Subject: RE: FOIA Request
Date: Monday, January 31, 2022 at 2:39:06 PM Eastern Standard Time
From: Andrew Gall
To: FOIA
CC: Angelia Rorison, David Ganz

EXTERNAL SENDER

Ms. Lewis,

To access the 1307 overlapping released documents please use the following link and password:
https://securisync.intermedia.net/us2/s/4ji4m76rWl8JUdlJF11UwS0011ef58
Password: Re#67#LB@9

This represents a partial response to FOIA Request #2022-1. We will provide you the remaining responsive documents shortly. Please let me know if you have any further questions or would like to discuss any aspect of your request.

Respectfully,
Andrew Gall
U.S. Commission on Civil Rights
Office of General Counsel
www.usccr.gov

AMERICAN OVERSIGHT

Date : 8/19/2021 11:15:35 AM
From : "Norma Cantu" ncantu@usccr.gov
To : "Juana Silverio" jsilverio@usccr.gov, "Mauro Morales" mmorales@usccr.gov, "John Mashburn" jmashburn@usccr.gov, "Irena Vidulovic" ividulovic@usccr.gov, "Mauro Morales" mmorales@usccr.gov
Cc : "Thomas Simuel" tsimuel@usccr.gov, "Alexander Heideman" aheideman@usccr.gov, "Carissa Mulder" CMulder@usccr.gov
Subject : RE: EAC Final Selections--not by notational vote

Dear John, Juana, and others,
I have already heard on Tuesday an objection from a Commissioner regarding using the notational vote to address the confirming of the EAC candidates. The concern, I understand, is that more discussion is needed on important items, such as length of term, duties to report back to USCCR, etc.
Since one objection stops the notational process, it will take a vote at a meeting to confirm.
I would welcome it if Commissioner Adams or others wish to make a motion at the meeting to add this item to the agenda.
Norma

From: Juana Silverio <jsilverio@usccr.gov>
Sent: Wednesday, August 18, 2021 4:13 PM
To: Mauro Morales <mmorales@usccr.gov>; John Mashburn <jmashburn@usccr.gov>
Cc: Thomas Simuel <tsimuel@usccr.gov>; Alexander Heideman <aheideman@usccr.gov>; Carissa Mulder <CMulder@usccr.gov>; Norma Cantu <ncantu@usccr.gov>
Subject: Re: EAC Final Selections

Thanks John. You are correct, the item is not on the agenda for Friday.

There were a few concerns raised on process before confirming the candidates to the EAC on behalf of the Commission. Please stand by snd advise your commissioners that further communication is forthcoming by the Chairwoman.

Please let us know if you have any further questions. We greatly appreciate your patience.

Juana

--
Juana Silverio (she/her/ella)
Special Assistant to Commissioner Norma V. Cantú
U.S. Commission on Civil Rights
E: jsilverio@usccr.gov
http://usccr.gov/
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425
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#USCCR

AMERICAN OVERSIGHT

From: Mauro Morales
Sent: Wednesday, August 18, 2021 4:41:49 PM
To: John Mashburn
Cc: Juana Silverio; Thomas Simuel; Alexander Heideman; Carissa Mulder
Subject: Re: EAC Final Selections

That is a good question. It is a decision for Commissioners in consultation with the Chair to decide how they wish to proceed. Adams is welcome to make a motion to amend the agenda to request a discussion and a vote. If the majority supports his motion it can be added to agenda. In the alternative, if Commissioners desire to proceed by notational vote and no one objects then a notational vote can occur. As I have requested previously, please advise me how you wish to proceed. I recommend Commissioners express their desire to the Chair since the Chair controls the agenda.

Sent from my iPhone

> On Aug 18, 2021, at 12:57 PM, John Mashburn <jmashburn@usccr.gov> wrote:
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> **Date:** Tuesday, August 10, 2021 at 2:57 PM
> **To:** Commissioners <Commissioners@usccr.gov>
> **Cc:**
> "CommissionerAssistants@usccr.gov" <CommissionerAssistants@usccr.gov>,
> David Ganz <dganz@usccr.gov>
> **Subject:** EAC Final Selections
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> Pursuant to the AI voted on during the April 30th Business meeting, I received the following names for appointment the Election Assistance Commission (EAC):
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AMERICAN OVERSIGHT

- Commissioner Michael Yaki;

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Staff Director
U.S. Commission on Civil Rights
P: 202-376-7796| F: 202-376-7672
Mmorales@usccr.gov
http://usccr.gov/
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425

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<image001.gif>
<image002.gif>

#USCCR

Sent from my iPhone

AMERICAN OVERSIGHT

Date : 8/19/2021 11:26:04 AM
From : "John Mashburn" jmashburn@usccr.gov
To : "Christian Adams" a@electionlawcenter.com, "Stephen Gilchrist" sgilchrist@usccr.gov, "Gail Heriot" gheriot@usccr.gov, "Peter Kirsanow" pkirsanow@usccr.gov
Cc : "Thomas Simuel" tsimuel@usccr.gov, "Alexander Heideman" aheideman@usccr.gov, "Carissa Mulder" CMulder@usccr.gov
Subject : Fw: EAC Final Selections--not by notational vote

FYI- Cantu "welcomes" a motion for a vote on EAC nominations

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AMERICAN OVERSIGHT

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AMERICAN OVERSIGHT

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<image001.gif>
<image002.gif>

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Sent from my iPhone

AMERICAN OVERSIGHT

Date : 3/13/2021 12:03:23 PM
From : "Alexander Heideman" aheideman@usccr.gov
To : "Gail Heriot" gheriot@usccr.gov, "Gail Heriot" gheriot@me.com
Cc : "Alexander Heideman" alexanderheideman@gmail.com
Subject : MOUs
Attachment : MOU SAC Membership Size.docx;MOU SAC Appointments.docx;MOU Commissions.docx;MOU Speaker Series.docx;

I've played around with these a bit. I include four MOUs:

1. Eliminating the "Speaker Series," and requiring any future series to be bipartisan
2. Requiring majority approval for appointments to other bodies (including but not limited to the EAC Board of Advisors)
3. Instituting a process for bipartisan SAC recruitment and nomination
4. Instructing Mauro to begin the notice-and-comment period to lower the SAC size to be consistent with our AIs

The EAC one is in line with what you and I talked about on Thursday; it is not in line with Norma's notes below. And I wrote the MOU directed at Mauro because Carissa told me that the Commissioners have asked him several times to do this and he's failed to act.

Carissa and John have the other things covered with AIs, which we discussed over coffee yesterday. I'll see if I can get Carissa to send them to me.

I can talk about this at any point today or tomorrow if you'd like. I'm going for a jog at some point today, and to mass in the morning tomorrow, but I'm 100% free otherwise.

Alex

From: Gail Heriot <gheriot@usccr.gov>
Date: Friday, March 12, 2021 at 11:29 AM
To: Alexander Heideman <aheideman@usccr.gov>
Subject: Fwd: My notes from yesterday's working group on topics related to Vote on Commissioner--No quorum & no decisions made.

Gail Heriot
Professor of Law
University of San Diego

Begin forwarded message:

> **From:** Norma Cantu <ncantu@usccr.gov>
> **Date:** March 12, 2021 at 8:19:25 AM PST
> **To:** Gail Heriot <gheriot@usccr.gov>, Michael Yaki <MYaki@usccr.gov>, Peter Kirsanow <pkirsanow@usccr.gov>
> **Subject: My notes from yesterday's working group on topics related to Vote on Commissioner--No quorum & no decisions made.**

AMERICAN OVERSIGHT

1. Language on 30/30/10 for rebuttals and surrebuttals-Gail-vehicle AI
2. Language on bipartisan nominations to Elect.Adv.Council at end of June 2021. Appointments to EAC will be made by Commission as a whole, with a majority vote. Proposed that Dem.Caucus nominates 2 people for one slot and R+I Caucus chooses the appointee. R+I Caucus nominates 2 people for one slot and Dem. caucus chooses the appointee. In future nominations to external agencies, the Chair will consult with the whole Commission before communicating any nominations. Vehicle-motion from floor at mtg. on March 19
3. Canceling the Chair's speakers series. Vehicle-email from Norma Cantu to Commissioners.
4. Already have language that half of State Adv. Council slots will be Dem. and half Rep. Need to add language on each Commissioners' Caucus will take ____days to nominate and vet new members of State Adv. Councils. At end of ___ days, the staff are expected to provide assistance in recruiting and vetting people to fill vacancies. Staff nominations take no longer than ____days. All nominations by Commissioners and staff come back to the full Commissioner for a discussion and vote to approve new members. Vehicle-motion from floor at mtg. on March 19.
5. Language about agreeing that AIs, as more specific agreements, govern process of Commissioners; in absence of relevant AI, Commissioners will apply Roberts' Rules of Order. Vehicle-Memo of Understanding approved by majority of Commissioners.
6. Chair proposes agenda for Commissioners' meeting, with Commissioners having ability to propose to amend agenda before meeting and also at the beginning the meeting, subject to majority vote. Vehicle-AI
7. A majority of Commissioners is needed to cancel a called Commissioner meeting. Vehicle-AI
8. Proposed by Norma, in absence of Chair available to moderate the meeting, the most senior Dem. and Rep. Commissioners will alternate chairing meetings. Vehicle-AI or memo. of understanding
9. Language that any Commissioner from each Caucus may sit in on OCRE interviews provided the Commissioner's request to attend does not cause a scheduling delay. Vehicle?
10. Memorial/obits require a majority vote of the Commission and the proposed language for the memorial shall be circulated to all the Commissioners. Vehicle-AI

AMERICAN OVERSIGHT

Memorandum of Understanding
SAC Membership Size

That: The undersigned Commissioners of the United States Commission on Civil Rights (the Commission) instruct the staff director to begin the pertinent notice-and-comment period to reconcile the Commission's regulations with its administrative instructions which permit a minimum size of nine people for all State Advisory Committees (SAC).

Agreed upon by Commissioners ___, ___, ___,
___, ___, ___, ___, and ___.
March 19, 2021.

AMERICAN OVERSIGHT

Memorandum of Understanding
SAC Appointments

That: The undersigned Commissioners of the United States Commission on Civil Rights (the Commission) agree that when vacancies occur on a State Advisory Committee (SAC) each caucus will have 30 calendar days to recruit and nominate five SAC members each.

That: Upon reaching the 30 calendar-day limit, and if a caucus has failed to recruit and nominate five SAC members, then Commission staff must provide assistance in recruiting additional members and will have 15 calendar days to do so.

That: Upon reaching the additional 15 calendar-day limit, the Commission staff must present all nominations to the Commission for discussion and voting per the Commission's administrative instructions.

Agreed upon by Commissioners ___, ___, ___,
___, ___, ___, ___, and ___.
March 19, 2021.

AMERICAN OVERSIGHT

Memorandum of Understanding
Appointments to Other Bodies

That: The undersigned Commissioners of the United States Commission on Civil Rights (the Commission) agree that when appointments to external bodies are made—such as those to be made to the Election Assistance Commission's Board of Advisors in June 2021—such appointments will not be made without the consent of a majority vote of the Commission.

That: The internal procedure that the Commission will be: The Democratic caucus of the Commission will nominate two people to that other body, and then the Republican caucus of the Commission will choose one of those two people to fill that appointment.

That: The Republican caucus of the Commission will nominate two people to that other body, and then the Democratic caucus of the Commission will choose one of those two people to fill that appointment.

Agreed upon by Commissioners ___, ___, ___,
___, ___, ___, ___, and ___.
March 19, 2021.

AMERICAN OVERSIGHT

Memorandum of Understanding
Speaker Series

That: The undersigned Commissioners of the United States Commission on Civil Rights (the Commission) agree to eliminate the "Speaker Series" as it currently exists at the Commission, that is to say as a series directed by the Chairperson of the Commission without the input or consent of other Commissioners.

That: If the Commission determines the need for any "Speaker Series" in the future, then such series will not be instituted and directed without the consent of a majority of the Commission.

That: If the majority of the Commission consents to a "Speaker Series," then such series must be bipartisan, allowing for each caucus to choose every other speaker.

Agreed upon by Commissioners ___, ___, ___,
___, ___, ___, ___, and ___.
March 19, 2021.

AMERICAN OVERSIGHT

Date : 8/19/2021 1:08:22 PM
From : "John Mashburn" jmashburn@usccr.gov
To : "Norma Cantu" ncantu@usccr.gov, "Juana Silverio" jsilverio@usccr.gov, "Mauro Morales" mmorales@usccr.gov, "Irena Vidulovic" ividulovic@usccr.gov
Cc : "Thomas Simuel" tsimuel@usccr.gov, "Alexander Heideman" aheideman@usccr.gov, "Carissa Mulder" CMulder@usccr.gov
Subject : Re: EAC Final Selections--not by notational vote

Thank you. Cmnr Adams will make the motion.

From: Norma Cantu <ncantu@usccr.gov>
Date: Thursday, August 19, 2021 at 11:15 AM
To: Juana Silverio <jsilverio@usccr.gov>, Mauro Morales <mmorales@usccr.gov>, John Mashburn <jmashburn@usccr.gov>, Irena Vidulovic <ividulovic@usccr.gov>, Mauro Morales <mmorales@usccr.gov>
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Please let us know if you have any further questions. We greatly appreciate your patience.

Juana

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AMERICAN OVERSIGHT

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Sent: Wednesday, August 18, 2021 4:41:49 PM
To: John Mashburn
Cc: Juana Silverio; Thomas Simuel; Alexander Heideman; Carissa Mulder
Subject: Re: EAC Final Selections

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Sent from my iPhone

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> **Cc:** "CommissionerAssistants@usccr.gov" <CommissionerAssistants@usccr.gov>, David Ganz <dganz@usccr.gov>
> **Subject:** EAC Final Selections
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AMERICAN OVERSIGHT

Date : 8/19/2021 1:09:27 PM
From : "John Mashburn" jmashburn@usccr.gov
To : "Christian Adams" a@electionlawcenter.com
Subject : Re: [EXTERNAL] RE: EAC Final Selections--not by notational vote

I let Cantu know.

Does Cleta know she will be asked to serve on this BOA?

From: Christian Adams <a@electionlawcenter.com>
Date: Thursday, August 19, 2021 at 1:00 PM
To: John Mashburn <jmashburn@usccr.gov>, Stephen Gilchrist <sgilchrist@usccr.gov>, Gail Heriot <gheriot@usccr.gov>, Peter Kirsanow <pkirsanow@usccr.gov>
Cc: Thomas Simuel <tsimuel@usccr.gov>, Alexander Heideman <aheideman@usccr.gov>, Carissa Mulder <CMulder@usccr.gov>
Subject: [EXTERNAL] RE: EAC Final Selections--not by notational vote

> CAUTION: This email is from outside USCCR.

Tell her I will make a motion to amend the agenda to have an amended agenda with a vote. this has gotten ridiculous. Probably the same commissioner that would not allow a vote (and then voted no) on the Walter Williams commemoration. Just petty.

From: John Mashburn <jmashburn@usccr.gov>
Sent: Thursday, August 19, 2021 11:26 AM
To: Christian Adams <a@electionlawcenter.com>; Stephen Gilchrist <sgilchrist@usccr.gov>; Gail Heriot <gheriot@usccr.gov>; Peter Kirsanow <pkirsanow@usccr.gov>
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P: 202-376-7796| F: 202-376-7672
Mmorales@usccr.gov
http://usccr.gov/

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Washington D.C. 20425

Follow Us on Twitter & Facebook:
<image001.gif>
<image002.gif>

#USCCR

Sent from my iPhone

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Date : 8/20/2021 2:20:40 PM
From : "Angelia Rorison" arorison@usccr.gov
To : "Mauro Morales" mmorales@usccr.gov
Subject : Article on Cleta RE: GA phone call

Recent article on our new EAC appointee:

https://www.newyorker.com/magazine/2021/08/09/the-big-money-behind-the-big-lie

Angelia Rorison (she/her/hers)
Director of Media and Communications
FOIA Public Liaison
U.S. Commission on Civil Rights
1331 Pennsylvania Ave., NW, Suite 1150
Washington, DC 20425
M: 202-499-0263
arorison@usccr.gov
www.usccr.gov
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Established in 1957 by the Civil Rights Act, the Commission is the only independent, bipartisan federal agency charged with advising the President and Congress on civil rights matters. Our 51 state Advisory Committees offer a broad perspective on civil rights concerns at state and local levels.

AMERICAN OVERSIGHT

Date : 10/18/2021 12:33:57 PM
From : "John Mashburn" jmashburn@usccr.gov
To : "Mauro Morales" mmorales@usccr.gov, "Juana Silverio" jsilverio@usccr.gov
Cc : "Carissa Mulder" CMulder@usccr.gov
Subject : Cleta Mitchell Serving on EAC Advisory Bd

Mauro/Juana – Cleta Mitchell has not been contacted by USCCR or EAC staff about serving on the EAC Bd of Advisors. As you recall, her nomination to serve was approved at the August USCCR Bus Mtg. My boss and one other Cmnr asked me to find out what the process and status are regarding her appointment to the EAC Bd of Advisors.

Can either of you provide that info, or do I need to contact someone else at USCCR, or EAC?

AMERICAN OVERSIGHT

Date : 10/28/2021 10:35:02 AM
From : "Juana Silverio" jsilverio@usccr.gov
To : "John Mashburn" jmashburn@usccr.gov
Subject : Re: Cleta Mitchell Serving on EAC Advisory Bd

Thanks for letting me know John.

The Chair is aware. We will get back to you.

Juana

--
Juana Silverio *(she/her/ella)*
Special Assistant to Commissioner Norma V. Cantú
U.S. Commission on Civil Rights
E: jsilverio@usccr.gov
http://usccr.gov/
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425
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#USCCR

From: John Mashburn
Sent: Thursday, October 28, 2021 9:59:56 AM
To: Juana Silverio
Subject: Re: Cleta Mitchell Serving on EAC Advisory Bd

How shortly is “shortly?”

The Bd of Advisors have a business meeting soon evidently.

From: Juana Silverio <jsilverio@usccr.gov>
Date: Thursday, October 28, 2021 at 9:50 AM
To: John Mashburn <jmashburn@usccr.gov>, Mauro Morales <mmorales@usccr.gov>, David Ganz <dganz@usccr.gov>
Cc: Norma Cantu <ncantu@usccr.gov>
Subject: Re: Cleta Mitchell Serving on EAC Advisory Bd

The Chair will address this shortly.

Juana

--
Juana Silverio *(she/her/ella)*
Special Assistant to Commissioner Norma V. Cantú
U.S. Commission on Civil Rights
E: jsilverio@usccr.gov
http://usccr.gov/

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Washington D.C. 20425
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From: John Mashburn
Sent: Thursday, October 28, 2021 8:40:44 AM
To: Mauro Morales; Juana Silverio; David Ganz
Subject: Fw: Cleta Mitchell Serving on EAC Advisory Bd

Is there an answer to this question?

From: John Mashburn
Sent: Monday, October 18, 2021 12:33:57 PM
To: Mauro Morales; Juana Silverio
Cc: Carissa Mulder
Subject: Cleta Mitchell Serving on EAC Advisory Bd

Mauro/Juana – Cleta Mitchell has not been contacted by USCCR or EAC staff about serving on the EAC Bd of Advisors. As you recall, her nomination to serve was approved at the August USCCR Bus Mtg. My boss and one other Cmnr asked me to find out what the process and status are regarding her appointment to the EAC Bd of Advisors.

Can either of you provide that info, or do I need to contact someone else at USCCR, or EAC?

AMERICAN OVERSIGHT

Date : 3/17/2021 12:50:37 PM
From : "Norma Cantu" ncantu@usccr.gov
To : "Michael Yaki" MYaki@usccr.gov
Subject : FW: [EXTERNAL] First set of docs---Please review Norma's draft reply
Attachment : AI-Appointments.docx;AI1-6Statements.docx;MOU-Appts.docx;MOU-Statements.docx;MOUSpeakerSeries.docx;

Here is my draft language to respond to Commissioners Heriot and Kirsanov,
It appearsthat your colleagues are adding new items to the list of requests. I am disappointed because we have already come close to running out of time for the 8, now 9, now 10 items on your Caucus's list of requests.
Item #1. We will not be able to change or add any Ais by Friday's meeting. I will ask for a Commissioner to offer a motion for vote in favor of continuing the current practice and policy of Commissioners. The language might go into an AI later but we have run out of time.
Item #2. I will ask for a Commissioner to offer a motion for a vote regarding the EAC Board of Advisors only. There are no other appointments pending and the vote on other bodies would be speculative.
Item #3. I have already offered to send you an email canceling the Speaker's series, once I am elected Chair. There is no need for an MOU. MOUs are for agreements between agencies, not within agencies.
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Item #10 I just saw it today and we don't have time for new items for Friday's meeting.
To summarize, I know Gail can't free herself up today. If we worked on it tonight or tomorrow, we might get Items without Ais done for votes on Friday. By this, I mean Items 1, 2, 3, and 5.
Norma

AMERICAN OVERSIGHT

From: Gail Heriot <gheriot@me.com>
Date: Tuesday, March 16, 2021 at 9:40 PM
To: Norma Cantu <ncantu@usccr.gov>
Subject: Fwd: [EXTERNAL] First set of docs

CAUTION: This email is from outside USCCR.

Gail Heriot
Professor of Law
University of San Diego

Begin forwarded message:

> **From:** Gail Heriot <gheriot@me.com>
> **Date:** March 16, 2021 at 5:06:37 PM PDT
> **To:** normavcantu@gmail.com, Peter Kirsanow <pkirsanow@beneschlaw.com>, Michael Yaki <MYaki@usccr.gov>, ncantu@usscr.gov
> **Cc:** Michael Yaki <commissioner.yaki@gmail.com>, Gail Heriot <gheriot@usccr.gov>
> **Subject: [EXTERNAL] First set of docs**
>
> *** CAUTION: This email is from outside USCCR. ***
>
> Dear Norma, Pete and Michael--Here is the first batch of documents. Note that the Statement/Rebuttal/Surrebuttal policy that was adopted November 19, 2010 was apparently never officially incorporated into the the AI Book. Carissa has incorporated the substance of the policy into an AI (and excised an earlier AI that was inconsistent with the 2010 policy adopted by the Commission). She didn't include everything from that policy in the proposed AI (though we certainly can if you want to). The 2010 policy is somewhat detailed. She didn't have the policy in front of her when she did the drafting. I've got it now.
>
> More to follow after I get a little further on my class prep for tomorrow.
>
> Gail

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ADMINISTRATIVE INSTRUCTION __- __

COMMISSION APPOINTMENTS TO OTHER FEDERAL ENTITIES

SECTION 1.

.01 Any authority specifically granted the Commission by statute to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc. shall be exercised by the Commission as a whole by majority vote.

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AI 1-6 Section 18

SECTION 18. FINAL REVISION OF NATIONAL OFFICE REPORTS AND COMMISSION REVIEW

.01 If defame and degrade procedures must be implemented the project team, in consultation with staff attorneys, makes appropriate changes in response to the comments received or, where suitable, add the comments as an appendix to the report.

.02 The assigned office sends the revised draft report to the Staff Director. This draft incorporates all applicable editorial, legal, and affected agency revisions. Before forwarding the report to the Staff Director, the assigned office completes its section(s) of the appropriate checklist form for forwarding along with the revised draft report.

.03 After completing the final review of the revised draft report, the Staff Director documents this review by completing his/her section(s) of the checklist. The Staff Director submits the proposed final draft report and the checklist to an external reviewer as described in Section 19 below.

.04 The Staff Director will confirm that the external reviewer has reviewed the report and the checklist and has completed the certification on the bottom of the appropriate national office report checklist. If the report is ready for final draft distribution, the Staff Director will submit the report to the Commissioners as the proposed final draft report, along with the completed report checklist. A copy of the proposed final draft report will also be returned to the assigned office to be maintained in the project file. The assigned office maintains a record of the changes it made as a result of the Commissioners' review.

.05 It appears there is no subsection .05, so this should be renumbered.

Commented [CM1]: Subsection .05 is missing in the original document, but I included it here so no one would wonder if I missed something.

.06 The Staff Director will determine (before transmitting the report to the Commissioners) if any changes should be made to the assigned office's follow-up plan.

.07 The proposed final draft report, incorporating any revisions made as a result of the Staff Director's review, is submitted to the Commissioners for a vote. For a report to become an official report of the Commission, it must be approved by a majority vote of the Commissioners.

(a) Nothing in this policy is intended to alter previously approved policies regarding the posting and release of reports to the public or on the agency Website.

(b) Nothing in this policy rule requires that a proposed final draft be submitted for an up or down vote in its entirety. If the staff or a majority of the Commission deems it appropriate, the Commission may sever the document for purposes of discussion and voting. Only portions of the report that receive a majority vote become part of the final Commission document.

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~~(c) Commissioners wishing to submit a statement of dissent may indicate their intention to do so after the vote approving the report has been taken. At that time, the Commissioner(s) will make arrangements with the Staff Director as to the date such dissent will be submitted. Nothing in this policy prohibits the integration of a dissenting statement within the body of the report, so long as the Staff Director and the author of the dissenting statement agree to use this format. All dissenting statements that are provided in a timely fashion and that comply with applicable federal law and Commission policy will either be included as an attachment to the report or integrated into the body of the final report.~~

(d) After the Commission has~~a majority of Commissioners have~~ approved the report (including its findings and recommendations), Commissioners may submit statements to be included with the report. From the date of approval, Commissioners will have thirty (30) days to submit statements. After the Staff Director distributes all Commissioner statements, Commissioners will have ~~and~~ thirty (30) days to submit rebuttals. If three Commissioners agree that an opportunity for surrebuttal is warranted, Commissioners will have ten (10) days to submit surrebuttals after notifying the Staff Director and other Commissioners of their intent to invoke an opportunity for subrebuttal.~~.~~ The three Commissioners shall notify the Staff Director and other Commissioners of their intention to invoke the surrebuttal period no more than three (3) days after the Staff Director has distributed ~~deadline for submission of~~ rebuttals.

Commented [CM2]: This will be (c), but I didn't want to delete current (c) so you can compare them.

~~(c)~~(e) Commissioners who are financially recused from working on the topic of a report should notify the Designated Agency Ethics Officers and should not participate in any portion of the project. The Staff Director will denote recusal in the written report by (1) placing an asterisk (*) beside the recused Commissioner(s) name when listing members of the Commission and (2) placing text at the bottom of the page explaining that the asterisk denotes recusal. Commissioners wishing to abstain should notify the Staff Director during the vote approving the report. The Staff Director will denote abstention in the written report by (1) placing a carat (^) beside the abstained Commissioner(s) name when listing members of the Commission and (2) placing text at the bottom of the page explaining that the carat denotes abstention.

Commented [CM3]: This is currently (and will remain) subsection (d), but became (e) in this document for the same reason (c) became (d) above.

.08 The timing of each of the stages describing Commissioner involvement is intended to be flexible and may be conducted by notational vote (project concept approval, background and planning, discovery, first draft report and final report).

.09 After Commissioner review and approval of a report, the project team in the assigned office makes any necessary revisions and oversees copy editing before submitting the report to the Staff Director for final approval. If there are any substantive changes made to the report subsequent to Commissioner review, such changes must be provided to the Commissioners for further review before the final report is published. Any editorial changes made to the report after Commissioner review will be documented in the project file.

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.10 If substantial changes affecting the legal thrust of the report are made as a result of Commissioner review they must undergo an expedited legal sufficiency review.

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Memorandum of Understanding
Appointments to Other Bodies

That: The undersigned Commissioners of the United States Commission on Civil Rights (the Commission) agree that when appointments to external bodies are made—such as those to be made to the Election Assistance Commission's Board of Advisors—such appointments will not be made without the consent of a majority vote of the Commission.

They further agree that, in 2021, the following internal procedure will be observed:

That: The Members appointed by Democratic authorities will nominate two people to that other body, and then Members appointed by Republican authorities will choose one of those two people to fill that appointment.

That: The Members appointed by Republican authorities will nominate two people to that other body, and then the Members appointed by Democratic authorities will choose one of those two people to fill that appointment.

Efforts will be made to insure not only bipartisanship, but also geographic diversity.

The "ticket" created by that method will then be subject to a majority vote of the Commission.

Agreed upon by Commissioners ___, ___, ___,
___, ___, ___, ___, and ___.
March 19, 2021.

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MEMORANDUM OF UNDERSTANDING

Statements, Rebuttals, Surrebuttals

The undersigned Commissioners agree that during their tenure on the U.S. Commission on Civil Rights they will always vote in favor of upholding the current policy on Commissioner statements, rebuttals, and surrebuttals (as adopted on November 19, 2010) and that they always vote against any motion to limit the time allotted for statements, rebuttals and surrebuttals in a particular case unless all Commissioners who plan to write such statements, rebuttals or surrebuttals agree to such a limitation.

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Memorandum of Understanding
Speaker Series

That: The undersigned Commissioners of the United States Commission on Civil Rights (the Commission) agree to eliminate the "Speaker Series" as it currently exists at the Commission, that is to say as a series directed by the Chairperson of the Commission without the input or consent of other Commissioners.

That: If the Commission determines the need for any "Speaker Series" in the future, then such series will not be instituted and directed without the consent of a majority of the Commission.

That: If the majority of the Commission consents to a "Speaker Series," then such series must be bipartisan, allowing for each caucus to choose every other speaker.

Agreed upon by Commissioners ___, ___, ___,
___, ___, ___, ___, and ___.
March 19, 2021.

AMERICAN OVERSIGHT

Date : 3/17/2021 3:16:41 PM
From : "Norma Cantu" ncantu@usccr.gov
To : "michael@michaelyaki.com" michael@michaelyaki.com, "Michael Yaki" MYaki@usccr.gov
Subject : Draft that includes the last paragraph.

Draft2
Dear Commissioners Heriot and Kirsanow,
It appears that your colleagues are adding new items to the list of requests. I am disappointed because we have already come close to running out of time for the 8, now 9, now 10 items on your Caucus's list of requests.
Item #1. We will not be able to change or add any Ais by Friday's meeting. I will ask for a Commissioner to offer a motion for vote in favor of continuing the current practice and policy of Commissioners. The language might go into an AI later but we have run out of time.
Item #2. I will ask for a Commissioner to offer a motion for a vote regarding the EAC Board of Advisors only. There are no other appointments pending and the vote on other bodies would be speculative.
Item #3. I have already offered to send you an email canceling the Speaker's series, once I am elected Chair. There is no need for an MOU. MOUs are for agreements between agencies, not within agencies.
Item #4. I still do not understand the problems about recruiting and vetting proposed members to the State Advisory Council. We will need a fuller discussion of why there appears to be a lag in numbers of Republicans in the nomination pools. We already have AI 59 Section 5 and Section 7.08 that require bipartisan participation on the SACs.
Item #5 I have no objection to using Robert's Rules provided we are using the same versions (there have been updates). I suggest a Commissioner offer a motion on this. I cannot agree on the AI's overruling Robert's Rules until I have read the "book" of Ais. Otherwise, I would not be performing my due diligence.
Item #6 We already have a rule in 7.01.11c that any Commissioner may make a motion at the beginning of a called meeting to add items to the agenda so I do not agree an AI would be needed to make amendments to the agenda before the meeting, even if we had time to write one by Friday. If we adopt Robert's Rules, this question would be answered.
Item #7 On the request that a majority of Commissioners is needed to cancel a meeting, this would impeded our ability to cancel meetings if conditions such as the Texas Ice Storm of 2021 were to cut WIFI. We need more discussion and we are out of time.
Item #8. We should wait on the item regarding the absence of the Chair because I understand the Office of Presidential Personnel is working nominating a Vice Chair, subject to the Commission's vote.
Item #9 This was added last week by Heriot and Kirsanow. I thought you were talking about content interviews, but realized you might be talking about job interviews. In either event, the Commission should not attend interviews so as to preserve the objectivity of the process and not bring in partisanship.
Item #10 I just saw it today and we don't have time for new items for Friday's meeting.

To summarize, I know Gail can't free herself up today. If we-Gail, Peter, Norma and Michael- worked on it tonight or tomorrow, we might get Items without Ais

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done for votes on Friday. By this, I mean Items 1, 2, 3, and 5.

Finally, there are members of my Caucus who believe that there should be concessions from your Caucus on part of the items on your agenda and these concessions should be part of the negotiations. Given that there are no other substantive items on the agenda for the March 19th Friday meeting, now that the FEMA plan has passed (thank you!), I suggest we inform Mauro that-for this meeting only-- pending resolution of Item #7—a majority wants the Friday business meeting cancelled, and we use the time on Friday to continue our discussions of these items.
Norma

AMERICAN OVERSIGHT

Date : 3/17/2021 3:00:31 PM
From : "Michael Yaki" MYaki@usccr.gov
To : "Norma Cantu" ncantu@usccr.gov
Subject : Re: [EXTERNAL] First set of docs---Please review Norma's draft reply

Thoughts below

From: Norma Cantu
Sent: Wednesday, March 17, 2021 12:50 PM
To: Michael Yaki
Subject: FW: [EXTERNAL] First set of docs---Please review Norma's draft reply

Here is my draft language to respond to Commissioners Heriot and Kirsanov,
It appears that your colleagues are adding new items to the list of requests. I am disappointed because we have already come close to running out of time for the 8, now 9, now 10 items on your Caucus's list of requests.
Item #1. We will not be able to change or add any Ais by Friday's meeting. I will ask for a Commissioner to offer a motion for vote in favor of continuing the current practice and policy of Commissioners. The language might go into an AI later but we have run out of time.
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AMERICAN OVERSIGHT

the process and not bring in partisanship.
Item #10 I just saw it today and we don't have time for new items for Friday's meeting.
To summarize, I know Gail can't free herself up today. If we worked on it tonight or tomorrow, we might get Items without Ais done for votes on Friday. By this, I mean Items 1, 2, 3, and 5.
Finally, there are members of my Caucus who believe that there should be concessions on your part on items on their agenda that should be part of the negotiations.
Given that there are no other substantive items on the agenda for Friday now that the FEMA plan has passed (thank you!), I suggest we inform Mauro that --for this meeting only, pending resolution of item 7 -- a majority wants the Friday meeting cancelled and we use the time to continue our discussions on these items.
Norma

From: Gail Heriot <gheriot@me.com>
Date: Tuesday, March 16, 2021 at 9:40 PM
To: Norma Cantu <ncantu@usccr.gov>
Subject: Fwd: [EXTERNAL] First set of docs

> CAUTION: This email is from outside USCCR.

Gail Heriot
Professor of Law
University of San Diego

Begin forwarded message:

> **From:** Gail Heriot <gheriot@me.com>
> **Date:** March 16, 2021 at 5:06:37 PM PDT
> **To:** normavcantu@gmail.com, Peter Kirsanow <pkirsanow@beneschlaw.com>, Michael Yaki <MYaki@usccr.gov>, ncantu@usscr.gov
> **Cc:** Michael Yaki <commissioner.yaki@gmail.com>, Gail Heriot <gheriot@usccr.gov>
> **Subject: [EXTERNAL] First set of docs**
>
> *** CAUTION: This email is from outside USCCR. ***
>
> Dear Norma, Pete and Michael--Here is the first batch of documents. Note that the Statement/Rebuttal/Surrebuttal policy that was adopted November 19, 2010 was apparently never officially incorporated into the the AI Book. Carissa has incorporated the substance of the policy into an AI (and excised an earlier AI that was inconsistent with the 2010 policy adopted by the Commission). She didn't include everything from that policy in the proposed AI (though we certainly can if you want to). The 2010 policy is somewhat detailed. She didn't have the policy in front of her when she did the drafting. I've got it now.
>
> More to follow after I get a little further on my class prep for tomorrow.

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Gail

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Date : 3/17/2021 4:56:42 PM
From : "Gail Heriot" gheriot@usccr.gov
To : "Carissa Mulder" CMulder@usccr.gov, "Carissa Mulder" carissa.mulder@gmail.com, "Alexander Heideman" aheideman@usccr.gov, "Alexander Heideman" alexanderheideman@gmail.com, "Peter Kirsanow" pkirsanow@usccr.gov, "Peter Kirsanow" pkirsanow@beneschlaw.com
Subject : Fwd: Response to today's emails from Commissioner Heriot--Thank you

I don't have time even to read this. Take a look.

Gail Heriot
Professor of Law
University of San Diego

Begin forwarded message:

From: Norma Cantu <ncantu@usccr.gov>
Date: March 17, 2021 at 1:24:01 PM PDT
To: Gail Heriot <gheriot@usccr.gov>, "Kirsanow, Peter" <pkirsanow@beneschlaw.com>, MICHAEL@michaelyaki.com
Cc: Norma Cantu <ncantu@usccr.gov>
Subject: Response to today's emails from Commissioner Heriot--Thank you

Dear Commissioners Heriot and Kirsanow,
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Norma

Cell 210 380 6380

AMERICAN OVERSIGHT

Date : 3/17/2021 4:24:00 PM
From : "Norma Cantu" ncantu@usccr.gov
To : "Gail Heriot" gheriot@usccr.gov, "Kirsanow, Peter" pkirsanow@beneschlaw.com, "michael@michaelyaki.com" michael@michaelyaki.com
Cc : "Norma Cantu" ncantu@usccr.gov
Subject : Response to today's emails from Commissioner Heriot--Thank you

Dear Commissioners Heriot and Kirsanow,
It appears that your colleagues are adding new items to the list of requests. I am disappointed because we have already come close to running out of time for the 8, now 9, now 10 items on your Caucus's list of requests.
Item #1. We will not be able to change or add any Ais by Friday's meeting. I will ask for a Commissioner to offer a motion for vote in favor of continuing the current practice and policy of Commissioners. The language might go into an AI later but we have run out of time.
Item #2. I will ask for a Commissioner to offer a motion for a vote regarding the EAC Board of Advisors only. There are no other appointments pending and the vote on other bodies would be speculative.
Item #3. I have already offered to send you an email canceling the Speaker's series, once I am elected Chair. There is no need for an MOU. MOUs are for agreements between agencies, not within agencies.
Item #4. I still do not understand the problems about recruiting and vetting proposed members to the State Advisory Council. We will need a fuller discussion of why there appears to be a lag in numbers of Republicans in the nomination pools. We already have AI 59 Section 5 and Section 7.08 that require bipartisan participation on the SACs.
Item #5 I have no objection to using Robert's Rules provided we are using the same versions (there have been updates). I suggest a Commissioner offer a motion on this. I cannot agree on the AI's overruling Robert's Rules until I have read the "book" of Ais. Otherwise, I would not be performing my due diligence.
Item #6 We already have a rule in 7.01.11c that any Commissioner may make a motion at the beginning of a called meeting to add items to the agenda so I do not agree an AI would be needed to make amendments to the agenda before the meeting, even if we had time to write one by Friday. If we adopt Robert's Rules, this question would be answered.
Item #7 On the request that a majority of Commissioners is needed to cancel a meeting, this would impeded our ability to cancel meetings if conditions such as the Texas Ice Storm of 2021 were to cut WIFI. We need more discussion and we are out of time.
Item #8. We should wait on the item regarding the absence of the Chair because I understand the Office of Presidential Personnel is working nominating a Vice Chair, subject to the Commission's vote.
Item #9 This was added last week by Heriot and Kirsanow. I thought you were talking about content interviews, but realized you might be talking about job interviews. In either event, the Commission should not attend interviews so as to preserve the objectivity of the process and not bring in partisanship.
Item #10 I just saw it today and we don't have time for new items for Friday's meeting.

To summarize, I know Gail can't free herself up today. If we-Gail, Peter, Norma and Michael- worked on it tonight or tomorrow, we might get Items without Ais done for votes on Friday. By this, I mean Items 1, 2, 3, and 5.

Finally, there are members of my Caucus who believe that there should be concessions from your Caucus on part of the items on your agenda and these concessions should be part of the negotiations. Given that there are no other substantive items on the agenda for the

AMERICAN OVERSIGHT

March 19th Friday meeting, now that the FEMA plan has passed (thank you!), I suggest we inform Mauro that-for this meeting only-- pending resolution of Item #7—a majority wants the Friday business meeting cancelled, and we use the time on Friday to continue our discussions of these items as a working group of four.

Norma

Cell 210 380 6380

AMERICAN OVERSIGHT

Date : 3/18/2021 2:37:11 PM
From : "Carissa Mulder" CMulder@usccr.gov
To : "John Mashburn" jmashburn@usccr.gov
Subject : Fw: Response to today's emails from Commissioner Heriot--Thank you

This is what Gail sent us.

From: Gail Heriot
Sent: Wednesday, March 17, 2021 4:56 PM
To: Carissa Mulder; Carissa Mulder; Alexander Heideman; Alexander Heideman; Peter Kirsanow; Peter Kirsanow
Subject: Fwd: Response to today's emails from Commissioner Heriot--Thank you

I don't have time even to read this. Take a look.

Gail Heriot
Professor of Law
University of San Diego

Begin forwarded message:

> **From:** Norma Cantu <ncantu@usccr.gov>
> **Date:** March 17, 2021 at 1:24:01 PM PDT
> **To:** Gail Heriot <gheriot@usccr.gov>, "Kirsanow, Peter" <pkirsanow@beneschlaw.com>, MICHAEL@michaelyaki.com
> **Cc:** Norma Cantu <ncantu@usccr.gov>
> **Subject: Response to today's emails from Commissioner Heriot--Thank you**
>
> Dear Commissioners Heriot and Kirsanow,
> It appears that your colleagues are adding new items to the list of requests. I am disappointed because we have already come close to running out of time for the 8, now 9, now 10 items on your Caucus's list of requests.
> Item #1. We will not be able to change or add any Ais by Friday's meeting. I will ask for a Commissioner to offer a motion for vote in favor of continuing the current practice and policy of Commissioners. The language might go into an AI later but we have run out of time.
> Item #2. I will ask for a Commissioner to offer a motion for a vote regarding the EAC Board of Advisors only. There are no other appointments pending and the vote on other bodies would be

AMERICAN OVERSIGHT

speculative.
Item #3. I have already offered to send you an email canceling the Speaker's series, once I am elected Chair. There is no need for an MOU. MOUs are for agreements between agencies, not within agencies.
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AMERICAN OVERSIGHT

Norma

Cell 210 380 6380

AMERICAN OVERSIGHT

Date : 3/24/2021 3:15:59 PM
From : "Pilar McLaughlin" pmclaughlin@usccr.gov
To : "David Ganz" dganz@usccr.gov, "Mauro Morales" mmorales@usccr.gov
Subject : FW: EAC Board of Advisors Membership Appointments
Attachment : EAC Letter to USCCR re Board of Advisors.pdf;Notice-of-Representation-Form-Board-Advisors-2021.pdf;

Mauro and David:

Wanted to make sure you saw this. Flagging the date (March 26, 2021) the EAC is requesting we submit the Commission's new appointments.

Pilar

From: Kevin Rayburn <KRayburn@eac.gov>
Sent: Wednesday, March 24, 2021 2:14 PM
To: Mauro Morales <mmorales@usccr.gov>
Cc: Pilar McLaughlin <pmclaughlin@usccr.gov>
Subject: [EXTERNAL] RE: EAC Board of Advisors Membership Appointments

> CAUTION: This email is from outside USCCR.

I just wanted to follow-up on my previous email and see if you had any questions or concerns.

Thanks,

Kevin Rayburn, General Counsel
U.S. Election Assistance Commission
Mobile: (202) 740-6546

From: Kevin Rayburn
Sent: Friday, March 5, 2021 11:14 AM
To: mmorales@usccr.gov
Subject: EAC Board of Advisors Membership Appointments

Good Morning Mr. Morales,

Please find attached correspondence from the U.S. Election Assistance Commission regarding your organization's appointments to the EAC Board of Advisors. Also included is a Notice of Representation Form. We ask that you please return the completed form to krayburn@eac.gov by March 26, 2021. Let me know if you have any questions.

Sincerely,

AMERICAN OVERSIGHT

Kevin Rayburn, General Counsel
U.S. Election Assistance Commission
Mobile: (202) 740-6546

AMERICAN OVERSIGHT

U.S. Election Assistance Commission

633 3rd Street NW, Suite 200
Washington, DC 20001

March 5, 2021

United States Commission on Civil Rights
Mauro Morales, Staff Director
1331 Pennsylvania Ave., NW, STE 1150
Washington, D.C. 20425
mmorales@usccr.gov

Re: U.S. Election Assistance Commission
Board of Advisors Membership Appointment

Dear Mr. Morales,

As you are aware, the Help America Vote Act of 2002 (HAVA) created the U.S. Election Assistance Commission (EAC) and established three advisory boards to assist the EAC: Board of Advisors, Standards Board, and Technical Guidelines Development Committee. The advisory boards are primarily charged with providing advice, guidance, and support to the EAC on the ongoing development of the Voluntary Voting System Guidelines (VVSG).

Under Section 214 of HAVA, your organization is authorized to appoint two members to the Board of Advisors. The Board of Advisors Charter and Bylaws govern the advisory board.

Please be advised that your designated representatives' two-year terms to the Board of Advisors expire on April 13, 2021. You can either reappoint your current representative(s) or appoint new representative(s) for a new two-year term. In compliance with HAVA, please make appointments "in a manner which ensures that the Board of Advisors will be bipartisan in nature and will reflect the various geographic regions of the United States." 52 U.S.C § 20944(b).

Your current representatives are:

Michael Yaki

David Kladney

The new term of your member representatives will begin on April 13, 2021 coinciding with the renewal of the Board of Advisor's Charter.

Please use the enclosed Notice of Representation form to advise us of your designated representatives to serve on the EAC Board of Advisors for the upcoming two-year term. **Please return this completed form by email to krayburn@eac.gov no later than March 26, 2021**.

While the EAC recently adopted VVSG 2.0, we are committed to an agile process that includes continually working with our advisory boards to identify enhancements to the VVSG. The

AMERICAN OVERSIGHT

usability, accessibility, and security of voting systems continue to be of critical importance, and recommendations from the advisory boards are as imperative as ever. Therefore, your prompt response to this letter is greatly appreciated.

Thank you for your attention to this matter. If we can be of assistance, please feel free to contact us at 202-740-6546 or krayburn@eac.gov.

Sincerely,

Mona Harrington
Executive Director
U.S. Election Assistance Commission

AMERICAN OVERSIGHT

Notice of Representation
United States Election Assistance Commission
Board of Advisors

In accordance with 52 U.S.C. § 20944 of the Help America Vote Act of 2002, your office submits the following individual(s) as a member of the Election Assistance Commission Board of Advisors:

Designated Representative

Name: _____

Title: _____

Address: _____

_____

Phone: _____

Email: _____

Party Affiliation: _____

Designated Representative

Name: _____

Title: _____

Address: _____

_____

Phone: _____

Email: _____

Party Affiliation: _____

Name and Title of Appointing Official

Print Name: _____

Print Title: _____

Signature: _____ Date: _____

Please return the completed form via email to EAC General Counsel Kevin Rayburn (krayburn@eac.gov).

AMERICAN OVERSIGHT

Date : 4/12/2021 1:38:26 PM
From : "Amy Royce" aroyce@usccr.gov
To : "juanadelpilar@gmail.com" juanadelpilar@gmail.com, "Irena Vidulovic" ividulovic@usccr.gov
Subject : Draft agenda for Tuesday/ Wednesday caucus call
Attachment : 04-08-Business-Meeting-Agenda-for-04-16.pdf;ID SAC Dr. Yenor.docx;CO SAC Dr. Chen.docx;

Hey Juana,

Including here items we flagged for discussion on the caucus call. Irena, please let me know if I missed anything, and if we should attach materials regarding the NC SAC.

We will continue to hold the 3:00 pm time tomorrow unless we hear otherwise. Usually we would circulate an agenda the day before. Since Commissioner Cantu will be leading the call, she may want to use this agenda or may have her own, but I thought this would be helpful.

Agenda items:

- Update from Comms. Cantu and Yaki on discussions regarding Chair confirmation
- Business meeting on Friday (Sunshine Act notice attached)
    - Need for agenda amendments: remove FEMA discovery materials, as already approved by notational vote
    - Remove/combine other items?
        - Eliminating the Speaker Series
        - Rebuttal/surrebuttal time period
        - Bi-partisan appointment to EAC board of advisors
    - Statement on violence against AAPI community?
- SAC updates
    - Potential compromise on North Carolina SAC, adding one member for an 8/8 balance
    - Colorado and Idaho SACs
        - R's proposal - Dr. Chen in CO if we allow Mr. Yenor in ID (objections and responses attached)
    - Need for information from regional staff on status of recruiting for remainder of 14 expired committees
- Status of AI availability for Commissioners
    - A version of the AI's that was current in 2014 is available online, need information and a timeline from the GC for updating that version

AMERICAN OVERSIGHT

CIVIL RIGHTS COMMISSION

Sunshine Act Meeting Notice

AGENCY: United States Commission on Civil Rights.

ACTION: Notice of Commission public business meeting.

DATES: Friday, April 16, 2021, 12:00 p.m. EST.

FOR FURTHER INFORMATION CONTACT: Angelia Rorison: 202-376-7700; publicaffairs@usccr.gov.

ADDRESSES: Meeting to take place by telephone and is open to the public by telephone: 1-866-556-2537, Conference ID #896-5601. Computer assisted real-time transcription (CART) will be provided. The web link toaccess CART (in English) on Friday, April 16th, 2021, is https://www.streamtext.net/player?event=USCCR. Please note that CART is text-only translation that occurs in real time during the meeting and is not an exact transcript.

MEETING AGENDA

I. Motion to Approve Commissioner Norma Cantú to Serve as USCCR Chair

II. Approval of Agenda

III. Business Meeting

A. Discussion and Vote on Statement of Walter E. Williams;

B. Discussion and Vote to continue the Policy of Rebuttals and Surrebuttals;

C. Discussion and Vote to suspend Speaker Series;

D. Discussion and Agreement to Appoint Bipartisan Commissioners to EAC

E. Discovery and Vote on FEMA Report Discovery Plan

F. Management and Operations

- Staff Director's Report

IV. Adjourn Meeting

Dated: April 8, 2021

AMERICAN OVERSIGHT

IDAHO

Commissioner Yaki's objection

Dear Dr. Yenor:

Thank you for your service on the Idaho Advisory Committee and for your recent application for reappointment. Your name was included on the list of nominated individuals that is currently being reviewed by the Commissioners prior to appointment. As part of that review, Commissioner Yaki has made a formal objection to your nomination on the Committee because of an alleged comment you made.

Pursuant to our Administrative Instructions, when Commissioner objections pertain to a proposed member's public statement, then that nominee is provided the opportunity to respond in writing to the raised concern. The Staff Director will then consider the written response when making the final determination on whether to include the nominee on the list of individuals to be recommended for appointment.

The Commissioner has objected to your reappointment to the Idaho Advisory Committee because the Commissioner believes you are hostile to marriage equality and transgender rights. Furthermore, The Commissioner believes your public statements render you incapable of, and unable to, protect the constitutional rights supported by recent Supreme Court opinions. Citations to your most objectionable public statements on the issues at hand include:

- *https://startingpointsjournal.com/feminism-transgenderism-and-the-politics-of-identity/*
- *https://www.dailysignal.com/2017/07/18/radical-feminism-sowed-seeds-transgender-moment*
- *https://www.dailysignal.com/2017/08/02/transgender-activists-seeking-undermine-parental-rights/*
- *https://www.dailysignal.com/2017/08/02/transgender-activists-seeking-undermine-parental-rights/*
- *https://www.heritage.org/marriage-and-family/report/the-obligations-family-life-response-modern-liberalism.*

Mr. Yenor's Reponse

Dear Mr. Mussatt,
Thank you for forwarding the objections of Commissioner Michael Yaki and giving me two days to respond. I would like to know more about the process for how my response will be evaluated. Is the whole USCCR to respond? How will responses be tabulated? In any event, again thank you for forwarding these objections.

The objections to my re-nomination to the Idaho Advisory committee on civil rights are (1) that I am "hostile to marriage equality and transgender rights" as evidenced in my public writings and (2) that my "public statements render [me] incapable of, and unable to, protect (sic) the constitutional rights supported by recent Supreme Court opinions."

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Claims of discrimination under the current civil rights regime must be established through rational inquiry aided, where appropriate, by social science. Proposed policies to combat alleged discrimination must then be weighed through a rational public policy process. Policies must be evaluated critically if they are implemented.

Civil rights are hardly an all or nothing proposition. Some civil rights clash with other civil rights. Civil rights almost always require a balancing of various claims or a negotiation of the rights of various groups. In objecting to my participation on the commission, Commissioner Yaki seems to deny that civil rights matters involve such balancing or to deny that some important civil rights should be protected or to deny that some civil rights claims should be heard or entertained; he seems to want civil rights for only some groups and not for others. He gives civil rights a bad name in so doing.

Suppose a civil rights commission finds itself adjudicating a claim of transgender rights as civil rights. In making a fair-minded adjudication, the commission would have to consider the relation between such transgender rights and other civil rights in our tradition such as the free exercise of religion, parental rights, rights against sex discrimination. It would have to determine how transgender rights weigh against those rights. In doing so, it would be necessary to inquire into the rational basis for claims of transgender rights and the likely consequences of affirming them, just as it would be necessary to see what would happen from denying them.

My work raises questions about the evidence that proves discrimination and it concerns the clash of civil rights in politics. Claims of transgender rights can, in some circumstances, I have argued, clash with parental rights (as when a school insists on transitioning a child from one gender to another without informing the parents or against their will). Such instances are, as my research argues, more likely to harm the child and, if multiplied, are likely to have a corrosive effect on parental rights, a crucial civil right (as established in Meyer v. Nebraska and Pierce v. Society of Sisters). Seeing children as products of state mandates in these instances is more likely to undermine well-functioning institutions than it is to promote a good society or thriving individuals. Claims to marital equality have already compromised religious liberty, the freedom of association, and the free thought and discussion on many platforms.

Does Commissioner Yaki disagree that transgender rights clash with parental rights? Does he think that the Civil Rights Commissions nationwide should ignore questions about what it would mean to take the side of "transgender rights" against parental rights? Does he think religious liberty of so little importance that Civil Rights Commissions should ignore how it is compromised by so-called marriage equality? Does he think Civil Rights Commissions should refrain from investigating the future mental and physical health of children who have been transitioned, against the will of their parents, from one gender to another? Does he think we should cease investigating the mental or physical health of all those who have transitioned, even with parental support? Perhaps I should object to his continued participation as a Civil Rights Commissioner if he thinks all such questions are settled questions or based on sound science!

The inclusion of gender identity within the anti-discrimination regime of the 1964 Civil Rights Act is a cause for no little concern. Under such gender identity claims, a person's subjective,

AMERICAN OVERSIGHT

gendered self-image as woman, man or whatever supersedes the objective biological fact of sexual identity as female or male. This new gender identity further may come with a demand that governments and others citizens recognize that new gender as an objective fact—a huge abridgement on the civil rights and the freedom of mind of others. These ideas, taken together, are incoherent and compromise our commitment to limited government. They are incoherent because they nullify the categories of male and female to which the anti-discrimination principle applies. How can a school district remedy supposed unjust discrimination in girls' sports when anyone can qualify, simply on their own assertion, as woman? Does Fairness in Sports demand keeping biological men out of women's sports and aspiring to equal treatment of such sports or does it demand letting transgendered men in and, perhaps, decrease the opportunities for the formerly protected class of women? Idaho has taken the lead in protecting women's sports in these circumstances, and I look forward to participating in studies investigating how this affects opportunities. The demands that Commissioner Yaki makes contain the seeds of a new political order, much less committed to civil rights than our current order.

I am very skeptical of the idea that gender operates independently of sex. I would demand verification, from well-designed studies, that confirmed the proposition that conceiving of gender independently of sex leads to individual and social thriving. It think it is irresponsible to accept, without critical inquiry, the idea that affirming gender identity fosters all manner of social and individual good. It is not at all clear to me that it is better to recognize a person's concept of gender, apart from their biological sex, as authentic and salutary rather than as erroneous or pathological. I would be concerned that acknowledging such an idea compromises other, well-established and important civil rights.

Conservatives participate in Civil Rights Commissions across the country. We generally worry about how anti-discrimination laws, as applied and as construed, abridge fundamental freedoms and can upset prospects of social harmony. We often investigate the implications of such abridgements in our scholarship. On the Yaki standard, would Justice Sam Alito or Justice Clarence Thomas or Chief Justice John Roberts be ineligible to serve on a civil rights commission? They dissented, after all, from the same-sex marriage decisions in Windsor and Obergefell. Two of them dissented in the recent case re-interpreting the 1964 Civil Rights Act. More broadly, would any conservative be allowed to participate unless he or she abandoned his or her conservatism? Perhaps all of these opinions disqualify someone from sitting on an Advisory Board. If they do, it may be hard to justify continued government support for a strictly partisan organ.

Sincerely,
Scott Yenor

AMERICAN OVERSIGHT

COLORADO: 12 candidates, 6 Republicans (including one Independent who leans Republican), 6 Democrats (including one Independent who leans Democrat).

- Comm. Heriot objected to Prof. Ming Hsu Chen on the basis of an article she wrote called, "Colorblind Nationalism."
- Prof. Chen responded, and Mauro kept her on the slate on the basis of the response.
- Full objection from Comm. Heriot:

In her article, Prof. Chen says that racist and anti-immigrant "policies are cloaked in the neutral language of national protection, public health, and economic justice." Therefore, anyone who supports those facially colorblind policies is racist. More broadly, Prof. Chen suggests that anyone who favors any level of immigration restriction is a white supremacist.

It is inappropriate for a SAC member to make wild accusations of racism against entire groups of people. This article reveals Prof. Chen's bad faith. Additionally, her embrace of Ibram X. Kendi's "anti-racist" ideology is troubling, as that ideology in and of itself promotes discrimination.

Prof. Chen's article in the Yale Journal on Regulation, "Colorblind Nationalism," (available here) is particularly objectionable for a member of a State Advisory Committee.

- Full response from Prof. Chen:

Dear Mr. Mussatt and Mr. Morales,

Thank you for the opportunity to respond to Commissioner Heriot's objection. This objection seems to be based on a single sentence from an opinion piece, which I discuss below, but please note her objection paraphrases my essay in ways that mischaracterize the essay and my beliefs.

For example:

- *I do not say or believe that "anyone who supports facially colorblind policies is racist"*
- *I do not say that or believe that "anyone who favors any level of immigration restriction is a white supremacist"*
- *There is also no basis for her claim that I write or act in "bad faith" in her formal objection.*

As some background, I have served on the Colorado State Advisory Committee for 4-years (2016-2020). During that time, I worked collaboratively with all SAC members after my project proposal on the naturalization backlog was unanimously adopted in 2018. This work included working together on a briefing with expert testimony from 12 speakers representing a range of perspectives, addressing all SAC member voices in when drafting our report, and incorporating suggestions during the subsequent revisions and adoption of the report. The resulting 2019 report has since been cited widely in media and other academic and policy research. A 2020

AMERICAN OVERSIGHT

update and 2-page statement of concern was adopted unanimously by the CO SAC, and USCCR Chair Catherine Lhamon endorsed and sent her own letter to the impacted agency.

During my tenure, I also supported projects spearheaded by other SAC members, including ones sponsored by our more conservative members on religious freedom and racial disparities in infant/maternal mortality. In each of these projects, I was an active team member and made good faith efforts to listen to evidence from our hearings, to consider the divergent viewpoints, and to incorporate and suggest revisions on my reports and others that would build a broader consensus.

Outside of my service to SAC, my professional qualifications include a ten-year history of academic teaching and writing in immigration, civil rights, and administrative law at the University of Colorado Law School. This has included presentations with scholars from many viewpoints. Not infrequently I've been invited by members of conservative groups like the Federalist Society or the National Association of Attorney Generals to be a reasonable voice in their discussions. In these and other endeavors, I have never been accused of bias in my professional work.

In my personal capacity, I occasionally write short opinion pieces such as the essay that is cited in the objection and published in a special symposium on racism and the law for the online edition of the nation's premiere specialty journal on administrative law. I would describe my own views in the essay as advocating for greater racial equality for immigrants negatively impacted by travel bans and expressing an abiding concern that our federal government adhere to fair procedures in the issuance of such policies. There is no basis for saying that these views amount to "wild accusations of racism against entire groups of people" or that they "embrace Ibram X. Kendi's antiracist ideology… as that ideology itself promotes discrimination." I am not familiar with Ibram X Kendi's writings on antiracism and do not read, engage with, nor cite his work in this essay or my other scholarship. Moreover, the piece does not claim to represent the views of CO SAC or the USCCR. While I do not think the views expressed in the essay are objectionable, even if they were, I would not bring personal biases into my professional service. In closing, I recognize that reasonable people disagree on the best means of achieving equality.

My sense is that Commissioner Heriot misunderstands my perspectives and seeks to associate me with views that are more extreme than my own. Rather than rely on her second-hand description of an opinion piece written in my personal capacity, I would encourage the USCCR to apply a fair minded consideration of my application that focuses on my actual statements and my record of service to the CO SAC and USCCR.

AMERICAN OVERSIGHT

Date : 10/29/2021 4:30:04 PM
From : "Norma Cantu" ncantu@usccr.gov
To : "John Mashburn" jmashburn@usccr.gov
Cc : "Juana Silverio" jsilverio@usccr.gov
Subject : Notice-of-Representation-Form-Board-Advisors-2021.pdf

John,
This is the form I will be sending to the Elections Commission. Do you have the information for Ms. Cleta Mitchell so I can send this form out?
Many thanks.
Norma

You can view "Notice-of-Representation-Form-Board-Advisors-2021.pdf" at:
https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:dfc1d27f-9812-4c9c-af42-c2ca43a2cc05

_____
Sent with Adobe Document Cloud. Click on the link above to access the file online. No sign up or installation of Acrobat is required to access.

AMERICAN OVERSIGHT

Date : 10/29/2021 6:01:50 PM
From : "John Mashburn" jmashburn@usccr.gov
To : "Norma Cantu" ncantu@usccr.gov
Cc : "Juana Silverio" jsilverio@usccr.gov
Subject : Re: Notice-of-Representation-Form-Board-Advisors-2021.pdf

I talked to her and she was traveling by car to SC. She will send me the info once she arrives and can get online.

On 10/29/21, 4:30 PM, "Norma Cantu" <ncantu@usccr.gov> wrote:

John,
This is the form I will be sending to the Elections Commission. Do you have the information for Ms. Cleta Mitchell so I can send this form out?
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https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:dfc1d27f-9812-4c9c-af42-c2ca43a2cc05

_____
Sent with Adobe Document Cloud. Click on the link above to access the file online. No sign up or installation of Acrobat is required to access.

AMERICAN OVERSIGHT

Date : 10/29/2021 6:02:18 PM
From : "John Mashburn" jmashburn@usccr.gov
To : "cleta@cletamitchell.com" cleta@cletamitchell.com
Subject : FW: Notice-of-Representation-Form-Board-Advisors-2021.pdf

FYI

On 10/29/21, 4:30 PM, "Norma Cantu" <ncantu@usccr.gov> wrote:

John,
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Many thanks.
Norma

You can view "Notice-of-Representation-Form-Board-Advisors-2021.pdf" at:
https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:dfc1d27f-9812-4c9c-af42-c2ca43a2cc05

_____
Sent with Adobe Document Cloud. Click on the link above to access the file online. No sign up or installation of Acrobat is required to access.

AMERICAN OVERSIGHT

Date : 10/30/2021 10:13:16 AM
From : "Norma Cantu" ncantu@usccr.gov
To : "John Mashburn" jmashburn@usccr.gov
Cc : "Juana Silverio" jsilverio@usccr.gov
Subject : RE: Notice-of-Representation-Form-Board-Advisors-2021.pdf

Thank you, John.
Norma

-----Original Message-----
From: John Mashburn <jmashburn@usccr.gov>
Sent: Friday, October 29, 2021 5:02 PM
To: Norma Cantu <ncantu@usccr.gov>
Cc: Juana Silverio <jsilverio@usccr.gov>
Subject: Re: Notice-of-Representation-Form-Board-Advisors-2021.pdf

I talked to her and she was traveling by car to SC. She will send me the info once she arrives and can get online.

On 10/29/21, 4:30 PM, "Norma Cantu" <ncantu@usccr.gov> wrote:

John,
This is the form I will be sending to the Elections Commission. Do you have the information for Ms. Cleta Mitchell so I can send this form out?
Many thanks.
Norma

You can view "Notice-of-Representation-Form-Board-Advisors-2021.pdf" at:
https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:dfc1d27f-9812-4c9c-af42-c2ca43a2cc05

_____
Sent with Adobe Document Cloud. Click on the link above to access the file online. No sign up or installation of Acrobat is required to access.

AMERICAN OVERSIGHT

Date : 10/30/2021 12:12:09 PM
From : "John Mashburn" jmashburn@usccr.gov
To : "cleta@cletamitchell.com" cleta@cletamitchell.com
Subject : Re: Notice-of-Representation-Form-Board-Advisors-2021.pdf

Did you get this email?

No rush, just want to make sure it got thru to you.

On 10/29/21, 6:02 PM, "John Mashburn" <jmashburn@usccr.gov> wrote:

FYI

On 10/29/21, 4:30 PM, "Norma Cantu" <ncantu@usccr.gov> wrote:

John,
This is the form I will be sending to the Elections Commission. Do you have the information for Ms. Cleta Mitchell so I can send this form out?
Many thanks.
Norma

You can view "Notice-of-Representation-Form-Board-Advisors-2021.pdf" at:
https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:dfc1d27f-9812-4c9c-af42-c2ca43a2cc05

_____
Sent with Adobe Document Cloud. Click on the link above to access the file online. No sign up or installation of Acrobat is required to access.

AMERICAN OVERSIGHT

Date : 11/1/2021 12:20:30 PM
From : "Irena Vidulovic" ividulovic@usccr.gov
To : "Debo P. Adegbile" dadegbile@usccr.gov, "Adegbile, Debo" Debo.Adegbile@wilmerhale.com
Subject : Fw: Commissioner Appointments to the Election Assistance Commission

Adegbile,

I think that this email is the one to forward to the caucus now that Commissioner Yaki is recused, nominating Allison Riggs and Jenny Carroll the Alabama SAC Chair. Both are willing and able to serve.

The email should go to Cantu, Kladney, Yaki, Juana, Alec and Joshua (email jdansby@usccr.gov).
The Chair can then send our nominees to the R's.

Thanks,
Irena

From: Juana Silverio
Sent: Tuesday, August 3, 2021 4:30 PM
To: Irena Vidulovic; Mauro Morales; Norma Cantu
Cc: Debo P. Adegbile; Michael Yaki; David Kladney; Alec Deull
Subject: RE: Commissioner Appointments to the Election Assistance Commission

Mauro- due to new information received, please replace Leah with Ms. Allison Riggs.

Juana

From: Irena Vidulovic <ividulovic@usccr.gov>
Sent: Tuesday, August 3, 2021 4:12 PM
To: Juana Silverio <jsilverio@usccr.gov>; Mauro Morales <mmorales@usccr.gov>; Norma Cantu <ncantu@usccr.gov>
Cc: Debo P. Adegbile <dadegbile@usccr.gov>; Michael Yaki <MYaki@usccr.gov>; David Kladney <dkladney@usccr.gov>; Alec Deull <adeull@usccr.gov>
Subject: Re: Commissioner Appointments to the Election Assistance Commission

Unfortunately Leah Aden is unable to serve. Commissioner Adebile reached out to all the candidates that we proposed including Leah to make sure that they would be willing and able to serve and we have been notified that Leah is unavailable to serve.

AMERICAN OVERSIGHT

From: Juana Silverio
Sent: Tuesday, August 3, 2021 3:38:23 PM
To: Mauro Morales; Norma Cantu
Cc: Debo P. Adegbile; Michael Yaki; David Kladney; Irena Vidulovic; Alec Deull
Subject: RE: Commissioner Appointments to the Election Assistance Commission

Good afternoon Mauro.

The Dem caucus had a tie:

Commissioner Michael Yaki
Leah Aden (Cantu and Yaki)
Allison Riggs (Adegbile and Kladney)

The Chairwoman, in the interest of observing the deadline, is submitting the following names for EAC consideration:

Commissioner Michael Yaki
Leah Aden - https://www.naacpldf.org/about-us/staff/leah-c-aden/

Leah C. Aden
www.naacpldf.org

Leah C. Aden has served as a Deputy Director of Litigation at the NAACP Legal Defense & Educational Fund, Inc. (LDF) since October 2018, assisting in the

Thank you.
Juana

From: Mauro Morales <mmorales@usccr.gov>
Sent: Monday, August 2, 2021 11:47 AM
To: Norma V. Cantú <normavcantu@gmail.com>; Juana Silverio <jsilverio@usccr.gov>
Subject: Fwd: Commissioner Appointments to the Election Assistance Commission

FYI
Sent from my iPhone

Begin forwarded message:

> **From:** Mauro Morales <mmorales@usccr.gov>
> **Date:** August 2, 2021 at 8:45:25 AM MST
> **To:** John Mashburn <jmashburn@usccr.gov>

AMERICAN OVERSIGHT

Cc: Carissa Mulder <CMulder@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>, Alexander Heideman <aheideman@usccr.gov>
Subject: Re: Commissioner Appointments to the Election Assistance Commission

My flight was canceled and returning today. Your selections were forwarded to Chair Cantu. Thank you.
Sent from my iPhone

> On Jul 30, 2021, at 9:34 AM, John Mashburn <jmashburn@usccr.gov> wrote:
>
> Mauro – after canvassing the Republican Commissioners, the two nominees they wish to put forward for one of the two USCCR designees for the EAC's Board of Advisors (per your email below) are:
>
> Cleta Mitchell – Chair, Conservative Partnership Institute Election Integrity Network, and
>
> Christian Adams – USCCR Commissioner.
>
> ---
>
> **From:** Mauro Morales <mmorales@usccr.gov>
> **Date:** Wednesday, July 28, 2021 at 11:30 AM
> **To:** Commissioners <Commissioners@usccr.gov>
> **Cc:**
> " <CommissionerAssistants@usccr.gov>
> **Subject:** Commissioner Appointments to the Election Assistance Commission
>
> Dear Commissioners-
>
> At the request and in consultation with the Chair, I am sending this email to start the EAC nomination process for Commissioners.
>
> Per the AI voted on during the April 30th meeting (language included below), each caucus is requested to submit two candidates for consideration by COB Friday, July 30, 2021. Once the names are submitted, OGC will conduct an ethics check to be completed by Wednesday, August 4, 2021. Each caucus will then have 24 hours to submit caucus strikes (Thursday, August 5, 2021 COB). The Chair will communicate the two names to EAC no later than Friday, August 6, 2021.
>
> Please let the Chair or I know if you have any questions or concerns.

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--
AI language:

Section 1.
.01 Any authority specifically granted the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Commission as a whole by majority vote.

.02 Any authority specifically granted the Staff Director of the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Staff Director.

.03 Any authority specifically granted the Chair of the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Chair.

Section 2
.02

(1) For the two (2) appointments to the U.S. Election Assistance Commission, the members appointed by Democratic authorities shall nominate two individuals who are ready, willing, and able to serve, and the members appointed by the Republican authorities shall nominate two individuals who are ready, willing, and able to serve.

(2) The members appointed by the Democratic authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Democratic authorities

(3) The members selected shall be placed in nomination and ratified in conformance with Section 1.

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Mauro Morales
Staff Director
U.S. Commission on Civil Rights
P: 202-376-7796| F: 202-376-7672
Mmorales@usccr.gov
http://usccr.gov/
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425

Follow Us on Twitter & Facebook:
<image001.gif>
<image002.gif>

#USCCR

AMERICAN OVERSIGHT

Date : 4/13/2021 11:44:48 AM
From : "Amy Royce" aroyce@usccr.gov
To : "David Kladney" dkladney@usccr.gov, "Debo P. Adegbile" dadegbile@usccr.gov, "Norma Cantu" ncantu@usccr.gov, "Michael Yaki" MYaki@usccr.gov
Cc : "normavcantu@gmail.com" normavcantu@gmail.com, "Irena Vidulovic" ividulovic@usccr.gov, "Alec Deull" adeull@usccr.gov, "juanadelpilar@gmail.com" juanadelpilar@gmail.com
Subject : Caucus call agenda
Attachment : 04-08-Business-Meeting-Agenda-for-04-16.pdf;ID SAC Dr. Yenor.docx;CO SAC Dr. Chen.docx;

Hello all,

We are scheduled for a caucus call today at 3:00 Eastern/ 12:00 Pacific. The number is 1-877-446-3914, passcode 858713#

Agenda items:

- Update from Comms. Cantu and Yaki on discussions regarding Chair confirmation
- Business meeting on Friday (Sunshine Act notice attached)
    - Need for agenda amendments: remove FEMA discovery materials, as already approved by notational vote
    - Remove/combine other items?
        - Eliminating the Speaker Series
        - Rebuttal/surrebuttal time period
        - Bi-partisan appointment to EAC board of advisors
    - Statement on violence against AAPI community?
- SAC updates
    - Potential compromise on North Carolina SAC, adding one member for an 8/8 balance
        - The Democratic caucus accepts adding Mincey *please see context below (no additional application needed)
        - The Republican caucus will remove the objection to Lechner *please see context below (no additional application needed)
        - Vote in the SAC w/8-8 balance
            - Slate failed to get a majority vote on Friday 10/30.
            - 15 candidates, 8 Democrats (including two Independents who lean Democrat), 7 Republicans (including one candidate who identified as “something else”).
            - Note that Olga Wright, the returning Chair, identifies herself as a Democrat but ran for public office as a Republican in all her past elections.
            - Comm. Kirsanow (and Adams) objected to the balance of the slate, and requested that it be shifted to 7 Republicans and 7 Democrats (removing one Dem).

AMERICAN OVERSIGHT

        - John/Adams objected to the inclusion of Jennifer Lechner as he don't consider her a true Republican." In her stead they would like to replace her with a Mr. Patrick Mincey who Carissa recruited. Replacing Lechner with Mincey takes the gender balance of the slate to 11 men and 4 women. Mincey is a white collar crime attorney and lacks major civil rights experience, however in our vetting process we did not find anything objectionable regarding his public statements or conduct
    - Colorado and Idaho SACs
        - R's proposal - Dr. Chen in CO if we allow Dr. Yenor in ID (objections and responses attached)
    - Need for information from regional staff on status of recruiting for remainder of 14 expired committees
- Status of AI availability for Commissioners
    - A version of the AI's that was current in 2014 is available online, need information and a timeline from the GC for updating that version

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CIVIL RIGHTS COMMISSION

Sunshine Act Meeting Notice

AGENCY: United States Commission on Civil Rights.

ACTION: Notice of Commission public business meeting.

DATES: Friday, April 16, 2021, 12:00 p.m. EST.

FOR FURTHER INFORMATION CONTACT: Angelia Rorison: 202-376-7700; publicaffairs@usccr.gov.

ADDRESSES: Meeting to take place by telephone and is open to the public by telephone: 1-866-556-2537, Conference ID #896-5601. Computer assisted real-time transcription (CART) will be provided. The web link toaccess CART (in English) on Friday, April 16th, 2021, is https://www.streamtext.net/player?event=USCCR. Please note that CART is text-only translation that occurs in real time during the meeting and is not an exact transcript.

MEETING AGENDA

I. Motion to Approve Commissioner Norma Cantú to Serve as USCCR Chair

II. Approval of Agenda

III. Business Meeting

A. Discussion and Vote on Statement of Walter E. Williams;

B. Discussion and Vote to continue the Policy of Rebuttals and Surrebuttals;

C. Discussion and Vote to suspend Speaker Series;

D. Discussion and Agreement to Appoint Bipartisan Commissioners to EAC

E. Discovery and Vote on FEMA Report Discovery Plan

F. Management and Operations

- Staff Director's Report

IV. Adjourn Meeting

Dated: April 8, 2021

AMERICAN OVERSIGHT

IDAHO

Commissioner Yaki's objection

Dear Dr. Yenor:

Thank you for your service on the Idaho Advisory Committee and for your recent application for reappointment. Your name was included on the list of nominated individuals that is currently being reviewed by the Commissioners prior to appointment. As part of that review, Commissioner Yaki has made a formal objection to your nomination on the Committee because of an alleged comment you made.

Pursuant to our Administrative Instructions, when Commissioner objections pertain to a proposed member's public statement, then that nominee is provided the opportunity to respond in writing to the raised concern. The Staff Director will then consider the written response when making the final determination on whether to include the nominee on the list of individuals to be recommended for appointment.

The Commissioner has objected to your reappointment to the Idaho Advisory Committee because the Commissioner believes you are hostile to marriage equality and transgender rights. Furthermore, The Commissioner believes your public statements render you incapable of, and unable to, protect the constitutional rights supported by recent Supreme Court opinions. Citations to your most objectionable public statements on the issues at hand include:

- *https://startingpointsjournal.com/feminism-transgenderism-and-the-politics-of-identity/*
- *https://www.dailysignal.com/2017/07/18/radical-feminism-sowed-seeds-transgender-moment*
- *https://www.dailysignal.com/2017/08/02/transgender-activists-seeking-undermine-parental-rights/*
- *https://www.dailysignal.com/2017/08/02/transgender-activists-seeking-undermine-parental-rights/*
- *https://www.heritage.org/marriage-and-family/report/the-obligations-family-life-response-modern-liberalism.*

Mr. Yenor's Reponse

Dear Mr. Mussatt,
Thank you for forwarding the objections of Commissioner Michael Yaki and giving me two days to respond. I would like to know more about the process for how my response will be evaluated. Is the whole USCCR to respond? How will responses be tabulated? In any event, again thank you for forwarding these objections.

The objections to my re-nomination to the Idaho Advisory committee on civil rights are (1) that I am "hostile to marriage equality and transgender rights" as evidenced in my public writings and (2) that my "public statements render [me] incapable of, and unable to, protect (sic) the constitutional rights supported by recent Supreme Court opinions."

AMERICAN OVERSIGHT

Claims of discrimination under the current civil rights regime must be established through rational inquiry aided, where appropriate, by social science. Proposed policies to combat alleged discrimination must then be weighed through a rational public policy process. Policies must be evaluated critically if they are implemented.

Civil rights are hardly an all or nothing proposition. Some civil rights clash with other civil rights. Civil rights almost always require a balancing of various claims or a negotiation of the rights of various groups. In objecting to my participation on the commission, Commissioner Yaki seems to deny that civil rights matters involve such balancing or to deny that some important civil rights should be protected or to deny that some civil rights claims should be heard or entertained; he seems to want civil rights for only some groups and not for others. He gives civil rights a bad name in so doing.

Suppose a civil rights commission finds itself adjudicating a claim of transgender rights as civil rights. In making a fair-minded adjudication, the commission would have to consider the relation between such transgender rights and other civil rights in our tradition such as the free exercise of religion, parental rights, rights against sex discrimination. It would have to determine how transgender rights weigh against those rights. In doing so, it would be necessary to inquire into the rational basis for claims of transgender rights and the likely consequences of affirming them, just as it would be necessary to see what would happen from denying them.

My work raises questions about the evidence that proves discrimination and it concerns the clash of civil rights in politics. Claims of transgender rights can, in some circumstances, I have argued, clash with parental rights (as when a school insists on transitioning a child from one gender to another without informing the parents or against their will). Such instances are, as my research argues, more likely to harm the child and, if multiplied, are likely to have a corrosive effect on parental rights, a crucial civil right (as established in Meyer v. Nebraska and Pierce v. Society of Sisters). Seeing children as products of state mandates in these instances is more likely to undermine well-functioning institutions than it is to promote a good society or thriving individuals. Claims to marital equality have already compromised religious liberty, the freedom of association, and the free thought and discussion on many platforms.

Does Commissioner Yaki disagree that transgender rights clash with parental rights? Does he think that the Civil Rights Commissions nationwide should ignore questions about what it would mean to take the side of "transgender rights" against parental rights? Does he think religious liberty of so little importance that Civil Rights Commissions should ignore how it is compromised by so-called marriage equality? Does he think Civil Rights Commissions should refrain from investigating the future mental and physical health of children who have been transitioned, against the will of their parents, from one gender to another? Does he think we should cease investigating the mental or physical health of all those who have transitioned, even with parental support? Perhaps I should object to his continued participation as a Civil Rights Commissioner if he thinks all such questions are settled questions or based on sound science!

The inclusion of gender identity within the anti-discrimination regime of the 1964 Civil Rights Act is a cause for no little concern. Under such gender identity claims, a person's subjective,

AMERICAN OVERSIGHT

gendered self-image as woman, man or whatever supersedes the objective biological fact of sexual identity as female or male. This new gender identity further may come with a demand that governments and others citizens recognize that new gender as an objective fact—a huge abridgement on the civil rights and the freedom of mind of others. These ideas, taken together, are incoherent and compromise our commitment to limited government. They are incoherent because they nullify the categories of male and female to which the anti-discrimination principle applies. How can a school district remedy supposed unjust discrimination in girls' sports when anyone can qualify, simply on their own assertion, as woman? Does Fairness in Sports demand keeping biological men out of women's sports and aspiring to equal treatment of such sports or does it demand letting transgendered men in and, perhaps, decrease the opportunities for the formerly protected class of women? Idaho has taken the lead in protecting women's sports in these circumstances, and I look forward to participating in studies investigating how this affects opportunities. The demands that Commissioner Yaki makes contain the seeds of a new political order, much less committed to civil rights than our current order.

I am very skeptical of the idea that gender operates independently of sex. I would demand verification, from well-designed studies, that confirmed the proposition that conceiving of gender independently of sex leads to individual and social thriving. It think it is irresponsible to accept, without critical inquiry, the idea that affirming gender identity fosters all manner of social and individual good. It is not at all clear to me that it is better to recognize a person's concept of gender, apart from their biological sex, as authentic and salutary rather than as erroneous or pathological. I would be concerned that acknowledging such an idea compromises other, well-established and important civil rights.

Conservatives participate in Civil Rights Commissions across the country. We generally worry about how anti-discrimination laws, as applied and as construed, abridge fundamental freedoms and can upset prospects of social harmony. We often investigate the implications of such abridgements in our scholarship. On the Yaki standard, would Justice Sam Alito or Justice Clarence Thomas or Chief Justice John Roberts be ineligible to serve on a civil rights commission? They dissented, after all, from the same-sex marriage decisions in Windsor and Obergefell. Two of them dissented in the recent case re-interpreting the 1964 Civil Rights Act. More broadly, would any conservative be allowed to participate unless he or she abandoned his or her conservatism? Perhaps all of these opinions disqualify someone from sitting on an Advisory Board. If they do, it may be hard to justify continued government support for a strictly partisan organ.

Sincerely,
Scott Yenor

AMERICAN OVERSIGHT

COLORADO: 12 candidates, 6 Republicans (including one Independent who leans Republican), 6 Democrats (including one Independent who leans Democrat).

- Comm. Heriot objected to Prof. Ming Hsu Chen on the basis of an article she wrote called, "Colorblind Nationalism."
- Prof. Chen responded, and Mauro kept her on the slate on the basis of the response.
- Full objection from Comm. Heriot:

In her article, Prof. Chen says that racist and anti-immigrant "policies are cloaked in the neutral language of national protection, public health, and economic justice." Therefore, anyone who supports those facially colorblind policies is racist. More broadly, Prof. Chen suggests that anyone who favors any level of immigration restriction is a white supremacist.

It is inappropriate for a SAC member to make wild accusations of racism against entire groups of people. This article reveals Prof. Chen's bad faith. Additionally, her embrace of Ibram X. Kendi's "anti-racist" ideology is troubling, as that ideology in and of itself promotes discrimination.

Prof. Chen's article in the Yale Journal on Regulation, "Colorblind Nationalism," (available here) is particularly objectionable for a member of a State Advisory Committee.

- Full response from Prof. Chen:

Dear Mr. Mussatt and Mr. Morales,

Thank you for the opportunity to respond to Commissioner Heriot's objection. This objection seems to be based on a single sentence from an opinion piece, which I discuss below, but please note her objection paraphrases my essay in ways that mischaracterize the essay and my beliefs.

For example:

- *I do not say or believe that "anyone who supports facially colorblind policies is racist"*
- *I do not say that or believe that "anyone who favors any level of immigration restriction is a white supremacist"*
- *There is also no basis for her claim that I write or act in "bad faith" in her formal objection.*

As some background, I have served on the Colorado State Advisory Committee for 4-years (2016-2020). During that time, I worked collaboratively with all SAC members after my project proposal on the naturalization backlog was unanimously adopted in 2018. This work included working together on a briefing with expert testimony from 12 speakers representing a range of perspectives, addressing all SAC member voices in when drafting our report, and incorporating suggestions during the subsequent revisions and adoption of the report. The resulting 2019 report has since been cited widely in media and other academic and policy research. A 2020

AMERICAN OVERSIGHT

update and 2-page statement of concern was adopted unanimously by the CO SAC, and USCCR Chair Catherine Lhamon endorsed and sent her own letter to the impacted agency.

During my tenure, I also supported projects spearheaded by other SAC members, including ones sponsored by our more conservative members on religious freedom and racial disparities in infant/maternal mortality. In each of these projects, I was an active team member and made good faith efforts to listen to evidence from our hearings, to consider the divergent viewpoints, and to incorporate and suggest revisions on my reports and others that would build a broader consensus.

Outside of my service to SAC, my professional qualifications include a ten-year history of academic teaching and writing in immigration, civil rights, and administrative law at the University of Colorado Law School. This has included presentations with scholars from many viewpoints. Not infrequently I've been invited by members of conservative groups like the Federalist Society or the National Association of Attorney Generals to be a reasonable voice in their discussions. In these and other endeavors, I have never been accused of bias in my professional work.

In my personal capacity, I occasionally write short opinion pieces such as the essay that is cited in the objection and published in a special symposium on racism and the law for the online edition of the nation's premiere specialty journal on administrative law. I would describe my own views in the essay as advocating for greater racial equality for immigrants negatively impacted by travel bans and expressing an abiding concern that our federal government adhere to fair procedures in the issuance of such policies. There is no basis for saying that these views amount to "wild accusations of racism against entire groups of people" or that they "embrace Ibram X. Kendi's antiracist ideology… as that ideology itself promotes discrimination." I am not familiar with Ibram X Kendi's writings on antiracism and do not read, engage with, nor cite his work in this essay or my other scholarship. Moreover, the piece does not claim to represent the views of CO SAC or the USCCR. While I do not think the views expressed in the essay are objectionable, even if they were, I would not bring personal biases into my professional service. In closing, I recognize that reasonable people disagree on the best means of achieving equality.

My sense is that Commissioner Heriot misunderstands my perspectives and seeks to associate me with views that are more extreme than my own. Rather than rely on her second-hand description of an opinion piece written in my personal capacity, I would encourage the USCCR to apply a fair minded consideration of my application that focuses on my actual statements and my record of service to the CO SAC and USCCR.

AMERICAN OVERSIGHT

Date : 11/4/2021 5:15:04 PM
From : "Norma Cantu" ncantu@usccr.gov
To : "Irena Vidulovic" ividulovic@usccr.gov
Cc : "Juana Silverio" jsilverio@usccr.gov, "Debo P. Adegbile" dadegbile@usccr.gov
Subject : RE: Commissioner Appointments to the Election Assistance Commission

Thank you, Irena.
I am relieved the Commission delivered two peerless choices.
Norma

From: Irena Vidulovic <ividulovic@usccr.gov>
Sent: Thursday, November 4, 2021 3:30 PM
To: Norma Cantu <ncantu@usccr.gov>
Cc: Juana Silverio <jsilverio@usccr.gov>; Debo P. Adegbile <dadegbile@usccr.gov>
Subject: Fw: Commissioner Appointments to the Election Assistance Commission

Dear Norma,

Commissioner Adegbile would like to thank you for thinking of him for the EAC nomination. While he appreciates it, he believes that Allison Riggs and Alabama SAC Chair Jenny Carroll should be nominated instead. They both have voting bona fides and have already expressed a willingness to serve.

Thank you again,

Irena

From: Juana Silverio
Sent: Tuesday, August 3, 2021 4:30 PM
To: Irena Vidulovic; Mauro Morales; Norma Cantu
Cc: Debo P. Adegbile; Michael Yaki; David Kladney; Alec Deull
Subject: RE: Commissioner Appointments to the Election Assistance Commission

Mauro- due to new information received, please replace Leah with Ms. Allison Riggs.

Juana

AMERICAN OVERSIGHT

From: Irena Vidulovic <ividulovic@usccr.gov>
Sent: Tuesday, August 3, 2021 4:12 PM
To: Juana Silverio <jsilverio@usccr.gov>; Mauro Morales <mmorales@usccr.gov>; Norma Cantu <ncantu@usccr.gov>
Cc: Debo P. Adegbile <dadegbile@usccr.gov>; Michael Yaki <MYaki@usccr.gov>; David Kladney <dkladney@usccr.gov>; Alec Deull <adeull@usccr.gov>
Subject: Re: Commissioner Appointments to the Election Assistance Commission

Unfortunately Leah Aden is unable to serve. Commissioner Adebile reached out to all the candidates that we proposed including Leah to make sure that they would be willing and able to serve and we have been notified that Leah is unavailable to serve.

From: Juana Silverio
Sent: Tuesday, August 3, 2021 3:38:23 PM
To: Mauro Morales; Norma Cantu
Cc: Debo P. Adegbile; Michael Yaki; David Kladney; Irena Vidulovic; Alec Deull
Subject: RE: Commissioner Appointments to the Election Assistance Commission

Good afternoon Mauro.

The Dem caucus had a tie:

Commissioner Michael Yaki

Leah Aden (Cantu and Yaki)

Allison Riggs (Adegbile and Kladney)

The Chairwoman, in the interest of observing the deadline, is submitting the following names for EAC consideration:

AMERICAN OVERSIGHT

Commissioner Michael Yaki

Leah Aden - https://www.naacpldf.org/about-us/staff/leah-c-aden/

Leah C. Aden

www.naacpldf.org

Leah C. Aden has served as a Deputy Director of Litigation at the NAACP Legal Defense & Educational Fund, Inc. (LDF) since October 2018, assisting in the planning, strategy, and supervision of LDF's voting rights work. In light of the upcoming post-Census redistricting cycle, Leah is leading the planning, strategy, and supervision of LDF's redistricting [...]

Thank you.

Juana

From: Mauro Morales <mmorales@usccr.gov>
Sent: Monday, August 2, 2021 11:47 AM
To: Norma V. Cantú <normavcantu@gmail.com>; Juana Silverio <jsilverio@usccr.gov>
Subject: Fwd: Commissioner Appointments to the Election Assistance Commission

FYI

Sent from my iPhone

AMERICAN OVERSIGHT

Begin forwarded message:

From: Mauro Morales <mmorales@usccr.gov>
Date: August 2, 2021 at 8:45:25 AM MST
To: John Mashburn <jmashburn@usccr.gov>
Cc: Carissa Mulder <CMulder@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>, Alexander Heideman <aheideman@usccr.gov>
Subject: Re: Commissioner Appointments to the Election Assistance Commission

My flight was canceled and returning today. Your selections were forwarded to Chair Cantu. Thank you.

Sent from my iPhone

On Jul 30, 2021, at 9:34 AM, John Mashburn <jmashburn@usccr.gov> wrote:

Mauro – after canvassing the Republican Commissioners, the two nominees they wish to put forward for one of the two USCCR designees for the EAC's Board of Advisors (per your email below) are:

Cleta Mitchell – Chair, Conservative Partnership Institute Election Integrity Network, and

Christian Adams – USCCR Commissioner.

From: Mauro Morales <mmorales@usccr.gov>
Date: Wednesday, July 28, 2021 at 11:30 AM
To: Commissioners <Commissioners@usccr.gov>
Cc:
" <CommissionerAssistants@usccr.gov>
Subject: Commissioner Appointments to the Election Assistance Commission

AMERICAN OVERSIGHT

Dear Commissioners-

At the request and in consultation with the Chair, I am sending this email to start the EAC nomination process for Commissioners.

Per the AI voted on during the April 30th meeting (language included below), each caucus is requested to submit two candidates for consideration by COB Friday, July 30, 2021. Once the names are submitted, OGC will conduct an ethics check to be completed by Wednesday, August 4, 2021. Each caucus will then have 24 hours to submit caucus strikes (Thursday, August 5, 2021 COB). The Chair will communicate the two names to EAC no later than Friday, August 6, 2021.

Please let the Chair or I know if you have any questions or concerns.

--

AI language:

Section 1.

.01 Any authority specifically granted the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Commission as a whole by majority vote.

.02 Any authority specifically granted the Staff Director of the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Staff Director.

AMERICAN OVERSIGHT

.03 Any authority specifically granted the Chair of the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Chair.

Section 2

.02

(1) For the two (2) appointments to the U.S. Election Assistance Commission, the members appointed by Democratic authorities shall nominate two individuals who are ready, willing, and able to serve, and the members appointed by the Republican authorities shall nominate two individuals who are ready, willing, and able to serve.

(2) The members appointed by the Democratic authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Democratic authorities

(3) The members selected shall be placed in nomination and ratified in conformance with Section 1.

Mauro Morales

Staff Director

U.S. Commission on Civil Rights

P: 202-376-7796| F: 202-376-7672

Mmorales@usccr.gov

AMERICAN OVERSIGHT

http://usccr.gov/

1331 Pennsylvania Avenue, NW Suite 1150

Washington D.C. 20425

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<image001.gif>

<image002.gif>

#USCCR

AMERICAN OVERSIGHT

Date : 11/9/2021 2:10:38 PM
From : "Juana Silverio" jsilverio@usccr.gov
To : "Michael Yaki" MYaki@usccr.gov, "David Kladney" dkladney@usccr.gov
Cc : "Joshua Dansby" jdansby@usccr.gov, "Alec Deull" adeull@usccr.gov
Subject : FW: Commissioner Appointments to the Election Assistance Commission

Good afternoon,

Norma wanted me to make sure you both were ok with the below names before sending them over to the Rep Caucus for consideration re: our second rep on the EAC

Allison Riggs- https://southerncoalition.org/staff/allison-riggs/
Alabama SAC Chair Jenny Carroll-
https://www.congress.gov/116/meeting/house/109456/witnesses/HHRG-116-HA08-Wstate-CarrollJ-20190513.pdf

---

From: Norma Cantu <ncantu@usccr.gov>
Sent: Thursday, November 4, 2021 5:15 PM
To: Irena Vidulovic <ividulovic@usccr.gov>
Cc: Juana Silverio <jsilverio@usccr.gov>; Debo P. Adegbile <dadegbile@usccr.gov>
Subject: RE: Commissioner Appointments to the Election Assistance Commission

Thank you, Irena.
I am relieved the Commission delivered two peerless choices.
Norma

From: Irena Vidulovic <ividulovic@usccr.gov>
Sent: Thursday, November 4, 2021 3:30 PM
To: Norma Cantu <ncantu@usccr.gov>
Cc: Juana Silverio <jsilverio@usccr.gov>; Debo P. Adegbile <dadegbile@usccr.gov>
Subject: Fw: Commissioner Appointments to the Election Assistance Commission

Dear Norma,

Commissioner Adegbile would like to thank you for thinking of him for the EAC nomination. While he appreciates it, he believes that Allison Riggs and Alabama SAC Chair Jenny Carroll should be nominated instead. They both have voting bona fides and have already expressed a willingness to serve.

Thank you again,

Irena

AMERICAN OVERSIGHT

From: Juana Silverio
Sent: Tuesday, August 3, 2021 4:30 PM
To: Irena Vidulovic; Mauro Morales; Norma Cantu
Cc: Debo P. Adegbile; Michael Yaki; David Kladney; Alec Deull
Subject: RE: Commissioner Appointments to the Election Assistance Commission

Mauro- due to new information received, please replace Leah with Ms. Allison Riggs.

Juana

From: Irena Vidulovic <ividulovic@usccr.gov>
Sent: Tuesday, August 3, 2021 4:12 PM
To: Juana Silverio <jsilverio@usccr.gov>; Mauro Morales <mmorales@usccr.gov>; Norma Cantu <ncantu@usccr.gov>
Cc: Debo P. Adegbile <dadegbile@usccr.gov>; Michael Yaki <MYaki@usccr.gov>; David Kladney <dkladney@usccr.gov>; Alec Deull <adeull@usccr.gov>
Subject: Re: Commissioner Appointments to the Election Assistance Commission

Unfortunately Leah Aden is unable to serve. Commissioner Adebile reached out to all the candidates that we proposed including Leah to make sure that they would be willing and able to serve and we have been notified that Leah is unavailable to serve.

From: Juana Silverio
Sent: Tuesday, August 3, 2021 3:38:23 PM
To: Mauro Morales; Norma Cantu
Cc: Debo P. Adegbile; Michael Yaki; David Kladney; Irena Vidulovic; Alec Deull
Subject: RE: Commissioner Appointments to the Election Assistance Commission

Good afternoon Mauro.

AMERICAN OVERSIGHT

The Dem caucus had a tie:

Commissioner Michael Yaki

Leah Aden (Cantu and Yaki)

Allison Riggs (Adegbile and Kladney)

The Chairwoman, in the interest of observing the deadline, is submitting the following names for EAC consideration:

Commissioner Michael Yaki

Leah Aden - https://www.naacpldf.org/about-us/staff/leah-c-aden/

Leah C. Aden

www.naacpldf.org

Leah C. Aden has served as a Deputy Director of Litigation at the NAACP Legal Defense & Educational Fund, Inc. (LDF) since October 2018, assisting in the planning, strategy, and supervision of LDF's voting rights work. In light of the upcoming post-Census redistricting cycle, Leah is leading the planning, strategy, and supervision of LDF's redistricting [...]

Thank you.

Juana

AMERICAN OVERSIGHT

From: Mauro Morales <mmorales@usccr.gov>
Sent: Monday, August 2, 2021 11:47 AM
To: Norma V. Cantú <normavcantu@gmail.com>; Juana Silverio <jsilverio@usccr.gov>
Subject: Fwd: Commissioner Appointments to the Election Assistance Commission

FYI

Sent from my iPhone

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> >
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> >
> > Christian Adams – USCCR Commissioner.

AMERICAN OVERSIGHT

From: Mauro Morales <mmorales@usccr.gov>
Date: Wednesday, July 28, 2021 at 11:30 AM
To: Commissioners <Commissioners@usccr.gov>
Cc:
" <CommissionerAssistants@usccr.gov>
Subject: Commissioner Appointments to the Election Assistance Commission

Dear Commissioners-

At the request and in consultation with the Chair, I am sending this email to start the EAC nomination process for Commissioners.

Per the AI voted on during the April 30th meeting (language included below), each caucus is requested to submit two candidates for consideration by COB Friday, July 30, 2021. Once the names are submitted, OGC will conduct an ethics check to be completed by Wednesday, August 4, 2021. Each caucus will then have 24 hours to submit caucus strikes (Thursday, August 5, 2021 COB). The Chair will communicate the two names to EAC no later than Friday, August 6, 2021.

Please let the Chair or I know if you have any questions or concerns.

--

AI language:

Section 1.

.01 Any authority specifically granted the Commission on Civil Rights by statute or regulation or executive order

AMERICAN OVERSIGHT

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(3) The members selected shall be placed in nomination and ratified in conformance with Section 1.

AMERICAN OVERSIGHT

Mauro Morales

Staff Director

U.S. Commission on Civil Rights

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Mmorales@usccr.gov

http://usccr.gov/

1331 Pennsylvania Avenue, NW Suite 1150

Washington D.C. 20425

Follow Us on Twitter & Facebook:

<image001.gif>

<image002.gif>

#USCCR

AMERICAN OVERSIGHT

Date : 11/9/2021 4:02:53 PM
From : "Joshua Dansby" jdansby@usccr.gov
To : "Juana Silverio" jsilverio@usccr.gov
Cc : "David Kladney" dkladney@usccr.gov
Subject : RE: Commissioner Appointments to the Election Assistance Commission

Juana,

Commissioner Kladney is fine with this. Thank you.

-Joshua

From: Juana Silverio <jsilverio@usccr.gov>
Sent: Tuesday, November 9, 2021 2:11 PM
To: Michael Yaki <MYaki@usccr.gov>; David Kladney <dkladney@usccr.gov>
Cc: Joshua Dansby <jdansby@usccr.gov>; Alec Deull <adeull@usccr.gov>
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AMERICAN OVERSIGHT

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AMERICAN OVERSIGHT

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AMERICAN OVERSIGHT

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Mauro Morales

Staff Director

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http://usccr.gov/

1331 Pennsylvania Avenue, NW Suite 1150

Washington D.C. 20425

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<image001.gif>

<image002.gif>

#USCCR

AMERICAN OVERSIGHT

Date : 4/16/2021 11:40:17 AM
From : "Gail Heriot" gheriot@usccr.gov
To : "stephen gilchrist" thegilchristassociates@gmail.com, "Alexander Heideman" alexanderheideman@gmail.com, "Carissa Mulder" CMulder@usccr.gov, "Carissa Mulder" carissa.mulder@gmail.com, "Christian Adams" adams@electionlawcenter.com, "Alexander Heideman" aheideman@usccr.gov, "John Mashburn" jkmash@comcast.net, "John Mashburn" jmashburn@usccr.gov, "Peter Kirsanow" pkirsanow@beneschlaw.com, "Peter Kirsanow" pkirsanow@usccr.gov, "Stephen Gilchrist" sgilchrist@usccr.gov, "Thomas Simuel" tjsimuel32@gmail.com, "Thomas Simuel" tsimuel@usccr.gov, "J. Christian Adams" jadams@usccr.gov
Subject : Fwd: [EXTERNAL] RE: Speakers Series

Note that Yaki is asking for a waiver of the 48 hour rule as part of the deal.

Gail Heriot
Professor of Law
University of San Diego

Begin forwarded message:

> **From:** Michael Yaki <michael@michaelyaki.com>
> **Date:** April 16, 2021 at 8:33:30 AM PDT
> **To:** Gail Heriot <gheriot@usccr.gov>, Norma Cantu <ncantu@usccr.gov>
> **Cc:** Norma Cantú <normavcantu@gmail.com>, Peter Kirsanow <pkirsanow@beneschlaw.com>, Peter Kirsanow <pkirsanow@usccr.gov>
> **Subject: Re: [EXTERNAL] RE: Speakers Series**
>
> CAUTION: This email is from outside USCCR.
>
> I want the waiver on the AAPI statement.
>
> Best Regards,
> Michael
>
> MICHAEL YAKI CONSULTING
> e. michael@michaelyaki.com
> m. 415.601.4908
>
> ---
>
> **From:** Gail Heriot <gheriot@usccr.gov>
> **Sent:** Friday, April 16, 2021 8:21:56 AM
> **To:** Norma Cantu <ncantu@usccr.gov>
> **Cc:** MICHAEL@michaelyaki.com <MICHAEL@michaelyaki.com>; Norma

AMERICAN OVERSIGHT

Cantú <normavcantu@gmail.com>; Peter Kirsanow <pkirsanow@beneschlaw.com>; Peter Kirsanow <pkirsanow@usccr.gov>
Subject: Re: [EXTERNAL] RE: Speakers Series

There are five altogether.

AI on EAC Board of Advisors and other appointments
AI on witness selection
AI on attending OCRE witness interviews

Statement on speaker series
Statement on 30-30-10 statements, rebuttals, etc.

Gail Heriot
Professor of Law
University of San Diego

> On Apr 16, 2021, at 8:18 AM, Norma Cantu <ncantu@usccr.gov> wrote:
>
> Let's be sure to name them.
> I have a statement on 30/30/10 and Carissa's draft A – I
> I have a Proposed A-1 on Office of Civil Rights Evaluation interviews
> I have a Proposed A-1 on Commission Appointments
> Norma
>
> ---
>
> **From:** "michael@michaelyaki.com" <michael@michaelyaki.com>
> **Date:** Friday, April 16, 2021 at 10:10 AM
> **To:** Gail Heriot <gheriot@usccr.gov>, Norma Cantu <ncantu@usccr.gov>
> **Cc:** 'Norma Cantú' <normavcantu@gmail.com>, 'Peter Kirsanow' <pkirsanow@beneschlaw.com>, Peter Kirsanow <pkirsanow@usccr.gov>
> **Subject:** [EXTERNAL] RE: Speakers Series
>
> CAUTION: This email is from outside USCCR.
>
> rd AI?
>
> Thanks!
> Michael
>
> **MICHAEL YAKI CONSULTING**

AMERICAN OVERSIGHT

This email and any files or attachments transmitted with it may contain privileged or otherwise confidential information. If you are not the intended recipient, or believe that you may have received this communication in error, please advise the sender via reply email and immediately delete the email you received.

From: Gail Heriot <gheriot@usccr.gov>
Sent: Friday, April 16, 2021 8:09 AM
To: Norma Cantu <ncantu@usccr.gov>
Cc: Norma Cantú <normavcantu@gmail.com>; Peter Kirsanow <pkirsanow@beneschlaw.com>; Peter Kirsanow <pkirsanow@usccr.gov>; Michael Yaki <MYaki@usccr.gov>; MICHAEL@michaelyaki.com
Subject: Re: Speakers Series

Norma—I just spoke with Pete about this. Our plan is for Pete to make an omnibus motion to confirm you and to adopt the three AIs. He will read the AIs into the record as part of the motion. Carissa is preparing a script for him now, so he'll have the wording ready before the meeting. Somebody will second the motion. (If we don't get an immediate second from a progressive, I will second, but the optics are better if a progressive seconds.) During the discussion, we will ask you your policy on 30-30-10 and on the speaker series. You should then read into the record your two policy statements. Have those statements ready for when we ask. When the discussion is over, we vote. Then you're Chair.

Gail

Gail Heriot
Professor of Law
University of San Diego

> On Apr 16, 2021, at 7:23 AM, Norma Cantu <ncantu@usccr.gov> wrote:
>
> Yes, Gail, Peter,
> I have kept circling back to the Progressive Caucus on all the items, from the proposals first raised in February, to the one we drafted last night.
>
> Last night, at 8:30, I thought we had an agreement on all the concepts. This is because we withdrew the language of no objection from the Conservative Caucus about language to the Vice Chair. You withdrew the language on needing to complete the SACs language before the Chair vote. We also made a concession to a

AMERICAN OVERSIGHT

last-minute request about Commissioners observing and participating in OCRE content interviews.

Earlier this week, in response to your request for A-Is, Michael gave you and Peter the language for A-Is on the 30/30/10 and for Commission appointments. Michael told you and Peter these were the only A -I s. I can share with you the Progressive Caucus would not consider any other A-s as necessary to proceed to the Chair vote. Putting form over substance is causing unnecessary delay. As an alternative, we had told you and Peter that oral statements on the record would suffice to memorialize the other agreements.

We are ready to discuss and vote on the items you proposed at the business meeting today. But, if not handled and decided today by Progressives and Conservatives together, all our concessions are withdrawn.
Norma V. Cantu

From: Gail Heriot <gheriot@usccr.gov>
Date: Friday, April 16, 2021 at 9:03 AM
To: Norma Cantu <ncantu@usccr.gov>, Norma Cantú <normavcantu@gmail.com>
Cc: Peter Kirsanow <pkirsanow@beneschlaw.com>, Peter Kirsanow <pkirsanow@usccr.gov>
Subject: Re: Speakers Series

Norma—What about the rest of the things on the list? Is the Progressive Caucus ready to vote on all of them? Or should the meeting be put off?

The conservatives are not inclined to negotiate further at the meeting. We are happy to get this done by notational vote if that allows the progressives the time they need to absorb all this.

Gail Heriot
Professor of Law
University of San Diego

AMERICAN OVERSIGHT

On Apr 15, 2021, at 7:36 PM, Norma Cantu <ncantu@usccr.gov> wrote:

Good
Norma

From: Gail Heriot <gheriot@usccr.gov>
Date: Thursday, April 15, 2021 at 8:22 PM
To: Norma Cantú <normavcantu@gmail.com>, Norma Cantu <ncantu@usccr.gov>
Subject: Speakers Series

Norma— I think that the members of the conservative caucus are satisfied that this will work for the speakers series. I'm working on the other issues. Gail

DRAFT: Email from Commissioner Norma V. Cantú Rescinding the Speakers Series Activity Conducted at Commissioners' Meetings:

April 16, 2021

I write to rescind any directives concerning a "Speakers Series" activity conducted during meetings of the Commission. I understand the Speakers Series was announced by email from a chairperson, not memorialized in any A-I or other rule. In light of several Commissioners' concerns that the activity should have included Commissioner

AMERICAN OVERSIGHT

input on speakers from both parties, I express my serious commitment to not reinstitute this activity. If it happens that a majority of the Commissioners were to consent in the future to support this endeavor by a majority vote of the members of the Commission, I wouldpersonally ascertain whether the proposed speaker would be bipartisan in the number of speakers or timing and scheduling of speakers; and if it is not, while I am on the Commission, I will vote against this proposal.

Gail Heriot
Professor of Law
University of San Diego

AMERICAN OVERSIGHT

Date : 4/16/2021 11:43:37 AM
From : "Gail Heriot" gheriot@usccr.gov
To : "stephen gilchrist" thegilchristassociates@gmail.com
Cc : "Alexander Heideman" alexanderheideman@gmail.com, "Carissa Mulder" CMulder@usccr.gov, "Carissa Mulder" carissa.mulder@gmail.com, "Christian Adams" adams@electionlawcenter.com, "Alexander Heideman" aheideman@usccr.gov, "John Mashburn" jkmash@comcast.net, "John Mashburn" jmashburn@usccr.gov, "Peter Kirsanow" pkirsanow@beneschlaw.com, "Peter Kirsanow" pkirsanow@usccr.gov, "Stephen Gilchrist" sgilchrist@usccr.gov, "Thomas Simuel" tjsimuel32@gmail.com, "Thomas Simuel" tsimuel@usccr.gov, "J. Christian Adams" jadams@usccr.gov
Subject : Re: [EXTERNAL] RE: Speakers Series

It's not clear to me.

Gail Heriot
Professor of Law
University of San Diego

> On Apr 16, 2021, at 8:43 AM, stephen gilchrist <thegilchristassociates@gmail.com> wrote:
>
> CAUTION: This email is from outside USCCR.
>
> Part of the negotiated deal? Or is this referencing his letter?
>
> On Fri, Apr 16, 2021, 11:40 AM Gail Heriot <gheriot@usccr.gov> wrote:
>
> > Note that Yaki is asking for a waiver of the 48 hour rule as part of the deal.
> >
> > Gail Heriot
> > Professor of Law
> > University of San Diego
> >
> > Begin forwarded message:
> >
> > **From:** Michael Yaki <michael@michaelyaki.com>
> > **Date:** April 16, 2021 at 8:33:30 AM PDT
> > **To:** Gail Heriot <gheriot@usccr.gov>, Norma Cantu <ncantu@usccr.gov>
> > **Cc:** Norma Cantú <normavcantu@gmail.com>, Peter Kirsanow <pkirsanow@beneschlaw.com>, Peter Kirsanow <pkirsanow@usccr.gov>

AMERICAN OVERSIGHT

Subject: Re: [EXTERNAL] RE: Speakers Series

CAUTION: This email is from outside USCCR.

I want the waiver on the AAPI statement.

Best Regards,
Michael

MICHAEL YAKI CONSULTING
e. michael@michaelyaki.com
m. 415.601.4908

From: Gail Heriot <gheriot@usccr.gov>
Sent: Friday, April 16, 2021 8:21:56 AM
To: Norma Cantu <ncantu@usccr.gov>
Cc: MICHAEL@michaelyaki.com <MICHAEL@michaelyaki.com>; Norma Cantú <normavcantu@gmail.com>; Peter Kirsanow <pkirsanow@beneschlaw.com>; Peter Kirsanow <pkirsanow@usccr.gov>
Subject: Re: [EXTERNAL] RE: Speakers Series

There are five altogether.

AI on EAC Board of Advisors and other appointments
AI on witness selection
AI on attending OCRE witness interviews

Statement on speaker series
Statement on 30-30-10 statements, rebuttals, etc.

Gail Heriot
Professor of Law
University of San Diego

> On Apr 16, 2021, at 8:18 AM, Norma Cantu <ncantu@usccr.gov> wrote:
>
> Let's be sure to name them.

AMERICAN OVERSIGHT

I have a statement on 30/30/10 and Carissa's draft A – I

I have a Proposed A-1 on Office of Civil Rights Evaluation interviews

I have a Proposed A-1 on Commission Appointments

Norma

From: "michael@michaelyaki.com" <michael@michaelyaki.com>
Date: Friday, April 16, 2021 at 10:10 AM
To: Gail Heriot <gheriot@usccr.gov>, Norma Cantu <ncantu@usccr.gov>
Cc: 'Norma Cantú' <normavcantu@gmail.com>, 'Peter Kirsanow' <pkirsanow@beneschlaw.com>, Peter Kirsanow <pkirsanow@usccr.gov>
Subject: [EXTERNAL] RE: Speakers Series

CAUTION: This email is from outside USCCR.

rd AI?

Thanks!

Michael

MICHAEL YAKI CONSULTING

This email and any files or attachments transmitted with it may contain privileged or otherwise confidential information. If you are not the intended recipient, or believe that you may have received this communication in error, please advise the sender via reply email and immediately delete the email you received.

AMERICAN OVERSIGHT

From: Gail Heriot <gheriot@usccr.gov>
Sent: Friday, April 16, 2021 8:09 AM
To: Norma Cantu <ncantu@usccr.gov>
Cc: Norma Cantú <normavcantu@gmail.com>; Peter Kirsanow <pkirsanow@beneschlaw.com>; Peter Kirsanow <pkirsanow@usccr.gov>; Michael Yaki <MYaki@usccr.gov>; MICHAEL@michaelyaki.com
Subject: Re: Speakers Series

Norma—I just spoke with Pete about this. Our plan is for Pete to make an omnibus motion to confirm you and to adopt the three AIs. He will read the AIs into the record as part of the motion. Carissa is preparing a script for him now, so he'll have the wording ready before the meeting. Somebody will second the motion. (If we don't get an immediate second from a progressive, I will second, but the optics are better if a progressive seconds.) During the discussion, we will ask you your policy on 30-30-10 and on the speaker series. You should then read into the record your two policy statements. Have those statements ready for when we ask. When the discussion is over, we vote. Then you're Chair.

Gail

Gail Heriot

Professor of Law

University of San Diego

AMERICAN OVERSIGHT

On Apr 16, 2021, at 7:23 AM, Norma Cantu <ncantu@usccr.gov> wrote:

Yes, Gail, Peter,

I have kept circling back to the Progressive Caucus on all the items, from the proposals first raised in February, to the one we drafted last night.

Last night, at 8:30, I thought we had an agreement on all the concepts. This is because we withdrew the language of no objection from the Conservative Caucus about language to the Vice Chair. You withdrew the language on needing to complete the SACs language before the Chair vote. We also made a concession to a last-minute request about Commissioners observing and participating in OCRE content interviews.

Earlier this week, in response to your request for A-Is, Michael gave you and Peter the language for A-Is on the 30/30/10 and for Commission appointments. Michael told you and Peter these were the only A -I s. I can share with you the Progressive Caucus would not consider any other A-s as necessary to proceed to the Chair vote. Putting form over substance is causing unnecessary delay. As an alternative, we had told you and Peter that oral statements on the record would suffice to memorialize the other

AMERICAN OVERSIGHT

agreements.

We are ready to discuss and vote on the items you proposed at the business meeting today. But, if not handled and decided today by Progressives and Conservatives together, all our concessions are withdrawn.

Norma V. Cantu

From: Gail Heriot <gheriot@usccr.gov>
Date: Friday, April 16, 2021 at 9:03 AM
To: Norma Cantu <ncantu@usccr.gov>, Norma Cantú <normavcantu@gmail.com>
Cc:
>, Peter Kirsanow <pkirsanow@usccr.gov>
Subject: Re: Speakers Series

Norma—What about the rest of the things on the list? Is the Progressive Caucus ready to vote on all of them? Or should the meeting be put off?

The conservatives are not inclined to negotiate further at the meeting. We are happy to get this done by notational vote if that allows the progressives the time they need to absorb all this.

AMERICAN OVERSIGHT

Gail Heriot

Professor of Law

University of San Diego

On Apr 15, 2021,
at 7:36 PM,
Norma Cantu
<ncantu@usccr.gov>
wrote:

Good

Norma

From: Gail Heriot
<gheriot@usccr.gov>
Date: Thursday,
April 15, 2021 at
8:22 PM
To: Norma Cantú
<normavcantu@gmail.com>,
Norma Cantu
<ncantu@usccr.gov>
Subject: Speakers
Series

Norma— I think
that the members
of the conservative
caucus are
satisfied that this
will work for the
speakers series.
I'm working on
the other issues.
Gail

AMERICAN OVERSIGHT

DRAFT: Email from Commissioner Norma V. Cantú Rescinding the Speakers Series Activity Conducted at Commissioners′ Meetings:

April 16, 2021

I write to rescind any directives concerning a "Speakers Series" activity conducted during meetings of the Commission. I understand the Speakers Series was announced by email from a chairperson, not memorialized in any A-I or other rule. In light of several Commissioners′ concerns that the activity should have included Commissioner input on speakers

AMERICAN OVERSIGHT

from both parties, I express my serious commitment to not reinstitute this activity. If it happens that a majority of the Commissioners were to consent in the future to support this endeavor by a majority vote of the members of the Commission, I wouldpersonally ascertain whether the proposed speaker would be bipartisan in the number of speakers or timing and scheduling of speakers; and if it is not, while I am on the Commission, I will vote against this proposal.

Gail Heriot

Professor of Law

University of San Diego

AMERICAN OVERSIGHT

Date : 11/10/2021 2:04:01 PM
From : "Alexander Heideman" aheideman@usccr.gov
To : "Gail Heriot" gheriot@usccr.gov, "Peter Kirsanow" pkirsanow@usccr.gov, "J. Christian Adams" jadams@usccr.gov, "Stephen Gilchrist" sgilchrist@usccr.gov
Cc : "Carissa Mulder" CMulder@usccr.gov, "John Mashburn" jmashburn@usccr.gov, "Thomas Simuel" tsimuel@usccr.gov
Subject : Re: Action Requested: EAC Representative Replacement for Commissioner Yaki
Attachment : Carroll-Jenny-cv.pdf;

I've attached Jenny Carroll's resume to this email for everyone's reference. She's a professor of law at Alabama.

From: Norma Cantu <ncantu@usccr.gov>
Date: Wednesday, November 10, 2021 at 1:53 PM
To: Gail Heriot <gheriot@usccr.gov>, Peter Kirsanow <pkirsanow@usccr.gov>, "J. Christian Adams" <jadams@usccr.gov>, Stephen Gilchrist <sgilchrist@usccr.gov>
Cc: Alexander Heideman <aheideman@usccr.gov>, Carissa Mulder <CMulder@usccr.gov>, John Mashburn <jmashburn@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>
Subject: Action Requested: EAC Representative Replacement for Commissioner Yaki

Dear Commissioners-

In response to Commissioner Yaki recently resigning from his position on the EAC as a representative of USCCR, the Progressive Caucus is putting for 2 names for consideration. I am asking that the candidate you strike be sent to me by Monday, November 15th, 2021 by 5pm EST so that we can include the candidate's confirmation vote at our November 19th business meeting.

Allison Riggs- https://southerncoalition.org/staff/allison-riggs/

Allison Riggs - Southern Coalition for Social Justice

southerncoalition.org

Allison Riggs leads the voting rights program at the Southern Coalition for Social Justice, an organization she joined in 2009. In

AMERICAN OVERSIGHT

Image removed by sender.

March of 2020, she also took over as Interim Executive Director of the organization. Her voting rights work over the last decade at SCSJ has been focused on fighting for fair redistricting plans, fighting against voter suppression, and advocating for electoral reforms that would expand access to voting.

Alabama SAC Chair Jenny Carroll - https://www.congress.gov/116/meeting/house/109456/witnesses/HHRG-116-HA08-Wstate-CarrollJ-20190513.pdf

Per the AI voted on during the April 30th meeting (language included below), each caucus will then have 24 hours to submit caucus strikes. In this instance, I am allowing 48 business day hours given that tomorrow is a holiday. The first representative, Cleta Mitchell, was already communicated to the EAC.

Please submit your strike no later than Monday, November 15th by 5pm EST.

Please let me know if you have any questions or concerns.

Norma
--
AI language:

Section 1.
.01 Any authority specifically granted the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Commission as a whole by majority vote.

.02 Any authority specifically granted the Staff Director of the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Staff Director.

AMERICAN OVERSIGHT

.03 Any authority specifically granted the Chair of the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Chair.

Section 2
.02

(1) For the two (2) appointments to the U.S. Election Assistance Commission, the members appointed by Democratic authorities shall nominate two individuals who are ready, willing, and able to serve, and the members appointed by the Republican authorities shall nominate two individuals who are ready, willing, and able to serve.

(2) The members appointed by the Democratic authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Democratic authorities

(3) The members selected shall be placed in nomination and ratified in conformance with Section 1.

AMERICAN OVERSIGHT

Jenny E. Carroll

University of Alabama School of Law
Box 870382
Tuscaloosa, AL 35487-0382

Phone: 205-348-1116
Email: jcarroll@law.ua.edu
Papers: http://ssrn.com/author=1245554

ACADEMIC APPOINTMENTS

University of Alabama School of Law, Tuscaloosa AL
Professor Law: Teach Crim. Law, Crim. Procedure, Juvenile Justice and Counter Terrorism, 2016–present.
***Associate Professor of Law*:** 2014–2016.

Seton Hall University School of Law, Newark, New Jersey
***Associate Professor of Law*:** Taught Crim. Law, Crim. Procedure, Evidence, and Juvenile Justice. 2010–2014.

University of Cincinnati College of Law, Cincinnati, Ohio
***Visiting Assistant Professor of Law*:** Taught Crim. Law, Crim. Procedure, Evidence, White Collar Crime, and Mental Health and Criminal Law. 2008–2010.

University of Cincinnati College of Law, Cincinnati, Ohio
Assistant Professor of Clinical Law; Academic Director of the Ohio Innocence Project/ Rosenthal Institute for Justice: Designed and taught course on criminal post-conviction law and procedure, investigation and direct client representation; co-taught Criminal Defense Investigation and Trial Practice for the Indigent Defense Clinic. 2005–2008.

Georgetown University Law Center, Washington, D.C.
Prettyman Fellow, Criminal Justice Clinic: Co-taught clinical course for third-year law students and represented indigent defendants on misdemeanor and felony matters in the Superior Court of the District of Columbia. 1998–2000.

PUBLICATIONS

The Problem with Inference for Juvenile Defendants, 45 F.S.U.L. REV. 1 (*forthcoming* 2017)

Bathroom Laws as Status Crimes (with Stephen Rushin), 86 FORDHAM L. REV. 1 (*forthcoming* 2017).

Afterword: Death and the State in FINAL JUDGMENTS: THE DEATH PENALTY AND AMERICAN LAW (Austin Sarat, ed., Cambridge University Press, *forthcoming* 2017)

Brain Science and the Theory of Juvenile Mens Rea, 94 N.C.L. REV. 539 (2016)

- *Featured in* THE CHAMPION *"Getting Scholarship into Courts"*
- Included in the National Juvenile Defender Conference's Resource Guide for 2015–2016
- Available on SSRN at: http://ssrn.com/abstract=2603647

AMERICAN OVERSIGHT

The Jury as Democracy, 66 ALABAMA L. REV. 825 (2015)
- Available on SSRN at: http://ssrn.com/abstract=2585564

Nullification as Law, 102 GEORGETOWN L.J. 579 (2014)
- Available on SSRN at: http://ssrn.com/abstract=2190703

The Resistance Defense, 64 ALABAMA L. REV. 589 (2013)
- Available on SSRN at: http://ssrn.com/abstract=2053378

The Jury's Second Coming, 100 GEORGETOWN L.J. 657 (2012)
- Available on SSRN at: http://ssrn.com/abstract=1486188

Rethinking the Constitutional Criminal Procedure of Juvenile Transfer Hearings: Apprendi*, Adult Punishment, and Adult Process*, 61 HASTINGS L.J. 175 (2009)
- *Featured in* THE CHAMPION *"Getting Scholarship into Courts"*
- Included in the National Juvenile Defender Conference's Resource Guide for 2009–2010
- Available on SSRN at: http://ssrn.com/abstract=1375189

Images of Women and Capital Sentencing Among Female Offenders: Exploring the Outer Limits of the Eighth Amendment and Articulated Theories of Justice, 75 TEXAS L. REV. 1413 (1997)

ABA Juvenile Law Publication, "Practice Paper on Applications of *Apprendi* to Juvenile Transfer Proceedings," November, 2002

WORKS IN PROGRESS

Realizing Touby*'s Promise of Meaningful Constraint in Executive Discretion to Criminalize*

Secondary Emotions and Adolescent Neuroscience

Criminal Regulation of Speech
Privacy in the National Security World

The Jury as Open Government

THE DEMOCRACY OF THE JURY

AMICUS CURIAE BRIEFS

National Association of Criminal Defense Lawyers (NACDL) Amicus Brief, Ayala v. State (Florida Supreme Court, 2017)

National Association of Criminal Defense Lawyers (NACDL) Amicus Brief, State. v.

AMERICAN OVERSIGHT

Kelly Mathis (Eleventh Circuit, 2015)

National Association of Criminal Defense Lawyers (NACDL) Amicus Brief, U.S. v. Keith Cooper (Third Circuit, 2013)

NACDL Amicus Brief, United States v. Andrew "Weev" Auernheimer (Third Circuit, 2013)

NACDL Amicus Brief, United States v. Richard Caraballo-Rodriguez (Third Circuit, 2013)

NACDL Amicus Brief, United States v. Harry Katzin (Third Circuit, 2012)

NACDL Amicus Brief, United States v. Keenan Quinn (Third Circuit, 2012)

Law Professors' Amicus Brief, U.S. v. Charles Lynch (Ninth Circuit, 2012)

Law Professors' Amicus Brief, U.S. v. Salim Ahmed Hamdan (D.C. Circuit, 2011)

SELECTED SHORTER WORKS AND MEDIA

Government Collection of Cellphone Data and Privacy, Op-Ed, THE RECORD, August, 2013

License, Registration, Cellphone, Op-Ed, THE RECORD, June 11, 2013

Why Process Matters in Military Commission, Truthout.org, October 12, 2012

Why Are We Turning Our Backs on the Constitution?, Truthout.org, August, 29, 2012

Is Punishment in the Webcam Case Excessive?, Op-Ed, THE RECORD, March 21, 2012
.
Now There's Caylee's Law of Good Intentions, Op-Ed, THE RECORD, July 18, 2011

ABA Juvenile Law Publication, "Practice Paper on Applications of *Apprendi* to Juvenile Transfer Proceedings," November, 2002

Media appearances include NBC News, ESPN, BBC World News, Hollywood.com, Fox News, WMBC TV, WNBC TV, NPR, WNBC Radio, WHYY-FM Radio, *Associated Press, Boston Globe, New York Times,* AL.com, *Birmingham News, Star Ledger*, *The Record*, *Asbury Park Press*, *Orlando Sentinal* and the *New Jersey Law Journal*

CNN Criminal Law Advisor, 2011-2014

ACTIVITIES

American Association of Law Schools, Criminal Law Section, Executive Committee Member, 2017-present.

AMERICAN OVERSIGHT

Member of Juvenile Detention Alternative Initiative, Alabama, 2015-present

Co-Founder, Transnational Justice Project, Seton Hall University, 2010-2014

Authorized Observer to Guantanamo Military Commissions, 2010-present

NACDL Amicus Vice-Chair, Eleventh Circuit, 2014-present

NACDL Amicus Vice-Chair, Third Circuit, 2010-2014

NACDL Pretrial Justice Task Force, Member, 2011-2014

Advisor to the New York City Department of Education regarding restorative justice projects in public schools, 2013- 2015

EDUCATION

Georgetown University, Washington, D.C. LL.M. in Advocacy, 2005.

The University of Texas School of Law, Austin, Texas. J.D. with Honors, 1997.
Order of the Coif; TEXAS LAW REVIEW, Symposium Editor; TEXAS JOURNAL OF WOMEN AND THE LAW, Community Service Organizer; Thad Hutchinson Moot Court, Quarter-Finalist; Dean's Achievement Award, Highest Grade in Criminal Law; Endowed Presidential Scholarships; Texas Law Fellowships, Director; Women's Law Caucus, Director

Duke University, Durham, North Carolina. A.B., *Summa Cum Laude* with Highest Distinction in Political Science and Women's Studies, 1993.
Dean's Award for Best Undergraduate Thesis; William Griffith Award for Community Service;
Margaret Rose Knight Sanford Scholar; Anne Flexner Award for Creative Writing; John Hope Franklin Award and Julia Harper Day Awards for Documentary Studies; Co-Editor, DISTAFF MAGAZINE

LAW PRACTICE EXPERIENCE

The Defender Association, Seattle, Washington
Juvenile and Felony Staff Attorney: Represented indigent defendants in criminal and mental health matters in adult and juvenile court. 2000–2004.

Georgetown University Law Center, Washington, D.C.
Prettyman Fellow, Criminal Justice Clinic: (See "Academic Appointments," Above). 1998–2000.

Hon. William Wayne Justice, U.S. District Court, Eastern District of Texas, Tyler, Texas, and U.S. District Court, Western District of Texas, Austin, Texas
Judicial Clerk: 1997–1998.

AMERICAN OVERSIGHT

Bredhoff & Kaiser, Washington, D.C.
Law Clerk: Summer 1997.

Allison, Yeager, and Bassett, Austin, Texas
Law Clerk: January 1997 – May 1997.

Skadden, Arps, Slate, Meagher & Flom, Washington, D.C.
Summer Associate: Summer 1996

Texas Rural Legal Aid, Edinburg, Texas
Law Student Associate: Researched remedying systemic violation of criminally accused indigents' civil rights through § 1983 litigation, including a class action suit to insure timely appointment of counsel in border counties in Texas; assisted in litigation involving civil rights, housing, consumer protection, public benefits, family law, and employment matters. 1995–1996.

Project Esperanza, Raleigh, North Carolina
Board Member: Appointed by Governor Hunt to board to secure funding for and establish North Carolina's first domestic violence support services for migrant and rural women. 1992–1994.

Farmworker's Legal Services, Newton Grove, North Carolina
Farmworker Educator and Intern: Performed outreach to migrant labor camps throughout Eastern North Carolina to provide information about immigration issues, worker's rights and other legal matters; served as legal intern to attorneys in the Newton Grove and Raleigh offices. Summer 1992.

SELECTED PRESENTATIONS

Speaker, Free Speech Forum, Charles Pazmany University, Budapest, Hungary, 2017.

Invited Speaker, Bio LawLaPaLooza, Stanford University School of Law, 2017

Invited Speaker, Alabama Juvenile Defender's Conference, 2016

Invited Speaker, Alabama Public Defender's Conference, 2016

Panelist, Moderator, and Discussion Group Organizer, SEALS, 2016

Speaker, CrimFest, 2016

Invited Presenter, Southern Regional Juvenile Defender's Conference, 2016

Invited Speaker, Université Paris – Dauphine, 2016

Invited Speaker, Université Paris-Sorbonne, 2016

Invited Speaker, Richmond College of Law, 2016

AMERICAN OVERSIGHT

Invited Speaker, Tuscaloosa Bar Association, 2014-2016

Invited Speaker, Louis D. Brandeis School of Law, University of Louisville, 2015

Invited Speaker, National Juvenile Defender's Conference, 2015

Panelist, Law and Society Annual Conference, 2015

Panelist, Law and Society Annual Conference, 2013

Panelist, Albany New Teacher's Conference, Albany Law School, 2013

Invited Speaker, Touro Law Center, Faculty Colloquium, 2013

Invited Speaker, The Georgetown University Law Center Advanced Constitutional Law Series, 2012

Participant, Ohio Legal Scholars Workshop, 2009, 2010

"The Jury's Second Coming," University of Dayton School of Law, Faculty Workshop, 2010

Invited Speaker, ABA Juvenile Defender Leadership Summit, 2009

Invited Instructor, Indiana Juvenile Defender Training Summit, 2004–2009

Invited Instructor, Indiana Juvenile Defender Continuing Legal Education Summit, 2009

Invited Instructor, Children's Law Center Defender Training Conference, 2007

Invited Instructor, Ohio Public Defender Training Conference, 2005–2006

Invited Participant, Voices for Children Panel on Juvenile Law Reform in Ohio, 2006

Invited Participant, Ohio Panel on Discovery Reform, 2006

Invited Speaker, ABA Juvenile Defender Leadership Summit, 2002

Invited Participant in Washington (2003) and Texas (2000) assessment studies of Public and Appointed Defender Systems

BAR ADMISSIONS

District of Columbia; Ohio; Texas; Washington (inactive in all).

AMERICAN OVERSIGHT

Date : 4/16/2021 11:21:57 AM
From : "Gail Heriot" gheriot@usccr.gov
To : "Norma Cantu" ncantu@usccr.gov
Cc : "MICHAEL@michaelyaki.com" MICHAEL@michaelyaki.com, "Norma Cantú" normavcantu@gmail.com, "Peter Kirsanow" pkirsanow@beneschlaw.com, "Peter Kirsanow" pkirsanow@usccr.gov
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Statement on 30-30-10 statements, rebuttals, etc.

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> I have a Proposed A-1 on Commission Appointments
> Norma
>
> ---
>
> **From:** "michael@michaelyaki.com" <michael@michaelyaki.com>
> **Date:** Friday, April 16, 2021 at 10:10 AM
> **To:** Gail Heriot <gheriot@usccr.gov>, Norma Cantu <ncantu@usccr.gov>
> **Cc:** 'Norma Cantú' <normavcantu@gmail.com>, 'Peter Kirsanow' <pkirsanow@beneschlaw.com>, Peter Kirsanow <pkirsanow@usccr.gov>
> **Subject:** [EXTERNAL] RE: Speakers Series
>
> CAUTION: This email is from outside USCCR.
>
> rd AI?
>
> Thanks!
> Michael

AMERICAN OVERSIGHT

MICHAEL YAKI CONSULTING

This email and any files or attachments transmitted with it may contain privileged or otherwise confidential information. If you are not the intended recipient, or believe that you may have received this communication in error, please advise the sender via reply email and immediately delete the email you received.

From: Gail Heriot <gheriot@usccr.gov>
Sent: Friday, April 16, 2021 8:09 AM
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Cc: Norma Cantú <normavcantu@gmail.com>; Peter Kirsanow <pkirsanow@beneschlaw.com>; Peter Kirsanow <pkirsanow@usccr.gov>; Michael Yaki <MYaki@usccr.gov>; MICHAEL@michaelyaki.com
Subject: Re: Speakers Series

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Professor of Law
University of San Diego

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AMERICAN OVERSIGHT

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To:
>
Cc: Peter Kirsanow <pkirsanow@beneschlaw.com>, Peter Kirsanow <pkirsanow@usccr.gov>
Subject: Re: Speakers Series

Norma—What about the rest of the things on the list? Is the Progressive Caucus ready to vote on all of them? Or should the meeting be put off?

The conservatives are not inclined to negotiate further at the meeting. We are happy to get this done by notational vote if that allows the progressives the time they need to absorb all this.

Gail Heriot
Professor of Law
University of San Diego

> On Apr 15, 2021, at 7:36 PM, Norma Cantu <ncantu@usccr.gov> wrote:
>
> Good
> Norma
>
> ---
>
> **From:** Gail Heriot <gheriot@usccr.gov>
> **Date:** Thursday, April 15, 2021 at 8:22 PM

AMERICAN OVERSIGHT

To: Norma Cantú <normavcantu@gmail.com>, Norma Cantu <ncantu@usccr.gov>
Subject: Speakers Series

Norma— I think that the members of the conservative caucus are satisfied that this will work for the speakers series. I'm working on the other issues. Gail

DRAFT: Email from Commissioner Norma V. Cantú Rescinding the Speakers Series Activity Conducted at Commissioners' Meetings:

April 16, 2021

I write to rescind any directives concerning a "Speakers Series" activity conducted during meetings of the Commission. I understand the Speakers Series was announced by email from a chairperson, not memorialized in any A-I or other rule. In light of several Commissioners' concerns that the activity should have included Commissioner input on speakers from both parties, I express my serious commitment to not reinstitute this activity. If it happens that a majority of the Commissioners were to consent in the future to support this endeavor by a majority vote of the members of the Commission, I wouldpersonally ascertain whether the proposed speaker would be bipartisan in the number of speakers or timing and scheduling of speakers; and if it is not, while I am on the Commission, I will vote against this proposal.

Gail Heriot
Professor of Law
University of San Diego

AMERICAN OVERSIGHT

Date : 11/10/2021 3:40:00 PM
From : "John Mashburn" jmashburn@usccr.gov
To : "Christian Adams" a@electionlawcenter.com
Subject : FW: Action Requested: EAC Representative Replacement for Commissioner Yaki
Attachment : Carroll-Jenny-cv.pdf;

Is Riggs still worse than Carroll?

From: Alexander Heideman <aheideman@usccr.gov>
Date: Wednesday, November 10, 2021 at 2:04 PM
To: Gail Heriot <gheriot@usccr.gov>, Peter Kirsanow <pkirsanow@usccr.gov>, "J. Christian Adams" <jadams@usccr.gov>, Stephen Gilchrist <sgilchrist@usccr.gov>
Cc: Carissa Mulder <CMulder@usccr.gov>, John Mashburn <jmashburn@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>
Subject: Re: Action Requested: EAC Representative Replacement for Commissioner Yaki

I've attached Jenny Carroll's resume to this email for everyone's reference. She's a professor of law at Alabama.

From: Norma Cantu <ncantu@usccr.gov>
Date: Wednesday, November 10, 2021 at 1:53 PM
To: Gail Heriot <gheriot@usccr.gov>, Peter Kirsanow <pkirsanow@usccr.gov>, "J. Christian Adams" <jadams@usccr.gov>, Stephen Gilchrist <sgilchrist@usccr.gov>
Cc: Alexander Heideman <aheideman@usccr.gov>, Carissa Mulder <CMulder@usccr.gov>, John Mashburn <jmashburn@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>
Subject: Action Requested: EAC Representative Replacement for Commissioner Yaki

Dear Commissioners-

In response to Commissioner Yaki recently resigning from his position on the EAC as a representative of USCCR, the Progressive Caucus is putting for 2 names for consideration. I am asking that the candidate you strike be sent to me by Monday, November 15th, 2021 by 5pm EST so that we can include the candidate's confirmation vote at our November 19th business meeting.

Allison Riggs- https://southerncoalition.org/staff/allison-riggs/

Allison Riggs -
Southern Coalition for

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Image removed by sender.

Social Justice

southerncoalition.org

Allison Riggs leads the voting rights program at the Southern Coalition for Social Justice, an organization she joined in 2009. In March of 2020, she also took over as Interim Executive Director of the organization. Her voting rights work over the last decade at SCSJ has been focused on fighting for fair redistricting plans, fighting against voter suppression, and advocating for electoral reforms that would expand access to voting.

Alabama SAC Chair Jenny Carroll - https://www.congress.gov/116/meeting/house/109456/witnesses/HHRG-116-HA08-Wstate-CarrollJ-20190513.pdf

Per the AI voted on during the April 30th meeting (language included below), each caucus will then have 24 hours to submit caucus strikes. In this instance, I am allowing 48 business day hours given that tomorrow is a holiday. The first representative, Cleta Mitchell, was already communicated to the EAC.

Please submit your strike no later than Monday, November 15th by 5pm EST.

Please let me know if you have any questions or concerns.

Norma
--
AI language:

Section 1.
.01 Any authority specifically granted the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Commission as a whole by majority vote.

.02 Any authority specifically granted the Staff Director of the Commission on Civil Rights by statute or regulation or executive order to appoint members to

AMERICAN OVERSIGHT

serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Staff Director.

.03 Any authority specifically granted the Chair of the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Chair.

Section 2
.02

(1) For the two (2) appointments to the U.S. Election Assistance Commission, the members appointed by Democratic authorities shall nominate two individuals who are ready, willing, and able to serve, and the members appointed by the Republican authorities shall nominate two individuals who are ready, willing, and able to serve.

(2) The members appointed by the Democratic authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Democratic authorities

(3) The members selected shall be placed in nomination and ratified in conformance with Section 1.

AMERICAN OVERSIGHT

Jenny E. Carroll

University of Alabama School of Law
Box 870382
Tuscaloosa, AL 35487-0382

Phone: 205-348-1116
Email: jcarroll@law.ua.edu
Papers: http://ssrn.com/author=1245554

ACADEMIC APPOINTMENTS

University of Alabama School of Law, Tuscaloosa AL
Professor Law: Teach Crim. Law, Crim. Procedure, Juvenile Justice and Counter Terrorism, 2016–present.
***Associate Professor of Law*:** 2014–2016.

Seton Hall University School of Law, Newark, New Jersey
***Associate Professor of Law*:** Taught Crim. Law, Crim. Procedure, Evidence, and Juvenile Justice. 2010–2014.

University of Cincinnati College of Law, Cincinnati, Ohio
***Visiting Assistant Professor of Law*:** Taught Crim. Law, Crim. Procedure, Evidence, White Collar Crime, and Mental Health and Criminal Law. 2008–2010.

University of Cincinnati College of Law, Cincinnati, Ohio
Assistant Professor of Clinical Law; Academic Director of the Ohio Innocence Project/ Rosenthal Institute for Justice: Designed and taught course on criminal post-conviction law and procedure, investigation and direct client representation; co-taught Criminal Defense Investigation and Trial Practice for the Indigent Defense Clinic. 2005–2008.

Georgetown University Law Center, Washington, D.C.
Prettyman Fellow, Criminal Justice Clinic: Co-taught clinical course for third-year law students and represented indigent defendants on misdemeanor and felony matters in the Superior Court of the District of Columbia. 1998–2000.

PUBLICATIONS

The Problem with Inference for Juvenile Defendants, 45 F.S.U.L. REV. 1 (*forthcoming* 2017)

Bathroom Laws as Status Crimes (with Stephen Rushin), 86 FORDHAM L. REV. 1 (*forthcoming* 2017).

Afterword: Death and the State in FINAL JUDGMENTS: THE DEATH PENALTY AND AMERICAN LAW (Austin Sarat, ed., Cambridge University Press, *forthcoming* 2017)

Brain Science and the Theory of Juvenile Mens Rea, 94 N.C.L. REV. 539 (2016)

- *Featured in* THE CHAMPION *"Getting Scholarship into Courts"*
- Included in the National Juvenile Defender Conference's Resource Guide for 2015–2016
- Available on SSRN at: http://ssrn.com/abstract=2603647

AMERICAN OVERSIGHT

The Jury as Democracy, 66 ALABAMA L. REV. 825 (2015)

- Available on SSRN at: http://ssrn.com/abstract=2585564

Nullification as Law, 102 GEORGETOWN L.J. 579 (2014)

- Available on SSRN at: http://ssrn.com/abstract=2190703

The Resistance Defense, 64 ALABAMA L. REV. 589 (2013)

- Available on SSRN at: http://ssrn.com/abstract=2053378

The Jury's Second Coming, 100 GEORGETOWN L.J. 657 (2012)

- Available on SSRN at: http://ssrn.com/abstract=1486188

Rethinking the Constitutional Criminal Procedure of Juvenile Transfer Hearings: Apprendi*, Adult Punishment, and Adult Process*, 61 HASTINGS L.J. 175 (2009)

- *Featured in* THE CHAMPION *"Getting Scholarship into Courts"*
- Included in the National Juvenile Defender Conference's Resource Guide for 2009–2010
- Available on SSRN at: http://ssrn.com/abstract=1375189

Images of Women and Capital Sentencing Among Female Offenders: Exploring the Outer Limits of the Eighth Amendment and Articulated Theories of Justice, 75 TEXAS L. REV. 1413 (1997)

ABA Juvenile Law Publication, "Practice Paper on Applications of *Apprendi* to Juvenile Transfer Proceedings," November, 2002

WORKS IN PROGRESS

Realizing Touby*'s Promise of Meaningful Constraint in Executive Discretion to Criminalize*

Secondary Emotions and Adolescent Neuroscience

Criminal Regulation of Speech
Privacy in the National Security World

The Jury as Open Government

THE DEMOCRACY OF THE JURY

AMICUS CURIAE BRIEFS

National Association of Criminal Defense Lawyers (NACDL) Amicus Brief, Ayala v. State (Florida Supreme Court, 2017)

National Association of Criminal Defense Lawyers (NACDL) Amicus Brief, State. v.

AMERICAN OVERSIGHT

Kelly Mathis (Eleventh Circuit, 2015)

National Association of Criminal Defense Lawyers (NACDL) Amicus Brief, U.S. v. Keith Cooper (Third Circuit, 2013)

NACDL Amicus Brief, United States v. Andrew "Weev" Auernheimer (Third Circuit, 2013)

NACDL Amicus Brief, United States v. Richard Caraballo-Rodriguez (Third Circuit, 2013)

NACDL Amicus Brief, United States v. Harry Katzin (Third Circuit, 2012)

NACDL Amicus Brief, United States v. Keenan Quinn (Third Circuit, 2012)

Law Professors' Amicus Brief, U.S. v. Charles Lynch (Ninth Circuit, 2012)

Law Professors' Amicus Brief, U.S. v. Salim Ahmed Hamdan (D.C. Circuit, 2011)

SELECTED SHORTER WORKS AND MEDIA

Government Collection of Cellphone Data and Privacy, Op-Ed, THE RECORD, August, 2013

License, Registration, Cellphone, Op-Ed, THE RECORD, June 11, 2013

Why Process Matters in Military Commission, Truthout.org, October 12, 2012

Why Are We Turning Our Backs on the Constitution?, Truthout.org, August, 29, 2012

Is Punishment in the Webcam Case Excessive?, Op-Ed, THE RECORD, March 21, 2012
.
Now There's Caylee's Law of Good Intentions, Op-Ed, THE RECORD, July 18, 2011

ABA Juvenile Law Publication, "Practice Paper on Applications of *Apprendi* to Juvenile Transfer Proceedings," November, 2002

Media appearances include NBC News, ESPN, BBC World News, Hollywood.com, Fox News, WMBC TV, WNBC TV, NPR, WNBC Radio, WHYY-FM Radio, *Associated Press, Boston Globe, New York Times,* AL.com, *Birmingham News, Star Ledger*, *The Record*, *Asbury Park Press*, *Orlando Sentinal* and the *New Jersey Law Journal*

CNN Criminal Law Advisor, 2011-2014

ACTIVITIES

American Association of Law Schools, Criminal Law Section, Executive Committee Member, 2017-present.

AMERICAN OVERSIGHT

Member of Juvenile Detention Alternative Initiative, Alabama, 2015-present

Co-Founder, Transnational Justice Project, Seton Hall University, 2010-2014

Authorized Observer to Guantanamo Military Commissions, 2010-present

NACDL Amicus Vice-Chair, Eleventh Circuit, 2014-present

NACDL Amicus Vice-Chair, Third Circuit, 2010-2014

NACDL Pretrial Justice Task Force, Member, 2011-2014

Advisor to the New York City Department of Education regarding restorative justice projects in public schools, 2013- 2015

EDUCATION

Georgetown University, Washington, D.C. LL.M. in Advocacy, 2005.

The University of Texas School of Law, Austin, Texas. J.D. with Honors, 1997.
Order of the Coif; TEXAS LAW REVIEW, Symposium Editor; TEXAS JOURNAL OF WOMEN AND THE LAW, Community Service Organizer; Thad Hutchinson Moot Court, Quarter-Finalist; Dean's Achievement Award, Highest Grade in Criminal Law; Endowed Presidential Scholarships; Texas Law Fellowships, Director; Women's Law Caucus, Director

Duke University, Durham, North Carolina. A.B., *Summa Cum Laude* with Highest Distinction in Political Science and Women's Studies, 1993.
Dean's Award for Best Undergraduate Thesis; William Griffith Award for Community Service;
Margaret Rose Knight Sanford Scholar; Anne Flexner Award for Creative Writing; John Hope Franklin Award and Julia Harper Day Awards for Documentary Studies; Co-Editor, DISTAFF MAGAZINE

LAW PRACTICE EXPERIENCE

The Defender Association, Seattle, Washington
Juvenile and Felony Staff Attorney: Represented indigent defendants in criminal and mental health matters in adult and juvenile court. 2000–2004.

Georgetown University Law Center, Washington, D.C.
Prettyman Fellow, Criminal Justice Clinic: (See "Academic Appointments," Above). 1998–2000.

Hon. William Wayne Justice, U.S. District Court, Eastern District of Texas, Tyler, Texas, and U.S. District Court, Western District of Texas, Austin, Texas
Judicial Clerk: 1997–1998.

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Bredhoff & Kaiser, Washington, D.C.
Law Clerk: Summer 1997.

Allison, Yeager, and Bassett, Austin, Texas
Law Clerk: January 1997 – May 1997.

Skadden, Arps, Slate, Meagher & Flom, Washington, D.C.
Summer Associate: Summer 1996

Texas Rural Legal Aid, Edinburg, Texas
Law Student Associate: Researched remedying systemic violation of criminally accused indigents' civil rights through § 1983 litigation, including a class action suit to insure timely appointment of counsel in border counties in Texas; assisted in litigation involving civil rights, housing, consumer protection, public benefits, family law, and employment matters. 1995–1996.

Project Esperanza, Raleigh, North Carolina
Board Member: Appointed by Governor Hunt to board to secure funding for and establish North Carolina's first domestic violence support services for migrant and rural women. 1992–1994.

Farmworker's Legal Services, Newton Grove, North Carolina
Farmworker Educator and Intern: Performed outreach to migrant labor camps throughout Eastern North Carolina to provide information about immigration issues, worker's rights and other legal matters; served as legal intern to attorneys in the Newton Grove and Raleigh offices. Summer 1992.

SELECTED PRESENTATIONS

Speaker, Free Speech Forum, Charles Pazmany University, Budapest, Hungary, 2017.

Invited Speaker, Bio LawLaPaLooza, Stanford University School of Law, 2017

Invited Speaker, Alabama Juvenile Defender's Conference, 2016

Invited Speaker, Alabama Public Defender's Conference, 2016

Panelist, Moderator, and Discussion Group Organizer, SEALS, 2016

Speaker, CrimFest, 2016

Invited Presenter, Southern Regional Juvenile Defender's Conference, 2016

Invited Speaker, Université Paris – Dauphine, 2016

Invited Speaker, Université Paris-Sorbonne, 2016

Invited Speaker, Richmond College of Law, 2016

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Invited Speaker, Tuscaloosa Bar Association, 2014-2016

Invited Speaker, Louis D. Brandeis School of Law, University of Louisville, 2015

Invited Speaker, National Juvenile Defender's Conference, 2015

Panelist, Law and Society Annual Conference, 2015

Panelist, Law and Society Annual Conference, 2013

Panelist, Albany New Teacher's Conference, Albany Law School, 2013

Invited Speaker, Touro Law Center, Faculty Colloquium, 2013

Invited Speaker, The Georgetown University Law Center Advanced Constitutional Law Series, 2012

Participant, Ohio Legal Scholars Workshop, 2009, 2010

"The Jury's Second Coming," University of Dayton School of Law, Faculty Workshop, 2010

Invited Speaker, ABA Juvenile Defender Leadership Summit, 2009

Invited Instructor, Indiana Juvenile Defender Training Summit, 2004–2009

Invited Instructor, Indiana Juvenile Defender Continuing Legal Education Summit, 2009

Invited Instructor, Children's Law Center Defender Training Conference, 2007

Invited Instructor, Ohio Public Defender Training Conference, 2005–2006

Invited Participant, Voices for Children Panel on Juvenile Law Reform in Ohio, 2006

Invited Participant, Ohio Panel on Discovery Reform, 2006

Invited Speaker, ABA Juvenile Defender Leadership Summit, 2002

Invited Participant in Washington (2003) and Texas (2000) assessment studies of Public and Appointed Defender Systems

BAR ADMISSIONS

District of Columbia; Ohio; Texas; Washington (inactive in all).

AMERICAN OVERSIGHT

Date : 7/29/2021 10:58:52 AM
From : "Stephen Gilchrist" sgilchrist@usccr.gov
To : "John Mashburn" jmashburn@usccr.gov, "Kirsanow, Peter" pkirsanow@Beneschlaw.com, "Gail Heriot" gheriot@usccr.gov, "Christian Adams" a@electionlawcenter.com
Cc : "Carissa Mulder" CMulder@usccr.gov, "Thomas Simuel" tsimuel@usccr.gov, "Alexander Heideman" aheideman@usccr.gov
Subject : Re: Commissioner Appointments to the Election Assistance Commission
Attachment : image001.gif;image002.gif;

I am fine with Comm. Adams suggestion.

From: John Mashburn
Sent: Thursday, July 29, 2021 10:43:10 AM
To: Kirsanow, Peter; Stephen Gilchrist; Gail Heriot; Christian Adams
Cc: Carissa Mulder; Thomas Simuel; Alexander Heideman
Subject: FW: Commissioner Appointments to the Election Assistance Commission

Per the Caucus discussion a few months back about USCCR's two designees to the EAC's Bd. of Advisors, Cmnr Adams would like the Caucus to recommend Cleta Mitchell and himself as the two nominees from the Republican Commissioners -- per the new AI on the issue (*see below in Mauro's email*). Democrat Cmnrs would then need to choose between Cleta Mitchell and Cmnr Adams as one of USCCR's two designees to the EAC Bd. of Advisors.

Cmnr Adams wanted me to double check that this is still OK with the 3 of you before he submits his and Cleta's names to Staff Director Morales by COB tomorrow, Friday July 30.

Please email me back to confirm that each of you is OK with submitting Cleta's and Cmnr Adams' names for the EAC .

From: Mauro Morales <mmorales@usccr.gov>
Date: Wednesday, July 28, 2021 at 11:30 AM
To: Commissioners <Commissioners@usccr.gov>
Cc: David Ganz <dganz@usccr.gov>,
"CommissionerAssistants@usccr.gov" <CommissionerAssistants@usccr.gov>
Subject: Commissioner Appointments to the Election Assistance Commission

Dear Commissioners-

At the request and in consultation with the Chair, I am sending this email to start the EAC nomination process for Commissioners.

Per the AI voted on during the April 30th meeting (language included below), each caucus is requested to submit two candidates for consideration by COB Friday, July 30, 2021. Once the names are submitted, OGC will conduct an ethics check to be completed by Wednesday, August 4, 2021. Each caucus will then have 24 hours to submit caucus strikes (Thursday, August 5, 2021 COB). The Chair will communicate

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the two names to EAC no later than Friday, August 6, 2021.

Please let the Chair or I know if you have any questions or concerns.

--
AI language:

Section 1.
.01 Any authority specifically granted the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Commission as a whole by majority vote.

.02 Any authority specifically granted the Staff Director of the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Staff Director.

.03 Any authority specifically granted the Chair of the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Chair.

Section 2
.02
(1) For the two (2) appointments to the U.S. Election Assistance Commission, the members appointed by Democratic authorities shall nominate two individuals who are ready, willing, and able to serve, and the members appointed by the Republican authorities shall nominate two individuals who are ready, willing, and able to serve.

(2) The members appointed by the Democratic authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Democratic authorities

(3) The members selected shall be placed in nomination and ratified in conformance with Section 1.

Mauro Morales
Staff Director
U.S. Commission on Civil Rights
P: 202-376-7796| F: 202-376-7672
Mmorales@usccr.gov
http://usccr.gov/

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1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425

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OVERSIGHT

OVERSTOCK

Date : 11/11/2021 8:13:29 PM
From : "J. Christian Adams" jadams@usccr.gov
To : "Alexander Heideman" aheideman@usccr.gov, "Gail Heriot" gheriot@usccr.gov, "Peter Kirsanow" pkirsanow@usccr.gov, "Stephen Gilchrist" sgilchrist@usccr.gov
Cc : "Carissa Mulder" CMulder@usccr.gov, "John Mashburn" jmashburn@usccr.gov, "Thomas Simuel" tsimuel@usccr.gov
Subject : Re: Action Requested: EAC Representative Replacement for Commissioner Yaki

Her name is not Allison Riggs. Therefore she is the person to pick.

From: Alexander Heideman
Sent: Wednesday, November 10, 2021 2:04:01 PM
To: Gail Heriot; Peter Kirsanow; J. Christian Adams; Stephen Gilchrist
Cc: Carissa Mulder; John Mashburn; Thomas Simuel
Subject: Re: Action Requested: EAC Representative Replacement for Commissioner Yaki

I've attached Jenny Carroll's resume to this email for everyone's reference. She's a professor of law at Alabama.

From: Norma Cantu <ncantu@usccr.gov>
Date: Wednesday, November 10, 2021 at 1:53 PM
To: Gail Heriot <gheriot@usccr.gov>, Peter Kirsanow <pkirsanow@usccr.gov>, "J. Christian Adams" <jadams@usccr.gov>, Stephen Gilchrist <sgilchrist@usccr.gov>
Cc: Alexander Heideman <aheideman@usccr.gov>, Carissa Mulder <CMulder@usccr.gov>, John Mashburn <jmashburn@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>
Subject: Action Requested: EAC Representative Replacement for Commissioner Yaki

Dear Commissioners-

In response to Commissioner Yaki recently resigning from his position on the EAC as a representative of USCCR, the Progressive Caucus is putting for 2 names for consideration. I am asking that the candidate you strike be sent to me by Monday, November 15th, 2021 by 5pm EST so that we can include the candidate's confirmation vote at our November 19th business meeting.

Allison Riggs- https://southerncoalition.org/staff/allison-riggs/

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Image removed by sender.

Allison Riggs - Southern Coalition for Social Justice

southerncoalition.org

Allison Riggs leads the voting rights program at the Southern Coalition for Social Justice, an organization she joined in 2009. In March of 2020, she also took over as Interim Executive Director of the organization. Her voting rights work over the last decade at SCSJ has been focused on fighting for fair redistricting plans, fighting against voter suppression, and advocating for electoral reforms that would expand access to voting.

Alabama SAC Chair Jenny Carroll - https://www.congress.gov/116/meeting/house/109456/witnesses/HHRG-116-HA08-Wstate-CarrollJ-20190513.pdf

Per the AI voted on during the April 30th meeting (language included below), each caucus will then have 24 hours to submit caucus strikes. In this instance, I am allowing 48 business day hours given that tomorrow is a holiday. The first representative, Cleta Mitchell, was already communicated to the EAC.

Please submit your strike no later than Monday, November 15th by 5pm EST.

Please let me know if you have any questions or concerns.

Norma
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AI language:

Section 1.
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.02 Any authority specifically granted the Staff Director of the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Staff Director.

.03 Any authority specifically granted the Chair of the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Chair.

Section 2
.02

(1) For the two (2) appointments to the U.S. Election Assistance Commission, the members appointed by Democratic authorities shall nominate two individuals who are ready, willing, and able to serve, and the members appointed by the Republican authorities shall nominate two individuals who are ready, willing, and able to serve.

(2) The members appointed by the Democratic authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Democratic authorities

(3) The members selected shall be placed in nomination and ratified in conformance with Section 1.

AMERICAN OVERSIGHT

Date : 4/19/2021 8:39:22 AM
From : "Amy Royce" aroyce@usccr.gov
To : "Juana Silverio" jsilverio@usccr.gov
Subject : Fw: Caucus SA's

Morning Juana,

Amy should be able to send you the re-occuring calendar invitation. Below are the zoom details for the meeting today. They are usually at 11:00am every Monday but last week we had it pushed back.

Below is the agenda we have been using and updating as we meet if you would like to update with any additional information and share with the group before out 11:00am meeting.

- Rescheduling the April Business Meeting
- Review and redline the proposed AI's
- Cancelled meeting with the Staff Director
- Alec reached out to the R caucus regarding the ID and CO SAC's. Looking to hear back (Alec update?). If we reach a deal we might be open to voting for the ID and CO slates if Yeanor apologized.
- NC SAC Update. R's reached out to see if we could find a compromise regarding the NC SAC. Please see description below. Debo, Dave and Michael are good with this deal. Juana we need Norma's go ahead to make the deal with the R's.
- Input on the AAPI Statement and it's reintroduction. Should we update the statement with current AAPI violence. We have a 48 hour deadline for distribution, meaning that by 12noon on Wednesday we would need to share the statement with all Commissioners.
    - Add a caucus call the week of the new April business meeting
    - Sunshine notice has FEMA discovery materials, will need to amend
- Sunshine notice also has additional agenda items that may or may not need to be amended –
    - Eliminating the Speaker Series,
    - Rebuttal/surrebuttal time periods
    - Bi-partisan appointment to EAC board of advisors

NC SAC

- The Democratic caucus accepts adding Mincey *please see context below (no additional application needed)
- When recirculating will make clear that Commissioners should not submit objections to other members of the slate who have already been circulated
- The Republican caucus will remove the objection to Lechner *please see context below (no additional application needed)
- Vote in the SAC w/8-8 balance

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For situational awareness please see the context for the NC SAC:

- Slate failed to get a majority vote on Friday 10/30.
- 15 candidates, 8 Democrats (including two Independents who lean Democrat), 7 Republicans (including one candidate who identified as “something else”).
- Note that Olga Wright, the returning Chair, identifies herself as a Democrat but ran for public office as a Republican in all her past elections.
- Comm. Kirsanow (and Adams) objected to the balance of the slate, and requested that it be shifted to 7 Republicans and 7 Democrats (removing one Dem).
- John/Adams objected to the inclusion of Jennifer Lechner as he don't consider her a true Republican." In her stead they would like to replace her with a Mr. Patrick Mincey who Carissa recruited. Replacing Lechner with Mincey takes the gender balance of the slate to 11 men and 4 women. Mincey is a white collar crime attorney and lacks major civil rights experience, however in our vetting process we did not find anything objectionable regarding his public statements or conduct.

FEMA/Puerto Rico

- The notational vote passed
    - FEMA panelist recommendations + briefing book recommendations. The
      panelist recommendations were due by this **Friday, April 2nd.** There were numerous recommendations from Irena, Alex, John Mashburn. Carissa and Thomas had one recommendation.
    - OCRE send the invitations last week. No confirmations to date. Irena spoke to Jason and has some updates.
      Briefing book recommendations are due on **Friday, May 7th.**
- Virtual briefing moved to June 25
- 2 site visits scheduled - Houston 11/19/21, Puerto Rico 12/10/21
- Third briefing planning meeting will take place on Tuesday, April 20th at 11am ET.

Bail Reform

- Kladney/Amy negotiations with R's ongoing
- Oregon SAC had their last briefing on Friday 12/11, Catherine attended. Rukku shared briefing notes with OCRE in the comments on the first draft.

Maternal Health

- OCRE, Debo and Irena met last week to discuss the final draft. Productive meeting, Irena to update the caucus.
    - Focus on Chapter 3 – Federal response, as area for potential bi-partisan consensus

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    - New HHS leadership – OCRE sent HHS and CDC targeted questions for affected agency review
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- Was signed into law, more details to come on what this means.
- Appointments from White House
- Call rescheduled with Congresswoman Wilson
- Women/Girls bill?

From: Amy Royce
Sent: Wednesday, February 3, 2021 8:49 AM
To: Amy Royce; Irena Vidulovic; Alec Deull
Subject: Caucus SA's
When: Monday, April 19, 2021 11:00 AM-12:00 PM.
Where: Zoom
New calendar invitation with new Zoom info

Amy Royce is inviting you to a scheduled Zoom meeting.

Topic: Caucus SA's
Time: This is a recurring meeting Meet anytime

Join Zoom Meeting
https://us02web.zoom.us/j/87862261260?pwd=RjBlbGp0blZTcHNzM2tJY3VUUURudz09

Launch Meeting - Zoom

us02web.zoom.us

Zoom is the leader in modern enterprise video communications, with an easy, reliable cloud platform for video and audio conferencing, chat, and webinars across mobile, desktop, and room systems. Zoom Rooms is the original software-based conference room solution used around the world in board, conference, huddle, and training rooms, as well as executive offices and classrooms. Founded in 2011, Zoom helps businesses and organizations bring their teams together in a frictionless environment to get more done. Zoom is a publicly traded company headquartered in San

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Jose, CA.

Meeting ID: 878 6226 1260
Passcode: 555120
One tap mobile
+13017158592,,87862261260# US (Washington DC)
+13126266799,,87862261260# US (Chicago)

Dial by your location
+1 301 715 8592 US (Washington DC)
+1 312 626 6799 US (Chicago)
+1 646 558 8656 US (New York)
+1 253 215 8782 US (Tacoma)
+1 346 248 7799 US (Houston)
+1 669 900 6833 US (San Jose)
833 548 0276 US Toll-free
833 548 0282 US Toll-free
855 880 1246 US Toll-free
877 369 0926 US Toll-free
Meeting ID: 878 6226 1260
Find your local number: https://us02web.zoom.us/u/kb1IE4rpVo

Join by SIP
87862261260@zoomcrc.com

Join by H.323
162.255.37.11 (US West)
162.255.36.11 (US East)
115.114.131.7 (India Mumbai)
115.114.115.7 (India Hyderabad)
213.19.144.110 (Amsterdam Netherlands)
213.244.140.110 (Germany)
103.122.166.55 (Australia Sydney)
103.122.167.55 (Australia Melbourne)
149.137.40.110 (Singapore)
64.211.144.160 (Brazil)
69.174.57.160 (Canada Toronto)
65.39.152.160 (Canada Vancouver)
207.226.132.110 (Japan Tokyo)
149.137.24.110 (Japan Osaka)
Meeting ID: 878 6226 1260
Passcode: 555120

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Date : 4/19/2021 10:39:58 AM
From : "Irena Vidulovic" ividulovic@usccr.gov
To : "Amy Royce" aroyce@usccr.gov
Subject : Fwd: Caucus SA's

For our meeting at 11am.

Sent from my iPhone

Begin forwarded message:

From: Amy Royce <aroyce@usccr.gov>
Date: April 19, 2021 at 8:39:22 AM EDT
To: Juana Silverio <Jsilverio@usccr.gov>
Subject: Fw: Caucus SA's

Morning Juana,

Amy should be able to send you the re-occuring calendar invitation. Below are the zoom details for the meeting today. They are usually at 11:00am every Monday but last week we had it pushed back.

Below is the agenda we have been using and updating as we meet if you would like to update with any additional information and share with the group before out 11:00am meeting.

* Rescheduling the April Business Meeting
* Review and redline the proposed AI's
* Cancelled meeting with the Staff Director
* Alec reached out to the R caucus regarding the ID and CO SAC's. Looking to hear back (Alec update?). If we reach a deal we might be open to voting for the ID and CO slates if Yeanor apologized.
* NC SAC Update. R's reached out to see if we could find a compromise regarding the NC SAC. Please see description below. Debo, Dave and Michael are good with this deal. Juana we need Norma's go ahead to make the deal with the R's.
* Input on the AAPI Statement and it's reintroduction. Should we update the statement with current AAPI violence. We have a 48 hour deadline for distribution, meaning that by 12noon on Wednesday we would need to share the statement with all Commissioners.
    * Add a caucus call the week of the new April business meeting
    * Sunshine notice has FEMA discovery materials, will need to amend
* Sunshine notice also has additional agenda items that may or may not need to be amended –

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* Eliminating the Speaker Series,
* Rebuttal/surrebuttal time periods
* Bi-partisan appointment to EAC board of advisors

NC SAC

* The Democratic caucus accepts adding Mincey *please see context below (no additional application needed)
* When recirculating will make clear that Commissioners should not submit objections to other members of the slate who have already been circulated
* The Republican caucus will remove the objection to Lechner *please see context below (no additional application needed)
* Vote in the SAC w/8-8 balance

For situational awareness please see the context for the NC SAC:
* Slate failed to get a majority vote on Friday 10/30.
* 15 candidates, 8 Democrats (including two Independents who lean Democrat), 7 Republicans (including one candidate who identified as “something else”).
* Note that Olga Wright, the returning Chair, identifies herself as a Democrat but ran for public office as a Republican in all her past elections.
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* John/Adams objected to the inclusion of Jennifer Lechner as he don't consider her a true Republican." In her stead they would like to replace her with a Mr. Patrick Mincey who Carissa recruited. Replacing Lechner with Mincey takes the gender balance of the slate to 11 men and 4 women. Mincey is a white collar crime attorney and lacks major civil rights experience, however in our vetting process we did not find anything objectionable regarding his public statements or conduct.

FEMA/Puerto Rico

* The notational vote passed
* FEMA panelist recommendations + briefing book recommendations. The
panelist recommendations were due by this Friday, April 2nd. There were numerous recommendations from Irena, Alex, John Mashburn. Carissa and Thomas had one recommendation.
* OCRE send the invitations last week. No confirmations to date. Irena spoke to Jason and has some updates.
Briefing book recommendations are due on Friday, May 7th.
* Virtual briefing moved to June 25
* 2 site visits scheduled - Houston 11/19/21, Puerto Rico 12/10/21
* Third briefing planning meeting will take place on Tuesday, April

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20th at 11am ET.
Bail Reform

* Kladney/Amy negotiations with R's ongoing
* Oregon SAC had their last briefing on Friday 12/11, Catherine attended. Rukku shared briefing notes with OCRE in the comments on the first draft.

Maternal Health

* OCRE, Debo and Irena met last week to discuss the final draft. Productive meeting, Irena to update the caucus.
    * Focus on Chapter 3 – Federal response, as area for potential bi-partisan consensus
    * New HHS leadership – OCRE sent HHS and CDC targeted questions for affected agency review
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headquartered in San Jose, CA.

Meeting ID: 878 6226 1260
Passcode: 555120
One tap mobile
+13017158592,,87862261260# US (Washington DC)
+13126266799,,87862261260# US (Chicago)

Dial by your location
+1 301 715 8592 US (Washington DC)
+1 312 626 6799 US (Chicago)
+1 646 558 8656 US (New York)
+1 253 215 8782 US (Tacoma)
+1 346 248 7799 US (Houston)
+1 669 900 6833 US (San Jose)
833 548 0276 US Toll-free
833 548 0282 US Toll-free
855 880 1246 US Toll-free
877 369 0926 US Toll-free
Meeting ID: 878 6226 1260
Find your local number: https://us02web.zoom.us/u/kb1IE4rpVo

Join by SIP
87862261260@zoomcrc.com

Join by H.323
162.255.37.11 (US West)
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115.114.131.7 (India Mumbai)
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149.137.24.110 (Japan Osaka)
Meeting ID: 878 6226 1260
Passcode: 555120

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<meeting.ics>

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Date : 11/15/2021 11:26:27 PM
From : "Gail Heriot" gheriot@usccr.gov
To : "Norma Cantu" ncantu@usccr.gov
Subject : Re: Action Requested: EAC Representative Replacement for Commissioner Yaki

I think a decision was made, but I haven't heard from Pete yet.

Sent from my iPhone

> On Nov 15, 2021, at 5:53 PM, Norma Cantu <ncantu@usccr.gov> wrote:
>
> Good evening,
>
> Was a decision made by the caucus?
>
> Thanks.
>
> Norma
>
> ---
>
> **From:** Norma Cantu
> **Sent:** Wednesday, November 10, 2021 12:53:30 PM
> **To:** Gail Heriot; Peter Kirsanow; J. Christian Adams; Stephen Gilchrist
> **Cc:** Alexander Heideman; Carissa Mulder; John Mashburn; Thomas Simuel
> **Subject:** Action Requested: EAC Representative Replacement for Commissioner Yaki
>
> Dear Commissioners-
>
> In response to Commissioner Yaki recently resigning from his position on the EAC as a representative of USCCR, the Progressive Caucus is putting for 2 names for consideration. I am asking that the candidate you strike be sent to me by Monday, November 15th, 2021 by 5pm EST so that we can include the candidate's confirmation vote at our November 19th business meeting.
>
> Allison Riggs- https://southerncoalition.org/staff/allison-riggs/

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Allison Riggs - Southern Coalition for Social Justice

southerncoalition.org

Allison Riggs leads the voting rights program at the Southern Coalition for Social Justice, an organization she joined

Alabama SAC Chair Jenny Carroll - https://www.congress.gov/116/meeting/house/109456/witnesses/HHRG-16-HA08-Wstate-CarrollJ-20190513.pdf

Per the AI voted on during the April 30th meeting (language included below), each caucus will then have 24 hours to submit caucus strikes. In this instance, I am allowing 48 business day hours given that tomorrow is a holiday. The first representative, Cleta Mitchell, was already communicated to the EAC.

Please submit your strike no later than Monday, November 15th by 5pm EST.

Please let me know if you have any questions or concerns.

Norma

--

AI language:

Section 1.

.01 Any authority specifically granted the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Commission as a whole by majority vote.

AMERICAN OVERSIGHT

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(3) The members selected shall be placed in nomination and ratified in conformance with Section 1.

AMERICAN OVERSIGHT

Date : 11/16/2021 9:46:33 AM
From : "Juana Silverio" jsilverio@usccr.gov
To : "Debo P. Adegbile" dadegbile@usccr.gov, "Norma Cantu" ncantu@usccr.gov
Cc : "Irena Vidulovic" ividulovic@usccr.gov
Subject : FW: Action Requested: EAC Representative Replacement for Commissioner Yaki

Good morning- the Rs did not get back to us by last night. While Carissa has said they will get back to us today, the Chair would like to coordinate on who the pick should be if they do not respond. FYI- the Rs had originally struck Ms. Riggs.

Juana

From: Norma Cantu <ncantu@usccr.gov>
Sent: Monday, November 15, 2021 8:53 PM
To: Gail Heriot <gheriot@usccr.gov>; Peter Kirsanow <pkirsanow@usccr.gov>; J. Christian Adams <jadams@usccr.gov>; Stephen Gilchrist <sgilchrist@usccr.gov>
Cc: Alexander Heideman <aheideman@usccr.gov>; Carissa Mulder <CMulder@usccr.gov>; John Mashburn <jmashburn@usccr.gov>; Thomas Simuel <tsimuel@usccr.gov>; Juana Silverio <jsilverio@usccr.gov>
Subject: Re: Action Requested: EAC Representative Replacement for Commissioner Yaki

Good evening,

Was a decision made by the caucus?

Thanks.

Norma

From: Norma Cantu
Sent: Wednesday, November 10, 2021 12:53:30 PM
To: Gail Heriot; Peter Kirsanow; J. Christian Adams; Stephen Gilchrist
Cc: Alexander Heideman; Carissa Mulder; John Mashburn; Thomas Simuel
Subject: Action Requested: EAC Representative Replacement for Commissioner Yaki

Dear Commissioners-

In response to Commissioner Yaki recently resigning from his position on the EAC as a representative of USCCR, the Progressive Caucus is putting for 2 names for consideration. I am asking that the candidate you strike be sent to me by Monday, November 15th, 2021 by 5pm EST so that we can include the candidate's confirmation vote at our November 19th business meeting.

AMERICAN OVERSIGHT

Allison Riggs- https://southerncoalition.org/staff/allison-riggs/

Allison Riggs - Southern Coalition for Social Justice

southerncoalition.org

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Alabama SAC Chair Jenny Carroll - https://www.congress.gov/116/meeting/house/109456/witnesses/HHRG-116-HA08-Wstate-CarrollJ-20190513.pdf

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Please submit your strike no later than Monday, November 15th by 5pm EST.

Please let me know if you have any questions or concerns.

Norma
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AMERICAN OVERSIGHT

Date : 11/16/2021 9:54:25 AM
From : "Norma Cantu" ncantu@usccr.gov
To : "Gail Heriot" gheriot@usccr.gov
Cc : "Juana Silverio" jsilverio@usccr.gov
Subject : RE: Action Requested: EAC Representative Replacement for Commissioner Yaki

Dear Gail,
The deadline came and went.
Will you please contact Commissioner Kirsanow.
Norma

From: Gail Heriot <gheriot@usccr.gov>
Sent: Monday, November 15, 2021 10:26 PM
To: Norma Cantu <ncantu@usccr.gov>
Subject: Re: Action Requested: EAC Representative Replacement for Commissioner Yaki

I think a decision was made, but I haven't heard from Pete yet.

Sent from my iPhone

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> **To:** Gail Heriot; Peter Kirsanow; J. Christian Adams; Stephen Gilchrist
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> **Subject:** Action Requested: EAC Representative Replacement for Commissioner Yaki
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AMERICAN OVERSIGHT

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AMERICAN OVERSIGHT

Date : 7/29/2021 10:43:10 AM
From : "John Mashburn" jmashburn@usccr.gov
To : "Kirsanow, Peter" pkirsanow@Beneschlaw.com, "Stephen Gilchrist" sgilchrist@usccr.gov, "Gail Heriot" gheriot@usccr.gov, "Christian Adams" a@electionlawcenter.com
Cc : "Carissa Mulder" CMulder@usccr.gov, "Thomas Simuel" tsimuel@usccr.gov, "Alexander Heideman" aheideman@usccr.gov
Subject : FW: Commissioner Appointments to the Election Assistance Commission
Attachment : image001.gif;image002.gif;

Per the Caucus discussion a few months back about USCCR's two designees to the EAC's Bd. of Advisors, Cmnr Adams would like the Caucus to recommend Cleta Mitchell and himself as the two nominees from the Republican Commissioners -- per the new AI on the issue (*see below in Mauro's email*). Democrat Cmnrs would then need to choose between Cleta Mitchell and Cmnr Adams as one of USCCR's two designees to the EAC Bd. of Advisors.

Cmnr Adams wanted me to double check that this is still OK with the 3 of you before he submits his and Cleta's names to Staff Director Morales by COB tomorrow, Friday July 30.

Please email me back to confirm that each of you is OK with submitting Cleta's and Cmnr Adams' names for the EAC .

From: Mauro Morales <mmorales@usccr.gov>
Date: Wednesday, July 28, 2021 at 11:30 AM
To: Commissioners <Commissioners@usccr.gov>
Cc: David Ganz <dganz@usccr.gov>,
"CommissionerAssistants@usccr.gov" <CommissionerAssistants@usccr.gov>
Subject: Commissioner Appointments to the Election Assistance Commission

Dear Commissioners-

At the request and in consultation with the Chair, I am sending this email to start the EAC nomination process for Commissioners.

Per the AI voted on during the April 30th meeting (language included below), each caucus is requested to submit two candidates for consideration by COB Friday, July 30, 2021. Once the names are submitted, OGC will conduct an ethics check to be completed by Wednesday, August 4, 2021. Each caucus will then have 24 hours to submit caucus strikes (Thursday, August 5, 2021 COB). The Chair will communicate the two names to EAC no later than Friday, August 6, 2021.

Please let the Chair or I know if you have any questions or concerns.

--
AI language:

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(3) The members selected shall be placed in nomination and ratified in conformance with Section 1.

Mauro Morales
Staff Director
U.S. Commission on Civil Rights
P: 202-376-7796| F: 202-376-7672
Mmorales@usccr.gov
http://usccr.gov/
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425

Follow Us on Twitter & Facebook:

#USCCR

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OVERSIGHT

OVERSTOCK

Date : 11/16/2021 10:27:40 AM
From : "Gail Heriot" gheriot@usccr.gov
To : "Thomas Simuel" tsimuel@usccr.gov
Cc : "Stephen Gilchrist" sgilchrist@usccr.gov, "J. Christian Adams" jadams@usccr.gov, "Alexander Heideman" aheideman@usccr.gov, "Peter Kirsanow" pkirsanow@usccr.gov, "Carissa Mulder" CMulder@usccr.gov, "John Mashburn" jmashburn@usccr.gov
Subject : Re: Action Requested: EAC Representative Replacement for Commissioner Yaki

No, I never heard from Pete.

Gail Heriot
Professor of Law
University of San Diego

On Nov 16, 2021, at 7:26 AM, Thomas Simuel <tsimuel@usccr.gov> wrote:

Did Chair Cantu receive the caucus vote for Jenny?

From: Stephen Gilchrist
Sent: Monday, November 15, 2021 10:10:00 PM
To: Gail Heriot; J. Christian Adams
Cc: Alexander Heideman; Peter Kirsanow; Carissa Mulder; John Mashburn; Thomas Simuel
Subject: Re: Action Requested: EAC Representative Replacement for Commissioner Yaki

Gail - I am fine with Jenny.

From: Gail Heriot
Sent: Monday, November 15, 2021 10:00:26 PM
To: J. Christian Adams
Cc: Alexander Heideman; Peter Kirsanow; Stephen Gilchrist; Carissa Mulder; John Mashburn; Thomas Simuel
Subject: Re: Action Requested: EAC Representative Replacement for Commissioner Yaki

I am happy to vote for Jenny Carroll. Is she our official pick? Norma is asking.

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Professor of Law
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On Nov 11, 2021, at 5:13 PM, J. Christian Adams <jadams@usccr.gov> wrote:

AMERICAN OVERSIGHT

Her name is not Allison Riggs. Therefore she is the person to pick.

From: Alexander Heideman
Sent: Wednesday, November 10, 2021 2:04:01 PM
To: Gail Heriot; Peter Kirsanow; J. Christian Adams; Stephen Gilchrist
Cc: Carissa Mulder; John Mashburn; Thomas Simuel
Subject: Re: Action Requested: EAC Representative Replacement for Commissioner Yaki

I've attached Jenny Carroll's resume to this email for everyone's reference. She's a professor of law at Alabama.

From: Norma Cantu <ncantu@usccr.gov>
Date: Wednesday, November 10, 2021 at 1:53 PM
To: Gail Heriot <gheriot@usccr.gov>, Peter Kirsanow <pkirsanow@usccr.gov>, "J. Christian Adams" <jadams@usccr.gov>, Stephen Gilchrist <sgilchrist@usccr.gov>
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Allison Riggs - Southern Coalition for

AMERICAN OVERSIGHT

Image removed by sender.

Social Justice

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AMERICAN OVERSIGHT

Date : 11/16/2021 10:26:50 AM
From : "Thomas Simuel" tsimuel@usccr.gov
To : "Stephen Gilchrist" sgilchrist@usccr.gov, "Gail Heriot" gheriot@usccr.gov, "J. Christian Adams" jadams@usccr.gov
Cc : "Alexander Heideman" aheideman@usccr.gov, "Peter Kirsanow" pkirsanow@usccr.gov, "Carissa Mulder" CMulder@usccr.gov, "John Mashburn" jmashburn@usccr.gov
Subject : Re: Action Requested: EAC Representative Replacement for Commissioner Yaki

Did Chair Cantu receive the caucus vote for Jenny?

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Sent: Monday, November 15, 2021 10:10:00 PM
To: Gail Heriot; J. Christian Adams
Cc: Alexander Heideman; Peter Kirsanow; Carissa Mulder; John Mashburn; Thomas Simuel
Subject: Re: Action Requested: EAC Representative Replacement for Commissioner Yaki

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Sent: Monday, November 15, 2021 10:00:26 PM
To: J. Christian Adams
Cc: Alexander Heideman; Peter Kirsanow; Stephen Gilchrist; Carissa Mulder; John Mashburn; Thomas Simuel
Subject: Re: Action Requested: EAC Representative Replacement for Commissioner Yaki

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To: Gail Heriot <gheriot@usccr.gov>, Peter Kirsanow <pkirsanow@usccr.gov>, "J. Christian Adams" <jadams@usccr.gov>, Stephen Gilchrist <sgilchrist@usccr.gov>
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AMERICAN OVERSIGHT

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AMERICAN OVERSIGHT

Date : 11/16/2021 10:11:37 AM
From : "Gail Heriot" gheriot@usccr.gov
To : "Norma Cantu" ncantu@usccr.gov
Cc : "Juana Silverio" jsilverio@usccr.gov
Subject : Re: Action Requested: EAC Representative Replacement for Commissioner Yaki

I'm trying. I texted him last night.

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AMERICAN OVERSIGHT

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AMERICAN OVERSIGHT

Date : 4/19/2021 6:56:31 PM
From : "David Ganz" dganz@usccr.gov
To : "David Ganz" dganz@usccr.gov
Subject : RE: Follow Up on Today's Business Meeting
Attachment : image003.png;image004.gif;image005.gif;

Most agencies have the chairman as the admin head; 'agency head' in 5 CFR. Our stat and regs do not.

1. 18 C.F.R. § 376.105 Code of Federal Regulations
   - Code of Federal Regulations
   - Title 18. Conservation of Power and Water Resources
   - Chapter I. Federal Energy Regulatory Commission, Department of Energy
   - Subchapter W. Revised General Rules
   - Part 376. Organization, Mission, and Functions; Operations During Emergency Conditions
   - Subpart A. Organization, Mission, and Functions

   ...A . Organization, Mission, and Functions § 376.105 Chairman. (a) **Administrative head** of agency. The Chairman is the **administrative head** of the Commission. (b) Administrative responsibilities. The Chairman is responsible...

2. 2. § 23.3 Coordination. 7 C.F.R. § 23.3 Code of Federal Regulations
   Code of Federal Regulations
   - Title 7. Agriculture
   - Subtitle A. Office of the Secretary of Agriculture
   - Part 23. State and Regional Annual Plans of Work
   - Subpart A. State Program

   ...responsible for the administration of the extension programs, and the **administrative head** of agriculture of the University (chairman of the State Rural...

3. 3. § 701.12 Staff Director.
   45 C.F.R. § 701.12 Code of Federal Regulations
   - Code of Federal Regulations
   - Title 45. Public Welfare
   - Subtitle B. Regulations Relating to Public Welfare
   - Chapter VII. Commission on Civil Rights
   - Part 701. Organization and Functions of the Commission
   - Subpart B. Organization Statement

   ...a majority of the Commissioners. The Staff Director is the **administrative head** of the agency. SOURCE: 67 FR 70482 , Nov. 22, 2002...

4. 4. 1402.101 Definitions.
   48 C.F.R. 1402.101 Effective: May 17, 2010 Federal Acquisition Regulations -- Title 48 CFR

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- Code of Federal Regulations
- Title 48. Federal Acquisition Regulations System
- Chapter 14. Department of the Interior
- Subchapter A. General
- Part 1402. Definitions of Words and Terms
- Subpart 1402.1. Definitions

...contracting activity (HCA) is defined as the assistant or associate **administrative head** of each bureau and office who has overall responsibility for...

5.

5. § 36.82 May behavioral health professional(s) provide services during the academic school day?

25 C.F.R. § 36.82 Effective: January 4, 2008 Code of Federal Regulations

- Code of Federal Regulations
- Title 25. Indians
- Chapter I. Bureau of Indian Affairs, Department of the Interior
- Subchapter E. Education
- Part 36. Minimum Academic Standards for the Basic Education of Indian Children and National Criteria for Dormitory Situations
- Subpart G. Homeliving Programs
- Staffing

...school day, except in emergency situations as deemed by the **administrative head** of the homeliving program or designee. The purpose of this...

6.

6. § 1007.2 Definitions.

49 C.F.R. § 1007.2 Code of Federal Regulations

- Code of Federal Regulations
- Title 49. Transportation
- Subtitle B. Other Regulations Relating to Transportation
- Chapter X. Surface Transportation Board
- Subchapter A. General Rules and Regulations
- Parts 1000 to 1019—General Provisions
- Part 1007. Records Containing Information About Individuals

...Chairman means the Presidentially appointed Board Member who is the **administrative head** of the Surface Transportation Board. Privacy Officer refers to the...

7.

7. § 0.8 The Chairman.

16 C.F.R. § 0.8 Code of Federal Regulations

- Code of Federal Regulations
- Title 16. Commercial Practices
- Chapter I. Federal Trade Commission
- Subchapter A. Organization, Procedures and Rules of Practice
- Part 0. Organization

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...the general policies of the Commission, is the executive and **administrative head** of the agency. He presides at meetings of and hearings...

8.

8. § 0.11 Functions of the Office.

47 C.F.R. § 0.11 Effective: February 26, 2019 Code of Federal Regulations

- Code of Federal Regulations
- Title 47. Telecommunication
- Chapter I. Federal Communications Commission
- Subchapter A. General
- Part 0. Commission Organization
- Subpart A. Organization
- Office of Managing Director

...administrative and executive responsibilities delegated to the Chairman as the **administrative head** of the agency. (4) Advise the Chairman and Commission on...

9.

9. § 1000.5 Delegations of authority.

6 C.F.R. § 1000.5 Effective: August 28, 2019 Code of Federal Regulations

- Code of Federal Regulations
- Title 6. Domestic Security
- Chapter X. Privacy and Civil Liberties Oversight Board
- Part 1000. Organization and Delegation of Powers and Duties of the Privacy and Civil Liberties Oversight Board

...delegation. (b) The Chairman. The Chairman is the executive and **administrative head** of the Board. The Chairman has the authority, duties, and...

10.

10. § 800.2 Organization.

49 C.F.R. § 800.2 Effective: November 1, 2016 Code of Federal Regulations

- Code of Federal Regulations
- Title 49. Transportation
- Subtitle B. Other Regulations Relating to Transportation
- Chapter VIII. National Transportation Safety Board
- Part 800. **Administrative** Rules
- Subpart A. Organization and Functions

...Chairman in the discharge of his functions as executive and **administrative head** of the Board; coordinates and directs the activities of the...

11.

11. § 12.2 Definitions.

17 C.F.R. § 12.2 Effective: February 26, 2013 Code of Federal Regulations

- Code of Federal Regulations
- Title 17. Commodity and Securities Exchanges

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- Chapter I. Commodity Futures Trading Commission
- Part 12. Rules Relating to Reparations
- Subpart A. General Information and Preliminary Consideration of Pleadings

...means an employee of the Commission who serves as the **administrative head** of that Office, with responsibility and authority to assure that...

Our regs define what chairman does; because they are enumerated they are exclusive so everything else goes to SD.

From: David Ganz <dganz@usccr.gov>
Sent: Monday, April 19, 2021 6:06 PM
To: David Ganz <dganz@usccr.gov>
Subject: RE: Follow Up on Today's Business Meeting

Both A.I.s on Ws could require SD's signature since it relates to how OCRE functions (this Office is responsible for monitoring, evaluating and reporting on the civil rights enforcement effort of the Federal Government; developing concepts for programs, projects, and policies directed toward the achievement of Commission goals) and thus relates to the SD's plenary authority over administrative functions.

From: David Ganz <dganz@usccr.gov>
Sent: Monday, April 19, 2021 5:24 PM
To: Pilar McLaughlin <pmclaughlin@usccr.gov>; Sheryl Cozart <sccozart@usccr.gov>
Subject: Re: Follow Up on Today's Business Meeting

Are you guys available for a quick call in 15 minutes?

Sent via the Samsung Galaxy S21 5G, an AT&T 5G smartphone
Get Outlook for Android

From: Sheryl Cozart <sccozart@usccr.gov>
Sent: Monday, April 19, 2021 5:01:07 PM
To: Pilar McLaughlin <pmclaughlin@usccr.gov>; David Ganz <dganz@usccr.gov>
Subject: RE: Follow Up on Today's Business Meeting

I agree. I am unaware of any such "external fact witnesses or experts." Nor have I ever seen such witnesses referenced in any reports. The only witnesses referenced are those invited to serve on panels in recorded briefings.

I am aware of OCRE calling individuals to get a better sense of the topic and to seek panelist suggestions. But, under no circumstances were these conversations interviews.

From: Pilar McLaughlin <pmclaughlin@usccr.gov>
Sent: Monday, April 19, 2021 4:51 PM
To: David Ganz <dganz@usccr.gov>; Sheryl Cozart <sccozart@usccr.gov>

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Subject: RE: Follow Up on Today's Business Meeting

I was going to call you guys earlier when I first looked at this AI. I don't quite understand it. When does or has OCRE ever conducted interviews? I've seen interviews happen **once** at the Commission and that's when we went to the 14C sites and intervied individuals with disabilities. I can't imagine a commissioner sitting in on one of those interviews.

From: David Ganz <dganz@usccr.gov>
Sent: Monday, April 19, 2021 4:47 PM
To: Sheryl Cozart <sccozart@usccr.gov>; Pilar McLaughlin <pmclaughlin@usccr.gov>
Subject: RE: Follow Up on Today's Business Meeting

One question on the interview A.I., what is authority (A.I.), which allows OCRE to conduct interviews with witnesses, which the below would change:

The observations will help the Commissioners better understand the subject matters covered, and enable the Commissioner to conduct and follow-up with questions of the witnesses .

From: Sheryl Cozart <sccozart@usccr.gov>
Sent: Monday, April 19, 2021 12:53 PM
To: David Ganz <dganz@usccr.gov>; Pilar McLaughlin <pmclaughlin@usccr.gov>
Subject: RE: Follow Up on Today's Business Meeting

David,

Attached are my redline comments and edits of the A.I.s.
A.I. on appointments to other Federal entities:

- I believe the appointment is to the Board of Advisors of the EAC, not the EAC itself.

A.I. on Commission Hearings

- Only a couple of small language changes.

Proposed A.I. re Commissioners observing external fact witnesses or experts:

- This proposed A.I. seems inconsistent with the internal communication procedures between staff and Commissioners.
- This proposed A.I. does not make clear who falls in the category of external fact witness or expert and does not offer the interview to be recorded and transcribed as required in our regs.

From: David Ganz <dganz@usccr.gov>
Sent: Friday, April 16, 2021 6:06 PM
To: Pilar McLaughlin <pmclaughlin@usccr.gov>; Sheryl Cozart <sccozart@usccr.gov>
Subject: RE: Follow Up on Today's Business Meeting

Please provide redlined comments and edits to these A.I.s by mid-day on Tuesday to me. I will consolidate OGC comments.

From: David Ganz
Sent: Friday, April 16, 2021 6:04 PM

AMERICAN OVERSIGHT

To: ExecutiveStaff <ExecutiveStaff@usccr.gov>
Cc: Pilar McLaughlin <pmclaughlin@usccr.gov>; Sheryl Cozart <sccozart@usccr.gov>; Mauro Morales <mmorales@usccr.gov>
Subject: RE: Follow Up on Today's Business Meeting

Hello all,

As Mauro indicated, please review these proposed A.I.s to determine the impact on your division's ability to carry out its, and the USCCR's broader, programmatic and statutory functions. Please redline the A.I.s and provide comments and send them back to me by COB Tuesday, April 20. OGC will consolidate the comments and edits from your respective divisions. OGC will provide comments and edits as well. I know it is quick turnaround, so I appreciate you prioritizing it. If you need an extension to Wednesday, please let me know. After we have consolidated comments, Mauro and Commission leadership will determine how we present it the Commissioners and SAs. Kind regards,

David

From: Mauro Morales <mmorales@usccr.gov>
Sent: Friday, April 16, 2021 5:04 PM
To: ExecutiveStaff <ExecutiveStaff@usccr.gov>
Subject: FW: Follow Up on Today's Business Meeting

Executive Team

Please review and determine if your department needs to provide input on one or more of these three AI's. What you should determine is what would be the legal, administrative and research impact to your department's ability to carry out its responsibility and ensure the mission of USCCR can be carried out. I am going to task David Ganz to coordinate a response for the agency to Commissioners on these three AI's. I will coordinate a check in on Monday to see how we should provide draft a response.

Mauro

From: Carissa Mulder
Sent: Friday, April 16, 2021 4:52 PM
To: Mauro Morales <mmorales@usccr.gov>; Peter Kirsanow <pkirsanow@usccr.gov>
Cc: CommissionerAssistants <CommissionerAssistants@usccr.gov>; ExecutiveStaff <ExecutiveStaff@usccr.gov>; Commissioners <Commissioners@usccr.gov>; pkirsanow@beneschlaw.com
Subject: Re: Follow Up on Today's Business Meeting

See attached.

From: Mauro Morales
Sent: Friday, April 16, 2021 4:34:23 PM
To: Peter Kirsanow
Cc: CommissionerAssistants; ExecutiveStaff; Commissioners
Subject: Follow Up on Today's Business Meeting

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Commissioner Kirsanow,

Pursuant to the vote of Commissioners during the business meeting, please forward the AI's you presented today for evaluation by appropriate agency staff for legal sufficiency, administrative compliance and research objectivity. Please do so within 48 hours of the receipt of this email as required by the AI and indicated by Commissioner's vote on the final motion. I have to notice the next Commission meeting by this Thursday the 22nd in time to hold a business meeting on Friday, April 30th at 12 noon. It is our plan to provide Commissioners with an evaluation of the proposed AI's by Friday, April 23rd. We believe that one week is sufficient time for Commissioners to decide to amend, revise or withdraw the proposed three AI's. Please keep in mind that any changes made to your proposed AI's must be sent to Commissioners 48 hours in advance of the noon business meeting on Friday the 30th.

Please contact me if you have any questions or concerns about meeting Commissioner determined deadlines.

Mauro Morales
Staff Director
U.S. Commission on Civil Rights
P: 202-376-7796| F: 202-376-7672
Mmorales@usccr.gov
http://usccr.gov/
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425

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OVERSTOCK

Date : 7/29/2021 11:09:10 AM
From : "Gail Heriot" gheriot@usccr.gov
To : "John Mashburn" jmashburn@usccr.gov
Cc : "Kirsanow, Peter" pkirsanow@beneschlaw.com, "Stephen Gilchrist" sgilchrist@usccr.gov, "Christian Adams" a@electionlawcenter.com, "Carissa Mulder" CMulder@usccr.gov, "Thomas Simuel" tsimuel@usccr.gov, "Alexander Heideman" aheideman@usccr.gov
Subject : Re: Commissioner Appointments to the Election Assistance Commission
Attachment : image001.gif;image002.gif;

Okay with me.

Gail Heriot
Professor of Law
University of San Diego

> On Jul 29, 2021, at 7:43 AM, John Mashburn <jmashburn@usccr.gov> wrote:
>
> Per the Caucus discussion a few months back about USCCR's two designees to the EAC's Bd. of Advisors, Cmnr Adams would like the Caucus to recommend Cleta Mitchell and himself as the two nominees from the Republican Commissioners -- per the new AI on the issue (*see below in Mauro's email*). Democrat Cmnrs would then need to choose between Cleta Mitchell and Cmnr Adams as one of USCCR's two designees to the EAC Bd. of Advisors.
>
> Cmnr Adams wanted me to double check that this is still OK with the 3 of you before he submits his and Cleta's names to Staff Director Morales by COB tomorrow, Friday July 30.
>
> Please email me back to confirm that each of you is OK with submitting Cleta's and Cmnr Adams' names for the EAC.
>
> ---
>
> **From:** Mauro Morales <mmorales@usccr.gov>
> **Date:** Wednesday, July 28, 2021 at 11:30 AM
> **To:** Commissioners <Commissioners@usccr.gov>
> **Cc:** David Ganz <dganz@usccr.gov>, "CommissionerAssistants@usccr.gov" <CommissionerAssistants@usccr.gov>
> **Subject:** Commissioner Appointments to the Election Assistance Commission
>
> Dear Commissioners-

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At the request and in consultation with the Chair, I am sending this email to start the EAC nomination process for Commissioners.

Per the AI voted on during the April 30th meeting (language included below), each caucus is requested to submit two candidates for consideration by COB Friday, July 30, 2021. Once the names are submitted, OGC will conduct an ethics check to be completed by Wednesday, August 4, 2021. Each caucus will then have 24 hours to submit caucus strikes (Thursday, August 5, 2021 COB). The Chair will communicate the two names to EAC no later than Friday, August 6, 2021.

Please let the Chair or I know if you have any questions or concerns.

--
AI language:

Section 1.
.01 Any authority specifically granted the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Commission as a whole by majority vote.

.02 Any authority specifically granted the Staff Director of the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Staff Director.

.03 Any authority specifically granted the Chair of the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Chair.

Section 2
.02
(1) For the two (2) appointments to the U.S. Election Assistance Commission, the members appointed by Democratic authorities shall nominate two individuals who are ready, willing, and able to serve, and the members appointed by the Republican authorities shall nominate two individuals who are ready, willing, and able to serve.

(2) The members appointed by the Democratic authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Republican authorities, and the members appointed

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by the Republican authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Democratic authorities

(3) The members selected shall be placed in nomination and ratified in conformance with Section 1.

Mauro Morales
Staff Director
U.S. Commission on Civil Rights
P: 202-376-7796| F: 202-376-7672
Mmorales@usccr.gov
http://usccr.gov/
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425

Follow Us on Twitter & Facebook:
<image001.gif>
<image002.gif>

#USCCR

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OVERSTOCK

Date : 11/16/2021 12:15:32 PM
From : "Irena Vidulovic" ividulovic@usccr.gov
To : "Juana Silverio" jsilverio@usccr.gov
Cc : "Debo P. Adegbile" dadegbile@usccr.gov, "Norma Cantu" ncantu@usccr.gov
Subject : Re: Action Requested: EAC Representative Replacement for Commissioner Yaki

Will do of course!

On Nov 16, 2021, at 6:14 PM, Juana Silverio <jsilverio@usccr.gov> wrote:

Irena, can you reach out to Ms. Carroll and let her know we've nominated her, that the Commission will ratify the nomination by majority vote at Friday's mtg.?

There is a statement going out today to address the tweets and press inquiries and will just focus on the EAC and mention that the 2nd Commission nominee will be ratified by majority vote on Friday.

Juana

From: Juana Silverio
Sent: Tuesday, November 16, 2021 11:47 AM
To: Debo P. Adegbile <dadegbile@usccr.gov>; David Kladney <dkladney@usccr.gov>; Michael Yaki <MYaki@usccr.gov>
Cc: Irena Vidulovic <ividulovic@usccr.gov>; Joshua Dansby <jdansby@usccr.gov>; Alec Deull <adeull@usccr.gov>; Norma Cantu <ncantu@usccr.gov>
Subject: FW: Action Requested: EAC Representative Replacement for Commissioner Yaki

FYI

From: Gail Heriot <gheriot@usccr.gov>
Sent: Tuesday, November 16, 2021 11:17 AM
To: Norma Cantu <ncantu@usccr.gov>
Cc: Juana Silverio <jsilverio@usccr.gov>; Peter Kirsanow <pkirsanow@usccr.gov>; J. Christian Adams <jadams@usccr.gov>; Stephen Gilchrist <sgilchrist@usccr.gov>; Alexander Heideman <aheideman@usccr.gov>; Carissa Mulder <CMulder@usccr.gov>
Subject: Re: Action Requested: EAC Representative Replacement for Commissioner Yaki

Hi Norma—Our ducks are now in order. The conservative caucus's pick is Jenny Carroll.

I apologize for the delay.

Gail

Gail Heriot
Professor of Law
University of San Diego

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On Nov 16, 2021, at 6:54 AM, Norma Cantu <ncantu@usccr.gov> wrote:

Dear Gail,
The deadline came and went.
Will you please contact Commissioner Kirsanow.
Norma

From: Gail Heriot <gheriot@usccr.gov>
Sent: Monday, November 15, 2021 10:26 PM
To: Norma Cantu <ncantu@usccr.gov>
Subject: Re: Action Requested: EAC Representative Replacement for Commissioner Yaki

I think a decision was made, but I haven't heard from Pete yet.

Sent from my iPhone

> On Nov 15, 2021, at 5:53 PM, Norma Cantu <ncantu@usccr.gov> wrote:
>
> Good evening,
>
> Was a decision made by the caucus?
>
> Thanks.
>
> Norma
>
> ---
>
> **From:** Norma Cantu
> **Sent:** Wednesday, November 10, 2021 12:53:30 PM
> **To:** Gail Heriot; Peter Kirsanow; J. Christian Adams; Stephen Gilchrist
> **Cc:** Alexander Heideman; Carissa Mulder; John Mashburn; Thomas Simuel
> **Subject:** Action Requested: EAC Representative Replacement for Commissioner Yaki
>
> Dear Commissioners-
>
> In response to Commissioner Yaki recently resigning from his position on the EAC as a representative of USCCR, the Progressive Caucus is putting for 2 names for consideration.

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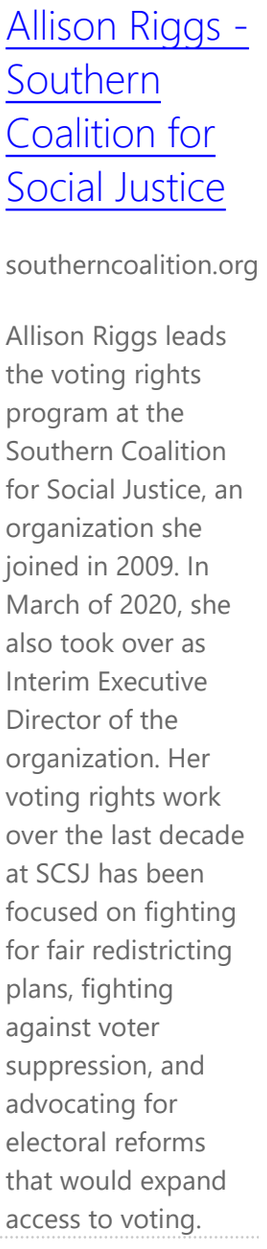
I am asking that the candidate you strike be sent to me by Monday, November 15th, 2021 by 5pm EST so that we can include the candidate's confirmation vote at our November 19th business meeting.

Allison Riggs-
https://southerncoalition.org/staff/allison-riggs/



Alabama SAC Chair Jenny Carroll -
https://www.congress.gov/116/meeting/house/109456/witnesses/HHRG-16-HA08-Wstate-CarrollJ-20190513.pdf

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Per the AI voted on during the April 30th meeting (language included below), each caucus will then have 24 hours to submit caucus strikes. In this instance, I am allowing 48 business day hours given that tomorrow is a holiday. The first representative, Cleta Mitchell, was already communicated to the EAC.

Please submit your strike no later than Monday, November 15th by 5pm EST.

Please let me know if you have any questions or concerns.

Norma
--
AI language:

Section 1.
.01 Any authority specifically granted the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Commission as a whole by majority vote.

.02 Any authority specifically granted the Staff Director of the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Staff Director.

.03 Any authority specifically granted the Chair of the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Chair.

Section 2
.02
(1) For the two (2) appointments to the U.S. Election Assistance Commission, the members appointed by Democratic authorities shall nominate two individuals who are ready, willing, and able to serve, and the members appointed by the Republican authorities shall nominate two individuals who are ready, willing, and able to serve.

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(2) The members appointed by the Democratic authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Democratic authorities

(3) The members selected shall be placed in nomination and ratified in conformance with Section 1.

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Date : 4/26/2021 9:42:30 AM
From : "Irena Vidulovic" ividulovic@usccr.gov
To : "Debo P. Adegbile" dadegbile@usccr.gov, "Adegbile, Debo" Debo.Adegbile@wilmerhale.com
Cc : "Zervoudis, Flor" Flor.Zervoudis@wilmerhale.com
Subject : TO DO + USCCR Updates
Attachment : AI on Appointment Authority (general and EAC) AR notes (1).docx;AI Letter to the Staff Director.docx;Review and Recommendations on Proposed 4-16 Final PDF (1).pdf;

TO DO LIST:

1. USCCR Hour's Please see below DUE, Tuesday April 27th
2. Letter to the Staff Director from all Commissioner's regarding making all the AI's available electronically in one place. Please see the letter attached that all the SA's worked on. Once we get the green light from all the Commissioners we can send to the Staff Director.
3. Review the attached EAC AI that is redlined + Career Staff Recommendations
4. Scheduling an April 30th business meeting at 2pm ET. Will send a calendar invitation, we also need to schedule a caucus meeting on Tuesday, April 27th at 3pm ET.

AI's

EAC appointing authority (redline attached)

- We have worked on the language that you emphasized during the calls.
- That the Chairperson still retains the authority to appoint with the consultation from Commissioners.
- That the Commissioners selected by respective caucus are willing and able to serve
- Finally, should the person by the choosing party not be able to serve, the chairperson shall be free to choose any other member of the Commission, including said chairperson, to serve on the U.S. Election Assistance Commission

The other 2 AI's will be reviewed by OGC and OCRE because it requires their input. However both of the AI have been non-starters for you and Dave.

OCRE Witness Interviews

The R's are wanting to attend interviews that OCRE conducts in order to obtain information for our investigations. Such interviews were conducted for the Sub-Minimum Wages, as well as for Bail

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Reform.

- ADA requirements for interviews may not allow for this
- Bail reform interviews also conducted with focus jurisdictions
- Statutory requirements for separation of staff and Commissioners – GC to weigh in.

Panelist requests for briefings

- Explanations from OCRE on why panelists are not being invited
- What do our current AI's and rules require for Commissioner recommendations to be invited
- Resources may not be used effectively if we institute this system
- Need to preserve the independence of the agency

The AI on Appointment of Commissioners to EAC:

The SD/Executive Committee gave the following opinions on the AI's. First they don't think that it should be an AI. Second, the proposed A.I. does not distinguish appointing authorities that provide appointments to the Commissioners themselves versus those that provide the Chair of the Commission or Staff Director with appointment authority. For example, the authorizing statute for the Commission on the Social Status of Black Men and Boys designates the Staff Director as the appointing authority for one (1) member.

If the proposed A.I., as written, was followed for the appointment to the Commission on the Social Status of Black Men and Boys, it would conflict and result in a violation of the statute. Lastly, the proposed A.I. provides a procedure to make appointments to the EAC, Board of Advisors, however it does not provide a procedure to make appointments if the caucuses do not agree on their nominees.

The Staff Director and Executive Committee recommends that this A.I. be revised or withdrawn from consideration.

AI on interviews of panelist/witnesses.

Career staff and SD say that they do not interview folks but that they gather information for the investigation like in the case of Sub-Minimum wages and Bail Reform. That the process as it stands is transparent and provides opportunity for all

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Commissioners to ask follow up questions to briefing panelists but that those questions are funneled via OCRE so that there is a one stop shop of where the questions are coming from and where the questions are to be responded to. Commissioners provide no evidence, justification or rational for the necessity and creation of this A.I. As a consequence, the Staff Director and Executive Committee recommend that this A.I. be withdrawn from further consideration.

Witness selection AI:

Basically the Career staff is saying that this would create a logistical nightmare, that it is inconsistent with A.I. 1-6, Sec. 4.06. Section 4.06 which enumerates the Commissioners' roles and functions, such as approving projects and concepts, commenting on draft reports, and approving reports, but it does not include witness selection.

The proposed A.I. would repudiate Sec. 4.07, which notes that "all responsibilities not otherwise delegated are reserved to the Staff Director who may redelegate any responsibilities to a member of the executive staff."
That it would make it impossible to have all Commissioner witness recommendations honored when there are 8 Commissioners and no limit to how many they could nominate.

As written, it is unclear when Commissioners' ability to suggest witnesses
ends, which may result in OCRE being unable to prepare a final witness or panelist roster/list.Commissioner selection of panelists and witnesses will also likely increase negotiation and debate among Commissioners, which could result in delays in confirming attendance.
Additionally, having a roster/list being selected by Commissioners and staff could result in the
need for briefings and hearings lasting multiple days, which will increase costs.

USCCR Hours

4/12 1.5 Weekly Priority Call with SA
4/13 2 hour prep + 1 hour caucus call
4/14 3 hour reviews of USCCR business meeting documents
4/15 1.5 call with SA regarding April Business Meeting +2 hour review
4/16 2 hour review + 1 hour April Business Meeting
4/17 1.5 hour call with SA
4/19 2 hour review of updated AI's

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4/22 1 hour review of USCCR materials

USCCR Updates:

- FEMA/Puerto Rico

  * The notational vote passed
  * FEMA panelist recommendations + briefing book recommendations. The panelist recommendations were due by this Friday, April 2nd. There were numerous recommendations from Irena, Alex, John Mashburn. Carissa and Thomas had one recommendation.
  * OCRE send the invitations last week. No confirmations to date. Irena spoke to Jason and has some updates.

- Commissioners may need to assist in getting the invitations to the principals – particularly Congressman Peters. Irena to update

  Briefing book recommendations are due on Friday, May 7th.
  * Virtual briefing moved to June 25
  * 2 site visits scheduled - Houston 11/19/21, Puerto Rico 12/10/21
  * Third briefing planning meeting will take place on Tuesday, April 20th at 11am ET.

  Bail Reform

  * Kladney/Amy negotiations with R's ongoing
  * Oregon SAC had their last briefing on Friday 12/11, Catherine attended. Rukku shared briefing notes with OCRE in the comments on the first draft.

- Draft coming on 4/26

  Maternal Health

  * OCRE, Debo and Irena met last week to discuss the final draft. Productive meeting, Irena to update the caucus.
  * Focus on Chapter 3 – Federal response, as area for potential bi-partisan consensus
  * New HHS leadership – OCRE sent HHS and CDC targeted questions for affected agency review
  * Need current data for programs that received funding
  * OCRE sent updated ROG's to HHS and also sent the draft report for agency review two weeks ago. No response from HHS, Irena advised Nick and OCRE to reach out to panelist including Congresswoman Ayanna Pressley and ask them to put pressure on HHS to respond especially since it was Black Maternal Health week last week and HHS and CDC was participating in all these various events with the partner organizations. Irena will follow up with OCRE this

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week and see if she can share what OCRE sent and to which programs
    * Final draft coming to Commissioners in May
    * 3 weeks to return edits before vote in June
    * Irena discussing with Republicans whether they will support

Broken Promises pandemic update

* Senator Warren's office has reached out to Irena to schedule a meeting this week on the report update + will invite Julie to the meeting.
* Interested to find out spokesperson for Commission. Irena provided public material and
* Pursue social media strategy using briefing video/materials
* Can we generate clips from the briefing video, into individual panelist testimony or other excerpts? **Irena to reach out to Ang.
* Revisit when we discuss project planning re FY22? (/FEMA, Comm. Adams' proposal, etc.).

Follow ups with Mauro

* The SA's have requested a follow up meeting with Mauro, we were trying to reinstitute the bi-weekly meetings, Mauro has cancelled our April 20th meeting. However Mauro has not been amenable to meeting, our last SA Meeting was held on 3/23.
* Mauro scheduled the meeting with the SA's next week on Tuesday, April 20th at 3pm. Juana you need to be added to the calendar invitation.
* The items raised at the last meeting for which we don't have updates:
    * AI's available online
    * Commissioner IT needs
    * Website update
    * Budget priorities
        * Forward funding for site visits in Puerto Rico and Texas
        * Regional staffing – at least one staffer for territory SACs
        * IT and website
    * SAC letters

Other outstanding items for all SA's

* AI 5-9
    * OCG provided redline and comments for Commissioner consideration for standards for removal for SAC members and procedures the Commission should adopt
* Project proposals
* "Balance" SAC AI?
* Expired SACs (14)

Project proposals for FY21/22

* Rukku checked with John to see if Commissioner Adams will submit new project proposals. John is working with Commissioner Adams on project priorities and check back on timeline. Rukku to follow up with John this week.

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* John (at all SA meeting) said that Comm. Adams had a proposal, so Rukku will generate a timeline for consideration.
* We will proceed with the FEMA Project as the FY22 statutory enforcement report.
* Need a new FY22 project planning calendar – Rukku generated the program planning schedule with emphasis on time early in the process for bipartisan discussion.

Personnel

* OCRE Director - posting closed. Interviews completed and offer should be going out soon.
* Commission on Black Man and Boys - posting closed + interviews scheduled
* Two regional positions for civil rights analysts – closes 3/31
* Summer 2021 interns – Irena hired a spring intern. Amy hired Clara Malkin – to start 5/24
* Irena's intern Alana Thomas started on March 16th Alana Thomas is currently a second year law student at Georgetown. She is currently pursuing a Master of Public Policy degree from Loyola University Chicago, and received her BS in Psychology from Virginia Tech. Alana has focused her studies on affordable housing and race in law. She currently serves as the Vice President of Marketing Strategy at Citi. Alana is from Chicago, and will be supporting Commissioner Adegbile
* Fulbright fellows – Media fellow recommendation for Ang.
    * Ang hired a Fullbright fellow!

Commission on the Social Status of Black Men and Boys

* Was signed into law, more details to come on what this means.
* Appointments from White House
* Call rescheduled with Congresswoman Wilson
* Women/Girls bill?

Irena Vidulovic
Special Assistant to Commissioner Debo P. Adegbile
U.S. Commission on Civil Rights
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Washington D.C. 20425

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ADMINISTRATIVE INSTRUCTION __- __

COMMISSION APPOINTMENTS TO OTHER FEDERAL ENTITIES

Section 1.

.01 Any authority specifically granted the Commission of Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc. shall be exercised by the Commission Chairperson in consultation with all members of the commission.~~as a whole by majority vote~~.

Section 2

.02

(1) For the two (2) appointments to the U.S. Election Assistance Commission, the members appointed by Democratic authorities shall nominate two individuals of their membership that are ready willing and able to serve, and the members appointed by the Republican authorities shall nominate two individuals of their membership that are ready willing and able to serve.

(2) The members appointed by the Democratic authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Democratic authorities.

(3) Should the person by the choosing party not be able to serve, the chairperson shall be free to choose any other member of the Commission, including said chairperson, to serve on the U.S. Election Assistance Commission/

(~~3~~4) ———— The members selected shall be placed in nomination and ratified in conformance with Section 1.

NOTE: I don't see the AI for the rebuttal/surrebuttal,…but I will not vote for it if that crap stays in their about understanding the individual commissioners point-of-vote or vote.

Commented [1]:
Past practice has been that the Chair makes these appointments. This reduces the power of the Chair.

We should find out all the boards and other groups the Commission appoints to in order to understand the full scope of what appointing authority the Chair is relinquishing

Commented [2]:
These requirements do not belong in an AI to be binding on all future compositions of the Commission. If Norma wants to agree to this process for the current appointments, that would be understandable since we are currently 4-4. In the future, if the Commission is 6-2 again, it would be less understandable to give 2 Commissioners this much control.

Alternative: Create a rule committing to bipartisan

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UNITED STATES COMMISSION ON CIVIL RIGHTS

1331 Pennsylvania Avenue, NW• Suite 1150 • Washington, DC 20425 www.usccr.gov

April 15, 2021

Mauro Morales
Staff Director
1331 Pennsylvania Ave NW
Washington, DC 20425

Dear Mr. Morales:

We, the undersigned Commissioners, write today to request the promulgation of a searchable digital collection of the Commission's Administrative Instructions (AIs). In order to efficiently serve as Commissioners, we must have easy access to the AIs. Thus, we request that you provide us with the following:

- One updated digital file containing every AI that is in effect, in its proper order, and with the date and manner of each AI's ratification
- Physical copies of that digital file by request

The general counsel has sent some of this information piece-by-piece via email to us over the past few weeks. But those AIs have not been updated or organized, and they have not been collected into a single digital document. As matters stand, accessing the AIs requires that we attempt to assemble a complete list from the documents we have been sent piecemeal. Thus, this effort is inadequate.

This is simply a matter of good governance. Please provide us with a timeline for completion of the above tasks.

Sincerely,

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UNITED STATE COMMISSION ON CIVIL RIGHTS
Washington, DC

CONFIDENTIAL & PRIVILEGED/PRE-DELIBERATIVE

April 23, 2021

MEMORANDUM FOR: Commissioners

FROM: Staff Director and Executive Committee

SUBJECT: Review and Recommendations of Proposed Administrative Instructions submitted on April 16, 2021, during the Commission Business Meeting

The Staff Director and the Executive Committee of the U.S. Commission on Civil Rights, which includes the offices of the Staff Director, Office of Civil Rights Evaluation, General Counsel, Public Affairs, and Management, have jointly reviewed the three proposed Administrative Instructions (A.I.s) introduced by the Commissioners during an April 16th , 2021, Business Meeting. The Staff Director and Executive Committee believes the proposed A.I.s inappropriately conflict with existing Administrative Instructions and Commission regulations, and unreasonably create programmatic and operations problems for the Commission. It is our recommendation that the proposed A.I.s in their current form be revised or withdrawn.

A. Proposed A.I. on Commission Appointments to Other Federal Entities

The Executive Committee provides the following recommendations regarding this proposed A.I. First, Commission appointments pursuant to 52 U.S.C. § 20944 to the U.S. Election Assistance Commission (EAC), Board of Advisors, could be accomplished via a Commission vote rather than an A.I. Second, the proposed A.I. does not distinguish appointing authorities that provide appointments to the Commissioners themselves versus those that provide the Chair of the Commission or Staff Director with appointment authority. For example, the authorizing statute for the Commission on the Social Status of Black Men and Boys designates the Staff Director as the appointing authority for one (1) member.[1] If the proposed A.I., as written, was followed for the appointment to the Commission on the Social Status of Black Men and Boys, it would conflict and result in a violation of the statute. Lastly, the proposed A.I. provides a procedure to make appointments to the EAC, Board of Advisors, however it does not provide a procedure to make appointments if the caucuses do not agree on their nominees.

The Staff Director and Executive Committee recommends that this A.I. be revised or withdrawn from consideration.

[1] *See* https://www.congress.gov/bill/116th-congress/house-bill/1636/text?q=%7B%22search%22%3A%5B%22%5B2018-09-28+TO+2018-09-28%5D%22%5D%7D, Sec. 3(6).

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B. Proposed A.I. on OCRE Interviews of Panelists and Witnesses

This proposed A.I. provides that Commissioners attend staff "interviews" with external fact "witnesses or experts." OCRE does not conduct interviews of panelists or witnesses before or after briefings or hearings, but rather, as was the case for the Subminimum Wage and Bail Reform Reports, it holds meetings with stakeholders as part of its data collection process to develop and prepare concepts and documents for reports pursuant to its regulatory mandate contained in 45 C.F.R. § 701.13(e) (this Office is responsible for monitoring, evaluating and reporting on the civil rights enforcement effort of the Federal Government; developing concepts for programs, projects, and policies directed toward the achievement of Commission goals; preparing documents that articulate the Commission's views and concerns regarding Federal civil rights.) Commissioner participation in OCRE pre-briefings and pre-hearing meetings is inconsistent with the aforementioned regulation, which prescribes OCRE's function within the Commission.[2]

Further, 45 C.F.R. § 702.14(a) notes that an accurate transcript recorded by a court reporter shall be made of the testimony of all witnesses at all proceedings of the Commission. Consequently, as written, by defining OCRE meetings as "interviews" this A.I. would result in the financial cost of court reporters to be present whenever OCRE meets with stakeholders, panelists, or witnesses, in addition to the administrative burden of having to schedule and coordinate meeting time with Commissioners and their Special Assistants on a bipartisan basis and the panelist or witness. This A.I. is impractical and unnecessary.

Finally, the A.I. provides that Commissioners can individually provide follow-up questions to witnesses. This runs counter to the Commission's Privacy Act policy as OCRE staff would not have access to these additional individual Commissioner questions, requests or the information gathered; nor can OCRE ensure that the information collected from participants will be properly stored and managed for confidentiality or for inclusion in Commission Reports. Additionally, career staff in OCRE, as social scientists, follow the three principles of the Belmont Report (respect of persons, beneficence, and justice), which are needed to protect vulnerable interviewees, such as children, persons with disabilities, prisoners, and others. It is not clear that Commissioners or their Special Assistants, given their varied professional backgrounds, will follow the aforementioned principles.

The current practice is that OCRE sends a joint set of follow up questions from Commissioners which are forwarded to panelists to answer. All questions and answers are shared with Commissioners and their special assistants. Sending separate and individual questions confuses panelists, results in multiple & repetitive questions and prevents every Commissioner equal access to questions and answers.

[2] *See U.S. Lines, Inc. v. Fed. Mar. Comm'n,* 584 F.2d 519, 526 n. 20 (D.C.Cir.1978) *citing* to *U.S. v. Nixon,* 418 U.S. 683, 693-696 (1974) ("an agency is not free to ignore or violate its regulations while they remain in effect.")

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Commissioners provide no evidence, justification or rational for the necessity and creation of this A.I. As a consequence, the Staff Director and Executive Committee recommend that this A.I. be withdrawn from further consideration.

C. Proposed A.I. on Witness Selection

This proposed A.I. revises A.I. 1-6, "National Project Development and Implementation." Specifically, it revises Section 11, Commission Hearings, and Section 12, Commission Briefings. Staff reminds Commissioners that there is a significant difference between a Commission hearing and a Commission briefing.

The first sentences of Sections 11.03 and 12.02 respectively state that staff are to use "various" sources to gather suggestions for witnesses, but the subsequent sentences state that Commissioners are the "primary" source for "suggesting" witnesses. These two sentences are contradictory and the use of the term "suggest" in reference to witness selection by the Commissioners is inconsistent with the provision in these Sections that if two Commissioners request a particular witness, then staff must invite that witness.

Sections 11.03 and 12.02 mandate that staff invite a witness who is requested by two or more Commissioners. This mandate is inconsistent with A.I. 1-6, Sec. 4.06. Section 4.06 enumerates the Commissioners' roles and functions, such as approving projects and concepts, commenting on draft reports, and approving reports, but it does not include witness selection. The proposed A.I. would repudiate Sec. 4.07, which notes that "all responsibilities not otherwise delegated are reserved to the Staff Director who may redelegate any responsibilities to a member of the executive staff." Section 12.02's requirement to invite witnesses to Commission briefings when they are selected by two or more Commissioners is also inconsistent with 45 C.F.R. § 701.13(e), which makes project development and civil rights evaluation functions of OCRE. As noted above, federal agencies are not free to ignore its regulations while they remain in effect. *See U.S. Lines, Inc.,* 584 F.2d 519 at n. 20. Similarly, Section 11.03's requirement to invite witnesses to Commission hearings when they are selected by two or more Commissioners is inconsistent with 45 C.F.R. § 701.13(c), which notes that OGC "plans and conducts hearings."[3] Given that this proposed A.I. allows Commissioners to select witnesses for hearings, it prevents OGC from fulfilling its regulatory mandate to plan hearings. In the sixty-three year history of the Commission, Commissioners have never unilaterally selected witnesses. Such a change would alter the fundamental role of OCRE and undermine its ability to conduct an objective and substantive briefing.

Sections 11.03 and 12.02's witness mandate is also not consistent with 42 U.S.C. § 1975b. This statute notes that the Staff Director is the administrative head of the Commission, which includes things such as proposing employee discipline and conducting performance appraisals for career staff under Title 5. Commissioner interference in OCRE and OGC's operations as

[3] Although notice and comment rulemaking is not required for general statements of policy under 5 U.S.C. § 553(b)(A), an agency acts arbitrarily and capriciously if it acts in a manner that is contrary to its own regulations or a congressional statute. *Pol'y & Rsch., LLC v. United States Dep't of Health & Hum. Servs*., 313 F. Supp. 3d 62, 72 (D.D.C. 2018).

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proposed in the A.I. would result in contradictory or inconsistent orders from Commissioners. Additionally, designating Commissioners as the "primary" source for inviting and hearing from a specific witness would be an extraordinary change skewing the ability of OCRE to engage in objective investigations. It would send the Commission down a slippery slope of Commissioners and their special assistants themselves conducting investigations and writing reports. Such change would irreparably alter the mission of the Commission and be at odds with our enacting statue and Congressional history in creating the Commission. Please also note that Commissioner involvement in selecting witnesses pursuant to this proposed A.I., attending panelist and witness meetings in the aforementioned proposed A.I., or other involvement in the Commission's day-to-day operations, may implicate the 75-day billable cap in the Commission's fiscal year 2021 budget. *See* https://www.usccr.gov/pubs/2020/FY2021-Congressional-Budget-Justification.pdf.

Section 11.02 of the current A.I. 1-6 references a Hearing Report form, however it is unclear whether the Commission actually utilizes this form. This form certifies a numerical balance of witnesses with opposing views, opinions, and perspectives, and could safeguard that witnesses and panelists are ideologically balanced. However, such a form could also be used to impede in the selection of panelists for briefings and undermine the benefit the collaborative working relationship. OCRE already works with the lead Special Assistant/Commissioner regarding witness and panelist selection. Adding a new form or a new layer in the selection process would further delay the creation of panels and delay the release of the final report.

Logistically the proposed A.I. presents a number of potential scheduling issues for Commission staff. As written, it is unclear when Commissioners' ability to suggest witnesses ends, which may result in OCRE being unable to prepare a final witness or panelist roster/list. Commissioner selection of panelists and witnesses will also likely increase negotiation and debate among Commissioners, which could result in delays in confirming attendance. Additionally, having a roster/list being selected by Commissioners and staff could result in the need for briefings and hearings lasting multiple days, which will increase costs.

Lastly, while it is understandable that that Commissioners want to play a larger role in the selection process, they should do so by negotiating with each other prior to panelists suggestions being sent to OCRE. They should continue to work with OCRE to have diverse and objective panelists instead of attempting to force a selection reflecting their individual viewpoint. It is the view of the staff that unilateral Commissioner selection of witnesses and panelists would constrain OCRE's ability to collect bipartisan testimony and prohibit OCRE's ability to act independently. The panelist and witness evaluation process is independent of the Commissioners final assessment and report of civil rights enforcement. Further, OCRE remains committed to work with Commissioners regarding their recommendations and will continue to strive to accommodate the recommended expert or fact witness or panelist.

Commissioners provide no evidence, justification or rational for the necessity and creation of this A.I. As a consequence, the Staff Director and Executive Committee recommends that this A.I. be withdrawn from further consideration.

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D. Conclusion

The following are the recommendations of the Commission professional staff:

- Commissioners discuss and take a recorded vote on bipartisan appointments to other Federal entities or revise the proposed A.I. for Commission appointments;
- Commissioners withdraw from further consideration the proposed A.I. on Stakeholder Interviews; and,
- Commissioners withdraw from further consideration the proposed A.I. on Witnesses.

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Date : 11/16/2021 1:29:25 PM
From : "Mauro Morales" mmorales@usccr.gov
To : "Irena Vidulovic" ividulovic@usccr.gov
Subject : FW: Action Requested: EAC Representative Replacement for Commissioner Yaki

She'll be voted on Friday

From: Norma Cantu <ncantu@usccr.gov>
Sent: Tuesday, November 16, 2021 1:14 PM
To: Mauro Morales <mmorales@usccr.gov>
Subject: FW: Action Requested: EAC Representative Replacement for Commissioner Yaki

FYI

From: Gail Heriot <gheriot@usccr.gov>
Sent: Tuesday, November 16, 2021 10:17 AM
To: Norma Cantu <ncantu@usccr.gov>
Cc: Juana Silverio <jsilverio@usccr.gov>; Peter Kirsanow <pkirsanow@usccr.gov>; J. Christian Adams <jadams@usccr.gov>; Stephen Gilchrist <sgilchrist@usccr.gov>; Alexander Heideman <aheideman@usccr.gov>; Carissa Mulder <CMulder@usccr.gov>
Subject: Re: Action Requested: EAC Representative Replacement for Commissioner Yaki

Hi Norma—Our ducks are now in order. The conservative caucus's pick is Jenny Carroll.

I apologize for the delay.

Gail

Gail Heriot
Professor of Law
University of San Diego

> On Nov 16, 2021, at 6:54 AM, Norma Cantu <ncantu@usccr.gov> wrote:
>
> Dear Gail,
> The deadline came and went.
> Will you please contact Commissioner Kirsanow.
> Norma
>
> ---
>
> **From:** Gail Heriot <gheriot@usccr.gov>
> **Sent:** Monday, November 15, 2021 10:26 PM
> **To:** Norma Cantu <ncantu@usccr.gov>
> **Subject:** Re: Action Requested: EAC Representative Replacement for Commissioner Yaki
>
> I think a decision was made, but I haven't heard from Pete yet.

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Sent from my iPhone

On Nov 15, 2021, at 5:53 PM, Norma Cantu <ncantu@usccr.gov> wrote:

Good evening,

Was a decision made by the caucus?

Thanks.

Norma

From: Norma Cantu
Sent: Wednesday, November 10, 2021 12:53:30 PM
To: Gail Heriot; Peter Kirsanow; J. Christian Adams; Stephen Gilchrist
Cc: Alexander Heideman; Carissa Mulder; John Mashburn; Thomas Simuel
Subject: Action Requested: EAC Representative Replacement for Commissioner Yaki

Dear Commissioners-

In response to Commissioner Yaki recently resigning from his position on the EAC as a representative of USCCR, the Progressive Caucus is putting for 2 names for consideration. I am asking that the candidate you strike be sent to me by Monday, November 15th, 2021 by 5pm EST so that we can include the candidate's confirmation vote at our November 19th business meeting.

Allison Riggs-
https://southerncoalition.org/staff/allison-riggs/

Allison Riggs - Southern Coalition for Social Justice

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southerncoalition.org

Allison Riggs leads the voting rights program at the Southern Coalition for Social Justice, an organization she joined in 2009. In March of 2020, she also took over as Interim Executive Director of the organization. Her voting rights work over the last decade at SCSJ has been focused on fighting for fair redistricting plans, fighting against voter suppression, and advocating for electoral reforms that would expand access to voting.

Alabama SAC Chair Jenny Carroll - https://www.congress.gov/116/meeting/house/109456/witnesses/HHRG-116-HA08-Wstate-CarrollJ-20190513.pdf

Per the AI voted on during the April 30th meeting (language included below), each caucus will then have 24 hours to submit caucus strikes. In this instance, I am allowing 48 business day hours given that tomorrow is a holiday. The first representative, Cleta Mitchell, was already communicated to the EAC.

Please submit your strike no later than Monday, November 15th by 5pm EST.

Please let me know if you have any questions or concerns.

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Norma
--
AI language:

Section 1.
.01 Any authority specifically granted the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Commission as a whole by majority vote.

.02 Any authority specifically granted the Staff Director of the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Staff Director.

.03 Any authority specifically granted the Chair of the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Chair.

Section 2
.02
(1) For the two (2) appointments to the U.S. Election Assistance Commission, the members appointed by Democratic authorities shall nominate two individuals who are ready, willing, and able to serve, and the members appointed by the Republican authorities shall nominate two individuals who are ready, willing, and able to serve.

(2) The members appointed by the Democratic authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Democratic authorities

(3) The members selected shall be placed in nomination and ratified in conformance with Section 1.

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Date : 4/27/2021 9:15:40 AM
From : "Juana Silverio" jsilverio@usccr.gov
To : "Norma Cantu" ncantu@usccr.gov
Subject : FW: [EXTERNAL] Fwd: Caucus call agenda
Attachment : 04-08-Business-Meeting-Agenda-for-04-16.pdf;ID SAC Dr. Yenor.docx;CO SAC Dr. Chen.docx;

Please review and let me know if you want this sent out

From: Juana Silverio <juanadelpilar@gmail.com>
Sent: Monday, April 26, 2021 4:51 PM
To: Juana Silverio <jsilverio@usccr.gov>
Subject: [EXTERNAL] Fwd: Caucus call agenda

CAUTION: This email is from outside USCCR.

---------- Forwarded message ---------
From: **Amy Royce** <aroyce@usccr.gov>
Date: Tue, Apr 13, 2021 at 11:44 AM
Subject: Caucus call agenda
To: David Kladney <dkladney@usccr.gov>, Debo P. Adegbile <dadegbile@usccr.gov>, Norma Cantu <ncantu@usccr.gov>, Michael Yaki <MYaki@usccr.gov>
Cc: normavcantu@gmail.com <normavcantu@gmail.com>, Irena Vidulovic <ividulovic@usccr.gov>, Alec Deull <adeull@usccr.gov>,
>

Hello all,

We are scheduled for a caucus call today at 3:00 Eastern/ 12:00 Pacific. The number is 1-877-446-3914, passcode 858713#

Agenda items:

- Update from Comms. Cantu and Yaki on discussions regarding Chair confirmation
- Business meeting on Friday (Sunshine Act notice attached)
    - Need for agenda amendments: remove FEMA discovery materials, as already approved by notational vote
    - Remove/combine other items?
        - Eliminating the Speaker Series
        - Rebuttal/surrebuttal time period

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        - Bi-partisan appointment to EAC board of advisors

    - Statement on violence against AAPI community?

- SAC updates

    - Potential compromise on North Carolina SAC, adding one member for an 8/8 balance

        - The Democratic caucus accepts adding Mincey *please see context below (no additional application needed)
        - The Republican caucus will remove the objection to Lechner *please see context below (no additional application needed)
        - Vote in the SAC w/8-8 balance

            - Slate failed to get a majority vote on Friday 10/30.
            - 15 candidates, 8 Democrats (including two Independents who lean Democrat), 7 Republicans (including one candidate who identified as “something else”).
            - Note that Olga Wright, the returning Chair, identifies herself as a Democrat but ran for public office as a Republican in all her past elections.
            - Comm. Kirsanow (and Adams) objected to the balance of the slate, and requested that it be shifted to 7 Republicans and 7 Democrats (removing one Dem).
            - John/Adams objected to the inclusion of Jennifer Lechner as he don't consider her a true Republican." In her stead they would like to replace her with a Mr. Patrick Mincey who Carissa recruited. Replacing Lechner with Mincey takes the gender balance of the slate to 11 men and 4 women. Mincey is a white collar crime attorney and lacks major civil rights experience, however in our vetting process we did not find anything objectionable regarding his public statements or conduct

    - Colorado and Idaho SACs

        - R's proposal - Dr. Chen in CO if we allow Dr. Yenor in ID (objections and responses attached)

    - Need for information from regional staff on status of recruiting for remainder of 14 expired committees

- Status of AI availability for Commissioners

    - A version of the AI's that was current in 2014 is available online, need information and a timeline from the GC for updating that version

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--
Juana P. Silverio, Esq.
(she/her/ella)

This e-mail and any attachments may contain information which is confidential, proprietary, privileged or otherwise protected by law. The information is solely intended for the named addressee (or a person responsible for delivering it to the addressee). If you are not the intended recipient of this message, you are not authorized to read, print, retain, copy or disseminate this message or any part of it. If you have received this e-mail in error, please notify the sender immediately by return e-mail and delete it from your computer.

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CIVIL RIGHTS COMMISSION

Sunshine Act Meeting Notice

AGENCY: United States Commission on Civil Rights.

ACTION: Notice of Commission public business meeting.

DATES: Friday, April 16, 2021, 12:00 p.m. EST.

FOR FURTHER INFORMATION CONTACT: Angelia Rorison: 202-376-7700; publicaffairs@usccr.gov.

ADDRESSES: Meeting to take place by telephone and is open to the public by telephone: 1-866-556-2537, Conference ID #896-5601. Computer assisted real-time transcription (CART) will be provided. The web link toaccess CART (in English) on Friday, April 16th, 2021, is https://www.streamtext.net/player?event=USCCR. Please note that CART is text-only translation that occurs in real time during the meeting and is not an exact transcript.

MEETING AGENDA

I. Motion to Approve Commissioner Norma Cantú to Serve as USCCR Chair

II. Approval of Agenda

III. Business Meeting

A. Discussion and Vote on Statement of Walter E. Williams;

B. Discussion and Vote to continue the Policy of Rebuttals and Surrebuttals;

C. Discussion and Vote to suspend Speaker Series;

D. Discussion and Agreement to Appoint Bipartisan Commissioners to EAC

E. Discovery and Vote on FEMA Report Discovery Plan

F. Management and Operations

- Staff Director's Report

IV. Adjourn Meeting

Dated: April 8, 2021

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IDAHO

Commissioner Yaki's objection

Dear Dr. Yenor:

Thank you for your service on the Idaho Advisory Committee and for your recent application for reappointment. Your name was included on the list of nominated individuals that is currently being reviewed by the Commissioners prior to appointment. As part of that review, Commissioner Yaki has made a formal objection to your nomination on the Committee because of an alleged comment you made.

Pursuant to our Administrative Instructions, when Commissioner objections pertain to a proposed member's public statement, then that nominee is provided the opportunity to respond in writing to the raised concern. The Staff Director will then consider the written response when making the final determination on whether to include the nominee on the list of individuals to be recommended for appointment.

The Commissioner has objected to your reappointment to the Idaho Advisory Committee because the Commissioner believes you are hostile to marriage equality and transgender rights. Furthermore, The Commissioner believes your public statements render you incapable of, and unable to, protect the constitutional rights supported by recent Supreme Court opinions. Citations to your most objectionable public statements on the issues at hand include:

- *https://startingpointsjournal.com/feminism-transgenderism-and-the-politics-of-identity/*
- *https://www.dailysignal.com/2017/07/18/radical-feminism-sowed-seeds-transgender-moment*
- *https://www.dailysignal.com/2017/08/02/transgender-activists-seeking-undermine-parental-rights/*
- *https://www.dailysignal.com/2017/08/02/transgender-activists-seeking-undermine-parental-rights/*
- *https://www.heritage.org/marriage-and-family/report/the-obligations-family-life-response-modern-liberalism.*

Mr. Yenor's Reponse

Dear Mr. Mussatt,
Thank you for forwarding the objections of Commissioner Michael Yaki and giving me two days to respond. I would like to know more about the process for how my response will be evaluated. Is the whole USCCR to respond? How will responses be tabulated? In any event, again thank you for forwarding these objections.

The objections to my re-nomination to the Idaho Advisory committee on civil rights are (1) that I am "hostile to marriage equality and transgender rights" as evidenced in my public writings and (2) that my "public statements render [me] incapable of, and unable to, protect (sic) the constitutional rights supported by recent Supreme Court opinions."

AMERICAN OVERSIGHT

Claims of discrimination under the current civil rights regime must be established through rational inquiry aided, where appropriate, by social science. Proposed policies to combat alleged discrimination must then be weighed through a rational public policy process. Policies must be evaluated critically if they are implemented.

Civil rights are hardly an all or nothing proposition. Some civil rights clash with other civil rights. Civil rights almost always require a balancing of various claims or a negotiation of the rights of various groups. In objecting to my participation on the commission, Commissioner Yaki seems to deny that civil rights matters involve such balancing or to deny that some important civil rights should be protected or to deny that some civil rights claims should be heard or entertained; he seems to want civil rights for only some groups and not for others. He gives civil rights a bad name in so doing.

Suppose a civil rights commission finds itself adjudicating a claim of transgender rights as civil rights. In making a fair-minded adjudication, the commission would have to consider the relation between such transgender rights and other civil rights in our tradition such as the free exercise of religion, parental rights, rights against sex discrimination. It would have to determine how transgender rights weigh against those rights. In doing so, it would be necessary to inquire into the rational basis for claims of transgender rights and the likely consequences of affirming them, just as it would be necessary to see what would happen from denying them.

My work raises questions about the evidence that proves discrimination and it concerns the clash of civil rights in politics. Claims of transgender rights can, in some circumstances, I have argued, clash with parental rights (as when a school insists on transitioning a child from one gender to another without informing the parents or against their will). Such instances are, as my research argues, more likely to harm the child and, if multiplied, are likely to have a corrosive effect on parental rights, a crucial civil right (as established in Meyer v. Nebraska and Pierce v. Society of Sisters). Seeing children as products of state mandates in these instances is more likely to undermine well-functioning institutions than it is to promote a good society or thriving individuals. Claims to marital equality have already compromised religious liberty, the freedom of association, and the free thought and discussion on many platforms.

Does Commissioner Yaki disagree that transgender rights clash with parental rights? Does he think that the Civil Rights Commissions nationwide should ignore questions about what it would mean to take the side of "transgender rights" against parental rights? Does he think religious liberty of so little importance that Civil Rights Commissions should ignore how it is compromised by so-called marriage equality? Does he think Civil Rights Commissions should refrain from investigating the future mental and physical health of children who have been transitioned, against the will of their parents, from one gender to another? Does he think we should cease investigating the mental or physical health of all those who have transitioned, even with parental support? Perhaps I should object to his continued participation as a Civil Rights Commissioner if he thinks all such questions are settled questions or based on sound science!

The inclusion of gender identity within the anti-discrimination regime of the 1964 Civil Rights Act is a cause for no little concern. Under such gender identity claims, a person's subjective,

AMERICAN OVERSIGHT

gendered self-image as woman, man or whatever supersedes the objective biological fact of sexual identity as female or male. This new gender identity further may come with a demand that governments and others citizens recognize that new gender as an objective fact—a huge abridgement on the civil rights and the freedom of mind of others. These ideas, taken together, are incoherent and compromise our commitment to limited government. They are incoherent because they nullify the categories of male and female to which the anti-discrimination principle applies. How can a school district remedy supposed unjust discrimination in girls' sports when anyone can qualify, simply on their own assertion, as woman? Does Fairness in Sports demand keeping biological men out of women's sports and aspiring to equal treatment of such sports or does it demand letting transgendered men in and, perhaps, decrease the opportunities for the formerly protected class of women? Idaho has taken the lead in protecting women's sports in these circumstances, and I look forward to participating in studies investigating how this affects opportunities. The demands that Commissioner Yaki makes contain the seeds of a new political order, much less committed to civil rights than our current order.

I am very skeptical of the idea that gender operates independently of sex. I would demand verification, from well-designed studies, that confirmed the proposition that conceiving of gender independently of sex leads to individual and social thriving. It think it is irresponsible to accept, without critical inquiry, the idea that affirming gender identity fosters all manner of social and individual good. It is not at all clear to me that it is better to recognize a person's concept of gender, apart from their biological sex, as authentic and salutary rather than as erroneous or pathological. I would be concerned that acknowledging such an idea compromises other, well-established and important civil rights.

Conservatives participate in Civil Rights Commissions across the country. We generally worry about how anti-discrimination laws, as applied and as construed, abridge fundamental freedoms and can upset prospects of social harmony. We often investigate the implications of such abridgements in our scholarship. On the Yaki standard, would Justice Sam Alito or Justice Clarence Thomas or Chief Justice John Roberts be ineligible to serve on a civil rights commission? They dissented, after all, from the same-sex marriage decisions in Windsor and Obergefell. Two of them dissented in the recent case re-interpreting the 1964 Civil Rights Act. More broadly, would any conservative be allowed to participate unless he or she abandoned his or her conservatism? Perhaps all of these opinions disqualify someone from sitting on an Advisory Board. If they do, it may be hard to justify continued government support for a strictly partisan organ.

Sincerely,
Scott Yenor

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COLORADO: 12 candidates, 6 Republicans (including one Independent who leans Republican), 6 Democrats (including one Independent who leans Democrat).

- Comm. Heriot objected to Prof. Ming Hsu Chen on the basis of an article she wrote called, "Colorblind Nationalism."
- Prof. Chen responded, and Mauro kept her on the slate on the basis of the response.
- Full objection from Comm. Heriot:

In her article, Prof. Chen says that racist and anti-immigrant "policies are cloaked in the neutral language of national protection, public health, and economic justice." Therefore, anyone who supports those facially colorblind policies is racist. More broadly, Prof. Chen suggests that anyone who favors any level of immigration restriction is a white supremacist.

It is inappropriate for a SAC member to make wild accusations of racism against entire groups of people. This article reveals Prof. Chen's bad faith. Additionally, her embrace of Ibram X. Kendi's "anti-racist" ideology is troubling, as that ideology in and of itself promotes discrimination.

Prof. Chen's article in the Yale Journal on Regulation, "Colorblind Nationalism," (available here) is particularly objectionable for a member of a State Advisory Committee.

- Full response from Prof. Chen:

Dear Mr. Mussatt and Mr. Morales,

Thank you for the opportunity to respond to Commissioner Heriot's objection. This objection seems to be based on a single sentence from an opinion piece, which I discuss below, but please note her objection paraphrases my essay in ways that mischaracterize the essay and my beliefs.

For example:

- *I do not say or believe that "anyone who supports facially colorblind policies is racist"*
- *I do not say that or believe that "anyone who favors any level of immigration restriction is a white supremacist"*
- *There is also no basis for her claim that I write or act in "bad faith" in her formal objection.*

As some background, I have served on the Colorado State Advisory Committee for 4-years (2016-2020). During that time, I worked collaboratively with all SAC members after my project proposal on the naturalization backlog was unanimously adopted in 2018. This work included working together on a briefing with expert testimony from 12 speakers representing a range of perspectives, addressing all SAC member voices in when drafting our report, and incorporating suggestions during the subsequent revisions and adoption of the report. The resulting 2019 report has since been cited widely in media and other academic and policy research. A 2020

AMERICAN OVERSIGHT

update and 2-page statement of concern was adopted unanimously by the CO SAC, and USCCR Chair Catherine Lhamon endorsed and sent her own letter to the impacted agency.

During my tenure, I also supported projects spearheaded by other SAC members, including ones sponsored by our more conservative members on religious freedom and racial disparities in infant/maternal mortality. In each of these projects, I was an active team member and made good faith efforts to listen to evidence from our hearings, to consider the divergent viewpoints, and to incorporate and suggest revisions on my reports and others that would build a broader consensus.

Outside of my service to SAC, my professional qualifications include a ten-year history of academic teaching and writing in immigration, civil rights, and administrative law at the University of Colorado Law School. This has included presentations with scholars from many viewpoints. Not infrequently I've been invited by members of conservative groups like the Federalist Society or the National Association of Attorney Generals to be a reasonable voice in their discussions. In these and other endeavors, I have never been accused of bias in my professional work.

In my personal capacity, I occasionally write short opinion pieces such as the essay that is cited in the objection and published in a special symposium on racism and the law for the online edition of the nation's premiere specialty journal on administrative law. I would describe my own views in the essay as advocating for greater racial equality for immigrants negatively impacted by travel bans and expressing an abiding concern that our federal government adhere to fair procedures in the issuance of such policies. There is no basis for saying that these views amount to "wild accusations of racism against entire groups of people" or that they "embrace Ibram X. Kendi's antiracist ideology… as that ideology itself promotes discrimination." I am not familiar with Ibram X Kendi's writings on antiracism and do not read, engage with, nor cite his work in this essay or my other scholarship. Moreover, the piece does not claim to represent the views of CO SAC or the USCCR. While I do not think the views expressed in the essay are objectionable, even if they were, I would not bring personal biases into my professional service. In closing, I recognize that reasonable people disagree on the best means of achieving equality.

My sense is that Commissioner Heriot misunderstands my perspectives and seeks to associate me with views that are more extreme than my own. Rather than rely on her second-hand description of an opinion piece written in my personal capacity, I would encourage the USCCR to apply a fair minded consideration of my application that focuses on my actual statements and my record of service to the CO SAC and USCCR.

AMERICAN OVERSIGHT

Date : 7/30/2021 12:34:11 PM
From : "John Mashburn" jmashburn@usccr.gov
To : "Mauro Morales" mmorales@usccr.gov
Cc : "Carissa Mulder" CMulder@usccr.gov, "Thomas Simuel" tsimuel@usccr.gov, "Alexander Heideman" aheideman@usccr.gov
Subject : Re: Commissioner Appointments to the Election Assistance Commission
Attachment : image001.gif;image002.gif;

Mauro – after canvassing the Republican Commissioners, the two nominees they wish to put forward for one of the two USCCR designees for the EAC's Board of Advisors (per your email below) are:

Cleta Mitchell – Chair, Conservative Partnership Institute Election Integrity Network, and

Christian Adams – USCCR Commissioner.

From: Mauro Morales <mmorales@usccr.gov>
Date: Wednesday, July 28, 2021 at 11:30 AM
To: Commissioners <Commissioners@usccr.gov>
Cc: David Ganz <dganz@usccr.gov>, "CommissionerAssistants@usccr.gov" <CommissionerAssistants@usccr.gov>
Subject: Commissioner Appointments to the Election Assistance Commission

Dear Commissioners-

At the request and in consultation with the Chair, I am sending this email to start the EAC nomination process for Commissioners.

Per the AI voted on during the April 30th meeting (language included below), each caucus is requested to submit two candidates for consideration by COB Friday, July 30, 2021. Once the names are submitted, OGC will conduct an ethics check to be completed by Wednesday, August 4, 2021. Each caucus will then have 24 hours to submit caucus strikes (Thursday, August 5, 2021 COB). The Chair will communicate the two names to EAC no later than Friday, August 6, 2021.

Please let the Chair or I know if you have any questions or concerns.

--
AI language:

Section 1.
.01 Any authority specifically granted the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Commission as a whole by majority vote.

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.02 Any authority specifically granted the Staff Director of the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Staff Director.

.03 Any authority specifically granted the Chair of the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Chair.

Section 2
.02

(1) For the two (2) appointments to the U.S. Election Assistance Commission, the members appointed by Democratic authorities shall nominate two individuals who are ready, willing, and able to serve, and the members appointed by the Republican authorities shall nominate two individuals who are ready, willing, and able to serve.

(2) The members appointed by the Democratic authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Democratic authorities

(3) The members selected shall be placed in nomination and ratified in conformance with Section 1.

Mauro Morales
Staff Director
U.S. Commission on Civil Rights
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OVERSIGHT

OVERSTOCK

Date : 4/27/2021 9:50:05 AM
From : "Irena Vidulovic" ividulovic@usccr.gov
To : "Debo P. Adegbile" dadegbile@usccr.gov, "Adegbile, Debo" Debo.Adegbile@wilmerhale.com
Subject : Caucus Call TODAY at 3pm
Attachment : AI on Appointment Authority (general and EAC) AR notes (1).docx;AI Letter to the Staff Director.docx;

1.
    - Update from Cantu and Yaki on the negotiations with the Rs
    - Make sure that the items are not presented as a omnimus bill but that it is delineated
    - Remove/combine other items?
    -
        - Eliminating the Speaker Series
        - Rebuttal/surrebuttal time period
        - Bi-partisan appointment to EAC board of advisors
        - AI's
    - Statement on violence against AAPI community? We have given Alec some ideas including the language from the legislation passed in the senate: The COVID-19 Hate Crimes Act cleared the chamber in a 94-1 vote Thursday. It would expedite the Justice Department's review of hate crimes and would designate an official at the department to oversee the effort.

AI's

EAC appointing authority (redline attached)

- We have worked on the language that you emphasized during the calls.
- That the Chairperson still retains the authority to appoint with the consultation from Commissioners.
- That the Commissioners selected by respective caucus are willing and able to serve
- Finally, should the person by the choosing party not be able to serve, the chairperson shall be free to choose any other member of the Commission, including said chairperson, to serve on the U.S. Election Assistance Commission

The other 2 AI's will be reviewed by OGC and OCRE because it requires their input. However both of the AI have been non-starters for you and Dave.

OCRE Witness Interviews

The R's are wanting to attend interviews that OCRE conducts in order to obtain information for our investigations. Such interviews were conducted for the Sub-Minimum Wages, as well as for Bail Reform.

- ADA requirements for interviews may not allow for this
- Bail reform interviews also conducted with focus jurisdictions

AMERICAN OVERSIGHT

- Statutory requirements for separation of staff and Commissioners – GC to weigh in.

Panelist requests for briefings

- Explanations from OCRE on why panelists are not being invited
- What do our current AI's and rules require for Commissioner recommendations to be invited
- Resources may not be used effectively if we institute this system
- Need to preserve the independence of the agency

The AI on Appointment of Commissioners to EAC:

The SD/Executive Committee gave the following opinions on the AI's. First they don't think that it should be an AI. Second, the proposed A.I. does not distinguish appointing authorities that provide appointments to the Commissioners themselves versus those that provide the Chair of the Commission or Staff Director with appointment authority. For example, the authorizing statute for the Commission on the Social Status of Black Men and Boys designates the Staff Director as the appointing authority for one (1) member.

If the proposed A.I., as written, was followed for the appointment to the Commission on the Social Status of Black Men and Boys, it would conflict and result in a violation of the statute. Lastly, the proposed A.I. provides a procedure to make appointments to the EAC, Board of Advisors, however it does not provide a procedure to make appointments if the caucuses do not agree on their nominees.

The Staff Director and Executive Committee recommends that this A.I. be revised or withdrawn from consideration.

AI on interviews of panelist/witnesses.

Career staff and SD say that they do not interview folks but that they gather information for the investigation like in the case of Sub-Minimum wages and Bail Reform. That the process as it stands is transparent and provides opportunity for all Commissioners to ask follow up questions to briefing panelists but that those questions are funneled via OCRE so that there is a one stop shop of where the questions are coming from and where the questions are to be responded to. Commissioners provide no evidence, justification or rational for the necessity and creation of this A.I. As a consequence, the Staff Director and Executive Committee recommend that this A.I. be withdrawn from further consideration.

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Witness selection AI:

Basically the Career staff is saying that this would create a logistical nightmare, that it is inconsistent with A.I. 1-6, Sec. 4.06. Section 4.06 which enumerates the Commissioners' roles and functions, such as approving projects and concepts, commenting on draft reports, and approving reports, but it does not include witness selection.

The proposed A.I. would repudiate Sec. 4.07, which notes that "all responsibilities not otherwise delegated are reserved to the Staff Director who may redelegate any responsibilities to a member of the executive staff." That it would make it impossible to have all Commissioner witness recommendations honored when there are 8 Commissioners and no limit to how many they could nominate.

As written, it is unclear when Commissioners' ability to suggest witnesses ends, which may result in OCRE being unable to prepare a final witness or panelist roster/list.Commissioner selection of panelists and witnesses will also likely increase negotiation and debate among Commissioners, which could result in delays in confirming attendance.
Additionally, having a roster/list being selected by Commissioners and staff could result in the
need for briefings and hearings lasting multiple days, which will increase costs.

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ADMINISTRATIVE INSTRUCTION __- __

COMMISSION APPOINTMENTS TO OTHER FEDERAL ENTITIES

Section 1.

.01 Any authority specifically granted the Commission of Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc. shall be exercised by the Commission Chairperson in consultation with all members of the commission.~~as a whole by majority vote~~.

Section 2

.02

(1) For the two (2) appointments to the U.S. Election Assistance Commission, the members appointed by Democratic authorities shall nominate two individuals of their membership that are ready willing and able to serve, and the members appointed by the Republican authorities shall nominate two individuals of their membership that are ready willing and able to serve.

(2) The members appointed by the Democratic authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Democratic authorities.

(3) Should the person by the choosing party not be able to serve, the chairperson shall be free to choose any other member of the Commission, including said chairperson, to serve on the U.S. Election Assistance Commission/

(~~3~~4) ———— The members selected shall be placed in nomination and ratified in conformance with Section 1.

NOTE: I don't see the AI for the rebuttal/surrebuttal,…but I will not vote for it if that crap stays in their about understanding the individual commissioners point-of-vote or vote.

Commented [1]:
Past practice has been that the Chair makes these appointments. This reduces the power of the Chair.

We should find out all the boards and other groups the Commission appoints to in order to understand the full scope of what appointing authority the Chair is relinquishing

Commented [2]:
These requirements do not belong in an AI to be binding on all future compositions of the Commission. If Norma wants to agree to this process for the current appointments, that would be understandable since we are currently 4-4. In the future, if the Commission is 6-2 again, it would be less understandable to give 2 Commissioners this much control.

Alternative: Create a rule committing to bipartisan

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UNITED STATES COMMISSION ON CIVIL RIGHTS

1331 Pennsylvania Avenue, NW• Suite 1150 • Washington, DC 20425 www.usccr.gov

April 15, 2021

Mauro Morales
Staff Director
1331 Pennsylvania Ave NW
Washington, DC 20425

Dear Mr. Morales:

We, the undersigned Commissioners, write today to request the promulgation of a searchable digital collection of the Commission's Administrative Instructions (AIs). In order to efficiently serve as Commissioners, we must have easy access to the AIs. Thus, we request that you provide us with the following:

- One updated digital file containing every AI that is in effect, in its proper order, and with the date and manner of each AI's ratification
- Physical copies of that digital file by request

The general counsel has sent some of this information piece-by-piece via email to us over the past few weeks. But those AIs have not been updated or organized, and they have not been collected into a single digital document. As matters stand, accessing the AIs requires that we attempt to assemble a complete list from the documents we have been sent piecemeal. Thus, this effort is inadequate.

This is simply a matter of good governance. Please provide us with a timeline for completion of the above tasks.

Sincerely,

AMERICAN OVERSIGHT

Date : 4/27/2021 9:54:04 AM
From : "Juana Silverio" jsilverio@usccr.gov
To : "Norma Cantu" ncantu@usccr.gov, "Michael Yaki" MYaki@usccr.gov, "David Kladney" dkladney@usccr.gov, "Debo P. Adegbile" dadegbile@usccr.gov, "Irena Vidulovic" ividulovic@usccr.gov, "Amy Royce" aroyce@usccr.gov, "Alec Deull" adeull@usccr.gov
Subject : DEM Caucus Mtg- Prep for Business Mtg
Attachment : 2021-04-30 Special Business Meeting Agenda.pdf;Review and Recommendations on Proposed 4-16 Final PDF.pdf;

Agenda items:

- Update from Comms. Cantu and Yaki on discussions regarding Chair confirmation
- Business meeting on Friday (Sunshine Act notice attached)
    - Need for agenda amendments: remove FEMA discovery materials, as already approved by notational vote
    - Remove/combine other items?
        - Eliminating the Speaker Series
        - Rebuttal/surrebuttal time period
        - Bi-partisan appointment to EAC board of advisors
    - Statement on violence against AAPI community?
- SAC updates

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CIVIL RIGHTS COMMISSION

Sunshine Act Meeting Notice

AGENCY: United States Commission on Civil Rights.

ACTION: Notice of Commission public business meeting.

DATES: Friday, April 30, 2021, 2:00 pm EST.

FOR FURTHER INFORMATION CONTACT: Angelia Rorison: 202-376-7700; publicaffairs@usccr.gov.

ADDRESSES: Meeting to take place by telephone and is open to the public by telephone: 1-855-710-4184, Conference ID #: 435-9779. Computer assisted real-time transcription (CART) will be provided. The web link to access CART (in English) on Friday, April 30th, 2021 is https://www.streamtext.net/player?event=USCCR. Please note that CART is text-only translation that occurs in real time during the meeting and is not an exact transcript.

MEETING AGENDA

I. Motion to Approve Commissioner Norma Cantú to Serve as USCCR Chair

II. Approval of Agenda

III. Business Meeting

A. Discussion and Vote on Statement of Walter E. Williams;

B. Discussion and Votes on Anti-Asian American Hate;

C. Discussion and Vote to continue the Policy of Rebuttals and Surrebuttals;

D. Discussion and Vote to suspend Speaker Series;

E. Discussion and Agreement to Appoint Bipartisan Commissioners to EAC

F. Discussion and Vote on NC SAC

G. Management and Operations

- Staff Director's Report

IV. Adjourn Meeting

Dated: April 21, 2021

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UNITED STATE COMMISSION ON CIVIL RIGHTS
Washington, DC

CONFIDENTIAL & PRIVILEGED/PRE-DELIBERATIVE

April 23, 2021

MEMORANDUM FOR: Commissioners

FROM: Staff Director and Executive Committee

SUBJECT: Review and Recommendations of Proposed Administrative Instructions submitted on April 16, 2021, during the Commission Business Meeting

The Staff Director and the Executive Committee of the U.S. Commission on Civil Rights, which includes the offices of the Staff Director, Office of Civil Rights Evaluation, General Counsel, Public Affairs, and Management, have jointly reviewed the three proposed Administrative Instructions (A.I.s) introduced by the Commissioners during an April 16th , 2021, Business Meeting. The Staff Director and Executive Committee believes the proposed A.I.s inappropriately conflict with existing Administrative Instructions and Commission regulations, and unreasonably create programmatic and operations problems for the Commission. It is our recommendation that the proposed A.I.s in their current form be revised or withdrawn.

A. Proposed A.I. on Commission Appointments to Other Federal Entities

The Executive Committee provides the following recommendations regarding this proposed A.I. First, Commission appointments pursuant to 52 U.S.C. § 20944 to the U.S. Election Assistance Commission (EAC), Board of Advisors, could be accomplished via a Commission vote rather than an A.I. Second, the proposed A.I. does not distinguish appointing authorities that provide appointments to the Commissioners themselves versus those that provide the Chair of the Commission or Staff Director with appointment authority. For example, the authorizing statute for the Commission on the Social Status of Black Men and Boys designates the Staff Director as the appointing authority for one (1) member.[1] If the proposed A.I., as written, was followed for the appointment to the Commission on the Social Status of Black Men and Boys, it would conflict and result in a violation of the statute. Lastly, the proposed A.I. provides a procedure to make appointments to the EAC, Board of Advisors, however it does not provide a procedure to make appointments if the caucuses do not agree on their nominees.

The Staff Director and Executive Committee recommends that this A.I. be revised or withdrawn from consideration.

[1] *See* https://www.congress.gov/bill/116th-congress/house-bill/1636/text?q=%7B%22search%22%3A%5B%22%5B2018-09-28+TO+2018-09-28%5D%22%5D%7D, Sec. 3(6).

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B. Proposed A.I. on OCRE Interviews of Panelists and Witnesses

This proposed A.I. provides that Commissioners attend staff "interviews" with external fact "witnesses or experts." OCRE does not conduct interviews of panelists or witnesses before or after briefings or hearings, but rather, as was the case for the Subminimum Wage and Bail Reform Reports, it holds meetings with stakeholders as part of its data collection process to develop and prepare concepts and documents for reports pursuant to its regulatory mandate contained in 45 C.F.R. § 701.13(e) (this Office is responsible for monitoring, evaluating and reporting on the civil rights enforcement effort of the Federal Government; developing concepts for programs, projects, and policies directed toward the achievement of Commission goals; preparing documents that articulate the Commission's views and concerns regarding Federal civil rights.) Commissioner participation in OCRE pre-briefings and pre-hearing meetings is inconsistent with the aforementioned regulation, which prescribes OCRE's function within the Commission.[2]

Further, 45 C.F.R. § 702.14(a) notes that an accurate transcript recorded by a court reporter shall be made of the testimony of all witnesses at all proceedings of the Commission. Consequently, as written, by defining OCRE meetings as "interviews" this A.I. would result in the financial cost of court reporters to be present whenever OCRE meets with stakeholders, panelists, or witnesses, in addition to the administrative burden of having to schedule and coordinate meeting time with Commissioners and their Special Assistants on a bipartisan basis and the panelist or witness. This A.I. is impractical and unnecessary.

Finally, the A.I. provides that Commissioners can individually provide follow-up questions to witnesses. This runs counter to the Commission's Privacy Act policy as OCRE staff would not have access to these additional individual Commissioner questions, requests or the information gathered; nor can OCRE ensure that the information collected from participants will be properly stored and managed for confidentiality or for inclusion in Commission Reports. Additionally, career staff in OCRE, as social scientists, follow the three principles of the Belmont Report (respect of persons, beneficence, and justice), which are needed to protect vulnerable interviewees, such as children, persons with disabilities, prisoners, and others. It is not clear that Commissioners or their Special Assistants, given their varied professional backgrounds, will follow the aforementioned principles.

The current practice is that OCRE sends a joint set of follow up questions from Commissioners which are forwarded to panelists to answer. All questions and answers are shared with Commissioners and their special assistants. Sending separate and individual questions confuses panelists, results in multiple & repetitive questions and prevents every Commissioner equal access to questions and answers.

---

[2] *See U.S. Lines, Inc. v. Fed. Mar. Comm'n,* 584 F.2d 519, 526 n. 20 (D.C.Cir.1978) *citing* to *U.S. v. Nixon,* 418 U.S. 683, 693-696 (1974) ("an agency is not free to ignore or violate its regulations while they remain in effect.")

AMERICAN OVERSIGHT

Commissioners provide no evidence, justification or rational for the necessity and creation of this A.I. As a consequence, the Staff Director and Executive Committee recommend that this A.I. be withdrawn from further consideration.

C. Proposed A.I. on Witness Selection

This proposed A.I. revises A.I. 1-6, "National Project Development and Implementation." Specifically, it revises Section 11, Commission Hearings, and Section 12, Commission Briefings. Staff reminds Commissioners that there is a significant difference between a Commission hearing and a Commission briefing.

The first sentences of Sections 11.03 and 12.02 respectively state that staff are to use "various" sources to gather suggestions for witnesses, but the subsequent sentences state that Commissioners are the "primary" source for "suggesting" witnesses. These two sentences are contradictory and the use of the term "suggest" in reference to witness selection by the Commissioners is inconsistent with the provision in these Sections that if two Commissioners request a particular witness, then staff must invite that witness.

Sections 11.03 and 12.02 mandate that staff invite a witness who is requested by two or more Commissioners. This mandate is inconsistent with A.I. 1-6, Sec. 4.06. Section 4.06 enumerates the Commissioners' roles and functions, such as approving projects and concepts, commenting on draft reports, and approving reports, but it does not include witness selection. The proposed A.I. would repudiate Sec. 4.07, which notes that "all responsibilities not otherwise delegated are reserved to the Staff Director who may redelegate any responsibilities to a member of the executive staff." Section 12.02's requirement to invite witnesses to Commission briefings when they are selected by two or more Commissioners is also inconsistent with 45 C.F.R. § 701.13(e), which makes project development and civil rights evaluation functions of OCRE. As noted above, federal agencies are not free to ignore its regulations while they remain in effect. *See U.S. Lines, Inc.,* 584 F.2d 519 at n. 20. Similarly, Section 11.03's requirement to invite witnesses to Commission hearings when they are selected by two or more Commissioners is inconsistent with 45 C.F.R. § 701.13(c), which notes that OGC "plans and conducts hearings."[3] Given that this proposed A.I. allows Commissioners to select witnesses for hearings, it prevents OGC from fulfilling its regulatory mandate to plan hearings. In the sixty-three year history of the Commission, Commissioners have never unilaterally selected witnesses. Such a change would alter the fundamental role of OCRE and undermine its ability to conduct an objective and substantive briefing.

Sections 11.03 and 12.02's witness mandate is also not consistent with 42 U.S.C. § 1975b. This statute notes that the Staff Director is the administrative head of the Commission, which includes things such as proposing employee discipline and conducting performance appraisals for career staff under Title 5. Commissioner interference in OCRE and OGC's operations as

[3] Although notice and comment rulemaking is not required for general statements of policy under 5 U.S.C. § 553(b)(A), an agency acts arbitrarily and capriciously if it acts in a manner that is contrary to its own regulations or a congressional statute. *Pol'y & Rsch., LLC v. United States Dep't of Health & Hum. Servs*., 313 F. Supp. 3d 62, 72 (D.D.C. 2018).

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proposed in the A.I. would result in contradictory or inconsistent orders from Commissioners. Additionally, designating Commissioners as the "primary" source for inviting and hearing from a specific witness would be an extraordinary change skewing the ability of OCRE to engage in objective investigations. It would send the Commission down a slippery slope of Commissioners and their special assistants themselves conducting investigations and writing reports. Such change would irreparably alter the mission of the Commission and be at odds with our enacting statue and Congressional history in creating the Commission. Please also note that Commissioner involvement in selecting witnesses pursuant to this proposed A.I., attending panelist and witness meetings in the aforementioned proposed A.I., or other involvement in the Commission's day-to-day operations, may implicate the 75-day billable cap in the Commission's fiscal year 2021 budget. *See* https://www.usccr.gov/pubs/2020/FY2021-Congressional-Budget-Justification.pdf.

Section 11.02 of the current A.I. 1-6 references a Hearing Report form, however it is unclear whether the Commission actually utilizes this form. This form certifies a numerical balance of witnesses with opposing views, opinions, and perspectives, and could safeguard that witnesses and panelists are ideologically balanced. However, such a form could also be used to impede in the selection of panelists for briefings and undermine the benefit the collaborative working relationship. OCRE already works with the lead Special Assistant/Commissioner regarding witness and panelist selection. Adding a new form or a new layer in the selection process would further delay the creation of panels and delay the release of the final report.

Logistically the proposed A.I. presents a number of potential scheduling issues for Commission staff. As written, it is unclear when Commissioners' ability to suggest witnesses ends, which may result in OCRE being unable to prepare a final witness or panelist roster/list. Commissioner selection of panelists and witnesses will also likely increase negotiation and debate among Commissioners, which could result in delays in confirming attendance. Additionally, having a roster/list being selected by Commissioners and staff could result in the need for briefings and hearings lasting multiple days, which will increase costs.

Lastly, while it is understandable that that Commissioners want to play a larger role in the selection process, they should do so by negotiating with each other prior to panelists suggestions being sent to OCRE. They should continue to work with OCRE to have diverse and objective panelists instead of attempting to force a selection reflecting their individual viewpoint. It is the view of the staff that unilateral Commissioner selection of witnesses and panelists would constrain OCRE's ability to collect bipartisan testimony and prohibit OCRE's ability to act independently. The panelist and witness evaluation process is independent of the Commissioners final assessment and report of civil rights enforcement. Further, OCRE remains committed to work with Commissioners regarding their recommendations and will continue to strive to accommodate the recommended expert or fact witness or panelist.

Commissioners provide no evidence, justification or rational for the necessity and creation of this A.I. As a consequence, the Staff Director and Executive Committee recommends that this A.I. be withdrawn from further consideration.

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D. Conclusion

The following are the recommendations of the Commission professional staff:

- Commissioners discuss and take a recorded vote on bipartisan appointments to other Federal entities or revise the proposed A.I. for Commission appointments;
- Commissioners withdraw from further consideration the proposed A.I. on Stakeholder Interviews; and,
- Commissioners withdraw from further consideration the proposed A.I. on Witnesses.

AMERICAN OVERSIGHT

Date : 4/27/2021 9:36:42 AM
From : "Irena Vidulovic" ividulovic@usccr.gov
To : "Debo P. Adegbile" dadegbile@usccr.gov, "Adegbile, Debo" Debo.Adegbile@wilmerhale.com, "Zervoudis, Flor" Flor.Zervoudis@wilmerhale.com
Subject : Caucus Call

3:00 Eastern/ 12:00 Pacific. The number is 1-877-446-3914, passcode 858713#

Agenda items:

- Update from Comms. Cantu and Yaki on discussions regarding Chair confirmation
- Business meeting on Friday
    - Remove/combine other items?
    -
        - Eliminating the Speaker Series
        - Rebuttal/surrebuttal time period
        - Bi-partisan appointment to EAC board of advisors
    - Statement on violence against AAPI community?

AMERICAN OVERSIGHT

Date : 4/27/2021 3:34:56 PM
From : "John Mashburn" jmashburn@usccr.gov
To : "Christian Adams" a@electionlawcenter.com
Subject : Motion for Friday
Attachment : Motion for April 30 Bus Mtg.docx;AI on Appointment Authority (general and EAC)[3].docx;

I move that the phrase "of their membership" be removed in the two places that it appears in the proposed Administrative Instruction (AI) on "Commission Appointments to Other Federal Entities."

The inclusion of this phrase in the proposed AI requires that USCCR's appointees to other federal entities must come from among the sitting USCCR commissioners themselves, even if that is not required by the statute authorizing the USCCR to make such appointments.

For instance, Section 214 of the "Help America Vote Act (HAVA) of 2002" (HR3295) states that the Board of Advisors to the Election Assistance Commission (EAC) shall consist of 37 members with: "(10) Two members appointed by the United States Commission on Civil Rights." The statute does not require that the appointees must come from among the ranks of the USCCR Commissioners themselves, but the AI as drafted would require that – which would set the terms of the AI above the terms of the statute itself.

Dropping the phrase "of their membership" in the 2 places it appears would make the proposed AI comport with Congress' original intent when it passed HAVA, and allow the USCCR to appoint members to the EAC's Board of Advisors from among USCCR own members, or from the public at large as Congress intended. Dropping the phrase would ensure that such Congressional intent in other future or present statutes that authorize the USCCR to make appointments to other federal entities would be similarly protected.

AMERICAN OVERSIGHT

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Dropping the phrase "of their membership" in the 2 places it appears would make the proposed AI comport with Congress' original intent when it passed HAVA, and allow the USCCR to appoint members to the EAC's Board of Advisors from among USCCR own members, or from the public at large as Congress intended. Dropping the phrase would ensure that such Congressional intent in other future or present statutes that authorize the USCCR to make appointments to other federal entities would be similarly protected.

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ADMINISTRATIVE INSTRUCTION __- __

COMMISSION APPOINTMENTS TO OTHER FEDERAL ENTITIES

Section 1.
.01 Any authority specifically granted the Commission of Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc. shall be exercised by the Commission as a whole by majority vote.

Section 2
.02

(1) For the two (2) appointments to the U.S. Election Assistance Commission, the members appointed by Democratic authorities shall nominate two individuals of their membership, and the members appointed by the Republican authorities shall nominate two individuals of their membership.

(2) The members appointed by the Democratic authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Democratic authorities

(3) The members selected shall be placed in nomination and ratified in conformance with Section 1.

AMERICAN OVERSIGHT

Date : 4/30/2021 12:28:10 PM
From : "Amy Royce" aroyce@usccr.gov
To : "David Kladney" dkladney@usccr.gov
Subject : EAC Board of Advisors

52 U.S. Code § 20944 - Membership of Board of Advisors
(a)In general
The Board of Advisors shall be composed of 37 members appointed as follows:
(1)Two members appointed by the National Governors Association.
(2)Two members appointed by the National Conference of State Legislatures.
(3)Two members appointed by the National Association of Secretaries of State.
(4)Two members appointed by the National Association of State Election Directors.
(5)Two members appointed by the National Association of Counties.
(6)Two members appointed by the National Association of County Recorders, Election Administrators, and Clerks.[1]
(7)Two members appointed by the United States Conference of Mayors.
(8)Two members appointed by the Election Center.
(9)Two members appointed by the International Association of County Recorders, Election Officials, and Treasurers.[2]
(10)Two members appointed by the United States Commission on Civil Rights.
(11)Two members appointed by the Architectural and Transportation Barrier [3] Compliance Board under section 792 of title 29.
(12)The chief of the Office of Public Integrity of the Department of Justice,[4] or the chief's designee.
(13)The chief of the Voting Section of the Civil Rights Division of the Department of Justice or the chief's designee.
(14)The director of the Federal Voting Assistance Program of the Department of Defense.
(15)Four members representing professionals in the field of science and technology, of whom—
(A)one each shall be appointed by the Speaker and the Minority Leader of the House of Representatives; and
(B)one each shall be appointed by the Majority Leader and the Minority Leader of the Senate.
(16)Eight members representing voter interests, of whom—
(A)four members shall be appointed by the Committee on House Administration of the House of Representatives, of whom two shall be appointed by the chair and two shall be appointed by the ranking minority member; and
(B)four members shall be appointed by the Committee on Rules and Administration of the Senate, of whom two shall be appointed by the chair and two shall be appointed by the ranking minority member.
(b)Manner of appointments
Appointments shall be made to the Board of Advisors under subsection (a) in a manner which ensures that the Board of Advisors will be bipartisan in nature and will reflect the various geographic regions of the United States.

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(c)Term of service; vacancy
Members of the Board of Advisors shall serve for a term of 2 years, and may be reappointed. Any vacancy in the Board of Advisors shall be filled in the manner in which the original appointment was made.

(d)Chair
The Board of Advisors shall elect a Chair from among its members.

AMERICAN OVERSIGHT

Date : 5/24/2021 3:41:23 PM
From : "Michael Yaki" MYaki@usccr.gov
To : "Irena Vidulovic" ividulovic@usccr.gov
Cc : "Alec Deull" adeull@usccr.gov
Subject : Election assistance commission

Irena

Can you ask Debo if there is any red-hot election / election security person he would recommend as one of the 2 D individuals who will be presented to the R's for the EAC in July? Someone who could take on Adams or someone of his ilk to balance out the USCCR app'tment to the Board of Advisors. Dave and I were talking and we thought that would be the appropriate thing for us to do, given that we know the R's are going to do the same thing.

Thanks
Michael

AMERICAN OVERSIGHT

Date : 5/24/2021 4:43:07 PM
From : "Irena Vidulovic" ividulovic@usccr.gov
To : "Michael Yaki" MYaki@usccr.gov
Cc : "Alec Deull" adeull@usccr.gov
Subject : Re: Election assistance commission

Of course, will do!

From: Michael Yaki
Sent: Monday, May 24, 2021 3:41:23 PM
To: Irena Vidulovic
Cc: Alec Deull
Subject: Election assistance commission

Irena

Can you ask Debo if there is any red-hot election / election security person he would recommend as one of the 2 D individuals who will be presented to the R's for the EAC in July? Someone who could take on Adams or someone of his ilk to balance out the USCCR app'tment to the Board of Advisors. Dave and I were talking and we thought that would be the appropriate thing for us to do, given that we know the R's are going to do the same thing.

Thanks
Michael

AMERICAN OVERSIGHT

Date : 9/15/2020 3:34:29 PM
From : "Carissa Mulder" CMulder@usccr.gov
To : "Christian Adams" a@electionlawcenter.com, "Peter Kirsanow" pkirsanow@Beneschlaw.com, "'Gail Heriot'" gheriot@me.com, "'stephen gilchrist'" thegilchristassociates@gmail.com
Cc : "John Mashburn" jkmash@comcast.net, "'Thomas Simuel'" tjsimuel32@gmail.com, "Alexander Heideman" aheideman@usccr.gov
Subject : Re: [EXTERNAL] EAC Board of Advisors

Good question! I had no idea the USCCR got two designees to the EAC Board of Advisors. Here's the list of all the current advisors: https://www.eac.gov/sites/default/files/boardofadvisors/BOARoster_072720.pdf.

From: Christian Adams <a@electionlawcenter.com>
Sent: Tuesday, September 15, 2020 3:15:28 PM
To: Peter Kirsanow; 'Gail Heriot'; 'stephen gilchrist'
Cc: John Mashburn; 'Thomas Simuel'; Carissa Mulder; Alexander Heideman
Subject: [EXTERNAL] EAC Board of Advisors

> CAUTION: This email is from outside USCCR.

Apparently the EAC gets two designees over the Election Assistance Commission Board of Advisors. Currently it is Yaki and Kladney. I just got a call from an EAC commission saying that Yaki is acting absurdly and exercising power over the EAC by threatening the Pelosi pick on the EAC with removal if he doesn't do what he wants, effectively making Yaki a commissioner on the EAC on many issues. He is causing mischief I don't even detail here.

My question is how does he get UNDONE from the EAC oversight commission? How does that get revoked and replaced?

AMERICAN OVERSIGHT

Date : 5/25/2021 12:19:25 PM
From : "Michael Yaki" MYaki@usccr.gov
To : "Irena Vidulovic" ividulovic@usccr.gov
Cc : "Alec Deull" adeull@usccr.gov
Subject : Re: Election assistance commission

We'll give them the choice of Worse or Worser from their point of view. So it should be someone aggressive, as well as knowledgeable.

From: Irena Vidulovic
Sent: Monday, May 24, 2021 4:43:07 PM
To: Michael Yaki
Cc: Alec Deull
Subject: Re: Election assistance commission

Of course, will do!

From: Michael Yaki
Sent: Monday, May 24, 2021 3:41:23 PM
To: Irena Vidulovic
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Subject: Election assistance commission

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Thanks
Michael

AMERICAN OVERSIGHT

Date : 11/17/2021 9:48:33 AM
From : "Mauro Morales" mmorales@usccr.gov
To : "Irena Vidulovic" ividulovic@usccr.gov
Subject : RE: Vote on EAC in transcriptp breakdown

Good point!!

From: Irena Vidulovic <ividulovic@usccr.gov>
Sent: Wednesday, November 17, 2021 9:43 AM
To: Mauro Morales <mmorales@usccr.gov>
Subject: Re: Vote on EAC in transcriptp breakdown

Commissioner Adegbile however voted against adopting the AI on EAC on April 30th. However once it was voted and it became a USCCR administrative instruction he followed the adopted AI which bundled Commissioner Yaki's vote with Cleta. He also understood that we could only strike one R' nominee.

From: Mauro Morales
Sent: Wednesday, November 17, 2021 9:39:51 AM
To: Irena Vidulovic
Subject: FW: Vote on EAC in transcriptp breakdown

From: Juana Silverio <jsilverio@usccr.gov>
Sent: Tuesday, November 16, 2021 5:59 PM
To: Norma Cantu <ncantu@usccr.gov>; Angelia Rorison <arorison@usccr.gov>; Mauro Morales <mmorales@usccr.gov>
Subject: Vote on EAC in transcriptp breakdown

I'm ready to call the question, folks.

All right. Call the question then.

Commissioner Adams, how do you vote?

COMMISSIONER ADAMS: Yes.

CHAIR CANTU: Commissioner Adegbile?

COMMISSIONER ADEGBILE: Aye.

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CHAIR CANTU: Commissioner Gilchrist?

COMMISSIONER GILCHRIST: Yes.

CHAIR CANTU: Commissioner Heriot?

COMMISSIONER HERIOT: Yes.

CHAIR CANTU: Commissioner Kirsanow?

COMMISSIONER KIRSANOW: Yes.

CHAIR CANTU: Commissioner Kladney?

COMMISSIONER KLADNEY: No.

CHAIR CANTU: Thank you.

Commissioner Yaki?

COMMISSIONER YAKI: Abstain.

CHAIR CANTU: And I vote yes.

One abstention, 1 no, 6 yeses. The motion passes.

--

Juana Silverio *(she/her/ella)*

Special Assistant to Commissioner Norma V. Cantú

U.S. Commission on Civil Rights

E: jsilverio@usccr.gov

http://usccr.gov/

1331 Pennsylvania Avenue, NW Suite 1150

Washington D.C. 20425
Follow Us on Twitter & Facebook:
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#USCCR

AMERICAN OVERSIGHT

Date : 11/17/2021 9:42:39 AM
From : "Irena Vidulovic" ividulovic@usccr.gov
To : "Mauro Morales" mmorales@usccr.gov
Subject : Re: Vote on EAC in transcriptp breakdown

Commissioner Adegbile however voted against adopting the AI on EAC on April 30th. However once it was voted and it became a USCCR administrative instruction he followed the adopted AI which bundled Commissioner Yaki's vote with Cleta. He also understood that we could only strike on e R' nominee.

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All right. Call the question then.
Commissioner Adams, how do you vote?
COMMISSIONER ADAMS: Yes.
CHAIR CANTU: Commissioner Adegbile?
COMMISSIONER ADEGBILE: Aye.
CHAIR CANTU: Commissioner Gilchrist?
COMMISSIONER GILCHRIST: Yes.
CHAIR CANTU: Commissioner Heriot?
COMMISSIONER HERIOT: Yes.
CHAIR CANTU: Commissioner Kirsanow?
COMMISSIONER KIRSANOW: Yes.
CHAIR CANTU: Commissioner Kladney?
COMMISSIONER KLADNEY: No.
CHAIR CANTU: Thank you.
Commissioner Yaki?
COMMISSIONER YAKI: Abstain.
CHAIR CANTU: And I vote yes.
One abstention, 1 no, 6 yeses. The motion passes.

--
Juana Silverio *(she/her/ella)*
Special Assistant to Commissioner Norma V. Cantú

AMERICAN OVERSIGHT

U.S. Commission on Civil Rights
E: jsilverio@usccr.gov
http://usccr.gov/
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425
Follow Us on Twitter & Facebook:
Twi FB
#USCCR

AMERICAN OVERSIGHT

Date : 9/15/2020 4:00:33 PM
From : "Carissa Mulder" CMulder@usccr.gov
To : "Christian Adams" a@electionlawcenter.com, "'Peter Kirsanow'" pkirsanow@Beneschlaw.com, "'Gail Heriot'" gheriot@me.com, "'stephen gilchrist'" thegilchristassociates@gmail.com
Cc : "'John Mashburn'" jkmash@comcast.net, "'Thomas Simuel'" tjsimuel32@gmail.com, "Alexander Heideman" aheideman@usccr.gov
Subject : Re: [EXTERNAL] EAC Board of Advisors

Looking at the document about the appointment of the advisory board members, I think that is correct, Christian. Catherine probably appointed them without ever bringing it up.

From: Christian Adams <a@electionlawcenter.com>
Sent: Tuesday, September 15, 2020 3:55:45 PM
To: Carissa Mulder; 'Peter Kirsanow'; 'Gail Heriot'; 'stephen gilchrist'
Cc: 'John Mashburn'; 'Thomas Simuel'; Alexander Heideman
Subject: RE: [EXTERNAL] EAC Board of Advisors

> CAUTION: This email is from outside USCCR.

My guess is the USCCR does their own "appointment" itself. How we un-appoint is going to be the issue. It probably NEVER came up in a business meeting and therefore we should, as a commission have the authority to take it up in a business meeting and appoint-anew.

From: Carissa Mulder <CMulder@usccr.gov>
Sent: Tuesday, September 15, 2020 3:34 PM
To: Christian Adams <a@electionlawcenter.com>; Peter Kirsanow <pkirsanow@Beneschlaw.com>; 'Gail Heriot' <gheriot@me.com>; 'stephen gilchrist' <thegilchristassociates@gmail.com>
Cc: John Mashburn <jkmash@comcast.net>; 'Thomas Simuel' <tjsimuel32@gmail.com>; Alexander Heideman <aheideman@usccr.gov>
Subject: Re: [EXTERNAL] EAC Board of Advisors

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From: Christian Adams <a@electionlawcenter.com>
Sent: Tuesday, September 15, 2020 3:15:28 PM
To: Peter Kirsanow; 'Gail Heriot'; 'stephen gilchrist'
Cc: John Mashburn; 'Thomas Simuel'; Carissa Mulder; Alexander Heideman
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AMERICAN OVERSIGHT

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My question is how does he get UNDONE from the EAC oversight commission? How does that get revoked and replaced?

AMERICAN OVERSIGHT

Date : 7/24/2021 10:08:41 AM
From : "Mauro Morales" mmorales@usccr.gov
To : "Norma Cantu" ncantu@usccr.gov
Cc : "Juana Silverio" jsilverio@usccr.gov
Subject : FW: [EXTERNAL] USCCR Appointments to EAC Board of Advisors
Attachment : EAC Letter to USCCR re BOA Appointments 7.23.21.pdf;Notice-of-Representation-Form-Board-Advisors-2021.pdf;

Chair Cantu,

How would you like me to handle the appointments to the EAC?

Mauro

From: Kevin Rayburn [mailto:KRayburn@eac.gov]
Sent: Friday, July 23, 2021 5:39 PM
To: Mauro Morales <mmorales@usccr.gov>
Cc: Christy McCormick <cmccormick@eac.gov>; Mona Harrington <mharrington@eac.gov>; Tina Barton <TBarton@eac.gov>
Subject: [EXTERNAL] USCCR Appointments to EAC Board of Advisors

> CAUTION: This email is from outside USCCR.

Good Afternoon Mr. Morales,

Please find attached a follow-up letter concerning the U.S. Commission on Civil Rights' appointments to the U.S. Election Assistance Commission Board of Advisors.

Sincerely,

Kevin Rayburn | General Counsel
U.S. Election Assistance Commission
633 3rd Street NW, Suite 200 | Washington, DC 20001
www.eac.gov

AMERICAN OVERSIGHT

U.S. ELECTION ASSISTANCE COMMISSION
633 3rd St. NW, Suite 200
Washington, DC 20001

July 23, 2021

United States Commission on Civil Rights
Mauro Morales, Staff Director
1331 Pennsylvania Ave., NW, STE 1150
Washington, D.C. 20425
mmorales@usccr.gov

Re: U.S. Election Assistance Commission
Board of Advisors Membership Appointments

Dear Mr. Morales,

This letter is to follow up on the previous letter sent on March 5, 2021 concerning the United States Commission on Civil Rights' representatives to the Unites States Election Assistance Commission (EAC) Board of Advisors. Under Section 214 of the Help America Vote Act of 2002 (HAVA), your organization is authorized to appoint two members to this federal advisory committee. The members serve two-year terms and are not term limited.

Your current representatives are:

Mr. Michael Yaki
Mr. David Kladney

The terms of the U.S. Commission on Civil Rights' designated representatives expired on April 13, 2021, coinciding with the renewal of the Board of Advisor's Charter. To date we have not received notice from the U.S. Commission on Civil Rights of its designated representatives for the term running from April 13, 2021 – April 13, 2023. Please use the enclosed Notice of Representation form to advise us of your designated representatives to serve on the EAC Board of Advisors for this two-year term. In compliance with HAVA, appointments must be made "in a manner which ensures that the Board of Advisors will be bipartisan in nature and will reflect the various geographic regions of the United States." 52 U.S.C § 20944(b).

Please return this completed form by email to krayburn@eac.gov.

Thank you for your attention to this matter. If we can be of assistance, please feel free to contact us at 202-740-6546 or krayburn@eac.gov.

Sincerely,

Kevin Rayburn
General Counsel
U.S. Election Assistance Commission

CC: Christy McCormick, EAC Commissioner and Board of Advisors DFO
Mona Harrington, EAC Executive Director
Tina Barton, EAC Senior Program Advisor and Board of Advisors ADFO

AMERICAN OVERSIGHT

Notice of Representation
United States Election Assistance Commission
Board of Advisors

In accordance with 52 U.S.C. § 20944 of the Help America Vote Act of 2002, your office submits the following individual(s) as a member of the Election Assistance Commission Board of Advisors:

Designated Representative

Name: _____

Title: _____

Address: _____

_____

Phone: _____

Email: _____

Party Affiliation: _____

Designated Representative

Name: _____

Title: _____

Address: _____

_____

Phone: _____

Email: _____

Party Affiliation: _____

Name and Title of Appointing Official

Print Name: _____

Print Title: _____

Signature: _____ Date: _____

Please return the completed form via email to EAC General Counsel Kevin Rayburn (krayburn@eac.gov).

AMERICAN OVERSIGHT

Date : 7/25/2021 2:57:42 PM
From : "Norma Cantu" ncantu@usccr.gov
To : "Mauro Morales" mmorales@usccr.gov
Cc : "Juana Silverio" jsilverio@usccr.gov
Subject : RE: [EXTERNAL] USCCR Appointments to EAC Board of Advisors

Hi,
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Norma

From: Mauro Morales <mmorales@usccr.gov>
Sent: Saturday, July 24, 2021 9:09 AM
To: Norma Cantu <ncantu@usccr.gov>
Cc: Juana Silverio <jsilverio@usccr.gov>
Subject: FW: [EXTERNAL] USCCR Appointments to EAC Board of Advisors

Chair Cantu,

How would you like me to handle the appointments to the EAC?

Mauro

From: Kevin Rayburn [mailto:KRayburn@eac.gov]
Sent: Friday, July 23, 2021 5:39 PM
To: Mauro Morales <mmorales@usccr.gov>
Cc: Christy McCormick <cmccormick@eac.gov>; Mona Harrington <mharrington@eac.gov>; Tina Barton <TBarton@eac.gov>
Subject: [EXTERNAL] USCCR Appointments to EAC Board of Advisors

> CAUTION: This email is from outside USCCR.

Good Afternoon Mr. Morales,

Please find attached a follow-up letter concerning the U.S. Commission on Civil Rights' appointments to the U.S. Election Assistance Commission Board of Advisors.

Sincerely,

Kevin Rayburn | General Counsel
U.S. Election Assistance Commission
633 3rd Street NW, Suite 200 | Washington, DC 20001
www.eac.gov

AMERICAN OVERSIGHT

AMERICAN OVERSIGHT

Date : 7/26/2021 10:35:41 AM
From : "Mauro Morales" mmorales@usccr.gov
To : "Norma Cantu" ncantu@usccr.gov
Cc : "Juana Silverio" jsilverio@usccr.gov, "David Ganz" dganz@usccr.gov
Subject : RE: [EXTERNAL] USCCR Appointments to EAC Board of Advisors

Chair Cantu,

Thank you for the follow up. I have cc'd David Ganz for his awareness.

Mauro

From: Norma Cantu <ncantu@usccr.gov>
Sent: Sunday, July 25, 2021 2:58 PM
To: Mauro Morales <mmorales@usccr.gov>
Cc: Juana Silverio <jsilverio@usccr.gov>
Subject: RE: [EXTERNAL] USCCR Appointments to EAC Board of Advisors

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www.eac.gov

AMERICAN OVERSIGHT

Date : 9/16/2020 11:02:46 AM
From : "Alexander Heideman" aheideman@usccr.gov
To : "Christian Adams" a@electionlawcenter.com, "'Gail Heriot'" gheriot@me.com
Cc : "Carissa Mulder" CMulder@usccr.gov, "'Peter Kirsanow'" pkirsanow@beneschlaw.com, "'stephen gilchrist'" thegilchristassociates@gmail.com, "'John Mashburn'" jkmash@comcast.net, "'Thomas Simuel'" tjsimuel32@gmail.com
Subject : Re: [EXTERNAL] EAC Board of Advisors

Yes, happy to.

From: Christian Adams <a@electionlawcenter.com>
Date: Wednesday, September 16, 2020 at 11:02 AM
To: 'Gail Heriot' <gheriot@me.com>
Cc: Carissa Mulder <CMulder@usccr.gov>, 'Peter Kirsanow' <pkirsanow@beneschlaw.com>, 'stephen gilchrist' <thegilchristassociates@gmail.com>, 'John Mashburn' <jkmash@comcast.net>, 'Thomas Simuel' <tjsimuel32@gmail.com>, Alexander Heideman <aheideman@usccr.gov>
Subject: RE: [EXTERNAL] EAC Board of Advisors

> CAUTION: This email is from outside USCCR.

ple people aren't asking her different times, can the SA's get to the bottom of this with maureen.

From: Gail Heriot <gheriot@me.com>
Sent: Wednesday, September 16, 2020 10:46 AM
To: Christian Adams <a@electionlawcenter.com>
Cc: Carissa Mulder <CMulder@usccr.gov>; Peter Kirsanow <pkirsanow@beneschlaw.com>; stephen gilchrist <thegilchristassociates@gmail.com>; John Mashburn <jkmash@comcast.net>; Thomas Simuel <tjsimuel32@gmail.com>; Alexander Heideman <aheideman@usccr.gov>
Subject: Re: [EXTERNAL] EAC Board of Advisors

I don't think there are any rules. In the absence of an explicit delegation of power, the Commission as a whole has that power. But you need to be sure it wasn't done properly. I have a vague recollection of talking about this in a meeting in the last decade. The straight shooter on the staff is Maureen Rudolph. You might want to ask her.

Gail Heriot
Professor of Law
University of San Diego

AMERICAN OVERSIGHT

On Sep 15, 2020, at 2:17 PM, Christian Adams <a@electionlawcenter.com> wrote:

I don't know the rules for USCCR appointing ANYONE yet, but if there are no minutes showing a vote appointing them in regular business, it would seem that their "appointment" is void.

From: Carissa Mulder <CMulder@usccr.gov>
Sent: Tuesday, September 15, 2020 4:01 PM
To: Christian Adams <a@electionlawcenter.com>; 'Peter Kirsanow' <pkirsanow@Beneschlaw.com>; 'Gail Heriot' <gheriot@me.com>; 'stephen gilchrist' <thegilchristassociates@gmail.com>
Cc: 'John Mashburn' <jkmash@comcast.net>; 'Thomas Simuel' <tjsimuel32@gmail.com>; Alexander Heideman <aheideman@usccr.gov>
Subject: Re: [EXTERNAL] EAC Board of Advisors

Looking at the document about the appointment of the advisory board members, I think that is correct, Christian. Catherine probably appointed them without ever bringing it up.

From: Christian Adams <a@electionlawcenter.com>
Sent: Tuesday, September 15, 2020 3:55:45 PM
To: Carissa Mulder; 'Peter Kirsanow'; 'Gail Heriot'; 'stephen gilchrist'
Cc: 'John Mashburn'; 'Thomas Simuel'; Alexander Heideman
Subject: RE: [EXTERNAL] EAC Board of Advisors

> CAUTION: This email is from outside USCCR.

It probably NEVER came up in a business meeting and therefore we should, as a commission have the authority to take it up in a business meeting and appoint-anew.

From: Carissa Mulder <CMulder@usccr.gov>
Sent: Tuesday, September 15, 2020 3:34 PM
To: Christian Adams <a@electionlawcenter.com>; Peter Kirsanow <pkirsanow@Beneschlaw.com>; 'Gail Heriot' <gheriot@me.com>; 'stephen gilchrist' <thegilchristassociates@gmail.com>
Cc: John Mashburn <jkmash@comcast.net>; 'Thomas Simuel' <tjsimuel32@gmail.com>; Alexander Heideman <aheideman@usccr.gov>
Subject: Re: [EXTERNAL] EAC Board of Advisors

Good question! I had no idea the USCCR got two designees to the .

AMERICAN OVERSIGHT

From: Christian Adams <a@electionlawcenter.com>
Sent: Tuesday, September 15, 2020 3:15:28 PM
To: Peter Kirsanow; 'Gail Heriot'; 'stephen gilchrist'
Cc: John Mashburn; 'Thomas Simuel'; Carissa Mulder; Alexander Heideman
Subject: [EXTERNAL] EAC Board of Advisors

CAUTION: This email is from outside USCCR.

AC commission saying that Yaki is acting absurdly and exercising power over the EAC by threatening the Pelosi pick on the EAC with removal if he doesn't do what he wants, effectively making Yaki a commissioner on the EAC on many issues. He is causing mischief I don't even detail here.

My question is how does he get UNDONE from the EAC oversight commission? How does that get revoked and replaced?

AMERICAN OVERSIGHT

Date : 7/26/2021 11:07:35 AM
From : "David Ganz" dganz@usccr.gov
To : "Pilar McLaughlin" pmclaughlin@usccr.gov
Cc : "Andrew Gall" agall@usccr.gov
Subject : FW: [EXTERNAL] USCCR Appointments to EAC Board of Advisors

Have we previously done this type of ethics check? There could be something on SecuriSync.

From: Mauro Morales <mmorales@usccr.gov>
Sent: Monday, July 26, 2021 10:36 AM
To: Norma Cantu <ncantu@usccr.gov>
Cc: Juana Silverio <jsilverio@usccr.gov>; David Ganz <dganz@usccr.gov>
Subject: RE: [EXTERNAL] USCCR Appointments to EAC Board of Advisors

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633 3rd Street NW, Suite 200 | Washington, DC 20001
www.eac.gov

AMERICAN OVERSIGHT

Date : 7/26/2021 11:14:03 AM
From : "Andrew Gall" agall@usccr.gov
To : "David Ganz" dganz@usccr.gov, "Pilar McLaughlin" pmclaughlin@usccr.gov
Subject : Re: [EXTERNAL] USCCR Appointments to EAC Board of Advisors

I found a spreadsheet for an ethics conflict check on Commissioner Adams (https://securisync.intermedia.net/us2/search?id=L2ZpbGVzeW5jL09HQy82X0V0aGljcw%3D%3D&filter=check), but I wasn't able to find anything for the U.S. Election Assistance Commission Board of Advisors.

From: David Ganz
Sent: Monday, July 26, 2021 11:07:35 AM
To: Pilar McLaughlin
Cc: Andrew Gall
Subject: FW: [EXTERNAL] USCCR Appointments to EAC Board of Advisors

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www.eac.gov

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From : "David Ganz" dganz@usccr.gov
To : "Pilar McLaughlin" pmclaughlin@usccr.gov
Cc : "Andrew Gall" agall@usccr.gov
Subject : RE: [EXTERNAL] USCCR Appointments to EAC Board of Advisors

I was also thinking that this is something EAC would do rather than us, but I think an appointing agency would also do some sort of ethics pre-appointment review.

From: Pilar McLaughlin <pmclaughlin@usccr.gov>
Sent: Monday, July 26, 2021 11:24 AM
To: David Ganz <dganz@usccr.gov>
Cc: Andrew Gall <agall@usccr.gov>
Subject: RE: [EXTERNAL] USCCR Appointments to EAC Board of Advisors

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AMERICAN OVERSIGHT

Date : 7/26/2021 11:38:54 AM
From : "Pilar McLaughlin" pmclaughlin@usccr.gov
To : "David Ganz" dganz@usccr.gov
Cc : "Andrew Gall" agall@usccr.gov
Subject : RE: [EXTERNAL] USCCR Appointments to EAC Board of Advisors

Yea, makes sense. I'll take a look in securisync

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633 3rd Street NW, Suite 200 | Washington, DC 20001
www.eac.gov

AMERICAN OVERSIGHT

Date : 7/29/2021 2:08:33 PM
From : "Amy Royce" aroyce@usccr.gov
To : "Irena Vidulovic" ividulovic@usccr.gov
Subject : RE: EAC

These are the other entities that appoint to the Board, in case helpful

From the statute:
52 U.S. Code § 20944 - Membership of Board of Advisors
(a)In general
The Board of Advisors shall be composed of 37 members appointed as follows:
(1)Two members appointed by the National Governors Association.
(2)Two members appointed by the National Conference of State Legislatures.
(3)Two members appointed by the National Association of Secretaries of State.
(4)Two members appointed by the National Association of State Election Directors.
(5)Two members appointed by the National Association of Counties.
(6)Two members appointed by the National Association of County Recorders, Election Administrators, and Clerks.[1]
(7)Two members appointed by the United States Conference of Mayors.
(8)Two members appointed by the Election Center.
(9)Two members appointed by the International Association of County Recorders, Election Officials, and Treasurers.[2]
(10)Two members appointed by the United States Commission on Civil Rights.
(11)Two members appointed by the Architectural and Transportation Barrier [3] Compliance Board under section 792 of title 29.
(12)The chief of the Office of Public Integrity of the Department of Justice,[4] or the chief's designee.
(13)The chief of the Voting Section of the Civil Rights Division of the Department of Justice or the chief's designee.
(14)The director of the Federal Voting Assistance Program of the Department of Defense.
(15)Four members representing professionals in the field of science and technology, of whom—
(A)one each shall be appointed by the Speaker and the Minority Leader of the House of Representatives; and
(B)one each shall be appointed by the Majority Leader and the Minority Leader of the Senate.
(16)Eight members representing voter interests, of whom—
(A)four members shall be appointed by the Committee on House Administration of the House of Representatives, of whom two shall be appointed by the chair and two shall be appointed by the ranking minority member; and
(B)four members shall be appointed by the Committee on Rules and Administration of the Senate, of whom two shall be appointed by the chair and two shall be appointed by the ranking minority member.

(b)Manner of appointments

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Appointments shall be made to the Board of Advisors under subsection (a) in a manner which ensures that the Board of Advisors will be bipartisan in nature and will reflect the various geographic regions of the United States.

(c)Term of service; vacancy
Members of the Board of Advisors shall serve for a term of 2 years, and may be reappointed. Any vacancy in the Board of Advisors shall be filled in the manner in which the original appointment was made.

(d)Chair
The Board of Advisors shall elect a Chair from among its members.

From: Amy Royce
Sent: Thursday, July 29, 2021 2:07 PM
To: Irena Vidulovic <ividulovic@usccr.gov>
Subject: RE: EAC

Hey, he never got a role description. The terms are for 2 years, but continue after that unless the appointing agency sends someone else or rescinds the appointment. They meet quarterly. The appointees are referred to as members of the Board of Advisors to the Election Assistance Commission.

Website is here:
https://www.eac.gov/about_the_eac/board_of_advisors

From: Irena Vidulovic <ividulovic@usccr.gov>
Sent: Thursday, July 29, 2021 12:57 PM
To: Amy Royce <aroyce@usccr.gov>
Subject: EAC

Hey Amy,

Can you check with Dave what his title at EAC was and if there is a good place to find a description on what the role entails?

Thank you,

Irena

Irena Vidulovic
Special Assistant to Commissioner Debo P. Adegbile

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U.S. Commission on Civil Rights
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ividulovic@usccr.gov
http://usccr.gov/
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Washington D.C. 20425

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Date : 9/16/2020 11:09:08 AM
From : "Alexander Heideman" aheideman@usccr.gov
To : "Maureen Rudolph" mrudolph@usccr.gov
Subject : USCCR & Election Assistance Commission Board of Advisors

Hi Maureen,

I hope you're having a great week.

I've got a few questions about USCCR & the EAC Board of Advisors that I'm hoping you'll be able to answer. Do you have time for a quick phone call today or would you prefer I email you?

Thanks!
Alex

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Date : 7/29/2021 2:06:34 PM
From : "Amy Royce" aroyce@usccr.gov
To : "Irena Vidulovic" ividulovic@usccr.gov
Subject : RE: EAC

Hey, he never got a role description. The terms are for 2 years, but continue after that unless the appointing agency sends someone else or rescinds the appointment. They meet quarterly. The appointees are referred to as members of the Board of Advisors to the Election Assistance Commission.

Website is here:
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Sent: Thursday, July 29, 2021 12:57 PM
To: Amy Royce <aroyce@usccr.gov>
Subject: EAC

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Thank you,

Irena

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AMERICAN OVERSIGHT

Date : 7/29/2021 2:20:23 PM
From : "Irena Vidulovic" ividulovic@usccr.gov
To : "Amy Royce" aroyce@usccr.gov
Subject : Draft Email: Election Assistance Commission (EAC) Board of Advisors

The U.S. Commission on Civil Rights has the privilege and authority to appoint two members to the EAC Board of Advisors . The Board of Advisors are appointed to a two year term . The Members meet quarterly and t he appointees are referred to as members of the Board of Advisors to the Election Assistance Commission.

I would like to take this opportunity to inquire if you would consider serving on the Board of Advisors. If you are willing and able I would like to nominate you to serve. The Commission has a internal process on nominations but if you would be selected then we would go forward with the appointment.

The description and statute is included below. Please take a look and feel free to email my Special Assistant Irena Vidulovic who is cc'd on this email with any questions.

The EACBoard of Advisors is a 35-member board composed of representatives from the National Governors Association; National Conference of State Legislatures; National Association of Secretaries of State; The National Association of State Election Directors; National Association of Counties; the International Association of Government Officials (created from the merger of the National Association of County Recorders, Election Officials and Clerks and the International Association of Clerks, Recorders, Election Officials, and Treasurers); Election Center; International Association of Clerks, Recorders, Election Officials, and Treasurers; **U.S. Commission on Civil Rights**; and Architectural and Transportation Barriers Compliance Board.

Other members include representatives from the U.S. Department of Justice, Office of Public Integrity, and the Civil Rights Division; the director of the U.S. Department of Defense Federal Voting Assistance Program; four professionals from the field of science and technology, one each appointed by the Speaker and the Minority Leader of the U.S. House of Representatives, and the Majority and Minority leaders of the U.S. Senate; and eight members representing voter interests, with the chairs and the ranking minority members of the U.S. House of Representatives Committee on House Administration and the U.S. Senate Committee on Rules and Administration each appointing two members. Following the passage of HAVA, the National Association of County Recorders, Election Officials and Clerks and the International Association of Clerks, Recorders, Election Officials, and Treasurers merged to form the International Association of Government Officials.

Statute:

AMERICAN OVERSIGHT

52 U.S. Code § 20944 - Membership of Board of Advisors

(a)In general

The Board of Advisors shall be composed of 37 members appointed as follows:

(1)Two members appointed by the National Governors Association.

(2)Two members appointed by the National Conference of State Legislatures.

(3)Two members appointed by the National Association of Secretaries of State.

(4)Two members appointed by the National Association of State Election Directors.

(5)Two members appointed by the National Association of Counties.

(6)Two members appointed by the National Association of County Recorders, Election Administrators, and Clerks.[1]

(7)Two members appointed by the United States Conference of Mayors.

(8)Two members appointed by the Election Center.

(9)Two members appointed by the International Association of County Recorders, Election Officials, and Treasurers.[2]

(10)Two members appointed by the United States Commission on Civil Rights.

(11)Two members appointed by the Architectural and Transportation Barrier [3] Compliance Board under section 792 of title 29.

(12)The chief of the Office of Public Integrity of the Department of Justice,[4] or the chief's designee.

(13)The chief of the Voting Section of the Civil Rights Division of the Department of Justice or the chief's designee.

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Appointments shall be made to the Board of Advisors under subsection (a) in a manner which ensures that the Board of Advisors will be bipartisan in nature and will reflect the various geographic regions of the United States.

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(d)Chair
The Board of Advisors shall elect a Chair from among its members.

Website:
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Date : 7/29/2021 2:24:15 PM
From : "Amy Royce" aroyce@usccr.gov
To : "Irena Vidulovic" ividulovic@usccr.gov
Subject : RE: Draft Email: Election Assistance Commission (EAC) Board of Advisors

Looks good to me!

From: Irena Vidulovic <ividulovic@usccr.gov>
Sent: Thursday, July 29, 2021 2:20 PM
To: Amy Royce <aroyce@usccr.gov>
Subject: Draft Email: Election Assistance Commission (EAC) Board of Advisors

The U.S. Commission on Civil Rights has the privilege and authority to appoint two members to the EAC Board of Advisors. The Board of Advisors are appointed to a two year term . The Members meet quarterly and the appointees are referred to as members of the Board of Advisors to the Election Assistance Commission.

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Other members include representatives from the U.S. Department of Justice, Office of Public Integrity, and the Civil Rights Division; the director of the U.S. Department of Defense Federal Voting Assistance Program; four professionals from the field of science and technology, one each appointed by the Speaker and the Minority Leader of the U.S. House of Representatives, and the Majority and Minority leaders of the U.S. Senate; and eight members representing voter interests, with the chairs and the ranking minority members of the U.S. House of Representatives Committee on House Administration and the U.S. Senate Committee on Rules and Administration each appointing two members. Following the passage of HAVA, the National Association of County Recorders, Election Officials and Clerks and the International Association of Clerks, Recorders, Election Officials, and Treasurers merged to form the International Association of Government Officials.

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https://www.eac.gov/about_the_eac/board_of_advisors

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Date : 7/29/2021 2:25:50 PM
From : "Irena Vidulovic" ividulovic@usccr.gov
To : "Debo P. Adegbile" dadegbile@usccr.gov, "Adegbile, Debo" Debo.Adegbile@wilmerhale.com
Subject : Draft Email to EAC/Board of Advisors Nomination

The U.S. Commission on Civil Rights has the privilege and authority to appoint two members to the EAC Board of Advisors. The Board of Advisors are appointed to a two year term . The Members meet quarterly and the appointees are referred to as members of the Board of Advisors to the Election Assistance Commission.

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Date : 7/30/2021 6:34:46 AM
From : "Irena Vidulovic" ividulovic@usccr.gov
To : "Irena Vidulovic" ividulovic@usccr.gov
Subject : EAC Nominations to the Board of Advisors

Hello Everyone,

Commissioner Adegbile has nominated Alabama SAC Chair Jenny Carroll and Allison Riggs of the Southern Coalition For Social Justice to serve on EAC's Board of Advisors. We have reached out to both of them to make sure that they are willing and able to serve and have heard back that they are and that they would be honored to serve.

Alabama SAC Chair Jenny Carroll https://www.law.ua.edu/directory/People/view/Jenny_Carroll

Jenny Carroll | University of Alabama School of Law

www.law.ua.edu

For more than 140 years, the University of Alabama School of Law has produced attorneys who become leaders locally, nationally and globally. Alabama Law provides a top-rate education at an affordable cost in a supportive and diverse environment.

Allison Riggs https://southerncoalition.org/staff/allison-riggs/

Allison Riggs - Southern Coalition for Social Justice

southerncoalition.org

Allison Riggs leads the voting rights program at the Southern Coalition for Social Justice, an organization she joined in 2009. In March of 2020, she also took over as Interim Executive Director of the organization. Her voting rights work over the last decade at SCSJ has been focused on fighting for fair redistricting plans, fighting against voter suppression, and advocating for electoral reforms that would expand access to voting.

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Date : 7/30/2021 9:35:01 AM
From : "Irena Vidulovic" ividulovic@usccr.gov
To : "Alec Deull" adeull@usccr.gov
Cc : "Juana Silverio" jsilverio@usccr.gov, "Mauro Morales" mmorales@usccr.gov, "Norma Cantu" ncantu@usccr.gov, "Debo P. Adegbile" dadegbile@usccr.gov, "Amy Royce" aroyce@usccr.gov, "David Kladney" dkladney@usccr.gov
Subject : Re: EAC Nominations

Thank you Alec for letting us know. As I mentioned yesterday Commissioner Adegbile would like to nominate Chair Jenny Carroll and Allison Riggs of the Southern Coalition For Social Justice to serve on EAC's Board of Advisors. We have reached out to both of them to make sure that they are willing and able to serve and have heard back that they are and that they would be honored to serve.

Alabama SAC Chair Jenny Carroll https://www.law.ua.edu/directory/People/view/Jenny_Carroll

Jenny Carroll | University of Alabama School of Law
www.law.ua.edu
For more than 140 years, the University of Alabama School of Law has produced attorneys who become leaders locally, nationally and globally. Alabama Law provides a top-rate education at an affordable cost in a supportive and diverse environment.

Allison Riggs https://southerncoalition.org/staff/allison-riggs/

Allison Riggs - Southern Coalition for Social Justice
southerncoalition.org
Allison Riggs leads the voting rights program at the Southern Coalition for Social Justice, an organization she joined in 2009. In March of 2020, she also took over as Interim Executive Director of the organization. Her voting rights work over the last decade at SCSJ has been focused on fighting for fair redistricting plans, fighting against voter suppression, and advocating for electoral reforms that would expand access to voting.

On Jul 30, 2021, at 3:17 PM, Alec Deull <adeull@usccr.gov> wrote:

hello All -

Commissioner Yaki intends to nominate himself for another EAC term.

all best, Alec

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From: Irena Vidulovic
Sent: Thursday, July 29, 2021 5:47:43 PM
To: Juana Silverio; Mauro Morales; Norma Cantu
Cc: Debo P. Adegbile; Amy Royce; Alec Deull
Subject: Re: EAC Nominations

Allison Riggs Co-Executive Director, Programs
Chief Counsel for Voting Rights is willing able and would be honored to serve.

Sent from my iPhone

> On Jul 29, 2021, at 9:48 PM, Irena Vidulovic <ividulovic@usccr.gov> wrote:

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Date : 7/30/2021 12:34:11 PM
From : "John Mashburn" jmashburn@usccr.gov
To : "Mauro Morales" mmorales@usccr.gov
Cc : "Carissa Mulder" CMulder@usccr.gov, "Thomas Simuel" tsimuel@usccr.gov, "Alexander Heideman" aheideman@usccr.gov
Subject : Re: Commissioner Appointments to the Election Assistance Commission
Attachment : image001.gif;image002.gif;

Mauro – after canvassing the Republican Commissioners, the two nominees they wish to put forward for one of the two USCCR designees for the EAC's Board of Advisors (per your email below) are:

Cleta Mitchell – Chair, Conservative Partnership Institute Election Integrity Network, and

Christian Adams – USCCR Commissioner.

From: Mauro Morales <mmorales@usccr.gov>
Date: Wednesday, July 28, 2021 at 11:30 AM
To: Commissioners <Commissioners@usccr.gov>
Cc: David Ganz <dganz@usccr.gov>, "CommissionerAssistants@usccr.gov" <CommissionerAssistants@usccr.gov>
Subject: Commissioner Appointments to the Election Assistance Commission

Dear Commissioners-

At the request and in consultation with the Chair, I am sending this email to start the EAC nomination process for Commissioners.

Per the AI voted on during the April 30th meeting (language included below), each caucus is requested to submit two candidates for consideration by COB Friday, July 30, 2021. Once the names are submitted, OGC will conduct an ethics check to be completed by Wednesday, August 4, 2021. Each caucus will then have 24 hours to submit caucus strikes (Thursday, August 5, 2021 COB). The Chair will communicate the two names to EAC no later than Friday, August 6, 2021.

Please let the Chair or I know if you have any questions or concerns.

--
AI language:

Section 1.
.01 Any authority specifically granted the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Commission as a whole by majority vote.

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.02 Any authority specifically granted the Staff Director of the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Staff Director.

.03 Any authority specifically granted the Chair of the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Chair.

Section 2
.02

(1) For the two (2) appointments to the U.S. Election Assistance Commission, the members appointed by Democratic authorities shall nominate two individuals who are ready, willing, and able to serve, and the members appointed by the Republican authorities shall nominate two individuals who are ready, willing, and able to serve.

(2) The members appointed by the Democratic authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Democratic authorities

(3) The members selected shall be placed in nomination and ratified in conformance with Section 1.

Mauro Morales
Staff Director
U.S. Commission on Civil Rights
P: 202-376-7796| F: 202-376-7672
Mmorales@usccr.gov
http://usccr.gov/
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425

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OVERSTOCK

Date : 7/30/2021 12:37:07 PM
From : "John Mashburn" jmashburn@usccr.gov
To : "Mauro Morales" mmorales@usccr.gov, "David Ganz" dganz@usccr.gov
Cc : "Carissa Mulder" CMulder@usccr.gov, "Thomas Simuel" tsimuel@usccr.gov, "Alexander Heideman" aheideman@usccr.gov
Subject : Re: Commissioner Appointments to the Election Assistance Commission
Attachment : image001.gif;image002.gif;

David – I got a response email saying Mauro is not in today, so I am forwarding this email to you to meet the deadline of COB today for these nominations from the Republican Commissioners.

From: John Mashburn <jmashburn@usccr.gov>
Date: Friday, July 30, 2021 at 12:34 PM
To: Mauro Morales <mmorales@usccr.gov>
Cc: Carissa Mulder <CMulder@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>, Alexander Heideman <aheideman@usccr.gov>
Subject: Re: Commissioner Appointments to the Election Assistance Commission

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Date: Wednesday, July 28, 2021 at 11:30 AM
To: Commissioners <Commissioners@usccr.gov>
Cc: David Ganz <dganz@usccr.gov>, "CommissionerAssistants@usccr.gov" <CommissionerAssistants@usccr.gov>
Subject: Commissioner Appointments to the Election Assistance Commission

Dear Commissioners-

At the request and in consultation with the Chair, I am sending this email to start the EAC nomination process for Commissioners.

Per the AI voted on during the April 30th meeting (language included below), each caucus is requested to submit two candidates for consideration by COB Friday, July 30, 2021. Once the names are submitted, OGC will conduct an ethics check to be completed by Wednesday, August 4, 2021. Each caucus will then have 24 hours to submit caucus strikes (Thursday, August 5, 2021 COB). The Chair will communicate the two names to EAC no later than Friday, August 6, 2021.

AMERICAN OVERSIGHT

Please let the Chair or I know if you have any questions or concerns.

--
AI language:

Section 1.
.01 Any authority specifically granted the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Commission as a whole by majority vote.

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Section 2
.02
(1) For the two (2) appointments to the U.S. Election Assistance Commission, the members appointed by Democratic authorities shall nominate two individuals who are ready, willing, and able to serve, and the members appointed by the Republican authorities shall nominate two individuals who are ready, willing, and able to serve.

(2) The members appointed by the Democratic authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Democratic authorities

(3) The members selected shall be placed in nomination and ratified in conformance with Section 1.

Mauro Morales
Staff Director
U.S. Commission on Civil Rights
P: 202-376-7796| F: 202-376-7672
Mmorales@usccr.gov
http://usccr.gov/
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425

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Date : 9/16/2020 11:13:33 AM
From : "Maureen Rudolph" mrudolph@usccr.gov
To : "Alexander Heideman" aheideman@usccr.gov
Subject : Re: USCCR & Election Assistance Commission Board of Advisors

Either is fine. If you'd like to chat, does 1pm work? Also, do you have the statutory citation, etc., or is there anything you'd like before talking? Thanks much, Maureen

---

From: Alexander Heideman
Sent: Wednesday, September 16, 2020 11:09:08 AM
To: Maureen Rudolph
Subject: USCCR & Election Assistance Commission Board of Advisors

Hi Maureen,

I hope you're having a great week.

I've got a few questions about USCCR & the EAC Board of Advisors that I'm hoping you'll be able to answer. Do you have time for a quick phone call today or would you prefer I email you?

Thanks!
Alex

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Date : 7/30/2021 12:59:50 PM
From : "Alec Deull" adeull@usccr.gov
To : "Juana Silverio" jsilverio@usccr.gov
Subject : Fw: EAC Nominations

hello Juana --

Any thoughts about how we should address having 3 nominees for 2 slots? I know that we are supposed to give Mauro our 2 caucus nominations today. Maybe we try to have a caucus call as early as possible next week to facilitate a discussion and vote among our 4? I have not yet discussed this with Michael. Thoughts?

Thanks! I hope that you are looking at a great weekend ahead -- all best, Alec

---

From: Irena Vidulovic
Sent: Friday, July 30, 2021 9:35 AM
To: Alec Deull
Cc: Juana Silverio; Mauro Morales; Norma Cantu; Debo P. Adegbile; Amy Royce; David Kladney
Subject: Re: EAC Nominations

Thank you Alec for letting us know. As I mentioned yesterday Commissioner Adegbile would like to nominate Chair Jenny Carroll and Allison Riggs of the Southern Coalition For Social Justice to serve on EAC's Board of Advisors. We have reached out to both of them to make sure that they are willing and able to serve and have heard back that they are and that they would be honored to serve.

Alabama SAC Chair Jenny Carroll https://www.law.ua.edu/directory/People/view/Jenny_Carroll

Jenny Carroll | University of Alabama School of Law

www.law.ua.edu

For more than 140 years, the University of Alabama School of Law has produced attorneys who become leaders locally, nationally and globally. Alabama Law provides a top-rate education at an affordable cost in a supportive and diverse environment.

Allison Riggs https://southerncoalition.org/staff/allison-riggs/

Allison Riggs - Southern Coalition for Social Justice

southerncoalition.org

Allison Riggs leads the voting rights program at the Southern Coalition for Social Justice, an organization she joined in 2009. In March of 2020, she also took over as Interim Executive Director of the organization. Her voting rights

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work over the last decade at SCSJ has been focused on fighting for fair redistricting plans, fighting against voter suppression, and advocating for electoral reforms that would expand access to voting.

On Jul 30, 2021, at 3:17 PM, Alec Deull <adeull@usccr.gov> wrote:

hello All -

Commissioner Yaki intends to nominate himself for another EAC term.

all best, Alec

From: Irena Vidulovic
Sent: Thursday, July 29, 2021 5:47:43 PM
To: Juana Silverio; Mauro Morales; Norma Cantu
Cc: Debo P. Adegbile; Amy Royce; Alec Deull
Subject: Re: EAC Nominations

Allison Riggs Co-Executive Director, Programs
Chief Counsel for Voting Rights is willing able and would be honored to serve.

Sent from my iPhone

On Jul 29, 2021, at 9:48 PM, Irena Vidulovic <ividulovic@usccr.gov> wrote:

AMERICAN OVERSIGHT

Date : 7/30/2021 12:43:18 PM
From : "David Ganz" dganz@usccr.gov
To : "Mauro Morales" mmorales@usccr.gov
Subject : RE: Commissioner Appointments to the Election Assistance Commission
Attachment : image001.gif;image002.gif;

Do you want me to forward this to Chair Cantu?

From: John Mashburn <jmashburn@usccr.gov>
Sent: Friday, July 30, 2021 12:37 PM
To: Mauro Morales <mmorales@usccr.gov>; David Ganz <dganz@usccr.gov>
Cc: Carissa Mulder <CMulder@usccr.gov>; Thomas Simuel <tsimuel@usccr.gov>; Alexander Heideman <aheideman@usccr.gov>
Subject: Re: Commissioner Appointments to the Election Assistance Commission

David – I got a response email saying Mauro is not in today, so I am forwarding this email to you to meet the deadline of COB today for these nominations from the Republican Commissioners.

From: John Mashburn <jmashburn@usccr.gov>
Date: Friday, July 30, 2021 at 12:34 PM
To: Mauro Morales <mmorales@usccr.gov>
Cc: Carissa Mulder <CMulder@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>, Alexander Heideman <aheideman@usccr.gov>
Subject: Re: Commissioner Appointments to the Election Assistance Commission

Mauro – after canvassing the Republican Commissioners, the two nominees they wish to put forward for one of the two USCCR designees for the EAC's Board of Advisors (per your email below) are:

Cleta Mitchell – Chair, Conservative Partnership Institute Election Integrity Network, and

Christian Adams – USCCR Commissioner.

From: Mauro Morales <mmorales@usccr.gov>
Date: Wednesday, July 28, 2021 at 11:30 AM
To: Commissioners <Commissioners@usccr.gov>
Cc: David Ganz <dganz@usccr.gov>, "CommissionerAssistants@usccr.gov" <CommissionerAssistants@usccr.gov>
Subject: Commissioner Appointments to the Election Assistance Commission

Dear Commissioners-

At the request and in consultation with the Chair, I am sending this email to start the EAC nomination process for Commissioners.

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Please let the Chair or I know if you have any questions or concerns.

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Mauro Morales
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http://usccr.gov/
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425

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Date : 7/30/2021 5:39:44 PM
From : "David Ganz" dganz@usccr.gov
To : "Juana Silverio" jsilverio@usccr.gov, "Norma Cantu" ncantu@usccr.gov
Cc : "Mauro Morales" mmorales@usccr.gov
Subject : EAC Board of Advisors nominees- reminder

Hello, Mauro's email requesting nominees has a deadline of today. The conservative caucus sent their two nominees in today, please submit the liberal caucus nominees. Thanks,

David

Sent via the Samsung Galaxy S21 5G, an AT&T 5G smartphone
Get Outlook for Android

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Date : 7/30/2021 6:52:27 PM
From : "Juana Silverio" jsilverio@usccr.gov
To : "David Ganz" dganz@usccr.gov, "Norma Cantu" ncantu@usccr.gov
Cc : "Mauro Morales" mmorales@usccr.gov
Subject : RE: EAC Board of Advisors nominees- reminder

Thanks David. There is an impasse as the Dems have 3 names and have not discussed narrowing it down.

We will touch base on Monday.

Juana

From: David Ganz <dganz@usccr.gov>
Sent: Friday, July 30, 2021 5:40 PM
To: Juana Silverio <jsilverio@usccr.gov>; Norma Cantu <ncantu@usccr.gov>
Cc: Mauro Morales <mmorales@usccr.gov>
Subject: EAC Board of Advisors nominees- reminder

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David

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Get Outlook for Android

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Date : 7/31/2021 12:01:32 AM
From : "Irena Vidulovic" ividulovic@usccr.gov
To : "David Ganz" dganz@usccr.gov
Subject : Re: EAC Board of Advisors nominees- reminder

Hello David,

Debo and I sent our nominations to Mauro on Thursday. I will check with Juana if they sent theirs over.

Sent from my iPhone

> On Jul 30, 2021, at 11:47 PM, David Ganz <dganz@usccr.gov> wrote:
>
> Sent via the Samsung Galaxy S21 5G, an AT&T 5G smartphone
> Get Outlook for Android
>
> ---
>
> **From:** dganz@usccr.gov <dganz@usccr.gov>
> **Sent:** Friday, July 30, 2021 5:39:43 PM
> **To:** Juana Silverio <jsilverio@usccr.gov>; Norma Cantu <ncantu@usccr.gov>
> **Cc:** Mauro Morales <mmorales@usccr.gov>
> **Subject:** EAC Board of Advisors nominees- reminder
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> David
>
> Sent via the Samsung Galaxy S21 5G, an AT&T 5G smartphone
> Get Outlook for Android

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Date : 8/2/2021 11:25:32 AM
From : "David Ganz" dganz@usccr.gov
To : "Irena Vidulovic" ividulovic@usccr.gov
Subject : RE: EAC Board of Advisors nominees- reminder

Thanks.

From: Irena Vidulovic <ividulovic@usccr.gov>
Sent: Saturday, July 31, 2021 12:02 AM
To: David Ganz <dganz@usccr.gov>
Subject: Re: EAC Board of Advisors nominees- reminder

Hello David,

Debo and I sent our nominations to Mauro on Thursday. I will check with Juana if they sent theirs over.

Sent from my iPhone

> On Jul 30, 2021, at 11:47 PM, David Ganz <dganz@usccr.gov> wrote:
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> **Sent:** Friday, July 30, 2021 5:39:43 PM
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> Sent via the Samsung Galaxy S21 5G, an AT&T 5G smartphone
> Get Outlook for Android

AMERICAN OVERSIGHT

Date : 9/16/2020 11:28:49 AM
From : "Alexander Heideman" aheideman@usccr.gov
To : "Maureen Rudolph" mrudolph@usccr.gov
Subject : Re: USCCR & Election Assistance Commission Board of Advisors

1PM works perfectly for me. Do you happen to have our internal rules on how the two Commissioners are appointed to the EAC Board of Advisors?

From: Maureen Rudolph <mrudolph@usccr.gov>
Date: Wednesday, September 16, 2020 at 11:13 AM
To: Alexander Heideman <aheideman@usccr.gov>
Subject: Re: USCCR & Election Assistance Commission Board of Advisors

Either is fine. If you'd like to chat, does 1pm work? Also, do you have the statutory citation, etc., or is there anything you'd like before talking? Thanks much, Maureen

---

From: Alexander Heideman
Sent: Wednesday, September 16, 2020 11:09:08 AM
To: Maureen Rudolph
Subject: USCCR & Election Assistance Commission Board of Advisors

Hi Maureen,

I hope you're having a great week.

I've got a few questions about USCCR & the EAC Board of Advisors that I'm hoping you'll be able to answer. Do you have time for a quick phone call today or would you prefer I email you?

Thanks!
Alex

AMERICAN OVERSIGHT

Date : 8/2/2021 11:45:24 AM
From : "Mauro Morales" mmorales@usccr.gov
To : "John Mashburn" jmashburn@usccr.gov
Cc : "Carissa Mulder" CMulder@usccr.gov, "Thomas Simuel" tsimuel@usccr.gov, "Alexander Heideman" aheideman@usccr.gov
Subject : Re: Commissioner Appointments to the Election Assistance Commission
Attachment : image001.gif;image002.gif;

My flight was canceled and returning today. Your selections were forwarded to Chair Cantu. Thank you.

Sent from my iPhone

> On Jul 30, 2021, at 9:34 AM, John Mashburn <jmashburn@usccr.gov> wrote:
>
> Mauro – after canvassing the Republican Commissioners, the two nominees they wish to put forward for one of the two USCCR designees for the EAC's Board of Advisors (per your email below) are:
>
> Cleta Mitchell – Chair, Conservative Partnership Institute Election Integrity Network, and
>
> Christian Adams – USCCR Commissioner.
>
> ---
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> **From:** Mauro Morales <mmorales@usccr.gov>
> **Date:** Wednesday, July 28, 2021 at 11:30 AM
> **To:** Commissioners <Commissioners@usccr.gov>
> **Cc:** David Ganz <dganz@usccr.gov>, "CommissionerAssistants@usccr.gov" <CommissionerAssistants@usccr.gov>
> **Subject:** Commissioner Appointments to the Election Assistance Commission
>
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AMERICAN OVERSIGHT

2021.

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Mauro Morales
Staff Director

AMERICAN OVERSIGHT

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<image001.gif>
<image002.gif>

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OVERSTOCK

Date : 8/2/2021 11:43:45 AM
From : "Mauro Morales" mmorales@usccr.gov
To : "David Ganz" dganz@usccr.gov
Subject : Re: Commissioner Appointments to the Election Assistance Commission
Attachment : image001.gif;image002.gif;

Yes.

Sent from my iPhone

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AMERICAN OVERSIGHT

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AMERICAN OVERSIGHT

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Follow Us on Twitter & Facebook:
<image001.gif>
<image002.gif>

#USCCR

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OVERSTOCK

Date : 8/3/2021 3:38:23 PM
From : "Juana Silverio" jsilverio@usccr.gov
To : "Mauro Morales" mmorales@usccr.gov, "Norma Cantu" ncantu@usccr.gov
Cc : "Debo P. Adegbile" dadegbile@usccr.gov, "Michael Yaki" MYaki@usccr.gov, "David Kladney" dkladney@usccr.gov, "Irena Vidulovic" ividulovic@usccr.gov, "Alec Deull" adeull@usccr.gov
Subject : RE: Commissioner Appointments to the Election Assistance Commission

Good afternoon Mauro.

The Dem caucus had a tie:

Commissioner Michael Yaki
Leah Aden (Cantu and Yaki)
Allison Riggs (Adegbile and Kladney)

The Chairwoman, in the interest of observing the deadline, is submitting the following names for EAC consideration:

Commissioner Michael Yaki
Leah Aden - https://www.naacpldf.org/about-us/staff/leah-c-aden/

Thank you.
Juana

From: Mauro Morales <mmorales@usccr.gov>
Sent: Monday, August 2, 2021 11:47 AM
To: Norma V. Cantú <normavcantu@gmail.com>; Juana Silverio <jsilverio@usccr.gov>
Subject: Fwd: Commissioner Appointments to the Election Assistance Commission

FYI

Sent from my iPhone

Begin forwarded message:

> **From:** Mauro Morales <mmorales@usccr.gov>
> **Date:** August 2, 2021 at 8:45:25 AM MST
> **To:** John Mashburn <jmashburn@usccr.gov>
> **Cc:** Carissa Mulder <CMulder@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>, Alexander Heideman <aheideman@usccr.gov>
> **Subject: Re: Commissioner Appointments to the Election Assistance Commission**
>
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AMERICAN OVERSIGHT

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.02

(1) For the two (2) appointments to the U.S. Election Assistance Commission, the members appointed by Democratic authorities shall nominate two individuals who are ready, willing, and able to serve, and the members appointed by the Republican authorities shall nominate two individuals who are ready, willing, and able to serve.

(2) The members appointed by the Democratic authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Democratic authorities

(3) The members selected shall be placed in nomination and ratified in conformance with Section 1.

Mauro Morales
Staff Director
U.S. Commission on Civil Rights
P: 202-376-7796| F: 202-376-7672
Mmorales@usccr.gov
http://usccr.gov/

AMERICAN OVERSIGHT

1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425

Follow Us on Twitter & Facebook:
<image001.gif>
<image002.gif>

#USCCR

AMERICAN OVERSIGHT

Date : 8/3/2021 4:12:07 PM
From : "Irena Vidulovic" ividulovic@usccr.gov
To : "Juana Silverio" jsilverio@usccr.gov, "Mauro Morales" mmorales@usccr.gov, "Norma Cantu" ncantu@usccr.gov
Cc : "Debo P. Adegbile" dadegbile@usccr.gov, "Michael Yaki" MYaki@usccr.gov, "David Kladney" dkladney@usccr.gov, "Alec Deull" adeull@usccr.gov
Subject : Re: Commissioner Appointments to the Election Assistance Commission

Unfortunately Leah Aden is unable to serve. Commissioner Adebile reached out to all the candidates that we proposed including Leah to make sure that they would be willing and able to serve and we have been notified that Leah is unavailable to serve.

From: Juana Silverio
Sent: Tuesday, August 3, 2021 3:38:23 PM
To: Mauro Morales; Norma Cantu
Cc: Debo P. Adegbile; Michael Yaki; David Kladney; Irena Vidulovic; Alec Deull
Subject: RE: Commissioner Appointments to the Election Assistance Commission

Good afternoon Mauro.

The Dem caucus had a tie:

Commissioner Michael Yaki
Leah Aden (Cantu and Yaki)
Allison Riggs (Adegbile and Kladney)

The Chairwoman, in the interest of observing the deadline, is submitting the following names for EAC consideration:

Commissioner Michael Yaki
Leah Aden - https://www.naacpldf.org/about-us/staff/leah-c-aden/

Thank you.
Juana

From: Mauro Morales <mmorales@usccr.gov>
Sent: Monday, August 2, 2021 11:47 AM
To: Norma V. Cantú <normavcantu@gmail.com>; Juana Silverio <jsilverio@usccr.gov>
Subject: Fwd: Commissioner Appointments to the Election Assistance Commission

FYI

Sent from my iPhone

Begin forwarded message:

AMERICAN OVERSIGHT

From: Mauro Morales <mmorales@usccr.gov>
Date: August 2, 2021 at 8:45:25 AM MST
To: John Mashburn <jmashburn@usccr.gov>
Cc: Carissa Mulder <CMulder@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>, Alexander Heideman <aheideman@usccr.gov>
Subject: Re: Commissioner Appointments to the Election Assistance Commission

My flight was canceled and returning today. Your selections were forwarded to Chair Cantu. Thank you.

Sent from my iPhone

> On Jul 30, 2021, at 9:34 AM, John Mashburn <jmashburn@usccr.gov> wrote:
>
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>
> Cleta Mitchell – Chair, Conservative Partnership Institute Election Integrity Network, and
>
> Christian Adams – USCCR Commissioner.
>
> ---
>
> **From:** Mauro Morales <mmorales@usccr.gov>
> **Date:** Wednesday, July 28, 2021 at 11:30 AM
> **To:** Commissioners <Commissioners@usccr.gov>
> **Cc:**
> " <CommissionerAssistants@usccr.gov>
> **Subject:** Commissioner Appointments to the Election Assistance Commission
>
> Dear Commissioners-
>
> At the request and in consultation with the Chair, I am sending this email to start the EAC nomination process for Commissioners.
>
> Per the AI voted on during the April 30th meeting (language included below), each caucus is requested to submit two candidates for consideration by COB Friday, July 30, 2021. Once the names are submitted, OGC will conduct an ethics check to be completed by Wednesday, August 4, 2021. Each caucus will then have 24 hours to

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submit caucus strikes (Thursday, August 5, 2021 COB). The Chair will communicate the two names to EAC no later than Friday, August 6, 2021.

Please let the Chair or I know if you have any questions or concerns.

--
AI language:

Section 1.
.01 Any authority specifically granted the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Commission as a whole by majority vote.

.02 Any authority specifically granted the Staff Director of the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Staff Director.

.03 Any authority specifically granted the Chair of the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Chair.

Section 2
.02
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Democratic authorities

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Mauro Morales
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<image002.gif>

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Date : 8/3/2021 4:30:17 PM
From : "Juana Silverio" jsilverio@usccr.gov
To : "Irena Vidulovic" ividulovic@usccr.gov, "Mauro Morales" mmorales@usccr.gov, "Norma Cantu" ncantu@usccr.gov
Cc : "Debo P. Adegbile" dadegbile@usccr.gov, "Michael Yaki" MYaki@usccr.gov, "David Kladney" dkladney@usccr.gov, "Alec Deull" adeull@usccr.gov
Subject : RE: Commissioner Appointments to the Election Assistance Commission

Mauro- due to new information received, please replace Leah with Ms. Allison Riggs.

Juana

From: Irena Vidulovic <ividulovic@usccr.gov>
Sent: Tuesday, August 3, 2021 4:12 PM
To: Juana Silverio <jsilverio@usccr.gov>; Mauro Morales <mmorales@usccr.gov>; Norma Cantu <ncantu@usccr.gov>
Cc: Debo P. Adegbile <dadegbile@usccr.gov>; Michael Yaki <MYaki@usccr.gov>; David Kladney <dkladney@usccr.gov>; Alec Deull <adeull@usccr.gov>
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Leah Aden - https://www.naacpldf.org/about-us/staff/leah-c-aden/

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> > **To:** Commissioners <Commissioners@usccr.gov>
> > **Cc:**
> > " <CommissionerAssistants@usccr.gov>

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Subject: Commissioner Appointments to the Election Assistance Commission

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Please let the Chair or I know if you have any questions or concerns.

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Section 2

AMERICAN OVERSIGHT

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(3) The members selected shall be placed in nomination and ratified in conformance with Section 1.

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1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425

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AMERICAN OVERSIGHT

Date : 9/16/2020 11:47:53 AM
From : "Maureen Rudolph" mrudolph@usccr.gov
To : "Alexander Heideman" aheideman@usccr.gov
Subject : Re: USCCR & Election Assistance Commission Board of Advisors
Attachment : Help America Vote Act House Report 107_329.pdf;

To my knowledge, there are not any internal rules about these appointments. The practice has been that the Chair makes the appointments. (Note though that I only have records going back to 2015 for these appointments and I do not know what the practice was before 2015). The statute (52 U.S.C. 20944(a)(10)) says "Two members appointed by the United States Commission on Civil Rights." 52 U.S.C. 20944(b) says "Appointments shall be made to the Board of Advisors under subsection (a) in a manner which ensures that the Board of Advisors will be bipartisan in nature and will reflect the various geographic regions of the United States." The terms are 2 year appointments; I believe the current USCCR appointments are Yaki and Kladney, and that their terms end 4/13/2021. I provided the above information, i.e., bipartisan and geographic scope, before the 2019 appointments, though did not provide any input beyond this. I've also attached the House report for the Help American Vote Act (establishes the advisory committees) - discussion of advisory boards is on page 33. Talk to you at 1pm. Please call me on my work cell (202)-657-2246. Thanks very much, Maureen

---

From: Alexander Heideman
Sent: Wednesday, September 16, 2020 11:28:49 AM
To: Maureen Rudolph
Subject: Re: USCCR & Election Assistance Commission Board of Advisors

1PM works perfectly for me. Do you happen to have our internal rules on how the two Commissioners are appointed to the EAC Board of Advisors?

From: Maureen Rudolph <mrudolph@usccr.gov>
Date: Wednesday, September 16, 2020 at 11:13 AM
To: Alexander Heideman <aheideman@usccr.gov>
Subject: Re: USCCR & Election Assistance Commission Board of Advisors

Either is fine. If you'd like to chat, does 1pm work? Also, do you have the statutory citation, etc., or is there anything you'd like before talking? Thanks much, Maureen

---

From: Alexander Heideman
Sent: Wednesday, September 16, 2020 11:09:08 AM
To: Maureen Rudolph
Subject: USCCR & Election Assistance Commission Board of Advisors

Hi Maureen,

AMERICAN OVERSIGHT

I hope you're having a great week.

I've got a few questions about USCCR & the EAC Board of Advisors that I'm hoping you'll be able to answer. Do you have time for a quick phone call today or would you prefer I email you?

Thanks!
Alex

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107TH CONGRESS } HOUSE OF REPRESENTATIVES { REPT. 107–329
1st Session } { Part 1

HELP AMERICA VOTE ACT OF 2001

DECEMBER 10, 2001.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. NEY, from the Committee on House Administration, submitted the following

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany H.R. 3295]

[Including cost estimate of the Congressional Budget Office]

The Committee on House Administration, to whom was referred the bill (H.R. 3295) to establish a program to provide funds to States to replace punch card voting systems, to establish the Election Assistance Commission to assist in the administration of Federal elections and to otherwise provide assistance with the administration of certain Federal election laws and programs, to establish minimum election administration standards for States and units of local government with responsibility for the administration of Federal elections, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Help America Vote Act of 2001".

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—PUNCH CARD VOTING MACHINES

Subtitle A—Replacement of Machines

Sec. 101. Establishment of program.
Sec. 102. Eligibility.
Sec. 103. Amount of payment.
Sec. 104. Audit and repayment of funds.
Sec. 105. Punch card voting system defined.

99–006

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Subtitle B—Enhancing Performance of Existing Systems

Sec. 111. Establishment of program.
Sec. 112. Eligibility.
Sec. 113. Amount of payment.
Sec. 114. Audit and repayment of funds.

Subtitle C—General Provisions

Sec. 121. Authorization of appropriations.
Sec. 122. Punch card voting system defined.

TITLE II—COMMISSION

Subtitle A—Establishment and General Organization

PART 1—ELECTION ASSISTANCE COMMISSION

Sec. 201. Establishment.
Sec. 202. Duties.
Sec. 203. Membership and appointment.
Sec. 204. Staff.
Sec. 205. Powers.
Sec. 206. Limitation on rulemaking authority.
Sec. 207. Authorization of appropriations.

PART 2—ELECTION ASSISTANCE COMMISSION STANDARDS BOARD AND BOARD OF ADVISORS

Sec. 211. Establishment.
Sec. 212. Duties.
Sec. 213. Membership of Standards Board.
Sec. 214. Membership of Board of Advisors.
Sec. 215. Powers of boards; no compensation for service.
Sec. 216. Status of boards and members for purposes of claims against board.

Subtitle B—Voluntary Election Standards

Sec. 221. Development of voluntary election standards.
Sec. 222. Technical standards development committee.
Sec. 223. Process for adoption of voluntary standards.
Sec. 224. Certification and testing of voting systems.
Sec. 225. Dissemination of information.

Subtitle C—Election Assistance

PART 1—ELECTION FUND PAYMENTS TO STATES FOR VOTING SYSTEM IMPROVEMENTS

Sec. 231. Election fund payments to States for voting system improvements.
Sec. 232. Allocation of funds.
Sec. 233. Conditions for receipt of funds.
Sec. 234. Authorization of appropriations.

PART 2—GRANTS FOR RESEARCH ON VOTING TECHNOLOGY IMPROVEMENTS

Sec. 241. Grants for research on voting technology improvements.
Sec. 242. Report.
Sec. 243. Authorization of appropriations.

PART 3—PILOT PROGRAM FOR TESTING OF EQUIPMENT AND TECHNOLOGY

Sec. 251. Pilot program.
Sec. 252. Report.
Sec. 253. Authorization of appropriations.

PART 4—MISCELLANEOUS

Sec. 261. Role of National Institute of Standards and Technology.
Sec. 262. Reports.
Sec. 263. Audit.

TITLE III—HELP AMERICA VOTE COLLEGE PROGRAM

Sec. 301. Establishment of Program.
Sec. 302. Activities under Program.
Sec. 303. Authorization of appropriations.

TITLE IV—HELP AMERICA VOTE FOUNDATION

Sec. 401. Help America Vote Foundation.

TITLE V—MINIMUM STANDARDS FOR STATE ELECTION SYSTEMS

Sec. 501. Minimum standards for State election systems.
Sec. 502. Standards described.
Sec. 503. Enforcement.
Sec. 504. Effective date.

TITLE VI—VOTING RIGHTS OF MILITARY MEMBERS AND OVERSEAS CITIZENS

Sec. 601. Voting assistance programs.
Sec. 602. Designation of single State office to provide information on registration and absentee ballots for all voters in State.
Sec. 603. Report on absentee ballots transmitted and received after general elections.
Sec. 604. Simplification of voter registration and absentee ballot application procedures for absent uniformed services and overseas voters.
Sec. 605. Additional duties of Presidential designee under Uniformed and Overseas Citizens Absentee Voting Act.
Sec. 606. Use of buildings on military installations and reserve component facilities as polling places.

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TITLE VII—REDUCED POSTAGE RATES FOR OFFICIAL ELECTION MAIL

Sec. 701. Reduced postage rates for official election mail.

TITLE VIII—TRANSITION PROVISIONS

Subtitle A—Transfer to Commission of Functions Under Certain Laws

Sec. 801. Federal Election Campaign Act of 1971.
Sec. 802. National Voter Registration Act of 1993.
Sec. 803. Transfer of property, records, and personnel.
Sec. 804. Effective date; transition.

Subtitle B—Coverage of Commission Under Certain Laws and Programs

Sec. 811. Treatment of Commission personnel under certain civil service laws.
Sec. 812. Coverage under Inspector General Act of 1978.

TITLE IX—MISCELLANEOUS PROVISIONS

Sec. 901. State defined.
Sec. 902. Miscellaneous provisions to protect integrity of election process.
Sec. 903. No effect on other laws.

TITLE I—PUNCH CARD VOTING MACHINES

Subtitle A—Replacement of Machines

SEC. 101. ESTABLISHMENT OF PROGRAM.

(a) IN GENERAL.—Not later than 30 days after the date of the enactment of this Act, the Administrator of General Services (hereafter in this title referred to as the "Administrator") shall establish a program under which the Administrator shall make a one-time payment to each eligible State or unit of local government which used a punch card voting system to administer the regularly scheduled general election for Federal office held in November 2000.

(b) USE OF FUNDS.—A State or unit of local government shall use the funds provided under a payment under this subtitle (either directly or as reimbursement) to replace its punch card voting system with a voting system which does not use punch cards (by purchase, lease, or such other arrangement as may be appropriate).

(c) DEADLINE.—

(1) IN GENERAL.—A State or unit of local government receiving a payment under the program under this subtitle shall—

(A) obligate the funds provided for the uses described in subsection (b) not later than the date of the regularly scheduled general election for Federal office to be held in November 2002; and

(B) ensure that all of the punch card voting systems under its jurisdiction have been replaced in time for the regularly scheduled general election for Federal office to be held in November 2004.

(2) WAIVER.—If a State or unit of local government provides the Election Assistance Commission (established under section 201) (not later than the date of the regularly scheduled general election for Federal office to be held in November 2002) with a notice that the State or unit will not meet the deadlines described in paragraph (1) and includes in the notice the reasons for the failure to meet such deadlines, and the Commission finds that there is good cause for the failure to meet such deadlines, paragraph (1) shall apply to the State or unit as if—

(A) the reference in paragraph (1)(A) to "November 2002" were a reference to "November 2004"; and

(B) the reference in paragraph (1)(B) to "November 2004" were a reference to "November 2006".

SEC. 102. ELIGIBILITY.

(a) STATES.—A State is eligible to receive a payment under the program under this subtitle if it submits to the Administrator an application not later than 120 days after the date of the enactment of this Act (in such form as the Administrator may require) which contains—

(1) assurances that the State will use the payment (either directly or as reimbursement) to replace punch card voting systems in jurisdictions within the State which used such systems to carry out the general Federal election held in November 2000;

(2) assurances that in replacing punch card voting systems the State will continue to meets its duties under the Voting Accessibility for the Elderly and Handicapped Act (42 U.S.C. 1973ee et seq.) and the Americans With Disabilities Act;

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(3) assurances that in replacing punch card voting systems the State will provide for alternative language accessibility for individuals with limited English proficiency, consistent with the requirements of the Voting Rights Act of 1965 and any other applicable provisions of law; and

(4) such other information and assurances as the Administrator may require which are necessary for the administration of the program.

(b) UNIT OF LOCAL GOVERNMENT.—A unit of local government is eligible to receive a payment under the program under this subtitle if it submits to the Administrator—

(1) not later than the date of the regularly scheduled general election for Federal office to be held in November 2002, a statement of its intent to participate in the program, including assurances that the State in which the unit is located—

(A) failed to submit an application under subsection (a) within the deadline specified under such subsection,

(B) is otherwise not eligible to receive a payment under the program, or

(C) will not use the payment to replace punch card voting systems in the unit; and

(2) an application (at such time and in such form as the Administrator may require) which contains similar assurances to those required to be provided by a State in its application under subsection (a).

SEC. 103. AMOUNT OF PAYMENT.

(a) IN GENERAL.—The amount of payment made to a State or unit of local government under the program under this subtitle shall be equal to the applicable per precinct matching rate of the cost to the State or unit (as the case may be) of replacing the punch card voting systems used in each precinct in the State or unit (as the case may be), except that in no case may the amount of the payment exceed the product of—

(1) the number of voting precincts administered by the State or unit which used a punch card voting system to carry out the general Federal election held in November 2000; and

(2) $6,000.

(b) APPLICABLE PER PRECINCT MATCHING RATE DEFINED.—In subsection (a), the "applicable per precinct matching rate" is—

(1) 90 percent; or

(2) 95 percent, in the case of a precinct whose average per capita income is within the lowest quartile of average per capita incomes for all precincts in the United States (as determined by the 2000 decennial census).

SEC. 104. AUDIT AND REPAYMENT OF FUNDS.

(a) AUDIT.—Funds provided under the program under this subtitle shall be subject to audit by the Administrator.

(b) REPAYMENT FOR FAILURE TO MEET DEADLINES.—If a State or unit of local government (as the case may be) receiving funds under the program under this subtitle fails to meet the deadlines applicable to the State or unit under section 101(c), the State or unit shall pay to the Administrator an amount equal to the amount of the funds provided to the State or unit under the program.

SEC. 105. PUNCH CARD VOTING SYSTEM DEFINED.

For purposes of this subtitle, a "punch card voting system" means any of the following voting systems:

(1) C.E.S.
(2) Datavote.
(3) PBC Counter.
(4) Pollstar.
(5) Punch Card.
(6) Vote Recorder.
(7) Votomatic.

Subtitle B—Enhancing Performance of Existing Systems

SEC. 111. ESTABLISHMENT OF PROGRAM.

(a) IN GENERAL.—Not later than 30 days after the date of the enactment of this Act, the Administrator shall establish a program under which the Administrator shall make a one-time payment to each eligible State or unit of local government

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which used a punch card voting system to administer the regularly scheduled general election for Federal office held in November 2000.

(b) USE OF FUNDS.—A State or unit of local government shall use the funds provided under a payment under this subtitle (either directly or as reimbursement) to make technical enhancements to the performance of its punch card voting system (by any arrangement as may be appropriate).

(c) DEADLINE.—

(1) IN GENERAL.—A State or unit of local government receiving a payment under the program under this subtitle shall—

(A) obligate the funds provided for the uses described in subsection (b) not later than the date of the regularly scheduled general election for Federal office to be held in November 2002; and

(B) ensure that technical enhancements have been made to the performance of all of the punch card voting systems under its jurisdiction in time for the regularly scheduled general election for Federal office to be held in November 2004.

(2) WAIVER.—If a State or unit of local government provides the Election Assistance Commission (established under section 201) (not later than the date of the regularly scheduled general election for Federal office to be held in November 2002) with a notice that the State or unit will not meet the deadlines described in paragraph (1) and includes in the notice the reasons for the failure to meet such deadlines, and the Commission finds that there is good cause for the failure to meet such deadlines, paragraph (1) shall apply to the State or unit as if—

(A) the reference in paragraph (1)(A) to "November 2002" were a reference to "November 2004"; and

(B) the reference in paragraph (1)(B) to "November 2004" were a reference to "November 2006".

SEC. 112. ELIGIBILITY.

(a) STATES.—Subject to subsection (c), a State is eligible to receive a payment under the program under this subtitle if it submits to the Administrator an application not later than 120 days after the date of the enactment of this Act (in such form as the Administrator may require) which contains—

(1) assurances that the State will use the payment (either directly or as reimbursement) to make technical enhancements to the performance of punch card voting systems in jurisdictions within the State which used such systems to carry out the general Federal election held in November 2000;

(2) assurances that in enhancing the performance of such voting systems the State will continue to meets its duties under the Voting Accessibility for the Elderly and Handicapped Act (42 U.S.C. 1973ee et seq.) and the Americans With Disabilities Act; and

(3) such other information and assurances as the Administrator may require which are necessary for the administration of the program.

(b) UNITS OF LOCAL GOVERNMENT.—Subject to subsection (c), a unit of local government is eligible to receive a payment under the program under this subtitle if it submits to the Administrator—

(1) not later than the date of the regularly scheduled general election for Federal office to be held in November 2002, a statement of its intent to participate in the program, including assurances that the State in which the unit is located—

(A) failed to submit an application under subsection (a) within the deadline specified under such subsection,

(B) is otherwise not eligible to receive a payment under the program, or

(C) will not use the payment to enhance the performance of punch card voting systems in the unit; and

(2) an application (at such time and in such form as the Administrator may require) which contains similar assurances to those required to be provided by a State in its application under subsection (a).

(c) PROHIBITING PARTICIPATION IN PUNCH CARD REPLACEMENT PROGRAM.—A State or unit of local government is not eligible to receive a payment under the program under this subtitle if the State or unit receives a payment under the program under subtitle A.

SEC. 113. AMOUNT OF PAYMENT.

(a) IN GENERAL.—The amount of payment made to a State or unit of local government under the program under this subtitle shall be equal to the applicable per precinct matching rate of the cost to the State or unit (as the case may be) of the activities to be funded with the payment under the program in each precinct in the State

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or unit (as the case may be) , except that in no case may the amount of the payment exceed the product of—

(1) the number of voting precincts administered by the State or unit which used a punch card voting system to carry out the general Federal election held in November 2000; and

(2) $2,000.

(b) APPLICABLE PER PRECINCT MATCHING RATE DEFINED.—In subsection (a), the "applicable per precinct matching rate" is—

(1) 90 percent; or

(2) 95 percent, in the case of a precinct whose average per capita income is within the lowest quartile of average per capita incomes for all precincts in the United States (as determined by the 2000 decennial census).

SEC. 114. AUDIT AND REPAYMENT OF FUNDS.

(a) AUDIT.—Funds provided under the program under this subtitle shall be subject to audit by the Administrator.

(b) REPAYMENT FOR FAILURE TO MEET REQUIREMENTS.—If a State or unit of local government (as the case may be) receiving funds under the program under this subtitle fails to meet the deadlines applicable to the State or unit under section 111(c), the State or unit shall pay to the Administrator an amount equal to the amount of the funds provided to the State or unit under the program.

Subtitle C—General Provisions

SEC. 121. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There are authorized to be appropriated for payments under this title $400,000,000, to remain available until expended (subject to subsection (b)).

(b) USE OF RETURNED FUNDS AND FUNDS REMAINING UNEXPENDED FOR ELECTION FUND PAYMENTS.—

(1) IN GENERAL.—The amounts referred to in paragraph (2) shall be transferred to the Election Assistance Commission (established under title II) and used by the Commission to make Election Fund payments under part 1 of subtitle C of title II.

(2) AMOUNTS DESCRIBED.—The amounts referred to in this paragraph are as follows:

(A) Any amounts appropriated pursuant to the authorization under this section which remain unobligated as of the date of the regularly scheduled general election for Federal office held in November 2002.

(B) Any amounts paid to the Administrator by a State or unit of local government under section 104(b).

(B) Any amounts paid to the Administrator by a State or unit of local government under section 114(b).

SEC. 122. PUNCH CARD VOTING SYSTEM DEFINED.

For purposes of this title, a "punch card voting system" means any of the following voting systems:

(1) C.E.S.
(2) Datavote.
(3) PBC Counter.
(4) Pollstar.
(5) Punch Card.
(6) Vote Recorder.
(7) Votomatic.

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TITLE II—COMMISSION

Subtitle A—Establishment and General Organization

PART 1—ELECTION ASSISTANCE COMMISSION

SEC. 201. ESTABLISHMENT.

There is hereby established as an independent entity in the executive branch the Election Assistance Commission (hereafter in this title referred to as the "Commission"), consisting of—

(1) the members appointed under this part;

(2) the Election Assistance Commission Standards Board established under part 2 (including the Executive Board of such Board); and

(3) the Election Assistance Commission Board of Advisors established under part 2.

SEC. 202. DUTIES.

The Commission shall serve as a national clearinghouse and resource for the compilation of information and review of procedures with respect to the administration of Federal elections by—

(1) carrying out the duties described in subtitle B (relating to voluntary election standards);

(2) carrying out the duties described in subtitle C (relating to election assistance); and

(3) developing and carrying out the Help America Vote College Program under title III.

SEC. 203. MEMBERSHIP AND APPOINTMENT.

(a) MEMBERSHIP.—

(1) IN GENERAL.—The Commission shall have 4 members appointed by the President, by and with the consent of the Senate, of whom—

(A) 1 shall be appointed from among a list of nominees submitted by the majority leader of the Senate;

(B) 1 shall be appointed from among a list of nominees submitted by the minority leader of the Senate;

(C) 1 shall be appointed from among a list of nominees submitted by the Speaker of the House of Representatives; and

(D) 1 shall be appointed from among a list of nominees submitted by the minority leader of the House of Representatives.

(2) QUALIFICATIONS.—Each member of the Commission shall have experience with or expertise in election administration or the study of elections, except that no individual may serve as a member of the Commission if the individual is an officer or employee of the Federal Government at any time during the period of service on the Commission.

(3) DATE OF APPOINTMENT.—The appointments of the members of the Commission shall be made not later than 30 days after the date of enactment of this Act.

(b) TERM OF SERVICE.—

(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), members shall serve for a term of 4 years and may be reappointed for not more than one additional term.

(2) TERMS OF INITIAL APPOINTEES.—As designated by the President at the time of appointment, of the members first appointed—

(A) 2 of the members (not more than 1 of whom may be affiliated with the same political party) shall be appointed for a term of 2 years; and

(B) 2 of the members (not more than 1 of whom may be affiliated with the same political party) shall be appointed for a term of 4 years.

(3) VACANCIES.—

(A) IN GENERAL.—A vacancy on the Commission shall be filled in the manner in which the original appointment was made and shall be subject to any conditions which applied with respect to the original appointment.

(B) EXPIRED TERMS.—A member of the Commission may serve on the Commission after the expiration of the member's term until the successor of such member has taken office as a member of the Commission.

(C) UNEXPIRED TERMS.—An individual chosen to fill a vacancy shall be appointed for the unexpired term of the member replaced.

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(c) CHAIR AND VICE CHAIR.—The Commission shall select a chair and vice chair from among its members for a term of 1 year, except that the chair and vice chair may not be affiliated with the same political party.

(d) COMPENSATION.—

(1) IN GENERAL.—Members of the Commission shall each be paid at an annual rate equal to $30,000.

(2) TRAVEL EXPENSES.—Members of the Commission shall each receive travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Commission.

(3) OUTSIDE EMPLOYMENT PERMITTED.—A member of the Commission may hold any other office or employment not inconsistent or in conflict with the member's duties, responsibilities, and powers as a member of the Commission.

SEC. 204. STAFF.

(a) EXECUTIVE DIRECTOR AND OTHER STAFF.—

(1) IN GENERAL.—The Commission shall have an Executive Director, who shall be paid at a rate not to exceed the rate of basic pay for level V of the Executive Schedule.

(2) TERM OF SERVICE FOR EXECUTIVE DIRECTOR.—Except as provided in paragraph (3)(C), the Executive Director shall serve for a term of 4 years. An Executive Director may be reappointed for additional terms.

(3) PROCEDURE FOR APPOINTMENT.—

(A) IN GENERAL.—When a vacancy exists in the position of the Executive Director, the Election Assistance Commission Standards Board and the Election Assistance Commission Board of Advisors (described in part 2) shall each appoint a search committee to recommend not fewer than 3 nominees for the position.

(B) REQUIRING CONSIDERATION OF NOMINEES.—Except as provided in subparagraph (C), the Commission shall consider the nominees recommended by the Standards Board and the Board of Advisors in appointing the Executive Director.

(C) SPECIAL RULES FOR FIRST EXECUTIVE DIRECTOR.—

(i) CONVENING OF SEARCH COMMITTEES.—The Standards Board and the Board of Advisors shall each appoint a search committee and recommend nominees for the position of Executive Director in accordance with subparagraph (A) as soon as practicable after the appointment of their members.

(ii) INTERIM INITIAL APPOINTMENT.—Notwithstanding subparagraph (B), the Commission may appoint an individual to serve as the first Executive Director prior to the recommendation of nominees for the position by the Standards Board or the Board of Advisors, except that such individual's term of service may not exceed 6 months. Nothing in the previous sentence may be construed to prohibit the individual serving as the first Executive Director from serving any additional term.

(4) OTHER STAFF.—Subject to rules prescribed by the Commission, the Executive Director may appoint and fix the pay of such additional personnel as the Executive Director considers appropriate.

(5) APPLICABILITY OF CERTAIN CIVIL SERVICE LAWS.—The Executive Director and staff of the Commission may be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of that title relating to classification and General Schedule pay rates, except that an individual so appointed may not receive pay in excess of the annual rate of basic pay for level V of the Executive Schedule.

(b) EXPERTS AND CONSULTANTS.—Subject to rules prescribed by the Commission, the Executive Director may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, with the approval of a majority of the members of the Commission.

(c) STAFF OF FEDERAL AGENCIES.—Upon request of the Chair, the head of any Federal department or agency may detail, on a reimbursable basis, any of the personnel of that department or agency to the Commission to assist it in carrying out its duties under this Act.

(d) ARRANGING FOR ASSISTANCE FOR BOARD OF ADVISORS AND STANDARDS BOARD.—At the request of the Election Assistance Commission Board of Advisors or the Election Assistance Commission Standards Board established under part 2, the Executive Director shall enter into such arrangements as the Executive Director considers appropriate to make personnel available to assist the Boards with car-

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rying out their duties under this title (including contracts with private individuals for providing temporary personnel services or the temporary detailing of personnel of the Commission).

(e) CONSULTATION WITH BOARD OF ADVISORS AND STANDARDS BOARD ON CERTAIN MATTERS.—In preparing the program goals, long-term plans, mission statements, and related matters for the Commission, the Executive Director and staff of the Commission shall consult with the Election Assistance Commission Board of Advisors and the Election Assistance Commission Standards Board established under part 2.

SEC. 205. POWERS.

(a) HEARINGS AND SESSIONS.—The Commission may hold such hearings for the purpose of carrying out this Act, sit and act at such times and places, take such testimony, and receive such evidence as the Commission considers advisable to carry out this Act. The Commission may administer oaths and affirmations to witnesses appearing before the Commission.

(b) INFORMATION FROM FEDERAL AGENCIES.—The Commission may secure directly from any Federal department or agency such information as the Commission considers necessary to carry out this Act. Upon request of the Chair of the Commission, the head of such department or agency shall furnish such information to the Commission.

(c) POSTAL SERVICES.—The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

(d) ADMINISTRATIVE SUPPORT SERVICES.—Upon the request of the Chair of the Commission, the Administrator of General Services shall provide to the Commission, on a reimbursable basis, the administrative support services that are necessary to enable the Commission to carry out its duties under this Act.

(e) CONTRACTS.—The Commission may contract with and compensate persons and Federal agencies for supplies and services without regard to section 3709 of the Revised Statutes of the United States (41 U.S.C. 5).

SEC. 206. LIMITATION ON RULEMAKING AUTHORITY.

The Commission shall not have any authority to issue any rule, promulgate any regulation, or take any other action which imposes any requirement on any State or unit of local government, except to the extent permitted under the National Voter Registration Act of 1993.

SEC. 207. AUTHORIZATION OF APPROPRIATIONS.

In addition to the amounts authorized for payments and grants under subtitle C and the amounts authorized to be appropriated for the program under section 303, there are authorized to be appropriated for each of the fiscal years 2002 through 2004 such sums as may be necessary (but not to exceed $10,000,000 for each such year) for the Commission to carry out its duties under this title.

PART 2—ELECTION ASSISTANCE COMMISSION STANDARDS BOARD AND BOARD OF ADVISORS

SEC. 211. ESTABLISHMENT.

There are hereby established the Election Assistance Commission Standards Board (hereafter in this title referred to as the "Standards Board") and the Election Assistance Commission Board of Advisors (hereafter in this title referred to as the "Board of Advisors").

SEC. 212. DUTIES.

The Standards Board and the Board of Advisors shall each, in accordance with the procedures described in section 223, review any of the voluntary engineering and procedural performance standards described in section 221(a)(1), any of the voluntary standards described in section 221(a)(4), and any of the voluntary election management practice standards described in section 221(a)(6) (and any modifications to such standards) which are recommended by the Commission under subtitle B.

SEC. 213. MEMBERSHIP OF STANDARDS BOARD.

(a) COMPOSITION.—

(1) IN GENERAL.—Subject to certification by the chair of the Federal Election Commission under subsection (b), the Standards Board shall be composed of 110 members as follows:

(A) 55 shall be the chief State election officials of each State.

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(B) 55 shall be local election officials selected in accordance with paragraph (2).

(2) LIST OF LOCAL ELECTION OFFICIALS.—Each State's local election officials shall select (under a process supervised by the chief election official of the State) a representative local election official from the State for purposes of paragraph (1)(B). In the case of the District of Columbia, Guam, and American Samoa, the chief election official shall establish a procedure for selecting an individual to serve as a local election official for purposes of such paragraph, except that under such a procedure the individual selected may not be a member of the same political party as the chief election official.

(3) REQUIRING MIX OF POLITICAL PARTIES REPRESENTED.—The 2 members of the Standards Board who represent the same State may not be members of the same political party.

(b) PROCEDURES FOR NOTICE AND CERTIFICATION OF APPOINTMENT.—

(1) NOTICE TO CHAIR OF FEDERAL ELECTION COMMISSION.—Not later than 90 days after the date of the enactment of this Act, a State shall transmit a notice to chair of the Federal Election Commission containing—

(A) a statement that the chief election official of the State agrees to serve on the Standards Board under this title; and

(B) the name of the representative local election official from the State selected under subsection (a)(2) who will serve on the Standards Board under this title.

(2) CERTIFICATION.—Upon receiving a notice from a State under paragraph (1), the chair of the Federal Election Commission shall publish a certification that the chief election official and the representative local election official are appointed as members of the Standards Board under this title.

(3) EFFECT OF FAILURE TO PROVIDE NOTICE.—If a State does not transmit a notice to the chair of the Federal Election Commission under paragraph (1) within the deadline described in such paragraph, no representative from the State may participate in the selection of the Executive Board under subsection (c).

(4) ROLE OF COMMISSION.—Upon the appointment of the members of the Election Assistance Commission, the Election Assistance Commission shall carry out the duties of the Federal Election Commission under this subsection.

(c) EXECUTIVE BOARD.—

(1) IN GENERAL.—Not later than 60 days after the last day on which the appointment of any of its members may be certified under subsection (b), the Standards Board shall select 9 of its members to serve as the Executive Board of the Standards Board, of whom—

(A) not more than 5 may be chief State election officials;

(B) not more than 5 may be local election officials; and

(C) not more than 5 may be members of the same political party.

(2) TERMS.—Except as provided in paragraph (3), members of the Executive Board of the Standards Board shall serve for a term of 2 years and may not serve for more than 3 consecutive terms.

(3) STAGGERING OF INITIAL TERMS.—Of the members first selected to serve on the Executive Board of the Standards Board—

(A) 3 shall serve for one term;

(B) 3 shall serve for 2 consecutive terms; and

(C) 3 shall serve for 3 consecutive terms,

as determined by lot at the time the members are first appointed.

(4) DUTIES.—In addition to any other duties assigned under this title, the Executive Board of the Standards Board may carry out such duties of the Standards Board as the Standards Board may delegate.

SEC. 214. MEMBERSHIP OF BOARD OF ADVISORS.

(a) IN GENERAL.—The Board of Advisors shall be composed of 25 members appointed as follows:

(1) 2 members appointed by the United States Commission on Civil Rights.

(2) 2 members appointed by the Architectural and Transportation Barrier Compliance Board under section 502 of the Rehabilitation Act of 1973 (29 U.S.C. 792).

(3) 2 members appointed by the National Governors Association.

(4) 2 members appointed by the National Conference of State Legislatures.

(5) 2 members appointed by the National Association of Secretaries of State.

(6) 2 members appointed by the National Association of State Election Directors.

(7) 2 members appointed by the National Association of Counties.

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(8) 2 members appointed by the National Association of County Recorders, Election Administrators, and Clerks.

(9) 2 members appointed by the United States Conference of Mayors.

(10) 2 members appointed by the Election Center.

(11) 2 members appointed by the International Association of County Recorders, Election Officials, and Treasurers.

(12) 2 members representing professionals in the field of science and technology, of whom 1 shall be appointed by the Speaker of the House of Representatives and 1 shall be appointed by the majority leader of the Senate (or, if the majority leader is a member of the same political party as the Speaker, by the minority leader of the Senate).

(13) The chief of the Office of Public Integrity of the Department of Justice, or the chief's designee.

(b) DIVERSITY IN APPOINTMENTS.—Appointments shall be made to the Board of Advisors under subsection (a) in a manner which ensures that the Board of Advisors will be bipartisan in nature and will reflect the various geographic regions of the United States.

(c) TERM OF SERVICE; VACANCY.—Members of the Board of Advisors shall serve for a term of 2 years, and may be reappointed. Any vacancy in the Board of Advisors shall be filled in the manner in which the original appointment was made.

(d) CHAIR.—The Board of Advisors shall elect a Chair from among its members.

SEC. 215. POWERS OF BOARDS; NO COMPENSATION FOR SERVICE.

(a) HEARINGS AND SESSIONS.—

(1) IN GENERAL.—To the extent that funds are made available by the Commission, the Standards Board (acting through the Executive Board) and the Board of Advisors may each hold such hearings for the purpose of carrying out this Act, sit and act at such times and places, take such testimony, and receive such evidence as each such Board considers advisable to carry out this title, except that the Boards may not issue subpoenas requiring the attendance and testimony of witnesses or the production of any evidence.

(2) MEETINGS.—The Standards Board and the Board of Advisors shall each hold a meeting of its members—

(A) not less frequently than once every year for purposes of voting on the standards referred to it under section 223;

(B) in the case of the Standards Board, not less frequently than once every 2 years for purposes of selecting the Executive Board; and

(C) at such other times as it considers appropriate for purposes of conducting such other business as it considers appropriate consistent with this title.

(b) INFORMATION FROM FEDERAL AGENCIES.—The Standards Board and the Board of Advisors may each secure directly from any Federal department or agency such information as the Board considers necessary to carry out this Act. Upon request of the Executive Board (in the case of the Standards Board) or the Chair (in the case of the Board of Advisors), the head of such department or agency shall furnish such information to the Board.

(c) POSTAL SERVICES.—The Standards Board and the Board of Advisors may use the United States mails in the same manner and under the same conditions as a department or agency of the Federal Government.

(d) ADMINISTRATIVE SUPPORT SERVICES.—Upon the request of the Executive Board (in the case of the Standards Board) or the Chair (in the case of the Board of Advisors), the Administrator of the General Services Administration shall provide to the Board, on a reimbursable basis, the administrative support services that are necessary to enable the Board to carry out its duties under this title.

(e) NO COMPENSATION FOR SERVICE.—Members of the Standards Board and members of the Board of Advisors shall not receive any compensation for their service, but shall be paid travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Board.

SEC. 216. STATUS OF BOARDS AND MEMBERS FOR PURPOSES OF CLAIMS AGAINST BOARD.

(a) IN GENERAL.—The provisions of chapters 161 and 171 of title 28, United States Code, shall apply with respect to the liability of the Standards Board, the Board of Advisors, and their members for acts or omissions performed pursuant to and in the course of the duties and responsibilities of the Board.

(b) EXCEPTION FOR CRIMINAL ACTS AND OTHER WILLFUL CONDUCT.—Subsection (a) may not be construed to limit personal liability for criminal acts or omissions, willful or malicious misconduct, acts or omissions for private gain, or any other act

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or omission outside the scope of the service of a member of the Standards Board or the Board of Advisors.

Subtitle B—Voluntary Election Standards

SEC. 221. DEVELOPMENT OF VOLUNTARY ELECTION STANDARDS.

(a) IN GENERAL.—The Commission shall:

(1) In accordance with section 223, develop (through the Executive Director of the Commission), adopt, and update (not less often than every 4 years thereafter) voluntary engineering and procedural performance standards for voting systems used in Federal elections which shall meet the following requirements:

(A) The scope of the standards should include security (including a documentary audit for non-ballot systems), the procedures for certification and decertification of software and hardware, the assessment of usability, and operational guidelines for the proper use and maintenance of equipment.

(B) The standards should provide that voters have the opportunity to correct errors at the precinct or other polling place, either within the voting equipment itself or in the operational guidelines to administrators for using the equipment, under conditions which assure privacy to the voter.

(C) Each voting tally system certified for use should include as part of the certification a proposed statement of what constitutes a proper vote in the design and operation of the system.

(D) New voting equipment systems certified either by the Federal government or by any State should provide a practical and effective means for voters with physical disabilities to cast a secret ballot.

(2) Maintain a clearinghouse of information on the experiences of State and local governments in implementing the voluntary standards described in paragraph (1) and in operating voting systems in general.

(3) In accordance with section 224, provide for the voluntary testing, certification, decertification, and recertification of voting systems.

(4) Advise States and units of local government regarding compliance with the requirements of the Voting Accessibility for the Elderly and Handicapped Act (42 U.S.C. 1973ee et seq.) and compliance with other Federal laws regarding accessibility of registration facilities and polling places. Additionally, in accordance with section 223, the Commission shall develop (through the Executive Director of the Commission), adopt, and update (not less often than every 4 years thereafter) voluntary standards for maintaining and enhancing the accessibility and privacy of registration facilities, polling places, and voting methods with the goal of promoting for all individuals, including the elderly and individuals with disabilities, the accessibility of polling places and the effective use of voting systems and voting equipment which provide the opportunity for casting a secure and secret ballot, and shall include in such standards voluntary guidelines regarding accessibility and ease-of-use for States and units of local government to use when obtaining voting equipment and selecting polling places. In carrying out this paragraph, the Commission shall consult with the Architectural and Transportation Barrier Compliance Board under section 502 of the Rehabilitation Act of 1973 (29 U.S.C. 792) and other individuals and entities with expertise in the accessibility of facilities for individuals with disabilities.

(5) Make periodic studies available to the public regarding the election administration issues described in subsection (b), with the goal of promoting methods of voting and administering elections which—

(A) will be the most convenient, accessible, and easy to use for voters, including members of the uniformed services, blind and disabled voters, and voters with limited English proficiency;

(B) will yield the most accurate, secure, and expeditious system for voting and tabulating election results;

(C) will be nondiscriminatory and afford each registered and eligible voter an equal opportunity to vote; and

(D) will be efficient and cost-effective for use.

(6) In accordance with section 223, develop (through the Executive Director of the Commission), adopt, and update (not less often than every 4 years) voluntary election management practice standards for State and local election officials to maintain and enhance the administration of Federal elections, including standards developed in consultation with the Secretary of Defense to govern the treatment of absent uniformed services voters (as defined in section 107(1) of the Uniformed and Overseas Citizens Absentee Voting Act) and overseas voters (as defined in section 107(5) of such Act) which will include provisions to address each of the following:

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(A) The rights of residence of uniformed services voters absent due to military orders.

(B) The rights of absent uniformed services voters and overseas voters to register to vote and cast absentee ballots.

(C) The rights of absent uniformed services voters and overseas voters to submit absentee ballot applications early during an election year.

(D) The appropriate pre-election deadline for mailing absentee ballots to absent uniformed services voters and overseas voters.

(E) The appropriate minimum period between the mailing of absentee ballots to absent uniformed services voters and overseas voters and the deadline for receipt of such ballots.

(F) The timely transmission of balloting materials to absent uniformed services voters and overseas voters.

(G) Security and privacy concerns in the transmission, receipt, and processing of ballots from absent uniformed services voters and overseas voters, including the need to protect against fraud.

(H) The use of a single application by absent uniformed services voters and overseas voters for absentee ballots for all Federal elections occurring during a year.

(I) The use of a single application for voter registration and absentee ballots by absent uniformed services voters and overseas voters.

(J) The use of facsimile machines and electronic means of transmission of absentee ballot applications and absentee ballots to absent uniformed services voters and overseas voters.

(K) Other issues related to the rights of absent uniformed services voters and overseas voters to participate in elections.

(7) Carry out the provisions of section 9 of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg–7) regarding mail voter registration.

(8) Make information on the Federal election system available to the public and the media.

(9) At the request of State officials, assist such officials in the review of election or vote counting procedures in Federal elections, through bipartisan panels of election professionals assembled by the Commission for such purpose.

(10) Compile and make available to the public the official certified results of general elections for Federal office and reports comparing the rates of voter registration, voter turnout, voting system functions, and ballot errors among jurisdictions in the United States.

(11) Gather information and serve as a clearinghouse concerning issues relating to Federal, State, and local elections.

(b) ELECTION ADMINISTRATION ISSUES DESCRIBED.—The election administration issues described in this subsection are as follows:

(1) Current and alternate methods and mechanisms of voting and counting votes in elections for Federal office.

(2) Current and alternate ballot designs for elections for Federal office.

(3) Current and alternate methods of voter registration, maintaining secure and accurate lists of registered voters (including the establishment of a centralized, interactive, statewide voter registration list linked to relevant agencies and all polling sites), and ensuring that all registered voters appear on the polling list at the appropriate polling site.

(4) Current and alternate methods of conducting provisional voting.

(5) Current and alternate methods of ensuring the accessibility of voting, registration, polling places, and voting equipment to all voters, including disabled voters and voters with limited English proficiency.

(6) Current and alternate methods of voter registration for members of the uniformed services and overseas voters, and methods of ensuring that such voters receive timely ballots that will be properly and expeditiously handled and counted.

(7) Current and alternate methods of recruiting and improving the performance of poll workers.

(8) Federal and State laws governing the eligibility of persons to vote.

(9) Current and alternate methods of educating voters about the process of registering to vote and voting, the operation of voting mechanisms, the location of polling places, and all other aspects of participating in elections.

(10) Matters particularly relevant to voting and administering elections in rural and urban areas.

(11) Conducting elections for Federal office on different days, at different places, and during different hours, including the advisability of establishing a uniform poll closing time.

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(12) The ways that the Federal Government can best assist State and local authorities to improve the administration of elections for Federal office and what levels of funding would be necessary to provide such assistance.

(c) CONSULTATION WITH STANDARDS BOARD AND BOARD OF ADVISORS.—The Commission shall carry out its duties under this subtitle in consultation with the Standards Board and the Board of Advisors.

SEC. 222. TECHNICAL STANDARDS DEVELOPMENT COMMITTEE.

(a) ESTABLISHMENT.—There is hereby established the Technical Standards Development Committee (hereafter in this subtitle referred to as the "Development Committee").

(b) DUTIES.—

(1) IN GENERAL.—The Development Committee shall assist the Executive Director of the Commission in the development of voluntary standards under this subtitle by recommending standards (and modifications to standards) to ensure the usability, accuracy, security, accessibility, and integrity of voting systems and voting equipment.

(2) DEADLINE FOR INITIAL SET OF RECOMMENDATIONS.—The Development Committee shall provide its first set of recommendations under this section to the Executive Director of the Commission not later than 9 months after all of its members have been appointed.

(c) MEMBERSHIP.—

(1) IN GENERAL.—The Development Committee shall be composed of the Director of the National Institute of Standards and Technology (who shall serve as its chair), together with a group of 14 other individuals appointed jointly by the Commission and the Director of the National Institute of Standards and Technology, consisting of the following:

(A) An equal number of each of the following:

(i) Members of the Standards Board.

(ii) Members of the Board of Advisors.

(iii) Members of the Architectural and Transportation Barrier Compliance Board under section 502 of the Rehabilitation Act of 1973 (29 U.S.C. 792).

(B) A representative of the American National Standards Institute.

(C) Other individuals with technical and scientific expertise relating to voting systems and voting equipment.

(2) QUORUM.—A majority of the members of the Development Committee shall constitute a quorum, except that the Development Committee may not conduct any business prior to the appointment of all of its members.

(d) NO COMPENSATION FOR SERVICE.—Members of the Development Committee shall not receive any compensation for their service, but shall be paid travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Development Committee.

(e) TECHNICAL SUPPORT FROM NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY.—At the request of the Development Committee, the Director of the National Institute of Standards and Technology shall provide the Development Committee with technical support necessary for the Development Committee to carry out its duties under this subtitle.

(f) PUBLICATION OF RECOMMENDATIONS IN FEDERAL REGISTER.—At the time the Commission adopts any standard pursuant to section 223, the Development Committee shall cause to have published in the Federal Register the recommendations it provided under this section to the Executive Director of the Commission concerning the standard adopted.

SEC. 223. PROCESS FOR ADOPTION OF VOLUNTARY STANDARDS.

(a) CONSIDERATION OF RECOMMENDATIONS OF DEVELOPMENT COMMITTEE; SUBMISSION OF PROPOSED VOLUNTARY STANDARDS TO BOARD OF ADVISORS AND STANDARDS BOARD.—

(1) CONSIDERATION OF RECOMMENDATIONS OF DEVELOPMENT COMMITTEE.—In developing standards and modifications for purposes of this section, the Executive Director of the Commission shall take into consideration the recommendations provided by the Technical Standards Development Committee under section 222.

(2) BOARD OF ADVISORS.—The Executive Director of the Commission shall submit each of the voluntary engineering and procedural performance standards (described in section 221(a)(1)), each of the voluntary standards described in section 221(a)(4), and each of the voluntary election management practice

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standards (described in section 221(a)(6)) developed by the Executive Director (or any modifications to such standards) to the Board of Advisors.

(3) STANDARDS BOARD.—The Executive Director of the Commission shall submit each of the voluntary engineering and procedural performance standards (described in section 221(a)(1)), each of the voluntary standards described in section 221(a)(4), and each of the voluntary election management practice standards (described in section 221(a)(6)) developed by the Executive Director (or any modifications to such standards) to the Executive Board of the Standards Board, who shall review the standard (or modification) and forward its recommendations to the Standards Board.

(b) REVIEW.—Upon receipt of a voluntary standard described in subsection (a) (or modification of such a standard) from the Executive Director of the Commission, the Board of Advisors and the Standards Board shall each review and submit comments and recommendations regarding the standard (or modification) to the Commission.

(c) FINAL APPROVAL.—

(1) IN GENERAL.—A voluntary standard described in subsection (a) (or modification of such a standard) shall not be considered to be finally adopted by the Commission unless the majority of the members of the Commission vote to approve the final adoption of the standard (or modification), taking into consideration the comments and recommendations submitted by the Board of Advisors and the Standards Board under subsection (b).

(2) MINIMUM PERIOD FOR CONSIDERATION OF COMMENTS AND RECOMMENDATIONS.—The Commission may not vote on the final adoption of a voluntary standard described in subsection (a) (or modification of such a standard) until the expiration of the 90-day period which begins on the date the Executive Director of the Commission submits the standard (or modification) to the Board of Advisors and the Standards Board under subsection (a).

SEC. 224. CERTIFICATION AND TESTING OF VOTING SYSTEMS.

(a) CERTIFICATION AND TESTING.—

(1) IN GENERAL.—The Commission shall provide for the testing, certification, decertification, and recertification of voting system hardware and software by accredited laboratories.

(2) OPTIONAL USE BY STATES.—At the option of a State, the State may provide for the testing, certification, decertification, or recertification of its voting system hardware and software by the laboratories accredited by the Commission under this section.

(b) LABORATORY ACCREDITATION.—

(1) RECOMMENDATIONS BY NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY.—Not later than 6 months after the Commission first adopts voluntary engineering and procedural performance standards under this subtitle, the Director of the National Institute of Standards and Technology shall conduct an evaluation of independent, non-Federal laboratories and shall submit to the Commission a list of those laboratories the Director proposes to be accredited to carry out the testing, certification, decertification, and recertification provided for under this section.

(2) APPROVAL BY COMMISSION.—The Commission shall vote on the proposed accreditation of each laboratory on the list submitted under paragraph (1), and no laboratory may be accredited for purposes of this section unless its accreditation is approved by a majority vote of the members of the Commission.

(c) CONTINUING REVIEW BY NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY.—

(1) IN GENERAL.—In cooperation with the Commission and in consultation with the Standards Board and the Board of Advisors, the Director of the National Institute of Standards and Technology shall monitor and review, on an ongoing basis, the performance of the laboratories accredited by the Commission under this section, and shall make such recommendations to the Commission as it considers appropriate with respect to the continuing accreditation of such laboratories, including recommendations to revoke the accreditation of any such laboratory.

(2) APPROVAL BY COMMISSION REQUIRED FOR REVOCATION.—The accreditation of a laboratory for purposes of this section may not be revoked unless the revocation is approved by a majority vote of the members of the Commission.

SEC. 225. DISSEMINATION OF INFORMATION.

On an ongoing basis, the Commission shall disseminate to the public (through the Internet, published reports, and such other methods as the Commission considers appropriate) information on the activities carried out under this subtitle, including—

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(1) the voluntary election standards adopted by the Commission, together with guidelines for applying the standards and other information to assist in their implementation;

(2) the list of laboratories accredited to carry out testing, certification, decertification, and recertification of voting system hardware and software under section 224; and

(3) a list of voting system hardware and software products which have been certified pursuant to section 224 as meeting the applicable voluntary standards adopted by the Commission under this subtitle.

Subtitle C—Election Assistance

PART 1—ELECTION FUND PAYMENTS TO STATES FOR VOTING SYSTEM IMPROVEMENTS

SEC. 231. ELECTION FUND PAYMENTS TO STATES FOR VOTING SYSTEM IMPROVEMENTS.

(a) IN GENERAL.—The Commission shall make an Election Fund payment each year in an amount determined under section 232 to each State which meets the requirements described in section 233 for the year.

(b) USE OF FUNDS.—A State receiving an Election Fund payment shall use the payment for any or all of the following activities:

(1) Establishing and maintaining accurate lists of eligible voters.

(2) Encouraging eligible voters to vote.

(3) Improving verification and identification of voters at the polling place.

(4) Improving equipment and methods for casting and counting votes.

(5) Recruiting and training election official and poll workers.

(6) Improving the quantity and quality of available polling places.

(7) Educating voters about their rights and responsibilities.

(8) Assuring access for voters with physical disabilities.

(9) Carrying out other activities to improve the administration of elections in the State.

(c) ADOPTION OF COMMISSION STANDARDS NOT REQUIRED TO RECEIVE PAYMENT.—Nothing in this part may be construed to require a State to implement any of the voluntary standards adopted by the Commission with respect to any matter as a condition for receiving an Election Fund payment.

(d) SCHEDULE OF PAYMENTS.—As soon as practicable after all members of the Commission are appointed (but in no event later than 6 months thereafter), and not less frequently than once each calendar year thereafter, the Commission shall make Election Fund payments to States under this part.

SEC. 232. ALLOCATION OF FUNDS.

(a) IN GENERAL.—Subject to subsection (c), the amount of an Election Fund payment made to a State for a year shall be equal to the product of—

(1) the total amount appropriated for Election Fund payments for the year under section 234; and

(2) the State allocation percentage for the State (as determined under subsection (b)).

(b) STATE ALLOCATION PERCENTAGE DEFINED.—The "State allocation percentage" for a State is the amount (expressed as a percentage) equal to the quotient of—

(1) the voting age population of the State; and

(2) the total voting age population of all States.

(c) MINIMUM AMOUNT OF PAYMENT.—The amount of an Election Fund payment made to a State for a year may not be less than—

(1) in the case of any of the several States or the District of Columbia, ½ of 1 percent of the total amount appropriated for Election Fund payments for the year under section 234; or

(2) in the case of the Commonwealth of Puerto Rico, Guam, American Samoa, or the United States Virgin Islands, 20% of the amount described in paragraph (1).

(d) CONTINUING AVAILABILITY OF FUNDS AFTER APPROPRIATION.—An Election Fund payment made to a State under this part shall be available to the State without fiscal year limitation.

SEC. 233. CONDITIONS FOR RECEIPT OF FUNDS.

(a) IN GENERAL.—In order to receive an Election Fund payment for a fiscal year, the chief State election official of the State shall provide the Commission with the following certifications:

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(1) A certification that the State has authorized and appropriated funds for carrying out the activities for which the Election Fund payment is made in an amount equal to 25 percent of the total amount to be spent for such activities (taking into account the Election Fund payment and the amount spent by the State).

(2) A certification that the State has set a uniform Statewide benchmark for voting system performance in each local jurisdiction administering elections, expressed as a percentage of residual vote in the contest at the top of the ballot, and requires local jurisdictions to report data relevant to this benchmark after each general election for Federal office.

(3) A certification that the State is in compliance with the voluntary voting system standards and certification processes adopted by the Commission or that the State has enacted legislation establishing its own State voting system standards and processes which (at a minimum) ensure that new voting mechanisms have the audit capacity to produce a record for each ballot cast.

(4) A certification that—

(A) in each precinct or polling place in the State, there is at least one voting system available which is fully accessible to individuals with physical disabilities; and

(B) if the State uses any portion of its Election Fund payment to obtain new voting machines, at least one voting machine in each polling place in the State will be fully accessible to individuals with physical disabilities.

(5) A certification that the State has established a fund described in subsection (b) for purposes of administering its activities under this part.

(6) A certification that, in administering election systems, the State is in compliance with the existing applicable requirements of the Voting Rights Act of 1965 (42 U.S.C. 1973 et seq.), the National Voter Registration Act of 1993 (42 U.S.C. 1973gg et seq.), the Voting Accessibility for the Elderly and Handicapped Act (42 U.S.C. 1973ee et seq.), and the Americans With Disabilities Act of 1990 (42 U.S.C. 12101 et seq.).

(7) A certification that the State provides for voter education and poll worker training programs to improve access to and participation in the electoral process, and provides relevant training in the requirements of the National Voter Registration Act of 1993 for personnel of State motor vehicle authority offices and other voter registration agencies designated by the State under such Act.

(8) A certification that the Election Fund payment has not and will not supplant funds provided under existing programs funded in the State for carrying out the activities for which the Election Fund payment is made.

(b) REQUIREMENTS FOR ELECTION FUND.—

(1) ELECTION FUND DESCRIBED.—For purposes of subsection (a)(5), a fund described in this subsection with respect to a State is a fund which is established in the treasury of the State government, which is used in accordance with paragraph (2), and which consists of the following amounts:

(A) Amounts appropriated or otherwise made available by the State for carrying out the activities for which the Election Fund payment is made to the State under this part.

(B) The Election Fund payment made to the State under this part.

(C) Such other amounts as may be appropriated under law.

(D) Interest earned on deposits of the fund.

(2) USE OF FUND.—Amounts in the fund shall be used by the State exclusively to carry out the activities for which the Election Fund payment is made to the State under this part.

(c) METHODS OF COMPLIANCE LEFT TO DISCRETION OF STATE.—The specific choices on the methods of complying with the requirements described in subsection (a) shall be left to the discretion of the State.

(d) CHIEF STATE ELECTION OFFICIAL DEFINED.—In this subtitle, the "chief State election official" of a State is the individual designated by the State under section 10 of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg–8) to be responsible for coordination of the State's responsibilities under such Act.

SEC. 234. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated for Election Fund payments under this part an aggregate amount of $2,250,000,000 for fiscal years 2002 through 2004.

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PART 2—GRANTS FOR RESEARCH ON VOTING TECHNOLOGY IMPROVEMENTS

SEC. 241. GRANTS FOR RESEARCH ON VOTING TECHNOLOGY IMPROVEMENTS.

(a) IN GENERAL.—The Commission shall make grants to assist entities in carrying out research and development to improve the quality, reliability, accuracy, accessibility, affordability, and security of voting equipment, election systems, and voting technology.

(b) ELIGIBILITY.—An entity is eligible to receive a grant under this part if it submits to the Commission (at such time and in such form as the Commission may require) an application containing—

(1) assurances that the research and development funded with the grant will take into account the need to make voting equipment fully accessible for individuals with disabilities (including blind individuals), the need to ensure that such individuals can vote independently and with privacy, and the need to provide alternative language accessibility for individuals with limited proficiency in the English language (consistent with the requirements of the Voting Rights Act of 1965); and

(2) such other information and assurances as the Commission may require.

(c) APPLICABILITY OF REGULATIONS GOVERNING PATENT RIGHTS IN INVENTIONS MADE WITH FEDERAL ASSISTANCE.—Any invention made by the recipient of a grant under this part using funds provided under this part shall be subject to chapter 18 of title 35, United States Code (relating to patent rights in inventions made with Federal assistance).

SEC. 242. REPORT.

(a) IN GENERAL.—Each entity which receives a grant under this part shall submit to the Commission, Congress, and the President a report describing the activities carried out with the funds provided under the grant.

(b) DEADLINE.—An entity shall submit a report required under subsection (a) not later than 60 days after the end of the fiscal year for which the entity received the grant which is the subject of the report.

SEC. 243. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated for grants under this part $20,000,000 for fiscal year 2002.

PART 3—PILOT PROGRAM FOR TESTING OF EQUIPMENT AND TECHNOLOGY

SEC. 251. PILOT PROGRAM.

(a) IN GENERAL.—The Commission shall make grants to carry out pilot programs under which new technologies in voting systems and equipment are implemented on a trial basis.

(b) ELIGIBILITY.—An entity is eligible to receive a grant under this part if it submits to the Commission (at such time and in such form as the Commission may require) an application containing—

(1) assurances that the pilot programs funded with the grant will take into account the need to make voting equipment fully accessible for individuals with disabilities (including blind individuals), the need to ensure that such individuals can vote independently and with privacy, and the need to provide alternative language accessibility for individuals with limited proficiency in the English language (consistent with the requirements of the Voting Rights Act of 1965); and

(2) such other information and assurances as the Commission may require.

SEC. 252. REPORT.

(a) IN GENERAL.—Each entity which receives a grant under this part shall submit to the Commission, Congress, and the President a report describing the activities carried out with the funds provided under the grant.

(b) DEADLINE.—An entity shall submit a report required under subsection (a) not later than 60 days after the end of the fiscal year for which the entity received the grant which is the subject of the report.

SEC. 253. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated for grants under this part $10,000,000 for fiscal year 2002.

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PART 4—MISCELLANEOUS

SEC. 261. ROLE OF NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY.

(a) RECOMMENDATION OF TOPICS FOR RESEARCH UNDER VOTING RESEARCH GRANTS AND PILOT PROGRAMS.—The Director of the National Institute of Standards and Technology (hereafter in this section referred to as the "Director") shall submit to the Commission an annual list of the Director's suggestions for issues which may be the subject of research funded with grants awarded under part 2 and part 3 during the year.

(b) REVIEW OF GRANT APPLICATIONS RECEIVED BY COMMISSION.—The Commission shall submit each application it receives for a grant under part 2 or part 3 to the Director, who shall review the application and provide the Commission with such comments as the Director considers appropriate.

(c) MONITORING AND ADJUSTMENT OF GRANT ACTIVITIES.—After the Commission has awarded a grant under part 2 or part 3, the Director shall monitor the grant and (to the extent permitted under the terms of the grant as awarded) may recommend to the Commission that the recipient of the grant modify and adjust the activities carried out under the grant.

(d) EVALUATION OF COMPLETED GRANTS.—

(1) IN GENERAL.—After the recipient of a grant awarded by the Commission has completed the terms of the grant, the Director shall prepare and submit to the Commission an evaluation of the grant and the activities carried out under the grant.

(2) INCLUSION IN REPORTS.—The Commission shall include the evaluations submitted under paragraph (1) for a year in the report submitted for the year under section 262.

(e) INTRAMURAL RESEARCH AND DEVELOPMENT.—The Director shall establish a program for intramural research and development in areas to support the development of voluntary technical standards for voting products and systems, including—

(1) the security of computers, computer networks, and computer data storage used in voting products and systems, including the Statewide voter registration networks required under the minimum standard described in section 502(1);

(2) methods to detect and prevent fraud;

(3) the protection of voter privacy;

(4) the role of human factors in the design and application of voting products and systems, including assistive technologies for individuals with disabilities and varying levels of literacy; and

(5) remote access voting, including voting through the Internet.

SEC. 262. REPORTS.

(a) ANNUAL REPORTS ON ACTIVITIES.—Not later than 90 days after the end of each fiscal year, the Commission shall submit a report to the Committee on House Administration of the House of Representatives and the Committee on Rules and Administration of the Senate on the activities carried out by the Commission under this subtitle during the previous fiscal year, and shall include in the report a description of all applications for Election Fund payments and grants received by the Commission during the year under this subtitle and the disposition of such applications.

(b) REPORT ON HUMAN FACTOR RESEARCH.—Not later than 1 year after the date of the enactment of this Act, the Commission, in consultation with the Director of the National Institute of Standards and Technology, shall submit a report to Congress which assesses the areas of human factor research, including usability engineering and human-computer and human-machine interaction, which feasibly could be applied to voting products and systems design to ensure the usability and accuracy of voting products and systems, including methods to improve access for individuals with disabilities and to reduce voter error and the number of spoiled ballots in elections.

SEC. 263. AUDIT.

(a) IN GENERAL.—As a condition of receiving funds under this subtitle, a State or entity described in part 2 or part 3 shall agree that such funds shall be subject to audit if 2 or more members of the Commission vote to require an audit.

(b) MANDATORY AUDIT.—In addition to audits conducted pursuant to subsection (a), all funds provided under this subtitle shall be subject to mandatory audit at least once during the lifetime of the programs under this subtitle.

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TITLE III—HELP AMERICA VOTE COLLEGE PROGRAM

SEC. 301. ESTABLISHMENT OF PROGRAM.

(a) IN GENERAL.—Not later than 1 year after the appointment of its members, the Election Assistance Commission shall develop a program to be known as the "Help America Vote College Program" (hereafter in this title referred to as the "Program").

(b) PURPOSES OF PROGRAM.—The purpose of the Program shall be—

(1) to encourage students enrolled at institutions of higher education (including community colleges) to assist State and local governments in the administration of elections by serving as nonpartisan poll workers or assistants; and

(2) to encourage State and local governments to use the services of the students participating in the Program.

SEC. 302. ACTIVITIES UNDER PROGRAM.

(a) IN GENERAL.—In carrying out the Program, the Commission (in consultation with the chief election official of each State) shall develop materials, sponsor seminars and workshops, engage in advertising targeted at students, make grants, and take such other actions as it considers appropriate to meet the purposes described in section 301(b).

(b) REQUIREMENTS FOR GRANT RECIPIENTS.—In making grants under the Program, the Commission shall ensure that the funds provided are spent for projects and activities which are carried out without partisan bias or without promoting any particular point of view regarding any issue, and that each recipient is governed in a balanced manner which does not reflect any partisan bias.

(c) COORDINATION WITH INSTITUTIONS OF HIGHER EDUCATION.—The Commission shall encourage institutions of higher education (including community colleges) to participate in the Program, and shall make all necessary materials and other assistance (including materials and assistance to enable the institution to hold workshops and poll worker training sessions) available without charge to any institution which desires to participate in the Program.

SEC. 303. AUTHORIZATION OF APPROPRIATIONS.

In addition to any funds authorized to be appropriated to the Commission under section 207, there are authorized to be appropriated to carry out this title—

(1) $5,000,000 for fiscal year 2002; and

(2) such sums as may be necessary for each succeeding fiscal year.

TITLE IV—HELP AMERICA VOTE FOUNDATION

SEC. 401. HELP AMERICA VOTE FOUNDATION.

(a) IN GENERAL.—Part B of subtitle II of title 36, United States Code, is amended by inserting after chapter 1525 the following:

"CHAPTER 1526—HELP AMERICA VOTE FOUNDATION

"Sec.
"152601. Organization.
"152602. Purposes.
"152603. Board of directors.
"152604. Officers and employees.
"152605. Powers.
"152606. Principal office.
"152607. Service of process.
"152608. Annual audit.
"152609. Civil action by Attorney General for equitable relief.
"152610. Immunity of United States Government.
"152611. Authorization of appropriations.
"152612. Annual report.

"§ 152601. Organization

"(a) FEDERAL CHARTER.—The Help America Vote Foundation (in this chapter, the 'foundation') is a federally chartered corporation.

"(b) NATURE OF FOUNDATION.—The foundation is a charitable and nonprofit corporation and is not an agency or establishment of the United States Government.

"(c) PERPETUAL EXISTENCE.—Except as otherwise provided, the foundation has perpetual existence.

"§ 152602. Purposes

"(a) IN GENERAL.—The purposes of the foundation are to—

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"(1) mobilize secondary school students (including students educated in the home) in the United States to participate in the election process in a nonpartisan manner as poll workers or assistants;

"(2) place secondary school students (including students educated in the home) as nonpartisan poll workers or assistants to local election officials in precinct polling places across the United States; and

"(3) establish cooperative efforts with State and local election officials, local educational agencies, superintendents and principals of public and private secondary schools, and other appropriate nonprofit charitable and educational organizations exempt from taxation under section 501(a) of the Internal Revenue Code of 1986 as an organization described in section 501(c)(3) of such Code to further the purposes of the foundation.

"(b) REQUIRING ACTIVITIES TO BE CARRIED OUT ON NONPARTISAN BASIS.—The foundation shall carry out its purposes without partisan bias or without promoting any particular point of view regarding any issue, and shall ensure that each participant in its activities is governed in a balanced manner which does not reflect any partisan bias.

"(c) CONSULTATION WITH STATE ELECTION OFFICIALS.—The foundation shall carry out its purposes under this section in consultation with the chief election officials of the States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, and the United States Virgin Islands.

"§ 152603. Board of directors

"(a) GENERAL.—The board of directors is the governing body of the foundation.

"(b) MEMBERS AND APPOINTMENT.—(1) The board consists of 12 directors, who shall be appointed not later than 60 days after the date of the enactment of this chapter as follows:

"(A) 4 directors (of whom not more than 2 may be members of the same political party) shall be appointed by the President.

"(B) 2 directors shall be appointed by the Speaker of the House of Representatives.

"(C) 2 directors shall be appointed by the minority leader of the House of Representatives.

"(D) 2 directors shall be appointed by the majority leader of the Senate.

"(E) 2 directors shall be appointed by the minority leader of the Senate.

"(2) In addition to the directors described in paragraph (1), the chair and ranking minority member of the Committee on House Administration of the House of Representatives (or their designees) and the chair and ranking minority member of the Committee on Rules and Administration of the Senate (or their designees) shall each serve as an ex officio nonvoting member of the board.

"(3) A director is not an employee of the Federal government and appointment to the board does not constitute appointment as an officer or employee of the United States Government for the purpose of any law of the United States (except as may otherwise be provided in this chapter).

"(4) The terms of office of the directors are 4 years.

"(5) A vacancy on the board shall be filled in the manner in which the original appointment was made.

"(c) CHAIR.—The directors shall select one of the directors as the chair of the board. The individual selected may not be a current or former holder of any partisan elected office or a current or former officer of any national committee of a political party.

"(d) QUORUM.—The number of directors constituting a quorum of the board shall be established under the bylaws of the foundation.

"(e) MEETINGS.—The board shall meet at the call of the chair of the board for regularly scheduled meetings, except that the board shall meet not less often than annually.

"(f) REIMBURSEMENT OF EXPENSES.—Directors shall serve without compensation but may receive travel expenses, including per diem in lieu of subsistence, in accordance with sections 5702 and 5703 of title 5.

"(g) LIABILITY OF DIRECTORS.—Directors are not personally liable, except for gross negligence.

"§ 152604. Officers and employees

"(a) APPOINTMENT OF OFFICERS AND EMPLOYEES.—The board of directors appoints, removes, and replaces officers and employees of the foundation.

"(b) STATUS AND COMPENSATION OF EMPLOYEES.—

"(1) IN GENERAL.—Officers and employees of the foundation—

"(A) are not employees of the Federal government (except as may otherwise be provided in this chapter);

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"(B) shall be appointed and removed without regard to the provisions of title 5 governing appointments in the competitive service; and

"(C) may be paid without regard to chapter 51 and subchapter III of chapter 53 of title 5.

"(2) AVAILABILITY OF FEDERAL EMPLOYEE RATES FOR TRAVEL.—For purposes of any schedules of rates negotiated by the Administrator of General Services for the use of employees of the Federal government who travel on official business, officers and employees of the foundation who travel while engaged in the performance of their duties under this chapter shall be deemed to be employees of the Federal government.

"§ 152605. Powers

"(a) GENERAL.—The foundation may—

"(1) adopt a constitution and bylaws;

"(2) adopt a seal which shall be judicially noticed; and

"(3) do any other act necessary to carry out this chapter.

"(b) POWERS AS TRUSTEE.—To carry out its purposes, the foundation has the usual powers of a corporation acting as a trustee in the District of Columbia, including the power—

"(1) to accept, receive, solicit, hold, administer, and use any gift, devise, or bequest, either absolutely or in trust, of property or any income from or other interest in property;

"(2) to acquire property or an interest in property by purchase or exchange;

"(3) unless otherwise required by an instrument of transfer, to sell, donate, lease, invest, or otherwise dispose of any property or income from property;

"(4) to borrow money and issue instruments of indebtedness;

"(5) to make contracts and other arrangements with public agencies and private organizations and persons and to make payments necessary to carry out its functions;

"(6) to sue and be sued; and

"(7) to do any other act necessary and proper to carry out the purposes of the foundation.

"(c) ENCUMBERED OR RESTRICTED GIFTS.—A gift, devise, or bequest may be accepted by the foundation even though it is encumbered, restricted, or subject to beneficial interests of private persons, if any current or future interest is for the benefit of the foundation.

"(d) CONTRACTS.—The foundation may enter into such contracts with public and private entities as it considers appropriate to carry out its purposes.

"(e) ANNUAL CONFERENCE IN WASHINGTON METROPOLITAN AREA.—During each year (beginning with 2003), the foundation may sponsor a conference in the Washington, D.C., metropolitan area to honor secondary school students and other individuals who have served (or plan to serve) as poll workers and assistants and who have otherwise participated in the programs and activities of the foundation.

"§ 152606. Principal office

"The principal office of the foundation shall be in the District of Columbia unless the board of directors determines otherwise. However, the foundation may conduct business throughout the States, territories, and possessions of the United States.

"§ 152607. Service of process

"The foundation shall have a designated agent to receive service of process for the foundation. Notice to or service on the agent, or mailed to the business address of the agent, is notice to or service on the foundation.

"§ 152608. Annual audit

"The foundation shall enter into a contract with an independent auditor to conduct an annual audit of the foundation.

"§ 152609. Civil action by Attorney General for equitable relief

"The Attorney General may bring a civil action in the United States District Court for the District of Columbia for appropriate equitable relief if the foundation—

"(1) engages or threatens to engage in any act, practice, or policy that is inconsistent with the purposes in section 152602 of this title; or

"(2) refuses, fails, or neglects to carry out its obligations under this chapter or threatens to do so.

"§ 152610. Immunity of United States Government

"The United States Government is not liable for any debts, defaults, acts, or omissions of the foundation. The full faith and credit of the Government does not extend to any obligation of the foundation.

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"§ 152611. Authorization of appropriations

"There are authorized to be appropriated to the foundation for carrying out the purposes of this chapter—

"(1) $5,000,000 for fiscal year 2002; and

"(2) such sums as may be necessary for each succeeding fiscal year.

"§ 152612. Annual report

"As soon as practicable after the end of each fiscal year, the foundation shall submit a report to the Commission, the President, and Congress on the activities of the foundation during the prior fiscal year, including a complete statement of its receipts, expenditures, and investments. Such report shall contain information gathered from participating secondary school students describing the nature of the work they performed in assisting local election officials and the value they derived from the experience of educating participants about the electoral process.".

(b) CLERICAL AMENDMENT.—The table of chapters for part B of subtitle II of title 36, United States Code, is amended by inserting after the item relating to chapter 1525 the following new item:

"1526. Help America Vote Foundation ..... 152601".

TITLE V—MINIMUM STANDARDS FOR STATE ELECTION SYSTEMS

SEC. 501. MINIMUM STANDARDS FOR STATE ELECTION SYSTEMS.

(a) IN GENERAL.—The chief State election official of each State shall certify in writing to the Election Assistance Commission that—

(1) in administering election systems, the State is in compliance with the existing applicable requirements of the Voting Rights Act of 1965, the National Voter Registration Act of 1993, the Uniformed and Overseas Citizens Absentee Voting Act, the Voting Accessibility for the Elderly and Handicapped Act, and the Americans With Disabilities Act of 1990; and

(2) the State has enacted legislation to enable the State to meet each of the minimum standards for State election systems described in section 502.

(b) METHODS OF IMPLEMENTATION LEFT TO DISCRETION OF STATE.—The specific choices on the methods of implementing the legislation enacted pursuant to subsection (a)(2) shall be left to the discretion of the State.

(c) CHIEF STATE ELECTION OFFICIAL DEFINED.—In this title, the "chief State election official" of a State is the individual designated by the State under section 10 of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg–8) to be responsible for coordination of the State's responsibilities under such Act.

SEC. 502. STANDARDS DESCRIBED.

The minimum standards for State election systems described in this section are as follows:

(1) The State will implement a Statewide voter registration system networked to every local jurisdiction in the State, with provisions for sharing data with other States, except that this paragraph shall not apply in the case of a State in which, under law in effect continuously on and after the date of the enactment of this Act, there is no voter registration requirement for any voter in the State with respect to an election for Federal office.

(2) The State election system includes provisions to ensure that voter registration records in the State are accurate and are updated regularly, including the following:

(A) A system of file maintenance which removes registrants who are ineligible to vote from the official list of eligible voters. Under such system, consistent with the National Voter Registration Act of 1993, registrants who have not voted in 2 or more consecutive general elections for Federal office and who have not responded to a notice shall be removed from the official list of eligible voters, except that no registrant may be removed solely by reason of a failure to vote.

(B) Safeguards to ensure that eligible voters are not removed in error from the official list of eligible voters.

(3) The State permits, by the deadline required under section 504(b), in-precinct provisional voting by every voter who claims to be qualified to vote in the State, or has adopted an alternative which achieves the same objective, except that this paragraph shall not apply in the case of a State in which, under law in effect continuously on and after the date of the enactment of this Act, all votes in the State in general elections for Federal office are cast by mail.

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(4) The State has adopted uniform standards that define what will constitute a vote on each category of voting equipment certified for use in the State.

(5) The State has implemented safeguards to ensure that absent uniformed services voters (as defined in section 107(1) of the Uniformed and Overseas Citizens Absentee Voting Act) and overseas voters (as defined in section 107(5) of such Act) in the jurisdiction have the opportunity to vote and to have their votes counted.

(6) The State requires new voting systems to provide a practical and effective means for voters with physical disabilities to cast a secret ballot.

(7) If the State uses voting systems which give voters the opportunity to correct errors, the State shall ensure that voters are able to check for and correct errors under conditions which assure privacy. States, and units of local government within the States, replacing all voting machines within their jurisdiction shall ensure that the new voting system gives voters the opportunity to correct errors before the vote is cast.

SEC. 503. ENFORCEMENT.

(a) REPORT BY COMMISSION TO ATTORNEY GENERAL.—If a State does not provide a certification under section 501 to the Election Assistance Commission, or if the Commission has credible evidence that a State's certification is false or that a State is carrying out activities in violation of the terms of the certification, the Commission shall notify the Attorney General.

(b) ACTION BY ATTORNEY GENERAL.—After receiving notice from the Commission under subsection (a), the Attorney General may bring a civil action against a State in an appropriate district court for such declaratory or injunctive relief as may be necessary to remedy a violation of this title.

SEC. 504. EFFECTIVE DATE.

(a) IN GENERAL.—Except as provided in subsection (b), the requirements of this title shall take effect upon the expiration of the 2-year period which begins on the date of the enactment of this Act, except that if the chief State election official of a State certifies that good cause exists to waive the requirements of this title with respect to the State until the date of the regularly scheduled general election for Federal office held in November 2004, the requirements shall apply with respect to the State beginning on the date of such election.

(b) DEADLINES FOR IMPLEMENTATION OF PROVISIONAL VOTING.—The minimum standard described in section 502(3) (relating to permitting in-precinct provisional voting) shall apply with respect to the regularly scheduled general election for Federal office held in November 2002 and each succeeding election for Federal office, except that if the chief State election official of a State certifies that good cause exists to delay the implementation of such standard in the State, the standard shall apply in the State with respect to the regularly scheduled general election for Federal office held in November 2004 and each succeeding election for Federal office held in the State.

TITLE VI—VOTING RIGHTS OF MILITARY MEMBERS AND OVERSEAS CITIZENS

SEC. 601. VOTING ASSISTANCE PROGRAMS.

(a) IN GENERAL.—(1) Chapter 80 of title 10, United States Code, is amended by adding at the end the following new section:

"§ 1566. Voting assistance: compliance assessments; assistance

"(a) REGULATIONS.—The Secretary of Defense shall prescribe regulations to require that the Army, Navy, Air Force, and Marine Corps ensure their compliance with any directives issued by the Secretary of Defense in implementing any voting assistance program.

"(b) VOTING ASSISTANCE PROGRAMS DEFINED.—In this section, the term 'voting assistance programs' means—

"(1) the Federal Voting Assistance Program carried out under the Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff et seq.); and

"(2) any similar program.

"(c) ANNUAL EFFECTIVENESS AND COMPLIANCE REVIEWS.—(1) The Inspector General of each of the Army, Navy, Air Force, and Marine Corps shall conduct—

"(A) an annual review of the effectiveness of voting assistance programs; and

"(B) an annual review of the compliance with voting assistance programs of that armed force.

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"(2) Upon the completion of each annual review under paragraph (1), each Inspector General specified in that paragraph shall submit to the Inspector General of the Department of Defense a report on the results of each such review. Such report shall be submitted in time each year to be reflected in the report of the Inspector General of the Department of Defense under paragraph (3).

"(3) Not later than March 31 each year, the Inspector General of the Department of Defense shall submit to Congress a report on—

"(A) the effectiveness during the preceding calendar year of voting assistance programs; and

"(B) the level of compliance during the preceding calendar year with voting assistance programs of each of the Army, Navy, Air Force, and Marine Corps.

"(d) INSPECTOR GENERAL ASSESSMENTS.—(1) The Inspector General of the Department of Defense shall periodically conduct at Department of Defense installations unannounced assessments of the compliance at those installations with—

"(A) the requirements of the Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff et seq.);

"(B) Department of Defense regulations regarding that Act and the Federal Voting Assistance Program carried out under that Act; and

"(C) other requirements of law regarding voting by members of the armed forces.

"(2) The Inspector General shall conduct an assessment under paragraph (1) at not less than 10 Department of Defense installations each calendar year.

"(3) Each assessment under paragraph (1) shall include a review of such compliance—

"(A) within units to which are assigned, in the aggregate, not less than 20 percent of the personnel assigned to duty at that installation;

"(B) within a representative survey of members of the armed forces assigned to that installation and their dependents; and

"(C) within unit voting assistance officers to measure program effectiveness.

"(e) REGULAR MILITARY DEPARTMENT ASSESSMENTS.—The Secretary of each military department shall include in the set of issues and programs to be reviewed during any management effectiveness review or inspection at the installation level an assessment of compliance with the Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff et seq.) and with Department of Defense regulations regarding the Federal Voting Assistance Program.

"(f) VOTING ASSISTANCE OFFICERS.—(1) Voting assistance officers shall be appointed or assigned under Department of Defense regulations. Commanders at all levels are responsible for ensuring that unit voting officers are trained and equipped to provide information and assistance to members of the armed forces on voting matters. Performance evaluation reports pertaining to a member who has been assigned to serve as a voting assistance officer shall comment on the performance of the member as a voting assistance officer. The Secretary of each military department shall certify to Congress that (at a minimum) a voting assistance officer has been appointed or assigned for each military installation and major command under the jurisdiction of the department and that a replacement will be appointed if the original officer is no longer able to serve.

"(2) Under regulations and procedures prescribed by the Secretary, a member of the armed forces appointed or assigned to duty as a voting assistance officer shall, to the maximum extent practicable, be given the time and resources needed to perform the member's duties as a voting assistance officer during the period in advance of a general election when members and their dependents are preparing and submitting absentee ballots.

"(3) As part of each assessment prepared by the Secretary of a military department under subsection (e), the Secretary shall—

"(A) specify the number of members of the armed forces under the jurisdiction of the Secretary who are appointed or assigned to duty as voting assistance officers;

"(B) specify the ratio of voting assistance officers to active duty members of the armed forces under the jurisdiction of the Secretary;

"(C) indicate whether this number and ratio comply with the requirements of the Federal Voting Assistance Program; and

"(D) describe the training such members receive to perform their duties as voting assistance officers.

"(g) REGISTRATION AND VOTING INFORMATION FOR MEMBERS AND DEPENDENTS.—(1) The Secretary of each military department, using a variety of means including both print and electronic media, shall, to the maximum extent practicable, ensure that members of the armed forces and their dependents who are qualified to vote have ready access to information regarding voter registration requirements and deadlines (including voter registration), absentee ballot application requirements

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and deadlines, and the availability of voting assistance officers to assist members and dependents to understand and comply with these requirement.

"(2) The Secretary of each military department shall make the national voter registration form prepared for purposes of the Uniformed and Overseas Citizens Absentee Voting Act by the Federal Election Commission available so that each person who enlists, reenlists, or voluntarily extends an enlistment or who completes a permanent change of station in an active or reserve component of the Army, Navy, Air Force, or Marine Corps shall receive such form at the time of the enlistment, reenlistment, extension, or completion of the permanent change of station, or as soon thereafter as practicable.

"(3) Where practicable, a special day or days shall be designated at each military installation for the purpose of informing members of the armed forces and their dependents of election timing, registration requirements, and voting procedures.

"(h) DELIVERY OF MAIL FROM OVERSEAS PRECEDING FEDERAL ELECTIONS.—(1) During the four months preceding a general Federal election month, the Secretary of Defense shall periodically conduct surveys of all overseas locations and vessels at sea with military units responsible for collecting mail for return shipment to the United States and all port facilities in the United States and overseas where military-related mail is collected for shipment to overseas locations or to the United States. The purpose of each survey shall be to determine if voting materials are awaiting shipment at any such location and, if so, the length of time that such materials have been held at that location. During the fourth and third months before a general Federal election month, such surveys shall be conducted biweekly. During the second and first months before a general Federal election month, such surveys shall be conducted weekly.

"(2) The Secretary shall ensure that voting materials are transmitted expeditiously by military postal authorities at all times. The Secretary shall, to the maximum extent practicable, implement measures to ensure that a postmark or other official proof of mailing date is provided on each absentee ballot collected at any overseas location or vessel at sea whenever the Department of Defense is responsible for collecting mail for return shipment to the United States. The Secretary shall submit to Congress a report describing the measures to be implemented to ensure the timely transmittal and postmarking of voting materials and identifying the persons responsible for implementing such measures.

"(3) The Secretary of each military department, utilizing the voting assistance officer network established for each military installation, shall, to the maximum extent practicable, provide notice to members of the armed forces stationed at that installation of the last date before a general Federal election for which absentee ballots mailed from a postal facility located at that installation can reasonably be expected to be timely delivered to the appropriate State and local election officials.

"(4) In this section, the term 'general Federal election month' means November in an even-numbered year.".

(2) The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"1566. Voting assistance: compliance assessments; assistance.".

(b) INITIAL REPORT.—The first report under section 1566(c)(3) of title 10, United States Code, as added by subsection (a), shall be submitted not later than March 31, 2003.

SEC. 602. DESIGNATION OF SINGLE STATE OFFICE TO PROVIDE INFORMATION ON REGISTRATION AND ABSENTEE BALLOTS FOR ALL VOTERS IN STATE.

Section 102 of the Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff–1) is amended—

(1) by inserting "(a) IN GENERAL.—" before "Each State"; and

(2) by adding at the end the following new subsection:

"(b) DESIGNATION OF SINGLE STATE OFFICE TO PROVIDE INFORMATION ON REGISTRATION AND ABSENTEE BALLOT PROCEDURES FOR ALL VOTERS IN STATE.—

"(1) IN GENERAL.—Each State shall designate a single office which shall be responsible for providing information regarding voter registration procedures and absentee ballot procedures (including procedures relating to the use of the Federal write-in absentee ballot) to all absent uniformed services voters and overseas voters who wish to register to vote or vote in any jurisdiction in the State.

"(2) RECOMMENDATION REGARDING USE OF OFFICE TO ACCEPT AND PROCESS MATERIALS.—Congress recommends that the State office designated under paragraph (1) be responsible for carrying out the State's duties under this Act, including accepting valid voter registration applications, absentee ballot applications, and absentee ballots (including Federal write-in absentee ballots) from all

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absent uniformed services voters and overseas voters who wish to register to vote or vote in any jurisdiction in the State.".

SEC. 603. REPORT ON ABSENTEE BALLOTS TRANSMITTED AND RECEIVED AFTER GENERAL ELECTIONS.

(a) IN GENERAL.—Section 102 of the Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff–1), as amended by section 602, is amended by adding at the end the following new subsection:

"(c) REPORT ON NUMBER OF ABSENTEE BALLOTS TRANSMITTED AND RECEIVED.—Not later than 90 days after the date of each regularly scheduled general election for Federal office, each State and unit of local government which administered the election shall (through the State, in the case of a unit of local government) submit a report to the Election Assistance Commission (established under the Help America Vote Act of 2001) on the number of absentee ballots transmitted to absent uniformed services voters and overseas voters for the election and the number of such ballots which were returned by such voters and cast in the election, and shall make such report available to the general public.".

(b) DEVELOPMENT OF STANDARDIZED FORMAT FOR REPORTS.—The Election Assistance Commission, working with the Election Assistance Commission Board of Advisors and the Election Assistance Commission Standards Board, shall develop a standardized format for the reports submitted by States and units of local government under section 102(c) of the Uniformed and Overseas Citizens Absentee Voting Act (as added by subsection (a)), and shall make the format available to the States and units of local government submitting such reports.

SEC. 604. SIMPLIFICATION OF VOTER REGISTRATION AND ABSENTEE BALLOT APPLICATION PROCEDURES FOR ABSENT UNIFORMED SERVICES AND OVERSEAS VOTERS.

(a) REQUIRING STATES TO ACCEPT OFFICIAL FORM FOR SIMULTANEOUS VOTER REGISTRATION AND ABSENTEE BALLOT APPLICATION; DEADLINE FOR PROCESSING APPLICATION.—

(1) IN GENERAL.—Section 102(a) of the Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff–1), as amended by section 602, is amended—

(A) by amending paragraph (2) to read as follows:

"(2) accept and process, with respect to any election for Federal office, any otherwise valid voter registration application and absentee ballot application from an absent uniformed services voter or overseas voter, if the application is received by the appropriate State election official not less than 30 days before the election;";

(B) by striking the period at the end of paragraph (3) and inserting "; and"; and

(C) by adding at the end the following new paragraph:

"(4) use the official post card form (prescribed under section 101) for simultaneous voter registration application and absentee ballot application.".

(2) CONFORMING AMENDMENTS.—Section 101(b)(2) of such Act (42 U.S.C. 1973ff(b)(2)) is amended by striking "as recommended in section 104" and inserting "as required under section 102(4)".

(b) USE OF SINGLE APPLICATION FOR ALL SUBSEQUENT ELECTIONS.—Section 104 of such Act (42 U.S.C. 1973ff–3) is amended to read as follows:

"SEC. 104. USE OF SINGLE APPLICATION FOR ALL SUBSEQUENT ELECTIONS.

"(a) IN GENERAL.—If a State accepts and processes an official post card form (prescribed under section 101) submitted by an absent uniformed services voter or overseas voter for simultaneous voter registration and absentee ballot application (in accordance with section 102(a)(4)) and the voter requests that the application be considered an application for an absentee ballot for each subsequent election for Federal office held in the State during that year, the State shall provide an absentee ballot to the voter for each subsequent election for Federal office held in the State during that year.

"(b) EXCEPTION FOR VOTERS CHANGING REGISTRATION.—Subsection (a) shall not apply with respect to a voter registered to vote in a State for any election held after the voter notifies the State that the voter no longer wishes to be registered to vote in the State or after the State determines that the voter has registered to vote in another State.

"(c) REVISION OF OFFICIAL POST CARD FORM.—The Presidential designee shall revise the official post card form (prescribed under section 101) to enable a voter using the form to—

"(1) request an absentee ballot for each election for Federal office held in a State during a year; or

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"(2) request an absentee ballot for only the next scheduled election for Federal office held in a State.

"(d) NO EFFECT ON VOTER REMOVAL PROGRAMS.—Nothing in this section may be construed to prevent a State from removing any voter from the rolls of registered voters in the State under any program or method permitted under section 8 of the National Voter Registration Act of 1993.".

SEC. 605. ADDITIONAL DUTIES OF PRESIDENTIAL DESIGNEE UNDER UNIFORMED AND OVERSEAS CITIZENS ABSENTEE VOTING ACT.

(a) EDUCATING ELECTION OFFICIALS ON RESPONSIBILITIES UNDER ACT.—Section 101(b)(1) of the Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff(b)(1)) is amended by striking the semicolon at the end and inserting the following: ", and ensuring that such officials are aware of the requirements of this Act;".

(b) DEVELOPMENT OF STANDARD OATH FOR USE WITH MATERIALS.—

(1) IN GENERAL.—Section 101(b) of such Act (42 U.S.C. 1973ff(b)) is amended—

(A) by striking "and" at the end of paragraph (5);

(B) by striking the period at the end of paragraph (6) and inserting "; and"; and

(C) by adding at the end the following new paragraph:

"(7) prescribe a standard oath for use with any document under this title affirming that a material misstatement of fact in the completion of such a document may constitute grounds for a conviction for perjury.".

(2) REQUIRING STATES TO USE STANDARD OATH.—Section 102(a) of such Act (42 U.S.C. 1973ff–1(b)), as amended by sections 603 and 605(a), is amended—

(A) by striking "and" at the end of paragraph (3);

(B) by striking the period at the end of paragraph (4) and inserting "; and"; and

(C) by adding at the end the following new paragraph:

"(5) if the State requires an oath or affirmation to accompany any document under this title, use the standard oath prescribed by the Presidential designee under section 101(b)(7).".

(c) PROVIDING BREAKDOWN BETWEEN OVERSEAS VOTERS AND ABSENT UNIFORMED SERVICES VOTERS IN STATISTICAL ANALYSIS OF VOTER PARTICIPATION.—Section 101(b)(6) of such Act (42 U.S.C. 1973ff(b)(6)) is amended by inserting after "participation" the following: "(listed separately for overseas voters and absent uniformed services voters)".

SEC. 606. USE OF BUILDINGS ON MILITARY INSTALLATIONS AND RESERVE COMPONENT FACILITIES AS POLLING PLACES.

(a) LIMITED USE OF MILITARY INSTALLATIONS AUTHORIZED.—Section 2670 of title 10, United States Code, is amended—

(1) by striking "Under" and inserting "(a) USE BY RED CROSS.—Under";

(2) by striking "this section" and inserting "this subsection"; and

(3) by adding at the end the following new subsection:

"(b) USE AS POLLING PLACES.—(1) Notwithstanding any other provision of law, the Secretary of a military department may make a building located on a military installation under the jurisdiction of the Secretary available for use as a polling place in any Federal, State, or local public election, but only if such use is limited to eligible voters who reside on that military installation.

"(2) If a building located on a military installation is made available under paragraph (1) as the site of a polling place, the Secretary shall continue to make the building available for subsequent elections unless the Secretary provides to the appropriate State or local election officials advance notice, in a reasonable and timely manner, of the reasons why the building will no longer be made available as a polling place.

"(3) In this section, the term 'military installation' has the meaning given the term in section 2687(e) of this title.".

(b) USE OF RESERVE COMPONENT FACILITIES.—(1) Section 18235 of title 10, United States Code, is amended by adding at the end the following new subsection:

"(c) Pursuant to a lease or other agreement under subsection (a)(2), the Secretary may make a facility covered by subsection (a) available for use as a polling place in any Federal, State, or local public election notwithstanding any other provision of law. If a facility is made available as the site of a polling place with respect to an election, the Secretary shall continue to make the facility available for subsequent elections unless the Secretary provides to the appropriate State or local election officials advance notice, in a reasonable and timely manner, of the reasons why the facility will no longer be made available as a polling place.".

(2) Section 18236 of such title is amended by adding at the end the following:

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"(e) Pursuant to a lease or other agreement under subsection (c)(1), a State may make a facility covered by subsection (c) available for use as a polling place in any Federal, State, or local public election notwithstanding any other provision of law.".

(c) CONFORMING AMENDMENTS TO TITLE 18.—(1) Section 592 of title 18, United States Code, is amended by adding at the end the following new sentence:

"This section shall not apply to the actions of members of the Armed Forces at any polling place on a military installation where a general or special election is held in accordance with section 2670(b), 18235, or 18236 of title 10.".

(2) Section 593 of such title is amended by adding at the end the following new sentence:

"This section shall not apply to the actions of members of the Armed Forces at any polling place on a military installation where a general or special election is held in accordance with section 2670(b), 18235, or 18236 of title 10.".

(d) CONFORMING AMENDMENT TO VOTING RIGHTS LAW.—Section 2003 of the Revised Statutes of the United States (42 U.S.C. 1972) is amended by adding at the end the following new sentence: "Making a military installation or reserve component facility available as a polling place in a Federal, State, or local public election in accordance with section 2670(b), 18235, or 18236 of title 10, United States Code, is deemed to be consistent with this section.".

(e) CLERICAL AMENDMENTS.—(1) The heading of section 2670 of title 10, United States Code, is amended to read as follows:

"§ 2670. Buildings on military installations: use by American National Red Cross and as polling places in Federal, State, and local elections".

(2) The item relating to such section in the table of sections at the beginning of chapter 159 of such title is amended to read as follows:

"2670. Buildings on military installations: use by American National Red Cross and as polling places in Federal, State, and local elections.".

TITLE VII—REDUCED POSTAGE RATES FOR OFFICIAL ELECTION MAIL

SEC. 701. REDUCED POSTAGE RATES FOR OFFICIAL ELECTION MAIL.

(a) IN GENERAL.—Section 3629 of title 39, United States Code, is amended to read as follows:

"§ 3629. Reduced rates for official election mail

"(a) Notwithstanding any other provision of this title, the rate of postage for any first-class mail matter shall, in the case of official election mail, be equal to 50 percent of the regular first-class rate, subject to subsection (c).

"(b) For purposes of this section, the term 'official election mail' means any mailing by a State or local election official that—

"(1) is mailed in the course of official business;

"(2) consists of voter registration or election information or assistance prepared and mailed in a nonpartisan manner; and

"(3) bears such logo or other markings as the Postal Service may require.

Such term does not include any mailing that includes any mail matter intended to promote government action unrelated to the conduct of an election.

"(c) Nothing in this section shall, with respect to any official election mail, be considered to make unavailable—

"(1) any free mailing privilege under section 3406 or any other provision of law for which such mail otherwise qualifies; or

"(2) any reduced rate of postage under section 3626 or any other provision of law for which such mail otherwise qualifies, if lower than the rate that would otherwise apply under subsection (a).".

(b) CLERICAL AMENDMENT.—The table of sections for chapter 36 of title 39, United States Code, is amended by striking the item relating to section 3629 and inserting the following:

"3629. Reduced rates for official election mail.".

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TITLE VIII—TRANSITION PROVISIONS

Subtitle A—Transfer to Commission of Functions Under Certain Laws

SEC. 801. FEDERAL ELECTION CAMPAIGN ACT OF 1971.

(a) TRANSFER OF FUNCTIONS OF OFFICE OF ELECTION ADMINISTRATION OF FEDERAL ELECTION COMMISSION.—There are transferred to the Election Assistance Commission established under section 201 all functions which the Office of the Election Administration, established within the Federal Election Commission, exercised before the date of enactment of this Act.

(b) CONFORMING AMENDMENT.—Section 311(a) of the Federal Election Campaign Act of 1971 (2 U.S.C. 438(a)) is amended—

(1) in paragraph (8), by inserting "and" at the end;

(2) in paragraph (9), by striking "; and" and inserting a period; and

(3) by striking paragraph (10) and the second and third sentences.

SEC. 802. NATIONAL VOTER REGISTRATION ACT OF 1993.

(a) TRANSFER OF FUNCTIONS.—There are transferred to the Election Assistance Commission established under section 201 all functions which the Federal Election Commission exercised under the National Voter Registration Act of 1993 before the date of enactment of this Act.

(b) CONFORMING AMENDMENT.—Section 9(a) of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg–7(a)) is amended by striking "Federal Election Commission" and inserting "Election Assistance Commission".

SEC. 803. TRANSFER OF PROPERTY, RECORDS, AND PERSONNEL.

(a) PROPERTY AND RECORDS.—The contracts, liabilities, records, property, and other assets and interests of, or made available in connection with, the offices and functions of the Federal Election Commission which are transferred by this subtitle are transferred to the Election Assistance Commission for appropriate allocation.

(b) PERSONNEL.—

(1) IN GENERAL.—The personnel employed in connection with the offices and functions of the Federal Election Commission which are transferred by this subtitle are transferred to the Election Assistance Commission.

(2) EFFECT.—Any full-time or part-time personnel employed in permanent positions shall not be separated or reduced in grade or compensation because of the transfer under this subsection during the 1-year period beginning on the date of the enactment of this Act.

SEC. 804. EFFECTIVE DATE; TRANSITION.

(a) EFFECTIVE DATE.—This title and the amendments made by this title shall take effect upon the appointment of all members of the Election Assistance Commission under section 203.

(b) TRANSITION.—With the consent of the entity involved, the Election Assistance Commission is authorized to utilize the services of such officers, employees, and other personnel of the entities from which functions have been transferred to the Election Assistance Commission under this title or the amendments made by this title for such period of time as may reasonably be needed to facilitate the orderly transfer of such functions.

Subtitle B—Coverage of Commission Under Certain Laws and Programs

SEC. 811. TREATMENT OF COMMISSION PERSONNEL UNDER CERTAIN CIVIL SERVICE LAWS.

(a) COVERAGE UNDER HATCH ACT.—Section 7323(b)(2)(B)(i)(I) of title 5, United States Code, is amended by inserting "or the Election Assistance Commission" after "Commission".

(b) EXCLUSION FROM SENIOR EXECUTIVE SERVICE.—Section 3132(a)(1)(C) of title 5, United States Code, is amended by inserting "or the Election Assistance Commission" after "Commission".

SEC. 812. COVERAGE UNDER INSPECTOR GENERAL ACT OF 1978.

(a) IN GENERAL.—Section 8G(a)(2) of the Inspector General Act of 1978 (5 U.S.C. App.) is amended by inserting "the Election Assistance Commission," after "Federal Election Commission,".

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(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect 180 days after the appointment of all members of the Election Assistance Commission under section 203.

TITLE IX—MISCELLANEOUS PROVISIONS

SEC. 901. STATE DEFINED.

In this Act, the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, and the United States Virgin Islands.

SEC. 902. MISCELLANEOUS PROVISIONS TO PROTECT INTEGRITY OF ELECTION PROCESS.

(a) CLARIFICATION OF ABILITY OF ELECTION OFFICIALS TO REMOVE REGISTRANTS FROM OFFICIAL LIST OF VOTERS ON GROUNDS OF CHANGE OF RESIDENCE.—Section 8(b)(2) of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg–6(b)(2)) is amended by striking the period at the end and inserting the following: ", except that nothing in this paragraph may be construed to prohibit a State from using the procedures described in subsections (c) and (d) to remove an individual from the official list of eligible voters if the individual has not voted or appeared to vote in 2 or more consecutive general elections for Federal office and has not notified the applicable registrar (in person or in writing) or responded to a notice sent by the applicable registrar during the period in which such elections are held that the individual intends to remain registered in the registrar's jurisdiction.".

(b) PROHIBITING EFFORTS BY POLL WORKERS TO COERCE VOTERS TO CAST VOTES FOR EVERY OFFICE ON BALLOT.—Section 594 of title 18, United States Code, is amended—

(1) by striking "Whoever" and inserting "(a) Whoever"; and

(2) by adding at the end the following new subsection:

"(b) For purposes of subsection (a), a poll worker who urges or encourages a voter who has not cast a vote for each office listed on the ballot to return to the voting booth to cast votes for every office, or who otherwise intimidates, harasses, or coerces the voter to vote for each such office (or who attempts to intimidate, harass, or coerce the voter to vote for each such office), shall be considered to have intimidated, threatened, or coerced (or to have attempted to intimidate, threaten, or coerce) the voter for the purpose of interfering with the voter's right to vote as the voter may choose. Nothing in this subsection shall prohibit a poll worker from providing information to a voter who requests assistance.".

SEC. 903. NO EFFECT ON OTHER LAWS.

(a) IN GENERAL.—Nothing in this Act and no action taken pursuant to this Act shall supersede, restrict, or limit the application of the Voting Rights Act of 1965, the National Voter Registration Act of 1993, the Voting Accessibility for the Elderly and Handicapped Act, or the Americans with Disabilities Act of 1990.

(b) NO CONDUCT AUTHORIZED WHICH IS PROHIBITED UNDER OTHER LAWS.—Nothing in this Act authorizes or requires any conduct which is prohibited by the Voting Rights Act of 1965, the National Voter Registration Act of 1993, or the Americans with Disabilities Act of 1990.

(c) APPLICATION TO STATES, LOCAL GOVERNMENTS, AND COMMISSION.—Except as specifically provided in the case of the National Voter Registration Act of 1993, nothing in this Act may be construed to affect the application of the Voting Rights Act of 1965, the National Voter Registration Act of 1993, or the Americans with Disabilities Act of 1990 to any State, unit of local government, or other person, or to grant to the Election Assistance Commission the authority to carry out activities inconsistent with such Acts.

PURPOSE OF THE LEGISLATION

The purpose of H.R. 3295, the Help America Vote Act of 2001, can be stated very simply—it is to improve our country's election system. The circumstances surrounding the election that took place in November 2000 brought an increased focus on the process of election administration, and highlighted the need for improvements. The Help America Vote Act of 2001 will make it possible to implement needed improvements.

Historically, elections in this country have been administered at the state and local level. This system has many benefits that must

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be preserved. The dispersal of responsibility for election administration has made it impossible for a single centrally controlled authority to dictate how elections will be run, and thereby be able to control the outcome. This leaves the power and responsibility for running elections where it should be, in the hands of the citizens of this country. Local control has the further added benefit of allowing for flexibility, so that local authorities can tailor their procedures to meet the demands of disparate and unique communities. Further by leaving the responsibility for election administration in the hands of local authorities, if a problem arises, the citizens who live within their jurisdictions know whom to hold accountable. The local authorities who bear the responsibility cannot now, and should not in the future be able to, point the finger of blame at some distant, unaccountable, centralized bureaucracy.

While local control must be preserved, it is time to recognize that the federal government can play a valuable roll by assisting state and local government in modernizing their election systems. H.R. 3295 will, for the first time, give the state and local governments some financial assistance, from the federal government, to improve their election infrastructure.

SUMMARY OF THE LEGISLATION

PUNCH CARD REPLACEMENT PROGRAM

The disadvantages of punch card voting systems were highlighted during the recount that took place in Florida following the November 2000 election. Large portions of the American public have lost confidence in them. For systems that use a blank punch card, a failure to properly align the card behind the ballot can result in the casting of a vote for a candidate the voter did not mean to select. The perforated chad on the punch card may not be completely punched out, so the machine counter does not register any vote for that office. In the event of a close election, punch cards are ill suited to a recount. Running the ballots through a counter repeatedly during a recount can result in the detachment of additional chads, essentially creating votes that were never meant to be cast. If a manual recount must be resorted to, officials are faced with the unenviable task of attempting to divine the intent of a voter based on the amount of depression or partial detachment of a chad.

H.R. 3295 seeks to make punch card systems a part of our history, not our future. It authorizes $400 million to replace them. Any State or jurisdiction that used punch card voting systems in the November 2000 general election is eligible to receive up to $6000 per precinct to replace them. They must obligate the funds before the next federal election in November 2002, and must have all their punch card systems replaced before the election in November 2004 (though they can get either deadline extended by 2 years for good cause shown). To hasten the dispersal of these dollars, this program will be administered by the General Services Administration.

Some jurisdictions may choose not to replace their punch card systems, but H.R. 3295 makes funds available to those jurisdictions that want to modernize their systems. Additionally, the bill makes available funds for enhancement of these systems. For example,

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punch card systems can be made far more reliable if they are counted at the precinct, rather than at a central location. The enhancement program will provide funds to make improvements that will restore public confidence in punch card machines where they remain in use.

ELECTION ASSISTANCE COMMISSION

H.R. 3295 creates a new federal commission that will be tasked with providing information and assistance to state and local governments on best practices to successfully administer elections. The Commission has been structured to perform an advisory, as opposed to an administrative roll, in elections. The Commission has no rule making authority. The four commissioners will be recommended by the congressional leadership and will be appointed by the President. No more than two commissioners may be of the same party, to assure that the Commission acts in a nonpartisan fashion. The Commissioners will have experience or expertise in election administration or the study of elections, and will serve on a part time basis.

In establishing this commission, the Committee sought to involve the state and local officials who will be tasked with carrying out its recommendations. Two boards were created under the Commission, the Advisory Board and the Standards Board. The twenty-five member Advisory Board will consist of representatives from various groups that are involved with or care about election administration issues. The Standards Board will consist of the chief state election official, and a local election official, from each of the 50 states, the District of Columbia and the territories. The Boards will review and comment on any proposed standards prior to consideration by the Commission. Since those who serve on the Board will determine if their jurisdictions will adopt any of the voluntary standards approved, their thoughts and comments will be given serious attention by the Commission.

There is also created under the Commission a Technical Standards Development Committee. The Development Committee will assist the Executive Director of the Commission in the development of voluntary standards by recommending standards pertaining to the usability, accuracy, security, accessibility and integrity of voting systems and equipment. The Development Committee will be chaired by the Director of the National Institute of Standards and Technology, and will consist of members of the Board of Advisors and members of the Standards Board, among others.

Once the Development Committee has developed proposed voluntary standards, it will submit them to the Executive Director. The Executive Director shall then forward the standards (as developed or with modifications) to the Boards for review and comment. After the Boards have had an opportunity to review or comment, the standards will be forwarded to the Commission, which can approve them by majority vote.

This process will ensure that the standards are developed in a way that involves persons with real world technical expertise and experience in election administration. It is a process designed to give the people who will be responsible for administering elections, the state and local elections officials, a voice in the standards development process. By heeding that voice, the Commission should

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be able to make recommendations that truly reflect the recognized best practices of election administration.

The Commission will have grant making power. In addition to distributing the election fund payments, the bill authorizes two grant programs. One grant program will be devoted to research on voting technology improvements, the second will distribute grants for pilot programs to test equipment and technology. The research and development program is designed to encourage innovative technological and management strategies that will improve the accessibility, efficiency and security of election systems. This program in conjunction with the pilot program should foster development of these strategies where it may not be cost effective for the private sector to conduct research on their own. Universities, local jurisdictions, and the private sector are eligible to participate alone or as partners. Ideas that can be explored could include, for example, developing ways to communicate in different ways to voters about their registration status before the election. This would avoid unnecessary confusion on Election Day about whether voters are registered and where they should vote. Use of the Internet or telephone systems in this initiative could preclude a great deal of confusion on Election Day and minimize unnecessary administrative burdens processing provisional ballots post election. These and other ideas could be explored to ensure that our election system and its associated technologies are constantly being improved.

FUNDING CONDITIONS

H.R. 3295 authorizes $2.25 billion over three years for Election Fund payments. These funds will be provided to states at a matching rate of 75% (federal) to 25% (state). States will be permitted to use these dollars for a range of activities which improve election administration. This will give states the opportunity to direct fund payments to the areas where the resources are most needed. Jurisdictions that want to modernize their voting equipment can use election fund payments for that purpose. Others may have more pressing needs for modernized statewide registration systems, or better education and training of voters and poll workers. The Election Fund is designed to allow states to determine their greatest needs, and direct resources where they are most needed.

While the States will have flexibility in deciding where to direct dollars, they will be required to meet certain requirements as a condition of receiving funds. These funding conditions are not intended to be unduly burdensome, or to require states to incur obligations that will exceed the amount of funds appropriated and made available to the States. They will, however, ensure that the federal dollars are being spent appropriately, and that recipients meet certain criteria. The Commission will disperse election fund payments, and will monitor compliance with the funding conditions.

HELP AMERICA VOTE FOUNDATION AND COLLEGE PROGRAM

There is a critical shortage of poll-workers in this country. Many election officials fear the problem will grow even worse as the volunteers they rely on, many of them retirees, grow older with little national effort to recruit new volunteers. Experienced and well trained poll workers are essential to making our elections run prop-

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erly. They provide assistance to voters, make sure proper procedures are followed, and guard the integrity of our elections.

A second well recognized problem in this country is the disengagement of our young people from the electoral process. For far too many of our young citizens, politics is a confusing and uninteresting side show in which they have no desire to participate.

The creation of the Help America Vote Foundation and College Program is designed to address both of these problems. These programs will encourage civic involvement by high school and college students by making them available for service as non-partisan poll workers and assistants to local election authorities. This will have the two-fold benefit of alleviating the shortage of volunteers, while also exposing our youth to the electoral process. Ideally, many of those who will become exposed to the election process for the first time through this program, will cultivate a life long interest in the process, and will continue to serve as election volunteers for many years, or at a minimum continue to be engaged in American civic life as informed citizens and voters.

The College Program will be administered by the Election Assistance Commission. The High School Program will be set up as a federally chartered corporation. The Commission will make grants for the college program, while the federal corporation created will administer the High School program. Both programs must be carried out without partisan bias, and without promoting any particular point of view regarding any issue.

MINIMUM STANDARDS

The minimum standards in H.R. 3295 require States to meet certain criteria, regardless of whether or not they accept election fund payments. While they impose minimum requirements, they allow the states to develop their own laws and procedures to fulfill the requirements. The goal of the minimum standards is to improve our election system without issuing dictates that would rob states of the ability to craft their own solutions.

The Minimum Standards are:

(1) The State will implement a Statewide voter registration system networked to every local jurisdiction in the State, with provisions for sharing data with other States, except that this paragraph shall not apply in the case of a State in which, under law in effect continuously on and after the date of the enactment of this Act, there is no voter registration requirement for any voter in the State with respect to an election for Federal office.

One of the most exciting and promising reforms that the Committee explored is statewide registration. In its June 2001 report to Congress, the bipartisan Federal Election Commission, after consulting with state and local election officials, recommended that states "1) develop and implement a statewide computerized voter registration database; 2) insure that all local registration offices are computerized; and 3) link their statewide computerized system, where feasible, with the computerized systems of the collateral public agencies relevant to the NVRA (motor-vehicle offices, public-assistance offices, etc.)". The bi-partisan National Commission on Federal Election Reform ("Ford/Carter Commission") also recommended states adopt such a system, as did the nation's election

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administrators in their non-partisan National Task Force on Election Reform.

Creation of such a system will make the registration lists more accurate, and easier to update. It should reduce the incidence of voters appearing at a polling place only to discover that no record of their registration can be found. When voters move from one jurisdiction to another within that state, the statewide system will be able to track that movement. If for some reason a voter remained registered at their old address, the election officials will be able to see that and take corrective action. Requiring states to develop statewide databases will modernize and improve registration nationwide.

People are mobile, but more than three-quarters of all residential moves are in-state. An effective statewide database can therefore be quite useful, including its capacity to address such common issues as the registration of in-state college students and people with second homes within a state. But perhaps the most important beneficiaries of statewide registration systems will be members of lower-income groups, who are more likely to move than higher-income groups within the same state.

The minimum standard requires states to create a single database that is official, centralized and administered at the state level. Databases which simply link existing local databases do not qualify as satisfying this requirement. Multiple databases linking various vendor or local government programs to a statewide system is not sufficient to satisfy this requirement. The intent of the minimum standard is to establish one database that is identical and is the same program throughout the state and local jurisdictions so that all training can be uniform, all records requirements are identical, and that the state has full authority for maintenance and quality matters related to the database. The intent is also to assure that there are not jurisdictional nor vendor issues in terms of operability, problem resolution, or other types of reasons for one part of the system not matching the other.

It is likely that states will find it necessary to create a unique identifier to distinguish registered voters who happen to have the same name and/or birth date. The unique identifier so created will be used to assure that list maintenance functions are attributable to the correct voter; so as to avoid removing registrants who happen to have the same name and birth date as a felon, for example. States are encouraged to use the unique identifier to share information with other governmental offices for purposes such as death certificates, court and tax records, etc., to assure proper maintenance of voter records, file integrity, and protection of voter rights. It is the intent of Congress to encourage the states to develop each statewide database system in such a manner that it will be possible at some point in the future for states to share data between them for the appropriate additions and removal of voters from their rolls.

(2) The State election system includes provisions to ensure that voter registration records in the State are accurate and are updated regularly, including the following:

(A) A system of file maintenance which removes registrants who are ineligible to vote from the official list of eligible voters. Under such system, consistent with the National Voter Registration Act of

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1993, registrants who have not voted in 2 or more consecutive general elections for federal office and who have not responded to a notice shall be removed from the official list of eligible voters, except that no registrant may be removed solely by reason of a failure to vote.

(B) Safeguards to ensure that eligible voters are not removed in error from the official list of eligible voters.

States must ensure that their registration list is accurate and is updated regularly. Leaving ineligible voters on the rolls leads to a number of problems. It increases costs as more ballots must be printed and more mailings must be sent out to voters that have died or moved away. This is a waste of vital resources that serves no purpose. One of the most damaging effects of inaccurate rolls is that they lead to the public perception that the process can be easily manipulated. When the number of voters on a registration list exceeds a jurisdiction's voting age population (itself an artificially high number because it includes non-citizens and person only temporarily in the jurisdiction), the perception is that the process has no integrity and accountability. Furthermore, when ineligible voters are left on rolls indefinitely, it invites fraud. Those who wish to commit fraud can vote in more than one jurisdiction, or more problematic, cast multiple votes in the names of those they know are no longer eligible.

A fraudulent vote that nullifies a legal one, disenfranchises the legal voter as surely as if his or her vote had never been cast at all. States are therefore obligated to maintain accurate lists, and thereby minimize the opportunities for and the incidence of fraud.

The minimum standard requires that removal of those deemed ineligible must be done in a manner consistent with the National Voter Registration Act. The procedures established by NVRA that guard against removal of eligible registrants remain in effect under this law. Accordingly, H.R. 3295 leaves NVRA intact, and does not undermine it in any way.

(3) The State permits, by the deadline required under section 504(b), in-precinct provisional voting by every voter who claims to be qualified to vote in the State, or has adopted an alternative which achieves the same objective, except that this paragraph shall not apply in the case of a State in which, under law in effect continuously on and after the date of the enactment of this Act, all votes in the State in general elections for Federal office are cast by mail.

The Committee spent considerable time and energy learning about in-precinct provisional voting. In spite of the statewide registration system and file maintenance requirements, there will still be some instances where a voter who is qualified to vote does not appear on the registration list when they present themselves to vote.

In-precinct provisional voting enables people whose eligibility is in doubt to vote in their precinct, without having to travel somewhere else to swear they are eligible to vote, and have their registration verified in the days following an election. The Committee believes provisional voting is necessary to the administration of a fair, democratic, and effective election system, and represents the ultimate safeguard to ensuring a person's right to vote. For these reasons, the Committee has included it in the bill. Under the bill,

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in-precinct provisional voting will be required in every jurisdiction except states that have or plan to adopt an alternative which achieves the same objective, such as same-day registration or voting-by-mail.

Studies of the nation's election system find that a significant problem voters experience is to arrive at the polling place believing that they are eligible to vote, and then to be turned away because the election workers cannot find their names on the list of qualified voters.

There are at least eight reasons this occurs:

1. Voters may be turned away because of administrative errors. Poll workers may overlook their names or not match them up with a different spelling. In most jurisdictions, poll workers work from printed lists of voters produced for each precinct. Staff in the offices that produce these lists can make clerical errors.

2. Poll workers may overlook a voter's name on the precinct roster, or may not be aware that the voter is listed on a supplemental roster containing the names of voters who registered shortly before the election.

3. Voters may have their names improperly removed from the voting rolls.

4. Voters may appear at the wrong precinct because they did not receive, or received but did not heed, a notice that their polling place had moved.

5. Motor-vehicle departments or social-service agencies that are supposed to make registration applications available to clients may improperly handle the applications or fail to forward them to proper election officials in a timely manner.

6. Voters may fail to notify their registrar, or fail to re-register, after a change of address.

7. Well-intentioned organizations seeking to register voters may mishandle registration materials.

8. Otherwise qualified citizens may simply fail to register.

Whatever the cause, eligible citizens may believe they have registered. Unfortunately, when they subsequently attempt to vote, they are not on the list. In-precinct provisional voting, or an alternative which achieves the same objective, such as same-day registration (currently used by Idaho, Maine, New Hampshire, Wisconsin, Wyoming, and Minnesota); voting-by-mail (used by Oregon and Washington State); or no voter registration requirement (North Dakota), can solve this problem.

In-precinct provisional voting has four key advantages:

1. Legally qualified voters are no longer turned away at the polls.

2. In-precinct provisional voting limits the ability of states to impose extra hurdles that may have the effect of deterring the use of provisional voting. For example, in Pennsylvania, voters whose names do not appear on the precinct rosters are required to travel to police stations to see an election judge, who determines whether or not they have the right to vote. Voters must then return to the polling location in order to cast their votes. Many voters, who are faced with the choice of traveling to the police station or leaving, ultimately do not vote either because they are intimidated by going to a police station or because it is logistically difficult or inconvenient.

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3. Voter participation is easier and more efficient, as poll workers can provide an option to voters who may be angry or frustrated by their absence from the registration list. These often ill-trained and low-paid temporary workers do not have to research or resolve cases on the spot, while other voters impatiently wait in line. Nor are more senior election officials tied down in resolving such questions during Election Day.

4. Voter registration becomes more accurate. The process becomes another way to amend registrations for people who evidently wish to vote. Officials can detect and correct mistakes and the research process, by helping senior administrators notice which problems are causing the mistakes, thus can help many other current and potential voters.

(4) The State has adopted uniform standards that define what will constitute a vote on each category of voting equipment certified for use in the State.

Requiring states to have a uniform standard for what constitutes a vote will ensure that voters receive the equal protection of the laws with respect to the counting of their ballots. Votes should be counted using objective standards put in place before an election contest. Whether or not a vote is counted should not depend on where a voter happens to live, nor should it depend on varying subjective interpretations of state laws by local election officials. Similarly marked ballots should not be discarded in one jurisdiction, but counted in another.

As Americans learned in November and December 2000, a major part of the problem in Florida was that the vote-counting process was subjective and inconsistent, with definitions of what constitutes a vote varying from jurisdiction to jurisdiction. The United States Supreme Court found such a standardless process to be a violation of the Equal Protection Clause of the Constitution.

As the Committee discovered, Florida is not alone. Most states do not prescribe a standard for election officials to follow in recounting votes. Amorphous statutory references to the "intent of the voter" invite still more confusion and ambiguity. "Intent of the voter" is not a standard but rather a subjective judgment, virtually guaranteeing litigation. It is unfair to voters, to candidates and to democracy.

The crux of the problem is that all systems that rely on individual ballots inherently raise questions as to whether a particular configuration is or is not a "vote." Such systems include traditional paper ballots, punch card ballots, connect the arrow ballots, or optical scan ballots, all of which the voter must alter in some manner to create a vote. Lever systems and DRE machines do not create a ballot with voter marks; therefore, there is no particular mark available to review.

Because every vote properly cast must be counted, and recounts are routinely conducted to make certain that all ballots have been properly counted, the Committee believes that uniform standards for what constitutes a vote must be adopted by all states. The definition of a vote shall be as objective as possible and spelled out in clear language before Election Day.

(5) The State has implemented safeguards to ensure that absent uniformed services voters (as defined in section 107(1) of the Uniformed and Overseas Citizens Absentee Voting Act) and overseas

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voters (as defined in section 107(5) of such Act) in the jurisdiction have the opportunity to vote and to have their votes counted.

States must implement safeguards to ensure that absent uniformed service personnel and overseas voters have the opportunity to vote and have their votes counted. Those serving in our military and citizens living abroad face many hurdles when it comes to registering, receiving ballots and casting them timely. States must take action to ensure that these voters have the opportunity to vote and have their votes counted. States need to recognize the difficulties faced by these voters, and take steps to see that their votes are counted. (See below for additional provisions affecting these voters).

(6) The State requires new voting systems to provide a practical and effective means for voters with physical disabilities to cast a secret ballot.

Advancements in technology make it possible for voters with physical disabilities to cast a secret ballot. New systems should strive to make it possible for voters with physical disabilities to cast secret ballots. (See below for additional provisions affecting these voters).

(7) If the State uses voting systems which give voters the opportunity to correct errors, the State shall ensure that voters are able to check for and correct errors under conditions which assure privacy. States, and units of local government within the States, replacing all voting machines within their jurisdiction shall ensure that the new voting system gives voters the opportunity to correct errors before the vote is cast.

In the 2000 presidential election, nearly two million voters, 2% of those who went to the polls, either did not mark their ballot, or marked it in a way that no vote was counted in the presidential contest. Election experts call these votes in which no choice is counted "residual votes." These millions of voters either spoiled their ballots by "overvoting" (appearing to vote for more than one candidate), or by "undervoting" (they marked their choice in a manner that could not be counted, or they marked no choice at all). Of course, an undervoted ballot is not necessarily "spoiled". Millions of voters intentionally do not vote in certain contests for various reasons, complicated the task of determining voter rates.

As the Committee learned in our June hearing, the consensus among engineers, computer scientists, and political scientists who study election systems is that the number of residual votes and the rate of voter error are greatly affected by the kind of equipment that is used. According to one expert who testified before the Committee on what is known as "human usability studies," predictably high levels of user error are evidence of system failure, flawed instructions, or faulty system design.

Whatever the specific causes for residual votes, the fact remains that some votes go uncounted because voters have no opportunity to detect and correct errors before they cast their ballots. Fortunately, there are voting systems available that permit voters to correct ballots in the precinct before they are cast.

The bill will ensure that as jurisdictions scrap obsolete voting systems, they replace them with systems that have the capability to detect errors, for poll site voting (the provisions for second chance voting cannot currently be applied to absentee or mail balloting since the ballot and the voter are separated before counting).

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To be sure, this provision will not instantly mandate that all machines in all polling places by a date certain have a second-chance voting capability. The Committee seriously explored the proposal to require all 200,000 jurisdictions nationwide to have second-chance voting by 2004 or, at the latest, 2006. Jurisdictions that failed to meet the deadline would be subject to suite in federal court. As the Committee learned more about the production capability of the voting machine industry, the timelines and procurement processes counties and states must go through to award contracts to voting-machine vendors, and the huge costs involved, the Committee decided that an aggressive deadline might cause more serious problems than it would solve. One disturbing possibility was that jurisdictions that could not meet the deadline, most likely poorer ones, might have their election systems shut down or seriously disrupted during an election while other jurisdictions in the state, most likely affluent ones, that met the deadline could proceed with their elections. The Committee was hard-pressed to imagine a more chilling 14th Amendment problem than this, where some eligible voters in a state could exercise the franchise while others could not.

As to whether the term "error" means overvote, undervote, or something else, the Committee referred to the findings of the National Commission on Federal Election Reform, commonly known as the "Ford-Carter Commission." The Commission's definition of "error" is set forth in the accompanying document.

As already noted, many voters intentionally do not vote in every race. The purpose of second chance technology is to provide voters information about their ballot. Voter privacy is an important right that must be protected. While voters should have the opportunity to verify the accuracy of their ballot, they should not be forced to do so under the scrutiny of a poll worker. Once a voter is satisfied of the accuracy of their ballot, it is not the roll or responsibility of a poll worker to inquire as to the voters intent.

Poll workers should, upon request, be available to provide assistance to voters, but voters should not be prompted by poll workers, or have to explain to poll workers why they have not voted in a certain race. The bill ensures voter privacy, by requiring that jurisdictions whose machines have second chance technology must ensure that voters are able to check for and correct errors on their ballots under conditions which assure privacy.

MILITARY AND OVERSEAS VOTERS

Those who serve in our military, and citizens living abroad, face peculiar hardships when attempting to vote. Relatively simple things like applying for and transmitting ballots can become a very difficult and lengthy process for these voters. Steps must be taken to protect the rights of these citizens. Military voters risk their very lives in defense of this country. We must repay them by doing everything possible to see that they are able to vote and have their votes counted.

A recent report by the General Accounting Office revealed that over 40% of the installations they visited had not assigned voting assistance officers. The Department of Defense must make certain that a sufficient number of voting assistance officers are assigned, and that those who are assigned are doing their duties. H.R. 3295 requires the Secretary of Defense to certify to Congress that, at a

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minimum, a voting assistance officer has been assigned to every installation and major command.

The bill also makes voter registration forms available to service personnel at the time of enlistment, reenlistment or extension of enlistment, to make it easier for them to register. The Secretary of Defense must also ensure that all ballots are properly postmarked, or marked with some other official mark, so that state officials can determine when the ballot left the voter's hands.

States are also required to designate a single point of contact for those in the service and living abroad, to make it easier for them to obtain needed information about elections, registration and voting.

The bill contains a number of the key provisions of the Uniformed and Overseas Citizen Absentee Voting Reform Act of 2001, H.R. 1997, which will help remove existing obstacles to absentee voting now confronting members of our armed services and overseas voters. Those obstacles contributed to the appallingly high level of rejected ballots in Florida and to the inability to vote of many others who wished to do so.

Similarly, the provision requiring the collection and publication of statistics on overseas voting by the states will fill one of the most serious gaps in our ability to monitor the adequacy of the overseas absentee voting regime. For the first time, we will all have the same information about voting access for overseas voters that we now have routinely for voters at home.

ACCESSIBILITY STANDARDS AND VOTING RIGHTS OF PERSONS WITH DISABILITIES

Sections 102, 112, 221, 233 and 501 and Compliance with the Americans with Disabilities Act and the Voting Accessibility for the Elderly and Handicapped Act

In this bill, the Committee reaffirms that public entities, such as States and localities and their responsible officials, must comply to the extent required by law with the Americans with Disabilities Act (ADA) and the Voting Accessibility for the Elderly and Handicapped Act (VAEHA).

The committee bill will enhance compliance with the ADA and VAEHA by enlisting a range of officials in the process of regulating accessibility problems and solutions. For example, the bill requires that the chief election official of each State certify the State's compliance with the applicable provisions of the ADA and the VAEHA, and requires that recipients of election funds provide assurance of compliance with such laws as a condition of their acceptance of federal money.

Section 903 and preservation of existing law

Section 903 expressly provides that noting in the bill will supersede, restrict, or limit the application of the VAEHA, the ADA, the Voting Rights Act or the National Voting Registration Act, nor will it authorize or require any conduct prohibited under any of these laws. Thus, the bill continues unchanged—the role of the Department of Justice (DOJ) as the agency responsible for authoritatively construing the ADA and promulgating regulations.

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Voluntary accessibility standards in sections 221 and 222

The Committee bill creates mechanisms for providing States and localities with technical guidance about improving accessibility through the adoption of voluntary standards by the Election Assistance Commission. The Committee expects that the voluntary standards will offer examples of achievable methods for ensuring accessibility. One example might include the moving of a polling place from an inaccessible historic library building to an accessible city hall building nearby.

These voluntary standards to be issued by the Commission would not, however, replace accessibility regulations and technical assistance provided by the DOJ for individuals with disabilities. Rather, these standards must be consistent with DOJ's regulations, and not serve as authorization for a level of accessibility lower than required by the regulations. In fact, this need for harmonious standards is the reason the bill directs the Commission to consult with the Architecture and Transportation Barrier Compliance Board in developing its voluntary standards.

If a state accepts election fund payments, the bill requires the state to certify its compliance with the voluntary standards for voting systems. This means that a state which accepts funds will be bound by at least two independent sources of law: the state's contractual duty to comply with the Commission's standards for voting systems, and the state's statutory duty to comply with the ADA. While the Committee anticipates that the Commission will take great care to create voluntary standards in a manner that conforms to existing law, compliance with the Commission's standards cannot provide any "safe harbor" against liability under the ADA or other applicable laws.

Eligibility for election assistance funding under section 233

One of the eligibility requirements for election assistance funding is that there must be at least one voting system available in each precinct or polling place that is fully accessible to individuals with disabilities. This means that if a State accepts any election assistance funding, the State is required to purchase a fully accessible voting system for each precinct or polling place that does not already have such a Summary

TITLE I—PUNCH CARD VOTING MACHINES

Subtitle A—Replacement of Machines

Sec. 101. Establishment of program

Provides for a one-time payment, through the General Services Administration, to State or local government to replace punch card voting systems with other kinds. Requires recipients to obligate funds by the November 2002 Federal election and complete replacement by the 2004 election, but deadlines may be extended two years if approved by the Election Assistance Commission established in Sec. 201.

Sec. 102. Eligibility

Requires that State applications include assurances that the State will use the payment to replace punch card systems used in

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the 2000 election, continue to comply with the Voting Accessibility for the Elderly and Handicapped Act and Americans With Disabilities Act, and provide for alternative language accessibility as required by the Voting Rights Act and other laws.

Permits a local government to apply if the State does not, is ineligible, or will not use the payment to replace punch card systems. Requires that the application include similar assurances as those required of States.

Sec. 103. Amount of payment

Sets payment at 90% of replacement cost, or 95% for precincts where per capita income is within the lowest quartile for the United States, with a maximum of $6,000 times the number of precincts using punch card systems in the jurisdiction during the 2000 election.

Sec. 104. Audit and repayment of funds

Makes payments subject to audit. Requires recipients that fail to meet deadlines to return the funds unless granted a waiver.

Sec. 105. Punch card voting system defined

Defines punch card voting systems to include C.E.S., Datavote, PBC Counter, Pollstar, Punch Card, Vote Recorder, and Votomatic.

Subtitle A—Enhancing Performance of Existing Systems

Sec. 111. Establishment of program

Provides for a one-time payment, through the General Services Administration, to State or local governments to enhance performance of punch card voting systems, with deadlines as in Sec. 101.

Sec. 112. Eligibility

Similiar to Sec. 102, except funds used for enhancement rather than replacement of systems; also, jurisdictions may not participate in both programs.

Sec. 113. Amount of payment

Similar to Sec. 103 except maximum is $2,000 times the number of covered precincts.

Sec. 113. Audit and repayment of funds

Makes payments subject to audit. Requires recipients that fail to meet deadlines to return the funds.

Subtitle C—General Provisions

Sec. 121. Authorization of appropriations

Authorizes appropriations of $400 million, to remain available until expended. Repaid or unobligated funds will be transferred to the Election Assistance Commission.

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TITLE II—COMMISSION

Subtitle A—Establishment and General Organization

PART I—ELECTION ASSISTANCE COMMISSION

Sec. 201. Establishment

Creates an independent executive branch agency called the Election Assistance Commission.

Sec. 202. Duties

Stipulates that the Commission will serve as a national clearinghouse and resource on the administration of Federal elections as described in this title and title III.

Sec. 203. Membership and appointment

Requires that the four Commission members have election-related experience or expertise and that they be appointed by the President with the consent of the Senate, with one member each chosen from nominees submitted by the President Pro Tempore of the Senate, the Senate minority leader, the Speaker of the House of Representatives, and the House minority leader.

Establishes staggered four-year terms for members, renewable once, and prohibits members from being officers or employees of the Federal government while serving. Requires members to select a chair and vice chair from different political parties.

Sets a commissioner's salary at $30,000, plus travel expenses, and permits outside employment.

Sec. 204. Staff

Creates position of Executive Director to be appointed by the Commission for a four-year renewable term and permits that person to appoint additional staff and use outside experts. Requires staff to consult with the two boards established in this title.

Sec. 205. Powers

Empowers the Commission to hold hearings, take testimony, receive evidence, let contracts, obtain information from Federal agencies and support from the General Services Administration, and to use the mails as do other Federal agencies.

Sec. 206. Limitation on rulemaking authority

Prohibits the Commission from imposing requirements on State or local governments except as permitted under the National Voter Registration Act.

Sec. 207. Authorization of appropriations

Authorizes a maximum appropriation of $10 million per year through FY2004.

PART II—ELECTION ASSISTANCE COMMISSION STANDARDS BOARD AND BOARD OF ADVISORS

Sec. 211. Establishment

Creates a Standards Board and a Board of Advisors under the Election Assistance Commission.

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Sec. 212. Duties

Requires that the two boards review the standards described in this title.

Sec. 213. Membership of Standards Board

Sets membership at 110, to include, from each State, the chief election official and a local election official chosen by peers in the State, with no two members from a State to be from the same political party.

Requires board to select a nine-member Executive Board, with no more than five to be chief election officials, local election officials, or from the same party. Sets two-year staggered terms with a maximum of two consecutive renewals.

Sec. 214. Membership of Board of Advisors

Sets membership at 25, two each appointed by the U.S. Commission on Civil Rights; the Architectural and Transportation Barrier Compliance Board; the National Governors Association; the National Conference of State Legislatures; the National Association of Secretaries of State; the National Association of State Election Directors; the National Association of Counties; the National Association of County Recorders, Election Administrators, and Clerks; the U.S. Conference of Mayors; the Election Center; and the International Association of County Recorders, Election Officials, and Treasurers; with the Speaker of the House and the Senate majority leader each appointing one professional in science and technology; and with the chief of the Office of Public Integrity of the Department of Justice or designee also a member. Requires bipartisan, geographically diverse appoints.

Sets two-year, renewable terms. Requires election of a chair from among the members.

Sec. 215. Powers of boards; no compensation for service

Empowers each board to hold hearings, take testimony, and receive evidence, obtain information from Federal agencies and support from the General Services Administration, and to use the mails as do other Federal agencies. Prohibits issuance of subpoenas. Requires each board to meet at least yearly to vote on standards, and the Standards Board to meet at least every two years to select the Executive Board. Prohibits compensation of board members, but permits payment of travel expenses.

Sec. 216. Status of boards and members for purposes of claims against board

Applies provisions of 28 U.S.C., Chapters 161 and 171, with respect to liability of boards and members, with an exception for criminal acts and other willful misconduct.

Subtitle B—Voluntary Election Standards

Sec. 221. Development of voluntary election standards

Requires the Commission, in consultation with the two boards, to develop and adopt voluntary voting system standards, accessibility standards, and election management standards, and update them at least every four years.

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Requires that the voting system standards include security, certification and decertification procedures, usability assessment, and operational guidelines; provide for error correction by voters; include for each certified system what is proposed to constitute a vote; and provide that certified new systems permit voters with disabilities to cast a secret ballot.

Requires the Commission to serve as a clearinghouse of information on experiences of State and local governments in implementing the standards and in operating voting systems; and to make available to the public studies on certain specified issues in election administration, information on the Federal election system, election results, and information concerning issues relating to Federal, State, and local elections.

Requires consultation with the Compliance Board and other experts with respect to accessibility standards, and that the election management standards address the treatment of uniformed and overseas voters, in consultation with the Secretary of Defense.

Requires the Commission to provide for voluntary testing, certification, decertification, and recertification of voting systems; to advise State and local governments on complying with Federal laws regarding accessibility of registration and polling places; to carry out the provisions of the National Voter Registration Act regarding voter registration by mail; and to assist State officials in review of Federal election procedures.

Sec. 222. Technical Standards Development Committee

Establishes a 15-member Technical Standards Development committee, to recommend voting system standards and modifications, to be chaired by the Director of the National Institute of Standards and Technology (NIST), and with members appointed jointly by the Director and the Commission and drawn from the Standards Board, the Board of Advisors, the Compliance Board, the American National Standards Institute, and other persons with relevant scientific and technical expertise. Requires NIST to provide technical support.

Prohibits compensation of members, but permits payment of travel expenses.

Requires, when the Commission adopts any standard, publication of corresponding recommendations of the Development Committee in the Federal Register.

Sec. 223. Process for adoption of voluntary standards

Requires the Executive Director of the Commission to take recommendations of the Development Committee into account in developing standards, and for the two boards to review the proposed standards, with majority vote of the Commission required for adoption.

Sec. 224. Certification and testing of voting systems

Requires that testing and certification of voting systems be performed by nonfederal laboratories accredited by the Commission, from a list of candidates submitted by the Director of NIST, who will also monitor and review laboratory performance and, when appropriate, make recommendations to the Commission regarding continuing accreditation.

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Sec. 225. Dissemination of information

Requires the Commission to disseminate to the public—via the Internet, published reports, and other means—information on the standards and guidelines for applying them, the list of accredited laboratories, a list of certified voting system hardware and software, and other activities carried out under this subtitle.

Subtitle C—Election Assistance

Part 1—Election Fund Payments to States for Voting System Improvements

Sec. 231. Election fund payments to States for voting system improvements

Requires the Commission to make payments to qualifying States to improve the administration of elections.

Sec. 232. Allocation of funds

Sets the size of payment to a State at the greater of either a percentage of the total amount appropriated for that year, based on the size of the voting age population in that State as compared to the total for all States; or 0.5 percent of the total appropriated, except 0.1 percent for Puerto Rico, Guam, American Samoa, or the U.S. Virgin Islands.

Sec. 233. Conditions for receipt of funds

Requires a State, to be eligible, to certify that it has established an Election Fund, provided a 25 percent match, and set benchmarks for voting system performance; complies with the voluntary voting system standards and certification processes described in subtitle B or has established statutory standards that provide for error correction by voters and for auditing of ballots; provides one or more fully accessible voting systems in each precinct; complies with Federal voting rights law; and provides for voter education and training of poll workers and personnel involved in voter registration. Also requires the State to certify that the Federal share will not supplant existing State funds. Gives States discretion to choose the method of compliance

Sec. 234. Authorization of appropriations

Authorizes appropriations totaling $2.25 billion through FY2004.

Part 2—Grants for Research on Voting Technology Improvements

Sec. 241. Grants for research on voting technology improvements

Establishes a grant program to be administered by the Commission for research and development to improve election systems and technology. Requires applicants to assure that funded activities will take accessibility needs into account. Applies 18 U.S.C. 35 with respect to patent rights.

Sec. 242. Report

Requires submission of a report describing activities under the grant.

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Sec. 243. Authorization of appropriations

Authorizes appropriations of $20 million for FY 2002.

PART 3—PILOT PROGRAM FOR TESTING OF EQUIPMENT AND TECHNOLOGY

Sec. 251. Pilot program

Establishes a grant program to be administered by the Commission to implement new voting technologies on a trial basis. Requires applicants to assure that the funded activities will take accessibility needs into account.

Sec. 252. Report

Requires submission of a report describing activities under the grant.

Sec. 253. Authorization of appropriations

Authorizes appropriations of $10 million for FY2002.

PART 4—MISCELLANEOUS

Sec. 261. Role of National Institute of Standards and Technology

Requires the Director of NIST to submit annually to the Commission a list of suggestions for issues to be addressed by the grant programs, review grant applications, monitor grant activities and recommend modifications as necessary, and evaluate completed grants. Also requires the Director to establish an intramural research and development program within NIST to support the development of voluntary technical standards.

Sec. 262. Reports

Requires submission of an annual report to Congress by the Commission and a report on the application of human factors research to voting systems.

Sec. 263. Audit

Provides for the Commission to audit recipients of funds and requires that each program established under the subtitle be audited at least once during its lifetime.

TITLE III—HELP AMERICA VOTE COLLEGE PROGRAM

Sec. 301. Establishment of program

Requires the Commission to establish the "Help America Vote Program," with the purpose of encouraging students at colleges, universities, and community colleges to serve as nonpartisan poll workers or assistants and to encourage State and local governments to use students in that capacity.

Sec. 302. Activities under program

Requires the Commission, in consultation with chief State election officials, to develop materials, sponsor seminars and workshops, advertise the program to students, make grants, assist any institution that wishes to participate, and take other appropriate

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actions. Limits grants to nonpartisan undertakings that do not promote a point of view or an issue.

Sec. 303. Authorization of appropriations

Authorizes appropriations of $5 million for FY2002 and sums necessary thereafter.

TITLE IV—HELP AMERICA VOTE FOUNDATION

Sec. 401. Help America Vote Foundation

Amends Part B of subtitle II of 36 U.S.C. to establish the federally chartered Help America Vote Foundation to mobilize secondary school students to participate as nonpartisan poll workers and assistants, and to establish cooperative efforts with election officials, local educational agencies, public and private school officials, and other appropriate nonprofit organizations.

Requires the foundation to act without partisan bias or promotion of any particular point of view and to consult with the chief State election officials.

Establishes a 12-member board of directors with four appointed by the President (not more than two from the same political party), two by the Speaker of the House of Representatives, two by the House minority leader, two by the Senate majority leader, and two by the Senate minority leader, and with the chairs and ranking Members of the House Administration Committee and the Senate Rules and Administration Committee as ex officio, nonvoting members.

Sets the term of office at four years and stipulates that members are not employees of the Federal government. Prohibits compensation of board members, but permits payment of travel expenses. Restricts personal liability of members to gross negligence.

Requires the board to meet at least yearly and to select a member as chair, who shall not hold or have held any partisan elected office or national political-party committee office.

Permits the board to appoint and remove officers and employees of the foundation and stipulates that they are not employees of the Federal government except as otherwise provided in this chapter.

Grants the foundation such powers as necessary to carry out this chapter and also the usual powers of a corporation acting as a trustee in the District of Columbia, where the foundation will be located. Permits it to conduct business throughout the United States. Requires the foundation to have a designated agent to receive service of process for it.

Permits the foundation to accept gifts, devises, and bequests for its benefit and to let contracts. Also permits it to sponsor an annual conference to honor persons who have served as poll workers or participated in foundation programs and activities.

Requires an annual audit by an independent auditor.

Permits the Attorney General to bring a civil action for relief for behavior by the foundation that is inconsistent with the purposes designated in this title.

Excludes the U.S. government from any liability or obligation incurred by the foundation.

Authorizes $5 million for FY 2002 and such sums as necessary thereafter.

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TITLE V—MINIMUM STANDARDS FOR STATE ELECTION SYSTEMS

Sec. 501. Minimum standards for State election systems

Requires each State to certify to the Commission that it is in compliance with the Voting Rights Act of 1965, the National Voter Registration Act of 1993, the Uniformed and Overseas Citizens Absentee Voting Act, the Voting Accessibility for the Elderly and Handicapped Act, and the Americans With Disabilities Act of 1990; and that it has, by statute, established standards for its election systems as described in this title. Gives States discretion to choose the method of implementation.

Sec. 502. Standards described

Sets minimum standards, to include a statewide, networked voter registration system in States requiring registration; provisions to ensure accurate, updated registration records; in-precinct provisional voting; uniform standards for what constitutes a vote for each certified voting system; safeguards for voting by uniformed and overseas voters; requirements that new voting systems provide for voters with physical disabilities to cast a secret ballot; and requirements that new voting systems give voters the opportunity to correct errors under conditions which assure privacy.

Sec. 503. Enforcement

Requires the Commission to notify the Attorney General if a State fails to comply, and authorizes the Attorney General, if so notified, to bring a civil action to remedy the violation.

Sec. 504. Effective date

Sets effective date for the provisional voting standard at the November 2002 Federal election and for other provisions in the title at two years from enactment, but permits an extension to the November 2004 Federal election.

TITLE VI—VOTING RIGHTS OF MILITARY MEMBERS AND OVERSEAS CITIZENS

Sec. 601. Voting assistance programs

Amends 10 U.S.C. Chapter 80 to require the Secretary of Defense to ensure compliance by the military services with the Federal Voting Assistance Program and any similar programs.

Requires the Inspector General of each service to conduct an annual review of the effectiveness of and compliance with the programs and to submit the review to the Inspector General for the Department of Defense (DOD), who will prepare an annual report to Congress. Requires the DOD Inspector General to conduct, at 10 or more installations each year, periodic, unannounced assessments of compliance with requirements of law regarding voting by members of the armed forces.

Requires the secretary of each military department to assess compliance as part of installation review or inspection, and to certify to Congress that, for each installation and major command, a voting assistance officer, has been appointed and given the time and resources to perform voting assistance duties. Also requires the

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secretaries to specify the number of voting action officers appointed and the ratio of voting action officers to active duty members, to assess compliance of those numbers with requirements, and to describe the training that voting action officers receive.

Requires the secretaries to ensure that members of the military and their dependents have access to information on voter registration and absentee ballot requirements and deadlines. Requires that each person who enlists, reenlists, or completes a permanent change of station receive the national voter registration form.

Requires the secretaries, through voting assistance officers, to provide notice to members of the armed forces of the last date before a general election for which ballots mailed at the facility can be expected to be delivered in a timely fashion to State and local election officials.

Requires the Secretary of Defense to ensure that voting materials are transmitted expeditiously, to conduct periodic surveys of mail shipments at all overseas locations and vessels at sea during the four months preceding an election, and to implement measures to ensure that a postmark or other proof of mailing date is provided on each absentee ballot.

Sec. 602. Designation of single State office to provide information on registration and absentee ballots for all voters in State

Amends the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) to require each State to designate a single office to provide information to members of the armed services concerning absentee registration and voting in the State. Recommends that the office be responsible for carrying out duties under this Act.

Sec. 603. Report on absentee ballots transmitted and received after general elections

Requires that after a Federal election, States submit a public report to the Commission on the number of absentee ballots transmitted to absent uniformed services and overseas voters and the number returned and cast in the election. Requires the Commission to develop a standardized format for such reports.

Sec. 604. Simplification of voter registration and absentee ballot application procedures for absent uniformed services and overseas voters

Amends UOCAVA to require States to accept the post card form as a simultaneous voter registration and absentee ballot application, and to require that an absentee ballot application pertain to all elections for Federal office held in the State during that year, if the applicant so requests. Requires the Presidential designee for UOCAVA to revise the official post card form to enable a voter to request an absentee ballot either for each Federal election held in a State during a year or for only the next schedules Federal election.

Sec. 605. Additional duties of presidential designee under Uniformed and Overseas Citizens Absentee Voting Act

Amends UOCAVA to require the Presidential designee to ensure that State officials are aware of the requirements of that Act, and to prescribe a standard oath regarding perjury in completion of a

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document required under the title. Requires States to use the standard oath if the State requires an oath or affirmation for any voting document.

Amends UOCAVA to require separate statistical analysis for overseas voters and absent uniformed services voters.

Sec. 606. Use of Buildings on Military Installations and Reserve Component Facilities as Polling Places

Amends 10 U.S.C. 2670 and 18235; 18 U.S.C. 592 and 593; and 42 U.S.C. 2003 to permit the secretary of a military department to make a building located on a military installation available for use as a polling place, in any Federal, State, or local election, for eligible voters who reside on that military installation. Requires that such a polling place continue to be available for subsequent elections unless the secretary provides appropriate advance notice to State and local officials of the reasons why it will not.

TITLE VII—REDUCED POSTAGE RATES FOR OFFICIAL ELECTION MAIL

Sec. 701. Reduced postage rates for official election mail

Amends 39 U.S.C. 3629 to establish a postage rate of 50% of the regular first-class rate for any State and local official election mail.

TITLE VIII—TRANSITION PROVISIONS

Subtitle A—Transfer to Commission of Functions Under Certain Laws

Sec. 801. Federal Election Campaign Act of 1971

Amends section 311 (a) of the Federal Election Campaign Act of 1971 (2 U.S.C. 438 (a)) Transfers to the Commission, upon appointment of all members, all functions of the Office of Election Administration of the Federal Election Commission.

Sec. 802 National Voter Registration Act of 1993

Amends section 9(a) of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg–7(a)). Transfers to the Commission all functions that the Federal Election Commission exercises under the National Voter Registration Act.

Sec. 803. Transfer of property, records, and personnel

Transfers to the Commission all personnel, contracts, liabilities, records, property, and other assets or interests of the offices and functions of the Federal Election Commission that are transferred by this subtitle.

Sec. 804. Effective date; transition

Requires that this title take effect upon the appointment of all members of the Commission, which is authorized to utilize services from the entities from which functions will be transferred as needed for an orderly transfer.

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Subtitle B—Coverage of Commission Under Certain Laws and Programs

Sec. 811. Treatment of commission personnel under certain civil service laws

Amends 5 U.S.C. 7323(b)(2)(B)(i)(I) and 3132(a)(1)(C) to specify that Commission personnel are covered by the Hatch Act and that the Commission is excluded from the Senior Executive Service.

Sec. 812. Coverage under Inspector General Act of 1978

Amends section 8G(a)(2) of the Inspector General Act of 1978 (5 U.S.C. App.) to provide for coverage under that Act.

TITLE IX—MISCELLANEOUS PROVISIONS

Sec. 901. State defined

Defines State to include the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, and the United States Virgin Islands.

Sec. 902. Miscellaneous provisions to protect integrity of election process

Amends the National Voter Registration Act of 1993 to clarify the ability of election officials to remove from the voter registration list the name of an individual who has not voted in two or more consecutive general elections for Federal office and who has not notified the registrar of an intent to remain registered in the registrar's jurisdiction or who has not responded to a notice from the registrar of voters. Amends 18 U.S.C. 594 to prohibit poll workers from intimidating, harassing, or coercing voters to cast votes for every office on the ballot, but not from providing information to a voter who requests assistance.

Sec. 903. No effect on other laws

Stipulates that nothing in the Act authorizes or requires conduct prohibited by the Voting Rights Act of 1965, the National Voter Registration Act of 1993, or the Americans With Disabilities Act of 1990; or may be construed to supersede, restrict, or limit those Acts or the Voting Accessibility for the Elderly and Handicapped Act.

COMMITTEE CONSIDERATION OF THE LEGISLATION

INTRODUCTION AND REFERRAL

On November 14, 2001, Mr. Ney, Mr. Hoyer, Mr. Blunt and Mr. Fattah introduced H.R. 3295, which was referred to the Committee on House Administration, the Committee on the Judiciary, the Committee on Armed Services, the Committee on Government Reform and the Committee on Science

HEARINGS

The Committee on House Administration held four hearings on election reform in the first session of the 107th Congress.

On April 25, 2001, the Committee held the first hearing on Election Reform.

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Members present: Mr. Ney, Mr. Ehlers, Mr. Mica, Mr. Linder, Mr. Reynolds, Mr. Hoyer, Mr. Fattah, Mr. Davis.

Witnesses: J. Kenneth Blackwell, Secretary of State, Ohio; Sharon Priest, Secretary of State, Arkansas; Katherine Harris, Secretary of State, Florida; Rebecca Vigil-Giron, Secretary of State, New Mexico; Ron Thornburgh, Secretary of State, Kansas; Martin Stephens, Speaker of the Utah House of Representatives; John Adams Hurson, Majority Leader, Maryland House of Delegates; Kenneth Mayfield, Commissioner, Dallas County, Texas; Deborah Phillips, President—The Voting Integrity Project; Kristen Cox, National Federation of the Blind; Hilary Shelton, Director NAACP Washington Bureau; Dennis Duggan, American Legion.

On May 10, 2001, the Committee held its second hearing on Election Reform.

Members present: Mr. Ney, Mr. Ehlers, Mr. Mica, Mr. Reynolds, Mr. Hoyer, Mr. Davis.

Witnesses: Doug Lewis, Director—The Election Center; Conny McCormack, Los Angeles County Registrar-Recorder/County Clerk; Connie Schmidt, Election Commissioner, Johnson County, Kansas; Carolyn Jackson, Administrator of Elections, Hamilton County, Tennessee; Pam Iorio, Supervisor of Elections, Hillsborough County, Florida; Linda Lamone, Administrator, Maryland State Administrative Board of Election Laws.

On May 17, 2001, the Committee held its third hearing on Election Reform.

Members present: Mr. Ney, Mr. Ehlers, Mr. Linder, Mr. Hoyer, Mr. Fattah, Mr. Davis.

Witnesses: Tom Davis, Managing Member, iPaper/Diversified Dynamics; William F. Welsh III, Chairman, Election Systems and Software; Brian O'Conner, Executive Vice President, Global Election Systems, Inc.; David E. Hart, Chairman, Hart InterCivic, Inc.; Richard Caruso, Chairman, Shoup Voting Solutions; Marlene Duffy Young, Regional Marketing Representative, Unilect; James Minadeo, Product Manager, Avante; Scott Faibaron, Regional Sales Manager, Envox (US) Ltd.; Mark Strama, Vice President, Public Elections, election.com; David Chaum, Founder, SureVote; Ralph Munro, Board of Directors, VoteHere; Dennis Vadura, CEO, Web Tools International.

On May 24, 2001, the Committee held its fourth hearing on Election Reform.

Members present: Mr. Ney, Mr. Ehlers, Mr. Doolittle, Mr. Hoyer, and Mr. Fattah.

Witnesses: Christopher Baum, Vice President, Gartner Group; Thomas R. Palfrey, Professor, California Institute of Technology; David Woods, Professor, Ohio State University; Ronald Rivest, Professor, Massachusetts Institute of Technology.

MARKUP

On Thursday November 15, 2001, the Committee met to mark up H.R. 3295. The Committee favorably reported H.R. 3295, as amended, by a recorded vote (8–0), a quorum being present.

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MATTERS REQUIRED UNDER THE RULES OF THE HOUSE

COMMITTEE RECORD VOTES

Clause 3(b) of House rule XIII requires the results of each record vote on an amendment or motion to report, together with the names of those voting for and against, to be printed in the committee report.

Amendment No. 1

Offered by Mr. Reynolds. The first vote during the markup came on the amendment offered by Mr. Reynolds.

The amendment would allow, but not require, military base commanders to locate polling places on their installations.

The amendment was approved by a voice vote a quorum being present.

Amendment No. 2

Offered by Mr. Hoyer. The second vote during the markup came on the amendment offered by Mr. Hoyer. This amendment would add additional voting system accessibility requirements for the disabled and those with limited proficiency in English.

The vote on the amendment was 3–4 and the amendment was not agreed to.

Member	Yes	No	Present
Mr. Ney		X	
Mr. Linder		X	
Mr. Doolittle		X	
Mr. Reynolds		X	
Mr. Hoyer	X		
Mr. Fattah	X		
Mr. Davis	X		
Total	3	4	

The Committee then voted on H.R. 3295, as amended. The bill as amended was agreed to by a recorded vote (8–0).

Member	Yes	No	Present
Mr. Ney	X		
Mr. Ehlers	X		
Mr. Linder	X		
Mr. Doolittle	X		
Mr. Reynolds	X		
Mr. Hoyer	X		
Mr. Fattah	X		
Mr. Davis	X		
Total	8	0	

The Committee then voted to report H.R. 3295 favorably, as amended. The vote to report favorably was approved by recorded vote (8–0).

Member	Yes	No	Present
Mr. Ney	X		
Mr. Ehlers	X		
Mr. Linder	X		
Mr. Doolittle	X		

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Member	Yes	No	Present
Mr. Reynolds	X		
Mr. Hoyer	X		
Mr. Fattah	X		
Mr. Davis	X		
Total	8	0	

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) rule XIII of the Rules of the House of Representatives, the Committee states that the findings and recommendations of the Convention Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

GENERAL PERFORMANCE GOALS AND OBJECTIVES

The Committee states, with respect to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, that the goal and objective of H.R. 3295 is to improve the election infrastructure in the United States.

CONSTITUTIONAL AUTHORITY

In compliance with clause 3(d)(1) of rule XIII, the Committee states that Article 1, Section 4 of the U.S. Constitution grants Congress the authority to make laws governing the time, place and manner of holding Federal elections.

FEDERAL MANDATES

The Committee states, with respect to section 423 of the Congressional Budget Act of 1974, that the bill does not include any significant Federal mandate.

PREEMPTION CLARIFICATION

Section 423 of the Congressional Budget Act of 1974 requires the report of any committee on a bill or joint resolution to include a committee statement on the extent to which the bill or joint resolution is intended to preempt state or local law. The Committee states that H.R. 3295 is not intended to preempt any state or local law.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

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U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, November 30, 2001.

Hon. ROBERT W. NEY,
Chairman, Committee on House Administration,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3295, the Help America Vote Act of 2001.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Mark Grabowicz and Matthew Pickford (for federal costs); Susan Sieg Tompkins (for the impact on state, local, and tribal governments): and Paige Piper/Bach (for the impact on the private sector).

Sincerely,

BARRY B. ANDERSON
(For Dan L. Crippen, Director).

Enclosure.

H.R. 3295, Help America Vote Act of 2001

Summary: H.R. 3295 would authorize the appropriation of about $2.8 billion over fiscal year 2002 through 2006, mostly for grants to states and localities to improve voting technology and election administration. The bill would establish the Election Assistance Commission to undertake activities to improve the administration of elections and would set minimum standards for national elections. H.R. 3295 also would require the Department of Defense to implement a voting assistance program for military personnel and other overseas U.S. citizens. Finally, the bill would provide reduced postage rates for official election mailings.

Assuming appropriation of the authorized amounts, CBO estimates that implementing H.R. 3295 would cost about $2.8 billion over the 2002–2006 period. In addition, we estimate that enacting the bill would increase costs to the U.S. Postal Service by about $100 million over the 2002–2003 period. (Postal Service spending is classified as off-budget and is not subject to pay-as-you-go procedures.) The bill would not otherwise affect direct spending or receipts so pay-as-you-go procedures would not apply.

Section 4 of the Unfunded Mandates Reform Act (UMRA) excludes from the application of that act any legislative provisions that enforce the constitutional rights of individuals. CBO has determined that title V and certain sections of title VI would fall within that exclusion. Other provisions of the bill would provide grants to states to improve voting procedures and technology. Any costs to state, local, or tribal governments as a result of participating in those programs would be incurred voluntarily. The remaining provisions of the bill contain no intergovernmental or private-sector mandates and would impose no costs on state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 3295 is shown in the following table. The costs of this legislation fall within budget functions 050 (national defense), 370 (commerce and housing credit), and 800 (general government).

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	By fiscal year, in millions of dollars—				
	2002	2003	2004	2005	2006
CHANGES IN SPENDING SUBJECT TO APPROPRIATION					
Grants to replace punch card voting machines:					
Authorization Level	400	0	0	0	0
Estimated Outlays	200	200	0	0	0
Voting system improvements:					
Authorization Level	750	750	750	0	0
Estimated Outlays	75	600	750	675	150
Election Assistance Commission:					
Estimated Authorization Level	3	4	4	4	4
Estimated Outlays	1	2	3	3	3
Other provisions:					
Estimated Authorization Level	37	14	12	12	14
Estimated Outlays	20	26	12	12	14
Total:					
Estimated Authorization Level	1,190	768	766	16	18
Estimated Outlays	296	828	765	690	167
CHANGES IN OFF-BUDGET DIRECT SPENDING					
U.S. Postal Service[1]					
Estimated Budget Authority	50	55	0	0	0
Estimated Outlays	50	55	0	0	0

[1] These estimated costs would be offset, overtime, by postal rate increases.

Basis of estimate: For this estimate, CBO assumes that the bill will be enacted by the end of calendar year 2001 and that the necessary amounts will be appropriated each year. CBO estimates that implementing H.R. 3295 would cost $2.8 billion over the 2002–2006 period, mostly for voting system improvements. The bill would also increase spending of the Postal Service, which is classified as off-budget.

Spending subject to appropriation

Grants to Replace Punch-Card Voting Machines. H.R. 3295 would authorize the appropriation of $400 million for fiscal year 2002 for payments for state and local governments to replace punch card voting systems. State and local governments that apply for these funds would be able to receive a maximum of $6,000 per precinct.

Voting System Improvements. The bill would authorize the appropriation of $2.25 billion over the 2002–2004 period to pay for grants to states and localities for improving voting technology and upgrading equipment, improving voter registration systems, increasing access for voters with disabilities, and enhancing training for poll workers. CBO expects that most of the funds to replace machines and so implement improvements would be spent in fiscal years 2003 through 2005.

Election Assistance Commission. Title II would authorize the appropriation of up to $10 million annually to establish the Election Assistance Commission. The four-member, bipartisan commission would advise state and local governments on election administration. This work would include developing voluntary election management standards, serving as a clearinghouse for information, and reviewing procedures affecting the administration of federal elections. The bill also would transfer all the functions of the Office of Election Administration of the Federal Election Commission to the new commission. CBO estimates that the commission would re-

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quire funding of $3 million to $4 million annually with estimated outlays of about $12 million over the 2002–2006 period.

Other Provisions. H.R. 3295 also would authorize appropriations for several other programs aimed at improving the election process, including grants to study and improve voting technology, pilot programs to test new technologies, and programs to encourage citizens to get involved in the election process. CBO estimates that, in total, implementing these programs would cost $84 million over the 2002–2006 period.

H.R. 3295 would direct the Secretary of Defense to coordinate all voting activities for members of the military and other overseas U.S. citizens, includes training voting assistance officers, conducting mail delivery surveys, and providing information on voter registration requirements and deadlines of the various states. Based on information from the Department of Defense, CBO estimates that implementing this section of the bill would result in no significant costs.

Off-budget costs (direct spending)

For official mailings sent to voters by local election officials via first-class mail, H.R. 3295 would reduce the postage rate by 50 percent. CBO expects that the reduced postage rate would apply to two mailings every year to each of the 150 million registered voters in the United States. The current first-class rate is 34 cents and is expected to rise to 37 cents by fiscal year 2003, so CBO estimates this provision would cost the Postal Service about $50 million in 2002 and about $55 million in 2003. Over time, there would be no net effect from this provision because the Postal Service is required to set rates so that it covers all costs. Postal Service spending and collections are classified as off-budget and would not be subject to pay-as-you-go procedures.

Pay-as-you-go considerations: None.

Intergovernmental and private-sector impact: Section 4 of UMRA excludes from the application of that act any legislative provisions that enforce the constitutional rights of individuals. CBO has determined that title V and certain sections of title VI would fall within that exclusion because they enforce an individual's right to vote, and to have that vote counted.

Other provisions of the bill would benefit state and local governments. Specifically, title I would provide grants to states to replace or upgrade punch card voting systems. Provisions of title II would provide payments to states to improve election administration and voter education. In both cases, states must provide up to 25 percent in matching funds to be eligible to receive the assistance. The matching requirement as well as any other costs to state, local, or tribal governments as a result of participating in these programs would be incurred voluntarily.

The remaining provisions of the bill contain no intergovernmental or private-sector mandates and would impose no costs on state, local, or tribal governments.

Estimate prepared by: Federal Costs: Mark Grabowicz and Matthew Pickford. Impact on State, Local, and Tribal Governments: Susan Sieg Tompkins. Impact on the Private Sector: Paige Piper/Bach.

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Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 36, UNITED STATES CODE

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SUBTITLE II—PATRIOTIC AND NATIONAL ORGANIZATIONS

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PART B—ORGANIZATIONS

201. AGRICULTURAL HALL OF FAME 20101

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1526. Help America Vote Foundation 152601

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PART B—ORGANIZATIONS

* * * * * * *

CHAPTER 1526—HELP AMERICA VOTE FOUNDATION

Sec.
152601. Organization.
152602. Purposes.
152603. Board of directors.
152604. Officers and employees.
152605. Powers.
152606. Principal office.
152607. Service of process.
152608. Annual audit.
152609. Civil action by Attorney General for equitable relief.
152610. Immunity of United States Government.
152611. Authorization of appropriations.
152612. Annual report.

§ 152601. Organization

(a) FEDERAL CHARTER.—The Help America Vote Foundation (in this chapter, the "foundation") is a federally chartered corporation.

(b) NATURE OF FOUNDATION.—The foundation is a charitable and nonprofit corporation and is not an agency or establishment of the United States Government.

(c) PERPETUAL EXISTENCE.—Except as otherwise provided, the foundation has perpetual existence.

§ 152602. Purposes

(a) IN GENERAL.—The purposes of the foundation are to—

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(1) mobilize secondary school students (including students educated in the home) in the United States to participate in the election process in a nonpartisan manner as poll workers or assistants;

(2) place secondary school students (including students educated in the home) as nonpartisan poll workers or assistants to local election officials in precinct polling places across the United States; and

(3) establish cooperative efforts with State and local election officials, local educational agencies, superintendents and principals of public and private secondary schools, and other appropriate nonprofit charitable and educational organizations exempt from taxation under section 501(a) of the Internal Revenue Code of 1986 as an organization described in section 501(c)(3) of such Code to further the purposes of the foundation.

(b) REQUIRING ACTIVITIES TO BE CARRIED OUT ON NONPARTISAN BASIS.—The foundation shall carry out its purposes without partisan bias or without promoting any particular point of view regarding any issue, and shall ensure that each participant in its activities is governed in a balanced manner which does not reflect any partisan bias.

(c) CONSULTATION WITH STATE ELECTION OFFICIALS.—The foundation shall carry out its purposes under this section in consultation with the chief election officials of the States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, and the United States Virgin Islands.

§ 152603. Board of directors

(a) GENERAL.—The board of directors is the governing body of the foundation.

(b) MEMBERS AND APPOINTMENT.—(1) The board consists of 12 directors, who shall be appointed not later than 60 days after the date of the enactment of this chapter as follows:

(A) 4 directors (of whom not more than 2 may be members of the same political party) shall be appointed by the President.

(B) 2 directors shall be appointed by the Speaker of the House of Representatives.

(C) 2 directors shall be appointed by the minority leader of the House of Representatives.

(D) 2 directors shall be appointed by the majority leader of the Senate.

(E) 2 directors shall be appointed by the minority leader of the Senate.

(2) In addition to the directors described in paragraph (1), the chair and ranking minority member of the Committee on House Administration of the House of Representatives (or their designees) and the chair and ranking minority member of the Committee on Rules and Administration of the Senate (or their designees) shall each serve as an ex officio nonvoting member of the board.

(3) A director is not an employee of the Federal government and appointment to the board does not constitute appointment as an officer or employee of the United States Government for the purpose of any law of the United States (except as may otherwise be provided in this chapter).

(4) The terms of office of the directors are 4 years.

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(5) A vacancy on the board shall be filled in the manner in which the original appointment was made.

(c) CHAIR.—The directors shall select one of the directors as the chair of the board. The individual selected may not be a current or former holder of any partisan elected office or a current or former officer of any national committee of a political party.

(d) QUORUM.—The number of directors constituting a quorum of the board shall be established under the bylaws of the foundation.

(e) MEETINGS.—The board shall meet at the call of the chair of the board for regularly scheduled meetings, except that the board shall meet not less often than annually.

(f) REIMBURSEMENT OF EXPENSES.—Directors shall serve without compensation but may receive travel expenses, including per diem in lieu of subsistence, in accordance with sections 5702 and 5703 of title 5.

(g) LIABILITY OF DIRECTORS.—Directors are not personally liable, except for gross negligence.

§ 152604. Officers and employees

(a) APPOINTMENT OF OFFICERS AND EMPLOYEES.—The board of directors appoints, removes, and replaces officers and employees of the foundation.

(b) STATUS AND COMPENSATION OF EMPLOYEES.—

(1) IN GENERAL.—Officers and employees of the foundation—

(A) are not employees of the Federal government (except as may otherwise be provided in this chapter);

(B) shall be appointed and removed without regard to the provisions of title 5 governing appointments in the competitive service; and

(C) may be paid without regard to chapter 51 and subchapter III of chapter 53 of title 5.

(2) AVAILABILITY OF FEDERAL EMPLOYEE RATES FOR TRAVEL.—For purposes of any schedules of rates negotiated by the Administrator of General Services for the use of employees of the Federal government who travel on official business, officers and employees of the foundation who travel while engaged in the performance of their duties under this chapter shall be deemed to be employees of the Federal government.

§ 152605. Powers

(a) GENERAL.—The foundation may—

(1) adopt a constitution and bylaws;

(2) adopt a seal which shall be judicially noticed; and

(3) do any other act necessary to carry out this chapter.

(b) POWERS AS TRUSTEE.—To carry out its purposes, the foundation has the usual powers of a corporation acting as a trustee in the District of Columbia, including the power—

(1) to accept, receive, solicit, hold, administer, and use any gift, devise, or bequest, either absolutely or in trust, of property or any income from or other interest in property;

(2) to acquire property or an interest in property by purchase or exchange;

(3) unless otherwise required by an instrument of transfer, to sell, donate, lease, invest, or otherwise dispose of any property or income from property;

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(4) to borrow money and issue instruments of indebtedness;

(5) to make contracts and other arrangements with public agencies and private organizations and persons and to make payments necessary to carry out its functions;

(6) to sue and be sued; and

(7) to do any other act necessary and proper to carry out the purposes of the foundation.

(c) ENCUMBERED OR RESTRICTED GIFTS.—A gift, devise, or bequest may be accepted by the foundation even though it is encumbered, restricted, or subject to beneficial interests of private persons, if any current or future interest is for the benefit of the foundation.

(d) CONTRACTS.—The foundation may enter into such contracts with public and private entities as it considers appropriate to carry out its purposes.

(e) ANNUAL CONFERENCE IN WASHINGTON METROPOLITAN AREA.—During each year (beginning with 2003), the foundation may sponsor a conference in the Washington, D.C., metropolitan area to honor secondary school students and other individuals who have served (or plan to serve) as poll workers and assistants and who have otherwise participated in the programs and activities of the foundation.

§ 152606. Principal office

The principal office of the foundation shall be in the District of Columbia unless the board of directors determines otherwise. However, the foundation may conduct business throughout the States, territories, and possessions of the United States.

§ 152607. Service of process

The foundation shall have a designated agent to receive service of process for the foundation. Notice to or service on the agent, or mailed to the business address of the agent, is notice to or service on the foundation.

§ 152608. Annual audit

The foundation shall enter into a contract with an independent auditor to conduct an annual audit of the foundation.

§ 152609. Civil action by Attorney General for equitable relief

The Attorney General may bring a civil action in the United States District Court for the District of Columbia for appropriate equitable relief if the foundation—

(1) engages or threatens to engage in any act, practice, or policy that is inconsistent with the purposes in section 152602 of this title; or

(2) refuses, fails, or neglects to carry out its obligations under this chapter or threatens to do so.

§ 152610. Immunity of United States Government

The United States Government is not liable for any debts, defaults, acts, or omissions of the foundation. The full faith and credit of the Government does not extend to any obligation of the foundation.

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§ 152611. Authorization of appropriations

There are authorized to be appropriated to the foundation for carrying out the purposes of this chapter—

(1) $5,000,000 for fiscal year 2002; and

(2) such sums as may be necessary for each succeeding fiscal year.

§ 152612. Annual report

As soon as practicable after the end of each fiscal year, the foundation shall submit a report to the Commission, the President, and Congress on the activities of the foundation during the prior fiscal year, including a complete statement of its receipts, expenditures, and investments. Such report shall contain information gathered from participating secondary school students describing the nature of the work they performed in assisting local election officials and the value they derived from the experience of educating participants about the electoral process.

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TITLE 10, UNITED STATES CODE

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Subtitle A—General Military Law

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PART II—PERSONNEL

* * * * * * *

CHAPTER 80—MISCELLANEOUS INVESTIGATION REQUIREMENTS AND OTHER DUTIES

Sec.

1561. Complaints of sexual harassment: investigation by commanding officers.

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1566. Voting assistance: compliance assessments; assistance.

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§ 1566. Voting assistance: compliance assessments; assistance

(a) REGULATIONS.—The Secretary of Defense shall prescribe regulations to require that the Army, Navy, Air Force, and Marine Corps ensure their compliance with any directives issued by the Secretary of Defense in implementing any voting assistance program.

(b) VOTING ASSISTANCE PROGRAMS DEFINED.—In this section, the term "voting assistance programs" means—

(1) the Federal Voting Assistance Program carried out under the Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff et seq.); and

(2) any similar program.

(c) ANNUAL EFFECTIVENESS AND COMPLIANCE REVIEWS.—(1) The Inspector General of each of the Army, Navy, Air Force, and Marine Corps shall conduct—

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(A) an annual review of the effectiveness of voting assistance programs; and

(B) an annual review of the compliance with voting assistance programs of that armed force.

(2) Upon the completion of each annual review under paragraph (1), each Inspector General specified in that paragraph shall submit to the Inspector General of the Department of Defense a report on the results of each such review. Such report shall be submitted in time each year to be reflected in the report of the Inspector General of the Department of Defense under paragraph (3).

(3) Not later than March 31 each year, the Inspector General of the Department of Defense shall submit to Congress a report on—

(A) the effectiveness during the preceding calendar year of voting assistance programs; and

(B) the level of compliance during the preceding calendar year with voting assistance programs of each of the Army, Navy, Air Force, and Marine Corps.

(d) INSPECTOR GENERAL ASSESSMENTS.—(1) The Inspector General of the Department of Defense shall periodically conduct at Department of Defense installations unannounced assessments of the compliance at those installations with—

(A) the requirements of the Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff et seq.);

(B) Department of Defense regulations regarding that Act and the Federal Voting Assistance Program carried out under that Act; and

(C) other requirements of law regarding voting by members of the armed forces.

(2) The Inspector General shall conduct an assessment under paragraph (1) at not less than 10 Department of Defense installations each calendar year.

(3) Each assessment under paragraph (1) shall include a review of such compliance—

(A) within units to which are assigned, in the aggregate, not less than 20 percent of the personnel assigned to duty at that installation;

(B) within a representative survey of members of the armed forces assigned to that installation and their dependents; and

(C) within unit voting assistance officers to measure program effectiveness.

(e) REGULAR MILITARY DEPARTMENT ASSESSMENTS.—The Secretary of each military department shall include in the set of issues and programs to be reviewed during any management effectiveness review or inspection at the installation level an assessment of compliance with the Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff et seq.) and with Department of Defense regulations regarding the Federal Voting Assistance Program.

(f) VOTING ASSISTANCE OFFICERS.—(1) Voting assistance officers shall be appointed or assigned under Department of Defense regulations. Commanders at all levels are responsible for ensuring that unit voting officers are trained and equipped to provide information and assistance to members of the armed forces on voting matters. Performance evaluation reports pertaining to a member who has been assigned to serve as a voting assistance officer shall comment on the performance of the member as a voting assistance officer. The

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Secretary of each military department shall certify to Congress that (at a minimum) a voting assistance officer has been appointed or assigned for each military installation and major command under the jurisdiction of the department and that a replacement will be appointed if the original officer is no longer able to serve.

(2) Under regulations and procedures prescribed by the Secretary, a member of the armed forces appointed or assigned to duty as a voting assistance officer shall, to the maximum extent practicable, be given the time and resources needed to perform the member's duties as a voting assistance officer during the period in advance of a general election when members and their dependents are preparing and submitting absentee ballots.

(3) As part of each assessment prepared by the Secretary of a military department under subsection (e), the Secretary shall—

(A) specify the number of members of the armed forces under the jurisdiction of the Secretary who are appointed or assigned to duty as voting assistance officers;

(B) specify the ratio of voting assistance officers to active duty members of the armed forces under the jurisdiction of the Secretary;

(C) indicate whether this number and ratio comply with the requirements of the Federal Voting Assistance Program; and

(D) describe the training such members receive to perform their duties as voting assistance officers.

(g) REGISTRATION AND VOTING INFORMATION FOR MEMBERS AND DEPENDENTS.—(1) The Secretary of each military department, using a variety of means including both print and electronic media, shall, to the maximum extent practicable, ensure that members of the armed forces and their dependents who are qualified to vote have ready access to information regarding voter registration requirements and deadlines (including voter registration), absentee ballot application requirements and deadlines, and the availability of voting assistance officers to assist members and dependents to understand and comply with these requirement.

(2) The Secretary of each military department shall make the national voter registration form prepared for purposes of the Uniformed and Overseas Citizens Absentee Voting Act by the Federal Election Commission available so that each person who enlists, reenlists, or voluntarily extends an enlistment or who completes a permanent change of station in an active or reserve component of the Army, Navy, Air Force, or Marine Corps shall receive such form at the time of the enlistment, reenlistment, extension, or completion of the permanent change of station, or as soon thereafter as practicable.

(3) Where practicable, a special day or days shall be designated at each military installation for the purpose of informing members of the armed forces and their dependents of election timing, registration requirements, and voting procedures.

(h) DELIVERY OF MAIL FROM OVERSEAS PRECEDING FEDERAL ELECTIONS.—(1) During the four months preceding a general Federal election month, the Secretary of Defense shall periodically conduct surveys of all overseas locations and vessels at sea with military units responsible for collecting mail for return shipment to the United States and all port facilities in the United States and overseas where military-related mail is collected for shipment to over-

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seas locations or to the United States. The purpose of each survey shall be to determine if voting materials are awaiting shipment at any such location and, if so, the length of time that such materials have been held at that location. During the fourth and third months before a general Federal election month, such surveys shall be conducted biweekly. During the second and first months before a general Federal election month, such surveys shall be conducted weekly.

(2) The Secretary shall ensure that voting materials are transmitted expeditiously by military postal authorities at all times. The Secretary shall, to the maximum extent practicable, implement measures to ensure that a postmark or other official proof of mailing date is provided on each absentee ballot collected at any overseas location or vessel at sea whenever the Department of Defense is responsible for collecting mail for return shipment to the United States. The Secretary shall submit to Congress a report describing the measures to be implemented to ensure the timely transmittal and postmarking of voting materials and identifying the persons responsible for implementing such measures.

(3) The Secretary of each military department, utilizing the voting assistance officer network established for each military installation, shall, to the maximum extent practicable, provide notice to members of the armed forces stationed at that installation of the last date before a general Federal election for which absentee ballots mailed from a postal facility located at that installation can reasonably be expected to be timely delivered to the appropriate State and local election officials.

(4) In this section, the term "general Federal election month" means November in an even-numbered year.

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PART IV—SERVICE, SUPPLY, AND PROCUREMENT

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CHAPTER 159—REAL PROPERTY; RELATED PERSONAL PROPERTY; AND LEASE OF NONEXCESS PROPERTY

Sec.
2661. Miscellaneous administrative provisions relating to real property.

* * * * * * *

[2670. Licenses: military installations; erection and use of buildings; American National Red Cross.**]**
2670. Buildings on military installations: use by American National Red Cross and as polling places in Federal, State, and local elections.

* * * * * * *

[§ 2670. Licenses: military installations; erection and use of buildings; American National Red Cross]

[Under**]**

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§ 2670. Buildings on military installations: use by American National Red Cross and as polling places in Federal, State, and local elections

(a) USE BY RED CROSS.—Under such conditions as he may prescribe, the Secretary of any military department may issue a revocable license to the American National Red Cross to—

(1) * * *

* * * * * * *

Supplies stored in buildings erected or used under this [section] *subsection* are available to aid the civilian population in a serious national disaster.

(b) USE AS POLLING PLACES.—(1) Notwithstanding any other provision of law, the Secretary of a military department may make a building located on a military installation under the jurisdiction of the Secretary available for use as a polling place in any Federal, State, or local public election, but only if such use is limited to eligible voters who reside on that military installation.

(2) If a building located on a military installation is made available under paragraph (1) as the site of a polling place, the Secretary shall continue to make the building available for subsequent elections unless the Secretary provides to the appropriate State or local election officials advance notice, in a reasonable and timely manner, of the reasons why the building will no longer be made available as a polling place.

(3) In this section, the term "military installation" has the meaning given the term in section 2687(e) of this title.

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Subtitle E—Reserve Components

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PART V—SERVICE, SUPPLY, AND PROCUREMENT

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CHAPTER 1803—FACILITIES FOR RESERVE COMPONENTS

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§ 18235. Administration; other use permitted by Secretary

(a) * * *

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(c) Pursuant to a lease or other agreement under subsection (a)(2), the Secretary may make a facility covered by subsection (a) available for use as a polling place in any Federal, State, or local public election notwithstanding any other provision of law. If a facility is made available as the site of a polling place with respect to an election, the Secretary shall continue to make the facility available for subsequent elections unless the Secretary provides to the appropriate State or local election officials advance notice, in a reasonable and

AMERICAN OVERSIGHT

timely manner, of the reasons why the facility will no longer be made available as a polling place.

§ 18236. Contributions to States; other use permitted by States

(a) * * *

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(e) Pursuant to a lease or other agreement under subsection (c)(1), a State may make a facility covered by subsection (c) available for use as a polling place in any Federal, State, or local public election notwithstanding any other provision of law.

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UNIFORMED AND OVERSEAS CITIZENS ABSENTEE VOTING ACT

* * * * * * *

TITLE I—REGISTRATION AND VOTING BY ABSENT UNIFORMED SERVICES VOTERS AND OVERSEAS VOTERS IN ELECTIONS FOR FEDERAL OFFICE

SEC. 101. FEDERAL RESPONSIBILITIES.

(a) * * *

* * * * * * *

(b) DUTIES OF PRESIDENTIAL DESIGNEE.—The Presidential designee shall—

(1) consult State and local election officials in carrying out this title**[**;**]**, *and ensuring that such officials are aware of the requirements of this Act;*

(2) prescibe an official post card form, containing both an absentee voter registration application and an absentee ballot application, for use by the States **[**as recommended in section 104**]** *as required under section 102(4)*;

* * * * * * *

(5) compile and distribute (A) descriptive material on State absentee registration and voting procedures, and (B) to the extent practicable, facts relating to specific elections, including dates, offices involved, and the text of ballot questions; **[**and**]**

(6) not later than the end of each year after a Presidential election year, transmit to the President and the Congress a report on the effectiveness of assistance under this title, including a statistical analysis of uniformed services voter participation *(listed separately for overseas voters and absent uniformed services voters)*, a general assessment of overseas nonmilitary participation, and a description of State-Federal cooperation**[**.**]***; and*

(7) prescribe a standard oath for use with any document under this title affirming that a material misstatement of fact

AMERICAN OVERSIGHT

in the completion of such a document may constitute grounds for a conviction for perjury.

* * * * * * *

SEC. 102. STATE RESPONSIBILITIES.

(a) IN GENERAL.—Each State shall—

(1) * * *

[(2) accept and process, with respect to any general, special, primary, or runoff election for Federal office, any otherwise valid voter registration application from an absent uniformed services voter or overseas voter, if the application is received by the appropriate State election official not less than 30 days before the election; and**]**

(2) accept and process, with respect to any election for Federal office, any otherwise valid voter registration application and absentee ballot application from an absent uniformed services voter or overseas voter, if the application is received by the appropriate State election official not less than 30 days before the election;

(3) permit overseas voters to use Federal write-in absentee ballots (in accordance with section 103) in general elections for Federal office**[**.**]***;*

(4) use the official post card form (prescribed under section 101) for simultaneous voter registration application and absentee ballot application; and

(5) if the State requires an oath or affirmation to accompany any document under this title, use the standard oath prescribed by the Presidential designee under section 101(b)(7).

(b) DESIGNATION OF SINGLE STATE OFFICE TO PROVIDE INFORMATION ON REGISTRATION AND ABSENTEE BALLOT PROCEDURES FOR ALL VOTERS IN STATE.—

(1) IN GENERAL.—Each State shall designate a single office which shall be responsible for providing information regarding voter registration procedures and absentee ballot procedures (including procedures relating to the use of the Federal write-in absentee ballot) to all absent uniformed services voters and overseas voters who wish to register to vote or vote in any jurisdiction in the State.

(2) RECOMMENDATION REGARDING USE OF OFFICE TO ACCEPT AND PROCESS MATERIALS.—Congress recommends that the State office designated under paragraph (1) be responsible for carrying out the State's duties under this Act, including accepting valid voter registration applications, absentee ballot applications, and absentee ballots (including Federal write-in absentee ballots) from all absent uniformed services voters and overseas voters who wish to register to vote or vote in any jurisdiction in the State.

(c) REPORT ON NUMBER OF ABSENTEE BALLOTS TRANSMITTED AND RECEIVED.—Not later than 90 days after the date of each regularly scheduled general election for Federal office, each State and unit of local government which administered the election shall (through the State, in the case of a unit of local government) submit a report to the Election Assistance Commission (established under the Help America Vote Act of 2001) on the number of absentee ballots transmitted to absent uniformed services voters and overseas

AMERICAN OVERSIGHT

voters for the election and the number of such ballots which were returned by such voters and cast in the election, and shall make such report available to the general public.

* * * * * * *

[SEC. 104. RECOMMENDATION TO THE STATES TO MAXIMIZE ACCESS TO THE POLLS BY ABSENT UNIFORMED SERVICES VOTERS AND OVERSEAS VOTERS.

[To afford maximum access to the polls by absent uniformed services voters and overseas voters, it is recommended that the States—

[(1) use the official post card form (prescribed under section 101) for simultaneous voter registration application and absentee ballot application;

[(2) adopt the suggested design for absentee ballot mailing envelopes prescribed under section 101;

[(3) waive registration requirements for absent uniformed services voters and overseas voters who, by reason of service or residence, do not have an opportunity to register;

[(4) if an application other than an official post card form (prescribed under section 101) is required for absentee registration, provide that registration forms be sent with the absentee ballot and may be returned with it;

[(5) expedite processing of balloting materials with respect to absent uniformed services voters and overseas voters;

[(6) permit any oath required for a document under this title to be administered by a commissioned officer of the Armed Forces or any official authorized to administer oaths under Federal law or the law of the State or other place where the oath is administered;

[(7) assure that absentee ballots are mailed to absent uniformed services voters and overseas voters at the earliest opportunity;

[(8) assist the Presidential designee in compiling statistical and other information relating to this title; and

[(9) provide late registration procedures for persons recently separated from the Armed Forces.]

SEC. 104. USE OF SINGLE APPLICATION FOR ALL SUBSEQUENT ELECTIONS.

(a) IN GENERAL.—If a State accepts and processes an official post card form (prescribed under section 101) submitted by an absent uniformed services voter or overseas voter for simultaneous voter registration and absentee ballot application (in accordance with section 102(a)(4)) and the voter requests that the application be considered an application for an absentee ballot for each subsequent election for Federal office held in the State during that year, the State shall provide an absentee ballot to the voter for each subsequent election for Federal office held in the State during that year.

(b) EXCEPTION FOR VOTERS CHANGING REGISTRATION.—Subsection (a) shall not apply with respect to a voter registered to vote in a State for any election held after the voter notifies the State that the voter no longer wishes to be registered to vote in the State or after the State determines that the voter has registered to vote in another State.

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(c) REVISION OF OFFICIAL POST CARD FORM.—The Presidential designee shall revise the official post card form (prescribed under section 101) to enable a voter using the form to—

(1) request an absentee ballot for each election for Federal office held in a State during a year; or

(2) request an absentee ballot for only the next scheduled election for Federal office held in a State.

(d) NO EFFECT ON VOTER REMOVAL PROGRAMS.—Nothing in this section may be construed to prevent a State from removing any voter from the rolls of registered voters in the State under any program or method permitted under section 8 of the National Voter Registration Act of 1993.

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TITLE 18, UNITED STATES CODE

* * * * * * *

PART I—CRIMES

* * * * * * *

CHAPTER 29—ELECTIONS AND POLITICAL ACTIVITIES

* * * * * * *

§ 592. Troops at polls

Whoever, being an officer of the Army or Navy, or other person in the civil, military, or naval service of the United States, orders, brings, keeps, or has under his authority or control any troops or armed men at any place where a general or special election is held, unless such force be necessary to repel armed enemies of the United States, shall be fined under this title or imprisoned not more than five years, or both; and be disqualified from holding any office of honor, profit, or trust under the United States.

This section shall not prevent any officer or member of the armed forces of the United States from exercising the right of suffrage in any election district to which he may belong, if otherwise qualified according to the laws of the State in which he offers to vote.

This section shall not apply to the actions of members of the Armed Forces at any polling place on a military installation where a general or special election is held in accordance with section 2670(b), 18235, or 18236 of title 10.

§ 593. Interference by armed forces

Whoever, being an officer or member of the Armed Forces of the United States, prescribes or fixes or attempts to prescribe or fix, whether by proclamation, order or otherwise, the qualifications of voters at any election in any State; or

Whoever, being such officer or member, prevents or attempts to prevent by force, threat, intimidation, advice or otherwise any qualified voter of any State from fully exercising the right of suffrage at any general or special election; or

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Whoever, being such officer or member, orders or compels or attempts to compel any election officer in any State to receive a vote from a person not legally qualified to vote; or

Whoever, being such officer or member, imposes or attempts to impose any regulations for conducting any general or special election in a State, different from those prescribed by law; or

Whoever, being such officer or member, interferes in any manner with an election officer's discharge of his duties—

Shall be fined under this title or imprisoned not more than five years, or both; and disqualified from holding any office of honor, profit or trust under the United States.

This section shall not prevent any officer or member of the Armed Forces from exercising the right of suffrage in any district to which he may belong, if otherwise qualified according to the laws of the State of such district.

This section shall not apply to the actions of members of the Armed Forces at any polling place on a military installation where a general or special election is held in accordance with section 2670(b), 18235, or 18236 of title 10.

§ 594. Intimidation of voters

(a) Whoever intimidates, threatens, coerces, or attempts to intimidate, threaten, or coerce, any other person for the purpose of interfering with the right of such other person to vote or to vote as he may choose, or of causing such other person to vote for, or not to vote for, any candidate for the office of President, Vice President, Presidential elector, Member of the Senate, Member of the House of Representatives, Delegate from the District of Columbia, or Resident Commissioner, at any election held solely or in part for the purpose of electing such candidate, shall be fined under this title or imprisoned not more than one year, or both.

(b) For purposes of subsection (a), a poll worker who urges or encourages a voter who has not cast a vote for each office listed on the ballot to return to the voting booth to cast votes for every office, or who otherwise intimidates, harasses, or coerces the voter to vote for each such office (or who attempts to intimidate, harass, or coerce the voter to vote for each such office), shall be considered to have intimidated, threatened, or coerced (or to have attempted to intimidate, threaten, or coerce) the voter for the purpose of interfering with the voter's right to vote as the voter may choose. Nothing in this subsection shall prohibit a poll worker from providing information to a voter who requests assistance.

* * * * * * *

SECTION 2003 OF THE REVISED STATUTES OF THE UNITED STATES

SEC. 2003. No officer of the Army or Navy of the United States shall prescribe or fix, or attempt to prescribe or fix, by proclamation, order, or otherwise, the qualifications of voters in any State, or in any manner interfere with the freedom of any election in any State, or with the exercise of the free right of suffrage in any State. *Making a military installation or reserve component facility available as a polling place in a Federal, State, or local public election*

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in accordance with section 2670(b), 18235, or 18236 of title 10, United States Code, is deemed to be consistent with this section.

TITLE 39, UNITED STATES CODE

* * * * * * *

PART IV—MAIL MATTER

* * * * * * *

CHAPTER 36—POSTAL RATES, CLASSES, AND SERVICES

SUBCHAPTER I—POSTAL RATE COMMISSION

Sec.
3601. Establishment.
* * * * * * *
SUBCHAPTER II—PERMANENT RATES AND CLASSES OF MAIL
3621. Authority to fix rates and classes.
* * * * * * *
[3629. Reduced rates for voter registration purposes.]
3629. Reduced rates for official election mail.
* * * * * * *

SUBCHAPTER II—PERMANENT RATES AND CLASSES OF MAIL

* * * * * * *

[§ 3629. Reduced rates for voter registration purposes

[The Postal Service shall make available to a State or local voting registration official the rate for any class of mail that is available to a qualified nonprofit organization under section 3626 for the purpose of making a mailing that the official certifies is required or authorized by the National Voter Registration Act of 1993.]

§ 3629. Reduced rates for official election mail

(a) Notwithstanding any other provision of this title, the rate of postage for any first-class mail matter shall, in the case of official election mail, be equal to 50 percent of the regular first-class rate, subject to subsection (c).

(b) For purposes of this section, the term "official election mail" means any mailing by a State or local election official that—

(1) is mailed in the course of official business;

(2) consists of voter registration or election information or assistance prepared and mailed in a nonpartisan manner; and

(3) bears such logo or other markings as the Postal Service may require.

Such term does not include any mailing that includes any mail matter intended to promote government action unrelated to the conduct of an election.

(c) Nothing in this section shall, with respect to any official election mail, be considered to make unavailable—

(1) any free mailing privilege under section 3406 or any other provision of law for which such mail otherwise qualifies; or

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(2) any reduced rate of postage under section 3626 or any other provision of law for which such mail otherwise qualifies, if lower than the rate that would otherwise apply under subsection (a).

* * * * * * *

SECTION 311 OF THE FEDERAL ELECTION CAMPAIGN ACT OF 1971

ADMINISTRATIVE PROVISIONS

SEC. 311. (a) The Commission shall—

(1) * * *

* * * * * * *

(8) prescribe rules, regulations, and forms to carry out the provisions of this Act, in accordance with the provisions of subsection (d); *and*

(9) transmit to the President and to each House of the Congress no later than June 1 of each year, a report which states in detail the activities of the Commission in carrying out its duties under this Act, and any recommendations for any legislative or other action the Commission considers appropriate**[**; and**]**.

[(10) serve as a national clearinghouse for the compilation of information and review of procedures with respect to the administration of Federal elections. The Commission may enter into contracts for the purpose of conducting studies under this paragraph. Reports or studies made under this paragraph shall be available to the public upon the payment of the cost thereof, except that copies shall be made available without cost, upon request, to agencies and branches of the Federal Government.**]**

* * * * * * *

NATIONAL VOTER REGISTRATION ACT OF 1993

* * * * * * *

SEC. 8. REQUIREMENTS WITH RESPECT TO ADMINISTRATION OF VOTER REGISTRATION.

(a) * * *

* * * * * * *

(b) CONFIRMATION OF VOTER REGISTRATION.—Any State program or activity to protect the integrity of the electoral process by ensuring the maintenance of an accurate and current voter registration roll for elections for Federal office—

(1) * * *

(2) shall not result in the removal of the name of any person from the official list of voters registered to vote in an election for Federal office by reason of the person's failure to vote**[**.**]**, *except that nothing in this paragraph may be construed to prohibit a State from using the procedures described in subsections (c) and (d) to remove an individual from the official list of eligible voters if the individual has not voted or appeared to vote in*

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2 or more consecutive general elections for Federal office and has not notified the applicable registrar (in person or in writing) or responded to a notice sent by the applicable registrar during the period in which such elections are held that the individual intends to remain registered in the registrar's jurisdiction.

* * * * * * *

SEC. 9. FEDERAL COORDINATION AND REGULATIONS.

(a) IN GENERAL.—The [Federal Election Commission] *Election Assistance Commission*—

(1) * * *

* * * * * * *

TITLE 5, UNITED STATES CODE

* * * * * * *

PART III—EMPLOYEES

* * * * * * *

Subpart B—Employment and Retention

CHAPTER 31—AUTHORITY FOR EMPLOYMENT

* * * * * * *

SUBCHAPTER II—THE SENIOR EXECUTIVE SERVICE

* * * * * * *

§ 3132. Definitions and exclusions

(a) For the purpose of this subchapter—

(1) "agency" means an Executive agency, except a Government corporation and the General Accounting Office, but does not include—

(A) * * *

* * * * * * *

(C) the Federal Election Commission *or the Election Assistance Commission*; or

* * * * * * *

Subpart F—Labor-Management and Employee Relations

* * * * * * *

CHAPTER 73—SUITABILITY, SECURITY, AND CONDUCT

* * * * * * *

SUBCHAPTER III—POLITICAL ACTIVITIES

* * * * * * *

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§ 7323. Political activity authorized; prohibitions

(a) * * *
(b)(1) * * *
(2)(A) * * *
(B) The provisions of subparagraph (A) shall apply to—
(i) an employee of—
(I) the Federal Election Commission *or the Election Assistance Commission*;

* * * * * * *

SECTION 8G OF THE INSPECTOR GENERAL ACT OF 1978

REQUIREMENTS FOR FEDERAL ENTITIES AND DESIGNATED FEDERAL ENTITIES

SEC. 8G. (a) Notwithstanding section 11 of this Act, as used in this section—

(1) * * *

(2) the term "designated Federal entity" means Amtrak, the Appalachian Regional Commission, the Board of Governors of the Federal Reserve System, the Board for International Broadcasting, the Commodity Futures Trading Commission, the Consumer Product Safety Commission, the Corporation for Public Broadcasting, the Equal Employment Opportunity Commission, the Farm Credit Administration, the Federal Communications Commission, the Federal Deposit Insurance Corporation, the Federal Election Commission, *the Election Assistance Commission,* the Federal Housing Finance Board, the Federal Labor Relations Authority, the Federal Maritime Commission, the Federal Trade Commission, the Legal Services Corporation, the National Archives and Records Administration, the National Credit Union Administration, the National Endowment for the Arts, the National Endowment for the Humanities, the National Labor Relations Board, the National Science Foundation, the Panama Canal Commission, the Peace Corps, the Pension Benefit Guaranty Corporation, the Securities and Exchange Commission, the Smithsonian Institution, the United States International Trade Commission, and the United States Postal Service;

* * * * * * *

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ADDITIONAL VIEWS OF HON. STENY H. HOYER

I write to offer my additional views regarding the importance of ensuring accessibility in voting for people with disabilities. The bill in its present form offers significant gains in voting accessibility for persons with disabilities, especially those with visual impairments. For example, the bill requires that, in a state receiving election fund payments, every polling place or precinct have at least one voting system (hardware and software) that is fully accessible. However, while I agree with everything in the committee report, I wish to emphasize the need to take further steps beyond this bill and beyond the Americans with Disabilities Act to ensure complete accessibility in voting and registration services for persons with disabilities.

Complete voting access must be assured for every voter regardless of whether a state or locality accepts federal election funds and without regard to any significant cost constraints. Voting is one of the fundamental rights of citizens in a Republic. As such, the right should not depend upon the vagaries of local budgets—certainly not in an affluent society like ours. Physical access to the ballot box should be unconditional. Every polling place in America should be accessible to persons with the full range of disabilities. Every polling place should have already at least one voting machine or method that is fully accessible, that is, a voting machine or method that allows a voter with a disability to vote in a manner that is as reliable, fraud-resistant, private, independent and anonymous as that available to anyone else.

One of our most profound accomplishments since the founding of the United States is the progressive broadening of the franchise to include African-Americans, women and others subject to pervasive discrimination. In this process, we have learned that few of the rights or interests of a particular group of Americans can be secure so long as that group lacks the right to vote for officials who will be accountable to them. We have also learned that, as more adult citizens become full participants in our polity, the democratic process is enriched for all. We are still in the process of learning this lesson with regard to persons with disabilities.

Most of the ongoing discrimination against persons with disabilities concerning voting is no longer motivated by deliberate efforts do exclude. However, as the recent GAO report on accessibility documents, the choice, design and administration of polling places, voting methods and machines continues in many instances to be driven by a careless assumption on the part of election administrators that all voters are able-bodied. The General Accounting Office recently found, for example, that many polling places have high door thresholds and inaccessible parking places, and that, even when ramps are installed, in many instances they are hazardous to users. Policymakers must strive to highlight the need to admin-

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USCCR-21-1814-A-000427

ister every aspect of elections in a way that recognizes that a portion of the electorate does not enjoy the full range of abilities, disabilities and impairments.

The right to vote is an almost sacred right that should not be casually traded off against other rights and interests. See, e.g., *Harper* v. *Virginia State Board of Elections,* 383 U.S. 663, 667 (voting is a fundamental right, any alleged infringement of which, must be meticulously scrutinized); *Kramer* v. *Union Free School District No. 15,* 395 U.S. 621, 626 (1969) ("statutes distributing the franchise constitute the foundation of our representative society [requiring careful examination of a State's stated interests]") Corresponding to the fundamental nature of this right, government officials and election administrators at all levels of government must recognize we have a fundamental obligation to guarantee full access to the ballot box for every qualified citizen. Thus, I hope the Senate will go beyond the achievements of this bill to provide a guarantee of full accessibility that is not dependent upon a state's acceptance of federal funds and that is not limited by any significant cost constraints. Further, I hope we then accept those additional requirements when we meet with the Senate in conference.

However, even before Congress takes additional steps, we should remember, as the committee report explains, that we already have powerful tools for electoral reform available to us, one of which is the Americans with Disabilities Act of 1990 (ADA). In the preamble to that Act, we found that voting is a "critical area" and that discrimination against individuals with disabilities, especially discrimination in the form of isolation and segregation, persists. To redress this discrimination, the ADA insists upon both equality and integration for persons with disabilities.

In the past decade, the ADA has already improved electoral access for persons with disabilities, both through voluntary compliance and through successful litigation in recent cases such as *New York* v. *Schoharie,* 82 F.Supp.2d 19 (N.D.N.Y. 2000) and *Doe* v. *Rowe,* 156 F.Supp.2d 35 (D. Me. 2001). But, as the GAO report documents, there is plenty of work left to be done to achieve compliance with the ADA. While the ADA provides an undue burden defense to its general mandates, it still provides a great deal of leverage for correcting the kinds of problems documented by the GAO.

Under the ADA, all voting and registration procedures and services must be accessible. Accessibility includes affording individuals with disabilities an opportunity to cast a ballot in a manner that is as private, independent and anonymous as that afforded other voters, and to vote in an integrated setting with other voters. The ADA includes an integration mandate that bars attempts to achieve accessibility through separate-but-equal kinds of arrangements, a mandate that is limited only by the undue burden defense. See, e.g., *Olmstead* v. *L.C. by Zimring,* 527 U.S. 581 (1999).

Of course, the ADA's mandate to offer equal and integrated voting methods to persons with disabilities does nothing to deny a State or local government the right to provide generally to the electorate alternative voting methods such as absentee balloting. Nor does it deny an individual with a disability the right to receive a reasonable accommodation in the form of an absentee ballot, curbside voting, or assistance from a poll worker or other indi-

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vidual of his or her choice (other than an individual who is the voter's employer or agent of that employer or officer or agent of the voter's union).

But the fact that an individual with a disability might want to use an absentee ballot or curbside voting as a means of gaining access to voting does not relieve a State or locality from its obligation to make polling places as integrated and accessible as possible. Thus, to comply with the ADA, a pubic entity (such as a State or unit of local government or a responsible government official) must first survey its polling places and move inaccessible polling places to accessible locations. The defense of undue burden is unavailable if there are accessible places that may reasonably serve as polling places. It will be a rare case in which the need to move a polling place to another location will create an undue burden.

Simple compliance with this requirement—that accessible polling places be chosen in the first place—will result in significant increased accessibility without costing any additional money. Normally, an alteration in polling location will only require a different way of thinking about what constitutes an appropriate polling place.

There may well be situations in which no accessible place is reasonably available as a polling place. In such cases, the public entity must make changes to existing polling places to ensure accessibility, such as installing a ramp providing access for those who use wheelchairs. This obligation, however, is subject to an "undue burden" defense. Thus, in some situations, the entity will not be required to make a polling place accessible, and instead, will be permitted to offer access to voting through such means as curbside voting or absentee balloting.

It is important to note, however, that a State or unit of local government may not, as a first resort, depend upon curbside voting or absentee balloting as its sole means to make polling places accessible. Rather, as noted, the government must first determine whether an integrated means of access can be achieved within the "undue burden" limitation. If such access cannot be achieved within that standard, the public entity may then rely upon alternative, less-integrated means of access to the act of voting, for example, curbside voting or absentee balloting.

The undue burden standard makes allowance for the limitations of poor or rural jurisdictions lacking the resources to achieve a level of accessibility equivalent to that of larger, wealthier or more populous areas. However, an undue burden defense must be assessed in terms of actual—rather than merely formal—resource constraints. An undue burden means significant difficulty or expense in light of the budget of the unit of government responsible for funding registration services, polling places and voting methods, together with any coordinated budget with, or budgetary resources available from, other units of State and local government. See, e.g., H.R. Rep. No. 101–485 (1990), reprinted in Comm. on Educ. and Labor, 101st Cong., Legislative History of the Americans with Dis-

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abilities Act, at 340–343 (1990) (providing guidance on the analogous undue hardship determination in the employment context.)

STENY H. HOYER.

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AMERICAN OVERSIGHT

Date : 8/19/2021 12:48:33 PM
From : "John Mashburn" jmashburn@usccr.gov
To : "Christian Adams" a@electionlawcenter.com, "Stephen Gilchrist" sgilchrist@usccr.gov, "Gail Heriot" gheriot@usccr.gov, "Peter Kirsanow" pkirsanow@usccr.gov
Cc : "Thomas Simuel" tsimuel@usccr.gov, "Alexander Heideman" aheideman@usccr.gov, "Carissa Mulder" CMulder@usccr.gov
Subject : Re: EAC Final Selections Info
Attachment : Commission Telphonic Meeting Transcript 04.30.2021 UNEDITED.docx;

EAC Transcript re: MOU: Attached is the transcript of the April 30, 2021 Bus Mtg where the EAC nominations "Memorandum of Understanding" (not an AI) on the USCCR's nominations and appointments to the Board of Advisors for the EAC was approved on pages 8-9 (*which I have highlighted in yellow*) – in case the specifics of what was approved come up at tomorrow's bus mtg. The transcript is hard to track down on the USCCR website, but Alex fortunately had a copy of it already.

Motion: to add the EAC appointments to the bus meeting agenda tomorrow:

> "I move that a vote on the USCCR's appointments to the Board of Advisors for the Election Assistance Commission be added to the agenda."

From: John Mashburn <jmashburn@usccr.gov>
Date: Thursday, August 19, 2021 at 11:26 AM
To: Christian Adams <a@electionlawcenter.com>, Stephen Gilchrist <sgilchrist@usccr.gov>, Gail Heriot <gheriot@usccr.gov>, Peter Kirsanow <pkirsanow@usccr.gov>
Cc: Thomas Simuel <tsimuel@usccr.gov>, Alexander Heideman <aheideman@usccr.gov>, Carissa Mulder <CMulder@usccr.gov>
Subject: Fw: EAC Final Selections--not by notational vote

FYI- Cantu "welcomes" a motion for a vote on EAC nominations

From: Norma Cantu
Sent: Thursday, August 19, 2021 11:15:35 AM
To: Juana Silverio; Mauro Morales; John Mashburn; Irena Vidulovic; Mauro Morales
Cc: Thomas Simuel; Alexander Heideman; Carissa Mulder
Subject: RE: EAC Final Selections--not by notational vote

Dear John, Juana, and others,
I have already heard on Tuesday an objection from a Commissioner regarding using the notational vote to address the confirming of the EAC candidates. The concern, I understand, is that more discussion is needed on important items, such as length of term, duties to report back to USCCR, etc.
Since one objection stops the notational process, it will take a vote at a meeting to confirm.
I would welcome it if Commissioner Adams or others wish to make a motion at the meeting to add this item to the agenda.
Norma

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From: Juana Silverio <jsilverio@usccr.gov>
Sent: Wednesday, August 18, 2021 4:13 PM
To: Mauro Morales <mmorales@usccr.gov>; John Mashburn <jmashburn@usccr.gov>
Cc: Thomas Simuel <tsimuel@usccr.gov>; Alexander Heideman <aheideman@usccr.gov>; Carissa Mulder <CMulder@usccr.gov>; Norma Cantu <ncantu@usccr.gov>
Subject: Re: EAC Final Selections

Thanks John. You are correct, the item is not on the agenda for Friday.

There were a few concerns raised on process before confirming the candidates to the EAC on behalf of the Commission. Please stand by snd advise your commissioners that further communication is forthcoming by the Chairwoman.

Please let us know if you have any further questions. We greatly appreciate your patience.

Juana

--
Juana Silverio (she/her/ella)
Special Assistant to Commissioner Norma V. Cantú
U.S. Commission on Civil Rights
E: jsilverio@usccr.gov
http://usccr.gov/
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425
Follow Us on Twitter & Facebook:

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From: Mauro Morales
Sent: Wednesday, August 18, 2021 4:41:49 PM
To: John Mashburn
Cc: Juana Silverio; Thomas Simuel; Alexander Heideman; Carissa Mulder
Subject: Re: EAC Final Selections

That is a good question. It is a decision for Commissioners in consultation with the Chair to decide how they wish to proceed. Adams is welcome to make a motion to amend the agenda to request a discussion and a vote. If the majority supports his motion it can be added to agenda. In the alternative, if Commissioners desire to proceed by notational vote and no one objects then a notational vote can occur. As I have requested previously, please advise me how you wish to proceed. I recommend Commissioners express their desire to the Chair since the Chair controls the agenda.

Sent from my iPhone

> On Aug 18, 2021, at 12:57 PM, John Mashburn <jmashburn@usccr.gov> wrote:

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This vote is not on the agenda for Friday, and a notational vote was not sent, so where does it stand? Gilchrist and Adams would like a vote at the business meeting and Adams is willing to make a motion to vote on it.

From: Mauro Morales <mmorales@usccr.gov>
Date: Tuesday, August 10, 2021 at 2:57 PM
To: Commissioners <Commissioners@usccr.gov>
Cc:
"CommissionerAssistants@usccr.gov" <CommissionerAssistants@usccr.gov>,
David Ganz <dganz@usccr.gov>
Subject: EAC Final Selections

Commissioners,

Pursuant to the AI voted on during the April 30th Business meeting, I received the following names for appointment the Election Assistance Commission (EAC):

Commissioners Cantu, Adegbile, Kladney and Yaki have selected for appointment to the EAC:

- Cleta Michell, Chair, Conservative Partnership Institute Election Integrity Network.

Commissioners Adams, Gilchrist, Heriot and Kirsanow have selected for appointment to the EAC:

- Commissioner Michael Yaki;

Under the AI adopted by Commissioners, these two members selected shall be placed in nomination and ratified by a majority vote. Please inform me how you would like to proceed for a majority vote either by placing it on the agenda for the next USCCR business meeting or by a notational vote. Thank you.

Mauro Morales
Staff Director
U.S. Commission on Civil Rights
P: 202-376-7796| F: 202-376-7672
Mmorales@usccr.gov
http://usccr.gov/
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425

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U.S. COMMISSION ON CIVIL RIGHTS

+ + + + + **UNEDITED**

TELEPHONIC SPECIAL BUSINESS MEETING

+ + + + +

FRIDAY, 30, 2021

+ + + + +

The Commission convened via teleconference, at 2:00 p.m. EDT, Peter Kirsanow and Michael Yaki, Co-Hosts, then Norma Cantu, Chair, presiding.

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PRESENT:

J. CHRISTIAN ADAMS, Commissioner

DEBO P. ADEGBILE, Commissioner

NORMA CANTU, Commissioner

GAIL HERIOT, Commissioner

STEPHEN GILCHRIST, Commissioner

PETER N. KIRSANOW, Commissioner

DAVID KLADNEY, Commissioner

MICHAEL YAKI, Commissioner

MAURO MORALES, Staff Director

DAVID GANZ, General Counsel

STAFF PRESENT:

PAMELA DUNSTON, Chief ASCD

TINALOUISE MARTIN, Director, OM

DAVID MUSSATT, Director, RPCU

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COMMISSIONER ASSISTANTS PRESENT:

ALEC DEULL

ALEXANDER HEIDEMAN

JOHN K. MASHBURN

CARISSA MULDER

AMY ROYCE

THOMAS SIMUEL

IRENA VIDULOVIC

JUANA SILVERIO

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A G E N D A

I. Omnibus Motion to Approve Commissioner Norma Cantu to Serve as USCCR Chair and to approve three Administrative Instructions 6

II. Approval of Agenda 16

III. Amendments to the Agenda 19

IV. Business meeting 37

V. Adjourn Meeting 52

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P R O C E E D I N G S

2:02 p.m.

OPERATOR: Good day and welcome to the Commission business meeting.

Today's conference is being recorded.

At this time, I would like to turn the conference over to Co-Hosts Commissioner Michael Yaki and Commissioner Peter Kirsanow. Please go ahead.

COMMISSIONER KIRSANOW: Thanks very much.

This is a meeting of the U.S. Commission on Civil Rights, and it is currently 2:02 p.m. Eastern Daylight Time, and the meeting is taking place over the phone.

I'm Commissioner Kirsanow. I'll be co-chairing the meeting with Commissioner Michael Yaki.

I'll now call the roll.

Commissioner Adams, are you present?

COMMISSIONER ADAMS: Present.

COMMISSIONER KIRSANOW: Commissioner Adegbile?

COMMISSIONER ADEGBILE: Present.

COMMISSIONER KIRSANOW: Commissioner Cantu?

COMMISSIONER CANTU: Present.

COMMISSIONER KIRSANOW: Commissioner

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Gilchrist?

COMMISSIONER GILCHRIST: Present.

COMMISSIONER KIRSANOW: Commissioner Heriot?

COMMISSIONER HERIOT: I'm here.

COMMISSIONER KIRSANOW: Commissioner Kladney?

COMMISSIONER KLADNEY: Here.

COMMISSIONER KIRSANOW: Commissioner Yaki?

COMMISSIONER YAKI: Here.

COMMISSIONER KIRSANOW: And Kirsanow is also present, and a quorum of the Commissioners is present.

Do we have a court reporter?

COURT REPORTER: Yes.

COMMISSIONER KIRSANOW: And the Staff Director. Mauro, present?

MR. MORALES: I am present.

COMMISSIONER KIRSANOW: Thank you.

All right. The meeting of the Civil Rights Commission will come to order.

I. OMNIBUS MOTION TO APPROVE COMMISSIONER NORMA CANTU TO SERVE AS CHAIR AND TO APPROVE THREE ADMINISTRATIVE INSTRUCTIONS

AMERICAN OVERSIGHT

COMMISSIONER KIRSANOW: And the first item on the agenda is an omnibus motion to confirm Commissioner Norma Cantu as the Chair, as well as making certain changes to the Commission's procedures.

I.D. TO APPROVE COMMISSIONER NORMA CANTU TO SERVE AS USCCR CHAIR

COMMISSIONER KIRSANOW: During our April 16th meeting, Commissioner Cantu confirmed that, if confirmed as Chair, she'll discontinue the Speaker Series that was in place for a while under the previous Chair, and that Commissioner Cantu will always vote to maintain the Commission's tradition of 30 days for Commissioners' statements, 30 days for rebuttals, and, if necessary, 10 days for surrebuttals. So, we don't need to revisit that today.

Therefore, I move, along with Co-Chair Commissioner Yaki, that the Commission confirm Norma Cantu as Chair; that the Commission adopt a Memorandum of Understanding regarding the appointment of members to the U.S. Election Assistance Commission Board of Advisors, and that the Commission adopt revisions to Administrative Instruction 1.

I'll read these into the record. Be

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patient. This will take a couple of minutes.

I.A. ADMINISTRATIVE INSTRUCTION REGARDING APPOINTMENTS BY THE COMMISSION

COMMISSIONER KIRSANOW: First, the Memorandum of Understanding regarding the appointment of members to the EAC Board of Advisors, Section 1.01, reads:

"Any authority not specifically granted the Commission on Civil Rights by statute or regulation or Executive Order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, et cetera, shall be exercised by the Commission as a whole by majority vote."

Paragraph .02. "Any authority specifically granted the Staff Director of the Commission on Civil Rights by statute or regulation or Executive Order to appoint members to serve on other federal entities such as advisory boards, tasks forces, other commissions, et cetera, shall be exercised by the Staff Director."

Paragraph .03. "Any authority specifically granted the Chair of the Commission on Civil Rights by statute or regulation or Executive Order to appoint members to serve on other federal

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entities such as advisory boards, task forces, other commissions, et cetera, shall be exercised by the Chair."

"Section 2.02(1). For the two appointments to the U.S. Election Assistance Commission, the members appointed by Democratic appointees shall nominate two individuals who are ready, willing, and able to serve, and the members appointed by the Republican authorities shall nominate two individuals who are ready, willing, and able to serve."

Subparagraph (2). "The members appointed by the Democratic authorities shall select one of the two individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one of the two individuals nominated by the members appointed by the Democratic authorities."

Subparagraph (3). "The members selected shall be placed in nomination and ratified in conformance with Section 1."

I.B. ADMINISTRATIVE INSTRUCTION ON INTERVIEWS WITH EXTERNAL FACT WITNESSES

COMMISSIONER KIRSANOW: Next, I'll read into the record the new section of AI 1 regarding

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witness interviews by staff. The Staff Director shall ensure that this provision is codified in the appropriate place of AI 1, and it reads as follows:

"As the staff persons arrange for interviews of external fact witnesses or experts for the purpose of informing writing of reports, et cetera, the Commissioners will be given notice of the names and titles of proposed witnesses, so that the Commissioners and their Special Assistants can observe the interview firsthand. The observations will help the Commissioners better understand the subject matters covered, and enable the Commissioner to conduct and follow up with questions of the witnesses. If more than one Commissioner (or Commissioner's Special Assistant) representing Democratic or Republican appointing authorities wishes to attend, the Staff Director may limit attendance to one representative from each (provided circumstances clearly warrant such a limit)."

I.C. ADMINISTRATIVE INSTRUCTION ON WITNESSES AT HEARINGS AND BRIEFINGS

COMMISSIONER KIRSANOW: Finally, I'll read into the record the revisions to AI 1.6, and that one reads:

"Section 11. Commission Hearings.

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".01 The OGC is responsible for preparing and holding Commission hearings. This includes ensuring that the witnesses, when viewed as a whole, possess sufficient policy, legal, academic, advocacy, and other knowledge and experience necessary for a full and balanced inquiry into the issues."

Paragraph .02. "To document that hearing witnesses reflected varied and opposing views, opinions, and perspectives, OSD completes Section III of the National Office Report Checklist for Hearing Reports form. By completing this form, OSD certifies that the hearing included a numerical balance of witnesses between opposing views, opinions and perspectives or that a numerical balance could not be achieved or was not appropriate in light of the subject of the hearing and/or the availability of credible witnesses. Section IV is completed by the Staff Director before the proposed final draft report and checklist are provided to the external reviewer."

Paragraph .03. "Staff is encouraged to use various sources to gather suggestions for appropriate hearing witnesses. Commissioners are the primary source of suggestions for hearing witnesses. Additional sources may include, but are not limited

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to, other program offices, regional directors, and appropriate external groups. If two Commissioners request that staff invite a particular witness, staff must invite that witness. No Commissioner may act jointly to invite more than two witnesses, which results in no more than 8 witnesses shall be required to be invited by staff by action of the Commission. Thereafter, a Commissioner or Commissioners may suggest as many witnesses as they deem advisable, but staff is not obligated to invite them, and staff may consult additional sources to invite additional witnesses for hearings."

Paragraph .04. We're almost there. That's not part of the AI. "OGC prepares hearing proposals, design or implementation plans, and briefing or background books. When preparing hearing proposals this office shall demonstrate a consideration of varied and opposing views, opinions, and perspectives. This office also verifies the accuracy of transcripts, drafts hearing reports, and maintains official hearing records."

Paragraph .05. "OGC is responsible for supplying a complete and correct transcript with appropriate exhibits to OSD and ASCD for publication. Hearing transcripts do not require editorial review."

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Paragraph .06. "The hearing record will be kept open for a period of 30 days after the hearing or as otherwise established by a majority vote of the Commissioners. Any material or information placed in the record during this period will be available to the Commissioners upon request."

Paragraph "Section 12. Commission Briefings."

Subparagraph .01. "Briefings are used by the Commission to provide Commissioners and the general public insight into civil rights without the formality of a hearing. Any program office may be assigned responsibility for conducting a briefing by the Staff Director."

Paragraph .02. "Staff is encouraged to use various sources to gather suggestions for appropriate briefing witnesses. Commissioners are the primary source of suggestions for briefing witnesses. Additional sources may include, but are not limited to, other program offices, regional directors, and appropriate external groups. If two Commissioners jointly request that staff invite a particular witness, staff must invite that witness. No Commissioner may act jointly to invite more than two witnesses, which results in no more than 8

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witnesses shall be required to be invited by staff by action of the Commission. Thereafter, a Commissioner or Commissioners may suggest as many witnesses as they deem advisable, but staff is not obligated to invite them, and staff may consult additional sources to invite additional witnesses for hearings."

".03 Commissioners are provided a proposed final list of briefing presenters for approval. To document that the briefing witnesses reflected varied and opposing views, opinions, and perspectives, OSD completes Section III of the National Office Report Checklist for Briefing Reports form. By completing this part of the form, OSD certifies that the briefing included a numerical balance of witnesses between opposing views, opinions and perspectives or that a numerical balance could not be achieved or was not appropriate in light of the subject of the briefing and/or the availability of credible witnesses. Section IV of this form is completed by the Staff Director before the proposed final draft report and checklist is provided to the external reviewer."

Finally, ".04 The briefing record will be kept open for a period of 30 days after the briefing or as otherwise established by a majority

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vote of the Commissioners. Any material or information placed in the record during this period will be available to the Commissioners upon request."

Kirsanow now pauses for a drink of vodka.

(Laughter.)

And that's the motion. Is there a second?

COMMISSIONER ADAMS: Yes, second. Adams.

COMMISSIONER KIRSANOW: Okay. The floor is open for discussion, and I turn it over to Commissioner Yaki.

COMMISSIONER YAKI: Thank you very much, Co-Chair Kirsanow.

First, I have a point of clarification. You had indicated that the first document that you read, which was on the appointments issue, was a Memorandum of Understanding, but I actually believe that is an Administrative Instruction. Is that not correct?

COMMISSIONER KIRSANOW: Yes, that's right.

COMMISSIONER YAKI: Yes. Okay. So, I wanted to clarify that for the record.

COMMISSIONER KIRSANOW: Thank you.

COMMISSIONER YAKI: Secondly, for those

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of you who were listening, the last document that Commissioner Kirsanow read, Section 11.01, Section 11.03, Section 12.02 were the only sections of that entire document that were amended. The rest remain intact as current Commission policy. I just wanted to clarify that for people who were listening in.

So, there has been a motion and a second. I am first going to do a little parliamentary moving, which is I think we need to first move to accept, approve and amend the agenda.

II. APPROVAL OF AGENDA

COMMISSIONER YAKI: So, I am going to set aside the first motion for the time being and first ask, is there a motion to approve the agenda?

COMMISSIONER ADAMS: So moved. So moved. Adams.

COMMISSIONER YAKI: Commissioner Adams moves to approve the agenda. Is there a second?

COMMISSIONER GILCHRIST: Second. Gilchrist.

COMMISSIONER YAKI: Second by Commissioner Gilchrist.

On the motion to approve the agenda -- we still have time to amend the agenda -- but on the motion to approve the agenda, so we have this before

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us, is there any discussion?

COMMISSIONER HERIOT: Wait. I thought you had to do amendments first?

COMMISSIONER YAKI: No. Well, I would rather have the agenda approved first, and then, amend the agenda. And then, we'd move on the agenda as approved.

COMMISSIONER HERIOT: I don't think that's the right way to do that.

COMMISSIONER YAKI: Well, that may be, but I'm going to put the extra vote in, just to make sure that no one can argue that we didn't follow strict rules.

So, on the order to approve the agenda now, I'm going to call the roll.

Commissioner Kirsanow, since you have the roll sheet, could you call the roll?

COMMISSIONER KIRSANOW: Sure.

Commissioner Adams?

COMMISSIONER ADAMS: Yes.

COMMISSIONER KIRSANOW: Commissioner Adegbile?

COMMISSIONER ADEGBILE: Aye.

COMMISSIONER KIRSANOW: Commissioner Cantu?

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COMMISSIONER CANTU: Yes.

COMMISSIONER KIRSANOW: Commissioner Gilchrist?

COMMISSIONER GILCHRIST: Aye.

COMMISSIONER KIRSANOW: Commissioner Heriot?

COMMISSIONER HERIOT: No.

COMMISSIONER KIRSANOW: Commissioner Kladney?

COMMISSIONER KLADNEY: Yes.

COMMISSIONER KIRSANOW: Commissioner Yaki?

COMMISSIONER YAKI: Aye.

COMMISSIONER KIRSANOW: And this is Kirsanow. I say "yes," also.

COMMISSIONER YAKI: Thank you.

There are 8 ayes, no objections.

The agenda is now before us. Is there a motion to approve, to amend the agenda --

COMMISSIONER KIRSANOW: I believe, Commissioner Yaki, I think there were 7 ayes and 1 nay.

COMMISSIONER YAKI: Oh, 1 nay. I'm sorry. 7 ayes, 7 yeses; 1 no.

Okay. Now we will take before us the

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motion to amend the agenda to put forth an omnibus motion that will approve both Commissioner, that will approve Commissioner Cantu as Chair of the United States Commission on Civil Rights, as well as approve the three Administrative Instructions that were read into the record by Commissioner Kirsanow.

III. AMENDMENTS TO THE AGENDA

COMMISSIONER YAKI: It has been moved, it has been seconded, moved by Commissioner Kirsanow, seconded by Commissioner Adams.

Is there any discussion?

COMMISSIONER ADEGBILE: Commissioner Adegbile.

COMMISSIONER YAKI: Commissioner Adegbile, the floor is yours.

COMMISSIONER ADEGBILE: Yes, I would have preferred that we move item by item and not have these things as an omnibus because there may be pieces that are acceptable and pieces that are unacceptable; and thus, it makes it hard to parse those things out. Because we're proceeding in omnibus fashion, it will affect my vote, though, obviously, I support Commissioner Cantu in her effort to chair our Commission in service of the people of the United States. But the omnibus motion will have impact on

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the way I will be voting.

COMMISSIONER YAKI: Thank you, Commissioner Adegbile.

Is there any further discussion?

COMMISSIONER KLADNEY: Dave Kladney.

COMMISSIONER YAKI: Commissioner Kladney?

COMMISSIONER KLADNEY: I concur with Commissioner Adegbile's assessment here, and this omnibus motion will affect my vote the same way. Thank you.

COMMISSIONER YAKI: Thank you, Commissioner Kladney.

If you can hang on just one second?

Is there any further discussion?

MR. MORALES: Staff Director Mauro Morales requests permission to address the Commissioners.

COMMISSIONER YAKI: Without objection, I will recognize Staff Director Morales.

MR. MORALES: Thank you, Commissioner. I appreciate the time.

I wanted to let you know that, and all the Commissioners know, that I and the Executive Committee have no opinion on the AI or the MOU about

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appointments to external commissions that the Commissioners are considering.

I will say that the Staff Director and the Executive Committee believe the proposed AIs concerning OCR witness selection and witness interviews -- I believe they're designated as AI 1 and AI 1.6 -- inappropriately conflict with existing Administrative Instructions and Commission regulations. Furthermore, we believe that they unreasonably create programmatic and operations problems for the Commission.

Commissioners provided no evidence, justification, or rationale for the necessity and the creation of these two AIs. As a consequence, the Staff Director and the Executive Committee respectfully object to them and recommend that these AIs be withdrawn from further consideration.

We thank you for your time and your consideration. Thank you.

COMMISSIONER YAKI: Thank you very much.

COMMISSIONER KLADNEY: Commissioner Yaki?

COMMISSIONER YAKI: Just one second. I just trying to get my phone back into where it should be.

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Thank you, Staff Director Morales.

Commissioner Kladney, were you speaking?

COMMISSIONER KLADNEY: Yes, Commissioner Yaki.

I would like to move to sever the items into individual votes.

COMMISSIONER YAKI: Thank you.

The motion to sever is a privileged motion and is not debatable or subject to a vote. So, we will have to take an individual vote on each one of these items.

However, in the discretion of the Co-Chair, I'm going to take them up in the order that I deem.

So, I'm going to first start with the AI on the Administrative Instruction regarding appointments by the Commission. That individual Instruction is before us.

And, Commissioner Kirsanow, would you please call the roll?

COMMISSIONER KIRSANOW: I'm sorry, are we voting on individual -- I'm lost as to what we're voting on right now. Are we voting on a separate issue or the omnibus?

COMMISSIONER YAKI: Well, the issue is

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that each of these items are individual items. They are put together as an omnibus. However, a Commissioner -- because they were originally noticed as individual items on the agenda, and the motion that you put and seconded and was put on the agenda was to combine them all into a single motion, a motion to sever, under Robert's Rules, is a privileged motion that is non-debatable and is -- well, it's self-executing. The Commission has actually done that before on previous occasions.

What I'm going to do, though, is call on AIs --

COMMISSIONER HERIOT: No, it's not self-executing.

COMMISSIONER YAKI: It is self-executing.

COMMISSIONER HERIOT: No, it's not.

COMMISSIONER YAKI: And if you would listen to me for a second, I am going to call the AIs first prior to the vote for Commissioner Cantu as Chair.

COMMISSIONER HERIOT: Okay.

COMMISSIONER YAKI: Okay?

COMMISSIONER HERIOT: But it's not self-executing. It's non-debatable. Nothing is self-executing. But --

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COMMISSIONER YAKI: But a motion to sever actually --

COMMISSIONER HERIOT: -- it's out of order, but that's okay with me.

COMMISSIONER YAKI: Okay. But I will tell you, under Robert's Rules, which is something I know you care about, a motion to sever is self-executing.

COMMISSIONER HERIOT: But it's not a motion, and that's --

COMMISSIONER YAKI: It is a motion to sever.

Anyway, that being the case --

COMMISSIONER HERIOT: Well, hold on. Hold on. Hold on. Okay. Are you saying that we are voting on the motion to sever --

COMMISSIONER YAKI: No.

COMMISSIONER HERIOT: -- or are you saying we are voting on the AI?

COMMISSIONER YAKI: We are voting on the AIs. And then, we will proceed to a vote on Commissioner Cantu, because the motion to sever is not something that is subject to a vote. I guess you would call it a request to sever, but it is one that, under Robert's Rules, is --

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COMMISSIONER HERIOT: No.

COMMISSIONER YAKI: -- is a privilege of --

COMMISSIONER HERIOT: I'm willing to let this go right now, but no.

COMMISSIONER YAKI: Okay. Well, I would disagree, and we can look it up, since you love Robert's Rules so much.

So, Commissioner --

COMMISSIONER ADAMS: Co-Chair Yaki, point of parliamentary inquiry. It's Commissioner Adams.

COMMISSIONER YAKI: Yes, Commissioner Adams.

COMMISSIONER ADAMS: Could you, for the record, tell us, because I can't find it, where is the request to sever in Robert's Rules?

COMMISSIONER YAKI: Okay.

COMMISSIONER HERIOT: Because if we do this in the order you're saying, let's just go.

COMMISSIONER ADAMS: Well, it's a point of parliamentary inquiry. I made a point of parliamentary inquiry, and I'm just asking, what is the number of Robert's Rules? Just help me find it. I can't find it.

COMMISSIONER YAKI: I'll find it, but

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I'll find it later.

As the Chair, I'm exercise my call.

So, Commissioner Kirsanow, on Administrative Instruction, Commissioner Kirsanow, would you please call the roll?

I.A. ADMINISTRATIVE INSTRUCTION REGARDING APPOINTMENTS BY THE COMMISSION

COMMISSIONER KIRSANOW: Commissioner Adams, how do you vote?

COMMISSIONER ADAMS: Yes.

COMMISSIONER KIRSANOW: Commissioner Adegbile?

COMMISSIONER ADEGBILE: No.

COMMISSIONER KIRSANOW: Commissioner Cantu?

COMMISSIONER CANTU: Yes.

COMMISSIONER KIRSANOW: Commissioner Gilchrist?

COMMISSIONER GILCHRIST: Yes.

COMMISSIONER KIRSANOW: Commissioner Heriot?

COMMISSIONER HERIOT: Yes.

COMMISSIONER KIRSANOW: Commissioner Kladney?

COMMISSIONER KLADNEY: No.

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COMMISSIONER KIRSANOW: Commissioner Yaki?

COMMISSIONER YAKI: Aye.

COMMISSIONER KIRSANOW: And I vote aye.

It is 6-to-2 aye.

COMMISSIONER YAKI: Thank you.

The Administrative Instruction on Commission appointments is passed.

Next, we will hear or we will have a vote on the Administrative Instruction on -- sorry, I have to put these all in order -- on the proposed AI on interviews with external fact witnesses. That was read into the record by Commissioner Kirsanow.

I.B. ADMINISTRATIVE INSTRUCTION ON INTERVIEWS WITH EXTERNAL FACT WITNESSES

COMMISSIONER YAKI: Would you please call the roll?

COMMISSIONER KIRSANOW: Commissioner Adams?

COMMISSIONER ADAMS: Yes.

COMMISSIONER KIRSANOW: Commissioner Adegbile?

COMMISSIONER ADEGBILE: Nay.

COMMISSIONER KIRSANOW: Commissioner Cantu?

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COMMISSIONER CANTU: Yes.

COMMISSIONER KIRSANOW: Commissioner Gilchrist?

COMMISSIONER GILCHRIST: Yes.

COMMISSIONER KIRSANOW: Commissioner Heriot?

COMMISSIONER HERIOT: Yes.

COMMISSIONER KIRSANOW: Commissioner Kladney?

COMMISSIONER KLADNEY: No.

COMMISSIONER KIRSANOW: Commissioner Yaki?

COMMISSIONER YAKI: Aye.

COMMISSIONER KIRSANOW: And I vote yes.

The motion passes 6-to-2.

COMMISSIONER YAKI: The motion on the Administrative Instruction on interviewing external fact witnesses passes 6-to-2.

We will now move to the last Administrative Instruction on witnesses at hearings and briefings, as read by Commissioner Kirsanow.

I.C. ADMINISTRATIVE INSTRUCTION ON WITNESSES AT HEARING AND BRIEFINGS

COMMISSIONER YAKI: Would you please call the roll?

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COMMISSIONER KIRSANOW: Commissioner Adams?

COMMISSIONER ADAMS: Yes.

COMMISSIONER KIRSANOW: Commissioner Adegbile?

COMMISSIONER ADEGBILE: Nay.

COMMISSIONER KIRSANOW: Commissioner Cantu?

COMMISSIONER CANTU: Yes.

COMMISSIONER KIRSANOW: Commissioner Gilchrist?

COMMISSIONER GILCHRIST: Yes.

COMMISSIONER KIRSANOW: Commissioner Heriot?

COMMISSIONER HERIOT: Yes.

COMMISSIONER KIRSANOW: Commissioner Kladney?

COMMISSIONER KLADNEY: No.

COMMISSIONER KIRSANOW: Commissioner Yaki?

COMMISSIONER YAKI: Aye.

COMMISSIONER KIRSANOW: And Kirsanow votes yes.

Passes 6-to-2.

COMMISSIONER YAKI: The Administrative

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Instruction on witnesses for briefings and hearings is hereby passed.

Finally, we come to the motion to confirm Commissioner Norma Cantu as Chair of the United States Commission on Civil Rights.

I.D. TO APPROVE COMMISSIONER NORMA CANTU TO SERVE AS USCCR CHAIR

COMMISSIONER YAKI: Commissioner Kirsanow, would you please call the roll in our last actions as Co-Chairs of the Commission?

COMMISSIONER KIRSANOW: Okay.

Commissioner Adams?

COMMISSIONER ADAMS: Yes.

COMMISSIONER KIRSANOW: Commissioner Adegbile?

COMMISSIONER ADEGBILE: Aye.

COMMISSIONER KIRSANOW: Commissioner Cantu?

COMMISSIONER CANTU: Yes.

COMMISSIONER KIRSANOW: Commissioner Gilchrist?

COMMISSIONER GILCHRIST: Yes.

COMMISSIONER KIRSANOW: Commissioner Heriot?

COMMISSIONER HERIOT: Yes.

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COMMISSIONER KIRSANOW: Commissioner Kladney?

COMMISSIONER KLADNEY: Yes.

COMMISSIONER KIRSANOW: Commissioner Yaki?

COMMISSIONER YAKI: Aye.

COMMISSIONER KIRSANOW: And I vote yes.

The motion passes 8-to-0.

And, Chairperson Cantu, congratulations. We'll pass the scepter to you.

(Applause.)

CHAIR CANTU: Thank you very much.

COMMISSIONER YAKI: Congratulations.

CHAIR CANTU: Thank you.

I really want to thank the White House, the U.S. Congress, the U.S. Senate, the Commissioners, those of you we call the "Group of Four" who were able to look very seriously at these matters of process. And I know that the result is one that will ultimately adhere. And we did work hard together to get to this place.

I also want to thank the Special Assistants, the staff who set up this call, all our staff, and your families who spared you all, so that we could get the Commission's work done.

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For those of you who are listening, this is what it looks like to be respectful. This is what it looks like to show that we can disagree, but do it in a very professional way. And I want to thank everyone on this call for providing this teachable moment for our audience.

We have an agenda that's been amended in terms of handling the first item. As a matter of procedure, I want to circle back to all the Commissioners.

III. AMENDMENTS TO THE AGENDA

CHAIR CANTU: Are there other items on the agenda that you need addressed today?

(No response.)

Hearing none, I would ask that --

COMMISSIONER YAKI: Wait. I'm sorry, I was on mute. I was on mute, Commissioner Cantu.

CHAIR CANTU: Okay. I hear you. I hear you. Please. That is why I offered -- this is my listening, and next time I will listen longer.

Do we have other items on today's agenda? Commissioner Yaki?

COMMISSIONER YAKI: Commissioner Cantu, I would simply say this: there are items on the agenda that I think have been adequately noticed and

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need to be addressed. However, in the interest of deferring to some concerns by my colleagues, I would ask that, if they are not discussed today, that they be subjected to a notational vote at their earliest convenience.

For me, especially the statement on Asian American/Pacific Islander hate and the continued concerns and struggles of our community with regard to the uptick in hate crimes, bias, and prejudice, stemming from or incited by the coronavirus pandemic, is one that continues to -- I think we need to reiterate to the new Administration our concerns, and I would like this addressed at the earliest possible convenience and by a notational vote, but I defer to my colleagues who have expressed some desire to have a shorter meeting today.

CHAIR CANTU: I'm sorry, are you making a motion, Commissioner Yaki, or are you suggesting an alternative way that we handle it?

COMMISSIONER YAKI: Yes, I was simply saying that I would like it to be moved on today. And so, I would like to move it. But if there is no second because of concerns of time, then I would simply ask the Chair, at her discretion, to put it on for a notational ballot approval at her earliest

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convenience.

I will formally move to take from the agenda Item III.B., the statement on Asian American hate, and ask for it to be approved today. If not, then it be brought up at the earliest convenience by the Chair for a notational vote.

CHAIR CANTU: We're discussing amending today's agenda. So, we have a motion to discuss today the Asian American statement.

COMMISSIONER KLADNEY: Kladney seconds. Kladney seconds.

CHAIR CANTU: Discussion?

COMMISSIONER HERIOT: Madam Chair, I'm getting a little confused here.

CHAIR CANTU: The motion is --

COMMISSIONER HERIOT: Is the motion about whether or not we're going to discuss this or whether or not we're removing it from the agenda? I'm just getting confused.

CHAIR CANTU: We're still talking about the agenda. Do we want to keep this on today's agenda?

COMMISSIONER HERIOT: My understanding is that some of my colleagues were going to offer an amendment, and that works better on the agenda than

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it does by notational vote.

CHAIR CANTU: Are you offering a friendly amendment to a motion that's been seconded on keeping it on today's agenda? Or are you agreeing --

COMMISSIONER HERIOT: That's just a reason to vote yes or no.

CHAIR CANTU: Okay.

COMMISSIONER HERIOT: I mean, if there's going to be an amendment, then it's better to discuss it today --

CHAIR CANTU: Okay.

COMMISSIONER HERIOT: -- than by notational vote, which doesn't lend itself to that very well.

CHAIR CANTU: I understand that.

By the way, the rule on dividing a question into subparts was 27.1.

So, any other discussion about going forward with adding the Asian American statement to today's agenda?

COMMISSIONER ADAMS: Chairman Cantu, Christian Adams.

CHAIR CANTU: Yes, Commissioner?

COMMISSIONER ADAMS: I don't have a strong view either way. I would urge Commissioner

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Yaki to take a look. There might be some fixes. There's some typos in the document, such as I think the last sentence in one of the documents, that I would have a better time dealing with it if those were fixed. And that may be a notational vote. I don't really have a view on that because there's some typos.

COMMISSIONER YAKI: Okay. Thank you for that consideration.

Look, I just want to express my view that we wanted to get this thing done. I'm going to withdraw my motion for the time being, since I think I confused everyone. So, I am going to withdraw my motion.

CHAIR CANTU: Thank you, Commissioner Yaki.

Other items that -- let me see if I can move this along. The rest of the items, C, D, E, were part of the vote that just took place. So, I can I use the discretion of the Chair to say we've already dealt with those items? That would be the rebuttals, Speaker Series, appointments.

Any objection to that?

COMMISSIONER KLADNEY: How did we deal with them, Madam Chair?

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CHAIR CANTU: In the meeting two weeks ago, I made a statement regarding the Speaker Series. In today's AI, we had an AI on the rebuttal/surrebuttal that passed. And on the appointments, we had a vote today on the bipartisan appointment that passed.

COMMISSIONER HERIOT: We haven't dealt with the Walter Williams thing.

CHAIR CANTU: Right. Do I hear a motion to keep that on today's agenda for discussion?

COMMISSIONER HERIOT: It's already there.

CHAIR CANTU: It's already there.

COMMISSIONER HERIOT: Yes.

CHAIR CANTU: It's been noticed a couple of times, you're correct.

IV. BUSINESS MEETING

CHAIR CANTU: So, at this point, I'm open to a motion and a second, so that we can have discussion on the Walter Williams memorial.

IV.A. DISCUSSION AND VOTE ON STATEMENT OF WALTER E. WILLIAMS

COMMISSIONER HERIOT: Okay. I move that we adopt the Walter Williams memorial.

COMMISSIONER KIRSANOW: Kirsanow seconds.

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CHAIR CANTU: I'm sorry, who seconded?

COMMISSIONER KIRSANOW: Kirsanow.

CHAIR CANTU: Kirsanow.

Commissioner Heriot moves, Commissioner Kirsanow seconds.

We are in discussion.

For those who are listening, in the past the individual Commissioners have been able to submit names of persons that they intend to recognize. It is not a policymaking. It is a statement and sign of respect.

COMMISSIONER HERIOT: Madam Chair?

CHAIR CANTU: Yes, Commissioner?

COMMISSIONER HERIOT: If you want, I'll talk about this. But, you know, it's just we've done this routinely now. I have voted for many of these when there have been people who have done significant work in this area.

This is one that matters to me, in the sense that Walter Williams is a hero of mine. And I think that he's also someone that many, many people think highly of.

I don't want to extend the meeting unnecessarily. Everybody has seen this statement now several times. And so, you know, I'd like to be able

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to say a kind word on Dr. Williams' passing.

CHAIR CANTU: You have my condolences and I offer condolences to the family.

Any other comments?

(No response.)

Could we do a voice vote or would you want to do a roll call vote? What is your preference?

COMMISSIONER HERIOT: Probably should do a roll call, given how confusing these things are over the phone.

CHAIR CANTU: I appreciate that.

Is there any further discussion? Does someone want to call the question?

COMMISSIONER ADAMS: Adams. Call the question.

CHAIR CANTU: Thank you.

We've had a question. The question is an aye vote supports the draft that has been duly circulated to us to honor Professor Walter Williams.

I would call alphabetically.

Adams?

COMMISSIONER ADAMS: Yes.

CHAIR CANTU: Adegbile?

COMMISSIONER ADEGBILE: Nay.

CHAIR CANTU: Gilchrist?

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COMMISSIONER GILCHRIST: Yes.

CHAIR CANTU: Heriot?

COMMISSIONER HERIOT: Yes.

CHAIR CANTU: Kirsanow?

COMMISSIONER KIRSANOW: Yes.

CHAIR CANTU: Kladney?

COMMISSIONER KLADNEY: No.

CHAIR CANTU: Yaki?

COMMISSIONER YAKI: Aye.

CHAIR CANTU: Cantu votes no.

Please note on the record, though, that, as Chair, I am cautious about the process of recognizing people where it's not clear, and has not been clear, what our criteria have been, but I do very deeply offer my condolences to those who knew the Professor and I do offer my prayers to the family.

Can we move to the next order of business? It is the item that has been noticed, the North Carolina State Advisory Council.

It is our responsibility on the Commission -- and it's a privilege to do this -- to approve --

COMMISSIONER YAKI: Point of order, Commissioner.

CHAIR CANTU: Yes, please. Yes, please.

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COMMISSIONER YAKI: Point of order, Chair Cantu.

CHAIR CANTU: Uh-hum.

IV.B. DISCUSSION AND VOTE ON ANTI-ASIAN AMERICAN HATE

COMMISSIONER YAKI: Commissioner Yaki.

One, on the item on Asian American/Pacific Islander hate, I saw the typo, "opposite" to "opposition". Thank you, Commissioner Adams for drawing that to my attention.

When I withdrew my motion, it was for consideration -- it was in light of the idea that perhaps we were going to not consider other items on the agenda and move on. But if we are considering other items on the agenda, then I wish that item to be heard in turn as Item III.B.

CHAIR CANTU: Is there an objection?

I think fair play would be we've heard from other Commissioners on their motions. So, as Chair, I'm exercising my management of time.

We will, hopefully, get these matters done pretty quickly. So, let's do our best.

On the Asian American statement regarding --

COMMISSIONER YAKI: As amended.

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CHAIR CANTU: As amended.

COMMISSIONER YAKI: As amended. Change the word "opposite" to "opposition".

CHAIR CANTU: Right. Your motion was seconded by?

COMMISSIONER KLADNEY: Kladney.

CHAIR CANTU: Kladney. Thank you, Commissioner.

And discussion?

COMMISSIONER ADAMS: Commissioner Adams.

CHAIR CANTU: Yes, Commissioner?

COMMISSIONER ADAMS: Commissioner Yaki, I had hoped to send a note. Take a look at that sentence because it seems to be relating to the previous Administration, but perhaps not.

COMMISSIONER YAKI: No, there's actually some continued controversy on this issue, Commissioner Adams.

COMMISSIONER ADAMS: Okay.

COMMISSIONER YAKI: So, I would like it to stand as is.

COMMISSIONER ADAMS: All right.

COMMISSIONER KIRSANOW: Madam Chair?

COMMISSIONER YAKI: In fact, there's been some controversy as to whether it went one way or

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backwards, or whatever. So, I think that putting our position firmly is important.

CHAIR CANTU: Who was acting to be recognized? I'm sorry. My ears --

COMMISSIONER KIRSANOW: Commissioner Kirsanow.

CHAIR CANTU: Oh, thank you, Commissioner.

COMMISSIONER KIRSANOW: Thank you, Madam Chair.

I would move to amend the letter to include the language to the following effect: that the federal government should withhold funding to any higher education institution if that institution has a policy in place or engages in a practice that discriminates against Asian Americans in recruitment or applicant review or admissions.

COMMISSIONER HERIOT: I second.

CHAIR CANTU: We have a motion --

COMMISSIONER YAKI: May I respond?

CHAIR CANTU: Yes, please.

COMMISSIONER YAKI: Commissioner Yaki responding.

Thank you, Commissioner Kirsanow, for that amendment. I will not accept it. This is

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dealing solely with the issue of the concerns regarding overt acts of bias and hate crime, as perpetrated against the Asian American community, stemming from, and incited by, in my view, the pandemic. The issue that you raise is one that I know that you care about, but I believe is not germane to this particular issue, and I ask my colleagues to oppose it.

COMMISSIONER HERIOT: And it has been seconded.

CHAIR CANTU: Is there further discussion?

COMMISSIONER ADEGBILE: Madam Chair?

CHAIR CANTU: Under the rules --

COMMISSIONER ADEGBILE: Commissioner Adegbile.

CHAIR CANTU: Yes, please. Commissioner?

COMMISSIONER ADEGBILE: It's my understanding that Title VI of the Civil Rights Act already creates a power for the federal government to withhold funding if there are findings of noncompliance with federal civil rights law. And so, in my view, this suggestion adds nothing to the current legal regime.

CHAIR CANTU: So, your contribution is

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that the amendment is unnecessary?

COMMISSIONER ADEGBILE: Yes.

CHAIR CANTU: Thank you.

COMMISSIONER YAKI: So, we need a vote on the motion to amend.

CHAIR CANTU: Has someone called the question on that motion, on the discussion on that?

COMMISSIONER KIRSANOW: There was a motion and it was seconded.

COMMISSIONER ADAMS: Adams. Call the question.

CHAIR CANTU: Thank you.

There's been a motion to amend, seconded, discussion.

Are you all ready to vote on the motion to amend to add language regarding higher education discrimination? Are you ready on that?

COMMISSIONER KIRSANOW: Yes.

CHAIR CANTU: Thank you.

So, a roll call vote would be Adams, please.

COMMISSIONER ADAMS: Yes.

CHAIR CANTU: Adegbile?

COMMISSIONER ADEGBILE: Nay.

CHAIR CANTU: Gilchrist?

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COMMISSIONER GILCHRIST: Yes.

CHAIR CANTU: Heriot?

COMMISSIONER HERIOT: Yes.

CHAIR CANTU: Kirsanow?

COMMISSIONER KIRSANOW: Yes.

CHAIR CANTU: Kladney?

COMMISSIONER KLADNEY: No.

CHAIR CANTU: And I vote no.

COMMISSIONER YAKI: You forgot me.

CHAIR CANTU: Oh, sorry. Where were you?

COMMISSIONER YAKI: You didn't call my name.

CHAIR CANTU: I'm so sorry.

Okay. Help me out.

COMMISSIONER YAKI: Commissioner Yaki votes no.

CHAIR CANTU: Thank you.

I saw your name and in my brain I thought I called you. I apologize.

So, we have -- I vote no. So, we have 4-4. The motion to amend does not carry.

We're back to the original motion.

COMMISSIONER YAKI: Yes, move to approve the -- move for the vote on the full motion.

CHAIR CANTU: All right. A roll call

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vote?

COMMISSIONER YAKI: Yes, please.

CHAIR CANTU: Adams?

COMMISSIONER ADAMS: Abstain.

CHAIR CANTU: Adegbile?

COMMISSIONER ADEGBILE: Aye.

CHAIR CANTU: Cantu? Well, skip me until the end.

Gilchrist?

COMMISSIONER GILCHRIST: Gilchrist abstains.

CHAIR CANTU: Heriot?

COMMISSIONER HERIOT: I abstain. There's something that I agree with in the letter, but, unfortunately, not all of it. So, I'm going to have to abstain.

CHAIR CANTU: Thank you.

Kirsanow?

COMMISSIONER KIRSANOW: Is that the famous director of "Rashomon"? Or is that Commissioner Kirsanow?

(Laughter.)

In any event, I'd rather be the director because I think he's a lot more entertaining and more important.

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But, nonetheless, Kirsanow abstains.

CHAIR CANTU: Thank you.

Kladney?

COMMISSIONER KLADNEY: Yes.

CHAIR CANTU: Yaki?

COMMISSIONER YAKI: Curacao is actually an alcohol. Kurosawa is a Japanese director.

(Laughter.)

COMMISSIONER KIRSANOW: It sounded like Kurosawa to me.

(Laughter.)

COMMISSIONER YAKI: And Commissioner Yaki votes aye.

CHAIR CANTU: Did I count correctly? With the abstentions, the ayes have it?

COMMISSIONER HERIOT: Yes.

COMMISSIONER ADEGBILE: Yes.

CHAIR CANTU: Thank you. Okay.

We have a little bit of time to do the North Carolina State Advisory Council motion on membership.

IV.C. DISCUSSION ON NC SAC

COMMISSIONER HERIOT: We haven't seen the list yet. So, I don't know think we can do this one.

CHAIR CANTU: I am sorry. Was the list

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in the -- were emails exchanged? But you're right, I don't believe that we have -- did we attach a list?

COMMISSIONER HERIOT: No, I haven't seen one.

CHAIR CANTU: Okay, okay.

COMMISSIONER GILCHRIST: Not the big list, no.

CHAIR CANTU: All right.

COMMISSIONER HERIOT: We should do this by notational vote. I think it's going to be an easy one. It's just that we have to confirm who's in and who's not.

CHAIR CANTU: And excuse me, but it's the first time I've done a notational vote. Do I direct the Staff Director to follow that process? Or does that require a vote?

COMMISSIONER HERIOT: I think you can just direct the Staff Director.

CHAIR CANTU: Okay. It's administrative, finally. A short item.

Speaking of the Staff Director, could we have a brief report on the item agenda on management on operations?

IV.D. MANAGEMENT AND OPERATIONS

X STAFF DIRECTOR'S REPORT

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MR. MORALES: Congratulations on becoming the Chair, Madam Chair.

CHAIR CANTU: Thank you.

MR. MORALES: In the interest of time, I have nothing further to add, other than is already contained in the report that was submitted to Commissioners. As always, I remain available to discuss any particular matter with a Commissioner.

And I thank you.

CHAIR CANTU: Thank you.

Normally, there would be an item called New Business, but, in the interest of letting everyone enjoy their family and go back to their other work, are there any other matters before we entertain a motion to adjourn?

COMMISSIONER KIRSANOW: Commissioner Kurosawa here, or Kirsanow.

(Laughter.)

CHAIR CANTU: Kirsanow.

(Laughter.)

COMMISSIONER KIRSANOW: I just want to thank Chairperson Cantu and congratulate her for being Chair. I'm looking forward to many more meetings with you as Chair.

CHAIR CANTU: I am looking forward to

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that, too -- thank you -- and to seeing you ultimately in person.

I understand Commissioner Adams will be having a one-year anniversary of his appointment next week and he's never seen the rest of you folks in person. So, these are unusual times that we're conducting business. But I'm optimistic, given the good faith shown in these conversations and the good faith shown as you all help this country through difficult times.

COMMISSIONER GILCHRIST: Chairwoman Canto, Stephen Gilchrist here.

CHAIR CANTU: Yes?

COMMISSIONER GILCHRIST: I just wanted to thank, also, Commissioner Kirsanow, Commissioner Heriot, Commissioner Yaki, and yourself for the good-faith effort that you guys put into the negotiations for the Commission. I am very pleased at the work that you've come up with, and certainly, we look forward to your tenure as our Chair. So, we look forward to working with you for sure.

CHAIR CANTU: I appreciate that.

Normally, when three new Commissioners show up, there would be a like a face-to-face retreat. There's a lot of conversations about how we look to

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each other to work together. We all had to have those kinds of conversations with a small group of four, and that group of four does deserve to be congratulated for helping us answer our questions about how we will be respectful of everyone's points of view and how we will incorporate and listen to each other's ideas.

So, thank you very much, Commissioner Adams and Gilchrist.

Anyone else for the good of the order?

COMMISSIONER HERIOT: Just congratulations from me.

CHAIR CANTU: Thank you. Thank you, and I will pop a virtual bottle of champagne.

(Laughter.)

COMMISSIONER ADAMS: Don't get virtually drunk.

(Laughter.)

CHAIR CANTU: Thank you all for having a wonderful sense of humor, and I'm really looking forward to our time together.

V. ADJOURN MEETING

CHAIR CANTU: The meeting is adjourned.

(Whereupon, at 2:54 p.m., the meeting was adjourned.)

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Date : 8/20/2021 12:15:46 PM
From : "Thomas Simuel" tsimuel@usccr.gov
To : "Alexander Heideman" aheideman@usccr.gov, "John Mashburn" jmashburn@usccr.gov, "Alexander Heideman" alexanderheideman@gmail.com, "Gail Heriot" gheriot@usccr.gov
Cc : "stephen gilchrist" thegilchristassociates@gmail.com, "Peter Kirsanow" pkirsanow@usccr.gov, "Christian Adams" adams@electionlawcenter.com, "Carissa Mulder" CMulder@usccr.gov, "Peter Kirsanow" pkirsanow@beneschlaw.com, "Stephen Gilchrist" sgilchrist@usccr.gov, "J. Christian Adams" jadams@usccr.gov, "Gail Heriot" gheriot@me.com
Subject : RE: [EXTERNAL] Re: Bail Reform

Exactly!!! Let's force the vote!

-------- Original message --------
From: Alexander Heideman <aheideman@usccr.gov>
Date: 8/20/21 12:13 PM (GMT-05:00)
To: John Mashburn <jmashburn@usccr.gov>, Alexander Heideman <alexanderheideman@gmail.com>, Gail Heriot <gheriot@usccr.gov>
Cc: stephen gilchrist <thegilchristassociates@gmail.com>, Peter Kirsanow <pkirsanow@usccr.gov>, Christian Adams <adams@electionlawcenter.com>, Carissa Mulder <CMulder@usccr.gov>, Peter Kirsanow <pkirsanow@beneschlaw.com>, Stephen Gilchrist <sgilchrist@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>, "J. Christian Adams" <jadams@usccr.gov>, Gail Heriot <gheriot@me.com>
Subject: Re: [EXTERNAL] Re: Bail Reform

They're the ones who picked someone outside the Comm'n!

From: John Mashburn <jmashburn@usccr.gov>
Date: Friday, August 20, 2021 at 12:12 PM
To: Alexander Heideman <alexanderheideman@gmail.com>, Gail Heriot <gheriot@usccr.gov>
Cc: stephen gilchrist <thegilchristassociates@gmail.com>, Peter Kirsanow <pkirsanow@usccr.gov>, Christian Adams <adams@electionlawcenter.com>, Carissa Mulder <CMulder@usccr.gov>, Alexander Heideman <aheideman@usccr.gov>, Peter Kirsanow <pkirsanow@beneschlaw.com>, Stephen Gilchrist <sgilchrist@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>, "J. Christian Adams" <jadams@usccr.gov>, Gail Heriot <gheriot@me.com>
Subject: Re: [EXTERNAL] Re: Bail Reform

Nothing Requiring this for decades

AMERICAN OVERSIGHT

From: Alexander Heideman <alexanderheideman@gmail.com>
Sent: Friday, August 20, 2021 12:09:20 PM
To: Gail Heriot
Cc: stephen gilchrist; Peter Kirsanow; Christian Adams; Carissa Mulder; Alexander Heideman; John Mashburn; Peter Kirsanow; Stephen Gilchrist; Thomas Simuel; J. Christian Adams; Gail Heriot
Subject: [EXTERNAL] Re: Bail Reform

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> > Yes, I will be doing that too.

AMERICAN OVERSIGHT

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Professor of Law
University of San Diego

> On Aug 20, 2021, at 4:08 AM, stephen gilchrist <thegilchristassociates@gmail.com> wrote:
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> Guys I will also be supporting Christians amendment to vote at the business meeting on the Nominations for the EAC.
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Date : 8/20/2021 12:13:47 PM
From : "Gail Heriot" gheriot@usccr.gov
To : "Alexander Heideman" aheideman@usccr.gov
Cc : "John Mashburn" jmashburn@usccr.gov, "Alexander Heideman" alexanderheideman@gmail.com, "stephen gilchrist" thegilchristassociates@gmail.com, "Peter Kirsanow" pkirsanow@usccr.gov, "Christian Adams" adams@electionlawcenter.com, "Carissa Mulder" CMulder@usccr.gov, "Peter Kirsanow" pkirsanow@beneschlaw.com, "Stephen Gilchrist" sgilchrist@usccr.gov, "Thomas Simuel" tsimuel@usccr.gov, "J. Christian Adams" jadams@usccr.gov, "Gail Heriot" gheriot@me.com
Subject : Re: [EXTERNAL] Re: Bail Reform

Why don't we ask them if they are more comfortable with Christian?

Gail Heriot
Professor of Law
University of San Diego

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>
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> ---
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> **To:** Alexander Heideman <alexanderheideman@gmail.com>, Gail Heriot <gheriot@usccr.gov>
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> > > > I found the Bail Reform report to be one that did try to highlight the facts rather than persuade the commission to some remarkable bias place. I am inclined to support the report and to support the Florida SAC.

AMERICAN OVERSIGHT

On Fri, Aug 20, 2021, 12:54 AM Gail Heriot <gheriot@usccr.gov> wrote:

> Dear all—Unless somebody wants to talk me out of it, my inclination is to abstain on the Bail Reform report. I think it has a lot of problems. But if we let it get through, we'll have the chance to file Statements commenting on it. If we abstain rather than affirmatively vote for it, nobody will be able to blame us for the report's flaws.
>
> I intend to vote in favor of the Florida SAC.
>
> Gail
>
> Gail Heriot
> Professor of Law
> University of San Diego

AMERICAN OVERSIGHT

Date : 8/20/2021 12:12:19 PM
From : "John Mashburn" jmashburn@usccr.gov
To : "Alexander Heideman" alexanderheideman@gmail.com, "Gail Heriot" gheriot@usccr.gov
Cc : "stephen gilchrist" thegilchristassociates@gmail.com, "Peter Kirsanow" pkirsanow@usccr.gov, "Christian Adams" adams@electionlawcenter.com, "Carissa Mulder" CMulder@usccr.gov, "Alexander Heideman" aheideman@usccr.gov, "Peter Kirsanow" pkirsanow@beneschlaw.com, "Stephen Gilchrist" sgilchrist@usccr.gov, "Thomas Simuel" tsimuel@usccr.gov, "J. Christian Adams" jadams@usccr.gov, "Gail Heriot" gheriot@me.com
Subject : Re: [EXTERNAL] Re: Bail Reform

Nothing Requiring this for decades

From: Alexander Heideman <alexanderheideman@gmail.com>
Sent: Friday, August 20, 2021 12:09:20 PM
To: Gail Heriot
Cc: stephen gilchrist; Peter Kirsanow; Christian Adams; Carissa Mulder; Alexander Heideman; John Mashburn; Peter Kirsanow; Stephen Gilchrist; Thomas Simuel; J. Christian Adams; Gail Heriot
Subject: [EXTERNAL] Re: Bail Reform

CAUTION: This email is from outside USCCR.

Just so everyone has easy access to the MOU that was agreed upon in April:

COMMISSIONER KIRSANOW: First, the Memorandum of Understanding regarding the appointment of members to the EAC Board of Advisors, Section 1.01, reads: "Any authority not specifically granted the Commission on Civil Rights by statute or regulation or Executive Order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, et cetera, shall be exercised by the Commission as a whole by majority vote." Paragraph .02. "Any authority specifically granted the Staff Director of the Commission on Civil Rights by statute or regulation or Executive Order to appoint members to serve on other federal entities such as advisory boards, tasks forces, other commissions, et cetera, shall be exercised by the Staff Director." Paragraph .03. "Any authority specifically granted the Chair of the Commission on Civil Rights by statute or regulation or Executive Order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, et cetera, shall be exercised by the Chair." "Section 2.02(1). For the two appointments to the U.S. Election Assistance Commission, the members appointed by Democratic appointees shall nominate two individuals who are ready, willing, and able to serve, and the members appointed by the Republican authorities shall nominate two individuals who are ready, willing, and able to serve." Subparagraph (2). "The members appointed by the Democratic authorities shall select one of the two individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one of the two individuals nominated by the members appointed by the Democratic authorities." Subparagraph (3). "The members selected shall be placed in nomination and ratified in conformance with Section 1."

AMERICAN OVERSIGHT

On Fri, Aug 20, 2021 at 12:05 PM Gail Heriot <gheriot@usccr.gov> wrote:

> They are much more organized than we are. They've had a zoom and have a list of people to call on.
>
> Gail Heriot
> Professor of Law
> University of San Diego
>
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AMERICAN OVERSIGHT

I intend to vote in favor of the Florida SAC.

Gail

Gail Heriot
Professor of Law
University of San Diego

AMERICAN OVERSIGHT

Date : 8/20/2021 12:27:56 PM
From : "Thomas Simuel" tsimuel@usccr.gov
To : "Christian Adams" adams@electionlawcenter.com, "Alexander Heideman" aheideman@usccr.gov, "John Mashburn" jmashburn@usccr.gov, "'Alexander Heideman'" alexanderheideman@gmail.com, "Gail Heriot" gheriot@usccr.gov
Cc : "'stephen gilchrist'" thegilchristassociates@gmail.com, "Peter Kirsanow" pkirsanow@usccr.gov, "Carissa Mulder" CMulder@usccr.gov, "'Peter Kirsanow'" pkirsanow@beneschlaw.com, "Stephen Gilchrist" sgilchrist@usccr.gov, "J. Christian Adams" jadams@usccr.gov, "'Gail Heriot'" gheriot@me.com
Subject : RE: [EXTERNAL] Re: Bail Reform

Definitely-they might want to change their vote!

Sent from my Metro By T-Mobile 4G LTE Android Device

-------- Original message --------
From: Christian Adams <adams@electionlawcenter.com>
Date: 8/20/21 12:26 PM (GMT-05:00)
To: Alexander Heideman <aheideman@usccr.gov>, John Mashburn <jmashburn@usccr.gov>, 'Alexander Heideman' <alexanderheideman@gmail.com>, Gail Heriot <gheriot@usccr.gov>
Cc: 'stephen gilchrist' <thegilchristassociates@gmail.com>, Peter Kirsanow <pkirsanow@usccr.gov>, Carissa Mulder <CMulder@usccr.gov>, 'Peter Kirsanow' <pkirsanow@beneschlaw.com>, Stephen Gilchrist <sgilchrist@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>, "J. Christian Adams" <jadams@usccr.gov>, 'Gail Heriot' <gheriot@me.com>
Subject: RE: [EXTERNAL] Re: Bail Reform

> CAUTION: This email is from outside USCCR.

Indeed. I am prepared to make note of that.

From: Alexander Heideman <aheideman@usccr.gov>
Sent: Friday, August 20, 2021 12:13 PM
To: John Mashburn <jmashburn@usccr.gov>; Alexander Heideman <alexanderheideman@gmail.com>; Gail Heriot <gheriot@usccr.gov>
Cc: stephen gilchrist <thegilchristassociates@gmail.com>; Peter Kirsanow <pkirsanow@usccr.gov>; Christian Adams <adams@electionlawcenter.com>; Carissa Mulder <CMulder@usccr.gov>; Peter Kirsanow <pkirsanow@beneschlaw.com>; Stephen Gilchrist <sgilchrist@usccr.gov>; Thomas Simuel <tsimuel@usccr.gov>; J. Christian Adams <jadams@usccr.gov>; Gail Heriot <gheriot@me.com>
Subject: Re: [EXTERNAL] Re: Bail Reform

AMERICAN OVERSIGHT

They're the ones who picked someone outside the Comm'n!

From: John Mashburn <jmashburn@usccr.gov>
Date: Friday, August 20, 2021 at 12:12 PM
To: Alexander Heideman <alexanderheideman@gmail.com>, Gail Heriot <gheriot@usccr.gov>
Cc: stephen gilchrist <thegilchristassociates@gmail.com>, Peter Kirsanow <pkirsanow@usccr.gov>, Christian Adams <adams@electionlawcenter.com>, Carissa Mulder <CMulder@usccr.gov>, Alexander Heideman <aheideman@usccr.gov>, Peter Kirsanow <pkirsanow@beneschlaw.com>, Stephen Gilchrist <sgilchrist@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>, "J. Christian Adams" <jadams@usccr.gov>, Gail Heriot <gheriot@me.com>
Subject: Re: [EXTERNAL] Re: Bail Reform

Nothing Requiring this for decades

From: Alexander Heideman <alexanderheideman@gmail.com>
Sent: Friday, August 20, 2021 12:09:20 PM
To: Gail Heriot
Cc: stephen gilchrist; Peter Kirsanow; Christian Adams; Carissa Mulder; Alexander Heideman; John Mashburn; Peter Kirsanow; Stephen Gilchrist; Thomas Simuel; J. Christian Adams; Gail Heriot
Subject: [EXTERNAL] Re: Bail Reform

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COMMISSIONER KIRSANOW: First, the Memorandum of Understanding regarding the appointment of members to the EAC Board of Advisors, Section 1.01, reads: "Any authority not specifically granted the Commission on Civil Rights by statute or regulation or Executive Order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, et cetera, shall be exercised by the Commission as a whole by majority vote." Paragraph .02. "Any authority specifically granted the Staff Director of the Commission on Civil Rights by statute or regulation or Executive Order to appoint members to serve on other federal entities such as advisory boards, tasks forces, other commissions, et cetera, shall be exercised by the Staff Director." Paragraph .03. "Any authority specifically granted the Chair of the Commission on Civil Rights by statute or regulation or Executive Order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, et cetera, shall be exercised by the Chair." "Section 2.02(1). For the two appointments to the U.S. Election Assistance Commission, the members appointed by Democratic appointees shall nominate two individuals who are ready, willing, and able to serve, and the members appointed by the Republican authorities shall nominate two individuals who are ready, willing, and able to serve." Subparagraph (2). "The members appointed by the Democratic authorities shall select one of the two individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one of the two individuals nominated by the members appointed by the Democratic authorities."

AMERICAN OVERSIGHT

Subparagraph (3). "The members selected shall be placed in nomination and ratified in conformance with Section 1."

On Fri, Aug 20, 2021 at 12:05 PM Gail Heriot <gheriot@usccr.gov> wrote:

> They are much more organized than we are. They've had a zoom and have a list of people to call on.
>
> Gail Heriot
> Professor of Law
> University of San Diego
>
> > On Aug 20, 2021, at 6:05 AM, Gail Heriot <gheriot@usccr.gov> wrote:
> >
> > Yes, I will be doing that too.
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> > Professor of Law
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> >
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> > > > >
> > > > > Gail

AMERICAN OVERSIGHT

Gail Heriot
Professor of Law
University of San Diego

AMERICAN OVERSIGHT

Date : 8/20/2021 12:30:26 PM
From : "Gail Heriot" gheriot@usccr.gov
To : "Christian Adams" adams@electionlawcenter.com
Cc : "stephen gilchrist" thegilchristassociates@gmail.com, "Alexander Heideman" aheideman@usccr.gov, "John Mashburn" jmashburn@usccr.gov, "Alexander Heideman" alexanderheideman@gmail.com, "Peter Kirsanow" pkirsanow@usccr.gov, "Carissa Mulder" CMulder@usccr.gov, "Peter Kirsanow" pkirsanow@beneschlaw.com, "Stephen Gilchrist" sgilchrist@usccr.gov, "Thomas Simuel" tsimuel@usccr.gov, "J. Christian Adams" jadams@usccr.gov, "Gail Heriot" gheriot@me.com
Subject : Re: [EXTERNAL] Re: Bail Reform

Yes, it is insane.

Gail Heriot
Professor of Law
University of San Diego

On Aug 20, 2021, at 9:29 AM, Christian Adams <adams@electionlawcenter.com> wrote:

It is insane this small issue is now in its SIXTH month without appointments.

From: stephen gilchrist <thegilchristassociates@gmail.com>
Sent: Friday, August 20, 2021 12:28 PM
To: Christian Adams <adams@electionlawcenter.com>
Cc: Gail Heriot <gheriot@usccr.gov>; Alexander Heideman <aheideman@usccr.gov>; John Mashburn <jmashburn@usccr.gov>; Alexander Heideman <alexanderheideman@gmail.com>; Peter Kirsanow <pkirsanow@usccr.gov>; Carissa Mulder <CMulder@usccr.gov>; Peter Kirsanow <pkirsanow@beneschlaw.com>; Stephen Gilchrist <sgilchrist@usccr.gov>; Thomas Simuel <tsimuel@usccr.gov>; J. Christian Adams <jadams@usccr.gov>; Gail Heriot <gheriot@me.com>
Subject: Re: [EXTERNAL] Re: Bail Reform

Correct Christian.

On Fri, Aug 20, 2021 at 12:27 PM Christian Adams <adams@electionlawcenter.com> wrote:

> "we were of that mindset also Commissioner Kladney and we resolved our concerns by picking Commissioner Yaki. One option for you to alleviate your concerns is to change your pick."
>
> **From:** Gail Heriot <gheriot@usccr.gov>
> **Sent:** Friday, August 20, 2021 12:14 PM
> **To:** Alexander Heideman <aheideman@usccr.gov>

AMERICAN OVERSIGHT

>; Christian Adams <adams@electionlawcenter.com>; Carissa Mulder <CMulder@usccr.gov>; Peter Kirsanow <pkirsanow@beneschlaw.com>; Stephen Gilchrist <sgilchrist@usccr.gov>; Thomas Simuel <tsimuel@usccr.gov>; J. Christian Adams <jadams@usccr.gov>; Gail Heriot <gheriot@me.com>
Subject: Re: [EXTERNAL] Re: Bail Reform

Why don't we ask them if they are more comfortable with Christian?

Gail Heriot
Professor of Law
University of San Diego

> On Aug 20, 2021, at 9:13 AM, Alexander Heideman <aheideman@usccr.gov> wrote:
>
> They're the ones who picked someone outside the Comm'n!
>
> ---
>
> **From:** John Mashburn <jmashburn@usccr.gov>
> **Date:** Friday, August 20, 2021 at 12:12 PM
> **To:** Alexander Heideman <alexanderheideman@gmail.com>, Gail Heriot <gheriot@usccr.gov>
> **Cc:** stephen gilchrist >, Christian Adams <adams@electionlawcenter.com>, Carissa Mulder <CMulder@usccr.gov>, Alexander >, Stephen Gilchrist <sgilchrist@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>, "J. Christian Adams" <jadams@usccr.gov>, Gail Heriot <gheriot@me.com>
> **Subject:** Re: [EXTERNAL] Re: Bail Reform
>
> Nothing Requiring this for decades
>
> ---
>
> **From:** Alexander Heideman <alexanderheideman@gmail.com>
> **Sent:** Friday, August 20, 2021 12:09:20 PM
> **To:** Gail Heriot
> **Cc:** stephen gilchrist; Peter Kirsanow; Christian Adams; Carissa Mulder; Alexander Heideman; John Mashburn; Peter Kirsanow; Stephen Gilchrist; Thomas Simuel; J. Christian Adams; Gail Heriot
> **Subject:** [EXTERNAL] Re: Bail Reform
>
> CAUTION: This email is from outside USCCR.

AMERICAN OVERSIGHT

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>
> Gail Heriot
> Professor of Law
> University of San Diego

AMERICAN OVERSIGHT

On Aug 20, 2021, at 6:05 AM, Gail Heriot <gheriot@usccr.gov> wrote:

Yes, I will be doing that too.

Gail Heriot
Professor of Law
University of San Diego

> On Aug 20, 2021, at 4:08 AM, > wrote:
>
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>
> On Fri, Aug 20, 2021, 7:03 AM > wrote:
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AMERICAN OVERSIGHT

I intend to vote in favor of the Florida SAC.

Gail

Gail Heriot
Professor of Law
University of San Diego

AMERICAN OVERSIGHT

Date : 9/16/2020 11:51:32 AM
From : "Alexander Heideman" aheideman@usccr.gov
To : "Christian Adams" a@electionlawcenter.com, "'Gail Heriot'" gheriot@me.com
Cc : "Carissa Mulder" CMulder@usccr.gov, "'Peter Kirsanow'" pkirsanow@beneschlaw.com, "'stephen gilchrist'" thegilchristassociates@gmail.com, "'John Mashburn'" jkmash@comcast.net, "'Thomas Simuel'" tjsimuel32@gmail.com
Subject : Re: [EXTERNAL] EAC Board of Advisors
Attachment : Help America Vote Act House Report 107_329[1].pdf;

Maureen says:

> To my knowledge, there are not any internal rules about these appointments. The practice has been that the Chair makes the appointments. (Note though that I only have records going back to 2015 for these appointments and I do not know what the practice was before 2015). The statute (52 U.S.C. 20944(a)(10)) says "Two members appointed by the United States Commission on Civil Rights." 52 U.S.C. 20944(b) says "Appointments shall be made to the Board of Advisors under subsection (a) in a manner which ensures that the Board of Advisors will be bipartisan in nature and will reflect the various geographic regions of the United States." The terms are 2 year appointments; I believe the current USCCR appointments are Yaki and Kladney, and that their terms end 4/13/2021. I provided the above information, i.e., bipartisan and geographic scope, before the 2019 appointments, though did not provide any input beyond this. I've also attached the House report for the Help American Vote Act (establishes the advisory committees) - discussion of advisory boards is on page 33.

I have a call scheduled with her at 1 pm to discuss further. Please let me know if there are any specific questions I should ask.

Alex

From: Alexander Heideman <aheideman@usccr.gov>
Date: Wednesday, September 16, 2020 at 11:02 AM
To: Christian Adams <a@electionlawcenter.com>, 'Gail Heriot' <gheriot@me.com>
Cc: Carissa Mulder <CMulder@usccr.gov>, 'Peter Kirsanow' <pkirsanow@beneschlaw.com>, 'stephen gilchrist' <thegilchristassociates@gmail.com>, 'John Mashburn' <jkmash@comcast.net>, 'Thomas Simuel' <tjsimuel32@gmail.com>
Subject: Re: [EXTERNAL] EAC Board of Advisors

Yes, happy to.

AMERICAN OVERSIGHT

From: Christian Adams <a@electionlawcenter.com>
Date: Wednesday, September 16, 2020 at 11:02 AM
To: 'Gail Heriot' <gheriot@me.com>
Cc: Carissa Mulder <CMulder@usccr.gov>, 'Peter Kirsanow' <pkirsanow@beneschlaw.com>, 'stephen gilchrist' <thegilchristassociates@gmail.com>, 'John Mashburn' <jkmash@comcast.net>, 'Thomas Simuel' <tjsimuel32@gmail.com>, Alexander Heideman <aheideman@usccr.gov>
Subject: RE: [EXTERNAL] EAC Board of Advisors

> CAUTION: This email is from outside USCCR.

ple people aren't asking her different times, can the SA's get to the bottom of this with maureen.

From: Gail Heriot <gheriot@me.com>
Sent: Wednesday, September 16, 2020 10:46 AM
To: Christian Adams <a@electionlawcenter.com>
Cc: Carissa Mulder <CMulder@usccr.gov>; Peter Kirsanow <pkirsanow@beneschlaw.com>; stephen gilchrist <thegilchristassociates@gmail.com>; John Mashburn <jkmash@comcast.net>; Thomas Simuel <tjsimuel32@gmail.com>; Alexander Heideman <aheideman@usccr.gov>
Subject: Re: [EXTERNAL] EAC Board of Advisors

I don't think there are any rules. In the absence of an explicit delegation of power, the Commission as a whole has that power. But you need to be sure it wasn't done properly. I have a vague recollection of talking about this in a meeting in the last decade. The straight shooter on the staff is Maureen Rudolph. You might want to ask her.

Gail Heriot
Professor of Law
University of San Diego

> On Sep 15, 2020, at 2:17 PM, Christian Adams <a@electionlawcenter.com> wrote:
>
> I don't know the rules for USCCR appointing ANYONE yet, but if there are no minutes showing a vote appointing them in regular business, it would seem that their "appointment" is void.
>
> ---
>
> **From:** Carissa Mulder <CMulder@usccr.gov>
> **Sent:** Tuesday, September 15, 2020 4:01 PM
> **To:** Christian Adams <a@electionlawcenter.com>; 'Peter Kirsanow' <pkirsanow@Beneschlaw.com>; 'Gail Heriot' <gheriot@me.com>;

AMERICAN OVERSIGHT

'stephen gilchrist' <thegilchristassociates@gmail.com>
Cc: 'John Mashburn' <jkmash@comcast.net>; 'Thomas Simuel' <tjsimuel32@gmail.com>; Alexander Heideman <aheideman@usccr.gov>
Subject: Re: [EXTERNAL] EAC Board of Advisors

Looking at the document about the appointment of the advisory board members, I think that is correct, Christian. Catherine probably appointed them without ever bringing it up.

From: Christian Adams <a@electionlawcenter.com>
Sent: Tuesday, September 15, 2020 3:55:45 PM
To: Carissa Mulder; 'Peter Kirsanow'; 'Gail Heriot'; 'stephen gilchrist'
Cc: 'John Mashburn'; 'Thomas Simuel'; Alexander Heideman
Subject: RE: [EXTERNAL] EAC Board of Advisors

> CAUTION: This email is from outside USCCR.

It probably NEVER came up in a business meeting and therefore we should, as a commission have the authority to take it up in a business meeting and appoint-anew.

From: Carissa Mulder <CMulder@usccr.gov>
Sent: Tuesday, September 15, 2020 3:34 PM
To: Christian Adams <a@electionlawcenter.com>; Peter Kirsanow <pkirsanow@Beneschlaw.com>; 'Gail Heriot' <gheriot@me.com>; 'stephen gilchrist' <thegilchristassociates@gmail.com>
Cc: John Mashburn <jkmash@comcast.net>; 'Thomas Simuel' <tjsimuel32@gmail.com>; Alexander Heideman <aheideman@usccr.gov>
Subject: Re: [EXTERNAL] EAC Board of Advisors

Good question! I had no idea the USCCR got two designees to the .

From: Christian Adams <a@electionlawcenter.com>
Sent: Tuesday, September 15, 2020 3:15:28 PM
To: Peter Kirsanow; 'Gail Heriot'; 'stephen gilchrist'
Cc: John Mashburn; 'Thomas Simuel'; Carissa Mulder; Alexander Heideman
Subject: [EXTERNAL] EAC Board of Advisors

> CAUTION: This email is from outside USCCR.

AMERICAN OVERSIGHT

AC commission saying that Yaki is acting absurdly and exercising power over the EAC by threatening the Pelosi pick on the EAC with removal if he doesn't do what he wants, effectively making Yaki a commissioner on the EAC on many issues. He is causing mischief I don't even detail here.

My question is how does he get UNDONE from the EAC oversight commission? How does that get revoked and replaced?

AMERICAN OVERSIGHT

AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

107TH CONGRESS } HOUSE OF REPRESENTATIVES { REPT. 107–329
1st Session } { Part 1

HELP AMERICA VOTE ACT OF 2001

DECEMBER 10, 2001.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. NEY, from the Committee on House Administration, submitted the following

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany H.R. 3295]

[Including cost estimate of the Congressional Budget Office]

The Committee on House Administration, to whom was referred the bill (H.R. 3295) to establish a program to provide funds to States to replace punch card voting systems, to establish the Election Assistance Commission to assist in the administration of Federal elections and to otherwise provide assistance with the administration of certain Federal election laws and programs, to establish minimum election administration standards for States and units of local government with responsibility for the administration of Federal elections, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Help America Vote Act of 2001".

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—PUNCH CARD VOTING MACHINES

Subtitle A—Replacement of Machines

Sec. 101. Establishment of program.
Sec. 102. Eligibility.
Sec. 103. Amount of payment.
Sec. 104. Audit and repayment of funds.
Sec. 105. Punch card voting system defined.

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Subtitle B—Enhancing Performance of Existing Systems

Sec. 111. Establishment of program.
Sec. 112. Eligibility.
Sec. 113. Amount of payment.
Sec. 114. Audit and repayment of funds.

Subtitle C—General Provisions

Sec. 121. Authorization of appropriations.
Sec. 122. Punch card voting system defined.

TITLE II—COMMISSION

Subtitle A—Establishment and General Organization

PART 1—ELECTION ASSISTANCE COMMISSION

Sec. 201. Establishment.
Sec. 202. Duties.
Sec. 203. Membership and appointment.
Sec. 204. Staff.
Sec. 205. Powers.
Sec. 206. Limitation on rulemaking authority.
Sec. 207. Authorization of appropriations.

PART 2—ELECTION ASSISTANCE COMMISSION STANDARDS BOARD AND BOARD OF ADVISORS

Sec. 211. Establishment.
Sec. 212. Duties.
Sec. 213. Membership of Standards Board.
Sec. 214. Membership of Board of Advisors.
Sec. 215. Powers of boards; no compensation for service.
Sec. 216. Status of boards and members for purposes of claims against board.

Subtitle B—Voluntary Election Standards

Sec. 221. Development of voluntary election standards.
Sec. 222. Technical standards development committee.
Sec. 223. Process for adoption of voluntary standards.
Sec. 224. Certification and testing of voting systems.
Sec. 225. Dissemination of information.

Subtitle C—Election Assistance

PART 1—ELECTION FUND PAYMENTS TO STATES FOR VOTING SYSTEM IMPROVEMENTS

Sec. 231. Election fund payments to States for voting system improvements.
Sec. 232. Allocation of funds.
Sec. 233. Conditions for receipt of funds.
Sec. 234. Authorization of appropriations.

PART 2—GRANTS FOR RESEARCH ON VOTING TECHNOLOGY IMPROVEMENTS

Sec. 241. Grants for research on voting technology improvements.
Sec. 242. Report.
Sec. 243. Authorization of appropriations.

PART 3—PILOT PROGRAM FOR TESTING OF EQUIPMENT AND TECHNOLOGY

Sec. 251. Pilot program.
Sec. 252. Report.
Sec. 253. Authorization of appropriations.

PART 4—MISCELLANEOUS

Sec. 261. Role of National Institute of Standards and Technology.
Sec. 262. Reports.
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TITLE III—HELP AMERICA VOTE COLLEGE PROGRAM

Sec. 301. Establishment of Program.
Sec. 302. Activities under Program.
Sec. 303. Authorization of appropriations.

TITLE IV—HELP AMERICA VOTE FOUNDATION

Sec. 401. Help America Vote Foundation.

TITLE V—MINIMUM STANDARDS FOR STATE ELECTION SYSTEMS

Sec. 501. Minimum standards for State election systems.
Sec. 502. Standards described.
Sec. 503. Enforcement.
Sec. 504. Effective date.

TITLE VI—VOTING RIGHTS OF MILITARY MEMBERS AND OVERSEAS CITIZENS

Sec. 601. Voting assistance programs.
Sec. 602. Designation of single State office to provide information on registration and absentee ballots for all voters in State.
Sec. 603. Report on absentee ballots transmitted and received after general elections.
Sec. 604. Simplification of voter registration and absentee ballot application procedures for absent uniformed services and overseas voters.
Sec. 605. Additional duties of Presidential designee under Uniformed and Overseas Citizens Absentee Voting Act.
Sec. 606. Use of buildings on military installations and reserve component facilities as polling places.

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TITLE VII—REDUCED POSTAGE RATES FOR OFFICIAL ELECTION MAIL

Sec. 701. Reduced postage rates for official election mail.

TITLE VIII—TRANSITION PROVISIONS

Subtitle A—Transfer to Commission of Functions Under Certain Laws

Sec. 801. Federal Election Campaign Act of 1971.
Sec. 802. National Voter Registration Act of 1993.
Sec. 803. Transfer of property, records, and personnel.
Sec. 804. Effective date; transition.

Subtitle B—Coverage of Commission Under Certain Laws and Programs

Sec. 811. Treatment of Commission personnel under certain civil service laws.
Sec. 812. Coverage under Inspector General Act of 1978.

TITLE IX—MISCELLANEOUS PROVISIONS

Sec. 901. State defined.
Sec. 902. Miscellaneous provisions to protect integrity of election process.
Sec. 903. No effect on other laws.

TITLE I—PUNCH CARD VOTING MACHINES

Subtitle A—Replacement of Machines

SEC. 101. ESTABLISHMENT OF PROGRAM.

(a) IN GENERAL.—Not later than 30 days after the date of the enactment of this Act, the Administrator of General Services (hereafter in this title referred to as the "Administrator") shall establish a program under which the Administrator shall make a one-time payment to each eligible State or unit of local government which used a punch card voting system to administer the regularly scheduled general election for Federal office held in November 2000.

(b) USE OF FUNDS.—A State or unit of local government shall use the funds provided under a payment under this subtitle (either directly or as reimbursement) to replace its punch card voting system with a voting system which does not use punch cards (by purchase, lease, or such other arrangement as may be appropriate).

(c) DEADLINE.—

(1) IN GENERAL.—A State or unit of local government receiving a payment under the program under this subtitle shall—

(A) obligate the funds provided for the uses described in subsection (b) not later than the date of the regularly scheduled general election for Federal office to be held in November 2002; and

(B) ensure that all of the punch card voting systems under its jurisdiction have been replaced in time for the regularly scheduled general election for Federal office to be held in November 2004.

(2) WAIVER.—If a State or unit of local government provides the Election Assistance Commission (established under section 201) (not later than the date of the regularly scheduled general election for Federal office to be held in November 2002) with a notice that the State or unit will not meet the deadlines described in paragraph (1) and includes in the notice the reasons for the failure to meet such deadlines, and the Commission finds that there is good cause for the failure to meet such deadlines, paragraph (1) shall apply to the State or unit as if—

(A) the reference in paragraph (1)(A) to "November 2002" were a reference to "November 2004"; and

(B) the reference in paragraph (1)(B) to "November 2004" were a reference to "November 2006".

SEC. 102. ELIGIBILITY.

(a) STATES.—A State is eligible to receive a payment under the program under this subtitle if it submits to the Administrator an application not later than 120 days after the date of the enactment of this Act (in such form as the Administrator may require) which contains—

(1) assurances that the State will use the payment (either directly or as reimbursement) to replace punch card voting systems in jurisdictions within the State which used such systems to carry out the general Federal election held in November 2000;

(2) assurances that in replacing punch card voting systems the State will continue to meets its duties under the Voting Accessibility for the Elderly and Handicapped Act (42 U.S.C. 1973ee et seq.) and the Americans With Disabilities Act;

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(3) assurances that in replacing punch card voting systems the State will provide for alternative language accessibility for individuals with limited English proficiency, consistent with the requirements of the Voting Rights Act of 1965 and any other applicable provisions of law; and

(4) such other information and assurances as the Administrator may require which are necessary for the administration of the program.

(b) UNIT OF LOCAL GOVERNMENT.—A unit of local government is eligible to receive a payment under the program under this subtitle if it submits to the Administrator—

(1) not later than the date of the regularly scheduled general election for Federal office to be held in November 2002, a statement of its intent to participate in the program, including assurances that the State in which the unit is located—

(A) failed to submit an application under subsection (a) within the deadline specified under such subsection,

(B) is otherwise not eligible to receive a payment under the program, or

(C) will not use the payment to replace punch card voting systems in the unit; and

(2) an application (at such time and in such form as the Administrator may require) which contains similar assurances to those required to be provided by a State in its application under subsection (a).

SEC. 103. AMOUNT OF PAYMENT.

(a) IN GENERAL.—The amount of payment made to a State or unit of local government under the program under this subtitle shall be equal to the applicable per precinct matching rate of the cost to the State or unit (as the case may be) of replacing the punch card voting systems used in each precinct in the State or unit (as the case may be), except that in no case may the amount of the payment exceed the product of—

(1) the number of voting precincts administered by the State or unit which used a punch card voting system to carry out the general Federal election held in November 2000; and

(2) $6,000.

(b) APPLICABLE PER PRECINCT MATCHING RATE DEFINED.—In subsection (a), the "applicable per precinct matching rate" is—

(1) 90 percent; or

(2) 95 percent, in the case of a precinct whose average per capita income is within the lowest quartile of average per capita incomes for all precincts in the United States (as determined by the 2000 decennial census).

SEC. 104. AUDIT AND REPAYMENT OF FUNDS.

(a) AUDIT.—Funds provided under the program under this subtitle shall be subject to audit by the Administrator.

(b) REPAYMENT FOR FAILURE TO MEET DEADLINES.—If a State or unit of local government (as the case may be) receiving funds under the program under this subtitle fails to meet the deadlines applicable to the State or unit under section 101(c), the State or unit shall pay to the Administrator an amount equal to the amount of the funds provided to the State or unit under the program.

SEC. 105. PUNCH CARD VOTING SYSTEM DEFINED.

For purposes of this subtitle, a "punch card voting system" means any of the following voting systems:

(1) C.E.S.
(2) Datavote.
(3) PBC Counter.
(4) Pollstar.
(5) Punch Card.
(6) Vote Recorder.
(7) Votomatic.

Subtitle B—Enhancing Performance of Existing Systems

SEC. 111. ESTABLISHMENT OF PROGRAM.

(a) IN GENERAL.—Not later than 30 days after the date of the enactment of this Act, the Administrator shall establish a program under which the Administrator shall make a one-time payment to each eligible State or unit of local government

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which used a punch card voting system to administer the regularly scheduled general election for Federal office held in November 2000.

(b) USE OF FUNDS.—A State or unit of local government shall use the funds provided under a payment under this subtitle (either directly or as reimbursement) to make technical enhancements to the performance of its punch card voting system (by any arrangement as may be appropriate).

(c) DEADLINE.—

(1) IN GENERAL.—A State or unit of local government receiving a payment under the program under this subtitle shall—

(A) obligate the funds provided for the uses described in subsection (b) not later than the date of the regularly scheduled general election for Federal office to be held in November 2002; and

(B) ensure that technical enhancements have been made to the performance of all of the punch card voting systems under its jurisdiction in time for the regularly scheduled general election for Federal office to be held in November 2004.

(2) WAIVER.—If a State or unit of local government provides the Election Assistance Commission (established under section 201) (not later than the date of the regularly scheduled general election for Federal office to be held in November 2002) with a notice that the State or unit will not meet the deadlines described in paragraph (1) and includes in the notice the reasons for the failure to meet such deadlines, and the Commission finds that there is good cause for the failure to meet such deadlines, paragraph (1) shall apply to the State or unit as if—

(A) the reference in paragraph (1)(A) to "November 2002" were a reference to "November 2004"; and

(B) the reference in paragraph (1)(B) to "November 2004" were a reference to "November 2006".

SEC. 112. ELIGIBILITY.

(a) STATES.—Subject to subsection (c), a State is eligible to receive a payment under the program under this subtitle if it submits to the Administrator an application not later than 120 days after the date of the enactment of this Act (in such form as the Administrator may require) which contains—

(1) assurances that the State will use the payment (either directly or as reimbursement) to make technical enhancements to the performance of punch card voting systems in jurisdictions within the State which used such systems to carry out the general Federal election held in November 2000;

(2) assurances that in enhancing the performance of such voting systems the State will continue to meets its duties under the Voting Accessibility for the Elderly and Handicapped Act (42 U.S.C. 1973ee et seq.) and the Americans With Disabilities Act; and

(3) such other information and assurances as the Administrator may require which are necessary for the administration of the program.

(b) UNITS OF LOCAL GOVERNMENT.—Subject to subsection (c), a unit of local government is eligible to receive a payment under the program under this subtitle if it submits to the Administrator—

(1) not later than the date of the regularly scheduled general election for Federal office to be held in November 2002, a statement of its intent to participate in the program, including assurances that the State in which the unit is located—

(A) failed to submit an application under subsection (a) within the deadline specified under such subsection,

(B) is otherwise not eligible to receive a payment under the program, or

(C) will not use the payment to enhance the performance of punch card voting systems in the unit; and

(2) an application (at such time and in such form as the Administrator may require) which contains similar assurances to those required to be provided by a State in its application under subsection (a).

(c) PROHIBITING PARTICIPATION IN PUNCH CARD REPLACEMENT PROGRAM.—A State or unit of local government is not eligible to receive a payment under the program under this subtitle if the State or unit receives a payment under the program under subtitle A.

SEC. 113. AMOUNT OF PAYMENT.

(a) IN GENERAL.—The amount of payment made to a State or unit of local government under the program under this subtitle shall be equal to the applicable per precinct matching rate of the cost to the State or unit (as the case may be) of the activities to be funded with the payment under the program in each precinct in the State

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or unit (as the case may be) , except that in no case may the amount of the payment exceed the product of—

(1) the number of voting precincts administered by the State or unit which used a punch card voting system to carry out the general Federal election held in November 2000; and

(2) $2,000.

(b) APPLICABLE PER PRECINCT MATCHING RATE DEFINED.—In subsection (a), the "applicable per precinct matching rate" is—

(1) 90 percent; or

(2) 95 percent, in the case of a precinct whose average per capita income is within the lowest quartile of average per capita incomes for all precincts in the United States (as determined by the 2000 decennial census).

SEC. 114. AUDIT AND REPAYMENT OF FUNDS.

(a) AUDIT.—Funds provided under the program under this subtitle shall be subject to audit by the Administrator.

(b) REPAYMENT FOR FAILURE TO MEET REQUIREMENTS.—If a State or unit of local government (as the case may be) receiving funds under the program under this subtitle fails to meet the deadlines applicable to the State or unit under section 111(c), the State or unit shall pay to the Administrator an amount equal to the amount of the funds provided to the State or unit under the program.

Subtitle C—General Provisions

SEC. 121. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There are authorized to be appropriated for payments under this title $400,000,000, to remain available until expended (subject to subsection (b)).

(b) USE OF RETURNED FUNDS AND FUNDS REMAINING UNEXPENDED FOR ELECTION FUND PAYMENTS.—

(1) IN GENERAL.—The amounts referred to in paragraph (2) shall be transferred to the Election Assistance Commission (established under title II) and used by the Commission to make Election Fund payments under part 1 of subtitle C of title II.

(2) AMOUNTS DESCRIBED.—The amounts referred to in this paragraph are as follows:

(A) Any amounts appropriated pursuant to the authorization under this section which remain unobligated as of the date of the regularly scheduled general election for Federal office held in November 2002.

(B) Any amounts paid to the Administrator by a State or unit of local government under section 104(b).

(B) Any amounts paid to the Administrator by a State or unit of local government under section 114(b).

SEC. 122. PUNCH CARD VOTING SYSTEM DEFINED.

For purposes of this title, a "punch card voting system" means any of the following voting systems:

(1) C.E.S.
(2) Datavote.
(3) PBC Counter.
(4) Pollstar.
(5) Punch Card.
(6) Vote Recorder.
(7) Votomatic.

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TITLE II—COMMISSION

Subtitle A—Establishment and General Organization

PART 1—ELECTION ASSISTANCE COMMISSION

SEC. 201. ESTABLISHMENT.

There is hereby established as an independent entity in the executive branch the Election Assistance Commission (hereafter in this title referred to as the "Commission"), consisting of—

(1) the members appointed under this part;

(2) the Election Assistance Commission Standards Board established under part 2 (including the Executive Board of such Board); and

(3) the Election Assistance Commission Board of Advisors established under part 2.

SEC. 202. DUTIES.

The Commission shall serve as a national clearinghouse and resource for the compilation of information and review of procedures with respect to the administration of Federal elections by—

(1) carrying out the duties described in subtitle B (relating to voluntary election standards);

(2) carrying out the duties described in subtitle C (relating to election assistance); and

(3) developing and carrying out the Help America Vote College Program under title III.

SEC. 203. MEMBERSHIP AND APPOINTMENT.

(a) MEMBERSHIP.—

(1) IN GENERAL.—The Commission shall have 4 members appointed by the President, by and with the consent of the Senate, of whom—

(A) 1 shall be appointed from among a list of nominees submitted by the majority leader of the Senate;

(B) 1 shall be appointed from among a list of nominees submitted by the minority leader of the Senate;

(C) 1 shall be appointed from among a list of nominees submitted by the Speaker of the House of Representatives; and

(D) 1 shall be appointed from among a list of nominees submitted by the minority leader of the House of Representatives.

(2) QUALIFICATIONS.—Each member of the Commission shall have experience with or expertise in election administration or the study of elections, except that no individual may serve as a member of the Commission if the individual is an officer or employee of the Federal Government at any time during the period of service on the Commission.

(3) DATE OF APPOINTMENT.—The appointments of the members of the Commission shall be made not later than 30 days after the date of enactment of this Act.

(b) TERM OF SERVICE.—

(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), members shall serve for a term of 4 years and may be reappointed for not more than one additional term.

(2) TERMS OF INITIAL APPOINTEES.—As designated by the President at the time of appointment, of the members first appointed—

(A) 2 of the members (not more than 1 of whom may be affiliated with the same political party) shall be appointed for a term of 2 years; and

(B) 2 of the members (not more than 1 of whom may be affiliated with the same political party) shall be appointed for a term of 4 years.

(3) VACANCIES.—

(A) IN GENERAL.—A vacancy on the Commission shall be filled in the manner in which the original appointment was made and shall be subject to any conditions which applied with respect to the original appointment.

(B) EXPIRED TERMS.—A member of the Commission may serve on the Commission after the expiration of the member's term until the successor of such member has taken office as a member of the Commission.

(C) UNEXPIRED TERMS.—An individual chosen to fill a vacancy shall be appointed for the unexpired term of the member replaced.

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(c) CHAIR AND VICE CHAIR.—The Commission shall select a chair and vice chair from among its members for a term of 1 year, except that the chair and vice chair may not be affiliated with the same political party.

(d) COMPENSATION.—

(1) IN GENERAL.—Members of the Commission shall each be paid at an annual rate equal to $30,000.

(2) TRAVEL EXPENSES.—Members of the Commission shall each receive travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Commission.

(3) OUTSIDE EMPLOYMENT PERMITTED.—A member of the Commission may hold any other office or employment not inconsistent or in conflict with the member's duties, responsibilities, and powers as a member of the Commission.

SEC. 204. STAFF.

(a) EXECUTIVE DIRECTOR AND OTHER STAFF.—

(1) IN GENERAL.—The Commission shall have an Executive Director, who shall be paid at a rate not to exceed the rate of basic pay for level V of the Executive Schedule.

(2) TERM OF SERVICE FOR EXECUTIVE DIRECTOR.—Except as provided in paragraph (3)(C), the Executive Director shall serve for a term of 4 years. An Executive Director may be reappointed for additional terms.

(3) PROCEDURE FOR APPOINTMENT.—

(A) IN GENERAL.—When a vacancy exists in the position of the Executive Director, the Election Assistance Commission Standards Board and the Election Assistance Commission Board of Advisors (described in part 2) shall each appoint a search committee to recommend not fewer than 3 nominees for the position.

(B) REQUIRING CONSIDERATION OF NOMINEES.—Except as provided in subparagraph (C), the Commission shall consider the nominees recommended by the Standards Board and the Board of Advisors in appointing the Executive Director.

(C) SPECIAL RULES FOR FIRST EXECUTIVE DIRECTOR.—

(i) CONVENING OF SEARCH COMMITTEES.—The Standards Board and the Board of Advisors shall each appoint a search committee and recommend nominees for the position of Executive Director in accordance with subparagraph (A) as soon as practicable after the appointment of their members.

(ii) INTERIM INITIAL APPOINTMENT.—Notwithstanding subparagraph (B), the Commission may appoint an individual to serve as the first Executive Director prior to the recommendation of nominees for the position by the Standards Board or the Board of Advisors, except that such individual's term of service may not exceed 6 months. Nothing in the previous sentence may be construed to prohibit the individual serving as the first Executive Director from serving any additional term.

(4) OTHER STAFF.—Subject to rules prescribed by the Commission, the Executive Director may appoint and fix the pay of such additional personnel as the Executive Director considers appropriate.

(5) APPLICABILITY OF CERTAIN CIVIL SERVICE LAWS.—The Executive Director and staff of the Commission may be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of that title relating to classification and General Schedule pay rates, except that an individual so appointed may not receive pay in excess of the annual rate of basic pay for level V of the Executive Schedule.

(b) EXPERTS AND CONSULTANTS.—Subject to rules prescribed by the Commission, the Executive Director may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, with the approval of a majority of the members of the Commission.

(c) STAFF OF FEDERAL AGENCIES.—Upon request of the Chair, the head of any Federal department or agency may detail, on a reimbursable basis, any of the personnel of that department or agency to the Commission to assist it in carrying out its duties under this Act.

(d) ARRANGING FOR ASSISTANCE FOR BOARD OF ADVISORS AND STANDARDS BOARD.—At the request of the Election Assistance Commission Board of Advisors or the Election Assistance Commission Standards Board established under part 2, the Executive Director shall enter into such arrangements as the Executive Director considers appropriate to make personnel available to assist the Boards with car-

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rying out their duties under this title (including contracts with private individuals for providing temporary personnel services or the temporary detailing of personnel of the Commission).

(e) CONSULTATION WITH BOARD OF ADVISORS AND STANDARDS BOARD ON CERTAIN MATTERS.—In preparing the program goals, long-term plans, mission statements, and related matters for the Commission, the Executive Director and staff of the Commission shall consult with the Election Assistance Commission Board of Advisors and the Election Assistance Commission Standards Board established under part 2.

SEC. 205. POWERS.

(a) HEARINGS AND SESSIONS.—The Commission may hold such hearings for the purpose of carrying out this Act, sit and act at such times and places, take such testimony, and receive such evidence as the Commission considers advisable to carry out this Act. The Commission may administer oaths and affirmations to witnesses appearing before the Commission.

(b) INFORMATION FROM FEDERAL AGENCIES.—The Commission may secure directly from any Federal department or agency such information as the Commission considers necessary to carry out this Act. Upon request of the Chair of the Commission, the head of such department or agency shall furnish such information to the Commission.

(c) POSTAL SERVICES.—The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

(d) ADMINISTRATIVE SUPPORT SERVICES.—Upon the request of the Chair of the Commission, the Administrator of General Services shall provide to the Commission, on a reimbursable basis, the administrative support services that are necessary to enable the Commission to carry out its duties under this Act.

(e) CONTRACTS.—The Commission may contract with and compensate persons and Federal agencies for supplies and services without regard to section 3709 of the Revised Statutes of the United States (41 U.S.C. 5).

SEC. 206. LIMITATION ON RULEMAKING AUTHORITY.

The Commission shall not have any authority to issue any rule, promulgate any regulation, or take any other action which imposes any requirement on any State or unit of local government, except to the extent permitted under the National Voter Registration Act of 1993.

SEC. 207. AUTHORIZATION OF APPROPRIATIONS.

In addition to the amounts authorized for payments and grants under subtitle C and the amounts authorized to be appropriated for the program under section 303, there are authorized to be appropriated for each of the fiscal years 2002 through 2004 such sums as may be necessary (but not to exceed $10,000,000 for each such year) for the Commission to carry out its duties under this title.

PART 2—ELECTION ASSISTANCE COMMISSION STANDARDS BOARD AND BOARD OF ADVISORS

SEC. 211. ESTABLISHMENT.

There are hereby established the Election Assistance Commission Standards Board (hereafter in this title referred to as the "Standards Board") and the Election Assistance Commission Board of Advisors (hereafter in this title referred to as the "Board of Advisors").

SEC. 212. DUTIES.

The Standards Board and the Board of Advisors shall each, in accordance with the procedures described in section 223, review any of the voluntary engineering and procedural performance standards described in section 221(a)(1), any of the voluntary standards described in section 221(a)(4), and any of the voluntary election management practice standards described in section 221(a)(6) (and any modifications to such standards) which are recommended by the Commission under subtitle B.

SEC. 213. MEMBERSHIP OF STANDARDS BOARD.

(a) COMPOSITION.—

(1) IN GENERAL.—Subject to certification by the chair of the Federal Election Commission under subsection (b), the Standards Board shall be composed of 110 members as follows:

(A) 55 shall be the chief State election officials of each State.

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(B) 55 shall be local election officials selected in accordance with paragraph (2).

(2) LIST OF LOCAL ELECTION OFFICIALS.—Each State's local election officials shall select (under a process supervised by the chief election official of the State) a representative local election official from the State for purposes of paragraph (1)(B). In the case of the District of Columbia, Guam, and American Samoa, the chief election official shall establish a procedure for selecting an individual to serve as a local election official for purposes of such paragraph, except that under such a procedure the individual selected may not be a member of the same political party as the chief election official.

(3) REQUIRING MIX OF POLITICAL PARTIES REPRESENTED.—The 2 members of the Standards Board who represent the same State may not be members of the same political party.

(b) PROCEDURES FOR NOTICE AND CERTIFICATION OF APPOINTMENT.—

(1) NOTICE TO CHAIR OF FEDERAL ELECTION COMMISSION.—Not later than 90 days after the date of the enactment of this Act, a State shall transmit a notice to chair of the Federal Election Commission containing—

(A) a statement that the chief election official of the State agrees to serve on the Standards Board under this title; and

(B) the name of the representative local election official from the State selected under subsection (a)(2) who will serve on the Standards Board under this title.

(2) CERTIFICATION.—Upon receiving a notice from a State under paragraph (1), the chair of the Federal Election Commission shall publish a certification that the chief election official and the representative local election official are appointed as members of the Standards Board under this title.

(3) EFFECT OF FAILURE TO PROVIDE NOTICE.—If a State does not transmit a notice to the chair of the Federal Election Commission under paragraph (1) within the deadline described in such paragraph, no representative from the State may participate in the selection of the Executive Board under subsection (c).

(4) ROLE OF COMMISSION.—Upon the appointment of the members of the Election Assistance Commission, the Election Assistance Commission shall carry out the duties of the Federal Election Commission under this subsection.

(c) EXECUTIVE BOARD.—

(1) IN GENERAL.—Not later than 60 days after the last day on which the appointment of any of its members may be certified under subsection (b), the Standards Board shall select 9 of its members to serve as the Executive Board of the Standards Board, of whom—

(A) not more than 5 may be chief State election officials;

(B) not more than 5 may be local election officials; and

(C) not more than 5 may be members of the same political party.

(2) TERMS.—Except as provided in paragraph (3), members of the Executive Board of the Standards Board shall serve for a term of 2 years and may not serve for more than 3 consecutive terms.

(3) STAGGERING OF INITIAL TERMS.—Of the members first selected to serve on the Executive Board of the Standards Board—

(A) 3 shall serve for one term;

(B) 3 shall serve for 2 consecutive terms; and

(C) 3 shall serve for 3 consecutive terms,

as determined by lot at the time the members are first appointed.

(4) DUTIES.—In addition to any other duties assigned under this title, the Executive Board of the Standards Board may carry out such duties of the Standards Board as the Standards Board may delegate.

SEC. 214. MEMBERSHIP OF BOARD OF ADVISORS.

(a) IN GENERAL.—The Board of Advisors shall be composed of 25 members appointed as follows:

(1) 2 members appointed by the United States Commission on Civil Rights.

(2) 2 members appointed by the Architectural and Transportation Barrier Compliance Board under section 502 of the Rehabilitation Act of 1973 (29 U.S.C. 792).

(3) 2 members appointed by the National Governors Association.

(4) 2 members appointed by the National Conference of State Legislatures.

(5) 2 members appointed by the National Association of Secretaries of State.

(6) 2 members appointed by the National Association of State Election Directors.

(7) 2 members appointed by the National Association of Counties.

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(8) 2 members appointed by the National Association of County Recorders, Election Administrators, and Clerks.

(9) 2 members appointed by the United States Conference of Mayors.

(10) 2 members appointed by the Election Center.

(11) 2 members appointed by the International Association of County Recorders, Election Officials, and Treasurers.

(12) 2 members representing professionals in the field of science and technology, of whom 1 shall be appointed by the Speaker of the House of Representatives and 1 shall be appointed by the majority leader of the Senate (or, if the majority leader is a member of the same political party as the Speaker, by the minority leader of the Senate).

(13) The chief of the Office of Public Integrity of the Department of Justice, or the chief's designee.

(b) DIVERSITY IN APPOINTMENTS.—Appointments shall be made to the Board of Advisors under subsection (a) in a manner which ensures that the Board of Advisors will be bipartisan in nature and will reflect the various geographic regions of the United States.

(c) TERM OF SERVICE; VACANCY.—Members of the Board of Advisors shall serve for a term of 2 years, and may be reappointed. Any vacancy in the Board of Advisors shall be filled in the manner in which the original appointment was made.

(d) CHAIR.—The Board of Advisors shall elect a Chair from among its members.

SEC. 215. POWERS OF BOARDS; NO COMPENSATION FOR SERVICE.

(a) HEARINGS AND SESSIONS.—

(1) IN GENERAL.—To the extent that funds are made available by the Commission, the Standards Board (acting through the Executive Board) and the Board of Advisors may each hold such hearings for the purpose of carrying out this Act, sit and act at such times and places, take such testimony, and receive such evidence as each such Board considers advisable to carry out this title, except that the Boards may not issue subpoenas requiring the attendance and testimony of witnesses or the production of any evidence.

(2) MEETINGS.—The Standards Board and the Board of Advisors shall each hold a meeting of its members—

(A) not less frequently than once every year for purposes of voting on the standards referred to it under section 223;

(B) in the case of the Standards Board, not less frequently than once every 2 years for purposes of selecting the Executive Board; and

(C) at such other times as it considers appropriate for purposes of conducting such other business as it considers appropriate consistent with this title.

(b) INFORMATION FROM FEDERAL AGENCIES.—The Standards Board and the Board of Advisors may each secure directly from any Federal department or agency such information as the Board considers necessary to carry out this Act. Upon request of the Executive Board (in the case of the Standards Board) or the Chair (in the case of the Board of Advisors), the head of such department or agency shall furnish such information to the Board.

(c) POSTAL SERVICES.—The Standards Board and the Board of Advisors may use the United States mails in the same manner and under the same conditions as a department or agency of the Federal Government.

(d) ADMINISTRATIVE SUPPORT SERVICES.—Upon the request of the Executive Board (in the case of the Standards Board) or the Chair (in the case of the Board of Advisors), the Administrator of the General Services Administration shall provide to the Board, on a reimbursable basis, the administrative support services that are necessary to enable the Board to carry out its duties under this title.

(e) NO COMPENSATION FOR SERVICE.—Members of the Standards Board and members of the Board of Advisors shall not receive any compensation for their service, but shall be paid travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Board.

SEC. 216. STATUS OF BOARDS AND MEMBERS FOR PURPOSES OF CLAIMS AGAINST BOARD.

(a) IN GENERAL.—The provisions of chapters 161 and 171 of title 28, United States Code, shall apply with respect to the liability of the Standards Board, the Board of Advisors, and their members for acts or omissions performed pursuant to and in the course of the duties and responsibilities of the Board.

(b) EXCEPTION FOR CRIMINAL ACTS AND OTHER WILLFUL CONDUCT.—Subsection (a) may not be construed to limit personal liability for criminal acts or omissions, willful or malicious misconduct, acts or omissions for private gain, or any other act

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or omission outside the scope of the service of a member of the Standards Board or the Board of Advisors.

Subtitle B—Voluntary Election Standards

SEC. 221. DEVELOPMENT OF VOLUNTARY ELECTION STANDARDS.

(a) IN GENERAL.—The Commission shall:

(1) In accordance with section 223, develop (through the Executive Director of the Commission), adopt, and update (not less often than every 4 years thereafter) voluntary engineering and procedural performance standards for voting systems used in Federal elections which shall meet the following requirements:

(A) The scope of the standards should include security (including a documentary audit for non-ballot systems), the procedures for certification and decertification of software and hardware, the assessment of usability, and operational guidelines for the proper use and maintenance of equipment.

(B) The standards should provide that voters have the opportunity to correct errors at the precinct or other polling place, either within the voting equipment itself or in the operational guidelines to administrators for using the equipment, under conditions which assure privacy to the voter.

(C) Each voting tally system certified for use should include as part of the certification a proposed statement of what constitutes a proper vote in the design and operation of the system.

(D) New voting equipment systems certified either by the Federal government or by any State should provide a practical and effective means for voters with physical disabilities to cast a secret ballot.

(2) Maintain a clearinghouse of information on the experiences of State and local governments in implementing the voluntary standards described in paragraph (1) and in operating voting systems in general.

(3) In accordance with section 224, provide for the voluntary testing, certification, decertification, and recertification of voting systems.

(4) Advise States and units of local government regarding compliance with the requirements of the Voting Accessibility for the Elderly and Handicapped Act (42 U.S.C. 1973ee et seq.) and compliance with other Federal laws regarding accessibility of registration facilities and polling places. Additionally, in accordance with section 223, the Commission shall develop (through the Executive Director of the Commission), adopt, and update (not less often than every 4 years thereafter) voluntary standards for maintaining and enhancing the accessibility and privacy of registration facilities, polling places, and voting methods with the goal of promoting for all individuals, including the elderly and individuals with disabilities, the accessibility of polling places and the effective use of voting systems and voting equipment which provide the opportunity for casting a secure and secret ballot, and shall include in such standards voluntary guidelines regarding accessibility and ease-of-use for States and units of local government to use when obtaining voting equipment and selecting polling places. In carrying out this paragraph, the Commission shall consult with the Architectural and Transportation Barrier Compliance Board under section 502 of the Rehabilitation Act of 1973 (29 U.S.C. 792) and other individuals and entities with expertise in the accessibility of facilities for individuals with disabilities.

(5) Make periodic studies available to the public regarding the election administration issues described in subsection (b), with the goal of promoting methods of voting and administering elections which—

(A) will be the most convenient, accessible, and easy to use for voters, including members of the uniformed services, blind and disabled voters, and voters with limited English proficiency;

(B) will yield the most accurate, secure, and expeditious system for voting and tabulating election results;

(C) will be nondiscriminatory and afford each registered and eligible voter an equal opportunity to vote; and

(D) will be efficient and cost-effective for use.

(6) In accordance with section 223, develop (through the Executive Director of the Commission), adopt, and update (not less often than every 4 years) voluntary election management practice standards for State and local election officials to maintain and enhance the administration of Federal elections, including standards developed in consultation with the Secretary of Defense to govern the treatment of absent uniformed services voters (as defined in section 107(1) of the Uniformed and Overseas Citizens Absentee Voting Act) and overseas voters (as defined in section 107(5) of such Act) which will include provisions to address each of the following:

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(A) The rights of residence of uniformed services voters absent due to military orders.

(B) The rights of absent uniformed services voters and overseas voters to register to vote and cast absentee ballots.

(C) The rights of absent uniformed services voters and overseas voters to submit absentee ballot applications early during an election year.

(D) The appropriate pre-election deadline for mailing absentee ballots to absent uniformed services voters and overseas voters.

(E) The appropriate minimum period between the mailing of absentee ballots to absent uniformed services voters and overseas voters and the deadline for receipt of such ballots.

(F) The timely transmission of balloting materials to absent uniformed services voters and overseas voters.

(G) Security and privacy concerns in the transmission, receipt, and processing of ballots from absent uniformed services voters and overseas voters, including the need to protect against fraud.

(H) The use of a single application by absent uniformed services voters and overseas voters for absentee ballots for all Federal elections occurring during a year.

(I) The use of a single application for voter registration and absentee ballots by absent uniformed services voters and overseas voters.

(J) The use of facsimile machines and electronic means of transmission of absentee ballot applications and absentee ballots to absent uniformed services voters and overseas voters.

(K) Other issues related to the rights of absent uniformed services voters and overseas voters to participate in elections.

(7) Carry out the provisions of section 9 of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg–7) regarding mail voter registration.

(8) Make information on the Federal election system available to the public and the media.

(9) At the request of State officials, assist such officials in the review of election or vote counting procedures in Federal elections, through bipartisan panels of election professionals assembled by the Commission for such purpose.

(10) Compile and make available to the public the official certified results of general elections for Federal office and reports comparing the rates of voter registration, voter turnout, voting system functions, and ballot errors among jurisdictions in the United States.

(11) Gather information and serve as a clearinghouse concerning issues relating to Federal, State, and local elections.

(b) ELECTION ADMINISTRATION ISSUES DESCRIBED.—The election administration issues described in this subsection are as follows:

(1) Current and alternate methods and mechanisms of voting and counting votes in elections for Federal office.

(2) Current and alternate ballot designs for elections for Federal office.

(3) Current and alternate methods of voter registration, maintaining secure and accurate lists of registered voters (including the establishment of a centralized, interactive, statewide voter registration list linked to relevant agencies and all polling sites), and ensuring that all registered voters appear on the polling list at the appropriate polling site.

(4) Current and alternate methods of conducting provisional voting.

(5) Current and alternate methods of ensuring the accessibility of voting, registration, polling places, and voting equipment to all voters, including disabled voters and voters with limited English proficiency.

(6) Current and alternate methods of voter registration for members of the uniformed services and overseas voters, and methods of ensuring that such voters receive timely ballots that will be properly and expeditiously handled and counted.

(7) Current and alternate methods of recruiting and improving the performance of poll workers.

(8) Federal and State laws governing the eligibility of persons to vote.

(9) Current and alternate methods of educating voters about the process of registering to vote and voting, the operation of voting mechanisms, the location of polling places, and all other aspects of participating in elections.

(10) Matters particularly relevant to voting and administering elections in rural and urban areas.

(11) Conducting elections for Federal office on different days, at different places, and during different hours, including the advisability of establishing a uniform poll closing time.

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(12) The ways that the Federal Government can best assist State and local authorities to improve the administration of elections for Federal office and what levels of funding would be necessary to provide such assistance.

(c) CONSULTATION WITH STANDARDS BOARD AND BOARD OF ADVISORS.—The Commission shall carry out its duties under this subtitle in consultation with the Standards Board and the Board of Advisors.

SEC. 222. TECHNICAL STANDARDS DEVELOPMENT COMMITTEE.

(a) ESTABLISHMENT.—There is hereby established the Technical Standards Development Committee (hereafter in this subtitle referred to as the "Development Committee").

(b) DUTIES.—

(1) IN GENERAL.—The Development Committee shall assist the Executive Director of the Commission in the development of voluntary standards under this subtitle by recommending standards (and modifications to standards) to ensure the usability, accuracy, security, accessibility, and integrity of voting systems and voting equipment.

(2) DEADLINE FOR INITIAL SET OF RECOMMENDATIONS.—The Development Committee shall provide its first set of recommendations under this section to the Executive Director of the Commission not later than 9 months after all of its members have been appointed.

(c) MEMBERSHIP.—

(1) IN GENERAL.—The Development Committee shall be composed of the Director of the National Institute of Standards and Technology (who shall serve as its chair), together with a group of 14 other individuals appointed jointly by the Commission and the Director of the National Institute of Standards and Technology, consisting of the following:

(A) An equal number of each of the following:

(i) Members of the Standards Board.

(ii) Members of the Board of Advisors.

(iii) Members of the Architectural and Transportation Barrier Compliance Board under section 502 of the Rehabilitation Act of 1973 (29 U.S.C. 792).

(B) A representative of the American National Standards Institute.

(C) Other individuals with technical and scientific expertise relating to voting systems and voting equipment.

(2) QUORUM.—A majority of the members of the Development Committee shall constitute a quorum, except that the Development Committee may not conduct any business prior to the appointment of all of its members.

(d) NO COMPENSATION FOR SERVICE.—Members of the Development Committee shall not receive any compensation for their service, but shall be paid travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Development Committee.

(e) TECHNICAL SUPPORT FROM NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY.—At the request of the Development Committee, the Director of the National Institute of Standards and Technology shall provide the Development Committee with technical support necessary for the Development Committee to carry out its duties under this subtitle.

(f) PUBLICATION OF RECOMMENDATIONS IN FEDERAL REGISTER.—At the time the Commission adopts any standard pursuant to section 223, the Development Committee shall cause to have published in the Federal Register the recommendations it provided under this section to the Executive Director of the Commission concerning the standard adopted.

SEC. 223. PROCESS FOR ADOPTION OF VOLUNTARY STANDARDS.

(a) CONSIDERATION OF RECOMMENDATIONS OF DEVELOPMENT COMMITTEE; SUBMISSION OF PROPOSED VOLUNTARY STANDARDS TO BOARD OF ADVISORS AND STANDARDS BOARD.—

(1) CONSIDERATION OF RECOMMENDATIONS OF DEVELOPMENT COMMITTEE.—In developing standards and modifications for purposes of this section, the Executive Director of the Commission shall take into consideration the recommendations provided by the Technical Standards Development Committee under section 222.

(2) BOARD OF ADVISORS.—The Executive Director of the Commission shall submit each of the voluntary engineering and procedural performance standards (described in section 221(a)(1)), each of the voluntary standards described in section 221(a)(4), and each of the voluntary election management practice

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standards (described in section 221(a)(6)) developed by the Executive Director (or any modifications to such standards) to the Board of Advisors.

(3) STANDARDS BOARD.—The Executive Director of the Commission shall submit each of the voluntary engineering and procedural performance standards (described in section 221(a)(1)), each of the voluntary standards described in section 221(a)(4), and each of the voluntary election management practice standards (described in section 221(a)(6)) developed by the Executive Director (or any modifications to such standards) to the Executive Board of the Standards Board, who shall review the standard (or modification) and forward its recommendations to the Standards Board.

(b) REVIEW.—Upon receipt of a voluntary standard described in subsection (a) (or modification of such a standard) from the Executive Director of the Commission, the Board of Advisors and the Standards Board shall each review and submit comments and recommendations regarding the standard (or modification) to the Commission.

(c) FINAL APPROVAL.—

(1) IN GENERAL.—A voluntary standard described in subsection (a) (or modification of such a standard) shall not be considered to be finally adopted by the Commission unless the majority of the members of the Commission vote to approve the final adoption of the standard (or modification), taking into consideration the comments and recommendations submitted by the Board of Advisors and the Standards Board under subsection (b).

(2) MINIMUM PERIOD FOR CONSIDERATION OF COMMENTS AND RECOMMENDATIONS.—The Commission may not vote on the final adoption of a voluntary standard described in subsection (a) (or modification of such a standard) until the expiration of the 90-day period which begins on the date the Executive Director of the Commission submits the standard (or modification) to the Board of Advisors and the Standards Board under subsection (a).

SEC. 224. CERTIFICATION AND TESTING OF VOTING SYSTEMS.

(a) CERTIFICATION AND TESTING.—

(1) IN GENERAL.—The Commission shall provide for the testing, certification, decertification, and recertification of voting system hardware and software by accredited laboratories.

(2) OPTIONAL USE BY STATES.—At the option of a State, the State may provide for the testing, certification, decertification, or recertification of its voting system hardware and software by the laboratories accredited by the Commission under this section.

(b) LABORATORY ACCREDITATION.—

(1) RECOMMENDATIONS BY NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY.—Not later than 6 months after the Commission first adopts voluntary engineering and procedural performance standards under this subtitle, the Director of the National Institute of Standards and Technology shall conduct an evaluation of independent, non-Federal laboratories and shall submit to the Commission a list of those laboratories the Director proposes to be accredited to carry out the testing, certification, decertification, and recertification provided for under this section.

(2) APPROVAL BY COMMISSION.—The Commission shall vote on the proposed accreditation of each laboratory on the list submitted under paragraph (1), and no laboratory may be accredited for purposes of this section unless its accreditation is approved by a majority vote of the members of the Commission.

(c) CONTINUING REVIEW BY NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY.—

(1) IN GENERAL.—In cooperation with the Commission and in consultation with the Standards Board and the Board of Advisors, the Director of the National Institute of Standards and Technology shall monitor and review, on an ongoing basis, the performance of the laboratories accredited by the Commission under this section, and shall make such recommendations to the Commission as it considers appropriate with respect to the continuing accreditation of such laboratories, including recommendations to revoke the accreditation of any such laboratory.

(2) APPROVAL BY COMMISSION REQUIRED FOR REVOCATION.—The accreditation of a laboratory for purposes of this section may not be revoked unless the revocation is approved by a majority vote of the members of the Commission.

SEC. 225. DISSEMINATION OF INFORMATION.

On an ongoing basis, the Commission shall disseminate to the public (through the Internet, published reports, and such other methods as the Commission considers appropriate) information on the activities carried out under this subtitle, including—

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(1) the voluntary election standards adopted by the Commission, together with guidelines for applying the standards and other information to assist in their implementation;

(2) the list of laboratories accredited to carry out testing, certification, decertification, and recertification of voting system hardware and software under section 224; and

(3) a list of voting system hardware and software products which have been certified pursuant to section 224 as meeting the applicable voluntary standards adopted by the Commission under this subtitle.

Subtitle C—Election Assistance

PART 1—ELECTION FUND PAYMENTS TO STATES FOR VOTING SYSTEM IMPROVEMENTS

SEC. 231. ELECTION FUND PAYMENTS TO STATES FOR VOTING SYSTEM IMPROVEMENTS.

(a) IN GENERAL.—The Commission shall make an Election Fund payment each year in an amount determined under section 232 to each State which meets the requirements described in section 233 for the year.

(b) USE OF FUNDS.—A State receiving an Election Fund payment shall use the payment for any or all of the following activities:

(1) Establishing and maintaining accurate lists of eligible voters.

(2) Encouraging eligible voters to vote.

(3) Improving verification and identification of voters at the polling place.

(4) Improving equipment and methods for casting and counting votes.

(5) Recruiting and training election official and poll workers.

(6) Improving the quantity and quality of available polling places.

(7) Educating voters about their rights and responsibilities.

(8) Assuring access for voters with physical disabilities.

(9) Carrying out other activities to improve the administration of elections in the State.

(c) ADOPTION OF COMMISSION STANDARDS NOT REQUIRED TO RECEIVE PAYMENT.—Nothing in this part may be construed to require a State to implement any of the voluntary standards adopted by the Commission with respect to any matter as a condition for receiving an Election Fund payment.

(d) SCHEDULE OF PAYMENTS.—As soon as practicable after all members of the Commission are appointed (but in no event later than 6 months thereafter), and not less frequently than once each calendar year thereafter, the Commission shall make Election Fund payments to States under this part.

SEC. 232. ALLOCATION OF FUNDS.

(a) IN GENERAL.—Subject to subsection (c), the amount of an Election Fund payment made to a State for a year shall be equal to the product of—

(1) the total amount appropriated for Election Fund payments for the year under section 234; and

(2) the State allocation percentage for the State (as determined under subsection (b)).

(b) STATE ALLOCATION PERCENTAGE DEFINED.—The "State allocation percentage" for a State is the amount (expressed as a percentage) equal to the quotient of—

(1) the voting age population of the State; and

(2) the total voting age population of all States.

(c) MINIMUM AMOUNT OF PAYMENT.—The amount of an Election Fund payment made to a State for a year may not be less than—

(1) in the case of any of the several States or the District of Columbia, ½ of 1 percent of the total amount appropriated for Election Fund payments for the year under section 234; or

(2) in the case of the Commonwealth of Puerto Rico, Guam, American Samoa, or the United States Virgin Islands, 20% of the amount described in paragraph (1).

(d) CONTINUING AVAILABILITY OF FUNDS AFTER APPROPRIATION.—An Election Fund payment made to a State under this part shall be available to the State without fiscal year limitation.

SEC. 233. CONDITIONS FOR RECEIPT OF FUNDS.

(a) IN GENERAL.—In order to receive an Election Fund payment for a fiscal year, the chief State election official of the State shall provide the Commission with the following certifications:

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(1) A certification that the State has authorized and appropriated funds for carrying out the activities for which the Election Fund payment is made in an amount equal to 25 percent of the total amount to be spent for such activities (taking into account the Election Fund payment and the amount spent by the State).

(2) A certification that the State has set a uniform Statewide benchmark for voting system performance in each local jurisdiction administering elections, expressed as a percentage of residual vote in the contest at the top of the ballot, and requires local jurisdictions to report data relevant to this benchmark after each general election for Federal office.

(3) A certification that the State is in compliance with the voluntary voting system standards and certification processes adopted by the Commission or that the State has enacted legislation establishing its own State voting system standards and processes which (at a minimum) ensure that new voting mechanisms have the audit capacity to produce a record for each ballot cast.

(4) A certification that—

(A) in each precinct or polling place in the State, there is at least one voting system available which is fully accessible to individuals with physical disabilities; and

(B) if the State uses any portion of its Election Fund payment to obtain new voting machines, at least one voting machine in each polling place in the State will be fully accessible to individuals with physical disabilities.

(5) A certification that the State has established a fund described in subsection (b) for purposes of administering its activities under this part.

(6) A certification that, in administering election systems, the State is in compliance with the existing applicable requirements of the Voting Rights Act of 1965 (42 U.S.C. 1973 et seq.), the National Voter Registration Act of 1993 (42 U.S.C. 1973gg et seq.), the Voting Accessibility for the Elderly and Handicapped Act (42 U.S.C. 1973ee et seq.), and the Americans With Disabilities Act of 1990 (42 U.S.C. 12101 et seq.).

(7) A certification that the State provides for voter education and poll worker training programs to improve access to and participation in the electoral process, and provides relevant training in the requirements of the National Voter Registration Act of 1993 for personnel of State motor vehicle authority offices and other voter registration agencies designated by the State under such Act.

(8) A certification that the Election Fund payment has not and will not supplant funds provided under existing programs funded in the State for carrying out the activities for which the Election Fund payment is made.

(b) REQUIREMENTS FOR ELECTION FUND.—

(1) ELECTION FUND DESCRIBED.—For purposes of subsection (a)(5), a fund described in this subsection with respect to a State is a fund which is established in the treasury of the State government, which is used in accordance with paragraph (2), and which consists of the following amounts:

(A) Amounts appropriated or otherwise made available by the State for carrying out the activities for which the Election Fund payment is made to the State under this part.

(B) The Election Fund payment made to the State under this part.

(C) Such other amounts as may be appropriated under law.

(D) Interest earned on deposits of the fund.

(2) USE OF FUND.—Amounts in the fund shall be used by the State exclusively to carry out the activities for which the Election Fund payment is made to the State under this part.

(c) METHODS OF COMPLIANCE LEFT TO DISCRETION OF STATE.—The specific choices on the methods of complying with the requirements described in subsection (a) shall be left to the discretion of the State.

(d) CHIEF STATE ELECTION OFFICIAL DEFINED.—In this subtitle, the "chief State election official" of a State is the individual designated by the State under section 10 of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg–8) to be responsible for coordination of the State's responsibilities under such Act.

SEC. 234. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated for Election Fund payments under this part an aggregate amount of $2,250,000,000 for fiscal years 2002 through 2004.

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PART 2—GRANTS FOR RESEARCH ON VOTING TECHNOLOGY IMPROVEMENTS

SEC. 241. GRANTS FOR RESEARCH ON VOTING TECHNOLOGY IMPROVEMENTS.

(a) IN GENERAL.—The Commission shall make grants to assist entities in carrying out research and development to improve the quality, reliability, accuracy, accessibility, affordability, and security of voting equipment, election systems, and voting technology.

(b) ELIGIBILITY.—An entity is eligible to receive a grant under this part if it submits to the Commission (at such time and in such form as the Commission may require) an application containing—

(1) assurances that the research and development funded with the grant will take into account the need to make voting equipment fully accessible for individuals with disabilities (including blind individuals), the need to ensure that such individuals can vote independently and with privacy, and the need to provide alternative language accessibility for individuals with limited proficiency in the English language (consistent with the requirements of the Voting Rights Act of 1965); and

(2) such other information and assurances as the Commission may require.

(c) APPLICABILITY OF REGULATIONS GOVERNING PATENT RIGHTS IN INVENTIONS MADE WITH FEDERAL ASSISTANCE.—Any invention made by the recipient of a grant under this part using funds provided under this part shall be subject to chapter 18 of title 35, United States Code (relating to patent rights in inventions made with Federal assistance).

SEC. 242. REPORT.

(a) IN GENERAL.—Each entity which receives a grant under this part shall submit to the Commission, Congress, and the President a report describing the activities carried out with the funds provided under the grant.

(b) DEADLINE.—An entity shall submit a report required under subsection (a) not later than 60 days after the end of the fiscal year for which the entity received the grant which is the subject of the report.

SEC. 243. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated for grants under this part $20,000,000 for fiscal year 2002.

PART 3—PILOT PROGRAM FOR TESTING OF EQUIPMENT AND TECHNOLOGY

SEC. 251. PILOT PROGRAM.

(a) IN GENERAL.—The Commission shall make grants to carry out pilot programs under which new technologies in voting systems and equipment are implemented on a trial basis.

(b) ELIGIBILITY.—An entity is eligible to receive a grant under this part if it submits to the Commission (at such time and in such form as the Commission may require) an application containing—

(1) assurances that the pilot programs funded with the grant will take into account the need to make voting equipment fully accessible for individuals with disabilities (including blind individuals), the need to ensure that such individuals can vote independently and with privacy, and the need to provide alternative language accessibility for individuals with limited proficiency in the English language (consistent with the requirements of the Voting Rights Act of 1965); and

(2) such other information and assurances as the Commission may require.

SEC. 252. REPORT.

(a) IN GENERAL.—Each entity which receives a grant under this part shall submit to the Commission, Congress, and the President a report describing the activities carried out with the funds provided under the grant.

(b) DEADLINE.—An entity shall submit a report required under subsection (a) not later than 60 days after the end of the fiscal year for which the entity received the grant which is the subject of the report.

SEC. 253. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated for grants under this part $10,000,000 for fiscal year 2002.

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PART 4—MISCELLANEOUS

SEC. 261. ROLE OF NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY.

(a) RECOMMENDATION OF TOPICS FOR RESEARCH UNDER VOTING RESEARCH GRANTS AND PILOT PROGRAMS.—The Director of the National Institute of Standards and Technology (hereafter in this section referred to as the "Director") shall submit to the Commission an annual list of the Director's suggestions for issues which may be the subject of research funded with grants awarded under part 2 and part 3 during the year.

(b) REVIEW OF GRANT APPLICATIONS RECEIVED BY COMMISSION.—The Commission shall submit each application it receives for a grant under part 2 or part 3 to the Director, who shall review the application and provide the Commission with such comments as the Director considers appropriate.

(c) MONITORING AND ADJUSTMENT OF GRANT ACTIVITIES.—After the Commission has awarded a grant under part 2 or part 3, the Director shall monitor the grant and (to the extent permitted under the terms of the grant as awarded) may recommend to the Commission that the recipient of the grant modify and adjust the activities carried out under the grant.

(d) EVALUATION OF COMPLETED GRANTS.—

(1) IN GENERAL.—After the recipient of a grant awarded by the Commission has completed the terms of the grant, the Director shall prepare and submit to the Commission an evaluation of the grant and the activities carried out under the grant.

(2) INCLUSION IN REPORTS.—The Commission shall include the evaluations submitted under paragraph (1) for a year in the report submitted for the year under section 262.

(e) INTRAMURAL RESEARCH AND DEVELOPMENT.—The Director shall establish a program for intramural research and development in areas to support the development of voluntary technical standards for voting products and systems, including—

(1) the security of computers, computer networks, and computer data storage used in voting products and systems, including the Statewide voter registration networks required under the minimum standard described in section 502(1);

(2) methods to detect and prevent fraud;

(3) the protection of voter privacy;

(4) the role of human factors in the design and application of voting products and systems, including assistive technologies for individuals with disabilities and varying levels of literacy; and

(5) remote access voting, including voting through the Internet.

SEC. 262. REPORTS.

(a) ANNUAL REPORTS ON ACTIVITIES.—Not later than 90 days after the end of each fiscal year, the Commission shall submit a report to the Committee on House Administration of the House of Representatives and the Committee on Rules and Administration of the Senate on the activities carried out by the Commission under this subtitle during the previous fiscal year, and shall include in the report a description of all applications for Election Fund payments and grants received by the Commission during the year under this subtitle and the disposition of such applications.

(b) REPORT ON HUMAN FACTOR RESEARCH.—Not later than 1 year after the date of the enactment of this Act, the Commission, in consultation with the Director of the National Institute of Standards and Technology, shall submit a report to Congress which assesses the areas of human factor research, including usability engineering and human-computer and human-machine interaction, which feasibly could be applied to voting products and systems design to ensure the usability and accuracy of voting products and systems, including methods to improve access for individuals with disabilities and to reduce voter error and the number of spoiled ballots in elections.

SEC. 263. AUDIT.

(a) IN GENERAL.—As a condition of receiving funds under this subtitle, a State or entity described in part 2 or part 3 shall agree that such funds shall be subject to audit if 2 or more members of the Commission vote to require an audit.

(b) MANDATORY AUDIT.—In addition to audits conducted pursuant to subsection (a), all funds provided under this subtitle shall be subject to mandatory audit at least once during the lifetime of the programs under this subtitle.

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TITLE III—HELP AMERICA VOTE COLLEGE PROGRAM

SEC. 301. ESTABLISHMENT OF PROGRAM.

(a) IN GENERAL.—Not later than 1 year after the appointment of its members, the Election Assistance Commission shall develop a program to be known as the "Help America Vote College Program" (hereafter in this title referred to as the "Program").

(b) PURPOSES OF PROGRAM.—The purpose of the Program shall be—

(1) to encourage students enrolled at institutions of higher education (including community colleges) to assist State and local governments in the administration of elections by serving as nonpartisan poll workers or assistants; and

(2) to encourage State and local governments to use the services of the students participating in the Program.

SEC. 302. ACTIVITIES UNDER PROGRAM.

(a) IN GENERAL.—In carrying out the Program, the Commission (in consultation with the chief election official of each State) shall develop materials, sponsor seminars and workshops, engage in advertising targeted at students, make grants, and take such other actions as it considers appropriate to meet the purposes described in section 301(b).

(b) REQUIREMENTS FOR GRANT RECIPIENTS.—In making grants under the Program, the Commission shall ensure that the funds provided are spent for projects and activities which are carried out without partisan bias or without promoting any particular point of view regarding any issue, and that each recipient is governed in a balanced manner which does not reflect any partisan bias.

(c) COORDINATION WITH INSTITUTIONS OF HIGHER EDUCATION.—The Commission shall encourage institutions of higher education (including community colleges) to participate in the Program, and shall make all necessary materials and other assistance (including materials and assistance to enable the institution to hold workshops and poll worker training sessions) available without charge to any institution which desires to participate in the Program.

SEC. 303. AUTHORIZATION OF APPROPRIATIONS.

In addition to any funds authorized to be appropriated to the Commission under section 207, there are authorized to be appropriated to carry out this title—

(1) $5,000,000 for fiscal year 2002; and

(2) such sums as may be necessary for each succeeding fiscal year.

TITLE IV—HELP AMERICA VOTE FOUNDATION

SEC. 401. HELP AMERICA VOTE FOUNDATION.

(a) IN GENERAL.—Part B of subtitle II of title 36, United States Code, is amended by inserting after chapter 1525 the following:

"CHAPTER 1526—HELP AMERICA VOTE FOUNDATION

"Sec.
"152601. Organization.
"152602. Purposes.
"152603. Board of directors.
"152604. Officers and employees.
"152605. Powers.
"152606. Principal office.
"152607. Service of process.
"152608. Annual audit.
"152609. Civil action by Attorney General for equitable relief.
"152610. Immunity of United States Government.
"152611. Authorization of appropriations.
"152612. Annual report.

"§ 152601. Organization

"(a) FEDERAL CHARTER.—The Help America Vote Foundation (in this chapter, the 'foundation') is a federally chartered corporation.

"(b) NATURE OF FOUNDATION.—The foundation is a charitable and nonprofit corporation and is not an agency or establishment of the United States Government.

"(c) PERPETUAL EXISTENCE.—Except as otherwise provided, the foundation has perpetual existence.

"§ 152602. Purposes

"(a) IN GENERAL.—The purposes of the foundation are to—

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"(1) mobilize secondary school students (including students educated in the home) in the United States to participate in the election process in a nonpartisan manner as poll workers or assistants;

"(2) place secondary school students (including students educated in the home) as nonpartisan poll workers or assistants to local election officials in precinct polling places across the United States; and

"(3) establish cooperative efforts with State and local election officials, local educational agencies, superintendents and principals of public and private secondary schools, and other appropriate nonprofit charitable and educational organizations exempt from taxation under section 501(a) of the Internal Revenue Code of 1986 as an organization described in section 501(c)(3) of such Code to further the purposes of the foundation.

"(b) REQUIRING ACTIVITIES TO BE CARRIED OUT ON NONPARTISAN BASIS.—The foundation shall carry out its purposes without partisan bias or without promoting any particular point of view regarding any issue, and shall ensure that each participant in its activities is governed in a balanced manner which does not reflect any partisan bias.

"(c) CONSULTATION WITH STATE ELECTION OFFICIALS.—The foundation shall carry out its purposes under this section in consultation with the chief election officials of the States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, and the United States Virgin Islands.

"§ 152603. Board of directors

"(a) GENERAL.—The board of directors is the governing body of the foundation.

"(b) MEMBERS AND APPOINTMENT.—(1) The board consists of 12 directors, who shall be appointed not later than 60 days after the date of the enactment of this chapter as follows:

"(A) 4 directors (of whom not more than 2 may be members of the same political party) shall be appointed by the President.

"(B) 2 directors shall be appointed by the Speaker of the House of Representatives.

"(C) 2 directors shall be appointed by the minority leader of the House of Representatives.

"(D) 2 directors shall be appointed by the majority leader of the Senate.

"(E) 2 directors shall be appointed by the minority leader of the Senate.

"(2) In addition to the directors described in paragraph (1), the chair and ranking minority member of the Committee on House Administration of the House of Representatives (or their designees) and the chair and ranking minority member of the Committee on Rules and Administration of the Senate (or their designees) shall each serve as an ex officio nonvoting member of the board.

"(3) A director is not an employee of the Federal government and appointment to the board does not constitute appointment as an officer or employee of the United States Government for the purpose of any law of the United States (except as may otherwise be provided in this chapter).

"(4) The terms of office of the directors are 4 years.

"(5) A vacancy on the board shall be filled in the manner in which the original appointment was made.

"(c) CHAIR.—The directors shall select one of the directors as the chair of the board. The individual selected may not be a current or former holder of any partisan elected office or a current or former officer of any national committee of a political party.

"(d) QUORUM.—The number of directors constituting a quorum of the board shall be established under the bylaws of the foundation.

"(e) MEETINGS.—The board shall meet at the call of the chair of the board for regularly scheduled meetings, except that the board shall meet not less often than annually.

"(f) REIMBURSEMENT OF EXPENSES.—Directors shall serve without compensation but may receive travel expenses, including per diem in lieu of subsistence, in accordance with sections 5702 and 5703 of title 5.

"(g) LIABILITY OF DIRECTORS.—Directors are not personally liable, except for gross negligence.

"§ 152604. Officers and employees

"(a) APPOINTMENT OF OFFICERS AND EMPLOYEES.—The board of directors appoints, removes, and replaces officers and employees of the foundation.

"(b) STATUS AND COMPENSATION OF EMPLOYEES.—

"(1) IN GENERAL.—Officers and employees of the foundation—

"(A) are not employees of the Federal government (except as may otherwise be provided in this chapter);

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"(B) shall be appointed and removed without regard to the provisions of title 5 governing appointments in the competitive service; and

"(C) may be paid without regard to chapter 51 and subchapter III of chapter 53 of title 5.

"(2) AVAILABILITY OF FEDERAL EMPLOYEE RATES FOR TRAVEL.—For purposes of any schedules of rates negotiated by the Administrator of General Services for the use of employees of the Federal government who travel on official business, officers and employees of the foundation who travel while engaged in the performance of their duties under this chapter shall be deemed to be employees of the Federal government.

"§ 152605. Powers

"(a) GENERAL.—The foundation may—

"(1) adopt a constitution and bylaws;

"(2) adopt a seal which shall be judicially noticed; and

"(3) do any other act necessary to carry out this chapter.

"(b) POWERS AS TRUSTEE.—To carry out its purposes, the foundation has the usual powers of a corporation acting as a trustee in the District of Columbia, including the power—

"(1) to accept, receive, solicit, hold, administer, and use any gift, devise, or bequest, either absolutely or in trust, of property or any income from or other interest in property;

"(2) to acquire property or an interest in property by purchase or exchange;

"(3) unless otherwise required by an instrument of transfer, to sell, donate, lease, invest, or otherwise dispose of any property or income from property;

"(4) to borrow money and issue instruments of indebtedness;

"(5) to make contracts and other arrangements with public agencies and private organizations and persons and to make payments necessary to carry out its functions;

"(6) to sue and be sued; and

"(7) to do any other act necessary and proper to carry out the purposes of the foundation.

"(c) ENCUMBERED OR RESTRICTED GIFTS.—A gift, devise, or bequest may be accepted by the foundation even though it is encumbered, restricted, or subject to beneficial interests of private persons, if any current or future interest is for the benefit of the foundation.

"(d) CONTRACTS.—The foundation may enter into such contracts with public and private entities as it considers appropriate to carry out its purposes.

"(e) ANNUAL CONFERENCE IN WASHINGTON METROPOLITAN AREA.—During each year (beginning with 2003), the foundation may sponsor a conference in the Washington, D.C., metropolitan area to honor secondary school students and other individuals who have served (or plan to serve) as poll workers and assistants and who have otherwise participated in the programs and activities of the foundation.

"§ 152606. Principal office

"The principal office of the foundation shall be in the District of Columbia unless the board of directors determines otherwise. However, the foundation may conduct business throughout the States, territories, and possessions of the United States.

"§ 152607. Service of process

"The foundation shall have a designated agent to receive service of process for the foundation. Notice to or service on the agent, or mailed to the business address of the agent, is notice to or service on the foundation.

"§ 152608. Annual audit

"The foundation shall enter into a contract with an independent auditor to conduct an annual audit of the foundation.

"§ 152609. Civil action by Attorney General for equitable relief

"The Attorney General may bring a civil action in the United States District Court for the District of Columbia for appropriate equitable relief if the foundation—

"(1) engages or threatens to engage in any act, practice, or policy that is inconsistent with the purposes in section 152602 of this title; or

"(2) refuses, fails, or neglects to carry out its obligations under this chapter or threatens to do so.

"§ 152610. Immunity of United States Government

"The United States Government is not liable for any debts, defaults, acts, or omissions of the foundation. The full faith and credit of the Government does not extend to any obligation of the foundation.

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"§ 152611. Authorization of appropriations

"There are authorized to be appropriated to the foundation for carrying out the purposes of this chapter—

"(1) $5,000,000 for fiscal year 2002; and

"(2) such sums as may be necessary for each succeeding fiscal year.

"§ 152612. Annual report

"As soon as practicable after the end of each fiscal year, the foundation shall submit a report to the Commission, the President, and Congress on the activities of the foundation during the prior fiscal year, including a complete statement of its receipts, expenditures, and investments. Such report shall contain information gathered from participating secondary school students describing the nature of the work they performed in assisting local election officials and the value they derived from the experience of educating participants about the electoral process.".

(b) CLERICAL AMENDMENT.—The table of chapters for part B of subtitle II of title 36, United States Code, is amended by inserting after the item relating to chapter 1525 the following new item:

"1526. Help America Vote Foundation ..... 152601".

TITLE V—MINIMUM STANDARDS FOR STATE ELECTION SYSTEMS

SEC. 501. MINIMUM STANDARDS FOR STATE ELECTION SYSTEMS.

(a) IN GENERAL.—The chief State election official of each State shall certify in writing to the Election Assistance Commission that—

(1) in administering election systems, the State is in compliance with the existing applicable requirements of the Voting Rights Act of 1965, the National Voter Registration Act of 1993, the Uniformed and Overseas Citizens Absentee Voting Act, the Voting Accessibility for the Elderly and Handicapped Act, and the Americans With Disabilities Act of 1990; and

(2) the State has enacted legislation to enable the State to meet each of the minimum standards for State election systems described in section 502.

(b) METHODS OF IMPLEMENTATION LEFT TO DISCRETION OF STATE.—The specific choices on the methods of implementing the legislation enacted pursuant to subsection (a)(2) shall be left to the discretion of the State.

(c) CHIEF STATE ELECTION OFFICIAL DEFINED.—In this title, the "chief State election official" of a State is the individual designated by the State under section 10 of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg–8) to be responsible for coordination of the State's responsibilities under such Act.

SEC. 502. STANDARDS DESCRIBED.

The minimum standards for State election systems described in this section are as follows:

(1) The State will implement a Statewide voter registration system networked to every local jurisdiction in the State, with provisions for sharing data with other States, except that this paragraph shall not apply in the case of a State in which, under law in effect continuously on and after the date of the enactment of this Act, there is no voter registration requirement for any voter in the State with respect to an election for Federal office.

(2) The State election system includes provisions to ensure that voter registration records in the State are accurate and are updated regularly, including the following:

(A) A system of file maintenance which removes registrants who are ineligible to vote from the official list of eligible voters. Under such system, consistent with the National Voter Registration Act of 1993, registrants who have not voted in 2 or more consecutive general elections for Federal office and who have not responded to a notice shall be removed from the official list of eligible voters, except that no registrant may be removed solely by reason of a failure to vote.

(B) Safeguards to ensure that eligible voters are not removed in error from the official list of eligible voters.

(3) The State permits, by the deadline required under section 504(b), in-precinct provisional voting by every voter who claims to be qualified to vote in the State, or has adopted an alternative which achieves the same objective, except that this paragraph shall not apply in the case of a State in which, under law in effect continuously on and after the date of the enactment of this Act, all votes in the State in general elections for Federal office are cast by mail.

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(4) The State has adopted uniform standards that define what will constitute a vote on each category of voting equipment certified for use in the State.

(5) The State has implemented safeguards to ensure that absent uniformed services voters (as defined in section 107(1) of the Uniformed and Overseas Citizens Absentee Voting Act) and overseas voters (as defined in section 107(5) of such Act) in the jurisdiction have the opportunity to vote and to have their votes counted.

(6) The State requires new voting systems to provide a practical and effective means for voters with physical disabilities to cast a secret ballot.

(7) If the State uses voting systems which give voters the opportunity to correct errors, the State shall ensure that voters are able to check for and correct errors under conditions which assure privacy. States, and units of local government within the States, replacing all voting machines within their jurisdiction shall ensure that the new voting system gives voters the opportunity to correct errors before the vote is cast.

SEC. 503. ENFORCEMENT.

(a) REPORT BY COMMISSION TO ATTORNEY GENERAL.—If a State does not provide a certification under section 501 to the Election Assistance Commission, or if the Commission has credible evidence that a State's certification is false or that a State is carrying out activities in violation of the terms of the certification, the Commission shall notify the Attorney General.

(b) ACTION BY ATTORNEY GENERAL.—After receiving notice from the Commission under subsection (a), the Attorney General may bring a civil action against a State in an appropriate district court for such declaratory or injunctive relief as may be necessary to remedy a violation of this title.

SEC. 504. EFFECTIVE DATE.

(a) IN GENERAL.—Except as provided in subsection (b), the requirements of this title shall take effect upon the expiration of the 2-year period which begins on the date of the enactment of this Act, except that if the chief State election official of a State certifies that good cause exists to waive the requirements of this title with respect to the State until the date of the regularly scheduled general election for Federal office held in November 2004, the requirements shall apply with respect to the State beginning on the date of such election.

(b) DEADLINES FOR IMPLEMENTATION OF PROVISIONAL VOTING.—The minimum standard described in section 502(3) (relating to permitting in-precinct provisional voting) shall apply with respect to the regularly scheduled general election for Federal office held in November 2002 and each succeeding election for Federal office, except that if the chief State election official of a State certifies that good cause exists to delay the implementation of such standard in the State, the standard shall apply in the State with respect to the regularly scheduled general election for Federal office held in November 2004 and each succeeding election for Federal office held in the State.

TITLE VI—VOTING RIGHTS OF MILITARY MEMBERS AND OVERSEAS CITIZENS

SEC. 601. VOTING ASSISTANCE PROGRAMS.

(a) IN GENERAL.—(1) Chapter 80 of title 10, United States Code, is amended by adding at the end the following new section:

"§ 1566. Voting assistance: compliance assessments; assistance

"(a) REGULATIONS.—The Secretary of Defense shall prescribe regulations to require that the Army, Navy, Air Force, and Marine Corps ensure their compliance with any directives issued by the Secretary of Defense in implementing any voting assistance program.

"(b) VOTING ASSISTANCE PROGRAMS DEFINED.—In this section, the term 'voting assistance programs' means—

"(1) the Federal Voting Assistance Program carried out under the Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff et seq.); and

"(2) any similar program.

"(c) ANNUAL EFFECTIVENESS AND COMPLIANCE REVIEWS.—(1) The Inspector General of each of the Army, Navy, Air Force, and Marine Corps shall conduct—

"(A) an annual review of the effectiveness of voting assistance programs; and

"(B) an annual review of the compliance with voting assistance programs of that armed force.

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"(2) Upon the completion of each annual review under paragraph (1), each Inspector General specified in that paragraph shall submit to the Inspector General of the Department of Defense a report on the results of each such review. Such report shall be submitted in time each year to be reflected in the report of the Inspector General of the Department of Defense under paragraph (3).

"(3) Not later than March 31 each year, the Inspector General of the Department of Defense shall submit to Congress a report on—

"(A) the effectiveness during the preceding calendar year of voting assistance programs; and

"(B) the level of compliance during the preceding calendar year with voting assistance programs of each of the Army, Navy, Air Force, and Marine Corps.

"(d) INSPECTOR GENERAL ASSESSMENTS.—(1) The Inspector General of the Department of Defense shall periodically conduct at Department of Defense installations unannounced assessments of the compliance at those installations with—

"(A) the requirements of the Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff et seq.);

"(B) Department of Defense regulations regarding that Act and the Federal Voting Assistance Program carried out under that Act; and

"(C) other requirements of law regarding voting by members of the armed forces.

"(2) The Inspector General shall conduct an assessment under paragraph (1) at not less than 10 Department of Defense installations each calendar year.

"(3) Each assessment under paragraph (1) shall include a review of such compliance—

"(A) within units to which are assigned, in the aggregate, not less than 20 percent of the personnel assigned to duty at that installation;

"(B) within a representative survey of members of the armed forces assigned to that installation and their dependents; and

"(C) within unit voting assistance officers to measure program effectiveness.

"(e) REGULAR MILITARY DEPARTMENT ASSESSMENTS.—The Secretary of each military department shall include in the set of issues and programs to be reviewed during any management effectiveness review or inspection at the installation level an assessment of compliance with the Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff et seq.) and with Department of Defense regulations regarding the Federal Voting Assistance Program.

"(f) VOTING ASSISTANCE OFFICERS.—(1) Voting assistance officers shall be appointed or assigned under Department of Defense regulations. Commanders at all levels are responsible for ensuring that unit voting officers are trained and equipped to provide information and assistance to members of the armed forces on voting matters. Performance evaluation reports pertaining to a member who has been assigned to serve as a voting assistance officer shall comment on the performance of the member as a voting assistance officer. The Secretary of each military department shall certify to Congress that (at a minimum) a voting assistance officer has been appointed or assigned for each military installation and major command under the jurisdiction of the department and that a replacement will be appointed if the original officer is no longer able to serve.

"(2) Under regulations and procedures prescribed by the Secretary, a member of the armed forces appointed or assigned to duty as a voting assistance officer shall, to the maximum extent practicable, be given the time and resources needed to perform the member's duties as a voting assistance officer during the period in advance of a general election when members and their dependents are preparing and submitting absentee ballots.

"(3) As part of each assessment prepared by the Secretary of a military department under subsection (e), the Secretary shall—

"(A) specify the number of members of the armed forces under the jurisdiction of the Secretary who are appointed or assigned to duty as voting assistance officers;

"(B) specify the ratio of voting assistance officers to active duty members of the armed forces under the jurisdiction of the Secretary;

"(C) indicate whether this number and ratio comply with the requirements of the Federal Voting Assistance Program; and

"(D) describe the training such members receive to perform their duties as voting assistance officers.

"(g) REGISTRATION AND VOTING INFORMATION FOR MEMBERS AND DEPENDENTS.—(1) The Secretary of each military department, using a variety of means including both print and electronic media, shall, to the maximum extent practicable, ensure that members of the armed forces and their dependents who are qualified to vote have ready access to information regarding voter registration requirements and deadlines (including voter registration), absentee ballot application requirements

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and deadlines, and the availability of voting assistance officers to assist members and dependents to understand and comply with these requirement.

"(2) The Secretary of each military department shall make the national voter registration form prepared for purposes of the Uniformed and Overseas Citizens Absentee Voting Act by the Federal Election Commission available so that each person who enlists, reenlists, or voluntarily extends an enlistment or who completes a permanent change of station in an active or reserve component of the Army, Navy, Air Force, or Marine Corps shall receive such form at the time of the enlistment, reenlistment, extension, or completion of the permanent change of station, or as soon thereafter as practicable.

"(3) Where practicable, a special day or days shall be designated at each military installation for the purpose of informing members of the armed forces and their dependents of election timing, registration requirements, and voting procedures.

"(h) DELIVERY OF MAIL FROM OVERSEAS PRECEDING FEDERAL ELECTIONS.—(1) During the four months preceding a general Federal election month, the Secretary of Defense shall periodically conduct surveys of all overseas locations and vessels at sea with military units responsible for collecting mail for return shipment to the United States and all port facilities in the United States and overseas where military-related mail is collected for shipment to overseas locations or to the United States. The purpose of each survey shall be to determine if voting materials are awaiting shipment at any such location and, if so, the length of time that such materials have been held at that location. During the fourth and third months before a general Federal election month, such surveys shall be conducted biweekly. During the second and first months before a general Federal election month, such surveys shall be conducted weekly.

"(2) The Secretary shall ensure that voting materials are transmitted expeditiously by military postal authorities at all times. The Secretary shall, to the maximum extent practicable, implement measures to ensure that a postmark or other official proof of mailing date is provided on each absentee ballot collected at any overseas location or vessel at sea whenever the Department of Defense is responsible for collecting mail for return shipment to the United States. The Secretary shall submit to Congress a report describing the measures to be implemented to ensure the timely transmittal and postmarking of voting materials and identifying the persons responsible for implementing such measures.

"(3) The Secretary of each military department, utilizing the voting assistance officer network established for each military installation, shall, to the maximum extent practicable, provide notice to members of the armed forces stationed at that installation of the last date before a general Federal election for which absentee ballots mailed from a postal facility located at that installation can reasonably be expected to be timely delivered to the appropriate State and local election officials.

"(4) In this section, the term 'general Federal election month' means November in an even-numbered year.".

(2) The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"1566. Voting assistance: compliance assessments; assistance.".

(b) INITIAL REPORT.—The first report under section 1566(c)(3) of title 10, United States Code, as added by subsection (a), shall be submitted not later than March 31, 2003.

SEC. 602. DESIGNATION OF SINGLE STATE OFFICE TO PROVIDE INFORMATION ON REGISTRATION AND ABSENTEE BALLOTS FOR ALL VOTERS IN STATE.

Section 102 of the Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff–1) is amended—

(1) by inserting "(a) IN GENERAL.—" before "Each State"; and

(2) by adding at the end the following new subsection:

"(b) DESIGNATION OF SINGLE STATE OFFICE TO PROVIDE INFORMATION ON REGISTRATION AND ABSENTEE BALLOT PROCEDURES FOR ALL VOTERS IN STATE.—

"(1) IN GENERAL.—Each State shall designate a single office which shall be responsible for providing information regarding voter registration procedures and absentee ballot procedures (including procedures relating to the use of the Federal write-in absentee ballot) to all absent uniformed services voters and overseas voters who wish to register to vote or vote in any jurisdiction in the State.

"(2) RECOMMENDATION REGARDING USE OF OFFICE TO ACCEPT AND PROCESS MATERIALS.—Congress recommends that the State office designated under paragraph (1) be responsible for carrying out the State's duties under this Act, including accepting valid voter registration applications, absentee ballot applications, and absentee ballots (including Federal write-in absentee ballots) from all

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absent uniformed services voters and overseas voters who wish to register to vote or vote in any jurisdiction in the State.".

SEC. 603. REPORT ON ABSENTEE BALLOTS TRANSMITTED AND RECEIVED AFTER GENERAL ELECTIONS.

(a) IN GENERAL.—Section 102 of the Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff–1), as amended by section 602, is amended by adding at the end the following new subsection:

"(c) REPORT ON NUMBER OF ABSENTEE BALLOTS TRANSMITTED AND RECEIVED.—Not later than 90 days after the date of each regularly scheduled general election for Federal office, each State and unit of local government which administered the election shall (through the State, in the case of a unit of local government) submit a report to the Election Assistance Commission (established under the Help America Vote Act of 2001) on the number of absentee ballots transmitted to absent uniformed services voters and overseas voters for the election and the number of such ballots which were returned by such voters and cast in the election, and shall make such report available to the general public.".

(b) DEVELOPMENT OF STANDARDIZED FORMAT FOR REPORTS.—The Election Assistance Commission, working with the Election Assistance Commission Board of Advisors and the Election Assistance Commission Standards Board, shall develop a standardized format for the reports submitted by States and units of local government under section 102(c) of the Uniformed and Overseas Citizens Absentee Voting Act (as added by subsection (a)), and shall make the format available to the States and units of local government submitting such reports.

SEC. 604. SIMPLIFICATION OF VOTER REGISTRATION AND ABSENTEE BALLOT APPLICATION PROCEDURES FOR ABSENT UNIFORMED SERVICES AND OVERSEAS VOTERS.

(a) REQUIRING STATES TO ACCEPT OFFICIAL FORM FOR SIMULTANEOUS VOTER REGISTRATION AND ABSENTEE BALLOT APPLICATION; DEADLINE FOR PROCESSING APPLICATION.—

(1) IN GENERAL.—Section 102(a) of the Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff–1), as amended by section 602, is amended—

(A) by amending paragraph (2) to read as follows:

"(2) accept and process, with respect to any election for Federal office, any otherwise valid voter registration application and absentee ballot application from an absent uniformed services voter or overseas voter, if the application is received by the appropriate State election official not less than 30 days before the election;";

(B) by striking the period at the end of paragraph (3) and inserting "; and"; and

(C) by adding at the end the following new paragraph:

"(4) use the official post card form (prescribed under section 101) for simultaneous voter registration application and absentee ballot application.".

(2) CONFORMING AMENDMENTS.—Section 101(b)(2) of such Act (42 U.S.C. 1973ff(b)(2)) is amended by striking "as recommended in section 104" and inserting "as required under section 102(4)".

(b) USE OF SINGLE APPLICATION FOR ALL SUBSEQUENT ELECTIONS.—Section 104 of such Act (42 U.S.C. 1973ff–3) is amended to read as follows:

"SEC. 104. USE OF SINGLE APPLICATION FOR ALL SUBSEQUENT ELECTIONS.

"(a) IN GENERAL.—If a State accepts and processes an official post card form (prescribed under section 101) submitted by an absent uniformed services voter or overseas voter for simultaneous voter registration and absentee ballot application (in accordance with section 102(a)(4)) and the voter requests that the application be considered an application for an absentee ballot for each subsequent election for Federal office held in the State during that year, the State shall provide an absentee ballot to the voter for each subsequent election for Federal office held in the State during that year.

"(b) EXCEPTION FOR VOTERS CHANGING REGISTRATION.—Subsection (a) shall not apply with respect to a voter registered to vote in a State for any election held after the voter notifies the State that the voter no longer wishes to be registered to vote in the State or after the State determines that the voter has registered to vote in another State.

"(c) REVISION OF OFFICIAL POST CARD FORM.—The Presidential designee shall revise the official post card form (prescribed under section 101) to enable a voter using the form to—

"(1) request an absentee ballot for each election for Federal office held in a State during a year; or

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"(2) request an absentee ballot for only the next scheduled election for Federal office held in a State.

"(d) NO EFFECT ON VOTER REMOVAL PROGRAMS.—Nothing in this section may be construed to prevent a State from removing any voter from the rolls of registered voters in the State under any program or method permitted under section 8 of the National Voter Registration Act of 1993.".

SEC. 605. ADDITIONAL DUTIES OF PRESIDENTIAL DESIGNEE UNDER UNIFORMED AND OVERSEAS CITIZENS ABSENTEE VOTING ACT.

(a) EDUCATING ELECTION OFFICIALS ON RESPONSIBILITIES UNDER ACT.—Section 101(b)(1) of the Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff(b)(1)) is amended by striking the semicolon at the end and inserting the following: ", and ensuring that such officials are aware of the requirements of this Act;".

(b) DEVELOPMENT OF STANDARD OATH FOR USE WITH MATERIALS.—

(1) IN GENERAL.—Section 101(b) of such Act (42 U.S.C. 1973ff(b)) is amended—

(A) by striking "and" at the end of paragraph (5);

(B) by striking the period at the end of paragraph (6) and inserting "; and"; and

(C) by adding at the end the following new paragraph:

"(7) prescribe a standard oath for use with any document under this title affirming that a material misstatement of fact in the completion of such a document may constitute grounds for a conviction for perjury.".

(2) REQUIRING STATES TO USE STANDARD OATH.—Section 102(a) of such Act (42 U.S.C. 1973ff–1(b)), as amended by sections 603 and 605(a), is amended—

(A) by striking "and" at the end of paragraph (3);

(B) by striking the period at the end of paragraph (4) and inserting "; and"; and

(C) by adding at the end the following new paragraph:

"(5) if the State requires an oath or affirmation to accompany any document under this title, use the standard oath prescribed by the Presidential designee under section 101(b)(7).".

(c) PROVIDING BREAKDOWN BETWEEN OVERSEAS VOTERS AND ABSENT UNIFORMED SERVICES VOTERS IN STATISTICAL ANALYSIS OF VOTER PARTICIPATION.—Section 101(b)(6) of such Act (42 U.S.C. 1973ff(b)(6)) is amended by inserting after "participation" the following: "(listed separately for overseas voters and absent uniformed services voters)".

SEC. 606. USE OF BUILDINGS ON MILITARY INSTALLATIONS AND RESERVE COMPONENT FACILITIES AS POLLING PLACES.

(a) LIMITED USE OF MILITARY INSTALLATIONS AUTHORIZED.—Section 2670 of title 10, United States Code, is amended—

(1) by striking "Under" and inserting "(a) USE BY RED CROSS.—Under";

(2) by striking "this section" and inserting "this subsection"; and

(3) by adding at the end the following new subsection:

"(b) USE AS POLLING PLACES.—(1) Notwithstanding any other provision of law, the Secretary of a military department may make a building located on a military installation under the jurisdiction of the Secretary available for use as a polling place in any Federal, State, or local public election, but only if such use is limited to eligible voters who reside on that military installation.

"(2) If a building located on a military installation is made available under paragraph (1) as the site of a polling place, the Secretary shall continue to make the building available for subsequent elections unless the Secretary provides to the appropriate State or local election officials advance notice, in a reasonable and timely manner, of the reasons why the building will no longer be made available as a polling place.

"(3) In this section, the term 'military installation' has the meaning given the term in section 2687(e) of this title.".

(b) USE OF RESERVE COMPONENT FACILITIES.—(1) Section 18235 of title 10, United States Code, is amended by adding at the end the following new subsection:

"(c) Pursuant to a lease or other agreement under subsection (a)(2), the Secretary may make a facility covered by subsection (a) available for use as a polling place in any Federal, State, or local public election notwithstanding any other provision of law. If a facility is made available as the site of a polling place with respect to an election, the Secretary shall continue to make the facility available for subsequent elections unless the Secretary provides to the appropriate State or local election officials advance notice, in a reasonable and timely manner, of the reasons why the facility will no longer be made available as a polling place.".

(2) Section 18236 of such title is amended by adding at the end the following:

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"(e) Pursuant to a lease or other agreement under subsection (c)(1), a State may make a facility covered by subsection (c) available for use as a polling place in any Federal, State, or local public election notwithstanding any other provision of law.".

(c) CONFORMING AMENDMENTS TO TITLE 18.—(1) Section 592 of title 18, United States Code, is amended by adding at the end the following new sentence:

"This section shall not apply to the actions of members of the Armed Forces at any polling place on a military installation where a general or special election is held in accordance with section 2670(b), 18235, or 18236 of title 10.".

(2) Section 593 of such title is amended by adding at the end the following new sentence:

"This section shall not apply to the actions of members of the Armed Forces at any polling place on a military installation where a general or special election is held in accordance with section 2670(b), 18235, or 18236 of title 10.".

(d) CONFORMING AMENDMENT TO VOTING RIGHTS LAW.—Section 2003 of the Revised Statutes of the United States (42 U.S.C. 1972) is amended by adding at the end the following new sentence: "Making a military installation or reserve component facility available as a polling place in a Federal, State, or local public election in accordance with section 2670(b), 18235, or 18236 of title 10, United States Code, is deemed to be consistent with this section.".

(e) CLERICAL AMENDMENTS.—(1) The heading of section 2670 of title 10, United States Code, is amended to read as follows:

"§ 2670. Buildings on military installations: use by American National Red Cross and as polling places in Federal, State, and local elections".

(2) The item relating to such section in the table of sections at the beginning of chapter 159 of such title is amended to read as follows:

"2670. Buildings on military installations: use by American National Red Cross and as polling places in Federal, State, and local elections.".

TITLE VII—REDUCED POSTAGE RATES FOR OFFICIAL ELECTION MAIL

SEC. 701. REDUCED POSTAGE RATES FOR OFFICIAL ELECTION MAIL.

(a) IN GENERAL.—Section 3629 of title 39, United States Code, is amended to read as follows:

"§ 3629. Reduced rates for official election mail

"(a) Notwithstanding any other provision of this title, the rate of postage for any first-class mail matter shall, in the case of official election mail, be equal to 50 percent of the regular first-class rate, subject to subsection (c).

"(b) For purposes of this section, the term 'official election mail' means any mailing by a State or local election official that—

"(1) is mailed in the course of official business;

"(2) consists of voter registration or election information or assistance prepared and mailed in a nonpartisan manner; and

"(3) bears such logo or other markings as the Postal Service may require.

Such term does not include any mailing that includes any mail matter intended to promote government action unrelated to the conduct of an election.

"(c) Nothing in this section shall, with respect to any official election mail, be considered to make unavailable—

"(1) any free mailing privilege under section 3406 or any other provision of law for which such mail otherwise qualifies; or

"(2) any reduced rate of postage under section 3626 or any other provision of law for which such mail otherwise qualifies, if lower than the rate that would otherwise apply under subsection (a).".

(b) CLERICAL AMENDMENT.—The table of sections for chapter 36 of title 39, United States Code, is amended by striking the item relating to section 3629 and inserting the following:

"3629. Reduced rates for official election mail.".

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TITLE VIII—TRANSITION PROVISIONS

Subtitle A—Transfer to Commission of Functions Under Certain Laws

SEC. 801. FEDERAL ELECTION CAMPAIGN ACT OF 1971.

(a) TRANSFER OF FUNCTIONS OF OFFICE OF ELECTION ADMINISTRATION OF FEDERAL ELECTION COMMISSION.—There are transferred to the Election Assistance Commission established under section 201 all functions which the Office of the Election Administration, established within the Federal Election Commission, exercised before the date of enactment of this Act.

(b) CONFORMING AMENDMENT.—Section 311(a) of the Federal Election Campaign Act of 1971 (2 U.S.C. 438(a)) is amended—

(1) in paragraph (8), by inserting "and" at the end;

(2) in paragraph (9), by striking "; and" and inserting a period; and

(3) by striking paragraph (10) and the second and third sentences.

SEC. 802. NATIONAL VOTER REGISTRATION ACT OF 1993.

(a) TRANSFER OF FUNCTIONS.—There are transferred to the Election Assistance Commission established under section 201 all functions which the Federal Election Commission exercised under the National Voter Registration Act of 1993 before the date of enactment of this Act.

(b) CONFORMING AMENDMENT.—Section 9(a) of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg–7(a)) is amended by striking "Federal Election Commission" and inserting "Election Assistance Commission".

SEC. 803. TRANSFER OF PROPERTY, RECORDS, AND PERSONNEL.

(a) PROPERTY AND RECORDS.—The contracts, liabilities, records, property, and other assets and interests of, or made available in connection with, the offices and functions of the Federal Election Commission which are transferred by this subtitle are transferred to the Election Assistance Commission for appropriate allocation.

(b) PERSONNEL.—

(1) IN GENERAL.—The personnel employed in connection with the offices and functions of the Federal Election Commission which are transferred by this subtitle are transferred to the Election Assistance Commission.

(2) EFFECT.—Any full-time or part-time personnel employed in permanent positions shall not be separated or reduced in grade or compensation because of the transfer under this subsection during the 1-year period beginning on the date of the enactment of this Act.

SEC. 804. EFFECTIVE DATE; TRANSITION.

(a) EFFECTIVE DATE.—This title and the amendments made by this title shall take effect upon the appointment of all members of the Election Assistance Commission under section 203.

(b) TRANSITION.—With the consent of the entity involved, the Election Assistance Commission is authorized to utilize the services of such officers, employees, and other personnel of the entities from which functions have been transferred to the Election Assistance Commission under this title or the amendments made by this title for such period of time as may reasonably be needed to facilitate the orderly transfer of such functions.

Subtitle B—Coverage of Commission Under Certain Laws and Programs

SEC. 811. TREATMENT OF COMMISSION PERSONNEL UNDER CERTAIN CIVIL SERVICE LAWS.

(a) COVERAGE UNDER HATCH ACT.—Section 7323(b)(2)(B)(i)(I) of title 5, United States Code, is amended by inserting "or the Election Assistance Commission" after "Commission".

(b) EXCLUSION FROM SENIOR EXECUTIVE SERVICE.—Section 3132(a)(1)(C) of title 5, United States Code, is amended by inserting "or the Election Assistance Commission" after "Commission".

SEC. 812. COVERAGE UNDER INSPECTOR GENERAL ACT OF 1978.

(a) IN GENERAL.—Section 8G(a)(2) of the Inspector General Act of 1978 (5 U.S.C. App.) is amended by inserting "the Election Assistance Commission," after "Federal Election Commission,".

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(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect 180 days after the appointment of all members of the Election Assistance Commission under section 203.

TITLE IX—MISCELLANEOUS PROVISIONS

SEC. 901. STATE DEFINED.

In this Act, the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, and the United States Virgin Islands.

SEC. 902. MISCELLANEOUS PROVISIONS TO PROTECT INTEGRITY OF ELECTION PROCESS.

(a) CLARIFICATION OF ABILITY OF ELECTION OFFICIALS TO REMOVE REGISTRANTS FROM OFFICIAL LIST OF VOTERS ON GROUNDS OF CHANGE OF RESIDENCE.—Section 8(b)(2) of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg–6(b)(2)) is amended by striking the period at the end and inserting the following: ", except that nothing in this paragraph may be construed to prohibit a State from using the procedures described in subsections (c) and (d) to remove an individual from the official list of eligible voters if the individual has not voted or appeared to vote in 2 or more consecutive general elections for Federal office and has not notified the applicable registrar (in person or in writing) or responded to a notice sent by the applicable registrar during the period in which such elections are held that the individual intends to remain registered in the registrar's jurisdiction.".

(b) PROHIBITING EFFORTS BY POLL WORKERS TO COERCE VOTERS TO CAST VOTES FOR EVERY OFFICE ON BALLOT.—Section 594 of title 18, United States Code, is amended—

(1) by striking "Whoever" and inserting "(a) Whoever"; and

(2) by adding at the end the following new subsection:

"(b) For purposes of subsection (a), a poll worker who urges or encourages a voter who has not cast a vote for each office listed on the ballot to return to the voting booth to cast votes for every office, or who otherwise intimidates, harasses, or coerces the voter to vote for each such office (or who attempts to intimidate, harass, or coerce the voter to vote for each such office), shall be considered to have intimidated, threatened, or coerced (or to have attempted to intimidate, threaten, or coerce) the voter for the purpose of interfering with the voter's right to vote as the voter may choose. Nothing in this subsection shall prohibit a poll worker from providing information to a voter who requests assistance.".

SEC. 903. NO EFFECT ON OTHER LAWS.

(a) IN GENERAL.—Nothing in this Act and no action taken pursuant to this Act shall supersede, restrict, or limit the application of the Voting Rights Act of 1965, the National Voter Registration Act of 1993, the Voting Accessibility for the Elderly and Handicapped Act, or the Americans with Disabilities Act of 1990.

(b) NO CONDUCT AUTHORIZED WHICH IS PROHIBITED UNDER OTHER LAWS.—Nothing in this Act authorizes or requires any conduct which is prohibited by the Voting Rights Act of 1965, the National Voter Registration Act of 1993, or the Americans with Disabilities Act of 1990.

(c) APPLICATION TO STATES, LOCAL GOVERNMENTS, AND COMMISSION.—Except as specifically provided in the case of the National Voter Registration Act of 1993, nothing in this Act may be construed to affect the application of the Voting Rights Act of 1965, the National Voter Registration Act of 1993, or the Americans with Disabilities Act of 1990 to any State, unit of local government, or other person, or to grant to the Election Assistance Commission the authority to carry out activities inconsistent with such Acts.

PURPOSE OF THE LEGISLATION

The purpose of H.R. 3295, the Help America Vote Act of 2001, can be stated very simply—it is to improve our country's election system. The circumstances surrounding the election that took place in November 2000 brought an increased focus on the process of election administration, and highlighted the need for improvements. The Help America Vote Act of 2001 will make it possible to implement needed improvements.

Historically, elections in this country have been administered at the state and local level. This system has many benefits that must

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be preserved. The dispersal of responsibility for election administration has made it impossible for a single centrally controlled authority to dictate how elections will be run, and thereby be able to control the outcome. This leaves the power and responsibility for running elections where it should be, in the hands of the citizens of this country. Local control has the further added benefit of allowing for flexibility, so that local authorities can tailor their procedures to meet the demands of disparate and unique communities. Further by leaving the responsibility for election administration in the hands of local authorities, if a problem arises, the citizens who live within their jurisdictions know whom to hold accountable. The local authorities who bear the responsibility cannot now, and should not in the future be able to, point the finger of blame at some distant, unaccountable, centralized bureaucracy.

While local control must be preserved, it is time to recognize that the federal government can play a valuable roll by assisting state and local government in modernizing their election systems. H.R. 3295 will, for the first time, give the state and local governments some financial assistance, from the federal government, to improve their election infrastructure.

SUMMARY OF THE LEGISLATION

PUNCH CARD REPLACEMENT PROGRAM

The disadvantages of punch card voting systems were highlighted during the recount that took place in Florida following the November 2000 election. Large portions of the American public have lost confidence in them. For systems that use a blank punch card, a failure to properly align the card behind the ballot can result in the casting of a vote for a candidate the voter did not mean to select. The perforated chad on the punch card may not be completely punched out, so the machine counter does not register any vote for that office. In the event of a close election, punch cards are ill suited to a recount. Running the ballots through a counter repeatedly during a recount can result in the detachment of additional chads, essentially creating votes that were never meant to be cast. If a manual recount must be resorted to, officials are faced with the unenviable task of attempting to divine the intent of a voter based on the amount of depression or partial detachment of a chad.

H.R. 3295 seeks to make punch card systems a part of our history, not our future. It authorizes $400 million to replace them. Any State or jurisdiction that used punch card voting systems in the November 2000 general election is eligible to receive up to $6000 per precinct to replace them. They must obligate the funds before the next federal election in November 2002, and must have all their punch card systems replaced before the election in November 2004 (though they can get either deadline extended by 2 years for good cause shown). To hasten the dispersal of these dollars, this program will be administered by the General Services Administration.

Some jurisdictions may choose not to replace their punch card systems, but H.R. 3295 makes funds available to those jurisdictions that want to modernize their systems. Additionally, the bill makes available funds for enhancement of these systems. For example,

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punch card systems can be made far more reliable if they are counted at the precinct, rather than at a central location. The enhancement program will provide funds to make improvements that will restore public confidence in punch card machines where they remain in use.

ELECTION ASSISTANCE COMMISSION

H.R. 3295 creates a new federal commission that will be tasked with providing information and assistance to state and local governments on best practices to successfully administer elections. The Commission has been structured to perform an advisory, as opposed to an administrative roll, in elections. The Commission has no rule making authority. The four commissioners will be recommended by the congressional leadership and will be appointed by the President. No more than two commissioners may be of the same party, to assure that the Commission acts in a nonpartisan fashion. The Commissioners will have experience or expertise in election administration or the study of elections, and will serve on a part time basis.

In establishing this commission, the Committee sought to involve the state and local officials who will be tasked with carrying out its recommendations. Two boards were created under the Commission, the Advisory Board and the Standards Board. The twenty-five member Advisory Board will consist of representatives from various groups that are involved with or care about election administration issues. The Standards Board will consist of the chief state election official, and a local election official, from each of the 50 states, the District of Columbia and the territories. The Boards will review and comment on any proposed standards prior to consideration by the Commission. Since those who serve on the Board will determine if their jurisdictions will adopt any of the voluntary standards approved, their thoughts and comments will be given serious attention by the Commission.

There is also created under the Commission a Technical Standards Development Committee. The Development Committee will assist the Executive Director of the Commission in the development of voluntary standards by recommending standards pertaining to the usability, accuracy, security, accessibility and integrity of voting systems and equipment. The Development Committee will be chaired by the Director of the National Institute of Standards and Technology, and will consist of members of the Board of Advisors and members of the Standards Board, among others.

Once the Development Committee has developed proposed voluntary standards, it will submit them to the Executive Director. The Executive Director shall then forward the standards (as developed or with modifications) to the Boards for review and comment. After the Boards have had an opportunity to review or comment, the standards will be forwarded to the Commission, which can approve them by majority vote.

This process will ensure that the standards are developed in a way that involves persons with real world technical expertise and experience in election administration. It is a process designed to give the people who will be responsible for administering elections, the state and local elections officials, a voice in the standards development process. By heeding that voice, the Commission should

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be able to make recommendations that truly reflect the recognized best practices of election administration.

The Commission will have grant making power. In addition to distributing the election fund payments, the bill authorizes two grant programs. One grant program will be devoted to research on voting technology improvements, the second will distribute grants for pilot programs to test equipment and technology. The research and development program is designed to encourage innovative technological and management strategies that will improve the accessibility, efficiency and security of election systems. This program in conjunction with the pilot program should foster development of these strategies where it may not be cost effective for the private sector to conduct research on their own. Universities, local jurisdictions, and the private sector are eligible to participate alone or as partners. Ideas that can be explored could include, for example, developing ways to communicate in different ways to voters about their registration status before the election. This would avoid unnecessary confusion on Election Day about whether voters are registered and where they should vote. Use of the Internet or telephone systems in this initiative could preclude a great deal of confusion on Election Day and minimize unnecessary administrative burdens processing provisional ballots post election. These and other ideas could be explored to ensure that our election system and its associated technologies are constantly being improved.

FUNDING CONDITIONS

H.R. 3295 authorizes $2.25 billion over three years for Election Fund payments. These funds will be provided to states at a matching rate of 75% (federal) to 25% (state). States will be permitted to use these dollars for a range of activities which improve election administration. This will give states the opportunity to direct fund payments to the areas where the resources are most needed. Jurisdictions that want to modernize their voting equipment can use election fund payments for that purpose. Others may have more pressing needs for modernized statewide registration systems, or better education and training of voters and poll workers. The Election Fund is designed to allow states to determine their greatest needs, and direct resources where they are most needed.

While the States will have flexibility in deciding where to direct dollars, they will be required to meet certain requirements as a condition of receiving funds. These funding conditions are not intended to be unduly burdensome, or to require states to incur obligations that will exceed the amount of funds appropriated and made available to the States. They will, however, ensure that the federal dollars are being spent appropriately, and that recipients meet certain criteria. The Commission will disperse election fund payments, and will monitor compliance with the funding conditions.

HELP AMERICA VOTE FOUNDATION AND COLLEGE PROGRAM

There is a critical shortage of poll-workers in this country. Many election officials fear the problem will grow even worse as the volunteers they rely on, many of them retirees, grow older with little national effort to recruit new volunteers. Experienced and well trained poll workers are essential to making our elections run prop-

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erly. They provide assistance to voters, make sure proper procedures are followed, and guard the integrity of our elections.

A second well recognized problem in this country is the disengagement of our young people from the electoral process. For far too many of our young citizens, politics is a confusing and uninteresting side show in which they have no desire to participate.

The creation of the Help America Vote Foundation and College Program is designed to address both of these problems. These programs will encourage civic involvement by high school and college students by making them available for service as non-partisan poll workers and assistants to local election authorities. This will have the two-fold benefit of alleviating the shortage of volunteers, while also exposing our youth to the electoral process. Ideally, many of those who will become exposed to the election process for the first time through this program, will cultivate a life long interest in the process, and will continue to serve as election volunteers for many years, or at a minimum continue to be engaged in American civic life as informed citizens and voters.

The College Program will be administered by the Election Assistance Commission. The High School Program will be set up as a federally chartered corporation. The Commission will make grants for the college program, while the federal corporation created will administer the High School program. Both programs must be carried out without partisan bias, and without promoting any particular point of view regarding any issue.

MINIMUM STANDARDS

The minimum standards in H.R. 3295 require States to meet certain criteria, regardless of whether or not they accept election fund payments. While they impose minimum requirements, they allow the states to develop their own laws and procedures to fulfill the requirements. The goal of the minimum standards is to improve our election system without issuing dictates that would rob states of the ability to craft their own solutions.

The Minimum Standards are:

(1) The State will implement a Statewide voter registration system networked to every local jurisdiction in the State, with provisions for sharing data with other States, except that this paragraph shall not apply in the case of a State in which, under law in effect continuously on and after the date of the enactment of this Act, there is no voter registration requirement for any voter in the State with respect to an election for Federal office.

One of the most exciting and promising reforms that the Committee explored is statewide registration. In its June 2001 report to Congress, the bipartisan Federal Election Commission, after consulting with state and local election officials, recommended that states "1) develop and implement a statewide computerized voter registration database; 2) insure that all local registration offices are computerized; and 3) link their statewide computerized system, where feasible, with the computerized systems of the collateral public agencies relevant to the NVRA (motor-vehicle offices, public-assistance offices, etc.)". The bi-partisan National Commission on Federal Election Reform ("Ford/Carter Commission") also recommended states adopt such a system, as did the nation's election

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administrators in their non-partisan National Task Force on Election Reform.

Creation of such a system will make the registration lists more accurate, and easier to update. It should reduce the incidence of voters appearing at a polling place only to discover that no record of their registration can be found. When voters move from one jurisdiction to another within that state, the statewide system will be able to track that movement. If for some reason a voter remained registered at their old address, the election officials will be able to see that and take corrective action. Requiring states to develop statewide databases will modernize and improve registration nationwide.

People are mobile, but more than three-quarters of all residential moves are in-state. An effective statewide database can therefore be quite useful, including its capacity to address such common issues as the registration of in-state college students and people with second homes within a state. But perhaps the most important beneficiaries of statewide registration systems will be members of lower-income groups, who are more likely to move than higher-income groups within the same state.

The minimum standard requires states to create a single database that is official, centralized and administered at the state level. Databases which simply link existing local databases do not qualify as satisfying this requirement. Multiple databases linking various vendor or local government programs to a statewide system is not sufficient to satisfy this requirement. The intent of the minimum standard is to establish one database that is identical and is the same program throughout the state and local jurisdictions so that all training can be uniform, all records requirements are identical, and that the state has full authority for maintenance and quality matters related to the database. The intent is also to assure that there are not jurisdictional nor vendor issues in terms of operability, problem resolution, or other types of reasons for one part of the system not matching the other.

It is likely that states will find it necessary to create a unique identifier to distinguish registered voters who happen to have the same name and/or birth date. The unique identifier so created will be used to assure that list maintenance functions are attributable to the correct voter; so as to avoid removing registrants who happen to have the same name and birth date as a felon, for example. States are encouraged to use the unique identifier to share information with other governmental offices for purposes such as death certificates, court and tax records, etc., to assure proper maintenance of voter records, file integrity, and protection of voter rights. It is the intent of Congress to encourage the states to develop each statewide database system in such a manner that it will be possible at some point in the future for states to share data between them for the appropriate additions and removal of voters from their rolls.

(2) The State election system includes provisions to ensure that voter registration records in the State are accurate and are updated regularly, including the following:

(A) A system of file maintenance which removes registrants who are ineligible to vote from the official list of eligible voters. Under such system, consistent with the National Voter Registration Act of

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1993, registrants who have not voted in 2 or more consecutive general elections for federal office and who have not responded to a notice shall be removed from the official list of eligible voters, except that no registrant may be removed solely by reason of a failure to vote.

(B) Safeguards to ensure that eligible voters are not removed in error from the official list of eligible voters.

States must ensure that their registration list is accurate and is updated regularly. Leaving ineligible voters on the rolls leads to a number of problems. It increases costs as more ballots must be printed and more mailings must be sent out to voters that have died or moved away. This is a waste of vital resources that serves no purpose. One of the most damaging effects of inaccurate rolls is that they lead to the public perception that the process can be easily manipulated. When the number of voters on a registration list exceeds a jurisdiction's voting age population (itself an artificially high number because it includes non-citizens and person only temporarily in the jurisdiction), the perception is that the process has no integrity and accountability. Furthermore, when ineligible voters are left on rolls indefinitely, it invites fraud. Those who wish to commit fraud can vote in more than one jurisdiction, or more problematic, cast multiple votes in the names of those they know are no longer eligible.

A fraudulent vote that nullifies a legal one, disenfranchises the legal voter as surely as if his or her vote had never been cast at all. States are therefore obligated to maintain accurate lists, and thereby minimize the opportunities for and the incidence of fraud.

The minimum standard requires that removal of those deemed ineligible must be done in a manner consistent with the National Voter Registration Act. The procedures established by NVRA that guard against removal of eligible registrants remain in effect under this law. Accordingly, H.R. 3295 leaves NVRA intact, and does not undermine it in any way.

(3) The State permits, by the deadline required under section 504(b), in-precinct provisional voting by every voter who claims to be qualified to vote in the State, or has adopted an alternative which achieves the same objective, except that this paragraph shall not apply in the case of a State in which, under law in effect continuously on and after the date of the enactment of this Act, all votes in the State in general elections for Federal office are cast by mail.

The Committee spent considerable time and energy learning about in-precinct provisional voting. In spite of the statewide registration system and file maintenance requirements, there will still be some instances where a voter who is qualified to vote does not appear on the registration list when they present themselves to vote.

In-precinct provisional voting enables people whose eligibility is in doubt to vote in their precinct, without having to travel somewhere else to swear they are eligible to vote, and have their registration verified in the days following an election. The Committee believes provisional voting is necessary to the administration of a fair, democratic, and effective election system, and represents the ultimate safeguard to ensuring a person's right to vote. For these reasons, the Committee has included it in the bill. Under the bill,

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in-precinct provisional voting will be required in every jurisdiction except states that have or plan to adopt an alternative which achieves the same objective, such as same-day registration or voting-by-mail.

Studies of the nation's election system find that a significant problem voters experience is to arrive at the polling place believing that they are eligible to vote, and then to be turned away because the election workers cannot find their names on the list of qualified voters.

There are at least eight reasons this occurs:

1. Voters may be turned away because of administrative errors. Poll workers may overlook their names or not match them up with a different spelling. In most jurisdictions, poll workers work from printed lists of voters produced for each precinct. Staff in the offices that produce these lists can make clerical errors.

2. Poll workers may overlook a voter's name on the precinct roster, or may not be aware that the voter is listed on a supplemental roster containing the names of voters who registered shortly before the election.

3. Voters may have their names improperly removed from the voting rolls.

4. Voters may appear at the wrong precinct because they did not receive, or received but did not heed, a notice that their polling place had moved.

5. Motor-vehicle departments or social-service agencies that are supposed to make registration applications available to clients may improperly handle the applications or fail to forward them to proper election officials in a timely manner.

6. Voters may fail to notify their registrar, or fail to re-register, after a change of address.

7. Well-intentioned organizations seeking to register voters may mishandle registration materials.

8. Otherwise qualified citizens may simply fail to register.

Whatever the cause, eligible citizens may believe they have registered. Unfortunately, when they subsequently attempt to vote, they are not on the list. In-precinct provisional voting, or an alternative which achieves the same objective, such as same-day registration (currently used by Idaho, Maine, New Hampshire, Wisconsin, Wyoming, and Minnesota); voting-by-mail (used by Oregon and Washington State); or no voter registration requirement (North Dakota), can solve this problem.

In-precinct provisional voting has four key advantages:

1. Legally qualified voters are no longer turned away at the polls.

2. In-precinct provisional voting limits the ability of states to impose extra hurdles that may have the effect of deterring the use of provisional voting. For example, in Pennsylvania, voters whose names do not appear on the precinct rosters are required to travel to police stations to see an election judge, who determines whether or not they have the right to vote. Voters must then return to the polling location in order to cast their votes. Many voters, who are faced with the choice of traveling to the police station or leaving, ultimately do not vote either because they are intimidated by going to a police station or because it is logistically difficult or inconvenient.

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3. Voter participation is easier and more efficient, as poll workers can provide an option to voters who may be angry or frustrated by their absence from the registration list. These often ill-trained and low-paid temporary workers do not have to research or resolve cases on the spot, while other voters impatiently wait in line. Nor are more senior election officials tied down in resolving such questions during Election Day.

4. Voter registration becomes more accurate. The process becomes another way to amend registrations for people who evidently wish to vote. Officials can detect and correct mistakes and the research process, by helping senior administrators notice which problems are causing the mistakes, thus can help many other current and potential voters.

(4) The State has adopted uniform standards that define what will constitute a vote on each category of voting equipment certified for use in the State.

Requiring states to have a uniform standard for what constitutes a vote will ensure that voters receive the equal protection of the laws with respect to the counting of their ballots. Votes should be counted using objective standards put in place before an election contest. Whether or not a vote is counted should not depend on where a voter happens to live, nor should it depend on varying subjective interpretations of state laws by local election officials. Similarly marked ballots should not be discarded in one jurisdiction, but counted in another.

As Americans learned in November and December 2000, a major part of the problem in Florida was that the vote-counting process was subjective and inconsistent, with definitions of what constitutes a vote varying from jurisdiction to jurisdiction. The United States Supreme Court found such a standardless process to be a violation of the Equal Protection Clause of the Constitution.

As the Committee discovered, Florida is not alone. Most states do not prescribe a standard for election officials to follow in recounting votes. Amorphous statutory references to the "intent of the voter" invite still more confusion and ambiguity. "Intent of the voter" is not a standard but rather a subjective judgment, virtually guaranteeing litigation. It is unfair to voters, to candidates and to democracy.

The crux of the problem is that all systems that rely on individual ballots inherently raise questions as to whether a particular configuration is or is not a "vote." Such systems include traditional paper ballots, punch card ballots, connect the arrow ballots, or optical scan ballots, all of which the voter must alter in some manner to create a vote. Lever systems and DRE machines do not create a ballot with voter marks; therefore, there is no particular mark available to review.

Because every vote properly cast must be counted, and recounts are routinely conducted to make certain that all ballots have been properly counted, the Committee believes that uniform standards for what constitutes a vote must be adopted by all states. The definition of a vote shall be as objective as possible and spelled out in clear language before Election Day.

(5) The State has implemented safeguards to ensure that absent uniformed services voters (as defined in section 107(1) of the Uniformed and Overseas Citizens Absentee Voting Act) and overseas

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voters (as defined in section 107(5) of such Act) in the jurisdiction have the opportunity to vote and to have their votes counted.

States must implement safeguards to ensure that absent uniformed service personnel and overseas voters have the opportunity to vote and have their votes counted. Those serving in our military and citizens living abroad face many hurdles when it comes to registering, receiving ballots and casting them timely. States must take action to ensure that these voters have the opportunity to vote and have their votes counted. States need to recognize the difficulties faced by these voters, and take steps to see that their votes are counted. (See below for additional provisions affecting these voters).

(6) The State requires new voting systems to provide a practical and effective means for voters with physical disabilities to cast a secret ballot.

Advancements in technology make it possible for voters with physical disabilities to cast a secret ballot. New systems should strive to make it possible for voters with physical disabilities to cast secret ballots. (See below for additional provisions affecting these voters).

(7) If the State uses voting systems which give voters the opportunity to correct errors, the State shall ensure that voters are able to check for and correct errors under conditions which assure privacy. States, and units of local government within the States, replacing all voting machines within their jurisdiction shall ensure that the new voting system gives voters the opportunity to correct errors before the vote is cast.

In the 2000 presidential election, nearly two million voters, 2% of those who went to the polls, either did not mark their ballot, or marked it in a way that no vote was counted in the presidential contest. Election experts call these votes in which no choice is counted "residual votes." These millions of voters either spoiled their ballots by "overvoting" (appearing to vote for more than one candidate), or by "undervoting" (they marked their choice in a manner that could not be counted, or they marked no choice at all). Of course, an undervoted ballot is not necessarily "spoiled". Millions of voters intentionally do not vote in certain contests for various reasons, complicated the task of determining voter rates.

As the Committee learned in our June hearing, the consensus among engineers, computer scientists, and political scientists who study election systems is that the number of residual votes and the rate of voter error are greatly affected by the kind of equipment that is used. According to one expert who testified before the Committee on what is known as "human usability studies," predictably high levels of user error are evidence of system failure, flawed instructions, or faulty system design.

Whatever the specific causes for residual votes, the fact remains that some votes go uncounted because voters have no opportunity to detect and correct errors before they cast their ballots. Fortunately, there are voting systems available that permit voters to correct ballots in the precinct before they are cast.

The bill will ensure that as jurisdictions scrap obsolete voting systems, they replace them with systems that have the capability to detect errors, for poll site voting (the provisions for second chance voting cannot currently be applied to absentee or mail balloting since the ballot and the voter are separated before counting).

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To be sure, this provision will not instantly mandate that all machines in all polling places by a date certain have a second-chance voting capability. The Committee seriously explored the proposal to require all 200,000 jurisdictions nationwide to have second-chance voting by 2004 or, at the latest, 2006. Jurisdictions that failed to meet the deadline would be subject to suite in federal court. As the Committee learned more about the production capability of the voting machine industry, the timelines and procurement processes counties and states must go through to award contracts to voting-machine vendors, and the huge costs involved, the Committee decided that an aggressive deadline might cause more serious problems than it would solve. One disturbing possibility was that jurisdictions that could not meet the deadline, most likely poorer ones, might have their election systems shut down or seriously disrupted during an election while other jurisdictions in the state, most likely affluent ones, that met the deadline could proceed with their elections. The Committee was hard-pressed to imagine a more chilling 14th Amendment problem than this, where some eligible voters in a state could exercise the franchise while others could not.

As to whether the term "error" means overvote, undervote, or something else, the Committee referred to the findings of the National Commission on Federal Election Reform, commonly known as the "Ford-Carter Commission." The Commission's definition of "error" is set forth in the accompanying document.

As already noted, many voters intentionally do not vote in every race. The purpose of second chance technology is to provide voters information about their ballot. Voter privacy is an important right that must be protected. While voters should have the opportunity to verify the accuracy of their ballot, they should not be forced to do so under the scrutiny of a poll worker. Once a voter is satisfied of the accuracy of their ballot, it is not the roll or responsibility of a poll worker to inquire as to the voters intent.

Poll workers should, upon request, be available to provide assistance to voters, but voters should not be prompted by poll workers, or have to explain to poll workers why they have not voted in a certain race. The bill ensures voter privacy, by requiring that jurisdictions whose machines have second chance technology must ensure that voters are able to check for and correct errors on their ballots under conditions which assure privacy.

MILITARY AND OVERSEAS VOTERS

Those who serve in our military, and citizens living abroad, face peculiar hardships when attempting to vote. Relatively simple things like applying for and transmitting ballots can become a very difficult and lengthy process for these voters. Steps must be taken to protect the rights of these citizens. Military voters risk their very lives in defense of this country. We must repay them by doing everything possible to see that they are able to vote and have their votes counted.

A recent report by the General Accounting Office revealed that over 40% of the installations they visited had not assigned voting assistance officers. The Department of Defense must make certain that a sufficient number of voting assistance officers are assigned, and that those who are assigned are doing their duties. H.R. 3295 requires the Secretary of Defense to certify to Congress that, at a

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minimum, a voting assistance officer has been assigned to every installation and major command.

The bill also makes voter registration forms available to service personnel at the time of enlistment, reenlistment or extension of enlistment, to make it easier for them to register. The Secretary of Defense must also ensure that all ballots are properly postmarked, or marked with some other official mark, so that state officials can determine when the ballot left the voter's hands.

States are also required to designate a single point of contact for those in the service and living abroad, to make it easier for them to obtain needed information about elections, registration and voting.

The bill contains a number of the key provisions of the Uniformed and Overseas Citizen Absentee Voting Reform Act of 2001, H.R. 1997, which will help remove existing obstacles to absentee voting now confronting members of our armed services and overseas voters. Those obstacles contributed to the appallingly high level of rejected ballots in Florida and to the inability to vote of many others who wished to do so.

Similarly, the provision requiring the collection and publication of statistics on overseas voting by the states will fill one of the most serious gaps in our ability to monitor the adequacy of the overseas absentee voting regime. For the first time, we will all have the same information about voting access for overseas voters that we now have routinely for voters at home.

ACCESSIBILITY STANDARDS AND VOTING RIGHTS OF PERSONS WITH DISABILITIES

Sections 102, 112, 221, 233 and 501 and Compliance with the Americans with Disabilities Act and the Voting Accessibility for the Elderly and Handicapped Act

In this bill, the Committee reaffirms that public entities, such as States and localities and their responsible officials, must comply to the extent required by law with the Americans with Disabilities Act (ADA) and the Voting Accessibility for the Elderly and Handicapped Act (VAEHA).

The committee bill will enhance compliance with the ADA and VAEHA by enlisting a range of officials in the process of regulating accessibility problems and solutions. For example, the bill requires that the chief election official of each State certify the State's compliance with the applicable provisions of the ADA and the VAEHA, and requires that recipients of election funds provide assurance of compliance with such laws as a condition of their acceptance of federal money.

Section 903 and preservation of existing law

Section 903 expressly provides that noting in the bill will supersede, restrict, or limit the application of the VAEHA, the ADA, the Voting Rights Act or the National Voting Registration Act, nor will it authorize or require any conduct prohibited under any of these laws. Thus, the bill continues unchanged—the role of the Department of Justice (DOJ) as the agency responsible for authoritatively construing the ADA and promulgating regulations.

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Voluntary accessibility standards in sections 221 and 222

The Committee bill creates mechanisms for providing States and localities with technical guidance about improving accessibility through the adoption of voluntary standards by the Election Assistance Commission. The Committee expects that the voluntary standards will offer examples of achievable methods for ensuring accessibility. One example might include the moving of a polling place from an inaccessible historic library building to an accessible city hall building nearby.

These voluntary standards to be issued by the Commission would not, however, replace accessibility regulations and technical assistance provided by the DOJ for individuals with disabilities. Rather, these standards must be consistent with DOJ's regulations, and not serve as authorization for a level of accessibility lower than required by the regulations. In fact, this need for harmonious standards is the reason the bill directs the Commission to consult with the Architecture and Transportation Barrier Compliance Board in developing its voluntary standards.

If a state accepts election fund payments, the bill requires the state to certify its compliance with the voluntary standards for voting systems. This means that a state which accepts funds will be bound by at least two independent sources of law: the state's contractual duty to comply with the Commission's standards for voting systems, and the state's statutory duty to comply with the ADA. While the Committee anticipates that the Commission will take great care to create voluntary standards in a manner that conforms to existing law, compliance with the Commission's standards cannot provide any "safe harbor" against liability under the ADA or other applicable laws.

Eligibility for election assistance funding under section 233

One of the eligibility requirements for election assistance funding is that there must be at least one voting system available in each precinct or polling place that is fully accessible to individuals with disabilities. This means that if a State accepts any election assistance funding, the State is required to purchase a fully accessible voting system for each precinct or polling place that does not already have such a Summary

TITLE I—PUNCH CARD VOTING MACHINES

Subtitle A—Replacement of Machines

Sec. 101. Establishment of program

Provides for a one-time payment, through the General Services Administration, to State or local government to replace punch card voting systems with other kinds. Requires recipients to obligate funds by the November 2002 Federal election and complete replacement by the 2004 election, but deadlines may be extended two years if approved by the Election Assistance Commission established in Sec. 201.

Sec. 102. Eligibility

Requires that State applications include assurances that the State will use the payment to replace punch card systems used in

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the 2000 election, continue to comply with the Voting Accessibility for the Elderly and Handicapped Act and Americans With Disabilities Act, and provide for alternative language accessibility as required by the Voting Rights Act and other laws.

Permits a local government to apply if the State does not, is ineligible, or will not use the payment to replace punch card systems. Requires that the application include similar assurances as those required of States.

Sec. 103. Amount of payment

Sets payment at 90% of replacement cost, or 95% for precincts where per capita income is within the lowest quartile for the United States, with a maximum of $6,000 times the number of precincts using punch card systems in the jurisdiction during the 2000 election.

Sec. 104. Audit and repayment of funds

Makes payments subject to audit. Requires recipients that fail to meet deadlines to return the funds unless granted a waiver.

Sec. 105. Punch card voting system defined

Defines punch card voting systems to include C.E.S., Datavote, PBC Counter, Pollstar, Punch Card, Vote Recorder, and Votomatic.

Subtitle A—Enhancing Performance of Existing Systems

Sec. 111. Establishment of program

Provides for a one-time payment, through the General Services Administration, to State or local governments to enhance performance of punch card voting systems, with deadlines as in Sec. 101.

Sec. 112. Eligibility

Similiar to Sec. 102, except funds used for enhancement rather than replacement of systems; also, jurisdictions may not participate in both programs.

Sec. 113. Amount of payment

Similar to Sec. 103 except maximum is $2,000 times the number of covered precincts.

Sec. 113. Audit and repayment of funds

Makes payments subject to audit. Requires recipients that fail to meet deadlines to return the funds.

Subtitle C—General Provisions

Sec. 121. Authorization of appropriations

Authorizes appropriations of $400 million, to remain available until expended. Repaid or unobligated funds will be transferred to the Election Assistance Commission.

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TITLE II—COMMISSION

Subtitle A—Establishment and General Organization

PART I—ELECTION ASSISTANCE COMMISSION

Sec. 201. Establishment

Creates an independent executive branch agency called the Election Assistance Commission.

Sec. 202. Duties

Stipulates that the Commission will serve as a national clearinghouse and resource on the administration of Federal elections as described in this title and title III.

Sec. 203. Membership and appointment

Requires that the four Commission members have election-related experience or expertise and that they be appointed by the President with the consent of the Senate, with one member each chosen from nominees submitted by the President Pro Tempore of the Senate, the Senate minority leader, the Speaker of the House of Representatives, and the House minority leader.

Establishes staggered four-year terms for members, renewable once, and prohibits members from being officers or employees of the Federal government while serving. Requires members to select a chair and vice chair from different political parties.

Sets a commissioner's salary at $30,000, plus travel expenses, and permits outside employment.

Sec. 204. Staff

Creates position of Executive Director to be appointed by the Commission for a four-year renewable term and permits that person to appoint additional staff and use outside experts. Requires staff to consult with the two boards established in this title.

Sec. 205. Powers

Empowers the Commission to hold hearings, take testimony, receive evidence, let contracts, obtain information from Federal agencies and support from the General Services Administration, and to use the mails as do other Federal agencies.

Sec. 206. Limitation on rulemaking authority

Prohibits the Commission from imposing requirements on State or local governments except as permitted under the National Voter Registration Act.

Sec. 207. Authorization of appropriations

Authorizes a maximum appropriation of $10 million per year through FY2004.

PART II—ELECTION ASSISTANCE COMMISSION STANDARDS BOARD AND BOARD OF ADVISORS

Sec. 211. Establishment

Creates a Standards Board and a Board of Advisors under the Election Assistance Commission.

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Sec. 212. Duties

Requires that the two boards review the standards described in this title.

Sec. 213. Membership of Standards Board

Sets membership at 110, to include, from each State, the chief election official and a local election official chosen by peers in the State, with no two members from a State to be from the same political party.

Requires board to select a nine-member Executive Board, with no more than five to be chief election officials, local election officials, or from the same party. Sets two-year staggered terms with a maximum of two consecutive renewals.

Sec. 214. Membership of Board of Advisors

Sets membership at 25, two each appointed by the U.S. Commission on Civil Rights; the Architectural and Transportation Barrier Compliance Board; the National Governors Association; the National Conference of State Legislatures; the National Association of Secretaries of State; the National Association of State Election Directors; the National Association of Counties; the National Association of County Recorders, Election Administrators, and Clerks; the U.S. Conference of Mayors; the Election Center; and the International Association of County Recorders, Election Officials, and Treasurers; with the Speaker of the House and the Senate majority leader each appointing one professional in science and technology; and with the chief of the Office of Public Integrity of the Department of Justice or designee also a member. Requires bipartisan, geographically diverse appoints.

Sets two-year, renewable terms. Requires election of a chair from among the members.

Sec. 215. Powers of boards; no compensation for service

Empowers each board to hold hearings, take testimony, and receive evidence, obtain information from Federal agencies and support from the General Services Administration, and to use the mails as do other Federal agencies. Prohibits issuance of subpoenas. Requires each board to meet at least yearly to vote on standards, and the Standards Board to meet at least every two years to select the Executive Board. Prohibits compensation of board members, but permits payment of travel expenses.

Sec. 216. Status of boards and members for purposes of claims against board

Applies provisions of 28 U.S.C., Chapters 161 and 171, with respect to liability of boards and members, with an exception for criminal acts and other willful misconduct.

Subtitle B—Voluntary Election Standards

Sec. 221. Development of voluntary election standards

Requires the Commission, in consultation with the two boards, to develop and adopt voluntary voting system standards, accessibility standards, and election management standards, and update them at least every four years.

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Requires that the voting system standards include security, certification and decertification procedures, usability assessment, and operational guidelines; provide for error correction by voters; include for each certified system what is proposed to constitute a vote; and provide that certified new systems permit voters with disabilities to cast a secret ballot.

Requires the Commission to serve as a clearinghouse of information on experiences of State and local governments in implementing the standards and in operating voting systems; and to make available to the public studies on certain specified issues in election administration, information on the Federal election system, election results, and information concerning issues relating to Federal, State, and local elections.

Requires consultation with the Compliance Board and other experts with respect to accessibility standards, and that the election management standards address the treatment of uniformed and overseas voters, in consultation with the Secretary of Defense.

Requires the Commission to provide for voluntary testing, certification, decertification, and recertification of voting systems; to advise State and local governments on complying with Federal laws regarding accessibility of registration and polling places; to carry out the provisions of the National Voter Registration Act regarding voter registration by mail; and to assist State officials in review of Federal election procedures.

Sec. 222. Technical Standards Development Committee

Establishes a 15-member Technical Standards Development committee, to recommend voting system standards and modifications, to be chaired by the Director of the National Institute of Standards and Technology (NIST), and with members appointed jointly by the Director and the Commission and drawn from the Standards Board, the Board of Advisors, the Compliance Board, the American National Standards Institute, and other persons with relevant scientific and technical expertise. Requires NIST to provide technical support.

Prohibits compensation of members, but permits payment of travel expenses.

Requires, when the Commission adopts any standard, publication of corresponding recommendations of the Development Committee in the Federal Register.

Sec. 223. Process for adoption of voluntary standards

Requires the Executive Director of the Commission to take recommendations of the Development Committee into account in developing standards, and for the two boards to review the proposed standards, with majority vote of the Commission required for adoption.

Sec. 224. Certification and testing of voting systems

Requires that testing and certification of voting systems be performed by nonfederal laboratories accredited by the Commission, from a list of candidates submitted by the Director of NIST, who will also monitor and review laboratory performance and, when appropriate, make recommendations to the Commission regarding continuing accreditation.

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Sec. 225. Dissemination of information

Requires the Commission to disseminate to the public—via the Internet, published reports, and other means—information on the standards and guidelines for applying them, the list of accredited laboratories, a list of certified voting system hardware and software, and other activities carried out under this subtitle.

Subtitle C—Election Assistance

Part 1—Election Fund Payments to States for Voting System Improvements

Sec. 231. Election fund payments to States for voting system improvements

Requires the Commission to make payments to qualifying States to improve the administration of elections.

Sec. 232. Allocation of funds

Sets the size of payment to a State at the greater of either a percentage of the total amount appropriated for that year, based on the size of the voting age population in that State as compared to the total for all States; or 0.5 percent of the total appropriated, except 0.1 percent for Puerto Rico, Guam, American Samoa, or the U.S. Virgin Islands.

Sec. 233. Conditions for receipt of funds

Requires a State, to be eligible, to certify that it has established an Election Fund, provided a 25 percent match, and set benchmarks for voting system performance; complies with the voluntary voting system standards and certification processes described in subtitle B or has established statutory standards that provide for error correction by voters and for auditing of ballots; provides one or more fully accessible voting systems in each precinct; complies with Federal voting rights law; and provides for voter education and training of poll workers and personnel involved in voter registration. Also requires the State to certify that the Federal share will not supplant existing State funds. Gives States discretion to choose the method of compliance

Sec. 234. Authorization of appropriations

Authorizes appropriations totaling $2.25 billion through FY2004.

Part 2—Grants for Research on Voting Technology Improvements

Sec. 241. Grants for research on voting technology improvements

Establishes a grant program to be administered by the Commission for research and development to improve election systems and technology. Requires applicants to assure that funded activities will take accessibility needs into account. Applies 18 U.S.C. 35 with respect to patent rights.

Sec. 242. Report

Requires submission of a report describing activities under the grant.

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Sec. 243. Authorization of appropriations

Authorizes appropriations of $20 million for FY 2002.

PART 3—PILOT PROGRAM FOR TESTING OF EQUIPMENT AND TECHNOLOGY

Sec. 251. Pilot program

Establishes a grant program to be administered by the Commission to implement new voting technologies on a trial basis. Requires applicants to assure that the funded activities will take accessibility needs into account.

Sec. 252. Report

Requires submission of a report describing activities under the grant.

Sec. 253. Authorization of appropriations

Authorizes appropriations of $10 million for FY2002.

PART 4—MISCELLANEOUS

Sec. 261. Role of National Institute of Standards and Technology

Requires the Director of NIST to submit annually to the Commission a list of suggestions for issues to be addressed by the grant programs, review grant applications, monitor grant activities and recommend modifications as necessary, and evaluate completed grants. Also requires the Director to establish an intramural research and development program within NIST to support the development of voluntary technical standards.

Sec. 262. Reports

Requires submission of an annual report to Congress by the Commission and a report on the application of human factors research to voting systems.

Sec. 263. Audit

Provides for the Commission to audit recipients of funds and requires that each program established under the subtitle be audited at least once during its lifetime.

TITLE III—HELP AMERICA VOTE COLLEGE PROGRAM

Sec. 301. Establishment of program

Requires the Commission to establish the "Help America Vote Program," with the purpose of encouraging students at colleges, universities, and community colleges to serve as nonpartisan poll workers or assistants and to encourage State and local governments to use students in that capacity.

Sec. 302. Activities under program

Requires the Commission, in consultation with chief State election officials, to develop materials, sponsor seminars and workshops, advertise the program to students, make grants, assist any institution that wishes to participate, and take other appropriate

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actions. Limits grants to nonpartisan undertakings that do not promote a point of view or an issue.

Sec. 303. Authorization of appropriations

Authorizes appropriations of $5 million for FY2002 and sums necessary thereafter.

TITLE IV—HELP AMERICA VOTE FOUNDATION

Sec. 401. Help America Vote Foundation

Amends Part B of subtitle II of 36 U.S.C. to establish the federally chartered Help America Vote Foundation to mobilize secondary school students to participate as nonpartisan poll workers and assistants, and to establish cooperative efforts with election officials, local educational agencies, public and private school officials, and other appropriate nonprofit organizations.

Requires the foundation to act without partisan bias or promotion of any particular point of view and to consult with the chief State election officials.

Establishes a 12-member board of directors with four appointed by the President (not more than two from the same political party), two by the Speaker of the House of Representatives, two by the House minority leader, two by the Senate majority leader, and two by the Senate minority leader, and with the chairs and ranking Members of the House Administration Committee and the Senate Rules and Administration Committee as ex officio, nonvoting members.

Sets the term of office at four years and stipulates that members are not employees of the Federal government. Prohibits compensation of board members, but permits payment of travel expenses. Restricts personal liability of members to gross negligence.

Requires the board to meet at least yearly and to select a member as chair, who shall not hold or have held any partisan elected office or national political-party committee office.

Permits the board to appoint and remove officers and employees of the foundation and stipulates that they are not employees of the Federal government except as otherwise provided in this chapter.

Grants the foundation such powers as necessary to carry out this chapter and also the usual powers of a corporation acting as a trustee in the District of Columbia, where the foundation will be located. Permits it to conduct business throughout the United States. Requires the foundation to have a designated agent to receive service of process for it.

Permits the foundation to accept gifts, devises, and bequests for its benefit and to let contracts. Also permits it to sponsor an annual conference to honor persons who have served as poll workers or participated in foundation programs and activities.

Requires an annual audit by an independent auditor.

Permits the Attorney General to bring a civil action for relief for behavior by the foundation that is inconsistent with the purposes designated in this title.

Excludes the U.S. government from any liability or obligation incurred by the foundation.

Authorizes $5 million for FY 2002 and such sums as necessary thereafter.

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TITLE V—MINIMUM STANDARDS FOR STATE ELECTION SYSTEMS

Sec. 501. Minimum standards for State election systems

Requires each State to certify to the Commission that it is in compliance with the Voting Rights Act of 1965, the National Voter Registration Act of 1993, the Uniformed and Overseas Citizens Absentee Voting Act, the Voting Accessibility for the Elderly and Handicapped Act, and the Americans With Disabilities Act of 1990; and that it has, by statute, established standards for its election systems as described in this title. Gives States discretion to choose the method of implementation.

Sec. 502. Standards described

Sets minimum standards, to include a statewide, networked voter registration system in States requiring registration; provisions to ensure accurate, updated registration records; in-precinct provisional voting; uniform standards for what constitutes a vote for each certified voting system; safeguards for voting by uniformed and overseas voters; requirements that new voting systems provide for voters with physical disabilities to cast a secret ballot; and requirements that new voting systems give voters the opportunity to correct errors under conditions which assure privacy.

Sec. 503. Enforcement

Requires the Commission to notify the Attorney General if a State fails to comply, and authorizes the Attorney General, if so notified, to bring a civil action to remedy the violation.

Sec. 504. Effective date

Sets effective date for the provisional voting standard at the November 2002 Federal election and for other provisions in the title at two years from enactment, but permits an extension to the November 2004 Federal election.

TITLE VI—VOTING RIGHTS OF MILITARY MEMBERS AND OVERSEAS CITIZENS

Sec. 601. Voting assistance programs

Amends 10 U.S.C. Chapter 80 to require the Secretary of Defense to ensure compliance by the military services with the Federal Voting Assistance Program and any similar programs.

Requires the Inspector General of each service to conduct an annual review of the effectiveness of and compliance with the programs and to submit the review to the Inspector General for the Department of Defense (DOD), who will prepare an annual report to Congress. Requires the DOD Inspector General to conduct, at 10 or more installations each year, periodic, unannounced assessments of compliance with requirements of law regarding voting by members of the armed forces.

Requires the secretary of each military department to assess compliance as part of installation review or inspection, and to certify to Congress that, for each installation and major command, a voting assistance officer, has been appointed and given the time and resources to perform voting assistance duties. Also requires the

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secretaries to specify the number of voting action officers appointed and the ratio of voting action officers to active duty members, to assess compliance of those numbers with requirements, and to describe the training that voting action officers receive.

Requires the secretaries to ensure that members of the military and their dependents have access to information on voter registration and absentee ballot requirements and deadlines. Requires that each person who enlists, reenlists, or completes a permanent change of station receive the national voter registration form.

Requires the secretaries, through voting assistance officers, to provide notice to members of the armed forces of the last date before a general election for which ballots mailed at the facility can be expected to be delivered in a timely fashion to State and local election officials.

Requires the Secretary of Defense to ensure that voting materials are transmitted expeditiously, to conduct periodic surveys of mail shipments at all overseas locations and vessels at sea during the four months preceding an election, and to implement measures to ensure that a postmark or other proof of mailing date is provided on each absentee ballot.

Sec. 602. Designation of single State office to provide information on registration and absentee ballots for all voters in State

Amends the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) to require each State to designate a single office to provide information to members of the armed services concerning absentee registration and voting in the State. Recommends that the office be responsible for carrying out duties under this Act.

Sec. 603. Report on absentee ballots transmitted and received after general elections

Requires that after a Federal election, States submit a public report to the Commission on the number of absentee ballots transmitted to absent uniformed services and overseas voters and the number returned and cast in the election. Requires the Commission to develop a standardized format for such reports.

Sec. 604. Simplification of voter registration and absentee ballot application procedures for absent uniformed services and overseas voters

Amends UOCAVA to require States to accept the post card form as a simultaneous voter registration and absentee ballot application, and to require that an absentee ballot application pertain to all elections for Federal office held in the State during that year, if the applicant so requests. Requires the Presidential designee for UOCAVA to revise the official post card form to enable a voter to request an absentee ballot either for each Federal election held in a State during a year or for only the next schedules Federal election.

Sec. 605. Additional duties of presidential designee under Uniformed and Overseas Citizens Absentee Voting Act

Amends UOCAVA to require the Presidential designee to ensure that State officials are aware of the requirements of that Act, and to prescribe a standard oath regarding perjury in completion of a

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document required under the title. Requires States to use the standard oath if the State requires an oath or affirmation for any voting document.

Amends UOCAVA to require separate statistical analysis for overseas voters and absent uniformed services voters.

Sec. 606. Use of Buildings on Military Installations and Reserve Component Facilities as Polling Places

Amends 10 U.S.C. 2670 and 18235; 18 U.S.C. 592 and 593; and 42 U.S.C. 2003 to permit the secretary of a military department to make a building located on a military installation available for use as a polling place, in any Federal, State, or local election, for eligible voters who reside on that military installation. Requires that such a polling place continue to be available for subsequent elections unless the secretary provides appropriate advance notice to State and local officials of the reasons why it will not.

TITLE VII—REDUCED POSTAGE RATES FOR OFFICIAL ELECTION MAIL

Sec. 701. Reduced postage rates for official election mail

Amends 39 U.S.C. 3629 to establish a postage rate of 50% of the regular first-class rate for any State and local official election mail.

TITLE VIII—TRANSITION PROVISIONS

Subtitle A—Transfer to Commission of Functions Under Certain Laws

Sec. 801. Federal Election Campaign Act of 1971

Amends section 311 (a) of the Federal Election Campaign Act of 1971 (2 U.S.C. 438 (a)) Transfers to the Commission, upon appointment of all members, all functions of the Office of Election Administration of the Federal Election Commission.

Sec. 802 National Voter Registration Act of 1993

Amends section 9(a) of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg–7(a)). Transfers to the Commission all functions that the Federal Election Commission exercises under the National Voter Registration Act.

Sec. 803. Transfer of property, records, and personnel

Transfers to the Commission all personnel, contracts, liabilities, records, property, and other assets or interests of the offices and functions of the Federal Election Commission that are transferred by this subtitle.

Sec. 804. Effective date; transition

Requires that this title take effect upon the appointment of all members of the Commission, which is authorized to utilize services from the entities from which functions will be transferred as needed for an orderly transfer.

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Subtitle B—Coverage of Commission Under Certain Laws and Programs

Sec. 811. Treatment of commission personnel under certain civil service laws

Amends 5 U.S.C. 7323(b)(2)(B)(i)(I) and 3132(a)(1)(C) to specify that Commission personnel are covered by the Hatch Act and that the Commission is excluded from the Senior Executive Service.

Sec. 812. Coverage under Inspector General Act of 1978

Amends section 8G(a)(2) of the Inspector General Act of 1978 (5 U.S.C. App.) to provide for coverage under that Act.

TITLE IX—MISCELLANEOUS PROVISIONS

Sec. 901. State defined

Defines State to include the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, and the United States Virgin Islands.

Sec. 902. Miscellaneous provisions to protect integrity of election process

Amends the National Voter Registration Act of 1993 to clarify the ability of election officials to remove from the voter registration list the name of an individual who has not voted in two or more consecutive general elections for Federal office and who has not notified the registrar of an intent to remain registered in the registrar's jurisdiction or who has not responded to a notice from the registrar of voters. Amends 18 U.S.C. 594 to prohibit poll workers from intimidating, harassing, or coercing voters to cast votes for every office on the ballot, but not from providing information to a voter who requests assistance.

Sec. 903. No effect on other laws

Stipulates that nothing in the Act authorizes or requires conduct prohibited by the Voting Rights Act of 1965, the National Voter Registration Act of 1993, or the Americans With Disabilities Act of 1990; or may be construed to supersede, restrict, or limit those Acts or the Voting Accessibility for the Elderly and Handicapped Act.

COMMITTEE CONSIDERATION OF THE LEGISLATION

INTRODUCTION AND REFERRAL

On November 14, 2001, Mr. Ney, Mr. Hoyer, Mr. Blunt and Mr. Fattah introduced H.R. 3295, which was referred to the Committee on House Administration, the Committee on the Judiciary, the Committee on Armed Services, the Committee on Government Reform and the Committee on Science

HEARINGS

The Committee on House Administration held four hearings on election reform in the first session of the 107th Congress.

On April 25, 2001, the Committee held the first hearing on Election Reform.

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Members present: Mr. Ney, Mr. Ehlers, Mr. Mica, Mr. Linder, Mr. Reynolds, Mr. Hoyer, Mr. Fattah, Mr. Davis.

Witnesses: J. Kenneth Blackwell, Secretary of State, Ohio; Sharon Priest, Secretary of State, Arkansas; Katherine Harris, Secretary of State, Florida; Rebecca Vigil-Giron, Secretary of State, New Mexico; Ron Thornburgh, Secretary of State, Kansas; Martin Stephens, Speaker of the Utah House of Representatives; John Adams Hurson, Majority Leader, Maryland House of Delegates; Kenneth Mayfield, Commissioner, Dallas County, Texas; Deborah Phillips, President—The Voting Integrity Project; Kristen Cox, National Federation of the Blind; Hilary Shelton, Director NAACP Washington Bureau; Dennis Duggan, American Legion.

On May 10, 2001, the Committee held its second hearing on Election Reform.

Members present: Mr. Ney, Mr. Ehlers, Mr. Mica, Mr. Reynolds, Mr. Hoyer, Mr. Davis.

Witnesses: Doug Lewis, Director—The Election Center; Conny McCormack, Los Angeles County Registrar-Recorder/County Clerk; Connie Schmidt, Election Commissioner, Johnson County, Kansas; Carolyn Jackson, Administrator of Elections, Hamilton County, Tennessee; Pam Iorio, Supervisor of Elections, Hillsborough County, Florida; Linda Lamone, Administrator, Maryland State Administrative Board of Election Laws.

On May 17, 2001, the Committee held its third hearing on Election Reform.

Members present: Mr. Ney, Mr. Ehlers, Mr. Linder, Mr. Hoyer, Mr. Fattah, Mr. Davis.

Witnesses: Tom Davis, Managing Member, iPaper/Diversified Dynamics; William F. Welsh III, Chairman, Election Systems and Software; Brian O'Conner, Executive Vice President, Global Election Systems, Inc.; David E. Hart, Chairman, Hart InterCivic, Inc.; Richard Caruso, Chairman, Shoup Voting Solutions; Marlene Duffy Young, Regional Marketing Representative, Unilect; James Minadeo, Product Manager, Avante; Scott Faibaron, Regional Sales Manager, Envox (US) Ltd.; Mark Strama, Vice President, Public Elections, election.com; David Chaum, Founder, SureVote; Ralph Munro, Board of Directors, VoteHere; Dennis Vadura, CEO, Web Tools International.

On May 24, 2001, the Committee held its fourth hearing on Election Reform.

Members present: Mr. Ney, Mr. Ehlers, Mr. Doolittle, Mr. Hoyer, and Mr. Fattah.

Witnesses: Christopher Baum, Vice President, Gartner Group; Thomas R. Palfrey, Professor, California Institute of Technology; David Woods, Professor, Ohio State University; Ronald Rivest, Professor, Massachusetts Institute of Technology.

MARKUP

On Thursday November 15, 2001, the Committee met to mark up H.R. 3295. The Committee favorably reported H.R. 3295, as amended, by a recorded vote (8–0), a quorum being present.

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MATTERS REQUIRED UNDER THE RULES OF THE HOUSE

COMMITTEE RECORD VOTES

Clause 3(b) of House rule XIII requires the results of each record vote on an amendment or motion to report, together with the names of those voting for and against, to be printed in the committee report.

Amendment No. 1

Offered by Mr. Reynolds. The first vote during the markup came on the amendment offered by Mr. Reynolds.

The amendment would allow, but not require, military base commanders to locate polling places on their installations.

The amendment was approved by a voice vote a quorum being present.

Amendment No. 2

Offered by Mr. Hoyer. The second vote during the markup came on the amendment offered by Mr. Hoyer. This amendment would add additional voting system accessibility requirements for the disabled and those with limited proficiency in English.

The vote on the amendment was 3–4 and the amendment was not agreed to.

Member	Yes	No	Present
Mr. Ney		X	
Mr. Linder		X	
Mr. Doolittle		X	
Mr. Reynolds		X	
Mr. Hoyer	X		
Mr. Fattah	X		
Mr. Davis	X		
Total	3	4	

The Committee then voted on H.R. 3295, as amended. The bill as amended was agreed to by a recorded vote (8–0).

Member	Yes	No	Present
Mr. Ney	X		
Mr. Ehlers	X		
Mr. Linder	X		
Mr. Doolittle	X		
Mr. Reynolds	X		
Mr. Hoyer	X		
Mr. Fattah	X		
Mr. Davis	X		
Total	8	0	

The Committee then voted to report H.R. 3295 favorably, as amended. The vote to report favorably was approved by recorded vote (8–0).

Member	Yes	No	Present
Mr. Ney	X		
Mr. Ehlers	X		
Mr. Linder	X		
Mr. Doolittle	X		

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Member	Yes	No	Present
Mr. Reynolds	X		
Mr. Hoyer	X		
Mr. Fattah	X		
Mr. Davis	X		
Total	8	0	

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) rule XIII of the Rules of the House of Representatives, the Committee states that the findings and recommendations of the Convention Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

GENERAL PERFORMANCE GOALS AND OBJECTIVES

The Committee states, with respect to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, that the goal and objective of H.R. 3295 is to improve the election infrastructure in the United States.

CONSTITUTIONAL AUTHORITY

In compliance with clause 3(d)(1) of rule XIII, the Committee states that Article 1, Section 4 of the U.S. Constitution grants Congress the authority to make laws governing the time, place and manner of holding Federal elections.

FEDERAL MANDATES

The Committee states, with respect to section 423 of the Congressional Budget Act of 1974, that the bill does not include any significant Federal mandate.

PREEMPTION CLARIFICATION

Section 423 of the Congressional Budget Act of 1974 requires the report of any committee on a bill or joint resolution to include a committee statement on the extent to which the bill or joint resolution is intended to preempt state or local law. The Committee states that H.R. 3295 is not intended to preempt any state or local law.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

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U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, November 30, 2001.

Hon. ROBERT W. NEY,
Chairman, Committee on House Administration,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3295, the Help America Vote Act of 2001.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Mark Grabowicz and Matthew Pickford (for federal costs); Susan Sieg Tompkins (for the impact on state, local, and tribal governments): and Paige Piper/Bach (for the impact on the private sector).

Sincerely,

BARRY B. ANDERSON
(For Dan L. Crippen, Director).

Enclosure.

H.R. 3295, Help America Vote Act of 2001

Summary: H.R. 3295 would authorize the appropriation of about $2.8 billion over fiscal year 2002 through 2006, mostly for grants to states and localities to improve voting technology and election administration. The bill would establish the Election Assistance Commission to undertake activities to improve the administration of elections and would set minimum standards for national elections. H.R. 3295 also would require the Department of Defense to implement a voting assistance program for military personnel and other overseas U.S. citizens. Finally, the bill would provide reduced postage rates for official election mailings.

Assuming appropriation of the authorized amounts, CBO estimates that implementing H.R. 3295 would cost about $2.8 billion over the 2002–2006 period. In addition, we estimate that enacting the bill would increase costs to the U.S. Postal Service by about $100 million over the 2002–2003 period. (Postal Service spending is classified as off-budget and is not subject to pay-as-you-go procedures.) The bill would not otherwise affect direct spending or receipts so pay-as-you-go procedures would not apply.

Section 4 of the Unfunded Mandates Reform Act (UMRA) excludes from the application of that act any legislative provisions that enforce the constitutional rights of individuals. CBO has determined that title V and certain sections of title VI would fall within that exclusion. Other provisions of the bill would provide grants to states to improve voting procedures and technology. Any costs to state, local, or tribal governments as a result of participating in those programs would be incurred voluntarily. The remaining provisions of the bill contain no intergovernmental or private-sector mandates and would impose no costs on state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 3295 is shown in the following table. The costs of this legislation fall within budget functions 050 (national defense), 370 (commerce and housing credit), and 800 (general government).

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	By fiscal year, in millions of dollars—				
	2002	2003	2004	2005	2006
CHANGES IN SPENDING SUBJECT TO APPROPRIATION					
Grants to replace punch card voting machines:					
Authorization Level	400	0	0	0	0
Estimated Outlays	200	200	0	0	0
Voting system improvements:					
Authorization Level	750	750	750	0	0
Estimated Outlays	75	600	750	675	150
Election Assistance Commission:					
Estimated Authorization Level	3	4	4	4	4
Estimated Outlays	1	2	3	3	3
Other provisions:					
Estimated Authorization Level	37	14	12	12	14
Estimated Outlays	20	26	12	12	14
Total:					
Estimated Authorization Level	1,190	768	766	16	18
Estimated Outlays	296	828	765	690	167
CHANGES IN OFF-BUDGET DIRECT SPENDING					
U.S. Postal Service[1]					
Estimated Budget Authority	50	55	0	0	0
Estimated Outlays	50	55	0	0	0

[1] These estimated costs would be offset, overtime, by postal rate increases.

Basis of estimate: For this estimate, CBO assumes that the bill will be enacted by the end of calendar year 2001 and that the necessary amounts will be appropriated each year. CBO estimates that implementing H.R. 3295 would cost $2.8 billion over the 2002–2006 period, mostly for voting system improvements. The bill would also increase spending of the Postal Service, which is classified as off-budget.

Spending subject to appropriation

Grants to Replace Punch-Card Voting Machines. H.R. 3295 would authorize the appropriation of $400 million for fiscal year 2002 for payments for state and local governments to replace punch card voting systems. State and local governments that apply for these funds would be able to receive a maximum of $6,000 per precinct.

Voting System Improvements. The bill would authorize the appropriation of $2.25 billion over the 2002–2004 period to pay for grants to states and localities for improving voting technology and upgrading equipment, improving voter registration systems, increasing access for voters with disabilities, and enhancing training for poll workers. CBO expects that most of the funds to replace machines and so implement improvements would be spent in fiscal years 2003 through 2005.

Election Assistance Commission. Title II would authorize the appropriation of up to $10 million annually to establish the Election Assistance Commission. The four-member, bipartisan commission would advise state and local governments on election administration. This work would include developing voluntary election management standards, serving as a clearinghouse for information, and reviewing procedures affecting the administration of federal elections. The bill also would transfer all the functions of the Office of Election Administration of the Federal Election Commission to the new commission. CBO estimates that the commission would re-

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quire funding of $3 million to $4 million annually with estimated outlays of about $12 million over the 2002–2006 period.

Other Provisions. H.R. 3295 also would authorize appropriations for several other programs aimed at improving the election process, including grants to study and improve voting technology, pilot programs to test new technologies, and programs to encourage citizens to get involved in the election process. CBO estimates that, in total, implementing these programs would cost $84 million over the 2002–2006 period.

H.R. 3295 would direct the Secretary of Defense to coordinate all voting activities for members of the military and other overseas U.S. citizens, includes training voting assistance officers, conducting mail delivery surveys, and providing information on voter registration requirements and deadlines of the various states. Based on information from the Department of Defense, CBO estimates that implementing this section of the bill would result in no significant costs.

Off-budget costs (direct spending)

For official mailings sent to voters by local election officials via first-class mail, H.R. 3295 would reduce the postage rate by 50 percent. CBO expects that the reduced postage rate would apply to two mailings every year to each of the 150 million registered voters in the United States. The current first-class rate is 34 cents and is expected to rise to 37 cents by fiscal year 2003, so CBO estimates this provision would cost the Postal Service about $50 million in 2002 and about $55 million in 2003. Over time, there would be no net effect from this provision because the Postal Service is required to set rates so that it covers all costs. Postal Service spending and collections are classified as off-budget and would not be subject to pay-as-you-go procedures.

Pay-as-you-go considerations: None.

Intergovernmental and private-sector impact: Section 4 of UMRA excludes from the application of that act any legislative provisions that enforce the constitutional rights of individuals. CBO has determined that title V and certain sections of title VI would fall within that exclusion because they enforce an individual's right to vote, and to have that vote counted.

Other provisions of the bill would benefit state and local governments. Specifically, title I would provide grants to states to replace or upgrade punch card voting systems. Provisions of title II would provide payments to states to improve election administration and voter education. In both cases, states must provide up to 25 percent in matching funds to be eligible to receive the assistance. The matching requirement as well as any other costs to state, local, or tribal governments as a result of participating in these programs would be incurred voluntarily.

The remaining provisions of the bill contain no intergovernmental or private-sector mandates and would impose no costs on state, local, or tribal governments.

Estimate prepared by: Federal Costs: Mark Grabowicz and Matthew Pickford. Impact on State, Local, and Tribal Governments: Susan Sieg Tompkins. Impact on the Private Sector: Paige Piper/Bach.

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Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 36, UNITED STATES CODE

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SUBTITLE II—PATRIOTIC AND NATIONAL ORGANIZATIONS

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PART B—ORGANIZATIONS

201. AGRICULTURAL HALL OF FAME 20101

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1526. Help America Vote Foundation 152601

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PART B—ORGANIZATIONS

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CHAPTER 1526—HELP AMERICA VOTE FOUNDATION

Sec.
152601. Organization.
152602. Purposes.
152603. Board of directors.
152604. Officers and employees.
152605. Powers.
152606. Principal office.
152607. Service of process.
152608. Annual audit.
152609. Civil action by Attorney General for equitable relief.
152610. Immunity of United States Government.
152611. Authorization of appropriations.
152612. Annual report.

§ 152601. Organization

(a) FEDERAL CHARTER.—The Help America Vote Foundation (in this chapter, the "foundation") is a federally chartered corporation.

(b) NATURE OF FOUNDATION.—The foundation is a charitable and nonprofit corporation and is not an agency or establishment of the United States Government.

(c) PERPETUAL EXISTENCE.—Except as otherwise provided, the foundation has perpetual existence.

§ 152602. Purposes

(a) IN GENERAL.—The purposes of the foundation are to—

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(1) mobilize secondary school students (including students educated in the home) in the United States to participate in the election process in a nonpartisan manner as poll workers or assistants;

(2) place secondary school students (including students educated in the home) as nonpartisan poll workers or assistants to local election officials in precinct polling places across the United States; and

(3) establish cooperative efforts with State and local election officials, local educational agencies, superintendents and principals of public and private secondary schools, and other appropriate nonprofit charitable and educational organizations exempt from taxation under section 501(a) of the Internal Revenue Code of 1986 as an organization described in section 501(c)(3) of such Code to further the purposes of the foundation.

(b) REQUIRING ACTIVITIES TO BE CARRIED OUT ON NONPARTISAN BASIS.—The foundation shall carry out its purposes without partisan bias or without promoting any particular point of view regarding any issue, and shall ensure that each participant in its activities is governed in a balanced manner which does not reflect any partisan bias.

(c) CONSULTATION WITH STATE ELECTION OFFICIALS.—The foundation shall carry out its purposes under this section in consultation with the chief election officials of the States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, and the United States Virgin Islands.

§ 152603. Board of directors

(a) GENERAL.—The board of directors is the governing body of the foundation.

(b) MEMBERS AND APPOINTMENT.—(1) The board consists of 12 directors, who shall be appointed not later than 60 days after the date of the enactment of this chapter as follows:

(A) 4 directors (of whom not more than 2 may be members of the same political party) shall be appointed by the President.

(B) 2 directors shall be appointed by the Speaker of the House of Representatives.

(C) 2 directors shall be appointed by the minority leader of the House of Representatives.

(D) 2 directors shall be appointed by the majority leader of the Senate.

(E) 2 directors shall be appointed by the minority leader of the Senate.

(2) In addition to the directors described in paragraph (1), the chair and ranking minority member of the Committee on House Administration of the House of Representatives (or their designees) and the chair and ranking minority member of the Committee on Rules and Administration of the Senate (or their designees) shall each serve as an ex officio nonvoting member of the board.

(3) A director is not an employee of the Federal government and appointment to the board does not constitute appointment as an officer or employee of the United States Government for the purpose of any law of the United States (except as may otherwise be provided in this chapter).

(4) The terms of office of the directors are 4 years.

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(5) A vacancy on the board shall be filled in the manner in which the original appointment was made.

(c) CHAIR.—The directors shall select one of the directors as the chair of the board. The individual selected may not be a current or former holder of any partisan elected office or a current or former officer of any national committee of a political party.

(d) QUORUM.—The number of directors constituting a quorum of the board shall be established under the bylaws of the foundation.

(e) MEETINGS.—The board shall meet at the call of the chair of the board for regularly scheduled meetings, except that the board shall meet not less often than annually.

(f) REIMBURSEMENT OF EXPENSES.—Directors shall serve without compensation but may receive travel expenses, including per diem in lieu of subsistence, in accordance with sections 5702 and 5703 of title 5.

(g) LIABILITY OF DIRECTORS.—Directors are not personally liable, except for gross negligence.

§ 152604. Officers and employees

(a) APPOINTMENT OF OFFICERS AND EMPLOYEES.—The board of directors appoints, removes, and replaces officers and employees of the foundation.

(b) STATUS AND COMPENSATION OF EMPLOYEES.—

(1) IN GENERAL.—Officers and employees of the foundation—

(A) are not employees of the Federal government (except as may otherwise be provided in this chapter);

(B) shall be appointed and removed without regard to the provisions of title 5 governing appointments in the competitive service; and

(C) may be paid without regard to chapter 51 and subchapter III of chapter 53 of title 5.

(2) AVAILABILITY OF FEDERAL EMPLOYEE RATES FOR TRAVEL.—For purposes of any schedules of rates negotiated by the Administrator of General Services for the use of employees of the Federal government who travel on official business, officers and employees of the foundation who travel while engaged in the performance of their duties under this chapter shall be deemed to be employees of the Federal government.

§ 152605. Powers

(a) GENERAL.—The foundation may—

(1) adopt a constitution and bylaws;

(2) adopt a seal which shall be judicially noticed; and

(3) do any other act necessary to carry out this chapter.

(b) POWERS AS TRUSTEE.—To carry out its purposes, the foundation has the usual powers of a corporation acting as a trustee in the District of Columbia, including the power—

(1) to accept, receive, solicit, hold, administer, and use any gift, devise, or bequest, either absolutely or in trust, of property or any income from or other interest in property;

(2) to acquire property or an interest in property by purchase or exchange;

(3) unless otherwise required by an instrument of transfer, to sell, donate, lease, invest, or otherwise dispose of any property or income from property;

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(4) to borrow money and issue instruments of indebtedness;

(5) to make contracts and other arrangements with public agencies and private organizations and persons and to make payments necessary to carry out its functions;

(6) to sue and be sued; and

(7) to do any other act necessary and proper to carry out the purposes of the foundation.

(c) ENCUMBERED OR RESTRICTED GIFTS.—A gift, devise, or bequest may be accepted by the foundation even though it is encumbered, restricted, or subject to beneficial interests of private persons, if any current or future interest is for the benefit of the foundation.

(d) CONTRACTS.—The foundation may enter into such contracts with public and private entities as it considers appropriate to carry out its purposes.

(e) ANNUAL CONFERENCE IN WASHINGTON METROPOLITAN AREA.—During each year (beginning with 2003), the foundation may sponsor a conference in the Washington, D.C., metropolitan area to honor secondary school students and other individuals who have served (or plan to serve) as poll workers and assistants and who have otherwise participated in the programs and activities of the foundation.

§ 152606. Principal office

The principal office of the foundation shall be in the District of Columbia unless the board of directors determines otherwise. However, the foundation may conduct business throughout the States, territories, and possessions of the United States.

§ 152607. Service of process

The foundation shall have a designated agent to receive service of process for the foundation. Notice to or service on the agent, or mailed to the business address of the agent, is notice to or service on the foundation.

§ 152608. Annual audit

The foundation shall enter into a contract with an independent auditor to conduct an annual audit of the foundation.

§ 152609. Civil action by Attorney General for equitable relief

The Attorney General may bring a civil action in the United States District Court for the District of Columbia for appropriate equitable relief if the foundation—

(1) engages or threatens to engage in any act, practice, or policy that is inconsistent with the purposes in section 152602 of this title; or

(2) refuses, fails, or neglects to carry out its obligations under this chapter or threatens to do so.

§ 152610. Immunity of United States Government

The United States Government is not liable for any debts, defaults, acts, or omissions of the foundation. The full faith and credit of the Government does not extend to any obligation of the foundation.

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§ 152611. Authorization of appropriations

There are authorized to be appropriated to the foundation for carrying out the purposes of this chapter—

(1) $5,000,000 for fiscal year 2002; and

(2) such sums as may be necessary for each succeeding fiscal year.

§ 152612. Annual report

As soon as practicable after the end of each fiscal year, the foundation shall submit a report to the Commission, the President, and Congress on the activities of the foundation during the prior fiscal year, including a complete statement of its receipts, expenditures, and investments. Such report shall contain information gathered from participating secondary school students describing the nature of the work they performed in assisting local election officials and the value they derived from the experience of educating participants about the electoral process.

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TITLE 10, UNITED STATES CODE

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Subtitle A—General Military Law

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PART II—PERSONNEL

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CHAPTER 80—MISCELLANEOUS INVESTIGATION REQUIREMENTS AND OTHER DUTIES

Sec.

1561. Complaints of sexual harassment: investigation by commanding officers.

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1566. Voting assistance: compliance assessments; assistance.

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§ 1566. Voting assistance: compliance assessments; assistance

(a) REGULATIONS.—The Secretary of Defense shall prescribe regulations to require that the Army, Navy, Air Force, and Marine Corps ensure their compliance with any directives issued by the Secretary of Defense in implementing any voting assistance program.

(b) VOTING ASSISTANCE PROGRAMS DEFINED.—In this section, the term "voting assistance programs" means—

(1) the Federal Voting Assistance Program carried out under the Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff et seq.); and

(2) any similar program.

(c) ANNUAL EFFECTIVENESS AND COMPLIANCE REVIEWS.—(1) The Inspector General of each of the Army, Navy, Air Force, and Marine Corps shall conduct—

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(A) an annual review of the effectiveness of voting assistance programs; and

(B) an annual review of the compliance with voting assistance programs of that armed force.

(2) Upon the completion of each annual review under paragraph (1), each Inspector General specified in that paragraph shall submit to the Inspector General of the Department of Defense a report on the results of each such review. Such report shall be submitted in time each year to be reflected in the report of the Inspector General of the Department of Defense under paragraph (3).

(3) Not later than March 31 each year, the Inspector General of the Department of Defense shall submit to Congress a report on—

(A) the effectiveness during the preceding calendar year of voting assistance programs; and

(B) the level of compliance during the preceding calendar year with voting assistance programs of each of the Army, Navy, Air Force, and Marine Corps.

(d) INSPECTOR GENERAL ASSESSMENTS.—(1) The Inspector General of the Department of Defense shall periodically conduct at Department of Defense installations unannounced assessments of the compliance at those installations with—

(A) the requirements of the Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff et seq.);

(B) Department of Defense regulations regarding that Act and the Federal Voting Assistance Program carried out under that Act; and

(C) other requirements of law regarding voting by members of the armed forces.

(2) The Inspector General shall conduct an assessment under paragraph (1) at not less than 10 Department of Defense installations each calendar year.

(3) Each assessment under paragraph (1) shall include a review of such compliance—

(A) within units to which are assigned, in the aggregate, not less than 20 percent of the personnel assigned to duty at that installation;

(B) within a representative survey of members of the armed forces assigned to that installation and their dependents; and

(C) within unit voting assistance officers to measure program effectiveness.

(e) REGULAR MILITARY DEPARTMENT ASSESSMENTS.—The Secretary of each military department shall include in the set of issues and programs to be reviewed during any management effectiveness review or inspection at the installation level an assessment of compliance with the Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff et seq.) and with Department of Defense regulations regarding the Federal Voting Assistance Program.

(f) VOTING ASSISTANCE OFFICERS.—(1) Voting assistance officers shall be appointed or assigned under Department of Defense regulations. Commanders at all levels are responsible for ensuring that unit voting officers are trained and equipped to provide information and assistance to members of the armed forces on voting matters. Performance evaluation reports pertaining to a member who has been assigned to serve as a voting assistance officer shall comment on the performance of the member as a voting assistance officer. The

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Secretary of each military department shall certify to Congress that (at a minimum) a voting assistance officer has been appointed or assigned for each military installation and major command under the jurisdiction of the department and that a replacement will be appointed if the original officer is no longer able to serve.

(2) Under regulations and procedures prescribed by the Secretary, a member of the armed forces appointed or assigned to duty as a voting assistance officer shall, to the maximum extent practicable, be given the time and resources needed to perform the member's duties as a voting assistance officer during the period in advance of a general election when members and their dependents are preparing and submitting absentee ballots.

(3) As part of each assessment prepared by the Secretary of a military department under subsection (e), the Secretary shall—

(A) specify the number of members of the armed forces under the jurisdiction of the Secretary who are appointed or assigned to duty as voting assistance officers;

(B) specify the ratio of voting assistance officers to active duty members of the armed forces under the jurisdiction of the Secretary;

(C) indicate whether this number and ratio comply with the requirements of the Federal Voting Assistance Program; and

(D) describe the training such members receive to perform their duties as voting assistance officers.

(g) REGISTRATION AND VOTING INFORMATION FOR MEMBERS AND DEPENDENTS.—(1) The Secretary of each military department, using a variety of means including both print and electronic media, shall, to the maximum extent practicable, ensure that members of the armed forces and their dependents who are qualified to vote have ready access to information regarding voter registration requirements and deadlines (including voter registration), absentee ballot application requirements and deadlines, and the availability of voting assistance officers to assist members and dependents to understand and comply with these requirement.

(2) The Secretary of each military department shall make the national voter registration form prepared for purposes of the Uniformed and Overseas Citizens Absentee Voting Act by the Federal Election Commission available so that each person who enlists, reenlists, or voluntarily extends an enlistment or who completes a permanent change of station in an active or reserve component of the Army, Navy, Air Force, or Marine Corps shall receive such form at the time of the enlistment, reenlistment, extension, or completion of the permanent change of station, or as soon thereafter as practicable.

(3) Where practicable, a special day or days shall be designated at each military installation for the purpose of informing members of the armed forces and their dependents of election timing, registration requirements, and voting procedures.

(h) DELIVERY OF MAIL FROM OVERSEAS PRECEDING FEDERAL ELECTIONS.—(1) During the four months preceding a general Federal election month, the Secretary of Defense shall periodically conduct surveys of all overseas locations and vessels at sea with military units responsible for collecting mail for return shipment to the United States and all port facilities in the United States and overseas where military-related mail is collected for shipment to over-

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seas locations or to the United States. The purpose of each survey shall be to determine if voting materials are awaiting shipment at any such location and, if so, the length of time that such materials have been held at that location. During the fourth and third months before a general Federal election month, such surveys shall be conducted biweekly. During the second and first months before a general Federal election month, such surveys shall be conducted weekly.

(2) The Secretary shall ensure that voting materials are transmitted expeditiously by military postal authorities at all times. The Secretary shall, to the maximum extent practicable, implement measures to ensure that a postmark or other official proof of mailing date is provided on each absentee ballot collected at any overseas location or vessel at sea whenever the Department of Defense is responsible for collecting mail for return shipment to the United States. The Secretary shall submit to Congress a report describing the measures to be implemented to ensure the timely transmittal and postmarking of voting materials and identifying the persons responsible for implementing such measures.

(3) The Secretary of each military department, utilizing the voting assistance officer network established for each military installation, shall, to the maximum extent practicable, provide notice to members of the armed forces stationed at that installation of the last date before a general Federal election for which absentee ballots mailed from a postal facility located at that installation can reasonably be expected to be timely delivered to the appropriate State and local election officials.

(4) In this section, the term "general Federal election month" means November in an even-numbered year.

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PART IV—SERVICE, SUPPLY, AND PROCUREMENT

* * * * * * *

CHAPTER 159—REAL PROPERTY; RELATED PERSONAL PROPERTY; AND LEASE OF NONEXCESS PROPERTY

Sec.
2661. Miscellaneous administrative provisions relating to real property.

* * * * * * *

[2670. Licenses: military installations; erection and use of buildings; American National Red Cross.**]**
2670. Buildings on military installations: use by American National Red Cross and as polling places in Federal, State, and local elections.

* * * * * * *

[§ 2670. Licenses: military installations; erection and use of buildings; American National Red Cross]

[Under**]**

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§ 2670. Buildings on military installations: use by American National Red Cross and as polling places in Federal, State, and local elections

(a) USE BY RED CROSS.—Under such conditions as he may prescribe, the Secretary of any military department may issue a revocable license to the American National Red Cross to—

(1) * * *

* * * * * * *

Supplies stored in buildings erected or used under this [section] *subsection* are available to aid the civilian population in a serious national disaster.

(b) USE AS POLLING PLACES.—(1) Notwithstanding any other provision of law, the Secretary of a military department may make a building located on a military installation under the jurisdiction of the Secretary available for use as a polling place in any Federal, State, or local public election, but only if such use is limited to eligible voters who reside on that military installation.

(2) If a building located on a military installation is made available under paragraph (1) as the site of a polling place, the Secretary shall continue to make the building available for subsequent elections unless the Secretary provides to the appropriate State or local election officials advance notice, in a reasonable and timely manner, of the reasons why the building will no longer be made available as a polling place.

(3) In this section, the term "military installation" has the meaning given the term in section 2687(e) of this title.

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Subtitle E—Reserve Components

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PART V—SERVICE, SUPPLY, AND PROCUREMENT

* * * * * * *

CHAPTER 1803—FACILITIES FOR RESERVE COMPONENTS

* * * * * * *

§ 18235. Administration; other use permitted by Secretary

(a) * * *

* * * * * * *

(c) Pursuant to a lease or other agreement under subsection (a)(2), the Secretary may make a facility covered by subsection (a) available for use as a polling place in any Federal, State, or local public election notwithstanding any other provision of law. If a facility is made available as the site of a polling place with respect to an election, the Secretary shall continue to make the facility available for subsequent elections unless the Secretary provides to the appropriate State or local election officials advance notice, in a reasonable and

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timely manner, of the reasons why the facility will no longer be made available as a polling place.

§ 18236. Contributions to States; other use permitted by States

(a) * * *

* * * * * * *

(e) Pursuant to a lease or other agreement under subsection (c)(1), a State may make a facility covered by subsection (c) available for use as a polling place in any Federal, State, or local public election notwithstanding any other provision of law.

* * * * * * *

UNIFORMED AND OVERSEAS CITIZENS ABSENTEE VOTING ACT

* * * * * * *

TITLE I—REGISTRATION AND VOTING BY ABSENT UNIFORMED SERVICES VOTERS AND OVERSEAS VOTERS IN ELECTIONS FOR FEDERAL OFFICE

SEC. 101. FEDERAL RESPONSIBILITIES.

(a) * * *

* * * * * * *

(b) DUTIES OF PRESIDENTIAL DESIGNEE.—The Presidential designee shall—

(1) consult State and local election officials in carrying out this title**[**;**]**, *and ensuring that such officials are aware of the requirements of this Act;*

(2) prescibe an official post card form, containing both an absentee voter registration application and an absentee ballot application, for use by the States **[**as recommended in section 104**]** *as required under section 102(4)*;

* * * * * * *

(5) compile and distribute (A) descriptive material on State absentee registration and voting procedures, and (B) to the extent practicable, facts relating to specific elections, including dates, offices involved, and the text of ballot questions; **[**and**]**

(6) not later than the end of each year after a Presidential election year, transmit to the President and the Congress a report on the effectiveness of assistance under this title, including a statistical analysis of uniformed services voter participation *(listed separately for overseas voters and absent uniformed services voters)*, a general assessment of overseas nonmilitary participation, and a description of State-Federal cooperation**[**.**]***; and*

(7) prescribe a standard oath for use with any document under this title affirming that a material misstatement of fact

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in the completion of such a document may constitute grounds for a conviction for perjury.

* * * * * * *

SEC. 102. STATE RESPONSIBILITIES.

(a) IN GENERAL.—Each State shall—

(1) * * *

[(2) accept and process, with respect to any general, special, primary, or runoff election for Federal office, any otherwise valid voter registration application from an absent uniformed services voter or overseas voter, if the application is received by the appropriate State election official not less than 30 days before the election; and**]**

(2) accept and process, with respect to any election for Federal office, any otherwise valid voter registration application and absentee ballot application from an absent uniformed services voter or overseas voter, if the application is received by the appropriate State election official not less than 30 days before the election;

(3) permit overseas voters to use Federal write-in absentee ballots (in accordance with section 103) in general elections for Federal office**[**.**]***;*

(4) use the official post card form (prescribed under section 101) for simultaneous voter registration application and absentee ballot application; and

(5) if the State requires an oath or affirmation to accompany any document under this title, use the standard oath prescribed by the Presidential designee under section 101(b)(7).

(b) DESIGNATION OF SINGLE STATE OFFICE TO PROVIDE INFORMATION ON REGISTRATION AND ABSENTEE BALLOT PROCEDURES FOR ALL VOTERS IN STATE.—

(1) IN GENERAL.—Each State shall designate a single office which shall be responsible for providing information regarding voter registration procedures and absentee ballot procedures (including procedures relating to the use of the Federal write-in absentee ballot) to all absent uniformed services voters and overseas voters who wish to register to vote or vote in any jurisdiction in the State.

(2) RECOMMENDATION REGARDING USE OF OFFICE TO ACCEPT AND PROCESS MATERIALS.—Congress recommends that the State office designated under paragraph (1) be responsible for carrying out the State's duties under this Act, including accepting valid voter registration applications, absentee ballot applications, and absentee ballots (including Federal write-in absentee ballots) from all absent uniformed services voters and overseas voters who wish to register to vote or vote in any jurisdiction in the State.

(c) REPORT ON NUMBER OF ABSENTEE BALLOTS TRANSMITTED AND RECEIVED.—Not later than 90 days after the date of each regularly scheduled general election for Federal office, each State and unit of local government which administered the election shall (through the State, in the case of a unit of local government) submit a report to the Election Assistance Commission (established under the Help America Vote Act of 2001) on the number of absentee ballots transmitted to absent uniformed services voters and overseas

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voters for the election and the number of such ballots which were returned by such voters and cast in the election, and shall make such report available to the general public.

* * * * * * *

[SEC. 104. RECOMMENDATION TO THE STATES TO MAXIMIZE ACCESS TO THE POLLS BY ABSENT UNIFORMED SERVICES VOTERS AND OVERSEAS VOTERS.

[To afford maximum access to the polls by absent uniformed services voters and overseas voters, it is recommended that the States—

[(1) use the official post card form (prescribed under section 101) for simultaneous voter registration application and absentee ballot application;

[(2) adopt the suggested design for absentee ballot mailing envelopes prescribed under section 101;

[(3) waive registration requirements for absent uniformed services voters and overseas voters who, by reason of service or residence, do not have an opportunity to register;

[(4) if an application other than an official post card form (prescribed under section 101) is required for absentee registration, provide that registration forms be sent with the absentee ballot and may be returned with it;

[(5) expedite processing of balloting materials with respect to absent uniformed services voters and overseas voters;

[(6) permit any oath required for a document under this title to be administered by a commissioned officer of the Armed Forces or any official authorized to administer oaths under Federal law or the law of the State or other place where the oath is administered;

[(7) assure that absentee ballots are mailed to absent uniformed services voters and overseas voters at the earliest opportunity;

[(8) assist the Presidential designee in compiling statistical and other information relating to this title; and

[(9) provide late registration procedures for persons recently separated from the Armed Forces.]

SEC. 104. USE OF SINGLE APPLICATION FOR ALL SUBSEQUENT ELECTIONS.

(a) IN GENERAL.—If a State accepts and processes an official post card form (prescribed under section 101) submitted by an absent uniformed services voter or overseas voter for simultaneous voter registration and absentee ballot application (in accordance with section 102(a)(4)) and the voter requests that the application be considered an application for an absentee ballot for each subsequent election for Federal office held in the State during that year, the State shall provide an absentee ballot to the voter for each subsequent election for Federal office held in the State during that year.

(b) EXCEPTION FOR VOTERS CHANGING REGISTRATION.—Subsection (a) shall not apply with respect to a voter registered to vote in a State for any election held after the voter notifies the State that the voter no longer wishes to be registered to vote in the State or after the State determines that the voter has registered to vote in another State.

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(c) REVISION OF OFFICIAL POST CARD FORM.—The Presidential designee shall revise the official post card form (prescribed under section 101) to enable a voter using the form to—

(1) request an absentee ballot for each election for Federal office held in a State during a year; or

(2) request an absentee ballot for only the next scheduled election for Federal office held in a State.

(d) NO EFFECT ON VOTER REMOVAL PROGRAMS.—Nothing in this section may be construed to prevent a State from removing any voter from the rolls of registered voters in the State under any program or method permitted under section 8 of the National Voter Registration Act of 1993.

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TITLE 18, UNITED STATES CODE

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PART I—CRIMES

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CHAPTER 29—ELECTIONS AND POLITICAL ACTIVITIES

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§ 592. Troops at polls

Whoever, being an officer of the Army or Navy, or other person in the civil, military, or naval service of the United States, orders, brings, keeps, or has under his authority or control any troops or armed men at any place where a general or special election is held, unless such force be necessary to repel armed enemies of the United States, shall be fined under this title or imprisoned not more than five years, or both; and be disqualified from holding any office of honor, profit, or trust under the United States.

This section shall not prevent any officer or member of the armed forces of the United States from exercising the right of suffrage in any election district to which he may belong, if otherwise qualified according to the laws of the State in which he offers to vote.

This section shall not apply to the actions of members of the Armed Forces at any polling place on a military installation where a general or special election is held in accordance with section 2670(b), 18235, or 18236 of title 10.

§ 593. Interference by armed forces

Whoever, being an officer or member of the Armed Forces of the United States, prescribes or fixes or attempts to prescribe or fix, whether by proclamation, order or otherwise, the qualifications of voters at any election in any State; or

Whoever, being such officer or member, prevents or attempts to prevent by force, threat, intimidation, advice or otherwise any qualified voter of any State from fully exercising the right of suffrage at any general or special election; or

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Whoever, being such officer or member, orders or compels or attempts to compel any election officer in any State to receive a vote from a person not legally qualified to vote; or

Whoever, being such officer or member, imposes or attempts to impose any regulations for conducting any general or special election in a State, different from those prescribed by law; or

Whoever, being such officer or member, interferes in any manner with an election officer's discharge of his duties—

Shall be fined under this title or imprisoned not more than five years, or both; and disqualified from holding any office of honor, profit or trust under the United States.

This section shall not prevent any officer or member of the Armed Forces from exercising the right of suffrage in any district to which he may belong, if otherwise qualified according to the laws of the State of such district.

This section shall not apply to the actions of members of the Armed Forces at any polling place on a military installation where a general or special election is held in accordance with section 2670(b), 18235, or 18236 of title 10.

§ 594. Intimidation of voters

(a) Whoever intimidates, threatens, coerces, or attempts to intimidate, threaten, or coerce, any other person for the purpose of interfering with the right of such other person to vote or to vote as he may choose, or of causing such other person to vote for, or not to vote for, any candidate for the office of President, Vice President, Presidential elector, Member of the Senate, Member of the House of Representatives, Delegate from the District of Columbia, or Resident Commissioner, at any election held solely or in part for the purpose of electing such candidate, shall be fined under this title or imprisoned not more than one year, or both.

(b) For purposes of subsection (a), a poll worker who urges or encourages a voter who has not cast a vote for each office listed on the ballot to return to the voting booth to cast votes for every office, or who otherwise intimidates, harasses, or coerces the voter to vote for each such office (or who attempts to intimidate, harass, or coerce the voter to vote for each such office), shall be considered to have intimidated, threatened, or coerced (or to have attempted to intimidate, threaten, or coerce) the voter for the purpose of interfering with the voter's right to vote as the voter may choose. Nothing in this subsection shall prohibit a poll worker from providing information to a voter who requests assistance.

* * * * * * *

SECTION 2003 OF THE REVISED STATUTES OF THE UNITED STATES

SEC. 2003. No officer of the Army or Navy of the United States shall prescribe or fix, or attempt to prescribe or fix, by proclamation, order, or otherwise, the qualifications of voters in any State, or in any manner interfere with the freedom of any election in any State, or with the exercise of the free right of suffrage in any State. *Making a military installation or reserve component facility available as a polling place in a Federal, State, or local public election*

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in accordance with section 2670(b), 18235, or 18236 of title 10, United States Code, is deemed to be consistent with this section.

TITLE 39, UNITED STATES CODE

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PART IV—MAIL MATTER

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CHAPTER 36—POSTAL RATES, CLASSES, AND SERVICES

SUBCHAPTER I—POSTAL RATE COMMISSION

Sec.
3601. Establishment.
* * * * * * *
SUBCHAPTER II—PERMANENT RATES AND CLASSES OF MAIL
3621. Authority to fix rates and classes.
* * * * * * *
[3629. Reduced rates for voter registration purposes.]
3629. Reduced rates for official election mail.
* * * * * * *

SUBCHAPTER II—PERMANENT RATES AND CLASSES OF MAIL

* * * * * * *

[§ 3629. Reduced rates for voter registration purposes

[The Postal Service shall make available to a State or local voting registration official the rate for any class of mail that is available to a qualified nonprofit organization under section 3626 for the purpose of making a mailing that the official certifies is required or authorized by the National Voter Registration Act of 1993.]

§ 3629. Reduced rates for official election mail

(a) Notwithstanding any other provision of this title, the rate of postage for any first-class mail matter shall, in the case of official election mail, be equal to 50 percent of the regular first-class rate, subject to subsection (c).

(b) For purposes of this section, the term "official election mail" means any mailing by a State or local election official that—

(1) is mailed in the course of official business;

(2) consists of voter registration or election information or assistance prepared and mailed in a nonpartisan manner; and

(3) bears such logo or other markings as the Postal Service may require.

Such term does not include any mailing that includes any mail matter intended to promote government action unrelated to the conduct of an election.

(c) Nothing in this section shall, with respect to any official election mail, be considered to make unavailable—

(1) any free mailing privilege under section 3406 or any other provision of law for which such mail otherwise qualifies; or

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(2) any reduced rate of postage under section 3626 or any other provision of law for which such mail otherwise qualifies, if lower than the rate that would otherwise apply under subsection (a).

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SECTION 311 OF THE FEDERAL ELECTION CAMPAIGN ACT OF 1971

ADMINISTRATIVE PROVISIONS

SEC. 311. (a) The Commission shall—

(1) * * *

* * * * * * *

(8) prescribe rules, regulations, and forms to carry out the provisions of this Act, in accordance with the provisions of subsection (d); *and*

(9) transmit to the President and to each House of the Congress no later than June 1 of each year, a report which states in detail the activities of the Commission in carrying out its duties under this Act, and any recommendations for any legislative or other action the Commission considers appropriate**[**; and**]**.

[(10) serve as a national clearinghouse for the compilation of information and review of procedures with respect to the administration of Federal elections. The Commission may enter into contracts for the purpose of conducting studies under this paragraph. Reports or studies made under this paragraph shall be available to the public upon the payment of the cost thereof, except that copies shall be made available without cost, upon request, to agencies and branches of the Federal Government.**]**

* * * * * * *

NATIONAL VOTER REGISTRATION ACT OF 1993

* * * * * * *

SEC. 8. REQUIREMENTS WITH RESPECT TO ADMINISTRATION OF VOTER REGISTRATION.

(a) * * *

* * * * * * *

(b) CONFIRMATION OF VOTER REGISTRATION.—Any State program or activity to protect the integrity of the electoral process by ensuring the maintenance of an accurate and current voter registration roll for elections for Federal office—

(1) * * *

(2) shall not result in the removal of the name of any person from the official list of voters registered to vote in an election for Federal office by reason of the person's failure to vote**[**.**]**, *except that nothing in this paragraph may be construed to prohibit a State from using the procedures described in subsections (c) and (d) to remove an individual from the official list of eligible voters if the individual has not voted or appeared to vote in*

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2 or more consecutive general elections for Federal office and has not notified the applicable registrar (in person or in writing) or responded to a notice sent by the applicable registrar during the period in which such elections are held that the individual intends to remain registered in the registrar's jurisdiction.

* * * * * * *

SEC. 9. FEDERAL COORDINATION AND REGULATIONS.

(a) IN GENERAL.—The [Federal Election Commission] *Election Assistance Commission*—

(1) * * *

* * * * * * *

TITLE 5, UNITED STATES CODE

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PART III—EMPLOYEES

* * * * * * *

Subpart B—Employment and Retention

CHAPTER 31—AUTHORITY FOR EMPLOYMENT

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SUBCHAPTER II—THE SENIOR EXECUTIVE SERVICE

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§ 3132. Definitions and exclusions

(a) For the purpose of this subchapter—

(1) "agency" means an Executive agency, except a Government corporation and the General Accounting Office, but does not include—

(A) * * *

* * * * * * *

(C) the Federal Election Commission *or the Election Assistance Commission*; or

* * * * * * *

Subpart F—Labor-Management and Employee Relations

* * * * * * *

CHAPTER 73—SUITABILITY, SECURITY, AND CONDUCT

* * * * * * *

SUBCHAPTER III—POLITICAL ACTIVITIES

* * * * * * *

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§ 7323. Political activity authorized; prohibitions

(a) * * *
(b)(1) * * *
(2)(A) * * *
(B) The provisions of subparagraph (A) shall apply to—
(i) an employee of—
(I) the Federal Election Commission *or the Election Assistance Commission*;

* * * * * * *

SECTION 8G OF THE INSPECTOR GENERAL ACT OF 1978

REQUIREMENTS FOR FEDERAL ENTITIES AND DESIGNATED FEDERAL ENTITIES

SEC. 8G. (a) Notwithstanding section 11 of this Act, as used in this section—

(1) * * *

(2) the term "designated Federal entity" means Amtrak, the Appalachian Regional Commission, the Board of Governors of the Federal Reserve System, the Board for International Broadcasting, the Commodity Futures Trading Commission, the Consumer Product Safety Commission, the Corporation for Public Broadcasting, the Equal Employment Opportunity Commission, the Farm Credit Administration, the Federal Communications Commission, the Federal Deposit Insurance Corporation, the Federal Election Commission, *the Election Assistance Commission,* the Federal Housing Finance Board, the Federal Labor Relations Authority, the Federal Maritime Commission, the Federal Trade Commission, the Legal Services Corporation, the National Archives and Records Administration, the National Credit Union Administration, the National Endowment for the Arts, the National Endowment for the Humanities, the National Labor Relations Board, the National Science Foundation, the Panama Canal Commission, the Peace Corps, the Pension Benefit Guaranty Corporation, the Securities and Exchange Commission, the Smithsonian Institution, the United States International Trade Commission, and the United States Postal Service;

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ADDITIONAL VIEWS OF HON. STENY H. HOYER

I write to offer my additional views regarding the importance of ensuring accessibility in voting for people with disabilities. The bill in its present form offers significant gains in voting accessibility for persons with disabilities, especially those with visual impairments. For example, the bill requires that, in a state receiving election fund payments, every polling place or precinct have at least one voting system (hardware and software) that is fully accessible. However, while I agree with everything in the committee report, I wish to emphasize the need to take further steps beyond this bill and beyond the Americans with Disabilities Act to ensure complete accessibility in voting and registration services for persons with disabilities.

Complete voting access must be assured for every voter regardless of whether a state or locality accepts federal election funds and without regard to any significant cost constraints. Voting is one of the fundamental rights of citizens in a Republic. As such, the right should not depend upon the vagaries of local budgets—certainly not in an affluent society like ours. Physical access to the ballot box should be unconditional. Every polling place in America should be accessible to persons with the full range of disabilities. Every polling place should have already at least one voting machine or method that is fully accessible, that is, a voting machine or method that allows a voter with a disability to vote in a manner that is as reliable, fraud-resistant, private, independent and anonymous as that available to anyone else.

One of our most profound accomplishments since the founding of the United States is the progressive broadening of the franchise to include African-Americans, women and others subject to pervasive discrimination. In this process, we have learned that few of the rights or interests of a particular group of Americans can be secure so long as that group lacks the right to vote for officials who will be accountable to them. We have also learned that, as more adult citizens become full participants in our polity, the democratic process is enriched for all. We are still in the process of learning this lesson with regard to persons with disabilities.

Most of the ongoing discrimination against persons with disabilities concerning voting is no longer motivated by deliberate efforts do exclude. However, as the recent GAO report on accessibility documents, the choice, design and administration of polling places, voting methods and machines continues in many instances to be driven by a careless assumption on the part of election administrators that all voters are able-bodied. The General Accounting Office recently found, for example, that many polling places have high door thresholds and inaccessible parking places, and that, even when ramps are installed, in many instances they are hazardous to users. Policymakers must strive to highlight the need to admin-

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ister every aspect of elections in a way that recognizes that a portion of the electorate does not enjoy the full range of abilities, disabilities and impairments.

The right to vote is an almost sacred right that should not be casually traded off against other rights and interests. See, e.g., *Harper* v. *Virginia State Board of Elections,* 383 U.S. 663, 667 (voting is a fundamental right, any alleged infringement of which, must be meticulously scrutinized); *Kramer* v. *Union Free School District No. 15,* 395 U.S. 621, 626 (1969) ("statutes distributing the franchise constitute the foundation of our representative society [requiring careful examination of a State's stated interests]") Corresponding to the fundamental nature of this right, government officials and election administrators at all levels of government must recognize we have a fundamental obligation to guarantee full access to the ballot box for every qualified citizen. Thus, I hope the Senate will go beyond the achievements of this bill to provide a guarantee of full accessibility that is not dependent upon a state's acceptance of federal funds and that is not limited by any significant cost constraints. Further, I hope we then accept those additional requirements when we meet with the Senate in conference.

However, even before Congress takes additional steps, we should remember, as the committee report explains, that we already have powerful tools for electoral reform available to us, one of which is the Americans with Disabilities Act of 1990 (ADA). In the preamble to that Act, we found that voting is a "critical area" and that discrimination against individuals with disabilities, especially discrimination in the form of isolation and segregation, persists. To redress this discrimination, the ADA insists upon both equality and integration for persons with disabilities.

In the past decade, the ADA has already improved electoral access for persons with disabilities, both through voluntary compliance and through successful litigation in recent cases such as *New York* v. *Schoharie,* 82 F.Supp.2d 19 (N.D.N.Y. 2000) and *Doe* v. *Rowe,* 156 F.Supp.2d 35 (D. Me. 2001). But, as the GAO report documents, there is plenty of work left to be done to achieve compliance with the ADA. While the ADA provides an undue burden defense to its general mandates, it still provides a great deal of leverage for correcting the kinds of problems documented by the GAO.

Under the ADA, all voting and registration procedures and services must be accessible. Accessibility includes affording individuals with disabilities an opportunity to cast a ballot in a manner that is as private, independent and anonymous as that afforded other voters, and to vote in an integrated setting with other voters. The ADA includes an integration mandate that bars attempts to achieve accessibility through separate-but-equal kinds of arrangements, a mandate that is limited only by the undue burden defense. See, e.g., *Olmstead* v. *L.C. by Zimring,* 527 U.S. 581 (1999).

Of course, the ADA's mandate to offer equal and integrated voting methods to persons with disabilities does nothing to deny a State or local government the right to provide generally to the electorate alternative voting methods such as absentee balloting. Nor does it deny an individual with a disability the right to receive a reasonable accommodation in the form of an absentee ballot, curbside voting, or assistance from a poll worker or other indi-

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vidual of his or her choice (other than an individual who is the voter's employer or agent of that employer or officer or agent of the voter's union).

But the fact that an individual with a disability might want to use an absentee ballot or curbside voting as a means of gaining access to voting does not relieve a State or locality from its obligation to make polling places as integrated and accessible as possible. Thus, to comply with the ADA, a pubic entity (such as a State or unit of local government or a responsible government official) must first survey its polling places and move inaccessible polling places to accessible locations. The defense of undue burden is unavailable if there are accessible places that may reasonably serve as polling places. It will be a rare case in which the need to move a polling place to another location will create an undue burden.

Simple compliance with this requirement—that accessible polling places be chosen in the first place—will result in significant increased accessibility without costing any additional money. Normally, an alteration in polling location will only require a different way of thinking about what constitutes an appropriate polling place.

There may well be situations in which no accessible place is reasonably available as a polling place. In such cases, the public entity must make changes to existing polling places to ensure accessibility, such as installing a ramp providing access for those who use wheelchairs. This obligation, however, is subject to an "undue burden" defense. Thus, in some situations, the entity will not be required to make a polling place accessible, and instead, will be permitted to offer access to voting through such means as curbside voting or absentee balloting.

It is important to note, however, that a State or unit of local government may not, as a first resort, depend upon curbside voting or absentee balloting as its sole means to make polling places accessible. Rather, as noted, the government must first determine whether an integrated means of access can be achieved within the "undue burden" limitation. If such access cannot be achieved within that standard, the public entity may then rely upon alternative, less-integrated means of access to the act of voting, for example, curbside voting or absentee balloting.

The undue burden standard makes allowance for the limitations of poor or rural jurisdictions lacking the resources to achieve a level of accessibility equivalent to that of larger, wealthier or more populous areas. However, an undue burden defense must be assessed in terms of actual—rather than merely formal—resource constraints. An undue burden means significant difficulty or expense in light of the budget of the unit of government responsible for funding registration services, polling places and voting methods, together with any coordinated budget with, or budgetary resources available from, other units of State and local government. See, e.g., H.R. Rep. No. 101–485 (1990), reprinted in Comm. on Educ. and Labor, 101st Cong., Legislative History of the Americans with Dis-

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abilities Act, at 340–343 (1990) (providing guidance on the analogous undue hardship determination in the employment context.)

STENY H. HOYER.

○

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Date : 9/3/2021 12:22:36 PM
From : "Pilar McLaughlin" pmclaughlin@usccr.gov
To : "Juana Silverio" jsilverio@usccr.gov
Cc : "Mauro Morales" mmorales@usccr.gov, "David Ganz" dganz@usccr.gov
Subject : EAC Board of Advisors Appointment Form
Attachment : Notice-of-Representation-Form-Board-Advisors-2021.pdf;image001.gif;image002.gif;

Hi Juana:

Attached is the appointment form that Chair Cantú should use for the EAC Board of Advisors appointments. Please complete it and send it to the EAC's General Counsel, Kevin Rayburn, whose email address is located at the bottom of the form. Let us know if you have any questions.

Have a wonderful holiday weekend.

Kind regards,
Pilar

Pilar Velasquez McLaughlin
Senior Counsel, Office of the General Counsel
U.S. Commission on Civil Rights
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425
https://www.usccr.gov/

Email: pmclaughlin@usccr.gov
Direct: 703.855.8866

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Notice of Representation
United States Election Assistance Commission
Board of Advisors

In accordance with 52 U.S.C. § 20944 of the Help America Vote Act of 2002, your office submits the following individual(s) as a member of the Election Assistance Commission Board of Advisors:

Designated Representative

Name: _____

Title: _____

Address: _____

_____

Phone: _____

Email: _____

Party Affiliation: _____

Designated Representative

Name: _____

Title: _____

Address: _____

_____

Phone: _____

Email: _____

Party Affiliation: _____

Name and Title of Appointing Official

Print Name: _____

Print Title: _____

Signature: _____ Date: _____

Please return the completed form via email to EAC General Counsel Kevin Rayburn (krayburn@eac.gov).

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OVERSIGHT

OVERSTOCK

Date : 9/3/2021 1:56:13 PM
From : "David Ganz" dganz@usccr.gov
To : "Mauro Morales" mmorales@usccr.gov
Subject : RE: EAC Board of Advisors Appointment Form
Attachment : image001.gif;image002.gif;

Anything further with this?

From: Pilar McLaughlin <pmclaughlin@usccr.gov>
Sent: Friday, September 3, 2021 12:23 PM
To: Juana Silverio <jsilverio@usccr.gov>
Cc: Mauro Morales <mmorales@usccr.gov>; David Ganz <dganz@usccr.gov>
Subject: EAC Board of Advisors Appointment Form

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Senior Counsel, Office of the General Counsel
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Email: pmclaughlin@usccr.gov
Direct: 703.855.8866

Follow Us on Twitter & Facebook:

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OVERSIGHT

OVERSTOCK

Date : 9/7/2021 8:03:31 AM
From : "Juana Silverio" jsilverio@usccr.gov
To : "Pilar McLaughlin" pmclaughlin@usccr.gov
Cc : "Mauro Morales" mmorales@usccr.gov, "David Ganz" dganz@usccr.gov
Subject : Re: EAC Board of Advisors Appointment Form
Attachment : image001.gif;image002.gif;

Thanks, will flag

--
Juana Silverio *(she/her/ella)*
Special Assistant to Commissioner Norma V. Cantú
U.S. Commission on Civil Rights
E: jsilverio@usccr.gov
http://usccr.gov/
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425
Follow Us on Twitter & Facebook:
Twi FB
#USCCR

From: Pilar McLaughlin
Sent: Friday, September 3, 2021 12:22:36 PM
To: Juana Silverio
Cc: Mauro Morales; David Ganz
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Email: pmclaughlin@usccr.gov
Direct: 703.855.8866

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OVERSTOCK

Date : 9/16/2020 1:31:27 PM
From : "Alexander Heideman" aheideman@usccr.gov
To : "Christian Adams" a@electionlawcenter.com, "'Gail Heriot'" gheriot@me.com
Cc : "Carissa Mulder" CMulder@usccr.gov, "'Peter Kirsanow'" pkirsanow@beneschlaw.com, "'stephen gilchrist'" thegilchristassociates@gmail.com, "'John Mashburn'" jkmash@comcast.net, "'Thomas Simuel'" tjsimuel32@gmail.com
Subject : Re: [EXTERNAL] EAC Board of Advisors

I spoke with Maureen. She said that she was not asked about these appointments in 2019, but she thought that the Commissioners had had a conversation about them.

It seems to me that these appointments were unlawful if they were not (1) made by the Commission and (2) bipartisan and geographically varied. And Google Maps says Reno (Kladney) is a short 3.5 hour drive from San Fran (Yaki).

I'll try to locate the 2015, 2013, & 2011 transcripts to see if appointments were voted on in the past.

From: Christian Adams <a@electionlawcenter.com>
Date: Wednesday, September 16, 2020 at 12:55 PM
To: 'Gail Heriot' <gheriot@me.com>, Alexander Heideman <aheideman@usccr.gov>
Cc: Carissa Mulder <CMulder@usccr.gov>, 'Peter Kirsanow' <pkirsanow@beneschlaw.com>, 'stephen gilchrist' <thegilchristassociates@gmail.com>, 'John Mashburn' <jkmash@comcast.net>, 'Thomas Simuel' <tjsimuel32@gmail.com>
Subject: RE: [EXTERNAL] EAC Board of Advisors

> CAUTION: This email is from outside USCCR.

ree with Gail. And the "appointments" did not comply with the admonition of the law that the board should be bipartisan.

From: Gail Heriot <gheriot@me.com>
Sent: Wednesday, September 16, 2020 12:15 PM
To: Alexander Heideman <aheideman@usccr.gov>
Cc: Christian Adams <a@electionlawcenter.com>; Carissa Mulder <CMulder@usccr.gov>; Peter Kirsanow <pkirsanow@beneschlaw.com>; stephen gilchrist <thegilchristassociates@gmail.com>; John Mashburn <jkmash@comcast.net>; Thomas Simuel <tjsimuel32@gmail.com>
Subject: Re: [EXTERNAL] EAC Board of Advisors

If the statute says the Commission makes the appointments, I don't see how it can be that the chair makes them. My recollection of the appointments under the Reynolds years is that Abby and maybe Yaki were our delegates. If there are transcripts going back that far they may show whether the Commission voted on these appointments.

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On Sep 16, 2020, at 8:51 AM, Alexander Heideman <aheideman@usccr.gov> wrote:

Maureen says:

> To my knowledge, there are not any internal rules about these appointments. The practice has been that the Chair makes the appointments. (Note though that I only have records going back to 2015 for these appointments and I do not know what the practice was before 2015). The statute (52 U.S.C. 20944(a)(10)) says "Two members appointed by the United States Commission on Civil Rights." 52 U.S.C. 20944(b) says "Appointments shall be made to the Board of Advisors under subsection (a) in a manner which ensures that the Board of Advisors will be bipartisan in nature and will reflect the various geographic regions of the United States." The terms are 2 year appointments; I believe the current USCCR appointments are Yaki and Kladney, and that their terms end 4/13/2021. I provided the above information, i.e., bipartisan and geographic scope, before the 2019 appointments, though did not provide any input beyond this. I've also attached the House report for the Help American Vote Act (establishes the advisory committees) - discussion of advisory boards is on page 33.

I have a call scheduled with her at 1 pm to discuss further. Please let me know if there are any specific questions I should ask.

Alex

From: Alexander Heideman <aheideman@usccr.gov>
Date: Wednesday, September 16, 2020 at 11:02 AM
To: Christian Adams <a@electionlawcenter.com>, 'Gail Heriot' <gheriot@me.com>
Cc: Carissa Mulder <CMulder@usccr.gov>, 'Peter >, 'John Mashburn' <jkmash@comcast.net>, 'Thomas Simuel' <tjsimuel32@gmail.com>
Subject: Re: [EXTERNAL] EAC Board of Advisors

Yes, happy to.

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From: Christian Adams <a@electionlawcenter.com>
Date: Wednesday, September 16, 2020 at 11:02 AM
To: 'Gail Heriot' <gheriot@me.com>
Cc: Carissa Mulder <CMulder@usccr.gov>, 'Peter >, 'John Mashburn' <jkmash@comcast.net>, 'Thomas Simuel' <tjsimuel32@gmail.com>, Alexander Heideman <aheideman@usccr.gov>
Subject: RE: [EXTERNAL] EAC Board of Advisors

> CAUTION: This email is from outside USCCR.

ple people aren't asking her different times, can the SA's get to the bottom of this with maureen.

From: Gail Heriot <gheriot@me.com>
Sent: Wednesday, September 16, 2020 10:46 AM
To: Christian Adams <a@electionlawcenter.com>
Cc: Carissa Mulder <CMulder@usccr.gov>; Peter Kirsanow <pkirsanow@beneschlaw.com>; stephen gilchrist <thegilchristassociates@gmail.com>; John Mashburn <jkmash@comcast.net>; Thomas Simuel <tjsimuel32@gmail.com>; Alexander Heideman <aheideman@usccr.gov>
Subject: Re: [EXTERNAL] EAC Board of Advisors

I don't think there are any rules. In the absence of an explicit delegation of power, the Commission as a whole has that power. But you need to be sure it wasn't done properly. I have a vague recollection of talking about this in a meeting in the last decade. The straight shooter on the staff is Maureen Rudolph. You might want to ask her.

Gail Heriot
Professor of Law
University of San Diego

> On Sep 15, 2020, at 2:17 PM, Christian Adams <a@electionlawcenter.com> wrote:
>
> I don't know the rules for USCCR appointing ANYONE yet, but if there are no minutes showing a vote appointing them in regular business, it would seem that their "appointment" is void.

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From: Carissa Mulder <CMulder@usccr.gov>
Sent: Tuesday, September 15, 2020 4:01 PM
To: Christian Adams <a@electionlawcenter.com>; 'Peter Kirsanow' <pkirsanow@Beneschlaw.com>; 'Gail Heriot' <gheriot@me.com>; 'stephen gilchrist' <thegilchristassociates@gmail.com>
Cc: 'John Mashburn' <jkmash@comcast.net>; 'Thomas Simuel' <tjsimuel32@gmail.com>; Alexander Heideman <aheideman@usccr.gov>
Subject: Re: [EXTERNAL] EAC Board of Advisors

Looking at the document about the appointment of the advisory board members, I think that is correct, Christian. Catherine probably appointed them without ever bringing it up.

From: Christian Adams <a@electionlawcenter.com>
Sent: Tuesday, September 15, 2020 3:55:45 PM
To: Carissa Mulder; 'Peter Kirsanow'; 'Gail Heriot'; 'stephen gilchrist'
Cc: 'John Mashburn'; 'Thomas Simuel'; Alexander Heideman
Subject: RE: [EXTERNAL] EAC Board of Advisors

> CAUTION: This email is from outside USCCR.

It probably NEVER came up in a business meeting and therefore we should, as a commission have the authority to take it up in a business meeting and appoint-anew.

From: Carissa Mulder <CMulder@usccr.gov>
Sent: Tuesday, September 15, 2020 3:34 PM
To: Christian Adams <a@electionlawcenter.com>; Peter Kirsanow <pkirsanow@Beneschlaw.com>; 'Gail Heriot' <gheriot@me.com>; 'stephen gilchrist' <thegilchristassociates@gmail.com>
>; Alexander Heideman <aheideman@usccr.gov>
Subject: Re: [EXTERNAL] EAC Board of Advisors

Good question! I had no idea the USCCR got two designees to the EAC Board of Advisors. Here's the .

From: Christian Adams <a@electionlawcenter.com>
Sent: Tuesday, September 15, 2020 3:15:28 PM
To: Peter Kirsanow; 'Gail Heriot'; 'stephen gilchrist'
Cc: John Mashburn; 'Thomas Simuel'; Carissa Mulder; Alexander Heideman

AMERICAN OVERSIGHT

Subject: [EXTERNAL] EAC Board of Advisors

> CAUTION: This email is from outside USCCR.

AC commission saying that Yaki is acting absurdly and exercising power over the EAC by threatening the Pelosi pick on the EAC with removal if he doesn't do what he wants, effectively making Yaki a commissioner on the EAC on many issues. He is causing mischief I don't even detail here.

My question is how does he get UNDONE from the EAC oversight commission? How does that get revoked and replaced?

<Help America Vote Act House Report 107_329[1].pdf>

AMERICAN OVERSIGHT

Date : 9/16/2020 4:59:54 PM
From : "Maureen Rudolph" mrudolph@usccr.gov
To : "Alexander Heideman" aheideman@usccr.gov
Subject : Re: USCCR & Election Assistance Commission Board of Advisors

Alex,

I haven't found much more than what we discussed. The meeting transcripts are here (and looks like we've almost completed uploading them back to 2006): https://www.usccr.gov/calendar/transcripts.php I did do a very quick glance through the transcripts and did not find any votes for the EAC positions. I did find the email below from 2015 in which the then- Chair's special assistant asked all Commissioners who wanted to be appointed. I wasn't at USCCR for this one - I found the email in securi sync. Sorry to not be of more help. -Maureen

---

From: Juana Silverio
Sent: Wednesday, March 04, 2015 6:09 PM
To: Martin Castro; Patricia Timmons-Goodson; Roberta Achtenberg; David Kladney; Michael Yaki; Karen Narasaki; Gail Heriot; Peter Kirsanow
Cc: Sheryl Cozart; Alec Deull; Amy Royce; Kimberly Tolhurst; Jason T. Lagria; Alison Somin; Carissa Mulder
Subject: US Election Assistance Commission

I am sending on behalf of Chairman Castro. Please let him and I know if you'd be interested in representing the Commission on the U.S. EAC's Advisory Board.

Commissioners Achtenberg & Thernstrom represented us in the past. The EAC has a quorum now and would appreciate the Commission's participation.

Best,
Juana Silverio, Esq.

From: Maureen Rudolph
Sent: Wednesday, September 16, 2020 11:47:53 AM
To: Alexander Heideman
Subject: Re: USCCR & Election Assistance Commission Board of Advisors

To my knowledge, there are not any internal rules about these appointments. The practice has been that the Chair makes the appointments. (Note though that I only have records going back to 2015 for these appointments and I do not know what the practice was before 2015). The statute (52 U.S.C. 20944(a)(10)) says "Two members appointed by the United States Commission on Civil Rights." 52 U.S.C. 20944(b) says "Appointments shall be made to the Board of Advisors under subsection (a) in a manner which ensures that the Board of Advisors will be bipartisan in nature and will reflect the various geographic regions of the United States." The terms are 2 year appointments; I believe the current USCCR appointments are Yaki and Kladney, and that their terms end 4/13/2021. I provided the above information, i.e., bipartisan and geographic scope, before the

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2019 appointments, though did not provide any input beyond this. I've also attached the House report for the Help American Vote Act (establishes the advisory committees) - discussion of advisory boards is on page 33. Talk to you at 1pm. Please call me on my work cell (202)-657-2246. Thanks very much, Maureen

---

From: Alexander Heideman
Sent: Wednesday, September 16, 2020 11:28:49 AM
To: Maureen Rudolph
Subject: Re: USCCR & Election Assistance Commission Board of Advisors

1PM works perfectly for me. Do you happen to have our internal rules on how the two Commissioners are appointed to the EAC Board of Advisors?

From: Maureen Rudolph <mrudolph@usccr.gov>
Date: Wednesday, September 16, 2020 at 11:13 AM
To: Alexander Heideman <aheideman@usccr.gov>
Subject: Re: USCCR & Election Assistance Commission Board of Advisors

Either is fine. If you'd like to chat, does 1pm work? Also, do you have the statutory citation, etc., or is there anything you'd like before talking? Thanks much, Maureen

---

From: Alexander Heideman
Sent: Wednesday, September 16, 2020 11:09:08 AM
To: Maureen Rudolph
Subject: USCCR & Election Assistance Commission Board of Advisors

Hi Maureen,

I hope you're having a great week.

I've got a few questions about USCCR & the EAC Board of Advisors that I'm hoping you'll be able to answer. Do you have time for a quick phone call today or would you prefer I email you?

Thanks!
Alex

AMERICAN OVERSIGHT

Date : 9/16/2020 5:29:43 PM
From : "Alexander Heideman" aheideman@usccr.gov
To : "Maureen Rudolph" mrudolph@usccr.gov
Subject : Re: USCCR & Election Assistance Commission Board of Advisors

Thanks, Maureen. I really appreciate your guidance here.

From: Maureen Rudolph <mrudolph@usccr.gov>
Date: Wednesday, September 16, 2020 at 4:59 PM
To: Alexander Heideman <aheideman@usccr.gov>
Subject: Re: USCCR & Election Assistance Commission Board of Advisors

Alex,

I haven't found much more than what we discussed. The meeting transcripts are here (and looks like we've almost completed uploading them back to 2006): https://www.usccr.gov/calendar/transcripts.php I did do a very quick glance through the transcripts and did not find any votes for the EAC positions. I did find the email below from 2015 in which the then- Chair's special assistant asked all Commissioners who wanted to be appointed. I wasn't at USCCR for this one - I found the email in securi sync. Sorry to not be of more help. -Maureen

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AMERICAN OVERSIGHT

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Thanks!
Alex

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Date : 9/16/2020 5:19:58 PM
From : "Alexander Heideman" aheideman@usccr.gov
To : "Christian Adams" a@electionlawcenter.com, "'Gail Heriot'" gheriot@me.com
Cc : "Carissa Mulder" CMulder@usccr.gov, "'Peter Kirsanow'" pkirsanow@beneschlaw.com, "'stephen gilchrist'" thegilchristassociates@gmail.com, "'John Mashburn'" jkmash@comcast.net, "'Thomas Simuel'" tjsimuel32@gmail.com
Subject : Re: [EXTERNAL] EAC Board of Advisors

More from Maureen:

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To: Christian Adams <a@electionlawcenter.com>, 'Gail Heriot' <gheriot@me.com>
Cc: Carissa Mulder <CMulder@usccr.gov>, 'Peter Kirsanow' <pkirsanow@beneschlaw.com>, 'stephen gilchrist' <thegilchristassociates@gmail.com>, 'John Mashburn' <jkmash@comcast.net>, 'Thomas Simuel' <tjsimuel32@gmail.com>
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appointments. (Note though that I only have records going back to 2015 for these appointments and I do not know what the practice was before 2015). The statute (52 U.S.C. 20944(a)(10)) says "Two members appointed by the United States Commission on Civil Rights." 52 U.S.C. 20944(b) says "Appointments shall be made to the Board of Advisors under subsection (a) in a manner which ensures that the Board of Advisors will be bipartisan in nature and will reflect the various geographic regions of the United States." The terms are 2 year appointments; I believe the current USCCR appointments are Yaki and Kladney, and that their terms end 4/13/2021. I provided the above information, i.e., bipartisan and geographic scope, before the 2019 appointments, though did not provide any input beyond this. I've also attached the House report for the Help American Vote Act (establishes the advisory committees) - discussion of advisory boards is on page 33.

I have a call scheduled with her at 1 pm to discuss further. Please let me know if there are any specific questions I should ask.

Alex

From: Alexander Heideman <aheideman@usccr.gov>
Date: Wednesday, September 16, 2020 at 11:02 AM
To: Christian Adams <a@electionlawcenter.com>, 'Gail Heriot' <gheriot@me.com>
Cc: Carissa Mulder <CMulder@usccr.gov>, 'Peter >, 'John Mashburn' <jkmash@comcast.net>, 'Thomas Simuel' <tjsimuel32@gmail.com>
Subject: Re: [EXTERNAL] EAC Board of Advisors

Yes, happy to.

From: Christian Adams <a@electionlawcenter.com>
Date: Wednesday, September 16, 2020 at 11:02 AM
To: 'Gail Heriot' <gheriot@me.com>
Cc: Carissa Mulder <CMulder@usccr.gov>, 'Peter >, 'John Mashburn' <jkmash@comcast.net>, 'Thomas Simuel' <tjsimuel32@gmail.com>, Alexander Heideman <aheideman@usccr.gov>
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CAUTION: This email is from outside USCCR.

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ple people aren't asking her different times, can the SA's get to the bottom of this with maureen.

From: Gail Heriot <gheriot@me.com>
Sent: Wednesday, September 16, 2020 10:46 AM
To: Christian Adams <a@electionlawcenter.com>
Cc: Carissa Mulder <CMulder@usccr.gov>; Peter Kirsanow <pkirsanow@beneschlaw.com>; stephen gilchrist <thegilchristassociates@gmail.com>; John Mashburn <jkmash@comcast.net>; Thomas Simuel <tjsimuel32@gmail.com>; Alexander Heideman <aheideman@usccr.gov>
Subject: Re: [EXTERNAL] EAC Board of Advisors

I don't think there are any rules. In the absence of an explicit delegation of power, the Commission as a whole has that power. But you need to be sure it wasn't done properly. I have a vague recollection of talking about this in a meeting in the last decade. The straight shooter on the staff is Maureen Rudolph. You might want to ask her.

Gail Heriot
Professor of Law
University of San Diego

> On Sep 15, 2020, at 2:17 PM, Christian Adams <a@electionlawcenter.com> wrote:
>
> I don't know the rules for USCCR appointing ANYONE yet, but if there are no minutes showing a vote appointing them in regular business, it would seem that their "appointment" is void.
>
> ---
>
> **From:** Carissa Mulder <CMulder@usccr.gov>
> **Sent:** Tuesday, September 15, 2020 4:01 PM
> **To:** Christian Adams <a@electionlawcenter.com>; 'Peter Kirsanow' <pkirsanow@Beneschlaw.com>; 'Gail Heriot' <gheriot@me.com>; 'stephen gilchrist' <thegilchristassociates@gmail.com>
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Looking at the document about the appointment of the advisory board members, I think that is correct, Christian. Catherine probably appointed them without ever bringing it up.

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Sent: Tuesday, September 15, 2020 3:55:45 PM
To: Carissa Mulder; 'Peter Kirsanow'; 'Gail Heriot'; 'stephen gilchrist'
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Subject: RE: [EXTERNAL] EAC Board of Advisors

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It probably NEVER came up in a business meeting and therefore we should, as a commission have the authority to take it up in a business meeting and appoint-anew.

From: Carissa Mulder <CMulder@usccr.gov>
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Subject: Re: [EXTERNAL] EAC Board of Advisors

Good question! I had no idea the USCCR got two designees to the EAC Board of Advisors. Here's the .

From: Christian Adams <a@electionlawcenter.com>
Sent: Tuesday, September 15, 2020 3:15:28 PM
To: Peter Kirsanow; 'Gail Heriot'; 'stephen gilchrist'
Cc: John Mashburn; 'Thomas Simuel'; Carissa Mulder; Alexander Heideman
Subject: [EXTERNAL] EAC Board of Advisors

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AC commission saying that Yaki is acting absurdly and exercising power over the EAC by threatening the Pelosi pick on the EAC with removal if he doesn't do what he wants, effectively making Yaki a

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commissioner on the EAC on many issues. He is causing mischief I don't even detail here.

My question is how does he get UNDONE from the EAC oversight commission? How does that get revoked and replaced?

<Help America Vote Act House Report 107_329[1].pdf>

AMERICAN OVERSIGHT

Date : 8/3/2021 4:30:17 PM
From : "Juana Silverio" jsilverio@usccr.gov
To : "Irena Vidulovic" ividulovic@usccr.gov, "Mauro Morales" mmorales@usccr.gov, "Norma Cantu" ncantu@usccr.gov
Cc : "Debo P. Adegbile" dadegbile@usccr.gov, "Michael Yaki" MYaki@usccr.gov, "David Kladney" dkladney@usccr.gov, "Alec Deull" adeull@usccr.gov
Subject : RE: Commissioner Appointments to the Election Assistance Commission

Mauro- due to new information received, please replace Leah with Ms. Allison Riggs.

Juana

From: Irena Vidulovic <ividulovic@usccr.gov>
Sent: Tuesday, August 3, 2021 4:12 PM
To: Juana Silverio <jsilverio@usccr.gov>; Mauro Morales <mmorales@usccr.gov>; Norma Cantu <ncantu@usccr.gov>
Cc: Debo P. Adegbile <dadegbile@usccr.gov>; Michael Yaki <MYaki@usccr.gov>; David Kladney <dkladney@usccr.gov>; Alec Deull <adeull@usccr.gov>
Subject: Re: Commissioner Appointments to the Election Assistance Commission

Unfortunately Leah Aden is unable to serve. Commissioner Adebile reached out to all the candidates that we proposed including Leah to make sure that they would be willing and able to serve and we have been notified that Leah is unavailable to serve.

From: Juana Silverio
Sent: Tuesday, August 3, 2021 3:38:23 PM
To: Mauro Morales; Norma Cantu
Cc: Debo P. Adegbile; Michael Yaki; David Kladney; Irena Vidulovic; Alec Deull
Subject: RE: Commissioner Appointments to the Election Assistance Commission

Good afternoon Mauro.

The Dem caucus had a tie:

Commissioner Michael Yaki
Leah Aden (Cantu and Yaki)
Allison Riggs (Adegbile and Kladney)

The Chairwoman, in the interest of observing the deadline, is submitting the following names for EAC consideration:

AMERICAN OVERSIGHT

Commissioner Michael Yaki
Leah Aden - https://www.naacpldf.org/about-us/staff/leah-c-aden/

Thank you.
Juana

From: Mauro Morales <mmorales@usccr.gov>
Sent: Monday, August 2, 2021 11:47 AM
To: Norma V. Cantú <normavcantu@gmail.com>; Juana Silverio <jsilverio@usccr.gov>
Subject: Fwd: Commissioner Appointments to the Election Assistance Commission

FYI

Sent from my iPhone

Begin forwarded message:

> **From:** Mauro Morales <mmorales@usccr.gov>
> **Date:** August 2, 2021 at 8:45:25 AM MST
> **To:** John Mashburn <jmashburn@usccr.gov>
> **Cc:** Carissa Mulder <CMulder@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>, Alexander Heideman <aheideman@usccr.gov>
> **Subject: Re: Commissioner Appointments to the Election Assistance Commission**
>
> My flight was canceled and returning today. Your selections were forwarded to Chair Cantu. Thank you.
>
> Sent from my iPhone
>
> > On Jul 30, 2021, at 9:34 AM, John Mashburn <jmashburn@usccr.gov> wrote:
> >
> > Mauro – after canvassing the Republican Commissioners, the two nominees they wish to put forward for one of the two USCCR designees for the EAC's Board of Advisors (per your email below) are:
> >
> > Cleta Mitchell – Chair, Conservative Partnership Institute Election Integrity Network, and
> >
> > Christian Adams – USCCR Commissioner.
> >
> > ---
> >
> > **From:** Mauro Morales <mmorales@usccr.gov>
> > **Date:** Wednesday, July 28, 2021 at 11:30 AM
> > **To:** Commissioners <Commissioners@usccr.gov>
> > **Cc:**
> > " <CommissionerAssistants@usccr.gov>

AMERICAN OVERSIGHT

Subject: Commissioner Appointments to the Election Assistance Commission

Dear Commissioners-

At the request and in consultation with the Chair, I am sending this email to start the EAC nomination process for Commissioners.

Per the AI voted on during the April 30th meeting (language included below), each caucus is requested to submit two candidates for consideration by COB Friday, July 30, 2021. Once the names are submitted, OGC will conduct an ethics check to be completed by Wednesday, August 4, 2021. Each caucus will then have 24 hours to submit caucus strikes (Thursday, August 5, 2021 COB). The Chair will communicate the two names to EAC no later than Friday, August 6, 2021.

Please let the Chair or I know if you have any questions or concerns.

--
AI language:

Section 1.
.01 Any authority specifically granted the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Commission as a whole by majority vote.

.02 Any authority specifically granted the Staff Director of the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Staff Director.

.03 Any authority specifically granted the Chair of the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Chair.

Section 2

AMERICAN OVERSIGHT

.02

(1) For the two (2) appointments to the U.S. Election Assistance Commission, the members appointed by Democratic authorities shall nominate two individuals who are ready, willing, and able to serve, and the members appointed by the Republican authorities shall nominate two individuals who are ready, willing, and able to serve.

(2) The members appointed by the Democratic authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Democratic authorities

(3) The members selected shall be placed in nomination and ratified in conformance with Section 1.

Mauro Morales
Staff Director
U.S. Commission on Civil Rights
P: 202-376-7796| F: 202-376-7672
Mmorales@usccr.gov
http://usccr.gov/
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425

Follow Us on Twitter & Facebook:
<image001.gif>
<image002.gif>

#USCCR

AMERICAN OVERSIGHT

Date : 10/26/2021 3:52:46 PM
From : "Michael Yaki" MYaki@usccr.gov
To : "Norma Cantu" ncantu@usccr.gov
Subject : Resignation from EAC board of Advisors

Chair Cantu -

After careful consideration, I have decided to resign from the US Election Assistance Commission Board of Advisors and withdraw my name from nomination to another term.

Sincerely,

Commissioner Michael Yaki

AMERICAN OVERSIGHT

Date : 10/26/2021 4:24:00 PM
From : "Norma Cantu" ncantu@usccr.gov
To : "Michael Yaki" MYaki@usccr.gov
Cc : "Debo P. Adegbile" dadegbile@usccr.gov, "David Kladney" dkladney@usccr.gov
Subject : RE: Resignation of Michael Yaki from Election Assistance Commission board of Advisors

Dear Commissioner Yaki,

Michael, I am so grateful for the six years you have served on the Board of Advisors to the US Election Assistance Commission. I supported your nomination to another term, and I was looking forward to your sage counsel on how the US Election Assistance Commission should proceed to fulfil its mission. I am sad to hear you wish to resign from the Board of Advisors, but I know how committed you to fulfilling each obligation completely and with dedication, so I respect your decision.

Please accept our thanks for your service above and beyond what is expected. Your service has been a sacrifice of your time and energy, and the results have been outstanding.

In representing the U.S. Commission on the Board of Advisors, you set a high bar for dedication, energy, and expertise. I will be looking to the Commissioners for input on the task of finding a replacement for you as an advisor to the US Election Commission. I am copying the rest of the progressive caucus so they can also thank you for your service

Sincerely,
Norma V. Cantu

Cell 210 380 6380

From: Michael Yaki <MYaki@usccr.gov>
Sent: Tuesday, October 26, 2021 2:53 PM
To: Norma Cantu <ncantu@usccr.gov>
Subject: Resignation from EAC board of Advisors

Chair Cantu -

After careful consideration, I have decided to resign from the US Election Assistance Commission Board of Advisors and withdraw my name from nomination to another term.

Sincerely,

Commissioner Michael Yaki

AMERICAN OVERSIGHT

Date : 9/18/2020 2:13:03 PM
From : "John Mashburn" jmashburn@usccr.gov
To : "Alexander Heideman" aheideman@usccr.gov, "Carissa Mulder" CMulder@usccr.gov
Subject : Re: [EXTERNAL] EAC Board of Advisors

Alex – is this the latest you have on this issue?

I talked to folks over at the EAC to see if the Cmn would be able -- from EAC's perspective – to change out one or both of the Bd of Advisors folks from the USCCR, or if once they are there that they are "stuck" for the term of the appointment

and the USCCR cannot change them out.

From: Alexander Heideman <aheideman@usccr.gov>
Date: Wednesday, September 16, 2020 at 5:20 PM
To: Christian Adams <a@electionlawcenter.com>, 'Gail Heriot' <gheriot@me.com>
Cc: Carissa Mulder <CMulder@usccr.gov>, 'Peter Kirsanow' <pkirsanow@beneschlaw.com>, 'stephen gilchrist' <thegilchristassociates@gmail.com>, 'John Mashburn' <jkmash@comcast.net>, 'Thomas Simuel' <tjsimuel32@gmail.com>
Subject: Re: [EXTERNAL] EAC Board of Advisors

More from Maureen:

Alex,

I haven't found much more than what we discussed. The meeting transcripts are here (and looks like we've almost completed uploading them back to 2006): https://www.usccr.gov/calendar/transcripts.php I did do a very quick glance through the transcripts and did not find any votes for the EAC positions. I did find the email below from 2015 in which the then- Chair's special assistant asked all Commissioners who wanted to be appointed. I wasn't at USCCR for this one - I found the email in securi sync. Sorry to not be of more help. -Maureen

---

From: Juana Silverio
Sent: Wednesday, March 04, 2015 6:09 PM
To: Martin Castro; Patricia Timmons-Goodson; Roberta Achtenberg; David Kladney; Michael Yaki; Karen Narasaki; Gail Heriot; Peter Kirsanow
Cc: Sheryl Cozart; Alec Deull; Amy Royce; Kimberly Tolhurst; Jason T. Lagria; Alison Somin; Carissa Mulder
Subject: US Election Assistance Commission

I am sending on behalf of Chairman Castro. Please let him and I know if you'd be interested in representing the Commission on the U.S. EAC's Advisory Board.

Commissioners Achtenberg & Thernstrom represented us in the past. The EAC has a quorum now and would appreciate the Commission's participation.

Best,
Juana Silverio, Esq.

AMERICAN OVERSIGHT

From: Alexander Heideman <aheideman@usccr.gov>
Date: Wednesday, September 16, 2020 at 1:31 PM
To: Christian Adams <a@electionlawcenter.com>, 'Gail Heriot' <gheriot@me.com>
Cc: Carissa Mulder <CMulder@usccr.gov>, 'Peter Kirsanow' <pkirsanow@beneschlaw.com>, 'stephen gilchrist' <thegilchristassociates@gmail.com>, 'John Mashburn' <jkmash@comcast.net>, 'Thomas Simuel' <tjsimuel32@gmail.com>
Subject: Re: [EXTERNAL] EAC Board of Advisors

I spoke with Maureen. She said that she was not asked about these appointments in 2019, but she thought that the Commissioners had had a conversation about them.

It seems to me that these appointments were unlawful if they were not (1) made by the Commission and (2) bipartisan and geographically varied. And Google Maps says Reno (Kladney) is a short 3.5 hour drive from San Fran (Yaki).

I'll try to locate the 2015, 2013, & 2011 transcripts to see if appointments were voted on in the past.

From: Christian Adams <a@electionlawcenter.com>
Date: Wednesday, September 16, 2020 at 12:55 PM
To: 'Gail Heriot' <gheriot@me.com>, Alexander Heideman <aheideman@usccr.gov>
Cc: Carissa Mulder <CMulder@usccr.gov>, 'Peter Kirsanow' <pkirsanow@beneschlaw.com>, 'stephen gilchrist' <thegilchristassociates@gmail.com>, 'John Mashburn' <jkmash@comcast.net>, 'Thomas Simuel' <tjsimuel32@gmail.com>
Subject: RE: [EXTERNAL] EAC Board of Advisors

> CAUTION: This email is from outside USCCR.

ree with Gail. And the "appointments" did not comply with the admonition of the law that the board should be bipartisan.

From: Gail Heriot <gheriot@me.com>
Sent: Wednesday, September 16, 2020 12:15 PM
To: Alexander Heideman <aheideman@usccr.gov>
Cc: Christian Adams <a@electionlawcenter.com>; Carissa Mulder <CMulder@usccr.gov>; Peter Kirsanow <pkirsanow@beneschlaw.com>; stephen gilchrist <thegilchristassociates@gmail.com>; John Mashburn <jkmash@comcast.net>; Thomas Simuel <tjsimuel32@gmail.com>
Subject: Re: [EXTERNAL] EAC Board of Advisors

If the statute says the Commission makes the appointments, I don't see how it can be that the chair makes them. My recollection of the appointments under the Reynolds years is

AMERICAN OVERSIGHT

that Abby and maybe Yaki were our delegates. If there are transcripts going back that far they may show whether the Commission voted on these appointments.

On Sep 16, 2020, at 8:51 AM, Alexander Heideman <aheideman@usccr.gov> wrote:

Maureen says:

> To my knowledge, there are not any internal rules about these appointments. The practice has been that the Chair makes the appointments. (Note though that I only have records going back to 2015 for these appointments and I do not know what the practice was before 2015). The statute (52 U.S.C. 20944(a)(10)) says "Two members appointed by the United States Commission on Civil Rights." 52 U.S.C. 20944(b) says "Appointments shall be made to the Board of Advisors under subsection (a) in a manner which ensures that the Board of Advisors will be bipartisan in nature and will reflect the various geographic regions of the United States." The terms are 2 year appointments; I believe the current USCCR appointments are Yaki and Kladney, and that their terms end 4/13/2021. I provided the above information, i.e., bipartisan and geographic scope, before the 2019 appointments, though did not provide any input beyond this. I've also attached the House report for the Help American Vote Act (establishes the advisory committees) - discussion of advisory boards is on page 33.

I have a call scheduled with her at 1 pm to discuss further. Please let me know if there are any specific questions I should ask.

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Subject: Re: [EXTERNAL] EAC Board of Advisors

Yes, happy to.

AMERICAN OVERSIGHT

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Professor of Law
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AMERICAN OVERSIGHT

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<Help America Vote Act House Report 107_329[1].pdf>

AMERICAN OVERSIGHT

Date : 9/21/2020 8:43:05 AM
From : "Alexander Heideman" aheideman@usccr.gov
To : "John Mashburn" jmashburn@usccr.gov, "Carissa Mulder" CMulder@usccr.gov
Subject : Re: [EXTERNAL] EAC Board of Advisors

I have nothing new to report here.

From: John Mashburn <jmashburn@usccr.gov>
Date: Friday, September 18, 2020 at 2:13 PM
To: Alexander Heideman <aheideman@usccr.gov>, Carissa Mulder <CMulder@usccr.gov>
Subject: Re: [EXTERNAL] EAC Board of Advisors

Alex – is this the latest you have on this issue?

I talked to folks over at the EAC to see if the Cmn would be able -- from EAC's perspective – to change out one or both of the Bd of Advisors folks from the USCCR, or if once they are there that they are "stuck" for the term of the appointment

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AMERICAN OVERSIGHT

Carissa Mulder
Subject: US Election Assistance Commission

I am sending on behalf of Chairman Castro. Please let him and I know if you'd be interested in representing the Commission on the U.S. EAC's Advisory Board.

Commissioners Achtenberg & Thernstrom represented us in the past. The EAC has a quorum now and would appreciate the Commission's participation.

Best,
Juana Silverio, Esq.

From: Alexander Heideman <aheideman@usccr.gov>
Date: Wednesday, September 16, 2020 at 1:31 PM
To: Christian Adams <a@electionlawcenter.com>, 'Gail Heriot' <gheriot@me.com>
Cc: Carissa Mulder <CMulder@usccr.gov>, 'Peter Kirsanow' <pkirsanow@beneschlaw.com>, 'stephen gilchrist' <thegilchristassociates@gmail.com>, 'John Mashburn' <jkmash@comcast.net>, 'Thomas Simuel' <tjsimuel32@gmail.com>
Subject: Re: [EXTERNAL] EAC Board of Advisors

I spoke with Maureen. She said that she was not asked about these appointments in 2019, but she thought that the Commissioners had had a conversation about them.

It seems to me that these appointments were unlawful if they were not (1) made by the Commission and (2) bipartisan and geographically varied. And Google Maps says Reno (Kladney) is a short 3.5 hour drive from San Fran (Yaki).

I'll try to locate the 2015, 2013, & 2011 transcripts to see if appointments were voted on in the past.

From: Christian Adams <a@electionlawcenter.com>
Date: Wednesday, September 16, 2020 at 12:55 PM
To: 'Gail Heriot' <gheriot@me.com>, Alexander Heideman <aheideman@usccr.gov>
Cc: Carissa Mulder <CMulder@usccr.gov>, 'Peter Kirsanow' <pkirsanow@beneschlaw.com>, 'stephen gilchrist' <thegilchristassociates@gmail.com>, 'John Mashburn' <jkmash@comcast.net>, 'Thomas Simuel' <tjsimuel32@gmail.com>
Subject: RE: [EXTERNAL] EAC Board of Advisors

> CAUTION: This email is from outside USCCR.

ree with Gail. And the "appointments" did not comply with the admonition of the law that the board should be bipartisan.

From: Gail Heriot <gheriot@me.com>
Sent: Wednesday, September 16, 2020 12:15 PM

AMERICAN OVERSIGHT

To: Alexander Heideman <aheideman@usccr.gov>
Cc: Christian Adams <a@electionlawcenter.com>; Carissa Mulder <CMulder@usccr.gov>; Peter Kirsanow <pkirsanow@beneschlaw.com>; stephen gilchrist <thegilchristassociates@gmail.com>; John Mashburn <jkmash@comcast.net>; Thomas Simuel <tjsimuel32@gmail.com>
Subject: Re: [EXTERNAL] EAC Board of Advisors

If the statute says the Commission makes the appointments, I don't see how it can be that the chair makes them. My recollection of the appointments under the Reynolds years is that Abby and maybe Yaki were our delegates. If there are transcripts going back that far they may show whether the Commission voted on these appointments.

On Sep 16, 2020, at 8:51 AM, Alexander Heideman <aheideman@usccr.gov> wrote:

Maureen says:

> To my knowledge, there are not any internal rules about these appointments. The practice has been that the Chair makes the appointments. (Note though that I only have records going back to 2015 for these appointments and I do not know what the practice was before 2015). The statute (52 U.S.C. 20944(a)(10)) says "Two members appointed by the United States Commission on Civil Rights." 52 U.S.C. 20944(b) says "Appointments shall be made to the Board of Advisors under subsection (a) in a manner which ensures that the Board of Advisors will be bipartisan in nature and will reflect the various geographic regions of the United States." The terms are 2 year appointments; I believe the current USCCR appointments are Yaki and Kladney, and that their terms end 4/13/2021. I provided the above information, i.e., bipartisan and geographic scope, before the 2019 appointments, though did not provide any input beyond this. I've also attached the House report for the Help American Vote Act (establishes the advisory committees) - discussion of advisory boards is on page 33.

I have a call scheduled with her at 1 pm to discuss further. Please let me know if there are any specific questions I should ask.

Alex

From: Alexander Heideman <aheideman@usccr.gov>
Date: Wednesday, September 16, 2020 at 11:02 AM

AMERICAN OVERSIGHT

To: Christian Adams <a@electionlawcenter.com>, 'Gail Heriot' <gheriot@me.com>
Cc: Carissa Mulder <CMulder@usccr.gov>, 'Peter >, 'John Mashburn' <jkmash@comcast.net>, 'Thomas Simuel' <tjsimuel32@gmail.com>
Subject: Re: [EXTERNAL] EAC Board of Advisors

Yes, happy to.

From: Christian Adams <a@electionlawcenter.com>
Date: Wednesday, September 16, 2020 at 11:02 AM
To: 'Gail Heriot' <gheriot@me.com>
Cc: Carissa Mulder <CMulder@usccr.gov>, 'Peter >, 'John Mashburn' <jkmash@comcast.net>, 'Thomas Simuel' <tjsimuel32@gmail.com>, Alexander Heideman <aheideman@usccr.gov>
Subject: RE: [EXTERNAL] EAC Board of Advisors

> CAUTION: This email is from outside USCCR.

ple people aren't asking her different times, can the SA's get to the bottom of this with maureen.

From: Gail Heriot <gheriot@me.com>
Sent: Wednesday, September 16, 2020 10:46 AM
To: Christian Adams <a@electionlawcenter.com>
Cc: Carissa Mulder <CMulder@usccr.gov>; Peter Kirsanow <pkirsanow@beneschlaw.com>; stephen gilchrist <thegilchristassociates@gmail.com>; John Mashburn <jkmash@comcast.net>; Thomas Simuel <tjsimuel32@gmail.com>; Alexander Heideman <aheideman@usccr.gov>
Subject: Re: [EXTERNAL] EAC Board of Advisors

I don't think there are any rules. In the absence of an explicit delegation of power, the Commission as a whole has that power. But you need to be sure it wasn't done properly. I have a vague recollection of talking about this in a meeting in the last decade. The straight shooter on the staff is Maureen Rudolph. You might want to ask her.

Gail Heriot
Professor of Law
University of San Diego

AMERICAN OVERSIGHT

On Sep 15, 2020, at 2:17 PM, Christian Adams <a@electionlawcenter.com> wrote:

I don't know the rules for USCCR appointing ANYONE yet, but if there are no minutes showing a vote appointing them in regular business, it would seem that their "appointment" is void.

From: Carissa Mulder <CMulder@usccr.gov>
Sent: Tuesday, September 15, 2020 4:01 PM
To: Christian Adams <a@electionlawcenter.com>; 'Peter Kirsanow' <pkirsanow@Beneschlaw.com>; 'Gail Heriot' <gheriot@me.com>; 'stephen gilchrist' <thegilchristassociates@gmail.com>
Cc: 'John Mashburn' <jkmash@comcast.net>; 'Thomas Simuel' <tjsimuel32@gmail.com>; Alexander Heideman <aheideman@usccr.gov>
Subject: Re: [EXTERNAL] EAC Board of Advisors

Looking at the document about the appointment of the advisory board members, I think that is correct, Christian. Catherine probably appointed them without ever bringing it up.

From: Christian Adams <a@electionlawcenter.com>
Sent: Tuesday, September 15, 2020 3:55:45 PM
To: Carissa Mulder; 'Peter Kirsanow'; 'Gail Heriot'; 'stephen gilchrist'
Cc: 'John Mashburn'; 'Thomas Simuel'; Alexander Heideman
Subject: RE: [EXTERNAL] EAC Board of Advisors

> CAUTION: This email is from outside USCCR.

It probably NEVER came up in a business meeting and therefore we should, as a commission have the authority to take it up in a business meeting and appoint-anew.

From: Carissa Mulder <CMulder@usccr.gov>
Sent: Tuesday, September 15, 2020 3:34 PM
To: Christian Adams <a@electionlawcenter.com>; Peter Kirsanow <pkirsanow@Beneschlaw.com>; 'Gail Heriot' <gheriot@me.com>; 'stephen

AMERICAN OVERSIGHT

gilchrist' <thegilchristassociates@gmail.com>
>; Alexander Heideman <aheideman@usccr.gov>
Subject: Re: [EXTERNAL] EAC Board of Advisors

Good question! I had no idea the USCCR got two designees to the EAC Board of Advisors. Here's the .

From: Christian Adams <a@electionlawcenter.com>
Sent: Tuesday, September 15, 2020 3:15:28 PM
To: Peter Kirsanow; 'Gail Heriot'; 'stephen gilchrist'
Cc: John Mashburn; 'Thomas Simuel'; Carissa Mulder; Alexander Heideman
Subject: [EXTERNAL] EAC Board of Advisors

CAUTION: This email is from outside USCCR.

AC commission saying that Yaki is acting absurdly and exercising power over the EAC by threatening the Pelosi pick on the EAC with removal if he doesn't do what he wants, effectively making Yaki a commissioner on the EAC on many issues. He is causing mischief I don't even detail here.

My question is how does he get UNDONE from the EAC oversight commission? How does that get revoked and replaced?

<Help America Vote Act House Report 107_329[1].pdf>

Date : 10/29/2021 4:11:58 PM
From : "Norma Cantu" ncantu@usccr.gov
To : "Michael Yaki" MYaki@usccr.gov, "David Kladney" dkladney@usccr.gov, "Debo P. Adegbile" dadegbile@usccr.gov
Cc : "Juana Silverio" jsilverio@usccr.gov
Subject : Today's announcement appointing Cleta Mitchell and announcing opening on Board of Advisors due to declination of new term by M Yaki

Yes, I failed to persuade Michael Yaki to serve another term on the Board of Advisors for the US Elections Assistance Commission. He did a great job in the past six years. He's not going anywhere, but we have a vacant position to fill on the Board of Advisors.

Please send me and Juana two names of progressive candidates so we can offer two names to the conservative caucus and they can strike one, as the AI requires.
I will need names by End of Business on Tuesday, November 2, 2021

On Wednesday, I will send the two names to the conservative caucus and give them 48-hours notice to respond by striking one of the names. Ths is the process we memorialized in an AI.
Please tell me that you have confirmed with the person whose name you are forwarding that this person is willing to serve.

Thank you.

Norma

Cell phone 210 380 6380

AMERICAN OVERSIGHT

Date : 11/2/2021 8:37:48 AM
From : "John Mashburn" jmashburn@usccr.gov
To : "Norma Cantu" ncantu@usccr.gov, "Juana Silverio" jsilverio@usccr.gov
Subject : FW: [EXTERNAL] RE: Notice-of-Representation-Form-Board-Advisors-2021.pdf
Attachment : Notice-of-Representation-Form-Board-Advisors-2021.pdf;

Attached is Cleta Mitchell's completed form with the information that was requested regarding her designation as one of USCCR'S two representatives on the Bd of Advisors to the Election Assistance Commission.

On 11/2/21, 8:26 AM, "Cleta Mitchell" <cleta@cletamitchell.com> wrote:

*** CAUTION: This email is from outside USCCR. ***

Here is my form

Cleta Mitchell, Esq.
Senior Legal Fellow, Election Integrity Network
Conservative Partnership Institute
cleta@cletamitchell.com
(202) 431-1950
https://url.emailprotection.link/?bpSZ5RqBm4QWq71VH06kxNiZUcwRlgNO43fbaiEmXRq8X7Bmw6epWLRZY07_AZcJLkw042PKMzh-GzB5u3mB_fw~~

On 10/29/21, 4:30 PM, "Norma Cantu" <ncantu@usccr.gov> wrote:

John,
This is the form I will be sending to the Elections Commission. Do you have the information for Ms. Cleta Mitchell so I can send this form out?
Many thanks.
Norma

You can view "Notice-of-Representation-Form-Board-Advisors-2021.pdf" at:
https://url.emailprotection.link/?bhGlJCICzBUucC3zhBPAFSDL-h5NRO9sxEO-UrSw_FBsGKreHtqHTlGNYMUi13dVPxGDwm28c9RZtFC89MjrlbxvqW59c5Q5VVIkrr9iOvrxCVovhPtBvxI-nIaJXeNyZQbE3aSFxff9i_60YFIaAvZS-glwYR_vPnNyaRBPIj8~

_____
Sent with Adobe Document Cloud. Click on the link above to access the file online. No sign up or installation of Acrobat is required to access.

AMERICAN OVERSIGHT

Notice of Representation
United States Election Assistance Commission
Board of Advisors

In accordance with 52 U.S.C. § 20944 of the Help America Vote Act of 2002, your office submits the following individual(s) as a member of the Election Assistance Commission Board of Advisors:

Designated Representative

Name: Cleta Mitchell

Title: Senior Legal Fellow, Conservative Partnership Institute

Address: 300 Independence Ave, SE
Washington, DC 20003

Phone: 202.431.1950

Email: cleta@cletamitchell.com

Party Affiliation: Republican (personal; CPI is nonpartisan)

Designated Representative

Name: _____

Title: _____

Address: _____

_____

Phone: _____

Email: _____

Party Affiliation: _____

Name and Title of Appointing Official

Print Name: _____

Print Title: _____

Signature: _____ Date: _____

Please return the completed form via email to EAC General Counsel Kevin Rayburn (krayburn@eac.gov).

AMERICAN OVERSIGHT

Date : 11/4/2021 4:29:31 PM
From : "Irena Vidulovic" ividulovic@usccr.gov
To : "Norma Cantu" ncantu@usccr.gov
Cc : "Juana Silverio" jsilverio@usccr.gov, "Debo P. Adegbile" dadegbile@usccr.gov
Subject : Fw: Commissioner Appointments to the Election Assistance Commission

Dear Norma,

Commissioner Adegbile would like to thank you for thinking of him for the EAC nomination. While he appreciates it, he believes that Allison Riggs and Alabama SAC Chair Jenny Carroll should be nominated instead. They both have voting bona fides and have already expressed a willingness to serve.

Thank you again,
Irena

From: Juana Silverio
Sent: Tuesday, August 3, 2021 4:30 PM
To: Irena Vidulovic; Mauro Morales; Norma Cantu
Cc: Debo P. Adegbile; Michael Yaki; David Kladney; Alec Deull
Subject: RE: Commissioner Appointments to the Election Assistance Commission

Mauro- due to new information received, please replace Leah with Ms. Allison Riggs.

Juana

From: Irena Vidulovic <ividulovic@usccr.gov>
Sent: Tuesday, August 3, 2021 4:12 PM
To: Juana Silverio <jsilverio@usccr.gov>; Mauro Morales <mmorales@usccr.gov>; Norma Cantu <ncantu@usccr.gov>
Cc: Debo P. Adegbile <dadegbile@usccr.gov>; Michael Yaki <MYaki@usccr.gov>; David Kladney <dkladney@usccr.gov>; Alec Deull <adeull@usccr.gov>
Subject: Re: Commissioner Appointments to the Election Assistance Commission

Unfortunately Leah Aden is unable to serve. Commissioner Adebile reached out to all the candidates that we proposed including Leah to make sure that they would be willing and able to serve and we have been notified that Leah is unavailable to serve.

From: Juana Silverio
Sent: Tuesday, August 3, 2021 3:38:23 PM
To: Mauro Morales; Norma Cantu
Cc: Debo P. Adegbile; Michael Yaki; David Kladney; Irena Vidulovic; Alec Deull

AMERICAN OVERSIGHT

Subject: RE: Commissioner Appointments to the Election Assistance Commission

Good afternoon Mauro.

The Dem caucus had a tie:

Commissioner Michael Yaki
Leah Aden (Cantu and Yaki)
Allison Riggs (Adegbile and Kladney)

The Chairwoman, in the interest of observing the deadline, is submitting the following names for EAC consideration:

Commissioner Michael Yaki
Leah Aden - https://www.naacpldf.org/about-us/staff/leah-c-aden/

Leah C. Aden

www.naacpldf.org

Leah C. Aden has served as a Deputy Director of Litigation at the NAACP Legal Defense & Educational Fund, Inc. (LDF) since October 2018, assisting in the

Thank you.
Juana

From: Mauro Morales <mmorales@usccr.gov>
Sent: Monday, August 2, 2021 11:47 AM
To: Norma V. Cantú <normavcantu@gmail.com>; Juana Silverio <jsilverio@usccr.gov>
Subject: Fwd: Commissioner Appointments to the Election Assistance Commission

FYI
Sent from my iPhone

Begin forwarded message:

> **From:** Mauro Morales <mmorales@usccr.gov>
> **Date:** August 2, 2021 at 8:45:25 AM MST
> **To:** John Mashburn <jmashburn@usccr.gov>
> **Cc:** Carissa Mulder <CMulder@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>, Alexander Heideman <aheideman@usccr.gov>
> **Subject: Re: Commissioner Appointments to the Election Assistance Commission**

AMERICAN OVERSIGHT

My flight was canceled and returning today. Your selections were forwarded to Chair Cantu. Thank you.
Sent from my iPhone

> On Jul 30, 2021, at 9:34 AM, John Mashburn <jmashburn@usccr.gov> wrote:
>
> Mauro – after canvassing the Republican Commissioners, the two nominees they wish to put forward for one of the two USCCR designees for the EAC's Board of Advisors (per your email below) are:
>
> Cleta Mitchell – Chair, Conservative Partnership Institute Election Integrity Network, and
>
> Christian Adams – USCCR Commissioner.
>
> ---
>
> **From:** Mauro Morales <mmorales@usccr.gov>
> **Date:** Wednesday, July 28, 2021 at 11:30 AM
> **To:** Commissioners <Commissioners@usccr.gov>
> **Cc:**
> " <CommissionerAssistants@usccr.gov>
> **Subject:** Commissioner Appointments to the Election Assistance Commission
>
> Dear Commissioners-
>
> At the request and in consultation with the Chair, I am sending this email to start the EAC nomination process for Commissioners.
>
> Per the AI voted on during the April 30th meeting (language included below), each caucus is requested to submit two candidates for consideration by COB Friday, July 30, 2021. Once the names are submitted, OGC will conduct an ethics check to be completed by Wednesday, August 4, 2021. Each caucus will then have 24 hours to submit caucus strikes (Thursday, August 5, 2021 COB). The Chair will communicate the two names to EAC no later than Friday, August 6, 2021.
>
> Please let the Chair or I know if you have any questions or concerns.
>
> --
> AI language:

AMERICAN OVERSIGHT

Section 1.
.01 Any authority specifically granted the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Commission as a whole by majority vote.

.02 Any authority specifically granted the Staff Director of the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Staff Director.

.03 Any authority specifically granted the Chair of the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Chair.

Section 2
.02

(1) For the two (2) appointments to the U.S. Election Assistance Commission, the members appointed by Democratic authorities shall nominate two individuals who are ready, willing, and able to serve, and the members appointed by the Republican authorities shall nominate two individuals who are ready, willing, and able to serve.

(2) The members appointed by the Democratic authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Democratic authorities

(3) The members selected shall be placed in nomination and ratified in conformance with Section 1.

Mauro Morales
Staff Director
U.S. Commission on Civil Rights

AMERICAN OVERSIGHT

P: 202-376-7796| F: 202-376-7672
Mmorales@usccr.gov
http://usccr.gov/
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425

Follow Us on Twitter & Facebook:

#USCCR

AMERICAN OVERSIGHT

Date : 11/4/2021 5:15:04 PM
From : "Norma Cantu" ncantu@usccr.gov
To : "Irena Vidulovic" ividulovic@usccr.gov
Cc : "Juana Silverio" jsilverio@usccr.gov, "Debo P. Adegbile" dadegbile@usccr.gov
Subject : RE: Commissioner Appointments to the Election Assistance Commission

Thank you, Irena.
I am relieved the Commission delivered two peerless choices.
Norma

From: Irena Vidulovic <ividulovic@usccr.gov>
Sent: Thursday, November 4, 2021 3:30 PM
To: Norma Cantu <ncantu@usccr.gov>
Cc: Juana Silverio <jsilverio@usccr.gov>; Debo P. Adegbile <dadegbile@usccr.gov>
Subject: Fw: Commissioner Appointments to the Election Assistance Commission

Dear Norma,

Commissioner Adegbile would like to thank you for thinking of him for the EAC nomination. While he appreciates it, he believes that Allison Riggs and Alabama SAC Chair Jenny Carroll should be nominated instead. They both have voting bona fides and have already expressed a willingness to serve.

Thank you again,

Irena

From: Juana Silverio
Sent: Tuesday, August 3, 2021 4:30 PM
To: Irena Vidulovic; Mauro Morales; Norma Cantu
Cc: Debo P. Adegbile; Michael Yaki; David Kladney; Alec Deull
Subject: RE: Commissioner Appointments to the Election Assistance Commission

Mauro- due to new information received, please replace Leah with Ms. Allison Riggs.

Juana

AMERICAN OVERSIGHT

From: Irena Vidulovic <ividulovic@usccr.gov>
Sent: Tuesday, August 3, 2021 4:12 PM
To: Juana Silverio <jsilverio@usccr.gov>; Mauro Morales <mmorales@usccr.gov>; Norma Cantu <ncantu@usccr.gov>
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Sent: Tuesday, August 3, 2021 3:38:23 PM
To: Mauro Morales; Norma Cantu
Cc: Debo P. Adegbile; Michael Yaki; David Kladney; Irena Vidulovic; Alec Deull
Subject: RE: Commissioner Appointments to the Election Assistance Commission

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Leah Aden (Cantu and Yaki)

Allison Riggs (Adegbile and Kladney)

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Commissioner Michael Yaki

Leah Aden - https://www.naacpldf.org/about-us/staff/leah-c-aden/

Leah C. Aden

www.naacpldf.org

Leah C. Aden has served as a Deputy Director of Litigation at the NAACP Legal Defense & Educational Fund, Inc. (LDF) since October 2018, assisting in the planning, strategy, and supervision of LDF's voting rights work. In light of the upcoming post-Census redistricting cycle, Leah is leading the planning, strategy, and supervision of LDF's redistricting [...]

Thank you.

Juana

From: Mauro Morales <mmorales@usccr.gov>
Sent: Monday, August 2, 2021 11:47 AM
To: Norma V. Cantú <normavcantu@gmail.com>; Juana Silverio <jsilverio@usccr.gov>
Subject: Fwd: Commissioner Appointments to the Election Assistance Commission

FYI

Sent from my iPhone

AMERICAN OVERSIGHT

Begin forwarded message:

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Date: August 2, 2021 at 8:45:25 AM MST
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Mauro – after canvassing the Republican Commissioners, the two nominees they wish to put forward for one of the two USCCR designees for the EAC's Board of Advisors (per your email below) are:

Cleta Mitchell – Chair, Conservative Partnership Institute Election Integrity Network, and

Christian Adams – USCCR Commissioner.

From: Mauro Morales <mmorales@usccr.gov>
Date: Wednesday, July 28, 2021 at 11:30 AM
To: Commissioners <Commissioners@usccr.gov>
Cc:
" <CommissionerAssistants@usccr.gov>
Subject: Commissioner Appointments to the Election Assistance Commission

AMERICAN OVERSIGHT

Dear Commissioners-

At the request and in consultation with the Chair, I am sending this email to start the EAC nomination process for Commissioners.

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Please let the Chair or I know if you have any questions or concerns.

--

AI language:

Section 1.

.01 Any authority specifically granted the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Commission as a whole by majority vote.

.02 Any authority specifically granted the Staff Director of the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Staff Director.

AMERICAN OVERSIGHT

.03 Any authority specifically granted the Chair of the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Chair.

Section 2

.02

(1) For the two (2) appointments to the U.S. Election Assistance Commission, the members appointed by Democratic authorities shall nominate two individuals who are ready, willing, and able to serve, and the members appointed by the Republican authorities shall nominate two individuals who are ready, willing, and able to serve.

(2) The members appointed by the Democratic authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Democratic authorities

(3) The members selected shall be placed in nomination and ratified in conformance with Section 1.

Mauro Morales

Staff Director

U.S. Commission on Civil Rights

P: 202-376-7796| F: 202-376-7672

Mmorales@usccr.gov

AMERICAN OVERSIGHT

http://usccr.gov/

1331 Pennsylvania Avenue, NW Suite 1150

Washington D.C. 20425

Follow Us on Twitter & Facebook:

<image001.gif>

<image002.gif>

#USCCR

AMERICAN OVERSIGHT

Date : 8/4/2021 11:06:53 AM
From : "Juana Silverio" jsilverio@usccr.gov
To : "Irena Vidulovic" ividulovic@usccr.gov, "Alec Deull" adeull@usccr.gov
Subject : RE: Nominations for Appointment to the EAC
Attachment : image001.gif;image002.gif;

The Chair is discussing with the Rs how they want to proceed to the next step and then we'll know. Though not in the ai below- the two that will be named need a majority vote.

From: Irena Vidulovic <ividulovic@usccr.gov>
Sent: Wednesday, August 4, 2021 10:15 AM
To: Juana Silverio <jsilverio@usccr.gov>; Alec Deull <adeull@usccr.gov>
Subject: Fw: Nominations for Appointment to the EAC

Team,

Do we want to schedule a call today to discuss? Let me know when you are free.

Irena

From: Mauro Morales
Sent: Tuesday, August 3, 2021 5:36 PM
To: Commissioners
Cc: CommissionerAssistants; David Ganz
Subject: Nominations for Appointment to the EAC

Commissioners,

Pursuant to the AI voted on during the April 30th Business meeting, you have nominated the following individuals to the Election Assistance Commission (EAC):

Commissioners Cantu, Adegbile, Kladney and Yaki have nominated the following individuals to the EAC:

- Commissioner Michael Yaki;

AMERICAN OVERSIGHT

- Ms. Allison Riggs , Co-Executive Director, Southern Coalition for Social Justice.

Commissioners Adams, Gilchrist, Heriot and Kirsanow have nominated the following individuals to the EAC:

- Commissioner Christian Adams;
- Cleta Michell, Chair, Conservative Partnership Institute Election Integrity Network.

Under the AI adopted by Commissioners, the members appointed by the Democratic authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Democratic authorities. The final members selected shall be placed in nomination and ratified by a majority vote. Please inform me how you would like to proceed for a majority vote either by placing it on the agenda for the next USCCR business meeting or by a notational vote.

Mauro Morales

Staff Director

U.S. Commission on Civil Rights

P: 202-376-7796| F: 202-376-7672

Mmorales@usccr.gov

http://usccr.gov/

1331 Pennsylvania Avenue, NW Suite 1150

Washington D.C. 20425

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OVERSIGHT

OVERSTOCK

Date : 11/9/2021 2:10:38 PM
From : "Juana Silverio" jsilverio@usccr.gov
To : "Michael Yaki" MYaki@usccr.gov, "David Kladney" dkladney@usccr.gov
Cc : "Joshua Dansby" jdansby@usccr.gov, "Alec Deull" adeull@usccr.gov
Subject : FW: Commissioner Appointments to the Election Assistance Commission

Good afternoon,

Norma wanted me to make sure you both were ok with the below names before sending them over to the Rep Caucus for consideration re: our second rep on the EAC

Allison Riggs- https://southerncoalition.org/staff/allison-riggs/
Alabama SAC Chair Jenny Carroll-
https://www.congress.gov/116/meeting/house/109456/witnesses/HHRG-116-HA08-Wstate-CarrollJ-20190513.pdf

---

From: Norma Cantu <ncantu@usccr.gov>
Sent: Thursday, November 4, 2021 5:15 PM
To: Irena Vidulovic <ividulovic@usccr.gov>
Cc: Juana Silverio <jsilverio@usccr.gov>; Debo P. Adegbile <dadegbile@usccr.gov>
Subject: RE: Commissioner Appointments to the Election Assistance Commission

Thank you, Irena.
I am relieved the Commission delivered two peerless choices.
Norma

From: Irena Vidulovic <ividulovic@usccr.gov>
Sent: Thursday, November 4, 2021 3:30 PM
To: Norma Cantu <ncantu@usccr.gov>
Cc: Juana Silverio <jsilverio@usccr.gov>; Debo P. Adegbile <dadegbile@usccr.gov>
Subject: Fw: Commissioner Appointments to the Election Assistance Commission

Dear Norma,

Commissioner Adegbile would like to thank you for thinking of him for the EAC nomination. While he appreciates it, he believes that Allison Riggs and Alabama SAC Chair Jenny Carroll should be nominated instead. They both have voting bona fides and have already expressed a willingness to serve.

Thank you again,

Irena

AMERICAN OVERSIGHT

From: Juana Silverio
Sent: Tuesday, August 3, 2021 4:30 PM
To: Irena Vidulovic; Mauro Morales; Norma Cantu
Cc: Debo P. Adegbile; Michael Yaki; David Kladney; Alec Deull
Subject: RE: Commissioner Appointments to the Election Assistance Commission

Mauro- due to new information received, please replace Leah with Ms. Allison Riggs.

Juana

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Subject: Re: Commissioner Appointments to the Election Assistance Commission

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Good afternoon Mauro.

AMERICAN OVERSIGHT

The Dem caucus had a tie:

Commissioner Michael Yaki

Leah Aden (Cantu and Yaki)

Allison Riggs (Adegbile and Kladney)

The Chairwoman, in the interest of observing the deadline, is submitting the following names for EAC consideration:

Commissioner Michael Yaki

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Leah C. Aden has served as a Deputy Director of Litigation at the NAACP Legal Defense & Educational Fund, Inc. (LDF) since October 2018, assisting in the planning, strategy, and supervision of LDF's voting rights work. In light of the upcoming post-Census redistricting cycle, Leah is leading the planning, strategy, and supervision of LDF's redistricting [...]

Thank you.

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AMERICAN OVERSIGHT

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Sent: Monday, August 2, 2021 11:47 AM
To: Norma V. Cantú <normavcantu@gmail.com>; Juana Silverio <jsilverio@usccr.gov>
Subject: Fwd: Commissioner Appointments to the Election Assistance Commission

FYI

Sent from my iPhone

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> **From:** Mauro Morales <mmorales@usccr.gov>
> **Date:** August 2, 2021 at 8:45:25 AM MST
> **To:** John Mashburn <jmashburn@usccr.gov>
> **Cc:** Carissa Mulder <CMulder@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>, Alexander Heideman <aheideman@usccr.gov>
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> > Christian Adams – USCCR Commissioner.

AMERICAN OVERSIGHT

From: Mauro Morales <mmorales@usccr.gov>
Date: Wednesday, July 28, 2021 at 11:30 AM
To: Commissioners <Commissioners@usccr.gov>
Cc:
" <CommissionerAssistants@usccr.gov>
Subject: Commissioner Appointments to the Election Assistance Commission

Dear Commissioners-

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Please let the Chair or I know if you have any questions or concerns.

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AI language:

Section 1.

.01 Any authority specifically granted the Commission on Civil Rights by statute or regulation or executive order

AMERICAN OVERSIGHT

to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Commission as a whole by majority vote.

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Section 2

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(2) The members appointed by the Democratic authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Democratic authorities

(3) The members selected shall be placed in nomination and ratified in conformance with Section 1.

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Washington D.C. 20425

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<image001.gif>

<image002.gif>

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Date : 11/9/2021 4:02:53 PM
From : "Joshua Dansby" jdansby@usccr.gov
To : "Juana Silverio" jsilverio@usccr.gov
Cc : "David Kladney" dkladney@usccr.gov
Subject : RE: Commissioner Appointments to the Election Assistance Commission

Juana,

Commissioner Kladney is fine with this. Thank you.

-Joshua

From: Juana Silverio <jsilverio@usccr.gov>
Sent: Tuesday, November 9, 2021 2:11 PM
To: Michael Yaki <MYaki@usccr.gov>; David Kladney <dkladney@usccr.gov>
Cc: Joshua Dansby <jdansby@usccr.gov>; Alec Deull <adeull@usccr.gov>
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AMERICAN OVERSIGHT

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AMERICAN OVERSIGHT

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Election Integrity Network, and

Christian Adams – USCCR Commissioner.

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Date: Wednesday, July 28, 2021 at 11:30 AM
To: Commissioners <Commissioners@usccr.gov>
Cc:
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Please let the Chair or I know if you have any questions or concerns.

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AMERICAN OVERSIGHT

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Section 2

.02

(1) For the two (2) appointments to the U.S. Election Assistance Commission, the members appointed by Democratic authorities shall nominate two individuals who are ready, willing, and able to serve, and the members appointed by the Republican authorities shall nominate two individuals who are ready, willing, and able to serve.

(2) The members appointed by the Democratic authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one (1) of the two (2) individuals

AMERICAN OVERSIGHT

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(3) The members selected shall be placed in nomination and ratified in conformance with Section 1.

Mauro Morales

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Washington D.C. 20425

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<image001.gif>

<image002.gif>

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AMERICAN OVERSIGHT

Date : 11/16/2021 2:45:05 PM
From : "Mauro Morales" mmorales@usccr.gov
To : "David Ganz" dganz@usccr.gov
Subject : RE: Action Requested: EAC Representative Replacement for Commissioner Yaki

You are correct, but I am just getting out of the way and let them have their vote.

From: David Ganz
Sent: Tuesday, November 16, 2021 2:44 PM
To: Mauro Morales <mmorales@usccr.gov>
Subject: RE: Action Requested: EAC Representative Replacement for Commissioner Yaki

Another vote isn't likely necessary under the EAC Board of Advisors statute or the AI, but it is within their discretion.

From: Mauro Morales <mmorales@usccr.gov>
Sent: Tuesday, November 16, 2021 1:30 PM
To: Angelia Rorison <arorison@usccr.gov>; David Ganz <dganz@usccr.gov>
Subject: RE: Action Requested: EAC Representative Replacement for Commissioner Yaki

She'll be voted on Friday

From: Mauro Morales
Sent: Tuesday, November 16, 2021 1:29 PM
To: Angelia Rorison <arorison@usccr.gov>; David Ganz <dganz@usccr.gov>
Subject: FW: Action Requested: EAC Representative Replacement for Commissioner Yaki

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From: Norma Cantu <ncantu@usccr.gov>
Sent: Tuesday, November 16, 2021 1:14 PM
To: Mauro Morales <mmorales@usccr.gov>
Subject: FW: Action Requested: EAC Representative Replacement for Commissioner Yaki

FYI

From: Gail Heriot <gheriot@usccr.gov>
Sent: Tuesday, November 16, 2021 10:17 AM
To: Norma Cantu <ncantu@usccr.gov>
Cc: Juana Silverio <jsilverio@usccr.gov>; Peter Kirsanow <pkirsanow@usccr.gov>; J. Christian Adams <jadams@usccr.gov>; Stephen Gilchrist <sgilchrist@usccr.gov>; Alexander Heideman <aheideman@usccr.gov>; Carissa Mulder <CMulder@usccr.gov>
Subject: Re: Action Requested: EAC Representative Replacement for Commissioner Yaki

Hi Norma—Our ducks are now in order. The conservative caucus's pick is Jenny Carroll.

I apologize for the delay.

AMERICAN OVERSIGHT

Gail

Gail Heriot
Professor of Law
University of San Diego

On Nov 16, 2021, at 6:54 AM, Norma Cantu <ncantu@usccr.gov> wrote:

Dear Gail,
The deadline came and went.
Will you please contact Commissioner Kirsanow.
Norma

From: Gail Heriot <gheriot@usccr.gov>
Sent: Monday, November 15, 2021 10:26 PM
To: Norma Cantu <ncantu@usccr.gov>
Subject: Re: Action Requested: EAC Representative Replacement for Commissioner Yaki

I think a decision was made, but I haven't heard from Pete yet.

Sent from my iPhone

On Nov 15, 2021, at 5:53 PM, Norma Cantu <ncantu@usccr.gov> wrote:

Good evening,

Was a decision made by the caucus?

Thanks.

Norma

From: Norma Cantu
Sent: Wednesday, November 10, 2021 12:53:30 PM
To: Gail Heriot; Peter Kirsanow; J. Christian Adams; Stephen Gilchrist
Cc: Alexander Heideman; Carissa Mulder; John Mashburn; Thomas Simuel
Subject: Action Requested: EAC Representative Replacement for Commissioner Yaki

Dear Commissioners-

AMERICAN OVERSIGHT

In response to Commissioner Yaki recently resigning from his position on the EAC as a representative of USCCR, the Progressive Caucus is putting for 2 names for consideration. I am asking that the candidate you strike be sent to me by Monday, November 15th, 2021 by 5pm EST so that we can include the candidate's confirmation vote at our November 19th business meeting.

Allison Riggs- https://southerncoalition.org/staff/allison-riggs/

Allison Riggs - Southern Coalition for Social Justice

southerncoalition.org

Allison Riggs leads the voting rights program at the Southern Coalition for Social Justice, an organization she joined in 2009. In March of 2020, she also took over as Interim Executive Director of the organization. Her voting rights work over the last decade at SCSJ has been focused on fighting for fair redistricting plans, fighting against voter suppression, and advocating for electoral reforms that would expand access to voting.

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Alabama SAC Chair Jenny Carroll - https://www.congress.gov/116/meeting/house/109456/witnesses/HHRG-16-HA08-Wstate-CarrollJ-20190513.pdf

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Please let me know if you have any questions or concerns.

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AMERICAN OVERSIGHT

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AMERICAN OVERSIGHT

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To : "Mauro Morales" mmorales@usccr.gov
Subject : RE: Action Requested: EAC Representative Replacement for Commissioner Yaki

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Section 1.
.01 Any authority specifically granted the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Commission as a whole by majority vote.

.02 Any authority specifically granted the Staff Director of the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Staff Director.

.03 Any authority specifically granted the Chair of the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Chair.

Section 2
.02
(1) For the two (2) appointments to the U.S. Election Assistance Commission, the members appointed by Democratic authorities shall nominate two individuals who are ready, willing, and able to serve, and the members appointed by the Republican authorities shall nominate two individuals who are ready, willing, and able to serve.

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(2) The members appointed by the Democratic authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Democratic authorities

(3) The members selected shall be placed in nomination and ratified in conformance with Section 1.

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Date : 9/30/2020 2:02:55 PM
From : "John Mashburn" jmashburn@usccr.gov
To : "Christian Adams" a@electionlawcenter.com
Subject : - EAC BOA Notice of Representation
Attachment : CLhamon signed - USCCR EAC Notice of Representation Form.pdf;Commission on Civil Rights Letter.pdf;

Attached is the letter from Chair Lhamon to EAC appointing Yaki and Kladney to the EAC's Board of Advisors. Rayburn says there is no meeting of the BOA prior to current BOA representatives' terms expiring on April 13, 2021. However, USCCR could still technically remove and replace its representatives on the BOA prior to that time.

He did note that removing Yaki would create an administrative issue for the BOA since Yaki is the current Chair of the BOA -- and was recently reelected to serve as Chair again. In February, the EAC (Rayburn) will send a notice to USCCR asking whom it wants its representatives to be. As noted in the EAC letter to the USCCR (2nd attachment), if USCCR does not act to change its representatives prior to April 13, 2021, then the terms of the current USCCR representatives on the BOA (Yaki/Kladney) will be *automatically renewed*.

From: Kevin Rayburn <krayburn@eac.gov>
Date: Wednesday, September 30, 2020 at 10:52 AM
To: John Mashburn <jmashburn@usccr.gov>
Subject: [EXTERNAL] United States Commission on Civil Rights - EAC BOA Notice of Representation

> CAUTION: This email is from outside USCCR.

As requested, please find attached a copy of the most recent BOA Notice of Representation submitted by the U.S. Commission on Civil Rights as well as the letter sent by the EAC asking for the form to be completed. The current term of BOA members ends on April 13, 2021. In Q1 of 2021, I will send out new Notice of Representation forms for BOA representatives to be made for the new term.

Sincerely,

Kevin Rayburn, General Counsel
U.S. Election Assistance Commission
1335 East West Highway Suite 4300
Silver Spring, MD 20910
Cell: (202) 740-6546

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Notice of Representation
United States Election Assistance Commission
Board of Advisors

In accordance with 52 USC 20901 of the Help America Vote Act of 2002, the (U.S. Commission on Civil Rights) submits the following individual(s) as a member of the Election Assistance Commission Board of Advisors:

Designated Representative

Name:	Michael Yaki
Title:	Commissioner, U.S. Commission on Civil Rights
Address:	268 Bush Street #3333 San Francisco, CA 94104
Phone/FAX:	415-601-4008
Email:	myaki@usccr.gov
Party Affiliation:	Democratic

Designated Representative

Name:	David Kladney
Title:	Commissioner, U.S. Commission on Civil Rights
Address:	905 Joy Lake Road Reno, NV 89511
Phone/FAX:	775-849-0545
Email:	dkladney@usccr.gov
Party Affiliation:	Democratic

NAME / TITLE OF APPOINTING OFFICIAL

Print Name: Catherine Lhamon / Chair, U.S. Commission on Civil Rights

Sign Name: _____ Date: 3/22/2019

Please return the completed form via email to Clifford Tatum (Ctatum@eac.gov), facsimile transmission, at (301) 734-3108, or your notice can be mailed to: U.S. Election Assistance Commission; 1335 East West Highway, Suite 4300; Silver Spring, MD 20910.

1/2019 version

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U.S. ELECTION ASSISTANCE COMMISSION
1335 East West Highway – Suite 4300
Silver Spring, MD 20910

February 22, 2019

United States Commission on Civil Rights
Catherine E. Lhamon, Chair
1331 Pennsylvania Avenue NW
Suite 1150
Washington DC 20425
Email: Rsingla@usccr.gov

Re: U.S. Election Assistance Commission
Board of Advisors Membership Appointment

Dear Ms. Lhamon:

As you know, the Help America Vote Act of 2002 (HAVA), 52 U.S.C. 20901 et seq., created the U.S. Election Assistance Commission (EAC) and established three Advisory Boards[15] to assist the EAC with the development of Voluntary Voting System Guidelines. The Advisory Boards are primarily charged with providing advice, guidance and support to the EAC on the development of the Voluntary Voting System Guidelines.

The membership of the respective Advisory Boards is set forth in Section 213, 214 and 221[16]. Under Section 214, your organization is authorized to appoint two members to the Board of Advisors.

Please be advised that it is time to reappoint your designated representatives to the Board of Advisors. If you do not appoint someone new, your existing representatives will continue to serve and be reappointed.

Your current representatives are:

Patricia Timmons-Goodson
Michael Yaki

Each member representative serves for a period of two years unless replaced and may be reappointed if no replacement is named. The term of your member representatives will renew on April 13, 2019 with the renewal of the Advisory Board's Charter.

---

[15] Standards Board and Board of Advisors created in Section 211; and the Technical Guidelines Development Committee created in Section 221.
[16] 52 USC 20943, 52 USC 20944 and 52 USC 20961

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This year we anticipate having important discussions about voting system guidelines development, election systems as part of the nation's critical infrastructure and cyber security. Therefore, your prompt response to this letter is greatly appreciated.

Please use the enclosed Notice of Representation form to advise us of the designated representative to serve on the EAC Board of Advisors. Please return your Notice of Representation no later than March 15, 2019, as the Board will hold its annual meeting during the week of April 22, 2019.

Please return the completed form via facsimile to (301) 734-3108, Attn: Brian Newby, by email to Bnewby@eac.gov or by mail to:

U.S. Election Assistance Commission
Advisory Board
1335 East West Highway, Suite 4300
Silver Spring, MD 20910

Thank you for your attention to this matter. If we can be of assistance, please feel free to contact us at (301) 563-3937.

Sincerely,

Brian Newby
Executive Director

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Date : 8/4/2021 12:24:32 PM
From : "Mauro Morales" mmorales@usccr.gov
To : "Juana Silverio" jsilverio@usccr.gov
Cc : "Norma Cantu" ncantu@usccr.gov, "David Ganz" dganz@usccr.gov
Subject : RE: Nominations for Appointment to the EAC
Attachment : image001.gif;image002.gif;

That is a good idea and each caucus should send me their final selection. There are no real procedures since this is the first time we've done this. It would be simpler if each caucus provides me with their selection rather than each commissioner provide me their individual vote on the different candidates that I would then have to account for and tally. I shouldn't have a part of the caucus votes for the final candidates. Each caucus should make their own selection and then send it to me which I can then schedule for a final vote by all Commissioners to send to the EAC.

From: Juana Silverio <jsilverio@usccr.gov>
Sent: Wednesday, August 4, 2021 11:10 AM
To: Mauro Morales <mmorales@usccr.gov>
Cc: Norma Cantu <ncantu@usccr.gov>
Subject: RE: Nominations for Appointment to the EAC

Should we remind them to send their "strike" no latr than COB tomorrow?

From: Mauro Morales <mmorales@usccr.gov>
Sent: Tuesday, August 3, 2021 5:36 PM
To: Commissioners <Commissioners@usccr.gov>
Cc: CommissionerAssistants <CommissionerAssistants@usccr.gov>; David Ganz <dganz@usccr.gov>
Subject: Nominations for Appointment to the EAC

Commissioners,

Pursuant to the AI voted on during the April 30th Business meeting, you have nominated the following individuals to the Election Assistance Commission (EAC):

Commissioners Cantu, Adegbile, Kladney and Yaki have nominated the following individuals to the EAC:

- Commissioner Michael Yaki;
- Ms. Allison Riggs , Co-Executive Director, Southern Coalition for Social Justice.

Commissioners Adams, Gilchrist, Heriot and Kirsanow have nominated the following individuals to the EAC:

- Commissioner Christian Adams;
- Cleta Michell, Chair, Conservative Partnership Institute Election Integrity Network.

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Under the AI adopted by Commissioners, the members appointed by the Democratic authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Democratic authorities. The final members selected shall be placed in nomination and ratified by a majority vote. Please inform me how you would like to proceed for a majority vote either by placing it on the agenda for the next USCCR business meeting or by a notational vote.

Mauro Morales
Staff Director
U.S. Commission on Civil Rights
P: 202-376-7796| F: 202-376-7672
Mmorales@usccr.gov
http://usccr.gov/
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425

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OVERSTOCK

Date : 12/1/2020 1:52:36 PM
From : "John Mashburn" jmashburn@usccr.gov
To : "Carissa Mulder" carissa.mulder@gmail.com, "Christian Adams" adams@electionlawcenter.com
Cc : "Kirsanow, Peter" pkirsanow@beneschlaw.com, "Gail Heriot" gheriot@me.com, "stephen gilchrist" thegilchristassociates@gmail.com, "Alexander Heideman" aheideman@usccr.gov, "Thomas Simuel" tsimuel@usccr.gov, "Carissa Mulder" CMulder@usccr.gov
Subject : Election Assistance Commission's Bd of Advisors supposed to be Appointed in a Bipartisan in Nature

HAVA Sec. 214 requires that appointments to the Bd of Advisors be done "in a manner" that ensures the BOA will be "bipartisan in nature." So USCCR should not be sending two Dems as it two representatives to the BOA, but 1 Democrat and 1 Republican.

SEC. 214. MEMBERSHIP OF BOARD OF ADVISORS.

> (b) MANNER OF APPOINTMENTS.—Appointments shall be made to the Board of Advisors under subsection (a) **in a manner which ensures that the Board of Advisors will be bipartisan in nature** and will reflect the various geographic regions of the United States.

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Date : 12/3/2020 2:35:49 PM
From : "Alexander Heideman" aheideman@usccr.gov
To : "John Mashburn" jmashburn@usccr.gov, "John Mashburn" jkmash@comcast.net
Subject : FW: [EXTERNAL] EAC Board of Advisors

Looking over my notes and these emails from September. During my call with her, Maureen indicated that she thought that the Commissioners were not informed of the EAC appointments. I also believe she told me that she advised Catherine of the right way to make appointments and was ignored. Gail thought you might want that information for the letter.

From: Alexander Heideman <aheideman@usccr.gov>
Date: Wednesday, September 16, 2020 at 5:19 PM
To: Christian Adams <a@electionlawcenter.com>, 'Gail Heriot' <gheriot@me.com>
Cc: Carissa Mulder <CMulder@usccr.gov>, 'Peter Kirsanow' <pkirsanow@beneschlaw.com>, 'stephen gilchrist' <thegilchristassociates@gmail.com>, 'John Mashburn' <jkmash@comcast.net>, 'Thomas Simuel' <tjsimuel32@gmail.com>
Subject: Re: [EXTERNAL] EAC Board of Advisors

More from Maureen:

Alex,

I haven't found much more than what we discussed. The meeting transcripts are here (and looks like we've almost completed uploading them back to 2006): https://www.usccr.gov/calendar/transcripts.php I did do a very quick glance through the transcripts and did not find any votes for the EAC positions. I did find the email below from 2015 in which the then- Chair's special assistant asked all Commissioners who wanted to be appointed. I wasn't at USCCR for this one - I found the email in securi sync. Sorry to not be of more help. -Maureen

---

From: Juana Silverio
Sent: Wednesday, March 04, 2015 6:09 PM
To: Martin Castro; Patricia Timmons-Goodson; Roberta Achtenberg; David Kladney; Michael Yaki; Karen Narasaki; Gail Heriot; Peter Kirsanow
Cc: Sheryl Cozart; Alec Deull; Amy Royce; Kimberly Tolhurst; Jason T. Lagria; Alison Somin; Carissa Mulder
Subject: US Election Assistance Commission

I am sending on behalf of Chairman Castro. Please let him and I know if you'd be interested in representing the Commission on the U.S. EAC's Advisory Board.

Commissioners Achtenberg & Thernstrom represented us in the past. The EAC has a quorum now and would appreciate the Commission's participation.

Best,
Juana Silverio, Esq.

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From: Alexander Heideman <aheideman@usccr.gov>
Date: Wednesday, September 16, 2020 at 1:31 PM
To: Christian Adams <a@electionlawcenter.com>, 'Gail Heriot' <gheriot@me.com>
Cc: Carissa Mulder <CMulder@usccr.gov>, 'Peter Kirsanow' <pkirsanow@beneschlaw.com>, 'stephen gilchrist' <thegilchristassociates@gmail.com>, 'John Mashburn' <jkmash@comcast.net>, 'Thomas Simuel' <tjsimuel32@gmail.com>
Subject: Re: [EXTERNAL] EAC Board of Advisors

I spoke with Maureen. She said that she was not asked about these appointments in 2019, but she thought that the Commissioners had had a conversation about them.

It seems to me that these appointments were unlawful if they were not (1) made by the Commission and (2) bipartisan and geographically varied. And Google Maps says Reno (Kladney) is a short 3.5 hour drive from San Fran (Yaki).

I'll try to locate the 2015, 2013, & 2011 transcripts to see if appointments were voted on in the past.

From: Christian Adams <a@electionlawcenter.com>
Date: Wednesday, September 16, 2020 at 12:55 PM
To: 'Gail Heriot' <gheriot@me.com>, Alexander Heideman <aheideman@usccr.gov>
Cc: Carissa Mulder <CMulder@usccr.gov>, 'Peter Kirsanow' <pkirsanow@beneschlaw.com>, 'stephen gilchrist' <thegilchristassociates@gmail.com>, 'John Mashburn' <jkmash@comcast.net>, 'Thomas Simuel' <tjsimuel32@gmail.com>
Subject: RE: [EXTERNAL] EAC Board of Advisors

> CAUTION: This email is from outside USCCR.

ree with Gail. And the "appointments" did not comply with the admonition of the law that the board should be bipartisan.

From: Gail Heriot <gheriot@me.com>
Sent: Wednesday, September 16, 2020 12:15 PM
To: Alexander Heideman <aheideman@usccr.gov>
Cc: Christian Adams <a@electionlawcenter.com>; Carissa Mulder <CMulder@usccr.gov>; Peter Kirsanow <pkirsanow@beneschlaw.com>; stephen gilchrist <thegilchristassociates@gmail.com>; John Mashburn <jkmash@comcast.net>; Thomas Simuel <tjsimuel32@gmail.com>
Subject: Re: [EXTERNAL] EAC Board of Advisors

If the statute says the Commission makes the appointments, I don't see how it can be that the chair makes them. My recollection of the appointments under the Reynolds years is

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that Abby and maybe Yaki were our delegates. If there are transcripts going back that far they may show whether the Commission voted on these appointments.

On Sep 16, 2020, at 8:51 AM, Alexander Heideman <aheideman@usccr.gov> wrote:

Maureen says:

> To my knowledge, there are not any internal rules about these appointments. The practice has been that the Chair makes the appointments. (Note though that I only have records going back to 2015 for these appointments and I do not know what the practice was before 2015). The statute (52 U.S.C. 20944(a)(10)) says "Two members appointed by the United States Commission on Civil Rights." 52 U.S.C. 20944(b) says "Appointments shall be made to the Board of Advisors under subsection (a) in a manner which ensures that the Board of Advisors will be bipartisan in nature and will reflect the various geographic regions of the United States." The terms are 2 year appointments; I believe the current USCCR appointments are Yaki and Kladney, and that their terms end 4/13/2021. I provided the above information, i.e., bipartisan and geographic scope, before the 2019 appointments, though did not provide any input beyond this. I've also attached the House report for the Help American Vote Act (establishes the advisory committees) - discussion of advisory boards is on page 33.

I have a call scheduled with her at 1 pm to discuss further. Please let me know if there are any specific questions I should ask.

Alex

From: Alexander Heideman <aheideman@usccr.gov>
Date: Wednesday, September 16, 2020 at 11:02 AM
To: Christian Adams <a@electionlawcenter.com>, 'Gail Heriot' <gheriot@me.com>
Cc: Carissa Mulder <CMulder@usccr.gov>, 'Peter >, 'John Mashburn' <jkmash@comcast.net>, 'Thomas Simuel' <tjsimuel32@gmail.com>
Subject: Re: [EXTERNAL] EAC Board of Advisors

Yes, happy to.

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From: Christian Adams <a@electionlawcenter.com>
Date: Wednesday, September 16, 2020 at 11:02 AM
To: 'Gail Heriot' <gheriot@me.com>
Cc: Carissa Mulder <CMulder@usccr.gov>, 'Peter >, 'John Mashburn' <jkmash@comcast.net>, 'Thomas Simuel' <tjsimuel32@gmail.com>, Alexander Heideman <aheideman@usccr.gov>
Subject: RE: [EXTERNAL] EAC Board of Advisors

> CAUTION: This email is from outside USCCR.

ple people aren't asking her different times, can the SA's get to the bottom of this with maureen.

From: Gail Heriot <gheriot@me.com>
Sent: Wednesday, September 16, 2020 10:46 AM
To: Christian Adams <a@electionlawcenter.com>
Cc: Carissa Mulder <CMulder@usccr.gov>; Peter Kirsanow <pkirsanow@beneschlaw.com>; stephen gilchrist <thegilchristassociates@gmail.com>; John Mashburn <jkmash@comcast.net>; Thomas Simuel <tjsimuel32@gmail.com>; Alexander Heideman <aheideman@usccr.gov>
Subject: Re: [EXTERNAL] EAC Board of Advisors

I don't think there are any rules. In the absence of an explicit delegation of power, the Commission as a whole has that power. But you need to be sure it wasn't done properly. I have a vague recollection of talking about this in a meeting in the last decade. The straight shooter on the staff is Maureen Rudolph. You might want to ask her.

Gail Heriot
Professor of Law
University of San Diego

> On Sep 15, 2020, at 2:17 PM, Christian Adams <a@electionlawcenter.com> wrote:
>
> I don't know the rules for USCCR appointing ANYONE yet, but if there are no minutes showing a vote appointing them in regular business, it would seem that their "appointment" is

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void.

From: Carissa Mulder <CMulder@usccr.gov>
Sent: Tuesday, September 15, 2020 4:01 PM
To: Christian Adams <a@electionlawcenter.com>; 'Peter Kirsanow' <pkirsanow@Beneschlaw.com>; 'Gail Heriot' <gheriot@me.com>; 'stephen gilchrist' <thegilchristassociates@gmail.com>
Cc: 'John Mashburn' <jkmash@comcast.net>; 'Thomas Simuel' <tjsimuel32@gmail.com>; Alexander Heideman <aheideman@usccr.gov>
Subject: Re: [EXTERNAL] EAC Board of Advisors

Looking at the document about the appointment of the advisory board members, I think that is correct, Christian. Catherine probably appointed them without ever bringing it up.

From: Christian Adams <a@electionlawcenter.com>
Sent: Tuesday, September 15, 2020 3:55:45 PM
To: Carissa Mulder; 'Peter Kirsanow'; 'Gail Heriot'; 'stephen gilchrist'
Cc: 'John Mashburn'; 'Thomas Simuel'; Alexander Heideman
Subject: RE: [EXTERNAL] EAC Board of Advisors

> CAUTION: This email is from outside USCCR.

It probably NEVER came up in a business meeting and therefore we should, as a commission have the authority to take it up in a business meeting and appoint-anew.

From: Carissa Mulder <CMulder@usccr.gov>
Sent: Tuesday, September 15, 2020 3:34 PM
To: Christian Adams <a@electionlawcenter.com>; Peter Kirsanow <pkirsanow@Beneschlaw.com>; 'Gail Heriot' <gheriot@me.com>; 'stephen gilchrist' <thegilchristassociates@gmail.com>
>; Alexander Heideman <aheideman@usccr.gov>
Subject: Re: [EXTERNAL] EAC Board of Advisors

Good question! I had no idea the USCCR got two designees to the EAC Board of Advisors. Here's the .

From: Christian Adams <a@electionlawcenter.com>
Sent: Tuesday, September 15, 2020 3:15:28 PM
To: Peter Kirsanow; 'Gail Heriot'; 'stephen gilchrist'

AMERICAN OVERSIGHT

Cc: John Mashburn; 'Thomas Simuel'; Carissa Mulder; Alexander Heideman
Subject: [EXTERNAL] EAC Board of Advisors

CAUTION: This email is from outside USCCR.

AC commission saying that Yaki is acting absurdly and exercising power over the EAC by threatening the Pelosi pick on the EAC with removal if he doesn't do what he wants, effectively making Yaki a commissioner on the EAC on many issues. He is causing mischief I don't even detail here.

My question is how does he get UNDONE from the EAC oversight commission? How does that get revoked and replaced?

<Help America Vote Act House Report 107_329[1].pdf>

AMERICAN OVERSIGHT

Date : 12/10/2020 10:09:16 AM
From : "John Mashburn" jmashburn@usccr.gov
To : "bhovland@eac.gov" bhovland@eac.gov, "Donald Palmer" dpalmer@eac.gov
Subject : 4 USCCR Commissioners' Letter to EAC Regarding Board of Advisors Appointments
Attachment : 4 USCCR Comissioners' Letter to EAC Regarding BOA Appointments.pdf;

Dear EAC Chairman Hovlan and Vice Chairman Palmer:

Attached is a letter from 4 Commissioners of the U.S. Commission on Civil Rights regarding EAC's enforcement of the legal requirements in its authorizing statutes for making appointments to the EAC's Board of Advisors. EAC's response should be directed to USCCR Commissioners Heriot, Kirsanow, Gilchrist and Adams who joined in signing the letter. Any questions may be directed to them, or to me at jmashburn@usccr.gov (or by phone at 202-236-2617).

John K. Mashburn
Special Assistant
USCCR Commissioner J. Christian Adams

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UNITED STATES COMMISSION ON CIVIL RIGHTS

1331 PENNSYLVANIA AVENUE , NW, WASHINGTON, DC 20425 www.usccr.gov

December 10, 2020

Chair Benjamin Hovland
Vice Chair Donald Palmer
U.S. Election Assistance Commission
633 3rd Street NW, Suite 200
Washington, DC 20001

Dear Chairman Hovland and Vice Chairman Palmer:

We write as four members of the U.S. Commission on Civil Rights, and not on behalf of the Commission as a whole, regarding enforcement of the legal requirements in EAC's authorizing statutes for making appointments to the EAC's Board of Advisors.

As you know, the Help America Vote Act of 2002 (HAVA), 52 U.S.C. 2091 et seq., created the U.S. Election Assistance Commission (EAC) and established three Advisory Boards to provide advice, guidance and support to the EAC on the development of Voluntary Voting System Guidelines. In Section 214(a), the United States Commission for Civil Rights (USCCR) *as a whole* is authorized to appoint two members of the EAC's 37-member Board of Advisors (BOA). Section 214(b) requires that "appointments shall be made to the Board of Advisors under subsection (a) in a manner which ***ensures*** that the Board of Advisors will be bipartisan in nature and will reflect the various geographic regions of the United States." [*emphasis added*].

In reviewing the USCCR's current appointees to the BOA, we note that both appointees are members of the same party -- and thus are not bipartisan as required by Section 214(b) -- and that the appointments were evidently made by the Chair of the USCCR unilaterally without approval of the USCCR as a whole. In addition to the USCCR, there are 9 other national associations authorized *as a whole* to each appoint two members to the EAC's 37-member BOA and section 214(b) requires that those appointments also be done "in a manner which ensures that the Board of Advisors will be bipartisan in nature …"

A letter sent to the Chair of the USCCR from the EAC on February 22, 2019 (*attached*) advised the Chair that it was time for the USCCR to "reappoint" its "designated representatives" to the BOA under Section 214(a) and stated that if no new designees were appointed, then the existing representatives would continue to serve and be automatically reappointed. The letter then asked the Chair to send in a "Notice of Representation" form by March 15, 2019 – which was less than 3 weeks later and thus provided little time for the USCCR as a whole to approve any designees. No mention is made in the EAC's letter that the appointment power under Section 214 is provided to the USCCR as a whole, and that it is not a power delegated to the USCCR Chair alone. The EAC letter to the USCCR Chair also failed to mention that Section 214(b) requires appointments made to the Board of Advisors be done "in a manner which ***ensures*** that the Board of Advisors will be bipartisan in nature …"

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Put simply, there are significant doubts that this "appointment" was actually an appointment that followed our Commission's regular procedures for making an appointment.

In light of the unbalanced partisan way (both being of the same party) in which the current USCCR appointments were made to the BOA, we would like to know what steps, if any, the EAC takes to enforce the statutory requirements under Section 214 regarding its Board of Advisors as follows:

a) that each of the national entities allowed to appoint members to the BOA (including the USCCR) actually approves the appointment of their representatives to the BOA *as a whole* – and that the nominal head of each entity does not make the appointments unilaterally on their own authority; and

b) that the appointments from each national entity are made in a manner that "*ensures*" the BOA will be "bipartisan in nature."

Sincerely,

Gail Heriot
Commissioner

Stephen Gilchrist
Commissioner

Peter Kirsanow
Commissioner

J. Christian Adams
Commissioner

Cc: Benjamin Hovland
Chair
U.S. Election Assistance Commission

Donald Palmer
Vice Chair
U.S. Election Assistance Commission

AMERICAN OVERSIGHT

Date : 12/10/2020 10:57:23 AM
From : "John Mashburn" jmashburn@usccr.gov
To : "Gail Heriot" gheriot@usccr.gov, "Peter Kirsanow" pkirsanow@usccr.gov, "Stephen Gilchrist" sgilchrist@usccr.gov, "J. Christian Adams" jadams@usccr.gov
Cc : "Carissa Mulder" CMulder@usccr.gov, "Alexander Heideman" aheideman@usccr.gov, "Thomas Simuel" tsimuel@usccr.gov
Subject : FW: 4 USCCR Commissioners' Letter to EAC Regarding Board of Advisors Appointments
Attachment : 4 USCCR Comissioners' Letter to EAC Regarding BOA Appointments.pdf;

Just FYI – the attached letter was sent to EAC Chair Hovlan and Vice Chair Palmer this morning.

From: John Mashburn <jmashburn@usccr.gov>
Date: Thursday, December 10, 2020 at 10:09 AM
To: "bhovland@eac.gov" <bhovland@eac.gov>, Donald Palmer <dpalmer@eac.gov>
Subject: 4 USCCR Commissioners' Letter to EAC Regarding Board of Advisors Appointments

Dear EAC Chairman Hovlan and Vice Chairman Palmer:

Attached is a letter from 4 Commissioners of the U.S. Commission on Civil Rights regarding EAC's enforcement of the legal requirements in its authorizing statutes for making appointments to the EAC's Board of Advisors. EAC's response should be directed to USCCR Commissioners Heriot, Kirsanow, Gilchrist and Adams who joined in signing the letter. Any questions may be directed to them, or to me at jmashburn@usccr.gov (or by phone at 202-236-2617).

John K. Mashburn
Special Assistant
USCCR Commissioner J. Christian Adams

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UNITED STATES COMMISSION ON CIVIL RIGHTS

1331 PENNSYLVANIA AVENUE , NW, WASHINGTON, DC 20425 www.usccr.gov

December 10, 2020

Chair Benjamin Hovland
Vice Chair Donald Palmer
U.S. Election Assistance Commission
633 3rd Street NW, Suite 200
Washington, DC 20001

Dear Chairman Hovland and Vice Chairman Palmer:

We write as four members of the U.S. Commission on Civil Rights, and not on behalf of the Commission as a whole, regarding enforcement of the legal requirements in EAC's authorizing statutes for making appointments to the EAC's Board of Advisors.

As you know, the Help America Vote Act of 2002 (HAVA), 52 U.S.C. 2091 et seq., created the U.S. Election Assistance Commission (EAC) and established three Advisory Boards to provide advice, guidance and support to the EAC on the development of Voluntary Voting System Guidelines. In Section 214(a), the United States Commission for Civil Rights (USCCR) *as a whole* is authorized to appoint two members of the EAC's 37-member Board of Advisors (BOA). Section 214(b) requires that "appointments shall be made to the Board of Advisors under subsection (a) in a manner which ***ensures*** that the Board of Advisors will be bipartisan in nature and will reflect the various geographic regions of the United States." [*emphasis added*].

In reviewing the USCCR's current appointees to the BOA, we note that both appointees are members of the same party -- and thus are not bipartisan as required by Section 214(b) -- and that the appointments were evidently made by the Chair of the USCCR unilaterally without approval of the USCCR as a whole. In addition to the USCCR, there are 9 other national associations authorized *as a whole* to each appoint two members to the EAC's 37-member BOA and section 214(b) requires that those appointments also be done "in a manner which ensures that the Board of Advisors will be bipartisan in nature …"

A letter sent to the Chair of the USCCR from the EAC on February 22, 2019 (*attached*) advised the Chair that it was time for the USCCR to "reappoint" its "designated representatives" to the BOA under Section 214(a) and stated that if no new designees were appointed, then the existing representatives would continue to serve and be automatically reappointed. The letter then asked the Chair to send in a "Notice of Representation" form by March 15, 2019 – which was less than 3 weeks later and thus provided little time for the USCCR as a whole to approve any designees. No mention is made in the EAC's letter that the appointment power under Section 214 is provided to the USCCR as a whole, and that it is not a power delegated to the USCCR Chair alone. The EAC letter to the USCCR Chair also failed to mention that Section 214(b) requires appointments made to the Board of Advisors be done "in a manner which ***ensures*** that the Board of Advisors will be bipartisan in nature …"

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Put simply, there are significant doubts that this "appointment" was actually an appointment that followed our Commission's regular procedures for making an appointment.

In light of the unbalanced partisan way (both being of the same party) in which the current USCCR appointments were made to the BOA, we would like to know what steps, if any, the EAC takes to enforce the statutory requirements under Section 214 regarding its Board of Advisors as follows:

a) that each of the national entities allowed to appoint members to the BOA (including the USCCR) actually approves the appointment of their representatives to the BOA *as a whole* – and that the nominal head of each entity does not make the appointments unilaterally on their own authority; and

b) that the appointments from each national entity are made in a manner that "*ensures*" the BOA will be "bipartisan in nature."

Sincerely,

Gail Heriot
Commissioner

Stephen Gilchrist
Commissioner

Peter Kirsanow
Commissioner

J. Christian Adams
Commissioner

Cc: Benjamin Hovland
Chair
U.S. Election Assistance Commission

Donald Palmer
Vice Chair
U.S. Election Assistance Commission

AMERICAN OVERSIGHT

Date : 8/5/2021 4:14:22 PM
From : "Norma Cantu" ncantu@usccr.gov
To : "Juana Silverio" jsilverio@usccr.gov, "Mauro Morales" mmorales@usccr.gov
Cc : "David Ganz" dganz@usccr.gov
Subject : RE: Nominations for Appointment to the EAC --please convey the results simultaneously to the Commissioners.
Attachment : image001.gif;image002.gif;

Mauro will wait for the Conservative caucus and will send the results together in the same email announcement.
Norma

From: Juana Silverio <jsilverio@usccr.gov>
Sent: Thursday, August 5, 2021 3:07 PM
To: Norma Cantu <ncantu@usccr.gov>; Mauro Morales <mmorales@usccr.gov>
Cc: David Ganz <dganz@usccr.gov>
Subject: RE: Nominations for Appointment to the EAC --please convey the results simultaneously to the Commissioners.

So we are sharing the strike or the nominee we will confirm by vote?

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Cc: David Ganz <dganz@usccr.gov>
Subject: RE: Nominations for Appointment to the EAC --please convey the results simultaneously to the Commissioners.

Per David Kladney's request, I ask the Staff Director to share out the results of the caucus votes simultaneously.
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From: Mauro Morales <mmorales@usccr.gov>
Sent: Wednesday, August 4, 2021 11:25 AM
To: Juana Silverio <jsilverio@usccr.gov>
Cc: Norma Cantu <ncantu@usccr.gov>; David Ganz <dganz@usccr.gov>
Subject: RE: Nominations for Appointment to the EAC

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From: Juana Silverio <jsilverio@usccr.gov>
Sent: Wednesday, August 4, 2021 11:10 AM
To: Mauro Morales <mmorales@usccr.gov>

AMERICAN OVERSIGHT

Cc: Norma Cantu <ncantu@usccr.gov>
Subject: RE: Nominations for Appointment to the EAC

Should we remind them to send their "strike" no latr than COB tomorrow?

From: Mauro Morales <mmorales@usccr.gov>
Sent: Tuesday, August 3, 2021 5:36 PM
To: Commissioners <Commissioners@usccr.gov>
Cc: CommissionerAssistants <CommissionerAssistants@usccr.gov>; David Ganz <dganz@usccr.gov>
Subject: Nominations for Appointment to the EAC

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Mauro Morales
Staff Director
U.S. Commission on Civil Rights
P: 202-376-7796| F: 202-376-7672
Mmorales@usccr.gov
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1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425

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Date : 8/5/2021 4:16:06 PM
From : "David Ganz" dganz@usccr.gov
To : "Norma Cantu" ncantu@usccr.gov, "Juana Silverio" jsilverio@usccr.gov, "Mauro Morales" mmorales@usccr.gov
Subject : Re: Nominations for Appointment to the EAC --please convey the results simultaneously to the Commissioners.
Attachment : image002.gif;image001.gif;

I'm tracking these messages. If any issues comes up, please let me know. Thanks,

David

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Date : 8/5/2021 5:44:58 PM
From : "Mauro Morales" mmorales@usccr.gov
To : "David Ganz" dganz@usccr.gov, "Norma Cantu" ncantu@usccr.gov, "Juana Silverio" jsilverio@usccr.gov
Subject : RE: Nominations for Appointment to the EAC --please convey the results simultaneously to the Commissioners.
Attachment : image001.gif;

I agree that I will not share the selections with either caucus but send the results together in the same email announcement.

From: David Ganz <dganz@usccr.gov>
Sent: Thursday, August 5, 2021 4:16 PM
To: Norma Cantu <ncantu@usccr.gov>; Juana Silverio <jsilverio@usccr.gov>; Mauro Morales <mmorales@usccr.gov>
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Date : 8/6/2021 1:17:10 PM
From : "Carissa Mulder" CMulder@usccr.gov
To : "pkirsanow@beneschlaw.com" pkirsanow@beneschlaw.com, "Gail Heriot" gheriot@me.com, "stephen gilchrist" thegilchristassociates@gmail.com, "Christian Adams" adams@electionlawcenter.com, "Alexander Heideman" aheideman@usccr.gov, "John Mashburn" jmashburn@usccr.gov, "Thomas Simuel" tsimuel@usccr.gov
Cc : "Peter Kirsanow" pkirsanow@usccr.gov, "Gail Heriot" gheriot@usccr.gov, "Stephen Gilchrist" sgilchrist@usccr.gov, "J. Christian Adams" jadams@usccr.gov
Subject : Fw: Nominations for Appointment to the EAC
Attachment : image001.gif;image002.gif;

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Christian, you are the voting expert - do you think Yaki or Allison Riggs is a less damaging choice?

Thanks!

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Date : 8/6/2021 1:31:27 PM
From : "John Mashburn" jmashburn@usccr.gov
To : "Gail Heriot" gheriot@me.com, "Carissa Mulder" CMulder@usccr.gov
Cc : "pkirsanow@beneschlaw.com" pkirsanow@beneschlaw.com, "stephen gilchrist" thegilchristassociates@gmail.com, "Christian Adams" adams@electionlawcenter.com, "Alexander Heideman" aheideman@usccr.gov, "Thomas Simuel" tsimuel@usccr.gov, "Peter Kirsanow" pkirsanow@usccr.gov, "Gail Heriot" gheriot@usccr.gov, "Stephen Gilchrist" sgilchrist@usccr.gov, "J. Christian Adams" jadams@usccr.gov
Subject : Re: [EXTERNAL] Re: Nominations for Appointment to the EAC

Allison Riggs

https://southerncoalition.org/staff/allison-riggs/

From: Gail Heriot <gheriot@me.com>
Date: Friday, August 6, 2021 at 1:23 PM
To: Carissa Mulder <CMulder@usccr.gov>
Cc: "pkirsanow@beneschlaw.com" <pkirsanow@beneschlaw.com>, stephen gilchrist <thegilchristassociates@gmail.com>, Christian Adams <adams@electionlawcenter.com>, Alexander Heideman <aheideman@usccr.gov>, John Mashburn <jmashburn@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>, Peter Kirsanow <pkirsanow@usccr.gov>, Gail Heriot <gheriot@usccr.gov>, Stephen Gilchrist <sgilchrist@usccr.gov>, "J. Christian Adams" <jadams@usccr.gov>
Subject: [EXTERNAL] Re: Nominations for Appointment to the EAC

> CAUTION: This email is from outside USCCR.

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Gail Heriot
Professor of Law
University of San Diego

> On Aug 6, 2021, at 1:17 PM, Carissa Mulder <CMulder@usccr.gov> wrote:
>
> Hi everyone,

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<image001.gif>
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From : "John Mashburn" jmashburn@usccr.gov
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Subject : Re: [EXTERNAL] Re: Nominations for Appointment to the EAC

Yes – better her than Yaki.

From: stephen gilchrist <thegilchristassociates@gmail.com>
Date: Friday, August 6, 2021 at 1:51 PM
To: John Mashburn <jmashburn@usccr.gov>
Cc: Gail Heriot <gheriot@me.com>, Carissa Mulder <CMulder@usccr.gov>, Peter Kirsanow <pkirsanow@beneschlaw.com>, Christian Adams <adams@electionlawcenter.com>, Alexander Heideman <aheideman@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>, Peter Kirsanow <pkirsanow@usccr.gov>, Gail Heriot <gheriot@usccr.gov>, Stephen Gilchrist <sgilchrist@usccr.gov>, "J. Christian Adams" <jadams@usccr.gov>
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>
> https://southerncoalition.org/staff/allison-riggs/
>
> ---
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From: Mauro Morales
Sent: Tuesday, August 3, 2021 5:36 PM
To: Commissioners
Cc: CommissionerAssistants; David Ganz
Subject: Nominations for Appointment to the EAC

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AMERICAN OVERSIGHT

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http://usccr.gov/
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425

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<image001.gif>
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#USCCR

AMERICAN OVERSIGHT

Date : 8/9/2021 9:28:31 AM
From : "Carissa Mulder" CMulder@usccr.gov
To : "Gail Heriot" gheriot@usccr.gov, "stephen gilchrist" thegilchristassociates@gmail.com
Cc : "Christian Adams" adams@electionlawcenter.com, "Gail Heriot" gheriot@me.com, "John Mashburn" jmashburn@usccr.gov, "Peter Kirsanow" pkirsanow@Beneschlaw.com, "Alexander Heideman" aheideman@usccr.gov, "Thomas Simuel" tsimuel@usccr.gov, "Peter Kirsanow" pkirsanow@usccr.gov, "Stephen Gilchrist" sgilchrist@usccr.gov, "J. Christian Adams" jadams@usccr.gov
Subject : Re: [EXTERNAL] Re: Nominations for Appointment to the EAC

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Sent: Monday, August 9, 2021 8:55:45 AM
To: stephen gilchrist
Cc: Christian Adams; Gail Heriot; John Mashburn; Carissa Mulder; Peter Kirsanow; Alexander Heideman; Thomas Simuel; Peter Kirsanow; Stephen Gilchrist; J. Christian Adams
Subject: Re: [EXTERNAL] Re: Nominations for Appointment to the EAC

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Professor of Law
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AMERICAN OVERSIGHT

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Kirsanow <pkirsanow@usccr.gov>, Gail Heriot <gheriot@usccr.gov>, Stephen Gilchrist <sgilchrist@usccr.gov>, "J. Christian Adams" <jadams@usccr.gov>
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Subject : Re: [EXTERNAL] Re: Nominations for Appointment to the EAC

Pete is available.

From: Gail Heriot
Sent: Monday, August 9, 2021 9:33:52 AM
To: Carissa Mulder
Cc: stephen gilchrist; Christian Adams; Gail Heriot; John Mashburn; Peter Kirsanow; Alexander Heideman; Thomas Simuel; Peter Kirsanow; Stephen Gilchrist; J. Christian Adams
Subject: Re: [EXTERNAL] Re: Nominations for Appointment to the EAC

I think we're all willing to defer to Christian on this. But a meeting is still useful to hear from him if 11:00 works. I'm sure it will be brief.

Sent from my iPhone

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notational vote or arrange for it to be voted on at the August business meeting.

Christian, you are the voting expert - do you think Yaki or Allison Riggs is a less damaging choice?

Thanks!

From: Mauro Morales
Sent: Tuesday, August 3, 2021 5:36 PM
To: Commissioners
Cc: CommissionerAssistants; David Ganz
Subject: Nominations for Appointment to the EAC

Commissioners,

Pursuant to the AI voted on during the April 30th Business meeting, you have nominated the following individuals to the Election Assistance Commission (EAC):

Commissioners Cantu, Adegbile, Kladney and Yaki have nominated the following individuals to

AMERICAN OVERSIGHT

the EAC:

- Commissioner Michael Yaki;
- Ms. Allison Riggs , Co-Executive Director, Southern Coalition for Social Justice.

Commissioners Adams, Gilchrist, Heriot and Kirsanow have nominated the following individuals to the EAC:

- Commissioner Christian Adams;
- Cleta Michell, Chair, Conservative Partnership Institute Election Integrity Network.

Under the AI adopted by Commissioners, the members appointed by the Democratic authorities shall select one (1) of the two (2) individuals nominated by the members appointed

AMERICAN OVERSIGHT

by the Republican authorities, and the members appointed by the Republican authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Democratic authorities. The final members selected shall be placed in nomination and ratified by a majority vote. Please inform me how you would like to proceed for a majority vote either by placing it on the agenda for the next USCCR business meeting or by a notational vote.

Mauro Morales

Staff Director

U.S. Commission on Civil Rights

P: 202-376-7796| F: 202-376-7672

Mmorales@usccr.gov

http://usccr.gov/

1331 Pennsylvania Avenue, NW Suite 1150

Washington D.C. 20425

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<image001.gif>

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AMERICAN OVERSIGHT

Date : 8/9/2021 9:33:53 AM
From : "Gail Heriot" gheriot@usccr.gov
To : "Carissa Mulder" CMulder@usccr.gov
Cc : "stephen gilchrist" thegilchristassociates@gmail.com, "Christian Adams" adams@electionlawcenter.com, "Gail Heriot" gheriot@me.com, "John Mashburn" jmashburn@usccr.gov, "Peter Kirsanow" pkirsanow@beneschlaw.com, "Alexander Heideman" aheideman@usccr.gov, "Thomas Simuel" tsimuel@usccr.gov, "Peter Kirsanow" pkirsanow@usccr.gov, "Stephen Gilchrist" sgilchrist@usccr.gov, "J. Christian Adams" jadams@usccr.gov
Subject : Re: [EXTERNAL] Re: Nominations for Appointment to the EAC

I think we're all willing to defer to Christian on this. But a meeting is still useful to hear from him if 11:00 works. I'm sure it will be brief.

Sent from my iPhone

> On Aug 9, 2021, at 9:28 AM, Carissa Mulder <CMulder@usccr.gov> wrote:
>
> I'm happy to set it up, but I don't know if Pete is available. I think he will defer to Christian on this.
>
> ---
>
> **From:** Gail Heriot
> **Sent:** Monday, August 9, 2021 8:55:45 AM
> **To:** stephen gilchrist
> **Cc:** Christian Adams; Gail Heriot; John Mashburn; Carissa Mulder; Peter Kirsanow; Alexander Heideman; Thomas Simuel; Peter Kirsanow; Stephen Gilchrist; J. Christian Adams
> **Subject:** Re: [EXTERNAL] Re: Nominations for Appointment to the EAC
>
> Should we do a zoom at 11:00 ET?
>
> Gail Heriot
> Professor of Law
> University of San Diego
>
> > On Aug 8, 2021, at 10:45 PM, stephen gilchrist <thegilchristassociates@gmail.com> wrote:
> >
> > I can do tomorrow but would have a window around 11am on.
> >
> > On Sun, Aug 8, 2021, 10:37 PM Gail Heriot <gheriot@usccr.gov> wrote:
> > > I am available tomorrow and more or less on Eastern time (still in Richmond).

AMERICAN OVERSIGHT

Gail Heriot
Professor of Law
University of San Diego

> On Aug 8, 2021, at 10:34 PM, Christian Adams <adams@electionlawcenter.com> wrote:
>
> CAUTION: This email is from outside USCCR.
>
> sure. Riggs is a nonstarter with me. she is a brilliant pick on thier part because they know my history with her. they know she us wholly unacceptable.
>
> -------- Original message --------
> From: Gail Heriot <gheriot@me.com>
> Date: 8/8/21 5:39 PM (GMT-05:00)
> To: Christian Adams <adams@electionlawcenter.com>
> Cc: John Mashburn <jmashburn@usccr.gov>, stephen gilchrist <thegilchristassociates@gmail.com>, Carissa >, Alexander Heideman <aheideman@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>, Peter Kirsanow <pkirsanow@usccr.gov>, Gail Heriot <gheriot@usccr.gov>, Stephen Gilchrist <sgilchrist@usccr.gov>, "J. Christian Adams" <jadams@usccr.gov>
> Subject: Re: [EXTERNAL] Re: Nominations for Appointment to the EAC
>
> Should we have a caucus zoom tomorrow about this?
>
> Gail Heriot
> Professor of Law
> University of San Diego
>
> > On Aug 8, 2021, at 4:20 PM, Christian Adams <adams@electionlawcenter.com> wrote:
> >
> > sorry, just returning.
> >
> > they picked Allison Riggs for a reason. I can explain offline but there is no way I will be part of giving her a single thing.i would rather

AMERICAN OVERSIGHT

work with Yaki

-------- Original message --------
From: Gail Heriot <gheriot@me.com>
Date: 8/6/21 3:13 PM (GMT-05:00)
To: John Mashburn <jmashburn@usccr.gov>
Cc: stephen gilchrist <thegilchristassociates@gmail.com>, Carissa Mulder <CMulder@usccr.gov>, Peter Kirsanow <pkirsanow@beneschlaw.com>, Christian Adams <adams@electionlawcenter.com>, Alexander Heideman <aheideman@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>, Peter Kirsanow <pkirsanow@usccr.gov>, Gail Heriot <gheriot@usccr.gov>, Stephen Gilchrist <sgilchrist@usccr.gov>, "J. Christian Adams" <jadams@usccr.gov>
Subject: Re: [EXTERNAL] Re: Nominations for Appointment to the EAC

I am willing to go with Christian's recommendation on this UNLESS he thinks it's a close case. If he thinks it's a close case AND IF we have reason to believe that the Progressives vetoed Cleta and not Christian, THEN I think we should consider a bit of reciprocity and let Yaki have the job. My impression is that he wants it. If it's really close to six of one half dozen of the other, pleasing him has its benefits.

Of course, so far the evidence is running against the possibility that the Progressives vetoed Cleta and not Christian. If they had vetoed Cleta, my guess is that they would have wanted us to know that. Nevertheless, if this is a close case, it would be a good idea to try to find out what the Progressives did.

Gail Heriot
Professor of Law
University of San Diego

> On Aug 6, 2021, at 1:54 PM, John Mashburn <jmashburn@usccr.gov> wrote:

AMERICAN OVERSIGHT

Yes – better her than Yaki.

From:
>
Date: Friday, August 6, 2021 at 1:51 PM
To: John Mashburn <jmashburn@usccr.gov>
Cc: Gail Heriot <gheriot@me.com>, Carissa Mulder <CMulder@usccr.gov>, Peter Kirsanow <pkirsanow@beneschlaw.com>, Christian Adams <adams@electionlawcenter.com>, Alexander Heideman <aheideman@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>, Peter Kirsanow <pkirsanow@usccr.gov>, Gail Heriot <gheriot@usccr.gov>, Stephen Gilchrist <sgilchrist@usccr.gov>, "J. Christian Adams" <jadams@usccr.gov>
Subject: Re: [EXTERNAL] Re: Nominations for Appointment to the EAC

CAUTION: This email is from outside USCCR.

On Fri, Aug 6, 2021, 1:31 PM John Mashburn <jmashburn@usccr.gov> wrote:

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Allison Riggs

https://southerncoalition.org/staff/allison-iggs/

From: Gail Heriot <gheriot@me.com>
Date: Friday, August 6, 2021 at 1:23 PM
To: Carissa Mulder <CMulder@usccr.gov>
Cc: "pkirsanow@beneschlaw.com" <pkirsanow@beneschlaw.com>, >, Christian Adams <adams@electionlawcenter.com>, Alexander Heideman <aheideman@usccr.gov>, John Mashburn <jmashburn@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>, Peter Kirsanow <pkirsanow@usccr.gov>, Gail Heriot <gheriot@usccr.gov>, Stephen Gilchrist <sgilchrist@usccr.gov>, "J. Christian Adams" <jadams@usccr.gov>
Subject: [EXTERNAL] Re: Nominations for Appointment to the EAC

CAUTION: This email is from outside USCCR.

they vetoed. Yaki at least has an incentive to tell us if it's Cleta.

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If it is Cleta, such that Christian will be the appointee, it might be seen as accommodating to let Yaki be re-appointed. If he declines to say, that will be evidence that they vetoed Christian.

Gail Heriot

Professor of Law

University of San Diego

> On Aug 6, 2021, at 1:17 PM, Carissa > wrote:
>
> Hi everyone,
>
> Mauro emailed and asked if the conservative commissioners have selected their EAC nominee. He said the progressives have notified him of their selection, and once we notify him of ours, he will circulate either a notational vote or arrange for it to be voted on at the August business meeting.
>
> Christian, you are the voting expert - do you think Yaki or Allison Riggs is a less damaging

AMERICAN OVERSIGHT

choice?

Thanks!

From: Mauro Morales
Sent: Tuesday, August 3, 2021 5:36 PM
To: Commissioners
Cc: CommissionerAssistants; David Ganz
Subject: Nominations for Appointment to the EAC

Commissioners,

Pursuant to the AI voted on during the April 30th Business meeting, you have nominated the following individuals to the Election Assistance Commission (EAC):

Commissioners Cantu, Adegbile, Kladney and Yaki have nominated the following individuals to the

AMERICAN OVERSIGHT

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Commissioners Adams, Gilchrist, Heriot and Kirsanow have nominated the following individuals to the EAC:

- Commissioner Christian Adams;
- Cleta Michell, Chair, Conservative Partnership Institute Election Integrity Network.

Under the AI adopted by

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Commissioners, the members appointed by the Democratic authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Democratic authorities. The final members selected shall be placed in nomination and ratified by a majority vote. Please inform me how you would like to proceed for a majority vote either by placing it on the agenda for the next USCCR business meeting or by a notational vote.

Mauro Morales

Staff Director

U.S. Commission on Civil Rights

AMERICAN OVERSIGHT

P: 202-376-7796|
F: 202-376-7672

Mmorales@usccr.gov

http://usccr.gov/

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Pennsylvania
Avenue, NW Suite
1150

Washington D.C.
20425

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<image002.gif>

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Date : 8/9/2021 1:01:44 PM
From : "Irena Vidulovic" ividulovic@usccr.gov
To : "Debo P. Adegbile" dadegbile@usccr.gov, "Adegbile, Debo" Debo.Adegbile@wilmerhale.com
Cc : "Zervoudis, Flor" Flor.Zervoudis@wilmerhale.com
Subject : UPDATED TO DO LIST

Adegbile,

Looking forward to our meeting:

1. Financial Disclosure Form
2. EAC Submissions (we submitted Cleta as a caucus)
3. Senator Schatz request fro Fines and Fees (please review)
4. Written Documents from Senator Warren's Office (this week)
5. August Business Meeting: Bail Reform vote + SAC's

Irena Vidulovic
Special Assistant to Commissioner Debo P. Adegbile
U.S. Commission on Civil Rights
M: 202-591-9969
ividulovic@usccr.gov
http://usccr.gov/
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425

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Date : 1/13/2021 3:40:25 PM
From : "Pilar McLaughlin" pmclaughlin@usccr.gov
To : "Kevin Rayburn" KRayburn@eac.gov
Cc : "Mauro Morales" mmorales@usccr.gov
Subject : RE: EAC Board of Advisors - USCCR Appointees

Hi Kevin:

I've copied our acting General Counsel, Mauro Morales, on my response. Let me see when he is available to discuss.

Thank you,
Pilar

From: Kevin Rayburn <KRayburn@eac.gov>
Sent: Wednesday, January 13, 2021 1:08 PM
To: Pilar McLaughlin <pmclaughlin@usccr.gov>
Subject: [EXTERNAL] EAC Board of Advisors - USCCR Appointees

> CAUTION: This email is from outside USCCR.

Good Afternoon Ms. McLaughlin,

I am the General Counsel for the U.S. Election Assistance Commission, and we recently received the attached correspondence from 4 of the Commissioners of USCCR. I am reaching out to see if you have any time tomorrow (Jan 14) or Friday (Jan 15) to briefly discuss the letter and the USCCR process of selecting its two statutory appointments to our Board of Advisors. My availability is below:

Thursday January 14: (8AM – Noon), (2:30PM – 6:00PM)
Friday January 15: All day

I don't anticipate needing more than 15 minutes of your time. I look forward to hearing back from you.

Sincerely,

Kevin Rayburn, General Counsel
U.S. Election Assistance Commission
Mobile: (202) 740-6546

AMERICAN OVERSIGHT

Date : 1/14/2021 10:43:53 AM
From : "Mauro Morales" mmorales@usccr.gov
To : "Kevin Rayburn" KRayburn@eac.gov, "Pilar McLaughlin" pmclaughlin@usccr.gov
Subject : RE: EAC Board of Advisors - USCCR Appointees
Attachment : image001.gif;image002.gif;

Mr. Rayburn,

I am available to speak to you today. As Staff Director of USCCR, I am the head of agency and in the absence of a General Counsel , I serve as the agency acting General Counsel.

How does 3 pm work for you?

Mauro Morales
Staff Director
U.S. Commission on Civil Rights
P: 202-376-7796| F: 202-376-7672
Mmorales@usccr.gov
http://usccr.gov/
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425

Follow Us on Twitter & Facebook:

From: Kevin Rayburn <KRayburn@eac.gov>
Sent: Wednesday, January 13, 2021 3:46 PM
To: Pilar McLaughlin <pmclaughlin@usccr.gov>; Mauro Morales <mmorales@usccr.gov>
Subject: [EXTERNAL] FW: EAC Board of Advisors - USCCR Appointees

> CAUTION: This email is from outside USCCR.

Thank you. I have attached the letter I referenced as well as prior correspondence between the EAC and USCCR for your awareness.

Sincerely,

Kevin Rayburn, General Counsel
U.S. Election Assistance Commission
Mobile: (202) 740-6546

From: Pilar McLaughlin <pmclaughlin@usccr.gov>
Sent: Wednesday, January 13, 2021 3:40 PM
To: Kevin Rayburn <KRayburn@eac.gov>

AMERICAN OVERSIGHT

Cc: Mauro Morales <mmorales@usccr.gov>
Subject: RE: EAC Board of Advisors - USCCR Appointees

Hi Kevin:

I've copied our acting General Counsel, Mauro Morales, on my response. Let me see when he is available to discuss.

Thank you,
Pilar

From: Kevin Rayburn <KRayburn@eac.gov>
Sent: Wednesday, January 13, 2021 1:08 PM
To: Pilar McLaughlin <pmclaughlin@usccr.gov>
Subject: [EXTERNAL] EAC Board of Advisors - USCCR Appointees

> CAUTION: This email is from outside USCCR.

Good Afternoon Ms. McLaughlin,

I am the General Counsel for the U.S. Election Assistance Commission, and we recently received the attached correspondence from 4 of the Commissioners of USCCR. I am reaching out to see if you have any time tomorrow (Jan 14) or Friday (Jan 15) to briefly discuss the letter and the USCCR process of selecting its two statutory appointments to our Board of Advisors. My availability is below:

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I don't anticipate needing more than 15 minutes of your time. I look forward to hearing back from you.

Sincerely,

Kevin Rayburn, General Counsel
U.S. Election Assistance Commission
Mobile: (202) 740-6546

AMERICAN OVERSIGHT

OVERSIGHT

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Date : 1/21/2021 1:19:03 PM
From : "Mauro Morales" mmorales@usccr.gov
To : "Kevin Rayburn" KRayburn@eac.gov
Cc : "Pilar McLaughlin" pmclaughlin@usccr.gov
Subject : EAC Board of Advisors - USCCR Appointees
Attachment : image001.gif;image002.gif;

Kevin,

Thank you for our phone call last week about the letter you received from Commissioners, Adams, Heriot, Kirsanow and Gilchrist.

I wish you advise you that should ignore the letter and not respond in any manner. The use of Commission letterhead and office titles in communication is entirely inappropriate and unauthorized. These Commissioners are aware of the prohibition of using official letterhead and have been admonished about its use on several occasions.

Per our Administrative Instruction AI-9, only the Chair and Staff Director are the official spokespersons of the Commission. Letters submitted to anyone or any organization that have not been presented to the Commission for a vote and passed, do not represent the official position of the Commission and therefore are not permitted to be sent on Commission letterhead. The use of Commission letterhead to express personal opinions of Commissioners creates confusion as to the Commission's official position. Because the Commission's mission is to inform the President, Congress, and the public on the development of national civil rights policy, it is imperative that our constituents and stakeholders know where we stand on those issues. Commissioners, through improper use of the Commission's letterhead, erode constituent and stakeholder trust in our organization and create confusion as to our official position.

From an ethics standpoint, the unauthorized use of Commission letterhead is a violation of the Standards of Ethical Conduct for Employees in the Executive Branch (which apply to Special Government Employees). Specifically, unauthorized use of Commission letterhead violates 5 C.F.R. § 2635.702(b), Appearance of Governmental Sanction, and 5 C.F.R. § 2635.704, Use of Government Property. Congress and oversight agencies have repeatedly reprimanded the Commission on Commissioner's misuse of letterhead. The Senate, in its 2015 report of the Commission's authorization bill, instructed Commissioners not to use official letterhead when communicating their personal opinion. See S. Rep. No. 114-66 (June 16, 2015). Additionally, both the Government Accountability Office and the Office of Government Ethics have previously commented on the misuse of title by members of the Commission. See GAO Report 15-92, U.S. Commission on Civil Rights, Management Improvements Are Needed to Better Achieve Its Mission (February 2015) at 19-23 (discussing that the misuse of letterhead by individual Commissioners has confused external organizations and jeopardized the Commission's effectiveness); see also Office of Government Ethics Report No. 15-04, Ethics Program Review, U.S. Commission on Civil Rights (November 2014) at 17-18 (noting that a "Commissioner cannot use his/her official title, the agency seal, agency letterhead or otherwise leave a third party to think that the speaking or writing has the sanction of the Commission.").

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The letter you received should be treated as though it was sent in the personal capacity of the public. It carries no significance whatsoever for Commission communication.

If you any additional have questions about the letter you received please contact or our senior attorney advisor Ms. Pilar Velasquez-McLaughlin. Thank you.

Mauro Morales
Staff Director
U.S. Commission on Civil Rights
P: 202-376-7796| F: 202-376-7672
Mmorales@usccr.gov
http://usccr.gov/
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425

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Date : 3/5/2021 3:45:20 PM
From : "Mauro Morales" mmorales@usccr.gov
To : "Norma Cantu" ncantu@usccr.gov
Cc : "David Ganz" dganz@usccr.gov
Subject : FW: EAC Board of Advisors Membership Appointments
Attachment : EAC Letter to USCCR re Board of Advisors.pdf;Notice-of-Representation-Form-Board-Advisors-2021.pdf;

Norma,

I do not recall if I already sent this to you. I apologize if I already sent it. I cc'd our GC David Ganz in case you wish to discuss further.

Mauro

From: Kevin Rayburn <KRayburn@eac.gov>
Sent: Friday, March 5, 2021 11:14 AM
To: Mauro Morales <mmorales@usccr.gov>
Subject: [EXTERNAL] EAC Board of Advisors Membership Appointments

> CAUTION: This email is from outside USCCR.

Please find attached correspondence from the U.S. Election Assistance Commission regarding your organization's appointments to the EAC Board of Advisors. Also included is a Notice of Representation Form. We ask that you please return the completed form to krayburn@eac.gov by March 26, 2021. Let me know if you have any questions.

Sincerely,

Kevin Rayburn, General Counsel
U.S. Election Assistance Commission
Mobile: (202) 740-6546

AMERICAN OVERSIGHT

U.S. Election Assistance Commission

633 3rd Street NW, Suite 200
Washington, DC 20001

March 5, 2021

United States Commission on Civil Rights
Mauro Morales, Staff Director
1331 Pennsylvania Ave., NW, STE 1150
Washington, D.C. 20425
mmorales@usccr.gov

Re: U.S. Election Assistance Commission
Board of Advisors Membership Appointment

Dear Mr. Morales,

As you are aware, the Help America Vote Act of 2002 (HAVA) created the U.S. Election Assistance Commission (EAC) and established three advisory boards to assist the EAC: Board of Advisors, Standards Board, and Technical Guidelines Development Committee. The advisory boards are primarily charged with providing advice, guidance, and support to the EAC on the ongoing development of the Voluntary Voting System Guidelines (VVSG).

Under Section 214 of HAVA, your organization is authorized to appoint two members to the Board of Advisors. The Board of Advisors Charter and Bylaws govern the advisory board.

Please be advised that your designated representatives' two-year terms to the Board of Advisors expire on April 13, 2021. You can either reappoint your current representative(s) or appoint new representative(s) for a new two-year term. In compliance with HAVA, please make appointments "in a manner which ensures that the Board of Advisors will be bipartisan in nature and will reflect the various geographic regions of the United States." 52 U.S.C § 20944(b).

Your current representatives are:

Michael Yaki

David Kladney

The new term of your member representatives will begin on April 13, 2021 coinciding with the renewal of the Board of Advisor's Charter.

Please use the enclosed Notice of Representation form to advise us of your designated representatives to serve on the EAC Board of Advisors for the upcoming two-year term. **Please return this completed form by email to krayburn@eac.gov no later than March 26, 2021**.

While the EAC recently adopted VVSG 2.0, we are committed to an agile process that includes continually working with our advisory boards to identify enhancements to the VVSG. The

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usability, accessibility, and security of voting systems continue to be of critical importance, and recommendations from the advisory boards are as imperative as ever. Therefore, your prompt response to this letter is greatly appreciated.

Thank you for your attention to this matter. If we can be of assistance, please feel free to contact us at 202-740-6546 or krayburn@eac.gov.

Sincerely,

Mona Harrington

Mona Harrington
Executive Director
U.S. Election Assistance Commission

AMERICAN OVERSIGHT

Notice of Representation
United States Election Assistance Commission
Board of Advisors

In accordance with 52 U.S.C. § 20944 of the Help America Vote Act of 2002, your office submits the following individual(s) as a member of the Election Assistance Commission Board of Advisors:

Designated Representative

Name: _____

Title: _____

Address: _____

_____

Phone: _____

Email: _____

Party Affiliation: _____

Designated Representative

Name: _____

Title: _____

Address: _____

_____

Phone: _____

Email: _____

Party Affiliation: _____

Name and Title of Appointing Official

Print Name: _____

Print Title: _____

Signature: _____ Date: _____

Please return the completed form via email to EAC General Counsel Kevin Rayburn (krayburn@eac.gov).

AMERICAN OVERSIGHT

Date : 8/17/2021 10:08:20 AM
From : "Mauro Morales" mmorales@usccr.gov
To : "Juana Silverio" jsilverio@usccr.gov
Subject : RE: EAC Final Selections
Attachment : image001.gif;image002.gif;

I am happy to send it out. However, as you are aware a single objection from a Commissioner to the holding of a notional vote prevents it from occurring. Usually, the Commissioner requesting the notational vote confirms with the other Commissioners or SA's that there is no objection to holding the vote by notation. Otherwise issuing the ballot is an exercise in futility. Nevertheless, I can proceed forward if this is what you wish.

From: Juana Silverio <jsilverio@usccr.gov>
Sent: Tuesday, August 17, 2021 8:34 AM
To: Mauro Morales <mmorales@usccr.gov>
Subject: Fw: EAC Final Selections

Good morning Mauro.

The chair mentioned last week that she wanted a notational vote which is why we did not add it to the agenda.

I understand you were on leave last week. Is it possible for you to send out the notice today so that we can circulate the notational vote? I'll also confirm with the Chair as we are a few days away from biz mtg.

Thanks.
Juana
--
Juana Silverio (she/her/ella)
Special Assistant to Commissioner Norma V. Cantú
U.S. Commission on Civil Rights
E: jsilverio@usccr.gov
http://usccr.gov/
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425
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From: Norma Cantu
Sent: Tuesday, August 10, 2021 5:52:30 PM
To: Mauro Morales
Cc: David Ganz; Juana Silverio
Subject: RE: EAC Final Selections

Dear Mauro,
Thank you for the news. Each caucus has performed its duty under the AI.
I see no need to add this to the business meeting.

AMERICAN OVERSIGHT

Notational vote will suffice.
Norma

From: Mauro Morales <mmorales@usccr.gov>
Sent: Tuesday, August 10, 2021 1:58 PM
To: Commissioners <Commissioners@usccr.gov>
Cc: CommissionerAssistants <CommissionerAssistants@usccr.gov>; David Ganz <dganz@usccr.gov>
Subject: EAC Final Selections

Commissioners,

Pursuant to the AI voted on during the April 30th Business meeting, I received the following names for appointment the Election Assistance Commission (EAC):

Commissioners Cantu, Adegbile, Kladney and Yaki have selected for appointment to the EAC:

- Cleta Michell, Chair, Conservative Partnership Institute Election Integrity Network.

Commissioners Adams, Gilchrist, Heriot and Kirsanow have selected for appointment to the EAC:

- Commissioner Michael Yaki;

Under the AI adopted by Commissioners, these two members selected shall be placed in nomination and ratified by a majority vote. Please inform me how you would like to proceed for a majority vote either by placing it on the agenda for the next USCCR business meeting or by a notational vote. Thank you.

Mauro Morales
Staff Director
U.S. Commission on Civil Rights
P: 202-376-7796| F: 202-376-7672
Mmorales@usccr.gov
http://usccr.gov/
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425

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Date : 3/8/2021 9:46:56 AM
From : "Pilar McLaughlin" pmclaughlin@usccr.gov
To : "Sheryl Cozart" sccozart@usccr.gov
Subject : Fwd: Chairperson EAC appointment authority
Attachment : image001.gif;image002.gif;

Sheryl:

Do you have any info on the commission's appointments to the Election Assistance Commission, Board of Advisors in 2017 and/or 2019? See David's question below.

There were a couple years (2010 and 2014) where I found discussion of the appointments in business meeting transcripts. Can't find anything about these appointments for 2016 and 2019. Thoughts you might know.

Get Outlook for iOS

From: pmclaughlin@usccr.gov <pmclaughlin@usccr.gov>
Sent: Monday, March 8, 2021 9:40 AM
To: David Ganz
Subject: Re: Chairperson EAC appointment authority

Not in the business meeting transcripts. I'll ask Sheryl.

Get Outlook for iOS

From: David Ganz <dganz@usccr.gov>
Sent: Monday, March 8, 2021 9:40:02 AM
To: Pilar McLaughlin <pmclaughlin@usccr.gov>
Subject: Re: Chairperson EAC appointment authority

Great work.

Any info on the 2019 or even 2017 appointments? Maybe Sheryl was around for them.

From: Pilar McLaughlin <pmclaughlin@usccr.gov>
Sent: Monday, March 8, 2021 9:10:15 AM
To: David Ganz <dganz@usccr.gov>
Subject: Chairperson EAC appointment authority

See the attached for our conversation today with Cantú.

Pilar Velasquez McLaughlin
Senior Counsel, Office of the General Counsel
U.S. Commission on Civil Rights
1331 Pennsylvania Avenue, NW Suite 1150

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Washington D.C. 20425
https://www.usccr.gov/

Email: pmclaughlin@usccr.gov
Direct: 703.855.8866

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Date : 3/8/2021 10:25:43 AM
From : "Sheryl Cozart" sccozart@usccr.gov
To : "Pilar McLaughlin" pmclaughlin@usccr.gov
Subject : RE: Chairperson EAC appointment authority
Attachment : image001.gif;image002.gif;

As I recall, both my Vice Chair Timmons-Goodson and Michael Yaki were appointed during my time. I don't know about 2019. It is not surprising that you would not find discussion about them in business meeting transcripts. In my opinion the EAC was not very active. As I recall, my boss (Vice Chair) meetings attended twice a year. You might want to reach out to Yaki's SA, Alec, to get more specifics about where things stand currently.

From: Pilar McLaughlin <pmclaughlin@usccr.gov>
Sent: Monday, March 8, 2021 9:47 AM
To: Sheryl Cozart <sccozart@usccr.gov>
Subject: Fwd: Chairperson EAC appointment authority

Sheryl:

Do you have any info on the commission's appointments to the Election Assistance Commission, Board of Advisors in 2017 and/or 2019? See David's question below.

There were a couple years (2010 and 2014) where I found discussion of the appointments in business meeting transcripts. Can't find anything about these appointments for 2016 and 2019. Thoughts you might know.

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To: David Ganz
Subject: Re: Chairperson EAC appointment authority

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AMERICAN OVERSIGHT

To: David Ganz <dganz@usccr.gov>
Subject: Chairperson EAC appointment authority

See the attached for our conversation today with Cantú.

Pilar Velasquez McLaughlin
Senior Counsel, Office of the General Counsel
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Email: pmclaughlin@usccr.gov
Direct: 703.855.8866

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Date : 3/8/2021 1:46:42 PM
From : "Pilar McLaughlin" pmclaughlin@usccr.gov
To : "Sheryl Cozart" sccozart@usccr.gov
Subject : RE: Chairperson EAC appointment authority
Attachment : image001.gif;image002.gif;

Hi Sheryl:

I think we know where things currently stand (see Mauro's email to David last week asking for an opinion on the Chair's authority to appoint commissioners). What I was looking for was if you had any historical information. If you don't have any, that's ok!

Pilar

From: Sheryl Cozart <sccozart@usccr.gov>
Sent: Monday, March 8, 2021 10:26 AM
To: Pilar McLaughlin <pmclaughlin@usccr.gov>
Subject: RE: Chairperson EAC appointment authority

As I recall, both my Vice Chair Timmons-Goodson and Michael Yaki were appointed during my time. I don't know about 2019. It is not surprising that you would not find discussion about them in business meeting transcripts. In my opinion the EAC was not very active. As I recall, my boss (Vice Chair) meetings attended twice a year. You might want to reach out to Yaki's SA, Alec, to get more specifics about where things stand currently.

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Sent: Monday, March 8, 2021 9:47 AM
To: Sheryl Cozart <sccozart@usccr.gov>
Subject: Fwd: Chairperson EAC appointment authority

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Pilar Velasquez McLaughlin
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Direct: 703.855.8866

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Date : 8/18/2021 2:27:20 PM
From : "John Mashburn" jmashburn@usccr.gov
To : "stephen gilchrist" thegilchristassociates@gmail.com, "J. Christian Adams" jadams@usccr.gov
Cc : "Christian Adams" adams@electionlawcenter.com, "Gail Heriot" gheriot@usccr.gov, "Gail Heriot" gheriot@me.com, "Carissa Mulder" CMulder@usccr.gov, "Peter Kirsanow" pkirsanow@beneschlaw.com, "Alexander Heideman" aheideman@usccr.gov, "Thomas Simuel" tsimuel@usccr.gov, "Peter Kirsanow" pkirsanow@usccr.gov, "Stephen Gilchrist" sgilchrist@usccr.gov
Subject : Re: [EXTERNAL] Re: Nominations for Appointment to the EAC

I sent an email to Mauro and Cantu's SA asking why it is not on the agenda, but have not heard back.

From: stephen gilchrist <thegilchristassociates@gmail.com>
Date: Wednesday, August 18, 2021 at 2:16 PM
To: "J. Christian Adams" <jadams@usccr.gov>
Cc: Christian Adams <adams@electionlawcenter.com>, Gail Heriot <gheriot@usccr.gov>, Gail Heriot <gheriot@me.com>, John Mashburn <jmashburn@usccr.gov>, Carissa Mulder <CMulder@usccr.gov>, Peter Kirsanow <pkirsanow@beneschlaw.com>, Alexander Heideman <aheideman@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>, Peter Kirsanow <pkirsanow@usccr.gov>, Stephen Gilchrist <sgilchrist@usccr.gov>
Subject: Re: [EXTERNAL] Re: Nominations for Appointment to the EAC

> CAUTION: This email is from outside USCCR.

I did not see it on the agenda as well? I did speak to the staff director to inform him that I would like to have the vote placed on the business agenda. Did not receive confirmation. I have also not spoken to the Chair.

On Tue, Aug 17, 2021, 1:46 PM J. Christian Adams <jadams@usccr.gov> wrote:

> Why isn't this on the agenda for Friday??
>
> ---
>
> **From:** stephen gilchrist <thegilchristassociates@gmail.com>
> **Sent:** Tuesday, August 10, 2021 3:01:40 PM
> **To:** Christian Adams
> **Cc:** Gail Heriot; Gail Heriot; John Mashburn; Carissa Mulder; Peter Kirsanow; Alexander Heideman; Thomas Simuel; Peter Kirsanow; Stephen Gilchrist; J. Christian Adams
> **Subject:** Re: [EXTERNAL] Re: Nominations for Appointment to the EAC
>
> > CAUTION: This email is from outside USCCR.
>
> We should make them vote at the meeting and not notational vote for the EAC. I'm willing to let Mauro know this.

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Please advise.

On Sun, Aug 8, 2021, 10:41 PM Christian Adams <adams@electionlawcenter.com> wrote:

> earlier the better. I have been out of the office for 2 weeks without email.
>
> -------- Original message --------
> From: Gail Heriot <gheriot@usccr.gov>
> Date: 8/8/21 10:37 PM (GMT-05:00)
> To: Christian Adams <adams@electionlawcenter.com>
> Cc: Gail Heriot <gheriot@me.com>, John Mashburn <jmashburn@usccr.gov>, stephen gilchrist <thegilchristassociates@gmail.com>, Carissa Mulder <CMulder@usccr.gov>, Peter Kirsanow <pkirsanow@beneschlaw.com>, Alexander Heideman <aheideman@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>, Peter Kirsanow <pkirsanow@usccr.gov>, Stephen Gilchrist <sgilchrist@usccr.gov>, "J. Christian Adams" <jadams@usccr.gov>
> Subject: Re: [EXTERNAL] Re: Nominations for Appointment to the EAC
>
> I am available tomorrow and more or less on Eastern time (still in Richmond).
>
> Gail Heriot
> Professor of Law
> University of San Diego
>
> > On Aug 8, 2021, at 10:34 PM, Christian Adams <adams@electionlawcenter.com> wrote:
> >
> > > CAUTION: This email is from outside USCCR.
> >
> > sure. Riggs is a nonstarter with me. she is a brilliant pick on thier part because they know my history with her. they know she us wholly unacceptable.
> >
> > -------- Original message --------
> > From: Gail Heriot <gheriot@me.com>
> > Date: 8/8/21 5:39 PM (GMT-05:00)
> > To: Christian Adams <adams@electionlawcenter.com>
> > Cc: John Mashburn <jmashburn@usccr.gov>, stephen gilchrist <thegilchristassociates@gmail.com>, Carissa Mulder <CMulder@usccr.gov>, Peter Kirsanow <pkirsanow@beneschlaw.com>, Alexander Heideman <aheideman@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>, Peter Kirsanow <pkirsanow@usccr.gov>, Gail Heriot <gheriot@usccr.gov>, Stephen Gilchrist <sgilchrist@usccr.gov>, "J. Christian Adams" <jadams@usccr.gov>
> > Subject: Re: [EXTERNAL] Re: Nominations for Appointment to the EAC
> >
> > Should we have a caucus zoom tomorrow about this?

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Gail Heriot
Professor of Law
University of San Diego

> On Aug 8, 2021, at 4:20 PM, Christian Adams <adams@electionlawcenter.com> wrote:
>
> sorry, just returning.
>
> they picked Allison Riggs for a reason. I can explain offline but there is no way I will be part of giving her a single thing.i would rather work with Yaki
>
> -------- Original message --------
> From: Gail Heriot <gheriot@me.com>
> Date: 8/6/21 3:13 PM (GMT-05:00)
> To: John Mashburn <jmashburn@usccr.gov>
> Cc: stephen gilchrist <thegilchristassociates@gmail.com>, >, Christian Adams <adams@electionlawcenter.com>, Alexander Heideman <aheideman@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>, Peter Kirsanow <pkirsanow@usccr.gov>, Gail Heriot <gheriot@usccr.gov>, Stephen Gilchrist <sgilchrist@usccr.gov>, "J. Christian Adams" <jadams@usccr.gov>
> Subject: Re: [EXTERNAL] Re: Nominations for Appointment to the EAC
>
> I am willing to go with Christian's recommendation on this UNLESS he thinks it's a close case. If he thinks it's a close case AND IF we have reason to believe that the Progressives vetoed Cleta and not Christian, THEN I think we should consider a bit of reciprocity and let Yaki have the job. My impression is that he wants it. If it's really close to six of one half dozen of the other, pleasing him has its benefits.
>
> Of course, so far the evidence is running against the possibility that the Progressives vetoed Cleta and not Christian. If they had vetoed Cleta, my guess is that they would have wanted us to know that. Nevertheless, if this is a close case, it would be a good idea to try to find out what the Progressives did.
>
> Gail Heriot
> Professor of Law
> University of San Diego
>
> > On Aug 6, 2021, at 1:54 PM, John Mashburn <jmashburn@usccr.gov> wrote:

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Yes – better her than Yaki.

From: stephen gilchrist <thegilchristassociates@gmail.com>
Date: Friday, August 6, 2021 at 1:51 PM
To: John Mashburn <jmashburn@usccr.gov>
Cc: Gail Heriot <gheriot@me.com>, Carissa Mulder <CMulder@usccr.gov>, Peter Kirsanow <pkirsanow@beneschlaw.com>, Christian Adams <adams@electionlawcenter.com>, Alexander Heideman <aheideman@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>, Peter Kirsanow <pkirsanow@usccr.gov>, Gail Heriot <gheriot@usccr.gov>, Stephen Gilchrist <sgilchrist@usccr.gov>, "J. Christian Adams" <jadams@usccr.gov>
Subject: Re: [EXTERNAL] Re: Nominations for Appointment to the EAC

> CAUTION: This email is from outside USCCR.

On Fri, Aug 6, 2021, 1:31 PM John Mashburn <jmashburn@usccr.gov> wrote:

> Allison Riggs
>
> https://southerncoalition.org/staff/allison-riggs/
>
> ---
>
> **From:** Gail Heriot <gheriot@me.com>
> **Date:** Friday, August 6, 2021 at 1:23 PM
> **To:** Carissa Mulder <CMulder@usccr.gov>
> **Cc:** "pkirsanow@beneschlaw.com" <pkirsanow@beneschlaw.com>, stephen gilchrist <thegilchristassociates@gmail.com>, Christian Adams <adams@electionlawcenter.com>, Alexander Heideman >, Thomas Simuel <tsimuel@usccr.gov>,

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Peter Kirsanow <pkirsanow@usccr.gov>, Gail Heriot <gheriot@usccr.gov>, Stephen Gilchrist <sgilchrist@usccr.gov>, "J. Christian Adams" <jadams@usccr.gov>
Subject: [EXTERNAL] Re: Nominations for Appointment to the EAC

CAUTION: This email is from outside USCCR.

they vetoed. Yaki at least has an incentive to tell us if it's Cleta. If it is Cleta, such that Christian will be the appointee, it might be seen as accommodating to let Yaki be re-appointed. If he declines to say, that will be evidence that they vetoed Christian.

Gail Heriot
Professor of Law
University of San Diego

> On Aug 6, 2021, at 1:17 PM, Carissa Mulder <CMulder@usccr.gov> wrote:
>
> Hi everyone,
>
> Mauro emailed and asked if the conservative commissioners have selected their EAC nominee. He said the progressives have notified him of their selection, and once we notify him of ours, he will circulate either a notational vote or arrange for it to be voted on at the August business meeting.
>
> Christian, you are the voting expert - do you think Yaki or Allison Riggs is a less damaging choice?

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Thanks!

From: Mauro Morales
Sent: Tuesday, August 3, 2021 5:36 PM
To: Commissioners
Cc: CommissionerAssistants; David Ganz
Subject: Nominations for Appointment to the EAC

Commissioners,

Pursuant to the AI voted on during the April 30th Business meeting, you have nominated the following individuals to the Election Assistance Commission (EAC):

Commissioners Cantu, Adegbile, Kladney and Yaki have nominated the following individuals to the EAC:

- Commissioner Michael Yaki;
- Ms. Allison Riggs , Co-Executive Director, Southern Coalition for Social Justice.

Commissioners Adams, Gilchrist, Heriot and Kirsanow have nominated the following individuals to the EAC:

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- Commissioner Christian Adams;

- Cleta Michell, Chair, Conservative Partnership Institute Election Integrity Network.

Under the AI adopted by Commissioners, the members appointed by the Democratic authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Democratic authorities. The final members selected shall be placed in nomination and ratified by a majority vote. Please inform me how you would like to proceed for a majority vote either by placing it on the agenda for the next USCCR business meeting or by a notational vote.

Mauro Morales
Staff Director
U.S. Commission on Civil Rights
P: 202-376-7796| F: 202-376-7672
Mmorales@usccr.gov
http://usccr.gov/

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Washington D.C. 20425

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Date : 8/18/2021 5:17:34 PM
From : "John Mashburn" jmashburn@usccr.gov
To : "Christian Adams" a@electionlawcenter.com, "Stephen Gilchrist" sgilchrist@usccr.gov, "Peter Kirsanow" pkirsanow@usccr.gov, "Gail Heriot" gheriot@usccr.gov
Cc : "Thomas Simuel" tsimuel@usccr.gov, "Alexander Heideman" aheideman@usccr.gov, "Carissa Mulder" CMulder@usccr.gov
Subject : Fw: EAC Final Selections

FYI to all

From: Juana Silverio
Sent: Wednesday, August 18, 2021 5:13:04 PM
To: Mauro Morales; John Mashburn
Cc: Thomas Simuel; Alexander Heideman; Carissa Mulder; Norma Cantu
Subject: Re: EAC Final Selections

Thanks John. You are correct, the item is not on the agenda for Friday.

There were a few concerns raised on process before confirming the candidates to the EAC on behalf of the Commission. Please stand by snd advise your commissioners that further communication is forthcoming by the Chairwoman.

Please let us know if you have any further questions. We greatly appreciate your patience.

Juana

--
Juana Silverio (she/her/ella)
Special Assistant to Commissioner Norma V. Cantú
U.S. Commission on Civil Rights
E: jsilverio@usccr.gov
http://usccr.gov/
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425
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From: Mauro Morales
Sent: Wednesday, August 18, 2021 4:41:49 PM
To: John Mashburn
Cc: Juana Silverio; Thomas Simuel; Alexander Heideman; Carissa Mulder
Subject: Re: EAC Final Selections

That is a good question. It is a decision for Commissioners in consultation with the Chair to decide how they wish to proceed. Adams is welcome to make a motion to amend the agenda to request a discussion and a vote. If the majority supports his motion it can be added to agenda. In the alternative, if Commissioners desire to proceed by notational vote and no one objects then a notational vote can occur. As I

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have requested previously, please advise me how you wish to proceed. I recommend Commissioners express their desire to the Chair since the Chair controls the agenda.

Sent from my iPhone

> On Aug 18, 2021, at 12:57 PM, John Mashburn <jmashburn@usccr.gov> wrote:
>
> This vote is not on the agenda for Friday, and a notational vote was not sent, so where does it stand? Gilchrist and Adams would like a vote at the business meeting and Adams is willing to make a motion to vote on it.
>
> ---
>
> **From:** Mauro Morales <mmorales@usccr.gov>
> **Date:** Tuesday, August 10, 2021 at 2:57 PM
> **To:** Commissioners <Commissioners@usccr.gov>
> **Cc:**
> "CommissionerAssistants@usccr.gov" <CommissionerAssistants@usccr.gov>, David Ganz <dganz@usccr.gov>
> **Subject:** EAC Final Selections
>
> Commissioners,
>
> Pursuant to the AI voted on during the April 30th Business meeting, I received the following names for appointment the Election Assistance Commission (EAC):
>
> Commissioners Cantu, Adegbile, Kladney and Yaki have selected for appointment to the EAC:
>
> - Cleta Michell, Chair, Conservative Partnership Institute Election Integrity Network.
>
> Commissioners Adams, Gilchrist, Heriot and Kirsanow have selected for appointment to the EAC:
>
> - Commissioner Michael Yaki;
>
> Under the AI adopted by Commissioners, these two members selected shall be placed in nomination and ratified by a majority vote. Please inform me how you would like to proceed for a majority vote either by placing it on the agenda for the next USCCR business

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meeting or by a notational vote. Thank you.

Mauro Morales
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Date : 8/18/2021 7:11:52 PM
From : "Pamela Dunston" Pdunston@usccr.gov
To : "Stanley Carr (ASCD Contractor)" scarr@usccr.gov
Cc : "Michele Ramey" myorkman@usccr.gov
Subject : FW: EAC Final Selections
Attachment : image002.gif;image001.gif;

FYI, This item may be added. We will wait to see if it is added before or added to the agenda at the meeting. Thanks

---

From: Mauro Morales <mmorales@usccr.gov>
Sent: Wednesday, August 18, 2021 4:43 PM
To: TinaLouise Martin <tmartin@usccr.gov>; Pamela Dunston <Pdunston@usccr.gov>; David Ganz <dganz@usccr.gov>
Subject: Fwd: EAC Final Selections

Sent from my iPhone

Begin forwarded message:

> **From:** Mauro Morales <mmorales@usccr.gov>
> **Date:** August 18, 2021 at 3:41:50 PM CDT
> **To:** John Mashburn <jmashburn@usccr.gov>
> **Cc:** Juana Silverio <jsilverio@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>, Alexander Heideman <aheideman@usccr.gov>, Carissa Mulder <CMulder@usccr.gov>
> **Subject: Re: EAC Final Selections**
>
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>
> Sent from my iPhone
>
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> >
> > This vote is not on the agenda for Friday, and a notational vote was not sent, so where does it stand? Gilchrist and Adams would like a vote at the business meeting and Adams is willing to make a motion to vote on it.

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From: Mauro Morales <mmorales@usccr.gov>
Date: Tuesday, August 10, 2021 at 2:57 PM
To: Commissioners <Commissioners@usccr.gov>
Cc:
"CommissionerAssistants@usccr.gov" <CommissionerAssistants@usccr.gov>,
David Ganz <dganz@usccr.gov>
Subject: EAC Final Selections

Commissioners,

Pursuant to the AI voted on during the April 30th Business meeting, I received the following names for appointment the Election Assistance Commission (EAC):

Commissioners Cantu, Adegbile, Kladney and Yaki have selected for appointment to the EAC:

- Cleta Michell, Chair, Conservative Partnership Institute Election Integrity Network.

Commissioners Adams, Gilchrist, Heriot and Kirsanow have selected for appointment to the EAC:

- Commissioner Michael Yaki;

Under the AI adopted by Commissioners, these two members selected shall be placed in nomination and ratified by a majority vote. Please inform me how you would like to proceed for a majority vote either by placing it on the agenda for the next USCCR business meeting or by a notational vote. Thank you.

Mauro Morales
Staff Director
U.S. Commission on Civil Rights
P: 202-376-7796| F: 202-376-7672
Mmorales@usccr.gov
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Date : 8/18/2021 7:29:20 PM
From : "David Ganz" dganz@usccr.gov
To : "Pamela Dunston" Pdunston@usccr.gov, "Mauro Morales" mmorales@usccr.gov, "TinaLouise Martin" tmartin@usccr.gov
Subject : RE: EAC Final Selections

Everyone seems clear on what the Administrative Instructions allow for, but let me know if the Commissioners need anything further on this matter tomorrow.

From: Pamela Dunston <Pdunston@usccr.gov>
Sent: Wednesday, August 18, 2021 7:11 PM
To: Mauro Morales <mmorales@usccr.gov>; TinaLouise Martin <tmartin@usccr.gov>; David Ganz <dganz@usccr.gov>
Subject: RE: EAC Final Selections

Thanks

From: Mauro Morales <mmorales@usccr.gov>
Sent: Wednesday, August 18, 2021 4:43 PM
To: TinaLouise Martin <tmartin@usccr.gov>; Pamela Dunston <Pdunston@usccr.gov>; David Ganz <dganz@usccr.gov>
Subject: Fwd: EAC Final Selections

Sent from my iPhone

Begin forwarded message:

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> **Date:** August 18, 2021 at 3:41:50 PM CDT
> **To:** John Mashburn <jmashburn@usccr.gov>
> **Cc:** Juana Silverio <jsilverio@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>, Alexander Heideman <aheideman@usccr.gov>, Carissa Mulder <CMulder@usccr.gov>
> **Subject: Re: EAC Final Selections**
>
> That is a good question. It is a decision for Commissioners in consultation with the Chair to decide how they wish to proceed. Adams is welcome to make a motion to amend the agenda to request a discussion and a vote. If the majority supports his motion it can be added to agenda. In the alternative, if Commissioners desire to proceed by notational vote and no one objects then a notational vote can occur. As I have requested previously, please advise me how you wish to proceed. I recommend Commissioners express their desire to the Chair since the Chair controls the agenda.
>
> Sent from my iPhone
>
> > On Aug 18, 2021, at 12:57 PM, John Mashburn <jmashburn@usccr.gov> wrote:

AMERICAN OVERSIGHT

This vote is not on the agenda for Friday, and a notational vote was not sent, so where does it stand? Gilchrist and Adams would like a vote at the business meeting and Adams is willing to make a motion to vote on it.

From: Mauro Morales <mmorales@usccr.gov>
Date: Tuesday, August 10, 2021 at 2:57 PM
To: Commissioners <Commissioners@usccr.gov>
Cc:
"CommissionerAssistants@usccr.gov" <CommissionerAssistants@usccr.gov>, David Ganz <dganz@usccr.gov>
Subject: EAC Final Selections

Commissioners,

Pursuant to the AI voted on during the April 30th Business meeting, I received the following names for appointment the Election Assistance Commission (EAC):

Commissioners Cantu, Adegbile, Kladney and Yaki have selected for appointment to the EAC:

- Cleta Michell, Chair, Conservative Partnership Institute Election Integrity Network.

Commissioners Adams, Gilchrist, Heriot and Kirsanow have selected for appointment to the EAC:

- Commissioner Michael Yaki;

Under the AI adopted by Commissioners, these two members selected shall be placed in nomination and ratified by a majority vote. Please inform me how you would like to proceed for a majority vote either by placing it on the agenda for the next USCCR business meeting or by a notational vote. Thank you.

Mauro Morales
Staff Director
U.S. Commission on Civil Rights
P: 202-376-7796| F: 202-376-7672
Mmorales@usccr.gov
http://usccr.gov/

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1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425

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<image001.gif>
<image002.gif>

#USCCR

Sent from my iPhone

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Date : 3/12/2021 3:56:01 PM
From : "Sheryl Cozart" sccozart@usccr.gov
To : "David Ganz" dganz@usccr.gov, "Pilar McLaughlin" pmclaughlin@usccr.gov
Subject : RE: My notes from yesterday's working group on topics related to Vote on Commissioner--No quorum & no decisions made.

David,
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AMERICAN OVERSIGHT

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To : "Mauro Morales" mmorales@usccr.gov
Subject : FW: My notes from yesterday's working group on topics related to Vote on Commissioner--No quorum & no decisions made.

I need to review the below, but let's discuss Monday morning as I am not clear about Commissioner Cantu's asks on some of the items. For example, she notes the 'vehicle' is an A.I., but there is a regulation that is applicable so the 'vehicle' could be either. Also, I am not sure if she wants to create an A.I. for some of the below items.

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AMERICAN OVERSIGHT

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3. Canceling the Chair's speakers series. Vehicle-email from Norma Cantu to Commissioners.
4. Already have language that half of State Adv. Council slots will be Dem. and half Rep. Need to add language on each Commissioners' Caucus will take ____days to nominate and vet new members of State Adv. Councils. At end of ___ days, the staff are expected to provide assistance in recruiting and vetting people to fill vacancies. Staff nominations take no longer than ____days. All nominations by Commissioners and staff come back to the full Commissioner for a discussion and vote to approve new members. Vehicle-motion from floor at mtg. on March 19.
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10. Memorial/obits require a majority vote of the Commission and the proposed language for the memorial shall be circulated to all the Commissioners. Vehicle-AI

AMERICAN OVERSIGHT

Date : 3/15/2021 1:35:46 PM
From : "David Ganz" dganz@usccr.gov
To : "Sheryl Cozart" sccozart@usccr.gov
Cc : "Pilar McLaughlin" pmclaughlin@usccr.gov
Subject : FW: My notes from yesterday's working group on topics related to Vote on Commissioner--No quorum & no decisions made.

Sheryl, I added to your below analysis. Could you both please review before we move to this to Mauro, which we need to do by 3:30 pm today. Thanks,

David

From: Sheryl Cozart <sccozart@usccr.gov>
Sent: Friday, March 12, 2021 4:01 PM
To: David Ganz <dganz@usccr.gov>; Pilar McLaughlin <pmclaughlin@usccr.gov>
Subject: RE: My notes from yesterday's working group on topics related to Vote on Commissioner--No quorum & no decisions made.

David,

I tried to point Commissioner Cantu in the right direction as it pertains to the AI, CFR, or statutes that govern her topics. If this is not what you had in mind or if you need anything else, let me know.

1. Language on 30/30/10 for rebuttals and surrebuttals-Gail-vehicle AI
   No A.I. provides for this procedure. Commissioners can vote to have these replies and surreplies as part of voting for a briefing and/or report pursuant to their general authority in 45 C.F.R. § 702.51 ("meeting means the deliberations of at least the number of Commissioners required to take action on behalf of the Commission where such deliberations determine or result in the joint conduct or disposition of official Commission business.") *See* also 45 C.F.R. § 702.2 ("the holding of hearings by the Commission or the appointment of a subcommittee to hold hearings pursuant to this section must be approved by a majority of the Commission or by a majority of the members present at a meeting at which at least a quorum of five members is present.")

2. Language on bipartisan nominations to Elect.Adv.Council at end of June 2021. Appointments to EAC will be made by Commission as a whole, with a majority vote. Proposed that Dem.Caucus nominates 2 people for one slot and R+I Caucus chooses the appointee. R+I Caucus nominates 2 people for one slot and Dem. caucus chooses the appointee. In future nominations to external agencies, the Chair will consult with the whole Commission before communicating any nominations. Vehicle-motion from floor at mtg. on March 19
   52 U.S.C § 20944 authorizes USCCR to appoint two members to EAC.

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- a (10): Two members appointed by the United States Commission on Civil Rights.
- (b): Appointments shall be made to the Board of Advisors under subsection (a) in a manner which ensures that the Board of Advisors will be bipartisan in nature and will reflect the various geographic regions of the United States.
- 45 CFR § 702.51 ("Meeting means the deliberations of at least the number of Commissioners required to take action on behalf of the Commission where such deliberations determine or result in the joint conduct or disposition of official Commission business") covers the above requested process.

3. Canceling the Chair's speakers series. Vehicle-email from Norma Cantu to Commissioners.

CFR 701.11 sets forth the meeting duties of the Chair.

- 701.11(c) reads: The Chairperson, after consulting with the Staff Director, shall establish the agenda for each meeting. The agenda at the meeting of the Commission may be modified by the addition or deletion of specific items upon the motion of a Commissioner and a favorable vote by a majority of the members.

AI 1-6 defines public/guest speaker.

- Appendix I : PUBLIC SPEAKER, a- Definition: An individual, appearing of his/her own volition and at the invitation of the Commission, to make a presentation to the Commission on a civil rights topic. Approval Process: Commissioners or managerial staff may submit names and ideas for such a presentation to OSD and this office will follow the same procedures for approval as outlined for briefings [i.e., a vote]. Appendix 1 to A.I. 1-6, p. 6, PDF, page 58.

45 CFR § 702.51 ("Meeting means the deliberations of at least the number of Commissioners required to take action on behalf of the Commission where such deliberations determine or result in the joint conduct or disposition of official Commission business.")

4. Already have language that half of State Adv. Council slots will be Dem. and half Rep. Need to add language on each Commissioners' Caucus will take ____days to nominate and vet new members of State Adv. Councils. At end of ___ days, the staff are expected to provide assistance in recruiting and vetting people to fill vacancies. Staff nominations take no longer than ____days. All nominations by Commissioners and staff come back to the full Commissioner for a discussion and vote to approve new members. Vehicle-motion from floor at mtg. on March 19.

A.I. 5-9 sets forth the policy on SAC appointments. Section 5 addresses selection guidelines and may be the appropriate place to add language on number of days to nominate and vet new members.

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Alternatively, rather than amending A.I. 5-9, and thereby binding the Commission to the above timelines and requirement for 50 percent representation of political parties, which could be difficult to achieve based on SACs' voluntary nature, it is suggested the current A.I. is followed. *See* Section 7.08 (both political parties should be represented).

5. Language about agreeing that AIs, as more specific agreements, govern process of Commissioners; in absence of relevant AI, Commissioners will apply Roberts' Rules of Order. Vehicle-Memo of Understanding approved by majority of Commissioners.

   In the absence of an applicable A.I., the above noted regulation, § 702.51 , on Commission business meetings and decision making, is applicable. Further A.I. 1-1.02, notes "information contained in the Administrative Manual serves to supplement, summarize, clarify and explain sometimes complex managerial or administrative policies as they relate to the day-to-day operations of the U.S. Commission on Civil Rights and its employees."

6. Chair proposes agenda for Commissioners' meeting, with Commissioners having ability to propose to amend agenda before meeting and also at the beginning the meeting, subject to majority vote. Vehicle-AI

   CFR 701.11 sets forth the meeting duties of the Chair.

   - 701.11(c) reads: The Chairperson, after consulting with the Staff Director, shall establish the agenda for each meeting. The agenda at the meeting of the Commission may be modified by the addition or deletion of specific items upon the motion of a Commissioner and a favorable vote by a majority of the members.
   - Thus, the above regulation covers the amendments to meeting agendas and an A.I. is unnecessary.

7. A majority of Commissioners is needed to cancel a called Commissioner meeting. Vehicle-AI

   CFR 701.11(d) authorizes the Chair to cancel meetings.

   - (d) reads: In the event that after consulting with the members of the Commission and consideration of the views of the members the Chairperson determines that there are insufficient substantive items on a proposed meeting agenda to warrant holding a scheduled meeting, the Chairperson may cancel such meeting.
   - Thus, an A.I. as proposed would be inconsistent with the above regulation.

8. Proposed by Norma, in absence of Chair available to moderate the meeting, the most senior Dem. and Rep. Commissioners will alternate chairing meetings. Vehicle-AI or memo. of understanding

   AI 1-24 sets forth the policy in the event of a Chair and Vice Chair.

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- Section 1 reads: The purpose of this Administrative Instruction (AI) is to establish a policy whereby, in the event of a vacancy in the positions of Commission Chairperson and Vice-Chairperson, the Commission may designate , by majority vote, a Commissioner to exercise the powers and perform the functions of the Chairperson on their behalf.
- 701.11(b) reads: …provided however, that upon the motion of a member, and a favorable vote by a majority of Commission members, a special meeting of the Commission may be held in the absence of a call by the Chairperson.
- A.I. 1-24 therefore already sets out a voting process to designate a chair, which could encompass the proposed alternate chairing process.

9. Language that any Commissioner from each Caucus may sit in on OCRE interviews provided the Commissioner's request to attend does not cause a scheduling delay. Vehicle?

   Under the Merit System Principles set out in 5 U.S.C. § 2301, "All employees and applicants for employment should receive fair and equitable treatment in all aspects of personnel management without regard to political affiliation." Having Commissioners attend interviews would violate or give the appearance of violating the forgoing and could result in litigation before the MSPB and/or investigations by the Office of Special Counsel.

   45 CFR § 701.12 notes that the SD is the administrative head of the Agency. Section 701.13(d)(3) notes that "Under the direction of the Director of Human Resources, this Division is responsible for human resources development, including career staffing, classification, benefits, time and attendance, training, and compensation." Having Commissioners participate in OCRE career staff interviews is not consistent with the foregoing regulations.

   A.I. 2-1, Merit Promotion and Staffing Plan, section 6.03, is inconsistent with this request. *See* id ("Managers and supervisors are responsible for: (a) Making selections from among the referred applicants and, in making the selections, ensuring that considerations are given to applicants.")

   A.I. 1-16 is inconsistent with this request. *See* id ("The Staff Director is also delegated, consistent with any policy established by the Commission, the authority to approve, certify or otherwise authorize those actions dealing with personnel, budget (including allotments), fiscal matters and contracts relating to the operations of the Commission.")

10. Memorial/obits require a majority vote of the Commission and the proposed language for the memorial shall be circulated to all the Commissioners. Vehicle-AI- new/creating an AI

AMERICAN OVERSIGHT

In the absence of an applicable A.I., the above noted regulation, § 702.51 , on Commission business meetings and decision making is applicable.

From: Sheryl Cozart
Sent: Friday, March 12, 2021 1:24 PM
To: David Ganz <dganz@usccr.gov>; Pilar McLaughlin <pmclaughlin@usccr.gov>
Subject: RE: My notes from yesterday's working group on topics related to Vote on Commissioner--No quorum & no decisions made.

David,

Upon further review, I am not clear about what Commissioner Cantu is seeking. Is she seeking a response to all 10 of her notes?

From: Sheryl Cozart
Sent: Friday, March 12, 2021 1:09 PM
To: David Ganz <dganz@usccr.gov>; Pilar McLaughlin <pmclaughlin@usccr.gov>
Subject: RE: My notes from yesterday's working group on topics related to Vote on Commissioner--No quorum & no decisions made.

I'm working on this now and will get you bulleted answers by COB.

From: David Ganz <dganz@usccr.gov>
Sent: Friday, March 12, 2021 12:33 PM
To: Sheryl Cozart <sccozart@usccr.gov>; Pilar McLaughlin <pmclaughlin@usccr.gov>
Subject: Fwd: My notes from yesterday's working group on topics related to Vote on Commissioner--No quorum & no decisions made.

Sheryl, could you provide responses to the below questions in a few sentences each in bullet points within this email thread and send me back the draft. This is a priority so let's try to have some responses back by cob today and then tell Mauro the other questions will be responded to early next week. Thanks,

David

From: Mauro Morales <mmorales@usccr.gov>
Sent: Friday, March 12, 2021 12:11:43 PM
To: David Ganz <dganz@usccr.gov>
Cc: Norma Cantu <ncantu@usccr.gov>
Subject: FW: My notes from yesterday's working group on topics related to Vote on Commissioner--No quorum & no decisions made.

David,

Commissioner Cantu has requested that you research and provide her with answers to each of the questions below about whether or not a Federal Statutes applies or whether Federal Regulations or AI's apply or govern. A zoom call with her as soon as possible

AMERICAN OVERSIGHT

would be sufficient for her purposes.

Mauro Morales
Staff Director
USCCR

From: Norma Cantu <ncantu@usccr.gov>
Sent: Friday, March 12, 2021 11:32 AM
To: David Kladney <dkladney@usccr.gov>; Michael Yaki <MYaki@usccr.gov>; Debo P. Adegbile <dadegbile@usccr.gov>
Subject: Fw: My notes from yesterday's working group on topics related to Vote on Commissioner--No quorum & no decisions made.

I have a zoom meeting today from 1-3 CST but am free to discuss the "housekeeping matters" I've described below. Call me as these email are subject to FOIA and it is better to deliberate and discuss draft language in a more informal setting.

Norma

cell 210 380 6380

From: Norma Cantu
Sent: Friday, March 12, 2021 10:19 AM
To: Gail Heriot; Michael Yaki; Peter Kirsanow
Subject: My notes from yesterday's working group on topics related to Vote on Commissioner--No quorum & no decisions made.

1. Language on 30/30/10 for rebuttals and surrebuttals-Gail-vehicle AI
2. Language on bipartisan nominations to Elect.Adv.Council at end of June 2021. Appointments to EAC will be made by Commission as a whole, with a majority vote. Proposed that Dem.Caucus nominates 2 people for one slot and R+I Caucus chooses the appointee. R+I Caucus nominates 2 people for one slot and Dem. caucus chooses the appointee. In future nominations to external agencies, the Chair will consult with the whole Commission before communicating any nominations. Vehicle-motion from floor at mtg. on March 19
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AMERICAN OVERSIGHT

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AMERICAN OVERSIGHT

Date : 3/15/2021 2:36:27 PM
From : "Sheryl Cozart" sccozart@usccr.gov
To : "David Ganz" dganz@usccr.gov
Cc : "Pilar McLaughlin" pmclaughlin@usccr.gov
Subject : RE: My notes from yesterday's working group on topics related to Vote on Commissioner--No quorum & no decisions made.

David,

I identified only one error, as highlighted below.

From: David Ganz <dganz@usccr.gov>
Sent: Monday, March 15, 2021 1:36 PM
To: Sheryl Cozart <sccozart@usccr.gov>
Cc: Pilar McLaughlin <pmclaughlin@usccr.gov>
Subject: FW: My notes from yesterday's working group on topics related to Vote on Commissioner--No quorum & no decisions made.

Sheryl, I added to your below analysis. Could you both please review before we move to this to Mauro, which we need to do by 3:30 pm today. Thanks,

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AMERICAN OVERSIGHT

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AMERICAN OVERSIGHT

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AMERICAN OVERSIGHT

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AI 1-24 sets forth the policy in the event of vacancies in the positions of Chair and Vice Chair.

- Section 1 reads: The purpose of this Administrative Instruction (AI) is to establish a policy whereby, in the event of a vacancy in the positions of Commission Chairperson and Vice-Chairperson, the Commission may designate , by majority vote, a Commissioner to exercise the powers and perform the functions of the Chairperson on their behalf.
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AMERICAN OVERSIGHT

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AMERICAN OVERSIGHT

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Mauro Morales
Staff Director
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Norma

cell 210 380 6380

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AMERICAN OVERSIGHT

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AMERICAN OVERSIGHT

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Cc : "Pilar McLaughlin" pmclaughlin@usccr.gov
Subject : RE: My notes from yesterday's working group on topics related to Vote on Commissioner--No quorum & no decisions made.

In numbers 8 and 10? What is error?

From: Sheryl Cozart <sccozart@usccr.gov>
Sent: Monday, March 15, 2021 2:36 PM
To: David Ganz <dganz@usccr.gov>
Cc: Pilar McLaughlin <pmclaughlin@usccr.gov>
Subject: RE: My notes from yesterday's working group on topics related to Vote on Commissioner--No quorum & no decisions made.

David,

I identified only one error, as highlighted below.

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Cc: Pilar McLaughlin <pmclaughlin@usccr.gov>
Subject: FW: My notes from yesterday's working group on topics related to Vote on Commissioner--No quorum & no decisions made.

Sheryl, I added to your below analysis. Could you both please review before we move to this to Mauro, which we need to do by 3:30 pm today. Thanks,

David

From: Sheryl Cozart <sccozart@usccr.gov>
Sent: Friday, March 12, 2021 4:01 PM
To: David Ganz <dganz@usccr.gov>; Pilar McLaughlin <pmclaughlin@usccr.gov>
Subject: RE: My notes from yesterday's working group on topics related to Vote on Commissioner--No quorum & no decisions made.

David,

I tried to point Commissioner Cantu in the right direction as it pertains to the AI, CFR, or statutes that govern her topics. If this is not what you had in mind or if you need anything else, let me know.

1. Language on 30/30/10 for rebuttals and surrebuttals-Gail-vehicle AI

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No A.I. provides for this procedure. Commissioners can vote to have these replies and surreplies as part of voting for a briefing and/or report pursuant to their general authority in 45 C.F.R. § 702.51 ("meeting means the deliberations of at least the number of Commissioners required to take action on behalf of the Commission where such deliberations determine or result in the joint conduct or disposition of official Commission business.") *See* also 45 C.F.R. § 702.2 ("the holding of hearings by the Commission or the appointment of a subcommittee to hold hearings pursuant to this section must be approved by a majority of the Commission or by a majority of the members present at a meeting at which at least a quorum of five members is present.")

2. Language on bipartisan nominations to Elect.Adv.Council at end of June 2021. Appointments to EAC will be made by Commission as a whole, with a majority vote. Proposed that Dem.Caucus nominates 2 people for one slot and R+I Caucus chooses the appointee. R+I Caucus nominates 2 people for one slot and Dem. caucus chooses the appointee. In future nominations to external agencies, the Chair will consult with the whole Commission before communicating any nominations. Vehicle-motion from floor at mtg. on March 19

   52 U.S.C § 20944 authorizes USCCR to appoint two members to EAC.

   - a (10): Two members appointed by the United States Commission on Civil Rights.
   - (b): Appointments shall be made to the Board of Advisors under subsection (a) in a manner which ensures that the Board of Advisors will be bipartisan in nature and will reflect the various geographic regions of the United States.
   - 45 CFR § 702.51 ("Meeting means the deliberations of at least the number of Commissioners required to take action on behalf of the Commission where such deliberations determine or result in the joint conduct or disposition of official Commission business") covers the above requested process.

3. Canceling the Chair's speakers series. Vehicle-email from Norma Cantu to Commissioners.

   CFR 701.11 sets forth the meeting duties of the Chair.

   - 701.11(c) reads: The Chairperson, after consulting with the Staff Director, shall establish the agenda for each meeting. The agenda at the meeting of the Commission may be modified by the addition or deletion of specific items upon the motion of a Commissioner and a favorable vote by a majority of the members.

   AI 1-6 defines public/guest speaker.

   - Appendix I : PUBLIC SPEAKER, a- Definition: An individual, appearing of his/her own volition and at the invitation of the Commission, to make a presentation to the Commission on a civil rights topic. Approval Process: Commissioners or managerial staff may submit names and ideas for such a presentation to OSD and this office will

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follow the same procedures for approval as outlined for briefings [i.e., a vote]. Appendix 1 to A.I. 1-6, p. 6, PDF, page 58.

45 CFR § 702.51 ("Meeting means the deliberations of at least the number of Commissioners required to take action on behalf of the Commission where such deliberations determine or result in the joint conduct or disposition of official Commission business.")

4. Already have language that half of State Adv. Council slots will be Dem. and half Rep. Need to add language on each Commissioners' Caucus will take ____days to nominate and vet new members of State Adv. Councils. At end of ___ days, the staff are expected to provide assistance in recruiting and vetting people to fill vacancies. Staff nominations take no longer than ____days. All nominations by Commissioners and staff come back to the full Commissioner for a discussion and vote to approve new members. Vehicle-motion from floor at mtg. on March 19.
   A.I. 5-9 sets forth the policy on SAC appointments. Section 5 addresses selection guidelines and may be the appropriate place to add language on number of days to nominate and vet new members.
   Alternatively, rather than amending A.I. 5-9, and thereby binding the Commission to the above timelines and requirement for 50 percent representation of political parties, which could be difficult to achieve based on SACs' voluntary nature, it is suggested the current A.I. is followed. *See* Section 7.08 (both political parties should be represented).

5. Language about agreeing that AIs, as more specific agreements, govern process of Commissioners; in absence of relevant AI, Commissioners will apply Roberts' Rules of Order. Vehicle-Memo of Understanding approved by majority of Commissioners.
   In the absence of an applicable A.I., the above noted regulation, § 702.51 , on Commission business meetings and decision making, is applicable. Further A.I. 1-1.02, notes "information contained in the Administrative Manual serves to supplement, summarize, clarify and explain sometimes complex managerial or administrative policies as they relate to the day-to-day operations of the U.S. Commission on Civil Rights and its employees."

6. Chair proposes agenda for Commissioners' meeting, with Commissioners having ability to propose to amend agenda before meeting and also at the beginning the meeting, subject to majority vote. Vehicle-AI
   CFR 701.11 sets forth the meeting duties of the Chair.
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- Thus, the above regulation covers the amendments to meeting agendas and an A.I. is unnecessary.

7. A majority of Commissioners is needed to cancel a called Commissioner meeting. Vehicle-AI

   CFR 701.11(d) authorizes the Chair to cancel meetings.

   - (d) reads: In the event that after consulting with the members of the Commission and consideration of the views of the members the Chairperson determines that there are insufficient substantive items on a proposed meeting agenda to warrant holding a scheduled meeting, the Chairperson may cancel such meeting.
   - Thus, an A.I. as proposed would be inconsistent with the above regulation.

8. Proposed by Norma, in absence of Chair available to moderate the meeting, the most senior Dem. and Rep. Commissioners will alternate chairing meetings. Vehicle-AI or memo. of understanding

   AI 1-24 sets forth the policy in the event of vacancies in the positions of Chair and Vice Chair.

   - Section 1 reads: The purpose of this Administrative Instruction (AI) is to establish a policy whereby, in the event of a vacancy in the positions of Commission Chairperson and Vice-Chairperson, the Commission may designate , by majority vote, a Commissioner to exercise the powers and perform the functions of the Chairperson on their behalf.
   - 701.11(b) reads: …provided however, that upon the motion of a member, and a favorable vote by a majority of Commission members, a special meeting of the Commission may be held in the absence of a call by the Chairperson.
   - A.I. 1-24 therefore already sets out a voting process to designate a chair, which could encompass the proposed alternate chairing process.

9. Language that any Commissioner from each Caucus may sit in on OCRE interviews provided the Commissioner's request to attend does not cause a scheduling delay. Vehicle?

   Under the Merit System Principles set out in 5 U.S.C. § 2301, "All employees and applicants for employment should receive fair and equitable treatment in all aspects of personnel management without regard to political affiliation." Having Commissioners attend interviews would violate or give the appearance of violating the forgoing and could result in litigation before the MSPB and/or investigations by the Office of Special Counsel.

   45 CFR § 701.12 notes that the SD is the administrative head of the Agency. Section 701.13(d)(3) notes that "Under the direction of the Director of

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Human Resources, this Division is responsible for human resources development, including career staffing, classification, benefits, time and attendance, training, and compensation." Having Commissioners participate in OCRE career staff interviews is not consistent with the foregoing regulations.

A.I. 2-1, Merit Promotion and Staffing Plan, section 6.03, is inconsistent with this request. *See* id ("Managers and supervisors are responsible for: (a) Making selections from among the referred applicants and, in making the selections, ensuring that considerations are given to applicants.")

A.I. 1-16 is inconsistent with this request. *See* id ("The Staff Director is also delegated, consistent with any policy established by the Commission, the authority to approve, certify or otherwise authorize those actions dealing with personnel, budget (including allotments), fiscal matters and contracts relating to the operations of the Commission.")

10. Memorial/obits require a majority vote of the Commission and the proposed language for the memorial shall be circulated to all the Commissioners. Vehicle-AI- new/creating an AI

In the absence of an applicable A.I., the above noted regulation, § 702.51 , on Commission business meetings and decision making is applicable.

From: Sheryl Cozart
Sent: Friday, March 12, 2021 1:24 PM
To: David Ganz <dganz@usccr.gov>; Pilar McLaughlin <pmclaughlin@usccr.gov>
Subject: RE: My notes from yesterday's working group on topics related to Vote on Commissioner--No quorum & no decisions made.

David,

Upon further review, I am not clear about what Commissioner Cantu is seeking. Is she seeking a response to all 10 of her notes?

From: Sheryl Cozart
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To: David Ganz <dganz@usccr.gov>; Pilar McLaughlin <pmclaughlin@usccr.gov>
Subject: RE: My notes from yesterday's working group on topics related to Vote on Commissioner--No quorum & no decisions made.

I'm working on this now and will get you bulleted answers by COB.

From: David Ganz <dganz@usccr.gov>
Sent: Friday, March 12, 2021 12:33 PM
To: Sheryl Cozart <sccozart@usccr.gov>; Pilar McLaughlin <pmclaughlin@usccr.gov>
Subject: Fwd: My notes from yesterday's working group on topics related to Vote on Commissioner--No quorum & no decisions made.

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Sheryl, could you provide responses to the below questions in a few sentences each in bullet points within this email thread and send me back the draft. This is a priority so let's try to have some responses back by cob today and then tell Mauro the other questions will be responded to early next week. Thanks,

David

From: Mauro Morales <mmorales@usccr.gov>
Sent: Friday, March 12, 2021 12:11:43 PM
To: David Ganz <dganz@usccr.gov>
Cc: Norma Cantu <ncantu@usccr.gov>
Subject: FW: My notes from yesterday's working group on topics related to Vote on Commissioner--No quorum & no decisions made.

David,

Commissioner Cantu has requested that you research and provide her with answers to each of the questions below about whether or not a Federal Statutes applies or whether Federal Regulations or AI's apply or govern. A zoom call with her as soon as possible would be sufficient for her purposes.

Mauro Morales
Staff Director
USCCR

From: Norma Cantu <ncantu@usccr.gov>
Sent: Friday, March 12, 2021 11:32 AM
To: David Kladney <dkladney@usccr.gov>; Michael Yaki <MYaki@usccr.gov>; Debo P. Adegbile <dadegbile@usccr.gov>
Subject: Fw: My notes from yesterday's working group on topics related to Vote on Commissioner--No quorum & no decisions made.

I have a zoom meeting today from 1-3 CST but am free to discuss the "housekeeping matters" I've described below. Call me as these email are subject to FOIA and it is better to deliberate and discuss draft language in a more informal setting.

Norma

cell 210 380 6380

From: Norma Cantu
Sent: Friday, March 12, 2021 10:19 AM
To: Gail Heriot; Michael Yaki; Peter Kirsanow
Subject: My notes from yesterday's working group on topics related to Vote on Commissioner--No quorum & no decisions made.

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2. Language on bipartisan nominations to Elect.Adv.Council at end of June 2021. Appointments to EAC will be made by Commission as a whole, with a majority vote. Proposed that Dem.Caucus nominates 2 people for one slot and R+I Caucus chooses the appointee. R+I Caucus nominates 2 people for one slot and Dem. caucus chooses the appointee. In future nominations to external agencies, the Chair will consult with the whole Commission before communicating any nominations. Vehicle-motion from floor at mtg. on March 19
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Date : 3/15/2021 2:46:39 PM
From : "David Ganz" dganz@usccr.gov
To : "Mauro Morales" mmorales@usccr.gov
Cc : "Sheryl Cozart" sccozart@usccr.gov
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AMERICAN OVERSIGHT

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AMERICAN OVERSIGHT

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Cc: Norma Cantu <ncantu@usccr.gov>
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Norma

cell 210 380 6380

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Commissioners. Vehicle-AI

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Date : 3/15/2021 2:43:08 PM
From : "Sheryl Cozart" sccozart@usccr.gov
To : "David Ganz" dganz@usccr.gov
Cc : "Pilar McLaughlin" pmclaughlin@usccr.gov
Subject : RE: My notes from yesterday's working group on topics related to Vote on Commissioner--No quorum & no decisions made.

8: I added language "vacancies in the position of…"
10: I did not add that highlight. There is no error.

From: David Ganz <dganz@usccr.gov>
Sent: Monday, March 15, 2021 2:40 PM
To: Sheryl Cozart <sccozart@usccr.gov>
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Commissioner--No quorum & no decisions made.

David,

I tried to point Commissioner Cantu in the right direction as it pertains to the AI, CFR, or statutes that govern her topics. If this is not what you had in mind or if you need anything else, let me know.

1. Language on 30/30/10 for rebuttals and surrebuttals-Gail-vehicle AI
   No A.I. provides for this procedure. Commissioners can vote to have these replies and surreplies as part of voting for a briefing and/or report pursuant to their general authority in 45 C.F.R. § 702.51 ("meeting means the deliberations of at least the number of Commissioners required to take action on behalf of the Commission where such deliberations determine or result in the joint conduct or disposition of official Commission business.") *See* also 45 C.F.R. § 702.2 ("the holding of hearings by the Commission or the appointment of a subcommittee to hold hearings pursuant to this section must be approved by a majority of the Commission or by a majority of the members present at a meeting at which at least a quorum of five members is present.")

2. Language on bipartisan nominations to Elect.Adv.Council at end of June 2021. Appointments to EAC will be made by Commission as a whole, with a majority vote. Proposed that Dem.Caucus nominates 2 people for one slot and R+I Caucus chooses the appointee. R+I Caucus nominates 2 people for one slot and Dem. caucus chooses the appointee. In future nominations to external agencies, the Chair will consult with the whole Commission before communicating any nominations. Vehicle-motion from floor at mtg. on March 19
   52 U.S.C § 20944 authorizes USCCR to appoint two members to EAC.
   - a (10): Two members appointed by the United States Commission on Civil Rights.
   - (b): Appointments shall be made to the Board of Advisors under subsection (a) in a manner which ensures that the Board of Advisors will be bipartisan in nature and will reflect the various geographic regions of the United States.
   - 45 CFR § 702.51 ("Meeting means the deliberations of at least the number of Commissioners required to take action on behalf of the Commission where such deliberations determine or result in the joint conduct or disposition of official Commission business") covers the above requested process.

3. Canceling the Chair's speakers series. Vehicle-email from Norma Cantu to Commissioners.
   CFR 701.11 sets forth the meeting duties of the Chair.
   - 701.11(c) reads: The Chairperson, after consulting with the Staff Director, shall establish the agenda for each meeting. The agenda at

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the meeting of the Commission may be modified by the addition or deletion of specific items upon the motion of a Commissioner and a favorable vote by a majority of the members.

AI 1-6 defines public/guest speaker.

- Appendix I : PUBLIC SPEAKER, a- Definition: An individual, appearing of his/her own volition and at the invitation of the Commission, to make a presentation to the Commission on a civil rights topic. Approval Process: Commissioners or managerial staff may submit names and ideas for such a presentation to OSD and this office will follow the same procedures for approval as outlined for briefings [i.e., a vote]. Appendix 1 to A.I. 1-6, p. 6, PDF, page 58.

45 CFR § 702.51 ("Meeting means the deliberations of at least the number of Commissioners required to take action on behalf of the Commission where such deliberations determine or result in the joint conduct or disposition of official Commission business.")

4. Already have language that half of State Adv. Council slots will be Dem. and half Rep. Need to add language on each Commissioners' Caucus will take ____days to nominate and vet new members of State Adv. Councils. At end of ___ days, the staff are expected to provide assistance in recruiting and vetting people to fill vacancies. Staff nominations take no longer than ____days. All nominations by Commissioners and staff come back to the full Commissioner for a discussion and vote to approve new members. Vehicle-motion from floor at mtg. on March 19.

   A.I. 5-9 sets forth the policy on SAC appointments. Section 5 addresses selection guidelines and may be the appropriate place to add language on number of days to nominate and vet new members.

   Alternatively, rather than amending A.I. 5-9, and thereby binding the Commission to the above timelines and requirement for 50 percent representation of political parties, which could be difficult to achieve based on SACs' voluntary nature, it is suggested the current A.I. is followed. *See* Section 7.08 (both political parties should be represented).

5. Language about agreeing that AIs, as more specific agreements, govern process of Commissioners; in absence of relevant AI, Commissioners will apply Roberts' Rules of Order. Vehicle-Memo of Understanding approved by majority of Commissioners.

   In the absence of an applicable A.I., the above noted regulation, § 702.51 , on Commission business meetings and decision making, is applicable. Further A.I. 1-1.02, notes "information contained in the Administrative Manual serves to supplement, summarize, clarify and explain sometimes complex managerial or administrative policies as they relate to the day-to-day operations of the U.S. Commission on Civil Rights and its employees."

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6. Chair proposes agenda for Commissioners' meeting, with Commissioners having ability to propose to amend agenda before meeting and also at the beginning the meeting, subject to majority vote. Vehicle-AI

   CFR 701.11 sets forth the meeting duties of the Chair.

   - 701.11(c) reads: The Chairperson, after consulting with the Staff Director, shall establish the agenda for each meeting. The agenda at the meeting of the Commission may be modified by the addition or deletion of specific items upon the motion of a Commissioner and a favorable vote by a majority of the members.
   - Thus, the above regulation covers the amendments to meeting agendas and an A.I. is unnecessary.

7. A majority of Commissioners is needed to cancel a called Commissioner meeting. Vehicle-AI

   CFR 701.11(d) authorizes the Chair to cancel meetings.

   - (d) reads: In the event that after consulting with the members of the Commission and consideration of the views of the members the Chairperson determines that there are insufficient substantive items on a proposed meeting agenda to warrant holding a scheduled meeting, the Chairperson may cancel such meeting.
   - Thus, an A.I. as proposed would be inconsistent with the above regulation.

8. Proposed by Norma, in absence of Chair available to moderate the meeting, the most senior Dem. and Rep. Commissioners will alternate chairing meetings. Vehicle-AI or memo. of understanding

   AI 1-24 sets forth the policy in the event of vacancies in the positions of Chair and Vice Chair.

   - Section 1 reads: The purpose of this Administrative Instruction (AI) is to establish a policy whereby, in the event of a vacancy in the positions of Commission Chairperson and Vice-Chairperson, the Commission may designate , by majority vote, a Commissioner to exercise the powers and perform the functions of the Chairperson on their behalf.
   - 701.11(b) reads: …provided however, that upon the motion of a member, and a favorable vote by a majority of Commission members, a special meeting of the Commission may be held in the absence of a call by the Chairperson.
   - A.I. 1-24 therefore already sets out a voting process to designate a chair, which could encompass the proposed alternate chairing process.

9. Language that any Commissioner from each Caucus may sit in on OCRE interviews provided the Commissioner's request to attend does not cause a scheduling delay. Vehicle?

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Under the Merit System Principles set out in 5 U.S.C. § 2301, "All employees and applicants for employment should receive fair and equitable treatment in all aspects of personnel management without regard to political affiliation." Having Commissioners attend interviews would violate or give the appearance of violating the forgoing and could result in litigation before the MSPB and/or investigations by the Office of Special Counsel.

45 CFR § 701.12 notes that the SD is the administrative head of the Agency. Section 701.13(d)(3) notes that "Under the direction of the Director of Human Resources, this Division is responsible for human resources development, including career staffing, classification, benefits, time and attendance, training, and compensation." Having Commissioners participate in OCRE career staff interviews is not consistent with the foregoing regulations.

A.I. 2-1, Merit Promotion and Staffing Plan, section 6.03, is inconsistent with this request. *See* id ("Managers and supervisors are responsible for: (a) Making selections from among the referred applicants and, in making the selections, ensuring that considerations are given to applicants.")

A.I. 1-16 is inconsistent with this request. *See* id ("The Staff Director is also delegated, consistent with any policy established by the Commission, the authority to approve, certify or otherwise authorize those actions dealing with personnel, budget (including allotments), fiscal matters and contracts relating to the operations of the Commission.")

10. Memorial/obits require a majority vote of the Commission and the proposed language for the memorial shall be circulated to all the Commissioners. Vehicle-AI- new/creating an AI

In the absence of an applicable A.I., the above noted regulation, § 702.51 , on Commission business meetings and decision making is applicable.

From: Sheryl Cozart
Sent: Friday, March 12, 2021 1:24 PM
To: David Ganz <dganz@usccr.gov>; Pilar McLaughlin <pmclaughlin@usccr.gov>
Subject: RE: My notes from yesterday's working group on topics related to Vote on Commissioner--No quorum & no decisions made.

David,

Upon further review, I am not clear about what Commissioner Cantu is seeking. Is she seeking a response to all 10 of her notes?

From: Sheryl Cozart
Sent: Friday, March 12, 2021 1:09 PM

AMERICAN OVERSIGHT

To: David Ganz <dganz@usccr.gov>; Pilar McLaughlin <pmclaughlin@usccr.gov>
Subject: RE: My notes from yesterday's working group on topics related to Vote on Commissioner--No quorum & no decisions made.

I'm working on this now and will get you bulleted answers by COB.

From: David Ganz <dganz@usccr.gov>
Sent: Friday, March 12, 2021 12:33 PM
To: Sheryl Cozart <sccozart@usccr.gov>; Pilar McLaughlin <pmclaughlin@usccr.gov>
Subject: Fwd: My notes from yesterday's working group on topics related to Vote on Commissioner--No quorum & no decisions made.

Sheryl, could you provide responses to the below questions in a few sentences each in bullet points within this email thread and send me back the draft. This is a priority so let's try to have some responses back by cob today and then tell Mauro the other questions will be responded to early next week. Thanks,

David

From: Mauro Morales <mmorales@usccr.gov>
Sent: Friday, March 12, 2021 12:11:43 PM
To: David Ganz <dganz@usccr.gov>
Cc: Norma Cantu <ncantu@usccr.gov>
Subject: FW: My notes from yesterday's working group on topics related to Vote on Commissioner--No quorum & no decisions made.

David,

Commissioner Cantu has requested that you research and provide her with answers to each of the questions below about whether or not a Federal Statutes applies or whether Federal Regulations or AI's apply or govern. A zoom call with her as soon as possible would be sufficient for her purposes.

Mauro Morales
Staff Director
USCCR

From: Norma Cantu <ncantu@usccr.gov>
Sent: Friday, March 12, 2021 11:32 AM
To: David Kladney <dkladney@usccr.gov>; Michael Yaki <MYaki@usccr.gov>; Debo P. Adegbile <dadegbile@usccr.gov>
Subject: Fw: My notes from yesterday's working group on topics related to Vote on Commissioner--No quorum & no decisions made.

I have a zoom meeting today from 1-3 CST but am free to discuss the "housekeeping matters" I've described below. Call me as these email are subject to FOIA and it is better to deliberate and discuss draft language in a more informal setting.

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Norma

cell 210 380 6380

From: Norma Cantu
Sent: Friday, March 12, 2021 10:19 AM
To: Gail Heriot; Michael Yaki; Peter Kirsanow
Subject: My notes from yesterday's working group on topics related to Vote on Commissioner--No quorum & no decisions made.

1. Language on 30/30/10 for rebuttals and surrebuttals-Gail-vehicle AI
2. Language on bipartisan nominations to Elect.Adv.Council at end of June 2021. Appointments to EAC will be made by Commission as a whole, with a majority vote. Proposed that Dem.Caucus nominates 2 people for one slot and R+I Caucus chooses the appointee. R+I Caucus nominates 2 people for one slot and Dem. caucus chooses the appointee. In future nominations to external agencies, the Chair will consult with the whole Commission before communicating any nominations. Vehicle-motion from floor at mtg. on March 19
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6. Chair proposes agenda for Commissioners' meeting, with Commissioners having ability to propose to amend agenda before meeting and also at the beginning the meeting, subject to majority vote. Vehicle-AI
7. A majority of Commissioners is needed to cancel a called Commissioner meeting. Vehicle-AI
8. Proposed by Norma, in absence of Chair available to moderate the meeting, the most senior Dem. and Rep. Commissioners will alternate chairing meetings. Vehicle-AI or memo. of understanding
9. Language that any Commissioner from each Caucus may sit in on OCRE interviews provided the Commissioner's request to attend does not cause a scheduling delay. Vehicle?
10. Memorial/obits require a majority vote of the Commission and the proposed language for the memorial shall be circulated to all the

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Commissioners. Vehicle-AI

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Date : 10/28/2021 11:11:48 AM
From : "Sheryl Cozart" sccozart@usccr.gov
To : "David Ganz" dganz@usccr.gov
Cc : "Pilar McLaughlin" pmclaughlin@usccr.gov, "Andrew Gall" agall@usccr.gov
Subject : Re: Cleta Mitchell Serving on EAC Advisory Bd

Good morning David,

While Pilar is reviewing the script, I'll get started on this assignment. We'll get back to you later this afternoon.

Sheryl

> On Oct 28, 2021, at 10:58 AM, David Ganz <dganz@usccr.gov> wrote:
>
> Please research this issue and get back to me later this afternoon. I do not think the EAC statute is as prescriptive as Chair Cantu is reading it.
>
> ---
>
> **From:** Norma Cantu <ncantu@usccr.gov>
> **Sent:** Thursday, October 28, 2021 10:51 AM
> **To:** Mauro Morales <mmorales@usccr.gov>; David Ganz <dganz@usccr.gov>; Juana Silverio <jsilverio@usccr.gov>
> **Subject:** RE: Cleta Mitchell Serving on EAC Advisory Bd
>
> Dear Mauro, David,
> The intent of the agreement on appointment to the EAC was that we would follow a bipartisan process. A few weeks back, I learned Michael Yaki had too many work commitments to take on the appointment to EAC. I tried, unsuccessfully, to convince him to start his new term. We are back to square one.
> David, do you read the AI the same as I do? I read it that the bipartisan nature means both names have to be provided concurrently. What is your insight?
> Norma
>
> ---
>
> **From:** Juana Silverio <jsilverio@usccr.gov>
> **Sent:** Thursday, October 28, 2021 8:51 AM
> **To:** John Mashburn <jmashburn@usccr.gov>; Mauro Morales <mmorales@usccr.gov>; David Ganz <dganz@usccr.gov>
> **Cc:** Norma Cantu <ncantu@usccr.gov>
> **Subject:** Re: Cleta Mitchell Serving on EAC Advisory Bd
>
> The Chair will address this shortly.

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Juana

--

Juana Silverio *(she/her/ella)*

Special Assistant to Commissioner Norma V. Cantú

U.S. Commission on Civil Rights

E: jsilverio@usccr.gov

http://usccr.gov/

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From: John Mashburn
Sent: Thursday, October 28, 2021 8:40:44 AM
To: Mauro Morales; Juana Silverio; David Ganz
Subject: Fw: Cleta Mitchell Serving on EAC Advisory Bd

Is there an answer to this question?

From: John Mashburn
Sent: Monday, October 18, 2021 12:33:57 PM
To: Mauro Morales; Juana Silverio
Cc: Carissa Mulder
Subject: Cleta Mitchell Serving on EAC Advisory Bd

Mauro/Juana – Cleta Mitchell has not been contacted by USCCR or EAC staff about serving on the EAC Bd of Advisors. As you recall, her nomination to serve was approved at the August USCCR Bus Mtg. My boss and one other Cmnr asked me to find out what the process and status are regarding her appointment to the EAC Bd of Advisors.

Can either of you provide that info, or do I need to contact someone else at USCCR, or EAC?

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Date : 10/28/2021 12:57:47 PM
From : "Sheryl Cozart" sccozart@usccr.gov
To : "Pilar McLaughlin" pmclaughlin@usccr.gov
Subject : FW: Cleta Mitchell Serving on EAC Advisory Bd

Pilar,

Here's what I have. Let me know what you think and if you want to change/edit something.

Chair Cantu inquired about whether the language of the AI provides that "the bipartisan nature means both names have to be provided concurrently."

The EAC Board of Advisors statute requires "two members appointed by the United States Commission on Civil Rights." 52 U.S.C. 20944(a)(10). The statute further states that appointments will be made "in a manner which ensures that the Board of Advisors will be bipartisan in nature and will reflect the various geographic regions of the United States." Id. at 20944(b). The Commissioners voted on an Administrative Instruction on April 30, 2021 to elect two members to the EAC Board of Advisors. Specifically, the AI provided that the "members appointed by Democratic authorities shall nominate two individuals who are ready, willing, and able to serve, and the members appointed by the Republican authorities shall nominate two individuals who are ready, willing, and able to serve." Section 2.02(1). Thereafter, "the members appointed by the Democratic authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Democratic authorities." Section 2.02(2).
The language of the statute calls for a bipartisan Board of Advisors, and the AI describes the manner in which USCCR will appoint a bipartisan bloc. Neither the statute nor the AI, require that the bipartisan appointments must occur concurrently to ensure bipartisanship. Commissioner Yaki, who was nominated by members appointed by Democratic authorities, is no longer able to serve. Presumably, the Commissioner nominated by members appointed by Republican authorities is still able to serve. Therefore, Chair Cantu can permit the Commissioner nominated by members appointed by Republican authorities to begin their term, and she can restart the nomination process among the members appointed by Democratic authorities.

From: David Ganz <dganz@usccr.gov>
Sent: Thursday, October 28, 2021 10:58 AM
To: Pilar McLaughlin <pmclaughlin@usccr.gov>
Cc: Sheryl Cozart <sccozart@usccr.gov>; Andrew Gall <agall@usccr.gov>
Subject: FW: Cleta Mitchell Serving on EAC Advisory Bd

Please research this issue and get back to me later this afternoon. I do not think the EAC statute is as prescriptive as Chair Cantu is reading it.

From: Norma Cantu <ncantu@usccr.gov>
Sent: Thursday, October 28, 2021 10:51 AM
To: Mauro Morales <mmorales@usccr.gov>; David Ganz <dganz@usccr.gov>; Juana Silverio <jsilverio@usccr.gov>

AMERICAN OVERSIGHT

Subject: RE: Cleta Mitchell Serving on EAC Advisory Bd

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David, do you read the AI the same as I do? I read it that the bipartisan nature means both names have to be provided concurrently. What is your insight?
Norma

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Cc: Norma Cantu <ncantu@usccr.gov>
Subject: Re: Cleta Mitchell Serving on EAC Advisory Bd

The Chair will address this shortly.

Juana

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Juana Silverio *(she/her/ella)*

Special Assistant to Commissioner Norma V. Cantú

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From: John Mashburn
Sent: Thursday, October 28, 2021 8:40:44 AM

AMERICAN OVERSIGHT

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Can either of you provide that info, or do I need to contact someone else at USCCR, or EAC?

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Date : 10/28/2021 4:49:49 PM
From : "Sheryl Cozart" sccozart@usccr.gov
To : "Pilar McLaughlin" pmclaughlin@usccr.gov
Subject : Re: Cleta Mitchell Serving on EAC Advisory Bd

Pilar,

Did you review this? Or are you sending a response to David?

Sheryl

> On Oct 28, 2021, at 12:57 PM, Sheryl Cozart <sccozart@usccr.gov> wrote:
>
> Pilar,
>
> Here's what I have. Let me know what you think and if you want to change/edit something.
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> The language of the statute calls for a bipartisan Board of Advisors, and the AI describes the manner in which USCCR will appoint a bipartisan bloc. Neither the statute nor the AI, require that the bipartisan appointments must occur concurrently to ensure bipartisanship. Commissioner Yaki, who was nominated by members appointed by Democratic authorities, is no longer able to serve. Presumably, the Commissioner nominated by members appointed by Republican authorities is still able to serve. Therefore, Chair Cantu can permit the Commissioner nominated by members appointed by Republican authorities to begin their term, and she can restart the nomination process among the members appointed by Democratic

AMERICAN OVERSIGHT

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Cc: Norma Cantu <ncantu@usccr.gov>
Subject: Re: Cleta Mitchell Serving on EAC Advisory Bd

The Chair will address this shortly.

Juana

--

Juana Silverio *(she/her/ella)*

Special Assistant to Commissioner Norma V. Cantú

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Can either of you provide that info, or do I need to contact someone else at USCCR, or EAC?

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Date : 10/28/2021 5:23:56 PM
From : "Pilar McLaughlin" pmclaughlin@usccr.gov
To : "David Ganz" dganz@usccr.gov
Subject : RE: Cleta Mitchell Serving on EAC Advisory Bd

Right, they *were* ratified and subsequently, one is now unable to serve. I don't think Yaki's inability to serve nullifies the other appointment or necessitates that they start the process all over again…

From a government continuity perspective, I don't think that makes sense.

From: David Ganz <dganz@usccr.gov>
Sent: Thursday, October 28, 2021 5:21 PM
To: Pilar McLaughlin <pmclaughlin@usccr.gov>
Subject: RE: Cleta Mitchell Serving on EAC Advisory Bd

From the AI:

(3) The members selected shall be placed in nomination and ratified in conformance with Section 1.

Sort of seems like the two nominees have to be 'ratified' at the same time.

From: Pilar McLaughlin <pmclaughlin@usccr.gov>
Sent: Thursday, October 28, 2021 5:15 PM
To: David Ganz <dganz@usccr.gov>
Subject: RE: Cleta Mitchell Serving on EAC Advisory Bd

David:

Below is what Sheryl sent me. I am still working on editing her response. I think that Cantu is referring to the AI that commissioners voted on to nominate members to the EAC Board of Advisors, but I don't know the name of the AI nor can I find it.

Chair Cantu inquired about whether the language of the AI provides that "the bipartisan nature means both names have to be provided concurrently."

The EAC Board of Advisors statute requires "two members appointed by the United States Commission on Civil Rights." 52 U.S.C. 20944(a)(10). The statute further states that appointments will be made "in a manner which ensures that the Board of Advisors will be bipartisan in nature and will reflect the various geographic regions of the United States." Id. at 20944(b). The Commissioners voted on an Administrative Instruction on April 30, 2021 to elect two members to the EAC Board of Advisors. Specifically, the AI provided that the "members appointed by Democratic authorities shall nominate two individuals who are ready, willing, and able to serve, and the members appointed by the Republican authorities shall nominate two individuals who are ready, willing, and able to serve." Section 2.02(1). Thereafter, "the members appointed by the Democratic authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the

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Democratic authorities." Section 2.02(2).

The language of the statute calls for a bipartisan Board of Advisors, and the AI describes the manner in which USCCR will appoint a bipartisan bloc. Neither the statute nor the AI, require that the bipartisan appointments must occur concurrently to ensure bipartisanship. Commissioner Yaki, who was nominated by members appointed by Democratic authorities, is no longer able to serve. Presumably, the Commissioner nominated by members appointed by Republican authorities is still able to serve. Therefore, Chair Cantu can permit the Commissioner nominated by members appointed by Republican authorities to begin their term, and she can restart the nomination process among the members appointed by Democratic authorities.

From: David Ganz <dganz@usccr.gov>
Sent: Thursday, October 28, 2021 5:13 PM
To: Pilar McLaughlin <pmclaughlin@usccr.gov>
Cc: Sheryl Cozart <sccozart@usccr.gov>; Andrew Gall <agall@usccr.gov>
Subject: RE: Cleta Mitchell Serving on EAC Advisory Bd

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Thoughts?

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Sent: Thursday, October 28, 2021 10:58 AM
To: Pilar McLaughlin <pmclaughlin@usccr.gov>
Cc: Sheryl Cozart <sccozart@usccr.gov>; Andrew Gall <agall@usccr.gov>
Subject: FW: Cleta Mitchell Serving on EAC Advisory Bd

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From: Norma Cantu <ncantu@usccr.gov>
Sent: Thursday, October 28, 2021 10:51 AM
To: Mauro Morales <mmorales@usccr.gov>; David Ganz <dganz@usccr.gov>; Juana Silverio <jsilverio@usccr.gov>
Subject: RE: Cleta Mitchell Serving on EAC Advisory Bd

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Norma

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From: Juana Silverio <jsilverio@usccr.gov>
Sent: Thursday, October 28, 2021 8:51 AM
To: John Mashburn <jmashburn@usccr.gov>; Mauro Morales <mmorales@usccr.gov>; David Ganz <dganz@usccr.gov>
Cc: Norma Cantu <ncantu@usccr.gov>
Subject: Re: Cleta Mitchell Serving on EAC Advisory Bd

The Chair will address this shortly.

Juana

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From: John Mashburn
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Subject: Fw: Cleta Mitchell Serving on EAC Advisory Bd

Is there an answer to this question?

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Sent: Monday, October 18, 2021 12:33:57 PM
To: Mauro Morales; Juana Silverio
Cc: Carissa Mulder
Subject: Cleta Mitchell Serving on EAC Advisory Bd

AMERICAN OVERSIGHT

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Date : 10/28/2021 5:26:08 PM
From : "David Ganz" dganz@usccr.gov
To : "Pilar McLaughlin" pmclaughlin@usccr.gov
Subject : RE: Cleta Mitchell Serving on EAC Advisory Bd

Good point. It would very odd for a properly selected or 'ratified' nominee to be canceled or nullified because his counterpart drops out.

From: Pilar McLaughlin <pmclaughlin@usccr.gov>
Sent: Thursday, October 28, 2021 5:24 PM
To: David Ganz <dganz@usccr.gov>
Subject: RE: Cleta Mitchell Serving on EAC Advisory Bd

Right, they *were* ratified and subsequently, one is now unable to serve. I don't think Yaki's inability to serve nullifies the other appointment or necessitates that they start the process all over again…

From a government continuity perspective, I don't think that makes sense.

From: David Ganz <dganz@usccr.gov>
Sent: Thursday, October 28, 2021 5:21 PM
To: Pilar McLaughlin <pmclaughlin@usccr.gov>
Subject: RE: Cleta Mitchell Serving on EAC Advisory Bd

From the AI:

(3) The members selected shall be placed in nomination and ratified in conformance with Section 1.

Sort of seems like the two nominees have to be 'ratified' at the same time.

From: Pilar McLaughlin <pmclaughlin@usccr.gov>
Sent: Thursday, October 28, 2021 5:15 PM
To: David Ganz <dganz@usccr.gov>
Subject: RE: Cleta Mitchell Serving on EAC Advisory Bd

David:

Below is what Sheryl sent me. I am still working on editing her response. I think that Cantu is referring to the AI that commissioners voted on to nominate members to the EAC Board of Advisors, but I don't know the name of the AI nor can I find it.

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2021 to elect two members to the EAC Board of Advisors. Specifically, the AI provided that the "members appointed by Democratic authorities shall nominate two individuals who are ready, willing, and able to serve, and the members appointed by the Republican authorities shall nominate two individuals who are ready, willing, and able to serve." Section 2.02(1). Thereafter, "the members appointed by the Democratic authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Democratic authorities." Section 2.02(2).

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AMERICAN OVERSIGHT

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AMERICAN OVERSIGHT

Date : 10/28/2021 5:13:17 PM
From : "Pilar McLaughlin" pmclaughlin@usccr.gov
To : "Sheryl Cozart" sccozart@usccr.gov
Subject : RE: Cleta Mitchell Serving on EAC Advisory Bd

I am

From: Sheryl Cozart <sccozart@usccr.gov>
Sent: Thursday, October 28, 2021 4:50 PM
To: Pilar McLaughlin <pmclaughlin@usccr.gov>
Subject: Re: Cleta Mitchell Serving on EAC Advisory Bd

Pilar,

Did you review this? Or are you sending a response to David?

Sheryl

> On Oct 28, 2021, at 12:57 PM, Sheryl Cozart <sccozart@usccr.gov> wrote:
>
> Pilar,
>
> Here's what I have. Let me know what you think and if you want to change/edit something.
>
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>
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AMERICAN OVERSIGHT

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From : "David Ganz" dganz@usccr.gov
To : "Pilar McLaughlin" pmclaughlin@usccr.gov
Subject : RE: Cleta Mitchell Serving on EAC Advisory Bd

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From : "David Ganz" dganz@usccr.gov
To : "Pilar McLaughlin" pmclaughlin@usccr.gov
Cc : "Sheryl Cozart" sccozart@usccr.gov, "Andrew Gall" agall@usccr.gov
Subject : RE: Cleta Mitchell Serving on EAC Advisory Bd
Attachment : AI on Appointment Authority (general and EAC).docx;

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AMERICAN OVERSIGHT

--

Juana Silverio *(she/her/ella)*

Special Assistant to Commissioner Norma V. Cantú

U.S. Commission on Civil Rights

E: jsilverio@usccr.gov

http://usccr.gov/

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From: John Mashburn
Sent: Thursday, October 28, 2021 8:40:44 AM
To: Mauro Morales; Juana Silverio; David Ganz
Subject: Fw: Cleta Mitchell Serving on EAC Advisory Bd

Is there an answer to this question?

From: John Mashburn
Sent: Monday, October 18, 2021 12:33:57 PM
To: Mauro Morales; Juana Silverio
Cc: Carissa Mulder
Subject: Cleta Mitchell Serving on EAC Advisory Bd

Mauro/Juana – Cleta Mitchell has not been contacted by USCCR or EAC staff about serving on the EAC Bd of Advisors. As you recall, her nomination to serve was approved at the August USCCR Bus Mtg. My boss and one other Cmnr asked me to find out what the process and status are regarding her appointment to the EAC Bd of Advisors.

Can either of you provide that info, or do I need to contact someone else at USCCR, or EAC?

AMERICAN OVERSIGHT

ADMINISTRATIVE INSTRUCTION __- __

COMMISSION APPOINTMENTS TO OTHER FEDERAL ENTITIES

Section 1.
.01 Any authority specifically granted the Commission of Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc. shall be exercised by the Commission as a whole by majority vote.

Section 2
.02

(1) For the two (2) appointments to the U.S. Election Assistance Commission, the members appointed by Democratic authorities shall nominate two individuals of their membership, and the members appointed by the Republican authorities shall nominate two individuals of their membership.

(2) The members appointed by the Democratic authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Democratic authorities

(3) The members selected shall be placed in nomination and ratified in conformance with Section 1.

AMERICAN OVERSIGHT

Date : 10/28/2021 5:37:49 PM
From : "Pilar McLaughlin" pmclaughlin@usccr.gov
To : "Sheryl Cozart" sccozart@usccr.gov
Subject : RE: Cleta Mitchell Serving on EAC Advisory Bd

I did send it to him. I was working on some of my own edits this afternoon, but then I decided they were really pointless.

Here is what I got which I didn't even bother sending to him because I turned it into a much bigger deal that it needed to be. The only line that matters is the last line which I highlighted in yellow.

Chair Cantu inquired about whether the language of the AI and the EAC Board of Advisors statute require that both USCCR appointees to the EAC Board of Advisors must be made concurrently. Commissioner Yaki, who was nominated by members appointed by Democratic authorities, is no longer able to serve and the Chair is concerned that by putting forward one name, we are not operating within the confines of the statute or the Commission's AI.

The EAC Board of Advisor is comprised of 37 members. 52 U.S.C. §20944(1). The statute requires "two members appointed by the United States Commission on Civil Rights." *Id*. at (a)(10). The statute further states that appointments will be made "in a manner which ensures that the Board of Advisors will be bipartisan in nature and will reflect the various geographic regions of the United States." *Id*. at 20944(b).

Commissions can be set up in different ways. The Congressional Research Service found that most commissions were structured to be bipartisan and only a small number were set up to have a perfect split between democrats and republican members. CRS, *Designating Congressional Commissions: Background and Considerations for Congress*, p. 10. Typically, according to the report, the bipartisanship is achieved by "dividing commission appointment authority between members of the majority and minority parties in the House and Senate." *Id* at p.10. With respect to the EAC Board of Advisors, the statute dictates a bipartisan appointment structure between members of the majority parties in the House and Senate, but also requires two appointees from non-congressional entities such as the Commission on Civil Rights. 52 U.S.C. §20944 (a)(1) – (11). The statute requires that each of the non-congressional appointing bodies make their appointments in a way that ensures bipartisanship and thus, these appointees should be from opposing political parties. Only three of the appointing authorities, the chief of the Office of Public Integrity of the Department of Justice, the chief of the Voting Section of the Civil Rights Division of the Department of Justice, and the director of the Federal Voting Assistance Program of the Department of Defense, are allotted one appointee each. *Id*. at §20944 (a)12-14. The report also notes that in some cases it may be difficult to enforce a bipartisanship requirement as "determining the political affiliation of some potential members, who may have no official affiliation with a party (through voter registration, for example), may not be possible." CRS Report, p. 10. Given that the statute calls for 37 members, an odd number, the Board was not designed to have a perfectly even split between two political parties.

AMERICAN OVERSIGHT

The Commissioners voted on an Administrative Instruction on April 30, 2021, to elect two members to appoint to the EAC Board of Advisors. Specifically, the AI provided that the "members appointed by Democratic authorities shall nominate two individuals who are ready, willing, and able to serve, and the members appointed by the Republican authorities shall nominate two individuals who are ready, willing, and able to serve." Section 2.02(1). Thereafter, "the members appointed by the Democratic authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Democratic authorities." Section 2.02(2).

The Commissioners voted on an Administrative Instruction on April 30, 2021, to elect two members to the EAC Board of Advisors. Specifically, the AI provided that the "members appointed by Democratic authorities shall nominate two individuals who are ready, willing, and able to serve, and the members appointed by the Republican authorities shall nominate two individuals who are ready, willing, and able to serve." Section 2.02(1). Thereafter, "the members appointed by the Democratic authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Democratic authorities." Section 2.02(2).

The language of the EAC statute calls for a bipartisan Board of Advisors, and the AI describes the manner in which USCCR will appoint a bipartisan bloc. Neither the statute nor the AI, however, require that the bipartisan appointments must occur concurrently or even within a certain time frame relative to each other. Moreover, the AI does not specify that the appointments put forward by the Commission must be voted on simultaneously. The language of the Commission's AI is silent on the timing of appointments and allows for flexibility should one of the appointees be unable to fulfill the requirements to serve. From a continuing of operations perspective, it would not make sense for one nominee who was properly selected or 'ratified' to be canceled or nullified because his counterpart drops out.

From: Sheryl Cozart <sccozart@usccr.gov>
Sent: Thursday, October 28, 2021 4:50 PM
To: Pilar McLaughlin <pmclaughlin@usccr.gov>
Subject: Re: Cleta Mitchell Serving on EAC Advisory Bd

Pilar,

Did you review this? Or are you sending a response to David?

Sheryl

AMERICAN OVERSIGHT

On Oct 28, 2021, at 12:57 PM, Sheryl Cozart <sccozart@usccr.gov> wrote:

Pilar,

Here's what I have. Let me know what you think and if you want to change/edit something.

Chair Cantu inquired about whether the language of the AI provides that "the bipartisan nature means both names have to be provided concurrently."

The EAC Board of Advisors statute requires "two members appointed by the United States Commission on Civil Rights." 52 U.S.C. 20944(a)(10). The statute further states that appointments will be made "in a manner which ensures that the Board of Advisors will be bipartisan in nature and will reflect the various geographic regions of the United States." Id. at 20944(b). The Commissioners voted on an Administrative Instruction on April 30, 2021 to elect two members to the EAC Board of Advisors. Specifically, the AI provided that the "members appointed by Democratic authorities shall nominate two individuals who are ready, willing, and able to serve, and the members appointed by the Republican authorities shall nominate two individuals who are ready, willing, and able to serve." Section 2.02(1). Thereafter, "the members appointed by the Democratic authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Democratic authorities." Section 2.02(2).
The language of the statute calls for a bipartisan Board of Advisors, and the AI describes the manner in which USCCR will appoint a bipartisan bloc. Neither the statute nor the AI, require that the bipartisan appointments must occur concurrently to ensure bipartisanship. Commissioner Yaki, who was nominated by members appointed by Democratic authorities, is no longer able to serve. Presumably, the Commissioner nominated by members appointed by Republican authorities is still able to serve. Therefore, Chair Cantu can permit the Commissioner nominated by members appointed by Republican authorities to begin their term, and she can restart the nomination process among the members appointed by Democratic authorities.

From: David Ganz <dganz@usccr.gov>
Sent: Thursday, October 28, 2021 10:58 AM
To: Pilar McLaughlin <pmclaughlin@usccr.gov>
Cc: Sheryl Cozart <sccozart@usccr.gov>; Andrew Gall <agall@usccr.gov>
Subject: FW: Cleta Mitchell Serving on EAC Advisory Bd

Please research this issue and get back to me later this afternoon. I do not think the EAC statute is as prescriptive as Chair Cantu is reading it.

AMERICAN OVERSIGHT

From: Norma Cantu <ncantu@usccr.gov>
Sent: Thursday, October 28, 2021 10:51 AM
To: Mauro Morales <mmorales@usccr.gov>; David Ganz <dganz@usccr.gov>; Juana Silverio <jsilverio@usccr.gov>
Subject: RE: Cleta Mitchell Serving on EAC Advisory Bd

Dear Mauro, David,
The intent of the agreement on appointment to the EAC was that we would follow a bipartisan process. A few weeks back, I learned Michael Yaki had too many work commitments to take on the appointment to EAC. I tried, unsuccessfully, to convince him to start his new term. We are back to square one.
David, do you read the AI the same as I do? I read it that the bipartisan nature means both names have to be provided concurrently. What is your insight?
Norma

From: Juana Silverio <jsilverio@usccr.gov>
Sent: Thursday, October 28, 2021 8:51 AM
To: John Mashburn <jmashburn@usccr.gov>; Mauro Morales <mmorales@usccr.gov>; David Ganz <dganz@usccr.gov>
Cc: Norma Cantu <ncantu@usccr.gov>
Subject: Re: Cleta Mitchell Serving on EAC Advisory Bd

The Chair will address this shortly.

Juana

--

Juana Silverio *(she/her/ella)*

Special Assistant to Commissioner Norma V. Cantú

U.S. Commission on Civil Rights

E: jsilverio@usccr.gov

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Can either of you provide that info, or do I need to contact someone else at USCCR, or EAC?

AMERICAN OVERSIGHT

Date : 3/24/2021 3:52:12 PM
From : "Mauro Morales" mmorales@usccr.gov
To : "David Ganz" dganz@usccr.gov, "Pilar McLaughlin" pmclaughlin@usccr.gov
Subject : RE: EAC Board of Advisors Membership Appointments

Yes, but this one of the issues of contention. I will respond. Thanks

---

From: David Ganz
Sent: Wednesday, March 24, 2021 3:30 PM
To: Pilar McLaughlin <pmclaughlin@usccr.gov>; Mauro Morales <mmorales@usccr.gov>
Subject: RE: EAC Board of Advisors Membership Appointments

If there aren't new appointments, then Yaki and Kladney are automatically renewed for new terms, right?

From: Pilar McLaughlin <pmclaughlin@usccr.gov>
Sent: Wednesday, March 24, 2021 3:16 PM
To: David Ganz <dganz@usccr.gov>; Mauro Morales <mmorales@usccr.gov>
Subject: FW: EAC Board of Advisors Membership Appointments

Mauro and David:

Wanted to make sure you saw this. Flagging the date (March 26, 2021) the EAC is requesting we submit the Commission's new appointments.

Pilar

From: Kevin Rayburn <KRayburn@eac.gov>
Sent: Wednesday, March 24, 2021 2:14 PM
To: Mauro Morales <mmorales@usccr.gov>
Cc: Pilar McLaughlin <pmclaughlin@usccr.gov>
Subject: [EXTERNAL] RE: EAC Board of Advisors Membership Appointments

> CAUTION: This email is from outside USCCR.

I just wanted to follow-up on my previous email and see if you had any questions or concerns.

Thanks,

Kevin Rayburn, General Counsel
U.S. Election Assistance Commission
Mobile: (202) 740-6546

AMERICAN OVERSIGHT

From: Kevin Rayburn
Sent: Friday, March 5, 2021 11:14 AM
To: mmorales@usccr.gov
Subject: EAC Board of Advisors Membership Appointments

Good Morning Mr. Morales,

Please find attached correspondence from the U.S. Election Assistance Commission regarding your organization's appointments to the EAC Board of Advisors. Also included is a Notice of Representation Form. We ask that you please return the completed form to krayburn@eac.gov by March 26, 2021. Let me know if you have any questions.

Sincerely,

Kevin Rayburn, General Counsel
U.S. Election Assistance Commission
Mobile: (202) 740-6546

AMERICAN OVERSIGHT

Date : 3/24/2021 4:11:04 PM
From : "Mauro Morales" mmorales@usccr.gov
To : "Kevin Rayburn" KRayburn@eac.gov
Cc : "Pilar McLaughlin" pmclaughlin@usccr.gov, "David Ganz" dganz@usccr.gov
Subject : RE: EAC Board of Advisors Membership Appointments
Attachment : image001.gif;image002.gif;

Kevin,

Thank you for getting back to us. Chair Catherine Lhamon resigned from the Commission on January 19th. Commissioner Norma Cantu has been sworn in to replace her and has been designated as the new Chair. Unfortunately, the Commissioners have been delayed in having a vote to confirm Commissioner Cantu as the new Chair. It is my understanding that Commissioner Cantu and the other commissioners wish to reach a mutual agreement on who they will select to fill the memberships. Commissioners Kladney and Yaki may be reappointed. On the other hand, Commissioner may agree to add a new member and keep one of the current members. It looks like the Commissioners will not be able to make a decision until the next US Commission on Civil Rights business meeting on April 16th.

Can you advise us as to the options we have available? If we are unable to make our appointments until April 16th, will the current appointments lapse or will Klandey and Yaki automatically be renewed for another term? If Kladney and Yaki are automatically renewed can they be changed once Commissioners reach a decision on who should be appointed. Please let us know if you wish to speak to us for clarity.

Thank you.

Mauro Morales
Staff Director
U.S. Commission on Civil Rights
P: 202-376-7796| F: 202-376-7672
Mmorales@usccr.gov
http://usccr.gov/
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425

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AMERICAN OVERSIGHT

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U.S. Election Assistance Commission
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AMERICAN OVERSIGHT

OVERSIGHT

OVERSTOCK

Date : 3/24/2021 3:30:02 PM
From : "David Ganz" dganz@usccr.gov
To : "Pilar McLaughlin" pmclaughlin@usccr.gov, "Mauro Morales" mmorales@usccr.gov
Subject : RE: EAC Board of Advisors Membership Appointments

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Mobile: (202) 740-6546

AMERICAN OVERSIGHT

Date : 10/29/2021 11:12:41 AM
From : "Norma Cantu" ncantu@usccr.gov
To : "David Ganz" dganz@usccr.gov, "Mauro Morales" mmorales@usccr.gov, "Juana Silverio" jsilverio@usccr.gov
Cc : "Pilar McLaughlin" pmclaughlin@usccr.gov
Subject : RE: Cleta Mitchell Serving on EAC Advisory Bd

Thanks. Good advice.
Norma

From: David Ganz <dganz@usccr.gov>
Sent: Thursday, October 28, 2021 5:24 PM
To: Norma Cantu <ncantu@usccr.gov>; Mauro Morales <mmorales@usccr.gov>; Juana Silverio <jsilverio@usccr.gov>
Cc: Pilar McLaughlin <pmclaughlin@usccr.gov>
Subject: RE: Cleta Mitchell Serving on EAC Advisory Bd

Dear Chair Cantu,

The EAC Board of Advisors statute requires "two members appointed by the United States Commission on Civil Rights." 52 U.S.C. § 20944(a)(10). The statute calls for bipartisan nominees, however it does not require that USCCR's two nominees are provided concurrently or even in a relatively close time frame. The process set out in the applicable A.I. was followed and two nominees were selected. Subsequently one nominee withdrew. To read the A.I. to require simultaneous nominees would effectively strip the other nominee of the position after he was properly nominated and ratified in violation of the A.I. and possibly § 20944. Therefore, it is recommended that the nominee appointed by Republican caucus begin his service on the EAC Board of Advisors and a new nomination process among the Democratic caucus be started.

Please let me know if you would like to discuss this issue tomorrow. Kind regards,

David

From: Norma Cantu <ncantu@usccr.gov>
Sent: Thursday, October 28, 2021 10:51 AM
To: Mauro Morales <mmorales@usccr.gov>; David Ganz <dganz@usccr.gov>; Juana Silverio <jsilverio@usccr.gov>
Subject: RE: Cleta Mitchell Serving on EAC Advisory Bd

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AMERICAN OVERSIGHT

Norma

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Sent: Thursday, October 28, 2021 8:51 AM
To: John Mashburn <jmashburn@usccr.gov>; Mauro Morales <mmorales@usccr.gov>; David Ganz <dganz@usccr.gov>
Cc: Norma Cantu <ncantu@usccr.gov>
Subject: Re: Cleta Mitchell Serving on EAC Advisory Bd

The Chair will address this shortly.

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Juana Silverio *(she/her/ella)*

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Can either of you provide that info, or do I need to contact someone else at USCCR, or EAC?

AMERICAN OVERSIGHT

Date : 11/2/2021 10:28:47 AM
From : "Andrew Gall" agall@usccr.gov
To : "David Ganz" dganz@usccr.gov, "Pilar McLaughlin" pmclaughlin@usccr.gov
Cc : "Sheryl Cozart" sccozart@usccr.gov
Subject : RE: Cleta Mitchell Serving on EAC Advisory Bd

"Appointments shall be made to the Board of Advisors under subsection (a) in a manner which ensures that the Board of Advisors will be bipartisan in nature and will reflect the various geographic regions of the United States." If one member is appointed before the other, it would seem to go against the "be bipartisan in nature" manner of appointment requirement to me.

From: David Ganz <dganz@usccr.gov>
Sent: Thursday, October 28, 2021 5:13 PM
To: Pilar McLaughlin <pmclaughlin@usccr.gov>
Cc: Sheryl Cozart <sccozart@usccr.gov>; Andrew Gall <agall@usccr.gov>
Subject: RE: Cleta Mitchell Serving on EAC Advisory Bd

She is asking about the attached A.I. rather than the EAC statute. A plain reading of the A.I. does envision both USCCR nominees being provided at the same time, however I do not think there is any legal basis for that process, but rather it is just they drafted the A.I.

Thoughts?

From: David Ganz
Sent: Thursday, October 28, 2021 10:58 AM
To: Pilar McLaughlin <pmclaughlin@usccr.gov>
Cc: Sheryl Cozart <sccozart@usccr.gov>; Andrew Gall <agall@usccr.gov>
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Please research this issue and get back to me later this afternoon. I do not think the EAC statute is as prescriptive as Chair Cantu is reading it.

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AMERICAN OVERSIGHT

Date : 4/19/2021 12:52:50 PM
From : "Sheryl Cozart" sccozart@usccr.gov
To : "David Ganz" dganz@usccr.gov, "Pilar McLaughlin" pmclaughlin@usccr.gov
Subject : RE: Follow Up on Today's Business Meeting
Attachment : AI on Appointment Authority (general and EAC) SCC edits.docx;AI1-6Witnesses - Yaki revision SCC edits.docx;OCRE.A-I.4.15.21 SCC edits.docx;image001.gif;image002.gif;

David,

Attached are my redline comments and edits of the A.I.s.
A.I. on appointments to other Federal entities:

- I believe the appointment is to the Board of Advisors of the EAC, not the EAC itself.

A.I. on Commission Hearings

- Only a couple of small language changes.

Proposed A.I. re Commissioners observing external fact witnesses or experts:

- This proposed A.I. seems inconsistent with the internal communication procedures between staff and Commissioners.
- This proposed A.I. does not make clear who falls in the category of external fact witness or expert and does not offer the interview to be recorded and transcribed as required in our regs.

From: David Ganz <dganz@usccr.gov>
Sent: Friday, April 16, 2021 6:06 PM
To: Pilar McLaughlin <pmclaughlin@usccr.gov>; Sheryl Cozart <sccozart@usccr.gov>
Subject: RE: Follow Up on Today's Business Meeting

Please provide redlined comments and edits to these A.I.s by mid-day on Tuesday to me. I will consolidate OGC comments.

From: David Ganz
Sent: Friday, April 16, 2021 6:04 PM
To: ExecutiveStaff <ExecutiveStaff@usccr.gov>
Cc: Pilar McLaughlin <pmclaughlin@usccr.gov>; Sheryl Cozart <sccozart@usccr.gov>; Mauro Morales <mmorales@usccr.gov>
Subject: RE: Follow Up on Today's Business Meeting

Hello all,

As Mauro indicated, please review these proposed A.I.s to determine the impact on your division's ability to carry out its, and the USCCR's broader, programmatic and statutory functions. Please redline the A.I.s and provide comments and send them back to me by COB Tuesday, April 20. OGC will consolidate the comments and edits from your respective divisions. OGC will provide comments and edits as well. I know it is quick turnaround, so I appreciate you prioritizing it. If you need an extension to Wednesday, please let me know. After we have consolidated comments, Mauro and Commission leadership will determine how we present it the Commissioners and SAs. Kind regards,

AMERICAN OVERSIGHT

David

From: Mauro Morales <mmorales@usccr.gov>
Sent: Friday, April 16, 2021 5:04 PM
To: ExecutiveStaff <ExecutiveStaff@usccr.gov>
Subject: FW: Follow Up on Today's Business Meeting

Executive Team

Please review and determine if your department needs to provide input on one or more of these three AI's. What you should determine is what would be the legal, administrative and research impact to your department's ability to carry out its responsibility and ensure the mission of USCCR can be carried out. I am going to task David Ganz to coordinate a response for the agency to Commissioners on these three AI's. I will coordinate a check in on Monday to see how we should provide draft a response.

Mauro

From: Carissa Mulder
Sent: Friday, April 16, 2021 4:52 PM
To: Mauro Morales <mmorales@usccr.gov>; Peter Kirsanow <pkirsanow@usccr.gov> >; Commissioners <Commissioners@usccr.gov>; pkirsanow@beneschlaw.com
Subject: Re: Follow Up on Today's Business Meeting

See attached.

From: Mauro Morales
Sent: Friday, April 16, 2021 4:34:23 PM
To: Peter Kirsanow
Cc: CommissionerAssistants; ExecutiveStaff; Commissioners
Subject: Follow Up on Today's Business Meeting

Commissioner Kirsanow,

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Please contact me if you have any questions or concerns about meeting Commissioner determined deadlines.

AMERICAN OVERSIGHT

Mauro Morales
Staff Director
U.S. Commission on Civil Rights
P: 202-376-7796| F: 202-376-7672
Mmorales@usccr.gov
http://usccr.gov/
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Washington D.C. 20425

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ADMINISTRATIVE INSTRUCTION __- __

COMMISSION APPOINTMENTS TO OTHER FEDERAL ENTITIES

Section 1.
.01 Any authority specifically granted the Commission of Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc. shall be exercised by the Commission as a whole by majority vote.

Section 2
.02

(1) For the two (2) appointments to the U.S. Election Assistance Commission, the members appointed by Democratic authorities shall nominate two individuals of their membership, and the members appointed by the Republican authorities shall nominate two individuals of their membership.

Commented [SC1]: I believe the position is to the Election Advisory Board of the U.S. Election Assistance Commission, not the EAC itself.

(2) The members appointed by the Democratic authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Democratic authorities

(3) The members selected shall be placed in nomination and ratified in conformance with Section 1.

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AI on Commission Hearings

SECTION 11. COMMISSION HEARINGS

.01 The OGC is responsible for preparing and holding Commission hearings. This includes ensuring that the witnesses, when viewed as a whole, possess sufficient policy, legal, academic, advocacy, and other knowledge and experience necessary for a full and balanced inquiry into the issues.

.02 To document that hearing witnesses reflected varied and opposing views, opinions, and perspectives, OSD completes Section III of the *National Office Report Checklist for Hearing Reports* form. By completing this part of the form OSD certifies that the hearing included a numerical balance of witnesses between opposing views, opinions and perspectives or that a numerical balance could not be achieved or was not appropriate in light of the subject of the hearing and/or the availability of credible witnesses. Section IV is completed by the Staff Director before the proposed final draft report and checklist are provided to the external reviewer.

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Commented [SC1]: See AI 1-6.1(b) which reads: Commission projects, including reports and other written work products, hearings, and briefings, are examinations of civil rights issues that reflect a consideration of varied and opposing viewpoints, opinions, and perspectives.

.04 OGC prepares hearing proposals, design or implementation plans, and briefing or background books. When preparing hearing proposals this office should demonstrate a consideration of varied and opposing views, opinions, and perspectives. This office also verifies the accuracy of transcripts, drafts hearing reports, and maintains official hearing records.

.05 OGC is responsible for supplying a complete and correct transcript with appropriate exhibits to OSD and ASCD for publication. Hearing transcripts do not require editorial review.

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Commented [SC2]: See comment above.

.0~~3~~2 Commissioners are provided a proposed final list of briefing presenters for approval. To document that the briefing witnesses reflected varied and opposing views, opinions, and perspectives, OSD completes Section III of the *National Office Report Checklist for Briefing Reports* form. By completing this part of the form, OSD certifies that the briefing included a numerical balance of witnesses between opposing views, opinions and perspectives or that a numerical balance could not be achieved or was not appropriate in light of the subject of the briefing and/or the availability of credible witnesses. Section IV of this form is completed by the Staff Director before the proposed final draft report and checklist is provided to the external reviewer.

.043 The briefing record will be kept open for a period of 30 days after the briefing or as otherwise established by a majority vote of the Commissioners. Any material or information placed in the record during this period will be available to the Commissioners upon request.

AMERICAN OVERSIGHT

Proposed A-I

As the staff persons arrange for interviews of external fact witnesses or experts for the purpose of informing writing of reports, etc., the Commissioners will be given notice of the names and titles of proposed witnesses, so that the Commissioners and their special assistants can observe the interview first-hand. The observations will help the Commissioners better understand the subject matters covered, and enable the Commissioner to conduct and follow-up with questions of the witnesses . If more than one Commissioner (or Commissioner's Special Assistant) representing Democratic or Republican appointing authorities wishes to attend, the Staff Director may limit attendance to one representative from each (provided circumstances clearly warrant such a limit).

Commented [SC1]: This A-I, in total, is inconsistent with the internal communication procedures between staff and Commissioners as described in A-I 9-2.2 which reads: .01 Individual Commissioners and their assistants may, at any time, request information about proposed or on-going Commission projects from the Staff Director, the General Counsel, or the Director of the Office for Civil Rights Evaluation. Such information may include, e.g., interrogatory responses, responses to data requests, availability of confirmed witnesses or panelists, and/or consultant work product, but not working drafts of reports.

. 02 If the Staff Director and the relevant senior managers determine that it is appropriate, Commissioners may speak directly with line staff responsible for a particular project, or segment of a project, related to their inquiry. Commissioners and their assistants will not contact individual staff members directly without first addressing their inquiries to the Staff Director and the relevant senior managers identified above.

. 03 Staff, in consultation with their department manager, may, as appropriate, contact individual Commissioners to seek their input and/or expertise regarding proposed or on-going projects.

Commented [SC2]: Also, I am not clear about who falls in the category of "external fact witness or expert." All witness interviews must be recorded and transcribed.
According to 702.14 (a) An accurate transcript shall be made of the testimony of all witnesses at all proceedings of the Commission. Transcripts shall be recorded solely by the official reporter or by any other person or means designated by the Commission.
(b) Every person who submits data or evidence shall be entitled to retain or, on payment of lawfully prescribed costs, procure a copy or transcript thereof, except that witnesses in a hearing held in executive session may be limited, for good cause, to inspec-tion of the official transcript of their testimony.

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OVERSIGHT

OVERSTOCK

Date : 4/19/2021 4:35:00 PM
From : "David Ganz" dganz@usccr.gov
To : "Sheryl Cozart" sccozart@usccr.gov, "Pilar McLaughlin" pmclaughlin@usccr.gov
Subject : RE: Follow Up on Today's Business Meeting
Attachment : image001.gif;image002.gif;

This section of our report also states that the commission's regulations do not specify who has authority to develop the commission's internal operating procedures. In response to the comments from commissioners Achtenberg, Kladney, Narasaki, Timmons-Goodson, and Yaki, we added a statement that several commissioners said they oversee the development of these procedures. As noted in the report, the staff director believes she has independent authority to develop these procedures. Therefore, we continue to believe that Congress should clarify who has responsibility for developing the commission's internal operating procedures because there is a lack of consensus within the commission, and our report contains a matter for congressional consideration to this effect. https://www.gao.gov/assets/gao-15-92.pdf, p. 36 of the PDF.

From: David Ganz
Sent: Monday, April 19, 2021 3:50 PM
To: Sheryl Cozart <sccozart@usccr.gov>; Pilar McLaughlin <pmclaughlin@usccr.gov>
Subject: RE: Follow Up on Today's Business Meeting

See my last comment. I think we should try to determine if the SD needs to sign A.I.s- A.I.s relating to 'administrative' functions may differ to those relating solely to Commissioner voting and internal Commissioner decisions.

From: Sheryl Cozart <sccozart@usccr.gov>
Sent: Monday, April 19, 2021 12:53 PM
To: David Ganz <dganz@usccr.gov>; Pilar McLaughlin <pmclaughlin@usccr.gov>
Subject: RE: Follow Up on Today's Business Meeting

David,

Attached are my redline comments and edits of the A.I.s.
A.I. on appointments to other Federal entities:

- I believe the appointment is to the Board of Advisors of the EAC, not the EAC itself.

A.I. on Commission Hearings

- Only a couple of small language changes.

Proposed A.I. re Commissioners observing external fact witnesses or experts:

- This proposed A.I. seems inconsistent with the internal communication procedures between staff and Commissioners.
- This proposed A.I. does not make clear who falls in the category of external fact witness or expert and does not offer the interview to be recorded and transcribed as required in our regs.

From: David Ganz <dganz@usccr.gov>
Sent: Friday, April 16, 2021 6:06 PM

AMERICAN OVERSIGHT

To: Pilar McLaughlin <pmclaughlin@usccr.gov>; Sheryl Cozart <sccozart@usccr.gov>
Subject: RE: Follow Up on Today's Business Meeting

Please provide redlined comments and edits to these A.I.s by mid-day on Tuesday to me. I will consolidate OGC comments.

From: David Ganz
Sent: Friday, April 16, 2021 6:04 PM
To: ExecutiveStaff <ExecutiveStaff@usccr.gov>
Cc: Pilar McLaughlin <pmclaughlin@usccr.gov>; Sheryl Cozart <sccozart@usccr.gov>; Mauro Morales <mmorales@usccr.gov>
Subject: RE: Follow Up on Today's Business Meeting

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To: ExecutiveStaff <ExecutiveStaff@usccr.gov>
Subject: FW: Follow Up on Today's Business Meeting

Executive Team

Please review and determine if your department needs to provide input on one or more of these three AI's. What you should determine is what would be the legal, administrative and research impact to your department's ability to carry out its responsibility and ensure the mission of USCCR can be carried out. I am going to task David Ganz to coordinate a response for the agency to Commissioners on these three AI's. I will coordinate a check in on Monday to see how we should provide draft a response.

Mauro

From: Carissa Mulder
Sent: Friday, April 16, 2021 4:52 PM
To: Mauro Morales <mmorales@usccr.gov>; Peter Kirsanow <pkirsanow@usccr.gov> >; Commissioners <Commissioners@usccr.gov>; pkirsanow@beneschlaw.com
Subject: Re: Follow Up on Today's Business Meeting

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AMERICAN OVERSIGHT

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To: Peter Kirsanow
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Mauro Morales
Staff Director
U.S. Commission on Civil Rights
P: 202-376-7796| F: 202-376-7672
Mmorales@usccr.gov
http://usccr.gov/
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425

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OVERSIGHT

OVERSTOCK

Date : 4/19/2021 7:36:16 PM
From : "Pilar McLaughlin" pmclaughlin@usccr.gov
To : "Sheryl Cozart" sccozart@usccr.gov, "David Ganz" dganz@usccr.gov
Subject : RE: Follow Up on Today's Business Meeting
Attachment : AI1-6Witnesses - Yaki revision PVM edits.docx;AI on Appointment Authority (general and EAC) PVM edits.docx;OCRE.A-I.4.15.21 PVm edits.docx;image001.gif;image002.gif;

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From: Sheryl Cozart <sccozart@usccr.gov>
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AI on Commission Hearings

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Commented [PM1]: Ok, so now I understand… this is intended to be a revision of Section 11 of AI 1-6

Commented [PM2]: When you say "balanced" do you mean bi-partisan?

Commented [PM3]: What is the point of the paragraph .03 below if this form is filled out and certified? The filling and certifying of this form seems to safeguard the required political balance, no? Is this form actually used because I have not seen it used in practice? If not, perhaps we should start using it.

Commented [PM4]: These two sentences are contradictory. On one hand you are saying you want staff to find witnesses from various sources, but on the other hand you want staff to primarily seek witnesses from Commissioners.

Commented [PM5]: This cuts against Section 4 .06 in AI 1-6, Responsibilities. Commissioners have an established set of responsibilities, none of which include picking witnesses, or, as is here, having veto power over career staff.

Furthermore, this practice cuts against the Commission's regulations, 45 C.F.R. § 701.13 (e) that put project development and civil rights evaluation squarely in the responsibilities of OCRE or, in the case of hearings, with OGC.

Finally, if Commissioners can demand that certain witnesses are invited, what happens if OGC determines that those those invited witnesses don't possess sufficient knowledge and experience? This creates a situation where you may have commissioners questioning the legal determinations of career legal staff or, in the case of OCRE, researchers and research methodologies.

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Additional sources may include, but are not limited to~~,~~ other program offices, regional directors, and appropriate external groups. If two Commissioners jointly request that staff invite a particular witness, staff must invite that witness. No Commissioner may act jointly to invite more than two witnesses, which results in no more than 8 witnesses shall be required to be invited by staff by action of the Commission. Thereafter, a Commissioner or Commissioners may suggest as many witnesses as they deem advisable, but staff is not obligated to invite them, and staff may consult additional sources to invite additional witnesses for hearings.

Commented [PM6]: See my same comments above.

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AMERICAN OVERSIGHT

ADMINISTRATIVE INSTRUCTION __- __

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Section 2
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(2) The members appointed by the Democratic authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Democratic authorities.

(3) The members selected shall be placed in nomination and ratified in conformance with Section 1.

Commented [PM1]: I would consider adding the phrase "unless specifically authorized by the entity, statute, regulation, or executive order" and/or "unless the appointing authority is specifically afforded to the Chair or Staff Director of the Commission." I would also consider adding a line that specifically excludes the Commission on Black Men and Boys that gives the SD the authority to appoint one commissioner and potentially additional commissioners were other appointing authorities fail to offer appointments.

Commented [PM2]: What happens if the respective caucuses can't agree on a nominee?

AMERICAN OVERSIGHT

Proposed A-I

As the staff persons arrange for interviews of external fact witnesses or experts for the purpose of informing writing of reports, etc., the Commissioners will be given notice of the names and titles of proposed witnesses, so that the Commissioners and their special assistants can observe the interview first-hand. The observations will help the Commissioners better understand the subject matters covered, and enable the Commissioner to conduct and follow-up with questions of the witnesses. If more than one Commissioner (or Commissioner's Special Assistant) representing Democratic or Republican appointing authorities wishes to attend, the Staff Director may limit attendance to one representative from each (provided circumstances clearly warrant such a limit).

Commented [PM1]: The only time I have seen interviews conducted at the Commission is in the context of the 14 C report where OCRE interviewed individuals with disabilities. In that context, I can't imagine the level of intrusiveness that would occur if SAs and Commissioners would have been allowed to observe those sensitive interviews.

Further, this type of policy starts to encroach on OCRE's role in researching and drafting reports. Per the Commission's regulation, 45 CFR § 701.13 (e) OCRE is responsible for "monitoring, evaluating, and reporting on…" and this responsibility includes appropriate research methods and practices that should be at the discretion and expertise of the director of this office.

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OVERSTOCK

Date : 4/20/2021 9:21:13 AM
From : "David Ganz" dganz@usccr.gov
To : "Pilar McLaughlin" pmclaughlin@usccr.gov, "Sheryl Cozart" sccozart@usccr.gov
Subject : RE: Follow Up on Today's Business Meeting
Attachment : image001.gif;image002.gif;

Thoughts on whether an A.I. should have the SD's signature/whether the Chair of the Commission or SD is the agency head?

From: Pilar McLaughlin <pmclaughlin@usccr.gov>
Sent: Monday, April 19, 2021 7:36 PM
To: Sheryl Cozart <sccozart@usccr.gov>; David Ganz <dganz@usccr.gov>
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From: David Ganz <dganz@usccr.gov>
Sent: Friday, April 16, 2021 6:06 PM
To: Pilar McLaughlin <pmclaughlin@usccr.gov>; Sheryl Cozart <sccozart@usccr.gov>
Subject: RE: Follow Up on Today's Business Meeting

Please provide redlined comments and edits to these A.I.s by mid-day on Tuesday to me. I will consolidate OGC comments.

AMERICAN OVERSIGHT

From: David Ganz
Sent: Friday, April 16, 2021 6:04 PM
To: ExecutiveStaff <ExecutiveStaff@usccr.gov>
Cc: Pilar McLaughlin <pmclaughlin@usccr.gov>; Sheryl Cozart <sccozart@usccr.gov>; Mauro Morales <mmorales@usccr.gov>
Subject: RE: Follow Up on Today's Business Meeting

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From: Mauro Morales <mmorales@usccr.gov>
Sent: Friday, April 16, 2021 5:04 PM
To: ExecutiveStaff <ExecutiveStaff@usccr.gov>
Subject: FW: Follow Up on Today's Business Meeting

Executive Team

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Mauro

From: Carissa Mulder
Sent: Friday, April 16, 2021 4:52 PM
To: Mauro Morales <mmorales@usccr.gov>; Peter Kirsanow <pkirsanow@usccr.gov> >; Commissioners <Commissioners@usccr.gov>; pkirsanow@beneschlaw.com
Subject: Re: Follow Up on Today's Business Meeting

See attached.

From: Mauro Morales
Sent: Friday, April 16, 2021 4:34:23 PM
To: Peter Kirsanow
Cc: CommissionerAssistants; ExecutiveStaff; Commissioners
Subject: Follow Up on Today's Business Meeting

AMERICAN OVERSIGHT

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Please contact me if you have any questions or concerns about meeting Commissioner determined deadlines.

Mauro Morales
Staff Director
U.S. Commission on Civil Rights
P: 202-376-7796| F: 202-376-7672
Mmorales@usccr.gov
http://usccr.gov/
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425

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#USCCR

AMERICAN OVERSIGHT

OVERSIGHT

OVERSTOCK

Date : 4/20/2021 9:40:36 AM
From : "Sheryl Cozart" sccozart@usccr.gov
To : "Pilar McLaughlin" pmclaughlin@usccr.gov
Cc : "David Ganz" dganz@usccr.gov
Subject : Re: Follow Up on Today's Business Meeting
Attachment : image001.gif;image002.gif;

I agree that the SD should sign all AIs, as evidence of a final version.

Sheryl

> On Apr 20, 2021, at 9:32 AM, Pilar McLaughlin <pmclaughlin@usccr.gov> wrote:
>
> I think the SD should sign all the AIs.
>
> Get Outlook for iOS
>
> ---
>
> **From:** David Ganz <dganz@usccr.gov>
> **Sent:** Tuesday, April 20, 2021 9:21:12 AM
> **To:** Pilar McLaughlin <pmclaughlin@usccr.gov>; Sheryl Cozart <sccozart@usccr.gov>
> **Subject:** RE: Follow Up on Today's Business Meeting
>
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Executive Team

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AMERICAN OVERSIGHT

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Follow Us on Twitter & Facebook:
<image001.gif>
<image002.gif>

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AMERICAN OVERSIGHT

OVERSIGHT

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Date : 4/20/2021 9:32:52 AM
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AMERICAN OVERSIGHT

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Date : 4/20/2021 9:43:11 AM
From : "Sheryl Cozart" sccozart@usccr.gov
To : "Pilar McLaughlin" pmclaughlin@usccr.gov
Cc : "David Ganz" dganz@usccr.gov
Subject : Re: Follow Up on Today's Business Meeting
Attachment : image001.gif;image002.gif;

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Sheryl

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<image001.gif>
<image002.gif>

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AMERICAN OVERSIGHT

OVERSIGHT

OVERSTOCK

Date : 8/2/2021 11:50:44 AM
From : "Mauro Morales" mmorales@usccr.gov
To : "David Ganz" dganz@usccr.gov
Subject : Fwd: EAC Board of Advisors nominees- reminder

Under the new AI what are the next steps and who does it fall on?

Sent from my iPhone

Begin forwarded message:

From: Juana Silverio <jsilverio@usccr.gov>
Date: July 30, 2021 at 3:52:28 PM MST
To: David Ganz <dganz@usccr.gov>, Norma Cantu <ncantu@usccr.gov>
Cc: Mauro Morales <mmorales@usccr.gov>
Subject: RE: EAC Board of Advisors nominees- reminder

Thanks David. There is an impasse as the Dems have 3 names and have not discussed narrowing it down.

We will touch base on Monday.

Juana

From: David Ganz <dganz@usccr.gov>
Sent: Friday, July 30, 2021 5:40 PM
To: Juana Silverio <jsilverio@usccr.gov>; Norma Cantu <ncantu@usccr.gov>
Cc: Mauro Morales <mmorales@usccr.gov>
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David

Sent via the Samsung Galaxy S21 5G, an AT&T 5G smartphone
Get Outlook for Android

AMERICAN OVERSIGHT

Date : 8/2/2021 12:53:56 PM
From : "David Ganz" dganz@usccr.gov
To : "Mauro Morales" mmorales@usccr.gov
Subject : RE: EAC Board of Advisors nominees- reminder

Since the April 2021 AIs haven't been signed I didn't save them on any network drive. I am not sure who has the latest draft, but I have been searching my emails for the past hour. Based on the most recent one I have your July 28, email is accurate and the latest AI doesn't contain anything more descriptive; the Dems need to just pick two people and then internally within their caucus select one person. If they fail to do that we should discuss as the Republicans may claim their appointments should move forward. Also, if you have the April 2021 AIs, could you forward them to me?

From: Mauro Morales <mmorales@usccr.gov>
Sent: Monday, August 2, 2021 11:51 AM
To: David Ganz <dganz@usccr.gov>
Subject: Fwd: EAC Board of Advisors nominees- reminder

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AMERICAN OVERSIGHT

Date : 8/3/2021 3:51:40 PM
From : "Mauro Morales" mmorales@usccr.gov
To : "David Ganz" dganz@usccr.gov
Subject : FW: Commissioner Appointments to the Election Assistance Commission

What am I supposed to do I do next?

From: Juana Silverio <jsilverio@usccr.gov>
Sent: Tuesday, August 3, 2021 3:38 PM
To: Mauro Morales <mmorales@usccr.gov>; Norma Cantu <ncantu@usccr.gov>
Cc: Debo P. Adegbile <dadegbile@usccr.gov>; Michael Yaki <MYaki@usccr.gov>; David Kladney <dkladney@usccr.gov>; Irena Vidulovic <ividulovic@usccr.gov>; Alec Deull <adeull@usccr.gov>
Subject: RE: Commissioner Appointments to the Election Assistance Commission

Good afternoon Mauro.

The Dem caucus had a tie:

Commissioner Michael Yaki
Leah Aden (Cantu and Yaki)
Allison Riggs (Adegbile and Kladney)

The Chairwoman, in the interest of observing the deadline, is submitting the following names for EAC consideration:

Commissioner Michael Yaki
Leah Aden - https://www.naacpldf.org/about-us/staff/leah-c-aden/

Thank you.
Juana

From: Mauro Morales <mmorales@usccr.gov>
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To: Norma V. Cantú <normavcantu@gmail.com>; Juana Silverio <jsilverio@usccr.gov>
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FYI

Sent from my iPhone

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> **From:** Mauro Morales <mmorales@usccr.gov>
> **Date:** August 2, 2021 at 8:45:25 AM MST
> **To:** John Mashburn <jmashburn@usccr.gov>
> **Cc:** Carissa Mulder <CMulder@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>, Alexander Heideman <aheideman@usccr.gov>
> **Subject: Re: Commissioner Appointments to the Election Assistance**

AMERICAN OVERSIGHT

Commission

My flight was canceled and returning today. Your selections were forwarded to Chair Cantu. Thank you.

Sent from my iPhone

> On Jul 30, 2021, at 9:34 AM, John Mashburn <jmashburn@usccr.gov> wrote:
>
> Mauro – after canvassing the Republican Commissioners, the two nominees they wish to put forward for one of the two USCCR designees for the EAC's Board of Advisors (per your email below) are:
>
> Cleta Mitchell – Chair, Conservative Partnership Institute Election Integrity Network, and
>
> Christian Adams – USCCR Commissioner.
>
> ---
>
> **From:** Mauro Morales <mmorales@usccr.gov>
> **Date:** Wednesday, July 28, 2021 at 11:30 AM
> **To:** Commissioners <Commissioners@usccr.gov>
> **Cc:**
> " <CommissionerAssistants@usccr.gov>
> **Subject:** Commissioner Appointments to the Election Assistance Commission
>
> Dear Commissioners-
>
> At the request and in consultation with the Chair, I am sending this email to start the EAC nomination process for Commissioners.
>
> Per the AI voted on during the April 30th meeting (language included below), each caucus is requested to submit two candidates for consideration by COB Friday, July 30, 2021. Once the names are submitted, OGC will conduct an ethics check to be completed by Wednesday, August 4, 2021. Each caucus will then have 24 hours to submit caucus strikes (Thursday, August 5, 2021 COB). The Chair will communicate the two names to EAC no later than Friday, August 6, 2021.
>
> Please let the Chair or I know if you have any questions or concerns.

AMERICAN OVERSIGHT

--
AI language:

Section 1.
.01 Any authority specifically granted the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Commission as a whole by majority vote.

.02 Any authority specifically granted the Staff Director of the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Staff Director.

.03 Any authority specifically granted the Chair of the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Chair.

Section 2
.02
(1) For the two (2) appointments to the U.S. Election Assistance Commission, the members appointed by Democratic authorities shall nominate two individuals who are ready, willing, and able to serve, and the members appointed by the Republican authorities shall nominate two individuals who are ready, willing, and able to serve.

(2) The members appointed by the Democratic authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Democratic authorities

(3) The members selected shall be placed in nomination and ratified in conformance with Section 1.

AMERICAN OVERSIGHT

Mauro Morales
Staff Director
U.S. Commission on Civil Rights
P: 202-376-7796| F: 202-376-7672
Mmorales@usccr.gov
http://usccr.gov/
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425

Follow Us on Twitter & Facebook:
<image001.gif>
<image002.gif>

#USCCR

AMERICAN OVERSIGHT

Date : 10/28/2021 5:20:38 PM
From : "David Ganz" dganz@usccr.gov
To : "Pilar McLaughlin" pmclaughlin@usccr.gov
Subject : RE: Cleta Mitchell Serving on EAC Advisory Bd

From the AI:

(3) The members selected shall be placed in nomination and ratified in conformance with Section 1.

Sort of seems like the two nominees have to be 'ratified' at the same time.

From: Pilar McLaughlin <pmclaughlin@usccr.gov>
Sent: Thursday, October 28, 2021 5:15 PM
To: David Ganz <dganz@usccr.gov>
Subject: RE: Cleta Mitchell Serving on EAC Advisory Bd

David:

Below is what Sheryl sent me. I am still working on editing her response. I think that Cantu is referring to the AI that commissioners voted on to nominate members to the EAC Board of Advisors, but I don't know the name of the AI nor can I find it.

Chair Cantu inquired about whether the language of the AI provides that "the bipartisan nature means both names have to be provided concurrently."

The EAC Board of Advisors statute requires "two members appointed by the United States Commission on Civil Rights." 52 U.S.C. 20944(a)(10). The statute further states that appointments will be made "in a manner which ensures that the Board of Advisors will be bipartisan in nature and will reflect the various geographic regions of the United States." Id. at 20944(b). The Commissioners voted on an Administrative Instruction on April 30, 2021 to elect two members to the EAC Board of Advisors. Specifically, the AI provided that the "members appointed by Democratic authorities shall nominate two individuals who are ready, willing, and able to serve, and the members appointed by the Republican authorities shall nominate two individuals who are ready, willing, and able to serve." Section 2.02(1). Thereafter, "the members appointed by the Democratic authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Democratic authorities." Section 2.02(2).

The language of the statute calls for a bipartisan Board of Advisors, and the AI describes the manner in which USCCR will appoint a bipartisan bloc. Neither the statute nor the AI, require that the bipartisan appointments must occur concurrently to ensure bipartisanship. Commissioner Yaki, who was nominated by members appointed by Democratic authorities, is no longer able to serve. Presumably, the Commissioner nominated by members appointed by Republican authorities is still able to serve. Therefore, Chair Cantu can permit the Commissioner nominated by members appointed by Republican authorities to begin their term, and she can restart the nomination process among the members appointed by Democratic authorities.

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From: David Ganz <dganz@usccr.gov>
Sent: Thursday, October 28, 2021 5:13 PM
To: Pilar McLaughlin <pmclaughlin@usccr.gov>
Cc: Sheryl Cozart <sccozart@usccr.gov>; Andrew Gall <agall@usccr.gov>
Subject: RE: Cleta Mitchell Serving on EAC Advisory Bd

She is asking about the attached A.I. rather than the EAC statute. A plain reading of the A.I. does envision both USCCR nominees being provided at the same time, however I do not think there is any legal basis for that process, but rather it is just they drafted the A.I.

Thoughts?

From: David Ganz
Sent: Thursday, October 28, 2021 10:58 AM
To: Pilar McLaughlin <pmclaughlin@usccr.gov>
Cc: Sheryl Cozart <sccozart@usccr.gov>; Andrew Gall <agall@usccr.gov>
Subject: FW: Cleta Mitchell Serving on EAC Advisory Bd

Please research this issue and get back to me later this afternoon. I do not think the EAC statute is as prescriptive as Chair Cantu is reading it.

From: Norma Cantu <ncantu@usccr.gov>
Sent: Thursday, October 28, 2021 10:51 AM
To: Mauro Morales <mmorales@usccr.gov>; David Ganz <dganz@usccr.gov>; Juana Silverio <jsilverio@usccr.gov>
Subject: RE: Cleta Mitchell Serving on EAC Advisory Bd

Dear Mauro, David,
The intent of the agreement on appointment to the EAC was that we would follow a bipartisan process. A few weeks back, I learned Michael Yaki had too many work commitments to take on the appointment to EAC. I tried, unsuccessfully, to convince him to start his new term. We are back to square one.
David, do you read the AI the same as I do? I read it that the bipartisan nature means both names have to be provided concurrently. What is your insight?
Norma

From: Juana Silverio <jsilverio@usccr.gov>
Sent: Thursday, October 28, 2021 8:51 AM
To: John Mashburn <jmashburn@usccr.gov>; Mauro Morales <mmorales@usccr.gov>; David Ganz <dganz@usccr.gov>
Cc: Norma Cantu <ncantu@usccr.gov>
Subject: Re: Cleta Mitchell Serving on EAC Advisory Bd

The Chair will address this shortly.

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Juana

--

Juana Silverio *(she/her/ella)*

Special Assistant to Commissioner Norma V. Cantú

U.S. Commission on Civil Rights

E: jsilverio@usccr.gov

http://usccr.gov/

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From: John Mashburn
Sent: Thursday, October 28, 2021 8:40:44 AM
To: Mauro Morales; Juana Silverio; David Ganz
Subject: Fw: Cleta Mitchell Serving on EAC Advisory Bd

Is there an answer to this question?

From: John Mashburn
Sent: Monday, October 18, 2021 12:33:57 PM
To: Mauro Morales; Juana Silverio
Cc: Carissa Mulder
Subject: Cleta Mitchell Serving on EAC Advisory Bd

Mauro/Juana – Cleta Mitchell has not been contacted by USCCR or EAC staff about serving on the EAC Bd of Advisors. As you recall, her nomination to serve was approved at the August USCCR Bus Mtg. My boss and one other Cmnr asked me to find out what the process and status are regarding her appointment to the EAC Bd of Advisors.

Can either of you provide that info, or do I need to contact someone else at USCCR, or EAC?

AMERICAN OVERSIGHT

Date : 10/28/2021 5:20:44 PM
From : "Pilar McLaughlin" pmclaughlin@usccr.gov
To : "David Ganz" dganz@usccr.gov
Subject : RE: Cleta Mitchell Serving on EAC Advisory Bd

Saw it.

Here are my quick thoughts on this, but I am looking for something else to support the interpretation of our AI relative to the statute.

Neither the statute nor the AI require that the bipartisan appointments *must* occur concurrently or even within a certain time frame relative to each other. Moreover, the AI does not specify that the appointments put forward by the Commission must be voted on simultaneously. The language of the Commission's AI is silent on the timing of appointments (both in terms of voting on appointees and putting forward names to the EAC) and allows for flexibility should one of the appointees be unable to fulfill the requirements to serve.

From: David Ganz <dganz@usccr.gov>
Sent: Thursday, October 28, 2021 5:16 PM
To: Pilar McLaughlin <pmclaughlin@usccr.gov>
Subject: RE: Cleta Mitchell Serving on EAC Advisory Bd

I sent you the AI

From: Pilar McLaughlin <pmclaughlin@usccr.gov>
Sent: Thursday, October 28, 2021 5:15 PM
To: David Ganz <dganz@usccr.gov>
Subject: RE: Cleta Mitchell Serving on EAC Advisory Bd

David:

Below is what Sheryl sent me. I am still working on editing her response. I think that Cantu is referring to the AI that commissioners voted on to nominate members to the EAC Board of Advisors, but I don't know the name of the AI nor can I find it.

Chair Cantu inquired about whether the language of the AI provides that "the bipartisan nature means both names have to be provided concurrently."

The EAC Board of Advisors statute requires "two members appointed by the United States Commission on Civil Rights." 52 U.S.C. 20944(a)(10). The statute further states that appointments will be made "in a manner which ensures that the Board of Advisors will be bipartisan in nature and will reflect the various geographic regions of the United States." Id. at 20944(b). The Commissioners voted on an Administrative Instruction on April 30, 2021 to elect two members to the EAC Board of Advisors. Specifically, the AI provided that the "members appointed by Democratic authorities shall nominate two individuals who are ready, willing, and able to serve, and the members appointed by the Republican

AMERICAN OVERSIGHT

authorities shall nominate two individuals who are ready, willing, and able to serve." Section 2.02(1). Thereafter, "the members appointed by the Democratic authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Democratic authorities." Section 2.02(2).

The language of the statute calls for a bipartisan Board of Advisors, and the AI describes the manner in which USCCR will appoint a bipartisan bloc. Neither the statute nor the AI, require that the bipartisan appointments must occur concurrently to ensure bipartisanship. Commissioner Yaki, who was nominated by members appointed by Democratic authorities, is no longer able to serve. Presumably, the Commissioner nominated by members appointed by Republican authorities is still able to serve. Therefore, Chair Cantu can permit the Commissioner nominated by members appointed by Republican authorities to begin their term, and she can restart the nomination process among the members appointed by Democratic authorities.

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Subject: RE: Cleta Mitchell Serving on EAC Advisory Bd

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Subject: FW: Cleta Mitchell Serving on EAC Advisory Bd

Please research this issue and get back to me later this afternoon. I do not think the EAC statute is as prescriptive as Chair Cantu is reading it.

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Sent: Thursday, October 28, 2021 10:51 AM
To: Mauro Morales <mmorales@usccr.gov>; David Ganz <dganz@usccr.gov>; Juana Silverio <jsilverio@usccr.gov>
Subject: RE: Cleta Mitchell Serving on EAC Advisory Bd

Dear Mauro, David,
The intent of the agreement on appointment to the EAC was that we would follow a bipartisan process. A few weeks back, I learned Michael Yaki had too many work commitments to take on the appointment to EAC. I tried, unsuccessfully, to convince him

AMERICAN OVERSIGHT

to start his new term. We are back to square one.
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Norma

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Sent: Thursday, October 28, 2021 8:51 AM
To: John Mashburn <jmashburn@usccr.gov>; Mauro Morales <mmorales@usccr.gov>; David Ganz <dganz@usccr.gov>
Cc: Norma Cantu <ncantu@usccr.gov>
Subject: Re: Cleta Mitchell Serving on EAC Advisory Bd

The Chair will address this shortly.

Juana

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Juana Silverio *(she/her/ella)*

Special Assistant to Commissioner Norma V. Cantú

U.S. Commission on Civil Rights

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To: Mauro Morales; Juana Silverio; David Ganz
Subject: Fw: Cleta Mitchell Serving on EAC Advisory Bd

Is there an answer to this question?

AMERICAN OVERSIGHT

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To: Mauro Morales; Juana Silverio
Cc: Carissa Mulder
Subject: Cleta Mitchell Serving on EAC Advisory Bd

Mauro/Juana – Cleta Mitchell has not been contacted by USCCR or EAC staff about serving on the EAC Bd of Advisors. As you recall, her nomination to serve was approved at the August USCCR Bus Mtg. My boss and one other Cmnr asked me to find out what the process and status are regarding her appointment to the EAC Bd of Advisors.

Can either of you provide that info, or do I need to contact someone else at USCCR, or EAC?

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Date : 10/28/2021 5:39:06 PM
From : "Pilar McLaughlin" pmclaughlin@usccr.gov
To : "David Ganz" dganz@usccr.gov
Subject : Draft response to Chair Cantu
Attachment : image001.gif;image002.gif;

The language of the EAC statute calls for a bipartisan Board of Advisors, and the AI describes the manner in which USCCR will appoint a bipartisan bloc. Neither the statute nor the AI, however, require that the bipartisan appointments must occur concurrently or even within a certain time frame relative to each other. Moreover, the AI does not specify that the appointments put forward by the Commission must be voted on simultaneously. The language of the Commission's AI is silent on the timing of appointments and allows for flexibility should one of the appointees be unable to fulfill the requirements to serve as is the case with Yaki. Most important, from a continuing of operations perspective, it would not make sense for one nominee who was properly selected or 'ratified' to be canceled or nullified because his counterpart drops out.

Pilar Velasquez McLaughlin
Senior Counsel, Office of the General Counsel
U.S. Commission on Civil Rights
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425
https://www.usccr.gov/

Email: pmclaughlin@usccr.gov
Direct: 703.855.8866

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OVERSTOCK

Date : 10/28/2021 5:29:17 PM
From : "Pilar McLaughlin" pmclaughlin@usccr.gov
To : "David Ganz" dganz@usccr.gov
Subject : RE: Cleta Mitchell Serving on EAC Advisory Bd

Other than the language we created for our own AI, where would we go to look for support on that point?

From: David Ganz <dganz@usccr.gov>
Sent: Thursday, October 28, 2021 5:26 PM
To: Pilar McLaughlin <pmclaughlin@usccr.gov>
Subject: RE: Cleta Mitchell Serving on EAC Advisory Bd

Good point. It would very odd for a properly selected or 'ratified' nominee to be canceled or nullified because his counterpart drops out.

From: Pilar McLaughlin <pmclaughlin@usccr.gov>
Sent: Thursday, October 28, 2021 5:24 PM
To: David Ganz <dganz@usccr.gov>
Subject: RE: Cleta Mitchell Serving on EAC Advisory Bd

Right, they *were* ratified and subsequently, one is now unable to serve. I don't think Yaki's inability to serve nullifies the other appointment or necessitates that they start the process all over again…

From a government continuity perspective, I don't think that makes sense.

From: David Ganz <dganz@usccr.gov>
Sent: Thursday, October 28, 2021 5:21 PM
To: Pilar McLaughlin <pmclaughlin@usccr.gov>
Subject: RE: Cleta Mitchell Serving on EAC Advisory Bd

From the AI:

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AMERICAN OVERSIGHT

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From: Norma Cantu <ncantu@usccr.gov>
Sent: Thursday, October 28, 2021 10:51 AM
To: Mauro Morales <mmorales@usccr.gov>; David Ganz <dganz@usccr.gov>; Juana Silverio <jsilverio@usccr.gov>
Subject: RE: Cleta Mitchell Serving on EAC Advisory Bd

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Subject: Re: Cleta Mitchell Serving on EAC Advisory Bd

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Date : 10/28/2021 6:23:56 PM
From : "David Ganz" dganz@usccr.gov
To : "Norma Cantu" ncantu@usccr.gov, "Mauro Morales" mmorales@usccr.gov, "Juana Silverio" jsilverio@usccr.gov
Cc : "Pilar McLaughlin" pmclaughlin@usccr.gov
Subject : RE: Cleta Mitchell Serving on EAC Advisory Bd

Dear Chair Cantu,

The EAC Board of Advisors statute requires "two members appointed by the United States Commission on Civil Rights." 52 U.S.C. § 20944(a)(10). The statute calls for bipartisan nominees, however it does not require that USCCR's two nominees are provided concurrently or even in a relatively close time frame. The process set out in the applicable A.I. was followed and two nominees were selected. Subsequently one nominee withdrew. To read the A.I. to require simultaneous nominees would effectively strip the other nominee of the position after he was properly nominated and ratified in violation of the A.I. and possibly § 20944. Therefore, it is recommended that the nominee appointed by Republican caucus begin his service on the EAC Board of Advisors and a new nomination process among the Democratic caucus be started.

Please let me know if you would like to discuss this issue tomorrow. Kind regards,

David

From: Norma Cantu <ncantu@usccr.gov>
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To: Mauro Morales <mmorales@usccr.gov>; David Ganz <dganz@usccr.gov>; Juana Silverio <jsilverio@usccr.gov>
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Subject: Re: Cleta Mitchell Serving on EAC Advisory Bd

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Special Assistant to Commissioner Norma V. Cantú

U.S. Commission on Civil Rights

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Can either of you provide that info, or do I need to contact someone else at USCCR, or EAC?

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Date : 12/11/2020 4:02:11 PM
From : "Rukku Singla" rsingla@usccr.gov
To : "Catherine Lhamon" clhamon@usccr.gov
Subject : EAC guidance from before

Hi Catherine,

Below is the guidance that Maureen provided with the understanding that you intended to reappoint Commissioner Yaki and were considering reappointing Vice Chair Timmons Goodson (we specifically wanted to clarify whether Vice Chair Timmons Goodson could serve as the USCCR appointee to the EAC Advisory Board even after her term with USCCR ended). I don't read anything in her guidance (or in the statute) that indicates that appointments like these need to be made by the whole of the Commission. I will check our AIs to see if they speak to appointments like these.

Prior guidance from Maureen on EAC appointments:

The short answer is yes, the Vice-Chair can stay on the EAC's Advisory Board after she concludes her term with us. The Help America Vote Act created the advisory committee/board to EAC. The membership requirements are found at 52 U.S.C. 20944. The statute says the composition of the board shall include "Two members appointed by the United States Commission on Civil Rights." 52 U.S.C. 20944(a)(10). The statute says that "appointments shall be made to the Board of Advisors under subpart (a) in a manner which ensures that the Board of Advisors will be bipartisan in nature and will reflect the various geographic regions of the United States." *Id.* at 20994(b). I've also reviewed the House Report that accompanied the bill. I don't see any further guidance on who can be appointed. The EAC Advisory Board appointment term is for two years, with the renewal being April 13, 2019. So the renewal would go through April 13, 2021. The Vice-Chair's term with the Commission ends on Dec. 5, 2019. Given the language of the statute (i.e., USCCR can appoint anyone with the caveat of bipartisan and to reflect the geographic regions of the US), I don't see any prohibition on the Vice Chair staying on the EAC Advisory Board after she concludes her term with the Commission.

Rukku Singla
Special Assistant to Chair Catherine E. Lhamon
U.S. Commission on Civil Rights
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425
M: 513-227-8558
rsingla@usccr.gov
Follow us on Twitter and Facebook

AMERICAN OVERSIGHT

Date : 3/2/2021 5:36:08 PM
From : "David Ganz" dganz@usccr.gov
To : "Pilar McLaughlin" pmclaughlin@usccr.gov
Subject : RE: Appointment

This seems relevant to whether the Chair has the authority to make EAC appointments or whether it requires a Commission vote.

A-7, SECTION 3. NOTATIONAL VOTING PACKAGE
.01 The Chairman decides if a matter that requires a Commission vote should be handled at a
Commission meeting or by a written circulation.

From: David Ganz
Sent: Tuesday, March 2, 2021 5:27 PM
To: Pilar McLaughlin <pmclaughlin@usccr.gov>
Subject: RE: Appointment

There is nothing in the A.I.s on this.

About Mauro's statement 'bipartisan appoints were not a rule or requirement but a best practice" what do you think of the below:

(b)Manner of appointments

Appointments shall be made to the Board of Advisors under subsection (a) in a manner which ensures that the Board of Advisors will be bipartisan in nature and will reflect the various geographic regions of the United States.

From: David Ganz
Sent: Tuesday, March 2, 2021 5:11 PM
To: Pilar McLaughlin <pmclaughlin@usccr.gov>
Subject: RE: Appointment

Yes please.

Here is the EAC's appointment statute referenced in the letter:
https://www.law.cornell.edu/uscode/text/52/20944

From: Pilar McLaughlin <pmclaughlin@usccr.gov>
Sent: Tuesday, March 2, 2021 5:06 PM
To: David Ganz <dganz@usccr.gov>
Subject: RE: Appointment

Definitely. You want me to take this one?

AMERICAN OVERSIGHT

From: David Ganz <dganz@usccr.gov>
Sent: Tuesday, March 2, 2021 5:01 PM
To: Pilar McLaughlin <pmclaughlin@usccr.gov>
Subject: FW: Appointment

Interesting issue, especially about the Chair's powers.

From: Mauro Morales <mmorales@usccr.gov>
Sent: Tuesday, March 2, 2021 4:36 PM
To: David Ganz <dganz@usccr.gov>
Cc: Norma Cantu <ncantu@usccr.gov>; Pilar McLaughlin <pmclaughlin@usccr.gov>
Subject: Appointment

David,

We respectfully request a legal opinion on the authority of the Chair to appoint other Commissioners to entities external to the USCCR. In this particular situation, Chair Catherine Lhamon made two appointments to the Election Assistance Commission (EAC). She appointed Commissioner Kladney and Commissioner Yaki to be advisory members in 2019. I believe former Commission Chair Marty Castro made two appointment to the EAC with Commissioners Timmons-Goodson and Commissioner Yaki. In a conversation a few months ago, the general counsel of EAC sent me the attached letter from Adams, Gilchrist, Heriot and Kirsanow. In our conversation the EAC GC informed me that other organizations that make such appointments to the EAC do so in a bipartisan manner. He told me that bipartisan appoints were not a rule or requirement but a best practice. I believe that the appointments to the EAC for the next submission are scheduled for April of 2021 (I believe the appointments are for two year terms). The Republican members of the USCCR wrote a letter to EAC demanding action on the EAC appointments. The four Commissioners have verbally insisted that when Commissioner Cantu becomes Chair that she appoint a Republican Commissioner to the EAC. I believe that Commissioner Cantu is evaluating appointments to the EAC but wants to know her legal authority to do so or whether or not a vote is required to make such appointments. Please be advised that the Staff Director has not been previously involved in the selection or the appoint to the EAC. I am not aware of other such appointments. I have cc'd Pilar because she was the initial contact for this matter several months ago. Commissioner Cantu and I are available for additional consultation if that would be useful to you.

Thank you.

Mauro Morales
Staff Director
USCCR

AMERICAN OVERSIGHT

Date : 3/2/2021 5:27:03 PM
From : "David Ganz" dganz@usccr.gov
To : "Pilar McLaughlin" pmclaughlin@usccr.gov
Subject : RE: Appointment

There is nothing in the A.I.s on this.

About Mauro's statement 'bipartisan appoints were not a rule or requirement but a best practice" what do you think of the below:

(b)Manner of appointments

Appointments shall be made to the Board of Advisors under subsection (a) in a manner which ensures that the Board of Advisors will be bipartisan in nature and will reflect the various geographic regions of the United States.

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To: Pilar McLaughlin <pmclaughlin@usccr.gov>
Subject: RE: Appointment

Yes please.

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Sent: Tuesday, March 2, 2021 5:06 PM
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Subject: RE: Appointment

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Sent: Tuesday, March 2, 2021 5:01 PM
To: Pilar McLaughlin <pmclaughlin@usccr.gov>
Subject: FW: Appointment

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Sent: Tuesday, March 2, 2021 4:36 PM
To: David Ganz <dganz@usccr.gov>
Cc: Norma Cantu <ncantu@usccr.gov>; Pilar McLaughlin <pmclaughlin@usccr.gov>
Subject: Appointment

AMERICAN OVERSIGHT

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Thank you.

Mauro Morales
Staff Director
USCCR

AMERICAN OVERSIGHT

Date : 3/4/2021 3:05:50 PM
From : "Pilar McLaughlin" pmclaughlin@usccr.gov
To : "David Ganz" dganz@usccr.gov
Subject : RE: Appointment

Oops. 2019 ended up being Yaki and Kladney (still a democrat).

From: Pilar McLaughlin
Sent: Thursday, March 4, 2021 2:59 PM
To: David Ganz <dganz@usccr.gov>
Subject: RE: Appointment

David:

I'm putting something more formal together and will send you a draft by the requested deadline. However, I am doing some searching in Securisync to see if I could find anything about how these appointments have been previously handled and I found two emails that confirms what Mauro said in his email to us (see the attached). It appears that historically (at least in April 2015, April 2017, and April 2019) the Chair has unilaterally made these appointments versus taking a vote of the whole Commission. Additionally, it appears that these appointments have not been bipartisan. In 2015, Castro appointed Timmons Goodson (Democrat appointed by Obama) and Commissioner Yaki (Democrat appointed by Pelosi). In 2017, Chair Lhamon reappointed Timmons Goodson and Yaki and then reappointed them for a third time in 2019.

I am still looking for some legal authority on how these appointments are supposed to work…

Secondarily, I want to confirm that I should be drafting this memo*assuming that Cantú becomes chair* via a majority vote of the Commission. Thus, what power does she have to make these appointments once confirmed via a vote by the Commission. If my research finds that the Chairperson has the authority to make these appointments, if she is NOT confirmed, I think her ability to appoint becomes dicey.

Thanks,
Pilar

From: David Ganz <dganz@usccr.gov>
Sent: Tuesday, March 2, 2021 5:27 PM
To: Pilar McLaughlin <pmclaughlin@usccr.gov>
Subject: RE: Appointment

There is nothing in the A.I.s on this.

About Mauro's statement 'bipartisan appoints were not a rule or requirement but a best practice" what do you think of the below:

AMERICAN OVERSIGHT

(b)Manner of appointments

Appointments shall be made to the Board of Advisors under subsection (a) in a manner which ensures that the Board of Advisors will be bipartisan in nature and will reflect the various geographic regions of the United States.

From: David Ganz
Sent: Tuesday, March 2, 2021 5:11 PM
To: Pilar McLaughlin <pmclaughlin@usccr.gov>
Subject: RE: Appointment

Yes please.

Here is the EAC's appointment statute referenced in the letter:
https://www.law.cornell.edu/uscode/text/52/20944

From: Pilar McLaughlin <pmclaughlin@usccr.gov>
Sent: Tuesday, March 2, 2021 5:06 PM
To: David Ganz <dganz@usccr.gov>
Subject: RE: Appointment

Definitely. You want me to take this one?

From: David Ganz <dganz@usccr.gov>
Sent: Tuesday, March 2, 2021 5:01 PM
To: Pilar McLaughlin <pmclaughlin@usccr.gov>
Subject: FW: Appointment

Interesting issue, especially about the Chair's powers.

From: Mauro Morales <mmorales@usccr.gov>
Sent: Tuesday, March 2, 2021 4:36 PM
To: David Ganz <dganz@usccr.gov>
Cc: Norma Cantu <ncantu@usccr.gov>; Pilar McLaughlin <pmclaughlin@usccr.gov>
Subject: Appointment

David,

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AMERICAN OVERSIGHT

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Thank you.

Mauro Morales
Staff Director
USCCR

AMERICAN OVERSIGHT

Date : 3/4/2021 2:59:22 PM
From : "Pilar McLaughlin" pmclaughlin@usccr.gov
To : "David Ganz" dganz@usccr.gov
Subject : RE: Appointment
Attachment : Appointment to EAC Board Term to Last Beyond Commissioner's Term at USCCR.pdf;RE_ US Election Assistance Commission.pdf;

David:

I'm putting something more formal together and will send you a draft by the requested deadline. However, I am doing some searching in Securisync to see if I could find anything about how these appointments have been previously handled and I found two emails that confirms what Mauro said in his email to us (see the attached). It appears that historically (at least in April 2015, April 2017, and April 2019) the Chair has unilaterally made these appointments versus taking a vote of the whole Commission. Additionally, it appears that these appointments have not been bipartisan. In 2015, Castro appointed Timmons Goodson (Democrat appointed by Obama) and Commissioner Yaki (Democrat appointed by Pelosi). In 2017, Chair Lhamon reappointed Timmons Goodson and Yaki and then reappointed them for a third time in 2019.

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Pilar

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Sent: Tuesday, March 2, 2021 5:27 PM
To: Pilar McLaughlin <pmclaughlin@usccr.gov>
Subject: RE: Appointment

There is nothing in the A.I.s on this.

About Mauro's statement 'bipartisan appoints were not a rule or requirement but a best practice" what do you think of the below:

(b)MANNER OF APPOINTMENTS

AMERICAN OVERSIGHT

Appointments shall be made to the Board of Advisors under subsection (a) in a manner which ensures that the Board of Advisors will be bipartisan in nature and will reflect the various geographic regions of the United States.

From: David Ganz
Sent: Tuesday, March 2, 2021 5:11 PM
To: Pilar McLaughlin <pmclaughlin@usccr.gov>
Subject: RE: Appointment

Yes please.

Here is the EAC's appointment statute referenced in the letter:
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To: David Ganz <dganz@usccr.gov>
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Sent: Tuesday, March 2, 2021 5:01 PM
To: Pilar McLaughlin <pmclaughlin@usccr.gov>
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Sent: Tuesday, March 2, 2021 4:36 PM
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Cc: Norma Cantu <ncantu@usccr.gov>; Pilar McLaughlin <pmclaughlin@usccr.gov>
Subject: Appointment

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AMERICAN OVERSIGHT

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Thank you.

Mauro Morales
Staff Director
USCCR

AMERICAN OVERSIGHT

Maureen Rudolph

From: Maureen Rudolph
Sent: Wednesday, March 06, 2019 6:44 PM
To: Rukku Singla
Cc: Catherine Lhamon; Mauro Morales
Subject: RE: [EXTERNAL] EAC Board of Advisors Representation

Rukku, et al.,

The short answer is yes, the Vice-Chair can stay on the EAC's Advisory Board after she concludes her term with us. The Help America Vote Act created the advisory committee/board to EAC. The membership requirements are found at 52 U.S.C. 20944. The statute says the composition of the board shall include "Two members appointed by the United States Commission on Civil Rights." 52 U.S.C. 20944(a)(10). The statute says that "appointments shall be made to the Board of Advisors under subpart (a) in a manner which ensures that the Board of Advisors will be bipartisan in nature and will reflect the various geographic regions of the United States." *Id.* at 20994(b). I've also reviewed the House Report that accompanied the bill. I don't see any further guidance on who can be appointed. The EAC Advisory Board appointment term is for two years, with the renewal being April 13, 2019. So the renewal would go through April 13, 2021. The Vice-Chair's term with the Commission ends on Dec. 5, 2019. Given the language of the statute (i.e., USCCR can appoint anyone with the caveat of bipartisan and to reflect the geographic regions of the US), I don't see any prohibition on the Vice Chair staying on the EAC Advisory Board after she concludes her term with the Commission.

Let me know if there are any questions.

Thanks much,
Maureen

From: Rukku Singla
Sent: Wednesday, March 06, 2019 10:17 AM
To: Maureen Rudolph <mrudolph@usccr.gov>
Cc: Catherine Lhamon <clhamon@usccr.gov>; Mauro Morales <mmorales@usccr.gov>
Subject: FW: [EXTERNAL] EAC Board of Advisors Representation

Hi Maureen,

The Commission's two positions on the Election Assistance Commission Advisory Board are up for reappointment this month, for a two year term. Currently Vice Chair Timmons Goodson and Commissioner Yaki are our representatives. The default will be to reappoint Vice Chair Timmons Goodson and Commissioner Yaki, but the reappointment of the Vice Chair will extend past her time on the Commission. Can you let us know if we'll need to reappoint someone when the Vice Chair's USCCR term expires, or can she continue to serve on the EAC Advisory Board?

Thanks,

Rukku

From: Cliff Tatum [mailto:ctatum@eac.gov]
Sent: Saturday, February 23, 2019 4:03 PM
To: Rukku Singla <rsingla@usccr.gov>
Subject: [EXTERNAL] EAC Board of Advisors Representation

AMERICAN OVERSIGHT

Attached please find correspondence from the EAC related to renewing your office's appointment to the EAC Advisory Board. I've also included a word version of the representation form.

Please feel free to call if you have any questions.

Regards,

Cliff

--
Clifford Tatum
General Counsel
301-563-3957

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AMERICAN OVERSIGHT

From: Rorey Smith
To: Jason T. Lagria
Cc: Jennifer Hepler (jhepler@usccr.gov)
Subject: RE: US Election Assistance Commission
Date: Wednesday, March 11, 2015 11:53:00 AM

Hello Jason,

Commissioner Narasaki would have been able to serve on the advisory board for the EAC. However, the aggregate number of days she would serve on the EAC as well as for the U.S. Commission on Civil Rights is critical for the following reasons:

Status as a Special Government Employee

Under Federal personnel laws, the total number of days Commissioner Narasaki can work as a Special Government Employee (SGE) cannot exceed 130 days during any period of 365 consecutive days, which begins on the anniversary date of her appointment each year. Service as an SGE may be compensated or uncompensated, but it is always temporary. In fact, an SGE cannot serve for more than 130 days during any period of 365 consecutive days. This 130-day period is an aggregate of all Federal service, not just her appointment at the Commission. This is important because serving more than 130 days will change her status from an SGE to a regular employee, which has implications for the ethics rules. As an SGE, some of the ethics rules are less restrictive, so it is important to count the days of service. When computing days that Commissioner Narasaki works as an SGE, count each day in which she perform services, even if it does not amount to an entire workday. Brief administrative, non-substantive interactions, such as emails or phone calls to set up a meeting, do not have to be counted as a day of duty.

Representational Activities

In addition to the above, criminal statutes regarding representational activities apply to SGEs, so the number of working days are important.

Two statutes, 18 U.S.C. §§ 203 and 205, prohibit Federal employees, including SGEs, from acting as an agent or attorney for non-federal entities before any agency or court of the Executive or Judicial Branches. The statutes are substantially identical, with § 203 covering compensated representational activities and § 205 covering uncompensated representational activities. For both, the restrictions are somewhat different for SGEs, depending on the number of days the SGE has served. For SGEs who have served 60 days or less, the law prohibits representation only in a particular matter involving a specific party where the SGE has participated personally and substantially in that matter as a Government employee. For SGEs who have served over 60 days but not more than 130 days, the law prohibits representational services in any particular matter involving a specific party that is pending before the Commission, regardless of whether the SGE actually participated in the matter. For SGEs who have served more than 130 days, the full representational restrictions apply and an SGE may not represent any non-federal entity before any agency or court of the Executive or Judicial Branches. Representational services include written or oral communications and appearances made on behalf of someone else with the intent to influence or persuade the Government.

Rorey Smith, CIPP/US, CIPP/G
General Counsel
U.S. Commission on Civil Rights
1331 Pennsylvania Avenue, NW
Suite 1150, Room 1113
Washington, D.C. 20425
Phone: (202) 376-7622
Fax: (202) 376-1163

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individual(s) or entity/ies to which it is addressed. This communication may contain information that is proprietary, privileged or confidential or otherwise legally exempt from disclosure. If you are not among the named addressees, you are not authorized to read, print, retain, copy or disseminate this message or any part of it. If you have received this message in error, please notify the sender immediately by e-mail and delete all copies of the message.

-----Original Message-----
From: Jason T. Lagria
Sent: Tuesday, March 10, 2015 4:21 PM
To: Rorey Smith
Subject: RE: US Election Assistance Commission

Hey Rorey -

FYI it turns out Chairman Castro went ahead and appointed the Vice Chair and Comm. Yaki. Just wondering - would she have been eligible?

-----Original Message-----
From: Jason T. Lagria
Sent: Tuesday, March 10, 2015 11:54 AM
To: Rorey Smith
Subject: RE: US Election Assistance Commission

Alec's response:

" I do not think that it was much of a time commitment for Roberta. A couple of meetings a year at most, if I recall correctly."

Given her work style I would estimate one day for the meeting and one day of prep for each meeting.

-----Original Message-----
From: Jason T. Lagria
Sent: Tuesday, March 10, 2015 11:20 AM
To: Rorey Smith
Subject: RE: US Election Assistance Commission

I'm not sure. Based on their website there are 2-3 meetings a year generally.
http://www.eac.gov/about_the_eac/board_of_advisors.aspx plus prep time.

I'll check with Alec and see how much of a time commitment it was for Commissioner Achtenberg. Thanks for looking into this.

-----Original Message-----
From: Rorey Smith
Sent: Tuesday, March 10, 2015 11:14 AM
To: Jason T. Lagria
Subject: RE: US Election Assistance Commission

Quick question: Do you know how many days in a 365 period that Commissioner Narasaki would be working on the advisory board for EAC?

Rorey Smith, CIPP/US, CIPP/G
General Counsel
U.S. Commission on Civil Rights
1331 Pennsylvania Avenue, NW
Suite 1150, Room 1113

AMERICAN OVERSIGHT

Washington, D.C. 20425
Phone: (202) 376-7622
Fax: (202) 376-1163

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-----Original Message-----
From: Jason T. Lagria
Sent: Monday, March 09, 2015 5:10 PM
To: Rorey Smith
Subject: RE: US Election Assistance Commission

Thanks.

-----Original Message-----
From: Rorey Smith
Sent: Monday, March 09, 2015 5:10 PM
To: Jason T. Lagria
Subject: RE: US Election Assistance Commission

Hello Jason,

I am acknowledging receipt of your email. I will look into this.

Rorey Smith, CIPP/US, CIPP/G
General Counsel
U.S. Commission on Civil Rights
1331 Pennsylvania Avenue, NW
Suite 1150, Room 1113
Washington, D.C. 20425
Phone: (202) 376-7622
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-----Original Message-----
From: Jason T. Lagria
Sent: Monday, March 09, 2015 1:41 PM
To: Rorey Smith
Subject: FW: US Election Assistance Commission

Hi Rorey -

I'm forwarding this as I saw that Jennifer is out of the office.

Jason

-----Original Message-----

AMERICAN OVERSIGHT

From: Jason T. Lagria
Sent: Friday, March 06, 2015 1:44 PM
To: Jennifer Hepler
Subject: FW: US Election Assistance Commission

Hi Jennifer -

Would Commissioner Narasaki be eligible to be a representative to the EAC?

Jason

_____

From: Juana Silverio
Sent: Wednesday, March 04, 2015 6:09 PM
To: Martin Castro; Patricia Timmons-Goodson; Roberta Achtenberg; David Kladney; Michael Yaki; Karen Narasaki; Gail Heriot; Peter Kirsanow
Cc: Sheryl Cozart; Alec Deull; Amy Royce; Kimberly Tolhurst; Jason T. Lagria; Alison Somin; Carissa Mulder
Subject: US Election Assistance Commission

I am sending on behalf of Chairman Castro. Please let him and I know if you'd be interested in representing the Commission on the U.S. EAC's Advisory Board.

Commissioners Achtenberg & Thernstrom represented us in the past. The EAC has a quorum now and would appreciate the Commission's participation.

Best,
Juana Silverio, Esq.

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AMERICAN OVERSIGHT

Date : 3/4/2021 6:25:14 PM
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To : "Pilar McLaughlin" pmclaughlin@usccr.gov
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AMERICAN OVERSIGHT

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To : "David Ganz" dganz@usccr.gov
Subject : RE: Appointment
Attachment : July 30, 2010 transcript.docx;

Ah! Check out page 25. Business meeting on July 10, 2010. The commissioners take a vote authorizing Chair Reynolds to select a replacement to fulfill the expiring seats of the board. That's a start…

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Mauro Morales
Staff Director
USCCR

AMERICAN OVERSIGHT

U.S. COMMISSION ON CIVIL RIGHTS

+ + + + +

MEETING

+ + + + +

FRIDAY, JULY 30, 2010

+ + + + +

The Commission convened via teleconference at 11:30 a.m., GERALD A. REYNOLDS, Chairperson, presiding.

PRESENT:

GERALD A. REYNOLDS, Chairperson
TODD GAZIANO, Commissioner
GAIL L. HERIOT, Commissioner
PETER N. KIRSANOW, Commissioner
ASHLEY L. TAYLOR, JR., Commissioner
MICHAEL YAKI, Commissioner

MARTIN DANNENFELSER, Staff Director

STAFF PRESENT:

DAVID BLACKWOOD, General Counsel, OGC
CHRISTOPHER BYRNES, Chief, Programs Coordination Unit
PETER MINARIK, Chief, RPCU
EILEEN RUDERT
AUDREY WRIGHT

COMMISSIONER ASSISTANTS PRESENT:

NICHOLAS COLTEN
ALEC DEULL
TIM FAY
JOHN MARTIN
ALISON SCHMAUCH

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

(11:35 a.m.)

THE OPERATOR: Good morning, everyone. My name is Andrea. And I will be your conference operator today at this time. I would like to welcome everyone to the U.S. Commission on Civil Rights teleconference today, on July 30th, 2010. All lines have been placed on mute to prevent any background noise. If you should need assistance during the call, please press *, then 0. And an operator will come back on line to assist you. Thank you.

I would now like to turn the call over to our host, Mr. Gerald Reynolds, Chairperson. Please go ahead, sir.

CHAIRPERSON REYNOLDS: Good morning. The meeting will come to order. This is a telephone meeting of the U.S. Commission on Civil Rights. It is 11:35 a.m. Eastern Standard Time on July 30th, 2010 with commissioners participating from different locations.

I will call the name of each commissioner in order to determine if there is a quorum to hold the meeting. Vice Chair Thernstrom?

(No response.)

CHAIRPERSON REYNOLDS: Commissioner

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Gaziano?

COMMISSIONER GAZIANO: Here.

CHAIRPERSON REYNOLDS: Commissioner Kirsanow?

COMMISSIONER KIRSANOW: Here.

CHAIRPERSON REYNOLDS: Commissioner Heriot?

COMMISSIONER HERIOT: Here.

CHAIRPERSON REYNOLDS: Commissioner Melendez?

(No response.)

CHAIRPERSON REYNOLDS: Commissioner Yaki?

COMMISSIONER YAKI: Aye.

CHAIRPERSON REYNOLDS: Commissioner Taylor?

COMMISSIONER TAYLOR: Here.

CHAIRPERSON REYNOLDS: Okay. We have a quorum. Is the Staff Director present?

STAFF DIRECTOR DANNENFELSER: Present.

CHAIRPERSON REYNOLDS: Is the Court Reporter on the line?

THE REPORTER: I'm here.

CHAIRPERSON REYNOLDS: Okay. And do we have a General Counsel?

MR. BLACKWOOD: Yes.

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CHAIRPERSON REYNOLDS: Okay. Good. Folks, usual rules. If you want to make a statement, please identify yourself by name. When it is necessary to take a vote, I will call out each one's name. Respond by saying, "Yes," "No," or "Abstain." After the voting has concluded, I will read out a tally of the votes just to confirm that the tally is correct.

I. APPROVAL OF AGENDA

CHAIRPERSON REYNOLDS: I move that we approve the agenda. Is there a second?

COMMISSIONER GAZIANO: Second. Gaziano.

CHAIRPERSON REYNOLDS: Discussion?

(No response.)

II. NEW BLACK PANTHER PARTY ENFORCEMENT PROJECT

CHAIRPERSON REYNOLDS: Okay. First up is the New Black Panther Party Enforcement Project. We would like to get an update from the General Counsel. I'm sorry? I'm sorry? David, are you on speakerphone? I'm having difficulty hearing you.

MR. BLACKWOOD: No. Can you hear me now?

CHAIRPERSON REYNOLDS: Yes, I can.

MR. BLACKWOOD: I was just informed that there were no votes on the agenda.

CHAIRPERSON REYNOLDS: What do you mean by

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"vote"?

COMMISSIONER HERIOT: We didn't vote.

CHAIRPERSON REYNOLDS: Oh, oh, oh, oh. Okay. I'm getting ahead of myself. All those in favor, please say aye.

(Whereupon, there was a chorus of "Ayes.")

CHAIRPERSON REYNOLDS: Objections?

(No response.)

CHAIRPERSON REYNOLDS: Abstentions?

(No response.)

CHAIRPERSON REYNOLDS: The vote was unanimous. Mr. Blackwell?

MR. BLACKWOOD: This is David Blackwood. With regard to the Black Panther matter, we are --

COMMISSIONER YAKI: Did you just call him Mr. Blackwell, Mr. Chair?

CHAIRPERSON REYNOLDS: Yes.

COMMISSIONER YAKI: Are you working on the best and worst dressed list of commissioners or something that we don't know about?

CHAIRPERSON REYNOLDS: No. This is in honor of a former colleague whose last name is Blackwell, whom I confused just now with Mr. Blackwood.

MR. BLACKWOOD: Still here. We are in the

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process of drafting the report to provide you guidance about where and how we are proceeding. The draft report is more in the nature of a just the facts report. Because of the nature of the evidence and what has and has not been provided, the report is --

THE REPORTER: This is the Court Reporter. I am having a hard time hearing him.

COMMISSIONER YAKI: I can only hear every other word that he's saying as well.

CHAIRPERSON REYNOLDS: Okay. David, if you're using a speakerphone, can you pick up the phone?

MR. BLACKWOOD: I'm not using a -- I'll just hold the -- is that better?

CHAIRPERSON REYNOLDS: Yes.

MR. BLACKWOOD: All right. It's the microphone. I'll just hold it closer.

So, again, just the guidance with regard to how we are going to draft the report, the report itself is going to be along the lines of what I would call a just the facts report. It's more in the nature of what evidence we have collected, what evidence remains, what questions remain.

I want to emphasize to everyone that everyone, commissioners and specialists, have all the

AMERICAN OVERSIGHT

same information that the Office of General Counsel has. If anybody feels that there is anything that they don't have or --

COMMISSIONER YAKI: David? David? David? When you start going a little faster, your words just start clicking out. That is Commissioner Yaki saying this. I don't know if anyone else is having the same problem.

COMMISSIONER HERIOT: I'm having the same problem.

MR. BLACKWOOD: I've switched microphones. Is this better?

CHAIRPERSON REYNOLDS: Okay. David?

COMMISSIONER GAZIANO: Speak slowly and enunciate.

MR. BLACKWOOD: I will do my best. I'll back up a little bit to where I was, which was that I want to emphasize that we have tried to provide, and I believe we have, all of the information that the Office of General Counsel, all the special systems has --

COMMISSIONER YAKI: In the case of Mr. Court Reporter -- I mean, all of the sudden, he's fine for like the first ten seconds. And then it just keeps getting staticy.

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CHAIRPERSON REYNOLDS: Okay, folks. To the extent you have cell phones near the phone, please remove all of your electronics. And just move them away from the phone. Maybe that's the cause of the interference.

MR. BLACKWOOD: Okay.

CHAIRPERSON REYNOLDS: Okay, David. Let's plow through. Let's --

COMMISSIONER YAKI: Mr. Chair, for the purposes of this report, can't he pick up a land line?

COMMISSIONER GAZIANO: He'd have to dial in, but that might be better.

MR. BLACKWOOD: Can you hear me now? Is this clearer?

CHAIRPERSON REYNOLDS: David, you start off clear, but it doesn't last.

MR. BLACKWOOD: I'm about as close to the telephone and the microphone as I can get.

CHAIRPERSON REYNOLDS: Okay. You may have to just speak directly into the phone, but let's proceed and see how it goes.

MR. BLACKWOOD: Okay. I am using the direct phone.

CHAIRPERSON REYNOLDS: Excellent. Let's roll.

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MR. BLACKWOOD: All right. Very quickly, to reiterate, we're trying to do this report as a just the facts report. Here are the allegations. Here are the comments. This is the information we have collected.

I wanted to emphasize that we have tried and I believe successfully providing all of the information that the Office of General Counsel has collected, that each of the commissioners and their special assistants has this same information. To the extent anybody has any question or doubts about whether they have received a particular piece of information, please just let us know. But our records show that we have sent out everything as we have collected it to each of the commissioners and each of the special assistants.

This year, given the nature of the report and the fact that it is running overlong, it is our intention to publish this report by posting. That is definitely the trend of other agencies. And it is something I have resisted in the past. But, frankly, it is the way that things are developing.

So what we intend to do is publish the report online, then run off a couple of thousand copies to make it available in writing if anybody

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wants it that way. But people will be able to access it by our website.

We're also doing something slightly different than we have in the past, which is to include as many links as we can in the report. So the report will not have to be voluminous in itself with lots of attachments and exhibits. One can merely link on the document.

The report itself will be approximately 20 to 30 pages at most because it is merely a summary of the evidence that we have collected.

At this stage also I would indicate that I do not anticipate staff drafting any findings or recommendations given the nature of the evidence and the status of the evidence that we have. If anybody feels differently about that, please let me know, but at this stage, I don't anticipate including any findings and recommendations.

As far as the nature of the evidence, everyone has seen the most recent letter, again requesting that Mr. Coates testify before the Commission. In the event that we receive an answer, I will let everyone know.

CHAIRPERSON REYNOLDS: Okay. Mr. General Counsel, I proposal that we have the following time

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line for the completion of the report. You would provide the commissioners with the first draft by August 13th.

Commissioners would have comments back to you by the 5th of September. There would be a vote on September 24th. And that would entail having in-person meeting on that date and changing the current in-person meeting that we have scheduled for September 10th, making that a teleconference.

And then the two other items are our statements would be due on October 23rd and rebuttals on November 23rd.

My question to you is, is that time line -- well, do you have any concerns with that time line?

MR. BLACKWOOD: No. I think we can meet that time line, especially with the fact that we're posting online. It should be noted, though, that that will put us over our traditional deadline of trying to complete the report by the end of the fiscal year.

CHAIRPERSON REYNOLDS: Yes.

MR. BLACKWOOD: But realistically and to keep the comment time for the commissioners in full, this is what we would have to do.

CHAIRPERSON REYNOLDS: Okay. Also, as I said, this would entail changing the current meeting

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schedule that we have. So at this time -- well, I'll open up the floor at this point for other commissioners to, you know, ask questions or provide comments.

COMMISSIONER GAZIANO: This is Commissioner Gaziano. If I could speak first to that? I have a couple of questions for the General Counsel, but there's one other date that I'm going to just throw out that maybe should be added. And that is the date in which the General Counsel will incorporate all of the comments from commissioners and send out a second version in time for us to study.

Mr. General Counsel, can you rightly do that in five to seven days and get something back out to us September 10 or September 12?

MR. BLACKWOOD: I believe so.

COMMISSIONER GAZIANO: Okay. Let's build into the schedule, then, either September 10 to 12 a return date. That would give us approximately 12 days to review it and note any typos or any other things.

The question I had, I suppose, to the General Counsel is links sound very good. I like them for the internet. But links, particularly if they're not our links, may die. Even some of our links might not.

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And so I would just like some further consideration of whether for the printed version we ought not to provide at least key documents and maybe several of them, but I'm sure that there may be many links that aren't that important.

What is your thought on that?

MR. BLACKWOOD: We're aware of that issue as far as items that are not on our website. We have many items that are hard copy. And to the extent that copyright is not an issue, we will post those. Other items there is a risk that some will expire, especially with regard to the Black Panthers. That's why we have tried to capture them on disk to the extent that we can.

With regard to, for example, the National Geographic items, we had an explicit waiver for a one-time use. And I will have to try to see if I can get that extended. That may not be possible, but we will certainly be able to have the disk available for the public. As in our past reports, you know, if somebody comes to the library and wants to see the hard copies, all of that would be available.

COMMISSIONER GAZIANO: I am certainly no expert in copyright. So I would like to kind of look into that further in another issue, but I would

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imagine evidence we have subpoenaed and if we need to subpoena, let's subpoena it for an official federal government inquiry. I wonder if there isn't some exception to copyright. But I hope that if it's not an issue, that we don't make it an issue.

CHAIRPERSON REYNOLDS: Okay. Other questions?

(No response.)

CHAIRPERSON REYNOLDS: Okay. Hearing none, I would like to move to change the scheduled September 24th teleconference to an in-person meeting as well as change the September 10th in-person meeting to a teleconference. Is there a second?

And that's needed to maintain the schedule in that right now we're scheduled to vote on the report on the 24th. And we need to have a meeting to do that. And it's preferable to do it in person.

Is there a second?

COMMISSIONER KIRSANOW: Kirsanow second.

CHAIRPERSON REYNOLDS: Discussion?

(No response.)

CHAIRPERSON REYNOLDS: Okay. Commissioner Gaziano, how do you vote?

COMMISSIONER GAZIANO: Yes.

CHAIRPERSON REYNOLDS: Commissioner

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Kirsanow?

COMMISSIONER KIRSANOW: Yes.

CHAIRPERSON REYNOLDS: Commissioner Heriot?

COMMISSIONER HERIOT: Yes.

CHAIRPERSON REYNOLDS: Commissioner Yaki? Commissioner Yaki?

COMMISSIONER YAKI: Abstain.

CHAIRPERSON REYNOLDS: I'm sorry? Okay.

COMMISSIONER YAKI: Abstain.

CHAIRPERSON REYNOLDS: Commissioner Taylor?

COMMISSIONER TAYLOR: Yes.

CHAIRPERSON REYNOLDS: And I also vote for the measure. Commissioner Yaki abstains. The remaining commissioners vote in favor of the motion. The motion passes.

III. DISCOVERY PLAN AND PROJECT OUTLINE, REPORT ON SEX DISCRIMINATION IN LIBERAL ARTS COLLEGE ADMISSIONS

CHAIRPERSON REYNOLDS: Next up we have consideration of a discovery plan and project outline for the report on Sex Discrimination in Liberal Arts College Admissions.

Mr. Staff Director, please provide us with

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an update on the status of the project.

STAFF DIRECTOR DANNENFELSER: Thank you, Mr. Chairman. At this time I would like to ask the Acting Chief of the Office for Civil Rights Evaluation, Chris Byrnes, to provide us with an update.

MR. BYRNES: This is Chris Byrnes. The Office of General Counsel has contacted the four hold-out schools. We are trying to schedule a meeting with them next week.

OCRE staff has completed sufficient recording of the data to begin preliminary analysis of the 15 schools. And this preliminary analysis is underway.

So far we have looked at gender composition of applicants, admission rates by gender, gender composition of those admitted and those enrolled, and male/female admittee differences in SAT, ACT, and high school GPA.

It's a little bit too soon to have confidence in what the data reveals because these preliminary analyses have been most useful in sort of showing us where the invalid or missing data is in the submissions we have received. So we are continuing to work with the schools to resolve these concerns.

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So we have been delayed a little bit recently in continuing the analyses due to a software-upgraded installation for the particular statistical software that we use. These have been resolved. And I think we will be able to move forward in the coming weeks.

CHAIRPERSON REYNOLDS: Okay. On June 18th and July 22nd, staff distributed a draft discovery plan and project outline for the Commission's report on Sex Discrimination in Liberal Arts College Admissions.

To further inform staff's development of the project, it would be useful for commissioners to discuss the proposal and provide staff with some guidance regarding whether they're headed in the right direction.

Commissioner Heriot, you're the primary sponsor of the project. Would you care to start us off with comment?

COMMISSIONER HERIOT: Well, I looked very briefly at the preliminary report outline. And I have one general concern and a specific concern. One general concern is that I think we need to avoid making this into a battleship project; for instance, you know, discussions of the statutory and regulatory

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framework, in which all of this takes place.

I don't think we're talking about something that should be more than a few paragraphs. The statutory and regulatory framework for this is really not the focus of the report and really shouldn't take up a lot of staff time. It will be perfectly fine not to discuss it at all. We can put it in a few sentences, if necessary.

One of the things that concerns me a great deal is in chapter 3. The proposal is to aggregate the data within category. My fear is if we aggregate the data within a category, we are, in fact, going to obscure whatever discrimination is going on.

If you look at the schools individually, if there is discrimination, it will show up a lot more clearly. The problem is, you know, each one of these selective schools is not equally selective. And so when you put them together, it is going to just be fuzziness that shows.

So I am very concerned about the notion of aggregating within category and very skeptical of that as a way of dealing with these data.

Beyond that, I would just say that less is more here. We don't want to get bogged down in this report. We're looking to see whether there, in fact,

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is discrimination -- and, you know, that's job one -- and not do an opus on gender discrimination in colleges.

That said, I think getting the data from Johns Hopkins and Georgetown is crucial and that that has got to be done. One way or another, that has to happen for this report to be useful. And so I hope that that is pursued strongly.

It's chapter 3 that should be the focus of this report, not chapters 1 and 2. And, in fact, I am not convinced we need chapter 1 at all.

So those are my thoughts so far.

CHAIRPERSON REYNOLDS: Okay. Mr. Byrnes, do you have any thoughts about the comments just made?

MR. BYRNES: I mean, I am in favor of a streamlined report addressing those concerns. I would ask if Peter Minarik is on the line, if he has any concerns about omitting the aggregation of the data.

MR. MINARIK: I'm on the line, Chris. The only reason I was slightly in favor of the aggregation is because I thought it was going to be difficult given that we never established exactly what the admission criteria are to point to a school and say that they are engaging a policy individually.

So I thought an aggregation might be of

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value because it would give us a picture of what is going on at specific groups of colleges. That's why I was slightly in favor of that approach.

COMMISSIONER HERIOT: Yes. They will have different admissions policies. So it will be harder to see it.

One thing I have no clear position on is whether or not schools should be individually identified. I have no objection just to calling these school A, school B, school C. You know, the purpose of this report is not to dump on a particular school for what it is doing but, rather, to find out the big picture what is happening.

MR. MINARIK: Well, that comment changes my perspective measurably.

CHAIRPERSON REYNOLDS: How so?

COMMISSIONER HERIOT: Although if we're talking about state schools, I am happy to report to other branches of government that there has been a violation of the law. That is a different matter. But I don't see the report needing to identify particular schools at all.

CHAIRPERSON REYNOLDS: Okay. Mr. Minarik, so we have a good understanding of the direction that we are headed. Do you have any questions or do you

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need additional clarification?

MR. MINARIK: I don't at the present time. Do you, Chris?

MR. BYRNES: No. I have no further questions except one. If we don't identify the schools individually, would we at least give a brief description of, you know, they're a moderately selective institution or --

COMMISSIONER HERIOT: Yes. I think that is a good thing, yes.

MR. BYRNES: Okay.

COMMISSIONER HERIOT: Yes. Again, we've got to get on it to get Johns Hopkins and Georgetown on board as quickly as possible.

CHAIRPERSON REYNOLDS: Okay. Any other questions or comments?

(No response.)

IV. TIME LINE FOR COMMISSIONER STATEMENTS AND REBUTTALS TO HBCU AND STEM REPORTS

CHAIRPERSON REYNOLDS: Next up is a time line for commissioner statements and rebuttals to the HBCU and STEM reports. I move that the Commission submit statements for the HBCU and STEM reports by August 16th and that they submit rebuttals for these by September 13th. Is there a second?

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COMMISSIONER HERIOT: Second.

CHAIRPERSON REYNOLDS: Discussion?

COMMISSIONER GAZIANO: I'm sorry? What were those dates again? August?

CHAIRPERSON REYNOLDS: Sixteenth and September 13th.

COMMISSIONER GAZIANO: The first one is just a little over two weeks. If there's unanimous consent for that, then I don't mind, but --

CHAIRPERSON REYNOLDS: Even if there's not unanimous consent, we have to be mindful of the fact that we have to start putting some of these reports to bed. It's going to be a burden on all of us. We have a lot of things that are in progress, several of which need to be finalized and voted on. So I would ask everyone to just grin and bear it with the understanding that we're all under the same burden.

COMMISSIONER HERIOT: No. I have a somewhat different perspective on this. And that is I would object to this but for the fact that we did, in fact, pass the report, I believe something like the 16th of July, somewhere in there. So this, in fact, is the 30 days.

I've always assumed we were working on a 30-30 schedule. And I think that is our default rule

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anyway.

COMMISSIONER GAZIANO: That is.

COMMISSIONER HERIOT: Yes. So I don't think this is a necessary vote. I think we are just making work for ourselves here. It's 30-30 because we didn't say anything else at the meeting.

COMMISSIONER GAZIANO: That makes sense. I just don't want to depart from our 30-30 without either all commissioners, but this is pretty much --

COMMISSIONER HERIOT: Yes. I agree with that. I agree with that. We should not depart from a 30-30 unless we have had unanimous consent. But what we're asking for here is essentially 30-30.

CHAIRPERSON REYNOLDS: Folks, we don't have a rule that requires unanimity for amending the 30-30.

COMMISSIONER GAZIANO: That is correct, but we ought not to do it out of respect to each other. But it seems like we probably won't --

CHAIRPERSON REYNOLDS: Folks, let's save this discussion. We don't have to have this discussion. I don't think we have a problem with the particular issue that is in front of us now.

Commissioner Gaziano, how do you vote?

COMMISSIONER GAZIANO: Yes.

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CHAIRPERSON REYNOLDS: Commissioner Kirsanow?

COMMISSIONER KIRSANOW: Yes.

CHAIRPERSON REYNOLDS: Commissioner Heriot?

COMMISSIONER HERIOT: Yes.

CHAIRPERSON REYNOLDS: Commissioner Yaki?

COMMISSIONER YAKI: Abstain.

CHAIRPERSON REYNOLDS: Commissioner Taylor?

COMMISSIONER TAYLOR: Yes.

CHAIRPERSON REYNOLDS: And I vote for it also. Commissioner Yaki abstains. The remaining commissioners voted for it. It passes.

V. ELECTION ASSISTANCE COMMISSION BOARD OF ADVISERS VACANCIES

CHAIRPERSON REYNOLDS: Next up is the consideration of the vacancies on the Election Assistance Commission's Board of Advisers. The terms of Commissioners Thernstrom and Melendez on the EAC Board of Advisers have expired. We're in charge of providing the names of two individuals to fill these vacancies.

Since the positions have been vacant since June, I move that the Commission authorize me to

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select a replacement to fill these seats as soon as practicable following our customary practice and the EAC preference of ensuring that the picks are politically diverse.

If a commissioner has any recommendations, please forward your recommendations to me for consideration.

Is there a second?

COMMISSIONER GAZIANO: Gaziano second.

CHAIRPERSON REYNOLDS: Discussion?

COMMISSIONER HERIOT: Am I right you can pick somebody from outside the Commission if you so choose?

CHAIRPERSON REYNOLDS: Yes, that is correct.

Okay. Mr. Gaziano, how do you vote?

COMMISSIONER GAZIANO: Yes.

CHAIRPERSON REYNOLDS: Commissioner Kirsanow?

COMMISSIONER KIRSANOW: Yes.

CHAIRPERSON REYNOLDS: Commissioner Heriot?

COMMISSIONER HERIOT: Yes.

CHAIRPERSON REYNOLDS: Commissioner Yaki?

COMMISSIONER YAKI: Yes. And I want to

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replace Commissioner Melendez.

CHAIRPERSON REYNOLDS: Okay. Commissioner Taylor?

COMMISSIONER TAYLOR: Yes.

CHAIRPERSON REYNOLDS: And I vote for it also. We have a unanimous vote.

VI. 2012 BUDGET ESTIMATE

CHAIRPERSON REYNOLDS: Next up is a discussion of the 2012 budget estimate. Mr. Staff Director?

STAFF DIRECTOR DANNENFELSER: Thank you, Mr. Chairman.

The Office of Management and Budget has given government-wide guidance that agencies reduce their budgets by 5 percent from their 2011 budget levels. And that was the guidance that we were operating under when we prepared this budget.

For the most part, we achieved those reductions through attrition in terms of staff positions And there were some other small tweaks that were identified in the budget materials relating to travel and printing and things of that nature, but for the most part, it was through not filling positions that have been authorized, that either have not been filled, such as the Deputy Staff Director position and

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others where people have left, such as the Solicitor. And we had a staff member in OCRE. So this is of that nature, the main area where we were able to reduce the budget and to get within this funding level.

CHAIRPERSON REYNOLDS: Questions for the Staff Director?

COMMISSIONER KIRSANOW: Mr. Chair, Kirsanow here. I recommend we dispense entirely with the budget.

CHAIRPERSON REYNOLDS: Please explain.

COMMISSIONER KIRSANOW: It's not good enough for Congress. It's not good enough for us.

COMMISSIONER HERIOT: Explain that.

CHAIRPERSON REYNOLDS: Okay. Just so that we're clear, I would assume that Mr. Kirsanow is -- well, this is Commissioner Kirsanow being a smart alec. Commissioner Kirsanow, may I have confirmation that you are a smart alec?

COMMISSIONER KIRSANOW: I exist, don't I?

CHAIRPERSON REYNOLDS: Yes, you do. Other questions, comments?

COMMISSIONER GAZIANO: Just for the record, I will repeat my view that we shouldn't be traced back as an independent agency from Office of Management and Budget dictates, especially with the

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ballooning pieces that they have sought for other agencies. So I probably will be voting against it on that ground alone.

CHAIRPERSON REYNOLDS: Okay. Commissioner Gaziano, how do you vote?

COMMISSIONER GAZIANO: No.

CHAIRPERSON REYNOLDS: Commissioner Kirsanow?

COMMISSIONER KIRSANOW: Abstain.

CHAIRPERSON REYNOLDS: Commissioner Heriot?

COMMISSIONER HERIOT: What are we voting on?

CHAIRPERSON REYNOLDS: On the budget.

COMMISSIONER HERIOT: Was there a motion made?

CHAIRPERSON REYNOLDS: I move that we accept the recommendations provided by the Staff Director. Is there a second? Pretty please?

COMMISSIONER TAYLOR: Taylor. Second.

CHAIRPERSON REYNOLDS: Thank you. Mr. Gaziano, may I have your no once again?

COMMISSIONER GAZIANO: No.

CHAIRPERSON REYNOLDS: Commissioner Kirsanow?

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COMMISSIONER KIRSANOW: Abstain.

CHAIRPERSON REYNOLDS: Commissioner Heriot?

COMMISSIONER HERIOT: I guess I am going to go with Pete and abstain.

CHAIRPERSON REYNOLDS: You're killing me. Commissioner Yaki?

COMMISSIONER YAKI: Abstain.

CHAIRPERSON REYNOLDS: Commissioner Taylor?

COMMISSIONER TAYLOR: Yes.

CHAIRPERSON REYNOLDS: And I vote for it. Commissioner Gaziano voted against it. We have three abstentions: Commissioners Kirsanow, Heriot, and Yaki. The two yes votes are from Commissioner Taylor and myself. The vote carries.

VII. APPROVAL OF MINUTES FROM MARCH 12, APRIL 16, MAY 14, MAY 28, JUNE 11, JUNE 25, AND JULY 16 MEETINGS

CHAIRPERSON REYNOLDS: Next up is the approval of the minutes from the March 12th, April 16th, May 14th, May 28th, June 11th, and July 16th meetings.

I would ask on the front end before a motion is made, does anyone have any concerns with it?

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Because my preference is to just vote on the set of minutes as a block. And I can do that if on the front end I know that no one had any concerns.

COMMISSIONER GAZIANO: I have none.

CHAIRPERSON REYNOLDS: Commissioner Kirsanow?

COMMISSIONER KIRSANOW: I have no problem with that.

CHAIRPERSON REYNOLDS: Commissioner Heriot?

COMMISSIONER HERIOT: I've got no problem.

CHAIRPERSON REYNOLDS: Commissioner Yaki?

COMMISSIONER YAKI: I'm sorry? What's the question? I was kind of like not paying attention.

CHAIRPERSON REYNOLDS: Okay. I'm trying to find out if you have any concerns with the minutes. I would prefer to vote on the minutes as a block to save time. If you don't have any concerns, then we can go down that path. If you do, then we'll have to do it our customary way.

COMMISSIONER YAKI: That's what I thought you said. I wasn't too sure exactly how you were framing it. But yes, that's fine with me.

CHAIRPERSON REYNOLDS: Commissioner Taylor?

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COMMISSIONER TAYLOR: Yes

CHAIRPERSON REYNOLDS: Okay, I move that we approve the following sets of minutes: the March 12th, April 16th, May 14th, May 28th, June 11th, and July 16th meeting minutes. Is there a second?

COMMISSIONER HERIOT: Second. You missed June 25th.

CHAIRPERSON REYNOLDS: And thank you. And the June 25th.

COMMISSIONER HERIOT: I second that part, too.

CHAIRPERSON REYNOLDS: Thank you.

Commissioner Gaziano, how do you vote?

COMMISSIONER GAZIANO: Yes.

CHAIRPERSON REYNOLDS: Commissioner Kirsanow?

COMMISSIONER KIRSANOW: Yes.

CHAIRPERSON REYNOLDS: Commissioner Heriot?

COMMISSIONER HERIOT: Yes.

CHAIRPERSON REYNOLDS: Commissioner Yaki?

COMMISSIONER YAKI: Sure. Yes.

CHAIRPERSON REYNOLDS: Commissioner Taylor?

COMMISSIONER TAYLOR: Sure. Yes.

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CHAIRPERSON REYNOLDS: Okay. And I vote for it myself. So, folks, today we have two unanimous votes including this one.

COMMISSIONER TAYLOR: Let's end the call right now.

CHAIRPERSON REYNOLDS: Yes. Thank you, folks, very efficient meeting. The meeting --

COMMISSIONER HERIOT: Wait, wait, wait, wait, Gerry. We still haven't set the meetings for next year, have we?

COMMISSIONER GAZIANO: Yes, we did last meeting, I believe.

COMMISSIONER HERIOT: Did we? I didn't write it down. Oh, dear. Okay.

CHAIRPERSON REYNOLDS: Okay.

COMMISSIONER HERIOT: Thanks.

CHAIRPERSON REYNOLDS: Well, we'll get with you to give you the dates.

COMMISSIONER HERIOT: Okay.

CHAIRPERSON REYNOLDS: Okay, folks. The meeting is adjourned.

(Whereupon, the foregoing matter was concluded at 12:08 p.m.)

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Date : 3/4/2021 6:21:10 PM
From : "Pilar McLaughlin" pmclaughlin@usccr.gov
To : "David Ganz" dganz@usccr.gov
Subject : RE: Appointment

No. Definitely not. Would it be relevant to see how the other federal entities who have appointing authority conduct their appointments?

The seven federal entity appointees come from Director of the U.S. Department of Defense's Federal Voting Assistance Program, the Chief of the DOJ's Office of Public Integrity or the Chief's designee, the Chief of the Voting Section of the DOJ's Civil Rights Division or the Chief's designee, two appointees of the Architectural and Transportation Barriers Compliance Board (Access Board), and two appointees of the U.S. Commission on Civil Rights (52 U.S.C. §20944)

From: David Ganz <dganz@usccr.gov>
Sent: Thursday, March 4, 2021 6:14 PM
To: Pilar McLaughlin <pmclaughlin@usccr.gov>
Subject: RE: Appointment

Thanks. Historically it seems that our appointments haven't been in "a manner which ensures that the Board of Advisors will be bipartisan in nature…"

From: Pilar McLaughlin <pmclaughlin@usccr.gov>
Sent: Thursday, March 4, 2021 2:59 PM
To: David Ganz <dganz@usccr.gov>
Subject: RE: Appointment

David:

I'm putting something more formal together and will send you a draft by the requested deadline. However, I am doing some searching in Securisync to see if I could find anything about how these appointments have been previously handled and I found two emails that confirms what Mauro said in his email to us (see the attached). It appears that historically (at least in April 2015, April 2017, and April 2019) the Chair has unilaterally made these appointments versus taking a vote of the whole Commission. Additionally, it appears that these appointments have not been bipartisan. In 2015, Castro appointed Timmons Goodson (Democrat appointed by Obama) and Commissioner Yaki (Democrat appointed by Pelosi). In 2017, Chair Lhamon reappointed Timmons Goodson and Yaki and then reappointed them for a third time in 2019.

I am still looking for some legal authority on how these appointments are supposed to work…

Secondarily, I want to confirm that I should be drafting this memo*assuming that Cantú becomes chair* via a majority vote of the Commission. Thus, what power does she have to make these appointments once confirmed via a vote by the Commission. If my research finds that the Chairperson has the authority to make these appointments, if she is NOT confirmed, I think her ability to appoint becomes dicey.

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Thanks,
Pilar

From: David Ganz <dganz@usccr.gov>
Sent: Tuesday, March 2, 2021 5:27 PM
To: Pilar McLaughlin <pmclaughlin@usccr.gov>
Subject: RE: Appointment

There is nothing in the A.I.s on this.

About Mauro's statement 'bipartisan appoints were not a rule or requirement but a best practice" what do you think of the below:

(b)Manner of appointments

Appointments shall be made to the Board of Advisors under subsection (a) in a manner which ensures that the Board of Advisors will be bipartisan in nature and will reflect the various geographic regions of the United States.

From: David Ganz
Sent: Tuesday, March 2, 2021 5:11 PM
To: Pilar McLaughlin <pmclaughlin@usccr.gov>
Subject: RE: Appointment

Yes please.

Here is the EAC's appointment statute referenced in the letter:
https://www.law.cornell.edu/uscode/text/52/20944

From: Pilar McLaughlin <pmclaughlin@usccr.gov>
Sent: Tuesday, March 2, 2021 5:06 PM
To: David Ganz <dganz@usccr.gov>
Subject: RE: Appointment

Definitely. You want me to take this one?

From: David Ganz <dganz@usccr.gov>
Sent: Tuesday, March 2, 2021 5:01 PM
To: Pilar McLaughlin <pmclaughlin@usccr.gov>
Subject: FW: Appointment

Interesting issue, especially about the Chair's powers.

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From: Mauro Morales <mmorales@usccr.gov>
Sent: Tuesday, March 2, 2021 4:36 PM
To: David Ganz <dganz@usccr.gov>
Cc: Norma Cantu <ncantu@usccr.gov>; Pilar McLaughlin <pmclaughlin@usccr.gov>
Subject: Appointment

David,

We respectfully request a legal opinion on the authority of the Chair to appoint other Commissioners to entities external to the USCCR. In this particular situation, Chair Catherine Lhamon made two appointments to the Election Assistance Commission (EAC). She appointed Commissioner Kladney and Commissioner Yaki to be advisory members in 2019. I believe former Commission Chair Marty Castro made two appointment to the EAC with Commissioners Timmons-Goodson and Commissioner Yaki. In a conversation a few months ago, the general counsel of EAC sent me the attached letter from Adams, Gilchrist, Heriot and Kirsanow. In our conversation the EAC GC informed me that other organizations that make such appointments to the EAC do so in a bipartisan manner. He told me that bipartisan appoints were not a rule or requirement but a best practice. I believe that the appointments to the EAC for the next submission are scheduled for April of 2021 (I believe the appointments are for two year terms). The Republican members of the USCCR wrote a letter to EAC demanding action on the EAC appointments. The four Commissioners have verbally insisted that when Commissioner Cantu becomes Chair that she appoint a Republican Commissioner to the EAC. I believe that Commissioner Cantu is evaluating appointments to the EAC but wants to know her legal authority to do so or whether or not a vote is required to make such appointments. Please be advised that the Staff Director has not been previously involved in the selection or the appoint to the EAC. I am not aware of other such appointments. I have cc'd Pilar because she was the initial contact for this matter several months ago. Commissioner Cantu and I are available for additional consultation if that would be useful to you.

Thank you.

Mauro Morales
Staff Director
USCCR

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Date : 3/4/2021 6:37:48 PM
From : "Pilar McLaughlin" pmclaughlin@usccr.gov
To : "David Ganz" dganz@usccr.gov
Subject : RE: Appointment

Yea, that is the question. Finding nothing. Any final thoughts for the evening on where to look?

From: David Ganz <dganz@usccr.gov>
Sent: Thursday, March 4, 2021 6:25 PM
To: Pilar McLaughlin <pmclaughlin@usccr.gov>
Subject: RE: Appointment

Given the external appointing agencies all have two I suspect the statute intends 1 and 1 from each party, but its EAC's statute so perhaps we should defer to how they interpret, which is the past seems to have been to interpret it to mean we can appoint two democrats.

The more difficult issue I think is what gives our Chair the authority alone to appoint them without a vote.

From: Pilar McLaughlin <pmclaughlin@usccr.gov>
Sent: Thursday, March 4, 2021 6:21 PM
To: David Ganz <dganz@usccr.gov>
Subject: RE: Appointment

No. Definitely not. Would it be relevant to see how the other federal entities who have appointing authority conduct their appointments?

The seven federal entity appointees come from Director of the U.S. Department of Defense's Federal Voting Assistance Program, the Chief of the DOJ's Office of Public Integrity or the Chief's designee, the Chief of the Voting Section of the DOJ's Civil Rights Division or the Chief's designee, two appointees of the Architectural and Transportation Barriers Compliance Board (Access Board), and two appointees of the U.S. Commission on Civil Rights (52 U.S.C. §20944)

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Sent: Thursday, March 4, 2021 2:59 PM
To: David Ganz <dganz@usccr.gov>
Subject: RE: Appointment

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AMERICAN OVERSIGHT

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Subject: RE: Appointment

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To: Pilar McLaughlin <pmclaughlin@usccr.gov>
Subject: FW: Appointment

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To: David Ganz <dganz@usccr.gov>
Cc: Norma Cantu <ncantu@usccr.gov>; Pilar McLaughlin <pmclaughlin@usccr.gov>
Subject: Appointment

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AMERICAN OVERSIGHT

Thank you.

Mauro Morales
Staff Director
USCCR

AMERICAN OVERSIGHT

Date : 3/4/2021 6:44:39 PM
From : "David Ganz" dganz@usccr.gov
To : "Pilar McLaughlin" pmclaughlin@usccr.gov
Subject : Re: Appointment

Seems like commission buisness to me per our regs but maybe legislative history or fr notice of our proposed rules have a comment. Al s don't delineate chair's powers.

Sent via the Samsung Galaxy S21 5G, an AT&T 5G smartphone
Get Outlook for Android

From: Pilar McLaughlin <pmclaughlin@usccr.gov>
Sent: Thursday, March 4, 2021 6:37:48 PM
To: David Ganz <dganz@usccr.gov>
Subject: RE: Appointment

Yea, that is the question. Finding nothing. Any final thoughts for the evening on where to look?

From: David Ganz <dganz@usccr.gov>
Sent: Thursday, March 4, 2021 6:25 PM
To: Pilar McLaughlin <pmclaughlin@usccr.gov>
Subject: RE: Appointment

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Mauro Morales
Staff Director
USCCR

AMERICAN OVERSIGHT

Date : 3/5/2021 10:26:32 AM
From : "David Ganz" dganz@usccr.gov
To : "Pilar McLaughlin" pmclaughlin@usccr.gov
Subject : RE: Appointment

Nice find.

From: Pilar McLaughlin <pmclaughlin@usccr.gov>
Sent: Thursday, March 4, 2021 6:47 PM
To: David Ganz <dganz@usccr.gov>
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Ah! Check out page 25. Business meeting on July 10, 2010. The commissioners take a vote authorizing Chair Reynolds to select a replacement to fulfill the expiring seats of the board. That's a start…

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Staff Director
USCCR

AMERICAN OVERSIGHT

Date : 3/9/2021 12:58:52 PM
From : "Pilar McLaughlin" pmclaughlin@usccr.gov
To : "David Ganz" dganz@usccr.gov
Cc : "Sheryl Cozart" sccozart@usccr.gov
Subject : RE: Draft Motions for March 19, 2021, Meeting
Attachment : Draft Motions for March 19 2021 Meeting (002) PVM edits.docx;

See my attached edits.

From: David Ganz <dganz@usccr.gov>
Sent: Tuesday, March 9, 2021 12:56 PM
To: Pilar McLaughlin <pmclaughlin@usccr.gov>
Subject: RE: Draft Motions for March 19, 2021, Meeting

Any edit to the motion I drafted?

From: Pilar McLaughlin <pmclaughlin@usccr.gov>
Sent: Tuesday, March 9, 2021 12:43 PM
To: Sheryl Cozart <sccozart@usccr.gov>
Cc: David Ganz <dganz@usccr.gov>
Subject: RE: Draft Motions for March 19, 2021, Meeting

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Pilar

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To: David Ganz <dganz@usccr.gov>; Pilar McLaughlin <pmclaughlin@usccr.gov>
Subject: RE: Draft Motions for March 19, 2021, Meeting

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AMERICAN OVERSIGHT

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Cc: Sheryl Cozart <sccozart@usccr.gov>
Subject: Draft Motions for March 19, 2021, Meeting

Please redline any changes and send the document back to me by tomorrow afternoon.

David Ganz
General Counsel, Office of the General Counsel
U.S. Commission on Civil Rights
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425
(617) 669-6413

AMERICAN OVERSIGHT

UNITED STATES COMMISSION ON CIVIL RIGHTS
Washington, DC

March 19, 2021

I. Motion to Vote on Chairpersonship of Commissioner Norma Cantu

Pursuant to 45 C.F.R. § 701.10, I, Commissioner **[insert the appropriate Commissioner]**, moves ~~the Commission to have the Commissioners present for this Meeting~~ to vote on President Biden's designation of Commissioner Norma Cantúu as Chairperson of the U.S. Commission on Civil Rights.

[If five (5) Commissioners are present and vote in favor of Commissioner Cantu's Chairpersonship, then she is the Chair]

II. Motion to have U.S. Commission on Civil Rights make two appointments to Election Assistance Commission's Board of Advisors

Pursuant to 52 U.S.C. § 20944(a), I, Chairperson Norma Cantúu, moves to appoint **[insert the appropriate Commissioner]** and Commissioner **[insert the appropriate Commissioner]** to the Election Assistance Commission's Board of Advisors.
~~the Commission to have the Commissioners present for this Meeting appoint Commissioner **[insert the appropriate Commissioner]** and Commissioner **[insert the appropriate Commissioner]**, to the Election Assistance Commission's Board of Advisors~~

Is there a second?

Commented [PM1]: You don't need "commissioners present for this meeting" because per the statute, the president's nominee needs a majority vote of THE COMMISSION. You need 5 votes in favor.

Commented [PM2]: So, now I am unclear on this as well. If the republican commissioners get what they want – a republican appointed to the board – perhaps a vote on the record is not required because you probably already have a consensus. However, we did determine that this is "commission business" in which case, if we are being consistent with our analysis, then the final slate of appointees would require a vote.

Further, if that's the case, you don't need the language about "the commissioners being present" (I deleted it) because you won't be able to approve the slate without a quorum of 5 anyways.

Commented [DG3]: I didn't think Mauro or Cantu actually wanted to have a Commission vote on the appointment, but am I remembering correctly?

AMERICAN OVERSIGHT

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Attachment : Chairperson's Appointment Authority EAC, Board of Advisors.docx;

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AMERICAN OVERSIGHT

Questions:

1. **May the USCCR Chair unilaterally appoint Commissioners to the Election Assistance Commission (EAC), Board of Advisors or, do those appointments require a majority vote by the Commission?**
2. **Are the Commission's appointments required to be bipartisan?**

Background on the Election Assistance Commission, Board of Advisors

- The U.S. Election Assistance Commission (EAC) is an independent federal agency charged with helping improve the administration of federal elections. The EAC was established by the Help America Vote Act (HAVA) of 2002 as part of Congress's response to administrative issues with the 2000 elections.[1] HAVA created three advisory bodies for the EAC one of which is the Board of Advisors (Board) whose role is to review voluntary guidance for the commissioners for a vote on adoption.
- The Commission, per the HAVA statute - along with other federal entities, Members of Congress, and ranking members of the HVAC - has the authority to appoint two individuals to the Board.[2]
- The appointees serve a two-year term; the Commission's 2019 appointees, Commissioner Kladney and Commissioner Yaki's terms are set to expire in April of 2021.

History of USCCR Appointments to the Board

- The Commission's appointments to the Board have been mixed both in terms of the appointing authority and in political affiliation. Prior to 2015, information on the Commission's appointments is limited.
- Nov 12, 2004, the Chair Berry makes unilateral appointment – one republican and one independent. At the November business meeting, Chair Berry explains that, upon advice of counsel, she was told that per the statute, the appointment authority was hers.
- July 30, 2010, Chair Reynolds puts the authority for making the appointments up for a vote at the July business meeting. Chair Reynolds moves that the Commission vote to authorize her to make the appointments sating "[f]ollowing our customary practice and the EAC's preference of ensuring that the picks are politically diverse. If a commissioner has any recommendations, please forward your recommendations to me for consideration." The

[1] Help America Vote Act; Pub. L. 107-252; 116 Stat. 1666; 52 U.S.C. §§20901-21145.
[2] 52 U.S.C. §20944. The Board of Advisors was initially assigned 37 members, but its membership dropped to 35 with the 2016 merger of two of the organizations responsible for appointing its members. Sixteen members of the board are appointed by organizations that represent state and local officials and seven represent federal entities. The seven federal entity appointees come from Director of the U.S. Department of Defense's Federal Voting Assistance Program, the Chief of the DOJ's Office of Public Integrity or the Chief's designee, the Chief of the Voting Section of the DOJ's Civil Rights Division or the Chief's designee, two appointees of the Architectural and Transportation Barriers Compliance Board (Access Board), and two appointees of the U.S. Commission on Civil Rights. The remaining twelve are appointed as follows: four members are science and technology professionals, who are each appointed by the majority or minority leadership of the House or Senate and eight are voter representatives, two of whom are appointed by each of the chairs and ranking members of the EAC's two primary oversight committees.

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motion received a unanimous vote to authorize Chair Reynolds to select replacements to fill the EAC Board seats.

Authorities

- The Commission's AI's and regulations are silent with respect to the Chairperson's powers.
- 52 U.S.C § 20944 sets for the membership of the Board of Advisors including which individuals/entities have the authority to make appointments and the manner of such appointments:
    - **(a)(10) "**The Board of Advisors shall be composed of 37 members appointed as follows: Two members appointed by the United States Commission on Civil Rights."
    - **(b) "**Appointments shall be made to the Board of Advisors under subsection (a) in a manner which ensures that the Board of Advisors will be bipartisan in nature and will reflect the various geographic regions of the United States."

Analysis

- The fact that the statute gives each entity two appointments suggests that the nature of the appointments should be bipartisan. Further, the fact that both the minority and majority leadership both the House and the Senate are afforded an equal number of appointments also suggests that the appointees should be from different political parties.
- Per OGC's previous analysis regarding what is considered "official commission business," the decision on who to appoint to the EAC ostensibly falls under that rubric and requires collective action by the commission. Further, the EAC statute denotes that the appointment authority is delegated the United State Commission on Civil Rights, rather than the Chairperson, Vice Chairperson, Staff Director, or other Commission leader, and thus requires collective action or at a minimum, consideration by the entire Commission.
- Regs do not speak to what is considered "official commission business" but they do speak to the definition of a meeting. Based on our reading of the regs, commission business includes which includes "an action that is the result of joint conduct or the disposition of an official commission action." See §702.51.
- Does not necessarily need to be commissioners.
- There should be a consensus reached – either in person vote or notational vote.
- Historically, the EAC has not challenged the Commission's appointees, but that does not necessarily mean we have been correct in the manner of our appointments. The EAC is not in the business of questioning appointments or the political party affiliation of the appointees.

AMERICAN OVERSIGHT

Date : 8/19/2021 11:32:46 AM
From : "John Mashburn" jmashburn@usccr.gov
To : "Christian Adams" a@electionlawcenter.com, "Stephen Gilchrist" sgilchrist@usccr.gov, "Peter Kirsanow" pkirsanow@usccr.gov, "Gail Heriot" gheriot@usccr.gov
Cc : "Thomas Simuel" tsimuel@usccr.gov, "Alexander Heideman" aheideman@usccr.gov, "Carissa Mulder" CMulder@usccr.gov
Subject : Re: [EXTERNAL] RE: EAC Final Selections

See email I just sent from my USCCR account. Cantu says she would welcome a motion to add EAC vote to tomorrow's agenda

---

From: Christian Adams <a@electionlawcenter.com>
Sent: Wednesday, August 18, 2021 5:29:14 PM
To: John Mashburn; Stephen Gilchrist; Peter Kirsanow; Gail Heriot
Cc: Thomas Simuel; Alexander Heideman; Carissa Mulder
Subject: [EXTERNAL] RE: EAC Final Selections

> CAUTION: This email is from outside USCCR.

This is unbelievable. The "process" was part of the AI we negotiated and voted on. What do you veterans read here?

From: John Mashburn <jmashburn@usccr.gov>
Sent: Wednesday, August 18, 2021 5:18 PM
To: Christian Adams <a@electionlawcenter.com>; Stephen Gilchrist <sgilchrist@usccr.gov>; Peter Kirsanow <pkirsanow@usccr.gov>; Gail Heriot <gheriot@usccr.gov>
Cc: Thomas Simuel <tsimuel@usccr.gov>; Alexander Heideman <aheideman@usccr.gov>; Carissa Mulder <CMulder@usccr.gov>
Subject: Fw: EAC Final Selections

FYI to all

From: Juana Silverio
Sent: Wednesday, August 18, 2021 5:13:04 PM
To: Mauro Morales; John Mashburn
Cc: Thomas Simuel; Alexander Heideman; Carissa Mulder; Norma Cantu
Subject: Re: EAC Final Selections

Thanks John. You are correct, the item is not on the agenda for Friday.

There were a few concerns raised on process before confirming the candidates to the EAC on behalf of the Commission. Please stand by snd advise your commissioners that further communication is forthcoming by the Chairwoman.

Please let us know if you have any further questions. We greatly appreciate your patience.

Juana

AMERICAN OVERSIGHT

--
Juana Silverio (she/her/ella)
Special Assistant to Commissioner Norma V. Cantú
U.S. Commission on Civil Rights
E: jsilverio@usccr.gov
http://usccr.gov/
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425
Follow Us on Twitter & Facebook:

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From: Mauro Morales
Sent: Wednesday, August 18, 2021 4:41:49 PM
To: John Mashburn
Cc: Juana Silverio; Thomas Simuel; Alexander Heideman; Carissa Mulder
Subject: Re: EAC Final Selections

That is a good question. It is a decision for Commissioners in consultation with the Chair to decide how they wish to proceed. Adams is welcome to make a motion to amend the agenda to request a discussion and a vote. If the majority supports his motion it can be added to agenda. In the alternative, if Commissioners desire to proceed by notational vote and no one objects then a notational vote can occur. As I have requested previously, please advise me how you wish to proceed. I recommend Commissioners express their desire to the Chair since the Chair controls the agenda.

Sent from my iPhone

> On Aug 18, 2021, at 12:57 PM, John Mashburn <jmashburn@usccr.gov> wrote:
>
> This vote is not on the agenda for Friday, and a notational vote was not sent, so where does it stand? Gilchrist and Adams would like a vote at the business meeting and Adams is willing to make a motion to vote on it.
>
> ---
>
> **From:** Mauro Morales <mmorales@usccr.gov>
> **Date:** Tuesday, August 10, 2021 at 2:57 PM
> **To:** Commissioners <Commissioners@usccr.gov>
> **Cc:**
> "CommissionerAssistants@usccr.gov" <CommissionerAssistants@usccr.gov>,
> David Ganz <dganz@usccr.gov>
> **Subject:** EAC Final Selections
>
> Commissioners,
>
> Pursuant to the AI voted on during the April 30th Business meeting, I received the following names for appointment the Election Assistance

AMERICAN OVERSIGHT

Commission (EAC):

Commissioners Cantu, Adegbile, Kladney and Yaki have selected for appointment to the EAC:

- Cleta Michell, Chair, Conservative Partnership Institute Election Integrity Network.

Commissioners Adams, Gilchrist, Heriot and Kirsanow have selected for appointment to the EAC:

- Commissioner Michael Yaki;

Under the AI adopted by Commissioners, these two members selected shall be placed in nomination and ratified by a majority vote. Please inform me how you would like to proceed for a majority vote either by placing it on the agenda for the next USCCR business meeting or by a notational vote. Thank you.

Mauro Morales
Staff Director
U.S. Commission on Civil Rights
P: 202-376-7796| F: 202-376-7672
Mmorales@usccr.gov
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1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425

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Sent from my iPhone

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Date : 8/19/2021 12:48:33 PM
From : "John Mashburn" jmashburn@usccr.gov
To : "Christian Adams" a@electionlawcenter.com, "Stephen Gilchrist" sgilchrist@usccr.gov, "Gail Heriot" gheriot@usccr.gov, "Peter Kirsanow" pkirsanow@usccr.gov
Cc : "Thomas Simuel" tsimuel@usccr.gov, "Alexander Heideman" aheideman@usccr.gov, "Carissa Mulder" CMulder@usccr.gov
Subject : Re: EAC Final Selections Info
Attachment : Commission Telphonic Meeting Transcript 04.30.2021 UNEDITED.docx;

EAC Transcript re: MOU: Attached is the transcript of the April 30, 2021 Bus Mtg where the EAC nominations "Memorandum of Understanding" (not an AI) on the USCCR's nominations and appointments to the Board of Advisors for the EAC was approved on pages 8-9 (*which I have highlighted in yellow*) – in case the specifics of what was approved come up at tomorrow's bus mtg. The transcript is hard to track down on the USCCR website, but Alex fortunately had a copy of it already.

Motion: to add the EAC appointments to the bus meeting agenda tomorrow:

> "I move that a vote on the USCCR's appointments to the Board of Advisors for the Election Assistance Commission be added to the agenda."

From: John Mashburn <jmashburn@usccr.gov>
Date: Thursday, August 19, 2021 at 11:26 AM
To: Christian Adams <a@electionlawcenter.com>, Stephen Gilchrist <sgilchrist@usccr.gov>, Gail Heriot <gheriot@usccr.gov>, Peter Kirsanow <pkirsanow@usccr.gov>
Cc: Thomas Simuel <tsimuel@usccr.gov>, Alexander Heideman <aheideman@usccr.gov>, Carissa Mulder <CMulder@usccr.gov>
Subject: Fw: EAC Final Selections--not by notational vote

FYI- Cantu "welcomes" a motion for a vote on EAC nominations

From: Norma Cantu
Sent: Thursday, August 19, 2021 11:15:35 AM
To: Juana Silverio; Mauro Morales; John Mashburn; Irena Vidulovic; Mauro Morales
Cc: Thomas Simuel; Alexander Heideman; Carissa Mulder
Subject: RE: EAC Final Selections--not by notational vote

Dear John, Juana, and others,
I have already heard on Tuesday an objection from a Commissioner regarding using the notational vote to address the confirming of the EAC candidates. The concern, I understand, is that more discussion is needed on important items, such as length of term, duties to report back to USCCR, etc.
Since one objection stops the notational process, it will take a vote at a meeting to confirm.
I would welcome it if Commissioner Adams or others wish to make a motion at the meeting to add this item to the agenda.
Norma

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From: Juana Silverio <jsilverio@usccr.gov>
Sent: Wednesday, August 18, 2021 4:13 PM
To: Mauro Morales <mmorales@usccr.gov>; John Mashburn <jmashburn@usccr.gov>
Cc: Thomas Simuel <tsimuel@usccr.gov>; Alexander Heideman <aheideman@usccr.gov>; Carissa Mulder <CMulder@usccr.gov>; Norma Cantu <ncantu@usccr.gov>
Subject: Re: EAC Final Selections

Thanks John. You are correct, the item is not on the agenda for Friday.

There were a few concerns raised on process before confirming the candidates to the EAC on behalf of the Commission. Please stand by snd advise your commissioners that further communication is forthcoming by the Chairwoman.

Please let us know if you have any further questions. We greatly appreciate your patience.

Juana

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Juana Silverio (she/her/ella)
Special Assistant to Commissioner Norma V. Cantú
U.S. Commission on Civil Rights
E: jsilverio@usccr.gov
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1331 Pennsylvania Avenue, NW Suite 1150
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Sent: Wednesday, August 18, 2021 4:41:49 PM
To: John Mashburn
Cc: Juana Silverio; Thomas Simuel; Alexander Heideman; Carissa Mulder
Subject: Re: EAC Final Selections

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Sent from my iPhone

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AMERICAN OVERSIGHT

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Date: Tuesday, August 10, 2021 at 2:57 PM
To: Commissioners <Commissioners@usccr.gov>
Cc:
"CommissionerAssistants@usccr.gov" <CommissionerAssistants@usccr.gov>,
David Ganz <dganz@usccr.gov>
Subject: EAC Final Selections

Commissioners,

Pursuant to the AI voted on during the April 30th Business meeting, I received the following names for appointment the Election Assistance Commission (EAC):

Commissioners Cantu, Adegbile, Kladney and Yaki have selected for appointment to the EAC:

- Cleta Michell, Chair, Conservative Partnership Institute Election Integrity Network.

Commissioners Adams, Gilchrist, Heriot and Kirsanow have selected for appointment to the EAC:

- Commissioner Michael Yaki;

Under the AI adopted by Commissioners, these two members selected shall be placed in nomination and ratified by a majority vote. Please inform me how you would like to proceed for a majority vote either by placing it on the agenda for the next USCCR business meeting or by a notational vote. Thank you.

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Mmorales@usccr.gov
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Washington D.C. 20425

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U.S. COMMISSION ON CIVIL RIGHTS

+ + + + + **UNEDITED**

TELEPHONIC SPECIAL BUSINESS MEETING

+ + + + +

FRIDAY, 30, 2021

+ + + + +

The Commission convened via teleconference, at 2:00 p.m. EDT, Peter Kirsanow and Michael Yaki, Co-Hosts, then Norma Cantu, Chair, presiding.

AMERICAN OVERSIGHT

PRESENT:

J. CHRISTIAN ADAMS, Commissioner

DEBO P. ADEGBILE, Commissioner

NORMA CANTU, Commissioner

GAIL HERIOT, Commissioner

STEPHEN GILCHRIST, Commissioner

PETER N. KIRSANOW, Commissioner

DAVID KLADNEY, Commissioner

MICHAEL YAKI, Commissioner

MAURO MORALES, Staff Director

DAVID GANZ, General Counsel

STAFF PRESENT:

PAMELA DUNSTON, Chief ASCD

TINALOUISE MARTIN, Director, OM

DAVID MUSSATT, Director, RPCU

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COMMISSIONER ASSISTANTS PRESENT:

ALEC DEULL

ALEXANDER HEIDEMAN

JOHN K. MASHBURN

CARISSA MULDER

AMY ROYCE

THOMAS SIMUEL

IRENA VIDULOVIC

JUANA SILVERIO

AMERICAN OVERSIGHT

A G E N D A

I. Omnibus Motion to Approve Commissioner Norma Cantu to Serve as USCCR Chair and to approve three Administrative Instructions 6

II. Approval of Agenda 16

III. Amendments to the Agenda 19

IV. Business meeting 37

V. Adjourn Meeting 52

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P R O C E E D I N G S

2:02 p.m.

OPERATOR: Good day and welcome to the Commission business meeting.

Today's conference is being recorded.

At this time, I would like to turn the conference over to Co-Hosts Commissioner Michael Yaki and Commissioner Peter Kirsanow. Please go ahead.

COMMISSIONER KIRSANOW: Thanks very much.

This is a meeting of the U.S. Commission on Civil Rights, and it is currently 2:02 p.m. Eastern Daylight Time, and the meeting is taking place over the phone.

I'm Commissioner Kirsanow. I'll be co-chairing the meeting with Commissioner Michael Yaki.

I'll now call the roll.

Commissioner Adams, are you present?

COMMISSIONER ADAMS: Present.

COMMISSIONER KIRSANOW: Commissioner Adegbile?

COMMISSIONER ADEGBILE: Present.

COMMISSIONER KIRSANOW: Commissioner Cantu?

COMMISSIONER CANTU: Present.

COMMISSIONER KIRSANOW: Commissioner

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Gilchrist?

COMMISSIONER GILCHRIST: Present.

COMMISSIONER KIRSANOW: Commissioner Heriot?

COMMISSIONER HERIOT: I'm here.

COMMISSIONER KIRSANOW: Commissioner Kladney?

COMMISSIONER KLADNEY: Here.

COMMISSIONER KIRSANOW: Commissioner Yaki?

COMMISSIONER YAKI: Here.

COMMISSIONER KIRSANOW: And Kirsanow is also present, and a quorum of the Commissioners is present.

Do we have a court reporter?

COURT REPORTER: Yes.

COMMISSIONER KIRSANOW: And the Staff Director. Mauro, present?

MR. MORALES: I am present.

COMMISSIONER KIRSANOW: Thank you.

All right. The meeting of the Civil Rights Commission will come to order.

I. OMNIBUS MOTION TO APPROVE COMMISSIONER NORMA CANTU TO SERVE AS CHAIR AND TO APPROVE THREE ADMINISTRATIVE INSTRUCTIONS

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COMMISSIONER KIRSANOW: And the first item on the agenda is an omnibus motion to confirm Commissioner Norma Cantu as the Chair, as well as making certain changes to the Commission's procedures.

I.D. TO APPROVE COMMISSIONER NORMA CANTU TO SERVE AS USCCR CHAIR

COMMISSIONER KIRSANOW: During our April 16th meeting, Commissioner Cantu confirmed that, if confirmed as Chair, she'll discontinue the Speaker Series that was in place for a while under the previous Chair, and that Commissioner Cantu will always vote to maintain the Commission's tradition of 30 days for Commissioners' statements, 30 days for rebuttals, and, if necessary, 10 days for surrebuttals. So, we don't need to revisit that today.

Therefore, I move, along with Co-Chair Commissioner Yaki, that the Commission confirm Norma Cantu as Chair; that the Commission adopt a Memorandum of Understanding regarding the appointment of members to the U.S. Election Assistance Commission Board of Advisors, and that the Commission adopt revisions to Administrative Instruction 1.

I'll read these into the record. Be

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patient. This will take a couple of minutes.

I.A. ADMINISTRATIVE INSTRUCTION REGARDING APPOINTMENTS BY THE COMMISSION

COMMISSIONER KIRSANOW: First, the Memorandum of Understanding regarding the appointment of members to the EAC Board of Advisors, Section 1.01, reads:

"Any authority not specifically granted the Commission on Civil Rights by statute or regulation or Executive Order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, et cetera, shall be exercised by the Commission as a whole by majority vote."

Paragraph .02. "Any authority specifically granted the Staff Director of the Commission on Civil Rights by statute or regulation or Executive Order to appoint members to serve on other federal entities such as advisory boards, tasks forces, other commissions, et cetera, shall be exercised by the Staff Director."

Paragraph .03. "Any authority specifically granted the Chair of the Commission on Civil Rights by statute or regulation or Executive Order to appoint members to serve on other federal

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entities such as advisory boards, task forces, other commissions, et cetera, shall be exercised by the Chair."

"Section 2.02(1). For the two appointments to the U.S. Election Assistance Commission, the members appointed by Democratic appointees shall nominate two individuals who are ready, willing, and able to serve, and the members appointed by the Republican authorities shall nominate two individuals who are ready, willing, and able to serve."

Subparagraph (2). "The members appointed by the Democratic authorities shall select one of the two individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one of the two individuals nominated by the members appointed by the Democratic authorities."

Subparagraph (3). "The members selected shall be placed in nomination and ratified in conformance with Section 1."

I.B. ADMINISTRATIVE INSTRUCTION ON INTERVIEWS WITH EXTERNAL FACT WITNESSES

COMMISSIONER KIRSANOW: Next, I'll read into the record the new section of AI 1 regarding

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witness interviews by staff. The Staff Director shall ensure that this provision is codified in the appropriate place of AI 1, and it reads as follows:

"As the staff persons arrange for interviews of external fact witnesses or experts for the purpose of informing writing of reports, et cetera, the Commissioners will be given notice of the names and titles of proposed witnesses, so that the Commissioners and their Special Assistants can observe the interview firsthand. The observations will help the Commissioners better understand the subject matters covered, and enable the Commissioner to conduct and follow up with questions of the witnesses. If more than one Commissioner (or Commissioner's Special Assistant) representing Democratic or Republican appointing authorities wishes to attend, the Staff Director may limit attendance to one representative from each (provided circumstances clearly warrant such a limit)."

I.C. ADMINISTRATIVE INSTRUCTION ON WITNESSES AT HEARINGS AND BRIEFINGS

COMMISSIONER KIRSANOW: Finally, I'll read into the record the revisions to AI 1.6, and that one reads:

"Section 11. Commission Hearings.

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".01 The OGC is responsible for preparing and holding Commission hearings. This includes ensuring that the witnesses, when viewed as a whole, possess sufficient policy, legal, academic, advocacy, and other knowledge and experience necessary for a full and balanced inquiry into the issues."

Paragraph .02. "To document that hearing witnesses reflected varied and opposing views, opinions, and perspectives, OSD completes Section III of the National Office Report Checklist for Hearing Reports form. By completing this form, OSD certifies that the hearing included a numerical balance of witnesses between opposing views, opinions and perspectives or that a numerical balance could not be achieved or was not appropriate in light of the subject of the hearing and/or the availability of credible witnesses. Section IV is completed by the Staff Director before the proposed final draft report and checklist are provided to the external reviewer."

Paragraph .03. "Staff is encouraged to use various sources to gather suggestions for appropriate hearing witnesses. Commissioners are the primary source of suggestions for hearing witnesses. Additional sources may include, but are not limited

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to, other program offices, regional directors, and appropriate external groups. If two Commissioners request that staff invite a particular witness, staff must invite that witness. No Commissioner may act jointly to invite more than two witnesses, which results in no more than 8 witnesses shall be required to be invited by staff by action of the Commission. Thereafter, a Commissioner or Commissioners may suggest as many witnesses as they deem advisable, but staff is not obligated to invite them, and staff may consult additional sources to invite additional witnesses for hearings."

Paragraph .04. We're almost there. That's not part of the AI. "OGC prepares hearing proposals, design or implementation plans, and briefing or background books. When preparing hearing proposals this office shall demonstrate a consideration of varied and opposing views, opinions, and perspectives. This office also verifies the accuracy of transcripts, drafts hearing reports, and maintains official hearing records."

Paragraph .05. "OGC is responsible for supplying a complete and correct transcript with appropriate exhibits to OSD and ASCD for publication. Hearing transcripts do not require editorial review."

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Paragraph .06. "The hearing record will be kept open for a period of 30 days after the hearing or as otherwise established by a majority vote of the Commissioners. Any material or information placed in the record during this period will be available to the Commissioners upon request."

Paragraph "Section 12. Commission Briefings."

Subparagraph .01. "Briefings are used by the Commission to provide Commissioners and the general public insight into civil rights without the formality of a hearing. Any program office may be assigned responsibility for conducting a briefing by the Staff Director."

Paragraph .02. "Staff is encouraged to use various sources to gather suggestions for appropriate briefing witnesses. Commissioners are the primary source of suggestions for briefing witnesses. Additional sources may include, but are not limited to, other program offices, regional directors, and appropriate external groups. If two Commissioners jointly request that staff invite a particular witness, staff must invite that witness. No Commissioner may act jointly to invite more than two witnesses, which results in no more than 8

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witnesses shall be required to be invited by staff by action of the Commission. Thereafter, a Commissioner or Commissioners may suggest as many witnesses as they deem advisable, but staff is not obligated to invite them, and staff may consult additional sources to invite additional witnesses for hearings."

".03 Commissioners are provided a proposed final list of briefing presenters for approval. To document that the briefing witnesses reflected varied and opposing views, opinions, and perspectives, OSD completes Section III of the National Office Report Checklist for Briefing Reports form. By completing this part of the form, OSD certifies that the briefing included a numerical balance of witnesses between opposing views, opinions and perspectives or that a numerical balance could not be achieved or was not appropriate in light of the subject of the briefing and/or the availability of credible witnesses. Section IV of this form is completed by the Staff Director before the proposed final draft report and checklist is provided to the external reviewer."

Finally, ".04 The briefing record will be kept open for a period of 30 days after the briefing or as otherwise established by a majority

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vote of the Commissioners. Any material or information placed in the record during this period will be available to the Commissioners upon request."

Kirsanow now pauses for a drink of vodka.

(Laughter.)

And that's the motion. Is there a second?

COMMISSIONER ADAMS: Yes, second. Adams.

COMMISSIONER KIRSANOW: Okay. The floor is open for discussion, and I turn it over to Commissioner Yaki.

COMMISSIONER YAKI: Thank you very much, Co-Chair Kirsanow.

First, I have a point of clarification. You had indicated that the first document that you read, which was on the appointments issue, was a Memorandum of Understanding, but I actually believe that is an Administrative Instruction. Is that not correct?

COMMISSIONER KIRSANOW: Yes, that's right.

COMMISSIONER YAKI: Yes. Okay. So, I wanted to clarify that for the record.

COMMISSIONER KIRSANOW: Thank you.

COMMISSIONER YAKI: Secondly, for those

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of you who were listening, the last document that Commissioner Kirsanow read, Section 11.01, Section 11.03, Section 12.02 were the only sections of that entire document that were amended. The rest remain intact as current Commission policy. I just wanted to clarify that for people who were listening in.

So, there has been a motion and a second. I am first going to do a little parliamentary moving, which is I think we need to first move to accept, approve and amend the agenda.

II. APPROVAL OF AGENDA

COMMISSIONER YAKI: So, I am going to set aside the first motion for the time being and first ask, is there a motion to approve the agenda?

COMMISSIONER ADAMS: So moved. So moved. Adams.

COMMISSIONER YAKI: Commissioner Adams moves to approve the agenda. Is there a second?

COMMISSIONER GILCHRIST: Second. Gilchrist.

COMMISSIONER YAKI: Second by Commissioner Gilchrist.

On the motion to approve the agenda -- we still have time to amend the agenda -- but on the motion to approve the agenda, so we have this before

AMERICAN OVERSIGHT

us, is there any discussion?

COMMISSIONER HERIOT: Wait. I thought you had to do amendments first?

COMMISSIONER YAKI: No. Well, I would rather have the agenda approved first, and then, amend the agenda. And then, we'd move on the agenda as approved.

COMMISSIONER HERIOT: I don't think that's the right way to do that.

COMMISSIONER YAKI: Well, that may be, but I'm going to put the extra vote in, just to make sure that no one can argue that we didn't follow strict rules.

So, on the order to approve the agenda now, I'm going to call the roll.

Commissioner Kirsanow, since you have the roll sheet, could you call the roll?

COMMISSIONER KIRSANOW: Sure.

Commissioner Adams?

COMMISSIONER ADAMS: Yes.

COMMISSIONER KIRSANOW: Commissioner Adegbile?

COMMISSIONER ADEGBILE: Aye.

COMMISSIONER KIRSANOW: Commissioner Cantu?

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COMMISSIONER CANTU: Yes.

COMMISSIONER KIRSANOW: Commissioner Gilchrist?

COMMISSIONER GILCHRIST: Aye.

COMMISSIONER KIRSANOW: Commissioner Heriot?

COMMISSIONER HERIOT: No.

COMMISSIONER KIRSANOW: Commissioner Kladney?

COMMISSIONER KLADNEY: Yes.

COMMISSIONER KIRSANOW: Commissioner Yaki?

COMMISSIONER YAKI: Aye.

COMMISSIONER KIRSANOW: And this is Kirsanow. I say "yes," also.

COMMISSIONER YAKI: Thank you.

There are 8 ayes, no objections.

The agenda is now before us. Is there a motion to approve, to amend the agenda --

COMMISSIONER KIRSANOW: I believe, Commissioner Yaki, I think there were 7 ayes and 1 nay.

COMMISSIONER YAKI: Oh, 1 nay. I'm sorry. 7 ayes, 7 yeses; 1 no.

Okay. Now we will take before us the

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motion to amend the agenda to put forth an omnibus motion that will approve both Commissioner, that will approve Commissioner Cantu as Chair of the United States Commission on Civil Rights, as well as approve the three Administrative Instructions that were read into the record by Commissioner Kirsanow.

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COMMISSIONER YAKI: It has been moved, it has been seconded, moved by Commissioner Kirsanow, seconded by Commissioner Adams.

Is there any discussion?

COMMISSIONER ADEGBILE: Commissioner Adegbile.

COMMISSIONER YAKI: Commissioner Adegbile, the floor is yours.

COMMISSIONER ADEGBILE: Yes, I would have preferred that we move item by item and not have these things as an omnibus because there may be pieces that are acceptable and pieces that are unacceptable; and thus, it makes it hard to parse those things out. Because we're proceeding in omnibus fashion, it will affect my vote, though, obviously, I support Commissioner Cantu in her effort to chair our Commission in service of the people of the United States. But the omnibus motion will have impact on

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the way I will be voting.

COMMISSIONER YAKI: Thank you, Commissioner Adegbile.

Is there any further discussion?

COMMISSIONER KLADNEY: Dave Kladney.

COMMISSIONER YAKI: Commissioner Kladney?

COMMISSIONER KLADNEY: I concur with Commissioner Adegbile's assessment here, and this omnibus motion will affect my vote the same way. Thank you.

COMMISSIONER YAKI: Thank you, Commissioner Kladney.

If you can hang on just one second?

Is there any further discussion?

MR. MORALES: Staff Director Mauro Morales requests permission to address the Commissioners.

COMMISSIONER YAKI: Without objection, I will recognize Staff Director Morales.

MR. MORALES: Thank you, Commissioner. I appreciate the time.

I wanted to let you know that, and all the Commissioners know, that I and the Executive Committee have no opinion on the AI or the MOU about

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appointments to external commissions that the Commissioners are considering.

I will say that the Staff Director and the Executive Committee believe the proposed AIs concerning OCR witness selection and witness interviews -- I believe they're designated as AI 1 and AI 1.6 -- inappropriately conflict with existing Administrative Instructions and Commission regulations. Furthermore, we believe that they unreasonably create programmatic and operations problems for the Commission.

Commissioners provided no evidence, justification, or rationale for the necessity and the creation of these two AIs. As a consequence, the Staff Director and the Executive Committee respectfully object to them and recommend that these AIs be withdrawn from further consideration.

We thank you for your time and your consideration. Thank you.

COMMISSIONER YAKI: Thank you very much.

COMMISSIONER KLADNEY: Commissioner Yaki?

COMMISSIONER YAKI: Just one second. I just trying to get my phone back into where it should be.

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Thank you, Staff Director Morales.

Commissioner Kladney, were you speaking?

COMMISSIONER KLADNEY: Yes, Commissioner Yaki.

I would like to move to sever the items into individual votes.

COMMISSIONER YAKI: Thank you.

The motion to sever is a privileged motion and is not debatable or subject to a vote. So, we will have to take an individual vote on each one of these items.

However, in the discretion of the Co-Chair, I'm going to take them up in the order that I deem.

So, I'm going to first start with the AI on the Administrative Instruction regarding appointments by the Commission. That individual Instruction is before us.

And, Commissioner Kirsanow, would you please call the roll?

COMMISSIONER KIRSANOW: I'm sorry, are we voting on individual -- I'm lost as to what we're voting on right now. Are we voting on a separate issue or the omnibus?

COMMISSIONER YAKI: Well, the issue is

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that each of these items are individual items. They are put together as an omnibus. However, a Commissioner -- because they were originally noticed as individual items on the agenda, and the motion that you put and seconded and was put on the agenda was to combine them all into a single motion, a motion to sever, under Robert's Rules, is a privileged motion that is non-debatable and is -- well, it's self-executing. The Commission has actually done that before on previous occasions.

What I'm going to do, though, is call on AIs --

COMMISSIONER HERIOT: No, it's not self-executing.

COMMISSIONER YAKI: It is self-executing.

COMMISSIONER HERIOT: No, it's not.

COMMISSIONER YAKI: And if you would listen to me for a second, I am going to call the AIs first prior to the vote for Commissioner Cantu as Chair.

COMMISSIONER HERIOT: Okay.

COMMISSIONER YAKI: Okay?

COMMISSIONER HERIOT: But it's not self-executing. It's non-debatable. Nothing is self-executing. But --

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COMMISSIONER YAKI: But a motion to sever actually --

COMMISSIONER HERIOT: -- it's out of order, but that's okay with me.

COMMISSIONER YAKI: Okay. But I will tell you, under Robert's Rules, which is something I know you care about, a motion to sever is self-executing.

COMMISSIONER HERIOT: But it's not a motion, and that's --

COMMISSIONER YAKI: It is a motion to sever.

Anyway, that being the case --

COMMISSIONER HERIOT: Well, hold on. Hold on. Hold on. Okay. Are you saying that we are voting on the motion to sever --

COMMISSIONER YAKI: No.

COMMISSIONER HERIOT: -- or are you saying we are voting on the AI?

COMMISSIONER YAKI: We are voting on the AIs. And then, we will proceed to a vote on Commissioner Cantu, because the motion to sever is not something that is subject to a vote. I guess you would call it a request to sever, but it is one that, under Robert's Rules, is --

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COMMISSIONER HERIOT: No.

COMMISSIONER YAKI: -- is a privilege of --

COMMISSIONER HERIOT: I'm willing to let this go right now, but no.

COMMISSIONER YAKI: Okay. Well, I would disagree, and we can look it up, since you love Robert's Rules so much.

So, Commissioner --

COMMISSIONER ADAMS: Co-Chair Yaki, point of parliamentary inquiry. It's Commissioner Adams.

COMMISSIONER YAKI: Yes, Commissioner Adams.

COMMISSIONER ADAMS: Could you, for the record, tell us, because I can't find it, where is the request to sever in Robert's Rules?

COMMISSIONER YAKI: Okay.

COMMISSIONER HERIOT: Because if we do this in the order you're saying, let's just go.

COMMISSIONER ADAMS: Well, it's a point of parliamentary inquiry. I made a point of parliamentary inquiry, and I'm just asking, what is the number of Robert's Rules? Just help me find it. I can't find it.

COMMISSIONER YAKI: I'll find it, but

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I'll find it later.

As the Chair, I'm exercise my call.

So, Commissioner Kirsanow, on Administrative Instruction, Commissioner Kirsanow, would you please call the roll?

I.A. ADMINISTRATIVE INSTRUCTION REGARDING APPOINTMENTS BY THE COMMISSION

COMMISSIONER KIRSANOW: Commissioner Adams, how do you vote?

COMMISSIONER ADAMS: Yes.

COMMISSIONER KIRSANOW: Commissioner Adegbile?

COMMISSIONER ADEGBILE: No.

COMMISSIONER KIRSANOW: Commissioner Cantu?

COMMISSIONER CANTU: Yes.

COMMISSIONER KIRSANOW: Commissioner Gilchrist?

COMMISSIONER GILCHRIST: Yes.

COMMISSIONER KIRSANOW: Commissioner Heriot?

COMMISSIONER HERIOT: Yes.

COMMISSIONER KIRSANOW: Commissioner Kladney?

COMMISSIONER KLADNEY: No.

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COMMISSIONER KIRSANOW: Commissioner Yaki?

COMMISSIONER YAKI: Aye.

COMMISSIONER KIRSANOW: And I vote aye.

It is 6-to-2 aye.

COMMISSIONER YAKI: Thank you.

The Administrative Instruction on Commission appointments is passed.

Next, we will hear or we will have a vote on the Administrative Instruction on -- sorry, I have to put these all in order -- on the proposed AI on interviews with external fact witnesses. That was read into the record by Commissioner Kirsanow.

I.B. ADMINISTRATIVE INSTRUCTION ON INTERVIEWS WITH EXTERNAL FACT WITNESSES

COMMISSIONER YAKI: Would you please call the roll?

COMMISSIONER KIRSANOW: Commissioner Adams?

COMMISSIONER ADAMS: Yes.

COMMISSIONER KIRSANOW: Commissioner Adegbile?

COMMISSIONER ADEGBILE: Nay.

COMMISSIONER KIRSANOW: Commissioner Cantu?

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COMMISSIONER CANTU: Yes.

COMMISSIONER KIRSANOW: Commissioner Gilchrist?

COMMISSIONER GILCHRIST: Yes.

COMMISSIONER KIRSANOW: Commissioner Heriot?

COMMISSIONER HERIOT: Yes.

COMMISSIONER KIRSANOW: Commissioner Kladney?

COMMISSIONER KLADNEY: No.

COMMISSIONER KIRSANOW: Commissioner Yaki?

COMMISSIONER YAKI: Aye.

COMMISSIONER KIRSANOW: And I vote yes.

The motion passes 6-to-2.

COMMISSIONER YAKI: The motion on the Administrative Instruction on interviewing external fact witnesses passes 6-to-2.

We will now move to the last Administrative Instruction on witnesses at hearings and briefings, as read by Commissioner Kirsanow.

I.C. ADMINISTRATIVE INSTRUCTION ON WITNESSES AT HEARING AND BRIEFINGS

COMMISSIONER YAKI: Would you please call the roll?

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COMMISSIONER KIRSANOW: Commissioner Adams?

COMMISSIONER ADAMS: Yes.

COMMISSIONER KIRSANOW: Commissioner Adegbile?

COMMISSIONER ADEGBILE: Nay.

COMMISSIONER KIRSANOW: Commissioner Cantu?

COMMISSIONER CANTU: Yes.

COMMISSIONER KIRSANOW: Commissioner Gilchrist?

COMMISSIONER GILCHRIST: Yes.

COMMISSIONER KIRSANOW: Commissioner Heriot?

COMMISSIONER HERIOT: Yes.

COMMISSIONER KIRSANOW: Commissioner Kladney?

COMMISSIONER KLADNEY: No.

COMMISSIONER KIRSANOW: Commissioner Yaki?

COMMISSIONER YAKI: Aye.

COMMISSIONER KIRSANOW: And Kirsanow votes yes.

Passes 6-to-2.

COMMISSIONER YAKI: The Administrative

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Instruction on witnesses for briefings and hearings is hereby passed.

Finally, we come to the motion to confirm Commissioner Norma Cantu as Chair of the United States Commission on Civil Rights.

I.D. TO APPROVE COMMISSIONER NORMA CANTU TO SERVE AS USCCR CHAIR

COMMISSIONER YAKI: Commissioner Kirsanow, would you please call the roll in our last actions as Co-Chairs of the Commission?

COMMISSIONER KIRSANOW: Okay.

Commissioner Adams?

COMMISSIONER ADAMS: Yes.

COMMISSIONER KIRSANOW: Commissioner Adegbile?

COMMISSIONER ADEGBILE: Aye.

COMMISSIONER KIRSANOW: Commissioner Cantu?

COMMISSIONER CANTU: Yes.

COMMISSIONER KIRSANOW: Commissioner Gilchrist?

COMMISSIONER GILCHRIST: Yes.

COMMISSIONER KIRSANOW: Commissioner Heriot?

COMMISSIONER HERIOT: Yes.

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COMMISSIONER KIRSANOW: Commissioner Kladney?

COMMISSIONER KLADNEY: Yes.

COMMISSIONER KIRSANOW: Commissioner Yaki?

COMMISSIONER YAKI: Aye.

COMMISSIONER KIRSANOW: And I vote yes.

The motion passes 8-to-0.

And, Chairperson Cantu, congratulations. We'll pass the scepter to you.

(Applause.)

CHAIR CANTU: Thank you very much.

COMMISSIONER YAKI: Congratulations.

CHAIR CANTU: Thank you.

I really want to thank the White House, the U.S. Congress, the U.S. Senate, the Commissioners, those of you we call the "Group of Four" who were able to look very seriously at these matters of process. And I know that the result is one that will ultimately adhere. And we did work hard together to get to this place.

I also want to thank the Special Assistants, the staff who set up this call, all our staff, and your families who spared you all, so that we could get the Commission's work done.

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For those of you who are listening, this is what it looks like to be respectful. This is what it looks like to show that we can disagree, but do it in a very professional way. And I want to thank everyone on this call for providing this teachable moment for our audience.

We have an agenda that's been amended in terms of handling the first item. As a matter of procedure, I want to circle back to all the Commissioners.

III. AMENDMENTS TO THE AGENDA

CHAIR CANTU: Are there other items on the agenda that you need addressed today?

(No response.)

Hearing none, I would ask that --

COMMISSIONER YAKI: Wait. I'm sorry, I was on mute. I was on mute, Commissioner Cantu.

CHAIR CANTU: Okay. I hear you. I hear you. Please. That is why I offered -- this is my listening, and next time I will listen longer.

Do we have other items on today's agenda? Commissioner Yaki?

COMMISSIONER YAKI: Commissioner Cantu, I would simply say this: there are items on the agenda that I think have been adequately noticed and

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need to be addressed. However, in the interest of deferring to some concerns by my colleagues, I would ask that, if they are not discussed today, that they be subjected to a notational vote at their earliest convenience.

For me, especially the statement on Asian American/Pacific Islander hate and the continued concerns and struggles of our community with regard to the uptick in hate crimes, bias, and prejudice, stemming from or incited by the coronavirus pandemic, is one that continues to -- I think we need to reiterate to the new Administration our concerns, and I would like this addressed at the earliest possible convenience and by a notational vote, but I defer to my colleagues who have expressed some desire to have a shorter meeting today.

CHAIR CANTU: I'm sorry, are you making a motion, Commissioner Yaki, or are you suggesting an alternative way that we handle it?

COMMISSIONER YAKI: Yes, I was simply saying that I would like it to be moved on today. And so, I would like to move it. But if there is no second because of concerns of time, then I would simply ask the Chair, at her discretion, to put it on for a notational ballot approval at her earliest

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convenience.

I will formally move to take from the agenda Item III.B., the statement on Asian American hate, and ask for it to be approved today. If not, then it be brought up at the earliest convenience by the Chair for a notational vote.

CHAIR CANTU: We're discussing amending today's agenda. So, we have a motion to discuss today the Asian American statement.

COMMISSIONER KLADNEY: Kladney seconds. Kladney seconds.

CHAIR CANTU: Discussion?

COMMISSIONER HERIOT: Madam Chair, I'm getting a little confused here.

CHAIR CANTU: The motion is --

COMMISSIONER HERIOT: Is the motion about whether or not we're going to discuss this or whether or not we're removing it from the agenda? I'm just getting confused.

CHAIR CANTU: We're still talking about the agenda. Do we want to keep this on today's agenda?

COMMISSIONER HERIOT: My understanding is that some of my colleagues were going to offer an amendment, and that works better on the agenda than

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it does by notational vote.

CHAIR CANTU: Are you offering a friendly amendment to a motion that's been seconded on keeping it on today's agenda? Or are you agreeing --

COMMISSIONER HERIOT: That's just a reason to vote yes or no.

CHAIR CANTU: Okay.

COMMISSIONER HERIOT: I mean, if there's going to be an amendment, then it's better to discuss it today --

CHAIR CANTU: Okay.

COMMISSIONER HERIOT: -- than by notational vote, which doesn't lend itself to that very well.

CHAIR CANTU: I understand that.

By the way, the rule on dividing a question into subparts was 27.1.

So, any other discussion about going forward with adding the Asian American statement to today's agenda?

COMMISSIONER ADAMS: Chairman Cantu, Christian Adams.

CHAIR CANTU: Yes, Commissioner?

COMMISSIONER ADAMS: I don't have a strong view either way. I would urge Commissioner

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Yaki to take a look. There might be some fixes. There's some typos in the document, such as I think the last sentence in one of the documents, that I would have a better time dealing with it if those were fixed. And that may be a notational vote. I don't really have a view on that because there's some typos.

COMMISSIONER YAKI: Okay. Thank you for that consideration.

Look, I just want to express my view that we wanted to get this thing done. I'm going to withdraw my motion for the time being, since I think I confused everyone. So, I am going to withdraw my motion.

CHAIR CANTU: Thank you, Commissioner Yaki.

Other items that -- let me see if I can move this along. The rest of the items, C, D, E, were part of the vote that just took place. So, I can I use the discretion of the Chair to say we've already dealt with those items? That would be the rebuttals, Speaker Series, appointments.

Any objection to that?

COMMISSIONER KLADNEY: How did we deal with them, Madam Chair?

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CHAIR CANTU: In the meeting two weeks ago, I made a statement regarding the Speaker Series. In today's AI, we had an AI on the rebuttal/surrebuttal that passed. And on the appointments, we had a vote today on the bipartisan appointment that passed.

COMMISSIONER HERIOT: We haven't dealt with the Walter Williams thing.

CHAIR CANTU: Right. Do I hear a motion to keep that on today's agenda for discussion?

COMMISSIONER HERIOT: It's already there.

CHAIR CANTU: It's already there.

COMMISSIONER HERIOT: Yes.

CHAIR CANTU: It's been noticed a couple of times, you're correct.

IV. BUSINESS MEETING

CHAIR CANTU: So, at this point, I'm open to a motion and a second, so that we can have discussion on the Walter Williams memorial.

IV.A. DISCUSSION AND VOTE ON STATEMENT OF WALTER E. WILLIAMS

COMMISSIONER HERIOT: Okay. I move that we adopt the Walter Williams memorial.

COMMISSIONER KIRSANOW: Kirsanow seconds.

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CHAIR CANTU: I'm sorry, who seconded?

COMMISSIONER KIRSANOW: Kirsanow.

CHAIR CANTU: Kirsanow.

Commissioner Heriot moves, Commissioner Kirsanow seconds.

We are in discussion.

For those who are listening, in the past the individual Commissioners have been able to submit names of persons that they intend to recognize. It is not a policymaking. It is a statement and sign of respect.

COMMISSIONER HERIOT: Madam Chair?

CHAIR CANTU: Yes, Commissioner?

COMMISSIONER HERIOT: If you want, I'll talk about this. But, you know, it's just we've done this routinely now. I have voted for many of these when there have been people who have done significant work in this area.

This is one that matters to me, in the sense that Walter Williams is a hero of mine. And I think that he's also someone that many, many people think highly of.

I don't want to extend the meeting unnecessarily. Everybody has seen this statement now several times. And so, you know, I'd like to be able

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to say a kind word on Dr. Williams' passing.

CHAIR CANTU: You have my condolences and I offer condolences to the family.

Any other comments?

(No response.)

Could we do a voice vote or would you want to do a roll call vote? What is your preference?

COMMISSIONER HERIOT: Probably should do a roll call, given how confusing these things are over the phone.

CHAIR CANTU: I appreciate that.

Is there any further discussion? Does someone want to call the question?

COMMISSIONER ADAMS: Adams. Call the question.

CHAIR CANTU: Thank you.

We've had a question. The question is an aye vote supports the draft that has been duly circulated to us to honor Professor Walter Williams.

I would call alphabetically.

Adams?

COMMISSIONER ADAMS: Yes.

CHAIR CANTU: Adegbile?

COMMISSIONER ADEGBILE: Nay.

CHAIR CANTU: Gilchrist?

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COMMISSIONER GILCHRIST: Yes.

CHAIR CANTU: Heriot?

COMMISSIONER HERIOT: Yes.

CHAIR CANTU: Kirsanow?

COMMISSIONER KIRSANOW: Yes.

CHAIR CANTU: Kladney?

COMMISSIONER KLADNEY: No.

CHAIR CANTU: Yaki?

COMMISSIONER YAKI: Aye.

CHAIR CANTU: Cantu votes no.

Please note on the record, though, that, as Chair, I am cautious about the process of recognizing people where it's not clear, and has not been clear, what our criteria have been, but I do very deeply offer my condolences to those who knew the Professor and I do offer my prayers to the family.

Can we move to the next order of business? It is the item that has been noticed, the North Carolina State Advisory Council.

It is our responsibility on the Commission -- and it's a privilege to do this -- to approve --

COMMISSIONER YAKI: Point of order, Commissioner.

CHAIR CANTU: Yes, please. Yes, please.

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COMMISSIONER YAKI: Point of order, Chair Cantu.

CHAIR CANTU: Uh-hum.

IV.B. DISCUSSION AND VOTE ON ANTI-ASIAN AMERICAN HATE

COMMISSIONER YAKI: Commissioner Yaki.

One, on the item on Asian American/Pacific Islander hate, I saw the typo, "opposite" to "opposition". Thank you, Commissioner Adams for drawing that to my attention.

When I withdrew my motion, it was for consideration -- it was in light of the idea that perhaps we were going to not consider other items on the agenda and move on. But if we are considering other items on the agenda, then I wish that item to be heard in turn as Item III.B.

CHAIR CANTU: Is there an objection?

I think fair play would be we've heard from other Commissioners on their motions. So, as Chair, I'm exercising my management of time.

We will, hopefully, get these matters done pretty quickly. So, let's do our best.

On the Asian American statement regarding --

COMMISSIONER YAKI: As amended.

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CHAIR CANTU: As amended.

COMMISSIONER YAKI: As amended. Change the word "opposite" to "opposition".

CHAIR CANTU: Right. Your motion was seconded by?

COMMISSIONER KLADNEY: Kladney.

CHAIR CANTU: Kladney. Thank you, Commissioner.

And discussion?

COMMISSIONER ADAMS: Commissioner Adams.

CHAIR CANTU: Yes, Commissioner?

COMMISSIONER ADAMS: Commissioner Yaki, I had hoped to send a note. Take a look at that sentence because it seems to be relating to the previous Administration, but perhaps not.

COMMISSIONER YAKI: No, there's actually some continued controversy on this issue, Commissioner Adams.

COMMISSIONER ADAMS: Okay.

COMMISSIONER YAKI: So, I would like it to stand as is.

COMMISSIONER ADAMS: All right.

COMMISSIONER KIRSANOW: Madam Chair?

COMMISSIONER YAKI: In fact, there's been some controversy as to whether it went one way or

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backwards, or whatever. So, I think that putting our position firmly is important.

CHAIR CANTU: Who was acting to be recognized? I'm sorry. My ears --

COMMISSIONER KIRSANOW: Commissioner Kirsanow.

CHAIR CANTU: Oh, thank you, Commissioner.

COMMISSIONER KIRSANOW: Thank you, Madam Chair.

I would move to amend the letter to include the language to the following effect: that the federal government should withhold funding to any higher education institution if that institution has a policy in place or engages in a practice that discriminates against Asian Americans in recruitment or applicant review or admissions.

COMMISSIONER HERIOT: I second.

CHAIR CANTU: We have a motion --

COMMISSIONER YAKI: May I respond?

CHAIR CANTU: Yes, please.

COMMISSIONER YAKI: Commissioner Yaki responding.

Thank you, Commissioner Kirsanow, for that amendment. I will not accept it. This is

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dealing solely with the issue of the concerns regarding overt acts of bias and hate crime, as perpetrated against the Asian American community, stemming from, and incited by, in my view, the pandemic. The issue that you raise is one that I know that you care about, but I believe is not germane to this particular issue, and I ask my colleagues to oppose it.

COMMISSIONER HERIOT: And it has been seconded.

CHAIR CANTU: Is there further discussion?

COMMISSIONER ADEGBILE: Madam Chair?

CHAIR CANTU: Under the rules --

COMMISSIONER ADEGBILE: Commissioner Adegbile.

CHAIR CANTU: Yes, please. Commissioner?

COMMISSIONER ADEGBILE: It's my understanding that Title VI of the Civil Rights Act already creates a power for the federal government to withhold funding if there are findings of noncompliance with federal civil rights law. And so, in my view, this suggestion adds nothing to the current legal regime.

CHAIR CANTU: So, your contribution is

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that the amendment is unnecessary?

COMMISSIONER ADEGBILE: Yes.

CHAIR CANTU: Thank you.

COMMISSIONER YAKI: So, we need a vote on the motion to amend.

CHAIR CANTU: Has someone called the question on that motion, on the discussion on that?

COMMISSIONER KIRSANOW: There was a motion and it was seconded.

COMMISSIONER ADAMS: Adams. Call the question.

CHAIR CANTU: Thank you.

There's been a motion to amend, seconded, discussion.

Are you all ready to vote on the motion to amend to add language regarding higher education discrimination? Are you ready on that?

COMMISSIONER KIRSANOW: Yes.

CHAIR CANTU: Thank you.

So, a roll call vote would be Adams, please.

COMMISSIONER ADAMS: Yes.

CHAIR CANTU: Adegbile?

COMMISSIONER ADEGBILE: Nay.

CHAIR CANTU: Gilchrist?

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COMMISSIONER GILCHRIST: Yes.

CHAIR CANTU: Heriot?

COMMISSIONER HERIOT: Yes.

CHAIR CANTU: Kirsanow?

COMMISSIONER KIRSANOW: Yes.

CHAIR CANTU: Kladney?

COMMISSIONER KLADNEY: No.

CHAIR CANTU: And I vote no.

COMMISSIONER YAKI: You forgot me.

CHAIR CANTU: Oh, sorry. Where were you?

COMMISSIONER YAKI: You didn't call my name.

CHAIR CANTU: I'm so sorry.

Okay. Help me out.

COMMISSIONER YAKI: Commissioner Yaki votes no.

CHAIR CANTU: Thank you.

I saw your name and in my brain I thought I called you. I apologize.

So, we have -- I vote no. So, we have 4-4. The motion to amend does not carry.

We're back to the original motion.

COMMISSIONER YAKI: Yes, move to approve the -- move for the vote on the full motion.

CHAIR CANTU: All right. A roll call

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vote?

COMMISSIONER YAKI: Yes, please.

CHAIR CANTU: Adams?

COMMISSIONER ADAMS: Abstain.

CHAIR CANTU: Adegbile?

COMMISSIONER ADEGBILE: Aye.

CHAIR CANTU: Cantu? Well, skip me until the end.

Gilchrist?

COMMISSIONER GILCHRIST: Gilchrist abstains.

CHAIR CANTU: Heriot?

COMMISSIONER HERIOT: I abstain. There's something that I agree with in the letter, but, unfortunately, not all of it. So, I'm going to have to abstain.

CHAIR CANTU: Thank you.

Kirsanow?

COMMISSIONER KIRSANOW: Is that the famous director of "Rashomon"? Or is that Commissioner Kirsanow?

(Laughter.)

In any event, I'd rather be the director because I think he's a lot more entertaining and more important.

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But, nonetheless, Kirsanow abstains.

CHAIR CANTU: Thank you.

Kladney?

COMMISSIONER KLADNEY: Yes.

CHAIR CANTU: Yaki?

COMMISSIONER YAKI: Curacao is actually an alcohol. Kurosawa is a Japanese director.

(Laughter.)

COMMISSIONER KIRSANOW: It sounded like Kurosawa to me.

(Laughter.)

COMMISSIONER YAKI: And Commissioner Yaki votes aye.

CHAIR CANTU: Did I count correctly? With the abstentions, the ayes have it?

COMMISSIONER HERIOT: Yes.

COMMISSIONER ADEGBILE: Yes.

CHAIR CANTU: Thank you. Okay.

We have a little bit of time to do the North Carolina State Advisory Council motion on membership.

IV.C. DISCUSSION ON NC SAC

COMMISSIONER HERIOT: We haven't seen the list yet. So, I don't know think we can do this one.

CHAIR CANTU: I am sorry. Was the list

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in the -- were emails exchanged? But you're right, I don't believe that we have -- did we attach a list?

COMMISSIONER HERIOT: No, I haven't seen one.

CHAIR CANTU: Okay, okay.

COMMISSIONER GILCHRIST: Not the big list, no.

CHAIR CANTU: All right.

COMMISSIONER HERIOT: We should do this by notational vote. I think it's going to be an easy one. It's just that we have to confirm who's in and who's not.

CHAIR CANTU: And excuse me, but it's the first time I've done a notational vote. Do I direct the Staff Director to follow that process? Or does that require a vote?

COMMISSIONER HERIOT: I think you can just direct the Staff Director.

CHAIR CANTU: Okay. It's administrative, finally. A short item.

Speaking of the Staff Director, could we have a brief report on the item agenda on management on operations?

IV.D. MANAGEMENT AND OPERATIONS

X STAFF DIRECTOR'S REPORT

AMERICAN OVERSIGHT

MR. MORALES: Congratulations on becoming the Chair, Madam Chair.

CHAIR CANTU: Thank you.

MR. MORALES: In the interest of time, I have nothing further to add, other than is already contained in the report that was submitted to Commissioners. As always, I remain available to discuss any particular matter with a Commissioner.

And I thank you.

CHAIR CANTU: Thank you.

Normally, there would be an item called New Business, but, in the interest of letting everyone enjoy their family and go back to their other work, are there any other matters before we entertain a motion to adjourn?

COMMISSIONER KIRSANOW: Commissioner Kurosawa here, or Kirsanow.

(Laughter.)

CHAIR CANTU: Kirsanow.

(Laughter.)

COMMISSIONER KIRSANOW: I just want to thank Chairperson Cantu and congratulate her for being Chair. I'm looking forward to many more meetings with you as Chair.

CHAIR CANTU: I am looking forward to

AMERICAN OVERSIGHT

that, too -- thank you -- and to seeing you ultimately in person.

I understand Commissioner Adams will be having a one-year anniversary of his appointment next week and he's never seen the rest of you folks in person. So, these are unusual times that we're conducting business. But I'm optimistic, given the good faith shown in these conversations and the good faith shown as you all help this country through difficult times.

COMMISSIONER GILCHRIST: Chairwoman Canto, Stephen Gilchrist here.

CHAIR CANTU: Yes?

COMMISSIONER GILCHRIST: I just wanted to thank, also, Commissioner Kirsanow, Commissioner Heriot, Commissioner Yaki, and yourself for the good-faith effort that you guys put into the negotiations for the Commission. I am very pleased at the work that you've come up with, and certainly, we look forward to your tenure as our Chair. So, we look forward to working with you for sure.

CHAIR CANTU: I appreciate that.

Normally, when three new Commissioners show up, there would be a like a face-to-face retreat. There's a lot of conversations about how we look to

AMERICAN OVERSIGHT

each other to work together. We all had to have those kinds of conversations with a small group of four, and that group of four does deserve to be congratulated for helping us answer our questions about how we will be respectful of everyone's points of view and how we will incorporate and listen to each other's ideas.

So, thank you very much, Commissioner Adams and Gilchrist.

Anyone else for the good of the order?

COMMISSIONER HERIOT: Just congratulations from me.

CHAIR CANTU: Thank you. Thank you, and I will pop a virtual bottle of champagne.

(Laughter.)

COMMISSIONER ADAMS: Don't get virtually drunk.

(Laughter.)

CHAIR CANTU: Thank you all for having a wonderful sense of humor, and I'm really looking forward to our time together.

V. ADJOURN MEETING

CHAIR CANTU: The meeting is adjourned.

(Whereupon, at 2:54 p.m., the meeting was adjourned.)

AMERICAN OVERSIGHT

AMERICAN OVERSIGHT

Date : 10/28/2021 8:40:44 AM
From : "John Mashburn" jmashburn@usccr.gov
To : "Mauro Morales" mmorales@usccr.gov, "Juana Silverio" jsilverio@usccr.gov, "David Ganz" dganz@usccr.gov
Subject : Fw: Cleta Mitchell Serving on EAC Advisory Bd

Is there an answer to this question?

From: John Mashburn
Sent: Monday, October 18, 2021 12:33:57 PM
To: Mauro Morales; Juana Silverio
Cc: Carissa Mulder
Subject: Cleta Mitchell Serving on EAC Advisory Bd

Mauro/Juana – Cleta Mitchell has not been contacted by USCCR or EAC staff about serving on the EAC Bd of Advisors. As you recall, her nomination to serve was approved at the August USCCR Bus Mtg. My boss and one other Cmnr asked me to find out what the process and status are regarding her appointment to the EAC Bd of Advisors.

Can either of you provide that info, or do I need to contact someone else at USCCR, or EAC?

AMERICAN OVERSIGHT

Date : 10/28/2021 9:50:48 AM
From : "Juana Silverio" jsilverio@usccr.gov
To : "John Mashburn" jmashburn@usccr.gov, "Mauro Morales" mmorales@usccr.gov, "David Ganz" dganz@usccr.gov
Cc : "Norma Cantu" ncantu@usccr.gov
Subject : Re: Cleta Mitchell Serving on EAC Advisory Bd

The Chair will address this shortly.

Juana

--
Juana Silverio *(she/her/ella)*
Special Assistant to Commissioner Norma V. Cantú
U.S. Commission on Civil Rights
E: jsilverio@usccr.gov
http://usccr.gov/
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425
Follow Us on Twitter & Facebook:
Twi FB
#USCCR

From: John Mashburn
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AMERICAN OVERSIGHT

Date : 10/28/2021 9:59:56 AM
From : "John Mashburn" jmashburn@usccr.gov
To : "Juana Silverio" jsilverio@usccr.gov
Subject : Re: Cleta Mitchell Serving on EAC Advisory Bd

How shortly is “shortly?”

The Bd of Advisors have a business meeting soon evidently.

From: Juana Silverio <jsilverio@usccr.gov>
Date: Thursday, October 28, 2021 at 9:50 AM
To: John Mashburn <jmashburn@usccr.gov>, Mauro Morales <mmorales@usccr.gov>, David Ganz <dganz@usccr.gov>
Cc: Norma Cantu <ncantu@usccr.gov>
Subject: Re: Cleta Mitchell Serving on EAC Advisory Bd

The Chair will address this shortly.

Juana

--

Juana Silverio *(she/her/ella)*

Special Assistant to Commissioner Norma V. Cantú

U.S. Commission on Civil Rights

E: jsilverio@usccr.gov

http://usccr.gov/

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Washington D.C. 20425
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#USCCR

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To: Mauro Morales; Juana Silverio; David Ganz

AMERICAN OVERSIGHT

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Can either of you provide that info, or do I need to contact someone else at USCCR, or EAC?

AMERICAN OVERSIGHT

Date : 10/29/2021 10:25:37 AM
From : "Juana Silverio" jsilverio@usccr.gov
To : "J. Christian Adams" jadams@usccr.gov, "John Mashburn" jmashburn@usccr.gov
Cc : "Norma Cantu" ncantu@usccr.gov
Subject : EAC Rep. Contact Info

Good morning,

Please provide the title, address, phone, email and party affiliation for Ms. Cleta Mitchell at your earliest convenience.

Thank you.
Juana

--
Juana Silverio *(she/her/ella)*
Special Assistant to Commissioner Norma V. Cantú
U.S. Commission on Civil Rights
E: jsilverio@usccr.gov
http://usccr.gov/
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425
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AMERICAN OVERSIGHT

Date : 10/29/2021 10:25:32 AM
From : "Juana Silverio" jsilverio@usccr.gov
To : "Norma Cantu" ncantu@usccr.gov
Subject : DRAFT- EMAIL to DEM CAUCUS re: EAC

Dear Commissioners -

I wanted to provide an update on the EAC appointments.

Commissioner Yaki is no longer able to serve; as a result, we will need to start the process of nominating and confirming a Dem candidate. As per the AI- we will provide 2 names to the Rs, have them strike one and we will confirm the candidate either by notational vote or at the Nov. 19th business meeting. To expedite the process, please provide your nominations to me by XXX. I will share wit the Rs and give them 48 hours to strike a candidate and we'll proceed with the confirmation vote shortly thereafter. In nominating the candidates, please ensure they are not only willing but able to serve.

In regards to the Rep candidate, after consultation with the Commission's GC, I will be submitting Cleta Mitchell's name to the EAC today. As the candidate was properly confirmed by the Commission, and the EAC board is scheduled to start meeting soon, I will submit the candidate to start her term.

Please let me know if you have any questions.
Norma
--
Juana Silverio *(she/her/ella)*
Special Assistant to Commissioner Norma V. Cantú
U.S. Commission on Civil Rights
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http://usccr.gov/
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Washington D.C. 20425
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#USCCR

AMERICAN OVERSIGHT

Date : 10/29/2021 4:11:58 PM
From : "Norma Cantu" ncantu@usccr.gov
To : "Michael Yaki" MYaki@usccr.gov, "David Kladney" dkladney@usccr.gov, "Debo P. Adegbile" dadegbile@usccr.gov
Cc : "Juana Silverio" jsilverio@usccr.gov
Subject : Today's announcement appointing Cleta Mitchell and announcing opening on Board of Advisors due to declination of new term by M Yaki

Yes, I failed to persuade Michael Yaki to serve another term on the Board of Advisors for the US Elections Assistance Commission. He did a great job in the past six years. He's not going anywhere, but we have a vacant position to fill on the Board of Advisors.

Please send me and Juana two names of progressive candidates so we can offer two names to the conservative caucus and they can strike one, as the AI requires.
I will need names by End of Business on Tuesday, November 2, 2021

On Wednesday, I will send the two names to the conservative caucus and give them 48-hours notice to respond by striking one of the names. Ths is the process we memorialized in an AI.
Please tell me that you have confirmed with the person whose name you are forwarding that this person is willing to serve.

Thank you.

Norma

Cell phone 210 380 6380

AMERICAN OVERSIGHT

Date : 11/4/2021 4:29:31 PM
From : "Irena Vidulovic" ividulovic@usccr.gov
To : "Norma Cantu" ncantu@usccr.gov
Cc : "Juana Silverio" jsilverio@usccr.gov, "Debo P. Adegbile" dadegbile@usccr.gov
Subject : Fw: Commissioner Appointments to the Election Assistance Commission

Dear Norma,

Commissioner Adegbile would like to thank you for thinking of him for the EAC nomination. While he appreciates it, he believes that Allison Riggs and Alabama SAC Chair Jenny Carroll should be nominated instead. They both have voting bona fides and have already expressed a willingness to serve.

Thank you again,
Irena

From: Juana Silverio
Sent: Tuesday, August 3, 2021 4:30 PM
To: Irena Vidulovic; Mauro Morales; Norma Cantu
Cc: Debo P. Adegbile; Michael Yaki; David Kladney; Alec Deull
Subject: RE: Commissioner Appointments to the Election Assistance Commission

Mauro- due to new information received, please replace Leah with Ms. Allison Riggs.

Juana

From: Irena Vidulovic <ividulovic@usccr.gov>
Sent: Tuesday, August 3, 2021 4:12 PM
To: Juana Silverio <jsilverio@usccr.gov>; Mauro Morales <mmorales@usccr.gov>; Norma Cantu <ncantu@usccr.gov>
Cc: Debo P. Adegbile <dadegbile@usccr.gov>; Michael Yaki <MYaki@usccr.gov>; David Kladney <dkladney@usccr.gov>; Alec Deull <adeull@usccr.gov>
Subject: Re: Commissioner Appointments to the Election Assistance Commission

Unfortunately Leah Aden is unable to serve. Commissioner Adebile reached out to all the candidates that we proposed including Leah to make sure that they would be willing and able to serve and we have been notified that Leah is unavailable to serve.

From: Juana Silverio
Sent: Tuesday, August 3, 2021 3:38:23 PM
To: Mauro Morales; Norma Cantu
Cc: Debo P. Adegbile; Michael Yaki; David Kladney; Irena Vidulovic; Alec Deull

AMERICAN OVERSIGHT

Subject: RE: Commissioner Appointments to the Election Assistance Commission

Good afternoon Mauro.

The Dem caucus had a tie:

Commissioner Michael Yaki
Leah Aden (Cantu and Yaki)
Allison Riggs (Adegbile and Kladney)

The Chairwoman, in the interest of observing the deadline, is submitting the following names for EAC consideration:

Commissioner Michael Yaki
Leah Aden - https://www.naacpldf.org/about-us/staff/leah-c-aden/

Leah C. Aden

www.naacpldf.org

Leah C. Aden has served as a Deputy Director of Litigation at the NAACP Legal Defense & Educational Fund, Inc. (LDF) since October 2018, assisting in the

Thank you.
Juana

From: Mauro Morales <mmorales@usccr.gov>
Sent: Monday, August 2, 2021 11:47 AM
To: Norma V. Cantú <normavcantu@gmail.com>; Juana Silverio <jsilverio@usccr.gov>
Subject: Fwd: Commissioner Appointments to the Election Assistance Commission

FYI
Sent from my iPhone

Begin forwarded message:

> **From:** Mauro Morales <mmorales@usccr.gov>
> **Date:** August 2, 2021 at 8:45:25 AM MST
> **To:** John Mashburn <jmashburn@usccr.gov>
> **Cc:** Carissa Mulder <CMulder@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>, Alexander Heideman <aheideman@usccr.gov>
> **Subject: Re: Commissioner Appointments to the Election Assistance Commission**

AMERICAN OVERSIGHT

My flight was canceled and returning today. Your selections were forwarded to Chair Cantu. Thank you.
Sent from my iPhone

> On Jul 30, 2021, at 9:34 AM, John Mashburn <jmashburn@usccr.gov> wrote:
>
> Mauro – after canvassing the Republican Commissioners, the two nominees they wish to put forward for one of the two USCCR designees for the EAC's Board of Advisors (per your email below) are:
>
> Cleta Mitchell – Chair, Conservative Partnership Institute Election Integrity Network, and
>
> Christian Adams – USCCR Commissioner.
>
> ---
>
> **From:** Mauro Morales <mmorales@usccr.gov>
> **Date:** Wednesday, July 28, 2021 at 11:30 AM
> **To:** Commissioners <Commissioners@usccr.gov>
> **Cc:**
> " <CommissionerAssistants@usccr.gov>
> **Subject:** Commissioner Appointments to the Election Assistance Commission
>
> Dear Commissioners-
>
> At the request and in consultation with the Chair, I am sending this email to start the EAC nomination process for Commissioners.
>
> Per the AI voted on during the April 30th meeting (language included below), each caucus is requested to submit two candidates for consideration by COB Friday, July 30, 2021. Once the names are submitted, OGC will conduct an ethics check to be completed by Wednesday, August 4, 2021. Each caucus will then have 24 hours to submit caucus strikes (Thursday, August 5, 2021 COB). The Chair will communicate the two names to EAC no later than Friday, August 6, 2021.
>
> Please let the Chair or I know if you have any questions or concerns.
>
> --
> AI language:

AMERICAN OVERSIGHT

Section 1.
.01 Any authority specifically granted the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Commission as a whole by majority vote.

.02 Any authority specifically granted the Staff Director of the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Staff Director.

.03 Any authority specifically granted the Chair of the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Chair.

Section 2
.02

(1) For the two (2) appointments to the U.S. Election Assistance Commission, the members appointed by Democratic authorities shall nominate two individuals who are ready, willing, and able to serve, and the members appointed by the Republican authorities shall nominate two individuals who are ready, willing, and able to serve.

(2) The members appointed by the Democratic authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Democratic authorities

(3) The members selected shall be placed in nomination and ratified in conformance with Section 1.

Mauro Morales
Staff Director
U.S. Commission on Civil Rights

AMERICAN OVERSIGHT

P: 202-376-7796| F: 202-376-7672
Mmorales@usccr.gov
http://usccr.gov/
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425

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AMERICAN OVERSIGHT

Date : 11/10/2021 1:53:30 PM
From : "Norma Cantu" ncantu@usccr.gov
To : "Gail Heriot" gheriot@usccr.gov, "Peter Kirsanow" pkirsanow@usccr.gov, "J. Christian Adams" jadams@usccr.gov, "Stephen Gilchrist" sgilchrist@usccr.gov
Cc : "Alexander Heideman" aheideman@usccr.gov, "Carissa Mulder" CMulder@usccr.gov, "John Mashburn" jmashburn@usccr.gov, "Thomas Simuel" tsimuel@usccr.gov
Subject : Action Requested: EAC Representative Replacement for Commissioner Yaki

Dear Commissioners-

In response to Commissioner Yaki recently resigning from his position on the EAC as a representative of USCCR, the Progressive Caucus is putting for 2 names for consideration. I am asking that the candidate you strike be sent to me by Monday, November 15th, 2021 by 5pm EST so that we can include the candidate's confirmation vote at our November 19th business meeting.

Allison Riggs- https://southerncoalition.org/staff/allison-riggs/

Allison Riggs - Southern Coalition for Social Justice

southerncoalition.org

Allison Riggs leads the voting rights program at the Southern Coalition for Social Justice, an organization she joined in 2009. In March of 2020, she also took over

Alabama SAC Chair Jenny Carroll - https://www.congress.gov/116/meeting/house/109456/witnesses/HHRG-116-HA08-Wstate-CarrollJ-20190513.pdf

Per the AI voted on during the April 30th meeting (language included below), each caucus will then have 24 hours to submit caucus strikes. In this instance, I am allowing 48 business day hours given that tomorrow is a holiday. The first representative, Cleta Mitchell, was already communicated to the EAC.

AMERICAN OVERSIGHT

Please submit your strike no later than Monday, November 15th by 5pm EST.

Please let me know if you have any questions or concerns.

Norma
--
AI language:

Section 1.
.01 Any authority specifically granted the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Commission as a whole by majority vote.

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(3) The members selected shall be placed in nomination and ratified in conformance with Section 1.

AMERICAN OVERSIGHT

Date : 11/10/2021 2:59:43 PM
From : "John Mashburn" jmashburn@usccr.gov
Subject : FW: Action Requested: EAC Representative Replacement for Commissioner Yaki
Attachment : Carroll-Jenny-cv.pdf;

Is Riggs still worse than Carroll?

From: Alexander Heideman <aheideman@usccr.gov>
Date: Wednesday, November 10, 2021 at 2:04 PM
To: Gail Heriot <gheriot@usccr.gov>, Peter Kirsanow <pkirsanow@usccr.gov>, "J. Christian Adams" <jadams@usccr.gov>, Stephen Gilchrist <sgilchrist@usccr.gov>
Cc: Carissa Mulder <CMulder@usccr.gov>, John Mashburn <jmashburn@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>
Subject: Re: Action Requested: EAC Representative Replacement for Commissioner Yaki

I've attached Jenny Carroll's resume to this email for everyone's reference. She's a professor of law at Alabama.

From: Norma Cantu <ncantu@usccr.gov>
Date: Wednesday, November 10, 2021 at 1:53 PM
To: Gail Heriot <gheriot@usccr.gov>, Peter Kirsanow <pkirsanow@usccr.gov>, "J. Christian Adams" <jadams@usccr.gov>, Stephen Gilchrist <sgilchrist@usccr.gov>
Cc: Alexander Heideman <aheideman@usccr.gov>, Carissa Mulder <CMulder@usccr.gov>, John Mashburn <jmashburn@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>
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Allison Riggs- https://southerncoalition.org/staff/allison-riggs/

AMERICAN OVERSIGHT

Image removed by sender.

Allison Riggs - Southern Coalition for Social Justice

southerncoalition.org

Allison Riggs leads the voting rights program at the Southern Coalition for Social Justice, an organization she joined in 2009. In March of 2020, she also took over as Interim Executive Director of the organization. Her voting rights work over the last decade at SCSJ has been focused on fighting for fair redistricting plans, fighting against voter suppression, and advocating for electoral reforms that would expand access to voting.

Alabama SAC Chair Jenny Carroll - https://www.congress.gov/116/meeting/house/109456/witnesses/HHRG-116-HA08-Wstate-CarrollJ-20190513.pdf

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Please let me know if you have any questions or concerns.

Norma

--

AI language:

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AMERICAN OVERSIGHT

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Section 2
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(3) The members selected shall be placed in nomination and ratified in conformance with Section 1.

AMERICAN OVERSIGHT

Jenny E. Carroll

University of Alabama School of Law
Box 870382
Tuscaloosa, AL 35487-0382

Phone: 205-348-1116
Email: jcarroll@law.ua.edu
Papers: http://ssrn.com/author=1245554

ACADEMIC APPOINTMENTS

University of Alabama School of Law, Tuscaloosa AL
Professor Law: Teach Crim. Law, Crim. Procedure, Juvenile Justice and Counter Terrorism, 2016–present.
***Associate Professor of Law*:** 2014–2016.

Seton Hall University School of Law, Newark, New Jersey
***Associate Professor of Law*:** Taught Crim. Law, Crim. Procedure, Evidence, and Juvenile Justice. 2010–2014.

University of Cincinnati College of Law, Cincinnati, Ohio
***Visiting Assistant Professor of Law*:** Taught Crim. Law, Crim. Procedure, Evidence, White Collar Crime, and Mental Health and Criminal Law. 2008–2010.

University of Cincinnati College of Law, Cincinnati, Ohio
Assistant Professor of Clinical Law; Academic Director of the Ohio Innocence Project/ Rosenthal Institute for Justice: Designed and taught course on criminal post-conviction law and procedure, investigation and direct client representation; co-taught Criminal Defense Investigation and Trial Practice for the Indigent Defense Clinic. 2005–2008.

Georgetown University Law Center, Washington, D.C.
Prettyman Fellow, Criminal Justice Clinic: Co-taught clinical course for third-year law students and represented indigent defendants on misdemeanor and felony matters in the Superior Court of the District of Columbia. 1998–2000.

PUBLICATIONS

The Problem with Inference for Juvenile Defendants, 45 F.S.U.L. REV. 1 (*forthcoming* 2017)

Bathroom Laws as Status Crimes (with Stephen Rushin), 86 FORDHAM L. REV. 1 (*forthcoming* 2017).

Afterword: Death and the State in FINAL JUDGMENTS: THE DEATH PENALTY AND AMERICAN LAW (Austin Sarat, ed., Cambridge University Press, *forthcoming* 2017)

Brain Science and the Theory of Juvenile Mens Rea, 94 N.C.L. REV. 539 (2016)

- *Featured in* THE CHAMPION *"Getting Scholarship into Courts"*
- Included in the National Juvenile Defender Conference's Resource Guide for 2015–2016
- Available on SSRN at: http://ssrn.com/abstract=2603647

AMERICAN OVERSIGHT

The Jury as Democracy, 66 ALABAMA L. REV. 825 (2015)
- Available on SSRN at: http://ssrn.com/abstract=2585564

Nullification as Law, 102 GEORGETOWN L.J. 579 (2014)
- Available on SSRN at: http://ssrn.com/abstract=2190703

The Resistance Defense, 64 ALABAMA L. REV. 589 (2013)
- Available on SSRN at: http://ssrn.com/abstract=2053378

The Jury's Second Coming, 100 GEORGETOWN L.J. 657 (2012)
- Available on SSRN at: http://ssrn.com/abstract=1486188

Rethinking the Constitutional Criminal Procedure of Juvenile Transfer Hearings: Apprendi*, Adult Punishment, and Adult Process*, 61 HASTINGS L.J. 175 (2009)
- *Featured in* THE CHAMPION *"Getting Scholarship into Courts"*
- Included in the National Juvenile Defender Conference's Resource Guide for 2009–2010
- Available on SSRN at: http://ssrn.com/abstract=1375189

Images of Women and Capital Sentencing Among Female Offenders: Exploring the Outer Limits of the Eighth Amendment and Articulated Theories of Justice, 75 TEXAS L. REV. 1413 (1997)

ABA Juvenile Law Publication, "Practice Paper on Applications of *Apprendi* to Juvenile Transfer Proceedings," November, 2002

WORKS IN PROGRESS

Realizing Touby*'s Promise of Meaningful Constraint in Executive Discretion to Criminalize*

Secondary Emotions and Adolescent Neuroscience

Criminal Regulation of Speech
Privacy in the National Security World

The Jury as Open Government

THE DEMOCRACY OF THE JURY

AMICUS CURIAE BRIEFS

National Association of Criminal Defense Lawyers (NACDL) Amicus Brief, Ayala v. State (Florida Supreme Court, 2017)

National Association of Criminal Defense Lawyers (NACDL) Amicus Brief, State. v.

AMERICAN OVERSIGHT

Kelly Mathis (Eleventh Circuit, 2015)

National Association of Criminal Defense Lawyers (NACDL) Amicus Brief, U.S. v. Keith Cooper (Third Circuit, 2013)

NACDL Amicus Brief, United States v. Andrew "Weev" Auernheimer (Third Circuit, 2013)

NACDL Amicus Brief, United States v. Richard Caraballo-Rodriguez (Third Circuit, 2013)

NACDL Amicus Brief, United States v. Harry Katzin (Third Circuit, 2012)

NACDL Amicus Brief, United States v. Keenan Quinn (Third Circuit, 2012)

Law Professors' Amicus Brief, U.S. v. Charles Lynch (Ninth Circuit, 2012)

Law Professors' Amicus Brief, U.S. v. Salim Ahmed Hamdan (D.C. Circuit, 2011)

SELECTED SHORTER WORKS AND MEDIA

Government Collection of Cellphone Data and Privacy, Op-Ed, THE RECORD, August, 2013

License, Registration, Cellphone, Op-Ed, THE RECORD, June 11, 2013

Why Process Matters in Military Commission, Truthout.org, October 12, 2012

Why Are We Turning Our Backs on the Constitution?, Truthout.org, August, 29, 2012

Is Punishment in the Webcam Case Excessive?, Op-Ed, THE RECORD, March 21, 2012
.
Now There's Caylee's Law of Good Intentions, Op-Ed, THE RECORD, July 18, 2011

ABA Juvenile Law Publication, "Practice Paper on Applications of *Apprendi* to Juvenile Transfer Proceedings," November, 2002

Media appearances include NBC News, ESPN, BBC World News, Hollywood.com, Fox News, WMBC TV, WNBC TV, NPR, WNBC Radio, WHYY-FM Radio, *Associated Press, Boston Globe, New York Times,* AL.com, *Birmingham News, Star Ledger*, *The Record*, *Asbury Park Press*, *Orlando Sentinal* and the *New Jersey Law Journal*

CNN Criminal Law Advisor, 2011-2014

ACTIVITIES

American Association of Law Schools, Criminal Law Section, Executive Committee Member, 2017-present.

AMERICAN OVERSIGHT

Member of Juvenile Detention Alternative Initiative, Alabama, 2015-present

Co-Founder, Transnational Justice Project, Seton Hall University, 2010-2014

Authorized Observer to Guantanamo Military Commissions, 2010-present

NACDL Amicus Vice-Chair, Eleventh Circuit, 2014-present

NACDL Amicus Vice-Chair, Third Circuit, 2010-2014

NACDL Pretrial Justice Task Force, Member, 2011-2014

Advisor to the New York City Department of Education regarding restorative justice projects in public schools, 2013- 2015

EDUCATION

Georgetown University, Washington, D.C. LL.M. in Advocacy, 2005.

The University of Texas School of Law, Austin, Texas. J.D. with Honors, 1997.
Order of the Coif; TEXAS LAW REVIEW, Symposium Editor; TEXAS JOURNAL OF WOMEN AND THE LAW, Community Service Organizer; Thad Hutchinson Moot Court, Quarter-Finalist; Dean's Achievement Award, Highest Grade in Criminal Law; Endowed Presidential Scholarships; Texas Law Fellowships, Director; Women's Law Caucus, Director

Duke University, Durham, North Carolina. A.B., *Summa Cum Laude* with Highest Distinction in Political Science and Women's Studies, 1993.
Dean's Award for Best Undergraduate Thesis; William Griffith Award for Community Service;
Margaret Rose Knight Sanford Scholar; Anne Flexner Award for Creative Writing; John Hope Franklin Award and Julia Harper Day Awards for Documentary Studies; Co-Editor, DISTAFF MAGAZINE

LAW PRACTICE EXPERIENCE

The Defender Association, Seattle, Washington
Juvenile and Felony Staff Attorney: Represented indigent defendants in criminal and mental health matters in adult and juvenile court. 2000–2004.

Georgetown University Law Center, Washington, D.C.
Prettyman Fellow, Criminal Justice Clinic: (See "Academic Appointments," Above). 1998–2000.

Hon. William Wayne Justice, U.S. District Court, Eastern District of Texas, Tyler, Texas, and U.S. District Court, Western District of Texas, Austin, Texas
Judicial Clerk: 1997–1998.

AMERICAN OVERSIGHT

Bredhoff & Kaiser, Washington, D.C.
Law Clerk: Summer 1997.

Allison, Yeager, and Bassett, Austin, Texas
Law Clerk: January 1997 – May 1997.

Skadden, Arps, Slate, Meagher & Flom, Washington, D.C.
Summer Associate: Summer 1996

Texas Rural Legal Aid, Edinburg, Texas
Law Student Associate: Researched remedying systemic violation of criminally accused indigents' civil rights through § 1983 litigation, including a class action suit to insure timely appointment of counsel in border counties in Texas; assisted in litigation involving civil rights, housing, consumer protection, public benefits, family law, and employment matters. 1995–1996.

Project Esperanza, Raleigh, North Carolina
Board Member: Appointed by Governor Hunt to board to secure funding for and establish North Carolina's first domestic violence support services for migrant and rural women. 1992–1994.

Farmworker's Legal Services, Newton Grove, North Carolina
Farmworker Educator and Intern: Performed outreach to migrant labor camps throughout Eastern North Carolina to provide information about immigration issues, worker's rights and other legal matters; served as legal intern to attorneys in the Newton Grove and Raleigh offices. Summer 1992.

SELECTED PRESENTATIONS

Speaker, Free Speech Forum, Charles Pazmany University, Budapest, Hungary, 2017.

Invited Speaker, Bio LawLaPaLooza, Stanford University School of Law, 2017

Invited Speaker, Alabama Juvenile Defender's Conference, 2016

Invited Speaker, Alabama Public Defender's Conference, 2016

Panelist, Moderator, and Discussion Group Organizer, SEALS, 2016

Speaker, CrimFest, 2016

Invited Presenter, Southern Regional Juvenile Defender's Conference, 2016

Invited Speaker, Université Paris – Dauphine, 2016

Invited Speaker, Université Paris-Sorbonne, 2016

Invited Speaker, Richmond College of Law, 2016

AMERICAN OVERSIGHT

Invited Speaker, Tuscaloosa Bar Association, 2014-2016

Invited Speaker, Louis D. Brandeis School of Law, University of Louisville, 2015

Invited Speaker, National Juvenile Defender's Conference, 2015

Panelist, Law and Society Annual Conference, 2015

Panelist, Law and Society Annual Conference, 2013

Panelist, Albany New Teacher's Conference, Albany Law School, 2013

Invited Speaker, Touro Law Center, Faculty Colloquium, 2013

Invited Speaker, The Georgetown University Law Center Advanced Constitutional Law Series, 2012

Participant, Ohio Legal Scholars Workshop, 2009, 2010

"The Jury's Second Coming," University of Dayton School of Law, Faculty Workshop, 2010

Invited Speaker, ABA Juvenile Defender Leadership Summit, 2009

Invited Instructor, Indiana Juvenile Defender Training Summit, 2004–2009

Invited Instructor, Indiana Juvenile Defender Continuing Legal Education Summit, 2009

Invited Instructor, Children's Law Center Defender Training Conference, 2007

Invited Instructor, Ohio Public Defender Training Conference, 2005–2006

Invited Participant, Voices for Children Panel on Juvenile Law Reform in Ohio, 2006

Invited Participant, Ohio Panel on Discovery Reform, 2006

Invited Speaker, ABA Juvenile Defender Leadership Summit, 2002

Invited Participant in Washington (2003) and Texas (2000) assessment studies of Public and Appointed Defender Systems

BAR ADMISSIONS

District of Columbia; Ohio; Texas; Washington (inactive in all).

AMERICAN OVERSIGHT

Date : 11/15/2021 8:53:19 PM
From : "Norma Cantu" ncantu@usccr.gov
To : "Gail Heriot" gheriot@usccr.gov, "Peter Kirsanow" pkirsanow@usccr.gov, "J. Christian Adams" jadams@usccr.gov, "Stephen Gilchrist" sgilchrist@usccr.gov
Cc : "Alexander Heideman" aheideman@usccr.gov, "Carissa Mulder" CMulder@usccr.gov, "John Mashburn" jmashburn@usccr.gov, "Thomas Simuel" tsimuel@usccr.gov, "Juana Silverio" jsilverio@usccr.gov
Subject : Re: Action Requested: EAC Representative Replacement for Commissioner Yaki

Good evening,

Was a decision made by the caucus?

Thanks.
Norma

From: Norma Cantu
Sent: Wednesday, November 10, 2021 12:53:30 PM
To: Gail Heriot; Peter Kirsanow; J. Christian Adams; Stephen Gilchrist
Cc: Alexander Heideman; Carissa Mulder; John Mashburn; Thomas Simuel
Subject: Action Requested: EAC Representative Replacement for Commissioner Yaki

Dear Commissioners-

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Allison Riggs- https://southerncoalition.org/staff/allison-riggs/

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southerncoalition.org

Allison Riggs leads the voting rights program at the Southern Coalition for Social Justice, an organization she joined in 2009. In March of 2020, she also took over

AMERICAN OVERSIGHT

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Alabama SAC Chair Jenny Carroll - https://www.congress.gov/116/meeting/house/109456/witnesses/HHRG-116-HA08-Wstate-CarrollJ-20190513.pdf

Per the AI voted on during the April 30th meeting (language included below), each caucus will then have 24 hours to submit caucus strikes. In this instance, I am allowing 48 business day hours given that tomorrow is a holiday. The first representative, Cleta Mitchell, was already communicated to the EAC.

Please submit your strike no later than Monday, November 15th by 5pm EST.

Please let me know if you have any questions or concerns.

Norma
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AI language:

Section 1.
.01 Any authority specifically granted the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Commission as a whole by majority vote.

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Section 2
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AMERICAN OVERSIGHT

(1) For the two (2) appointments to the U.S. Election Assistance Commission, the members appointed by Democratic authorities shall nominate two individuals who are ready, willing, and able to serve, and the members appointed by the Republican authorities shall nominate two individuals who are ready, willing, and able to serve.

(2) The members appointed by the Democratic authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Democratic authorities

(3) The members selected shall be placed in nomination and ratified in conformance with Section 1.

AMERICAN OVERSIGHT

Date : 11/15/2021 10:00:27 PM
From : "Gail Heriot" gheriot@usccr.gov
To : "J. Christian Adams" jadams@usccr.gov
Cc : "Alexander Heideman" aheideman@usccr.gov, "Peter Kirsanow" pkirsanow@usccr.gov, "Stephen Gilchrist" sgilchrist@usccr.gov, "Carissa Mulder" CMulder@usccr.gov, "John Mashburn" jmashburn@usccr.gov, "Thomas Simuel" tsimuel@usccr.gov
Subject : Re: Action Requested: EAC Representative Replacement for Commissioner Yaki

I am happy to vote for Jenny Carroll. Is she our official pick? Norma is asking.

Gail Heriot
Professor of Law
University of San Diego

> On Nov 11, 2021, at 5:13 PM, J. Christian Adams <jadams@usccr.gov> wrote:
>
> Her name is not Allison Riggs. Therefore she is the person to pick.
>
> ---
>
> **From:** Alexander Heideman
> **Sent:** Wednesday, November 10, 2021 2:04:01 PM
> **To:** Gail Heriot; Peter Kirsanow; J. Christian Adams; Stephen Gilchrist
> **Cc:** Carissa Mulder; John Mashburn; Thomas Simuel
> **Subject:** Re: Action Requested: EAC Representative Replacement for Commissioner Yaki
>
> I've attached Jenny Carroll's resume to this email for everyone's reference. She's a professor of law at Alabama.
>
> ---
>
> **From:** Norma Cantu <ncantu@usccr.gov>
> **Date:** Wednesday, November 10, 2021 at 1:53 PM
> **To:** Gail Heriot <gheriot@usccr.gov>, Peter Kirsanow <pkirsanow@usccr.gov>, "J. Christian Adams" <jadams@usccr.gov>, Stephen Gilchrist <sgilchrist@usccr.gov>
> **Cc:** Alexander Heideman <aheideman@usccr.gov>, Carissa Mulder <CMulder@usccr.gov>, John Mashburn <jmashburn@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>
> **Subject:** Action Requested: EAC Representative Replacement for Commissioner Yaki

AMERICAN OVERSIGHT

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Allison Riggs- https://southerncoalition.org/staff/allison-riggs/

Image removed by sender.

Allison Riggs - Southern Coalition for Social Justice

southerncoalition.org

Allison Riggs leads the voting rights program at the Southern Coalition for Social Justice, an organization she joined in 2009. In March of 2020, she also took over as Interim Executive Director of the organization. Her voting rights work over the last decade at SCSJ has been focused on fighting for fair redistricting plans, fighting against voter suppression, and advocating for electoral reforms that would expand access to voting.

Alabama SAC Chair Jenny Carroll - https://www.congress.gov/116/meeting/house/109456/witnesses/HHRG-16-HA08-Wstate-CarrollJ-20190513.pdf

AMERICAN OVERSIGHT

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Norma
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Section 2
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AMERICAN OVERSIGHT

authorities

(3) The members selected shall be placed in nomination and ratified in conformance with Section 1.

AMERICAN OVERSIGHT

Date : 11/15/2021 10:10:00 PM
From : "Stephen Gilchrist" sgilchrist@usccr.gov
To : "Gail Heriot" gheriot@usccr.gov, "J. Christian Adams" jadams@usccr.gov
Cc : "Alexander Heideman" aheideman@usccr.gov, "Peter Kirsanow" pkirsanow@usccr.gov, "Carissa Mulder" CMulder@usccr.gov, "John Mashburn" jmashburn@usccr.gov, "Thomas Simuel" tsimuel@usccr.gov
Subject : Re: Action Requested: EAC Representative Replacement for Commissioner Yaki

Gail - I am fine with Jenny.

From: Gail Heriot
Sent: Monday, November 15, 2021 10:00:26 PM
To: J. Christian Adams
Cc: Alexander Heideman; Peter Kirsanow; Stephen Gilchrist; Carissa Mulder; John Mashburn; Thomas Simuel
Subject: Re: Action Requested: EAC Representative Replacement for Commissioner Yaki

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> **Sent:** Wednesday, November 10, 2021 2:04:01 PM
> **To:** Gail Heriot; Peter Kirsanow; J. Christian Adams; Stephen Gilchrist
> **Cc:** Carissa Mulder; John Mashburn; Thomas Simuel
> **Subject:** Re: Action Requested: EAC Representative Replacement for Commissioner Yaki
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> **From:** Norma Cantu <ncantu@usccr.gov>
> **Date:** Wednesday, November 10, 2021 at 1:53 PM
> **To:** Gail Heriot <gheriot@usccr.gov>, Peter Kirsanow <pkirsanow@usccr.gov>, "J. Christian Adams" <jadams@usccr.gov>,

AMERICAN OVERSIGHT

Stephen Gilchrist <sgilchrist@usccr.gov>
Cc: Alexander Heideman <aheideman@usccr.gov>, Carissa Mulder <CMulder@usccr.gov>, John Mashburn <jmashburn@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>
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Image removed by sender.

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AMERICAN OVERSIGHT

Alabama SAC Chair Jenny Carroll -
https://www.congress.gov/116/meeting/house/109456/witnesses/HHRG-16-HA08-Wstate-CarrollJ-20190513.pdf

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Norma
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AMERICAN OVERSIGHT

(2) The members appointed by the Democratic authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Democratic authorities

(3) The members selected shall be placed in nomination and ratified in conformance with Section 1.

AMERICAN OVERSIGHT

Date : 11/16/2021 10:45:34 AM
From : "Mauro Morales" mmorales@usccr.gov
To : "Norma Cantu" ncantu@usccr.gov, "David Kladney" dkladney@usccr.gov
Cc : "Juana Silverio" jsilverio@usccr.gov, "Joshua Dansby" jdansby@usccr.gov, "Angelia Rorison" arorison@usccr.gov, "Marik Xavier-Brier" mxavierbrier@usccr.gov, "Pamela Dunston" Pdunston@usccr.gov, "TinaLouise Martin" tmartin@usccr.gov, "David Ganz" dganz@usccr.gov
Subject : Postpone 11-18 Release of Bail Reform Report

Chair Cantu and Commissioner Kladney,

I recommend that we postpone the release of the Bail Reform report scheduled for the 18th at 1:00 pm until after the November 19th business meeting. Because of the high level of interest generated by the media and external stakeholders over the appointment of Cleta Mitchel to the Election Assistance Commission, we believe the release of the report and telephonic press conference will be overwhelmed and overshadowed by media coverage of her appointment. The bail reform report should be moved to a different date in the future in order to ensure that it will received the attention of the media and the public in an appropriate setting. Please contact me if you have any questions.

Mauro

AMERICAN OVERSIGHT

Date : 11/16/2021 11:17:27 AM
From : "Gail Heriot" gheriot@usccr.gov
To : "Norma Cantu" ncantu@usccr.gov
Cc : "Juana Silverio" jsilverio@usccr.gov, "Peter Kirsanow" pkirsanow@usccr.gov, "J. Christian Adams" jadams@usccr.gov, "Stephen Gilchrist" sgilchrist@usccr.gov, "Alexander Heideman" aheideman@usccr.gov, "Carissa Mulder" CMulder@usccr.gov
Subject : Re: Action Requested: EAC Representative Replacement for Commissioner Yaki

Hi Norma—Our ducks are now in order. The conservative caucus's pick is Jenny Carroll.

I apologize for the delay.

Gail

Gail Heriot
Professor of Law
University of San Diego

On Nov 16, 2021, at 6:54 AM, Norma Cantu <ncantu@usccr.gov> wrote:

Dear Gail,
The deadline came and went.
Will you please contact Commissioner Kirsanow.
Norma

From: Gail Heriot <gheriot@usccr.gov>
Sent: Monday, November 15, 2021 10:26 PM
To: Norma Cantu <ncantu@usccr.gov>
Subject: Re: Action Requested: EAC Representative Replacement for Commissioner Yaki

I think a decision was made, but I haven't heard from Pete yet.

Sent from my iPhone

On Nov 15, 2021, at 5:53 PM, Norma Cantu <ncantu@usccr.gov> wrote:

Good evening,

Was a decision made by the caucus?

AMERICAN OVERSIGHT

Thanks.

Norma

From: Norma Cantu
Sent: Wednesday, November 10, 2021 12:53:30 PM
To: Gail Heriot; Peter Kirsanow; J. Christian Adams; Stephen Gilchrist
Cc: Alexander Heideman; Carissa Mulder; John Mashburn; Thomas Simuel
Subject: Action Requested: EAC Representative Replacement for Commissioner Yaki

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AMERICAN OVERSIGHT

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AMERICAN OVERSIGHT

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(3) The members selected shall be placed in nomination and ratified in conformance with Section 1.

AMERICAN OVERSIGHT

Date : 11/16/2021 12:14:06 PM
From : "Juana Silverio" jsilverio@usccr.gov
To : "Debo P. Adegbile" dadegbile@usccr.gov, "Irena Vidulovic" ividulovic@usccr.gov
Cc : "Norma Cantu" ncantu@usccr.gov
Subject : RE: Action Requested: EAC Representative Replacement for Commissioner Yaki

Irena, can you reach out to Ms. Carroll and let her know we've nominated her, that the Commission will ratify the nomination by majority vote at Friday's mtg.?

There is a statement going out today to address the tweets and press inquiries and will just focus on the EAC and mention that the 2nd Commission nominee will be ratified by majority vote on Friday.

Juana

From: Juana Silverio
Sent: Tuesday, November 16, 2021 11:47 AM
To: Debo P. Adegbile <dadegbile@usccr.gov>; David Kladney <dkladney@usccr.gov>; Michael Yaki <MYaki@usccr.gov>
Cc: Irena Vidulovic <ividulovic@usccr.gov>; Joshua Dansby <jdansby@usccr.gov>; Alec Deull <adeull@usccr.gov>; Norma Cantu <ncantu@usccr.gov>
Subject: FW: Action Requested: EAC Representative Replacement for Commissioner Yaki

FYI

From: Gail Heriot <gheriot@usccr.gov>
Sent: Tuesday, November 16, 2021 11:17 AM
To: Norma Cantu <ncantu@usccr.gov>
Cc: Juana Silverio <jsilverio@usccr.gov>; Peter Kirsanow <pkirsanow@usccr.gov>; J. Christian Adams <jadams@usccr.gov>; Stephen Gilchrist <sgilchrist@usccr.gov>; Alexander Heideman <aheideman@usccr.gov>; Carissa Mulder <CMulder@usccr.gov>
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I apologize for the delay.

Gail

Gail Heriot
Professor of Law
University of San Diego

> On Nov 16, 2021, at 6:54 AM, Norma Cantu <ncantu@usccr.gov> wrote:
>
> Dear Gail,

AMERICAN OVERSIGHT

The deadline came and went.
Will you please contact Commissioner Kirsanow.
Norma

From: Gail Heriot <gheriot@usccr.gov>
Sent: Monday, November 15, 2021 10:26 PM
To: Norma Cantu <ncantu@usccr.gov>
Subject: Re: Action Requested: EAC Representative Replacement for Commissioner Yaki

I think a decision was made, but I haven't heard from Pete yet.

Sent from my iPhone

> On Nov 15, 2021, at 5:53 PM, Norma Cantu <ncantu@usccr.gov> wrote:
>
> Good evening,
>
> Was a decision made by the caucus?
>
> Thanks.
>
> Norma
>
> ---
>
> **From:** Norma Cantu
> **Sent:** Wednesday, November 10, 2021 12:53:30 PM
> **To:** Gail Heriot; Peter Kirsanow; J. Christian Adams; Stephen Gilchrist
> **Cc:** Alexander Heideman; Carissa Mulder; John Mashburn; Thomas Simuel
> **Subject:** Action Requested: EAC Representative Replacement for Commissioner Yaki
>
> Dear Commissioners-
>
> In response to Commissioner Yaki recently resigning from his position on the EAC as a representative of USCCR, the Progressive Caucus is putting for 2 names for consideration. I am asking that the candidate you strike be sent to me by Monday, November 15th, 2021 by 5pm EST so that we can include the candidate's confirmation vote at our November 19th business meeting.

AMERICAN OVERSIGHT

Allison Riggs-
https://southerncoalition.org/staff/allison-riggs/

Allison Riggs - Southern Coalition for Social Justice

southerncoalition.org

Allison Riggs leads the voting rights program at the Southern Coalition for Social Justice, an organization she joined in 2009. In March of 2020, she also took over as Interim Executive Director of the organization. Her voting rights work over the last decade at SCSJ has been focused on fighting for fair redistricting plans, fighting against voter suppression, and advocating for electoral reforms that would expand access to voting.

Alabama SAC Chair Jenny Carroll -
https://www.congress.gov/116/meeting/house/109456/witnesses/HHRG-116-HA08-Wstate-CarrollJ-20190513.pdf

Per the AI voted on during the April 30th meeting (language included below), each caucus will then have 24

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hours to submit caucus strikes. In this instance, I am allowing 48 business day hours given that tomorrow is a holiday. The first representative, Cleta Mitchell, was already communicated to the EAC.

Please submit your strike no later than Monday, November 15th by 5pm EST.

Please let me know if you have any questions or concerns.

Norma
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AI language:

Section 1.
.01 Any authority specifically granted the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Commission as a whole by majority vote.

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.03 Any authority specifically granted the Chair of the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Chair.

Section 2
.02
(1) For the two (2) appointments to the U.S. Election Assistance Commission, the members appointed by Democratic authorities shall nominate two individuals who are ready, willing, and able to serve, and the members appointed by the Republican authorities shall nominate two individuals who are ready, willing, and able to serve.

(2) The members appointed by the Democratic authorities shall select one (1) of the two (2) individuals

AMERICAN OVERSIGHT

nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Democratic authorities

(3) The members selected shall be placed in nomination and ratified in conformance with Section 1.

AMERICAN OVERSIGHT

Date : 11/16/2021 1:30:13 PM
From : "Mauro Morales" mmorales@usccr.gov
To : "Angelia Rorison" arorison@usccr.gov, "David Ganz" dganz@usccr.gov
Subject : RE: Action Requested: EAC Representative Replacement for Commissioner Yaki

She'll be voted on Friday

From: Mauro Morales
Sent: Tuesday, November 16, 2021 1:29 PM
To: Angelia Rorison <arorison@usccr.gov>; David Ganz <dganz@usccr.gov>
Subject: FW: Action Requested: EAC Representative Replacement for Commissioner Yaki

---

From: Norma Cantu <ncantu@usccr.gov>
Sent: Tuesday, November 16, 2021 1:14 PM
To: Mauro Morales <mmorales@usccr.gov>
Subject: FW: Action Requested: EAC Representative Replacement for Commissioner Yaki

FYI

From: Gail Heriot <gheriot@usccr.gov>
Sent: Tuesday, November 16, 2021 10:17 AM
To: Norma Cantu <ncantu@usccr.gov>
Cc: Juana Silverio <jsilverio@usccr.gov>; Peter Kirsanow <pkirsanow@usccr.gov>; J. Christian Adams <jadams@usccr.gov>; Stephen Gilchrist <sgilchrist@usccr.gov>; Alexander Heideman <aheideman@usccr.gov>; Carissa Mulder <CMulder@usccr.gov>
Subject: Re: Action Requested: EAC Representative Replacement for Commissioner Yaki

Hi Norma—Our ducks are now in order. The conservative caucus's pick is Jenny Carroll.

I apologize for the delay.

Gail

Gail Heriot
Professor of Law
University of San Diego

> On Nov 16, 2021, at 6:54 AM, Norma Cantu <ncantu@usccr.gov> wrote:
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AMERICAN OVERSIGHT

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Sent from my iPhone

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> Was a decision made by the caucus?
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> Thanks.
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Sent: Wednesday, November 10, 2021 12:53:30 PM
To: Gail Heriot; Peter Kirsanow; J. Christian Adams; Stephen Gilchrist
Cc: Alexander Heideman; Carissa Mulder; John Mashburn; Thomas Simuel
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In response to Commissioner Yaki recently resigning from his position on the EAC as a representative of USCCR, the Progressive Caucus is putting for 2 names for consideration. I am asking that the candidate you strike be sent to me by Monday, November 15th, 2021 by 5pm EST so that we can include the candidate's confirmation vote at our November 19th business meeting.

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AMERICAN OVERSIGHT

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AMERICAN OVERSIGHT

Democratic authorities

(3) The members selected shall be placed in nomination and ratified in conformance with Section 1.

AMERICAN OVERSIGHT

Date : 7/30/2021 12:37:07 PM
From : "John Mashburn" jmashburn@usccr.gov
To : "Mauro Morales" mmorales@usccr.gov, "David Ganz" dganz@usccr.gov
Cc : "Carissa Mulder" CMulder@usccr.gov, "Thomas Simuel" tsimuel@usccr.gov, "Alexander Heideman" aheideman@usccr.gov
Subject : Re: Commissioner Appointments to the Election Assistance Commission
Attachment : image001.gif;image002.gif;

David – I got a response email saying Mauro is not in today, so I am forwarding this email to you to meet the deadline of COB today for these nominations from the Republican Commissioners.

From: John Mashburn <jmashburn@usccr.gov>
Date: Friday, July 30, 2021 at 12:34 PM
To: Mauro Morales <mmorales@usccr.gov>
Cc: Carissa Mulder <CMulder@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>, Alexander Heideman <aheideman@usccr.gov>
Subject: Re: Commissioner Appointments to the Election Assistance Commission

Mauro – after canvassing the Republican Commissioners, the two nominees they wish to put forward for one of the two USCCR designees for the EAC's Board of Advisors (per your email below) are:

Cleta Mitchell – Chair, Conservative Partnership Institute Election Integrity Network, and

Christian Adams – USCCR Commissioner.

From: Mauro Morales <mmorales@usccr.gov>
Date: Wednesday, July 28, 2021 at 11:30 AM
To: Commissioners <Commissioners@usccr.gov>
Cc: David Ganz <dganz@usccr.gov>, "CommissionerAssistants@usccr.gov" <CommissionerAssistants@usccr.gov>
Subject: Commissioner Appointments to the Election Assistance Commission

Dear Commissioners-

At the request and in consultation with the Chair, I am sending this email to start the EAC nomination process for Commissioners.

Per the AI voted on during the April 30th meeting (language included below), each caucus is requested to submit two candidates for consideration by COB Friday, July 30, 2021. Once the names are submitted, OGC will conduct an ethics check to be completed by Wednesday, August 4, 2021. Each caucus will then have 24 hours to submit caucus strikes (Thursday, August 5, 2021 COB). The Chair will communicate the two names to EAC no later than Friday, August 6, 2021.

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Please let the Chair or I know if you have any questions or concerns.

--
AI language:

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(3) The members selected shall be placed in nomination and ratified in conformance with Section 1.

Mauro Morales
Staff Director
U.S. Commission on Civil Rights
P: 202-376-7796| F: 202-376-7672
Mmorales@usccr.gov
http://usccr.gov/
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425

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Date : 7/30/2021 12:43:18 PM
From : "David Ganz" dganz@usccr.gov
To : "Mauro Morales" mmorales@usccr.gov
Subject : RE: Commissioner Appointments to the Election Assistance Commission
Attachment : image001.gif;image002.gif;

Do you want me to forward this to Chair Cantu?

From: John Mashburn <jmashburn@usccr.gov>
Sent: Friday, July 30, 2021 12:37 PM
To: Mauro Morales <mmorales@usccr.gov>; David Ganz <dganz@usccr.gov>
Cc: Carissa Mulder <CMulder@usccr.gov>; Thomas Simuel <tsimuel@usccr.gov>; Alexander Heideman <aheideman@usccr.gov>
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To: Mauro Morales <mmorales@usccr.gov>
Cc: Carissa Mulder <CMulder@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>, Alexander Heideman <aheideman@usccr.gov>
Subject: Re: Commissioner Appointments to the Election Assistance Commission

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To: Commissioners <Commissioners@usccr.gov>
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AMERICAN OVERSIGHT

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AMERICAN OVERSIGHT

Mauro Morales
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P: 202-376-7796| F: 202-376-7672
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http://usccr.gov/
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425

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#USCCR

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OVERSIGHT

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Date : 8/2/2021 11:45:24 AM
From : "Mauro Morales" mmorales@usccr.gov
To : "John Mashburn" jmashburn@usccr.gov
Cc : "Carissa Mulder" CMulder@usccr.gov, "Thomas Simuel" tsimuel@usccr.gov, "Alexander Heideman" aheideman@usccr.gov
Subject : Re: Commissioner Appointments to the Election Assistance Commission
Attachment : image001.gif;image002.gif;

My flight was canceled and returning today. Your selections were forwarded to Chair Cantu. Thank you.

Sent from my iPhone

> On Jul 30, 2021, at 9:34 AM, John Mashburn <jmashburn@usccr.gov> wrote:
>
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>
> Cleta Mitchell – Chair, Conservative Partnership Institute Election Integrity Network, and
>
> Christian Adams – USCCR Commissioner.
>
> ---
>
> **From:** Mauro Morales <mmorales@usccr.gov>
> **Date:** Wednesday, July 28, 2021 at 11:30 AM
> **To:** Commissioners <Commissioners@usccr.gov>
> **Cc:** David Ganz <dganz@usccr.gov>, "CommissionerAssistants@usccr.gov" <CommissionerAssistants@usccr.gov>
> **Subject:** Commissioner Appointments to the Election Assistance Commission
>
> Dear Commissioners-
>
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AMERICAN OVERSIGHT

2021.

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(3) The members selected shall be placed in nomination and ratified in conformance with Section 1.

Mauro Morales
Staff Director

AMERICAN OVERSIGHT

U.S. Commission on Civil Rights
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http://usccr.gov/
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Washington D.C. 20425

Follow Us on Twitter & Facebook:
<image001.gif>
<image002.gif>

#USCCR

AMERICAN OVERSIGHT

OVERSIGHT

OVERSTOCK

Date : 8/2/2021 11:43:45 AM
From : "Mauro Morales" mmorales@usccr.gov
To : "David Ganz" dganz@usccr.gov
Subject : Re: Commissioner Appointments to the Election Assistance Commission
Attachment : image001.gif;image002.gif;

Yes.

Sent from my iPhone

On Jul 30, 2021, at 9:43 AM, David Ganz <dganz@usccr.gov> wrote:

Do you want me to forward this to Chair Cantu?

From: John Mashburn <jmashburn@usccr.gov>
Sent: Friday, July 30, 2021 12:37 PM
To: Mauro Morales <mmorales@usccr.gov>; David Ganz <dganz@usccr.gov>
Cc: Carissa Mulder <CMulder@usccr.gov>; Thomas Simuel <tsimuel@usccr.gov>; Alexander Heideman <aheideman@usccr.gov>
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AMERICAN OVERSIGHT

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AMERICAN OVERSIGHT

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Washington D.C. 20425

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<image001.gif>
<image002.gif>

#USCCR

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OVERSIGHT

OVERSTOCK

Date : 8/3/2021 3:38:23 PM
From : "Juana Silverio" jsilverio@usccr.gov
To : "Mauro Morales" mmorales@usccr.gov, "Norma Cantu" ncantu@usccr.gov
Cc : "Debo P. Adegbile" dadegbile@usccr.gov, "Michael Yaki" MYaki@usccr.gov, "David Kladney" dkladney@usccr.gov, "Irena Vidulovic" ividulovic@usccr.gov, "Alec Deull" adeull@usccr.gov
Subject : RE: Commissioner Appointments to the Election Assistance Commission

Good afternoon Mauro.

The Dem caucus had a tie:

Commissioner Michael Yaki
Leah Aden (Cantu and Yaki)
Allison Riggs (Adegbile and Kladney)

The Chairwoman, in the interest of observing the deadline, is submitting the following names for EAC consideration:

Commissioner Michael Yaki
Leah Aden - https://www.naacpldf.org/about-us/staff/leah-c-aden/

Thank you.
Juana

From: Mauro Morales <mmorales@usccr.gov>
Sent: Monday, August 2, 2021 11:47 AM
To: Norma V. Cantú <normavcantu@gmail.com>; Juana Silverio <jsilverio@usccr.gov>
Subject: Fwd: Commissioner Appointments to the Election Assistance Commission

FYI

Sent from my iPhone

Begin forwarded message:

> **From:** Mauro Morales <mmorales@usccr.gov>
> **Date:** August 2, 2021 at 8:45:25 AM MST
> **To:** John Mashburn <jmashburn@usccr.gov>
> **Cc:** Carissa Mulder <CMulder@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>, Alexander Heideman <aheideman@usccr.gov>
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Dear Commissioners-

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Per the AI voted on during the April 30th meeting (language included below), each caucus is requested to submit two candidates for consideration by COB Friday, July 30, 2021. Once the names are submitted, OGC will conduct an ethics check to be completed by Wednesday, August 4, 2021. Each caucus will then have 24 hours to submit caucus strikes (Thursday, August 5, 2021 COB). The Chair will communicate the two names to EAC no later than Friday, August 6, 2021.

Please let the Chair or I know if you have any questions or concerns.

--
AI language:

Section 1.

AMERICAN OVERSIGHT

.01 Any authority specifically granted the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Commission as a whole by majority vote.

.02 Any authority specifically granted the Staff Director of the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Staff Director.

.03 Any authority specifically granted the Chair of the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Chair.

Section 2
.02

(1) For the two (2) appointments to the U.S. Election Assistance Commission, the members appointed by Democratic authorities shall nominate two individuals who are ready, willing, and able to serve, and the members appointed by the Republican authorities shall nominate two individuals who are ready, willing, and able to serve.

(2) The members appointed by the Democratic authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Democratic authorities

(3) The members selected shall be placed in nomination and ratified in conformance with Section 1.

Mauro Morales
Staff Director
U.S. Commission on Civil Rights
P: 202-376-7796| F: 202-376-7672
Mmorales@usccr.gov
http://usccr.gov/

AMERICAN OVERSIGHT

1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425

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<image002.gif>

#USCCR

AMERICAN OVERSIGHT

Date : 8/3/2021 4:12:07 PM
From : "Irena Vidulovic" ividulovic@usccr.gov
To : "Juana Silverio" jsilverio@usccr.gov, "Mauro Morales" mmorales@usccr.gov, "Norma Cantu" ncantu@usccr.gov
Cc : "Debo P. Adegbile" dadegbile@usccr.gov, "Michael Yaki" MYaki@usccr.gov, "David Kladney" dkladney@usccr.gov, "Alec Deull" adeull@usccr.gov
Subject : Re: Commissioner Appointments to the Election Assistance Commission

Unfortunately Leah Aden is unable to serve. Commissioner Adebile reached out to all the candidates that we proposed including Leah to make sure that they would be willing and able to serve and we have been notified that Leah is unavailable to serve.

From: Juana Silverio
Sent: Tuesday, August 3, 2021 3:38:23 PM
To: Mauro Morales; Norma Cantu
Cc: Debo P. Adegbile; Michael Yaki; David Kladney; Irena Vidulovic; Alec Deull
Subject: RE: Commissioner Appointments to the Election Assistance Commission

Good afternoon Mauro.

The Dem caucus had a tie:

Commissioner Michael Yaki
Leah Aden (Cantu and Yaki)
Allison Riggs (Adegbile and Kladney)

The Chairwoman, in the interest of observing the deadline, is submitting the following names for EAC consideration:

Commissioner Michael Yaki
Leah Aden - https://www.naacpldf.org/about-us/staff/leah-c-aden/

Thank you.
Juana

From: Mauro Morales <mmorales@usccr.gov>
Sent: Monday, August 2, 2021 11:47 AM
To: Norma V. Cantú <normavcantu@gmail.com>; Juana Silverio <jsilverio@usccr.gov>
Subject: Fwd: Commissioner Appointments to the Election Assistance Commission

FYI

Sent from my iPhone

Begin forwarded message:

AMERICAN OVERSIGHT

From: Mauro Morales <mmorales@usccr.gov>
Date: August 2, 2021 at 8:45:25 AM MST
To: John Mashburn <jmashburn@usccr.gov>
Cc: Carissa Mulder <CMulder@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>, Alexander Heideman <aheideman@usccr.gov>
Subject: Re: Commissioner Appointments to the Election Assistance Commission

My flight was canceled and returning today. Your selections were forwarded to Chair Cantu. Thank you.

Sent from my iPhone

> On Jul 30, 2021, at 9:34 AM, John Mashburn <jmashburn@usccr.gov> wrote:
>
> Mauro – after canvassing the Republican Commissioners, the two nominees they wish to put forward for one of the two USCCR designees for the EAC's Board of Advisors (per your email below) are:
>
> Cleta Mitchell – Chair, Conservative Partnership Institute Election Integrity Network, and
>
> Christian Adams – USCCR Commissioner.
>
> ---
>
> **From:** Mauro Morales <mmorales@usccr.gov>
> **Date:** Wednesday, July 28, 2021 at 11:30 AM
> **To:** Commissioners <Commissioners@usccr.gov>
> **Cc:**
> " <CommissionerAssistants@usccr.gov>
> **Subject:** Commissioner Appointments to the Election Assistance Commission
>
> Dear Commissioners-
>
> At the request and in consultation with the Chair, I am sending this email to start the EAC nomination process for Commissioners.
>
> Per the AI voted on during the April 30th meeting (language included below), each caucus is requested to submit two candidates for consideration by COB Friday, July 30, 2021. Once the names are submitted, OGC will conduct an ethics check to be completed by Wednesday, August 4, 2021. Each caucus will then have 24 hours to

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submit caucus strikes (Thursday, August 5, 2021 COB). The Chair will communicate the two names to EAC no later than Friday, August 6, 2021.

Please let the Chair or I know if you have any questions or concerns.

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Section 2
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(1) For the two (2) appointments to the U.S. Election Assistance Commission, the members appointed by Democratic authorities shall nominate two individuals who are ready, willing, and able to serve, and the members appointed by the Republican authorities shall nominate two individuals who are ready, willing, and able to serve.

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Democratic authorities

(3) The members selected shall be placed in nomination and ratified in conformance with Section 1.

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<image002.gif>

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Date : 8/3/2021 5:36:11 PM
From : "Mauro Morales" mmorales@usccr.gov
To : "Commissioners" Commissioners@usccr.gov
Cc : "CommissionerAssistants" CommissionerAssistants@usccr.gov, "David Ganz" dganz@usccr.gov
Subject : Nominations for Appointment to the EAC
Attachment : image001.gif;image002.gif;

Commissioners,

Pursuant to the AI voted on during the April 30th Business meeting, you have nominated the following individuals to the Election Assistance Commission (EAC):

Commissioners Cantu, Adegbile, Kladney and Yaki have nominated the following individuals to the EAC:

- Commissioner Michael Yaki;
- Ms. Allison Riggs , Co-Executive Director, Southern Coalition for Social Justice.

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- Commissioner Christian Adams;
- Cleta Michell, Chair, Conservative Partnership Institute Election Integrity Network.

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Date : 8/4/2021 10:14:51 AM
From : "Irena Vidulovic" ividulovic@usccr.gov
To : "Juana Silverio" jsilverio@usccr.gov, "Alec Deull" adeull@usccr.gov
Subject : Fw: Nominations for Appointment to the EAC
Attachment : image001.gif;image002.gif;

Team,

Do we want to schedule a call today to discuss? Let me know when you are free.

Irena

From: Mauro Morales
Sent: Tuesday, August 3, 2021 5:36 PM
To: Commissioners
Cc: CommissionerAssistants; David Ganz
Subject: Nominations for Appointment to the EAC

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Date : 8/4/2021 11:09:32 AM
From : "Juana Silverio" jsilverio@usccr.gov
To : "Mauro Morales" mmorales@usccr.gov
Cc : "Norma Cantu" ncantu@usccr.gov
Subject : RE: Nominations for Appointment to the EAC
Attachment : image001.gif;image002.gif;

Should we remind them to send their "strike" no latr than COB tomorrow?

From: Mauro Morales <mmorales@usccr.gov>
Sent: Tuesday, August 3, 2021 5:36 PM
To: Commissioners <Commissioners@usccr.gov>
Cc: CommissionerAssistants <CommissionerAssistants@usccr.gov>; David Ganz <dganz@usccr.gov>
Subject: Nominations for Appointment to the EAC

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Date : 8/4/2021 11:38:21 AM
From : "Irena Vidulovic" ividulovic@usccr.gov
To : "Juana Silverio" jsilverio@usccr.gov, "Alec Deull" adeull@usccr.gov, "David Kladney" dkladney@usccr.gov
Subject : Re: Nominations for Appointment to the EAC
Attachment : image001.gif;image002.gif;

Thanks Juana, + Adding Commissioner Kladney to this email chain since he is currently without an SA.

I am thinking it would be helpful to have our bosses be on the same page as well so that we could have a unified front.

Look forward to discussing your bosses preference /thoughts now that the nominations have been submitted.

Thanks,
Irena

From: Juana Silverio
Sent: Wednesday, August 4, 2021 11:06:53 AM
To: Irena Vidulovic; Alec Deull
Subject: RE: Nominations for Appointment to the EAC

The Chair is discussing with the Rs how they want to proceed to the next step and then we'll know. Though not in the ai below- the two that will be named need a majority vote.

From: Irena Vidulovic <ividulovic@usccr.gov>
Sent: Wednesday, August 4, 2021 10:15 AM
To: Juana Silverio <jsilverio@usccr.gov>; Alec Deull <adeull@usccr.gov>
Subject: Fw: Nominations for Appointment to the EAC

Team,

Do we want to schedule a call today to discuss? Let me know when you are free.

Irena

From: Mauro Morales
Sent: Tuesday, August 3, 2021 5:36 PM
To: Commissioners
Cc: CommissionerAssistants; David Ganz
Subject: Nominations for Appointment to the EAC

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Date : 8/5/2021 1:30:29 PM
From : "Debo P. Adegbile" dadegbile@usccr.gov
To : "Norma Cantu" ncantu@usccr.gov, "Michael Yaki" commissioner.yaki@gmail.com, "David Kladney" dkladney@usccr.gov
Cc : "Irena Vidulovic" ividulovic@usccr.gov
Subject : Fwd: Nominations for Appointment to the EAC
Attachment : image001.gif;image002.gif;

Cleta Mitchell is my pick of those they nominated.

Sent from my iPhone

Begin forwarded message:

> **From:** Mauro Morales <mmorales@usccr.gov>
> **Date:** August 3, 2021 at 5:36:12 PM EDT
> **To:** Commissioners <Commissioners@usccr.gov>
> **Cc:** CommissionerAssistants <CommissionerAssistants@usccr.gov>, David Ganz <dganz@usccr.gov>
> **Subject: Nominations for Appointment to the EAC**
>
> Commissioners,
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Date : 8/5/2021 4:03:06 PM
From : "Norma Cantu" ncantu@usccr.gov
To : "Mauro Morales" mmorales@usccr.gov, "Juana Silverio" jsilverio@usccr.gov
Cc : "David Ganz" dganz@usccr.gov
Subject : RE: Nominations for Appointment to the EAC
Attachment : image001.gif;image002.gif;

Dear Mauro,
The progressive caucus discussed the two options from the conservative caucus and unanimously selected Cleta Mitchell as nominee from the conservative caucus.
Norma

From: Mauro Morales <mmorales@usccr.gov>
Sent: Wednesday, August 4, 2021 11:25 AM
To: Juana Silverio <jsilverio@usccr.gov>
Cc: Norma Cantu <ncantu@usccr.gov>; David Ganz <dganz@usccr.gov>
Subject: RE: Nominations for Appointment to the EAC

That is a good idea and each caucus should send me their final selection. There are no real procedures since this is the first time we've done this. It would be simpler if each caucus provides me with their selection rather than each commissioner provide me their individual vote on the different candidates that I would then have to account for and tally. I shouldn't have a part of the caucus votes for the final candidates. Each caucus should make their own selection and then send it to me which I can then schedule for a final vote by all Commissioners to send to the EAC.

From: Juana Silverio <jsilverio@usccr.gov>
Sent: Wednesday, August 4, 2021 11:10 AM
To: Mauro Morales <mmorales@usccr.gov>
Cc: Norma Cantu <ncantu@usccr.gov>
Subject: RE: Nominations for Appointment to the EAC

Should we remind them to send their "strike" no latr than COB tomorrow?

From: Mauro Morales <mmorales@usccr.gov>
Sent: Tuesday, August 3, 2021 5:36 PM
To: Commissioners <Commissioners@usccr.gov>
Cc: CommissionerAssistants <CommissionerAssistants@usccr.gov>; David Ganz <dganz@usccr.gov>
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AMERICAN OVERSIGHT

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Date : 8/5/2021 4:05:24 PM
From : "Norma Cantu" ncantu@usccr.gov
To : "Mauro Morales" mmorales@usccr.gov, "Juana Silverio" jsilverio@usccr.gov
Cc : "David Ganz" dganz@usccr.gov
Subject : RE: Nominations for Appointment to the EAC --please convey the results simultaneously to the Commissioners.
Attachment : image001.gif;image002.gif;

Per David Kladney's request, I ask the Staff Director to share out the results of the caucus votes simultaneously.
Norma

From: Mauro Morales <mmorales@usccr.gov>
Sent: Wednesday, August 4, 2021 11:25 AM
To: Juana Silverio <jsilverio@usccr.gov>
Cc: Norma Cantu <ncantu@usccr.gov>; David Ganz <dganz@usccr.gov>
Subject: RE: Nominations for Appointment to the EAC

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To: Mauro Morales <mmorales@usccr.gov>
Cc: Norma Cantu <ncantu@usccr.gov>
Subject: RE: Nominations for Appointment to the EAC

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AMERICAN OVERSIGHT

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Date : 8/5/2021 4:06:38 PM
From : "Juana Silverio" jsilverio@usccr.gov
To : "Norma Cantu" ncantu@usccr.gov, "Mauro Morales" mmorales@usccr.gov
Cc : "David Ganz" dganz@usccr.gov
Subject : RE: Nominations for Appointment to the EAC --please convey the results simultaneously to the Commissioners.
Attachment : image001.gif;image002.gif;

So we are sharing the strike or the nominee we will confirm by vote?

From: Norma Cantu <ncantu@usccr.gov>
Sent: Thursday, August 5, 2021 4:05 PM
To: Mauro Morales <mmorales@usccr.gov>; Juana Silverio <jsilverio@usccr.gov>
Cc: David Ganz <dganz@usccr.gov>
Subject: RE: Nominations for Appointment to the EAC --please convey the results simultaneously to the Commissioners.

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Norma

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Subject: Nominations for Appointment to the EAC

AMERICAN OVERSIGHT

Commissioners,

Pursuant to the AI voted on during the April 30th Business meeting, you have nominated the following individuals to the Election Assistance Commission (EAC):

Commissioners Cantu, Adegbile, Kladney and Yaki have nominated the following individuals to the EAC:

- Commissioner Michael Yaki;
- Ms. Allison Riggs , Co-Executive Director, Southern Coalition for Social Justice.

Commissioners Adams, Gilchrist, Heriot and Kirsanow have nominated the following individuals to the EAC:

- Commissioner Christian Adams;
- Cleta Michell, Chair, Conservative Partnership Institute Election Integrity Network.

Under the AI adopted by Commissioners, the members appointed by the Democratic authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Democratic authorities. The final members selected shall be placed in nomination and ratified by a majority vote. Please inform me how you would like to proceed for a majority vote either by placing it on the agenda for the next USCCR business meeting or by a notational vote.

Mauro Morales
Staff Director
U.S. Commission on Civil Rights
P: 202-376-7796| F: 202-376-7672
Mmorales@usccr.gov
http://usccr.gov/
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425

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OVERSIGHT

OVERSTOCK

Date : 8/10/2021 2:57:39 PM
From : "Mauro Morales" mmorales@usccr.gov
To : "Commissioners" Commissioners@usccr.gov
Cc : "CommissionerAssistants" CommissionerAssistants@usccr.gov, "David Ganz" dganz@usccr.gov
Subject : EAC Final Selections
Attachment : Twitter from Outlook support page.gif;FB icon.gif;

Commissioners,

Pursuant to the AI voted on during the April 30th Business meeting, I received the following names for appointment the Election Assistance Commission (EAC):

Commissioners Cantu, Adegbile, Kladney and Yaki have selected for appointment to the EAC:

- Cleta Michell, Chair, Conservative Partnership Institute Election Integrity Network.

Commissioners Adams, Gilchrist, Heriot and Kirsanow have selected for appointment to the EAC:

- Commissioner Michael Yaki;

Under the AI adopted by Commissioners, these two members selected shall be placed in nomination and ratified by a majority vote. Please inform me how you would like to proceed for a majority vote either by placing it on the agenda for the next USCCR business meeting or by a notational vote. Thank you.

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Washington D.C. 20425

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OVERSTOCK

Date : 8/10/2021 4:40:11 PM
From : "J. Christian Adams" jadams@usccr.gov
To : "Mauro Morales" mmorales@usccr.gov
Subject : Re: EAC Final Selections
Attachment : Twitter from Outlook support page.gif;FB icon.gif;

We can vote on it at the next meeting.

From: Mauro Morales
Sent: Tuesday, August 10, 2021 2:57:39 PM
To: Commissioners
Cc: CommissionerAssistants; David Ganz
Subject: EAC Final Selections

Commissioners,

Pursuant to the AI voted on during the April 30th Business meeting, I received the following names for appointment the Election Assistance Commission (EAC):

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- Commissioner Michael Yaki;

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OVERSTOCK

Date : 8/10/2021 4:52:24 PM
From : "Thomas Simuel" tsimuel@usccr.gov
To : "Mauro Morales" mmorales@usccr.gov
Cc : "Stephen Gilchrist" sgilchrist@usccr.gov, "stephen gilchrist" thegilchristassociates@gmail.com
Subject : RE: EAC Final Selections

Hey Mauro,

Commissioner Gilchrist prefer to have the EAC vote at the business meeting.

Thanks,

Thomas

-------- Original message --------
From: Mauro Morales <mmorales@usccr.gov>
Date: 8/10/21 2:57 PM (GMT-05:00)
To: Commissioners <Commissioners@usccr.gov>
Cc: CommissionerAssistants <CommissionerAssistants@usccr.gov>, David Ganz <dganz@usccr.gov>
Subject: EAC Final Selections

Commissioners,

Pursuant to the AI voted on during the April 30th Business meeting, I received the following names for appointment the Election Assistance Commission (EAC):

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Commissioners Adams, Gilchrist, Heriot and Kirsanow have selected for appointment to the EAC:

- Commissioner Michael Yaki;

Under the AI adopted by Commissioners, these two members selected shall be placed in nomination and ratified by a majority vote. Please inform me how you would like to proceed for a majority vote either by placing it on the agenda for the next USCCR business meeting or by a notational vote. Thank you.

Mauro Morales
Staff Director

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Date : 8/10/2021 5:52:30 PM
From : "Norma Cantu" ncantu@usccr.gov
To : "Mauro Morales" mmorales@usccr.gov
Cc : "David Ganz" dganz@usccr.gov, "Juana Silverio" jsilverio@usccr.gov
Subject : RE: EAC Final Selections
Attachment : image001.gif;image002.gif;

Dear Mauro,
Thank you for the news. Each caucus has performed its duty under the AI.
I see no need to add this to the business meeting.
Notational vote will suffice.
Norma

From: Mauro Morales <mmorales@usccr.gov>
Sent: Tuesday, August 10, 2021 1:58 PM
To: Commissioners <Commissioners@usccr.gov>
Cc: CommissionerAssistants <CommissionerAssistants@usccr.gov>; David Ganz <dganz@usccr.gov>
Subject: EAC Final Selections

Commissioners,

Pursuant to the AI voted on during the April 30th Business meeting, I received the following names for appointment the Election Assistance Commission (EAC):

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- Commissioner Michael Yaki;

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Mauro Morales
Staff Director
U.S. Commission on Civil Rights

AMERICAN OVERSIGHT

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OVERSIGHT

OVERSTOCK

Date : 8/11/2021 10:23:46 AM
From : "Irena Vidulovic" ividulovic@usccr.gov
To : "Debo P. Adegbile" dadegbile@usccr.gov, "Adegbile, Debo" Debo.Adegbile@wilmerhale.com
Cc : "Zervoudis, Flor" Flor.Zervoudis@wilmerhale.com
Subject : Re: UPDATED TO DO LIST

Adegbile,

Wanted to send you an updated TO DO LIST. I have finalized the Bail Reform project and have send the redline version to the SA's. I also sent your quote to Sen. Schatz's office.

1. Financial Disclosure Form (this week)
2. ~~EAC Submissions (we submitted Cleta as a caucus)~~
3. ~~Senator Schatz request fro Fines and Fees (please review)~~
4. Written Documents from Senator Warren's Office (this week)
5. August Business Meeting: Bail Reform vote + SAC's

From: Irena Vidulovic
Sent: Monday, August 9, 2021 1:01:44 PM
To: Debo P. Adegbile; Adegbile, Debo
Cc: Zervoudis, Flor
Subject: UPDATED TO DO LIST

Adegbile,

Looking forward to our meeting:

1. Financial Disclosure Form
2. EAC Submissions (we submitted Cleta as a caucus)
3. Senator Schatz request fro Fines and Fees (please review)
4. Written Documents from Senator Warren's Office (this week)
5. August Business Meeting: Bail Reform vote + SAC's

Irena Vidulovic
Special Assistant to Commissioner Debo P. Adegbile
U.S. Commission on Civil Rights
M: 202-591-9969
ividulovic@usccr.gov
http://usccr.gov/
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425

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Date : 8/11/2021 12:45:25 PM
From : "Michael Yaki" MYaki@usccr.gov
To : "Mauro Morales" mmorales@usccr.gov
Subject : Re: EAC Final Selections
Attachment : Twitter from Outlook support page.gif;FB icon.gif;

Mauro

Hold off. I may be withdrawing my name from consideration.

From: Mauro Morales
Sent: Tuesday, August 10, 2021 2:57:39 PM
To: Commissioners
Cc: CommissionerAssistants; David Ganz
Subject: EAC Final Selections

Commissioners,

Pursuant to the AI voted on during the April 30th Business meeting, I received the following names for appointment the Election Assistance Commission (EAC):

Commissioners Cantu, Adegbile, Kladney and Yaki have selected for appointment to the EAC:

- Cleta Michell, Chair, Conservative Partnership Institute Election Integrity Network.

Commissioners Adams, Gilchrist, Heriot and Kirsanow have selected for appointment to the EAC:

- Commissioner Michael Yaki;

Under the AI adopted by Commissioners, these two members selected shall be placed in nomination and ratified by a majority vote. Please inform me how you would like to proceed for a majority vote either by placing it on the agenda for the next USCCR business meeting or by a notational vote. Thank you.

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Date : 8/12/2021 8:45:35 AM
From : "Mauro Morales" mmorales@usccr.gov
To : "David Ganz" dganz@usccr.gov
Subject : Fwd: EAC Final Selections
Attachment : FB icon.gif;Twitter from Outlook support page.gif;

FYI. Not sure if he will decide to actually withdraw.

Sent from my iPhone

Begin forwarded message:

> **From:** Mauro Morales <mmorales@usccr.gov>
> **Date:** August 12, 2021 at 6:44:21 AM MDT
> **To:** Michael Yaki <MYaki@usccr.gov>
> **Subject: Re: EAC Final Selections**
>
> Of course. I recommend that you inform the chair as soon as you decide. My interpretation is that we will have to restart the process from the beginning because the A.I. requires a selection from two candidates. The A.I. is silent on a withdrawal at this final stage. Since you were selected and the other candidate was not, they should not become the final nominee by default. The A.I. is clear that each side gets to make a final selection from the two candidates submitted.
>
> Sent from my iPhone
>
> > On Aug 11, 2021, at 10:45 AM, Michael Yaki <MYaki@usccr.gov> wrote:
> >
> > Mauro
> >
> > Hold off. I may be withdrawing my name from consideration.
> >
> > ---
> >
> > **From:** Mauro Morales
> > **Sent:** Tuesday, August 10, 2021 2:57:39 PM
> > **To:** Commissioners
> > **Cc:** CommissionerAssistants; David Ganz
> > **Subject:** EAC Final Selections
> >
> > Commissioners,

AMERICAN OVERSIGHT

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OVERSTOCK

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Date : 8/12/2021 8:44:21 AM
From : "Mauro Morales" mmorales@usccr.gov
To : "Michael Yaki" MYaki@usccr.gov
Subject : Re: EAC Final Selections
Attachment : Twitter from Outlook support page.gif;FB icon.gif;

Of course. I recommend that you inform the chair as soon as you decide. My interpretation is that we will have to restart the process from the beginning because the A.I. requires a selection from two candidates. The A.I. is silent on a withdrawal at this final stage. Since you were selected and the other candidate was not, they should not become the final nominee by default. The A.I. is clear that each side gets to make a final selection from the two candidates submitted.

Sent from my iPhone

> On Aug 11, 2021, at 10:45 AM, Michael Yaki <MYaki@usccr.gov> wrote:
>
> Mauro
>
> Hold off. I may be withdrawing my name from consideration.
>
> ---
>
> **From:** Mauro Morales
> **Sent:** Tuesday, August 10, 2021 2:57:39 PM
> **To:** Commissioners
> **Cc:** CommissionerAssistants; David Ganz
> **Subject:** EAC Final Selections
>
> Commissioners,
>
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>
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>
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AMERICAN OVERSIGHT

- Commissioner Michael Yaki;

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OVERSIGHT

OVERSTOCK

Date : 8/12/2021 10:19:19 AM
From : "David Ganz" dganz@usccr.gov
To : "Mauro Morales" mmorales@usccr.gov
Subject : RE: EAC Final Selections

I agree that under the AI, the process should be restarted if Yaki withdrawals.

From: Mauro Morales <mmorales@usccr.gov>
Sent: Thursday, August 12, 2021 8:46 AM
To: David Ganz <dganz@usccr.gov>
Subject: Fwd: EAC Final Selections

FYI. Not sure if he will decide to actually withdraw.

Sent from my iPhone

Begin forwarded message:

> **From:** Mauro Morales <mmorales@usccr.gov>
> **Date:** August 12, 2021 at 6:44:21 AM MDT
> **To:** Michael Yaki <MYaki@usccr.gov>
> **Subject: Re: EAC Final Selections**
>
> Of course. I recommend that you inform the chair as soon as you decide. My interpretation is that we will have to restart the process from the beginning because the A.I. requires a selection from two candidates. The A.I. is silent on a withdrawal at this final stage. Since you were selected and the other candidate was not, they should not become the final nominee by default. The A.I. is clear that each side gets to make a final selection from the two candidates submitted.
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> Sent from my iPhone
>
> > On Aug 11, 2021, at 10:45 AM, Michael Yaki <MYaki@usccr.gov> wrote:
> >
> > Mauro
> >
> > Hold off. I may be withdrawing my name from consideration.
> >
> > ---
> >
> > **From:** Mauro Morales
> > **Sent:** Tuesday, August 10, 2021 2:57:39 PM
> > **To:** Commissioners
> > **Cc:** CommissionerAssistants; David Ganz

AMERICAN OVERSIGHT

Subject: EAC Final Selections

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- Commissioner Michael Yaki;

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Date : 8/12/2021 11:54:44 AM
From : "Irena Vidulovic" ividulovic@usccr.gov
To : "Debo P. Adegbile" dadegbile@usccr.gov, "Adegbile, Debo" Debo.Adegbile@wilmerhale.com
Cc : "Zervoudis, Flor" Flor.Zervoudis@wilmerhale.com
Subject : UPDATED TO DO LIST- AUGUST BUSINESS MEETING NEXT WEEK
Attachment : 08-20-USCCR-Business-Meeting-Sunshine-Act-Notice.pdf;

Adegbile,

I just wanted to give you an updated TO DO LIST since I will be out on vacation next week. As you know the most important item on this entire list is the Financial Disclosure Form. As you know you don't have any more extensions.

1. Financial Disclosure Form (this week)!
2. USCCR Hours (today) 8/1-14
   8/2 1hour Weekly Priority Call with SA
   8/3 1.5 hours Review USCCR Documents
   8/5 .5 Call with SA regarding FEMA briefing
   8/6 3 hours review USCCR documents
   8/9 1.5 hours Weekly Priority call with SA
   8/10 2 hours review financial disclosure form
   8/11 1.5 hours review Fines and Fees Quote
   8/12 1 hour call with SA regarding August Business Meeting

3. August Business Meeting Agenda (the Sunshine notice has posted and attached)
   A. Presentations from Advisory Committees to the Commission on Recent 2 Reports/Memo Releases
   B. Discussion and Vote on Iowa Advisory Committee Chair Appointment
   C. Discussion and Vote on Advisory Committee Appointments (Florida). Juana, David should circulate and then if we could have your legal intern do the vet memo that would be great.
   D. Discussion and Vote on the Release of The Civil Rights Implications of Cash Bail: Briefing Report Before the U.S. Commission on Civil Rights. I have circulated the final version to the SA's and will circulate to Commissioners, Mauro + OGC today.
4. E. Management and Operations
   **It looks like the only item that is missing is the EAC nominations. So someone would need to amend the agenda to add that item and have a vote on Commissioner Yaki and Cleta Mitchell for EAC.
5. Written Documents from Senator Warren's Office

Please let me know if you have any questions,

Irena

AMERICAN OVERSIGHT

Irena Vidulovic
Special Assistant to Commissioner Debo P. Adegbile
U.S. Commission on Civil Rights
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ividulovic@usccr.gov
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COMMISSION ON CIVIL RIGHTS

Sunshine Act Meetings

AGENCY: United States Commission on Civil Rights.

ACTION: Notice of Commission public business meeting.

DATES: Friday, August 20, 2021, 12:00 pm EST.

ADDRESSES: Meeting to take place by telephone and is open to the public by telephone: 1-800-635-7637, Conference ID #: 8000136.

FOR FURTHER INFORMATION CONTACT: Angelia Rorison: 202-376-7700; publicaffairs@usccr.gov.

SUPPLEMENTARY INFORMATION:

In accordance with the Government in Sunshine Act (5 U.S.C. 552b), the Commission on Civil Rights is holding a meeting to discuss the Commission's business for the month of August. This meeting is open to the public. Computer assisted real-time transcription (CART) will be provided. The web link to access CART (in English) on Friday, August 20, 2021, is https://www.streamtext.net/player?event=USCCR. Please note that CART is text-only translation that occurs in real time during the meeting and is not an exact transcript.

Meeting Agenda

I. Approval of Agenda

II. Business Meeting

A. Presentations from Advisory Committees to the Commission on Recent

AMERICAN OVERSIGHT

Reports/Memo Releases

B. Discussion and Vote on Iowa Advisory Committee Chair Appointment

C. Discussion and Vote on Advisory Committee Appointments

D. Discussion and Vote on the Release of The Civil Rights Implications of Cash Bail: Briefing Report Before the U.S. Commission on Civil Rights

E. Management and Operations

- Staff Director's Report

III. Adjourn Meeting

Dated: August 11, 2021

AMERICAN OVERSIGHT

Date : 8/12/2021 12:18:06 PM
From : "Juana Silverio" jsilverio@usccr.gov
To : "Irena Vidulovic" ividulovic@usccr.gov, "Alec Deull" adeull@usccr.gov
Subject : RE: Next Week/August Business Meeting

From: Irena Vidulovic <ividulovic@usccr.gov>
Sent: Thursday, August 12, 2021 11:26 AM
To: Juana Silverio <jsilverio@usccr.gov>; Alec Deull <adeull@usccr.gov>
Subject: Next Week/August Business Meeting

Good Morning Juana and Alec,

Since I will be on travel next week I just wanted to make sure that I had all our ducks in order and make sure that I am not missing anything in preparation for Debo and Dave.

August Business Meeting Agenda (the Sunshine notice has posted)

A. Presentations from Advisory Committees to the Commission on Recent 2 Reports/Memo Releases

B. Discussion and Vote on Iowa Advisory Committee Chair Appointment

C. Discussion and Vote on Advisory Committee Appointments (Florida). Juana, David should circulate and then if we could have your legal intern do the vet memo that would be great. ***- sure***

D. Discussion and Vote on the Release of The Civil Rights Implications of Cash Bail: Briefing Report Before the U.S. Commission on Civil Rights. I have circulated the final version to the SA's and will circulate to Commissioners, Mauro + OGC today.

E. Management and Operations

**It looks like the only item that is missing is the EAC nominations. So someone would need to amend the agenda to add that item and have a vote on

AMERICAN OVERSIGHT

Commissioner Yaki and Cleta Mitchell for EAC. ***– this is not going on the agenda. It will be a notational vote.***

Please let me know if I am missing anything or that there is something we should discuss. ***– thanks! have a great vaca!***

Irena

Irena Vidulovic
Special Assistant to Commissioner Debo P. Adegbile
U.S. Commission on Civil Rights
M: 202-591-9969
ividulovic@usccr.gov
http://usccr.gov/
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425

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Date : 8/16/2021 2:20:54 PM
From : "Thomas Simuel" tsimuel@usccr.gov
To : "Mauro Morales" mmorales@usccr.gov
Cc : "stephen gilchrist" thegilchristassociates@gmail.com
Subject : FW: EAC Final Selections

Hey Mauro,

You might've missed this email.

Thomas

-------- Original message --------
From: Thomas Simuel <tsimuel@usccr.gov>
Date: 8/10/21 4:52 PM (GMT-05:00)
To: Mauro Morales <mmorales@usccr.gov>
Cc: Stephen Gilchrist <sgilchrist@usccr.gov>, stephen gilchrist <thegilchristassociates@gmail.com>
Subject: RE: EAC Final Selections

Hey Mauro,

Commissioner Gilchrist prefer to have the EAC vote at the business meeting.

Thanks,

Thomas

-------- Original message --------
From: Mauro Morales <mmorales@usccr.gov>
Date: 8/10/21 2:57 PM (GMT-05:00)
To: Commissioners <Commissioners@usccr.gov>
Cc: CommissionerAssistants <CommissionerAssistants@usccr.gov>, David Ganz <dganz@usccr.gov>
Subject: EAC Final Selections

Commissioners,

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AMERICAN OVERSIGHT

- Cleta Michell, Chair, Conservative Partnership Institute Election Integrity Network.

Commissioners Adams, Gilchrist, Heriot and Kirsanow have selected for appointment to the EAC:

- Commissioner Michael Yaki;

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AMERICAN OVERSIGHT

Date : 8/16/2021 3:50:47 PM
From : "Mauro Morales" mmorales@usccr.gov
To : "Thomas Simuel" tsimuel@usccr.gov
Cc : "stephen gilchrist" thegilchristassociates@gmail.com
Subject : RE: EAC Final Selections

Only three Commissioners responded to my inquiry in addition to Commissioner Gilchrist. All the responses were different. As a consequence, there was no consensus on my request for instructions. Changes to the agenda before posted must coordinated with the Chair. The Chair is in charge of the agenda. But as I have previously stated, the agenda can always be amended by majority vote at the beginning of the meeting. I recommend you reach out to her on what you want or believe should occur for the next business meeting

---

From: Thomas Simuel <tsimuel@usccr.gov>
Sent: Monday, August 16, 2021 2:21 PM
To: Mauro Morales <mmorales@usccr.gov>
Cc: stephen gilchrist <thegilchristassociates@gmail.com>
Subject: FW: EAC Final Selections

Hey Mauro,

You might've missed this email.

Thomas

-------- Original message --------
From: Thomas Simuel <tsimuel@usccr.gov>
Date: 8/10/21 4:52 PM (GMT-05:00)
To: Mauro Morales <mmorales@usccr.gov>
Cc: Stephen Gilchrist <sgilchrist@usccr.gov>, stephen gilchrist <thegilchristassociates@gmail.com>
Subject: RE: EAC Final Selections

Hey Mauro,

Commissioner Gilchrist prefer to have the EAC vote at the business meeting.

Thanks,

Thomas

-------- Original message --------
From: Mauro Morales <mmorales@usccr.gov>
Date: 8/10/21 2:57 PM (GMT-05:00)
To: Commissioners <Commissioners@usccr.gov>

AMERICAN OVERSIGHT

Cc: CommissionerAssistants <CommissionerAssistants@usccr.gov>, David Ganz <dganz@usccr.gov>
Subject: EAC Final Selections

Commissioners,

Pursuant to the AI voted on during the April 30th Business meeting, I received the following names for appointment the Election Assistance Commission (EAC):

Commissioners Cantu, Adegbile, Kladney and Yaki have selected for appointment to the EAC:

- Cleta Michell, Chair, Conservative Partnership Institute Election Integrity Network.

Commissioners Adams, Gilchrist, Heriot and Kirsanow have selected for appointment to the EAC:

- Commissioner Michael Yaki;

Under the AI adopted by Commissioners, these two members selected shall be placed in nomination and ratified by a majority vote. Please inform me how you would like to proceed for a majority vote either by placing it on the agenda for the next USCCR business meeting or by a notational vote. Thank you.

Mauro Morales
Staff Director
U.S. Commission on Civil Rights
P: 202-376-7796| F: 202-376-7672
Mmorales@usccr.gov
http://usccr.gov/
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425

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Date : 8/16/2021 3:52:35 PM
From : "Thomas Simuel" tsimuel@usccr.gov
To : "Mauro Morales" mmorales@usccr.gov
Cc : "stephen gilchrist" thegilchristassociates@gmail.com
Subject : Re: EAC Final Selections

Thanks!

Thomas

From: Mauro Morales
Sent: Monday, August 16, 2021 3:50:47 PM
To: Thomas Simuel
Cc: stephen gilchrist
Subject: RE: EAC Final Selections

Only three Commissioners responded to my inquiry in addition to Commissioner Gilchrist. All the responses were different. As a consequence, there was no consensus on my request for instructions. Changes to the agenda before posted must coordinated with the Chair. The Chair is in charge of the agenda. But as I have previously stated, the agenda can always be amended by majority vote at the beginning of the meeting. I recommend you reach out to her on what you want or believe should occur for the next business meeting

---

From: Thomas Simuel <tsimuel@usccr.gov>
Sent: Monday, August 16, 2021 2:21 PM
To: Mauro Morales <mmorales@usccr.gov>
Cc: stephen gilchrist <thegilchristassociates@gmail.com>
Subject: FW: EAC Final Selections

Hey Mauro,

You might've missed this email.

Thomas

-------- Original message --------
From: Thomas Simuel <tsimuel@usccr.gov>
Date: 8/10/21 4:52 PM (GMT-05:00)
To: Mauro Morales <mmorales@usccr.gov>
Cc: Stephen Gilchrist <sgilchrist@usccr.gov>, stephen gilchrist <thegilchristassociates@gmail.com>
Subject: RE: EAC Final Selections

Hey Mauro,

Commissioner Gilchrist prefer to have the EAC vote at the business meeting.

AMERICAN OVERSIGHT

Thanks,

Thomas

-------- Original message --------
From: Mauro Morales <mmorales@usccr.gov>
Date: 8/10/21 2:57 PM (GMT-05:00)
To: Commissioners <Commissioners@usccr.gov>
Cc: CommissionerAssistants <CommissionerAssistants@usccr.gov>, David Ganz <dganz@usccr.gov>
Subject: EAC Final Selections

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Date : 8/17/2021 8:34:15 AM
From : "Juana Silverio" jsilverio@usccr.gov
To : "Mauro Morales" mmorales@usccr.gov
Subject : Fw: EAC Final Selections
Attachment : image001.gif;image002.gif;

Good morning Mauro.

The chair mentioned last week that she wanted a notational vote which is why we did not add it to the agenda.

I understand you were on leave last week. Is it possible for you to send out the notice today so that we can circulate the notational vote? I'll also confirm with the Chair as we are a few days away from biz mtg.

Thanks.
Juana
--
Juana Silverio (she/her/ella)
Special Assistant to Commissioner Norma V. Cantú
U.S. Commission on Civil Rights
E: jsilverio@usccr.gov
http://usccr.gov/
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425
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From: Norma Cantu
Sent: Tuesday, August 10, 2021 5:52:30 PM
To: Mauro Morales
Cc: David Ganz; Juana Silverio
Subject: RE: EAC Final Selections

Dear Mauro,
Thank you for the news. Each caucus has performed its duty under the AI.
I see no need to add this to the business meeting.
Notational vote will suffice.
Norma

From: Mauro Morales <mmorales@usccr.gov>
Sent: Tuesday, August 10, 2021 1:58 PM
To: Commissioners <Commissioners@usccr.gov>
Cc: CommissionerAssistants <CommissionerAssistants@usccr.gov>; David Ganz <dganz@usccr.gov>
Subject: EAC Final Selections

Commissioners,

AMERICAN OVERSIGHT

Pursuant to the AI voted on during the April 30th Business meeting, I received the following names for appointment the Election Assistance Commission (EAC):

Commissioners Cantu, Adegbile, Kladney and Yaki have selected for appointment to the EAC:

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Date : 8/17/2021 1:46:50 PM
From : "J. Christian Adams" jadams@usccr.gov
To : "stephen gilchrist" thegilchristassociates@gmail.com, "Christian Adams" adams@electionlawcenter.com
Cc : "Gail Heriot" gheriot@usccr.gov, "Gail Heriot" gheriot@me.com, "John Mashburn" jmashburn@usccr.gov, "Carissa Mulder" CMulder@usccr.gov, "Peter Kirsanow" pkirsanow@Beneschlaw.com, "Alexander Heideman" aheideman@usccr.gov, "Thomas Simuel" tsimuel@usccr.gov, "Peter Kirsanow" pkirsanow@usccr.gov, "Stephen Gilchrist" sgilchrist@usccr.gov
Subject : Re: [EXTERNAL] Re: Nominations for Appointment to the EAC

Why isn't this on the agenda for Friday??

From: stephen gilchrist <thegilchristassociates@gmail.com>
Sent: Tuesday, August 10, 2021 3:01:40 PM
To: Christian Adams
Cc: Gail Heriot; Gail Heriot; John Mashburn; Carissa Mulder; Peter Kirsanow; Alexander Heideman; Thomas Simuel; Peter Kirsanow; Stephen Gilchrist; J. Christian Adams
Subject: Re: [EXTERNAL] Re: Nominations for Appointment to the EAC

CAUTION: This email is from outside USCCR.

We should make them vote at the meeting and not notational vote for the EAC. I'm willing to let Mauro know this.

Please advise.

On Sun, Aug 8, 2021, 10:41 PM Christian Adams <adams@electionlawcenter.com> wrote:

> earlier the better. I have been out of the office for 2 weeks without email.
>
> -------- Original message --------
> From: Gail Heriot <gheriot@usccr.gov>
> Date: 8/8/21 10:37 PM (GMT-05:00)
> To: Christian Adams <adams@electionlawcenter.com>
> Cc: Gail Heriot <gheriot@me.com>, John Mashburn <jmashburn@usccr.gov>, stephen gilchrist <thegilchristassociates@gmail.com>, Carissa Mulder <CMulder@usccr.gov>, Peter Kirsanow <pkirsanow@beneschlaw.com>, Alexander Heideman <aheideman@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>, Peter Kirsanow <pkirsanow@usccr.gov>, Stephen Gilchrist <sgilchrist@usccr.gov>, "J. Christian Adams" <jadams@usccr.gov>
> Subject: Re: [EXTERNAL] Re: Nominations for Appointment to the EAC
>
> I am available tomorrow and more or less on Eastern time (still in Richmond).
>
> Gail Heriot
> Professor of Law
> University of San Diego

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On Aug 8, 2021, at 10:34 PM, Christian Adams <adams@electionlawcenter.com> wrote:

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sure. Riggs is a nonstarter with me. she is a brilliant pick on thier part because they know my history with her. they know she us wholly unacceptable.

-------- Original message --------
From: Gail Heriot <gheriot@me.com>
Date: 8/8/21 5:39 PM (GMT-05:00)
To: Christian Adams <adams@electionlawcenter.com>
>, Carissa Mulder <CMulder@usccr.gov>, Peter Kirsanow <pkirsanow@beneschlaw.com>, Alexander Heideman <aheideman@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>, Peter Kirsanow <pkirsanow@usccr.gov>, Gail Heriot <gheriot@usccr.gov>, Stephen Gilchrist <sgilchrist@usccr.gov>, "J. Christian Adams" <jadams@usccr.gov>
Subject: Re: [EXTERNAL] Re: Nominations for Appointment to the EAC

Should we have a caucus zoom tomorrow about this?

Gail Heriot
Professor of Law
University of San Diego

> On Aug 8, 2021, at 4:20 PM, Christian Adams <adams@electionlawcenter.com> wrote:
>
> sorry, just returning.
>
> they picked Allison Riggs for a reason. I can explain offline but there is no way I will be part of giving her a single thing.i would rather work with Yaki
>
> -------- Original message --------
> From: Gail Heriot <gheriot@me.com>
> Date: 8/6/21 3:13 PM (GMT-05:00)
> To: John Mashburn <jmashburn@usccr.gov>
> Cc: stephen gilchrist <thegilchristassociates@gmail.com>, >, Christian Adams <adams@electionlawcenter.com>,

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Alexander Heideman <aheideman@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>, Peter Kirsanow <pkirsanow@usccr.gov>, Gail Heriot <gheriot@usccr.gov>, Stephen Gilchrist <sgilchrist@usccr.gov>, "J. Christian Adams" <jadams@usccr.gov>
Subject: Re: [EXTERNAL] Re: Nominations for Appointment to the EAC

I am willing to go with Christian's recommendation on this UNLESS he thinks it's a close case. If he thinks it's a close case AND IF we have reason to believe that the Progressives vetoed Cleta and not Christian, THEN I think we should consider a bit of reciprocity and let Yaki have the job. My impression is that he wants it. If it's really close to six of one half dozen of the other, pleasing him has its benefits.

Of course, so far the evidence is running against the possibility that the Progressives vetoed Cleta and not Christian. If they had vetoed Cleta, my guess is that they would have wanted us to know that. Nevertheless, if this is a close case, it would be a good idea to try to find out what the Progressives did.

Gail Heriot
Professor of Law
University of San Diego

> On Aug 6, 2021, at 1:54 PM, John Mashburn <jmashburn@usccr.gov> wrote:
>
> Yes – better her than Yaki.
>
> ---
>
> **From:** stephen gilchrist <thegilchristassociates@gmail.com>
> **Date:** Friday, August 6, 2021 at 1:51 PM
> **To:** John Mashburn <jmashburn@usccr.gov>
> **Cc:** Gail Heriot <gheriot@me.com>, Carissa Mulder <CMulder@usccr.gov>, Peter Kirsanow <pkirsanow@beneschlaw.com>, Christian Adams <adams@electionlawcenter.com>, Alexander Heideman <aheideman@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>, Peter Kirsanow <pkirsanow@usccr.gov>, Gail Heriot <gheriot@usccr.gov>, Stephen Gilchrist

AMERICAN OVERSIGHT

<sgilchrist@usccr.gov>, "J. Christian Adams" <jadams@usccr.gov>
Subject: Re: [EXTERNAL] Re: Nominations for Appointment to the EAC

CAUTION: This email is from outside USCCR.

On Fri, Aug 6, 2021, 1:31 PM John Mashburn <jmashburn@usccr.gov> wrote:

Allison Riggs

https://southerncoalition.org/staff/allison-riggs/

From: Gail Heriot <gheriot@me.com>
Date: Friday, August 6, 2021 at 1:23 PM
To: Carissa Mulder <CMulder@usccr.gov>
Cc: "pkirsanow@beneschlaw.com" <pkirsanow@beneschlaw.com>, stephen gilchrist <thegilchristassociates@gmail.com>, Christian Adams <adams@electionlawcenter.com>, Alexander Heideman >, Thomas Simuel <tsimuel@usccr.gov>, Peter Kirsanow <pkirsanow@usccr.gov>, Gail Heriot <gheriot@usccr.gov>, Stephen Gilchrist <sgilchrist@usccr.gov>, "J. Christian Adams" <jadams@usccr.gov>
Subject: [EXTERNAL] Re: Nominations for Appointment to the EAC

CAUTION: This email is from outside USCCR.

they vetoed. Yaki at least has an incentive to tell us if it's Cleta. If it is Cleta, such that Christian will be the appointee, it might be seen as accommodating to let Yaki be re-appointed. If he declines to say, that will be evidence

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that they vetoed Christian.

Gail Heriot
Professor of Law
University of San Diego

> On Aug 6, 2021, at 1:17 PM, Carissa Mulder <CMulder@usccr.gov> wrote:
>
> Hi everyone,
>
> Mauro emailed and asked if the conservative commissioners have selected their EAC nominee. He said the progressives have notified him of their selection, and once we notify him of ours, he will circulate either a notational vote or arrange for it to be voted on at the August business meeting.
>
> Christian, you are the voting expert - do you think Yaki or Allison Riggs is a less damaging choice?
>
> Thanks!
>
> ---
>
> **From:** Mauro Morales
> **Sent:** Tuesday, August 3, 2021 5:36 PM
> **To:** Commissioners
> **Cc:** CommissionerAssistants; David Ganz
> **Subject:** Nominations for Appointment to the EAC
>
> Commissioners,
>
> Pursuant to the AI voted on during the April 30th Business meeting, you have nominated the following individuals to the Election Assistance Commission (EAC):

AMERICAN OVERSIGHT

Commissioners Cantu, Adegbile, Kladney and Yaki have nominated the following individuals to the EAC:

- Commissioner Michael Yaki;
- Ms. Allison Riggs , Co-Executive Director, Southern Coalition for Social Justice.

Commissioners Adams, Gilchrist, Heriot and Kirsanow have nominated the following individuals to the EAC:

- Commissioner Christian Adams;
- Cleta Michell, Chair, Conservative Partnership Institute Election Integrity Network.

Under the AI adopted by Commissioners, the members appointed by the Democratic authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Democratic authorities. The final members selected shall be placed in nomination and ratified by a majority vote. Please inform me how you would like to

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proceed for a majority vote either by placing it on the agenda for the next USCCR business meeting or by a notational vote.

Mauro Morales
Staff Director
U.S. Commission on Civil Rights
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Mmorales@usccr.gov
http://usccr.gov/
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425

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Date : 8/18/2021 1:57:36 PM
From : "John Mashburn" jmashburn@usccr.gov
To : "Mauro Morales" mmorales@usccr.gov, "Juana Silverio" jsilverio@usccr.gov
Cc : "Thomas Simuel" tsimuel@usccr.gov, "Alexander Heideman" aheideman@usccr.gov, "Carissa Mulder" CMulder@usccr.gov
Subject : Re: EAC Final Selections
Attachment : image001.gif;image002.gif;

This vote is not on the agenda for Friday, and a notational vote was not sent, so where does it stand? Gilchrist and Adams would like a vote at the business meeting and Adams is willing to make a motion to vote on it.

From: Mauro Morales <mmorales@usccr.gov>
Date: Tuesday, August 10, 2021 at 2:57 PM
To: Commissioners <Commissioners@usccr.gov>
Cc: "CommissionerAssistants@usccr.gov" <CommissionerAssistants@usccr.gov>, David Ganz <dganz@usccr.gov>
Subject: EAC Final Selections

Commissioners,

Pursuant to the AI voted on during the April 30th Business meeting, I received the following names for appointment the Election Assistance Commission (EAC):

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Under the AI adopted by Commissioners, these two members selected shall be placed in nomination and ratified by a majority vote. Please inform me how you would like to proceed for a majority vote either by placing it on the agenda for the next USCCR business meeting or by a notational vote. Thank you.

Mauro Morales
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Date : 8/18/2021 4:41:49 PM
From : "Mauro Morales" mmorales@usccr.gov
To : "John Mashburn" jmashburn@usccr.gov
Cc : "Juana Silverio" jsilverio@usccr.gov, "Thomas Simuel" tsimuel@usccr.gov, "Alexander Heideman" aheideman@usccr.gov, "Carissa Mulder" CMulder@usccr.gov
Subject : Re: EAC Final Selections
Attachment : image001.gif;image002.gif;

That is a good question. It is a decision for Commissioners in consultation with the Chair to decide how they wish to proceed. Adams is welcome to make a motion to amend the agenda to request a discussion and a vote. If the majority supports his motion it can be added to agenda. In the alternative, if Commissioners desire to proceed by notational vote and no one objects then a notational vote can occur. As I have requested previously, please advise me how you wish to proceed. I recommend Commissioners express their desire to the Chair since the Chair controls the agenda.

Sent from my iPhone

> On Aug 18, 2021, at 12:57 PM, John Mashburn <jmashburn@usccr.gov> wrote:
>
> This vote is not on the agenda for Friday, and a notational vote was not sent, so where does it stand? Gilchrist and Adams would like a vote at the business meeting and Adams is willing to make a motion to vote on it.
>
> ---
>
> **From:** Mauro Morales <mmorales@usccr.gov>
> **Date:** Tuesday, August 10, 2021 at 2:57 PM
> **To:** Commissioners <Commissioners@usccr.gov>
> **Cc:**
> "CommissionerAssistants@usccr.gov" <CommissionerAssistants@usccr.gov>, David Ganz <dganz@usccr.gov>
> **Subject:** EAC Final Selections
>
> Commissioners,
>
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>
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Date : 8/18/2021 5:13:04 PM
From : "Juana Silverio" jsilverio@usccr.gov
To : "Mauro Morales" mmorales@usccr.gov, "John Mashburn" jmashburn@usccr.gov
Cc : "Thomas Simuel" tsimuel@usccr.gov, "Alexander Heideman" aheideman@usccr.gov, "Carissa Mulder" CMulder@usccr.gov, "Norma Cantu" ncantu@usccr.gov
Subject : Re: EAC Final Selections

Thanks John. You are correct, the item is not on the agenda for Friday.

There were a few concerns raised on process before confirming the candidates to the EAC on behalf of the Commission. Please stand by snd advise your commissioners that further communication is forthcoming by the Chairwoman.

Please let us know if you have any further questions. We greatly appreciate your patience.

Juana

--
Juana Silverio (she/her/ella)
Special Assistant to Commissioner Norma V. Cantú
U.S. Commission on Civil Rights
E: jsilverio@usccr.gov
http://usccr.gov/
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425
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From: Mauro Morales
Sent: Wednesday, August 18, 2021 4:41:49 PM
To: John Mashburn
Cc: Juana Silverio; Thomas Simuel; Alexander Heideman; Carissa Mulder
Subject: Re: EAC Final Selections

That is a good question. It is a decision for Commissioners in consultation with the Chair to decide how they wish to proceed. Adams is welcome to make a motion to amend the agenda to request a discussion and a vote. If the majority supports his motion it can be added to agenda. In the alternative, if Commissioners desire to proceed by notational vote and no one objects then a notational vote can occur. As I have requested previously, please advise me how you wish to proceed. I recommend Commissioners express their desire to the Chair since the Chair controls the agenda.

Sent from my iPhone

AMERICAN OVERSIGHT

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This vote is not on the agenda for Friday, and a notational vote was not sent, so where does it stand? Gilchrist and Adams would like a vote at the business meeting and Adams is willing to make a motion to vote on it.

From: Mauro Morales <mmorales@usccr.gov>
Date: Tuesday, August 10, 2021 at 2:57 PM
To: Commissioners <Commissioners@usccr.gov>
Cc:
"CommissionerAssistants@usccr.gov" <CommissionerAssistants@usccr.gov>, David Ganz <dganz@usccr.gov>
Subject: EAC Final Selections

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- Commissioner Michael Yaki;

Under the AI adopted by Commissioners, these two members selected shall be placed in nomination and ratified by a majority vote. Please inform me how you would like to proceed for a majority vote either by placing it on the agenda for the next USCCR business meeting or by a notational vote. Thank you.

Mauro Morales
Staff Director
U.S. Commission on Civil Rights
P: 202-376-7796| F: 202-376-7672

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Mmorales@usccr.gov
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Date : 8/18/2021 5:24:36 PM
From : "Gail Heriot" gheriot@usccr.gov
To : "John Mashburn" jmashburn@usccr.gov
Cc : "Christian Adams" a@electionlawcenter.com, "Stephen Gilchrist" sgilchrist@usccr.gov, "Peter Kirsanow" pkirsanow@usccr.gov, "Thomas Simuel" tsimuel@usccr.gov, "Alexander Heideman" aheideman@usccr.gov, "Carissa Mulder" CMulder@usccr.gov
Subject : Re: EAC Final Selections

Hmm … not a good sign.

Gail Heriot
Professor of Law
University of San Diego

On Aug 18, 2021, at 2:17 PM, John Mashburn <jmashburn@usccr.gov> wrote:

FYI to all

From: Juana Silverio
Sent: Wednesday, August 18, 2021 5:13:04 PM
To: Mauro Morales; John Mashburn
Cc: Thomas Simuel; Alexander Heideman; Carissa Mulder; Norma Cantu
Subject: Re: EAC Final Selections

Thanks John. You are correct, the item is not on the agenda for Friday.

There were a few concerns raised on process before confirming the candidates to the EAC on behalf of the Commission. Please stand by snd advise your commissioners that further communication is forthcoming by the Chairwoman.

Please let us know if you have any further questions. We greatly appreciate your patience.

Juana

--
Juana Silverio (she/her/ella)
Special Assistant to Commissioner Norma V. Cantú
U.S. Commission on Civil Rights
E: jsilverio@usccr.gov
http://usccr.gov/
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425
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AMERICAN OVERSIGHT

From: Mauro Morales
Sent: Wednesday, August 18, 2021 4:41:49 PM
To: John Mashburn
Cc: Juana Silverio; Thomas Simuel; Alexander Heideman; Carissa Mulder
Subject: Re: EAC Final Selections

That is a good question. It is a decision for Commissioners in consultation with the Chair to decide how they wish to proceed. Adams is welcome to make a motion to amend the agenda to request a discussion and a vote. If the majority supports his motion it can be added to agenda. In the alternative, if Commissioners desire to proceed by notational vote and no one objects then a notational vote can occur. As I have requested previously, please advise me how you wish to proceed. I recommend Commissioners express their desire to the Chair since the Chair controls the agenda.

Sent from my iPhone

> On Aug 18, 2021, at 12:57 PM, John Mashburn <jmashburn@usccr.gov> wrote:
>
> This vote is not on the agenda for Friday, and a notational vote was not sent, so where does it stand? Gilchrist and Adams would like a vote at the business meeting and Adams is willing to make a motion to vote on it.
>
> ---
>
> **From:** Mauro Morales <mmorales@usccr.gov>
> **Date:** Tuesday, August 10, 2021 at 2:57 PM
> **To:** Commissioners <Commissioners@usccr.gov>
> **Cc:** "CommissionerAssistants@usccr.gov" <CommissionerAssistants@usccr.gov>, David Ganz <dganz@usccr.gov>
> **Subject:** EAC Final Selections
>
> Commissioners,
>
> Pursuant to the AI voted on during the April 30th Business meeting, I received the following names for appointment the Election Assistance Commission (EAC):
>
> Commissioners Cantu, Adegbile, Kladney and Yaki have selected for appointment to the EAC:

AMERICAN OVERSIGHT

- Cleta Michell, Chair, Conservative Partnership Institute Election Integrity Network.

Commissioners Adams, Gilchrist, Heriot and Kirsanow have selected for appointment to the EAC:

- Commissioner Michael Yaki;

Under the AI adopted by Commissioners, these two members selected shall be placed in nomination and ratified by a majority vote. Please inform me how you would like to proceed for a majority vote either by placing it on the agenda for the next USCCR business meeting or by a notational vote. Thank you.

Mauro Morales
Staff Director
U.S. Commission on Civil Rights
P: 202-376-7796| F: 202-376-7672
Mmorales@usccr.gov
http://usccr.gov/
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425

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<image001.gif>
<image002.gif>

#USCCR

Sent from my iPhone

AMERICAN OVERSIGHT

Date : 10/28/2021 10:58:20 AM
From : "David Ganz" dganz@usccr.gov
To : "Norma Cantu" ncantu@usccr.gov, "Mauro Morales" mmorales@usccr.gov, "Juana Silverio" jsilverio@usccr.gov
Subject : RE: Cleta Mitchell Serving on EAC Advisory Bd

Hello Chair Cantu,

We will research the A.I. and get back to you later today. Thanks.

From: Norma Cantu <ncantu@usccr.gov>
Sent: Thursday, October 28, 2021 10:51 AM
To: Mauro Morales <mmorales@usccr.gov>; David Ganz <dganz@usccr.gov>; Juana Silverio <jsilverio@usccr.gov>
Subject: RE: Cleta Mitchell Serving on EAC Advisory Bd

Dear Mauro, David,
The intent of the agreement on appointment to the EAC was that we would follow a bipartisan process. A few weeks back, I learned Michael Yaki had too many work commitments to take on the appointment to EAC. I tried, unsuccessfully, to convince him to start his new term. We are back to square one.
David, do you read the AI the same as I do? I read it that the bipartisan nature means both names have to be provided concurrently. What is your insight?
Norma

From: Juana Silverio <jsilverio@usccr.gov>
Sent: Thursday, October 28, 2021 8:51 AM
To: John Mashburn <jmashburn@usccr.gov>; Mauro Morales <mmorales@usccr.gov>; David Ganz <dganz@usccr.gov>
Cc: Norma Cantu <ncantu@usccr.gov>
Subject: Re: Cleta Mitchell Serving on EAC Advisory Bd

The Chair will address this shortly.

Juana

--

Juana Silverio *(she/her/ella)*

Special Assistant to Commissioner Norma V. Cantú

U.S. Commission on Civil Rights

E: jsilverio@usccr.gov

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From: John Mashburn
Sent: Thursday, October 28, 2021 8:40:44 AM
To: Mauro Morales; Juana Silverio; David Ganz
Subject: Fw: Cleta Mitchell Serving on EAC Advisory Bd

Is there an answer to this question?

From: John Mashburn
Sent: Monday, October 18, 2021 12:33:57 PM
To: Mauro Morales; Juana Silverio
Cc: Carissa Mulder
Subject: Cleta Mitchell Serving on EAC Advisory Bd

Mauro/Juana – Cleta Mitchell has not been contacted by USCCR or EAC staff about serving on the EAC Bd of Advisors. As you recall, her nomination to serve was approved at the August USCCR Bus Mtg. My boss and one other Cmnr asked me to find out what the process and status are regarding her appointment to the EAC Bd of Advisors.

Can either of you provide that info, or do I need to contact someone else at USCCR, or EAC?

AMERICAN OVERSIGHT

Date : 10/28/2021 10:58:20 AM
From : "David Ganz" dganz@usccr.gov
To : "Pilar McLaughlin" pmclaughlin@usccr.gov
Cc : "Sheryl Cozart" sccozart@usccr.gov, "Andrew Gall" agall@usccr.gov
Subject : FW: Cleta Mitchell Serving on EAC Advisory Bd

Please research this issue and get back to me later this afternoon. I do not think the EAC statute is as prescriptive as Chair Cantu is reading it.

From: Norma Cantu <ncantu@usccr.gov>
Sent: Thursday, October 28, 2021 10:51 AM
To: Mauro Morales <mmorales@usccr.gov>; David Ganz <dganz@usccr.gov>; Juana Silverio <jsilverio@usccr.gov>
Subject: RE: Cleta Mitchell Serving on EAC Advisory Bd

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Cc: Norma Cantu <ncantu@usccr.gov>
Subject: Re: Cleta Mitchell Serving on EAC Advisory Bd

The Chair will address this shortly.

Juana

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Juana Silverio *(she/her/ella)*

Special Assistant to Commissioner Norma V. Cantú

U.S. Commission on Civil Rights

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Can either of you provide that info, or do I need to contact someone else at USCCR, or EAC?

AMERICAN OVERSIGHT

Date : 10/28/2021 10:50:43 AM
From : "Norma Cantu" ncantu@usccr.gov
To : "Mauro Morales" mmorales@usccr.gov, "David Ganz" dganz@usccr.gov, "Juana Silverio" jsilverio@usccr.gov
Subject : RE: Cleta Mitchell Serving on EAC Advisory Bd

Dear Mauro, David,
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Norma

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Sent: Thursday, October 28, 2021 8:51 AM
To: John Mashburn <jmashburn@usccr.gov>; Mauro Morales <mmorales@usccr.gov>; David Ganz <dganz@usccr.gov>
Cc: Norma Cantu <ncantu@usccr.gov>
Subject: Re: Cleta Mitchell Serving on EAC Advisory Bd

The Chair will address this shortly.

Juana

--

Juana Silverio *(she/her/ella)*

Special Assistant to Commissioner Norma V. Cantú

U.S. Commission on Civil Rights

E: jsilverio@usccr.gov

http://usccr.gov/

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AMERICAN OVERSIGHT

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Can either of you provide that info, or do I need to contact someone else at USCCR, or EAC?

AMERICAN OVERSIGHT

Date : 8/3/2021 5:26:54 PM
From : "David Ganz" dganz@usccr.gov
To : "Mauro Morales" mmorales@usccr.gov
Subject : RE: Draft EAC Email.

No change. I think it is better to let them determine how to make their selections/strikes before the final vote.

From: Mauro Morales <mmorales@usccr.gov>
Sent: Tuesday, August 3, 2021 5:10 PM
To: David Ganz <dganz@usccr.gov>
Subject: Draft EAC Email.

FYI. Let me know what should be changed?

> *"Commissioners,*
>
> *Pursuant to the AI voted on during the April 30th Business meeting, you have selected the following as nominations to the Election Assistance Commission (EAC):*
>
> *Commissioners Cantu, Adegbile, Kladney and Yaki have nominated the following individuals to the EAC:*
> - *Commissioner Michael Yaki;*
> - *Ms. Allison Riggs , Co-Executive Director, Southern Coalition for Social Justice.*
>
> *Commissioners Adams, Gilchrist, Heriot and Kirsanow have nominated the following individuals to the EAC:*
> - *Commissioner Christian Adams;*
> - *Cleta Michell, Chair, Conservative Partnership Institute Election Integrity Network.*
>
> *Under the AI adopted by Commissioners, the members appointed by the Democratic authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Democratic authorities. The final members selected shall be placed in nomination and ratified by a majority vote. Please inform me how you would like to proceed for a majority vote either by placing it on the agenda for the next USCCR business meeting or by a notational vote."*

AMERICAN OVERSIGHT

AMERICAN OVERSIGHT

Date : 8/3/2021 5:09:42 PM
From : "Mauro Morales" mmorales@usccr.gov
To : "David Ganz" dganz@usccr.gov
Subject : Draft EAC Email.

FYI. Let me know what should be changed?

"Commissioners,

Pursuant to the AI voted on during the April 30th Business meeting, you have selected the following as nominations to the Election Assistance Commission (EAC):

Commissioners Cantu, Adegbile, Kladney and Yaki have nominated the following individuals to the EAC:

- *Commissioner Michael Yaki;*
- *Ms. Allison Riggs , Co-Executive Director, Southern Coalition for Social Justice.*

Commissioners Adams, Gilchrist, Heriot and Kirsanow have nominated the following individuals to the EAC:

- *Commissioner Christian Adams;*
- *Cleta Michell, Chair, Conservative Partnership Institute Election Integrity Network.*

Under the AI adopted by Commissioners, the members appointed by the Democratic authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Democratic authorities. The final members selected shall be placed in nomination and ratified by a majority vote. Please inform me how you would like to proceed for a majority vote either by placing it on the agenda for the next USCCR business meeting or by a notational vote."

AMERICAN OVERSIGHT

Date : 3/8/2021 9:10:15 AM
From : "Pilar McLaughlin" pmclaughlin@usccr.gov
To : "David Ganz" dganz@usccr.gov
Subject : Chairperson EAC appointment authority
Attachment : Chairperson's Appointment Authority EAC, Board of Advisors.docx;image001.gif;image002.gif;

See the attached for our conversation today with Cantú.

Pilar Velasquez McLaughlin
Senior Counsel, Office of the General Counsel
U.S. Commission on Civil Rights
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425
https://www.usccr.gov/

Email: pmclaughlin@usccr.gov
Direct: 703.855.8866

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Questions:

1. **May the USCCR Chair unilaterally appoint Commissioners to the Election Assistance Commission (EAC), Board of Advisors or, do those appointments require a majority vote by the Commission?**
2. **Are the Commission's appointments required to be bipartisan?**

Background on the Election Assistance Commission, Board of Advisors

- The U.S. Election Assistance Commission (EAC) is an independent federal agency charged with helping improve the administration of federal elections. The EAC was established by the Help America Vote Act (HAVA) of 2002 as part of Congress's response to administrative issues with the 2000 elections.[1] HAVA created three advisory bodies for the EAC one of which is the Board of Advisors (Board) whose role is to review voluntary guidance for the commissioners for a vote on adoption.
- The Commission, per the HAVA statute - along with other federal entities, Members of Congress, and ranking members of the HVAC - has the authority to appoint two individuals to the Board.[2]
- The appointees serve a two-year term; the Commission's 2019 appointees, Commissioner Kladney and Commissioner Yaki's terms are set to expire in April of 2021.

History of USCCR Appointments to the Board

- The Commission's appointments to the Board have been mixed both in terms of the appointing authority and in political affiliation. Prior to 2015, information on the Commission's appointments is limited.
- Nov 12, 2004, the Chair Berry makes unilateral appointment – one republican and one independent. At the November business meeting, Chair Berry explains that, upon advice of counsel, she was told that per the statute, the appointment authority was hers.
- July 30, 2010, Chair Reynolds puts the authority for making the appointments up for a vote at the July business meeting. Chair Reynolds moves that the Commission vote to authorize her to make the appointments sating "[f]ollowing our customary practice and the EAC's preference of ensuring that the picks are politically diverse. If a commissioner has any recommendations, please forward your recommendations to me for consideration." The

[1] Help America Vote Act; Pub. L. 107-252; 116 Stat. 1666; 52 U.S.C. §§20901-21145.
[2] 52 U.S.C. §20944. The Board of Advisors was initially assigned 37 members, but its membership dropped to 35 with the 2016 merger of two of the organizations responsible for appointing its members. Sixteen members of the board are appointed by organizations that represent state and local officials and seven represent federal entities. The seven federal entity appointees come from Director of the U.S. Department of Defense's Federal Voting Assistance Program, the Chief of the DOJ's Office of Public Integrity or the Chief's designee, the Chief of the Voting Section of the DOJ's Civil Rights Division or the Chief's designee, two appointees of the Architectural and Transportation Barriers Compliance Board (Access Board), and two appointees of the U.S. Commission on Civil Rights. The remaining twelve are appointed as follows: four members are science and technology professionals, who are each appointed by the majority or minority leadership of the House or Senate and eight are voter representatives, two of whom are appointed by each of the chairs and ranking members of the EAC's two primary oversight committees.

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motion received a unanimous vote to authorize Chair Reynolds to select replacements to fill the EAC Board seats.

Authorities

- The Commission's AI's and regulations are silent with respect to the Chairperson's powers.
- 52 U.S.C § 20944 sets for the membership of the Board of Advisors including which individuals/entities have the authority to make appointments and the manner of such appointments:
    - **(a)(10) "**The Board of Advisors shall be composed of 37 members appointed as follows: Two members appointed by the United States Commission on Civil Rights."
    - **(b) "**Appointments shall be made to the Board of Advisors under subsection (a) in a manner which ensures that the Board of Advisors will be bipartisan in nature and will reflect the various geographic regions of the United States."

Analysis

- The fact that the statute gives each entity two appointments suggests that the nature of the appointments should be bipartisan. Further, the fact that both the minority and majority leadership both the House and the Senate are afforded an equal number of appointments also suggests that the appointees should be from different political parties.
- Per OGC's previous analysis regarding what is considered "official commission business," the decision on who to appoint to the EAC ostensibly falls under that rubric and requires collective action by the commission. Further, the EAC statute denotes that the appointment authority is delegated the United State Commission on Civil Rights, rather than the Chairperson, Vice Chairperson, Staff Director, or other Commission leader, and thus requires collective action or at a minimum, consideration by the entire Commission.
- Historically, the EAC has not challenged the Commission's appointees, but that does not necessarily mean we have been correct in the manner of our appointments. The EAC is not in the business of questioning appointments or the political party affiliation of the appointees.

AMERICAN OVERSIGHT

OVERSIGHT

OVERSTOCK

Date : 3/8/2021 9:40:02 AM
From : "David Ganz" dganz@usccr.gov
To : "Pilar McLaughlin" pmclaughlin@usccr.gov
Subject : Re: Chairperson EAC appointment authority
Attachment : image001.gif;image002.gif;

Great work.

Any info on the 2019 or even 2017 appointments? Maybe Sheryl was around for them.

From: Pilar McLaughlin <pmclaughlin@usccr.gov>
Sent: Monday, March 8, 2021 9:10:15 AM
To: David Ganz <dganz@usccr.gov>
Subject: Chairperson EAC appointment authority

See the attached for our conversation today with Cantú.

Pilar Velasquez McLaughlin
Senior Counsel, Office of the General Counsel
U.S. Commission on Civil Rights
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425
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Email: pmclaughlin@usccr.gov
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OVERSTOCK

Date : 3/8/2021 10:09:25 AM
From : "David Ganz" dganz@usccr.gov
To : "Pilar McLaughlin" pmclaughlin@usccr.gov
Subject : RE: Chairperson EAC appointment authority
Attachment : image001.gif;image002.gif;

Thanks.

From: Pilar McLaughlin <pmclaughlin@usccr.gov>
Sent: Monday, March 8, 2021 9:41 AM
To: David Ganz <dganz@usccr.gov>
Subject: Re: Chairperson EAC appointment authority

Not in the business meeting transcripts. I'll ask Sheryl.

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From: David Ganz <dganz@usccr.gov>
Sent: Monday, March 8, 2021 9:40:02 AM
To: Pilar McLaughlin <pmclaughlin@usccr.gov>
Subject: Re: Chairperson EAC appointment authority

Great work.

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Date : 3/8/2021 10:42:37 AM
From : "Mauro Morales" mmorales@usccr.gov
To : "Zakee Martin" zmartin@usccr.gov
Subject : FW: [EXTERNAL] Re: FW: Chairperson EAC appointment authority

Can you set this up at 2:00pm as a zoom. Between David Ganz, Pilar, myself and Norma. Us here USCCR and Gmail account addresses.

From: Norma V. Cantú <normavcantu@gmail.com>
Sent: Monday, March 8, 2021 10:29 AM
To: Mauro Morales <mmorales@usccr.gov>
Subject: [EXTERNAL] Re: FW: Chairperson EAC appointment authority

> CAUTION: This email is from outside USCCR.

Yes,
Today would be great,
Anytime.
Norma

On Mon, Mar 8, 2021 at 9:17 AM Mauro Morales <mmorales@usccr.gov> wrote:

> Commissioner Cantu,
>
> OGC and I are available to discuss issues about appointments to the EAC. Would you have time today via a conference call or zoom to discuss?
>
> Mauro
>
> ---
>
> **From:** David Ganz <dganz@usccr.gov>
> **Sent:** Monday, March 8, 2021 10:11 AM
> **To:** Mauro Morales <mmorales@usccr.gov>
> **Cc:** Pilar McLaughlin <pmclaughlin@usccr.gov>
> **Subject:** Chairperson EAC appointment authority
>
> Good morning, Pilar has finished our analysis of this issue. Please let us know when you and Commissioner Cantu would like to discuss. Thanks,
>
> David Ganz
> General Counsel, Office of the General Counsel
> U.S. Commission on Civil Rights
> 1331 Pennsylvania Avenue, NW Suite 1150
> Washington D.C. 20425
> (617) 669-6413

AMERICAN OVERSIGHT

Date : 3/8/2021 9:46:56 AM
From : "Pilar McLaughlin" pmclaughlin@usccr.gov
To : "Sheryl Cozart" sccozart@usccr.gov
Subject : Fwd: Chairperson EAC appointment authority
Attachment : image001.gif;image002.gif;

Sheryl:

Do you have any info on the commission's appointments to the Election Assistance Commission, Board of Advisors in 2017 and/or 2019? See David's question below.

There were a couple years (2010 and 2014) where I found discussion of the appointments in business meeting transcripts. Can't find anything about these appointments for 2016 and 2019. Thoughts you might know.

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From: pmclaughlin@usccr.gov <pmclaughlin@usccr.gov>
Sent: Monday, March 8, 2021 9:40 AM
To: David Ganz
Subject: Re: Chairperson EAC appointment authority

Not in the business meeting transcripts. I'll ask Sheryl.

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From: David Ganz <dganz@usccr.gov>
Sent: Monday, March 8, 2021 9:40:02 AM
To: Pilar McLaughlin <pmclaughlin@usccr.gov>
Subject: Re: Chairperson EAC appointment authority

Great work.

Any info on the 2019 or even 2017 appointments? Maybe Sheryl was around for them.

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Sent: Monday, March 8, 2021 9:10:15 AM
To: David Ganz <dganz@usccr.gov>
Subject: Chairperson EAC appointment authority

See the attached for our conversation today with Cantú.

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U.S. Commission on Civil Rights
1331 Pennsylvania Avenue, NW Suite 1150

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OVERSTOCK

Date : 3/8/2021 10:11:15 AM
From : "David Ganz" dganz@usccr.gov
To : "Mauro Morales" mmorales@usccr.gov
Cc : "Pilar McLaughlin" pmclaughlin@usccr.gov
Subject : Chairperson EAC appointment authority

Good morning, Pilar has finished our analysis of this issue. Please let us know when you and Commissioner Cantu would like to discuss. Thanks,

David Ganz
General Counsel, Office of the General Counsel
U.S. Commission on Civil Rights
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425
(617) 669-6413

AMERICAN OVERSIGHT

Date : 3/8/2021 9:40:47 AM
From : "Pilar McLaughlin" pmclaughlin@usccr.gov
To : "David Ganz" dganz@usccr.gov
Subject : Re: Chairperson EAC appointment authority
Attachment : image001.gif;image002.gif;

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Email: pmclaughlin@usccr.gov
Direct: 703.855.8866

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OVERSTOCK

Date : 3/8/2021 10:25:43 AM
From : "Sheryl Cozart" sccozart@usccr.gov
To : "Pilar McLaughlin" pmclaughlin@usccr.gov
Subject : RE: Chairperson EAC appointment authority
Attachment : image001.gif;image002.gif;

As I recall, both my Vice Chair Timmons-Goodson and Michael Yaki were appointed during my time. I don't know about 2019. It is not surprising that you would not find discussion about them in business meeting transcripts. In my opinion the EAC was not very active. As I recall, my boss (Vice Chair) meetings attended twice a year. You might want to reach out to Yaki's SA, Alec, to get more specifics about where things stand currently.

From: Pilar McLaughlin <pmclaughlin@usccr.gov>
Sent: Monday, March 8, 2021 9:47 AM
To: Sheryl Cozart <sccozart@usccr.gov>
Subject: Fwd: Chairperson EAC appointment authority

Sheryl:

Do you have any info on the commission's appointments to the Election Assistance Commission, Board of Advisors in 2017 and/or 2019? See David's question below.

There were a couple years (2010 and 2014) where I found discussion of the appointments in business meeting transcripts. Can't find anything about these appointments for 2016 and 2019. Thoughts you might know.

Get Outlook for iOS

From: pmclaughlin@usccr.gov <pmclaughlin@usccr.gov>
Sent: Monday, March 8, 2021 9:40 AM
To: David Ganz
Subject: Re: Chairperson EAC appointment authority

Not in the business meeting transcripts. I'll ask Sheryl.

Get Outlook for iOS

From: David Ganz <dganz@usccr.gov>
Sent: Monday, March 8, 2021 9:40:02 AM
To: Pilar McLaughlin <pmclaughlin@usccr.gov>
Subject: Re: Chairperson EAC appointment authority

Great work.

Any info on the 2019 or even 2017 appointments? Maybe Sheryl was around for them.

From: Pilar McLaughlin <pmclaughlin@usccr.gov>
Sent: Monday, March 8, 2021 9:10:15 AM

AMERICAN OVERSIGHT

To: David Ganz <dganz@usccr.gov>
Subject: Chairperson EAC appointment authority

See the attached for our conversation today with Cantú.

Pilar Velasquez McLaughlin
Senior Counsel, Office of the General Counsel
U.S. Commission on Civil Rights
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425
https://www.usccr.gov/

Email: pmclaughlin@usccr.gov
Direct: 703.855.8866

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#USCCR

AMERICAN OVERSIGHT

OVERSIGHT

OVERSTOCK

Date : 3/8/2021 11:03:52 AM
From : "Mauro Morales" mmorales@usccr.gov
To : "Zakee Martin" zmartin@usccr.gov
Subject : Accepted: EAC Appointment Authority Discussion

AMERICAN OVERSIGHT

Date : 3/8/2021 11:03:42 AM
From : "Pilar McLaughlin" pmclaughlin@usccr.gov
To : "Zakee Martin" zmartin@usccr.gov
Subject : Accepted: EAC Appointment Authority Discussion

AMERICAN OVERSIGHT

Date : 3/8/2021 11:03:23 AM
From : "Zakee Martin" zmartin@usccr.gov
To : "Mauro Morales" mmorales@usccr.gov, "David Ganz" dganz@usccr.gov, "Pilar McLaughlin" pmclaughlin@usccr.gov, "Norma Cantu" ncantu@usccr.gov, "normavcantu@gmail.com" normavcantu@gmail.com
Subject : EAC Appointment Authority Discussion

Join Zoom Meeting
https://zoom.us/j/97595013884?pwd=cTF2WStvWGhpdzZ3N0poQVd2Y1pHZz09

Meeting ID: 975 9501 3884
Passcode: 520411
One tap mobile
+13017158592,,97595013884#,,,,*520411# US (Washington DC)
+13126266799,,97595013884#,,,,*520411# US (Chicago)

Dial by your location
+1 301 715 8592 US (Washington DC)
+1 312 626 6799 US (Chicago)
+1 929 205 6099 US (New York)
+1 346 248 7799 US (Houston)
+1 669 900 6833 US (San Jose)
+1 253 215 8782 US (Tacoma)
Meeting ID: 975 9501 3884
Passcode: 520411
Find your local number: https://zoom.us/u/abkSkGS4QD

AMERICAN OVERSIGHT

Date : 3/8/2021 11:31:25 AM
From : "David Ganz" dganz@usccr.gov
To : "Zakee Martin" zmartin@usccr.gov
Subject : Accepted: EAC Appointment Authority Discussion

AMERICAN OVERSIGHT

Date : 3/8/2021 11:03:41 AM
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To : "Zakee Martin" zmartin@usccr.gov
Subject : Accepted: EAC Appointment Authority Discussion

AMERICAN OVERSIGHT

Date : 3/8/2021 12:48:54 PM
From : "David Ganz" dganz@usccr.gov
To : "Pilar McLaughlin" pmclaughlin@usccr.gov
Subject : EAC Meeting at 1- do we need to have a pre-meeting?

David Ganz
General Counsel, Office of the General Counsel
U.S. Commission on Civil Rights
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425
(617) 669-6413

AMERICAN OVERSIGHT

Date : 3/8/2021 12:50:27 PM
From : "David Ganz" dganz@usccr.gov
To : "Mauro Morales" mmorales@usccr.gov
Subject : FW: EAC Meeting at 2- do we need to have a pre-meeting?

Anything we should discuss before the meeting?

From: David Ganz
Sent: Monday, March 8, 2021 12:49 PM
To: Pilar McLaughlin <pmclaughlin@usccr.gov>
Subject: EAC Meeting at 2- do we need to have a pre-meeting?

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AMERICAN OVERSIGHT

Date : 3/8/2021 12:57:05 PM
From : "David Ganz" dganz@usccr.gov
To : "Mauro Morales" mmorales@usccr.gov
Subject : RE: EAC Meeting at 2- do we need to have a pre-meeting?

Sounds good.

From: Mauro Morales <mmorales@usccr.gov>
Sent: Monday, March 8, 2021 12:53 PM
To: David Ganz <dganz@usccr.gov>
Subject: RE: EAC Meeting at 2- do we need to have a pre-meeting?

I don't think so. Just lay out the facts as you have determined and she can decide how to proceed.

From: David Ganz <dganz@usccr.gov>
Sent: Monday, March 8, 2021 12:50 PM
To: Mauro Morales <mmorales@usccr.gov>
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From : "David Ganz" dganz@usccr.gov
To : "Pilar McLaughlin" pmclaughlin@usccr.gov
Subject : FW: EAC Meeting at 1- do we need to have a pre-meeting?

Meant 2 pm meeting.

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Sent: Monday, March 8, 2021 12:49 PM
To: Pilar McLaughlin <pmclaughlin@usccr.gov>
Subject: EAC Meeting at 1- do we need to have a pre-meeting?

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AMERICAN OVERSIGHT

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From : "Pilar McLaughlin" pmclaughlin@usccr.gov
To : "David Ganz" dganz@usccr.gov
Subject : RE: EAC Meeting at 1- do we need to have a pre-meeting?

Sure. If you want. I can call you at 1:45 on your cell. Does that work?

From: David Ganz <dganz@usccr.gov>
Sent: Monday, March 8, 2021 12:50 PM
To: Pilar McLaughlin <pmclaughlin@usccr.gov>
Subject: FW: EAC Meeting at 1- do we need to have a pre-meeting?

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AMERICAN OVERSIGHT

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To : "Pilar McLaughlin" pmclaughlin@usccr.gov
Subject : RE: EAC Meeting at 1- do we need to have a pre-meeting?

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AMERICAN OVERSIGHT

Date : 3/8/2021 1:46:42 PM
From : "Pilar McLaughlin" pmclaughlin@usccr.gov
To : "Sheryl Cozart" sccozart@usccr.gov
Subject : RE: Chairperson EAC appointment authority
Attachment : image001.gif;image002.gif;

Hi Sheryl:

I think we know where things currently stand (see Mauro's email to David last week asking for an opinion on the Chair's authority to appoint commissioners). What I was looking for was if you had any historical information. If you don't have any, that's ok!

Pilar

From: Sheryl Cozart <sccozart@usccr.gov>
Sent: Monday, March 8, 2021 10:26 AM
To: Pilar McLaughlin <pmclaughlin@usccr.gov>
Subject: RE: Chairperson EAC appointment authority

As I recall, both my Vice Chair Timmons-Goodson and Michael Yaki were appointed during my time. I don't know about 2019. It is not surprising that you would not find discussion about them in business meeting transcripts. In my opinion the EAC was not very active. As I recall, my boss (Vice Chair) meetings attended twice a year. You might want to reach out to Yaki's SA, Alec, to get more specifics about where things stand currently.

From: Pilar McLaughlin <pmclaughlin@usccr.gov>
Sent: Monday, March 8, 2021 9:47 AM
To: Sheryl Cozart <sccozart@usccr.gov>
Subject: Fwd: Chairperson EAC appointment authority

Sheryl:

Do you have any info on the commission's appointments to the Election Assistance Commission, Board of Advisors in 2017 and/or 2019? See David's question below.

There were a couple years (2010 and 2014) where I found discussion of the appointments in business meeting transcripts. Can't find anything about these appointments for 2016 and 2019. Thoughts you might know.

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From: pmclaughlin@usccr.gov <pmclaughlin@usccr.gov>
Sent: Monday, March 8, 2021 9:40 AM
To: David Ganz
Subject: Re: Chairperson EAC appointment authority

Not in the business meeting transcripts. I'll ask Sheryl.

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Sent: Monday, March 8, 2021 9:40:02 AM
To: Pilar McLaughlin <pmclaughlin@usccr.gov>
Subject: Re: Chairperson EAC appointment authority

Great work.

Any info on the 2019 or even 2017 appointments? Maybe Sheryl was around for them.

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Email: pmclaughlin@usccr.gov
Direct: 703.855.8866

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OVERSTOCK

Date : 3/9/2021 12:58:52 PM
From : "Pilar McLaughlin" pmclaughlin@usccr.gov
To : "David Ganz" dganz@usccr.gov
Cc : "Sheryl Cozart" sccozart@usccr.gov
Subject : RE: Draft Motions for March 19, 2021, Meeting
Attachment : Draft Motions for March 19 2021 Meeting (002) PVM edits.docx;

See my attached edits.

From: David Ganz <dganz@usccr.gov>
Sent: Tuesday, March 9, 2021 12:56 PM
To: Pilar McLaughlin <pmclaughlin@usccr.gov>
Subject: RE: Draft Motions for March 19, 2021, Meeting

Any edit to the motion I drafted?

From: Pilar McLaughlin <pmclaughlin@usccr.gov>
Sent: Tuesday, March 9, 2021 12:43 PM
To: Sheryl Cozart <sccozart@usccr.gov>
Cc: David Ganz <dganz@usccr.gov>
Subject: RE: Draft Motions for March 19, 2021, Meeting

Hi Sheryl:

I apologize for not sharing this with you sooner. I am just now realizing that you didn't know Mauro had requested an opinion from OGC on whether the EAC appointment required a vote. See the attached analysis I drafted and OGC reviewed with Cantu and the SD that basically says that the EAC appointment requires a consensus from the Commission and that Chair does not have unilateral authority to make these appointments. Further, the appointments should be bipartisan.

Through our discussions with Cantu and the SD, we realized that commissioners may not have previously objected to the appointments or the process (that we know of), but they are now. Currently, there is some interest from the republican appointed commissioners. Additionally, we learned that prior to this appointment cycyle, there was much reluctance to Commissioners to sit on the Board – hence the request by the Chair to serve versus putting the appointments for the board for a vote. Going forward, the discussion about the EAC Board of Advisors appointments should be on the record and should be approved by the Commission as a whole.

Pilar

From: Sheryl Cozart <sccozart@usccr.gov>
Sent: Tuesday, March 9, 2021 12:08 PM
To: David Ganz <dganz@usccr.gov>; Pilar McLaughlin <pmclaughlin@usccr.gov>
Subject: RE: Draft Motions for March 19, 2021, Meeting

Motion 1 looks accurate.

AMERICAN OVERSIGHT

Comment about Motion 2: I don't think that the Commissioners need to vote to give the Chair appointment authority for the two EAC positions. As I recall in practice, the Chair simply requests Commissioners serve and then informs the body of the two EAC appointments.

From: David Ganz <dganz@usccr.gov>
Sent: Monday, March 8, 2021 4:34 PM
To: Pilar McLaughlin <pmclaughlin@usccr.gov>
Cc: Sheryl Cozart <sccozart@usccr.gov>
Subject: Draft Motions for March 19, 2021, Meeting

Please redline any changes and send the document back to me by tomorrow afternoon.

David Ganz
General Counsel, Office of the General Counsel
U.S. Commission on Civil Rights
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425
(617) 669-6413

AMERICAN OVERSIGHT

UNITED STATES COMMISSION ON CIVIL RIGHTS
Washington, DC

March 19, 2021

I. Motion to Vote on Chairpersonship of Commissioner Norma Cantu

Pursuant to 45 C.F.R. § 701.10, I, Commissioner **[insert the appropriate Commissioner]**, moves ~~the Commission to have the Commissioners present for this Meeting~~ to vote on President Biden's designation of Commissioner Norma Cantúu as Chairperson of the U.S. Commission on Civil Rights.

[If five (5) Commissioners are present and vote in favor of Commissioner Cantu's Chairpersonship, then she is the Chair]

II. Motion to have U.S. Commission on Civil Rights make two appointments to Election Assistance Commission's Board of Advisors

Pursuant to 52 U.S.C. § 20944(a), I, Chairperson Norma Cantúu, moves to appoint **[insert the appropriate Commissioner]** and Commissioner **[insert the appropriate Commissioner]** to the Election Assistance Commission's Board of Advisors. ~~the Commission to have the Commissioners present for this Meeting appoint Commissioner **[insert the appropriate Commissioner]** and Commissioner **[insert the appropriate Commissioner]**, to the Election Assistance Commission's Board of Advisors~~

Is there a second?

Commented [PM1]: You don't need "commissioners present for this meeting" because per the statute, the president's nominee needs a majority vote of THE COMMISSION. You need 5 votes in favor.

Commented [PM2]: So, now I am unclear on this as well. If the republican commissioners get what they want – a republican appointed to the board – perhaps a vote on the record is not required because you probably already have a consensus. However, we did determine that this is "commission business" in which case, if we are being consistent with our analysis, then the final slate of appointees would require a vote.

Further, if that's the case, you don't need the language about "the commissioners being present" (I deleted it) because you won't be able to approve the slate without a quorum of 5 anyways.

Commented [DG3]: I didn't think Mauro or Cantu actually wanted to have a Commission vote on the appointment, but am I remembering correctly?

AMERICAN OVERSIGHT

Date : 3/9/2021 12:56:08 PM
From : "David Ganz" dganz@usccr.gov
To : "Pilar McLaughlin" pmclaughlin@usccr.gov
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Pilar

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Subject: Draft Motions for March 19, 2021, Meeting

AMERICAN OVERSIGHT

Please redline any changes and send the document back to me by tomorrow afternoon.

David Ganz
General Counsel, Office of the General Counsel
U.S. Commission on Civil Rights
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425
(617) 669-6413

AMERICAN OVERSIGHT

Date : 3/9/2021 12:20:37 PM
From : "Mauro Morales" mmorales@usccr.gov
To : "Pamela Dunston" Pdunston@usccr.gov
Subject : RE: Draft March 19th Business Agenda

Good question. I will spell it out. EAC stand for the Election Assistance Commission.

From: Pamela Dunston <Pdunston@usccr.gov>
Sent: Tuesday, March 9, 2021 12:17 PM
To: Mauro Morales <mmorales@usccr.gov>
Subject: RE: Draft March 19th Business Agenda

Hi Mauro,

Can you tell me what the acronym "EAC" stands for

Thanks.

Sent from my Verizon, Samsung Galaxy smartphone

-------- Original message --------
From: Mauro Morales <mmorales@usccr.gov>
Date: 3/9/21 11:21 AM (GMT-05:00)
To: Pamela Dunston <Pdunston@usccr.gov>, TinaLouise Martin <tmartin@usccr.gov>, David Ganz <dganz@usccr.gov>, Angelia Rorison <arorison@usccr.gov>, Zakee Martin <zmartin@usccr.gov>
Subject: FW: Draft March 19th Business Agenda

All,

I have attached a draft agenda for the March 19th business meeting. Commissioner Cantu is speaking with Commissioners and the agenda may still be adjusted. In the interim, we should acquire the call in phone numbers. Please review for additional needed edits. I will let you know when it is approved for posting.

Maur

From: Mauro Morales
Sent: Tuesday, March 9, 2021 11:16 AM
To: 'ncantu@usccr.gov' <ncantu@usccr.gov>; Norma Cantú <normavcantu@gmail.com>
Subject: Draft March 19th Business Agenda

Norma,

Good morning. Please review this draft business meeting agenda for the March 19th Business meeting. We should post it on our website no later than tomorrow by COB in

AMERICAN OVERSIGHT

order to provide the proper eight day calendar notice required under the Sunshine Act. We also will secure the telephone numbers for the public and also commissioners to call in for the meeting. Please let me know if you have questions or wish to change the agenda. Thank you.

Mauro Morales
Staff Directorlease
USCCR

AMERICAN OVERSIGHT

Date : 3/9/2021 1:15:39 PM
From : "Pamela Dunston" Pdunston@usccr.gov
To : "Mauro Morales" mmorales@usccr.gov
Subject : RE: Draft March 19th Business Agenda

Ok. Thanks

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To: Pamela Dunston <Pdunston@usccr.gov>, TinaLouise Martin <tmartin@usccr.gov>, David Ganz <dganz@usccr.gov>, Angelia Rorison <arorison@usccr.gov>, Zakee Martin <zmartin@usccr.gov>
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Mauro Morales
Staff Directorlease
USCCR

AMERICAN OVERSIGHT

Date : 3/12/2021 11:19:24 AM
From : "Norma Cantu" ncantu@usccr.gov
To : "Gail Heriot" gheriot@usccr.gov, "Michael Yaki" MYaki@usccr.gov, "Peter Kirsanow" pkirsanow@usccr.gov
Subject : My notes from yesterday's working group on topics related to Vote on Commissioner--No quorum & no decisions made.

1. Language on 30/30/10 for rebuttals and surrebuttals-Gail-vehicle AI
2. Language on bipartisan nominations to Elect.Adv.Council at end of June 2021. Appointments to EAC will be made by Commission as a whole, with a majority vote. Proposed that Dem.Caucus nominates 2 people for one slot and R+I Caucus chooses the appointee. R+I Caucus nominates 2 people for one slot and Dem. caucus chooses the appointee. In future nominations to external agencies, the Chair will consult with the whole Commission before communicating any nominations. Vehicle-motion from floor at mtg. on March 19
3. Canceling the Chair's speakers series. Vehicle-email from Norma Cantu to Commissioners.
4. Already have language that half of State Adv. Council slots will be Dem. and half Rep. Need to add language on each Commissioners' Caucus will take ____days to nominate and vet new members of State Adv. Councils. At end of ___ days, the staff are expected to provide assistance in recruiting and vetting people to fill vacancies. Staff nominations take no longer than ____days. All nominations by Commissioners and staff come back to the full Commissioner for a discussion and vote to approve new members. Vehicle-motion from floor at mtg. on March 19.
5. Language about agreeing that AIs, as more specific agreements, govern process of Commissioners; in absence of relevant AI, Commissioners will apply Roberts' Rules of Order. Vehicle-Memo of Understanding approved by majority of Commissioners.
6. Chair proposes agenda for Commissioners' meeting, with Commissioners having ability to propose to amend agenda before meeting and also at the beginning the meeting, subject to majority vote. Vehicle-AI
7. A majority of Commissioners is needed to cancel a called Commissioner meeting. Vehicle-AI
8. Proposed by Norma, in absence of Chair available to moderate the meeting, the most senior Dem. and Rep. Commissioners will alternate chairing meetings. Vehicle-AI or memo. of understanding
9. Language that any Commissioner from each Caucus may sit in on OCRE interviews provided the Commissioner's request to attend does not cause a scheduling delay. Vehicle?
10. Memorial/obits require a majority vote of the Commission and the proposed language for the memorial shall be circulated to all the Commissioners. Vehicle-AI

AMERICAN OVERSIGHT

Date : 3/12/2021 11:44:43 AM
From : "Gail Heriot" gheriot@usccr.gov
To : "Alexander Heideman" aheideman@usccr.gov
Cc : "Gail Heriot" gheriot@me.com, "Alexander Heideman" alexanderheideman@gmail.com
Subject : Re: My notes from yesterday's working group on topics related to Vote on Commissioner--No quorum & no decisions made.

Okay. let's talk about it later today or tomorrow.

Gail Heriot
Professor of Law
University of San Diego

On Mar 12, 2021, at 8:42 AM, Alexander Heideman <aheideman@usccr.gov> wrote:

Okay—I'm working on this now and am meeting (in person!) with Carissa and John at 1 and will discuss with them then.

Some of her notes are different than what we had discussed yesterday. For example, her understanding of the EAC Comm'n appointments aligns with what you said, but her understanding of other appointments afterwards differs.

From: Gail Heriot <gheriot@usccr.gov>
Date: Friday, March 12, 2021 at 11:29 AM
To: Alexander Heideman <aheideman@usccr.gov>
Subject: Fwd: My notes from yesterday's working group on topics related to Vote on Commissioner--No quorum & no decisions made.

Gail Heriot
Professor of Law
University of San Diego

Begin forwarded message:

From: Norma Cantu <ncantu@usccr.gov>
Date: March 12, 2021 at 8:19:25 AM PST
To: Gail Heriot <gheriot@usccr.gov>, Michael Yaki <MYaki@usccr.gov>, Peter Kirsanow <pkirsanow@usccr.gov>
Subject: My notes from yesterday's working group on topics related to Vote on Commissioner--No quorum & no decisions

AMERICAN OVERSIGHT

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1. Language on 30/30/10 for rebuttals and surrebuttals-Gail-vehicle AI
2. Language on bipartisan nominations to Elect.Adv.Council at end of June 2021. Appointments to EAC will be made by Commission as a whole, with a majority vote. Proposed that Dem.Caucus nominates 2 people for one slot and R +I Caucus chooses the appointee. R+I Caucus nominates 2 people for one slot and Dem. caucus chooses the appointee. In future nominations to external agencies, the Chair will consult with the whole Commission before communicating any nominations. Vehicle-motion from floor at mtg. on March 19
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AMERICAN OVERSIGHT

meetings. Vehicle-AI or memo. of understanding

9. Language that any Commissioner from each Caucus may sit in on OCRE interviews provided the Commissioner's request to attend does not cause a scheduling delay. Vehicle?
10. Memorial/obits require a majority vote of the Commission and the proposed language for the memorial shall be circulated to all the Commissioners. Vehicle-AI

AMERICAN OVERSIGHT

Date : 3/12/2021 11:32:26 AM
From : "Norma Cantu" ncantu@usccr.gov
To : "David Kladney" dkladney@usccr.gov, "Michael Yaki" MYaki@usccr.gov, "Debo P. Adegbile" dadegbile@usccr.gov
Subject : Fw: My notes from yesterday's working group on topics related to Vote on Commissioner--No quorum & no decisions made.

I have a zoom meeting today from 1-3 CST but am free to discuss the "housekeeping matters" I've described below. Call me as these email are subject to FOIA and it is better to deliberate and discuss draft language in a more informal setting.
Norma
cell 210 380 6380

From: Norma Cantu
Sent: Friday, March 12, 2021 10:19 AM
To: Gail Heriot; Michael Yaki; Peter Kirsanow
Subject: My notes from yesterday's working group on topics related to Vote on Commissioner--No quorum & no decisions made.

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AMERICAN OVERSIGHT

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AMERICAN OVERSIGHT

Date : 3/12/2021 3:56:01 PM
From : "Sheryl Cozart" sccozart@usccr.gov
To : "David Ganz" dganz@usccr.gov, "Pilar McLaughlin" pmclaughlin@usccr.gov
Subject : RE: My notes from yesterday's working group on topics related to Vote on Commissioner--No quorum & no decisions made.

David,
As you can see below, I tried to point Commissioner Cantu in the right direction as to which AIs, CFR or statutes govern some of the topics. Let me know if this is what you were looking for and if you need anything else.

1. Language on 30/30/10 for rebuttals and surrebuttals-Gail-vehicle AI
2. Language on bipartisan nominations to Elect.Adv.Council at end of June 2021. Appointments to EAC will be made by Commission as a whole, with a majority vote. Proposed that Dem.Caucus nominates 2 people for one slot and R+I Caucus chooses the appointee. R+I Caucus nominates 2 people for one slot and Dem. caucus chooses the appointee. In future nominations to external agencies, the Chair will consult with the whole Commission before communicating any nominations. Vehicle-motion from floor at mtg. on March 19

   52 U.S.C § 20944 authorizes USCCR to appoint two members to EAC.
   - a (10): Two members appointed by the United States Commission on Civil Rights.
   - (b): Appointments shall be made to the Board of Advisors under subsection (a) in a manner which ensures that the Board of Advisors will be bipartisan in nature and will reflect the various geographic regions of the United States.

3. Canceling the Chair's speakers series. Vehicle-email from Norma Cantu to Commissioners.

   CFR 701.11 sets forth the meeting duties of the Chair.
   - 701.11(c) reads: The Chairperson, after consulting with the Staff Director, shall establish the agenda for each meeting. The agenda at the meeting of the Commission may be modified by the addition or deletion of specific items upon the motion of a Commissioner and a favorable vote by a majority of the members.

   AI 1-6 defines public/guest speaker.
   - Appendix I reads: An individual, appearing of his/her own volition and at the invitation of the Commission, to make a presentation to the Commission on a civil rights topic.

4. Already have language that half of State Adv. Council slots will be Dem. and half Rep. Need to add language on each Commissioners' Caucus will take ____days to nominate and vet new members of State Adv. Councils. At end of ___ days, the staff are expected to provide assistance in recruiting and

AMERICAN OVERSIGHT

vetting people to fill vacancies. Staff nominations take no longer than ____days. All nominations by Commissioners and staff come back to the full Commissioner for a discussion and vote to approve new members. Vehicle-motion from floor at mtg. on March 19.

AI 5-9 sets forth the policy on SAC appointments. Section 5 addresses selection guidelines and may be the appropriate place to add language on number of days to nominate and vet new members.

5. Language about agreeing that AIs, as more specific agreements, govern process of Commissioners; in absence of relevant AI, Commissioners will apply Roberts' Rules of Order. Vehicle-Memo of Understanding approved by majority of Commissioners.

6. Chair proposes agenda for Commissioners' meeting, with Commissioners having ability to propose to amend agenda before meeting and also at the beginning the meeting, subject to majority vote. Vehicle-AI

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7. A majority of Commissioners is needed to cancel a called Commissioner meeting. Vehicle-AI

   CFR 701.11(d) authorizes the Chair to cancel meetings.

   - (d) reads: In the event that after consulting with the members of the Commission and consideration of the views of the members the Chairperson determines that there are insufficient substantive items on a proposed meeting agenda to warrant holding a scheduled meeting, the Chairperson may cancel such meeting.

8. Proposed by Norma, in absence of Chair available to moderate the meeting, the most senior Dem. and Rep. Commissioners will alternate chairing meetings. Vehicle-AI or memo. of understanding

   AI 1-24 sets forth the policy in the event of a Chair and Vice Chair.

   - Section 1 reads: The purpose of this Administrative Instruction (AI) is to establish a policy whereby, in the event of a vacancy in the positions of Commission Chairperson and Vice-Chairperson, the Commission may designate , by majority vote, a Commissioner to exercise the powers and perform the functions of the Chairperson on their behalf.
   - 701.11(b) reads: …provided however, that upon the motion of a member, and a favorable vote by a majority of Commission members, a special meeting of the Commission may be held in the absence of a call by the Chairperson.

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9. Language that any Commissioner from each Caucus may sit in on OCRE interviews provided the Commissioner's request to attend does not cause a scheduling delay. Vehicle?

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From: David Ganz <dganz@usccr.gov>
Sent: Friday, March 12, 2021 12:33 PM
To: Sheryl Cozart <sccozart@usccr.gov>; Pilar McLaughlin <pmclaughlin@usccr.gov>
Subject: Fwd: My notes from yesterday's working group on topics related to Vote on Commissioner--No quorum & no decisions made.

Sheryl, could you provide responses to the below questions in a few sentences each in bullet points within this email thread and send me back the draft. This is a priority so let's try to have some responses back by cob today and then tell Mauro the other questions will be responded to early next week. Thanks,

David

From: Mauro Morales <mmorales@usccr.gov>
Sent: Friday, March 12, 2021 12:11:43 PM
To: David Ganz <dganz@usccr.gov>
Cc: Norma Cantu <ncantu@usccr.gov>
Subject: FW: My notes from yesterday's working group on topics related to Vote on Commissioner--No quorum & no decisions made.

David,

Commissioner Cantu has requested that you research and provide her with answers to each of the questions below about whether or not a Federal Statutes applies or whether Federal Regulations or AI's apply or govern. A zoom call with her as soon as possible would be sufficient for her purposes.

Mauro Morales
Staff Director
USCCR

From: Norma Cantu <ncantu@usccr.gov>
Sent: Friday, March 12, 2021 11:32 AM
To: David Kladney <dkladney@usccr.gov>; Michael Yaki <MYaki@usccr.gov>; Debo P. Adegbile <dadegbile@usccr.gov>
Subject: Fw: My notes from yesterday's working group on topics related to Vote on Commissioner--No quorum & no decisions made.

AMERICAN OVERSIGHT

I have a zoom meeting today from 1-3 CST but am free to discuss the "housekeeping matters" I've described below. Call me as these email are subject to FOIA and it is better to deliberate and discuss draft language in a more informal setting.

Norma

cell 210 380 6380

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To: Gail Heriot; Michael Yaki; Peter Kirsanow
Subject: My notes from yesterday's working group on topics related to Vote on Commissioner--No quorum & no decisions made.

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AMERICAN OVERSIGHT

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AMERICAN OVERSIGHT

Date : 3/13/2021 12:03:23 PM
From : "Alexander Heideman" aheideman@usccr.gov
To : "Gail Heriot" gheriot@usccr.gov, "Gail Heriot" gheriot@me.com
Cc : "Alexander Heideman" alexanderheideman@gmail.com
Subject : MOUs
Attachment : MOU SAC Membership Size.docx;MOU SAC Appointments.docx;MOU Commissions.docx;MOU Speaker Series.docx;

I've played around with these a bit. I include four MOUs:

1. Eliminating the "Speaker Series," and requiring any future series to be bipartisan
2. Requiring majority approval for appointments to other bodies (including but not limited to the EAC Board of Advisors)
3. Instituting a process for bipartisan SAC recruitment and nomination
4. Instructing Mauro to begin the notice-and-comment period to lower the SAC size to be consistent with our AIs

The EAC one is in line with what you and I talked about on Thursday; it is not in line with Norma's notes below. And I wrote the MOU directed at Mauro because Carissa told me that the Commissioners have asked him several times to do this and he's failed to act.

Carissa and John have the other things covered with AIs, which we discussed over coffee yesterday. I'll see if I can get Carissa to send them to me.

I can talk about this at any point today or tomorrow if you'd like. I'm going for a jog at some point today, and to mass in the morning tomorrow, but I'm 100% free otherwise.

Alex

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AMERICAN OVERSIGHT

Memorandum of Understanding
SAC Membership Size

That: The undersigned Commissioners of the United States Commission on Civil Rights (the Commission) instruct the staff director to begin the pertinent notice-and-comment period to reconcile the Commission's regulations with its administrative instructions which permit a minimum size of nine people for all State Advisory Committees (SAC).

Agreed upon by Commissioners ___, ___, ___,
___, ___, ___, ___, and ___.
March 19, 2021.

AMERICAN OVERSIGHT

Memorandum of Understanding
SAC Appointments

That: The undersigned Commissioners of the United States Commission on Civil Rights (the Commission) agree that when vacancies occur on a State Advisory Committee (SAC) each caucus will have 30 calendar days to recruit and nominate five SAC members each.

That: Upon reaching the 30 calendar-day limit, and if a caucus has failed to recruit and nominate five SAC members, then Commission staff must provide assistance in recruiting additional members and will have 15 calendar days to do so.

That: Upon reaching the additional 15 calendar-day limit, the Commission staff must present all nominations to the Commission for discussion and voting per the Commission's administrative instructions.

Agreed upon by Commissioners ___, ___, ___,
___, ___, ___, ___, and ___.
March 19, 2021.

AMERICAN OVERSIGHT

Memorandum of Understanding
Appointments to Other Bodies

That: The undersigned Commissioners of the United States Commission on Civil Rights (the Commission) agree that when appointments to external bodies are made—such as those to be made to the Election Assistance Commission's Board of Advisors in June 2021—such appointments will not be made without the consent of a majority vote of the Commission.

That: The internal procedure that the Commission will be: The Democratic caucus of the Commission will nominate two people to that other body, and then the Republican caucus of the Commission will choose one of those two people to fill that appointment.

That: The Republican caucus of the Commission will nominate two people to that other body, and then the Democratic caucus of the Commission will choose one of those two people to fill that appointment.

Agreed upon by Commissioners ___, ___, ___,
___, ___, ___, ___, and ___.
March 19, 2021.

AMERICAN OVERSIGHT

Memorandum of Understanding
Speaker Series

That: The undersigned Commissioners of the United States Commission on Civil Rights (the Commission) agree to eliminate the "Speaker Series" as it currently exists at the Commission, that is to say as a series directed by the Chairperson of the Commission without the input or consent of other Commissioners.

That: If the Commission determines the need for any "Speaker Series" in the future, then such series will not be instituted and directed without the consent of a majority of the Commission.

That: If the majority of the Commission consents to a "Speaker Series," then such series must be bipartisan, allowing for each caucus to choose every other speaker.

Agreed upon by Commissioners ___, ___, ___,
___, ___, ___, ___, and ___.
March 19, 2021.

AMERICAN OVERSIGHT

Date : 3/14/2021 7:52:20 PM
From : "Gail Heriot" gheriot@usccr.gov
To : "Alexander Heideman" alexanderheideman@gmail.com
Cc : "Alexander Heideman" aheideman@usccr.gov, "Gail Heriot" gheriot@me.com
Subject : Re: MOUs

It's okay as long as they say something like "Gail hasn't had a chance to look yet, but we thought to move things along, we'd send our work out for comment now."

I'm still working on classes. By the tine I look, you guys will likely be in bed.

Gail Heriot
Professor of Law
University of San Diego

> On Mar 14, 2021, at 4:38 PM, Alexander Heideman <alexanderheideman@gmail.com> wrote:
>
> I sent them to John & Carissa. They made a couple of edits, and I think they're going to send the MOUs and the AIs to all the Commissioners as a package tonight, if that's alright.
>
> On Sun, Mar 14, 2021 at 6:49 PM Gail Heriot <gheriot@usccr.gov> wrote:
>> I will try to look at this tonight.
>>
>> Gail Heriot
>> Professor of Law
>> University of San Diego
>>
>>> On Mar 13, 2021, at 9:03 AM, Alexander Heideman <aheideman@usccr.gov> wrote:
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AMERICAN OVERSIGHT

Professor of Law

University of San Diego

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<MOU SAC Membership Size.docx>
<MOU SAC Appointments.docx>
<MOU Commissions.docx>
<MOU Speaker Series.docx>

AMERICAN OVERSIGHT

Date : 3/15/2021 10:07:46 AM
From : "Irena Vidulovic" ividulovic@usccr.gov
To : "Debo P. Adegbile" dadegbile@usccr.gov, "Adegbile, Debo" Debo.Adegbile@wilmerhale.com
Cc : "Zervoudis, Flor" Flor.Zervoudis@wilmerhale.com
Subject : IMPORTANT TO DO LIST

Adegbile,

Looking forward to our call at 10:30am.

Loads to discuss:

1. Notational vote for FEMA Discovery Materials
2. Caucus call tomorrow at6 3pm ET (please see items for discussion from Commissioner Cantu below)
3. USCCR Hours (will send a separate email)
4. Friday's Business Meeting (agenda)
5. Scheduling Zoom call with our law intern Alana Thomas

From: Norma Cantu
Sent: Friday, March 12, 2021 10:19 AM
To: Gail Heriot; Michael Yaki; Peter Kirsanow
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AMERICAN OVERSIGHT

Date : 3/15/2021 10:26:46 AM
From : "Irena Vidulovic" ividulovic@usccr.gov
To : "Amy Royce" aroyce@usccr.gov, "Alec Deull" adeull@usccr.gov
Subject : Re: Caucus Call

Thanks Amy! Alec please let us know what time works best for you. There is loads to discuss and a need to create and send out the caucus call agenda for tomorrow's call at 3pm. Please see the list of items below from Commissioner Cantu.

- Language on 30/30/10 for rebuttals and surrebuttals-Gail-vehicle AI
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Commissioners. Vehicle-AI

- **FEMA / Puerto Rico**
  - The notational vote failed
  - OGC and OCRE finalizing the added language from Commissioner Adams
  - Hoping we can schedule another notational vote in order to untangle this procedural vote from all of the items that are on the agenda on Friday.
  - Irena to follow up with OGC/OCRE regarding the finalized FEMA discovery
  - documents

- **Bail reform**
  - Comm. Kladney taking over as lead on the project
  - debrief update?
  - Kladney/Amy negotiations with R's update? Status of follow up questions/update?
  - Oregon SAC had their last briefing on Friday 12/11, Catherine attended. Rukku shared briefing notes with OCRE in the comments
  - on the first draft.

- SAC recruitment
- Alex reached out to Irena to discuss CO and Idaho
- The Republican's via Alex would like to make a deal Yeanor for Dr. Chen. Please let your boss know and let's disscuss during out caucus call tomorrow.
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- They further objected to the inclusion of Jennifer Lechner as they don't consider her a "true Republican." In her stead they would like to replace her with a Mr. Patrick Mincey who Carissa recruited. Replacing Lechner with Mincey takes the gender balance of the slate to 11 men and 4 women. Mincey has no civil rights experience, based on his application and a review of his public record.
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- Staff confirmed that Yenor is still interested in joining.
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    - New Mexico 12/1/20 – Alex, Amy/Irena/Rukku
    - 5 applicants. Need more candidates.
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    - Wyoming 12/1/20 – Alex, Alec
    - 6 applicants. Need more candidates.
    - Alec reached out to Shepard Foundation and confirmed that Judy Shepard will apply for the SAC.
    - In general: Irena recommended we reach out to new Members' offices. Rukku circulated Congressional letter + updated 2 pager to share with offices.
    - Florida 3/2021 – Irena
    - Louisiana 3/2021 – Rukku
    - Nebraska 3/2021 – Alec
    - Texas 3/2021 – Amy
    - New advisory committees (Puerto Rico, Virgin Islands, Northern Mariana Islands, Guam, American Samoa)
    - Irena to check in with David on how he wants to move forward with new advisory committees and what slates to set for the March meeting
- Broken Promises pandemic update
- Senator Warren's office has reached out to Irena to schedule a meeting this week on the report update + will invite Julie to the meeting.
    - Irena to check website and send Sen. Warren's office info that is already public
    - Pursue social media strategy using briefing video/materials
    - Can we generate clips from the briefing video, into individual panelist testimony or other excerpts. Rukku to check in with Ang.
    - Catherine wants to raise this project again, to see if we can get to common ground with the Republicans. Catherine wants to revisit when we discuss project planning re FY22 (/FEMA, Comm. Adams' proposal, etc.).
    - Catherine spoke to Gilchrist over the holidays and he seemed open to reconsidering the report; Rukku will reach out to Thomas to see about next steps.
    -
- **All SA Meeting**
- AI 5-9
- Project propsals
- "Balance" SAC AI
- **Expired SACs**
- **Meeting with Mauro**

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    - Alex reached out to Mauro about scheduling a meeting and it was scheduled for tomorrow but Mauro cancelled it and scheduled it for next week.
        - Website update – contract secured. Update to occur over the next year. Check in with Ang on things moving forward

- **Other SAC activity**
- AI 5-9 - SAC member conduct.
    - Rukku, Irena, Carissa met with OGC to discuss proposed revisions to the AI. Irena and Carissa are taking OGC's redline and comments to Commissioners to get feedback.
    - SAC letters – Rukku is working on moving out of backlog of Commissioner letters sharing publications from SACs. Sent Indiana and Arkansas last week.
        - Irena will raise with Ang/David that Staff Director could take over these letters while waiting for a new Chair.
- Project proposals for FY21/22
    - Rukku checked with John to see if Commissioner Adams will submit new project proposals. John is working with Commissioner Adams on project priorities and check back on timeline. Rukku to follow up with John this week.
    - John (at all SA meeting) said that Comm. Adams had a proposal, so Rukku will generate a timeline for consideration.
    - We will proceed with the FEMA Project as the FY22 statutory enforcement report.
    - Move forward with FY22 project planning calendar – Rukku generated the program planning schedule with emphasis on time early in the process for bipartisan discussion.
    - Dave is working on a concept paper on race discrimination and small business lending, perhaps focusing on the recipients of the PPP loan.
    - Dave spoke with Comm. Gilchrist about potential interest.
- Personnel
    - Cantu Special Assistant?
    - Amy to follow up regarding notational vote and process for SA
    - OCRE Director ?
    - Commission on Black Man and Boys
    - Irena to follow up with Mauro about these two positions
    - Summer 2021 interns – Irena hired a spring intern. Am? Irena reached out to Carissa their caucus will have 4, ours will have 2.
    - Irena's intern to start next week, Amy still in hiring process
    - Fulbright fellows – Media fellow recommendation for Ang + possibly HQ fellow.
        - Ang is looking to hire a Fullbright fellow ASAP.
    - Irena has lead on a candidate with interest in bail reform.
- Commission on the Social Status of Black Men and Boys was signed into law, more details to come on what this means.
    - Appointments from White House

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- Call rescheduled with Congresswoman Wilson
- Women/Girls bill
- Irena to follow up on status of staffer

- **Budget questions**
  - Appropriations reached out to Irena + held a meeting last week, Irena to update.
  - Website update – contract secured. Update to occur over the next year. Check in with Ang on things moving forward
  - FY22 budget timeline – John M. emailed Mauro to ask about status
- **Budget priorities for FY21/22?**
  - Forward funding for site visits in Puerto Rico and Texas
  - Regional staffing – at least one staffer for territory SACs
  - **Please check with your bosses and send priorities by the end of this week.**

- **Election Assistance Commission**
  - Question about appointments. When do the terms expire?
  - Alec to follow up on term expirations

From: Amy Royce
Sent: Monday, March 15, 2021 10:00:15 AM
To: Irena Vidulovic; Alec Deull
Subject: Re: Caucus Call

Sure thing. Either time works for me

From: Irena Vidulovic
Sent: Monday, March 15, 2021 9:59:28 AM
To: Amy Royce; Alec Deull
Subject: Caucus Call

Hey Team,

I now have to attend a last minute 11:00am ET meeting. Can we move our caucus call to 12noon or 1pm ET. We have a lot to discuss. I will work on the agenda.

Please let me know what works.

Irena

AMERICAN OVERSIGHT

Date : 3/15/2021 10:22:36 AM
From : "Mauro Morales" mmorales@usccr.gov
To : "Norma Cantu" ncantu@usccr.gov
Cc : "David Ganz" dganz@usccr.gov, "Zakee Martin" zmartin@usccr.gov
Subject : RE: My notes from yesterday's working group on topics related to Vote on Commissioner--No quorum & no decisions made.

Commissioner Cantus,

Let us know what time this afternoon (Monday the 15th) works for you to join a call between you, me and OGC about the 10 questions you had below. I am on my way to the doctor but will be back after 2:00 pm. I will have Zakee look for a zoom time that works for you.

Mauro

From: Norma Cantu <ncantu@usccr.gov>
Sent: Friday, March 12, 2021 11:32 AM
To: David Kladney <dkladney@usccr.gov>; Michael Yaki <MYaki@usccr.gov>; Debo P. Adegbile <dadegbile@usccr.gov>
Subject: Fw: My notes from yesterday's working group on topics related to Vote on Commissioner--No quorum & no decisions made.

I have a zoom meeting today from 1-3 CST but am free to discuss the "housekeeping matters" I've described below. Call me as these email are subject to FOIA and it is better to deliberate and discuss draft language in a more informal setting.

Norma

cell 210 380 6380

From: Norma Cantu
Sent: Friday, March 12, 2021 10:19 AM
To: Gail Heriot; Michael Yaki; Peter Kirsanow
Subject: My notes from yesterday's working group on topics related to Vote on Commissioner--No quorum & no decisions made.

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AMERICAN OVERSIGHT

March 19

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AMERICAN OVERSIGHT

Date : 3/15/2021 10:31:39 AM
From : "David Ganz" dganz@usccr.gov
To : "Sheryl Cozart" sccozart@usccr.gov
Subject : FW: My notes from yesterday's working group on topics related to Vote on Commissioner--No quorum & no decisions made.

Please join us for this discussion when the time is set. I am finalizing our responses for Norma. When we are done with our responses, I will share them with you, but we aren't going to provide Norma with anything in writing.

From: Mauro Morales <mmorales@usccr.gov>
Sent: Monday, March 15, 2021 10:23 AM
To: Norma Cantu <ncantu@usccr.gov>
Cc: David Ganz <dganz@usccr.gov>; Zakee Martin <zmartin@usccr.gov>
Subject: RE: My notes from yesterday's working group on topics related to Vote on Commissioner--No quorum & no decisions made.

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AMERICAN OVERSIGHT

Date : 3/15/2021 1:46:15 PM
From : "Amy Royce" aroyce@usccr.gov
To : "Irena Vidulovic" ividulovic@usccr.gov, "Alec Deull" adeull@usccr.gov
Subject : Re: Caucus Call

Notes below

Alec, please let us know if there is any objection to proceeding with the notational vote on the FEMA materials today. Per your email on Friday we understood that to be Michael's preference. Irena is checking with Mauro on how to move forward.

From: Irena Vidulovic
Sent: Monday, March 15, 2021 10:26 AM
To: Amy Royce; Alec Deull
Subject: Re: Caucus Call

Thanks Amy! Alec please let us know what time works best for you. There is loads to discuss and a need to create and send out the caucus call agenda for tomorrow's call at 3pm. Please see the list of items below from Commissioner Cantu.

To be discussed on caucus call tomorrow - Amy to send business meeting agenda (attach sunshine act notice and email from Alex) and negotiations

1. Negotiations (list below)
2. FEMA discovery materials and notational vote -
    - Updated language has been vetted by OCRE/OGC and language the conservatives proposed has been adopted (attach materials)
    - Change in briefing date for virtual briefing (June instead of May)
3. Bail reform
4. Colorado and Idaho Advisory Committees
    - R's proposal - Dr. Chen in CO if we allow Mr. Yenor in ID
    - Attach document with Dr. Chen response and Yenor response

- Language on 30/30/10 for rebuttals and surrebuttals-Gail-vehicle AI
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    Status of follow up questions/update?
    Amy to ask Mauro today
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- SAC recruitment

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- So far 10 SAC's have expired and not been reappointed, and 4 more expire this month
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- Louisiana 3/2021 – Rukku
- Nebraska 3/2021 – Alec
- Texas 3/2021 – Amy
- New advisory committees (Puerto Rico, Virgin Islands, Northern Mariana Islands, Guam, American Samoa)

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- Irena checked in with David on how he wants to move forward with new advisory committees - on hold for the moment
- Broken Promises pandemic update
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  - Interested to find out spokesperson for Commission. Irena provided public material and plan to reconnect when a Commissioner can be designated to speak for the Commission
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  - Can we generate clips from the briefing video, into individual panelist testimony or other excerpts. Rukku to check in with Ang.
  - Catherine wants to raise this project again, to see if we can get to common ground with the Republicans. Catherine wants to revisit when we discuss project planning re FY22 (/FEMA, Comm. Adams' proposal, etc.).
  - Catherine spoke to Gilchrist over the holidays and he seemed open to reconsidering the report; Rukku will reach out to Thomas to see about next steps.
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- **All SA Meeting**
- AI 5-9
- Project propsals
- "Balance" SAC AI
- **Expired SACs (14)**
- **Meeting with Mauro**
  - Alex reached out to Mauro about scheduling a meeting and it was scheduled for tomorrow but Mauro cancelled it and scheduled it for next week.
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  - Rukku, Irena, Carissa met with OGC to discuss proposed revisions to the AI. Irena and Carissa are taking OGC's redline and comments to Commissioners to get feedback.
  - SAC letters – Rukku is working on moving out of backlog of Commissioner letters sharing publications from SACs. Sent Indiana and Arkansas last week.
    - Irena will raise with Ang/David that Staff Director could take over these letters while waiting for a new Chair.
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  - Rukku checked with John to see if Commissioner Adams will submit new project proposals. John is working with Commissioner Adams on project priorities and check back on timeline. Rukku to follow up with John this week.
  - John (at all SA meeting) said that Comm. Adams had a proposal, so Rukku will generate a timeline for consideration.
  - We will proceed with the FEMA Project as the FY22 statutory enforcement report.

AMERICAN OVERSIGHT

- Move forward with FY22 project planning calendar – Rukku generated the program planning schedule with emphasis on time early in the process for bipartisan discussion.
- Dave is working on a concept paper on race discrimination and small business lending, perhaps focusing on the recipients of the PPP loan.
- Dave spoke with Comm. Gilchrist about potential interest.

- Personnel
  - Cantu Special Assistant?
  - OCRE Director ?
  - Commission on Black Man and Boys
  - Irena to follow up with Mauro about these two positions
  - Summer 2021 interns – Irena hired a spring intern. Am? Irena reached out to Carissa their caucus will have 4, ours will have 2.
  - Irena's intern to start this week, Amy hired an intern to start 5/24
  - Fulbright fellows – Media fellow recommendation for Ang + possibly HQ fellow.
    - Ang is looking to hire a Fullbright fellow ASAP.
  - Irena has lead on a candidate with interest in bail reform.
- Commission on the Social Status of Black Men and Boys was signed into law, more details to come on what this means.
  - Appointments from White House
  - Call rescheduled with Congresswoman Wilson
  - Women/Girls bill
  - Irena to follow up on status of staffer
- **Budget questions**
  - Appropriations reached out to Irena + held a meeting last week, Irena to update.
  - Call regarding budget happened, John to provide additional information comparing requests to actuals
  - Website update – contract secured. Update to occur over the next year. Check in with Ang on things moving forward
  - FY22 budget timeline – John M. emailed Mauro to ask about status
- **Budget priorities for FY22?**
  - Forward funding for site visits in Puerto Rico and Texas
  - Regional staffing – at least one staffer for territory SACs
  - Irena to ask Alex to add to the agenda for the All SA meeting on
  - Monday

- **Election Assistance Commission**
  - Question about appointments

From: Amy Royce
Sent: Monday, March 15, 2021 10:00:15 AM
To: Irena Vidulovic; Alec Deull
Subject: Re: Caucus Call

Sure thing. Either time works for me

AMERICAN OVERSIGHT

From: Irena Vidulovic
Sent: Monday, March 15, 2021 9:59:28 AM
To: Amy Royce; Alec Deull
Subject: Caucus Call

Hey Team,

I now have to attend a last minute 11:00am ET meeting. Can we move our caucus call to 12noon or 1pm ET. We have a lot to discuss. I will work on the agenda.

Please let me know what works.

Irena

AMERICAN OVERSIGHT

Date : 3/15/2021 1:46:09 PM
From : "Alec Deull" adeull@usccr.gov
To : "Irena Vidulovic" ividulovic@usccr.gov, "Amy Royce" aroyce@usccr.gov
Subject : Re: Caucus Call

I give up. I have no idea what is going on with my phone.

Question regarding the EAC appointment proposal: from whom did that originate? Michael may already know about it and just not have communicated it with me, but if I need to discuss it with him, it would be helpful to know the background.

thanks! - Alec

From: Alec Deull
Sent: Monday, March 15, 2021 1:21:17 PM
To: Irena Vidulovic; Amy Royce
Subject: Re: Caucus Call

my phone keeps shutting down as I am trying to call back in. still trying.

From: Alec Deull
Sent: Monday, March 15, 2021 1:02:48 PM
To: Irena Vidulovic; Amy Royce
Subject: Re: Caucus Call

Just called in. I was on hold and call dropped. Calling back in.

From: Alec Deull
Sent: Monday, March 15, 2021 11:19:26 AM
To: Irena Vidulovic; Amy Royce
Subject: Re: Caucus Call

Thanks. Talk to you at 1. Sorry to respond late. I've accepted the calendar invitation. Thanks to Amy for grabbing my attention.

all best, Alec

From: Irena Vidulovic
Sent: Monday, March 15, 2021 10:55:10 AM
To: Amy Royce; Alec Deull
Subject: Re: Caucus Call

Amy,

Let's meet at 1pm ET today, hoping that you can join Alec.
Amy can you move the calendar invitation?

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Thanks,
Irena

From: Irena Vidulovic
Sent: Monday, March 15, 2021 10:26:46 AM
To: Amy Royce; Alec Deull
Subject: Re: Caucus Call

Thanks Amy! Alec please let us know what time works best for you. There is loads to discuss and a need to create and send out the caucus call agenda for tomorrow's call at 3pm. Please see the list of items below from Commissioner Cantu.

- Language on 30/30/10 for rebuttals and surrebuttals-Gail-vehicle AI
- Language on bipartisan nominations to Elect.Adv.Council at end of June 2021. Appointments to EAC will be made by Commission as a whole, with a majority vote. Proposed that Dem.Caucus nominates 2 people for one slot and R+I Caucus chooses the appointee. R+I Caucus nominates 2 people for one slot and Dem. caucus chooses the appointee. In future nominations to external agencies, the Chair will consult with the whole Commission before communicating any nominations. Vehicle-motion from floor at mtg. on March 19
- Canceling the Chair's speakers series. Vehicle-email from Norma Cantu to Commissioners.
- Already have language that half of State Adv. Council slots will be Dem. and half Rep. Need to add language on each Commissioners' Caucus will take ____days to nominate and vet new members of State Adv. Councils. At end of ___ days, the staff are expected to provide assistance in recruiting and vetting people to fill vacancies. Staff nominations take no longer than ____days. All nominations by Commissioners and staff come back to the full Commissioner for a discussion and vote to approve new members. Vehicle-motion from floor at mtg. on March 19.
- Language about agreeing that AIs, as more specific agreements, govern process of Commissioners; in absence of relevant AI, Commissioners will apply Roberts' Rules of Order. Vehicle-Memo of Understanding approved by majority of Commissioners.
- Chair proposes agenda for Commissioners' meeting, with Commissioners having ability to propose to amend agenda before meeting and also at the beginning the meeting, subject to majority vote. Vehicle-AI
- A majority of Commissioners is needed to cancel a called Commissioner meeting. Vehicle-AI
- Proposed by Norma, in absence of Chair available to moderate the meeting, the most senior Dem. and Rep. Commissioners will alternate chairing meetings. Vehicle-AI or memo. of understanding
- Language that any Commissioner from each Caucus may sit in on OCRE interviews provided the Commissioner's request to attend does not cause a

AMERICAN OVERSIGHT

scheduling delay. Vehicle?

- Memorial/obits require a majority vote of the Commission and the proposed language for the memorial shall be circulated to all the Commissioners. Vehicle-AI

- **FEMA / Puerto Rico**
  - The notational vote failed
  - OGC and OCRE finalizing the added language from Commissioner Adams
  - Hoping we can schedule another notational vote in order to untangle this procedural vote from all of the items that are on the agenda on Friday.
  - Irena to follow up with OGC/OCRE regarding the finalized FEMA discovery
  - documents

- **Bail reform**
  - Comm. Kladney taking over as lead on the project
  - debrief update?
  - Kladney/Amy negotiations with R's update? Status of follow up questions/update?
  - Oregon SAC had their last briefing on Friday 12/11, Catherine attended. Rukku shared briefing notes with OCRE in the comments
  - on the first draft.

- SAC recruitment
- Alex reached out to Irena to discuss CO and Idaho
- The Republican's via Alex would like to make a deal Yeanor for Dr. Chen. Please let your boss know and let's disscuss during out caucus call tomorrow.
  - Indiana 12/1/20 – Mauro circulated slate on Friday
  - Amy circulated vet memo. Slate includes 7 Ds, 7 Rs, and 1 Ind.
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  - Vermont (expired in June).
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AMERICAN OVERSIGHT

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- Comm. Heriot had objected to Prof. Chen, on the basis of a recent article that Prof. Chen published called Colorblind Nationalism.
- Irena is checking in with Alex on whether Comm. Heriot's objection is ongoing. Alex said he would update last week. No update.
- North Carolina: Irena
- Slate failed to get a majority vote on Friday 10/30.
- 15 candidates, 8 Democrats (including two Independents who lean Democrat), 7 Republicans (including one candidate who identified as "something else"). Note that Olga Wright, the returning Chair, identifies herself as a Democrat but ran for public office as a Republican in 2012.
- Comm. Kirsanow (and Adams) objected to the balance of the slate, and requested that it be shifted to 7 Republicans and 7 Democrats (removing one Dem).
- They further objected to the inclusion of Jennifer Lechner as they don't consider her a "true Republican." In her stead they would like to replace her with a Mr. Patrick Mincey who Carissa recruited. Replacing Lechner with Mincey takes the gender balance of the slate to 11 men and 4 women. Mincey has no civil rights experience, based on his application and a review of his public record.
- Rukku spoke to Thomas; Thomas proposed that we consider a slate of 9 Republicans (including Lechner) and 8 Democrats, and they would work on recruiting Republicans who would assist with balance of slate with respect to gender and other diversity factors. Catherine's current position is that she will not vote for unbalanced slate with 9 Republicans and 8 Democrats.
- Rukku proposed to Thomas the following: get another R, and add to the slate, to move to a balance of 8-8; added R cannot be Patrick Mincey (no civil rights experience). Might consider Mincey if he submits revised application with more justification for his civil rights experience.
- Idaho (expired in July).
- Rukku shared proposal with Carissa: 4 Republicans, 5 Democrats, 1 Independent leaning Democrat, and 1 Independent who leans in no direction. Slate did not include Scott Yenor.
- From Carissa: They are not willing to move forward with it without Scott Yenor, and it is unbalanced.
- Carissa relayed that they continue to not want to move forward without Yenor.
- Staff confirmed that Yenor is still interested in joining.
- District of Columbia 10/20/20 – Alex, Irena
- (as of 12/17) 11 applicants: 9 men, 2 women; 6 Ds, 4 Rs, 1 something else

AMERICAN OVERSIGHT

- Need more Rs and better diversity
- Iowa 11/17/20 – Carissa, Amy/Rukku
- (as of 11/17) 11 applicants: 7 men, 4 women; 5 Ds, 4 Rs, 2 Ind.
- Need at least one more R.
- Amy to check in with Carissa to see if she has any more leads. Carissa has exhausted her recruitment efforts, but John may have more leads.
- Ohio 11/17/20 – Carissa, Rukku
- (as of 12/17) 16 applicants: 11 Ds, 4 Rs, 1 Ind.
- Need more Rs. Carissa to work on recruitment.
- New Mexico 12/1/20 – Alex, Amy/Irena/Rukku
- 5 applicants. Need more candidates.
- Rukku reached out to Haaland's office for candidates, Rukku to follow up.
- Wyoming 12/1/20 – Alex, Alec
- 6 applicants. Need more candidates.
- Alec reached out to Shepard Foundation and confirmed that Judy Shepard will apply for the SAC.
- In general: Irena recommended we reach out to new Members' offices. Rukku circulated Congressional letter + updated 2 pager to share with offices.
- Florida 3/2021 – Irena
- Louisiana 3/2021 – Rukku
- Nebraska 3/2021 – Alec
- Texas 3/2021 – Amy
- New advisory committees (Puerto Rico, Virgin Islands, Northern Mariana Islands, Guam, American Samoa)
- Irena to check in with David on how he wants to move forward with new advisory committees and what slates to set for the March meeting

- Broken Promises pandemic update
- Senator Warren's office has reached out to Irena to schedule a meeting this week on the report update + will invite Julie to the meeting.
  - Irena to check website and send Sen. Warren's office info that is already public
  - Pursue social media strategy using briefing video/materials
  - Can we generate clips from the briefing video, into individual panelist testimony or other excerpts. Rukku to check in with Ang.
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AMERICAN OVERSIGHT

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- **Meeting with Mauro**
    - Alex reached out to Mauro about scheduling a meeting and it was scheduled for tomorrow but Mauro cancelled it and scheduled it for next week.
        - Website update – contract secured. Update to occur over the next year. Check in with Ang on things moving forward

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    - Cantu Special Assistant?
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AMERICAN OVERSIGHT

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- Commission on the Social Status of Black Men and Boys was signed into law, more details to come on what this means.
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  - Call rescheduled with Congresswoman Wilson
  - Women/Girls bill
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  - Appropriations reached out to Irena + held a meeting last week, Irena to update.
  - Website update – contract secured. Update to occur over the next year. Check in with Ang on things moving forward
  - FY22 budget timeline – John M. emailed Mauro to ask about status
- **Budget priorities for FY21/22?**
  - Forward funding for site visits in Puerto Rico and Texas
  - Regional staffing – at least one staffer for territory SACs
  - **Please check with your bosses and send priorities by the end of this week.**
- **Election Assistance Commission**
  - Question about appointments. When do the terms expire?
  - Alec to follow up on term expirations

From: Amy Royce
Sent: Monday, March 15, 2021 10:00:15 AM
To: Irena Vidulovic; Alec Deull
Subject: Re: Caucus Call

Sure thing. Either time works for me

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AMERICAN OVERSIGHT

Date : 3/15/2021 1:49:45 PM
From : "Alec Deull" adeull@usccr.gov
To : "Amy Royce" aroyce@usccr.gov, "Irena Vidulovic" ividulovic@usccr.gov
Subject : Re: Caucus Call

About the EAC proposal? Is it the Rs' idea? Thanks.

From: Amy Royce
Sent: Monday, March 15, 2021 1:47:02 PM
To: Irena Vidulovic; Alec Deull
Subject: Re: Caucus Call

Thanks. I don't believe we have any more information on the back and forth

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From: Amy Royce
Sent: Monday, March 15, 2021 1:46:15 PM
To: Irena Vidulovic; Alec Deull
Subject: Re: Caucus Call

Notes below

Alec, please let us know if there is any objection to proceeding with the notational vote on the FEMA materials today. Per your email on Friday we understood that to be Michael's preference. Irena is checking with Mauro on how to move forward.

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Subject: Re: Caucus Call

Thanks Amy! Alec please let us know what time works best for you. There is loads to discuss and a need to create and send out the caucus call agenda for tomorrow's call at 3pm. Please see the list of items below from Commissioner Cantu.

To be discussed on caucus call tomorrow - Amy to send business meeting agenda (attach sunshine act notice and email from Alex) and negotiations

1. Negotiations (list below)
2. FEMA discovery materials and notational vote -
    - Updated language has been vetted by OCRE/OGC and language the conservatives proposed has been adopted (attach materials)
    - Change in briefing date for virtual briefing (June instead of May)
3. Bail reform
4. Colorado and Idaho Advisory Committees
    - R's proposal - Dr. Chen in CO if we allow Mr. Yenor in ID

AMERICAN OVERSIGHT

    - Attach document with Dr. Chen response and Yenor response
- Language on 30/30/10 for rebuttals and surrebuttals-Gail-vehicle AI
- Language on bipartisan nominations to Elect.Adv.Council at end of June 2021. Appointments to EAC will be made by Commission as a whole, with a majority vote. Proposed that Dem.Caucus nominates 2 people for one slot and R+I Caucus chooses the appointee. R+I Caucus nominates 2 people for one slot and Dem. caucus chooses the appointee. In future nominations to external agencies, the Chair will consult with the whole Commission before communicating any nominations. Vehicle-motion from floor at mtg. on March 19
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AMERICAN OVERSIGHT

- **Bail reform**
  - Comm. Kladney taking over as lead on the project
  - Kladney/Amy negotiations with R's update?
    Status of follow up questions/update?
    Amy to ask Mauro today
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- SAC recruitment
- So far 10 SAC's have expired and not been reappointed, and 4 more expire this month
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AMERICAN OVERSIGHT

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- Project proposals for FY21/22
    - Rukku checked with John to see if Commissioner Adams will submit new project proposals. John is working with Commissioner Adams on project priorities and check back on timeline. Rukku to follow up with John this week.
    - John (at all SA meeting) said that Comm. Adams had a proposal, so Rukku will generate a timeline for consideration.
    - We will proceed with the FEMA Project as the FY22 statutory enforcement report.
    - Move forward with FY22 project planning calendar – Rukku generated the program planning schedule with emphasis on time early in the process for bipartisan discussion.
    - Dave is working on a concept paper on race discrimination and small business lending, perhaps focusing on the recipients of the PPP loan.
    - Dave spoke with Comm. Gilchrist about potential interest.
- Personnel
    - Cantu Special Assistant?
    - OCRE Director ?
    - Commission on Black Man and Boys
    - Irena to follow up with Mauro about these two positions
    - Summer 2021 interns – Irena hired a spring intern. Am? Irena reached out to Carissa their caucus will have 4, ours will have 2.
    - Irena's intern to start this week, Amy hired an intern to start 5/24
    - Fulbright fellows – Media fellow recommendation for Ang + possibly HQ fellow.
        - Ang is looking to hire a Fullbright fellow ASAP.
    - Irena has lead on a candidate with interest in bail reform.
- Commission on the Social Status of Black Men and Boys was signed into law, more details to come on what this means.
    - Appointments from White House
    - Call rescheduled with Congresswoman Wilson
    - Women/Girls bill
    - Irena to follow up on status of staffer
- **Budget questions**
    - Appropriations reached out to Irena + held a meeting last week, Irena to update.
    - Call regarding budget happened, John to provide additional information comparing requests to actuals
    - Website update – contract secured. Update to occur over the next year. Check in with Ang on things moving forward
    - FY22 budget timeline – John M. emailed Mauro to ask about status
- **Budget priorities for FY22?**

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- Forward funding for site visits in Puerto Rico and Texas
- Regional staffing – at least one staffer for territory SACs
- Irena to ask Alex to add to the agenda for the All SA meeting on Monday

- **Election Assistance Commission**
  - Question about appointments

From: Amy Royce
Sent: Monday, March 15, 2021 10:00:15 AM
To: Irena Vidulovic; Alec Deull
Subject: Re: Caucus Call

Sure thing. Either time works for me

From: Irena Vidulovic
Sent: Monday, March 15, 2021 9:59:28 AM
To: Amy Royce; Alec Deull
Subject: Caucus Call

Hey Team,

I now have to attend a last minute 11:00am ET meeting. Can we move our caucus call to 12noon or 1pm ET. We have a lot to discuss. I will work on the agenda.

Please let me know what works.

Irena

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Date : 3/15/2021 3:32:30 PM
From : "Amy Royce" aroyce@usccr.gov
To : "David Kladney" dkladney@usccr.gov, "Debo P. Adegbile" dadegbile@usccr.gov, "Michael Yaki" MYaki@usccr.gov, "Norma Cantu" ncantu@usccr.gov, "normavcantu@gmail.com" normavcantu@gmail.com
Cc : "Irena Vidulovic" ividulovic@usccr.gov, "Alec Deull" adeull@usccr.gov
Subject : Caucus call tomorrow
Attachment : RE_ March 19th Business Meeting Agenda Posting - Amy Royce.pdf;03-19-Business-Meeting-Agenda-Sunshine-Act-Notice.pdf;FEMA Research Plan.OCRE_2.22.21.docx;FEMA Timeline.OCRE_3.15.2021.docx;FEMA Chapter Outline.3.15.2021.docx;CO SAC Dr. Chen.docx;ID SAC Dr. Yenor.docx;

Hello all,

We are scheduled for a caucus call tomorrow at 3:00 Eastern/ 12:00 Pacific. The number is 1-877-446-3914, passcode 858713#

Agenda items:

- Business meeting on Friday (Sunshine Act notice and email regarding the R caucus understanding for how the meeting will run, attached)
- Potential items for discussion at business meeting (list below)
- FEMA discovery materials (attached)
    - Materials may be considered by notational vote
    - Updated language has been vetted by OCRE/OGC and language the conservatives proposed has been adopted
    - Change in briefing date for virtual briefing (June instead of May)
- Bail reform pending report
- Colorado and Idaho Advisory Committee
    - R's proposal - Dr. Chen in CO if we allow Mr. Yenor in ID (objections and responses attached)

Items for discussion at business meeting:

- Language on 30/30/10 for rebuttals and surrebuttals-Gail-vehicle AI
- Language on bipartisan nominations to Elect.Adv.Council at end of June 2021. Appointments to EAC will be made by Commission as a whole, with a majority vote. Proposed that Dem.Caucus nominates 2 people for one slot and R+I Caucus chooses the appointee. R+I Caucus nominates 2 people for one slot and Dem. caucus chooses the appointee. In future nominations to external agencies, the Chair will consult with the whole Commission before communicating any nominations. Vehicle-motion from floor at mtg. on March 19
- Canceling the Chair's speakers series. Vehicle-email from Norma Cantu to Commissioners.
- Already have language that half of State Adv. Council slots will be Dem. and half Rep. Need to add language on each Commissioners' Caucus will take

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____days to nominate and vet new members of State Adv. Councils. At end of ___ days, the staff are expected to provide assistance in recruiting and vetting people to fill vacancies. Staff nominations take no longer than ____days. All nominations by Commissioners and staff come back to the full Commissioner for a discussion and vote to approve new members. Vehicle-motion from floor at mtg. on March 19.

- Language about agreeing that AIs, as more specific agreements, govern process of Commissioners; in absence of relevant AI, Commissioners will apply Roberts' Rules of Order. Vehicle-Memo of Understanding approved by majority of Commissioners.
- Chair proposes agenda for Commissioners' meeting, with Commissioners having ability to propose to amend agenda before meeting and also at the beginning the meeting, subject to majority vote. Vehicle-AI
- A majority of Commissioners is needed to cancel a called Commissioner meeting. Vehicle-AI
- Proposed by Norma, in absence of Chair available to moderate the meeting, the most senior Dem. and Rep. Commissioners will alternate chairing meetings. Vehicle-AI or memo. of understanding
- Language that any Commissioner from each Caucus may sit in on OCRE interviews provided the Commissioner's request to attend does not cause a scheduling delay. Vehicle?
- Memorial/obits require a majority vote of the Commission and the proposed language for the memorial shall be circulated to all the Commissioners. Vehicle-AI

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RE: March 19th Business Meeting Agenda Posting

Mauro Morales

Thu 3/11/2021 8:45 PM

To: Alexander Heideman <aheideman@usccr.gov>;

Cc: Carissa Mulder <CMulder@usccr.gov>; Peter Kirsanow <pkirsanow@usccr.gov>; Gail Heriot <gheriot@usccr.gov>; Norma Cantu <ncantu@usccr.gov>; Michael Yaki <MYaki@usccr.gov>; Commissioners <Commissioners@usccr.gov>; CommissionerAssistants <CommissionerAssistants@usccr.gov>; ExecutiveStaff <ExecutiveStaff@usccr.gov>;

Alex,

You are welcome. I was not aware of agreements you mentioned between Commissioners. I now understand that you are serving as the representative for all Commissioners on the negotiations for the March 19th agenda. The posting of the agenda today was required for notice under the requirements of the Sunshine Act in order for the Commission to meet on the 19th. As I reminded Commissioners in my email, at the commencement of the meeting the agenda may be amended by the majority through a voice or roll call vote. Commissioners have the ability to remove or add items for consideration. If the desire of Commissioners is to create an omnibus motion containing a number of MOU's and AI's it can be done by a majority vote. I would recommend that the omnibus motion be read into the record to create a clear transcript of what Commissioners are voting to accomplish. AI's will need prior approval of the General Counsel to ensure legality and compliance with Commission procedures.

A joint chairmanship to conduct the meeting would be extraordinary and outside my six year experience serving as the staff director. I am unsure why you would not simplify the process by voting Commissioner Cantu into the Chair at the beginning of the meeting as requested by the President and thereby allowing her to conduct the business meeting as is the regular process for the Commission. However, if the Commissioners wish to a conduct a business meeting with two Commissioners acting as a joint Chair, I will have the GC look into how it can be accomplished. Lastly, there is no AI or statute that "requires" Commissioner Cantu's appointment to be listed first on the business meeting agenda. It is highly irregular and disruptive to operate the Commission without a Chair as you have witnessed in the past weeks. Listing the motion first on the agenda for a vote on the Chairmanship was done as a matter of respect to Commissioner Cantu, to honor the request of the President and as a practical way to undertake the work of the Commission. If the majority of Commissioners desire another process to commence the meeting on the 19th we will do our best to honor their wishes. I have cc'd all Commissioners, all SA's and the agency executive staff for transparency and to be prepared to take steps to carry out commissioner requests. I look forward to hearing from you and reviewing your MOU's and AI's as negotiated and deemed acceptable to Commissioners.

Mauro Morales
Staff Director
USCCR

From: Alexander Heideman <aheideman@usccr.gov>
Sent: Thursday, March 11, 2021 6:29 PMCom
To: Mauro Morales <mmorales@usccr.gov>
Cc: Carissa Mulder <CMulder@usccr.gov>; Peter Kirsanow <pkirsanow@usccr.gov>; Gail Heriot <gheriot@usccr.gov>; Norma Cantu <ncantu@usccr.gov>; Michael Yaki <MYaki@usccr.gov>
Subject: Re: March 19th Business Meeting Agenda Posting

Dear Mauro:

AMERICAN OVERSIGHT

Thank you for sending the meeting agenda for next Friday.

It is our understanding that several Commissioners agreed to allow Commissioners Yaki and Kirsanow to co-chair the start of the business meeting. Furthermore, it is our understanding that several Commissioners agreed for the agenda to list first an omnibus motion that would include President Biden's appointment of Commissioner Cantú as chairperson as well as several MOUs and AIs. All this assumes that the pre-meeting negotiations over exact wording go well (and we anticipate that they will).

On the other hand, we are unaware of any AI or statute that *requires* Commissioner Cantú's appointment to be listed first on a business-meeting agenda. If your position is different, then please provide us with the citation to the appropriate authority.

Sincerely,

Alex

Alexander M. Heideman
Special Assistant/Counsel to Commissioner Gail Heriot
U.S. Commission on Civil Rights
1331 Pennsylvania Avenue NW, Suite 1150
Washington DC 20425
aheideman@usccr.gov

From: Mauro Morales <mmorales@usccr.gov>
Date: Thursday, March 11, 2021 at 4:52 PM
To: Commissioners <Commissioners@usccr.gov>
Cc: CommissionerAssistants <CommissionerAssistants@usccr.gov>, ExecutiveStaff <ExecutiveStaff@usccr.gov>
Subject: March 19th Business Meeting Agenda Posting

Commissioners,

I have attached the hyperlink to the agenda for the March 19th Commission Business Meeting. As you are aware, Commissioners agreed to schedule this business meeting on September 11th , 2020 by a unanimous vote. In order to meet requirements for compliance with the Sunshine Act, the notice had to be posted today. Commissioner Cantu was consulted in creation of the agenda and it was developed pursuant to previous and ongoing communications she had with other Commissioners. The very first order of business must be the vote on President Biden's designation of Commissioner Cantu to become Commission Chair. I defer to Commissioners as to who they want to make the motion to vote on her Chairmanship. After the vote occurs and in anticipation of Commissioner Cantu becoming Chair, she can then run the rest of the business meeting as Chair. A motion to adopt or amend the agenda would be in order after she becomes Chair. I understand that there are ongoing discussions to potentially add items for Commissioner discussion and votes. As always, Commissioners may amend the agenda to add or remove items with a majority voice or roll call vote of Commissioners. Items not ready for consideration at that time may be deferred to the next business meeting scheduled for April if necessary.
https://www.usccr.gov/files/2021/03-19-Business-Meeting-Agenda-Sunshine-Act-Notice.pdf

Commissioner folders will be populated with relevant information on Friday and during the week leading up to the business meeting. In addition, you will receive the telephone conference call number that will enable you to join and speak during the meeting.

Please contact me if you have any questions.

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Mauro Morales
Staff Director
U.S. Commission on Civil Rights
P: 202-376-7796| F: 202-376-7672
Mmorales@usccr.gov
http://usccr.gov/
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425

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CIVIL RIGHTS COMMISSION

Sunshine Act Meeting Notice

AGENCY: United States Commission on Civil Rights.

ACTION: Notice of Commission public business meeting.

DATES: Friday, March 19, 2021, 12:00 p.m. EST.

FOR FURTHER INFORMATION CONTACT: Angelia Rorison: 202-376-7700; publicaffairs@usccr.gov.

ADDRESSES: Meeting to take place by telephone and is open to the public by telephone: 1-866-556-2429, Conference ID #6761392. Computer assisted real-time transcription (CART) will be provided. The web link to access CART (in English) on Friday, March 19th, 2021, is https://www.streamtext.net/player?event=USCCR. Please note that CART is text-only translation that occurs in real time during the meeting and is not an exact transcript.

MEETING AGENDA

I. Motion to Approve Commissioner Norma Cantú to Serve as USCCR Chair

II. Approval of Agenda

III. Business Meeting

A. Discussion and Vote on Statement of Walter E. Williams;

B. Discussion and Vote to continue the Policy of Rebuttals and Surrebuttals;

C. Discussion and Vote to suspend Speaker Series;

D. Discussion and Agreement to Appoint Bipartisan Commissioners to EAC

E. Discussion and Vote on FEMA Report Discovery Plan

F. Management and Operations

- Staff Director's Report

G. **Adjourn Meeting**

Dated: March 11, 2021
Angelia Rorison
USCCR Media and Communications Director

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FEMA's Natural Disaster Response
Research Plan

Working Title: Federal Response to Hurricanes María and Harvey: Civil Rights and Protections Following a Natural Disaster

From January 2021 to June 2022, OCRE staff will seek information through a variety of sources (e.g., interrogatories, empirical research, qualitative and quantitative data, briefing testimony, and formal and informal outreach to government officials, scholars, and community stakeholders) to investigate the federal government's response to the original and ongoing impact of Hurricanes María in Puerto Rico and Harvey in Texas, and may possibly compare them to the federal response to other significant hurricane systems. OCRE will focus its data-gathering in the following areas:

- The role of the federal government in responding to natural disasters such as hurricanes
    - Federal obligations to provide aid for relief and rebuilding through FEMA under the Stafford Act, 42 U.S.C. § 5121 et. al., and related federal policy and practice
    - How federal disasters are determined by "the States" and declared by the President
    - How funding is budgeted for and allocated across disasters
    - How FEMA plans, coordinates, and executes emergency management in administering aid relief, in collaboration with other federal organizations, as well as with state, local, territorial, and tribal lands
    - Trajectory and types of assistance that may be provided, i.e., evacuation to safety, temporary shelter, health care, food, clothing, housing, unemployment benefits or training, and rebuilding, through individual or block assistance, programs entitling payments or programs entitling other relief
- Framework of relevant civil rights laws and regulations, and assessment, including:
    - The Stafford Act's requirements that the federal government ensure all relief and assistance "… shall be accomplished in an equitable and impartial manner, without discrimination on the grounds of race, color, religion, nationality, sex, age, disability, English proficiency, or economic status."[1]
    - Relevant constitutional and other federal law; any relevant federal policy guidance
        - Title VI of the Civil Rights Act
        - Rehabilitation Act of 1973
        - Executive Order 13,166 (LEP)
        - Executive Order 12,898 (Environmental Justice)
        - Fair Housing Act of 1968

[1] 42 U.S.C. § 5151 (1988).

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    - Relevant legal rulings regarding the equities of federal responses to natural disasters
    - Implications of differing local systems, such as U.S. territories v. states v. tribes, land classifications, etc.
- Study of essential data regarding Hurricanes María and Harvey including but not limited to demographics, including race, nationality, English proficiency (LEP status), disability status, and other data regarding the following potentially key factors, along with any others that are identified as relevant during the research process. Key factors may include:
    - Number of individuals/households impacted by:
        - Fatalities
        - Injuries requiring hospitalization
        - Households/structures demolished (completely/partially)
        - Individuals/households misplaced from homes
        - Job losses and other income losses (such as small business losses)
    - Cost of damage of structures
    - Geographical landmass information as to expansiveness of damage
    - Extent of flooding and its impacts
    - Loss of utilities (electricity, clean water)
    - Extent of homes impacted
    - Timeline of loss and repair where available
    - Federal response, to include:
        - Accessibility of requests for aid, and any barriers
        - Number of requests for assistance; outcomes
            - Demographic information available for individuals requesting assistance, experiencing barriers in requests
        - Number of individuals/households provided assistance
            - Demographic information available for individuals provided assistance
        - Any relevant disparities and inequities associated with access to relief aid, including placement and staffing of Disaster Recovery Centers, hot-line staffing, contractor hiring and staffing, and access to appeals procedures
        - Monetary amount of relief provided, including demographic and geographic distribution within a disaster declaration area
        - Timeline of relief provided
        - Logistical differences in administering disaster relief
        - Types of civil rights complaints received
        - Any community-wide analyses performed by the federal government, such as surveys, public fora; other assessments
        - Environmental impact assessments
- Whether and how hurricanes María and Harvey can be compared to each other, and possibly whether other recent hurricanes may also be compared through data trends

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- Whether data trends exist as to the federal disaster response to hurricanes in U.S. territories such as Puerto Rico
    - How these trends might differ from responses to hurricanes in U.S. states
        - Examination of historic and current qualitative and quantitative data
    - Trend data would include the amount of aid provided, the type of aid provided, the timeline of aid provided, the number of individuals to whom aid was provided, and demographics

OCRE will accomplish this research by:

- Holding a briefing before the Commission with a panel of expert witnesses (including government officials, scholars, community stakeholders, etc.) who can provide information, data, and insight into the impacts of Hurricanes María and Harvey, as well as the federal aid received, and information regarding the timeliness and amount of aid provided; and soliciting public comments. Testimony and public comments may be received in English and/or Spanish, or other languages as needed (such as Vietnamese in the Houston area). (this briefing may be virtual, depending on COVID-19 conditions). The briefing may be followed by a site visit to Puerto Rico and/or Texas in late 2021, if travel is feasible and resources are available.
- Examining publicly available data, research, and information from interrogatories provided by government offices and departments regarding resources provided to victims of and communities impacted by Hurricanes María and Harvey including (but not limited to):
    - Timeline of resources provided to victims and communities
    - Any formulas used to determine the amount of aid provided and the specific recipients of such aid
    - Extent to which federal agencies complied with federal civil rights laws and policies regarding aid provided to U.S. states and U.S. territories
    - Information about how to apply for aid, number of applications received, outcomes, and appeals and/or complaints filed, and their resolution
    - Policies and procedures with regard to the location and staffing of Disaster Recovery Centers, including decisions regarding language and translation services
    - Policies and procedures for the hiring of contractors by FEMA to handle individual assistance claims and compliance with federal civil rights laws and policies
- Working with OGC to send Interrogatories and Document Requests to FEMA
- Collecting and analyzing FEMA briefings, USCCR State Advisory Committee panels and follow-up questions, additional testimony/field hearings conducted by Congress or other entities
- Examining relevant information from academic journals and nonpartisan research organizations

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- Examining empirical research and analyzing relevant data from government and non-government sources regarding federal responses to hurricanes in the U.S., in both territories and mainland states, including demographic data
- Examining the data/reports/work product of federal agencies, advocates, and community stakeholders in order to assess:
    - Key players and their objectives
    - Efforts these agencies and comparable groups took in response to Hurricanes María and Harvey
    - Recommendations or best practices that may be drawn from the work of FEMA, as well as advocates and community stakeholders

Proposed Virtual Briefing Panels

A. State and Local Disaster Response Officials and Community Stakeholders
- State and municipal Office of Emergency Services officials from Texas, Puerto Rico, and United States Virgin Islands.
- Local mayoral offices
- National Guard

B. FEMA
- ODIC (Office of Disability Integration and Coordination)
- Regional Administrators
- Office of Response and Recovery
- Office of Equal Rights
- DHS - Center for Faith-Based and Neighborhood Partnerships
- DHS - Office of Civil Rights and Civil Liberties
- Department of Defense
- Department of Housing and Urban Development

C. Outside Testimony and FEMA Voluntary Organizations
- Community stakeholders (representing and/or serving impacted persons)
- American Red Cross, other private relief organizations
- National Association of State Emergency Donations and Volunteer Coordinators, National Mass Care Council/Strategy, International Association of Emergency Managers, National Emergency Management Association
- Victims of Hurricanes María and Harvey
- The Corporation for National and Community Service (CNCS)

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FY 2021 / 2022 FEMA Timeline

I. Pre-Briefing	
OCRE circulates draft of discovery plan, outline, and timeline to lead SA's	Thursday, December 31, 2020
OCRE circulates draft of discovery plan, outline, and timeline to Commissioners and SAs	Thursday, January 14, 2021
Commissioners and SAs provide feedback to OCRE on draft of discovery plan, outline, and timeline	Friday, February 5, 2021
OCRE submits finalized discovery plan, outline, and timeline to Commissioners and SAs	Monday, March 15, 2021
Vote on discovery plan, outline, and timeline	Tuesday, March 16, 2021
OCRE request panelist recommendations for virtual briefing and briefing book recommendations	Tuesday, March 16, 2021
Commissioners & SAs submit names for potential panelists to OCRE	Friday, April 2, 2021
OCRE finalizes list of panelists	Friday, April 9, 2021
Send invites out to potential panelists	Monday, April 12, 2021
Article suggestions for Briefing Book due to OCRE	Friday, May 7, 2021
Briefing Book due to SAs and Commissioners	Tuesday, May 25, 2021
Briefing (Virtual) (2 expert panels)	**Friday, June 25, 2021**
1st Field Briefing (1 expert panel, Onsite Public Forum) – Texas	**Friday, November 19, 2021**
2nd Field Briefing (1 expert panel, Onsite Public Form) – Puerto Rico	**Friday, December 10, 2021**
End of first public comment period	Monday, July 26, 2021
End of second public comment period	Monday, January 10, 2022
II. Review of Report Drafts and Comments	
Initial Draft to Commissioners	**Monday, September 27, 2021**
Commissioners' Comments Due Back to OCRE	Wednesday, October 27, 2021
2nd draft to Commissioners	**Friday, January 21, 2022**
Commissioners' Comments Due Back to OCRE	Friday, February 18, 2022
Send Report for LSR	**Friday, March 4, 2022**
LSR Due	Friday, April 1, 2022
LSR incorporated	Friday, April 15, 2022
Send report for Affected Agency Review	**Friday, April 15, 2022**

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Affected Agency Review Due	Friday, May 13, 2022
III. Final Report and Vote	
Disseminate report to Commissioners for vote	**Friday, May 27, 2022**
Commissioner vote on report	**Friday, June 24, 2022**
IV. Post-Vote	
Commissioners statements due	Monday, July 25, 2022
Commissioners rebuttals due	Thursday, August 25, 2022
Commissioner surrebuttals due	Thursday, September 8, 2022
OCRE circulates formatted version for Commissioner edits	Thursday, September 8, 2022
Commissioner edits due	Wednesday, September 14, 2022
OCRE provides embargoed version	Friday, September 16, 2022
OCRE provides version for website upload	Monday, September 19, 2022
Publication	Wednesday, September 21, 2022

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Draft Chapter Outline
Federal Response to Hurricanes María and Harvey: Civil Rights and Protections Following a Natural Disaster

Executive Summary

CHAPTER 1: Introduction

I. Context & Background
   A. Introductory discussion of FEMA's response to natural disasters
      i. Why the Commission took on this issue (voted-upon Concept Paper)
      ii. Brief summary of report methodology, including briefing, testimony received and other key sources of information; and brief summary of OCRE research and methodology

II. Hurricanes María and Harvey
   A. Number of individuals/households impacted
      i. Fatalities
      ii. Hospitalizations
      iii. Structural damage
      iv. Individuals/households misplaced from homes
         1. Long-term displacement
      v. Job losses
      vi. Monetary information regarding damage
      vii. Flooding impacts
      viii. Loss of utilities
         1. Electricity
         2. Clean water
         3. Telecommunications
   B. Impacts on sectors
      i. Healthcare
      ii. Education
      iii. Business
      iv. Local government
   C. Pre-disaster challenges in Puerto Rico and Texas
      i. Economic issues including PROMESA in Puerto Rico
      ii. Existing infrastructure issues
      iii. Geographic issues
   D. Challenges faced by FEMA from the adequacy or inadequacy of state and local government responses to the disasters, as well as impacts on FEMA from private sector responses to the disaster
      i. Coordination of state and local governments with FEMA to authorize, arrange, organize, and prioritize delivery of aid

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ii. Technical assistance to FEMA in identifying, evaluating, and understanding infrastructure, transportation, distribution, and healthcare system failures
iii. Local private sector responses from suppliers, providers, contractors, labor unions, etc. that positively or adversely impacted FEMA's ability to supply or deliver needed disaster aid

III. Status and other local government issues
A. Overview of potential civil rights issues involved in the federal responses to the storms
i. Summary of testimony (including from the Texas SAC)
ii. Summary of data
iii. Summary of FEMA's responses to the Commission's inquiries
B. Overview of Applicable Civil Rights Protections
i. The Stafford Act's requirements that the federal government ensure all relief and assistance "… shall be accomplished in an equitable and impartial manner, without discrimination on the grounds of race, color, religion, nationality, sex, age, disability, English proficiency, or economic status."[1]
ii. Relevant constitutional and other federal law/policy guidance
1. Title VI of the Civil Rights Act
2. Rehabilitation Act of 1973
3. Executive Order 13,166 (LEP)
4. Executive Order 12,898 (Environmental Justice)
5. Fair Housing Act of 1968
iii. Relevant caselaw
iv. Challenges applicants seeking disaster relief resources may face, including accessibility issues, wait times, and sufficiency of aid; consequences of not receiving aid v. benefits of aid

IV. How did Hurricanes María and Harvey impact various demographic populations?
i. Racial and ethnic minorities
ii. People with disabilities
iii. Individuals with limited or no English language proficiency
iv. Individuals of low socioeconomic status

CHAPTER 2: Federal Government's Role in Disaster Response

I. Discussion of FEMA's role and obligations in natural disaster emergencies
i. Brief History
ii. Role and Responsibilities
iii. Resources provided before, during, and after a natural disaster

[1] 42 U.S.C. § 5151 (1988).

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A. Coordinating role with other federal agencies, state, local, territorial, and tribal governments, and nongovernmental organizations in providing aid
B. Summary of civil rights duties

II. FEMA's Response to Hurricanes María and Harvey (comparison of benchmarks to short- and long-term data, including but not limited to the factors listed below)

A. Hurricane María
   i. Disaster declaration proceedings
   ii. FEMA's Overall Estimated Monetary Damages
   iii. FEMA's Assessment of Infrastructure & Community Impacts (hospitals & schools closed, accessibility of food & water, etc.)
   iv. Federal Response/Demographics of:
      1. Requests for Assistance
      2. Location and staffing of Disaster Recovery Centers, phone assistance lines, and hiring of contractors for the individual and business assistance programs.
      3. Accessibility and Barriers to Aid Requests
      4. Assistance Provided
      5. Timeline of Relief & Rebuilding Aid Provided
   v. Ongoing rebuilding efforts
      1. Where do the impacted areas in Puerto Rico stand on any type of recovery timeline?
      2. Long-term/permanent displacement
      3. COVID-19 impacts on these efforts (including analysis of declaration of COVID-19 as a natural disaster)

B. Hurricane Harvey
   i. Disaster declaration proceedings
   ii. FEMA's Overall Estimated Monetary Damages
   iii. Infrastructure & Community Impacts (hospitals & schools closed, accessibility of food & water, etc.)
   iv. Federal Response/Demographics of:
      1. Requests for Assistance
      2. Location and staffing of Disaster Recovery Centers, phone assistance lines, and hiring of contractors for the individual and business assistance programs.
      3. Accessibility and Barriers to Aid Requests
      4. Assistance Provided
      5. Timeline of Relief & Rebuilding Aid Provided
   v. Ongoing rebuilding efforts
      1. Where do the impacted areas in Texas stand on any type of recovery timeline?
      2. Long-term/permanent displacement
      3. COVID-19 impacts on these efforts (including analysis of declaration of COVID-19 as a natural disaster)

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III. Trajectory and types of assistance provided (comparing any benchmarks to data/comparative data)
    i. Public assistance
    ii. Individual assistance
    iii. Block grants
    iv. Payment programs vs. programs providing shelter, housing, job assistance, food, education, etc.

IV. Considerations in providing FEMA aid
    A. What relevant factors are taken into consideration regarding relief appropriations?
        i. Community-wide analyses?
        ii. Environmental impact assessments?
    B. Is there a need to reduce any barriers for states/territories and/or individuals applying for disaster assistance and relief?
    C. How well has FEMA coordinated with intergovernmental agencies and organizations in planning, coordinating, and executing emergency management in administering aid relief?

V. Examination of whether local factors, practices, or guidelines, or other factors impact damage assessments and the delivery of resources - are there challenges in providing disaster relief and how can they be overcome? Factors may include:
    i. Infrastructure
    ii. Telecommunications
    iii. Logistics
    iv. Language
    v. Cultural competencies
    vi. Mainland states vs. U.S. territories

VI. FEMA's compliance efforts with the Stafford Act and other civil rights obligations in response to Hurricanes María and Harvey
    A. Review of access to disaster relief, including:
        1. Accessibility issues
        2. Any income or housing requirements for receiving aid
        3. Differential requirements or barriers based on territorial status or other qualities of local government
        4. Whether these types of barriers are reasonable
    B. Types of civil rights complaints received
    C. Have there been indications of discrimination in relief and assistance activity on the basis of race, color, religion, nationality, sex, age, disability, or English proficiency (LEP status)?

CHAPTER 3: Emerging Best Practices

I. Identification of potential civil rights issues & developing practices to address them (based on FEMA Summit as well as agency testimony and information provided)

AMERICAN OVERSIGHT

II. Local governments' identification of FEMA-related civil rights issues & recommendations for best practices
III. Impacted individuals, community stakeholders & nongovernmental actors' identification of potential civil rights issues & recommendations for best practices

CHAPTER 4: Findings and Recommendations

AMERICAN OVERSIGHT

COLORADO: 12 candidates, 6 Republicans (including one Independent who leans Republican), 6 Democrats (including one Independent who leans Democrat).

- Comm. Heriot objected to Prof. Ming Hsu Chen on the basis of an article she wrote called, "Colorblind Nationalism."
- Prof. Chen responded, and Mauro kept her on the slate on the basis of the response.
- Full objection from Comm. Heriot:

In her article, Prof. Chen says that racist and anti-immigrant "policies are cloaked in the neutral language of national protection, public health, and economic justice." Therefore, anyone who supports those facially colorblind policies is racist. More broadly, Prof. Chen suggests that anyone who favors any level of immigration restriction is a white supremacist.

It is inappropriate for a SAC member to make wild accusations of racism against entire groups of people. This article reveals Prof. Chen's bad faith. Additionally, her embrace of Ibram X. Kendi's "anti-racist" ideology is troubling, as that ideology in and of itself promotes discrimination.

Prof. Chen's article in the Yale Journal on Regulation, "Colorblind Nationalism," (available here) is particularly objectionable for a member of a State Advisory Committee.

- Full response from Prof. Chen:

Dear Mr. Mussatt and Mr. Morales,

Thank you for the opportunity to respond to Commissioner Heriot's objection. This objection seems to be based on a single sentence from an opinion piece, which I discuss below, but please note her objection paraphrases my essay in ways that mischaracterize the essay and my beliefs.

For example:

- *I do not say or believe that "anyone who supports facially colorblind policies is racist"*
- *I do not say that or believe that "anyone who favors any level of immigration restriction is a white supremacist"*
- *There is also no basis for her claim that I write or act in "bad faith" in her formal objection.*

As some background, I have served on the Colorado State Advisory Committee for 4-years (2016-2020). During that time, I worked collaboratively with all SAC members after my project proposal on the naturalization backlog was unanimously adopted in 2018. This work included working together on a briefing with expert testimony from 12 speakers representing a range of perspectives, addressing all SAC member voices in when drafting our report, and incorporating suggestions during the subsequent revisions and adoption of the report. The resulting 2019 report has since been cited widely in media and other academic and policy research. A 2020

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update and 2-page statement of concern was adopted unanimously by the CO SAC, and USCCR Chair Catherine Lhamon endorsed and sent her own letter to the impacted agency.

During my tenure, I also supported projects spearheaded by other SAC members, including ones sponsored by our more conservative members on religious freedom and racial disparities in infant/maternal mortality. In each of these projects, I was an active team member and made good faith efforts to listen to evidence from our hearings, to consider the divergent viewpoints, and to incorporate and suggest revisions on my reports and others that would build a broader consensus.

Outside of my service to SAC, my professional qualifications include a ten-year history of academic teaching and writing in immigration, civil rights, and administrative law at the University of Colorado Law School. This has included presentations with scholars from many viewpoints. Not infrequently I've been invited by members of conservative groups like the Federalist Society or the National Association of Attorney Generals to be a reasonable voice in their discussions. In these and other endeavors, I have never been accused of bias in my professional work.

In my personal capacity, I occasionally write short opinion pieces such as the essay that is cited in the objection and published in a special symposium on racism and the law for the online edition of the nation's premiere specialty journal on administrative law. I would describe my own views in the essay as advocating for greater racial equality for immigrants negatively impacted by travel bans and expressing an abiding concern that our federal government adhere to fair procedures in the issuance of such policies. There is no basis for saying that these views amount to "wild accusations of racism against entire groups of people" or that they "embrace Ibram X. Kendi's antiracist ideology… as that ideology itself promotes discrimination." I am not familiar with Ibram X Kendi's writings on antiracism and do not read, engage with, nor cite his work in this essay or my other scholarship. Moreover, the piece does not claim to represent the views of CO SAC or the USCCR. While I do not think the views expressed in the essay are objectionable, even if they were, I would not bring personal biases into my professional service. In closing, I recognize that reasonable people disagree on the best means of achieving equality.

My sense is that Commissioner Heriot misunderstands my perspectives and seeks to associate me with views that are more extreme than my own. Rather than rely on her second-hand description of an opinion piece written in my personal capacity, I would encourage the USCCR to apply a fair minded consideration of my application that focuses on my actual statements and my record of service to the CO SAC and USCCR.

AMERICAN OVERSIGHT

IDAHO

Commissioner Yaki's objection

Dear Dr. Yenor:

Thank you for your service on the Idaho Advisory Committee and for your recent application for reappointment. Your name was included on the list of nominated individuals that is currently being reviewed by the Commissioners prior to appointment. As part of that review, Commissioner Yaki has made a formal objection to your nomination on the Committee because of an alleged comment you made.

Pursuant to our Administrative Instructions, when Commissioner objections pertain to a proposed member's public statement, then that nominee is provided the opportunity to respond in writing to the raised concern. The Staff Director will then consider the written response when making the final determination on whether to include the nominee on the list of individuals to be recommended for appointment.

The Commissioner has objected to your reappointment to the Idaho Advisory Committee because the Commissioner believes you are hostile to marriage equality and transgender rights. Furthermore, The Commissioner believes your public statements render you incapable of, and unable to, protect the constitutional rights supported by recent Supreme Court opinions. Citations to your most objectionable public statements on the issues at hand include:

- *https://startingpointsjournal.com/feminism-transgenderism-and-the-politics-of-identity/*
- *https://www.dailysignal.com/2017/07/18/radical-feminism-sowed-seeds-transgender-moment*
- *https://www.dailysignal.com/2017/08/02/transgender-activists-seeking-undermine-parental-rights/*
- *https://www.dailysignal.com/2017/08/02/transgender-activists-seeking-undermine-parental-rights/*
- *https://www.heritage.org/marriage-and-family/report/the-obligations-family-life-response-modern-liberalism.*

Mr. Yenor's Reponse

Dear Mr. Mussatt,
Thank you for forwarding the objections of Commissioner Michael Yaki and giving me two days to respond. I would like to know more about the process for how my response will be evaluated. Is the whole USCCR to respond? How will responses be tabulated? In any event, again thank you for forwarding these objections.

The objections to my re-nomination to the Idaho Advisory committee on civil rights are (1) that I am "hostile to marriage equality and transgender rights" as evidenced in my public writings and (2) that my "public statements render [me] incapable of, and unable to, protect (sic) the constitutional rights supported by recent Supreme Court opinions."

AMERICAN OVERSIGHT

Claims of discrimination under the current civil rights regime must be established through rational inquiry aided, where appropriate, by social science. Proposed policies to combat alleged discrimination must then be weighed through a rational public policy process. Policies must be evaluated critically if they are implemented.

Civil rights are hardly an all or nothing proposition. Some civil rights clash with other civil rights. Civil rights almost always require a balancing of various claims or a negotiation of the rights of various groups. In objecting to my participation on the commission, Commissioner Yaki seems to deny that civil rights matters involve such balancing or to deny that some important civil rights should be protected or to deny that some civil rights claims should be heard or entertained; he seems to want civil rights for only some groups and not for others. He gives civil rights a bad name in so doing.

Suppose a civil rights commission finds itself adjudicating a claim of transgender rights as civil rights. In making a fair-minded adjudication, the commission would have to consider the relation between such transgender rights and other civil rights in our tradition such as the free exercise of religion, parental rights, rights against sex discrimination. It would have to determine how transgender rights weigh against those rights. In doing so, it would be necessary to inquire into the rational basis for claims of transgender rights and the likely consequences of affirming them, just as it would be necessary to see what would happen from denying them.

My work raises questions about the evidence that proves discrimination and it concerns the clash of civil rights in politics. Claims of transgender rights can, in some circumstances, I have argued, clash with parental rights (as when a school insists on transitioning a child from one gender to another without informing the parents or against their will). Such instances are, as my research argues, more likely to harm the child and, if multiplied, are likely to have a corrosive effect on parental rights, a crucial civil right (as established in Meyer v. Nebraska and Pierce v. Society of Sisters). Seeing children as products of state mandates in these instances is more likely to undermine well-functioning institutions than it is to promote a good society or thriving individuals. Claims to marital equality have already compromised religious liberty, the freedom of association, and the free thought and discussion on many platforms.

Does Commissioner Yaki disagree that transgender rights clash with parental rights? Does he think that the Civil Rights Commissions nationwide should ignore questions about what it would mean to take the side of "transgender rights" against parental rights? Does he think religious liberty of so little importance that Civil Rights Commissions should ignore how it is compromised by so-called marriage equality? Does he think Civil Rights Commissions should refrain from investigating the future mental and physical health of children who have been transitioned, against the will of their parents, from one gender to another? Does he think we should cease investigating the mental or physical health of all those who have transitioned, even with parental support? Perhaps I should object to his continued participation as a Civil Rights Commissioner if he thinks all such questions are settled questions or based on sound science!

The inclusion of gender identity within the anti-discrimination regime of the 1964 Civil Rights Act is a cause for no little concern. Under such gender identity claims, a person's subjective,

AMERICAN OVERSIGHT

gendered self-image as woman, man or whatever supersedes the objective biological fact of sexual identity as female or male. This new gender identity further may come with a demand that governments and others citizens recognize that new gender as an objective fact—a huge abridgement on the civil rights and the freedom of mind of others. These ideas, taken together, are incoherent and compromise our commitment to limited government. They are incoherent because they nullify the categories of male and female to which the anti-discrimination principle applies. How can a school district remedy supposed unjust discrimination in girls' sports when anyone can qualify, simply on their own assertion, as woman? Does Fairness in Sports demand keeping biological men out of women's sports and aspiring to equal treatment of such sports or does it demand letting transgendered men in and, perhaps, decrease the opportunities for the formerly protected class of women? Idaho has taken the lead in protecting women's sports in these circumstances, and I look forward to participating in studies investigating how this affects opportunities. The demands that Commissioner Yaki makes contain the seeds of a new political order, much less committed to civil rights than our current order.

I am very skeptical of the idea that gender operates independently of sex. I would demand verification, from well-designed studies, that confirmed the proposition that conceiving of gender independently of sex leads to individual and social thriving. It think it is irresponsible to accept, without critical inquiry, the idea that affirming gender identity fosters all manner of social and individual good. It is not at all clear to me that it is better to recognize a person's concept of gender, apart from their biological sex, as authentic and salutary rather than as erroneous or pathological. I would be concerned that acknowledging such an idea compromises other, well-established and important civil rights.

Conservatives participate in Civil Rights Commissions across the country. We generally worry about how anti-discrimination laws, as applied and as construed, abridge fundamental freedoms and can upset prospects of social harmony. We often investigate the implications of such abridgements in our scholarship. On the Yaki standard, would Justice Sam Alito or Justice Clarence Thomas or Chief Justice John Roberts be ineligible to serve on a civil rights commission? They dissented, after all, from the same-sex marriage decisions in Windsor and Obergefell. Two of them dissented in the recent case re-interpreting the 1964 Civil Rights Act. More broadly, would any conservative be allowed to participate unless he or she abandoned his or her conservatism? Perhaps all of these opinions disqualify someone from sitting on an Advisory Board. If they do, it may be hard to justify continued government support for a strictly partisan organ.

Sincerely,
Scott Yenor

AMERICAN OVERSIGHT

Date : 3/15/2021 6:11:44 PM
From : "Gail Heriot" gheriot@usccr.gov
To : "Norma Cantu" ncantu@usccr.gov, "Norma Cantú" normavcantu@gmail.com
Cc : "Michael Yaki" MYaki@usccr.gov, "Peter Kirsanow" pkirsanow@usccr.gov
Subject : Re: My notes from yesterday's working group on topics related to Vote on Commissioner--No quorum & no decisions made.

Hi Norma—I apologize for being slow on this project. I have been swamped. But I really do want to get this done. I still haven't read what the SAs produced. Nevertheless, we need to schedule at least one more meeting (and probably two) if we want to get this done by the end of the week.

I will likely have a little time tomorrow, but I will have no time at all on Wednesday. On Thursday, I will have lots of time. If we want to play it safe we probably need to at least confer briefly on Tuesday and be prepared to complete everything on Thursday.

Gail

Gail Heriot
Professor of Law
University of San Diego

> On Mar 12, 2021, at 8:19 AM, Norma Cantu <ncantu@usccr.gov> wrote:
>
> 1. Language on 30/30/10 for rebuttals and surrebuttals-Gail-vehicle AI
> 2. Language on bipartisan nominations to Elect.Adv.Council at end of June 2021. Appointments to EAC will be made by Commission as a whole, with a majority vote. Proposed that Dem.Caucus nominates 2 people for one slot and R+I Caucus chooses the appointee. R+I Caucus nominates 2 people for one slot and Dem. caucus chooses the appointee. In future nominations to external agencies, the Chair will consult with the whole Commission before communicating any nominations. Vehicle-motion from floor at mtg. on March 19
> 3. Canceling the Chair's speakers series. Vehicle-email from Norma Cantu to Commissioners.
> 4. Already have language that half of State Adv. Council slots will be Dem. and half Rep. Need to add language on each Commissioners' Caucus will take ____days to nominate and vet new members of State Adv. Councils. At end of ___ days, the

AMERICAN OVERSIGHT

staff are expected to provide assistance in recruiting and vetting people to fill vacancies. Staff nominations take no longer than ____days. All nominations by Commissioners and staff come back to the full Commissioner for a discussion and vote to approve new members. Vehicle-motion from floor at mtg. on March 19.

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6. Chair proposes agenda for Commissioners' meeting, with Commissioners having ability to propose to amend agenda before meeting and also at the beginning the meeting, subject to majority vote. Vehicle-AI
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8. Proposed by Norma, in absence of Chair available to moderate the meeting, the most senior Dem. and Rep. Commissioners will alternate chairing meetings. Vehicle-AI or memo. of understanding
9. Language that any Commissioner from each Caucus may sit in on OCRE interviews provided the Commissioner's request to attend does not cause a scheduling delay. Vehicle?
10. Memorial/obits require a majority vote of the Commission and the proposed language for the memorial shall be circulated to all the Commissioners. Vehicle-AI

AMERICAN OVERSIGHT

Date : 3/16/2021 3:07:16 PM
From : "Michael Yaki" MYaki@usccr.gov
To : "Norma V. Cantú" normavcantu@gmail.com, "Gail Heriot" gheriot@usccr.gov
Cc : "Norma Cantu" ncantu@usccr.gov, "Peter Kirsanow" pkirsanow@usccr.gov
Subject : Re: [EXTERNAL] Re: My notes from yesterday's working group on topics related to Vote on Commissioner--No quorum & no decisions made.

Gail -

Until we have some language to look at, I'm pretty full up today. But if you have anything you want to bounce off me, send it here AND to commissioner.yaki@gmail.com, and we can revert back and forth that way

---

From: Norma V. Cantú <normavcantu@gmail.com>
Sent: Tuesday, March 16, 2021 10:52:42 AM
To: Gail Heriot
Cc: Norma Cantu; Michael Yaki; Peter Kirsanow
Subject: [EXTERNAL] Re: My notes from yesterday's working group on topics related to Vote on Commissioner--No quorum & no decisions made.

> CAUTION: This email is from outside USCCR.

Dear Gail,
I totally understand.
Let me check with Michael's schedule.
Norma

On Mon, Mar 15, 2021 at 5:11 PM Gail Heriot <gheriot@usccr.gov> wrote:

> Hi Norma—I apologize for being slow on this project. I have been swamped. But I really do want to get this done. I still haven't read what the SAs produced. Nevertheless, we need to schedule at least one more meeting (and probably two) if we want to get this done by the end of the week.
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> Gail Heriot
> Professor of Law
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AMERICAN OVERSIGHT

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AMERICAN OVERSIGHT

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AMERICAN OVERSIGHT

Date : 3/16/2021 7:07:12 PM
From : "Gail Heriot" gheriot@usccr.gov
To : "Michael Yaki" MYaki@usccr.gov, "Michael Yaki" commissioner.yaki@gmail.com, "Peter Kirsanow" pkirsanow@beneschlaw.com
Cc : "Norma V. Cantú" normavcantu@gmail.com, "Norma Cantu" ncantu@usccr.gov, "Peter Kirsanow" pkirsanow@usccr.gov
Subject : Re: [EXTERNAL] Re: My notes from yesterday's working group on topics related to Vote on Commissioner--No quorum & no decisions made.

Dear Norma, Pete and Michael—

In just a little while, I will send a few of the documents the conservatives SAs sent me that attempt to memorialize the various pieces of our tentative agreement. They came up with a lot more ... uh ... words than I thought they would. I still haven't read through it all.

The SAs (and Christian and Stephen) are very concerned that our "book" of AIs is a mess. New AIs haven't always been integrated into the book in the right place. AIs that have been superseded by newer AIs haven't been deleted. Long since abandoned procedures are sometimes still in the book. So they've attempted a little clean up as they memorialize our tentative agreement

As I get a chance to read and digest what they've proposed, I will send more on to you. But let me get at least some of it out to you in the next few minutes.

Gail

Gail Heriot
Professor of Law
University of San Diego

> On Mar 16, 2021, at 12:07 PM, Michael Yaki <MYaki@usccr.gov> wrote:
>
> Gail -
>
> Until we have some language to look at, I'm pretty full up today. But if you have anything you want to bounce off me, send it here AND to commissioner.yaki@gmail.com, and we can revert back and forth that way

AMERICAN OVERSIGHT

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Sent: Tuesday, March 16, 2021 10:52:42 AM
To: Gail Heriot
Cc: Norma Cantu; Michael Yaki; Peter Kirsanow
Subject: [EXTERNAL] Re: My notes from yesterday's working group on topics related to Vote on Commissioner--No quorum & no decisions made.

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Norma

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AMERICAN OVERSIGHT

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AMERICAN OVERSIGHT

Date : 3/17/2021 12:50:37 PM
From : "Norma Cantu" ncantu@usccr.gov
To : "Michael Yaki" MYaki@usccr.gov
Subject : FW: [EXTERNAL] First set of docs---Please review Norma's draft reply
Attachment : AI-Appointments.docx;AI1-6Statements.docx;MOU-Appts.docx;MOU-Statements.docx;MOUSpeakerSeries.docx;

Here is my draft language to respond to Commissioners Heriot and Kirsanov,
It appearsthat your colleagues are adding new items to the list of requests. I am disappointed because we have already come close to running out of time for the 8, now 9, now 10 items on your Caucus's list of requests.
Item #1. We will not be able to change or add any Ais by Friday's meeting. I will ask for a Commissioner to offer a motion for vote in favor of continuing the current practice and policy of Commissioners. The language might go into an AI later but we have run out of time.
Item #2. I will ask for a Commissioner to offer a motion for a vote regarding the EAC Board of Advisors only. There are no other appointments pending and the vote on other bodies would be speculative.
Item #3. I have already offered to send you an email canceling the Speaker's series, once I am elected Chair. There is no need for an MOU. MOUs are for agreements between agencies, not within agencies.
Item #4. I still do not understand the problems about recruiting and vetting proposed members to the State Advisory Council. We will need a fuller discussion of why there appears to be a lag in numbers of Republicans in the nomination pools. We already have AI 59 Section 5 and Section 7.08 that require bipartisan participation on the SACs.
Item #5 I have no objection to using Robert's Rules provided we are using the same versions (there have been updates). I suggest a Commissioner offer a motion on this. I cannot agree on the AI's overruling Robert's Rules until I have read the "book" of Ais. Otherwise, I would not be performing my due diligence.
Item #6 We already have a rule in 7.01.11c that any Commissioner may make a motion at the beginning of a called meeting to add items to the agenda so I do not agree an AI would be needed to make amendments to the agenda before the meeting, even if we had time to write one by Friday. If we adopt Robert's Rules, this question would be answered.
Item #7 On the request that a majority of Commissioners is needed to cancel a meeting, this would impeded our ability to cancel meetings if conditions such as the Texas Ice Storm of 2021 were to cut WIFI. We need more discussion and we are out of time.
Item #8. We should wait on the item regarding the absence of the Chair because I understand the Office of Presidential Personnel is working nominating a Vice Chair, subject to the Commission's vote.
Item #9 This was added last week by Heriot and Kirsanow. I thought you were talking about content interviews, but realized youmight be talking about job interviews. In either event, the Commission should not attend interviews so as to preserve the objectivity of the process and not bring in partisanship.
Item #10 I just saw it today and we don't have time for new items for Friday's meeting.
To summarize, I know Gail can't free herself up today. If we worked on it tonight or tomorrow, we might get Items without Ais done for votes on Friday. By this, I mean Items 1, 2, 3, and 5.
Norma

AMERICAN OVERSIGHT

From: Gail Heriot <gheriot@me.com>
Date: Tuesday, March 16, 2021 at 9:40 PM
To: Norma Cantu <ncantu@usccr.gov>
Subject: Fwd: [EXTERNAL] First set of docs

CAUTION: This email is from outside USCCR.

Gail Heriot
Professor of Law
University of San Diego

Begin forwarded message:

> **From:** Gail Heriot <gheriot@me.com>
> **Date:** March 16, 2021 at 5:06:37 PM PDT
> **To:** normavcantu@gmail.com, Peter Kirsanow <pkirsanow@beneschlaw.com>, Michael Yaki <MYaki@usccr.gov>, ncantu@usscr.gov
> **Cc:** Michael Yaki <commissioner.yaki@gmail.com>, Gail Heriot <gheriot@usccr.gov>
> **Subject: [EXTERNAL] First set of docs**
>
> *** CAUTION: This email is from outside USCCR. ***
>
> Dear Norma, Pete and Michael--Here is the first batch of documents. Note that the Statement/Rebuttal/Surrebuttal policy that was adopted November 19, 2010 was apparently never officially incorporated into the the AI Book. Carissa has incorporated the substance of the policy into an AI (and excised an earlier AI that was inconsistent with the 2010 policy adopted by the Commission). She didn't include everything from that policy in the proposed AI (though we certainly can if you want to). The 2010 policy is somewhat detailed. She didn't have the policy in front of her when she did the drafting. I've got it now.
>
> More to follow after I get a little further on my class prep for tomorrow.
>
> Gail

AMERICAN OVERSIGHT

ADMINISTRATIVE INSTRUCTION __- __

COMMISSION APPOINTMENTS TO OTHER FEDERAL ENTITIES

SECTION 1.

.01 Any authority specifically granted the Commission by statute to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc. shall be exercised by the Commission as a whole by majority vote.

AMERICAN OVERSIGHT

AI 1-6 Section 18

SECTION 18. FINAL REVISION OF NATIONAL OFFICE REPORTS AND COMMISSION REVIEW

.01 If defame and degrade procedures must be implemented the project team, in consultation with staff attorneys, makes appropriate changes in response to the comments received or, where suitable, add the comments as an appendix to the report.

.02 The assigned office sends the revised draft report to the Staff Director. This draft incorporates all applicable editorial, legal, and affected agency revisions. Before forwarding the report to the Staff Director, the assigned office completes its section(s) of the appropriate checklist form for forwarding along with the revised draft report.

.03 After completing the final review of the revised draft report, the Staff Director documents this review by completing his/her section(s) of the checklist. The Staff Director submits the proposed final draft report and the checklist to an external reviewer as described in Section 19 below.

.04 The Staff Director will confirm that the external reviewer has reviewed the report and the checklist and has completed the certification on the bottom of the appropriate national office report checklist. If the report is ready for final draft distribution, the Staff Director will submit the report to the Commissioners as the proposed final draft report, along with the completed report checklist. A copy of the proposed final draft report will also be returned to the assigned office to be maintained in the project file. The assigned office maintains a record of the changes it made as a result of the Commissioners' review.

.05 It appears there is no subsection .05, so this should be renumbered.

Commented [CM1]: Subsection .05 is missing in the original document, but I included it here so no one would wonder if I missed something.

.06 The Staff Director will determine (before transmitting the report to the Commissioners) if any changes should be made to the assigned office's follow-up plan.

.07 The proposed final draft report, incorporating any revisions made as a result of the Staff Director's review, is submitted to the Commissioners for a vote. For a report to become an official report of the Commission, it must be approved by a majority vote of the Commissioners.

(a) Nothing in this policy is intended to alter previously approved policies regarding the posting and release of reports to the public or on the agency Website.

(b) Nothing in this policy rule requires that a proposed final draft be submitted for an up or down vote in its entirety. If the staff or a majority of the Commission deems it appropriate, the Commission may sever the document for purposes of discussion and voting. Only portions of the report that receive a majority vote become part of the final Commission document.

AMERICAN OVERSIGHT

~~(c) Commissioners wishing to submit a statement of dissent may indicate their intention to do so after the vote approving the report has been taken. At that time, the Commissioner(s) will make arrangements with the Staff Director as to the date such dissent will be submitted. Nothing in this policy prohibits the integration of a dissenting statement within the body of the report, so long as the Staff Director and the author of the dissenting statement agree to use this format. All dissenting statements that are provided in a timely fashion and that comply with applicable federal law and Commission policy will either be included as an attachment to the report or integrated into the body of the final report.~~

(d) After the Commission has~~a majority of Commissioners have~~ approved the report (including its findings and recommendations), Commissioners may submit statements to be included with the report. From the date of approval, Commissioners will have thirty (30) days to submit statements. After the Staff Director distributes all Commissioner statements, Commissioners will have ~~and~~ thirty (30) days to submit rebuttals. If three Commissioners agree that an opportunity for surrebuttal is warranted, Commissioners will have ten (10) days to submit surrebuttals after notifying the Staff Director and other Commissioners of their intent to invoke an opportunity for subrebuttal.~~.~~ The three Commissioners shall notify the Staff Director and other Commissioners of their intention to invoke the surrebuttal period no more than three (3) days after the Staff Director has distributed ~~deadline for submission of~~ rebuttals.

Commented [CM2]: This will be (c), but I didn't want to delete current (c) so you can compare them.

~~(c)~~(e) Commissioners who are financially recused from working on the topic of a report should notify the Designated Agency Ethics Officers and should not participate in any portion of the project. The Staff Director will denote recusal in the written report by (1) placing an asterisk (*) beside the recused Commissioner(s) name when listing members of the Commission and (2) placing text at the bottom of the page explaining that the asterisk denotes recusal. Commissioners wishing to abstain should notify the Staff Director during the vote approving the report. The Staff Director will denote abstention in the written report by (1) placing a carat (^) beside the abstained Commissioner(s) name when listing members of the Commission and (2) placing text at the bottom of the page explaining that the carat denotes abstention.

Commented [CM3]: This is currently (and will remain) subsection (d), but became (e) in this document for the same reason (c) became (d) above.

.08 The timing of each of the stages describing Commissioner involvement is intended to be flexible and may be conducted by notational vote (project concept approval, background and planning, discovery, first draft report and final report).

.09 After Commissioner review and approval of a report, the project team in the assigned office makes any necessary revisions and oversees copy editing before submitting the report to the Staff Director for final approval. If there are any substantive changes made to the report subsequent to Commissioner review, such changes must be provided to the Commissioners for further review before the final report is published. Any editorial changes made to the report after Commissioner review will be documented in the project file.

AMERICAN OVERSIGHT

.10 If substantial changes affecting the legal thrust of the report are made as a result of Commissioner review they must undergo an expedited legal sufficiency review.

AMERICAN OVERSIGHT

Memorandum of Understanding
Appointments to Other Bodies

That: The undersigned Commissioners of the United States Commission on Civil Rights (the Commission) agree that when appointments to external bodies are made—such as those to be made to the Election Assistance Commission's Board of Advisors—such appointments will not be made without the consent of a majority vote of the Commission.

They further agree that, in 2021, the following internal procedure will be observed:

That: The Members appointed by Democratic authorities will nominate two people to that other body, and then Members appointed by Republican authorities will choose one of those two people to fill that appointment.

That: The Members appointed by Republican authorities will nominate two people to that other body, and then the Members appointed by Democratic authorities will choose one of those two people to fill that appointment.

Efforts will be made to insure not only bipartisanship, but also geographic diversity.

The "ticket" created by that method will then be subject to a majority vote of the Commission.

Agreed upon by Commissioners ___, ___, ___,
___, ___, ___, ___, and ___.
March 19, 2021.

AMERICAN OVERSIGHT

MEMORANDUM OF UNDERSTANDING

Statements, Rebuttals, Surrebuttals

The undersigned Commissioners agree that during their tenure on the U.S. Commission on Civil Rights they will always vote in favor of upholding the current policy on Commissioner statements, rebuttals, and surrebuttals (as adopted on November 19, 2010) and that they always vote against any motion to limit the time allotted for statements, rebuttals and surrebuttals in a particular case unless all Commissioners who plan to write such statements, rebuttals or surrebuttals agree to such a limitation.

AMERICAN OVERSIGHT

Memorandum of Understanding
Speaker Series

That: The undersigned Commissioners of the United States Commission on Civil Rights (the Commission) agree to eliminate the "Speaker Series" as it currently exists at the Commission, that is to say as a series directed by the Chairperson of the Commission without the input or consent of other Commissioners.

That: If the Commission determines the need for any "Speaker Series" in the future, then such series will not be instituted and directed without the consent of a majority of the Commission.

That: If the majority of the Commission consents to a "Speaker Series," then such series must be bipartisan, allowing for each caucus to choose every other speaker.

Agreed upon by Commissioners ___, ___, ___,
___, ___, ___, ___, and ___.
March 19, 2021.

AMERICAN OVERSIGHT

Date : 3/17/2021 3:16:41 PM
From : "Norma Cantu" ncantu@usccr.gov
To : "michael@michaelyaki.com" michael@michaelyaki.com, "Michael Yaki" MYaki@usccr.gov
Subject : Draft that includes the last paragraph.

Draft2
Dear Commissioners Heriot and Kirsanow,
It appears that your colleagues are adding new items to the list of requests. I am disappointed because we have already come close to running out of time for the 8, now 9, now 10 items on your Caucus's list of requests.
Item #1. We will not be able to change or add any Ais by Friday's meeting. I will ask for a Commissioner to offer a motion for vote in favor of continuing the current practice and policy of Commissioners. The language might go into an AI later but we have run out of time.
Item #2. I will ask for a Commissioner to offer a motion for a vote regarding the EAC Board of Advisors only. There are no other appointments pending and the vote on other bodies would be speculative.
Item #3. I have already offered to send you an email canceling the Speaker's series, once I am elected Chair. There is no need for an MOU. MOUs are for agreements between agencies, not within agencies.
Item #4. I still do not understand the problems about recruiting and vetting proposed members to the State Advisory Council. We will need a fuller discussion of why there appears to be a lag in numbers of Republicans in the nomination pools. We already have AI 59 Section 5 and Section 7.08 that require bipartisan participation on the SACs.
Item #5 I have no objection to using Robert's Rules provided we are using the same versions (there have been updates). I suggest a Commissioner offer a motion on this. I cannot agree on the AI's overruling Robert's Rules until I have read the "book" of Ais. Otherwise, I would not be performing my due diligence.
Item #6 We already have a rule in 7.01.11c that any Commissioner may make a motion at the beginning of a called meeting to add items to the agenda so I do not agree an AI would be needed to make amendments to the agenda before the meeting, even if we had time to write one by Friday. If we adopt Robert's Rules, this question would be answered.
Item #7 On the request that a majority of Commissioners is needed to cancel a meeting, this would impeded our ability to cancel meetings if conditions such as the Texas Ice Storm of 2021 were to cut WIFI. We need more discussion and we are out of time.
Item #8. We should wait on the item regarding the absence of the Chair because I understand the Office of Presidential Personnel is working nominating a Vice Chair, subject to the Commission's vote.
Item #9 This was added last week by Heriot and Kirsanow. I thought you were talking about content interviews, but realized you might be talking about job interviews. In either event, the Commission should not attend interviews so as to preserve the objectivity of the process and not bring in partisanship.
Item #10 I just saw it today and we don't have time for new items for Friday's meeting.

To summarize, I know Gail can't free herself up today. If we-Gail, Peter, Norma and Michael- worked on it tonight or tomorrow, we might get Items without Ais

AMERICAN OVERSIGHT

done for votes on Friday. By this, I mean Items 1, 2, 3, and 5.

Finally, there are members of my Caucus who believe that there should be concessions from your Caucus on part of the items on your agenda and these concessions should be part of the negotiations. Given that there are no other substantive items on the agenda for the March 19th Friday meeting, now that the FEMA plan has passed (thank you!), I suggest we inform Mauro that-for this meeting only-- pending resolution of Item #7—a majority wants the Friday business meeting cancelled, and we use the time on Friday to continue our discussions of these items.
Norma

AMERICAN OVERSIGHT

Date : 3/17/2021 3:00:31 PM
From : "Michael Yaki" MYaki@usccr.gov
To : "Norma Cantu" ncantu@usccr.gov
Subject : Re: [EXTERNAL] First set of docs---Please review Norma's draft reply

Thoughts below

From: Norma Cantu
Sent: Wednesday, March 17, 2021 12:50 PM
To: Michael Yaki
Subject: FW: [EXTERNAL] First set of docs---Please review Norma's draft reply

Here is my draft language to respond to Commissioners Heriot and Kirsanov,
It appears that your colleagues are adding new items to the list of requests. I am disappointed because we have already come close to running out of time for the 8, now 9, now 10 items on your Caucus's list of requests.
Item #1. We will not be able to change or add any Ais by Friday's meeting. I will ask for a Commissioner to offer a motion for vote in favor of continuing the current practice and policy of Commissioners. The language might go into an AI later but we have run out of time.
Item #2. I will ask for a Commissioner to offer a motion for a vote regarding the EAC Board of Advisors only. There are no other appointments pending and the vote on other bodies would be speculative.
Item #3. I have already offered to send you an email canceling the Speaker's series, once I am elected Chair. There is no need for an MOU. MOUs are for agreements between agencies, not within agencies.
Item #4. I still do not understand the problems about recruiting and vetting proposed members to the State Advisory Council. We will need a fuller discussion of why there appears to be a lag in numbers of Republicans in the nomination pools. We already have AI 59 Section 5 and Section 7.08 that require bipartisan participation on the SACs.
Item #5 I have no objection to using Robert's Rules provided we are using the same versions (there have been updates). I suggest a Commissioner offer a motion on this. I cannot agree on the AI's overruling Robert's Rules until I have read the "book" of Ais. Otherwise, I would not be performing my due diligence.
Item #6 We already have a rule in 7.01.11c that any Commissioner may make a motion at the beginning of a called meeting to add items to the agenda so I do not agree an AI would be needed to make amendments to the agenda before the meeting, even if we had time to write one by Friday. If we adopt Robert's Rules, this question would be answered.
Item #7 On the request that a majority of Commissioners is needed to cancel a meeting, this would impeded our ability to cancel meetings if conditions such as the Texas Ice Storm of 2021 were to cut WIFI. We need more discussion and we are out of time.
Item #8. We should wait on the item regarding the absence of the Chair because I understand the Office of Presidential Personnel is working nominating a Vice Chair, subject to the Commission's vote.
Item #9 This was added last week by Heriot and Kirsanow. I thought you were talking about content interviews, but realized youmight be talking about job interviews. In either event, the Commission should not attend interviews so as to preserve the objectivity of

AMERICAN OVERSIGHT

the process and not bring in partisanship.
Item #10 I just saw it today and we don't have time for new items for Friday's meeting.
To summarize, I know Gail can't free herself up today. If we worked on it tonight or tomorrow, we might get Items without Ais done for votes on Friday. By this, I mean Items 1, 2, 3, and 5.
Finally, there are members of my Caucus who believe that there should be concessions on your part on items on their agenda that should be part of the negotiations.
Given that there are no other substantive items on the agenda for Friday now that the FEMA plan has passed (thank you!), I suggest we inform Mauro that --for this meeting only, pending resolution of item 7 -- a majority wants the Friday meeting cancelled and we use the time to continue our discussions on these items.
Norma

From: Gail Heriot <gheriot@me.com>
Date: Tuesday, March 16, 2021 at 9:40 PM
To: Norma Cantu <ncantu@usccr.gov>
Subject: Fwd: [EXTERNAL] First set of docs

> CAUTION: This email is from outside USCCR.

Gail Heriot
Professor of Law
University of San Diego

Begin forwarded message:

> **From:** Gail Heriot <gheriot@me.com>
> **Date:** March 16, 2021 at 5:06:37 PM PDT
> **To:** normavcantu@gmail.com, Peter Kirsanow <pkirsanow@beneschlaw.com>, Michael Yaki <MYaki@usccr.gov>, ncantu@usscr.gov
> **Cc:** Michael Yaki <commissioner.yaki@gmail.com>, Gail Heriot <gheriot@usccr.gov>
> **Subject: [EXTERNAL] First set of docs**
>
> *** CAUTION: This email is from outside USCCR. ***
>
> Dear Norma, Pete and Michael--Here is the first batch of documents. Note that the Statement/Rebuttal/Surrebuttal policy that was adopted November 19, 2010 was apparently never officially incorporated into the the AI Book. Carissa has incorporated the substance of the policy into an AI (and excised an earlier AI that was inconsistent with the 2010 policy adopted by the Commission). She didn't include everything from that policy in the proposed AI (though we certainly can if you want to). The 2010 policy is somewhat detailed. She didn't have the policy in front of her when she did the drafting. I've got it now.
>
> More to follow after I get a little further on my class prep for tomorrow.

AMERICAN OVERSIGHT

Gail

AMERICAN OVERSIGHT

Date : 3/17/2021 5:38:20 PM
From : "Gail Heriot" gheriot@usccr.gov
To : "Norma Cantu" ncantu@usccr.gov, "Norma Cantú" normavcantu@gmail.com, "Michael Yaki" commissioner.yaki@gmail.com, "Michael Yaki" MYaki@usccr.gov, "Peter Kirsanow" pkirsanow@usccr.gov
Cc : "Kirsanow, Peter" pkirsanow@beneschlaw.com, "MICHAEL@michaelyaki.com" MICHAEL@michaelyaki.com
Subject : Re: Response to today's emails from Commissioner Heriot--Thank you

Hi Norma—Yes, it's okay with me if you want to cancel the Friday meeting. It's a good idea.

And you were right about the OCRE meetings. We were talking about content interviews, not job interviews. If you want to meet to iron this stuff out on Thursday and/or Friday, that works fine with me. We can get this done.

More later ...

Gail

Gail Heriot
Professor of Law
University of San Diego

> On Mar 17, 2021, at 1:24 PM, Norma Cantu <ncantu@usccr.gov> wrote:
>
> Dear Commissioners Heriot and Kirsanow,
> It appears that your colleagues are adding new items to the list of requests. I am disappointed because we have already come close to running out of time for the 8, now 9, now 10 items on your Caucus's list of requests.
> Item #1. We will not be able to change or add any Ais by Friday's meeting. I will ask for a Commissioner to offer a motion for vote in favor of continuing the current practice and policy of Commissioners. The language might go into an AI later but we have run out of time.
> Item #2. I will ask for a Commissioner to offer a motion for a vote regarding the EAC Board of Advisors only. There are no other appointments pending and the vote on other bodies would be speculative.
> Item #3. I have already offered to send you an email canceling the Speaker's series, once I am elected Chair. There is no need for an MOU. MOUs are for agreements between agencies, not within agencies.
> Item #4. I still do not understand the problems about recruiting and vetting proposed members to the State Advisory Council. We will need a fuller discussion of why there appears to be a lag in numbers of Republicans in the nomination pools. We already have AI 59 Section 5 and Section 7.08 that require bipartisan participation on the SACs.
> Item #5 I have no objection to using Robert's Rules provided we are using the same versions (there have been updates). I suggest a Commissioner offer

AMERICAN OVERSIGHT

a motion on this. I cannot agree on the AI's overruling Robert's Rules until I have read the "book" of Ais. Otherwise, I would not be performing my due diligence.
Item #6 We already have a rule in 7.01.11c that any Commissioner may make a motion at the beginning of a called meeting to add items to the agenda so I do not agree an AI would be needed to make amendments to the agenda before the meeting, even if we had time to write one by Friday. If we adopt Robert's Rules, this question would be answered.
Item #7 On the request that a majority of Commissioners is needed to cancel a meeting, this would impeded our ability to cancel meetings if conditions such as the Texas Ice Storm of 2021 were to cut WIFI. We need more discussion and we are out of time.
Item #8. We should wait on the item regarding the absence of the Chair because I understand the Office of Presidential Personnel is working nominating a Vice Chair, subject to the Commission's vote.
Item #9 This was added last week by Heriot and Kirsanow. I thought you were talking about content interviews, but realized you might be talking about job interviews. In either event, the Commission should not attend interviews so as to preserve the objectivity of the process and not bring in partisanship.
Item #10 I just saw it today and we don't have time for new items for Friday's meeting.

To summarize, I know Gail can't free herself up today. If we-Gail, Peter, Norma and Michael- worked on it tonight or tomorrow, we might get Items without Ais done for votes on Friday. By this, I mean Items 1, 2, 3, and 5.

Finally, there are members of my Caucus who believe that there should be concessions from your Caucus on part of the items on your agenda and these concessions should be part of the negotiations. Given that there are no other substantive items on the agenda for the March 19th Friday meeting, now that the FEMA plan has passed (thank you!), I suggest we inform Mauro that-for this meeting only-- pending resolution of Item #7—a majority wants the Friday business meeting cancelled, and we use the time on Friday to continue our discussions of these items as a working group of four.

Norma

Cell 210 380 6380

AMERICAN OVERSIGHT

Date : 3/17/2021 5:16:04 PM
From : "Gail Heriot" gheriot@usccr.gov
To : "Carissa Mulder" carissa.mulder@gmail.com
Cc : "Carissa Mulder" CMulder@usccr.gov, "Alexander Heideman" aheideman@usccr.gov, "Alexander Heideman" alexanderheideman@gmail.com, "Peter Kirsanow" pkirsanow@usccr.gov, "Peter Kirsanow" pkirsanow@beneschlaw.com
Subject : Re: [EXTERNAL] Re: Response to today's emails from Commissioner Heriot--Thank you

I have a doctor's appointment and a faculty meeting and several other things on my schedule for next week. I am perfectly happy cancelling the meeting for this Friday—even delighted. I have too many things to do. I am perfectly happy putting this off till April 16th.

Gail Heriot
Professor of Law
University of San Diego

On Mar 17, 2021, at 2:12 PM, Carissa Mulder <carissa.mulder@gmail.com> wrote:

> CAUTION: This email is from outside USCCR.

Hi Gail,

The short version is that Norma is pushing back on everything substantive, does not want these to go into AIs or MOUs ("I will gladly pay you tomorrow if you give me a hamburger today"), and says that her caucus wants our caucus to make concessions for these things. Apparently they still do not understand that the concession is that Norma becomes chair. Because of that, she wants to cancel the Friday business meeting and use that as a time for the working group to discuss these things.

Pete is not happy about this and he thinks this takes the pressure off them, but he doesn't want to do anything that pushes them into removing Christian or Stephen. He says he is willing to postpone the meeting for one week so the Sunshine Act notice can be published and so you can hold a meeting next Friday. Pete, one thought that occurred to me after we got off the phone - I don't know that they will agree to that. They may say that the scheduled April 16th meeting is soon enough.

On Wed, Mar 17, 2021 at 4:56 PM Gail Heriot <gheriot@usccr.gov> wrote:

AMERICAN OVERSIGHT

I don't have time even to read this. Take a look.

Gail Heriot
Professor of Law
University of San Diego

Begin forwarded message:

> **From:** Norma Cantu <ncantu@usccr.gov>
> **Date:** March 17, 2021 at 1:24:01 PM PDT
> **To:** Gail Heriot <gheriot@usccr.gov>, "Kirsanow, Peter" <pkirsanow@beneschlaw.com>, MICHAEL@michaelyaki.com
> **Cc:** Norma Cantu <ncantu@usccr.gov>
> **Subject: Response to today's emails from Commissioner Heriot--Thank you**
>
> Dear Commissioners Heriot and Kirsanow,
>
> It appears that your colleagues are adding new items to the list of requests. I am disappointed because we have already come close to running out of time for the 8, now 9, now 10 items on your Caucus's list of requests.
>
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> Item #2. I will ask for a Commissioner to offer a motion for a vote regarding the EAC Board of Advisors only. There are no other appointments pending and the vote on other bodies would be speculative.
>
> Item #3. I have already offered to send you an email canceling the Speaker's series, once I am elected Chair. There is no need for an MOU. MOUs are for agreements between agencies, not within agencies.
>
> Item #4. I still do not understand the problems about recruiting and vetting proposed members to the State Advisory Council. We will need a fuller discussion of why there appears to be a lag in numbers of Republicans in the nomination pools. We already have AI 59 Section 5 and Section 7.08 that require bipartisan participation

AMERICAN OVERSIGHT

on the SACs.

Item #5 I have no objection to using Robert's Rules provided we are using the same versions (there have been updates). I suggest a Commissioner offer a motion on this. I cannot agree on the AI's overruling Robert's Rules until I have read the "book" of Ais. Otherwise, I would not be performing my due diligence.

Item #6 We already have a rule in 7.01.11c that any Commissioner may make a motion at the beginning of a called meeting to add items to the agenda so I do not agree an AI would be needed to make amendments to the agenda before the meeting, even if we had time to write one by Friday. If we adopt Robert's Rules, this question would be answered.

Item #7 On the request that a majority of Commissioners is needed to cancel a meeting, this would impeded our ability to cancel meetings if conditions such as the Texas Ice Storm of 2021 were to cut WIFI. We need more discussion and we are out of time.

Item #8. We should wait on the item regarding the absence of the Chair because I understand the Office of Presidential Personnel is working nominating a Vice Chair, subject to the Commission's vote.

Item #9 This was added last week by Heriot and Kirsanow. I thought you were talking about content interviews, but realized you might be talking about job interviews. In either event, the Commission should not attend interviews so as to preserve the objectivity of the process and not bring in partisanship.

Item #10 I just saw it today and we don't have time for new items for Friday's meeting.

To summarize, I know Gail can't free herself up today. If we-Gail, Peter, Norma and Michael- worked on it tonight or tomorrow, we might get Items without Ais done for votes on Friday. By this, I mean Items 1, 2, 3, and 5.

Finally, there are members of my Caucus who believe that there should be concessions from your Caucus on

AMERICAN OVERSIGHT

part of the items on your agenda and these concessions should be part of the negotiations. Given that there are no other substantive items on the agenda for the March 19th Friday meeting, now that the FEMA plan has passed (thank you!), I suggest we inform Mauro that-for this meeting only-- pending resolution of Item #7—a majority wants the Friday business meeting cancelled, and we use the time on Friday to continue our discussions of these items as a working group of four.

Norma

Cell 210 380 6380

--
Carissa B. Mulder

AMERICAN OVERSIGHT

Date : 3/17/2021 4:56:42 PM
From : "Gail Heriot" gheriot@usccr.gov
To : "Carissa Mulder" CMulder@usccr.gov, "Carissa Mulder" carissa.mulder@gmail.com, "Alexander Heideman" aheideman@usccr.gov, "Alexander Heideman" alexanderheideman@gmail.com, "Peter Kirsanow" pkirsanow@usccr.gov, "Peter Kirsanow" pkirsanow@beneschlaw.com
Subject : Fwd: Response to today's emails from Commissioner Heriot--Thank you

I don't have time even to read this. Take a look.

Gail Heriot
Professor of Law
University of San Diego

Begin forwarded message:

From: Norma Cantu <ncantu@usccr.gov>
Date: March 17, 2021 at 1:24:01 PM PDT
To: Gail Heriot <gheriot@usccr.gov>, "Kirsanow, Peter" <pkirsanow@beneschlaw.com>, MICHAEL@michaelyaki.com
Cc: Norma Cantu <ncantu@usccr.gov>
Subject: Response to today's emails from Commissioner Heriot--Thank you

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AMERICAN OVERSIGHT

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To summarize, I know Gail can't free herself up today. If we-Gail, Peter, Norma and Michael- worked on it tonight or tomorrow, we might get Items without Ais done for votes on Friday. By this, I mean Items 1, 2, 3, and 5.

Finally, there are members of my Caucus who believe that there should be concessions from your Caucus on part of the items on your agenda and these concessions should be part of the negotiations. Given that there are no other substantive items on the agenda for the March 19th Friday meeting, now that the FEMA plan has passed (thank you!), I suggest we inform Mauro that-for this meeting only-- pending resolution of Item #7—a majority wants the Friday business meeting cancelled, and we use the time on Friday to continue our discussions of these items as a working group of four.

Norma

Cell 210 380 6380

AMERICAN OVERSIGHT

Date : 3/17/2021 5:22:31 PM
From : "Alexander Heideman" aheideman@usccr.gov
To : "Gail Heriot" gheriot@usccr.gov, "Carissa Mulder" carissa.mulder@gmail.com
Cc : "Carissa Mulder" CMulder@usccr.gov, "Alexander Heideman" alexanderheideman@gmail.com, "Peter Kirsanow" pkirsanow@usccr.gov, "Peter Kirsanow" pkirsanow@beneschlaw.com
Subject : Re: [EXTERNAL] Re: Response to today's emails from Commissioner Heriot--Thank you

I don't understand why she's pushing back on the MOUs… And her assertion regarding interviews is ludicrous ("the Commission should not attend interviews so as to preserve the objectivity of the process and not bring in partisanship").

This no longer feels like good-faith negotiations.

I'm also alarmed at the prospect of another Vice Chair nomination.

From: Gail Heriot <gheriot@usccr.gov>
Date: Wednesday, March 17, 2021 at 5:16 PM
To: Carissa Mulder <carissa.mulder@gmail.com>
Cc: Carissa Mulder <CMulder@usccr.gov>, Alexander Heideman <aheideman@usccr.gov>, Alexander Heideman <alexanderheideman@gmail.com>, Peter Kirsanow <pkirsanow@usccr.gov>, Peter Kirsanow <pkirsanow@beneschlaw.com>
Subject: Re: [EXTERNAL] Re: Response to today's emails from Commissioner Heriot--Thank you

I have a doctor's appointment and a faculty meeting and several other things on my schedule for next week. I am perfectly happy cancelling the meeting for this Friday—even delighted. I have too many things to do. I am perfectly happy putting this off till April 16th.

Gail Heriot
Professor of Law
University of San Diego

> On Mar 17, 2021, at 2:12 PM, Carissa Mulder <carissa.mulder@gmail.com> wrote:
>
> > CAUTION: This email is from outside USCCR.

AMERICAN OVERSIGHT

The short version is that Norma is pushing back on everything substantive, does not want these to go into AIs or MOUs ("I will gladly pay you tomorrow if you give me a hamburger today"), and says that her caucus wants our caucus to make concessions for these things. Apparently they still do not understand that the concession is that Norma becomes chair. Because of that, she wants to cancel the Friday business meeting and use that as a time for the working group to discuss these things.

Pete is not happy about this and he thinks this takes the pressure off them, but he doesn't want to do anything that pushes them into removing Christian or Stephen. He says he is willing to postpone the meeting for one week so the Sunshine Act notice can be published and so you can hold a meeting next Friday. Pete, one thought that occurred to me after we got off the phone - I don't know that they will agree to that. They may say that the scheduled April 16th meeting is soon enough.

On Wed, Mar 17, 2021 at 4:56 PM Gail Heriot <gheriot@usccr.gov> wrote:

> I don't have time even to read this. Take a look.
>
> Gail Heriot
> Professor of Law
> University of San Diego
>
> Begin forwarded message:
>
> **From:** Norma Cantu <ncantu@usccr.gov>
> **Date:** March 17, 2021 at 1:24:01 PM PDT
> >, MICHAEL@michaelyaki.com
> **Cc:** Norma Cantu <ncantu@usccr.gov>
> **Subject: Response to today's emails from Commissioner Heriot--Thank you**
>
> Dear Commissioners Heriot and Kirsanow,
> It appears that your colleagues are adding new items to the list of requests. I am disappointed because we have already come close to running out of time for the 8, now 9, now 10 items on your Caucus's list of requests.
> Item #1. We will not be able to change or add any Ais by Friday's meeting. I will ask for a Commissioner to offer a motion for vote in favor of continuing the current practice and policy of Commissioners. The language might go into an AI later but we have run out of time.
> Item #2. I will ask for a Commissioner to offer a motion for a vote regarding the EAC Board of Advisors only. There are no other appointments pending and the vote on other bodies would be speculative.
> Item #3. I have already offered to send you an email canceling the Speaker's series, once I am elected Chair. There is no need for an MOU. MOUs are for agreements between agencies, not within agencies.

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Item #4. I still do not understand the problems about recruiting and vetting proposed members to the State Advisory Council. We will need a fuller discussion of why there appears to be a lag in numbers of Republicans in the nomination pools. We already have AI 59 Section 5 and Section 7.08 that require bipartisan participation on the SACs.
Item #5 I have no objection to using Robert's Rules provided we are using the same versions (there have been updates). I suggest a Commissioner offer a motion on this. I cannot agree on the AI's overruling Robert's Rules until I have read the "book" of Ais. Otherwise, I would not be performing my due diligence.
Item #6 We already have a rule in 7.01.11c that any Commissioner may make a motion at the beginning of a called meeting to add items to the agenda so I do not agree an AI would be needed to make amendments to the agenda before the meeting, even if we had time to write one by Friday. If we adopt Robert's Rules, this question would be answered.
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Item #10 I just saw it today and we don't have time for new items for Friday's meeting.

To summarize, I know Gail can't free herself up today. If we-Gail, Peter, Norma and Michael- worked on it tonight or tomorrow, we might get Items without Ais done for votes on Friday. By this, I mean Items 1, 2, 3, and 5.

Finally, there are members of my Caucus who believe that there should be concessions from your Caucus on part of the items on your agenda and these concessions should be part of the negotiations. Given that there are no other substantive items on the agenda for the March 19th Friday meeting, now that the FEMA plan has passed (thank you!), I suggest we inform Mauro that-for this meeting only-- pending resolution of Item #7—a majority wants the Friday business meeting cancelled, and we use the time on Friday to continue our discussions of these items as a working group of four.

AMERICAN OVERSIGHT

Norma

Cell 210 380 6380

--
Carissa B. Mulder

AMERICAN OVERSIGHT

Date : 3/17/2021 4:24:00 PM
From : "Norma Cantu" ncantu@usccr.gov
To : "Gail Heriot" gheriot@usccr.gov, "Kirsanow, Peter" pkirsanow@beneschlaw.com, "michael@michaelyaki.com" michael@michaelyaki.com
Cc : "Norma Cantu" ncantu@usccr.gov
Subject : Response to today's emails from Commissioner Heriot--Thank you

Dear Commissioners Heriot and Kirsanow,
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AMERICAN OVERSIGHT

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Norma

Cell 210 380 6380

AMERICAN OVERSIGHT

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From : "Gail Heriot" gheriot@usccr.gov
To : "Carissa Mulder" carissa.mulder@gmail.com
Cc : "Carissa Mulder" CMulder@usccr.gov, "Alexander Heideman" aheideman@usccr.gov, "Alexander Heideman" alexanderheideman@gmail.com, "Peter Kirsanow" pkirsanow@usccr.gov, "Peter Kirsanow" pkirsanow@beneschlaw.com
Subject : Re: [EXTERNAL] Re: Response to today's emails from Commissioner Heriot--Thank you

Pete—Can I tell Norma that it's okay to cancel Friday? It actually makes my life easier to be able to do so. I would still like to meet with Norma and Michael Thursday or Friday.

Gail

Gail Heriot
Professor of Law
University of San Diego

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AMERICAN OVERSIGHT

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AMERICAN OVERSIGHT

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AMERICAN OVERSIGHT

Norma

Cell 210 380 6380

--
Carissa B. Mulder

AMERICAN OVERSIGHT

Date : 3/18/2021 11:56:02 AM
From : "Alexander Heideman" aheideman@usccr.gov
To : "John Mashburn" jmashburn@usccr.gov, "Carissa Mulder" CMulder@usccr.gov, "Thomas Simuel" tsimuel@usccr.gov
Cc : "John Mashburn" jkmash@comcast.net, "Carissa Mulder" carissa.mulder@gmail.com, "Thomas Simuel" tjsimuel32@gmail.com, "Alexander Heideman" alexanderheideman@gmail.com
Subject : Is this the corresponding 10-point list?

1. Language on 30/30/10 for rebuttals and surrebuttals-Gail-vehicle AI
2. Language on bipartisan nominations to Elect.Adv.Council at end of June 2021. Appointments to EAC will be made by Commission as a whole, with a majority vote. Proposed that Dem.Caucus nominates 2 people for one slot and R+I Caucus chooses the appointee. R+I Caucus nominates 2 people for one slot and Dem. caucus chooses the appointee. In future nominations to external agencies, the Chair will consult with the whole Commission before communicating any nominations. Vehicle-motion from floor at mtg. on March 19
3. Canceling the Chair's speakers series. Vehicle-email from Norma Cantu to Commissioners.
4. Already have language that half of State Adv. Council slots will be Dem. and half Rep. Need to add language on each Commissioners' Caucus will take ____days to nominate and vet new members of State Adv. Councils. At end of ___ days, the staff are expected to provide assistance in recruiting and vetting people to fill vacancies. Staff nominations take no longer than ____days. All nominations by Commissioners and staff come back to the full Commissioner for a discussion and vote to approve new members. Vehicle-motion from floor at mtg. on March 19.
5. Language about agreeing that AIs, as more specific agreements, govern process of Commissioners; in absence of relevant AI, Commissioners will apply Roberts' Rules of Order. Vehicle-Memo of Understanding approved by majority of Commissioners.
6. Chair proposes agenda for Commissioners' meeting, with Commissioners having ability to propose to amend agenda before meeting and also at the beginning the meeting, subject to majority vote. Vehicle-AI
7. A majority of Commissioners is needed to cancel a called Commissioner meeting. Vehicle-AI
8. Proposed by Norma, in absence of Chair available to moderate the meeting, the most senior Dem. and Rep. Commissioners will alternate chairing meetings. Vehicle-AI

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or memo. of understanding

9. Language that any Commissioner from each Caucus may sit in on OCRE interviews provided the Commissioner's request to attend does not cause a scheduling delay. Vehicle?
10. Memorial/obits require a majority vote of the Commission and the proposed language for the memorial shall be circulated to all the Commissioners. Vehicle-AI

AMERICAN OVERSIGHT

Date : 3/22/2021 10:50:29 AM
From : "Irena Vidulovic" ividulovic@usccr.gov
To : "Amy Royce" aroyce@usccr.gov, "Alec Deull" adeull@usccr.gov
Subject : Caucus Meeting 3/22

1. Negotiations (list below)
2. Meeting with ALL SA's
3. Meeting with SD
4. Possible statement regarding AAPI hate
5. Bail reform
6. Colorado and Idaho Advisory Committees
    - R's proposal - Dr. Chen in CO if we allow Mr. Yenor in ID
    - Attach document with Dr. Chen response and Yenor response

- Language on 30/30/10 for rebuttals and surrebuttals-Gail-vehicle AI. DOES NOT NEED TO BE AN AI *WE SHOULD INCLUDE LANGUAGE THAT SUBJECT TO A MAJORITY TO MOVE THE TIMELINES.
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- Already have language that half of State Adv. Council slots will be Dem. and half Rep. Need to add language on each Commissioners' Caucus will take ____days to nominate and vet new members of State Adv. Councils. At end of ___ days, the staff are expected to provide assistance in recruiting and vetting people to fill vacancies. Staff nominations take no longer than ____days. All nominations by Commissioners and staff come back to the full Commissioner for a discussion and vote to approve new members. Vehicle-motion from floor at mtg. on March 19. AI EXISTS/PROCESS EXISTS DOES NOT NEED TO AMEND AI
- Language about agreeing that AIs, as more specific agreements, govern process of Commissioners; in absence of relevant AI, Commissioners will apply Roberts' Rules of Order. Vehicle-Memo of Understanding approved by majority of Commissioners. SA's to research Roberts Rules.
- Chair proposes agenda for Commissioners' meeting, with Commissioners having ability to propose to amend agenda before meeting and also at the beginning the meeting, subject to majority vote. Vehicle-AI PROCESS EXISTS

AMERICAN OVERSIGHT

DOES NOT NEED UPDATE.

- A majority of Commissioners is needed to cancel a called Commissioner meeting. Vehicle-AI PROCESS ALREADY EXISTS.
- Proposed by Norma, in absence of Chair available to moderate the meeting, the most ?
- Language that any Commissioner from each Caucus may sit in on OCRE interviews provided the Commissioner's request to attend does not cause a scheduling delay. Vehicle? NOPE
- Memorial/obits require a majority vote of the Commission and the proposed language for the memorial shall be circulated to all the Commissioners. Vehicle-AIPROCESS ALREADY EXISTS.

- **FEMA / Puerto Rico**
  - The notational vote passed
  - OCRE sent both panelist and briefing book recommendations
  - Virtual briefing moved to June
  - Need to start planning meetings

- **Bail reform**
  - Comm. Kladney taking over as lead on the project
  - Kladney/Amy negotiations with R's update?
    Status of follow up questions/update?
  - Oregon SAC had their last briefing on Friday 12/11, Catherine attended. Rukku shared briefing notes with OCRE in the comments on the first draft.

- SAC recruitment
- So far 14 SAC's have expired and not been reappointed, and 4 more expire this month
- Alex reached out to Irena to discuss CO and Idaho
- The Republican's via Alex would like to make a deal Yenor for Dr. Chen. Please let your boss know and let's disscuss during out caucus call tomorrow.
  - Indiana 12/1/20 – Mauro circulated slate on Friday
  - Amy circulated vet memo. Slate includes 7 Ds, 7 Rs, and 1 Ind.
  - Carissa objected to the balance, the same type of objection as with a NC. Spoke to Carissa and she will check with their caucus if we add a R or if we add an R and a D however she did say that they probably will not vote for slates that are not balanced.
  - Vermont (expired in June).
  - Mauro circulated slate, which included 5 Rs, 5 Ds, and 2 Ind. (including Reed and Martin). Catherine and Debo objected to Lefavour for lack of experience; need to recruit another R.
  - Irena will reach out to Leahy's office and ping Ang to see if she has any candidates.

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- Colorado: Irena
- Slate failed to get a majority vote on Friday 10/30.
- 12 candidates, 6 Republicans (including one Independent who leans Republican), 6 Democrats (including one Independent who leans Democrat). No particular flags on any candidates.
- Comm. Heriot had objected to Prof. Chen, on the basis of a recent article that Prof. Chen published called Colorblind Nationalism.
- Irena is checking in with Alex on whether Comm. Heriot's objection is ongoing. Alex said he would update last week. No update.
- North Carolina: Irena
- Slate failed to get a majority vote on Friday 10/30.
- 15 candidates, 8 Democrats (including two Independents who lean Democrat), 7 Republicans (including one candidate who identified as "something else"). Note that Olga Wright, the returning Chair, identifies herself as a Democrat but ran for public office as a Republican in 2012.
- Comm. Kirsanow (and Adams) objected to the balance of the slate, and requested that it be shifted to 7 Republicans and 7 Democrats (removing one Dem).
- They further objected to the inclusion of Jennifer Lechner as they don't consider her a "true Republican." In her stead they would like to replace her with a Mr. Patrick Mincey who Carissa recruited. Replacing Lechner with Mincey takes the gender balance of the slate to 11 men and 4 women. Mincey has no civil rights experience, based on his application and a review of his public record.
- Rukku spoke to Thomas; Thomas proposed that we consider a slate of 9 Republicans (including Lechner) and 8 Democrats, and they would work on recruiting Republicans who would assist with balance of slate with respect to gender and other diversity factors. Catherine's current position is that she will not vote for unbalanced slate with 9 Republicans and 8 Democrats.
- Rukku proposed to Thomas the following: get another R, and add to the slate, to move to a balance of 8-8; added R cannot be Patrick Mincey (no civil rights experience). Might consider Mincey if he submits revised application with more justification for his civil rights experience.
- Idaho (expired in July).
- Rukku shared proposal with Carissa: 4 Republicans, 5 Democrats, 1 Independent leaning Democrat, and 1 Independent who leans in no direction. Slate did not include Scott Yenor.
- From Carissa: They are not willing to move forward with it without Scott Yenor, and it is unbalanced.
- Carissa relayed that they continue to not want to move forward without Yenor.
- Staff confirmed that Yenor is still interested in joining.
- District of Columbia 10/20/20 – Alex, Irena

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- (as of 12/17) 11 applicants: 9 men, 2 women; 6 Ds, 4 Rs, 1 something else
- Need more Rs and better diversity
- Iowa 11/17/20 – Carissa, Amy/Rukku
- (as of 11/17) 11 applicants: 7 men, 4 women; 5 Ds, 4 Rs, 2 Ind.
- Need at least one more R.
- Amy to check in with Carissa to see if she has any more leads. Carissa has exhausted her recruitment efforts, but John may have more leads.
- Ohio 11/17/20 – Carissa, Rukku
- (as of 12/17) 16 applicants: 11 Ds, 4 Rs, 1 Ind.
- Need more Rs. Carissa to work on recruitment.
- New Mexico 12/1/20 – Alex, Amy/Irena/Rukku
- 5 applicants. Need more candidates.
- Rukku reached out to Haaland's office for candidates, Rukku to follow up.
- Wyoming 12/1/20 – Alex, Alec
- 6 applicants. Need more candidates.
- Alec reached out to Shepard Foundation and confirmed that Judy Shepard will apply for the SAC.
- In general: Irena recommended we reach out to new Members' offices. Rukku circulated Congressional letter + updated 2 pager to share with offices.
- Florida 3/2021 – Irena
- Louisiana 3/2021 – Rukku
- Nebraska 3/2021 – Alec
- Texas 3/2021 – Amy
- New advisory committees (Puerto Rico, Virgin Islands, Northern Mariana Islands, Guam, American Samoa)
- Irena checked in with David on how he wants to move forward with new advisory committees - on hold for the moment

- Broken Promises pandemic update
- Senator Warren's office has reached out to Irena to schedule a meeting this week on the report update + will invite Julie to the meeting.
  - Interested to find out spokesperson for Commission. Irena provided public material and plan to reconnect when a Commissioner can be designated to speak for the Commission
  - Pursue social media strategy using briefing video/materials
  - Can we generate clips from the briefing video, into individual panelist testimony or other excerpts. Rukku to check in with Ang.
  - Catherine wants to raise this project again, to see if we can get to common ground with the Republicans. Catherine wants to revisit when we discuss project planning re FY22 (/FEMA, Comm. Adams' proposal, etc.).
  - Catherine spoke to Gilchrist over the holidays and he seemed open to reconsidering the report; Rukku will reach out to Thomas to see about next steps.
  -

AMERICAN OVERSIGHT

- **All SA Meeting**
- AI 5-9
- Project propsals
- "Balance" SAC AI
- **Expired SACs (14)**
- **Meeting with Mauro**
    - Tomorrow

- **Other SAC activity**
- AI 5-9 - SAC member conduct.
    - Rukku, Irena, Carissa met with OGC to discuss proposed revisions to the AI. Irena and Carissa are taking OGC's redline and comments to Commissioners to get feedback.
    - SAC letters – Rukku is working on moving out of backlog of Commissioner letters sharing publications from SACs. Sent Indiana and Arkansas last week.
        - Irena will raise with Ang/David that Staff Director could take over these letters while waiting for a new Chair.
- Project proposals for FY21/22
    - Rukku checked with John to see if Commissioner Adams will submit new project proposals. John is working with Commissioner Adams on project priorities and check back on timeline. Rukku to follow up with John this week.
    - John (at all SA meeting) said that Comm. Adams had a proposal, so Rukku will generate a timeline for consideration.
    - We will proceed with the FEMA Project as the FY22 statutory enforcement report.
    - Move forward with FY22 project planning calendar – Rukku generated the program planning schedule with emphasis on time early in the process for bipartisan discussion.
    - Dave is working on a concept paper on race discrimination and small business lending, perhaps focusing on the recipients of the PPP loan.
    - Dave spoke with Comm. Gilchrist about potential interest.
- Personnel
    - Cantu Special Assistant?
    - OCRE Director ?
    - Commission on Black Man and Boys
    - Summer 2021 interns – Irena hired a spring intern. Am? Irena reached out to Carissa their caucus will have 4, ours will have 2.
    - Irena's intern Alana Thomas started this week: Alana Thomas is currently a second year law student at Georgetown. She is currently pursuing a Master of Public Policy degree from Loyola University Chicago, and received her BS in Psychology from Virginia Tech. Alana has focused her studies on affordable housing and race in law. She currently serves as the Vice President of Marketing Strategy at Citi. Alana is from Chicago, and will be supporting Commissioner Adegbile

AMERICAN OVERSIGHT

- Fulbright fellows – Media fellow recommendation for Ang + possibly HQ fellow.
  - Ang is looking to hire a Fullbright fellow ASAP.
- Irena has lead on a candidate with interest in bail reform.

- Commission on the Social Status of Black Men and Boys was signed into law, more details to come on what this means.
  - Appointments from White House
  - Call rescheduled with Congresswoman Wilson
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- **Budget questions**
  - Appropriations reached out to Irena + held a meeting last week, Irena to update.
  - Call regarding budget happened, John to provide additional information comparing requests to actuals
  - Website update – contract secured. Update to occur over the next year. Check in with Ang on things moving forward
  - FY22 budget timeline – John M. emailed Mauro to ask about status
- **Budget priorities for FY22?**
  - Forward funding for site visits in Puerto Rico and Texas
  - Regional staffing – at least one staffer for territory SACs
  - Irena to ask Alex to add to the agenda for the All SA meeting on Monday

AMERICAN OVERSIGHT

Date : 3/22/2021 2:24:01 PM
From : "Amy Royce" aroyce@usccr.gov
To : "Irena Vidulovic" ividulovic@usccr.gov, "Alec Deull" adeull@usccr.gov
Subject : Re: Caucus Meeting 3/22

Notes below

From: Irena Vidulovic
Sent: Monday, March 22, 2021 10:50 AM
To: Amy Royce; Alec Deull
Subject: Caucus Meeting 3/22

1. Negotiations (list below)
2. Meeting with ALL SA's
3. Meeting with SD
4. Possible statement regarding AAPI hate
5. Bail reform
6. Colorado and Idaho Advisory Committees
    - R's proposal - Dr. Chen in CO if we allow Mr. Yenor in ID
    - Attach document with Dr. Chen response and Yenor response

• Language on 30/30/10 for rebuttals and surrebuttals-Gail-vehicle AI. DOES NOT NEED TO BE AN AI *WE SHOULD INCLUDE LANGUAGE THAT SUBJECT TO A MAJORITY TO MOVE THE TIMELINES.
• Language on bipartisan nominations to Elect.Adv.Council at end of June 2021. Appointments to EAC will be made by Commission as a whole, with a majority vote. Proposed that Dem.Caucus nominates 2 people for one slot and R+I Caucus chooses the appointee. R+I Caucus nominates 2 people for one slot and Dem. caucus chooses the appointee. In future nominations to external agencies, the Chair will consult with the whole Commission before communicating any nominations. Vehicle-motion from floor at mtg. on March 19. THE CHAIR SHOULD NOMINATE ONE D AND ONE R.
• Canceling the Chair's speakers series. Vehicle-email from Norma Cantu to Commissioners. FINE
• Already have language that half of State Adv. Council slots will be Dem. and half Rep. Need to add language on each Commissioners' Caucus will take ____days to nominate and vet new members of State Adv. Councils. At end of ___ days, the staff are expected to provide assistance in recruiting and vetting people to fill vacancies. Staff nominations take no longer than ____days. All nominations by Commissioners and staff come back to the full Commissioner for a discussion and vote to approve new members. Vehicle-motion from floor

AMERICAN OVERSIGHT

at mtg. on March 19. AI EXISTS/PROCESS EXISTS DOES NOT NEED TO AMEND AI

- Language about agreeing that AIs, as more specific agreements, govern process of Commissioners; in absence of relevant AI, Commissioners will apply Roberts' Rules of Order. Vehicle-Memo of Understanding approved by majority of Commissioners. SA's to research Roberts Rules.
- Chair proposes agenda for Commissioners' meeting, with Commissioners having ability to propose to amend agenda before meeting and also at the beginning the meeting, subject to majority vote. Vehicle-AI PROCESS EXISTS DOES NOT NEED UPDATE.
- A majority of Commissioners is needed to cancel a called Commissioner meeting. Vehicle-AI PROCESS ALREADY EXISTS.
- Proposed by Norma, in absence of Chair available to moderate the meeting, the most ?
- Language that any Commissioner from each Caucus may sit in on OCRE interviews provided the Commissioner's request to attend does not cause a scheduling delay. Vehicle? NOPE
- Memorial/obits require a majority vote of the Commission and the proposed language for the memorial shall be circulated to all the Commissioners. Vehicle-AIPROCESS ALREADY EXISTS.

- **FEMA / Puerto Rico**
  - The notational vote passed
  - OCRE sent both panelist and briefing book recommendations
  - Virtual briefing moved to June
  - 2 site visits scheduled - Houston 11/19/21, Puerto Rico 12/10/21
  - Need to start planning meetings

- **Bail reform**
  - Comm. Kladney taking over as lead on the project
  - Kladney/Amy negotiations with R's update?
    Status of follow up questions/update?
  - Oregon SAC had their last briefing on Friday 12/11, Catherine attended. Rukku shared briefing notes with OCRE in the comments on the first draft.

- **Maternal Health**
  - Final draft coming to Commissioners in May
  - 3 weeks to return edits before vote in June
  - Irena discussing with Republicans whether they will support

- SAC recruitment
- So far 14 SAC's have expired and not been reappointed
- Alex reached out to Irena to discuss CO and Idaho

AMERICAN OVERSIGHT

- The Republican's via Alex would like to make a deal Yenor for Dr. Chen. Please let your boss know and let's discuss during out caucus call tomorrow.
    - Indiana 12/1/20 – Mauro circulated slate on Friday
    - Amy circulated vet memo. Slate includes 7 Ds, 7 Rs, and 1 Ind.
    - Carissa objected to the balance, the same type of objection as with a NC. Spoke to Carissa and she will check with their caucus if we add a R or if we add an R and a D however she did say that they probably will not vote for slates that are not balanced.
    - Vermont (expired in June).
    - Mauro circulated slate, which included 5 Rs, 5 Ds, and 2 Ind. (including Reed and Martin). Catherine and Debo objected to Lefavour for lack of experience; need to recruit another R.
    - Irena will reach out to Leahy's office and ping Ang to see if she has any candidates.
    - Colorado: Irena
    - Slate failed to get a majority vote on Friday 10/30.
    - 12 candidates, 6 Republicans (including one Independent who leans Republican), 6 Democrats (including one Independent who leans Democrat). No particular flags on any candidates.
    - Comm. Heriot had objected to Prof. Chen, on the basis of a recent article that Prof. Chen published called Colorblind Nationalism.
    - Irena is checking in with Alex on whether Comm. Heriot's objection is ongoing. Alex said he would update last week. No update.
    - North Carolina: Irena
    - Slate failed to get a majority vote on Friday 10/30.
    - 15 candidates, 8 Democrats (including two Independents who lean Democrat), 7 Republicans (including one candidate who identified as "something else"). Note that Olga Wright, the returning Chair, identifies herself as a Democrat but ran for public office as a Republican in 2012.
    - Comm. Kirsanow (and Adams) objected to the balance of the slate, and requested that it be shifted to 7 Republicans and 7 Democrats (removing one Dem).
    - They further objected to the inclusion of Jennifer Lechner as they don't consider her a "true Republican." In her stead they would like to replace her with a Mr. Patrick Mincey who Carissa recruited. Replacing Lechner with Mincey takes the gender balance of the slate to 11 men and 4 women. Mincey has no civil rights experience, based on his application and a review of his public record.
    - Rukku spoke to Thomas; Thomas proposed that we consider a slate of 9 Republicans (including Lechner) and 8 Democrats, and they would work on recruiting Republicans who would assist with balance of slate with respect to gender and other diversity factors. Catherine's current position is that she will not vote for unbalanced slate with 9 Republicans and 8 Democrats.

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- Rukku proposed to Thomas the following: get another R, and add to the slate, to move to a balance of 8-8; added R cannot be Patrick Mincey (no civil rights experience). Might consider Mincey if he submits revised application with more justification for his civil rights experience.
- Idaho (expired in July).
- Rukku shared proposal with Carissa: 4 Republicans, 5 Democrats, 1 Independent leaning Democrat, and 1 Independent who leans in no direction. Slate did not include Scott Yenor.
- From Carissa: They are not willing to move forward with it without Scott Yenor, and it is unbalanced.
- Carissa relayed that they continue to not want to move forward without Yenor.
- Staff confirmed that Yenor is still interested in joining.
- District of Columbia 10/20/20 – Alex, Irena
- (as of 12/17) 11 applicants: 9 men, 2 women; 6 Ds, 4 Rs, 1 something else
- Need more Rs and better diversity
- Iowa 11/17/20 – Carissa, Amy/Rukku
- (as of 11/17) 11 applicants: 7 men, 4 women; 5 Ds, 4 Rs, 2 Ind.
- Need at least one more R.
- Amy to check in with Carissa to see if she has any more leads. Carissa has exhausted her recruitment efforts, but John may have more leads.
- Ohio 11/17/20 – Carissa, Rukku
- (as of 12/17) 16 applicants: 11 Ds, 4 Rs, 1 Ind.
- Need more Rs. Carissa to work on recruitment.
- New Mexico 12/1/20 – Alex, Amy/Irena/Rukku
- 5 applicants. Need more candidates.
- Rukku reached out to Haaland's office for candidates, Rukku to follow up.
- Wyoming 12/1/20 – Alex, Alec
- 6 applicants. Need more candidates.
- Alec reached out to Shepard Foundation and confirmed that Judy Shepard will apply for the SAC.
- In general: Irena recommended we reach out to new Members' offices. Rukku circulated Congressional letter + updated 2 pager to share with offices.
- Florida 3/2021 – Irena
- Louisiana 3/2021 – Rukku
- Nebraska 3/2021 – Alec
- Texas 3/2021 – Amy
- New advisory committees (Puerto Rico, Virgin Islands, Northern Mariana Islands, Guam, American Samoa)
- Irena checked in with David on how he wants to move forward with new advisory committees - on hold for the moment
- Vacancy posted for Civil Rights Analyst in the regions - closes 3/31

- Broken Promises pandemic update

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- Senator Warren's office has reached out to Irena to schedule a meeting this week on the report update + will invite Julie to the meeting.
    - Interested to find out spokesperson for Commission. Irena provided public material and plan to reconnect when a Commissioner can be designated to speak for the Commission
    - Pursue social media strategy using briefing video/materials
    - Can we generate clips from the briefing video, into individual panelist testimony or other excerpts. Rukku to check in with Ang.
    - Catherine wants to raise this project again, to see if we can get to common ground with the Republicans. Catherine wants to revisit when we discuss project planning re FY22 (/FEMA, Comm. Adams' proposal, etc.).
    - Catherine spoke to Gilchrist over the holidays and he seemed open to reconsidering the report; Rukku will reach out to Thomas to see about next steps.
    -
- **All SA Meeting**
- AI 5-9
- Project propsals
- "Balance" SAC AI
- **Expired SACs (14)**
- **Meeting with Mauro**
        - Tomorrow

- **Other SAC activity**
- AI 5-9 - SAC member conduct.
    - Rukku, Irena, Carissa met with OGC to discuss proposed revisions to the AI. Irena and Carissa are taking OGC's redline and comments to Commissioners to get feedback.
    - SAC letters – Rukku is working on moving out of backlog of Commissioner letters sharing publications from SACs. Sent Indiana and Arkansas last week.
        - Irena will raise with Ang/David that Staff Director could take over these letters while waiting for a new Chair.
- Project proposals for FY21/22
    - Rukku checked with John to see if Commissioner Adams will submit new project proposals. John is working with Commissioner Adams on project priorities and check back on timeline. Rukku to follow up with John this week.
    - John (at all SA meeting) said that Comm. Adams had a proposal, so Rukku will generate a timeline for consideration.
    - We will proceed with the FEMA Project as the FY22 statutory enforcement report.
    - Move forward with FY22 project planning calendar – Rukku generated the program planning schedule with emphasis on time early in the process for bipartisan discussion.
    - Dave is working on a concept paper on race discrimination and small business lending, perhaps focusing on the recipients of the

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PPP loan.
    - Dave spoke with Comm. Gilchrist about potential interest.
- Personnel
    - Cantu Special Assistant
    - OCRE Director - posting closed, Mauro conducting interviews
    - Commission on Black Man and Boys - posting closed
    - Summer 2021 interns – Irena hired a spring intern. Am? Irena reached out to Carissa their caucus will have 4, ours will have 2.
    - Irena's intern Alana Thomas started this week: Alana Thomas is currently a second year law student at Georgetown. She is currently pursuing a Master of Public Policy degree from Loyola University Chicago, and received her BS in Psychology from Virginia Tech. Alana has focused her studies on affordable housing and race in law. She currently serves as the Vice President of Marketing Strategy at Citi. Alana is from Chicago, and will be supporting Commissioner Adegbile
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    - Monday

AMERICAN OVERSIGHT

Date : 3/24/2021 3:52:12 PM
From : "Mauro Morales" mmorales@usccr.gov
To : "David Ganz" dganz@usccr.gov, "Pilar McLaughlin" pmclaughlin@usccr.gov
Subject : RE: EAC Board of Advisors Membership Appointments

Yes, but this one of the issues of contention. I will respond. Thanks

---

From: David Ganz
Sent: Wednesday, March 24, 2021 3:30 PM
To: Pilar McLaughlin <pmclaughlin@usccr.gov>; Mauro Morales <mmorales@usccr.gov>
Subject: RE: EAC Board of Advisors Membership Appointments

If there aren't new appointments, then Yaki and Kladney are automatically renewed for new terms, right?

From: Pilar McLaughlin <pmclaughlin@usccr.gov>
Sent: Wednesday, March 24, 2021 3:16 PM
To: David Ganz <dganz@usccr.gov>; Mauro Morales <mmorales@usccr.gov>
Subject: FW: EAC Board of Advisors Membership Appointments

Mauro and David:

Wanted to make sure you saw this. Flagging the date (March 26, 2021) the EAC is requesting we submit the Commission's new appointments.

Pilar

From: Kevin Rayburn <KRayburn@eac.gov>
Sent: Wednesday, March 24, 2021 2:14 PM
To: Mauro Morales <mmorales@usccr.gov>
Cc: Pilar McLaughlin <pmclaughlin@usccr.gov>
Subject: [EXTERNAL] RE: EAC Board of Advisors Membership Appointments

> CAUTION: This email is from outside USCCR.

I just wanted to follow-up on my previous email and see if you had any questions or concerns.

Thanks,

Kevin Rayburn, General Counsel
U.S. Election Assistance Commission
Mobile: (202) 740-6546

AMERICAN OVERSIGHT

From: Kevin Rayburn
Sent: Friday, March 5, 2021 11:14 AM
To: mmorales@usccr.gov
Subject: EAC Board of Advisors Membership Appointments

Good Morning Mr. Morales,

Please find attached correspondence from the U.S. Election Assistance Commission regarding your organization's appointments to the EAC Board of Advisors. Also included is a Notice of Representation Form. We ask that you please return the completed form to krayburn@eac.gov by March 26, 2021. Let me know if you have any questions.

Sincerely,

Kevin Rayburn, General Counsel
U.S. Election Assistance Commission
Mobile: (202) 740-6546

AMERICAN OVERSIGHT

Date : 3/24/2021 3:15:59 PM
From : "Pilar McLaughlin" pmclaughlin@usccr.gov
To : "David Ganz" dganz@usccr.gov, "Mauro Morales" mmorales@usccr.gov
Subject : FW: EAC Board of Advisors Membership Appointments
Attachment : EAC Letter to USCCR re Board of Advisors.pdf;Notice-of-Representation-Form-Board-Advisors-2021.pdf;

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Sincerely,

AMERICAN OVERSIGHT

Kevin Rayburn, General Counsel
U.S. Election Assistance Commission
Mobile: (202) 740-6546

AMERICAN OVERSIGHT

U.S. Election Assistance Commission

633 3rd Street NW, Suite 200
Washington, DC 20001

March 5, 2021

United States Commission on Civil Rights
Mauro Morales, Staff Director
1331 Pennsylvania Ave., NW, STE 1150
Washington, D.C. 20425
mmorales@usccr.gov

Re: U.S. Election Assistance Commission
Board of Advisors Membership Appointment

Dear Mr. Morales,

As you are aware, the Help America Vote Act of 2002 (HAVA) created the U.S. Election Assistance Commission (EAC) and established three advisory boards to assist the EAC: Board of Advisors, Standards Board, and Technical Guidelines Development Committee. The advisory boards are primarily charged with providing advice, guidance, and support to the EAC on the ongoing development of the Voluntary Voting System Guidelines (VVSG).

Under Section 214 of HAVA, your organization is authorized to appoint two members to the Board of Advisors. The Board of Advisors Charter and Bylaws govern the advisory board.

Please be advised that your designated representatives' two-year terms to the Board of Advisors expire on April 13, 2021. You can either reappoint your current representative(s) or appoint new representative(s) for a new two-year term. In compliance with HAVA, please make appointments "in a manner which ensures that the Board of Advisors will be bipartisan in nature and will reflect the various geographic regions of the United States." 52 U.S.C § 20944(b).

Your current representatives are:

Michael Yaki

David Kladney

The new term of your member representatives will begin on April 13, 2021 coinciding with the renewal of the Board of Advisor's Charter.

Please use the enclosed Notice of Representation form to advise us of your designated representatives to serve on the EAC Board of Advisors for the upcoming two-year term. **Please return this completed form by email to krayburn@eac.gov no later than March 26, 2021**.

While the EAC recently adopted VVSG 2.0, we are committed to an agile process that includes continually working with our advisory boards to identify enhancements to the VVSG. The

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usability, accessibility, and security of voting systems continue to be of critical importance, and recommendations from the advisory boards are as imperative as ever. Therefore, your prompt response to this letter is greatly appreciated.

Thank you for your attention to this matter. If we can be of assistance, please feel free to contact us at 202-740-6546 or krayburn@eac.gov.

Sincerely,

Mona Harrington
Executive Director
U.S. Election Assistance Commission

AMERICAN OVERSIGHT

Notice of Representation
United States Election Assistance Commission
Board of Advisors

In accordance with 52 U.S.C. § 20944 of the Help America Vote Act of 2002, your office submits the following individual(s) as a member of the Election Assistance Commission Board of Advisors:

Designated Representative

Name: _____

Title: _____

Address: _____

_____

Phone: _____

Email: _____

Party Affiliation: _____

Designated Representative

Name: _____

Title: _____

Address: _____

_____

Phone: _____

Email: _____

Party Affiliation: _____

Name and Title of Appointing Official

Print Name: _____

Print Title: _____

Signature: _____ Date: _____

Please return the completed form via email to EAC General Counsel Kevin Rayburn (krayburn@eac.gov).

AMERICAN OVERSIGHT

Date : 3/24/2021 4:11:04 PM
From : "Mauro Morales" mmorales@usccr.gov
To : "Kevin Rayburn" KRayburn@eac.gov
Cc : "Pilar McLaughlin" pmclaughlin@usccr.gov, "David Ganz" dganz@usccr.gov
Subject : RE: EAC Board of Advisors Membership Appointments
Attachment : image001.gif;image002.gif;

Kevin,

Thank you for getting back to us. Chair Catherine Lhamon resigned from the Commission on January 19th. Commissioner Norma Cantu has been sworn in to replace her and has been designated as the new Chair. Unfortunately, the Commissioners have been delayed in having a vote to confirm Commissioner Cantu as the new Chair. It is my understanding that Commissioner Cantu and the other commissioners wish to reach a mutual agreement on who they will select to fill the memberships. Commissioners Kladney and Yaki may be reappointed. On the other hand, Commissioner may agree to add a new member and keep one of the current members. It looks like the Commissioners will not be able to make a decision until the next US Commission on Civil Rights business meeting on April 16th.

Can you advise us as to the options we have available? If we are unable to make our appointments until April 16th, will the current appointments lapse or will Klandey and Yaki automatically be renewed for another term? If Kladney and Yaki are automatically renewed can they be changed once Commissioners reach a decision on who should be appointed. Please let us know if you wish to speak to us for clarity.

Thank you.

Mauro Morales
Staff Director
U.S. Commission on Civil Rights
P: 202-376-7796| F: 202-376-7672
Mmorales@usccr.gov
http://usccr.gov/
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425

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#USCCR

AMERICAN OVERSIGHT

From: Kevin Rayburn [mailto:KRayburn@eac.gov]
Sent: Wednesday, March 24, 2021 2:14 PM
To: Mauro Morales <mmorales@usccr.gov>
Cc: Pilar McLaughlin <pmclaughlin@usccr.gov>
Subject: [EXTERNAL] RE: EAC Board of Advisors Membership Appointments

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Good Afternoon Mr. Morales,

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Thanks,

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U.S. Election Assistance Commission
Mobile: (202) 740-6546

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Sincerely,

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AMERICAN OVERSIGHT

OVERSIGHT

OVERSTOCK

Date : 3/24/2021 3:30:02 PM
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Kevin Rayburn, General Counsel
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Mobile: (202) 740-6546

AMERICAN OVERSIGHT

Date : 3/25/2021 4:56:05 PM
From : "Norma Cantu" ncantu@usccr.gov
To : "Gail Heriot" gheriot@me.com, "Carissa Mulder" CMulder@usccr.gov
Cc : "Michael Yaki" MYaki@usccr.gov, "pkirsanow@beneschlaw.com" pkirsanow@beneschlaw.com
Subject : Re: [EXTERNAL] Re: Noon meeting-how about Thursday at 6 pm EST?

Dear Gail, Peter,
I think we are there on the EAC topic.
Do you want to talk briefly?
The timing is a bit urgent because the EAC is eager to get our nominations.
Norma

From: Gail Heriot <gheriot@me.com>
Date: Thursday, March 25, 2021 at 2:21 PM
To: Carissa Mulder <CMulder@usccr.gov>
Cc: Michael Yaki <MYaki@usccr.gov>, Norma Cantu <ncantu@usccr.gov>, "pkirsanow@beneschlaw.com" <pkirsanow@beneschlaw.com>
Subject: [EXTERNAL] Re: Noon meeting-how about Thursday at 6 pm EST?

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Gail Heriot
Professor of Law
University of San Diego

> On Mar 25, 2021, at 12:18 PM, Carissa Mulder <CMulder@usccr.gov> wrote:
>
> I hope you feel better soon! Pete unfortunately just found out that he can't meet this evening either, due to an emergency in his practice.
>
> ---
>
> **From:** Michael Yaki
> **Sent:** Thursday, March 25, 2021 3:15:05 PM
> **To:** Carissa Mulder; Norma Cantu
> **Cc:** pkirsanow@beneschlaw.com; Gail Heriot
> **Subject:** Re: Noon meeting-how about Thursday at 6 pm EST?
>
> Hey everyone
>
> I am having a reaction to my Moderna shot and am out of commission today. Norma can meet if she wants to go forward to get some of the

AMERICAN OVERSIGHT

non controversial items out of the way. Sorry for the late notice, but it hit me this morning.

From: Carissa Mulder
Sent: Friday, March 19, 2021 11:46:11 AM
To: Norma Cantu; Michael Yaki
Cc: pkirsanow@beneschlaw.com; Gail Heriot
Subject: Re: Noon meeting-how about Thursday at 6 pm EST?

Dear Commissioners:

6 pm Eastern on Thursday works for both Commissioners Heriot and Kirsanow. They look forward to meeting with you then!

Sincerely,

Carissa

From: Norma Cantu
Sent: Friday, March 19, 2021 11:43:00 AM
To: Carissa Mulder; Michael Yaki
Cc: pkirsanow@beneschlaw.com; Gail Heriot
Subject: Re: Noon meeting-how about Thursday at 6 pm EST?

Dear Carissa,
I teach a class from 2 to 5 EST on Thursdays. I can meet after class at 6 p.m. EST this Thursday.
I also have Friday open until 3 p.m. EST.
Norma

From: Carissa Mulder <CMulder@usccr.gov>
Date: Friday, March 19, 2021 at 10:39 AM
To: Norma Cantu <ncantu@usccr.gov>, Michael Yaki <MYaki@usccr.gov>
Cc: "pkirsanow@beneschlaw.com" <pkirsanow@beneschlaw.com>, Gail Heriot <gheriot@me.com>
Subject: Noon meeting

Good morning, Commissioners Cantu and Yaki:

Commissioners Kirsanow and Heriot asked me to email you and tell you that they are not logistically prepared to negotiate today. Would you be available to meet Thursday at 1:30 PM EDT?

AMERICAN OVERSIGHT

Thank you,

Carissa

AMERICAN OVERSIGHT

Date : 3/25/2021 6:28:01 PM
From : "Norma Cantu" ncantu@usccr.gov
To : "Michael Yaki" MYaki@usccr.gov, "Gail Heriot" gheriot@me.com, "Carissa Mulder" CMulder@usccr.gov
Cc : "pkirsanow@beneschlaw.com" pkirsanow@beneschlaw.com
Subject : Re: [EXTERNAL] Re: Noon meeting-how about Thursday at 6 pm EST?

Dear Michael,
I really am sorry you are not feeling well.
We are not replacing anyone on EAC yet. At our last meeting with Gail and Peter, I said to Gail and Peter the change would not happen until after June.
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Date: Thursday, March 25, 2021 at 4:46 PM
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Cc: "pkirsanow@beneschlaw.com" <pkirsanow@beneschlaw.com>
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Sent: Thursday, March 25, 2021 4:56:05 PM
To: Gail Heriot; Carissa Mulder
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Subject: Re: [EXTERNAL] Re: Noon meeting-how about Thursday at 6 pm EST?

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I think we are there on the EAC topic.
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AMERICAN OVERSIGHT

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Subject: Re: Noon meeting-how about Thursday at 6 pm EST?

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Cc : "Michael Yaki" MYaki@usccr.gov, "pkirsanow@beneschlaw.com" pkirsanow@beneschlaw.com, "michael@michaelyaki.com" michael@michaelyaki.com, "David Ganz" dganz@usccr.gov
Subject : Re: [EXTERNAL] Meeting--Times available for Norma to meet regarding vote on Chair

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Subject: Re: [EXTERNAL] Meeting--Times available for Norma to meet

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AMERICAN OVERSIGHT

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Friday may be a religious holiday, but if it is not for you, I am open from 11-3 PST/ 1-5 CST/ 2-6 EST

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Date : 4/8/2021 11:57:01 AM
From : "David Ganz" dganz@usccr.gov
To : "Mauro Morales" mmorales@usccr.gov
Subject : FW: [EXTERNAL] Meeting--Times available for Norma to meet regarding vote on Chair

Any idea what is in these proposed A.I.s?

From: Norma Cantu <ncantu@usccr.gov>
Sent: Thursday, April 8, 2021 11:45 AM
To: Carissa Mulder <CMulder@usccr.gov>; Gail Heriot <gheriot@me.com>
Cc: Michael Yaki <MYaki@usccr.gov>; pkirsanow@beneschlaw.com; michael@michaelyaki.com; David Ganz <dganz@usccr.gov>
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I hope you feel better soon! Pete unfortunately just found out that he can't meet this evening either, due to an emergency in his practice.

From: Michael Yaki
Sent: Thursday, March 25, 2021 3:15:05 PM
To: Carissa Mulder; Norma Cantu
Cc: pkirsanow@beneschlaw.com; Gail Heriot
Subject: Re: Noon meeting-how about Thursday at 6 pm EST?

Hey everyone

I am having a reaction to my Moderna shot and am out of commission today. Norma can meet if she wants to go forward to get some of the non controversial items out of the way. Sorry for the late notice, but it hit me this morning.

From: Carissa Mulder
Sent: Friday, March 19, 2021

AMERICAN OVERSIGHT

11:46:11 AM
To: Norma Cantu; Michael Yaki
Cc: pkirsanow@beneschlaw.com; Gail Heriot
Subject: Re: Noon meeting-how about Thursday at 6 pm EST?

Dear Commissioners:

6 pm Eastern on Thursday works for both Commissioners Heriot and Kirsanow. They look forward to meeting with you then!

Sincerely,

Carissa

From: Norma Cantu
Sent: Friday, March 19, 2021 11:43:00 AM
To: Carissa Mulder; Michael Yaki
Cc: pkirsanow@beneschlaw.com; Gail Heriot
Subject: Re: Noon meeting-how about Thursday at 6 pm EST?

Dear Carissa,

I teach a class from 2 to 5 EST on Thursdays. I can meet after class at 6 p.m. EST this Thursday.

I also have Friday open until 3 p.m. EST.

Norma

From: Carissa Mulder <CMulder@usccr.gov>
Date: Friday, March 19, 2021 at 10:39 AM
To: Norma Cantu

AMERICAN OVERSIGHT

<ncantu@usccr.gov>, Michael Yaki <MYaki@usccr.gov>
Cc: "pkirsanow@beneschlaw.com" <pkirsanow@beneschlaw.com>, Gail Heriot <gheriot@me.com>
Subject: Noon meeting

Good morning, Commissioners Cantu and Yaki:

Commissioners Kirsanow and Heriot asked me to email you and tell you that they are not logistically prepared to negotiate today. Would you be available to meet Thursday at 1:30 PM EDT?

Thank you,

Carissa

AMERICAN OVERSIGHT

Date : 4/8/2021 12:28:00 PM
From : "David Ganz" dganz@usccr.gov
To : "Carissa Mulder" CMulder@usccr.gov, "Norma Cantu" ncantu@usccr.gov, "Gail Heriot" gheriot@me.com
Cc : "Michael Yaki" MYaki@usccr.gov, "pkirsanow@beneschlaw.com" pkirsanow@beneschlaw.com, "michael@michaelyaki.com" michael@michaelyaki.com
Subject : RE: [EXTERNAL] Meeting--Times available for Norma to meet regarding vote on Chair

Hello all, I will make myself available when the group meets. Thanks,

David

From: Carissa Mulder <CMulder@usccr.gov>
Sent: Thursday, April 8, 2021 12:02 PM
To: Norma Cantu <ncantu@usccr.gov>; Gail Heriot <gheriot@me.com>
Cc: Michael Yaki <MYaki@usccr.gov>; pkirsanow@beneschlaw.com; michael@michaelyaki.com; David Ganz <dganz@usccr.gov>
Subject: RE: [EXTERNAL] Meeting--Times available for Norma to meet regarding vote on Chair

Good morning, everyone:

I just got off the phone with Pete. Unfortunately, he can't meet before Monday at 2 pm Eastern. Is there a time after that that would work for everyone? I realize this is after April 10, but he can't make it work before then.

From: Norma Cantu <ncantu@usccr.gov>
Sent: Thursday, April 8, 2021 11:45 AM
To: Carissa Mulder <CMulder@usccr.gov>; Gail Heriot <gheriot@me.com>
Cc: Michael Yaki <MYaki@usccr.gov>; pkirsanow@beneschlaw.com; michael@michaelyaki.com; David Ganz <dganz@usccr.gov>
Subject: Re: [EXTERNAL] Meeting--Times available for Norma to meet regarding vote on Chair

Hello, all,
Not hearing a response, I am checking in on a good time to complete our task on the proposed AI's, etc.

I will be in a two-hour meeting today and will be back at my desk at 11:30PST/ 1:30 CST/2:30 EST. After that, I have cleared off the rest of today and all of tomorrow for the four Commissioners to work on language. Of course, it won't take that much time, but I do estimate 1-2 hours for our discussion.

Please bear in mind that we should try to get the language together by Saturday, April 10, because we need to give the USCCR General Counsel time to review the language for AI's or other vehicles to be sure we are aligned to language in our statute and other federal laws.

FYI, I would rather be listening to your ideas than reading all the digitized AI's and the newest version of Robert's Rules. I can meet late in the day for the convenience of those of you on West Coast time.
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AMERICAN OVERSIGHT

From: Carissa Mulder <CMulder@usccr.gov>
Date: Friday, April 2, 2021 at 12:26 PM
To: Gail Heriot <gheriot@me.com>, Norma Cantu <ncantu@usccr.gov>
Cc: Michael Yaki <MYaki@usccr.gov>,
"pkirsanow@beneschlaw.com" <pkirsanow@beneschlaw.com>,
"michael@michaelyaki.com" <michael@michaelyaki.com>
Subject: Re: [EXTERNAL] Meeting--Times available for Norma to meet

Hello everyone,

Pete can do anytime Tuesday between 1-4 PM Eastern. Is there a time in there that works for everyone?

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Gail Heriot
Professor of Law
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I just got off the phone with Pete. He is tied up for the rest of the week. Would Monday work?

Thank you!

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Subject: Re: [EXTERNAL] Meeting--Times available for Norma to meet

Pete told me yesterday (sorry, I thought he had responded to this email) that he is only available later in the week. Pete, can you do any of these times Thursday or Friday?

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Sent: Wednesday, March 31, 2021 12:28:04 AM
To: Norma Cantu
Cc: michael@michaeyaki.com; Michael Yaki; Carissa Mulder; pkirsanow@beneschlaw.com
Subject: Re: [EXTERNAL] Meeting--Times available for Norma to meet

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You don't want to see me at 7:00 am PT on Thursday. But I can do any time after 9:00 am PT.

Friday is okay from 11:00 am PT till 1:30 pm or so PT.

AMERICAN OVERSIGHT

I can do Saturday.

Gail Heriot
Professor of Law
University of San Diego

> On Mar 30, 2021, at 12:32 PM, Norma Cantu <ncantu@usccr.gov> wrote:
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> Dear Michael, Peter, Gail,
>
> I would set up a doodle poll, but my USCCR email address is not compatible. Perhaps, Ms. Mulder would have better access to Doodle Poll?
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> Thursday is fine from 7-11 PST/ 9-1 CST/ 10-12 EST. I also have time open 7-8 PST/ 5-7 CST/ 6-8 EST
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> Friday may be a religious holiday, but if it is not for you, I am open from 11-3 PST/ 1-5 CST/ 2-6 EST
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> Saturday, I am donating blood in the morning, but will be ready for a call between 9- 6 PST? 11 - 8 CST/ 120-9 EST.
> Norma
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> **From:** Gail Heriot <gheriot@me.com>
> **Date:** Monday, March 29, 2021 at 8:58 PM
> **To:** Norma Cantu <ncantu@usccr.gov>
> **Cc:** Michael Yaki <MYaki@usccr.gov>, Carissa Mulder <CMulder@usccr.gov>, "pkirsanow@beneschlaw.com" <pkirsanow@beneschlaw.com>
> **Subject:** [EXTERNAL] Meeting
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> Gail Heriot
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AMERICAN OVERSIGHT

University of San Diego

On Mar 25, 2021, at 3:28 PM, Norma Cantu <ncantu@usccr.gov> wrote:

Dear Michael,
I really am sorry you are not feeling well.
We are not replacing anyone on EAC yet. At our last meeting with Gail and Peter, I said to Gail and Peter the change would not happen until after June.
Norma

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To: Norma Cantu <ncantu@usccr.gov>, Gail Heriot <gheriot@me.com>, Carissa Mulder <CMulder@usccr.gov>
Cc: "pkirsanow@beneschlaw.com" <pkirsanow@beneschlaw.com>
Subject: Re: [EXTERNAL] Re: Noon meeting- how about Thursday at 6 pm EST?

Hang on. You can't replace me yet b/c I have to chair the annual meeting in June. I will resign after the meeting in June.

If I sound belligerent it's bc i have a huge headache

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To: Gail Heriot; Carissa Mulder
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Subject: Re: [EXTERNAL] Re: Noon meeting- how about Thursday at 6 pm EST?

Dear Gail, Peter,
I think we are there on the EAC topic.
Do you want to talk briefly?
The timing is a bit urgent because the EAC is eager to get our nominations.
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AMERICAN OVERSIGHT

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AMERICAN OVERSIGHT

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AMERICAN OVERSIGHT

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Thank you,

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AMERICAN OVERSIGHT

Date : 4/8/2021 12:08:13 PM
From : "Mauro Morales" mmorales@usccr.gov
To : "David Ganz" dganz@usccr.gov
Subject : RE: [EXTERNAL] Meeting--Times available for Norma to meet regarding vote on Chair

No idea.

From: David Ganz <dganz@usccr.gov>
Sent: Thursday, April 8, 2021 11:57 AM
To: Mauro Morales <mmorales@usccr.gov>
Subject: FW: [EXTERNAL] Meeting--Times available for Norma to meet regarding vote on Chair

Any idea what is in these proposed A.I.s?

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AMERICAN OVERSIGHT

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To : "Gail Heriot" gheriot@me.com, "Gail Heriot" gheriot@usccr.gov, "Peter Kirsanow" pkirsanow@beneschlaw.com
Cc : "Michael Yaki" michael@michaelyaki.com, "Carissa Mulder" CMulder@usccr.gov, "Michael Yaki" MYaki@usccr.gov, "David Ganz" dganz@usccr.gov
Subject : Re: [EXTERNAL] Meeting--Times available for Norma to meet regarding vote on Chair

Dear Gail,

In my earlier email, I wrote that our General Counsel would need to review our language on proposed AI's and other vehicles to be sure we were consistent with applicable federal laws.
I copied David Ganz on that email so he could anticipate that we were working on language. Ganz replied that he received the email and would be available as needed.
It seems that you inferred that he was invited to join the call. That was not my intent.
We won't have language ready to share with General Counsel until *after* our meeting on Tuesday.
Norma

From: Gail Heriot <gheriot@me.com>
Date: Friday, April 9, 2021 at 1:31 PM
To: Norma Cantu <ncantu@usccr.gov>, Gail Heriot <gheriot@usccr.gov>, Peter Kirsanow <pkirsanow@beneschlaw.com>
Cc: Norma Cantu <ncantu@usccr.gov>, Michael Yaki <michael@michaelyaki.com>, Carissa Mulder <CMulder@usccr.gov>, Michael Yaki <MYaki@usccr.gov>, "pkirsanow@beneschlaw.com" <pkirsanow@beneschlaw.com>
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Tuesday, at 4 p.m. EST works for me.
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" <pkirsanow@beneschlaw.com>, David Ganz <dganz@usccr.gov>
Subject: Re: [EXTERNAL] Meeting--Times available for Norma to meet regarding vote on Chair

> CAUTION: This email is from outside USCCR.

Best regards,
Michael

MICHAEL YAKI CONSULTING
e: michael@michaelyaki.com
m: 415.601.4008

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On Thursday, April 8, 2021, 09:58:06 AM PDT, Gail Heriot <gheriot@me.com> wrote:

Yes.

Gail Heriot
Professor of Law
University of San Diego

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Pete asks if Tuesday at 4 pm Eastern works.

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Subject: Re: [EXTERNAL] Meeting--Times available for Norma to meet regarding vote on Chair

AMERICAN OVERSIGHT

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Gail Heriot

Professor of Law

University of San Diego

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Please bear in mind that we should try to get the language together by Saturday, April 10, because we need to give the USCCR General Counsel time to review the language for AI's or other vehicles to be sure we are aligned to language in our statute and other federal laws.

AMERICAN OVERSIGHT

FYI, I would rather be listening to your ideas than reading all the digitized AI's and the newest version of Robert's Rules. I can meet late in the day for the convenience of those of you on West Coast time.

Norma

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Professor of Law

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AMERICAN OVERSIGHT

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Cc: Norma Cantu <ncantu@usccr.gov>, "michael@michaeyaki.com" <michael@michaeyaki.com>, Michael Yaki <MYaki@usccr.gov>, "pkirsanow@beneschlaw.com" <pkirsanow@beneschlaw.com>
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Professor of Law

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AMERICAN OVERSIGHT

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You don't want to see me at 7:00 am PT on Thursday. But I can do any time after 9:00 am PT.

Friday is okay from 11:00 am PT till 1:30 pm or so PT.

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Gail Heriot

Professor of Law

University of San Diego

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AMERICAN OVERSIGHT

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Thursday is fine from 7-11 PST/ 9-1 CST/ 10-12 EST. I also have time open 7-8 PST/ 5-7 CST/ 6-8 EST

Friday may be a religious holiday, but if it is not for you, I am open from 11-3 PST/ 1-5 CST/ 2-6 EST

Saturday, I am donating blood in the morning, but will be ready for a call between 9- 6 PST? 11 - 8 CST/ 120-9 EST.

Norma

From: Gail Heriot <gheriot@me.com>
Date: Monday, March 29, 2021 at 8:58 PM
To: Norma Cantu <ncantu@usccr.gov>
Cc: Michael Yaki <MYaki@usccr.gov>, " <pkirsanow@beneschlaw.com>
Subject: [EXTERNAL] Meeting

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We need to get this show on the road. Is there a time late this week that we can all meet?

Gail

Gail Heriot

Professor of Law

University of San Diego

AMERICAN OVERSIGHT

On Mar 25, 2021, at 3:28 PM, Norma Cantu <ncantu@usccr.gov> wrote:

Dear Michael,

I really am sorry you are not feeling well.

We are not replacing anyone on EAC yet. At our last meeting with Gail and Peter, I said to Gail and Peter the change would not happen until after June.

Norma

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Cc: "pkirsanow@beneschlaw.com" <pkirsanow@beneschlaw.com>
Subject: Re: [EXTERNAL] Re: Noon meeting-how about Thursday at 6 pm EST?

Hang on. You can't replace me yet b/c I have to chair the annual meeting in June. I will resign after the meeting in June.

If I sound belligerent it's bc i have a huge headache

AMERICAN OVERSIGHT

From: Norma Cantu
Sent: Thursday, March 25, 2021 4:56:05 PM
To: Gail Heriot; Carissa Mulder
Cc: Michael Yaki; pkirsanow@beneschlaw.com
Subject: Re: [EXTERNAL] Re: Noon meeting-how about Thursday at 6 pm EST?

Dear Gail, Peter,

I think we are there on the EAC topic.

Do you want to talk briefly?

The timing is a bit urgent because the EAC is eager to get our nominations.

Norma

From: Gail Heriot <gheriot@me.com>
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To: Carissa Mulder <CMulder@usccr.gov>
Cc: Michael Yaki <MYaki@usccr.gov>, Norma " <pkirsanow@beneschlaw.com>
Subject: [EXTERNAL] Re: Noon meeting-how about Thursday at 6 pm EST?

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Gail Heriot

Professor of Law

University of San Diego

AMERICAN OVERSIGHT

On Mar 25, 2021, at 12:18 PM, Carissa Mulder <CMulder@usccr.gov> wrote:

I hope you feel better soon! Pete unfortunately just found out that he can't meet this evening either, due to an emergency in his practice.

From: Michael Yaki
Sent: Thursday, March 25, 2021 3:15:05 PM
To: Carissa Mulder; Norma Cantu
Cc: pkirsanow@beneschlaw.com; Gail Heriot
Subject: Re: Noon meeting-how about Thursday at 6 pm EST?

Hey everyone

I am having a reaction to my Moderna shot and am out of commission today. Norma can meet if she wants to go forward to get some of the non controversial items out of the way. Sorry for the late notice, but it hit me this morning.

AMERICAN OVERSIGHT

From: Carissa Mulder
Sent: Friday, March 19, 2021 11:46:11 AM
To: Norma Cantu; Michael Yaki
Cc: pkirsanow@beneschlaw.com; Gail Heriot
Subject: Re: Noon meeting-how about Thursday at 6 pm EST?

Dear Commissioners:

6 pm Eastern on Thursday works for both Commissioners Heriot and Kirsanow. They look forward to meeting with you then!

Sincerely,

Carissa

From: Norma Cantu
Sent: Friday, March 19, 2021 11:43:00 AM
To: Carissa Mulder; Michael Yaki
Cc: pkirsanow@beneschlaw.com; Gail Heriot
Subject: Re: Noon meeting-how about

AMERICAN OVERSIGHT

Thursday at 6 pm
EST?

Dear Carissa,

I teach a class from 2
to 5 EST on
Thursdays. I can meet
after class at 6 p.m.
EST this Thursday.

I also have Friday
open until 3 p.m. EST.

Norma

From: Carissa
>
Date: Friday,
March 19, 2021 at
10:39 AM
To: Norma Cantu
<ncantu@usccr.gov>,
Michael Yaki
<MYaki@usccr.gov>
Cc:
"pkirsanow@beneschlaw.com" <pkirsanow@beneschlaw.com>,
Gail Heriot
<gheriot@me.com>
Subject: Noon
meeting

Good morning,
Commissioners
Cantu and Yaki:

Commissioners
Kirsanow and
Heriot asked me to
email you and tell
you that they are
not logistically
prepared to
negotiate today.

AMERICAN OVERSIGHT

Would you be
available to meet
Thursday at 1:30
PM EDT?

Thank you,

Carissa

AMERICAN OVERSIGHT

Date : 4/9/2021 4:54:26 PM
From : "David Ganz" dganz@usccr.gov
To : "Norma Cantu" ncantu@usccr.gov, "Gail Heriot" gheriot@me.com, "Gail Heriot" gheriot@usccr.gov, "Peter Kirsanow" pkirsanow@beneschlaw.com
Cc : "Michael Yaki" michael@michaelyaki.com, "Carissa Mulder" CMulder@usccr.gov, "Michael Yaki" MYaki@usccr.gov
Subject : RE: [EXTERNAL] Meeting--Times available for Norma to meet regarding vote on Chair

Hello all, please share the draft agreed-upon A.I.s with me whenever you are ready. Unless you request my assistance on Tuesday, I do not plan on attending the 4 o'clock meeting. Have a good weekend,

David

From: Norma Cantu <ncantu@usccr.gov>
Sent: Friday, April 9, 2021 4:26 PM
To: Gail Heriot <gheriot@me.com>; Gail Heriot <gheriot@usccr.gov>; Peter Kirsanow <pkirsanow@beneschlaw.com>
Cc: Michael Yaki <michael@michaelyaki.com>; Carissa Mulder <CMulder@usccr.gov>; Michael Yaki <MYaki@usccr.gov>; David Ganz <dganz@usccr.gov>
Subject: Re: [EXTERNAL] Meeting--Times available for Norma to meet regarding vote on Chair

Dear Gail,

In my earlier email, I wrote that our General Counsel would need to review our language on proposed AI's and other vehicles to be sure we were consistent with applicable federal laws.
I copied David Ganz on that email so he could anticipate that we were working on language. Ganz replied that he received the email and would be available as needed.
It seems that you inferred that he was invited to join the call. That was not my intent.
We won't have language ready to share with General Counsel until *after* our meeting on Tuesday.
Norma

From: Gail Heriot <gheriot@me.com>
Date: Friday, April 9, 2021 at 1:31 PM
To: Norma Cantu <ncantu@usccr.gov>, Gail Heriot <gheriot@usccr.gov>, Peter Kirsanow <pkirsanow@beneschlaw.com>
Cc: Norma Cantu <ncantu@usccr.gov>, Michael Yaki <michael@michaelyaki.com>, Carissa Mulder <CMulder@usccr.gov>, Michael Yaki <MYaki@usccr.gov>, "pkirsanow@beneschlaw.com" <pkirsanow@beneschlaw.com>
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Gail Heriot
Professor of Law
University of San Diego

AMERICAN OVERSIGHT

On Apr 9, 2021, at 11:28 AM, David Ganz <dganz@usccr.gov> wrote:

Me as well.

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To: Michael Yaki <michael@michaelyaki.com>; Carissa Mulder <CMulder@usccr.gov>; Gail Heriot <gheriot@me.com>
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Subject: Re: [EXTERNAL] Meeting--Times available for Norma to meet regarding vote on Chair

Dear Michael, Gail, Carissa, Peter,
Tuesday, at 4 p.m. EST works for me.
Norma

From: Michael Yaki <michael@michaelyaki.com>
Reply-To: Michael Yaki <michael@michaelyaki.com>
Date: Thursday, April 8, 2021 at 12:21 PM
To: Carissa Mulder <CMulder@usccr.gov>, Gail Heriot <gheriot@me.com>
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Best regards,
Michael

MICHAEL YAKI CONSULTING
e: michael@michaelyaki.com
m: 415.601.4008

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AMERICAN OVERSIGHT

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> Hello, all,
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AMERICAN OVERSIGHT

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AMERICAN OVERSIGHT

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AMERICAN OVERSIGHT

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Professor of Law

University of San Diego

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AMERICAN OVERSIGHT

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Dear Commissioners:

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Sincerely,

Carissa

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Sent: Friday, March

AMERICAN OVERSIGHT

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To: Carissa Mulder; Michael Yaki
Cc: pkirsanow@beneschlaw.com; Gail Heriot
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Dear Carissa,

I teach a class from 2 to 5 EST on Thursdays. I can meet after class at 6 p.m. EST this Thursday.

I also have Friday open until 3 p.m. EST.

Norma

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To: Norma Cantu <ncantu@usccr.gov>, Michael Yaki <MYaki@usccr.gov>
Cc: "pkirsanow@beneschlaw.com" <pkirsanow@beneschlaw.com>, Gail Heriot <gheriot@me.com>
Subject: Noon meeting

Good morning, Commissioners Cantu and Yaki:

AMERICAN OVERSIGHT

Commissioners Kirsanow and Heriot asked me to email you and tell you that they are not logistically prepared to negotiate today. Would you be available to meet Thursday at 1:30 PM EDT?

Thank you,

Carissa

AMERICAN OVERSIGHT

Date : 4/12/2021 1:12:55 PM
From : "Amy Royce" aroyce@usccr.gov
To : "Irena Vidulovic" ividulovic@usccr.gov, "Alec Deull" adeull@usccr.gov, "Juana Silverio" jsilverio@usccr.gov
Subject : Re: Caucus Meeting 4/12

Notes below

Welcome back Juana, we are so happy to have you be the team leader again! Please see the updated Agenda items below.

Commission Business Updates + April Business Meeting

- Caucus call at 3pm tomorrow, Tuesday April 13pm. If we need to reschedule based on when negotiations are taking place, Juana will let us know. Plan to hold 3:00/3:30
- We need to draft the agenda
- Alec reached out to the R caucus regarding the ID and CO SAC's. Looking to hear back. If we reach a deal we might be open to voting for the ID and CO slates if Yeanor apologized.
- NC SAC Update. R's reached out to see if we could find a compromise regarding the NC SAC. Please see description below. Debo, Dave and Michael are good with this deal. Juana we need Norma's go ahead to make the deal with the R's.
- Potential AAPI Statement. Alec does not have an update from Michael. We have a 48 hour deadline for distribution, meaning that by 12noon on Wednesday we would need to share the statement with all Commissioners.
    - Add to caucus call agenda
- Roberts Rule of order
    - Amy to review Alana's research + any updates from Jason?
    - Possible compromise to have senior D and senior R run the vote for Chair together
- Sunshine notice has FEMA discovery materials, will need to amend
- Sunshine notice also has additional agenda items that may or may not need to be amended –
    - Eliminating the Speaker Series,
    - Rebuttal/surrebuttal time periods
    - Bi-partisan appointment to EAC board of advisors

NC SAC

- The Democratic caucus accepts adding Mincey *please see context below (no additional application needed)
- When recirculating will make clear that Commissioners should not submit objections to other members of the slate who have already been circulated
- The Republican caucus will remove the objection to Lechner *please see context below (no additional application needed)
- Vote in the SAC w/8-8 balance

AMERICAN OVERSIGHT

For situational awareness please see the context for the NC SAC:

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- The notational vote passed
    - FEMA panelist recommendations + briefing book recommendations. The panelist recommendations were due by this **Friday, April 2nd.** There were numerous recommendations from Irena, Alex, John Mashburn. Carissa and Thomas had one recommendation.
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- Kladney/Amy negotiations with R's ongoing
- Oregon SAC had their last briefing on Friday 12/11, Catherine attended. Rukku shared briefing notes with OCRE in the comments on the first draft.

Maternal Health

AMERICAN OVERSIGHT

- OCRE, Debo and Irena met last week to discuss the final draft. Productive meeting, Irena to update the caucus.
    - Focus on Chapter 3 – Federal response, as area for potential bi-partisan consensus
    - New HHS leadership – OCRE sent HHS and CDC targeted questions for affected agency review
    - Need current data for programs that received funding
- OCRE sent updated ROG's to HHS and also sent the draft report for agency review last week.
- Final draft coming to Commissioners in May
- 3 weeks to return edits before vote in June
- Irena discussing with Republicans whether they will support

SAC Recruitment

- So far 14 SAC's have expired and not been reappointed
    - 3 SACs voted down already, potential compromises being discussed – NC, ID, CO
- Alex reached out to Irena to discuss CO and Idaho.
- The Republican's via Alex would like to make a deal Yenor for Dr. Chen. Alec to provide update
- In general: Irena recommended we reach out to new Members' offices. Rukku circulated Congressional letter + updated 2 pager to share with offices.
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AMERICAN OVERSIGHT

        - Comm. Heriot had objected to Prof. Chen, on the basis of a recent article that Prof. Chen published called Colorblind Nationalism.
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        - Carissa has exhausted her recruitment efforts, but John may have more leads.
    - Ohio 11/17/20 – Carissa, Rukku
        - (as of 12/17) 16 applicants: 11 Ds, 4 Rs, 1 Ind.
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AMERICAN OVERSIGHT

- New Mexico 12/1/20 – Alex, Amy/Irena/Rukku
  - 5 applicants. Need more candidates.
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- Wyoming 12/1/20 – Alex, Alec
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  - Irena checked in with David on how he wants to move forward with new advisory committees - on hold for the moment
  - Vacancy posted for Civil Rights Analyst in the regions - closes 3/31

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    - IT and website
  - SAC letters

AMERICAN OVERSIGHT

Other outstanding items for all SA's

- AI 5-9
    - OCG provided redline and comments for Commissioner consideration for standards for removal for SAC members and procedures the Commission should adopt
- Project proposals
- "Balance" SAC AI?
- Expired SACs (14)

Project proposals for FY21/22

- Rukku checked with John to see if Commissioner Adams will submit new project proposals. John is working with Commissioner Adams on project priorities and check back on timeline. Rukku to follow up with John this week.
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- Was signed into law, more details to come on what this means.
- Appointments from White House
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AMERICAN OVERSIGHT

- Women/Girls bill?

From: Irena Vidulovic
Sent: Monday, April 12, 2021 9:39:24 AM
To: Alec Deull; Amy Royce; Juana Silverio
Subject: Caucus Meeting 4/12

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AMERICAN OVERSIGHT

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AMERICAN OVERSIGHT

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AMERICAN OVERSIGHT

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- Women/Girls bill?

AMERICAN OVERSIGHT

Date : 4/12/2021 1:38:26 PM
From : "Amy Royce" aroyce@usccr.gov
To : "juanadelpilar@gmail.com" juanadelpilar@gmail.com, "Irena Vidulovic" ividulovic@usccr.gov
Subject : Draft agenda for Tuesday/ Wednesday caucus call
Attachment : 04-08-Business-Meeting-Agenda-for-04-16.pdf;ID SAC Dr. Yenor.docx;CO SAC Dr. Chen.docx;

Hey Juana,

Including here items we flagged for discussion on the caucus call. Irena, please let me know if I missed anything, and if we should attach materials regarding the NC SAC.

We will continue to hold the 3:00 pm time tomorrow unless we hear otherwise. Usually we would circulate an agenda the day before. Since Commissioner Cantu will be leading the call, she may want to use this agenda or may have her own, but I thought this would be helpful.

Agenda items:

- Update from Comms. Cantu and Yaki on discussions regarding Chair confirmation
- Business meeting on Friday (Sunshine Act notice attached)
    - Need for agenda amendments: remove FEMA discovery materials, as already approved by notational vote
    - Remove/combine other items?
        - Eliminating the Speaker Series
        - Rebuttal/surrebuttal time period
        - Bi-partisan appointment to EAC board of advisors
    - Statement on violence against AAPI community?
- SAC updates
    - Potential compromise on North Carolina SAC, adding one member for an 8/8 balance
    - Colorado and Idaho SACs
        - R's proposal - Dr. Chen in CO if we allow Mr. Yenor in ID (objections and responses attached)
    - Need for information from regional staff on status of recruiting for remainder of 14 expired committees
- Status of AI availability for Commissioners
    - A version of the AI's that was current in 2014 is available online, need information and a timeline from the GC for updating that version

AMERICAN OVERSIGHT

CIVIL RIGHTS COMMISSION

Sunshine Act Meeting Notice

AGENCY: United States Commission on Civil Rights.

ACTION: Notice of Commission public business meeting.

DATES: Friday, April 16, 2021, 12:00 p.m. EST.

FOR FURTHER INFORMATION CONTACT: Angelia Rorison: 202-376-7700; publicaffairs@usccr.gov.

ADDRESSES: Meeting to take place by telephone and is open to the public by telephone: 1-866-556-2537, Conference ID #896-5601. Computer assisted real-time transcription (CART) will be provided. The web link toaccess CART (in English) on Friday, April 16th, 2021, is https://www.streamtext.net/player?event=USCCR. Please note that CART is text-only translation that occurs in real time during the meeting and is not an exact transcript.

MEETING AGENDA

I. Motion to Approve Commissioner Norma Cantú to Serve as USCCR Chair

II. Approval of Agenda

III. Business Meeting

A. Discussion and Vote on Statement of Walter E. Williams;

B. Discussion and Vote to continue the Policy of Rebuttals and Surrebuttals;

C. Discussion and Vote to suspend Speaker Series;

D. Discussion and Agreement to Appoint Bipartisan Commissioners to EAC

E. Discovery and Vote on FEMA Report Discovery Plan

F. Management and Operations

- Staff Director's Report

IV. Adjourn Meeting

Dated: April 8, 2021

AMERICAN OVERSIGHT

IDAHO

Commissioner Yaki's objection

Dear Dr. Yenor:

Thank you for your service on the Idaho Advisory Committee and for your recent application for reappointment. Your name was included on the list of nominated individuals that is currently being reviewed by the Commissioners prior to appointment. As part of that review, Commissioner Yaki has made a formal objection to your nomination on the Committee because of an alleged comment you made.

Pursuant to our Administrative Instructions, when Commissioner objections pertain to a proposed member's public statement, then that nominee is provided the opportunity to respond in writing to the raised concern. The Staff Director will then consider the written response when making the final determination on whether to include the nominee on the list of individuals to be recommended for appointment.

The Commissioner has objected to your reappointment to the Idaho Advisory Committee because the Commissioner believes you are hostile to marriage equality and transgender rights. Furthermore, The Commissioner believes your public statements render you incapable of, and unable to, protect the constitutional rights supported by recent Supreme Court opinions. Citations to your most objectionable public statements on the issues at hand include:

- *https://startingpointsjournal.com/feminism-transgenderism-and-the-politics-of-identity/*
- *https://www.dailysignal.com/2017/07/18/radical-feminism-sowed-seeds-transgender-moment*
- *https://www.dailysignal.com/2017/08/02/transgender-activists-seeking-undermine-parental-rights/*
- *https://www.dailysignal.com/2017/08/02/transgender-activists-seeking-undermine-parental-rights/*
- *https://www.heritage.org/marriage-and-family/report/the-obligations-family-life-response-modern-liberalism.*

Mr. Yenor's Reponse

Dear Mr. Mussatt,
Thank you for forwarding the objections of Commissioner Michael Yaki and giving me two days to respond. I would like to know more about the process for how my response will be evaluated. Is the whole USCCR to respond? How will responses be tabulated? In any event, again thank you for forwarding these objections.

The objections to my re-nomination to the Idaho Advisory committee on civil rights are (1) that I am "hostile to marriage equality and transgender rights" as evidenced in my public writings and (2) that my "public statements render [me] incapable of, and unable to, protect (sic) the constitutional rights supported by recent Supreme Court opinions."

AMERICAN OVERSIGHT

Claims of discrimination under the current civil rights regime must be established through rational inquiry aided, where appropriate, by social science. Proposed policies to combat alleged discrimination must then be weighed through a rational public policy process. Policies must be evaluated critically if they are implemented.

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Suppose a civil rights commission finds itself adjudicating a claim of transgender rights as civil rights. In making a fair-minded adjudication, the commission would have to consider the relation between such transgender rights and other civil rights in our tradition such as the free exercise of religion, parental rights, rights against sex discrimination. It would have to determine how transgender rights weigh against those rights. In doing so, it would be necessary to inquire into the rational basis for claims of transgender rights and the likely consequences of affirming them, just as it would be necessary to see what would happen from denying them.

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Does Commissioner Yaki disagree that transgender rights clash with parental rights? Does he think that the Civil Rights Commissions nationwide should ignore questions about what it would mean to take the side of "transgender rights" against parental rights? Does he think religious liberty of so little importance that Civil Rights Commissions should ignore how it is compromised by so-called marriage equality? Does he think Civil Rights Commissions should refrain from investigating the future mental and physical health of children who have been transitioned, against the will of their parents, from one gender to another? Does he think we should cease investigating the mental or physical health of all those who have transitioned, even with parental support? Perhaps I should object to his continued participation as a Civil Rights Commissioner if he thinks all such questions are settled questions or based on sound science!

The inclusion of gender identity within the anti-discrimination regime of the 1964 Civil Rights Act is a cause for no little concern. Under such gender identity claims, a person's subjective,

AMERICAN OVERSIGHT

gendered self-image as woman, man or whatever supersedes the objective biological fact of sexual identity as female or male. This new gender identity further may come with a demand that governments and others citizens recognize that new gender as an objective fact—a huge abridgement on the civil rights and the freedom of mind of others. These ideas, taken together, are incoherent and compromise our commitment to limited government. They are incoherent because they nullify the categories of male and female to which the anti-discrimination principle applies. How can a school district remedy supposed unjust discrimination in girls' sports when anyone can qualify, simply on their own assertion, as woman? Does Fairness in Sports demand keeping biological men out of women's sports and aspiring to equal treatment of such sports or does it demand letting transgendered men in and, perhaps, decrease the opportunities for the formerly protected class of women? Idaho has taken the lead in protecting women's sports in these circumstances, and I look forward to participating in studies investigating how this affects opportunities. The demands that Commissioner Yaki makes contain the seeds of a new political order, much less committed to civil rights than our current order.

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AMERICAN OVERSIGHT

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It is inappropriate for a SAC member to make wild accusations of racism against entire groups of people. This article reveals Prof. Chen's bad faith. Additionally, her embrace of Ibram X. Kendi's "anti-racist" ideology is troubling, as that ideology in and of itself promotes discrimination.

Prof. Chen's article in the Yale Journal on Regulation, "Colorblind Nationalism," (available here) is particularly objectionable for a member of a State Advisory Committee.

- Full response from Prof. Chen:

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For example:

- *I do not say or believe that "anyone who supports facially colorblind policies is racist"*
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- *There is also no basis for her claim that I write or act in "bad faith" in her formal objection.*

As some background, I have served on the Colorado State Advisory Committee for 4-years (2016-2020). During that time, I worked collaboratively with all SAC members after my project proposal on the naturalization backlog was unanimously adopted in 2018. This work included working together on a briefing with expert testimony from 12 speakers representing a range of perspectives, addressing all SAC member voices in when drafting our report, and incorporating suggestions during the subsequent revisions and adoption of the report. The resulting 2019 report has since been cited widely in media and other academic and policy research. A 2020

AMERICAN OVERSIGHT

update and 2-page statement of concern was adopted unanimously by the CO SAC, and USCCR Chair Catherine Lhamon endorsed and sent her own letter to the impacted agency.

During my tenure, I also supported projects spearheaded by other SAC members, including ones sponsored by our more conservative members on religious freedom and racial disparities in infant/maternal mortality. In each of these projects, I was an active team member and made good faith efforts to listen to evidence from our hearings, to consider the divergent viewpoints, and to incorporate and suggest revisions on my reports and others that would build a broader consensus.

Outside of my service to SAC, my professional qualifications include a ten-year history of academic teaching and writing in immigration, civil rights, and administrative law at the University of Colorado Law School. This has included presentations with scholars from many viewpoints. Not infrequently I've been invited by members of conservative groups like the Federalist Society or the National Association of Attorney Generals to be a reasonable voice in their discussions. In these and other endeavors, I have never been accused of bias in my professional work.

In my personal capacity, I occasionally write short opinion pieces such as the essay that is cited in the objection and published in a special symposium on racism and the law for the online edition of the nation's premiere specialty journal on administrative law. I would describe my own views in the essay as advocating for greater racial equality for immigrants negatively impacted by travel bans and expressing an abiding concern that our federal government adhere to fair procedures in the issuance of such policies. There is no basis for saying that these views amount to "wild accusations of racism against entire groups of people" or that they "embrace Ibram X. Kendi's antiracist ideology… as that ideology itself promotes discrimination." I am not familiar with Ibram X Kendi's writings on antiracism and do not read, engage with, nor cite his work in this essay or my other scholarship. Moreover, the piece does not claim to represent the views of CO SAC or the USCCR. While I do not think the views expressed in the essay are objectionable, even if they were, I would not bring personal biases into my professional service. In closing, I recognize that reasonable people disagree on the best means of achieving equality.

My sense is that Commissioner Heriot misunderstands my perspectives and seeks to associate me with views that are more extreme than my own. Rather than rely on her second-hand description of an opinion piece written in my personal capacity, I would encourage the USCCR to apply a fair minded consideration of my application that focuses on my actual statements and my record of service to the CO SAC and USCCR.

AMERICAN OVERSIGHT

Date : 4/13/2021 11:44:48 AM
From : "Amy Royce" aroyce@usccr.gov
To : "David Kladney" dkladney@usccr.gov, "Debo P. Adegbile" dadegbile@usccr.gov, "Norma Cantu" ncantu@usccr.gov, "Michael Yaki" MYaki@usccr.gov
Cc : "normavcantu@gmail.com" normavcantu@gmail.com, "Irena Vidulovic" ividulovic@usccr.gov, "Alec Deull" adeull@usccr.gov, "juanadelpilar@gmail.com" juanadelpilar@gmail.com
Subject : Caucus call agenda
Attachment : 04-08-Business-Meeting-Agenda-for-04-16.pdf;ID SAC Dr. Yenor.docx;CO SAC Dr. Chen.docx;

Hello all,

We are scheduled for a caucus call today at 3:00 Eastern/ 12:00 Pacific. The number is 1-877-446-3914, passcode 858713#

Agenda items:

- Update from Comms. Cantu and Yaki on discussions regarding Chair confirmation
- Business meeting on Friday (Sunshine Act notice attached)
    - Need for agenda amendments: remove FEMA discovery materials, as already approved by notational vote
    - Remove/combine other items?
        - Eliminating the Speaker Series
        - Rebuttal/surrebuttal time period
        - Bi-partisan appointment to EAC board of advisors
    - Statement on violence against AAPI community?
- SAC updates
    - Potential compromise on North Carolina SAC, adding one member for an 8/8 balance
        - The Democratic caucus accepts adding Mincey *please see context below (no additional application needed)
        - The Republican caucus will remove the objection to Lechner *please see context below (no additional application needed)
        - Vote in the SAC w/8-8 balance
            - Slate failed to get a majority vote on Friday 10/30.
            - 15 candidates, 8 Democrats (including two Independents who lean Democrat), 7 Republicans (including one candidate who identified as “something else”).
            - Note that Olga Wright, the returning Chair, identifies herself as a Democrat but ran for public office as a Republican in all her past elections.
            - Comm. Kirsanow (and Adams) objected to the balance of the slate, and requested that it be shifted to 7 Republicans and 7 Democrats (removing one Dem).

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        - John/Adams objected to the inclusion of Jennifer Lechner as he don't consider her a true Republican." In her stead they would like to replace her with a Mr. Patrick Mincey who Carissa recruited. Replacing Lechner with Mincey takes the gender balance of the slate to 11 men and 4 women. Mincey is a white collar crime attorney and lacks major civil rights experience, however in our vetting process we did not find anything objectionable regarding his public statements or conduct
    - Colorado and Idaho SACs
        - R's proposal - Dr. Chen in CO if we allow Dr. Yenor in ID (objections and responses attached)
    - Need for information from regional staff on status of recruiting for remainder of 14 expired committees
- Status of AI availability for Commissioners
    - A version of the AI's that was current in 2014 is available online, need information and a timeline from the GC for updating that version

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CIVIL RIGHTS COMMISSION

Sunshine Act Meeting Notice

AGENCY: United States Commission on Civil Rights.

ACTION: Notice of Commission public business meeting.

DATES: Friday, April 16, 2021, 12:00 p.m. EST.

FOR FURTHER INFORMATION CONTACT: Angelia Rorison: 202-376-7700; publicaffairs@usccr.gov.

ADDRESSES: Meeting to take place by telephone and is open to the public by telephone: 1-866-556-2537, Conference ID #896-5601. Computer assisted real-time transcription (CART) will be provided. The web link toaccess CART (in English) on Friday, April 16th, 2021, is https://www.streamtext.net/player?event=USCCR. Please note that CART is text-only translation that occurs in real time during the meeting and is not an exact transcript.

MEETING AGENDA

I. Motion to Approve Commissioner Norma Cantú to Serve as USCCR Chair

II. Approval of Agenda

III. Business Meeting

A. Discussion and Vote on Statement of Walter E. Williams;

B. Discussion and Vote to continue the Policy of Rebuttals and Surrebuttals;

C. Discussion and Vote to suspend Speaker Series;

D. Discussion and Agreement to Appoint Bipartisan Commissioners to EAC

E. Discovery and Vote on FEMA Report Discovery Plan

F. Management and Operations

- Staff Director's Report

IV. Adjourn Meeting

Dated: April 8, 2021

AMERICAN OVERSIGHT

IDAHO

Commissioner Yaki's objection

Dear Dr. Yenor:

Thank you for your service on the Idaho Advisory Committee and for your recent application for reappointment. Your name was included on the list of nominated individuals that is currently being reviewed by the Commissioners prior to appointment. As part of that review, Commissioner Yaki has made a formal objection to your nomination on the Committee because of an alleged comment you made.

Pursuant to our Administrative Instructions, when Commissioner objections pertain to a proposed member's public statement, then that nominee is provided the opportunity to respond in writing to the raised concern. The Staff Director will then consider the written response when making the final determination on whether to include the nominee on the list of individuals to be recommended for appointment.

The Commissioner has objected to your reappointment to the Idaho Advisory Committee because the Commissioner believes you are hostile to marriage equality and transgender rights. Furthermore, The Commissioner believes your public statements render you incapable of, and unable to, protect the constitutional rights supported by recent Supreme Court opinions. Citations to your most objectionable public statements on the issues at hand include:

- *https://startingpointsjournal.com/feminism-transgenderism-and-the-politics-of-identity/*
- *https://www.dailysignal.com/2017/07/18/radical-feminism-sowed-seeds-transgender-moment*
- *https://www.dailysignal.com/2017/08/02/transgender-activists-seeking-undermine-parental-rights/*
- *https://www.dailysignal.com/2017/08/02/transgender-activists-seeking-undermine-parental-rights/*
- *https://www.heritage.org/marriage-and-family/report/the-obligations-family-life-response-modern-liberalism.*

Mr. Yenor's Reponse

Dear Mr. Mussatt,
Thank you for forwarding the objections of Commissioner Michael Yaki and giving me two days to respond. I would like to know more about the process for how my response will be evaluated. Is the whole USCCR to respond? How will responses be tabulated? In any event, again thank you for forwarding these objections.

The objections to my re-nomination to the Idaho Advisory committee on civil rights are (1) that I am "hostile to marriage equality and transgender rights" as evidenced in my public writings and (2) that my "public statements render [me] incapable of, and unable to, protect (sic) the constitutional rights supported by recent Supreme Court opinions."

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AMERICAN OVERSIGHT

Date : 4/13/2021 3:10:47 PM
From : "David Ganz" dganz@usccr.gov
To : "Gail Heriot" gheriot@me.com, "Norma Cantu" ncantu@usccr.gov
Cc : "Gail Heriot" gheriot@usccr.gov, "Peter Kirsanow" pkirsanow@beneschlaw.com, "Michael Yaki" michael@michaelyaki.com, "Carissa Mulder" CMulder@usccr.gov, "Michael Yaki" MYaki@usccr.gov
Subject : RE: [EXTERNAL] Meeting--Times available for Norma to meet regarding vote on Chair

Hello all, this past Friday I received some email traffic indicating the Commissioners wanted me not be on the call today. I am happy to join today if that is what the group wants. Please let me know. Thanks,

David

From: Gail Heriot <gheriot@me.com>
Sent: Tuesday, April 13, 2021 3:06 PM
To: Norma Cantu <ncantu@usccr.gov>
Cc: Gail Heriot <gheriot@usccr.gov>; Peter Kirsanow <pkirsanow@beneschlaw.com>; Michael Yaki <michael@michaelyaki.com>; Carissa Mulder <CMulder@usccr.gov>; Michael Yaki <MYaki@usccr.gov>; David Ganz <dganz@usccr.gov>
Subject: Re: [EXTERNAL] Meeting--Times available for Norma to meet regarding vote on Chair

> CAUTION: This email is from outside USCCR.

Gail Heriot is inviting you to a scheduled Zoom meeting.

Topic: My Meeting with Norma et al.
Time: Apr 13, 2021 01:00 PM Pacific Time (US and Canada)

Join Zoom Meeting
https://sandiego.zoom.us/j/94847298845

Meeting ID: 948 4729 8845
One tap mobile
+16699006833,,94847298845# US (San Jose)
+13462487799,,94847298845# US (Houston)

Dial by your location
+1 669 900 6833 US (San Jose)
+1 346 248 7799 US (Houston)
+1 253 215 8782 US (Tacoma)
+1 312 626 6799 US (Chicago)
+1 646 876 9923 US (New York)
+1 301 715 8592 US (Washington DC)
Meeting ID: 948 4729 8845
Find your local number: https://sandiego.zoom.us/u/am6VwqyuA

AMERICAN OVERSIGHT

On Apr 9, 2021, at 1:26 PM, Norma Cantu <ncantu@usccr.gov> wrote:

Dear Gail,

In my earlier email, I wrote that our General Counsel would need to review our language on proposed AI's and other vehicles to be sure we were consistent with applicable federal laws.
I copied David Ganz on that email so he could anticipate that we were working on language. Ganz replied that he received the email and would be available as needed.
It seems that you inferred that he was invited to join the call. That was not my intent.
We won't have language ready to share with General Counsel until *after* our meeting on Tuesday.
Norma

From: Gail Heriot <gheriot@me.com>
Date: Friday, April 9, 2021 at 1:31 PM
To: Norma Cantu <ncantu@usccr.gov>, Gail Heriot <gheriot@usccr.gov>, Peter Kirsanow <pkirsanow@beneschlaw.com>
>, Michael Yaki <MYaki@usccr.gov>, "pkirsanow@beneschlaw.com" <pkirsanow@beneschlaw.com>
Subject: Re: [EXTERNAL] Meeting--Times available for Norma to meet regarding vote on Chair

> CAUTION: This email is from outside USCCR.

Gail Heriot
Professor of Law
University of San Diego

> On Apr 9, 2021, at 11:28 AM, David Ganz <dganz@usccr.gov> wrote:
>
> Me as well.
>
> ---
>
> **From:** Norma Cantu <ncantu@usccr.gov>
> **Sent:** Friday, April 9, 2021 2:26 PM
> **To:** Michael Yaki <michael@michaelyaki.com>; Carissa Mulder <CMulder@usccr.gov>; Gail Heriot <gheriot@me.com>
> **Cc:** Michael Yaki <MYaki@usccr.gov>; pkirsanow@beneschlaw.com; David Ganz <dganz@usccr.gov>
> **Subject:** Re: [EXTERNAL] Meeting--Times available for Norma to meet regarding vote on Chair
>
> Dear Michael, Gail, Carissa, Peter,
> Tuesday, at 4 p.m. EST works for me.
> Norma

AMERICAN OVERSIGHT

From: Michael Yaki <michael@michaelyaki.com>
Reply-To: Michael Yaki <michael@michaelyaki.com>
Date: Thursday, April 8, 2021 at 12:21 PM
To: Carissa Mulder <CMulder@usccr.gov>, Gail Heriot <gheriot@me.com>
" <pkirsanow@beneschlaw.com>, David Ganz <dganz@usccr.gov>
Subject: Re: [EXTERNAL] Meeting--Times available for Norma to meet regarding vote on Chair

> CAUTION: This email is from outside USCCR.

Best regards,
Michael

MICHAEL YAKI CONSULTING
e: michael@michaelyaki.com
m: 415.601.4008

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On Thursday, April 8, 2021, 09:58:06 AM PDT, Gail Heriot <gheriot@me.com> wrote:

Yes.

Gail Heriot
Professor of Law
University of San Diego

On Apr 8, 2021, at 9:46 AM, Carissa Mulder <CMulder@usccr.gov> wrote:

Pete asks if Tuesday at 4 pm Eastern works.

From: Gail Heriot <gheriot@me.com>
Sent: Thursday, April 8, 2021 12:37 PM
To: Carissa Mulder <CMulder@usccr.gov>
Cc: Norma Cantu <ncantu@usccr.gov>; Michael Yaki <MYaki@usccr.gov>; pkirsanow@beneschlaw.com; MICHAEL@michaelyaki.com; David Ganz <dganz@usccr.gov>
Subject: Re: [EXTERNAL] Meeting--Times available for Norma to meet regarding vote on Chair

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Gail Heriot

Professor of Law

University of San Diego

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Good morning, everyone:

I just got off the phone with Pete. Unfortunately, he can't meet before Monday at 2 pm Eastern. Is there a time after that that would work for everyone? I realize this is after April 10, but he can't make it work before then.

From: Norma Cantu <ncantu@usccr.gov>
Sent: Thursday, April 8, 2021 11:45 AM
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Cc: Michael Yaki <MYaki@usccr.gov>; pkirsanow@beneschlaw.com; michael@michaelyaki.com; David Ganz <dganz@usccr.gov>
Subject: Re: [EXTERNAL] Meeting--Times available for Norma to meet regarding vote on Chair

Hello, all,

Not hearing a response, I am checking in on a good time to complete our task on the proposed AI's, etc.

I will be in a two-hour meeting today and will be back at my desk at 11:30PST/ 1:30 CST/2:30 EST. After that, I have cleared off the rest of today and all of tomorrow for the four Commissioners to work on language. Of course, it won't take that much time, but I do estimate 1-2 hours for our discussion.

Please bear in mind that we should try to get the language together by Saturday, April 10, because we need to give the USCCR General Counsel time to review the language for AI's or other vehicles to be sure we are aligned to language in our statute and other federal laws.

FYI, I would rather be listening to your ideas than reading all the digitized AI's and the newest version of Robert's Rules. I can meet late in the day for the convenience of those of you on West Coast time.

AMERICAN OVERSIGHT

Norma

From: Carissa Mulder <CMulder@usccr.gov>
Date: Friday, April 2, 2021 at 12:26 PM
To: Gail Heriot <gheriot@me.com>, Norma Cantu <ncantu@usccr.gov>
Cc: Michael Yaki <MYaki@usccr.gov>,
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Gail Heriot

Professor of Law

University of San Diego

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> Monday doesn't work.
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> I suggest Tuesday afternoon.
>
> Norma

AMERICAN OVERSIGHT

From: Gail Heriot <gheriot@me.com>
Date: Wednesday, March 31, 2021 at 3:19 PM
To: Carissa Mulder <CMulder@usccr.gov>
" <michael@michaeyaki.com>, Michael Yaki <MYaki@usccr.gov>,
"pkirsanow@beneschlaw.com" <pkirsanow@beneschlaw.com>
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Professor of Law

University of San Diego

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>
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> **Sent:** Wednesday, March 31, 2021 9:22:57 AM
> **To:** Gail Heriot; Norma Cantu
> **Cc:** michael@michaeyaki.com; Michael Yaki; pkirsanow@beneschlaw.com
> **Subject:** Re: [EXTERNAL] Meeting--Times available for Norma to meet
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> Pete told me yesterday (sorry, I thought he had responded to this email) that he is only available later in the week. Pete, can you do any of these times Thursday or Friday?
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> **Subject:** Re: [EXTERNAL] Meeting--Times available for

AMERICAN OVERSIGHT

Norma to meet

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You don‘t want to see me at 7:00 am PT on Thursday. But I can do any time after 9:00 am PT.

Friday is okay from 11:00 am PT till 1:30 pm or so PT.

I can do Saturday.

Gail Heriot

Professor of Law

University of San Diego

> On Mar 30, 2021, at 12:32 PM, Norma Cantu <ncantu@usccr.gov> wrote:
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> Dear Michael, Peter, Gail,
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> I would set up a doodle poll, but my USCCR email address is not compatible. Perhaps, Ms. Mulder would have better access to Doodle Poll?
>
> I have Wednesday available at 7-2 PST/ 9-4 CST/ 10-5 EST
>
> Thursday is fine from 7-11 PST/ 9-1 CST/ 10-12 EST. I also have time open 7-8 PST/ 5-7 CST/ 6-8 EST
>
> Friday may be a religious holiday, but if it is not for you, I am open from 11-3 PST/ 1-5 CST/ 2-6 EST

AMERICAN OVERSIGHT

Saturday, I am donating blood in the morning, but will be ready for a call between 9- 6 PST? 11 - 8 CST/ 120-9 EST.

Norma

From: Gail Heriot <gheriot@me.com>
Date: Monday, March 29, 2021 at 8:58 PM
To: Norma Cantu <ncantu@usccr.gov>
Cc: Michael Yaki <MYaki@usccr.gov>, Carissa Mulder " <pkirsanow@beneschlaw.com>
Subject: [EXTERNAL] Meeting

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We need to get this show on the road. Is there a time late this week that we can all meet?

Gail

Gail Heriot

Professor of Law

University of San Diego

> On Mar 25, 2021, at 3:28 PM, Norma Cantu <ncantu@usccr.gov> wrote:
>
> Dear Michael,

AMERICAN OVERSIGHT

I really am sorry you are not feeling well.

We are not replacing anyone on EAC yet. At our last meeting with Gail and Peter, I said to Gail and Peter the change would not happen until after June.

Norma

From: Michael Yaki <MYaki@usccr.gov>
Date: Thursday, March 25, 2021 at 4:46 PM
To: Norma Cantu <ncantu@usccr.gov>, Gail Heriot <gheriot@me.com>, Carissa Mulder <CMulder@usccr.gov>
Cc: "pkirsanow@beneschlaw.com" <pkirsanow@beneschlaw.com>
Subject: Re: [EXTERNAL] Re: Noon meeting-how about Thursday at 6 pm EST?

Hang on. You can't replace me yet b/c I have to chair the annual meeting in June. I will resign after the meeting in June.

If I sound belligerent it's bc i have a huge headache

From: Norma Cantu
Sent: Thursday, March 25, 2021 4:56:05 PM
To: Gail Heriot; Carissa Mulder

Subject: Re: [EXTERNAL] Re: Noon meeting-how about Thursday at 6 pm EST?

AMERICAN OVERSIGHT

Dear Gail, Peter,

I think we are there on the EAC topic.

Do you want to talk briefly?

The timing is a bit urgent because the EAC is eager to get our nominations.

Norma

From: Gail Heriot <gheriot@me.com>
Date: Thursday, March 25, 2021 at 2:21 PM
To: Carissa Mulder <CMulder@usccr.gov>
Cc: Michael Yaki <MYaki@usccr.gov>, Norma Cantu " <pkirsanow@beneschlaw.com>
Subject: [EXTERNAL] Re: Noon meeting-how about Thursday at 6 pm EST?

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Gail Heriot

Professor of Law

University of San Diego

AMERICAN OVERSIGHT

On Mar 25, 2021, at 12:18 PM, Carissa > wrote:

I hope you feel better soon! Pete unfortunately just found out that he can't meet this evening either, due to an emergency in his practice.

From: Michael Yaki
Sent: Thursday, March 25, 2021 3:15:05 PM
To: Carissa Mulder; Norma Cantu
Cc: pkirsanow@beneschlaw.com; Gail Heriot
Subject: Re: Noon meeting- how about Thursday at 6 pm EST?

Hey everyone

I am having a reaction to my Moderna shot and am out of commission today.
Norma can meet if she wants to go forward to get some of

AMERICAN OVERSIGHT

the non controversial items out of the way. Sorry for the late notice, but it hit me this morning.

From: Carissa Mulder
Sent: Friday, March 19, 2021 11:46:11 AM
To: Norma Cantu; Michael Yaki
Cc: pkirsanow@beneschlaw.com; Gail Heriot
Subject: Re: Noon meeting- how about Thursday at 6 pm EST?

Dear Commissioners:

6 pm Eastern on Thursday works for both Commissioners Heriot and Kirsanow. They look forward to meeting with you then!

AMERICAN OVERSIGHT

Sincerely,

Carissa

From: Norma Cantu
Sent: Friday, March 19, 2021 11:43:00 AM
To: Carissa Mulder; Michael Yaki
Cc: pkirsanow@beneschlaw.com; Gail Heriot
Subject: Re: Noon meeting- how about Thursday at 6 pm EST?

Dear Carissa,
I teach a class from 2 to 5 EST on Thursdays. I can meet after class at 6 p.m. EST this Thursday.
I also have Friday open until 3 p.m. EST.
Norma

From: Carissa >
Date: Friday, March 19, 2021 at 10:39 AM
To: Norma >, Michael >
Cc: "pkirsanow@beneschlaw.com" <pkirsanow@beneschlaw.com>, >
Subject: Noon meeting

Good morning,

AMERICAN OVERSIGHT

Commissioners Cantu and Yaki:

Commissioners Kirsanow and Heriot asked me to email you and tell you that they are not logistically prepared to negotiate today. Would you be available to meet Thursday at 1:30 PM EDT?

Thank you,

Carissa

AMERICAN OVERSIGHT

Date : 4/13/2021 4:03:46 PM
From : "David Ganz" dganz@usccr.gov
To : "Michael Yaki" MYaki@usccr.gov, "Gail Heriot" gheriot@me.com, "Norma Cantu" ncantu@usccr.gov
Cc : "Gail Heriot" gheriot@usccr.gov, "Peter Kirsanow" pkirsanow@beneschlaw.com, "Michael Yaki" michael@michaelyaki.com, "Carissa Mulder" CMulder@usccr.gov
Subject : RE: [EXTERNAL] Meeting--Times available for Norma to meet regarding vote on Chair

No problem. I am in the waiting area of the Zoom, but will jump off in minute.

From: Michael Yaki <MYaki@usccr.gov>
Sent: Tuesday, April 13, 2021 4:03 PM
To: David Ganz <dganz@usccr.gov>; Gail Heriot <gheriot@me.com>; Norma Cantu <ncantu@usccr.gov>
Cc: Gail Heriot <gheriot@usccr.gov>; Peter Kirsanow <pkirsanow@beneschlaw.com>; Michael Yaki <michael@michaelyaki.com>; Carissa Mulder <CMulder@usccr.gov>
Subject: Re: [EXTERNAL] Meeting--Times available for Norma to meet regarding vote on Chair

No.

From: David Ganz
Sent: Tuesday, April 13, 2021 3:10:47 PM
To: Gail Heriot; Norma Cantu
Cc: Gail Heriot; Peter Kirsanow; Michael Yaki; Carissa Mulder; Michael Yaki
Subject: RE: [EXTERNAL] Meeting--Times available for Norma to meet regarding vote on Chair

Hello all, this past Friday I received some email traffic indicating the Commissioners wanted me not be on the call today. I am happy to join today if that is what the group wants. Please let me know. Thanks,

David

From: Gail Heriot <gheriot@me.com>
Sent: Tuesday, April 13, 2021 3:06 PM
To: Norma Cantu <ncantu@usccr.gov>
Cc: Gail Heriot <gheriot@usccr.gov>; Peter Kirsanow <pkirsanow@beneschlaw.com>; Michael Yaki <michael@michaelyaki.com>; Carissa Mulder <CMulder@usccr.gov>; Michael Yaki <MYaki@usccr.gov>; David Ganz <dganz@usccr.gov>
Subject: Re: [EXTERNAL] Meeting--Times available for Norma to meet regarding vote on Chair

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Gail Heriot is inviting you to a scheduled Zoom meeting.

Topic: My Meeting with Norma et al.
Time: Apr 13, 2021 01:00 PM Pacific Time (US and Canada)

Join Zoom Meeting

AMERICAN OVERSIGHT

https://sandiego.zoom.us/j/94847298845

Meeting ID: 948 4729 8845
One tap mobile
+16699006833,,94847298845# US (San Jose)
+13462487799,,94847298845# US (Houston)

Dial by your location
+1 669 900 6833 US (San Jose)
+1 346 248 7799 US (Houston)
+1 253 215 8782 US (Tacoma)
+1 312 626 6799 US (Chicago)
+1 646 876 9923 US (New York)
+1 301 715 8592 US (Washington DC)
Meeting ID: 948 4729 8845
Find your local number: https://sandiego.zoom.us/u/am6VwqyuA

On Apr 9, 2021, at 1:26 PM, Norma Cantu <ncantu@usccr.gov> wrote:

Dear Gail,

In my earlier email, I wrote that our General Counsel would need to review our language on proposed AI's and other vehicles to be sure we were consistent with applicable federal laws.
I copied David Ganz on that email so he could anticipate that we were working on language. Ganz replied that he received the email and would be available as needed.
It seems that you inferred that he was invited to join the call. That was not my intent.
We won't have language ready to share with General Counsel until *after* our meeting on Tuesday.
Norma

From: Gail Heriot <gheriot@me.com>
Date: Friday, April 9, 2021 at 1:31 PM
To: Norma Cantu <ncantu@usccr.gov>, Gail Heriot <gheriot@usccr.gov>, Peter Kirsanow <pkirsanow@beneschlaw.com>
>, Michael Yaki <MYaki@usccr.gov>, "pkirsanow@beneschlaw.com" <pkirsanow@beneschlaw.com>
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Gail Heriot
Professor of Law
University of San Diego

AMERICAN OVERSIGHT

On Apr 9, 2021, at 11:28 AM, David Ganz <dganz@usccr.gov> wrote:

Me as well.

From: Norma Cantu <ncantu@usccr.gov>
Sent: Friday, April 9, 2021 2:26 PM
To: Michael Yaki <michael@michaelyaki.com>; Carissa Mulder <CMulder@usccr.gov>; Gail Heriot <gheriot@me.com>
Cc: Michael Yaki <MYaki@usccr.gov>; pkirsanow@beneschlaw.com; David Ganz <dganz@usccr.gov>
Subject: Re: [EXTERNAL] Meeting--Times available for Norma to meet regarding vote on Chair

Dear Michael, Gail, Carissa, Peter,
Tuesday, at 4 p.m. EST works for me.
Norma

From: Michael Yaki <michael@michaelyaki.com>
Reply-To: Michael Yaki <michael@michaelyaki.com>
Date: Thursday, April 8, 2021 at 12:21 PM
To: Carissa Mulder <CMulder@usccr.gov>, Gail Heriot <gheriot@me.com>
" <pkirsanow@beneschlaw.com>, David Ganz <dganz@usccr.gov>
Subject: Re: [EXTERNAL] Meeting--Times available for Norma to meet regarding vote on Chair

> CAUTION: This email is from outside USCCR.

Best regards,
Michael

MICHAEL YAKI CONSULTING
e: michael@michaelyaki.com
m: 415.601.4008

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Yes.

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Professor of Law
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AMERICAN OVERSIGHT

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Professor of Law

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Hello, all,

AMERICAN OVERSIGHT

Not hearing a response, I am checking in on a good time to complete our task on the proposed AI's, etc.

I will be in a two-hour meeting today and will be back at my desk at 11:30PST/ 1:30 CST/2:30 EST. After that, I have cleared off the rest of today and all of tomorrow for the four Commissioners to work on language. Of course, it won't take that much time, but I do estimate 1-2 hours for our discussion.

Please bear in mind that we should try to get the language together by Saturday, April 10, because we need to give the USCCR General Counsel time to review the language for AI's or other vehicles to be sure we are aligned to language in our statute and other federal laws.

FYI, I would rather be listening to your ideas than reading all the digitized AI's and the newest version of Robert's Rules. I can meet late in the day for the convenience of those of you on West Coast time.

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AMERICAN OVERSIGHT

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Professor of Law

University of San Diego

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Friday may be a religious holiday, but if it is not for you, I am open from 11-3 PST/ 1-5 CST/ 2-6 EST

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Gail Heriot

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If I sound belligerent it's bc i have a huge headache

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Professor of Law

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AMERICAN OVERSIGHT

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To: Carissa Mulder; Michael Yaki
Cc: pkirsanow@beneschlaw.com; Gail Heriot
Subject: Re: Noon meeting- how about Thursday at 6 pm EST?

Dear Carissa,
I teach a class from 2 to 5 EST on Thursdays. I can meet after class at 6 p.m. EST this Thursday.
I also have Friday open

AMERICAN OVERSIGHT

until 3 p.m.
EST.
Norma

From: Carissa
>
Date: Friday,
March 19,
2021 at 10:39
AM
To: Norma
>, Michael
>
Cc: "pkirsanow@beneschlaw.com" <pkirsanow@beneschlaw.com>,
>
Subject: Noon
meeting

Good
morning,
Commissione
rs Cantu and
Yaki:

Commissione
rs Kirsanow
and Heriot
asked me to
email you
and tell you
that they are
not
logistically
prepared to
negotiate
today. Would
you be
available to
meet
Thursday at
1:30 PM
EDT?

Thank you,

Carissa

AMERICAN OVERSIGHT

Date : 4/13/2021 4:04:13 PM
From : "Michael Yaki" MYaki@usccr.gov
To : "David Ganz" dganz@usccr.gov
Subject : Re: [EXTERNAL] Meeting--Times available for Norma to meet regarding vote on Chair

Thanks. It's not personal.

From: David Ganz
Sent: Tuesday, April 13, 2021 4:03:46 PM
To: Michael Yaki; Gail Heriot; Norma Cantu
Cc: Gail Heriot; Peter Kirsanow; Michael Yaki; Carissa Mulder
Subject: RE: [EXTERNAL] Meeting--Times available for Norma to meet regarding vote on Chair

No problem. I am in the waiting area of the Zoom, but will jump off in minute.

From: Michael Yaki <MYaki@usccr.gov>
Sent: Tuesday, April 13, 2021 4:03 PM
To: David Ganz <dganz@usccr.gov>; Gail Heriot <gheriot@me.com>; Norma Cantu <ncantu@usccr.gov>
Cc: Gail Heriot <gheriot@usccr.gov>; Peter Kirsanow <pkirsanow@beneschlaw.com>; Michael Yaki <michael@michaelyaki.com>; Carissa Mulder <CMulder@usccr.gov>
Subject: Re: [EXTERNAL] Meeting--Times available for Norma to meet regarding vote on Chair

No.

From: David Ganz
Sent: Tuesday, April 13, 2021 3:10:47 PM
To: Gail Heriot; Norma Cantu
Cc: Gail Heriot; Peter Kirsanow; Michael Yaki; Carissa Mulder; Michael Yaki
Subject: RE: [EXTERNAL] Meeting--Times available for Norma to meet regarding vote on Chair

Hello all, this past Friday I received some email traffic indicating the Commissioners wanted me not be on the call today. I am happy to join today if that is what the group wants. Please let me know. Thanks,

David

From: Gail Heriot <gheriot@me.com>
Sent: Tuesday, April 13, 2021 3:06 PM
To: Norma Cantu <ncantu@usccr.gov>
Cc: Gail Heriot <gheriot@usccr.gov>; Peter Kirsanow <pkirsanow@beneschlaw.com>; Michael Yaki <michael@michaelyaki.com>; Carissa Mulder <CMulder@usccr.gov>; Michael Yaki <MYaki@usccr.gov>; David Ganz <dganz@usccr.gov>
Subject: Re: [EXTERNAL] Meeting--Times available for Norma to meet regarding vote on Chair

> CAUTION: This email is from outside USCCR.

Gail Heriot is inviting you to a scheduled Zoom meeting.

Topic: My Meeting with Norma et al.

AMERICAN OVERSIGHT

Time: Apr 13, 2021 01:00 PM Pacific Time (US and Canada)

Join Zoom Meeting
https://sandiego.zoom.us/j/94847298845

Meeting ID: 948 4729 8845
One tap mobile
+16699006833,,94847298845# US (San Jose)
+13462487799,,94847298845# US (Houston)

Dial by your location
+1 669 900 6833 US (San Jose)
+1 346 248 7799 US (Houston)
+1 253 215 8782 US (Tacoma)
+1 312 626 6799 US (Chicago)
+1 646 876 9923 US (New York)
+1 301 715 8592 US (Washington DC)
Meeting ID: 948 4729 8845
Find your local number: https://sandiego.zoom.us/u/am6VwqyuA

On Apr 9, 2021, at 1:26 PM, Norma Cantu <ncantu@usccr.gov> wrote:

Dear Gail,

In my earlier email, I wrote that our General Counsel would need to review our language on proposed AI's and other vehicles to be sure we were consistent with applicable federal laws.
I copied David Ganz on that email so he could anticipate that we were working on language. Ganz replied that he received the email and would be available as needed.
It seems that you inferred that he was invited to join the call. That was not my intent.
We won't have language ready to share with General Counsel until *after* our meeting on Tuesday.
Norma

From: Gail Heriot <gheriot@me.com>
Date: Friday, April 9, 2021 at 1:31 PM
To: Norma Cantu <ncantu@usccr.gov>, Gail Heriot <gheriot@usccr.gov>, Peter Kirsanow <pkirsanow@beneschlaw.com>
>, Michael Yaki <MYaki@usccr.gov>, "pkirsanow@beneschlaw.com" <pkirsanow@beneschlaw.com>
Subject: Re: [EXTERNAL] Meeting--Times available for Norma to meet regarding vote on Chair

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Gail Heriot

AMERICAN OVERSIGHT

Professor of Law
University of San Diego

On Apr 9, 2021, at 11:28 AM, David Ganz <dganz@usccr.gov> wrote:

Me as well.

From: Norma Cantu <ncantu@usccr.gov>
Sent: Friday, April 9, 2021 2:26 PM
To: Michael Yaki <michael@michaelyaki.com>; Carissa Mulder <CMulder@usccr.gov>; Gail Heriot <gheriot@me.com>
Cc: Michael Yaki <MYaki@usccr.gov>; pkirsanow@beneschlaw.com; David Ganz <dganz@usccr.gov>
Subject: Re: [EXTERNAL] Meeting--Times available for Norma to meet regarding vote on Chair

Dear Michael, Gail, Carissa, Peter,
Tuesday, at 4 p.m. EST works for me.
Norma

From: Michael Yaki <michael@michaelyaki.com>
Reply-To: Michael Yaki <michael@michaelyaki.com>
Date: Thursday, April 8, 2021 at 12:21 PM
To: Carissa Mulder <CMulder@usccr.gov>, Gail Heriot <gheriot@me.com>
" <pkirsanow@beneschlaw.com>, David Ganz <dganz@usccr.gov>
Subject: Re: [EXTERNAL] Meeting--Times available for Norma to meet regarding vote on Chair

> CAUTION: This email is from outside USCCR.

Best regards,
Michael

MICHAEL YAKI CONSULTING
e: michael@michaelyaki.com
m: 415.601.4008

CONFIDENTIAL COMMUNICATION: This email message and any attachments are intended only for the use of the addressee named above and may contain information that is privileged and confidential. If you are not the intended recipient, any dissemination, distribution, or copying is strictly prohibited. If you received this email message in error, please immediately notify the sender by replying to this email message or by telephone.

On Thursday, April 8, 2021, 09:58:06 AM PDT, Gail Heriot <gheriot@me.com> wrote:

Yes.

Gail Heriot
Professor of Law

AMERICAN OVERSIGHT

University of San Diego

> On Apr 8, 2021, at 9:46 AM, Carissa Mulder <CMulder@usccr.gov> wrote:

Pete asks if Tuesday at 4 pm Eastern works.

From: Gail Heriot <gheriot@me.com>
Sent: Thursday, April 8, 2021 12:37 PM
To: Carissa Mulder <CMulder@usccr.gov>
Cc: Norma Cantu <ncantu@usccr.gov>; Michael Yaki <MYaki@usccr.gov>; pkirsanow@beneschlaw.com; MICHAEL@michaelyaki.com; David Ganz <dganz@usccr.gov>
Subject: Re: [EXTERNAL] Meeting--Times available for Norma to meet regarding vote on Chair

> CAUTION: This email is from outside USCCR.

Gail Heriot
Professor of Law
University of San Diego

> On Apr 8, 2021, at 9:01 AM, Carissa Mulder <CMulder@usccr.gov> wrote:
>
> Good morning, everyone:
>
> I just got off the phone with Pete. Unfortunately, he can't meet before Monday at 2 pm Eastern. Is there a time after that that would work for everyone? I realize this is after April 10, but he can't make it work before then.

From: Norma Cantu <ncantu@usccr.gov>
Sent: Thursday, April 8, 2021 11:45 AM
To: Carissa Mulder <CMulder@usccr.gov>; Gail Heriot <gheriot@me.com>
Cc: Michael Yaki <MYaki@usccr.gov>; pkirsanow@beneschlaw.com; michael@michaelyaki.com; David Ganz <dganz@usccr.gov>
Subject: Re: [EXTERNAL] Meeting--Times available for Norma to meet regarding vote on Chair

Hello, all,
Not hearing a response, I am checking in on a good time to complete our task on the proposed AI's, etc.

I will be in a two-hour meeting today and will be back at my desk at 11:30PST/ 1:30 CST/2:30 EST. After that, I have cleared off the rest of today and all of tomorrow for the four Commissioners to work on language. Of course, it won't take that much time, but I do estimate 1-2 hours for our discussion.

Please bear in mind that we should try to get the language together by Saturday, April 10, because we need to give the USCCR General Counsel time to review the language for AI's or other vehicles to be sure we are aligned to language in our statute and other federal laws.

FYI, I would rather be listening to your ideas than reading all the digitized AI's and the newest version of Robert's Rules. I can meet late in the day for the convenience of those of you on West Coast time.

AMERICAN OVERSIGHT

Norma

From: Carissa Mulder <CMulder@usccr.gov>
Date: Friday, April 2, 2021 at 12:26 PM
To: Gail Heriot <gheriot@me.com>, Norma Cantu <ncantu@usccr.gov>
Cc: Michael Yaki <MYaki@usccr.gov>,
" <michael@michaelyaki.com>
Subject: Re: [EXTERNAL] Meeting--Times available for Norma to meet

Hello everyone,

Pete can do anytime Tuesday between 1-4 PM Eastern. Is there a time in there that works for everyone?

From: Gail Heriot <gheriot@me.com>
Sent: Thursday, April 1, 2021 4:46:24 PM
To: Norma Cantu
Cc: Carissa Mulder; Michael Yaki; pkirsanow@beneschlaw.com; MICHAEL@michaelyaki.com
Subject: Re: [EXTERNAL] Meeting--Times available for Norma to meet

> CAUTION: This email is from outside USCCR.

e to make Tuesday work.

Gail Heriot
Professor of Law
University of San Diego

> On Apr 1, 2021, at 1:41 PM, Norma Cantu <ncantu@usccr.gov> wrote:
>
> Dear Peter, Gail, Michael, Carissa,
> Monday doesn't work.
> I suggest Tuesday afternoon.
> Norma
>
> ---
>
> **From:** Gail Heriot <gheriot@me.com>
> **Date:** Wednesday, March 31, 2021 at 3:19 PM
> **To:** Carissa Mulder <CMulder@usccr.gov>
> " <michael@michaeyaki.com>, Michael Yaki <MYaki@usccr.gov>,
> "pkirsanow@beneschlaw.com" <pkirsanow@beneschlaw.com>
> **Subject:** Re: [EXTERNAL] Meeting--Times available for Norma to meet
>
> > CAUTION: This email is from outside USCCR.

AMERICAN OVERSIGHT

Gail Heriot
Professor of Law
University of San Diego

> On Mar 31, 2021, at 1:18 PM, Carissa Mulder <CMulder@usccr.gov> wrote:
>
> I just got off the phone with Pete. He is tied up for the rest of the week. Would Monday work?
>
> Thank you!
>
> ---
>
> **From:** Carissa Mulder
> **Sent:** Wednesday, March 31, 2021 9:22:57 AM
> **To:** Gail Heriot; Norma Cantu
> **Cc:** michael@michaeyaki.com; Michael Yaki; pkirsanow@beneschlaw.com
> **Subject:** Re: [EXTERNAL] Meeting--Times available for Norma to meet
>
> Pete told me yesterday (sorry, I thought he had responded to this email) that he is only available later in the week. Pete, can you do any of these times Thursday or Friday?
>
> ---
>
> **From:** Gail Heriot <gheriot@me.com>
> **Sent:** Wednesday, March 31, 2021 12:28:04 AM
> **To:** Norma Cantu
> **Cc:** michael@michaeyaki.com; Michael Yaki; Carissa Mulder; pkirsanow@beneschlaw.com
> **Subject:** Re: [EXTERNAL] Meeting--Times available for Norma to meet
>
> CAUTION: This email is from outside USCCR.

You don‘t want to see me at 7:00 am PT on Thursday. But I can do any time after 9:00 am PT.

Friday is okay from 11:00 am PT till 1:30 pm or so PT.

I can do Saturday.

Gail Heriot
Professor of Law
University of San Diego

> On Mar 30, 2021, at 12:32 PM, Norma Cantu <ncantu@usccr.gov> wrote:
>
> Dear Michael, Peter, Gail,

AMERICAN OVERSIGHT

I would set up a doodle poll, but my USCCR email address is not compatible. Perhaps, Ms. Mulder would have better access to Doodle Poll?

I have Wednesday available at 7-2 PST/ 9-4 CST/ 10-5 EST

Thursday is fine from 7-11 PST/ 9-1 CST/ 10-12 EST. I also have time open 7-8 PST/ 5-7 CST/ 6-8 EST

Friday may be a religious holiday, but if it is not for you, I am open from 11-3 PST/ 1-5 CST/ 2-6 EST

Saturday, I am donating blood in the morning, but will be ready for a call between 9- 6 PST? 11 - 8 CST/ 120-9 EST.
Norma

From: Gail Heriot <gheriot@me.com>
Date: Monday, March 29, 2021 at 8:58 PM
To: Norma Cantu <ncantu@usccr.gov>
Cc: Michael Yaki <MYaki@usccr.gov>, Carissa Mulder " <pkirsanow@beneschlaw.com>
Subject: [EXTERNAL] Meeting

> CAUTION: This email is from outside USCCR.

We need to get this show on the road. Is there a time late this week that we can all meet?

Gail

Gail Heriot
Professor of Law
University of San Diego

> On Mar 25, 2021, at 3:28 PM, Norma Cantu <ncantu@usccr.gov> wrote:
>
> Dear Michael,
> I really am sorry you are not feeling well.

AMERICAN OVERSIGHT

We are not replacing anyone on EAC yet. At our last meeting with Gail and Peter, I said to Gail and Peter the change would not happen until after June.
Norma

From: Michael Yaki <MYaki@usccr.gov>
Date: Thursday, March 25, 2021 at 4:46 PM
To: Norma Cantu <ncantu@usccr.gov>, Gail Heriot <gheriot@me.com>, Carissa Mulder <CMulder@usccr.gov>
Cc: "pkirsanow@beneschlaw.com" <pkirsanow@beneschlaw.com>
Subject: Re: [EXTERNAL] Re: Noon meeting-how about Thursday at 6 pm EST?

Hang on. You can't replace me yet b/c I have to chair the annual meeting in June. I will resign after the meeting in June.

If I sound belligerent it's bc i have a huge headache

From: Norma Cantu
Sent: Thursday, March 25, 2021 4:56:05 PM
To: Gail Heriot; Carissa Mulder

Subject: Re: [EXTERNAL] Re: Noon meeting-how about Thursday at 6 pm EST?

Dear Gail, Peter,
I think we are there on the EAC topic.
Do you want to talk briefly?
The timing is a bit urgent because the EAC is eager to get our nominations.
Norma

From: Gail Heriot <gheriot@me.com>

AMERICAN OVERSIGHT

Date: Thursday, March 25, 2021 at 2:21 PM
To: Carissa Mulder <CMulder@usccr.gov>
Cc: Michael Yaki <MYaki@usccr.gov>, Norma Cantu " <pkirsanow@beneschlaw.com>
Subject: [EXTERNAL] Re: Noon meeting-how about Thursday at 6 pm EST?

CAUTION: This email is from outside USCCR.

Gail Heriot
Professor of Law
University of San Diego

On Mar 25, 2021, at 12:18 PM, Carissa > wrote:

I hope you feel better soon! Pete unfortunately just found out that he can't meet this evening either, due to an emergency in his practice.

From: Michael Yaki
Sent: Thursday, March 25, 2021 3:15:05 PM
To: Carissa Mulder; Norma

AMERICAN OVERSIGHT

Cantu
Cc: pkirsanow@beneschlaw.com; Gail Heriot
Subject: Re: Noon meeting- how about Thursday at 6 pm EST?

Hey everyone

I am having a reaction to my Moderna shot and am out of commission today. Norma can meet if she wants to go forward to get some of the non controversial items out of the way. Sorry for the late notice, but it hit me this morning.

From: Carissa Mulder
Sent: Friday, March 19, 2021 11:46:11 AM
To: Norma Cantu; Michael Yaki
Cc: pkirsanow@beneschlaw.com; Gail Heriot
Subject: Re: Noon meeting- how about Thursday at 6 pm EST?

AMERICAN OVERSIGHT

Dear Commissioners:

6 pm Eastern on Thursday works for both Commissioners Heriot and Kirsanow. They look forward to meeting with you then!

Sincerely,

Carissa

From: Norma Cantu
Sent: Friday, March 19, 2021 11:43:00 AM
To: Carissa Mulder; Michael Yaki
Cc: pkirsanow@beneschlaw.com; Gail Heriot
Subject: Re: Noon meeting- how about Thursday at 6 pm EST?

Dear Carissa,
I teach a class from 2 to 5 EST on Thursdays. I can meet after class at 6 p.m. EST this Thursday.
I also have Friday open until 3 p.m. EST.
Norma

From: Carissa >
Date: Friday, March 19, 2021 at 10:39 AM

AMERICAN OVERSIGHT

To: Norma
>, Michael
>
Cc: "pkirsanow@beneschlaw.com" <pkirsanow@beneschlaw.com>,
>
Subject: Noon
meeting

Good
morning,
Commissione
rs Cantu and
Yaki:

Commissione
rs Kirsanow
and Heriot
asked me to
email you
and tell you
that they are
not
logistically
prepared to
negotiate
today. Would
you be
available to
meet
Thursday at
1:30 PM
EDT?

Thank you,

Carissa

AMERICAN OVERSIGHT

Date : 4/13/2021 4:02:50 PM
From : "Michael Yaki" MYaki@usccr.gov
To : "David Ganz" dganz@usccr.gov, "Gail Heriot" gheriot@me.com, "Norma Cantu" ncantu@usccr.gov
Cc : "Gail Heriot" gheriot@usccr.gov, "Peter Kirsanow" pkirsanow@beneschlaw.com, "Michael Yaki" michael@michaelyaki.com, "Carissa Mulder" CMulder@usccr.gov
Subject : Re: [EXTERNAL] Meeting--Times available for Norma to meet regarding vote on Chair

No.

From: David Ganz
Sent: Tuesday, April 13, 2021 3:10:47 PM
To: Gail Heriot; Norma Cantu
Cc: Gail Heriot; Peter Kirsanow; Michael Yaki; Carissa Mulder; Michael Yaki
Subject: RE: [EXTERNAL] Meeting--Times available for Norma to meet regarding vote on Chair

Hello all, this past Friday I received some email traffic indicating the Commissioners wanted me not be on the call today. I am happy to join today if that is what the group wants. Please let me know. Thanks,

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Cc: Gail Heriot <gheriot@usccr.gov>; Peter Kirsanow <pkirsanow@beneschlaw.com>; Michael Yaki <michael@michaelyaki.com>; Carissa Mulder <CMulder@usccr.gov>; Michael Yaki <MYaki@usccr.gov>; David Ganz <dganz@usccr.gov>
Subject: Re: [EXTERNAL] Meeting--Times available for Norma to meet regarding vote on Chair

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Gail Heriot is inviting you to a scheduled Zoom meeting.

Topic: My Meeting with Norma et al.
Time: Apr 13, 2021 01:00 PM Pacific Time (US and Canada)

Join Zoom Meeting
https://sandiego.zoom.us/j/94847298845

Meeting ID: 948 4729 8845
One tap mobile
+16699006833,,94847298845# US (San Jose)
+13462487799,,94847298845# US (Houston)

Dial by your location
+1 669 900 6833 US (San Jose)
+1 346 248 7799 US (Houston)
+1 253 215 8782 US (Tacoma)
+1 312 626 6799 US (Chicago)

AMERICAN OVERSIGHT

+1 646 876 9923 US (New York)
+1 301 715 8592 US (Washington DC)
Meeting ID: 948 4729 8845
Find your local number: https://sandiego.zoom.us/u/am6VwqyuA

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Dear Gail,

In my earlier email, I wrote that our General Counsel would need to review our language on proposed AI's and other vehicles to be sure we were consistent with applicable federal laws.
I copied David Ganz on that email so he could anticipate that we were working on language. Ganz replied that he received the email and would be available as needed.
It seems that you inferred that he was invited to join the call. That was not my intent.
We won't have language ready to share with General Counsel until *after* our meeting on Tuesday.
Norma

From: Gail Heriot <gheriot@me.com>
Date: Friday, April 9, 2021 at 1:31 PM
To: Norma Cantu <ncantu@usccr.gov>, Gail Heriot <gheriot@usccr.gov>, Peter Kirsanow <pkirsanow@beneschlaw.com>
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Gail Heriot
Professor of Law
University of San Diego

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AMERICAN OVERSIGHT

<dganz@usccr.gov>
Subject: Re: [EXTERNAL] Meeting--Times available for Norma to meet regarding vote on Chair

Dear Michael, Gail, Carissa, Peter,
Tuesday, at 4 p.m. EST works for me.
Norma

From: Michael Yaki <michael@michaelyaki.com>
Reply-To: Michael Yaki <michael@michaelyaki.com>
Date: Thursday, April 8, 2021 at 12:21 PM
To: Carissa Mulder <CMulder@usccr.gov>, Gail Heriot <gheriot@me.com>
" <pkirsanow@beneschlaw.com>, David Ganz <dganz@usccr.gov>
Subject: Re: [EXTERNAL] Meeting--Times available for Norma to meet regarding vote on Chair

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Best regards,
Michael

MICHAEL YAKI CONSULTING
e: michael@michaelyaki.com
m: 415.601.4008

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Yes.

Gail Heriot
Professor of Law
University of San Diego

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AMERICAN OVERSIGHT

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Gail Heriot
Professor of Law
University of San Diego

On Apr 8, 2021, at 9:01 AM, Carissa Mulder <CMulder@usccr.gov> wrote:

Good morning, everyone:

I just got off the phone with Pete. Unfortunately, he can't meet before Monday at 2 pm Eastern. Is there a time after that that would work for everyone? I realize this is after April 10, but he can't make it work before then.

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Please bear in mind that we should try to get the language together by Saturday, April 10, because we need to give the USCCR General Counsel time to review the language for AI's or other vehicles to be sure we are aligned to language in our statute and other federal laws.

FYI, I would rather be listening to your ideas than reading all the digitized AI's and the newest version of Robert's Rules. I can meet late in the day for the convenience of those of you on West Coast time.
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From: Carissa Mulder <CMulder@usccr.gov>
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To: Gail Heriot <gheriot@me.com>, Norma Cantu <ncantu@usccr.gov>
Cc: Michael Yaki <MYaki@usccr.gov>,
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Subject: Re: [EXTERNAL] Meeting--Times available for Norma to meet

CAUTION: This email is from outside USCCR.

e to make Tuesday work.

Gail Heriot
Professor of Law
University of San Diego

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> ---
>
> **From:** Gail Heriot <gheriot@me.com>
> **Date:** Wednesday, March 31, 2021 at 3:19 PM
> **To:** Carissa Mulder <CMulder@usccr.gov>
> " <michael@michaeyaki.com>, Michael Yaki <MYaki@usccr.gov>,
> "pkirsanow@beneschlaw.com" <pkirsanow@beneschlaw.com>
> **Subject:** Re: [EXTERNAL] Meeting--Times available for Norma to meet
>
> CAUTION: This email is from outside USCCR.
>
> Gail Heriot
> Professor of Law
> University of San Diego
>
> > On Mar 31, 2021, at 1:18 PM, Carissa Mulder <CMulder@usccr.gov> wrote:
> >
> > I just got off the phone with Pete. He is tied up for the rest of the week. Would Monday work?
> >
> > Thank you!

AMERICAN OVERSIGHT

From: Carissa Mulder
Sent: Wednesday, March 31, 2021 9:22:57 AM
To: Gail Heriot; Norma Cantu
Cc: michael@michaeyaki.com; Michael Yaki; pkirsanow@beneschlaw.com
Subject: Re: [EXTERNAL] Meeting--Times available for Norma to meet

Pete told me yesterday (sorry, I thought he had responded to this email) that he is only available later in the week. Pete, can you do any of these times Thursday or Friday?

From: Gail Heriot <gheriot@me.com>
Sent: Wednesday, March 31, 2021 12:28:04 AM
To: Norma Cantu
Cc: michael@michaeyaki.com; Michael Yaki; Carissa Mulder; pkirsanow@beneschlaw.com
Subject: Re: [EXTERNAL] Meeting--Times available for Norma to meet

CAUTION: This email is from outside USCCR.

You don‘t want to see me at 7:00 am PT on Thursday. But I can do any time after 9:00 am PT.

Friday is okay from 11:00 am PT till 1:30 pm or so PT.

I can do Saturday.

Gail Heriot
Professor of Law
University of San Diego

> On Mar 30, 2021, at 12:32 PM, Norma Cantu <ncantu@usccr.gov> wrote:
>
> Dear Michael, Peter, Gail,
>
> I would set up a doodle poll, but my USCCR email address is not compatible. Perhaps, Ms. Mulder would have better access to Doodle Poll?
>
> I have Wednesday available at 7-2 PST/ 9-4 CST/ 10-5 EST
>
> Thursday is fine from 7-11 PST/ 9-1 CST/ 10-12 EST. I also have time open 7-8 PST/ 5-7 CST/ 6-8 EST
>
> Friday may be a religious holiday, but if it is not for you, I am open from 11-3 PST/ 1-5 CST/ 2-6 EST

AMERICAN OVERSIGHT

Saturday, I am donating blood in the morning, but will be ready for a call between 9- 6 PST? 11 - 8 CST/ 120-9 EST.
Norma

From: Gail Heriot <gheriot@me.com>
Date: Monday, March 29, 2021 at 8:58 PM
To: Norma Cantu <ncantu@usccr.gov>
Cc: Michael Yaki <MYaki@usccr.gov>, Carissa Mulder " <pkirsanow@beneschlaw.com>
Subject: [EXTERNAL] Meeting

CAUTION: This email is from outside USCCR.

We need to get this show on the road. Is there a time late this week that we can all meet?

Gail

Gail Heriot
Professor of Law
University of San Diego

> On Mar 25, 2021, at 3:28 PM, Norma Cantu <ncantu@usccr.gov> wrote:
>
> Dear Michael,
> I really am sorry you are not feeling well.
> We are not replacing anyone on EAC yet. At our last meeting with Gail and Peter, I said to Gail and Peter the change would not happen until after June.
> Norma
>
> ---
>
> **From:** Michael Yaki <MYaki@usccr.gov>
> **Date:** Thursday, March 25, 2021 at 4:46 PM
> **To:** Norma Cantu <ncantu@usccr.gov>,

AMERICAN OVERSIGHT

Gail Heriot
<gheriot@me.com>,
Carissa Mulder
<CMulder@usccr.gov>
Cc: "pkirsanow@beneschlaw.com" <pkirsanow@beneschlaw.com>
Subject: Re:
[EXTERNAL] Re: Noon
meeting-how about
Thursday at 6 pm EST?

Hang on. You can't
replace me yet b/c I have
to chair the annual
meeting in June. I will
resign after the meeting in
June.

If I sound belligerent it's
bc i have a huge headache

From: Norma Cantu
Sent: Thursday, March 25,
2021 4:56:05 PM
To: Gail Heriot; Carissa
Mulder

Subject: Re: [EXTERNAL]
Re: Noon meeting-how about
Thursday at 6 pm EST?

Dear Gail, Peter,
I think we are there on the
EAC topic.
Do you want to talk briefly?
The timing is a bit urgent
because the EAC is eager to
get our nominations.
Norma

From: Gail Heriot
<gheriot@me.com>
Date: Thursday, March
25, 2021 at 2:21 PM
To: Carissa Mulder
<CMulder@usccr.gov>
Cc: Michael Yaki
<MYaki@usccr.gov>,
Norma Cantu
" <pkirsanow@beneschlaw.com>
Subject: [EXTERNAL]
Re: Noon meeting-how
about Thursday at 6 pm
EST?

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CAUTION: This email is from outside USCCR.

Gail Heriot
Professor of Law
University of San Diego

On Mar 25, 2021, at 12:18 PM, Carissa > wrote:

I hope you feel better soon! Pete unfortunately just found out that he can't meet this evening either, due to an emergency in his practice.

From: Michael Yaki
Sent: Thursday, March 25, 2021 3:15:05 PM
To: Carissa Mulder; Norma Cantu
Cc: pkirsanow@beneschlaw.com; Gail Heriot
Subject: Re: Noon meeting- how about Thursday at 6 pm EST?

Hey everyone

AMERICAN OVERSIGHT

I am having a reaction to my Moderna shot and am out of commission today. Norma can meet if she wants to go forward to get some of the non controversial items out of the way. Sorry for the late notice, but it hit me this morning.

From: Carissa Mulder
Sent: Friday, March 19, 2021 11:46:11 AM
To: Norma Cantu; Michael Yaki
Cc: pkirsanow@beneschlaw.com; Gail Heriot
Subject: Re: Noon meeting- how about Thursday at 6 pm EST?

Dear Commissioners:

6 pm Eastern on Thursday works for both Commissioners Heriot and

AMERICAN OVERSIGHT

Kirsanow.
They look
forward to
meeting with
you then!

Sincerely,

Carissa

From: Norma
Cantu
Sent: Friday,
March 19, 2021
11:43:00 AM
To: Carissa
Mulder;
Michael Yaki
Cc: pkirsanow@beneschlaw.com;
Gail Heriot
Subject: Re:
Noon meeting-
how about
Thursday at 6
pm EST?

Dear Carissa,
I teach a class
from 2 to 5 EST
on Thursdays. I
can meet after
class at 6 p.m.
EST this
Thursday.
I also have
Friday open
until 3 p.m.
EST.
Norma

From: Carissa
>
Date: Friday,
March 19,
2021 at 10:39
AM
To: Norma
>, Michael
>
Cc: "pkirsanow@beneschlaw.com" <pkirsanow@beneschlaw.com>,
>
Subject: Noon
meeting

Good
morning,

AMERICAN OVERSIGHT

Commissioners Cantu and Yaki:

Commissioners Kirsanow and Heriot asked me to email you and tell you that they are not logistically prepared to negotiate today. Would you be available to meet Thursday at 1:30 PM EDT?

Thank you,

Carissa

AMERICAN OVERSIGHT

Date : 4/15/2021 6:50:24 PM
From : "Gail Heriot" gheriot@usccr.gov
To : "Alexander Heideman" aheideman@usccr.gov
Cc : "Gail Heriot" gheriot@me.com, "Alexander Heideman" alexanderheideman@gmail.com, "Peter Kirsanow" pkirsanow@usccr.gov, "Carissa Mulder" CMulder@usccr.gov, "Christian Adams" adams@electionlawcenter.com, "cadams@usccr.gov" cadams@usccr.gov, "stephen gilchrist" thegilchristassociates@gmail.com, "Stephen Gilchrist" sgilchrist@usccr.gov, "Thomas Simuel" tjsimuel32@gmail.com, "Thomas Simuel" tsimuel@usccr.gov, "John Mashburn" jmashburn@usccr.gov, "John Mashburn" jkmash@comcast.net, "Kirsanow, Peter" pkirsanow@beneschlaw.com
Subject : Re: [EXTERNAL] RE: Comments please

Mandatory calling of witnesses that two of us nominate.

Gail Heriot
Professor of Law
University of San Diego

On Apr 15, 2021, at 3:49 PM, Alexander Heideman <aheideman@usccr.gov> wrote:

So the conservative caucus got four big items:

1. Bipartisan nominations to the EAC & other federal entities;
2. Cancelling the Speaker Series;
3. Sitting in on OCRE interviews; and
4. Committing to the 30-30-10 rule.

Also a soft promise on reevaluating the SAC issues at a later date. Am I missing anything else?

This seems like a big win, especially if the only concession was confirming the Chair's nomination.

From: Gail Heriot <gheriot@me.com>
Date: Thursday, April 15, 2021 at 6:38 PM
To: Alexander Heideman <alexanderheideman@gmail.com>
Cc: Gail Heriot <gheriot@usccr.gov>, Peter Kirsanow <pkirsanow@usccr.gov>, Alexander Heideman <aheideman@usccr.gov>, Carissa Mulder <CMulder@usccr.gov>, Christian Adams <adams@electionlawcenter.com>, "cadams@usccr.gov" <cadams@usccr.gov>, stephen gilchrist <thegilchristassociates@gmail.com>, Stephen Gilchrist

AMERICAN OVERSIGHT

<sgilchrist@usccr.gov>, Thomas Simuel <tjsimuel32@gmail.com>, Thomas Simuel <tsimuel@usccr.gov>, John Mashburn <jmashburn@usccr.gov>, John Mashburn <jkmash@comcast.net>, "Kirsanow, Peter" <pkirsanow@beneschlaw.com>
Subject: Re: [EXTERNAL] RE: Comments please

> CAUTION: This email is from outside USCCR.

They appear to be okay with an omnibus motion.

Gail Heriot
Professor of Law
University of San Diego

> On Apr 15, 2021, at 3:36 PM, Alexander Heideman <alexanderheideman@gmail.com> wrote:
>
> > CAUTION: This email is from outside USCCR.
>
> On Apr 15, 2021, 6:34 PM -0400, Kirsanow, Peter <pkirsanow@beneschlaw.com>, wrote:
>
> > I'm OK with it.
> >
> > What do the SAs think?
> >
> > ---
> >
> > **From:** Gail Heriot <gheriot@usccr.gov>
> > **Sent:** Thursday, April 15, 2021 6:22 PM
> > **To:** Peter Kirsanow <pkirsanow@usccr.gov>; Kirsanow, Peter <pkirsanow@Beneschlaw.com>; Alexander Heideman <alexanderheideman@gmail.com>; Alexander Heideman <aheideman@usccr.gov>; Carissa Mulder <CMulder@usccr.gov>; Carissa Mulder <CMulder@usccr.gov>; Christian Adams <adams@electionlawcenter.com>; cadams@usccr.gov; stephen gilchrist <thegilchristassociates@gmail.com>; Stephen Gilchrist <sgilchrist@usccr.gov>; Thomas Simuel <tjsimuel32@gmail.com>; Thomas Simuel <tsimuel@usccr.gov>; John Mashburn <jmashburn@usccr.gov>; John Mashburn

AMERICAN OVERSIGHT

<jkmash@comcast.net>; Gail Heriot <gheriot@me.com>
Subject: Comments please

***** External E-Mail - Use Caution *****

This is what Norma is proposing for the AI to govern the OCRE witness issue. She still intends to hold the meeting tomorrow. Let me know what you think of her proposal.

Gail Heriot
Professor of Law
University of San Diego

Begin forwarded message:

> **From:** "Cantu, Norma V" <NCantu@law.utexas.edu>
> **Date:** April 15, 2021 at 3:05:52 PM PDT
> **To:** Gail Heriot <gheriot@usccr.gov>
> **Subject: [EXTERNAL] FW: OCRE A-I**
>
> > CAUTION: This email is from outside USCCR.
>
> ---
>
> **From:** "Cantu, Norma V" <NCantu@law.utexas.edu>
> **Date:** Thursday, April 15, 2021 at 5:05 PM
> **To:** "Cantu, Norma V" <NCantu@law.utexas.edu>
> **Subject:** OCRE A-I

AMERICAN OVERSIGHT

Date : 4/15/2021 6:49:10 PM
From : "Alexander Heideman" aheideman@usccr.gov
To : "Gail Heriot" gheriot@me.com, "Alexander Heideman" alexanderheideman@gmail.com
Cc : "Gail Heriot" gheriot@usccr.gov, "Peter Kirsanow" pkirsanow@usccr.gov, "Carissa Mulder" CMulder@usccr.gov, "Christian Adams" adams@electionlawcenter.com, "cadams@usccr.gov" cadams@usccr.gov, "stephen gilchrist" thegilchristassociates@gmail.com, "Stephen Gilchrist" sgilchrist@usccr.gov, "Thomas Simuel" tjsimuel32@gmail.com, "Thomas Simuel" tsimuel@usccr.gov, "John Mashburn" jmashburn@usccr.gov, "John Mashburn" jkmash@comcast.net, "Kirsanow, Peter" pkirsanow@beneschlaw.com
Subject : Re: [EXTERNAL] RE: Comments please

So the conservative caucus got four big items:

1. Bipartisan nominations to the EAC & other federal entities;
2. Cancelling the Speaker Series;
3. Sitting in on OCRE interviews; and
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Also a soft promise on reevaluating the SAC issues at a later date. Am I missing anything else?

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Date: Thursday, April 15, 2021 at 6:38 PM
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Cc: Gail Heriot <gheriot@usccr.gov>, Peter Kirsanow <pkirsanow@usccr.gov>, Alexander Heideman <aheideman@usccr.gov>, Carissa Mulder <CMulder@usccr.gov>, Christian Adams <adams@electionlawcenter.com>, "cadams@usccr.gov" <cadams@usccr.gov>, stephen gilchrist <thegilchristassociates@gmail.com>, Stephen Gilchrist <sgilchrist@usccr.gov>, Thomas Simuel <tjsimuel32@gmail.com>, Thomas Simuel <tsimuel@usccr.gov>, John Mashburn <jmashburn@usccr.gov>, John Mashburn <jkmash@comcast.net>, "Kirsanow, Peter" <pkirsanow@beneschlaw.com>
Subject: Re: [EXTERNAL] RE: Comments please

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They appear to be okay with an omnibus motion.

AMERICAN OVERSIGHT

Gail Heriot
Professor of Law
University of San Diego

On Apr 15, 2021, at 3:36 PM, Alexander Heideman <alexanderheideman@gmail.com> wrote:

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On Apr 15, 2021, 6:34 PM -0400, Kirsanow, Peter <pkirsanow@beneschlaw.com>, wrote:

> I'm OK with it.
>
> What do the SAs think?
>
> ---
>
> **From:** Gail Heriot <gheriot@usccr.gov>
> **Sent:** Thursday, April 15, 2021 6:22 PM
> **To:** Peter Kirsanow <pkirsanow@usccr.gov>; Kirsanow, Peter <pkirsanow@Beneschlaw.com>; Alexander Heideman <alexanderheideman@gmail.com>; Alexander Heideman <aheideman@usccr.gov>; Carissa Mulder <CMulder@usccr.gov>; Carissa Mulder <CMulder@usccr.gov>; Christian Adams <adams@electionlawcenter.com>; cadams@usccr.gov; stephen gilchrist <thegilchristassociates@gmail.com>; Stephen Gilchrist <sgilchrist@usccr.gov>; Thomas Simuel <tjsimuel32@gmail.com>; Thomas Simuel <tsimuel@usccr.gov>; John Mashburn <jmashburn@usccr.gov>; John Mashburn <jkmash@comcast.net>; Gail Heriot <gheriot@me.com>
> **Subject:** Comments please
>
> ***** External E-Mail - Use Caution *****
>
> This is what Norma is proposing for the AI to govern the OCRE witness issue. She still intends to hold the meeting tomorrow. Let me know what you think of her proposal.
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> Professor of Law
> University of San Diego

AMERICAN OVERSIGHT

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From: "Cantu, Norma V" <NCantu@law.utexas.edu>
Date: April 15, 2021 at 3:05:52 PM PDT
To: Gail Heriot <gheriot@usccr.gov>
Subject: [EXTERNAL] FW: OCRE A-I

> CAUTION: This email is from outside USCCR.

From: "Cantu, Norma V" <NCantu@law.utexas.edu>
Date: Thursday, April 15, 2021 at 5:05 PM
To: "Cantu, Norma V" <NCantu@law.utexas.edu>
Subject: OCRE A-I

AMERICAN OVERSIGHT

Date : 4/15/2021 7:27:13 PM
From : "Thomas Simuel" tsimuel@usccr.gov
To : "Alexander Heideman" aheideman@usccr.gov, "Gail Heriot" gheriot@me.com, "Alexander Heideman" alexanderheideman@gmail.com
Cc : "Gail Heriot" gheriot@usccr.gov, "Peter Kirsanow" pkirsanow@usccr.gov, "Carissa Mulder" CMulder@usccr.gov, "Christian Adams" adams@electionlawcenter.com, "cadams@usccr.gov" cadams@usccr.gov, "stephen gilchrist" thegilchristassociates@gmail.com, "Stephen Gilchrist" sgilchrist@usccr.gov, "Thomas Simuel" tjsimuel32@gmail.com, "John Mashburn" jmashburn@usccr.gov, "John Mashburn" jkmash@comcast.net, "Kirsanow, Peter" pkirsanow@beneschlaw.com
Subject : RE: [EXTERNAL] RE: Comments please

Did I read that they are also willing to drop the Vice-Chair issue?

I think the concessions helps the overall Commission. I agree with Alex & Comm. Heriot that we didn't expect to get all that we asked for, but it seem as though we got a good chunk.

If neither of the Dems agree to canceling the meeting then I believe we need to meet, however, are we really settled on where we are?

Are there specific motions that need to be made to change the agenda at the beginning of the meeting? If so, what are those? Are our side going to propose those changes, or their side?

To be clear- we are meeting tomorrow?

-------- Original message --------
From: Alexander Heideman <aheideman@usccr.gov>
Date: 4/15/21 6:49 PM (GMT-05:00)
To: Gail Heriot <gheriot@me.com>, Alexander Heideman <alexanderheideman@gmail.com>
Cc: Gail Heriot <gheriot@usccr.gov>, Peter Kirsanow <pkirsanow@usccr.gov>, Carissa Mulder <CMulder@usccr.gov>, Christian Adams <adams@electionlawcenter.com>, cadams@usccr.gov, stephen gilchrist <thegilchristassociates@gmail.com>, Stephen Gilchrist <sgilchrist@usccr.gov>, Thomas Simuel <tjsimuel32@gmail.com>, Thomas Simuel <tsimuel@usccr.gov>, John Mashburn <jmashburn@usccr.gov>, John Mashburn <jkmash@comcast.net>, "Kirsanow, Peter" <pkirsanow@beneschlaw.com>
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AMERICAN OVERSIGHT

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Subject: Re: [EXTERNAL] RE: Comments please

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They appear to be okay with an omnibus motion.

Gail Heriot

AMERICAN OVERSIGHT

Professor of Law

University of San Diego

On Apr 15, 2021, at 3:36 PM, Alexander Heideman <alexanderheideman@gmail.com> wrote:

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On Apr 15, 2021, 6:34 PM -0400, Kirsanow, Peter <pkirsanow@beneschlaw.com>, wrote:

> I'm OK with it.
>
> What do the SAs think?
>
> ---
>
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> **Sent:** Thursday, April 15, 2021 6:22 PM
> **To:** Peter Kirsanow <pkirsanow@usccr.gov>; Kirsanow, Peter <pkirsanow@Beneschlaw.com>; Alexander Heideman <alexanderheideman@gmail.com>; Alexander Heideman <aheideman@usccr.gov>; Carissa Mulder <CMulder@usccr.gov>; Carissa Mulder <CMulder@usccr.gov>; Christian Adams <adams@electionlawcenter.com>; cadams@usccr.gov; stephen gilchrist <thegilchristassociates@gmail.com>; Stephen Gilchrist <sgilchrist@usccr.gov>; Thomas Simuel <tjsimuel32@gmail.com>; Thomas Simuel <tsimuel@usccr.gov>; John Mashburn <jmashburn@usccr.gov>; John Mashburn <jkmash@comcast.net>; Gail Heriot <gheriot@me.com>
> **Subject:** Comments please
>
> ***** External E-Mail - Use Caution *****
>
> This is what Norma is proposing for the AI to govern the OCRE witness issue. She still intends to hold the meeting tomorrow. Let

AMERICAN OVERSIGHT

me know what you think of her proposal.

Gail Heriot

Professor of Law

University of San Diego

Begin forwarded message:

From: "Cantu, Norma V" <NCantu@law.utexas.edu>
Date: April 15, 2021 at 3:05:52 PM PDT
To: Gail Heriot <gheriot@usccr.gov>
Subject: [EXTERNAL] FW: OCRE A-I

> CAUTION: This email is from outside USCCR.

From: "Cantu, Norma V" <NCantu@law.utexas.edu>
Date: Thursday, April 15, 2021 at 5:05 PM
To: "Cantu, Norma V" <NCantu@law.utexas.edu>
Subject: OCRE A-I

AMERICAN OVERSIGHT

Date : 4/16/2021 8:46:06 AM
From : "Angelia Rorison" arorison@usccr.gov
To : "USCCR AGENCYWIDE" USCCRAGENCYWIDE@usccr.gov
Subject : Commission Business Meeting TODAY

Dear Commission Staff,

This is a reminder that the April Commission Business Meeting will take place today, April 16, 2021, at 12 pm EST. Please see below for call-in information for listen-only attendance to the meeting, and agenda.

Call-in Number: 1-866-556-2537
Conference ID #: 896-5601

The web link to access CART: https://www.streamtext.net/player?event=USCCR
**Please note that CART is text-only translation that occurs in real time during the meeting and is not an exact transcript.*

MEETING AGENDA

I. Motion to Approve Commissioner Norma Cantú to Serve as USCCR Chair
II. Approval of Agenda III. Business Meeting
- A. Discussion and Vote on Statement of Walter E. Williams;
- B. Discussion and Vote to continue the Policy of Rebuttals and Surrebuttals;
- C. Discussion and Vote to suspend Speaker Series;
- D. Discussion and Agreement to Appoint Bipartisan Commissioners to EAC
- E. Discussion and Vote on FEMA Report Discovery Plan
- F. Management and Operations

III. Staff Director's Report
IV. Adjourn Meeting

Happy Friday,

Angelia Rorison

Director of Media and Communications
FOIA Public Liaison
U.S. Commission on Civil Rights
1331 Pennsylvania Ave., NW, Suite 1150
Washington, DC 20425
M: 202-499-0263
(she/her)
arorison@usccr.gov
www.usccr.gov
Follow us on Twitter and Facebook

AMERICAN OVERSIGHT

Established in 1957 by the Civil Rights Act, the Commission is the only independent, bipartisan federal agency charged with advising the President and Congress on civil rights matters. Our 51 state Advisory Committees offer a broad perspective on civil rights concerns at state and local levels.

AMERICAN OVERSIGHT

Date : 4/16/2021 10:35:02 AM
From : "Irena Vidulovic" ividulovic@usccr.gov
To : "Debo P. Adegbile" dadegbile@usccr.gov, "Adegbile, Debo" Debo.Adegbile@wilmerhale.com
Subject : Business Meeting Agenda

MEETING AGENDA

I. Motion to Approve Commissioner Norma Cantú to Serve as USCCR Chair
II. Approval of Agenda
III. Business Meeting
A. Discussion and Vote on Statement of Walter E. Williams;
B. Discussion and Vote to continue the Policy of Rebuttals and Surrebuttals;
C. Discussion and Vote to suspend Speaker Series;
D. Discussion and Agreement to Appoint Bipartisan Commissioners to EAC
E. ~~Discovery and Vote on FEMA Report Discovery Plan~~ (Someone needs to amend the agenda to remove FEMA since we have voted on those materials via notational vote)
F. Management and Operations
• Staff Director's Report

Irena Vidulovic
Special Assistant to Commissioner Debo P. Adegbile
U.S. Commission on Civil Rights
M: 202-591-9969
ividulovic@usccr.gov
http://usccr.gov/
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425

Follow Us on Twitter & Facebook:
TwiFB
#USCCR

AMERICAN OVERSIGHT

Date : 4/16/2021 11:50:34 AM
From : "Norma Cantu" ncantu@usccr.gov
To : "Mauro Morales" mmorales@usccr.gov
Cc : "Juana Silverio" jsilverio@usccr.gov
Subject : Re: [EXTERNAL] RE: Speakers Series

I will invite you to join General Counsel. Both of you will be responsible for implementing the Commission decision.
Norma

From: Mauro Morales <mmorales@usccr.gov>
Date: Friday, April 16, 2021 at 10:45 AM
To: Norma Cantu <ncantu@usccr.gov>
Cc: Juana Silverio <jsilverio@usccr.gov>
Subject: RE: [EXTERNAL] RE: Speakers Series

I would ask that you allow the Staff Director to opine on these proposals since they would impact Commission departments and staff and potentially the mission of the Commission

---

From: Norma Cantu
Sent: Friday, April 16, 2021 11:40 AM
To: Mauro Morales <mmorales@usccr.gov>
Cc: Juana Silverio <jsilverio@usccr.gov>
Subject: Re: [EXTERNAL] RE: Speakers Series

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Date: Friday, April 16, 2021 at 10:33 AM
To: Norma Cantu <ncantu@usccr.gov>
Cc: Juana Silverio <jsilverio@usccr.gov>
Subject: RE: [EXTERNAL] RE: Speakers Series

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Statement on speaker series
Statement on 30-30-10 statements, rebuttals, etc.

AMERICAN OVERSIGHT

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Sent: Friday, April 16, 2021 11:26 AM
To: Mauro Morales <mmorales@usccr.gov>
Subject: FW: [EXTERNAL] RE: Speakers Series

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Date: Friday, April 16, 2021 at 10:21 AM
To: Norma Cantu <ncantu@usccr.gov>
Cc:
>, Peter Kirsanow <pkirsanow@beneschlaw.com>, Peter Kirsanow <pkirsanow@usccr.gov>
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AMERICAN OVERSIGHT

Subject: [EXTERNAL] RE: Speakers Series

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rd AI?

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Michael

MICHAEL YAKI CONSULTING

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AMERICAN OVERSIGHT

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AMERICAN OVERSIGHT

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To : "Mauro Morales" mmorales@usccr.gov
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AMERICAN OVERSIGHT

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AMERICAN OVERSIGHT

Date : 4/16/2021 11:40:17 AM
From : "Gail Heriot" gheriot@usccr.gov
To : "stephen gilchrist" thegilchristassociates@gmail.com, "Alexander Heideman" alexanderheideman@gmail.com, "Carissa Mulder" CMulder@usccr.gov, "Carissa Mulder" carissa.mulder@gmail.com, "Christian Adams" adams@electionlawcenter.com, "Alexander Heideman" aheideman@usccr.gov, "John Mashburn" jkmash@comcast.net, "John Mashburn" jmashburn@usccr.gov, "Peter Kirsanow" pkirsanow@beneschlaw.com, "Peter Kirsanow" pkirsanow@usccr.gov, "Stephen Gilchrist" sgilchrist@usccr.gov, "Thomas Simuel" tjsimuel32@gmail.com, "Thomas Simuel" tsimuel@usccr.gov, "J. Christian Adams" jadams@usccr.gov
Subject : Fwd: [EXTERNAL] RE: Speakers Series

Note that Yaki is asking for a waiver of the 48 hour rule as part of the deal.

Gail Heriot
Professor of Law
University of San Diego

Begin forwarded message:

> **From:** Michael Yaki <michael@michaelyaki.com>
> **Date:** April 16, 2021 at 8:33:30 AM PDT
> **To:** Gail Heriot <gheriot@usccr.gov>, Norma Cantu <ncantu@usccr.gov>
> **Cc:** Norma Cantú <normavcantu@gmail.com>, Peter Kirsanow <pkirsanow@beneschlaw.com>, Peter Kirsanow <pkirsanow@usccr.gov>
> **Subject: Re: [EXTERNAL] RE: Speakers Series**
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> I want the waiver on the AAPI statement.
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> Best Regards,
> Michael
>
> MICHAEL YAKI CONSULTING
> e. michael@michaelyaki.com
> m. 415.601.4908
>
> ---
>
> **From:** Gail Heriot <gheriot@usccr.gov>
> **Sent:** Friday, April 16, 2021 8:21:56 AM
> **To:** Norma Cantu <ncantu@usccr.gov>
> **Cc:** MICHAEL@michaelyaki.com <MICHAEL@michaelyaki.com>; Norma

AMERICAN OVERSIGHT

Cantú <normavcantu@gmail.com>; Peter Kirsanow <pkirsanow@beneschlaw.com>; Peter Kirsanow <pkirsanow@usccr.gov>
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Subject : Re: [EXTERNAL] RE: Speakers Series

It's not clear to me.

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Professor of Law
University of San Diego

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AMERICAN OVERSIGHT

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Sent: Friday, April 16, 2021 8:09 AM
To: Norma Cantu <ncantu@usccr.gov>
Cc: Norma Cantú <normavcantu@gmail.com>; Peter Kirsanow <pkirsanow@beneschlaw.com>; Peter Kirsanow <pkirsanow@usccr.gov>; Michael Yaki <MYaki@usccr.gov>; MICHAEL@michaelyaki.com
Subject: Re: Speakers Series

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Gail

Gail Heriot

Professor of Law

University of San Diego

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<ncantu@usccr.gov>
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University of San Diego

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Date : 4/16/2021 11:32:59 AM
From : "Mauro Morales" mmorales@usccr.gov
To : "Norma Cantu" ncantu@usccr.gov
Cc : "Juana Silverio" jsilverio@usccr.gov
Subject : RE: [EXTERNAL] RE: Speakers Series

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To : "Mauro Morales" mmorales@usccr.gov
Subject : FW: [EXTERNAL] RE: Speakers Series

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Subject: [EXTERNAL] RE: Speakers Series

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To : "Norma Cantu" ncantu@usccr.gov
Cc : "MICHAEL@michaelyaki.com" MICHAEL@michaelyaki.com, "Norma Cantú" normavcantu@gmail.com, "Peter Kirsanow" pkirsanow@beneschlaw.com, "Peter Kirsanow" pkirsanow@usccr.gov
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Date : 4/16/2021 11:45:10 AM
From : "Mauro Morales" mmorales@usccr.gov
To : "Norma Cantu" ncantu@usccr.gov
Cc : "Juana Silverio" jsilverio@usccr.gov
Subject : RE: [EXTERNAL] RE: Speakers Series

I would ask that you allow the Staff Director to opine on these proposals since they would impact Commission departments and staff and potentially the mission of the Commission

---

From: Norma Cantu
Sent: Friday, April 16, 2021 11:40 AM
To: Mauro Morales <mmorales@usccr.gov>
Cc: Juana Silverio <jsilverio@usccr.gov>
Subject: Re: [EXTERNAL] RE: Speakers Series

Staff objections noted. I will repeat before each A-I that these have not cleared by General Counsel.
Norma

From: Mauro Morales <mmorales@usccr.gov>
Date: Friday, April 16, 2021 at 10:33 AM
To: Norma Cantu <ncantu@usccr.gov>
Cc: Juana Silverio <jsilverio@usccr.gov>
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> **Cc:**
> >, Peter Kirsanow <pkirsanow@usccr.gov>
> **Subject:** [EXTERNAL] RE: Speakers Series
>
> CAUTION: This email is from outside USCCR.
>
> rd AI?
>
> Thanks!

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Michael

MICHAEL YAKI CONSULTING

This email and any files or attachments transmitted with it may contain privileged or otherwise confidential information. If you are not the intended recipient, or believe that you may have received this communication in error, please advise the sender via reply email and immediately delete the email you received.

From: Gail Heriot <gheriot@usccr.gov>
Sent: Friday, April 16, 2021 8:09 AM
To: Norma Cantu <ncantu@usccr.gov>
Cc: Norma Cantú <normavcantu@gmail.com>; Peter Kirsanow <pkirsanow@beneschlaw.com>; Peter Kirsanow <pkirsanow@usccr.gov>; Michael Yaki <MYaki@usccr.gov>; MICHAEL@michaelyaki.com
Subject: Re: Speakers Series

Norma—I just spoke with Pete about this. Our plan is for Pete to make an omnibus motion to confirm you and to adopt the three AIs. He will read the AIs into the record as part of the motion. Carissa is preparing a script for him now, so he'll have the wording ready before the meeting. Somebody will second the motion. (If we don't get an immediate second from a progressive, I will second, but the optics are better if a progressive seconds.) During the discussion, we will ask you your policy on 30-30-10 and on the speaker series. You should then read into the record your two policy statements. Have those statements ready for when we ask. When the discussion is over, we vote. Then you're Chair.

Gail

Gail Heriot
Professor of Law
University of San Diego

> On Apr 16, 2021, at 7:23 AM, Norma Cantu <ncantu@usccr.gov> wrote:
>
> Yes, Gail, Peter,
> I have kept circling back to the Progressive Caucus on all the items, from the proposals first raised in February, to the one we drafted last night.
>
> Last night, at 8:30, I thought we had an agreement on all the concepts. This is because we withdrew the language of no objection from the Conservative Caucus about language to the Vice Chair. You withdrew the language on needing to complete the SACs language before the Chair vote. We also made a concession to a last-minute request about Commissioners observing and participating in OCRE content interviews.

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Earlier this week, in response to your request for A-Is, Michael gave you and Peter the language for A-Is on the 30/30/10 and for Commission appointments. Michael told you and Peter these were the only A -I s. I can share with you the Progressive Caucus would not consider any other A-s as necessary to proceed to the Chair vote. Putting form over substance is causing unnecessary delay. As an alternative, we had told you and Peter that oral statements on the record would suffice to memorialize the other agreements.

We are ready to discuss and vote on the items you proposed at the business meeting today. But, if not handled and decided today by Progressives and Conservatives together, all our concessions are withdrawn.
Norma V. Cantu

From: Gail Heriot <gheriot@usccr.gov>
Date: Friday, April 16, 2021 at 9:03 AM
To:
>
Cc: Peter Kirsanow <pkirsanow@beneschlaw.com>, Peter Kirsanow <pkirsanow@usccr.gov>
Subject: Re: Speakers Series

Norma—What about the rest of the things on the list? Is the Progressive Caucus ready to vote on all of them? Or should the meeting be put off?

The conservatives are not inclined to negotiate further at the meeting. We are happy to get this done by notational vote if that allows the progressives the time they need to absorb all this.

Gail Heriot
Professor of Law
University of San Diego

> On Apr 15, 2021, at 7:36 PM, Norma Cantu <ncantu@usccr.gov> wrote:
>
> Good
> Norma

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From: Gail Heriot <gheriot@usccr.gov>
Date: Thursday, April 15, 2021 at 8:22 PM
To: Norma Cantú <normavcantu@gmail.com>, Norma Cantu <ncantu@usccr.gov>
Subject: Speakers Series

Norma— I think that the members of the conservative caucus are satisfied that this will work for the speakers series. I'm working on the other issues. Gail

DRAFT: Email from Commissioner Norma V. Cantú Rescinding the Speakers Series Activity Conducted at Commissioners' Meetings:

April 16, 2021

I write to rescind any directives concerning a "Speakers Series" activity conducted during meetings of the Commission. I understand the Speakers Series was announced by email from a chairperson, not memorialized in any A-I or other rule. In light of several Commissioners' concerns that the activity should have included Commissioner input on speakers from both parties, I express my serious commitment to not reinstitute this activity. If it happens that a majority of the Commissioners were to consent in the future to support this endeavor by a majority vote of the members of the Commission, I wouldpersonally ascertain whether the proposed speaker would be bipartisan in the number of speakers or timing and scheduling of speakers; and if it is not, while I am on the Commission, I will vote against this proposal.

Gail Heriot

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Professor of Law
University of San Diego

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Date : 4/19/2021 8:39:22 AM
From : "Amy Royce" aroyce@usccr.gov
To : "Juana Silverio" jsilverio@usccr.gov
Subject : Fw: Caucus SA's

Morning Juana,

Amy should be able to send you the re-occuring calendar invitation. Below are the zoom details for the meeting today. They are usually at 11:00am every Monday but last week we had it pushed back.

Below is the agenda we have been using and updating as we meet if you would like to update with any additional information and share with the group before out 11:00am meeting.

- Rescheduling the April Business Meeting
- Review and redline the proposed AI's
- Cancelled meeting with the Staff Director
- Alec reached out to the R caucus regarding the ID and CO SAC's. Looking to hear back (Alec update?). If we reach a deal we might be open to voting for the ID and CO slates if Yeanor apologized.
- NC SAC Update. R's reached out to see if we could find a compromise regarding the NC SAC. Please see description below. Debo, Dave and Michael are good with this deal. Juana we need Norma's go ahead to make the deal with the R's.
- Input on the AAPI Statement and it's reintroduction. Should we update the statement with current AAPI violence. We have a 48 hour deadline for distribution, meaning that by 12noon on Wednesday we would need to share the statement with all Commissioners.
    - Add a caucus call the week of the new April business meeting
    - Sunshine notice has FEMA discovery materials, will need to amend
- Sunshine notice also has additional agenda items that may or may not need to be amended –
    - Eliminating the Speaker Series,
    - Rebuttal/surrebuttal time periods
    - Bi-partisan appointment to EAC board of advisors

NC SAC

- The Democratic caucus accepts adding Mincey *please see context below (no additional application needed)
- When recirculating will make clear that Commissioners should not submit objections to other members of the slate who have already been circulated
- The Republican caucus will remove the objection to Lechner *please see context below (no additional application needed)
- Vote in the SAC w/8-8 balance

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For situational awareness please see the context for the NC SAC:

- Slate failed to get a majority vote on Friday 10/30.
- 15 candidates, 8 Democrats (including two Independents who lean Democrat), 7 Republicans (including one candidate who identified as “something else”).
- Note that Olga Wright, the returning Chair, identifies herself as a Democrat but ran for public office as a Republican in all her past elections.
- Comm. Kirsanow (and Adams) objected to the balance of the slate, and requested that it be shifted to 7 Republicans and 7 Democrats (removing one Dem).
- John/Adams objected to the inclusion of Jennifer Lechner as he don't consider her a true Republican." In her stead they would like to replace her with a Mr. Patrick Mincey who Carissa recruited. Replacing Lechner with Mincey takes the gender balance of the slate to 11 men and 4 women. Mincey is a white collar crime attorney and lacks major civil rights experience, however in our vetting process we did not find anything objectionable regarding his public statements or conduct.

FEMA/Puerto Rico

- The notational vote passed
    - FEMA panelist recommendations + briefing book recommendations. The
      panelist recommendations were due by this **Friday, April 2nd.** There were numerous recommendations from Irena, Alex, John Mashburn. Carissa and Thomas had one recommendation.
    - OCRE send the invitations last week. No confirmations to date. Irena spoke to Jason and has some updates.
      Briefing book recommendations are due on **Friday, May 7th.**
- Virtual briefing moved to June 25
- 2 site visits scheduled - Houston 11/19/21, Puerto Rico 12/10/21
- Third briefing planning meeting will take place on Tuesday, April 20th at 11am ET.

Bail Reform

- Kladney/Amy negotiations with R's ongoing
- Oregon SAC had their last briefing on Friday 12/11, Catherine attended. Rukku shared briefing notes with OCRE in the comments on the first draft.

Maternal Health

- OCRE, Debo and Irena met last week to discuss the final draft. Productive meeting, Irena to update the caucus.
    - Focus on Chapter 3 – Federal response, as area for potential bi-partisan consensus

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    - New HHS leadership – OCRE sent HHS and CDC targeted questions for affected agency review
    - Need current data for programs that received funding
- OCRE sent updated ROG's to HHS and also sent the draft report for agency review two weeks ago. No response from HHS, Irena advised Nick and OCRE to reach out to panelist including Congresswoman Ayanna Pressley and ask them to put pressure on HHS to respond especially since it was Black Maternal Health week last week and HHS and CDC was participating in all these various events with the partner organizations. Irena will follow up with OCRE this week.
- Final draft coming to Commissioners in May
- 3 weeks to return edits before vote in June
- Irena discussing with Republicans whether they will support

SAC Recruitment

- So far 14 SAC's have expired and not been reappointed
    - 3 SACs voted down already, potential compromises being discussed – NC, ID, CO
- Alex reached out to Irena to discuss CO and Idaho.
- The Republican's via Alex would like to make a deal Yenor for Dr. Chen. Alec to provide update
- In general: Irena recommended we reach out to new Members' offices. Rukku circulated Congressional letter + updated 2 pager to share with offices.
- Alex and Irena met with David and Mauro two weeks ago. David will be updating the SAC folder and then we can assign recruitment duties. **Alex and Irena to reach out to David this week since it has been 3 weeks for the request and no updates!**
    - Irena sent Alex the NC and Indiana compromise. Alex only responded to NC.
    - Indiana 12/1/20 – Mauro circulated slate
        - Amy circulated vet memo. Slate includes 7 Ds, 7 Rs, and 1 Ind.
        - Carissa objected to the balance, the same type of objection as with a NC. Irena Spoke to Carissa and she will check with their caucus if we add a R or if we add an R and a D however she did say that they probably will not vote for slates that are not balanced.
    - Vermont (expired in June)
        - Mauro circulated slate, which included 5 Rs, 5 Ds, and 2 Ind. (including Reed and Martin). Catherine and Debo objected to Lefavour for lack of experience; need to recruit another R.
        - Irena will reach out to Leahy's office and ping Ang to see if she has any candidates.
    - Colorado: Irena
        - Slate failed to get a majority vote on Friday 10/30.

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        - 12 candidates, 6 Republicans (including one Independent who leans Republican), 6 Democrats (including one Independent who leans Democrat). No particular flags on any candidates.
        - Comm. Heriot had objected to Prof. Chen, on the basis of a recent article that Prof. Chen published called Colorblind Nationalism.
        - Irena is checking in with Alex on whether a compromise is possible
    - North Carolina: Irena
        - Slate failed to get a majority vote on Friday 10/30.
        - 15 candidates, 8 Democrats (including two Independents who lean Democrat), 7 Republicans (including one candidate who identified as “something else”). Note that Olga Wright, the returning Chair, identifies herself as a Democrat but ran for public office as a Republican in 2012.
        - Comm. Kirsanow (and Adams) objected to the balance of the slate, and requested that it be shifted to 7 Republicans and 7 Democrats (removing one Dem).
        - They further objected to the inclusion of Jennifer Lechner as they don't consider her a "true Republican." In her stead they would like to replace her with a Mr. Patrick Mincey who Carissa recruited. Replacing Lechner with Mincey takes the gender balance of the slate to 11 men and 4 women. Mincey has no civil rights experience, based on his application and a review of his public record.
        - Rukku spoke to Thomas; Thomas proposed that we consider a slate of 9 Republicans (including Lechner) and 8 Democrats, and they would work on recruiting Republicans who would assist with balance of slate with respect to gender and other diversity factors. This would leave a slate with 9 R’s and 8 D’s
        - Rukku proposed to Thomas the following: get another R, and add to the slate, to move to a balance of 8-8; added R cannot be Patrick Mincey (no civil rights experience). Might consider Mincey if he submits revised application with more justification for his civil rights experience.
    - Idaho (expired in July).
        - Rukku shared proposal with Carissa: 4 Republicans, 5 Democrats, 1 Independent leaning Democrat, and 1 Independent who leans in no direction. Slate did not include Scott Yenor.
        - Carissa relayed that they continue to not want to move forward without Yenor.
    - District of Columbia 10/20/20 – Alex, Irena
        - (as of 12/17) 11 applicants: 9 men, 2 women; 6 Ds, 4 Rs, 1 something else
        - Need more Rs and better diversity

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- Iowa 11/17/20 – Carissa, Amy/Rukku
  - (as of 11/17) 11 applicants: 7 men, 4 women; 5 Ds, 4 Rs, 2 Ind.
  - Need at least one more R.
  - Carissa has exhausted her recruitment efforts, but John may have more leads.
- Ohio 11/17/20 – Carissa, Rukku
  - (as of 12/17) 16 applicants: 11 Ds, 4 Rs, 1 Ind.
  - Need more Rs. Carissa to work on recruitment.
- New Mexico 12/1/20 – Alex, Amy/Irena/Rukku
  - 5 applicants. Need more candidates.
  - Rukku reached out to Haaland's office for candidates.
- Wyoming 12/1/20 – Alex, Alec
  - 6 applicants. Need more candidates.
  - Alec reached out to Shepard Foundation and confirmed that Judy Shepard will apply for the SAC.
- Florida 3/2021 – Irena
- Louisiana 3/2021 – Rukku
- Nebraska 3/2021 – Alec
- Texas 3/2021 – Amy
- New advisory committees (Puerto Rico, Virgin Islands, Northern Mariana Islands, Guam, American Samoa)
  - Irena checked in with David on how he wants to move forward with new advisory committees - on hold for the moment
  - Vacancy posted for Civil Rights Analyst in the regions - closes 3/31

Broken Promises pandemic update

- Senator Warren's office has reached out to Irena to schedule a meeting this week on the report update + will invite Julie to the meeting.
- Interested to find out spokesperson for Commission. Irena provided public material and
- Pursue social media strategy using briefing video/materials
- Can we generate clips from the briefing video, into individual panelist testimony or other excerpts? **Irena to reach out to Ang.
- Revisit when we discuss project planning re FY22? (/FEMA, Comm. Adams' proposal, etc.).

Follow ups with Mauro

- The SA's have requested a follow up meeting with Mauro, we were trying to reinstitute the bi-weekly meetings, Mauro has cancelled our April 20th meeting. However Mauro has not been amenable to meeting, our last SA Meeting was held on 3/23.
- Mauro scheduled the meeting with the SA's next week on Tuesday, April 20th at 3pm. Juana you need to be added to the calendar invitation.

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- The items raised at the last meeting for which we don't have updates:
    - AI's available online
    - Commissioner IT needs
    - Website update
    - Budget priorities
        - Forward funding for site visits in Puerto Rico and Texas
        - Regional staffing – at least one staffer for territory SACs
        - IT and website
    - SAC letters

Other outstanding items for all SA's

- AI 5-9
    - OCG provided redline and comments for Commissioner consideration for standards for removal for SAC members and procedures the Commission should adopt
- Project proposals
- "Balance" SAC AI?
- Expired SACs (14)

Project proposals for FY21/22

- Rukku checked with John to see if Commissioner Adams will submit new project proposals. John is working with Commissioner Adams on project priorities and check back on timeline. Rukku to follow up with John this week.
- John (at all SA meeting) said that Comm. Adams had a proposal, so Rukku will generate a timeline for consideration.
- We will proceed with the FEMA Project as the FY22 statutory enforcement report.
- Need a new FY22 project planning calendar – Rukku generated the program planning schedule with emphasis on time early in the process for bipartisan discussion.

Personnel

- OCRE Director - posting closed. Interviews completed and offer should be going out soon.
- Commission on Black Man and Boys - posting closed + interviews scheduled
- Two regional positions for civil rights analysts – closes 3/31
- Summer 2021 interns – Irena hired a spring intern. Amy hired Clara Malkin – to start 5/24
- Irena's intern Alana Thomas started on March 16th Alana Thomas is currently a second year law student at Georgetown. She is currently pursuing a Master of Public Policy degree from Loyola University Chicago, and received her BS in Psychology from Virginia Tech. Alana has focused her

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studies on affordable housing and race in law. She currently serves as the Vice President of Marketing Strategy at Citi. Alana is from Chicago, and will be supporting Commissioner Adegbile
- Fulbright fellows – Media fellow recommendation for Ang.
    - Ang hired a Fullbright fellow!

Commission on the Social Status of Black Men and Boys

- Was signed into law, more details to come on what this means.
- Appointments from White House
- Call rescheduled with Congresswoman Wilson
- Women/Girls bill?

From: Amy Royce
Sent: Wednesday, February 3, 2021 8:49 AM
To: Amy Royce; Irena Vidulovic; Alec Deull
Subject: Caucus SA's
When: Monday, April 19, 2021 11:00 AM-12:00 PM.
Where: Zoom
New calendar invitation with new Zoom info

Amy Royce is inviting you to a scheduled Zoom meeting.

Topic: Caucus SA's
Time: This is a recurring meeting Meet anytime

Join Zoom Meeting
https://us02web.zoom.us/j/87862261260?pwd=RjBlbGp0blZTcHNzM2tJY3VUUURudz09

Launch Meeting - Zoom

us02web.zoom.us

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Jose, CA.

Meeting ID: 878 6226 1260
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115.114.115.7 (India Hyderabad)
213.19.144.110 (Amsterdam Netherlands)
213.244.140.110 (Germany)
103.122.166.55 (Australia Sydney)
103.122.167.55 (Australia Melbourne)
149.137.40.110 (Singapore)
64.211.144.160 (Brazil)
69.174.57.160 (Canada Toronto)
65.39.152.160 (Canada Vancouver)
207.226.132.110 (Japan Tokyo)
149.137.24.110 (Japan Osaka)
Meeting ID: 878 6226 1260
Passcode: 555120

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Date : 4/19/2021 12:52:50 PM
From : "Sheryl Cozart" sccozart@usccr.gov
To : "David Ganz" dganz@usccr.gov, "Pilar McLaughlin" pmclaughlin@usccr.gov
Subject : RE: Follow Up on Today's Business Meeting
Attachment : AI on Appointment Authority (general and EAC) SCC edits.docx;AI1-6Witnesses - Yaki revision SCC edits.docx;OCRE.A-I.4.15.21 SCC edits.docx;image001.gif;image002.gif;

David,

Attached are my redline comments and edits of the A.I.s.
A.I. on appointments to other Federal entities:

- I believe the appointment is to the Board of Advisors of the EAC, not the EAC itself.

A.I. on Commission Hearings

- Only a couple of small language changes.

Proposed A.I. re Commissioners observing external fact witnesses or experts:

- This proposed A.I. seems inconsistent with the internal communication procedures between staff and Commissioners.
- This proposed A.I. does not make clear who falls in the category of external fact witness or expert and does not offer the interview to be recorded and transcribed as required in our regs.

From: David Ganz <dganz@usccr.gov>
Sent: Friday, April 16, 2021 6:06 PM
To: Pilar McLaughlin <pmclaughlin@usccr.gov>; Sheryl Cozart <sccozart@usccr.gov>
Subject: RE: Follow Up on Today's Business Meeting

Please provide redlined comments and edits to these A.I.s by mid-day on Tuesday to me. I will consolidate OGC comments.

From: David Ganz
Sent: Friday, April 16, 2021 6:04 PM
To: ExecutiveStaff <ExecutiveStaff@usccr.gov>
Cc: Pilar McLaughlin <pmclaughlin@usccr.gov>; Sheryl Cozart <sccozart@usccr.gov>; Mauro Morales <mmorales@usccr.gov>
Subject: RE: Follow Up on Today's Business Meeting

Hello all,

As Mauro indicated, please review these proposed A.I.s to determine the impact on your division's ability to carry out its, and the USCCR's broader, programmatic and statutory functions. Please redline the A.I.s and provide comments and send them back to me by COB Tuesday, April 20. OGC will consolidate the comments and edits from your respective divisions. OGC will provide comments and edits as well. I know it is quick turnaround, so I appreciate you prioritizing it. If you need an extension to Wednesday, please let me know. After we have consolidated comments, Mauro and Commission leadership will determine how we present it the Commissioners and SAs. Kind regards,

AMERICAN OVERSIGHT

David

From: Mauro Morales <mmorales@usccr.gov>
Sent: Friday, April 16, 2021 5:04 PM
To: ExecutiveStaff <ExecutiveStaff@usccr.gov>
Subject: FW: Follow Up on Today's Business Meeting

Executive Team

Please review and determine if your department needs to provide input on one or more of these three AI's. What you should determine is what would be the legal, administrative and research impact to your department's ability to carry out its responsibility and ensure the mission of USCCR can be carried out. I am going to task David Ganz to coordinate a response for the agency to Commissioners on these three AI's. I will coordinate a check in on Monday to see how we should provide draft a response.

Mauro

From: Carissa Mulder
Sent: Friday, April 16, 2021 4:52 PM
To: Mauro Morales <mmorales@usccr.gov>; Peter Kirsanow <pkirsanow@usccr.gov> >; Commissioners <Commissioners@usccr.gov>; pkirsanow@beneschlaw.com
Subject: Re: Follow Up on Today's Business Meeting

See attached.

From: Mauro Morales
Sent: Friday, April 16, 2021 4:34:23 PM
To: Peter Kirsanow
Cc: CommissionerAssistants; ExecutiveStaff; Commissioners
Subject: Follow Up on Today's Business Meeting

Commissioner Kirsanow,

Pursuant to the vote of Commissioners during the business meeting, please forward the AI's you presented today for evaluation by appropriate agency staff for legal sufficiency, administrative compliance and research objectivity. Please do so within 48 hours of the receipt of this email as required by the AI and indicated by Commissioner's vote on the final motion. I have to notice the next Commission meeting by this Thursday the 22nd in time to hold a business meeting on Friday, April 30th at 12 noon. It is our plan to provide Commissioners with an evaluation of the proposed AI's by Friday, April 23rd. We believe that one week is sufficient time for Commissioners to decide to amend, revise or withdraw the proposed three AI's. Please keep in mind that any changes made to your proposed AI's must be sent to Commissioners 48 hours in advance of the noon business meeting on Friday the 30th.

Please contact me if you have any questions or concerns about meeting Commissioner determined deadlines.

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Mauro Morales
Staff Director
U.S. Commission on Civil Rights
P: 202-376-7796| F: 202-376-7672
Mmorales@usccr.gov
http://usccr.gov/
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425

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ADMINISTRATIVE INSTRUCTION __- __

COMMISSION APPOINTMENTS TO OTHER FEDERAL ENTITIES

Section 1.
.01 Any authority specifically granted the Commission of Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc. shall be exercised by the Commission as a whole by majority vote.

Section 2
.02

(1) For the two (2) appointments to the U.S. Election Assistance Commission, the members appointed by Democratic authorities shall nominate two individuals of their membership, and the members appointed by the Republican authorities shall nominate two individuals of their membership.

Commented [SC1]: I believe the position is to the Election Advisory Board of the U.S. Election Assistance Commission, not the EAC itself.

(2) The members appointed by the Democratic authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Democratic authorities

(3) The members selected shall be placed in nomination and ratified in conformance with Section 1.

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AI on Commission Hearings

SECTION 11. COMMISSION HEARINGS

.01 The OGC is responsible for preparing and holding Commission hearings. This includes ensuring that the witnesses, when viewed as a whole, possess sufficient policy, legal, academic, advocacy, and other knowledge and experience necessary for a full and balanced inquiry into the issues.

.02 To document that hearing witnesses reflected varied and opposing views, opinions, and perspectives, OSD completes Section III of the *National Office Report Checklist for Hearing Reports* form. By completing this part of the form OSD certifies that the hearing included a numerical balance of witnesses between opposing views, opinions and perspectives or that a numerical balance could not be achieved or was not appropriate in light of the subject of the hearing and/or the availability of credible witnesses. Section IV is completed by the Staff Director before the proposed final draft report and checklist are provided to the external reviewer.

.03 Staff is encouraged to use various sources to gather suggestions for appropriate hearing witnesses. Commissioners are the primary source of suggestions for hearing witnesses. ~~These~~ Additional sources may include, but are not limited to, ~~Commissioners,~~ other program offices, regional directors, and appropriate external groups. If two Commissioners request that staff invite a particular witness, staff may~~must~~ invite that witness if doing so furthers the consideration of varied and opposing viewpoints, opinions, and perspectives . No Commissioner may act jointly to invite more than two witnesses, which results in no more than 8 witnesses shall be required to be invited by staff by action of the Commission. Thereafter, a Commissioner or Commissioners may suggest as many witnesses as they deem advisable, but staff is not obligated to invite them, and staff may consult additional sources to invite additional witnesses for hearings.

Commented [SC1]: See AI 1-6.1(b) which reads: Commission projects, including reports and other written work products, hearings, and briefings, are examinations of civil rights issues that reflect a consideration of varied and opposing viewpoints, opinions, and perspectives.

.04 OGC prepares hearing proposals, design or implementation plans, and briefing or background books. When preparing hearing proposals this office should demonstrate a consideration of varied and opposing views, opinions, and perspectives. This office also verifies the accuracy of transcripts, drafts hearing reports, and maintains official hearing records.

.05 OGC is responsible for supplying a complete and correct transcript with appropriate exhibits to OSD and ASCD for publication. Hearing transcripts do not require editorial review.

.06 The hearing record will be kept open for a period of 30 days after the hearing or as otherwise established by a majority vote of the Commissioners. Any material or information placed in the record during this period will be available to the Commissioners upon request.

SECTION 12. COMMISSION BRIEFINGS

.01 Briefings are used by the Commission to provide Commissioners and the general public insight into civil rights issues without the formality of a hearing. Any program office may be assigned responsibility for conducting a briefing by the Staff Director.

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.02 Staff is encouraged to use various sources to gather suggestions for appropriate briefing witnesses. Commissioners are the primary source of suggestions for briefing witnesses. Additional sources may include, but are not limited to~~,~~ other program offices, regional directors, and appropriate external groups. If two Commissioners jointly request that staff invite a particular witness, staff may ~~must~~ invite that witness if doing so furthers the consideration of varied and opposing viewpoints, opinions, and perspectives. No Commissioner may act jointly to invite more than two witnesses, which results in no more than 8 witnesses shall be required to be invited by staff by action of the Commission. Thereafter, a Commissioner or Commissioners may suggest as many witnesses as they deem advisable, but staff is not obligated to invite them, and staff may consult additional sources to invite additional witnesses for hearings.

Commented [SC2]: See comment above.

.03~~2~~ Commissioners are provided a proposed final list of briefing presenters for approval. To document that the briefing witnesses reflected varied and opposing views, opinions, and perspectives, OSD completes Section III of the *National Office Report Checklist for Briefing Reports* form. By completing this part of the form, OSD certifies that the briefing included a numerical balance of witnesses between opposing views, opinions and perspectives or that a numerical balance could not be achieved or was not appropriate in light of the subject of the briefing and/or the availability of credible witnesses. Section IV of this form is completed by the Staff Director before the proposed final draft report and checklist is provided to the external reviewer.

.04~~3~~ The briefing record will be kept open for a period of 30 days after the briefing or as otherwise established by a majority vote of the Commissioners. Any material or information placed in the record during this period will be available to the Commissioners upon request.

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Proposed A-I

As the staff persons arrange for interviews of external fact witnesses or experts for the purpose of informing writing of reports, etc., the Commissioners will be given notice of the names and titles of proposed witnesses, so that the Commissioners and their special assistants can observe the interview first-hand. The observations will help the Commissioners better understand the subject matters covered, and enable the Commissioner to conduct and follow-up with questions of the witnesses . If more than one Commissioner (or Commissioner's Special Assistant) representing Democratic or Republican appointing authorities wishes to attend, the Staff Director may limit attendance to one representative from each (provided circumstances clearly warrant such a limit).

Commented [SC1]: This A-I, in total, is inconsistent with the internal communication procedures between staff and Commissioners as described in A-I 9-2.2 which reads: .01 Individual Commissioners and their assistants may, at any time, request information about proposed or on-going Commission projects from the Staff Director, the General Counsel, or the Director of the Office for Civil Rights Evaluation. Such information may include, e.g., interrogatory responses, responses to data requests, availability of confirmed witnesses or panelists, and/or consultant work product, but not working drafts of reports.

. 02 If the Staff Director and the relevant senior managers determine that it is appropriate, Commissioners may speak directly with line staff responsible for a particular project, or segment of a project, related to their inquiry. Commissioners and their assistants will not contact individual staff members directly without first addressing their inquiries to the Staff Director and the relevant senior managers identified above.

. 03 Staff, in consultation with their department manager, may, as appropriate, contact individual Commissioners to seek their input and/or expertise regarding proposed or on-going projects.

Commented [SC2]: Also, I am not clear about who falls in the category of "external fact witness or expert." All witness interviews must be recorded and transcribed.
According to 702.14 (a) An accurate transcript shall be made of the testimony of all witnesses at all proceedings of the Commission. Transcripts shall be recorded solely by the official reporter or by any other person or means designated by the Commission.
(b) Every person who submits data or evidence shall be entitled to retain or, on payment of lawfully prescribed costs, procure a copy or transcript thereof, except that witnesses in a hearing held in executive session may be limited, for good cause, to inspec-tion of the official transcript of their testimony.

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Date : 4/19/2021 3:34:40 PM
From : "Juana Silverio" jsilverio@usccr.gov
To : "Norma Cantu" ncantu@usccr.gov
Subject : PLEASE REVIEW- Ltr on AIs; NC SAC; Initial thoughts re: the proposed AIs from Rs
Attachment : AI Letter.docx;

Hi Commissioner Cantu,

Hope it was a great Monday.

As promised, here is the letter I mentioned last week that the SAs are circulating to their Commissioners re: getting the AIs organized, updated and in a shareable and searchable format on the Shared Drive or its equivalent. Let me know if you have any concerns and/or changes to the attached.

See below for my other notes.

Chat soon.
Juana

Thoughts on proposed AIs-
- The DEM caucus SAs met this morning & we'd suggest the following:

Witness Interviews
* ADA requirements for interviews may not allow for this (Commissioner presence)- F*ederal over AI/Commissioner will*
* Statutory requirements for separation of staff and Commissioners' official duties – *GC Should weigh in highlighting federal over AI*

Panelist requests
* Explanations from OCRE on why panelists are not being invited (as a compromise to an AI)
* What do our current AI's and rules require for Commissioner recommendations to be invited- *Past practice has been that Commissioners have the say so on who to invite; recently the Commissioners have taken Staff input. Will get you the AI language but recommend that SD come back with STATUTORY language backing up impartiality and STAFF role in this*
* Resources may not be used effectively if we institute this system *(argument as to why there is a limit on the # of speakers ultimately allowed to speak)*
* Need to preserve the independence of the agency *(same as above)*

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As for the EAC AI
** Here, Kladney's SA is going to circulate language that will include the caucus sentiment

1. Nominated for consideration must be *ABLE AND WILLING TO SERVE*
2. The fear is that this deal will BIND future Chairs to this process; I'd recommend that language be included to the effect: *"the ultimate appointment decision is at the discretion of the Chair, provided a good faith effort decision-making process was observed to preserve the integrity and mission of the appointment."*

--
SAC appointment- North Carolina
- The NC SAC- the Rs and Ds have reached a deal and need your sign off to OK the re-authorization.
- *Context below but bottom line- Ds to add a R member if Rs agree to remove objection to a D member*

> NC SAC * The Democratic caucus accepts adding Mincey *please see context below (no additional application needed) * When recirculating will make clear that Commissioners should not submit objections to other members of the slate who have already been circulated * The Republican caucus will remove the objection to Lechner *please see context below (no additional application needed) * Vote in the SAC w/8-8 balance For situational awareness please see the context for the NC SAC: * Slate failed to get a majority vote on Friday 10/30. * 15 candidates, 8 Democrats (including two Independents who lean Democrat), 7 Republicans (including one candidate who identified as “something else”). * Note that Olga Wright, the returning Chair, identifies herself as a Democrat but ran for public office as a Republican in all her past elections. * Comm. Kirsanow (and Adams) objected to the balance of the slate, and requested that it be shifted to 7 Republicans and 7 Democrats (removing one Dem). * John/Adams objected to the inclusion of Jennifer Lechner as he don't consider her a true Republican." In her stead they would like to replace her with a Mr. Patrick Mincey who Carissa recruited. Replacing Lechner with Mincey takes the gender balance of the slate to 11 men and 4 women. Mincey is a white collar crime attorney and lacks major civil rights experience, however in our vetting process we did not find anything objectionable regarding his public statements or conduct.

--
Juana Silverio *(she/her/ella)*
Special Assistant to Commissioner Norma V. Cantú
U.S. Commission on Civil Rights
E: jsilverio@usccr.gov
http://usccr.gov/
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425

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From: Alexander Heideman
Sent: Thursday, April 15, 2021 11:18 AM
To: Irena Vidulovic; Amy Royce; Thomas Simuel
Cc: Carissa Mulder; Juana Silverio; Alec Deull; John Mashburn; Alexander Heideman
Subject: Re: [EXTERNAL] Re: Draft letter to Mauro

Just updated the date and altered the spacing.

From: Irena Vidulovic <ividulovic@usccr.gov>
Date: Thursday, April 15, 2021 at 11:16 AM
To: Amy Royce <aroyce@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>, Alexander Heideman <aheideman@usccr.gov>
Cc: Carissa Mulder <CMulder@usccr.gov>, Juana Silverio <jsilverio@usccr.gov>, Alec Deull <adeull@usccr.gov>, John Mashburn <jmashburn@usccr.gov>, Alexander Heideman <alexanderheideman@gmail.com>
Subject: Re: [EXTERNAL] Re: Draft letter to Mauro

Looks good. Thank you everyone for your input, especially Alex for getting us moving on this important issue and for drafting. I have accepted all the changes and have added the language to the official letterhead doc.

I think the next step is that we share with our bosses for approval/green light unless anyone else has any additional changes.

Irena

From: Amy Royce
Sent: Wednesday, April 14, 2021 9:55:32 AM
To: Thomas Simuel; Alexander Heideman; Jdp Sil; Irena Vidulovic
Cc: Carissa Mulder; Juana Silverio; Alec Deull; John Mashburn; Alexander Heideman
Subject: Re: [EXTERNAL] Re: Draft letter to Mauro

Thanks Alex, looks good to me

From: Thomas Simuel
Sent: Wednesday, April 14, 2021 9:48:15 AM
To: Alexander Heideman; Jdp Sil; Irena Vidulovic
Cc: Carissa Mulder; Juana Silverio; Alec Deull; Amy Royce; John Mashburn; Alexander Heideman
Subject: RE: [EXTERNAL] Re: Draft letter to Mauro

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Thanks! Whatever the final version, I believe it will meet my Commissioner's approval.

Thanks,

Thomas

-------- Original message --------
From: Alexander Heideman <aheideman@usccr.gov>
Date: 4/14/21 9:42 AM (GMT-05:00)
To: Thomas Simuel <tsimuel@usccr.gov>, Jdp Sil <juanadelpilar@gmail.com>, Irena Vidulovic <ividulovic@usccr.gov>
Cc: Carissa Mulder <CMulder@usccr.gov>, Juana Silverio <jsilverio@usccr.gov>, Alec Deull <adeull@usccr.gov>, Amy Royce <aroyce@usccr.gov>, John Mashburn <jmashburn@usccr.gov>, Alexander Heideman <alexanderheideman@gmail.com>
Subject: Re: [EXTERNAL] Re: Draft letter to Mauro

Accepted and incorporated 95% of edits. Please let me know if you want to discuss further.

From: Thomas Simuel <tsimuel@usccr.gov>
Date: Wednesday, April 14, 2021 at 9:17 AM
To: Jdp Sil <juanadelpilar@gmail.com>, Irena Vidulovic <ividulovic@usccr.gov>
Cc: Carissa Mulder <CMulder@usccr.gov>, Alexander Heideman <aheideman@usccr.gov>, Juana Silverio <jsilverio@usccr.gov>, Alec Deull <adeull@usccr.gov>, Amy Royce <aroyce@usccr.gov>, John Mashburn <jmashburn@usccr.gov>, Alexander Heideman <alexanderheideman@gmail.com>
Subject: RE: [EXTERNAL] Re: Draft letter to Mauro

Any of the versions would be sufficient for my boss.

Thanks,

Thomas

-------- Original message --------
From: Jdp Sil <juanadelpilar@gmail.com>
Date: 4/14/21 8:45 AM (GMT-05:00)
To: Irena Vidulovic <ividulovic@usccr.gov>
Cc: Carissa Mulder <CMulder@usccr.gov>, Alexander Heideman <aheideman@usccr.gov>, Juana Silverio <jsilverio@usccr.gov>, Alec Deull <adeull@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>, Amy Royce <aroyce@usccr.gov>, John Mashburn

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<jmashburn@usccr.gov>, Alexander Heideman <alexanderheideman@gmail.com>
Subject: [EXTERNAL] Re: Draft letter to Mauro

CAUTION: This email is from outside USCCR.

Best,
Juana Silverio, Esq.

On Apr 13, 2021, at 1:19 PM, Irena Vidulovic <ividulovic@usccr.gov> wrote:

I agree with all your redline edits.

From: Carissa Mulder
Sent: Tuesday, April 13, 2021 1:04:17 PM
To: Irena Vidulovic; Alexander Heideman; Juana Silverio; Alec Deull; Thomas Simuel; Amy Royce; John Mashburn; juanadelpilar@gmail.com
Cc: Alexander Heideman
Subject: RE: Draft letter to Mauro

My redline thoughts attached.

From: Irena Vidulovic <ividulovic@usccr.gov>
Sent: Tuesday, April 13, 2021 12:51 PM
To: Alexander Heideman <aheideman@usccr.gov>; Juana Silverio <jsilverio@usccr.gov>; Carissa Mulder <CMulder@usccr.gov>; Alec Deull <adeull@usccr.gov>; Thomas Simuel <tsimuel@usccr.gov>; Amy Royce <aroyce@usccr.gov>; John Mashburn <jmashburn@usccr.gov>; juanadelpilar@gmail.com
Cc: Alexander Heideman <alexanderheideman@gmail.com>
Subject: Re: Draft letter to Mauro

My redline thoughts attached. Feel free to make edits on top of my redline and of course feel free to change/edit anything that I have added.

Thanks again Alex for drafting the letter!
Irena

From: Irena Vidulovic
Sent: Tuesday, April 13, 2021 12:32:45 PM
To: Alexander Heideman; Juana Silverio; Carissa Mulder; Alec Deull; Thomas Simuel; Amy Royce; John Mashburn; juanadelpilar@gmail.com
Cc: Alexander Heideman
Subject: Re: Draft letter to Mauro

+ Juana's personal email since her USCCR is not up yet (shocker I know).

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Thank you Alex for this first draft should have some thoughts in a redline soon.

Irena

From: Alexander Heideman
Sent: Tuesday, April 13, 2021 12:21:14 PM
To: Juana Silverio; Carissa Mulder; Alec Deull; Thomas Simuel; Amy Royce; John Mashburn; Irena Vidulovic
Cc: Alexander Heideman
Subject: Draft letter to Mauro

Please find attached.

Alex

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UNITED STATES COMMISSION ON CIVIL RIGHTS

1331 Pennsylvania Avenue, NW• Suite 1150 • Washington, DC 20425 www.usccr.gov

April 15, 2021

Mauro Morales
Staff Director
1331 Pennsylvania Ave NW
Washington, DC 20425

Dear Mr. Morales:

We, the undersigned Commissioners, write today to request the promulgation of a searchable digital collection of the Commission's Administrative Instructions (AIs). In order to efficiently serve as Commissioners, we must have easy access to the AIs. Thus, we request that you provide us with the following:

- One updated digital file containing every AI that is in effect, in its proper order, and with the date and manner of each AI's ratification
- Physical copies of that digital file by request

The general counsel has sent some of this information piece-by-piece via email to us over the past few weeks. But those AIs have not been updated or organized, and they have not been collected into a single digital document. As matters stand, accessing the AIs requires that we attempt to assemble a complete list from the documents we have been sent piecemeal. Thus, this effort is inadequate.

This is simply a matter of good governance. Please provide us with a timeline for completion of the above tasks.

Sincerely,

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Date : 4/19/2021 7:36:16 PM
From : "Pilar McLaughlin" pmclaughlin@usccr.gov
To : "Sheryl Cozart" sccozart@usccr.gov, "David Ganz" dganz@usccr.gov
Subject : RE: Follow Up on Today's Business Meeting
Attachment : AI1-6Witnesses - Yaki revision PVM edits.docx;AI on Appointment Authority (general and EAC) PVM edits.docx;OCRE.A-I.4.15.21 PVm edits.docx;image001.gif;image002.gif;

David:

Attached are my edits.

From: Sheryl Cozart <sccozart@usccr.gov>
Sent: Monday, April 19, 2021 12:53 PM
To: David Ganz <dganz@usccr.gov>; Pilar McLaughlin <pmclaughlin@usccr.gov>
Subject: RE: Follow Up on Today's Business Meeting

David,

Attached are my redline comments and edits of the A.I.s.
A.I. on appointments to other Federal entities:

- I believe the appointment is to the Board of Advisors of the EAC, not the EAC itself.

A.I. on Commission Hearings

- Only a couple of small language changes.

Proposed A.I. re Commissioners observing external fact witnesses or experts:

- This proposed A.I. seems inconsistent with the internal communication procedures between staff and Commissioners.
- This proposed A.I. does not make clear who falls in the category of external fact witness or expert and does not offer the interview to be recorded and transcribed as required in our regs.

From: David Ganz <dganz@usccr.gov>
Sent: Friday, April 16, 2021 6:06 PM
To: Pilar McLaughlin <pmclaughlin@usccr.gov>; Sheryl Cozart <sccozart@usccr.gov>
Subject: RE: Follow Up on Today's Business Meeting

Please provide redlined comments and edits to these A.I.s by mid-day on Tuesday to me. I will consolidate OGC comments.

From: David Ganz
Sent: Friday, April 16, 2021 6:04 PM
To: ExecutiveStaff <ExecutiveStaff@usccr.gov>
Cc: Pilar McLaughlin <pmclaughlin@usccr.gov>; Sheryl Cozart <sccozart@usccr.gov>; Mauro Morales <mmorales@usccr.gov>
Subject: RE: Follow Up on Today's Business Meeting

Hello all,

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As Mauro indicated, please review these proposed A.I.s to determine the impact on your division's ability to carry out its, and the USCCR's broader, programmatic and statutory functions. Please redline the A.I.s and provide comments and send them back to me by COB Tuesday, April 20. OGC will consolidate the comments and edits from your respective divisions. OGC will provide comments and edits as well. I know it is quick turnaround, so I appreciate you prioritizing it. If you need an extension to Wednesday, please let me know. After we have consolidated comments, Mauro and Commission leadership will determine how we present it the Commissioners and SAs. Kind regards,

David

From: Mauro Morales <mmorales@usccr.gov>
Sent: Friday, April 16, 2021 5:04 PM
To: ExecutiveStaff <ExecutiveStaff@usccr.gov>
Subject: FW: Follow Up on Today's Business Meeting

Executive Team

Please review and determine if your department needs to provide input on one or more of these three AI's. What you should determine is what would be the legal, administrative and research impact to your department's ability to carry out its responsibility and ensure the mission of USCCR can be carried out. I am going to task David Ganz to coordinate a response for the agency to Commissioners on these three AI's. I will coordinate a check in on Monday to see how we should provide draft a response.

Mauro

From: Carissa Mulder
Sent: Friday, April 16, 2021 4:52 PM
To: Mauro Morales <mmorales@usccr.gov>; Peter Kirsanow <pkirsanow@usccr.gov> >; Commissioners <Commissioners@usccr.gov>; pkirsanow@beneschlaw.com
Subject: Re: Follow Up on Today's Business Meeting

See attached.

From: Mauro Morales
Sent: Friday, April 16, 2021 4:34:23 PM
To: Peter Kirsanow
Cc: CommissionerAssistants; ExecutiveStaff; Commissioners
Subject: Follow Up on Today's Business Meeting

Commissioner Kirsanow,

Pursuant to the vote of Commissioners during the business meeting, please forward the AI's you presented today for evaluation by appropriate agency staff for legal sufficiency, administrative compliance and research objectivity. Please do so within 48 hours of the receipt of this email as required by the AI and indicated by Commissioner's vote on the final motion. I have to notice the next Commission meeting by this Thursday the 22nd in

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time to hold a business meeting on Friday, April 30th at 12 noon. It is our plan to provide Commissioners with an evaluation of the proposed AI's by Friday, April 23rd . We believe that one week is sufficient time for Commissioners to decide to amend, revise or withdraw the proposed three AI's. Please keep in mind that any changes made to your proposed AI's must be sent to Commissioners 48 hours in advance of the noon business meeting on Friday the 30th.

Please contact me if you have any questions or concerns about meeting Commissioner determined deadlines.

Mauro Morales
Staff Director
U.S. Commission on Civil Rights
P: 202-376-7796| F: 202-376-7672
Mmorales@usccr.gov
http://usccr.gov/
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425

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AI on Commission Hearings

SECTION 11. COMMISSION HEARINGS

.01 The OGC is responsible for preparing for and holding Commission hearings. This includes ensuring that the witnesses, when viewed as a whole, possess sufficient policy, legal, academic, advocacy, and other knowledge and experience necessary for a full and balanced inquiry into the issues.

.02 To document that hearing witnesses reflected varied and opposing views, opinions, and perspectives, OSD completes Section III of the *National Office Report Checklist for Hearing Reports* form. By completing this part of the form, OSD certifies that the hearing included a numerical balance of witnesses between opposing views, opinions and perspectives or that a numerical balance could not be achieved or was not appropriate in light of the subject of the hearing and/or the availability of credible witnesses. Section IV is completed by the Staff Director before the proposed final draft report and checklist are provided to the external reviewer.

.03 Staff is encouraged to use various sources to gather suggestions for appropriate hearing witnesses. Commissioners are the primary source of suggestions for hearing witnesses. ~~These~~ Additional sources may include, but are not limited to, ~~Commissioners,~~ other program offices, regional directors, and appropriate external groups. If two Commissioners request that staff invite a particular witness, staff must invite that witness. No Commissioner may act jointly to invite more than two witnesses, which results in no more than 8 witnesses shall be required to be invited by staff by action of the Commission. Thereafter, a Commissioner or Commissioners may suggest as many witnesses as they deem advisable, but staff is not obligated to invite them, and staff may consult additional sources to invite additional witnesses for hearings.

.04 OGC prepares hearing proposals, design or implementation plans, and briefing or background books. When preparing hearing proposals this office should demonstrate a consideration of varied and opposing views, opinions, and perspectives. This office also verifies the accuracy of transcripts, drafts hearing reports, and maintains official hearing records.

.05 OGC is responsible for supplying a complete and correct transcript with appropriate exhibits to OSD and ASCD for publication. Hearing transcripts do not require editorial review.

.06 The hearing record will be kept open for a period of 30 days after the hearing or as otherwise established by a majority vote of the Commissioners. Any material or information placed in the record during this period will be available to the Commissioners upon request.

SECTION 12. COMMISSION BRIEFINGS

.01 Briefings are used by the Commission to provide Commissioners and the general public insight into civil rights issues without the formality of a hearing. Any program office may be assigned responsibility for conducting a briefing by the Staff Director.

.02 Staff is encouraged to use various sources to gather suggestions for appropriate briefing witnesses. Commissioners are the primary source of suggestions for briefing witnesses.

Commented [PM1]: Ok, so now I understand… this is intended to be a revision of Section 11 of AI 1-6

Commented [PM2]: When you say "balanced" do you mean bi-partisan?

Commented [PM3]: What is the point of the paragraph .03 below if this form is filled out and certified? The filling and certifying of this form seems to safeguard the required political balance, no? Is this form actually used because I have not seen it used in practice? If not, perhaps we should start using it.

Commented [PM4]: These two sentences are contradictory. On one hand you are saying you want staff to find witnesses from various sources, but on the other hand you want staff to primarily seek witnesses from Commissioners.

Commented [PM5]: This cuts against Section 4 .06 in AI 1-6, Responsibilities. Commissioners have an established set of responsibilities, none of which include picking witnesses, or, as is here, having veto power over career staff.

Furthermore, this practice cuts against the Commission's regulations, 45 C.F.R. § 701.13 (e) that put project development and civil rights evaluation squarely in the responsibilities of OCRE or, in the case of hearings, with OGC.

Finally, if Commissioners can demand that certain witnesses are invited, what happens if OGC determines that those those invited witnesses don't possess sufficient knowledge and experience? This creates a situation where you may have commissioners questioning the legal determinations of career legal staff or, in the case of OCRE, researchers and research methodologies.

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Additional sources may include, but are not limited to~~,~~ other program offices, regional directors, and appropriate external groups. If two Commissioners jointly request that staff invite a particular witness, staff must invite that witness. No Commissioner may act jointly to invite more than two witnesses, which results in no more than 8 witnesses shall be required to be invited by staff by action of the Commission. Thereafter, a Commissioner or Commissioners may suggest as many witnesses as they deem advisable, but staff is not obligated to invite them, and staff may consult additional sources to invite additional witnesses for hearings.

Commented [PM6]: See my same comments above.

.03~~2~~ Commissioners are provided a proposed final list of briefing presenters for approval. To document that the briefing witnesses reflected varied and opposing views, opinions, and perspectives, OSD completes Section III of the *National Office Report Checklist for Briefing Reports* form. By completing this part of the form, OSD certifies that the briefing included a numerical balance of witnesses between opposing views, opinions and perspectives or that a numerical balance could not be achieved or was not appropriate in light of the subject of the briefing and/or the availability of credible witnesses. Section IV of this form is completed by the Staff Director before the proposed final draft report and checklist is provided to the external reviewer.

.043 The briefing record will be kept open for a period of 30 days after the briefing or as otherwise established by a majority vote of the Commissioners. Any material or information placed in the record during this period will be available to the Commissioners upon request.

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ADMINISTRATIVE INSTRUCTION __- __

COMMISSION APPOINTMENTS TO OTHER FEDERAL ENTITIES

Section 1.
.01 Any authority specifically granted the Commission of Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc. shall be exercised by the Commission as a whole by majority vote.

Section 2
.02

(1) For the two (2) appointments to the U.S. Election Assistance Commission, the members appointed by Democratic authorities shall nominate two individuals of their membership, and the members appointed by the Republican authorities shall nominate two individuals of their membership.

(2) The members appointed by the Democratic authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Democratic authorities.

(3) The members selected shall be placed in nomination and ratified in conformance with Section 1.

Commented [PM1]: I would consider adding the phrase "unless specifically authorized by the entity, statute, regulation, or executive order" and/or "unless the appointing authority is specifically afforded to the Chair or Staff Director of the Commission." I would also consider adding a line that specifically excludes the Commission on Black Men and Boys that gives the SD the authority to appoint one commissioner and potentially additional commissioners were other appointing authorities fail to offer appointments.

Commented [PM2]: What happens if the respective caucuses can't agree on a nominee?

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Proposed A-I

As the staff persons arrange for interviews of external fact witnesses or experts for the purpose of informing writing of reports, etc., the Commissioners will be given notice of the names and titles of proposed witnesses, so that the Commissioners and their special assistants can observe the interview first-hand. The observations will help the Commissioners better understand the subject matters covered, and enable the Commissioner to conduct and follow-up with questions of the witnesses. If more than one Commissioner (or Commissioner's Special Assistant) representing Democratic or Republican appointing authorities wishes to attend, the Staff Director may limit attendance to one representative from each (provided circumstances clearly warrant such a limit).

Commented [PM1]: The only time I have seen interviews conducted at the Commission is in the context of the 14 C report where OCRE interviewed individuals with disabilities. In that context, I can't imagine the level of intrusiveness that would occur if SAs and Commissioners would have been allowed to observe those sensitive interviews.

Further, this type of policy starts to encroach on OCRE's role in researching and drafting reports. Per the Commission's regulation, 45 CFR § 701.13 (e) OCRE is responsible for "monitoring, evaluating, and reporting on…" and this responsibility includes appropriate research methods and practices that should be at the discretion and expertise of the director of this office.

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OVERSTOCK

Date : 4/20/2021 9:34:36 AM
From : "Irena Vidulovic" ividulovic@usccr.gov
To : "Debo P. Adegbile" dadegbile@usccr.gov, "Adegbile, Debo" Debo.Adegbile@wilmerhale.com
Cc : "Zervoudis, Flor" Flor.Zervoudis@wilmerhale.com
Subject : TO DO + USCCR Updates
Attachment : AI on Appointment Authority (general and EAC) AR notes (1).docx;AI Letter to the Staff Director.docx;

Good Morning Adegbile,

Please see the updated TO DO list for this week, the AI information and USCCR updates.

TO DO LIST:

1. Letter to the Staff Director from all Commissioner's regarding making all the AI's available electronically in one place. Please see the letter attached that all the SA's worked on. Once we get the green light from all the Commissioners we can send to the Staff Director.
2. Review the attached EAC AI that is redlined. Please add any additional thoughts or approve as is so we can share with the rest of the caucus.
3. Scheduling an April 30th business meeting at noon. Will send a calendar invitation, we also need to schedule a caucus meeting on Tuesday, April 27th at 3pm ET.

AI's

EAC appointing authority (redline attached)

- We have worked on the language that you emphasized during the calls.
- That the Chairperson still retains the authority to appoint with the consultation from Commissioners.
- That the Commissioners selected by respective caucus are willing and able to serve
- Finally, should the person by the choosing party not be able to serve, the chairperson shall be free to choose any other member of the Commission, including said chairperson, to serve on the U.S. Election Assistance Commission

The other 2 AI's will be reviewed by OGC and OCRE because it requires their input. However both of the AI have been non-starters for you and Dave.

OCRE Witness Interviews

The R's are wanting to attend interviews that OCRE conducts in order to obtain information for our investigations. Such interviews were conducted for the Sub-Minimum Wages, as well as for Bail Reform.

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- ADA requirements for interviews may not allow for this
- Bail reform interviews also conducted with focus jurisdictions
- Statutory requirements for separation of staff and Commissioners – GC to weigh in.

Panelist requests for briefings

- Explanations from OCRE on why panelists are not being invited
- What do our current AI's and rules require for Commissioner recommendations to be invited
- Resources may not be used effectively if we institute this system
- Need to preserve the independence of the agency

USCCR Updates:

- FEMA/Puerto Rico

  * The notational vote passed
  * FEMA panelist recommendations + briefing book recommendations. The panelist recommendations were due by this Friday, April 2nd. There were numerous recommendations from Irena, Alex, John Mashburn. Carissa and Thomas had one recommendation.
  * OCRE send the invitations last week. No confirmations to date. Irena spoke to Jason and has some updates.

- Commissioners may need to assist in getting the invitations to the principals – particularly Congressman Peters. Irena to update

  Briefing book recommendations are due on Friday, May 7th.
  * Virtual briefing moved to June 25
  * 2 site visits scheduled - Houston 11/19/21, Puerto Rico 12/10/21
  * Third briefing planning meeting will take place on Tuesday, April 20th at 11am ET.

  Bail Reform

  * Kladney/Amy negotiations with R's ongoing
  * Oregon SAC had their last briefing on Friday 12/11, Catherine attended. Rukku shared briefing notes with OCRE in the comments on the first draft.

- Draft coming on 4/26

  Maternal Health

  * OCRE, Debo and Irena met last week to discuss the final draft. Productive meeting, Irena to update the caucus.
  * Focus on Chapter 3 – Federal response, as area for potential bi-partisan consensus
  * New HHS leadership – OCRE sent HHS and CDC targeted questions for affected agency review
  * Need current data for programs that received funding
  * OCRE sent updated ROG's to HHS and also sent the draft report for agency review two weeks ago. No response from HHS, Irena advised

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Nick and OCRE to reach out to panelist including Congresswoman Ayanna Pressley and ask them to put pressure on HHS to respond especially since it was Black Maternal Health week last week and HHS and CDC was participating in all these various events with the partner organizations. Irena will follow up with OCRE this week and see if she can share what OCRE sent and to which programs
    * Final draft coming to Commissioners in May
    * 3 weeks to return edits before vote in June
    * Irena discussing with Republicans whether they will support

Broken Promises pandemic update

* Senator Warren's office has reached out to Irena to schedule a meeting this week on the report update + will invite Julie to the meeting.
* Interested to find out spokesperson for Commission. Irena provided public material and
* Pursue social media strategy using briefing video/materials
* Can we generate clips from the briefing video, into individual panelist testimony or other excerpts? **Irena to reach out to Ang.
* Revisit when we discuss project planning re FY22? (/FEMA, Comm. Adams' proposal, etc.).

Follow ups with Mauro

* The SA's have requested a follow up meeting with Mauro, we were trying to reinstitute the bi-weekly meetings, Mauro has cancelled our April 20th meeting. However Mauro has not been amenable to meeting, our last SA Meeting was held on 3/23.
* Mauro scheduled the meeting with the SA's next week on Tuesday, April 20th at 3pm. Juana you need to be added to the calendar invitation.
* The items raised at the last meeting for which we don't have updates:
    * AI's available online
    * Commissioner IT needs
    * Website update
    * Budget priorities
        * Forward funding for site visits in Puerto Rico and Texas
        * Regional staffing – at least one staffer for territory SACs
        * IT and website
    * SAC letters

Other outstanding items for all SA's

* AI 5-9
    * OCG provided redline and comments for Commissioner consideration for standards for removal for SAC members and procedures the Commission should adopt
* Project proposals
* "Balance" SAC AI?
* Expired SACs (14)

Project proposals for FY21/22

* Rukku checked with John to see if Commissioner Adams will submit new project proposals. John is working with Commissioner Adams on project priorities and check back on timeline. Rukku to follow up with John this week.
* John (at all SA meeting) said that Comm. Adams had a proposal, so Rukku

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will generate a timeline for consideration.
* We will proceed with the FEMA Project as the FY22 statutory enforcement report.
* Need a new FY22 project planning calendar – Rukku generated the program planning schedule with emphasis on time early in the process for bipartisan discussion.

Personnel

* OCRE Director - posting closed. Interviews completed and offer should be going out soon.
* Commission on Black Man and Boys - posting closed + interviews scheduled
* Two regional positions for civil rights analysts – closes 3/31
* Summer 2021 interns – Irena hired a spring intern. Amy hired Clara Malkin – to start 5/24
* Irena's intern Alana Thomas started on March 16th Alana Thomas is currently a second year law student at Georgetown. She is currently pursuing a Master of Public Policy degree from Loyola University Chicago, and received her BS in Psychology from Virginia Tech. Alana has focused her studies on affordable housing and race in law. She currently serves as the Vice President of Marketing Strategy at Citi. Alana is from Chicago, and will be supporting Commissioner Adegbile
* Fulbright fellows – Media fellow recommendation for Ang.
    * Ang hired a Fullbright fellow!

Commission on the Social Status of Black Men and Boys

* Was signed into law, more details to come on what this means.
* Appointments from White House
* Call rescheduled with Congresswoman Wilson
* Women/Girls bill?

Irena Vidulovic
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ADMINISTRATIVE INSTRUCTION __- __

COMMISSION APPOINTMENTS TO OTHER FEDERAL ENTITIES

Section 1.
.01 Any authority specifically granted the Commission of Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc. shall be exercised by the Commission Chairperson in consultation with all members of the commission.~~as a whole by majority vote~~.

Section 2
.02

(1) For the two (2) appointments to the U.S. Election Assistance Commission, the members appointed by Democratic authorities shall nominate two individuals of their membership that are ready willing and able to serve, and the members appointed by the Republican authorities shall nominate two individuals of their membership that are ready willing and able to serve.

(2) The members appointed by the Democratic authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Democratic authorities.

(3) Should the person by the choosing party not be able to serve, the chairperson shall be free to choose any other member of the Commission, including said chairperson, to serve on the U.S. Election Assistance Commission/

(~~3~~4) ———— The members selected shall be placed in nomination and ratified in conformance with Section 1.

NOTE: I don't see the AI for the rebuttal/surrebuttal,…but I will not vote for it if that crap stays in their about understanding the individual commissioners point-of-vote or vote.

Commented [1]:
Past practice has been that the Chair makes these appointments. This reduces the power of the Chair.

We should find out all the boards and other groups the Commission appoints to in order to understand the full scope of what appointing authority the Chair is relinquishing

Commented [2]:
These requirements do not belong in an AI to be binding on all future compositions of the Commission. If Norma wants to agree to this process for the current appointments, that would be understandable since we are currently 4-4. In the future, if the Commission is 6-2 again, it would be less understandable to give 2 Commissioners this much control.

Alternative: Create a rule committing to bipartisan

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UNITED STATES COMMISSION ON CIVIL RIGHTS

1331 Pennsylvania Avenue, NW• Suite 1150 • Washington, DC 20425 www.usccr.gov

April 15, 2021

Mauro Morales
Staff Director
1331 Pennsylvania Ave NW
Washington, DC 20425

Dear Mr. Morales:

We, the undersigned Commissioners, write today to request the promulgation of a searchable digital collection of the Commission's Administrative Instructions (AIs). In order to efficiently serve as Commissioners, we must have easy access to the AIs. Thus, we request that you provide us with the following:

- One updated digital file containing every AI that is in effect, in its proper order, and with the date and manner of each AI's ratification
- Physical copies of that digital file by request

The general counsel has sent some of this information piece-by-piece via email to us over the past few weeks. But those AIs have not been updated or organized, and they have not been collected into a single digital document. As matters stand, accessing the AIs requires that we attempt to assemble a complete list from the documents we have been sent piecemeal. Thus, this effort is inadequate.

This is simply a matter of good governance. Please provide us with a timeline for completion of the above tasks.

Sincerely,

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Date : 4/20/2021 3:32:10 PM
From : "Angelia Rorison" arorison@usccr.gov
To : "David Ganz" dganz@usccr.gov
Subject : PAU Notes on Proposed AIs

Hi David,

So I don't know if I have redline edits for the AI's, however, I do have the following notes on the PA/communications impact these proposed changes could yield:

- **Appointment to other federal agencies**
  - I don't really have any comments on the AI - but I would like to point out that if we were to appoint Commissioner Adams to the EAC there would be some pretty significant public blow back. There would certainly be media attention and create a public affairs situation we do not have the capacity to handle.
  - As you know, the EAC is charged with *administering payments to states and developing guidance to meet HAVA requirements, adopting voluntary voting system guidelines, and accrediting voting system test laboratories and certifying voting equipment. It is also charged with developing and maintaining a national mail voter registration form.* I will remind you that Commissioner Adams not only has his own organization that manipulates voting data by indicating it is fraudulent but has some connections to that nonprofit in CA that is suing the state over voting laws that the LA Times had contacted us over.
  - Not saying this AI is right or wrong, I definitely think it should be bipartisan. I just want to point out that this will not only delegitimize our work but also cause quite a stir on social media and with reporters.
  - Here are a few, of many, article written about Adams' appointment to USCCR:
    - https://www.theguardian.com/us-news/2020/oct/26/us-election-voter-fraud-mail-in-ballots
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    - https://www.nbcnews.com/politics/donald-trump/vote-fraud-crusader-j-christian-adams-sparks-outrage-n796026
- **AI 1-6 Revisions**
  - In all of our messaging and on our website we claim to be an independant fact finding agency. I don't see how we can do that when politicizing the panelists/witnesses. If Commissioners
  - I will also point out that we get negative comments about our choice of panelists on social media frequently. If selected by Commissioners in this way it will create a pubic, partisan battle over facts vs

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alternative facts at every briefing. Not sure how that serves the Commission or allows us to be independent. If the Commissioners are selecting the narrative through their choices. Again, I believe this would bring undue negative attention to the Commissioner and a wave of FOIA requests and media inquiries.

- **Proposed AI for OCRE**
  - Again, the optics on this would be bad - if we are independant, why can't those questions be asked of panelists in public on the record?
  - This would also raise a lot of questions with panelists and pass that burden on to staff. As you heard in the FEMA meeting today, it is hard enough to get panelists to agree to come and testify. Creating another rule that would turn people off limiting who will agree - again, making our reports less robust.
- **Lastly, I want to just express the impact on staff and the quality of work that will be produced.** It is important that we think of the impacts on our organizational health. Mauro, Tina and the team here have worked so hard these last few years to get us into a functioning body again and it is disheartening to be a political football when we are supposed to be rooted in facts. If there is any policy, rule or legal opinion that can stop them from doing this I would argue that we take a stand against these AIs and this overreach by Commissioners.

Thanks for collecting this input David. Not sure if mine helps, but I just want to stress that we do not have the capacity to deal with this from a comms stand point. Also that these measures would delegitimize our past and future work, as well as the work of the SACs.

Thanks so much,
Ang

Angelia Rorison (She/Her)

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Date : 4/20/2021 5:43:18 PM
From : "David Ganz" dganz@usccr.gov
To : "Sheryl Cozart" sccozart@usccr.gov, "Pilar McLaughlin" pmclaughlin@usccr.gov
Subject : FW: PAU Notes on Proposed AIs

I think the below highlighted concern is legitimate. Thoughts?

From: Angelia Rorison <arorison@usccr.gov>
Sent: Tuesday, April 20, 2021 3:32 PM
To: David Ganz <dganz@usccr.gov>
Subject: PAU Notes on Proposed AIs

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- https://www.theguardian.com/us-news/2020/oct/26/us-election-voter-fraud-mail-in-ballots
- https://truthout.org/articles/gops-strategy-for-2020-election-looks-like-an-all-out-assault-on-voting-rights/
- https://www.nbcnews.com/politics/donald-trump/vote-fraud-crusader-j-christian-adams-sparks-outrage-n796026

- **AI 1-6 Revisions**
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Date : 4/20/2021 5:41:44 PM
From : "David Ganz" dganz@usccr.gov
To : "Angelia Rorison" arorison@usccr.gov
Subject : RE: PAU Notes on Proposed AIs

Thanks we will incorporate your concerns in our comments.

From: Angelia Rorison <arorison@usccr.gov>
Sent: Tuesday, April 20, 2021 3:32 PM
To: David Ganz <dganz@usccr.gov>
Subject: PAU Notes on Proposed AIs

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- **AI 1-6 Revisions**

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Date : 4/22/2021 5:27:59 PM
From : "Norma Cantu" ncantu@usccr.gov
To : "Mauro Morales" mmorales@usccr.gov
Cc : "Juana Silverio" jsilverio@usccr.gov
Subject : Re: Memo on AI's--CONFIDENTIAL & PRIVILEGED/PRE-DELIBERATIVE

Dear Mauro,
The draft is helpful. I was expecting two memos, actually---one from the General Counsel and one from the other staff, with your responding to both as the Director.
In writing one memo, you should have an introductory sentence that says you are giving feedback to each of the draft A Is, first by obtaining the analysis and legal opinion of the GC, and secondly by describing how the proposed A I would conflict with well-established policies and practices of the staff. Then, you would conclude that the language as it stands it not consistent with law, regs., and existing A Is.
So for section A, it would be useful to identify which are the arguments of the OGC and which are the objections of the other staff. In the first paragraph, you should start with 45 CFR 701.13 (c) which includes the duties of the GC to plan and conduct hearings, as well as provide advice on ethics, and to provide other legal duties in support of the Commission and the staff. There are four bullets in this part:

- Cannot have five Commissioners attending because it becomes a meeting, and the public must have notice and opportunity to attend the meeting, and a formal record of the interview must be prepared and maintained;
- If fewer than five Commissioners are present, Staff still have the responsibility to act ethically in conducting research and follow the three principles of the Belmont Report (respect of persons, beneficence and justice) which are needed to protect vulnerable interviewees, such as children, persons with disabilities, prisoners, and others
- The entire interview should take place with staff present, and staff have been trained to be polite and respectful of the interviewees. If a Commissioner needed to ask a follow-up question, the proper time, place, and manner would be in the open briefing (is this right term?)

In addition to the analysis provided by the General Counsel, the staff offered more feedback.

- The staff are not aware of any instances where they were asked by a Commissioner to participate in the questioning or the follow-up. However, if the Commissioner wanted the SA to hear the testimony earlier than the full hearing so the SA could help prepare the Commissioner for the full briefing, then a copy of the taped interview could be made accessible to the SA, provided the privacy and confidentiality rights of the interviewee were protected by the SA and the Commissioner.
- The staff are concerned that the Commissioners "taking two bites of the apple" in interviewing the same witnesses could lead to a confusing record and make it more challenging to sort out the facts and to meet the deadlines for drafting reports.

Section B.
The General Counsel is unable to ascertain whether the AI applies solely to the EAC or to all appointments. If the language is limited to the EAC, the language is still unclear about whether the appointments will meet the geographic expectation of the EAC. The language is also ambiguous about what happens when there is only one slot to be filled by appointment. The General Counsel concludes that 52 USC 20944 is unambiguous that the Director makes appointments to the Commission on Black Men and Boys.

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The staff offered feedback that they did not understand how the Commission would proceed if there a tie vote for an appointment, and do not see what the criteria will be for future appointments where there is only one slot to fill.

Section C. The General Counsel has analyzed the proposed A I and finds it to conflict with duties given to staff in OFCRE in 45 CFR 701.13 (c) and (e).
The evaluation process is independent of the Commission final assessment and report of civil rights enforcement and the matters of social justice. The delegation to the staff to find witnesses has been working effectively, and the General Counsel was not provided an example of an occasion when the staff rejected a recommendation of an expert or fact witness to OFCRE, (Is this right?). To the General Counsel, this A I is a proposed solution in search of a problem that has not appeared.
Further, the GC has read the proposed alternative by the Director to assist in the collection of names and recommendations of witnesses, (is this correct?) and sees no legal flaw in how the OFCRE has conducted its duties to secure witnesses.
The staff offered feedback as follows:

- Staff receive names of potential witnesses from many sources, and have no reason to reject any name simply because it comes from a Commissioner
- Staff vet the proposed witnesses to ascertain whether that person will be covering topics already been covered by other witnesses
- Staff vet the proposed witnesses to see if they are recently involved active and engaged in the content material to avoid stale testimony
- (maybe add other explanations of how the OFCRE has expertise in performing their duties)

To conclude, the A I's are not ready to be adopted, and the staff stand ready to assist in any way they can to help the Commissioners meet the mission of the Commission. Your tone can be strong in the conclusion. This is where you can say something is "inappropriate" or "unnecessary" or "attempting to force a selection" on the staff. But, the General Counsel's analysis and legal conclusions should have a neutral, calming tone.

From: Mauro Morales <mmorales@usccr.gov>
Date: Thursday, April 22, 2021 at 12:49 PM
To: Norma Cantu <ncantu@usccr.gov>
Cc: Juana Silverio <jsilverio@usccr.gov>
Subject: Memo on AI's

Norma,

Here is a draft of the memo I and the staff prepared for Commissioners on the three proposed AI's the presented on Friday. Please keep it close hold. I would welcome your response. I intend to send it to all Commissioners by noon tomorrow. Whether the other Commissioners accept our recommendations remains to be seen. Please contact me if you wish to discuss.

Mauro

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Date : 4/22/2021 9:00:52 PM
From : "Norma Cantu" ncantu@usccr.gov
To : "Mauro Morales" mmorales@usccr.gov
Cc : "Juana Silverio" jsilverio@usccr.gov
Subject : Re: Memo on AI's--CONFIDENTIAL & PRIVILEGED/PRE-DELIBERATIVE

Thank you, Mauro, for hearing me and for your honesty.
I realize you will do your best to explain to the Commissioners how their proposed changes will likely affect the "mission and operation of the Commission."
Some of the Commissioners need to hear they can't make the changes. Others need to hear the reasons they shouldn't.

Feel free to tell the Commissioners both types of objections. My memo to you was to urge you to help them see more clearly that you know which is which.

By the way, the Belmont project talked about beneficence, the principle that the interviewing and interaction with human subjects had to be carefully calculated to also help people upon which the research is practiced. Our interviews are not just for unknown folks to feel better about social justice; it is also about social justice for the people we interview.

Keep up the good fight for John Lewis' sake.
Best,
Norma

From: Mauro Morales <mmorales@usccr.gov>
Date: Thursday, April 22, 2021 at 5:59 PM
To: Norma Cantu <ncantu@usccr.gov>
Cc: Juana Silverio <jsilverio@usccr.gov>
Subject: RE: Memo on AI's--CONFIDENTIAL & PRIVILEGED/PRE-DELIBERATIVE

Norma,

Thank you for your comments. My intention was never to provide two memos. My intention was to present feedback from all departments about the harmful consequences in adopting these three AI's. We were not consulted in any manner on these AI' and are expected to accept them. This process was disrespectful and is unacceptable. Commissioners involved in this effort understood what they were doing. The review in our memo was created to focus on the contradictory and unnecessary need for the AI's. OCG's review and recommendations are no more important, if not secondary, to the real impact on the operation of OCRE and other departments. We want Commissioners to have a comprehensive and substantive understanding of the impact these changes would have on the mission and operation of the Commission. We know this memo may not sway any Commissioners. We understand they may adopt AI's that reflect their viewpoint. As a consequence, it is our intention to create a record that lays out the potential damage these AI's will have in the long run to the mission of the Commission. I will incorporate your comments in appropriate places. Again, we thank you and appreciate your input. Please feel free to call if you would like to discuss further.

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Mauro

From: Norma Cantu <ncantu@usccr.gov>
Sent: Thursday, April 22, 2021 5:28 PM
To: Mauro Morales <mmorales@usccr.gov>
Cc: Juana Silverio <jsilverio@usccr.gov>
Subject: Re: Memo on AI's--CONFIDENTIAL & PRIVILEGED/PRE-DELIBERATIVE

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The draft is helpful. I was expecting two memos, actually---one from the General Counsel and one from the other staff, with your responding to both as the Director.
In writing one memo, you should have an introductory sentence that says you are giving feedback to each of the draft A Is, first by obtaining the analysis and legal opinion of the GC, and secondly by describing how the proposed A I would conflict with well-established policies and practices of the staff. Then, you would conclude that the language as it stands it not consistent with law, regs., and existing A Is.
So for section A, it would be useful to identify which are the arguments of the OGC and which are the objections of the other staff. In the first paragraph, you should start with 45 CFR 701.13 (c) which includes the duties of the GC to plan and conduct hearings, as well as provide advice on ethics, and to provide other legal duties in support of the Commission and the staff. There are four bullets in this part:

- Cannot have five Commissioners attending because it becomes a meeting, and the public must have notice and opportunity to attend the meeting, and a formal record of the interview must be prepared and maintained;
- If fewer than five Commissioners are present, Staff still have the responsibility to act ethically in conducting research and follow the three principles of the Belmont Report (respect of persons, beneficence and justice) which are needed to protect vulnerable interviewees, such as children, persons with disabilities, prisoners, and others
- The entire interview should take place with staff present, and staff have been trained to be polite and respectful of the interviewees. If a Commissioner needed to ask a follow-up question, the proper time, place, and manner would be in the open briefing (is this right term?)

In addition to the analysis provided by the General Counsel, the staff offered more feedback.

- The staff are not aware of any instances where they were asked by a Commissioner to participate in the questioning or the follow-up. However, if the Commissioner wanted the SA to hear the testimony earlier than the full hearing so the SA could help prepare the Commissioner for the full briefing, then a copy of the taped interview could be made accessible to the SA, provided the privacy and confidentiality rights of the interviewee were protected by the SA and the Commissioner.
- The staff are concerned that the Commissioners "taking two bites of the apple" in interviewing the same witnesses could lead to a confusing record and make it more challenging to sort out the facts and to meet the deadlines for drafting reports.

Section B.
The General Counsel is unable to ascertain whether the AI applies solely to the EAC or to all appointments. If the language is limited to the EAC, the language is still unclear about whether the appointments will meet the geographic expectation of the EAC. The language is also ambiguous about what happens when there is only one slot to be filled by

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appointment. The General Counsel concludes that 52 USC 20944 is unambiguous that the Director makes appointments to the Commission on Black Men and Boys.
The staff offered feedback that they did not understand how the Commission would proceed if there a tie vote for an appointment, and do not see what the criteria will be for future appointments where there is only one slot to fill.

Section C. The General Counsel has analyzed the proposed A I and finds it to conflict with duties given to staff in OFCRE in 45 CFR 701.13 (c) and (e).
The evaluation process is independent of the Commission final assessment and report of civil rights enforcement and the matters of social justice. The delegation to the staff to find witnesses has been working effectively, and the General Counsel was not provided an example of an occasion when the staff rejected a recommendation of an expert or fact witness to OFCRE, (Is this right?). To the General Counsel, this A I is a proposed solution in search of a problem that has not appeared.
Further, the GC has read the proposed alternative by the Director to assist in the collection of names and recommendations of witnesses, (is this correct?) and sees no legal flaw in how the OFCRE has conducted its duties to secure witnesses.
The staff offered feedback as follows:

- Staff receive names of potential witnesses from many sources, and have no reason to reject any name simply because it comes from a Commissioner
- Staff vet the proposed witnesses to ascertain whether that person will be covering topics already been covered by other witnesses
- Staff vet the proposed witnesses to see if they are recently involved active and engaged in the content material to avoid stale testimony
- (maybe add other explanations of how the OFCRE has expertise in performing their duties)

To conclude, the A I's are not ready to be adopted, and the staff stand ready to assist in any way they can to help the Commissioners meet the mission of the Commission. Your tone can be strong in the conclusion. This is where you can say something is "inappropriate" or "unnecessary" or "attempting to force a selection" on the staff. But, the General Counsel's analysis and legal conclusions should have a neutral, calming tone.

From: Mauro Morales <mmorales@usccr.gov>
Date: Thursday, April 22, 2021 at 12:49 PM
To: Norma Cantu <ncantu@usccr.gov>
Cc: Juana Silverio <jsilverio@usccr.gov>
Subject: Memo on AI's

Norma,

Here is a draft of the memo I and the staff prepared for Commissioners on the three proposed AI's the presented on Friday. Please keep it close hold. I would welcome your response. I intend to send it to all Commissioners by noon tomorrow. Whether the other Commissioners accept our recommendations remains to be seen. Please contact me if you wish to discuss.

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Mauro

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Date : 4/26/2021 9:42:30 AM
From : "Irena Vidulovic" ividulovic@usccr.gov
To : "Debo P. Adegbile" dadegbile@usccr.gov, "Adegbile, Debo" Debo.Adegbile@wilmerhale.com
Cc : "Zervoudis, Flor" Flor.Zervoudis@wilmerhale.com
Subject : TO DO + USCCR Updates
Attachment : AI on Appointment Authority (general and EAC) AR notes (1).docx;AI Letter to the Staff Director.docx;Review and Recommendations on Proposed 4-16 Final PDF (1).pdf;

TO DO LIST:

1. USCCR Hour's Please see below DUE, Tuesday April 27th
2. Letter to the Staff Director from all Commissioner's regarding making all the AI's available electronically in one place. Please see the letter attached that all the SA's worked on. Once we get the green light from all the Commissioners we can send to the Staff Director.
3. Review the attached EAC AI that is redlined + Career Staff Recommendations
4. Scheduling an April 30th business meeting at 2pm ET. Will send a calendar invitation, we also need to schedule a caucus meeting on Tuesday, April 27th at 3pm ET.

AI's

EAC appointing authority (redline attached)

- We have worked on the language that you emphasized during the calls.
- That the Chairperson still retains the authority to appoint with the consultation from Commissioners.
- That the Commissioners selected by respective caucus are willing and able to serve
- Finally, should the person by the choosing party not be able to serve, the chairperson shall be free to choose any other member of the Commission, including said chairperson, to serve on the U.S. Election Assistance Commission

The other 2 AI's will be reviewed by OGC and OCRE because it requires their input. However both of the AI have been non-starters for you and Dave.

OCRE Witness Interviews

The R's are wanting to attend interviews that OCRE conducts in order to obtain information for our investigations. Such interviews were conducted for the Sub-Minimum Wages, as well as for Bail

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Reform.

- ADA requirements for interviews may not allow for this
- Bail reform interviews also conducted with focus jurisdictions
- Statutory requirements for separation of staff and Commissioners – GC to weigh in.

Panelist requests for briefings

- Explanations from OCRE on why panelists are not being invited
- What do our current AI's and rules require for Commissioner recommendations to be invited
- Resources may not be used effectively if we institute this system
- Need to preserve the independence of the agency

The AI on Appointment of Commissioners to EAC:

The SD/Executive Committee gave the following opinions on the AI's. First they don't think that it should be an AI. Second, the proposed A.I. does not distinguish appointing authorities that provide appointments to the Commissioners themselves versus those that provide the Chair of the Commission or Staff Director with appointment authority. For example, the authorizing statute for the Commission on the Social Status of Black Men and Boys designates the Staff Director as the appointing authority for one (1) member.

If the proposed A.I., as written, was followed for the appointment to the Commission on the Social Status of Black Men and Boys, it would conflict and result in a violation of the statute. Lastly, the proposed A.I. provides a procedure to make appointments to the EAC, Board of Advisors, however it does not provide a procedure to make appointments if the caucuses do not agree on their nominees.

The Staff Director and Executive Committee recommends that this A.I. be revised or withdrawn from consideration.

AI on interviews of panelist/witnesses.

Career staff and SD say that they do not interview folks but that they gather information for the investigation like in the case of Sub-Minimum wages and Bail Reform. That the process as it stands is transparent and provides opportunity for all

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Commissioners to ask follow up questions to briefing panelists but that those questions are funneled via OCRE so that there is a one stop shop of where the questions are coming from and where the questions are to be responded to. Commissioners provide no evidence, justification or rational for the necessity and creation of this A.I. As a consequence, the Staff Director and Executive Committee recommend that this A.I. be withdrawn from further consideration.

Witness selection AI:

Basically the Career staff is saying that this would create a logistical nightmare, that it is inconsistent with A.I. 1-6, Sec. 4.06. Section 4.06 which enumerates the Commissioners' roles and functions, such as approving projects and concepts, commenting on draft reports, and approving reports, but it does not include witness selection.

The proposed A.I. would repudiate Sec. 4.07, which notes that "all responsibilities not otherwise delegated are reserved to the Staff Director who may redelegate any responsibilities to a member of the executive staff."
That it would make it impossible to have all Commissioner witness recommendations honored when there are 8 Commissioners and no limit to how many they could nominate.

As written, it is unclear when Commissioners' ability to suggest witnesses
ends, which may result in OCRE being unable to prepare a final witness or panelist roster/list.Commissioner selection of panelists and witnesses will also likely increase negotiation and debate among Commissioners, which could result in delays in confirming attendance.
Additionally, having a roster/list being selected by Commissioners and staff could result in the
need for briefings and hearings lasting multiple days, which will increase costs.

USCCR Hours

4/12 1.5 Weekly Priority Call with SA
4/13 2 hour prep + 1 hour caucus call
4/14 3 hour reviews of USCCR business meeting documents
4/15 1.5 call with SA regarding April Business Meeting +2 hour review
4/16 2 hour review + 1 hour April Business Meeting
4/17 1.5 hour call with SA
4/19 2 hour review of updated AI's

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4/22 1 hour review of USCCR materials

USCCR Updates:

- FEMA/Puerto Rico

  * The notational vote passed
  * FEMA panelist recommendations + briefing book recommendations. The panelist recommendations were due by this Friday, April 2nd. There were numerous recommendations from Irena, Alex, John Mashburn. Carissa and Thomas had one recommendation.
  * OCRE send the invitations last week. No confirmations to date. Irena spoke to Jason and has some updates.

- Commissioners may need to assist in getting the invitations to the principals – particularly Congressman Peters. Irena to update

  Briefing book recommendations are due on Friday, May 7th.
  * Virtual briefing moved to June 25
  * 2 site visits scheduled - Houston 11/19/21, Puerto Rico 12/10/21
  * Third briefing planning meeting will take place on Tuesday, April 20th at 11am ET.

  Bail Reform

  * Kladney/Amy negotiations with R's ongoing
  * Oregon SAC had their last briefing on Friday 12/11, Catherine attended. Rukku shared briefing notes with OCRE in the comments on the first draft.

- Draft coming on 4/26

  Maternal Health

  * OCRE, Debo and Irena met last week to discuss the final draft. Productive meeting, Irena to update the caucus.
  * Focus on Chapter 3 – Federal response, as area for potential bi-partisan consensus
  * New HHS leadership – OCRE sent HHS and CDC targeted questions for affected agency review
  * Need current data for programs that received funding
  * OCRE sent updated ROG's to HHS and also sent the draft report for agency review two weeks ago. No response from HHS, Irena advised Nick and OCRE to reach out to panelist including Congresswoman Ayanna Pressley and ask them to put pressure on HHS to respond especially since it was Black Maternal Health week last week and HHS and CDC was participating in all these various events with the partner organizations. Irena will follow up with OCRE this

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week and see if she can share what OCRE sent and to which programs
    * Final draft coming to Commissioners in May
    * 3 weeks to return edits before vote in June
    * Irena discussing with Republicans whether they will support

Broken Promises pandemic update

* Senator Warren's office has reached out to Irena to schedule a meeting this week on the report update + will invite Julie to the meeting.
* Interested to find out spokesperson for Commission. Irena provided public material and
* Pursue social media strategy using briefing video/materials
* Can we generate clips from the briefing video, into individual panelist testimony or other excerpts? **Irena to reach out to Ang.
* Revisit when we discuss project planning re FY22? (/FEMA, Comm. Adams' proposal, etc.).

Follow ups with Mauro

* The SA's have requested a follow up meeting with Mauro, we were trying to reinstitute the bi-weekly meetings, Mauro has cancelled our April 20th meeting. However Mauro has not been amenable to meeting, our last SA Meeting was held on 3/23.
* Mauro scheduled the meeting with the SA's next week on Tuesday, April 20th at 3pm. Juana you need to be added to the calendar invitation.
* The items raised at the last meeting for which we don't have updates:
    * AI's available online
    * Commissioner IT needs
    * Website update
    * Budget priorities
        * Forward funding for site visits in Puerto Rico and Texas
        * Regional staffing – at least one staffer for territory SACs
        * IT and website
    * SAC letters

Other outstanding items for all SA's

* AI 5-9
    * OCG provided redline and comments for Commissioner consideration for standards for removal for SAC members and procedures the Commission should adopt
* Project proposals
* "Balance" SAC AI?
* Expired SACs (14)

Project proposals for FY21/22

* Rukku checked with John to see if Commissioner Adams will submit new project proposals. John is working with Commissioner Adams on project priorities and check back on timeline. Rukku to follow up with John this week.

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* John (at all SA meeting) said that Comm. Adams had a proposal, so Rukku will generate a timeline for consideration.
* We will proceed with the FEMA Project as the FY22 statutory enforcement report.
* Need a new FY22 project planning calendar – Rukku generated the program planning schedule with emphasis on time early in the process for bipartisan discussion.

Personnel

* OCRE Director - posting closed. Interviews completed and offer should be going out soon.
* Commission on Black Man and Boys - posting closed + interviews scheduled
* Two regional positions for civil rights analysts – closes 3/31
* Summer 2021 interns – Irena hired a spring intern. Amy hired Clara Malkin – to start 5/24
* Irena's intern Alana Thomas started on March 16th Alana Thomas is currently a second year law student at Georgetown. She is currently pursuing a Master of Public Policy degree from Loyola University Chicago, and received her BS in Psychology from Virginia Tech. Alana has focused her studies on affordable housing and race in law. She currently serves as the Vice President of Marketing Strategy at Citi. Alana is from Chicago, and will be supporting Commissioner Adegbile
* Fulbright fellows – Media fellow recommendation for Ang.
    * Ang hired a Fullbright fellow!

Commission on the Social Status of Black Men and Boys

* Was signed into law, more details to come on what this means.
* Appointments from White House
* Call rescheduled with Congresswoman Wilson
* Women/Girls bill?

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ADMINISTRATIVE INSTRUCTION __- __

COMMISSION APPOINTMENTS TO OTHER FEDERAL ENTITIES

Section 1.

.01 Any authority specifically granted the Commission of Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc. shall be exercised by the Commission Chairperson in consultation with all members of the commission.~~as a whole by majority vote~~.

Section 2

.02

(1) For the two (2) appointments to the U.S. Election Assistance Commission, the members appointed by Democratic authorities shall nominate two individuals of their membership that are ready willing and able to serve, and the members appointed by the Republican authorities shall nominate two individuals of their membership that are ready willing and able to serve.

(2) The members appointed by the Democratic authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Democratic authorities.

(3) Should the person by the choosing party not be able to serve, the chairperson shall be free to choose any other member of the Commission, including said chairperson, to serve on the U.S. Election Assistance Commission/

(~~3~~4) ———— The members selected shall be placed in nomination and ratified in conformance with Section 1.

NOTE: I don't see the AI for the rebuttal/surrebuttal,…but I will not vote for it if that crap stays in their about understanding the individual commissioners point-of-vote or vote.

Commented [1]:
Past practice has been that the Chair makes these appointments. This reduces the power of the Chair.

We should find out all the boards and other groups the Commission appoints to in order to understand the full scope of what appointing authority the Chair is relinquishing

Commented [2]:
These requirements do not belong in an AI to be binding on all future compositions of the Commission. If Norma wants to agree to this process for the current appointments, that would be understandable since we are currently 4-4. In the future, if the Commission is 6-2 again, it would be less understandable to give 2 Commissioners this much control.

Alternative: Create a rule committing to bipartisan

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UNITED STATES COMMISSION ON CIVIL RIGHTS

1331 Pennsylvania Avenue, NW• Suite 1150 • Washington, DC 20425 www.usccr.gov

April 15, 2021

Mauro Morales
Staff Director
1331 Pennsylvania Ave NW
Washington, DC 20425

Dear Mr. Morales:

We, the undersigned Commissioners, write today to request the promulgation of a searchable digital collection of the Commission's Administrative Instructions (AIs). In order to efficiently serve as Commissioners, we must have easy access to the AIs. Thus, we request that you provide us with the following:

- One updated digital file containing every AI that is in effect, in its proper order, and with the date and manner of each AI's ratification
- Physical copies of that digital file by request

The general counsel has sent some of this information piece-by-piece via email to us over the past few weeks. But those AIs have not been updated or organized, and they have not been collected into a single digital document. As matters stand, accessing the AIs requires that we attempt to assemble a complete list from the documents we have been sent piecemeal. Thus, this effort is inadequate.

This is simply a matter of good governance. Please provide us with a timeline for completion of the above tasks.

Sincerely,

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UNITED STATE COMMISSION ON CIVIL RIGHTS
Washington, DC

CONFIDENTIAL & PRIVILEGED/PRE-DELIBERATIVE

April 23, 2021

MEMORANDUM FOR: Commissioners

FROM: Staff Director and Executive Committee

SUBJECT: Review and Recommendations of Proposed Administrative Instructions submitted on April 16, 2021, during the Commission Business Meeting

The Staff Director and the Executive Committee of the U.S. Commission on Civil Rights, which includes the offices of the Staff Director, Office of Civil Rights Evaluation, General Counsel, Public Affairs, and Management, have jointly reviewed the three proposed Administrative Instructions (A.I.s) introduced by the Commissioners during an April 16th , 2021, Business Meeting. The Staff Director and Executive Committee believes the proposed A.I.s inappropriately conflict with existing Administrative Instructions and Commission regulations, and unreasonably create programmatic and operations problems for the Commission. It is our recommendation that the proposed A.I.s in their current form be revised or withdrawn.

A. Proposed A.I. on Commission Appointments to Other Federal Entities

The Executive Committee provides the following recommendations regarding this proposed A.I. First, Commission appointments pursuant to 52 U.S.C. § 20944 to the U.S. Election Assistance Commission (EAC), Board of Advisors, could be accomplished via a Commission vote rather than an A.I. Second, the proposed A.I. does not distinguish appointing authorities that provide appointments to the Commissioners themselves versus those that provide the Chair of the Commission or Staff Director with appointment authority. For example, the authorizing statute for the Commission on the Social Status of Black Men and Boys designates the Staff Director as the appointing authority for one (1) member.[1] If the proposed A.I., as written, was followed for the appointment to the Commission on the Social Status of Black Men and Boys, it would conflict and result in a violation of the statute. Lastly, the proposed A.I. provides a procedure to make appointments to the EAC, Board of Advisors, however it does not provide a procedure to make appointments if the caucuses do not agree on their nominees.

The Staff Director and Executive Committee recommends that this A.I. be revised or withdrawn from consideration.

[1] *See* https://www.congress.gov/bill/116th-congress/house-bill/1636/text?q=%7B%22search%22%3A%5B%22%5B2018-09-28+TO+2018-09-28%5D%22%5D%7D, Sec. 3(6).

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B. Proposed A.I. on OCRE Interviews of Panelists and Witnesses

This proposed A.I. provides that Commissioners attend staff "interviews" with external fact "witnesses or experts." OCRE does not conduct interviews of panelists or witnesses before or after briefings or hearings, but rather, as was the case for the Subminimum Wage and Bail Reform Reports, it holds meetings with stakeholders as part of its data collection process to develop and prepare concepts and documents for reports pursuant to its regulatory mandate contained in 45 C.F.R. § 701.13(e) (this Office is responsible for monitoring, evaluating and reporting on the civil rights enforcement effort of the Federal Government; developing concepts for programs, projects, and policies directed toward the achievement of Commission goals; preparing documents that articulate the Commission's views and concerns regarding Federal civil rights.) Commissioner participation in OCRE pre-briefings and pre-hearing meetings is inconsistent with the aforementioned regulation, which prescribes OCRE's function within the Commission.[2]

Further, 45 C.F.R. § 702.14(a) notes that an accurate transcript recorded by a court reporter shall be made of the testimony of all witnesses at all proceedings of the Commission. Consequently, as written, by defining OCRE meetings as "interviews" this A.I. would result in the financial cost of court reporters to be present whenever OCRE meets with stakeholders, panelists, or witnesses, in addition to the administrative burden of having to schedule and coordinate meeting time with Commissioners and their Special Assistants on a bipartisan basis and the panelist or witness. This A.I. is impractical and unnecessary.

Finally, the A.I. provides that Commissioners can individually provide follow-up questions to witnesses. This runs counter to the Commission's Privacy Act policy as OCRE staff would not have access to these additional individual Commissioner questions, requests or the information gathered; nor can OCRE ensure that the information collected from participants will be properly stored and managed for confidentiality or for inclusion in Commission Reports. Additionally, career staff in OCRE, as social scientists, follow the three principles of the Belmont Report (respect of persons, beneficence, and justice), which are needed to protect vulnerable interviewees, such as children, persons with disabilities, prisoners, and others. It is not clear that Commissioners or their Special Assistants, given their varied professional backgrounds, will follow the aforementioned principles.

The current practice is that OCRE sends a joint set of follow up questions from Commissioners which are forwarded to panelists to answer. All questions and answers are shared with Commissioners and their special assistants. Sending separate and individual questions confuses panelists, results in multiple & repetitive questions and prevents every Commissioner equal access to questions and answers.

[2] *See U.S. Lines, Inc. v. Fed. Mar. Comm'n,* 584 F.2d 519, 526 n. 20 (D.C.Cir.1978) *citing* to *U.S. v. Nixon,* 418 U.S. 683, 693-696 (1974) ("an agency is not free to ignore or violate its regulations while they remain in effect.")

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Commissioners provide no evidence, justification or rational for the necessity and creation of this A.I. As a consequence, the Staff Director and Executive Committee recommend that this A.I. be withdrawn from further consideration.

C. Proposed A.I. on Witness Selection

This proposed A.I. revises A.I. 1-6, "National Project Development and Implementation." Specifically, it revises Section 11, Commission Hearings, and Section 12, Commission Briefings. Staff reminds Commissioners that there is a significant difference between a Commission hearing and a Commission briefing.

The first sentences of Sections 11.03 and 12.02 respectively state that staff are to use "various" sources to gather suggestions for witnesses, but the subsequent sentences state that Commissioners are the "primary" source for "suggesting" witnesses. These two sentences are contradictory and the use of the term "suggest" in reference to witness selection by the Commissioners is inconsistent with the provision in these Sections that if two Commissioners request a particular witness, then staff must invite that witness.

Sections 11.03 and 12.02 mandate that staff invite a witness who is requested by two or more Commissioners. This mandate is inconsistent with A.I. 1-6, Sec. 4.06. Section 4.06 enumerates the Commissioners' roles and functions, such as approving projects and concepts, commenting on draft reports, and approving reports, but it does not include witness selection. The proposed A.I. would repudiate Sec. 4.07, which notes that "all responsibilities not otherwise delegated are reserved to the Staff Director who may redelegate any responsibilities to a member of the executive staff." Section 12.02's requirement to invite witnesses to Commission briefings when they are selected by two or more Commissioners is also inconsistent with 45 C.F.R. § 701.13(e), which makes project development and civil rights evaluation functions of OCRE. As noted above, federal agencies are not free to ignore its regulations while they remain in effect. *See U.S. Lines, Inc.,* 584 F.2d 519 at n. 20. Similarly, Section 11.03's requirement to invite witnesses to Commission hearings when they are selected by two or more Commissioners is inconsistent with 45 C.F.R. § 701.13(c), which notes that OGC "plans and conducts hearings."[3] Given that this proposed A.I. allows Commissioners to select witnesses for hearings, it prevents OGC from fulfilling its regulatory mandate to plan hearings. In the sixty-three year history of the Commission, Commissioners have never unilaterally selected witnesses. Such a change would alter the fundamental role of OCRE and undermine its ability to conduct an objective and substantive briefing.

Sections 11.03 and 12.02's witness mandate is also not consistent with 42 U.S.C. § 1975b. This statute notes that the Staff Director is the administrative head of the Commission, which includes things such as proposing employee discipline and conducting performance appraisals for career staff under Title 5. Commissioner interference in OCRE and OGC's operations as

[3] Although notice and comment rulemaking is not required for general statements of policy under 5 U.S.C. § 553(b)(A), an agency acts arbitrarily and capriciously if it acts in a manner that is contrary to its own regulations or a congressional statute. *Pol'y & Rsch., LLC v. United States Dep't of Health & Hum. Servs*., 313 F. Supp. 3d 62, 72 (D.D.C. 2018).

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proposed in the A.I. would result in contradictory or inconsistent orders from Commissioners. Additionally, designating Commissioners as the "primary" source for inviting and hearing from a specific witness would be an extraordinary change skewing the ability of OCRE to engage in objective investigations. It would send the Commission down a slippery slope of Commissioners and their special assistants themselves conducting investigations and writing reports. Such change would irreparably alter the mission of the Commission and be at odds with our enacting statue and Congressional history in creating the Commission. Please also note that Commissioner involvement in selecting witnesses pursuant to this proposed A.I., attending panelist and witness meetings in the aforementioned proposed A.I., or other involvement in the Commission's day-to-day operations, may implicate the 75-day billable cap in the Commission's fiscal year 2021 budget. *See* https://www.usccr.gov/pubs/2020/FY2021-Congressional-Budget-Justification.pdf.

Section 11.02 of the current A.I. 1-6 references a Hearing Report form, however it is unclear whether the Commission actually utilizes this form. This form certifies a numerical balance of witnesses with opposing views, opinions, and perspectives, and could safeguard that witnesses and panelists are ideologically balanced. However, such a form could also be used to impede in the selection of panelists for briefings and undermine the benefit the collaborative working relationship. OCRE already works with the lead Special Assistant/Commissioner regarding witness and panelist selection. Adding a new form or a new layer in the selection process would further delay the creation of panels and delay the release of the final report.

Logistically the proposed A.I. presents a number of potential scheduling issues for Commission staff. As written, it is unclear when Commissioners' ability to suggest witnesses ends, which may result in OCRE being unable to prepare a final witness or panelist roster/list. Commissioner selection of panelists and witnesses will also likely increase negotiation and debate among Commissioners, which could result in delays in confirming attendance. Additionally, having a roster/list being selected by Commissioners and staff could result in the need for briefings and hearings lasting multiple days, which will increase costs.

Lastly, while it is understandable that that Commissioners want to play a larger role in the selection process, they should do so by negotiating with each other prior to panelists suggestions being sent to OCRE. They should continue to work with OCRE to have diverse and objective panelists instead of attempting to force a selection reflecting their individual viewpoint. It is the view of the staff that unilateral Commissioner selection of witnesses and panelists would constrain OCRE's ability to collect bipartisan testimony and prohibit OCRE's ability to act independently. The panelist and witness evaluation process is independent of the Commissioners final assessment and report of civil rights enforcement. Further, OCRE remains committed to work with Commissioners regarding their recommendations and will continue to strive to accommodate the recommended expert or fact witness or panelist.

Commissioners provide no evidence, justification or rational for the necessity and creation of this A.I. As a consequence, the Staff Director and Executive Committee recommends that this A.I. be withdrawn from further consideration.

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D. Conclusion

The following are the recommendations of the Commission professional staff:

- Commissioners discuss and take a recorded vote on bipartisan appointments to other Federal entities or revise the proposed A.I. for Commission appointments;
- Commissioners withdraw from further consideration the proposed A.I. on Stakeholder Interviews; and,
- Commissioners withdraw from further consideration the proposed A.I. on Witnesses.

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Date : 4/26/2021 10:15:35 AM
From : "Juana Silverio" jsilverio@usccr.gov
To : "Irena Vidulovic" ividulovic@usccr.gov, "Amy Royce" aroyce@usccr.gov, "Alec Deull" adeull@usccr.gov
Subject : RE: Caucus Meeting Agenda-4.26.2021
Attachment : Review and Recommendations on Proposed 4-16 Final PDF.pdf;

Memo from SD re: 3 AIs

From: Juana Silverio
Sent: Monday, April 26, 2021 10:01 AM
To: Irena Vidulovic <ividulovic@usccr.gov>; Amy Royce <aroyce@usccr.gov>; Alec Deull <adeull@usccr.gov>
Subject: Caucus Meeting Agenda-4.26.2021

Good morning. Thank you Irena for forwarding last week's agenda. All- Please feel free to add anything you'd like to address not listed.

- Rescheduling the April Business Meeting for Friday April 30th at 2pm ET.
  - Done and waiting on call in numbers
  - New mtg notice update to go up today (4/26)
- Review and redline the proposed AI's
- Alec reached out to the R caucus regarding the ID and CO SAC's. Looking to hear back (Alec update?). If we reach a deal we might be open to voting for the ID and CO slates if Yeanor apologized.
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- Sunshine notice also has additional agenda items that may or may not need to be amended –
  - Eliminating the Speaker Series,
  - Rebuttal/surrebuttal time periods
  - Bi-partisan appointment to EAC board of advisors
- SA priorities for week of 4/26

AMERICAN OVERSIGHT

From: Irena Vidulovic <ividulovic@usccr.gov>
Sent: Monday, April 26, 2021 9:48 AM
To: Juana Silverio <jsilverio@usccr.gov>
Subject: Caucus Meeting Agenda

Good Morning J,

Here is the info from our last caucus meeting agenda. If you would like to eliminate, add, change anything and circulate to our team before our 11am meeting.

Thanks,

Irena

- Rescheduling the April Business Meeting for Friday April 30th at 2pm ET.
- Review and redline the proposed AI's
- Alec reached out to the R caucus regarding the ID and CO SAC's. Looking to hear back (Alec update?). If we reach a deal we might be open to voting for the ID and CO slates if Yeanor apologized.
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NC SAC

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- The Democratic caucus accepts adding Mincey * please see context below (no additional application needed)
- When recirculating will make clear that Commissioners should not submit objections to other members of the slate who have already been circulated
- The Republican caucus will remove the objection to Lechner * please see context below (no additional application needed)
- Vote in the SACw/8-8 balance
- Irena has informed the R's that all D Commissioners are on board.

For situational awareness please see the context for the NC SAC:

- Slate failed to get a majority vote on Friday 10/30.
- 15 candidates, 8 Democrats (including two Independents who lean Democrat), 7 Republicans (including one candidate who identified as "something else").
- Note that Olga Wright, the returning Chair, identifies herself as a Democrat but ran for public office as a Republican in all her past elections.
- Comm. Kirsanow (and Adams) objected to the balance of the slate, and requested that it be shifted to 7 Republicans and 7 Democrats (removing one Dem).
- John/Adams objected to the inclusion of Jennifer Lechner as he don't consider her a true Republican." In her stead they would like to replace her with a Mr. Patrick Mincey who Carissa recruited. Replacing Lechner with Mincey takes the gender balance of the slate to 11 men and 4 women. Mincey is a white collar crime attorney and lacks major civil rights experience, however in our vetting process we did not find anything objectionable regarding his public statements or conduct.

FEMA/Puerto Rico

- The notational vote passed
    - FEMA panelist recommendations + briefing book recommendations. The panelist recommendations were due by this **Friday, April 2nd.** There were numerous recommendations from Irena, Alex, John Mashburn. Carissa and Thomas had one recommendation.
    - OCRE send the invitations last week. No confirmations to date. Irena spoke to Jason and has some updates. Briefing book recommendations are due on **Friday, May 7th.**
- Virtual briefing moved to June 25
- 2 site visits scheduled - Houston 11/19/21, Puerto Rico 12/10/21

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- Third briefing planning meeting will take place on Tuesday, April 20th at 11am ET.

Bail Reform

- Kladney/Amy negotiations with R's ongoing
- Oregon SAC had their last briefing on Friday 12/11, Catherine attended. Rukku shared briefing notes with OCRE in the comments on the first draft.

Maternal Health

- OCRE, Debo and Irena met last week to discuss the final draft. Productive meeting, Irena to update the caucus.
    - Focus on Chapter 3 – Federal response, as area for potential bi-partisan consensus
    - New HHS leadership – OCRE sent HHS and CDC targeted questions for affected agency review
    - Need current data for programs that received funding
- OCRE sent updated ROG's to HHS and also sent the draft report for agency review two weeks ago. No response from HHS, Irena advised Nick and OCRE to reach out to panelist including Congresswoman Ayanna Pressley and ask them to put pressure on HHS to respond especially since it was Black Maternal Health week last week and HHS and CDC was participating in all these various events with the partner organizations. Irena will follow up with OCRE this week.
- Final draft coming to Commissioners in May
- 3 weeks to return edits before vote in June
- Irena discussing with Republicans whether they will support

SAC Recruitment

- So far 14 SAC's have expired and not been reappointed
    - 3 SACs voted down already, potential compromises being discussed – NC, ID, CO
- Alex reached out to Irena to discuss CO and Idaho.
- The Republican's via Alex would like to make a deal Yenor for Dr. Chen. Alec to provide update
- In general: Irena recommended we reach out to new Members' offices. Rukku circulated Congressional letter + updated 2 pager to share with offices.
- Alex and Irena met with David and Mauro two weeks ago. David will be updating the SAC folder and then we can assign recruitment duties. **Alex and Irena to reach out to David this week since it has been 3 weeks for the request and no updates!**

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- Irena sent Alex the NC and Indiana compromise. Alex only responded to NC.
- Indiana 12/1/20 – Mauro circulated slate

    - Amy circulated vet memo. Slate includes 7 Ds, 7 Rs, and 1 Ind.
    - Carissa objected to the balance, the same type of objection as with a NC. Irena Spoke to Carissa and she will check with their caucus if we add a R or if we add an R and a D however she did say that they probably will not vote for slates that are not balanced.

- Vermont (expired in June)

    - Mauro circulated slate, which included 5 Rs, 5 Ds, and 2 Ind. (including Reed and Martin). Catherine and Debo objected to Lefavour for lack of experience; need to recruit another R.
    - Irena will reach out to Leahy's office and ping Ang to see if she has any candidates.

- Colorado: Irena

    - Slate failed to get a majority vote on Friday 10/30.
    - 12 candidates, 6 Republicans (including one Independent who leans Republican), 6 Democrats (including one Independent who leans Democrat). No particular flags on any candidates.
    - Comm. Heriot had objected to Prof. Chen, on the basis of a recent article that Prof. Chen published called Colorblind Nationalism.
    - Irena is checking in with Alex on whether a compromise is possible

- North Carolina: Irena

    - Slate failed to get a majority vote on Friday 10/30.
    - 15 candidates, 8 Democrats (including two Independents who lean Democrat), 7 Republicans (including one candidate who identified as "something else"). Note that Olga Wright, the returning Chair, identifies herself as a Democrat but ran for public office as a Republican in 2012.
    - Comm. Kirsanow (and Adams) objected to the balance of the slate, and requested that it be shifted to 7 Republicans and 7 Democrats (removing one Dem).
    - They further objected to the inclusion of Jennifer Lechner as they don't consider her a "true Republican." In her stead they would like to replace her with a Mr. Patrick Mincey who Carissa recruited. Replacing Lechner with Mincey takes the

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gender balance of the slate to 11 men and 4 women. Mincey has no civil rights experience, based on his application and a review of his public record.
    - Rukku spoke to Thomas; Thomas proposed that we consider a slate of 9 Republicans (including Lechner) and 8 Democrats, and they would work on recruiting Republicans who would assist with balance of slate with respect to gender and other diversity factors. This would leave a slate with 9 R's and 8 D's
    - Rukku proposed to Thomas the following: get another R, and add to the slate, to move to a balance of 8-8; added R cannot be Patrick Mincey (no civil rights experience). Might consider Mincey if he submits revised application with more justification for his civil rights experience.

- Idaho (expired in July).

    - Rukku shared proposal with Carissa: 4 Republicans, 5 Democrats, 1 Independent leaning Democrat, and 1 Independent who leans in no direction. Slate did not include Scott Yenor.
    - Carissa relayed that they continue to not want to move forward without Yenor.

- District of Columbia 10/20/20 – Alex, Irena

    - (as of 12/17) 11 applicants: 9 men, 2 women; 6 Ds, 4 Rs, 1 something else
    - Need more Rs and better diversity

- Iowa 11/17/20 – Carissa, Amy/Rukku

    - (as of 11/17) 11 applicants: 7 men, 4 women; 5 Ds, 4 Rs, 2 Ind.
    - Need at least one more R.
    - Carissa has exhausted her recruitment efforts, but John may have more leads.

- Ohio 11/17/20 – Carissa, Rukku

    - (as of 12/17) 16 applicants: 11 Ds, 4 Rs, 1 Ind.
    - Need more Rs. Carissa to work on recruitment.

- New Mexico 12/1/20 – Alex, Amy/Irena/Rukku

    - 5 applicants. Need more candidates.
    - Rukku reached out to Haaland's office for candidates.

- Wyoming 12/1/20 – Alex, Alec

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        - 6 applicants. Need more candidates.
        - Alec reached out to Shepard Foundation and confirmed that Judy Shepard will apply for the SAC.

    - Florida 3/2021 – Irena
    - Louisiana 3/2021 – Rukku
    - Nebraska 3/2021 – Alec
    - Texas 3/2021 – Amy
    - New advisory committees (Puerto Rico, Virgin Islands, Northern Mariana Islands, Guam, American Samoa)

        - Irena checked in with David on how he wants to move forward with new advisory committees - on hold for the moment
        - Vacancy posted for Civil Rights Analyst in the regions - closes 3/31

Broken Promises pandemic update

- Senator Warren's office has reached out to Irena to schedule a meeting this week on the report update + will invite Julie to the meeting.
- Interested to find out spokesperson for Commission. Irena provided public material and
- Pursue social media strategy using briefing video/materials
- Can we generate clips from the briefing video, into individual panelist testimony or other excerpts? **Irena to reach out to Ang.
- Revisit when we discuss project planning re FY22? (/FEMA, Comm. Adams' proposal, etc.).

Follow ups with Mauro

- The SA's have requested a follow up meeting with Mauro, we were trying to reinstitute the bi-weekly meetings, Mauro has cancelled our April 20th meeting. However Mauro has not been amenable to meeting, our last SA Meeting was held on 3/23.
- Mauro scheduled the meeting with the SA's next week on Tuesday, April 20th at 3pm. Juana you need to be added to the calendar invitation.
- The items raised at the last meeting for which we don't have updates:

    - AI's available online
    - Commissioner IT needs
    - Website update
    - Budget priorities

        - Forward funding for site visits in Puerto Rico and Texas
        - Regional staffing – at least one staffer for territory SACs
        - IT and website

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- SAC letters

Other outstanding items for all SA's

- AI 5-9
    - OCG provided redline and comments for Commissioner consideration for standards for removal for SAC members and procedures the Commission should adopt
- Project proposals
- "Balance" SAC AI?
- Expired SACs (14)

Project proposals for FY21/22

- Rukku checked with John to see if Commissioner Adams will submit new project proposals. John is working with Commissioner Adams on project priorities and check back on timeline. Rukku to follow up with John this week.
- John (at all SA meeting) said that Comm. Adams had a proposal, so Rukku will generate a timeline for consideration.
- We will proceed with the FEMA Project as the FY22 statutory enforcement report.
- Need a new FY22 project planning calendar – Rukku generated the program planning schedule with emphasis on time early in the process for bipartisan discussion.

Personnel

- OCRE Director - posting closed. Interviews completed and offer should be going out soon.
- Commission on Black Man and Boys - posting closed + interviews scheduled
- Two regional positions for civil rights analysts – closes 3/31
- Summer 2021 interns – Irena hired a spring intern. Amy hired Clara Malkin – to start 5/24
- Irena's intern Alana Thomas started on March 16th Alana Thomas is currently a second year law student at Georgetown. She is currently pursuing a Master of Public Policy degree from Loyola University Chicago, and received her BS in Psychology from Virginia Tech. Alana has focused her studies on affordable housing and race in law. She currently serves as the Vice President of Marketing Strategy at Citi. Alana is from Chicago, and will be supporting Commissioner Adegbile
- Fulbright fellows – Media fellow recommendation for Ang.
    - Ang hired a Fullbright fellow!

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Commission on the Social Status of Black Men and Boys

- Was signed into law, more details to come on what this means.
- Appointments from White House
- Call rescheduled with Congresswoman Wilson
- Women/Girls bill?

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UNITED STATE COMMISSION ON CIVIL RIGHTS
Washington, DC

CONFIDENTIAL & PRIVILEGED/PRE-DELIBERATIVE

April 23, 2021

MEMORANDUM FOR: Commissioners

FROM: Staff Director and Executive Committee

SUBJECT: Review and Recommendations of Proposed Administrative Instructions submitted on April 16, 2021, during the Commission Business Meeting

The Staff Director and the Executive Committee of the U.S. Commission on Civil Rights, which includes the offices of the Staff Director, Office of Civil Rights Evaluation, General Counsel, Public Affairs, and Management, have jointly reviewed the three proposed Administrative Instructions (A.I.s) introduced by the Commissioners during an April 16th , 2021, Business Meeting. The Staff Director and Executive Committee believes the proposed A.I.s inappropriately conflict with existing Administrative Instructions and Commission regulations, and unreasonably create programmatic and operations problems for the Commission. It is our recommendation that the proposed A.I.s in their current form be revised or withdrawn.

A. Proposed A.I. on Commission Appointments to Other Federal Entities

The Executive Committee provides the following recommendations regarding this proposed A.I. First, Commission appointments pursuant to 52 U.S.C. § 20944 to the U.S. Election Assistance Commission (EAC), Board of Advisors, could be accomplished via a Commission vote rather than an A.I. Second, the proposed A.I. does not distinguish appointing authorities that provide appointments to the Commissioners themselves versus those that provide the Chair of the Commission or Staff Director with appointment authority. For example, the authorizing statute for the Commission on the Social Status of Black Men and Boys designates the Staff Director as the appointing authority for one (1) member.[1] If the proposed A.I., as written, was followed for the appointment to the Commission on the Social Status of Black Men and Boys, it would conflict and result in a violation of the statute. Lastly, the proposed A.I. provides a procedure to make appointments to the EAC, Board of Advisors, however it does not provide a procedure to make appointments if the caucuses do not agree on their nominees.

The Staff Director and Executive Committee recommends that this A.I. be revised or withdrawn from consideration.

[1] *See* https://www.congress.gov/bill/116th-congress/house-bill/1636/text?q=%7B%22search%22%3A%5B%22%5B2018-09-28+TO+2018-09-28%5D%22%5D%7D, Sec. 3(6).

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B. Proposed A.I. on OCRE Interviews of Panelists and Witnesses

This proposed A.I. provides that Commissioners attend staff "interviews" with external fact "witnesses or experts." OCRE does not conduct interviews of panelists or witnesses before or after briefings or hearings, but rather, as was the case for the Subminimum Wage and Bail Reform Reports, it holds meetings with stakeholders as part of its data collection process to develop and prepare concepts and documents for reports pursuant to its regulatory mandate contained in 45 C.F.R. § 701.13(e) (this Office is responsible for monitoring, evaluating and reporting on the civil rights enforcement effort of the Federal Government; developing concepts for programs, projects, and policies directed toward the achievement of Commission goals; preparing documents that articulate the Commission's views and concerns regarding Federal civil rights.) Commissioner participation in OCRE pre-briefings and pre-hearing meetings is inconsistent with the aforementioned regulation, which prescribes OCRE's function within the Commission.[2]

Further, 45 C.F.R. § 702.14(a) notes that an accurate transcript recorded by a court reporter shall be made of the testimony of all witnesses at all proceedings of the Commission. Consequently, as written, by defining OCRE meetings as "interviews" this A.I. would result in the financial cost of court reporters to be present whenever OCRE meets with stakeholders, panelists, or witnesses, in addition to the administrative burden of having to schedule and coordinate meeting time with Commissioners and their Special Assistants on a bipartisan basis and the panelist or witness. This A.I. is impractical and unnecessary.

Finally, the A.I. provides that Commissioners can individually provide follow-up questions to witnesses. This runs counter to the Commission's Privacy Act policy as OCRE staff would not have access to these additional individual Commissioner questions, requests or the information gathered; nor can OCRE ensure that the information collected from participants will be properly stored and managed for confidentiality or for inclusion in Commission Reports. Additionally, career staff in OCRE, as social scientists, follow the three principles of the Belmont Report (respect of persons, beneficence, and justice), which are needed to protect vulnerable interviewees, such as children, persons with disabilities, prisoners, and others. It is not clear that Commissioners or their Special Assistants, given their varied professional backgrounds, will follow the aforementioned principles.

The current practice is that OCRE sends a joint set of follow up questions from Commissioners which are forwarded to panelists to answer. All questions and answers are shared with Commissioners and their special assistants. Sending separate and individual questions confuses panelists, results in multiple & repetitive questions and prevents every Commissioner equal access to questions and answers.

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[2] *See U.S. Lines, Inc. v. Fed. Mar. Comm'n,* 584 F.2d 519, 526 n. 20 (D.C.Cir.1978) *citing* to *U.S. v. Nixon,* 418 U.S. 683, 693-696 (1974) ("an agency is not free to ignore or violate its regulations while they remain in effect.")

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Commissioners provide no evidence, justification or rational for the necessity and creation of this A.I. As a consequence, the Staff Director and Executive Committee recommend that this A.I. be withdrawn from further consideration.

C. Proposed A.I. on Witness Selection

This proposed A.I. revises A.I. 1-6, "National Project Development and Implementation." Specifically, it revises Section 11, Commission Hearings, and Section 12, Commission Briefings. Staff reminds Commissioners that there is a significant difference between a Commission hearing and a Commission briefing.

The first sentences of Sections 11.03 and 12.02 respectively state that staff are to use "various" sources to gather suggestions for witnesses, but the subsequent sentences state that Commissioners are the "primary" source for "suggesting" witnesses. These two sentences are contradictory and the use of the term "suggest" in reference to witness selection by the Commissioners is inconsistent with the provision in these Sections that if two Commissioners request a particular witness, then staff must invite that witness.

Sections 11.03 and 12.02 mandate that staff invite a witness who is requested by two or more Commissioners. This mandate is inconsistent with A.I. 1-6, Sec. 4.06. Section 4.06 enumerates the Commissioners' roles and functions, such as approving projects and concepts, commenting on draft reports, and approving reports, but it does not include witness selection. The proposed A.I. would repudiate Sec. 4.07, which notes that "all responsibilities not otherwise delegated are reserved to the Staff Director who may redelegate any responsibilities to a member of the executive staff." Section 12.02's requirement to invite witnesses to Commission briefings when they are selected by two or more Commissioners is also inconsistent with 45 C.F.R. § 701.13(e), which makes project development and civil rights evaluation functions of OCRE. As noted above, federal agencies are not free to ignore its regulations while they remain in effect. *See U.S. Lines, Inc.,* 584 F.2d 519 at n. 20. Similarly, Section 11.03's requirement to invite witnesses to Commission hearings when they are selected by two or more Commissioners is inconsistent with 45 C.F.R. § 701.13(c), which notes that OGC "plans and conducts hearings."[3] Given that this proposed A.I. allows Commissioners to select witnesses for hearings, it prevents OGC from fulfilling its regulatory mandate to plan hearings. In the sixty-three year history of the Commission, Commissioners have never unilaterally selected witnesses. Such a change would alter the fundamental role of OCRE and undermine its ability to conduct an objective and substantive briefing.

Sections 11.03 and 12.02's witness mandate is also not consistent with 42 U.S.C. § 1975b. This statute notes that the Staff Director is the administrative head of the Commission, which includes things such as proposing employee discipline and conducting performance appraisals for career staff under Title 5. Commissioner interference in OCRE and OGC's operations as

[3] Although notice and comment rulemaking is not required for general statements of policy under 5 U.S.C. § 553(b)(A), an agency acts arbitrarily and capriciously if it acts in a manner that is contrary to its own regulations or a congressional statute. *Pol'y & Rsch., LLC v. United States Dep't of Health & Hum. Servs*., 313 F. Supp. 3d 62, 72 (D.D.C. 2018).

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proposed in the A.I. would result in contradictory or inconsistent orders from Commissioners. Additionally, designating Commissioners as the "primary" source for inviting and hearing from a specific witness would be an extraordinary change skewing the ability of OCRE to engage in objective investigations. It would send the Commission down a slippery slope of Commissioners and their special assistants themselves conducting investigations and writing reports. Such change would irreparably alter the mission of the Commission and be at odds with our enacting statue and Congressional history in creating the Commission. Please also note that Commissioner involvement in selecting witnesses pursuant to this proposed A.I., attending panelist and witness meetings in the aforementioned proposed A.I., or other involvement in the Commission's day-to-day operations, may implicate the 75-day billable cap in the Commission's fiscal year 2021 budget. *See* https://www.usccr.gov/pubs/2020/FY2021-Congressional-Budget-Justification.pdf.

Section 11.02 of the current A.I. 1-6 references a Hearing Report form, however it is unclear whether the Commission actually utilizes this form. This form certifies a numerical balance of witnesses with opposing views, opinions, and perspectives, and could safeguard that witnesses and panelists are ideologically balanced. However, such a form could also be used to impede in the selection of panelists for briefings and undermine the benefit the collaborative working relationship. OCRE already works with the lead Special Assistant/Commissioner regarding witness and panelist selection. Adding a new form or a new layer in the selection process would further delay the creation of panels and delay the release of the final report.

Logistically the proposed A.I. presents a number of potential scheduling issues for Commission staff. As written, it is unclear when Commissioners' ability to suggest witnesses ends, which may result in OCRE being unable to prepare a final witness or panelist roster/list. Commissioner selection of panelists and witnesses will also likely increase negotiation and debate among Commissioners, which could result in delays in confirming attendance. Additionally, having a roster/list being selected by Commissioners and staff could result in the need for briefings and hearings lasting multiple days, which will increase costs.

Lastly, while it is understandable that that Commissioners want to play a larger role in the selection process, they should do so by negotiating with each other prior to panelists suggestions being sent to OCRE. They should continue to work with OCRE to have diverse and objective panelists instead of attempting to force a selection reflecting their individual viewpoint. It is the view of the staff that unilateral Commissioner selection of witnesses and panelists would constrain OCRE's ability to collect bipartisan testimony and prohibit OCRE's ability to act independently. The panelist and witness evaluation process is independent of the Commissioners final assessment and report of civil rights enforcement. Further, OCRE remains committed to work with Commissioners regarding their recommendations and will continue to strive to accommodate the recommended expert or fact witness or panelist.

Commissioners provide no evidence, justification or rational for the necessity and creation of this A.I. As a consequence, the Staff Director and Executive Committee recommends that this A.I. be withdrawn from further consideration.

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D. Conclusion

The following are the recommendations of the Commission professional staff:

- Commissioners discuss and take a recorded vote on bipartisan appointments to other Federal entities or revise the proposed A.I. for Commission appointments;
- Commissioners withdraw from further consideration the proposed A.I. on Stakeholder Interviews; and,
- Commissioners withdraw from further consideration the proposed A.I. on Witnesses.

AMERICAN OVERSIGHT

Date : 4/26/2021 10:01:00 AM
From : "Juana Silverio" jsilverio@usccr.gov
To : "Irena Vidulovic" ividulovic@usccr.gov, "Amy Royce" aroyce@usccr.gov, "Alec Deull" adeull@usccr.gov
Subject : Caucus Meeting Agenda-4.26.2021
Attachment : 2021-04-30 Special Business Meeting Agenda.pdf;

Good morning. Thank you Irena for forwarding last week's agenda. All- Please feel free to add anything you'd like to address not listed.

- Rescheduling the April Business Meeting for Friday April 30th at 2pm ET.
  - Done and waiting on call in numbers
  - New mtg notice update to go up today (4/26)
- Review and redline the proposed AI's
- Alec reached out to the R caucus regarding the ID and CO SAC's. Looking to hear back (Alec update?). If we reach a deal we might be open to voting for the ID and CO slates if Yeanor apologized.
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Sent: Monday, April 26, 2021 9:48 AM
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AMERICAN OVERSIGHT

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Maternal Health

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- Florida 3/2021 – Irena
- Louisiana 3/2021 – Rukku
- Nebraska 3/2021 – Alec
- Texas 3/2021 – Amy
- New advisory committees (Puerto Rico, Virgin Islands, Northern Mariana Islands, Guam, American Samoa)

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        - Irena checked in with David on how he wants to move forward with new advisory committees - on hold for the moment
        - Vacancy posted for Civil Rights Analyst in the regions - closes 3/31

Broken Promises pandemic update

- Senator Warren's office has reached out to Irena to schedule a meeting this week on the report update + will invite Julie to the meeting.
- Interested to find out spokesperson for Commission. Irena provided public material and
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AMERICAN OVERSIGHT

- "Balance" SAC AI?
- Expired SACs (14)

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- John (at all SA meeting) said that Comm. Adams had a proposal, so Rukku will generate a timeline for consideration.
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- Fulbright fellows – Media fellow recommendation for Ang.
    - Ang hired a Fullbright fellow!

Commission on the Social Status of Black Men and Boys

- Was signed into law, more details to come on what this means.
- Appointments from White House
- Call rescheduled with Congresswoman Wilson
- Women/Girls bill?

Irena Vidulovic
Special Assistant to Commissioner Debo P. Adegbile

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CIVIL RIGHTS COMMISSION

Sunshine Act Meeting Notice

AGENCY: United States Commission on Civil Rights.

ACTION: Notice of Commission public business meeting.

DATES: Friday, April 30, 2021, 2:00 pm EST.

FOR FURTHER INFORMATION CONTACT: Angelia Rorison: 202-376-7700; publicaffairs@usccr.gov.

ADDRESSES: Meeting to take place by telephone and is open to the public by telephone: 1-855-710-4184, Conference ID #: 435-9779. Computer assisted real-time transcription (CART) will be provided. The web link to access CART (in English) on Friday, April 30th, 2021 is https://www.streamtext.net/player?event=USCCR. Please note that CART is text-only translation that occurs in real time during the meeting and is not an exact transcript.

MEETING AGENDA

I. Motion to Approve Commissioner Norma Cantú to Serve as USCCR Chair

II. Approval of Agenda

III. Business Meeting

A. Discussion and Vote on Statement of Walter E. Williams;

B. Discussion and Votes on Anti-Asian American Hate;

C. Discussion and Vote to continue the Policy of Rebuttals and Surrebuttals;

D. Discussion and Vote to suspend Speaker Series;

E. Discussion and Agreement to Appoint Bipartisan Commissioners to EAC

F. Discussion and Vote on NC SAC

G. Management and Operations

- Staff Director's Report

IV. Adjourn Meeting

Dated: April 21, 2021

AMERICAN OVERSIGHT

Date : 4/26/2021 9:47:49 AM
From : "Irena Vidulovic" ividulovic@usccr.gov
To : "Juana Silverio" jsilverio@usccr.gov
Subject : Caucus Meeting Agenda

Good Morning J,

Here is the info from our last caucus meeting agenda . If you would like to eliminate, add, change anything and circulate to our team before our 11am meeting.

Thanks,
Irena

- Rescheduling the April Business Meeting for Friday April 30th at 2pm ET.
- Review and redline the proposed AI's
- Alec reached out to the R caucus regarding the ID and CO SAC's. Looking to hear back (Alec update?). If we reach a deal we might be open to voting for the ID and CO slates if Yeanor apologized.
- NC SAC Update. R's reached out to see if we could find a compromise regarding the NC SAC. Please see description below. Debo, Dave and Michael are good with this deal. Juana we need Norma's go ahead to make the deal with the R's.
- Input on the AAPI Statement and it's reintroduction. Should we update the statement with current AAPI violence. We have a 48 hour deadline for distribution, meaning that by 12noon on Wednesday we would need to share the statement with all Commissioners.
    - Add a caucus call the week of the new April business meeting
    - Sunshine notice has FEMA discovery materials, will need to amend
- Sunshine notice also has additional agenda items that may or may not need to be amended –
    - Eliminating the Speaker Series,
    - Rebuttal/surrebuttal time periods
    - Bi-partisan appointment to EAC board of advisors

NC SAC

- The Democratic caucus accepts adding Mincey * please see context below (no additional application needed)
- When recirculating will make clear that Commissioners should not submit objections to other members of the slate who have already been circulated
- The Republican caucus will remove the objection to Lechner * please see context below (no additional application needed)
- Vote in the SACw/8-8 balance
- Irena has informed the R's that all D Commissioners are on board.

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For situational awareness please see the context for the NC SAC:

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- 15 candidates, 8 Democrats (including two Independents who lean Democrat), 7 Republicans (including one candidate who identified as "something else").
- Note that Olga Wright, the returning Chair, identifies herself as a Democrat but ran for public office as a Republican in all her past elections.
- Comm. Kirsanow (and Adams) objected to the balance of the slate, and requested that it be shifted to 7 Republicans and 7 Democrats (removing one Dem).
- John/Adams objected to the inclusion of Jennifer Lechner as he don't consider her a true Republican." In her stead they would like to replace her with a Mr. Patrick Mincey who Carissa recruited. Replacing Lechner with Mincey takes the gender balance of the slate to 11 men and 4 women. Mincey is a white collar crime attorney and lacks major civil rights experience, however in our vetting process we did not find anything objectionable regarding his public statements or conduct.

FEMA/Puerto Rico

- The notational vote passed
    - FEMA panelist recommendations + briefing book recommendations. The panelist recommendations were due by this **Friday, April 2nd.** There were numerous recommendations from Irena, Alex, John Mashburn. Carissa and Thomas had one recommendation.
    - OCRE send the invitations last week. No confirmations to date. Irena spoke to Jason and has some updates. Briefing book recommendations are due on **Friday, May 7th.**
- Virtual briefing moved to June 25
- 2 site visits scheduled - Houston 11/19/21, Puerto Rico 12/10/21
- Third briefing planning meeting will take place on Tuesday, April 20th at 11am ET.

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- Kladney/Amy negotiations with R's ongoing
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Date : 4/26/2021 11:45:04 AM
From : "Juana Silverio" jsilverio@usccr.gov
To : "Irena Vidulovic" ividulovic@usccr.gov, "Amy Royce" aroyce@usccr.gov, "Alec Deull" adeull@usccr.gov
Subject : Notes- 04.26.21- Caucus SA Mtg.
Attachment : image001.gif;image002.gif;image003.gif;

Notes:

1. Nothing on mtg (will go ahead 4/30 at 2pm)
2. AIs/memos -
    a. We will discuss further at Caucus mtg once we consult with the Commissioners (memo)
    b. EAC- redlines from Kladney + Adegbile consistent and non-negotiable
    c. Other 2 AIs- Kladney + Adegbile will not support the AIs re: want out to stay out of career staff day to day business
3. NC/ID/CO SACs –
    a. Irena spoke to Alex re: NC; Irena will circle back to David M & Mauro as Alec did not reach out w/o strategizing with us
    b. NC will move forward but for MAY 14 mtg
4. AAPI statement
    a. No update from YAKI
    b. Comms. Adegbile, Kladney & Cantu have not provided feedback
        i. Irena recommendation – add to caucus mtg due to updates in legislation, events, etc.
5. All items were carried over to Friday's mtg
6. SA Priorities
    a. Amy getting Bail Reform draft today; will review this week and will let us know on Monday on sections we should focus on; Rs can't focus on it until AIs and Chair resolved
    b. Irena- prep for business mtgs so possibly set another call on Thursday to ensure all on same page (add Caucus agenda)
    c. Nothing from Alec
    d. Juana – caucus agenda today by COB (skeleton and call in info)
        i. In event not to tonight, ASAP Tuesday morning

Thanks! - J

--
Juana Silverio *(she/her/ella)*
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OVERSTOCK

Date : 4/27/2021 3:35:35 AM
From : "Alec Deull" adeull@usccr.gov
To : "Michael Yaki" MYaki@usccr.gov, "michael@michaelyaki.com" michael@michaelyaki.com
Subject : info re: Caucus Call: 3 pm Eastern, Tues., April 30
Attachment : USCCR 2021-04-30 Special Business Meeting Agenda.pdf;OGC Review and Recommendations on Proposed 4-16 Final PDF.pdf;Review and Recommendations on Proposed 4-16 Final PDF.pdf;AI on Appointment Authority (general and EAC) DK DA.docx;

hello Michael --

Juana plans to release an agenda for the caucus call this morning.

In order to give you a heads-up and organize documents for you regarding anticipated agenda items:

A. Agenda for Friday's Business Meeting:

Attached. Mauro's link to the secure file is https://securisync.intermedia.net/us2/s/login?public_share=_XZOHVK92GU1VDGU925IM8. Password is Lieko#450. The Monday update of which Mauro speaks has not yet appeared.

B. Bipartisan/Negotiated A.I. proposals:

EAC: Dave and Debo submitted "non-negotiable" feedback on the language which you and Pete crafted, if in fact this issue needs to be addressed in an AI at all. The documents are attached. As per Amy:

"Sending edits from Dave and Debo on the appointing authority to external Commissions. Their preference is that this not be handled through an AI at all, as it will bind future Commissions to this process. They prefer a different vehicle to handle this round of appointments only. If it is necessary to adopt a new AI, I'm attaching here language that reflects their position."

The Debo/Dave document is attached.

The new GG submitted a memo opposing ALL THREE proffered A.I.s. It is attached.

The Staff Director submitted a memo recommending that the Commissioners take bipartisan votes on EAC members and withdraw the other two proposals. It is attached.

AMERICAN OVERSIGHT

Other A.I.s:

Debo and Dave oppose having the Commissioners get so deeply involved in the day-to-day operations of the career staff.

As above, the new GG submitted a memo opposing ALL THREE proffered A.I.s. It is attached.

As above, the Staff Director submitted a memo recommending that the Commissioners withdraw these two proposals. It is attached.

C. SACs:

NC will likely go forward upon bipartisan agreement long in the making.

ID is still stalled because the Rs disagree with your assertion that Yenor needs to apologize.

D. Anti-AAPI discrimination statement:

This item appears on the new agenda. Do you still want to go forward? If so, do you want to make any edits? Other Ds may suggest edits. If a new version is going forward on Friday, we must circulate by noon Eastern on Wednesday. I will be out of pocket for a while after the caucus meeting by can likely resume work late Tues. night.

Here is a relevant update: https://www.axios.com/asian-hate-crimes-bill-senate-2fdcec03-4157-453c-818a-07b45151edc3.html.

Please see the MD SAC's statement on anti-AAPI discrimination, also provided under separate cover: https://www.usccr.gov/files/2021/04-12-MD-SAC-Statement-of-Concern-Hate-Crimes-AAPI.pdf.

all best, Alec

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DATES: Friday, April 30, 2021, 2:00 pm EST.

FOR FURTHER INFORMATION CONTACT: Angelia Rorison: 202-376-7700; publicaffairs@usccr.gov.

ADDRESSES: Meeting to take place by telephone and is open to the public by telephone: 1-855-710-4184, Conference ID #: 435-9779. Computer assisted real-time transcription (CART) will be provided. The web link to access CART (in English) on Friday, April 30th, 2021 is https://www.streamtext.net/player?event=USCCR. Please note that CART is text-only translation that occurs in real time during the meeting and is not an exact transcript.

MEETING AGENDA

I. Motion to Approve Commissioner Norma Cantú to Serve as USCCR Chair

II. Approval of Agenda

III. Business Meeting

A. Discussion and Vote on Statement of Walter E. Williams;

B. Discussion and Votes on Anti-Asian American Hate;

C. Discussion and Vote to continue the Policy of Rebuttals and Surrebuttals;

D. Discussion and Vote to suspend Speaker Series;

E. Discussion and Agreement to Appoint Bipartisan Commissioners to EAC

F. Discussion and Vote on NC SAC

G. Management and Operations

- Staff Director's Report

IV. Adjourn Meeting

Dated: April 21, 2021

AMERICAN OVERSIGHT

UNITED STATE COMMISSION ON CIVIL RIGHTS
Washington, DC

CONFIDENTIAL & PRIVILEGED/PRE-DELIBERATIVE

April 23, 2021

MEMORANDUM FOR: Commissioners

FROM: Staff Director and Executive Committee

SUBJECT: Review and Recommendations of Proposed Administrative Instructions submitted on April 16, 2021, during the Commission Business Meeting

The Staff Director and the Executive Committee of the U.S. Commission on Civil Rights, which includes the offices of the Staff Director, Office of Civil Rights Evaluation, General Counsel, Public Affairs, and Management, have jointly reviewed the three proposed Administrative Instructions (A.I.s) introduced by the Commissioners during an April 16th , 2021, Business Meeting. The Staff Director and Executive Committee believes the proposed A.I.s inappropriately conflict with existing Administrative Instructions and Commission regulations, and unreasonably create programmatic and operations problems for the Commission. It is our recommendation that the proposed A.I.s in their current form be revised or withdrawn.

A. Proposed A.I. on Commission Appointments to Other Federal Entities

The Executive Committee provides the following recommendations regarding this proposed A.I. First, Commission appointments pursuant to 52 U.S.C. § 20944 to the U.S. Election Assistance Commission (EAC), Board of Advisors, could be accomplished via a Commission vote rather than an A.I. Second, the proposed A.I. does not distinguish appointing authorities that provide appointments to the Commissioners themselves versus those that provide the Chair of the Commission or Staff Director with appointment authority. For example, the authorizing statute for the Commission on the Social Status of Black Men and Boys designates the Staff Director as the appointing authority for one (1) member.[1] If the proposed A.I., as written, was followed for the appointment to the Commission on the Social Status of Black Men and Boys, it would conflict and result in a violation of the statute. Lastly, the proposed A.I. provides a procedure to make appointments to the EAC, Board of Advisors, however it does not provide a procedure to make appointments if the caucuses do not agree on their nominees.

The Staff Director and Executive Committee recommends that this A.I. be revised or withdrawn from consideration.

[1] *See* https://www.congress.gov/bill/116th-congress/house-bill/1636/text?q=%7B%22search%22%3A%5B%22%5B2018-09-28+TO+2018-09-28%5D%22%5D%7D, Sec. 3(6).

AMERICAN OVERSIGHT

B. Proposed A.I. on OCRE Interviews of Panelists and Witnesses

This proposed A.I. provides that Commissioners attend staff "interviews" with external fact "witnesses or experts." OCRE does not conduct interviews of panelists or witnesses before or after briefings or hearings, but rather, as was the case for the Subminimum Wage and Bail Reform Reports, it holds meetings with stakeholders as part of its data collection process to develop and prepare concepts and documents for reports pursuant to its regulatory mandate contained in 45 C.F.R. § 701.13(e) (this Office is responsible for monitoring, evaluating and reporting on the civil rights enforcement effort of the Federal Government; developing concepts for programs, projects, and policies directed toward the achievement of Commission goals; preparing documents that articulate the Commission's views and concerns regarding Federal civil rights.) Commissioner participation in OCRE pre-briefings and pre-hearing meetings is inconsistent with the aforementioned regulation, which prescribes OCRE's function within the Commission.[2]

Further, 45 C.F.R. § 702.14(a) notes that an accurate transcript recorded by a court reporter shall be made of the testimony of all witnesses at all proceedings of the Commission. Consequently, as written, by defining OCRE meetings as "interviews" this A.I. would result in the financial cost of court reporters to be present whenever OCRE meets with stakeholders, panelists, or witnesses, in addition to the administrative burden of having to schedule and coordinate meeting time with Commissioners and their Special Assistants on a bipartisan basis and the panelist or witness. This A.I. is impractical and unnecessary.

Finally, the A.I. provides that Commissioners can individually provide follow-up questions to witnesses. This runs counter to the Commission's Privacy Act policy as OCRE staff would not have access to these additional individual Commissioner questions, requests or the information gathered; nor can OCRE ensure that the information collected from participants will be properly stored and managed for confidentiality or for inclusion in Commission Reports. Additionally, career staff in OCRE, as social scientists, follow the three principles of the Belmont Report (respect of persons, beneficence, and justice), which are needed to protect vulnerable interviewees, such as children, persons with disabilities, prisoners, and others. It is not clear that Commissioners or their Special Assistants, given their varied professional backgrounds, will follow the aforementioned principles.

The current practice is that OCRE sends a joint set of follow up questions from Commissioners which are forwarded to panelists to answer. All questions and answers are shared with Commissioners and their special assistants. Sending separate and individual questions confuses panelists, results in multiple & repetitive questions and prevents every Commissioner equal access to questions and answers.

[2] *See U.S. Lines, Inc. v. Fed. Mar. Comm'n,* 584 F.2d 519, 526 n. 20 (D.C.Cir.1978) *citing* to *U.S. v. Nixon,* 418 U.S. 683, 693-696 (1974) ("an agency is not free to ignore or violate its regulations while they remain in effect.")

AMERICAN OVERSIGHT

Commissioners provide no evidence, justification or rational for the necessity and creation of this A.I. As a consequence, the Staff Director and Executive Committee recommend that this A.I. be withdrawn from further consideration.

C. Proposed A.I. on Witness Selection

This proposed A.I. revises A.I. 1-6, "National Project Development and Implementation." Specifically, it revises Section 11, Commission Hearings, and Section 12, Commission Briefings. Staff reminds Commissioners that there is a significant difference between a Commission hearing and a Commission briefing.

The first sentences of Sections 11.03 and 12.02 respectively state that staff are to use "various" sources to gather suggestions for witnesses, but the subsequent sentences state that Commissioners are the "primary" source for "suggesting" witnesses. These two sentences are contradictory and the use of the term "suggest" in reference to witness selection by the Commissioners is inconsistent with the provision in these Sections that if two Commissioners request a particular witness, then staff must invite that witness.

Sections 11.03 and 12.02 mandate that staff invite a witness who is requested by two or more Commissioners. This mandate is inconsistent with A.I. 1-6, Sec. 4.06. Section 4.06 enumerates the Commissioners' roles and functions, such as approving projects and concepts, commenting on draft reports, and approving reports, but it does not include witness selection. The proposed A.I. would repudiate Sec. 4.07, which notes that "all responsibilities not otherwise delegated are reserved to the Staff Director who may redelegate any responsibilities to a member of the executive staff." Section 12.02's requirement to invite witnesses to Commission briefings when they are selected by two or more Commissioners is also inconsistent with 45 C.F.R. § 701.13(e), which makes project development and civil rights evaluation functions of OCRE. As noted above, federal agencies are not free to ignore its regulations while they remain in effect. *See U.S. Lines, Inc.,* 584 F.2d 519 at n. 20. Similarly, Section 11.03's requirement to invite witnesses to Commission hearings when they are selected by two or more Commissioners is inconsistent with 45 C.F.R. § 701.13(c), which notes that OGC "plans and conducts hearings."[3] Given that this proposed A.I. allows Commissioners to select witnesses for hearings, it prevents OGC from fulfilling its regulatory mandate to plan hearings. In the sixty-three year history of the Commission, Commissioners have never unilaterally selected witnesses. Such a change would alter the fundamental role of OCRE and undermine its ability to conduct an objective and substantive briefing.

Sections 11.03 and 12.02's witness mandate is also not consistent with 42 U.S.C. § 1975b. This statute notes that the Staff Director is the administrative head of the Commission, which includes things such as proposing employee discipline and conducting performance appraisals for career staff under Title 5. Commissioner interference in OCRE and OGC's operations as

[3] Although notice and comment rulemaking is not required for general statements of policy under 5 U.S.C. § 553(b)(A), an agency acts arbitrarily and capriciously if it acts in a manner that is contrary to its own regulations or a congressional statute. *Pol'y & Rsch., LLC v. United States Dep't of Health & Hum. Servs*., 313 F. Supp. 3d 62, 72 (D.D.C. 2018).

AMERICAN OVERSIGHT

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Section 11.02 of the current A.I. 1-6 references a Hearing Report form, however it is unclear whether the Commission actually utilizes this form. This form certifies a numerical balance of witnesses with opposing views, opinions, and perspectives, and could safeguard that witnesses and panelists are ideologically balanced. However, such a form could also be used to impede in the selection of panelists for briefings and undermine the benefit the collaborative working relationship. OCRE already works with the lead Special Assistant/Commissioner regarding witness and panelist selection. Adding a new form or a new layer in the selection process would further delay the creation of panels and delay the release of the final report.

Logistically the proposed A.I. presents a number of potential scheduling issues for Commission staff. As written, it is unclear when Commissioners' ability to suggest witnesses ends, which may result in OCRE being unable to prepare a final witness or panelist roster/list. Commissioner selection of panelists and witnesses will also likely increase negotiation and debate among Commissioners, which could result in delays in confirming attendance. Additionally, having a roster/list being selected by Commissioners and staff could result in the need for briefings and hearings lasting multiple days, which will increase costs.

Lastly, while it is understandable that that Commissioners want to play a larger role in the selection process, they should do so by negotiating with each other prior to panelists suggestions being sent to OCRE. They should continue to work with OCRE to have diverse and objective panelists instead of attempting to force a selection reflecting their individual viewpoint. It is the view of the staff that unilateral Commissioner selection of witnesses and panelists would constrain OCRE's ability to collect bipartisan testimony and prohibit OCRE's ability to act independently. The panelist and witness evaluation process is independent of the Commissioners final assessment and report of civil rights enforcement. Further, OCRE remains committed to work with Commissioners regarding their recommendations and will continue to strive to accommodate the recommended expert or fact witness or panelist.

Commissioners provide no evidence, justification or rational for the necessity and creation of this A.I. As a consequence, the Staff Director and Executive Committee recommends that this A.I. be withdrawn from further consideration.

AMERICAN OVERSIGHT

D. Conclusion

The following are the recommendations of the Commission professional staff:

- Commissioners discuss and take a recorded vote on bipartisan appointments to other Federal entities or revise the proposed A.I. for Commission appointments;
- Commissioners withdraw from further consideration the proposed A.I. on Stakeholder Interviews; and,
- Commissioners withdraw from further consideration the proposed A.I. on Witnesses.

AMERICAN OVERSIGHT

UNITED STATE COMMISSION ON CIVIL RIGHTS
Washington, DC

CONFIDENTIAL & PRIVILEGED/PRE-DELIBERATIVE

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AMERICAN OVERSIGHT

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AMERICAN OVERSIGHT

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AMERICAN OVERSIGHT

ADMINISTRATIVE INSTRUCTION __- __

COMMISSION APPOINTMENTS TO OTHER FEDERAL ENTITIES

Section 1.

.01 Any authority specifically granted the Commission of Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc. shall be exercised by the Commission Chairperson in consultation with all members of the commission.~~as a whole by majority vote~~.

Commented [AR1]: Dave and Debo disagree with adopting a new AI to control the appointments process going forward. They believe commitments to an appointments process can be made through a different vehicle that would not bind future Commissions

Section 2

.02

(1) For the two (2) appointments to the U.S. Election Assistance Commission, the members appointed by Democratic authorities shall nominate two individuals of their membership that are ready willing and able to serve, and the members appointed by the Republican authorities shall nominate two individuals of their membership that are ready willing and able to serve.

(2) The members appointed by the Democratic authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Democratic authorities.

(3) Should the person by the choosing party not be able to serve, the chairperson shall be free to choose any other member of the Commission, including said chairperson, to serve on the U.S. Election Assistance Commission/

(~~3~~4) The members selected shall be placed in nomination and ratified in conformance with Section 1.

AMERICAN OVERSIGHT

Date : 4/27/2021 9:15:40 AM
From : "Juana Silverio" jsilverio@usccr.gov
To : "Norma Cantu" ncantu@usccr.gov
Subject : FW: [EXTERNAL] Fwd: Caucus call agenda
Attachment : 04-08-Business-Meeting-Agenda-for-04-16.pdf;ID SAC Dr. Yenor.docx;CO SAC Dr. Chen.docx;

Please review and let me know if you want this sent out

From: Juana Silverio <juanadelpilar@gmail.com>
Sent: Monday, April 26, 2021 4:51 PM
To: Juana Silverio <jsilverio@usccr.gov>
Subject: [EXTERNAL] Fwd: Caucus call agenda

CAUTION: This email is from outside USCCR.

---------- Forwarded message ---------
From: **Amy Royce** <aroyce@usccr.gov>
Date: Tue, Apr 13, 2021 at 11:44 AM
Subject: Caucus call agenda
To: David Kladney <dkladney@usccr.gov>, Debo P. Adegbile <dadegbile@usccr.gov>, Norma Cantu <ncantu@usccr.gov>, Michael Yaki <MYaki@usccr.gov>
Cc: normavcantu@gmail.com <normavcantu@gmail.com>, Irena Vidulovic <ividulovic@usccr.gov>, Alec Deull <adeull@usccr.gov>,
>

Hello all,

We are scheduled for a caucus call today at 3:00 Eastern/ 12:00 Pacific. The number is 1-877-446-3914, passcode 858713#

Agenda items:

- Update from Comms. Cantu and Yaki on discussions regarding Chair confirmation
- Business meeting on Friday (Sunshine Act notice attached)
    - Need for agenda amendments: remove FEMA discovery materials, as already approved by notational vote
    - Remove/combine other items?
        - Eliminating the Speaker Series
        - Rebuttal/surrebuttal time period

AMERICAN OVERSIGHT

        - Bi-partisan appointment to EAC board of advisors

    - Statement on violence against AAPI community?

- SAC updates

    - Potential compromise on North Carolina SAC, adding one member for an 8/8 balance

        - The Democratic caucus accepts adding Mincey *please see context below (no additional application needed)
        - The Republican caucus will remove the objection to Lechner *please see context below (no additional application needed)
        - Vote in the SAC w/8-8 balance

            - Slate failed to get a majority vote on Friday 10/30.
            - 15 candidates, 8 Democrats (including two Independents who lean Democrat), 7 Republicans (including one candidate who identified as “something else”).
            - Note that Olga Wright, the returning Chair, identifies herself as a Democrat but ran for public office as a Republican in all her past elections.
            - Comm. Kirsanow (and Adams) objected to the balance of the slate, and requested that it be shifted to 7 Republicans and 7 Democrats (removing one Dem).
            - John/Adams objected to the inclusion of Jennifer Lechner as he don't consider her a true Republican." In her stead they would like to replace her with a Mr. Patrick Mincey who Carissa recruited. Replacing Lechner with Mincey takes the gender balance of the slate to 11 men and 4 women. Mincey is a white collar crime attorney and lacks major civil rights experience, however in our vetting process we did not find anything objectionable regarding his public statements or conduct

    - Colorado and Idaho SACs

        - R's proposal - Dr. Chen in CO if we allow Dr. Yenor in ID (objections and responses attached)

    - Need for information from regional staff on status of recruiting for remainder of 14 expired committees

- Status of AI availability for Commissioners

    - A version of the AI's that was current in 2014 is available online, need information and a timeline from the GC for updating that version

AMERICAN OVERSIGHT

--
Juana P. Silverio, Esq.
(she/her/ella)

This e-mail and any attachments may contain information which is confidential, proprietary, privileged or otherwise protected by law. The information is solely intended for the named addressee (or a person responsible for delivering it to the addressee). If you are not the intended recipient of this message, you are not authorized to read, print, retain, copy or disseminate this message or any part of it. If you have received this e-mail in error, please notify the sender immediately by return e-mail and delete it from your computer.

AMERICAN OVERSIGHT

CIVIL RIGHTS COMMISSION

Sunshine Act Meeting Notice

AGENCY: United States Commission on Civil Rights.

ACTION: Notice of Commission public business meeting.

DATES: Friday, April 16, 2021, 12:00 p.m. EST.

FOR FURTHER INFORMATION CONTACT: Angelia Rorison: 202-376-7700; publicaffairs@usccr.gov.

ADDRESSES: Meeting to take place by telephone and is open to the public by telephone: 1-866-556-2537, Conference ID #896-5601. Computer assisted real-time transcription (CART) will be provided. The web link toaccess CART (in English) on Friday, April 16th, 2021, is https://www.streamtext.net/player?event=USCCR. Please note that CART is text-only translation that occurs in real time during the meeting and is not an exact transcript.

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III. Business Meeting

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B. Discussion and Vote to continue the Policy of Rebuttals and Surrebuttals;

C. Discussion and Vote to suspend Speaker Series;

D. Discussion and Agreement to Appoint Bipartisan Commissioners to EAC

E. Discovery and Vote on FEMA Report Discovery Plan

F. Management and Operations

- Staff Director's Report

IV. Adjourn Meeting

Dated: April 8, 2021

AMERICAN OVERSIGHT

IDAHO

Commissioner Yaki's objection

Dear Dr. Yenor:

Thank you for your service on the Idaho Advisory Committee and for your recent application for reappointment. Your name was included on the list of nominated individuals that is currently being reviewed by the Commissioners prior to appointment. As part of that review, Commissioner Yaki has made a formal objection to your nomination on the Committee because of an alleged comment you made.

Pursuant to our Administrative Instructions, when Commissioner objections pertain to a proposed member's public statement, then that nominee is provided the opportunity to respond in writing to the raised concern. The Staff Director will then consider the written response when making the final determination on whether to include the nominee on the list of individuals to be recommended for appointment.

The Commissioner has objected to your reappointment to the Idaho Advisory Committee because the Commissioner believes you are hostile to marriage equality and transgender rights. Furthermore, The Commissioner believes your public statements render you incapable of, and unable to, protect the constitutional rights supported by recent Supreme Court opinions. Citations to your most objectionable public statements on the issues at hand include:

- *https://startingpointsjournal.com/feminism-transgenderism-and-the-politics-of-identity/*
- *https://www.dailysignal.com/2017/07/18/radical-feminism-sowed-seeds-transgender-moment*
- *https://www.dailysignal.com/2017/08/02/transgender-activists-seeking-undermine-parental-rights/*
- *https://www.dailysignal.com/2017/08/02/transgender-activists-seeking-undermine-parental-rights/*
- *https://www.heritage.org/marriage-and-family/report/the-obligations-family-life-response-modern-liberalism.*

Mr. Yenor's Reponse

Dear Mr. Mussatt,
Thank you for forwarding the objections of Commissioner Michael Yaki and giving me two days to respond. I would like to know more about the process for how my response will be evaluated. Is the whole USCCR to respond? How will responses be tabulated? In any event, again thank you for forwarding these objections.

The objections to my re-nomination to the Idaho Advisory committee on civil rights are (1) that I am "hostile to marriage equality and transgender rights" as evidenced in my public writings and (2) that my "public statements render [me] incapable of, and unable to, protect (sic) the constitutional rights supported by recent Supreme Court opinions."

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Claims of discrimination under the current civil rights regime must be established through rational inquiry aided, where appropriate, by social science. Proposed policies to combat alleged discrimination must then be weighed through a rational public policy process. Policies must be evaluated critically if they are implemented.

Civil rights are hardly an all or nothing proposition. Some civil rights clash with other civil rights. Civil rights almost always require a balancing of various claims or a negotiation of the rights of various groups. In objecting to my participation on the commission, Commissioner Yaki seems to deny that civil rights matters involve such balancing or to deny that some important civil rights should be protected or to deny that some civil rights claims should be heard or entertained; he seems to want civil rights for only some groups and not for others. He gives civil rights a bad name in so doing.

Suppose a civil rights commission finds itself adjudicating a claim of transgender rights as civil rights. In making a fair-minded adjudication, the commission would have to consider the relation between such transgender rights and other civil rights in our tradition such as the free exercise of religion, parental rights, rights against sex discrimination. It would have to determine how transgender rights weigh against those rights. In doing so, it would be necessary to inquire into the rational basis for claims of transgender rights and the likely consequences of affirming them, just as it would be necessary to see what would happen from denying them.

My work raises questions about the evidence that proves discrimination and it concerns the clash of civil rights in politics. Claims of transgender rights can, in some circumstances, I have argued, clash with parental rights (as when a school insists on transitioning a child from one gender to another without informing the parents or against their will). Such instances are, as my research argues, more likely to harm the child and, if multiplied, are likely to have a corrosive effect on parental rights, a crucial civil right (as established in Meyer v. Nebraska and Pierce v. Society of Sisters). Seeing children as products of state mandates in these instances is more likely to undermine well-functioning institutions than it is to promote a good society or thriving individuals. Claims to marital equality have already compromised religious liberty, the freedom of association, and the free thought and discussion on many platforms.

Does Commissioner Yaki disagree that transgender rights clash with parental rights? Does he think that the Civil Rights Commissions nationwide should ignore questions about what it would mean to take the side of "transgender rights" against parental rights? Does he think religious liberty of so little importance that Civil Rights Commissions should ignore how it is compromised by so-called marriage equality? Does he think Civil Rights Commissions should refrain from investigating the future mental and physical health of children who have been transitioned, against the will of their parents, from one gender to another? Does he think we should cease investigating the mental or physical health of all those who have transitioned, even with parental support? Perhaps I should object to his continued participation as a Civil Rights Commissioner if he thinks all such questions are settled questions or based on sound science!

The inclusion of gender identity within the anti-discrimination regime of the 1964 Civil Rights Act is a cause for no little concern. Under such gender identity claims, a person's subjective,

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gendered self-image as woman, man or whatever supersedes the objective biological fact of sexual identity as female or male. This new gender identity further may come with a demand that governments and others citizens recognize that new gender as an objective fact—a huge abridgement on the civil rights and the freedom of mind of others. These ideas, taken together, are incoherent and compromise our commitment to limited government. They are incoherent because they nullify the categories of male and female to which the anti-discrimination principle applies. How can a school district remedy supposed unjust discrimination in girls' sports when anyone can qualify, simply on their own assertion, as woman? Does Fairness in Sports demand keeping biological men out of women's sports and aspiring to equal treatment of such sports or does it demand letting transgendered men in and, perhaps, decrease the opportunities for the formerly protected class of women? Idaho has taken the lead in protecting women's sports in these circumstances, and I look forward to participating in studies investigating how this affects opportunities. The demands that Commissioner Yaki makes contain the seeds of a new political order, much less committed to civil rights than our current order.

I am very skeptical of the idea that gender operates independently of sex. I would demand verification, from well-designed studies, that confirmed the proposition that conceiving of gender independently of sex leads to individual and social thriving. It think it is irresponsible to accept, without critical inquiry, the idea that affirming gender identity fosters all manner of social and individual good. It is not at all clear to me that it is better to recognize a person's concept of gender, apart from their biological sex, as authentic and salutary rather than as erroneous or pathological. I would be concerned that acknowledging such an idea compromises other, well-established and important civil rights.

Conservatives participate in Civil Rights Commissions across the country. We generally worry about how anti-discrimination laws, as applied and as construed, abridge fundamental freedoms and can upset prospects of social harmony. We often investigate the implications of such abridgements in our scholarship. On the Yaki standard, would Justice Sam Alito or Justice Clarence Thomas or Chief Justice John Roberts be ineligible to serve on a civil rights commission? They dissented, after all, from the same-sex marriage decisions in Windsor and Obergefell. Two of them dissented in the recent case re-interpreting the 1964 Civil Rights Act. More broadly, would any conservative be allowed to participate unless he or she abandoned his or her conservatism? Perhaps all of these opinions disqualify someone from sitting on an Advisory Board. If they do, it may be hard to justify continued government support for a strictly partisan organ.

Sincerely,
Scott Yenor

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COLORADO: 12 candidates, 6 Republicans (including one Independent who leans Republican), 6 Democrats (including one Independent who leans Democrat).

- Comm. Heriot objected to Prof. Ming Hsu Chen on the basis of an article she wrote called, "Colorblind Nationalism."
- Prof. Chen responded, and Mauro kept her on the slate on the basis of the response.
- Full objection from Comm. Heriot:

In her article, Prof. Chen says that racist and anti-immigrant "policies are cloaked in the neutral language of national protection, public health, and economic justice." Therefore, anyone who supports those facially colorblind policies is racist. More broadly, Prof. Chen suggests that anyone who favors any level of immigration restriction is a white supremacist.

It is inappropriate for a SAC member to make wild accusations of racism against entire groups of people. This article reveals Prof. Chen's bad faith. Additionally, her embrace of Ibram X. Kendi's "anti-racist" ideology is troubling, as that ideology in and of itself promotes discrimination.

Prof. Chen's article in the Yale Journal on Regulation, "Colorblind Nationalism," (available here) is particularly objectionable for a member of a State Advisory Committee.

- Full response from Prof. Chen:

Dear Mr. Mussatt and Mr. Morales,

Thank you for the opportunity to respond to Commissioner Heriot's objection. This objection seems to be based on a single sentence from an opinion piece, which I discuss below, but please note her objection paraphrases my essay in ways that mischaracterize the essay and my beliefs.

For example:

- *I do not say or believe that "anyone who supports facially colorblind policies is racist"*
- *I do not say that or believe that "anyone who favors any level of immigration restriction is a white supremacist"*
- *There is also no basis for her claim that I write or act in "bad faith" in her formal objection.*

As some background, I have served on the Colorado State Advisory Committee for 4-years (2016-2020). During that time, I worked collaboratively with all SAC members after my project proposal on the naturalization backlog was unanimously adopted in 2018. This work included working together on a briefing with expert testimony from 12 speakers representing a range of perspectives, addressing all SAC member voices in when drafting our report, and incorporating suggestions during the subsequent revisions and adoption of the report. The resulting 2019 report has since been cited widely in media and other academic and policy research. A 2020

AMERICAN OVERSIGHT

update and 2-page statement of concern was adopted unanimously by the CO SAC, and USCCR Chair Catherine Lhamon endorsed and sent her own letter to the impacted agency.

During my tenure, I also supported projects spearheaded by other SAC members, including ones sponsored by our more conservative members on religious freedom and racial disparities in infant/maternal mortality. In each of these projects, I was an active team member and made good faith efforts to listen to evidence from our hearings, to consider the divergent viewpoints, and to incorporate and suggest revisions on my reports and others that would build a broader consensus.

Outside of my service to SAC, my professional qualifications include a ten-year history of academic teaching and writing in immigration, civil rights, and administrative law at the University of Colorado Law School. This has included presentations with scholars from many viewpoints. Not infrequently I've been invited by members of conservative groups like the Federalist Society or the National Association of Attorney Generals to be a reasonable voice in their discussions. In these and other endeavors, I have never been accused of bias in my professional work.

In my personal capacity, I occasionally write short opinion pieces such as the essay that is cited in the objection and published in a special symposium on racism and the law for the online edition of the nation's premiere specialty journal on administrative law. I would describe my own views in the essay as advocating for greater racial equality for immigrants negatively impacted by travel bans and expressing an abiding concern that our federal government adhere to fair procedures in the issuance of such policies. There is no basis for saying that these views amount to "wild accusations of racism against entire groups of people" or that they "embrace Ibram X. Kendi's antiracist ideology… as that ideology itself promotes discrimination." I am not familiar with Ibram X Kendi's writings on antiracism and do not read, engage with, nor cite his work in this essay or my other scholarship. Moreover, the piece does not claim to represent the views of CO SAC or the USCCR. While I do not think the views expressed in the essay are objectionable, even if they were, I would not bring personal biases into my professional service. In closing, I recognize that reasonable people disagree on the best means of achieving equality.

My sense is that Commissioner Heriot misunderstands my perspectives and seeks to associate me with views that are more extreme than my own. Rather than rely on her second-hand description of an opinion piece written in my personal capacity, I would encourage the USCCR to apply a fair minded consideration of my application that focuses on my actual statements and my record of service to the CO SAC and USCCR.

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Date : 4/27/2021 9:50:05 AM
From : "Irena Vidulovic" ividulovic@usccr.gov
To : "Debo P. Adegbile" dadegbile@usccr.gov, "Adegbile, Debo" Debo.Adegbile@wilmerhale.com
Subject : Caucus Call TODAY at 3pm
Attachment : AI on Appointment Authority (general and EAC) AR notes (1).docx;AI Letter to the Staff Director.docx;

1.
    - Update from Cantu and Yaki on the negotiations with the Rs
    - Make sure that the items are not presented as a omnimus bill but that it is delineated
    - Remove/combine other items?
    -
        - Eliminating the Speaker Series
        - Rebuttal/surrebuttal time period
        - Bi-partisan appointment to EAC board of advisors
        - AI's
    - Statement on violence against AAPI community? We have given Alec some ideas including the language from the legislation passed in the senate: The COVID-19 Hate Crimes Act cleared the chamber in a 94-1 vote Thursday. It would expedite the Justice Department's review of hate crimes and would designate an official at the department to oversee the effort.

AI's

EAC appointing authority (redline attached)

- We have worked on the language that you emphasized during the calls.
- That the Chairperson still retains the authority to appoint with the consultation from Commissioners.
- That the Commissioners selected by respective caucus are willing and able to serve
- Finally, should the person by the choosing party not be able to serve, the chairperson shall be free to choose any other member of the Commission, including said chairperson, to serve on the U.S. Election Assistance Commission

The other 2 AI's will be reviewed by OGC and OCRE because it requires their input. However both of the AI have been non-starters for you and Dave.

OCRE Witness Interviews

The R's are wanting to attend interviews that OCRE conducts in order to obtain information for our investigations. Such interviews were conducted for the Sub-Minimum Wages, as well as for Bail Reform.

- ADA requirements for interviews may not allow for this
- Bail reform interviews also conducted with focus jurisdictions

AMERICAN OVERSIGHT

- Statutory requirements for separation of staff and Commissioners – GC to weigh in.

Panelist requests for briefings

- Explanations from OCRE on why panelists are not being invited
- What do our current AI's and rules require for Commissioner recommendations to be invited
- Resources may not be used effectively if we institute this system
- Need to preserve the independence of the agency

The AI on Appointment of Commissioners to EAC:

The SD/Executive Committee gave the following opinions on the AI's. First they don't think that it should be an AI. Second, the proposed A.I. does not distinguish appointing authorities that provide appointments to the Commissioners themselves versus those that provide the Chair of the Commission or Staff Director with appointment authority. For example, the authorizing statute for the Commission on the Social Status of Black Men and Boys designates the Staff Director as the appointing authority for one (1) member.

If the proposed A.I., as written, was followed for the appointment to the Commission on the Social Status of Black Men and Boys, it would conflict and result in a violation of the statute. Lastly, the proposed A.I. provides a procedure to make appointments to the EAC, Board of Advisors, however it does not provide a procedure to make appointments if the caucuses do not agree on their nominees.

The Staff Director and Executive Committee recommends that this A.I. be revised or withdrawn from consideration.

AI on interviews of panelist/witnesses.

Career staff and SD say that they do not interview folks but that they gather information for the investigation like in the case of Sub-Minimum wages and Bail Reform. That the process as it stands is transparent and provides opportunity for all Commissioners to ask follow up questions to briefing panelists but that those questions are funneled via OCRE so that there is a one stop shop of where the questions are coming from and where the questions are to be responded to. Commissioners provide no evidence, justification or rational for the necessity and creation of this A.I. As a consequence, the Staff Director and Executive Committee recommend that this A.I. be withdrawn from further consideration.

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Witness selection AI:

Basically the Career staff is saying that this would create a logistical nightmare, that it is inconsistent with A.I. 1-6, Sec. 4.06. Section 4.06 which enumerates the Commissioners' roles and functions, such as approving projects and concepts, commenting on draft reports, and approving reports, but it does not include witness selection.

The proposed A.I. would repudiate Sec. 4.07, which notes that "all responsibilities not otherwise delegated are reserved to the Staff Director who may redelegate any responsibilities to a member of the executive staff." That it would make it impossible to have all Commissioner witness recommendations honored when there are 8 Commissioners and no limit to how many they could nominate.

As written, it is unclear when Commissioners' ability to suggest witnesses ends, which may result in OCRE being unable to prepare a final witness or panelist roster/list.Commissioner selection of panelists and witnesses will also likely increase negotiation and debate among Commissioners, which could result in delays in confirming attendance.
Additionally, having a roster/list being selected by Commissioners and staff could result in the
need for briefings and hearings lasting multiple days, which will increase costs.

Irena Vidulovic
Special Assistant to Commissioner Debo P. Adegbile
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ADMINISTRATIVE INSTRUCTION __- __

COMMISSION APPOINTMENTS TO OTHER FEDERAL ENTITIES

Section 1.

.01 Any authority specifically granted the Commission of Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc. shall be exercised by the Commission Chairperson in consultation with all members of the commission.~~as a whole by majority vote~~.

Section 2

.02

(1) For the two (2) appointments to the U.S. Election Assistance Commission, the members appointed by Democratic authorities shall nominate two individuals of their membership that are ready willing and able to serve, and the members appointed by the Republican authorities shall nominate two individuals of their membership that are ready willing and able to serve.

(2) The members appointed by the Democratic authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Democratic authorities.

(3) Should the person by the choosing party not be able to serve, the chairperson shall be free to choose any other member of the Commission, including said chairperson, to serve on the U.S. Election Assistance Commission/

(~~3~~4) ———— The members selected shall be placed in nomination and ratified in conformance with Section 1.

NOTE: I don't see the AI for the rebuttal/surrebuttal,…but I will not vote for it if that crap stays in their about understanding the individual commissioners point-of-vote or vote.

Commented [1]:
Past practice has been that the Chair makes these appointments. This reduces the power of the Chair.

We should find out all the boards and other groups the Commission appoints to in order to understand the full scope of what appointing authority the Chair is relinquishing

Commented [2]:
These requirements do not belong in an AI to be binding on all future compositions of the Commission. If Norma wants to agree to this process for the current appointments, that would be understandable since we are currently 4-4. In the future, if the Commission is 6-2 again, it would be less understandable to give 2 Commissioners this much control.

Alternative: Create a rule committing to bipartisan

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UNITED STATES COMMISSION ON CIVIL RIGHTS

1331 Pennsylvania Avenue, NW• Suite 1150 • Washington, DC 20425 www.usccr.gov

April 15, 2021

Mauro Morales
Staff Director
1331 Pennsylvania Ave NW
Washington, DC 20425

Dear Mr. Morales:

We, the undersigned Commissioners, write today to request the promulgation of a searchable digital collection of the Commission's Administrative Instructions (AIs). In order to efficiently serve as Commissioners, we must have easy access to the AIs. Thus, we request that you provide us with the following:

- One updated digital file containing every AI that is in effect, in its proper order, and with the date and manner of each AI's ratification
- Physical copies of that digital file by request

The general counsel has sent some of this information piece-by-piece via email to us over the past few weeks. But those AIs have not been updated or organized, and they have not been collected into a single digital document. As matters stand, accessing the AIs requires that we attempt to assemble a complete list from the documents we have been sent piecemeal. Thus, this effort is inadequate.

This is simply a matter of good governance. Please provide us with a timeline for completion of the above tasks.

Sincerely,

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Date : 4/27/2021 9:54:04 AM
From : "Juana Silverio" jsilverio@usccr.gov
To : "Norma Cantu" ncantu@usccr.gov, "Michael Yaki" MYaki@usccr.gov, "David Kladney" dkladney@usccr.gov, "Debo P. Adegbile" dadegbile@usccr.gov, "Irena Vidulovic" ividulovic@usccr.gov, "Amy Royce" aroyce@usccr.gov, "Alec Deull" adeull@usccr.gov
Subject : DEM Caucus Mtg- Prep for Business Mtg
Attachment : 2021-04-30 Special Business Meeting Agenda.pdf;Review and Recommendations on Proposed 4-16 Final PDF.pdf;

Agenda items:

- Update from Comms. Cantu and Yaki on discussions regarding Chair confirmation
- Business meeting on Friday (Sunshine Act notice attached)
    - Need for agenda amendments: remove FEMA discovery materials, as already approved by notational vote
    - Remove/combine other items?
        - Eliminating the Speaker Series
        - Rebuttal/surrebuttal time period
        - Bi-partisan appointment to EAC board of advisors
    - Statement on violence against AAPI community?
- SAC updates

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CIVIL RIGHTS COMMISSION

Sunshine Act Meeting Notice

AGENCY: United States Commission on Civil Rights.

ACTION: Notice of Commission public business meeting.

DATES: Friday, April 30, 2021, 2:00 pm EST.

FOR FURTHER INFORMATION CONTACT: Angelia Rorison: 202-376-7700; publicaffairs@usccr.gov.

ADDRESSES: Meeting to take place by telephone and is open to the public by telephone: 1-855-710-4184, Conference ID #: 435-9779. Computer assisted real-time transcription (CART) will be provided. The web link to access CART (in English) on Friday, April 30th, 2021 is https://www.streamtext.net/player?event=USCCR. Please note that CART is text-only translation that occurs in real time during the meeting and is not an exact transcript.

MEETING AGENDA

I. Motion to Approve Commissioner Norma Cantú to Serve as USCCR Chair

II. Approval of Agenda

III. Business Meeting

A. Discussion and Vote on Statement of Walter E. Williams;

B. Discussion and Votes on Anti-Asian American Hate;

C. Discussion and Vote to continue the Policy of Rebuttals and Surrebuttals;

D. Discussion and Vote to suspend Speaker Series;

E. Discussion and Agreement to Appoint Bipartisan Commissioners to EAC

F. Discussion and Vote on NC SAC

G. Management and Operations

- Staff Director's Report

IV. Adjourn Meeting

Dated: April 21, 2021

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UNITED STATE COMMISSION ON CIVIL RIGHTS
Washington, DC

CONFIDENTIAL & PRIVILEGED/PRE-DELIBERATIVE

April 23, 2021

MEMORANDUM FOR: Commissioners

FROM: Staff Director and Executive Committee

SUBJECT: Review and Recommendations of Proposed Administrative Instructions submitted on April 16, 2021, during the Commission Business Meeting

The Staff Director and the Executive Committee of the U.S. Commission on Civil Rights, which includes the offices of the Staff Director, Office of Civil Rights Evaluation, General Counsel, Public Affairs, and Management, have jointly reviewed the three proposed Administrative Instructions (A.I.s) introduced by the Commissioners during an April 16th , 2021, Business Meeting. The Staff Director and Executive Committee believes the proposed A.I.s inappropriately conflict with existing Administrative Instructions and Commission regulations, and unreasonably create programmatic and operations problems for the Commission. It is our recommendation that the proposed A.I.s in their current form be revised or withdrawn.

A. Proposed A.I. on Commission Appointments to Other Federal Entities

The Executive Committee provides the following recommendations regarding this proposed A.I. First, Commission appointments pursuant to 52 U.S.C. § 20944 to the U.S. Election Assistance Commission (EAC), Board of Advisors, could be accomplished via a Commission vote rather than an A.I. Second, the proposed A.I. does not distinguish appointing authorities that provide appointments to the Commissioners themselves versus those that provide the Chair of the Commission or Staff Director with appointment authority. For example, the authorizing statute for the Commission on the Social Status of Black Men and Boys designates the Staff Director as the appointing authority for one (1) member.[1] If the proposed A.I., as written, was followed for the appointment to the Commission on the Social Status of Black Men and Boys, it would conflict and result in a violation of the statute. Lastly, the proposed A.I. provides a procedure to make appointments to the EAC, Board of Advisors, however it does not provide a procedure to make appointments if the caucuses do not agree on their nominees.

The Staff Director and Executive Committee recommends that this A.I. be revised or withdrawn from consideration.

[1] *See* https://www.congress.gov/bill/116th-congress/house-bill/1636/text?q=%7B%22search%22%3A%5B%22%5B2018-09-28+TO+2018-09-28%5D%22%5D%7D, Sec. 3(6).

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B. Proposed A.I. on OCRE Interviews of Panelists and Witnesses

This proposed A.I. provides that Commissioners attend staff "interviews" with external fact "witnesses or experts." OCRE does not conduct interviews of panelists or witnesses before or after briefings or hearings, but rather, as was the case for the Subminimum Wage and Bail Reform Reports, it holds meetings with stakeholders as part of its data collection process to develop and prepare concepts and documents for reports pursuant to its regulatory mandate contained in 45 C.F.R. § 701.13(e) (this Office is responsible for monitoring, evaluating and reporting on the civil rights enforcement effort of the Federal Government; developing concepts for programs, projects, and policies directed toward the achievement of Commission goals; preparing documents that articulate the Commission's views and concerns regarding Federal civil rights.) Commissioner participation in OCRE pre-briefings and pre-hearing meetings is inconsistent with the aforementioned regulation, which prescribes OCRE's function within the Commission.[2]

Further, 45 C.F.R. § 702.14(a) notes that an accurate transcript recorded by a court reporter shall be made of the testimony of all witnesses at all proceedings of the Commission. Consequently, as written, by defining OCRE meetings as "interviews" this A.I. would result in the financial cost of court reporters to be present whenever OCRE meets with stakeholders, panelists, or witnesses, in addition to the administrative burden of having to schedule and coordinate meeting time with Commissioners and their Special Assistants on a bipartisan basis and the panelist or witness. This A.I. is impractical and unnecessary.

Finally, the A.I. provides that Commissioners can individually provide follow-up questions to witnesses. This runs counter to the Commission's Privacy Act policy as OCRE staff would not have access to these additional individual Commissioner questions, requests or the information gathered; nor can OCRE ensure that the information collected from participants will be properly stored and managed for confidentiality or for inclusion in Commission Reports. Additionally, career staff in OCRE, as social scientists, follow the three principles of the Belmont Report (respect of persons, beneficence, and justice), which are needed to protect vulnerable interviewees, such as children, persons with disabilities, prisoners, and others. It is not clear that Commissioners or their Special Assistants, given their varied professional backgrounds, will follow the aforementioned principles.

The current practice is that OCRE sends a joint set of follow up questions from Commissioners which are forwarded to panelists to answer. All questions and answers are shared with Commissioners and their special assistants. Sending separate and individual questions confuses panelists, results in multiple & repetitive questions and prevents every Commissioner equal access to questions and answers.

[2] *See U.S. Lines, Inc. v. Fed. Mar. Comm'n,* 584 F.2d 519, 526 n. 20 (D.C.Cir.1978) *citing* to *U.S. v. Nixon,* 418 U.S. 683, 693-696 (1974) ("an agency is not free to ignore or violate its regulations while they remain in effect.")

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Commissioners provide no evidence, justification or rational for the necessity and creation of this A.I. As a consequence, the Staff Director and Executive Committee recommend that this A.I. be withdrawn from further consideration.

C. Proposed A.I. on Witness Selection

This proposed A.I. revises A.I. 1-6, "National Project Development and Implementation." Specifically, it revises Section 11, Commission Hearings, and Section 12, Commission Briefings. Staff reminds Commissioners that there is a significant difference between a Commission hearing and a Commission briefing.

The first sentences of Sections 11.03 and 12.02 respectively state that staff are to use "various" sources to gather suggestions for witnesses, but the subsequent sentences state that Commissioners are the "primary" source for "suggesting" witnesses. These two sentences are contradictory and the use of the term "suggest" in reference to witness selection by the Commissioners is inconsistent with the provision in these Sections that if two Commissioners request a particular witness, then staff must invite that witness.

Sections 11.03 and 12.02 mandate that staff invite a witness who is requested by two or more Commissioners. This mandate is inconsistent with A.I. 1-6, Sec. 4.06. Section 4.06 enumerates the Commissioners' roles and functions, such as approving projects and concepts, commenting on draft reports, and approving reports, but it does not include witness selection. The proposed A.I. would repudiate Sec. 4.07, which notes that "all responsibilities not otherwise delegated are reserved to the Staff Director who may redelegate any responsibilities to a member of the executive staff." Section 12.02's requirement to invite witnesses to Commission briefings when they are selected by two or more Commissioners is also inconsistent with 45 C.F.R. § 701.13(e), which makes project development and civil rights evaluation functions of OCRE. As noted above, federal agencies are not free to ignore its regulations while they remain in effect. *See U.S. Lines, Inc.,* 584 F.2d 519 at n. 20. Similarly, Section 11.03's requirement to invite witnesses to Commission hearings when they are selected by two or more Commissioners is inconsistent with 45 C.F.R. § 701.13(c), which notes that OGC "plans and conducts hearings."[3] Given that this proposed A.I. allows Commissioners to select witnesses for hearings, it prevents OGC from fulfilling its regulatory mandate to plan hearings. In the sixty-three year history of the Commission, Commissioners have never unilaterally selected witnesses. Such a change would alter the fundamental role of OCRE and undermine its ability to conduct an objective and substantive briefing.

Sections 11.03 and 12.02's witness mandate is also not consistent with 42 U.S.C. § 1975b. This statute notes that the Staff Director is the administrative head of the Commission, which includes things such as proposing employee discipline and conducting performance appraisals for career staff under Title 5. Commissioner interference in OCRE and OGC's operations as

[3] Although notice and comment rulemaking is not required for general statements of policy under 5 U.S.C. § 553(b)(A), an agency acts arbitrarily and capriciously if it acts in a manner that is contrary to its own regulations or a congressional statute. *Pol'y & Rsch., LLC v. United States Dep't of Health & Hum. Servs*., 313 F. Supp. 3d 62, 72 (D.D.C. 2018).

AMERICAN OVERSIGHT

proposed in the A.I. would result in contradictory or inconsistent orders from Commissioners. Additionally, designating Commissioners as the "primary" source for inviting and hearing from a specific witness would be an extraordinary change skewing the ability of OCRE to engage in objective investigations. It would send the Commission down a slippery slope of Commissioners and their special assistants themselves conducting investigations and writing reports. Such change would irreparably alter the mission of the Commission and be at odds with our enacting statue and Congressional history in creating the Commission. Please also note that Commissioner involvement in selecting witnesses pursuant to this proposed A.I., attending panelist and witness meetings in the aforementioned proposed A.I., or other involvement in the Commission's day-to-day operations, may implicate the 75-day billable cap in the Commission's fiscal year 2021 budget. *See* https://www.usccr.gov/pubs/2020/FY2021-Congressional-Budget-Justification.pdf.

Section 11.02 of the current A.I. 1-6 references a Hearing Report form, however it is unclear whether the Commission actually utilizes this form. This form certifies a numerical balance of witnesses with opposing views, opinions, and perspectives, and could safeguard that witnesses and panelists are ideologically balanced. However, such a form could also be used to impede in the selection of panelists for briefings and undermine the benefit the collaborative working relationship. OCRE already works with the lead Special Assistant/Commissioner regarding witness and panelist selection. Adding a new form or a new layer in the selection process would further delay the creation of panels and delay the release of the final report.

Logistically the proposed A.I. presents a number of potential scheduling issues for Commission staff. As written, it is unclear when Commissioners' ability to suggest witnesses ends, which may result in OCRE being unable to prepare a final witness or panelist roster/list. Commissioner selection of panelists and witnesses will also likely increase negotiation and debate among Commissioners, which could result in delays in confirming attendance. Additionally, having a roster/list being selected by Commissioners and staff could result in the need for briefings and hearings lasting multiple days, which will increase costs.

Lastly, while it is understandable that that Commissioners want to play a larger role in the selection process, they should do so by negotiating with each other prior to panelists suggestions being sent to OCRE. They should continue to work with OCRE to have diverse and objective panelists instead of attempting to force a selection reflecting their individual viewpoint. It is the view of the staff that unilateral Commissioner selection of witnesses and panelists would constrain OCRE's ability to collect bipartisan testimony and prohibit OCRE's ability to act independently. The panelist and witness evaluation process is independent of the Commissioners final assessment and report of civil rights enforcement. Further, OCRE remains committed to work with Commissioners regarding their recommendations and will continue to strive to accommodate the recommended expert or fact witness or panelist.

Commissioners provide no evidence, justification or rational for the necessity and creation of this A.I. As a consequence, the Staff Director and Executive Committee recommends that this A.I. be withdrawn from further consideration.

AMERICAN OVERSIGHT

D. Conclusion

The following are the recommendations of the Commission professional staff:

- Commissioners discuss and take a recorded vote on bipartisan appointments to other Federal entities or revise the proposed A.I. for Commission appointments;
- Commissioners withdraw from further consideration the proposed A.I. on Stakeholder Interviews; and,
- Commissioners withdraw from further consideration the proposed A.I. on Witnesses.

AMERICAN OVERSIGHT

Date : 4/27/2021 9:54:36 AM
From : "Juana Silverio" jsilverio@usccr.gov
To : "Norma Cantu" ncantu@usccr.gov, "Michael Yaki" MYaki@usccr.gov, "David Kladney" dkladney@usccr.gov, "Debo P. Adegbile" dadegbile@usccr.gov, "Irena Vidulovic" ividulovic@usccr.gov, "Amy Royce" aroyce@usccr.gov, "Alec Deull" adeull@usccr.gov
Subject : DEM Caucus Mtg- Prep for Business Mtg
Attachment : 2021-04-30 Special Business Meeting Agenda.pdf;Review and Recommendations on Proposed 4-16 Final PDF.pdf;

Agenda items:

- Update from Comms. Cantu and Yaki on discussions regarding Chair confirmation
- Business meeting on Friday (Sunshine Act notice attached)
    - Need for agenda amendments: remove FEMA discovery materials, as already approved by notational vote
    - Remove/combine other items?
        - Eliminating the Speaker Series
        - Rebuttal/surrebuttal time period
        - Bi-partisan appointment to EAC board of advisors
    - Statement on violence against AAPI community?
- SAC updates

AMERICAN OVERSIGHT

CIVIL RIGHTS COMMISSION

Sunshine Act Meeting Notice

AGENCY: United States Commission on Civil Rights.

ACTION: Notice of Commission public business meeting.

DATES: Friday, April 30, 2021, 2:00 pm EST.

FOR FURTHER INFORMATION CONTACT: Angelia Rorison: 202-376-7700; publicaffairs@usccr.gov.

ADDRESSES: Meeting to take place by telephone and is open to the public by telephone: 1-855-710-4184, Conference ID #: 435-9779. Computer assisted real-time transcription (CART) will be provided. The web link to access CART (in English) on Friday, April 30th, 2021 is https://www.streamtext.net/player?event=USCCR. Please note that CART is text-only translation that occurs in real time during the meeting and is not an exact transcript.

MEETING AGENDA

I. Motion to Approve Commissioner Norma Cantú to Serve as USCCR Chair

II. Approval of Agenda

III. Business Meeting

A. Discussion and Vote on Statement of Walter E. Williams;

B. Discussion and Votes on Anti-Asian American Hate;

C. Discussion and Vote to continue the Policy of Rebuttals and Surrebuttals;

D. Discussion and Vote to suspend Speaker Series;

E. Discussion and Agreement to Appoint Bipartisan Commissioners to EAC

F. Discussion and Vote on NC SAC

G. Management and Operations

- Staff Director's Report

IV. Adjourn Meeting

Dated: April 21, 2021

AMERICAN OVERSIGHT

UNITED STATE COMMISSION ON CIVIL RIGHTS
Washington, DC

CONFIDENTIAL & PRIVILEGED/PRE-DELIBERATIVE

April 23, 2021

MEMORANDUM FOR: Commissioners

FROM: Staff Director and Executive Committee

SUBJECT: Review and Recommendations of Proposed Administrative Instructions submitted on April 16, 2021, during the Commission Business Meeting

The Staff Director and the Executive Committee of the U.S. Commission on Civil Rights, which includes the offices of the Staff Director, Office of Civil Rights Evaluation, General Counsel, Public Affairs, and Management, have jointly reviewed the three proposed Administrative Instructions (A.I.s) introduced by the Commissioners during an April 16th , 2021, Business Meeting. The Staff Director and Executive Committee believes the proposed A.I.s inappropriately conflict with existing Administrative Instructions and Commission regulations, and unreasonably create programmatic and operations problems for the Commission. It is our recommendation that the proposed A.I.s in their current form be revised or withdrawn.

A. Proposed A.I. on Commission Appointments to Other Federal Entities

The Executive Committee provides the following recommendations regarding this proposed A.I. First, Commission appointments pursuant to 52 U.S.C. § 20944 to the U.S. Election Assistance Commission (EAC), Board of Advisors, could be accomplished via a Commission vote rather than an A.I. Second, the proposed A.I. does not distinguish appointing authorities that provide appointments to the Commissioners themselves versus those that provide the Chair of the Commission or Staff Director with appointment authority. For example, the authorizing statute for the Commission on the Social Status of Black Men and Boys designates the Staff Director as the appointing authority for one (1) member.[1] If the proposed A.I., as written, was followed for the appointment to the Commission on the Social Status of Black Men and Boys, it would conflict and result in a violation of the statute. Lastly, the proposed A.I. provides a procedure to make appointments to the EAC, Board of Advisors, however it does not provide a procedure to make appointments if the caucuses do not agree on their nominees.

The Staff Director and Executive Committee recommends that this A.I. be revised or withdrawn from consideration.

[1] *See* https://www.congress.gov/bill/116th-congress/house-bill/1636/text?q=%7B%22search%22%3A%5B%22%5B2018-09-28+TO+2018-09-28%5D%22%5D%7D, Sec. 3(6).

AMERICAN OVERSIGHT

B. Proposed A.I. on OCRE Interviews of Panelists and Witnesses

This proposed A.I. provides that Commissioners attend staff "interviews" with external fact "witnesses or experts." OCRE does not conduct interviews of panelists or witnesses before or after briefings or hearings, but rather, as was the case for the Subminimum Wage and Bail Reform Reports, it holds meetings with stakeholders as part of its data collection process to develop and prepare concepts and documents for reports pursuant to its regulatory mandate contained in 45 C.F.R. § 701.13(e) (this Office is responsible for monitoring, evaluating and reporting on the civil rights enforcement effort of the Federal Government; developing concepts for programs, projects, and policies directed toward the achievement of Commission goals; preparing documents that articulate the Commission's views and concerns regarding Federal civil rights.) Commissioner participation in OCRE pre-briefings and pre-hearing meetings is inconsistent with the aforementioned regulation, which prescribes OCRE's function within the Commission.[2]

Further, 45 C.F.R. § 702.14(a) notes that an accurate transcript recorded by a court reporter shall be made of the testimony of all witnesses at all proceedings of the Commission. Consequently, as written, by defining OCRE meetings as "interviews" this A.I. would result in the financial cost of court reporters to be present whenever OCRE meets with stakeholders, panelists, or witnesses, in addition to the administrative burden of having to schedule and coordinate meeting time with Commissioners and their Special Assistants on a bipartisan basis and the panelist or witness. This A.I. is impractical and unnecessary.

Finally, the A.I. provides that Commissioners can individually provide follow-up questions to witnesses. This runs counter to the Commission's Privacy Act policy as OCRE staff would not have access to these additional individual Commissioner questions, requests or the information gathered; nor can OCRE ensure that the information collected from participants will be properly stored and managed for confidentiality or for inclusion in Commission Reports. Additionally, career staff in OCRE, as social scientists, follow the three principles of the Belmont Report (respect of persons, beneficence, and justice), which are needed to protect vulnerable interviewees, such as children, persons with disabilities, prisoners, and others. It is not clear that Commissioners or their Special Assistants, given their varied professional backgrounds, will follow the aforementioned principles.

The current practice is that OCRE sends a joint set of follow up questions from Commissioners which are forwarded to panelists to answer. All questions and answers are shared with Commissioners and their special assistants. Sending separate and individual questions confuses panelists, results in multiple & repetitive questions and prevents every Commissioner equal access to questions and answers.

[2] *See U.S. Lines, Inc. v. Fed. Mar. Comm'n,* 584 F.2d 519, 526 n. 20 (D.C.Cir.1978) *citing* to *U.S. v. Nixon,* 418 U.S. 683, 693-696 (1974) ("an agency is not free to ignore or violate its regulations while they remain in effect.")

AMERICAN OVERSIGHT

Commissioners provide no evidence, justification or rational for the necessity and creation of this A.I. As a consequence, the Staff Director and Executive Committee recommend that this A.I. be withdrawn from further consideration.

C. Proposed A.I. on Witness Selection

This proposed A.I. revises A.I. 1-6, "National Project Development and Implementation." Specifically, it revises Section 11, Commission Hearings, and Section 12, Commission Briefings. Staff reminds Commissioners that there is a significant difference between a Commission hearing and a Commission briefing.

The first sentences of Sections 11.03 and 12.02 respectively state that staff are to use "various" sources to gather suggestions for witnesses, but the subsequent sentences state that Commissioners are the "primary" source for "suggesting" witnesses. These two sentences are contradictory and the use of the term "suggest" in reference to witness selection by the Commissioners is inconsistent with the provision in these Sections that if two Commissioners request a particular witness, then staff must invite that witness.

Sections 11.03 and 12.02 mandate that staff invite a witness who is requested by two or more Commissioners. This mandate is inconsistent with A.I. 1-6, Sec. 4.06. Section 4.06 enumerates the Commissioners' roles and functions, such as approving projects and concepts, commenting on draft reports, and approving reports, but it does not include witness selection. The proposed A.I. would repudiate Sec. 4.07, which notes that "all responsibilities not otherwise delegated are reserved to the Staff Director who may redelegate any responsibilities to a member of the executive staff." Section 12.02's requirement to invite witnesses to Commission briefings when they are selected by two or more Commissioners is also inconsistent with 45 C.F.R. § 701.13(e), which makes project development and civil rights evaluation functions of OCRE. As noted above, federal agencies are not free to ignore its regulations while they remain in effect. *See U.S. Lines, Inc.,* 584 F.2d 519 at n. 20. Similarly, Section 11.03's requirement to invite witnesses to Commission hearings when they are selected by two or more Commissioners is inconsistent with 45 C.F.R. § 701.13(c), which notes that OGC "plans and conducts hearings."[3] Given that this proposed A.I. allows Commissioners to select witnesses for hearings, it prevents OGC from fulfilling its regulatory mandate to plan hearings. In the sixty-three year history of the Commission, Commissioners have never unilaterally selected witnesses. Such a change would alter the fundamental role of OCRE and undermine its ability to conduct an objective and substantive briefing.

Sections 11.03 and 12.02's witness mandate is also not consistent with 42 U.S.C. § 1975b. This statute notes that the Staff Director is the administrative head of the Commission, which includes things such as proposing employee discipline and conducting performance appraisals for career staff under Title 5. Commissioner interference in OCRE and OGC's operations as

[3] Although notice and comment rulemaking is not required for general statements of policy under 5 U.S.C. § 553(b)(A), an agency acts arbitrarily and capriciously if it acts in a manner that is contrary to its own regulations or a congressional statute. *Pol'y & Rsch., LLC v. United States Dep't of Health & Hum. Servs*., 313 F. Supp. 3d 62, 72 (D.D.C. 2018).

AMERICAN OVERSIGHT

proposed in the A.I. would result in contradictory or inconsistent orders from Commissioners. Additionally, designating Commissioners as the "primary" source for inviting and hearing from a specific witness would be an extraordinary change skewing the ability of OCRE to engage in objective investigations. It would send the Commission down a slippery slope of Commissioners and their special assistants themselves conducting investigations and writing reports. Such change would irreparably alter the mission of the Commission and be at odds with our enacting statue and Congressional history in creating the Commission. Please also note that Commissioner involvement in selecting witnesses pursuant to this proposed A.I., attending panelist and witness meetings in the aforementioned proposed A.I., or other involvement in the Commission's day-to-day operations, may implicate the 75-day billable cap in the Commission's fiscal year 2021 budget. *See* https://www.usccr.gov/pubs/2020/FY2021-Congressional-Budget-Justification.pdf.

Section 11.02 of the current A.I. 1-6 references a Hearing Report form, however it is unclear whether the Commission actually utilizes this form. This form certifies a numerical balance of witnesses with opposing views, opinions, and perspectives, and could safeguard that witnesses and panelists are ideologically balanced. However, such a form could also be used to impede in the selection of panelists for briefings and undermine the benefit the collaborative working relationship. OCRE already works with the lead Special Assistant/Commissioner regarding witness and panelist selection. Adding a new form or a new layer in the selection process would further delay the creation of panels and delay the release of the final report.

Logistically the proposed A.I. presents a number of potential scheduling issues for Commission staff. As written, it is unclear when Commissioners' ability to suggest witnesses ends, which may result in OCRE being unable to prepare a final witness or panelist roster/list. Commissioner selection of panelists and witnesses will also likely increase negotiation and debate among Commissioners, which could result in delays in confirming attendance. Additionally, having a roster/list being selected by Commissioners and staff could result in the need for briefings and hearings lasting multiple days, which will increase costs.

Lastly, while it is understandable that that Commissioners want to play a larger role in the selection process, they should do so by negotiating with each other prior to panelists suggestions being sent to OCRE. They should continue to work with OCRE to have diverse and objective panelists instead of attempting to force a selection reflecting their individual viewpoint. It is the view of the staff that unilateral Commissioner selection of witnesses and panelists would constrain OCRE's ability to collect bipartisan testimony and prohibit OCRE's ability to act independently. The panelist and witness evaluation process is independent of the Commissioners final assessment and report of civil rights enforcement. Further, OCRE remains committed to work with Commissioners regarding their recommendations and will continue to strive to accommodate the recommended expert or fact witness or panelist.

Commissioners provide no evidence, justification or rational for the necessity and creation of this A.I. As a consequence, the Staff Director and Executive Committee recommends that this A.I. be withdrawn from further consideration.

AMERICAN OVERSIGHT

D. Conclusion

The following are the recommendations of the Commission professional staff:

- Commissioners discuss and take a recorded vote on bipartisan appointments to other Federal entities or revise the proposed A.I. for Commission appointments;
- Commissioners withdraw from further consideration the proposed A.I. on Stakeholder Interviews; and,
- Commissioners withdraw from further consideration the proposed A.I. on Witnesses.

AMERICAN OVERSIGHT

Date : 4/27/2021 9:36:42 AM
From : "Irena Vidulovic" ividulovic@usccr.gov
To : "Debo P. Adegbile" dadegbile@usccr.gov, "Adegbile, Debo" Debo.Adegbile@wilmerhale.com, "Zervoudis, Flor" Flor.Zervoudis@wilmerhale.com
Subject : Caucus Call

3:00 Eastern/ 12:00 Pacific. The number is 1-877-446-3914, passcode 858713#

Agenda items:

- Update from Comms. Cantu and Yaki on discussions regarding Chair confirmation
- Business meeting on Friday
    - Remove/combine other items?
    -
        - Eliminating the Speaker Series
        - Rebuttal/surrebuttal time period
        - Bi-partisan appointment to EAC board of advisors
    - Statement on violence against AAPI community?

AMERICAN OVERSIGHT

Date : 4/27/2021 10:41:16 AM
From : "Gail Heriot" gheriot@usccr.gov
To : "Carissa Mulder" carissa.mulder@gmail.com
Cc : "Kirsanow, Peter" pkirsanow@beneschlaw.com, "Gail Heriot" gheriot@me.com, "stephen gilchrist" thegilchristassociates@gmail.com, "Christian Adams (adams@electionlawcenter.com)" adams@electionlawcenter.com, "Alexander Heideman" aheideman@usccr.gov, "John Mashburn" jmashburn@usccr.gov, "Thomas Simuel" tsimuel@usccr.gov, "Carissa Mulder" CMulder@usccr.gov, "Peter Kirsanow" pkirsanow@usccr.gov, "J. Christian Adams" jadams@usccr.gov, "Stephen Gilchrist" sgilchrist@usccr.gov
Subject : Re: AIs for Friday's business meeting

Given that this is an omnibus motion, is it even necessary to amend the agenda?

Gail Heriot
Professor of Law
University of San Diego

> On Apr 27, 2021, at 7:39 AM, Carissa Mulder <carissa.mulder@gmail.com> wrote:
>
>
> Good morning, everyone:
>
> As you know, Mauro issued a memo opposing all the proposed AIs. Alex and John noticed this morning that he also posted an updated agenda for Friday's business meeting. He removed both the AIs having to do with OCRE from that agenda and also renamed the AI having to do with the EAC as an "agreement". I just looked at the materials he has posted for Friday's business meeting, and he removed all the AIs and has replaced them with his memo.
>
> Because of this, the Commissioners are going to have to amend the agenda to include the AIs. We are also going to have to circulate the original AIs before 2 pm tomorrow in order to avoid another 48 hour objection. Gail and Pete - can you check with Norma and Yaki and make sure we are all still on the same page? I am happy to circulate the AIs, but I don't want to step on Norma and Yaki's toes.
>
> --
> Carissa B. Mulder
>
>

AMERICAN OVERSIGHT

Date : 4/27/2021 10:44:25 AM
From : "Thomas Simuel" tsimuel@usccr.gov
To : "Carissa Mulder" carissa.mulder@gmail.com, "John Mashburn" jkmash@comcast.net
Cc : "Alexander Heideman" aheideman@usccr.gov, "Carissa Mulder" CMulder@usccr.gov, "John Mashburn" jmashburn@usccr.gov, "Thomas Simuel" tjsimuel32@gmail.com, "alexanderheideman@gmail.com" alexanderheideman@gmail.com
Subject : RE: [EXTERNAL] Re: Friday's Agenda

I agree Carissa...hopefully Yaki and Cantu will agree with us as well.

-------- Original message --------
From: Carissa Mulder <carissa.mulder@gmail.com>
Date: 4/27/21 10:09 AM (GMT-05:00)
To: John Mashburn <jkmash@comcast.net>
Cc: Alexander Heideman <aheideman@usccr.gov>, Carissa Mulder <CMulder@usccr.gov>, John Mashburn <jmashburn@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>, Thomas Simuel <tjsimuel32@gmail.com>, alexanderheideman@gmail.com
Subject: [EXTERNAL] Re: Friday's Agenda

> CAUTION: This email is from outside USCCR.

Yes we will. Mauro just *had* to make everything more difficult. We'll also have to amend the agenda to reflect that we're passing that AI about the EAC, not whatever garbage Mauro has dreamed up.

On Tue, Apr 27, 2021 at 10:03 AM John Mashburn <jkmash@comcast.net> wrote:

> Note that only the AI regarding the “EAC” type appointments is listed as an agenda item. The AIs regarding selection of witnesses and attending witness interviews are not listed on this agenda.
>
> Will we need to modifiy the agenda at the beginning of the meeting on Friday to include those items?
>
> ---
>
> **From:** Alexander Heideman <aheideman@usccr.gov>
> **Date:** Tuesday, April 27, 2021 at 9:51 AM

AMERICAN OVERSIGHT

To: Carissa Mulder <CMulder@usccr.gov>, John Mashburn <jmashburn@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>
Cc: Carissa Mulder <carissa.mulder@gmail.com>, John Mashburn " <alexanderheideman@gmail.com>
Subject: Friday's Agenda

Attached for your reference.

Alex

--
Carissa B. Mulder

AMERICAN OVERSIGHT

Date : 4/27/2021 1:21:06 PM
From : "Amy Royce" aroyce@usccr.gov
To : "Juana Silverio" jsilverio@usccr.gov, "Norma Cantu" ncantu@usccr.gov, "Norma Cantu" normavcantu@gmail.com
Cc : "Irena Vidulovic" ividulovic@usccr.gov, "Debo P. Adegbile" dadegbile@usccr.gov, "David Kladney" dkladney@usccr.gov
Subject : Redline to EAC Appointments AI
Attachment : AI on Appointment Authority (general and EAC) DK DA.docx;

Hi Norma and Juana,

Resending the edits Dave and Debo had to the EAC Appointments AI for discussion on the call.

All the best,
Amy

AMERICAN OVERSIGHT

ADMINISTRATIVE INSTRUCTION __- __

COMMISSION APPOINTMENTS TO OTHER FEDERAL ENTITIES

Section 1.

.01 Any authority specifically granted the Commission of Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc. shall be exercised by the Commission Chairperson in consultation with all members of the commission.~~as a whole by majority vote~~.

Commented [AR1]: Dave and Debo disagree with adopting a new AI to control the appointments process going forward. They believe commitments to an appointments process can be made through a different vehicle that would not bind future Commissions

Section 2

.02

(1) For the two (2) appointments to the U.S. Election Assistance Commission, the members appointed by Democratic authorities shall nominate two individuals of their membership that are ready willing and able to serve, and the members appointed by the Republican authorities shall nominate two individuals of their membership that are ready willing and able to serve.

(2) The members appointed by the Democratic authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Democratic authorities.

(3) Should the person by the choosing party not be able to serve, the chairperson shall be free to choose any other member of the Commission, including said chairperson, to serve on the U.S. Election Assistance Commission/

(~~3~~4) The members selected shall be placed in nomination and ratified in conformance with Section 1.

AMERICAN OVERSIGHT

Date : 4/27/2021 3:42:52 PM
From : "David Ganz" dganz@usccr.gov
To : "Mauro Morales" mmorales@usccr.gov
Cc : "ExecutiveStaff" ExecutiveStaff@usccr.gov
Subject : RE: AIs for 4/30 business meeting

The Interview, EAC, and Witness A.I.s are unchanged from previous versions. No further comment or additional comment(s) from OGC.

From: Mauro Morales <mmorales@usccr.gov>
Sent: Tuesday, April 27, 2021 2:56 PM
To: ExecutiveStaff <ExecutiveStaff@usccr.gov>
Subject: Fwd: AIs for 4/30 business meeting

Please provide any further comments or recommendations by COB tomorrow. Thank you.

Sent from my iPhone

Begin forwarded message:

> **From:** Carissa Mulder <CMulder@usccr.gov>
> **Date:** April 27, 2021 at 12:51:26 PM EDT
> **To:** Commissioners <Commissioners@usccr.gov>
> **Cc:** CommissionerAssistants <CommissionerAssistants@usccr.gov>, Mauro Morales <mmorales@usccr.gov>
> **Subject: AIs for 4/30 business meeting**
>
> Good afternoon:
>
> On behalf of Commissioners Heriot and Yaki, I am recirculating the AIs that will be proposed as part of an omnibus motion at Friday's business meeting.
>
> Thank you,
>
> Carissa

AMERICAN OVERSIGHT

Date : 4/29/2021 12:59:07 PM
From : "John Mashburn" jmashburn@usccr.gov
To : "Carissa Mulder" carissa.mulder@gmail.com, "Kirsanow, Peter" pkirsanow@beneschlaw.com, "Gail Heriot" gheriot@me.com, "Christian Adams (adams@electionlawcenter.com)" adams@electionlawcenter.com, "stephen gilchrist" thegilchristassociates@gmail.com
Cc : "Peter Kirsanow" pkirsanow@usccr.gov, "Gail Heriot" gheriot@usccr.gov, "J. Christian Adams" jadams@usccr.gov, "Thomas Simuel" tsimuel@usccr.gov, "Alexander Heideman" aheideman@usccr.gov, "Carissa Mulder" CMulder@usccr.gov, "Stephen Gilchrist" sgilchrist@usccr.gov
Subject : Re: [EXTERNAL] Revised EAC AI

Other than allowing non-Cmnr nominees now (a biggie), I don't see as this makes any further substantive change to what the AI said before.

From: Carissa Mulder <carissa.mulder@gmail.com>
Date: Thursday, April 29, 2021 at 12:47 PM
To: "Kirsanow, Peter" <pkirsanow@beneschlaw.com>, Gail Heriot <gheriot@me.com>, "Christian Adams (adams@electionlawcenter.com)" <adams@electionlawcenter.com>, stephen gilchrist <thegilchristassociates@gmail.com>
Cc: Peter Kirsanow <pkirsanow@usccr.gov>, Gail Heriot <gheriot@usccr.gov>, "J. Christian Adams" <jadams@usccr.gov>, John Mashburn <jmashburn@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>, Alexander Heideman <aheideman@usccr.gov>, Carissa Mulder <CMulder@usccr.gov>, Stephen Gilchrist <sgilchrist@usccr.gov>
Subject: [EXTERNAL] Revised EAC AI

> CAUTION: This email is from outside USCCR.

Hi everyone,

Please see the attached revised EAC AI. It incorporates changes discussed by Pete, Gail, Norma, and Yaki yesterday, removes the requirement that nominees to the EAC be members of the Commission, and adds Debo's language that any nominees "be ready, able, and willing to serve". Pete is going to send this to Norma, and hopefully all goes well.

--
Carissa B. Mulder

AMERICAN OVERSIGHT

Date : 4/29/2021 1:03:38 PM
From : "Alexander Heideman" aheideman@usccr.gov
To : "Christian Adams" adams@electionlawcenter.com, "Carissa Mulder" carissa.mulder@gmail.com, "Kirsanow, Peter" pkirsanow@beneschlaw.com, "Gail Heriot" gheriot@me.com, "stephen gilchrist" thegilchristassociates@gmail.com
Cc : "Peter Kirsanow" pkirsanow@usccr.gov, "Gail Heriot" gheriot@usccr.gov, "J. Christian Adams" jadams@usccr.gov, "John Mashburn" jmashburn@usccr.gov, "Thomas Simuel" tsimuel@usccr.gov, "Carissa Mulder" CMulder@usccr.gov, "Stephen Gilchrist" sgilchrist@usccr.gov
Subject : Re: [EXTERNAL] RE: Revised EAC AI

This is Debo's "baby," according to his SA. It didn't in any way substantially change the AI for us, so it seems like a minimal concession. It apparently bothers him that people get nominated for things despite the fact that they don't want the nomination. Weird, but whatever.

From: Christian Adams <adams@electionlawcenter.com>
Date: Thursday, April 29, 2021 at 1:01 PM
To: Carissa Mulder <carissa.mulder@gmail.com>, "Kirsanow, Peter" <pkirsanow@beneschlaw.com>, Gail Heriot <gheriot@me.com>, stephen gilchrist <thegilchristassociates@gmail.com>
Cc: Peter Kirsanow <pkirsanow@usccr.gov>, Gail Heriot <gheriot@usccr.gov>, "J. Christian Adams" <jadams@usccr.gov>, John Mashburn <jmashburn@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>, Alexander Heideman <aheideman@usccr.gov>, Carissa Mulder <CMulder@usccr.gov>, Stephen Gilchrist <sgilchrist@usccr.gov>
Subject: [EXTERNAL] RE: Revised EAC AI

> CAUTION: This email is from outside USCCR.

-------- Original message --------
From: Carissa Mulder <carissa.mulder@gmail.com>
Date: 4/29/21 12:47 PM (GMT-05:00)
To: "Kirsanow, Peter" <pkirsanow@beneschlaw.com>, Gail Heriot <gheriot@me.com>, "Christian Adams (adams@electionlawcenter.com)" <adams@electionlawcenter.com>, stephen gilchrist <thegilchristassociates@gmail.com>
Cc: Peter Kirsanow <pkirsanow@usccr.gov>, Gail Heriot <gheriot@usccr.gov>, "J. Christian Adams" <jadams@usccr.gov>, John Mashburn <jmashburn@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>, Alexander Heideman <aheideman@usccr.gov>, Carissa Mulder <cmulder@usccr.gov>, Stephen Gilchrist <sgilchrist@usccr.gov>
Subject: Revised EAC AI

AMERICAN OVERSIGHT

Hi everyone,

Please see the attached revised EAC AI. It incorporates changes discussed by Pete, Gail, Norma, and Yaki yesterday, removes the requirement that nominees to the EAC be members of the Commission, and adds Debo's language that any nominees "be ready, able, and willing to serve". Pete is going to send this to Norma, and hopefully all goes well.

--
Carissa B. Mulder

AMERICAN OVERSIGHT

Date : 4/29/2021 3:21:05 PM
From : "Norma Cantu" ncantu@usccr.gov
To : "Kirsanow, Peter" pkirsanow@Beneschlaw.com, "Norma V. Cantú" normavcantu@gmail.com, "Michael Yaki" MYaki@usccr.gov
Cc : "Gail Heriot (gheriot@me.com)" gheriot@me.com, "Gail Heriot" gheriot@usccr.gov
Subject : RE: appointments

Good drafting, Michael. That captures the discussion of the group of four.
I will leave it to the co-chair designees to decide whether to share this language with the whole commission.I

Norma

From: Kirsanow, Peter <pkirsanow@Beneschlaw.com>
Sent: Thursday, April 29, 2021 11:26 AM
To: Norma V. Cantú <normavcantu@gmail.com>; Norma Cantu <ncantu@usccr.gov>; Michael Yaki <MYaki@usccr.gov>
Cc: Gail Heriot (gheriot@me.com) <gheriot@me.com>; Gail Heriot <gheriot@usccr.gov>
Subject: [EXTERNAL] appointments

> CAUTION: This email is from outside USCCR.

Dear Norma,

I've attached Michael's draft AI with the revisions we discussed regarding the Chair and Staff Director. I've also incorporated Debo's caveat that any prospective nominees be "ready, willing, and able to serve." I also removed the phrase "of their membership" from the description of the nominees. It may well be that there are not two commissioners from each caucus who are 'ready, willing, and able to serve" on the EAC, and therefore the Commission should be able to designate other individuals to serve. This does not conflict with the statute, which only states that the Commission shall designate two individuals to serve, but does not specify that they must be Commissioners. Looking forward to getting this done and confirming you as Chair tomorrow.

AMERICAN OVERSIGHT

Date : 4/29/2021 10:19:21 PM
From : "Michael Yaki" MYaki@usccr.gov
To : "Norma Cantu" ncantu@usccr.gov, "Kirsanow, Peter" pkirsanow@Beneschlaw.com, "Norma V. Cantú" normavcantu@gmail.com
Cc : "Gail Heriot (gheriot@me.com)" gheriot@me.com, "Gail Heriot" gheriot@usccr.gov
Subject : Re: appointments

Since this is an amendment to an item already noticed, Peter -- please circulate this to everyone tonight. It will be an amendment to an item already noticed for adoption.

From: Norma Cantu
Sent: Thursday, April 29, 2021 3:21:05 PM
To: Kirsanow, Peter; Norma V. Cantú ; Michael Yaki
Cc: Gail Heriot (gheriot@me.com); Gail Heriot
Subject: RE: appointments

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I will leave it to the co-chair designees to decide whether to share this language with the whole commission.I

Norma

From: Kirsanow, Peter <pkirsanow@Beneschlaw.com>
Sent: Thursday, April 29, 2021 11:26 AM
To: Norma V. Cantú <normavcantu@gmail.com>; Norma Cantu <ncantu@usccr.gov>; Michael Yaki <MYaki@usccr.gov>
Cc: Gail Heriot (gheriot@me.com) <gheriot@me.com>; Gail Heriot <gheriot@usccr.gov>
Subject: [EXTERNAL] appointments

> CAUTION: This email is from outside USCCR.

Dear Norma,

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AMERICAN OVERSIGHT

Date : 4/29/2021 10:21:19 PM
From : "Gail Heriot" gheriot@usccr.gov
To : "Carissa Mulder" carissa.mulder@gmail.com, "Carissa Mulder" CMulder@usccr.gov
Subject : Fwd: appointments

Has this been done already?

Gail Heriot
Professor of Law
University of San Diego

Begin forwarded message:

> **From:** Michael Yaki <MYaki@usccr.gov>
> **Date:** April 29, 2021 at 7:19:24 PM PDT
> **To:** Norma Cantu <ncantu@usccr.gov>, "Kirsanow, Peter" <pkirsanow@beneschlaw.com>, "Norma V. Cantú" <normavcantu@gmail.com>
> **Cc:** "Gail Heriot (gheriot@me.com)" <gheriot@me.com>, Gail Heriot <gheriot@usccr.gov>
> **Subject: Re: appointments**
>
> Since this is an amendment to an item already noticed, Peter -- please circulate this to everyone tonight. It will be an amendment to an item already noticed for adoption.
>
> ---
>
> **From:** Norma Cantu
> **Sent:** Thursday, April 29, 2021 3:21:05 PM
> **To:** Kirsanow, Peter; Norma V. Cantú ; Michael Yaki
> **Cc:** Gail Heriot (gheriot@me.com); Gail Heriot
> **Subject:** RE: appointments
>
> Good drafting, Michael. That captures the discussion of the group of four. I will leave it to the co-chair designees to decide whether to share this language with the whole commission.I
>
> Norma
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> ---
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> **From:** Kirsanow, Peter <pkirsanow@Beneschlaw.com>
> **Sent:** Thursday, April 29, 2021 11:26 AM
> **To:** Norma V. Cantú <normavcantu@gmail.com>; Norma Cantu <ncantu@usccr.gov>; Michael Yaki <MYaki@usccr.gov>
> **Cc:** Gail Heriot (gheriot@me.com) <gheriot@me.com>; Gail Heriot <gheriot@usccr.gov>

AMERICAN OVERSIGHT

Subject: [EXTERNAL] appointments

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Dear Norma,

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AMERICAN OVERSIGHT

Date : 4/29/2021 10:21:21 PM
From : "Michael Yaki" MYaki@usccr.gov
To : "CommissionerAssistants" CommissionerAssistants@usccr.gov, "Commissioners" Commissioners@usccr.gov
Cc : "Mauro Morales" mmorales@usccr.gov, "David Ganz" dganz@usccr.gov
Subject : Fw: appointments
Attachment : AI on Appointment Authority (general and EAC)(revised).docx;

This is a draft amendment to the AI on appointments that will be considered tomorrow. I have yet to review, but wanted to get this out to everyone.

From: Kirsanow, Peter <pkirsanow@Beneschlaw.com>
Sent: Thursday, April 29, 2021 12:25 PM
To: Norma V. Cantú ; Norma Cantu; Michael Yaki
Cc: Gail Heriot (gheriot@me.com); Gail Heriot
Subject: [EXTERNAL] appointments

CAUTION: This email is from outside USCCR.

Dear Norma,

I've attached Michael's draft AI with the revisions we discussed regarding the Chair and Staff Director. I've also incorporated Debo's caveat that any prospective nominees be "ready, willing, and able to serve." I also removed the phrase "of their membership" from the description of the nominees. It may well be that there are not two commissioners from each caucus who are 'ready, willing, and able to serve" on the EAC, and therefore the Commission should be able to designate other individuals to serve. This does not conflict with the statute, which only states that the Commission shall designate two individuals to serve, but does not specify that they must be Commissioners. Looking forward to getting this done and confirming you as Chair tomorrow.

AMERICAN OVERSIGHT

ADMINISTRATIVE INSTRUCTION __- __

COMMISSION APPOINTMENTS TO OTHER FEDERAL ENTITIES

Section 1.
.01 ~~-~~Any authority specifically granted the Commission on~~f~~ Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc.~~,~~ shall be exercised by the Commission as a whole by majority vote.

.02 Any authority specifically granted the Staff Director of the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Staff Director.

.03 Any authority specifically granted the Chair of the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Chair.

Section 2
.02
(1) For the two (2) appointments to the U.S. Election Assistance Commission, the members appointed by Democratic authorities shall nominate two individuals who are ready, willing, and able to serve ~~of their membership~~, and the members appointed by the Republican authorities shall nominate two individuals who are ready, willing, and able to serve ~~of their membership~~.

(2) The members appointed by the Democratic authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Democratic authorities

(3) The members selected shall be placed in nomination and ratified in conformance with Section 1.

AMERICAN OVERSIGHT

Date : 4/30/2021 8:11:26 AM
From : "Angelia Rorison" arorison@usccr.gov
To : "USCCR AGENCYWIDE" USCCRAGENCYWIDE@usccr.gov
Subject : Commission Business Meeting TODAY at 2 PM

Dear Commission Staff,

This is a reminder that the Commission is holding a business meeting today, April 30, 2021 at 2 pm EST. Please see below for listen only call-in information to the meeting, and agenda.

Call-in Number: 1-855-710-4184
Conference ID #: 435-9779

The web link to access CART: https://www.streamtext.net/player?event=USCCR
**Please note that CART is text-only translation that occurs in real time during the meeting and is not an exact transcript.*

MEETING AGENDA

I. Motion to Approve Commissioner Norma Cantú to Serve as USCCR Chair

II. Approval of Agenda

III. Business Meeting
- A. Discussion and Vote on Statement of Walter E. Williams;
- B. Discussion and Votes on Anti-Asian American Hate;
- C. Discussion and Vote to continue the Policy of Rebuttals and Surrebuttals;
- D. Discussion and Vote to suspend Speaker Series;
- E. Discussion and Agreement to Appoint Bipartisan Commissioners to EAC
- F. Discussion and Vote on NC SAC
- G. Management and Operations
  - Staff Director's Report

IV. Adjourn Meeting

Angelia Rorison (She/Her)
Director of Media and Communications
FOIA Public Liaison
U.S. Commission on Civil Rights
1331 Pennsylvania Ave., NW, Suite 1150
Washington, DC 20425
M: 202-499-0263
arorison@usccr.gov

AMERICAN OVERSIGHT

www.usccr.gov
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AMERICAN OVERSIGHT

Date : 4/30/2021 8:55:46 AM
From : "Irena Vidulovic" ividulovic@usccr.gov
To : "Debo Adegbile" debo.adegbile@wilmerhale.com, "Debo Adegbile" debo.adegbile@wilmerhale.com
Subject : Fwd: appointments
Attachment : AI on Appointment Authority (general and EAC)(revised).docx;
Ready and able has been added to the AI language.

From: Michael Yaki <MYaki@usccr.gov>
Date: April 29, 2021 at 10:21:22 PM EDT
To: CommissionerAssistants <CommissionerAssistants@usccr.gov>, Commissioners <Commissioners@usccr.gov>
Cc: Mauro Morales <mmorales@usccr.gov>, David Ganz <dganz@usccr.gov>
Subject: Fw: appointments

This is a draft amendment to the AI on appointments that will be considered tomorrow. I have yet to review, but wanted to get this out to everyone.

From: Kirsanow, Peter <pkirsanow@Beneschlaw.com>
Sent: Thursday, April 29, 2021 12:25 PM
To: Norma V. Cantú ; Norma Cantu; Michael Yaki
Cc: Gail Heriot (gheriot@me.com); Gail Heriot
Subject: [EXTERNAL] appointments

> CAUTION: This email is from outside USCCR.

Dear Norma,

I've attached Michael's draft AI with the revisions we discussed regarding the Chair and Staff Director. I've also incorporated Debo's caveat that any prospective nominees be "ready, willing, and able to serve." I also removed the phrase "of their membership" from the description of the nominees. It may well be that there are not two commissioners from each caucus who are 'ready, willing, and able to serve" on the EAC, and therefore the Commission should be able to designate other individuals to serve. This does not conflict with the statute, which only states that the Commission shall designate two individuals to serve, but does not specify that they must be Commissioners. Looking forward to getting this done and confirming you as Chair tomorrow.

AMERICAN OVERSIGHT

AMERICAN OVERSIGHT

ADMINISTRATIVE INSTRUCTION __- __

COMMISSION APPOINTMENTS TO OTHER FEDERAL ENTITIES

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(2) The members appointed by the Democratic authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Democratic authorities

(3) The members selected shall be placed in nomination and ratified in conformance with Section 1.

AMERICAN OVERSIGHT

Date : 4/30/2021 9:39:20 AM
From : "Irena Vidulovic" ividulovic@usccr.gov
To : "Adegbile, Debo" Debo.Adegbile@wilmerhale.com
Subject : Re: [EXTERNAL] Re: appointments

It is one vote (it is an omnibus motion). They are lumping everything together! Also the new language added to the EAC AI:

It may well be that there are not two commissioners from each caucus who are 'ready, willing, and able to serve" on the EAC, and therefore the Commission should be able to designate other individuals to serve. This does not conflict with the statute, which only states that the Commission shall designate two individuals to serve, but does not specify that they must be Commissioners. Looking forward to getting this done and confirming you as Chair tomorrow.

Sent from my iPhone

> On Apr 30, 2021, at 9:27 AM, Adegbile, Debo <Debo.Adegbile@wilmerhale.com> wrote:
>
> CAUTION: This email is from outside USCCR.
>
> Will they be voted separately?
>
> Sent from my iPhone
>
> > On Apr 30, 2021, at 8:57 AM, Irena Vidulovic <ividulovic@usccr.gov> wrote:
> >
> > **EXTERNAL SENDER**
> >
> > Ready and able has been added to the AI language.
> >
> > **From:** Michael Yaki <MYaki@usccr.gov>
> > **Date:** April 29, 2021 at 10:21:22 PM EDT
> > **To:** CommissionerAssistants <CommissionerAssistants@usccr.gov>, Commissioners <Commissioners@usccr.gov>
> > **Cc:** Mauro Morales <mmorales@usccr.gov>, David Ganz <dganz@usccr.gov>
> > **Subject: Fw: appointments**

AMERICAN OVERSIGHT

This is a draft amendment to the AI on appointments that will be considered tomorrow. I have yet to review, but wanted to get this out to everyone.

From: Kirsanow, Peter <pkirsanow@Beneschlaw.com>
Sent: Thursday, April 29, 2021 12:25 PM
To: Norma V. Cantú ; Norma Cantu; Michael Yaki
Cc: Gail Heriot (gheriot@me.com); Gail Heriot
Subject: [EXTERNAL] appointments

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Dear Norma,

I've attached Michael's draft AI with the revisions we discussed regarding the Chair and Staff Director. I've also incorporated Debo's caveat that any prospective nominees be "ready, willing, and able to serve." I also removed the phrase "of their membership" from the description of the nominees. It may well be that there are not two commissioners from each caucus who are 'ready, willing, and able to serve" on the EAC, and therefore the Commission should be able to designate other individuals to serve. This does not conflict with the statute, which only states that the Commission shall designate two individuals to serve, but does not specify that they must be Commissioners. Looking forward to getting this done and confirming you as Chair tomorrow.

<AI on Appointment Authority (general and EAC) (revised).docx>

AMERICAN OVERSIGHT

Date : 4/30/2021 11:01:40 AM
From : "Michael Yaki" MYaki@usccr.gov
To : "Peter Kirsanow" pkirsanow@usccr.gov, "Gail Heriot" gheriot@usccr.gov
Cc : "Carissa Mulder" CMulder@usccr.gov, "Alec Deull" adeull@usccr.gov
Subject : Fw: appointments

Peter -

While I take over the motion duties, I'll look to you to make the initial motion, including referencing the substitute AI on app'tment circulated last night, and reading the revised AI's into the record if need be. I'll second the motion, and we can start the fun.

From: Mauro Morales
Sent: Friday, April 30, 2021 10:43 AM
To: Michael Yaki
Cc: David Ganz
Subject: RE: appointments

Thank you for circulating this to us. I do not have any changes and would support this AI if asked.

From: Michael Yaki <MYaki@usccr.gov>
Sent: Thursday, April 29, 2021 10:21 PM
To: CommissionerAssistants <CommissionerAssistants@usccr.gov>; Commissioners <Commissioners@usccr.gov>
Cc: Mauro Morales <mmorales@usccr.gov>; David Ganz <dganz@usccr.gov>
Subject: Fw: appointments

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AMERICAN OVERSIGHT

nominees be "ready, willing, and able to serve." I also removed the phrase "of their membership" from the description of the nominees. It may well be that there are not two commissioners from each caucus who are 'ready, willing, and able to serve" on the EAC, and therefore the Commission should be able to designate other individuals to serve. This does not conflict with the statute, which only states that the Commission shall designate two individuals to serve, but does not specify that they must be Commissioners. Looking forward to getting this done and confirming you as Chair tomorrow.

AMERICAN OVERSIGHT

Date : 4/30/2021 10:43:09 AM
From : "Mauro Morales" mmorales@usccr.gov
To : "Michael Yaki" MYaki@usccr.gov
Cc : "David Ganz" dganz@usccr.gov
Subject : RE: appointments

Thank you for circulating this to us. I do not have any changes and would support this AI if asked.

From: Michael Yaki <MYaki@usccr.gov>
Sent: Thursday, April 29, 2021 10:21 PM
To: CommissionerAssistants <CommissionerAssistants@usccr.gov>; Commissioners <Commissioners@usccr.gov>
Cc: Mauro Morales <mmorales@usccr.gov>; David Ganz <dganz@usccr.gov>
Subject: Fw: appointments

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From: Kirsanow, Peter <pkirsanow@Beneschlaw.com>
Sent: Thursday, April 29, 2021 12:25 PM
To: Norma V. Cantú ; Norma Cantu; Michael Yaki
Cc: Gail Heriot (gheriot@me.com); Gail Heriot
Subject: [EXTERNAL] appointments

> CAUTION: This email is from outside USCCR.

Dear Norma,

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AMERICAN OVERSIGHT

AMERICAN OVERSIGHT

Date : 4/30/2021 11:33:41 AM
From : "Carissa Mulder" CMulder@usccr.gov
To : "Gail Heriot" gheriot@me.com, "Carissa Mulder" carissa.mulder@gmail.com
Cc : "Kirsanow, Peter" pkirsanow@beneschlaw.com, "Christian Adams (adams@electionlawcenter.com)" adams@electionlawcenter.com, "stephen gilchrist" thegilchristassociates@gmail.com, "Peter Kirsanow" pkirsanow@usccr.gov, "Gail Heriot" gheriot@usccr.gov, "J. Christian Adams" jadams@usccr.gov, "John Mashburn" jmashburn@usccr.gov, "Thomas Simuel" tsimuel@usccr.gov, "Alexander Heideman" aheideman@usccr.gov, "Stephen Gilchrist" sgilchrist@usccr.gov
Subject : Re: [EXTERNAL] Revised EAC AI

Yes, I changed that language in how Pete is introducing the motion to an MOU.

From: Gail Heriot <gheriot@me.com>
Sent: Friday, April 30, 2021 11:30:11 AM
To: Carissa Mulder
Cc: Kirsanow, Peter; Christian Adams (adams@electionlawcenter.com); stephen gilchrist; Peter Kirsanow; Gail Heriot; J. Christian Adams; John Mashburn; Thomas Simuel; Alexander Heideman; Carissa Mulder; Stephen Gilchrist
Subject: Re: [EXTERNAL] Revised EAC AI

*** CAUTION: This email is from outside USCCR. ***

We actually agreed (or at least I did) to make the second part a Memorandum of Understanding (since it is just a Commission policy and not directed to the staff).

Gail Heriot
Professor of Law
University of San Diego

> On Apr 29, 2021, at 9:47 AM, Carissa Mulder <carissa.mulder@gmail.com> wrote:
>
>
> Hi everyone,
>
> Please see the attached revised EAC AI. It incorporates changes discussed by Pete, Gail, Norma, and Yaki yesterday, removes the requirement that nominees to the EAC be members of the Commission, and adds Debo's language that any nominees "be ready, able, and willing to serve". Pete is going to send this to Norma, and hopefully all goes well.
>
> --
> Carissa B. Mulder
>
>
> <AI on Appointment Authority (general and EAC)(revised).docx>

AMERICAN OVERSIGHT

Date : 4/30/2021 12:28:10 PM
From : "Amy Royce" aroyce@usccr.gov
To : "David Kladney" dkladney@usccr.gov
Subject : EAC Board of Advisors

52 U.S. Code § 20944 - Membership of Board of Advisors
(a)In general
The Board of Advisors shall be composed of 37 members appointed as follows:
(1)Two members appointed by the National Governors Association.
(2)Two members appointed by the National Conference of State Legislatures.
(3)Two members appointed by the National Association of Secretaries of State.
(4)Two members appointed by the National Association of State Election Directors.
(5)Two members appointed by the National Association of Counties.
(6)Two members appointed by the National Association of County Recorders, Election Administrators, and Clerks.[1]
(7)Two members appointed by the United States Conference of Mayors.
(8)Two members appointed by the Election Center.
(9)Two members appointed by the International Association of County Recorders, Election Officials, and Treasurers.[2]
(10)Two members appointed by the United States Commission on Civil Rights.
(11)Two members appointed by the Architectural and Transportation Barrier [3] Compliance Board under section 792 of title 29.
(12)The chief of the Office of Public Integrity of the Department of Justice,[4] or the chief's designee.
(13)The chief of the Voting Section of the Civil Rights Division of the Department of Justice or the chief's designee.
(14)The director of the Federal Voting Assistance Program of the Department of Defense.
(15)Four members representing professionals in the field of science and technology, of whom—
(A)one each shall be appointed by the Speaker and the Minority Leader of the House of Representatives; and
(B)one each shall be appointed by the Majority Leader and the Minority Leader of the Senate.
(16)Eight members representing voter interests, of whom—
(A)four members shall be appointed by the Committee on House Administration of the House of Representatives, of whom two shall be appointed by the chair and two shall be appointed by the ranking minority member; and
(B)four members shall be appointed by the Committee on Rules and Administration of the Senate, of whom two shall be appointed by the chair and two shall be appointed by the ranking minority member.
(b)Manner of appointments
Appointments shall be made to the Board of Advisors under subsection (a) in a manner which ensures that the Board of Advisors will be bipartisan in nature and will reflect the various geographic regions of the United States.

AMERICAN OVERSIGHT

(c)Term of service; vacancy
Members of the Board of Advisors shall serve for a term of 2 years, and may be reappointed. Any vacancy in the Board of Advisors shall be filled in the manner in which the original appointment was made.

(d)Chair
The Board of Advisors shall elect a Chair from among its members.

AMERICAN OVERSIGHT

Date : 5/24/2021 3:41:23 PM
From : "Michael Yaki" MYaki@usccr.gov
To : "Irena Vidulovic" ividulovic@usccr.gov
Cc : "Alec Deull" adeull@usccr.gov
Subject : Election assistance commission

Irena

Can you ask Debo if there is any red-hot election / election security person he would recommend as one of the 2 D individuals who will be presented to the R's for the EAC in July? Someone who could take on Adams or someone of his ilk to balance out the USCCR app'tment to the Board of Advisors. Dave and I were talking and we thought that would be the appropriate thing for us to do, given that we know the R's are going to do the same thing.

Thanks
Michael

AMERICAN OVERSIGHT

Date : 5/25/2021 12:19:25 PM
From : "Michael Yaki" MYaki@usccr.gov
To : "Irena Vidulovic" ividulovic@usccr.gov
Cc : "Alec Deull" adeull@usccr.gov
Subject : Re: Election assistance commission

We'll give them the choice of Worse or Worser from their point of view. So it should be someone aggressive, as well as knowledgeable.

From: Irena Vidulovic
Sent: Monday, May 24, 2021 4:43:07 PM
To: Michael Yaki
Cc: Alec Deull
Subject: Re: Election assistance commission

Of course, will do!

From: Michael Yaki
Sent: Monday, May 24, 2021 3:41:23 PM
To: Irena Vidulovic
Cc: Alec Deull
Subject: Election assistance commission

Irena

Can you ask Debo if there is any red-hot election / election security person he would recommend as one of the 2 D individuals who will be presented to the R's for the EAC in July? Someone who could take on Adams or someone of his ilk to balance out the USCCR app'tment to the Board of Advisors. Dave and I were talking and we thought that would be the appropriate thing for us to do, given that we know the R's are going to do the same thing.

Thanks
Michael

AMERICAN OVERSIGHT

Date : 6/15/2021 3:14:26 PM
From : "John Mashburn" jmashburn@usccr.gov
To : "Christian Adams" a@electionlawcenter.com
Subject : Re: [EXTERNAL] RE: Meeting request with Chair Cantu
Attachment : image001.gif;image002.gif;image003.gif;

Have no idea of what subject Cantu wants to address is.

From: Christian Adams <a@electionlawcenter.com>
Date: Tuesday, June 15, 2021 at 2:59 PM
To: John Mashburn <jmashburn@usccr.gov>
Subject: [EXTERNAL] RE: Meeting request with Chair Cantu

> CAUTION: This email is from outside USCCR.

Wed after 2. Is this what we talked about? The EAC stuff.

From: John Mashburn <jmashburn@usccr.gov>
Sent: Tuesday, June 15, 2021 1:57 PM
To: Christian Adams <a@electionlawcenter.com>
Subject: Fw: Meeting request with Chair Cantu

You available this Wed (tomorrow) and Thus or next Wed or Thurs for a mtg with Cantu between noon and 5 pm any of those day's?

From: Juana Silverio
Sent: Tuesday, June 15, 2021 1:49:45 PM
To: CommissionerAssistants
Subject: Meeting request with Chair Cantu

Good afternoon all!

I wanted to get availability for a meeting with Chairwoman Cantu for either tomorrow or Thursday or next Wednesday or Thursday between 11a CST/12pm EST and 4p CST/5p EST.

Thanks in advance and looking forward to hearing from you all.
Juana

--
Juana Silverio *(she/her/ella)*
Special Assistant to Commissioner Norma V. Cantú
U.S. Commission on Civil Rights
E: jsilverio@usccr.gov
http://usccr.gov/
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425
Follow Us on Twitter & Facebook:
#USCCR

AMERICAN OVERSIGHT

OVERSIGHT

OVERSTOCK

Date : 7/12/2021 10:37:12 AM
From : "Juana Silverio" jsilverio@usccr.gov
To : "Alec Deull" adeull@usccr.gov, "Amy Royce" aroyce@usccr.gov, "Irena Vidulovic" ividulovic@usccr.gov
Subject : 7.12.2021- Caucus SA mtg - AGENDA

Pls add as you see fit:

SA Caucus Mtg.- 7.12.2021

1. July 23 business mtg agenda
    a. Sac appointment (s)
    b. Sac speaker
    c. Finding and recs re: maternal health (?)(could also be a notational vote, waiting on Cmr. Adegbile to see if we have a 5th vote)
2. EAC – nomination deadlines
3. Bail reform report- update/needs
4. FEMA- update/needs
5. FY 2022- topics
    a. Staff review?
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    c. Full concept paper submission- adjust timeline
6. Miscellaneous
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    b. SAC recruitment

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Sent: Monday, June 28, 2021 1:07 PM
To: Alec Deull <adeull@usccr.gov>; Amy Royce <aroyce@usccr.gov>; Irena Vidulovic <ividulovic@usccr.gov>
Subject: 6.28.2021- Caucus SA mtg

Dem SA mtg 6.28.21

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    a. Tech side - horrible execution
        i. YouTube link did not work immediately
        ii. Captions were not operational
    b. Debo questions did not get asked
    c. OCRE to send the follow up questions
        i. Need to flush out the civil rights questions
    d. Testimony
        i. For most part strong
        ii. FEMA – didn't really represent
            1. Bulk of questions will go to them
    b. Follow up questions – send to OCRE to be compiled & sent together
    c. Future Cmr. questioning – better way to manage
    d. ROGs – need to have them in by 7/2 (pls provide redline)
4. Field briefings
    a. Mauro call with Chair
    b. Staff mtg 7/1 at 10a EST
    c. Points
        i. Right now issue is one sided

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ii. Would've have made it a fuller briefing of 4 panels
iii. The delays were to accommodate for covid; if it was going to be virtual all along, no point in delays

3. Record findings + recs: Maternal health
    a. Aim for an hour mtg week of 7/5
4. Notional vote – Bail reform
    a. Will get it to mauro today or tomorrow
5. July mtg
    a. Sacs sacs sacs
    i. IA
    ii. FL
    iii. Ne
    b. Sac report presentation
    c. Commemoration stmts
4. Miscellaneous
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    b. Alec will be out in afternoons this week
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1. Mtg to vote for Maternal Health Report + Findings - have to make sure commissioners are STILL available on Friday at 4pm
    a. Juana to send out and confirm everyone is available for 4pm 6/25 -*SENT*
    b. Plan B – notational vote if folks can't show up on Friday

2. Notional vote for the revised Bail Reform timeline (I do not think we will take it up on Friday)
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    a. Switch the contractor to earlier vs later given an hour break in between
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AMERICAN OVERSIGHT

4. FEMA Sunshine Notice and Press Release – BRING IN GC***; GC is looped in and will have opinion in by afternoon***
    a. Have used the law against the Rs so they may use it against us
    b. Need an airtight reason to overcome the Rs
    c. Is the save the date sufficiently enough?

5. Iowa SAC
    a. Default to July mtg

6. FEMA Briefings
    a. Need to follow up with Zakee (Irena to follow up**)- Agenda sent out and mtg on calendar**
    b. Chorus – tomo 6/22 - need to put this up ASAP so all of us chime in tomorrow

7. Staff Director's Report and adding the information regarding the safe plan and protocol on the return to office per OMB directive
    a. Juana to nudge Mauro on this for FRIDAY 6/25**

8. Miscellaneous

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Subject: 6.14.2021- Caucus SA mtg

Tentative agenda items

1. Report updates
    a. Bail reform
    i. Voting on timeline changes Friday 6/18

2. Friday mtg
    a. Maternal Health
    i. HHS agency review coming today or tomorrow
    ii. Irena to speak with Debo re: updates and redlines before the report is voted on on Friday

AMERICAN OVERSIGHT

iii. Will propose recs but not clear what the Rs will do but will also have findings and recs in statements
iv. Juana and Amy to work on 2 things to support Irena

b. SAC vet memo- Iowa

3. FEMA briefing- red flags?
   a. Planning for field hearings (Houston and PR)
   b. Chair to join the mtg tomorrow 6/15
4. Miscellaneous
   a. SAC recruitment
      i. Florida- a R did apply and we could possibly have it on July
      ii. Nebraska- 3 folks were interested (just need 1)
      iii. Louisiana- send Amy recruiting email so her intern can use in Louisiana

   b. Intern support?
      i. Maternal health
      ii. Iowa SAC memo

   c. All staff retreat/ possibly just a DEM Caucus retreat
   d. Have interns meet with the Commissioners
      i. Let's set it up (Juana to set it up for Chair to meet with summer interns)

   e. Topics
      i. Reach out to Mauro to ensure all of the concepts were included

---

From: Alec Deull <adeull@usccr.gov>
Sent: Monday, June 7, 2021 12:03 PM
>
Subject: Re: 6.7.2021

Thanks for this, Juana.

I hope everyone has a good day -- all best, Alec

From: Juana Silverio
Sent: Monday, June 7, 2021 11:47:45 AM
To: Amy Royce; Alec Deull; Irena Vidulovic
Subject: 6.7.2021

SACs

- In balancing stage right now

AMERICAN OVERSIGHT

- Irena speaking to the Rs to see what we can work out before re-sending up to SD/David and vetting
- Alec to see if Chair can get on Yaki calendar re: CO and ID

Reports

- Maternal health- nothing from HHS yet; was given to June 14/15 to respond by GC; will need all hands on deck to incorporate. Vote: June 18
- FEMA- 10 panelists confirmed, 2 panels of 5 each; push out SM on twitter/LinkedIn
- Bail reform- coming along nicely; no updates/alarm

Topics

- Ds do not have any topics to propose as they all come off in Dec. '22
- Will see what Chair proposes to coalesce around those
- Will have to keep an eye out for what the Rs propose (Debo recused since he cannot do the Asian American admissions one)
- Have til June 11 to submit (2 Rs asked for more time)

Mauro update

- No update on OCRE hire though they had opened up the listing internally
- No update on tech (he had followed up with a few/Debo still waiting)
- No budget update though we need status + dates; gift authority

---

From: Amy Royce <aroyce@usccr.gov>
Sent: Tuesday, June 1, 2021 10:19 AM
>
Subject: RE: Caucus SA's

Hi all,

I'm not sure what's going on with the meeting, but wanted to flag a couple of things

- Please review the draft statement on the 100th anniversary of the Tulsa Race Massacre and let me know today if your boss would like any changes or needs more time to review. I am planning to ask Mauro to prepare the notational ballots at the end of the day today unless I hear otherwise. I have already incorporated changes from Debo, reflected in the attached version
- The Bail reform timeline has the date for the vote as August 13. Our meeting is on August 20. I have drafted an amended timeline to reflect the August 20 date, then moving the other dates back a week. I kept the publication date on November 17, because otherwise we run into Thanksgiving, and made up the time by shortening the Commissioners' final review period of the formatted version (that ends Nov. 9). I have confirmed with OCRE that it will work for them. Please let me know if this works for everyone, and Dave will offer for a vote at the June 18 meeting
- For the FY 2022 calendar, the June meeting date is not the same as the planned vote on the FEMA project, which plans the vote for June 24. We should either amend the meeting date or the FEMA timeline
- Juana, Dave would like an update on gift authority remaining in our appropriation. Feel free to call me anytime today.

Thanks all,
Amy

AMERICAN OVERSIGHT

From: Alec Deull <adeull@usccr.gov>
Sent: Tuesday, June 1, 2021 10:04 AM
>
Subject: Re: Caucus SA's

hello Friends!

Have we started yet? My screen tells me that the meeting has not started. Just want to make sure that my link is ok.

thanks! -- Alec

From: Amy Royce
Sent: Monday, May 24, 2021 8:39:42 AM
To: Alec Deull; Juana Silverio; Irena Vidulovic
Subject: RE: Caucus SA's

Hey all, talk to you tomorrow!

From: Alec Deull <adeull@usccr.gov>
Sent: Thursday, May 20, 2021 1:16 PM
To: Juana Silverio <jsilverio@usccr.gov>; Irena Vidulovic <ividulovic@usccr.gov>; Amy Royce <aroyce@usccr.gov>
Subject: Re: Caucus SA's

10 am Tuesday is fine for me. :)

all best, Alec

From: Juana Silverio
Sent: Thursday, May 20, 2021 10:43:59 AM
To: Irena Vidulovic; Amy Royce
Cc: Alec Deull
Subject: RE: Caucus SA's

Ok! Alec?

From: Irena Vidulovic <ividulovic@usccr.gov>
Sent: Thursday, May 20, 2021 9:37 AM
To: Juana Silverio <jsilverio@usccr.gov>; Amy Royce <aroyce@usccr.gov>
Cc: Alec Deull <adeull@usccr.gov>
Subject: Re: Caucus SA's

AMERICAN OVERSIGHT

I can do 10 am on Tuesday, I have a conflict on Monday as that is my regularly scheduled time with Debo.

From: Juana Silverio
Sent: Thursday, May 20, 2021 9:35:12 AM
To: Amy Royce
Cc: Irena Vidulovic; Alec Deull
Subject: New Time Proposed: Caucus SA's
When: Monday, May 24, 2021 11:00 AM-12:00 PM.
Where: Zoom

Good morning- can we change next Monday to either Monday at 10 or Tuesday at 10a? I have a conflict at 11am- Juana

AMERICAN OVERSIGHT

Date : 7/12/2021 3:09:28 PM
From : "Juana Silverio" jsilverio@usccr.gov
To : "Alec Deull" adeull@usccr.gov, "Amy Royce" aroyce@usccr.gov, "Irena Vidulovic" ividulovic@usccr.gov
Subject : RE: 7.12.2021- Caucus SA mtg - AGENDA

SA Caucus Mtg.- 7.12.2021

1. July 23 business mtg agenda
    a. Sac appointment (s)
        i. Reps about fl re: ready to vote if we move a dem
            1. Irena to nominate another a rep by Debbie et al (moderate R or I leaning R)
            2. Also Texas- we pushed back; not ready
        ii. Right now –
            1. FL
            2. NE
    b. Sac chair report (need a speaker)
        i. Go to Dave M
    c. Finding and recs re: maternal health (?)(could also be a notational vote, waiting on Cmr. Adegbile to see if we have a 5th vote)
        i. Adegbile wants it up on the record; chance to thank folks for the vote on report and put something o record
        ii. Adegbile to re-circulate F&Rs
            1. Pls send feedback
    b. Staff director's report
        i. Where we are on return back to work plan; allow commissioners to ask questions? (on record)
    e. Fy 22 business mtg calendar vote
        i. Juana to recirculate to get final opinion
2. EAC – nomination deadlines
    a. Last mtg happened 2 weeks ago
        i. We should get idea of timing to select 2 by caucus, reject 1 by caucus and submit nominees
3. Bail reform report- update/needs
    a. Amy will circulate by end of week
4. FEMA- update/needs
    a. Nov 19 and Dec 10 (current)
    b. Oct 22 and Dec 17 (new proposed dates by staff)
    c. Oct 22 and Dec 10 (counter)
        i. These dates are already on commissioner calendars
        ii. Would most likely be able to have quorum if kept these days
        iii. Will just have to adjust for more travel time
        iv. Gives us 5 weeks in between briefings
        v. Next
            1. Float with Commissioners/SAs by tomorrow's mtg
3. FY 2022- topics
    a. Staff review?
    b. Ranking?
    c. Full concept paper submission- adjust timeline
        i. Mauro send out staff feedback; Juana circulated revised timeline to include ranking (due by Friday, Jul 16)
6. Miscellaneous
    a. Interns meet and greet with Chair- deadline (when do interns finish)
        i. Claire- aug

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ii. Alana – last week of July
iii. Nana- aug

b. SAC recruitment

i. Ongoing

c. Sen. Warren and Rep. Kilmer

i. Native American COVID updated report (briefing by Adegbile)

1. Publicly available info (items on website)
2. Just to staff (no hill hearing)

From: Juana Silverio
Sent: Monday, July 12, 2021 10:37 AM
To: Alec Deull <adeull@usccr.gov>; Amy Royce <aroyce@usccr.gov>; Irena Vidulovic <ividulovic@usccr.gov>
Subject: 7.12.2021- Caucus SA mtg - AGENDA

Pls add as you see fit:

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Dem SA mtg 6.28.21

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    i. Need to flush out the civil rights questions
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1. Bulk of questions will go to them

b. Follow up questions – send to OCRE to be compiled & sent together
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AMERICAN OVERSIGHT

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Where: Zoom

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AMERICAN OVERSIGHT

Date : 7/19/2021 2:27:57 PM
From : "Juana Silverio" jsilverio@usccr.gov
To : "Norma Cantu" ncantu@usccr.gov, "David Kladney" dkladney@usccr.gov, "Debo P. Adegbile" dadegbile@usccr.gov, "Michael Yaki" MYaki@usccr.gov, "Irena Vidulovic" ividulovic@usccr.gov, "Amy Royce" aroyce@usccr.gov, "Alec Deull" adeull@usccr.gov
Cc : "michael@michaelyaki.com" michael@michaelyaki.com, "Zervoudis, Flor" Flor.Zervoudis@wilmerhale.com, "Adegbile, Debo" Debo.Adegbile@wilmerhale.com
Subject : (12P PST/2P CST) DEM Caucus Meeting re: July 23rd Business Mtg.

Agenda:

1. Discuss July 23rd business mtg votes
    a. Findings and recs for SER Maternal Health report
2. EAC nomination
3. FY22 concept paper rankings

__Please send in other agenda items at your earlies convenience__

AMERICAN OVERSIGHT

Date : 7/24/2021 10:08:41 AM
From : "Mauro Morales" mmorales@usccr.gov
To : "Norma Cantu" ncantu@usccr.gov
Cc : "Juana Silverio" jsilverio@usccr.gov
Subject : FW: [EXTERNAL] USCCR Appointments to EAC Board of Advisors
Attachment : EAC Letter to USCCR re BOA Appointments 7.23.21.pdf;Notice-of-Representation-Form-Board-Advisors-2021.pdf;

Chair Cantu,

How would you like me to handle the appointments to the EAC?

Mauro

From: Kevin Rayburn [mailto:KRayburn@eac.gov]
Sent: Friday, July 23, 2021 5:39 PM
To: Mauro Morales <mmorales@usccr.gov>
Cc: Christy McCormick <cmccormick@eac.gov>; Mona Harrington <mharrington@eac.gov>; Tina Barton <TBarton@eac.gov>
Subject: [EXTERNAL] USCCR Appointments to EAC Board of Advisors

> CAUTION: This email is from outside USCCR.

Good Afternoon Mr. Morales,

Please find attached a follow-up letter concerning the U.S. Commission on Civil Rights' appointments to the U.S. Election Assistance Commission Board of Advisors.

Sincerely,

Kevin Rayburn | General Counsel
U.S. Election Assistance Commission
633 3rd Street NW, Suite 200 | Washington, DC 20001
www.eac.gov

AMERICAN OVERSIGHT

U.S. ELECTION ASSISTANCE COMMISSION
633 3rd St. NW, Suite 200
Washington, DC 20001

July 23, 2021

United States Commission on Civil Rights
Mauro Morales, Staff Director
1331 Pennsylvania Ave., NW, STE 1150
Washington, D.C. 20425
mmorales@usccr.gov

Re: U.S. Election Assistance Commission
Board of Advisors Membership Appointments

Dear Mr. Morales,

This letter is to follow up on the previous letter sent on March 5, 2021 concerning the United States Commission on Civil Rights' representatives to the Unites States Election Assistance Commission (EAC) Board of Advisors. Under Section 214 of the Help America Vote Act of 2002 (HAVA), your organization is authorized to appoint two members to this federal advisory committee. The members serve two-year terms and are not term limited.

Your current representatives are:

Mr. Michael Yaki
Mr. David Kladney

The terms of the U.S. Commission on Civil Rights' designated representatives expired on April 13, 2021, coinciding with the renewal of the Board of Advisor's Charter. To date we have not received notice from the U.S. Commission on Civil Rights of its designated representatives for the term running from April 13, 2021 – April 13, 2023. Please use the enclosed Notice of Representation form to advise us of your designated representatives to serve on the EAC Board of Advisors for this two-year term. In compliance with HAVA, appointments must be made "in a manner which ensures that the Board of Advisors will be bipartisan in nature and will reflect the various geographic regions of the United States." 52 U.S.C § 20944(b).

Please return this completed form by email to krayburn@eac.gov.

Thank you for your attention to this matter. If we can be of assistance, please feel free to contact us at 202-740-6546 or krayburn@eac.gov.

Sincerely,

Kevin Rayburn
General Counsel
U.S. Election Assistance Commission

CC: Christy McCormick, EAC Commissioner and Board of Advisors DFO
Mona Harrington, EAC Executive Director
Tina Barton, EAC Senior Program Advisor and Board of Advisors ADFO

AMERICAN OVERSIGHT

Notice of Representation
United States Election Assistance Commission
Board of Advisors

In accordance with 52 U.S.C. § 20944 of the Help America Vote Act of 2002, your office submits the following individual(s) as a member of the Election Assistance Commission Board of Advisors:

Designated Representative

Name: _____

Title: _____

Address: _____

_____

Phone: _____

Email: _____

Party Affiliation: _____

Designated Representative

Name: _____

Title: _____

Address: _____

_____

Phone: _____

Email: _____

Party Affiliation: _____

Name and Title of Appointing Official

Print Name: _____

Print Title: _____

Signature: _____ Date: _____

Please return the completed form via email to EAC General Counsel Kevin Rayburn (krayburn@eac.gov).

AMERICAN OVERSIGHT

Date : 7/25/2021 2:57:42 PM
From : "Norma Cantu" ncantu@usccr.gov
To : "Mauro Morales" mmorales@usccr.gov
Cc : "Juana Silverio" jsilverio@usccr.gov
Subject : RE: [EXTERNAL] USCCR Appointments to EAC Board of Advisors

Hi,
We have discussed nominations informally, and need to move to written, formal levels. This means I will give the Commissioners a week to send you the 2 nominations from each Caucus; follow up with an ethics check, and then allow 24 hours to reply with the Caucus strikes.
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Norma

From: Mauro Morales <mmorales@usccr.gov>
Sent: Saturday, July 24, 2021 9:09 AM
To: Norma Cantu <ncantu@usccr.gov>
Cc: Juana Silverio <jsilverio@usccr.gov>
Subject: FW: [EXTERNAL] USCCR Appointments to EAC Board of Advisors

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Sincerely,

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U.S. Election Assistance Commission
633 3rd Street NW, Suite 200 | Washington, DC 20001
www.eac.gov

AMERICAN OVERSIGHT

AMERICAN OVERSIGHT

Date : 7/26/2021 10:35:41 AM
From : "Mauro Morales" mmorales@usccr.gov
To : "Norma Cantu" ncantu@usccr.gov
Cc : "Juana Silverio" jsilverio@usccr.gov, "David Ganz" dganz@usccr.gov
Subject : RE: [EXTERNAL] USCCR Appointments to EAC Board of Advisors

Chair Cantu,

Thank you for the follow up. I have cc'd David Ganz for his awareness.

Mauro

From: Norma Cantu <ncantu@usccr.gov>
Sent: Sunday, July 25, 2021 2:58 PM
To: Mauro Morales <mmorales@usccr.gov>
Cc: Juana Silverio <jsilverio@usccr.gov>
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Kevin Rayburn | General Counsel
U.S. Election Assistance Commission
633 3rd Street NW, Suite 200 | Washington, DC 20001
www.eac.gov

AMERICAN OVERSIGHT

Date : 7/26/2021 11:07:35 AM
From : "David Ganz" dganz@usccr.gov
To : "Pilar McLaughlin" pmclaughlin@usccr.gov
Cc : "Andrew Gall" agall@usccr.gov
Subject : FW: [EXTERNAL] USCCR Appointments to EAC Board of Advisors

Have we previously done this type of ethics check? There could be something on SecuriSync.

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633 3rd Street NW, Suite 200 | Washington, DC 20001
www.eac.gov

AMERICAN OVERSIGHT

Date : 7/26/2021 11:14:03 AM
From : "Andrew Gall" agall@usccr.gov
To : "David Ganz" dganz@usccr.gov, "Pilar McLaughlin" pmclaughlin@usccr.gov
Subject : Re: [EXTERNAL] USCCR Appointments to EAC Board of Advisors

I found a spreadsheet for an ethics conflict check on Commissioner Adams (https://securisync.intermedia.net/us2/search?id=L2ZpbGVzeW5jL09HQy82X0V0aGljcw%3D%3D&filter=check), but I wasn't able to find anything for the U.S. Election Assistance Commission Board of Advisors.

From: David Ganz
Sent: Monday, July 26, 2021 11:07:35 AM
To: Pilar McLaughlin
Cc: Andrew Gall
Subject: FW: [EXTERNAL] USCCR Appointments to EAC Board of Advisors

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Cc: Juana Silverio <jsilverio@usccr.gov>; David Ganz <dganz@usccr.gov>
Subject: RE: [EXTERNAL] USCCR Appointments to EAC Board of Advisors

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Mauro

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Sincerely,

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U.S. Election Assistance Commission
633 3rd Street NW, Suite 200 | Washington, DC 20001
www.eac.gov

AMERICAN OVERSIGHT

Date : 7/26/2021 11:23:37 AM
From : "Pilar McLaughlin" pmclaughlin@usccr.gov
To : "David Ganz" dganz@usccr.gov
Cc : "Andrew Gall" agall@usccr.gov
Subject : RE: [EXTERNAL] USCCR Appointments to EAC Board of Advisors

David:

I can look in the share drive, but I wonder if an ethics check is within our jurisdiction or the EAC's? Are we in the position to do an ethics check - we don't know the EAC's issues or work/projects.

Does the Chair know for certain or has she received communication from the EAC's GC that we need to do this? Maybe we have a call with their GC to find out what's required on our end.

From: David Ganz <dganz@usccr.gov>
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To: Pilar McLaughlin <pmclaughlin@usccr.gov>
Cc: Andrew Gall <agall@usccr.gov>
Subject: FW: [EXTERNAL] USCCR Appointments to EAC Board of Advisors

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Subject: RE: [EXTERNAL] USCCR Appointments to EAC Board of Advisors

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633 3rd Street NW, Suite 200 | Washington, DC 20001
www.eac.gov

AMERICAN OVERSIGHT

Date : 7/26/2021 11:36:10 AM
From : "David Ganz" dganz@usccr.gov
To : "Pilar McLaughlin" pmclaughlin@usccr.gov
Cc : "Andrew Gall" agall@usccr.gov
Subject : RE: [EXTERNAL] USCCR Appointments to EAC Board of Advisors

I was also thinking that this is something EAC would do rather than us, but I think an appointing agency would also do some sort of ethics pre-appointment review.

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AMERICAN OVERSIGHT

Date : 7/26/2021 11:38:54 AM
From : "Pilar McLaughlin" pmclaughlin@usccr.gov
To : "David Ganz" dganz@usccr.gov
Cc : "Andrew Gall" agall@usccr.gov
Subject : RE: [EXTERNAL] USCCR Appointments to EAC Board of Advisors

Yea, makes sense. I'll take a look in securisync

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www.eac.gov

AMERICAN OVERSIGHT

Date : 7/27/2021 1:11:27 PM
From : "Mauro Morales" mmorales@usccr.gov
To : "Juana Silverio" jsilverio@usccr.gov
Subject : RE: eac email + rankings
Attachment : image004.gif;image005.gif;image006.gif;

Yes, I can do it. Go ahead and draft the email you want and the way you want it.

Yes, on rankings. It has been done but, I am waiting for Irena. Debo's is the only one missing.

From: Juana Silverio <jsilverio@usccr.gov>
Sent: Tuesday, July 27, 2021 12:57 PM
To: Mauro Morales <mmorales@usccr.gov>
Subject: eac email + rankings

Hi Mauro- I spoke to the Chair briefly this morning. Will you be sending out the email to Commissioners asking for the names of their nominees on behalf of the Chair and explaining the process?

Also- can we expect the rankings today?

--
Juana Silverio *(she/her/ella)*
Special Assistant to Commissioner Norma V. Cantú
U.S. Commission on Civil Rights
E: jsilverio@usccr.gov
http://usccr.gov/
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425
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AMERICAN OVERSIGHT

OVERSIGHT

OVERSTOCK

Date : 7/27/2021 3:44:50 PM
From : "Juana Silverio" jsilverio@usccr.gov
To : "Mauro Morales" mmorales@usccr.gov
Cc : "Norma Cantu" ncantu@usccr.gov
Subject : RE: eac email + rankings
Attachment : image001.gif;image002.gif;image003.gif;

DRAFT EMAIL- EAC

Dear Commissioners-

In consultation with the Chair, I am sending this email to start the EAC nomination process.

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Please let the Chair or I know if you have any questions or concerns.

--
AI language:

Section 1.
.01 Any authority specifically granted the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Commission as a whole by majority vote.

.02 Any authority specifically granted the Staff Director of the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Staff Director.

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Section 2
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(1) For the two (2) appointments to the U.S. Election Assistance Commission, the members appointed by Democratic authorities shall nominate two individuals who are ready, willing, and able to serve, and the members appointed by the Republican authorities shall nominate two individuals who are ready, willing, and able to serve.

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(2) The members appointed by the Democratic authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Democratic authorities

(3) The members selected shall be placed in nomination and ratified in conformance with Section 1.

From: Mauro Morales <mmorales@usccr.gov>
Sent: Tuesday, July 27, 2021 1:11 PM
To: Juana Silverio <jsilverio@usccr.gov>
Subject: RE: eac email + rankings

Yes, I can do it. Go ahead and draft the email you want and the way you want it.

Yes, on rankings. It has been done but, I am waiting for Irena. Debo's is the only one missing.

From: Juana Silverio <jsilverio@usccr.gov>
Sent: Tuesday, July 27, 2021 12:57 PM
To: Mauro Morales <mmorales@usccr.gov>
Subject: eac email + rankings

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Date : 7/27/2021 6:02:57 PM
From : "Mauro Morales" mmorales@usccr.gov
To : "Juana Silverio" jsilverio@usccr.gov
Cc : "Norma Cantu" ncantu@usccr.gov
Subject : RE: eac email + rankings
Attachment : image004.gif;image005.gif;image006.gif;

Looks good. I will get it out ASAP.

From: Juana Silverio <jsilverio@usccr.gov>
Sent: Tuesday, July 27, 2021 3:45 PM
To: Mauro Morales <mmorales@usccr.gov>
Cc: Norma Cantu <ncantu@usccr.gov>
Subject: RE: eac email + rankings

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Please let the Chair or I know if you have any questions or concerns.

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Date : 7/28/2021 12:28:29 PM
From : "Mauro Morales" mmorales@usccr.gov
To : "Norma Cantu" ncantu@usccr.gov
Cc : "Juana Silverio" jsilverio@usccr.gov
Subject : RE: Commissioner Appointments to the Election Assistance Commission
Attachment : image001.gif;image002.gif;

Sounds good and will do.

From: Norma Cantu <ncantu@usccr.gov>
Sent: Wednesday, July 28, 2021 12:28 PM
To: Mauro Morales <mmorales@usccr.gov>
Cc: Juana Silverio <jsilverio@usccr.gov>
Subject: RE: Commissioner Appointments to the Election Assistance Commission

Thank you. I expect the Commissioners will ask for more time, so be prepared a couple of days of extension, without checking back in with me.
Norma

From: Mauro Morales <mmorales@usccr.gov>
Sent: Wednesday, July 28, 2021 10:31 AM
To: Commissioners <Commissioners@usccr.gov>
Cc: David Ganz <dganz@usccr.gov>; CommissionerAssistants <CommissionerAssistants@usccr.gov>
Subject: Commissioner Appointments to the Election Assistance Commission

Dear Commissioners-

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Mauro Morales
Staff Director
U.S. Commission on Civil Rights
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Washington D.C. 20425

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Date : 7/28/2021 1:01:17 PM
From : "Pilar McLaughlin" pmclaughlin@usccr.gov
To : "David Ganz" dganz@usccr.gov
Cc : "Sheryl Cozart" sccozart@usccr.gov, "Andrew Gall" agall@usccr.gov
Subject : Re: Commissioner Appointments to the Election Assistance Commission
Attachment : image001.gif;image002.gif;

Yes! Will do.

Get Outlook for iOS

From: David Ganz <dganz@usccr.gov>
Sent: Wednesday, July 28, 2021 12:59:26 PM
To: Pilar McLaughlin <pmclaughlin@usccr.gov>
Cc: Sheryl Cozart <sccozart@usccr.gov>; Andrew Gall <agall@usccr.gov>
Subject: FW: Commissioner Appointments to the Election Assistance Commission

Hey Pilar, could you reach out to EAC and see if we should do any vetting or 'ethics' check of our appointees to their advisory committee? Given that anyone, including non-Commissioner members of the public, could be appointed, I am not sure how we could vet them or do an ethics check since we don't know what the EAC advisory committee does or studies. Of course, we could always send them a generic ethics checklist, but I am not sure to what we compare their responses.

EAC GC Kevin Rayburn has previously been in touch with us. KRayburn@eac.gov Mobile: (202) 740-6546

https://www.eac.gov/about-the-useac
https://www.eac.gov/about_the_eac/board_of_advisors

From: Mauro Morales <mmorales@usccr.gov>
Sent: Wednesday, July 28, 2021 11:31 AM
To: Commissioners <Commissioners@usccr.gov>
Cc: David Ganz <dganz@usccr.gov>; CommissionerAssistants <CommissionerAssistants@usccr.gov>
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Mmorales@usccr.gov
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1331 Pennsylvania Avenue, NW Suite 1150

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Washington D.C. 20425

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Date : 7/28/2021 1:29:54 PM
From : "Amy Royce" aroyce@usccr.gov
To : "Juana Silverio" jsilverio@usccr.gov, "Alec Deull" adeull@usccr.gov, "Irena Vidulovic" ividulovic@usccr.gov
Subject : FW: Commissioner Appointments to the Election Assistance Commission
Attachment : image001.gif;image002.gif;

Hey Juana,
Should we send any nominations to you? When would you like them by?
Thanks,
Amy

From: Mauro Morales <mmorales@usccr.gov>
Sent: Wednesday, July 28, 2021 11:31 AM
To: Commissioners <Commissioners@usccr.gov>
Cc: David Ganz <dganz@usccr.gov>; CommissionerAssistants <CommissionerAssistants@usccr.gov>
Subject: Commissioner Appointments to the Election Assistance Commission

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Date : 7/28/2021 12:59:26 PM
From : "David Ganz" dganz@usccr.gov
To : "Pilar McLaughlin" pmclaughlin@usccr.gov
Cc : "Sheryl Cozart" sccozart@usccr.gov, "Andrew Gall" agall@usccr.gov
Subject : FW: Commissioner Appointments to the Election Assistance Commission
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EAC GC Kevin Rayburn has previously been in touch with us. KRayburn@eac.gov Mobile: (202) 740-6546

https://www.eac.gov/about-the-useac
https://www.eac.gov/about_the_eac/board_of_advisors

From: Mauro Morales <mmorales@usccr.gov>
Sent: Wednesday, July 28, 2021 11:31 AM
To: Commissioners <Commissioners@usccr.gov>
Cc: David Ganz <dganz@usccr.gov>; CommissionerAssistants <CommissionerAssistants@usccr.gov>
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Date : 7/28/2021 4:24:01 PM
From : "David Ganz" dganz@usccr.gov
To : "Pilar McLaughlin" pmclaughlin@usccr.gov
Subject : FW: Commissioner Appointments to the Election Assistance Commission
Attachment : image001.gif;image002.gif;

The April 30, AI doesn't set out a vetting or ethics process.

From: Mauro Morales <mmorales@usccr.gov>
Sent: Wednesday, July 28, 2021 11:31 AM
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OVERSTOCK

Date : 7/29/2021 2:20:23 PM
From : "Irena Vidulovic" ividulovic@usccr.gov
To : "Amy Royce" aroyce@usccr.gov
Subject : Draft Email: Election Assistance Commission (EAC) Board of Advisors

The U.S. Commission on Civil Rights has the privilege and authority to appoint two members to the EAC Board of Advisors . The Board of Advisors are appointed to a two year term . The Members meet quarterly and t he appointees are referred to as members of the Board of Advisors to the Election Assistance Commission.

I would like to take this opportunity to inquire if you would consider serving on the Board of Advisors. If you are willing and able I would like to nominate you to serve. The Commission has a internal process on nominations but if you would be selected then we would go forward with the appointment.

The description and statute is included below. Please take a look and feel free to email my Special Assistant Irena Vidulovic who is cc'd on this email with any questions.

The EACBoard of Advisors is a 35-member board composed of representatives from the National Governors Association; National Conference of State Legislatures; National Association of Secretaries of State; The National Association of State Election Directors; National Association of Counties; the International Association of Government Officials (created from the merger of the National Association of County Recorders, Election Officials and Clerks and the International Association of Clerks, Recorders, Election Officials, and Treasurers); Election Center; International Association of Clerks, Recorders, Election Officials, and Treasurers; **U.S. Commission on Civil Rights**; and Architectural and Transportation Barriers Compliance Board.

Other members include representatives from the U.S. Department of Justice, Office of Public Integrity, and the Civil Rights Division; the director of the U.S. Department of Defense Federal Voting Assistance Program; four professionals from the field of science and technology, one each appointed by the Speaker and the Minority Leader of the U.S. House of Representatives, and the Majority and Minority leaders of the U.S. Senate; and eight members representing voter interests, with the chairs and the ranking minority members of the U.S. House of Representatives Committee on House Administration and the U.S. Senate Committee on Rules and Administration each appointing two members. Following the passage of HAVA, the National Association of County Recorders, Election Officials and Clerks and the International Association of Clerks, Recorders, Election Officials, and Treasurers merged to form the International Association of Government Officials.

Statute:

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52 U.S. Code § 20944 - Membership of Board of Advisors

(a)In general

The Board of Advisors shall be composed of 37 members appointed as follows:

(1)Two members appointed by the National Governors Association.

(2)Two members appointed by the National Conference of State Legislatures.

(3)Two members appointed by the National Association of Secretaries of State.

(4)Two members appointed by the National Association of State Election Directors.

(5)Two members appointed by the National Association of Counties.

(6)Two members appointed by the National Association of County Recorders, Election Administrators, and Clerks.[1]

(7)Two members appointed by the United States Conference of Mayors.

(8)Two members appointed by the Election Center.

(9)Two members appointed by the International Association of County Recorders, Election Officials, and Treasurers.[2]

(10)Two members appointed by the United States Commission on Civil Rights.

(11)Two members appointed by the Architectural and Transportation Barrier [3] Compliance Board under section 792 of title 29.

(12)The chief of the Office of Public Integrity of the Department of Justice,[4] or the chief's designee.

(13)The chief of the Voting Section of the Civil Rights Division of the Department of Justice or the chief's designee.

(14)The director of the Federal Voting Assistance Program of the Department of Defense.

(15)Four members representing professionals in the field of science and technology, of whom—

(A)one each shall be appointed by the Speaker and the Minority Leader of the House of Representatives; and

(B)one each shall be appointed by the Majority Leader and the Minority Leader of the Senate.

(16)Eight members representing voter interests, of whom—

(A)four members shall be appointed by the Committee on House Administration of the House of Representatives, of whom two shall be appointed by the chair and two shall be appointed by the ranking minority member; and

(B)four members shall be appointed by the Committee on Rules and Administration of the Senate, of whom two shall be appointed by the chair and two shall be appointed by the ranking minority member.

(b)Manner of appointments

Appointments shall be made to the Board of Advisors under subsection (a) in a manner which ensures that the Board of Advisors will be bipartisan in nature and will reflect the various geographic regions of the United States.

(c)Term of service; vacancy

Members of the Board of Advisors shall serve for a term of 2 years, and may be reappointed. Any vacancy in the Board of Advisors shall be filled in the manner in which the original appointment was made.

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(d)Chair
The Board of Advisors shall elect a Chair from among its members.

Website:
https://www.eac.gov/about_the_eac/board_of_advisors

Irena Vidulovic
Special Assistant to Commissioner Debo P. Adegbile
U.S. Commission on Civil Rights
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Date : 7/29/2021 2:24:15 PM
From : "Amy Royce" aroyce@usccr.gov
To : "Irena Vidulovic" ividulovic@usccr.gov
Subject : RE: Draft Email: Election Assistance Commission (EAC) Board of Advisors

Looks good to me!

From: Irena Vidulovic <ividulovic@usccr.gov>
Sent: Thursday, July 29, 2021 2:20 PM
To: Amy Royce <aroyce@usccr.gov>
Subject: Draft Email: Election Assistance Commission (EAC) Board of Advisors

The U.S. Commission on Civil Rights has the privilege and authority to appoint two members to the EAC Board of Advisors. The Board of Advisors are appointed to a two year term . The Members meet quarterly and the appointees are referred to as members of the Board of Advisors to the Election Assistance Commission.

I would like to take this opportunity to inquire if you would consider serving on the Board of Advisors. If you are willing and able I would like to nominate you to serve. The Commission has a internal process on nominations but if you would be selected then we would go forward with the appointment.

The description and statute is included below. Please take a look and feel free to email my Special Assistant Irena Vidulovic who is cc'd on this email with any questions.

The EAC Board of Advisors is a 35-member board composed of representatives from the National Governors Association; National Conference of State Legislatures; National Association of Secretaries of State; The National Association of State Election Directors; National Association of Counties; the International Association of Government Officials (created from the merger of the National Association of County Recorders, Election Officials and Clerks and the International Association of Clerks, Recorders, Election Officials, and Treasurers); Election Center; International Association of Clerks, Recorders, Election Officials, and Treasurers; **U.S. Commission on Civil Rights**; and Architectural and Transportation Barriers Compliance Board.

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Other members include representatives from the U.S. Department of Justice, Office of Public Integrity, and the Civil Rights Division; the director of the U.S. Department of Defense Federal Voting Assistance Program; four professionals from the field of science and technology, one each appointed by the Speaker and the Minority Leader of the U.S. House of Representatives, and the Majority and Minority leaders of the U.S. Senate; and eight members representing voter interests, with the chairs and the ranking minority members of the U.S. House of Representatives Committee on House Administration and the U.S. Senate Committee on Rules and Administration each appointing two members. Following the passage of HAVA, the National Association of County Recorders, Election Officials and Clerks and the International Association of Clerks, Recorders, Election Officials, and Treasurers merged to form the International Association of Government Officials.

Statute:
52 U.S. Code § 20944 - Membership of Board of Advisors
(a)In general
The Board of Advisors shall be composed of 37 members appointed as follows:
(1)Two members appointed by the National Governors Association.
(2)Two members appointed by the National Conference of State Legislatures.
(3)Two members appointed by the National Association of Secretaries of State.
(4)Two members appointed by the National Association of State Election Directors.
(5)Two members appointed by the National Association of Counties.
(6)Two members appointed by the National Association of County Recorders, Election Administrators, and Clerks.[1]
(7)Two members appointed by the United States Conference of Mayors.
(8)Two members appointed by the Election Center.
(9)Two members appointed by the International Association of County Recorders, Election Officials, and Treasurers.[2]
(10)Two members appointed by the United States Commission on Civil Rights.
(11)Two members appointed by the Architectural and Transportation Barrier [3] Compliance Board under section 792 of title 29.
(12)The chief of the Office of Public Integrity of the Department of Justice,[4] or the chief's designee.
(13)The chief of the Voting Section of the Civil Rights Division of the Department of Justice or the chief's designee.
(14)The director of the Federal Voting Assistance Program of the Department of Defense.
(15)Four members representing professionals in the field of science and technology, of whom—
(A)one each shall be appointed by the Speaker and the Minority Leader of the House of Representatives; and
(B)one each shall be appointed by the Majority Leader and the Minority Leader of the Senate.
(16)Eight members representing voter interests, of whom—
(A)four members shall be appointed by the Committee on House Administration of the House of Representatives, of whom two shall be

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appointed by the chair and two shall be appointed by the ranking minority member; and
(B)four members shall be appointed by the Committee on Rules and Administration of the Senate, of whom two shall be appointed by the chair and two shall be appointed by the ranking minority member.

(b)Manner of appointments
Appointments shall be made to the Board of Advisors under subsection (a) in a manner which ensures that the Board of Advisors will be bipartisan in nature and will reflect the various geographic regions of the United States.

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Members of the Board of Advisors shall serve for a term of 2 years, and may be reappointed. Any vacancy in the Board of Advisors shall be filled in the manner in which the original appointment was made.

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Washington D.C. 20425

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Date : 7/29/2021 2:25:50 PM
From : "Irena Vidulovic" ividulovic@usccr.gov
To : "Debo P. Adegbile" dadegbile@usccr.gov, "Adegbile, Debo" Debo.Adegbile@wilmerhale.com
Subject : Draft Email to EAC/Board of Advisors Nomination

The U.S. Commission on Civil Rights has the privilege and authority to appoint two members to the EAC Board of Advisors. The Board of Advisors are appointed to a two year term . The Members meet quarterly and the appointees are referred to as members of the Board of Advisors to the Election Assistance Commission.

I would like to take this opportunity to inquire if you would consider serving on the Board of Advisors. If you are willing and able I would like to nominate you to serve. The Commission has a internal process on nominations but if you would be selected then we would go forward with the appointment.

The description and statute is included below. Please take a look and feel free to email my Special Assistant Irena Vidulovic who is cc'd on this email with any questions.

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Other members include representatives from the U.S. Department of Justice, Office of Public Integrity, and the Civil Rights Division; the director of the U.S. Department of Defense Federal Voting Assistance Program; four professionals from the field of science and technology, one each appointed by the Speaker and the Minority Leader of the U.S. House of Representatives, and the Majority and Minority leaders of the U.S. Senate; and eight members representing voter interests, with the chairs and the ranking minority members of the U.S. House of Representatives Committee on House Administration and the U.S. Senate

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Committee on Rules and Administration each appointing two members. Following the passage of HAVA, the National Association of County Recorders, Election Officials and Clerks and the International Association of Clerks, Recorders, Election Officials, and Treasurers merged to form the International Association of Government Officials.

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(7)Two members appointed by the United States Conference of Mayors.
(8)Two members appointed by the Election Center.
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(10)Two members appointed by the United States Commission on Civil Rights.
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(12)The chief of the Office of Public Integrity of the Department of Justice,[4] or the chief's designee.
(13)The chief of the Voting Section of the Civil Rights Division of the Department of Justice or the chief's designee.
(14)The director of the Federal Voting Assistance Program of the Department of Defense.
(15)Four members representing professionals in the field of science and technology, of whom—
(A)one each shall be appointed by the Speaker and the Minority Leader of the House of Representatives; and
(B)one each shall be appointed by the Majority Leader and the Minority Leader of the Senate.
(16)Eight members representing voter interests, of whom—
(A)four members shall be appointed by the Committee on House Administration of the House of Representatives, of whom two shall be appointed by the chair and two shall be appointed by the ranking minority member; and
(B)four members shall be appointed by the Committee on Rules and Administration of the Senate, of whom two shall be appointed by the chair and two shall be appointed by the ranking minority member.

(b)Manner of appointments

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Appointments shall be made to the Board of Advisors under subsection (a) in a manner which ensures that the Board of Advisors will be bipartisan in nature and will reflect the various geographic regions of the United States.

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The Board of Advisors shall elect a Chair from among its members.

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https://www.eac.gov/about_the_eac/board_of_advisors

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Date : 7/29/2021 3:48:08 PM
From : "Irena Vidulovic" ividulovic@usccr.gov
To : "Juana Silverio" jsilverio@usccr.gov, "Mauro Morales" mmorales@usccr.gov, "Norma Cantu" ncantu@usccr.gov
Cc : "Debo P. Adegbile" dadegbile@usccr.gov, "Amy Royce" aroyce@usccr.gov, "Alec Deull" adeull@usccr.gov
Subject : Re: EAC Nominations

Alabama SAC Chair Jenny Carroll is willing, able and would be honored to serve.

Sent from my iPhone

> On Jul 28, 2021, at 9:45 PM, Irena Vidulovic <ividulovic@usccr.gov> wrote:
>
> Dear Juana and Mauro,
>
> Commissioner Adegbile intends to nominate the following folks to the EAC. We will be reaching out to them to make sure that they are able and willing to serve.
>
> Alabama SAC Chair Jenny Carroll https://www.law.ua.edu/directory/People/view/Jenny_Carroll

---

Jenny Carroll | University of Alabama School of Law

www.law.ua.edu

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Alison Riggs https://southerncoalition.org/staff/allison-riggs/

Allison Riggs - Southern Coalition for Social Justice

southerncoalition.org

Allison Riggs leads the voting rights program at the Southern Coalition for Social Justice, an

Leah Aden https://www.naacpldf.org/about-us/staff/leah-c-aden/

Leah C. Aden

www.naacpldf.org

Leah C. Aden has served as a Deputy Director of Litigation at the NAACP Legal Defense & Educational

Irena Vidulovic
Special Assistant to Commissioner Debo P. Adegbile
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Date : 7/29/2021 4:50:42 PM
From : "David Ganz" dganz@usccr.gov
To : "Pilar McLaughlin" pmclaughlin@usccr.gov
Subject : Summary of call with EAC GC
Attachment : image001.png;

1. Advisory Board members are not SGE; they are representative members so they aren't given ethics or background checks/file 450s or 278s by/with EAC.
2. SGEs give personal views; because members aren't giving own views, no potential conflicts.
3. They aren't representing USCCR, but maybe larger community. EAC statute doesn't specify either. Do not nominate them with USCCR title.
4. Criminal ethics law applies because they are USCCR SGEs.
5. No more meetings in 2021.
6.

David Ganz
General Counsel, Office of the General Counsel
U.S. Commission on Civil Rights
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425
(617) 669-6413

This message, including attachments, is confidential and may contain information protected by the attorney-client privilege or work product doctrine. If you are not the addressee, any disclosure, copying, distribution, or use of the contents of this message are prohibited. If you have received this email in error, please destroy it and notify me immediately.

Established as an independent, bipartisan, fact-finding federal agency, our mission is to inform the development of national civil rights policy and enhance enforcement of federal civil rights laws. We pursue this mission by studying alleged deprivations of voting rights and alleged discrimination based on race, color, religion, sex, age, disability, or national origin, or in the administration of justice. We play a vital role in advancing civil rights through objective and comprehensive investigation, research, and analysis on issues of fundamental concern to the federal government and the public.

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C001975
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Date : 7/29/2021 5:47:43 PM
From : "Irena Vidulovic" ividulovic@usccr.gov
To : "Juana Silverio" jsilverio@usccr.gov, "Mauro Morales" mmorales@usccr.gov, "Norma Cantu" ncantu@usccr.gov
Cc : "Debo P. Adegbile" dadegbile@usccr.gov, "Amy Royce" aroyce@usccr.gov, "Alec Deull" adeull@usccr.gov
Subject : Re: EAC Nominations

Allison Riggs Co-Executive Director, Programs
Chief Counsel for Voting Rights is willing able and would be honored to serve.

Sent from my iPhone

> On Jul 29, 2021, at 9:48 PM, Irena Vidulovic <ividulovic@usccr.gov> wrote:

AMERICAN OVERSIGHT

Date : 7/30/2021 6:34:46 AM
From : "Irena Vidulovic" ividulovic@usccr.gov
To : "Irena Vidulovic" ividulovic@usccr.gov
Subject : EAC Nominations to the Board of Advisors

Hello Everyone,

Commissioner Adegbile has nominated Alabama SAC Chair Jenny Carroll and Allison Riggs of the Southern Coalition For Social Justice to serve on EAC's Board of Advisors. We have reached out to both of them to make sure that they are willing and able to serve and have heard back that they are and that they would be honored to serve.

Alabama SAC Chair Jenny Carroll https://www.law.ua.edu/directory/People/view/Jenny_Carroll

Jenny Carroll | University of Alabama School of Law

www.law.ua.edu

For more than 140 years, the University of Alabama School of Law has produced attorneys who become leaders locally, nationally and globally. Alabama Law provides a top-rate education at an affordable cost in a supportive and diverse environment.

Allison Riggs https://southerncoalition.org/staff/allison-riggs/

Allison Riggs - Southern Coalition for Social Justice

southerncoalition.org

Allison Riggs leads the voting rights program at the Southern Coalition for Social Justice, an organization she joined in 2009. In March of 2020, she also took over as Interim Executive Director of the organization. Her voting rights work over the last decade at SCSJ has been focused on fighting for fair redistricting plans, fighting against voter suppression, and advocating for electoral reforms that would expand access to voting.

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Washington D.C. 20425

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Date : 7/30/2021 9:17:10 AM
From : "Alec Deull" adeull@usccr.gov
To : "Irena Vidulovic" ividulovic@usccr.gov, "Juana Silverio" jsilverio@usccr.gov, "Mauro Morales" mmorales@usccr.gov, "Norma Cantu" ncantu@usccr.gov
Cc : "Debo P. Adegbile" dadegbile@usccr.gov, "Amy Royce" aroyce@usccr.gov
Subject : Re: EAC Nominations

hello All -

Commissioner Yaki intends to nominate himself for another EAC term.

all best, Alec

From: Irena Vidulovic
Sent: Thursday, July 29, 2021 5:47:43 PM
To: Juana Silverio; Mauro Morales; Norma Cantu
Cc: Debo P. Adegbile; Amy Royce; Alec Deull
Subject: Re: EAC Nominations

Allison Riggs Co-Executive Director, Programs
Chief Counsel for Voting Rights is willing able and would be honored to serve.

Sent from my iPhone

> On Jul 29, 2021, at 9:48 PM, Irena Vidulovic <ividulovic@usccr.gov> wrote:

AMERICAN OVERSIGHT

Date : 7/30/2021 9:35:01 AM
From : "Irena Vidulovic" ividulovic@usccr.gov
To : "Alec Deull" adeull@usccr.gov
Cc : "Juana Silverio" jsilverio@usccr.gov, "Mauro Morales" mmorales@usccr.gov, "Norma Cantu" ncantu@usccr.gov, "Debo P. Adegbile" dadegbile@usccr.gov, "Amy Royce" aroyce@usccr.gov, "David Kladney" dkladney@usccr.gov
Subject : Re: EAC Nominations

Thank you Alec for letting us know. As I mentioned yesterday Commissioner Adegbile would like to nominate Chair Jenny Carroll and Allison Riggs of the Southern Coalition For Social Justice to serve on EAC's Board of Advisors. We have reached out to both of them to make sure that they are willing and able to serve and have heard back that they are and that they would be honored to serve.

Alabama SAC Chair Jenny Carroll https://www.law.ua.edu/directory/People/view/Jenny_Carroll

Jenny Carroll | University of Alabama School of Law
www.law.ua.edu
For more than 140 years, the University of Alabama School of Law has produced attorneys who become leaders locally, nationally and globally. Alabama Law provides a top-rate education at an affordable cost in a supportive and diverse environment.

Allison Riggs https://southerncoalition.org/staff/allison-riggs/

Allison Riggs - Southern Coalition for Social Justice
southerncoalition.org
Allison Riggs leads the voting rights program at the Southern Coalition for Social Justice, an organization she joined in 2009. In March of 2020, she also took over as Interim Executive Director of the organization. Her voting rights work over the last decade at SCSJ has been focused on fighting for fair redistricting plans, fighting against voter suppression, and advocating for electoral reforms that would expand access to voting.

On Jul 30, 2021, at 3:17 PM, Alec Deull <adeull@usccr.gov> wrote:

hello All -

Commissioner Yaki intends to nominate himself for another EAC term.

all best, Alec

AMERICAN OVERSIGHT

From: Irena Vidulovic
Sent: Thursday, July 29, 2021 5:47:43 PM
To: Juana Silverio; Mauro Morales; Norma Cantu
Cc: Debo P. Adegbile; Amy Royce; Alec Deull
Subject: Re: EAC Nominations

Allison Riggs Co-Executive Director, Programs
Chief Counsel for Voting Rights is willing able and would be honored to serve.

Sent from my iPhone

> On Jul 29, 2021, at 9:48 PM, Irena Vidulovic <ividulovic@usccr.gov> wrote:

AMERICAN OVERSIGHT

Date : 7/30/2021 10:22:00 AM
From : "Michael Yaki" MYaki@usccr.gov
To : "Norma Cantu" ncantu@usccr.gov, "Debo P. Adegbile" dadegbile@usccr.gov, "David Kladney" dkladney@usccr.gov
Cc : "Mauro Morales" mmorales@usccr.gov
Subject : EAC

I am nominating myself for my caucus slot on the EAC.

AMERICAN OVERSIGHT

Date : 7/30/2021 11:54:45 AM
From : "Alec Deull" adeull@usccr.gov
To : "Mauro Morales" mmorales@usccr.gov, "Norma Cantu" ncantu@usccr.gov, "Juana Silverio" jsilverio@usccr.gov
Subject : Re: Commissioner Appointments to the Election Assistance Commission
Attachment : image001.gif;image002.gif;

hello All --

Please be advised that Commissioner Yaki nominates himself for an additional term on the EAC.

all best, Alec

From: Mauro Morales
Sent: Wednesday, July 28, 2021 11:30:30 AM
To: Commissioners
Cc: David Ganz; CommissionerAssistants
Subject: Commissioner Appointments to the Election Assistance Commission

Dear Commissioners-

At the request and in consultation with the Chair, I am sending this email to start the EAC nomination process for Commissioners.

Per the AI voted on during the April 30th meeting (language included below), each caucus is requested to submit two candidates for consideration by COB Friday, July 30, 2021. Once the names are submitted, OGC will conduct an ethics check to be completed by Wednesday, August 4, 2021. Each caucus will then have 24 hours to submit caucus strikes (Thursday, August 5, 2021 COB). The Chair will communicate the two names to EAC no later than Friday, August 6, 2021.

Please let the Chair or I know if you have any questions or concerns.

--
AI language:

Section 1.
.01 Any authority specifically granted the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Commission as a whole by majority vote.

.02 Any authority specifically granted the Staff Director of the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other

AMERICAN OVERSIGHT

commissions, etc., shall be exercised by the Staff Director.

.03 Any authority specifically granted the Chair of the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Chair.

Section 2
.02

(1) For the two (2) appointments to the U.S. Election Assistance Commission, the members appointed by Democratic authorities shall nominate two individuals who are ready, willing, and able to serve, and the members appointed by the Republican authorities shall nominate two individuals who are ready, willing, and able to serve.

(2) The members appointed by the Democratic authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Democratic authorities

(3) The members selected shall be placed in nomination and ratified in conformance with Section 1.

Mauro Morales
Staff Director
U.S. Commission on Civil Rights
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Mmorales@usccr.gov
http://usccr.gov/
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425

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Date : 7/30/2021 12:34:11 PM
From : "John Mashburn" jmashburn@usccr.gov
To : "Mauro Morales" mmorales@usccr.gov
Cc : "Carissa Mulder" CMulder@usccr.gov, "Thomas Simuel" tsimuel@usccr.gov, "Alexander Heideman" aheideman@usccr.gov
Subject : Re: Commissioner Appointments to the Election Assistance Commission
Attachment : image001.gif;image002.gif;

Mauro – after canvassing the Republican Commissioners, the two nominees they wish to put forward for one of the two USCCR designees for the EAC's Board of Advisors (per your email below) are:

Cleta Mitchell – Chair, Conservative Partnership Institute Election Integrity Network, and

Christian Adams – USCCR Commissioner.

From: Mauro Morales <mmorales@usccr.gov>
Date: Wednesday, July 28, 2021 at 11:30 AM
To: Commissioners <Commissioners@usccr.gov>
Cc: David Ganz <dganz@usccr.gov>, "CommissionerAssistants@usccr.gov" <CommissionerAssistants@usccr.gov>
Subject: Commissioner Appointments to the Election Assistance Commission

Dear Commissioners-

At the request and in consultation with the Chair, I am sending this email to start the EAC nomination process for Commissioners.

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Please let the Chair or I know if you have any questions or concerns.

--
AI language:

Section 1.
.01 Any authority specifically granted the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Commission as a whole by majority vote.

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.02 Any authority specifically granted the Staff Director of the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Staff Director.

.03 Any authority specifically granted the Chair of the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Chair.

Section 2
.02

(1) For the two (2) appointments to the U.S. Election Assistance Commission, the members appointed by Democratic authorities shall nominate two individuals who are ready, willing, and able to serve, and the members appointed by the Republican authorities shall nominate two individuals who are ready, willing, and able to serve.

(2) The members appointed by the Democratic authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Democratic authorities

(3) The members selected shall be placed in nomination and ratified in conformance with Section 1.

Mauro Morales
Staff Director
U.S. Commission on Civil Rights
P: 202-376-7796| F: 202-376-7672
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Date : 7/30/2021 12:37:07 PM
From : "John Mashburn" jmashburn@usccr.gov
To : "Mauro Morales" mmorales@usccr.gov, "David Ganz" dganz@usccr.gov
Cc : "Carissa Mulder" CMulder@usccr.gov, "Thomas Simuel" tsimuel@usccr.gov, "Alexander Heideman" aheideman@usccr.gov
Subject : Re: Commissioner Appointments to the Election Assistance Commission
Attachment : image001.gif;image002.gif;

David – I got a response email saying Mauro is not in today, so I am forwarding this email to you to meet the deadline of COB today for these nominations from the Republican Commissioners.

From: John Mashburn <jmashburn@usccr.gov>
Date: Friday, July 30, 2021 at 12:34 PM
To: Mauro Morales <mmorales@usccr.gov>
Cc: Carissa Mulder <CMulder@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>, Alexander Heideman <aheideman@usccr.gov>
Subject: Re: Commissioner Appointments to the Election Assistance Commission

Mauro – after canvassing the Republican Commissioners, the two nominees they wish to put forward for one of the two USCCR designees for the EAC's Board of Advisors (per your email below) are:

Cleta Mitchell – Chair, Conservative Partnership Institute Election Integrity Network, and

Christian Adams – USCCR Commissioner.

From: Mauro Morales <mmorales@usccr.gov>
Date: Wednesday, July 28, 2021 at 11:30 AM
To: Commissioners <Commissioners@usccr.gov>
Cc: David Ganz <dganz@usccr.gov>, "CommissionerAssistants@usccr.gov" <CommissionerAssistants@usccr.gov>
Subject: Commissioner Appointments to the Election Assistance Commission

Dear Commissioners-

At the request and in consultation with the Chair, I am sending this email to start the EAC nomination process for Commissioners.

Per the AI voted on during the April 30th meeting (language included below), each caucus is requested to submit two candidates for consideration by COB Friday, July 30, 2021. Once the names are submitted, OGC will conduct an ethics check to be completed by Wednesday, August 4, 2021. Each caucus will then have 24 hours to submit caucus strikes (Thursday, August 5, 2021 COB). The Chair will communicate the two names to EAC no later than Friday, August 6, 2021.

AMERICAN OVERSIGHT

Please let the Chair or I know if you have any questions or concerns.

--
AI language:

Section 1.
.01 Any authority specifically granted the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Commission as a whole by majority vote.

.02 Any authority specifically granted the Staff Director of the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Staff Director.

.03 Any authority specifically granted the Chair of the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Chair.

Section 2
.02
(1) For the two (2) appointments to the U.S. Election Assistance Commission, the members appointed by Democratic authorities shall nominate two individuals who are ready, willing, and able to serve, and the members appointed by the Republican authorities shall nominate two individuals who are ready, willing, and able to serve.

(2) The members appointed by the Democratic authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Democratic authorities

(3) The members selected shall be placed in nomination and ratified in conformance with Section 1.

Mauro Morales
Staff Director
U.S. Commission on Civil Rights
P: 202-376-7796| F: 202-376-7672
Mmorales@usccr.gov
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OVERSTOCK

Date : 7/30/2021 12:59:50 PM
From : "Alec Deull" adeull@usccr.gov
To : "Juana Silverio" jsilverio@usccr.gov
Subject : Fw: EAC Nominations

hello Juana --

Any thoughts about how we should address having 3 nominees for 2 slots? I know that we are supposed to give Mauro our 2 caucus nominations today. Maybe we try to have a caucus call as early as possible next week to facilitate a discussion and vote among our 4? I have not yet discussed this with Michael. Thoughts?

Thanks! I hope that you are looking at a great weekend ahead -- all best, Alec

---

From: Irena Vidulovic
Sent: Friday, July 30, 2021 9:35 AM
To: Alec Deull
Cc: Juana Silverio; Mauro Morales; Norma Cantu; Debo P. Adegbile; Amy Royce; David Kladney
Subject: Re: EAC Nominations

Thank you Alec for letting us know. As I mentioned yesterday Commissioner Adegbile would like to nominate Chair Jenny Carroll and Allison Riggs of the Southern Coalition For Social Justice to serve on EAC's Board of Advisors. We have reached out to both of them to make sure that they are willing and able to serve and have heard back that they are and that they would be honored to serve.

Alabama SAC Chair Jenny Carroll https://www.law.ua.edu/directory/People/view/Jenny_Carroll

Jenny Carroll | University of Alabama School of Law

www.law.ua.edu

For more than 140 years, the University of Alabama School of Law has produced attorneys who become leaders locally, nationally and globally. Alabama Law provides a top-rate education at an affordable cost in a supportive and diverse environment.

Allison Riggs https://southerncoalition.org/staff/allison-riggs/

Allison Riggs - Southern Coalition for Social Justice

southerncoalition.org

Allison Riggs leads the voting rights program at the Southern Coalition for Social Justice, an organization she joined in 2009. In March of 2020, she also took over as Interim Executive Director of the organization. Her voting rights

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work over the last decade at SCSJ has been focused on fighting for fair redistricting plans, fighting against voter suppression, and advocating for electoral reforms that would expand access to voting.

On Jul 30, 2021, at 3:17 PM, Alec Deull <adeull@usccr.gov> wrote:

hello All -

Commissioner Yaki intends to nominate himself for another EAC term.

all best, Alec

From: Irena Vidulovic
Sent: Thursday, July 29, 2021 5:47:43 PM
To: Juana Silverio; Mauro Morales; Norma Cantu
Cc: Debo P. Adegbile; Amy Royce; Alec Deull
Subject: Re: EAC Nominations

Allison Riggs Co-Executive Director, Programs
Chief Counsel for Voting Rights is willing able and would be honored to serve.

Sent from my iPhone

On Jul 29, 2021, at 9:48 PM, Irena Vidulovic <ividulovic@usccr.gov> wrote:

AMERICAN OVERSIGHT

Date : 7/30/2021 12:43:18 PM
From : "David Ganz" dganz@usccr.gov
To : "Mauro Morales" mmorales@usccr.gov
Subject : RE: Commissioner Appointments to the Election Assistance Commission
Attachment : image001.gif;image002.gif;

Do you want me to forward this to Chair Cantu?

From: John Mashburn <jmashburn@usccr.gov>
Sent: Friday, July 30, 2021 12:37 PM
To: Mauro Morales <mmorales@usccr.gov>; David Ganz <dganz@usccr.gov>
Cc: Carissa Mulder <CMulder@usccr.gov>; Thomas Simuel <tsimuel@usccr.gov>; Alexander Heideman <aheideman@usccr.gov>
Subject: Re: Commissioner Appointments to the Election Assistance Commission

David – I got a response email saying Mauro is not in today, so I am forwarding this email to you to meet the deadline of COB today for these nominations from the Republican Commissioners.

From: John Mashburn <jmashburn@usccr.gov>
Date: Friday, July 30, 2021 at 12:34 PM
To: Mauro Morales <mmorales@usccr.gov>
Cc: Carissa Mulder <CMulder@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>, Alexander Heideman <aheideman@usccr.gov>
Subject: Re: Commissioner Appointments to the Election Assistance Commission

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Cleta Mitchell – Chair, Conservative Partnership Institute Election Integrity Network, and

Christian Adams – USCCR Commissioner.

From: Mauro Morales <mmorales@usccr.gov>
Date: Wednesday, July 28, 2021 at 11:30 AM
To: Commissioners <Commissioners@usccr.gov>
Cc: David Ganz <dganz@usccr.gov>, "CommissionerAssistants@usccr.gov" <CommissionerAssistants@usccr.gov>
Subject: Commissioner Appointments to the Election Assistance Commission

Dear Commissioners-

At the request and in consultation with the Chair, I am sending this email to start the EAC nomination process for Commissioners.

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Please let the Chair or I know if you have any questions or concerns.

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(3) The members selected shall be placed in nomination and ratified in conformance with Section 1.

AMERICAN OVERSIGHT

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Washington D.C. 20425

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Date : 7/30/2021 5:36:50 PM
From : "Debo P. Adegbile" dadegbile@usccr.gov
To : "David Kladney" dkladney@usccr.gov
Cc : "Irena Vidulovic" ividulovic@usccr.gov
Subject : Re: EAC

Thanks Dave. This is very helpful.

Debo

Sent from my iPhone

> On Jul 29, 2021, at 2:22 PM, David Kladney <dkladney@usccr.gov> wrote:
>
> I, honestly, did not spend much time with meeting. There is only one held each year in person. They have been cancelled lately in response to covid. They conducted the last one via video. From time to time, the group will be asked to read recommendations to the EAC. Things like types of machines, security of the vote, and administrative recommendations.
>
> As a whole, it is not much time.
>
> dave
>> On Jul 29, 2021, at 10:51 AM, Debo P. Adegbile <dadegbile@usccr.gov> wrote:
>>
>> Commissioner: How often does the advisory body that you sit on meet? Any other thoughts on time commitment?
>>
>> Many Thanks,
>>
>> Debo
>>
>> Sent from my iPhone
>

AMERICAN OVERSIGHT

Date : 7/30/2021 5:39:44 PM
From : "David Ganz" dganz@usccr.gov
To : "Juana Silverio" jsilverio@usccr.gov, "Norma Cantu" ncantu@usccr.gov
Cc : "Mauro Morales" mmorales@usccr.gov
Subject : EAC Board of Advisors nominees- reminder

Hello, Mauro's email requesting nominees has a deadline of today. The conservative caucus sent their two nominees in today, please submit the liberal caucus nominees. Thanks,

David

Sent via the Samsung Galaxy S21 5G, an AT&T 5G smartphone
Get Outlook for Android

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Date : 7/30/2021 6:52:27 PM
From : "Juana Silverio" jsilverio@usccr.gov
To : "David Ganz" dganz@usccr.gov, "Norma Cantu" ncantu@usccr.gov
Cc : "Mauro Morales" mmorales@usccr.gov
Subject : RE: EAC Board of Advisors nominees- reminder

Thanks David. There is an impasse as the Dems have 3 names and have not discussed narrowing it down.

We will touch base on Monday.

Juana

From: David Ganz <dganz@usccr.gov>
Sent: Friday, July 30, 2021 5:40 PM
To: Juana Silverio <jsilverio@usccr.gov>; Norma Cantu <ncantu@usccr.gov>
Cc: Mauro Morales <mmorales@usccr.gov>
Subject: EAC Board of Advisors nominees- reminder

Hello, Mauro's email requesting nominees has a deadline of today. The conservative caucus sent their two nominees in today, please submit the liberal caucus nominees. Thanks,

David

Sent via the Samsung Galaxy S21 5G, an AT&T 5G smartphone
Get Outlook for Android

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Date : 7/31/2021 12:01:32 AM
From : "Irena Vidulovic" ividulovic@usccr.gov
To : "David Ganz" dganz@usccr.gov
Subject : Re: EAC Board of Advisors nominees- reminder

Hello David,

Debo and I sent our nominations to Mauro on Thursday. I will check with Juana if they sent theirs over.

Sent from my iPhone

> On Jul 30, 2021, at 11:47 PM, David Ganz <dganz@usccr.gov> wrote:
>
> Sent via the Samsung Galaxy S21 5G, an AT&T 5G smartphone
> Get Outlook for Android
>
> ---
>
> **From:** dganz@usccr.gov <dganz@usccr.gov>
> **Sent:** Friday, July 30, 2021 5:39:43 PM
> **To:** Juana Silverio <jsilverio@usccr.gov>; Norma Cantu <ncantu@usccr.gov>
> **Cc:** Mauro Morales <mmorales@usccr.gov>
> **Subject:** EAC Board of Advisors nominees- reminder
>
> Hello, Mauro's email requesting nominees has a deadline of today. The conservative caucus sent their two nominees in today, please submit the liberal caucus nominees. Thanks,
>
> David
>
> Sent via the Samsung Galaxy S21 5G, an AT&T 5G smartphone
> Get Outlook for Android

AMERICAN OVERSIGHT

Date : 8/2/2021 8:20:22 AM
From : "Irena Vidulovic" ividulovic@usccr.gov
To : "Debo P. Adegbile" dadegbile@usccr.gov, "Adegbile, Debo" Debo.Adegbile@wilmerhale.com
Subject : TO DO LIST

1. 2X of USCCR Hours (IV to send) DUE TODAY
2. Financial Disclosure form (DUE THIS WEEK)
3. Written Document for Sen. Warren's Office (This Week)
4. EAC Submissions (IV to email Juana today)
5. Senator Schatz request fro Fines and Fees (IV to forward along)

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Washington D.C. 20425

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Date : 8/2/2021 9:00:18 AM
From : "Irena Vidulovic" ividulovic@usccr.gov
To : "Mauro Morales" mmorales@usccr.gov, "David Ganz" dganz@usccr.gov
Cc : "Pilar McLaughlin" pmclaughlin@usccr.gov
Subject : Re: EAC Nominations

Apologies,

We have made a change to the second nominee instead of Leah Aden it will be Allison Riggs who we have nominated earlier this week. We have sent the nominees to the Chair and are hoping that they will be submitted today on behalf of our caucus.

Working with Juana and the Chair. Please let me know if you have any questions.
Irena

Allison Riggs https://southerncoalition.org/staff/allison-riggs/

Allison Riggs - Southern Coalition for Social Justice

southerncoalition.org

Allison Riggs leads the voting rights program at the Southern Coalition for Social Justice, an organization she joined in 2009. In March of 2020, she also took over as Interim Executive Director of the organization. Her voting rights work over the last decade at SCSJ has been focused on fighting for fair redistricting plans, fighting against voter suppression, and advocating for electoral reforms that would expand access to voting.

From: Irena Vidulovic
Sent: Monday, August 2, 2021 8:54:48 AM
To: Mauro Morales; David Ganz
Cc: Pilar McLaughlin
Subject: Fw: EAC Nominations

FYI

From: Irena Vidulovic
Sent: Monday, August 2, 2021 8:53 AM
To: Juana Silverio
Cc: Debo P. Adegbile; Norma Cantu
Subject: EAC Nominations

AMERICAN OVERSIGHT

Good Morning Juana,

Unfortunately Commissioner Adegbile will not be able to connect with the Chair today regarding the EAC nominations.
As you know we have nominated 3 people for the EAC who are all willing and able to serve (we have provided these nominations to the caucus and Mauro) . After review of all three candidates and taking into consideration that Commissioner Yaki would like to be reappointed Commissioner Adegbile strongly recommends that we as a caucus nominate along with Commissioner Yaki LDF's voting rights expert who testified in front of the Commission on our voting rights report Leah Aden (her information is below).

Please let me know if you have any questions and if I could be helpful in any way.

Leah Aden https://www.naacpldf.org/about-us/staff/leah-c-aden/

Leah C. Aden

www.naacpldf.org

Leah C. Aden has served as a Deputy Director of Litigation at the NAACP Legal Defense & Educational Fund, Inc. (LDF) since October 2018, assisting in the planning, strategy, and supervision of LDF's voting rights work. In light of the upcoming post-Census redistricting cycle, Leah will assist in the planning, strategy, and supervision of LDF's [...]

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AMERICAN OVERSIGHT

Date : 8/2/2021 8:57:53 AM
From : "Irena Vidulovic" ividulovic@usccr.gov
To : "David Kladney" dkladney@usccr.gov
Subject : Re: EAC Nominations

Good Morning Dave,

I have made a change per Debo's request to the second nominee and it would be Allison Riggs:

Alison Riggs https://southerncoalition.org/staff/allison-riggs/

Allison Riggs - Southern Coalition for Social Justice

southerncoalition.org

Allison Riggs leads the voting rights program at the Southern Coalition for Social Justice, an organization she joined in 2009. In March of 2020, she also took over as Interim Executive Director of the organization. Her voting rights work over the last decade at SCSJ has been focused on fighting for fair redistricting plans, fighting against voter suppression, and advocating for electoral reforms that would expand access to voting.

From: Irena Vidulovic
Sent: Monday, August 2, 2021 8:53:58 AM
To: David Kladney
Subject: Fw: EAC Nominations

FYI

From: Irena Vidulovic
Sent: Monday, August 2, 2021 8:53 AM
To: Juana Silverio
Cc: Debo P. Adegbile; Norma Cantu
Subject: EAC Nominations

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AMERICAN OVERSIGHT

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Please let me know if you have any questions and if I could be helpful in any way.

Leah Aden https://www.naacpldf.org/about-us/staff/leah-c-aden/

Leah C. Aden

www.naacpldf.org

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Date : 8/2/2021 8:53:31 AM
From : "Irena Vidulovic" ividulovic@usccr.gov
To : "Juana Silverio" jsilverio@usccr.gov
Cc : "Debo P. Adegbile" dadegbile@usccr.gov, "Norma Cantu" ncantu@usccr.gov
Subject : EAC Nominations

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Date : 8/2/2021 8:57:05 AM
From : "Irena Vidulovic" ividulovic@usccr.gov
To : "Juana Silverio" jsilverio@usccr.gov
Cc : "Debo P. Adegbile" dadegbile@usccr.gov, "Norma Cantu" ncantu@usccr.gov
Subject : Re: EAC Nominations

My apologies Juana,

I meant to say Allison Riggs per the earlier emails.

Her bio is below:

Alison Riggs https://southerncoalition.org/staff/allison-riggs/

Allison Riggs - Southern Coalition for Social Justice

southerncoalition.org

Allison Riggs leads the voting rights program at the Southern Coalition for Social Justice, an organization she joined in 2009. In March of 2020, she also took over as Interim Executive Director of the organization. Her voting rights work over the last decade at SCSJ has been focused on fighting for fair redistricting plans, fighting against voter suppression, and advocating for electoral reforms that would expand access to voting.

From: Irena Vidulovic
Sent: Monday, August 2, 2021 8:53:30 AM
To: Juana Silverio
Cc: Debo P. Adegbile; Norma Cantu
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www.naacpldf.org

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AMERICAN OVERSIGHT

Date : 8/2/2021 11:50:44 AM
From : "Mauro Morales" mmorales@usccr.gov
To : "David Ganz" dganz@usccr.gov
Subject : Fwd: EAC Board of Advisors nominees- reminder

Under the new AI what are the next steps and who does it fall on?

Sent from my iPhone

Begin forwarded message:

From: Juana Silverio <jsilverio@usccr.gov>
Date: July 30, 2021 at 3:52:28 PM MST
To: David Ganz <dganz@usccr.gov>, Norma Cantu <ncantu@usccr.gov>
Cc: Mauro Morales <mmorales@usccr.gov>
Subject: RE: EAC Board of Advisors nominees- reminder

Thanks David. There is an impasse as the Dems have 3 names and have not discussed narrowing it down.

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Cc: Mauro Morales <mmorales@usccr.gov>
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David

Sent via the Samsung Galaxy S21 5G, an AT&T 5G smartphone
Get Outlook for Android

AMERICAN OVERSIGHT

Date : 8/2/2021 11:42:54 AM
From : "David Ganz" dganz@usccr.gov
To : "Irena Vidulovic" ividulovic@usccr.gov, "Mauro Morales" mmorales@usccr.gov
Cc : "Pilar McLaughlin" pmclaughlin@usccr.gov
Subject : RE: EAC Nominations

Thanks Irena. Per Mauro's July 28, email, OGC will conduct an ethics check to be completed by Wednesday, August 4, of each caucus's two nominees. I will reach out to Chair Cantu today for the two nominees.

From: Irena Vidulovic <ividulovic@usccr.gov>
Sent: Monday, August 2, 2021 8:55 AM
To: Mauro Morales <mmorales@usccr.gov>; David Ganz <dganz@usccr.gov>
Cc: Pilar McLaughlin <pmclaughlin@usccr.gov>
Subject: Fw: EAC Nominations

FYI

From: Irena Vidulovic
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To: Juana Silverio
Cc: Debo P. Adegbile; Norma Cantu
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AMERICAN OVERSIGHT

Leah Aden https://www.naacpldf.org/about-us/staff/leah-c-aden/

Leah C. Aden

www.naacpldf.org

Leah C. Aden has served as a Deputy Director of Litigation at the NAACP Legal Defense & Educational Fund, Inc. (LDF) since October 2018, assisting in the planning, strategy, and supervision of LDF's voting rights work. In light of the upcoming post-Census redistricting cycle, Leah will assist in the planning, strategy, and supervision of LDF's [...]

Irena Vidulovic
Special Assistant to Commissioner Debo P. Adegbile
U.S. Commission on Civil Rights
M: 202-591-9969
ividulovic@usccr.gov
http://usccr.gov/
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425

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TwiFB
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AMERICAN OVERSIGHT

Date : 8/2/2021 11:45:24 AM
From : "Mauro Morales" mmorales@usccr.gov
To : "John Mashburn" jmashburn@usccr.gov
Cc : "Carissa Mulder" CMulder@usccr.gov, "Thomas Simuel" tsimuel@usccr.gov, "Alexander Heideman" aheideman@usccr.gov
Subject : Re: Commissioner Appointments to the Election Assistance Commission
Attachment : image001.gif;image002.gif;

My flight was canceled and returning today. Your selections were forwarded to Chair Cantu. Thank you.

Sent from my iPhone

> On Jul 30, 2021, at 9:34 AM, John Mashburn <jmashburn@usccr.gov> wrote:
>
> Mauro – after canvassing the Republican Commissioners, the two nominees they wish to put forward for one of the two USCCR designees for the EAC's Board of Advisors (per your email below) are:
>
> Cleta Mitchell – Chair, Conservative Partnership Institute Election Integrity Network, and
>
> Christian Adams – USCCR Commissioner.
>
> ---
>
> **From:** Mauro Morales <mmorales@usccr.gov>
> **Date:** Wednesday, July 28, 2021 at 11:30 AM
> **To:** Commissioners <Commissioners@usccr.gov>
> **Cc:** David Ganz <dganz@usccr.gov>, "CommissionerAssistants@usccr.gov" <CommissionerAssistants@usccr.gov>
> **Subject:** Commissioner Appointments to the Election Assistance Commission
>
> Dear Commissioners-
>
> At the request and in consultation with the Chair, I am sending this email to start the EAC nomination process for Commissioners.
>
> Per the AI voted on during the April 30th meeting (language included below), each caucus is requested to submit two candidates for consideration by COB Friday, July 30, 2021. Once the names are submitted, OGC will conduct an ethics check to be completed by Wednesday, August 4, 2021. Each caucus will then have 24 hours to submit caucus strikes (Thursday, August 5, 2021 COB). The Chair will communicate the two names to EAC no later than Friday, August 6,

AMERICAN OVERSIGHT

2021.

Please let the Chair or I know if you have any questions or concerns.

--
AI language:

Section 1.
.01 Any authority specifically granted the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Commission as a whole by majority vote.

.02 Any authority specifically granted the Staff Director of the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Staff Director.

.03 Any authority specifically granted the Chair of the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Chair.

Section 2
.02
(1) For the two (2) appointments to the U.S. Election Assistance Commission, the members appointed by Democratic authorities shall nominate two individuals who are ready, willing, and able to serve, and the members appointed by the Republican authorities shall nominate two individuals who are ready, willing, and able to serve.

(2) The members appointed by the Democratic authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Democratic authorities

(3) The members selected shall be placed in nomination and ratified in conformance with Section 1.

Mauro Morales
Staff Director

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U.S. Commission on Civil Rights
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Mmorales@usccr.gov
http://usccr.gov/
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425

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<image001.gif>
<image002.gif>

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OVERSIGHT

OVERSTOCK

Date : 8/2/2021 11:43:45 AM
From : "Mauro Morales" mmorales@usccr.gov
To : "David Ganz" dganz@usccr.gov
Subject : Re: Commissioner Appointments to the Election Assistance Commission
Attachment : image001.gif;image002.gif;

Yes.

Sent from my iPhone

On Jul 30, 2021, at 9:43 AM, David Ganz <dganz@usccr.gov> wrote:

Do you want me to forward this to Chair Cantu?

From: John Mashburn <jmashburn@usccr.gov>
Sent: Friday, July 30, 2021 12:37 PM
To: Mauro Morales <mmorales@usccr.gov>; David Ganz <dganz@usccr.gov>
Cc: Carissa Mulder <CMulder@usccr.gov>; Thomas Simuel <tsimuel@usccr.gov>; Alexander Heideman <aheideman@usccr.gov>
Subject: Re: Commissioner Appointments to the Election Assistance Commission

David – I got a response email saying Mauro is not in today, so I am forwarding this email to you to meet the deadline of COB today for these nominations from the Republican Commissioners.

From: John Mashburn <jmashburn@usccr.gov>
Date: Friday, July 30, 2021 at 12:34 PM
To: Mauro Morales <mmorales@usccr.gov>
Cc: Carissa Mulder <CMulder@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>, Alexander Heideman <aheideman@usccr.gov>
Subject: Re: Commissioner Appointments to the Election Assistance Commission

Mauro – after canvassing the Republican Commissioners, the two nominees they wish to put forward for one of the two USCCR designees for the EAC's Board of Advisors (per your email below) are:

Cleta Mitchell – Chair, Conservative Partnership Institute Election Integrity Network, and

Christian Adams – USCCR Commissioner.

From: Mauro Morales <mmorales@usccr.gov>
Date: Wednesday, July 28, 2021 at 11:30 AM
To: Commissioners <Commissioners@usccr.gov>

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Cc: David Ganz <dganz@usccr.gov>,
"CommissionerAssistants@usccr.gov" <CommissionerAssistants@usccr.gov>
Subject: Commissioner Appointments to the Election Assistance Commission

Dear Commissioners-

At the request and in consultation with the Chair, I am sending this email to start the EAC nomination process for Commissioners.

Per the AI voted on during the April 30th meeting (language included below), each caucus is requested to submit two candidates for consideration by COB Friday, July 30, 2021. Once the names are submitted, OGC will conduct an ethics check to be completed by Wednesday, August 4, 2021. Each caucus will then have 24 hours to submit caucus strikes (Thursday, August 5, 2021 COB). The Chair will communicate the two names to EAC no later than Friday, August 6, 2021.

Please let the Chair or I know if you have any questions or concerns.

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(2) The members appointed by the Democratic authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Democratic authorities

(3) The members selected shall be placed in nomination and ratified in conformance with Section 1.

Mauro Morales
Staff Director
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Washington D.C. 20425

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<image002.gif>

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OVERSTOCK

Date : 8/2/2021 12:53:56 PM
From : "David Ganz" dganz@usccr.gov
To : "Mauro Morales" mmorales@usccr.gov
Subject : RE: EAC Board of Advisors nominees- reminder

Since the April 2021 AIs haven't been signed I didn't save them on any network drive. I am not sure who has the latest draft, but I have been searching my emails for the past hour. Based on the most recent one I have your July 28, email is accurate and the latest AI doesn't contain anything more descriptive; the Dems need to just pick two people and then internally within their caucus select one person. If they fail to do that we should discuss as the Republicans may claim their appointments should move forward. Also, if you have the April 2021 AIs, could you forward them to me?

From: Mauro Morales <mmorales@usccr.gov>
Sent: Monday, August 2, 2021 11:51 AM
To: David Ganz <dganz@usccr.gov>
Subject: Fwd: EAC Board of Advisors nominees- reminder

Under the new AI what are the next steps and who does it fall on?

Sent from my iPhone

Begin forwarded message:

> **From:** Juana Silverio <jsilverio@usccr.gov>
> **Date:** July 30, 2021 at 3:52:28 PM MST
> **To:** David Ganz <dganz@usccr.gov>, Norma Cantu <ncantu@usccr.gov>
> **Cc:** Mauro Morales <mmorales@usccr.gov>
> **Subject: RE: EAC Board of Advisors nominees- reminder**
>
> Thanks David. There is an impasse as the Dems have 3 names and have not discussed narrowing it down.
>
> We will touch base on Monday.
>
> Juana
>
> ---
>
> **From:** David Ganz <dganz@usccr.gov>
> **Sent:** Friday, July 30, 2021 5:40 PM
> **To:** Juana Silverio <jsilverio@usccr.gov>; Norma Cantu <ncantu@usccr.gov>
> **Cc:** Mauro Morales <mmorales@usccr.gov>
> **Subject:** EAC Board of Advisors nominees- reminder
>
> Hello, Mauro's email requesting nominees has a deadline of today. The conservative caucus sent their two nominees in today, please submit the liberal caucus nominees. Thanks,
>
> David

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Sent via the Samsung Galaxy S21 5G, an AT&T 5G smartphone
Get Outlook for Android

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Date : 8/2/2021 2:23:55 PM
From : "David Ganz" dganz@usccr.gov
To : "Juana Silverio" jsilverio@usccr.gov, "Norma Cantu" ncantu@usccr.gov
Cc : "Pilar McLaughlin" pmclaughlin@usccr.gov, "Mauro Morales" mmorales@usccr.gov
Subject : RE: Commissioner Appointments to the Election Assistance Commission
Attachment : image001.gif;image002.gif;

Hi Juana and Chair Cantu,

In the past few days I have received several emails about the EAC appointments. I understand that one of the caucuses hasn't finalized its two selections as outlined in the below AI and Mauro' email. The 'ethics check' isn't prescribed by the below AI. OGC held a call with General Counsel of the EAC and would like to meet with you to discuss the requested ethics check. What is your availability tomorrow and Wednesday? Thanks,

David

From: Mauro Morales <mmorales@usccr.gov>
Sent: Wednesday, July 28, 2021 11:31 AM
To: Commissioners <Commissioners@usccr.gov>
Cc: David Ganz <dganz@usccr.gov>; CommissionerAssistants <CommissionerAssistants@usccr.gov>
Subject: Commissioner Appointments to the Election Assistance Commission

Dear Commissioners-

At the request and in consultation with the Chair, I am sending this email to start the EAC nomination process for Commissioners.

Per the AI voted on during the April 30th meeting (language included below), each caucus is requested to submit two candidates for consideration by COB Friday, July 30, 2021. Once the names are submitted, OGC will conduct an ethics check to be completed by Wednesday, August 4, 2021. Each caucus will then have 24 hours to submit caucus strikes (Thursday, August 5, 2021 COB). The Chair will communicate the two names to EAC no later than Friday, August 6, 2021.

Please let the Chair or I know if you have any questions or concerns.

--
AI language:

Section 1.
.01 Any authority specifically granted the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Commission as a whole by majority vote.

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.03 Any authority specifically granted the Chair of the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Chair.

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(1) For the two (2) appointments to the U.S. Election Assistance Commission, the members appointed by Democratic authorities shall nominate two individuals who are ready, willing, and able to serve, and the members appointed by the Republican authorities shall nominate two individuals who are ready, willing, and able to serve.

(2) The members appointed by the Democratic authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Democratic authorities

(3) The members selected shall be placed in nomination and ratified in conformance with Section 1.

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Date : 8/2/2021 2:34:32 PM
From : "David Ganz" dganz@usccr.gov
To : "TinaLouise Martin" tmartin@usccr.gov
Subject : Re: draft AIs from April
Attachment : image001.png;

The ones about EAC appointment and that Commissioners can pick witnesses for briefings.

Sent via the Samsung Galaxy S21 5G, an AT&T 5G smartphone
Get Outlook for Android

From: TinaLouise Martin <tmartin@usccr.gov>
Sent: Monday, August 2, 2021 2:24:59 PM
To: David Ganz <dganz@usccr.gov>
Subject: RE: draft AIs from April

Which ones?

From: David Ganz <dganz@usccr.gov>
Sent: Monday, August 2, 2021 1:13 PM
To: TinaLouise Martin <tmartin@usccr.gov>
Subject: draft AIs from April

Do you have these?

David Ganz
General Counsel, Office of the General Counsel
U.S. Commission on Civil Rights
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425
(617) 669-6413

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Established as an independent, bipartisan, fact-finding federal agency, our mission is to inform the development of national civil rights policy and enhance enforcement of federal civil rights laws. We pursue this mission by studying alleged deprivations of voting rights and alleged discrimination based on race, color,

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religion, sex, age, disability, or national origin, or in the administration of justice. We play a vital role in advancing civil rights through objective and comprehensive investigation, research, and analysis on issues of fundamental concern to the federal government and the public.

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C002037
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Date : 8/2/2021 2:49:08 PM
From : "TinaLouise Martin" tmartin@usccr.gov
To : "David Ganz" dganz@usccr.gov
Subject : RE: draft AIs from April
Attachment : image001.png;

Would you happen to know the AI number?

From: David Ganz <dganz@usccr.gov>
Sent: Monday, August 2, 2021 1:35 PM
To: TinaLouise Martin <tmartin@usccr.gov>
Subject: Re: draft AIs from April

The ones about EAC appointment and that Commissioners can pick witnesses for briefings.

Sent via the Samsung Galaxy S21 5G, an AT&T 5G smartphone
Get Outlook for Android

From: TinaLouise Martin <tmartin@usccr.gov>
Sent: Monday, August 2, 2021 2:24:59 PM
To: David Ganz <dganz@usccr.gov>
Subject: RE: draft AIs from April

Which ones?

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Sent: Monday, August 2, 2021 1:13 PM
To: TinaLouise Martin <tmartin@usccr.gov>
Subject: draft AIs from April

Do you have these?

David Ganz
General Counsel, Office of the General Counsel
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Established as an independent, bipartisan, fact-finding federal agency, our mission is to inform the development of national civil rights policy and enhance enforcement of federal civil rights laws. We pursue this mission by studying alleged deprivations of voting rights and alleged discrimination based on race, color, religion, sex, age, disability, or national origin, or in the administration of justice. We play a vital role in advancing civil rights through objective and comprehensive investigation, research, and analysis on issues of fundamental concern to the federal government and the public.

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C002040
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Date : 8/2/2021 3:13:27 PM
From : "TinaLouise Martin" tmartin@usccr.gov
To : "Pamela Dunston" Pdunston@usccr.gov
Cc : "Michele Ramey" myorkman@usccr.gov
Subject : Fwd: draft AIs from April
Attachment : image001.png;AI on Appointment Authority (general and EAC) dg edts.docx;

Hi Pam,

Would you happen to have a copy of these drafts?

(working from home)

Begin forwarded message:

> **From:** David Ganz <dganz@usccr.gov>
> **Date:** August 2, 2021 at 1:51:18 PM CDT
> **To:** TinaLouise Martin <tmartin@usccr.gov>
> **Subject: RE: draft AIs from April**
>
> They were signed by Mauro so they don't have numbers, but they (3 in total) were ones voted on by the Comms at the 4/30 Business meeting. Attached is a draft of one of them.
>
> ---
>
> **From:** TinaLouise Martin <tmartin@usccr.gov>
> **Sent:** Monday, August 2, 2021 2:49 PM
> **To:** David Ganz <dganz@usccr.gov>
> **Subject:** RE: draft AIs from April
>
> Would you happen to know the AI number?
>
> ---
>
> **From:** David Ganz <dganz@usccr.gov>
> **Sent:** Monday, August 2, 2021 1:35 PM
> **To:** TinaLouise Martin <tmartin@usccr.gov>
> **Subject:** Re: draft AIs from April
>
> The ones about EAC appointment and that Commissioners can pick witnesses for briefings.
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> Sent via the Samsung Galaxy S21 5G, an AT&T 5G smartphone
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>
> ---
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> **From:** TinaLouise Martin <tmartin@usccr.gov>
> **Sent:** Monday, August 2, 2021 2:24:59 PM
> **To:** David Ganz <dganz@usccr.gov>
> **Subject:** RE: draft AIs from April

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Which ones?

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Sent: Monday, August 2, 2021 1:13 PM
To: TinaLouise Martin <tmartin@usccr.gov>
Subject: draft AIs from April

Do you have these?

David Ganz
General Counsel, Office of the General Counsel
U.S. Commission on Civil Rights
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425
(617) 669-6413

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C002043

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ADMINISTRATIVE INSTRUCTION __- __

COMMISSION APPOINTMENTS TO OTHER FEDERAL ENTITIES

Section 1.
.01 Any authority specifically granted the Commission of Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc. shall be exercised by the Commission as a whole by majority vote.

Section 2
.02

(1) For the two (2) appointments to the U.S. Election Assistance Commission, Board of Advisors pursuant to 52 U.S.C. 20944, the members appointed by Democratic authorities shall nominate two individuals of their membership, and the members appointed by the Republican authorities shall nominate two individuals of their membership.

(2) The members appointed by the Democratic authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Democratic authorities

(3) The members selected shall be placed in nomination and ratified in conformance with Section 1.

Commented [DG1]: It is recommended that the "etcetera" is explicitly defined.

Commented [DG2]: The authorizing statute for the Commission on the Social Status of Black Men and Boys reserves to the Staff Director the appointing authority for 1 member. *See* https://www.congress.gov/bill/116th-congress/house-bill/1636/text?q=%7B%22search%22%3A%5B%22%5B2018-09-28+TO+2018-09-28%5D%22%5D%7D, Sec 3(6). This is contrary to the foregoing and revision is necessary. Non-concur.

Commented [DG3]: What about Commissioners who are Independents or members of other political parties?

Commented [DG4]: This could be accomplished by a Commission vote rather than A.I.

52 U.S.C. § 20944 requires Board of Advisor appointments to be bipartisan in nature and so this is redundant.

Further, under 45 CFR § 702.51(c) Meeting means the deliberations of at least the number of Commissioners required to take action on behalf of the Commission where such deliberations determine or result in the joint conduct or disposition of official Commission business and therefore this regulation already provides for a voting requirement for appointments to other federal entities.

Commented [DG5]: Discussion point: does this require the SD's signature to be valid? APA provides little guidance. What is other legal authority that SD or Commissioners do or don't need to sign it to make it effective? Our Agency head is not clear under our statute and thus who signatory should be isn't clear. Any power could be delegated under 5 USC 302, but need to identify the Agency head first.

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Date : 8/2/2021 3:40:33 PM
From : "Juana Silverio" jsilverio@usccr.gov
To : "David Ganz" dganz@usccr.gov, "Norma Cantu" ncantu@usccr.gov
Cc : "Pilar McLaughlin" pmclaughlin@usccr.gov, "Mauro Morales" mmorales@usccr.gov
Subject : RE: Commissioner Appointments to the Election Assistance Commission
Attachment : image001.gif;image002.gif;

Hi David- this wasn't an EAC request. Rather it is the request of the Chair to include it in our process.

I will get times for you.

Juana

From: David Ganz <dganz@usccr.gov>
Sent: Monday, August 2, 2021 2:24 PM
To: Juana Silverio <jsilverio@usccr.gov>; Norma Cantu <ncantu@usccr.gov>
Cc: Pilar McLaughlin <pmclaughlin@usccr.gov>; Mauro Morales <mmorales@usccr.gov>
Subject: RE: Commissioner Appointments to the Election Assistance Commission

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David

From: Mauro Morales <mmorales@usccr.gov>
Sent: Wednesday, July 28, 2021 11:31 AM
To: Commissioners <Commissioners@usccr.gov>
Cc: David Ganz <dganz@usccr.gov>; CommissionerAssistants <CommissionerAssistants@usccr.gov>
Subject: Commissioner Appointments to the Election Assistance Commission

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AMERICAN OVERSIGHT

the two names to EAC no later than Friday, August 6, 2021.

Please let the Chair or I know if you have any questions or concerns.

--
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.02 Any authority specifically granted the Staff Director of the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Staff Director.

.03 Any authority specifically granted the Chair of the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Chair.

Section 2
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(1) For the two (2) appointments to the U.S. Election Assistance Commission, the members appointed by Democratic authorities shall nominate two individuals who are ready, willing, and able to serve, and the members appointed by the Republican authorities shall nominate two individuals who are ready, willing, and able to serve.

(2) The members appointed by the Democratic authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Democratic authorities

(3) The members selected shall be placed in nomination and ratified in conformance with Section 1.

Mauro Morales
Staff Director
U.S. Commission on Civil Rights
P: 202-376-7796| F: 202-376-7672
Mmorales@usccr.gov
http://usccr.gov/

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Washington D.C. 20425

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OVERSTOCK

Date : 8/2/2021 4:45:52 PM
From : "Juana Silverio" jsilverio@usccr.gov
To : "Norma Cantu" ncantu@usccr.gov, "David Ganz" dganz@usccr.gov, "Pilar McLaughlin" pmclaughlin@usccr.gov, "Mauro Morales" mmorales@usccr.gov
Subject : EAC

Juana Silverio is inviting you to a scheduled Zoom meeting.

Join Zoom Meeting
https://us02web.zoom.us/j/86394153470?pwd=TEVXUUVkM1IvZEc2UmdtbokoWHUxdz09

Meeting ID: 863 9415 3470
Passcode: 750801
One tap mobile
+13126266799,,86394153470# US (Chicago)
+16465588656,,86394153470# US (New York)

Dial by your location
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+1 646 558 8656 US (New York)
+1 301 715 8592 US (Washington DC)
+1 346 248 7799 US (Houston)
+1 669 900 6833 US (San Jose)
+1 253 215 8782 US (Tacoma)
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Meeting ID: 863 9415 3470
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162.255.36.11 (US East)
115.114.131.7 (India Mumbai)
115.114.115.7 (India Hyderabad)
213.19.144.110 (Amsterdam Netherlands)
213.244.140.110 (Germany)
103.122.166.55 (Australia Sydney)
103.122.167.55 (Australia Melbourne)
149.137.40.110 (Singapore)

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64.211.144.160 (Brazil)
149.137.68.253 (Mexico)
69.174.57.160 (Canada Toronto)
65.39.152.160 (Canada Vancouver)
207.226.132.110 (Japan Tokyo)
149.137.24.110 (Japan Osaka)
Meeting ID: 863 9415 3470
Passcode: 750801

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Date : 8/2/2021 4:49:06 PM
From : "David Ganz" dganz@usccr.gov
To : "Juana Silverio" jsilverio@usccr.gov
Subject : Accepted: EAC

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Date : 8/2/2021 4:52:36 PM
From : "Pilar McLaughlin" pmclaughlin@usccr.gov
To : "Juana Silverio" jsilverio@usccr.gov
Subject : Accepted: EAC

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Date : 8/2/2021 4:08:58 PM
From : "Pamela Dunston" Pdunston@usccr.gov
To : "Michele Ramey" myorkman@usccr.gov
Subject : RE: draft AIs from April

Hi,

Yes we received email copies. Also found copies in comm and SA shared folder.

Sending email to them now. Thanks

Sent from my Verizon, Samsung Galaxy smartphone

-------- Original message --------
From: Michele Ramey <myorkman@usccr.gov>
Date: 8/2/21 4:05 PM (GMT-05:00)
To: Pamela Dunston <Pdunston@usccr.gov>
Subject: RE: draft AIs from April

I don't have these. Would they have been sent to you via email?

From: Pamela Dunston <Pdunston@usccr.gov>
Sent: Monday, August 2, 2021 3:37 PM
To: TinaLouise Martin <tmartin@usccr.gov>
Cc: Michele Ramey <myorkman@usccr.gov>
Subject: RE: draft AIs from April

Hi,

Let me look for them and get back to you. Thanks.

From: TinaLouise Martin <tmartin@usccr.gov>
Sent: Monday, August 2, 2021 3:13 PM
To: Pamela Dunston <Pdunston@usccr.gov>
Cc: Michele Ramey <myorkman@usccr.gov>
Subject: Fwd: draft AIs from April

Hi Pam,

Would you happen to have a copy of these drafts?

(working from home)

Begin forwarded message:

> **From:** David Ganz <dganz@usccr.gov>
> **Date:** August 2, 2021 at 1:51:18 PM CDT

AMERICAN OVERSIGHT

To: TinaLouise Martin <tmartin@usccr.gov>
Subject: RE: draft AIs from April

They were signed by Mauro so they don't have numbers, but they (3 in total) were ones voted on by the Comms at the 4/30 Business meeting. Attached is a draft of one of them.

From: TinaLouise Martin <tmartin@usccr.gov>
Sent: Monday, August 2, 2021 2:49 PM
To: David Ganz <dganz@usccr.gov>
Subject: RE: draft AIs from April

Would you happen to know the AI number?

From: David Ganz <dganz@usccr.gov>
Sent: Monday, August 2, 2021 1:35 PM
To: TinaLouise Martin <tmartin@usccr.gov>
Subject: Re: draft AIs from April

The ones about EAC appointment and that Commissioners can pick witnesses for briefings.

Sent via the Samsung Galaxy S21 5G, an AT&T 5G smartphone
Get Outlook for Android

From: TinaLouise Martin <tmartin@usccr.gov>
Sent: Monday, August 2, 2021 2:24:59 PM
To: David Ganz <dganz@usccr.gov>
Subject: RE: draft AIs from April

Which ones?

From: David Ganz <dganz@usccr.gov>
Sent: Monday, August 2, 2021 1:13 PM
To: TinaLouise Martin <tmartin@usccr.gov>
Subject: draft AIs from April

Do you have these?

David Ganz
General Counsel, Office of the General Counsel
U.S. Commission on Civil Rights
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425
(617) 669-6413

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doctrine. If you are not the addressee, any disclosure, copying, distribution, or use of the contents of this message are prohibited. If you have received this email in error, please destroy it and notify me immediately.

Established as an independent, bipartisan, fact-finding federal agency, our mission is to inform the development of national civil rights policy and enhance enforcement of federal civil rights laws. We pursue this mission by studying alleged deprivations of voting rights and alleged discrimination based on race, color, religion, sex, age, disability, or national origin, or in the administration of justice. We play a vital role in advancing civil rights through objective and comprehensive investigation, research, and analysis on issues of fundamental concern to the federal government and the public.

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Date : 8/2/2021 4:57:22 PM
From : "David Ganz" dganz@usccr.gov
To : "Mauro Morales" mmorales@usccr.gov
Subject : RE: Commissioner Appointments to the Election Assistance Commission
Attachment : image001.gif;image002.gif;

You don't need to attend to attend this tomorrow.

From: Juana Silverio <jsilverio@usccr.gov>
Sent: Monday, August 2, 2021 4:43 PM
To: David Ganz <dganz@usccr.gov>; Norma Cantu <ncantu@usccr.gov>
Cc: Pilar McLaughlin <pmclaughlin@usccr.gov>; Mauro Morales <mmorales@usccr.gov>
Subject: RE: Commissioner Appointments to the Election Assistance Commission

Would you like to send the zoom or shall we?

From: David Ganz <dganz@usccr.gov>
Sent: Monday, August 2, 2021 4:13 PM
To: Juana Silverio <jsilverio@usccr.gov>; Norma Cantu <ncantu@usccr.gov>
Cc: Pilar McLaughlin <pmclaughlin@usccr.gov>; Mauro Morales <mmorales@usccr.gov>
Subject: RE: Commissioner Appointments to the Election Assistance Commission

Tomorrow at noon works for us.

From: Juana Silverio <jsilverio@usccr.gov>
Sent: Monday, August 2, 2021 3:45 PM
To: David Ganz <dganz@usccr.gov>; Norma Cantu <ncantu@usccr.gov>
Cc: Pilar McLaughlin <pmclaughlin@usccr.gov>; Mauro Morales <mmorales@usccr.gov>
Subject: RE: Commissioner Appointments to the Election Assistance Commission

Does noon EST (11a CST) Work?

From: Juana Silverio
Sent: Monday, August 2, 2021 3:41 PM
To: David Ganz <dganz@usccr.gov>; Norma Cantu <ncantu@usccr.gov>
Cc: Pilar McLaughlin <pmclaughlin@usccr.gov>; Mauro Morales <mmorales@usccr.gov>
Subject: RE: Commissioner Appointments to the Election Assistance Commission

Hi David- this wasn't an EAC request. Rather it is the request of the Chair to include it in our process.

I will get times for you.

Juana

From: David Ganz <dganz@usccr.gov>
Sent: Monday, August 2, 2021 2:24 PM
To: Juana Silverio <jsilverio@usccr.gov>; Norma Cantu <ncantu@usccr.gov>

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Cc: Pilar McLaughlin <pmclaughlin@usccr.gov>; Mauro Morales <mmorales@usccr.gov>
Subject: RE: Commissioner Appointments to the Election Assistance Commission

Hi Juana and Chair Cantu,

In the past few days I have received several emails about the EAC appointments. I understand that one of the caucuses hasn't finalized its two selections as outlined in the below AI and Mauro' email. The 'ethics check' isn't prescribed by the below AI. OGC held a call with General Counsel of the EAC and would like to meet with you to discuss the requested ethics check. What is your availability tomorrow and Wednesday? Thanks,

David

From: Mauro Morales <mmorales@usccr.gov>
Sent: Wednesday, July 28, 2021 11:31 AM
To: Commissioners <Commissioners@usccr.gov>
Cc: David Ganz <dganz@usccr.gov>; CommissionerAssistants <CommissionerAssistants@usccr.gov>
Subject: Commissioner Appointments to the Election Assistance Commission

Dear Commissioners-

At the request and in consultation with the Chair, I am sending this email to start the EAC nomination process for Commissioners.

Per the AI voted on during the April 30th meeting (language included below), each caucus is requested to submit two candidates for consideration by COB Friday, July 30, 2021. Once the names are submitted, OGC will conduct an ethics check to be completed by Wednesday, August 4, 2021. Each caucus will then have 24 hours to submit caucus strikes (Thursday, August 5, 2021 COB). The Chair will communicate the two names to EAC no later than Friday, August 6, 2021.

Please let the Chair or I know if you have any questions or concerns.

--
AI language:

Section 1.
.01 Any authority specifically granted the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Commission as a whole by majority vote.

.02 Any authority specifically granted the Staff Director of the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Staff Director.

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.03 Any authority specifically granted the Chair of the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Chair.

Section 2
.02

(1) For the two (2) appointments to the U.S. Election Assistance Commission, the members appointed by Democratic authorities shall nominate two individuals who are ready, willing, and able to serve, and the members appointed by the Republican authorities shall nominate two individuals who are ready, willing, and able to serve.

(2) The members appointed by the Democratic authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Democratic authorities

(3) The members selected shall be placed in nomination and ratified in conformance with Section 1.

Mauro Morales
Staff Director
U.S. Commission on Civil Rights
P: 202-376-7796| F: 202-376-7672
Mmorales@usccr.gov
http://usccr.gov/
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425

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Date : 8/2/2021 4:56:02 PM
From : "David Ganz" dganz@usccr.gov
To : "David Ganz" dganz@usccr.gov, "Pilar McLaughlin" pmclaughlin@usccr.gov
Subject : FW: Summary of call with EAC GC
Attachment : image001.png;

For tomorrow's meeting with Norma.

From: David Ganz <dganz@usccr.gov>
Sent: Thursday, July 29, 2021 4:50:42 PM
To: Pilar McLaughlin <pmclaughlin@usccr.gov>
Subject: Summary of call with EAC GC

1. Advisory Board members are not SGE; they are representative members so they aren't given ethics or background checks/file 450s or 278s by/with EAC.
2. SGEs give personal views; because members aren't giving own views, no potential conflicts.
3. They aren't representing USCCR, but maybe larger community. EAC statute doesn't specify either. Do not nominate them with USCCR title.
4. Criminal ethics law may apply because they are USCCR SGEs.
5. No more meetings in 2021.
6.

David Ganz
General Counsel, Office of the General Counsel
U.S. Commission on Civil Rights
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425
(617) 669-6413

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Established as an independent, bipartisan, fact-finding federal agency, our mission is to inform the development of national civil rights policy and enhance enforcement of federal civil rights laws. We pursue this mission by studying alleged deprivations of voting rights and alleged discrimination based on race, color, religion, sex, age, disability, or national origin, or in the administration of justice. We play a vital role in advancing civil rights through objective and comprehensive investigation, research, and analysis on issues of fundamental concern to the federal

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government and the public.

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C002064
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Date : 8/2/2021 5:07:37 PM
From : "Pilar McLaughlin" pmclaughlin@usccr.gov
To : "David Ganz" dganz@usccr.gov
Subject : July Monthly report
Attachment : image001.gif;image002.gif;

Ethics:

- 278 reviews (Gilchrist, Heriot, Yaki, Carissa Mulder)
- NC SAC Ethics Rollout Email
- Monday.com set up guidance/instruction
- Zoom meetings with Regional Programs Office to discuss ethics SAC rollout
- Guidelines for USCCR spokespersons
- EAC ethics check - TBD

Reports

- Bail reform LSR
- Maine SAC report
- Nevada SAC statement

Research/writing

- Edits to Sheryl's CBM&B and FACA application memo
- Research on student volunteers for SACs

Pilar Velasquez McLaughlin
Senior Counsel, Office of the General Counsel
U.S. Commission on Civil Rights
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425
https://www.usccr.gov/

Email: pmclaughlin@usccr.gov
Direct: 703.855.8866

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Date : 8/3/2021 10:34:41 AM
From : "Mauro Morales" mmorales@usccr.gov
To : "David Ganz" dganz@usccr.gov
Subject : RE: Commissioner Appointments to the Election Assistance Commission
Attachment : image001.gif;image002.gif;

I will just to listen. I let you and Juana drive the meeting.

From: David Ganz <dganz@usccr.gov>
Sent: Monday, August 2, 2021 4:57 PM
To: Mauro Morales <mmorales@usccr.gov>
Subject: RE: Commissioner Appointments to the Election Assistance Commission

You don't need to attend to attend this tomorrow.

From: Juana Silverio <jsilverio@usccr.gov>
Sent: Monday, August 2, 2021 4:43 PM
To: David Ganz <dganz@usccr.gov>; Norma Cantu <ncantu@usccr.gov>
Cc: Pilar McLaughlin <pmclaughlin@usccr.gov>; Mauro Morales <mmorales@usccr.gov>
Subject: RE: Commissioner Appointments to the Election Assistance Commission

Would you like to send the zoom or shall we?

From: David Ganz <dganz@usccr.gov>
Sent: Monday, August 2, 2021 4:13 PM
To: Juana Silverio <jsilverio@usccr.gov>; Norma Cantu <ncantu@usccr.gov>
Cc: Pilar McLaughlin <pmclaughlin@usccr.gov>; Mauro Morales <mmorales@usccr.gov>
Subject: RE: Commissioner Appointments to the Election Assistance Commission

Tomorrow at noon works for us.

From: Juana Silverio <jsilverio@usccr.gov>
Sent: Monday, August 2, 2021 3:45 PM
To: David Ganz <dganz@usccr.gov>; Norma Cantu <ncantu@usccr.gov>
Cc: Pilar McLaughlin <pmclaughlin@usccr.gov>; Mauro Morales <mmorales@usccr.gov>
Subject: RE: Commissioner Appointments to the Election Assistance Commission

Does noon EST (11a CST) Work?

From: Juana Silverio
Sent: Monday, August 2, 2021 3:41 PM
To: David Ganz <dganz@usccr.gov>; Norma Cantu <ncantu@usccr.gov>
Cc: Pilar McLaughlin <pmclaughlin@usccr.gov>; Mauro Morales <mmorales@usccr.gov>
Subject: RE: Commissioner Appointments to the Election Assistance Commission

Hi David- this wasn't an EAC request. Rather it is the request of the Chair to include it in our process.

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I will get times for you.

Juana

From: David Ganz <dganz@usccr.gov>
Sent: Monday, August 2, 2021 2:24 PM
To: Juana Silverio <jsilverio@usccr.gov>; Norma Cantu <ncantu@usccr.gov>
Cc: Pilar McLaughlin <pmclaughlin@usccr.gov>; Mauro Morales <mmorales@usccr.gov>
Subject: RE: Commissioner Appointments to the Election Assistance Commission

Hi Juana and Chair Cantu,

In the past few days I have received several emails about the EAC appointments. I understand that one of the caucuses hasn't finalized its two selections as outlined in the below AI and Mauro' email. The 'ethics check' isn't prescribed by the below AI. OGC held a call with General Counsel of the EAC and would like to meet with you to discuss the requested ethics check. What is your availability tomorrow and Wednesday? Thanks,

David

From: Mauro Morales <mmorales@usccr.gov>
Sent: Wednesday, July 28, 2021 11:31 AM
To: Commissioners <Commissioners@usccr.gov>
Cc: David Ganz <dganz@usccr.gov>; CommissionerAssistants <CommissionerAssistants@usccr.gov>
Subject: Commissioner Appointments to the Election Assistance Commission

Dear Commissioners-

At the request and in consultation with the Chair, I am sending this email to start the EAC nomination process for Commissioners.

Per the AI voted on during the April 30th meeting (language included below), each caucus is requested to submit two candidates for consideration by COB Friday, July 30, 2021. Once the names are submitted, OGC will conduct an ethics check to be completed by Wednesday, August 4, 2021. Each caucus will then have 24 hours to submit caucus strikes (Thursday, August 5, 2021 COB). The Chair will communicate the two names to EAC no later than Friday, August 6, 2021.

Please let the Chair or I know if you have any questions or concerns.

--
AI language:

Section 1.
.01 Any authority specifically granted the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be

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exercised by the Commission as a whole by majority vote.

.02 Any authority specifically granted the Staff Director of the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Staff Director.

.03 Any authority specifically granted the Chair of the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Chair.

Section 2
.02

(1) For the two (2) appointments to the U.S. Election Assistance Commission, the members appointed by Democratic authorities shall nominate two individuals who are ready, willing, and able to serve, and the members appointed by the Republican authorities shall nominate two individuals who are ready, willing, and able to serve.

(2) The members appointed by the Democratic authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Democratic authorities

(3) The members selected shall be placed in nomination and ratified in conformance with Section 1.

Mauro Morales
Staff Director
U.S. Commission on Civil Rights
P: 202-376-7796| F: 202-376-7672
Mmorales@usccr.gov
http://usccr.gov/
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425

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Date : 8/3/2021 11:35:21 AM
From : "Juana Silverio" jsilverio@usccr.gov
To : "Irena Vidulovic" ividulovic@usccr.gov, "Alec Deull" adeull@usccr.gov
Subject : RE: EAC Nominations

Hi Irena,

She spoke to Michael, waiting on Dave to respond but she's moving forward today.

Juana

From: Irena Vidulovic <ividulovic@usccr.gov>
Sent: Tuesday, August 3, 2021 11:34 AM
To: Juana Silverio <jsilverio@usccr.gov>; Alec Deull <adeull@usccr.gov>
Subject: EAC Nominations

Hey Juana,

Just checking if the Chair had the opportunity to connect with Michael and Dave and if we have submitted our caucus nominees?

Thanks,

Irena

Irena Vidulovic
Special Assistant to Commissioner Debo P. Adegbile
U.S. Commission on Civil Rights
M: 202-591-9969
ividulovic@usccr.gov
http://usccr.gov/
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425

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Date : 8/3/2021 11:34:03 AM
From : "Irena Vidulovic" ividulovic@usccr.gov
To : "Juana Silverio" jsilverio@usccr.gov, "Alec Deull" adeull@usccr.gov
Subject : EAC Nominations

Hey Juana,

Just checking if the Chair had the opportunity to connect with Michael and Dave and if we have submitted our caucus nominees?

Thanks,
Irena

Irena Vidulovic
Special Assistant to Commissioner Debo P. Adegbile
U.S. Commission on Civil Rights
M: 202-591-9969
ividulovic@usccr.gov
http://usccr.gov/
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425

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Date : 8/3/2021 3:38:23 PM
From : "Juana Silverio" jsilverio@usccr.gov
To : "Mauro Morales" mmorales@usccr.gov, "Norma Cantu" ncantu@usccr.gov
Cc : "Debo P. Adegbile" dadegbile@usccr.gov, "Michael Yaki" MYaki@usccr.gov, "David Kladney" dkladney@usccr.gov, "Irena Vidulovic" ividulovic@usccr.gov, "Alec Deull" adeull@usccr.gov
Subject : RE: Commissioner Appointments to the Election Assistance Commission

Good afternoon Mauro.

The Dem caucus had a tie:

Commissioner Michael Yaki
Leah Aden (Cantu and Yaki)
Allison Riggs (Adegbile and Kladney)

The Chairwoman, in the interest of observing the deadline, is submitting the following names for EAC consideration:

Commissioner Michael Yaki
Leah Aden - https://www.naacpldf.org/about-us/staff/leah-c-aden/

Thank you.
Juana

From: Mauro Morales <mmorales@usccr.gov>
Sent: Monday, August 2, 2021 11:47 AM
To: Norma V. Cantú <normavcantu@gmail.com>; Juana Silverio <jsilverio@usccr.gov>
Subject: Fwd: Commissioner Appointments to the Election Assistance Commission

FYI

Sent from my iPhone

Begin forwarded message:

> **From:** Mauro Morales <mmorales@usccr.gov>
> **Date:** August 2, 2021 at 8:45:25 AM MST
> **To:** John Mashburn <jmashburn@usccr.gov>
> **Cc:** Carissa Mulder <CMulder@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>, Alexander Heideman <aheideman@usccr.gov>
> **Subject: Re: Commissioner Appointments to the Election Assistance Commission**
>
> My flight was canceled and returning today. Your selections were forwarded to Chair Cantu. Thank you.
>
> Sent from my iPhone

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On Jul 30, 2021, at 9:34 AM, John Mashburn <jmashburn@usccr.gov> wrote:

Mauro – after canvassing the Republican Commissioners, the two nominees they wish to put forward for one of the two USCCR designees for the EAC's Board of Advisors (per your email below) are:

Cleta Mitchell – Chair, Conservative Partnership Institute Election Integrity Network, and

Christian Adams – USCCR Commissioner.

From: Mauro Morales <mmorales@usccr.gov>
Date: Wednesday, July 28, 2021 at 11:30 AM
To: Commissioners <Commissioners@usccr.gov>
Cc:
" <CommissionerAssistants@usccr.gov>
Subject: Commissioner Appointments to the Election Assistance Commission

Dear Commissioners-

At the request and in consultation with the Chair, I am sending this email to start the EAC nomination process for Commissioners.

Per the AI voted on during the April 30th meeting (language included below), each caucus is requested to submit two candidates for consideration by COB Friday, July 30, 2021. Once the names are submitted, OGC will conduct an ethics check to be completed by Wednesday, August 4, 2021. Each caucus will then have 24 hours to submit caucus strikes (Thursday, August 5, 2021 COB). The Chair will communicate the two names to EAC no later than Friday, August 6, 2021.

Please let the Chair or I know if you have any questions or concerns.

--
AI language:

Section 1.

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.01 Any authority specifically granted the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Commission as a whole by majority vote.

.02 Any authority specifically granted the Staff Director of the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Staff Director.

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Section 2
.02

(1) For the two (2) appointments to the U.S. Election Assistance Commission, the members appointed by Democratic authorities shall nominate two individuals who are ready, willing, and able to serve, and the members appointed by the Republican authorities shall nominate two individuals who are ready, willing, and able to serve.

(2) The members appointed by the Democratic authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Democratic authorities

(3) The members selected shall be placed in nomination and ratified in conformance with Section 1.

Mauro Morales
Staff Director
U.S. Commission on Civil Rights
P: 202-376-7796| F: 202-376-7672
Mmorales@usccr.gov
http://usccr.gov/

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1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425

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Date : 8/3/2021 4:12:07 PM
From : "Irena Vidulovic" ividulovic@usccr.gov
To : "Juana Silverio" jsilverio@usccr.gov, "Mauro Morales" mmorales@usccr.gov, "Norma Cantu" ncantu@usccr.gov
Cc : "Debo P. Adegbile" dadegbile@usccr.gov, "Michael Yaki" MYaki@usccr.gov, "David Kladney" dkladney@usccr.gov, "Alec Deull" adeull@usccr.gov
Subject : Re: Commissioner Appointments to the Election Assistance Commission

Unfortunately Leah Aden is unable to serve. Commissioner Adebile reached out to all the candidates that we proposed including Leah to make sure that they would be willing and able to serve and we have been notified that Leah is unavailable to serve.

From: Juana Silverio
Sent: Tuesday, August 3, 2021 3:38:23 PM
To: Mauro Morales; Norma Cantu
Cc: Debo P. Adegbile; Michael Yaki; David Kladney; Irena Vidulovic; Alec Deull
Subject: RE: Commissioner Appointments to the Election Assistance Commission

Good afternoon Mauro.

The Dem caucus had a tie:

Commissioner Michael Yaki
Leah Aden (Cantu and Yaki)
Allison Riggs (Adegbile and Kladney)

The Chairwoman, in the interest of observing the deadline, is submitting the following names for EAC consideration:

Commissioner Michael Yaki
Leah Aden - https://www.naacpldf.org/about-us/staff/leah-c-aden/

Thank you.
Juana

From: Mauro Morales <mmorales@usccr.gov>
Sent: Monday, August 2, 2021 11:47 AM
To: Norma V. Cantú <normavcantu@gmail.com>; Juana Silverio <jsilverio@usccr.gov>
Subject: Fwd: Commissioner Appointments to the Election Assistance Commission

FYI

Sent from my iPhone

Begin forwarded message:

AMERICAN OVERSIGHT

From: Mauro Morales <mmorales@usccr.gov>
Date: August 2, 2021 at 8:45:25 AM MST
To: John Mashburn <jmashburn@usccr.gov>
Cc: Carissa Mulder <CMulder@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>, Alexander Heideman <aheideman@usccr.gov>
Subject: Re: Commissioner Appointments to the Election Assistance Commission

My flight was canceled and returning today. Your selections were forwarded to Chair Cantu. Thank you.

Sent from my iPhone

> On Jul 30, 2021, at 9:34 AM, John Mashburn <jmashburn@usccr.gov> wrote:
>
> Mauro – after canvassing the Republican Commissioners, the two nominees they wish to put forward for one of the two USCCR designees for the EAC's Board of Advisors (per your email below) are:
>
> Cleta Mitchell – Chair, Conservative Partnership Institute Election Integrity Network, and
>
> Christian Adams – USCCR Commissioner.
>
> ---
>
> **From:** Mauro Morales <mmorales@usccr.gov>
> **Date:** Wednesday, July 28, 2021 at 11:30 AM
> **To:** Commissioners <Commissioners@usccr.gov>
> **Cc:**
> " <CommissionerAssistants@usccr.gov>
> **Subject:** Commissioner Appointments to the Election Assistance Commission
>
> Dear Commissioners-
>
> At the request and in consultation with the Chair, I am sending this email to start the EAC nomination process for Commissioners.
>
> Per the AI voted on during the April 30th meeting (language included below), each caucus is requested to submit two candidates for consideration by COB Friday, July 30, 2021. Once the names are submitted, OGC will conduct an ethics check to be completed by Wednesday, August 4, 2021. Each caucus will then have 24 hours to

AMERICAN OVERSIGHT

submit caucus strikes (Thursday, August 5, 2021 COB). The Chair will communicate the two names to EAC no later than Friday, August 6, 2021.

Please let the Chair or I know if you have any questions or concerns.

--
AI language:

Section 1.
.01 Any authority specifically granted the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Commission as a whole by majority vote.

.02 Any authority specifically granted the Staff Director of the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Staff Director.

.03 Any authority specifically granted the Chair of the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Chair.

Section 2
.02
(1) For the two (2) appointments to the U.S. Election Assistance Commission, the members appointed by Democratic authorities shall nominate two individuals who are ready, willing, and able to serve, and the members appointed by the Republican authorities shall nominate two individuals who are ready, willing, and able to serve.

(2) The members appointed by the Democratic authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the

AMERICAN OVERSIGHT

Democratic authorities

(3) The members selected shall be placed in nomination and ratified in conformance with Section 1.

Mauro Morales
Staff Director
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1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425

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<image002.gif>

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AMERICAN OVERSIGHT

Date : 8/3/2021 3:51:40 PM
From : "Mauro Morales" mmorales@usccr.gov
To : "David Ganz" dganz@usccr.gov
Subject : FW: Commissioner Appointments to the Election Assistance Commission

What am I supposed to do I do next?

From: Juana Silverio <jsilverio@usccr.gov>
Sent: Tuesday, August 3, 2021 3:38 PM
To: Mauro Morales <mmorales@usccr.gov>; Norma Cantu <ncantu@usccr.gov>
Cc: Debo P. Adegbile <dadegbile@usccr.gov>; Michael Yaki <MYaki@usccr.gov>; David Kladney <dkladney@usccr.gov>; Irena Vidulovic <ividulovic@usccr.gov>; Alec Deull <adeull@usccr.gov>
Subject: RE: Commissioner Appointments to the Election Assistance Commission

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The Dem caucus had a tie:

Commissioner Michael Yaki
Leah Aden (Cantu and Yaki)
Allison Riggs (Adegbile and Kladney)

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Commissioner Michael Yaki
Leah Aden - https://www.naacpldf.org/about-us/staff/leah-c-aden/

Thank you.
Juana

From: Mauro Morales <mmorales@usccr.gov>
Sent: Monday, August 2, 2021 11:47 AM
To: Norma V. Cantú <normavcantu@gmail.com>; Juana Silverio <jsilverio@usccr.gov>
Subject: Fwd: Commissioner Appointments to the Election Assistance Commission

FYI

Sent from my iPhone

Begin forwarded message:

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> **Date:** August 2, 2021 at 8:45:25 AM MST
> **To:** John Mashburn <jmashburn@usccr.gov>
> **Cc:** Carissa Mulder <CMulder@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>, Alexander Heideman <aheideman@usccr.gov>
> **Subject: Re: Commissioner Appointments to the Election Assistance**

AMERICAN OVERSIGHT

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Sent from my iPhone

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>
> Mauro – after canvassing the Republican Commissioners, the two nominees they wish to put forward for one of the two USCCR designees for the EAC's Board of Advisors (per your email below) are:
>
> Cleta Mitchell – Chair, Conservative Partnership Institute Election Integrity Network, and
>
> Christian Adams – USCCR Commissioner.
>
> ---
>
> **From:** Mauro Morales <mmorales@usccr.gov>
> **Date:** Wednesday, July 28, 2021 at 11:30 AM
> **To:** Commissioners <Commissioners@usccr.gov>
> **Cc:**
> " <CommissionerAssistants@usccr.gov>
> **Subject:** Commissioner Appointments to the Election Assistance Commission
>
> Dear Commissioners-
>
> At the request and in consultation with the Chair, I am sending this email to start the EAC nomination process for Commissioners.
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>
> Please let the Chair or I know if you have any questions or concerns.

AMERICAN OVERSIGHT

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AI language:

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.01 Any authority specifically granted the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Commission as a whole by majority vote.

.02 Any authority specifically granted the Staff Director of the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Staff Director.

.03 Any authority specifically granted the Chair of the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Chair.

Section 2
.02

(1) For the two (2) appointments to the U.S. Election Assistance Commission, the members appointed by Democratic authorities shall nominate two individuals who are ready, willing, and able to serve, and the members appointed by the Republican authorities shall nominate two individuals who are ready, willing, and able to serve.

(2) The members appointed by the Democratic authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Democratic authorities

(3) The members selected shall be placed in nomination and ratified in conformance with Section 1.

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Mauro Morales
Staff Director
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Washington D.C. 20425

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<image002.gif>

#USCCR

AMERICAN OVERSIGHT

Date : 8/3/2021 5:26:54 PM
From : "David Ganz" dganz@usccr.gov
To : "Mauro Morales" mmorales@usccr.gov
Subject : RE: Draft EAC Email.

No change. I think it is better to let them determine how to make their selections/strikes before the final vote.

From: Mauro Morales <mmorales@usccr.gov>
Sent: Tuesday, August 3, 2021 5:10 PM
To: David Ganz <dganz@usccr.gov>
Subject: Draft EAC Email.

FYI. Let me know what should be changed?

"Commissioners,

Pursuant to the AI voted on during the April 30th Business meeting, you have selected the following as nominations to the Election Assistance Commission (EAC):

Commissioners Cantu, Adegbile, Kladney and Yaki have nominated the following individuals to the EAC:

- *Commissioner Michael Yaki;*
- *Ms. Allison Riggs , Co-Executive Director, Southern Coalition for Social Justice.*

Commissioners Adams, Gilchrist, Heriot and Kirsanow have nominated the following individuals to the EAC:

- *Commissioner Christian Adams;*
- *Cleta Michell, Chair, Conservative Partnership Institute Election Integrity Network.*

Under the AI adopted by Commissioners, the members appointed by the Democratic authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Democratic authorities. The final members selected shall be placed in nomination and ratified by a majority vote. Please inform me how you would like to proceed for a majority vote either by placing it on the agenda for the next USCCR business meeting or by a notational vote."

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AMERICAN OVERSIGHT

Date : 8/3/2021 5:36:11 PM
From : "Mauro Morales" mmorales@usccr.gov
To : "Commissioners" Commissioners@usccr.gov
Cc : "CommissionerAssistants" CommissionerAssistants@usccr.gov, "David Ganz" dganz@usccr.gov
Subject : Nominations for Appointment to the EAC
Attachment : image001.gif;image002.gif;

Commissioners,

Pursuant to the AI voted on during the April 30th Business meeting, you have nominated the following individuals to the Election Assistance Commission (EAC):

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- Commissioner Michael Yaki;
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Date : 8/3/2021 5:09:42 PM
From : "Mauro Morales" mmorales@usccr.gov
To : "David Ganz" dganz@usccr.gov
Subject : Draft EAC Email.

FYI. Let me know what should be changed?

"Commissioners,

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AMERICAN OVERSIGHT

Date : 8/3/2021 4:30:17 PM
From : "Juana Silverio" jsilverio@usccr.gov
To : "Irena Vidulovic" ividulovic@usccr.gov, "Mauro Morales" mmorales@usccr.gov, "Norma Cantu" ncantu@usccr.gov
Cc : "Debo P. Adegbile" dadegbile@usccr.gov, "Michael Yaki" MYaki@usccr.gov, "David Kladney" dkladney@usccr.gov, "Alec Deull" adeull@usccr.gov
Subject : RE: Commissioner Appointments to the Election Assistance Commission

Mauro- due to new information received, please replace Leah with Ms. Allison Riggs.

Juana

From: Irena Vidulovic <ividulovic@usccr.gov>
Sent: Tuesday, August 3, 2021 4:12 PM
To: Juana Silverio <jsilverio@usccr.gov>; Mauro Morales <mmorales@usccr.gov>; Norma Cantu <ncantu@usccr.gov>
Cc: Debo P. Adegbile <dadegbile@usccr.gov>; Michael Yaki <MYaki@usccr.gov>; David Kladney <dkladney@usccr.gov>; Alec Deull <adeull@usccr.gov>
Subject: Re: Commissioner Appointments to the Election Assistance Commission

Unfortunately Leah Aden is unable to serve. Commissioner Adebile reached out to all the candidates that we proposed including Leah to make sure that they would be willing and able to serve and we have been notified that Leah is unavailable to serve.

From: Juana Silverio
Sent: Tuesday, August 3, 2021 3:38:23 PM
To: Mauro Morales; Norma Cantu
Cc: Debo P. Adegbile; Michael Yaki; David Kladney; Irena Vidulovic; Alec Deull
Subject: RE: Commissioner Appointments to the Election Assistance Commission

Good afternoon Mauro.

The Dem caucus had a tie:

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Leah Aden (Cantu and Yaki)
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The Chairwoman, in the interest of observing the deadline, is submitting the following names for EAC consideration:

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Commissioner Michael Yaki
Leah Aden - https://www.naacpldf.org/about-us/staff/leah-c-aden/

Thank you.
Juana

From: Mauro Morales <mmorales@usccr.gov>
Sent: Monday, August 2, 2021 11:47 AM
To: Norma V. Cantú <normavcantu@gmail.com>; Juana Silverio <jsilverio@usccr.gov>
Subject: Fwd: Commissioner Appointments to the Election Assistance Commission

FYI

Sent from my iPhone

Begin forwarded message:

> **From:** Mauro Morales <mmorales@usccr.gov>
> **Date:** August 2, 2021 at 8:45:25 AM MST
> **To:** John Mashburn <jmashburn@usccr.gov>
> **Cc:** Carissa Mulder <CMulder@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>, Alexander Heideman <aheideman@usccr.gov>
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> Sent from my iPhone
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> >
> > Cleta Mitchell – Chair, Conservative Partnership Institute Election Integrity Network, and
> >
> > Christian Adams – USCCR Commissioner.
> >
> > ---
> >
> > **From:** Mauro Morales <mmorales@usccr.gov>
> > **Date:** Wednesday, July 28, 2021 at 11:30 AM
> > **To:** Commissioners <Commissioners@usccr.gov>
> > **Cc:**
> > " <CommissionerAssistants@usccr.gov>

AMERICAN OVERSIGHT

Subject: Commissioner Appointments to the Election Assistance Commission

Dear Commissioners-

At the request and in consultation with the Chair, I am sending this email to start the EAC nomination process for Commissioners.

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Section 2

AMERICAN OVERSIGHT

.02

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(3) The members selected shall be placed in nomination and ratified in conformance with Section 1.

Mauro Morales
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Mmorales@usccr.gov
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Washington D.C. 20425

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#USCCR

AMERICAN OVERSIGHT

Date : 8/4/2021 10:14:51 AM
From : "Irena Vidulovic" ividulovic@usccr.gov
To : "Juana Silverio" jsilverio@usccr.gov, "Alec Deull" adeull@usccr.gov
Subject : Fw: Nominations for Appointment to the EAC
Attachment : image001.gif;image002.gif;

Team,

Do we want to schedule a call today to discuss? Let me know when you are free.

Irena

From: Mauro Morales
Sent: Tuesday, August 3, 2021 5:36 PM
To: Commissioners
Cc: CommissionerAssistants; David Ganz
Subject: Nominations for Appointment to the EAC

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Date : 8/4/2021 11:09:32 AM
From : "Juana Silverio" jsilverio@usccr.gov
To : "Mauro Morales" mmorales@usccr.gov
Cc : "Norma Cantu" ncantu@usccr.gov
Subject : RE: Nominations for Appointment to the EAC
Attachment : image001.gif;image002.gif;

Should we remind them to send their "strike" no latr than COB tomorrow?

From: Mauro Morales <mmorales@usccr.gov>
Sent: Tuesday, August 3, 2021 5:36 PM
To: Commissioners <Commissioners@usccr.gov>
Cc: CommissionerAssistants <CommissionerAssistants@usccr.gov>; David Ganz <dganz@usccr.gov>
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Mauro Morales
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P: 202-376-7796| F: 202-376-7672

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Washington D.C. 20425

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OVERSTOCK

Date : 8/4/2021 11:06:53 AM
From : "Juana Silverio" jsilverio@usccr.gov
To : "Irena Vidulovic" ividulovic@usccr.gov, "Alec Deull" adeull@usccr.gov
Subject : RE: Nominations for Appointment to the EAC
Attachment : image001.gif;image002.gif;

The Chair is discussing with the Rs how they want to proceed to the next step and then we'll know. Though not in the ai below- the two that will be named need a majority vote.

From: Irena Vidulovic <ividulovic@usccr.gov>
Sent: Wednesday, August 4, 2021 10:15 AM
To: Juana Silverio <jsilverio@usccr.gov>; Alec Deull <adeull@usccr.gov>
Subject: Fw: Nominations for Appointment to the EAC

Team,

Do we want to schedule a call today to discuss? Let me know when you are free.

Irena

From: Mauro Morales
Sent: Tuesday, August 3, 2021 5:36 PM
To: Commissioners
Cc: CommissionerAssistants; David Ganz
Subject: Nominations for Appointment to the EAC

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AMERICAN OVERSIGHT

- Ms. Allison Riggs , Co-Executive Director, Southern Coalition for Social Justice.

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Mauro Morales

Staff Director

U.S. Commission on Civil Rights

P: 202-376-7796| F: 202-376-7672

Mmorales@usccr.gov

http://usccr.gov/

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Washington D.C. 20425

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#USCCR

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OVERSIGHT

OVERSTOCK

Date : 8/4/2021 11:38:21 AM
From : "Irena Vidulovic" ividulovic@usccr.gov
To : "Juana Silverio" jsilverio@usccr.gov, "Alec Deull" adeull@usccr.gov, "David Kladney" dkladney@usccr.gov
Subject : Re: Nominations for Appointment to the EAC
Attachment : image001.gif;image002.gif;

Thanks Juana, + Adding Commissioner Kladney to this email chain since he is currently without an SA.

I am thinking it would be helpful to have our bosses be on the same page as well so that we could have a unified front.

Look forward to discussing your bosses preference /thoughts now that the nominations have been submitted.

Thanks,
Irena

From: Juana Silverio
Sent: Wednesday, August 4, 2021 11:06:53 AM
To: Irena Vidulovic; Alec Deull
Subject: RE: Nominations for Appointment to the EAC

The Chair is discussing with the Rs how they want to proceed to the next step and then we'll know. Though not in the ai below- the two that will be named need a majority vote.

From: Irena Vidulovic <ividulovic@usccr.gov>
Sent: Wednesday, August 4, 2021 10:15 AM
To: Juana Silverio <jsilverio@usccr.gov>; Alec Deull <adeull@usccr.gov>
Subject: Fw: Nominations for Appointment to the EAC

Team,

Do we want to schedule a call today to discuss? Let me know when you are free.

Irena

From: Mauro Morales
Sent: Tuesday, August 3, 2021 5:36 PM
To: Commissioners
Cc: CommissionerAssistants; David Ganz
Subject: Nominations for Appointment to the EAC

AMERICAN OVERSIGHT

Commissioners,

Pursuant to the AI voted on during the April 30th Business meeting, you have nominated the following individuals to the Election Assistance Commission (EAC):

Commissioners Cantu, Adegbile, Kladney and Yaki have nominated the following individuals to the EAC:

- Commissioner Michael Yaki;
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- Cleta Michell, Chair, Conservative Partnership Institute Election Integrity Network.

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Mauro Morales
Staff Director
U.S. Commission on Civil Rights
P: 202-376-7796| F: 202-376-7672
Mmorales@usccr.gov
http://usccr.gov/
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425

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OVERSTOCK

Date : 8/4/2021 12:24:32 PM
From : "Mauro Morales" mmorales@usccr.gov
To : "Juana Silverio" jsilverio@usccr.gov
Cc : "Norma Cantu" ncantu@usccr.gov, "David Ganz" dganz@usccr.gov
Subject : RE: Nominations for Appointment to the EAC
Attachment : image001.gif;image002.gif;

That is a good idea and each caucus should send me their final selection. There are no real procedures since this is the first time we've done this. It would be simpler if each caucus provides me with their selection rather than each commissioner provide me their individual vote on the different candidates that I would then have to account for and tally. I shouldn't have a part of the caucus votes for the final candidates. Each caucus should make their own selection and then send it to me which I can then schedule for a final vote by all Commissioners to send to the EAC.

From: Juana Silverio <jsilverio@usccr.gov>
Sent: Wednesday, August 4, 2021 11:10 AM
To: Mauro Morales <mmorales@usccr.gov>
Cc: Norma Cantu <ncantu@usccr.gov>
Subject: RE: Nominations for Appointment to the EAC

Should we remind them to send their "strike" no latr than COB tomorrow?

From: Mauro Morales <mmorales@usccr.gov>
Sent: Tuesday, August 3, 2021 5:36 PM
To: Commissioners <Commissioners@usccr.gov>
Cc: CommissionerAssistants <CommissionerAssistants@usccr.gov>; David Ganz <dganz@usccr.gov>
Subject: Nominations for Appointment to the EAC

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Date : 8/5/2021 1:30:29 PM
From : "Debo P. Adegbile" dadegbile@usccr.gov
To : "Norma Cantu" ncantu@usccr.gov, "Michael Yaki" commissioner.yaki@gmail.com, "David Kladney" dkladney@usccr.gov
Cc : "Irena Vidulovic" ividulovic@usccr.gov
Subject : Fwd: Nominations for Appointment to the EAC
Attachment : image001.gif;image002.gif;

Cleta Mitchell is my pick of those they nominated.

Sent from my iPhone

Begin forwarded message:

From: Mauro Morales <mmorales@usccr.gov>
Date: August 3, 2021 at 5:36:12 PM EDT
To: Commissioners <Commissioners@usccr.gov>
Cc: CommissionerAssistants <CommissionerAssistants@usccr.gov>, David Ganz <dganz@usccr.gov>
Subject: Nominations for Appointment to the EAC

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Date : 8/5/2021 4:03:06 PM
From : "Norma Cantu" ncantu@usccr.gov
To : "Mauro Morales" mmorales@usccr.gov, "Juana Silverio" jsilverio@usccr.gov
Cc : "David Ganz" dganz@usccr.gov
Subject : RE: Nominations for Appointment to the EAC
Attachment : image001.gif;image002.gif;

Dear Mauro,
The progressive caucus discussed the two options from the conservative caucus and unanimously selected Cleta Mitchell as nominee from the conservative caucus.
Norma

From: Mauro Morales <mmorales@usccr.gov>
Sent: Wednesday, August 4, 2021 11:25 AM
To: Juana Silverio <jsilverio@usccr.gov>
Cc: Norma Cantu <ncantu@usccr.gov>; David Ganz <dganz@usccr.gov>
Subject: RE: Nominations for Appointment to the EAC

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Sent: Wednesday, August 4, 2021 11:10 AM
To: Mauro Morales <mmorales@usccr.gov>
Cc: Norma Cantu <ncantu@usccr.gov>
Subject: RE: Nominations for Appointment to the EAC

Should we remind them to send their "strike" no latr than COB tomorrow?

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Sent: Tuesday, August 3, 2021 5:36 PM
To: Commissioners <Commissioners@usccr.gov>
Cc: CommissionerAssistants <CommissionerAssistants@usccr.gov>; David Ganz <dganz@usccr.gov>
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OVERSTOCK

Date : 8/5/2021 4:05:24 PM
From : "Norma Cantu" ncantu@usccr.gov
To : "Mauro Morales" mmorales@usccr.gov, "Juana Silverio" jsilverio@usccr.gov
Cc : "David Ganz" dganz@usccr.gov
Subject : RE: Nominations for Appointment to the EAC --please convey the results simultaneously to the Commissioners.
Attachment : image001.gif;image002.gif;

Per David Kladney's request, I ask the Staff Director to share out the results of the caucus votes simultaneously.
Norma

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Sent: Wednesday, August 4, 2021 11:25 AM
To: Juana Silverio <jsilverio@usccr.gov>
Cc: Norma Cantu <ncantu@usccr.gov>; David Ganz <dganz@usccr.gov>
Subject: RE: Nominations for Appointment to the EAC

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Sent: Wednesday, August 4, 2021 11:10 AM
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Cc: Norma Cantu <ncantu@usccr.gov>
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Date : 8/5/2021 4:06:38 PM
From : "Juana Silverio" jsilverio@usccr.gov
To : "Norma Cantu" ncantu@usccr.gov, "Mauro Morales" mmorales@usccr.gov
Cc : "David Ganz" dganz@usccr.gov
Subject : RE: Nominations for Appointment to the EAC --please convey the results simultaneously to the Commissioners.
Attachment : image001.gif;image002.gif;

So we are sharing the strike or the nominee we will confirm by vote?

From: Norma Cantu <ncantu@usccr.gov>
Sent: Thursday, August 5, 2021 4:05 PM
To: Mauro Morales <mmorales@usccr.gov>; Juana Silverio <jsilverio@usccr.gov>
Cc: David Ganz <dganz@usccr.gov>
Subject: RE: Nominations for Appointment to the EAC --please convey the results simultaneously to the Commissioners.

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Norma

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To: Juana Silverio <jsilverio@usccr.gov>
Cc: Norma Cantu <ncantu@usccr.gov>; David Ganz <dganz@usccr.gov>
Subject: RE: Nominations for Appointment to the EAC

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Date : 8/5/2021 4:14:22 PM
From : "Norma Cantu" ncantu@usccr.gov
To : "Juana Silverio" jsilverio@usccr.gov, "Mauro Morales" mmorales@usccr.gov
Cc : "David Ganz" dganz@usccr.gov
Subject : RE: Nominations for Appointment to the EAC --please convey the results simultaneously to the Commissioners.
Attachment : image001.gif;image002.gif;

Mauro will wait for the Conservative caucus and will send the results together in the same email announcement.
Norma

From: Juana Silverio <jsilverio@usccr.gov>
Sent: Thursday, August 5, 2021 3:07 PM
To: Norma Cantu <ncantu@usccr.gov>; Mauro Morales <mmorales@usccr.gov>
Cc: David Ganz <dganz@usccr.gov>
Subject: RE: Nominations for Appointment to the EAC --please convey the results simultaneously to the Commissioners.

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Cc: David Ganz <dganz@usccr.gov>
Subject: RE: Nominations for Appointment to the EAC --please convey the results simultaneously to the Commissioners.

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Cc: Norma Cantu <ncantu@usccr.gov>; David Ganz <dganz@usccr.gov>
Subject: RE: Nominations for Appointment to the EAC

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To: Mauro Morales <mmorales@usccr.gov>

AMERICAN OVERSIGHT

Cc: Norma Cantu <ncantu@usccr.gov>
Subject: RE: Nominations for Appointment to the EAC

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Date : 8/5/2021 4:16:06 PM
From : "David Ganz" dganz@usccr.gov
To : "Norma Cantu" ncantu@usccr.gov, "Juana Silverio" jsilverio@usccr.gov, "Mauro Morales" mmorales@usccr.gov
Subject : Re: Nominations for Appointment to the EAC --please convey the results simultaneously to the Commissioners.
Attachment : image002.gif;image001.gif;

I'm tracking these messages. If any issues comes up, please let me know. Thanks,

David

From: Norma Cantu <ncantu@usccr.gov>
Sent: Thursday, August 5, 2021, 4:14 PM
To: Juana Silverio; Mauro Morales
Cc: David Ganz
Subject: RE: Nominations for Appointment to the EAC --please convey the results simultaneously to the Commissioners.

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Subject: RE: Nominations for Appointment to the EAC --please convey the results simultaneously to the Commissioners.

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To: Juana Silverio <jsilverio@usccr.gov>
Cc: Norma Cantu <ncantu@usccr.gov>; David Ganz <dganz@usccr.gov>
Subject: RE: Nominations for Appointment to the EAC

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AMERICAN OVERSIGHT

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Washington D.C. 20425

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Date : 8/5/2021 5:44:58 PM
From : "Mauro Morales" mmorales@usccr.gov
To : "David Ganz" dganz@usccr.gov, "Norma Cantu" ncantu@usccr.gov, "Juana Silverio" jsilverio@usccr.gov
Subject : RE: Nominations for Appointment to the EAC --please convey the results simultaneously to the Commissioners.
Attachment : image001.gif;

I agree that I will not share the selections with either caucus but send the results together in the same email announcement.

From: David Ganz <dganz@usccr.gov>
Sent: Thursday, August 5, 2021 4:16 PM
To: Norma Cantu <ncantu@usccr.gov>; Juana Silverio <jsilverio@usccr.gov>; Mauro Morales <mmorales@usccr.gov>
Subject: Re: Nominations for Appointment to the EAC --please convey the results simultaneously to the Commissioners.

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Sent: Thursday, August 5, 2021, 4:14 PM
To: Juana Silverio; Mauro Morales
Cc: David Ganz
Subject: RE: Nominations for Appointment to the EAC --please convey the results simultaneously to the Commissioners.

Mauro will wait for the Conservative caucus and will send the results together in the same email announcement.
Norma

From: Juana Silverio <jsilverio@usccr.gov>
Sent: Thursday, August 5, 2021 3:07 PM
To: Norma Cantu <ncantu@usccr.gov>; Mauro Morales <mmorales@usccr.gov>
Cc: David Ganz <dganz@usccr.gov>
Subject: RE: Nominations for Appointment to the EAC --please convey the results simultaneously to the Commissioners.

So we are sharing the strike or the nominee we will confirm by vote?

From: Norma Cantu <ncantu@usccr.gov>
Sent: Thursday, August 5, 2021 4:05 PM
To: Mauro Morales <mmorales@usccr.gov>; Juana Silverio <jsilverio@usccr.gov>
Cc: David Ganz <dganz@usccr.gov>
Subject: RE: Nominations for Appointment to the EAC --please convey the results simultaneously to the Commissioners.

AMERICAN OVERSIGHT

Per David Kladney's request, I ask the Staff Director to share out the results of the caucus votes simultaneously.
Norma

From: Mauro Morales <mmorales@usccr.gov>
Sent: Wednesday, August 4, 2021 11:25 AM
To: Juana Silverio <jsilverio@usccr.gov>
Cc: Norma Cantu <ncantu@usccr.gov>; David Ganz <dganz@usccr.gov>
Subject: RE: Nominations for Appointment to the EAC

That is a good idea and each caucus should send me their final selection. There are no real procedures since this is the first time we've done this. It would be simpler if each caucus provides me with their selection rather than each commissioner provide me their individual vote on the different candidates that I would then have to account for and tally. I shouldn't have a part of the caucus votes for the final candidates. Each caucus should make their own selection and then send it to me which I can then schedule for a final vote by all Commissioners to send to the EAC.

From: Juana Silverio <jsilverio@usccr.gov>
Sent: Wednesday, August 4, 2021 11:10 AM
To: Mauro Morales <mmorales@usccr.gov>
Cc: Norma Cantu <ncantu@usccr.gov>
Subject: RE: Nominations for Appointment to the EAC

Should we remind them to send their "strike" no latr than COB tomorrow?

From: Mauro Morales <mmorales@usccr.gov>
Sent: Tuesday, August 3, 2021 5:36 PM
To: Commissioners <Commissioners@usccr.gov>
Cc: CommissionerAssistants <CommissionerAssistants@usccr.gov>; David Ganz <dganz@usccr.gov>
Subject: Nominations for Appointment to the EAC

Commissioners,

Pursuant to the AI voted on during the April 30th Business meeting, you have nominated the following individuals to the Election Assistance Commission (EAC):

Commissioners Cantu, Adegbile, Kladney and Yaki have nominated the following individuals to the EAC:

Commissioner Michael Yaki;
Ms. Allison Riggs , Co-Executive Director, Southern Coalition for Social Justice.

Commissioners Adams, Gilchrist, Heriot and Kirsanow have nominated the following individuals to the EAC:

Commissioner Christian Adams;

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Cleta Michell, Chair, Conservative Partnership Institute Election Integrity Network.

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Mauro Morales
Staff Director
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P: 202-376-7796| F: 202-376-7672
Mmorales@usccr.gov
http://usccr.gov/
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425

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Date : 8/6/2021 12:53:31 PM
From : "Mauro Morales" mmorales@usccr.gov
To : "Carissa Mulder" CMulder@usccr.gov
Cc : "Juana Silverio" jsilverio@usccr.gov, "David Ganz" dganz@usccr.gov
Subject : EAC Selection
Attachment : image001.gif;image002.gif;

Carissa,

Will the conservative caucus be informing me when they have made their selection of one of the two candidates to the EAC? I have received the selection from the progressive caucus. I intend to announce the selections in a joint email so both sides can see each other's final selection at the same time. I will then schedule a vote to confirm the two selections to send to the EAC. Per the preference of Commissioners, I can schedule the confirming vote either as a notational vote or as a regular vote on August 20th. Thank you for your assistance.

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Date : 8/6/2021 1:13:46 PM
From : "Carissa Mulder" CMulder@usccr.gov
To : "Mauro Morales" mmorales@usccr.gov
Cc : "Juana Silverio" jsilverio@usccr.gov, "David Ganz" dganz@usccr.gov
Subject : Re: EAC Selection
Attachment : image001.gif;image002.gif;

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Sorry, I thought the vote decision was coming first! I will check with them and let you know. Thanks!

From: Mauro Morales
Sent: Friday, August 6, 2021 12:53:31 PM
To: Carissa Mulder
Cc: Juana Silverio; David Ganz
Subject: EAC Selection

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Washington D.C. 20425

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Date : 8/6/2021 1:17:10 PM
From : "Carissa Mulder" CMulder@usccr.gov
To : "pkirsanow@beneschlaw.com" pkirsanow@beneschlaw.com, "Gail Heriot" gheriot@me.com, "stephen gilchrist" thegilchristassociates@gmail.com, "Christian Adams" adams@electionlawcenter.com, "Alexander Heideman" aheideman@usccr.gov, "John Mashburn" jmashburn@usccr.gov, "Thomas Simuel" tsimuel@usccr.gov
Cc : "Peter Kirsanow" pkirsanow@usccr.gov, "Gail Heriot" gheriot@usccr.gov, "Stephen Gilchrist" sgilchrist@usccr.gov, "J. Christian Adams" jadams@usccr.gov
Subject : Fw: Nominations for Appointment to the EAC
Attachment : image001.gif;image002.gif;

Hi everyone,

Mauro emailed and asked if the conservative commissioners have selected their EAC nominee. He said the progressives have notified him of their selection, and once we notify him of ours, he will circulate either a notational vote or arrange for it to be voted on at the August business meeting.

Christian, you are the voting expert - do you think Yaki or Allison Riggs is a less damaging choice?

Thanks!

From: Mauro Morales
Sent: Tuesday, August 3, 2021 5:36 PM
To: Commissioners
Cc: CommissionerAssistants; David Ganz
Subject: Nominations for Appointment to the EAC

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Commissioners Cantu, Adegbile, Kladney and Yaki have nominated the following individuals to the EAC:

- Commissioner Michael Yaki;
- Ms. Allison Riggs , Co-Executive Director, Southern Coalition for Social Justice.

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AMERICAN OVERSIGHT

- Commissioner Christian Adams;
- Cleta Michell, Chair, Conservative Partnership Institute Election Integrity Network.

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Date : 8/6/2021 1:24:52 PM
From : "Mauro Morales" mmorales@usccr.gov
To : "Carissa Mulder" CMulder@usccr.gov
Cc : "Juana Silverio" jsilverio@usccr.gov, "David Ganz" dganz@usccr.gov
Subject : RE: EAC Selection
Attachment : image001.gif;image002.gif;

As I understand the AI, each side must make a final selection from the other's two nominations. The final two selections then go forward to be ratified with a vote from all Commissioners.

AI language:

Section 1.
.01 Any authority specifically granted the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Commission as a whole by majority vote.

.02 Any authority specifically granted the Staff Director of the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Staff Director.

.03 Any authority specifically granted the Chair of the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Chair.

Section 2
.02
(1) For the two (2) appointments to the U.S. Election Assistance Commission, the members appointed by Democratic authorities shall nominate two individuals who are ready, willing, and able to serve, and the members appointed by the Republican authorities shall nominate two individuals who are ready, willing, and able to serve.

(2) The members appointed by the Democratic authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Democratic authorities

(3) The members selected shall be placed in nomination and ratified in conformance with Section 1.

AMERICAN OVERSIGHT

From: Carissa Mulder
Sent: Friday, August 06, 2021 1:14 PM
To: Mauro Morales <mmorales@usccr.gov>
Cc: Juana Silverio <jsilverio@usccr.gov>; David Ganz <dganz@usccr.gov>
Subject: Re: EAC Selection

Hi Mauro,

Sorry, I thought the vote decision was coming first! I will check with them and let you know. Thanks!

From: Mauro Morales
Sent: Friday, August 6, 2021 12:53:31 PM
To: Carissa Mulder
Cc: Juana Silverio; David Ganz
Subject: EAC Selection

Carissa,

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Date : 8/6/2021 1:31:27 PM
From : "John Mashburn" jmashburn@usccr.gov
To : "Gail Heriot" gheriot@me.com, "Carissa Mulder" CMulder@usccr.gov
Cc : "pkirsanow@beneschlaw.com" pkirsanow@beneschlaw.com, "stephen gilchrist" thegilchristassociates@gmail.com, "Christian Adams" adams@electionlawcenter.com, "Alexander Heideman" aheideman@usccr.gov, "Thomas Simuel" tsimuel@usccr.gov, "Peter Kirsanow" pkirsanow@usccr.gov, "Gail Heriot" gheriot@usccr.gov, "Stephen Gilchrist" sgilchrist@usccr.gov, "J. Christian Adams" jadams@usccr.gov
Subject : Re: [EXTERNAL] Re: Nominations for Appointment to the EAC

Allison Riggs

https://southerncoalition.org/staff/allison-riggs/

From: Gail Heriot <gheriot@me.com>
Date: Friday, August 6, 2021 at 1:23 PM
To: Carissa Mulder <CMulder@usccr.gov>
Cc: "pkirsanow@beneschlaw.com" <pkirsanow@beneschlaw.com>, stephen gilchrist <thegilchristassociates@gmail.com>, Christian Adams <adams@electionlawcenter.com>, Alexander Heideman <aheideman@usccr.gov>, John Mashburn <jmashburn@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>, Peter Kirsanow <pkirsanow@usccr.gov>, Gail Heriot <gheriot@usccr.gov>, Stephen Gilchrist <sgilchrist@usccr.gov>, "J. Christian Adams" <jadams@usccr.gov>
Subject: [EXTERNAL] Re: Nominations for Appointment to the EAC

> CAUTION: This email is from outside USCCR.

they vetoed. Yaki at least has an incentive to tell us if it's Cleta. If it is Cleta, such that Christian will be the appointee, it might be seen as accommodating to let Yaki be re-appointed. If he declines to say, that will be evidence that they vetoed Christian.

Gail Heriot
Professor of Law
University of San Diego

> On Aug 6, 2021, at 1:17 PM, Carissa Mulder <CMulder@usccr.gov> wrote:
>
> Hi everyone,

AMERICAN OVERSIGHT

Mauro emailed and asked if the conservative commissioners have selected their EAC nominee. He said the progressives have notified him of their selection, and once we notify him of ours, he will circulate either a notational vote or arrange for it to be voted on at the August business meeting.

Christian, you are the voting expert - do you think Yaki or Allison Riggs is a less damaging choice?

Thanks!

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Sent: Tuesday, August 3, 2021 5:36 PM
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Cc: CommissionerAssistants; David Ganz
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<image002.gif>

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Date : 8/6/2021 1:41:51 PM
From : "David Ganz" dganz@usccr.gov
To : "Mauro Morales" mmorales@usccr.gov, "Carissa Mulder" CMulder@usccr.gov
Cc : "Juana Silverio" jsilverio@usccr.gov
Subject : Re: EAC Selection
Attachment : image002.gif;image002.gif;image001.gif;

That is my understanding of the Administrative Instruction as well.

From: Mauro Morales <mmorales@usccr.gov>
Sent: Friday, August 6, 2021, 1:24 PM
To: Carissa Mulder
Cc: Juana Silverio; David Ganz
Subject: RE: EAC Selection

As I understand the AI, each side must make a final selection from the other's two nominations. The final two selections then go forward to be ratified with a vote from all Commissioners.

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Section 2
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AMERICAN OVERSIGHT

authorities, and the members appointed by the Republican authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Democratic authorities

(3) The members selected shall be placed in nomination and ratified in conformance with Section 1.

From: Carissa Mulder
Sent: Friday, August 06, 2021 1:14 PM
To: Mauro Morales <mmorales@usccr.gov>
Cc: Juana Silverio <jsilverio@usccr.gov>; David Ganz <dganz@usccr.gov>
Subject: Re: EAC Selection

Hi Mauro,

Sorry, I thought the vote decision was coming first! I will check with them and let you know. Thanks!

From: Mauro Morales
Sent: Friday, August 6, 2021 12:53:31 PM
To: Carissa Mulder
Cc: Juana Silverio; David Ganz
Subject: EAC Selection

Carissa,

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Date : 8/6/2021 1:54:03 PM
From : "John Mashburn" jmashburn@usccr.gov
To : "stephen gilchrist" thegilchristassociates@gmail.com
Cc : "Gail Heriot" gheriot@me.com, "Carissa Mulder" CMulder@usccr.gov, "Peter Kirsanow" pkirsanow@beneschlaw.com, "Christian Adams" adams@electionlawcenter.com, "Alexander Heideman" aheideman@usccr.gov, "Thomas Simuel" tsimuel@usccr.gov, "Peter Kirsanow" pkirsanow@usccr.gov, "Gail Heriot" gheriot@usccr.gov, "Stephen Gilchrist" sgilchrist@usccr.gov, "J. Christian Adams" jadams@usccr.gov
Subject : Re: [EXTERNAL] Re: Nominations for Appointment to the EAC

Yes – better her than Yaki.

From: stephen gilchrist <thegilchristassociates@gmail.com>
Date: Friday, August 6, 2021 at 1:51 PM
To: John Mashburn <jmashburn@usccr.gov>
Cc: Gail Heriot <gheriot@me.com>, Carissa Mulder <CMulder@usccr.gov>, Peter Kirsanow <pkirsanow@beneschlaw.com>, Christian Adams <adams@electionlawcenter.com>, Alexander Heideman <aheideman@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>, Peter Kirsanow <pkirsanow@usccr.gov>, Gail Heriot <gheriot@usccr.gov>, Stephen Gilchrist <sgilchrist@usccr.gov>, "J. Christian Adams" <jadams@usccr.gov>
Subject: Re: [EXTERNAL] Re: Nominations for Appointment to the EAC

> CAUTION: This email is from outside USCCR.

On Fri, Aug 6, 2021, 1:31 PM John Mashburn <jmashburn@usccr.gov> wrote:

> Allison Riggs
>
> https://southerncoalition.org/staff/allison-riggs/
>
> ---
>
> **From:** Gail Heriot <gheriot@me.com>
> **Date:** Friday, August 6, 2021 at 1:23 PM
> **To:** Carissa Mulder <CMulder@usccr.gov>
> **Cc:** "pkirsanow@beneschlaw.com" <pkirsanow@beneschlaw.com>, stephen gilchrist <thegilchristassociates@gmail.com>, Christian Adams <adams@electionlawcenter.com>, Alexander Heideman <aheideman@usccr.gov>, John Mashburn <jmashburn@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>, Peter Kirsanow <pkirsanow@usccr.gov>, Gail Heriot <gheriot@usccr.gov>, Stephen Gilchrist <sgilchrist@usccr.gov>, "J. Christian Adams" <jadams@usccr.gov>

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Professor of Law
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>
> Christian, you are the voting expert - do you think Yaki or Allison Riggs is a less damaging choice?
>
> Thanks!
>
> ---
>
> **From:** Mauro Morales
> **Sent:** Tuesday, August 3, 2021 5:36 PM
> **To:** Commissioners
> **Cc:** CommissionerAssistants; David Ganz
> **Subject:** Nominations for Appointment to the EAC
>
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AMERICAN OVERSIGHT

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Date : 8/9/2021 9:37:49 AM
From : "Carissa Mulder" CMulder@usccr.gov
To : "pkirsanow@beneschlaw.com" pkirsanow@beneschlaw.com, "Gail Heriot" gheriot@me.com, "stephen gilchrist" thegilchristassociates@gmail.com, "Christian Adams" adams@electionlawcenter.com, "Thomas Simuel" tsimuel@usccr.gov, "John Mashburn" jmashburn@usccr.gov, "Alexander Heideman" aheideman@usccr.gov
Subject : EAC Discussion

Carissa Mulder is inviting you to a scheduled Zoom meeting.

Topic: EAC Discussion
Time: Aug 9, 2021 11:00 AM Eastern Time (US and Canada)

Join Zoom Meeting
https://us02web.zoom.us/j/82752150046?pwd=a3JVckRINHhqY21ZYkpDNVcybFdZQT09

Meeting ID: 827 5215 0046
Passcode: 154517
One tap mobile
+16465588656,,82752150046# US (New York)
+13017158592,,82752150046# US (Washington DC)

Dial by your location
+1 646 558 8656 US (New York)
+1 301 715 8592 US (Washington DC)
+1 312 626 6799 US (Chicago)
+1 669 900 6833 US (San Jose)
+1 253 215 8782 US (Tacoma)
+1 346 248 7799 US (Houston)
855 880 1246 US Toll-free
877 369 0926 US Toll-free
833 548 0276 US Toll-free
833 548 0282 US Toll-free
Meeting ID: 827 5215 0046
Find your local number: https://us02web.zoom.us/u/kcE59a6V2f

Join by SIP
82752150046@zoomcrc.com

Join by H.323
162.255.37.11 (US West)
162.255.36.11 (US East)
115.114.131.7 (India Mumbai)
115.114.115.7 (India Hyderabad)

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213.19.144.110 (Amsterdam Netherlands)
213.244.140.110 (Germany)
103.122.166.55 (Australia Sydney)
103.122.167.55 (Australia Melbourne)
149.137.40.110 (Singapore)
64.211.144.160 (Brazil)
149.137.68.253 (Mexico)
69.174.57.160 (Canada Toronto)
65.39.152.160 (Canada Vancouver)
207.226.132.110 (Japan Tokyo)
149.137.24.110 (Japan Osaka)
Meeting ID: 827 5215 0046
Passcode: 154517

AMERICAN OVERSIGHT

Date : 8/9/2021 9:38:04 AM
From : "Alexander Heideman" aheideman@usccr.gov
To : "Carissa Mulder" CMulder@usccr.gov
Subject : Accepted: EAC Discussion

AMERICAN OVERSIGHT

Date : 8/9/2021 9:28:31 AM
From : "Carissa Mulder" CMulder@usccr.gov
To : "Gail Heriot" gheriot@usccr.gov, "stephen gilchrist" thegilchristassociates@gmail.com
Cc : "Christian Adams" adams@electionlawcenter.com, "Gail Heriot" gheriot@me.com, "John Mashburn" jmashburn@usccr.gov, "Peter Kirsanow" pkirsanow@Beneschlaw.com, "Alexander Heideman" aheideman@usccr.gov, "Thomas Simuel" tsimuel@usccr.gov, "Peter Kirsanow" pkirsanow@usccr.gov, "Stephen Gilchrist" sgilchrist@usccr.gov, "J. Christian Adams" jadams@usccr.gov
Subject : Re: [EXTERNAL] Re: Nominations for Appointment to the EAC

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Sent: Monday, August 9, 2021 8:55:45 AM
To: stephen gilchrist
Cc: Christian Adams; Gail Heriot; John Mashburn; Carissa Mulder; Peter Kirsanow; Alexander Heideman; Thomas Simuel; Peter Kirsanow; Stephen Gilchrist; J. Christian Adams
Subject: Re: [EXTERNAL] Re: Nominations for Appointment to the EAC

Should we do a zoom at 11:00 ET?

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From: Mauro Morales
Sent: Tuesday, August 3, 2021 5:36 PM
To: Commissioners
Cc: CommissionerAssistants; David Ganz
Subject: Nominations for Appointment to the EAC

Commissioners,

Pursuant to the AI voted on during the April 30th Business meeting, you have nominated the following individuals to the Election Assistance Commission (EAC):

Commissioners Cantu, Adegbile, Kladney and Yaki have nominated the following individuals to the EAC:

- Commissioner Michael Yaki;
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AMERICAN OVERSIGHT

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Staff Director
U.S. Commission on Civil Rights
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Mmorales@usccr.gov
http://usccr.gov/

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1331 Pennsylvania
Avenue, NW Suite 1150
Washington D.C. 20425

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Cc: CommissionerAssistants; David Ganz
Subject: Nominations for Appointment to the EAC

Commissioners,

Pursuant to the AI voted on during the April 30th Business meeting, you have nominated the following individuals to the Election Assistance Commission (EAC):

Commissioners Cantu, Adegbile, Kladney and Yaki have nominated the following individuals to the

AMERICAN OVERSIGHT

EAC:

- Commissioner Michael Yaki;
- Ms. Allison Riggs , Co-Executive Director, Southern Coalition for Social Justice.

Commissioners Adams, Gilchrist, Heriot and Kirsanow have nominated the following individuals to the EAC:

- Commissioner Christian Adams;
- Cleta Michell, Chair, Conservative Partnership Institute Election Integrity Network.

Under the AI adopted by

AMERICAN OVERSIGHT

Commissioners, the members appointed by the Democratic authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Democratic authorities. The final members selected shall be placed in nomination and ratified by a majority vote. Please inform me how you would like to proceed for a majority vote either by placing it on the agenda for the next USCCR business meeting or by a notational vote.

Mauro Morales

Staff Director

U.S. Commission on Civil Rights

AMERICAN OVERSIGHT

P: 202-376-7796|
F: 202-376-7672

Mmorales@usccr.gov

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1150

Washington D.C.
20425

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<image001.gif>

<image002.gif>

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AMERICAN OVERSIGHT

Date : 8/9/2021 9:45:48 AM
From : "John Mashburn" jmashburn@usccr.gov
To : "Carissa Mulder" CMulder@usccr.gov
Subject : Accepted: EAC Discussion

AMERICAN OVERSIGHT

Date : 8/9/2021 11:31:35 AM
From : "Carissa Mulder" CMulder@usccr.gov
To : "Mauro Morales" mmorales@usccr.gov
Subject : EAC

Good morning, Mauro:

The conservative commissioners have selected Commissioner Yaki for the EAC.

Thank you,

Carissa

AMERICAN OVERSIGHT

Date : 8/9/2021 1:01:44 PM
From : "Irena Vidulovic" ividulovic@usccr.gov
To : "Debo P. Adegbile" dadegbile@usccr.gov, "Adegbile, Debo" Debo.Adegbile@wilmerhale.com
Cc : "Zervoudis, Flor" Flor.Zervoudis@wilmerhale.com
Subject : UPDATED TO DO LIST

Adegbile,

Looking forward to our meeting:

1. Financial Disclosure Form
2. EAC Submissions (we submitted Cleta as a caucus)
3. Senator Schatz request fro Fines and Fees (please review)
4. Written Documents from Senator Warren's Office (this week)
5. August Business Meeting: Bail Reform vote + SAC's

Irena Vidulovic
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AMERICAN OVERSIGHT

Date : 8/9/2021 2:01:16 PM
From : "David Ganz" dganz@usccr.gov
To : "Sheryl Cozart" sccozart@usccr.gov
Subject : FW: Nominations for Appointment to the EAC --please convey the results simultaneously to the Commissioners.
Attachment : image001.gif;image002.jpg;

In your memo you concluded "you may exercise your appointment authority to fill those vacancies anytime between August 9, 2021, and December 27, 2021."

If Mauro doesn't make an appointment by December 27, can a meeting occur? Under the statute, as long as quorum is present, there can be vacancies, right? I researched whether there has ever been a lawsuit to enjoin or force the President to make an appointment, but couldn't find anything. See https://www.pogo.org/analysis/2019/08/the-dangers-of-chronic-federal-vacancies/.

From: Mauro Morales <mmorales@usccr.gov>
Sent: Thursday, August 5, 2021 5:45 PM
To: David Ganz <dganz@usccr.gov>; Norma Cantu <ncantu@usccr.gov>; Juana Silverio <jsilverio@usccr.gov>
Subject: RE: Nominations for Appointment to the EAC --please convey the results simultaneously to the Commissioners.

I agree that I will not share the selections with either caucus but send the results together in the same email announcement.

From: David Ganz <dganz@usccr.gov>
Sent: Thursday, August 5, 2021 4:16 PM
To: Norma Cantu <ncantu@usccr.gov>; Juana Silverio <jsilverio@usccr.gov>; Mauro Morales <mmorales@usccr.gov>
Subject: Re: Nominations for Appointment to the EAC --please convey the results simultaneously to the Commissioners.

I'm tracking these messages. If any issues comes up, please let me know. Thanks,

David

From: Norma Cantu <ncantu@usccr.gov>
Sent: Thursday, August 5, 2021, 4:14 PM
To: Juana Silverio; Mauro Morales
Cc: David Ganz
Subject: RE: Nominations for Appointment to the EAC --please convey the results simultaneously to the Commissioners.

Mauro will wait for the Conservative caucus and will send the results together in the same email announcement.
Norma

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From: Juana Silverio <jsilverio@usccr.gov>
Sent: Thursday, August 5, 2021 3:07 PM
To: Norma Cantu <ncantu@usccr.gov>; Mauro Morales <mmorales@usccr.gov>
Cc: David Ganz <dganz@usccr.gov>
Subject: RE: Nominations for Appointment to the EAC --please convey the results simultaneously to the Commissioners.

So we are sharing the strike or the nominee we will confirm by vote?

From: Norma Cantu <ncantu@usccr.gov>
Sent: Thursday, August 5, 2021 4:05 PM
To: Mauro Morales <mmorales@usccr.gov>; Juana Silverio <jsilverio@usccr.gov>
Cc: David Ganz <dganz@usccr.gov>
Subject: RE: Nominations for Appointment to the EAC --please convey the results simultaneously to the Commissioners.

Per David Kladney's request, I ask the Staff Director to share out the results of the caucus votes simultaneously.
Norma

From: Mauro Morales <mmorales@usccr.gov>
Sent: Wednesday, August 4, 2021 11:25 AM
To: Juana Silverio <jsilverio@usccr.gov>
Cc: Norma Cantu <ncantu@usccr.gov>; David Ganz <dganz@usccr.gov>
Subject: RE: Nominations for Appointment to the EAC

That is a good idea and each caucus should send me their final selection. There are no real procedures since this is the first time we've done this. It would be simpler if each caucus provides me with their selection rather than each commissioner provide me their individual vote on the different candidates that I would then have to account for and tally. I shouldn't have a part of the caucus votes for the final candidates. Each caucus should make their own selection and then send it to me which I can then schedule for a final vote by all Commissioners to send to the EAC.

From: Juana Silverio <jsilverio@usccr.gov>
Sent: Wednesday, August 4, 2021 11:10 AM
To: Mauro Morales <mmorales@usccr.gov>
Cc: Norma Cantu <ncantu@usccr.gov>
Subject: RE: Nominations for Appointment to the EAC

Should we remind them to send their "strike" no latr than COB tomorrow?

From: Mauro Morales <mmorales@usccr.gov>
Sent: Tuesday, August 3, 2021 5:36 PM
To: Commissioners <Commissioners@usccr.gov>
Cc: CommissionerAssistants <CommissionerAssistants@usccr.gov>; David Ganz <dganz@usccr.gov>
Subject: Nominations for Appointment to the EAC

Commissioners,

AMERICAN OVERSIGHT

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Commissioners Cantu, Adegbile, Kladney and Yaki have nominated the following individuals to the EAC:

Commissioner Michael Yaki;
Ms. Allison Riggs , Co-Executive Director, Southern Coalition for Social Justice.

Commissioners Adams, Gilchrist, Heriot and Kirsanow have nominated the following individuals to the EAC:

Commissioner Christian Adams;
Cleta Michell, Chair, Conservative Partnership Institute Election Integrity Network.

Under the AI adopted by Commissioners, the members appointed by the Democratic authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Democratic authorities. The final members selected shall be placed in nomination and ratified by a majority vote. Please inform me how you would like to proceed for a majority vote either by placing it on the agenda for the next USCCR business meeting or by a notational vote.

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02212

AMERICAN OVERSIGHT

Date : 8/10/2021 2:57:39 PM
From : "Mauro Morales" mmorales@usccr.gov
To : "Commissioners" Commissioners@usccr.gov
Cc : "CommissionerAssistants" CommissionerAssistants@usccr.gov, "David Ganz" dganz@usccr.gov
Subject : EAC Final Selections
Attachment : Twitter from Outlook support page.gif;FB icon.gif;

Commissioners,

Pursuant to the AI voted on during the April 30th Business meeting, I received the following names for appointment the Election Assistance Commission (EAC):

Commissioners Cantu, Adegbile, Kladney and Yaki have selected for appointment to the EAC:

- Cleta Michell, Chair, Conservative Partnership Institute Election Integrity Network.

Commissioners Adams, Gilchrist, Heriot and Kirsanow have selected for appointment to the EAC:

- Commissioner Michael Yaki;

Under the AI adopted by Commissioners, these two members selected shall be placed in nomination and ratified by a majority vote. Please inform me how you would like to proceed for a majority vote either by placing it on the agenda for the next USCCR business meeting or by a notational vote. Thank you.

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Date : 8/10/2021 4:40:11 PM
From : "J. Christian Adams" jadams@usccr.gov
To : "Mauro Morales" mmorales@usccr.gov
Subject : Re: EAC Final Selections
Attachment : Twitter from Outlook support page.gif;FB icon.gif;

We can vote on it at the next meeting.

From: Mauro Morales
Sent: Tuesday, August 10, 2021 2:57:39 PM
To: Commissioners
Cc: CommissionerAssistants; David Ganz
Subject: EAC Final Selections

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Date : 8/10/2021 4:52:24 PM
From : "Thomas Simuel" tsimuel@usccr.gov
To : "Mauro Morales" mmorales@usccr.gov
Cc : "Stephen Gilchrist" sgilchrist@usccr.gov, "stephen gilchrist" thegilchristassociates@gmail.com
Subject : RE: EAC Final Selections

Hey Mauro,

Commissioner Gilchrist prefer to have the EAC vote at the business meeting.

Thanks,

Thomas

-------- Original message --------
From: Mauro Morales <mmorales@usccr.gov>
Date: 8/10/21 2:57 PM (GMT-05:00)
To: Commissioners <Commissioners@usccr.gov>
Cc: CommissionerAssistants <CommissionerAssistants@usccr.gov>, David Ganz <dganz@usccr.gov>
Subject: EAC Final Selections

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Mauro Morales
Staff Director

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Date : 8/10/2021 5:52:30 PM
From : "Norma Cantu" ncantu@usccr.gov
To : "Mauro Morales" mmorales@usccr.gov
Cc : "David Ganz" dganz@usccr.gov, "Juana Silverio" jsilverio@usccr.gov
Subject : RE: EAC Final Selections
Attachment : image001.gif;image002.gif;

Dear Mauro,
Thank you for the news. Each caucus has performed its duty under the AI.
I see no need to add this to the business meeting.
Notational vote will suffice.
Norma

From: Mauro Morales <mmorales@usccr.gov>
Sent: Tuesday, August 10, 2021 1:58 PM
To: Commissioners <Commissioners@usccr.gov>
Cc: CommissionerAssistants <CommissionerAssistants@usccr.gov>; David Ganz <dganz@usccr.gov>
Subject: EAC Final Selections

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U.S. Commission on Civil Rights

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Date : 8/11/2021 10:23:46 AM
From : "Irena Vidulovic" ividulovic@usccr.gov
To : "Debo P. Adegbile" dadegbile@usccr.gov, "Adegbile, Debo" Debo.Adegbile@wilmerhale.com
Cc : "Zervoudis, Flor" Flor.Zervoudis@wilmerhale.com
Subject : Re: UPDATED TO DO LIST

Adegbile,

Wanted to send you an updated TO DO LIST. I have finalized the Bail Reform project and have send the redline version to the SA's. I also sent your quote to Sen. Schatz's office.

1. Financial Disclosure Form (this week)
2. ~~EAC Submissions (we submitted Cleta as a caucus)~~
3. ~~Senator Schatz request fro Fines and Fees (please review)~~
4. Written Documents from Senator Warren's Office (this week)
5. August Business Meeting: Bail Reform vote + SAC's

From: Irena Vidulovic
Sent: Monday, August 9, 2021 1:01:44 PM
To: Debo P. Adegbile; Adegbile, Debo
Cc: Zervoudis, Flor
Subject: UPDATED TO DO LIST

Adegbile,

Looking forward to our meeting:

1. Financial Disclosure Form
2. EAC Submissions (we submitted Cleta as a caucus)
3. Senator Schatz request fro Fines and Fees (please review)
4. Written Documents from Senator Warren's Office (this week)
5. August Business Meeting: Bail Reform vote + SAC's

Irena Vidulovic
Special Assistant to Commissioner Debo P. Adegbile
U.S. Commission on Civil Rights
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ividulovic@usccr.gov
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Date : 8/11/2021 12:45:25 PM
From : "Michael Yaki" MYaki@usccr.gov
To : "Mauro Morales" mmorales@usccr.gov
Subject : Re: EAC Final Selections
Attachment : Twitter from Outlook support page.gif;FB icon.gif;

Mauro

Hold off. I may be withdrawing my name from consideration.

From: Mauro Morales
Sent: Tuesday, August 10, 2021 2:57:39 PM
To: Commissioners
Cc: CommissionerAssistants; David Ganz
Subject: EAC Final Selections

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Date : 8/12/2021 8:45:35 AM
From : "Mauro Morales" mmorales@usccr.gov
To : "David Ganz" dganz@usccr.gov
Subject : Fwd: EAC Final Selections
Attachment : FB icon.gif;Twitter from Outlook support page.gif;

FYI. Not sure if he will decide to actually withdraw.

Sent from my iPhone

Begin forwarded message:

> **From:** Mauro Morales <mmorales@usccr.gov>
> **Date:** August 12, 2021 at 6:44:21 AM MDT
> **To:** Michael Yaki <MYaki@usccr.gov>
> **Subject: Re: EAC Final Selections**
>
> Of course. I recommend that you inform the chair as soon as you decide. My interpretation is that we will have to restart the process from the beginning because the A.I. requires a selection from two candidates. The A.I. is silent on a withdrawal at this final stage. Since you were selected and the other candidate was not, they should not become the final nominee by default. The A.I. is clear that each side gets to make a final selection from the two candidates submitted.
>
> Sent from my iPhone
>
> > On Aug 11, 2021, at 10:45 AM, Michael Yaki <MYaki@usccr.gov> wrote:
> >
> > Mauro
> >
> > Hold off. I may be withdrawing my name from consideration.
> >
> > ---
> >
> > **From:** Mauro Morales
> > **Sent:** Tuesday, August 10, 2021 2:57:39 PM
> > **To:** Commissioners
> > **Cc:** CommissionerAssistants; David Ganz
> > **Subject:** EAC Final Selections
> >
> > Commissioners,

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Date : 8/12/2021 8:44:21 AM
From : "Mauro Morales" mmorales@usccr.gov
To : "Michael Yaki" MYaki@usccr.gov
Subject : Re: EAC Final Selections
Attachment : Twitter from Outlook support page.gif;FB icon.gif;

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> **Subject:** EAC Final Selections
>
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AMERICAN OVERSIGHT

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Date : 8/12/2021 10:19:19 AM
From : "David Ganz" dganz@usccr.gov
To : "Mauro Morales" mmorales@usccr.gov
Subject : RE: EAC Final Selections

I agree that under the AI, the process should be restarted if Yaki withdrawals.

From: Mauro Morales <mmorales@usccr.gov>
Sent: Thursday, August 12, 2021 8:46 AM
To: David Ganz <dganz@usccr.gov>
Subject: Fwd: EAC Final Selections

FYI. Not sure if he will decide to actually withdraw.

Sent from my iPhone

Begin forwarded message:

> **From:** Mauro Morales <mmorales@usccr.gov>
> **Date:** August 12, 2021 at 6:44:21 AM MDT
> **To:** Michael Yaki <MYaki@usccr.gov>
> **Subject: Re: EAC Final Selections**
>
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> > **To:** Commissioners
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AMERICAN OVERSIGHT

Date : 8/18/2021 5:13:04 PM
From : "Juana Silverio" jsilverio@usccr.gov
To : "Mauro Morales" mmorales@usccr.gov, "John Mashburn" jmashburn@usccr.gov
Cc : "Thomas Simuel" tsimuel@usccr.gov, "Alexander Heideman" aheideman@usccr.gov, "Carissa Mulder" CMulder@usccr.gov, "Norma Cantu" ncantu@usccr.gov
Subject : Re: EAC Final Selections

Thanks John. You are correct, the item is not on the agenda for Friday.

There were a few concerns raised on process before confirming the candidates to the EAC on behalf of the Commission. Please stand by snd advise your commissioners that further communication is forthcoming by the Chairwoman.

Please let us know if you have any further questions. We greatly appreciate your patience.

Juana

--
Juana Silverio (she/her/ella)
Special Assistant to Commissioner Norma V. Cantú
U.S. Commission on Civil Rights
E: jsilverio@usccr.gov
http://usccr.gov/
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425
Follow Us on Twitter & Facebook:

#USCCR

From: Mauro Morales
Sent: Wednesday, August 18, 2021 4:41:49 PM
To: John Mashburn
Cc: Juana Silverio; Thomas Simuel; Alexander Heideman; Carissa Mulder
Subject: Re: EAC Final Selections

That is a good question. It is a decision for Commissioners in consultation with the Chair to decide how they wish to proceed. Adams is welcome to make a motion to amend the agenda to request a discussion and a vote. If the majority supports his motion it can be added to agenda. In the alternative, if Commissioners desire to proceed by notational vote and no one objects then a notational vote can occur. As I have requested previously, please advise me how you wish to proceed. I recommend Commissioners express their desire to the Chair since the Chair controls the agenda.

Sent from my iPhone

AMERICAN OVERSIGHT

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Staff Director
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P: 202-376-7796| F: 202-376-7672

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Date : 8/18/2021 5:17:34 PM
From : "John Mashburn" jmashburn@usccr.gov
To : "Christian Adams" a@electionlawcenter.com, "Stephen Gilchrist" sgilchrist@usccr.gov, "Peter Kirsanow" pkirsanow@usccr.gov, "Gail Heriot" gheriot@usccr.gov
Cc : "Thomas Simuel" tsimuel@usccr.gov, "Alexander Heideman" aheideman@usccr.gov, "Carissa Mulder" CMulder@usccr.gov
Subject : Fw: EAC Final Selections

FYI to all

From: Juana Silverio
Sent: Wednesday, August 18, 2021 5:13:04 PM
To: Mauro Morales; John Mashburn
Cc: Thomas Simuel; Alexander Heideman; Carissa Mulder; Norma Cantu
Subject: Re: EAC Final Selections

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Date : 8/18/2021 5:24:36 PM
From : "Gail Heriot" gheriot@usccr.gov
To : "John Mashburn" jmashburn@usccr.gov
Cc : "Christian Adams" a@electionlawcenter.com, "Stephen Gilchrist" sgilchrist@usccr.gov, "Peter Kirsanow" pkirsanow@usccr.gov, "Thomas Simuel" tsimuel@usccr.gov, "Alexander Heideman" aheideman@usccr.gov, "Carissa Mulder" CMulder@usccr.gov
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Hmm … not a good sign.

Gail Heriot
Professor of Law
University of San Diego

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Date : 8/18/2021 7:11:52 PM
From : "Pamela Dunston" Pdunston@usccr.gov
To : "Stanley Carr (ASCD Contractor)" scarr@usccr.gov
Cc : "Michele Ramey" myorkman@usccr.gov
Subject : FW: EAC Final Selections
Attachment : image002.gif;image001.gif;

FYI, This item may be added. We will wait to see if it is added before or added to the agenda at the meeting. Thanks

---

From: Mauro Morales <mmorales@usccr.gov>
Sent: Wednesday, August 18, 2021 4:43 PM
To: TinaLouise Martin <tmartin@usccr.gov>; Pamela Dunston <Pdunston@usccr.gov>; David Ganz <dganz@usccr.gov>
Subject: Fwd: EAC Final Selections

Sent from my iPhone

Begin forwarded message:

> **From:** Mauro Morales <mmorales@usccr.gov>
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> **To:** John Mashburn <jmashburn@usccr.gov>
> **Cc:** Juana Silverio <jsilverio@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>, Alexander Heideman <aheideman@usccr.gov>, Carissa Mulder <CMulder@usccr.gov>
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Date : 8/18/2021 7:29:20 PM
From : "David Ganz" dganz@usccr.gov
To : "Pamela Dunston" Pdunston@usccr.gov, "Mauro Morales" mmorales@usccr.gov, "TinaLouise Martin" tmartin@usccr.gov
Subject : RE: EAC Final Selections

Everyone seems clear on what the Administrative Instructions allow for, but let me know if the Commissioners need anything further on this matter tomorrow.

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Sent: Wednesday, August 18, 2021 7:11 PM
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Cc : "Thomas Simuel" tsimuel@usccr.gov, "Alexander Heideman" aheideman@usccr.gov, "Carissa Mulder" CMulder@usccr.gov
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FYI- Cantu "welcomes" a motion for a vote on EAC nominations

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AMERICAN OVERSIGHT

Date : 8/19/2021 11:32:46 AM
From : "John Mashburn" jmashburn@usccr.gov
To : "Christian Adams" a@electionlawcenter.com, "Stephen Gilchrist" sgilchrist@usccr.gov, "Peter Kirsanow" pkirsanow@usccr.gov, "Gail Heriot" gheriot@usccr.gov
Cc : "Thomas Simuel" tsimuel@usccr.gov, "Alexander Heideman" aheideman@usccr.gov, "Carissa Mulder" CMulder@usccr.gov
Subject : Re: [EXTERNAL] RE: EAC Final Selections

See email I just sent from my USCCR account. Cantu says she would welcome a motion to add EAC vote to tomorrow's agenda

---

From: Christian Adams <a@electionlawcenter.com>
Sent: Wednesday, August 18, 2021 5:29:14 PM
To: John Mashburn; Stephen Gilchrist; Peter Kirsanow; Gail Heriot
Cc: Thomas Simuel; Alexander Heideman; Carissa Mulder
Subject: [EXTERNAL] RE: EAC Final Selections

> CAUTION: This email is from outside USCCR.

This is unbelievable. The "process" was part of the AI we negotiated and voted on. What do you veterans read here?

From: John Mashburn <jmashburn@usccr.gov>
Sent: Wednesday, August 18, 2021 5:18 PM
To: Christian Adams <a@electionlawcenter.com>; Stephen Gilchrist <sgilchrist@usccr.gov>; Peter Kirsanow <pkirsanow@usccr.gov>; Gail Heriot <gheriot@usccr.gov>
Cc: Thomas Simuel <tsimuel@usccr.gov>; Alexander Heideman <aheideman@usccr.gov>; Carissa Mulder <CMulder@usccr.gov>
Subject: Fw: EAC Final Selections

FYI to all

From: Juana Silverio
Sent: Wednesday, August 18, 2021 5:13:04 PM
To: Mauro Morales; John Mashburn
Cc: Thomas Simuel; Alexander Heideman; Carissa Mulder; Norma Cantu
Subject: Re: EAC Final Selections

Thanks John. You are correct, the item is not on the agenda for Friday.

There were a few concerns raised on process before confirming the candidates to the EAC on behalf of the Commission. Please stand by snd advise your commissioners that further communication is forthcoming by the Chairwoman.

Please let us know if you have any further questions. We greatly appreciate your patience.

Juana

AMERICAN OVERSIGHT

--
Juana Silverio (she/her/ella)
Special Assistant to Commissioner Norma V. Cantú
U.S. Commission on Civil Rights
E: jsilverio@usccr.gov
http://usccr.gov/
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425
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From: Mauro Morales
Sent: Wednesday, August 18, 2021 4:41:49 PM
To: John Mashburn
Cc: Juana Silverio; Thomas Simuel; Alexander Heideman; Carissa Mulder
Subject: Re: EAC Final Selections

That is a good question. It is a decision for Commissioners in consultation with the Chair to decide how they wish to proceed. Adams is welcome to make a motion to amend the agenda to request a discussion and a vote. If the majority supports his motion it can be added to agenda. In the alternative, if Commissioners desire to proceed by notational vote and no one objects then a notational vote can occur. As I have requested previously, please advise me how you wish to proceed. I recommend Commissioners express their desire to the Chair since the Chair controls the agenda.

Sent from my iPhone

> On Aug 18, 2021, at 12:57 PM, John Mashburn <jmashburn@usccr.gov> wrote:
>
> This vote is not on the agenda for Friday, and a notational vote was not sent, so where does it stand? Gilchrist and Adams would like a vote at the business meeting and Adams is willing to make a motion to vote on it.
>
> ---
>
> **From:** Mauro Morales <mmorales@usccr.gov>
> **Date:** Tuesday, August 10, 2021 at 2:57 PM
> **To:** Commissioners <Commissioners@usccr.gov>
> **Cc:**
> "CommissionerAssistants@usccr.gov" <CommissionerAssistants@usccr.gov>,
> David Ganz <dganz@usccr.gov>
> **Subject:** EAC Final Selections
>
> Commissioners,
>
> Pursuant to the AI voted on during the April 30th Business meeting, I received the following names for appointment the Election Assistance

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Commission (EAC):

Commissioners Cantu, Adegbile, Kladney and Yaki have selected for appointment to the EAC:

- Cleta Michell, Chair, Conservative Partnership Institute Election Integrity Network.

Commissioners Adams, Gilchrist, Heriot and Kirsanow have selected for appointment to the EAC:

- Commissioner Michael Yaki;

Under the AI adopted by Commissioners, these two members selected shall be placed in nomination and ratified by a majority vote. Please inform me how you would like to proceed for a majority vote either by placing it on the agenda for the next USCCR business meeting or by a notational vote. Thank you.

Mauro Morales
Staff Director
U.S. Commission on Civil Rights
P: 202-376-7796| F: 202-376-7672
Mmorales@usccr.gov
http://usccr.gov/
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425

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Date : 8/19/2021 12:18:44 PM
From : "John Mashburn" jmashburn@usccr.gov
To : "David Ganz" dganz@usccr.gov
Subject : His adopted at April 30, 2021 meeting

Can you send me, or point me to, the official versions/texts of the AIs (including the one on the EAC appointments) that were adopted at the April 30 Bus Mtg?

AMERICAN OVERSIGHT

Date : 8/19/2021 12:39:24 PM
From : "David Ganz" dganz@usccr.gov
To : "John Mashburn" jmashburn@usccr.gov
Subject : RE: His adopted at April 30, 2021 meeting
Attachment : AI on Appointment Authority (general and EAC).docx;

No problem; AI is attached.

From: John Mashburn <jmashburn@usccr.gov>
Sent: Thursday, August 19, 2021 12:19 PM
To: David Ganz <dganz@usccr.gov>
Subject: His adopted at April 30, 2021 meeting

Can you send me, or point me to, the official versions/texts of the AIs (including the one on the EAC appointments) that were adopted at the April 30 Bus Mtg?

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ADMINISTRATIVE INSTRUCTION __- __

COMMISSION APPOINTMENTS TO OTHER FEDERAL ENTITIES

Section 1.
.01 Any authority specifically granted the Commission of Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc. shall be exercised by the Commission as a whole by majority vote.

Section 2
.02

(1) For the two (2) appointments to the U.S. Election Assistance Commission, the members appointed by Democratic authorities shall nominate two individuals of their membership, and the members appointed by the Republican authorities shall nominate two individuals of their membership.

(2) The members appointed by the Democratic authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Democratic authorities

(3) The members selected shall be placed in nomination and ratified in conformance with Section 1.

AMERICAN OVERSIGHT

Date : 8/19/2021 12:48:33 PM
From : "John Mashburn" jmashburn@usccr.gov
To : "Christian Adams" a@electionlawcenter.com, "Stephen Gilchrist" sgilchrist@usccr.gov, "Gail Heriot" gheriot@usccr.gov, "Peter Kirsanow" pkirsanow@usccr.gov
Cc : "Thomas Simuel" tsimuel@usccr.gov, "Alexander Heideman" aheideman@usccr.gov, "Carissa Mulder" CMulder@usccr.gov
Subject : Re: EAC Final Selections Info
Attachment : Commission Telphonic Meeting Transcript 04.30.2021 UNEDITED.docx;

EAC Transcript re: MOU: Attached is the transcript of the April 30, 2021 Bus Mtg where the EAC nominations "Memorandum of Understanding" (not an AI) on the USCCR's nominations and appointments to the Board of Advisors for the EAC was approved on pages 8-9 (*which I have highlighted in yellow*) – in case the specifics of what was approved come up at tomorrow's bus mtg. The transcript is hard to track down on the USCCR website, but Alex fortunately had a copy of it already.

Motion: to add the EAC appointments to the bus meeting agenda tomorrow:

> "I move that a vote on the USCCR's appointments to the Board of Advisors for the Election Assistance Commission be added to the agenda."

From: John Mashburn <jmashburn@usccr.gov>
Date: Thursday, August 19, 2021 at 11:26 AM
To: Christian Adams <a@electionlawcenter.com>, Stephen Gilchrist <sgilchrist@usccr.gov>, Gail Heriot <gheriot@usccr.gov>, Peter Kirsanow <pkirsanow@usccr.gov>
Cc: Thomas Simuel <tsimuel@usccr.gov>, Alexander Heideman <aheideman@usccr.gov>, Carissa Mulder <CMulder@usccr.gov>
Subject: Fw: EAC Final Selections--not by notational vote

FYI- Cantu "welcomes" a motion for a vote on EAC nominations

From: Norma Cantu
Sent: Thursday, August 19, 2021 11:15:35 AM
To: Juana Silverio; Mauro Morales; John Mashburn; Irena Vidulovic; Mauro Morales
Cc: Thomas Simuel; Alexander Heideman; Carissa Mulder
Subject: RE: EAC Final Selections--not by notational vote

Dear John, Juana, and others,
I have already heard on Tuesday an objection from a Commissioner regarding using the notational vote to address the confirming of the EAC candidates. The concern, I understand, is that more discussion is needed on important items, such as length of term, duties to report back to USCCR, etc.
Since one objection stops the notational process, it will take a vote at a meeting to confirm.
I would welcome it if Commissioner Adams or others wish to make a motion at the meeting to add this item to the agenda.
Norma

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From: Juana Silverio <jsilverio@usccr.gov>
Sent: Wednesday, August 18, 2021 4:13 PM
To: Mauro Morales <mmorales@usccr.gov>; John Mashburn <jmashburn@usccr.gov>
Cc: Thomas Simuel <tsimuel@usccr.gov>; Alexander Heideman <aheideman@usccr.gov>; Carissa Mulder <CMulder@usccr.gov>; Norma Cantu <ncantu@usccr.gov>
Subject: Re: EAC Final Selections

Thanks John. You are correct, the item is not on the agenda for Friday.

There were a few concerns raised on process before confirming the candidates to the EAC on behalf of the Commission. Please stand by snd advise your commissioners that further communication is forthcoming by the Chairwoman.

Please let us know if you have any further questions. We greatly appreciate your patience.

Juana

--
Juana Silverio (she/her/ella)
Special Assistant to Commissioner Norma V. Cantú
U.S. Commission on Civil Rights
E: jsilverio@usccr.gov
http://usccr.gov/
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Washington D.C. 20425
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Sent: Wednesday, August 18, 2021 4:41:49 PM
To: John Mashburn
Cc: Juana Silverio; Thomas Simuel; Alexander Heideman; Carissa Mulder
Subject: Re: EAC Final Selections

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Sent from my iPhone

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Date: Tuesday, August 10, 2021 at 2:57 PM
To: Commissioners <Commissioners@usccr.gov>
Cc:
"CommissionerAssistants@usccr.gov" <CommissionerAssistants@usccr.gov>, David Ganz <dganz@usccr.gov>
Subject: EAC Final Selections

Commissioners,

Pursuant to the AI voted on during the April 30th Business meeting, I received the following names for appointment the Election Assistance Commission (EAC):

Commissioners Cantu, Adegbile, Kladney and Yaki have selected for appointment to the EAC:

- Cleta Michell, Chair, Conservative Partnership Institute Election Integrity Network.

Commissioners Adams, Gilchrist, Heriot and Kirsanow have selected for appointment to the EAC:

- Commissioner Michael Yaki;

Under the AI adopted by Commissioners, these two members selected shall be placed in nomination and ratified by a majority vote. Please inform me how you would like to proceed for a majority vote either by placing it on the agenda for the next USCCR business meeting or by a notational vote. Thank you.

Mauro Morales
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Washington D.C. 20425

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U.S. COMMISSION ON CIVIL RIGHTS

+ + + + + **UNEDITED**

TELEPHONIC SPECIAL BUSINESS MEETING

+ + + + +

FRIDAY, 30, 2021

+ + + + +

The Commission convened via teleconference, at 2:00 p.m. EDT, Peter Kirsanow and Michael Yaki, Co-Hosts, then Norma Cantu, Chair, presiding.

AMERICAN OVERSIGHT

PRESENT:

J. CHRISTIAN ADAMS, Commissioner

DEBO P. ADEGBILE, Commissioner

NORMA CANTU, Commissioner

GAIL HERIOT, Commissioner

STEPHEN GILCHRIST, Commissioner

PETER N. KIRSANOW, Commissioner

DAVID KLADNEY, Commissioner

MICHAEL YAKI, Commissioner

MAURO MORALES, Staff Director

DAVID GANZ, General Counsel

STAFF PRESENT:

PAMELA DUNSTON, Chief ASCD

TINALOUISE MARTIN, Director, OM

DAVID MUSSATT, Director, RPCU

AMERICAN OVERSIGHT

COMMISSIONER ASSISTANTS PRESENT:

ALEC DEULL

ALEXANDER HEIDEMAN

JOHN K. MASHBURN

CARISSA MULDER

AMY ROYCE

THOMAS SIMUEL

IRENA VIDULOVIC

JUANA SILVERIO

AMERICAN OVERSIGHT

A G E N D A

I. Omnibus Motion to Approve Commissioner Norma Cantu to Serve as USCCR Chair and to approve three Administrative Instructions 6

II. Approval of Agenda 16

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IV. Business meeting 37

V. Adjourn Meeting 52

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P R O C E E D I N G S

2:02 p.m.

OPERATOR: Good day and welcome to the Commission business meeting.

Today's conference is being recorded.

At this time, I would like to turn the conference over to Co-Hosts Commissioner Michael Yaki and Commissioner Peter Kirsanow. Please go ahead.

COMMISSIONER KIRSANOW: Thanks very much.

This is a meeting of the U.S. Commission on Civil Rights, and it is currently 2:02 p.m. Eastern Daylight Time, and the meeting is taking place over the phone.

I'm Commissioner Kirsanow. I'll be co-chairing the meeting with Commissioner Michael Yaki.

I'll now call the roll.

Commissioner Adams, are you present?

COMMISSIONER ADAMS: Present.

COMMISSIONER KIRSANOW: Commissioner Adegbile?

COMMISSIONER ADEGBILE: Present.

COMMISSIONER KIRSANOW: Commissioner Cantu?

COMMISSIONER CANTU: Present.

COMMISSIONER KIRSANOW: Commissioner

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Gilchrist?

COMMISSIONER GILCHRIST: Present.

COMMISSIONER KIRSANOW: Commissioner Heriot?

COMMISSIONER HERIOT: I'm here.

COMMISSIONER KIRSANOW: Commissioner Kladney?

COMMISSIONER KLADNEY: Here.

COMMISSIONER KIRSANOW: Commissioner Yaki?

COMMISSIONER YAKI: Here.

COMMISSIONER KIRSANOW: And Kirsanow is also present, and a quorum of the Commissioners is present.

Do we have a court reporter?

COURT REPORTER: Yes.

COMMISSIONER KIRSANOW: And the Staff Director. Mauro, present?

MR. MORALES: I am present.

COMMISSIONER KIRSANOW: Thank you.

All right. The meeting of the Civil Rights Commission will come to order.

I. OMNIBUS MOTION TO APPROVE COMMISSIONER NORMA CANTU TO SERVE AS CHAIR AND TO APPROVE THREE ADMINISTRATIVE INSTRUCTIONS

AMERICAN OVERSIGHT

COMMISSIONER KIRSANOW: And the first item on the agenda is an omnibus motion to confirm Commissioner Norma Cantu as the Chair, as well as making certain changes to the Commission's procedures.

I.D. TO APPROVE COMMISSIONER NORMA CANTU TO SERVE AS USCCR CHAIR

COMMISSIONER KIRSANOW: During our April 16th meeting, Commissioner Cantu confirmed that, if confirmed as Chair, she'll discontinue the Speaker Series that was in place for a while under the previous Chair, and that Commissioner Cantu will always vote to maintain the Commission's tradition of 30 days for Commissioners' statements, 30 days for rebuttals, and, if necessary, 10 days for surrebuttals. So, we don't need to revisit that today.

Therefore, I move, along with Co-Chair Commissioner Yaki, that the Commission confirm Norma Cantu as Chair; that the Commission adopt a Memorandum of Understanding regarding the appointment of members to the U.S. Election Assistance Commission Board of Advisors, and that the Commission adopt revisions to Administrative Instruction 1.

I'll read these into the record. Be

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patient. This will take a couple of minutes.

I.A. ADMINISTRATIVE INSTRUCTION REGARDING APPOINTMENTS BY THE COMMISSION

COMMISSIONER KIRSANOW: First, the Memorandum of Understanding regarding the appointment of members to the EAC Board of Advisors, Section 1.01, reads:

"Any authority not specifically granted the Commission on Civil Rights by statute or regulation or Executive Order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, et cetera, shall be exercised by the Commission as a whole by majority vote."

Paragraph .02. "Any authority specifically granted the Staff Director of the Commission on Civil Rights by statute or regulation or Executive Order to appoint members to serve on other federal entities such as advisory boards, tasks forces, other commissions, et cetera, shall be exercised by the Staff Director."

Paragraph .03. "Any authority specifically granted the Chair of the Commission on Civil Rights by statute or regulation or Executive Order to appoint members to serve on other federal

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entities such as advisory boards, task forces, other commissions, et cetera, shall be exercised by the Chair."

"Section 2.02(1). For the two appointments to the U.S. Election Assistance Commission, the members appointed by Democratic appointees shall nominate two individuals who are ready, willing, and able to serve, and the members appointed by the Republican authorities shall nominate two individuals who are ready, willing, and able to serve."

Subparagraph (2). "The members appointed by the Democratic authorities shall select one of the two individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one of the two individuals nominated by the members appointed by the Democratic authorities."

Subparagraph (3). "The members selected shall be placed in nomination and ratified in conformance with Section 1."

I.B. ADMINISTRATIVE INSTRUCTION ON INTERVIEWS WITH EXTERNAL FACT WITNESSES

COMMISSIONER KIRSANOW: Next, I'll read into the record the new section of AI 1 regarding

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witness interviews by staff. The Staff Director shall ensure that this provision is codified in the appropriate place of AI 1, and it reads as follows:

"As the staff persons arrange for interviews of external fact witnesses or experts for the purpose of informing writing of reports, et cetera, the Commissioners will be given notice of the names and titles of proposed witnesses, so that the Commissioners and their Special Assistants can observe the interview firsthand. The observations will help the Commissioners better understand the subject matters covered, and enable the Commissioner to conduct and follow up with questions of the witnesses. If more than one Commissioner (or Commissioner's Special Assistant) representing Democratic or Republican appointing authorities wishes to attend, the Staff Director may limit attendance to one representative from each (provided circumstances clearly warrant such a limit)."

I.C. ADMINISTRATIVE INSTRUCTION ON WITNESSES AT HEARINGS AND BRIEFINGS

COMMISSIONER KIRSANOW: Finally, I'll read into the record the revisions to AI 1.6, and that one reads:

"Section 11. Commission Hearings.

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".01 The OGC is responsible for preparing and holding Commission hearings. This includes ensuring that the witnesses, when viewed as a whole, possess sufficient policy, legal, academic, advocacy, and other knowledge and experience necessary for a full and balanced inquiry into the issues."

Paragraph .02. "To document that hearing witnesses reflected varied and opposing views, opinions, and perspectives, OSD completes Section III of the National Office Report Checklist for Hearing Reports form. By completing this form, OSD certifies that the hearing included a numerical balance of witnesses between opposing views, opinions and perspectives or that a numerical balance could not be achieved or was not appropriate in light of the subject of the hearing and/or the availability of credible witnesses. Section IV is completed by the Staff Director before the proposed final draft report and checklist are provided to the external reviewer."

Paragraph .03. "Staff is encouraged to use various sources to gather suggestions for appropriate hearing witnesses. Commissioners are the primary source of suggestions for hearing witnesses. Additional sources may include, but are not limited

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to, other program offices, regional directors, and appropriate external groups. If two Commissioners request that staff invite a particular witness, staff must invite that witness. No Commissioner may act jointly to invite more than two witnesses, which results in no more than 8 witnesses shall be required to be invited by staff by action of the Commission. Thereafter, a Commissioner or Commissioners may suggest as many witnesses as they deem advisable, but staff is not obligated to invite them, and staff may consult additional sources to invite additional witnesses for hearings."

Paragraph .04. We're almost there. That's not part of the AI. "OGC prepares hearing proposals, design or implementation plans, and briefing or background books. When preparing hearing proposals this office shall demonstrate a consideration of varied and opposing views, opinions, and perspectives. This office also verifies the accuracy of transcripts, drafts hearing reports, and maintains official hearing records."

Paragraph .05. "OGC is responsible for supplying a complete and correct transcript with appropriate exhibits to OSD and ASCD for publication. Hearing transcripts do not require editorial review."

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Paragraph .06. "The hearing record will be kept open for a period of 30 days after the hearing or as otherwise established by a majority vote of the Commissioners. Any material or information placed in the record during this period will be available to the Commissioners upon request."

Paragraph "Section 12. Commission Briefings."

Subparagraph .01. "Briefings are used by the Commission to provide Commissioners and the general public insight into civil rights without the formality of a hearing. Any program office may be assigned responsibility for conducting a briefing by the Staff Director."

Paragraph .02. "Staff is encouraged to use various sources to gather suggestions for appropriate briefing witnesses. Commissioners are the primary source of suggestions for briefing witnesses. Additional sources may include, but are not limited to, other program offices, regional directors, and appropriate external groups. If two Commissioners jointly request that staff invite a particular witness, staff must invite that witness. No Commissioner may act jointly to invite more than two witnesses, which results in no more than 8

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witnesses shall be required to be invited by staff by action of the Commission. Thereafter, a Commissioner or Commissioners may suggest as many witnesses as they deem advisable, but staff is not obligated to invite them, and staff may consult additional sources to invite additional witnesses for hearings."

".03 Commissioners are provided a proposed final list of briefing presenters for approval. To document that the briefing witnesses reflected varied and opposing views, opinions, and perspectives, OSD completes Section III of the National Office Report Checklist for Briefing Reports form. By completing this part of the form, OSD certifies that the briefing included a numerical balance of witnesses between opposing views, opinions and perspectives or that a numerical balance could not be achieved or was not appropriate in light of the subject of the briefing and/or the availability of credible witnesses. Section IV of this form is completed by the Staff Director before the proposed final draft report and checklist is provided to the external reviewer."

Finally, ".04 The briefing record will be kept open for a period of 30 days after the briefing or as otherwise established by a majority

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vote of the Commissioners. Any material or information placed in the record during this period will be available to the Commissioners upon request."

Kirsanow now pauses for a drink of vodka.

(Laughter.)

And that's the motion. Is there a second?

COMMISSIONER ADAMS: Yes, second. Adams.

COMMISSIONER KIRSANOW: Okay. The floor is open for discussion, and I turn it over to Commissioner Yaki.

COMMISSIONER YAKI: Thank you very much, Co-Chair Kirsanow.

First, I have a point of clarification. You had indicated that the first document that you read, which was on the appointments issue, was a Memorandum of Understanding, but I actually believe that is an Administrative Instruction. Is that not correct?

COMMISSIONER KIRSANOW: Yes, that's right.

COMMISSIONER YAKI: Yes. Okay. So, I wanted to clarify that for the record.

COMMISSIONER KIRSANOW: Thank you.

COMMISSIONER YAKI: Secondly, for those

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of you who were listening, the last document that Commissioner Kirsanow read, Section 11.01, Section 11.03, Section 12.02 were the only sections of that entire document that were amended. The rest remain intact as current Commission policy. I just wanted to clarify that for people who were listening in.

So, there has been a motion and a second. I am first going to do a little parliamentary moving, which is I think we need to first move to accept, approve and amend the agenda.

II. APPROVAL OF AGENDA

COMMISSIONER YAKI: So, I am going to set aside the first motion for the time being and first ask, is there a motion to approve the agenda?

COMMISSIONER ADAMS: So moved. So moved. Adams.

COMMISSIONER YAKI: Commissioner Adams moves to approve the agenda. Is there a second?

COMMISSIONER GILCHRIST: Second. Gilchrist.

COMMISSIONER YAKI: Second by Commissioner Gilchrist.

On the motion to approve the agenda -- we still have time to amend the agenda -- but on the motion to approve the agenda, so we have this before

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us, is there any discussion?

COMMISSIONER HERIOT: Wait. I thought you had to do amendments first?

COMMISSIONER YAKI: No. Well, I would rather have the agenda approved first, and then, amend the agenda. And then, we'd move on the agenda as approved.

COMMISSIONER HERIOT: I don't think that's the right way to do that.

COMMISSIONER YAKI: Well, that may be, but I'm going to put the extra vote in, just to make sure that no one can argue that we didn't follow strict rules.

So, on the order to approve the agenda now, I'm going to call the roll.

Commissioner Kirsanow, since you have the roll sheet, could you call the roll?

COMMISSIONER KIRSANOW: Sure.

Commissioner Adams?

COMMISSIONER ADAMS: Yes.

COMMISSIONER KIRSANOW: Commissioner Adegbile?

COMMISSIONER ADEGBILE: Aye.

COMMISSIONER KIRSANOW: Commissioner Cantu?

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COMMISSIONER CANTU: Yes.

COMMISSIONER KIRSANOW: Commissioner Gilchrist?

COMMISSIONER GILCHRIST: Aye.

COMMISSIONER KIRSANOW: Commissioner Heriot?

COMMISSIONER HERIOT: No.

COMMISSIONER KIRSANOW: Commissioner Kladney?

COMMISSIONER KLADNEY: Yes.

COMMISSIONER KIRSANOW: Commissioner Yaki?

COMMISSIONER YAKI: Aye.

COMMISSIONER KIRSANOW: And this is Kirsanow. I say "yes," also.

COMMISSIONER YAKI: Thank you.

There are 8 ayes, no objections.

The agenda is now before us. Is there a motion to approve, to amend the agenda --

COMMISSIONER KIRSANOW: I believe, Commissioner Yaki, I think there were 7 ayes and 1 nay.

COMMISSIONER YAKI: Oh, 1 nay. I'm sorry. 7 ayes, 7 yeses; 1 no.

Okay. Now we will take before us the

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motion to amend the agenda to put forth an omnibus motion that will approve both Commissioner, that will approve Commissioner Cantu as Chair of the United States Commission on Civil Rights, as well as approve the three Administrative Instructions that were read into the record by Commissioner Kirsanow.

III. AMENDMENTS TO THE AGENDA

COMMISSIONER YAKI: It has been moved, it has been seconded, moved by Commissioner Kirsanow, seconded by Commissioner Adams.

Is there any discussion?

COMMISSIONER ADEGBILE: Commissioner Adegbile.

COMMISSIONER YAKI: Commissioner Adegbile, the floor is yours.

COMMISSIONER ADEGBILE: Yes, I would have preferred that we move item by item and not have these things as an omnibus because there may be pieces that are acceptable and pieces that are unacceptable; and thus, it makes it hard to parse those things out. Because we're proceeding in omnibus fashion, it will affect my vote, though, obviously, I support Commissioner Cantu in her effort to chair our Commission in service of the people of the United States. But the omnibus motion will have impact on

AMERICAN OVERSIGHT

the way I will be voting.

COMMISSIONER YAKI: Thank you, Commissioner Adegbile.

Is there any further discussion?

COMMISSIONER KLADNEY: Dave Kladney.

COMMISSIONER YAKI: Commissioner Kladney?

COMMISSIONER KLADNEY: I concur with Commissioner Adegbile's assessment here, and this omnibus motion will affect my vote the same way. Thank you.

COMMISSIONER YAKI: Thank you, Commissioner Kladney.

If you can hang on just one second?

Is there any further discussion?

MR. MORALES: Staff Director Mauro Morales requests permission to address the Commissioners.

COMMISSIONER YAKI: Without objection, I will recognize Staff Director Morales.

MR. MORALES: Thank you, Commissioner. I appreciate the time.

I wanted to let you know that, and all the Commissioners know, that I and the Executive Committee have no opinion on the AI or the MOU about

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appointments to external commissions that the Commissioners are considering.

I will say that the Staff Director and the Executive Committee believe the proposed AIs concerning OCR witness selection and witness interviews -- I believe they're designated as AI 1 and AI 1.6 -- inappropriately conflict with existing Administrative Instructions and Commission regulations. Furthermore, we believe that they unreasonably create programmatic and operations problems for the Commission.

Commissioners provided no evidence, justification, or rationale for the necessity and the creation of these two AIs. As a consequence, the Staff Director and the Executive Committee respectfully object to them and recommend that these AIs be withdrawn from further consideration.

We thank you for your time and your consideration. Thank you.

COMMISSIONER YAKI: Thank you very much.

COMMISSIONER KLADNEY: Commissioner Yaki?

COMMISSIONER YAKI: Just one second. I just trying to get my phone back into where it should be.

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Thank you, Staff Director Morales.

Commissioner Kladney, were you speaking?

COMMISSIONER KLADNEY: Yes, Commissioner Yaki.

I would like to move to sever the items into individual votes.

COMMISSIONER YAKI: Thank you.

The motion to sever is a privileged motion and is not debatable or subject to a vote. So, we will have to take an individual vote on each one of these items.

However, in the discretion of the Co-Chair, I'm going to take them up in the order that I deem.

So, I'm going to first start with the AI on the Administrative Instruction regarding appointments by the Commission. That individual Instruction is before us.

And, Commissioner Kirsanow, would you please call the roll?

COMMISSIONER KIRSANOW: I'm sorry, are we voting on individual -- I'm lost as to what we're voting on right now. Are we voting on a separate issue or the omnibus?

COMMISSIONER YAKI: Well, the issue is

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that each of these items are individual items. They are put together as an omnibus. However, a Commissioner -- because they were originally noticed as individual items on the agenda, and the motion that you put and seconded and was put on the agenda was to combine them all into a single motion, a motion to sever, under Robert's Rules, is a privileged motion that is non-debatable and is -- well, it's self-executing. The Commission has actually done that before on previous occasions.

What I'm going to do, though, is call on AIs --

COMMISSIONER HERIOT: No, it's not self-executing.

COMMISSIONER YAKI: It is self-executing.

COMMISSIONER HERIOT: No, it's not.

COMMISSIONER YAKI: And if you would listen to me for a second, I am going to call the AIs first prior to the vote for Commissioner Cantu as Chair.

COMMISSIONER HERIOT: Okay.

COMMISSIONER YAKI: Okay?

COMMISSIONER HERIOT: But it's not self-executing. It's non-debatable. Nothing is self-executing. But --

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COMMISSIONER YAKI: But a motion to sever actually --

COMMISSIONER HERIOT: -- it's out of order, but that's okay with me.

COMMISSIONER YAKI: Okay. But I will tell you, under Robert's Rules, which is something I know you care about, a motion to sever is self-executing.

COMMISSIONER HERIOT: But it's not a motion, and that's --

COMMISSIONER YAKI: It is a motion to sever.

Anyway, that being the case --

COMMISSIONER HERIOT: Well, hold on. Hold on. Hold on. Okay. Are you saying that we are voting on the motion to sever --

COMMISSIONER YAKI: No.

COMMISSIONER HERIOT: -- or are you saying we are voting on the AI?

COMMISSIONER YAKI: We are voting on the AIs. And then, we will proceed to a vote on Commissioner Cantu, because the motion to sever is not something that is subject to a vote. I guess you would call it a request to sever, but it is one that, under Robert's Rules, is --

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COMMISSIONER HERIOT: No.

COMMISSIONER YAKI: -- is a privilege of --

COMMISSIONER HERIOT: I'm willing to let this go right now, but no.

COMMISSIONER YAKI: Okay. Well, I would disagree, and we can look it up, since you love Robert's Rules so much.

So, Commissioner --

COMMISSIONER ADAMS: Co-Chair Yaki, point of parliamentary inquiry. It's Commissioner Adams.

COMMISSIONER YAKI: Yes, Commissioner Adams.

COMMISSIONER ADAMS: Could you, for the record, tell us, because I can't find it, where is the request to sever in Robert's Rules?

COMMISSIONER YAKI: Okay.

COMMISSIONER HERIOT: Because if we do this in the order you're saying, let's just go.

COMMISSIONER ADAMS: Well, it's a point of parliamentary inquiry. I made a point of parliamentary inquiry, and I'm just asking, what is the number of Robert's Rules? Just help me find it. I can't find it.

COMMISSIONER YAKI: I'll find it, but

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I'll find it later.

As the Chair, I'm exercise my call.

So, Commissioner Kirsanow, on Administrative Instruction, Commissioner Kirsanow, would you please call the roll?

I.A. ADMINISTRATIVE INSTRUCTION REGARDING APPOINTMENTS BY THE COMMISSION

COMMISSIONER KIRSANOW: Commissioner Adams, how do you vote?

COMMISSIONER ADAMS: Yes.

COMMISSIONER KIRSANOW: Commissioner Adegbile?

COMMISSIONER ADEGBILE: No.

COMMISSIONER KIRSANOW: Commissioner Cantu?

COMMISSIONER CANTU: Yes.

COMMISSIONER KIRSANOW: Commissioner Gilchrist?

COMMISSIONER GILCHRIST: Yes.

COMMISSIONER KIRSANOW: Commissioner Heriot?

COMMISSIONER HERIOT: Yes.

COMMISSIONER KIRSANOW: Commissioner Kladney?

COMMISSIONER KLADNEY: No.

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COMMISSIONER KIRSANOW: Commissioner Yaki?

COMMISSIONER YAKI: Aye.

COMMISSIONER KIRSANOW: And I vote aye.

It is 6-to-2 aye.

COMMISSIONER YAKI: Thank you.

The Administrative Instruction on Commission appointments is passed.

Next, we will hear or we will have a vote on the Administrative Instruction on -- sorry, I have to put these all in order -- on the proposed AI on interviews with external fact witnesses. That was read into the record by Commissioner Kirsanow.

I.B. ADMINISTRATIVE INSTRUCTION ON INTERVIEWS WITH EXTERNAL FACT WITNESSES

COMMISSIONER YAKI: Would you please call the roll?

COMMISSIONER KIRSANOW: Commissioner Adams?

COMMISSIONER ADAMS: Yes.

COMMISSIONER KIRSANOW: Commissioner Adegbile?

COMMISSIONER ADEGBILE: Nay.

COMMISSIONER KIRSANOW: Commissioner Cantu?

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COMMISSIONER CANTU: Yes.

COMMISSIONER KIRSANOW: Commissioner Gilchrist?

COMMISSIONER GILCHRIST: Yes.

COMMISSIONER KIRSANOW: Commissioner Heriot?

COMMISSIONER HERIOT: Yes.

COMMISSIONER KIRSANOW: Commissioner Kladney?

COMMISSIONER KLADNEY: No.

COMMISSIONER KIRSANOW: Commissioner Yaki?

COMMISSIONER YAKI: Aye.

COMMISSIONER KIRSANOW: And I vote yes.

The motion passes 6-to-2.

COMMISSIONER YAKI: The motion on the Administrative Instruction on interviewing external fact witnesses passes 6-to-2.

We will now move to the last Administrative Instruction on witnesses at hearings and briefings, as read by Commissioner Kirsanow.

I.C. ADMINISTRATIVE INSTRUCTION ON WITNESSES AT HEARING AND BRIEFINGS

COMMISSIONER YAKI: Would you please call the roll?

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COMMISSIONER KIRSANOW: Commissioner Adams?

COMMISSIONER ADAMS: Yes.

COMMISSIONER KIRSANOW: Commissioner Adegbile?

COMMISSIONER ADEGBILE: Nay.

COMMISSIONER KIRSANOW: Commissioner Cantu?

COMMISSIONER CANTU: Yes.

COMMISSIONER KIRSANOW: Commissioner Gilchrist?

COMMISSIONER GILCHRIST: Yes.

COMMISSIONER KIRSANOW: Commissioner Heriot?

COMMISSIONER HERIOT: Yes.

COMMISSIONER KIRSANOW: Commissioner Kladney?

COMMISSIONER KLADNEY: No.

COMMISSIONER KIRSANOW: Commissioner Yaki?

COMMISSIONER YAKI: Aye.

COMMISSIONER KIRSANOW: And Kirsanow votes yes.

Passes 6-to-2.

COMMISSIONER YAKI: The Administrative

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Instruction on witnesses for briefings and hearings is hereby passed.

Finally, we come to the motion to confirm Commissioner Norma Cantu as Chair of the United States Commission on Civil Rights.

I.D. TO APPROVE COMMISSIONER NORMA CANTU TO SERVE AS USCCR CHAIR

COMMISSIONER YAKI: Commissioner Kirsanow, would you please call the roll in our last actions as Co-Chairs of the Commission?

COMMISSIONER KIRSANOW: Okay.

Commissioner Adams?

COMMISSIONER ADAMS: Yes.

COMMISSIONER KIRSANOW: Commissioner Adegbile?

COMMISSIONER ADEGBILE: Aye.

COMMISSIONER KIRSANOW: Commissioner Cantu?

COMMISSIONER CANTU: Yes.

COMMISSIONER KIRSANOW: Commissioner Gilchrist?

COMMISSIONER GILCHRIST: Yes.

COMMISSIONER KIRSANOW: Commissioner Heriot?

COMMISSIONER HERIOT: Yes.

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COMMISSIONER KIRSANOW: Commissioner Kladney?

COMMISSIONER KLADNEY: Yes.

COMMISSIONER KIRSANOW: Commissioner Yaki?

COMMISSIONER YAKI: Aye.

COMMISSIONER KIRSANOW: And I vote yes.

The motion passes 8-to-0.

And, Chairperson Cantu, congratulations. We'll pass the scepter to you.

(Applause.)

CHAIR CANTU: Thank you very much.

COMMISSIONER YAKI: Congratulations.

CHAIR CANTU: Thank you.

I really want to thank the White House, the U.S. Congress, the U.S. Senate, the Commissioners, those of you we call the "Group of Four" who were able to look very seriously at these matters of process. And I know that the result is one that will ultimately adhere. And we did work hard together to get to this place.

I also want to thank the Special Assistants, the staff who set up this call, all our staff, and your families who spared you all, so that we could get the Commission's work done.

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For those of you who are listening, this is what it looks like to be respectful. This is what it looks like to show that we can disagree, but do it in a very professional way. And I want to thank everyone on this call for providing this teachable moment for our audience.

We have an agenda that's been amended in terms of handling the first item. As a matter of procedure, I want to circle back to all the Commissioners.

III. AMENDMENTS TO THE AGENDA

CHAIR CANTU: Are there other items on the agenda that you need addressed today?

(No response.)

Hearing none, I would ask that --

COMMISSIONER YAKI: Wait. I'm sorry, I was on mute. I was on mute, Commissioner Cantu.

CHAIR CANTU: Okay. I hear you. I hear you. Please. That is why I offered -- this is my listening, and next time I will listen longer.

Do we have other items on today's agenda? Commissioner Yaki?

COMMISSIONER YAKI: Commissioner Cantu, I would simply say this: there are items on the agenda that I think have been adequately noticed and

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need to be addressed. However, in the interest of deferring to some concerns by my colleagues, I would ask that, if they are not discussed today, that they be subjected to a notational vote at their earliest convenience.

For me, especially the statement on Asian American/Pacific Islander hate and the continued concerns and struggles of our community with regard to the uptick in hate crimes, bias, and prejudice, stemming from or incited by the coronavirus pandemic, is one that continues to -- I think we need to reiterate to the new Administration our concerns, and I would like this addressed at the earliest possible convenience and by a notational vote, but I defer to my colleagues who have expressed some desire to have a shorter meeting today.

CHAIR CANTU: I'm sorry, are you making a motion, Commissioner Yaki, or are you suggesting an alternative way that we handle it?

COMMISSIONER YAKI: Yes, I was simply saying that I would like it to be moved on today. And so, I would like to move it. But if there is no second because of concerns of time, then I would simply ask the Chair, at her discretion, to put it on for a notational ballot approval at her earliest

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convenience.

I will formally move to take from the agenda Item III.B., the statement on Asian American hate, and ask for it to be approved today. If not, then it be brought up at the earliest convenience by the Chair for a notational vote.

CHAIR CANTU: We're discussing amending today's agenda. So, we have a motion to discuss today the Asian American statement.

COMMISSIONER KLADNEY: Kladney seconds. Kladney seconds.

CHAIR CANTU: Discussion?

COMMISSIONER HERIOT: Madam Chair, I'm getting a little confused here.

CHAIR CANTU: The motion is --

COMMISSIONER HERIOT: Is the motion about whether or not we're going to discuss this or whether or not we're removing it from the agenda? I'm just getting confused.

CHAIR CANTU: We're still talking about the agenda. Do we want to keep this on today's agenda?

COMMISSIONER HERIOT: My understanding is that some of my colleagues were going to offer an amendment, and that works better on the agenda than

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it does by notational vote.

CHAIR CANTU: Are you offering a friendly amendment to a motion that's been seconded on keeping it on today's agenda? Or are you agreeing --

COMMISSIONER HERIOT: That's just a reason to vote yes or no.

CHAIR CANTU: Okay.

COMMISSIONER HERIOT: I mean, if there's going to be an amendment, then it's better to discuss it today --

CHAIR CANTU: Okay.

COMMISSIONER HERIOT: -- than by notational vote, which doesn't lend itself to that very well.

CHAIR CANTU: I understand that.

By the way, the rule on dividing a question into subparts was 27.1.

So, any other discussion about going forward with adding the Asian American statement to today's agenda?

COMMISSIONER ADAMS: Chairman Cantu, Christian Adams.

CHAIR CANTU: Yes, Commissioner?

COMMISSIONER ADAMS: I don't have a strong view either way. I would urge Commissioner

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Yaki to take a look. There might be some fixes. There's some typos in the document, such as I think the last sentence in one of the documents, that I would have a better time dealing with it if those were fixed. And that may be a notational vote. I don't really have a view on that because there's some typos.

COMMISSIONER YAKI: Okay. Thank you for that consideration.

Look, I just want to express my view that we wanted to get this thing done. I'm going to withdraw my motion for the time being, since I think I confused everyone. So, I am going to withdraw my motion.

CHAIR CANTU: Thank you, Commissioner Yaki.

Other items that -- let me see if I can move this along. The rest of the items, C, D, E, were part of the vote that just took place. So, I can I use the discretion of the Chair to say we've already dealt with those items? That would be the rebuttals, Speaker Series, appointments.

Any objection to that?

COMMISSIONER KLADNEY: How did we deal with them, Madam Chair?

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CHAIR CANTU: In the meeting two weeks ago, I made a statement regarding the Speaker Series. In today's AI, we had an AI on the rebuttal/surrebuttal that passed. And on the appointments, we had a vote today on the bipartisan appointment that passed.

COMMISSIONER HERIOT: We haven't dealt with the Walter Williams thing.

CHAIR CANTU: Right. Do I hear a motion to keep that on today's agenda for discussion?

COMMISSIONER HERIOT: It's already there.

CHAIR CANTU: It's already there.

COMMISSIONER HERIOT: Yes.

CHAIR CANTU: It's been noticed a couple of times, you're correct.

IV. BUSINESS MEETING

CHAIR CANTU: So, at this point, I'm open to a motion and a second, so that we can have discussion on the Walter Williams memorial.

IV.A. DISCUSSION AND VOTE ON STATEMENT OF WALTER E. WILLIAMS

COMMISSIONER HERIOT: Okay. I move that we adopt the Walter Williams memorial.

COMMISSIONER KIRSANOW: Kirsanow seconds.

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CHAIR CANTU: I'm sorry, who seconded?

COMMISSIONER KIRSANOW: Kirsanow.

CHAIR CANTU: Kirsanow.

Commissioner Heriot moves, Commissioner Kirsanow seconds.

We are in discussion.

For those who are listening, in the past the individual Commissioners have been able to submit names of persons that they intend to recognize. It is not a policymaking. It is a statement and sign of respect.

COMMISSIONER HERIOT: Madam Chair?

CHAIR CANTU: Yes, Commissioner?

COMMISSIONER HERIOT: If you want, I'll talk about this. But, you know, it's just we've done this routinely now. I have voted for many of these when there have been people who have done significant work in this area.

This is one that matters to me, in the sense that Walter Williams is a hero of mine. And I think that he's also someone that many, many people think highly of.

I don't want to extend the meeting unnecessarily. Everybody has seen this statement now several times. And so, you know, I'd like to be able

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to say a kind word on Dr. Williams' passing.

CHAIR CANTU: You have my condolences and I offer condolences to the family.

Any other comments?

(No response.)

Could we do a voice vote or would you want to do a roll call vote? What is your preference?

COMMISSIONER HERIOT: Probably should do a roll call, given how confusing these things are over the phone.

CHAIR CANTU: I appreciate that.

Is there any further discussion? Does someone want to call the question?

COMMISSIONER ADAMS: Adams. Call the question.

CHAIR CANTU: Thank you.

We've had a question. The question is an aye vote supports the draft that has been duly circulated to us to honor Professor Walter Williams.

I would call alphabetically.

Adams?

COMMISSIONER ADAMS: Yes.

CHAIR CANTU: Adegbile?

COMMISSIONER ADEGBILE: Nay.

CHAIR CANTU: Gilchrist?

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COMMISSIONER GILCHRIST: Yes.

CHAIR CANTU: Heriot?

COMMISSIONER HERIOT: Yes.

CHAIR CANTU: Kirsanow?

COMMISSIONER KIRSANOW: Yes.

CHAIR CANTU: Kladney?

COMMISSIONER KLADNEY: No.

CHAIR CANTU: Yaki?

COMMISSIONER YAKI: Aye.

CHAIR CANTU: Cantu votes no.

Please note on the record, though, that, as Chair, I am cautious about the process of recognizing people where it's not clear, and has not been clear, what our criteria have been, but I do very deeply offer my condolences to those who knew the Professor and I do offer my prayers to the family.

Can we move to the next order of business? It is the item that has been noticed, the North Carolina State Advisory Council.

It is our responsibility on the Commission -- and it's a privilege to do this -- to approve --

COMMISSIONER YAKI: Point of order, Commissioner.

CHAIR CANTU: Yes, please. Yes, please.

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COMMISSIONER YAKI: Point of order, Chair Cantu.

CHAIR CANTU: Uh-hum.

IV.B. DISCUSSION AND VOTE ON ANTI-ASIAN AMERICAN HATE

COMMISSIONER YAKI: Commissioner Yaki.

One, on the item on Asian American/Pacific Islander hate, I saw the typo, "opposite" to "opposition". Thank you, Commissioner Adams for drawing that to my attention.

When I withdrew my motion, it was for consideration -- it was in light of the idea that perhaps we were going to not consider other items on the agenda and move on. But if we are considering other items on the agenda, then I wish that item to be heard in turn as Item III.B.

CHAIR CANTU: Is there an objection?

I think fair play would be we've heard from other Commissioners on their motions. So, as Chair, I'm exercising my management of time.

We will, hopefully, get these matters done pretty quickly. So, let's do our best.

On the Asian American statement regarding --

COMMISSIONER YAKI: As amended.

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CHAIR CANTU: As amended.

COMMISSIONER YAKI: As amended. Change the word "opposite" to "opposition".

CHAIR CANTU: Right. Your motion was seconded by?

COMMISSIONER KLADNEY: Kladney.

CHAIR CANTU: Kladney. Thank you, Commissioner.

And discussion?

COMMISSIONER ADAMS: Commissioner Adams.

CHAIR CANTU: Yes, Commissioner?

COMMISSIONER ADAMS: Commissioner Yaki, I had hoped to send a note. Take a look at that sentence because it seems to be relating to the previous Administration, but perhaps not.

COMMISSIONER YAKI: No, there's actually some continued controversy on this issue, Commissioner Adams.

COMMISSIONER ADAMS: Okay.

COMMISSIONER YAKI: So, I would like it to stand as is.

COMMISSIONER ADAMS: All right.

COMMISSIONER KIRSANOW: Madam Chair?

COMMISSIONER YAKI: In fact, there's been some controversy as to whether it went one way or

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backwards, or whatever. So, I think that putting our position firmly is important.

CHAIR CANTU: Who was acting to be recognized? I'm sorry. My ears --

COMMISSIONER KIRSANOW: Commissioner Kirsanow.

CHAIR CANTU: Oh, thank you, Commissioner.

COMMISSIONER KIRSANOW: Thank you, Madam Chair.

I would move to amend the letter to include the language to the following effect: that the federal government should withhold funding to any higher education institution if that institution has a policy in place or engages in a practice that discriminates against Asian Americans in recruitment or applicant review or admissions.

COMMISSIONER HERIOT: I second.

CHAIR CANTU: We have a motion --

COMMISSIONER YAKI: May I respond?

CHAIR CANTU: Yes, please.

COMMISSIONER YAKI: Commissioner Yaki responding.

Thank you, Commissioner Kirsanow, for that amendment. I will not accept it. This is

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dealing solely with the issue of the concerns regarding overt acts of bias and hate crime, as perpetrated against the Asian American community, stemming from, and incited by, in my view, the pandemic. The issue that you raise is one that I know that you care about, but I believe is not germane to this particular issue, and I ask my colleagues to oppose it.

COMMISSIONER HERIOT: And it has been seconded.

CHAIR CANTU: Is there further discussion?

COMMISSIONER ADEGBILE: Madam Chair?

CHAIR CANTU: Under the rules --

COMMISSIONER ADEGBILE: Commissioner Adegbile.

CHAIR CANTU: Yes, please. Commissioner?

COMMISSIONER ADEGBILE: It's my understanding that Title VI of the Civil Rights Act already creates a power for the federal government to withhold funding if there are findings of noncompliance with federal civil rights law. And so, in my view, this suggestion adds nothing to the current legal regime.

CHAIR CANTU: So, your contribution is

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that the amendment is unnecessary?

COMMISSIONER ADEGBILE: Yes.

CHAIR CANTU: Thank you.

COMMISSIONER YAKI: So, we need a vote on the motion to amend.

CHAIR CANTU: Has someone called the question on that motion, on the discussion on that?

COMMISSIONER KIRSANOW: There was a motion and it was seconded.

COMMISSIONER ADAMS: Adams. Call the question.

CHAIR CANTU: Thank you.

There's been a motion to amend, seconded, discussion.

Are you all ready to vote on the motion to amend to add language regarding higher education discrimination? Are you ready on that?

COMMISSIONER KIRSANOW: Yes.

CHAIR CANTU: Thank you.

So, a roll call vote would be Adams, please.

COMMISSIONER ADAMS: Yes.

CHAIR CANTU: Adegbile?

COMMISSIONER ADEGBILE: Nay.

CHAIR CANTU: Gilchrist?

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COMMISSIONER GILCHRIST: Yes.

CHAIR CANTU: Heriot?

COMMISSIONER HERIOT: Yes.

CHAIR CANTU: Kirsanow?

COMMISSIONER KIRSANOW: Yes.

CHAIR CANTU: Kladney?

COMMISSIONER KLADNEY: No.

CHAIR CANTU: And I vote no.

COMMISSIONER YAKI: You forgot me.

CHAIR CANTU: Oh, sorry. Where were you?

COMMISSIONER YAKI: You didn't call my name.

CHAIR CANTU: I'm so sorry.

Okay. Help me out.

COMMISSIONER YAKI: Commissioner Yaki votes no.

CHAIR CANTU: Thank you.

I saw your name and in my brain I thought I called you. I apologize.

So, we have -- I vote no. So, we have 4-4. The motion to amend does not carry.

We're back to the original motion.

COMMISSIONER YAKI: Yes, move to approve the -- move for the vote on the full motion.

CHAIR CANTU: All right. A roll call

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vote?

COMMISSIONER YAKI: Yes, please.

CHAIR CANTU: Adams?

COMMISSIONER ADAMS: Abstain.

CHAIR CANTU: Adegbile?

COMMISSIONER ADEGBILE: Aye.

CHAIR CANTU: Cantu? Well, skip me until the end.

Gilchrist?

COMMISSIONER GILCHRIST: Gilchrist abstains.

CHAIR CANTU: Heriot?

COMMISSIONER HERIOT: I abstain. There's something that I agree with in the letter, but, unfortunately, not all of it. So, I'm going to have to abstain.

CHAIR CANTU: Thank you.

Kirsanow?

COMMISSIONER KIRSANOW: Is that the famous director of "Rashomon"? Or is that Commissioner Kirsanow?

(Laughter.)

In any event, I'd rather be the director because I think he's a lot more entertaining and more important.

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But, nonetheless, Kirsanow abstains.

CHAIR CANTU: Thank you.

Kladney?

COMMISSIONER KLADNEY: Yes.

CHAIR CANTU: Yaki?

COMMISSIONER YAKI: Curacao is actually an alcohol. Kurosawa is a Japanese director.

(Laughter.)

COMMISSIONER KIRSANOW: It sounded like Kurosawa to me.

(Laughter.)

COMMISSIONER YAKI: And Commissioner Yaki votes aye.

CHAIR CANTU: Did I count correctly? With the abstentions, the ayes have it?

COMMISSIONER HERIOT: Yes.

COMMISSIONER ADEGBILE: Yes.

CHAIR CANTU: Thank you. Okay.

We have a little bit of time to do the North Carolina State Advisory Council motion on membership.

IV.C. DISCUSSION ON NC SAC

COMMISSIONER HERIOT: We haven't seen the list yet. So, I don't know think we can do this one.

CHAIR CANTU: I am sorry. Was the list

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in the -- were emails exchanged? But you're right, I don't believe that we have -- did we attach a list?

COMMISSIONER HERIOT: No, I haven't seen one.

CHAIR CANTU: Okay, okay.

COMMISSIONER GILCHRIST: Not the big list, no.

CHAIR CANTU: All right.

COMMISSIONER HERIOT: We should do this by notational vote. I think it's going to be an easy one. It's just that we have to confirm who's in and who's not.

CHAIR CANTU: And excuse me, but it's the first time I've done a notational vote. Do I direct the Staff Director to follow that process? Or does that require a vote?

COMMISSIONER HERIOT: I think you can just direct the Staff Director.

CHAIR CANTU: Okay. It's administrative, finally. A short item.

Speaking of the Staff Director, could we have a brief report on the item agenda on management on operations?

IV.D. MANAGEMENT AND OPERATIONS

X STAFF DIRECTOR'S REPORT

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MR. MORALES: Congratulations on becoming the Chair, Madam Chair.

CHAIR CANTU: Thank you.

MR. MORALES: In the interest of time, I have nothing further to add, other than is already contained in the report that was submitted to Commissioners. As always, I remain available to discuss any particular matter with a Commissioner.

And I thank you.

CHAIR CANTU: Thank you.

Normally, there would be an item called New Business, but, in the interest of letting everyone enjoy their family and go back to their other work, are there any other matters before we entertain a motion to adjourn?

COMMISSIONER KIRSANOW: Commissioner Kurosawa here, or Kirsanow.

(Laughter.)

CHAIR CANTU: Kirsanow.

(Laughter.)

COMMISSIONER KIRSANOW: I just want to thank Chairperson Cantu and congratulate her for being Chair. I'm looking forward to many more meetings with you as Chair.

CHAIR CANTU: I am looking forward to

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that, too -- thank you -- and to seeing you ultimately in person.

I understand Commissioner Adams will be having a one-year anniversary of his appointment next week and he's never seen the rest of you folks in person. So, these are unusual times that we're conducting business. But I'm optimistic, given the good faith shown in these conversations and the good faith shown as you all help this country through difficult times.

COMMISSIONER GILCHRIST: Chairwoman Canto, Stephen Gilchrist here.

CHAIR CANTU: Yes?

COMMISSIONER GILCHRIST: I just wanted to thank, also, Commissioner Kirsanow, Commissioner Heriot, Commissioner Yaki, and yourself for the good-faith effort that you guys put into the negotiations for the Commission. I am very pleased at the work that you've come up with, and certainly, we look forward to your tenure as our Chair. So, we look forward to working with you for sure.

CHAIR CANTU: I appreciate that.

Normally, when three new Commissioners show up, there would be a like a face-to-face retreat. There's a lot of conversations about how we look to

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each other to work together. We all had to have those kinds of conversations with a small group of four, and that group of four does deserve to be congratulated for helping us answer our questions about how we will be respectful of everyone's points of view and how we will incorporate and listen to each other's ideas.

So, thank you very much, Commissioner Adams and Gilchrist.

Anyone else for the good of the order?

COMMISSIONER HERIOT: Just congratulations from me.

CHAIR CANTU: Thank you. Thank you, and I will pop a virtual bottle of champagne.

(Laughter.)

COMMISSIONER ADAMS: Don't get virtually drunk.

(Laughter.)

CHAIR CANTU: Thank you all for having a wonderful sense of humor, and I'm really looking forward to our time together.

V. ADJOURN MEETING

CHAIR CANTU: The meeting is adjourned.

(Whereupon, at 2:54 p.m., the meeting was adjourned.)

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Date : 8/19/2021 12:55:52 PM
From : "Alexander Heideman" aheideman@usccr.gov
To : "John Mashburn" jmashburn@usccr.gov, "Carissa Mulder" CMulder@usccr.gov
Subject : Re: His adopted at April 30, 2021 meeting

This is incorrect.

From: John Mashburn <jmashburn@usccr.gov>
Date: Thursday, August 19, 2021 at 12:55 PM
To: Alexander Heideman <aheideman@usccr.gov>, Carissa Mulder <CMulder@usccr.gov>
Subject: FW: His adopted at April 30, 2021 meeting

From: David Ganz <dganz@usccr.gov>
Date: Thursday, August 19, 2021 at 12:39 PM
To: John Mashburn <jmashburn@usccr.gov>
Subject: RE: His adopted at April 30, 2021 meeting

No problem; AI is attached.

From: John Mashburn <jmashburn@usccr.gov>
Sent: Thursday, August 19, 2021 12:19 PM
To: David Ganz <dganz@usccr.gov>
Subject: His adopted at April 30, 2021 meeting

Can you send me, or point me to, the official versions/texts of the AIs (including the one on the EAC appointments) that were adopted at the April 30 Bus Mtg?

AMERICAN OVERSIGHT

Date : 8/19/2021 12:54:46 PM
From : "John Mashburn" jmashburn@usccr.gov
To : "David Ganz" dganz@usccr.gov
Subject : Re: His adopted at April 30, 2021 meeting
Attachment : Commission Telphonic Meeting Transcript 04.30.2021 UNEDITED.docx;

David – this is not what was voted on. Please see the attached transcript which shows the language that was actually voted on highlighted in yellow on pages 8-9.

Biggest difference was that what was voted on does not say "of their membership" -- so USCCR appointees to the EAC's BOA do not have to be from among the USCCR Commissioners. This was an issue debated among the Cmnrs prior to the bus mtg.

From: David Ganz <dganz@usccr.gov>
Date: Thursday, August 19, 2021 at 12:39 PM
To: John Mashburn <jmashburn@usccr.gov>
Subject: RE: His adopted at April 30, 2021 meeting

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U.S. COMMISSION ON CIVIL RIGHTS

+ + + + + **UNEDITED**

TELEPHONIC SPECIAL BUSINESS MEETING

+ + + + +

FRIDAY, 30, 2021

+ + + + +

The Commission convened via teleconference, at 2:00 p.m. EDT, Peter Kirsanow and Michael Yaki, Co-Hosts, then Norma Cantu, Chair, presiding.

AMERICAN OVERSIGHT

PRESENT:

J. CHRISTIAN ADAMS, Commissioner

DEBO P. ADEGBILE, Commissioner

NORMA CANTU, Commissioner

GAIL HERIOT, Commissioner

STEPHEN GILCHRIST, Commissioner

PETER N. KIRSANOW, Commissioner

DAVID KLADNEY, Commissioner

MICHAEL YAKI, Commissioner

MAURO MORALES, Staff Director

DAVID GANZ, General Counsel

STAFF PRESENT:

PAMELA DUNSTON, Chief ASCD

TINALOUISE MARTIN, Director, OM

DAVID MUSSATT, Director, RPCU

AMERICAN OVERSIGHT

COMMISSIONER ASSISTANTS PRESENT:

ALEC DEULL

ALEXANDER HEIDEMAN

JOHN K. MASHBURN

CARISSA MULDER

AMY ROYCE

THOMAS SIMUEL

IRENA VIDULOVIC

JUANA SILVERIO

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A G E N D A

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P R O C E E D I N G S

2:02 p.m.

OPERATOR: Good day and welcome to the Commission business meeting.

Today's conference is being recorded.

At this time, I would like to turn the conference over to Co-Hosts Commissioner Michael Yaki and Commissioner Peter Kirsanow. Please go ahead.

COMMISSIONER KIRSANOW: Thanks very much.

This is a meeting of the U.S. Commission on Civil Rights, and it is currently 2:02 p.m. Eastern Daylight Time, and the meeting is taking place over the phone.

I'm Commissioner Kirsanow. I'll be co-chairing the meeting with Commissioner Michael Yaki.

I'll now call the roll.

Commissioner Adams, are you present?

COMMISSIONER ADAMS: Present.

COMMISSIONER KIRSANOW: Commissioner Adegbile?

COMMISSIONER ADEGBILE: Present.

COMMISSIONER KIRSANOW: Commissioner Cantu?

COMMISSIONER CANTU: Present.

COMMISSIONER KIRSANOW: Commissioner

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Gilchrist?

COMMISSIONER GILCHRIST: Present.

COMMISSIONER KIRSANOW: Commissioner Heriot?

COMMISSIONER HERIOT: I'm here.

COMMISSIONER KIRSANOW: Commissioner Kladney?

COMMISSIONER KLADNEY: Here.

COMMISSIONER KIRSANOW: Commissioner Yaki?

COMMISSIONER YAKI: Here.

COMMISSIONER KIRSANOW: And Kirsanow is also present, and a quorum of the Commissioners is present.

Do we have a court reporter?

COURT REPORTER: Yes.

COMMISSIONER KIRSANOW: And the Staff Director. Mauro, present?

MR. MORALES: I am present.

COMMISSIONER KIRSANOW: Thank you.

All right. The meeting of the Civil Rights Commission will come to order.

I. OMNIBUS MOTION TO APPROVE COMMISSIONER NORMA CANTU TO SERVE AS CHAIR AND TO APPROVE THREE ADMINISTRATIVE INSTRUCTIONS

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COMMISSIONER KIRSANOW: And the first item on the agenda is an omnibus motion to confirm Commissioner Norma Cantu as the Chair, as well as making certain changes to the Commission's procedures.

I.D. TO APPROVE COMMISSIONER NORMA CANTU TO SERVE AS USCCR CHAIR

COMMISSIONER KIRSANOW: During our April 16th meeting, Commissioner Cantu confirmed that, if confirmed as Chair, she'll discontinue the Speaker Series that was in place for a while under the previous Chair, and that Commissioner Cantu will always vote to maintain the Commission's tradition of 30 days for Commissioners' statements, 30 days for rebuttals, and, if necessary, 10 days for surrebuttals. So, we don't need to revisit that today.

Therefore, I move, along with Co-Chair Commissioner Yaki, that the Commission confirm Norma Cantu as Chair; that the Commission adopt a Memorandum of Understanding regarding the appointment of members to the U.S. Election Assistance Commission Board of Advisors, and that the Commission adopt revisions to Administrative Instruction 1.

I'll read these into the record. Be

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patient. This will take a couple of minutes.

I.A. ADMINISTRATIVE INSTRUCTION REGARDING APPOINTMENTS BY THE COMMISSION

COMMISSIONER KIRSANOW: First, the Memorandum of Understanding regarding the appointment of members to the EAC Board of Advisors, Section 1.01, reads:

"Any authority not specifically granted the Commission on Civil Rights by statute or regulation or Executive Order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, et cetera, shall be exercised by the Commission as a whole by majority vote."

Paragraph .02. "Any authority specifically granted the Staff Director of the Commission on Civil Rights by statute or regulation or Executive Order to appoint members to serve on other federal entities such as advisory boards, tasks forces, other commissions, et cetera, shall be exercised by the Staff Director."

Paragraph .03. "Any authority specifically granted the Chair of the Commission on Civil Rights by statute or regulation or Executive Order to appoint members to serve on other federal

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entities such as advisory boards, task forces, other commissions, et cetera, shall be exercised by the Chair."

"Section 2.02(1). For the two appointments to the U.S. Election Assistance Commission, the members appointed by Democratic appointees shall nominate two individuals who are ready, willing, and able to serve, and the members appointed by the Republican authorities shall nominate two individuals who are ready, willing, and able to serve."

Subparagraph (2). "The members appointed by the Democratic authorities shall select one of the two individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one of the two individuals nominated by the members appointed by the Democratic authorities."

Subparagraph (3). "The members selected shall be placed in nomination and ratified in conformance with Section 1."

I.B. ADMINISTRATIVE INSTRUCTION ON INTERVIEWS WITH EXTERNAL FACT WITNESSES

COMMISSIONER KIRSANOW: Next, I'll read into the record the new section of AI 1 regarding

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witness interviews by staff. The Staff Director shall ensure that this provision is codified in the appropriate place of AI 1, and it reads as follows:

"As the staff persons arrange for interviews of external fact witnesses or experts for the purpose of informing writing of reports, et cetera, the Commissioners will be given notice of the names and titles of proposed witnesses, so that the Commissioners and their Special Assistants can observe the interview firsthand. The observations will help the Commissioners better understand the subject matters covered, and enable the Commissioner to conduct and follow up with questions of the witnesses. If more than one Commissioner (or Commissioner's Special Assistant) representing Democratic or Republican appointing authorities wishes to attend, the Staff Director may limit attendance to one representative from each (provided circumstances clearly warrant such a limit)."

I.C. ADMINISTRATIVE INSTRUCTION ON WITNESSES AT HEARINGS AND BRIEFINGS

COMMISSIONER KIRSANOW: Finally, I'll read into the record the revisions to AI 1.6, and that one reads:

"Section 11. Commission Hearings.

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".01 The OGC is responsible for preparing and holding Commission hearings. This includes ensuring that the witnesses, when viewed as a whole, possess sufficient policy, legal, academic, advocacy, and other knowledge and experience necessary for a full and balanced inquiry into the issues."

Paragraph .02. "To document that hearing witnesses reflected varied and opposing views, opinions, and perspectives, OSD completes Section III of the National Office Report Checklist for Hearing Reports form. By completing this form, OSD certifies that the hearing included a numerical balance of witnesses between opposing views, opinions and perspectives or that a numerical balance could not be achieved or was not appropriate in light of the subject of the hearing and/or the availability of credible witnesses. Section IV is completed by the Staff Director before the proposed final draft report and checklist are provided to the external reviewer."

Paragraph .03. "Staff is encouraged to use various sources to gather suggestions for appropriate hearing witnesses. Commissioners are the primary source of suggestions for hearing witnesses. Additional sources may include, but are not limited

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to, other program offices, regional directors, and appropriate external groups. If two Commissioners request that staff invite a particular witness, staff must invite that witness. No Commissioner may act jointly to invite more than two witnesses, which results in no more than 8 witnesses shall be required to be invited by staff by action of the Commission. Thereafter, a Commissioner or Commissioners may suggest as many witnesses as they deem advisable, but staff is not obligated to invite them, and staff may consult additional sources to invite additional witnesses for hearings."

Paragraph .04. We're almost there. That's not part of the AI. "OGC prepares hearing proposals, design or implementation plans, and briefing or background books. When preparing hearing proposals this office shall demonstrate a consideration of varied and opposing views, opinions, and perspectives. This office also verifies the accuracy of transcripts, drafts hearing reports, and maintains official hearing records."

Paragraph .05. "OGC is responsible for supplying a complete and correct transcript with appropriate exhibits to OSD and ASCD for publication. Hearing transcripts do not require editorial review."

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Paragraph .06. "The hearing record will be kept open for a period of 30 days after the hearing or as otherwise established by a majority vote of the Commissioners. Any material or information placed in the record during this period will be available to the Commissioners upon request."

Paragraph "Section 12. Commission Briefings."

Subparagraph .01. "Briefings are used by the Commission to provide Commissioners and the general public insight into civil rights without the formality of a hearing. Any program office may be assigned responsibility for conducting a briefing by the Staff Director."

Paragraph .02. "Staff is encouraged to use various sources to gather suggestions for appropriate briefing witnesses. Commissioners are the primary source of suggestions for briefing witnesses. Additional sources may include, but are not limited to, other program offices, regional directors, and appropriate external groups. If two Commissioners jointly request that staff invite a particular witness, staff must invite that witness. No Commissioner may act jointly to invite more than two witnesses, which results in no more than 8

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witnesses shall be required to be invited by staff by action of the Commission. Thereafter, a Commissioner or Commissioners may suggest as many witnesses as they deem advisable, but staff is not obligated to invite them, and staff may consult additional sources to invite additional witnesses for hearings."

".03 Commissioners are provided a proposed final list of briefing presenters for approval. To document that the briefing witnesses reflected varied and opposing views, opinions, and perspectives, OSD completes Section III of the National Office Report Checklist for Briefing Reports form. By completing this part of the form, OSD certifies that the briefing included a numerical balance of witnesses between opposing views, opinions and perspectives or that a numerical balance could not be achieved or was not appropriate in light of the subject of the briefing and/or the availability of credible witnesses. Section IV of this form is completed by the Staff Director before the proposed final draft report and checklist is provided to the external reviewer."

Finally, ".04 The briefing record will be kept open for a period of 30 days after the briefing or as otherwise established by a majority

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vote of the Commissioners. Any material or information placed in the record during this period will be available to the Commissioners upon request."

Kirsanow now pauses for a drink of vodka.

(Laughter.)

And that's the motion. Is there a second?

COMMISSIONER ADAMS: Yes, second. Adams.

COMMISSIONER KIRSANOW: Okay. The floor is open for discussion, and I turn it over to Commissioner Yaki.

COMMISSIONER YAKI: Thank you very much, Co-Chair Kirsanow.

First, I have a point of clarification. You had indicated that the first document that you read, which was on the appointments issue, was a Memorandum of Understanding, but I actually believe that is an Administrative Instruction. Is that not correct?

COMMISSIONER KIRSANOW: Yes, that's right.

COMMISSIONER YAKI: Yes. Okay. So, I wanted to clarify that for the record.

COMMISSIONER KIRSANOW: Thank you.

COMMISSIONER YAKI: Secondly, for those

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of you who were listening, the last document that Commissioner Kirsanow read, Section 11.01, Section 11.03, Section 12.02 were the only sections of that entire document that were amended. The rest remain intact as current Commission policy. I just wanted to clarify that for people who were listening in.

So, there has been a motion and a second. I am first going to do a little parliamentary moving, which is I think we need to first move to accept, approve and amend the agenda.

II. APPROVAL OF AGENDA

COMMISSIONER YAKI: So, I am going to set aside the first motion for the time being and first ask, is there a motion to approve the agenda?

COMMISSIONER ADAMS: So moved. So moved. Adams.

COMMISSIONER YAKI: Commissioner Adams moves to approve the agenda. Is there a second?

COMMISSIONER GILCHRIST: Second. Gilchrist.

COMMISSIONER YAKI: Second by Commissioner Gilchrist.

On the motion to approve the agenda -- we still have time to amend the agenda -- but on the motion to approve the agenda, so we have this before

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us, is there any discussion?

COMMISSIONER HERIOT: Wait. I thought you had to do amendments first?

COMMISSIONER YAKI: No. Well, I would rather have the agenda approved first, and then, amend the agenda. And then, we'd move on the agenda as approved.

COMMISSIONER HERIOT: I don't think that's the right way to do that.

COMMISSIONER YAKI: Well, that may be, but I'm going to put the extra vote in, just to make sure that no one can argue that we didn't follow strict rules.

So, on the order to approve the agenda now, I'm going to call the roll.

Commissioner Kirsanow, since you have the roll sheet, could you call the roll?

COMMISSIONER KIRSANOW: Sure.

Commissioner Adams?

COMMISSIONER ADAMS: Yes.

COMMISSIONER KIRSANOW: Commissioner Adegbile?

COMMISSIONER ADEGBILE: Aye.

COMMISSIONER KIRSANOW: Commissioner Cantu?

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COMMISSIONER CANTU: Yes.

COMMISSIONER KIRSANOW: Commissioner Gilchrist?

COMMISSIONER GILCHRIST: Aye.

COMMISSIONER KIRSANOW: Commissioner Heriot?

COMMISSIONER HERIOT: No.

COMMISSIONER KIRSANOW: Commissioner Kladney?

COMMISSIONER KLADNEY: Yes.

COMMISSIONER KIRSANOW: Commissioner Yaki?

COMMISSIONER YAKI: Aye.

COMMISSIONER KIRSANOW: And this is Kirsanow. I say "yes," also.

COMMISSIONER YAKI: Thank you.

There are 8 ayes, no objections.

The agenda is now before us. Is there a motion to approve, to amend the agenda --

COMMISSIONER KIRSANOW: I believe, Commissioner Yaki, I think there were 7 ayes and 1 nay.

COMMISSIONER YAKI: Oh, 1 nay. I'm sorry. 7 ayes, 7 yeses; 1 no.

Okay. Now we will take before us the

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motion to amend the agenda to put forth an omnibus motion that will approve both Commissioner, that will approve Commissioner Cantu as Chair of the United States Commission on Civil Rights, as well as approve the three Administrative Instructions that were read into the record by Commissioner Kirsanow.

III. AMENDMENTS TO THE AGENDA

COMMISSIONER YAKI: It has been moved, it has been seconded, moved by Commissioner Kirsanow, seconded by Commissioner Adams.

Is there any discussion?

COMMISSIONER ADEGBILE: Commissioner Adegbile.

COMMISSIONER YAKI: Commissioner Adegbile, the floor is yours.

COMMISSIONER ADEGBILE: Yes, I would have preferred that we move item by item and not have these things as an omnibus because there may be pieces that are acceptable and pieces that are unacceptable; and thus, it makes it hard to parse those things out. Because we're proceeding in omnibus fashion, it will affect my vote, though, obviously, I support Commissioner Cantu in her effort to chair our Commission in service of the people of the United States. But the omnibus motion will have impact on

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the way I will be voting.

COMMISSIONER YAKI: Thank you, Commissioner Adegbile.

Is there any further discussion?

COMMISSIONER KLADNEY: Dave Kladney.

COMMISSIONER YAKI: Commissioner Kladney?

COMMISSIONER KLADNEY: I concur with Commissioner Adegbile's assessment here, and this omnibus motion will affect my vote the same way. Thank you.

COMMISSIONER YAKI: Thank you, Commissioner Kladney.

If you can hang on just one second?

Is there any further discussion?

MR. MORALES: Staff Director Mauro Morales requests permission to address the Commissioners.

COMMISSIONER YAKI: Without objection, I will recognize Staff Director Morales.

MR. MORALES: Thank you, Commissioner. I appreciate the time.

I wanted to let you know that, and all the Commissioners know, that I and the Executive Committee have no opinion on the AI or the MOU about

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appointments to external commissions that the Commissioners are considering.

I will say that the Staff Director and the Executive Committee believe the proposed AIs concerning OCR witness selection and witness interviews -- I believe they're designated as AI 1 and AI 1.6 -- inappropriately conflict with existing Administrative Instructions and Commission regulations. Furthermore, we believe that they unreasonably create programmatic and operations problems for the Commission.

Commissioners provided no evidence, justification, or rationale for the necessity and the creation of these two AIs. As a consequence, the Staff Director and the Executive Committee respectfully object to them and recommend that these AIs be withdrawn from further consideration.

We thank you for your time and your consideration. Thank you.

COMMISSIONER YAKI: Thank you very much.

COMMISSIONER KLADNEY: Commissioner Yaki?

COMMISSIONER YAKI: Just one second. I just trying to get my phone back into where it should be.

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Thank you, Staff Director Morales.

Commissioner Kladney, were you speaking?

COMMISSIONER KLADNEY: Yes, Commissioner Yaki.

I would like to move to sever the items into individual votes.

COMMISSIONER YAKI: Thank you.

The motion to sever is a privileged motion and is not debatable or subject to a vote. So, we will have to take an individual vote on each one of these items.

However, in the discretion of the Co-Chair, I'm going to take them up in the order that I deem.

So, I'm going to first start with the AI on the Administrative Instruction regarding appointments by the Commission. That individual Instruction is before us.

And, Commissioner Kirsanow, would you please call the roll?

COMMISSIONER KIRSANOW: I'm sorry, are we voting on individual -- I'm lost as to what we're voting on right now. Are we voting on a separate issue or the omnibus?

COMMISSIONER YAKI: Well, the issue is

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that each of these items are individual items. They are put together as an omnibus. However, a Commissioner -- because they were originally noticed as individual items on the agenda, and the motion that you put and seconded and was put on the agenda was to combine them all into a single motion, a motion to sever, under Robert's Rules, is a privileged motion that is non-debatable and is -- well, it's self-executing. The Commission has actually done that before on previous occasions.

What I'm going to do, though, is call on AIs --

COMMISSIONER HERIOT: No, it's not self-executing.

COMMISSIONER YAKI: It is self-executing.

COMMISSIONER HERIOT: No, it's not.

COMMISSIONER YAKI: And if you would listen to me for a second, I am going to call the AIs first prior to the vote for Commissioner Cantu as Chair.

COMMISSIONER HERIOT: Okay.

COMMISSIONER YAKI: Okay?

COMMISSIONER HERIOT: But it's not self-executing. It's non-debatable. Nothing is self-executing. But --

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COMMISSIONER YAKI: But a motion to sever actually --

COMMISSIONER HERIOT: -- it's out of order, but that's okay with me.

COMMISSIONER YAKI: Okay. But I will tell you, under Robert's Rules, which is something I know you care about, a motion to sever is self-executing.

COMMISSIONER HERIOT: But it's not a motion, and that's --

COMMISSIONER YAKI: It is a motion to sever.

Anyway, that being the case --

COMMISSIONER HERIOT: Well, hold on. Hold on. Hold on. Okay. Are you saying that we are voting on the motion to sever --

COMMISSIONER YAKI: No.

COMMISSIONER HERIOT: -- or are you saying we are voting on the AI?

COMMISSIONER YAKI: We are voting on the AIs. And then, we will proceed to a vote on Commissioner Cantu, because the motion to sever is not something that is subject to a vote. I guess you would call it a request to sever, but it is one that, under Robert's Rules, is --

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COMMISSIONER HERIOT: No.

COMMISSIONER YAKI: -- is a privilege of --

COMMISSIONER HERIOT: I'm willing to let this go right now, but no.

COMMISSIONER YAKI: Okay. Well, I would disagree, and we can look it up, since you love Robert's Rules so much.

So, Commissioner --

COMMISSIONER ADAMS: Co-Chair Yaki, point of parliamentary inquiry. It's Commissioner Adams.

COMMISSIONER YAKI: Yes, Commissioner Adams.

COMMISSIONER ADAMS: Could you, for the record, tell us, because I can't find it, where is the request to sever in Robert's Rules?

COMMISSIONER YAKI: Okay.

COMMISSIONER HERIOT: Because if we do this in the order you're saying, let's just go.

COMMISSIONER ADAMS: Well, it's a point of parliamentary inquiry. I made a point of parliamentary inquiry, and I'm just asking, what is the number of Robert's Rules? Just help me find it. I can't find it.

COMMISSIONER YAKI: I'll find it, but

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I'll find it later.

As the Chair, I'm exercise my call.

So, Commissioner Kirsanow, on Administrative Instruction, Commissioner Kirsanow, would you please call the roll?

I.A. ADMINISTRATIVE INSTRUCTION REGARDING APPOINTMENTS BY THE COMMISSION

COMMISSIONER KIRSANOW: Commissioner Adams, how do you vote?

COMMISSIONER ADAMS: Yes.

COMMISSIONER KIRSANOW: Commissioner Adegbile?

COMMISSIONER ADEGBILE: No.

COMMISSIONER KIRSANOW: Commissioner Cantu?

COMMISSIONER CANTU: Yes.

COMMISSIONER KIRSANOW: Commissioner Gilchrist?

COMMISSIONER GILCHRIST: Yes.

COMMISSIONER KIRSANOW: Commissioner Heriot?

COMMISSIONER HERIOT: Yes.

COMMISSIONER KIRSANOW: Commissioner Kladney?

COMMISSIONER KLADNEY: No.

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COMMISSIONER KIRSANOW: Commissioner Yaki?

COMMISSIONER YAKI: Aye.

COMMISSIONER KIRSANOW: And I vote aye.

It is 6-to-2 aye.

COMMISSIONER YAKI: Thank you.

The Administrative Instruction on Commission appointments is passed.

Next, we will hear or we will have a vote on the Administrative Instruction on -- sorry, I have to put these all in order -- on the proposed AI on interviews with external fact witnesses. That was read into the record by Commissioner Kirsanow.

I.B. ADMINISTRATIVE INSTRUCTION ON INTERVIEWS WITH EXTERNAL FACT WITNESSES

COMMISSIONER YAKI: Would you please call the roll?

COMMISSIONER KIRSANOW: Commissioner Adams?

COMMISSIONER ADAMS: Yes.

COMMISSIONER KIRSANOW: Commissioner Adegbile?

COMMISSIONER ADEGBILE: Nay.

COMMISSIONER KIRSANOW: Commissioner Cantu?

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COMMISSIONER CANTU: Yes.

COMMISSIONER KIRSANOW: Commissioner Gilchrist?

COMMISSIONER GILCHRIST: Yes.

COMMISSIONER KIRSANOW: Commissioner Heriot?

COMMISSIONER HERIOT: Yes.

COMMISSIONER KIRSANOW: Commissioner Kladney?

COMMISSIONER KLADNEY: No.

COMMISSIONER KIRSANOW: Commissioner Yaki?

COMMISSIONER YAKI: Aye.

COMMISSIONER KIRSANOW: And I vote yes.

The motion passes 6-to-2.

COMMISSIONER YAKI: The motion on the Administrative Instruction on interviewing external fact witnesses passes 6-to-2.

We will now move to the last Administrative Instruction on witnesses at hearings and briefings, as read by Commissioner Kirsanow.

I.C. ADMINISTRATIVE INSTRUCTION ON WITNESSES AT HEARING AND BRIEFINGS

COMMISSIONER YAKI: Would you please call the roll?

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COMMISSIONER KIRSANOW: Commissioner Adams?

COMMISSIONER ADAMS: Yes.

COMMISSIONER KIRSANOW: Commissioner Adegbile?

COMMISSIONER ADEGBILE: Nay.

COMMISSIONER KIRSANOW: Commissioner Cantu?

COMMISSIONER CANTU: Yes.

COMMISSIONER KIRSANOW: Commissioner Gilchrist?

COMMISSIONER GILCHRIST: Yes.

COMMISSIONER KIRSANOW: Commissioner Heriot?

COMMISSIONER HERIOT: Yes.

COMMISSIONER KIRSANOW: Commissioner Kladney?

COMMISSIONER KLADNEY: No.

COMMISSIONER KIRSANOW: Commissioner Yaki?

COMMISSIONER YAKI: Aye.

COMMISSIONER KIRSANOW: And Kirsanow votes yes.

Passes 6-to-2.

COMMISSIONER YAKI: The Administrative

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Instruction on witnesses for briefings and hearings is hereby passed.

Finally, we come to the motion to confirm Commissioner Norma Cantu as Chair of the United States Commission on Civil Rights.

I.D. TO APPROVE COMMISSIONER NORMA CANTU TO SERVE AS USCCR CHAIR

COMMISSIONER YAKI: Commissioner Kirsanow, would you please call the roll in our last actions as Co-Chairs of the Commission?

COMMISSIONER KIRSANOW: Okay.

Commissioner Adams?

COMMISSIONER ADAMS: Yes.

COMMISSIONER KIRSANOW: Commissioner Adegbile?

COMMISSIONER ADEGBILE: Aye.

COMMISSIONER KIRSANOW: Commissioner Cantu?

COMMISSIONER CANTU: Yes.

COMMISSIONER KIRSANOW: Commissioner Gilchrist?

COMMISSIONER GILCHRIST: Yes.

COMMISSIONER KIRSANOW: Commissioner Heriot?

COMMISSIONER HERIOT: Yes.

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COMMISSIONER KIRSANOW: Commissioner Kladney?

COMMISSIONER KLADNEY: Yes.

COMMISSIONER KIRSANOW: Commissioner Yaki?

COMMISSIONER YAKI: Aye.

COMMISSIONER KIRSANOW: And I vote yes.

The motion passes 8-to-0.

And, Chairperson Cantu, congratulations. We'll pass the scepter to you.

(Applause.)

CHAIR CANTU: Thank you very much.

COMMISSIONER YAKI: Congratulations.

CHAIR CANTU: Thank you.

I really want to thank the White House, the U.S. Congress, the U.S. Senate, the Commissioners, those of you we call the "Group of Four" who were able to look very seriously at these matters of process. And I know that the result is one that will ultimately adhere. And we did work hard together to get to this place.

I also want to thank the Special Assistants, the staff who set up this call, all our staff, and your families who spared you all, so that we could get the Commission's work done.

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For those of you who are listening, this is what it looks like to be respectful. This is what it looks like to show that we can disagree, but do it in a very professional way. And I want to thank everyone on this call for providing this teachable moment for our audience.

We have an agenda that's been amended in terms of handling the first item. As a matter of procedure, I want to circle back to all the Commissioners.

III. AMENDMENTS TO THE AGENDA

CHAIR CANTU: Are there other items on the agenda that you need addressed today?

(No response.)

Hearing none, I would ask that --

COMMISSIONER YAKI: Wait. I'm sorry, I was on mute. I was on mute, Commissioner Cantu.

CHAIR CANTU: Okay. I hear you. I hear you. Please. That is why I offered -- this is my listening, and next time I will listen longer.

Do we have other items on today's agenda? Commissioner Yaki?

COMMISSIONER YAKI: Commissioner Cantu, I would simply say this: there are items on the agenda that I think have been adequately noticed and

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need to be addressed. However, in the interest of deferring to some concerns by my colleagues, I would ask that, if they are not discussed today, that they be subjected to a notational vote at their earliest convenience.

For me, especially the statement on Asian American/Pacific Islander hate and the continued concerns and struggles of our community with regard to the uptick in hate crimes, bias, and prejudice, stemming from or incited by the coronavirus pandemic, is one that continues to -- I think we need to reiterate to the new Administration our concerns, and I would like this addressed at the earliest possible convenience and by a notational vote, but I defer to my colleagues who have expressed some desire to have a shorter meeting today.

CHAIR CANTU: I'm sorry, are you making a motion, Commissioner Yaki, or are you suggesting an alternative way that we handle it?

COMMISSIONER YAKI: Yes, I was simply saying that I would like it to be moved on today. And so, I would like to move it. But if there is no second because of concerns of time, then I would simply ask the Chair, at her discretion, to put it on for a notational ballot approval at her earliest

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convenience.

I will formally move to take from the agenda Item III.B., the statement on Asian American hate, and ask for it to be approved today. If not, then it be brought up at the earliest convenience by the Chair for a notational vote.

CHAIR CANTU: We're discussing amending today's agenda. So, we have a motion to discuss today the Asian American statement.

COMMISSIONER KLADNEY: Kladney seconds. Kladney seconds.

CHAIR CANTU: Discussion?

COMMISSIONER HERIOT: Madam Chair, I'm getting a little confused here.

CHAIR CANTU: The motion is --

COMMISSIONER HERIOT: Is the motion about whether or not we're going to discuss this or whether or not we're removing it from the agenda? I'm just getting confused.

CHAIR CANTU: We're still talking about the agenda. Do we want to keep this on today's agenda?

COMMISSIONER HERIOT: My understanding is that some of my colleagues were going to offer an amendment, and that works better on the agenda than

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it does by notational vote.

CHAIR CANTU: Are you offering a friendly amendment to a motion that's been seconded on keeping it on today's agenda? Or are you agreeing --

COMMISSIONER HERIOT: That's just a reason to vote yes or no.

CHAIR CANTU: Okay.

COMMISSIONER HERIOT: I mean, if there's going to be an amendment, then it's better to discuss it today --

CHAIR CANTU: Okay.

COMMISSIONER HERIOT: -- than by notational vote, which doesn't lend itself to that very well.

CHAIR CANTU: I understand that.

By the way, the rule on dividing a question into subparts was 27.1.

So, any other discussion about going forward with adding the Asian American statement to today's agenda?

COMMISSIONER ADAMS: Chairman Cantu, Christian Adams.

CHAIR CANTU: Yes, Commissioner?

COMMISSIONER ADAMS: I don't have a strong view either way. I would urge Commissioner

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Yaki to take a look. There might be some fixes. There's some typos in the document, such as I think the last sentence in one of the documents, that I would have a better time dealing with it if those were fixed. And that may be a notational vote. I don't really have a view on that because there's some typos.

COMMISSIONER YAKI: Okay. Thank you for that consideration.

Look, I just want to express my view that we wanted to get this thing done. I'm going to withdraw my motion for the time being, since I think I confused everyone. So, I am going to withdraw my motion.

CHAIR CANTU: Thank you, Commissioner Yaki.

Other items that -- let me see if I can move this along. The rest of the items, C, D, E, were part of the vote that just took place. So, I can I use the discretion of the Chair to say we've already dealt with those items? That would be the rebuttals, Speaker Series, appointments.

Any objection to that?

COMMISSIONER KLADNEY: How did we deal with them, Madam Chair?

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CHAIR CANTU: In the meeting two weeks ago, I made a statement regarding the Speaker Series. In today's AI, we had an AI on the rebuttal/surrebuttal that passed. And on the appointments, we had a vote today on the bipartisan appointment that passed.

COMMISSIONER HERIOT: We haven't dealt with the Walter Williams thing.

CHAIR CANTU: Right. Do I hear a motion to keep that on today's agenda for discussion?

COMMISSIONER HERIOT: It's already there.

CHAIR CANTU: It's already there.

COMMISSIONER HERIOT: Yes.

CHAIR CANTU: It's been noticed a couple of times, you're correct.

IV. BUSINESS MEETING

CHAIR CANTU: So, at this point, I'm open to a motion and a second, so that we can have discussion on the Walter Williams memorial.

IV.A. DISCUSSION AND VOTE ON STATEMENT OF WALTER E. WILLIAMS

COMMISSIONER HERIOT: Okay. I move that we adopt the Walter Williams memorial.

COMMISSIONER KIRSANOW: Kirsanow seconds.

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CHAIR CANTU: I'm sorry, who seconded?

COMMISSIONER KIRSANOW: Kirsanow.

CHAIR CANTU: Kirsanow.

Commissioner Heriot moves, Commissioner Kirsanow seconds.

We are in discussion.

For those who are listening, in the past the individual Commissioners have been able to submit names of persons that they intend to recognize. It is not a policymaking. It is a statement and sign of respect.

COMMISSIONER HERIOT: Madam Chair?

CHAIR CANTU: Yes, Commissioner?

COMMISSIONER HERIOT: If you want, I'll talk about this. But, you know, it's just we've done this routinely now. I have voted for many of these when there have been people who have done significant work in this area.

This is one that matters to me, in the sense that Walter Williams is a hero of mine. And I think that he's also someone that many, many people think highly of.

I don't want to extend the meeting unnecessarily. Everybody has seen this statement now several times. And so, you know, I'd like to be able

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to say a kind word on Dr. Williams' passing.

CHAIR CANTU: You have my condolences and I offer condolences to the family.

Any other comments?

(No response.)

Could we do a voice vote or would you want to do a roll call vote? What is your preference?

COMMISSIONER HERIOT: Probably should do a roll call, given how confusing these things are over the phone.

CHAIR CANTU: I appreciate that.

Is there any further discussion? Does someone want to call the question?

COMMISSIONER ADAMS: Adams. Call the question.

CHAIR CANTU: Thank you.

We've had a question. The question is an aye vote supports the draft that has been duly circulated to us to honor Professor Walter Williams.

I would call alphabetically.

Adams?

COMMISSIONER ADAMS: Yes.

CHAIR CANTU: Adegbile?

COMMISSIONER ADEGBILE: Nay.

CHAIR CANTU: Gilchrist?

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COMMISSIONER GILCHRIST: Yes.

CHAIR CANTU: Heriot?

COMMISSIONER HERIOT: Yes.

CHAIR CANTU: Kirsanow?

COMMISSIONER KIRSANOW: Yes.

CHAIR CANTU: Kladney?

COMMISSIONER KLADNEY: No.

CHAIR CANTU: Yaki?

COMMISSIONER YAKI: Aye.

CHAIR CANTU: Cantu votes no.

Please note on the record, though, that, as Chair, I am cautious about the process of recognizing people where it's not clear, and has not been clear, what our criteria have been, but I do very deeply offer my condolences to those who knew the Professor and I do offer my prayers to the family.

Can we move to the next order of business? It is the item that has been noticed, the North Carolina State Advisory Council.

It is our responsibility on the Commission -- and it's a privilege to do this -- to approve --

COMMISSIONER YAKI: Point of order, Commissioner.

CHAIR CANTU: Yes, please. Yes, please.

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COMMISSIONER YAKI: Point of order, Chair Cantu.

CHAIR CANTU: Uh-hum.

IV.B. DISCUSSION AND VOTE ON ANTI-ASIAN AMERICAN HATE

COMMISSIONER YAKI: Commissioner Yaki.

One, on the item on Asian American/Pacific Islander hate, I saw the typo, "opposite" to "opposition". Thank you, Commissioner Adams for drawing that to my attention.

When I withdrew my motion, it was for consideration -- it was in light of the idea that perhaps we were going to not consider other items on the agenda and move on. But if we are considering other items on the agenda, then I wish that item to be heard in turn as Item III.B.

CHAIR CANTU: Is there an objection?

I think fair play would be we've heard from other Commissioners on their motions. So, as Chair, I'm exercising my management of time.

We will, hopefully, get these matters done pretty quickly. So, let's do our best.

On the Asian American statement regarding --

COMMISSIONER YAKI: As amended.

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CHAIR CANTU: As amended.

COMMISSIONER YAKI: As amended. Change the word "opposite" to "opposition".

CHAIR CANTU: Right. Your motion was seconded by?

COMMISSIONER KLADNEY: Kladney.

CHAIR CANTU: Kladney. Thank you, Commissioner.

And discussion?

COMMISSIONER ADAMS: Commissioner Adams.

CHAIR CANTU: Yes, Commissioner?

COMMISSIONER ADAMS: Commissioner Yaki, I had hoped to send a note. Take a look at that sentence because it seems to be relating to the previous Administration, but perhaps not.

COMMISSIONER YAKI: No, there's actually some continued controversy on this issue, Commissioner Adams.

COMMISSIONER ADAMS: Okay.

COMMISSIONER YAKI: So, I would like it to stand as is.

COMMISSIONER ADAMS: All right.

COMMISSIONER KIRSANOW: Madam Chair?

COMMISSIONER YAKI: In fact, there's been some controversy as to whether it went one way or

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backwards, or whatever. So, I think that putting our position firmly is important.

CHAIR CANTU: Who was acting to be recognized? I'm sorry. My ears --

COMMISSIONER KIRSANOW: Commissioner Kirsanow.

CHAIR CANTU: Oh, thank you, Commissioner.

COMMISSIONER KIRSANOW: Thank you, Madam Chair.

I would move to amend the letter to include the language to the following effect: that the federal government should withhold funding to any higher education institution if that institution has a policy in place or engages in a practice that discriminates against Asian Americans in recruitment or applicant review or admissions.

COMMISSIONER HERIOT: I second.

CHAIR CANTU: We have a motion --

COMMISSIONER YAKI: May I respond?

CHAIR CANTU: Yes, please.

COMMISSIONER YAKI: Commissioner Yaki responding.

Thank you, Commissioner Kirsanow, for that amendment. I will not accept it. This is

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dealing solely with the issue of the concerns regarding overt acts of bias and hate crime, as perpetrated against the Asian American community, stemming from, and incited by, in my view, the pandemic. The issue that you raise is one that I know that you care about, but I believe is not germane to this particular issue, and I ask my colleagues to oppose it.

COMMISSIONER HERIOT: And it has been seconded.

CHAIR CANTU: Is there further discussion?

COMMISSIONER ADEGBILE: Madam Chair?

CHAIR CANTU: Under the rules --

COMMISSIONER ADEGBILE: Commissioner Adegbile.

CHAIR CANTU: Yes, please. Commissioner?

COMMISSIONER ADEGBILE: It's my understanding that Title VI of the Civil Rights Act already creates a power for the federal government to withhold funding if there are findings of noncompliance with federal civil rights law. And so, in my view, this suggestion adds nothing to the current legal regime.

CHAIR CANTU: So, your contribution is

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that the amendment is unnecessary?

COMMISSIONER ADEGBILE: Yes.

CHAIR CANTU: Thank you.

COMMISSIONER YAKI: So, we need a vote on the motion to amend.

CHAIR CANTU: Has someone called the question on that motion, on the discussion on that?

COMMISSIONER KIRSANOW: There was a motion and it was seconded.

COMMISSIONER ADAMS: Adams. Call the question.

CHAIR CANTU: Thank you.

There's been a motion to amend, seconded, discussion.

Are you all ready to vote on the motion to amend to add language regarding higher education discrimination? Are you ready on that?

COMMISSIONER KIRSANOW: Yes.

CHAIR CANTU: Thank you.

So, a roll call vote would be Adams, please.

COMMISSIONER ADAMS: Yes.

CHAIR CANTU: Adegbile?

COMMISSIONER ADEGBILE: Nay.

CHAIR CANTU: Gilchrist?

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COMMISSIONER GILCHRIST: Yes.

CHAIR CANTU: Heriot?

COMMISSIONER HERIOT: Yes.

CHAIR CANTU: Kirsanow?

COMMISSIONER KIRSANOW: Yes.

CHAIR CANTU: Kladney?

COMMISSIONER KLADNEY: No.

CHAIR CANTU: And I vote no.

COMMISSIONER YAKI: You forgot me.

CHAIR CANTU: Oh, sorry. Where were you?

COMMISSIONER YAKI: You didn't call my name.

CHAIR CANTU: I'm so sorry.

Okay. Help me out.

COMMISSIONER YAKI: Commissioner Yaki votes no.

CHAIR CANTU: Thank you.

I saw your name and in my brain I thought I called you. I apologize.

So, we have -- I vote no. So, we have 4-4. The motion to amend does not carry.

We're back to the original motion.

COMMISSIONER YAKI: Yes, move to approve the -- move for the vote on the full motion.

CHAIR CANTU: All right. A roll call

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vote?

COMMISSIONER YAKI: Yes, please.

CHAIR CANTU: Adams?

COMMISSIONER ADAMS: Abstain.

CHAIR CANTU: Adegbile?

COMMISSIONER ADEGBILE: Aye.

CHAIR CANTU: Cantu? Well, skip me until the end.

Gilchrist?

COMMISSIONER GILCHRIST: Gilchrist abstains.

CHAIR CANTU: Heriot?

COMMISSIONER HERIOT: I abstain. There's something that I agree with in the letter, but, unfortunately, not all of it. So, I'm going to have to abstain.

CHAIR CANTU: Thank you.

Kirsanow?

COMMISSIONER KIRSANOW: Is that the famous director of "Rashomon"? Or is that Commissioner Kirsanow?

(Laughter.)

In any event, I'd rather be the director because I think he's a lot more entertaining and more important.

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But, nonetheless, Kirsanow abstains.

CHAIR CANTU: Thank you.

Kladney?

COMMISSIONER KLADNEY: Yes.

CHAIR CANTU: Yaki?

COMMISSIONER YAKI: Curacao is actually an alcohol. Kurosawa is a Japanese director.

(Laughter.)

COMMISSIONER KIRSANOW: It sounded like Kurosawa to me.

(Laughter.)

COMMISSIONER YAKI: And Commissioner Yaki votes aye.

CHAIR CANTU: Did I count correctly? With the abstentions, the ayes have it?

COMMISSIONER HERIOT: Yes.

COMMISSIONER ADEGBILE: Yes.

CHAIR CANTU: Thank you. Okay.

We have a little bit of time to do the North Carolina State Advisory Council motion on membership.

IV.C. DISCUSSION ON NC SAC

COMMISSIONER HERIOT: We haven't seen the list yet. So, I don't know think we can do this one.

CHAIR CANTU: I am sorry. Was the list

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in the -- were emails exchanged? But you're right, I don't believe that we have -- did we attach a list?

COMMISSIONER HERIOT: No, I haven't seen one.

CHAIR CANTU: Okay, okay.

COMMISSIONER GILCHRIST: Not the big list, no.

CHAIR CANTU: All right.

COMMISSIONER HERIOT: We should do this by notational vote. I think it's going to be an easy one. It's just that we have to confirm who's in and who's not.

CHAIR CANTU: And excuse me, but it's the first time I've done a notational vote. Do I direct the Staff Director to follow that process? Or does that require a vote?

COMMISSIONER HERIOT: I think you can just direct the Staff Director.

CHAIR CANTU: Okay. It's administrative, finally. A short item.

Speaking of the Staff Director, could we have a brief report on the item agenda on management on operations?

IV.D. MANAGEMENT AND OPERATIONS

X STAFF DIRECTOR'S REPORT

AMERICAN OVERSIGHT

MR. MORALES: Congratulations on becoming the Chair, Madam Chair.

CHAIR CANTU: Thank you.

MR. MORALES: In the interest of time, I have nothing further to add, other than is already contained in the report that was submitted to Commissioners. As always, I remain available to discuss any particular matter with a Commissioner.

And I thank you.

CHAIR CANTU: Thank you.

Normally, there would be an item called New Business, but, in the interest of letting everyone enjoy their family and go back to their other work, are there any other matters before we entertain a motion to adjourn?

COMMISSIONER KIRSANOW: Commissioner Kurosawa here, or Kirsanow.

(Laughter.)

CHAIR CANTU: Kirsanow.

(Laughter.)

COMMISSIONER KIRSANOW: I just want to thank Chairperson Cantu and congratulate her for being Chair. I'm looking forward to many more meetings with you as Chair.

CHAIR CANTU: I am looking forward to

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that, too -- thank you -- and to seeing you ultimately in person.

I understand Commissioner Adams will be having a one-year anniversary of his appointment next week and he's never seen the rest of you folks in person. So, these are unusual times that we're conducting business. But I'm optimistic, given the good faith shown in these conversations and the good faith shown as you all help this country through difficult times.

COMMISSIONER GILCHRIST: Chairwoman Canto, Stephen Gilchrist here.

CHAIR CANTU: Yes?

COMMISSIONER GILCHRIST: I just wanted to thank, also, Commissioner Kirsanow, Commissioner Heriot, Commissioner Yaki, and yourself for the good-faith effort that you guys put into the negotiations for the Commission. I am very pleased at the work that you've come up with, and certainly, we look forward to your tenure as our Chair. So, we look forward to working with you for sure.

CHAIR CANTU: I appreciate that.

Normally, when three new Commissioners show up, there would be a like a face-to-face retreat. There's a lot of conversations about how we look to

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each other to work together. We all had to have those kinds of conversations with a small group of four, and that group of four does deserve to be congratulated for helping us answer our questions about how we will be respectful of everyone's points of view and how we will incorporate and listen to each other's ideas.

So, thank you very much, Commissioner Adams and Gilchrist.

Anyone else for the good of the order?

COMMISSIONER HERIOT: Just congratulations from me.

CHAIR CANTU: Thank you. Thank you, and I will pop a virtual bottle of champagne.

(Laughter.)

COMMISSIONER ADAMS: Don't get virtually drunk.

(Laughter.)

CHAIR CANTU: Thank you all for having a wonderful sense of humor, and I'm really looking forward to our time together.

V. ADJOURN MEETING

CHAIR CANTU: The meeting is adjourned.

(Whereupon, at 2:54 p.m., the meeting was adjourned.)

AMERICAN OVERSIGHT

AMERICAN OVERSIGHT

Date : 8/19/2021 12:56:22 PM
From : "Alexander Heideman" aheideman@usccr.gov
To : "John Mashburn" jmashburn@usccr.gov, "Carissa Mulder" CMulder@usccr.gov
Subject : Re: His adopted at April 30, 2021 meeting

Cool cool.

From: John Mashburn <jmashburn@usccr.gov>
Date: Thursday, August 19, 2021 at 12:55 PM
To: Alexander Heideman <aheideman@usccr.gov>, Carissa Mulder <CMulder@usccr.gov>
Subject: FW: His adopted at April 30, 2021 meeting

You really have to stay on top of this stuff with them.

From: John Mashburn <jmashburn@usccr.gov>
Date: Thursday, August 19, 2021 at 12:54 PM
To: David Ganz <dganz@usccr.gov>
Subject: Re: His adopted at April 30, 2021 meeting

David – this is not what was voted on. Please see the attached transcript which shows the language that was actually voted on highlighted in yellow on pages 8-9.

Biggest difference was that what was voted on does not say “of their membership” -- so USCCR appointees to the EAC’s BOA do not have to be from among the USCCR Commissioners. This was an issue debated among the Cmnrs prior to the bus mtg.

From: David Ganz <dganz@usccr.gov>
Date: Thursday, August 19, 2021 at 12:39 PM
To: John Mashburn <jmashburn@usccr.gov>
Subject: RE: His adopted at April 30, 2021 meeting

No problem; AI is attached.

From: John Mashburn <jmashburn@usccr.gov>
Sent: Thursday, August 19, 2021 12:19 PM
To: David Ganz <dganz@usccr.gov>
Subject: His adopted at April 30, 2021 meeting

Can you send me, or point me to, the official versions/texts of the AIs (including the one on the EAC appointments) that were adopted at the April 30 Bus Mtg?

AMERICAN OVERSIGHT

Date : 8/19/2021 12:55:56 PM
From : "John Mashburn" jmashburn@usccr.gov
To : "Alexander Heideman" aheideman@usccr.gov, "Carissa Mulder" CMulder@usccr.gov
Subject : FW: His adopted at April 30, 2021 meeting
Attachment : Commission Telphonic Meeting Transcript 04.30.2021 UNEDITED.docx;

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U.S. COMMISSION ON CIVIL RIGHTS

+ + + + + **UNEDITED**

TELEPHONIC SPECIAL BUSINESS MEETING

+ + + + +

FRIDAY, 30, 2021

+ + + + +

The Commission convened via teleconference, at 2:00 p.m. EDT, Peter Kirsanow and Michael Yaki, Co-Hosts, then Norma Cantu, Chair, presiding.

AMERICAN OVERSIGHT

PRESENT:

J. CHRISTIAN ADAMS, Commissioner

DEBO P. ADEGBILE, Commissioner

NORMA CANTU, Commissioner

GAIL HERIOT, Commissioner

STEPHEN GILCHRIST, Commissioner

PETER N. KIRSANOW, Commissioner

DAVID KLADNEY, Commissioner

MICHAEL YAKI, Commissioner

MAURO MORALES, Staff Director

DAVID GANZ, General Counsel

STAFF PRESENT:

PAMELA DUNSTON, Chief ASCD

TINALOUISE MARTIN, Director, OM

DAVID MUSSATT, Director, RPCU

AMERICAN OVERSIGHT

COMMISSIONER ASSISTANTS PRESENT:

ALEC DEULL

ALEXANDER HEIDEMAN

JOHN K. MASHBURN

CARISSA MULDER

AMY ROYCE

THOMAS SIMUEL

IRENA VIDULOVIC

JUANA SILVERIO

AMERICAN OVERSIGHT

A G E N D A

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P R O C E E D I N G S

2:02 p.m.

OPERATOR: Good day and welcome to the Commission business meeting.

Today's conference is being recorded.

At this time, I would like to turn the conference over to Co-Hosts Commissioner Michael Yaki and Commissioner Peter Kirsanow. Please go ahead.

COMMISSIONER KIRSANOW: Thanks very much.

This is a meeting of the U.S. Commission on Civil Rights, and it is currently 2:02 p.m. Eastern Daylight Time, and the meeting is taking place over the phone.

I'm Commissioner Kirsanow. I'll be co-chairing the meeting with Commissioner Michael Yaki.

I'll now call the roll.

Commissioner Adams, are you present?

COMMISSIONER ADAMS: Present.

COMMISSIONER KIRSANOW: Commissioner Adegbile?

COMMISSIONER ADEGBILE: Present.

COMMISSIONER KIRSANOW: Commissioner Cantu?

COMMISSIONER CANTU: Present.

COMMISSIONER KIRSANOW: Commissioner

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Gilchrist?

COMMISSIONER GILCHRIST: Present.

COMMISSIONER KIRSANOW: Commissioner Heriot?

COMMISSIONER HERIOT: I'm here.

COMMISSIONER KIRSANOW: Commissioner Kladney?

COMMISSIONER KLADNEY: Here.

COMMISSIONER KIRSANOW: Commissioner Yaki?

COMMISSIONER YAKI: Here.

COMMISSIONER KIRSANOW: And Kirsanow is also present, and a quorum of the Commissioners is present.

Do we have a court reporter?

COURT REPORTER: Yes.

COMMISSIONER KIRSANOW: And the Staff Director. Mauro, present?

MR. MORALES: I am present.

COMMISSIONER KIRSANOW: Thank you.

All right. The meeting of the Civil Rights Commission will come to order.

I. OMNIBUS MOTION TO APPROVE COMMISSIONER NORMA CANTU TO SERVE AS CHAIR AND TO APPROVE THREE ADMINISTRATIVE INSTRUCTIONS

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COMMISSIONER KIRSANOW: And the first item on the agenda is an omnibus motion to confirm Commissioner Norma Cantu as the Chair, as well as making certain changes to the Commission's procedures.

I.D. TO APPROVE COMMISSIONER NORMA CANTU TO SERVE AS USCCR CHAIR

COMMISSIONER KIRSANOW: During our April 16th meeting, Commissioner Cantu confirmed that, if confirmed as Chair, she'll discontinue the Speaker Series that was in place for a while under the previous Chair, and that Commissioner Cantu will always vote to maintain the Commission's tradition of 30 days for Commissioners' statements, 30 days for rebuttals, and, if necessary, 10 days for surrebuttals. So, we don't need to revisit that today.

Therefore, I move, along with Co-Chair Commissioner Yaki, that the Commission confirm Norma Cantu as Chair; that the Commission adopt a Memorandum of Understanding regarding the appointment of members to the U.S. Election Assistance Commission Board of Advisors, and that the Commission adopt revisions to Administrative Instruction 1.

I'll read these into the record. Be

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patient. This will take a couple of minutes.

I.A. ADMINISTRATIVE INSTRUCTION REGARDING APPOINTMENTS BY THE COMMISSION

COMMISSIONER KIRSANOW: First, the Memorandum of Understanding regarding the appointment of members to the EAC Board of Advisors, Section 1.01, reads:

"Any authority not specifically granted the Commission on Civil Rights by statute or regulation or Executive Order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, et cetera, shall be exercised by the Commission as a whole by majority vote."

Paragraph .02. "Any authority specifically granted the Staff Director of the Commission on Civil Rights by statute or regulation or Executive Order to appoint members to serve on other federal entities such as advisory boards, tasks forces, other commissions, et cetera, shall be exercised by the Staff Director."

Paragraph .03. "Any authority specifically granted the Chair of the Commission on Civil Rights by statute or regulation or Executive Order to appoint members to serve on other federal

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entities such as advisory boards, task forces, other commissions, et cetera, shall be exercised by the Chair."

"Section 2.02(1). For the two appointments to the U.S. Election Assistance Commission, the members appointed by Democratic appointees shall nominate two individuals who are ready, willing, and able to serve, and the members appointed by the Republican authorities shall nominate two individuals who are ready, willing, and able to serve."

Subparagraph (2). "The members appointed by the Democratic authorities shall select one of the two individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one of the two individuals nominated by the members appointed by the Democratic authorities."

Subparagraph (3). "The members selected shall be placed in nomination and ratified in conformance with Section 1."

I.B. ADMINISTRATIVE INSTRUCTION ON INTERVIEWS WITH EXTERNAL FACT WITNESSES

COMMISSIONER KIRSANOW: Next, I'll read into the record the new section of AI 1 regarding

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witness interviews by staff. The Staff Director shall ensure that this provision is codified in the appropriate place of AI 1, and it reads as follows:

"As the staff persons arrange for interviews of external fact witnesses or experts for the purpose of informing writing of reports, et cetera, the Commissioners will be given notice of the names and titles of proposed witnesses, so that the Commissioners and their Special Assistants can observe the interview firsthand. The observations will help the Commissioners better understand the subject matters covered, and enable the Commissioner to conduct and follow up with questions of the witnesses. If more than one Commissioner (or Commissioner's Special Assistant) representing Democratic or Republican appointing authorities wishes to attend, the Staff Director may limit attendance to one representative from each (provided circumstances clearly warrant such a limit)."

I.C. ADMINISTRATIVE INSTRUCTION ON WITNESSES AT HEARINGS AND BRIEFINGS

COMMISSIONER KIRSANOW: Finally, I'll read into the record the revisions to AI 1.6, and that one reads:

"Section 11. Commission Hearings.

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".01 The OGC is responsible for preparing and holding Commission hearings. This includes ensuring that the witnesses, when viewed as a whole, possess sufficient policy, legal, academic, advocacy, and other knowledge and experience necessary for a full and balanced inquiry into the issues."

Paragraph .02. "To document that hearing witnesses reflected varied and opposing views, opinions, and perspectives, OSD completes Section III of the National Office Report Checklist for Hearing Reports form. By completing this form, OSD certifies that the hearing included a numerical balance of witnesses between opposing views, opinions and perspectives or that a numerical balance could not be achieved or was not appropriate in light of the subject of the hearing and/or the availability of credible witnesses. Section IV is completed by the Staff Director before the proposed final draft report and checklist are provided to the external reviewer."

Paragraph .03. "Staff is encouraged to use various sources to gather suggestions for appropriate hearing witnesses. Commissioners are the primary source of suggestions for hearing witnesses. Additional sources may include, but are not limited

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to, other program offices, regional directors, and appropriate external groups. If two Commissioners request that staff invite a particular witness, staff must invite that witness. No Commissioner may act jointly to invite more than two witnesses, which results in no more than 8 witnesses shall be required to be invited by staff by action of the Commission. Thereafter, a Commissioner or Commissioners may suggest as many witnesses as they deem advisable, but staff is not obligated to invite them, and staff may consult additional sources to invite additional witnesses for hearings."

Paragraph .04. We're almost there. That's not part of the AI. "OGC prepares hearing proposals, design or implementation plans, and briefing or background books. When preparing hearing proposals this office shall demonstrate a consideration of varied and opposing views, opinions, and perspectives. This office also verifies the accuracy of transcripts, drafts hearing reports, and maintains official hearing records."

Paragraph .05. "OGC is responsible for supplying a complete and correct transcript with appropriate exhibits to OSD and ASCD for publication. Hearing transcripts do not require editorial review."

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Paragraph .06. "The hearing record will be kept open for a period of 30 days after the hearing or as otherwise established by a majority vote of the Commissioners. Any material or information placed in the record during this period will be available to the Commissioners upon request."

Paragraph "Section 12. Commission Briefings."

Subparagraph .01. "Briefings are used by the Commission to provide Commissioners and the general public insight into civil rights without the formality of a hearing. Any program office may be assigned responsibility for conducting a briefing by the Staff Director."

Paragraph .02. "Staff is encouraged to use various sources to gather suggestions for appropriate briefing witnesses. Commissioners are the primary source of suggestions for briefing witnesses. Additional sources may include, but are not limited to, other program offices, regional directors, and appropriate external groups. If two Commissioners jointly request that staff invite a particular witness, staff must invite that witness. No Commissioner may act jointly to invite more than two witnesses, which results in no more than 8

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witnesses shall be required to be invited by staff by action of the Commission. Thereafter, a Commissioner or Commissioners may suggest as many witnesses as they deem advisable, but staff is not obligated to invite them, and staff may consult additional sources to invite additional witnesses for hearings."

".03 Commissioners are provided a proposed final list of briefing presenters for approval. To document that the briefing witnesses reflected varied and opposing views, opinions, and perspectives, OSD completes Section III of the National Office Report Checklist for Briefing Reports form. By completing this part of the form, OSD certifies that the briefing included a numerical balance of witnesses between opposing views, opinions and perspectives or that a numerical balance could not be achieved or was not appropriate in light of the subject of the briefing and/or the availability of credible witnesses. Section IV of this form is completed by the Staff Director before the proposed final draft report and checklist is provided to the external reviewer."

Finally, ".04 The briefing record will be kept open for a period of 30 days after the briefing or as otherwise established by a majority

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vote of the Commissioners. Any material or information placed in the record during this period will be available to the Commissioners upon request."

Kirsanow now pauses for a drink of vodka.

(Laughter.)

And that's the motion. Is there a second?

COMMISSIONER ADAMS: Yes, second. Adams.

COMMISSIONER KIRSANOW: Okay. The floor is open for discussion, and I turn it over to Commissioner Yaki.

COMMISSIONER YAKI: Thank you very much, Co-Chair Kirsanow.

First, I have a point of clarification. You had indicated that the first document that you read, which was on the appointments issue, was a Memorandum of Understanding, but I actually believe that is an Administrative Instruction. Is that not correct?

COMMISSIONER KIRSANOW: Yes, that's right.

COMMISSIONER YAKI: Yes. Okay. So, I wanted to clarify that for the record.

COMMISSIONER KIRSANOW: Thank you.

COMMISSIONER YAKI: Secondly, for those

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of you who were listening, the last document that Commissioner Kirsanow read, Section 11.01, Section 11.03, Section 12.02 were the only sections of that entire document that were amended. The rest remain intact as current Commission policy. I just wanted to clarify that for people who were listening in.

So, there has been a motion and a second. I am first going to do a little parliamentary moving, which is I think we need to first move to accept, approve and amend the agenda.

II. APPROVAL OF AGENDA

COMMISSIONER YAKI: So, I am going to set aside the first motion for the time being and first ask, is there a motion to approve the agenda?

COMMISSIONER ADAMS: So moved. So moved. Adams.

COMMISSIONER YAKI: Commissioner Adams moves to approve the agenda. Is there a second?

COMMISSIONER GILCHRIST: Second. Gilchrist.

COMMISSIONER YAKI: Second by Commissioner Gilchrist.

On the motion to approve the agenda -- we still have time to amend the agenda -- but on the motion to approve the agenda, so we have this before

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us, is there any discussion?

COMMISSIONER HERIOT: Wait. I thought you had to do amendments first?

COMMISSIONER YAKI: No. Well, I would rather have the agenda approved first, and then, amend the agenda. And then, we'd move on the agenda as approved.

COMMISSIONER HERIOT: I don't think that's the right way to do that.

COMMISSIONER YAKI: Well, that may be, but I'm going to put the extra vote in, just to make sure that no one can argue that we didn't follow strict rules.

So, on the order to approve the agenda now, I'm going to call the roll.

Commissioner Kirsanow, since you have the roll sheet, could you call the roll?

COMMISSIONER KIRSANOW: Sure.

Commissioner Adams?

COMMISSIONER ADAMS: Yes.

COMMISSIONER KIRSANOW: Commissioner Adegbile?

COMMISSIONER ADEGBILE: Aye.

COMMISSIONER KIRSANOW: Commissioner Cantu?

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COMMISSIONER CANTU: Yes.

COMMISSIONER KIRSANOW: Commissioner Gilchrist?

COMMISSIONER GILCHRIST: Aye.

COMMISSIONER KIRSANOW: Commissioner Heriot?

COMMISSIONER HERIOT: No.

COMMISSIONER KIRSANOW: Commissioner Kladney?

COMMISSIONER KLADNEY: Yes.

COMMISSIONER KIRSANOW: Commissioner Yaki?

COMMISSIONER YAKI: Aye.

COMMISSIONER KIRSANOW: And this is Kirsanow. I say "yes," also.

COMMISSIONER YAKI: Thank you.

There are 8 ayes, no objections.

The agenda is now before us. Is there a motion to approve, to amend the agenda --

COMMISSIONER KIRSANOW: I believe, Commissioner Yaki, I think there were 7 ayes and 1 nay.

COMMISSIONER YAKI: Oh, 1 nay. I'm sorry. 7 ayes, 7 yeses; 1 no.

Okay. Now we will take before us the

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motion to amend the agenda to put forth an omnibus motion that will approve both Commissioner, that will approve Commissioner Cantu as Chair of the United States Commission on Civil Rights, as well as approve the three Administrative Instructions that were read into the record by Commissioner Kirsanow.

III. AMENDMENTS TO THE AGENDA

COMMISSIONER YAKI: It has been moved, it has been seconded, moved by Commissioner Kirsanow, seconded by Commissioner Adams.

Is there any discussion?

COMMISSIONER ADEGBILE: Commissioner Adegbile.

COMMISSIONER YAKI: Commissioner Adegbile, the floor is yours.

COMMISSIONER ADEGBILE: Yes, I would have preferred that we move item by item and not have these things as an omnibus because there may be pieces that are acceptable and pieces that are unacceptable; and thus, it makes it hard to parse those things out. Because we're proceeding in omnibus fashion, it will affect my vote, though, obviously, I support Commissioner Cantu in her effort to chair our Commission in service of the people of the United States. But the omnibus motion will have impact on

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the way I will be voting.

COMMISSIONER YAKI: Thank you, Commissioner Adegbile.

Is there any further discussion?

COMMISSIONER KLADNEY: Dave Kladney.

COMMISSIONER YAKI: Commissioner Kladney?

COMMISSIONER KLADNEY: I concur with Commissioner Adegbile's assessment here, and this omnibus motion will affect my vote the same way. Thank you.

COMMISSIONER YAKI: Thank you, Commissioner Kladney.

If you can hang on just one second?

Is there any further discussion?

MR. MORALES: Staff Director Mauro Morales requests permission to address the Commissioners.

COMMISSIONER YAKI: Without objection, I will recognize Staff Director Morales.

MR. MORALES: Thank you, Commissioner. I appreciate the time.

I wanted to let you know that, and all the Commissioners know, that I and the Executive Committee have no opinion on the AI or the MOU about

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appointments to external commissions that the Commissioners are considering.

I will say that the Staff Director and the Executive Committee believe the proposed AIs concerning OCR witness selection and witness interviews -- I believe they're designated as AI 1 and AI 1.6 -- inappropriately conflict with existing Administrative Instructions and Commission regulations. Furthermore, we believe that they unreasonably create programmatic and operations problems for the Commission.

Commissioners provided no evidence, justification, or rationale for the necessity and the creation of these two AIs. As a consequence, the Staff Director and the Executive Committee respectfully object to them and recommend that these AIs be withdrawn from further consideration.

We thank you for your time and your consideration. Thank you.

COMMISSIONER YAKI: Thank you very much.

COMMISSIONER KLADNEY: Commissioner Yaki?

COMMISSIONER YAKI: Just one second. I just trying to get my phone back into where it should be.

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Thank you, Staff Director Morales.

Commissioner Kladney, were you speaking?

COMMISSIONER KLADNEY: Yes, Commissioner Yaki.

I would like to move to sever the items into individual votes.

COMMISSIONER YAKI: Thank you.

The motion to sever is a privileged motion and is not debatable or subject to a vote. So, we will have to take an individual vote on each one of these items.

However, in the discretion of the Co-Chair, I'm going to take them up in the order that I deem.

So, I'm going to first start with the AI on the Administrative Instruction regarding appointments by the Commission. That individual Instruction is before us.

And, Commissioner Kirsanow, would you please call the roll?

COMMISSIONER KIRSANOW: I'm sorry, are we voting on individual -- I'm lost as to what we're voting on right now. Are we voting on a separate issue or the omnibus?

COMMISSIONER YAKI: Well, the issue is

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that each of these items are individual items. They are put together as an omnibus. However, a Commissioner -- because they were originally noticed as individual items on the agenda, and the motion that you put and seconded and was put on the agenda was to combine them all into a single motion, a motion to sever, under Robert's Rules, is a privileged motion that is non-debatable and is -- well, it's self-executing. The Commission has actually done that before on previous occasions.

What I'm going to do, though, is call on AIs --

COMMISSIONER HERIOT: No, it's not self-executing.

COMMISSIONER YAKI: It is self-executing.

COMMISSIONER HERIOT: No, it's not.

COMMISSIONER YAKI: And if you would listen to me for a second, I am going to call the AIs first prior to the vote for Commissioner Cantu as Chair.

COMMISSIONER HERIOT: Okay.

COMMISSIONER YAKI: Okay?

COMMISSIONER HERIOT: But it's not self-executing. It's non-debatable. Nothing is self-executing. But --

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COMMISSIONER YAKI: But a motion to sever actually --

COMMISSIONER HERIOT: -- it's out of order, but that's okay with me.

COMMISSIONER YAKI: Okay. But I will tell you, under Robert's Rules, which is something I know you care about, a motion to sever is self-executing.

COMMISSIONER HERIOT: But it's not a motion, and that's --

COMMISSIONER YAKI: It is a motion to sever.

Anyway, that being the case --

COMMISSIONER HERIOT: Well, hold on. Hold on. Hold on. Okay. Are you saying that we are voting on the motion to sever --

COMMISSIONER YAKI: No.

COMMISSIONER HERIOT: -- or are you saying we are voting on the AI?

COMMISSIONER YAKI: We are voting on the AIs. And then, we will proceed to a vote on Commissioner Cantu, because the motion to sever is not something that is subject to a vote. I guess you would call it a request to sever, but it is one that, under Robert's Rules, is --

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COMMISSIONER HERIOT: No.

COMMISSIONER YAKI: -- is a privilege of --

COMMISSIONER HERIOT: I'm willing to let this go right now, but no.

COMMISSIONER YAKI: Okay. Well, I would disagree, and we can look it up, since you love Robert's Rules so much.

So, Commissioner --

COMMISSIONER ADAMS: Co-Chair Yaki, point of parliamentary inquiry. It's Commissioner Adams.

COMMISSIONER YAKI: Yes, Commissioner Adams.

COMMISSIONER ADAMS: Could you, for the record, tell us, because I can't find it, where is the request to sever in Robert's Rules?

COMMISSIONER YAKI: Okay.

COMMISSIONER HERIOT: Because if we do this in the order you're saying, let's just go.

COMMISSIONER ADAMS: Well, it's a point of parliamentary inquiry. I made a point of parliamentary inquiry, and I'm just asking, what is the number of Robert's Rules? Just help me find it. I can't find it.

COMMISSIONER YAKI: I'll find it, but

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I'll find it later.

As the Chair, I'm exercise my call.

So, Commissioner Kirsanow, on Administrative Instruction, Commissioner Kirsanow, would you please call the roll?

I.A. ADMINISTRATIVE INSTRUCTION REGARDING APPOINTMENTS BY THE COMMISSION

COMMISSIONER KIRSANOW: Commissioner Adams, how do you vote?

COMMISSIONER ADAMS: Yes.

COMMISSIONER KIRSANOW: Commissioner Adegbile?

COMMISSIONER ADEGBILE: No.

COMMISSIONER KIRSANOW: Commissioner Cantu?

COMMISSIONER CANTU: Yes.

COMMISSIONER KIRSANOW: Commissioner Gilchrist?

COMMISSIONER GILCHRIST: Yes.

COMMISSIONER KIRSANOW: Commissioner Heriot?

COMMISSIONER HERIOT: Yes.

COMMISSIONER KIRSANOW: Commissioner Kladney?

COMMISSIONER KLADNEY: No.

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COMMISSIONER KIRSANOW: Commissioner Yaki?

COMMISSIONER YAKI: Aye.

COMMISSIONER KIRSANOW: And I vote aye.

It is 6-to-2 aye.

COMMISSIONER YAKI: Thank you.

The Administrative Instruction on Commission appointments is passed.

Next, we will hear or we will have a vote on the Administrative Instruction on -- sorry, I have to put these all in order -- on the proposed AI on interviews with external fact witnesses. That was read into the record by Commissioner Kirsanow.

I.B. ADMINISTRATIVE INSTRUCTION ON INTERVIEWS WITH EXTERNAL FACT WITNESSES

COMMISSIONER YAKI: Would you please call the roll?

COMMISSIONER KIRSANOW: Commissioner Adams?

COMMISSIONER ADAMS: Yes.

COMMISSIONER KIRSANOW: Commissioner Adegbile?

COMMISSIONER ADEGBILE: Nay.

COMMISSIONER KIRSANOW: Commissioner Cantu?

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COMMISSIONER CANTU: Yes.

COMMISSIONER KIRSANOW: Commissioner Gilchrist?

COMMISSIONER GILCHRIST: Yes.

COMMISSIONER KIRSANOW: Commissioner Heriot?

COMMISSIONER HERIOT: Yes.

COMMISSIONER KIRSANOW: Commissioner Kladney?

COMMISSIONER KLADNEY: No.

COMMISSIONER KIRSANOW: Commissioner Yaki?

COMMISSIONER YAKI: Aye.

COMMISSIONER KIRSANOW: And I vote yes.

The motion passes 6-to-2.

COMMISSIONER YAKI: The motion on the Administrative Instruction on interviewing external fact witnesses passes 6-to-2.

We will now move to the last Administrative Instruction on witnesses at hearings and briefings, as read by Commissioner Kirsanow.

I.C. ADMINISTRATIVE INSTRUCTION ON WITNESSES AT HEARING AND BRIEFINGS

COMMISSIONER YAKI: Would you please call the roll?

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COMMISSIONER KIRSANOW: Commissioner Adams?

COMMISSIONER ADAMS: Yes.

COMMISSIONER KIRSANOW: Commissioner Adegbile?

COMMISSIONER ADEGBILE: Nay.

COMMISSIONER KIRSANOW: Commissioner Cantu?

COMMISSIONER CANTU: Yes.

COMMISSIONER KIRSANOW: Commissioner Gilchrist?

COMMISSIONER GILCHRIST: Yes.

COMMISSIONER KIRSANOW: Commissioner Heriot?

COMMISSIONER HERIOT: Yes.

COMMISSIONER KIRSANOW: Commissioner Kladney?

COMMISSIONER KLADNEY: No.

COMMISSIONER KIRSANOW: Commissioner Yaki?

COMMISSIONER YAKI: Aye.

COMMISSIONER KIRSANOW: And Kirsanow votes yes.

Passes 6-to-2.

COMMISSIONER YAKI: The Administrative

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Instruction on witnesses for briefings and hearings is hereby passed.

Finally, we come to the motion to confirm Commissioner Norma Cantu as Chair of the United States Commission on Civil Rights.

I.D. TO APPROVE COMMISSIONER NORMA CANTU TO SERVE AS USCCR CHAIR

COMMISSIONER YAKI: Commissioner Kirsanow, would you please call the roll in our last actions as Co-Chairs of the Commission?

COMMISSIONER KIRSANOW: Okay.

Commissioner Adams?

COMMISSIONER ADAMS: Yes.

COMMISSIONER KIRSANOW: Commissioner Adegbile?

COMMISSIONER ADEGBILE: Aye.

COMMISSIONER KIRSANOW: Commissioner Cantu?

COMMISSIONER CANTU: Yes.

COMMISSIONER KIRSANOW: Commissioner Gilchrist?

COMMISSIONER GILCHRIST: Yes.

COMMISSIONER KIRSANOW: Commissioner Heriot?

COMMISSIONER HERIOT: Yes.

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COMMISSIONER KIRSANOW: Commissioner Kladney?

COMMISSIONER KLADNEY: Yes.

COMMISSIONER KIRSANOW: Commissioner Yaki?

COMMISSIONER YAKI: Aye.

COMMISSIONER KIRSANOW: And I vote yes.

The motion passes 8-to-0.

And, Chairperson Cantu, congratulations. We'll pass the scepter to you.

(Applause.)

CHAIR CANTU: Thank you very much.

COMMISSIONER YAKI: Congratulations.

CHAIR CANTU: Thank you.

I really want to thank the White House, the U.S. Congress, the U.S. Senate, the Commissioners, those of you we call the "Group of Four" who were able to look very seriously at these matters of process. And I know that the result is one that will ultimately adhere. And we did work hard together to get to this place.

I also want to thank the Special Assistants, the staff who set up this call, all our staff, and your families who spared you all, so that we could get the Commission's work done.

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For those of you who are listening, this is what it looks like to be respectful. This is what it looks like to show that we can disagree, but do it in a very professional way. And I want to thank everyone on this call for providing this teachable moment for our audience.

We have an agenda that's been amended in terms of handling the first item. As a matter of procedure, I want to circle back to all the Commissioners.

III. AMENDMENTS TO THE AGENDA

CHAIR CANTU: Are there other items on the agenda that you need addressed today?

(No response.)

Hearing none, I would ask that --

COMMISSIONER YAKI: Wait. I'm sorry, I was on mute. I was on mute, Commissioner Cantu.

CHAIR CANTU: Okay. I hear you. I hear you. Please. That is why I offered -- this is my listening, and next time I will listen longer.

Do we have other items on today's agenda? Commissioner Yaki?

COMMISSIONER YAKI: Commissioner Cantu, I would simply say this: there are items on the agenda that I think have been adequately noticed and

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need to be addressed. However, in the interest of deferring to some concerns by my colleagues, I would ask that, if they are not discussed today, that they be subjected to a notational vote at their earliest convenience.

For me, especially the statement on Asian American/Pacific Islander hate and the continued concerns and struggles of our community with regard to the uptick in hate crimes, bias, and prejudice, stemming from or incited by the coronavirus pandemic, is one that continues to -- I think we need to reiterate to the new Administration our concerns, and I would like this addressed at the earliest possible convenience and by a notational vote, but I defer to my colleagues who have expressed some desire to have a shorter meeting today.

CHAIR CANTU: I'm sorry, are you making a motion, Commissioner Yaki, or are you suggesting an alternative way that we handle it?

COMMISSIONER YAKI: Yes, I was simply saying that I would like it to be moved on today. And so, I would like to move it. But if there is no second because of concerns of time, then I would simply ask the Chair, at her discretion, to put it on for a notational ballot approval at her earliest

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convenience.

I will formally move to take from the agenda Item III.B., the statement on Asian American hate, and ask for it to be approved today. If not, then it be brought up at the earliest convenience by the Chair for a notational vote.

CHAIR CANTU: We're discussing amending today's agenda. So, we have a motion to discuss today the Asian American statement.

COMMISSIONER KLADNEY: Kladney seconds. Kladney seconds.

CHAIR CANTU: Discussion?

COMMISSIONER HERIOT: Madam Chair, I'm getting a little confused here.

CHAIR CANTU: The motion is --

COMMISSIONER HERIOT: Is the motion about whether or not we're going to discuss this or whether or not we're removing it from the agenda? I'm just getting confused.

CHAIR CANTU: We're still talking about the agenda. Do we want to keep this on today's agenda?

COMMISSIONER HERIOT: My understanding is that some of my colleagues were going to offer an amendment, and that works better on the agenda than

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it does by notational vote.

CHAIR CANTU: Are you offering a friendly amendment to a motion that's been seconded on keeping it on today's agenda? Or are you agreeing --

COMMISSIONER HERIOT: That's just a reason to vote yes or no.

CHAIR CANTU: Okay.

COMMISSIONER HERIOT: I mean, if there's going to be an amendment, then it's better to discuss it today --

CHAIR CANTU: Okay.

COMMISSIONER HERIOT: -- than by notational vote, which doesn't lend itself to that very well.

CHAIR CANTU: I understand that.

By the way, the rule on dividing a question into subparts was 27.1.

So, any other discussion about going forward with adding the Asian American statement to today's agenda?

COMMISSIONER ADAMS: Chairman Cantu, Christian Adams.

CHAIR CANTU: Yes, Commissioner?

COMMISSIONER ADAMS: I don't have a strong view either way. I would urge Commissioner

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Yaki to take a look. There might be some fixes. There's some typos in the document, such as I think the last sentence in one of the documents, that I would have a better time dealing with it if those were fixed. And that may be a notational vote. I don't really have a view on that because there's some typos.

COMMISSIONER YAKI: Okay. Thank you for that consideration.

Look, I just want to express my view that we wanted to get this thing done. I'm going to withdraw my motion for the time being, since I think I confused everyone. So, I am going to withdraw my motion.

CHAIR CANTU: Thank you, Commissioner Yaki.

Other items that -- let me see if I can move this along. The rest of the items, C, D, E, were part of the vote that just took place. So, I can I use the discretion of the Chair to say we've already dealt with those items? That would be the rebuttals, Speaker Series, appointments.

Any objection to that?

COMMISSIONER KLADNEY: How did we deal with them, Madam Chair?

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CHAIR CANTU: In the meeting two weeks ago, I made a statement regarding the Speaker Series. In today's AI, we had an AI on the rebuttal/surrebuttal that passed. And on the appointments, we had a vote today on the bipartisan appointment that passed.

COMMISSIONER HERIOT: We haven't dealt with the Walter Williams thing.

CHAIR CANTU: Right. Do I hear a motion to keep that on today's agenda for discussion?

COMMISSIONER HERIOT: It's already there.

CHAIR CANTU: It's already there.

COMMISSIONER HERIOT: Yes.

CHAIR CANTU: It's been noticed a couple of times, you're correct.

IV. BUSINESS MEETING

CHAIR CANTU: So, at this point, I'm open to a motion and a second, so that we can have discussion on the Walter Williams memorial.

IV.A. DISCUSSION AND VOTE ON STATEMENT OF WALTER E. WILLIAMS

COMMISSIONER HERIOT: Okay. I move that we adopt the Walter Williams memorial.

COMMISSIONER KIRSANOW: Kirsanow seconds.

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CHAIR CANTU: I'm sorry, who seconded?

COMMISSIONER KIRSANOW: Kirsanow.

CHAIR CANTU: Kirsanow.

Commissioner Heriot moves, Commissioner Kirsanow seconds.

We are in discussion.

For those who are listening, in the past the individual Commissioners have been able to submit names of persons that they intend to recognize. It is not a policymaking. It is a statement and sign of respect.

COMMISSIONER HERIOT: Madam Chair?

CHAIR CANTU: Yes, Commissioner?

COMMISSIONER HERIOT: If you want, I'll talk about this. But, you know, it's just we've done this routinely now. I have voted for many of these when there have been people who have done significant work in this area.

This is one that matters to me, in the sense that Walter Williams is a hero of mine. And I think that he's also someone that many, many people think highly of.

I don't want to extend the meeting unnecessarily. Everybody has seen this statement now several times. And so, you know, I'd like to be able

AMERICAN OVERSIGHT

to say a kind word on Dr. Williams' passing.

CHAIR CANTU: You have my condolences and I offer condolences to the family.

Any other comments?

(No response.)

Could we do a voice vote or would you want to do a roll call vote? What is your preference?

COMMISSIONER HERIOT: Probably should do a roll call, given how confusing these things are over the phone.

CHAIR CANTU: I appreciate that.

Is there any further discussion? Does someone want to call the question?

COMMISSIONER ADAMS: Adams. Call the question.

CHAIR CANTU: Thank you.

We've had a question. The question is an aye vote supports the draft that has been duly circulated to us to honor Professor Walter Williams.

I would call alphabetically.

Adams?

COMMISSIONER ADAMS: Yes.

CHAIR CANTU: Adegbile?

COMMISSIONER ADEGBILE: Nay.

CHAIR CANTU: Gilchrist?

AMERICAN OVERSIGHT

COMMISSIONER GILCHRIST: Yes.

CHAIR CANTU: Heriot?

COMMISSIONER HERIOT: Yes.

CHAIR CANTU: Kirsanow?

COMMISSIONER KIRSANOW: Yes.

CHAIR CANTU: Kladney?

COMMISSIONER KLADNEY: No.

CHAIR CANTU: Yaki?

COMMISSIONER YAKI: Aye.

CHAIR CANTU: Cantu votes no.

Please note on the record, though, that, as Chair, I am cautious about the process of recognizing people where it's not clear, and has not been clear, what our criteria have been, but I do very deeply offer my condolences to those who knew the Professor and I do offer my prayers to the family.

Can we move to the next order of business? It is the item that has been noticed, the North Carolina State Advisory Council.

It is our responsibility on the Commission -- and it's a privilege to do this -- to approve --

COMMISSIONER YAKI: Point of order, Commissioner.

CHAIR CANTU: Yes, please. Yes, please.

AMERICAN OVERSIGHT

COMMISSIONER YAKI: Point of order, Chair Cantu.

CHAIR CANTU: Uh-hum.

IV.B. DISCUSSION AND VOTE ON ANTI-ASIAN AMERICAN HATE

COMMISSIONER YAKI: Commissioner Yaki.

One, on the item on Asian American/Pacific Islander hate, I saw the typo, "opposite" to "opposition". Thank you, Commissioner Adams for drawing that to my attention.

When I withdrew my motion, it was for consideration -- it was in light of the idea that perhaps we were going to not consider other items on the agenda and move on. But if we are considering other items on the agenda, then I wish that item to be heard in turn as Item III.B.

CHAIR CANTU: Is there an objection?

I think fair play would be we've heard from other Commissioners on their motions. So, as Chair, I'm exercising my management of time.

We will, hopefully, get these matters done pretty quickly. So, let's do our best.

On the Asian American statement regarding --

COMMISSIONER YAKI: As amended.

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CHAIR CANTU: As amended.

COMMISSIONER YAKI: As amended. Change the word "opposite" to "opposition".

CHAIR CANTU: Right. Your motion was seconded by?

COMMISSIONER KLADNEY: Kladney.

CHAIR CANTU: Kladney. Thank you, Commissioner.

And discussion?

COMMISSIONER ADAMS: Commissioner Adams.

CHAIR CANTU: Yes, Commissioner?

COMMISSIONER ADAMS: Commissioner Yaki, I had hoped to send a note. Take a look at that sentence because it seems to be relating to the previous Administration, but perhaps not.

COMMISSIONER YAKI: No, there's actually some continued controversy on this issue, Commissioner Adams.

COMMISSIONER ADAMS: Okay.

COMMISSIONER YAKI: So, I would like it to stand as is.

COMMISSIONER ADAMS: All right.

COMMISSIONER KIRSANOW: Madam Chair?

COMMISSIONER YAKI: In fact, there's been some controversy as to whether it went one way or

AMERICAN OVERSIGHT

backwards, or whatever. So, I think that putting our position firmly is important.

CHAIR CANTU: Who was acting to be recognized? I'm sorry. My ears --

COMMISSIONER KIRSANOW: Commissioner Kirsanow.

CHAIR CANTU: Oh, thank you, Commissioner.

COMMISSIONER KIRSANOW: Thank you, Madam Chair.

I would move to amend the letter to include the language to the following effect: that the federal government should withhold funding to any higher education institution if that institution has a policy in place or engages in a practice that discriminates against Asian Americans in recruitment or applicant review or admissions.

COMMISSIONER HERIOT: I second.

CHAIR CANTU: We have a motion --

COMMISSIONER YAKI: May I respond?

CHAIR CANTU: Yes, please.

COMMISSIONER YAKI: Commissioner Yaki responding.

Thank you, Commissioner Kirsanow, for that amendment. I will not accept it. This is

AMERICAN OVERSIGHT

dealing solely with the issue of the concerns regarding overt acts of bias and hate crime, as perpetrated against the Asian American community, stemming from, and incited by, in my view, the pandemic. The issue that you raise is one that I know that you care about, but I believe is not germane to this particular issue, and I ask my colleagues to oppose it.

COMMISSIONER HERIOT: And it has been seconded.

CHAIR CANTU: Is there further discussion?

COMMISSIONER ADEGBILE: Madam Chair?

CHAIR CANTU: Under the rules --

COMMISSIONER ADEGBILE: Commissioner Adegbile.

CHAIR CANTU: Yes, please. Commissioner?

COMMISSIONER ADEGBILE: It's my understanding that Title VI of the Civil Rights Act already creates a power for the federal government to withhold funding if there are findings of noncompliance with federal civil rights law. And so, in my view, this suggestion adds nothing to the current legal regime.

CHAIR CANTU: So, your contribution is

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that the amendment is unnecessary?

COMMISSIONER ADEGBILE: Yes.

CHAIR CANTU: Thank you.

COMMISSIONER YAKI: So, we need a vote on the motion to amend.

CHAIR CANTU: Has someone called the question on that motion, on the discussion on that?

COMMISSIONER KIRSANOW: There was a motion and it was seconded.

COMMISSIONER ADAMS: Adams. Call the question.

CHAIR CANTU: Thank you.

There's been a motion to amend, seconded, discussion.

Are you all ready to vote on the motion to amend to add language regarding higher education discrimination? Are you ready on that?

COMMISSIONER KIRSANOW: Yes.

CHAIR CANTU: Thank you.

So, a roll call vote would be Adams, please.

COMMISSIONER ADAMS: Yes.

CHAIR CANTU: Adegbile?

COMMISSIONER ADEGBILE: Nay.

CHAIR CANTU: Gilchrist?

AMERICAN OVERSIGHT

COMMISSIONER GILCHRIST: Yes.

CHAIR CANTU: Heriot?

COMMISSIONER HERIOT: Yes.

CHAIR CANTU: Kirsanow?

COMMISSIONER KIRSANOW: Yes.

CHAIR CANTU: Kladney?

COMMISSIONER KLADNEY: No.

CHAIR CANTU: And I vote no.

COMMISSIONER YAKI: You forgot me.

CHAIR CANTU: Oh, sorry. Where were you?

COMMISSIONER YAKI: You didn't call my name.

CHAIR CANTU: I'm so sorry.

Okay. Help me out.

COMMISSIONER YAKI: Commissioner Yaki votes no.

CHAIR CANTU: Thank you.

I saw your name and in my brain I thought I called you. I apologize.

So, we have -- I vote no. So, we have 4-4. The motion to amend does not carry.

We're back to the original motion.

COMMISSIONER YAKI: Yes, move to approve the -- move for the vote on the full motion.

CHAIR CANTU: All right. A roll call

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vote?

COMMISSIONER YAKI: Yes, please.

CHAIR CANTU: Adams?

COMMISSIONER ADAMS: Abstain.

CHAIR CANTU: Adegbile?

COMMISSIONER ADEGBILE: Aye.

CHAIR CANTU: Cantu? Well, skip me until the end.

Gilchrist?

COMMISSIONER GILCHRIST: Gilchrist abstains.

CHAIR CANTU: Heriot?

COMMISSIONER HERIOT: I abstain. There's something that I agree with in the letter, but, unfortunately, not all of it. So, I'm going to have to abstain.

CHAIR CANTU: Thank you.

Kirsanow?

COMMISSIONER KIRSANOW: Is that the famous director of "Rashomon"? Or is that Commissioner Kirsanow?

(Laughter.)

In any event, I'd rather be the director because I think he's a lot more entertaining and more important.

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But, nonetheless, Kirsanow abstains.

CHAIR CANTU: Thank you.

Kladney?

COMMISSIONER KLADNEY: Yes.

CHAIR CANTU: Yaki?

COMMISSIONER YAKI: Curacao is actually an alcohol. Kurosawa is a Japanese director.

(Laughter.)

COMMISSIONER KIRSANOW: It sounded like Kurosawa to me.

(Laughter.)

COMMISSIONER YAKI: And Commissioner Yaki votes aye.

CHAIR CANTU: Did I count correctly? With the abstentions, the ayes have it?

COMMISSIONER HERIOT: Yes.

COMMISSIONER ADEGBILE: Yes.

CHAIR CANTU: Thank you. Okay.

We have a little bit of time to do the North Carolina State Advisory Council motion on membership.

IV.C. DISCUSSION ON NC SAC

COMMISSIONER HERIOT: We haven't seen the list yet. So, I don't know think we can do this one.

CHAIR CANTU: I am sorry. Was the list

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in the -- were emails exchanged? But you're right, I don't believe that we have -- did we attach a list?

COMMISSIONER HERIOT: No, I haven't seen one.

CHAIR CANTU: Okay, okay.

COMMISSIONER GILCHRIST: Not the big list, no.

CHAIR CANTU: All right.

COMMISSIONER HERIOT: We should do this by notational vote. I think it's going to be an easy one. It's just that we have to confirm who's in and who's not.

CHAIR CANTU: And excuse me, but it's the first time I've done a notational vote. Do I direct the Staff Director to follow that process? Or does that require a vote?

COMMISSIONER HERIOT: I think you can just direct the Staff Director.

CHAIR CANTU: Okay. It's administrative, finally. A short item.

Speaking of the Staff Director, could we have a brief report on the item agenda on management on operations?

IV.D. MANAGEMENT AND OPERATIONS

X STAFF DIRECTOR'S REPORT

AMERICAN OVERSIGHT

MR. MORALES: Congratulations on becoming the Chair, Madam Chair.

CHAIR CANTU: Thank you.

MR. MORALES: In the interest of time, I have nothing further to add, other than is already contained in the report that was submitted to Commissioners. As always, I remain available to discuss any particular matter with a Commissioner.

And I thank you.

CHAIR CANTU: Thank you.

Normally, there would be an item called New Business, but, in the interest of letting everyone enjoy their family and go back to their other work, are there any other matters before we entertain a motion to adjourn?

COMMISSIONER KIRSANOW: Commissioner Kurosawa here, or Kirsanow.

(Laughter.)

CHAIR CANTU: Kirsanow.

(Laughter.)

COMMISSIONER KIRSANOW: I just want to thank Chairperson Cantu and congratulate her for being Chair. I'm looking forward to many more meetings with you as Chair.

CHAIR CANTU: I am looking forward to

AMERICAN OVERSIGHT

that, too -- thank you -- and to seeing you ultimately in person.

I understand Commissioner Adams will be having a one-year anniversary of his appointment next week and he's never seen the rest of you folks in person. So, these are unusual times that we're conducting business. But I'm optimistic, given the good faith shown in these conversations and the good faith shown as you all help this country through difficult times.

COMMISSIONER GILCHRIST: Chairwoman Canto, Stephen Gilchrist here.

CHAIR CANTU: Yes?

COMMISSIONER GILCHRIST: I just wanted to thank, also, Commissioner Kirsanow, Commissioner Heriot, Commissioner Yaki, and yourself for the good-faith effort that you guys put into the negotiations for the Commission. I am very pleased at the work that you've come up with, and certainly, we look forward to your tenure as our Chair. So, we look forward to working with you for sure.

CHAIR CANTU: I appreciate that.

Normally, when three new Commissioners show up, there would be a like a face-to-face retreat. There's a lot of conversations about how we look to

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each other to work together. We all had to have those kinds of conversations with a small group of four, and that group of four does deserve to be congratulated for helping us answer our questions about how we will be respectful of everyone's points of view and how we will incorporate and listen to each other's ideas.

So, thank you very much, Commissioner Adams and Gilchrist.

Anyone else for the good of the order?

COMMISSIONER HERIOT: Just congratulations from me.

CHAIR CANTU: Thank you. Thank you, and I will pop a virtual bottle of champagne.

(Laughter.)

COMMISSIONER ADAMS: Don't get virtually drunk.

(Laughter.)

CHAIR CANTU: Thank you all for having a wonderful sense of humor, and I'm really looking forward to our time together.

V. ADJOURN MEETING

CHAIR CANTU: The meeting is adjourned.

(Whereupon, at 2:54 p.m., the meeting was adjourned.)

AMERICAN OVERSIGHT

AMERICAN OVERSIGHT

Date : 8/19/2021 1:08:22 PM
From : "John Mashburn" jmashburn@usccr.gov
To : "Norma Cantu" ncantu@usccr.gov, "Juana Silverio" jsilverio@usccr.gov, "Mauro Morales" mmorales@usccr.gov, "Irena Vidulovic" ividulovic@usccr.gov
Cc : "Thomas Simuel" tsimuel@usccr.gov, "Alexander Heideman" aheideman@usccr.gov, "Carissa Mulder" CMulder@usccr.gov
Subject : Re: EAC Final Selections--not by notational vote

Thank you. Cmnr Adams will make the motion.

From: Norma Cantu <ncantu@usccr.gov>
Date: Thursday, August 19, 2021 at 11:15 AM
To: Juana Silverio <jsilverio@usccr.gov>, Mauro Morales <mmorales@usccr.gov>, John Mashburn <jmashburn@usccr.gov>, Irena Vidulovic <ividulovic@usccr.gov>, Mauro Morales <mmorales@usccr.gov>
Cc: Thomas Simuel <tsimuel@usccr.gov>, Alexander Heideman <aheideman@usccr.gov>, Carissa Mulder <CMulder@usccr.gov>
Subject: RE: EAC Final Selections--not by notational vote

Dear John, Juana, and others,
I have already heard on Tuesday an objection from a Commissioner regarding using the notational vote to address the confirming of the EAC candidates. The concern, I understand, is that more discussion is needed on important items, such as length of term, duties to report back to USCCR, etc.
Since one objection stops the notational process, it will take a vote at a meeting to confirm.
I would welcome it if Commissioner Adams or others wish to make a motion at the meeting to add this item to the agenda.
Norma

From: Juana Silverio <jsilverio@usccr.gov>
Sent: Wednesday, August 18, 2021 4:13 PM
To: Mauro Morales <mmorales@usccr.gov>; John Mashburn <jmashburn@usccr.gov>
Cc: Thomas Simuel <tsimuel@usccr.gov>; Alexander Heideman <aheideman@usccr.gov>; Carissa Mulder <CMulder@usccr.gov>; Norma Cantu <ncantu@usccr.gov>
Subject: Re: EAC Final Selections

Thanks John. You are correct, the item is not on the agenda for Friday.

There were a few concerns raised on process before confirming the candidates to the EAC on behalf of the Commission. Please stand by snd advise your commissioners that further communication is forthcoming by the Chairwoman.

Please let us know if you have any further questions. We greatly appreciate your patience.

Juana

--

AMERICAN OVERSIGHT

Juana Silverio (she/her/ella)
Special Assistant to Commissioner Norma V. Cantú
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Washington D.C. 20425
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From: Mauro Morales
Sent: Wednesday, August 18, 2021 4:41:49 PM
To: John Mashburn
Cc: Juana Silverio; Thomas Simuel; Alexander Heideman; Carissa Mulder
Subject: Re: EAC Final Selections

That is a good question. It is a decision for Commissioners in consultation with the Chair to decide how they wish to proceed. Adams is welcome to make a motion to amend the agenda to request a discussion and a vote. If the majority supports his motion it can be added to agenda. In the alternative, if Commissioners desire to proceed by notational vote and no one objects then a notational vote can occur. As I have requested previously, please advise me how you wish to proceed. I recommend Commissioners express their desire to the Chair since the Chair controls the agenda.

Sent from my iPhone

> On Aug 18, 2021, at 12:57 PM, John Mashburn <jmashburn@usccr.gov> wrote:
>
> This vote is not on the agenda for Friday, and a notational vote was not sent, so where does it stand? Gilchrist and Adams would like a vote at the business meeting and Adams is willing to make a motion to vote on it.
>
> ---
>
> **From:** Mauro Morales <mmorales@usccr.gov>
> **Date:** Tuesday, August 10, 2021 at 2:57 PM
> **To:** Commissioners <Commissioners@usccr.gov>
> **Cc:** "CommissionerAssistants@usccr.gov" <CommissionerAssistants@usccr.gov>, David Ganz <dganz@usccr.gov>
> **Subject:** EAC Final Selections
>
> Commissioners,
>
> Pursuant to the AI voted on during the April 30th Business meeting, I received the following names for appointment the Election Assistance Commission (EAC):

AMERICAN OVERSIGHT

Commissioners Cantu, Adegbile, Kladney and Yaki have selected for appointment to the EAC:

- Cleta Michell, Chair, Conservative Partnership Institute Election Integrity Network.

Commissioners Adams, Gilchrist, Heriot and Kirsanow have selected for appointment to the EAC:

- Commissioner Michael Yaki;

Under the AI adopted by Commissioners, these two members selected shall be placed in nomination and ratified by a majority vote. Please inform me how you would like to proceed for a majority vote either by placing it on the agenda for the next USCCR business meeting or by a notational vote. Thank you.

Mauro Morales
Staff Director
U.S. Commission on Civil Rights
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Mmorales@usccr.gov
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Washington D.C. 20425

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Date : 8/19/2021 12:56:38 PM
From : "John Mashburn" jmashburn@usccr.gov
To : "Alexander Heideman" aheideman@usccr.gov
Subject : Re: His adopted at April 30, 2021 meeting

See email I just sent him that I forwarded to you as well.

From: Alexander Heideman <aheideman@usccr.gov>
Date: Thursday, August 19, 2021 at 12:55 PM
To: John Mashburn <jmashburn@usccr.gov>, Carissa Mulder <CMulder@usccr.gov>
Subject: Re: His adopted at April 30, 2021 meeting

This is incorrect.

From: John Mashburn <jmashburn@usccr.gov>
Date: Thursday, August 19, 2021 at 12:55 PM
To: Alexander Heideman <aheideman@usccr.gov>, Carissa Mulder <CMulder@usccr.gov>
Subject: FW: His adopted at April 30, 2021 meeting

From: David Ganz <dganz@usccr.gov>
Date: Thursday, August 19, 2021 at 12:39 PM
To: John Mashburn <jmashburn@usccr.gov>
Subject: RE: His adopted at April 30, 2021 meeting

No problem; AI is attached.

From: John Mashburn <jmashburn@usccr.gov>
Sent: Thursday, August 19, 2021 12:19 PM
To: David Ganz <dganz@usccr.gov>
Subject: His adopted at April 30, 2021 meeting

Can you send me, or point me to, the official versions/texts of the AIs (including the one on the EAC appointments) that were adopted at the April 30 Bus Mtg?

AMERICAN OVERSIGHT

Date : 8/19/2021 1:09:27 PM
From : "John Mashburn" jmashburn@usccr.gov
To : "Christian Adams" a@electionlawcenter.com
Subject : Re: [EXTERNAL] RE: EAC Final Selections--not by notational vote

I let Cantu know.

Does Cleta know she will be asked to serve on this BOA?

From: Christian Adams <a@electionlawcenter.com>
Date: Thursday, August 19, 2021 at 1:00 PM
To: John Mashburn <jmashburn@usccr.gov>, Stephen Gilchrist <sgilchrist@usccr.gov>, Gail Heriot <gheriot@usccr.gov>, Peter Kirsanow <pkirsanow@usccr.gov>
Cc: Thomas Simuel <tsimuel@usccr.gov>, Alexander Heideman <aheideman@usccr.gov>, Carissa Mulder <CMulder@usccr.gov>
Subject: [EXTERNAL] RE: EAC Final Selections--not by notational vote

> CAUTION: This email is from outside USCCR.

Tell her I will make a motion to amend the agenda to have an amended agenda with a vote. this has gotten ridiculous. Probably the same commissioner that would not allow a vote (and then voted no) on the Walter Williams commemoration. Just petty.

From: John Mashburn <jmashburn@usccr.gov>
Sent: Thursday, August 19, 2021 11:26 AM
To: Christian Adams <a@electionlawcenter.com>; Stephen Gilchrist <sgilchrist@usccr.gov>; Gail Heriot <gheriot@usccr.gov>; Peter Kirsanow <pkirsanow@usccr.gov>
Cc: Thomas Simuel <tsimuel@usccr.gov>; Alexander Heideman <aheideman@usccr.gov>; Carissa Mulder <CMulder@usccr.gov>
Subject: Fw: EAC Final Selections--not by notational vote

FYI- Cantu “welcomes” a motion for a vote on EAC nominations

From: Norma Cantu
Sent: Thursday, August 19, 2021 11:15:35 AM
To: Juana Silverio; Mauro Morales; John Mashburn; Irena Vidulovic; Mauro Morales
Cc: Thomas Simuel; Alexander Heideman; Carissa Mulder
Subject: RE: EAC Final Selections--not by notational vote

Dear John, Juana, and others,
I have already heard on Tuesday an objection from a Commissioner regarding using the notational vote to address the confirming of the EAC candidates. The concern, I understand, is that more discussion is needed on important items, such as length of term, duties to report back to USCCR, etc.
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Cc: Thomas Simuel <tsimuel@usccr.gov>; Alexander Heideman <aheideman@usccr.gov>; Carissa Mulder <CMulder@usccr.gov>; Norma Cantu <ncantu@usccr.gov>
Subject: Re: EAC Final Selections

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Please let us know if you have any further questions. We greatly appreciate your patience.

Juana

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Juana Silverio (she/her/ella)
Special Assistant to Commissioner Norma V. Cantú
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Cc: Juana Silverio; Thomas Simuel; Alexander Heideman; Carissa Mulder
Subject: Re: EAC Final Selections

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Sent from my iPhone

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Date: Tuesday, August 10, 2021 at 2:57 PM
To: Commissioners <Commissioners@usccr.gov>
Cc:
"CommissionerAssistants@usccr.gov" <CommissionerAssistants@usccr.gov>, David Ganz <dganz@usccr.gov>
Subject: EAC Final Selections

Commissioners,

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Commissioners Cantu, Adegbile, Kladney and Yaki have selected for appointment to the EAC:

- Cleta Michell, Chair, Conservative Partnership Institute Election Integrity Network.

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Sent from my iPhone

AMERICAN OVERSIGHT

Date : 8/19/2021 1:38:30 PM
From : "David Ganz" dganz@usccr.gov
To : "Mauro Morales" mmorales@usccr.gov
Subject : FW: His adopted at April 30, 2021 meeting
Attachment : FW: Commissioner Appointments to the Election Assistance Commission (15.0 KB);

FYI.

John is asking for the AI passed in April. I sent him what Tina sent me, but apparently that isn't satisfactory to him.

From: David Ganz
Sent: Thursday, August 19, 2021 1:36 PM
To: John Mashburn <jmashburn@usccr.gov>
Subject: RE: His adopted at April 30, 2021 meeting

What I previously sent was the most current version of the AI OGC has in its records. I attached the email circulated by Mauro asking for nominees back on July 28. Sorry I cannot be of more assistance. Regards,

David

From: John Mashburn <jmashburn@usccr.gov>
Sent: Thursday, August 19, 2021 12:55 PM
To: David Ganz <dganz@usccr.gov>
Subject: Re: His adopted at April 30, 2021 meeting

David – this is not what was voted on. Please see the attached transcript which shows the language that was actually voted on highlighted in yellow on pages 8-9.

Biggest difference was that what was voted on does not say "of their membership" -- so USCCR appointees to the EAC's BOA do not have to be from among the USCCR Commissioners. This was an issue debated among the Cmnrs prior to the bus mtg.

From: David Ganz <dganz@usccr.gov>
Date: Thursday, August 19, 2021 at 12:39 PM
To: John Mashburn <jmashburn@usccr.gov>
Subject: RE: His adopted at April 30, 2021 meeting

No problem; AI is attached.

From: John Mashburn <jmashburn@usccr.gov>
Sent: Thursday, August 19, 2021 12:19 PM
To: David Ganz <dganz@usccr.gov>
Subject: His adopted at April 30, 2021 meeting

Can you send me, or point me to, the official versions/texts of the AIs (including the one on the EAC appointments) that were adopted at the April 30 Bus Mtg?

AMERICAN OVERSIGHT

Date : 8/19/2021 1:26:56 PM
From : "David Ganz"
To : "David Ganz"
Subject : FW: Commissioner Appointments to the Election Assistance Commission
Attachment : image001.gif;image002.gif;

From: Mauro Morales <mmorales@usccr.gov>
Sent: Wednesday, July 28, 2021 11:31 AM
To: Commissioners <Commissioners@usccr.gov>
Cc: David Ganz <dganz@usccr.gov>; CommissionerAssistants <CommissionerAssistants@usccr.gov>
Subject: Commissioner Appointments to the Election Assistance Commission

Dear Commissioners-

At the request and in consultation with the Chair, I am sending this email to start the EAC nomination process for Commissioners.

Per the AI voted on during the April 30th meeting (language included below), each caucus is requested to submit two candidates for consideration by COB Friday, July 30, 2021. Once the names are submitted, OGC will conduct an ethics check to be completed by Wednesday, August 4, 2021. Each caucus will then have 24 hours to submit caucus strikes (Thursday, August 5, 2021 COB). The Chair will communicate the two names to EAC no later than Friday, August 6, 2021.

Please let the Chair or I know if you have any questions or concerns.

--
AI language:

Section 1.
.01 Any authority specifically granted the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Commission as a whole by majority vote.

.02 Any authority specifically granted the Staff Director of the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Staff Director.

.03 Any authority specifically granted the Chair of the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc.,

AMERICAN OVERSIGHT

shall be exercised by the Chair.

Section 2
.02

(1) For the two (2) appointments to the U.S. Election Assistance Commission, the members appointed by Democratic authorities shall nominate two individuals who are ready, willing, and able to serve, and the members appointed by the Republican authorities shall nominate two individuals who are ready, willing, and able to serve.

(2) The members appointed by the Democratic authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Democratic authorities

(3) The members selected shall be placed in nomination and ratified in conformance with Section 1.

Mauro Morales
Staff Director
U.S. Commission on Civil Rights
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Mmorales@usccr.gov
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Washington D.C. 20425

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OVERSTOCK

From: David Ganz <dganz@usccr.gov>
Sent: Thursday, August 19, 2021 1:26 PM EDT
To: David Ganz <dganz@usccr.gov>
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Washington D.C. 20425

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AMERICAN OVERSIGHT

Date : 8/19/2021 1:36:18 PM
From : "David Ganz" dganz@usccr.gov
To : "John Mashburn" jmashburn@usccr.gov
Subject : RE: His adopted at April 30, 2021 meeting
Attachment : FW: Commissioner Appointments to the Election Assistance Commission (15.0 KB);

What I previously sent was the most current version of the AI OGC has in its records. I attached the email circulated by Mauro asking for nominees back on July 28. Sorry I cannot be of more assistance. Regards,

David

From: John Mashburn <jmashburn@usccr.gov>
Sent: Thursday, August 19, 2021 12:55 PM
To: David Ganz <dganz@usccr.gov>
Subject: Re: His adopted at April 30, 2021 meeting

David – this is not what was voted on. Please see the attached transcript which shows the language that was actually voted on highlighted in yellow on pages 8-9.

Biggest difference was that what was voted on does not say "of their membership" -- so USCCR appointees to the EAC's BOA do not have to be from among the USCCR Commissioners. This was an issue debated among the Cmnrs prior to the bus mtg.

From: David Ganz <dganz@usccr.gov>
Date: Thursday, August 19, 2021 at 12:39 PM
To: John Mashburn <jmashburn@usccr.gov>
Subject: RE: His adopted at April 30, 2021 meeting

No problem; AI is attached.

From: John Mashburn <jmashburn@usccr.gov>
Sent: Thursday, August 19, 2021 12:19 PM
To: David Ganz <dganz@usccr.gov>
Subject: His adopted at April 30, 2021 meeting

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AMERICAN OVERSIGHT

Date : 8/19/2021 1:26:56 PM
From : "David Ganz"
To : "David Ganz"
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Attachment : image001.gif;image002.gif;

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To: Commissioners <Commissioners@usccr.gov>
Cc: David Ganz <dganz@usccr.gov>; CommissionerAssistants <CommissionerAssistants@usccr.gov>
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AMERICAN OVERSIGHT

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(2) The members appointed by the Democratic authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Democratic authorities

(3) The members selected shall be placed in nomination and ratified in conformance with Section 1.

Mauro Morales
Staff Director
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Washington D.C. 20425

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OVERSTOCK

From: David Ganz <dganz@usccr.gov>
Sent: Thursday, August 19, 2021 1:26 PM EDT
To: David Ganz <dganz@usccr.gov>
Subject: FW: Commissioner Appointments to the Election Assistance Commission

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AMERICAN OVERSIGHT

Date : 8/19/2021 1:37:26 PM
From : "John Mashburn" jmashburn@usccr.gov
To : "Alexander Heideman" aheideman@usccr.gov
Subject : FW: His adopted at April 30, 2021 meeting
Attachment : FW: Commissioner Appointments to the Election Assistance Commission (14.5 KB);

What?

From: David Ganz <dganz@usccr.gov>
Date: Thursday, August 19, 2021 at 1:36 PM
To: John Mashburn <jmashburn@usccr.gov>
Subject: RE: His adopted at April 30, 2021 meeting

What I previously sent was the most current version of the AI OGC has in its records. I attached the email circulated by Mauro asking for nominees back on July 28. Sorry I cannot be of more assistance. Regards,

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To: John Mashburn <jmashburn@usccr.gov>
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To : "David Ganz"
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AMERICAN OVERSIGHT

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AMERICAN OVERSIGHT

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OVERSTOCK

From: David Ganz <dganz@usccr.gov>
Sent: Thursday, August 19, 2021 1:26 PM EDT
To: David Ganz <dganz@usccr.gov>
Subject: FW: Commissioner Appointments to the Election Assistance Commission

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AMERICAN OVERSIGHT

Date : 8/19/2021 1:39:38 PM
From : "Alexander Heideman" aheideman@usccr.gov
To : "John Mashburn" jmashburn@usccr.gov
Subject : Re: His adopted at April 30, 2021 meeting

Holy moly.

From: John Mashburn <jmashburn@usccr.gov>
Date: Thursday, August 19, 2021 at 1:37 PM
To: Alexander Heideman <aheideman@usccr.gov>
Subject: FW: His adopted at April 30, 2021 meeting

What?

From: David Ganz <dganz@usccr.gov>
Date: Thursday, August 19, 2021 at 1:36 PM
To: John Mashburn <jmashburn@usccr.gov>
Subject: RE: His adopted at April 30, 2021 meeting

What I previously sent was the most current version of the AI OGC has in its records. I attached the email circulated by Mauro asking for nominees back on July 28. Sorry I cannot be of more assistance. Regards,

David

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Sent: Thursday, August 19, 2021 12:55 PM
To: David Ganz <dganz@usccr.gov>
Subject: Re: His adopted at April 30, 2021 meeting

David – this is not what was voted on. Please see the attached transcript which shows the language that was actually voted on highlighted in yellow on pages 8-9.

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From: David Ganz <dganz@usccr.gov>
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To: John Mashburn <jmashburn@usccr.gov>
Subject: RE: His adopted at April 30, 2021 meeting

No problem; AI is attached.

From: John Mashburn <jmashburn@usccr.gov>
Sent: Thursday, August 19, 2021 12:19 PM
To: David Ganz <dganz@usccr.gov>
Subject: His adopted at April 30, 2021 meeting

AMERICAN OVERSIGHT

Can you send me, or point me to, the official versions/texts of the AIs (including the one on the EAC appointments) that were adopted at the April 30 Bus Mtg?

AMERICAN OVERSIGHT

Date : 8/19/2021 2:06:22 PM
From : "Mauro Morales" mmorales@usccr.gov
To : "David Ganz" dganz@usccr.gov
Subject : Re: His adopted at April 30, 2021 meeting

The transcript on what they voted that day is controlling. It would have been what they created. We had nothing to do with its creation. He should go back and do his own homework. It is not GC's doing or mine.

Sent from my iPhone

> On Aug 19, 2021, at 12:38 PM, David Ganz <dganz@usccr.gov> wrote:
>
> FYI.
>
> John is asking for the AI passed in April. I sent him what Tina sent me, but apparently that isn't satisfactory to him.
>
> ---
>
> **From:** David Ganz
> **Sent:** Thursday, August 19, 2021 1:36 PM
> **To:** John Mashburn <jmashburn@usccr.gov>
> **Subject:** RE: His adopted at April 30, 2021 meeting
>
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>
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>
> ---
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> **Sent:** Thursday, August 19, 2021 12:55 PM
> **To:** David Ganz <dganz@usccr.gov>
> **Subject:** Re: His adopted at April 30, 2021 meeting
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<mime-attachment>

AMERICAN OVERSIGHT

Date : 8/20/2021 9:05:14 AM
From : "Gail Heriot" gheriot@usccr.gov
To : "stephen gilchrist" thegilchristassociates@gmail.com
Cc : "Peter Kirsanow" pkirsanow@usccr.gov, "Christian Adams" adams@electionlawcenter.com, "Carissa Mulder" CMulder@usccr.gov, "Alexander Heideman" aheideman@usccr.gov, "John Mashburn" jmashburn@usccr.gov, "Peter Kirsanow" pkirsanow@beneschlaw.com, "Stephen Gilchrist" sgilchrist@usccr.gov, "Thomas Simuel" tsimuel@usccr.gov, "J. Christian Adams" jadams@usccr.gov, "Gail Heriot" gheriot@me.com, "Alexander Heideman" alexanderheideman@gmail.com
Subject : Re: Bail Reform

Yes, I will be doing that too.

Gail Heriot
Professor of Law
University of San Diego

> On Aug 20, 2021, at 4:08 AM, stephen gilchrist <thegilchristassociates@gmail.com> wrote:
>
> Guys I will also be supporting Christians amendment to vote at the business meeting on the Nominations for the EAC.
>
> On Fri, Aug 20, 2021, 7:03 AM stephen gilchrist <thegilchristassociates@gmail.com> wrote:
>
> > I found the Bail Reform report to be one that did try to highlight the facts rather than persuade the commission to some remarkable bias place. I am inclined to support the report and to support the Florida SAC.
> >
> > On Fri, Aug 20, 2021, 12:54 AM Gail Heriot <gheriot@usccr.gov> wrote:
> >
> > > Dear all—Unless somebody wants to talk me out of it, my inclination is to abstain on the Bail Reform report. I think it has a lot of problems. But if we let it get through, we'll have the chance to file Statements commenting on it. If we abstain rather than affirmatively vote for it, nobody will be able to blame us for the report's flaws.
> > >
> > > I intend to vote in favor of the Florida SAC.
> > >
> > > Gail
> > >
> > > Gail Heriot
> > > Professor of Law
> > > University of San Diego

AMERICAN OVERSIGHT

Date : 8/20/2021 12:11:38 PM
From : "Sheryl Cozart" sccozart@usccr.gov
To : "Pilar McLaughlin" pmclaughlin@usccr.gov, "Andrew Gall" agall@usccr.gov
Subject : FW: EAC AI
Attachment : AI on Appointment Authority (general and EAC).docx;

+Pilar and Andrew.

From: Sheryl Cozart
Sent: Friday, August 20, 2021 12:11 PM
To: David Ganz <dganz@usccr.gov>
Subject: EAC AI

I believe this is the AI the Commissioners are referencing.

Sheryl Cozart
Attorney Advisor
Office of the General Counsel
U.S. Commission on Civil Rights
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425
sccozart@usccr.gov

AMERICAN OVERSIGHT

ADMINISTRATIVE INSTRUCTION __- __

COMMISSION APPOINTMENTS TO OTHER FEDERAL ENTITIES

Section 1.
.01 Any authority specifically granted the Commission of Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc. shall be exercised by the Commission as a whole by majority vote.

Section 2
.02

(1) For the two (2) appointments to the U.S. Election Assistance Commission, the members appointed by Democratic authorities shall nominate two individuals of their membership, and the members appointed by the Republican authorities shall nominate two individuals of their membership.

(2) The members appointed by the Democratic authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Democratic authorities

(3) The members selected shall be placed in nomination and ratified in conformance with Section 1.

AMERICAN OVERSIGHT

Date : 8/20/2021 12:15:46 PM
From : "Thomas Simuel" tsimuel@usccr.gov
To : "Alexander Heideman" aheideman@usccr.gov, "John Mashburn" jmashburn@usccr.gov, "Alexander Heideman" alexanderheideman@gmail.com, "Gail Heriot" gheriot@usccr.gov
Cc : "stephen gilchrist" thegilchristassociates@gmail.com, "Peter Kirsanow" pkirsanow@usccr.gov, "Christian Adams" adams@electionlawcenter.com, "Carissa Mulder" CMulder@usccr.gov, "Peter Kirsanow" pkirsanow@beneschlaw.com, "Stephen Gilchrist" sgilchrist@usccr.gov, "J. Christian Adams" jadams@usccr.gov, "Gail Heriot" gheriot@me.com
Subject : RE: [EXTERNAL] Re: Bail Reform

Exactly!!! Let's force the vote!

-------- Original message --------
From: Alexander Heideman <aheideman@usccr.gov>
Date: 8/20/21 12:13 PM (GMT-05:00)
To: John Mashburn <jmashburn@usccr.gov>, Alexander Heideman <alexanderheideman@gmail.com>, Gail Heriot <gheriot@usccr.gov>
Cc: stephen gilchrist <thegilchristassociates@gmail.com>, Peter Kirsanow <pkirsanow@usccr.gov>, Christian Adams <adams@electionlawcenter.com>, Carissa Mulder <CMulder@usccr.gov>, Peter Kirsanow <pkirsanow@beneschlaw.com>, Stephen Gilchrist <sgilchrist@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>, "J. Christian Adams" <jadams@usccr.gov>, Gail Heriot <gheriot@me.com>
Subject: Re: [EXTERNAL] Re: Bail Reform

They're the ones who picked someone outside the Comm'n!

From: John Mashburn <jmashburn@usccr.gov>
Date: Friday, August 20, 2021 at 12:12 PM
To: Alexander Heideman <alexanderheideman@gmail.com>, Gail Heriot <gheriot@usccr.gov>
Cc: stephen gilchrist <thegilchristassociates@gmail.com>, Peter Kirsanow <pkirsanow@usccr.gov>, Christian Adams <adams@electionlawcenter.com>, Carissa Mulder <CMulder@usccr.gov>, Alexander Heideman <aheideman@usccr.gov>, Peter Kirsanow <pkirsanow@beneschlaw.com>, Stephen Gilchrist <sgilchrist@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>, "J. Christian Adams" <jadams@usccr.gov>, Gail Heriot <gheriot@me.com>
Subject: Re: [EXTERNAL] Re: Bail Reform

Nothing Requiring this for decades

AMERICAN OVERSIGHT

From: Alexander Heideman <alexanderheideman@gmail.com>
Sent: Friday, August 20, 2021 12:09:20 PM
To: Gail Heriot
Cc: stephen gilchrist; Peter Kirsanow; Christian Adams; Carissa Mulder; Alexander Heideman; John Mashburn; Peter Kirsanow; Stephen Gilchrist; Thomas Simuel; J. Christian Adams; Gail Heriot
Subject: [EXTERNAL] Re: Bail Reform

CAUTION: This email is from outside USCCR.

COMMISSIONER KIRSANOW: First, the Memorandum of Understanding regarding the appointment of members to the EAC Board of Advisors, Section 1.01, reads: "Any authority not specifically granted the Commission on Civil Rights by statute or regulation or Executive Order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, et cetera, shall be exercised by the Commission as a whole by majority vote." Paragraph .02. "Any authority specifically granted the Staff Director of the Commission on Civil Rights by statute or regulation or Executive Order to appoint members to serve on other federal entities such as advisory boards, tasks forces, other commissions, et cetera, shall be exercised by the Staff Director." Paragraph .03. "Any authority specifically granted the Chair of the Commission on Civil Rights by statute or regulation or Executive Order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, et cetera, shall be exercised by the Chair." "Section 2.02(1). For the two appointments to the U.S. Election Assistance Commission, the members appointed by Democratic appointees shall nominate two individuals who are ready, willing, and able to serve, and the members appointed by the Republican authorities shall nominate two individuals who are ready, willing, and able to serve." Subparagraph (2). "The members appointed by the Democratic authorities shall select one of the two individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one of the two individuals nominated by the members appointed by the Democratic authorities." Subparagraph (3). "The members selected shall be placed in nomination and ratified in conformance with Section 1."

On Fri, Aug 20, 2021 at 12:05 PM Gail Heriot <gheriot@usccr.gov> wrote:

> They are much more organized than we are. They've had a zoom and have a list of people to call on.
>
> Gail Heriot
> Professor of Law
> University of San Diego
>
> On Aug 20, 2021, at 6:05 AM, Gail Heriot <gheriot@usccr.gov> wrote:
>
> Yes, I will be doing that too.

Gail Heriot
Professor of Law
University of San Diego

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>
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> > > I intend to vote in favor of the Florida SAC.
> > >
> > > Gail
> > >
> > > Gail Heriot
> > > Professor of Law
> > > University of San Diego

AMERICAN OVERSIGHT

Date : 8/20/2021 12:12:56 PM
From : "Pilar McLaughlin" pmclaughlin@usccr.gov
To : "Sheryl Cozart" sccozart@usccr.gov, "Andrew Gall" agall@usccr.gov
Cc : "David Ganz" dganz@usccr.gov
Subject : RE: EAC AI

Yes, this is the correct one.

Thanks, Sheryl.

From: Sheryl Cozart <sccozart@usccr.gov>
Sent: Friday, August 20, 2021 12:12 PM
To: Pilar McLaughlin <pmclaughlin@usccr.gov>; Andrew Gall <agall@usccr.gov>
Subject: FW: EAC AI

+Pilar and Andrew.

From: Sheryl Cozart
Sent: Friday, August 20, 2021 12:11 PM
To: David Ganz <dganz@usccr.gov>
Subject: EAC AI

I believe this is the AI the Commissioners are referencing.

Sheryl Cozart
Attorney Advisor
Office of the General Counsel
U.S. Commission on Civil Rights
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425
sccozart@usccr.gov

AMERICAN OVERSIGHT

Date : 8/20/2021 12:13:07 PM
From : "David Ganz" dganz@usccr.gov
To : "Sheryl Cozart" sccozart@usccr.gov
Subject : RE: EAC AI

Kladney's concerns are baseless; EAC's meetings are public and EAC isn't meeting again this year; we have an AI regarding speaking for the Comm

---

From: Sheryl Cozart <sccozart@usccr.gov>
Sent: Friday, August 20, 2021 12:11 PM
To: David Ganz <dganz@usccr.gov>
Subject: EAC AI

I believe this is the AI the Commissioners are referencing.

Sheryl Cozart
Attorney Advisor
Office of the General Counsel
U.S. Commission on Civil Rights
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425
sccozart@usccr.gov

AMERICAN OVERSIGHT

Date : 8/20/2021 12:14:12 PM
From : "Pilar McLaughlin" pmclaughlin@usccr.gov
To : "Sheryl Cozart" sccozart@usccr.gov, "Andrew Gall" agall@usccr.gov, "David Ganz" dganz@usccr.gov
Subject : RE: EAC AI

Is this the final? It's not numbered or signed.

From: Sheryl Cozart <sccozart@usccr.gov>
Sent: Friday, August 20, 2021 12:12 PM
To: Pilar McLaughlin <pmclaughlin@usccr.gov>; Andrew Gall <agall@usccr.gov>
Subject: FW: EAC AI

+Pilar and Andrew.

From: Sheryl Cozart
Sent: Friday, August 20, 2021 12:11 PM
To: David Ganz <dganz@usccr.gov>
Subject: EAC AI

I believe this is the AI the Commissioners are referencing.

Sheryl Cozart
Attorney Advisor
Office of the General Counsel
U.S. Commission on Civil Rights
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425
sccozart@usccr.gov

AMERICAN OVERSIGHT

Date : 8/20/2021 12:13:47 PM
From : "Gail Heriot" gheriot@usccr.gov
To : "Alexander Heideman" aheideman@usccr.gov
Cc : "John Mashburn" jmashburn@usccr.gov, "Alexander Heideman" alexanderheideman@gmail.com, "stephen gilchrist" thegilchristassociates@gmail.com, "Peter Kirsanow" pkirsanow@usccr.gov, "Christian Adams" adams@electionlawcenter.com, "Carissa Mulder" CMulder@usccr.gov, "Peter Kirsanow" pkirsanow@beneschlaw.com, "Stephen Gilchrist" sgilchrist@usccr.gov, "Thomas Simuel" tsimuel@usccr.gov, "J. Christian Adams" jadams@usccr.gov, "Gail Heriot" gheriot@me.com
Subject : Re: [EXTERNAL] Re: Bail Reform

Why don't we ask them if they are more comfortable with Christian?

Gail Heriot
Professor of Law
University of San Diego

> On Aug 20, 2021, at 9:13 AM, Alexander Heideman <aheideman@usccr.gov> wrote:
>
> They're the ones who picked someone outside the Comm'n!
>
> ---
>
> **From:** John Mashburn <jmashburn@usccr.gov>
> **Date:** Friday, August 20, 2021 at 12:12 PM
> **To:** Alexander Heideman <alexanderheideman@gmail.com>, Gail Heriot <gheriot@usccr.gov>
> **Cc:** stephen gilchrist <thegilchristassociates@gmail.com>, Peter Kirsanow <pkirsanow@usccr.gov>, Christian Adams <adams@electionlawcenter.com>, Carissa Mulder <CMulder@usccr.gov>, Alexander Heideman <aheideman@usccr.gov>, Peter Kirsanow <pkirsanow@beneschlaw.com>, Stephen Gilchrist <sgilchrist@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>, "J. Christian Adams" <jadams@usccr.gov>, Gail Heriot <gheriot@me.com>
> **Subject:** Re: [EXTERNAL] Re: Bail Reform
>
> Nothing Requiring this for decades
>
> ---
>
> **From:** Alexander Heideman <alexanderheideman@gmail.com>
> **Sent:** Friday, August 20, 2021 12:09:20 PM
> **To:** Gail Heriot
> **Cc:** stephen gilchrist; Peter Kirsanow; Christian Adams; Carissa Mulder;

AMERICAN OVERSIGHT

Alexander Heideman; John Mashburn; Peter Kirsanow; Stephen Gilchrist; Thomas Simuel; J. Christian Adams; Gail Heriot
Subject: [EXTERNAL] Re: Bail Reform

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COMMISSIONER KIRSANOW: First, the Memorandum of Understanding regarding the appointment of members to the EAC Board of Advisors, Section 1.01, reads: "Any authority not specifically granted the Commission on Civil Rights by statute or regulation or Executive Order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, et cetera, shall be exercised by the Commission as a whole by majority vote." Paragraph .02. "Any authority specifically granted the Staff Director of the Commission on Civil Rights by statute or regulation or Executive Order to appoint members to serve on other federal entities such as advisory boards, tasks forces, other commissions, et cetera, shall be exercised by the Staff Director." Paragraph .03. "Any authority specifically granted the Chair of the Commission on Civil Rights by statute or regulation or Executive Order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, et cetera, shall be exercised by the Chair." "Section 2.02(1). For the two appointments to the U.S. Election Assistance Commission, the members appointed by Democratic appointees shall nominate two individuals who are ready, willing, and able to serve, and the members appointed by the Republican authorities shall nominate two individuals who are ready, willing, and able to serve." Subparagraph (2). "The members appointed by the Democratic authorities shall select one of the two individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one of the two individuals nominated by the members appointed by the Democratic authorities." Subparagraph (3). "The members selected shall be placed in nomination and ratified in conformance with Section 1."

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>
> Gail Heriot
> Professor of Law
> University of San Diego
>
> > On Aug 20, 2021, at 6:05 AM, Gail Heriot <gheriot@usccr.gov> wrote:

AMERICAN OVERSIGHT

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Professor of Law
University of San Diego

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> > > Gail Heriot
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> > > University of San Diego

AMERICAN OVERSIGHT

Date : 8/20/2021 12:13:00 PM
From : "Alexander Heideman" aheideman@usccr.gov
To : "John Mashburn" jmashburn@usccr.gov, "Alexander Heideman" alexanderheideman@gmail.com, "Gail Heriot" gheriot@usccr.gov
Cc : "stephen gilchrist" thegilchristassociates@gmail.com, "Peter Kirsanow" pkirsanow@usccr.gov, "Christian Adams" adams@electionlawcenter.com, "Carissa Mulder" CMulder@usccr.gov, "Peter Kirsanow" pkirsanow@beneschlaw.com, "Stephen Gilchrist" sgilchrist@usccr.gov, "Thomas Simuel" tsimuel@usccr.gov, "J. Christian Adams" jadams@usccr.gov, "Gail Heriot" gheriot@me.com
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From: John Mashburn <jmashburn@usccr.gov>
Date: Friday, August 20, 2021 at 12:12 PM
To: Alexander Heideman <alexanderheideman@gmail.com>, Gail Heriot <gheriot@usccr.gov>
Cc: stephen gilchrist <thegilchristassociates@gmail.com>, Peter Kirsanow <pkirsanow@usccr.gov>, Christian Adams <adams@electionlawcenter.com>, Carissa Mulder <CMulder@usccr.gov>, Alexander Heideman <aheideman@usccr.gov>, Peter Kirsanow <pkirsanow@beneschlaw.com>, Stephen Gilchrist <sgilchrist@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>, "J. Christian Adams" <jadams@usccr.gov>, Gail Heriot <gheriot@me.com>
Subject: Re: [EXTERNAL] Re: Bail Reform

Nothing Requiring this for decades

From: Alexander Heideman <alexanderheideman@gmail.com>
Sent: Friday, August 20, 2021 12:09:20 PM
To: Gail Heriot
Cc: stephen gilchrist; Peter Kirsanow; Christian Adams; Carissa Mulder; Alexander Heideman; John Mashburn; Peter Kirsanow; Stephen Gilchrist; Thomas Simuel; J. Christian Adams; Gail Heriot
Subject: [EXTERNAL] Re: Bail Reform

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AMERICAN OVERSIGHT

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AMERICAN OVERSIGHT

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> Gail
>
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> Professor of Law
> University of San Diego

AMERICAN OVERSIGHT

Date : 8/20/2021 12:12:19 PM
From : "John Mashburn" jmashburn@usccr.gov
To : "Alexander Heideman" alexanderheideman@gmail.com, "Gail Heriot" gheriot@usccr.gov
Cc : "stephen gilchrist" thegilchristassociates@gmail.com, "Peter Kirsanow" pkirsanow@usccr.gov, "Christian Adams" adams@electionlawcenter.com, "Carissa Mulder" CMulder@usccr.gov, "Alexander Heideman" aheideman@usccr.gov, "Peter Kirsanow" pkirsanow@beneschlaw.com, "Stephen Gilchrist" sgilchrist@usccr.gov, "Thomas Simuel" tsimuel@usccr.gov, "J. Christian Adams" jadams@usccr.gov, "Gail Heriot" gheriot@me.com
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Sent: Friday, August 20, 2021 12:09:20 PM
To: Gail Heriot
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Subject: [EXTERNAL] Re: Bail Reform

CAUTION: This email is from outside USCCR.

Just so everyone has easy access to the MOU that was agreed upon in April:

COMMISSIONER KIRSANOW: First, the Memorandum of Understanding regarding the appointment of members to the EAC Board of Advisors, Section 1.01, reads: "Any authority not specifically granted the Commission on Civil Rights by statute or regulation or Executive Order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, et cetera, shall be exercised by the Commission as a whole by majority vote." Paragraph .02. "Any authority specifically granted the Staff Director of the Commission on Civil Rights by statute or regulation or Executive Order to appoint members to serve on other federal entities such as advisory boards, tasks forces, other commissions, et cetera, shall be exercised by the Staff Director." Paragraph .03. "Any authority specifically granted the Chair of the Commission on Civil Rights by statute or regulation or Executive Order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, et cetera, shall be exercised by the Chair." "Section 2.02(1). For the two appointments to the U.S. Election Assistance Commission, the members appointed by Democratic appointees shall nominate two individuals who are ready, willing, and able to serve, and the members appointed by the Republican authorities shall nominate two individuals who are ready, willing, and able to serve." Subparagraph (2). "The members appointed by the Democratic authorities shall select one of the two individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one of the two individuals nominated by the members appointed by the Democratic authorities." Subparagraph (3). "The members selected shall be placed in nomination and ratified in conformance with Section 1."

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AMERICAN OVERSIGHT

I intend to vote in favor of the Florida SAC.

Gail

Gail Heriot
Professor of Law
University of San Diego

AMERICAN OVERSIGHT

Date : 8/20/2021 12:11:06 PM
From : "Sheryl Cozart" sccozart@usccr.gov
To : "David Ganz" dganz@usccr.gov
Subject : EAC AI
Attachment : AI on Appointment Authority (general and EAC).docx;

I believe this is the AI the Commissioners are referencing.

Sheryl Cozart
Attorney Advisor
Office of the General Counsel
U.S. Commission on Civil Rights
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425
sccozart@usccr.gov

AMERICAN OVERSIGHT

ADMINISTRATIVE INSTRUCTION __- __

COMMISSION APPOINTMENTS TO OTHER FEDERAL ENTITIES

Section 1.
.01 Any authority specifically granted the Commission of Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc. shall be exercised by the Commission as a whole by majority vote.

Section 2
.02

(1) For the two (2) appointments to the U.S. Election Assistance Commission, the members appointed by Democratic authorities shall nominate two individuals of their membership, and the members appointed by the Republican authorities shall nominate two individuals of their membership.

(2) The members appointed by the Democratic authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Democratic authorities

(3) The members selected shall be placed in nomination and ratified in conformance with Section 1.

AMERICAN OVERSIGHT

Date : 8/20/2021 12:27:56 PM
From : "Thomas Simuel" tsimuel@usccr.gov
To : "Christian Adams" adams@electionlawcenter.com, "Alexander Heideman" aheideman@usccr.gov, "John Mashburn" jmashburn@usccr.gov, "'Alexander Heideman'" alexanderheideman@gmail.com, "Gail Heriot" gheriot@usccr.gov
Cc : "'stephen gilchrist'" thegilchristassociates@gmail.com, "Peter Kirsanow" pkirsanow@usccr.gov, "Carissa Mulder" CMulder@usccr.gov, "'Peter Kirsanow'" pkirsanow@beneschlaw.com, "Stephen Gilchrist" sgilchrist@usccr.gov, "J. Christian Adams" jadams@usccr.gov, "'Gail Heriot'" gheriot@me.com
Subject : RE: [EXTERNAL] Re: Bail Reform

Definitely-they might want to change their vote!

Sent from my Metro By T-Mobile 4G LTE Android Device

-------- Original message --------
From: Christian Adams <adams@electionlawcenter.com>
Date: 8/20/21 12:26 PM (GMT-05:00)
To: Alexander Heideman <aheideman@usccr.gov>, John Mashburn <jmashburn@usccr.gov>, 'Alexander Heideman' <alexanderheideman@gmail.com>, Gail Heriot <gheriot@usccr.gov>
Cc: 'stephen gilchrist' <thegilchristassociates@gmail.com>, Peter Kirsanow <pkirsanow@usccr.gov>, Carissa Mulder <CMulder@usccr.gov>, 'Peter Kirsanow' <pkirsanow@beneschlaw.com>, Stephen Gilchrist <sgilchrist@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>, "J. Christian Adams" <jadams@usccr.gov>, 'Gail Heriot' <gheriot@me.com>
Subject: RE: [EXTERNAL] Re: Bail Reform

> CAUTION: This email is from outside USCCR.

Indeed. I am prepared to make note of that.

From: Alexander Heideman <aheideman@usccr.gov>
Sent: Friday, August 20, 2021 12:13 PM
To: John Mashburn <jmashburn@usccr.gov>; Alexander Heideman <alexanderheideman@gmail.com>; Gail Heriot <gheriot@usccr.gov>
Cc: stephen gilchrist <thegilchristassociates@gmail.com>; Peter Kirsanow <pkirsanow@usccr.gov>; Christian Adams <adams@electionlawcenter.com>; Carissa Mulder <CMulder@usccr.gov>; Peter Kirsanow <pkirsanow@beneschlaw.com>; Stephen Gilchrist <sgilchrist@usccr.gov>; Thomas Simuel <tsimuel@usccr.gov>; J. Christian Adams <jadams@usccr.gov>; Gail Heriot <gheriot@me.com>
Subject: Re: [EXTERNAL] Re: Bail Reform

AMERICAN OVERSIGHT

They're the ones who picked someone outside the Comm'n!

From: John Mashburn <jmashburn@usccr.gov>
Date: Friday, August 20, 2021 at 12:12 PM
To: Alexander Heideman <alexanderheideman@gmail.com>, Gail Heriot <gheriot@usccr.gov>
Cc: stephen gilchrist <thegilchristassociates@gmail.com>, Peter Kirsanow <pkirsanow@usccr.gov>, Christian Adams <adams@electionlawcenter.com>, Carissa Mulder <CMulder@usccr.gov>, Alexander Heideman <aheideman@usccr.gov>, Peter Kirsanow <pkirsanow@beneschlaw.com>, Stephen Gilchrist <sgilchrist@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>, "J. Christian Adams" <jadams@usccr.gov>, Gail Heriot <gheriot@me.com>
Subject: Re: [EXTERNAL] Re: Bail Reform

Nothing Requiring this for decades

From: Alexander Heideman <alexanderheideman@gmail.com>
Sent: Friday, August 20, 2021 12:09:20 PM
To: Gail Heriot
Cc: stephen gilchrist; Peter Kirsanow; Christian Adams; Carissa Mulder; Alexander Heideman; John Mashburn; Peter Kirsanow; Stephen Gilchrist; Thomas Simuel; J. Christian Adams; Gail Heriot
Subject: [EXTERNAL] Re: Bail Reform

> CAUTION: This email is from outside USCCR.

COMMISSIONER KIRSANOW: First, the Memorandum of Understanding regarding the appointment of members to the EAC Board of Advisors, Section 1.01, reads: "Any authority not specifically granted the Commission on Civil Rights by statute or regulation or Executive Order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, et cetera, shall be exercised by the Commission as a whole by majority vote." Paragraph .02. "Any authority specifically granted the Staff Director of the Commission on Civil Rights by statute or regulation or Executive Order to appoint members to serve on other federal entities such as advisory boards, tasks forces, other commissions, et cetera, shall be exercised by the Staff Director." Paragraph .03. "Any authority specifically granted the Chair of the Commission on Civil Rights by statute or regulation or Executive Order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, et cetera, shall be exercised by the Chair." "Section 2.02(1). For the two appointments to the U.S. Election Assistance Commission, the members appointed by Democratic appointees shall nominate two individuals who are ready, willing, and able to serve, and the members appointed by the Republican authorities shall nominate two individuals who are ready, willing, and able to serve." Subparagraph (2). "The members appointed by the Democratic authorities shall select one of the two individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one of the two individuals nominated by the members appointed by the Democratic authorities."

AMERICAN OVERSIGHT

Subparagraph (3). "The members selected shall be placed in nomination and ratified in conformance with Section 1."

On Fri, Aug 20, 2021 at 12:05 PM Gail Heriot <gheriot@usccr.gov> wrote:

> They are much more organized than we are. They've had a zoom and have a list of people to call on.
>
> Gail Heriot
> Professor of Law
> University of San Diego
>
> > On Aug 20, 2021, at 6:05 AM, Gail Heriot <gheriot@usccr.gov> wrote:
> >
> > Yes, I will be doing that too.
> >
> > Gail Heriot
> > Professor of Law
> > University of San Diego
> >
> > > On Aug 20, 2021, at 4:08 AM, stephen gilchrist <thegilchristassociates@gmail.com> wrote:
> > >
> > > Guys I will also be supporting Christians amendment to vote at the business meeting on the Nominations for the EAC.
> > >
> > > On Fri, Aug 20, 2021, 7:03 AM stephen gilchrist <thegilchristassociates@gmail.com> wrote:
> > >
> > > > I found the Bail Reform report to be one that did try to highlight the facts rather than persuade the commission to some remarkable bias place. I am inclined to support the report and to support the Florida SAC.
> > > >
> > > > On Fri, Aug 20, 2021, 12:54 AM Gail Heriot <gheriot@usccr.gov> wrote:
> > > >
> > > > > Dear all—Unless somebody wants to talk me out of it, my inclination is to abstain on the Bail Reform report. I think it has a lot of problems. But if we let it get through, we'll have the chance to file Statements commenting on it. If we abstain rather than affirmatively vote for it, nobody will be able to blame us for the report's flaws.
> > > > >
> > > > > I intend to vote in favor of the Florida SAC.
> > > > >
> > > > > Gail

AMERICAN OVERSIGHT

Gail Heriot
Professor of Law
University of San Diego

AMERICAN OVERSIGHT

Date : 8/20/2021 12:30:26 PM
From : "Gail Heriot" gheriot@usccr.gov
To : "Christian Adams" adams@electionlawcenter.com
Cc : "stephen gilchrist" thegilchristassociates@gmail.com, "Alexander Heideman" aheideman@usccr.gov, "John Mashburn" jmashburn@usccr.gov, "Alexander Heideman" alexanderheideman@gmail.com, "Peter Kirsanow" pkirsanow@usccr.gov, "Carissa Mulder" CMulder@usccr.gov, "Peter Kirsanow" pkirsanow@beneschlaw.com, "Stephen Gilchrist" sgilchrist@usccr.gov, "Thomas Simuel" tsimuel@usccr.gov, "J. Christian Adams" jadams@usccr.gov, "Gail Heriot" gheriot@me.com
Subject : Re: [EXTERNAL] Re: Bail Reform

Yes, it is insane.

Gail Heriot
Professor of Law
University of San Diego

On Aug 20, 2021, at 9:29 AM, Christian Adams <adams@electionlawcenter.com> wrote:

It is insane this small issue is now in its SIXTH month without appointments.

From: stephen gilchrist <thegilchristassociates@gmail.com>
Sent: Friday, August 20, 2021 12:28 PM
To: Christian Adams <adams@electionlawcenter.com>
Cc: Gail Heriot <gheriot@usccr.gov>; Alexander Heideman <aheideman@usccr.gov>; John Mashburn <jmashburn@usccr.gov>; Alexander Heideman <alexanderheideman@gmail.com>; Peter Kirsanow <pkirsanow@usccr.gov>; Carissa Mulder <CMulder@usccr.gov>; Peter Kirsanow <pkirsanow@beneschlaw.com>; Stephen Gilchrist <sgilchrist@usccr.gov>; Thomas Simuel <tsimuel@usccr.gov>; J. Christian Adams <jadams@usccr.gov>; Gail Heriot <gheriot@me.com>
Subject: Re: [EXTERNAL] Re: Bail Reform

Correct Christian.

On Fri, Aug 20, 2021 at 12:27 PM Christian Adams <adams@electionlawcenter.com> wrote:

> "we were of that mindset also Commissioner Kladney and we resolved our concerns by picking Commissioner Yaki. One option for you to alleviate your concerns is to change your pick."
>
> **From:** Gail Heriot <gheriot@usccr.gov>
> **Sent:** Friday, August 20, 2021 12:14 PM
> **To:** Alexander Heideman <aheideman@usccr.gov>

AMERICAN OVERSIGHT

>; Christian Adams <adams@electionlawcenter.com>; Carissa Mulder <CMulder@usccr.gov>; Peter Kirsanow <pkirsanow@beneschlaw.com>; Stephen Gilchrist <sgilchrist@usccr.gov>; Thomas Simuel <tsimuel@usccr.gov>; J. Christian Adams <jadams@usccr.gov>; Gail Heriot <gheriot@me.com>
Subject: Re: [EXTERNAL] Re: Bail Reform

Why don't we ask them if they are more comfortable with Christian?

Gail Heriot
Professor of Law
University of San Diego

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>
> They're the ones who picked someone outside the Comm'n!
>
> ---
>
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> **Date:** Friday, August 20, 2021 at 12:12 PM
> **To:** Alexander Heideman <alexanderheideman@gmail.com>, Gail Heriot <gheriot@usccr.gov>
> **Cc:** stephen gilchrist >, Christian Adams <adams@electionlawcenter.com>, Carissa Mulder <CMulder@usccr.gov>, Alexander >, Stephen Gilchrist <sgilchrist@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>, "J. Christian Adams" <jadams@usccr.gov>, Gail Heriot <gheriot@me.com>
> **Subject:** Re: [EXTERNAL] Re: Bail Reform
>
> Nothing Requiring this for decades
>
> ---
>
> **From:** Alexander Heideman <alexanderheideman@gmail.com>
> **Sent:** Friday, August 20, 2021 12:09:20 PM
> **To:** Gail Heriot
> **Cc:** stephen gilchrist; Peter Kirsanow; Christian Adams; Carissa Mulder; Alexander Heideman; John Mashburn; Peter Kirsanow; Stephen Gilchrist; Thomas Simuel; J. Christian Adams; Gail Heriot
> **Subject:** [EXTERNAL] Re: Bail Reform
>
> CAUTION: This email is from outside USCCR.

AMERICAN OVERSIGHT

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>
> Gail Heriot
> Professor of Law
> University of San Diego

AMERICAN OVERSIGHT

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Gail Heriot
Professor of Law
University of San Diego

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> >
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AMERICAN OVERSIGHT

I intend to vote in favor of the Florida SAC.

Gail

Gail Heriot
Professor of Law
University of San Diego

AMERICAN OVERSIGHT

Date : 9/2/2021 8:13:21 PM
From : "David Ganz" dganz@usccr.gov
To : "Pilar McLaughlin" pmclaughlin@usccr.gov, "Sheryl Cozart" sccozart@usccr.gov
Cc : "Andrew Gall" agall@usccr.gov
Subject : EAC appointment letter for Chair Cantu
Attachment : image001.png;

Mauro texted me about having this for Chair Cantu tomorrow. Please let me know if you have the bandwidth to get this to me tomorrow. Mauro mentioned that Llhamon (sp?) sent one to EAC for our prior appointments so let's just use that one as a template. Thanks!

David Ganz
General Counsel, Office of the General Counsel
U.S. Commission on Civil Rights
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425
(617) 669-6413

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Established as an independent, bipartisan, fact-finding federal agency, our mission is to inform the development of national civil rights policy and enhance enforcement of federal civil rights laws. We pursue this mission by studying alleged deprivations of voting rights and alleged discrimination based on race, color, religion, sex, age, disability, or national origin, or in the administration of justice. We play a vital role in advancing civil rights through objective and comprehensive investigation, research, and analysis on issues of fundamental concern to the federal government and the public.

AMERICAN OVERSIGHT

C002498
AMERICAN OVERSIGHT

Date : 9/3/2021 10:14:38 AM
From : "Pilar McLaughlin" pmclaughlin@usccr.gov
To : "David Ganz" dganz@usccr.gov
Subject : RE: EAC appointment letter for Chair Cantu
Attachment : Notice-of-Representation-Form-Board-Advisors-2021.pdf;CLhamon signed - USCCR EAC Notice of Representation Form.pdf;image001.png;

David:

I don't have a copy of a letter Lhamon wrote to the EAC for previous appointments (there is not a copy in Securisync either). All I have is a copy of the EAC form she completed for the appointments.

Do you want me to draft a letter or is Cantu going to use the form ?

Pilar

From: David Ganz <dganz@usccr.gov>
Sent: Thursday, September 2, 2021 8:13 PM
To: Pilar McLaughlin <pmclaughlin@usccr.gov>; Sheryl Cozart <sccozart@usccr.gov>
Cc: Andrew Gall <agall@usccr.gov>
Subject: EAC appointment letter for Chair Cantu

Mauro texted me about having this for Chair Cantu tomorrow. Please let me know if you have the bandwidth to get this to me tomorrow. Mauro mentioned that Llhamon (sp?) sent one to EAC for our prior appointments so let's just use that one as a template. Thanks!

David Ganz
General Counsel, Office of the General Counsel
U.S. Commission on Civil Rights
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425
(617) 669-6413

This message, including attachments, is confidential and may contain information protected by the attorney-client privilege or work product doctrine. If you are not the addressee, any disclosure, copying, distribution, or use of the contents of this message are prohibited. If you have received this email in error, please destroy it and notify me immediately.

AMERICAN OVERSIGHT

Established as an independent, bipartisan, fact-finding federal agency, our mission is to inform the development of national civil rights policy and enhance enforcement of federal civil rights laws. We pursue this mission by studying alleged deprivations of voting rights and alleged discrimination based on race, color, religion, sex, age, disability, or national origin, or in the administration of justice. We play a vital role in advancing civil rights through objective and comprehensive investigation, research, and analysis on issues of fundamental concern to the federal government and the public.

AMERICAN OVERSIGHT

Notice of Representation
United States Election Assistance Commission
Board of Advisors

In accordance with 52 U.S.C. § 20944 of the Help America Vote Act of 2002, your office submits the following individual(s) as a member of the Election Assistance Commission Board of Advisors:

Designated Representative

Name: _____

Title: _____

Address: _____

_____

Phone: _____

Email: _____

Party Affiliation: _____

Designated Representative

Name: _____

Title: _____

Address: _____

_____

Phone: _____

Email: _____

Party Affiliation: _____

Name and Title of Appointing Official

Print Name: _____

Print Title: _____

Signature: _____ Date: _____

Please return the completed form via email to EAC General Counsel Kevin Rayburn (krayburn@eac.gov).

AMERICAN OVERSIGHT

Notice of Representation
United States Election Assistance Commission
Board of Advisors

In accordance with 52 USC 20901 of the Help America Vote Act of 2002, the (U.S. Commission on Civil Rights) submits the following individual(s) as a member of the Election Assistance Commission Board of Advisors:

Designated Representative

Name:	Michael Yaki
Title:	Commissioner, U.S. Commission on Civil Rights
Address:	268 Bush Street #3333 San Francisco, CA 94104
Phone/FAX:	415-601-4008
Email:	myaki@usccr.gov
Party Affiliation:	Democratic

Designated Representative

Name:	David Kladney
Title:	Commissioner, U.S. Commission on Civil Rights
Address:	905 Joy Lake Road Reno, NV 89511
Phone/FAX:	775-849-0545
Email:	dkladney@usccr.gov
Party Affiliation:	Democratic

NAME / TITLE OF APPOINTING OFFICIAL

Print Name: Catherine Lhamon / Chair, U.S. Commission on Civil Rights

Sign Name: Cae Date: 3/22/2019

Please return the completed form via email to Clifford Tatum (Ctatum@eac.gov), facsimile transmission, at (301) 734-3108, or your notice can be mailed to: U.S. Election Assistance Commission; 1335 East West Highway, Suite 4300; Silver Spring, MD 20910.

1/2019 version

AMERICAN OVERSIGHT

C002503

AMERICAN OVERSIGHT

Date : 9/3/2021 12:22:36 PM
From : "Pilar McLaughlin" pmclaughlin@usccr.gov
To : "Juana Silverio" jsilverio@usccr.gov
Cc : "Mauro Morales" mmorales@usccr.gov, "David Ganz" dganz@usccr.gov
Subject : EAC Board of Advisors Appointment Form
Attachment : Notice-of-Representation-Form-Board-Advisors-2021.pdf;image001.gif;image002.gif;

Hi Juana:

Attached is the appointment form that Chair Cantú should use for the EAC Board of Advisors appointments. Please complete it and send it to the EAC's General Counsel, Kevin Rayburn, whose email address is located at the bottom of the form. Let us know if you have any questions.

Have a wonderful holiday weekend.

Kind regards,
Pilar

Pilar Velasquez McLaughlin
Senior Counsel, Office of the General Counsel
U.S. Commission on Civil Rights
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425
https://www.usccr.gov/

Email: pmclaughlin@usccr.gov
Direct: 703.855.8866

Follow Us on Twitter & Facebook:

#USCCR

AMERICAN OVERSIGHT

Notice of Representation
United States Election Assistance Commission
Board of Advisors

In accordance with 52 U.S.C. § 20944 of the Help America Vote Act of 2002, your office submits the following individual(s) as a member of the Election Assistance Commission Board of Advisors:

Designated Representative

Name: _____

Title: _____

Address: _____

_____

Phone: _____

Email: _____

Party Affiliation: _____

Designated Representative

Name: _____

Title: _____

Address: _____

_____

Phone: _____

Email: _____

Party Affiliation: _____

Name and Title of Appointing Official

Print Name: _____

Print Title: _____

Signature: _____ Date: _____

Please return the completed form via email to EAC General Counsel Kevin Rayburn (krayburn@eac.gov).

AMERICAN OVERSIGHT

OVERSIGHT

OVERSTOCK

Date : 9/3/2021 1:56:13 PM
From : "David Ganz" dganz@usccr.gov
To : "Mauro Morales" mmorales@usccr.gov
Subject : RE: EAC Board of Advisors Appointment Form
Attachment : image001.gif;image002.gif;

Anything further with this?

From: Pilar McLaughlin <pmclaughlin@usccr.gov>
Sent: Friday, September 3, 2021 12:23 PM
To: Juana Silverio <jsilverio@usccr.gov>
Cc: Mauro Morales <mmorales@usccr.gov>; David Ganz <dganz@usccr.gov>
Subject: EAC Board of Advisors Appointment Form

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Have a wonderful holiday weekend.

Kind regards,
Pilar

Pilar Velasquez McLaughlin
Senior Counsel, Office of the General Counsel
U.S. Commission on Civil Rights
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425
https://www.usccr.gov/

Email: pmclaughlin@usccr.gov
Direct: 703.855.8866

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#USCCR

AMERICAN OVERSIGHT

OVERSIGHT

OVERSTOCK

Date : 9/6/2021 7:08:11 AM
From : "Irena Vidulovic" ividulovic@usccr.gov
To : "Debo P. Adegbile" dadegbile@usccr.gov, "Adegbile, Debo" Debo.Adegbile@wilmerhale.com
Cc : "Zervoudis, Flor" Flor.Zervoudis@wilmerhale.com
Subject : USCCR UPDATES + TO DO

Adegbile,

Hope that you are having a lovely Labor Day! I look forward to connecting tomorrow, in the meantime I am including the updated TO DO LIST so that we can discuss:

1. Concept Paper Discussion (info below)
2. Email to Jenny and Allison EAC (draft emailed to you for review)
3. September 15th availability for Maternal Mortality Report Release. I sent Flor the request for 12noon for the Press call and 1pm for the Stakeholder call. There is much to discuss regarding the release and your role.
4. September Business Meeting Agenda: 1) Presentations from Advisory Committees to the Commission on Recent Reports/Memo Releases 2). Discussion and Vote on Advisory Committee Appointments Texas and New Mexico 3). Vote to Amend October 2022 Business Meeting Date 4). Discussion and Vote on Fiscal Year 2022 Concept Papers and Fiscal Year 2023 Statutory Enforcement Report 5) Discussion and Vote on Commission Statement Regarding School Safety 6). Management and Operations • Staff Director's Report.

SBA + PPP from Commissioner Gilchrest and Cantu. However Juana and Thomas have not presented a joint proposal yet for everyone to review so I am a little skeptical that we will be able to vote on a project that is the amalgamation of their two separate concept papers without seeing the join vision.

Covid and Digital Divide in Education from Commissioner Cantu.

The third and final project is HUD Home Values from Gilchrist. From Juana's email to the SA's it is my understanding that they are looking for a progressive Commissioner to join with Gilchrist on the HUD Home values concept paper and help him develop the concept paper. Juana and the Chair originally reached out to Commissioner Kladney as he mentioned in caucus meeting he'd be supportive of this topic and since he shared some ideas with Gilchrist already. However this too raises many red flags since that concept paper did not really score well with during the ranking and I fear that however takes over the writing of the concept paper will have to do all the work. I also don't see this being done in time for the vote this Friday.

AMERICAN OVERSIGHT

Irena Vidulovic
Special Assistant to Commissioner Debo P. Adegbile
U.S. Commission on Civil Rights
M: 202-591-9969
ividulovic@usccr.gov
http://usccr.gov/
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425

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TwiFB
#USCCR

AMERICAN OVERSIGHT

Date : 9/6/2021 7:08:12 AM
From : "Irena Vidulovic" ividulovic@usccr.gov
To : "Debo P. Adegbile" dadegbile@usccr.gov, "Adegbile, Debo" Debo.Adegbile@wilmerhale.com
Subject : Draft Email Reg: EAC

Dear _____,

Commissioner Adegbile wanted to extend his thanks yet again for your willingness to serve on the Board of ? for the EAC. He put forth your nomination to USCCR which went through our internal voting process which includes that the progressive commissioners put forth nominees and the conservative commissioners put forth their nominees. The conservatives then vote on a progressive nominee and the progressives then vote on the conservative nominee. However the conservative commissioners have voted that Commissioner Yaki (a Commissioner appointed by Speaker Pelosi) represent USCCR on the Board of EAC.

Thank you again for your service to the Alabama State Advisory and voting rights.

Irena

Irena Vidulovic
Special Assistant to Commissioner Debo P. Adegbile
U.S. Commission on Civil Rights
M: 202-591-9969
ividulovic@usccr.gov
http://usccr.gov/
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425

Follow Us on Twitter & Facebook:
TwiFB
#USCCR

AMERICAN OVERSIGHT

Date : 9/7/2021 8:03:31 AM
From : "Juana Silverio" jsilverio@usccr.gov
To : "Pilar McLaughlin" pmclaughlin@usccr.gov
Cc : "Mauro Morales" mmorales@usccr.gov, "David Ganz" dganz@usccr.gov
Subject : Re: EAC Board of Advisors Appointment Form
Attachment : image001.gif;image002.gif;

Thanks, will flag

--
Juana Silverio *(she/her/ella)*
Special Assistant to Commissioner Norma V. Cantú
U.S. Commission on Civil Rights
E: jsilverio@usccr.gov
http://usccr.gov/
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425
Follow Us on Twitter & Facebook:
Twi FB
#USCCR

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To: Juana Silverio
Cc: Mauro Morales; David Ganz
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Have a wonderful holiday weekend.

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Pilar

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1331 Pennsylvania Avenue, NW Suite 1150
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Email: pmclaughlin@usccr.gov
Direct: 703.855.8866

AMERICAN OVERSIGHT

Follow Us on Twitter & Facebook:

#USCCR

AMERICAN OVERSIGHT

OVERSIGHT

OVERSTOCK

Date : 9/7/2021 9:53:08 AM
From : "Juana Silverio" jsilverio@usccr.gov
To : "Norma Cantu" ncantu@usccr.gov
Subject : Juana/Chair re: marching orders for rest of week

1. EAC form- fill out and send to GC
2. Concept papers
3. Maternal health- op ed? press call?
4. Caucus mtg today re: Biz mtg fri (did you review SAC members re TX)
5. Statement re: school safety- did Thomas move on it?
6. FEMA town hall
7. Activate SM ASAP
8. expense report

--
Norma V. Cantú is inviting you to a scheduled Zoom meeting.

Topic: (7pm CST) Juana/Chair mtg.
Time: Sep 7, 2021 08:00 PM Eastern Time (US and Canada)

Join Zoom Meeting
https://us02web.zoom.us/j/84182679255?
pwd=dStzQzNseDFLcnBGY3RWNEhVQ0JWQT09

Meeting ID: 841 8267 9255
Passcode: 722436
One tap mobile
+13017158592,,84182679255# US (Washington DC)
+13126266799,,84182679255# US (Chicago)

Dial by your location
+1 301 715 8592 US (Washington DC)
+1 312 626 6799 US (Chicago)
+1 646 558 8656 US (New York)
+1 253 215 8782 US (Tacoma)
+1 346 248 7799 US (Houston)
+1 669 900 6833 US (San Jose)
833 548 0282 US Toll-free
855 880 1246 US Toll-free
877 369 0926 US Toll-free
833 548 0276 US Toll-free
Meeting ID: 841 8267 9255
Find your local number: https://us02web.zoom.us/u/kyZtsZP7w

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84182679255@zoomcrc.com

Join by H.323
162.255.37.11 (US West)
162.255.36.11 (US East)
115.114.131.7 (India Mumbai)
115.114.115.7 (India Hyderabad)
213.19.144.110 (Amsterdam Netherlands)
213.244.140.110 (Germany)

AMERICAN OVERSIGHT

103.122.166.55 (Australia Sydney)
103.122.167.55 (Australia Melbourne)
149.137.40.110 (Singapore)
64.211.144.160 (Brazil)
149.137.68.253 (Mexico)
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65.39.152.160 (Canada Vancouver)
207.226.132.110 (Japan Tokyo)
149.137.24.110 (Japan Osaka)
Meeting ID: 841 8267 9255
Passcode: 722436

AMERICAN OVERSIGHT

Date : 9/7/2021 11:07:34 AM
From : "Juana Silverio" jsilverio@usccr.gov
To : "Norma Cantu" ncantu@usccr.gov
Subject : Juana/Chair re: marching orders for rest of week

Agenda:

1. EAC form- fill out and send to GC
2. Concept papers
3. Maternal health- op ed? press call?
4. Caucus mtg today re: Biz mtg fri (did you review SAC members re TX)
5. Statement re: school safety- did Thomas move on it?
6. FEMA town hall
7. Activate SM ASAP
8. expense report
9. schedule for the rest of the year
10. new caucus mtg date/time
11. what times do you have available for Debo call
12. Hispanic heritage month (statement); WH/admin events list ASAP

--
Norma V. Cantú is inviting you to a scheduled Zoom meeting.

Topic: (7pm CST) Juana/Chair mtg.
Time: Sep 7, 2021 08:00 PM Eastern Time (US and Canada)

Join Zoom Meeting
https://us02web.zoom.us/j/84182679255?
pwd=dStzQzNseDFLcnBGY3RWNEhVQ0JWQT09

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207.226.132.110 (Japan Tokyo)
149.137.24.110 (Japan Osaka)
Meeting ID: 841 8267 9255
Passcode: 722436

AMERICAN OVERSIGHT

Date : 9/7/2021 2:44:44 PM
From : "Juana Silverio" jsilverio@usccr.gov
To : "Norma Cantu" ncantu@usccr.gov
Subject : (6pm CST) Juana/Chair re: marching orders for rest of week

Agenda:

1. EAC form- fill out and send to GC
2. Concept papers
3. Maternal health- op ed? press call?
    1. Need to change to Sept 15 between 11-1pm EST and 430-530p EST- 30 min max time; are you available?)
4. Caucus mtg today re: Biz mtg fri (did you review SAC members re TX)
5. Statement re: school safety- did Thomas move on it?
6. FEMA town hall
7. Activate SM ASAP
8. expense report (juana to complete)
9. schedule for the rest of the year (your calendar + our check ins)
10. new caucus mtg date/time (biweekly proposal)
11. what times do you have available for Debo call
12. Hispanic heritage month (statement); WH/admin events list ASAP

--
Norma V. Cantú is inviting you to a scheduled Zoom meeting.

Topic: (6pm CST) Juana/Chair mtg.
Time: Sep 7, 2021 07:00 PM Eastern Time (US and Canada)

Join Zoom Meeting
https://us02web.zoom.us/j/84182679255?pwd=dStzQzNseDFLcnBGY3RWNEhVQ0JWQT09

Meeting ID: 841 8267 9255
Passcode: 722436
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833 548 0276 US Toll-free
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Find your local number: https://us02web.zoom.us/u/kyZtsZP7w

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84182679255@zoomcrc.com

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149.137.24.110 (Japan Osaka)
Meeting ID: 841 8267 9255
Passcode: 722436

AMERICAN OVERSIGHT

Date : 9/7/2021 2:36:27 PM
From : "Juana Silverio" jsilverio@usccr.gov
To : "Norma Cantu" ncantu@usccr.gov
Subject : Juana/Chair re: marching orders for rest of week

Agenda:

1. EAC form- fill out and send to GC
2. Concept papers
3. Maternal health- op ed? press call?
    1. Need to change to Sept 15 between 11-1pm EST and 430-530p EST- 30 min max time; are you available?)
4. Caucus mtg today re: Biz mtg fri (did you review SAC members re TX)
5. Statement re: school safety- did Thomas move on it?
6. FEMA town hall
7. Activate SM ASAP
8. expense report (juana to complete)
9. schedule for the rest of the year (your calendar + our check ins)
10. new caucus mtg date/time (biweekly proposal)
11. what times do you have available for Debo call
12. Hispanic heritage month (statement); WH/admin events list ASAP

--
Norma V. Cantú is inviting you to a scheduled Zoom meeting.

Topic: (7pm CST) Juana/Chair mtg.
Time: Sep 7, 2021 08:00 PM Eastern Time (US and Canada)

Join Zoom Meeting
https://us02web.zoom.us/j/84182679255?pwd=dStzQzNseDFLcnBGY3RWNEhVQ0JWQT09

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65.39.152.160 (Canada Vancouver)
207.226.132.110 (Japan Tokyo)
149.137.24.110 (Japan Osaka)
Meeting ID: 841 8267 9255
Passcode: 722436

AMERICAN OVERSIGHT

Date : 9/7/2021 3:50:47 PM
From : "Andrew Gall" agall@usccr.gov
To : "David Ganz" dganz@usccr.gov
Subject : Re: EAC appointment letter for Chair Cantu
Attachment : image001.png;

You don't still need this do you?

From: David Ganz
Sent: Thursday, September 2, 2021 8:13:21 PM
To: Pilar McLaughlin; Sheryl Cozart
Cc: Andrew Gall
Subject: EAC appointment letter for Chair Cantu

Mauro texted me about having this for Chair Cantu tomorrow. Please let me know if you have the bandwidth to get this to me tomorrow. Mauro mentioned that Llhamon (sp?) sent one to EAC for our prior appointments so let's just use that one as a template. Thanks!

David Ganz
General Counsel, Office of the General Counsel
U.S. Commission on Civil Rights
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425
(617) 669-6413

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Established as an independent, bipartisan, fact-finding federal agency, our mission is to inform the development of national civil rights policy and enhance enforcement of federal civil rights laws. We pursue this mission by studying alleged deprivations of voting rights and alleged discrimination based on race, color, religion, sex, age, disability, or national origin, or in the administration of justice. We play a vital role in advancing civil rights through objective and comprehensive investigation, research, and analysis on issues of fundamental concern to the federal government and the public.

AMERICAN OVERSIGHT

UNITED STATES COMMISSION ON CIVIL RIGHTS
C002527

Date : 9/7/2021 5:05:08 PM
From : "David Ganz" dganz@usccr.gov
To : "Andrew Gall" agall@usccr.gov
Subject : RE: EAC appointment letter for Chair Cantu
Attachment : image001.png;

It's done

From: Andrew Gall <agall@usccr.gov>
Sent: Tuesday, September 7, 2021 3:51 PM
To: David Ganz <dganz@usccr.gov>
Subject: Re: EAC appointment letter for Chair Cantu

You don't still need this do you?

From: David Ganz
Sent: Thursday, September 2, 2021 8:13:21 PM
To: Pilar McLaughlin; Sheryl Cozart
Cc: Andrew Gall
Subject: EAC appointment letter for Chair Cantu

Mauro texted me about having this for Chair Cantu tomorrow. Please let me know if you have the bandwidth to get this to me tomorrow. Mauro mentioned that Llhamon (sp?) sent one to EAC for our prior appointments so let's just use that one as a template. Thanks!

David Ganz
General Counsel, Office of the General Counsel
U.S. Commission on Civil Rights
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425
(617) 669-6413

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Established as an independent, bipartisan, fact-finding federal agency, our mission is to inform the development of national civil rights policy and

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enhance enforcement of federal civil rights laws. We pursue this mission by studying alleged deprivations of voting rights and alleged discrimination based on race, color, religion, sex, age, disability, or national origin, or in the administration of justice. We play a vital role in advancing civil rights through objective and comprehensive investigation, research, and analysis on issues of fundamental concern to the federal government and the public.

AMERICAN OVERSIGHT

UNITED STATES COMMISSION ON CIVIL RIGHTS
C002530

Date : 9/7/2021 5:15:31 PM
From : "Juana Silverio" jsilverio@usccr.gov
To : "Norma Cantu" ncantu@usccr.gov
Subject : (6pm CST) Juana/Chair re: marching orders for rest of week

Agenda:

* EAC form- fill out and send to GC
* Concept papers
* Maternal health- op ed? press call?
* Need to change to Sept 15 between 11-1pm EST and 430-530p EST- 30 min max time; are you available?)
* Caucus mtg today re: Biz mtg fri (did you review SAC members re TX)
* Statement re: school safety- did Thomas move on it?
* FEMA town hall
* Activate SM ASAP
* expense report (juana to complete)
* schedule for the rest of the year (your calendar + our check ins)
* new caucus mtg date/time (biweekly proposal)
* what times do you have available for Debo call
* Hispanic heritage month (statement); WH/admin events list ASAP
* PR advance trip (commissioner rep)

--
Norma V. Cantú is inviting you to a scheduled Zoom meeting.

Topic: (6pm CST) Juana/Chair mtg.
Time: Sep 7, 2021 07:00 PM Eastern Time (US and Canada)

Join Zoom Meeting
https://us02web.zoom.us/j/84182679255?pwd=dStzQzNseDFLcnBGY3RWNEhVQ0JWQT09

Meeting ID: 841 8267 9255
Passcode: 722436
One tap mobile
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+1 346 248 7799 US (Houston)
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833 548 0276 US Toll-free
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65.39.152.160 (Canada Vancouver)
207.226.132.110 (Japan Tokyo)
149.137.24.110 (Japan Osaka)
Meeting ID: 841 8267 9255
Passcode: 722436

AMERICAN OVERSIGHT

Date : 9/8/2021 1:19:52 PM
From : "Juana Silverio" jsilverio@usccr.gov
To : "Norma Cantu" ncantu@usccr.gov
Subject : (8:30am CST) Juana/Chair re: marching orders for rest of week

* new caucus mtg date/time (biweekly proposal)
* what times do you have available for Debo call
* Hispanic heritage month (statement); WH/admin events list ASAP
* FEMA town hall
* Activate SM ASAP
* expense report (juana to complete)
* PR advance trip (commissioner rep)
* caucus mtg today re: Biz mtg fri (did you review SAC members re TX)

EAC form- fill out and send to GC **(juana to fill out)
* *Concept papers **(postponed)**
* * Maternal health- op ed? press call? **(no oped)**
* * Need to change to Sept 15 between 11-1pm EST and 430-530p EST- 30 min max time; are you available?) **(Ang/Pam to change times with contractor)**
* Statement re: school safety- did Thomas move on it? **(postponed)**
* schedule for the rest of the year (your calendar + our check ins) **(juana to block out)**

Norma V. Cantú is inviting you to a scheduled Zoom meeting.

Topic: (8:30am CST) Juana/Chair mtg.
Time: Sep 9, 2021 09:30 AM Eastern Time (US and Canada)

Join Zoom Meeting
https://us02web.zoom.us/j/84182679255?pwd=dStzQzNseDFLcnBGY3RWNEhVQ0JWQT09

Meeting ID: 841 8267 9255
Passcode: 722436
One tap mobile
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AMERICAN OVERSIGHT

Date : 10/1/2021 3:55:15 PM
From : "Pilar McLaughlin" pmclaughlin@usccr.gov
To : "David Ganz" dganz@usccr.gov
Subject : FW: Notice of Representation Form
Attachment : Notice-of-Representation-Form-Board-Advisors-2021.pdf;image001.gif;image002.gif;

Here is the EAC form. I can turn into a Word document, edit it and then send to you and Sheryl for edits.

From: Pilar McLaughlin
Sent: Thursday, September 23, 2021 5:15 PM
To: Marvin Williams (CSSBMB) <mwilliams@usccr.gov>; Sheryl Cozart <sccozart@usccr.gov>
Subject: Notice of Representation Form

Good Evening Marvin and Sheryl:

Thank you again for bringing me into the fold on our brainstorming sessions. I just thought of something that you all may find useful now and as we progress forward. To date, how has the CBM&B been receiving appointees from appointing authorities? Attached is the form that the Election Assistance Commission, Board of Advisors uses for that purpose. The GC sends out this form to appointing authorities (in this case, the Chair of the USCCR) and asks them to fill it out and send it back. Does the CBM&B have a notice of rep form or see a need for one? I ask because I believe that the statute requires partisan parity. Outside of the appointees' political affiliations that are obvious (i.e. members of congress) have we been made aware of other appointee's political affiliations?

Pilar

Pilar Velasquez McLaughlin
Senior Counsel, Office of the General Counsel
U.S. Commission on Civil Rights
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425
https://www.usccr.gov/

Email: pmclaughlin@usccr.gov
Direct: 703.855.8866

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Notice of Representation
United States Election Assistance Commission
Board of Advisors

In accordance with 52 U.S.C. § 20944 of the Help America Vote Act of 2002, your office submits the following individual(s) as a member of the Election Assistance Commission Board of Advisors:

Designated Representative

Name: _____

Title: _____

Address: _____

_____

Phone: _____

Email: _____

Party Affiliation: _____

Designated Representative

Name: _____

Title: _____

Address: _____

_____

Phone: _____

Email: _____

Party Affiliation: _____

Name and Title of Appointing Official

Print Name: _____

Print Title: _____

Signature: _____ Date: _____

Please return the completed form via email to EAC General Counsel Kevin Rayburn (krayburn@eac.gov).

AMERICAN OVERSIGHT

OVERSIGHT

OVERSTOCK

Date : 10/18/2021 12:33:57 PM
From : "John Mashburn" jmashburn@usccr.gov
To : "Mauro Morales" mmorales@usccr.gov, "Juana Silverio" jsilverio@usccr.gov
Cc : "Carissa Mulder" CMulder@usccr.gov
Subject : Cleta Mitchell Serving on EAC Advisory Bd

Mauro/Juana – Cleta Mitchell has not been contacted by USCCR or EAC staff about serving on the EAC Bd of Advisors. As you recall, her nomination to serve was approved at the August USCCR Bus Mtg. My boss and one other Cmnr asked me to find out what the process and status are regarding her appointment to the EAC Bd of Advisors.

Can either of you provide that info, or do I need to contact someone else at USCCR, or EAC?

AMERICAN OVERSIGHT

Date : 10/26/2021 3:52:46 PM
From : "Michael Yaki" MYaki@usccr.gov
To : "Norma Cantu" ncantu@usccr.gov
Subject : Resignation from EAC board of Advisors

Chair Cantu -

After careful consideration, I have decided to resign from the US Election Assistance Commission Board of Advisors and withdraw my name from nomination to another term.

Sincerely,

Commissioner Michael Yaki

AMERICAN OVERSIGHT

Date : 10/26/2021 4:24:00 PM
From : "Norma Cantu" ncantu@usccr.gov
To : "Michael Yaki" MYaki@usccr.gov
Cc : "Debo P. Adegbile" dadegbile@usccr.gov, "David Kladney" dkladney@usccr.gov
Subject : RE: Resignation of Michael Yaki from Election Assistance Commission board of Advisors

Dear Commissioner Yaki,

Michael, I am so grateful for the six years you have served on the Board of Advisors to the US Election Assistance Commission. I supported your nomination to another term, and I was looking forward to your sage counsel on how the US Election Assistance Commission should proceed to fulfil its mission. I am sad to hear you wish to resign from the Board of Advisors, but I know how committed you to fulfilling each obligation completely and with dedication, so I respect your decision.

Please accept our thanks for your service above and beyond what is expected. Your service has been a sacrifice of your time and energy, and the results have been outstanding.

In representing the U.S. Commission on the Board of Advisors, you set a high bar for dedication, energy, and expertise. I will be looking to the Commissioners for input on the task of finding a replacement for you as an advisor to the US Election Commission. I am copying the rest of the progressive caucus so they can also thank you for your service

Sincerely,
Norma V. Cantu

Cell 210 380 6380

From: Michael Yaki <MYaki@usccr.gov>
Sent: Tuesday, October 26, 2021 2:53 PM
To: Norma Cantu <ncantu@usccr.gov>
Subject: Resignation from EAC board of Advisors

Chair Cantu -

After careful consideration, I have decided to resign from the US Election Assistance Commission Board of Advisors and withdraw my name from nomination to another term.

Sincerely,

Commissioner Michael Yaki

AMERICAN OVERSIGHT

Date : 10/28/2021 8:40:44 AM
From : "John Mashburn" jmashburn@usccr.gov
To : "Mauro Morales" mmorales@usccr.gov, "Juana Silverio" jsilverio@usccr.gov, "David Ganz" dganz@usccr.gov
Subject : Fw: Cleta Mitchell Serving on EAC Advisory Bd

Is there an answer to this question?

From: John Mashburn
Sent: Monday, October 18, 2021 12:33:57 PM
To: Mauro Morales; Juana Silverio
Cc: Carissa Mulder
Subject: Cleta Mitchell Serving on EAC Advisory Bd

Mauro/Juana – Cleta Mitchell has not been contacted by USCCR or EAC staff about serving on the EAC Bd of Advisors. As you recall, her nomination to serve was approved at the August USCCR Bus Mtg. My boss and one other Cmnr asked me to find out what the process and status are regarding her appointment to the EAC Bd of Advisors.

Can either of you provide that info, or do I need to contact someone else at USCCR, or EAC?

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Date : 10/28/2021 9:50:48 AM
From : "Juana Silverio" jsilverio@usccr.gov
To : "John Mashburn" jmashburn@usccr.gov, "Mauro Morales" mmorales@usccr.gov, "David Ganz" dganz@usccr.gov
Cc : "Norma Cantu" ncantu@usccr.gov
Subject : Re: Cleta Mitchell Serving on EAC Advisory Bd

The Chair will address this shortly.

Juana

--
Juana Silverio *(she/her/ella)*
Special Assistant to Commissioner Norma V. Cantú
U.S. Commission on Civil Rights
E: jsilverio@usccr.gov
http://usccr.gov/
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425
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#USCCR

From: John Mashburn
Sent: Thursday, October 28, 2021 8:40:44 AM
To: Mauro Morales; Juana Silverio; David Ganz
Subject: Fw: Cleta Mitchell Serving on EAC Advisory Bd

Is there an answer to this question?

From: John Mashburn
Sent: Monday, October 18, 2021 12:33:57 PM
To: Mauro Morales; Juana Silverio
Cc: Carissa Mulder
Subject: Cleta Mitchell Serving on EAC Advisory Bd

Mauro/Juana – Cleta Mitchell has not been contacted by USCCR or EAC staff about serving on the EAC Bd of Advisors. As you recall, her nomination to serve was approved at the August USCCR Bus Mtg. My boss and one other Cmnr asked me to find out what the process and status are regarding her appointment to the EAC Bd of Advisors.

Can either of you provide that info, or do I need to contact someone else at USCCR, or EAC?

AMERICAN OVERSIGHT

Date : 10/28/2021 9:59:56 AM
From : "John Mashburn" jmashburn@usccr.gov
To : "Juana Silverio" jsilverio@usccr.gov
Subject : Re: Cleta Mitchell Serving on EAC Advisory Bd

How shortly is “shortly?”

The Bd of Advisors have a business meeting soon evidently.

From: Juana Silverio <jsilverio@usccr.gov>
Date: Thursday, October 28, 2021 at 9:50 AM
To: John Mashburn <jmashburn@usccr.gov>, Mauro Morales <mmorales@usccr.gov>, David Ganz <dganz@usccr.gov>
Cc: Norma Cantu <ncantu@usccr.gov>
Subject: Re: Cleta Mitchell Serving on EAC Advisory Bd

The Chair will address this shortly.

Juana

--

Juana Silverio *(she/her/ella)*

Special Assistant to Commissioner Norma V. Cantú

U.S. Commission on Civil Rights

E: jsilverio@usccr.gov

http://usccr.gov/

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From: John Mashburn
Sent: Thursday, October 28, 2021 8:40:44 AM
To: Mauro Morales; Juana Silverio; David Ganz

AMERICAN OVERSIGHT

Subject: Fw: Cleta Mitchell Serving on EAC Advisory Bd

Is there an answer to this question?

From: John Mashburn
Sent: Monday, October 18, 2021 12:33:57 PM
To: Mauro Morales; Juana Silverio
Cc: Carissa Mulder
Subject: Cleta Mitchell Serving on EAC Advisory Bd

Mauro/Juana – Cleta Mitchell has not been contacted by USCCR or EAC staff about serving on the EAC Bd of Advisors. As you recall, her nomination to serve was approved at the August USCCR Bus Mtg. My boss and one other Cmnr asked me to find out what the process and status are regarding her appointment to the EAC Bd of Advisors.

Can either of you provide that info, or do I need to contact someone else at USCCR, or EAC?

AMERICAN OVERSIGHT

Date : 10/28/2021 10:35:02 AM
From : "Juana Silverio" jsilverio@usccr.gov
To : "John Mashburn" jmashburn@usccr.gov
Subject : Re: Cleta Mitchell Serving on EAC Advisory Bd

Thanks for letting me know John.

The Chair is aware. We will get back to you.

Juana

--
Juana Silverio *(she/her/ella)*
Special Assistant to Commissioner Norma V. Cantú
U.S. Commission on Civil Rights
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http://usccr.gov/
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From: John Mashburn
Sent: Thursday, October 28, 2021 9:59:56 AM
To: Juana Silverio
Subject: Re: Cleta Mitchell Serving on EAC Advisory Bd

How shortly is “shortly?”

The Bd of Advisors have a business meeting soon evidently.

From: Juana Silverio <jsilverio@usccr.gov>
Date: Thursday, October 28, 2021 at 9:50 AM
To: John Mashburn <jmashburn@usccr.gov>, Mauro Morales <mmorales@usccr.gov>, David Ganz <dganz@usccr.gov>
Cc: Norma Cantu <ncantu@usccr.gov>
Subject: Re: Cleta Mitchell Serving on EAC Advisory Bd

The Chair will address this shortly.

Juana

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Can either of you provide that info, or do I need to contact someone else at USCCR, or EAC?

AMERICAN OVERSIGHT

Date : 10/28/2021 10:34:46 AM
From : "J. Christian Adams" jadams@usccr.gov
To : "Mauro Morales" mmorales@usccr.gov
Cc : "John Mashburn" jmashburn@usccr.gov
Subject : Please call John Mashburn back

Mauro- ten days ago John Mashburn left you a voicemail to talk about completing the appointments to the EAC Advisory board. He tells me his call has not been returned. Would you please do so and move this along please?

Finishing the appointment process, which should have been long ago finished, has relevance to other matters which may arise at the November business meeting. We need to complete the EAC appointment process before addressing other issues.

Thanks,

J. Christian Adams

AMERICAN OVERSIGHT

Date : 10/28/2021 10:58:20 AM
From : "David Ganz" dganz@usccr.gov
To : "Norma Cantu" ncantu@usccr.gov, "Mauro Morales" mmorales@usccr.gov, "Juana Silverio" jsilverio@usccr.gov
Subject : RE: Cleta Mitchell Serving on EAC Advisory Bd

Hello Chair Cantu,

We will research the A.I. and get back to you later today. Thanks.

From: Norma Cantu <ncantu@usccr.gov>
Sent: Thursday, October 28, 2021 10:51 AM
To: Mauro Morales <mmorales@usccr.gov>; David Ganz <dganz@usccr.gov>; Juana Silverio <jsilverio@usccr.gov>
Subject: RE: Cleta Mitchell Serving on EAC Advisory Bd

Dear Mauro, David,
The intent of the agreement on appointment to the EAC was that we would follow a bipartisan process. A few weeks back, I learned Michael Yaki had too many work commitments to take on the appointment to EAC. I tried, unsuccessfully, to convince him to start his new term. We are back to square one.
David, do you read the AI the same as I do? I read it that the bipartisan nature means both names have to be provided concurrently. What is your insight?
Norma

From: Juana Silverio <jsilverio@usccr.gov>
Sent: Thursday, October 28, 2021 8:51 AM
To: John Mashburn <jmashburn@usccr.gov>; Mauro Morales <mmorales@usccr.gov>; David Ganz <dganz@usccr.gov>
Cc: Norma Cantu <ncantu@usccr.gov>
Subject: Re: Cleta Mitchell Serving on EAC Advisory Bd

The Chair will address this shortly.

Juana

--

Juana Silverio *(she/her/ella)*

Special Assistant to Commissioner Norma V. Cantú

U.S. Commission on Civil Rights

E: jsilverio@usccr.gov

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Can either of you provide that info, or do I need to contact someone else at USCCR, or EAC?

AMERICAN OVERSIGHT

Date : 10/28/2021 10:58:20 AM
From : "David Ganz" dganz@usccr.gov
To : "Pilar McLaughlin" pmclaughlin@usccr.gov
Cc : "Sheryl Cozart" sccozart@usccr.gov, "Andrew Gall" agall@usccr.gov
Subject : FW: Cleta Mitchell Serving on EAC Advisory Bd

Please research this issue and get back to me later this afternoon. I do not think the EAC statute is as prescriptive as Chair Cantu is reading it.

From: Norma Cantu <ncantu@usccr.gov>
Sent: Thursday, October 28, 2021 10:51 AM
To: Mauro Morales <mmorales@usccr.gov>; David Ganz <dganz@usccr.gov>; Juana Silverio <jsilverio@usccr.gov>
Subject: RE: Cleta Mitchell Serving on EAC Advisory Bd

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Cc: Norma Cantu <ncantu@usccr.gov>
Subject: Re: Cleta Mitchell Serving on EAC Advisory Bd

The Chair will address this shortly.

Juana

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Juana Silverio *(she/her/ella)*

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Can either of you provide that info, or do I need to contact someone else at USCCR, or EAC?

AMERICAN OVERSIGHT

Date : 10/28/2021 10:50:43 AM
From : "Norma Cantu" ncantu@usccr.gov
To : "Mauro Morales" mmorales@usccr.gov, "David Ganz" dganz@usccr.gov, "Juana Silverio" jsilverio@usccr.gov
Subject : RE: Cleta Mitchell Serving on EAC Advisory Bd

Dear Mauro, David,
The intent of the agreement on appointment to the EAC was that we would follow a bipartisan process. A few weeks back, I learned Michael Yaki had too many work commitments to take on the appointment to EAC. I tried, unsuccessfully, to convince him to start his new term. We are back to square one.
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Sent: Thursday, October 28, 2021 8:51 AM
To: John Mashburn <jmashburn@usccr.gov>; Mauro Morales <mmorales@usccr.gov>; David Ganz <dganz@usccr.gov>
Cc: Norma Cantu <ncantu@usccr.gov>
Subject: Re: Cleta Mitchell Serving on EAC Advisory Bd

The Chair will address this shortly.

Juana

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Juana Silverio *(she/her/ella)*

Special Assistant to Commissioner Norma V. Cantú

U.S. Commission on Civil Rights

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AMERICAN OVERSIGHT

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Can either of you provide that info, or do I need to contact someone else at USCCR, or EAC?

AMERICAN OVERSIGHT

Date : 10/28/2021 11:11:48 AM
From : "Sheryl Cozart" sccozart@usccr.gov
To : "David Ganz" dganz@usccr.gov
Cc : "Pilar McLaughlin" pmclaughlin@usccr.gov, "Andrew Gall" agall@usccr.gov
Subject : Re: Cleta Mitchell Serving on EAC Advisory Bd

Good morning David,

While Pilar is reviewing the script, I'll get started on this assignment. We'll get back to you later this afternoon.

Sheryl

> On Oct 28, 2021, at 10:58 AM, David Ganz <dganz@usccr.gov> wrote:
>
> Please research this issue and get back to me later this afternoon. I do not think the EAC statute is as prescriptive as Chair Cantu is reading it.
>
> ---
>
> **From:** Norma Cantu <ncantu@usccr.gov>
> **Sent:** Thursday, October 28, 2021 10:51 AM
> **To:** Mauro Morales <mmorales@usccr.gov>; David Ganz <dganz@usccr.gov>; Juana Silverio <jsilverio@usccr.gov>
> **Subject:** RE: Cleta Mitchell Serving on EAC Advisory Bd
>
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> Norma
>
> ---
>
> **From:** Juana Silverio <jsilverio@usccr.gov>
> **Sent:** Thursday, October 28, 2021 8:51 AM
> **To:** John Mashburn <jmashburn@usccr.gov>; Mauro Morales <mmorales@usccr.gov>; David Ganz <dganz@usccr.gov>
> **Cc:** Norma Cantu <ncantu@usccr.gov>
> **Subject:** Re: Cleta Mitchell Serving on EAC Advisory Bd
>
> The Chair will address this shortly.

AMERICAN OVERSIGHT

Juana

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Juana Silverio *(she/her/ella)*

Special Assistant to Commissioner Norma V. Cantú

U.S. Commission on Civil Rights

E: jsilverio@usccr.gov

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Cc: Carissa Mulder
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Can either of you provide that info, or do I need to contact someone else at USCCR, or EAC?

AMERICAN OVERSIGHT

Date : 10/28/2021 12:47:15 PM
From : "Mauro Morales" mmorales@usccr.gov
To : "J. Christian Adams" jadams@usccr.gov
Cc : "John Mashburn" jmashburn@usccr.gov
Subject : RE: Please call John Mashburn back

Commissioner Adams,

John Mashburn did not leave me a voice mail ten days ago. He sent Juana Silverio and me a joint email. At that time I had a conversation with Juana that the staff has nothing further to do with the appointment and that the Chair merely needs to send a letter to the EAC regarding the decision by the Commissioners. Juana informed me that the Chair was addressing the issue and that she would respond to John. I spoke to John about 10 minutes ago and informed him of this information. I have been copied on a email today from Juana to John and others that the Chair will be addressing the issue shortly. I hope this information is helpful.

Mauro

From: J. Christian Adams <jadams@usccr.gov>
Sent: Thursday, October 28, 2021 10:35 AM
To: Mauro Morales <mmorales@usccr.gov>
Cc: John Mashburn <jmashburn@usccr.gov>
Subject: Please call John Mashburn back

Mauro- ten days ago John Mashburn left you a voicemail to talk about completing the appointments to the EAC Advisory board. He tells me his call has not been returned. Would you please do so and move this along please?

Finishing the appointment process, which should have been long ago finished, has relevance to other matters which may arise at the November business meeting. We need to complete the EAC appointment process before addressing other issues.

Thanks,

J. Christian Adams

AMERICAN OVERSIGHT

Date : 9/15/2020 4:00:33 PM
From : "Carissa Mulder" CMulder@usccr.gov
To : "Christian Adams" a@electionlawcenter.com, "'Peter Kirsanow'" pkirsanow@Beneschlaw.com, "'Gail Heriot'" gheriot@me.com, "'stephen gilchrist'" thegilchristassociates@gmail.com
Cc : "'John Mashburn'" jkmash@comcast.net, "'Thomas Simuel'" tjsimuel32@gmail.com, "Alexander Heideman" aheideman@usccr.gov
Subject : Re: [EXTERNAL] EAC Board of Advisors

Looking at the document about the appointment of the advisory board members, I think that is correct, Christian. Catherine probably appointed them without ever bringing it up.

From: Christian Adams <a@electionlawcenter.com>
Sent: Tuesday, September 15, 2020 3:55:45 PM
To: Carissa Mulder; 'Peter Kirsanow'; 'Gail Heriot'; 'stephen gilchrist'
Cc: 'John Mashburn'; 'Thomas Simuel'; Alexander Heideman
Subject: RE: [EXTERNAL] EAC Board of Advisors

> CAUTION: This email is from outside USCCR.

My guess is the USCCR does their own "appointment" itself. How we un-appoint is going to be the issue. It probably NEVER came up in a business meeting and therefore we should, as a commission have the authority to take it up in a business meeting and appoint-anew.

From: Carissa Mulder <CMulder@usccr.gov>
Sent: Tuesday, September 15, 2020 3:34 PM
To: Christian Adams <a@electionlawcenter.com>; Peter Kirsanow <pkirsanow@Beneschlaw.com>; 'Gail Heriot' <gheriot@me.com>; 'stephen gilchrist' <thegilchristassociates@gmail.com>
Cc: John Mashburn <jkmash@comcast.net>; 'Thomas Simuel' <tjsimuel32@gmail.com>; Alexander Heideman <aheideman@usccr.gov>
Subject: Re: [EXTERNAL] EAC Board of Advisors

Good question! I had no idea the USCCR got two designees to the EAC Board of Advisors. Here's the list of all the current advisors: https://www.eac.gov/sites/default/files/boardofadvisors/BOARoster_072720.pdf .

From: Christian Adams <a@electionlawcenter.com>
Sent: Tuesday, September 15, 2020 3:15:28 PM
To: Peter Kirsanow; 'Gail Heriot'; 'stephen gilchrist'
Cc: John Mashburn; 'Thomas Simuel'; Carissa Mulder; Alexander Heideman
Subject: [EXTERNAL] EAC Board of Advisors

> CAUTION: This email is from outside USCCR.

Apparently the EAC gets two designees over the Election Assistance Commission Board of Advisors. Currently it is Yaki and Kladney. I just got a call from an EAC commission saying that

AMERICAN OVERSIGHT

Yaki is acting absurdly and exercising power over the EAC by threatening the Pelosi pick on the EAC with removal if he doesn't do what he wants, effectively making Yaki a commissioner on the EAC on many issues. He is causing mischief I don't even detail here.

My question is how does he get UNDONE from the EAC oversight commission? How does that get revoked and replaced?

AMERICAN OVERSIGHT

Date : 9/16/2020 11:02:46 AM
From : "Alexander Heideman" aheideman@usccr.gov
To : "Christian Adams" a@electionlawcenter.com, "'Gail Heriot'" gheriot@me.com
Cc : "Carissa Mulder" CMulder@usccr.gov, "'Peter Kirsanow'" pkirsanow@beneschlaw.com, "'stephen gilchrist'" thegilchristassociates@gmail.com, "'John Mashburn'" jkmash@comcast.net, "'Thomas Simuel'" tjsimuel32@gmail.com
Subject : Re: [EXTERNAL] EAC Board of Advisors

Yes, happy to.

From: Christian Adams <a@electionlawcenter.com>
Date: Wednesday, September 16, 2020 at 11:02 AM
To: 'Gail Heriot' <gheriot@me.com>
Cc: Carissa Mulder <CMulder@usccr.gov>, 'Peter Kirsanow' <pkirsanow@beneschlaw.com>, 'stephen gilchrist' <thegilchristassociates@gmail.com>, 'John Mashburn' <jkmash@comcast.net>, 'Thomas Simuel' <tjsimuel32@gmail.com>, Alexander Heideman <aheideman@usccr.gov>
Subject: RE: [EXTERNAL] EAC Board of Advisors

> CAUTION: This email is from outside USCCR.

ple people aren't asking her different times, can the SA's get to the bottom of this with maureen.

From: Gail Heriot <gheriot@me.com>
Sent: Wednesday, September 16, 2020 10:46 AM
To: Christian Adams <a@electionlawcenter.com>
Cc: Carissa Mulder <CMulder@usccr.gov>; Peter Kirsanow <pkirsanow@beneschlaw.com>; stephen gilchrist <thegilchristassociates@gmail.com>; John Mashburn <jkmash@comcast.net>; Thomas Simuel <tjsimuel32@gmail.com>; Alexander Heideman <aheideman@usccr.gov>
Subject: Re: [EXTERNAL] EAC Board of Advisors

I don't think there are any rules. In the absence of an explicit delegation of power, the Commission as a whole has that power. But you need to be sure it wasn't done properly. I have a vague recollection of talking about this in a meeting in the last decade. The straight shooter on the staff is Maureen Rudolph. You might want to ask her.

Gail Heriot
Professor of Law
University of San Diego

AMERICAN OVERSIGHT

On Sep 15, 2020, at 2:17 PM, Christian Adams <a@electionlawcenter.com> wrote:

I don't know the rules for USCCR appointing ANYONE yet, but if there are no minutes showing a vote appointing them in regular business, it would seem that their "appointment" is void.

From: Carissa Mulder <CMulder@usccr.gov>
Sent: Tuesday, September 15, 2020 4:01 PM
To: Christian Adams <a@electionlawcenter.com>; 'Peter Kirsanow' <pkirsanow@Beneschlaw.com>; 'Gail Heriot' <gheriot@me.com>; 'stephen gilchrist' <thegilchristassociates@gmail.com>
Cc: 'John Mashburn' <jkmash@comcast.net>; 'Thomas Simuel' <tjsimuel32@gmail.com>; Alexander Heideman <aheideman@usccr.gov>
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It probably NEVER came up in a business meeting and therefore we should, as a commission have the authority to take it up in a business meeting and appoint-anew.

From: Carissa Mulder <CMulder@usccr.gov>
Sent: Tuesday, September 15, 2020 3:34 PM
To: Christian Adams <a@electionlawcenter.com>; Peter Kirsanow <pkirsanow@Beneschlaw.com>; 'Gail Heriot' <gheriot@me.com>; 'stephen gilchrist' <thegilchristassociates@gmail.com>
Cc: John Mashburn <jkmash@comcast.net>; 'Thomas Simuel' <tjsimuel32@gmail.com>; Alexander Heideman <aheideman@usccr.gov>
Subject: Re: [EXTERNAL] EAC Board of Advisors

Good question! I had no idea the USCCR got two designees to the .

AMERICAN OVERSIGHT

From: Christian Adams <a@electionlawcenter.com>
Sent: Tuesday, September 15, 2020 3:15:28 PM
To: Peter Kirsanow; 'Gail Heriot'; 'stephen gilchrist'
Cc: John Mashburn; 'Thomas Simuel'; Carissa Mulder; Alexander Heideman
Subject: [EXTERNAL] EAC Board of Advisors

CAUTION: This email is from outside USCCR.

AC commission saying that Yaki is acting absurdly and exercising power over the EAC by threatening the Pelosi pick on the EAC with removal if he doesn't do what he wants, effectively making Yaki a commissioner on the EAC on many issues. He is causing mischief I don't even detail here.

My question is how does he get UNDONE from the EAC oversight commission? How does that get revoked and replaced?

AMERICAN OVERSIGHT

Date : 9/16/2020 11:09:08 AM
From : "Alexander Heideman" aheideman@usccr.gov
To : "Maureen Rudolph" mrudolph@usccr.gov
Subject : USCCR & Election Assistance Commission Board of Advisors

Hi Maureen,

I hope you're having a great week.

I've got a few questions about USCCR & the EAC Board of Advisors that I'm hoping you'll be able to answer. Do you have time for a quick phone call today or would you prefer I email you?

Thanks!
Alex

AMERICAN OVERSIGHT

Date : 9/16/2020 11:13:33 AM
From : "Maureen Rudolph" mrudolph@usccr.gov
To : "Alexander Heideman" aheideman@usccr.gov
Subject : Re: USCCR & Election Assistance Commission Board of Advisors

Either is fine. If you'd like to chat, does 1pm work? Also, do you have the statutory citation, etc., or is there anything you'd like before talking? Thanks much, Maureen

---

From: Alexander Heideman
Sent: Wednesday, September 16, 2020 11:09:08 AM
To: Maureen Rudolph
Subject: USCCR & Election Assistance Commission Board of Advisors

Hi Maureen,

I hope you're having a great week.

I've got a few questions about USCCR & the EAC Board of Advisors that I'm hoping you'll be able to answer. Do you have time for a quick phone call today or would you prefer I email you?

Thanks!
Alex

AMERICAN OVERSIGHT

Date : 9/16/2020 11:28:49 AM
From : "Alexander Heideman" aheideman@usccr.gov
To : "Maureen Rudolph" mrudolph@usccr.gov
Subject : Re: USCCR & Election Assistance Commission Board of Advisors

1PM works perfectly for me. Do you happen to have our internal rules on how the two Commissioners are appointed to the EAC Board of Advisors?

From: Maureen Rudolph <mrudolph@usccr.gov>
Date: Wednesday, September 16, 2020 at 11:13 AM
To: Alexander Heideman <aheideman@usccr.gov>
Subject: Re: USCCR & Election Assistance Commission Board of Advisors

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Subject: USCCR & Election Assistance Commission Board of Advisors

Hi Maureen,

I hope you're having a great week.

I've got a few questions about USCCR & the EAC Board of Advisors that I'm hoping you'll be able to answer. Do you have time for a quick phone call today or would you prefer I email you?

Thanks!
Alex

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Date : 9/16/2020 11:47:53 AM
From : "Maureen Rudolph" mrudolph@usccr.gov
To : "Alexander Heideman" aheideman@usccr.gov
Subject : Re: USCCR & Election Assistance Commission Board of Advisors
Attachment : Help America Vote Act House Report 107_329.pdf;

To my knowledge, there are not any internal rules about these appointments. The practice has been that the Chair makes the appointments. (Note though that I only have records going back to 2015 for these appointments and I do not know what the practice was before 2015). The statute (52 U.S.C. 20944(a)(10)) says "Two members appointed by the United States Commission on Civil Rights." 52 U.S.C. 20944(b) says "Appointments shall be made to the Board of Advisors under subsection (a) in a manner which ensures that the Board of Advisors will be bipartisan in nature and will reflect the various geographic regions of the United States." The terms are 2 year appointments; I believe the current USCCR appointments are Yaki and Kladney, and that their terms end 4/13/2021. I provided the above information, i.e., bipartisan and geographic scope, before the 2019 appointments, though did not provide any input beyond this. I've also attached the House report for the Help American Vote Act (establishes the advisory committees) - discussion of advisory boards is on page 33. Talk to you at 1pm. Please call me on my work cell (202)-657-2246. Thanks very much, Maureen

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From: Alexander Heideman
Sent: Wednesday, September 16, 2020 11:28:49 AM
To: Maureen Rudolph
Subject: Re: USCCR & Election Assistance Commission Board of Advisors

1PM works perfectly for me. Do you happen to have our internal rules on how the two Commissioners are appointed to the EAC Board of Advisors?

From: Maureen Rudolph <mrudolph@usccr.gov>
Date: Wednesday, September 16, 2020 at 11:13 AM
To: Alexander Heideman <aheideman@usccr.gov>
Subject: Re: USCCR & Election Assistance Commission Board of Advisors

Either is fine. If you'd like to chat, does 1pm work? Also, do you have the statutory citation, etc., or is there anything you'd like before talking? Thanks much, Maureen

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From: Alexander Heideman
Sent: Wednesday, September 16, 2020 11:09:08 AM
To: Maureen Rudolph
Subject: USCCR & Election Assistance Commission Board of Advisors

Hi Maureen,

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I hope you're having a great week.

I've got a few questions about USCCR & the EAC Board of Advisors that I'm hoping you'll be able to answer. Do you have time for a quick phone call today or would you prefer I email you?

Thanks!
Alex

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107TH CONGRESS } HOUSE OF REPRESENTATIVES { REPT. 107–329
1st Session } { Part 1

HELP AMERICA VOTE ACT OF 2001

DECEMBER 10, 2001.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. NEY, from the Committee on House Administration, submitted the following

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany H.R. 3295]

[Including cost estimate of the Congressional Budget Office]

The Committee on House Administration, to whom was referred the bill (H.R. 3295) to establish a program to provide funds to States to replace punch card voting systems, to establish the Election Assistance Commission to assist in the administration of Federal elections and to otherwise provide assistance with the administration of certain Federal election laws and programs, to establish minimum election administration standards for States and units of local government with responsibility for the administration of Federal elections, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Help America Vote Act of 2001".

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—PUNCH CARD VOTING MACHINES

Subtitle A—Replacement of Machines

Sec. 101. Establishment of program.
Sec. 102. Eligibility.
Sec. 103. Amount of payment.
Sec. 104. Audit and repayment of funds.
Sec. 105. Punch card voting system defined.

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Subtitle B—Enhancing Performance of Existing Systems

Sec. 111. Establishment of program.
Sec. 112. Eligibility.
Sec. 113. Amount of payment.
Sec. 114. Audit and repayment of funds.

Subtitle C—General Provisions

Sec. 121. Authorization of appropriations.
Sec. 122. Punch card voting system defined.

TITLE II—COMMISSION

Subtitle A—Establishment and General Organization

PART 1—ELECTION ASSISTANCE COMMISSION

Sec. 201. Establishment.
Sec. 202. Duties.
Sec. 203. Membership and appointment.
Sec. 204. Staff.
Sec. 205. Powers.
Sec. 206. Limitation on rulemaking authority.
Sec. 207. Authorization of appropriations.

PART 2—ELECTION ASSISTANCE COMMISSION STANDARDS BOARD AND BOARD OF ADVISORS

Sec. 211. Establishment.
Sec. 212. Duties.
Sec. 213. Membership of Standards Board.
Sec. 214. Membership of Board of Advisors.
Sec. 215. Powers of boards; no compensation for service.
Sec. 216. Status of boards and members for purposes of claims against board.

Subtitle B—Voluntary Election Standards

Sec. 221. Development of voluntary election standards.
Sec. 222. Technical standards development committee.
Sec. 223. Process for adoption of voluntary standards.
Sec. 224. Certification and testing of voting systems.
Sec. 225. Dissemination of information.

Subtitle C—Election Assistance

PART 1—ELECTION FUND PAYMENTS TO STATES FOR VOTING SYSTEM IMPROVEMENTS

Sec. 231. Election fund payments to States for voting system improvements.
Sec. 232. Allocation of funds.
Sec. 233. Conditions for receipt of funds.
Sec. 234. Authorization of appropriations.

PART 2—GRANTS FOR RESEARCH ON VOTING TECHNOLOGY IMPROVEMENTS

Sec. 241. Grants for research on voting technology improvements.
Sec. 242. Report.
Sec. 243. Authorization of appropriations.

PART 3—PILOT PROGRAM FOR TESTING OF EQUIPMENT AND TECHNOLOGY

Sec. 251. Pilot program.
Sec. 252. Report.
Sec. 253. Authorization of appropriations.

PART 4—MISCELLANEOUS

Sec. 261. Role of National Institute of Standards and Technology.
Sec. 262. Reports.
Sec. 263. Audit.

TITLE III—HELP AMERICA VOTE COLLEGE PROGRAM

Sec. 301. Establishment of Program.
Sec. 302. Activities under Program.
Sec. 303. Authorization of appropriations.

TITLE IV—HELP AMERICA VOTE FOUNDATION

Sec. 401. Help America Vote Foundation.

TITLE V—MINIMUM STANDARDS FOR STATE ELECTION SYSTEMS

Sec. 501. Minimum standards for State election systems.
Sec. 502. Standards described.
Sec. 503. Enforcement.
Sec. 504. Effective date.

TITLE VI—VOTING RIGHTS OF MILITARY MEMBERS AND OVERSEAS CITIZENS

Sec. 601. Voting assistance programs.
Sec. 602. Designation of single State office to provide information on registration and absentee ballots for all voters in State.
Sec. 603. Report on absentee ballots transmitted and received after general elections.
Sec. 604. Simplification of voter registration and absentee ballot application procedures for absent uniformed services and overseas voters.
Sec. 605. Additional duties of Presidential designee under Uniformed and Overseas Citizens Absentee Voting Act.
Sec. 606. Use of buildings on military installations and reserve component facilities as polling places.

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TITLE VII—REDUCED POSTAGE RATES FOR OFFICIAL ELECTION MAIL

Sec. 701. Reduced postage rates for official election mail.

TITLE VIII—TRANSITION PROVISIONS

Subtitle A—Transfer to Commission of Functions Under Certain Laws

Sec. 801. Federal Election Campaign Act of 1971.
Sec. 802. National Voter Registration Act of 1993.
Sec. 803. Transfer of property, records, and personnel.
Sec. 804. Effective date; transition.

Subtitle B—Coverage of Commission Under Certain Laws and Programs

Sec. 811. Treatment of Commission personnel under certain civil service laws.
Sec. 812. Coverage under Inspector General Act of 1978.

TITLE IX—MISCELLANEOUS PROVISIONS

Sec. 901. State defined.
Sec. 902. Miscellaneous provisions to protect integrity of election process.
Sec. 903. No effect on other laws.

TITLE I—PUNCH CARD VOTING MACHINES

Subtitle A—Replacement of Machines

SEC. 101. ESTABLISHMENT OF PROGRAM.

(a) IN GENERAL.—Not later than 30 days after the date of the enactment of this Act, the Administrator of General Services (hereafter in this title referred to as the "Administrator") shall establish a program under which the Administrator shall make a one-time payment to each eligible State or unit of local government which used a punch card voting system to administer the regularly scheduled general election for Federal office held in November 2000.

(b) USE OF FUNDS.—A State or unit of local government shall use the funds provided under a payment under this subtitle (either directly or as reimbursement) to replace its punch card voting system with a voting system which does not use punch cards (by purchase, lease, or such other arrangement as may be appropriate).

(c) DEADLINE.—

(1) IN GENERAL.—A State or unit of local government receiving a payment under the program under this subtitle shall—

(A) obligate the funds provided for the uses described in subsection (b) not later than the date of the regularly scheduled general election for Federal office to be held in November 2002; and

(B) ensure that all of the punch card voting systems under its jurisdiction have been replaced in time for the regularly scheduled general election for Federal office to be held in November 2004.

(2) WAIVER.—If a State or unit of local government provides the Election Assistance Commission (established under section 201) (not later than the date of the regularly scheduled general election for Federal office to be held in November 2002) with a notice that the State or unit will not meet the deadlines described in paragraph (1) and includes in the notice the reasons for the failure to meet such deadlines, and the Commission finds that there is good cause for the failure to meet such deadlines, paragraph (1) shall apply to the State or unit as if—

(A) the reference in paragraph (1)(A) to "November 2002" were a reference to "November 2004"; and

(B) the reference in paragraph (1)(B) to "November 2004" were a reference to "November 2006".

SEC. 102. ELIGIBILITY.

(a) STATES.—A State is eligible to receive a payment under the program under this subtitle if it submits to the Administrator an application not later than 120 days after the date of the enactment of this Act (in such form as the Administrator may require) which contains—

(1) assurances that the State will use the payment (either directly or as reimbursement) to replace punch card voting systems in jurisdictions within the State which used such systems to carry out the general Federal election held in November 2000;

(2) assurances that in replacing punch card voting systems the State will continue to meets its duties under the Voting Accessibility for the Elderly and Handicapped Act (42 U.S.C. 1973ee et seq.) and the Americans With Disabilities Act;

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(3) assurances that in replacing punch card voting systems the State will provide for alternative language accessibility for individuals with limited English proficiency, consistent with the requirements of the Voting Rights Act of 1965 and any other applicable provisions of law; and

(4) such other information and assurances as the Administrator may require which are necessary for the administration of the program.

(b) UNIT OF LOCAL GOVERNMENT.—A unit of local government is eligible to receive a payment under the program under this subtitle if it submits to the Administrator—

(1) not later than the date of the regularly scheduled general election for Federal office to be held in November 2002, a statement of its intent to participate in the program, including assurances that the State in which the unit is located—

(A) failed to submit an application under subsection (a) within the deadline specified under such subsection,

(B) is otherwise not eligible to receive a payment under the program, or

(C) will not use the payment to replace punch card voting systems in the unit; and

(2) an application (at such time and in such form as the Administrator may require) which contains similar assurances to those required to be provided by a State in its application under subsection (a).

SEC. 103. AMOUNT OF PAYMENT.

(a) IN GENERAL.—The amount of payment made to a State or unit of local government under the program under this subtitle shall be equal to the applicable per precinct matching rate of the cost to the State or unit (as the case may be) of replacing the punch card voting systems used in each precinct in the State or unit (as the case may be), except that in no case may the amount of the payment exceed the product of—

(1) the number of voting precincts administered by the State or unit which used a punch card voting system to carry out the general Federal election held in November 2000; and

(2) $6,000.

(b) APPLICABLE PER PRECINCT MATCHING RATE DEFINED.—In subsection (a), the "applicable per precinct matching rate" is—

(1) 90 percent; or

(2) 95 percent, in the case of a precinct whose average per capita income is within the lowest quartile of average per capita incomes for all precincts in the United States (as determined by the 2000 decennial census).

SEC. 104. AUDIT AND REPAYMENT OF FUNDS.

(a) AUDIT.—Funds provided under the program under this subtitle shall be subject to audit by the Administrator.

(b) REPAYMENT FOR FAILURE TO MEET DEADLINES.—If a State or unit of local government (as the case may be) receiving funds under the program under this subtitle fails to meet the deadlines applicable to the State or unit under section 101(c), the State or unit shall pay to the Administrator an amount equal to the amount of the funds provided to the State or unit under the program.

SEC. 105. PUNCH CARD VOTING SYSTEM DEFINED.

For purposes of this subtitle, a "punch card voting system" means any of the following voting systems:

(1) C.E.S.
(2) Datavote.
(3) PBC Counter.
(4) Pollstar.
(5) Punch Card.
(6) Vote Recorder.
(7) Votomatic.

Subtitle B—Enhancing Performance of Existing Systems

SEC. 111. ESTABLISHMENT OF PROGRAM.

(a) IN GENERAL.—Not later than 30 days after the date of the enactment of this Act, the Administrator shall establish a program under which the Administrator shall make a one-time payment to each eligible State or unit of local government

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which used a punch card voting system to administer the regularly scheduled general election for Federal office held in November 2000.

(b) USE OF FUNDS.—A State or unit of local government shall use the funds provided under a payment under this subtitle (either directly or as reimbursement) to make technical enhancements to the performance of its punch card voting system (by any arrangement as may be appropriate).

(c) DEADLINE.—

(1) IN GENERAL.—A State or unit of local government receiving a payment under the program under this subtitle shall—

(A) obligate the funds provided for the uses described in subsection (b) not later than the date of the regularly scheduled general election for Federal office to be held in November 2002; and

(B) ensure that technical enhancements have been made to the performance of all of the punch card voting systems under its jurisdiction in time for the regularly scheduled general election for Federal office to be held in November 2004.

(2) WAIVER.—If a State or unit of local government provides the Election Assistance Commission (established under section 201) (not later than the date of the regularly scheduled general election for Federal office to be held in November 2002) with a notice that the State or unit will not meet the deadlines described in paragraph (1) and includes in the notice the reasons for the failure to meet such deadlines, and the Commission finds that there is good cause for the failure to meet such deadlines, paragraph (1) shall apply to the State or unit as if—

(A) the reference in paragraph (1)(A) to "November 2002" were a reference to "November 2004"; and

(B) the reference in paragraph (1)(B) to "November 2004" were a reference to "November 2006".

SEC. 112. ELIGIBILITY.

(a) STATES.—Subject to subsection (c), a State is eligible to receive a payment under the program under this subtitle if it submits to the Administrator an application not later than 120 days after the date of the enactment of this Act (in such form as the Administrator may require) which contains—

(1) assurances that the State will use the payment (either directly or as reimbursement) to make technical enhancements to the performance of punch card voting systems in jurisdictions within the State which used such systems to carry out the general Federal election held in November 2000;

(2) assurances that in enhancing the performance of such voting systems the State will continue to meets its duties under the Voting Accessibility for the Elderly and Handicapped Act (42 U.S.C. 1973ee et seq.) and the Americans With Disabilities Act; and

(3) such other information and assurances as the Administrator may require which are necessary for the administration of the program.

(b) UNITS OF LOCAL GOVERNMENT.—Subject to subsection (c), a unit of local government is eligible to receive a payment under the program under this subtitle if it submits to the Administrator—

(1) not later than the date of the regularly scheduled general election for Federal office to be held in November 2002, a statement of its intent to participate in the program, including assurances that the State in which the unit is located—

(A) failed to submit an application under subsection (a) within the deadline specified under such subsection,

(B) is otherwise not eligible to receive a payment under the program, or

(C) will not use the payment to enhance the performance of punch card voting systems in the unit; and

(2) an application (at such time and in such form as the Administrator may require) which contains similar assurances to those required to be provided by a State in its application under subsection (a).

(c) PROHIBITING PARTICIPATION IN PUNCH CARD REPLACEMENT PROGRAM.—A State or unit of local government is not eligible to receive a payment under the program under this subtitle if the State or unit receives a payment under the program under subtitle A.

SEC. 113. AMOUNT OF PAYMENT.

(a) IN GENERAL.—The amount of payment made to a State or unit of local government under the program under this subtitle shall be equal to the applicable per precinct matching rate of the cost to the State or unit (as the case may be) of the activities to be funded with the payment under the program in each precinct in the State

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or unit (as the case may be) , except that in no case may the amount of the payment exceed the product of—

(1) the number of voting precincts administered by the State or unit which used a punch card voting system to carry out the general Federal election held in November 2000; and

(2) $2,000.

(b) APPLICABLE PER PRECINCT MATCHING RATE DEFINED.—In subsection (a), the "applicable per precinct matching rate" is—

(1) 90 percent; or

(2) 95 percent, in the case of a precinct whose average per capita income is within the lowest quartile of average per capita incomes for all precincts in the United States (as determined by the 2000 decennial census).

SEC. 114. AUDIT AND REPAYMENT OF FUNDS.

(a) AUDIT.—Funds provided under the program under this subtitle shall be subject to audit by the Administrator.

(b) REPAYMENT FOR FAILURE TO MEET REQUIREMENTS.—If a State or unit of local government (as the case may be) receiving funds under the program under this subtitle fails to meet the deadlines applicable to the State or unit under section 111(c), the State or unit shall pay to the Administrator an amount equal to the amount of the funds provided to the State or unit under the program.

Subtitle C—General Provisions

SEC. 121. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There are authorized to be appropriated for payments under this title $400,000,000, to remain available until expended (subject to subsection (b)).

(b) USE OF RETURNED FUNDS AND FUNDS REMAINING UNEXPENDED FOR ELECTION FUND PAYMENTS.—

(1) IN GENERAL.—The amounts referred to in paragraph (2) shall be transferred to the Election Assistance Commission (established under title II) and used by the Commission to make Election Fund payments under part 1 of subtitle C of title II.

(2) AMOUNTS DESCRIBED.—The amounts referred to in this paragraph are as follows:

(A) Any amounts appropriated pursuant to the authorization under this section which remain unobligated as of the date of the regularly scheduled general election for Federal office held in November 2002.

(B) Any amounts paid to the Administrator by a State or unit of local government under section 104(b).

(B) Any amounts paid to the Administrator by a State or unit of local government under section 114(b).

SEC. 122. PUNCH CARD VOTING SYSTEM DEFINED.

For purposes of this title, a "punch card voting system" means any of the following voting systems:

(1) C.E.S.
(2) Datavote.
(3) PBC Counter.
(4) Pollstar.
(5) Punch Card.
(6) Vote Recorder.
(7) Votomatic.

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TITLE II—COMMISSION

Subtitle A—Establishment and General Organization

PART 1—ELECTION ASSISTANCE COMMISSION

SEC. 201. ESTABLISHMENT.

There is hereby established as an independent entity in the executive branch the Election Assistance Commission (hereafter in this title referred to as the "Commission"), consisting of—

(1) the members appointed under this part;

(2) the Election Assistance Commission Standards Board established under part 2 (including the Executive Board of such Board); and

(3) the Election Assistance Commission Board of Advisors established under part 2.

SEC. 202. DUTIES.

The Commission shall serve as a national clearinghouse and resource for the compilation of information and review of procedures with respect to the administration of Federal elections by—

(1) carrying out the duties described in subtitle B (relating to voluntary election standards);

(2) carrying out the duties described in subtitle C (relating to election assistance); and

(3) developing and carrying out the Help America Vote College Program under title III.

SEC. 203. MEMBERSHIP AND APPOINTMENT.

(a) MEMBERSHIP.—

(1) IN GENERAL.—The Commission shall have 4 members appointed by the President, by and with the consent of the Senate, of whom—

(A) 1 shall be appointed from among a list of nominees submitted by the majority leader of the Senate;

(B) 1 shall be appointed from among a list of nominees submitted by the minority leader of the Senate;

(C) 1 shall be appointed from among a list of nominees submitted by the Speaker of the House of Representatives; and

(D) 1 shall be appointed from among a list of nominees submitted by the minority leader of the House of Representatives.

(2) QUALIFICATIONS.—Each member of the Commission shall have experience with or expertise in election administration or the study of elections, except that no individual may serve as a member of the Commission if the individual is an officer or employee of the Federal Government at any time during the period of service on the Commission.

(3) DATE OF APPOINTMENT.—The appointments of the members of the Commission shall be made not later than 30 days after the date of enactment of this Act.

(b) TERM OF SERVICE.—

(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), members shall serve for a term of 4 years and may be reappointed for not more than one additional term.

(2) TERMS OF INITIAL APPOINTEES.—As designated by the President at the time of appointment, of the members first appointed—

(A) 2 of the members (not more than 1 of whom may be affiliated with the same political party) shall be appointed for a term of 2 years; and

(B) 2 of the members (not more than 1 of whom may be affiliated with the same political party) shall be appointed for a term of 4 years.

(3) VACANCIES.—

(A) IN GENERAL.—A vacancy on the Commission shall be filled in the manner in which the original appointment was made and shall be subject to any conditions which applied with respect to the original appointment.

(B) EXPIRED TERMS.—A member of the Commission may serve on the Commission after the expiration of the member's term until the successor of such member has taken office as a member of the Commission.

(C) UNEXPIRED TERMS.—An individual chosen to fill a vacancy shall be appointed for the unexpired term of the member replaced.

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(c) CHAIR AND VICE CHAIR.—The Commission shall select a chair and vice chair from among its members for a term of 1 year, except that the chair and vice chair may not be affiliated with the same political party.

(d) COMPENSATION.—

(1) IN GENERAL.—Members of the Commission shall each be paid at an annual rate equal to $30,000.

(2) TRAVEL EXPENSES.—Members of the Commission shall each receive travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Commission.

(3) OUTSIDE EMPLOYMENT PERMITTED.—A member of the Commission may hold any other office or employment not inconsistent or in conflict with the member's duties, responsibilities, and powers as a member of the Commission.

SEC. 204. STAFF.

(a) EXECUTIVE DIRECTOR AND OTHER STAFF.—

(1) IN GENERAL.—The Commission shall have an Executive Director, who shall be paid at a rate not to exceed the rate of basic pay for level V of the Executive Schedule.

(2) TERM OF SERVICE FOR EXECUTIVE DIRECTOR.—Except as provided in paragraph (3)(C), the Executive Director shall serve for a term of 4 years. An Executive Director may be reappointed for additional terms.

(3) PROCEDURE FOR APPOINTMENT.—

(A) IN GENERAL.—When a vacancy exists in the position of the Executive Director, the Election Assistance Commission Standards Board and the Election Assistance Commission Board of Advisors (described in part 2) shall each appoint a search committee to recommend not fewer than 3 nominees for the position.

(B) REQUIRING CONSIDERATION OF NOMINEES.—Except as provided in subparagraph (C), the Commission shall consider the nominees recommended by the Standards Board and the Board of Advisors in appointing the Executive Director.

(C) SPECIAL RULES FOR FIRST EXECUTIVE DIRECTOR.—

(i) CONVENING OF SEARCH COMMITTEES.—The Standards Board and the Board of Advisors shall each appoint a search committee and recommend nominees for the position of Executive Director in accordance with subparagraph (A) as soon as practicable after the appointment of their members.

(ii) INTERIM INITIAL APPOINTMENT.—Notwithstanding subparagraph (B), the Commission may appoint an individual to serve as the first Executive Director prior to the recommendation of nominees for the position by the Standards Board or the Board of Advisors, except that such individual's term of service may not exceed 6 months. Nothing in the previous sentence may be construed to prohibit the individual serving as the first Executive Director from serving any additional term.

(4) OTHER STAFF.—Subject to rules prescribed by the Commission, the Executive Director may appoint and fix the pay of such additional personnel as the Executive Director considers appropriate.

(5) APPLICABILITY OF CERTAIN CIVIL SERVICE LAWS.—The Executive Director and staff of the Commission may be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of that title relating to classification and General Schedule pay rates, except that an individual so appointed may not receive pay in excess of the annual rate of basic pay for level V of the Executive Schedule.

(b) EXPERTS AND CONSULTANTS.—Subject to rules prescribed by the Commission, the Executive Director may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, with the approval of a majority of the members of the Commission.

(c) STAFF OF FEDERAL AGENCIES.—Upon request of the Chair, the head of any Federal department or agency may detail, on a reimbursable basis, any of the personnel of that department or agency to the Commission to assist it in carrying out its duties under this Act.

(d) ARRANGING FOR ASSISTANCE FOR BOARD OF ADVISORS AND STANDARDS BOARD.—At the request of the Election Assistance Commission Board of Advisors or the Election Assistance Commission Standards Board established under part 2, the Executive Director shall enter into such arrangements as the Executive Director considers appropriate to make personnel available to assist the Boards with car-

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rying out their duties under this title (including contracts with private individuals for providing temporary personnel services or the temporary detailing of personnel of the Commission).

(e) CONSULTATION WITH BOARD OF ADVISORS AND STANDARDS BOARD ON CERTAIN MATTERS.—In preparing the program goals, long-term plans, mission statements, and related matters for the Commission, the Executive Director and staff of the Commission shall consult with the Election Assistance Commission Board of Advisors and the Election Assistance Commission Standards Board established under part 2.

SEC. 205. POWERS.

(a) HEARINGS AND SESSIONS.—The Commission may hold such hearings for the purpose of carrying out this Act, sit and act at such times and places, take such testimony, and receive such evidence as the Commission considers advisable to carry out this Act. The Commission may administer oaths and affirmations to witnesses appearing before the Commission.

(b) INFORMATION FROM FEDERAL AGENCIES.—The Commission may secure directly from any Federal department or agency such information as the Commission considers necessary to carry out this Act. Upon request of the Chair of the Commission, the head of such department or agency shall furnish such information to the Commission.

(c) POSTAL SERVICES.—The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

(d) ADMINISTRATIVE SUPPORT SERVICES.—Upon the request of the Chair of the Commission, the Administrator of General Services shall provide to the Commission, on a reimbursable basis, the administrative support services that are necessary to enable the Commission to carry out its duties under this Act.

(e) CONTRACTS.—The Commission may contract with and compensate persons and Federal agencies for supplies and services without regard to section 3709 of the Revised Statutes of the United States (41 U.S.C. 5).

SEC. 206. LIMITATION ON RULEMAKING AUTHORITY.

The Commission shall not have any authority to issue any rule, promulgate any regulation, or take any other action which imposes any requirement on any State or unit of local government, except to the extent permitted under the National Voter Registration Act of 1993.

SEC. 207. AUTHORIZATION OF APPROPRIATIONS.

In addition to the amounts authorized for payments and grants under subtitle C and the amounts authorized to be appropriated for the program under section 303, there are authorized to be appropriated for each of the fiscal years 2002 through 2004 such sums as may be necessary (but not to exceed $10,000,000 for each such year) for the Commission to carry out its duties under this title.

PART 2—ELECTION ASSISTANCE COMMISSION STANDARDS BOARD AND BOARD OF ADVISORS

SEC. 211. ESTABLISHMENT.

There are hereby established the Election Assistance Commission Standards Board (hereafter in this title referred to as the "Standards Board") and the Election Assistance Commission Board of Advisors (hereafter in this title referred to as the "Board of Advisors").

SEC. 212. DUTIES.

The Standards Board and the Board of Advisors shall each, in accordance with the procedures described in section 223, review any of the voluntary engineering and procedural performance standards described in section 221(a)(1), any of the voluntary standards described in section 221(a)(4), and any of the voluntary election management practice standards described in section 221(a)(6) (and any modifications to such standards) which are recommended by the Commission under subtitle B.

SEC. 213. MEMBERSHIP OF STANDARDS BOARD.

(a) COMPOSITION.—

(1) IN GENERAL.—Subject to certification by the chair of the Federal Election Commission under subsection (b), the Standards Board shall be composed of 110 members as follows:

(A) 55 shall be the chief State election officials of each State.

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(B) 55 shall be local election officials selected in accordance with paragraph (2).

(2) LIST OF LOCAL ELECTION OFFICIALS.—Each State's local election officials shall select (under a process supervised by the chief election official of the State) a representative local election official from the State for purposes of paragraph (1)(B). In the case of the District of Columbia, Guam, and American Samoa, the chief election official shall establish a procedure for selecting an individual to serve as a local election official for purposes of such paragraph, except that under such a procedure the individual selected may not be a member of the same political party as the chief election official.

(3) REQUIRING MIX OF POLITICAL PARTIES REPRESENTED.—The 2 members of the Standards Board who represent the same State may not be members of the same political party.

(b) PROCEDURES FOR NOTICE AND CERTIFICATION OF APPOINTMENT.—

(1) NOTICE TO CHAIR OF FEDERAL ELECTION COMMISSION.—Not later than 90 days after the date of the enactment of this Act, a State shall transmit a notice to chair of the Federal Election Commission containing—

(A) a statement that the chief election official of the State agrees to serve on the Standards Board under this title; and

(B) the name of the representative local election official from the State selected under subsection (a)(2) who will serve on the Standards Board under this title.

(2) CERTIFICATION.—Upon receiving a notice from a State under paragraph (1), the chair of the Federal Election Commission shall publish a certification that the chief election official and the representative local election official are appointed as members of the Standards Board under this title.

(3) EFFECT OF FAILURE TO PROVIDE NOTICE.—If a State does not transmit a notice to the chair of the Federal Election Commission under paragraph (1) within the deadline described in such paragraph, no representative from the State may participate in the selection of the Executive Board under subsection (c).

(4) ROLE OF COMMISSION.—Upon the appointment of the members of the Election Assistance Commission, the Election Assistance Commission shall carry out the duties of the Federal Election Commission under this subsection.

(c) EXECUTIVE BOARD.—

(1) IN GENERAL.—Not later than 60 days after the last day on which the appointment of any of its members may be certified under subsection (b), the Standards Board shall select 9 of its members to serve as the Executive Board of the Standards Board, of whom—

(A) not more than 5 may be chief State election officials;

(B) not more than 5 may be local election officials; and

(C) not more than 5 may be members of the same political party.

(2) TERMS.—Except as provided in paragraph (3), members of the Executive Board of the Standards Board shall serve for a term of 2 years and may not serve for more than 3 consecutive terms.

(3) STAGGERING OF INITIAL TERMS.—Of the members first selected to serve on the Executive Board of the Standards Board—

(A) 3 shall serve for one term;

(B) 3 shall serve for 2 consecutive terms; and

(C) 3 shall serve for 3 consecutive terms,

as determined by lot at the time the members are first appointed.

(4) DUTIES.—In addition to any other duties assigned under this title, the Executive Board of the Standards Board may carry out such duties of the Standards Board as the Standards Board may delegate.

SEC. 214. MEMBERSHIP OF BOARD OF ADVISORS.

(a) IN GENERAL.—The Board of Advisors shall be composed of 25 members appointed as follows:

(1) 2 members appointed by the United States Commission on Civil Rights.

(2) 2 members appointed by the Architectural and Transportation Barrier Compliance Board under section 502 of the Rehabilitation Act of 1973 (29 U.S.C. 792).

(3) 2 members appointed by the National Governors Association.

(4) 2 members appointed by the National Conference of State Legislatures.

(5) 2 members appointed by the National Association of Secretaries of State.

(6) 2 members appointed by the National Association of State Election Directors.

(7) 2 members appointed by the National Association of Counties.

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(8) 2 members appointed by the National Association of County Recorders, Election Administrators, and Clerks.

(9) 2 members appointed by the United States Conference of Mayors.

(10) 2 members appointed by the Election Center.

(11) 2 members appointed by the International Association of County Recorders, Election Officials, and Treasurers.

(12) 2 members representing professionals in the field of science and technology, of whom 1 shall be appointed by the Speaker of the House of Representatives and 1 shall be appointed by the majority leader of the Senate (or, if the majority leader is a member of the same political party as the Speaker, by the minority leader of the Senate).

(13) The chief of the Office of Public Integrity of the Department of Justice, or the chief's designee.

(b) DIVERSITY IN APPOINTMENTS.—Appointments shall be made to the Board of Advisors under subsection (a) in a manner which ensures that the Board of Advisors will be bipartisan in nature and will reflect the various geographic regions of the United States.

(c) TERM OF SERVICE; VACANCY.—Members of the Board of Advisors shall serve for a term of 2 years, and may be reappointed. Any vacancy in the Board of Advisors shall be filled in the manner in which the original appointment was made.

(d) CHAIR.—The Board of Advisors shall elect a Chair from among its members.

SEC. 215. POWERS OF BOARDS; NO COMPENSATION FOR SERVICE.

(a) HEARINGS AND SESSIONS.—

(1) IN GENERAL.—To the extent that funds are made available by the Commission, the Standards Board (acting through the Executive Board) and the Board of Advisors may each hold such hearings for the purpose of carrying out this Act, sit and act at such times and places, take such testimony, and receive such evidence as each such Board considers advisable to carry out this title, except that the Boards may not issue subpoenas requiring the attendance and testimony of witnesses or the production of any evidence.

(2) MEETINGS.—The Standards Board and the Board of Advisors shall each hold a meeting of its members—

(A) not less frequently than once every year for purposes of voting on the standards referred to it under section 223;

(B) in the case of the Standards Board, not less frequently than once every 2 years for purposes of selecting the Executive Board; and

(C) at such other times as it considers appropriate for purposes of conducting such other business as it considers appropriate consistent with this title.

(b) INFORMATION FROM FEDERAL AGENCIES.—The Standards Board and the Board of Advisors may each secure directly from any Federal department or agency such information as the Board considers necessary to carry out this Act. Upon request of the Executive Board (in the case of the Standards Board) or the Chair (in the case of the Board of Advisors), the head of such department or agency shall furnish such information to the Board.

(c) POSTAL SERVICES.—The Standards Board and the Board of Advisors may use the United States mails in the same manner and under the same conditions as a department or agency of the Federal Government.

(d) ADMINISTRATIVE SUPPORT SERVICES.—Upon the request of the Executive Board (in the case of the Standards Board) or the Chair (in the case of the Board of Advisors), the Administrator of the General Services Administration shall provide to the Board, on a reimbursable basis, the administrative support services that are necessary to enable the Board to carry out its duties under this title.

(e) NO COMPENSATION FOR SERVICE.—Members of the Standards Board and members of the Board of Advisors shall not receive any compensation for their service, but shall be paid travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Board.

SEC. 216. STATUS OF BOARDS AND MEMBERS FOR PURPOSES OF CLAIMS AGAINST BOARD.

(a) IN GENERAL.—The provisions of chapters 161 and 171 of title 28, United States Code, shall apply with respect to the liability of the Standards Board, the Board of Advisors, and their members for acts or omissions performed pursuant to and in the course of the duties and responsibilities of the Board.

(b) EXCEPTION FOR CRIMINAL ACTS AND OTHER WILLFUL CONDUCT.—Subsection (a) may not be construed to limit personal liability for criminal acts or omissions, willful or malicious misconduct, acts or omissions for private gain, or any other act

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or omission outside the scope of the service of a member of the Standards Board or the Board of Advisors.

Subtitle B—Voluntary Election Standards

SEC. 221. DEVELOPMENT OF VOLUNTARY ELECTION STANDARDS.

(a) IN GENERAL.—The Commission shall:

(1) In accordance with section 223, develop (through the Executive Director of the Commission), adopt, and update (not less often than every 4 years thereafter) voluntary engineering and procedural performance standards for voting systems used in Federal elections which shall meet the following requirements:

(A) The scope of the standards should include security (including a documentary audit for non-ballot systems), the procedures for certification and decertification of software and hardware, the assessment of usability, and operational guidelines for the proper use and maintenance of equipment.

(B) The standards should provide that voters have the opportunity to correct errors at the precinct or other polling place, either within the voting equipment itself or in the operational guidelines to administrators for using the equipment, under conditions which assure privacy to the voter.

(C) Each voting tally system certified for use should include as part of the certification a proposed statement of what constitutes a proper vote in the design and operation of the system.

(D) New voting equipment systems certified either by the Federal government or by any State should provide a practical and effective means for voters with physical disabilities to cast a secret ballot.

(2) Maintain a clearinghouse of information on the experiences of State and local governments in implementing the voluntary standards described in paragraph (1) and in operating voting systems in general.

(3) In accordance with section 224, provide for the voluntary testing, certification, decertification, and recertification of voting systems.

(4) Advise States and units of local government regarding compliance with the requirements of the Voting Accessibility for the Elderly and Handicapped Act (42 U.S.C. 1973ee et seq.) and compliance with other Federal laws regarding accessibility of registration facilities and polling places. Additionally, in accordance with section 223, the Commission shall develop (through the Executive Director of the Commission), adopt, and update (not less often than every 4 years thereafter) voluntary standards for maintaining and enhancing the accessibility and privacy of registration facilities, polling places, and voting methods with the goal of promoting for all individuals, including the elderly and individuals with disabilities, the accessibility of polling places and the effective use of voting systems and voting equipment which provide the opportunity for casting a secure and secret ballot, and shall include in such standards voluntary guidelines regarding accessibility and ease-of-use for States and units of local government to use when obtaining voting equipment and selecting polling places. In carrying out this paragraph, the Commission shall consult with the Architectural and Transportation Barrier Compliance Board under section 502 of the Rehabilitation Act of 1973 (29 U.S.C. 792) and other individuals and entities with expertise in the accessibility of facilities for individuals with disabilities.

(5) Make periodic studies available to the public regarding the election administration issues described in subsection (b), with the goal of promoting methods of voting and administering elections which—

(A) will be the most convenient, accessible, and easy to use for voters, including members of the uniformed services, blind and disabled voters, and voters with limited English proficiency;

(B) will yield the most accurate, secure, and expeditious system for voting and tabulating election results;

(C) will be nondiscriminatory and afford each registered and eligible voter an equal opportunity to vote; and

(D) will be efficient and cost-effective for use.

(6) In accordance with section 223, develop (through the Executive Director of the Commission), adopt, and update (not less often than every 4 years) voluntary election management practice standards for State and local election officials to maintain and enhance the administration of Federal elections, including standards developed in consultation with the Secretary of Defense to govern the treatment of absent uniformed services voters (as defined in section 107(1) of the Uniformed and Overseas Citizens Absentee Voting Act) and overseas voters (as defined in section 107(5) of such Act) which will include provisions to address each of the following:

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(A) The rights of residence of uniformed services voters absent due to military orders.

(B) The rights of absent uniformed services voters and overseas voters to register to vote and cast absentee ballots.

(C) The rights of absent uniformed services voters and overseas voters to submit absentee ballot applications early during an election year.

(D) The appropriate pre-election deadline for mailing absentee ballots to absent uniformed services voters and overseas voters.

(E) The appropriate minimum period between the mailing of absentee ballots to absent uniformed services voters and overseas voters and the deadline for receipt of such ballots.

(F) The timely transmission of balloting materials to absent uniformed services voters and overseas voters.

(G) Security and privacy concerns in the transmission, receipt, and processing of ballots from absent uniformed services voters and overseas voters, including the need to protect against fraud.

(H) The use of a single application by absent uniformed services voters and overseas voters for absentee ballots for all Federal elections occurring during a year.

(I) The use of a single application for voter registration and absentee ballots by absent uniformed services voters and overseas voters.

(J) The use of facsimile machines and electronic means of transmission of absentee ballot applications and absentee ballots to absent uniformed services voters and overseas voters.

(K) Other issues related to the rights of absent uniformed services voters and overseas voters to participate in elections.

(7) Carry out the provisions of section 9 of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg–7) regarding mail voter registration.

(8) Make information on the Federal election system available to the public and the media.

(9) At the request of State officials, assist such officials in the review of election or vote counting procedures in Federal elections, through bipartisan panels of election professionals assembled by the Commission for such purpose.

(10) Compile and make available to the public the official certified results of general elections for Federal office and reports comparing the rates of voter registration, voter turnout, voting system functions, and ballot errors among jurisdictions in the United States.

(11) Gather information and serve as a clearinghouse concerning issues relating to Federal, State, and local elections.

(b) ELECTION ADMINISTRATION ISSUES DESCRIBED.—The election administration issues described in this subsection are as follows:

(1) Current and alternate methods and mechanisms of voting and counting votes in elections for Federal office.

(2) Current and alternate ballot designs for elections for Federal office.

(3) Current and alternate methods of voter registration, maintaining secure and accurate lists of registered voters (including the establishment of a centralized, interactive, statewide voter registration list linked to relevant agencies and all polling sites), and ensuring that all registered voters appear on the polling list at the appropriate polling site.

(4) Current and alternate methods of conducting provisional voting.

(5) Current and alternate methods of ensuring the accessibility of voting, registration, polling places, and voting equipment to all voters, including disabled voters and voters with limited English proficiency.

(6) Current and alternate methods of voter registration for members of the uniformed services and overseas voters, and methods of ensuring that such voters receive timely ballots that will be properly and expeditiously handled and counted.

(7) Current and alternate methods of recruiting and improving the performance of poll workers.

(8) Federal and State laws governing the eligibility of persons to vote.

(9) Current and alternate methods of educating voters about the process of registering to vote and voting, the operation of voting mechanisms, the location of polling places, and all other aspects of participating in elections.

(10) Matters particularly relevant to voting and administering elections in rural and urban areas.

(11) Conducting elections for Federal office on different days, at different places, and during different hours, including the advisability of establishing a uniform poll closing time.

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(12) The ways that the Federal Government can best assist State and local authorities to improve the administration of elections for Federal office and what levels of funding would be necessary to provide such assistance.

(c) CONSULTATION WITH STANDARDS BOARD AND BOARD OF ADVISORS.—The Commission shall carry out its duties under this subtitle in consultation with the Standards Board and the Board of Advisors.

SEC. 222. TECHNICAL STANDARDS DEVELOPMENT COMMITTEE.

(a) ESTABLISHMENT.—There is hereby established the Technical Standards Development Committee (hereafter in this subtitle referred to as the "Development Committee").

(b) DUTIES.—

(1) IN GENERAL.—The Development Committee shall assist the Executive Director of the Commission in the development of voluntary standards under this subtitle by recommending standards (and modifications to standards) to ensure the usability, accuracy, security, accessibility, and integrity of voting systems and voting equipment.

(2) DEADLINE FOR INITIAL SET OF RECOMMENDATIONS.—The Development Committee shall provide its first set of recommendations under this section to the Executive Director of the Commission not later than 9 months after all of its members have been appointed.

(c) MEMBERSHIP.—

(1) IN GENERAL.—The Development Committee shall be composed of the Director of the National Institute of Standards and Technology (who shall serve as its chair), together with a group of 14 other individuals appointed jointly by the Commission and the Director of the National Institute of Standards and Technology, consisting of the following:

(A) An equal number of each of the following:

(i) Members of the Standards Board.

(ii) Members of the Board of Advisors.

(iii) Members of the Architectural and Transportation Barrier Compliance Board under section 502 of the Rehabilitation Act of 1973 (29 U.S.C. 792).

(B) A representative of the American National Standards Institute.

(C) Other individuals with technical and scientific expertise relating to voting systems and voting equipment.

(2) QUORUM.—A majority of the members of the Development Committee shall constitute a quorum, except that the Development Committee may not conduct any business prior to the appointment of all of its members.

(d) NO COMPENSATION FOR SERVICE.—Members of the Development Committee shall not receive any compensation for their service, but shall be paid travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Development Committee.

(e) TECHNICAL SUPPORT FROM NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY.—At the request of the Development Committee, the Director of the National Institute of Standards and Technology shall provide the Development Committee with technical support necessary for the Development Committee to carry out its duties under this subtitle.

(f) PUBLICATION OF RECOMMENDATIONS IN FEDERAL REGISTER.—At the time the Commission adopts any standard pursuant to section 223, the Development Committee shall cause to have published in the Federal Register the recommendations it provided under this section to the Executive Director of the Commission concerning the standard adopted.

SEC. 223. PROCESS FOR ADOPTION OF VOLUNTARY STANDARDS.

(a) CONSIDERATION OF RECOMMENDATIONS OF DEVELOPMENT COMMITTEE; SUBMISSION OF PROPOSED VOLUNTARY STANDARDS TO BOARD OF ADVISORS AND STANDARDS BOARD.—

(1) CONSIDERATION OF RECOMMENDATIONS OF DEVELOPMENT COMMITTEE.—In developing standards and modifications for purposes of this section, the Executive Director of the Commission shall take into consideration the recommendations provided by the Technical Standards Development Committee under section 222.

(2) BOARD OF ADVISORS.—The Executive Director of the Commission shall submit each of the voluntary engineering and procedural performance standards (described in section 221(a)(1)), each of the voluntary standards described in section 221(a)(4), and each of the voluntary election management practice

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standards (described in section 221(a)(6)) developed by the Executive Director (or any modifications to such standards) to the Board of Advisors.

(3) STANDARDS BOARD.—The Executive Director of the Commission shall submit each of the voluntary engineering and procedural performance standards (described in section 221(a)(1)), each of the voluntary standards described in section 221(a)(4), and each of the voluntary election management practice standards (described in section 221(a)(6)) developed by the Executive Director (or any modifications to such standards) to the Executive Board of the Standards Board, who shall review the standard (or modification) and forward its recommendations to the Standards Board.

(b) REVIEW.—Upon receipt of a voluntary standard described in subsection (a) (or modification of such a standard) from the Executive Director of the Commission, the Board of Advisors and the Standards Board shall each review and submit comments and recommendations regarding the standard (or modification) to the Commission.

(c) FINAL APPROVAL.—

(1) IN GENERAL.—A voluntary standard described in subsection (a) (or modification of such a standard) shall not be considered to be finally adopted by the Commission unless the majority of the members of the Commission vote to approve the final adoption of the standard (or modification), taking into consideration the comments and recommendations submitted by the Board of Advisors and the Standards Board under subsection (b).

(2) MINIMUM PERIOD FOR CONSIDERATION OF COMMENTS AND RECOMMENDATIONS.—The Commission may not vote on the final adoption of a voluntary standard described in subsection (a) (or modification of such a standard) until the expiration of the 90-day period which begins on the date the Executive Director of the Commission submits the standard (or modification) to the Board of Advisors and the Standards Board under subsection (a).

SEC. 224. CERTIFICATION AND TESTING OF VOTING SYSTEMS.

(a) CERTIFICATION AND TESTING.—

(1) IN GENERAL.—The Commission shall provide for the testing, certification, decertification, and recertification of voting system hardware and software by accredited laboratories.

(2) OPTIONAL USE BY STATES.—At the option of a State, the State may provide for the testing, certification, decertification, or recertification of its voting system hardware and software by the laboratories accredited by the Commission under this section.

(b) LABORATORY ACCREDITATION.—

(1) RECOMMENDATIONS BY NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY.—Not later than 6 months after the Commission first adopts voluntary engineering and procedural performance standards under this subtitle, the Director of the National Institute of Standards and Technology shall conduct an evaluation of independent, non-Federal laboratories and shall submit to the Commission a list of those laboratories the Director proposes to be accredited to carry out the testing, certification, decertification, and recertification provided for under this section.

(2) APPROVAL BY COMMISSION.—The Commission shall vote on the proposed accreditation of each laboratory on the list submitted under paragraph (1), and no laboratory may be accredited for purposes of this section unless its accreditation is approved by a majority vote of the members of the Commission.

(c) CONTINUING REVIEW BY NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY.—

(1) IN GENERAL.—In cooperation with the Commission and in consultation with the Standards Board and the Board of Advisors, the Director of the National Institute of Standards and Technology shall monitor and review, on an ongoing basis, the performance of the laboratories accredited by the Commission under this section, and shall make such recommendations to the Commission as it considers appropriate with respect to the continuing accreditation of such laboratories, including recommendations to revoke the accreditation of any such laboratory.

(2) APPROVAL BY COMMISSION REQUIRED FOR REVOCATION.—The accreditation of a laboratory for purposes of this section may not be revoked unless the revocation is approved by a majority vote of the members of the Commission.

SEC. 225. DISSEMINATION OF INFORMATION.

On an ongoing basis, the Commission shall disseminate to the public (through the Internet, published reports, and such other methods as the Commission considers appropriate) information on the activities carried out under this subtitle, including—

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(1) the voluntary election standards adopted by the Commission, together with guidelines for applying the standards and other information to assist in their implementation;

(2) the list of laboratories accredited to carry out testing, certification, decertification, and recertification of voting system hardware and software under section 224; and

(3) a list of voting system hardware and software products which have been certified pursuant to section 224 as meeting the applicable voluntary standards adopted by the Commission under this subtitle.

Subtitle C—Election Assistance

PART 1—ELECTION FUND PAYMENTS TO STATES FOR VOTING SYSTEM IMPROVEMENTS

SEC. 231. ELECTION FUND PAYMENTS TO STATES FOR VOTING SYSTEM IMPROVEMENTS.

(a) IN GENERAL.—The Commission shall make an Election Fund payment each year in an amount determined under section 232 to each State which meets the requirements described in section 233 for the year.

(b) USE OF FUNDS.—A State receiving an Election Fund payment shall use the payment for any or all of the following activities:

(1) Establishing and maintaining accurate lists of eligible voters.

(2) Encouraging eligible voters to vote.

(3) Improving verification and identification of voters at the polling place.

(4) Improving equipment and methods for casting and counting votes.

(5) Recruiting and training election official and poll workers.

(6) Improving the quantity and quality of available polling places.

(7) Educating voters about their rights and responsibilities.

(8) Assuring access for voters with physical disabilities.

(9) Carrying out other activities to improve the administration of elections in the State.

(c) ADOPTION OF COMMISSION STANDARDS NOT REQUIRED TO RECEIVE PAYMENT.—Nothing in this part may be construed to require a State to implement any of the voluntary standards adopted by the Commission with respect to any matter as a condition for receiving an Election Fund payment.

(d) SCHEDULE OF PAYMENTS.—As soon as practicable after all members of the Commission are appointed (but in no event later than 6 months thereafter), and not less frequently than once each calendar year thereafter, the Commission shall make Election Fund payments to States under this part.

SEC. 232. ALLOCATION OF FUNDS.

(a) IN GENERAL.—Subject to subsection (c), the amount of an Election Fund payment made to a State for a year shall be equal to the product of—

(1) the total amount appropriated for Election Fund payments for the year under section 234; and

(2) the State allocation percentage for the State (as determined under subsection (b)).

(b) STATE ALLOCATION PERCENTAGE DEFINED.—The "State allocation percentage" for a State is the amount (expressed as a percentage) equal to the quotient of—

(1) the voting age population of the State; and

(2) the total voting age population of all States.

(c) MINIMUM AMOUNT OF PAYMENT.—The amount of an Election Fund payment made to a State for a year may not be less than—

(1) in the case of any of the several States or the District of Columbia, ½ of 1 percent of the total amount appropriated for Election Fund payments for the year under section 234; or

(2) in the case of the Commonwealth of Puerto Rico, Guam, American Samoa, or the United States Virgin Islands, 20% of the amount described in paragraph (1).

(d) CONTINUING AVAILABILITY OF FUNDS AFTER APPROPRIATION.—An Election Fund payment made to a State under this part shall be available to the State without fiscal year limitation.

SEC. 233. CONDITIONS FOR RECEIPT OF FUNDS.

(a) IN GENERAL.—In order to receive an Election Fund payment for a fiscal year, the chief State election official of the State shall provide the Commission with the following certifications:

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(1) A certification that the State has authorized and appropriated funds for carrying out the activities for which the Election Fund payment is made in an amount equal to 25 percent of the total amount to be spent for such activities (taking into account the Election Fund payment and the amount spent by the State).

(2) A certification that the State has set a uniform Statewide benchmark for voting system performance in each local jurisdiction administering elections, expressed as a percentage of residual vote in the contest at the top of the ballot, and requires local jurisdictions to report data relevant to this benchmark after each general election for Federal office.

(3) A certification that the State is in compliance with the voluntary voting system standards and certification processes adopted by the Commission or that the State has enacted legislation establishing its own State voting system standards and processes which (at a minimum) ensure that new voting mechanisms have the audit capacity to produce a record for each ballot cast.

(4) A certification that—

(A) in each precinct or polling place in the State, there is at least one voting system available which is fully accessible to individuals with physical disabilities; and

(B) if the State uses any portion of its Election Fund payment to obtain new voting machines, at least one voting machine in each polling place in the State will be fully accessible to individuals with physical disabilities.

(5) A certification that the State has established a fund described in subsection (b) for purposes of administering its activities under this part.

(6) A certification that, in administering election systems, the State is in compliance with the existing applicable requirements of the Voting Rights Act of 1965 (42 U.S.C. 1973 et seq.), the National Voter Registration Act of 1993 (42 U.S.C. 1973gg et seq.), the Voting Accessibility for the Elderly and Handicapped Act (42 U.S.C. 1973ee et seq.), and the Americans With Disabilities Act of 1990 (42 U.S.C. 12101 et seq.).

(7) A certification that the State provides for voter education and poll worker training programs to improve access to and participation in the electoral process, and provides relevant training in the requirements of the National Voter Registration Act of 1993 for personnel of State motor vehicle authority offices and other voter registration agencies designated by the State under such Act.

(8) A certification that the Election Fund payment has not and will not supplant funds provided under existing programs funded in the State for carrying out the activities for which the Election Fund payment is made.

(b) REQUIREMENTS FOR ELECTION FUND.—

(1) ELECTION FUND DESCRIBED.—For purposes of subsection (a)(5), a fund described in this subsection with respect to a State is a fund which is established in the treasury of the State government, which is used in accordance with paragraph (2), and which consists of the following amounts:

(A) Amounts appropriated or otherwise made available by the State for carrying out the activities for which the Election Fund payment is made to the State under this part.

(B) The Election Fund payment made to the State under this part.

(C) Such other amounts as may be appropriated under law.

(D) Interest earned on deposits of the fund.

(2) USE OF FUND.—Amounts in the fund shall be used by the State exclusively to carry out the activities for which the Election Fund payment is made to the State under this part.

(c) METHODS OF COMPLIANCE LEFT TO DISCRETION OF STATE.—The specific choices on the methods of complying with the requirements described in subsection (a) shall be left to the discretion of the State.

(d) CHIEF STATE ELECTION OFFICIAL DEFINED.—In this subtitle, the "chief State election official" of a State is the individual designated by the State under section 10 of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg–8) to be responsible for coordination of the State's responsibilities under such Act.

SEC. 234. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated for Election Fund payments under this part an aggregate amount of $2,250,000,000 for fiscal years 2002 through 2004.

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PART 2—GRANTS FOR RESEARCH ON VOTING TECHNOLOGY IMPROVEMENTS

SEC. 241. GRANTS FOR RESEARCH ON VOTING TECHNOLOGY IMPROVEMENTS.

(a) IN GENERAL.—The Commission shall make grants to assist entities in carrying out research and development to improve the quality, reliability, accuracy, accessibility, affordability, and security of voting equipment, election systems, and voting technology.

(b) ELIGIBILITY.—An entity is eligible to receive a grant under this part if it submits to the Commission (at such time and in such form as the Commission may require) an application containing—

(1) assurances that the research and development funded with the grant will take into account the need to make voting equipment fully accessible for individuals with disabilities (including blind individuals), the need to ensure that such individuals can vote independently and with privacy, and the need to provide alternative language accessibility for individuals with limited proficiency in the English language (consistent with the requirements of the Voting Rights Act of 1965); and

(2) such other information and assurances as the Commission may require.

(c) APPLICABILITY OF REGULATIONS GOVERNING PATENT RIGHTS IN INVENTIONS MADE WITH FEDERAL ASSISTANCE.—Any invention made by the recipient of a grant under this part using funds provided under this part shall be subject to chapter 18 of title 35, United States Code (relating to patent rights in inventions made with Federal assistance).

SEC. 242. REPORT.

(a) IN GENERAL.—Each entity which receives a grant under this part shall submit to the Commission, Congress, and the President a report describing the activities carried out with the funds provided under the grant.

(b) DEADLINE.—An entity shall submit a report required under subsection (a) not later than 60 days after the end of the fiscal year for which the entity received the grant which is the subject of the report.

SEC. 243. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated for grants under this part $20,000,000 for fiscal year 2002.

PART 3—PILOT PROGRAM FOR TESTING OF EQUIPMENT AND TECHNOLOGY

SEC. 251. PILOT PROGRAM.

(a) IN GENERAL.—The Commission shall make grants to carry out pilot programs under which new technologies in voting systems and equipment are implemented on a trial basis.

(b) ELIGIBILITY.—An entity is eligible to receive a grant under this part if it submits to the Commission (at such time and in such form as the Commission may require) an application containing—

(1) assurances that the pilot programs funded with the grant will take into account the need to make voting equipment fully accessible for individuals with disabilities (including blind individuals), the need to ensure that such individuals can vote independently and with privacy, and the need to provide alternative language accessibility for individuals with limited proficiency in the English language (consistent with the requirements of the Voting Rights Act of 1965); and

(2) such other information and assurances as the Commission may require.

SEC. 252. REPORT.

(a) IN GENERAL.—Each entity which receives a grant under this part shall submit to the Commission, Congress, and the President a report describing the activities carried out with the funds provided under the grant.

(b) DEADLINE.—An entity shall submit a report required under subsection (a) not later than 60 days after the end of the fiscal year for which the entity received the grant which is the subject of the report.

SEC. 253. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated for grants under this part $10,000,000 for fiscal year 2002.

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PART 4—MISCELLANEOUS

SEC. 261. ROLE OF NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY.

(a) RECOMMENDATION OF TOPICS FOR RESEARCH UNDER VOTING RESEARCH GRANTS AND PILOT PROGRAMS.—The Director of the National Institute of Standards and Technology (hereafter in this section referred to as the "Director") shall submit to the Commission an annual list of the Director's suggestions for issues which may be the subject of research funded with grants awarded under part 2 and part 3 during the year.

(b) REVIEW OF GRANT APPLICATIONS RECEIVED BY COMMISSION.—The Commission shall submit each application it receives for a grant under part 2 or part 3 to the Director, who shall review the application and provide the Commission with such comments as the Director considers appropriate.

(c) MONITORING AND ADJUSTMENT OF GRANT ACTIVITIES.—After the Commission has awarded a grant under part 2 or part 3, the Director shall monitor the grant and (to the extent permitted under the terms of the grant as awarded) may recommend to the Commission that the recipient of the grant modify and adjust the activities carried out under the grant.

(d) EVALUATION OF COMPLETED GRANTS.—

(1) IN GENERAL.—After the recipient of a grant awarded by the Commission has completed the terms of the grant, the Director shall prepare and submit to the Commission an evaluation of the grant and the activities carried out under the grant.

(2) INCLUSION IN REPORTS.—The Commission shall include the evaluations submitted under paragraph (1) for a year in the report submitted for the year under section 262.

(e) INTRAMURAL RESEARCH AND DEVELOPMENT.—The Director shall establish a program for intramural research and development in areas to support the development of voluntary technical standards for voting products and systems, including—

(1) the security of computers, computer networks, and computer data storage used in voting products and systems, including the Statewide voter registration networks required under the minimum standard described in section 502(1);

(2) methods to detect and prevent fraud;

(3) the protection of voter privacy;

(4) the role of human factors in the design and application of voting products and systems, including assistive technologies for individuals with disabilities and varying levels of literacy; and

(5) remote access voting, including voting through the Internet.

SEC. 262. REPORTS.

(a) ANNUAL REPORTS ON ACTIVITIES.—Not later than 90 days after the end of each fiscal year, the Commission shall submit a report to the Committee on House Administration of the House of Representatives and the Committee on Rules and Administration of the Senate on the activities carried out by the Commission under this subtitle during the previous fiscal year, and shall include in the report a description of all applications for Election Fund payments and grants received by the Commission during the year under this subtitle and the disposition of such applications.

(b) REPORT ON HUMAN FACTOR RESEARCH.—Not later than 1 year after the date of the enactment of this Act, the Commission, in consultation with the Director of the National Institute of Standards and Technology, shall submit a report to Congress which assesses the areas of human factor research, including usability engineering and human-computer and human-machine interaction, which feasibly could be applied to voting products and systems design to ensure the usability and accuracy of voting products and systems, including methods to improve access for individuals with disabilities and to reduce voter error and the number of spoiled ballots in elections.

SEC. 263. AUDIT.

(a) IN GENERAL.—As a condition of receiving funds under this subtitle, a State or entity described in part 2 or part 3 shall agree that such funds shall be subject to audit if 2 or more members of the Commission vote to require an audit.

(b) MANDATORY AUDIT.—In addition to audits conducted pursuant to subsection (a), all funds provided under this subtitle shall be subject to mandatory audit at least once during the lifetime of the programs under this subtitle.

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TITLE III—HELP AMERICA VOTE COLLEGE PROGRAM

SEC. 301. ESTABLISHMENT OF PROGRAM.

(a) IN GENERAL.—Not later than 1 year after the appointment of its members, the Election Assistance Commission shall develop a program to be known as the "Help America Vote College Program" (hereafter in this title referred to as the "Program").

(b) PURPOSES OF PROGRAM.—The purpose of the Program shall be—

(1) to encourage students enrolled at institutions of higher education (including community colleges) to assist State and local governments in the administration of elections by serving as nonpartisan poll workers or assistants; and

(2) to encourage State and local governments to use the services of the students participating in the Program.

SEC. 302. ACTIVITIES UNDER PROGRAM.

(a) IN GENERAL.—In carrying out the Program, the Commission (in consultation with the chief election official of each State) shall develop materials, sponsor seminars and workshops, engage in advertising targeted at students, make grants, and take such other actions as it considers appropriate to meet the purposes described in section 301(b).

(b) REQUIREMENTS FOR GRANT RECIPIENTS.—In making grants under the Program, the Commission shall ensure that the funds provided are spent for projects and activities which are carried out without partisan bias or without promoting any particular point of view regarding any issue, and that each recipient is governed in a balanced manner which does not reflect any partisan bias.

(c) COORDINATION WITH INSTITUTIONS OF HIGHER EDUCATION.—The Commission shall encourage institutions of higher education (including community colleges) to participate in the Program, and shall make all necessary materials and other assistance (including materials and assistance to enable the institution to hold workshops and poll worker training sessions) available without charge to any institution which desires to participate in the Program.

SEC. 303. AUTHORIZATION OF APPROPRIATIONS.

In addition to any funds authorized to be appropriated to the Commission under section 207, there are authorized to be appropriated to carry out this title—

(1) $5,000,000 for fiscal year 2002; and

(2) such sums as may be necessary for each succeeding fiscal year.

TITLE IV—HELP AMERICA VOTE FOUNDATION

SEC. 401. HELP AMERICA VOTE FOUNDATION.

(a) IN GENERAL.—Part B of subtitle II of title 36, United States Code, is amended by inserting after chapter 1525 the following:

"CHAPTER 1526—HELP AMERICA VOTE FOUNDATION

"Sec.
"152601. Organization.
"152602. Purposes.
"152603. Board of directors.
"152604. Officers and employees.
"152605. Powers.
"152606. Principal office.
"152607. Service of process.
"152608. Annual audit.
"152609. Civil action by Attorney General for equitable relief.
"152610. Immunity of United States Government.
"152611. Authorization of appropriations.
"152612. Annual report.

"§ 152601. Organization

"(a) FEDERAL CHARTER.—The Help America Vote Foundation (in this chapter, the 'foundation') is a federally chartered corporation.

"(b) NATURE OF FOUNDATION.—The foundation is a charitable and nonprofit corporation and is not an agency or establishment of the United States Government.

"(c) PERPETUAL EXISTENCE.—Except as otherwise provided, the foundation has perpetual existence.

"§ 152602. Purposes

"(a) IN GENERAL.—The purposes of the foundation are to—

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"(1) mobilize secondary school students (including students educated in the home) in the United States to participate in the election process in a nonpartisan manner as poll workers or assistants;

"(2) place secondary school students (including students educated in the home) as nonpartisan poll workers or assistants to local election officials in precinct polling places across the United States; and

"(3) establish cooperative efforts with State and local election officials, local educational agencies, superintendents and principals of public and private secondary schools, and other appropriate nonprofit charitable and educational organizations exempt from taxation under section 501(a) of the Internal Revenue Code of 1986 as an organization described in section 501(c)(3) of such Code to further the purposes of the foundation.

"(b) REQUIRING ACTIVITIES TO BE CARRIED OUT ON NONPARTISAN BASIS.—The foundation shall carry out its purposes without partisan bias or without promoting any particular point of view regarding any issue, and shall ensure that each participant in its activities is governed in a balanced manner which does not reflect any partisan bias.

"(c) CONSULTATION WITH STATE ELECTION OFFICIALS.—The foundation shall carry out its purposes under this section in consultation with the chief election officials of the States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, and the United States Virgin Islands.

"§ 152603. Board of directors

"(a) GENERAL.—The board of directors is the governing body of the foundation.

"(b) MEMBERS AND APPOINTMENT.—(1) The board consists of 12 directors, who shall be appointed not later than 60 days after the date of the enactment of this chapter as follows:

"(A) 4 directors (of whom not more than 2 may be members of the same political party) shall be appointed by the President.

"(B) 2 directors shall be appointed by the Speaker of the House of Representatives.

"(C) 2 directors shall be appointed by the minority leader of the House of Representatives.

"(D) 2 directors shall be appointed by the majority leader of the Senate.

"(E) 2 directors shall be appointed by the minority leader of the Senate.

"(2) In addition to the directors described in paragraph (1), the chair and ranking minority member of the Committee on House Administration of the House of Representatives (or their designees) and the chair and ranking minority member of the Committee on Rules and Administration of the Senate (or their designees) shall each serve as an ex officio nonvoting member of the board.

"(3) A director is not an employee of the Federal government and appointment to the board does not constitute appointment as an officer or employee of the United States Government for the purpose of any law of the United States (except as may otherwise be provided in this chapter).

"(4) The terms of office of the directors are 4 years.

"(5) A vacancy on the board shall be filled in the manner in which the original appointment was made.

"(c) CHAIR.—The directors shall select one of the directors as the chair of the board. The individual selected may not be a current or former holder of any partisan elected office or a current or former officer of any national committee of a political party.

"(d) QUORUM.—The number of directors constituting a quorum of the board shall be established under the bylaws of the foundation.

"(e) MEETINGS.—The board shall meet at the call of the chair of the board for regularly scheduled meetings, except that the board shall meet not less often than annually.

"(f) REIMBURSEMENT OF EXPENSES.—Directors shall serve without compensation but may receive travel expenses, including per diem in lieu of subsistence, in accordance with sections 5702 and 5703 of title 5.

"(g) LIABILITY OF DIRECTORS.—Directors are not personally liable, except for gross negligence.

"§ 152604. Officers and employees

"(a) APPOINTMENT OF OFFICERS AND EMPLOYEES.—The board of directors appoints, removes, and replaces officers and employees of the foundation.

"(b) STATUS AND COMPENSATION OF EMPLOYEES.—

"(1) IN GENERAL.—Officers and employees of the foundation—

"(A) are not employees of the Federal government (except as may otherwise be provided in this chapter);

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"(B) shall be appointed and removed without regard to the provisions of title 5 governing appointments in the competitive service; and

"(C) may be paid without regard to chapter 51 and subchapter III of chapter 53 of title 5.

"(2) AVAILABILITY OF FEDERAL EMPLOYEE RATES FOR TRAVEL.—For purposes of any schedules of rates negotiated by the Administrator of General Services for the use of employees of the Federal government who travel on official business, officers and employees of the foundation who travel while engaged in the performance of their duties under this chapter shall be deemed to be employees of the Federal government.

"§ 152605. Powers

"(a) GENERAL.—The foundation may—

"(1) adopt a constitution and bylaws;

"(2) adopt a seal which shall be judicially noticed; and

"(3) do any other act necessary to carry out this chapter.

"(b) POWERS AS TRUSTEE.—To carry out its purposes, the foundation has the usual powers of a corporation acting as a trustee in the District of Columbia, including the power—

"(1) to accept, receive, solicit, hold, administer, and use any gift, devise, or bequest, either absolutely or in trust, of property or any income from or other interest in property;

"(2) to acquire property or an interest in property by purchase or exchange;

"(3) unless otherwise required by an instrument of transfer, to sell, donate, lease, invest, or otherwise dispose of any property or income from property;

"(4) to borrow money and issue instruments of indebtedness;

"(5) to make contracts and other arrangements with public agencies and private organizations and persons and to make payments necessary to carry out its functions;

"(6) to sue and be sued; and

"(7) to do any other act necessary and proper to carry out the purposes of the foundation.

"(c) ENCUMBERED OR RESTRICTED GIFTS.—A gift, devise, or bequest may be accepted by the foundation even though it is encumbered, restricted, or subject to beneficial interests of private persons, if any current or future interest is for the benefit of the foundation.

"(d) CONTRACTS.—The foundation may enter into such contracts with public and private entities as it considers appropriate to carry out its purposes.

"(e) ANNUAL CONFERENCE IN WASHINGTON METROPOLITAN AREA.—During each year (beginning with 2003), the foundation may sponsor a conference in the Washington, D.C., metropolitan area to honor secondary school students and other individuals who have served (or plan to serve) as poll workers and assistants and who have otherwise participated in the programs and activities of the foundation.

"§ 152606. Principal office

"The principal office of the foundation shall be in the District of Columbia unless the board of directors determines otherwise. However, the foundation may conduct business throughout the States, territories, and possessions of the United States.

"§ 152607. Service of process

"The foundation shall have a designated agent to receive service of process for the foundation. Notice to or service on the agent, or mailed to the business address of the agent, is notice to or service on the foundation.

"§ 152608. Annual audit

"The foundation shall enter into a contract with an independent auditor to conduct an annual audit of the foundation.

"§ 152609. Civil action by Attorney General for equitable relief

"The Attorney General may bring a civil action in the United States District Court for the District of Columbia for appropriate equitable relief if the foundation—

"(1) engages or threatens to engage in any act, practice, or policy that is inconsistent with the purposes in section 152602 of this title; or

"(2) refuses, fails, or neglects to carry out its obligations under this chapter or threatens to do so.

"§ 152610. Immunity of United States Government

"The United States Government is not liable for any debts, defaults, acts, or omissions of the foundation. The full faith and credit of the Government does not extend to any obligation of the foundation.

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"§ 152611. Authorization of appropriations

"There are authorized to be appropriated to the foundation for carrying out the purposes of this chapter—

"(1) $5,000,000 for fiscal year 2002; and

"(2) such sums as may be necessary for each succeeding fiscal year.

"§ 152612. Annual report

"As soon as practicable after the end of each fiscal year, the foundation shall submit a report to the Commission, the President, and Congress on the activities of the foundation during the prior fiscal year, including a complete statement of its receipts, expenditures, and investments. Such report shall contain information gathered from participating secondary school students describing the nature of the work they performed in assisting local election officials and the value they derived from the experience of educating participants about the electoral process.".

(b) CLERICAL AMENDMENT.—The table of chapters for part B of subtitle II of title 36, United States Code, is amended by inserting after the item relating to chapter 1525 the following new item:

"1526. Help America Vote Foundation ..... 152601".

TITLE V—MINIMUM STANDARDS FOR STATE ELECTION SYSTEMS

SEC. 501. MINIMUM STANDARDS FOR STATE ELECTION SYSTEMS.

(a) IN GENERAL.—The chief State election official of each State shall certify in writing to the Election Assistance Commission that—

(1) in administering election systems, the State is in compliance with the existing applicable requirements of the Voting Rights Act of 1965, the National Voter Registration Act of 1993, the Uniformed and Overseas Citizens Absentee Voting Act, the Voting Accessibility for the Elderly and Handicapped Act, and the Americans With Disabilities Act of 1990; and

(2) the State has enacted legislation to enable the State to meet each of the minimum standards for State election systems described in section 502.

(b) METHODS OF IMPLEMENTATION LEFT TO DISCRETION OF STATE.—The specific choices on the methods of implementing the legislation enacted pursuant to subsection (a)(2) shall be left to the discretion of the State.

(c) CHIEF STATE ELECTION OFFICIAL DEFINED.—In this title, the "chief State election official" of a State is the individual designated by the State under section 10 of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg–8) to be responsible for coordination of the State's responsibilities under such Act.

SEC. 502. STANDARDS DESCRIBED.

The minimum standards for State election systems described in this section are as follows:

(1) The State will implement a Statewide voter registration system networked to every local jurisdiction in the State, with provisions for sharing data with other States, except that this paragraph shall not apply in the case of a State in which, under law in effect continuously on and after the date of the enactment of this Act, there is no voter registration requirement for any voter in the State with respect to an election for Federal office.

(2) The State election system includes provisions to ensure that voter registration records in the State are accurate and are updated regularly, including the following:

(A) A system of file maintenance which removes registrants who are ineligible to vote from the official list of eligible voters. Under such system, consistent with the National Voter Registration Act of 1993, registrants who have not voted in 2 or more consecutive general elections for Federal office and who have not responded to a notice shall be removed from the official list of eligible voters, except that no registrant may be removed solely by reason of a failure to vote.

(B) Safeguards to ensure that eligible voters are not removed in error from the official list of eligible voters.

(3) The State permits, by the deadline required under section 504(b), in-precinct provisional voting by every voter who claims to be qualified to vote in the State, or has adopted an alternative which achieves the same objective, except that this paragraph shall not apply in the case of a State in which, under law in effect continuously on and after the date of the enactment of this Act, all votes in the State in general elections for Federal office are cast by mail.

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(4) The State has adopted uniform standards that define what will constitute a vote on each category of voting equipment certified for use in the State.

(5) The State has implemented safeguards to ensure that absent uniformed services voters (as defined in section 107(1) of the Uniformed and Overseas Citizens Absentee Voting Act) and overseas voters (as defined in section 107(5) of such Act) in the jurisdiction have the opportunity to vote and to have their votes counted.

(6) The State requires new voting systems to provide a practical and effective means for voters with physical disabilities to cast a secret ballot.

(7) If the State uses voting systems which give voters the opportunity to correct errors, the State shall ensure that voters are able to check for and correct errors under conditions which assure privacy. States, and units of local government within the States, replacing all voting machines within their jurisdiction shall ensure that the new voting system gives voters the opportunity to correct errors before the vote is cast.

SEC. 503. ENFORCEMENT.

(a) REPORT BY COMMISSION TO ATTORNEY GENERAL.—If a State does not provide a certification under section 501 to the Election Assistance Commission, or if the Commission has credible evidence that a State's certification is false or that a State is carrying out activities in violation of the terms of the certification, the Commission shall notify the Attorney General.

(b) ACTION BY ATTORNEY GENERAL.—After receiving notice from the Commission under subsection (a), the Attorney General may bring a civil action against a State in an appropriate district court for such declaratory or injunctive relief as may be necessary to remedy a violation of this title.

SEC. 504. EFFECTIVE DATE.

(a) IN GENERAL.—Except as provided in subsection (b), the requirements of this title shall take effect upon the expiration of the 2-year period which begins on the date of the enactment of this Act, except that if the chief State election official of a State certifies that good cause exists to waive the requirements of this title with respect to the State until the date of the regularly scheduled general election for Federal office held in November 2004, the requirements shall apply with respect to the State beginning on the date of such election.

(b) DEADLINES FOR IMPLEMENTATION OF PROVISIONAL VOTING.—The minimum standard described in section 502(3) (relating to permitting in-precinct provisional voting) shall apply with respect to the regularly scheduled general election for Federal office held in November 2002 and each succeeding election for Federal office, except that if the chief State election official of a State certifies that good cause exists to delay the implementation of such standard in the State, the standard shall apply in the State with respect to the regularly scheduled general election for Federal office held in November 2004 and each succeeding election for Federal office held in the State.

TITLE VI—VOTING RIGHTS OF MILITARY MEMBERS AND OVERSEAS CITIZENS

SEC. 601. VOTING ASSISTANCE PROGRAMS.

(a) IN GENERAL.—(1) Chapter 80 of title 10, United States Code, is amended by adding at the end the following new section:

"§ 1566. Voting assistance: compliance assessments; assistance

"(a) REGULATIONS.—The Secretary of Defense shall prescribe regulations to require that the Army, Navy, Air Force, and Marine Corps ensure their compliance with any directives issued by the Secretary of Defense in implementing any voting assistance program.

"(b) VOTING ASSISTANCE PROGRAMS DEFINED.—In this section, the term 'voting assistance programs' means—

"(1) the Federal Voting Assistance Program carried out under the Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff et seq.); and

"(2) any similar program.

"(c) ANNUAL EFFECTIVENESS AND COMPLIANCE REVIEWS.—(1) The Inspector General of each of the Army, Navy, Air Force, and Marine Corps shall conduct—

"(A) an annual review of the effectiveness of voting assistance programs; and

"(B) an annual review of the compliance with voting assistance programs of that armed force.

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"(2) Upon the completion of each annual review under paragraph (1), each Inspector General specified in that paragraph shall submit to the Inspector General of the Department of Defense a report on the results of each such review. Such report shall be submitted in time each year to be reflected in the report of the Inspector General of the Department of Defense under paragraph (3).

"(3) Not later than March 31 each year, the Inspector General of the Department of Defense shall submit to Congress a report on—

"(A) the effectiveness during the preceding calendar year of voting assistance programs; and

"(B) the level of compliance during the preceding calendar year with voting assistance programs of each of the Army, Navy, Air Force, and Marine Corps.

"(d) INSPECTOR GENERAL ASSESSMENTS.—(1) The Inspector General of the Department of Defense shall periodically conduct at Department of Defense installations unannounced assessments of the compliance at those installations with—

"(A) the requirements of the Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff et seq.);

"(B) Department of Defense regulations regarding that Act and the Federal Voting Assistance Program carried out under that Act; and

"(C) other requirements of law regarding voting by members of the armed forces.

"(2) The Inspector General shall conduct an assessment under paragraph (1) at not less than 10 Department of Defense installations each calendar year.

"(3) Each assessment under paragraph (1) shall include a review of such compliance—

"(A) within units to which are assigned, in the aggregate, not less than 20 percent of the personnel assigned to duty at that installation;

"(B) within a representative survey of members of the armed forces assigned to that installation and their dependents; and

"(C) within unit voting assistance officers to measure program effectiveness.

"(e) REGULAR MILITARY DEPARTMENT ASSESSMENTS.—The Secretary of each military department shall include in the set of issues and programs to be reviewed during any management effectiveness review or inspection at the installation level an assessment of compliance with the Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff et seq.) and with Department of Defense regulations regarding the Federal Voting Assistance Program.

"(f) VOTING ASSISTANCE OFFICERS.—(1) Voting assistance officers shall be appointed or assigned under Department of Defense regulations. Commanders at all levels are responsible for ensuring that unit voting officers are trained and equipped to provide information and assistance to members of the armed forces on voting matters. Performance evaluation reports pertaining to a member who has been assigned to serve as a voting assistance officer shall comment on the performance of the member as a voting assistance officer. The Secretary of each military department shall certify to Congress that (at a minimum) a voting assistance officer has been appointed or assigned for each military installation and major command under the jurisdiction of the department and that a replacement will be appointed if the original officer is no longer able to serve.

"(2) Under regulations and procedures prescribed by the Secretary, a member of the armed forces appointed or assigned to duty as a voting assistance officer shall, to the maximum extent practicable, be given the time and resources needed to perform the member's duties as a voting assistance officer during the period in advance of a general election when members and their dependents are preparing and submitting absentee ballots.

"(3) As part of each assessment prepared by the Secretary of a military department under subsection (e), the Secretary shall—

"(A) specify the number of members of the armed forces under the jurisdiction of the Secretary who are appointed or assigned to duty as voting assistance officers;

"(B) specify the ratio of voting assistance officers to active duty members of the armed forces under the jurisdiction of the Secretary;

"(C) indicate whether this number and ratio comply with the requirements of the Federal Voting Assistance Program; and

"(D) describe the training such members receive to perform their duties as voting assistance officers.

"(g) REGISTRATION AND VOTING INFORMATION FOR MEMBERS AND DEPENDENTS.—(1) The Secretary of each military department, using a variety of means including both print and electronic media, shall, to the maximum extent practicable, ensure that members of the armed forces and their dependents who are qualified to vote have ready access to information regarding voter registration requirements and deadlines (including voter registration), absentee ballot application requirements

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and deadlines, and the availability of voting assistance officers to assist members and dependents to understand and comply with these requirement.

"(2) The Secretary of each military department shall make the national voter registration form prepared for purposes of the Uniformed and Overseas Citizens Absentee Voting Act by the Federal Election Commission available so that each person who enlists, reenlists, or voluntarily extends an enlistment or who completes a permanent change of station in an active or reserve component of the Army, Navy, Air Force, or Marine Corps shall receive such form at the time of the enlistment, reenlistment, extension, or completion of the permanent change of station, or as soon thereafter as practicable.

"(3) Where practicable, a special day or days shall be designated at each military installation for the purpose of informing members of the armed forces and their dependents of election timing, registration requirements, and voting procedures.

"(h) DELIVERY OF MAIL FROM OVERSEAS PRECEDING FEDERAL ELECTIONS.—(1) During the four months preceding a general Federal election month, the Secretary of Defense shall periodically conduct surveys of all overseas locations and vessels at sea with military units responsible for collecting mail for return shipment to the United States and all port facilities in the United States and overseas where military-related mail is collected for shipment to overseas locations or to the United States. The purpose of each survey shall be to determine if voting materials are awaiting shipment at any such location and, if so, the length of time that such materials have been held at that location. During the fourth and third months before a general Federal election month, such surveys shall be conducted biweekly. During the second and first months before a general Federal election month, such surveys shall be conducted weekly.

"(2) The Secretary shall ensure that voting materials are transmitted expeditiously by military postal authorities at all times. The Secretary shall, to the maximum extent practicable, implement measures to ensure that a postmark or other official proof of mailing date is provided on each absentee ballot collected at any overseas location or vessel at sea whenever the Department of Defense is responsible for collecting mail for return shipment to the United States. The Secretary shall submit to Congress a report describing the measures to be implemented to ensure the timely transmittal and postmarking of voting materials and identifying the persons responsible for implementing such measures.

"(3) The Secretary of each military department, utilizing the voting assistance officer network established for each military installation, shall, to the maximum extent practicable, provide notice to members of the armed forces stationed at that installation of the last date before a general Federal election for which absentee ballots mailed from a postal facility located at that installation can reasonably be expected to be timely delivered to the appropriate State and local election officials.

"(4) In this section, the term 'general Federal election month' means November in an even-numbered year.".

(2) The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"1566. Voting assistance: compliance assessments; assistance.".

(b) INITIAL REPORT.—The first report under section 1566(c)(3) of title 10, United States Code, as added by subsection (a), shall be submitted not later than March 31, 2003.

SEC. 602. DESIGNATION OF SINGLE STATE OFFICE TO PROVIDE INFORMATION ON REGISTRATION AND ABSENTEE BALLOTS FOR ALL VOTERS IN STATE.

Section 102 of the Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff–1) is amended—

(1) by inserting "(a) IN GENERAL.—" before "Each State"; and

(2) by adding at the end the following new subsection:

"(b) DESIGNATION OF SINGLE STATE OFFICE TO PROVIDE INFORMATION ON REGISTRATION AND ABSENTEE BALLOT PROCEDURES FOR ALL VOTERS IN STATE.—

"(1) IN GENERAL.—Each State shall designate a single office which shall be responsible for providing information regarding voter registration procedures and absentee ballot procedures (including procedures relating to the use of the Federal write-in absentee ballot) to all absent uniformed services voters and overseas voters who wish to register to vote or vote in any jurisdiction in the State.

"(2) RECOMMENDATION REGARDING USE OF OFFICE TO ACCEPT AND PROCESS MATERIALS.—Congress recommends that the State office designated under paragraph (1) be responsible for carrying out the State's duties under this Act, including accepting valid voter registration applications, absentee ballot applications, and absentee ballots (including Federal write-in absentee ballots) from all

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absent uniformed services voters and overseas voters who wish to register to vote or vote in any jurisdiction in the State.".

SEC. 603. REPORT ON ABSENTEE BALLOTS TRANSMITTED AND RECEIVED AFTER GENERAL ELECTIONS.

(a) IN GENERAL.—Section 102 of the Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff–1), as amended by section 602, is amended by adding at the end the following new subsection:

"(c) REPORT ON NUMBER OF ABSENTEE BALLOTS TRANSMITTED AND RECEIVED.—Not later than 90 days after the date of each regularly scheduled general election for Federal office, each State and unit of local government which administered the election shall (through the State, in the case of a unit of local government) submit a report to the Election Assistance Commission (established under the Help America Vote Act of 2001) on the number of absentee ballots transmitted to absent uniformed services voters and overseas voters for the election and the number of such ballots which were returned by such voters and cast in the election, and shall make such report available to the general public.".

(b) DEVELOPMENT OF STANDARDIZED FORMAT FOR REPORTS.—The Election Assistance Commission, working with the Election Assistance Commission Board of Advisors and the Election Assistance Commission Standards Board, shall develop a standardized format for the reports submitted by States and units of local government under section 102(c) of the Uniformed and Overseas Citizens Absentee Voting Act (as added by subsection (a)), and shall make the format available to the States and units of local government submitting such reports.

SEC. 604. SIMPLIFICATION OF VOTER REGISTRATION AND ABSENTEE BALLOT APPLICATION PROCEDURES FOR ABSENT UNIFORMED SERVICES AND OVERSEAS VOTERS.

(a) REQUIRING STATES TO ACCEPT OFFICIAL FORM FOR SIMULTANEOUS VOTER REGISTRATION AND ABSENTEE BALLOT APPLICATION; DEADLINE FOR PROCESSING APPLICATION.—

(1) IN GENERAL.—Section 102(a) of the Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff–1), as amended by section 602, is amended—

(A) by amending paragraph (2) to read as follows:

"(2) accept and process, with respect to any election for Federal office, any otherwise valid voter registration application and absentee ballot application from an absent uniformed services voter or overseas voter, if the application is received by the appropriate State election official not less than 30 days before the election;";

(B) by striking the period at the end of paragraph (3) and inserting "; and"; and

(C) by adding at the end the following new paragraph:

"(4) use the official post card form (prescribed under section 101) for simultaneous voter registration application and absentee ballot application.".

(2) CONFORMING AMENDMENTS.—Section 101(b)(2) of such Act (42 U.S.C. 1973ff(b)(2)) is amended by striking "as recommended in section 104" and inserting "as required under section 102(4)".

(b) USE OF SINGLE APPLICATION FOR ALL SUBSEQUENT ELECTIONS.—Section 104 of such Act (42 U.S.C. 1973ff–3) is amended to read as follows:

"SEC. 104. USE OF SINGLE APPLICATION FOR ALL SUBSEQUENT ELECTIONS.

"(a) IN GENERAL.—If a State accepts and processes an official post card form (prescribed under section 101) submitted by an absent uniformed services voter or overseas voter for simultaneous voter registration and absentee ballot application (in accordance with section 102(a)(4)) and the voter requests that the application be considered an application for an absentee ballot for each subsequent election for Federal office held in the State during that year, the State shall provide an absentee ballot to the voter for each subsequent election for Federal office held in the State during that year.

"(b) EXCEPTION FOR VOTERS CHANGING REGISTRATION.—Subsection (a) shall not apply with respect to a voter registered to vote in a State for any election held after the voter notifies the State that the voter no longer wishes to be registered to vote in the State or after the State determines that the voter has registered to vote in another State.

"(c) REVISION OF OFFICIAL POST CARD FORM.—The Presidential designee shall revise the official post card form (prescribed under section 101) to enable a voter using the form to—

"(1) request an absentee ballot for each election for Federal office held in a State during a year; or

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"(2) request an absentee ballot for only the next scheduled election for Federal office held in a State.

"(d) NO EFFECT ON VOTER REMOVAL PROGRAMS.—Nothing in this section may be construed to prevent a State from removing any voter from the rolls of registered voters in the State under any program or method permitted under section 8 of the National Voter Registration Act of 1993.".

SEC. 605. ADDITIONAL DUTIES OF PRESIDENTIAL DESIGNEE UNDER UNIFORMED AND OVERSEAS CITIZENS ABSENTEE VOTING ACT.

(a) EDUCATING ELECTION OFFICIALS ON RESPONSIBILITIES UNDER ACT.—Section 101(b)(1) of the Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff(b)(1)) is amended by striking the semicolon at the end and inserting the following: ", and ensuring that such officials are aware of the requirements of this Act;".

(b) DEVELOPMENT OF STANDARD OATH FOR USE WITH MATERIALS.—

(1) IN GENERAL.—Section 101(b) of such Act (42 U.S.C. 1973ff(b)) is amended—

(A) by striking "and" at the end of paragraph (5);

(B) by striking the period at the end of paragraph (6) and inserting "; and"; and

(C) by adding at the end the following new paragraph:

"(7) prescribe a standard oath for use with any document under this title affirming that a material misstatement of fact in the completion of such a document may constitute grounds for a conviction for perjury.".

(2) REQUIRING STATES TO USE STANDARD OATH.—Section 102(a) of such Act (42 U.S.C. 1973ff–1(b)), as amended by sections 603 and 605(a), is amended—

(A) by striking "and" at the end of paragraph (3);

(B) by striking the period at the end of paragraph (4) and inserting "; and"; and

(C) by adding at the end the following new paragraph:

"(5) if the State requires an oath or affirmation to accompany any document under this title, use the standard oath prescribed by the Presidential designee under section 101(b)(7).".

(c) PROVIDING BREAKDOWN BETWEEN OVERSEAS VOTERS AND ABSENT UNIFORMED SERVICES VOTERS IN STATISTICAL ANALYSIS OF VOTER PARTICIPATION.—Section 101(b)(6) of such Act (42 U.S.C. 1973ff(b)(6)) is amended by inserting after "participation" the following: "(listed separately for overseas voters and absent uniformed services voters)".

SEC. 606. USE OF BUILDINGS ON MILITARY INSTALLATIONS AND RESERVE COMPONENT FACILITIES AS POLLING PLACES.

(a) LIMITED USE OF MILITARY INSTALLATIONS AUTHORIZED.—Section 2670 of title 10, United States Code, is amended—

(1) by striking "Under" and inserting "(a) USE BY RED CROSS.—Under";

(2) by striking "this section" and inserting "this subsection"; and

(3) by adding at the end the following new subsection:

"(b) USE AS POLLING PLACES.—(1) Notwithstanding any other provision of law, the Secretary of a military department may make a building located on a military installation under the jurisdiction of the Secretary available for use as a polling place in any Federal, State, or local public election, but only if such use is limited to eligible voters who reside on that military installation.

"(2) If a building located on a military installation is made available under paragraph (1) as the site of a polling place, the Secretary shall continue to make the building available for subsequent elections unless the Secretary provides to the appropriate State or local election officials advance notice, in a reasonable and timely manner, of the reasons why the building will no longer be made available as a polling place.

"(3) In this section, the term 'military installation' has the meaning given the term in section 2687(e) of this title.".

(b) USE OF RESERVE COMPONENT FACILITIES.—(1) Section 18235 of title 10, United States Code, is amended by adding at the end the following new subsection:

"(c) Pursuant to a lease or other agreement under subsection (a)(2), the Secretary may make a facility covered by subsection (a) available for use as a polling place in any Federal, State, or local public election notwithstanding any other provision of law. If a facility is made available as the site of a polling place with respect to an election, the Secretary shall continue to make the facility available for subsequent elections unless the Secretary provides to the appropriate State or local election officials advance notice, in a reasonable and timely manner, of the reasons why the facility will no longer be made available as a polling place.".

(2) Section 18236 of such title is amended by adding at the end the following:

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"(e) Pursuant to a lease or other agreement under subsection (c)(1), a State may make a facility covered by subsection (c) available for use as a polling place in any Federal, State, or local public election notwithstanding any other provision of law.".

(c) CONFORMING AMENDMENTS TO TITLE 18.—(1) Section 592 of title 18, United States Code, is amended by adding at the end the following new sentence:

"This section shall not apply to the actions of members of the Armed Forces at any polling place on a military installation where a general or special election is held in accordance with section 2670(b), 18235, or 18236 of title 10.".

(2) Section 593 of such title is amended by adding at the end the following new sentence:

"This section shall not apply to the actions of members of the Armed Forces at any polling place on a military installation where a general or special election is held in accordance with section 2670(b), 18235, or 18236 of title 10.".

(d) CONFORMING AMENDMENT TO VOTING RIGHTS LAW.—Section 2003 of the Revised Statutes of the United States (42 U.S.C. 1972) is amended by adding at the end the following new sentence: "Making a military installation or reserve component facility available as a polling place in a Federal, State, or local public election in accordance with section 2670(b), 18235, or 18236 of title 10, United States Code, is deemed to be consistent with this section.".

(e) CLERICAL AMENDMENTS.—(1) The heading of section 2670 of title 10, United States Code, is amended to read as follows:

"§ 2670. Buildings on military installations: use by American National Red Cross and as polling places in Federal, State, and local elections".

(2) The item relating to such section in the table of sections at the beginning of chapter 159 of such title is amended to read as follows:

"2670. Buildings on military installations: use by American National Red Cross and as polling places in Federal, State, and local elections.".

TITLE VII—REDUCED POSTAGE RATES FOR OFFICIAL ELECTION MAIL

SEC. 701. REDUCED POSTAGE RATES FOR OFFICIAL ELECTION MAIL.

(a) IN GENERAL.—Section 3629 of title 39, United States Code, is amended to read as follows:

"§ 3629. Reduced rates for official election mail

"(a) Notwithstanding any other provision of this title, the rate of postage for any first-class mail matter shall, in the case of official election mail, be equal to 50 percent of the regular first-class rate, subject to subsection (c).

"(b) For purposes of this section, the term 'official election mail' means any mailing by a State or local election official that—

"(1) is mailed in the course of official business;

"(2) consists of voter registration or election information or assistance prepared and mailed in a nonpartisan manner; and

"(3) bears such logo or other markings as the Postal Service may require.

Such term does not include any mailing that includes any mail matter intended to promote government action unrelated to the conduct of an election.

"(c) Nothing in this section shall, with respect to any official election mail, be considered to make unavailable—

"(1) any free mailing privilege under section 3406 or any other provision of law for which such mail otherwise qualifies; or

"(2) any reduced rate of postage under section 3626 or any other provision of law for which such mail otherwise qualifies, if lower than the rate that would otherwise apply under subsection (a).".

(b) CLERICAL AMENDMENT.—The table of sections for chapter 36 of title 39, United States Code, is amended by striking the item relating to section 3629 and inserting the following:

"3629. Reduced rates for official election mail.".

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TITLE VIII—TRANSITION PROVISIONS

Subtitle A—Transfer to Commission of Functions Under Certain Laws

SEC. 801. FEDERAL ELECTION CAMPAIGN ACT OF 1971.

(a) TRANSFER OF FUNCTIONS OF OFFICE OF ELECTION ADMINISTRATION OF FEDERAL ELECTION COMMISSION.—There are transferred to the Election Assistance Commission established under section 201 all functions which the Office of the Election Administration, established within the Federal Election Commission, exercised before the date of enactment of this Act.

(b) CONFORMING AMENDMENT.—Section 311(a) of the Federal Election Campaign Act of 1971 (2 U.S.C. 438(a)) is amended—

(1) in paragraph (8), by inserting "and" at the end;

(2) in paragraph (9), by striking "; and" and inserting a period; and

(3) by striking paragraph (10) and the second and third sentences.

SEC. 802. NATIONAL VOTER REGISTRATION ACT OF 1993.

(a) TRANSFER OF FUNCTIONS.—There are transferred to the Election Assistance Commission established under section 201 all functions which the Federal Election Commission exercised under the National Voter Registration Act of 1993 before the date of enactment of this Act.

(b) CONFORMING AMENDMENT.—Section 9(a) of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg–7(a)) is amended by striking "Federal Election Commission" and inserting "Election Assistance Commission".

SEC. 803. TRANSFER OF PROPERTY, RECORDS, AND PERSONNEL.

(a) PROPERTY AND RECORDS.—The contracts, liabilities, records, property, and other assets and interests of, or made available in connection with, the offices and functions of the Federal Election Commission which are transferred by this subtitle are transferred to the Election Assistance Commission for appropriate allocation.

(b) PERSONNEL.—

(1) IN GENERAL.—The personnel employed in connection with the offices and functions of the Federal Election Commission which are transferred by this subtitle are transferred to the Election Assistance Commission.

(2) EFFECT.—Any full-time or part-time personnel employed in permanent positions shall not be separated or reduced in grade or compensation because of the transfer under this subsection during the 1-year period beginning on the date of the enactment of this Act.

SEC. 804. EFFECTIVE DATE; TRANSITION.

(a) EFFECTIVE DATE.—This title and the amendments made by this title shall take effect upon the appointment of all members of the Election Assistance Commission under section 203.

(b) TRANSITION.—With the consent of the entity involved, the Election Assistance Commission is authorized to utilize the services of such officers, employees, and other personnel of the entities from which functions have been transferred to the Election Assistance Commission under this title or the amendments made by this title for such period of time as may reasonably be needed to facilitate the orderly transfer of such functions.

Subtitle B—Coverage of Commission Under Certain Laws and Programs

SEC. 811. TREATMENT OF COMMISSION PERSONNEL UNDER CERTAIN CIVIL SERVICE LAWS.

(a) COVERAGE UNDER HATCH ACT.—Section 7323(b)(2)(B)(i)(I) of title 5, United States Code, is amended by inserting "or the Election Assistance Commission" after "Commission".

(b) EXCLUSION FROM SENIOR EXECUTIVE SERVICE.—Section 3132(a)(1)(C) of title 5, United States Code, is amended by inserting "or the Election Assistance Commission" after "Commission".

SEC. 812. COVERAGE UNDER INSPECTOR GENERAL ACT OF 1978.

(a) IN GENERAL.—Section 8G(a)(2) of the Inspector General Act of 1978 (5 U.S.C. App.) is amended by inserting "the Election Assistance Commission," after "Federal Election Commission,".

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(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect 180 days after the appointment of all members of the Election Assistance Commission under section 203.

TITLE IX—MISCELLANEOUS PROVISIONS

SEC. 901. STATE DEFINED.

In this Act, the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, and the United States Virgin Islands.

SEC. 902. MISCELLANEOUS PROVISIONS TO PROTECT INTEGRITY OF ELECTION PROCESS.

(a) CLARIFICATION OF ABILITY OF ELECTION OFFICIALS TO REMOVE REGISTRANTS FROM OFFICIAL LIST OF VOTERS ON GROUNDS OF CHANGE OF RESIDENCE.—Section 8(b)(2) of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg–6(b)(2)) is amended by striking the period at the end and inserting the following: ", except that nothing in this paragraph may be construed to prohibit a State from using the procedures described in subsections (c) and (d) to remove an individual from the official list of eligible voters if the individual has not voted or appeared to vote in 2 or more consecutive general elections for Federal office and has not notified the applicable registrar (in person or in writing) or responded to a notice sent by the applicable registrar during the period in which such elections are held that the individual intends to remain registered in the registrar's jurisdiction.".

(b) PROHIBITING EFFORTS BY POLL WORKERS TO COERCE VOTERS TO CAST VOTES FOR EVERY OFFICE ON BALLOT.—Section 594 of title 18, United States Code, is amended—

(1) by striking "Whoever" and inserting "(a) Whoever"; and

(2) by adding at the end the following new subsection:

"(b) For purposes of subsection (a), a poll worker who urges or encourages a voter who has not cast a vote for each office listed on the ballot to return to the voting booth to cast votes for every office, or who otherwise intimidates, harasses, or coerces the voter to vote for each such office (or who attempts to intimidate, harass, or coerce the voter to vote for each such office), shall be considered to have intimidated, threatened, or coerced (or to have attempted to intimidate, threaten, or coerce) the voter for the purpose of interfering with the voter's right to vote as the voter may choose. Nothing in this subsection shall prohibit a poll worker from providing information to a voter who requests assistance.".

SEC. 903. NO EFFECT ON OTHER LAWS.

(a) IN GENERAL.—Nothing in this Act and no action taken pursuant to this Act shall supersede, restrict, or limit the application of the Voting Rights Act of 1965, the National Voter Registration Act of 1993, the Voting Accessibility for the Elderly and Handicapped Act, or the Americans with Disabilities Act of 1990.

(b) NO CONDUCT AUTHORIZED WHICH IS PROHIBITED UNDER OTHER LAWS.—Nothing in this Act authorizes or requires any conduct which is prohibited by the Voting Rights Act of 1965, the National Voter Registration Act of 1993, or the Americans with Disabilities Act of 1990.

(c) APPLICATION TO STATES, LOCAL GOVERNMENTS, AND COMMISSION.—Except as specifically provided in the case of the National Voter Registration Act of 1993, nothing in this Act may be construed to affect the application of the Voting Rights Act of 1965, the National Voter Registration Act of 1993, or the Americans with Disabilities Act of 1990 to any State, unit of local government, or other person, or to grant to the Election Assistance Commission the authority to carry out activities inconsistent with such Acts.

PURPOSE OF THE LEGISLATION

The purpose of H.R. 3295, the Help America Vote Act of 2001, can be stated very simply—it is to improve our country's election system. The circumstances surrounding the election that took place in November 2000 brought an increased focus on the process of election administration, and highlighted the need for improvements. The Help America Vote Act of 2001 will make it possible to implement needed improvements.

Historically, elections in this country have been administered at the state and local level. This system has many benefits that must

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be preserved. The dispersal of responsibility for election administration has made it impossible for a single centrally controlled authority to dictate how elections will be run, and thereby be able to control the outcome. This leaves the power and responsibility for running elections where it should be, in the hands of the citizens of this country. Local control has the further added benefit of allowing for flexibility, so that local authorities can tailor their procedures to meet the demands of disparate and unique communities. Further by leaving the responsibility for election administration in the hands of local authorities, if a problem arises, the citizens who live within their jurisdictions know whom to hold accountable. The local authorities who bear the responsibility cannot now, and should not in the future be able to, point the finger of blame at some distant, unaccountable, centralized bureaucracy.

While local control must be preserved, it is time to recognize that the federal government can play a valuable roll by assisting state and local government in modernizing their election systems. H.R. 3295 will, for the first time, give the state and local governments some financial assistance, from the federal government, to improve their election infrastructure.

SUMMARY OF THE LEGISLATION

PUNCH CARD REPLACEMENT PROGRAM

The disadvantages of punch card voting systems were highlighted during the recount that took place in Florida following the November 2000 election. Large portions of the American public have lost confidence in them. For systems that use a blank punch card, a failure to properly align the card behind the ballot can result in the casting of a vote for a candidate the voter did not mean to select. The perforated chad on the punch card may not be completely punched out, so the machine counter does not register any vote for that office. In the event of a close election, punch cards are ill suited to a recount. Running the ballots through a counter repeatedly during a recount can result in the detachment of additional chads, essentially creating votes that were never meant to be cast. If a manual recount must be resorted to, officials are faced with the unenviable task of attempting to divine the intent of a voter based on the amount of depression or partial detachment of a chad.

H.R. 3295 seeks to make punch card systems a part of our history, not our future. It authorizes $400 million to replace them. Any State or jurisdiction that used punch card voting systems in the November 2000 general election is eligible to receive up to $6000 per precinct to replace them. They must obligate the funds before the next federal election in November 2002, and must have all their punch card systems replaced before the election in November 2004 (though they can get either deadline extended by 2 years for good cause shown). To hasten the dispersal of these dollars, this program will be administered by the General Services Administration.

Some jurisdictions may choose not to replace their punch card systems, but H.R. 3295 makes funds available to those jurisdictions that want to modernize their systems. Additionally, the bill makes available funds for enhancement of these systems. For example,

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punch card systems can be made far more reliable if they are counted at the precinct, rather than at a central location. The enhancement program will provide funds to make improvements that will restore public confidence in punch card machines where they remain in use.

ELECTION ASSISTANCE COMMISSION

H.R. 3295 creates a new federal commission that will be tasked with providing information and assistance to state and local governments on best practices to successfully administer elections. The Commission has been structured to perform an advisory, as opposed to an administrative roll, in elections. The Commission has no rule making authority. The four commissioners will be recommended by the congressional leadership and will be appointed by the President. No more than two commissioners may be of the same party, to assure that the Commission acts in a nonpartisan fashion. The Commissioners will have experience or expertise in election administration or the study of elections, and will serve on a part time basis.

In establishing this commission, the Committee sought to involve the state and local officials who will be tasked with carrying out its recommendations. Two boards were created under the Commission, the Advisory Board and the Standards Board. The twenty-five member Advisory Board will consist of representatives from various groups that are involved with or care about election administration issues. The Standards Board will consist of the chief state election official, and a local election official, from each of the 50 states, the District of Columbia and the territories. The Boards will review and comment on any proposed standards prior to consideration by the Commission. Since those who serve on the Board will determine if their jurisdictions will adopt any of the voluntary standards approved, their thoughts and comments will be given serious attention by the Commission.

There is also created under the Commission a Technical Standards Development Committee. The Development Committee will assist the Executive Director of the Commission in the development of voluntary standards by recommending standards pertaining to the usability, accuracy, security, accessibility and integrity of voting systems and equipment. The Development Committee will be chaired by the Director of the National Institute of Standards and Technology, and will consist of members of the Board of Advisors and members of the Standards Board, among others.

Once the Development Committee has developed proposed voluntary standards, it will submit them to the Executive Director. The Executive Director shall then forward the standards (as developed or with modifications) to the Boards for review and comment. After the Boards have had an opportunity to review or comment, the standards will be forwarded to the Commission, which can approve them by majority vote.

This process will ensure that the standards are developed in a way that involves persons with real world technical expertise and experience in election administration. It is a process designed to give the people who will be responsible for administering elections, the state and local elections officials, a voice in the standards development process. By heeding that voice, the Commission should

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be able to make recommendations that truly reflect the recognized best practices of election administration.

The Commission will have grant making power. In addition to distributing the election fund payments, the bill authorizes two grant programs. One grant program will be devoted to research on voting technology improvements, the second will distribute grants for pilot programs to test equipment and technology. The research and development program is designed to encourage innovative technological and management strategies that will improve the accessibility, efficiency and security of election systems. This program in conjunction with the pilot program should foster development of these strategies where it may not be cost effective for the private sector to conduct research on their own. Universities, local jurisdictions, and the private sector are eligible to participate alone or as partners. Ideas that can be explored could include, for example, developing ways to communicate in different ways to voters about their registration status before the election. This would avoid unnecessary confusion on Election Day about whether voters are registered and where they should vote. Use of the Internet or telephone systems in this initiative could preclude a great deal of confusion on Election Day and minimize unnecessary administrative burdens processing provisional ballots post election. These and other ideas could be explored to ensure that our election system and its associated technologies are constantly being improved.

FUNDING CONDITIONS

H.R. 3295 authorizes $2.25 billion over three years for Election Fund payments. These funds will be provided to states at a matching rate of 75% (federal) to 25% (state). States will be permitted to use these dollars for a range of activities which improve election administration. This will give states the opportunity to direct fund payments to the areas where the resources are most needed. Jurisdictions that want to modernize their voting equipment can use election fund payments for that purpose. Others may have more pressing needs for modernized statewide registration systems, or better education and training of voters and poll workers. The Election Fund is designed to allow states to determine their greatest needs, and direct resources where they are most needed.

While the States will have flexibility in deciding where to direct dollars, they will be required to meet certain requirements as a condition of receiving funds. These funding conditions are not intended to be unduly burdensome, or to require states to incur obligations that will exceed the amount of funds appropriated and made available to the States. They will, however, ensure that the federal dollars are being spent appropriately, and that recipients meet certain criteria. The Commission will disperse election fund payments, and will monitor compliance with the funding conditions.

HELP AMERICA VOTE FOUNDATION AND COLLEGE PROGRAM

There is a critical shortage of poll-workers in this country. Many election officials fear the problem will grow even worse as the volunteers they rely on, many of them retirees, grow older with little national effort to recruit new volunteers. Experienced and well trained poll workers are essential to making our elections run prop-

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erly. They provide assistance to voters, make sure proper procedures are followed, and guard the integrity of our elections.

A second well recognized problem in this country is the disengagement of our young people from the electoral process. For far too many of our young citizens, politics is a confusing and uninteresting side show in which they have no desire to participate.

The creation of the Help America Vote Foundation and College Program is designed to address both of these problems. These programs will encourage civic involvement by high school and college students by making them available for service as non-partisan poll workers and assistants to local election authorities. This will have the two-fold benefit of alleviating the shortage of volunteers, while also exposing our youth to the electoral process. Ideally, many of those who will become exposed to the election process for the first time through this program, will cultivate a life long interest in the process, and will continue to serve as election volunteers for many years, or at a minimum continue to be engaged in American civic life as informed citizens and voters.

The College Program will be administered by the Election Assistance Commission. The High School Program will be set up as a federally chartered corporation. The Commission will make grants for the college program, while the federal corporation created will administer the High School program. Both programs must be carried out without partisan bias, and without promoting any particular point of view regarding any issue.

MINIMUM STANDARDS

The minimum standards in H.R. 3295 require States to meet certain criteria, regardless of whether or not they accept election fund payments. While they impose minimum requirements, they allow the states to develop their own laws and procedures to fulfill the requirements. The goal of the minimum standards is to improve our election system without issuing dictates that would rob states of the ability to craft their own solutions.

The Minimum Standards are:

(1) The State will implement a Statewide voter registration system networked to every local jurisdiction in the State, with provisions for sharing data with other States, except that this paragraph shall not apply in the case of a State in which, under law in effect continuously on and after the date of the enactment of this Act, there is no voter registration requirement for any voter in the State with respect to an election for Federal office.

One of the most exciting and promising reforms that the Committee explored is statewide registration. In its June 2001 report to Congress, the bipartisan Federal Election Commission, after consulting with state and local election officials, recommended that states "1) develop and implement a statewide computerized voter registration database; 2) insure that all local registration offices are computerized; and 3) link their statewide computerized system, where feasible, with the computerized systems of the collateral public agencies relevant to the NVRA (motor-vehicle offices, public-assistance offices, etc.)". The bi-partisan National Commission on Federal Election Reform ("Ford/Carter Commission") also recommended states adopt such a system, as did the nation's election

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administrators in their non-partisan National Task Force on Election Reform.

Creation of such a system will make the registration lists more accurate, and easier to update. It should reduce the incidence of voters appearing at a polling place only to discover that no record of their registration can be found. When voters move from one jurisdiction to another within that state, the statewide system will be able to track that movement. If for some reason a voter remained registered at their old address, the election officials will be able to see that and take corrective action. Requiring states to develop statewide databases will modernize and improve registration nationwide.

People are mobile, but more than three-quarters of all residential moves are in-state. An effective statewide database can therefore be quite useful, including its capacity to address such common issues as the registration of in-state college students and people with second homes within a state. But perhaps the most important beneficiaries of statewide registration systems will be members of lower-income groups, who are more likely to move than higher-income groups within the same state.

The minimum standard requires states to create a single database that is official, centralized and administered at the state level. Databases which simply link existing local databases do not qualify as satisfying this requirement. Multiple databases linking various vendor or local government programs to a statewide system is not sufficient to satisfy this requirement. The intent of the minimum standard is to establish one database that is identical and is the same program throughout the state and local jurisdictions so that all training can be uniform, all records requirements are identical, and that the state has full authority for maintenance and quality matters related to the database. The intent is also to assure that there are not jurisdictional nor vendor issues in terms of operability, problem resolution, or other types of reasons for one part of the system not matching the other.

It is likely that states will find it necessary to create a unique identifier to distinguish registered voters who happen to have the same name and/or birth date. The unique identifier so created will be used to assure that list maintenance functions are attributable to the correct voter; so as to avoid removing registrants who happen to have the same name and birth date as a felon, for example. States are encouraged to use the unique identifier to share information with other governmental offices for purposes such as death certificates, court and tax records, etc., to assure proper maintenance of voter records, file integrity, and protection of voter rights. It is the intent of Congress to encourage the states to develop each statewide database system in such a manner that it will be possible at some point in the future for states to share data between them for the appropriate additions and removal of voters from their rolls.

(2) The State election system includes provisions to ensure that voter registration records in the State are accurate and are updated regularly, including the following:

(A) A system of file maintenance which removes registrants who are ineligible to vote from the official list of eligible voters. Under such system, consistent with the National Voter Registration Act of

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1993, registrants who have not voted in 2 or more consecutive general elections for federal office and who have not responded to a notice shall be removed from the official list of eligible voters, except that no registrant may be removed solely by reason of a failure to vote.

(B) Safeguards to ensure that eligible voters are not removed in error from the official list of eligible voters.

States must ensure that their registration list is accurate and is updated regularly. Leaving ineligible voters on the rolls leads to a number of problems. It increases costs as more ballots must be printed and more mailings must be sent out to voters that have died or moved away. This is a waste of vital resources that serves no purpose. One of the most damaging effects of inaccurate rolls is that they lead to the public perception that the process can be easily manipulated. When the number of voters on a registration list exceeds a jurisdiction's voting age population (itself an artificially high number because it includes non-citizens and person only temporarily in the jurisdiction), the perception is that the process has no integrity and accountability. Furthermore, when ineligible voters are left on rolls indefinitely, it invites fraud. Those who wish to commit fraud can vote in more than one jurisdiction, or more problematic, cast multiple votes in the names of those they know are no longer eligible.

A fraudulent vote that nullifies a legal one, disenfranchises the legal voter as surely as if his or her vote had never been cast at all. States are therefore obligated to maintain accurate lists, and thereby minimize the opportunities for and the incidence of fraud.

The minimum standard requires that removal of those deemed ineligible must be done in a manner consistent with the National Voter Registration Act. The procedures established by NVRA that guard against removal of eligible registrants remain in effect under this law. Accordingly, H.R. 3295 leaves NVRA intact, and does not undermine it in any way.

(3) The State permits, by the deadline required under section 504(b), in-precinct provisional voting by every voter who claims to be qualified to vote in the State, or has adopted an alternative which achieves the same objective, except that this paragraph shall not apply in the case of a State in which, under law in effect continuously on and after the date of the enactment of this Act, all votes in the State in general elections for Federal office are cast by mail.

The Committee spent considerable time and energy learning about in-precinct provisional voting. In spite of the statewide registration system and file maintenance requirements, there will still be some instances where a voter who is qualified to vote does not appear on the registration list when they present themselves to vote.

In-precinct provisional voting enables people whose eligibility is in doubt to vote in their precinct, without having to travel somewhere else to swear they are eligible to vote, and have their registration verified in the days following an election. The Committee believes provisional voting is necessary to the administration of a fair, democratic, and effective election system, and represents the ultimate safeguard to ensuring a person's right to vote. For these reasons, the Committee has included it in the bill. Under the bill,

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in-precinct provisional voting will be required in every jurisdiction except states that have or plan to adopt an alternative which achieves the same objective, such as same-day registration or voting-by-mail.

Studies of the nation's election system find that a significant problem voters experience is to arrive at the polling place believing that they are eligible to vote, and then to be turned away because the election workers cannot find their names on the list of qualified voters.

There are at least eight reasons this occurs:

1. Voters may be turned away because of administrative errors. Poll workers may overlook their names or not match them up with a different spelling. In most jurisdictions, poll workers work from printed lists of voters produced for each precinct. Staff in the offices that produce these lists can make clerical errors.

2. Poll workers may overlook a voter's name on the precinct roster, or may not be aware that the voter is listed on a supplemental roster containing the names of voters who registered shortly before the election.

3. Voters may have their names improperly removed from the voting rolls.

4. Voters may appear at the wrong precinct because they did not receive, or received but did not heed, a notice that their polling place had moved.

5. Motor-vehicle departments or social-service agencies that are supposed to make registration applications available to clients may improperly handle the applications or fail to forward them to proper election officials in a timely manner.

6. Voters may fail to notify their registrar, or fail to re-register, after a change of address.

7. Well-intentioned organizations seeking to register voters may mishandle registration materials.

8. Otherwise qualified citizens may simply fail to register.

Whatever the cause, eligible citizens may believe they have registered. Unfortunately, when they subsequently attempt to vote, they are not on the list. In-precinct provisional voting, or an alternative which achieves the same objective, such as same-day registration (currently used by Idaho, Maine, New Hampshire, Wisconsin, Wyoming, and Minnesota); voting-by-mail (used by Oregon and Washington State); or no voter registration requirement (North Dakota), can solve this problem.

In-precinct provisional voting has four key advantages:

1. Legally qualified voters are no longer turned away at the polls.

2. In-precinct provisional voting limits the ability of states to impose extra hurdles that may have the effect of deterring the use of provisional voting. For example, in Pennsylvania, voters whose names do not appear on the precinct rosters are required to travel to police stations to see an election judge, who determines whether or not they have the right to vote. Voters must then return to the polling location in order to cast their votes. Many voters, who are faced with the choice of traveling to the police station or leaving, ultimately do not vote either because they are intimidated by going to a police station or because it is logistically difficult or inconvenient.

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3. Voter participation is easier and more efficient, as poll workers can provide an option to voters who may be angry or frustrated by their absence from the registration list. These often ill-trained and low-paid temporary workers do not have to research or resolve cases on the spot, while other voters impatiently wait in line. Nor are more senior election officials tied down in resolving such questions during Election Day.

4. Voter registration becomes more accurate. The process becomes another way to amend registrations for people who evidently wish to vote. Officials can detect and correct mistakes and the research process, by helping senior administrators notice which problems are causing the mistakes, thus can help many other current and potential voters.

(4) The State has adopted uniform standards that define what will constitute a vote on each category of voting equipment certified for use in the State.

Requiring states to have a uniform standard for what constitutes a vote will ensure that voters receive the equal protection of the laws with respect to the counting of their ballots. Votes should be counted using objective standards put in place before an election contest. Whether or not a vote is counted should not depend on where a voter happens to live, nor should it depend on varying subjective interpretations of state laws by local election officials. Similarly marked ballots should not be discarded in one jurisdiction, but counted in another.

As Americans learned in November and December 2000, a major part of the problem in Florida was that the vote-counting process was subjective and inconsistent, with definitions of what constitutes a vote varying from jurisdiction to jurisdiction. The United States Supreme Court found such a standardless process to be a violation of the Equal Protection Clause of the Constitution.

As the Committee discovered, Florida is not alone. Most states do not prescribe a standard for election officials to follow in recounting votes. Amorphous statutory references to the "intent of the voter" invite still more confusion and ambiguity. "Intent of the voter" is not a standard but rather a subjective judgment, virtually guaranteeing litigation. It is unfair to voters, to candidates and to democracy.

The crux of the problem is that all systems that rely on individual ballots inherently raise questions as to whether a particular configuration is or is not a "vote." Such systems include traditional paper ballots, punch card ballots, connect the arrow ballots, or optical scan ballots, all of which the voter must alter in some manner to create a vote. Lever systems and DRE machines do not create a ballot with voter marks; therefore, there is no particular mark available to review.

Because every vote properly cast must be counted, and recounts are routinely conducted to make certain that all ballots have been properly counted, the Committee believes that uniform standards for what constitutes a vote must be adopted by all states. The definition of a vote shall be as objective as possible and spelled out in clear language before Election Day.

(5) The State has implemented safeguards to ensure that absent uniformed services voters (as defined in section 107(1) of the Uniformed and Overseas Citizens Absentee Voting Act) and overseas

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voters (as defined in section 107(5) of such Act) in the jurisdiction have the opportunity to vote and to have their votes counted.

States must implement safeguards to ensure that absent uniformed service personnel and overseas voters have the opportunity to vote and have their votes counted. Those serving in our military and citizens living abroad face many hurdles when it comes to registering, receiving ballots and casting them timely. States must take action to ensure that these voters have the opportunity to vote and have their votes counted. States need to recognize the difficulties faced by these voters, and take steps to see that their votes are counted. (See below for additional provisions affecting these voters).

(6) The State requires new voting systems to provide a practical and effective means for voters with physical disabilities to cast a secret ballot.

Advancements in technology make it possible for voters with physical disabilities to cast a secret ballot. New systems should strive to make it possible for voters with physical disabilities to cast secret ballots. (See below for additional provisions affecting these voters).

(7) If the State uses voting systems which give voters the opportunity to correct errors, the State shall ensure that voters are able to check for and correct errors under conditions which assure privacy. States, and units of local government within the States, replacing all voting machines within their jurisdiction shall ensure that the new voting system gives voters the opportunity to correct errors before the vote is cast.

In the 2000 presidential election, nearly two million voters, 2% of those who went to the polls, either did not mark their ballot, or marked it in a way that no vote was counted in the presidential contest. Election experts call these votes in which no choice is counted "residual votes." These millions of voters either spoiled their ballots by "overvoting" (appearing to vote for more than one candidate), or by "undervoting" (they marked their choice in a manner that could not be counted, or they marked no choice at all). Of course, an undervoted ballot is not necessarily "spoiled". Millions of voters intentionally do not vote in certain contests for various reasons, complicated the task of determining voter rates.

As the Committee learned in our June hearing, the consensus among engineers, computer scientists, and political scientists who study election systems is that the number of residual votes and the rate of voter error are greatly affected by the kind of equipment that is used. According to one expert who testified before the Committee on what is known as "human usability studies," predictably high levels of user error are evidence of system failure, flawed instructions, or faulty system design.

Whatever the specific causes for residual votes, the fact remains that some votes go uncounted because voters have no opportunity to detect and correct errors before they cast their ballots. Fortunately, there are voting systems available that permit voters to correct ballots in the precinct before they are cast.

The bill will ensure that as jurisdictions scrap obsolete voting systems, they replace them with systems that have the capability to detect errors, for poll site voting (the provisions for second chance voting cannot currently be applied to absentee or mail balloting since the ballot and the voter are separated before counting).

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To be sure, this provision will not instantly mandate that all machines in all polling places by a date certain have a second-chance voting capability. The Committee seriously explored the proposal to require all 200,000 jurisdictions nationwide to have second-chance voting by 2004 or, at the latest, 2006. Jurisdictions that failed to meet the deadline would be subject to suite in federal court. As the Committee learned more about the production capability of the voting machine industry, the timelines and procurement processes counties and states must go through to award contracts to voting-machine vendors, and the huge costs involved, the Committee decided that an aggressive deadline might cause more serious problems than it would solve. One disturbing possibility was that jurisdictions that could not meet the deadline, most likely poorer ones, might have their election systems shut down or seriously disrupted during an election while other jurisdictions in the state, most likely affluent ones, that met the deadline could proceed with their elections. The Committee was hard-pressed to imagine a more chilling 14th Amendment problem than this, where some eligible voters in a state could exercise the franchise while others could not.

As to whether the term "error" means overvote, undervote, or something else, the Committee referred to the findings of the National Commission on Federal Election Reform, commonly known as the "Ford-Carter Commission." The Commission's definition of "error" is set forth in the accompanying document.

As already noted, many voters intentionally do not vote in every race. The purpose of second chance technology is to provide voters information about their ballot. Voter privacy is an important right that must be protected. While voters should have the opportunity to verify the accuracy of their ballot, they should not be forced to do so under the scrutiny of a poll worker. Once a voter is satisfied of the accuracy of their ballot, it is not the roll or responsibility of a poll worker to inquire as to the voters intent.

Poll workers should, upon request, be available to provide assistance to voters, but voters should not be prompted by poll workers, or have to explain to poll workers why they have not voted in a certain race. The bill ensures voter privacy, by requiring that jurisdictions whose machines have second chance technology must ensure that voters are able to check for and correct errors on their ballots under conditions which assure privacy.

MILITARY AND OVERSEAS VOTERS

Those who serve in our military, and citizens living abroad, face peculiar hardships when attempting to vote. Relatively simple things like applying for and transmitting ballots can become a very difficult and lengthy process for these voters. Steps must be taken to protect the rights of these citizens. Military voters risk their very lives in defense of this country. We must repay them by doing everything possible to see that they are able to vote and have their votes counted.

A recent report by the General Accounting Office revealed that over 40% of the installations they visited had not assigned voting assistance officers. The Department of Defense must make certain that a sufficient number of voting assistance officers are assigned, and that those who are assigned are doing their duties. H.R. 3295 requires the Secretary of Defense to certify to Congress that, at a

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minimum, a voting assistance officer has been assigned to every installation and major command.

The bill also makes voter registration forms available to service personnel at the time of enlistment, reenlistment or extension of enlistment, to make it easier for them to register. The Secretary of Defense must also ensure that all ballots are properly postmarked, or marked with some other official mark, so that state officials can determine when the ballot left the voter's hands.

States are also required to designate a single point of contact for those in the service and living abroad, to make it easier for them to obtain needed information about elections, registration and voting.

The bill contains a number of the key provisions of the Uniformed and Overseas Citizen Absentee Voting Reform Act of 2001, H.R. 1997, which will help remove existing obstacles to absentee voting now confronting members of our armed services and overseas voters. Those obstacles contributed to the appallingly high level of rejected ballots in Florida and to the inability to vote of many others who wished to do so.

Similarly, the provision requiring the collection and publication of statistics on overseas voting by the states will fill one of the most serious gaps in our ability to monitor the adequacy of the overseas absentee voting regime. For the first time, we will all have the same information about voting access for overseas voters that we now have routinely for voters at home.

ACCESSIBILITY STANDARDS AND VOTING RIGHTS OF PERSONS WITH DISABILITIES

Sections 102, 112, 221, 233 and 501 and Compliance with the Americans with Disabilities Act and the Voting Accessibility for the Elderly and Handicapped Act

In this bill, the Committee reaffirms that public entities, such as States and localities and their responsible officials, must comply to the extent required by law with the Americans with Disabilities Act (ADA) and the Voting Accessibility for the Elderly and Handicapped Act (VAEHA).

The committee bill will enhance compliance with the ADA and VAEHA by enlisting a range of officials in the process of regulating accessibility problems and solutions. For example, the bill requires that the chief election official of each State certify the State's compliance with the applicable provisions of the ADA and the VAEHA, and requires that recipients of election funds provide assurance of compliance with such laws as a condition of their acceptance of federal money.

Section 903 and preservation of existing law

Section 903 expressly provides that noting in the bill will supersede, restrict, or limit the application of the VAEHA, the ADA, the Voting Rights Act or the National Voting Registration Act, nor will it authorize or require any conduct prohibited under any of these laws. Thus, the bill continues unchanged—the role of the Department of Justice (DOJ) as the agency responsible for authoritatively construing the ADA and promulgating regulations.

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Voluntary accessibility standards in sections 221 and 222

The Committee bill creates mechanisms for providing States and localities with technical guidance about improving accessibility through the adoption of voluntary standards by the Election Assistance Commission. The Committee expects that the voluntary standards will offer examples of achievable methods for ensuring accessibility. One example might include the moving of a polling place from an inaccessible historic library building to an accessible city hall building nearby.

These voluntary standards to be issued by the Commission would not, however, replace accessibility regulations and technical assistance provided by the DOJ for individuals with disabilities. Rather, these standards must be consistent with DOJ's regulations, and not serve as authorization for a level of accessibility lower than required by the regulations. In fact, this need for harmonious standards is the reason the bill directs the Commission to consult with the Architecture and Transportation Barrier Compliance Board in developing its voluntary standards.

If a state accepts election fund payments, the bill requires the state to certify its compliance with the voluntary standards for voting systems. This means that a state which accepts funds will be bound by at least two independent sources of law: the state's contractual duty to comply with the Commission's standards for voting systems, and the state's statutory duty to comply with the ADA. While the Committee anticipates that the Commission will take great care to create voluntary standards in a manner that conforms to existing law, compliance with the Commission's standards cannot provide any "safe harbor" against liability under the ADA or other applicable laws.

Eligibility for election assistance funding under section 233

One of the eligibility requirements for election assistance funding is that there must be at least one voting system available in each precinct or polling place that is fully accessible to individuals with disabilities. This means that if a State accepts any election assistance funding, the State is required to purchase a fully accessible voting system for each precinct or polling place that does not already have such a Summary

TITLE I—PUNCH CARD VOTING MACHINES

Subtitle A—Replacement of Machines

Sec. 101. Establishment of program

Provides for a one-time payment, through the General Services Administration, to State or local government to replace punch card voting systems with other kinds. Requires recipients to obligate funds by the November 2002 Federal election and complete replacement by the 2004 election, but deadlines may be extended two years if approved by the Election Assistance Commission established in Sec. 201.

Sec. 102. Eligibility

Requires that State applications include assurances that the State will use the payment to replace punch card systems used in

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the 2000 election, continue to comply with the Voting Accessibility for the Elderly and Handicapped Act and Americans With Disabilities Act, and provide for alternative language accessibility as required by the Voting Rights Act and other laws.

Permits a local government to apply if the State does not, is ineligible, or will not use the payment to replace punch card systems. Requires that the application include similar assurances as those required of States.

Sec. 103. Amount of payment

Sets payment at 90% of replacement cost, or 95% for precincts where per capita income is within the lowest quartile for the United States, with a maximum of $6,000 times the number of precincts using punch card systems in the jurisdiction during the 2000 election.

Sec. 104. Audit and repayment of funds

Makes payments subject to audit. Requires recipients that fail to meet deadlines to return the funds unless granted a waiver.

Sec. 105. Punch card voting system defined

Defines punch card voting systems to include C.E.S., Datavote, PBC Counter, Pollstar, Punch Card, Vote Recorder, and Votomatic.

Subtitle A—Enhancing Performance of Existing Systems

Sec. 111. Establishment of program

Provides for a one-time payment, through the General Services Administration, to State or local governments to enhance performance of punch card voting systems, with deadlines as in Sec. 101.

Sec. 112. Eligibility

Similiar to Sec. 102, except funds used for enhancement rather than replacement of systems; also, jurisdictions may not participate in both programs.

Sec. 113. Amount of payment

Similar to Sec. 103 except maximum is $2,000 times the number of covered precincts.

Sec. 113. Audit and repayment of funds

Makes payments subject to audit. Requires recipients that fail to meet deadlines to return the funds.

Subtitle C—General Provisions

Sec. 121. Authorization of appropriations

Authorizes appropriations of $400 million, to remain available until expended. Repaid or unobligated funds will be transferred to the Election Assistance Commission.

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TITLE II—COMMISSION

Subtitle A—Establishment and General Organization

PART I—ELECTION ASSISTANCE COMMISSION

Sec. 201. Establishment

Creates an independent executive branch agency called the Election Assistance Commission.

Sec. 202. Duties

Stipulates that the Commission will serve as a national clearinghouse and resource on the administration of Federal elections as described in this title and title III.

Sec. 203. Membership and appointment

Requires that the four Commission members have election-related experience or expertise and that they be appointed by the President with the consent of the Senate, with one member each chosen from nominees submitted by the President Pro Tempore of the Senate, the Senate minority leader, the Speaker of the House of Representatives, and the House minority leader.

Establishes staggered four-year terms for members, renewable once, and prohibits members from being officers or employees of the Federal government while serving. Requires members to select a chair and vice chair from different political parties.

Sets a commissioner's salary at $30,000, plus travel expenses, and permits outside employment.

Sec. 204. Staff

Creates position of Executive Director to be appointed by the Commission for a four-year renewable term and permits that person to appoint additional staff and use outside experts. Requires staff to consult with the two boards established in this title.

Sec. 205. Powers

Empowers the Commission to hold hearings, take testimony, receive evidence, let contracts, obtain information from Federal agencies and support from the General Services Administration, and to use the mails as do other Federal agencies.

Sec. 206. Limitation on rulemaking authority

Prohibits the Commission from imposing requirements on State or local governments except as permitted under the National Voter Registration Act.

Sec. 207. Authorization of appropriations

Authorizes a maximum appropriation of $10 million per year through FY2004.

PART II—ELECTION ASSISTANCE COMMISSION STANDARDS BOARD AND BOARD OF ADVISORS

Sec. 211. Establishment

Creates a Standards Board and a Board of Advisors under the Election Assistance Commission.

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Sec. 212. Duties

Requires that the two boards review the standards described in this title.

Sec. 213. Membership of Standards Board

Sets membership at 110, to include, from each State, the chief election official and a local election official chosen by peers in the State, with no two members from a State to be from the same political party.

Requires board to select a nine-member Executive Board, with no more than five to be chief election officials, local election officials, or from the same party. Sets two-year staggered terms with a maximum of two consecutive renewals.

Sec. 214. Membership of Board of Advisors

Sets membership at 25, two each appointed by the U.S. Commission on Civil Rights; the Architectural and Transportation Barrier Compliance Board; the National Governors Association; the National Conference of State Legislatures; the National Association of Secretaries of State; the National Association of State Election Directors; the National Association of Counties; the National Association of County Recorders, Election Administrators, and Clerks; the U.S. Conference of Mayors; the Election Center; and the International Association of County Recorders, Election Officials, and Treasurers; with the Speaker of the House and the Senate majority leader each appointing one professional in science and technology; and with the chief of the Office of Public Integrity of the Department of Justice or designee also a member. Requires bipartisan, geographically diverse appoints.

Sets two-year, renewable terms. Requires election of a chair from among the members.

Sec. 215. Powers of boards; no compensation for service

Empowers each board to hold hearings, take testimony, and receive evidence, obtain information from Federal agencies and support from the General Services Administration, and to use the mails as do other Federal agencies. Prohibits issuance of subpoenas. Requires each board to meet at least yearly to vote on standards, and the Standards Board to meet at least every two years to select the Executive Board. Prohibits compensation of board members, but permits payment of travel expenses.

Sec. 216. Status of boards and members for purposes of claims against board

Applies provisions of 28 U.S.C., Chapters 161 and 171, with respect to liability of boards and members, with an exception for criminal acts and other willful misconduct.

Subtitle B—Voluntary Election Standards

Sec. 221. Development of voluntary election standards

Requires the Commission, in consultation with the two boards, to develop and adopt voluntary voting system standards, accessibility standards, and election management standards, and update them at least every four years.

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Requires that the voting system standards include security, certification and decertification procedures, usability assessment, and operational guidelines; provide for error correction by voters; include for each certified system what is proposed to constitute a vote; and provide that certified new systems permit voters with disabilities to cast a secret ballot.

Requires the Commission to serve as a clearinghouse of information on experiences of State and local governments in implementing the standards and in operating voting systems; and to make available to the public studies on certain specified issues in election administration, information on the Federal election system, election results, and information concerning issues relating to Federal, State, and local elections.

Requires consultation with the Compliance Board and other experts with respect to accessibility standards, and that the election management standards address the treatment of uniformed and overseas voters, in consultation with the Secretary of Defense.

Requires the Commission to provide for voluntary testing, certification, decertification, and recertification of voting systems; to advise State and local governments on complying with Federal laws regarding accessibility of registration and polling places; to carry out the provisions of the National Voter Registration Act regarding voter registration by mail; and to assist State officials in review of Federal election procedures.

Sec. 222. Technical Standards Development Committee

Establishes a 15-member Technical Standards Development committee, to recommend voting system standards and modifications, to be chaired by the Director of the National Institute of Standards and Technology (NIST), and with members appointed jointly by the Director and the Commission and drawn from the Standards Board, the Board of Advisors, the Compliance Board, the American National Standards Institute, and other persons with relevant scientific and technical expertise. Requires NIST to provide technical support.

Prohibits compensation of members, but permits payment of travel expenses.

Requires, when the Commission adopts any standard, publication of corresponding recommendations of the Development Committee in the Federal Register.

Sec. 223. Process for adoption of voluntary standards

Requires the Executive Director of the Commission to take recommendations of the Development Committee into account in developing standards, and for the two boards to review the proposed standards, with majority vote of the Commission required for adoption.

Sec. 224. Certification and testing of voting systems

Requires that testing and certification of voting systems be performed by nonfederal laboratories accredited by the Commission, from a list of candidates submitted by the Director of NIST, who will also monitor and review laboratory performance and, when appropriate, make recommendations to the Commission regarding continuing accreditation.

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Sec. 225. Dissemination of information

Requires the Commission to disseminate to the public—via the Internet, published reports, and other means—information on the standards and guidelines for applying them, the list of accredited laboratories, a list of certified voting system hardware and software, and other activities carried out under this subtitle.

Subtitle C—Election Assistance

Part 1—Election Fund Payments to States for Voting System Improvements

Sec. 231. Election fund payments to States for voting system improvements

Requires the Commission to make payments to qualifying States to improve the administration of elections.

Sec. 232. Allocation of funds

Sets the size of payment to a State at the greater of either a percentage of the total amount appropriated for that year, based on the size of the voting age population in that State as compared to the total for all States; or 0.5 percent of the total appropriated, except 0.1 percent for Puerto Rico, Guam, American Samoa, or the U.S. Virgin Islands.

Sec. 233. Conditions for receipt of funds

Requires a State, to be eligible, to certify that it has established an Election Fund, provided a 25 percent match, and set benchmarks for voting system performance; complies with the voluntary voting system standards and certification processes described in subtitle B or has established statutory standards that provide for error correction by voters and for auditing of ballots; provides one or more fully accessible voting systems in each precinct; complies with Federal voting rights law; and provides for voter education and training of poll workers and personnel involved in voter registration. Also requires the State to certify that the Federal share will not supplant existing State funds. Gives States discretion to choose the method of compliance

Sec. 234. Authorization of appropriations

Authorizes appropriations totaling $2.25 billion through FY2004.

Part 2—Grants for Research on Voting Technology Improvements

Sec. 241. Grants for research on voting technology improvements

Establishes a grant program to be administered by the Commission for research and development to improve election systems and technology. Requires applicants to assure that funded activities will take accessibility needs into account. Applies 18 U.S.C. 35 with respect to patent rights.

Sec. 242. Report

Requires submission of a report describing activities under the grant.

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Sec. 243. Authorization of appropriations

Authorizes appropriations of $20 million for FY 2002.

PART 3—PILOT PROGRAM FOR TESTING OF EQUIPMENT AND TECHNOLOGY

Sec. 251. Pilot program

Establishes a grant program to be administered by the Commission to implement new voting technologies on a trial basis. Requires applicants to assure that the funded activities will take accessibility needs into account.

Sec. 252. Report

Requires submission of a report describing activities under the grant.

Sec. 253. Authorization of appropriations

Authorizes appropriations of $10 million for FY2002.

PART 4—MISCELLANEOUS

Sec. 261. Role of National Institute of Standards and Technology

Requires the Director of NIST to submit annually to the Commission a list of suggestions for issues to be addressed by the grant programs, review grant applications, monitor grant activities and recommend modifications as necessary, and evaluate completed grants. Also requires the Director to establish an intramural research and development program within NIST to support the development of voluntary technical standards.

Sec. 262. Reports

Requires submission of an annual report to Congress by the Commission and a report on the application of human factors research to voting systems.

Sec. 263. Audit

Provides for the Commission to audit recipients of funds and requires that each program established under the subtitle be audited at least once during its lifetime.

TITLE III—HELP AMERICA VOTE COLLEGE PROGRAM

Sec. 301. Establishment of program

Requires the Commission to establish the "Help America Vote Program," with the purpose of encouraging students at colleges, universities, and community colleges to serve as nonpartisan poll workers or assistants and to encourage State and local governments to use students in that capacity.

Sec. 302. Activities under program

Requires the Commission, in consultation with chief State election officials, to develop materials, sponsor seminars and workshops, advertise the program to students, make grants, assist any institution that wishes to participate, and take other appropriate

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actions. Limits grants to nonpartisan undertakings that do not promote a point of view or an issue.

Sec. 303. Authorization of appropriations

Authorizes appropriations of $5 million for FY2002 and sums necessary thereafter.

TITLE IV—HELP AMERICA VOTE FOUNDATION

Sec. 401. Help America Vote Foundation

Amends Part B of subtitle II of 36 U.S.C. to establish the federally chartered Help America Vote Foundation to mobilize secondary school students to participate as nonpartisan poll workers and assistants, and to establish cooperative efforts with election officials, local educational agencies, public and private school officials, and other appropriate nonprofit organizations.

Requires the foundation to act without partisan bias or promotion of any particular point of view and to consult with the chief State election officials.

Establishes a 12-member board of directors with four appointed by the President (not more than two from the same political party), two by the Speaker of the House of Representatives, two by the House minority leader, two by the Senate majority leader, and two by the Senate minority leader, and with the chairs and ranking Members of the House Administration Committee and the Senate Rules and Administration Committee as ex officio, nonvoting members.

Sets the term of office at four years and stipulates that members are not employees of the Federal government. Prohibits compensation of board members, but permits payment of travel expenses. Restricts personal liability of members to gross negligence.

Requires the board to meet at least yearly and to select a member as chair, who shall not hold or have held any partisan elected office or national political-party committee office.

Permits the board to appoint and remove officers and employees of the foundation and stipulates that they are not employees of the Federal government except as otherwise provided in this chapter.

Grants the foundation such powers as necessary to carry out this chapter and also the usual powers of a corporation acting as a trustee in the District of Columbia, where the foundation will be located. Permits it to conduct business throughout the United States. Requires the foundation to have a designated agent to receive service of process for it.

Permits the foundation to accept gifts, devises, and bequests for its benefit and to let contracts. Also permits it to sponsor an annual conference to honor persons who have served as poll workers or participated in foundation programs and activities.

Requires an annual audit by an independent auditor.

Permits the Attorney General to bring a civil action for relief for behavior by the foundation that is inconsistent with the purposes designated in this title.

Excludes the U.S. government from any liability or obligation incurred by the foundation.

Authorizes $5 million for FY 2002 and such sums as necessary thereafter.

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TITLE V—MINIMUM STANDARDS FOR STATE ELECTION SYSTEMS

Sec. 501. Minimum standards for State election systems

Requires each State to certify to the Commission that it is in compliance with the Voting Rights Act of 1965, the National Voter Registration Act of 1993, the Uniformed and Overseas Citizens Absentee Voting Act, the Voting Accessibility for the Elderly and Handicapped Act, and the Americans With Disabilities Act of 1990; and that it has, by statute, established standards for its election systems as described in this title. Gives States discretion to choose the method of implementation.

Sec. 502. Standards described

Sets minimum standards, to include a statewide, networked voter registration system in States requiring registration; provisions to ensure accurate, updated registration records; in-precinct provisional voting; uniform standards for what constitutes a vote for each certified voting system; safeguards for voting by uniformed and overseas voters; requirements that new voting systems provide for voters with physical disabilities to cast a secret ballot; and requirements that new voting systems give voters the opportunity to correct errors under conditions which assure privacy.

Sec. 503. Enforcement

Requires the Commission to notify the Attorney General if a State fails to comply, and authorizes the Attorney General, if so notified, to bring a civil action to remedy the violation.

Sec. 504. Effective date

Sets effective date for the provisional voting standard at the November 2002 Federal election and for other provisions in the title at two years from enactment, but permits an extension to the November 2004 Federal election.

TITLE VI—VOTING RIGHTS OF MILITARY MEMBERS AND OVERSEAS CITIZENS

Sec. 601. Voting assistance programs

Amends 10 U.S.C. Chapter 80 to require the Secretary of Defense to ensure compliance by the military services with the Federal Voting Assistance Program and any similar programs.

Requires the Inspector General of each service to conduct an annual review of the effectiveness of and compliance with the programs and to submit the review to the Inspector General for the Department of Defense (DOD), who will prepare an annual report to Congress. Requires the DOD Inspector General to conduct, at 10 or more installations each year, periodic, unannounced assessments of compliance with requirements of law regarding voting by members of the armed forces.

Requires the secretary of each military department to assess compliance as part of installation review or inspection, and to certify to Congress that, for each installation and major command, a voting assistance officer, has been appointed and given the time and resources to perform voting assistance duties. Also requires the

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secretaries to specify the number of voting action officers appointed and the ratio of voting action officers to active duty members, to assess compliance of those numbers with requirements, and to describe the training that voting action officers receive.

Requires the secretaries to ensure that members of the military and their dependents have access to information on voter registration and absentee ballot requirements and deadlines. Requires that each person who enlists, reenlists, or completes a permanent change of station receive the national voter registration form.

Requires the secretaries, through voting assistance officers, to provide notice to members of the armed forces of the last date before a general election for which ballots mailed at the facility can be expected to be delivered in a timely fashion to State and local election officials.

Requires the Secretary of Defense to ensure that voting materials are transmitted expeditiously, to conduct periodic surveys of mail shipments at all overseas locations and vessels at sea during the four months preceding an election, and to implement measures to ensure that a postmark or other proof of mailing date is provided on each absentee ballot.

Sec. 602. Designation of single State office to provide information on registration and absentee ballots for all voters in State

Amends the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) to require each State to designate a single office to provide information to members of the armed services concerning absentee registration and voting in the State. Recommends that the office be responsible for carrying out duties under this Act.

Sec. 603. Report on absentee ballots transmitted and received after general elections

Requires that after a Federal election, States submit a public report to the Commission on the number of absentee ballots transmitted to absent uniformed services and overseas voters and the number returned and cast in the election. Requires the Commission to develop a standardized format for such reports.

Sec. 604. Simplification of voter registration and absentee ballot application procedures for absent uniformed services and overseas voters

Amends UOCAVA to require States to accept the post card form as a simultaneous voter registration and absentee ballot application, and to require that an absentee ballot application pertain to all elections for Federal office held in the State during that year, if the applicant so requests. Requires the Presidential designee for UOCAVA to revise the official post card form to enable a voter to request an absentee ballot either for each Federal election held in a State during a year or for only the next schedules Federal election.

Sec. 605. Additional duties of presidential designee under Uniformed and Overseas Citizens Absentee Voting Act

Amends UOCAVA to require the Presidential designee to ensure that State officials are aware of the requirements of that Act, and to prescribe a standard oath regarding perjury in completion of a

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document required under the title. Requires States to use the standard oath if the State requires an oath or affirmation for any voting document.

Amends UOCAVA to require separate statistical analysis for overseas voters and absent uniformed services voters.

Sec. 606. Use of Buildings on Military Installations and Reserve Component Facilities as Polling Places

Amends 10 U.S.C. 2670 and 18235; 18 U.S.C. 592 and 593; and 42 U.S.C. 2003 to permit the secretary of a military department to make a building located on a military installation available for use as a polling place, in any Federal, State, or local election, for eligible voters who reside on that military installation. Requires that such a polling place continue to be available for subsequent elections unless the secretary provides appropriate advance notice to State and local officials of the reasons why it will not.

TITLE VII—REDUCED POSTAGE RATES FOR OFFICIAL ELECTION MAIL

Sec. 701. Reduced postage rates for official election mail

Amends 39 U.S.C. 3629 to establish a postage rate of 50% of the regular first-class rate for any State and local official election mail.

TITLE VIII—TRANSITION PROVISIONS

Subtitle A—Transfer to Commission of Functions Under Certain Laws

Sec. 801. Federal Election Campaign Act of 1971

Amends section 311 (a) of the Federal Election Campaign Act of 1971 (2 U.S.C. 438 (a)) Transfers to the Commission, upon appointment of all members, all functions of the Office of Election Administration of the Federal Election Commission.

Sec. 802 National Voter Registration Act of 1993

Amends section 9(a) of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg–7(a)). Transfers to the Commission all functions that the Federal Election Commission exercises under the National Voter Registration Act.

Sec. 803. Transfer of property, records, and personnel

Transfers to the Commission all personnel, contracts, liabilities, records, property, and other assets or interests of the offices and functions of the Federal Election Commission that are transferred by this subtitle.

Sec. 804. Effective date; transition

Requires that this title take effect upon the appointment of all members of the Commission, which is authorized to utilize services from the entities from which functions will be transferred as needed for an orderly transfer.

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Subtitle B—Coverage of Commission Under Certain Laws and Programs

Sec. 811. Treatment of commission personnel under certain civil service laws

Amends 5 U.S.C. 7323(b)(2)(B)(i)(I) and 3132(a)(1)(C) to specify that Commission personnel are covered by the Hatch Act and that the Commission is excluded from the Senior Executive Service.

Sec. 812. Coverage under Inspector General Act of 1978

Amends section 8G(a)(2) of the Inspector General Act of 1978 (5 U.S.C. App.) to provide for coverage under that Act.

TITLE IX—MISCELLANEOUS PROVISIONS

Sec. 901. State defined

Defines State to include the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, and the United States Virgin Islands.

Sec. 902. Miscellaneous provisions to protect integrity of election process

Amends the National Voter Registration Act of 1993 to clarify the ability of election officials to remove from the voter registration list the name of an individual who has not voted in two or more consecutive general elections for Federal office and who has not notified the registrar of an intent to remain registered in the registrar's jurisdiction or who has not responded to a notice from the registrar of voters. Amends 18 U.S.C. 594 to prohibit poll workers from intimidating, harassing, or coercing voters to cast votes for every office on the ballot, but not from providing information to a voter who requests assistance.

Sec. 903. No effect on other laws

Stipulates that nothing in the Act authorizes or requires conduct prohibited by the Voting Rights Act of 1965, the National Voter Registration Act of 1993, or the Americans With Disabilities Act of 1990; or may be construed to supersede, restrict, or limit those Acts or the Voting Accessibility for the Elderly and Handicapped Act.

COMMITTEE CONSIDERATION OF THE LEGISLATION

INTRODUCTION AND REFERRAL

On November 14, 2001, Mr. Ney, Mr. Hoyer, Mr. Blunt and Mr. Fattah introduced H.R. 3295, which was referred to the Committee on House Administration, the Committee on the Judiciary, the Committee on Armed Services, the Committee on Government Reform and the Committee on Science

HEARINGS

The Committee on House Administration held four hearings on election reform in the first session of the 107th Congress.

On April 25, 2001, the Committee held the first hearing on Election Reform.

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Members present: Mr. Ney, Mr. Ehlers, Mr. Mica, Mr. Linder, Mr. Reynolds, Mr. Hoyer, Mr. Fattah, Mr. Davis.

Witnesses: J. Kenneth Blackwell, Secretary of State, Ohio; Sharon Priest, Secretary of State, Arkansas; Katherine Harris, Secretary of State, Florida; Rebecca Vigil-Giron, Secretary of State, New Mexico; Ron Thornburgh, Secretary of State, Kansas; Martin Stephens, Speaker of the Utah House of Representatives; John Adams Hurson, Majority Leader, Maryland House of Delegates; Kenneth Mayfield, Commissioner, Dallas County, Texas; Deborah Phillips, President—The Voting Integrity Project; Kristen Cox, National Federation of the Blind; Hilary Shelton, Director NAACP Washington Bureau; Dennis Duggan, American Legion.

On May 10, 2001, the Committee held its second hearing on Election Reform.

Members present: Mr. Ney, Mr. Ehlers, Mr. Mica, Mr. Reynolds, Mr. Hoyer, Mr. Davis.

Witnesses: Doug Lewis, Director—The Election Center; Conny McCormack, Los Angeles County Registrar-Recorder/County Clerk; Connie Schmidt, Election Commissioner, Johnson County, Kansas; Carolyn Jackson, Administrator of Elections, Hamilton County, Tennessee; Pam Iorio, Supervisor of Elections, Hillsborough County, Florida; Linda Lamone, Administrator, Maryland State Administrative Board of Election Laws.

On May 17, 2001, the Committee held its third hearing on Election Reform.

Members present: Mr. Ney, Mr. Ehlers, Mr. Linder, Mr. Hoyer, Mr. Fattah, Mr. Davis.

Witnesses: Tom Davis, Managing Member, iPaper/Diversified Dynamics; William F. Welsh III, Chairman, Election Systems and Software; Brian O'Conner, Executive Vice President, Global Election Systems, Inc.; David E. Hart, Chairman, Hart InterCivic, Inc.; Richard Caruso, Chairman, Shoup Voting Solutions; Marlene Duffy Young, Regional Marketing Representative, Unilect; James Minadeo, Product Manager, Avante; Scott Faibaron, Regional Sales Manager, Envox (US) Ltd.; Mark Strama, Vice President, Public Elections, election.com; David Chaum, Founder, SureVote; Ralph Munro, Board of Directors, VoteHere; Dennis Vadura, CEO, Web Tools International.

On May 24, 2001, the Committee held its fourth hearing on Election Reform.

Members present: Mr. Ney, Mr. Ehlers, Mr. Doolittle, Mr. Hoyer, and Mr. Fattah.

Witnesses: Christopher Baum, Vice President, Gartner Group; Thomas R. Palfrey, Professor, California Institute of Technology; David Woods, Professor, Ohio State University; Ronald Rivest, Professor, Massachusetts Institute of Technology.

MARKUP

On Thursday November 15, 2001, the Committee met to mark up H.R. 3295. The Committee favorably reported H.R. 3295, as amended, by a recorded vote (8–0), a quorum being present.

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MATTERS REQUIRED UNDER THE RULES OF THE HOUSE

COMMITTEE RECORD VOTES

Clause 3(b) of House rule XIII requires the results of each record vote on an amendment or motion to report, together with the names of those voting for and against, to be printed in the committee report.

Amendment No. 1

Offered by Mr. Reynolds. The first vote during the markup came on the amendment offered by Mr. Reynolds.

The amendment would allow, but not require, military base commanders to locate polling places on their installations.

The amendment was approved by a voice vote a quorum being present.

Amendment No. 2

Offered by Mr. Hoyer. The second vote during the markup came on the amendment offered by Mr. Hoyer. This amendment would add additional voting system accessibility requirements for the disabled and those with limited proficiency in English.

The vote on the amendment was 3–4 and the amendment was not agreed to.

Member	Yes	No	Present
Mr. Ney		X	
Mr. Linder		X	
Mr. Doolittle		X	
Mr. Reynolds		X	
Mr. Hoyer	X		
Mr. Fattah	X		
Mr. Davis	X		
Total	3	4	

The Committee then voted on H.R. 3295, as amended. The bill as amended was agreed to by a recorded vote (8–0).

Member	Yes	No	Present
Mr. Ney	X		
Mr. Ehlers	X		
Mr. Linder	X		
Mr. Doolittle	X		
Mr. Reynolds	X		
Mr. Hoyer	X		
Mr. Fattah	X		
Mr. Davis	X		
Total	8	0	

The Committee then voted to report H.R. 3295 favorably, as amended. The vote to report favorably was approved by recorded vote (8–0).

Member	Yes	No	Present
Mr. Ney	X		
Mr. Ehlers	X		
Mr. Linder	X		
Mr. Doolittle	X		

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Member	Yes	No	Present
Mr. Reynolds	X		
Mr. Hoyer	X		
Mr. Fattah	X		
Mr. Davis	X		
Total	8	0	

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) rule XIII of the Rules of the House of Representatives, the Committee states that the findings and recommendations of the Convention Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

GENERAL PERFORMANCE GOALS AND OBJECTIVES

The Committee states, with respect to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, that the goal and objective of H.R. 3295 is to improve the election infrastructure in the United States.

CONSTITUTIONAL AUTHORITY

In compliance with clause 3(d)(1) of rule XIII, the Committee states that Article 1, Section 4 of the U.S. Constitution grants Congress the authority to make laws governing the time, place and manner of holding Federal elections.

FEDERAL MANDATES

The Committee states, with respect to section 423 of the Congressional Budget Act of 1974, that the bill does not include any significant Federal mandate.

PREEMPTION CLARIFICATION

Section 423 of the Congressional Budget Act of 1974 requires the report of any committee on a bill or joint resolution to include a committee statement on the extent to which the bill or joint resolution is intended to preempt state or local law. The Committee states that H.R. 3295 is not intended to preempt any state or local law.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

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U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, November 30, 2001.

Hon. ROBERT W. NEY,
Chairman, Committee on House Administration,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3295, the Help America Vote Act of 2001.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Mark Grabowicz and Matthew Pickford (for federal costs); Susan Sieg Tompkins (for the impact on state, local, and tribal governments): and Paige Piper/Bach (for the impact on the private sector).

Sincerely,

BARRY B. ANDERSON
(For Dan L. Crippen, Director).

Enclosure.

H.R. 3295, Help America Vote Act of 2001

Summary: H.R. 3295 would authorize the appropriation of about $2.8 billion over fiscal year 2002 through 2006, mostly for grants to states and localities to improve voting technology and election administration. The bill would establish the Election Assistance Commission to undertake activities to improve the administration of elections and would set minimum standards for national elections. H.R. 3295 also would require the Department of Defense to implement a voting assistance program for military personnel and other overseas U.S. citizens. Finally, the bill would provide reduced postage rates for official election mailings.

Assuming appropriation of the authorized amounts, CBO estimates that implementing H.R. 3295 would cost about $2.8 billion over the 2002–2006 period. In addition, we estimate that enacting the bill would increase costs to the U.S. Postal Service by about $100 million over the 2002–2003 period. (Postal Service spending is classified as off-budget and is not subject to pay-as-you-go procedures.) The bill would not otherwise affect direct spending or receipts so pay-as-you-go procedures would not apply.

Section 4 of the Unfunded Mandates Reform Act (UMRA) excludes from the application of that act any legislative provisions that enforce the constitutional rights of individuals. CBO has determined that title V and certain sections of title VI would fall within that exclusion. Other provisions of the bill would provide grants to states to improve voting procedures and technology. Any costs to state, local, or tribal governments as a result of participating in those programs would be incurred voluntarily. The remaining provisions of the bill contain no intergovernmental or private-sector mandates and would impose no costs on state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 3295 is shown in the following table. The costs of this legislation fall within budget functions 050 (national defense), 370 (commerce and housing credit), and 800 (general government).

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	By fiscal year, in millions of dollars—				
	2002	2003	2004	2005	2006
CHANGES IN SPENDING SUBJECT TO APPROPRIATION					
Grants to replace punch card voting machines:					
Authorization Level	400	0	0	0	0
Estimated Outlays	200	200	0	0	0
Voting system improvements:					
Authorization Level	750	750	750	0	0
Estimated Outlays	75	600	750	675	150
Election Assistance Commission:					
Estimated Authorization Level	3	4	4	4	4
Estimated Outlays	1	2	3	3	3
Other provisions:					
Estimated Authorization Level	37	14	12	12	14
Estimated Outlays	20	26	12	12	14
Total:					
Estimated Authorization Level	1,190	768	766	16	18
Estimated Outlays	296	828	765	690	167
CHANGES IN OFF-BUDGET DIRECT SPENDING					
U.S. Postal Service[1]					
Estimated Budget Authority	50	55	0	0	0
Estimated Outlays	50	55	0	0	0

[1] These estimated costs would be offset, overtime, by postal rate increases.

Basis of estimate: For this estimate, CBO assumes that the bill will be enacted by the end of calendar year 2001 and that the necessary amounts will be appropriated each year. CBO estimates that implementing H.R. 3295 would cost $2.8 billion over the 2002–2006 period, mostly for voting system improvements. The bill would also increase spending of the Postal Service, which is classified as off-budget.

Spending subject to appropriation

Grants to Replace Punch-Card Voting Machines. H.R. 3295 would authorize the appropriation of $400 million for fiscal year 2002 for payments for state and local governments to replace punch card voting systems. State and local governments that apply for these funds would be able to receive a maximum of $6,000 per precinct.

Voting System Improvements. The bill would authorize the appropriation of $2.25 billion over the 2002–2004 period to pay for grants to states and localities for improving voting technology and upgrading equipment, improving voter registration systems, increasing access for voters with disabilities, and enhancing training for poll workers. CBO expects that most of the funds to replace machines and so implement improvements would be spent in fiscal years 2003 through 2005.

Election Assistance Commission. Title II would authorize the appropriation of up to $10 million annually to establish the Election Assistance Commission. The four-member, bipartisan commission would advise state and local governments on election administration. This work would include developing voluntary election management standards, serving as a clearinghouse for information, and reviewing procedures affecting the administration of federal elections. The bill also would transfer all the functions of the Office of Election Administration of the Federal Election Commission to the new commission. CBO estimates that the commission would re-

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quire funding of $3 million to $4 million annually with estimated outlays of about $12 million over the 2002–2006 period.

Other Provisions. H.R. 3295 also would authorize appropriations for several other programs aimed at improving the election process, including grants to study and improve voting technology, pilot programs to test new technologies, and programs to encourage citizens to get involved in the election process. CBO estimates that, in total, implementing these programs would cost $84 million over the 2002–2006 period.

H.R. 3295 would direct the Secretary of Defense to coordinate all voting activities for members of the military and other overseas U.S. citizens, includes training voting assistance officers, conducting mail delivery surveys, and providing information on voter registration requirements and deadlines of the various states. Based on information from the Department of Defense, CBO estimates that implementing this section of the bill would result in no significant costs.

Off-budget costs (direct spending)

For official mailings sent to voters by local election officials via first-class mail, H.R. 3295 would reduce the postage rate by 50 percent. CBO expects that the reduced postage rate would apply to two mailings every year to each of the 150 million registered voters in the United States. The current first-class rate is 34 cents and is expected to rise to 37 cents by fiscal year 2003, so CBO estimates this provision would cost the Postal Service about $50 million in 2002 and about $55 million in 2003. Over time, there would be no net effect from this provision because the Postal Service is required to set rates so that it covers all costs. Postal Service spending and collections are classified as off-budget and would not be subject to pay-as-you-go procedures.

Pay-as-you-go considerations: None.

Intergovernmental and private-sector impact: Section 4 of UMRA excludes from the application of that act any legislative provisions that enforce the constitutional rights of individuals. CBO has determined that title V and certain sections of title VI would fall within that exclusion because they enforce an individual's right to vote, and to have that vote counted.

Other provisions of the bill would benefit state and local governments. Specifically, title I would provide grants to states to replace or upgrade punch card voting systems. Provisions of title II would provide payments to states to improve election administration and voter education. In both cases, states must provide up to 25 percent in matching funds to be eligible to receive the assistance. The matching requirement as well as any other costs to state, local, or tribal governments as a result of participating in these programs would be incurred voluntarily.

The remaining provisions of the bill contain no intergovernmental or private-sector mandates and would impose no costs on state, local, or tribal governments.

Estimate prepared by: Federal Costs: Mark Grabowicz and Matthew Pickford. Impact on State, Local, and Tribal Governments: Susan Sieg Tompkins. Impact on the Private Sector: Paige Piper/Bach.

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Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 36, UNITED STATES CODE

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SUBTITLE II—PATRIOTIC AND NATIONAL ORGANIZATIONS

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PART B—ORGANIZATIONS

201. AGRICULTURAL HALL OF FAME 20101

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1526. Help America Vote Foundation 152601

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PART B—ORGANIZATIONS

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CHAPTER 1526—HELP AMERICA VOTE FOUNDATION

Sec.
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152602. Purposes.
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152609. Civil action by Attorney General for equitable relief.
152610. Immunity of United States Government.
152611. Authorization of appropriations.
152612. Annual report.

§ 152601. Organization

(a) FEDERAL CHARTER.—The Help America Vote Foundation (in this chapter, the "foundation") is a federally chartered corporation.

(b) NATURE OF FOUNDATION.—The foundation is a charitable and nonprofit corporation and is not an agency or establishment of the United States Government.

(c) PERPETUAL EXISTENCE.—Except as otherwise provided, the foundation has perpetual existence.

§ 152602. Purposes

(a) IN GENERAL.—The purposes of the foundation are to—

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(1) mobilize secondary school students (including students educated in the home) in the United States to participate in the election process in a nonpartisan manner as poll workers or assistants;

(2) place secondary school students (including students educated in the home) as nonpartisan poll workers or assistants to local election officials in precinct polling places across the United States; and

(3) establish cooperative efforts with State and local election officials, local educational agencies, superintendents and principals of public and private secondary schools, and other appropriate nonprofit charitable and educational organizations exempt from taxation under section 501(a) of the Internal Revenue Code of 1986 as an organization described in section 501(c)(3) of such Code to further the purposes of the foundation.

(b) REQUIRING ACTIVITIES TO BE CARRIED OUT ON NONPARTISAN BASIS.—The foundation shall carry out its purposes without partisan bias or without promoting any particular point of view regarding any issue, and shall ensure that each participant in its activities is governed in a balanced manner which does not reflect any partisan bias.

(c) CONSULTATION WITH STATE ELECTION OFFICIALS.—The foundation shall carry out its purposes under this section in consultation with the chief election officials of the States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, and the United States Virgin Islands.

§ 152603. Board of directors

(a) GENERAL.—The board of directors is the governing body of the foundation.

(b) MEMBERS AND APPOINTMENT.—(1) The board consists of 12 directors, who shall be appointed not later than 60 days after the date of the enactment of this chapter as follows:

(A) 4 directors (of whom not more than 2 may be members of the same political party) shall be appointed by the President.

(B) 2 directors shall be appointed by the Speaker of the House of Representatives.

(C) 2 directors shall be appointed by the minority leader of the House of Representatives.

(D) 2 directors shall be appointed by the majority leader of the Senate.

(E) 2 directors shall be appointed by the minority leader of the Senate.

(2) In addition to the directors described in paragraph (1), the chair and ranking minority member of the Committee on House Administration of the House of Representatives (or their designees) and the chair and ranking minority member of the Committee on Rules and Administration of the Senate (or their designees) shall each serve as an ex officio nonvoting member of the board.

(3) A director is not an employee of the Federal government and appointment to the board does not constitute appointment as an officer or employee of the United States Government for the purpose of any law of the United States (except as may otherwise be provided in this chapter).

(4) The terms of office of the directors are 4 years.

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(5) A vacancy on the board shall be filled in the manner in which the original appointment was made.

(c) CHAIR.—The directors shall select one of the directors as the chair of the board. The individual selected may not be a current or former holder of any partisan elected office or a current or former officer of any national committee of a political party.

(d) QUORUM.—The number of directors constituting a quorum of the board shall be established under the bylaws of the foundation.

(e) MEETINGS.—The board shall meet at the call of the chair of the board for regularly scheduled meetings, except that the board shall meet not less often than annually.

(f) REIMBURSEMENT OF EXPENSES.—Directors shall serve without compensation but may receive travel expenses, including per diem in lieu of subsistence, in accordance with sections 5702 and 5703 of title 5.

(g) LIABILITY OF DIRECTORS.—Directors are not personally liable, except for gross negligence.

§ 152604. Officers and employees

(a) APPOINTMENT OF OFFICERS AND EMPLOYEES.—The board of directors appoints, removes, and replaces officers and employees of the foundation.

(b) STATUS AND COMPENSATION OF EMPLOYEES.—

(1) IN GENERAL.—Officers and employees of the foundation—

(A) are not employees of the Federal government (except as may otherwise be provided in this chapter);

(B) shall be appointed and removed without regard to the provisions of title 5 governing appointments in the competitive service; and

(C) may be paid without regard to chapter 51 and subchapter III of chapter 53 of title 5.

(2) AVAILABILITY OF FEDERAL EMPLOYEE RATES FOR TRAVEL.—For purposes of any schedules of rates negotiated by the Administrator of General Services for the use of employees of the Federal government who travel on official business, officers and employees of the foundation who travel while engaged in the performance of their duties under this chapter shall be deemed to be employees of the Federal government.

§ 152605. Powers

(a) GENERAL.—The foundation may—

(1) adopt a constitution and bylaws;

(2) adopt a seal which shall be judicially noticed; and

(3) do any other act necessary to carry out this chapter.

(b) POWERS AS TRUSTEE.—To carry out its purposes, the foundation has the usual powers of a corporation acting as a trustee in the District of Columbia, including the power—

(1) to accept, receive, solicit, hold, administer, and use any gift, devise, or bequest, either absolutely or in trust, of property or any income from or other interest in property;

(2) to acquire property or an interest in property by purchase or exchange;

(3) unless otherwise required by an instrument of transfer, to sell, donate, lease, invest, or otherwise dispose of any property or income from property;

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(4) to borrow money and issue instruments of indebtedness;

(5) to make contracts and other arrangements with public agencies and private organizations and persons and to make payments necessary to carry out its functions;

(6) to sue and be sued; and

(7) to do any other act necessary and proper to carry out the purposes of the foundation.

(c) ENCUMBERED OR RESTRICTED GIFTS.—A gift, devise, or bequest may be accepted by the foundation even though it is encumbered, restricted, or subject to beneficial interests of private persons, if any current or future interest is for the benefit of the foundation.

(d) CONTRACTS.—The foundation may enter into such contracts with public and private entities as it considers appropriate to carry out its purposes.

(e) ANNUAL CONFERENCE IN WASHINGTON METROPOLITAN AREA.—During each year (beginning with 2003), the foundation may sponsor a conference in the Washington, D.C., metropolitan area to honor secondary school students and other individuals who have served (or plan to serve) as poll workers and assistants and who have otherwise participated in the programs and activities of the foundation.

§ 152606. Principal office

The principal office of the foundation shall be in the District of Columbia unless the board of directors determines otherwise. However, the foundation may conduct business throughout the States, territories, and possessions of the United States.

§ 152607. Service of process

The foundation shall have a designated agent to receive service of process for the foundation. Notice to or service on the agent, or mailed to the business address of the agent, is notice to or service on the foundation.

§ 152608. Annual audit

The foundation shall enter into a contract with an independent auditor to conduct an annual audit of the foundation.

§ 152609. Civil action by Attorney General for equitable relief

The Attorney General may bring a civil action in the United States District Court for the District of Columbia for appropriate equitable relief if the foundation—

(1) engages or threatens to engage in any act, practice, or policy that is inconsistent with the purposes in section 152602 of this title; or

(2) refuses, fails, or neglects to carry out its obligations under this chapter or threatens to do so.

§ 152610. Immunity of United States Government

The United States Government is not liable for any debts, defaults, acts, or omissions of the foundation. The full faith and credit of the Government does not extend to any obligation of the foundation.

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§ 152611. Authorization of appropriations

There are authorized to be appropriated to the foundation for carrying out the purposes of this chapter—

(1) $5,000,000 for fiscal year 2002; and

(2) such sums as may be necessary for each succeeding fiscal year.

§ 152612. Annual report

As soon as practicable after the end of each fiscal year, the foundation shall submit a report to the Commission, the President, and Congress on the activities of the foundation during the prior fiscal year, including a complete statement of its receipts, expenditures, and investments. Such report shall contain information gathered from participating secondary school students describing the nature of the work they performed in assisting local election officials and the value they derived from the experience of educating participants about the electoral process.

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TITLE 10, UNITED STATES CODE

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Subtitle A—General Military Law

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PART II—PERSONNEL

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CHAPTER 80—MISCELLANEOUS INVESTIGATION REQUIREMENTS AND OTHER DUTIES

Sec.

1561. Complaints of sexual harassment: investigation by commanding officers.

* * * * * * *

1566. Voting assistance: compliance assessments; assistance.

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§ 1566. Voting assistance: compliance assessments; assistance

(a) REGULATIONS.—The Secretary of Defense shall prescribe regulations to require that the Army, Navy, Air Force, and Marine Corps ensure their compliance with any directives issued by the Secretary of Defense in implementing any voting assistance program.

(b) VOTING ASSISTANCE PROGRAMS DEFINED.—In this section, the term "voting assistance programs" means—

(1) the Federal Voting Assistance Program carried out under the Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff et seq.); and

(2) any similar program.

(c) ANNUAL EFFECTIVENESS AND COMPLIANCE REVIEWS.—(1) The Inspector General of each of the Army, Navy, Air Force, and Marine Corps shall conduct—

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(A) an annual review of the effectiveness of voting assistance programs; and

(B) an annual review of the compliance with voting assistance programs of that armed force.

(2) Upon the completion of each annual review under paragraph (1), each Inspector General specified in that paragraph shall submit to the Inspector General of the Department of Defense a report on the results of each such review. Such report shall be submitted in time each year to be reflected in the report of the Inspector General of the Department of Defense under paragraph (3).

(3) Not later than March 31 each year, the Inspector General of the Department of Defense shall submit to Congress a report on—

(A) the effectiveness during the preceding calendar year of voting assistance programs; and

(B) the level of compliance during the preceding calendar year with voting assistance programs of each of the Army, Navy, Air Force, and Marine Corps.

(d) INSPECTOR GENERAL ASSESSMENTS.—(1) The Inspector General of the Department of Defense shall periodically conduct at Department of Defense installations unannounced assessments of the compliance at those installations with—

(A) the requirements of the Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff et seq.);

(B) Department of Defense regulations regarding that Act and the Federal Voting Assistance Program carried out under that Act; and

(C) other requirements of law regarding voting by members of the armed forces.

(2) The Inspector General shall conduct an assessment under paragraph (1) at not less than 10 Department of Defense installations each calendar year.

(3) Each assessment under paragraph (1) shall include a review of such compliance—

(A) within units to which are assigned, in the aggregate, not less than 20 percent of the personnel assigned to duty at that installation;

(B) within a representative survey of members of the armed forces assigned to that installation and their dependents; and

(C) within unit voting assistance officers to measure program effectiveness.

(e) REGULAR MILITARY DEPARTMENT ASSESSMENTS.—The Secretary of each military department shall include in the set of issues and programs to be reviewed during any management effectiveness review or inspection at the installation level an assessment of compliance with the Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff et seq.) and with Department of Defense regulations regarding the Federal Voting Assistance Program.

(f) VOTING ASSISTANCE OFFICERS.—(1) Voting assistance officers shall be appointed or assigned under Department of Defense regulations. Commanders at all levels are responsible for ensuring that unit voting officers are trained and equipped to provide information and assistance to members of the armed forces on voting matters. Performance evaluation reports pertaining to a member who has been assigned to serve as a voting assistance officer shall comment on the performance of the member as a voting assistance officer. The

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Secretary of each military department shall certify to Congress that (at a minimum) a voting assistance officer has been appointed or assigned for each military installation and major command under the jurisdiction of the department and that a replacement will be appointed if the original officer is no longer able to serve.

(2) Under regulations and procedures prescribed by the Secretary, a member of the armed forces appointed or assigned to duty as a voting assistance officer shall, to the maximum extent practicable, be given the time and resources needed to perform the member's duties as a voting assistance officer during the period in advance of a general election when members and their dependents are preparing and submitting absentee ballots.

(3) As part of each assessment prepared by the Secretary of a military department under subsection (e), the Secretary shall—

(A) specify the number of members of the armed forces under the jurisdiction of the Secretary who are appointed or assigned to duty as voting assistance officers;

(B) specify the ratio of voting assistance officers to active duty members of the armed forces under the jurisdiction of the Secretary;

(C) indicate whether this number and ratio comply with the requirements of the Federal Voting Assistance Program; and

(D) describe the training such members receive to perform their duties as voting assistance officers.

(g) REGISTRATION AND VOTING INFORMATION FOR MEMBERS AND DEPENDENTS.—(1) The Secretary of each military department, using a variety of means including both print and electronic media, shall, to the maximum extent practicable, ensure that members of the armed forces and their dependents who are qualified to vote have ready access to information regarding voter registration requirements and deadlines (including voter registration), absentee ballot application requirements and deadlines, and the availability of voting assistance officers to assist members and dependents to understand and comply with these requirement.

(2) The Secretary of each military department shall make the national voter registration form prepared for purposes of the Uniformed and Overseas Citizens Absentee Voting Act by the Federal Election Commission available so that each person who enlists, reenlists, or voluntarily extends an enlistment or who completes a permanent change of station in an active or reserve component of the Army, Navy, Air Force, or Marine Corps shall receive such form at the time of the enlistment, reenlistment, extension, or completion of the permanent change of station, or as soon thereafter as practicable.

(3) Where practicable, a special day or days shall be designated at each military installation for the purpose of informing members of the armed forces and their dependents of election timing, registration requirements, and voting procedures.

(h) DELIVERY OF MAIL FROM OVERSEAS PRECEDING FEDERAL ELECTIONS.—(1) During the four months preceding a general Federal election month, the Secretary of Defense shall periodically conduct surveys of all overseas locations and vessels at sea with military units responsible for collecting mail for return shipment to the United States and all port facilities in the United States and overseas where military-related mail is collected for shipment to over-

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seas locations or to the United States. The purpose of each survey shall be to determine if voting materials are awaiting shipment at any such location and, if so, the length of time that such materials have been held at that location. During the fourth and third months before a general Federal election month, such surveys shall be conducted biweekly. During the second and first months before a general Federal election month, such surveys shall be conducted weekly.

(2) The Secretary shall ensure that voting materials are transmitted expeditiously by military postal authorities at all times. The Secretary shall, to the maximum extent practicable, implement measures to ensure that a postmark or other official proof of mailing date is provided on each absentee ballot collected at any overseas location or vessel at sea whenever the Department of Defense is responsible for collecting mail for return shipment to the United States. The Secretary shall submit to Congress a report describing the measures to be implemented to ensure the timely transmittal and postmarking of voting materials and identifying the persons responsible for implementing such measures.

(3) The Secretary of each military department, utilizing the voting assistance officer network established for each military installation, shall, to the maximum extent practicable, provide notice to members of the armed forces stationed at that installation of the last date before a general Federal election for which absentee ballots mailed from a postal facility located at that installation can reasonably be expected to be timely delivered to the appropriate State and local election officials.

(4) In this section, the term "general Federal election month" means November in an even-numbered year.

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PART IV—SERVICE, SUPPLY, AND PROCUREMENT

* * * * * * *

CHAPTER 159—REAL PROPERTY; RELATED PERSONAL PROPERTY; AND LEASE OF NONEXCESS PROPERTY

Sec.
2661. Miscellaneous administrative provisions relating to real property.

* * * * * * *

[2670. Licenses: military installations; erection and use of buildings; American National Red Cross.]
2670. Buildings on military installations: use by American National Red Cross and as polling places in Federal, State, and local elections.

* * * * * * *

[§ 2670. Licenses: military installations; erection and use of buildings; American National Red Cross]

[Under]

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§ 2670. Buildings on military installations: use by American National Red Cross and as polling places in Federal, State, and local elections

(a) USE BY RED CROSS.—Under such conditions as he may prescribe, the Secretary of any military department may issue a revocable license to the American National Red Cross to—

(1) * * *

* * * * * * *

Supplies stored in buildings erected or used under this [section] *subsection* are available to aid the civilian population in a serious national disaster.

(b) USE AS POLLING PLACES.—(1) Notwithstanding any other provision of law, the Secretary of a military department may make a building located on a military installation under the jurisdiction of the Secretary available for use as a polling place in any Federal, State, or local public election, but only if such use is limited to eligible voters who reside on that military installation.

(2) If a building located on a military installation is made available under paragraph (1) as the site of a polling place, the Secretary shall continue to make the building available for subsequent elections unless the Secretary provides to the appropriate State or local election officials advance notice, in a reasonable and timely manner, of the reasons why the building will no longer be made available as a polling place.

(3) In this section, the term "military installation" has the meaning given the term in section 2687(e) of this title.

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Subtitle E—Reserve Components

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PART V—SERVICE, SUPPLY, AND PROCUREMENT

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CHAPTER 1803—FACILITIES FOR RESERVE COMPONENTS

* * * * * * *

§ 18235. Administration; other use permitted by Secretary

(a) * * *

* * * * * * *

(c) Pursuant to a lease or other agreement under subsection (a)(2), the Secretary may make a facility covered by subsection (a) available for use as a polling place in any Federal, State, or local public election notwithstanding any other provision of law. If a facility is made available as the site of a polling place with respect to an election, the Secretary shall continue to make the facility available for subsequent elections unless the Secretary provides to the appropriate State or local election officials advance notice, in a reasonable and

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timely manner, of the reasons why the facility will no longer be made available as a polling place.

§ 18236. Contributions to States; other use permitted by States

(a) * * *

* * * * * * *

(e) Pursuant to a lease or other agreement under subsection (c)(1), a State may make a facility covered by subsection (c) available for use as a polling place in any Federal, State, or local public election notwithstanding any other provision of law.

* * * * * * *

UNIFORMED AND OVERSEAS CITIZENS ABSENTEE VOTING ACT

* * * * * * *

TITLE I—REGISTRATION AND VOTING BY ABSENT UNIFORMED SERVICES VOTERS AND OVERSEAS VOTERS IN ELECTIONS FOR FEDERAL OFFICE

SEC. 101. FEDERAL RESPONSIBILITIES.

(a) * * *

* * * * * * *

(b) DUTIES OF PRESIDENTIAL DESIGNEE.—The Presidential designee shall—

(1) consult State and local election officials in carrying out this title**[**;**]**, *and ensuring that such officials are aware of the requirements of this Act;*

(2) prescibe an official post card form, containing both an absentee voter registration application and an absentee ballot application, for use by the States **[**as recommended in section 104**]** *as required under section 102(4)*;

* * * * * * *

(5) compile and distribute (A) descriptive material on State absentee registration and voting procedures, and (B) to the extent practicable, facts relating to specific elections, including dates, offices involved, and the text of ballot questions; **[**and**]**

(6) not later than the end of each year after a Presidential election year, transmit to the President and the Congress a report on the effectiveness of assistance under this title, including a statistical analysis of uniformed services voter participation *(listed separately for overseas voters and absent uniformed services voters)*, a general assessment of overseas nonmilitary participation, and a description of State-Federal cooperation**[**.**]***; and*

(7) prescribe a standard oath for use with any document under this title affirming that a material misstatement of fact

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in the completion of such a document may constitute grounds for a conviction for perjury.

* * * * * * *

SEC. 102. STATE RESPONSIBILITIES.

(a) IN GENERAL.—Each State shall—

(1) * * *

[(2) accept and process, with respect to any general, special, primary, or runoff election for Federal office, any otherwise valid voter registration application from an absent uniformed services voter or overseas voter, if the application is received by the appropriate State election official not less than 30 days before the election; and**]**

(2) accept and process, with respect to any election for Federal office, any otherwise valid voter registration application and absentee ballot application from an absent uniformed services voter or overseas voter, if the application is received by the appropriate State election official not less than 30 days before the election;

(3) permit overseas voters to use Federal write-in absentee ballots (in accordance with section 103) in general elections for Federal office**[**.**]***;*

(4) use the official post card form (prescribed under section 101) for simultaneous voter registration application and absentee ballot application; and

(5) if the State requires an oath or affirmation to accompany any document under this title, use the standard oath prescribed by the Presidential designee under section 101(b)(7).

(b) DESIGNATION OF SINGLE STATE OFFICE TO PROVIDE INFORMATION ON REGISTRATION AND ABSENTEE BALLOT PROCEDURES FOR ALL VOTERS IN STATE.—

(1) IN GENERAL.—Each State shall designate a single office which shall be responsible for providing information regarding voter registration procedures and absentee ballot procedures (including procedures relating to the use of the Federal write-in absentee ballot) to all absent uniformed services voters and overseas voters who wish to register to vote or vote in any jurisdiction in the State.

(2) RECOMMENDATION REGARDING USE OF OFFICE TO ACCEPT AND PROCESS MATERIALS.—Congress recommends that the State office designated under paragraph (1) be responsible for carrying out the State's duties under this Act, including accepting valid voter registration applications, absentee ballot applications, and absentee ballots (including Federal write-in absentee ballots) from all absent uniformed services voters and overseas voters who wish to register to vote or vote in any jurisdiction in the State.

(c) REPORT ON NUMBER OF ABSENTEE BALLOTS TRANSMITTED AND RECEIVED.—Not later than 90 days after the date of each regularly scheduled general election for Federal office, each State and unit of local government which administered the election shall (through the State, in the case of a unit of local government) submit a report to the Election Assistance Commission (established under the Help America Vote Act of 2001) on the number of absentee ballots transmitted to absent uniformed services voters and overseas

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voters for the election and the number of such ballots which were returned by such voters and cast in the election, and shall make such report available to the general public.

* * * * * * *

[SEC. 104. RECOMMENDATION TO THE STATES TO MAXIMIZE ACCESS TO THE POLLS BY ABSENT UNIFORMED SERVICES VOTERS AND OVERSEAS VOTERS.

[To afford maximum access to the polls by absent uniformed services voters and overseas voters, it is recommended that the States—

[(1) use the official post card form (prescribed under section 101) for simultaneous voter registration application and absentee ballot application;

[(2) adopt the suggested design for absentee ballot mailing envelopes prescribed under section 101;

[(3) waive registration requirements for absent uniformed services voters and overseas voters who, by reason of service or residence, do not have an opportunity to register;

[(4) if an application other than an official post card form (prescribed under section 101) is required for absentee registration, provide that registration forms be sent with the absentee ballot and may be returned with it;

[(5) expedite processing of balloting materials with respect to absent uniformed services voters and overseas voters;

[(6) permit any oath required for a document under this title to be administered by a commissioned officer of the Armed Forces or any official authorized to administer oaths under Federal law or the law of the State or other place where the oath is administered;

[(7) assure that absentee ballots are mailed to absent uniformed services voters and overseas voters at the earliest opportunity;

[(8) assist the Presidential designee in compiling statistical and other information relating to this title; and

[(9) provide late registration procedures for persons recently separated from the Armed Forces.]

SEC. 104. USE OF SINGLE APPLICATION FOR ALL SUBSEQUENT ELECTIONS.

(a) IN GENERAL.—If a State accepts and processes an official post card form (prescribed under section 101) submitted by an absent uniformed services voter or overseas voter for simultaneous voter registration and absentee ballot application (in accordance with section 102(a)(4)) and the voter requests that the application be considered an application for an absentee ballot for each subsequent election for Federal office held in the State during that year, the State shall provide an absentee ballot to the voter for each subsequent election for Federal office held in the State during that year.

(b) EXCEPTION FOR VOTERS CHANGING REGISTRATION.—Subsection (a) shall not apply with respect to a voter registered to vote in a State for any election held after the voter notifies the State that the voter no longer wishes to be registered to vote in the State or after the State determines that the voter has registered to vote in another State.

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(c) REVISION OF OFFICIAL POST CARD FORM.—The Presidential designee shall revise the official post card form (prescribed under section 101) to enable a voter using the form to—

(1) request an absentee ballot for each election for Federal office held in a State during a year; or

(2) request an absentee ballot for only the next scheduled election for Federal office held in a State.

(d) NO EFFECT ON VOTER REMOVAL PROGRAMS.—Nothing in this section may be construed to prevent a State from removing any voter from the rolls of registered voters in the State under any program or method permitted under section 8 of the National Voter Registration Act of 1993.

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TITLE 18, UNITED STATES CODE

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PART I—CRIMES

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CHAPTER 29—ELECTIONS AND POLITICAL ACTIVITIES

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§ 592. Troops at polls

Whoever, being an officer of the Army or Navy, or other person in the civil, military, or naval service of the United States, orders, brings, keeps, or has under his authority or control any troops or armed men at any place where a general or special election is held, unless such force be necessary to repel armed enemies of the United States, shall be fined under this title or imprisoned not more than five years, or both; and be disqualified from holding any office of honor, profit, or trust under the United States.

This section shall not prevent any officer or member of the armed forces of the United States from exercising the right of suffrage in any election district to which he may belong, if otherwise qualified according to the laws of the State in which he offers to vote.

This section shall not apply to the actions of members of the Armed Forces at any polling place on a military installation where a general or special election is held in accordance with section 2670(b), 18235, or 18236 of title 10.

§ 593. Interference by armed forces

Whoever, being an officer or member of the Armed Forces of the United States, prescribes or fixes or attempts to prescribe or fix, whether by proclamation, order or otherwise, the qualifications of voters at any election in any State; or

Whoever, being such officer or member, prevents or attempts to prevent by force, threat, intimidation, advice or otherwise any qualified voter of any State from fully exercising the right of suffrage at any general or special election; or

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Whoever, being such officer or member, orders or compels or attempts to compel any election officer in any State to receive a vote from a person not legally qualified to vote; or

Whoever, being such officer or member, imposes or attempts to impose any regulations for conducting any general or special election in a State, different from those prescribed by law; or

Whoever, being such officer or member, interferes in any manner with an election officer's discharge of his duties—

Shall be fined under this title or imprisoned not more than five years, or both; and disqualified from holding any office of honor, profit or trust under the United States.

This section shall not prevent any officer or member of the Armed Forces from exercising the right of suffrage in any district to which he may belong, if otherwise qualified according to the laws of the State of such district.

This section shall not apply to the actions of members of the Armed Forces at any polling place on a military installation where a general or special election is held in accordance with section 2670(b), 18235, or 18236 of title 10.

§ 594. Intimidation of voters

(a) Whoever intimidates, threatens, coerces, or attempts to intimidate, threaten, or coerce, any other person for the purpose of interfering with the right of such other person to vote or to vote as he may choose, or of causing such other person to vote for, or not to vote for, any candidate for the office of President, Vice President, Presidential elector, Member of the Senate, Member of the House of Representatives, Delegate from the District of Columbia, or Resident Commissioner, at any election held solely or in part for the purpose of electing such candidate, shall be fined under this title or imprisoned not more than one year, or both.

(b) For purposes of subsection (a), a poll worker who urges or encourages a voter who has not cast a vote for each office listed on the ballot to return to the voting booth to cast votes for every office, or who otherwise intimidates, harasses, or coerces the voter to vote for each such office (or who attempts to intimidate, harass, or coerce the voter to vote for each such office), shall be considered to have intimidated, threatened, or coerced (or to have attempted to intimidate, threaten, or coerce) the voter for the purpose of interfering with the voter's right to vote as the voter may choose. Nothing in this subsection shall prohibit a poll worker from providing information to a voter who requests assistance.

* * * * * * *

SECTION 2003 OF THE REVISED STATUTES OF THE UNITED STATES

SEC. 2003. No officer of the Army or Navy of the United States shall prescribe or fix, or attempt to prescribe or fix, by proclamation, order, or otherwise, the qualifications of voters in any State, or in any manner interfere with the freedom of any election in any State, or with the exercise of the free right of suffrage in any State. *Making a military installation or reserve component facility available as a polling place in a Federal, State, or local public election*

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in accordance with section 2670(b), 18235, or 18236 of title 10, United States Code, is deemed to be consistent with this section.

TITLE 39, UNITED STATES CODE

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PART IV—MAIL MATTER

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CHAPTER 36—POSTAL RATES, CLASSES, AND SERVICES

SUBCHAPTER I—POSTAL RATE COMMISSION

Sec.
3601. Establishment.
* * * * * * *
SUBCHAPTER II—PERMANENT RATES AND CLASSES OF MAIL
3621. Authority to fix rates and classes.
* * * * * * *
[3629. Reduced rates for voter registration purposes.]
3629. Reduced rates for official election mail.
* * * * * * *

SUBCHAPTER II—PERMANENT RATES AND CLASSES OF MAIL

* * * * * * *

[§ 3629. Reduced rates for voter registration purposes

[The Postal Service shall make available to a State or local voting registration official the rate for any class of mail that is available to a qualified nonprofit organization under section 3626 for the purpose of making a mailing that the official certifies is required or authorized by the National Voter Registration Act of 1993.]

§ 3629. Reduced rates for official election mail

(a) Notwithstanding any other provision of this title, the rate of postage for any first-class mail matter shall, in the case of official election mail, be equal to 50 percent of the regular first-class rate, subject to subsection (c).

(b) For purposes of this section, the term "official election mail" means any mailing by a State or local election official that—

(1) is mailed in the course of official business;

(2) consists of voter registration or election information or assistance prepared and mailed in a nonpartisan manner; and

(3) bears such logo or other markings as the Postal Service may require.

Such term does not include any mailing that includes any mail matter intended to promote government action unrelated to the conduct of an election.

(c) Nothing in this section shall, with respect to any official election mail, be considered to make unavailable—

(1) any free mailing privilege under section 3406 or any other provision of law for which such mail otherwise qualifies; or

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(2) any reduced rate of postage under section 3626 or any other provision of law for which such mail otherwise qualifies, if lower than the rate that would otherwise apply under subsection (a).

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SECTION 311 OF THE FEDERAL ELECTION CAMPAIGN ACT OF 1971

ADMINISTRATIVE PROVISIONS

SEC. 311. (a) The Commission shall—

(1) * * *

* * * * * * *

(8) prescribe rules, regulations, and forms to carry out the provisions of this Act, in accordance with the provisions of subsection (d); *and*

(9) transmit to the President and to each House of the Congress no later than June 1 of each year, a report which states in detail the activities of the Commission in carrying out its duties under this Act, and any recommendations for any legislative or other action the Commission considers appropriate**[**; and**]**.

[(10) serve as a national clearinghouse for the compilation of information and review of procedures with respect to the administration of Federal elections. The Commission may enter into contracts for the purpose of conducting studies under this paragraph. Reports or studies made under this paragraph shall be available to the public upon the payment of the cost thereof, except that copies shall be made available without cost, upon request, to agencies and branches of the Federal Government.**]**

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NATIONAL VOTER REGISTRATION ACT OF 1993

* * * * * * *

SEC. 8. REQUIREMENTS WITH RESPECT TO ADMINISTRATION OF VOTER REGISTRATION.

(a) * * *

* * * * * * *

(b) CONFIRMATION OF VOTER REGISTRATION.—Any State program or activity to protect the integrity of the electoral process by ensuring the maintenance of an accurate and current voter registration roll for elections for Federal office—

(1) * * *

(2) shall not result in the removal of the name of any person from the official list of voters registered to vote in an election for Federal office by reason of the person's failure to vote**[**.**]**, *except that nothing in this paragraph may be construed to prohibit a State from using the procedures described in subsections (c) and (d) to remove an individual from the official list of eligible voters if the individual has not voted or appeared to vote in*

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2 or more consecutive general elections for Federal office and has not notified the applicable registrar (in person or in writing) or responded to a notice sent by the applicable registrar during the period in which such elections are held that the individual intends to remain registered in the registrar's jurisdiction.

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SEC. 9. FEDERAL COORDINATION AND REGULATIONS.

(a) IN GENERAL.—The [Federal Election Commission] *Election Assistance Commission*—

(1) * * *

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TITLE 5, UNITED STATES CODE

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PART III—EMPLOYEES

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Subpart B—Employment and Retention

CHAPTER 31—AUTHORITY FOR EMPLOYMENT

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SUBCHAPTER II—THE SENIOR EXECUTIVE SERVICE

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§ 3132. Definitions and exclusions

(a) For the purpose of this subchapter—

(1) "agency" means an Executive agency, except a Government corporation and the General Accounting Office, but does not include—

(A) * * *

* * * * * * *

(C) the Federal Election Commission *or the Election Assistance Commission*; or

* * * * * * *

Subpart F—Labor-Management and Employee Relations

* * * * * * *

CHAPTER 73—SUITABILITY, SECURITY, AND CONDUCT

* * * * * * *

SUBCHAPTER III—POLITICAL ACTIVITIES

* * * * * * *

AMERICAN OVERSIGHT

§ 7323. Political activity authorized; prohibitions

(a) * * *
(b)(1) * * *
(2)(A) * * *
(B) The provisions of subparagraph (A) shall apply to—
(i) an employee of—
(I) the Federal Election Commission *or the Election Assistance Commission*;

* * * * * * *

SECTION 8G OF THE INSPECTOR GENERAL ACT OF 1978

REQUIREMENTS FOR FEDERAL ENTITIES AND DESIGNATED FEDERAL ENTITIES

SEC. 8G. (a) Notwithstanding section 11 of this Act, as used in this section—

(1) * * *

(2) the term "designated Federal entity" means Amtrak, the Appalachian Regional Commission, the Board of Governors of the Federal Reserve System, the Board for International Broadcasting, the Commodity Futures Trading Commission, the Consumer Product Safety Commission, the Corporation for Public Broadcasting, the Equal Employment Opportunity Commission, the Farm Credit Administration, the Federal Communications Commission, the Federal Deposit Insurance Corporation, the Federal Election Commission, *the Election Assistance Commission,* the Federal Housing Finance Board, the Federal Labor Relations Authority, the Federal Maritime Commission, the Federal Trade Commission, the Legal Services Corporation, the National Archives and Records Administration, the National Credit Union Administration, the National Endowment for the Arts, the National Endowment for the Humanities, the National Labor Relations Board, the National Science Foundation, the Panama Canal Commission, the Peace Corps, the Pension Benefit Guaranty Corporation, the Securities and Exchange Commission, the Smithsonian Institution, the United States International Trade Commission, and the United States Postal Service;

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ADDITIONAL VIEWS OF HON. STENY H. HOYER

I write to offer my additional views regarding the importance of ensuring accessibility in voting for people with disabilities. The bill in its present form offers significant gains in voting accessibility for persons with disabilities, especially those with visual impairments. For example, the bill requires that, in a state receiving election fund payments, every polling place or precinct have at least one voting system (hardware and software) that is fully accessible. However, while I agree with everything in the committee report, I wish to emphasize the need to take further steps beyond this bill and beyond the Americans with Disabilities Act to ensure complete accessibility in voting and registration services for persons with disabilities.

Complete voting access must be assured for every voter regardless of whether a state or locality accepts federal election funds and without regard to any significant cost constraints. Voting is one of the fundamental rights of citizens in a Republic. As such, the right should not depend upon the vagaries of local budgets—certainly not in an affluent society like ours. Physical access to the ballot box should be unconditional. Every polling place in America should be accessible to persons with the full range of disabilities. Every polling place should have already at least one voting machine or method that is fully accessible, that is, a voting machine or method that allows a voter with a disability to vote in a manner that is as reliable, fraud-resistant, private, independent and anonymous as that available to anyone else.

One of our most profound accomplishments since the founding of the United States is the progressive broadening of the franchise to include African-Americans, women and others subject to pervasive discrimination. In this process, we have learned that few of the rights or interests of a particular group of Americans can be secure so long as that group lacks the right to vote for officials who will be accountable to them. We have also learned that, as more adult citizens become full participants in our polity, the democratic process is enriched for all. We are still in the process of learning this lesson with regard to persons with disabilities.

Most of the ongoing discrimination against persons with disabilities concerning voting is no longer motivated by deliberate efforts do exclude. However, as the recent GAO report on accessibility documents, the choice, design and administration of polling places, voting methods and machines continues in many instances to be driven by a careless assumption on the part of election administrators that all voters are able-bodied. The General Accounting Office recently found, for example, that many polling places have high door thresholds and inaccessible parking places, and that, even when ramps are installed, in many instances they are hazardous to users. Policymakers must strive to highlight the need to admin-

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ister every aspect of elections in a way that recognizes that a portion of the electorate does not enjoy the full range of abilities, disabilities and impairments.

The right to vote is an almost sacred right that should not be casually traded off against other rights and interests. See, e.g., *Harper* v. *Virginia State Board of Elections,* 383 U.S. 663, 667 (voting is a fundamental right, any alleged infringement of which, must be meticulously scrutinized); *Kramer* v. *Union Free School District No. 15,* 395 U.S. 621, 626 (1969) ("statutes distributing the franchise constitute the foundation of our representative society [requiring careful examination of a State's stated interests]") Corresponding to the fundamental nature of this right, government officials and election administrators at all levels of government must recognize we have a fundamental obligation to guarantee full access to the ballot box for every qualified citizen. Thus, I hope the Senate will go beyond the achievements of this bill to provide a guarantee of full accessibility that is not dependent upon a state's acceptance of federal funds and that is not limited by any significant cost constraints. Further, I hope we then accept those additional requirements when we meet with the Senate in conference.

However, even before Congress takes additional steps, we should remember, as the committee report explains, that we already have powerful tools for electoral reform available to us, one of which is the Americans with Disabilities Act of 1990 (ADA). In the preamble to that Act, we found that voting is a "critical area" and that discrimination against individuals with disabilities, especially discrimination in the form of isolation and segregation, persists. To redress this discrimination, the ADA insists upon both equality and integration for persons with disabilities.

In the past decade, the ADA has already improved electoral access for persons with disabilities, both through voluntary compliance and through successful litigation in recent cases such as *New York* v. *Schoharie,* 82 F.Supp.2d 19 (N.D.N.Y. 2000) and *Doe* v. *Rowe,* 156 F.Supp.2d 35 (D. Me. 2001). But, as the GAO report documents, there is plenty of work left to be done to achieve compliance with the ADA. While the ADA provides an undue burden defense to its general mandates, it still provides a great deal of leverage for correcting the kinds of problems documented by the GAO.

Under the ADA, all voting and registration procedures and services must be accessible. Accessibility includes affording individuals with disabilities an opportunity to cast a ballot in a manner that is as private, independent and anonymous as that afforded other voters, and to vote in an integrated setting with other voters. The ADA includes an integration mandate that bars attempts to achieve accessibility through separate-but-equal kinds of arrangements, a mandate that is limited only by the undue burden defense. See, e.g., *Olmstead* v. *L.C. by Zimring,* 527 U.S. 581 (1999).

Of course, the ADA's mandate to offer equal and integrated voting methods to persons with disabilities does nothing to deny a State or local government the right to provide generally to the electorate alternative voting methods such as absentee balloting. Nor does it deny an individual with a disability the right to receive a reasonable accommodation in the form of an absentee ballot, curbside voting, or assistance from a poll worker or other indi-

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vidual of his or her choice (other than an individual who is the voter's employer or agent of that employer or officer or agent of the voter's union).

But the fact that an individual with a disability might want to use an absentee ballot or curbside voting as a means of gaining access to voting does not relieve a State or locality from its obligation to make polling places as integrated and accessible as possible. Thus, to comply with the ADA, a pubic entity (such as a State or unit of local government or a responsible government official) must first survey its polling places and move inaccessible polling places to accessible locations. The defense of undue burden is unavailable if there are accessible places that may reasonably serve as polling places. It will be a rare case in which the need to move a polling place to another location will create an undue burden.

Simple compliance with this requirement—that accessible polling places be chosen in the first place—will result in significant increased accessibility without costing any additional money. Normally, an alteration in polling location will only require a different way of thinking about what constitutes an appropriate polling place.

There may well be situations in which no accessible place is reasonably available as a polling place. In such cases, the public entity must make changes to existing polling places to ensure accessibility, such as installing a ramp providing access for those who use wheelchairs. This obligation, however, is subject to an "undue burden" defense. Thus, in some situations, the entity will not be required to make a polling place accessible, and instead, will be permitted to offer access to voting through such means as curbside voting or absentee balloting.

It is important to note, however, that a State or unit of local government may not, as a first resort, depend upon curbside voting or absentee balloting as its sole means to make polling places accessible. Rather, as noted, the government must first determine whether an integrated means of access can be achieved within the "undue burden" limitation. If such access cannot be achieved within that standard, the public entity may then rely upon alternative, less-integrated means of access to the act of voting, for example, curbside voting or absentee balloting.

The undue burden standard makes allowance for the limitations of poor or rural jurisdictions lacking the resources to achieve a level of accessibility equivalent to that of larger, wealthier or more populous areas. However, an undue burden defense must be assessed in terms of actual—rather than merely formal—resource constraints. An undue burden means significant difficulty or expense in light of the budget of the unit of government responsible for funding registration services, polling places and voting methods, together with any coordinated budget with, or budgetary resources available from, other units of State and local government. See, e.g., H.R. Rep. No. 101–485 (1990), reprinted in Comm. on Educ. and Labor, 101st Cong., Legislative History of the Americans with Dis-

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abilities Act, at 340–343 (1990) (providing guidance on the analogous undue hardship determination in the employment context.)

STENY H. HOYER.

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Date : 9/16/2020 11:51:32 AM
From : "Alexander Heideman" aheideman@usccr.gov
To : "Christian Adams" a@electionlawcenter.com, "'Gail Heriot'" gheriot@me.com
Cc : "Carissa Mulder" CMulder@usccr.gov, "'Peter Kirsanow'" pkirsanow@beneschlaw.com, "'stephen gilchrist'" thegilchristassociates@gmail.com, "'John Mashburn'" jkmash@comcast.net, "'Thomas Simuel'" tjsimuel32@gmail.com
Subject : Re: [EXTERNAL] EAC Board of Advisors
Attachment : Help America Vote Act House Report 107_329[1].pdf;

Maureen says:

> To my knowledge, there are not any internal rules about these appointments. The practice has been that the Chair makes the appointments. (Note though that I only have records going back to 2015 for these appointments and I do not know what the practice was before 2015). The statute (52 U.S.C. 20944(a)(10)) says "Two members appointed by the United States Commission on Civil Rights." 52 U.S.C. 20944(b) says "Appointments shall be made to the Board of Advisors under subsection (a) in a manner which ensures that the Board of Advisors will be bipartisan in nature and will reflect the various geographic regions of the United States." The terms are 2 year appointments; I believe the current USCCR appointments are Yaki and Kladney, and that their terms end 4/13/2021. I provided the above information, i.e., bipartisan and geographic scope, before the 2019 appointments, though did not provide any input beyond this. I've also attached the House report for the Help American Vote Act (establishes the advisory committees) - discussion of advisory boards is on page 33.

I have a call scheduled with her at 1 pm to discuss further. Please let me know if there are any specific questions I should ask.

Alex

From: Alexander Heideman <aheideman@usccr.gov>
Date: Wednesday, September 16, 2020 at 11:02 AM
To: Christian Adams <a@electionlawcenter.com>, 'Gail Heriot' <gheriot@me.com>
Cc: Carissa Mulder <CMulder@usccr.gov>, 'Peter Kirsanow' <pkirsanow@beneschlaw.com>, 'stephen gilchrist' <thegilchristassociates@gmail.com>, 'John Mashburn' <jkmash@comcast.net>, 'Thomas Simuel' <tjsimuel32@gmail.com>
Subject: Re: [EXTERNAL] EAC Board of Advisors

Yes, happy to.

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From: Christian Adams <a@electionlawcenter.com>
Date: Wednesday, September 16, 2020 at 11:02 AM
To: 'Gail Heriot' <gheriot@me.com>
Cc: Carissa Mulder <CMulder@usccr.gov>, 'Peter Kirsanow' <pkirsanow@beneschlaw.com>, 'stephen gilchrist' <thegilchristassociates@gmail.com>, 'John Mashburn' <jkmash@comcast.net>, 'Thomas Simuel' <tjsimuel32@gmail.com>, Alexander Heideman <aheideman@usccr.gov>
Subject: RE: [EXTERNAL] EAC Board of Advisors

> CAUTION: This email is from outside USCCR.

ple people aren't asking her different times, can the SA's get to the bottom of this with maureen.

From: Gail Heriot <gheriot@me.com>
Sent: Wednesday, September 16, 2020 10:46 AM
To: Christian Adams <a@electionlawcenter.com>
Cc: Carissa Mulder <CMulder@usccr.gov>; Peter Kirsanow <pkirsanow@beneschlaw.com>; stephen gilchrist <thegilchristassociates@gmail.com>; John Mashburn <jkmash@comcast.net>; Thomas Simuel <tjsimuel32@gmail.com>; Alexander Heideman <aheideman@usccr.gov>
Subject: Re: [EXTERNAL] EAC Board of Advisors

I don't think there are any rules. In the absence of an explicit delegation of power, the Commission as a whole has that power. But you need to be sure it wasn't done properly. I have a vague recollection of talking about this in a meeting in the last decade. The straight shooter on the staff is Maureen Rudolph. You might want to ask her.

Gail Heriot
Professor of Law
University of San Diego

> On Sep 15, 2020, at 2:17 PM, Christian Adams <a@electionlawcenter.com> wrote:
>
> I don't know the rules for USCCR appointing ANYONE yet, but if there are no minutes showing a vote appointing them in regular business, it would seem that their "appointment" is void.
>
> ---
>
> **From:** Carissa Mulder <CMulder@usccr.gov>
> **Sent:** Tuesday, September 15, 2020 4:01 PM
> **To:** Christian Adams <a@electionlawcenter.com>; 'Peter Kirsanow' <pkirsanow@Beneschlaw.com>; 'Gail Heriot' <gheriot@me.com>;

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'stephen gilchrist' <thegilchristassociates@gmail.com>
Cc: 'John Mashburn' <jkmash@comcast.net>; 'Thomas Simuel' <tjsimuel32@gmail.com>; Alexander Heideman <aheideman@usccr.gov>
Subject: Re: [EXTERNAL] EAC Board of Advisors

Looking at the document about the appointment of the advisory board members, I think that is correct, Christian. Catherine probably appointed them without ever bringing it up.

From: Christian Adams <a@electionlawcenter.com>
Sent: Tuesday, September 15, 2020 3:55:45 PM
To: Carissa Mulder; 'Peter Kirsanow'; 'Gail Heriot'; 'stephen gilchrist'
Cc: 'John Mashburn'; 'Thomas Simuel'; Alexander Heideman
Subject: RE: [EXTERNAL] EAC Board of Advisors

> CAUTION: This email is from outside USCCR.

It probably NEVER came up in a business meeting and therefore we should, as a commission have the authority to take it up in a business meeting and appoint-anew.

From: Carissa Mulder <CMulder@usccr.gov>
Sent: Tuesday, September 15, 2020 3:34 PM
To: Christian Adams <a@electionlawcenter.com>; Peter Kirsanow <pkirsanow@Beneschlaw.com>; 'Gail Heriot' <gheriot@me.com>; 'stephen gilchrist' <thegilchristassociates@gmail.com>
Cc: John Mashburn <jkmash@comcast.net>; 'Thomas Simuel' <tjsimuel32@gmail.com>; Alexander Heideman <aheideman@usccr.gov>
Subject: Re: [EXTERNAL] EAC Board of Advisors

Good question! I had no idea the USCCR got two designees to the .

From: Christian Adams <a@electionlawcenter.com>
Sent: Tuesday, September 15, 2020 3:15:28 PM
To: Peter Kirsanow; 'Gail Heriot'; 'stephen gilchrist'
Cc: John Mashburn; 'Thomas Simuel'; Carissa Mulder; Alexander Heideman
Subject: [EXTERNAL] EAC Board of Advisors

> CAUTION: This email is from outside USCCR.

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AC commission saying that Yaki is acting absurdly and exercising power over the EAC by threatening the Pelosi pick on the EAC with removal if he doesn't do what he wants, effectively making Yaki a commissioner on the EAC on many issues. He is causing mischief I don't even detail here.

My question is how does he get UNDONE from the EAC oversight commission? How does that get revoked and replaced?

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107TH CONGRESS } HOUSE OF REPRESENTATIVES { REPT. 107–329
1st Session } { Part 1

HELP AMERICA VOTE ACT OF 2001

DECEMBER 10, 2001.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. NEY, from the Committee on House Administration, submitted the following

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany H.R. 3295]

[Including cost estimate of the Congressional Budget Office]

The Committee on House Administration, to whom was referred the bill (H.R. 3295) to establish a program to provide funds to States to replace punch card voting systems, to establish the Election Assistance Commission to assist in the administration of Federal elections and to otherwise provide assistance with the administration of certain Federal election laws and programs, to establish minimum election administration standards for States and units of local government with responsibility for the administration of Federal elections, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Help America Vote Act of 2001".

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—PUNCH CARD VOTING MACHINES

Subtitle A—Replacement of Machines

Sec. 101. Establishment of program.
Sec. 102. Eligibility.
Sec. 103. Amount of payment.
Sec. 104. Audit and repayment of funds.
Sec. 105. Punch card voting system defined.

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Subtitle B—Enhancing Performance of Existing Systems

Sec. 111. Establishment of program.
Sec. 112. Eligibility.
Sec. 113. Amount of payment.
Sec. 114. Audit and repayment of funds.

Subtitle C—General Provisions

Sec. 121. Authorization of appropriations.
Sec. 122. Punch card voting system defined.

TITLE II—COMMISSION

Subtitle A—Establishment and General Organization

PART 1—ELECTION ASSISTANCE COMMISSION

Sec. 201. Establishment.
Sec. 202. Duties.
Sec. 203. Membership and appointment.
Sec. 204. Staff.
Sec. 205. Powers.
Sec. 206. Limitation on rulemaking authority.
Sec. 207. Authorization of appropriations.

PART 2—ELECTION ASSISTANCE COMMISSION STANDARDS BOARD AND BOARD OF ADVISORS

Sec. 211. Establishment.
Sec. 212. Duties.
Sec. 213. Membership of Standards Board.
Sec. 214. Membership of Board of Advisors.
Sec. 215. Powers of boards; no compensation for service.
Sec. 216. Status of boards and members for purposes of claims against board.

Subtitle B—Voluntary Election Standards

Sec. 221. Development of voluntary election standards.
Sec. 222. Technical standards development committee.
Sec. 223. Process for adoption of voluntary standards.
Sec. 224. Certification and testing of voting systems.
Sec. 225. Dissemination of information.

Subtitle C—Election Assistance

PART 1—ELECTION FUND PAYMENTS TO STATES FOR VOTING SYSTEM IMPROVEMENTS

Sec. 231. Election fund payments to States for voting system improvements.
Sec. 232. Allocation of funds.
Sec. 233. Conditions for receipt of funds.
Sec. 234. Authorization of appropriations.

PART 2—GRANTS FOR RESEARCH ON VOTING TECHNOLOGY IMPROVEMENTS

Sec. 241. Grants for research on voting technology improvements.
Sec. 242. Report.
Sec. 243. Authorization of appropriations.

PART 3—PILOT PROGRAM FOR TESTING OF EQUIPMENT AND TECHNOLOGY

Sec. 251. Pilot program.
Sec. 252. Report.
Sec. 253. Authorization of appropriations.

PART 4—MISCELLANEOUS

Sec. 261. Role of National Institute of Standards and Technology.
Sec. 262. Reports.
Sec. 263. Audit.

TITLE III—HELP AMERICA VOTE COLLEGE PROGRAM

Sec. 301. Establishment of Program.
Sec. 302. Activities under Program.
Sec. 303. Authorization of appropriations.

TITLE IV—HELP AMERICA VOTE FOUNDATION

Sec. 401. Help America Vote Foundation.

TITLE V—MINIMUM STANDARDS FOR STATE ELECTION SYSTEMS

Sec. 501. Minimum standards for State election systems.
Sec. 502. Standards described.
Sec. 503. Enforcement.
Sec. 504. Effective date.

TITLE VI—VOTING RIGHTS OF MILITARY MEMBERS AND OVERSEAS CITIZENS

Sec. 601. Voting assistance programs.
Sec. 602. Designation of single State office to provide information on registration and absentee ballots for all voters in State.
Sec. 603. Report on absentee ballots transmitted and received after general elections.
Sec. 604. Simplification of voter registration and absentee ballot application procedures for absent uniformed services and overseas voters.
Sec. 605. Additional duties of Presidential designee under Uniformed and Overseas Citizens Absentee Voting Act.
Sec. 606. Use of buildings on military installations and reserve component facilities as polling places.

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TITLE VII—REDUCED POSTAGE RATES FOR OFFICIAL ELECTION MAIL

Sec. 701. Reduced postage rates for official election mail.

TITLE VIII—TRANSITION PROVISIONS

Subtitle A—Transfer to Commission of Functions Under Certain Laws

Sec. 801. Federal Election Campaign Act of 1971.
Sec. 802. National Voter Registration Act of 1993.
Sec. 803. Transfer of property, records, and personnel.
Sec. 804. Effective date; transition.

Subtitle B—Coverage of Commission Under Certain Laws and Programs

Sec. 811. Treatment of Commission personnel under certain civil service laws.
Sec. 812. Coverage under Inspector General Act of 1978.

TITLE IX—MISCELLANEOUS PROVISIONS

Sec. 901. State defined.
Sec. 902. Miscellaneous provisions to protect integrity of election process.
Sec. 903. No effect on other laws.

TITLE I—PUNCH CARD VOTING MACHINES

Subtitle A—Replacement of Machines

SEC. 101. ESTABLISHMENT OF PROGRAM.

(a) IN GENERAL.—Not later than 30 days after the date of the enactment of this Act, the Administrator of General Services (hereafter in this title referred to as the "Administrator") shall establish a program under which the Administrator shall make a one-time payment to each eligible State or unit of local government which used a punch card voting system to administer the regularly scheduled general election for Federal office held in November 2000.

(b) USE OF FUNDS.—A State or unit of local government shall use the funds provided under a payment under this subtitle (either directly or as reimbursement) to replace its punch card voting system with a voting system which does not use punch cards (by purchase, lease, or such other arrangement as may be appropriate).

(c) DEADLINE.—

(1) IN GENERAL.—A State or unit of local government receiving a payment under the program under this subtitle shall—

(A) obligate the funds provided for the uses described in subsection (b) not later than the date of the regularly scheduled general election for Federal office to be held in November 2002; and

(B) ensure that all of the punch card voting systems under its jurisdiction have been replaced in time for the regularly scheduled general election for Federal office to be held in November 2004.

(2) WAIVER.—If a State or unit of local government provides the Election Assistance Commission (established under section 201) (not later than the date of the regularly scheduled general election for Federal office to be held in November 2002) with a notice that the State or unit will not meet the deadlines described in paragraph (1) and includes in the notice the reasons for the failure to meet such deadlines, and the Commission finds that there is good cause for the failure to meet such deadlines, paragraph (1) shall apply to the State or unit as if—

(A) the reference in paragraph (1)(A) to "November 2002" were a reference to "November 2004"; and

(B) the reference in paragraph (1)(B) to "November 2004" were a reference to "November 2006".

SEC. 102. ELIGIBILITY.

(a) STATES.—A State is eligible to receive a payment under the program under this subtitle if it submits to the Administrator an application not later than 120 days after the date of the enactment of this Act (in such form as the Administrator may require) which contains—

(1) assurances that the State will use the payment (either directly or as reimbursement) to replace punch card voting systems in jurisdictions within the State which used such systems to carry out the general Federal election held in November 2000;

(2) assurances that in replacing punch card voting systems the State will continue to meets its duties under the Voting Accessibility for the Elderly and Handicapped Act (42 U.S.C. 1973ee et seq.) and the Americans With Disabilities Act;

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(3) assurances that in replacing punch card voting systems the State will provide for alternative language accessibility for individuals with limited English proficiency, consistent with the requirements of the Voting Rights Act of 1965 and any other applicable provisions of law; and

(4) such other information and assurances as the Administrator may require which are necessary for the administration of the program.

(b) UNIT OF LOCAL GOVERNMENT.—A unit of local government is eligible to receive a payment under the program under this subtitle if it submits to the Administrator—

(1) not later than the date of the regularly scheduled general election for Federal office to be held in November 2002, a statement of its intent to participate in the program, including assurances that the State in which the unit is located—

(A) failed to submit an application under subsection (a) within the deadline specified under such subsection,

(B) is otherwise not eligible to receive a payment under the program, or

(C) will not use the payment to replace punch card voting systems in the unit; and

(2) an application (at such time and in such form as the Administrator may require) which contains similar assurances to those required to be provided by a State in its application under subsection (a).

SEC. 103. AMOUNT OF PAYMENT.

(a) IN GENERAL.—The amount of payment made to a State or unit of local government under the program under this subtitle shall be equal to the applicable per precinct matching rate of the cost to the State or unit (as the case may be) of replacing the punch card voting systems used in each precinct in the State or unit (as the case may be), except that in no case may the amount of the payment exceed the product of—

(1) the number of voting precincts administered by the State or unit which used a punch card voting system to carry out the general Federal election held in November 2000; and

(2) $6,000.

(b) APPLICABLE PER PRECINCT MATCHING RATE DEFINED.—In subsection (a), the "applicable per precinct matching rate" is—

(1) 90 percent; or

(2) 95 percent, in the case of a precinct whose average per capita income is within the lowest quartile of average per capita incomes for all precincts in the United States (as determined by the 2000 decennial census).

SEC. 104. AUDIT AND REPAYMENT OF FUNDS.

(a) AUDIT.—Funds provided under the program under this subtitle shall be subject to audit by the Administrator.

(b) REPAYMENT FOR FAILURE TO MEET DEADLINES.—If a State or unit of local government (as the case may be) receiving funds under the program under this subtitle fails to meet the deadlines applicable to the State or unit under section 101(c), the State or unit shall pay to the Administrator an amount equal to the amount of the funds provided to the State or unit under the program.

SEC. 105. PUNCH CARD VOTING SYSTEM DEFINED.

For purposes of this subtitle, a "punch card voting system" means any of the following voting systems:

(1) C.E.S.
(2) Datavote.
(3) PBC Counter.
(4) Pollstar.
(5) Punch Card.
(6) Vote Recorder.
(7) Votomatic.

Subtitle B—Enhancing Performance of Existing Systems

SEC. 111. ESTABLISHMENT OF PROGRAM.

(a) IN GENERAL.—Not later than 30 days after the date of the enactment of this Act, the Administrator shall establish a program under which the Administrator shall make a one-time payment to each eligible State or unit of local government

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which used a punch card voting system to administer the regularly scheduled general election for Federal office held in November 2000.

(b) USE OF FUNDS.—A State or unit of local government shall use the funds provided under a payment under this subtitle (either directly or as reimbursement) to make technical enhancements to the performance of its punch card voting system (by any arrangement as may be appropriate).

(c) DEADLINE.—

(1) IN GENERAL.—A State or unit of local government receiving a payment under the program under this subtitle shall—

(A) obligate the funds provided for the uses described in subsection (b) not later than the date of the regularly scheduled general election for Federal office to be held in November 2002; and

(B) ensure that technical enhancements have been made to the performance of all of the punch card voting systems under its jurisdiction in time for the regularly scheduled general election for Federal office to be held in November 2004.

(2) WAIVER.—If a State or unit of local government provides the Election Assistance Commission (established under section 201) (not later than the date of the regularly scheduled general election for Federal office to be held in November 2002) with a notice that the State or unit will not meet the deadlines described in paragraph (1) and includes in the notice the reasons for the failure to meet such deadlines, and the Commission finds that there is good cause for the failure to meet such deadlines, paragraph (1) shall apply to the State or unit as if—

(A) the reference in paragraph (1)(A) to "November 2002" were a reference to "November 2004"; and

(B) the reference in paragraph (1)(B) to "November 2004" were a reference to "November 2006".

SEC. 112. ELIGIBILITY.

(a) STATES.—Subject to subsection (c), a State is eligible to receive a payment under the program under this subtitle if it submits to the Administrator an application not later than 120 days after the date of the enactment of this Act (in such form as the Administrator may require) which contains—

(1) assurances that the State will use the payment (either directly or as reimbursement) to make technical enhancements to the performance of punch card voting systems in jurisdictions within the State which used such systems to carry out the general Federal election held in November 2000;

(2) assurances that in enhancing the performance of such voting systems the State will continue to meets its duties under the Voting Accessibility for the Elderly and Handicapped Act (42 U.S.C. 1973ee et seq.) and the Americans With Disabilities Act; and

(3) such other information and assurances as the Administrator may require which are necessary for the administration of the program.

(b) UNITS OF LOCAL GOVERNMENT.—Subject to subsection (c), a unit of local government is eligible to receive a payment under the program under this subtitle if it submits to the Administrator—

(1) not later than the date of the regularly scheduled general election for Federal office to be held in November 2002, a statement of its intent to participate in the program, including assurances that the State in which the unit is located—

(A) failed to submit an application under subsection (a) within the deadline specified under such subsection,

(B) is otherwise not eligible to receive a payment under the program, or

(C) will not use the payment to enhance the performance of punch card voting systems in the unit; and

(2) an application (at such time and in such form as the Administrator may require) which contains similar assurances to those required to be provided by a State in its application under subsection (a).

(c) PROHIBITING PARTICIPATION IN PUNCH CARD REPLACEMENT PROGRAM.—A State or unit of local government is not eligible to receive a payment under the program under this subtitle if the State or unit receives a payment under the program under subtitle A.

SEC. 113. AMOUNT OF PAYMENT.

(a) IN GENERAL.—The amount of payment made to a State or unit of local government under the program under this subtitle shall be equal to the applicable per precinct matching rate of the cost to the State or unit (as the case may be) of the activities to be funded with the payment under the program in each precinct in the State

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or unit (as the case may be) , except that in no case may the amount of the payment exceed the product of—

(1) the number of voting precincts administered by the State or unit which used a punch card voting system to carry out the general Federal election held in November 2000; and

(2) $2,000.

(b) APPLICABLE PER PRECINCT MATCHING RATE DEFINED.—In subsection (a), the "applicable per precinct matching rate" is—

(1) 90 percent; or

(2) 95 percent, in the case of a precinct whose average per capita income is within the lowest quartile of average per capita incomes for all precincts in the United States (as determined by the 2000 decennial census).

SEC. 114. AUDIT AND REPAYMENT OF FUNDS.

(a) AUDIT.—Funds provided under the program under this subtitle shall be subject to audit by the Administrator.

(b) REPAYMENT FOR FAILURE TO MEET REQUIREMENTS.—If a State or unit of local government (as the case may be) receiving funds under the program under this subtitle fails to meet the deadlines applicable to the State or unit under section 111(c), the State or unit shall pay to the Administrator an amount equal to the amount of the funds provided to the State or unit under the program.

Subtitle C—General Provisions

SEC. 121. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There are authorized to be appropriated for payments under this title $400,000,000, to remain available until expended (subject to subsection (b)).

(b) USE OF RETURNED FUNDS AND FUNDS REMAINING UNEXPENDED FOR ELECTION FUND PAYMENTS.—

(1) IN GENERAL.—The amounts referred to in paragraph (2) shall be transferred to the Election Assistance Commission (established under title II) and used by the Commission to make Election Fund payments under part 1 of subtitle C of title II.

(2) AMOUNTS DESCRIBED.—The amounts referred to in this paragraph are as follows:

(A) Any amounts appropriated pursuant to the authorization under this section which remain unobligated as of the date of the regularly scheduled general election for Federal office held in November 2002.

(B) Any amounts paid to the Administrator by a State or unit of local government under section 104(b).

(B) Any amounts paid to the Administrator by a State or unit of local government under section 114(b).

SEC. 122. PUNCH CARD VOTING SYSTEM DEFINED.

For purposes of this title, a "punch card voting system" means any of the following voting systems:

(1) C.E.S.
(2) Datavote.
(3) PBC Counter.
(4) Pollstar.
(5) Punch Card.
(6) Vote Recorder.
(7) Votomatic.

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TITLE II—COMMISSION

Subtitle A—Establishment and General Organization

PART 1—ELECTION ASSISTANCE COMMISSION

SEC. 201. ESTABLISHMENT.

There is hereby established as an independent entity in the executive branch the Election Assistance Commission (hereafter in this title referred to as the "Commission"), consisting of—

(1) the members appointed under this part;

(2) the Election Assistance Commission Standards Board established under part 2 (including the Executive Board of such Board); and

(3) the Election Assistance Commission Board of Advisors established under part 2.

SEC. 202. DUTIES.

The Commission shall serve as a national clearinghouse and resource for the compilation of information and review of procedures with respect to the administration of Federal elections by—

(1) carrying out the duties described in subtitle B (relating to voluntary election standards);

(2) carrying out the duties described in subtitle C (relating to election assistance); and

(3) developing and carrying out the Help America Vote College Program under title III.

SEC. 203. MEMBERSHIP AND APPOINTMENT.

(a) MEMBERSHIP.—

(1) IN GENERAL.—The Commission shall have 4 members appointed by the President, by and with the consent of the Senate, of whom—

(A) 1 shall be appointed from among a list of nominees submitted by the majority leader of the Senate;

(B) 1 shall be appointed from among a list of nominees submitted by the minority leader of the Senate;

(C) 1 shall be appointed from among a list of nominees submitted by the Speaker of the House of Representatives; and

(D) 1 shall be appointed from among a list of nominees submitted by the minority leader of the House of Representatives.

(2) QUALIFICATIONS.—Each member of the Commission shall have experience with or expertise in election administration or the study of elections, except that no individual may serve as a member of the Commission if the individual is an officer or employee of the Federal Government at any time during the period of service on the Commission.

(3) DATE OF APPOINTMENT.—The appointments of the members of the Commission shall be made not later than 30 days after the date of enactment of this Act.

(b) TERM OF SERVICE.—

(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), members shall serve for a term of 4 years and may be reappointed for not more than one additional term.

(2) TERMS OF INITIAL APPOINTEES.—As designated by the President at the time of appointment, of the members first appointed—

(A) 2 of the members (not more than 1 of whom may be affiliated with the same political party) shall be appointed for a term of 2 years; and

(B) 2 of the members (not more than 1 of whom may be affiliated with the same political party) shall be appointed for a term of 4 years.

(3) VACANCIES.—

(A) IN GENERAL.—A vacancy on the Commission shall be filled in the manner in which the original appointment was made and shall be subject to any conditions which applied with respect to the original appointment.

(B) EXPIRED TERMS.—A member of the Commission may serve on the Commission after the expiration of the member's term until the successor of such member has taken office as a member of the Commission.

(C) UNEXPIRED TERMS.—An individual chosen to fill a vacancy shall be appointed for the unexpired term of the member replaced.

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(c) CHAIR AND VICE CHAIR.—The Commission shall select a chair and vice chair from among its members for a term of 1 year, except that the chair and vice chair may not be affiliated with the same political party.

(d) COMPENSATION.—

(1) IN GENERAL.—Members of the Commission shall each be paid at an annual rate equal to $30,000.

(2) TRAVEL EXPENSES.—Members of the Commission shall each receive travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Commission.

(3) OUTSIDE EMPLOYMENT PERMITTED.—A member of the Commission may hold any other office or employment not inconsistent or in conflict with the member's duties, responsibilities, and powers as a member of the Commission.

SEC. 204. STAFF.

(a) EXECUTIVE DIRECTOR AND OTHER STAFF.—

(1) IN GENERAL.—The Commission shall have an Executive Director, who shall be paid at a rate not to exceed the rate of basic pay for level V of the Executive Schedule.

(2) TERM OF SERVICE FOR EXECUTIVE DIRECTOR.—Except as provided in paragraph (3)(C), the Executive Director shall serve for a term of 4 years. An Executive Director may be reappointed for additional terms.

(3) PROCEDURE FOR APPOINTMENT.—

(A) IN GENERAL.—When a vacancy exists in the position of the Executive Director, the Election Assistance Commission Standards Board and the Election Assistance Commission Board of Advisors (described in part 2) shall each appoint a search committee to recommend not fewer than 3 nominees for the position.

(B) REQUIRING CONSIDERATION OF NOMINEES.—Except as provided in subparagraph (C), the Commission shall consider the nominees recommended by the Standards Board and the Board of Advisors in appointing the Executive Director.

(C) SPECIAL RULES FOR FIRST EXECUTIVE DIRECTOR.—

(i) CONVENING OF SEARCH COMMITTEES.—The Standards Board and the Board of Advisors shall each appoint a search committee and recommend nominees for the position of Executive Director in accordance with subparagraph (A) as soon as practicable after the appointment of their members.

(ii) INTERIM INITIAL APPOINTMENT.—Notwithstanding subparagraph (B), the Commission may appoint an individual to serve as the first Executive Director prior to the recommendation of nominees for the position by the Standards Board or the Board of Advisors, except that such individual's term of service may not exceed 6 months. Nothing in the previous sentence may be construed to prohibit the individual serving as the first Executive Director from serving any additional term.

(4) OTHER STAFF.—Subject to rules prescribed by the Commission, the Executive Director may appoint and fix the pay of such additional personnel as the Executive Director considers appropriate.

(5) APPLICABILITY OF CERTAIN CIVIL SERVICE LAWS.—The Executive Director and staff of the Commission may be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of that title relating to classification and General Schedule pay rates, except that an individual so appointed may not receive pay in excess of the annual rate of basic pay for level V of the Executive Schedule.

(b) EXPERTS AND CONSULTANTS.—Subject to rules prescribed by the Commission, the Executive Director may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, with the approval of a majority of the members of the Commission.

(c) STAFF OF FEDERAL AGENCIES.—Upon request of the Chair, the head of any Federal department or agency may detail, on a reimbursable basis, any of the personnel of that department or agency to the Commission to assist it in carrying out its duties under this Act.

(d) ARRANGING FOR ASSISTANCE FOR BOARD OF ADVISORS AND STANDARDS BOARD.—At the request of the Election Assistance Commission Board of Advisors or the Election Assistance Commission Standards Board established under part 2, the Executive Director shall enter into such arrangements as the Executive Director considers appropriate to make personnel available to assist the Boards with car-

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rying out their duties under this title (including contracts with private individuals for providing temporary personnel services or the temporary detailing of personnel of the Commission).

(e) CONSULTATION WITH BOARD OF ADVISORS AND STANDARDS BOARD ON CERTAIN MATTERS.—In preparing the program goals, long-term plans, mission statements, and related matters for the Commission, the Executive Director and staff of the Commission shall consult with the Election Assistance Commission Board of Advisors and the Election Assistance Commission Standards Board established under part 2.

SEC. 205. POWERS.

(a) HEARINGS AND SESSIONS.—The Commission may hold such hearings for the purpose of carrying out this Act, sit and act at such times and places, take such testimony, and receive such evidence as the Commission considers advisable to carry out this Act. The Commission may administer oaths and affirmations to witnesses appearing before the Commission.

(b) INFORMATION FROM FEDERAL AGENCIES.—The Commission may secure directly from any Federal department or agency such information as the Commission considers necessary to carry out this Act. Upon request of the Chair of the Commission, the head of such department or agency shall furnish such information to the Commission.

(c) POSTAL SERVICES.—The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

(d) ADMINISTRATIVE SUPPORT SERVICES.—Upon the request of the Chair of the Commission, the Administrator of General Services shall provide to the Commission, on a reimbursable basis, the administrative support services that are necessary to enable the Commission to carry out its duties under this Act.

(e) CONTRACTS.—The Commission may contract with and compensate persons and Federal agencies for supplies and services without regard to section 3709 of the Revised Statutes of the United States (41 U.S.C. 5).

SEC. 206. LIMITATION ON RULEMAKING AUTHORITY.

The Commission shall not have any authority to issue any rule, promulgate any regulation, or take any other action which imposes any requirement on any State or unit of local government, except to the extent permitted under the National Voter Registration Act of 1993.

SEC. 207. AUTHORIZATION OF APPROPRIATIONS.

In addition to the amounts authorized for payments and grants under subtitle C and the amounts authorized to be appropriated for the program under section 303, there are authorized to be appropriated for each of the fiscal years 2002 through 2004 such sums as may be necessary (but not to exceed $10,000,000 for each such year) for the Commission to carry out its duties under this title.

PART 2—ELECTION ASSISTANCE COMMISSION STANDARDS BOARD AND BOARD OF ADVISORS

SEC. 211. ESTABLISHMENT.

There are hereby established the Election Assistance Commission Standards Board (hereafter in this title referred to as the "Standards Board") and the Election Assistance Commission Board of Advisors (hereafter in this title referred to as the "Board of Advisors").

SEC. 212. DUTIES.

The Standards Board and the Board of Advisors shall each, in accordance with the procedures described in section 223, review any of the voluntary engineering and procedural performance standards described in section 221(a)(1), any of the voluntary standards described in section 221(a)(4), and any of the voluntary election management practice standards described in section 221(a)(6) (and any modifications to such standards) which are recommended by the Commission under subtitle B.

SEC. 213. MEMBERSHIP OF STANDARDS BOARD.

(a) COMPOSITION.—

(1) IN GENERAL.—Subject to certification by the chair of the Federal Election Commission under subsection (b), the Standards Board shall be composed of 110 members as follows:

(A) 55 shall be the chief State election officials of each State.

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(B) 55 shall be local election officials selected in accordance with paragraph (2).

(2) LIST OF LOCAL ELECTION OFFICIALS.—Each State's local election officials shall select (under a process supervised by the chief election official of the State) a representative local election official from the State for purposes of paragraph (1)(B). In the case of the District of Columbia, Guam, and American Samoa, the chief election official shall establish a procedure for selecting an individual to serve as a local election official for purposes of such paragraph, except that under such a procedure the individual selected may not be a member of the same political party as the chief election official.

(3) REQUIRING MIX OF POLITICAL PARTIES REPRESENTED.—The 2 members of the Standards Board who represent the same State may not be members of the same political party.

(b) PROCEDURES FOR NOTICE AND CERTIFICATION OF APPOINTMENT.—

(1) NOTICE TO CHAIR OF FEDERAL ELECTION COMMISSION.—Not later than 90 days after the date of the enactment of this Act, a State shall transmit a notice to chair of the Federal Election Commission containing—

(A) a statement that the chief election official of the State agrees to serve on the Standards Board under this title; and

(B) the name of the representative local election official from the State selected under subsection (a)(2) who will serve on the Standards Board under this title.

(2) CERTIFICATION.—Upon receiving a notice from a State under paragraph (1), the chair of the Federal Election Commission shall publish a certification that the chief election official and the representative local election official are appointed as members of the Standards Board under this title.

(3) EFFECT OF FAILURE TO PROVIDE NOTICE.—If a State does not transmit a notice to the chair of the Federal Election Commission under paragraph (1) within the deadline described in such paragraph, no representative from the State may participate in the selection of the Executive Board under subsection (c).

(4) ROLE OF COMMISSION.—Upon the appointment of the members of the Election Assistance Commission, the Election Assistance Commission shall carry out the duties of the Federal Election Commission under this subsection.

(c) EXECUTIVE BOARD.—

(1) IN GENERAL.—Not later than 60 days after the last day on which the appointment of any of its members may be certified under subsection (b), the Standards Board shall select 9 of its members to serve as the Executive Board of the Standards Board, of whom—

(A) not more than 5 may be chief State election officials;

(B) not more than 5 may be local election officials; and

(C) not more than 5 may be members of the same political party.

(2) TERMS.—Except as provided in paragraph (3), members of the Executive Board of the Standards Board shall serve for a term of 2 years and may not serve for more than 3 consecutive terms.

(3) STAGGERING OF INITIAL TERMS.—Of the members first selected to serve on the Executive Board of the Standards Board—

(A) 3 shall serve for one term;

(B) 3 shall serve for 2 consecutive terms; and

(C) 3 shall serve for 3 consecutive terms,

as determined by lot at the time the members are first appointed.

(4) DUTIES.—In addition to any other duties assigned under this title, the Executive Board of the Standards Board may carry out such duties of the Standards Board as the Standards Board may delegate.

SEC. 214. MEMBERSHIP OF BOARD OF ADVISORS.

(a) IN GENERAL.—The Board of Advisors shall be composed of 25 members appointed as follows:

(1) 2 members appointed by the United States Commission on Civil Rights.

(2) 2 members appointed by the Architectural and Transportation Barrier Compliance Board under section 502 of the Rehabilitation Act of 1973 (29 U.S.C. 792).

(3) 2 members appointed by the National Governors Association.

(4) 2 members appointed by the National Conference of State Legislatures.

(5) 2 members appointed by the National Association of Secretaries of State.

(6) 2 members appointed by the National Association of State Election Directors.

(7) 2 members appointed by the National Association of Counties.

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(8) 2 members appointed by the National Association of County Recorders, Election Administrators, and Clerks.

(9) 2 members appointed by the United States Conference of Mayors.

(10) 2 members appointed by the Election Center.

(11) 2 members appointed by the International Association of County Recorders, Election Officials, and Treasurers.

(12) 2 members representing professionals in the field of science and technology, of whom 1 shall be appointed by the Speaker of the House of Representatives and 1 shall be appointed by the majority leader of the Senate (or, if the majority leader is a member of the same political party as the Speaker, by the minority leader of the Senate).

(13) The chief of the Office of Public Integrity of the Department of Justice, or the chief's designee.

(b) DIVERSITY IN APPOINTMENTS.—Appointments shall be made to the Board of Advisors under subsection (a) in a manner which ensures that the Board of Advisors will be bipartisan in nature and will reflect the various geographic regions of the United States.

(c) TERM OF SERVICE; VACANCY.—Members of the Board of Advisors shall serve for a term of 2 years, and may be reappointed. Any vacancy in the Board of Advisors shall be filled in the manner in which the original appointment was made.

(d) CHAIR.—The Board of Advisors shall elect a Chair from among its members.

SEC. 215. POWERS OF BOARDS; NO COMPENSATION FOR SERVICE.

(a) HEARINGS AND SESSIONS.—

(1) IN GENERAL.—To the extent that funds are made available by the Commission, the Standards Board (acting through the Executive Board) and the Board of Advisors may each hold such hearings for the purpose of carrying out this Act, sit and act at such times and places, take such testimony, and receive such evidence as each such Board considers advisable to carry out this title, except that the Boards may not issue subpoenas requiring the attendance and testimony of witnesses or the production of any evidence.

(2) MEETINGS.—The Standards Board and the Board of Advisors shall each hold a meeting of its members—

(A) not less frequently than once every year for purposes of voting on the standards referred to it under section 223;

(B) in the case of the Standards Board, not less frequently than once every 2 years for purposes of selecting the Executive Board; and

(C) at such other times as it considers appropriate for purposes of conducting such other business as it considers appropriate consistent with this title.

(b) INFORMATION FROM FEDERAL AGENCIES.—The Standards Board and the Board of Advisors may each secure directly from any Federal department or agency such information as the Board considers necessary to carry out this Act. Upon request of the Executive Board (in the case of the Standards Board) or the Chair (in the case of the Board of Advisors), the head of such department or agency shall furnish such information to the Board.

(c) POSTAL SERVICES.—The Standards Board and the Board of Advisors may use the United States mails in the same manner and under the same conditions as a department or agency of the Federal Government.

(d) ADMINISTRATIVE SUPPORT SERVICES.—Upon the request of the Executive Board (in the case of the Standards Board) or the Chair (in the case of the Board of Advisors), the Administrator of the General Services Administration shall provide to the Board, on a reimbursable basis, the administrative support services that are necessary to enable the Board to carry out its duties under this title.

(e) NO COMPENSATION FOR SERVICE.—Members of the Standards Board and members of the Board of Advisors shall not receive any compensation for their service, but shall be paid travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Board.

SEC. 216. STATUS OF BOARDS AND MEMBERS FOR PURPOSES OF CLAIMS AGAINST BOARD.

(a) IN GENERAL.—The provisions of chapters 161 and 171 of title 28, United States Code, shall apply with respect to the liability of the Standards Board, the Board of Advisors, and their members for acts or omissions performed pursuant to and in the course of the duties and responsibilities of the Board.

(b) EXCEPTION FOR CRIMINAL ACTS AND OTHER WILLFUL CONDUCT.—Subsection (a) may not be construed to limit personal liability for criminal acts or omissions, willful or malicious misconduct, acts or omissions for private gain, or any other act

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or omission outside the scope of the service of a member of the Standards Board or the Board of Advisors.

Subtitle B—Voluntary Election Standards

SEC. 221. DEVELOPMENT OF VOLUNTARY ELECTION STANDARDS.

(a) IN GENERAL.—The Commission shall:

(1) In accordance with section 223, develop (through the Executive Director of the Commission), adopt, and update (not less often than every 4 years thereafter) voluntary engineering and procedural performance standards for voting systems used in Federal elections which shall meet the following requirements:

(A) The scope of the standards should include security (including a documentary audit for non-ballot systems), the procedures for certification and decertification of software and hardware, the assessment of usability, and operational guidelines for the proper use and maintenance of equipment.

(B) The standards should provide that voters have the opportunity to correct errors at the precinct or other polling place, either within the voting equipment itself or in the operational guidelines to administrators for using the equipment, under conditions which assure privacy to the voter.

(C) Each voting tally system certified for use should include as part of the certification a proposed statement of what constitutes a proper vote in the design and operation of the system.

(D) New voting equipment systems certified either by the Federal government or by any State should provide a practical and effective means for voters with physical disabilities to cast a secret ballot.

(2) Maintain a clearinghouse of information on the experiences of State and local governments in implementing the voluntary standards described in paragraph (1) and in operating voting systems in general.

(3) In accordance with section 224, provide for the voluntary testing, certification, decertification, and recertification of voting systems.

(4) Advise States and units of local government regarding compliance with the requirements of the Voting Accessibility for the Elderly and Handicapped Act (42 U.S.C. 1973ee et seq.) and compliance with other Federal laws regarding accessibility of registration facilities and polling places. Additionally, in accordance with section 223, the Commission shall develop (through the Executive Director of the Commission), adopt, and update (not less often than every 4 years thereafter) voluntary standards for maintaining and enhancing the accessibility and privacy of registration facilities, polling places, and voting methods with the goal of promoting for all individuals, including the elderly and individuals with disabilities, the accessibility of polling places and the effective use of voting systems and voting equipment which provide the opportunity for casting a secure and secret ballot, and shall include in such standards voluntary guidelines regarding accessibility and ease-of-use for States and units of local government to use when obtaining voting equipment and selecting polling places. In carrying out this paragraph, the Commission shall consult with the Architectural and Transportation Barrier Compliance Board under section 502 of the Rehabilitation Act of 1973 (29 U.S.C. 792) and other individuals and entities with expertise in the accessibility of facilities for individuals with disabilities.

(5) Make periodic studies available to the public regarding the election administration issues described in subsection (b), with the goal of promoting methods of voting and administering elections which—

(A) will be the most convenient, accessible, and easy to use for voters, including members of the uniformed services, blind and disabled voters, and voters with limited English proficiency;

(B) will yield the most accurate, secure, and expeditious system for voting and tabulating election results;

(C) will be nondiscriminatory and afford each registered and eligible voter an equal opportunity to vote; and

(D) will be efficient and cost-effective for use.

(6) In accordance with section 223, develop (through the Executive Director of the Commission), adopt, and update (not less often than every 4 years) voluntary election management practice standards for State and local election officials to maintain and enhance the administration of Federal elections, including standards developed in consultation with the Secretary of Defense to govern the treatment of absent uniformed services voters (as defined in section 107(1) of the Uniformed and Overseas Citizens Absentee Voting Act) and overseas voters (as defined in section 107(5) of such Act) which will include provisions to address each of the following:

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(A) The rights of residence of uniformed services voters absent due to military orders.

(B) The rights of absent uniformed services voters and overseas voters to register to vote and cast absentee ballots.

(C) The rights of absent uniformed services voters and overseas voters to submit absentee ballot applications early during an election year.

(D) The appropriate pre-election deadline for mailing absentee ballots to absent uniformed services voters and overseas voters.

(E) The appropriate minimum period between the mailing of absentee ballots to absent uniformed services voters and overseas voters and the deadline for receipt of such ballots.

(F) The timely transmission of balloting materials to absent uniformed services voters and overseas voters.

(G) Security and privacy concerns in the transmission, receipt, and processing of ballots from absent uniformed services voters and overseas voters, including the need to protect against fraud.

(H) The use of a single application by absent uniformed services voters and overseas voters for absentee ballots for all Federal elections occurring during a year.

(I) The use of a single application for voter registration and absentee ballots by absent uniformed services voters and overseas voters.

(J) The use of facsimile machines and electronic means of transmission of absentee ballot applications and absentee ballots to absent uniformed services voters and overseas voters.

(K) Other issues related to the rights of absent uniformed services voters and overseas voters to participate in elections.

(7) Carry out the provisions of section 9 of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg–7) regarding mail voter registration.

(8) Make information on the Federal election system available to the public and the media.

(9) At the request of State officials, assist such officials in the review of election or vote counting procedures in Federal elections, through bipartisan panels of election professionals assembled by the Commission for such purpose.

(10) Compile and make available to the public the official certified results of general elections for Federal office and reports comparing the rates of voter registration, voter turnout, voting system functions, and ballot errors among jurisdictions in the United States.

(11) Gather information and serve as a clearinghouse concerning issues relating to Federal, State, and local elections.

(b) ELECTION ADMINISTRATION ISSUES DESCRIBED.—The election administration issues described in this subsection are as follows:

(1) Current and alternate methods and mechanisms of voting and counting votes in elections for Federal office.

(2) Current and alternate ballot designs for elections for Federal office.

(3) Current and alternate methods of voter registration, maintaining secure and accurate lists of registered voters (including the establishment of a centralized, interactive, statewide voter registration list linked to relevant agencies and all polling sites), and ensuring that all registered voters appear on the polling list at the appropriate polling site.

(4) Current and alternate methods of conducting provisional voting.

(5) Current and alternate methods of ensuring the accessibility of voting, registration, polling places, and voting equipment to all voters, including disabled voters and voters with limited English proficiency.

(6) Current and alternate methods of voter registration for members of the uniformed services and overseas voters, and methods of ensuring that such voters receive timely ballots that will be properly and expeditiously handled and counted.

(7) Current and alternate methods of recruiting and improving the performance of poll workers.

(8) Federal and State laws governing the eligibility of persons to vote.

(9) Current and alternate methods of educating voters about the process of registering to vote and voting, the operation of voting mechanisms, the location of polling places, and all other aspects of participating in elections.

(10) Matters particularly relevant to voting and administering elections in rural and urban areas.

(11) Conducting elections for Federal office on different days, at different places, and during different hours, including the advisability of establishing a uniform poll closing time.

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(12) The ways that the Federal Government can best assist State and local authorities to improve the administration of elections for Federal office and what levels of funding would be necessary to provide such assistance.

(c) CONSULTATION WITH STANDARDS BOARD AND BOARD OF ADVISORS.—The Commission shall carry out its duties under this subtitle in consultation with the Standards Board and the Board of Advisors.

SEC. 222. TECHNICAL STANDARDS DEVELOPMENT COMMITTEE.

(a) ESTABLISHMENT.—There is hereby established the Technical Standards Development Committee (hereafter in this subtitle referred to as the "Development Committee").

(b) DUTIES.—

(1) IN GENERAL.—The Development Committee shall assist the Executive Director of the Commission in the development of voluntary standards under this subtitle by recommending standards (and modifications to standards) to ensure the usability, accuracy, security, accessibility, and integrity of voting systems and voting equipment.

(2) DEADLINE FOR INITIAL SET OF RECOMMENDATIONS.—The Development Committee shall provide its first set of recommendations under this section to the Executive Director of the Commission not later than 9 months after all of its members have been appointed.

(c) MEMBERSHIP.—

(1) IN GENERAL.—The Development Committee shall be composed of the Director of the National Institute of Standards and Technology (who shall serve as its chair), together with a group of 14 other individuals appointed jointly by the Commission and the Director of the National Institute of Standards and Technology, consisting of the following:

(A) An equal number of each of the following:

(i) Members of the Standards Board.

(ii) Members of the Board of Advisors.

(iii) Members of the Architectural and Transportation Barrier Compliance Board under section 502 of the Rehabilitation Act of 1973 (29 U.S.C. 792).

(B) A representative of the American National Standards Institute.

(C) Other individuals with technical and scientific expertise relating to voting systems and voting equipment.

(2) QUORUM.—A majority of the members of the Development Committee shall constitute a quorum, except that the Development Committee may not conduct any business prior to the appointment of all of its members.

(d) NO COMPENSATION FOR SERVICE.—Members of the Development Committee shall not receive any compensation for their service, but shall be paid travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Development Committee.

(e) TECHNICAL SUPPORT FROM NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY.—At the request of the Development Committee, the Director of the National Institute of Standards and Technology shall provide the Development Committee with technical support necessary for the Development Committee to carry out its duties under this subtitle.

(f) PUBLICATION OF RECOMMENDATIONS IN FEDERAL REGISTER.—At the time the Commission adopts any standard pursuant to section 223, the Development Committee shall cause to have published in the Federal Register the recommendations it provided under this section to the Executive Director of the Commission concerning the standard adopted.

SEC. 223. PROCESS FOR ADOPTION OF VOLUNTARY STANDARDS.

(a) CONSIDERATION OF RECOMMENDATIONS OF DEVELOPMENT COMMITTEE; SUBMISSION OF PROPOSED VOLUNTARY STANDARDS TO BOARD OF ADVISORS AND STANDARDS BOARD.—

(1) CONSIDERATION OF RECOMMENDATIONS OF DEVELOPMENT COMMITTEE.—In developing standards and modifications for purposes of this section, the Executive Director of the Commission shall take into consideration the recommendations provided by the Technical Standards Development Committee under section 222.

(2) BOARD OF ADVISORS.—The Executive Director of the Commission shall submit each of the voluntary engineering and procedural performance standards (described in section 221(a)(1)), each of the voluntary standards described in section 221(a)(4), and each of the voluntary election management practice

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standards (described in section 221(a)(6)) developed by the Executive Director (or any modifications to such standards) to the Board of Advisors.

(3) STANDARDS BOARD.—The Executive Director of the Commission shall submit each of the voluntary engineering and procedural performance standards (described in section 221(a)(1)), each of the voluntary standards described in section 221(a)(4), and each of the voluntary election management practice standards (described in section 221(a)(6)) developed by the Executive Director (or any modifications to such standards) to the Executive Board of the Standards Board, who shall review the standard (or modification) and forward its recommendations to the Standards Board.

(b) REVIEW.—Upon receipt of a voluntary standard described in subsection (a) (or modification of such a standard) from the Executive Director of the Commission, the Board of Advisors and the Standards Board shall each review and submit comments and recommendations regarding the standard (or modification) to the Commission.

(c) FINAL APPROVAL.—

(1) IN GENERAL.—A voluntary standard described in subsection (a) (or modification of such a standard) shall not be considered to be finally adopted by the Commission unless the majority of the members of the Commission vote to approve the final adoption of the standard (or modification), taking into consideration the comments and recommendations submitted by the Board of Advisors and the Standards Board under subsection (b).

(2) MINIMUM PERIOD FOR CONSIDERATION OF COMMENTS AND RECOMMENDATIONS.—The Commission may not vote on the final adoption of a voluntary standard described in subsection (a) (or modification of such a standard) until the expiration of the 90-day period which begins on the date the Executive Director of the Commission submits the standard (or modification) to the Board of Advisors and the Standards Board under subsection (a).

SEC. 224. CERTIFICATION AND TESTING OF VOTING SYSTEMS.

(a) CERTIFICATION AND TESTING.—

(1) IN GENERAL.—The Commission shall provide for the testing, certification, decertification, and recertification of voting system hardware and software by accredited laboratories.

(2) OPTIONAL USE BY STATES.—At the option of a State, the State may provide for the testing, certification, decertification, or recertification of its voting system hardware and software by the laboratories accredited by the Commission under this section.

(b) LABORATORY ACCREDITATION.—

(1) RECOMMENDATIONS BY NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY.—Not later than 6 months after the Commission first adopts voluntary engineering and procedural performance standards under this subtitle, the Director of the National Institute of Standards and Technology shall conduct an evaluation of independent, non-Federal laboratories and shall submit to the Commission a list of those laboratories the Director proposes to be accredited to carry out the testing, certification, decertification, and recertification provided for under this section.

(2) APPROVAL BY COMMISSION.—The Commission shall vote on the proposed accreditation of each laboratory on the list submitted under paragraph (1), and no laboratory may be accredited for purposes of this section unless its accreditation is approved by a majority vote of the members of the Commission.

(c) CONTINUING REVIEW BY NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY.—

(1) IN GENERAL.—In cooperation with the Commission and in consultation with the Standards Board and the Board of Advisors, the Director of the National Institute of Standards and Technology shall monitor and review, on an ongoing basis, the performance of the laboratories accredited by the Commission under this section, and shall make such recommendations to the Commission as it considers appropriate with respect to the continuing accreditation of such laboratories, including recommendations to revoke the accreditation of any such laboratory.

(2) APPROVAL BY COMMISSION REQUIRED FOR REVOCATION.—The accreditation of a laboratory for purposes of this section may not be revoked unless the revocation is approved by a majority vote of the members of the Commission.

SEC. 225. DISSEMINATION OF INFORMATION.

On an ongoing basis, the Commission shall disseminate to the public (through the Internet, published reports, and such other methods as the Commission considers appropriate) information on the activities carried out under this subtitle, including—

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(1) the voluntary election standards adopted by the Commission, together with guidelines for applying the standards and other information to assist in their implementation;

(2) the list of laboratories accredited to carry out testing, certification, decertification, and recertification of voting system hardware and software under section 224; and

(3) a list of voting system hardware and software products which have been certified pursuant to section 224 as meeting the applicable voluntary standards adopted by the Commission under this subtitle.

Subtitle C—Election Assistance

PART 1—ELECTION FUND PAYMENTS TO STATES FOR VOTING SYSTEM IMPROVEMENTS

SEC. 231. ELECTION FUND PAYMENTS TO STATES FOR VOTING SYSTEM IMPROVEMENTS.

(a) IN GENERAL.—The Commission shall make an Election Fund payment each year in an amount determined under section 232 to each State which meets the requirements described in section 233 for the year.

(b) USE OF FUNDS.—A State receiving an Election Fund payment shall use the payment for any or all of the following activities:

(1) Establishing and maintaining accurate lists of eligible voters.

(2) Encouraging eligible voters to vote.

(3) Improving verification and identification of voters at the polling place.

(4) Improving equipment and methods for casting and counting votes.

(5) Recruiting and training election official and poll workers.

(6) Improving the quantity and quality of available polling places.

(7) Educating voters about their rights and responsibilities.

(8) Assuring access for voters with physical disabilities.

(9) Carrying out other activities to improve the administration of elections in the State.

(c) ADOPTION OF COMMISSION STANDARDS NOT REQUIRED TO RECEIVE PAYMENT.—Nothing in this part may be construed to require a State to implement any of the voluntary standards adopted by the Commission with respect to any matter as a condition for receiving an Election Fund payment.

(d) SCHEDULE OF PAYMENTS.—As soon as practicable after all members of the Commission are appointed (but in no event later than 6 months thereafter), and not less frequently than once each calendar year thereafter, the Commission shall make Election Fund payments to States under this part.

SEC. 232. ALLOCATION OF FUNDS.

(a) IN GENERAL.—Subject to subsection (c), the amount of an Election Fund payment made to a State for a year shall be equal to the product of—

(1) the total amount appropriated for Election Fund payments for the year under section 234; and

(2) the State allocation percentage for the State (as determined under subsection (b)).

(b) STATE ALLOCATION PERCENTAGE DEFINED.—The "State allocation percentage" for a State is the amount (expressed as a percentage) equal to the quotient of—

(1) the voting age population of the State; and

(2) the total voting age population of all States.

(c) MINIMUM AMOUNT OF PAYMENT.—The amount of an Election Fund payment made to a State for a year may not be less than—

(1) in the case of any of the several States or the District of Columbia, ½ of 1 percent of the total amount appropriated for Election Fund payments for the year under section 234; or

(2) in the case of the Commonwealth of Puerto Rico, Guam, American Samoa, or the United States Virgin Islands, 20% of the amount described in paragraph (1).

(d) CONTINUING AVAILABILITY OF FUNDS AFTER APPROPRIATION.—An Election Fund payment made to a State under this part shall be available to the State without fiscal year limitation.

SEC. 233. CONDITIONS FOR RECEIPT OF FUNDS.

(a) IN GENERAL.—In order to receive an Election Fund payment for a fiscal year, the chief State election official of the State shall provide the Commission with the following certifications:

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(1) A certification that the State has authorized and appropriated funds for carrying out the activities for which the Election Fund payment is made in an amount equal to 25 percent of the total amount to be spent for such activities (taking into account the Election Fund payment and the amount spent by the State).

(2) A certification that the State has set a uniform Statewide benchmark for voting system performance in each local jurisdiction administering elections, expressed as a percentage of residual vote in the contest at the top of the ballot, and requires local jurisdictions to report data relevant to this benchmark after each general election for Federal office.

(3) A certification that the State is in compliance with the voluntary voting system standards and certification processes adopted by the Commission or that the State has enacted legislation establishing its own State voting system standards and processes which (at a minimum) ensure that new voting mechanisms have the audit capacity to produce a record for each ballot cast.

(4) A certification that—

(A) in each precinct or polling place in the State, there is at least one voting system available which is fully accessible to individuals with physical disabilities; and

(B) if the State uses any portion of its Election Fund payment to obtain new voting machines, at least one voting machine in each polling place in the State will be fully accessible to individuals with physical disabilities.

(5) A certification that the State has established a fund described in subsection (b) for purposes of administering its activities under this part.

(6) A certification that, in administering election systems, the State is in compliance with the existing applicable requirements of the Voting Rights Act of 1965 (42 U.S.C. 1973 et seq.), the National Voter Registration Act of 1993 (42 U.S.C. 1973gg et seq.), the Voting Accessibility for the Elderly and Handicapped Act (42 U.S.C. 1973ee et seq.), and the Americans With Disabilities Act of 1990 (42 U.S.C. 12101 et seq.).

(7) A certification that the State provides for voter education and poll worker training programs to improve access to and participation in the electoral process, and provides relevant training in the requirements of the National Voter Registration Act of 1993 for personnel of State motor vehicle authority offices and other voter registration agencies designated by the State under such Act.

(8) A certification that the Election Fund payment has not and will not supplant funds provided under existing programs funded in the State for carrying out the activities for which the Election Fund payment is made.

(b) REQUIREMENTS FOR ELECTION FUND.—

(1) ELECTION FUND DESCRIBED.—For purposes of subsection (a)(5), a fund described in this subsection with respect to a State is a fund which is established in the treasury of the State government, which is used in accordance with paragraph (2), and which consists of the following amounts:

(A) Amounts appropriated or otherwise made available by the State for carrying out the activities for which the Election Fund payment is made to the State under this part.

(B) The Election Fund payment made to the State under this part.

(C) Such other amounts as may be appropriated under law.

(D) Interest earned on deposits of the fund.

(2) USE OF FUND.—Amounts in the fund shall be used by the State exclusively to carry out the activities for which the Election Fund payment is made to the State under this part.

(c) METHODS OF COMPLIANCE LEFT TO DISCRETION OF STATE.—The specific choices on the methods of complying with the requirements described in subsection (a) shall be left to the discretion of the State.

(d) CHIEF STATE ELECTION OFFICIAL DEFINED.—In this subtitle, the "chief State election official" of a State is the individual designated by the State under section 10 of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg–8) to be responsible for coordination of the State's responsibilities under such Act.

SEC. 234. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated for Election Fund payments under this part an aggregate amount of $2,250,000,000 for fiscal years 2002 through 2004.

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PART 2—GRANTS FOR RESEARCH ON VOTING TECHNOLOGY IMPROVEMENTS

SEC. 241. GRANTS FOR RESEARCH ON VOTING TECHNOLOGY IMPROVEMENTS.

(a) IN GENERAL.—The Commission shall make grants to assist entities in carrying out research and development to improve the quality, reliability, accuracy, accessibility, affordability, and security of voting equipment, election systems, and voting technology.

(b) ELIGIBILITY.—An entity is eligible to receive a grant under this part if it submits to the Commission (at such time and in such form as the Commission may require) an application containing—

(1) assurances that the research and development funded with the grant will take into account the need to make voting equipment fully accessible for individuals with disabilities (including blind individuals), the need to ensure that such individuals can vote independently and with privacy, and the need to provide alternative language accessibility for individuals with limited proficiency in the English language (consistent with the requirements of the Voting Rights Act of 1965); and

(2) such other information and assurances as the Commission may require.

(c) APPLICABILITY OF REGULATIONS GOVERNING PATENT RIGHTS IN INVENTIONS MADE WITH FEDERAL ASSISTANCE.—Any invention made by the recipient of a grant under this part using funds provided under this part shall be subject to chapter 18 of title 35, United States Code (relating to patent rights in inventions made with Federal assistance).

SEC. 242. REPORT.

(a) IN GENERAL.—Each entity which receives a grant under this part shall submit to the Commission, Congress, and the President a report describing the activities carried out with the funds provided under the grant.

(b) DEADLINE.—An entity shall submit a report required under subsection (a) not later than 60 days after the end of the fiscal year for which the entity received the grant which is the subject of the report.

SEC. 243. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated for grants under this part $20,000,000 for fiscal year 2002.

PART 3—PILOT PROGRAM FOR TESTING OF EQUIPMENT AND TECHNOLOGY

SEC. 251. PILOT PROGRAM.

(a) IN GENERAL.—The Commission shall make grants to carry out pilot programs under which new technologies in voting systems and equipment are implemented on a trial basis.

(b) ELIGIBILITY.—An entity is eligible to receive a grant under this part if it submits to the Commission (at such time and in such form as the Commission may require) an application containing—

(1) assurances that the pilot programs funded with the grant will take into account the need to make voting equipment fully accessible for individuals with disabilities (including blind individuals), the need to ensure that such individuals can vote independently and with privacy, and the need to provide alternative language accessibility for individuals with limited proficiency in the English language (consistent with the requirements of the Voting Rights Act of 1965); and

(2) such other information and assurances as the Commission may require.

SEC. 252. REPORT.

(a) IN GENERAL.—Each entity which receives a grant under this part shall submit to the Commission, Congress, and the President a report describing the activities carried out with the funds provided under the grant.

(b) DEADLINE.—An entity shall submit a report required under subsection (a) not later than 60 days after the end of the fiscal year for which the entity received the grant which is the subject of the report.

SEC. 253. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated for grants under this part $10,000,000 for fiscal year 2002.

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PART 4—MISCELLANEOUS

SEC. 261. ROLE OF NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY.

(a) RECOMMENDATION OF TOPICS FOR RESEARCH UNDER VOTING RESEARCH GRANTS AND PILOT PROGRAMS.—The Director of the National Institute of Standards and Technology (hereafter in this section referred to as the "Director") shall submit to the Commission an annual list of the Director's suggestions for issues which may be the subject of research funded with grants awarded under part 2 and part 3 during the year.

(b) REVIEW OF GRANT APPLICATIONS RECEIVED BY COMMISSION.—The Commission shall submit each application it receives for a grant under part 2 or part 3 to the Director, who shall review the application and provide the Commission with such comments as the Director considers appropriate.

(c) MONITORING AND ADJUSTMENT OF GRANT ACTIVITIES.—After the Commission has awarded a grant under part 2 or part 3, the Director shall monitor the grant and (to the extent permitted under the terms of the grant as awarded) may recommend to the Commission that the recipient of the grant modify and adjust the activities carried out under the grant.

(d) EVALUATION OF COMPLETED GRANTS.—

(1) IN GENERAL.—After the recipient of a grant awarded by the Commission has completed the terms of the grant, the Director shall prepare and submit to the Commission an evaluation of the grant and the activities carried out under the grant.

(2) INCLUSION IN REPORTS.—The Commission shall include the evaluations submitted under paragraph (1) for a year in the report submitted for the year under section 262.

(e) INTRAMURAL RESEARCH AND DEVELOPMENT.—The Director shall establish a program for intramural research and development in areas to support the development of voluntary technical standards for voting products and systems, including—

(1) the security of computers, computer networks, and computer data storage used in voting products and systems, including the Statewide voter registration networks required under the minimum standard described in section 502(1);

(2) methods to detect and prevent fraud;

(3) the protection of voter privacy;

(4) the role of human factors in the design and application of voting products and systems, including assistive technologies for individuals with disabilities and varying levels of literacy; and

(5) remote access voting, including voting through the Internet.

SEC. 262. REPORTS.

(a) ANNUAL REPORTS ON ACTIVITIES.—Not later than 90 days after the end of each fiscal year, the Commission shall submit a report to the Committee on House Administration of the House of Representatives and the Committee on Rules and Administration of the Senate on the activities carried out by the Commission under this subtitle during the previous fiscal year, and shall include in the report a description of all applications for Election Fund payments and grants received by the Commission during the year under this subtitle and the disposition of such applications.

(b) REPORT ON HUMAN FACTOR RESEARCH.—Not later than 1 year after the date of the enactment of this Act, the Commission, in consultation with the Director of the National Institute of Standards and Technology, shall submit a report to Congress which assesses the areas of human factor research, including usability engineering and human-computer and human-machine interaction, which feasibly could be applied to voting products and systems design to ensure the usability and accuracy of voting products and systems, including methods to improve access for individuals with disabilities and to reduce voter error and the number of spoiled ballots in elections.

SEC. 263. AUDIT.

(a) IN GENERAL.—As a condition of receiving funds under this subtitle, a State or entity described in part 2 or part 3 shall agree that such funds shall be subject to audit if 2 or more members of the Commission vote to require an audit.

(b) MANDATORY AUDIT.—In addition to audits conducted pursuant to subsection (a), all funds provided under this subtitle shall be subject to mandatory audit at least once during the lifetime of the programs under this subtitle.

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TITLE III—HELP AMERICA VOTE COLLEGE PROGRAM

SEC. 301. ESTABLISHMENT OF PROGRAM.

(a) IN GENERAL.—Not later than 1 year after the appointment of its members, the Election Assistance Commission shall develop a program to be known as the "Help America Vote College Program" (hereafter in this title referred to as the "Program").

(b) PURPOSES OF PROGRAM.—The purpose of the Program shall be—

(1) to encourage students enrolled at institutions of higher education (including community colleges) to assist State and local governments in the administration of elections by serving as nonpartisan poll workers or assistants; and

(2) to encourage State and local governments to use the services of the students participating in the Program.

SEC. 302. ACTIVITIES UNDER PROGRAM.

(a) IN GENERAL.—In carrying out the Program, the Commission (in consultation with the chief election official of each State) shall develop materials, sponsor seminars and workshops, engage in advertising targeted at students, make grants, and take such other actions as it considers appropriate to meet the purposes described in section 301(b).

(b) REQUIREMENTS FOR GRANT RECIPIENTS.—In making grants under the Program, the Commission shall ensure that the funds provided are spent for projects and activities which are carried out without partisan bias or without promoting any particular point of view regarding any issue, and that each recipient is governed in a balanced manner which does not reflect any partisan bias.

(c) COORDINATION WITH INSTITUTIONS OF HIGHER EDUCATION.—The Commission shall encourage institutions of higher education (including community colleges) to participate in the Program, and shall make all necessary materials and other assistance (including materials and assistance to enable the institution to hold workshops and poll worker training sessions) available without charge to any institution which desires to participate in the Program.

SEC. 303. AUTHORIZATION OF APPROPRIATIONS.

In addition to any funds authorized to be appropriated to the Commission under section 207, there are authorized to be appropriated to carry out this title—

(1) $5,000,000 for fiscal year 2002; and

(2) such sums as may be necessary for each succeeding fiscal year.

TITLE IV—HELP AMERICA VOTE FOUNDATION

SEC. 401. HELP AMERICA VOTE FOUNDATION.

(a) IN GENERAL.—Part B of subtitle II of title 36, United States Code, is amended by inserting after chapter 1525 the following:

"CHAPTER 1526—HELP AMERICA VOTE FOUNDATION

"Sec.
"152601. Organization.
"152602. Purposes.
"152603. Board of directors.
"152604. Officers and employees.
"152605. Powers.
"152606. Principal office.
"152607. Service of process.
"152608. Annual audit.
"152609. Civil action by Attorney General for equitable relief.
"152610. Immunity of United States Government.
"152611. Authorization of appropriations.
"152612. Annual report.

"§ 152601. Organization

"(a) FEDERAL CHARTER.—The Help America Vote Foundation (in this chapter, the 'foundation') is a federally chartered corporation.

"(b) NATURE OF FOUNDATION.—The foundation is a charitable and nonprofit corporation and is not an agency or establishment of the United States Government.

"(c) PERPETUAL EXISTENCE.—Except as otherwise provided, the foundation has perpetual existence.

"§ 152602. Purposes

"(a) IN GENERAL.—The purposes of the foundation are to—

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"(1) mobilize secondary school students (including students educated in the home) in the United States to participate in the election process in a nonpartisan manner as poll workers or assistants;

"(2) place secondary school students (including students educated in the home) as nonpartisan poll workers or assistants to local election officials in precinct polling places across the United States; and

"(3) establish cooperative efforts with State and local election officials, local educational agencies, superintendents and principals of public and private secondary schools, and other appropriate nonprofit charitable and educational organizations exempt from taxation under section 501(a) of the Internal Revenue Code of 1986 as an organization described in section 501(c)(3) of such Code to further the purposes of the foundation.

"(b) REQUIRING ACTIVITIES TO BE CARRIED OUT ON NONPARTISAN BASIS.—The foundation shall carry out its purposes without partisan bias or without promoting any particular point of view regarding any issue, and shall ensure that each participant in its activities is governed in a balanced manner which does not reflect any partisan bias.

"(c) CONSULTATION WITH STATE ELECTION OFFICIALS.—The foundation shall carry out its purposes under this section in consultation with the chief election officials of the States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, and the United States Virgin Islands.

"§ 152603. Board of directors

"(a) GENERAL.—The board of directors is the governing body of the foundation.

"(b) MEMBERS AND APPOINTMENT.—(1) The board consists of 12 directors, who shall be appointed not later than 60 days after the date of the enactment of this chapter as follows:

"(A) 4 directors (of whom not more than 2 may be members of the same political party) shall be appointed by the President.

"(B) 2 directors shall be appointed by the Speaker of the House of Representatives.

"(C) 2 directors shall be appointed by the minority leader of the House of Representatives.

"(D) 2 directors shall be appointed by the majority leader of the Senate.

"(E) 2 directors shall be appointed by the minority leader of the Senate.

"(2) In addition to the directors described in paragraph (1), the chair and ranking minority member of the Committee on House Administration of the House of Representatives (or their designees) and the chair and ranking minority member of the Committee on Rules and Administration of the Senate (or their designees) shall each serve as an ex officio nonvoting member of the board.

"(3) A director is not an employee of the Federal government and appointment to the board does not constitute appointment as an officer or employee of the United States Government for the purpose of any law of the United States (except as may otherwise be provided in this chapter).

"(4) The terms of office of the directors are 4 years.

"(5) A vacancy on the board shall be filled in the manner in which the original appointment was made.

"(c) CHAIR.—The directors shall select one of the directors as the chair of the board. The individual selected may not be a current or former holder of any partisan elected office or a current or former officer of any national committee of a political party.

"(d) QUORUM.—The number of directors constituting a quorum of the board shall be established under the bylaws of the foundation.

"(e) MEETINGS.—The board shall meet at the call of the chair of the board for regularly scheduled meetings, except that the board shall meet not less often than annually.

"(f) REIMBURSEMENT OF EXPENSES.—Directors shall serve without compensation but may receive travel expenses, including per diem in lieu of subsistence, in accordance with sections 5702 and 5703 of title 5.

"(g) LIABILITY OF DIRECTORS.—Directors are not personally liable, except for gross negligence.

"§ 152604. Officers and employees

"(a) APPOINTMENT OF OFFICERS AND EMPLOYEES.—The board of directors appoints, removes, and replaces officers and employees of the foundation.

"(b) STATUS AND COMPENSATION OF EMPLOYEES.—

"(1) IN GENERAL.—Officers and employees of the foundation—

"(A) are not employees of the Federal government (except as may otherwise be provided in this chapter);

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"(B) shall be appointed and removed without regard to the provisions of title 5 governing appointments in the competitive service; and

"(C) may be paid without regard to chapter 51 and subchapter III of chapter 53 of title 5.

"(2) AVAILABILITY OF FEDERAL EMPLOYEE RATES FOR TRAVEL.—For purposes of any schedules of rates negotiated by the Administrator of General Services for the use of employees of the Federal government who travel on official business, officers and employees of the foundation who travel while engaged in the performance of their duties under this chapter shall be deemed to be employees of the Federal government.

"§ 152605. Powers

"(a) GENERAL.—The foundation may—

"(1) adopt a constitution and bylaws;

"(2) adopt a seal which shall be judicially noticed; and

"(3) do any other act necessary to carry out this chapter.

"(b) POWERS AS TRUSTEE.—To carry out its purposes, the foundation has the usual powers of a corporation acting as a trustee in the District of Columbia, including the power—

"(1) to accept, receive, solicit, hold, administer, and use any gift, devise, or bequest, either absolutely or in trust, of property or any income from or other interest in property;

"(2) to acquire property or an interest in property by purchase or exchange;

"(3) unless otherwise required by an instrument of transfer, to sell, donate, lease, invest, or otherwise dispose of any property or income from property;

"(4) to borrow money and issue instruments of indebtedness;

"(5) to make contracts and other arrangements with public agencies and private organizations and persons and to make payments necessary to carry out its functions;

"(6) to sue and be sued; and

"(7) to do any other act necessary and proper to carry out the purposes of the foundation.

"(c) ENCUMBERED OR RESTRICTED GIFTS.—A gift, devise, or bequest may be accepted by the foundation even though it is encumbered, restricted, or subject to beneficial interests of private persons, if any current or future interest is for the benefit of the foundation.

"(d) CONTRACTS.—The foundation may enter into such contracts with public and private entities as it considers appropriate to carry out its purposes.

"(e) ANNUAL CONFERENCE IN WASHINGTON METROPOLITAN AREA.—During each year (beginning with 2003), the foundation may sponsor a conference in the Washington, D.C., metropolitan area to honor secondary school students and other individuals who have served (or plan to serve) as poll workers and assistants and who have otherwise participated in the programs and activities of the foundation.

"§ 152606. Principal office

"The principal office of the foundation shall be in the District of Columbia unless the board of directors determines otherwise. However, the foundation may conduct business throughout the States, territories, and possessions of the United States.

"§ 152607. Service of process

"The foundation shall have a designated agent to receive service of process for the foundation. Notice to or service on the agent, or mailed to the business address of the agent, is notice to or service on the foundation.

"§ 152608. Annual audit

"The foundation shall enter into a contract with an independent auditor to conduct an annual audit of the foundation.

"§ 152609. Civil action by Attorney General for equitable relief

"The Attorney General may bring a civil action in the United States District Court for the District of Columbia for appropriate equitable relief if the foundation—

"(1) engages or threatens to engage in any act, practice, or policy that is inconsistent with the purposes in section 152602 of this title; or

"(2) refuses, fails, or neglects to carry out its obligations under this chapter or threatens to do so.

"§ 152610. Immunity of United States Government

"The United States Government is not liable for any debts, defaults, acts, or omissions of the foundation. The full faith and credit of the Government does not extend to any obligation of the foundation.

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"§ 152611. Authorization of appropriations

"There are authorized to be appropriated to the foundation for carrying out the purposes of this chapter—

"(1) $5,000,000 for fiscal year 2002; and

"(2) such sums as may be necessary for each succeeding fiscal year.

"§ 152612. Annual report

"As soon as practicable after the end of each fiscal year, the foundation shall submit a report to the Commission, the President, and Congress on the activities of the foundation during the prior fiscal year, including a complete statement of its receipts, expenditures, and investments. Such report shall contain information gathered from participating secondary school students describing the nature of the work they performed in assisting local election officials and the value they derived from the experience of educating participants about the electoral process.".

(b) CLERICAL AMENDMENT.—The table of chapters for part B of subtitle II of title 36, United States Code, is amended by inserting after the item relating to chapter 1525 the following new item:

"1526. Help America Vote Foundation ..... 152601".

TITLE V—MINIMUM STANDARDS FOR STATE ELECTION SYSTEMS

SEC. 501. MINIMUM STANDARDS FOR STATE ELECTION SYSTEMS.

(a) IN GENERAL.—The chief State election official of each State shall certify in writing to the Election Assistance Commission that—

(1) in administering election systems, the State is in compliance with the existing applicable requirements of the Voting Rights Act of 1965, the National Voter Registration Act of 1993, the Uniformed and Overseas Citizens Absentee Voting Act, the Voting Accessibility for the Elderly and Handicapped Act, and the Americans With Disabilities Act of 1990; and

(2) the State has enacted legislation to enable the State to meet each of the minimum standards for State election systems described in section 502.

(b) METHODS OF IMPLEMENTATION LEFT TO DISCRETION OF STATE.—The specific choices on the methods of implementing the legislation enacted pursuant to subsection (a)(2) shall be left to the discretion of the State.

(c) CHIEF STATE ELECTION OFFICIAL DEFINED.—In this title, the "chief State election official" of a State is the individual designated by the State under section 10 of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg–8) to be responsible for coordination of the State's responsibilities under such Act.

SEC. 502. STANDARDS DESCRIBED.

The minimum standards for State election systems described in this section are as follows:

(1) The State will implement a Statewide voter registration system networked to every local jurisdiction in the State, with provisions for sharing data with other States, except that this paragraph shall not apply in the case of a State in which, under law in effect continuously on and after the date of the enactment of this Act, there is no voter registration requirement for any voter in the State with respect to an election for Federal office.

(2) The State election system includes provisions to ensure that voter registration records in the State are accurate and are updated regularly, including the following:

(A) A system of file maintenance which removes registrants who are ineligible to vote from the official list of eligible voters. Under such system, consistent with the National Voter Registration Act of 1993, registrants who have not voted in 2 or more consecutive general elections for Federal office and who have not responded to a notice shall be removed from the official list of eligible voters, except that no registrant may be removed solely by reason of a failure to vote.

(B) Safeguards to ensure that eligible voters are not removed in error from the official list of eligible voters.

(3) The State permits, by the deadline required under section 504(b), in-precinct provisional voting by every voter who claims to be qualified to vote in the State, or has adopted an alternative which achieves the same objective, except that this paragraph shall not apply in the case of a State in which, under law in effect continuously on and after the date of the enactment of this Act, all votes in the State in general elections for Federal office are cast by mail.

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(4) The State has adopted uniform standards that define what will constitute a vote on each category of voting equipment certified for use in the State.

(5) The State has implemented safeguards to ensure that absent uniformed services voters (as defined in section 107(1) of the Uniformed and Overseas Citizens Absentee Voting Act) and overseas voters (as defined in section 107(5) of such Act) in the jurisdiction have the opportunity to vote and to have their votes counted.

(6) The State requires new voting systems to provide a practical and effective means for voters with physical disabilities to cast a secret ballot.

(7) If the State uses voting systems which give voters the opportunity to correct errors, the State shall ensure that voters are able to check for and correct errors under conditions which assure privacy. States, and units of local government within the States, replacing all voting machines within their jurisdiction shall ensure that the new voting system gives voters the opportunity to correct errors before the vote is cast.

SEC. 503. ENFORCEMENT.

(a) REPORT BY COMMISSION TO ATTORNEY GENERAL.—If a State does not provide a certification under section 501 to the Election Assistance Commission, or if the Commission has credible evidence that a State's certification is false or that a State is carrying out activities in violation of the terms of the certification, the Commission shall notify the Attorney General.

(b) ACTION BY ATTORNEY GENERAL.—After receiving notice from the Commission under subsection (a), the Attorney General may bring a civil action against a State in an appropriate district court for such declaratory or injunctive relief as may be necessary to remedy a violation of this title.

SEC. 504. EFFECTIVE DATE.

(a) IN GENERAL.—Except as provided in subsection (b), the requirements of this title shall take effect upon the expiration of the 2-year period which begins on the date of the enactment of this Act, except that if the chief State election official of a State certifies that good cause exists to waive the requirements of this title with respect to the State until the date of the regularly scheduled general election for Federal office held in November 2004, the requirements shall apply with respect to the State beginning on the date of such election.

(b) DEADLINES FOR IMPLEMENTATION OF PROVISIONAL VOTING.—The minimum standard described in section 502(3) (relating to permitting in-precinct provisional voting) shall apply with respect to the regularly scheduled general election for Federal office held in November 2002 and each succeeding election for Federal office, except that if the chief State election official of a State certifies that good cause exists to delay the implementation of such standard in the State, the standard shall apply in the State with respect to the regularly scheduled general election for Federal office held in November 2004 and each succeeding election for Federal office held in the State.

TITLE VI—VOTING RIGHTS OF MILITARY MEMBERS AND OVERSEAS CITIZENS

SEC. 601. VOTING ASSISTANCE PROGRAMS.

(a) IN GENERAL.—(1) Chapter 80 of title 10, United States Code, is amended by adding at the end the following new section:

"§ 1566. Voting assistance: compliance assessments; assistance

"(a) REGULATIONS.—The Secretary of Defense shall prescribe regulations to require that the Army, Navy, Air Force, and Marine Corps ensure their compliance with any directives issued by the Secretary of Defense in implementing any voting assistance program.

"(b) VOTING ASSISTANCE PROGRAMS DEFINED.—In this section, the term 'voting assistance programs' means—

"(1) the Federal Voting Assistance Program carried out under the Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff et seq.); and

"(2) any similar program.

"(c) ANNUAL EFFECTIVENESS AND COMPLIANCE REVIEWS.—(1) The Inspector General of each of the Army, Navy, Air Force, and Marine Corps shall conduct—

"(A) an annual review of the effectiveness of voting assistance programs; and

"(B) an annual review of the compliance with voting assistance programs of that armed force.

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"(2) Upon the completion of each annual review under paragraph (1), each Inspector General specified in that paragraph shall submit to the Inspector General of the Department of Defense a report on the results of each such review. Such report shall be submitted in time each year to be reflected in the report of the Inspector General of the Department of Defense under paragraph (3).

"(3) Not later than March 31 each year, the Inspector General of the Department of Defense shall submit to Congress a report on—

"(A) the effectiveness during the preceding calendar year of voting assistance programs; and

"(B) the level of compliance during the preceding calendar year with voting assistance programs of each of the Army, Navy, Air Force, and Marine Corps.

"(d) INSPECTOR GENERAL ASSESSMENTS.—(1) The Inspector General of the Department of Defense shall periodically conduct at Department of Defense installations unannounced assessments of the compliance at those installations with—

"(A) the requirements of the Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff et seq.);

"(B) Department of Defense regulations regarding that Act and the Federal Voting Assistance Program carried out under that Act; and

"(C) other requirements of law regarding voting by members of the armed forces.

"(2) The Inspector General shall conduct an assessment under paragraph (1) at not less than 10 Department of Defense installations each calendar year.

"(3) Each assessment under paragraph (1) shall include a review of such compliance—

"(A) within units to which are assigned, in the aggregate, not less than 20 percent of the personnel assigned to duty at that installation;

"(B) within a representative survey of members of the armed forces assigned to that installation and their dependents; and

"(C) within unit voting assistance officers to measure program effectiveness.

"(e) REGULAR MILITARY DEPARTMENT ASSESSMENTS.—The Secretary of each military department shall include in the set of issues and programs to be reviewed during any management effectiveness review or inspection at the installation level an assessment of compliance with the Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff et seq.) and with Department of Defense regulations regarding the Federal Voting Assistance Program.

"(f) VOTING ASSISTANCE OFFICERS.—(1) Voting assistance officers shall be appointed or assigned under Department of Defense regulations. Commanders at all levels are responsible for ensuring that unit voting officers are trained and equipped to provide information and assistance to members of the armed forces on voting matters. Performance evaluation reports pertaining to a member who has been assigned to serve as a voting assistance officer shall comment on the performance of the member as a voting assistance officer. The Secretary of each military department shall certify to Congress that (at a minimum) a voting assistance officer has been appointed or assigned for each military installation and major command under the jurisdiction of the department and that a replacement will be appointed if the original officer is no longer able to serve.

"(2) Under regulations and procedures prescribed by the Secretary, a member of the armed forces appointed or assigned to duty as a voting assistance officer shall, to the maximum extent practicable, be given the time and resources needed to perform the member's duties as a voting assistance officer during the period in advance of a general election when members and their dependents are preparing and submitting absentee ballots.

"(3) As part of each assessment prepared by the Secretary of a military department under subsection (e), the Secretary shall—

"(A) specify the number of members of the armed forces under the jurisdiction of the Secretary who are appointed or assigned to duty as voting assistance officers;

"(B) specify the ratio of voting assistance officers to active duty members of the armed forces under the jurisdiction of the Secretary;

"(C) indicate whether this number and ratio comply with the requirements of the Federal Voting Assistance Program; and

"(D) describe the training such members receive to perform their duties as voting assistance officers.

"(g) REGISTRATION AND VOTING INFORMATION FOR MEMBERS AND DEPENDENTS.—(1) The Secretary of each military department, using a variety of means including both print and electronic media, shall, to the maximum extent practicable, ensure that members of the armed forces and their dependents who are qualified to vote have ready access to information regarding voter registration requirements and deadlines (including voter registration), absentee ballot application requirements

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and deadlines, and the availability of voting assistance officers to assist members and dependents to understand and comply with these requirement.

"(2) The Secretary of each military department shall make the national voter registration form prepared for purposes of the Uniformed and Overseas Citizens Absentee Voting Act by the Federal Election Commission available so that each person who enlists, reenlists, or voluntarily extends an enlistment or who completes a permanent change of station in an active or reserve component of the Army, Navy, Air Force, or Marine Corps shall receive such form at the time of the enlistment, reenlistment, extension, or completion of the permanent change of station, or as soon thereafter as practicable.

"(3) Where practicable, a special day or days shall be designated at each military installation for the purpose of informing members of the armed forces and their dependents of election timing, registration requirements, and voting procedures.

"(h) DELIVERY OF MAIL FROM OVERSEAS PRECEDING FEDERAL ELECTIONS.—(1) During the four months preceding a general Federal election month, the Secretary of Defense shall periodically conduct surveys of all overseas locations and vessels at sea with military units responsible for collecting mail for return shipment to the United States and all port facilities in the United States and overseas where military-related mail is collected for shipment to overseas locations or to the United States. The purpose of each survey shall be to determine if voting materials are awaiting shipment at any such location and, if so, the length of time that such materials have been held at that location. During the fourth and third months before a general Federal election month, such surveys shall be conducted biweekly. During the second and first months before a general Federal election month, such surveys shall be conducted weekly.

"(2) The Secretary shall ensure that voting materials are transmitted expeditiously by military postal authorities at all times. The Secretary shall, to the maximum extent practicable, implement measures to ensure that a postmark or other official proof of mailing date is provided on each absentee ballot collected at any overseas location or vessel at sea whenever the Department of Defense is responsible for collecting mail for return shipment to the United States. The Secretary shall submit to Congress a report describing the measures to be implemented to ensure the timely transmittal and postmarking of voting materials and identifying the persons responsible for implementing such measures.

"(3) The Secretary of each military department, utilizing the voting assistance officer network established for each military installation, shall, to the maximum extent practicable, provide notice to members of the armed forces stationed at that installation of the last date before a general Federal election for which absentee ballots mailed from a postal facility located at that installation can reasonably be expected to be timely delivered to the appropriate State and local election officials.

"(4) In this section, the term 'general Federal election month' means November in an even-numbered year.".

(2) The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"1566. Voting assistance: compliance assessments; assistance.".

(b) INITIAL REPORT.—The first report under section 1566(c)(3) of title 10, United States Code, as added by subsection (a), shall be submitted not later than March 31, 2003.

SEC. 602. DESIGNATION OF SINGLE STATE OFFICE TO PROVIDE INFORMATION ON REGISTRATION AND ABSENTEE BALLOTS FOR ALL VOTERS IN STATE.

Section 102 of the Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff–1) is amended—

(1) by inserting "(a) IN GENERAL.—" before "Each State"; and

(2) by adding at the end the following new subsection:

"(b) DESIGNATION OF SINGLE STATE OFFICE TO PROVIDE INFORMATION ON REGISTRATION AND ABSENTEE BALLOT PROCEDURES FOR ALL VOTERS IN STATE.—

"(1) IN GENERAL.—Each State shall designate a single office which shall be responsible for providing information regarding voter registration procedures and absentee ballot procedures (including procedures relating to the use of the Federal write-in absentee ballot) to all absent uniformed services voters and overseas voters who wish to register to vote or vote in any jurisdiction in the State.

"(2) RECOMMENDATION REGARDING USE OF OFFICE TO ACCEPT AND PROCESS MATERIALS.—Congress recommends that the State office designated under paragraph (1) be responsible for carrying out the State's duties under this Act, including accepting valid voter registration applications, absentee ballot applications, and absentee ballots (including Federal write-in absentee ballots) from all

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absent uniformed services voters and overseas voters who wish to register to vote or vote in any jurisdiction in the State.".

SEC. 603. REPORT ON ABSENTEE BALLOTS TRANSMITTED AND RECEIVED AFTER GENERAL ELECTIONS.

(a) IN GENERAL.—Section 102 of the Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff–1), as amended by section 602, is amended by adding at the end the following new subsection:

"(c) REPORT ON NUMBER OF ABSENTEE BALLOTS TRANSMITTED AND RECEIVED.—Not later than 90 days after the date of each regularly scheduled general election for Federal office, each State and unit of local government which administered the election shall (through the State, in the case of a unit of local government) submit a report to the Election Assistance Commission (established under the Help America Vote Act of 2001) on the number of absentee ballots transmitted to absent uniformed services voters and overseas voters for the election and the number of such ballots which were returned by such voters and cast in the election, and shall make such report available to the general public.".

(b) DEVELOPMENT OF STANDARDIZED FORMAT FOR REPORTS.—The Election Assistance Commission, working with the Election Assistance Commission Board of Advisors and the Election Assistance Commission Standards Board, shall develop a standardized format for the reports submitted by States and units of local government under section 102(c) of the Uniformed and Overseas Citizens Absentee Voting Act (as added by subsection (a)), and shall make the format available to the States and units of local government submitting such reports.

SEC. 604. SIMPLIFICATION OF VOTER REGISTRATION AND ABSENTEE BALLOT APPLICATION PROCEDURES FOR ABSENT UNIFORMED SERVICES AND OVERSEAS VOTERS.

(a) REQUIRING STATES TO ACCEPT OFFICIAL FORM FOR SIMULTANEOUS VOTER REGISTRATION AND ABSENTEE BALLOT APPLICATION; DEADLINE FOR PROCESSING APPLICATION.—

(1) IN GENERAL.—Section 102(a) of the Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff–1), as amended by section 602, is amended—

(A) by amending paragraph (2) to read as follows:

"(2) accept and process, with respect to any election for Federal office, any otherwise valid voter registration application and absentee ballot application from an absent uniformed services voter or overseas voter, if the application is received by the appropriate State election official not less than 30 days before the election;";

(B) by striking the period at the end of paragraph (3) and inserting "; and"; and

(C) by adding at the end the following new paragraph:

"(4) use the official post card form (prescribed under section 101) for simultaneous voter registration application and absentee ballot application.".

(2) CONFORMING AMENDMENTS.—Section 101(b)(2) of such Act (42 U.S.C. 1973ff(b)(2)) is amended by striking "as recommended in section 104" and inserting "as required under section 102(4)".

(b) USE OF SINGLE APPLICATION FOR ALL SUBSEQUENT ELECTIONS.—Section 104 of such Act (42 U.S.C. 1973ff–3) is amended to read as follows:

"SEC. 104. USE OF SINGLE APPLICATION FOR ALL SUBSEQUENT ELECTIONS.

"(a) IN GENERAL.—If a State accepts and processes an official post card form (prescribed under section 101) submitted by an absent uniformed services voter or overseas voter for simultaneous voter registration and absentee ballot application (in accordance with section 102(a)(4)) and the voter requests that the application be considered an application for an absentee ballot for each subsequent election for Federal office held in the State during that year, the State shall provide an absentee ballot to the voter for each subsequent election for Federal office held in the State during that year.

"(b) EXCEPTION FOR VOTERS CHANGING REGISTRATION.—Subsection (a) shall not apply with respect to a voter registered to vote in a State for any election held after the voter notifies the State that the voter no longer wishes to be registered to vote in the State or after the State determines that the voter has registered to vote in another State.

"(c) REVISION OF OFFICIAL POST CARD FORM.—The Presidential designee shall revise the official post card form (prescribed under section 101) to enable a voter using the form to—

"(1) request an absentee ballot for each election for Federal office held in a State during a year; or

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"(2) request an absentee ballot for only the next scheduled election for Federal office held in a State.

"(d) NO EFFECT ON VOTER REMOVAL PROGRAMS.—Nothing in this section may be construed to prevent a State from removing any voter from the rolls of registered voters in the State under any program or method permitted under section 8 of the National Voter Registration Act of 1993.".

SEC. 605. ADDITIONAL DUTIES OF PRESIDENTIAL DESIGNEE UNDER UNIFORMED AND OVERSEAS CITIZENS ABSENTEE VOTING ACT.

(a) EDUCATING ELECTION OFFICIALS ON RESPONSIBILITIES UNDER ACT.—Section 101(b)(1) of the Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff(b)(1)) is amended by striking the semicolon at the end and inserting the following: ", and ensuring that such officials are aware of the requirements of this Act;".

(b) DEVELOPMENT OF STANDARD OATH FOR USE WITH MATERIALS.—

(1) IN GENERAL.—Section 101(b) of such Act (42 U.S.C. 1973ff(b)) is amended—

(A) by striking "and" at the end of paragraph (5);

(B) by striking the period at the end of paragraph (6) and inserting "; and"; and

(C) by adding at the end the following new paragraph:

"(7) prescribe a standard oath for use with any document under this title affirming that a material misstatement of fact in the completion of such a document may constitute grounds for a conviction for perjury.".

(2) REQUIRING STATES TO USE STANDARD OATH.—Section 102(a) of such Act (42 U.S.C. 1973ff–1(b)), as amended by sections 603 and 605(a), is amended—

(A) by striking "and" at the end of paragraph (3);

(B) by striking the period at the end of paragraph (4) and inserting "; and"; and

(C) by adding at the end the following new paragraph:

"(5) if the State requires an oath or affirmation to accompany any document under this title, use the standard oath prescribed by the Presidential designee under section 101(b)(7).".

(c) PROVIDING BREAKDOWN BETWEEN OVERSEAS VOTERS AND ABSENT UNIFORMED SERVICES VOTERS IN STATISTICAL ANALYSIS OF VOTER PARTICIPATION.—Section 101(b)(6) of such Act (42 U.S.C. 1973ff(b)(6)) is amended by inserting after "participation" the following: "(listed separately for overseas voters and absent uniformed services voters)".

SEC. 606. USE OF BUILDINGS ON MILITARY INSTALLATIONS AND RESERVE COMPONENT FACILITIES AS POLLING PLACES.

(a) LIMITED USE OF MILITARY INSTALLATIONS AUTHORIZED.—Section 2670 of title 10, United States Code, is amended—

(1) by striking "Under" and inserting "(a) USE BY RED CROSS.—Under";

(2) by striking "this section" and inserting "this subsection"; and

(3) by adding at the end the following new subsection:

"(b) USE AS POLLING PLACES.—(1) Notwithstanding any other provision of law, the Secretary of a military department may make a building located on a military installation under the jurisdiction of the Secretary available for use as a polling place in any Federal, State, or local public election, but only if such use is limited to eligible voters who reside on that military installation.

"(2) If a building located on a military installation is made available under paragraph (1) as the site of a polling place, the Secretary shall continue to make the building available for subsequent elections unless the Secretary provides to the appropriate State or local election officials advance notice, in a reasonable and timely manner, of the reasons why the building will no longer be made available as a polling place.

"(3) In this section, the term 'military installation' has the meaning given the term in section 2687(e) of this title.".

(b) USE OF RESERVE COMPONENT FACILITIES.—(1) Section 18235 of title 10, United States Code, is amended by adding at the end the following new subsection:

"(c) Pursuant to a lease or other agreement under subsection (a)(2), the Secretary may make a facility covered by subsection (a) available for use as a polling place in any Federal, State, or local public election notwithstanding any other provision of law. If a facility is made available as the site of a polling place with respect to an election, the Secretary shall continue to make the facility available for subsequent elections unless the Secretary provides to the appropriate State or local election officials advance notice, in a reasonable and timely manner, of the reasons why the facility will no longer be made available as a polling place.".

(2) Section 18236 of such title is amended by adding at the end the following:

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"(e) Pursuant to a lease or other agreement under subsection (c)(1), a State may make a facility covered by subsection (c) available for use as a polling place in any Federal, State, or local public election notwithstanding any other provision of law.".

(c) CONFORMING AMENDMENTS TO TITLE 18.—(1) Section 592 of title 18, United States Code, is amended by adding at the end the following new sentence:

"This section shall not apply to the actions of members of the Armed Forces at any polling place on a military installation where a general or special election is held in accordance with section 2670(b), 18235, or 18236 of title 10.".

(2) Section 593 of such title is amended by adding at the end the following new sentence:

"This section shall not apply to the actions of members of the Armed Forces at any polling place on a military installation where a general or special election is held in accordance with section 2670(b), 18235, or 18236 of title 10.".

(d) CONFORMING AMENDMENT TO VOTING RIGHTS LAW.—Section 2003 of the Revised Statutes of the United States (42 U.S.C. 1972) is amended by adding at the end the following new sentence: "Making a military installation or reserve component facility available as a polling place in a Federal, State, or local public election in accordance with section 2670(b), 18235, or 18236 of title 10, United States Code, is deemed to be consistent with this section.".

(e) CLERICAL AMENDMENTS.—(1) The heading of section 2670 of title 10, United States Code, is amended to read as follows:

"§ 2670. Buildings on military installations: use by American National Red Cross and as polling places in Federal, State, and local elections".

(2) The item relating to such section in the table of sections at the beginning of chapter 159 of such title is amended to read as follows:

"2670. Buildings on military installations: use by American National Red Cross and as polling places in Federal, State, and local elections.".

TITLE VII—REDUCED POSTAGE RATES FOR OFFICIAL ELECTION MAIL

SEC. 701. REDUCED POSTAGE RATES FOR OFFICIAL ELECTION MAIL.

(a) IN GENERAL.—Section 3629 of title 39, United States Code, is amended to read as follows:

"§ 3629. Reduced rates for official election mail

"(a) Notwithstanding any other provision of this title, the rate of postage for any first-class mail matter shall, in the case of official election mail, be equal to 50 percent of the regular first-class rate, subject to subsection (c).

"(b) For purposes of this section, the term 'official election mail' means any mailing by a State or local election official that—

"(1) is mailed in the course of official business;

"(2) consists of voter registration or election information or assistance prepared and mailed in a nonpartisan manner; and

"(3) bears such logo or other markings as the Postal Service may require.

Such term does not include any mailing that includes any mail matter intended to promote government action unrelated to the conduct of an election.

"(c) Nothing in this section shall, with respect to any official election mail, be considered to make unavailable—

"(1) any free mailing privilege under section 3406 or any other provision of law for which such mail otherwise qualifies; or

"(2) any reduced rate of postage under section 3626 or any other provision of law for which such mail otherwise qualifies, if lower than the rate that would otherwise apply under subsection (a).".

(b) CLERICAL AMENDMENT.—The table of sections for chapter 36 of title 39, United States Code, is amended by striking the item relating to section 3629 and inserting the following:

"3629. Reduced rates for official election mail.".

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TITLE VIII—TRANSITION PROVISIONS

Subtitle A—Transfer to Commission of Functions Under Certain Laws

SEC. 801. FEDERAL ELECTION CAMPAIGN ACT OF 1971.

(a) TRANSFER OF FUNCTIONS OF OFFICE OF ELECTION ADMINISTRATION OF FEDERAL ELECTION COMMISSION.—There are transferred to the Election Assistance Commission established under section 201 all functions which the Office of the Election Administration, established within the Federal Election Commission, exercised before the date of enactment of this Act.

(b) CONFORMING AMENDMENT.—Section 311(a) of the Federal Election Campaign Act of 1971 (2 U.S.C. 438(a)) is amended—

(1) in paragraph (8), by inserting "and" at the end;

(2) in paragraph (9), by striking "; and" and inserting a period; and

(3) by striking paragraph (10) and the second and third sentences.

SEC. 802. NATIONAL VOTER REGISTRATION ACT OF 1993.

(a) TRANSFER OF FUNCTIONS.—There are transferred to the Election Assistance Commission established under section 201 all functions which the Federal Election Commission exercised under the National Voter Registration Act of 1993 before the date of enactment of this Act.

(b) CONFORMING AMENDMENT.—Section 9(a) of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg–7(a)) is amended by striking "Federal Election Commission" and inserting "Election Assistance Commission".

SEC. 803. TRANSFER OF PROPERTY, RECORDS, AND PERSONNEL.

(a) PROPERTY AND RECORDS.—The contracts, liabilities, records, property, and other assets and interests of, or made available in connection with, the offices and functions of the Federal Election Commission which are transferred by this subtitle are transferred to the Election Assistance Commission for appropriate allocation.

(b) PERSONNEL.—

(1) IN GENERAL.—The personnel employed in connection with the offices and functions of the Federal Election Commission which are transferred by this subtitle are transferred to the Election Assistance Commission.

(2) EFFECT.—Any full-time or part-time personnel employed in permanent positions shall not be separated or reduced in grade or compensation because of the transfer under this subsection during the 1-year period beginning on the date of the enactment of this Act.

SEC. 804. EFFECTIVE DATE; TRANSITION.

(a) EFFECTIVE DATE.—This title and the amendments made by this title shall take effect upon the appointment of all members of the Election Assistance Commission under section 203.

(b) TRANSITION.—With the consent of the entity involved, the Election Assistance Commission is authorized to utilize the services of such officers, employees, and other personnel of the entities from which functions have been transferred to the Election Assistance Commission under this title or the amendments made by this title for such period of time as may reasonably be needed to facilitate the orderly transfer of such functions.

Subtitle B—Coverage of Commission Under Certain Laws and Programs

SEC. 811. TREATMENT OF COMMISSION PERSONNEL UNDER CERTAIN CIVIL SERVICE LAWS.

(a) COVERAGE UNDER HATCH ACT.—Section 7323(b)(2)(B)(i)(I) of title 5, United States Code, is amended by inserting "or the Election Assistance Commission" after "Commission".

(b) EXCLUSION FROM SENIOR EXECUTIVE SERVICE.—Section 3132(a)(1)(C) of title 5, United States Code, is amended by inserting "or the Election Assistance Commission" after "Commission".

SEC. 812. COVERAGE UNDER INSPECTOR GENERAL ACT OF 1978.

(a) IN GENERAL.—Section 8G(a)(2) of the Inspector General Act of 1978 (5 U.S.C. App.) is amended by inserting "the Election Assistance Commission," after "Federal Election Commission,".

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(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect 180 days after the appointment of all members of the Election Assistance Commission under section 203.

TITLE IX—MISCELLANEOUS PROVISIONS

SEC. 901. STATE DEFINED.

In this Act, the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, and the United States Virgin Islands.

SEC. 902. MISCELLANEOUS PROVISIONS TO PROTECT INTEGRITY OF ELECTION PROCESS.

(a) CLARIFICATION OF ABILITY OF ELECTION OFFICIALS TO REMOVE REGISTRANTS FROM OFFICIAL LIST OF VOTERS ON GROUNDS OF CHANGE OF RESIDENCE.—Section 8(b)(2) of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg–6(b)(2)) is amended by striking the period at the end and inserting the following: ", except that nothing in this paragraph may be construed to prohibit a State from using the procedures described in subsections (c) and (d) to remove an individual from the official list of eligible voters if the individual has not voted or appeared to vote in 2 or more consecutive general elections for Federal office and has not notified the applicable registrar (in person or in writing) or responded to a notice sent by the applicable registrar during the period in which such elections are held that the individual intends to remain registered in the registrar's jurisdiction.".

(b) PROHIBITING EFFORTS BY POLL WORKERS TO COERCE VOTERS TO CAST VOTES FOR EVERY OFFICE ON BALLOT.—Section 594 of title 18, United States Code, is amended—

(1) by striking "Whoever" and inserting "(a) Whoever"; and

(2) by adding at the end the following new subsection:

"(b) For purposes of subsection (a), a poll worker who urges or encourages a voter who has not cast a vote for each office listed on the ballot to return to the voting booth to cast votes for every office, or who otherwise intimidates, harasses, or coerces the voter to vote for each such office (or who attempts to intimidate, harass, or coerce the voter to vote for each such office), shall be considered to have intimidated, threatened, or coerced (or to have attempted to intimidate, threaten, or coerce) the voter for the purpose of interfering with the voter's right to vote as the voter may choose. Nothing in this subsection shall prohibit a poll worker from providing information to a voter who requests assistance.".

SEC. 903. NO EFFECT ON OTHER LAWS.

(a) IN GENERAL.—Nothing in this Act and no action taken pursuant to this Act shall supersede, restrict, or limit the application of the Voting Rights Act of 1965, the National Voter Registration Act of 1993, the Voting Accessibility for the Elderly and Handicapped Act, or the Americans with Disabilities Act of 1990.

(b) NO CONDUCT AUTHORIZED WHICH IS PROHIBITED UNDER OTHER LAWS.—Nothing in this Act authorizes or requires any conduct which is prohibited by the Voting Rights Act of 1965, the National Voter Registration Act of 1993, or the Americans with Disabilities Act of 1990.

(c) APPLICATION TO STATES, LOCAL GOVERNMENTS, AND COMMISSION.—Except as specifically provided in the case of the National Voter Registration Act of 1993, nothing in this Act may be construed to affect the application of the Voting Rights Act of 1965, the National Voter Registration Act of 1993, or the Americans with Disabilities Act of 1990 to any State, unit of local government, or other person, or to grant to the Election Assistance Commission the authority to carry out activities inconsistent with such Acts.

PURPOSE OF THE LEGISLATION

The purpose of H.R. 3295, the Help America Vote Act of 2001, can be stated very simply—it is to improve our country's election system. The circumstances surrounding the election that took place in November 2000 brought an increased focus on the process of election administration, and highlighted the need for improvements. The Help America Vote Act of 2001 will make it possible to implement needed improvements.

Historically, elections in this country have been administered at the state and local level. This system has many benefits that must

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be preserved. The dispersal of responsibility for election administration has made it impossible for a single centrally controlled authority to dictate how elections will be run, and thereby be able to control the outcome. This leaves the power and responsibility for running elections where it should be, in the hands of the citizens of this country. Local control has the further added benefit of allowing for flexibility, so that local authorities can tailor their procedures to meet the demands of disparate and unique communities. Further by leaving the responsibility for election administration in the hands of local authorities, if a problem arises, the citizens who live within their jurisdictions know whom to hold accountable. The local authorities who bear the responsibility cannot now, and should not in the future be able to, point the finger of blame at some distant, unaccountable, centralized bureaucracy.

While local control must be preserved, it is time to recognize that the federal government can play a valuable roll by assisting state and local government in modernizing their election systems. H.R. 3295 will, for the first time, give the state and local governments some financial assistance, from the federal government, to improve their election infrastructure.

SUMMARY OF THE LEGISLATION

PUNCH CARD REPLACEMENT PROGRAM

The disadvantages of punch card voting systems were highlighted during the recount that took place in Florida following the November 2000 election. Large portions of the American public have lost confidence in them. For systems that use a blank punch card, a failure to properly align the card behind the ballot can result in the casting of a vote for a candidate the voter did not mean to select. The perforated chad on the punch card may not be completely punched out, so the machine counter does not register any vote for that office. In the event of a close election, punch cards are ill suited to a recount. Running the ballots through a counter repeatedly during a recount can result in the detachment of additional chads, essentially creating votes that were never meant to be cast. If a manual recount must be resorted to, officials are faced with the unenviable task of attempting to divine the intent of a voter based on the amount of depression or partial detachment of a chad.

H.R. 3295 seeks to make punch card systems a part of our history, not our future. It authorizes $400 million to replace them. Any State or jurisdiction that used punch card voting systems in the November 2000 general election is eligible to receive up to $6000 per precinct to replace them. They must obligate the funds before the next federal election in November 2002, and must have all their punch card systems replaced before the election in November 2004 (though they can get either deadline extended by 2 years for good cause shown). To hasten the dispersal of these dollars, this program will be administered by the General Services Administration.

Some jurisdictions may choose not to replace their punch card systems, but H.R. 3295 makes funds available to those jurisdictions that want to modernize their systems. Additionally, the bill makes available funds for enhancement of these systems. For example,

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punch card systems can be made far more reliable if they are counted at the precinct, rather than at a central location. The enhancement program will provide funds to make improvements that will restore public confidence in punch card machines where they remain in use.

ELECTION ASSISTANCE COMMISSION

H.R. 3295 creates a new federal commission that will be tasked with providing information and assistance to state and local governments on best practices to successfully administer elections. The Commission has been structured to perform an advisory, as opposed to an administrative roll, in elections. The Commission has no rule making authority. The four commissioners will be recommended by the congressional leadership and will be appointed by the President. No more than two commissioners may be of the same party, to assure that the Commission acts in a nonpartisan fashion. The Commissioners will have experience or expertise in election administration or the study of elections, and will serve on a part time basis.

In establishing this commission, the Committee sought to involve the state and local officials who will be tasked with carrying out its recommendations. Two boards were created under the Commission, the Advisory Board and the Standards Board. The twenty-five member Advisory Board will consist of representatives from various groups that are involved with or care about election administration issues. The Standards Board will consist of the chief state election official, and a local election official, from each of the 50 states, the District of Columbia and the territories. The Boards will review and comment on any proposed standards prior to consideration by the Commission. Since those who serve on the Board will determine if their jurisdictions will adopt any of the voluntary standards approved, their thoughts and comments will be given serious attention by the Commission.

There is also created under the Commission a Technical Standards Development Committee. The Development Committee will assist the Executive Director of the Commission in the development of voluntary standards by recommending standards pertaining to the usability, accuracy, security, accessibility and integrity of voting systems and equipment. The Development Committee will be chaired by the Director of the National Institute of Standards and Technology, and will consist of members of the Board of Advisors and members of the Standards Board, among others.

Once the Development Committee has developed proposed voluntary standards, it will submit them to the Executive Director. The Executive Director shall then forward the standards (as developed or with modifications) to the Boards for review and comment. After the Boards have had an opportunity to review or comment, the standards will be forwarded to the Commission, which can approve them by majority vote.

This process will ensure that the standards are developed in a way that involves persons with real world technical expertise and experience in election administration. It is a process designed to give the people who will be responsible for administering elections, the state and local elections officials, a voice in the standards development process. By heeding that voice, the Commission should

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be able to make recommendations that truly reflect the recognized best practices of election administration.

The Commission will have grant making power. In addition to distributing the election fund payments, the bill authorizes two grant programs. One grant program will be devoted to research on voting technology improvements, the second will distribute grants for pilot programs to test equipment and technology. The research and development program is designed to encourage innovative technological and management strategies that will improve the accessibility, efficiency and security of election systems. This program in conjunction with the pilot program should foster development of these strategies where it may not be cost effective for the private sector to conduct research on their own. Universities, local jurisdictions, and the private sector are eligible to participate alone or as partners. Ideas that can be explored could include, for example, developing ways to communicate in different ways to voters about their registration status before the election. This would avoid unnecessary confusion on Election Day about whether voters are registered and where they should vote. Use of the Internet or telephone systems in this initiative could preclude a great deal of confusion on Election Day and minimize unnecessary administrative burdens processing provisional ballots post election. These and other ideas could be explored to ensure that our election system and its associated technologies are constantly being improved.

FUNDING CONDITIONS

H.R. 3295 authorizes $2.25 billion over three years for Election Fund payments. These funds will be provided to states at a matching rate of 75% (federal) to 25% (state). States will be permitted to use these dollars for a range of activities which improve election administration. This will give states the opportunity to direct fund payments to the areas where the resources are most needed. Jurisdictions that want to modernize their voting equipment can use election fund payments for that purpose. Others may have more pressing needs for modernized statewide registration systems, or better education and training of voters and poll workers. The Election Fund is designed to allow states to determine their greatest needs, and direct resources where they are most needed.

While the States will have flexibility in deciding where to direct dollars, they will be required to meet certain requirements as a condition of receiving funds. These funding conditions are not intended to be unduly burdensome, or to require states to incur obligations that will exceed the amount of funds appropriated and made available to the States. They will, however, ensure that the federal dollars are being spent appropriately, and that recipients meet certain criteria. The Commission will disperse election fund payments, and will monitor compliance with the funding conditions.

HELP AMERICA VOTE FOUNDATION AND COLLEGE PROGRAM

There is a critical shortage of poll-workers in this country. Many election officials fear the problem will grow even worse as the volunteers they rely on, many of them retirees, grow older with little national effort to recruit new volunteers. Experienced and well trained poll workers are essential to making our elections run prop-

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erly. They provide assistance to voters, make sure proper procedures are followed, and guard the integrity of our elections.

A second well recognized problem in this country is the disengagement of our young people from the electoral process. For far too many of our young citizens, politics is a confusing and uninteresting side show in which they have no desire to participate.

The creation of the Help America Vote Foundation and College Program is designed to address both of these problems. These programs will encourage civic involvement by high school and college students by making them available for service as non-partisan poll workers and assistants to local election authorities. This will have the two-fold benefit of alleviating the shortage of volunteers, while also exposing our youth to the electoral process. Ideally, many of those who will become exposed to the election process for the first time through this program, will cultivate a life long interest in the process, and will continue to serve as election volunteers for many years, or at a minimum continue to be engaged in American civic life as informed citizens and voters.

The College Program will be administered by the Election Assistance Commission. The High School Program will be set up as a federally chartered corporation. The Commission will make grants for the college program, while the federal corporation created will administer the High School program. Both programs must be carried out without partisan bias, and without promoting any particular point of view regarding any issue.

MINIMUM STANDARDS

The minimum standards in H.R. 3295 require States to meet certain criteria, regardless of whether or not they accept election fund payments. While they impose minimum requirements, they allow the states to develop their own laws and procedures to fulfill the requirements. The goal of the minimum standards is to improve our election system without issuing dictates that would rob states of the ability to craft their own solutions.

The Minimum Standards are:

(1) The State will implement a Statewide voter registration system networked to every local jurisdiction in the State, with provisions for sharing data with other States, except that this paragraph shall not apply in the case of a State in which, under law in effect continuously on and after the date of the enactment of this Act, there is no voter registration requirement for any voter in the State with respect to an election for Federal office.

One of the most exciting and promising reforms that the Committee explored is statewide registration. In its June 2001 report to Congress, the bipartisan Federal Election Commission, after consulting with state and local election officials, recommended that states "1) develop and implement a statewide computerized voter registration database; 2) insure that all local registration offices are computerized; and 3) link their statewide computerized system, where feasible, with the computerized systems of the collateral public agencies relevant to the NVRA (motor-vehicle offices, public-assistance offices, etc.)". The bi-partisan National Commission on Federal Election Reform ("Ford/Carter Commission") also recommended states adopt such a system, as did the nation's election

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administrators in their non-partisan National Task Force on Election Reform.

Creation of such a system will make the registration lists more accurate, and easier to update. It should reduce the incidence of voters appearing at a polling place only to discover that no record of their registration can be found. When voters move from one jurisdiction to another within that state, the statewide system will be able to track that movement. If for some reason a voter remained registered at their old address, the election officials will be able to see that and take corrective action. Requiring states to develop statewide databases will modernize and improve registration nationwide.

People are mobile, but more than three-quarters of all residential moves are in-state. An effective statewide database can therefore be quite useful, including its capacity to address such common issues as the registration of in-state college students and people with second homes within a state. But perhaps the most important beneficiaries of statewide registration systems will be members of lower-income groups, who are more likely to move than higher-income groups within the same state.

The minimum standard requires states to create a single database that is official, centralized and administered at the state level. Databases which simply link existing local databases do not qualify as satisfying this requirement. Multiple databases linking various vendor or local government programs to a statewide system is not sufficient to satisfy this requirement. The intent of the minimum standard is to establish one database that is identical and is the same program throughout the state and local jurisdictions so that all training can be uniform, all records requirements are identical, and that the state has full authority for maintenance and quality matters related to the database. The intent is also to assure that there are not jurisdictional nor vendor issues in terms of operability, problem resolution, or other types of reasons for one part of the system not matching the other.

It is likely that states will find it necessary to create a unique identifier to distinguish registered voters who happen to have the same name and/or birth date. The unique identifier so created will be used to assure that list maintenance functions are attributable to the correct voter; so as to avoid removing registrants who happen to have the same name and birth date as a felon, for example. States are encouraged to use the unique identifier to share information with other governmental offices for purposes such as death certificates, court and tax records, etc., to assure proper maintenance of voter records, file integrity, and protection of voter rights. It is the intent of Congress to encourage the states to develop each statewide database system in such a manner that it will be possible at some point in the future for states to share data between them for the appropriate additions and removal of voters from their rolls.

(2) The State election system includes provisions to ensure that voter registration records in the State are accurate and are updated regularly, including the following:

(A) A system of file maintenance which removes registrants who are ineligible to vote from the official list of eligible voters. Under such system, consistent with the National Voter Registration Act of

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1993, registrants who have not voted in 2 or more consecutive general elections for federal office and who have not responded to a notice shall be removed from the official list of eligible voters, except that no registrant may be removed solely by reason of a failure to vote.

(B) Safeguards to ensure that eligible voters are not removed in error from the official list of eligible voters.

States must ensure that their registration list is accurate and is updated regularly. Leaving ineligible voters on the rolls leads to a number of problems. It increases costs as more ballots must be printed and more mailings must be sent out to voters that have died or moved away. This is a waste of vital resources that serves no purpose. One of the most damaging effects of inaccurate rolls is that they lead to the public perception that the process can be easily manipulated. When the number of voters on a registration list exceeds a jurisdiction's voting age population (itself an artificially high number because it includes non-citizens and person only temporarily in the jurisdiction), the perception is that the process has no integrity and accountability. Furthermore, when ineligible voters are left on rolls indefinitely, it invites fraud. Those who wish to commit fraud can vote in more than one jurisdiction, or more problematic, cast multiple votes in the names of those they know are no longer eligible.

A fraudulent vote that nullifies a legal one, disenfranchises the legal voter as surely as if his or her vote had never been cast at all. States are therefore obligated to maintain accurate lists, and thereby minimize the opportunities for and the incidence of fraud.

The minimum standard requires that removal of those deemed ineligible must be done in a manner consistent with the National Voter Registration Act. The procedures established by NVRA that guard against removal of eligible registrants remain in effect under this law. Accordingly, H.R. 3295 leaves NVRA intact, and does not undermine it in any way.

(3) The State permits, by the deadline required under section 504(b), in-precinct provisional voting by every voter who claims to be qualified to vote in the State, or has adopted an alternative which achieves the same objective, except that this paragraph shall not apply in the case of a State in which, under law in effect continuously on and after the date of the enactment of this Act, all votes in the State in general elections for Federal office are cast by mail.

The Committee spent considerable time and energy learning about in-precinct provisional voting. In spite of the statewide registration system and file maintenance requirements, there will still be some instances where a voter who is qualified to vote does not appear on the registration list when they present themselves to vote.

In-precinct provisional voting enables people whose eligibility is in doubt to vote in their precinct, without having to travel somewhere else to swear they are eligible to vote, and have their registration verified in the days following an election. The Committee believes provisional voting is necessary to the administration of a fair, democratic, and effective election system, and represents the ultimate safeguard to ensuring a person's right to vote. For these reasons, the Committee has included it in the bill. Under the bill,

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in-precinct provisional voting will be required in every jurisdiction except states that have or plan to adopt an alternative which achieves the same objective, such as same-day registration or voting-by-mail.

Studies of the nation's election system find that a significant problem voters experience is to arrive at the polling place believing that they are eligible to vote, and then to be turned away because the election workers cannot find their names on the list of qualified voters.

There are at least eight reasons this occurs:

1. Voters may be turned away because of administrative errors. Poll workers may overlook their names or not match them up with a different spelling. In most jurisdictions, poll workers work from printed lists of voters produced for each precinct. Staff in the offices that produce these lists can make clerical errors.

2. Poll workers may overlook a voter's name on the precinct roster, or may not be aware that the voter is listed on a supplemental roster containing the names of voters who registered shortly before the election.

3. Voters may have their names improperly removed from the voting rolls.

4. Voters may appear at the wrong precinct because they did not receive, or received but did not heed, a notice that their polling place had moved.

5. Motor-vehicle departments or social-service agencies that are supposed to make registration applications available to clients may improperly handle the applications or fail to forward them to proper election officials in a timely manner.

6. Voters may fail to notify their registrar, or fail to re-register, after a change of address.

7. Well-intentioned organizations seeking to register voters may mishandle registration materials.

8. Otherwise qualified citizens may simply fail to register.

Whatever the cause, eligible citizens may believe they have registered. Unfortunately, when they subsequently attempt to vote, they are not on the list. In-precinct provisional voting, or an alternative which achieves the same objective, such as same-day registration (currently used by Idaho, Maine, New Hampshire, Wisconsin, Wyoming, and Minnesota); voting-by-mail (used by Oregon and Washington State); or no voter registration requirement (North Dakota), can solve this problem.

In-precinct provisional voting has four key advantages:

1. Legally qualified voters are no longer turned away at the polls.

2. In-precinct provisional voting limits the ability of states to impose extra hurdles that may have the effect of deterring the use of provisional voting. For example, in Pennsylvania, voters whose names do not appear on the precinct rosters are required to travel to police stations to see an election judge, who determines whether or not they have the right to vote. Voters must then return to the polling location in order to cast their votes. Many voters, who are faced with the choice of traveling to the police station or leaving, ultimately do not vote either because they are intimidated by going to a police station or because it is logistically difficult or inconvenient.

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3. Voter participation is easier and more efficient, as poll workers can provide an option to voters who may be angry or frustrated by their absence from the registration list. These often ill-trained and low-paid temporary workers do not have to research or resolve cases on the spot, while other voters impatiently wait in line. Nor are more senior election officials tied down in resolving such questions during Election Day.

4. Voter registration becomes more accurate. The process becomes another way to amend registrations for people who evidently wish to vote. Officials can detect and correct mistakes and the research process, by helping senior administrators notice which problems are causing the mistakes, thus can help many other current and potential voters.

(4) The State has adopted uniform standards that define what will constitute a vote on each category of voting equipment certified for use in the State.

Requiring states to have a uniform standard for what constitutes a vote will ensure that voters receive the equal protection of the laws with respect to the counting of their ballots. Votes should be counted using objective standards put in place before an election contest. Whether or not a vote is counted should not depend on where a voter happens to live, nor should it depend on varying subjective interpretations of state laws by local election officials. Similarly marked ballots should not be discarded in one jurisdiction, but counted in another.

As Americans learned in November and December 2000, a major part of the problem in Florida was that the vote-counting process was subjective and inconsistent, with definitions of what constitutes a vote varying from jurisdiction to jurisdiction. The United States Supreme Court found such a standardless process to be a violation of the Equal Protection Clause of the Constitution.

As the Committee discovered, Florida is not alone. Most states do not prescribe a standard for election officials to follow in recounting votes. Amorphous statutory references to the "intent of the voter" invite still more confusion and ambiguity. "Intent of the voter" is not a standard but rather a subjective judgment, virtually guaranteeing litigation. It is unfair to voters, to candidates and to democracy.

The crux of the problem is that all systems that rely on individual ballots inherently raise questions as to whether a particular configuration is or is not a "vote." Such systems include traditional paper ballots, punch card ballots, connect the arrow ballots, or optical scan ballots, all of which the voter must alter in some manner to create a vote. Lever systems and DRE machines do not create a ballot with voter marks; therefore, there is no particular mark available to review.

Because every vote properly cast must be counted, and recounts are routinely conducted to make certain that all ballots have been properly counted, the Committee believes that uniform standards for what constitutes a vote must be adopted by all states. The definition of a vote shall be as objective as possible and spelled out in clear language before Election Day.

(5) The State has implemented safeguards to ensure that absent uniformed services voters (as defined in section 107(1) of the Uniformed and Overseas Citizens Absentee Voting Act) and overseas

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voters (as defined in section 107(5) of such Act) in the jurisdiction have the opportunity to vote and to have their votes counted.

States must implement safeguards to ensure that absent uniformed service personnel and overseas voters have the opportunity to vote and have their votes counted. Those serving in our military and citizens living abroad face many hurdles when it comes to registering, receiving ballots and casting them timely. States must take action to ensure that these voters have the opportunity to vote and have their votes counted. States need to recognize the difficulties faced by these voters, and take steps to see that their votes are counted. (See below for additional provisions affecting these voters).

(6) The State requires new voting systems to provide a practical and effective means for voters with physical disabilities to cast a secret ballot.

Advancements in technology make it possible for voters with physical disabilities to cast a secret ballot. New systems should strive to make it possible for voters with physical disabilities to cast secret ballots. (See below for additional provisions affecting these voters).

(7) If the State uses voting systems which give voters the opportunity to correct errors, the State shall ensure that voters are able to check for and correct errors under conditions which assure privacy. States, and units of local government within the States, replacing all voting machines within their jurisdiction shall ensure that the new voting system gives voters the opportunity to correct errors before the vote is cast.

In the 2000 presidential election, nearly two million voters, 2% of those who went to the polls, either did not mark their ballot, or marked it in a way that no vote was counted in the presidential contest. Election experts call these votes in which no choice is counted "residual votes." These millions of voters either spoiled their ballots by "overvoting" (appearing to vote for more than one candidate), or by "undervoting" (they marked their choice in a manner that could not be counted, or they marked no choice at all). Of course, an undervoted ballot is not necessarily "spoiled". Millions of voters intentionally do not vote in certain contests for various reasons, complicated the task of determining voter rates.

As the Committee learned in our June hearing, the consensus among engineers, computer scientists, and political scientists who study election systems is that the number of residual votes and the rate of voter error are greatly affected by the kind of equipment that is used. According to one expert who testified before the Committee on what is known as "human usability studies," predictably high levels of user error are evidence of system failure, flawed instructions, or faulty system design.

Whatever the specific causes for residual votes, the fact remains that some votes go uncounted because voters have no opportunity to detect and correct errors before they cast their ballots. Fortunately, there are voting systems available that permit voters to correct ballots in the precinct before they are cast.

The bill will ensure that as jurisdictions scrap obsolete voting systems, they replace them with systems that have the capability to detect errors, for poll site voting (the provisions for second chance voting cannot currently be applied to absentee or mail balloting since the ballot and the voter are separated before counting).

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To be sure, this provision will not instantly mandate that all machines in all polling places by a date certain have a second-chance voting capability. The Committee seriously explored the proposal to require all 200,000 jurisdictions nationwide to have second-chance voting by 2004 or, at the latest, 2006. Jurisdictions that failed to meet the deadline would be subject to suite in federal court. As the Committee learned more about the production capability of the voting machine industry, the timelines and procurement processes counties and states must go through to award contracts to voting-machine vendors, and the huge costs involved, the Committee decided that an aggressive deadline might cause more serious problems than it would solve. One disturbing possibility was that jurisdictions that could not meet the deadline, most likely poorer ones, might have their election systems shut down or seriously disrupted during an election while other jurisdictions in the state, most likely affluent ones, that met the deadline could proceed with their elections. The Committee was hard-pressed to imagine a more chilling 14th Amendment problem than this, where some eligible voters in a state could exercise the franchise while others could not.

As to whether the term "error" means overvote, undervote, or something else, the Committee referred to the findings of the National Commission on Federal Election Reform, commonly known as the "Ford-Carter Commission." The Commission's definition of "error" is set forth in the accompanying document.

As already noted, many voters intentionally do not vote in every race. The purpose of second chance technology is to provide voters information about their ballot. Voter privacy is an important right that must be protected. While voters should have the opportunity to verify the accuracy of their ballot, they should not be forced to do so under the scrutiny of a poll worker. Once a voter is satisfied of the accuracy of their ballot, it is not the roll or responsibility of a poll worker to inquire as to the voters intent.

Poll workers should, upon request, be available to provide assistance to voters, but voters should not be prompted by poll workers, or have to explain to poll workers why they have not voted in a certain race. The bill ensures voter privacy, by requiring that jurisdictions whose machines have second chance technology must ensure that voters are able to check for and correct errors on their ballots under conditions which assure privacy.

MILITARY AND OVERSEAS VOTERS

Those who serve in our military, and citizens living abroad, face peculiar hardships when attempting to vote. Relatively simple things like applying for and transmitting ballots can become a very difficult and lengthy process for these voters. Steps must be taken to protect the rights of these citizens. Military voters risk their very lives in defense of this country. We must repay them by doing everything possible to see that they are able to vote and have their votes counted.

A recent report by the General Accounting Office revealed that over 40% of the installations they visited had not assigned voting assistance officers. The Department of Defense must make certain that a sufficient number of voting assistance officers are assigned, and that those who are assigned are doing their duties. H.R. 3295 requires the Secretary of Defense to certify to Congress that, at a

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minimum, a voting assistance officer has been assigned to every installation and major command.

The bill also makes voter registration forms available to service personnel at the time of enlistment, reenlistment or extension of enlistment, to make it easier for them to register. The Secretary of Defense must also ensure that all ballots are properly postmarked, or marked with some other official mark, so that state officials can determine when the ballot left the voter's hands.

States are also required to designate a single point of contact for those in the service and living abroad, to make it easier for them to obtain needed information about elections, registration and voting.

The bill contains a number of the key provisions of the Uniformed and Overseas Citizen Absentee Voting Reform Act of 2001, H.R. 1997, which will help remove existing obstacles to absentee voting now confronting members of our armed services and overseas voters. Those obstacles contributed to the appallingly high level of rejected ballots in Florida and to the inability to vote of many others who wished to do so.

Similarly, the provision requiring the collection and publication of statistics on overseas voting by the states will fill one of the most serious gaps in our ability to monitor the adequacy of the overseas absentee voting regime. For the first time, we will all have the same information about voting access for overseas voters that we now have routinely for voters at home.

ACCESSIBILITY STANDARDS AND VOTING RIGHTS OF PERSONS WITH DISABILITIES

Sections 102, 112, 221, 233 and 501 and Compliance with the Americans with Disabilities Act and the Voting Accessibility for the Elderly and Handicapped Act

In this bill, the Committee reaffirms that public entities, such as States and localities and their responsible officials, must comply to the extent required by law with the Americans with Disabilities Act (ADA) and the Voting Accessibility for the Elderly and Handicapped Act (VAEHA).

The committee bill will enhance compliance with the ADA and VAEHA by enlisting a range of officials in the process of regulating accessibility problems and solutions. For example, the bill requires that the chief election official of each State certify the State's compliance with the applicable provisions of the ADA and the VAEHA, and requires that recipients of election funds provide assurance of compliance with such laws as a condition of their acceptance of federal money.

Section 903 and preservation of existing law

Section 903 expressly provides that noting in the bill will supersede, restrict, or limit the application of the VAEHA, the ADA, the Voting Rights Act or the National Voting Registration Act, nor will it authorize or require any conduct prohibited under any of these laws. Thus, the bill continues unchanged—the role of the Department of Justice (DOJ) as the agency responsible for authoritatively construing the ADA and promulgating regulations.

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Voluntary accessibility standards in sections 221 and 222

The Committee bill creates mechanisms for providing States and localities with technical guidance about improving accessibility through the adoption of voluntary standards by the Election Assistance Commission. The Committee expects that the voluntary standards will offer examples of achievable methods for ensuring accessibility. One example might include the moving of a polling place from an inaccessible historic library building to an accessible city hall building nearby.

These voluntary standards to be issued by the Commission would not, however, replace accessibility regulations and technical assistance provided by the DOJ for individuals with disabilities. Rather, these standards must be consistent with DOJ's regulations, and not serve as authorization for a level of accessibility lower than required by the regulations. In fact, this need for harmonious standards is the reason the bill directs the Commission to consult with the Architecture and Transportation Barrier Compliance Board in developing its voluntary standards.

If a state accepts election fund payments, the bill requires the state to certify its compliance with the voluntary standards for voting systems. This means that a state which accepts funds will be bound by at least two independent sources of law: the state's contractual duty to comply with the Commission's standards for voting systems, and the state's statutory duty to comply with the ADA. While the Committee anticipates that the Commission will take great care to create voluntary standards in a manner that conforms to existing law, compliance with the Commission's standards cannot provide any "safe harbor" against liability under the ADA or other applicable laws.

Eligibility for election assistance funding under section 233

One of the eligibility requirements for election assistance funding is that there must be at least one voting system available in each precinct or polling place that is fully accessible to individuals with disabilities. This means that if a State accepts any election assistance funding, the State is required to purchase a fully accessible voting system for each precinct or polling place that does not already have such a Summary

TITLE I—PUNCH CARD VOTING MACHINES

Subtitle A—Replacement of Machines

Sec. 101. Establishment of program

Provides for a one-time payment, through the General Services Administration, to State or local government to replace punch card voting systems with other kinds. Requires recipients to obligate funds by the November 2002 Federal election and complete replacement by the 2004 election, but deadlines may be extended two years if approved by the Election Assistance Commission established in Sec. 201.

Sec. 102. Eligibility

Requires that State applications include assurances that the State will use the payment to replace punch card systems used in

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the 2000 election, continue to comply with the Voting Accessibility for the Elderly and Handicapped Act and Americans With Disabilities Act, and provide for alternative language accessibility as required by the Voting Rights Act and other laws.

Permits a local government to apply if the State does not, is ineligible, or will not use the payment to replace punch card systems. Requires that the application include similar assurances as those required of States.

Sec. 103. Amount of payment

Sets payment at 90% of replacement cost, or 95% for precincts where per capita income is within the lowest quartile for the United States, with a maximum of $6,000 times the number of precincts using punch card systems in the jurisdiction during the 2000 election.

Sec. 104. Audit and repayment of funds

Makes payments subject to audit. Requires recipients that fail to meet deadlines to return the funds unless granted a waiver.

Sec. 105. Punch card voting system defined

Defines punch card voting systems to include C.E.S., Datavote, PBC Counter, Pollstar, Punch Card, Vote Recorder, and Votomatic.

Subtitle A—Enhancing Performance of Existing Systems

Sec. 111. Establishment of program

Provides for a one-time payment, through the General Services Administration, to State or local governments to enhance performance of punch card voting systems, with deadlines as in Sec. 101.

Sec. 112. Eligibility

Similiar to Sec. 102, except funds used for enhancement rather than replacement of systems; also, jurisdictions may not participate in both programs.

Sec. 113. Amount of payment

Similar to Sec. 103 except maximum is $2,000 times the number of covered precincts.

Sec. 113. Audit and repayment of funds

Makes payments subject to audit. Requires recipients that fail to meet deadlines to return the funds.

Subtitle C—General Provisions

Sec. 121. Authorization of appropriations

Authorizes appropriations of $400 million, to remain available until expended. Repaid or unobligated funds will be transferred to the Election Assistance Commission.

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TITLE II—COMMISSION

Subtitle A—Establishment and General Organization

PART I—ELECTION ASSISTANCE COMMISSION

Sec. 201. Establishment

Creates an independent executive branch agency called the Election Assistance Commission.

Sec. 202. Duties

Stipulates that the Commission will serve as a national clearinghouse and resource on the administration of Federal elections as described in this title and title III.

Sec. 203. Membership and appointment

Requires that the four Commission members have election-related experience or expertise and that they be appointed by the President with the consent of the Senate, with one member each chosen from nominees submitted by the President Pro Tempore of the Senate, the Senate minority leader, the Speaker of the House of Representatives, and the House minority leader.

Establishes staggered four-year terms for members, renewable once, and prohibits members from being officers or employees of the Federal government while serving. Requires members to select a chair and vice chair from different political parties.

Sets a commissioner's salary at $30,000, plus travel expenses, and permits outside employment.

Sec. 204. Staff

Creates position of Executive Director to be appointed by the Commission for a four-year renewable term and permits that person to appoint additional staff and use outside experts. Requires staff to consult with the two boards established in this title.

Sec. 205. Powers

Empowers the Commission to hold hearings, take testimony, receive evidence, let contracts, obtain information from Federal agencies and support from the General Services Administration, and to use the mails as do other Federal agencies.

Sec. 206. Limitation on rulemaking authority

Prohibits the Commission from imposing requirements on State or local governments except as permitted under the National Voter Registration Act.

Sec. 207. Authorization of appropriations

Authorizes a maximum appropriation of $10 million per year through FY2004.

PART II—ELECTION ASSISTANCE COMMISSION STANDARDS BOARD AND BOARD OF ADVISORS

Sec. 211. Establishment

Creates a Standards Board and a Board of Advisors under the Election Assistance Commission.

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Sec. 212. Duties

Requires that the two boards review the standards described in this title.

Sec. 213. Membership of Standards Board

Sets membership at 110, to include, from each State, the chief election official and a local election official chosen by peers in the State, with no two members from a State to be from the same political party.

Requires board to select a nine-member Executive Board, with no more than five to be chief election officials, local election officials, or from the same party. Sets two-year staggered terms with a maximum of two consecutive renewals.

Sec. 214. Membership of Board of Advisors

Sets membership at 25, two each appointed by the U.S. Commission on Civil Rights; the Architectural and Transportation Barrier Compliance Board; the National Governors Association; the National Conference of State Legislatures; the National Association of Secretaries of State; the National Association of State Election Directors; the National Association of Counties; the National Association of County Recorders, Election Administrators, and Clerks; the U.S. Conference of Mayors; the Election Center; and the International Association of County Recorders, Election Officials, and Treasurers; with the Speaker of the House and the Senate majority leader each appointing one professional in science and technology; and with the chief of the Office of Public Integrity of the Department of Justice or designee also a member. Requires bipartisan, geographically diverse appoints.

Sets two-year, renewable terms. Requires election of a chair from among the members.

Sec. 215. Powers of boards; no compensation for service

Empowers each board to hold hearings, take testimony, and receive evidence, obtain information from Federal agencies and support from the General Services Administration, and to use the mails as do other Federal agencies. Prohibits issuance of subpoenas. Requires each board to meet at least yearly to vote on standards, and the Standards Board to meet at least every two years to select the Executive Board. Prohibits compensation of board members, but permits payment of travel expenses.

Sec. 216. Status of boards and members for purposes of claims against board

Applies provisions of 28 U.S.C., Chapters 161 and 171, with respect to liability of boards and members, with an exception for criminal acts and other willful misconduct.

Subtitle B—Voluntary Election Standards

Sec. 221. Development of voluntary election standards

Requires the Commission, in consultation with the two boards, to develop and adopt voluntary voting system standards, accessibility standards, and election management standards, and update them at least every four years.

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Requires that the voting system standards include security, certification and decertification procedures, usability assessment, and operational guidelines; provide for error correction by voters; include for each certified system what is proposed to constitute a vote; and provide that certified new systems permit voters with disabilities to cast a secret ballot.

Requires the Commission to serve as a clearinghouse of information on experiences of State and local governments in implementing the standards and in operating voting systems; and to make available to the public studies on certain specified issues in election administration, information on the Federal election system, election results, and information concerning issues relating to Federal, State, and local elections.

Requires consultation with the Compliance Board and other experts with respect to accessibility standards, and that the election management standards address the treatment of uniformed and overseas voters, in consultation with the Secretary of Defense.

Requires the Commission to provide for voluntary testing, certification, decertification, and recertification of voting systems; to advise State and local governments on complying with Federal laws regarding accessibility of registration and polling places; to carry out the provisions of the National Voter Registration Act regarding voter registration by mail; and to assist State officials in review of Federal election procedures.

Sec. 222. Technical Standards Development Committee

Establishes a 15-member Technical Standards Development committee, to recommend voting system standards and modifications, to be chaired by the Director of the National Institute of Standards and Technology (NIST), and with members appointed jointly by the Director and the Commission and drawn from the Standards Board, the Board of Advisors, the Compliance Board, the American National Standards Institute, and other persons with relevant scientific and technical expertise. Requires NIST to provide technical support.

Prohibits compensation of members, but permits payment of travel expenses.

Requires, when the Commission adopts any standard, publication of corresponding recommendations of the Development Committee in the Federal Register.

Sec. 223. Process for adoption of voluntary standards

Requires the Executive Director of the Commission to take recommendations of the Development Committee into account in developing standards, and for the two boards to review the proposed standards, with majority vote of the Commission required for adoption.

Sec. 224. Certification and testing of voting systems

Requires that testing and certification of voting systems be performed by nonfederal laboratories accredited by the Commission, from a list of candidates submitted by the Director of NIST, who will also monitor and review laboratory performance and, when appropriate, make recommendations to the Commission regarding continuing accreditation.

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Sec. 225. Dissemination of information

Requires the Commission to disseminate to the public—via the Internet, published reports, and other means—information on the standards and guidelines for applying them, the list of accredited laboratories, a list of certified voting system hardware and software, and other activities carried out under this subtitle.

Subtitle C—Election Assistance

Part 1—Election Fund Payments to States for Voting System Improvements

Sec. 231. Election fund payments to States for voting system improvements

Requires the Commission to make payments to qualifying States to improve the administration of elections.

Sec. 232. Allocation of funds

Sets the size of payment to a State at the greater of either a percentage of the total amount appropriated for that year, based on the size of the voting age population in that State as compared to the total for all States; or 0.5 percent of the total appropriated, except 0.1 percent for Puerto Rico, Guam, American Samoa, or the U.S. Virgin Islands.

Sec. 233. Conditions for receipt of funds

Requires a State, to be eligible, to certify that it has established an Election Fund, provided a 25 percent match, and set benchmarks for voting system performance; complies with the voluntary voting system standards and certification processes described in subtitle B or has established statutory standards that provide for error correction by voters and for auditing of ballots; provides one or more fully accessible voting systems in each precinct; complies with Federal voting rights law; and provides for voter education and training of poll workers and personnel involved in voter registration. Also requires the State to certify that the Federal share will not supplant existing State funds. Gives States discretion to choose the method of compliance

Sec. 234. Authorization of appropriations

Authorizes appropriations totaling $2.25 billion through FY2004.

Part 2—Grants for Research on Voting Technology Improvements

Sec. 241. Grants for research on voting technology improvements

Establishes a grant program to be administered by the Commission for research and development to improve election systems and technology. Requires applicants to assure that funded activities will take accessibility needs into account. Applies 18 U.S.C. 35 with respect to patent rights.

Sec. 242. Report

Requires submission of a report describing activities under the grant.

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Sec. 243. Authorization of appropriations

Authorizes appropriations of $20 million for FY 2002.

PART 3—PILOT PROGRAM FOR TESTING OF EQUIPMENT AND TECHNOLOGY

Sec. 251. Pilot program

Establishes a grant program to be administered by the Commission to implement new voting technologies on a trial basis. Requires applicants to assure that the funded activities will take accessibility needs into account.

Sec. 252. Report

Requires submission of a report describing activities under the grant.

Sec. 253. Authorization of appropriations

Authorizes appropriations of $10 million for FY2002.

PART 4—MISCELLANEOUS

Sec. 261. Role of National Institute of Standards and Technology

Requires the Director of NIST to submit annually to the Commission a list of suggestions for issues to be addressed by the grant programs, review grant applications, monitor grant activities and recommend modifications as necessary, and evaluate completed grants. Also requires the Director to establish an intramural research and development program within NIST to support the development of voluntary technical standards.

Sec. 262. Reports

Requires submission of an annual report to Congress by the Commission and a report on the application of human factors research to voting systems.

Sec. 263. Audit

Provides for the Commission to audit recipients of funds and requires that each program established under the subtitle be audited at least once during its lifetime.

TITLE III—HELP AMERICA VOTE COLLEGE PROGRAM

Sec. 301. Establishment of program

Requires the Commission to establish the "Help America Vote Program," with the purpose of encouraging students at colleges, universities, and community colleges to serve as nonpartisan poll workers or assistants and to encourage State and local governments to use students in that capacity.

Sec. 302. Activities under program

Requires the Commission, in consultation with chief State election officials, to develop materials, sponsor seminars and workshops, advertise the program to students, make grants, assist any institution that wishes to participate, and take other appropriate

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actions. Limits grants to nonpartisan undertakings that do not promote a point of view or an issue.

Sec. 303. Authorization of appropriations

Authorizes appropriations of $5 million for FY2002 and sums necessary thereafter.

TITLE IV—HELP AMERICA VOTE FOUNDATION

Sec. 401. Help America Vote Foundation

Amends Part B of subtitle II of 36 U.S.C. to establish the federally chartered Help America Vote Foundation to mobilize secondary school students to participate as nonpartisan poll workers and assistants, and to establish cooperative efforts with election officials, local educational agencies, public and private school officials, and other appropriate nonprofit organizations.

Requires the foundation to act without partisan bias or promotion of any particular point of view and to consult with the chief State election officials.

Establishes a 12-member board of directors with four appointed by the President (not more than two from the same political party), two by the Speaker of the House of Representatives, two by the House minority leader, two by the Senate majority leader, and two by the Senate minority leader, and with the chairs and ranking Members of the House Administration Committee and the Senate Rules and Administration Committee as ex officio, nonvoting members.

Sets the term of office at four years and stipulates that members are not employees of the Federal government. Prohibits compensation of board members, but permits payment of travel expenses. Restricts personal liability of members to gross negligence.

Requires the board to meet at least yearly and to select a member as chair, who shall not hold or have held any partisan elected office or national political-party committee office.

Permits the board to appoint and remove officers and employees of the foundation and stipulates that they are not employees of the Federal government except as otherwise provided in this chapter.

Grants the foundation such powers as necessary to carry out this chapter and also the usual powers of a corporation acting as a trustee in the District of Columbia, where the foundation will be located. Permits it to conduct business throughout the United States. Requires the foundation to have a designated agent to receive service of process for it.

Permits the foundation to accept gifts, devises, and bequests for its benefit and to let contracts. Also permits it to sponsor an annual conference to honor persons who have served as poll workers or participated in foundation programs and activities.

Requires an annual audit by an independent auditor.

Permits the Attorney General to bring a civil action for relief for behavior by the foundation that is inconsistent with the purposes designated in this title.

Excludes the U.S. government from any liability or obligation incurred by the foundation.

Authorizes $5 million for FY 2002 and such sums as necessary thereafter.

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TITLE V—MINIMUM STANDARDS FOR STATE ELECTION SYSTEMS

Sec. 501. Minimum standards for State election systems

Requires each State to certify to the Commission that it is in compliance with the Voting Rights Act of 1965, the National Voter Registration Act of 1993, the Uniformed and Overseas Citizens Absentee Voting Act, the Voting Accessibility for the Elderly and Handicapped Act, and the Americans With Disabilities Act of 1990; and that it has, by statute, established standards for its election systems as described in this title. Gives States discretion to choose the method of implementation.

Sec. 502. Standards described

Sets minimum standards, to include a statewide, networked voter registration system in States requiring registration; provisions to ensure accurate, updated registration records; in-precinct provisional voting; uniform standards for what constitutes a vote for each certified voting system; safeguards for voting by uniformed and overseas voters; requirements that new voting systems provide for voters with physical disabilities to cast a secret ballot; and requirements that new voting systems give voters the opportunity to correct errors under conditions which assure privacy.

Sec. 503. Enforcement

Requires the Commission to notify the Attorney General if a State fails to comply, and authorizes the Attorney General, if so notified, to bring a civil action to remedy the violation.

Sec. 504. Effective date

Sets effective date for the provisional voting standard at the November 2002 Federal election and for other provisions in the title at two years from enactment, but permits an extension to the November 2004 Federal election.

TITLE VI—VOTING RIGHTS OF MILITARY MEMBERS AND OVERSEAS CITIZENS

Sec. 601. Voting assistance programs

Amends 10 U.S.C. Chapter 80 to require the Secretary of Defense to ensure compliance by the military services with the Federal Voting Assistance Program and any similar programs.

Requires the Inspector General of each service to conduct an annual review of the effectiveness of and compliance with the programs and to submit the review to the Inspector General for the Department of Defense (DOD), who will prepare an annual report to Congress. Requires the DOD Inspector General to conduct, at 10 or more installations each year, periodic, unannounced assessments of compliance with requirements of law regarding voting by members of the armed forces.

Requires the secretary of each military department to assess compliance as part of installation review or inspection, and to certify to Congress that, for each installation and major command, a voting assistance officer, has been appointed and given the time and resources to perform voting assistance duties. Also requires the

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secretaries to specify the number of voting action officers appointed and the ratio of voting action officers to active duty members, to assess compliance of those numbers with requirements, and to describe the training that voting action officers receive.

Requires the secretaries to ensure that members of the military and their dependents have access to information on voter registration and absentee ballot requirements and deadlines. Requires that each person who enlists, reenlists, or completes a permanent change of station receive the national voter registration form.

Requires the secretaries, through voting assistance officers, to provide notice to members of the armed forces of the last date before a general election for which ballots mailed at the facility can be expected to be delivered in a timely fashion to State and local election officials.

Requires the Secretary of Defense to ensure that voting materials are transmitted expeditiously, to conduct periodic surveys of mail shipments at all overseas locations and vessels at sea during the four months preceding an election, and to implement measures to ensure that a postmark or other proof of mailing date is provided on each absentee ballot.

Sec. 602. Designation of single State office to provide information on registration and absentee ballots for all voters in State

Amends the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) to require each State to designate a single office to provide information to members of the armed services concerning absentee registration and voting in the State. Recommends that the office be responsible for carrying out duties under this Act.

Sec. 603. Report on absentee ballots transmitted and received after general elections

Requires that after a Federal election, States submit a public report to the Commission on the number of absentee ballots transmitted to absent uniformed services and overseas voters and the number returned and cast in the election. Requires the Commission to develop a standardized format for such reports.

Sec. 604. Simplification of voter registration and absentee ballot application procedures for absent uniformed services and overseas voters

Amends UOCAVA to require States to accept the post card form as a simultaneous voter registration and absentee ballot application, and to require that an absentee ballot application pertain to all elections for Federal office held in the State during that year, if the applicant so requests. Requires the Presidential designee for UOCAVA to revise the official post card form to enable a voter to request an absentee ballot either for each Federal election held in a State during a year or for only the next schedules Federal election.

Sec. 605. Additional duties of presidential designee under Uniformed and Overseas Citizens Absentee Voting Act

Amends UOCAVA to require the Presidential designee to ensure that State officials are aware of the requirements of that Act, and to prescribe a standard oath regarding perjury in completion of a

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document required under the title. Requires States to use the standard oath if the State requires an oath or affirmation for any voting document.

Amends UOCAVA to require separate statistical analysis for overseas voters and absent uniformed services voters.

Sec. 606. Use of Buildings on Military Installations and Reserve Component Facilities as Polling Places

Amends 10 U.S.C. 2670 and 18235; 18 U.S.C. 592 and 593; and 42 U.S.C. 2003 to permit the secretary of a military department to make a building located on a military installation available for use as a polling place, in any Federal, State, or local election, for eligible voters who reside on that military installation. Requires that such a polling place continue to be available for subsequent elections unless the secretary provides appropriate advance notice to State and local officials of the reasons why it will not.

TITLE VII—REDUCED POSTAGE RATES FOR OFFICIAL ELECTION MAIL

Sec. 701. Reduced postage rates for official election mail

Amends 39 U.S.C. 3629 to establish a postage rate of 50% of the regular first-class rate for any State and local official election mail.

TITLE VIII—TRANSITION PROVISIONS

Subtitle A—Transfer to Commission of Functions Under Certain Laws

Sec. 801. Federal Election Campaign Act of 1971

Amends section 311 (a) of the Federal Election Campaign Act of 1971 (2 U.S.C. 438 (a)) Transfers to the Commission, upon appointment of all members, all functions of the Office of Election Administration of the Federal Election Commission.

Sec. 802 National Voter Registration Act of 1993

Amends section 9(a) of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg–7(a)). Transfers to the Commission all functions that the Federal Election Commission exercises under the National Voter Registration Act.

Sec. 803. Transfer of property, records, and personnel

Transfers to the Commission all personnel, contracts, liabilities, records, property, and other assets or interests of the offices and functions of the Federal Election Commission that are transferred by this subtitle.

Sec. 804. Effective date; transition

Requires that this title take effect upon the appointment of all members of the Commission, which is authorized to utilize services from the entities from which functions will be transferred as needed for an orderly transfer.

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Subtitle B—Coverage of Commission Under Certain Laws and Programs

Sec. 811. Treatment of commission personnel under certain civil service laws

Amends 5 U.S.C. 7323(b)(2)(B)(i)(I) and 3132(a)(1)(C) to specify that Commission personnel are covered by the Hatch Act and that the Commission is excluded from the Senior Executive Service.

Sec. 812. Coverage under Inspector General Act of 1978

Amends section 8G(a)(2) of the Inspector General Act of 1978 (5 U.S.C. App.) to provide for coverage under that Act.

TITLE IX—MISCELLANEOUS PROVISIONS

Sec. 901. State defined

Defines State to include the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, and the United States Virgin Islands.

Sec. 902. Miscellaneous provisions to protect integrity of election process

Amends the National Voter Registration Act of 1993 to clarify the ability of election officials to remove from the voter registration list the name of an individual who has not voted in two or more consecutive general elections for Federal office and who has not notified the registrar of an intent to remain registered in the registrar's jurisdiction or who has not responded to a notice from the registrar of voters. Amends 18 U.S.C. 594 to prohibit poll workers from intimidating, harassing, or coercing voters to cast votes for every office on the ballot, but not from providing information to a voter who requests assistance.

Sec. 903. No effect on other laws

Stipulates that nothing in the Act authorizes or requires conduct prohibited by the Voting Rights Act of 1965, the National Voter Registration Act of 1993, or the Americans With Disabilities Act of 1990; or may be construed to supersede, restrict, or limit those Acts or the Voting Accessibility for the Elderly and Handicapped Act.

COMMITTEE CONSIDERATION OF THE LEGISLATION

INTRODUCTION AND REFERRAL

On November 14, 2001, Mr. Ney, Mr. Hoyer, Mr. Blunt and Mr. Fattah introduced H.R. 3295, which was referred to the Committee on House Administration, the Committee on the Judiciary, the Committee on Armed Services, the Committee on Government Reform and the Committee on Science

HEARINGS

The Committee on House Administration held four hearings on election reform in the first session of the 107th Congress.

On April 25, 2001, the Committee held the first hearing on Election Reform.

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Members present: Mr. Ney, Mr. Ehlers, Mr. Mica, Mr. Linder, Mr. Reynolds, Mr. Hoyer, Mr. Fattah, Mr. Davis.

Witnesses: J. Kenneth Blackwell, Secretary of State, Ohio; Sharon Priest, Secretary of State, Arkansas; Katherine Harris, Secretary of State, Florida; Rebecca Vigil-Giron, Secretary of State, New Mexico; Ron Thornburgh, Secretary of State, Kansas; Martin Stephens, Speaker of the Utah House of Representatives; John Adams Hurson, Majority Leader, Maryland House of Delegates; Kenneth Mayfield, Commissioner, Dallas County, Texas; Deborah Phillips, President—The Voting Integrity Project; Kristen Cox, National Federation of the Blind; Hilary Shelton, Director NAACP Washington Bureau; Dennis Duggan, American Legion.

On May 10, 2001, the Committee held its second hearing on Election Reform.

Members present: Mr. Ney, Mr. Ehlers, Mr. Mica, Mr. Reynolds, Mr. Hoyer, Mr. Davis.

Witnesses: Doug Lewis, Director—The Election Center; Conny McCormack, Los Angeles County Registrar-Recorder/County Clerk; Connie Schmidt, Election Commissioner, Johnson County, Kansas; Carolyn Jackson, Administrator of Elections, Hamilton County, Tennessee; Pam Iorio, Supervisor of Elections, Hillsborough County, Florida; Linda Lamone, Administrator, Maryland State Administrative Board of Election Laws.

On May 17, 2001, the Committee held its third hearing on Election Reform.

Members present: Mr. Ney, Mr. Ehlers, Mr. Linder, Mr. Hoyer, Mr. Fattah, Mr. Davis.

Witnesses: Tom Davis, Managing Member, iPaper/Diversified Dynamics; William F. Welsh III, Chairman, Election Systems and Software; Brian O'Conner, Executive Vice President, Global Election Systems, Inc.; David E. Hart, Chairman, Hart InterCivic, Inc.; Richard Caruso, Chairman, Shoup Voting Solutions; Marlene Duffy Young, Regional Marketing Representative, Unilect; James Minadeo, Product Manager, Avante; Scott Faibaron, Regional Sales Manager, Envox (US) Ltd.; Mark Strama, Vice President, Public Elections, election.com; David Chaum, Founder, SureVote; Ralph Munro, Board of Directors, VoteHere; Dennis Vadura, CEO, Web Tools International.

On May 24, 2001, the Committee held its fourth hearing on Election Reform.

Members present: Mr. Ney, Mr. Ehlers, Mr. Doolittle, Mr. Hoyer, and Mr. Fattah.

Witnesses: Christopher Baum, Vice President, Gartner Group; Thomas R. Palfrey, Professor, California Institute of Technology; David Woods, Professor, Ohio State University; Ronald Rivest, Professor, Massachusetts Institute of Technology.

MARKUP

On Thursday November 15, 2001, the Committee met to mark up H.R. 3295. The Committee favorably reported H.R. 3295, as amended, by a recorded vote (8–0), a quorum being present.

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MATTERS REQUIRED UNDER THE RULES OF THE HOUSE

COMMITTEE RECORD VOTES

Clause 3(b) of House rule XIII requires the results of each record vote on an amendment or motion to report, together with the names of those voting for and against, to be printed in the committee report.

Amendment No. 1

Offered by Mr. Reynolds. The first vote during the markup came on the amendment offered by Mr. Reynolds.

The amendment would allow, but not require, military base commanders to locate polling places on their installations.

The amendment was approved by a voice vote a quorum being present.

Amendment No. 2

Offered by Mr. Hoyer. The second vote during the markup came on the amendment offered by Mr. Hoyer. This amendment would add additional voting system accessibility requirements for the disabled and those with limited proficiency in English.

The vote on the amendment was 3–4 and the amendment was not agreed to.

Member	Yes	No	Present
Mr. Ney		X	
Mr. Linder		X	
Mr. Doolittle		X	
Mr. Reynolds		X	
Mr. Hoyer	X		
Mr. Fattah	X		
Mr. Davis	X		
Total	3	4	

The Committee then voted on H.R. 3295, as amended. The bill as amended was agreed to by a recorded vote (8–0).

Member	Yes	No	Present
Mr. Ney	X		
Mr. Ehlers	X		
Mr. Linder	X		
Mr. Doolittle	X		
Mr. Reynolds	X		
Mr. Hoyer	X		
Mr. Fattah	X		
Mr. Davis	X		
Total	8	0	

The Committee then voted to report H.R. 3295 favorably, as amended. The vote to report favorably was approved by recorded vote (8–0).

Member	Yes	No	Present
Mr. Ney	X		
Mr. Ehlers	X		
Mr. Linder	X		
Mr. Doolittle	X		

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Member	Yes	No	Present
Mr. Reynolds	X		
Mr. Hoyer	X		
Mr. Fattah	X		
Mr. Davis	X		
Total	8	0	

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) rule XIII of the Rules of the House of Representatives, the Committee states that the findings and recommendations of the Convention Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

GENERAL PERFORMANCE GOALS AND OBJECTIVES

The Committee states, with respect to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, that the goal and objective of H.R. 3295 is to improve the election infrastructure in the United States.

CONSTITUTIONAL AUTHORITY

In compliance with clause 3(d)(1) of rule XIII, the Committee states that Article 1, Section 4 of the U.S. Constitution grants Congress the authority to make laws governing the time, place and manner of holding Federal elections.

FEDERAL MANDATES

The Committee states, with respect to section 423 of the Congressional Budget Act of 1974, that the bill does not include any significant Federal mandate.

PREEMPTION CLARIFICATION

Section 423 of the Congressional Budget Act of 1974 requires the report of any committee on a bill or joint resolution to include a committee statement on the extent to which the bill or joint resolution is intended to preempt state or local law. The Committee states that H.R. 3295 is not intended to preempt any state or local law.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

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U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, November 30, 2001.

Hon. ROBERT W. NEY,
Chairman, Committee on House Administration,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3295, the Help America Vote Act of 2001.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Mark Grabowicz and Matthew Pickford (for federal costs); Susan Sieg Tompkins (for the impact on state, local, and tribal governments): and Paige Piper/Bach (for the impact on the private sector).

Sincerely,

BARRY B. ANDERSON
(For Dan L. Crippen, Director).

Enclosure.

H.R. 3295, Help America Vote Act of 2001

Summary: H.R. 3295 would authorize the appropriation of about $2.8 billion over fiscal year 2002 through 2006, mostly for grants to states and localities to improve voting technology and election administration. The bill would establish the Election Assistance Commission to undertake activities to improve the administration of elections and would set minimum standards for national elections. H.R. 3295 also would require the Department of Defense to implement a voting assistance program for military personnel and other overseas U.S. citizens. Finally, the bill would provide reduced postage rates for official election mailings.

Assuming appropriation of the authorized amounts, CBO estimates that implementing H.R. 3295 would cost about $2.8 billion over the 2002–2006 period. In addition, we estimate that enacting the bill would increase costs to the U.S. Postal Service by about $100 million over the 2002–2003 period. (Postal Service spending is classified as off-budget and is not subject to pay-as-you-go procedures.) The bill would not otherwise affect direct spending or receipts so pay-as-you-go procedures would not apply.

Section 4 of the Unfunded Mandates Reform Act (UMRA) excludes from the application of that act any legislative provisions that enforce the constitutional rights of individuals. CBO has determined that title V and certain sections of title VI would fall within that exclusion. Other provisions of the bill would provide grants to states to improve voting procedures and technology. Any costs to state, local, or tribal governments as a result of participating in those programs would be incurred voluntarily. The remaining provisions of the bill contain no intergovernmental or private-sector mandates and would impose no costs on state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 3295 is shown in the following table. The costs of this legislation fall within budget functions 050 (national defense), 370 (commerce and housing credit), and 800 (general government).

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	By fiscal year, in millions of dollars—				
	2002	2003	2004	2005	2006
CHANGES IN SPENDING SUBJECT TO APPROPRIATION					
Grants to replace punch card voting machines:					
Authorization Level	400	0	0	0	0
Estimated Outlays	200	200	0	0	0
Voting system improvements:					
Authorization Level	750	750	750	0	0
Estimated Outlays	75	600	750	675	150
Election Assistance Commission:					
Estimated Authorization Level	3	4	4	4	4
Estimated Outlays	1	2	3	3	3
Other provisions:					
Estimated Authorization Level	37	14	12	12	14
Estimated Outlays	20	26	12	12	14
Total:					
Estimated Authorization Level	1,190	768	766	16	18
Estimated Outlays	296	828	765	690	167
CHANGES IN OFF-BUDGET DIRECT SPENDING					
U.S. Postal Service[1]					
Estimated Budget Authority	50	55	0	0	0
Estimated Outlays	50	55	0	0	0

[1] These estimated costs would be offset, overtime, by postal rate increases.

Basis of estimate: For this estimate, CBO assumes that the bill will be enacted by the end of calendar year 2001 and that the necessary amounts will be appropriated each year. CBO estimates that implementing H.R. 3295 would cost $2.8 billion over the 2002–2006 period, mostly for voting system improvements. The bill would also increase spending of the Postal Service, which is classified as off-budget.

Spending subject to appropriation

Grants to Replace Punch-Card Voting Machines. H.R. 3295 would authorize the appropriation of $400 million for fiscal year 2002 for payments for state and local governments to replace punch card voting systems. State and local governments that apply for these funds would be able to receive a maximum of $6,000 per precinct.

Voting System Improvements. The bill would authorize the appropriation of $2.25 billion over the 2002–2004 period to pay for grants to states and localities for improving voting technology and upgrading equipment, improving voter registration systems, increasing access for voters with disabilities, and enhancing training for poll workers. CBO expects that most of the funds to replace machines and so implement improvements would be spent in fiscal years 2003 through 2005.

Election Assistance Commission. Title II would authorize the appropriation of up to $10 million annually to establish the Election Assistance Commission. The four-member, bipartisan commission would advise state and local governments on election administration. This work would include developing voluntary election management standards, serving as a clearinghouse for information, and reviewing procedures affecting the administration of federal elections. The bill also would transfer all the functions of the Office of Election Administration of the Federal Election Commission to the new commission. CBO estimates that the commission would re-

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quire funding of $3 million to $4 million annually with estimated outlays of about $12 million over the 2002–2006 period.

Other Provisions. H.R. 3295 also would authorize appropriations for several other programs aimed at improving the election process, including grants to study and improve voting technology, pilot programs to test new technologies, and programs to encourage citizens to get involved in the election process. CBO estimates that, in total, implementing these programs would cost $84 million over the 2002–2006 period.

H.R. 3295 would direct the Secretary of Defense to coordinate all voting activities for members of the military and other overseas U.S. citizens, includes training voting assistance officers, conducting mail delivery surveys, and providing information on voter registration requirements and deadlines of the various states. Based on information from the Department of Defense, CBO estimates that implementing this section of the bill would result in no significant costs.

Off-budget costs (direct spending)

For official mailings sent to voters by local election officials via first-class mail, H.R. 3295 would reduce the postage rate by 50 percent. CBO expects that the reduced postage rate would apply to two mailings every year to each of the 150 million registered voters in the United States. The current first-class rate is 34 cents and is expected to rise to 37 cents by fiscal year 2003, so CBO estimates this provision would cost the Postal Service about $50 million in 2002 and about $55 million in 2003. Over time, there would be no net effect from this provision because the Postal Service is required to set rates so that it covers all costs. Postal Service spending and collections are classified as off-budget and would not be subject to pay-as-you-go procedures.

Pay-as-you-go considerations: None.

Intergovernmental and private-sector impact: Section 4 of UMRA excludes from the application of that act any legislative provisions that enforce the constitutional rights of individuals. CBO has determined that title V and certain sections of title VI would fall within that exclusion because they enforce an individual's right to vote, and to have that vote counted.

Other provisions of the bill would benefit state and local governments. Specifically, title I would provide grants to states to replace or upgrade punch card voting systems. Provisions of title II would provide payments to states to improve election administration and voter education. In both cases, states must provide up to 25 percent in matching funds to be eligible to receive the assistance. The matching requirement as well as any other costs to state, local, or tribal governments as a result of participating in these programs would be incurred voluntarily.

The remaining provisions of the bill contain no intergovernmental or private-sector mandates and would impose no costs on state, local, or tribal governments.

Estimate prepared by: Federal Costs: Mark Grabowicz and Matthew Pickford. Impact on State, Local, and Tribal Governments: Susan Sieg Tompkins. Impact on the Private Sector: Paige Piper/Bach.

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Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 36, UNITED STATES CODE

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SUBTITLE II—PATRIOTIC AND NATIONAL ORGANIZATIONS

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PART B—ORGANIZATIONS

201. AGRICULTURAL HALL OF FAME 20101

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1526. Help America Vote Foundation 152601

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PART B—ORGANIZATIONS

* * * * * * *

CHAPTER 1526—HELP AMERICA VOTE FOUNDATION

Sec.
152601. Organization.
152602. Purposes.
152603. Board of directors.
152604. Officers and employees.
152605. Powers.
152606. Principal office.
152607. Service of process.
152608. Annual audit.
152609. Civil action by Attorney General for equitable relief.
152610. Immunity of United States Government.
152611. Authorization of appropriations.
152612. Annual report.

§ 152601. Organization

(a) FEDERAL CHARTER.—The Help America Vote Foundation (in this chapter, the "foundation") is a federally chartered corporation.

(b) NATURE OF FOUNDATION.—The foundation is a charitable and nonprofit corporation and is not an agency or establishment of the United States Government.

(c) PERPETUAL EXISTENCE.—Except as otherwise provided, the foundation has perpetual existence.

§ 152602. Purposes

(a) IN GENERAL.—The purposes of the foundation are to—

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(1) mobilize secondary school students (including students educated in the home) in the United States to participate in the election process in a nonpartisan manner as poll workers or assistants;

(2) place secondary school students (including students educated in the home) as nonpartisan poll workers or assistants to local election officials in precinct polling places across the United States; and

(3) establish cooperative efforts with State and local election officials, local educational agencies, superintendents and principals of public and private secondary schools, and other appropriate nonprofit charitable and educational organizations exempt from taxation under section 501(a) of the Internal Revenue Code of 1986 as an organization described in section 501(c)(3) of such Code to further the purposes of the foundation.

(b) REQUIRING ACTIVITIES TO BE CARRIED OUT ON NONPARTISAN BASIS.—The foundation shall carry out its purposes without partisan bias or without promoting any particular point of view regarding any issue, and shall ensure that each participant in its activities is governed in a balanced manner which does not reflect any partisan bias.

(c) CONSULTATION WITH STATE ELECTION OFFICIALS.—The foundation shall carry out its purposes under this section in consultation with the chief election officials of the States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, and the United States Virgin Islands.

§ 152603. Board of directors

(a) GENERAL.—The board of directors is the governing body of the foundation.

(b) MEMBERS AND APPOINTMENT.—(1) The board consists of 12 directors, who shall be appointed not later than 60 days after the date of the enactment of this chapter as follows:

(A) 4 directors (of whom not more than 2 may be members of the same political party) shall be appointed by the President.

(B) 2 directors shall be appointed by the Speaker of the House of Representatives.

(C) 2 directors shall be appointed by the minority leader of the House of Representatives.

(D) 2 directors shall be appointed by the majority leader of the Senate.

(E) 2 directors shall be appointed by the minority leader of the Senate.

(2) In addition to the directors described in paragraph (1), the chair and ranking minority member of the Committee on House Administration of the House of Representatives (or their designees) and the chair and ranking minority member of the Committee on Rules and Administration of the Senate (or their designees) shall each serve as an ex officio nonvoting member of the board.

(3) A director is not an employee of the Federal government and appointment to the board does not constitute appointment as an officer or employee of the United States Government for the purpose of any law of the United States (except as may otherwise be provided in this chapter).

(4) The terms of office of the directors are 4 years.

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(5) A vacancy on the board shall be filled in the manner in which the original appointment was made.

(c) CHAIR.—The directors shall select one of the directors as the chair of the board. The individual selected may not be a current or former holder of any partisan elected office or a current or former officer of any national committee of a political party.

(d) QUORUM.—The number of directors constituting a quorum of the board shall be established under the bylaws of the foundation.

(e) MEETINGS.—The board shall meet at the call of the chair of the board for regularly scheduled meetings, except that the board shall meet not less often than annually.

(f) REIMBURSEMENT OF EXPENSES.—Directors shall serve without compensation but may receive travel expenses, including per diem in lieu of subsistence, in accordance with sections 5702 and 5703 of title 5.

(g) LIABILITY OF DIRECTORS.—Directors are not personally liable, except for gross negligence.

§ 152604. Officers and employees

(a) APPOINTMENT OF OFFICERS AND EMPLOYEES.—The board of directors appoints, removes, and replaces officers and employees of the foundation.

(b) STATUS AND COMPENSATION OF EMPLOYEES.—

(1) IN GENERAL.—Officers and employees of the foundation—

(A) are not employees of the Federal government (except as may otherwise be provided in this chapter);

(B) shall be appointed and removed without regard to the provisions of title 5 governing appointments in the competitive service; and

(C) may be paid without regard to chapter 51 and subchapter III of chapter 53 of title 5.

(2) AVAILABILITY OF FEDERAL EMPLOYEE RATES FOR TRAVEL.—For purposes of any schedules of rates negotiated by the Administrator of General Services for the use of employees of the Federal government who travel on official business, officers and employees of the foundation who travel while engaged in the performance of their duties under this chapter shall be deemed to be employees of the Federal government.

§ 152605. Powers

(a) GENERAL.—The foundation may—

(1) adopt a constitution and bylaws;

(2) adopt a seal which shall be judicially noticed; and

(3) do any other act necessary to carry out this chapter.

(b) POWERS AS TRUSTEE.—To carry out its purposes, the foundation has the usual powers of a corporation acting as a trustee in the District of Columbia, including the power—

(1) to accept, receive, solicit, hold, administer, and use any gift, devise, or bequest, either absolutely or in trust, of property or any income from or other interest in property;

(2) to acquire property or an interest in property by purchase or exchange;

(3) unless otherwise required by an instrument of transfer, to sell, donate, lease, invest, or otherwise dispose of any property or income from property;

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(4) to borrow money and issue instruments of indebtedness;

(5) to make contracts and other arrangements with public agencies and private organizations and persons and to make payments necessary to carry out its functions;

(6) to sue and be sued; and

(7) to do any other act necessary and proper to carry out the purposes of the foundation.

(c) ENCUMBERED OR RESTRICTED GIFTS.—A gift, devise, or bequest may be accepted by the foundation even though it is encumbered, restricted, or subject to beneficial interests of private persons, if any current or future interest is for the benefit of the foundation.

(d) CONTRACTS.—The foundation may enter into such contracts with public and private entities as it considers appropriate to carry out its purposes.

(e) ANNUAL CONFERENCE IN WASHINGTON METROPOLITAN AREA.—During each year (beginning with 2003), the foundation may sponsor a conference in the Washington, D.C., metropolitan area to honor secondary school students and other individuals who have served (or plan to serve) as poll workers and assistants and who have otherwise participated in the programs and activities of the foundation.

§ 152606. Principal office

The principal office of the foundation shall be in the District of Columbia unless the board of directors determines otherwise. However, the foundation may conduct business throughout the States, territories, and possessions of the United States.

§ 152607. Service of process

The foundation shall have a designated agent to receive service of process for the foundation. Notice to or service on the agent, or mailed to the business address of the agent, is notice to or service on the foundation.

§ 152608. Annual audit

The foundation shall enter into a contract with an independent auditor to conduct an annual audit of the foundation.

§ 152609. Civil action by Attorney General for equitable relief

The Attorney General may bring a civil action in the United States District Court for the District of Columbia for appropriate equitable relief if the foundation—

(1) engages or threatens to engage in any act, practice, or policy that is inconsistent with the purposes in section 152602 of this title; or

(2) refuses, fails, or neglects to carry out its obligations under this chapter or threatens to do so.

§ 152610. Immunity of United States Government

The United States Government is not liable for any debts, defaults, acts, or omissions of the foundation. The full faith and credit of the Government does not extend to any obligation of the foundation.

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§ 152611. Authorization of appropriations

There are authorized to be appropriated to the foundation for carrying out the purposes of this chapter—

(1) $5,000,000 for fiscal year 2002; and

(2) such sums as may be necessary for each succeeding fiscal year.

§ 152612. Annual report

As soon as practicable after the end of each fiscal year, the foundation shall submit a report to the Commission, the President, and Congress on the activities of the foundation during the prior fiscal year, including a complete statement of its receipts, expenditures, and investments. Such report shall contain information gathered from participating secondary school students describing the nature of the work they performed in assisting local election officials and the value they derived from the experience of educating participants about the electoral process.

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TITLE 10, UNITED STATES CODE

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Subtitle A—General Military Law

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PART II—PERSONNEL

* * * * * * *

CHAPTER 80—MISCELLANEOUS INVESTIGATION REQUIREMENTS AND OTHER DUTIES

Sec.

1561. Complaints of sexual harassment: investigation by commanding officers.

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1566. Voting assistance: compliance assessments; assistance.

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§ 1566. Voting assistance: compliance assessments; assistance

(a) REGULATIONS.—The Secretary of Defense shall prescribe regulations to require that the Army, Navy, Air Force, and Marine Corps ensure their compliance with any directives issued by the Secretary of Defense in implementing any voting assistance program.

(b) VOTING ASSISTANCE PROGRAMS DEFINED.—In this section, the term "voting assistance programs" means—

(1) the Federal Voting Assistance Program carried out under the Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff et seq.); and

(2) any similar program.

(c) ANNUAL EFFECTIVENESS AND COMPLIANCE REVIEWS.—(1) The Inspector General of each of the Army, Navy, Air Force, and Marine Corps shall conduct—

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(A) an annual review of the effectiveness of voting assistance programs; and

(B) an annual review of the compliance with voting assistance programs of that armed force.

(2) Upon the completion of each annual review under paragraph (1), each Inspector General specified in that paragraph shall submit to the Inspector General of the Department of Defense a report on the results of each such review. Such report shall be submitted in time each year to be reflected in the report of the Inspector General of the Department of Defense under paragraph (3).

(3) Not later than March 31 each year, the Inspector General of the Department of Defense shall submit to Congress a report on—

(A) the effectiveness during the preceding calendar year of voting assistance programs; and

(B) the level of compliance during the preceding calendar year with voting assistance programs of each of the Army, Navy, Air Force, and Marine Corps.

(d) INSPECTOR GENERAL ASSESSMENTS.—(1) The Inspector General of the Department of Defense shall periodically conduct at Department of Defense installations unannounced assessments of the compliance at those installations with—

(A) the requirements of the Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff et seq.);

(B) Department of Defense regulations regarding that Act and the Federal Voting Assistance Program carried out under that Act; and

(C) other requirements of law regarding voting by members of the armed forces.

(2) The Inspector General shall conduct an assessment under paragraph (1) at not less than 10 Department of Defense installations each calendar year.

(3) Each assessment under paragraph (1) shall include a review of such compliance—

(A) within units to which are assigned, in the aggregate, not less than 20 percent of the personnel assigned to duty at that installation;

(B) within a representative survey of members of the armed forces assigned to that installation and their dependents; and

(C) within unit voting assistance officers to measure program effectiveness.

(e) REGULAR MILITARY DEPARTMENT ASSESSMENTS.—The Secretary of each military department shall include in the set of issues and programs to be reviewed during any management effectiveness review or inspection at the installation level an assessment of compliance with the Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff et seq.) and with Department of Defense regulations regarding the Federal Voting Assistance Program.

(f) VOTING ASSISTANCE OFFICERS.—(1) Voting assistance officers shall be appointed or assigned under Department of Defense regulations. Commanders at all levels are responsible for ensuring that unit voting officers are trained and equipped to provide information and assistance to members of the armed forces on voting matters. Performance evaluation reports pertaining to a member who has been assigned to serve as a voting assistance officer shall comment on the performance of the member as a voting assistance officer. The

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Secretary of each military department shall certify to Congress that (at a minimum) a voting assistance officer has been appointed or assigned for each military installation and major command under the jurisdiction of the department and that a replacement will be appointed if the original officer is no longer able to serve.

(2) Under regulations and procedures prescribed by the Secretary, a member of the armed forces appointed or assigned to duty as a voting assistance officer shall, to the maximum extent practicable, be given the time and resources needed to perform the member's duties as a voting assistance officer during the period in advance of a general election when members and their dependents are preparing and submitting absentee ballots.

(3) As part of each assessment prepared by the Secretary of a military department under subsection (e), the Secretary shall—

(A) specify the number of members of the armed forces under the jurisdiction of the Secretary who are appointed or assigned to duty as voting assistance officers;

(B) specify the ratio of voting assistance officers to active duty members of the armed forces under the jurisdiction of the Secretary;

(C) indicate whether this number and ratio comply with the requirements of the Federal Voting Assistance Program; and

(D) describe the training such members receive to perform their duties as voting assistance officers.

(g) REGISTRATION AND VOTING INFORMATION FOR MEMBERS AND DEPENDENTS.—(1) The Secretary of each military department, using a variety of means including both print and electronic media, shall, to the maximum extent practicable, ensure that members of the armed forces and their dependents who are qualified to vote have ready access to information regarding voter registration requirements and deadlines (including voter registration), absentee ballot application requirements and deadlines, and the availability of voting assistance officers to assist members and dependents to understand and comply with these requirement.

(2) The Secretary of each military department shall make the national voter registration form prepared for purposes of the Uniformed and Overseas Citizens Absentee Voting Act by the Federal Election Commission available so that each person who enlists, reenlists, or voluntarily extends an enlistment or who completes a permanent change of station in an active or reserve component of the Army, Navy, Air Force, or Marine Corps shall receive such form at the time of the enlistment, reenlistment, extension, or completion of the permanent change of station, or as soon thereafter as practicable.

(3) Where practicable, a special day or days shall be designated at each military installation for the purpose of informing members of the armed forces and their dependents of election timing, registration requirements, and voting procedures.

(h) DELIVERY OF MAIL FROM OVERSEAS PRECEDING FEDERAL ELECTIONS.—(1) During the four months preceding a general Federal election month, the Secretary of Defense shall periodically conduct surveys of all overseas locations and vessels at sea with military units responsible for collecting mail for return shipment to the United States and all port facilities in the United States and overseas where military-related mail is collected for shipment to over-

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seas locations or to the United States. The purpose of each survey shall be to determine if voting materials are awaiting shipment at any such location and, if so, the length of time that such materials have been held at that location. During the fourth and third months before a general Federal election month, such surveys shall be conducted biweekly. During the second and first months before a general Federal election month, such surveys shall be conducted weekly.

(2) The Secretary shall ensure that voting materials are transmitted expeditiously by military postal authorities at all times. The Secretary shall, to the maximum extent practicable, implement measures to ensure that a postmark or other official proof of mailing date is provided on each absentee ballot collected at any overseas location or vessel at sea whenever the Department of Defense is responsible for collecting mail for return shipment to the United States. The Secretary shall submit to Congress a report describing the measures to be implemented to ensure the timely transmittal and postmarking of voting materials and identifying the persons responsible for implementing such measures.

(3) The Secretary of each military department, utilizing the voting assistance officer network established for each military installation, shall, to the maximum extent practicable, provide notice to members of the armed forces stationed at that installation of the last date before a general Federal election for which absentee ballots mailed from a postal facility located at that installation can reasonably be expected to be timely delivered to the appropriate State and local election officials.

(4) In this section, the term "general Federal election month" means November in an even-numbered year.

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PART IV—SERVICE, SUPPLY, AND PROCUREMENT

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CHAPTER 159—REAL PROPERTY; RELATED PERSONAL PROPERTY; AND LEASE OF NONEXCESS PROPERTY

Sec.
2661. Miscellaneous administrative provisions relating to real property.

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[2670. Licenses: military installations; erection and use of buildings; American National Red Cross.**]**
2670. Buildings on military installations: use by American National Red Cross and as polling places in Federal, State, and local elections.

* * * * * * *

[§ 2670. Licenses: military installations; erection and use of buildings; American National Red Cross]

[Under**]**

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§ 2670. Buildings on military installations: use by American National Red Cross and as polling places in Federal, State, and local elections

(a) USE BY RED CROSS.—Under such conditions as he may prescribe, the Secretary of any military department may issue a revocable license to the American National Red Cross to—

(1) * * *

* * * * * * *

Supplies stored in buildings erected or used under this [section] *subsection* are available to aid the civilian population in a serious national disaster.

(b) USE AS POLLING PLACES.—(1) Notwithstanding any other provision of law, the Secretary of a military department may make a building located on a military installation under the jurisdiction of the Secretary available for use as a polling place in any Federal, State, or local public election, but only if such use is limited to eligible voters who reside on that military installation.

(2) If a building located on a military installation is made available under paragraph (1) as the site of a polling place, the Secretary shall continue to make the building available for subsequent elections unless the Secretary provides to the appropriate State or local election officials advance notice, in a reasonable and timely manner, of the reasons why the building will no longer be made available as a polling place.

(3) In this section, the term "military installation" has the meaning given the term in section 2687(e) of this title.

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Subtitle E—Reserve Components

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PART V—SERVICE, SUPPLY, AND PROCUREMENT

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CHAPTER 1803—FACILITIES FOR RESERVE COMPONENTS

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§ 18235. Administration; other use permitted by Secretary

(a) * * *

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(c) Pursuant to a lease or other agreement under subsection (a)(2), the Secretary may make a facility covered by subsection (a) available for use as a polling place in any Federal, State, or local public election notwithstanding any other provision of law. If a facility is made available as the site of a polling place with respect to an election, the Secretary shall continue to make the facility available for subsequent elections unless the Secretary provides to the appropriate State or local election officials advance notice, in a reasonable and

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timely manner, of the reasons why the facility will no longer be made available as a polling place.

§ 18236. Contributions to States; other use permitted by States

(a) * * *

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(e) Pursuant to a lease or other agreement under subsection (c)(1), a State may make a facility covered by subsection (c) available for use as a polling place in any Federal, State, or local public election notwithstanding any other provision of law.

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UNIFORMED AND OVERSEAS CITIZENS ABSENTEE VOTING ACT

* * * * * * *

TITLE I—REGISTRATION AND VOTING BY ABSENT UNIFORMED SERVICES VOTERS AND OVERSEAS VOTERS IN ELECTIONS FOR FEDERAL OFFICE

SEC. 101. FEDERAL RESPONSIBILITIES.

(a) * * *

* * * * * * *

(b) DUTIES OF PRESIDENTIAL DESIGNEE.—The Presidential designee shall—

(1) consult State and local election officials in carrying out this title**[**;**]**, *and ensuring that such officials are aware of the requirements of this Act;*

(2) prescibe an official post card form, containing both an absentee voter registration application and an absentee ballot application, for use by the States **[**as recommended in section 104**]** *as required under section 102(4)*;

* * * * * * *

(5) compile and distribute (A) descriptive material on State absentee registration and voting procedures, and (B) to the extent practicable, facts relating to specific elections, including dates, offices involved, and the text of ballot questions; **[**and**]**

(6) not later than the end of each year after a Presidential election year, transmit to the President and the Congress a report on the effectiveness of assistance under this title, including a statistical analysis of uniformed services voter participation *(listed separately for overseas voters and absent uniformed services voters)*, a general assessment of overseas nonmilitary participation, and a description of State-Federal cooperation**[**.**]***; and*

(7) prescribe a standard oath for use with any document under this title affirming that a material misstatement of fact

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in the completion of such a document may constitute grounds for a conviction for perjury.

* * * * * * *

SEC. 102. STATE RESPONSIBILITIES.

(a) IN GENERAL.—Each State shall—

(1) * * *

[(2) accept and process, with respect to any general, special, primary, or runoff election for Federal office, any otherwise valid voter registration application from an absent uniformed services voter or overseas voter, if the application is received by the appropriate State election official not less than 30 days before the election; and**]**

(2) accept and process, with respect to any election for Federal office, any otherwise valid voter registration application and absentee ballot application from an absent uniformed services voter or overseas voter, if the application is received by the appropriate State election official not less than 30 days before the election;

(3) permit overseas voters to use Federal write-in absentee ballots (in accordance with section 103) in general elections for Federal office**[**.**]***;*

(4) use the official post card form (prescribed under section 101) for simultaneous voter registration application and absentee ballot application; and

(5) if the State requires an oath or affirmation to accompany any document under this title, use the standard oath prescribed by the Presidential designee under section 101(b)(7).

(b) DESIGNATION OF SINGLE STATE OFFICE TO PROVIDE INFORMATION ON REGISTRATION AND ABSENTEE BALLOT PROCEDURES FOR ALL VOTERS IN STATE.—

(1) IN GENERAL.—Each State shall designate a single office which shall be responsible for providing information regarding voter registration procedures and absentee ballot procedures (including procedures relating to the use of the Federal write-in absentee ballot) to all absent uniformed services voters and overseas voters who wish to register to vote or vote in any jurisdiction in the State.

(2) RECOMMENDATION REGARDING USE OF OFFICE TO ACCEPT AND PROCESS MATERIALS.—Congress recommends that the State office designated under paragraph (1) be responsible for carrying out the State's duties under this Act, including accepting valid voter registration applications, absentee ballot applications, and absentee ballots (including Federal write-in absentee ballots) from all absent uniformed services voters and overseas voters who wish to register to vote or vote in any jurisdiction in the State.

(c) REPORT ON NUMBER OF ABSENTEE BALLOTS TRANSMITTED AND RECEIVED.—Not later than 90 days after the date of each regularly scheduled general election for Federal office, each State and unit of local government which administered the election shall (through the State, in the case of a unit of local government) submit a report to the Election Assistance Commission (established under the Help America Vote Act of 2001) on the number of absentee ballots transmitted to absent uniformed services voters and overseas

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voters for the election and the number of such ballots which were returned by such voters and cast in the election, and shall make such report available to the general public.

* * * * * * *

[SEC. 104. RECOMMENDATION TO THE STATES TO MAXIMIZE ACCESS TO THE POLLS BY ABSENT UNIFORMED SERVICES VOTERS AND OVERSEAS VOTERS.

[To afford maximum access to the polls by absent uniformed services voters and overseas voters, it is recommended that the States—

[(1) use the official post card form (prescribed under section 101) for simultaneous voter registration application and absentee ballot application;

[(2) adopt the suggested design for absentee ballot mailing envelopes prescribed under section 101;

[(3) waive registration requirements for absent uniformed services voters and overseas voters who, by reason of service or residence, do not have an opportunity to register;

[(4) if an application other than an official post card form (prescribed under section 101) is required for absentee registration, provide that registration forms be sent with the absentee ballot and may be returned with it;

[(5) expedite processing of balloting materials with respect to absent uniformed services voters and overseas voters;

[(6) permit any oath required for a document under this title to be administered by a commissioned officer of the Armed Forces or any official authorized to administer oaths under Federal law or the law of the State or other place where the oath is administered;

[(7) assure that absentee ballots are mailed to absent uniformed services voters and overseas voters at the earliest opportunity;

[(8) assist the Presidential designee in compiling statistical and other information relating to this title; and

[(9) provide late registration procedures for persons recently separated from the Armed Forces.]

SEC. 104. USE OF SINGLE APPLICATION FOR ALL SUBSEQUENT ELECTIONS.

(a) IN GENERAL.—If a State accepts and processes an official post card form (prescribed under section 101) submitted by an absent uniformed services voter or overseas voter for simultaneous voter registration and absentee ballot application (in accordance with section 102(a)(4)) and the voter requests that the application be considered an application for an absentee ballot for each subsequent election for Federal office held in the State during that year, the State shall provide an absentee ballot to the voter for each subsequent election for Federal office held in the State during that year.

(b) EXCEPTION FOR VOTERS CHANGING REGISTRATION.—Subsection (a) shall not apply with respect to a voter registered to vote in a State for any election held after the voter notifies the State that the voter no longer wishes to be registered to vote in the State or after the State determines that the voter has registered to vote in another State.

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(c) REVISION OF OFFICIAL POST CARD FORM.—The Presidential designee shall revise the official post card form (prescribed under section 101) to enable a voter using the form to—

(1) request an absentee ballot for each election for Federal office held in a State during a year; or

(2) request an absentee ballot for only the next scheduled election for Federal office held in a State.

(d) NO EFFECT ON VOTER REMOVAL PROGRAMS.—Nothing in this section may be construed to prevent a State from removing any voter from the rolls of registered voters in the State under any program or method permitted under section 8 of the National Voter Registration Act of 1993.

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TITLE 18, UNITED STATES CODE

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PART I—CRIMES

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CHAPTER 29—ELECTIONS AND POLITICAL ACTIVITIES

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§ 592. Troops at polls

Whoever, being an officer of the Army or Navy, or other person in the civil, military, or naval service of the United States, orders, brings, keeps, or has under his authority or control any troops or armed men at any place where a general or special election is held, unless such force be necessary to repel armed enemies of the United States, shall be fined under this title or imprisoned not more than five years, or both; and be disqualified from holding any office of honor, profit, or trust under the United States.

This section shall not prevent any officer or member of the armed forces of the United States from exercising the right of suffrage in any election district to which he may belong, if otherwise qualified according to the laws of the State in which he offers to vote.

This section shall not apply to the actions of members of the Armed Forces at any polling place on a military installation where a general or special election is held in accordance with section 2670(b), 18235, or 18236 of title 10.

§ 593. Interference by armed forces

Whoever, being an officer or member of the Armed Forces of the United States, prescribes or fixes or attempts to prescribe or fix, whether by proclamation, order or otherwise, the qualifications of voters at any election in any State; or

Whoever, being such officer or member, prevents or attempts to prevent by force, threat, intimidation, advice or otherwise any qualified voter of any State from fully exercising the right of suffrage at any general or special election; or

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Whoever, being such officer or member, orders or compels or attempts to compel any election officer in any State to receive a vote from a person not legally qualified to vote; or

Whoever, being such officer or member, imposes or attempts to impose any regulations for conducting any general or special election in a State, different from those prescribed by law; or

Whoever, being such officer or member, interferes in any manner with an election officer's discharge of his duties—

Shall be fined under this title or imprisoned not more than five years, or both; and disqualified from holding any office of honor, profit or trust under the United States.

This section shall not prevent any officer or member of the Armed Forces from exercising the right of suffrage in any district to which he may belong, if otherwise qualified according to the laws of the State of such district.

This section shall not apply to the actions of members of the Armed Forces at any polling place on a military installation where a general or special election is held in accordance with section 2670(b), 18235, or 18236 of title 10.

§ 594. Intimidation of voters

(a) Whoever intimidates, threatens, coerces, or attempts to intimidate, threaten, or coerce, any other person for the purpose of interfering with the right of such other person to vote or to vote as he may choose, or of causing such other person to vote for, or not to vote for, any candidate for the office of President, Vice President, Presidential elector, Member of the Senate, Member of the House of Representatives, Delegate from the District of Columbia, or Resident Commissioner, at any election held solely or in part for the purpose of electing such candidate, shall be fined under this title or imprisoned not more than one year, or both.

(b) For purposes of subsection (a), a poll worker who urges or encourages a voter who has not cast a vote for each office listed on the ballot to return to the voting booth to cast votes for every office, or who otherwise intimidates, harasses, or coerces the voter to vote for each such office (or who attempts to intimidate, harass, or coerce the voter to vote for each such office), shall be considered to have intimidated, threatened, or coerced (or to have attempted to intimidate, threaten, or coerce) the voter for the purpose of interfering with the voter's right to vote as the voter may choose. Nothing in this subsection shall prohibit a poll worker from providing information to a voter who requests assistance.

* * * * * * *

SECTION 2003 OF THE REVISED STATUTES OF THE UNITED STATES

SEC. 2003. No officer of the Army or Navy of the United States shall prescribe or fix, or attempt to prescribe or fix, by proclamation, order, or otherwise, the qualifications of voters in any State, or in any manner interfere with the freedom of any election in any State, or with the exercise of the free right of suffrage in any State. *Making a military installation or reserve component facility available as a polling place in a Federal, State, or local public election*

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in accordance with section 2670(b), 18235, or 18236 of title 10, United States Code, is deemed to be consistent with this section.

TITLE 39, UNITED STATES CODE

* * * * * * *

PART IV—MAIL MATTER

* * * * * * *

CHAPTER 36—POSTAL RATES, CLASSES, AND SERVICES

SUBCHAPTER I—POSTAL RATE COMMISSION

Sec.
3601. Establishment.
* * * * * * *
SUBCHAPTER II—PERMANENT RATES AND CLASSES OF MAIL
3621. Authority to fix rates and classes.
* * * * * * *
[3629. Reduced rates for voter registration purposes.]
3629. Reduced rates for official election mail.
* * * * * * *

SUBCHAPTER II—PERMANENT RATES AND CLASSES OF MAIL

* * * * * * *

[§ 3629. Reduced rates for voter registration purposes

[The Postal Service shall make available to a State or local voting registration official the rate for any class of mail that is available to a qualified nonprofit organization under section 3626 for the purpose of making a mailing that the official certifies is required or authorized by the National Voter Registration Act of 1993.]

§ 3629. Reduced rates for official election mail

(a) Notwithstanding any other provision of this title, the rate of postage for any first-class mail matter shall, in the case of official election mail, be equal to 50 percent of the regular first-class rate, subject to subsection (c).

(b) For purposes of this section, the term "official election mail" means any mailing by a State or local election official that—

(1) is mailed in the course of official business;

(2) consists of voter registration or election information or assistance prepared and mailed in a nonpartisan manner; and

(3) bears such logo or other markings as the Postal Service may require.

Such term does not include any mailing that includes any mail matter intended to promote government action unrelated to the conduct of an election.

(c) Nothing in this section shall, with respect to any official election mail, be considered to make unavailable—

(1) any free mailing privilege under section 3406 or any other provision of law for which such mail otherwise qualifies; or

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(2) any reduced rate of postage under section 3626 or any other provision of law for which such mail otherwise qualifies, if lower than the rate that would otherwise apply under subsection (a).

* * * * * * *

SECTION 311 OF THE FEDERAL ELECTION CAMPAIGN ACT OF 1971

ADMINISTRATIVE PROVISIONS

SEC. 311. (a) The Commission shall—

(1) * * *

* * * * * * *

(8) prescribe rules, regulations, and forms to carry out the provisions of this Act, in accordance with the provisions of subsection (d); *and*

(9) transmit to the President and to each House of the Congress no later than June 1 of each year, a report which states in detail the activities of the Commission in carrying out its duties under this Act, and any recommendations for any legislative or other action the Commission considers appropriate**[**; and**]**.

[(10) serve as a national clearinghouse for the compilation of information and review of procedures with respect to the administration of Federal elections. The Commission may enter into contracts for the purpose of conducting studies under this paragraph. Reports or studies made under this paragraph shall be available to the public upon the payment of the cost thereof, except that copies shall be made available without cost, upon request, to agencies and branches of the Federal Government.**]**

* * * * * * *

NATIONAL VOTER REGISTRATION ACT OF 1993

* * * * * * *

SEC. 8. REQUIREMENTS WITH RESPECT TO ADMINISTRATION OF VOTER REGISTRATION.

(a) * * *

* * * * * * *

(b) CONFIRMATION OF VOTER REGISTRATION.—Any State program or activity to protect the integrity of the electoral process by ensuring the maintenance of an accurate and current voter registration roll for elections for Federal office—

(1) * * *

(2) shall not result in the removal of the name of any person from the official list of voters registered to vote in an election for Federal office by reason of the person's failure to vote**[**.**]**, *except that nothing in this paragraph may be construed to prohibit a State from using the procedures described in subsections (c) and (d) to remove an individual from the official list of eligible voters if the individual has not voted or appeared to vote in*

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2 or more consecutive general elections for Federal office and has not notified the applicable registrar (in person or in writing) or responded to a notice sent by the applicable registrar during the period in which such elections are held that the individual intends to remain registered in the registrar's jurisdiction.

* * * * * * *

SEC. 9. FEDERAL COORDINATION AND REGULATIONS.

(a) IN GENERAL.—The [Federal Election Commission] *Election Assistance Commission*—

(1) * * *

* * * * * * *

TITLE 5, UNITED STATES CODE

* * * * * * *

PART III—EMPLOYEES

* * * * * * *

Subpart B—Employment and Retention

CHAPTER 31—AUTHORITY FOR EMPLOYMENT

* * * * * * *

SUBCHAPTER II—THE SENIOR EXECUTIVE SERVICE

* * * * * * *

§ 3132. Definitions and exclusions

(a) For the purpose of this subchapter—

(1) "agency" means an Executive agency, except a Government corporation and the General Accounting Office, but does not include—

(A) * * *

* * * * * * *

(C) the Federal Election Commission *or the Election Assistance Commission*; or

* * * * * * *

Subpart F—Labor-Management and Employee Relations

* * * * * * *

CHAPTER 73—SUITABILITY, SECURITY, AND CONDUCT

* * * * * * *

SUBCHAPTER III—POLITICAL ACTIVITIES

* * * * * * *

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§ 7323. Political activity authorized; prohibitions

(a) * * *
(b)(1) * * *
(2)(A) * * *
(B) The provisions of subparagraph (A) shall apply to—
(i) an employee of—
(I) the Federal Election Commission *or the Election Assistance Commission*;

* * * * * * *

SECTION 8G OF THE INSPECTOR GENERAL ACT OF 1978

REQUIREMENTS FOR FEDERAL ENTITIES AND DESIGNATED FEDERAL ENTITIES

SEC. 8G. (a) Notwithstanding section 11 of this Act, as used in this section—

(1) * * *

(2) the term "designated Federal entity" means Amtrak, the Appalachian Regional Commission, the Board of Governors of the Federal Reserve System, the Board for International Broadcasting, the Commodity Futures Trading Commission, the Consumer Product Safety Commission, the Corporation for Public Broadcasting, the Equal Employment Opportunity Commission, the Farm Credit Administration, the Federal Communications Commission, the Federal Deposit Insurance Corporation, the Federal Election Commission, *the Election Assistance Commission,* the Federal Housing Finance Board, the Federal Labor Relations Authority, the Federal Maritime Commission, the Federal Trade Commission, the Legal Services Corporation, the National Archives and Records Administration, the National Credit Union Administration, the National Endowment for the Arts, the National Endowment for the Humanities, the National Labor Relations Board, the National Science Foundation, the Panama Canal Commission, the Peace Corps, the Pension Benefit Guaranty Corporation, the Securities and Exchange Commission, the Smithsonian Institution, the United States International Trade Commission, and the United States Postal Service;

* * * * * * *

AMERICAN OVERSIGHT

ADDITIONAL VIEWS OF HON. STENY H. HOYER

I write to offer my additional views regarding the importance of ensuring accessibility in voting for people with disabilities. The bill in its present form offers significant gains in voting accessibility for persons with disabilities, especially those with visual impairments. For example, the bill requires that, in a state receiving election fund payments, every polling place or precinct have at least one voting system (hardware and software) that is fully accessible. However, while I agree with everything in the committee report, I wish to emphasize the need to take further steps beyond this bill and beyond the Americans with Disabilities Act to ensure complete accessibility in voting and registration services for persons with disabilities.

Complete voting access must be assured for every voter regardless of whether a state or locality accepts federal election funds and without regard to any significant cost constraints. Voting is one of the fundamental rights of citizens in a Republic. As such, the right should not depend upon the vagaries of local budgets—certainly not in an affluent society like ours. Physical access to the ballot box should be unconditional. Every polling place in America should be accessible to persons with the full range of disabilities. Every polling place should have already at least one voting machine or method that is fully accessible, that is, a voting machine or method that allows a voter with a disability to vote in a manner that is as reliable, fraud-resistant, private, independent and anonymous as that available to anyone else.

One of our most profound accomplishments since the founding of the United States is the progressive broadening of the franchise to include African-Americans, women and others subject to pervasive discrimination. In this process, we have learned that few of the rights or interests of a particular group of Americans can be secure so long as that group lacks the right to vote for officials who will be accountable to them. We have also learned that, as more adult citizens become full participants in our polity, the democratic process is enriched for all. We are still in the process of learning this lesson with regard to persons with disabilities.

Most of the ongoing discrimination against persons with disabilities concerning voting is no longer motivated by deliberate efforts do exclude. However, as the recent GAO report on accessibility documents, the choice, design and administration of polling places, voting methods and machines continues in many instances to be driven by a careless assumption on the part of election administrators that all voters are able-bodied. The General Accounting Office recently found, for example, that many polling places have high door thresholds and inaccessible parking places, and that, even when ramps are installed, in many instances they are hazardous to users. Policymakers must strive to highlight the need to admin-

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USCCR-21-1814-A-002731

ister every aspect of elections in a way that recognizes that a portion of the electorate does not enjoy the full range of abilities, disabilities and impairments.

The right to vote is an almost sacred right that should not be casually traded off against other rights and interests. See, e.g., *Harper* v. *Virginia State Board of Elections,* 383 U.S. 663, 667 (voting is a fundamental right, any alleged infringement of which, must be meticulously scrutinized); *Kramer* v. *Union Free School District No. 15,* 395 U.S. 621, 626 (1969) ("statutes distributing the franchise constitute the foundation of our representative society [requiring careful examination of a State's stated interests]") Corresponding to the fundamental nature of this right, government officials and election administrators at all levels of government must recognize we have a fundamental obligation to guarantee full access to the ballot box for every qualified citizen. Thus, I hope the Senate will go beyond the achievements of this bill to provide a guarantee of full accessibility that is not dependent upon a state's acceptance of federal funds and that is not limited by any significant cost constraints. Further, I hope we then accept those additional requirements when we meet with the Senate in conference.

However, even before Congress takes additional steps, we should remember, as the committee report explains, that we already have powerful tools for electoral reform available to us, one of which is the Americans with Disabilities Act of 1990 (ADA). In the preamble to that Act, we found that voting is a "critical area" and that discrimination against individuals with disabilities, especially discrimination in the form of isolation and segregation, persists. To redress this discrimination, the ADA insists upon both equality and integration for persons with disabilities.

In the past decade, the ADA has already improved electoral access for persons with disabilities, both through voluntary compliance and through successful litigation in recent cases such as *New York* v. *Schoharie,* 82 F.Supp.2d 19 (N.D.N.Y. 2000) and *Doe* v. *Rowe,* 156 F.Supp.2d 35 (D. Me. 2001). But, as the GAO report documents, there is plenty of work left to be done to achieve compliance with the ADA. While the ADA provides an undue burden defense to its general mandates, it still provides a great deal of leverage for correcting the kinds of problems documented by the GAO.

Under the ADA, all voting and registration procedures and services must be accessible. Accessibility includes affording individuals with disabilities an opportunity to cast a ballot in a manner that is as private, independent and anonymous as that afforded other voters, and to vote in an integrated setting with other voters. The ADA includes an integration mandate that bars attempts to achieve accessibility through separate-but-equal kinds of arrangements, a mandate that is limited only by the undue burden defense. See, e.g., *Olmstead* v. *L.C. by Zimring,* 527 U.S. 581 (1999).

Of course, the ADA's mandate to offer equal and integrated voting methods to persons with disabilities does nothing to deny a State or local government the right to provide generally to the electorate alternative voting methods such as absentee balloting. Nor does it deny an individual with a disability the right to receive a reasonable accommodation in the form of an absentee ballot, curbside voting, or assistance from a poll worker or other indi-

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vidual of his or her choice (other than an individual who is the voter's employer or agent of that employer or officer or agent of the voter's union).

But the fact that an individual with a disability might want to use an absentee ballot or curbside voting as a means of gaining access to voting does not relieve a State or locality from its obligation to make polling places as integrated and accessible as possible. Thus, to comply with the ADA, a pubic entity (such as a State or unit of local government or a responsible government official) must first survey its polling places and move inaccessible polling places to accessible locations. The defense of undue burden is unavailable if there are accessible places that may reasonably serve as polling places. It will be a rare case in which the need to move a polling place to another location will create an undue burden.

Simple compliance with this requirement—that accessible polling places be chosen in the first place—will result in significant increased accessibility without costing any additional money. Normally, an alteration in polling location will only require a different way of thinking about what constitutes an appropriate polling place.

There may well be situations in which no accessible place is reasonably available as a polling place. In such cases, the public entity must make changes to existing polling places to ensure accessibility, such as installing a ramp providing access for those who use wheelchairs. This obligation, however, is subject to an "undue burden" defense. Thus, in some situations, the entity will not be required to make a polling place accessible, and instead, will be permitted to offer access to voting through such means as curbside voting or absentee balloting.

It is important to note, however, that a State or unit of local government may not, as a first resort, depend upon curbside voting or absentee balloting as its sole means to make polling places accessible. Rather, as noted, the government must first determine whether an integrated means of access can be achieved within the "undue burden" limitation. If such access cannot be achieved within that standard, the public entity may then rely upon alternative, less-integrated means of access to the act of voting, for example, curbside voting or absentee balloting.

The undue burden standard makes allowance for the limitations of poor or rural jurisdictions lacking the resources to achieve a level of accessibility equivalent to that of larger, wealthier or more populous areas. However, an undue burden defense must be assessed in terms of actual—rather than merely formal—resource constraints. An undue burden means significant difficulty or expense in light of the budget of the unit of government responsible for funding registration services, polling places and voting methods, together with any coordinated budget with, or budgetary resources available from, other units of State and local government. See, e.g., H.R. Rep. No. 101–485 (1990), reprinted in Comm. on Educ. and Labor, 101st Cong., Legislative History of the Americans with Dis-

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abilities Act, at 340–343 (1990) (providing guidance on the analogous undue hardship determination in the employment context.)

STENY H. HOYER.

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AMERICAN OVERSIGHT

Date : 9/16/2020 1:31:27 PM
From : "Alexander Heideman" aheideman@usccr.gov
To : "Christian Adams" a@electionlawcenter.com, "'Gail Heriot'" gheriot@me.com
Cc : "Carissa Mulder" CMulder@usccr.gov, "'Peter Kirsanow'" pkirsanow@beneschlaw.com, "'stephen gilchrist'" thegilchristassociates@gmail.com, "'John Mashburn'" jkmash@comcast.net, "'Thomas Simuel'" tjsimuel32@gmail.com
Subject : Re: [EXTERNAL] EAC Board of Advisors

I spoke with Maureen. She said that she was not asked about these appointments in 2019, but she thought that the Commissioners had had a conversation about them.

It seems to me that these appointments were unlawful if they were not (1) made by the Commission and (2) bipartisan and geographically varied. And Google Maps says Reno (Kladney) is a short 3.5 hour drive from San Fran (Yaki).

I'll try to locate the 2015, 2013, & 2011 transcripts to see if appointments were voted on in the past.

From: Christian Adams <a@electionlawcenter.com>
Date: Wednesday, September 16, 2020 at 12:55 PM
To: 'Gail Heriot' <gheriot@me.com>, Alexander Heideman <aheideman@usccr.gov>
Cc: Carissa Mulder <CMulder@usccr.gov>, 'Peter Kirsanow' <pkirsanow@beneschlaw.com>, 'stephen gilchrist' <thegilchristassociates@gmail.com>, 'John Mashburn' <jkmash@comcast.net>, 'Thomas Simuel' <tjsimuel32@gmail.com>
Subject: RE: [EXTERNAL] EAC Board of Advisors

> CAUTION: This email is from outside USCCR.

ree with Gail. And the "appointments" did not comply with the admonition of the law that the board should be bipartisan.

From: Gail Heriot <gheriot@me.com>
Sent: Wednesday, September 16, 2020 12:15 PM
To: Alexander Heideman <aheideman@usccr.gov>
Cc: Christian Adams <a@electionlawcenter.com>; Carissa Mulder <CMulder@usccr.gov>; Peter Kirsanow <pkirsanow@beneschlaw.com>; stephen gilchrist <thegilchristassociates@gmail.com>; John Mashburn <jkmash@comcast.net>; Thomas Simuel <tjsimuel32@gmail.com>
Subject: Re: [EXTERNAL] EAC Board of Advisors

If the statute says the Commission makes the appointments, I don't see how it can be that the chair makes them. My recollection of the appointments under the Reynolds years is that Abby and maybe Yaki were our delegates. If there are transcripts going back that far they may show whether the Commission voted on these appointments.

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On Sep 16, 2020, at 8:51 AM, Alexander Heideman <aheideman@usccr.gov> wrote:

Maureen says:

> To my knowledge, there are not any internal rules about these appointments. The practice has been that the Chair makes the appointments. (Note though that I only have records going back to 2015 for these appointments and I do not know what the practice was before 2015). The statute (52 U.S.C. 20944(a)(10)) says "Two members appointed by the United States Commission on Civil Rights." 52 U.S.C. 20944(b) says "Appointments shall be made to the Board of Advisors under subsection (a) in a manner which ensures that the Board of Advisors will be bipartisan in nature and will reflect the various geographic regions of the United States." The terms are 2 year appointments; I believe the current USCCR appointments are Yaki and Kladney, and that their terms end 4/13/2021. I provided the above information, i.e., bipartisan and geographic scope, before the 2019 appointments, though did not provide any input beyond this. I've also attached the House report for the Help American Vote Act (establishes the advisory committees) - discussion of advisory boards is on page 33.

I have a call scheduled with her at 1 pm to discuss further. Please let me know if there are any specific questions I should ask.

Alex

From: Alexander Heideman <aheideman@usccr.gov>
Date: Wednesday, September 16, 2020 at 11:02 AM
To: Christian Adams <a@electionlawcenter.com>, 'Gail Heriot' <gheriot@me.com>
Cc: Carissa Mulder <CMulder@usccr.gov>, 'Peter >, 'John Mashburn' <jkmash@comcast.net>, 'Thomas Simuel' <tjsimuel32@gmail.com>
Subject: Re: [EXTERNAL] EAC Board of Advisors

Yes, happy to.

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From: Christian Adams <a@electionlawcenter.com>
Date: Wednesday, September 16, 2020 at 11:02 AM
To: 'Gail Heriot' <gheriot@me.com>
Cc: Carissa Mulder <CMulder@usccr.gov>, 'Peter >, 'John Mashburn' <jkmash@comcast.net>, 'Thomas Simuel' <tjsimuel32@gmail.com>, Alexander Heideman <aheideman@usccr.gov>
Subject: RE: [EXTERNAL] EAC Board of Advisors

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ple people aren't asking her different times, can the SA's get to the bottom of this with maureen.

From: Gail Heriot <gheriot@me.com>
Sent: Wednesday, September 16, 2020 10:46 AM
To: Christian Adams <a@electionlawcenter.com>
Cc: Carissa Mulder <CMulder@usccr.gov>; Peter Kirsanow <pkirsanow@beneschlaw.com>; stephen gilchrist <thegilchristassociates@gmail.com>; John Mashburn <jkmash@comcast.net>; Thomas Simuel <tjsimuel32@gmail.com>; Alexander Heideman <aheideman@usccr.gov>
Subject: Re: [EXTERNAL] EAC Board of Advisors

I don't think there are any rules. In the absence of an explicit delegation of power, the Commission as a whole has that power. But you need to be sure it wasn't done properly. I have a vague recollection of talking about this in a meeting in the last decade. The straight shooter on the staff is Maureen Rudolph. You might want to ask her.

Gail Heriot
Professor of Law
University of San Diego

> On Sep 15, 2020, at 2:17 PM, Christian Adams <a@electionlawcenter.com> wrote:
>
> I don't know the rules for USCCR appointing ANYONE yet, but if there are no minutes showing a vote appointing them in regular business, it would seem that their "appointment" is void.

From: Carissa Mulder <CMulder@usccr.gov>
Sent: Tuesday, September 15, 2020 4:01 PM
To: Christian Adams <a@electionlawcenter.com>; 'Peter Kirsanow' <pkirsanow@Beneschlaw.com>; 'Gail Heriot' <gheriot@me.com>; 'stephen gilchrist' <thegilchristassociates@gmail.com>
Cc: 'John Mashburn' <jkmash@comcast.net>; 'Thomas Simuel' <tjsimuel32@gmail.com>; Alexander Heideman <aheideman@usccr.gov>
Subject: Re: [EXTERNAL] EAC Board of Advisors

Looking at the document about the appointment of the advisory board members, I think that is correct, Christian. Catherine probably appointed them without ever bringing it up.

From: Christian Adams <a@electionlawcenter.com>
Sent: Tuesday, September 15, 2020 3:55:45 PM
To: Carissa Mulder; 'Peter Kirsanow'; 'Gail Heriot'; 'stephen gilchrist'
Cc: 'John Mashburn'; 'Thomas Simuel'; Alexander Heideman
Subject: RE: [EXTERNAL] EAC Board of Advisors

> CAUTION: This email is from outside USCCR.

It probably NEVER came up in a business meeting and therefore we should, as a commission have the authority to take it up in a business meeting and appoint-anew.

From: Carissa Mulder <CMulder@usccr.gov>
Sent: Tuesday, September 15, 2020 3:34 PM
To: Christian Adams <a@electionlawcenter.com>; Peter Kirsanow <pkirsanow@Beneschlaw.com>; 'Gail Heriot' <gheriot@me.com>; 'stephen gilchrist' <thegilchristassociates@gmail.com>
>; Alexander Heideman <aheideman@usccr.gov>
Subject: Re: [EXTERNAL] EAC Board of Advisors

Good question! I had no idea the USCCR got two designees to the EAC Board of Advisors. Here's the .

From: Christian Adams <a@electionlawcenter.com>
Sent: Tuesday, September 15, 2020 3:15:28 PM
To: Peter Kirsanow; 'Gail Heriot'; 'stephen gilchrist'
Cc: John Mashburn; 'Thomas Simuel'; Carissa Mulder; Alexander Heideman

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Subject: [EXTERNAL] EAC Board of Advisors

CAUTION: This email is from outside USCCR.

AC commission saying that Yaki is acting absurdly and exercising power over the EAC by threatening the Pelosi pick on the EAC with removal if he doesn't do what he wants, effectively making Yaki a commissioner on the EAC on many issues. He is causing mischief I don't even detail here.

My question is how does he get UNDONE from the EAC oversight commission? How does that get revoked and replaced?

<Help America Vote Act House Report 107_329[1].pdf>

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Date : 9/16/2020 4:59:54 PM
From : "Maureen Rudolph" mrudolph@usccr.gov
To : "Alexander Heideman" aheideman@usccr.gov
Subject : Re: USCCR & Election Assistance Commission Board of Advisors

Alex,

I haven't found much more than what we discussed. The meeting transcripts are here (and looks like we've almost completed uploading them back to 2006): https://www.usccr.gov/calendar/transcripts.php I did do a very quick glance through the transcripts and did not find any votes for the EAC positions. I did find the email below from 2015 in which the then- Chair's special assistant asked all Commissioners who wanted to be appointed. I wasn't at USCCR for this one - I found the email in securi sync. Sorry to not be of more help. -Maureen

---

From: Juana Silverio
Sent: Wednesday, March 04, 2015 6:09 PM
To: Martin Castro; Patricia Timmons-Goodson; Roberta Achtenberg; David Kladney; Michael Yaki; Karen Narasaki; Gail Heriot; Peter Kirsanow
Cc: Sheryl Cozart; Alec Deull; Amy Royce; Kimberly Tolhurst; Jason T. Lagria; Alison Somin; Carissa Mulder
Subject: US Election Assistance Commission

I am sending on behalf of Chairman Castro. Please let him and I know if you'd be interested in representing the Commission on the U.S. EAC's Advisory Board.

Commissioners Achtenberg & Thernstrom represented us in the past. The EAC has a quorum now and would appreciate the Commission's participation.

Best,
Juana Silverio, Esq.

From: Maureen Rudolph
Sent: Wednesday, September 16, 2020 11:47:53 AM
To: Alexander Heideman
Subject: Re: USCCR & Election Assistance Commission Board of Advisors

To my knowledge, there are not any internal rules about these appointments. The practice has been that the Chair makes the appointments. (Note though that I only have records going back to 2015 for these appointments and I do not know what the practice was before 2015). The statute (52 U.S.C. 20944(a)(10)) says "Two members appointed by the United States Commission on Civil Rights." 52 U.S.C. 20944(b) says "Appointments shall be made to the Board of Advisors under subsection (a) in a manner which ensures that the Board of Advisors will be bipartisan in nature and will reflect the various geographic regions of the United States." The terms are 2 year appointments; I believe the current USCCR appointments are Yaki and Kladney, and that their terms end 4/13/2021. I provided the above information, i.e., bipartisan and geographic scope, before the

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2019 appointments, though did not provide any input beyond this. I've also attached the House report for the Help American Vote Act (establishes the advisory committees) - discussion of advisory boards is on page 33. Talk to you at 1pm. Please call me on my work cell (202)-657-2246. Thanks very much, Maureen

---

From: Alexander Heideman
Sent: Wednesday, September 16, 2020 11:28:49 AM
To: Maureen Rudolph
Subject: Re: USCCR & Election Assistance Commission Board of Advisors

1PM works perfectly for me. Do you happen to have our internal rules on how the two Commissioners are appointed to the EAC Board of Advisors?

From: Maureen Rudolph <mrudolph@usccr.gov>
Date: Wednesday, September 16, 2020 at 11:13 AM
To: Alexander Heideman <aheideman@usccr.gov>
Subject: Re: USCCR & Election Assistance Commission Board of Advisors

Either is fine. If you'd like to chat, does 1pm work? Also, do you have the statutory citation, etc., or is there anything you'd like before talking? Thanks much, Maureen

---

From: Alexander Heideman
Sent: Wednesday, September 16, 2020 11:09:08 AM
To: Maureen Rudolph
Subject: USCCR & Election Assistance Commission Board of Advisors

Hi Maureen,

I hope you're having a great week.

I've got a few questions about USCCR & the EAC Board of Advisors that I'm hoping you'll be able to answer. Do you have time for a quick phone call today or would you prefer I email you?

Thanks!
Alex

AMERICAN OVERSIGHT

Date : 9/16/2020 5:29:43 PM
From : "Alexander Heideman" aheideman@usccr.gov
To : "Maureen Rudolph" mrudolph@usccr.gov
Subject : Re: USCCR & Election Assistance Commission Board of Advisors

Thanks, Maureen. I really appreciate your guidance here.

From: Maureen Rudolph <mrudolph@usccr.gov>
Date: Wednesday, September 16, 2020 at 4:59 PM
To: Alexander Heideman <aheideman@usccr.gov>
Subject: Re: USCCR & Election Assistance Commission Board of Advisors

Alex,

I haven't found much more than what we discussed. The meeting transcripts are here (and looks like we've almost completed uploading them back to 2006): https://www.usccr.gov/calendar/transcripts.php I did do a very quick glance through the transcripts and did not find any votes for the EAC positions. I did find the email below from 2015 in which the then- Chair's special assistant asked all Commissioners who wanted to be appointed. I wasn't at USCCR for this one - I found the email in securi sync. Sorry to not be of more help. -Maureen

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From: Juana Silverio
Sent: Wednesday, March 04, 2015 6:09 PM
To: Martin Castro; Patricia Timmons-Goodson; Roberta Achtenberg; David Kladney; Michael Yaki; Karen Narasaki; Gail Heriot; Peter Kirsanow
Cc: Sheryl Cozart; Alec Deull; Amy Royce; Kimberly Tolhurst; Jason T. Lagria; Alison Somin; Carissa Mulder
Subject: US Election Assistance Commission

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Best,
Juana Silverio, Esq.

From: Maureen Rudolph
Sent: Wednesday, September 16, 2020 11:47:53 AM
To: Alexander Heideman
Subject: Re: USCCR & Election Assistance Commission Board of Advisors

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To my knowledge, there are not any internal rules about these appointments. The practice has been that the Chair makes the appointments. (Note though that I only have records going back to 2015 for these appointments and I do not know what the practice was before 2015). The statute (52 U.S.C. 20944(a)(10)) says "Two members appointed by the United States Commission on Civil Rights." 52 U.S.C. 20944(b) says "Appointments shall be made to the Board of Advisors under subsection (a) in a manner which ensures that the Board of Advisors will be bipartisan in nature and will reflect the various geographic regions of the United States." The terms are 2 year appointments; I believe the current USCCR appointments are Yaki and Kladney, and that their terms end 4/13/2021. I provided the above information, i.e., bipartisan and geographic scope, before the 2019 appointments, though did not provide any input beyond this. I've also attached the House report for the Help American Vote Act (establishes the advisory committees) - discussion of advisory boards is on page 33. Talk to you at 1pm. Please call me on my work cell (202)-657-2246. Thanks very much, Maureen

---

From: Alexander Heideman
Sent: Wednesday, September 16, 2020 11:28:49 AM
To: Maureen Rudolph
Subject: Re: USCCR & Election Assistance Commission Board of Advisors

1PM works perfectly for me. Do you happen to have our internal rules on how the two Commissioners are appointed to the EAC Board of Advisors?

From: Maureen Rudolph <mrudolph@usccr.gov>
Date: Wednesday, September 16, 2020 at 11:13 AM
To: Alexander Heideman <aheideman@usccr.gov>
Subject: Re: USCCR & Election Assistance Commission Board of Advisors

Either is fine. If you'd like to chat, does 1pm work? Also, do you have the statutory citation, etc., or is there anything you'd like before talking? Thanks much, Maureen

---

From: Alexander Heideman
Sent: Wednesday, September 16, 2020 11:09:08 AM
To: Maureen Rudolph
Subject: USCCR & Election Assistance Commission Board of Advisors

Hi Maureen,

I hope you're having a great week.

I've got a few questions about USCCR & the EAC Board of Advisors that I'm hoping you'll be able to answer. Do you have time for a quick phone call today or would you prefer I email you?

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Thanks!
Alex

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From : "Alexander Heideman" aheideman@usccr.gov
To : "Christian Adams" a@electionlawcenter.com, "'Gail Heriot'" gheriot@me.com
Cc : "Carissa Mulder" CMulder@usccr.gov, "'Peter Kirsanow'" pkirsanow@beneschlaw.com, "'stephen gilchrist'" thegilchristassociates@gmail.com, "'John Mashburn'" jkmash@comcast.net, "'Thomas Simuel'" tjsimuel32@gmail.com
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More from Maureen:

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> **Sent:** Tuesday, September 15, 2020 4:01 PM
> **To:** Christian Adams <a@electionlawcenter.com>; 'Peter Kirsanow' <pkirsanow@Beneschlaw.com>; 'Gail Heriot' <gheriot@me.com>; 'stephen gilchrist' <thegilchristassociates@gmail.com>
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<Help America Vote Act House Report 107_329[1].pdf>

AMERICAN OVERSIGHT

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To : "Alexander Heideman" aheideman@usccr.gov, "Carissa Mulder" CMulder@usccr.gov
Subject : Re: [EXTERNAL] EAC Board of Advisors

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Subject : Re: [EXTERNAL] EAC Board of Advisors

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Date: Friday, September 18, 2020 at 2:13 PM
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Juana Silverio, Esq.

From: Alexander Heideman <aheideman@usccr.gov>
Date: Wednesday, September 16, 2020 at 1:31 PM
To: Christian Adams <a@electionlawcenter.com>, 'Gail Heriot' <gheriot@me.com>
Cc: Carissa Mulder <CMulder@usccr.gov>, 'Peter Kirsanow' <pkirsanow@beneschlaw.com>, 'stephen gilchrist' <thegilchristassociates@gmail.com>, 'John Mashburn' <jkmash@comcast.net>, 'Thomas Simuel' <tjsimuel32@gmail.com>
Subject: Re: [EXTERNAL] EAC Board of Advisors

I spoke with Maureen. She said that she was not asked about these appointments in 2019, but she thought that the Commissioners had had a conversation about them.

It seems to me that these appointments were unlawful if they were not (1) made by the Commission and (2) bipartisan and geographically varied. And Google Maps says Reno (Kladney) is a short 3.5 hour drive from San Fran (Yaki).

I'll try to locate the 2015, 2013, & 2011 transcripts to see if appointments were voted on in the past.

From: Christian Adams <a@electionlawcenter.com>
Date: Wednesday, September 16, 2020 at 12:55 PM
To: 'Gail Heriot' <gheriot@me.com>, Alexander Heideman <aheideman@usccr.gov>
Cc: Carissa Mulder <CMulder@usccr.gov>, 'Peter Kirsanow' <pkirsanow@beneschlaw.com>, 'stephen gilchrist' <thegilchristassociates@gmail.com>, 'John Mashburn' <jkmash@comcast.net>, 'Thomas Simuel' <tjsimuel32@gmail.com>
Subject: RE: [EXTERNAL] EAC Board of Advisors

> CAUTION: This email is from outside USCCR.

ree with Gail. And the "appointments" did not comply with the admonition of the law that the board should be bipartisan.

From: Gail Heriot <gheriot@me.com>
Sent: Wednesday, September 16, 2020 12:15 PM

AMERICAN OVERSIGHT

To: Alexander Heideman <aheideman@usccr.gov>
Cc: Christian Adams <a@electionlawcenter.com>; Carissa Mulder <CMulder@usccr.gov>; Peter Kirsanow <pkirsanow@beneschlaw.com>; stephen gilchrist <thegilchristassociates@gmail.com>; John Mashburn <jkmash@comcast.net>; Thomas Simuel <tjsimuel32@gmail.com>
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If the statute says the Commission makes the appointments, I don't see how it can be that the chair makes them. My recollection of the appointments under the Reynolds years is that Abby and maybe Yaki were our delegates. If there are transcripts going back that far they may show whether the Commission voted on these appointments.

On Sep 16, 2020, at 8:51 AM, Alexander Heideman <aheideman@usccr.gov> wrote:

Maureen says:

> To my knowledge, there are not any internal rules about these appointments. The practice has been that the Chair makes the appointments. (Note though that I only have records going back to 2015 for these appointments and I do not know what the practice was before 2015). The statute (52 U.S.C. 20944(a)(10)) says "Two members appointed by the United States Commission on Civil Rights." 52 U.S.C. 20944(b) says "Appointments shall be made to the Board of Advisors under subsection (a) in a manner which ensures that the Board of Advisors will be bipartisan in nature and will reflect the various geographic regions of the United States." The terms are 2 year appointments; I believe the current USCCR appointments are Yaki and Kladney, and that their terms end 4/13/2021. I provided the above information, i.e., bipartisan and geographic scope, before the 2019 appointments, though did not provide any input beyond this. I've also attached the House report for the Help American Vote Act (establishes the advisory committees) - discussion of advisory boards is on page 33.

I have a call scheduled with her at 1 pm to discuss further. Please let me know if there are any specific questions I should ask.

Alex

From: Alexander Heideman <aheideman@usccr.gov>
Date: Wednesday, September 16, 2020 at 11:02 AM

AMERICAN OVERSIGHT

To: Christian Adams <a@electionlawcenter.com>, 'Gail Heriot' <gheriot@me.com>
Cc: Carissa Mulder <CMulder@usccr.gov>, 'Peter >, 'John Mashburn' <jkmash@comcast.net>, 'Thomas Simuel' <tjsimuel32@gmail.com>
Subject: Re: [EXTERNAL] EAC Board of Advisors

Yes, happy to.

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Date: Wednesday, September 16, 2020 at 11:02 AM
To: 'Gail Heriot' <gheriot@me.com>
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Subject: RE: [EXTERNAL] EAC Board of Advisors

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ple people aren't asking her different times, can the SA's get to the bottom of this with maureen.

From: Gail Heriot <gheriot@me.com>
Sent: Wednesday, September 16, 2020 10:46 AM
To: Christian Adams <a@electionlawcenter.com>
Cc: Carissa Mulder <CMulder@usccr.gov>; Peter Kirsanow <pkirsanow@beneschlaw.com>; stephen gilchrist <thegilchristassociates@gmail.com>; John Mashburn <jkmash@comcast.net>; Thomas Simuel <tjsimuel32@gmail.com>; Alexander Heideman <aheideman@usccr.gov>
Subject: Re: [EXTERNAL] EAC Board of Advisors

I don't think there are any rules. In the absence of an explicit delegation of power, the Commission as a whole has that power. But you need to be sure it wasn't done properly. I have a vague recollection of talking about this in a meeting in the last decade. The straight shooter on the staff is Maureen Rudolph. You might want to ask her.

Gail Heriot
Professor of Law
University of San Diego

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On Sep 15, 2020, at 2:17 PM, Christian Adams <a@electionlawcenter.com> wrote:

I don't know the rules for USCCR appointing ANYONE yet, but if there are no minutes showing a vote appointing them in regular business, it would seem that their "appointment" is void.

From: Carissa Mulder <CMulder@usccr.gov>
Sent: Tuesday, September 15, 2020 4:01 PM
To: Christian Adams <a@electionlawcenter.com>; 'Peter Kirsanow' <pkirsanow@Beneschlaw.com>; 'Gail Heriot' <gheriot@me.com>; 'stephen gilchrist' <thegilchristassociates@gmail.com>
Cc: 'John Mashburn' <jkmash@comcast.net>; 'Thomas Simuel' <tjsimuel32@gmail.com>; Alexander Heideman <aheideman@usccr.gov>
Subject: Re: [EXTERNAL] EAC Board of Advisors

Looking at the document about the appointment of the advisory board members, I think that is correct, Christian. Catherine probably appointed them without ever bringing it up.

From: Christian Adams <a@electionlawcenter.com>
Sent: Tuesday, September 15, 2020 3:55:45 PM
To: Carissa Mulder; 'Peter Kirsanow'; 'Gail Heriot'; 'stephen gilchrist'
Cc: 'John Mashburn'; 'Thomas Simuel'; Alexander Heideman
Subject: RE: [EXTERNAL] EAC Board of Advisors

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It probably NEVER came up in a business meeting and therefore we should, as a commission have the authority to take it up in a business meeting and appoint-anew.

From: Carissa Mulder <CMulder@usccr.gov>
Sent: Tuesday, September 15, 2020 3:34 PM
To: Christian Adams <a@electionlawcenter.com>; Peter Kirsanow <pkirsanow@Beneschlaw.com>; 'Gail Heriot' <gheriot@me.com>; 'stephen

AMERICAN OVERSIGHT

gilchrist' <thegilchristassociates@gmail.com>
>; Alexander Heideman <aheideman@usccr.gov>
Subject: Re: [EXTERNAL] EAC Board of Advisors

Good question! I had no idea the USCCR got two designees to the EAC Board of Advisors. Here's the .

From: Christian Adams <a@electionlawcenter.com>
Sent: Tuesday, September 15, 2020 3:15:28 PM
To: Peter Kirsanow; 'Gail Heriot'; 'stephen gilchrist'
Cc: John Mashburn; 'Thomas Simuel'; Carissa Mulder; Alexander Heideman
Subject: [EXTERNAL] EAC Board of Advisors

CAUTION: This email is from outside USCCR.

AC commission saying that Yaki is acting absurdly and exercising power over the EAC by threatening the Pelosi pick on the EAC with removal if he doesn't do what he wants, effectively making Yaki a commissioner on the EAC on many issues. He is causing mischief I don't even detail here.

My question is how does he get UNDONE from the EAC oversight commission? How does that get revoked and replaced?

<Help America Vote Act House Report 107_329[1].pdf>

Date : 9/23/2020 9:54:36 AM
From : "John Mashburn" jmashburn@usccr.gov
To : "Christian Adams" a@electionlawcenter.com
Subject : Quick Update on Things

Below is where we stand on various issues:

1. **Blue Ink Electronic Signature** – USCCR needs one from you to attach to letters. Angela Rorison sent you an email requesting it. (FYI – she is one week on the job.)

2. **Nov. 13 Maternal Health Disparity/Mortality Briefing Witness AGREED TO**– first off, you should know that Kirsanow joined with us in requesting a witness. Bridget Wagner's recommendation of Ms. Kathleen Bravo -- who founded and runs OBRIA Medical Group (which runs 21 pro-life maternal health clinics and 11 mobile centers) -- was finally agreed to by Cullington-Gonzalez. She initially rejected Ms. Bravo as not having "appropriate background" and preferred the first proposed witness instead. However, Star Parker's witness Ms. Catherine Davis felt (and I agree) that if she could not talk about the disparate impact abortion has on the minority community (per the USCCR authorizing statute) she would not have a lot to contribute. After I sent Kathy a 2-page detailed defense on why Bravo does have appropriate experience and why perhaps some of their 13 current witnesses might not have -- based on the materials they sent out regarding the purpose of the hearing -- she relented and agreed to invite Ms. Bravo (who I am reaching out to today with her invitation letter, etc.)

    a. **Nov. 10 TEST RUN for Zooming this Hearing at 10 am or 11 am**– they want to know if you can participate in this test run on Nov. 10 at one of those times.

3. **EAC** – I talked with Kevin Rayburn last Friday late afternoon and he agreed to look into the issues. Will touch base with him again today. Alex has nothing new from his end looking into this.

4. **Vice-Chair** – talked to Andrew, etc. Today is Andrew's first day at his new job at OPM. Spencer is taking over for him. **We need to discuss this**.

5. **GC Vacancy** – I reached out to Carrie Lee as you asked. She will apply, but had some concerns that we should discuss.

6. **USA Today Criticism** – Alex found the "Economic Liberty" report Heriot mentioned that was rejected when the Dem majority first took over back in 2012 or so, and is looking for other reports that were also rejected.

7. **Oct. 30 Cmn Business Mtg** – the Oct. 16th Cmn Business Meeting has been moved from Oct. 16 to Oct. 30th -- at 12 noon.

At a staff level we are reviewing several 150-plus page report DRAFTS (Native American COVID-19 Impacts; Maternal Health Disparity – yes, written before the Nov. 13 hearing;

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etc.) Carissa is taking the lead on them. Carissa is also taking the lead in identifying folks for expiring State Advisory Cmtees (SACs).

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Date : 9/30/2020 11:02:28 AM
From : "John Mashburn" jmashburn@usccr.gov
To : "Kevin Rayburn" krayburn@eac.gov
Subject : Re: [EXTERNAL] United States Commission on Civil Rights - EAC BOA Notice of Representation

Thanks

From: Kevin Rayburn <krayburn@eac.gov>
Date: Wednesday, September 30, 2020 at 10:52 AM
To: John Mashburn <jmashburn@usccr.gov>
Subject: [EXTERNAL] United States Commission on Civil Rights - EAC BOA Notice of Representation

CAUTION: This email is from outside USCCR.

As requested, please find attached a copy of the most recent BOA Notice of Representation submitted by the U.S. Commission on Civil Rights as well as the letter sent by the EAC asking for the form to be completed. The current term of BOA members ends on April 13, 2021. In Q1 of 2021, I will send out new Notice of Representation forms for BOA representatives to be made for the new term.

Sincerely,

Kevin Rayburn, General Counsel
U.S. Election Assistance Commission
1335 East West Highway Suite 4300
Silver Spring, MD 20910
Cell: (202) 740-6546

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Date : 9/30/2020 3:17:35 PM
From : "Carissa Mulder" CMulder@usccr.gov
To : "John Mashburn" jmashburn@usccr.gov
Subject : Re: - EAC BOA Notice of Representation

Thanks!

From: John Mashburn
Sent: Wednesday, September 30, 2020 2:05:11 PM
To: Carissa Mulder
Subject: FW: - EAC BOA Notice of Representation

From: John Mashburn <jmashburn@usccr.gov>
Date: Wednesday, September 30, 2020 at 2:02 PM
To: Christian Adams <a@electionlawcenter.com>
Subject: - EAC BOA Notice of Representation

Attached is the letter from Chair Lhamon to EAC appointing Yaki and Kladney to the EAC's Board of Advisors. Rayburn says there is no meeting of the BOA prior to current BOA representatives' terms expiring on April 13, 2021. However, USCCR could still technically remove and replace its representatives on the BOA prior to that time.

He did note that removing Yaki would create an administrative issue for the BOA since Yaki is the current Chair of the BOA -- and was recently reelected to serve as Chair again. In February, the EAC (Rayburn) will send a notice to USCCR asking whom it wants its representatives to be. As noted in the EAC letter to the USCCR (2nd attachment), if USCCR does not act to change its representatives prior to April 13, 2021, then the terms of the current USCCR representatives on the BOA (Yaki/Kladney) will be *automatically renewed*.

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Date : 9/30/2020 2:02:55 PM
From : "John Mashburn" jmashburn@usccr.gov
To : "Christian Adams" a@electionlawcenter.com
Subject : - EAC BOA Notice of Representation
Attachment : CLhamon signed - USCCR EAC Notice of Representation Form.pdf;Commission on Civil Rights Letter.pdf;

Attached is the letter from Chair Lhamon to EAC appointing Yaki and Kladney to the EAC's Board of Advisors. Rayburn says there is no meeting of the BOA prior to current BOA representatives' terms expiring on April 13, 2021. However, USCCR could still technically remove and replace its representatives on the BOA prior to that time.

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Notice of Representation
United States Election Assistance Commission
Board of Advisors

In accordance with 52 USC 20901 of the Help America Vote Act of 2002, the (U.S. Commission on Civil Rights) submits the following individual(s) as a member of the Election Assistance Commission Board of Advisors:

Designated Representative

Name:	Michael Yaki
Title:	Commissioner, U.S. Commission on Civil Rights
Address:	268 Bush Street #3333 San Francisco, CA 94104
Phone/FAX:	415-601-4008
Email:	myaki@usccr.gov
Party Affiliation:	Democratic

Designated Representative

Name:	David Kladney
Title:	Commissioner, U.S. Commission on Civil Rights
Address:	905 Joy Lake Road Reno, NV 89511
Phone/FAX:	775-849-0545
Email:	dkladney@usccr.gov
Party Affiliation:	Democratic

NAME / TITLE OF APPOINTING OFFICIAL

Print Name: Catherine Lhamon / Chair, U.S. Commission on Civil Rights

Sign Name: Cae Date: 3/22/2019

Please return the completed form via email to Clifford Tatum (Ctatum@eac.gov), facsimile transmission, at (301) 734-3108, or your notice can be mailed to: U.S. Election Assistance Commission; 1335 East West Highway, Suite 4300; Silver Spring, MD 20910.

1/2019 version

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U.S. ELECTION ASSISTANCE COMMISSION
1335 East West Highway – Suite 4300
Silver Spring, MD 20910

February 22, 2019

United States Commission on Civil Rights
Catherine E. Lhamon, Chair
1331 Pennsylvania Avenue NW
Suite 1150
Washington DC 20425
Email: Rsingla@usccr.gov

Re: U.S. Election Assistance Commission
Board of Advisors Membership Appointment

Dear Ms. Lhamon:

As you know, the Help America Vote Act of 2002 (HAVA), 52 U.S.C. 20901 et seq., created the U.S. Election Assistance Commission (EAC) and established three Advisory Boards[15] to assist the EAC with the development of Voluntary Voting System Guidelines. The Advisory Boards are primarily charged with providing advice, guidance and support to the EAC on the development of the Voluntary Voting System Guidelines.

The membership of the respective Advisory Boards is set forth in Section 213, 214 and 221[16]. Under Section 214, your organization is authorized to appoint two members to the Board of Advisors.

Please be advised that it is time to reappoint your designated representatives to the Board of Advisors. If you do not appoint someone new, your existing representatives will continue to serve and be reappointed.

Your current representatives are:

Patricia Timmons-Goodson
Michael Yaki

Each member representative serves for a period of two years unless replaced and may be reappointed if no replacement is named. The term of your member representatives will renew on April 13, 2019 with the renewal of the Advisory Board's Charter.

---

[15] Standards Board and Board of Advisors created in Section 211; and the Technical Guidelines Development Committee created in Section 221.
[16] 52 USC 20943, 52 USC 20944 and 52 USC 20961

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This year we anticipate having important discussions about voting system guidelines development, election systems as part of the nation's critical infrastructure and cyber security. Therefore, your prompt response to this letter is greatly appreciated.

Please use the enclosed Notice of Representation form to advise us of the designated representative to serve on the EAC Board of Advisors. Please return your Notice of Representation no later than March 15, 2019, as the Board will hold its annual meeting during the week of April 22, 2019.

Please return the completed form via facsimile to (301) 734-3108, Attn: Brian Newby, by email to Bnewby@eac.gov or by mail to:

U.S. Election Assistance Commission
Advisory Board
1335 East West Highway, Suite 4300
Silver Spring, MD 20910

Thank you for your attention to this matter. If we can be of assistance, please feel free to contact us at (301) 563-3937.

Sincerely,

Brian Newby
Executive Director

AMERICAN OVERSIGHT

Date : 12/3/2020 2:35:49 PM
From : "Alexander Heideman" aheideman@usccr.gov
To : "John Mashburn" jmashburn@usccr.gov, "John Mashburn" jkmash@comcast.net
Subject : FW: [EXTERNAL] EAC Board of Advisors

Looking over my notes and these emails from September. During my call with her, Maureen indicated that she thought that the Commissioners were not informed of the EAC appointments. I also believe she told me that she advised Catherine of the right way to make appointments and was ignored. Gail thought you might want that information for the letter.

From: Alexander Heideman <aheideman@usccr.gov>
Date: Wednesday, September 16, 2020 at 5:19 PM
To: Christian Adams <a@electionlawcenter.com>, 'Gail Heriot' <gheriot@me.com>
Cc: Carissa Mulder <CMulder@usccr.gov>, 'Peter Kirsanow' <pkirsanow@beneschlaw.com>, 'stephen gilchrist' <thegilchristassociates@gmail.com>, 'John Mashburn' <jkmash@comcast.net>, 'Thomas Simuel' <tjsimuel32@gmail.com>
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More from Maureen:

Alex,

I haven't found much more than what we discussed. The meeting transcripts are here (and looks like we've almost completed uploading them back to 2006): https://www.usccr.gov/calendar/transcripts.php I did do a very quick glance through the transcripts and did not find any votes for the EAC positions. I did find the email below from 2015 in which the then- Chair's special assistant asked all Commissioners who wanted to be appointed. I wasn't at USCCR for this one - I found the email in securi sync. Sorry to not be of more help. -Maureen

---

From: Juana Silverio
Sent: Wednesday, March 04, 2015 6:09 PM
To: Martin Castro; Patricia Timmons-Goodson; Roberta Achtenberg; David Kladney; Michael Yaki; Karen Narasaki; Gail Heriot; Peter Kirsanow
Cc: Sheryl Cozart; Alec Deull; Amy Royce; Kimberly Tolhurst; Jason T. Lagria; Alison Somin; Carissa Mulder
Subject: US Election Assistance Commission

I am sending on behalf of Chairman Castro. Please let him and I know if you'd be interested in representing the Commission on the U.S. EAC's Advisory Board.

Commissioners Achtenberg & Thernstrom represented us in the past. The EAC has a quorum now and would appreciate the Commission's participation.

Best,
Juana Silverio, Esq.

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It seems to me that these appointments were unlawful if they were not (1) made by the Commission and (2) bipartisan and geographically varied. And Google Maps says Reno (Kladney) is a short 3.5 hour drive from San Fran (Yaki).

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I have a call scheduled with her at 1 pm to discuss further. Please let me know if there are any specific questions I should ask.

Alex

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Date: Wednesday, September 16, 2020 at 11:02 AM
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Subject: RE: [EXTERNAL] EAC Board of Advisors

> CAUTION: This email is from outside USCCR.

ple people aren't asking her different times, can the SA's get to the bottom of this with maureen.

From: Gail Heriot <gheriot@me.com>
Sent: Wednesday, September 16, 2020 10:46 AM
To: Christian Adams <a@electionlawcenter.com>
Cc: Carissa Mulder <CMulder@usccr.gov>; Peter Kirsanow <pkirsanow@beneschlaw.com>; stephen gilchrist <thegilchristassociates@gmail.com>; John Mashburn <jkmash@comcast.net>; Thomas Simuel <tjsimuel32@gmail.com>; Alexander Heideman <aheideman@usccr.gov>
Subject: Re: [EXTERNAL] EAC Board of Advisors

I don't think there are any rules. In the absence of an explicit delegation of power, the Commission as a whole has that power. But you need to be sure it wasn't done properly. I have a vague recollection of talking about this in a meeting in the last decade. The straight shooter on the staff is Maureen Rudolph. You might want to ask her.

Gail Heriot
Professor of Law
University of San Diego

> On Sep 15, 2020, at 2:17 PM, Christian Adams <a@electionlawcenter.com> wrote:
>
> I don't know the rules for USCCR appointing ANYONE yet, but if there are no minutes showing a vote appointing them in regular business, it would seem that their "appointment" is

AMERICAN OVERSIGHT

void.

From: Carissa Mulder <CMulder@usccr.gov>
Sent: Tuesday, September 15, 2020 4:01 PM
To: Christian Adams <a@electionlawcenter.com>; 'Peter Kirsanow' <pkirsanow@Beneschlaw.com>; 'Gail Heriot' <gheriot@me.com>; 'stephen gilchrist' <thegilchristassociates@gmail.com>
Cc: 'John Mashburn' <jkmash@comcast.net>; 'Thomas Simuel' <tjsimuel32@gmail.com>; Alexander Heideman <aheideman@usccr.gov>
Subject: Re: [EXTERNAL] EAC Board of Advisors

Looking at the document about the appointment of the advisory board members, I think that is correct, Christian. Catherine probably appointed them without ever bringing it up.

From: Christian Adams <a@electionlawcenter.com>
Sent: Tuesday, September 15, 2020 3:55:45 PM
To: Carissa Mulder; 'Peter Kirsanow'; 'Gail Heriot'; 'stephen gilchrist'
Cc: 'John Mashburn'; 'Thomas Simuel'; Alexander Heideman
Subject: RE: [EXTERNAL] EAC Board of Advisors

> CAUTION: This email is from outside USCCR.

It probably NEVER came up in a business meeting and therefore we should, as a commission have the authority to take it up in a business meeting and appoint-anew.

From: Carissa Mulder <CMulder@usccr.gov>
Sent: Tuesday, September 15, 2020 3:34 PM
To: Christian Adams <a@electionlawcenter.com>; Peter Kirsanow <pkirsanow@Beneschlaw.com>; 'Gail Heriot' <gheriot@me.com>; 'stephen gilchrist' <thegilchristassociates@gmail.com>
>; Alexander Heideman <aheideman@usccr.gov>
Subject: Re: [EXTERNAL] EAC Board of Advisors

Good question! I had no idea the USCCR got two designees to the EAC Board of Advisors. Here's the .

From: Christian Adams <a@electionlawcenter.com>
Sent: Tuesday, September 15, 2020 3:15:28 PM
To: Peter Kirsanow; 'Gail Heriot'; 'stephen gilchrist'

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Cc: John Mashburn; 'Thomas Simuel'; Carissa Mulder; Alexander Heideman
Subject: [EXTERNAL] EAC Board of Advisors

CAUTION: This email is from outside USCCR.

AC commission saying that Yaki is acting absurdly and exercising power over the EAC by threatening the Pelosi pick on the EAC with removal if he doesn't do what he wants, effectively making Yaki a commissioner on the EAC on many issues. He is causing mischief I don't even detail here.

My question is how does he get UNDONE from the EAC oversight commission? How does that get revoked and replaced?

<Help America Vote Act House Report 107_329[1].pdf>

AMERICAN OVERSIGHT

Date : 12/9/2020 12:12:26 PM
From : "Thomas Simuel" tsimuel@usccr.gov
To : "John Mashburn" jmashburn@usccr.gov
Subject : RE: [EXTERNAL] EAC letter

Stephen is ok with EAC letter.

Sent from my Metro By T-Mobile 4G LTE Android Device

-------- Original message --------
From: John Mashburn <jmashburn@usccr.gov>
Date: 12/9/20 12:06 PM (GMT-05:00)
To: Thomas Simuel <tsimuel@usccr.gov>
Subject: FW: [EXTERNAL] EAC letter

Thomas – is your boss OK with the EAC letter?

From: Carissa Mulder <carissa.mulder@gmail.com>
Date: Wednesday, December 9, 2020 at 11:56 AM
To: John Mashburn <jmashburn@usccr.gov>
Cc: Carissa Mulder <CMulder@usccr.gov>
Subject: [EXTERNAL] EAC letter

> CAUTION: This email is from outside USCCR.

--
Carissa B. Mulder

AMERICAN OVERSIGHT

Date : 12/9/2020 12:06:00 PM
From : "John Mashburn" jmashburn@usccr.gov
To : "Thomas Simuel" tsimuel@usccr.gov
Subject : FW: [EXTERNAL] EAC letter

Thomas – is your boss OK with the EAC letter?

From: Carissa Mulder <carissa.mulder@gmail.com>
Date: Wednesday, December 9, 2020 at 11:56 AM
To: John Mashburn <jmashburn@usccr.gov>
Cc: Carissa Mulder <CMulder@usccr.gov>
Subject: [EXTERNAL] EAC letter

> CAUTION: This email is from outside USCCR.

--
Carissa B. Mulder

AMERICAN OVERSIGHT

Date : 12/10/2020 10:09:16 AM
From : "John Mashburn" jmashburn@usccr.gov
To : "bhovland@eac.gov" bhovland@eac.gov, "Donald Palmer" dpalmer@eac.gov
Subject : 4 USCCR Commissioners' Letter to EAC Regarding Board of Advisors Appointments
Attachment : 4 USCCR Comissioners' Letter to EAC Regarding BOA Appointments.pdf;

Dear EAC Chairman Hovlan and Vice Chairman Palmer:

Attached is a letter from 4 Commissioners of the U.S. Commission on Civil Rights regarding EAC's enforcement of the legal requirements in its authorizing statutes for making appointments to the EAC's Board of Advisors. EAC's response should be directed to USCCR Commissioners Heriot, Kirsanow, Gilchrist and Adams who joined in signing the letter. Any questions may be directed to them, or to me at jmashburn@usccr.gov (or by phone at 202-236-2617).

John K. Mashburn
Special Assistant
USCCR Commissioner J. Christian Adams

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UNITED STATES COMMISSION ON CIVIL RIGHTS

1331 PENNSYLVANIA AVENUE , NW, WASHINGTON, DC 20425 www.usccr.gov

December 10, 2020

Chair Benjamin Hovland
Vice Chair Donald Palmer
U.S. Election Assistance Commission
633 3rd Street NW, Suite 200
Washington, DC 20001

Dear Chairman Hovland and Vice Chairman Palmer:

We write as four members of the U.S. Commission on Civil Rights, and not on behalf of the Commission as a whole, regarding enforcement of the legal requirements in EAC's authorizing statutes for making appointments to the EAC's Board of Advisors.

As you know, the Help America Vote Act of 2002 (HAVA), 52 U.S.C. 2091 et seq., created the U.S. Election Assistance Commission (EAC) and established three Advisory Boards to provide advice, guidance and support to the EAC on the development of Voluntary Voting System Guidelines. In Section 214(a), the United States Commission for Civil Rights (USCCR) *as a whole* is authorized to appoint two members of the EAC's 37-member Board of Advisors (BOA). Section 214(b) requires that "appointments shall be made to the Board of Advisors under subsection (a) in a manner which ***ensures*** that the Board of Advisors will be bipartisan in nature and will reflect the various geographic regions of the United States." [*emphasis added*].

In reviewing the USCCR's current appointees to the BOA, we note that both appointees are members of the same party -- and thus are not bipartisan as required by Section 214(b) -- and that the appointments were evidently made by the Chair of the USCCR unilaterally without approval of the USCCR as a whole. In addition to the USCCR, there are 9 other national associations authorized *as a whole* to each appoint two members to the EAC's 37-member BOA and section 214(b) requires that those appointments also be done "in a manner which ensures that the Board of Advisors will be bipartisan in nature …"

A letter sent to the Chair of the USCCR from the EAC on February 22, 2019 (*attached*) advised the Chair that it was time for the USCCR to "reappoint" its "designated representatives" to the BOA under Section 214(a) and stated that if no new designees were appointed, then the existing representatives would continue to serve and be automatically reappointed. The letter then asked the Chair to send in a "Notice of Representation" form by March 15, 2019 – which was less than 3 weeks later and thus provided little time for the USCCR as a whole to approve any designees. No mention is made in the EAC's letter that the appointment power under Section 214 is provided to the USCCR as a whole, and that it is not a power delegated to the USCCR Chair alone. The EAC letter to the USCCR Chair also failed to mention that Section 214(b) requires appointments made to the Board of Advisors be done "in a manner which ***ensures*** that the Board of Advisors will be bipartisan in nature …"

AMERICAN OVERSIGHT

Put simply, there are significant doubts that this "appointment" was actually an appointment that followed our Commission's regular procedures for making an appointment.

In light of the unbalanced partisan way (both being of the same party) in which the current USCCR appointments were made to the BOA, we would like to know what steps, if any, the EAC takes to enforce the statutory requirements under Section 214 regarding its Board of Advisors as follows:

a) that each of the national entities allowed to appoint members to the BOA (including the USCCR) actually approves the appointment of their representatives to the BOA *as a whole* – and that the nominal head of each entity does not make the appointments unilaterally on their own authority; and

b) that the appointments from each national entity are made in a manner that "*ensures*" the BOA will be "bipartisan in nature."

Sincerely,

Gail Heriot
Commissioner

Stephen Gilchrist
Commissioner

Peter Kirsanow
Commissioner

J. Christian Adams
Commissioner

Cc: Benjamin Hovland
Chair
U.S. Election Assistance Commission

Donald Palmer
Vice Chair
U.S. Election Assistance Commission

AMERICAN OVERSIGHT

Date : 12/10/2020 12:26:54 PM
From : "Catherine Lhamon" clhamon@usccr.gov
To : "Rukku Singla" rsingla@usccr.gov
Subject : Fw: [EXTERNAL] The 4 are trying an end run to EAC
Attachment : 4 USCCR Comissioners' Letter to EAC Regarding BOA Appointments.pdf;

Catherine E. Lhamon
Chair
U.S. Commission on Civil Rights
1331 Pennsylvania Ave NW, Suite 1150
Washington, DC 20425
clhamon@usccr.gov
Follow us on Twitter and Facebook.

From: michael@michaelyaki.com <michael@michaelyaki.com>
Sent: Thursday, December 10, 2020 12:24 PM
To: Catherine Lhamon
Subject: [EXTERNAL] The 4 are trying an end run to EAC

> CAUTION: This email is from outside USCCR.

I guess they don't like the fact that I'm chair . . . the response back will be it's the USCCR decision, not EAC.

Thanks!
Michael

MICHAEL YAKI CONSULTING

This email and any files or attachments transmitted with it may contain privileged or otherwise confidential information. If you are not the intended recipient, or believe that you may have received this communication in error, please advise the sender via reply email and immediately delete the email you received.

AMERICAN OVERSIGHT

UNITED STATES COMMISSION ON CIVIL RIGHTS

1331 PENNSYLVANIA AVENUE , NW, WASHINGTON, DC 20425 www.usccr.gov

December 10, 2020

Chair Benjamin Hovland
Vice Chair Donald Palmer
U.S. Election Assistance Commission
633 3rd Street NW, Suite 200
Washington, DC 20001

Dear Chairman Hovland and Vice Chairman Palmer:

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AMERICAN OVERSIGHT

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b) that the appointments from each national entity are made in a manner that "*ensures*" the BOA will be "bipartisan in nature."

Sincerely,

Gail Heriot
Commissioner

Stephen Gilchrist
Commissioner

Peter Kirsanow
Commissioner

J. Christian Adams
Commissioner

Cc: Benjamin Hovland
Chair
U.S. Election Assistance Commission

Donald Palmer
Vice Chair
U.S. Election Assistance Commission

AMERICAN OVERSIGHT

Date : 12/10/2020 10:57:23 AM
From : "John Mashburn" jmashburn@usccr.gov
To : "Gail Heriot" gheriot@usccr.gov, "Peter Kirsanow" pkirsanow@usccr.gov, "Stephen Gilchrist" sgilchrist@usccr.gov, "J. Christian Adams" jadams@usccr.gov
Cc : "Carissa Mulder" CMulder@usccr.gov, "Alexander Heideman" aheideman@usccr.gov, "Thomas Simuel" tsimuel@usccr.gov
Subject : FW: 4 USCCR Commissioners' Letter to EAC Regarding Board of Advisors Appointments
Attachment : 4 USCCR Comissioners' Letter to EAC Regarding BOA Appointments.pdf;

Just FYI – the attached letter was sent to EAC Chair Hovlan and Vice Chair Palmer this morning.

From: John Mashburn <jmashburn@usccr.gov>
Date: Thursday, December 10, 2020 at 10:09 AM
To: "bhovland@eac.gov" <bhovland@eac.gov>, Donald Palmer <dpalmer@eac.gov>
Subject: 4 USCCR Commissioners' Letter to EAC Regarding Board of Advisors Appointments

Dear EAC Chairman Hovlan and Vice Chairman Palmer:

Attached is a letter from 4 Commissioners of the U.S. Commission on Civil Rights regarding EAC's enforcement of the legal requirements in its authorizing statutes for making appointments to the EAC's Board of Advisors. EAC's response should be directed to USCCR Commissioners Heriot, Kirsanow, Gilchrist and Adams who joined in signing the letter. Any questions may be directed to them, or to me at jmashburn@usccr.gov (or by phone at 202-236-2617).

John K. Mashburn
Special Assistant
USCCR Commissioner J. Christian Adams

AMERICAN OVERSIGHT

UNITED STATES COMMISSION ON CIVIL RIGHTS

1331 PENNSYLVANIA AVENUE , NW, WASHINGTON, DC 20425 www.usccr.gov

December 10, 2020

Chair Benjamin Hovland
Vice Chair Donald Palmer
U.S. Election Assistance Commission
633 3rd Street NW, Suite 200
Washington, DC 20001

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AMERICAN OVERSIGHT

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Sincerely,

Gail Heriot
Commissioner

Stephen Gilchrist
Commissioner

Peter Kirsanow
Commissioner

J. Christian Adams
Commissioner

Cc: Benjamin Hovland
Chair
U.S. Election Assistance Commission

Donald Palmer
Vice Chair
U.S. Election Assistance Commission

AMERICAN OVERSIGHT

Date : 7/27/2021 12:56:46 PM
From : "Juana Silverio" jsilverio@usccr.gov
To : "Mauro Morales" mmorales@usccr.gov
Subject : eac email + rankings
Attachment : image001.gif;image002.gif;image003.gif;

Hi Mauro- I spoke to the Chair briefly this morning. Will you be sending out the email to Commissioners asking for the names of their nominees on behalf of the Chair and explaining the process?

Also- can we expect the rankings today?

--
Juana Silverio *(she/her/ella)*
Special Assistant to Commissioner Norma V. Cantú
U.S. Commission on Civil Rights
E: jsilverio@usccr.gov
http://usccr.gov/
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425
Follow Us on Twitter & Facebook:

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OVERSIGHT

OVERSTOCK

Date : 7/28/2021 11:30:30 AM
From : "Mauro Morales" mmorales@usccr.gov
To : "Commissioners" Commissioners@usccr.gov
Cc : "David Ganz" dganz@usccr.gov, "CommissionerAssistants" CommissionerAssistants@usccr.gov
Subject : Commissioner Appointments to the Election Assistance Commission
Attachment : image001.gif;image002.gif;

Dear Commissioners-

At the request and in consultation with the Chair, I am sending this email to start the EAC nomination process for Commissioners.

Per the AI voted on during the April 30th meeting (language included below), each caucus is requested to submit two candidates for consideration by COB Friday, July 30, 2021. Once the names are submitted, OGC will conduct an ethics check to be completed by Wednesday, August 4, 2021. Each caucus will then have 24 hours to submit caucus strikes (Thursday, August 5, 2021 COB). The Chair will communicate the two names to EAC no later than Friday, August 6, 2021.

Please let the Chair or I know if you have any questions or concerns.

--
AI language:

Section 1.
.01 Any authority specifically granted the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Commission as a whole by majority vote.

.02 Any authority specifically granted the Staff Director of the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Staff Director.

.03 Any authority specifically granted the Chair of the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Chair.

Section 2
.02
(1) For the two (2) appointments to the U.S. Election Assistance Commission, the members appointed by Democratic authorities shall nominate two individuals who are ready, willing, and able to serve, and the members appointed by the

AMERICAN OVERSIGHT

Republican authorities shall nominate two individuals who are ready, willing, and able to serve.

(2) The members appointed by the Democratic authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Democratic authorities

(3) The members selected shall be placed in nomination and ratified in conformance with Section 1.

Mauro Morales
Staff Director
U.S. Commission on Civil Rights
P: 202-376-7796| F: 202-376-7672
Mmorales@usccr.gov
http://usccr.gov/
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425

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#USCCR

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OVERSIGHT

OVERSTOCK

Date : 7/28/2021 3:45:22 PM
From : "Irena Vidulovic" ividulovic@usccr.gov
To : "Juana Silverio" jsilverio@usccr.gov, "Mauro Morales" mmorales@usccr.gov
Cc : "Debo P. Adegbile" dadegbile@usccr.gov, "Amy Royce" aroyce@usccr.gov, "Alec Deull" adeull@usccr.gov
Subject : EAC Nominations

Dear Juana and Mauro,

Commissioner Adegbile intends to nominate the following folks to the EAC. We will be reaching out to them to make sure that they are able and willing to serve.

Alabama SAC Chair Jenny Carroll https://www.law.ua.edu/directory/People/view/Jenny_Carroll

Jenny Carroll | University of Alabama School of Law

www.law.ua.edu

For more than 140 years, the University of Alabama School of Law has produced attorneys who become leaders locally, nationally and globally. Alabama Law provides a top-rate education at an affordable cost in a supportive and diverse environment.

Alison Riggs https://southerncoalition.org/staff/allison-riggs/

Allison Riggs - Southern Coalition for Social Justice

southerncoalition.org

Allison Riggs leads the voting rights program at the Southern Coalition for Social Justice, an organization she joined in 2009. In March of 2020, she also took over

AMERICAN OVERSIGHT

against voter suppression, and advocating for electoral reforms that would expand access to voting.

Leah Aden https://www.naacpldf.org/about-us/staff/leah-c-aden/

Leah C. Aden

www.naacpldf.org

Leah C. Aden has served as a Deputy Director of Litigation at the NAACP Legal Defense & Educational Fund, Inc. (LDF) since October 2018, assisting in the

Irena Vidulovic
Special Assistant to Commissioner Debo P. Adegbile
U.S. Commission on Civil Rights
M: 202-591-9969
ividulovic@usccr.gov
http://usccr.gov/
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425

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TwiFB
#USCCR

AMERICAN OVERSIGHT

Date : 7/28/2021 3:39:08 PM
From : "Juana Silverio" jsilverio@usccr.gov
To : "Amy Royce" aroyce@usccr.gov, "Alec Deull" adeull@usccr.gov, "Irena Vidulovic" ividulovic@usccr.gov
Subject : RE: Commissioner Appointments to the Election Assistance Commission
Attachment : image001.gif;image002.gif;

Please send to me and chair, cc mauro but the Chair will be managing the names. She suggested an ethics check hence why they are going to OGC.

Friday is what we stated but whenever before then you are ready to submit please do.

From: Amy Royce <aroyce@usccr.gov>
Sent: Wednesday, July 28, 2021 1:30 PM
To: Juana Silverio <jsilverio@usccr.gov>; Alec Deull <adeull@usccr.gov>; Irena Vidulovic <ividulovic@usccr.gov>
Subject: FW: Commissioner Appointments to the Election Assistance Commission

Hey Juana,
Should we send any nominations to you? When would you like them by?
Thanks,
Amy

From: Mauro Morales <mmorales@usccr.gov>
Sent: Wednesday, July 28, 2021 11:31 AM
To: Commissioners <Commissioners@usccr.gov>
Cc: David Ganz <dganz@usccr.gov>; CommissionerAssistants <CommissionerAssistants@usccr.gov>
Subject: Commissioner Appointments to the Election Assistance Commission

Dear Commissioners-

At the request and in consultation with the Chair, I am sending this email to start the EAC nomination process for Commissioners.

Per the AI voted on during the April 30th meeting (language included below), each caucus is requested to submit two candidates for consideration by COB Friday, July 30, 2021. Once the names are submitted, OGC will conduct an ethics check to be completed by Wednesday, August 4, 2021. Each caucus will then have 24 hours to submit caucus strikes (Thursday, August 5, 2021 COB). The Chair will communicate the two names to EAC no later than Friday, August 6, 2021.

Please let the Chair or I know if you have any questions or concerns.

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AMERICAN OVERSIGHT

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Section 2
.02

(1) For the two (2) appointments to the U.S. Election Assistance Commission, the members appointed by Democratic authorities shall nominate two individuals who are ready, willing, and able to serve, and the members appointed by the Republican authorities shall nominate two individuals who are ready, willing, and able to serve.

(2) The members appointed by the Democratic authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Democratic authorities

(3) The members selected shall be placed in nomination and ratified in conformance with Section 1.

Mauro Morales
Staff Director
U.S. Commission on Civil Rights
P: 202-376-7796| F: 202-376-7672
Mmorales@usccr.gov
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Washington D.C. 20425

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Date : 7/28/2021 3:37:13 PM
From : "Juana Silverio" jsilverio@usccr.gov
To : "Irena Vidulovic" ividulovic@usccr.gov, "Alec Deull" adeull@usccr.gov, "Amy Royce" aroyce@usccr.gov
Cc : "Norma Cantu" ncantu@usccr.gov
Subject : I assume you meant names re: EAC?
Attachment : image001.gif;image002.gif;

Below is a totally separate as k so wanted to clarify that both Debo and Michael are submitting eac names and not stakeholders for the strategic plan?

From: Irena Vidulovic <ividulovic@usccr.gov>
Sent: Wednesday, July 28, 2021 1:52 PM
To: Alec Deull <adeull@usccr.gov>; Juana Silverio <jsilverio@usccr.gov>; Amy Royce <aroyce@usccr.gov>
Cc: Norma Cantu <ncantu@usccr.gov>
Subject: Re: Draft 2022-2026 USCCR Strategic Plan

Debo has thee folks that he would like to nominate and we will send the names by Thursday. I am thinking it would be good to check first if they are willing and able to serve before we nominate.

One of the folks is definitely the Alabama SAC Chair Jenny Caroll who I think we were all very enthusiastic about.

Irena

From: Alec Deull
Sent: Wednesday, July 28, 2021 1:46:50 PM
To: Juana Silverio; Amy Royce; Irena Vidulovic
Cc: Norma Cantu
Subject: Re: Draft 2022-2026 USCCR Strategic Plan

Hello Juana!

I will send you names from Michael neither later today or tomorrow.

Thanks - all best, Alec

From: Juana Silverio
Sent: Tuesday, July 27, 2021 12:11:27 PM
To: Amy Royce; Irena Vidulovic; Alec Deull
Cc: Norma Cantu
Subject: FW: Draft 2022-2026 USCCR Strategic Plan

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Hey all. I heard from Mauro that the Rs submitted their list and it is pretty extensive. Can we can submit by the end of this week or early next week? Happy to compile and send in together.

Let me know your thoughts- J

From: Mauro Morales <mmorales@usccr.gov>
Sent: Friday, July 16, 2021 9:39 AM
To: CommissionerAssistants <CommissionerAssistants@usccr.gov>
Cc: ExecutiveStaff <ExecutiveStaff@usccr.gov>
Subject: Draft 2022-2026 USCCR Strategic Plan

Dear Special Assistants,

I have attached a draft of the proposed 2022-2026 USCCR Strategic Plan. As a reminder, every Federal Agency is required to create and follow a strategic plan and update it every four years. (GPRA Modernization Act of 2010). We need to create and adopt a new plan by January 2022. For your information, I have attached the 2018-2022 Strategic Plan we adopted that Commissioners previously voted on and that was submitted to the President and Congress back in 2018. The Commission staff has already reviewed and provided their input to the attached draft plan. Many of their recommendations have been incorporated.

First, I am requesting that you review and provide your review and edits which we will examine for inclusion. We would like your responses no later than 30 days from today or COB on Monday August 16th.

Second, as part of the requirements under the statute we are required to solicit input from the public. We have a survey we will be sending to select bipartisan members of Congress and to bipartisan external stakeholders. We would welcome any recommendations you may have on who these external parties should be and who we should send the survey to for a reply. If you have recommendations, please forward them to us no later than COB next Friday on July 23rd. We want to give this group 30 days to respond. Once we have all the final data, we will update and revise the draft plan. We will then submit the final revised plan to Commissioners by early October for a vote in December. We think we can follow this timeline and meet our requirement to create a strategic plan for the next five years.

Finally, Please contact me if you have any questions.

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Date : 7/28/2021 3:40:00 PM
From : "Irena Vidulovic" ividulovic@usccr.gov
To : "Juana Silverio" jsilverio@usccr.gov, "Alec Deull" adeull@usccr.gov, "Amy Royce" aroyce@usccr.gov
Cc : "Norma Cantu" ncantu@usccr.gov
Subject : Re: I assume you meant names re: EAC?
Attachment : image001.gif;image002.gif;

I was on a separate chain that Amy started I don't know how we ended up here but yeah, EAC was what I was discussing.

On the strategic plan, I think that Ang has the database of all the civil right groups and congressional offices that attended our various events including the 70th anniversary of USCCR. So we might what to use that list.

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Sent: Wednesday, July 28, 2021 3:37:13 PM
To: Irena Vidulovic; Alec Deull; Amy Royce
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Subject: I assume you meant names re: EAC?

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Date : 7/29/2021 10:58:52 AM
From : "Stephen Gilchrist" sgilchrist@usccr.gov
To : "John Mashburn" jmashburn@usccr.gov, "Kirsanow, Peter" pkirsanow@Beneschlaw.com, "Gail Heriot" gheriot@usccr.gov, "Christian Adams" a@electionlawcenter.com
Cc : "Carissa Mulder" CMulder@usccr.gov, "Thomas Simuel" tsimuel@usccr.gov, "Alexander Heideman" aheideman@usccr.gov
Subject : Re: Commissioner Appointments to the Election Assistance Commission
Attachment : image001.gif;image002.gif;

I am fine with Comm. Adams suggestion.

From: John Mashburn
Sent: Thursday, July 29, 2021 10:43:10 AM
To: Kirsanow, Peter; Stephen Gilchrist; Gail Heriot; Christian Adams
Cc: Carissa Mulder; Thomas Simuel; Alexander Heideman
Subject: FW: Commissioner Appointments to the Election Assistance Commission

Per the Caucus discussion a few months back about USCCR's two designees to the EAC's Bd. of Advisors, Cmnr Adams would like the Caucus to recommend Cleta Mitchell and himself as the two nominees from the Republican Commissioners -- per the new AI on the issue (*see below in Mauro's email*). Democrat Cmnrs would then need to choose between Cleta Mitchell and Cmnr Adams as one of USCCR's two designees to the EAC Bd. of Advisors.

Cmnr Adams wanted me to double check that this is still OK with the 3 of you before he submits his and Cleta's names to Staff Director Morales by COB tomorrow, Friday July 30.

Please email me back to confirm that each of you is OK with submitting Cleta's and Cmnr Adams' names for the EAC .

From: Mauro Morales <mmorales@usccr.gov>
Date: Wednesday, July 28, 2021 at 11:30 AM
To: Commissioners <Commissioners@usccr.gov>
Cc: David Ganz <dganz@usccr.gov>,
"CommissionerAssistants@usccr.gov" <CommissionerAssistants@usccr.gov>
Subject: Commissioner Appointments to the Election Assistance Commission

Dear Commissioners-

At the request and in consultation with the Chair, I am sending this email to start the EAC nomination process for Commissioners.

Per the AI voted on during the April 30th meeting (language included below), each caucus is requested to submit two candidates for consideration by COB Friday, July 30, 2021. Once the names are submitted, OGC will conduct an ethics check to be completed by Wednesday, August 4, 2021. Each caucus will then have 24 hours to submit caucus strikes (Thursday, August 5, 2021 COB). The Chair will communicate

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the two names to EAC no later than Friday, August 6, 2021.

Please let the Chair or I know if you have any questions or concerns.

--
AI language:

Section 1.
.01 Any authority specifically granted the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Commission as a whole by majority vote.

.02 Any authority specifically granted the Staff Director of the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Staff Director.

.03 Any authority specifically granted the Chair of the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Chair.

Section 2
.02
(1) For the two (2) appointments to the U.S. Election Assistance Commission, the members appointed by Democratic authorities shall nominate two individuals who are ready, willing, and able to serve, and the members appointed by the Republican authorities shall nominate two individuals who are ready, willing, and able to serve.

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(3) The members selected shall be placed in nomination and ratified in conformance with Section 1.

Mauro Morales
Staff Director
U.S. Commission on Civil Rights
P: 202-376-7796| F: 202-376-7672
Mmorales@usccr.gov
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Date : 7/29/2021 10:43:10 AM
From : "John Mashburn" jmashburn@usccr.gov
To : "Kirsanow, Peter" pkirsanow@Beneschlaw.com, "Stephen Gilchrist" sgilchrist@usccr.gov, "Gail Heriot" gheriot@usccr.gov, "Christian Adams" a@electionlawcenter.com
Cc : "Carissa Mulder" CMulder@usccr.gov, "Thomas Simuel" tsimuel@usccr.gov, "Alexander Heideman" aheideman@usccr.gov
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Cmnr Adams wanted me to double check that this is still OK with the 3 of you before he submits his and Cleta's names to Staff Director Morales by COB tomorrow, Friday July 30.

Please email me back to confirm that each of you is OK with submitting Cleta's and Cmnr Adams' names for the EAC .

From: Mauro Morales <mmorales@usccr.gov>
Date: Wednesday, July 28, 2021 at 11:30 AM
To: Commissioners <Commissioners@usccr.gov>
Cc: David Ganz <dganz@usccr.gov>,
"CommissionerAssistants@usccr.gov" <CommissionerAssistants@usccr.gov>
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Please let the Chair or I know if you have any questions or concerns.

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(3) The members selected shall be placed in nomination and ratified in conformance with Section 1.

Mauro Morales
Staff Director
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Date : 7/29/2021 11:09:10 AM
From : "Gail Heriot" gheriot@usccr.gov
To : "John Mashburn" jmashburn@usccr.gov
Cc : "Kirsanow, Peter" pkirsanow@beneschlaw.com, "Stephen Gilchrist" sgilchrist@usccr.gov, "Christian Adams" a@electionlawcenter.com, "Carissa Mulder" CMulder@usccr.gov, "Thomas Simuel" tsimuel@usccr.gov, "Alexander Heideman" aheideman@usccr.gov
Subject : Re: Commissioner Appointments to the Election Assistance Commission
Attachment : image001.gif;image002.gif;

Okay with me.

Gail Heriot
Professor of Law
University of San Diego

> On Jul 29, 2021, at 7:43 AM, John Mashburn <jmashburn@usccr.gov> wrote:
>
> Per the Caucus discussion a few months back about USCCR's two designees to the EAC's Bd. of Advisors, Cmnr Adams would like the Caucus to recommend Cleta Mitchell and himself as the two nominees from the Republican Commissioners -- per the new AI on the issue (*see below in Mauro's email*). Democrat Cmnrs would then need to choose between Cleta Mitchell and Cmnr Adams as one of USCCR's two designees to the EAC Bd. of Advisors.
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>
> Please email me back to confirm that each of you is OK with submitting Cleta's and Cmnr Adams' names for the EAC.
>
> ---
>
> **From:** Mauro Morales <mmorales@usccr.gov>
> **Date:** Wednesday, July 28, 2021 at 11:30 AM
> **To:** Commissioners <Commissioners@usccr.gov>
> **Cc:** David Ganz <dganz@usccr.gov>, "CommissionerAssistants@usccr.gov" <CommissionerAssistants@usccr.gov>
> **Subject:** Commissioner Appointments to the Election Assistance Commission
>
> Dear Commissioners-

AMERICAN OVERSIGHT

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AMERICAN OVERSIGHT

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(3) The members selected shall be placed in nomination and ratified in conformance with Section 1.

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Washington D.C. 20425

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Date : 7/29/2021 12:56:39 PM
From : "Irena Vidulovic" ividulovic@usccr.gov
To : "Amy Royce" aroyce@usccr.gov
Subject : EAC

Hey Amy,

Can you check with Dave what his title at EAC was and if there is a good place to find a description on what the role entails?

Thank you,
Irena

Irena Vidulovic
Special Assistant to Commissioner Debo P. Adegbile
U.S. Commission on Civil Rights
M: 202-591-9969
ividulovic@usccr.gov
http://usccr.gov/
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425

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Date : 7/29/2021 1:51:41 PM
From : "Debo P. Adegbile" dadegbile@usccr.gov
To : "David Kladney" dkladney@usccr.gov
Cc : "Irena Vidulovic" ividulovic@usccr.gov
Subject : EAC

Commissioner: How often does the advisory body that you sit on meet? Any other thoughts on time commitment?

Many Thanks,

Debo

Sent from my iPhone

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Date : 7/29/2021 2:08:33 PM
From : "Amy Royce" aroyce@usccr.gov
To : "Irena Vidulovic" ividulovic@usccr.gov
Subject : RE: EAC

These are the other entities that appoint to the Board, in case helpful

From the statute:
52 U.S. Code § 20944 - Membership of Board of Advisors
(a)In general
The Board of Advisors shall be composed of 37 members appointed as follows:
(1)Two members appointed by the National Governors Association.
(2)Two members appointed by the National Conference of State Legislatures.
(3)Two members appointed by the National Association of Secretaries of State.
(4)Two members appointed by the National Association of State Election Directors.
(5)Two members appointed by the National Association of Counties.
(6)Two members appointed by the National Association of County Recorders, Election Administrators, and Clerks.[1]
(7)Two members appointed by the United States Conference of Mayors.
(8)Two members appointed by the Election Center.
(9)Two members appointed by the International Association of County Recorders, Election Officials, and Treasurers.[2]
(10)Two members appointed by the United States Commission on Civil Rights.
(11)Two members appointed by the Architectural and Transportation Barrier [3] Compliance Board under section 792 of title 29.
(12)The chief of the Office of Public Integrity of the Department of Justice,[4] or the chief's designee.
(13)The chief of the Voting Section of the Civil Rights Division of the Department of Justice or the chief's designee.
(14)The director of the Federal Voting Assistance Program of the Department of Defense.
(15)Four members representing professionals in the field of science and technology, of whom—
(A)one each shall be appointed by the Speaker and the Minority Leader of the House of Representatives; and
(B)one each shall be appointed by the Majority Leader and the Minority Leader of the Senate.
(16)Eight members representing voter interests, of whom—
(A)four members shall be appointed by the Committee on House Administration of the House of Representatives, of whom two shall be appointed by the chair and two shall be appointed by the ranking minority member; and
(B)four members shall be appointed by the Committee on Rules and Administration of the Senate, of whom two shall be appointed by the chair and two shall be appointed by the ranking minority member.

(b)Manner of appointments

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Appointments shall be made to the Board of Advisors under subsection (a) in a manner which ensures that the Board of Advisors will be bipartisan in nature and will reflect the various geographic regions of the United States.

(c)Term of service; vacancy
Members of the Board of Advisors shall serve for a term of 2 years, and may be reappointed. Any vacancy in the Board of Advisors shall be filled in the manner in which the original appointment was made.

(d)Chair
The Board of Advisors shall elect a Chair from among its members.

From: Amy Royce
Sent: Thursday, July 29, 2021 2:07 PM
To: Irena Vidulovic <ividulovic@usccr.gov>
Subject: RE: EAC

Hey, he never got a role description. The terms are for 2 years, but continue after that unless the appointing agency sends someone else or rescinds the appointment. They meet quarterly. The appointees are referred to as members of the Board of Advisors to the Election Assistance Commission.

Website is here:
https://www.eac.gov/about_the_eac/board_of_advisors

From: Irena Vidulovic <ividulovic@usccr.gov>
Sent: Thursday, July 29, 2021 12:57 PM
To: Amy Royce <aroyce@usccr.gov>
Subject: EAC

Hey Amy,

Can you check with Dave what his title at EAC was and if there is a good place to find a description on what the role entails?

Thank you,

Irena

Irena Vidulovic
Special Assistant to Commissioner Debo P. Adegbile

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Washington D.C. 20425

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Date : 7/29/2021 2:06:34 PM
From : "Amy Royce" aroyce@usccr.gov
To : "Irena Vidulovic" ividulovic@usccr.gov
Subject : RE: EAC

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From: Irena Vidulovic <ividulovic@usccr.gov>
Sent: Thursday, July 29, 2021 12:57 PM
To: Amy Royce <aroyce@usccr.gov>
Subject: EAC

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Washington D.C. 20425

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Date : 7/29/2021 2:21:46 PM
From : "Dave" dkladney@usccr.gov
To : "Debo Adegbile" dadegbile@usccr.gov
Cc : "Irena Vidulovic" ividulovic@usccr.gov
Subject : Re: EAC

I, honestly, did not spend much time with meeting. There is only one held each year in person. They have been cancelled lately in response to covid. They conducted the last one via video. From time to time, the group will be asked to read recommendations to the EAC. Things like types of machines, security of the vote, and administrative recommendations.

As a whole, it is not much time.

dave
> On Jul 29, 2021, at 10:51 AM, Debo P. Adegbile <dadegbile@usccr.gov> wrote:
>
> Commissioner: How often does the advisory body that you sit on meet? Any other thoughts on time commitment?
>
> Many Thanks,
>
> Debo
>
> Sent from my iPhone

AMERICAN OVERSIGHT

Date : 1/14/2021 7:42:20 PM
From : "Alexander Heideman" aheideman@usccr.gov
To : "Gail Heriot" gheriot@me.com
Cc : "Gail Heriot" gheriot@usccr.gov
Subject : Re: [EXTERNAL] Re: Zoom
Attachment : Caucus Letter to EAC - 2_withsignatures.docx;

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From: Gail Heriot <gheriot@me.com>
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To: Alexander Heideman <aheideman@usccr.gov>
Cc: Gail Heriot <gheriot@usccr.gov>
Subject: [EXTERNAL] Re: Zoom

> CAUTION: This email is from outside USCCR.

e say that in the letter?

Gail Heriot
Professor of Law
University of San Diego

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AMERICAN OVERSIGHT

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Cc: Gail Heriot <gheriot@me.com>
Subject: Re: Zoom

Let's try 1:00 ET/10:00PT.

Gail Heriot
Professor of Law
University of San Diego

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> **From:** Gail Heriot <gheriot@usccr.gov>
> **Date:** Thursday, January 14, 2021 at 3:31 PM
> **To:** Alexander Heideman <aheideman@usccr.gov>, Gail Heriot <gheriot@me.com>

AMERICAN OVERSIGHT

Subject: Zoom

Are you up for a zoom tomorrow morning? In the meantime, if you have tiime, can you see if you can find out what sort of litigation Catherine worked on (as mentioned below)?

Gail

Gail Heriot
Professor of Law
University of San Diego

AMERICAN OVERSIGHT

UNITED STATES COMMISSION ON CIVIL RIGHTS

1331 PENNSYLVANIA AVENUE, NW, WASHINGTON, DC 20425 www.usccr.gov

December 2, 2020

Chair Benjamin Hovland
Vice Chair Donald Palmer
U.S. Election Assistance Commission
633 3rd Street NW, Suite 200
Washington, DC 20001

Dear Chairman Hovland and Vice Chairman Palmer:

We write as four members of the U.S. Commission on Civil Rights, and not on behalf of the Commission as a whole, regarding enforcement of the legal requirements in EAC's authorizing statutes for making appointments to the EAC's Board of Advisors.

As you know, the Help America Vote Act of 2002 (HAVA), 52 U.S.C. 2091 et seq., created the U.S. Election Assistance Commission (EAC) and established three Advisory Boards to provide advice, guidance and support to the EAC on the development of Voluntary Voting System Guidelines. In Section 214(a), the United States Commission for Civil Rights (USCCR) *as a whole* is authorized to appoint two members of the EAC's 37-member Board of Advisors (BOA). Section 214(b) requires that "appointments shall be made to the Board of Advisors under subsection (a) in a manner which ***ensures*** that the Board of Advisors will be bipartisan in nature and will reflect the various geographic regions of the United States." [*emphasis added*].

In reviewing the USCCR's current appointees to the BOA, we note that both appointees are members of the same party -- and thus are not bipartisan as required by Section 214(b) -- and that the appointments were evidently made by the Chair of the USCCR unilaterally without approval of the USCCR as a whole. In addition to the USCCR, there are 9 other national associations authorized *as a whole* to each appoint two members to the EAC's 37-member BOA and section 214(b) requires that those appointments also be done "in a manner which ensures that the Board of Advisors will be bipartisan in nature …"

A letter sent to the Chair of the USCCR from the EAC on February 22, 2019 (*attached*) advised the Chair that it was time for the USCCR to "reappoint" its "designated representatives" to the BOA under Section 214(a) and stated that if no new designees were appointed, then the existing representatives would continue to serve and be automatically reappointed. The letter then asked the Chair to send in a "Notice of Representation" form by March 15, 2019 – which was less than 3 weeks later and thus provided little time for the USCCR as a whole to approve any designees. No mention is made in the EAC's letter that the appointment power under Section 214 is provided to the USCCR as a whole, and that it is not a power delegated to the USCCR Chair alone. The EAC letter to the USCCR Chair also failed to mention that Section 214(b) requires appointments made to the Board of Advisors be done "in a manner which ***ensures*** that the Board of Advisors will be bipartisan in nature …"

AMERICAN OVERSIGHT

Put simply, there are significant doubts that this "appointment" was actually an appointment that followed our Commission's regular procedures for making an appointment.

In light of the unbalanced partisan way (both being of the same party) in which the current USCCR appointments were made to the BOA, we would like to know what steps, if any, the EAC takes to enforce the statutory requirements under Section 214 regarding its Board of Advisors as follows:

a) that each of the national entities allowed to appoint members to the BOA (including the USCCR) actually approves the appointment of their representatives to the BOA *as a whole* – and that the nominal head of each entity does not make the appointments unilaterally on their own authority; and

b) that the appointments from each national entity are made in a manner that "*ensures*" the BOA will be "bipartisan in nature."

Sincerely,

Gail Heriot
Commissioner

Stephen Gilchrist
Commissioner

Peter Kirsanow
Commissioner

J. Christian Adams
Commissioner

Cc: Benjamin Hovland
Chair
U.S. Election Assistance Commission

Donald Palmer
Vice Chair
U.S. Election Assistance Commission

AMERICAN OVERSIGHT

Date : 1/15/2021 11:10:25 AM
From : "Gail Heriot" gheriot@usccr.gov
To : "Alexander Heideman" aheideman@usccr.gov
Cc : "Gail Heriot" gheriot@me.com
Subject : Re: [EXTERNAL] Re: Zoom

Argh. Can we put off our zoom meeting? Are you able to do it tomorrow?

Gail Heriot
Professor of Law
University of San Diego

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AMERICAN OVERSIGHT

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Let's try 1:00 ET/10:00PT.

AMERICAN OVERSIGHT

Gail Heriot
Professor of Law
University of San Diego

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Professor of Law
University of San Diego

<Caucus Letter to EAC - 2_withsignatures.docx>

AMERICAN OVERSIGHT

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From : "Alexander Heideman" aheideman@usccr.gov
To : "Gail Heriot" gheriot@usccr.gov
Cc : "Gail Heriot" gheriot@me.com
Subject : Re: [EXTERNAL] Re: Zoom

Sure, no problem. I can do tomorrow before noon Eastern, but I know that's early for you. I can also do anytime today if there's a better time that works.

From: Gail Heriot <gheriot@usccr.gov>
Date: Friday, January 15, 2021 at 11:10 AM
To: Alexander Heideman <aheideman@usccr.gov>
Cc: Gail Heriot <gheriot@me.com>
Subject: Re: [EXTERNAL] Re: Zoom

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<Caucus Letter to EAC - 2_withsignatures.docx>

AMERICAN OVERSIGHT

Date : 1/15/2021 12:25:14 PM
From : "Gail Heriot" gheriot@usccr.gov
To : "Alexander Heideman" aheideman@usccr.gov
Cc : "Gail Heriot" gheriot@me.com
Subject : Re: [EXTERNAL] Re: Zoom

Early evening ET today might work. Stay tuned.

Gail Heriot
Professor of Law
University of San Diego

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> **Date:** Friday, January 15, 2021 at 11:10 AM
> **To:** Alexander Heideman <aheideman@usccr.gov>
> **Cc:** Gail Heriot <gheriot@me.com>
> **Subject:** Re: [EXTERNAL] Re: Zoom
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AMERICAN OVERSIGHT

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<Caucus Letter to EAC - 2_withsignatures.docx>

AMERICAN OVERSIGHT

Date : 1/28/2021 5:30:38 PM
From : "John Mashburn" jmashburn@usccr.gov
To : "Carissa Mulder" carissa.mulder@gmail.com, "Christian Adams" adams@electionlawcenter.com
Cc : "Gail Heriot" gheriot@me.com, "Kirsanow, Peter" pkirsanow@beneschlaw.com, "Alexander Heideman" aheideman@usccr.gov, "stephen gilchrist" thegilchristassociates@gmail.com, "Thomas Simuel" tsimuel@usccr.gov, "J. Christian Adams" jadams@usccr.gov, "Thomas Simuel" tjsimuel32@gmail.com, "Peter Kirsanow" pkirsanow@usccr.gov, "Gail Heriot" gheriot@usccr.gov, "Carissa Mulder" CMulder@usccr.gov, "Stephen Gilchrist" sgilchrist@usccr.gov
Subject : Re: [EXTERNAL] Re: Asks for when a new chair is appointed

And add an AI that all appointments that the USCCR is statutorily authorized make to advisory Boards, Cmtees, etc. for other agencies must be approved by a majority vote of the Cmnrs, and not just unilaterally appointed by the USCCR Chair.

(e.g. Election Assistance Cmn for which the Chair appointed 2 Dems from the USCCR to EAC's Board of Advisors when the law called for political balance in appointments to the EAC's Advisory Board.

From: Carissa Mulder <carissa.mulder@gmail.com>
Date: Thursday, January 28, 2021 at 4:09 PM
To: Christian Adams <adams@electionlawcenter.com>
Cc: Gail Heriot <gheriot@me.com>, "Kirsanow, Peter" <pkirsanow@beneschlaw.com>, Alexander Heideman <aheideman@usccr.gov>, stephen gilchrist <thegilchristassociates@gmail.com>, Thomas Simuel <tsimuel@usccr.gov>, "J. Christian Adams" <jadams@usccr.gov>, Thomas Simuel <tjsimuel32@gmail.com>, Peter Kirsanow <pkirsanow@usccr.gov>, Gail Heriot <gheriot@usccr.gov>, Carissa Mulder <CMulder@usccr.gov>, Stephen Gilchrist <sgilchrist@usccr.gov>, John Mashburn <jmashburn@usccr.gov>
Subject: [EXTERNAL] Re: Asks for when a new chair is appointed

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r possible conditions:

- All interviews conducted as part of Commission projects must be attended by two Commissioners (or their designees), representing both political parties.
- AI stipulating that the Staff Director has no authority over special assistants .
- AI stipulating that the Staff Director has no authority to call a meeting, and must publish the Sunshine Act notice if four commissioners direct him to do so.

On Thu, Jan 28, 2021 at 3:57 PM Christian Adams <adams@electionlawcenter.com> wrote:

> Agree in the extreme: Responsibility for choosing SAC members is shifted entirely to the Commissioners and away from career staff.

AMERICAN OVERSIGHT

From: Carissa Mulder <carissa.mulder@gmail.com>
Sent: Thursday, January 28, 2021 3:55 PM
To: Gail Heriot <gheriot@me.com>; Kirsanow, Peter <pkirsanow@beneschlaw.com>; Alexander Heideman <aheideman@usccr.gov>; Christian Adams >; Thomas Simuel <tsimuel@usccr.gov>; J. Christian Adams <jadams@usccr.gov>; Thomas Simuel <tjsimuel32@gmail.com>
Cc: Peter Kirsanow <pkirsanow@usccr.gov>; Gail Heriot <gheriot@usccr.gov>; Carissa Mulder <cmulder@usccr.gov>; Stephen Gilchrist <sgilchrist@usccr.gov>; John Mashburn <jmashburn@usccr.gov>
Subject: Asks for when a new chair is appointed

Mauro's intransigence and the Dems' continued blocking of Scott Yenor and Patrick Mincey have me thinking about what Gail called "big asks" for whenever a new chair is appointed. I was also thinking about something Thomas said about the need to keep commissioners from blocking SAC appointees. A few ideas:

- A new AI that specifies that Commissioners appointed by Ds get to pick 7 SAC members for each SAC, and Commissioners appointed by Rs get to pick 7 SAC members for each SAC. The choices are not subject to review by the Staff Director or objection from the other caucus. Responsibility for choosing SAC members is shifted entirely to the Commissioners and away from career staff.

- Fire Mauro - no agreement on new staff director.

--
Carissa B. Mulder

--
Carissa B. Mulder

AMERICAN OVERSIGHT

Date : 2/22/2021 12:08:24 PM
From : "Alec Deull" adeull@usccr.gov
To : "Michael Yaki" MYaki@usccr.gov
Subject : Fw: Election Assistance Commission / Board of Advisors

hello Michael --

Do you know when your term expires? Was the election as Chair of the Board of Advisors at the start of a new term?

thanks -- Alec

From: Michael Yaki
Sent: Thursday, September 3, 2020 1:02 PM
To: Alec Deull
Subject: Fw: Election Assistance Commission / Board of Advisors

---

From: Michael Yaki
Sent: Thursday, September 3, 2020 1:02 PM
To: Catherine Lhamon; David Kladney; Debo P. Adegbile
Subject: Election Assistance Commission / Board of Advisors

Colleagues -

In a contested race against the Secretary of State of Vermont, I was elected to a second (and consecutive) term as Chair of the Board of Advisors for the EAC. The final total was 21-12.

Thanks to Dave Kladney for his support!

Have a great Labor Day Weekend

Michael

AMERICAN OVERSIGHT

Date : 2/23/2021 7:54:58 PM
From : "John Mashburn" jmashburn@usccr.gov
To : "stephen gilchrist" thegilchristassociates@gmail.com, "Gail Heriot" gheriot@usccr.gov
Cc : "Carissa Mulder" carissa.mulder@gmail.com, "Christian Adams" adams@electionlawcenter.com, "Alexander Heideman" aheideman@usccr.gov, "Carissa Mulder" CMulder@usccr.gov, "Gail Heriot" gheriot@me.com, "Kirsanow, Peter" pkirsanow@beneschlaw.com, "Peter Kirsanow" pkirsanow@usccr.gov, "Stephen Gilchrist" sgilchrist@usccr.gov, "Thomas Simuel" tsimuel@usccr.gov
Subject : Commissioner Appointment/Removal

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AMERICAN OVERSIGHT

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To: Gail Heriot <gheriot@usccr.gov>
Cc: Carissa Mulder <carissa.mulder@gmail.com>, Christian Adams <adams@electionlawcenter.com>, Alexander Heideman <aheideman@usccr.gov>, Carissa Mulder <CMulder@usccr.gov>, Gail Heriot <gheriot@me.com>, John Mashburn <jmashburn@usccr.gov>, "Kirsanow, Peter" <pkirsanow@beneschlaw.com>, Peter Kirsanow <pkirsanow@usccr.gov>, Stephen Gilchrist <sgilchrist@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>
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AMERICAN OVERSIGHT

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AMERICAN OVERSIGHT

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To: Gail Heriot <gheriot@me.com>
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Subject : Re: [EXTERNAL] Re: Commissioner Appointment/Removal

That's the statute that was passed in the 1980s as a result of the kerfuffle that was created when Reagan removed members. That law replaced the 1957 Act's provisions on the USCCR. I think that legally Reagan was clearly in the right when he acted. Members served at his pleasure, and as he put it, "She [Mary Frances Berry] wasn't giving me pleasure." Under the law that applies now, he would have been clearly in the wrong. That's why Congress changed it.

As for what applies to our situation, for Biden to be able to remove a Commissioner for not attending a meeting called by the Staff Director, I would think it would have to be true that the Staff Director has the authority to call a meeting. I don't see where that authority would come from.

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> > > I just talked to Cantu for an hour. Key takeaways
> > >
> > > 1. I told her she HAD to get up with Pete regarding details.
> > > 2. I gave her a heads up that there was a chance she would NOT have a quorum on Friday pending resolution of big issues. She should not be

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blindsided in my view. I put down the threat of a withheld quorum in order to remind her it was possible and that we needed to resolve things.

3. She said something that indicated to me that Yaki and Debo or someone else (Mauro?) are agitating to have Stephen and I removed by the President. I cannot recall her exact words, but it was along the lines "I tell people that the people we got are the people we got. President Reagan tried to remove commissioners and he got sued and lost for removing them." She would NOT HAVE BROUGHT THIS up unless that chatter is occurring somewhere. And after all, ask Roger Severino if the Biden people are thinking like this. Bottom Line: some members of the Commission may be thinking they can improve their bargaining position by altering the composition of the commission and getting rid of two of us. Whether or not they are correct is irrelevant to Yaki or Debo's potential perception of this option.
4. I repeatedly told her - "You need to get with Pete on that; he knows more about that than me." Among the topics falling under this category were EAC appointments, SAC issues, and all manner of administrative issues.
5. I made it plain to her we could stop the business of the commission if we were not treated fairly, and fairness is all we want.

From: stephen gilchrist <thegilchristassociates@gmail.com>
Sent: Tuesday, February 23, 2021 4:06 PM
To: Carissa Mulder <carissa.mulder@gmail.com>
Cc: Kirsanow, Peter <pkirsanow@beneschlaw.com>; Gail Heriot) <adams@electionlawcenter.com>; Alexander Heideman >; Thomas Simuel <tsimuel@usccr.gov>; Peter Kirsanow <pkirsanow@usccr.gov>; Stephen Gilchrist <sgilchrist@usccr.gov>;

AMERICAN OVERSIGHT

Gail Heriot <gheriot@usccr.gov>; Carissa Mulder <cmulder@usccr.gov>
Subject: Re: Caucus Meeting tomorrow?

Carissa - I can do 1pm.

On Tue, Feb 23, 2021, 3:45 PM Carissa Mulder <carissa.mulder@gmail.com> wrote:

> Pete would like to have a caucus meeting tomorrow to discuss how to proceed from here. Are people free at 1:00?
> --
> Carissa B. Mulder

--
Carissa B. Mulder

AMERICAN OVERSIGHT

Date : 8/12/2021 11:25:50 AM
From : "Irena Vidulovic" ividulovic@usccr.gov
To : "Juana Silverio" jsilverio@usccr.gov, "Alec Deull" adeull@usccr.gov
Subject : Next Week/August Business Meeting

Good Morning Juana and Alec,

Since I will be on travel next week I just wanted to make sure that I had all our ducks in order and make sure that I am not missing anything in preparation for Debo and Dave.

August Business Meeting Agenda (the Sunshine notice has posted)

A. Presentations from Advisory Committees to the Commission on Recent 2 Reports/Memo Releases
B. Discussion and Vote on Iowa Advisory Committee Chair Appointment
C. Discussion and Vote on Advisory Committee Appointments (Florida). Juana, David should circulate and then if we could have your legal intern do the vet memo that would be great.
D. Discussion and Vote on the Release of The Civil Rights Implications of Cash Bail: Briefing Report Before the U.S. Commission on Civil Rights. I have circulated the final version to the SA's and will circulate to Commissioners, Mauro + OGC today.
E. Management and Operations

**It looks like the only item that is missing is the EAC nominations. So someone would need to amend the agenda to add that item and have a vote on Commissioner Yaki and Cleta Mitchell for EAC.

Please let me know if I am missing anything or that there is something we should discuss.

Irena

Irena Vidulovic
Special Assistant to Commissioner Debo P. Adegbile
U.S. Commission on Civil Rights
M: 202-591-9969
ividulovic@usccr.gov
http://usccr.gov/
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Washington D.C. 20425

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Date : 8/12/2021 11:54:44 AM
From : "Irena Vidulovic" ividulovic@usccr.gov
To : "Debo P. Adegbile" dadegbile@usccr.gov, "Adegbile, Debo" Debo.Adegbile@wilmerhale.com
Cc : "Zervoudis, Flor" Flor.Zervoudis@wilmerhale.com
Subject : UPDATED TO DO LIST- AUGUST BUSINESS MEETING NEXT WEEK
Attachment : 08-20-USCCR-Business-Meeting-Sunshine-Act-Notice.pdf;

Adegbile,

I just wanted to give you an updated TO DO LIST since I will be out on vacation next week. As you know the most important item on this entire list is the Financial Disclosure Form. As you know you don't have any more extensions.

1. Financial Disclosure Form (this week)!
2. USCCR Hours (today) 8/1-14
   8/2 1hour Weekly Priority Call with SA
   8/3 1.5 hours Review USCCR Documents
   8/5 .5 Call with SA regarding FEMA briefing
   8/6 3 hours review USCCR documents
   8/9 1.5 hours Weekly Priority call with SA
   8/10 2 hours review financial disclosure form
   8/11 1.5 hours review Fines and Fees Quote
   8/12 1 hour call with SA regarding August Business Meeting

3. August Business Meeting Agenda (the Sunshine notice has posted and attached)
   A. Presentations from Advisory Committees to the Commission on Recent 2 Reports/Memo Releases
   B. Discussion and Vote on Iowa Advisory Committee Chair Appointment
   C. Discussion and Vote on Advisory Committee Appointments (Florida). Juana, David should circulate and then if we could have your legal intern do the vet memo that would be great.
   D. Discussion and Vote on the Release of The Civil Rights Implications of Cash Bail: Briefing Report Before the U.S. Commission on Civil Rights. I have circulated the final version to the SA's and will circulate to Commissioners, Mauro + OGC today.
4. E. Management and Operations
   **It looks like the only item that is missing is the EAC nominations. So someone would need to amend the agenda to add that item and have a vote on Commissioner Yaki and Cleta Mitchell for EAC.
5. Written Documents from Senator Warren's Office

Please let me know if you have any questions,

Irena

AMERICAN OVERSIGHT

Irena Vidulovic
Special Assistant to Commissioner Debo P. Adegbile
U.S. Commission on Civil Rights
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ividulovic@usccr.gov
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COMMISSION ON CIVIL RIGHTS

Sunshine Act Meetings

AGENCY: United States Commission on Civil Rights.

ACTION: Notice of Commission public business meeting.

DATES: Friday, August 20, 2021, 12:00 pm EST.

ADDRESSES: Meeting to take place by telephone and is open to the public by telephone: 1-800-635-7637, Conference ID #: 8000136.

FOR FURTHER INFORMATION CONTACT: Angelia Rorison: 202-376-7700; publicaffairs@usccr.gov.

SUPPLEMENTARY INFORMATION:

In accordance with the Government in Sunshine Act (5 U.S.C. 552b), the Commission on Civil Rights is holding a meeting to discuss the Commission's business for the month of August. This meeting is open to the public. Computer assisted real-time transcription (CART) will be provided. The web link to access CART (in English) on Friday, August 20, 2021, is https://www.streamtext.net/player?event=USCCR. Please note that CART is text-only translation that occurs in real time during the meeting and is not an exact transcript.

Meeting Agenda

I. Approval of Agenda

II. Business Meeting

A. Presentations from Advisory Committees to the Commission on Recent

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Reports/Memo Releases

B. Discussion and Vote on Iowa Advisory Committee Chair Appointment

C. Discussion and Vote on Advisory Committee Appointments

D. Discussion and Vote on the Release of The Civil Rights Implications of Cash Bail: Briefing Report Before the U.S. Commission on Civil Rights

E. Management and Operations

- Staff Director's Report

III. Adjourn Meeting

Dated: August 11, 2021

AMERICAN OVERSIGHT

Date : 8/12/2021 12:26:41 PM
From : "Juana Silverio" jsilverio@usccr.gov
To : "Juana Silverio" jsilverio@usccr.gov
Subject : (12P PST/2P CST) DEM Caucus Meeting re: Aug. 20th Business Mtg.

Agenda

1. Aug 20th meeting
    a. Bail Reform report vote; findings?
2. EAC notational vote
3. SAC territories acknowledgement by Commissioners (notational vote)

Please add agenda items I may have missed

Sunshine notice - https://www.usccr.gov/files/2021/08-20-USCCR-Business-Meeting-Sunshine-Act-Notice.pdf

AMERICAN OVERSIGHT

Date : 2/23/2021 8:44:21 PM
From : "John Mashburn" jmashburn@usccr.gov
To : "Gail Heriot" gheriot@me.com
Cc : "stephen gilchrist" thegilchristassociates@gmail.com, "Gail Heriot" gheriot@usccr.gov, "Carissa Mulder" carissa.mulder@gmail.com, "Christian Adams" adams@electionlawcenter.com, "Alexander Heideman" aheideman@usccr.gov, "Carissa Mulder" CMulder@usccr.gov, "Kirsanow, Peter" pkirsanow@beneschlaw.com, "Peter Kirsanow" pkirsanow@usccr.gov, "Stephen Gilchrist" sgilchrist@usccr.gov, "Thomas Simuel" tsimuel@usccr.gov
Subject : Re: [EXTERNAL] Re: Commissioner Appointment/Removal

The articles I read and the one I sent the link to all said that the statute — prior to the compromise Reagan signed reauthorizing the USCCR in 1984 - said that commissioners "served at the pleasure of the President." The new statute signed by Reagan changed that to the Statutory text I sent previously.

From: Gail Heriot <gheriot@me.com>
Sent: Tuesday, February 23, 2021 8:38:41 PM
To: John Mashburn
Cc: stephen gilchrist; Gail Heriot; Carissa Mulder; Christian Adams; Alexander Heideman; Carissa Mulder; Kirsanow, Peter; Peter Kirsanow; Stephen Gilchrist; Thomas Simuel
Subject: [EXTERNAL] Re: Commissioner Appointment/Removal

CAUTION: This email is from outside USCCR.

To the best of my recollection, the original 1957 Act did not say anything about how a Commissioner could be removed. If that's not so, could someone point me to the section of the 1957 Act that says that? Alex?

Gail Heriot
Professor of Law
University of San Diego

> On Feb 23, 2021, at 4:55 PM, John Mashburn <jmashburn@usccr.gov> wrote:
>
> Quick wiki excerpt:
>
> > In 1983, Reagan attempted to fire three members of the commission. They sued the administration in federal court to stay on. The authorizing legislation stated that a president could only fire a commissioner for "misbehavior in office," and it was clear that the terminations were the result of disagreements over policy. A compromise brokered in the Senate resulted in the current hybrid group of eight, half appointed by the president and half by the Congress, **with six-year terms that do not expire with the inauguration of a new president**. Since that time the commission has struggled to remain independent, and its agenda

AMERICAN OVERSIGHT

has oscillated between liberal and conservative aims as factions among its members have ebbed and waned.[10]

USCCR Authorizing Statute excerpt:

"Sec. 2. <42 USC 1975> ESTABLISHMENT OF COMMISSION.

"(a) Generally.--There is established the United States**Commission on Civil Rights** (hereinafter in this Act referred to as the 'Commission').

"(b) Membership.--The Commission shall be composed of 8 members. Not more than 4 of the members shall at any one time be of the same political party. The initial membership of the Commission shall be the members of the United States **Commission on Civil Rights** on September 30, 1994. Thereafter vacancies in the membership of the Commission shall continue to be appointed as follows:

"(1) **4 members of the Commission shall be appointed by the President.**

"(2) 2 members of the Commission shall be appointed by the President pro tempore of the Senate, upon the recommendations of the majority leader and the minority leader, and of the members appointed not more than one shall be appointed from the same political party.

"(3) 2 members of the Commission shall be appointed by the Speaker of the House of Representatives upon the recommendations of the majority leader and the minority leader, and of the members appointed not more than one shall be appointed from the same political party.

"(c) Terms.--**The term of office of each member of the Commission shall be 6 years**. The term of each member of the Commission **[**4339]** in the initial membership of the Commission shall expire on the date such term would have expired as of September 30, 1994. "(d) Chairperson.—

(1) Except as provided in paragraphs (2) and (3), the individuals serving as Chairperson and Vice Chairperson of the United States **Commission on Civil Rights** on September 30, 1994 shall initially fill those roles on the Commission. "

(2) Thereafter the President may, with the concurrence of a majority of the Commission's members, designate a Chairperson or Vice Chairperson, as the case may be, from among the Commission's members. "

(3) The President shall, with the concurrence of a majority of the Commission's members, fill a vacancy by designating a Chairperson or Vice Chairperson, as the case may be, from among the Commission's members. "

(4) The Vice Chairperson shall act in place of the Chairperson in the absence of the Chairperson. "

(e) **Removal of Members.--The President may remove a member of the Commission only for neglect of duty or malfeasance in office.** "

(f) Quorum.--5 members of the Commission constitute a quorum of the Commission.

From: stephen gilchrist <thegilchristassociates@gmail.com>
Date: Tuesday, February 23, 2021 at 7:11 PM
To: Gail Heriot <gheriot@usccr.gov>
Cc: Carissa Mulder <carissa.mulder@gmail.com>, Christian Adams <adams@electionlawcenter.com>, Alexander Heideman <aheideman@usccr.gov>, Carissa Mulder <CMulder@usccr.gov>, Gail Heriot <gheriot@me.com>, John Mashburn <jmashburn@usccr.gov>, "Kirsanow, Peter" <pkirsanow@beneschlaw.com>, Peter Kirsanow <pkirsanow@usccr.gov>, Stephen Gilchrist <sgilchrist@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>
Subject: Re: [EXTERNAL] Re: Caucus Meeting tomorrow?

CAUTION: This email is from outside USCCR.

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On Tue, Feb 23, 2021, 7:09 PM Gail Heriot <gheriot@usccr.gov> wrote:

> Sounds like our colleagues are crazy. But I take it she didn't say straight out that Yaki (or someone) is trying to have you and Stephen removed?
>
> Gail Heriot
> Professor of Law
> University of San Diego
>
> > On Feb 23, 2021, at 3:53 PM, Carissa Mulder <carissa.mulder@gmail.com> wrote:
> >
> > CAUTION: This email is from outside USCCR.
> >
> > o get you removed.
> >
> > On Tue, Feb 23, 2021 at 6:39 PM Christian Adams <adams@electionlawcenter.com> wrote:
> >
> > > I just talked to Cantu for an hour. Key takeaways
> > >
> > > 1. I told her she HAD to get up with Pete regarding details.
> > > 2. I gave her a heads up that there was a chance she would NOT have a quorum on Friday pending resolution of big issues. She should not be blindsided in my view. I put down the threat of a withheld quorum in order to remind her it was possible and that we needed to resolve things.
> > > 3. She said something that indicated to me that Yaki and Debo or someone else (Mauro?) are agitating to have Stephen and I removed by the President. I cannot recall her exact words, but it was along the lines "I tell people that the people we got are the people we got. President Reagan tried to remove commissioners and he got sued and lost for removing them." She would NOT HAVE BROUGHT THIS up unless that chatter is occurring somewhere. And after all, ask Roger Severino if the Biden people are thinking like this. Bottom Line: some members of the Commission may be thinking they can improve their bargaining position by altering the composition of the commission and getting rid of two of us. Whether or not they are correct is irrelevant to Yaki or Debo's potential

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perception of this option.

4. I repeatedly told her - "You need to get with Pete on that; he knows more about that than me." Among the topics falling under this category were EAC appointments, SAC issues, and all manner of administrative issues.
5. I made it plain to her we could stop the business of the commission if we were not treated fairly, and fairness is all we want.

From: stephen gilchrist <thegilchristassociates@gmail.com>
Sent: Tuesday, February 23, 2021 4:06 PM
To: Carissa Mulder <carissa.mulder@gmail.com>
Cc: Kirsanow, Peter <pkirsanow@beneschlaw.com>; Gail Heriot <gheriot@me.com>; Christian Adams >; Alexander Heideman <aheideman@usccr.gov>; John Mashburn <jmashburn@usccr.gov>; Thomas Simuel <tsimuel@usccr.gov>; Peter Kirsanow <pkirsanow@usccr.gov>; Stephen Gilchrist <sgilchrist@usccr.gov>; Gail Heriot <gheriot@usccr.gov>; Carissa Mulder <cmulder@usccr.gov>
Subject: Re: Caucus Meeting tomorrow?

Carissa - I can do 1pm.

On Tue, Feb 23, 2021, 3:45 PM Carissa Mulder <carissa.mulder@gmail.com> wrote:

> Pete would like to have a caucus meeting tomorrow to discuss how to proceed from here. Are people free at 1:00?
> --
> Carissa B. Mulder

--
Carissa B. Mulder

AMERICAN OVERSIGHT

Date : 8/12/2021 12:26:40 PM
From : "Juana Silverio" jsilverio@usccr.gov
To : "Norma Cantu" ncantu@usccr.gov, "Debo P. Adegbile" dadegbile@usccr.gov, "David Kladney" dkladney@usccr.gov, "Michael Yaki" MYaki@usccr.gov, "Alec Deull" adeull@usccr.gov, "Irena Vidulovic" ividulovic@usccr.gov
Cc : "Adegbile, Debo" Debo.Adegbile@wilmerhale.com, "michael@michaelyaki.com" michael@michaelyaki.com
Subject : (12P PST/2P CST) DEM Caucus Meeting re: Aug. 20th Business Mtg.

Agenda

1. Aug 20th meeting
    a. Bail Reform report vote; findings?
2. EAC notational vote
3. SAC territories acknowledgement by Commissioners (notational vote)

Please add agenda items I may have missed

Sunshine notice - https://www.usccr.gov/files/2021/08-20-USCCR-Business-Meeting-Sunshine-Act-Notice.pdf

AMERICAN OVERSIGHT

Date : 8/13/2021 1:38:19 PM
From : "Alexander Heideman" aheideman@usccr.gov
To : "Gail Heriot" gheriot@me.com, "Gail Heriot" gheriot@usccr.gov
Subject : Call with Thomas

I spoke with Thomas re: the proposed notational vote.

Comm. Gilchrist connected with Comm. Adams. Gilchrist wants to force a public vote on the EAC selection because he thinks it's shameful that they didn't pick their USCCR colleague and he wants it on the public record.

I gently mentioned your concern about setting a precedent for notational votes, but I think Gilchrist is set on this.

AMERICAN OVERSIGHT

Date : 8/13/2021 1:40:34 PM
From : "Gail Heriot" gheriot@usccr.gov
To : "Alexander Heideman" aheideman@usccr.gov
Cc : "Gail Heriot" gheriot@me.com
Subject : Re: Call with Thomas

Okay. I think that's all we can do.

Gail Heriot
Professor of Law
University of San Diego

> On Aug 13, 2021, at 10:38 AM, Alexander Heideman <aheideman@usccr.gov> wrote:
>
> I spoke with Thomas re: the proposed notational vote.
>
> Comm. Gilchrist connected with Comm. Adams. Gilchrist wants to force a public vote on the EAC selection because he thinks it's shameful that they didn't pick their USCCR colleague and he wants it on the public record.
>
> I gently mentioned your concern about setting a precedent for notational votes, but I think Gilchrist is set on this.

AMERICAN OVERSIGHT

Date : 8/14/2021 2:03:55 PM
From : "Debo P. Adegbile" dadegbile@usccr.gov
To : "Michael Yaki" commissioner.yaki@gmail.com
Subject : Re: [EXTERNAL] Re: EAC

I hope everything is ok Michael.

Best,

Debo

Sent from my iPhone

> On Aug 13, 2021, at 9:58 AM, Michael Yaki <commissioner.yaki@gmail.com> wrote:
>
> CAUTION: This email is from outside USCCR.
>
> I'm reconsidering. Stuff has come up in my life that may require me to ditch some extracurriculars so we may have to go back and present your two. I'm discussing it with folks now.
>
> On Thu, Aug 12, 2021 at 9:33 AM Debo P. Adegbile <dadegbile@usccr.gov> wrote:
>
> > Congrats Michael.
> >
> > Debo
> >
> > Sent from my iPhone
>
> --
> MICHAEL YAKI, Commissioner
> U.S. Commission on Civil Rights
> 415-601-4008

AMERICAN OVERSIGHT

Date : 8/16/2021 9:40:01 AM
From : "Juana Silverio" jsilverio@usccr.gov
To : "Alec Deull" adeull@usccr.gov
Cc : "Irena Vidulovic" ividulovic@usccr.gov
Subject : Re: CAUCUS SA Weekly Mtg.

Good morning! No mtg this morning.

Will check in with Mauro today on
- Start of Kladney's SA (any progress)
- notational vote re: ratification for the EAC nominees
- any heads up on Fema site visits (I believe staff was traveling there this week)
- still need the fl sac (will have Nana do the vet memo)

With the Chair
- discussing the joint statutory enforcement report topic (sba/ppp/min. entrepreneurship)
- any update to the caucus mtg tomorrow (Alec let me know if you have other thoughts)

--
Juana Silverio (she/her/ella)
Special Assistant to Commissioner Norma V. Cantú
U.S. Commission on Civil Rights
E: jsilverio@usccr.gov
http://usccr.gov/
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425
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From: Juana Silverio
Sent: Monday, August 16, 2021 9:34:08 AM
To: Irena Vidulovic; Alec Deull
Subject: CAUCUS SA Weekly Mtg.
When: Occurs every Monday from 11:00 AM to 12:00 PM effective 6/7/2021.
Where: https://us02web.zoom.us/j/86329603179?pwd=dk84MjMrK2J5N1lTQjM4dTN1eXhrQT09

Juana Silverio is inviting you to a scheduled Zoom meeting.

Join Zoom Meeting
https://us02web.zoom.us/j/86329603179?pwd=dk84MjMrK2J5N1lTQjM4dTN1eXhrQT09

Meeting ID: 863 2960 3179
Passcode: 336611
One tap mobile
+13017158592,,86329603179# US (Washington DC)
+13126266799,,86329603179# US (Chicago)

Dial by your location

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+1 301 715 8592 US (Washington DC)
+1 312 626 6799 US (Chicago)
+1 646 558 8656 US (New York)
+1 253 215 8782 US (Tacoma)
+1 346 248 7799 US (Houston)
+1 669 900 6833 US (San Jose)
833 548 0282 US Toll-free
855 880 1246 US Toll-free
877 369 0926 US Toll-free
833 548 0276 US Toll-free
Meeting ID: 863 2960 3179
Find your local number: https://us02web.zoom.us/u/kbwrOhRHzo

Join by SIP
86329603179@zoomcrc.com<mailto:86329603179@zoomcrc.com>

Join by H.323
162.255.37.11 (US West)
162.255.36.11 (US East)
115.114.131.7 (India Mumbai)
115.114.115.7 (India Hyderabad)
213.19.144.110 (Amsterdam Netherlands)
213.244.140.110 (Germany)
103.122.166.55 (Australia Sydney)
103.122.167.55 (Australia Melbourne)
149.137.40.110 (Singapore)
64.211.144.160 (Brazil)
69.174.57.160 (Canada Toronto)
65.39.152.160 (Canada Vancouver)
207.226.132.110 (Japan Tokyo)
149.137.24.110 (Japan Osaka)
Meeting ID: 863 2960 3179
Passcode: 336611

AMERICAN OVERSIGHT

Date : 8/16/2021 1:52:44 PM
From : "Thomas Simuel" tsimuel@usccr.gov
To : "Mauro Morales" mmorales@usccr.gov
Subject : RE: Material for August 20th Commission Business Meeting
Attachment : image001.gif;image002.gif;

Hey Mauro,

I didn't see the EAC vote be added to the agenda.

Thanks,

Thomas

-------- Original message --------
From: Mauro Morales <mmorales@usccr.gov>
Date: 8/16/21 1:33 PM (GMT-05:00)
To: Commissioners <Commissioners@usccr.gov>
Cc: CommissionerAssistants <CommissionerAssistants@usccr.gov>, ExecutiveStaff <ExecutiveStaff@usccr.gov>
Subject: Material for August 20th Commission Business Meeting

Commissioners,

Good afternoon. I have placed material in the Commissioner and SA's folder for the 12:00 pm ET August 20th business meeting. (Pam will send you your telephone call in numbers in a separate email.) I apologize for not sending this material sooner but I was on vacation and returned late yesterday.

To access the material please follow a simple two-step process:
First, you must click on this link. https://securisync.intermedia.net/us2/s/login?public_share=_XZOHVK92GU1VDGU925IM8

Second, you must insert the following password when required: Lieko#450

Look for the 2021 subfolder designated 8.20.21 Business Meeting Material. Commissioners may add or remove items currently on the agenda by majority vote. At present, the folder contains the posted agenda for the business meeting, the Florida SAC package, the reports of the Utah and Maine SAC's and the redline and clean version of the Bail Reform reports for your review and consideration.

I will add the Staff Director report once it is finalized. Please contact me if you have any questions. Thank you.

Mauro Morales
Staff Director

AMERICAN OVERSIGHT

U.S. Commission on Civil Rights
P: 202-376-7796| F: 202-376-7672
Mmorales@usccr.gov
http://usccr.gov/
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425

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OVERSIGHT

OVERSTOCK

Date : 8/16/2021 2:13:50 PM
From : "Mauro Morales" mmorales@usccr.gov
To : "Thomas Simuel" tsimuel@usccr.gov
Cc : "Juana Silverio" jsilverio@usccr.gov
Subject : RE: Material for August 20th Commission Business Meeting
Attachment : image001.gif;image002.gif;

You are correct. It was not added when it was published last Thursday because I received no coordinated instructions from Commissioners on how they wanted to proceed. I still have not received final instructions on what all of you would like done. One of you will have to amend the agenda to add it. I recommend that you coordinate with the Chair to clarify that a discussion and vote on EAC is being requested to be added to the agenda. I have added Juana for her awareness.

From: Thomas Simuel <tsimuel@usccr.gov>
Sent: Monday, August 16, 2021 1:53 PM
To: Mauro Morales <mmorales@usccr.gov>
Subject: RE: Material for August 20th Commission Business Meeting

Hey Mauro,

I didn't see the EAC vote be added to the agenda.

Thanks,

Thomas

-------- Original message --------
From: Mauro Morales <mmorales@usccr.gov>
Date: 8/16/21 1:33 PM (GMT-05:00)
To: Commissioners <Commissioners@usccr.gov>
>
Subject: Material for August 20th Commission Business Meeting

Commissioners,

Good afternoon. I have placed material in the Commissioner and SA's folder for the 12:00 pm ET August 20th business meeting. (Pam will send you your telephone call in numbers in a separate email.) I apologize for not sending this material sooner but I was on vacation and returned late yesterday.

To access the material please follow a simple two-step process:
First, you must click on this link. https://securisync.intermedia.net/us2/s/login?public_share=_XZOHVK92GU1VDGU925IM8

Second, you must insert the following password when required: Lieko#450

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I will add the Staff Director report once it is finalized. Please contact me if you have any questions. Thank you.

Mauro Morales
Staff Director
U.S. Commission on Civil Rights
P: 202-376-7796| F: 202-376-7672
Mmorales@usccr.gov
http://usccr.gov/
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425

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Date : 8/16/2021 2:20:54 PM
From : "Thomas Simuel" tsimuel@usccr.gov
To : "Mauro Morales" mmorales@usccr.gov
Cc : "stephen gilchrist" thegilchristassociates@gmail.com
Subject : FW: EAC Final Selections

Hey Mauro,

You might've missed this email.

Thomas

-------- Original message --------
From: Thomas Simuel <tsimuel@usccr.gov>
Date: 8/10/21 4:52 PM (GMT-05:00)
To: Mauro Morales <mmorales@usccr.gov>
Cc: Stephen Gilchrist <sgilchrist@usccr.gov>, stephen gilchrist <thegilchristassociates@gmail.com>
Subject: RE: EAC Final Selections

Hey Mauro,

Commissioner Gilchrist prefer to have the EAC vote at the business meeting.

Thanks,

Thomas

-------- Original message --------
From: Mauro Morales <mmorales@usccr.gov>
Date: 8/10/21 2:57 PM (GMT-05:00)
To: Commissioners <Commissioners@usccr.gov>
Cc: CommissionerAssistants <CommissionerAssistants@usccr.gov>, David Ganz <dganz@usccr.gov>
Subject: EAC Final Selections

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Commissioners Cantu, Adegbile, Kladney and Yaki have selected for appointment to the EAC:

AMERICAN OVERSIGHT

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Sent from my iPhone

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Date : 8/16/2021 3:50:47 PM
From : "Mauro Morales" mmorales@usccr.gov
To : "Thomas Simuel" tsimuel@usccr.gov
Cc : "stephen gilchrist" thegilchristassociates@gmail.com
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Sent: Monday, August 16, 2021 2:21 PM
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Cc: stephen gilchrist <thegilchristassociates@gmail.com>
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Washington D.C. 20425

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Sent from my iPhone

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Date : 2/23/2021 8:09:07 PM
From : "John Mashburn" jmashburn@usccr.gov
To : "Christian Adams" adams@electionlawcenter.com, "stephen gilchrist" thegilchristassociates@gmail.com, "Gail Heriot" gheriot@usccr.gov
Cc : "Carissa Mulder" carissa.mulder@gmail.com, "Alexander Heideman" aheideman@usccr.gov, "Carissa Mulder" CMulder@usccr.gov, "Gail Heriot" gheriot@me.com, "Kirsanow, Peter" pkirsanow@beneschlaw.com, "Peter Kirsanow" pkirsanow@usccr.gov, "Stephen Gilchrist" sgilchrist@usccr.gov, "Thomas Simuel" tsimuel@usccr.gov
Subject : Re: [EXTERNAL] RE: Commissioner Appointment/Removal

1983 NYTimes article on USCCR statute compromise and differences in new vs. old appointment of Cmnrs

https://www.nytimes.com/1983/11/12/us/civil-rights-advocates-applaud-senate-action.html

---

From: Christian Adams <adams@electionlawcenter.com>
Date: Tuesday, February 23, 2021 at 8:00 PM
To: John Mashburn <jmashburn@usccr.gov>, stephen gilchrist <thegilchristassociates@gmail.com>, Gail Heriot <gheriot@usccr.gov>
Cc: Carissa Mulder <carissa.mulder@gmail.com>, Alexander Heideman <aheideman@usccr.gov>, Carissa Mulder <CMulder@usccr.gov>, Gail Heriot <gheriot@me.com>, "Kirsanow, Peter" <pkirsanow@beneschlaw.com>, Peter Kirsanow <pkirsanow@usccr.gov>, Stephen Gilchrist <sgilchrist@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>
Subject: [EXTERNAL] RE: Commissioner Appointment/Removal

> CAUTION: This email is from outside USCCR.

Mark my words, it is a smart play to find a reason to be rid of one of us.

-------- Original message --------
From: John Mashburn <jmashburn@usccr.gov>
Date: 2/23/21 7:55 PM (GMT-05:00)
To: stephen gilchrist <thegilchristassociates@gmail.com>, Gail Heriot <gheriot@usccr.gov>
Cc: Carissa Mulder <carissa.mulder@gmail.com>, Christian Adams <adams@electionlawcenter.com>, Alexander Heideman <aheideman@usccr.gov>, Carissa Mulder <CMulder@usccr.gov>, Gail Heriot <gheriot@me.com>, "Kirsanow, Peter" <pkirsanow@beneschlaw.com>, Peter Kirsanow <pkirsanow@usccr.gov>, Stephen Gilchrist <sgilchrist@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>
Subject: Commissioner Appointment/Removal

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Quick wiki excerpt:

> In 1983, Reagan attempted to fire three members of the commission. They sued the administration in federal court to stay on. The authorizing legislation stated that a president could only fire a commissioner for "misbehavior in office," and it was clear that the terminations were the result of disagreements over policy. A compromise brokered in the Senate resulted in the current hybrid group of eight, half appointed by the president and half by the Congress, **with six-year terms that do not expire with the inauguration of a new president**. Since that time the commission has struggled to remain independent, and its agenda has oscillated between liberal and conservative aims as factions among its members have ebbed and waned.[10]

USCCR Authorizing Statute excerpt:

> "Sec. 2. <42 USC 1975> ESTABLISHMENT OF COMMISSION.
>
> "(a) Generally.--There is established the United States**Commission on Civil Rights** (hereinafter in this Act referred to as the 'Commission').
>
> "(b) Membership.--The Commission shall be composed of 8 members. Not more than 4 of the members shall at any one time be of the same political party. The initial membership of the Commission shall be the members of the United States **Commission on Civil Rights** on September 30, 1994. Thereafter vacancies in the membership of the Commission shall continue to be appointed as follows:
>
> "(1) **4 members of the Commission shall be appointed by the President.**
>
> "(2) 2 members of the Commission shall be appointed by the President pro tempore of the Senate, upon the recommendations of the majority leader and the minority leader, and of the members appointed not more than one shall be appointed from the same political party.
>
> "(3) 2 members of the Commission shall be appointed by the Speaker of the House of Representatives upon the recommendations of the majority leader and the minority leader, and of the members appointed not more than one shall be appointed from the same political party.
>
> "(c) Terms.--**The term of office of each member of the Commission shall be 6 years**. The term of each member of the Commission **[**4339]** in the initial membership of the Commission shall expire on the date such term would have expired as of September 30, 1994. "(d) Chairperson.—
>
> (1) Except as provided in paragraphs (2) and (3), the individuals serving as Chairperson and Vice Chairperson of the United States **Commission on Civil Rights** on September 30, 1994 shall initially fill those roles on the Commission. "
>
> (2) Thereafter the President may, with the concurrence of a majority of the Commission's members, designate a Chairperson or Vice Chairperson, as the case may be, from among the Commission's members. "
>
> (3) The President shall, with the concurrence of a majority of the Commission's members, fill a vacancy by designating a Chairperson or

AMERICAN OVERSIGHT

Vice Chairperson, as the case may be, from among the Commission's members. "

(4) The Vice Chairperson shall act in place of the Chairperson in the absence of the Chairperson. "

(e) **Removal of Members.--The President may remove a member of the Commission only for neglect of duty or malfeasance in office.** "

(f) Quorum.--5 members of the Commission constitute a quorum of the Commission.

From: stephen gilchrist <thegilchristassociates@gmail.com>
Date: Tuesday, February 23, 2021 at 7:11 PM
To: Gail Heriot <gheriot@usccr.gov>
Cc: Carissa Mulder <carissa.mulder@gmail.com>, Christian Adams <adams@electionlawcenter.com>, Alexander Heideman <aheideman@usccr.gov>, Carissa Mulder <CMulder@usccr.gov>, Gail Heriot <gheriot@me.com>, John Mashburn <jmashburn@usccr.gov>, "Kirsanow, Peter" <pkirsanow@beneschlaw.com>, Peter Kirsanow <pkirsanow@usccr.gov>, Stephen Gilchrist <sgilchrist@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>
Subject: Re: [EXTERNAL] Re: Caucus Meeting tomorrow?

> CAUTION: This email is from outside USCCR.

On Tue, Feb 23, 2021, 7:09 PM Gail Heriot <gheriot@usccr.gov> wrote:

> Sounds like our colleagues are crazy. But I take it she didn't say straight out that Yaki (or someone) is trying to have you and Stephen removed?
>
> Gail Heriot
> Professor of Law
> University of San Diego
>
> On Feb 23, 2021, at 3:53 PM, Carissa Mulder <carissa.mulder@gmail.com> wrote:
>
> > CAUTION: This email is from outside USCCR.
>
> o get you removed.
>
> On Tue, Feb 23, 2021 at 6:39 PM Christian Adams <adams@electionlawcenter.com> wrote:

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I just talked to Cantu for an hour. Key takeaways

1. I told her she HAD to get up with Pete regarding details.
2. I gave her a heads up that there was a chance she would NOT have a quorum on Friday pending resolution of big issues. She should not be blindsided in my view. I put down the threat of a withheld quorum in order to remind her it was possible and that we needed to resolve things.
3. She said something that indicated to me that Yaki and Debo or someone else (Mauro?) are agitating to have Stephen and I removed by the President. I cannot recall her exact words, but it was along the lines "I tell people that the people we got are the people we got. President Reagan tried to remove commissioners and he got sued and lost for removing them." She would NOT HAVE BROUGHT THIS up unless that chatter is occurring somewhere. And after all, ask Roger Severino if the Biden people are thinking like this. Bottom Line: some members of the Commission may be thinking they can improve their bargaining position by altering the composition of the commission and getting rid of two of us. Whether or not they are correct is irrelevant to Yaki or Debo's potential perception of this option.
4. I repeatedly told her - "You need to get with Pete on that; he knows more about that than me." Among the topics falling under this category were EAC appointments, SAC issues, and all manner of administrative issues.
5. I made it plain to her we could stop the business of the commission if we were not treated fairly, and fairness is all we want.

From: stephen gilchrist <thegilchristassociates@gmail.com>
Sent: Tuesday, February 23, 2021 4:06 PM
To: Carissa Mulder <carissa.mulder@gmail.com>
Cc: Kirsanow, Peter <pkirsanow@beneschlaw.com>; Gail Heriot <gheriot@me.com>; Christian Adams (adams@electionlawcenter.com) <adams@electionlawcenter.com>; Alexander Heideman <aheideman@usccr.gov>; John Mashburn <jmashburn@usccr.gov>; Thomas Simuel <tsimuel@usccr.gov>; Peter Kirsanow <pkirsanow@usccr.gov>; Stephen Gilchrist <sgilchrist@usccr.gov>; Gail Heriot <gheriot@usccr.gov>; Carissa Mulder <cmulder@usccr.gov>
Subject: Re: Caucus Meeting tomorrow?

Carissa - I can do 1pm.

On Tue, Feb 23, 2021, 3:45 PM Carissa Mulder <carissa.mulder@gmail.com> wrote:

> Pete would like to have a caucus meeting tomorrow to discuss how to proceed from here. Are people free at 1:00?
> --
> Carissa B. Mulder

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--
Carissa B. Mulder

AMERICAN OVERSIGHT

Date : 8/16/2021 3:52:35 PM
From : "Thomas Simuel" tsimuel@usccr.gov
To : "Mauro Morales" mmorales@usccr.gov
Cc : "stephen gilchrist" thegilchristassociates@gmail.com
Subject : Re: EAC Final Selections

Thanks!

Thomas

From: Mauro Morales
Sent: Monday, August 16, 2021 3:50:47 PM
To: Thomas Simuel
Cc: stephen gilchrist
Subject: RE: EAC Final Selections

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From: Thomas Simuel <tsimuel@usccr.gov>
Sent: Monday, August 16, 2021 2:21 PM
To: Mauro Morales <mmorales@usccr.gov>
Cc: stephen gilchrist <thegilchristassociates@gmail.com>
Subject: FW: EAC Final Selections

Hey Mauro,

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Thomas

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From: Thomas Simuel <tsimuel@usccr.gov>
Date: 8/10/21 4:52 PM (GMT-05:00)
To: Mauro Morales <mmorales@usccr.gov>
Cc: Stephen Gilchrist <sgilchrist@usccr.gov>, stephen gilchrist <thegilchristassociates@gmail.com>
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Thanks,

Thomas

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From: Mauro Morales <mmorales@usccr.gov>
Date: 8/10/21 2:57 PM (GMT-05:00)
To: Commissioners <Commissioners@usccr.gov>
Cc: CommissionerAssistants <CommissionerAssistants@usccr.gov>, David Ganz <dganz@usccr.gov>
Subject: EAC Final Selections

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Sent from my iPhone

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Date : 8/16/2021 8:42:13 PM
From : "Juana Silverio" jsilverio@usccr.gov
To : "Mauro Morales" mmorales@usccr.gov, "Thomas Simuel" tsimuel@usccr.gov
Subject : Re: Material for August 20th Commission Business Meeting
Attachment : image001.gif;image002.gif;

Thanks Thomas!

The chair's wish is for this to be a notational vote. I had an equipment mishap this weekend and did not get this out to Mauro and the team today. I will have my intern work on it and have Mauro send out this week!

--
Juana Silverio (she/her/ella)
Special Assistant to Commissioner Norma V. Cantú
U.S. Commission on Civil Rights
E: jsilverio@usccr.gov
http://usccr.gov/
1331 Pennsylvania Avenue, NW Suite 1150
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From: Mauro Morales
Sent: Monday, August 16, 2021 2:13:50 PM
To: Thomas Simuel
Cc: Juana Silverio
Subject: RE: Material for August 20th Commission Business Meeting

You are correct. It was not added when it was published last Thursday because I received no coordinated instructions from Commissioners on how they wanted to proceed. I still have not received final instructions on what all of you would like done. One of you will have to amend the agenda to add it. I recommend that you coordinate with the Chair to clarify that a discussion and vote on EAC is being requested to be added to the agenda. I have added Juana for her awareness.

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Subject: RE: Material for August 20th Commission Business Meeting

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Thanks,

Thomas

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Date: 8/16/21 1:33 PM (GMT-05:00)
To: Commissioners <Commissioners@usccr.gov>
>
Subject: Material for August 20th Commission Business Meeting

Commissioners,

Good afternoon. I have placed material in the Commissioner and SA's folder for the 12:00 pm ET August 20th business meeting. (Pam will send you your telephone call in numbers in a separate email.) I apologize for not sending this material sooner but I was on vacation and returned late yesterday.

To access the material please follow a simple two-step process:
First, you must click on this link. https://securisync.intermedia.net/us2/s/login?public_share=_XZOHVK92GU1VDGU925IM8

Second, you must insert the following password when required: Lieko#450

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Date : 8/16/2021 8:54:09 PM
From : "Thomas Simuel" tsimuel@usccr.gov
To : "Juana Silverio" jsilverio@usccr.gov
Subject : RE: Material for August 20th Commission Business Meeting
Attachment : image001.gif;image002.gif;

Hey Juana,

It would be a good idea to have the Chair reach out to Comm. Gilchrist. He was wanting it on the agenda at the Business meeting.

Thanks,

Thomas

Sent from my Metro By T-Mobile 4G LTE Android Device

-------- Original message --------
From: Juana Silverio <jsilverio@usccr.gov>
Date: 8/16/21 8:42 PM (GMT-05:00)
To: Mauro Morales <mmorales@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>
Subject: Re: Material for August 20th Commission Business Meeting

Thanks Thomas!

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Special Assistant to Commissioner Norma V. Cantú
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Sent: Monday, August 16, 2021 2:13:50 PM
To: Thomas Simuel
Cc: Juana Silverio

AMERICAN OVERSIGHT

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Thanks,

Thomas

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To: Commissioners <Commissioners@usccr.gov>
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OVERSTOCK

Date : 8/17/2021 8:26:27 AM
From : "Juana Silverio" jsilverio@usccr.gov
To : "Thomas Simuel" tsimuel@usccr.gov
Subject : Re: Material for August 20th Commission Business Meeting
Attachment : image001.gif;image002.gif;

She told Mauro a week or so ago and it should have been sent out as notice so my apologies for this not being communicated earlier.

Please have him reach out to her/ she's responsive on text/calls. I will also mention it to her on my call.

--
Juana Silverio (she/her/ella)
Special Assistant to Commissioner Norma V. Cantú
U.S. Commission on Civil Rights
E: jsilverio@usccr.gov
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1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425
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From: Thomas Simuel
Sent: Monday, August 16, 2021 8:54:08 PM
To: Juana Silverio
Subject: RE: Material for August 20th Commission Business Meeting

Hey Juana,

It would be a good idea to have the Chair reach out to Comm. Gilchrist. He was wanting it on the agenda at the Business meeting.

Thanks,

Thomas

Sent from my Metro By T-Mobile 4G LTE Android Device

-------- Original message --------
From: Juana Silverio <jsilverio@usccr.gov>
Date: 8/16/21 8:42 PM (GMT-05:00)
To: Mauro Morales <mmorales@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>
Subject: Re: Material for August 20th Commission Business Meeting

AMERICAN OVERSIGHT

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Cc: Juana Silverio
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From: Thomas Simuel <tsimuel@usccr.gov>
Sent: Monday, August 16, 2021 1:53 PM
To: Mauro Morales <mmorales@usccr.gov>
Subject: RE: Material for August 20th Commission Business Meeting

Hey Mauro,

I didn't see the EAC vote be added to the agenda.

Thanks,

Thomas

-------- Original message --------
From: Mauro Morales <mmorales@usccr.gov>
Date: 8/16/21 1:33 PM (GMT-05:00)
To: Commissioners <Commissioners@usccr.gov>

AMERICAN OVERSIGHT

>
Subject: Material for August 20th Commission Business Meeting

Commissioners,

Good afternoon. I have placed material in the Commissioner and SA's folder for the 12:00 pm ET August 20th business meeting. (Pam will send you your telephone call in numbers in a separate email.) I apologize for not sending this material sooner but I was on vacation and returned late yesterday.

To access the material please follow a simple two-step process:
First, you must click on this link. https://securisync.intermedia.net/us2/s/login?public_share=_XZOHVK92GU1VDGU925IM8

Second, you must insert the following password when required: Lieko#450

Look for the 2021 subfolder designated 8.20.21 Business Meeting Material. Commissioners may add or remove items currently on the agenda by majority vote. At present, the folder contains the posted agenda for the business meeting, the Florida SAC package, the reports of the Utah and Maine SAC's and the redline and clean version of the Bail Reform reports for your review and consideration.

I will add the Staff Director report once it is finalized. Please contact me if you have any questions. Thank you.

Mauro Morales
Staff Director
U.S. Commission on Civil Rights
P: 202-376-7796| F: 202-376-7672
Mmorales@usccr.gov
http://usccr.gov/
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425

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OVERSTOCK

Date : 8/17/2021 8:34:15 AM
From : "Juana Silverio" jsilverio@usccr.gov
To : "Mauro Morales" mmorales@usccr.gov
Subject : Fw: EAC Final Selections
Attachment : image001.gif;image002.gif;

Good morning Mauro.

The chair mentioned last week that she wanted a notational vote which is why we did not add it to the agenda.

I understand you were on leave last week. Is it possible for you to send out the notice today so that we can circulate the notational vote? I'll also confirm with the Chair as we are a few days away from biz mtg.

Thanks.
Juana
--
Juana Silverio (she/her/ella)
Special Assistant to Commissioner Norma V. Cantú
U.S. Commission on Civil Rights
E: jsilverio@usccr.gov
http://usccr.gov/
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425
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From: Norma Cantu
Sent: Tuesday, August 10, 2021 5:52:30 PM
To: Mauro Morales
Cc: David Ganz; Juana Silverio
Subject: RE: EAC Final Selections

Dear Mauro,
Thank you for the news. Each caucus has performed its duty under the AI.
I see no need to add this to the business meeting.
Notational vote will suffice.
Norma

From: Mauro Morales <mmorales@usccr.gov>
Sent: Tuesday, August 10, 2021 1:58 PM
To: Commissioners <Commissioners@usccr.gov>
Cc: CommissionerAssistants <CommissionerAssistants@usccr.gov>; David Ganz <dganz@usccr.gov>
Subject: EAC Final Selections

Commissioners,

AMERICAN OVERSIGHT

Pursuant to the AI voted on during the April 30th Business meeting, I received the following names for appointment the Election Assistance Commission (EAC):

Commissioners Cantu, Adegbile, Kladney and Yaki have selected for appointment to the EAC:

- Cleta Michell, Chair, Conservative Partnership Institute Election Integrity Network.

Commissioners Adams, Gilchrist, Heriot and Kirsanow have selected for appointment to the EAC:

- Commissioner Michael Yaki;

Under the AI adopted by Commissioners, these two members selected shall be placed in nomination and ratified by a majority vote. Please inform me how you would like to proceed for a majority vote either by placing it on the agenda for the next USCCR business meeting or by a notational vote. Thank you.

Mauro Morales
Staff Director
U.S. Commission on Civil Rights
P: 202-376-7796| F: 202-376-7672
Mmorales@usccr.gov
http://usccr.gov/
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425

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Date : 8/17/2021 10:08:20 AM
From : "Mauro Morales" mmorales@usccr.gov
To : "Juana Silverio" jsilverio@usccr.gov
Subject : RE: EAC Final Selections
Attachment : image001.gif;image002.gif;

I am happy to send it out. However, as you are aware a single objection from a Commissioner to the holding of a notional vote prevents it from occurring. Usually, the Commissioner requesting the notational vote confirms with the other Commissioners or SA's that there is no objection to holding the vote by notation. Otherwise issuing the ballot is an exercise in futility. Nevertheless, I can proceed forward if this is what you wish.

From: Juana Silverio <jsilverio@usccr.gov>
Sent: Tuesday, August 17, 2021 8:34 AM
To: Mauro Morales <mmorales@usccr.gov>
Subject: Fw: EAC Final Selections

Good morning Mauro.

The chair mentioned last week that she wanted a notational vote which is why we did not add it to the agenda.

I understand you were on leave last week. Is it possible for you to send out the notice today so that we can circulate the notational vote? I'll also confirm with the Chair as we are a few days away from biz mtg.

Thanks.
Juana
--
Juana Silverio (she/her/ella)
Special Assistant to Commissioner Norma V. Cantú
U.S. Commission on Civil Rights
E: jsilverio@usccr.gov
http://usccr.gov/
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425
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From: Norma Cantu
Sent: Tuesday, August 10, 2021 5:52:30 PM
To: Mauro Morales
Cc: David Ganz; Juana Silverio
Subject: RE: EAC Final Selections

Dear Mauro,
Thank you for the news. Each caucus has performed its duty under the AI.
I see no need to add this to the business meeting.

AMERICAN OVERSIGHT

Notational vote will suffice.
Norma

From: Mauro Morales <mmorales@usccr.gov>
Sent: Tuesday, August 10, 2021 1:58 PM
To: Commissioners <Commissioners@usccr.gov>
Cc: CommissionerAssistants <CommissionerAssistants@usccr.gov>; David Ganz <dganz@usccr.gov>
Subject: EAC Final Selections

Commissioners,

Pursuant to the AI voted on during the April 30th Business meeting, I received the following names for appointment the Election Assistance Commission (EAC):

Commissioners Cantu, Adegbile, Kladney and Yaki have selected for appointment to the EAC:

- Cleta Michell, Chair, Conservative Partnership Institute Election Integrity Network.

Commissioners Adams, Gilchrist, Heriot and Kirsanow have selected for appointment to the EAC:

- Commissioner Michael Yaki;

Under the AI adopted by Commissioners, these two members selected shall be placed in nomination and ratified by a majority vote. Please inform me how you would like to proceed for a majority vote either by placing it on the agenda for the next USCCR business meeting or by a notational vote. Thank you.

Mauro Morales
Staff Director
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Washington D.C. 20425

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Date : 8/17/2021 1:46:50 PM
From : "J. Christian Adams" jadams@usccr.gov
To : "stephen gilchrist" thegilchristassociates@gmail.com, "Christian Adams" adams@electionlawcenter.com
Cc : "Gail Heriot" gheriot@usccr.gov, "Gail Heriot" gheriot@me.com, "John Mashburn" jmashburn@usccr.gov, "Carissa Mulder" CMulder@usccr.gov, "Peter Kirsanow" pkirsanow@Beneschlaw.com, "Alexander Heideman" aheideman@usccr.gov, "Thomas Simuel" tsimuel@usccr.gov, "Peter Kirsanow" pkirsanow@usccr.gov, "Stephen Gilchrist" sgilchrist@usccr.gov
Subject : Re: [EXTERNAL] Re: Nominations for Appointment to the EAC

Why isn't this on the agenda for Friday??

From: stephen gilchrist <thegilchristassociates@gmail.com>
Sent: Tuesday, August 10, 2021 3:01:40 PM
To: Christian Adams
Cc: Gail Heriot; Gail Heriot; John Mashburn; Carissa Mulder; Peter Kirsanow; Alexander Heideman; Thomas Simuel; Peter Kirsanow; Stephen Gilchrist; J. Christian Adams
Subject: Re: [EXTERNAL] Re: Nominations for Appointment to the EAC

CAUTION: This email is from outside USCCR.

We should make them vote at the meeting and not notational vote for the EAC. I'm willing to let Mauro know this.

Please advise.

On Sun, Aug 8, 2021, 10:41 PM Christian Adams <adams@electionlawcenter.com> wrote:

> earlier the better. I have been out of the office for 2 weeks without email.
>
> -------- Original message --------
> From: Gail Heriot <gheriot@usccr.gov>
> Date: 8/8/21 10:37 PM (GMT-05:00)
> To: Christian Adams <adams@electionlawcenter.com>
> Cc: Gail Heriot <gheriot@me.com>, John Mashburn <jmashburn@usccr.gov>, stephen gilchrist <thegilchristassociates@gmail.com>, Carissa Mulder <CMulder@usccr.gov>, Peter Kirsanow <pkirsanow@beneschlaw.com>, Alexander Heideman <aheideman@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>, Peter Kirsanow <pkirsanow@usccr.gov>, Stephen Gilchrist <sgilchrist@usccr.gov>, "J. Christian Adams" <jadams@usccr.gov>
> Subject: Re: [EXTERNAL] Re: Nominations for Appointment to the EAC
>
> I am available tomorrow and more or less on Eastern time (still in Richmond).
>
> Gail Heriot
> Professor of Law
> University of San Diego

AMERICAN OVERSIGHT

On Aug 8, 2021, at 10:34 PM, Christian Adams <adams@electionlawcenter.com> wrote:

CAUTION: This email is from outside USCCR.

sure. Riggs is a nonstarter with me. she is a brilliant pick on thier part because they know my history with her. they know she us wholly unacceptable.

-------- Original message --------
From: Gail Heriot <gheriot@me.com>
Date: 8/8/21 5:39 PM (GMT-05:00)
To: Christian Adams <adams@electionlawcenter.com>
>, Carissa Mulder <CMulder@usccr.gov>, Peter Kirsanow <pkirsanow@beneschlaw.com>, Alexander Heideman <aheideman@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>, Peter Kirsanow <pkirsanow@usccr.gov>, Gail Heriot <gheriot@usccr.gov>, Stephen Gilchrist <sgilchrist@usccr.gov>, "J. Christian Adams" <jadams@usccr.gov>
Subject: Re: [EXTERNAL] Re: Nominations for Appointment to the EAC

Should we have a caucus zoom tomorrow about this?

Gail Heriot
Professor of Law
University of San Diego

> On Aug 8, 2021, at 4:20 PM, Christian Adams <adams@electionlawcenter.com> wrote:
>
> sorry, just returning.
>
> they picked Allison Riggs for a reason. I can explain offline but there is no way I will be part of giving her a single thing.i would rather work with Yaki
>
> -------- Original message --------
> From: Gail Heriot <gheriot@me.com>
> Date: 8/6/21 3:13 PM (GMT-05:00)
> To: John Mashburn <jmashburn@usccr.gov>
> Cc: stephen gilchrist <thegilchristassociates@gmail.com>, >, Christian Adams <adams@electionlawcenter.com>,

AMERICAN OVERSIGHT

Alexander Heideman <aheideman@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>, Peter Kirsanow <pkirsanow@usccr.gov>, Gail Heriot <gheriot@usccr.gov>, Stephen Gilchrist <sgilchrist@usccr.gov>, "J. Christian Adams" <jadams@usccr.gov>
Subject: Re: [EXTERNAL] Re: Nominations for Appointment to the EAC

I am willing to go with Christian's recommendation on this UNLESS he thinks it's a close case. If he thinks it's a close case AND IF we have reason to believe that the Progressives vetoed Cleta and not Christian, THEN I think we should consider a bit of reciprocity and let Yaki have the job. My impression is that he wants it. If it's really close to six of one half dozen of the other, pleasing him has its benefits.

Of course, so far the evidence is running against the possibility that the Progressives vetoed Cleta and not Christian. If they had vetoed Cleta, my guess is that they would have wanted us to know that. Nevertheless, if this is a close case, it would be a good idea to try to find out what the Progressives did.

Gail Heriot
Professor of Law
University of San Diego

> On Aug 6, 2021, at 1:54 PM, John Mashburn <jmashburn@usccr.gov> wrote:
>
> Yes – better her than Yaki.
>
> ---
>
> **From:** stephen gilchrist <thegilchristassociates@gmail.com>
> **Date:** Friday, August 6, 2021 at 1:51 PM
> **To:** John Mashburn <jmashburn@usccr.gov>
> **Cc:** Gail Heriot <gheriot@me.com>, Carissa Mulder <CMulder@usccr.gov>, Peter Kirsanow <pkirsanow@beneschlaw.com>, Christian Adams <adams@electionlawcenter.com>, Alexander Heideman <aheideman@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>, Peter Kirsanow <pkirsanow@usccr.gov>, Gail Heriot <gheriot@usccr.gov>, Stephen Gilchrist

AMERICAN OVERSIGHT

<sgilchrist@usccr.gov>, "J. Christian Adams" <jadams@usccr.gov>
Subject: Re: [EXTERNAL] Re: Nominations for Appointment to the EAC

CAUTION: This email is from outside USCCR.

On Fri, Aug 6, 2021, 1:31 PM John Mashburn <jmashburn@usccr.gov> wrote:

Allison Riggs

https://southerncoalition.org/staff/allison-riggs/

From: Gail Heriot <gheriot@me.com>
Date: Friday, August 6, 2021 at 1:23 PM
To: Carissa Mulder <CMulder@usccr.gov>
Cc: "pkirsanow@beneschlaw.com" <pkirsanow@beneschlaw.com>, stephen gilchrist <thegilchristassociates@gmail.com>, Christian Adams <adams@electionlawcenter.com>, Alexander Heideman >, Thomas Simuel <tsimuel@usccr.gov>, Peter Kirsanow <pkirsanow@usccr.gov>, Gail Heriot <gheriot@usccr.gov>, Stephen Gilchrist <sgilchrist@usccr.gov>, "J. Christian Adams" <jadams@usccr.gov>
Subject: [EXTERNAL] Re: Nominations for Appointment to the EAC

CAUTION: This email is from outside USCCR.

they vetoed. Yaki at least has an incentive to tell us if it's Cleta. If it is Cleta, such that Christian will be the appointee, it might be seen as accommodating to let Yaki be re-appointed. If he declines to say, that will be evidence

AMERICAN OVERSIGHT

that they vetoed Christian.

Gail Heriot
Professor of Law
University of San Diego

> On Aug 6, 2021, at 1:17 PM, Carissa Mulder <CMulder@usccr.gov> wrote:
>
> Hi everyone,
>
> Mauro emailed and asked if the conservative commissioners have selected their EAC nominee. He said the progressives have notified him of their selection, and once we notify him of ours, he will circulate either a notational vote or arrange for it to be voted on at the August business meeting.
>
> Christian, you are the voting expert - do you think Yaki or Allison Riggs is a less damaging choice?
>
> Thanks!
>
> ---
>
> **From:** Mauro Morales
> **Sent:** Tuesday, August 3, 2021 5:36 PM
> **To:** Commissioners
> **Cc:** CommissionerAssistants; David Ganz
> **Subject:** Nominations for Appointment to the EAC
>
> Commissioners,
>
> Pursuant to the AI voted on during the April 30th Business meeting, you have nominated the following individuals to the Election Assistance Commission (EAC):

AMERICAN OVERSIGHT

Commissioners Cantu, Adegbile, Kladney and Yaki have nominated the following individuals to the EAC:

- Commissioner Michael Yaki;
- Ms. Allison Riggs , Co-Executive Director, Southern Coalition for Social Justice.

Commissioners Adams, Gilchrist, Heriot and Kirsanow have nominated the following individuals to the EAC:

- Commissioner Christian Adams;
- Cleta Michell, Chair, Conservative Partnership Institute Election Integrity Network.

Under the AI adopted by Commissioners, the members appointed by the Democratic authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Democratic authorities. The final members selected shall be placed in nomination and ratified by a majority vote. Please inform me how you would like to

AMERICAN OVERSIGHT

proceed for a majority vote either by placing it on the agenda for the next USCCR business meeting or by a notational vote.

Mauro Morales
Staff Director
U.S. Commission on Civil Rights
P: 202-376-7796| F: 202-376-7672
Mmorales@usccr.gov
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Washington D.C. 20425

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<image001.gif>
<image002.gif>

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Date : 2/23/2021 10:09:56 PM
From : "John Mashburn" jmashburn@usccr.gov
To : "Carissa Mulder" carissa.mulder@gmail.com, "Gail Heriot" gheriot@usccr.gov
Cc : "Thomas Simuel" tsimuel@usccr.gov, "Gail Heriot" gheriot@me.com, "stephen gilchrist" thegilchristassociates@gmail.com, "Christian Adams" adams@electionlawcenter.com, "Alexander Heideman" aheideman@usccr.gov, "Carissa Mulder" CMulder@usccr.gov, "Kirsanow, Peter" pkirsanow@beneschlaw.com, "Peter Kirsanow" pkirsanow@usccr.gov, "Stephen Gilchrist" sgilchrist@usccr.gov
Subject : Re: [EXTERNAL] Re: Commissioner Appointment/Removal

Should the R Cmn then attend the meeting but not give a 5th vote To make her Chair? Then there is nothing to critique any of the 4 Rs about.

From: Carissa Mulder <carissa.mulder@gmail.com>
Sent: Tuesday, February 23, 2021 10:02:53 PM
To: Gail Heriot
Cc: Thomas Simuel; John Mashburn; Gail Heriot; stephen gilchrist; Christian Adams; Alexander Heideman; Carissa Mulder; Kirsanow, Peter; Peter Kirsanow; Stephen Gilchrist
Subject: Re: [EXTERNAL] Re: Commissioner Appointment/Removal

CAUTION: This email is from outside USCCR.

The only thing that gives Mauro a leg to stand on is that the 26th was already on the Commission's calendar. At the time the Commission voted on the dates for the 2021 meetings, they didn't designate which were for briefings and which were for business meetings. But that also doesn't give him the authority to add a business meeting to a meeting date.

On Tue, Feb 23, 2021 at 8:55 PM Gail Heriot <gheriot@usccr.gov> wrote:

> That's the statute that was passed in the 1980s as a result of the kerfuffle that was created when Reagan removed members. That law replaced the 1957 Act's provisions on the USCCR. I think that legally Reagan was clearly in the right when he acted. Members served at his pleasure, and as he put it, "She [Mary Frances Berry] wasn't giving me pleasure." Under the law that applies now, he would have been clearly in the wrong. That's why Congress changed it.
>
> As for what applies to our situation, for Biden to be able to remove a Commissioner for not attending a meeting called by the Staff Director, I would think it would have to be true that the Staff Director has the authority to call a meeting. I don't see where that authority would come from.
>
> Gail Heriot
> Professor of Law
> University of San Diego
>
> > On Feb 23, 2021, at 5:46 PM, Thomas Simuel <tsimuel@usccr.gov> wrote:

AMERICAN OVERSIGHT

(e) **Removal of Members.--The President may remove a member of the Commission only for neglect of duty or malfeasance in office. "**

Sent from my Metro By T-Mobile 4G LTE Android Device

-------- Original message --------
From: John Mashburn <jmashburn@usccr.gov>
Date: 2/23/21 8:44 PM (GMT-05:00)
To: Gail Heriot <gheriot@me.com>
Cc: stephen gilchrist <thegilchristassociates@gmail.com>, Gail Heriot <gheriot@usccr.gov>, Carissa Mulder <carissa.mulder@gmail.com>, Christian Adams <adams@electionlawcenter.com>, Alexander Heideman <aheideman@usccr.gov>, Carissa Mulder <CMulder@usccr.gov>, "Kirsanow, Peter" <pkirsanow@beneschlaw.com>, Peter Kirsanow <pkirsanow@usccr.gov>, Stephen Gilchrist <sgilchrist@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>
Subject: Re: [EXTERNAL] Re: Commissioner Appointment/Removal

The articles I read and the one I sent the link to all said that the statute — prior to the compromise Reagan signed reauthorizing the USCCR in 1984 - said that commissioners "served at the pleasure of the President." The new statute signed by Reagan changed that to the Statutory text I sent previously.

From: Gail Heriot <gheriot@me.com>
Sent: Tuesday, February 23, 2021 8:38:41 PM
To: John Mashburn
Cc: stephen gilchrist; Gail Heriot; Carissa Mulder; Christian Adams; Alexander Heideman; Carissa Mulder; Kirsanow, Peter; Peter Kirsanow; Stephen Gilchrist; Thomas Simuel
Subject: [EXTERNAL] Re: Commissioner Appointment/Removal

> CAUTION: This email is from outside USCCR.

To the best of my recollection, the original 1957 Act did not say anything about how a Commissioner could be removed. If that's not so, could someone point me to the section of the 1957 Act that says that? Alex?

AMERICAN OVERSIGHT

Gail Heriot
Professor of Law
University of San Diego

On Feb 23, 2021, at 4:55 PM, John Mashburn <jmashburn@usccr.gov> wrote:

Quick wiki excerpt:

> In 1983, Reagan attempted to fire three members of the commission. They sued the administration in federal court to stay on. The authorizing legislation stated that a president could only fire a commissioner for "misbehavior in office," and it was clear that the terminations were the result of disagreements over policy. A compromise brokered in the Senate resulted in the current hybrid group of eight, half appointed by the president and half by the Congress, **with six-year terms that do not expire with the inauguration of a new president**. Since that time the commission has struggled to remain independent, and its agenda has oscillated between liberal and conservative aims as factions among its members have ebbed and waned.[10]

USCCR Authorizing Statute excerpt:

> "Sec. 2. <42 USC 1975> ESTABLISHMENT OF COMMISSION.
>
> "(a) Generally.--There is established the United States **Commission on Civil Rights** (hereinafter in this Act referred to as the 'Commission').
>
> "(b) Membership.--The Commission shall be composed of 8 members. Not more than 4 of the members shall at any one time be of the same political party. The initial membership of the Commission shall be the members of the United States **Commission on Civil Rights** on September 30, 1994. Thereafter vacancies in the membership of the Commission shall continue to be appointed as follows:

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"(1) **4 members of the Commission shall be appointed by the President.**

"(2) 2 members of the Commission shall be appointed by the President pro tempore of the Senate, upon the recommendations of the majority leader and the minority leader, and of the members appointed not more than one shall be appointed from the same political party.

"(3) 2 members of the Commission shall be appointed by the Speaker of the House of Representatives upon the recommendations of the majority leader and the minority leader, and of the members appointed not more than one shall be appointed from the same political party.

"(c) Terms.--**The term of office of each member of the Commission shall be 6 years**. The term of each member of the Commission **[**4339]** in the initial membership of the Commission shall expire on the date such term would have expired as of September 30, 1994.
"(d) Chairperson.—

(1) Except as provided in paragraphs (2) and (3), the individuals serving as Chairperson and Vice Chairperson of the United States **Commission on Civil Rights** on September 30, 1994 shall initially fill those roles on the Commission. "

(2) Thereafter the President may, with the concurrence of a majority of the Commission's members, designate a Chairperson or Vice Chairperson, as the case may be, from among the Commission's members. "

(3) The President shall, with the concurrence of a majority of the Commission's members, fill a vacancy by designating a Chairperson or Vice Chairperson, as the case may be, from among the Commission's members. "

(4) The Vice Chairperson shall act in place of the Chairperson in the absence of the Chairperson. "

AMERICAN OVERSIGHT

(e) **Removal of Members.--The President may remove a member of the Commission only for neglect of duty or malfeasance in office. "**

(f) Quorum.--5 members of the Commission constitute a quorum of the Commission.

From: stephen gilchrist <thegilchristassociates@gmail.com>
Date: Tuesday, February 23, 2021 at 7:11 PM
To: Gail Heriot <gheriot@usccr.gov>
Cc: Carissa Mulder <carissa.mulder@gmail.com>, Christian Adams <adams@electionlawcenter.com>, Alexander Heideman <aheideman@usccr.gov>, Carissa Mulder <CMulder@usccr.gov>, Gail Heriot <gheriot@me.com>, John Mashburn <jmashburn@usccr.gov>, "Kirsanow, Peter" <pkirsanow@beneschlaw.com>, Peter Kirsanow <pkirsanow@usccr.gov>, Stephen Gilchrist <sgilchrist@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>
Subject: Re: [EXTERNAL] Re: Caucus Meeting tomorrow?

CAUTION: This email is from outside USCCR.

On Tue, Feb 23, 2021, 7:09 PM Gail Heriot <gheriot@usccr.gov> wrote:

> Sounds like our colleagues are crazy. But I take it she didn't say straight out that Yaki (or someone) is trying to have you and Stephen removed?
>
> Gail Heriot
>
> Professor of Law

AMERICAN OVERSIGHT

University of San Diego

On Feb 23, 2021, at 3:53 PM, Carissa Mulder <carissa.mulder@gmail.com> wrote:

> CAUTION: This email is from outside USCCR.

o get you removed.

On Tue, Feb 23, 2021 at 6:39 PM Christian Adams <adams@electionlawcenter.com> wrote:

> I just talked to Cantu for an hour. Key takeaways
>
> 1. I told her she HAD to get up with Pete regarding details.
> 2. I gave her a heads up that there was a chance she would NOT have a quorum on Friday pending resolution of big issues. She should not be blindsided in my view. I put down the threat of a withheld quorum in order to remind her it was possible and that we needed to resolve things.
> 3. She said something that indicated to me that Yaki and Debo or someone else (Mauro?) are agitating to have Stephen and I removed by the President. I cannot recall her exact words, but it was along the lines "I tell people that the people we got are the people we got. President Reagan tried to remove commissioners and he got sued and lost for removing them." She would NOT HAVE

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BROUGHT THIS up unless that chatter is occurring somewhere. And after all, ask Roger Severino if the Biden people are thinking like this. Bottom Line: some members of the Commission may be thinking they can improve their bargaining position by altering the composition of the commission and getting rid of two of us. Whether or not they are correct is irrelevant to Yaki or Debo's potential perception of this option.

4. I repeatedly told her - "You need to get with Pete on that; he knows more about that than me." Among the topics falling under this category were EAC appointments, SAC issues, and all manner of administrative issues.
5. I made it plain to her we could stop the business of the commission if we were not treated fairly, and fairness is all we want.

>
Sent: Tuesday, February 23, 2021 4:06 PM
To: Carissa Mulder <carissa.mulder@gmail.com>
Cc: Kirsanow, Peter <pkirsanow@beneschlaw.com>; Gail Heriot <gheriot@me.com>; Christian Adams
>; Alexander Heideman <aheideman@usccr.gov>; John Mashburn <jmashburn@usccr.gov>; Thomas Simuel <tsimuel@usccr.gov>; Peter Kirsanow <pkirsanow@usccr.gov>; Stephen Gilchrist <sgilchrist@usccr.gov>; Gail Heriot <gheriot@usccr.gov>; Carissa Mulder <cmulder@usccr.gov>
Subject: Re: Caucus Meeting tomorrow?

AMERICAN OVERSIGHT

Carissa - I can do 1pm.

On Tue, Feb 23, 2021, 3:45 PM
Carissa Mulder
<carissa.mulder@gmail.com> wrote:

> Pete would like to have a caucus meeting tomorrow to discuss how to proceed from here. Are people free at 1:00?
> --
>
> Carissa B. Mulder

--

Carissa B. Mulder

--
Carissa B. Mulder

AMERICAN OVERSIGHT

Date : 8/18/2021 1:57:36 PM
From : "John Mashburn" jmashburn@usccr.gov
To : "Mauro Morales" mmorales@usccr.gov, "Juana Silverio" jsilverio@usccr.gov
Cc : "Thomas Simuel" tsimuel@usccr.gov, "Alexander Heideman" aheideman@usccr.gov, "Carissa Mulder" CMulder@usccr.gov
Subject : Re: EAC Final Selections
Attachment : image001.gif;image002.gif;

This vote is not on the agenda for Friday, and a notational vote was not sent, so where does it stand? Gilchrist and Adams would like a vote at the business meeting and Adams is willing to make a motion to vote on it.

From: Mauro Morales <mmorales@usccr.gov>
Date: Tuesday, August 10, 2021 at 2:57 PM
To: Commissioners <Commissioners@usccr.gov>
Cc: "CommissionerAssistants@usccr.gov" <CommissionerAssistants@usccr.gov>, David Ganz <dganz@usccr.gov>
Subject: EAC Final Selections

Commissioners,

Pursuant to the AI voted on during the April 30th Business meeting, I received the following names for appointment the Election Assistance Commission (EAC):

Commissioners Cantu, Adegbile, Kladney and Yaki have selected for appointment to the EAC:

- Cleta Michell, Chair, Conservative Partnership Institute Election Integrity Network.

Commissioners Adams, Gilchrist, Heriot and Kirsanow have selected for appointment to the EAC:

- Commissioner Michael Yaki;

Under the AI adopted by Commissioners, these two members selected shall be placed in nomination and ratified by a majority vote. Please inform me how you would like to proceed for a majority vote either by placing it on the agenda for the next USCCR business meeting or by a notational vote. Thank you.

Mauro Morales
Staff Director
U.S. Commission on Civil Rights
P: 202-376-7796| F: 202-376-7672

AMERICAN OVERSIGHT

Mmorales@usccr.gov
http://usccr.gov/
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425

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OVERSTOCK

Date : 8/18/2021 1:55:27 PM
From : "Alexander Heideman" aheideman@usccr.gov
To : "Gail Heriot" gheriot@usccr.gov, "Gail Heriot" gheriot@me.com
Subject : EAC vote

I just got off the phone with John. Apparently nobody asked Mauro/Cantu to place the EAC vote on the agenda; but our colleagues are just assuming bad faith. John is emailing Mauro & Juana now to ask.

AMERICAN OVERSIGHT

Date : 8/18/2021 2:01:49 PM
From : "Alexander Heideman" aheideman@usccr.gov
To : "Gail Heriot" gheriot@me.com
Cc : "Gail Heriot" gheriot@usccr.gov
Subject : Re: [EXTERNAL] Re: EAC vote

I'll send you the email that John just sent to Mauro. I'll ask him & Thomas if they think there should be a caucus meeting.

From: Gail Heriot <gheriot@me.com>
Date: Wednesday, August 18, 2021 at 1:57 PM
To: Alexander Heideman <aheideman@usccr.gov>
Cc: Gail Heriot <gheriot@usccr.gov>
Subject: [EXTERNAL] Re: EAC vote

> CAUTION: This email is from outside USCCR.

Gail Heriot
Professor of Law
University of San Diego

> On Aug 18, 2021, at 10:55 AM, Alexander Heideman <aheideman@usccr.gov> wrote:
>
> I just got off the phone with John. Apparently nobody asked Mauro/Cantu to place the EAC vote on the agenda; but our colleagues are just assuming bad faith. John is emailing Mauro & Juana now to ask.

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Date : 8/18/2021 2:27:20 PM
From : "John Mashburn" jmashburn@usccr.gov
To : "stephen gilchrist" thegilchristassociates@gmail.com, "J. Christian Adams" jadams@usccr.gov
Cc : "Christian Adams" adams@electionlawcenter.com, "Gail Heriot" gheriot@usccr.gov, "Gail Heriot" gheriot@me.com, "Carissa Mulder" CMulder@usccr.gov, "Peter Kirsanow" pkirsanow@beneschlaw.com, "Alexander Heideman" aheideman@usccr.gov, "Thomas Simuel" tsimuel@usccr.gov, "Peter Kirsanow" pkirsanow@usccr.gov, "Stephen Gilchrist" sgilchrist@usccr.gov
Subject : Re: [EXTERNAL] Re: Nominations for Appointment to the EAC

I sent an email to Mauro and Cantu's SA asking why it is not on the agenda, but have not heard back.

From: stephen gilchrist <thegilchristassociates@gmail.com>
Date: Wednesday, August 18, 2021 at 2:16 PM
To: "J. Christian Adams" <jadams@usccr.gov>
Cc: Christian Adams <adams@electionlawcenter.com>, Gail Heriot <gheriot@usccr.gov>, Gail Heriot <gheriot@me.com>, John Mashburn <jmashburn@usccr.gov>, Carissa Mulder <CMulder@usccr.gov>, Peter Kirsanow <pkirsanow@beneschlaw.com>, Alexander Heideman <aheideman@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>, Peter Kirsanow <pkirsanow@usccr.gov>, Stephen Gilchrist <sgilchrist@usccr.gov>
Subject: Re: [EXTERNAL] Re: Nominations for Appointment to the EAC

> CAUTION: This email is from outside USCCR.

I did not see it on the agenda as well? I did speak to the staff director to inform him that I would like to have the vote placed on the business agenda. Did not receive confirmation. I have also not spoken to the Chair.

On Tue, Aug 17, 2021, 1:46 PM J. Christian Adams <jadams@usccr.gov> wrote:

> Why isn't this on the agenda for Friday??
>
> ---
>
> **From:** stephen gilchrist <thegilchristassociates@gmail.com>
> **Sent:** Tuesday, August 10, 2021 3:01:40 PM
> **To:** Christian Adams
> **Cc:** Gail Heriot; Gail Heriot; John Mashburn; Carissa Mulder; Peter Kirsanow; Alexander Heideman; Thomas Simuel; Peter Kirsanow; Stephen Gilchrist; J. Christian Adams
> **Subject:** Re: [EXTERNAL] Re: Nominations for Appointment to the EAC
>
> > CAUTION: This email is from outside USCCR.
>
> We should make them vote at the meeting and not notational vote for the EAC. I'm willing to let Mauro know this.

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Please advise.

On Sun, Aug 8, 2021, 10:41 PM Christian Adams <adams@electionlawcenter.com> wrote:

> earlier the better. I have been out of the office for 2 weeks without email.
>
> -------- Original message --------
> From: Gail Heriot <gheriot@usccr.gov>
> Date: 8/8/21 10:37 PM (GMT-05:00)
> To: Christian Adams <adams@electionlawcenter.com>
> Cc: Gail Heriot <gheriot@me.com>, John Mashburn <jmashburn@usccr.gov>, stephen gilchrist <thegilchristassociates@gmail.com>, Carissa Mulder <CMulder@usccr.gov>, Peter Kirsanow <pkirsanow@beneschlaw.com>, Alexander Heideman <aheideman@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>, Peter Kirsanow <pkirsanow@usccr.gov>, Stephen Gilchrist <sgilchrist@usccr.gov>, "J. Christian Adams" <jadams@usccr.gov>
> Subject: Re: [EXTERNAL] Re: Nominations for Appointment to the EAC
>
> I am available tomorrow and more or less on Eastern time (still in Richmond).
>
> Gail Heriot
> Professor of Law
> University of San Diego
>
> > On Aug 8, 2021, at 10:34 PM, Christian Adams <adams@electionlawcenter.com> wrote:
> >
> > > CAUTION: This email is from outside USCCR.
> >
> > sure. Riggs is a nonstarter with me. she is a brilliant pick on thier part because they know my history with her. they know she us wholly unacceptable.
> >
> > -------- Original message --------
> > From: Gail Heriot <gheriot@me.com>
> > Date: 8/8/21 5:39 PM (GMT-05:00)
> > To: Christian Adams <adams@electionlawcenter.com>
> > Cc: John Mashburn <jmashburn@usccr.gov>, stephen gilchrist <thegilchristassociates@gmail.com>, Carissa Mulder <CMulder@usccr.gov>, Peter Kirsanow <pkirsanow@beneschlaw.com>, Alexander Heideman <aheideman@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>, Peter Kirsanow <pkirsanow@usccr.gov>, Gail Heriot <gheriot@usccr.gov>, Stephen Gilchrist <sgilchrist@usccr.gov>, "J. Christian Adams" <jadams@usccr.gov>
> > Subject: Re: [EXTERNAL] Re: Nominations for Appointment to the EAC
> >
> > Should we have a caucus zoom tomorrow about this?

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Gail Heriot
Professor of Law
University of San Diego

> On Aug 8, 2021, at 4:20 PM, Christian Adams <adams@electionlawcenter.com> wrote:
>
> sorry, just returning.
>
> they picked Allison Riggs for a reason. I can explain offline but there is no way I will be part of giving her a single thing.i would rather work with Yaki
>
> -------- Original message --------
> From: Gail Heriot <gheriot@me.com>
> Date: 8/6/21 3:13 PM (GMT-05:00)
> To: John Mashburn <jmashburn@usccr.gov>
> Cc: stephen gilchrist <thegilchristassociates@gmail.com>, >, Christian Adams <adams@electionlawcenter.com>, Alexander Heideman <aheideman@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>, Peter Kirsanow <pkirsanow@usccr.gov>, Gail Heriot <gheriot@usccr.gov>, Stephen Gilchrist <sgilchrist@usccr.gov>, "J. Christian Adams" <jadams@usccr.gov>
> Subject: Re: [EXTERNAL] Re: Nominations for Appointment to the EAC
>
> I am willing to go with Christian's recommendation on this UNLESS he thinks it's a close case. If he thinks it's a close case AND IF we have reason to believe that the Progressives vetoed Cleta and not Christian, THEN I think we should consider a bit of reciprocity and let Yaki have the job. My impression is that he wants it. If it's really close to six of one half dozen of the other, pleasing him has its benefits.
>
> Of course, so far the evidence is running against the possibility that the Progressives vetoed Cleta and not Christian. If they had vetoed Cleta, my guess is that they would have wanted us to know that. Nevertheless, if this is a close case, it would be a good idea to try to find out what the Progressives did.
>
> Gail Heriot
> Professor of Law
> University of San Diego
>
> > On Aug 6, 2021, at 1:54 PM, John Mashburn <jmashburn@usccr.gov> wrote:

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Yes – better her than Yaki.

From: stephen gilchrist <thegilchristassociates@gmail.com>
Date: Friday, August 6, 2021 at 1:51 PM
To: John Mashburn <jmashburn@usccr.gov>
Cc: Gail Heriot <gheriot@me.com>, Carissa Mulder <CMulder@usccr.gov>, Peter Kirsanow <pkirsanow@beneschlaw.com>, Christian Adams <adams@electionlawcenter.com>, Alexander Heideman <aheideman@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>, Peter Kirsanow <pkirsanow@usccr.gov>, Gail Heriot <gheriot@usccr.gov>, Stephen Gilchrist <sgilchrist@usccr.gov>, "J. Christian Adams" <jadams@usccr.gov>
Subject: Re: [EXTERNAL] Re: Nominations for Appointment to the EAC

> CAUTION: This email is from outside USCCR.

On Fri, Aug 6, 2021, 1:31 PM John Mashburn <jmashburn@usccr.gov> wrote:

> Allison Riggs
>
> https://southerncoalition.org/staff/allison-riggs/
>
> ---
>
> **From:** Gail Heriot <gheriot@me.com>
> **Date:** Friday, August 6, 2021 at 1:23 PM
> **To:** Carissa Mulder <CMulder@usccr.gov>
> **Cc:** "pkirsanow@beneschlaw.com" <pkirsanow@beneschlaw.com>, stephen gilchrist <thegilchristassociates@gmail.com>, Christian Adams <adams@electionlawcenter.com>, Alexander Heideman >, Thomas Simuel <tsimuel@usccr.gov>,

Peter Kirsanow <pkirsanow@usccr.gov>, Gail Heriot <gheriot@usccr.gov>, Stephen Gilchrist <sgilchrist@usccr.gov>, "J. Christian Adams" <jadams@usccr.gov>
Subject: [EXTERNAL] Re: Nominations for Appointment to the EAC

CAUTION: This email is from outside USCCR.

they vetoed. Yaki at least has an incentive to tell us if it's Cleta. If it is Cleta, such that Christian will be the appointee, it might be seen as accommodating to let Yaki be re-appointed. If he declines to say, that will be evidence that they vetoed Christian.

Gail Heriot
Professor of Law
University of San Diego

> On Aug 6, 2021, at 1:17 PM, Carissa Mulder <CMulder@usccr.gov> wrote:
>
> Hi everyone,
>
> Mauro emailed and asked if the conservative commissioners have selected their EAC nominee. He said the progressives have notified him of their selection, and once we notify him of ours, he will circulate either a notational vote or arrange for it to be voted on at the August business meeting.
>
> Christian, you are the voting expert - do you think Yaki or Allison Riggs is a less damaging choice?

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Thanks!

From: Mauro Morales
Sent: Tuesday, August 3, 2021 5:36 PM
To: Commissioners
Cc: CommissionerAssistants; David Ganz
Subject: Nominations for Appointment to the EAC

Commissioners,

Pursuant to the AI voted on during the April 30th Business meeting, you have nominated the following individuals to the Election Assistance Commission (EAC):

Commissioners Cantu, Adegbile, Kladney and Yaki have nominated the following individuals to the EAC:

- Commissioner Michael Yaki;
- Ms. Allison Riggs , Co-Executive Director, Southern Coalition for Social Justice.

Commissioners Adams, Gilchrist, Heriot and Kirsanow have nominated the following individuals to the EAC:

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- Commissioner Christian Adams;

- Cleta Michell, Chair, Conservative Partnership Institute Election Integrity Network.

Under the AI adopted by Commissioners, the members appointed by the Democratic authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Democratic authorities. The final members selected shall be placed in nomination and ratified by a majority vote. Please inform me how you would like to proceed for a majority vote either by placing it on the agenda for the next USCCR business meeting or by a notational vote.

Mauro Morales
Staff Director
U.S. Commission on Civil Rights
P: 202-376-7796| F: 202-376-7672
Mmorales@usccr.gov
http://usccr.gov/

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Washington D.C. 20425

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<image002.gif>

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Date : 2/23/2021 11:22:40 PM
From : "Alexander Heideman" aheideman@usccr.gov
To : "Gail Heriot" gheriot@me.com, "John Mashburn" jmashburn@usccr.gov
Cc : "stephen gilchrist" thegilchristassociates@gmail.com, "Gail Heriot" gheriot@usccr.gov, "Carissa Mulder" carissa.mulder@gmail.com, "Christian Adams" adams@electionlawcenter.com, "Carissa Mulder" CMulder@usccr.gov, "Kirsanow, Peter" pkirsanow@beneschlaw.com, "Peter Kirsanow" pkirsanow@usccr.gov, "Stephen Gilchrist" sgilchrist@usccr.gov, "Thomas Simuel" tsimuel@usccr.gov, "Alexander Heideman" alexanderheideman@gmail.com
Subject : Re: [EXTERNAL] Re: Commissioner Appointment/Removal
Attachment : STATUTE-71-Pg634.pdf;

I'm sorry I'm late to this. The 1957 Act did not provide for the removal of a Commissioner. I've attached the act in PDF format.

From: Gail Heriot <gheriot@me.com>
Date: Tuesday, February 23, 2021 at 8:38 PM
To: John Mashburn <jmashburn@usccr.gov>
Cc: stephen gilchrist <thegilchristassociates@gmail.com>, Gail Heriot <gheriot@usccr.gov>, Carissa Mulder <carissa.mulder@gmail.com>, Christian Adams <adams@electionlawcenter.com>, Alexander Heideman <aheideman@usccr.gov>, Carissa Mulder <CMulder@usccr.gov>, "Kirsanow, Peter" <pkirsanow@beneschlaw.com>, Peter Kirsanow <pkirsanow@usccr.gov>, Stephen Gilchrist <sgilchrist@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>
Subject: [EXTERNAL] Re: Commissioner Appointment/Removal

> CAUTION: This email is from outside USCCR.

oner could be removed. If that's not so, could someone point me to the section of the 1957 Act that says that? Alex?

Gail Heriot
Professor of Law
University of San Diego

> On Feb 23, 2021, at 4:55 PM, John Mashburn <jmashburn@usccr.gov> wrote:
>
> Quick wiki excerpt:
>
> > In 1983, Reagan attempted to fire three members of the commission. They sued the administration in federal court to stay on. The authorizing legislation stated that a president could only

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fire a commissioner for "misbehavior in office," and it was clear that the terminations were the result of disagreements over policy. A compromise brokered in the Senate resulted in the current hybrid group of eight, half appointed by the president and half by the Congress, **with six-year terms that do not expire with the inauguration of a new president**. Since that time the commission has struggled to remain independent, and its agenda has oscillated between liberal and conservative aims as factions among its members have ebbed and waned.[10]

USCCR Authorizing Statute excerpt:

"Sec. 2. <42 USC 1975> ESTABLISHMENT OF COMMISSION.

"(a) Generally.--There is established the United States**Commission on Civil Rights** (hereinafter in this Act referred to as the 'Commission').

"(b) Membership.--The Commission shall be composed of 8 members. Not more than 4 of the members shall at any one time be of the same political party. The initial membership of the Commission shall be the members of the United States **Commission on Civil Rights** on September 30, 1994. Thereafter vacancies in the membership of the Commission shall continue to be appointed as follows:

"(1) **4 members of the Commission shall be appointed by the President.**

"(2) 2 members of the Commission shall be appointed by the President pro tempore of the Senate, upon the recommendations of the majority leader and the minority leader, and of the members appointed not more than one shall be appointed from the same political party.

"(3) 2 members of the Commission shall be appointed by the Speaker of the House of Representatives upon the recommendations of the majority leader and the minority leader, and of the members appointed not more than one shall be appointed from the same political party.

"(c) Terms.--**The term of office of each member of the Commission shall be 6 years**. The term of each member of the Commission **[**4339]** in the initial membership of the Commission shall expire on the date such term would have expired as of September 30, 1994. "(d) Chairperson.—

(1) Except as provided in paragraphs (2) and (3), the individuals serving as Chairperson and Vice Chairperson of the United States **Commission on Civil Rights** on September 30, 1994 shall initially fill those roles on the Commission. "

(2) Thereafter the President may, with the concurrence of a majority of the Commission's members, designate a Chairperson or Vice Chairperson, as the case may be, from among the Commission's members. "

(3) The President shall, with the concurrence of a majority of the Commission's members, fill a vacancy by designating a Chairperson or Vice Chairperson, as the case may be, from among the Commission's members. "

(4) The Vice Chairperson shall act in place of the Chairperson in the absence of the Chairperson. "

(e) **Removal of Members.--The President may remove a member of the Commission only for neglect of duty or malfeasance in office.** "

(f) Quorum.--5 members of the Commission constitute a quorum of the Commission.

From: stephen gilchrist <thegilchristassociates@gmail.com>
Date: Tuesday, February 23, 2021 at 7:11 PM
To: Gail Heriot <gheriot@usccr.gov>
Cc: Carissa Mulder <carissa.mulder@gmail.com>, Christian Adams <adams@electionlawcenter.com>, Alexander Heideman <aheideman@usccr.gov>, Carissa Mulder <CMulder@usccr.gov>, Gail Heriot <gheriot@me.com>, John Mashburn <jmashburn@usccr.gov>, "Kirsanow, Peter" <pkirsanow@beneschlaw.com>, Peter Kirsanow

AMERICAN OVERSIGHT

<pkirsanow@usccr.gov>, Stephen Gilchrist <sgilchrist@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>
Subject: Re: [EXTERNAL] Re: Caucus Meeting tomorrow?

> CAUTION: This email is from outside USCCR.

On Tue, Feb 23, 2021, 7:09 PM Gail Heriot <gheriot@usccr.gov> wrote:

> Sounds like our colleagues are crazy. But I take it she didn't say straight out that Yaki (or someone) is trying to have you and Stephen removed?
>
> Gail Heriot
> Professor of Law
> University of San Diego
>
> On Feb 23, 2021, at 3:53 PM, Carissa Mulder <carissa.mulder@gmail.com> wrote:
>
> > CAUTION: This email is from outside USCCR.
> >
> > o get you removed.
> >
> > On Tue, Feb 23, 2021 at 6:39 PM Christian Adams <adams@electionlawcenter.com> wrote:
> >
> > > I just talked to Cantu for an hour. Key takeaways
> > >
> > > 1. I told her she HAD to get up with Pete regarding details.
> > > 2. I gave her a heads up that there was a chance she would NOT have a quorum on Friday pending resolution of big issues. She should not be blindsided in my view. I put down the threat of a withheld quorum in order to remind her it was possible and that we needed to resolve things.
> > > 3. She said something that indicated to me that Yaki and Debo or someone else (Mauro?) are agitating to have Stephen and I removed by the President. I cannot recall her exact words, but it was along the lines "I tell people that the people we got are the people we got. President Reagan tried to remove commissioners and he got sued and lost for removing them." She would NOT HAVE BROUGHT THIS up unless that chatter is occurring

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somewhere. And after all, ask Roger Severino if the Biden people are thinking like this. Bottom Line: some members of the Commission may be thinking they can improve their bargaining position by altering the composition of the commission and getting rid of two of us. Whether or not they are correct is irrelevant to Yaki or Debo's potential perception of this option.

4. I repeatedly told her - "You need to get with Pete on that; he knows more about that than me." Among the topics falling under this category were EAC appointments, SAC issues, and all manner of administrative issues.
5. I made it plain to her we could stop the business of the commission if we were not treated fairly, and fairness is all we want.

From: stephen gilchrist <thegilchristassociates@gmail.com>
Sent: Tuesday, February 23, 2021 4:06 PM
To: Carissa Mulder <carissa.mulder@gmail.com>
Cc: Kirsanow, Peter <pkirsanow@beneschlaw.com>; Gail Heriot <gheriot@me.com>; Christian Adams >; Alexander Heideman <aheideman@usccr.gov>; John Mashburn <jmashburn@usccr.gov>; Thomas Simuel <tsimuel@usccr.gov>; Peter Kirsanow <pkirsanow@usccr.gov>; Stephen Gilchrist <sgilchrist@usccr.gov>; Gail Heriot <gheriot@usccr.gov>; Carissa Mulder <cmulder@usccr.gov>
Subject: Re: Caucus Meeting tomorrow?

Carissa - I can do 1pm.

On Tue, Feb 23, 2021, 3:45 PM Carissa Mulder <carissa.mulder@gmail.com> wrote:

> Pete would like to have a caucus meeting tomorrow to discuss how to proceed from here. Are people free at 1:00?
> --
> Carissa B. Mulder

--
Carissa B. Mulder

AMERICAN OVERSIGHT

Public Law 85-315

September 9, 1957
[H. R. 6127]

AN ACT

To provide means of further securing and protecting the civil rights of persons within the jurisdiction of the United States.

Civil Rights Act of 1957.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

PART I—ESTABLISHMENT OF THE COMMISSION ON CIVIL RIGHTS

SEC. 101. (a) There is created in the executive branch of the Government a Commission on Civil Rights (hereinafter called the "Commission").

(b) The Commission shall be composed of six members who shall be appointed by the President by and with the advice and consent of the Senate. Not more than three of the members shall at any one time be of the same political party.

(c) The President shall designate one of the members of the Commission as Chairman and one as Vice Chairman. The Vice Chairman shall act as Chairman in the absence or disability of the Chairman, or in the event of a vacancy in that office.

(d) Any vacancy in the Commission shall not affect its powers and shall be filled in the same manner, and subject to the same limitation with respect to party affiliations as the original appointment was made.

(e) Four members of the Commission shall constitute a quorum.

RULES OF PROCEDURE OF THE COMMISSION

SEC. 102. (a) The Chairman or one designated by him to act as Chairman at a hearing of the Commission shall announce in an opening statement the subject of the hearing.

(b) A copy of the Commission's rules shall be made available to the witness before the Commission.

(c) Witnesses at the hearings may be accompanied by their own counsel for the purpose of advising them concerning their constitutional rights.

(d) The Chairman or Acting Chairman may punish breaches of order and decorum and unprofessional ethics on the part of counsel, by censure and exclusion from the hearings.

(e) If the Commission determines that evidence or testimony at any hearing may tend to defame, degrade, or incriminate any person, it shall (1) receive such evidence or testimony in executive session; (2) afford such person an opportunity voluntarily to appear as a witness; and (3) receive and dispose of requests from such person to subpena additional witnesses.

(f) Except as provided in sections 102 and 105 (f) of this Act, the Chairman shall receive and the Commission shall dispose of requests to subpena additional witnesses.

Evidence or testimony. Release.

(g) No evidence or testimony taken in executive session may be released or used in public sessions without the consent of the Commission. Whoever releases or uses in public without the consent of the Commission evidence or testimony taken in executive session shall be fined not more than $1,000, or imprisoned for not more than one year.

(h) In the discretion of the Commission, witnesses may submit brief and pertinent sworn statements in writing for inclusion in the record. The Commission is the sole judge of the pertinency of testimony and evidence adduced at its hearings.

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USCCR-21-1814-A-002963

(i) Upon payment of the cost thereof, a witness may obtain a transcript copy of his testimony given at a public session or, if given at an executive session, when authorized by the Commission.

Witness fees.

(j) A witness attending any session of the Commission shall receive $4 for each day's attendance and for the time necessarily occupied in going to and returning from the same, and 8 cents per mile for going from and returning to his place of residence. Witnesses who attend at points so far removed from their respective residences as to prohibit return thereto from day to day shall be entitled to an additional allowance of $12 per day for expenses of subsistence, including the time necessarily occupied in going to and returning from the place of attendance. Mileage payments shall be tendered to the witness upon service of a subpena issued on behalf of the Commission or any subcommittee thereof.

(k) The Commission shall not issue any subpena for the attendance and testimony of witnesses or for the production of written or other matter which would require the presence of the party subpenaed at a hearing to be held outside of the State, wherein the witness is found or resides or transacts business.

COMPENSATION OF MEMBERS OF THE COMMISSION

SEC. 103. (a) Each member of the Commission who is not otherwise in the service of the Government of the United States shall receive the sum of $50 per day for each day spent in the work of the Commission, shall be reimbursed for actual and necessary travel expenses, and shall receive a per diem allowance of $12 in lieu of actual expenses for subsistence when away from his usual place of residence, inclusive of fees or tips to porters and stewards.

(b) Each member of the Commission who is otherwise in the service of the Government of the United States shall serve without compensation in addition to that received for such other service, but while engaged in the work of the Commission shall be reimbursed for actual and necessary travel expenses, and shall receive a per diem allowance of $12 in lieu of actual expenses for subsistence when away from his usual place of residence, inclusive of fees or tips to porters and stewards.

DUTIES OF THE COMMISSION

SEC. 104. (a) The Commission shall—

(1) investigate allegations in writing under oath or affirmation that certain citizens of the United States are being deprived of their right to vote and have that vote counted by reason of their color, race, religion, or national origin; which writing, under oath or affirmation, shall set forth the facts upon which such belief or beliefs are based;

(2) study and collect information concerning legal developments constituting a denial of equal protection of the laws under the Constitution; and

(3) appraise the laws and policies of the Federal Government with respect to equal protection of the laws under the Constitution.

Reports to President and Congress.

(b) The Commission shall submit interim reports to the President and to the Congress at such times as either the Commission or the President shall deem desirable, and shall submit to the President and to the Congress a final and comprehensive report of its activities, findings, and recommendations not later than two years from the date of the enactment of this Act.

Termination of Commission.

(c) Sixty days after the submission of its final report and recommendations the Commission shall cease to exist.

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POWERS OF THE COMMISSION

Staff director.

SEC. 105. (a) There shall be a full-time staff director for the Commission who shall be appointed by the President by and with the advice and consent of the Senate and who shall receive compensation at a rate, to be fixed by the President, not in excess of $22,500 a year. The President shall consult with the Commission before submitting the nomination of any person for appointment to the position of staff director. Within the limitations of its appropriations, the Commission may appoint such other personnel as it deems advisable, in accordance with the civil service and classification laws, and may procure services as authorized by section 15 of the Act of August 2, 1946 (60 Stat. 810; 5 U. S. C. 55a), but at rates for individuals not in excess of $50 per diem.

(b) The Commission shall not accept or utilize services of voluntary or uncompensated personnel, and the term "whoever" as used in paragraph (g) of section 102 hereof shall be construed to mean a person whose services are compensated by the United States.

(c) The Commission may constitute such advisory committees within States composed of citizens of that State and may consult with governors, attorneys general, and other representatives of State and local governments, and private organizations, as it deems advisable.

(d) Members of the Commission, and members of advisory committees constituted pursuant to subsection (c) of this section, shall be exempt from the operation of sections 281, 283, 284, 434, and 1914 of title 18 of the United States Code, and section 190 of the Revised Statutes (5 U. S. C. 99).

62 Stat. 697 *et seq.*

(e) All Federal agencies shall cooperate fully with the Commission to the end that it may effectively carry out its functions and duties.

Hearings, etc.

(f) The Commission, or on the authorization of the Commission any subcommittee of two or more members, at least one of whom shall be of each major political party, may, for the purpose of carrying out the provisions of this Act, hold such hearings and act at such times and places as the Commission or such authorized subcommittee may deem advisable.

Subpenas.

Subpenas for the attendance and testimony of witnesses or the production of written or other matter may be issued in accordance with the rules of the Commission as contained in section 102 (j) and (k) of this Act, over the signature of the Chairman of the Commission or of such subcommittee, and may be served by any person designated by such Chairman.

(g) In case of contumacy or refusal to obey a subpena, any district court of the United States or the United States court of any Territory or possession, or the District Court of the United States for the District of Columbia, within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the Attorney General of the United States shall have jurisdiction to issue to such person an order requiring such person to appear before the Commission or a subcommittee thereof, there to produce evidence if so ordered, or there to give testimony touching the matter under investigation; and any failure to obey such order of the court may be punished by said court as a contempt thereof.

APPROPRIATIONS

SEC. 106. There is hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, so much as may be necessary to carry out the provisions of this Act.

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PART II—TO PROVIDE FOR AN ADDITIONAL ASSISTANT ATTORNEY GENERAL

SEC. 111. There shall be in the Department of Justice one additional Assistant Attorney General, who shall be appointed by the President, by and with the advice and consent of the Senate, who shall assist the Attorney General in the performance of his duties, and who shall receive compensation at the rate prescribed by law for other Assistant Attorneys General.

PART III—TO STRENGTHEN THE CIVIL RIGHTS STATUTES, AND FOR OTHER PURPOSES

SEC. 121. Section 1343 of title 28, United States Code, is amended as follows: 62 Stat. 932.

(a) Amend the catch line of said section to read,

"§ 1343. Civil rights and elective franchise"

(b) Delete the period at the end of paragraph (3) and insert in lieu thereof a semicolon.

(c) Add a paragraph as follows:

"(4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote."

SEC. 122. Section 1989 of the Revised Statutes (42 U. S. C. 1993) is hereby repealed. Repeal.

PART IV—TO PROVIDE MEANS OF FURTHER SECURING AND PROTECTING THE RIGHT TO VOTE

SEC. 131. Section 2004 of the Revised Statutes (42 U. S. C. 1971), is amended as follows:

(a) Amend the catch line of said section to read, "Voting rights".

(b) Designate its present text with the subsection symbol "(a)".

(c) Add, immediately following the present text, four new subsections to read as follows:

"(b) No person, whether acting under color of law or otherwise, shall intimidate, threaten, coerce, or attempt to intimidate, threaten, or coerce any other person for the purpose of interfering with the right of such other person to vote or to vote as he may choose, or of causing such other person to vote for, or not to vote for, any candidate for the office of President, Vice President, presidential elector, Member of the Senate, or Member of the House of Representatives, Delegates or Commissioners from the Territories or possessions, at any general, special, or primary election held solely or in part for the purpose of selecting or electing any such candidate.

"(c) Whenever any person has engaged or there are reasonable grounds to believe that any person is about to engage in any act or practice which would deprive any other person of any right or privilege secured by subsection (a) or (b), the Attorney General may institute for the United States, or in the name of the United States, a civil action or other proper proceeding for preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order. In any proceeding hereunder the United States shall be liable for costs the same as a private person.

"(d) The district courts of the United States shall have jurisdiction of proceedings instituted pursuant to this section and shall exercise the same without regard to whether the party aggrieved shall have exhausted any administrative or other remedies that may be provided by law.

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USCCR-21-1814-A-002966

"(e) Any person cited for an alleged contempt under this Act shall be allowed to make his full defense by counsel learned in the law; and the court before which he is cited or tried, or some judge thereof, shall immediately, upon his request, assign to him such counsel, not exceeding two, as he may desire, who shall have free access to him at all reasonable hours. He shall be allowed, in his defense to make any proof that he can produce by lawful witnesses, and shall have the like process of the court to compel his witnesses to appear at his trial or hearing, as is usually granted to compel witnesses to appear on behalf of the prosecution. If such person shall be found by the court to be financially unable to provide for such counsel, it shall be the duty of the court to provide such counsel."

PART V—TO PROVIDE TRIAL BY JURY FOR PROCEEDINGS TO PUNISH CRIMINAL CONTEMPTS OF COURT GROWING OUT OF CIVIL RIGHTS CASES AND TO AMEND THE JUDICIAL CODE RELATING TO FEDERAL JURY QUALIFICATIONS

Criminal contempt. Penalties.

SEC. 151. In all cases of criminal contempt arising under the provisions of this Act, the accused, upon conviction, shall be punished by fine or imprisonment or both: *Provided however*, That in case the accused is a natural person the fine to be paid shall not exceed the sum of $1,000, nor shall imprisonment exceed the term of six months: *Provided further*, That in any such proceeding for criminal contempt, at the discretion of the judge, the accused may be tried with or without a jury: *Provided further, however*, That in the event such proceeding for criminal contempt be tried before a judge without a jury and the sentence of the court upon conviction is a fine in excess of the sum of $300 or imprisonment in excess of forty-five days, the accused in said proceeding, upon demand therefor, shall be entitled to a trial de novo before a jury, which shall conform as near as may be to the practice in other criminal cases.

Nonapplicability.

This section shall not apply to contempts committed in the presence of the court or so near thereto as to interfere directly with the administration of justice nor to the misbehavior, misconduct, or disobedience, of any officer of the court in respect to the writs, orders, or process of the court.

Nor shall anything herein or in any other provision of law be construed to deprive courts of their power, by civil contempt proceedings, without a jury, to secure compliance with or to prevent obstruction of, as distinguished from punishment for violations of, any lawful writ, process, order, rule, decree, or command of the court in accordance with the prevailing usages of law and equity, including the power of detention.

62 Stat. 951.

SEC. 152. Section 1861, title 28, of the United States Code is hereby amended to read as follows:

"§ 1861. Qualifications of Federal jurors

"Any citizen of the United States who has attained the age of twenty-one years and who has resided for a period of one year within the judicial district, is competent to serve as a grand or petit juror unless—

"(1) He has been convicted in a State or Federal court of record of a crime punishable by imprisonment for more than one year and his civil rights have not been restored by pardon or amnesty.

"(2) He is unable to read, write, speak, and understand the English language.

"(3) He is incapable, by reason of mental or physical infirmities to render efficient jury service."

Short title.

SEC. 161. This Act may be cited as the "Civil Rights Act of 1957".

Approved September 9, 1957.

AMERICAN OVERSIGHT USCCR-21-1814-A-002967

Date : 8/18/2021 4:41:49 PM
From : "Mauro Morales" mmorales@usccr.gov
To : "John Mashburn" jmashburn@usccr.gov
Cc : "Juana Silverio" jsilverio@usccr.gov, "Thomas Simuel" tsimuel@usccr.gov, "Alexander Heideman" aheideman@usccr.gov, "Carissa Mulder" CMulder@usccr.gov
Subject : Re: EAC Final Selections
Attachment : image001.gif;image002.gif;

That is a good question. It is a decision for Commissioners in consultation with the Chair to decide how they wish to proceed. Adams is welcome to make a motion to amend the agenda to request a discussion and a vote. If the majority supports his motion it can be added to agenda. In the alternative, if Commissioners desire to proceed by notational vote and no one objects then a notational vote can occur. As I have requested previously, please advise me how you wish to proceed. I recommend Commissioners express their desire to the Chair since the Chair controls the agenda.

Sent from my iPhone

> On Aug 18, 2021, at 12:57 PM, John Mashburn <jmashburn@usccr.gov> wrote:
>
> This vote is not on the agenda for Friday, and a notational vote was not sent, so where does it stand? Gilchrist and Adams would like a vote at the business meeting and Adams is willing to make a motion to vote on it.
>
> ---
>
> **From:** Mauro Morales <mmorales@usccr.gov>
> **Date:** Tuesday, August 10, 2021 at 2:57 PM
> **To:** Commissioners <Commissioners@usccr.gov>
> **Cc:** "CommissionerAssistants@usccr.gov" <CommissionerAssistants@usccr.gov>, David Ganz <dganz@usccr.gov>
> **Subject:** EAC Final Selections
>
> Commissioners,
>
> Pursuant to the AI voted on during the April 30th Business meeting, I received the following names for appointment the Election Assistance Commission (EAC):
>
> Commissioners Cantu, Adegbile, Kladney and Yaki have selected for appointment to the EAC:
>
> - Cleta Michell, Chair, Conservative Partnership Institute Election Integrity Network.

AMERICAN OVERSIGHT

Commissioners Adams, Gilchrist, Heriot and Kirsanow have selected for appointment to the EAC:

- Commissioner Michael Yaki;

Under the AI adopted by Commissioners, these two members selected shall be placed in nomination and ratified by a majority vote. Please inform me how you would like to proceed for a majority vote either by placing it on the agenda for the next USCCR business meeting or by a notational vote. Thank you.

Mauro Morales
Staff Director
U.S. Commission on Civil Rights
P: 202-376-7796| F: 202-376-7672
Mmorales@usccr.gov
http://usccr.gov/
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425

Follow Us on Twitter & Facebook:
<image001.gif>
<image002.gif>

#USCCR

Sent from my iPhone

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OVERSIGHT

OVERSTOCK

Date : 2/28/2021 10:47:06 AM
From : "Alexander Heideman" aheideman@usccr.gov
To : "Gail Heriot" gheriot@me.com, "Gail Heriot" gheriot@usccr.gov
Cc : "Alexander Heideman" alexanderheideman@gmail.com
Subject : Letter draft updated
Attachment : CantuLetter_Draft2_2.28.2021.docx;

Attached---my big edits:

- Changed all “Staff Director” to “staff director” to minimize the importance of the position;
- Standardized “Chair” and “Vice-Chair” to “chairperson” and “vice-chairperson” to be consistent with the statute;
- Deleted a couple small phrases/sentences that Cantu might read as hostile to her; and
- Added footnote 11 to cite authority for the Commission as a whole appointing EAC advisory board members, rather than chairperson as an individual appointing them.

I can Zoom or call about this any time after 3 PM Eastern that works for you.

Alex

AMERICAN OVERSIGHT

Commissioners Adams, Gilchrist,
Heriot, and Kirsanow
United States Commission on Civil Rights
1331 Pennsylvania Avenue NW
Washington, DC 20425

March 1, 2021

The Honorable Norma Cantú~~,~~
United States Commission on Civil Rights
1331 Pennsylvania Avenue NW
Washington, DC 20425

Dear Commissioner Cantú:

We write today to detail our concerns with Staff Director Mauro Morales's recent actions and to ensure that you understand why we were compelled not to attend Friday's briefing. We understand that you are new to the Commission and unfamiliar with its procedures and traditions. It's important that we be clear.

The staff director ~~Staff Director~~ began his unlawful actions on January 21, 2021, when he refused to honor our directive to him to reinstate the January 29 business meeting, which the Commission had voted to hold.[1] That meeting had been cancelled ~~(~~contrary to our rules~~)~~ by our former chairperson, Catherine Lhamon, as her last act prior to resigning on January 20.[2] The staff director ~~Staff Director~~ attempted to justify his refusal by stating that he "[found] ~~former Chairperson Lhamon's~~her decision to postpone the January 29 meeting as reasonable and appropriate."[3] But that refusal was in contravention of our Administrative ~~Order~~ Instruction ("AI") 1-24(1), which provides:

> (1) If there is a vacancy in both the positions of Chairperson and Vice-Chairperson, the Commission may call a special meeting by majority vote pursuant to Regulations § 701.11(b).[4]

---

[1] Transcript of U.S. Commission on Civil Rights Telephonic Business Meeting September 11, 2020 at 17 (available at https://www.usccr.gov/files/2020-11-04-Commission-Business-Meeting-Transcript-for-09-11.pdf).
[2] Neither Chairperson Lhamon nor the staff director ~~Staff Director~~ had the authority to cancel a meeting that the Commission had voted to hold. *See* 45 C.F.R. § 701.11(d) (allowing for cancellation of meetings only after the chairperson ~~Chair~~ "determines that there are insufficient substantive items on a proposed meeting agenda" and after she has "consult[ed] with the members of the Commission and consider[ed] . . . the views of the members."). *See also* 45 C.F.R. § 701.12; 45 C.F.R. § 701.11(a). But there is no need to belabor this point ~~since~~ because it is very clear that a majority of the members of the Commission had the authority to require the staff director ~~Staff Director~~ to call a meeting when there is a vacancy in both the positions of c~~C~~hairperson and v~~V~~ice-c ~~C~~hairperson.
[3] Email from Mauro Morales, Staff Director, U.S. Comm'n on Civil Rights, to Commissioners, U.S. Comm'n on Civil Rights (Jan. 21, 2021, 13:02 EST) (on file with authors).
[4] Regulation § 701.11(b) permits a majority of the members of the Commission to call a meeting even in cases where the chairperson ~~Chair~~ and v~~V~~ice- ~~C~~chairperson ~~hair~~ are not absent.

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Note that AI 1-24(1) refers to "the Commission" "by majority vote" as the entity that can call a special meeting. The statute that constitutes the Commission tells us exactly what that means: "The Commission shall be composed of ~~eight~~ 8 members." ~~U.S.C. §~~ .[5] Significantly, it does *not* say that "the Commission shall be composed of ~~eight~~ 8 members and a staff director~~Staff Director~~," much less that it "shall be composed of ~~eight~~ 8 members under the leadership of ~~the~~ a staff director~~Staff Director~~." The staff director ~~Staff Director~~ directs the Commission's staff, not the Commission itself.[6] If leading the Commission were the staff director's ~~Staff Director's~~ job, his title would be "Commission Director."

Commented [AH1]: The statute uses "8" rather than "eight."

It is also important to note that our statute assigns all responsibilities to the Commission. That's important to understanding how the Commission is designed by Congress to work. The staff director ~~Staff Director~~ is given no statutory authority at all (with the possible exception of the power to organize the work of the staff, assuming there is a staff, which arguably is inherent in the title). The power to undertake tasks must thus be delegated *by* the Commission *to* the staff director ~~Staff Director~~ (which the Commission has often done so through its Administrative Instructions).

But the staff director ~~Staff Director~~ may not arrogate power to himself that has not been delegated. AI 1-24(1) clearly states that when no c~~C~~hairperson or v~~V~~ice-c~~C~~hairperson exists, it is for the Commission to call a special meeting. There is no parallel provision that gives that same power to the staff director~~Staff Director~~. Nor do those rules give the staff director ~~Staff Director~~ the authority to ignore the Commission's call for such a meeting. On January ~~,~~ 21, when the four of us made clear that we wished to reinstate the meeting that had been scheduled for January 29, we were the majority of the members of the Commission. It was up to the staff director ~~Staff Director~~ to execute that directive by posting a notice in the Federal Register. Yet the staff director continued to refuse~~d~~ to hold that meeting.[7]

Things got worse from there. After President Biden appointed you as a commissioner and nominated you to be our next chairperson, our staff director ~~Staff Director~~ arrogated to himself the power to call a special business meeting for February 26 (directly after our already-scheduled briefing on bail reform). This, again, is not his proper role. That authority belongs to the Commission itself. But that wasn't the worst of it. The staff director ~~Staff Director~~ then claimed the power to appoint the Acting c~~C~~hairperson of the Commission, pending your confirmation (which, for the record, we continue to believe can and should happen soon).

His claim was utter nonsense.[8] - Our position ~~is~~ was and continues to be that the most senior member of the Commission (Kirsanow) should wield the gavel pending the election by the

---

[5] 42 U.S.C. § 1975(b).

[6] In this respect, the staff director's ~~Staff Director's~~ job can be analogized to the White House Chief of Staff or the Chief of Staff of a U.S. Senator. Both are important jobs, but the White House Chief of Staff directs the White House staff, not the President, just as a U.S. Senator's Chief of Staff directs the Senator's staff, not the Senator. The only difference is the Commission is a multi-member body. In that way a useful analogy might be made to the Clerk of the Court for the U.S. Supreme Court:- The Justices do not work at his direction.

[7] Email from Mauro Morales, Staff Director, U.S. Comm'n on Civil Rights, to Peter Kirsanow, Commissioner, U.S. Comm'n on Civil Rights (Jan. 22, 2021, 20:53 EST) (on file with authors).

[8] Although the staff director failed to cite the authority on which he acted, you informed us that the staff director believes AI 1-6 provides that authority. It does not. Section 4.07 of AI 1-6 (entitled "National Project Development

AMERICAN OVERSIGHT

Commission of an acting chairperson. Put only slightly differently, ~~Pete's~~ Kirsanow's job would be to convene the meeting at which ~~an~~ the Commission selects an a~~A~~cting c~~C~~hairperson ~~is selected~~. As you know from your discussions with two of us (Heriot and Kirsanow) via Zoom, we have always been flexible concerning the issue of who should be elected a~~A~~cting c~~C~~hairperson pending your confirmation. But there are two things that we believed then and continue to believe are extremely important:

(1) ***The s~~S~~taff d~~D~~irector cannot be the one to designate the a~~A~~cting c~~C~~hairperson.*** That task is for the Commission. AI 1-24 states in full:

> (1) If there is a vacancy in both the positions of Chairperson and Vice-Chairperson, the Commission may call a special meeting by majority vote pursuant to Regulations § 701.11(b).
> (2) There being no Chairperson or Vice-Chairperson, the Staff Director shall establish the agenda for this special meeting, whereby specific items may be added or deleted in accordance with Regulations § 701.11(c). However, the first item of business shall be the election of a designee of the functions of the Chairperson.

The Commission must call the meeting and elect the a~~A~~cting c~~C~~hairperson. The staff director's ~~Staff Director's~~ role is to undertake the ministerial tasks of noticing the meeting in the Federal Register and drawing up the agenda. He is not even permitted to put any business before that of electing an a~~A~~cting c~~C~~hairperson.

(2) ***The President's nominee cannot be the a~~A~~cting c~~C~~hairperson.*** This is in keeping with federal practice. When the President's nominee to a Senate-confirmable office has not yet been confirmed, he or she cannot be "acting" in that position. The contrary practice would essentially eviscerate the Senate's role. If you're doing the job anyway, why bother to cooperate with the Senate in the confirmation process? Why bother to give Members of the Senate assurances that the job will be performed in keeping with federal law and policy when you've already got the authority of the office? The same logic applies here.

---

and Implementation"), provides, "All responsibilities not otherwise delegated are reserved to the Staff Director. The Staff Director may delegate any of these responsibilities to a member of the executive staff." AI 1-6 § 4.07. There are many reasons this provision does apply to the appointment of an a~~A~~cting c~~C~~hairperson. Most obviously, AI 1-24 explicitly delegates the designation of a commissioner to fill the functions of chairperson during a vacancy to "a majority of Commissioners," thereby negating any possible interpretation of AI 1-6 § 4.07 that would give this authority to the staff director~~Staff Director~~. Moreover, §4 is generally about how tasks are to be allocated among the various divisions of the Commission's staff—the O~~o~~ffice of the Staff Director (OSD), the Office of the General Counsel (OGC), the Office of Civil Rights Evaluation ("OCRE"), and the Office of Management (OM), etc. This is how the staff director ~~Staff Director~~ delegates responsibilities to the staff that have been delegated to him. But he cannot delegate responsibilities that were never delegated to him in the first place. That's why the section states that he "reserves" responsibilities that he has not otherwise delegated by him; the section is not itself a delegation of authority to him.

AMERICAN OVERSIGHT

We thought all this was obvious and appropriate, and for a while we thought you ~~understood and~~ agreed. To our astonishment, you ended up being willing to go along the staff director's ~~Staff Director's~~ arrogation of power.[9] Not only did you recognize his purported authority to designate the a~~A~~cting c~~C~~hairperson ~~(something we suspect you'll regret when you understand how the Commission works a little better)~~, but you also allowed him to designate you as a~~A~~cting chairperson~~Chair~~, knowing our reasonable objections to such a move.

As you will remember, we were very flexible as to how the Commission would select an a~~A~~cting c~~C~~hairperson for the February 26 bail reform hearing. We were willing to have our most senior member chair; we were willing to draw a Commissioner's name out of a hat; we were willing to split the a~~A~~cting c~~C~~hairperson's position between one Commissioner appointed by a Democrat and one Commission appointed by a Republican; we were willing to have Commissioner Kladney (who was appointed by a Democrat) serve as acting chairperson. All of these methods would have worked and ~~. Given a few more minutes of time to think about it,~~ we could have come up with even more alternatives.

Alas, the issue was resolved instead in a way that was contrary to our rules and (if we had acquiesced) would have set an extraordinarily bad precedent. We were baffled. Under the circumstances, we viewed it as necessary not to acquiesce. That is why we could not attend the briefing.

We don't blame you. We know that you are new at this. All institutions have their rules and traditions that outsiders are unfamiliar with. Soon enough you will be familiar with those that apply to the Commission. So, despite the staff director's ~~Staff Director's~~ continued unlawful actions, we remain confident that you can lead this Commission and that you can be confirmed as c~~C~~hairperson—soon. However, before we concur ~~her~~ your appointment as chairperson,[10] we still need an agreement on the record about the matters that we (~~Gail~~ Heriot and ~~Pete~~ Kirsanow) discussed with you earlier.

We understood from ~~Gail and Pete's~~ earlier discussions with you that (with the exception of the v~~V~~ice-c~~C~~hairmanship, which you felt you had no control over) that our proposals were fair and appropriate. All we are trying to do is ensure fairness and prevent the abuses that went on during Chairperson Lhamon's tenure.

We won't repeat those matters here. This letter is long enough as it is. But we did wish to mention one aspect of the matter that has been troubling us over the last couple of days.

One of our requests was that you follow that law when appointments are made. For example, the law gives the Commission (and *not* the chairperson ~~Chair~~ or the staff director~~Staff Director~~) the

---

[9] At the February 26 briefing, "The Civil Rights Implications of Cash Bail," the staff director ~~Staff Director~~ designated Commissioner Cantú as moderator of the hearing, saying, "In the absence of a chairperson for the Commission, I will appoint a moderator to administer today's briefing." U.S. Comm'n on Civil Rights, *U.S. Comm'n on Civil Rights Public Briefing: The Civil Rights Implications of Cash Bail*, YOUTUBE (Feb. 26, 2021), https://www.youtube.com/watch?v=fWLcyC_kZqI&ab_channel=USCCR.

[10] Concurrence of the majority of the Commission is required by our authorizing statute. 42 U.S.C. § 1975(d).

AMERICAN OVERSIGHT

authority to appoint two members of the Election Assistance Commission's Board of Advisors.[11] Yet c~~C~~hairperson Lhamon arrogated that authority to herself and appointed the members without consulting or even notifying us. This act was simply a violation of the law. Yet when you spoke last with ~~Pete~~ Kirsanow (after consulting with our Progressive colleagues) on Thursday, you suggested a "compromise" under which you would appoint the members~~,~~ but promised that they would not be Democrats. Alas, we don't think the law can be compromised in that way. All we ~~are~~ ask~~ing~~ here is that you comply with the law.

We look forward to fruitful and constructive discussions stemming from our earlier ~~discussions~~ conversations with you and from this letter. We are still confident that we can reach an agreement ~~with you~~. We remain dedicated to the Commission's important and bipartisan work.

Sincerely,

Peter Kirsanow
Commissioner

J. Christian Adams
Commissioner

Gail Heriot
Commissioner

Stephen Gilchrist
Commissioner

[11] *See* 52 U.S.C. § 20944(a)(10)) ("Two members appointed [to the U.S. Election Assistance Commission] by the United States Commission on Civil Rights."); *see also* 52 U.S.C. § 20944(b) ("Appointments shall be made to the Board of Advisors [of the the U.S. Election Assistance Commission] under subsection (a) in a manner which ensures that the Board of Advisors will be bipartisan in nature and will reflect the various geographic regions of the United States.").

AMERICAN OVERSIGHT

Date : 2/28/2021 12:20:18 PM
From : "Gail Heriot" gheriot@usccr.gov
To : "Alexander Heideman" aheideman@usccr.gov
Cc : "Gail Heriot" gheriot@me.com, "Alexander Heideman" alexanderheideman@gmail.com
Subject : Re: Letter draft updated

Sounds good. Let's figure on 4:00 pm your time for a zoom. It probably won't take very long ... just a few minutes.

Gail Heriot
Professor of Law
University of San Diego

On Feb 28, 2021, at 7:47 AM, Alexander Heideman <aheideman@usccr.gov> wrote:

Attached---my big edits:

- Changed all "Staff Director" to "staff director" to minimize the importance of the position;
- Standardized "Chair" and "Vice-Chair" to "chairperson" and "vice-chairperson" to be consistent with the statute;
- Deleted a couple small phrases/sentences that Cantu might read as hostile to her; and
- Added footnote 11 to cite authority for the Commission as a whole appointing EAC advisory board members, rather than chairperson as an individual appointing them.

I can Zoom or call about this any time after 3 PM Eastern that works for you.

Alex
<CantuLetter_Draft2_2.28.2021.docx>

AMERICAN OVERSIGHT

Date : 2/28/2021 2:07:07 PM
From : "Carissa Mulder" CMulder@usccr.gov
To : "Gail Heriot" gheriot@me.com
Cc : "Gail Heriot" gheriot@usccr.gov
Subject : Re: [EXTERNAL] Fwd: Letter draft updated
Attachment : CantuLetter_Draft2_2.28.2021.docx;

Just a few edits.

From: Gail Heriot <gheriot@me.com>
Sent: Sunday, February 28, 2021 1:36:15 PM
To: Carissa Mulder
Cc: Gail Heriot
Subject: [EXTERNAL] Fwd: Letter draft updated

CAUTION: This email is from outside USCCR.

Begin forwarded message:

From: Alexander Heideman <aheideman@usccr.gov>
Subject: Letter draft updated
Date: February 28, 2021 at 7:47:06 AM PST
To: Gail Heriot <gheriot@me.com>, Gail Heriot <gheriot@usccr.gov>
Cc: Alexander Heideman <alexanderheideman@gmail.com>

Attached---my big edits:

- Changed all “Staff Director” to “staff director” to minimize the importance of the position;
- Standardized “Chair” and “Vice-Chair” to “chairperson” and “vice-chairperson” to be consistent with the statute;
- Deleted a couple small phrases/sentences that Cantu might read as hostile to her; and
- Added footnote 11 to cite authority for the Commission as a whole appointing EAC advisory board members, rather than chairperson as an individual appointing them.

I can Zoom or call about this any time after 3 PM Eastern that works for you.

Alex

AMERICAN OVERSIGHT

Commissioners Adams, Gilchrist,
Heriot, and Kirsanow
United States Commission on Civil Rights
1331 Pennsylvania Avenue NW
Washington, DC 20425

March 1, 2021

The Honorable Norma Cantú~~,~~
United States Commission on Civil Rights
1331 Pennsylvania Avenue NW
Washington, DC 20425

Dear Commissioner Cantú:

We write today to detail our concerns with Staff Director Mauro Morales's recent actions and to ensure that you understand why we were compelled not to attend Friday's briefing. We understand that you are new to the Commission and unfamiliar with its procedures and traditions. It's important that we be clear.

The staff director ~~Staff Director~~ began his unlawful actions on January 21, 2021, when he refused to honor our directive to him to reinstate the January 29 business meeting, which the Commission had voted to hold.[1] That meeting had been cancelled ~~(~~contrary to our rules~~)~~ by our former chairperson, Catherine Lhamon, as her last act prior to resigning on January 20.[2] The staff director ~~Staff Director~~ attempted to justify his refusal by stating that he "[found] ~~former Chairperson Lhamon's~~her decision to postpone the January 29 meeting as reasonable and appropriate."[3] But that refusal was in contravention of our Administrative ~~Order~~ Instruction ("AI") 1-24(1), which provides:

> (1) If there is a vacancy in both the positions of Chairperson and Vice-Chairperson, the Commission may call a special meeting by majority vote pursuant to Regulations § 701.11(b).[4]

---

[1] Transcript of U.S. Commission on Civil Rights Telephonic Business Meeting September 11, 2020 at 17 (available at https://www.usccr.gov/files/2020-11-04-Commission-Business-Meeting-Transcript-for-09-11.pdf).
[2] Neither Chairperson Lhamon nor the staff director ~~Staff Director~~ had the authority to cancel a meeting that the Commission had voted to hold. *See* 45 C.F.R. § 701.11(d) (allowing for cancellation of meetings only after the chairperson ~~Chair~~ "determines that there are insufficient substantive items on a proposed meeting agenda" and after she has "consult[ed] with the members of the Commission and consider[ed] . . . the views of the members."). *See also* 45 C.F.R. § 701.12; 45 C.F.R. § 701.11(a). But there is no need to belabor this point ~~since~~ because it is very clear that a majority of the members of the Commission had the authority to require the staff director ~~Staff Director~~ to call a meeting when there is a vacancy in both the positions of c~~C~~hairperson and v~~V~~ice-c ~~C~~hairperson.
[3] Email from Mauro Morales, Staff Director, U.S. Comm'n on Civil Rights, to Commissioners, U.S. Comm'n on Civil Rights (Jan. 21, 2021, 13:02 EST) (on file with authors).
[4] Regulation § 701.11(b) permits a majority of the members of the Commission to call a meeting even in cases where the chairperson ~~Chair~~ and v~~V~~ice- ~~C~~chairperson ~~hair~~ are not absent.

AMERICAN OVERSIGHT

Note that AI 1-24(1) refers to "the Commission" "by majority vote" as the entity that can call a special meeting. The statute that constitutes the Commission tells us exactly what that means: "The Commission shall be composed of ~~eight~~ 8 members." ~~U.S.C. §~~ .[5] Significantly, it does *not* say that "the Commission shall be composed of ~~eight~~ 8 members and a staff director~~Staff Director~~," much less that it "shall be composed of ~~eight~~ 8 members under the leadership of ~~the~~ a staff director~~Staff Director~~." The staff director ~~Staff Director~~ directs the Commission's staff, not the Commission itself.[6] If leading the Commission were the staff director's ~~Staff Director's~~ job, his title would be "Commission Director."

Commented [AH1]: The statute uses "8" rather than "eight."

It is also important to note that our statute assigns all responsibilities to the Commission. That's important to understanding how the Commission is designed by Congress to work. The staff director ~~Staff Director~~ is given no statutory authority at all (with the possible exception of the power to organize the work of the staff, assuming there is a staff, which arguably is inherent in the title). The power to undertake tasks must thus be delegated *by* the Commission *to* the staff director ~~Staff Director~~ (which the Commission has often done so through its Administrative Instructions).

But the staff director ~~Staff Director~~ may not arrogate power to himself that has not been delegated. AI 1-24(1) clearly states that when no c~~C~~hairperson or v~~V~~ice- c~~C~~hairperson exists, it is for the Commission to call a special meeting. There is no parallel provision that gives that same power to the staff director~~Staff Director~~. Nor do those rules give the staff director ~~Staff Director~~ the authority to ignore the Commission's call for such a meeting. On January ~~,~~ 21, when the four of us made clear that we wished to reinstate the meeting that had been scheduled for January 29, we were the majority of the members of the Commission. It was up to the staff director ~~Staff Director~~ to execute that directive by posting a notice in the Federal Register. Yet the staff director continued to refuse~~d~~ to hold that meeting.[7]

Things got worse from there. After President Biden appointed you as a commissioner and nominated you to be our next chairperson, our staff director ~~Staff Director~~ arrogated to himself the power to call a special business meeting for February 26 (directly after our already-scheduled briefing on bail reform). This, again, is not his proper role. That authority belongs to the Commission itself. But that wasn't the worst of it. The staff director ~~Staff Director~~ then claimed the power to appoint the Acting c~~C~~hairperson of the Commission, pending your confirmation (which, for the record, we continue to believe can and should happen soon).

His claim was utter nonsense.[8] - Our position ~~is~~ was and continues to be that the most senior member of the Commission (Kirsanow) should wield the gavel pending the election by the

---

[5] 42 U.S.C. § 1975(b).

[6] In this respect, the staff director's ~~Staff Director's~~ job can be analogized to the White House Chief of Staff or the Chief of Staff of a U.S. Senator. Both are important jobs, but the White House Chief of Staff directs the White House staff, not the President, just as a U.S. Senator's Chief of Staff directs the Senator's staff, not the Senator. The only difference is the Commission is a multi-member body. In that way a useful analogy might be made to the Clerk of the Court for the U.S. Supreme Court:- The Justices do not work at his direction.

[7] Email from Mauro Morales, Staff Director, U.S. Comm'n on Civil Rights, to Peter Kirsanow, Commissioner, U.S. Comm'n on Civil Rights (Jan. 22, 2021, 20:53 EST) (on file with authors).

[8] Although the staff director failed to cite the authority on which he acted, you informed us that the staff director believes AI 1-6 provides that authority. It does not. Section 4.07 of AI 1-6 (entitled "National Project Development

AMERICAN OVERSIGHT

Commission of an acting chairperson. Put only slightly differently, ~~Pete's~~ Kirsanow's job would be to convene the meeting at which ~~an~~ the Commission selects an a~~A~~cting c~~C~~hairperson ~~is selected~~. As you know from your discussions with two of us (Heriot and Kirsanow) via Zoom, we have always been flexible concerning the issue of who should be elected a~~A~~cting c~~C~~hairperson pending your confirmation. But there are two things that we believed then and continue to believe are extremely important:

(1) ***The s~~S~~taff d~~D~~irector cannot be the one to designate the a~~A~~cting c~~C~~hairperson.*** That task is for the Commission. AI 1-24 states in full:

> (1) If there is a vacancy in both the positions of Chairperson and Vice-Chairperson, the Commission may call a special meeting by majority vote pursuant to Regulations § 701.11(b).
> (2) There being no Chairperson or Vice-Chairperson, the Staff Director shall establish the agenda for this special meeting, whereby specific items may be added or deleted in accordance with Regulations § 701.11(c). However, the first item of business shall be the election of a designee of the functions of the Chairperson.

The Commission must call the meeting and elect the a~~A~~cting c~~C~~hairperson. The staff director's ~~Staff Director's~~ role is to undertake the ministerial tasks of noticing the meeting in the Federal Register and drawing up the agenda. He is not even permitted to put any business before that of electing an a~~A~~cting c~~C~~hairperson.

Furthermore, there is no mention in the Commission's statutes, regulations, or administrative instructions of a "moderator" for Commission briefings. There is no example in at least the past twenty years of the Commission's history of such a practice. The role simply does not exist.

(2) ***The President's nominee cannot be the a~~A~~cting c~~C~~hairperson.*** This is in keeping with federal practice. When the President's nominee to a Senate-confirmable office has not yet been confirmed, he or she cannot be "acting" in that position. The contrary practice would essentially eviscerate the Senate's role. If you're doing the job anyway, why bother to cooperate with the Senate in the confirmation process? Why bother to give

---

and Implementation"), provides, "All responsibilities not otherwise delegated are reserved to the Staff Director. The Staff Director may delegate any of these responsibilities to a member of the executive staff." AI 1-6 § 4.07. There are many reasons this provision does apply to the appointment of an a~~A~~cting c~~C~~hairperson. Most obviously, AI 1-24 explicitly delegates the designation of a commissioner to fill the functions of chairperson during a vacancy to "a majority of Commissioners," thereby negating any possible interpretation of AI 1-6 § 4.07 that would give this authority to the staff director~~Staff Director~~. Moreover, §4 is generally about how tasks are to be allocated among the various divisions of the Commission's staff—the O~~o~~ffice of the Staff Director (OSD), the Office of the General Counsel (OGC), the Office of Civil Rights Evaluation ("OCRE"), and the Office of Management (OM), etc. This is how the staff director ~~Staff Director~~ delegates responsibilities to the staff that have been delegated to him. But he cannot delegate responsibilities that were never delegated to him in the first place. That's why the section states that he "reserves" responsibilities that he has not otherwise delegated by him; the section is not itself a delegation of authority to him.

AMERICAN OVERSIGHT

Members of the Senate assurances that the job will be performed in keeping with federal law and policy when you've already got the authority of the office? The same logic applies here.

We thought all this was obvious and appropriate, and for a while we thought you ~~understood and~~ agreed. To our astonishment, you ended up being willing to go along with the staff director's ~~Staff Director's~~ arrogation of power.[9] Not only did you recognize his purported authority to designate the a~~A~~cting c~~C~~hairperson ~~(something we suspect you'll regret when you understand how the Commission works a little better)~~, but you also allowed him to designate you as a~~A~~cting chairperson~~Chair~~, knowing our reasonable objections to such a move.

As you will remember, we were very flexible as to how the Commission would select an a~~A~~cting c~~C~~hairperson for the February 26 bail reform hearing. We were willing to have our most senior member chair; we were willing to draw a Commissioner's name out of a hat; we were willing to split the a~~A~~cting c~~C~~hairperson's position between one Commissioner appointed by a Democrat and one Commission appointed by a Republican; we were willing to have Commissioner Kladney (who was appointed by a Democrat) serve as acting chairperson. All of these methods would have worked and ~~. Given a few more minutes of time to think about it,~~ we could have come up with even more alternatives.

Alas, the issue was resolved instead in a way that was contrary to our rules and (if we had acquiesced) would have set an extraordinarily bad precedent. We were baffled. Under the circumstances, we viewed it as necessary not to acquiesce. That is why we could not attend the briefing.

We don't blame you. We know that you are new at this. All institutions have their rules and traditions that outsiders are unfamiliar with. Soon enough you will be familiar with those that apply to the Commission. So, despite the staff director's ~~Staff Director's~~ continued unlawful actions, we remain confident that you can lead this Commission and that you can be confirmed as c~~C~~hairperson—soon. However, before we concur in ~~her~~ your appointment as chairperson,[10] we still need an agreement on the record about the matters that we (~~Gail~~ Heriot and ~~Pete~~ Kirsanow) discussed with you earlier.

We understood from ~~Gail and Pete's~~ earlier discussions with you that (with the exception of the v~~V~~ice-c~~C~~hairmanship, which you felt you had no control over) that our proposals were fair and appropriate. All we are trying to do is ensure fairness and prevent the abuses that went on during Chairperson Lhamon's tenure.

---

[9] At the February 26 briefing, "The Civil Rights Implications of Cash Bail," the staff director ~~Staff Director~~ designated Commissioner Cantú as moderator of the hearing, saying, "In the absence of a chairperson for the Commission, I will appoint a moderator to administer today's briefing." U.S. Comm'n on Civil Rights, *U.S. Comm'n on Civil Rights Public Briefing: The Civil Rights Implications of Cash Bail*, YOUTUBE (Feb. 26, 2021), https://www.youtube.com/watch?v=fWLcyC_kZqI&ab_channel=USCCR.

[10] Concurrence of the majority of the Commission is required by our authorizing statute. 42 U.S.C. § 1975(d).

AMERICAN OVERSIGHT

We won't repeat those matters here. This letter is long enough as it is. But we did wish to mention one aspect of the matter that has been troubling us over the last couple of days.

One of our requests was that you follow that law when appointments are made. For example, the law gives the Commission (and *not* the chairperson ~~Chair~~ or the staff director~~Staff Director~~) the authority to appoint two members of the Election Assistance Commission's Board of Advisors.[11] Yet c~~C~~hairperson Lhamon arrogated that authority to herself and appointed the members without consulting or even notifying us. This act was simply a violation of the law. Yet when you spoke last with ~~Pete~~ Kirsanow (after consulting with our Progressive colleagues) on Thursday, you suggested a "compromise" under which you would appoint the members~~,~~ but promised that they would not be Democrats. Alas, we don't think the law can be compromised in that way. All we ~~are~~ ask~~ing~~ here is that you comply with the law.

We look forward to fruitful and constructive discussions stemming from our earlier ~~discussions~~ conversations with you and from this letter. We are still confident that we can reach an agreement ~~with you~~. We remain dedicated to the Commission's important and bipartisan work.

Sincerely,

Peter Kirsanow
Commissioner

J. Christian Adams
Commissioner

Gail Heriot
Commissioner

Stephen Gilchrist
Commissioner

[11] *See* 52 U.S.C. § 20944(a)(10)) ("Two members appointed [to the U.S. Election Assistance Commission] by the United States Commission on Civil Rights."); *see also* 52 U.S.C. § 20944(b) ("Appointments shall be made to the Board of Advisors [of the the U.S. Election Assistance Commission] under subsection (a) in a manner which ensures that the Board of Advisors will be bipartisan in nature and will reflect the various geographic regions of the United States.").

AMERICAN OVERSIGHT

Date : 11/1/2021 12:20:30 PM
From : "Irena Vidulovic" ividulovic@usccr.gov
To : "Debo P. Adegbile" dadegbile@usccr.gov, "Adegbile, Debo" Debo.Adegbile@wilmerhale.com
Subject : Fw: Commissioner Appointments to the Election Assistance Commission

Adegbile,

I think that this email is the one to forward to the caucus now that Commissioner Yaki is recused, nominating Allison Riggs and Jenny Carroll the Alabama SAC Chair. Both are willing and able to serve.

The email should go to Cantu, Kladney, Yaki, Juana, Alec and Joshua (email jdansby@usccr.gov).
The Chair can then send our nominees to the R's.

Thanks,
Irena

From: Juana Silverio
Sent: Tuesday, August 3, 2021 4:30 PM
To: Irena Vidulovic; Mauro Morales; Norma Cantu
Cc: Debo P. Adegbile; Michael Yaki; David Kladney; Alec Deull
Subject: RE: Commissioner Appointments to the Election Assistance Commission

Mauro- due to new information received, please replace Leah with Ms. Allison Riggs.

Juana

From: Irena Vidulovic <ividulovic@usccr.gov>
Sent: Tuesday, August 3, 2021 4:12 PM
To: Juana Silverio <jsilverio@usccr.gov>; Mauro Morales <mmorales@usccr.gov>; Norma Cantu <ncantu@usccr.gov>
Cc: Debo P. Adegbile <dadegbile@usccr.gov>; Michael Yaki <MYaki@usccr.gov>; David Kladney <dkladney@usccr.gov>; Alec Deull <adeull@usccr.gov>
Subject: Re: Commissioner Appointments to the Election Assistance Commission

Unfortunately Leah Aden is unable to serve. Commissioner Adebile reached out to all the candidates that we proposed including Leah to make sure that they would be willing and able to serve and we have been notified that Leah is unavailable to serve.

AMERICAN OVERSIGHT

From: Juana Silverio
Sent: Tuesday, August 3, 2021 3:38:23 PM
To: Mauro Morales; Norma Cantu
Cc: Debo P. Adegbile; Michael Yaki; David Kladney; Irena Vidulovic; Alec Deull
Subject: RE: Commissioner Appointments to the Election Assistance Commission

Good afternoon Mauro.

The Dem caucus had a tie:

Commissioner Michael Yaki
Leah Aden (Cantu and Yaki)
Allison Riggs (Adegbile and Kladney)

The Chairwoman, in the interest of observing the deadline, is submitting the following names for EAC consideration:

Commissioner Michael Yaki
Leah Aden - https://www.naacpldf.org/about-us/staff/leah-c-aden/

Leah C. Aden
www.naacpldf.org

Leah C. Aden has served as a Deputy Director of Litigation at the NAACP Legal Defense & Educational Fund, Inc. (LDF) since October 2018, assisting in the

Thank you.
Juana

From: Mauro Morales <mmorales@usccr.gov>
Sent: Monday, August 2, 2021 11:47 AM
To: Norma V. Cantú <normavcantu@gmail.com>; Juana Silverio <jsilverio@usccr.gov>
Subject: Fwd: Commissioner Appointments to the Election Assistance Commission

FYI
Sent from my iPhone

Begin forwarded message:

> **From:** Mauro Morales <mmorales@usccr.gov>
> **Date:** August 2, 2021 at 8:45:25 AM MST
> **To:** John Mashburn <jmashburn@usccr.gov>

AMERICAN OVERSIGHT

Cc: Carissa Mulder <CMulder@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>, Alexander Heideman <aheideman@usccr.gov>
Subject: Re: Commissioner Appointments to the Election Assistance Commission

My flight was canceled and returning today. Your selections were forwarded to Chair Cantu. Thank you.
Sent from my iPhone

> On Jul 30, 2021, at 9:34 AM, John Mashburn <jmashburn@usccr.gov> wrote:
>
> Mauro – after canvassing the Republican Commissioners, the two nominees they wish to put forward for one of the two USCCR designees for the EAC's Board of Advisors (per your email below) are:
>
> Cleta Mitchell – Chair, Conservative Partnership Institute Election Integrity Network, and
>
> Christian Adams – USCCR Commissioner.
>
> ---
>
> **From:** Mauro Morales <mmorales@usccr.gov>
> **Date:** Wednesday, July 28, 2021 at 11:30 AM
> **To:** Commissioners <Commissioners@usccr.gov>
> **Cc:**
> " <CommissionerAssistants@usccr.gov>
> **Subject:** Commissioner Appointments to the Election Assistance Commission
>
> Dear Commissioners-
>
> At the request and in consultation with the Chair, I am sending this email to start the EAC nomination process for Commissioners.
>
> Per the AI voted on during the April 30th meeting (language included below), each caucus is requested to submit two candidates for consideration by COB Friday, July 30, 2021. Once the names are submitted, OGC will conduct an ethics check to be completed by Wednesday, August 4, 2021. Each caucus will then have 24 hours to submit caucus strikes (Thursday, August 5, 2021 COB). The Chair will communicate the two names to EAC no later than Friday, August 6, 2021.
>
> Please let the Chair or I know if you have any questions or concerns.

AMERICAN OVERSIGHT

--
AI language:

Section 1.
.01 Any authority specifically granted the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Commission as a whole by majority vote.

.02 Any authority specifically granted the Staff Director of the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Staff Director.

.03 Any authority specifically granted the Chair of the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Chair.

Section 2
.02

(1) For the two (2) appointments to the U.S. Election Assistance Commission, the members appointed by Democratic authorities shall nominate two individuals who are ready, willing, and able to serve, and the members appointed by the Republican authorities shall nominate two individuals who are ready, willing, and able to serve.

(2) The members appointed by the Democratic authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Democratic authorities

(3) The members selected shall be placed in nomination and ratified in conformance with Section 1.

AMERICAN OVERSIGHT

Mauro Morales
Staff Director
U.S. Commission on Civil Rights
P: 202-376-7796| F: 202-376-7672
Mmorales@usccr.gov
http://usccr.gov/
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425

Follow Us on Twitter & Facebook:
<image001.gif>
<image002.gif>

#USCCR

AMERICAN OVERSIGHT

Date : 11/3/2021 11:26:49 AM
From : "Norma Cantu" ncantu@usccr.gov
To : "krayburn@eac.gov" krayburn@eac.gov
Cc : "Juana Silverio" jsilverio@usccr.gov
Subject : EAC Representative for USCCR
Attachment : Notice-of-Representation-Form-Board-Advisors-2021_USCCR_Mitchell.pdf;

Good morning-

Please find one of the 2 representatives for the EAC on behalf of the USCCR. We will forward the second representative shortly.

Thank you.
Norma V. Cantú
Chairwoman, USCCR

AMERICAN OVERSIGHT

Notice of Representation
United States Election Assistance Commission
Board of Advisors

In accordance with 52 U.S.C. § 20944 of the Help America Vote Act of 2002, your office submits the following individual(s) as a member of the Election Assistance Commission Board of Advisors:

Designated Representative

Name: Cleta Mitchell

Title: Senior Legal Fellow, Conservative Partnership Institute

Address: 300 Independence Ave, SE

Washington, DC 20003

Phone: 202.431.1950

Email: cleta@cletamitchell.com

Party Affiliation: Republican (personal; CPI is nonpartisan)

Designated Representative

Name: _____

Title: _____

Address: _____

_____

Phone: _____

Email: _____

Party Affiliation: _____

Name and Title of Appointing Official

Print Name: Norma Cantu

Print Title: Chairwoman- USCCR

Signature: Norma V. Cantú Date: 11/3/2021

Please return the completed form via email to EAC General Counsel Kevin Rayburn (krayburn@eac.gov).

AMERICAN OVERSIGHT

Date : 11/4/2021 4:29:31 PM
From : "Irena Vidulovic" ividulovic@usccr.gov
To : "Norma Cantu" ncantu@usccr.gov
Cc : "Juana Silverio" jsilverio@usccr.gov, "Debo P. Adegbile" dadegbile@usccr.gov
Subject : Fw: Commissioner Appointments to the Election Assistance Commission

Dear Norma,

Commissioner Adegbile would like to thank you for thinking of him for the EAC nomination. While he appreciates it, he believes that Allison Riggs and Alabama SAC Chair Jenny Carroll should be nominated instead. They both have voting bona fides and have already expressed a willingness to serve.

Thank you again,
Irena

From: Juana Silverio
Sent: Tuesday, August 3, 2021 4:30 PM
To: Irena Vidulovic; Mauro Morales; Norma Cantu
Cc: Debo P. Adegbile; Michael Yaki; David Kladney; Alec Deull
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AMERICAN OVERSIGHT

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Leah Aden (Cantu and Yaki)
Allison Riggs (Adegbile and Kladney)

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Leah C. Aden

www.naacpldf.org

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Subject: Fwd: Commissioner Appointments to the Election Assistance Commission

FYI
Sent from my iPhone

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> **Date:** August 2, 2021 at 8:45:25 AM MST
> **To:** John Mashburn <jmashburn@usccr.gov>
> **Cc:** Carissa Mulder <CMulder@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>, Alexander Heideman <aheideman@usccr.gov>
> **Subject: Re: Commissioner Appointments to the Election Assistance Commission**

AMERICAN OVERSIGHT

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> **Date:** Wednesday, July 28, 2021 at 11:30 AM
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> **Cc:**
> " <CommissionerAssistants@usccr.gov>
> **Subject:** Commissioner Appointments to the Election Assistance Commission
>
> Dear Commissioners-
>
> At the request and in consultation with the Chair, I am sending this email to start the EAC nomination process for Commissioners.
>
> Per the AI voted on during the April 30th meeting (language included below), each caucus is requested to submit two candidates for consideration by COB Friday, July 30, 2021. Once the names are submitted, OGC will conduct an ethics check to be completed by Wednesday, August 4, 2021. Each caucus will then have 24 hours to submit caucus strikes (Thursday, August 5, 2021 COB). The Chair will communicate the two names to EAC no later than Friday, August 6, 2021.
>
> Please let the Chair or I know if you have any questions or concerns.
>
> --
> AI language:

AMERICAN OVERSIGHT

Section 1.
.01 Any authority specifically granted the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Commission as a whole by majority vote.

.02 Any authority specifically granted the Staff Director of the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Staff Director.

.03 Any authority specifically granted the Chair of the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Chair.

Section 2
.02

(1) For the two (2) appointments to the U.S. Election Assistance Commission, the members appointed by Democratic authorities shall nominate two individuals who are ready, willing, and able to serve, and the members appointed by the Republican authorities shall nominate two individuals who are ready, willing, and able to serve.

(2) The members appointed by the Democratic authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Democratic authorities

(3) The members selected shall be placed in nomination and ratified in conformance with Section 1.

Mauro Morales
Staff Director
U.S. Commission on Civil Rights

AMERICAN OVERSIGHT

P: 202-376-7796| F: 202-376-7672
Mmorales@usccr.gov
http://usccr.gov/
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425

Follow Us on Twitter & Facebook:

<image002.gif>

#USCCR

AMERICAN OVERSIGHT

Date : 11/4/2021 5:15:04 PM
From : "Norma Cantu" ncantu@usccr.gov
To : "Irena Vidulovic" ividulovic@usccr.gov
Cc : "Juana Silverio" jsilverio@usccr.gov, "Debo P. Adegbile" dadegbile@usccr.gov
Subject : RE: Commissioner Appointments to the Election Assistance Commission

Thank you, Irena.
I am relieved the Commission delivered two peerless choices.
Norma

From: Irena Vidulovic <ividulovic@usccr.gov>
Sent: Thursday, November 4, 2021 3:30 PM
To: Norma Cantu <ncantu@usccr.gov>
Cc: Juana Silverio <jsilverio@usccr.gov>; Debo P. Adegbile <dadegbile@usccr.gov>
Subject: Fw: Commissioner Appointments to the Election Assistance Commission

Dear Norma,

Commissioner Adegbile would like to thank you for thinking of him for the EAC nomination. While he appreciates it, he believes that Allison Riggs and Alabama SAC Chair Jenny Carroll should be nominated instead. They both have voting bona fides and have already expressed a willingness to serve.

Thank you again,

Irena

From: Juana Silverio
Sent: Tuesday, August 3, 2021 4:30 PM
To: Irena Vidulovic; Mauro Morales; Norma Cantu
Cc: Debo P. Adegbile; Michael Yaki; David Kladney; Alec Deull
Subject: RE: Commissioner Appointments to the Election Assistance Commission

Mauro- due to new information received, please replace Leah with Ms. Allison Riggs.

Juana

AMERICAN OVERSIGHT

From: Irena Vidulovic <ividulovic@usccr.gov>
Sent: Tuesday, August 3, 2021 4:12 PM
To: Juana Silverio <jsilverio@usccr.gov>; Mauro Morales <mmorales@usccr.gov>; Norma Cantu <ncantu@usccr.gov>
Cc: Debo P. Adegbile <dadegbile@usccr.gov>; Michael Yaki <MYaki@usccr.gov>; David Kladney <dkladney@usccr.gov>; Alec Deull <adeull@usccr.gov>
Subject: Re: Commissioner Appointments to the Election Assistance Commission

Unfortunately Leah Aden is unable to serve. Commissioner Adebile reached out to all the candidates that we proposed including Leah to make sure that they would be willing and able to serve and we have been notified that Leah is unavailable to serve.

From: Juana Silverio
Sent: Tuesday, August 3, 2021 3:38:23 PM
To: Mauro Morales; Norma Cantu
Cc: Debo P. Adegbile; Michael Yaki; David Kladney; Irena Vidulovic; Alec Deull
Subject: RE: Commissioner Appointments to the Election Assistance Commission

Good afternoon Mauro.

The Dem caucus had a tie:

Commissioner Michael Yaki

Leah Aden (Cantu and Yaki)

Allison Riggs (Adegbile and Kladney)

The Chairwoman, in the interest of observing the deadline, is submitting the following names for EAC consideration:

AMERICAN OVERSIGHT

Commissioner Michael Yaki

Leah Aden - https://www.naacpldf.org/about-us/staff/leah-c-aden/

Leah C. Aden

www.naacpldf.org

Leah C. Aden has served as a Deputy Director of Litigation at the NAACP Legal Defense & Educational Fund, Inc. (LDF) since October 2018, assisting in the planning, strategy, and supervision of LDF's voting rights work. In light of the upcoming post-Census redistricting cycle, Leah is leading the planning, strategy, and supervision of LDF's redistricting [...]

Thank you.

Juana

From: Mauro Morales <mmorales@usccr.gov>
Sent: Monday, August 2, 2021 11:47 AM
To: Norma V. Cantú <normavcantu@gmail.com>; Juana Silverio <jsilverio@usccr.gov>
Subject: Fwd: Commissioner Appointments to the Election Assistance Commission

FYI

Sent from my iPhone

AMERICAN OVERSIGHT

Begin forwarded message:

From: Mauro Morales <mmorales@usccr.gov>
Date: August 2, 2021 at 8:45:25 AM MST
To: John Mashburn <jmashburn@usccr.gov>
Cc: Carissa Mulder <CMulder@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>, Alexander Heideman <aheideman@usccr.gov>
Subject: Re: Commissioner Appointments to the Election Assistance Commission

My flight was canceled and returning today. Your selections were forwarded to Chair Cantu. Thank you.

Sent from my iPhone

On Jul 30, 2021, at 9:34 AM, John Mashburn <jmashburn@usccr.gov> wrote:

Mauro – after canvassing the Republican Commissioners, the two nominees they wish to put forward for one of the two USCCR designees for the EAC's Board of Advisors (per your email below) are:

Cleta Mitchell – Chair, Conservative Partnership Institute Election Integrity Network, and

Christian Adams – USCCR Commissioner.

From: Mauro Morales <mmorales@usccr.gov>
Date: Wednesday, July 28, 2021 at 11:30 AM
To: Commissioners <Commissioners@usccr.gov>
Cc:
" <CommissionerAssistants@usccr.gov>
Subject: Commissioner Appointments to the Election Assistance Commission

AMERICAN OVERSIGHT

Dear Commissioners-

At the request and in consultation with the Chair, I am sending this email to start the EAC nomination process for Commissioners.

Per the AI voted on during the April 30th meeting (language included below), each caucus is requested to submit two candidates for consideration by COB Friday, July 30, 2021. Once the names are submitted, OGC will conduct an ethics check to be completed by Wednesday, August 4, 2021. Each caucus will then have 24 hours to submit caucus strikes (Thursday, August 5, 2021 COB). The Chair will communicate the two names to EAC no later than Friday, August 6, 2021.

Please let the Chair or I know if you have any questions or concerns.

--

AI language:

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.02 Any authority specifically granted the Staff Director of the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Staff Director.

AMERICAN OVERSIGHT

.03 Any authority specifically granted the Chair of the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Chair.

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(1) For the two (2) appointments to the U.S. Election Assistance Commission, the members appointed by Democratic authorities shall nominate two individuals who are ready, willing, and able to serve, and the members appointed by the Republican authorities shall nominate two individuals who are ready, willing, and able to serve.

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(3) The members selected shall be placed in nomination and ratified in conformance with Section 1.

Mauro Morales

Staff Director

U.S. Commission on Civil Rights

P: 202-376-7796| F: 202-376-7672

Mmorales@usccr.gov

AMERICAN OVERSIGHT

http://usccr.gov/

1331 Pennsylvania Avenue, NW Suite 1150

Washington D.C. 20425

Follow Us on Twitter & Facebook:

<image001.gif>

<image002.gif>

#USCCR

AMERICAN OVERSIGHT

Date : 11/9/2021 10:20:01 AM
From : "Mauro Morales" mmorales@usccr.gov
To : "Angelia Rorison" arorison@usccr.gov, "Juana Silverio" jsilverio@usccr.gov
Subject : RE: Draft Agenda for Approval

I approve. Good to go.

From: Angelia Rorison <arorison@usccr.gov>
Sent: Tuesday, November 9, 2021 10:14 AM
To: Juana Silverio <jsilverio@usccr.gov>; Mauro Morales <mmorales@usccr.gov>
Subject: RE: Draft Agenda for Approval

Mauro – see attached for your approval to send to the Federal Register and post to the usccr website.

Thanks!
Ang

From: Juana Silverio <jsilverio@usccr.gov>
Sent: Tuesday, November 9, 2021 10:07 AM
To: Mauro Morales <mmorales@usccr.gov>
Cc: Angelia Rorison <arorison@usccr.gov>
Subject: RE: Draft Agenda

I lied.

1. David M asked us to appoint a new Chair to the SD SAC: For the Nov. 19 Commission meeting, I recommend that you nominate Travis Letellier, a current Committee member, be appointed the new Chair of the SD Advisory Committee for the remainder of their term.
2. Vote to confirm USCCR Representative to the EAC

From: Juana Silverio
Sent: Tuesday, November 9, 2021 9:58 AM
To: Mauro Morales <mmorales@usccr.gov>
Cc: Angelia Rorison <arorison@usccr.gov>
Subject: RE: Draft Agenda

This is good to go, thank you!

From: Mauro Morales <mmorales@usccr.gov>
Sent: Tuesday, November 9, 2021 9:54 AM
To: Juana Silverio <jsilverio@usccr.gov>
Cc: Angelia Rorison <arorison@usccr.gov>
Subject: Draft Agenda

AMERICAN OVERSIGHT

Juana,

Please send us any changes you had to the attached Agenda the Chair wanted. We need to post the agenda on our website by tomorrow. Thank you.

Mauro

AMERICAN OVERSIGHT

Date : 11/9/2021 10:14:24 AM
From : "Angelia Rorison" arorison@usccr.gov
To : "Juana Silverio" jsilverio@usccr.gov, "Mauro Morales" mmorales@usccr.gov
Subject : RE: Draft Agenda for Approval
Attachment : 2021-11-19 USCCR Business Meeting Notice.docx;

Mauro – see attached for your approval to send to the Federal Register and post to the usccr website.

Thanks!
Ang

From: Juana Silverio <jsilverio@usccr.gov>
Sent: Tuesday, November 9, 2021 10:07 AM
To: Mauro Morales <mmorales@usccr.gov>
Cc: Angelia Rorison <arorison@usccr.gov>
Subject: RE: Draft Agenda

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Subject: Draft Agenda

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Mauro

AMERICAN OVERSIGHT

BILLING CODE 6335-01-P

COMMISSION ON CIVIL RIGHTS

Sunshine Act Meetings

AGENCY: United States Commission on Civil Rights.

ACTION: Notice of Commission public business meeting.

DATES: Friday, November 19, 2021, 12:00 pm EST.

ADDRESSES: Meeting to take place by telephone and is open to the public by telephone: 866-556-2513, Conference ID #: 7517508.

FOR FURTHER INFORMATION CONTACT: Angelia Rorison: 202-376-7700; publicaffairs@usccr.gov.

SUPPLEMENTARY INFORMATION:

In accordance with the Government in Sunshine Act (5 U.S.C. 552b), the Commission on Civil Rights is holding a meeting to discuss the Commission's business for the month of August. This meeting is open to the public. Computer assisted real-time transcription (CART) will be provided. The web link to access CART (in English) on Friday, November 19, 2021, is https://www.streamtext.net/player?event=USCCR. Please note that CART is text-only translation that occurs in real time during the meeting and is not an exact transcript. Schedule subject to change, for updates visit the USCCR Twitter at www.twitter.com/usccrgov.

Meeting Agenda

I. Approval of Agenda

AMERICAN OVERSIGHT

II. Business Meeting

A. Presentations from Advisory Committees to the Commission on Recent Reports/Memo Releases

B. Discussion and Vote on Advisory Committee Appointments

C. Vote to Appoint Travis Letellier as New Chair of South Dakota Advisory Committee

D. Vote to Confirm USCCR Representative to the EAC

E. Vote to Amend January 2022 Business Meeting Date

F. Discussion and Vote on Fiscal Year 2022 Concept Papers and Fiscal Year 2023 Statutory Enforcement Report

G. Management and Operations

- Staff Director's Report

III. Adjourn Meeting

Dated: November 9, 2021

Angelia Rorison,

USCCR Media and Communications Director.

AMERICAN OVERSIGHT

Date : 11/9/2021 10:07:15 AM
From : "Juana Silverio" jsilverio@usccr.gov
To : "Mauro Morales" mmorales@usccr.gov
Cc : "Angelia Rorison" arorison@usccr.gov
Subject : RE: Draft Agenda

I lied.

1. David M asked us to appoint a new Chair to the SD SAC: For the Nov. 19 Commission meeting, I recommend that you nominate Travis Letellier, a current Committee member, be appointed the new Chair of the SD Advisory Committee for the remainder of their term.
2. Vote to confirm USCCR Representative to the EAC

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To: Mauro Morales <mmorales@usccr.gov>
Cc: Angelia Rorison <arorison@usccr.gov>
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To: Juana Silverio <jsilverio@usccr.gov>
Cc: Angelia Rorison <arorison@usccr.gov>
Subject: Draft Agenda

Juana,

Please send us any changes you had to the attached Agenda the Chair wanted. We need to post the agenda on our website by tomorrow. Thank you.

Mauro

AMERICAN OVERSIGHT

Date : 11/9/2021 12:34:37 PM
From : "Carissa Mulder" CMulder@usccr.gov
To : "John Mashburn" jmashburn@usccr.gov, "Alexander Heideman" aheideman@usccr.gov, "Thomas Simuel" tsimuel@usccr.gov
Subject : EAC

Hi everyone,

Did you see this on the email Ang just sent around that has the agenda for next week's business meeting?

Vote to Confirm USCCR Representative to the EAC

AMERICAN OVERSIGHT

Date : 11/9/2021 12:20:45 PM
From : "Angelia Rorison" arorison@usccr.gov
To : "Juana Silverio" jsilverio@usccr.gov
Subject : November Commission Business Meeting

The Commission will be having the November Public Business Meeting on Friday, November 19, 2021.

To attend via listen-only phone line, use the following phone number and conference ID: 866-556-2513, Conference ID #: 7517508

Meeting Agenda

I. Approval of Agenda

II. Business Meeting

A. Presentations from Advisory Committees to the Commission on Recent Reports/Memo Releases

B. Discussion and Vote on Advisory Committee Appointments

C. Vote to Appoint Travis Letellier as New Chair of South Dakota Advisory Committee

D. Vote to Confirm USCCR Representative to the EAC

E. Vote to Amend January 2022 Business Meeting Date

F. Discussion and Vote on Fiscal Year 2022 Concept Papers and Fiscal Year 2023 Statutory Enforcement Report

G. Management and Operations

- Staff Director's Report

III. Adjourn Meeting

AMERICAN OVERSIGHT

Date : 11/9/2021 12:20:43 PM
From : "Angelia Rorison" arorison@usccr.gov
To : "USCCR AGENCYWIDE" USCCRAGENCYWIDE@usccr.gov
Subject : November Commission Business Meeting

The Commission will be having the November Public Business Meeting on Friday, November 19, 2021.

To attend via listen-only phone line, use the following phone number and conference ID: 866-556-2513, Conference ID #: 7517508

Meeting Agenda

I. Approval of Agenda

II. Business Meeting

A. Presentations from Advisory Committees to the Commission on Recent Reports/Memo Releases

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E. Vote to Amend January 2022 Business Meeting Date

F. Discussion and Vote on Fiscal Year 2022 Concept Papers and Fiscal Year 2023 Statutory Enforcement Report

G. Management and Operations

- Staff Director's Report

III. Adjourn Meeting

AMERICAN OVERSIGHT

Date : 11/9/2021 12:38:08 PM
From : "Alexander Heideman" aheideman@usccr.gov
To : "Carissa Mulder" CMulder@usccr.gov, "John Mashburn" jmashburn@usccr.gov, "Thomas Simuel" tsimuel@usccr.gov
Subject : Re: EAC

I assumed that was to replace Yaki after his resignation.

From: Carissa Mulder <CMulder@usccr.gov>
Date: Tuesday, November 9, 2021 at 12:34 PM
To: John Mashburn <jmashburn@usccr.gov>, Alexander Heideman <aheideman@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>
Subject: EAC

Hi everyone,

Did you see this on the email Ang just sent around that has the agenda for next week's business meeting?

Vote to Confirm USCCR Representative to the EAC

AMERICAN OVERSIGHT

Date : 11/9/2021 12:38:41 PM
From : "Carissa Mulder" CMulder@usccr.gov
To : "Alexander Heideman" aheideman@usccr.gov, "John Mashburn" jmashburn@usccr.gov, "Thomas Simuel" tsimuel@usccr.gov
Subject : Re: EAC

Me too, I just think it is odd that we have had no indication of who this person may be.

From: Alexander Heideman
Sent: Tuesday, November 9, 2021 12:38:07 PM
To: Carissa Mulder; John Mashburn; Thomas Simuel
Subject: Re: EAC

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From: Carissa Mulder <CMulder@usccr.gov>
Date: Tuesday, November 9, 2021 at 12:34 PM
To: John Mashburn <jmashburn@usccr.gov>, Alexander Heideman <aheideman@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>
Subject: EAC

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Vote to Confirm USCCR Representative to the EAC

AMERICAN OVERSIGHT

Date : 11/9/2021 1:10:50 PM
From : "Carissa Mulder" CMulder@usccr.gov
To : "Thomas Simuel" tsimuel@usccr.gov, "John Mashburn" jmashburn@usccr.gov, "Alexander Heideman" aheideman@usccr.gov
Subject : Re: EAC

That's my view, and I think that will also be our commissioners' view.

From: Thomas Simuel
Sent: Tuesday, November 9, 2021 1:09:14 PM
To: Carissa Mulder; John Mashburn; Alexander Heideman
Subject: RE: EAC

We voted on Yaki. Per our agreement don't they need to submit two names for us to vote on?

-------- Original message --------
From: Carissa Mulder <CMulder@usccr.gov>
Date: 11/9/21 12:34 PM (GMT-05:00)
To: John Mashburn <jmashburn@usccr.gov>, Alexander Heideman <aheideman@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>
Subject: EAC

Hi everyone,

Did you see this on the email Ang just sent around that has the agenda for next week's business meeting?

Vote to Confirm USCCR Representative to the EAC

AMERICAN OVERSIGHT

Date : 11/9/2021 12:46:36 PM
From : "Alexander Heideman" aheideman@usccr.gov
To : "Carissa Mulder" CMulder@usccr.gov, "John Mashburn" jmashburn@usccr.gov, "Thomas Simuel" tsimuel@usccr.gov
Subject : Re: EAC

Oh that's a very good point.

From: Carissa Mulder <CMulder@usccr.gov>
Date: Tuesday, November 9, 2021 at 12:38 PM
To: Alexander Heideman <aheideman@usccr.gov>, John Mashburn <jmashburn@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>
Subject: Re: EAC

Me too, I just think it is odd that we have had no indication of who this person may be.

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Vote to Confirm USCCR Representative to the EAC

AMERICAN OVERSIGHT

Date : 11/9/2021 2:10:38 PM
From : "Juana Silverio" jsilverio@usccr.gov
To : "Michael Yaki" MYaki@usccr.gov, "David Kladney" dkladney@usccr.gov
Cc : "Joshua Dansby" jdansby@usccr.gov, "Alec Deull" adeull@usccr.gov
Subject : FW: Commissioner Appointments to the Election Assistance Commission

Good afternoon,

Norma wanted me to make sure you both were ok with the below names before sending them over to the Rep Caucus for consideration re: our second rep on the EAC

Allison Riggs- https://southerncoalition.org/staff/allison-riggs/
Alabama SAC Chair Jenny Carroll-
https://www.congress.gov/116/meeting/house/109456/witnesses/HHRG-116-HA08-Wstate-CarrollJ-20190513.pdf

---

From: Norma Cantu <ncantu@usccr.gov>
Sent: Thursday, November 4, 2021 5:15 PM
To: Irena Vidulovic <ividulovic@usccr.gov>
Cc: Juana Silverio <jsilverio@usccr.gov>; Debo P. Adegbile <dadegbile@usccr.gov>
Subject: RE: Commissioner Appointments to the Election Assistance Commission

Thank you, Irena.
I am relieved the Commission delivered two peerless choices.
Norma

From: Irena Vidulovic <ividulovic@usccr.gov>
Sent: Thursday, November 4, 2021 3:30 PM
To: Norma Cantu <ncantu@usccr.gov>
Cc: Juana Silverio <jsilverio@usccr.gov>; Debo P. Adegbile <dadegbile@usccr.gov>
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Dear Norma,

Commissioner Adegbile would like to thank you for thinking of him for the EAC nomination. While he appreciates it, he believes that Allison Riggs and Alabama SAC Chair Jenny Carroll should be nominated instead. They both have voting bona fides and have already expressed a willingness to serve.

Thank you again,

Irena

AMERICAN OVERSIGHT

From: Juana Silverio
Sent: Tuesday, August 3, 2021 4:30 PM
To: Irena Vidulovic; Mauro Morales; Norma Cantu
Cc: Debo P. Adegbile; Michael Yaki; David Kladney; Alec Deull
Subject: RE: Commissioner Appointments to the Election Assistance Commission

Mauro- due to new information received, please replace Leah with Ms. Allison Riggs.

Juana

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Subject: Re: Commissioner Appointments to the Election Assistance Commission

Unfortunately Leah Aden is unable to serve. Commissioner Adebile reached out to all the candidates that we proposed including Leah to make sure that they would be willing and able to serve and we have been notified that Leah is unavailable to serve.

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Sent: Tuesday, August 3, 2021 3:38:23 PM
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Cc: Debo P. Adegbile; Michael Yaki; David Kladney; Irena Vidulovic; Alec Deull
Subject: RE: Commissioner Appointments to the Election Assistance Commission

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AMERICAN OVERSIGHT

The Dem caucus had a tie:

Commissioner Michael Yaki

Leah Aden (Cantu and Yaki)

Allison Riggs (Adegbile and Kladney)

The Chairwoman, in the interest of observing the deadline, is submitting the following names for EAC consideration:

Commissioner Michael Yaki

Leah Aden - https://www.naacpldf.org/about-us/staff/leah-c-aden/

Leah C. Aden

www.naacpldf.org

Leah C. Aden has served as a Deputy Director of Litigation at the NAACP Legal Defense & Educational Fund, Inc. (LDF) since October 2018, assisting in the planning, strategy, and supervision of LDF's voting rights work. In light of the upcoming post-Census redistricting cycle, Leah is leading the planning, strategy, and supervision of LDF's redistricting [...]

Thank you.

Juana

AMERICAN OVERSIGHT

From: Mauro Morales <mmorales@usccr.gov>
Sent: Monday, August 2, 2021 11:47 AM
To: Norma V. Cantú <normavcantu@gmail.com>; Juana Silverio <jsilverio@usccr.gov>
Subject: Fwd: Commissioner Appointments to the Election Assistance Commission

FYI

Sent from my iPhone

Begin forwarded message:

> **From:** Mauro Morales <mmorales@usccr.gov>
> **Date:** August 2, 2021 at 8:45:25 AM MST
> **To:** John Mashburn <jmashburn@usccr.gov>
> **Cc:** Carissa Mulder <CMulder@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>, Alexander Heideman <aheideman@usccr.gov>
> **Subject: Re: Commissioner Appointments to the Election Assistance Commission**
>
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> >
> > Cleta Mitchell – Chair, Conservative Partnership Institute Election Integrity Network, and
> >
> > Christian Adams – USCCR Commissioner.

AMERICAN OVERSIGHT

From: Mauro Morales <mmorales@usccr.gov>
Date: Wednesday, July 28, 2021 at 11:30 AM
To: Commissioners <Commissioners@usccr.gov>
Cc:
" <CommissionerAssistants@usccr.gov>
Subject: Commissioner Appointments to the Election Assistance Commission

Dear Commissioners-

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Please let the Chair or I know if you have any questions or concerns.

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AI language:

Section 1.

.01 Any authority specifically granted the Commission on Civil Rights by statute or regulation or executive order

AMERICAN OVERSIGHT

to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Commission as a whole by majority vote.

.02 Any authority specifically granted the Staff Director of the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Staff Director.

.03 Any authority specifically granted the Chair of the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Chair.

Section 2

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(1) For the two (2) appointments to the U.S. Election Assistance Commission, the members appointed by Democratic authorities shall nominate two individuals who are ready, willing, and able to serve, and the members appointed by the Republican authorities shall nominate two individuals who are ready, willing, and able to serve.

(2) The members appointed by the Democratic authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Democratic authorities

(3) The members selected shall be placed in nomination and ratified in conformance with Section 1.

AMERICAN OVERSIGHT

Mauro Morales

Staff Director

U.S. Commission on Civil Rights

P: 202-376-7796| F: 202-376-7672

Mmorales@usccr.gov

http://usccr.gov/

1331 Pennsylvania Avenue, NW Suite 1150

Washington D.C. 20425

Follow Us on Twitter & Facebook:

<image001.gif>

<image002.gif>

#USCCR

AMERICAN OVERSIGHT

Date : 11/9/2021 4:02:53 PM
From : "Joshua Dansby" jdansby@usccr.gov
To : "Juana Silverio" jsilverio@usccr.gov
Cc : "David Kladney" dkladney@usccr.gov
Subject : RE: Commissioner Appointments to the Election Assistance Commission

Juana,

Commissioner Kladney is fine with this. Thank you.

-Joshua

From: Juana Silverio <jsilverio@usccr.gov>
Sent: Tuesday, November 9, 2021 2:11 PM
To: Michael Yaki <MYaki@usccr.gov>; David Kladney <dkladney@usccr.gov>
Cc: Joshua Dansby <jdansby@usccr.gov>; Alec Deull <adeull@usccr.gov>
Subject: FW: Commissioner Appointments to the Election Assistance Commission

Good afternoon,

Norma wanted me to make sure you both were ok with the below names before sending them over to the Rep Caucus for consideration re: our second rep on the EAC

Allison Riggs- https://southerncoalition.org/staff/allison-riggs/
Alabama SAC Chair Jenny Carroll-
https://www.congress.gov/116/meeting/house/109456/witnesses/HHRG-116-HA08-Wstate-CarrollJ-20190513.pdf

---

From: Norma Cantu <ncantu@usccr.gov>
Sent: Thursday, November 4, 2021 5:15 PM
To: Irena Vidulovic <ividulovic@usccr.gov>
Cc: Juana Silverio <jsilverio@usccr.gov>; Debo P. Adegbile <dadegbile@usccr.gov>
Subject: RE: Commissioner Appointments to the Election Assistance Commission

Thank you, Irena.
I am relieved the Commission delivered two peerless choices.
Norma

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AMERICAN OVERSIGHT

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Thank you again,

Irena

From: Juana Silverio
Sent: Tuesday, August 3, 2021 4:30 PM
To: Irena Vidulovic; Mauro Morales; Norma Cantu
Cc: Debo P. Adegbile; Michael Yaki; David Kladney; Alec Deull
Subject: RE: Commissioner Appointments to the Election Assistance Commission

Mauro- due to new information received, please replace Leah with Ms. Allison Riggs.

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Leah Aden (Cantu and Yaki)

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The Chairwoman, in the interest of observing the deadline, is submitting the following names for EAC consideration:

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AMERICAN OVERSIGHT

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Please let the Chair or I know if you have any questions or concerns.

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AMERICAN OVERSIGHT

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Washington D.C. 20425

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<image001.gif>

<image002.gif>

#USCCR

AMERICAN OVERSIGHT

Date : 11/9/2021 4:18:59 PM
From : "Juana Silverio" jsilverio@usccr.gov
To : "Joshua Dansby" jdansby@usccr.gov
Cc : "David Kladney" dkladney@usccr.gov
Subject : RE: Commissioner Appointments to the Election Assistance Commission

Thank you!

From: Joshua Dansby <jdansby@usccr.gov>
Sent: Tuesday, November 9, 2021 4:03 PM
To: Juana Silverio <jsilverio@usccr.gov>
Cc: David Kladney <dkladney@usccr.gov>
Subject: RE: Commissioner Appointments to the Election Assistance Commission

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AMERICAN OVERSIGHT

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AMERICAN OVERSIGHT

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AMERICAN OVERSIGHT

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Washington D.C. 20425

Follow Us on Twitter & Facebook:

<image001.gif>

<image002.gif>

#USCCR

AMERICAN OVERSIGHT

AMERICAN OVERSIGHT

Date : 11/10/2021 1:53:30 PM
From : "Norma Cantu" ncantu@usccr.gov
To : "Gail Heriot" gheriot@usccr.gov, "Peter Kirsanow" pkirsanow@usccr.gov, "J. Christian Adams" jadams@usccr.gov, "Stephen Gilchrist" sgilchrist@usccr.gov
Cc : "Alexander Heideman" aheideman@usccr.gov, "Carissa Mulder" CMulder@usccr.gov, "John Mashburn" jmashburn@usccr.gov, "Thomas Simuel" tsimuel@usccr.gov
Subject : Action Requested: EAC Representative Replacement for Commissioner Yaki

Dear Commissioners-

In response to Commissioner Yaki recently resigning from his position on the EAC as a representative of USCCR, the Progressive Caucus is putting for 2 names for consideration. I am asking that the candidate you strike be sent to me by Monday, November 15th, 2021 by 5pm EST so that we can include the candidate's confirmation vote at our November 19th business meeting.

Allison Riggs- https://southerncoalition.org/staff/allison-riggs/

Allison Riggs - Southern Coalition for Social Justice

southerncoalition.org

Allison Riggs leads the voting rights program at the Southern Coalition for Social Justice, an organization she joined in 2009. In March of 2020, she also took over

Alabama SAC Chair Jenny Carroll - https://www.congress.gov/116/meeting/house/109456/witnesses/HHRG-116-HA08-Wstate-CarrollJ-20190513.pdf

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AMERICAN OVERSIGHT

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Please let me know if you have any questions or concerns.

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AMERICAN OVERSIGHT

Date : 11/10/2021 2:04:01 PM
From : "Alexander Heideman" aheideman@usccr.gov
To : "Gail Heriot" gheriot@usccr.gov, "Peter Kirsanow" pkirsanow@usccr.gov, "J. Christian Adams" jadams@usccr.gov, "Stephen Gilchrist" sgilchrist@usccr.gov
Cc : "Carissa Mulder" CMulder@usccr.gov, "John Mashburn" jmashburn@usccr.gov, "Thomas Simuel" tsimuel@usccr.gov
Subject : Re: Action Requested: EAC Representative Replacement for Commissioner Yaki
Attachment : Carroll-Jenny-cv.pdf;

I've attached Jenny Carroll's resume to this email for everyone's reference. She's a professor of law at Alabama.

From: Norma Cantu <ncantu@usccr.gov>
Date: Wednesday, November 10, 2021 at 1:53 PM
To: Gail Heriot <gheriot@usccr.gov>, Peter Kirsanow <pkirsanow@usccr.gov>, "J. Christian Adams" <jadams@usccr.gov>, Stephen Gilchrist <sgilchrist@usccr.gov>
Cc: Alexander Heideman <aheideman@usccr.gov>, Carissa Mulder <CMulder@usccr.gov>, John Mashburn <jmashburn@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>
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Allison Riggs leads the voting rights program at the Southern Coalition for Social Justice, an organization she joined in 2009. In

AMERICAN OVERSIGHT

Image removed by sender.

March of 2020, she also took over as Interim Executive Director of the organization. Her voting rights work over the last decade at SCSJ has been focused on fighting for fair redistricting plans, fighting against voter suppression, and advocating for electoral reforms that would expand access to voting.

Alabama SAC Chair Jenny Carroll - https://www.congress.gov/116/meeting/house/109456/witnesses/HHRG-116-HA08-Wstate-CarrollJ-20190513.pdf

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(2) The members appointed by the Democratic authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Democratic authorities

(3) The members selected shall be placed in nomination and ratified in conformance with Section 1.

AMERICAN OVERSIGHT

Jenny E. Carroll

University of Alabama School of Law
Box 870382
Tuscaloosa, AL 35487-0382

Phone: 205-348-1116
Email: jcarroll@law.ua.edu
Papers: http://ssrn.com/author=1245554

ACADEMIC APPOINTMENTS

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Professor Law: Teach Crim. Law, Crim. Procedure, Juvenile Justice and Counter Terrorism, 2016–present.
***Associate Professor of Law*:** 2014–2016.

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AMERICAN OVERSIGHT

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AMERICAN OVERSIGHT

Date : 11/10/2021 2:59:43 PM
From : "John Mashburn" jmashburn@usccr.gov
Subject : FW: Action Requested: EAC Representative Replacement for Commissioner Yaki
Attachment : Carroll-Jenny-cv.pdf;

Is Riggs still worse than Carroll?

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Date: Wednesday, November 10, 2021 at 2:04 PM
To: Gail Heriot <gheriot@usccr.gov>, Peter Kirsanow <pkirsanow@usccr.gov>, "J. Christian Adams" <jadams@usccr.gov>, Stephen Gilchrist <sgilchrist@usccr.gov>
Cc: Carissa Mulder <CMulder@usccr.gov>, John Mashburn <jmashburn@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>
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Dear Commissioners-

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Allison Riggs- https://southerncoalition.org/staff/allison-riggs/

AMERICAN OVERSIGHT

Image removed by sender.

Allison Riggs - Southern Coalition for Social Justice

southerncoalition.org

Allison Riggs leads the voting rights program at the Southern Coalition for Social Justice, an organization she joined in 2009. In March of 2020, she also took over as Interim Executive Director of the organization. Her voting rights work over the last decade at SCSJ has been focused on fighting for fair redistricting plans, fighting against voter suppression, and advocating for electoral reforms that would expand access to voting.

Alabama SAC Chair Jenny Carroll - https://www.congress.gov/116/meeting/house/109456/witnesses/HHRG-116-HA08-Wstate-CarrollJ-20190513.pdf

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Please submit your strike no later than Monday, November 15th by 5pm EST.

Please let me know if you have any questions or concerns.

Norma

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AI language:

Section 1.

.01 Any authority specifically granted the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be

AMERICAN OVERSIGHT

exercised by the Commission as a whole by majority vote.

.02 Any authority specifically granted the Staff Director of the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Staff Director.

.03 Any authority specifically granted the Chair of the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Chair.

Section 2
.02

(1) For the two (2) appointments to the U.S. Election Assistance Commission, the members appointed by Democratic authorities shall nominate two individuals who are ready, willing, and able to serve, and the members appointed by the Republican authorities shall nominate two individuals who are ready, willing, and able to serve.

(2) The members appointed by the Democratic authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Democratic authorities

(3) The members selected shall be placed in nomination and ratified in conformance with Section 1.

AMERICAN OVERSIGHT

Jenny E. Carroll

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To : "Christian Adams" a@electionlawcenter.com
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AMERICAN OVERSIGHT

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AMERICAN OVERSIGHT

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Section 2
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(1) For the two (2) appointments to the U.S. Election Assistance Commission, the members appointed by Democratic authorities shall nominate two individuals who are ready, willing, and able to serve, and the members appointed by the Republican authorities shall nominate two individuals who are ready, willing, and able to serve.

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(3) The members selected shall be placed in nomination and ratified in conformance with Section 1.

AMERICAN OVERSIGHT

Jenny E. Carroll

University of Alabama School of Law
Box 870382
Tuscaloosa, AL 35487-0382

Phone: 205-348-1116
Email: jcarroll@law.ua.edu
Papers: http://ssrn.com/author=1245554

ACADEMIC APPOINTMENTS

University of Alabama School of Law, Tuscaloosa AL
Professor Law: Teach Crim. Law, Crim. Procedure, Juvenile Justice and Counter Terrorism, 2016–present.
***Associate Professor of Law*:** 2014–2016.

Seton Hall University School of Law, Newark, New Jersey
***Associate Professor of Law*:** Taught Crim. Law, Crim. Procedure, Evidence, and Juvenile Justice. 2010–2014.

University of Cincinnati College of Law, Cincinnati, Ohio
***Visiting Assistant Professor of Law*:** Taught Crim. Law, Crim. Procedure, Evidence, White Collar Crime, and Mental Health and Criminal Law. 2008–2010.

University of Cincinnati College of Law, Cincinnati, Ohio
Assistant Professor of Clinical Law; Academic Director of the Ohio Innocence Project/ Rosenthal Institute for Justice: Designed and taught course on criminal post-conviction law and procedure, investigation and direct client representation; co-taught Criminal Defense Investigation and Trial Practice for the Indigent Defense Clinic. 2005–2008.

Georgetown University Law Center, Washington, D.C.
Prettyman Fellow, Criminal Justice Clinic: Co-taught clinical course for third-year law students and represented indigent defendants on misdemeanor and felony matters in the Superior Court of the District of Columbia. 1998–2000.

PUBLICATIONS

The Problem with Inference for Juvenile Defendants, 45 F.S.U.L. REV. 1 (*forthcoming* 2017)

Bathroom Laws as Status Crimes (with Stephen Rushin), 86 FORDHAM L. REV. 1 (*forthcoming* 2017).

Afterword: Death and the State in FINAL JUDGMENTS: THE DEATH PENALTY AND AMERICAN LAW (Austin Sarat, ed., Cambridge University Press, *forthcoming* 2017)

Brain Science and the Theory of Juvenile Mens Rea, 94 N.C.L. REV. 539 (2016)

- *Featured in* THE CHAMPION *"Getting Scholarship into Courts"*
- Included in the National Juvenile Defender Conference's Resource Guide for 2015–2016
- Available on SSRN at: http://ssrn.com/abstract=2603647

AMERICAN OVERSIGHT

The Jury as Democracy, 66 ALABAMA L. REV. 825 (2015)

- Available on SSRN at: http://ssrn.com/abstract=2585564

Nullification as Law, 102 GEORGETOWN L.J. 579 (2014)

- Available on SSRN at: http://ssrn.com/abstract=2190703

The Resistance Defense, 64 ALABAMA L. REV. 589 (2013)

- Available on SSRN at: http://ssrn.com/abstract=2053378

The Jury's Second Coming, 100 GEORGETOWN L.J. 657 (2012)

- Available on SSRN at: http://ssrn.com/abstract=1486188

Rethinking the Constitutional Criminal Procedure of Juvenile Transfer Hearings: Apprendi*, Adult Punishment, and Adult Process*, 61 HASTINGS L.J. 175 (2009)

- *Featured in* THE CHAMPION *"Getting Scholarship into Courts"*
- Included in the National Juvenile Defender Conference's Resource Guide for 2009–2010
- Available on SSRN at: http://ssrn.com/abstract=1375189

Images of Women and Capital Sentencing Among Female Offenders: Exploring the Outer Limits of the Eighth Amendment and Articulated Theories of Justice, 75 TEXAS L. REV. 1413 (1997)

ABA Juvenile Law Publication, "Practice Paper on Applications of *Apprendi* to Juvenile Transfer Proceedings," November, 2002

WORKS IN PROGRESS

Realizing Touby*'s Promise of Meaningful Constraint in Executive Discretion to Criminalize*

Secondary Emotions and Adolescent Neuroscience

Criminal Regulation of Speech
Privacy in the National Security World

The Jury as Open Government

THE DEMOCRACY OF THE JURY

AMICUS CURIAE BRIEFS

National Association of Criminal Defense Lawyers (NACDL) Amicus Brief, Ayala v. State (Florida Supreme Court, 2017)

National Association of Criminal Defense Lawyers (NACDL) Amicus Brief, State. v.

AMERICAN OVERSIGHT

Kelly Mathis (Eleventh Circuit, 2015)

National Association of Criminal Defense Lawyers (NACDL) Amicus Brief, U.S. v. Keith Cooper (Third Circuit, 2013)

NACDL Amicus Brief, United States v. Andrew "Weev" Auernheimer (Third Circuit, 2013)

NACDL Amicus Brief, United States v. Richard Caraballo-Rodriguez (Third Circuit, 2013)

NACDL Amicus Brief, United States v. Harry Katzin (Third Circuit, 2012)

NACDL Amicus Brief, United States v. Keenan Quinn (Third Circuit, 2012)

Law Professors' Amicus Brief, U.S. v. Charles Lynch (Ninth Circuit, 2012)

Law Professors' Amicus Brief, U.S. v. Salim Ahmed Hamdan (D.C. Circuit, 2011)

SELECTED SHORTER WORKS AND MEDIA

Government Collection of Cellphone Data and Privacy, Op-Ed, THE RECORD, August, 2013

License, Registration, Cellphone, Op-Ed, THE RECORD, June 11, 2013

Why Process Matters in Military Commission, Truthout.org, October 12, 2012

Why Are We Turning Our Backs on the Constitution?, Truthout.org, August, 29, 2012

Is Punishment in the Webcam Case Excessive?, Op-Ed, THE RECORD, March 21, 2012
.
Now There's Caylee's Law of Good Intentions, Op-Ed, THE RECORD, July 18, 2011

ABA Juvenile Law Publication, "Practice Paper on Applications of *Apprendi* to Juvenile Transfer Proceedings," November, 2002

Media appearances include NBC News, ESPN, BBC World News, Hollywood.com, Fox News, WMBC TV, WNBC TV, NPR, WNBC Radio, WHYY-FM Radio, *Associated Press, Boston Globe, New York Times,* AL.com, *Birmingham News, Star Ledger*, *The Record*, *Asbury Park Press*, *Orlando Sentinal* and the *New Jersey Law Journal*

CNN Criminal Law Advisor, 2011-2014

ACTIVITIES

American Association of Law Schools, Criminal Law Section, Executive Committee Member, 2017-present.

AMERICAN OVERSIGHT

Member of Juvenile Detention Alternative Initiative, Alabama, 2015-present

Co-Founder, Transnational Justice Project, Seton Hall University, 2010-2014

Authorized Observer to Guantanamo Military Commissions, 2010-present

NACDL Amicus Vice-Chair, Eleventh Circuit, 2014-present

NACDL Amicus Vice-Chair, Third Circuit, 2010-2014

NACDL Pretrial Justice Task Force, Member, 2011-2014

Advisor to the New York City Department of Education regarding restorative justice projects in public schools, 2013- 2015

EDUCATION

Georgetown University, Washington, D.C. LL.M. in Advocacy, 2005.

The University of Texas School of Law, Austin, Texas. J.D. with Honors, 1997.
Order of the Coif; TEXAS LAW REVIEW, Symposium Editor; TEXAS JOURNAL OF WOMEN AND THE LAW, Community Service Organizer; Thad Hutchinson Moot Court, Quarter-Finalist; Dean's Achievement Award, Highest Grade in Criminal Law; Endowed Presidential Scholarships; Texas Law Fellowships, Director; Women's Law Caucus, Director

Duke University, Durham, North Carolina. A.B., *Summa Cum Laude* with Highest Distinction in Political Science and Women's Studies, 1993.
Dean's Award for Best Undergraduate Thesis; William Griffith Award for Community Service;
Margaret Rose Knight Sanford Scholar; Anne Flexner Award for Creative Writing; John Hope Franklin Award and Julia Harper Day Awards for Documentary Studies; Co-Editor, DISTAFF MAGAZINE

LAW PRACTICE EXPERIENCE

The Defender Association, Seattle, Washington
Juvenile and Felony Staff Attorney: Represented indigent defendants in criminal and mental health matters in adult and juvenile court. 2000–2004.

Georgetown University Law Center, Washington, D.C.
Prettyman Fellow, Criminal Justice Clinic: (See "Academic Appointments," Above). 1998–2000.

Hon. William Wayne Justice, U.S. District Court, Eastern District of Texas, Tyler, Texas, and U.S. District Court, Western District of Texas, Austin, Texas
Judicial Clerk: 1997–1998.

AMERICAN OVERSIGHT

Bredhoff & Kaiser, Washington, D.C.
Law Clerk: Summer 1997.

Allison, Yeager, and Bassett, Austin, Texas
Law Clerk: January 1997 – May 1997.

Skadden, Arps, Slate, Meagher & Flom, Washington, D.C.
Summer Associate: Summer 1996

Texas Rural Legal Aid, Edinburg, Texas
Law Student Associate: Researched remedying systemic violation of criminally accused indigents' civil rights through § 1983 litigation, including a class action suit to insure timely appointment of counsel in border counties in Texas; assisted in litigation involving civil rights, housing, consumer protection, public benefits, family law, and employment matters. 1995–1996.

Project Esperanza, Raleigh, North Carolina
Board Member: Appointed by Governor Hunt to board to secure funding for and establish North Carolina's first domestic violence support services for migrant and rural women. 1992–1994.

Farmworker's Legal Services, Newton Grove, North Carolina
Farmworker Educator and Intern: Performed outreach to migrant labor camps throughout Eastern North Carolina to provide information about immigration issues, worker's rights and other legal matters; served as legal intern to attorneys in the Newton Grove and Raleigh offices. Summer 1992.

SELECTED PRESENTATIONS

Speaker, Free Speech Forum, Charles Pazmany University, Budapest, Hungary, 2017.

Invited Speaker, Bio LawLaPaLooza, Stanford University School of Law, 2017

Invited Speaker, Alabama Juvenile Defender's Conference, 2016

Invited Speaker, Alabama Public Defender's Conference, 2016

Panelist, Moderator, and Discussion Group Organizer, SEALS, 2016

Speaker, CrimFest, 2016

Invited Presenter, Southern Regional Juvenile Defender's Conference, 2016

Invited Speaker, Université Paris – Dauphine, 2016

Invited Speaker, Université Paris-Sorbonne, 2016

Invited Speaker, Richmond College of Law, 2016

AMERICAN OVERSIGHT

Invited Speaker, Tuscaloosa Bar Association, 2014-2016

Invited Speaker, Louis D. Brandeis School of Law, University of Louisville, 2015

Invited Speaker, National Juvenile Defender's Conference, 2015

Panelist, Law and Society Annual Conference, 2015

Panelist, Law and Society Annual Conference, 2013

Panelist, Albany New Teacher's Conference, Albany Law School, 2013

Invited Speaker, Touro Law Center, Faculty Colloquium, 2013

Invited Speaker, The Georgetown University Law Center Advanced Constitutional Law Series, 2012

Participant, Ohio Legal Scholars Workshop, 2009, 2010

"The Jury's Second Coming," University of Dayton School of Law, Faculty Workshop, 2010

Invited Speaker, ABA Juvenile Defender Leadership Summit, 2009

Invited Instructor, Indiana Juvenile Defender Training Summit, 2004–2009

Invited Instructor, Indiana Juvenile Defender Continuing Legal Education Summit, 2009

Invited Instructor, Children's Law Center Defender Training Conference, 2007

Invited Instructor, Ohio Public Defender Training Conference, 2005–2006

Invited Participant, Voices for Children Panel on Juvenile Law Reform in Ohio, 2006

Invited Participant, Ohio Panel on Discovery Reform, 2006

Invited Speaker, ABA Juvenile Defender Leadership Summit, 2002

Invited Participant in Washington (2003) and Texas (2000) assessment studies of Public and Appointed Defender Systems

BAR ADMISSIONS

District of Columbia; Ohio; Texas; Washington (inactive in all).

AMERICAN OVERSIGHT

Date : 11/11/2021 8:13:29 PM
From : "J. Christian Adams" jadams@usccr.gov
To : "Alexander Heideman" aheideman@usccr.gov, "Gail Heriot" gheriot@usccr.gov, "Peter Kirsanow" pkirsanow@usccr.gov, "Stephen Gilchrist" sgilchrist@usccr.gov
Cc : "Carissa Mulder" CMulder@usccr.gov, "John Mashburn" jmashburn@usccr.gov, "Thomas Simuel" tsimuel@usccr.gov
Subject : Re: Action Requested: EAC Representative Replacement for Commissioner Yaki

Her name is not Allison Riggs. Therefore she is the person to pick.

From: Alexander Heideman
Sent: Wednesday, November 10, 2021 2:04:01 PM
To: Gail Heriot; Peter Kirsanow; J. Christian Adams; Stephen Gilchrist
Cc: Carissa Mulder; John Mashburn; Thomas Simuel
Subject: Re: Action Requested: EAC Representative Replacement for Commissioner Yaki

I've attached Jenny Carroll's resume to this email for everyone's reference. She's a professor of law at Alabama.

From: Norma Cantu <ncantu@usccr.gov>
Date: Wednesday, November 10, 2021 at 1:53 PM
To: Gail Heriot <gheriot@usccr.gov>, Peter Kirsanow <pkirsanow@usccr.gov>, "J. Christian Adams" <jadams@usccr.gov>, Stephen Gilchrist <sgilchrist@usccr.gov>
Cc: Alexander Heideman <aheideman@usccr.gov>, Carissa Mulder <CMulder@usccr.gov>, John Mashburn <jmashburn@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>
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Allison Riggs- https://southerncoalition.org/staff/allison-riggs/

AMERICAN OVERSIGHT

Image removed by sender.

Allison Riggs - Southern Coalition for Social Justice

southerncoalition.org

Allison Riggs leads the voting rights program at the Southern Coalition for Social Justice, an organization she joined in 2009. In March of 2020, she also took over as Interim Executive Director of the organization. Her voting rights work over the last decade at SCSJ has been focused on fighting for fair redistricting plans, fighting against voter suppression, and advocating for electoral reforms that would expand access to voting.

Alabama SAC Chair Jenny Carroll - https://www.congress.gov/116/meeting/house/109456/witnesses/HHRG-116-HA08-Wstate-CarrollJ-20190513.pdf

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Please let me know if you have any questions or concerns.

Norma

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AI language:

Section 1.

.01 Any authority specifically granted the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be

AMERICAN OVERSIGHT

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AMERICAN OVERSIGHT

Date : 11/15/2021 10:04:42 AM
From : "Juana Silverio" jsilverio@usccr.gov
To : "Norma Cantu" ncantu@usccr.gov, "Debo P. Adegbile" dadegbile@usccr.gov, "David Kladney" dkladney@usccr.gov, "Michael Yaki" MYaki@usccr.gov, "Irena Vidulovic" ividulovic@usccr.gov, "Alec Deull" adeull@usccr.gov, "Joshua Dansby" jdansby@usccr.gov
Subject : Dem Caucus Mtg. re: Friday Business Mtg.

Hello all,

We are scheduled for a caucus call today at 4:00 Eastern/ 3:00 Central/ 1:00 Pacific. The number is 1-877-446-3914, passcode 858713#

Agenda items:

1. Concept Paper vote
2. R Strike re: progressive candidate for USCCR EAC Rep (due today COB)
3. SACs – any red flags?
4. Bail reform report release – updates?

** please let us know if you have other items you'd like to discuss

AMERICAN OVERSIGHT

Date : 11/15/2021 8:53:19 PM
From : "Norma Cantu" ncantu@usccr.gov
To : "Gail Heriot" gheriot@usccr.gov, "Peter Kirsanow" pkirsanow@usccr.gov, "J. Christian Adams" jadams@usccr.gov, "Stephen Gilchrist" sgilchrist@usccr.gov
Cc : "Alexander Heideman" aheideman@usccr.gov, "Carissa Mulder" CMulder@usccr.gov, "John Mashburn" jmashburn@usccr.gov, "Thomas Simuel" tsimuel@usccr.gov, "Juana Silverio" jsilverio@usccr.gov
Subject : Re: Action Requested: EAC Representative Replacement for Commissioner Yaki

Good evening,

Was a decision made by the caucus?

Thanks.
Norma

From: Norma Cantu
Sent: Wednesday, November 10, 2021 12:53:30 PM
To: Gail Heriot; Peter Kirsanow; J. Christian Adams; Stephen Gilchrist
Cc: Alexander Heideman; Carissa Mulder; John Mashburn; Thomas Simuel
Subject: Action Requested: EAC Representative Replacement for Commissioner Yaki

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AMERICAN OVERSIGHT

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Alabama SAC Chair Jenny Carroll - https://www.congress.gov/116/meeting/house/109456/witnesses/HHRG-116-HA08-Wstate-CarrollJ-20190513.pdf

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AMERICAN OVERSIGHT

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AMERICAN OVERSIGHT

Date : 11/15/2021 10:00:27 PM
From : "Gail Heriot" gheriot@usccr.gov
To : "J. Christian Adams" jadams@usccr.gov
Cc : "Alexander Heideman" aheideman@usccr.gov, "Peter Kirsanow" pkirsanow@usccr.gov, "Stephen Gilchrist" sgilchrist@usccr.gov, "Carissa Mulder" CMulder@usccr.gov, "John Mashburn" jmashburn@usccr.gov, "Thomas Simuel" tsimuel@usccr.gov
Subject : Re: Action Requested: EAC Representative Replacement for Commissioner Yaki

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Professor of Law
University of San Diego

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> **Sent:** Wednesday, November 10, 2021 2:04:01 PM
> **To:** Gail Heriot; Peter Kirsanow; J. Christian Adams; Stephen Gilchrist
> **Cc:** Carissa Mulder; John Mashburn; Thomas Simuel
> **Subject:** Re: Action Requested: EAC Representative Replacement for Commissioner Yaki
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> ---
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> **From:** Norma Cantu <ncantu@usccr.gov>
> **Date:** Wednesday, November 10, 2021 at 1:53 PM
> **To:** Gail Heriot <gheriot@usccr.gov>, Peter Kirsanow <pkirsanow@usccr.gov>, "J. Christian Adams" <jadams@usccr.gov>, Stephen Gilchrist <sgilchrist@usccr.gov>
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Alabama SAC Chair Jenny Carroll - https://www.congress.gov/116/meeting/house/109456/witnesses/HHRG-16-HA08-Wstate-CarrollJ-20190513.pdf

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AMERICAN OVERSIGHT

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AMERICAN OVERSIGHT

Date : 11/15/2021 10:10:00 PM
From : "Stephen Gilchrist" sgilchrist@usccr.gov
To : "Gail Heriot" gheriot@usccr.gov, "J. Christian Adams" jadams@usccr.gov
Cc : "Alexander Heideman" aheideman@usccr.gov, "Peter Kirsanow" pkirsanow@usccr.gov, "Carissa Mulder" CMulder@usccr.gov, "John Mashburn" jmashburn@usccr.gov, "Thomas Simuel" tsimuel@usccr.gov
Subject : Re: Action Requested: EAC Representative Replacement for Commissioner Yaki

Gail - I am fine with Jenny.

From: Gail Heriot
Sent: Monday, November 15, 2021 10:00:26 PM
To: J. Christian Adams
Cc: Alexander Heideman; Peter Kirsanow; Stephen Gilchrist; Carissa Mulder; John Mashburn; Thomas Simuel
Subject: Re: Action Requested: EAC Representative Replacement for Commissioner Yaki

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Professor of Law
University of San Diego

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>
> **From:** Alexander Heideman
> **Sent:** Wednesday, November 10, 2021 2:04:01 PM
> **To:** Gail Heriot; Peter Kirsanow; J. Christian Adams; Stephen Gilchrist
> **Cc:** Carissa Mulder; John Mashburn; Thomas Simuel
> **Subject:** Re: Action Requested: EAC Representative Replacement for Commissioner Yaki
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>
> ---
>
> **From:** Norma Cantu <ncantu@usccr.gov>
> **Date:** Wednesday, November 10, 2021 at 1:53 PM
> **To:** Gail Heriot <gheriot@usccr.gov>, Peter Kirsanow <pkirsanow@usccr.gov>, "J. Christian Adams" <jadams@usccr.gov>,

AMERICAN OVERSIGHT

Stephen Gilchrist <sgilchrist@usccr.gov>
Cc: Alexander Heideman <aheideman@usccr.gov>, Carissa Mulder <CMulder@usccr.gov>, John Mashburn <jmashburn@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>
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AMERICAN OVERSIGHT

(2) The members appointed by the Democratic authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Democratic authorities

(3) The members selected shall be placed in nomination and ratified in conformance with Section 1.

AMERICAN OVERSIGHT

Date : 11/15/2021 11:26:27 PM
From : "Gail Heriot" gheriot@usccr.gov
To : "Norma Cantu" ncantu@usccr.gov
Subject : Re: Action Requested: EAC Representative Replacement for Commissioner Yaki

I think a decision was made, but I haven't heard from Pete yet.

Sent from my iPhone

> On Nov 15, 2021, at 5:53 PM, Norma Cantu <ncantu@usccr.gov> wrote:
>
> Good evening,
>
> Was a decision made by the caucus?
>
> Thanks.
>
> Norma
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>
> **From:** Norma Cantu
> **Sent:** Wednesday, November 10, 2021 12:53:30 PM
> **To:** Gail Heriot; Peter Kirsanow; J. Christian Adams; Stephen Gilchrist
> **Cc:** Alexander Heideman; Carissa Mulder; John Mashburn; Thomas Simuel
> **Subject:** Action Requested: EAC Representative Replacement for Commissioner Yaki
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> Dear Commissioners-
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> In response to Commissioner Yaki recently resigning from his position on the EAC as a representative of USCCR, the Progressive Caucus is putting for 2 names for consideration. I am asking that the candidate you strike be sent to me by Monday, November 15th, 2021 by 5pm EST so that we can include the candidate's confirmation vote at our November 19th business meeting.
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AMERICAN OVERSIGHT

Allison Riggs - Southern Coalition for Social Justice

southerncoalition.org

Allison Riggs leads the voting rights program at the Southern Coalition for Social Justice, an organization she joined

Alabama SAC Chair Jenny Carroll - https://www.congress.gov/116/meeting/house/109456/witnesses/HHRG-16-HA08-Wstate-CarrollJ-20190513.pdf

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Please submit your strike no later than Monday, November 15th by 5pm EST.

Please let me know if you have any questions or concerns.

Norma

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AI language:

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(3) The members selected shall be placed in nomination and ratified in conformance with Section 1.

AMERICAN OVERSIGHT

Date : 11/16/2021 9:46:33 AM
From : "Juana Silverio" jsilverio@usccr.gov
To : "Debo P. Adegbile" dadegbile@usccr.gov, "Norma Cantu" ncantu@usccr.gov
Cc : "Irena Vidulovic" ividulovic@usccr.gov
Subject : FW: Action Requested: EAC Representative Replacement for Commissioner Yaki

Good morning- the Rs did not get back to us by last night. While Carissa has said they will get back to us today, the Chair would like to coordinate on who the pick should be if they do not respond. FYI- the Rs had originally struck Ms. Riggs.

Juana

From: Norma Cantu <ncantu@usccr.gov>
Sent: Monday, November 15, 2021 8:53 PM
To: Gail Heriot <gheriot@usccr.gov>; Peter Kirsanow <pkirsanow@usccr.gov>; J. Christian Adams <jadams@usccr.gov>; Stephen Gilchrist <sgilchrist@usccr.gov>
Cc: Alexander Heideman <aheideman@usccr.gov>; Carissa Mulder <CMulder@usccr.gov>; John Mashburn <jmashburn@usccr.gov>; Thomas Simuel <tsimuel@usccr.gov>; Juana Silverio <jsilverio@usccr.gov>
Subject: Re: Action Requested: EAC Representative Replacement for Commissioner Yaki

Good evening,

Was a decision made by the caucus?

Thanks.

Norma

From: Norma Cantu
Sent: Wednesday, November 10, 2021 12:53:30 PM
To: Gail Heriot; Peter Kirsanow; J. Christian Adams; Stephen Gilchrist
Cc: Alexander Heideman; Carissa Mulder; John Mashburn; Thomas Simuel
Subject: Action Requested: EAC Representative Replacement for Commissioner Yaki

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AMERICAN OVERSIGHT

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AMERICAN OVERSIGHT

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From : "Norma Cantu" ncantu@usccr.gov
To : "Gail Heriot" gheriot@usccr.gov
Cc : "Juana Silverio" jsilverio@usccr.gov
Subject : RE: Action Requested: EAC Representative Replacement for Commissioner Yaki

Dear Gail,
The deadline came and went.
Will you please contact Commissioner Kirsanow.
Norma

From: Gail Heriot <gheriot@usccr.gov>
Sent: Monday, November 15, 2021 10:26 PM
To: Norma Cantu <ncantu@usccr.gov>
Subject: Re: Action Requested: EAC Representative Replacement for Commissioner Yaki

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> **Subject:** Action Requested: EAC Representative Replacement for Commissioner Yaki
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AMERICAN OVERSIGHT

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AMERICAN OVERSIGHT

Date : 11/16/2021 10:27:40 AM
From : "Gail Heriot" gheriot@usccr.gov
To : "Thomas Simuel" tsimuel@usccr.gov
Cc : "Stephen Gilchrist" sgilchrist@usccr.gov, "J. Christian Adams" jadams@usccr.gov, "Alexander Heideman" aheideman@usccr.gov, "Peter Kirsanow" pkirsanow@usccr.gov, "Carissa Mulder" CMulder@usccr.gov, "John Mashburn" jmashburn@usccr.gov
Subject : Re: Action Requested: EAC Representative Replacement for Commissioner Yaki

No, I never heard from Pete.

Gail Heriot
Professor of Law
University of San Diego

> On Nov 16, 2021, at 7:26 AM, Thomas Simuel <tsimuel@usccr.gov> wrote:
>
> Did Chair Cantu receive the caucus vote for Jenny?
>
> ---
>
> **From:** Stephen Gilchrist
> **Sent:** Monday, November 15, 2021 10:10:00 PM
> **To:** Gail Heriot; J. Christian Adams
> **Cc:** Alexander Heideman; Peter Kirsanow; Carissa Mulder; John Mashburn; Thomas Simuel
> **Subject:** Re: Action Requested: EAC Representative Replacement for Commissioner Yaki
>
> Gail - I am fine with Jenny.
>
> ---
>
> **From:** Gail Heriot
> **Sent:** Monday, November 15, 2021 10:00:26 PM
> **To:** J. Christian Adams
> **Cc:** Alexander Heideman; Peter Kirsanow; Stephen Gilchrist; Carissa Mulder; John Mashburn; Thomas Simuel
> **Subject:** Re: Action Requested: EAC Representative Replacement for Commissioner Yaki
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> I am happy to vote for Jenny Carroll. Is she our official pick? Norma is asking.
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> Gail Heriot
> Professor of Law
> University of San Diego
>
> > On Nov 11, 2021, at 5:13 PM, J. Christian Adams <jadams@usccr.gov> wrote:

AMERICAN OVERSIGHT

Her name is not Allison Riggs. Therefore she is the person to pick.

From: Alexander Heideman
Sent: Wednesday, November 10, 2021 2:04:01 PM
To: Gail Heriot; Peter Kirsanow; J. Christian Adams; Stephen Gilchrist
Cc: Carissa Mulder; John Mashburn; Thomas Simuel
Subject: Re: Action Requested: EAC Representative Replacement for Commissioner Yaki

I've attached Jenny Carroll's resume to this email for everyone's reference. She's a professor of law at Alabama.

From: Norma Cantu <ncantu@usccr.gov>
Date: Wednesday, November 10, 2021 at 1:53 PM
To: Gail Heriot <gheriot@usccr.gov>, Peter Kirsanow <pkirsanow@usccr.gov>, "J. Christian Adams" <jadams@usccr.gov>, Stephen Gilchrist <sgilchrist@usccr.gov>
Cc: Alexander Heideman <aheideman@usccr.gov>, Carissa Mulder <CMulder@usccr.gov>, John Mashburn <jmashburn@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>
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Allison Riggs - Southern Coalition for

AMERICAN OVERSIGHT

Image removed by sender.

Social Justice

southerncoalition.org

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AMERICAN OVERSIGHT

Date : 11/16/2021 10:26:50 AM
From : "Thomas Simuel" tsimuel@usccr.gov
To : "Stephen Gilchrist" sgilchrist@usccr.gov, "Gail Heriot" gheriot@usccr.gov, "J. Christian Adams" jadams@usccr.gov
Cc : "Alexander Heideman" aheideman@usccr.gov, "Peter Kirsanow" pkirsanow@usccr.gov, "Carissa Mulder" CMulder@usccr.gov, "John Mashburn" jmashburn@usccr.gov
Subject : Re: Action Requested: EAC Representative Replacement for Commissioner Yaki

Did Chair Cantu receive the caucus vote for Jenny?

From: Stephen Gilchrist
Sent: Monday, November 15, 2021 10:10:00 PM
To: Gail Heriot; J. Christian Adams
Cc: Alexander Heideman; Peter Kirsanow; Carissa Mulder; John Mashburn; Thomas Simuel
Subject: Re: Action Requested: EAC Representative Replacement for Commissioner Yaki

Gail - I am fine with Jenny.

From: Gail Heriot
Sent: Monday, November 15, 2021 10:00:26 PM
To: J. Christian Adams
Cc: Alexander Heideman; Peter Kirsanow; Stephen Gilchrist; Carissa Mulder; John Mashburn; Thomas Simuel
Subject: Re: Action Requested: EAC Representative Replacement for Commissioner Yaki

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> **Cc:** Carissa Mulder; John Mashburn; Thomas Simuel
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To: Gail Heriot <gheriot@usccr.gov>, Peter Kirsanow <pkirsanow@usccr.gov>, "J. Christian Adams" <jadams@usccr.gov>, Stephen Gilchrist <sgilchrist@usccr.gov>
Cc: Alexander Heideman <aheideman@usccr.gov>, Carissa Mulder <CMulder@usccr.gov>, John Mashburn <jmashburn@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>
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AMERICAN OVERSIGHT

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Date : 11/16/2021 10:11:37 AM
From : "Gail Heriot" gheriot@usccr.gov
To : "Norma Cantu" ncantu@usccr.gov
Cc : "Juana Silverio" jsilverio@usccr.gov
Subject : Re: Action Requested: EAC Representative Replacement for Commissioner Yaki

I'm trying. I texted him last night.

Gail Heriot
Professor of Law
University of San Diego

On Nov 16, 2021, at 6:54 AM, Norma Cantu <ncantu@usccr.gov> wrote:

Dear Gail,
The deadline came and went.
Will you please contact Commissioner Kirsanow.
Norma

From: Gail Heriot <gheriot@usccr.gov>
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Cc : "Juana Silverio" jsilverio@usccr.gov, "Peter Kirsanow" pkirsanow@usccr.gov, "J. Christian Adams" jadams@usccr.gov, "Stephen Gilchrist" sgilchrist@usccr.gov, "Alexander Heideman" aheideman@usccr.gov, "Carissa Mulder" CMulder@usccr.gov
Subject : Re: Action Requested: EAC Representative Replacement for Commissioner Yaki

Hi Norma—Our ducks are now in order. The conservative caucus's pick is Jenny Carroll.

I apologize for the delay.

Gail

Gail Heriot
Professor of Law
University of San Diego

On Nov 16, 2021, at 6:54 AM, Norma Cantu <ncantu@usccr.gov> wrote:

Dear Gail,
The deadline came and went.
Will you please contact Commissioner Kirsanow.
Norma

From: Gail Heriot <gheriot@usccr.gov>
Sent: Monday, November 15, 2021 10:26 PM
To: Norma Cantu <ncantu@usccr.gov>
Subject: Re: Action Requested: EAC Representative Replacement for Commissioner Yaki

I think a decision was made, but I haven't heard from Pete yet.

Sent from my iPhone

On Nov 15, 2021, at 5:53 PM, Norma Cantu <ncantu@usccr.gov> wrote:

Good evening,

Was a decision made by the caucus?

AMERICAN OVERSIGHT

Thanks.

Norma

From: Norma Cantu
Sent: Wednesday, November 10, 2021 12:53:30 PM
To: Gail Heriot; Peter Kirsanow; J. Christian Adams; Stephen Gilchrist
Cc: Alexander Heideman; Carissa Mulder; John Mashburn; Thomas Simuel
Subject: Action Requested: EAC Representative Replacement for Commissioner Yaki

Dear Commissioners-

In response to Commissioner Yaki recently resigning from his position on the EAC as a representative of USCCR, the Progressive Caucus is putting for 2 names for consideration. I am asking that the candidate you strike be sent to me by Monday, November 15th, 2021 by 5pm EST so that we can include the candidate's confirmation vote at our November 19th business meeting.

Allison Riggs- https://southerncoalition.org/staff/allison-riggs/

Allison Riggs - Southern Coalition for Social Justice

southerncoalition.org

Allison Riggs leads the voting rights program at the Southern Coalition for Social Justice, an organization she joined in 2009. In March of 2020, she also took over as Interim Executive Director of the organization. Her voting rights work

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over the last decade at SCSJ has been focused on fighting for fair redistricting plans, fighting against voter suppression, and advocating for electoral reforms that would expand access to voting.

Alabama SAC Chair Jenny Carroll - https://www.congress.gov/116/meeting/house/109456/witnesses/HHRG-16-HA08-Wstate-CarrollJ-20190513.pdf

Per the AI voted on during the April 30th meeting (language included below), each caucus will then have 24 hours to submit caucus strikes. In this instance, I am allowing 48 business day hours given that tomorrow is a holiday. The first representative, Cleta Mitchell, was already communicated to the EAC.

Please submit your strike no later than Monday, November 15th by 5pm EST.

Please let me know if you have any questions or concerns.

Norma
--
AI language:

Section 1.
.01 Any authority specifically granted the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Commission as a whole by majority vote.

.02 Any authority specifically granted the Staff Director of the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Staff Director.

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.03 Any authority specifically granted the Chair of the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Chair.

Section 2
.02

(1) For the two (2) appointments to the U.S. Election Assistance Commission, the members appointed by Democratic authorities shall nominate two individuals who are ready, willing, and able to serve, and the members appointed by the Republican authorities shall nominate two individuals who are ready, willing, and able to serve.

(2) The members appointed by the Democratic authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Democratic authorities

(3) The members selected shall be placed in nomination and ratified in conformance with Section 1.

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Date : 11/16/2021 12:06:06 PM
From : "Juana Silverio" jsilverio@usccr.gov
To : "Mauro Morales" mmorales@usccr.gov, "Angelia Rorison" arorison@usccr.gov
Cc : "Norma Cantu" ncantu@usccr.gov
Subject : EAC

Hi- wanted to follow up.

The Chair will be available to discuss in about 45 mins – she is on her way to campus. She agrees

1. Yes to statement discussing bipartisanship and saying that there are 2 nominees, the 2nd to be confirmed on Friday
2. Yes to keeping the vote on the agenda for Friday's business meeting a we will not gain time by notational vote
3. Yes to postponing bail reform release if Cmr. Kladney is ok with postponing

Juana

--
Juana Silverio *(she/her/ella)*
Special Assistant to Commissioner Norma V. Cantú
U.S. Commission on Civil Rights
E: jsilverio@usccr.gov
http://usccr.gov/
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425
Follow us on Twitter and Facebook
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Date : 11/16/2021 12:14:06 PM
From : "Juana Silverio" jsilverio@usccr.gov
To : "Debo P. Adegbile" dadegbile@usccr.gov, "Irena Vidulovic" ividulovic@usccr.gov
Cc : "Norma Cantu" ncantu@usccr.gov
Subject : RE: Action Requested: EAC Representative Replacement for Commissioner Yaki

Irena, can you reach out to Ms. Carroll and let her know we've nominated her, that the Commission will ratify the nomination by majority vote at Friday's mtg.?

There is a statement going out today to address the tweets and press inquiries and will just focus on the EAC and mention that the 2nd Commission nominee will be ratified by majority vote on Friday.

Juana

From: Juana Silverio
Sent: Tuesday, November 16, 2021 11:47 AM
To: Debo P. Adegbile <dadegbile@usccr.gov>; David Kladney <dkladney@usccr.gov>; Michael Yaki <MYaki@usccr.gov>
Cc: Irena Vidulovic <ividulovic@usccr.gov>; Joshua Dansby <jdansby@usccr.gov>; Alec Deull <adeull@usccr.gov>; Norma Cantu <ncantu@usccr.gov>
Subject: FW: Action Requested: EAC Representative Replacement for Commissioner Yaki

FYI

From: Gail Heriot <gheriot@usccr.gov>
Sent: Tuesday, November 16, 2021 11:17 AM
To: Norma Cantu <ncantu@usccr.gov>
Cc: Juana Silverio <jsilverio@usccr.gov>; Peter Kirsanow <pkirsanow@usccr.gov>; J. Christian Adams <jadams@usccr.gov>; Stephen Gilchrist <sgilchrist@usccr.gov>; Alexander Heideman <aheideman@usccr.gov>; Carissa Mulder <CMulder@usccr.gov>
Subject: Re: Action Requested: EAC Representative Replacement for Commissioner Yaki

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AMERICAN OVERSIGHT

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> Good evening,
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> Was a decision made by the caucus?
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> Thanks.
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> ---
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> **From:** Norma Cantu
> **Sent:** Wednesday, November 10, 2021 12:53:30 PM
> **To:** Gail Heriot; Peter Kirsanow; J. Christian Adams; Stephen Gilchrist
> **Cc:** Alexander Heideman; Carissa Mulder; John Mashburn; Thomas Simuel
> **Subject:** Action Requested: EAC Representative Replacement for Commissioner Yaki
>
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Allison Riggs-
https://southerncoalition.org/staff/allison-riggs/

Allison Riggs - Southern Coalition for Social Justice

southerncoalition.org

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Alabama SAC Chair Jenny Carroll -
https://www.congress.gov/116/meeting/house/109456/witnesses/HHRG-116-HA08-Wstate-CarrollJ-20190513.pdf

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Section 2
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(1) For the two (2) appointments to the U.S. Election Assistance Commission, the members appointed by Democratic authorities shall nominate two individuals who are ready, willing, and able to serve, and the members appointed by the Republican authorities shall nominate two individuals who are ready, willing, and able to serve.

(2) The members appointed by the Democratic authorities shall select one (1) of the two (2) individuals

AMERICAN OVERSIGHT

nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Democratic authorities

(3) The members selected shall be placed in nomination and ratified in conformance with Section 1.

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Date : 11/16/2021 12:44:18 PM
From : "David Ganz" dganz@usccr.gov
To : "Angelia Rorison" arorison@usccr.gov
Cc : "Mauro Morales" mmorales@usccr.gov
Subject : FW: EAC Selection
Attachment : image002.gif;image002.gif;image001.gif;image002.jpg;

Below is the email sent out to the SAs and Comms regarding the appointment; if you or Chair Cantu want me to review the statement, I'm happy to do so.

From: David Ganz <dganz@usccr.gov>
Sent: Friday, August 6, 2021 1:42 PM
To: Mauro Morales <mmorales@usccr.gov>; Carissa Mulder <CMulder@usccr.gov>
Cc: Juana Silverio <jsilverio@usccr.gov>
Subject: Re: EAC Selection

That is my understanding of the Administrative Instruction as well.

From: Mauro Morales <mmorales@usccr.gov>
Sent: Friday, August 6, 2021, 1:24 PM
To: Carissa Mulder
Cc: Juana Silverio; David Ganz
Subject: RE: EAC Selection

As I understand the AI, each side must make a final selection from the other's two nominations. The final two selections then go forward to be ratified with a vote from all Commissioners.

AI language:

Section 1.
.01 Any authority specifically granted the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Commission as a whole by majority vote.

.02 Any authority specifically granted the Staff Director of the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Staff Director.

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(2) The members appointed by the Democratic authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Democratic authorities

(3) The members selected shall be placed in nomination and ratified in conformance with Section 1.

From: Carissa Mulder
Sent: Friday, August 06, 2021 1:14 PM
To: Mauro Morales <mmorales@usccr.gov>
Cc: Juana Silverio <jsilverio@usccr.gov>; David Ganz <dganz@usccr.gov>
Subject: Re: EAC Selection

Hi Mauro,

Sorry, I thought the vote decision was coming first! I will check with them and let you know. Thanks!

From: Mauro Morales
Sent: Friday, August 6, 2021 12:53:31 PM
To: Carissa Mulder
Cc: Juana Silverio; David Ganz
Subject: EAC Selection

Carissa,

Will the conservative caucus be informing me when they have made their selection of one of the two candidates to the EAC? I have received the selection from the progressive caucus. I intend to announce the selections in a joint email so both sides can see each other's final selection at the same time. I will then schedule a vote to confirm the two selections to send to the EAC. Per the preference of Commissioners, I can schedule the confirming vote either as a notational vote or as a regular vote on August 20th. Thank you for your assistance.

AMERICAN OVERSIGHT

Mauro Morales
Staff Director
U.S. Commission on Civil Rights
P: 202-376-7796| F: 202-376-7672
Mmorales@usccr.gov
http://usccr.gov/
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425

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OVERSTOCK

OVERSTOCK

OVERSIGHT

03122

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OVERSIGHT

Date : 11/16/2021 1:15:56 PM
From : "Norma Cantu" ncantu@usccr.gov
To : "Kevin Rayburn" KRayburn@eac.gov
Cc : "Juana Silverio" jsilverio@usccr.gov, "Mauro Morales" mmorales@usccr.gov
Subject : RE: [EXTERNAL] RE: EAC Representative for USCCR

We have our second appointment named, and she will be voted upon during our Friday, November 19th meeting.
We have some press calls. I assume you do, too.
Norma

From: Kevin Rayburn <KRayburn@eac.gov>
Sent: Tuesday, November 16, 2021 8:58 AM
To: Norma Cantu <ncantu@usccr.gov>
Cc: Juana Silverio <jsilverio@usccr.gov>
Subject: [EXTERNAL] RE: EAC Representative for USCCR

> CAUTION: This email is from outside USCCR.

Cantú,

Do you have an anticipated timeline on when the second appointment will be made?

Thanks,

Kevin Rayburn | General Counsel
U.S. Election Assistance Commission
633 3rd Street NW, Suite 200 | Washington, DC 20001
www.eac.gov

From: Kevin Rayburn
Sent: Wednesday, November 3, 2021 11:50 AM
To: 'Norma Cantu' <ncantu@usccr.gov>
Cc: Juana Silverio <jsilverio@usccr.gov>
Subject: RE: EAC Representative for USCCR

Good Morning Chairwoman Cantú,

I am confirming receipt and look forward to receiving the 2nd appointment.

Sincerely,

Kevin Rayburn | General Counsel
U.S. Election Assistance Commission
633 3rd Street NW, Suite 200 | Washington, DC 20001
www.eac.gov

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From: Norma Cantu <ncantu@usccr.gov>
Sent: Wednesday, November 3, 2021 11:27 AM
To: Kevin Rayburn <KRayburn@eac.gov>
Cc: Juana Silverio <jsilverio@usccr.gov>
Subject: EAC Representative for USCCR

Good morning-

Please find one of the 2 representatives for the EAC on behalf of the USCCR. We will forward the second representative shortly.

Thank you.

Norma V. Cantú

Chairwoman, USCCR

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Date : 11/16/2021 3:59:58 PM
From : "Mauro Morales" mmorales@usccr.gov
To : "ExecutiveStaff" ExecutiveStaff@usccr.gov
Subject : Response to Media Inquiries about the Appointment to EAC
Attachment : United States Commission on Civil Rights Statement on Appointment to Election Assistance Commission 35.pdf;

AMERICAN OVERSIGHT

United States Commission on Civil Rights Statement on Appointment to Election Assistance Commission 35-member Board of Advisors

November 16, 2021

Ms. Cleta Mitchell's nomination was put forth by Commissioners appointed by Republican authorities, including former President Trump, Senate Minority Leader McConnell, and House Minority McCarthy. Ms. Mitchell is not a member of the Commission on Civil Rights.

The Elections Assistance Commission (EAC), which solicits nominations, requested the U.S. Commission on Civil Rights (Commission) nominate two advisors to the EAC 35-member board of advisors.

Ms. Mitchell is one of two Commission appointees selected by Commissioners to serve on Board of Advisors to the Election Assistance Commission.

The EAC nominee by Commissioners appointed by Democratic authorities was unable to serve and the Commissioners have re-nominated their candidate-to the Commission's remaining appointment to the EAC. There will be a discussion and vote on this matter at the Commission's November 19, 2021, business meeting.

By way of background, Commissioners of the Commission of Civil Rights (USCCR) have the sole authority to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, which is exercised by majority vote of Commissioners.

USCCR is governed by the following agency instruction process regarding nominations to the Board of Advisors to the EAC:

- Commissioners appointed by Democratic authorities nominated two individuals of their membership, and the members appointed by the Republican authorities nominated two individuals of their membership.
- Once nominated, the members appointed by the Democratic authorities, selects one of two individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one of the two individuals nominated by the members appointed by the Democratic authorities.
- Appointments are ratified by majority vote of Commissioners.

Cleta Mitchell was nominated by Commissioners that were appointed by Republican authorities; and was ratified by majority vote of Commissioners.

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Date : 11/16/2021 4:13:10 PM
From : "Irena Vidulovic" ividulovic@usccr.gov
To : "Joshua Dansby" jdansby@usccr.gov
Subject : Call today

Hey Joshua,

Can you please check with Dave if 5:15pm ET/2:15pm PT works for Dave to have a call with Debo (you and I will be on the call as well) to discuss EAC.

If that works I will send out a calendar invitation.

Thanks,
Irena

Irena Vidulovic
Special Assistant to Commissioner Debo P. Adegbile
U.S. Commission on Civil Rights
M: 202-591-9969
ividulovic@usccr.gov
http://usccr.gov/
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425

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Date : 11/16/2021 4:18:00 PM
From : "Joshua Dansby" jdansby@usccr.gov
To : "Irena Vidulovic" ividulovic@usccr.gov
Subject : Re: Call today

This be a telephonic or zoom call?

On Nov 16, 2021 4:13 PM, Irena Vidulovic <ividulovic@usccr.gov> wrote:
Hey Joshua,

Can you please check with Dave if 5:15pm ET/2:15pm PT works for Dave to have a call with Debo (you and I will be on the call as well) to discuss EAC.

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1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425

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Date : 11/16/2021 4:47:44 PM
From : "Joshua Dansby" jdansby@usccr.gov
To : "Irena Vidulovic" ividulovic@usccr.gov
Subject : RE: USCCR Statement on EAC Nomination

...Alright. Thanks.

From: Irena Vidulovic <ividulovic@usccr.gov>
Sent: Tuesday, November 16, 2021 4:47 PM
To: Joshua Dansby <jdansby@usccr.gov>
Subject: Re: USCCR Statement on EAC Nomination

Issued and published on our Twitter.

From: Joshua Dansby
Sent: Tuesday, November 16, 2021 4:45:41 PM
To: Irena Vidulovic
Subject: RE: USCCR Statement on EAC Nomination

Irena,

Is this a draft or was this issued?

-Joshua

From: Irena Vidulovic <ividulovic@usccr.gov>
Sent: Tuesday, November 16, 2021 4:44 PM
To: Debo P. Adegbile <dadegbile@usccr.gov>; Adegbile, Debo <Debo.Adegbile@wilmerhale.com>; David Kladney <dkladney@usccr.gov>; Joshua Dansby <jdansby@usccr.gov>
Subject: USCCR Statement on EAC Nomination

Please see attached!

AMERICAN OVERSIGHT

Date : 11/16/2021 4:38:23 PM
From : "Joshua Dansby" jdansby@usccr.gov
To : "Irena Vidulovic" ividulovic@usccr.gov
Subject : RE: Call today

Irena,

Dave is available. Please send along the invite when you can.

-Joshua

From: Irena Vidulovic <ividulovic@usccr.gov>
Sent: Tuesday, November 16, 2021 4:22 PM
To: Joshua Dansby <jdansby@usccr.gov>
Subject: Re: Call today

I am trying to find a conference line we can use if I don't I have my personal Zoom but Debo and Dave can just call in.

From: Joshua Dansby
Sent: Tuesday, November 16, 2021 4:18:00 PM
To: Irena Vidulovic
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U.S. Commission on Civil Rights

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Washington D.C. 20425

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Date : 11/16/2021 4:22:01 PM
From : "Irena Vidulovic" ividulovic@usccr.gov
To : "Joshua Dansby" jdansby@usccr.gov
Subject : Re: Call today

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Washington D.C. 20425

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#USCCR

AMERICAN OVERSIGHT

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From : "Joshua Dansby" jdansby@usccr.gov
To : "Irena Vidulovic" ividulovic@usccr.gov
Subject : RE: USCCR Statement on EAC Nomination

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-Joshua

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Sent: Tuesday, November 16, 2021 4:44 PM
To: Debo P. Adegbile <dadegbile@usccr.gov>; Adegbile, Debo <Debo.Adegbile@wilmerhale.com>; David Kladney <dkladney@usccr.gov>; Joshua Dansby <jdansby@usccr.gov>
Subject: USCCR Statement on EAC Nomination

Please see attached!

AMERICAN OVERSIGHT

Date : 11/16/2021 4:47:07 PM
From : "Irena Vidulovic" ividulovic@usccr.gov
To : "Joshua Dansby" jdansby@usccr.gov
Subject : Re: USCCR Statement on EAC Nomination

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To : "Debo P. Adegbile" dadegbile@usccr.gov, "Adegbile, Debo" Debo.Adegbile@wilmerhale.com, "David Kladney" dkladney@usccr.gov, "Joshua Dansby" jdansby@usccr.gov
Subject : USCCR Statement on EAC Nomination
Attachment : United States Commission on Civil Rights Statement on Appointment to Election Assistance Commission 35.pdf;

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Ms. Mitchell is one of two Commission appointees selected by Commissioners to serve on Board of Advisors to the Election Assistance Commission.

The EAC nominee by Commissioners appointed by Democratic authorities was unable to serve and the Commissioners have re-nominated their candidate-to the Commission's remaining appointment to the EAC. There will be a discussion and vote on this matter at the Commission's November 19, 2021, business meeting.

By way of background, Commissioners of the Commission of Civil Rights (USCCR) have the sole authority to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, which is exercised by majority vote of Commissioners.

USCCR is governed by the following agency instruction process regarding nominations to the Board of Advisors to the EAC:

- Commissioners appointed by Democratic authorities nominated two individuals of their membership, and the members appointed by the Republican authorities nominated two individuals of their membership.
- Once nominated, the members appointed by the Democratic authorities, selects one of two individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one of the two individuals nominated by the members appointed by the Democratic authorities.
- Appointments are ratified by majority vote of Commissioners.

Cleta Mitchell was nominated by Commissioners that were appointed by Republican authorities; and was ratified by majority vote of Commissioners.

AMERICAN OVERSIGHT

Date : 11/16/2021 5:59:16 PM
From : "Juana Silverio" jsilverio@usccr.gov
To : "Norma Cantu" ncantu@usccr.gov, "Angelia Rorison" arorison@usccr.gov, "Mauro Morales" mmorales@usccr.gov
Subject : Vote on EAC in transcriptp breakdown

I'm ready to call the question, folks.
All right. Call the question then.
Commissioner Adams, how do you vote?
COMMISSIONER ADAMS: Yes.
CHAIR CANTU: Commissioner Adegbile?
COMMISSIONER ADEGBILE: Aye.
CHAIR CANTU: Commissioner Gilchrist?
COMMISSIONER GILCHRIST: Yes.
CHAIR CANTU: Commissioner Heriot?
COMMISSIONER HERIOT: Yes.
CHAIR CANTU: Commissioner Kirsanow?
COMMISSIONER KIRSANOW: Yes.
CHAIR CANTU: Commissioner Kladney?
COMMISSIONER KLADNEY: No.
CHAIR CANTU: Thank you.
Commissioner Yaki?
COMMISSIONER YAKI: Abstain.
CHAIR CANTU: And I vote yes.
One abstention, 1 no, 6 yeses. The motion passes.

--
Juana Silverio *(she/her/ella)*
Special Assistant to Commissioner Norma V. Cantú
U.S. Commission on Civil Rights
E: jsilverio@usccr.gov
http://usccr.gov/
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AMERICAN OVERSIGHT

Date : 11/16/2021 7:18:16 PM
From : "Alexander Heideman" aheideman@usccr.gov
To : "Gail Heriot" gheriot@usccr.gov, "Alexander Heideman" alexanderheideman@gmail.com
Subject : Re: Friday

Here

On 11/15/21, 11:03 AM, "Alexander Heideman" <aheideman@usccr.gov> wrote:

This is the agenda (also attached). I'll be able to send you a more detailed version this week; some of the SACs and other things are still in the works.

A. Presentations from Advisory Committees to the Commission on Recent Reports/Memo Releases
B. Discussion and Vote on Advisory Committee Appointments
C. Vote to Appoint Travis Letellier as New Chair of South Dakota Advisory Committee
D. Vote to Confirm USCCR Representative to the EAC
E. Vote to Amend January2022 Business Meeting Date
F. Discussion and Vote on Fiscal Year 2022 Concept Papers and Fiscal Year 2023 Statutory Enforcement Report
G. Management and Operations

Alex

On 11/14/21, 12:22 PM, "Gail Heriot" <gheriot@usccr.gov> wrote:

What's on the agenda for Friday?

Gail

Gail Heriot
Professor of Law
University of San Diego

AMERICAN OVERSIGHT

Date : 11/16/2021 9:26:02 PM
From : "Joshua Dansby" jdansby@usccr.gov
To : "David Kladney" dkladney@usccr.gov, "Irena Vidulovic" ividulovic@usccr.gov, "Debo P. Adegbile" dadegbile@usccr.gov
Subject : Yahoo Article EAC Appointment

Most comprehensive article I have found so far.

https://www.yahoo.com/now/trump-adviser-appointed-panel-us-231913763.html

-Joshua

Joshua W. Dansby (he/him)
Special Assistant to Commissioner David Kladney
U.S. Commission on Civil Rights
E: jdansby@usccr.gov
http://usccr.gov/
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425

AMERICAN OVERSIGHT

Date : 11/17/2021 9:48:33 AM
From : "Mauro Morales" mmorales@usccr.gov
To : "Irena Vidulovic" ividulovic@usccr.gov
Subject : RE: Vote on EAC in transcriptp breakdown

Good point!!

From: Irena Vidulovic <ividulovic@usccr.gov>
Sent: Wednesday, November 17, 2021 9:43 AM
To: Mauro Morales <mmorales@usccr.gov>
Subject: Re: Vote on EAC in transcriptp breakdown

Commissioner Adegbile however voted against adopting the AI on EAC on April 30th. However once it was voted and it became a USCCR administrative instruction he followed the adopted AI which bundled Commissioner Yaki's vote with Cleta. He also understood that we could only strike one R' nominee.

From: Mauro Morales
Sent: Wednesday, November 17, 2021 9:39:51 AM
To: Irena Vidulovic
Subject: FW: Vote on EAC in transcriptp breakdown

From: Juana Silverio <jsilverio@usccr.gov>
Sent: Tuesday, November 16, 2021 5:59 PM
To: Norma Cantu <ncantu@usccr.gov>; Angelia Rorison <arorison@usccr.gov>; Mauro Morales <mmorales@usccr.gov>
Subject: Vote on EAC in transcriptp breakdown

I'm ready to call the question, folks.

All right. Call the question then.

Commissioner Adams, how do you vote?

COMMISSIONER ADAMS: Yes.

CHAIR CANTU: Commissioner Adegbile?

COMMISSIONER ADEGBILE: Aye.

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CHAIR CANTU: Commissioner Gilchrist?

COMMISSIONER GILCHRIST: Yes.

CHAIR CANTU: Commissioner Heriot?

COMMISSIONER HERIOT: Yes.

CHAIR CANTU: Commissioner Kirsanow?

COMMISSIONER KIRSANOW: Yes.

CHAIR CANTU: Commissioner Kladney?

COMMISSIONER KLADNEY: No.

CHAIR CANTU: Thank you.

Commissioner Yaki?

COMMISSIONER YAKI: Abstain.

CHAIR CANTU: And I vote yes.

One abstention, 1 no, 6 yeses. The motion passes.

--

Juana Silverio *(she/her/ella)*

Special Assistant to Commissioner Norma V. Cantú

U.S. Commission on Civil Rights

E: jsilverio@usccr.gov

http://usccr.gov/

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AMERICAN OVERSIGHT

Date : 11/17/2021 9:42:39 AM
From : "Irena Vidulovic" ividulovic@usccr.gov
To : "Mauro Morales" mmorales@usccr.gov
Subject : Re: Vote on EAC in transcriptp breakdown

Commissioner Adegbile however voted against adopting the AI on EAC on April 30th. However once it was voted and it became a USCCR administrative instruction he followed the adopted AI which bundled Commissioner Yaki's vote with Cleta. He also understood that we could only strike on e R' nominee.

From: Mauro Morales
Sent: Wednesday, November 17, 2021 9:39:51 AM
To: Irena Vidulovic
Subject: FW: Vote on EAC in transcriptp breakdown

From: Juana Silverio <jsilverio@usccr.gov>
Sent: Tuesday, November 16, 2021 5:59 PM
To: Norma Cantu <ncantu@usccr.gov>; Angelia Rorison <arorison@usccr.gov>; Mauro Morales <mmorales@usccr.gov>
Subject: Vote on EAC in transcriptp breakdown

I'm ready to call the question, folks.
All right. Call the question then.
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COMMISSIONER ADAMS: Yes.
CHAIR CANTU: Commissioner Adegbile?
COMMISSIONER ADEGBILE: Aye.
CHAIR CANTU: Commissioner Gilchrist?
COMMISSIONER GILCHRIST: Yes.
CHAIR CANTU: Commissioner Heriot?
COMMISSIONER HERIOT: Yes.
CHAIR CANTU: Commissioner Kirsanow?
COMMISSIONER KIRSANOW: Yes.
CHAIR CANTU: Commissioner Kladney?
COMMISSIONER KLADNEY: No.
CHAIR CANTU: Thank you.
Commissioner Yaki?
COMMISSIONER YAKI: Abstain.
CHAIR CANTU: And I vote yes.
One abstention, 1 no, 6 yeses. The motion passes.

--
Juana Silverio *(she/her/ella)*
Special Assistant to Commissioner Norma V. Cantú

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Date : 11/17/2021 11:26:10 AM
From : "Angelia Rorison" arorison@usccr.gov
To : "Mauro Morales" mmorales@usccr.gov
Subject : Media Regarding EAC Appointment

Hi Mauro,

Here is current coverage:

- Original AP Story
  - Notable publications that ran:
    - Washington Post
    - NBC
    - SF Chronicle
    - Yahoo
    - Over 260 outlets have run the AP story across the US & a few in India
- Fox News
  - The Fox piece also cites the Commission's statement; the subhead notes that the EAC advisory board doesn't have power to make policy. It includes Cleta's quote a bit higher up and doesn't as directly cite the cause of her resignation from her law firm.
  - It cites the AP story and includes an image of and link to the Twitter post from Jessica Huseman, which was also mentioned in the AP piece
  - Also republished on Yahoo
- HillReporter.com
  - Goes a little deeper into Cleta's background and doesn't mention the nominations of the two board members but also calls the EAC and the USCCR "bodies with little authority."
  - It also includes an image of and link to Jessica Huseman's post on Twitter as well as a Nov. 1 post from Cleta

These are the major highlights – these stories all cite your statement and mention the nomination of 2 board members and the nomination process.

- J. Christian Adams guest hosted a radio show this morning where he interviewed Cleta. I haven't had a chance to listen since it just went online.
- Newsweek released an updated story, but didn't name J. Christian Adams as the other nominee. It cites the statement from yesterday.

Angelia Rorison (she/her/hers)
Director of Media and Communications
FOIA Public Liaison
U.S. Commission on Civil Rights
1331 Pennsylvania Ave., NW, Suite 1150
Washington, DC 20425
M: 202-499-0263

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arorison@usccr.gov
www.usccr.gov
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Established in 1957 by the Civil Rights Act, the Commission is the only independent, bipartisan federal agency charged with advising the President and Congress on civil rights matters. Our 51 state Advisory Committees offer a broad perspective on civil rights concerns at state and local levels.

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Date : 11/17/2021 11:33:10 AM
From : "Mauro Morales" mmorales@usccr.gov
To : "Irena Vidulovic" ividulovic@usccr.gov
Subject : FW: Media Regarding EAC Appointment

Close hold

From: Angelia Rorison <arorison@usccr.gov>
Sent: Wednesday, November 17, 2021 11:26 AM
To: Mauro Morales <mmorales@usccr.gov>
Subject: Media Regarding EAC Appointment

Hi Mauro,

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Angelia Rorison (she/her/hers)

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Director of Media and Communications
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Established in 1957 by the Civil Rights Act, the Commission is the only independent, bipartisan federal agency charged with advising the President and Congress on civil rights matters. Our 51 state Advisory Committees offer a broad perspective on civil rights concerns at state and local levels.

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Date : 11/17/2021 11:56:01 AM
From : "Irena Vidulovic" ividulovic@usccr.gov
To : "Debo P. Adegbile" dadegbile@usccr.gov, "Adegbile, Debo" Debo.Adegbile@wilmerhale.com
Subject : Re: Yahoo Article EAC Appointment

Adegbile,

Here is some updated coverage with hyperlinks.

- Original AP Story
  - Notable publications that ran:
    - Washington Post
    - NBC
    - SF Chronicle
    - Yahoo
    - Over 260 outlets have run the AP story across the US & a few in India
- Fox News
  - The Fox piece also cites the Commission's statement; the subhead notes that the EAC advisory board doesn't have power to make policy. It includes Cleta's quote a bit higher up and doesn't as directly cite the cause of her resignation from her law firm.
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These are the major highlights – these stories all cite your statement and mention the nomination of 2 board members and the nomination process.

- Newsweek released an updated story, but didn't name J. Christian Adams as the other nominee. It cites the statement from yesterday.

From: Joshua Dansby
Sent: Tuesday, November 16, 2021 9:26:02 PM
To: David Kladney; Irena Vidulovic; Debo P. Adegbile
Subject: Yahoo Article EAC Appointment

Most comprehensive article I have found so far.

https://www.yahoo.com/now/trump-adviser-appointed-panel-us-

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231913763.html

-Joshua

Joshua W. Dansby (he/him)
Special Assistant to Commissioner David Kladney
U.S. Commission on Civil Rights
E: jdansby@usccr.gov
http://usccr.gov/
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425

AMERICAN OVERSIGHT

Date : 3/5/2021 3:06:07 PM
From : "David Ganz" dganz@usccr.gov
To : "Mauro Morales" mmorales@usccr.gov
Cc : "Pilar McLaughlin" pmclaughlin@usccr.gov
Subject : EAC opinion

Before a memo is finalized, it may be prudent for us to discuss on a call whether you would like us to proceed with it.

David Ganz
General Counsel, Office of the General Counsel
U.S. Commission on Civil Rights
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425
(617) 669-6413

AMERICAN OVERSIGHT

Date : 3/5/2021 3:45:20 PM
From : "Mauro Morales" mmorales@usccr.gov
To : "Norma Cantu" ncantu@usccr.gov
Cc : "David Ganz" dganz@usccr.gov
Subject : FW: EAC Board of Advisors Membership Appointments
Attachment : EAC Letter to USCCR re Board of Advisors.pdf;Notice-of-Representation-Form-Board-Advisors-2021.pdf;

Norma,

I do not recall if I already sent this to you. I apologize if I already sent it. I cc'd our GC David Ganz in case you wish to discuss further.

Mauro

From: Kevin Rayburn <KRayburn@eac.gov>
Sent: Friday, March 5, 2021 11:14 AM
To: Mauro Morales <mmorales@usccr.gov>
Subject: [EXTERNAL] EAC Board of Advisors Membership Appointments

> CAUTION: This email is from outside USCCR.

Please find attached correspondence from the U.S. Election Assistance Commission regarding your organization's appointments to the EAC Board of Advisors. Also included is a Notice of Representation Form. We ask that you please return the completed form to krayburn@eac.gov by March 26, 2021. Let me know if you have any questions.

Sincerely,

Kevin Rayburn, General Counsel
U.S. Election Assistance Commission
Mobile: (202) 740-6546

AMERICAN OVERSIGHT

U.S. Election Assistance Commission

633 3rd Street NW, Suite 200
Washington, DC 20001

March 5, 2021

United States Commission on Civil Rights
Mauro Morales, Staff Director
1331 Pennsylvania Ave., NW, STE 1150
Washington, D.C. 20425
mmorales@usccr.gov

Re: U.S. Election Assistance Commission
Board of Advisors Membership Appointment

Dear Mr. Morales,

As you are aware, the Help America Vote Act of 2002 (HAVA) created the U.S. Election Assistance Commission (EAC) and established three advisory boards to assist the EAC: Board of Advisors, Standards Board, and Technical Guidelines Development Committee. The advisory boards are primarily charged with providing advice, guidance, and support to the EAC on the ongoing development of the Voluntary Voting System Guidelines (VVSG).

Under Section 214 of HAVA, your organization is authorized to appoint two members to the Board of Advisors. The Board of Advisors Charter and Bylaws govern the advisory board.

Please be advised that your designated representatives' two-year terms to the Board of Advisors expire on April 13, 2021. You can either reappoint your current representative(s) or appoint new representative(s) for a new two-year term. In compliance with HAVA, please make appointments "in a manner which ensures that the Board of Advisors will be bipartisan in nature and will reflect the various geographic regions of the United States." 52 U.S.C § 20944(b).

Your current representatives are:

Michael Yaki

David Kladney

The new term of your member representatives will begin on April 13, 2021 coinciding with the renewal of the Board of Advisor's Charter.

Please use the enclosed Notice of Representation form to advise us of your designated representatives to serve on the EAC Board of Advisors for the upcoming two-year term. **Please return this completed form by email to krayburn@eac.gov no later than March 26, 2021**.

While the EAC recently adopted VVSG 2.0, we are committed to an agile process that includes continually working with our advisory boards to identify enhancements to the VVSG. The

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usability, accessibility, and security of voting systems continue to be of critical importance, and recommendations from the advisory boards are as imperative as ever. Therefore, your prompt response to this letter is greatly appreciated.

Thank you for your attention to this matter. If we can be of assistance, please feel free to contact us at 202-740-6546 or krayburn@eac.gov.

Sincerely,

Mona Harrington
Executive Director
U.S. Election Assistance Commission

AMERICAN OVERSIGHT

Notice of Representation
United States Election Assistance Commission
Board of Advisors

In accordance with 52 U.S.C. § 20944 of the Help America Vote Act of 2002, your office submits the following individual(s) as a member of the Election Assistance Commission Board of Advisors:

Designated Representative

Name: _____

Title: _____

Address: _____

_____

Phone: _____

Email: _____

Party Affiliation: _____

Designated Representative

Name: _____

Title: _____

Address: _____

_____

Phone: _____

Email: _____

Party Affiliation: _____

Name and Title of Appointing Official

Print Name: _____

Print Title: _____

Signature: _____ Date: _____

Please return the completed form via email to EAC General Counsel Kevin Rayburn (krayburn@eac.gov).

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Date : 3/5/2021 3:47:31 PM
From : "Mauro Morales" mmorales@usccr.gov
To : "David Ganz" dganz@usccr.gov
Cc : "Pilar McLaughlin" pmclaughlin@usccr.gov
Subject : RE: EAC opinion

Yes

From: David Ganz <dganz@usccr.gov>
Sent: Friday, March 5, 2021 3:06 PM
To: Mauro Morales <mmorales@usccr.gov>
Cc: Pilar McLaughlin <pmclaughlin@usccr.gov>
Subject: EAC opinion

Before a memo is finalized, it may be prudent for us to discuss on a call whether you would like us to proceed with it.

David Ganz
General Counsel, Office of the General Counsel
U.S. Commission on Civil Rights
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425
(617) 669-6413

AMERICAN OVERSIGHT

Date : 3/5/2021 4:45:36 PM
From : "David Ganz" dganz@usccr.gov
To : "Mauro Morales" mmorales@usccr.gov
Subject : RE: EAC opinion

I'll call you in a minute on this.

From: Mauro Morales <mmorales@usccr.gov>
Sent: Friday, March 5, 2021 3:48 PM
To: David Ganz <dganz@usccr.gov>
Cc: Pilar McLaughlin <pmclaughlin@usccr.gov>
Subject: RE: EAC opinion

Yes

From: David Ganz <dganz@usccr.gov>
Sent: Friday, March 5, 2021 3:06 PM
To: Mauro Morales <mmorales@usccr.gov>
Cc: Pilar McLaughlin <pmclaughlin@usccr.gov>
Subject: EAC opinion

Before a memo is finalized, it may be prudent for us to discuss on a call whether you would like us to proceed with it.

David Ganz
General Counsel, Office of the General Counsel
U.S. Commission on Civil Rights
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425
(617) 669-6413

AMERICAN OVERSIGHT

Date : 9/15/2020 3:34:29 PM
From : "Carissa Mulder" CMulder@usccr.gov
To : "Christian Adams" a@electionlawcenter.com, "Peter Kirsanow" pkirsanow@Beneschlaw.com, "'Gail Heriot'" gheriot@me.com, "'stephen gilchrist'" thegilchristassociates@gmail.com
Cc : "John Mashburn" jkmash@comcast.net, "'Thomas Simuel'" tjsimuel32@gmail.com, "Alexander Heideman" aheideman@usccr.gov
Subject : Re: [EXTERNAL] EAC Board of Advisors

Good question! I had no idea the USCCR got two designees to the EAC Board of Advisors. Here's the list of all the current advisors: https://www.eac.gov/sites/default/files/boardofadvisors/BOARoster_072720.pdf.

From: Christian Adams <a@electionlawcenter.com>
Sent: Tuesday, September 15, 2020 3:15:28 PM
To: Peter Kirsanow; 'Gail Heriot'; 'stephen gilchrist'
Cc: John Mashburn; 'Thomas Simuel'; Carissa Mulder; Alexander Heideman
Subject: [EXTERNAL] EAC Board of Advisors

> CAUTION: This email is from outside USCCR.

Apparently the EAC gets two designees over the Election Assistance Commission Board of Advisors. Currently it is Yaki and Kladney. I just got a call from an EAC commission saying that Yaki is acting absurdly and exercising power over the EAC by threatening the Pelosi pick on the EAC with removal if he doesn't do what he wants, effectively making Yaki a commissioner on the EAC on many issues. He is causing mischief I don't even detail here.

My question is how does he get UNDONE from the EAC oversight commission? How does that get revoked and replaced?

AMERICAN OVERSIGHT

Date : 8/2/2021 2:51:18 PM
From : "David Ganz" dganz@usccr.gov
To : "TinaLouise Martin" tmartin@usccr.gov
Subject : RE: draft AIs from April
Attachment : AI on Appointment Authority (general and EAC) dg edts.docx;image001.png;

They were signed by Mauro so they don't have numbers, but they (3 in total) were ones voted on by the Comms at the 4/30 Business meeting. Attached is a draft of one of them.

From: TinaLouise Martin <tmartin@usccr.gov>
Sent: Monday, August 2, 2021 2:49 PM
To: David Ganz <dganz@usccr.gov>
Subject: RE: draft AIs from April

Would you happen to know the AI number?

From: David Ganz <dganz@usccr.gov>
Sent: Monday, August 2, 2021 1:35 PM
To: TinaLouise Martin <tmartin@usccr.gov>
Subject: Re: draft AIs from April

The ones about EAC appointment and that Commissioners can pick witnesses for briefings.

Sent via the Samsung Galaxy S21 5G, an AT&T 5G smartphone
Get Outlook for Android

From: TinaLouise Martin <tmartin@usccr.gov>
Sent: Monday, August 2, 2021 2:24:59 PM
To: David Ganz <dganz@usccr.gov>
Subject: RE: draft AIs from April

Which ones?

From: David Ganz <dganz@usccr.gov>
Sent: Monday, August 2, 2021 1:13 PM
To: TinaLouise Martin <tmartin@usccr.gov>
Subject: draft AIs from April

Do you have these?

David Ganz
General Counsel, Office of the General Counsel
U.S. Commission on Civil Rights
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425
(617) 669-6413

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Established as an independent, bipartisan, fact-finding federal agency, our mission is to inform the development of national civil rights policy and enhance enforcement of federal civil rights laws. We pursue this mission by studying alleged deprivations of voting rights and alleged discrimination based on race, color, religion, sex, age, disability, or national origin, or in the administration of justice. We play a vital role in advancing civil rights through objective and comprehensive investigation, research, and analysis on issues of fundamental concern to the federal government and the public.

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ADMINISTRATIVE INSTRUCTION __- __

COMMISSION APPOINTMENTS TO OTHER FEDERAL ENTITIES

Section 1.
.01 Any authority specifically granted the Commission of Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc. shall be exercised by the Commission as a whole by majority vote.

Section 2
.02

(1) For the two (2) appointments to the U.S. Election Assistance Commission, Board of Advisors pursuant to 52 U.S.C. 20944, the members appointed by Democratic authorities shall nominate two individuals of their membership, and the members appointed by the Republican authorities shall nominate two individuals of their membership.

(2) The members appointed by the Democratic authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Democratic authorities

(3) The members selected shall be placed in nomination and ratified in conformance with Section 1.

Commented [DG1]: It is recommended that the "etcetera" is explicitly defined.

Commented [DG2]: The authorizing statute for the Commission on the Social Status of Black Men and Boys reserves to the Staff Director the appointing authority for 1 member. *See* https://www.congress.gov/bill/116th-congress/house-bill/1636/text?q=%7B%22search%22%3A%5B%22%5B2018-09-28+TO+2018-09-28%5D%22%5D%7D, Sec 3(6). This is contrary to the foregoing and revision is necessary. Non-concur.

Commented [DG3]: What about Commissioners who are Independents or members of other political parties?

Commented [DG4]: This could be accomplished by a Commission vote rather than A.I.

52 U.S.C. § 20944 requires Board of Advisor appointments to be bipartisan in nature and so this is redundant.

Further, under 45 CFR § 702.51(c) Meeting means the deliberations of at least the number of Commissioners required to take action on behalf of the Commission where such deliberations determine or result in the joint conduct or disposition of official Commission business and therefore this regulation already provides for a voting requirement for appointments to other federal entities.

Commented [DG5]: Discussion point: does this require the SD's signature to be valid? APA provides little guidance. What is other legal authority that SD or Commissioners do or don't need to sign it to make it effective? Our Agency head is not clear under our statute and thus who signatory should be isn't clear. Any power could be delegated under 5 USC 302, but need to identify the Agency head first.

AMERICAN OVERSIGHT

C003161
AMERICAN OVERSIGHT

Date : 8/9/2021 2:40:53 PM
From : "Sheryl Cozart" sccozart@usccr.gov
To : "David Ganz" dganz@usccr.gov
Subject : RE: Nominations for Appointment to the EAC --please convey the results simultaneously to the Commissioners.
Attachment : image001.gif;image002.jpg;

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OVERSIGHT

03167

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Date : 8/9/2021 2:47:16 PM
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To : "Pilar McLaughlin" pmclaughlin@usccr.gov
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AMERICAN OVERSIGHT

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OVERSIGHT

03173

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Date : 8/9/2021 3:21:03 PM
From : "David Ganz" dganz@usccr.gov
To : "Sheryl Cozart" sccozart@usccr.gov
Subject : RE: Nominations for Appointment to the EAC --please convey the results simultaneously to the Commissioners.
Attachment : image001.gif;image002.jpg;

This interpretation of the statute would seriously hamper the functioning of the new Commission. Please research other commissions and boards in the government and see if there is any case law interpreting their authorizing statute. I suggest you go on West Law and search for notes/cases on other authorizing statutes. These may be useful as well: https://www.usa.gov/federal-agencies, https://fas.org/sgp/crs/misc/R40076.pdf

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AMERICAN OVERSIGHT

OVERSIGHT

03179

AMERICAN OVERSIGHT

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To : "Pilar McLaughlin" pmclaughlin@usccr.gov
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Attachment : image001.gif;image002.jpg;

This is issue is what you texted about on August 4. If Sheryl is correct, we need to have Congress change the statute as there always/often be some vacancies given the number of commissioners.

From: Pilar McLaughlin <pmclaughlin@usccr.gov>
Sent: Monday, August 9, 2021 3:27 PM
To: David Ganz <dganz@usccr.gov>
Subject: Re: Nominations for Appointment to the EAC --please convey the results simultaneously to the Commissioners.

I agree with you. The conclusion that there can't be a meeting unless all seats are filled does not seem correct. The fact that a vacancy would keep a commission from operating cuts against principles of continuity of operations.

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Cc: Norma Cantu <ncantu@usccr.gov>; David Ganz <dganz@usccr.gov>
Subject: RE: Nominations for Appointment to the EAC

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From: Juana Silverio <jsilverio@usccr.gov>
Sent: Wednesday, August 4, 2021 11:10 AM
To: Mauro Morales <mmorales@usccr.gov>
Cc: Norma Cantu <ncantu@usccr.gov>
Subject: RE: Nominations for Appointment to the EAC

Should we remind them to send their "strike" no latr than COB tomorrow?

From: Mauro Morales <mmorales@usccr.gov>
Sent: Tuesday, August 3, 2021 5:36 PM

AMERICAN OVERSIGHT

To: Commissioners <Commissioners@usccr.gov>
Cc: CommissionerAssistants <CommissionerAssistants@usccr.gov>; David Ganz <dganz@usccr.gov>
Subject: Nominations for Appointment to the EAC

Commissioners,

Pursuant to the AI voted on during the April 30th Business meeting, you have nominated the following individuals to the Election Assistance Commission (EAC):

Commissioners Cantu, Adegbile, Kladney and Yaki have nominated the following individuals to the EAC:

Commissioner Michael Yaki;
Ms. Allison Riggs , Co-Executive Director, Southern Coalition for Social Justice.

Commissioners Adams, Gilchrist, Heriot and Kirsanow have nominated the following individuals to the EAC:

Commissioner Christian Adams;
Cleta Michell, Chair, Conservative Partnership Institute Election Integrity Network.

Under the AI adopted by Commissioners, the members appointed by the Democratic authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Democratic authorities. The final members selected shall be placed in nomination and ratified by a majority vote. Please inform me how you would like to proceed for a majority vote either by placing it on the agenda for the next USCCR business meeting or by a notational vote.

Mauro Morales
Staff Director
U.S. Commission on Civil Rights
P: 202-376-7796| F: 202-376-7672
Mmorales@usccr.gov
http://usccr.gov/
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Washington D.C. 20425

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03186

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Date : 8/9/2021 3:26:48 PM
From : "Pilar McLaughlin" pmclaughlin@usccr.gov
To : "David Ganz" dganz@usccr.gov
Subject : Re: Nominations for Appointment to the EAC --please convey the results simultaneously to the Commissioners.
Attachment : image001.gif;image002.jpg;

I agree with you. The conclusion that there can't be a meeting unless all seats are filled does not seem correct. The fact that a vacancy would keep a commission from operating cuts against principles of continuity of operations.

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From: David Ganz <dganz@usccr.gov>
Sent: Monday, August 9, 2021 2:47:17 PM
To: Pilar McLaughlin <pmclaughlin@usccr.gov>
Subject: FW: Nominations for Appointment to the EAC --please convey the results simultaneously to the Commissioners.

Thoughts? I know of no commission or board in the government that operates like below.

From: Sheryl Cozart <sccozart@usccr.gov>
Sent: Monday, August 9, 2021 2:41 PM
To: David Ganz <dganz@usccr.gov>
Subject: RE: Nominations for Appointment to the EAC --please convey the results simultaneously to the Commissioners.

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Under the statute, there can be no vacancies for the first meeting. There must be 19 members (or more to correct a partisan imbalance) at all times. In addition, if there are ever vacancies, they must be filled before the next meeting.

As we approach December 27th, Mauro will have to actively pursue appointing any remaining vacancies so that the initial meeting can take place. Mauro is the safeguard so that a first meeting takes place.

Thoughts?

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Sent: Monday, August 9, 2021 2:01 PM
To: Sheryl Cozart <sccozart@usccr.gov>
Subject: FW: Nominations for Appointment to the EAC --please convey the results simultaneously to the Commissioners.

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Sent: Thursday, August 5, 2021 5:45 PM
To: David Ganz <dganz@usccr.gov>; Norma Cantu <ncantu@usccr.gov>; Juana Silverio <jsilverio@usccr.gov>
Subject: RE: Nominations for Appointment to the EAC --please convey the results simultaneously to the Commissioners.

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Cc: David Ganz
Subject: RE: Nominations for Appointment to the EAC --please convey the results simultaneously to the Commissioners.

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Norma

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Subject: RE: Nominations for Appointment to the EAC

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AMERICAN OVERSIGHT

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Washington D.C. 20425

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Date : 8/9/2021 3:48:43 PM
From : "Pilar McLaughlin" pmclaughlin@usccr.gov
To : "David Ganz" dganz@usccr.gov
Subject : Re: Nominations for Appointment to the EAC --please convey the results simultaneously to the Commissioners.
Attachment : image001.gif;image002.jpg;

Yes. I think the provision in the statute regarding quorum - "a majority of the members of the commission constitute a quorum…" is in conflict with the part of the statute that requires vacancies to be immediately filled.

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From: David Ganz <dganz@usccr.gov>
Sent: Monday, August 9, 2021 3:37:04 PM
To: Pilar McLaughlin <pmclaughlin@usccr.gov>
Subject: RE: Nominations for Appointment to the EAC --please convey the results simultaneously to the Commissioners.

This is issue is what you texted about on August 4. If Sheryl is correct, we need to have Congress change the statute as there always/often be some vacancies given the number of commissioners.

From: Pilar McLaughlin <pmclaughlin@usccr.gov>
Sent: Monday, August 9, 2021 3:27 PM
To: David Ganz <dganz@usccr.gov>
Subject: Re: Nominations for Appointment to the EAC --please convey the results simultaneously to the Commissioners.

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03199

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Date : 10/28/2021 12:57:47 PM
From : "Sheryl Cozart" sccozart@usccr.gov
To : "Pilar McLaughlin" pmclaughlin@usccr.gov
Subject : FW: Cleta Mitchell Serving on EAC Advisory Bd

Pilar,

Here's what I have. Let me know what you think and if you want to change/edit something.

Chair Cantu inquired about whether the language of the AI provides that "the bipartisan nature means both names have to be provided concurrently."

The EAC Board of Advisors statute requires "two members appointed by the United States Commission on Civil Rights." 52 U.S.C. 20944(a)(10). The statute further states that appointments will be made "in a manner which ensures that the Board of Advisors will be bipartisan in nature and will reflect the various geographic regions of the United States." Id. at 20944(b). The Commissioners voted on an Administrative Instruction on April 30, 2021 to elect two members to the EAC Board of Advisors. Specifically, the AI provided that the "members appointed by Democratic authorities shall nominate two individuals who are ready, willing, and able to serve, and the members appointed by the Republican authorities shall nominate two individuals who are ready, willing, and able to serve." Section 2.02(1). Thereafter, "the members appointed by the Democratic authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Democratic authorities." Section 2.02(2).
The language of the statute calls for a bipartisan Board of Advisors, and the AI describes the manner in which USCCR will appoint a bipartisan bloc. Neither the statute nor the AI, require that the bipartisan appointments must occur concurrently to ensure bipartisanship. Commissioner Yaki, who was nominated by members appointed by Democratic authorities, is no longer able to serve. Presumably, the Commissioner nominated by members appointed by Republican authorities is still able to serve. Therefore, Chair Cantu can permit the Commissioner nominated by members appointed by Republican authorities to begin their term, and she can restart the nomination process among the members appointed by Democratic authorities.

From: David Ganz <dganz@usccr.gov>
Sent: Thursday, October 28, 2021 10:58 AM
To: Pilar McLaughlin <pmclaughlin@usccr.gov>
Cc: Sheryl Cozart <sccozart@usccr.gov>; Andrew Gall <agall@usccr.gov>
Subject: FW: Cleta Mitchell Serving on EAC Advisory Bd

Please research this issue and get back to me later this afternoon. I do not think the EAC statute is as prescriptive as Chair Cantu is reading it.

From: Norma Cantu <ncantu@usccr.gov>
Sent: Thursday, October 28, 2021 10:51 AM
To: Mauro Morales <mmorales@usccr.gov>; David Ganz <dganz@usccr.gov>; Juana Silverio <jsilverio@usccr.gov>

AMERICAN OVERSIGHT

Subject: RE: Cleta Mitchell Serving on EAC Advisory Bd

Dear Mauro, David,
The intent of the agreement on appointment to the EAC was that we would follow a bipartisan process. A few weeks back, I learned Michael Yaki had too many work commitments to take on the appointment to EAC. I tried, unsuccessfully, to convince him to start his new term. We are back to square one.
David, do you read the AI the same as I do? I read it that the bipartisan nature means both names have to be provided concurrently. What is your insight?
Norma

From: Juana Silverio <jsilverio@usccr.gov>
Sent: Thursday, October 28, 2021 8:51 AM
To: John Mashburn <jmashburn@usccr.gov>; Mauro Morales <mmorales@usccr.gov>; David Ganz <dganz@usccr.gov>
Cc: Norma Cantu <ncantu@usccr.gov>
Subject: Re: Cleta Mitchell Serving on EAC Advisory Bd

The Chair will address this shortly.

Juana

--

Juana Silverio *(she/her/ella)*

Special Assistant to Commissioner Norma V. Cantú

U.S. Commission on Civil Rights

E: jsilverio@usccr.gov

http://usccr.gov/

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Washington D.C. 20425
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From: John Mashburn
Sent: Thursday, October 28, 2021 8:40:44 AM

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To: Mauro Morales; Juana Silverio; David Ganz
Subject: Fw: Cleta Mitchell Serving on EAC Advisory Bd

Is there an answer to this question?

From: John Mashburn
Sent: Monday, October 18, 2021 12:33:57 PM
To: Mauro Morales; Juana Silverio
Cc: Carissa Mulder
Subject: Cleta Mitchell Serving on EAC Advisory Bd

Mauro/Juana – Cleta Mitchell has not been contacted by USCCR or EAC staff about serving on the EAC Bd of Advisors. As you recall, her nomination to serve was approved at the August USCCR Bus Mtg. My boss and one other Cmnr asked me to find out what the process and status are regarding her appointment to the EAC Bd of Advisors.

Can either of you provide that info, or do I need to contact someone else at USCCR, or EAC?

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Date : 10/28/2021 5:23:56 PM
From : "Pilar McLaughlin" pmclaughlin@usccr.gov
To : "David Ganz" dganz@usccr.gov
Subject : RE: Cleta Mitchell Serving on EAC Advisory Bd

Right, they *were* ratified and subsequently, one is now unable to serve. I don't think Yaki's inability to serve nullifies the other appointment or necessitates that they start the process all over again…

From a government continuity perspective, I don't think that makes sense.

From: David Ganz <dganz@usccr.gov>
Sent: Thursday, October 28, 2021 5:21 PM
To: Pilar McLaughlin <pmclaughlin@usccr.gov>
Subject: RE: Cleta Mitchell Serving on EAC Advisory Bd

From the AI:

(3) The members selected shall be placed in nomination and ratified in conformance with Section 1.

Sort of seems like the two nominees have to be 'ratified' at the same time.

From: Pilar McLaughlin <pmclaughlin@usccr.gov>
Sent: Thursday, October 28, 2021 5:15 PM
To: David Ganz <dganz@usccr.gov>
Subject: RE: Cleta Mitchell Serving on EAC Advisory Bd

David:

Below is what Sheryl sent me. I am still working on editing her response. I think that Cantu is referring to the AI that commissioners voted on to nominate members to the EAC Board of Advisors, but I don't know the name of the AI nor can I find it.

Chair Cantu inquired about whether the language of the AI provides that "the bipartisan nature means both names have to be provided concurrently."

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Cc: Sheryl Cozart <sccozart@usccr.gov>; Andrew Gall <agall@usccr.gov>
Subject: RE: Cleta Mitchell Serving on EAC Advisory Bd

She is asking about the attached A.I. rather than the EAC statute. A plain reading of the A.I. does envision both USCCR nominees being provided at the same time, however I do not think there is any legal basis for that process, but rather it is just they drafted the A.I.

Thoughts?

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Dear Mauro, David,
The intent of the agreement on appointment to the EAC was that we would follow a bipartisan process. A few weeks back, I learned Michael Yaki had too many work commitments to take on the appointment to EAC. I tried, unsuccessfully, to convince him to start his new term. We are back to square one.
David, do you read the AI the same as I do? I read it that the bipartisan nature means both names have to be provided concurrently. What is your insight?
Norma

AMERICAN OVERSIGHT

From: Juana Silverio <jsilverio@usccr.gov>
Sent: Thursday, October 28, 2021 8:51 AM
To: John Mashburn <jmashburn@usccr.gov>; Mauro Morales <mmorales@usccr.gov>; David Ganz <dganz@usccr.gov>
Cc: Norma Cantu <ncantu@usccr.gov>
Subject: Re: Cleta Mitchell Serving on EAC Advisory Bd

The Chair will address this shortly.

Juana

--

Juana Silverio *(she/her/ella)*

Special Assistant to Commissioner Norma V. Cantú

U.S. Commission on Civil Rights

E: jsilverio@usccr.gov

http://usccr.gov/

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Washington D.C. 20425
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From: John Mashburn
Sent: Thursday, October 28, 2021 8:40:44 AM
To: Mauro Morales; Juana Silverio; David Ganz
Subject: Fw: Cleta Mitchell Serving on EAC Advisory Bd

Is there an answer to this question?

From: John Mashburn
Sent: Monday, October 18, 2021 12:33:57 PM
To: Mauro Morales; Juana Silverio
Cc: Carissa Mulder
Subject: Cleta Mitchell Serving on EAC Advisory Bd

AMERICAN OVERSIGHT

Mauro/Juana – Cleta Mitchell has not been contacted by USCCR or EAC staff about serving on the EAC Bd of Advisors. As you recall, her nomination to serve was approved at the August USCCR Bus Mtg. My boss and one other Cmnr asked me to find out what the process and status are regarding her appointment to the EAC Bd of Advisors.

Can either of you provide that info, or do I need to contact someone else at USCCR, or EAC?

AMERICAN OVERSIGHT

Date : 11/16/2021 2:29:16 PM
From : "Mauro Morales" mmorales@usccr.gov
To : "Juana Silverio" jsilverio@usccr.gov, "Norma Cantu" ncantu@usccr.gov
Cc : "Angelia Rorison" arorison@usccr.gov
Subject : FW: Chair EAC Statement

Chair Cantu and Juana,

We are thinking a basic statement should be issued when we receive inquires from media about Cleta Mitchel. Something clear and appropriate. Please feel free to edit to fit your tone and voice:

> *"Ms. Mitchell's nomination was put forth by Commissioners appointed by Republican authorities, including former President Trump, Senate Minority Leader McConnell and House Minority McCarthy. Ms. Mitchell is not a member of the Commission on Civil Rights.*
> *Cleta Mitchell is one of two U.S. Commission on Civil Rights (the Commission) appointees selected by Commissioners to serve on Board of Advisors to the Election Assistance Commission (EAC).*
> *The EAC nominee by Commissioners appointed by Democratic authorities' was ~~is~~ unable to serve and the Commissioners have re-nominated their candidate to the Commission's remaining appointment to the EAC. There will be a discussion and vote on this matter at the Commission's November 19, 2021, business meeting.*
> *By way of background, Commissioners of the Commission of Civil Rights (USCCR) have the sole authority to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, which is exercised by majority vote of Commissioners.*
> *USCCR is governed by the following agency instruction process regarding nominations to the Board of Advisors to the EAC:*
>
> - *Commissioners appointed by Democratic authorities nominated two individuals of their membership, and the members appointed by the Republican authorities nominated two individuals of their membership.*
> - *Once nominated, the members appointed by the Democratic authorities, selects one of two individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one of the two individuals nominated by the members appointed by the Democratic authorities.*
> - *Appointments are ratified by majority vote of Commissioners.*
>
> *Cleta Mitchell was nominated by Commissioners that were appointed by Republican authorities; and was ratified by majority vote of Commissioners."*

Mauro

AMERICAN OVERSIGHT

Date : 11/16/2021 3:09:58 PM
From : "Mauro Morales" mmorales@usccr.gov
To : "Norma Cantu" ncantu@usccr.gov, "Juana Silverio" jsilverio@usccr.gov
Cc : "Angelia Rorison" arorison@usccr.gov
Subject : RE: Chair EAC Statement

Great idea. Love it. We will finalize it and have it ready to send only to media that inquiries about the appointment.

From: Norma Cantu
Sent: Tuesday, November 16, 2021 3:08 PM
To: Mauro Morales <mmorales@usccr.gov>; Juana Silverio <jsilverio@usccr.gov>
Cc: Angelia Rorison <arorison@usccr.gov>
Subject: RE: Chair EAC Statement

I suggest adding that EAC sets the eligibily criteria, and that there are 3 boards of advisors, and that Cleta is one of 35 members on the EAC board of advisor

---

From: Mauro Morales <mmorales@usccr.gov>
Sent: Tuesday, November 16, 2021 1:29 PM
To: Juana Silverio <jsilverio@usccr.gov>; Norma Cantu <ncantu@usccr.gov>
Cc: Angelia Rorison <arorison@usccr.gov>
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> The Elections Assistance Commission asked USCCR to nominate two advisors to the EAC 35-member board of advisors.
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Cleta Mitchell was nominated by Commissioners that were appointed by Republican authorities; and was ratified by majority vote of Commissioners."

Mauro

AMERICAN OVERSIGHT

Date : 11/16/2021 3:08:22 PM
From : "Norma Cantu" ncantu@usccr.gov
To : "Mauro Morales" mmorales@usccr.gov, "Juana Silverio" jsilverio@usccr.gov
Cc : "Angelia Rorison" arorison@usccr.gov
Subject : RE: Chair EAC Statement

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Sent: Tuesday, November 16, 2021 1:29 PM
To: Juana Silverio <jsilverio@usccr.gov>; Norma Cantu <ncantu@usccr.gov>
Cc: Angelia Rorison <arorison@usccr.gov>
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AMERICAN OVERSIGHT

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Cleta Mitchell was nominated by Commissioners that were appointed by Republican authorities; and was ratified by majority vote of Commissioners."

Mauro

AMERICAN OVERSIGHT

Date : 11/16/2021 3:22:41 PM
From : "Juana Silverio" jsilverio@usccr.gov
To : "Mauro Morales" mmorales@usccr.gov, "Norma Cantu" ncantu@usccr.gov
Cc : "Angelia Rorison" arorison@usccr.gov
Subject : RE: Chair EAC Statement

In purple below (which solicits nominations)

From: Mauro Morales <mmorales@usccr.gov>
Sent: Tuesday, November 16, 2021 3:10 PM
To: Norma Cantu <ncantu@usccr.gov>; Juana Silverio <jsilverio@usccr.gov>
Cc: Angelia Rorison <arorison@usccr.gov>
Subject: RE: Chair EAC Statement

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From: Norma Cantu
Sent: Tuesday, November 16, 2021 3:08 PM
To: Mauro Morales <mmorales@usccr.gov>; Juana Silverio <jsilverio@usccr.gov>
Cc: Angelia Rorison <arorison@usccr.gov>
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> The Elections Assistance Commission, which solicits nominations, requested USCCR nominate two advisors to the EAC 35-member board of advisors.
> *Cleta Mitchell is one of two U.S. Commission on Civil Rights (the Commission) appointees selected by Commissioners to serve on Board of Advisors to the Election Assistance Commission (EAC).*
> *The EAC nominee by Commissioners appointed by Democratic authorities' was ~~is~~ unable to serve and the Commissioners have re-nominated their candidate*

AMERICAN OVERSIGHT

to the Commission's remaining appointment to the EAC. There will be a discussion and vote on this matter at the Commission's November 19, 2021, business meeting.

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Cleta Mitchell was nominated by Commissioners that were appointed by Republican authorities; and was ratified by majority vote of Commissioners."

Mauro

AMERICAN OVERSIGHT

Date : 1/4/2021 10:00:38 AM
From : "Rukku Singla" rsingla@usccr.gov
To : "Alec Deull" adeull@usccr.gov, "Irena Vidulovic" ividulovic@usccr.gov, "Amy Royce" aroyce@usccr.gov
Subject : Caucus meeting on 1/4

Hi all,

Happy new year, and welcome back to those who have been off! My items for our meeting at 11am are below, as always please bring any additional items on your list.

- Maternal health
  - Ang has access to the YouTube channel, but still needs to be able to download the video (right now because it is a livestream, only the contractor can download the video). Rukku flagged for Mauro, who said he would check in with Ang.
  - OCRE sent out follow up questions to panelists, due by 12/4. Responses?
    - Irena sent questions for panelists from caucus.
    - John requested that we find out more information about improving current programs rather than just discussing new programs, and flagged for OCRE.
  - No response from agencies on interrogatories yet. Want to think strategically about where to direct questions (using former officials from our roster of experts).
    - Irena to work with OCRE on timeline for following up on interrogatories in time leading up to affected agency review.
  - Irena and Rukku to follow up with Mauro on media debrief items. Irena and Rukku to raise with Mauro after the holidays.
  - Briefing transcript – Rukku flagged for Mauro/Kathy, Kathy said that Nick would handle.
  - Debo and Irena had meeting with Comm. Gilchrist and Thomas to discuss next steps for maternal health project.
  - Irena has been working with OCRE on focus jurisdictions, and they will likely be NC, GA, and a third state. OCRE's first draft had New Jersey, but that might shift.
- Bail reform
  - OCRE sent first draft on 11/20. Commissioners submitted comments on 12/21, only Catherine/Rukku and Debo/Irena submitted.
  - Briefing invitations went out before the holidays. Briefing will follow same template as maternal health briefing, with 3 virtual panels and one in writing. Briefing will be on Friday 2/26 from 10am – 2pm. Test will be on Tuesday 2/23, at 1pm ET.
    - Rukku will send a list of invitees to all SAs.
  - Mauro began briefing planning meetings in December. Meetings will happen every week on Tuesday at 11am.
  - Oregon SAC had their last briefing on Friday 12/11, Catherine attended. Rukku shared briefing notes with OCRE in the comments on the first draft.
- FEMA / Puerto Rico
  - Irena submitted draft timeline to OCRE. OCRE sent back comments on timeline, along with a draft outline and discovery plan. Goal for the

AMERICAN OVERSIGHT

documents will be for the Commissioners to vote at the January business meeting.
    - Irena will revisit meeting transcript from vote at which FEMA was moved out of the FY21 statutory enforcement report spot; what did the Commissioners vote to do?
    - Texas SAC is holding briefing on disaster preparedness this month; flagged for OCRE
    - FEMA is holding civil rights stakeholder calls, OCRE will attend to prep
- SAC recruitment
    - Vermont (expired in June).
        - Mauro circulated slate last week, which included 5 Rs, 5 Ds, and 2 Ind. (including Reed and Martin).
        - Irena updated vet memo and circulated. Bradford Lefavour has no relevant civil rights experience.
            - Debo and Catherine objected, because this objection changed the balance of the slate, Catherine pulled down for 12/4 meeting.
        - Rukku to follow up with Ang and Carissa to see if they have any other leads on recruitment. Ang is working on this. David will also reach out to Lefavour to see if he wants to amend his application to add more about his qualifications to serve on committee.
    - Colorado: Rukku
        - Slate failed to get a majority vote on Friday 10/30.
        - 12 candidates, 6 Republicans (including one Independent who leans Republican), 6 Democrats (including one Independent who leans Democrat). No particular flags on any candidates.
        - Comm. Heriot had objected to Prof. Chen, on the basis of a recent article that Prof. Chen published called Colorblind Nationalism.
            - Rukku is checking in with Alex on whether Comm. Heriot's objection is ongoing. No update. Rukku to follow up with Alex on Colorado.
    - North Carolina: Irena
        - Slate failed to get a majority vote on Friday 10/30.
        - 15 candidates, 8 Democrats (including two Independents who lean Democrat), 7 Republicans (including one candidate who identified as "something else"). Note that Olga Wright, the returning Chair, identifies herself as a Democrat but ran for public office as a Republican in 2012.
        - Comm. Kirsanow (and Adams) objected to the balance of the slate, and requested that it be shifted to 7 Republicans and 7 Democrats (removing one Dem).
        - They further objected to the inclusion of Jennifer Lechner as they don't consider her a "true Republican." In her stead they would like to replace her with a Mr. Patrick Mincey who Carissa recruited. Replacing Lechner with Mincey takes the gender balance of the slate to 11 men and 4 women. Mincey has no civil rights experience, based on his application and a review of his public record.
        - Rukku spoke to Thomas; Thomas proposed that we consider a slate of 9 Republicans (including Lechner) and 8 Democrats, and they would work on recruiting Republicans who would assist with balance of slate with respect to gender and other diversity factors. Catherine's current

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position is that she will not vote for unbalanced slate with 9 Republicans and 8 Democrats.
        - Rukku proposed to Thomas the following: get another R, and add to the slate, to move to a balance of 8-8; added R cannot be Patrick Mincey (no civil rights experience). Might consider Mincey if he submits revised application with more justification for his civil rights experience.
- Idaho (expired in July).
    - Rukku shared proposal with Carissa: 4 Republicans, 5 Democrats, 1 Independent leaning Democrat, and 1 Independent who leans in no direction. Slate did not include Scott Yenor.
    - From Carissa: They are not willing to move forward with it without Scott Yenor, and it is unbalanced.
        - Carissa relayed that they continue to not want to move forward without Yenor.
        - Staff wants to confirm that Yenor is still interested in joining, given his published article.
- District of Columbia 10/20/20 – Alex, Irena
    - (as of 12/17) 11 applicants: 9 men, 2 women; 6 Ds, 4 Rs, 1 something else
    - Need more Rs and better diversity
- Iowa 11/17/20 – Carissa, Amy/Rukku
    - (as of 11/17) 11 applicants: 7 men, 4 women; 5 Ds, 4 Rs, 2 Ind.
    - Need at least one more R.
    - Rukku to check in with Carissa to see if she has any more leads.
- Ohio 11/17/20 – Carissa, Rukku
    - (as of 12/17) 16 applicants: 11 Ds, 4 Rs, 1 Ind.
    - Need more Rs. Carissa to work on recruitment.
- Indiana 12/1/20 – Carissa, Irena
    - (as of 12/17) 17 applicants, including: 8 Rs, 8 Ds, 1 Ind.
    - Might have enough candidates for slate, Irena to review and see if qualified candidates.
- New Mexico 12/1/20 – Alex, Amy/Irena/Rukku
    - 5 applicants. Need more candidates.
    - Rukku reached out to Haaland's office for candidates, Rukku to follow up.
- Wyoming 12/1/20 – Alex, Alec
    - 6 applicants. Need more candidates.
    - Alec reached out to Sheppard Foundation and confirmed that Judy Shepard will apply for the SAC.
- Florida 3/2021 – Irena
- Louisiana 3/2021 – Rukku
- Nebraska 3/2021 – Alec
- Texas 3/2021 – Amy
- Next vote on slates: January 2021
    - Tuesday January 5: circulation of slates (Indiana?)
    - Tuesday January 19: objections due
    - Friday January 22: Staff Director makes decisions on final slate

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        - Friday January 29: vote on slates
- Broken Promises pandemic update
    - ABA will be reaching out to Catherine to do a webinar on the testimony. Details to come.
    - Pursue social media strategy using briefing video/materials
        - Can we generate clips from the briefing video, into individual panelist testimony or other excerpts. Rukku to check in with Ang.
    - Catherine wants to raise this project again, to see if we can get to common ground with the Republicans. Catherine wants to revisit when we discuss project planning re FY22 (/FEMA, Comm. Adams' proposal, etc.).
- Other SAC activity
    - AI 5-9 - SAC member conduct.
        - Rukku and Irena meeting with OGC to discuss proposed revisions to the AI.
        - OGC is reviewing the redline, and will have additional comments / feedback in early January.
    - SAC letters – Rukku is working on moving out of backlog of Commissioner letters sharing publications from SACs
        - Nebraska, Hawaii
        - Project for Staff Director's office?
- Project proposals for FY21/22
    - Catherine tabled this item until next business meeting, not for this business meeting (most likely December, if ready).
    - New proposals for FY22? Dave is working on a proposal. Dave has reached out to Comm. Gilchrist on new topic. Orlando will check in with Dave on the status of a possible collaboration with Commissioner Gilchrist.
    - Rukku checked with John to see if Commissioner Adams will submit new project proposals. John is working with Commissioner Adams on project priorities and check back on timeline. Rukku to follow up with John this week.
        - John (at all SA meeting) said that Comm. Adams had a proposal, so Rukku will generate a timeline for consideration.
    - Rukku to discuss with Catherine about other projects that could garner a majority vote
    - Project planning calendar will in part depend on whether we want to propose the FEMA Project as a FY22 statutory enforcement report.
- December letter of priorities for new Administration / new Congress
    - Rukku to send letter to new House leadership regarding Commission priorities
    - Rukku to work on drafts of letters to agency transition teams
- Personnel
    - OGC vacancy – update? Mauro is working to interview candidates for new GC position.
        - Conservative Commissioners had reached out to Mauro to get more information about who had applied for GC; not appropriate as Mauro responded.
    - Summer 2021 interns – Irena and Rukku to follow up based on writing samples this week and finally make the offer. Rukku to create a shared folder and populate all the cover letters and resumes.
        - Rukku and Irena to sign up for GW interviews in January, Amy will join.

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- Commission on the Social Status of Black Men and Boys was signed into law, more details to come on what this means.
    - Appointments from White House
    - Call rescheduled with Congresswoman Wilson
    - Women/Girls bill
- Budget questions
    - Mauro sent out survey for Commissioner IT needs. Rukku to follow up on timing.
    - Website update – contract secured. Update to occur over the next year. Check in with Ang on things moving forward, Rukku to push for SA involvement.
    - SA computers were shipped in the last couple of weeks.
    - FY22 budget timeline – John M. emailed Mauro to ask about status
- Speaker Series
    - Mauro shared calendar of when ASCD can do Speaker Series events, we could have one in January. It would be a Zoom direct stream, without a contractor to assist. Ang and Zakee will coordinate, Rukku to follow up with Mauro on more information.
- Monday.com
    - Ang walked through the platform at all SA meeting
    - Ang will also prompt more office use of it for our next project planning (likely the bail briefing in February)
    - Rukku will start building out project boards
- Election Assistance Commission
    - Question about appointments
- January business meeting
    - Statement on Dr. Walter Williams
        - Catherine said she would abstain
        - Debo is still considering his position
- Consider: should we do a caucus call before January 26 with our bosses?

Rukku Singla
Special Assistant to Chair Catherine E. Lhamon
U.S. Commission on Civil Rights
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425
M: 513-227-8558
rsingla@usccr.gov
Follow us on Twitter and Facebook

AMERICAN OVERSIGHT

Date : 1/4/2021 1:04:37 PM
From : "Irena Vidulovic" ividulovic@usccr.gov
To : "Debo P. Adegbile" dadegbile@usccr.gov, "Adegbile, Debo" Debo.Adegbile@wilmerhale.com
Cc : "Zervoudis, Flor" Flor.Zervoudis@wilmerhale.com
Subject : IMPORTANT: UPDATED TO DO LIST + USCCR Updates

1. USCCR Hours(below) DUE Tomorrow, Tuesday before 11:00AM ET
2. FEMA: Got discovery materials back from OCRE/Irena to review and get your thoughts before I send out.
3. Bail Reform review was due on December 18th, I sent the review of the executive summary and Chapter 3. Spoke to Rukku about meeting with OCRE and she agrees however she recommends that that after the call we still send a redline b/c it has proved to be more affective when we have something in writing. Will work Flor on finding some time this week to offer to OCRE.
4. Security Training (PASTDue October 12, 2020)

USCCR Hours:

12/20-01/2

12/21 1 Hour priority call with SA
12/22 2 hours work on FEMA project materials
12/23 1.5 hour call with SA + 2 hour review USCCR documents
12/28 2 hours review USCCR documents
12/29 3 hours work on Bail Reform project

January business meeting

- Statement on Dr. Walter Williams
  - Catherine said she would abstain
  - Debo is still considering his position , particularly given the lack of a civil rights nexus evidenced in the statement / materials on Williams. Caucus needs to discuss so we can plan scheduling a call next week.

Consider: having a call next week to discuss the following:

- Jan. 29 business
- Project planning
- Budget
- AIs

- **Maternal health**
  - OCRE sent out follow up questions to panelists, due by 1/8 . Responses? No responses yet.
- **Bail reform**

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- OCRE sent first draft on 11/20. Commissioners submitted comments on 12/21, only Catherine/Rukku and Debo/Irena submitted.
    - Irena will reach out to OCRE to set up a call for Debo to share thoughts on Chapter 1 of the report.
- **FEMA / Puerto Rico**
    - Irena submitted draft timeline to OCRE. OCRE sent back comments on timeline, along with a draft outline and discovery plan.
        - Irena has begun to review the outline and discovery plan; OCRE drafting is ahead of schedule so there is some time for detailed feedback. Irena aims to provide feedback before scheduling a meeting; Alec will provide feedback this week.
            - OCRE will circulate to all Commissioners by 1/14; Alec and Irena should aim to send feedback to OCRE by 1/8 or 1/11. Meeting with OCRE (if necessary) on the discovery materials can occur early next week.
            - Rukku will share thoughts from Catherine with Irena for incorporation in feedback.
        - Goal for the documents will be for the Commissioners to vote at the January business meeting.
    - Commissioners should be cognizant of budget considerations for the two site visits, and make sure that we can account for that in FY22 budget – can we set up particular contracts etc. to forward fund from the FY21 surplus?
    - Irena will revisit meeting transcript from vote at which FEMA was moved out of the FY21 statutory enforcement report spot; what did the Commissioners vote to do? Updates to come.
    - Texas SAC is holding briefing on disaster preparedness this month; flagged for OCRE
    - FEMA is holding civil rights stakeholder calls, OCRE will attend to prep
    -
- **Broken Promises pandemic update**
    - ABA will be reaching out to Catherine to do a webinar on the testimony. Details to come.
    - Pursue social media strategy using briefing video/materials
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    - Catherine and Debo want to raise this project again, to see if we can get to common ground with the Republicans. Catherine wants to revisit when we discuss project planning re FY22 (/FEMA, Comm. Adams' proposal, etc.).
        - Catherine spoke to Gilchrist over the holidays and he seemed open to reconsidering the report;
        -
- **Project proposals for FY21/22**

AMERICAN OVERSIGHT

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  - Send a letter to House leadership regarding Commission priorities
  - Caucus to draft letters to agency transition teams
- Personnel
  - OGC vacancy – update? Mauro is working to interview candidates for new GC position.
    - Conservative Commissioners had reached out to Mauro to get more information about who had applied for GC; not appropriate as Mauro responded.
  - Summer 2021 interns –
    - Rukku and Irena to sign up for GW interviews in January, Amy will join.
- Commission on the Social Status of Black Men and Boys was signed into law, more details to come on what this means.
  - Appointments from White House
  - Call rescheduled with Congresswoman Wilson
  - Women/Girls bill
- Budget questions
  - Mauro sent out survey for Commissioner IT needs.
  - Website update – contract secured. Update to occur over the next year. Check in with Ang on things moving forward, Rukku to push for SA involvement.
  - SA computers were shipped in the last couple of weeks.
  - FY22 budget timeline – John M. emailed Mauro to ask about status
- Speaker Series
  - Mauro shared calendar of when ASCD can do Speaker Series events, we could have one in January. It would be a Zoom direct stream, without a contractor to assist. Ang and Zakee will coordinate.
  -
-
  - **Election Assistance Commission**
  - Question about appointments
- Consider: should we do a caucus call before January 26 with our bosses?
  - Likely week of 1/11?

AMERICAN OVERSIGHT

- Jan. 29 business
- Project planning
- Budget
- AIs

- Vice Chair nomination
  - No nomination paperwork submitted

From: Irena Vidulovic
Sent: Monday, December 28, 2020 9:52 AM
To: Debo P. Adegbile; Adegbile, Debo
Subject: UPDATED TO DO LIST

1. Fema Project timeline, I need to send to OCRE today (please see below)
2. Bail Reform review was due on December 18th, I sent the review of the executive summary and Chapter 3. Are you still planning to send your thoughts on Chapter 1
3. Security Training (PASTDue October 12, 2020)

From: Irena Vidulovic
Sent: Wednesday, December 23, 2020 3:26 PM
To: Debo P. Adegbile; Adegbile, Debo
Subject: FEMA Timeline

Adegbile,

Please see attached the FEMA project timeline. Rukku and I worked on it to include both the virtual briefing in the Spring (May 2021) and the field briefings/site visits to Texas (November 2021) and Puerto Rico (December 2021). We are hoping by the late fall that we would be able to travel and if not then we would default to gathering info virtually and via the videographer.

Please take a look, hoping to be able to share with OCRE this week.

Please let me know if you have any questions.

AMERICAN OVERSIGHT

Irena

AMERICAN OVERSIGHT

Date : 1/11/2021 9:53:27 AM
From : "Rukku Singla" rsingla@usccr.gov
To : "Amy Royce" aroyce@usccr.gov, "Alec Deull" adeull@usccr.gov, "Irena Vidulovic" ividulovic@usccr.gov
Subject : Caucus meeting 1/11

Hi all,

My items for our meeting at 11am are below, as always please bring any additional items on your list.

- Did everyone get paid?
- Maternal health
    - Ang has access to the YouTube channel, but still needs to be able to download the video (right now because it is a livestream, only the contractor can download the video). Rukku flagged for Mauro, who said he would check in with Ang.
    - OCRE sent out follow up questions to panelists, due by 1/8. Responses will be put in the shared folder.
    - No response from agencies on interrogatories yet. Want to think strategically about where to direct questions (using former officials from our roster of experts).
        - Irena to work with OCRE on timeline for following up on interrogatories in time leading up to affected agency review.
    - Irena and Rukku to follow up with Mauro on media debrief items.
    - Briefing transcript – Rukku flagged for Mauro/Kathy, Kathy said that Nick would handle. Unedited transcript is in the shared folder.
    - Irena has been working with OCRE on focus jurisdictions, and they will likely be NC, GA, and a third state. OCRE's first draft had New Jersey, but that might shift.
- Bail reform
    - OCRE sent first draft on 11/20. Commissioners submitted comments on 12/21, only Catherine/Rukku and Debo/Irena submitted.
        - Irena scheduled call with OCRE for Debo to share thoughts on Chapter 1 of the report.
        - Rukku reached out to Republican SAs to see if they submitted comments on the draft and to get big picture thoughts so that we can try to move together for the next draft. Carissa is compiling high level thoughts on the draft.
    - Briefing invitations went out before the holidays. Briefing will follow same template as maternal health briefing, with 3 virtual panels and one in writing. Briefing will be on Friday 2/26 from 10am – 2pm. Test will be on Tuesday 2/23, at 1pm ET.
        - Rukku will send a list of invitees to all SAs.
        - Rukku meeting with OCRE this afternoon to discuss alternate invitations.
    - Mauro began briefing planning meetings in December. Meetings will happen every week on Tuesday at 11am.
    - Oregon SAC had their last briefing on Friday 12/11, Catherine attended. Rukku shared briefing notes with OCRE in the comments on the first draft.

AMERICAN OVERSIGHT

- FEMA / Puerto Rico
    - Irena submitted draft timeline to OCRE. OCRE sent back comments on timeline (structured for statutory enforcement report), along with a draft outline and discovery plan.
        - Irena submitted feedback on draft outline and discovery plan.
            - OCRE will circulate to all Commissioners by 1/14.
        - Goal for the documents will be for the Commissioners to vote at the January business meeting.
    - Commissioners should be cognizant of budget considerations for the two site visits, and make sure that we can account for that in FY22 budget – can we set up particular contracts etc. to forward fund from the FY21 surplus?
        - Catherine mentioned this to Mauro. Should add to priority budget items.
    - Texas SAC held briefings on disaster preparedness in December; flagged for OCRE
    - FEMA is holding civil rights stakeholder calls, OCRE will attend to prep
- SAC recruitment
    - Indiana 12/1/20 – Mauro circulated slate on Friday
        - Irena to vet slate, which includes 7 Ds, 7 Rs, and 1 Ind.
        - Objections are due by Thurs 1/21.
    - Vermont (expired in June).
        - Mauro circulated slate last week, which included 5 Rs, 5 Ds, and 2 Ind. (including Reed and Martin).
        - Irena updated vet memo and circulated. Bradford Lefavour has no relevant civil rights experience.
            - Debo and Catherine objected, because this objection changed the balance of the slate, Catherine pulled down for 12/4 meeting.
        - Rukku to follow up with Ang and Carissa to see if they have any other leads on recruitment. Ang is working on this. David will also reach out to Lefavour to see if he wants to amend his application to add more about his qualifications to serve on committee.
    - Colorado: Rukku
        - Slate failed to get a majority vote on Friday 10/30.
        - 12 candidates, 6 Republicans (including one Independent who leans Republican), 6 Democrats (including one Independent who leans Democrat). No particular flags on any candidates.
        - Comm. Heriot had objected to Prof. Chen, on the basis of a recent article that Prof. Chen published called Colorblind Nationalism.
            - Rukku is checking in with Alex on whether Comm. Heriot's objection is ongoing. No update. Rukku to follow up with Alex on Colorado.
    - North Carolina: Irena
        - Slate failed to get a majority vote on Friday 10/30.
        - 15 candidates, 8 Democrats (including two Independents who lean Democrat), 7 Republicans (including one candidate who identified as "something else"). Note that Olga Wright, the returning Chair, identifies herself as a Democrat but ran for public office as a Republican in 2012.

AMERICAN OVERSIGHT

        - Comm. Kirsanow (and Adams) objected to the balance of the slate, and requested that it be shifted to 7 Republicans and 7 Democrats (removing one Dem).
        - They further objected to the inclusion of Jennifer Lechner as they don't consider her a "true Republican." In her stead they would like to replace her with a Mr. Patrick Mincey who Carissa recruited. Replacing Lechner with Mincey takes the gender balance of the slate to 11 men and 4 women. Mincey has no civil rights experience, based on his application and a review of his public record.
        - Rukku spoke to Thomas; Thomas proposed that we consider a slate of 9 Republicans (including Lechner) and 8 Democrats, and they would work on recruiting Republicans who would assist with balance of slate with respect to gender and other diversity factors. Catherine's current position is that she will not vote for unbalanced slate with 9 Republicans and 8 Democrats.
            - Rukku proposed to Thomas the following: get another R, and add to the slate, to move to a balance of 8-8; added R cannot be Patrick Mincey (no civil rights experience). Might consider Mincey if he submits revised application with more justification for his civil rights experience.
    - Idaho (expired in July).
        - Rukku shared proposal with Carissa: 4 Republicans, 5 Democrats, 1 Independent leaning Democrat, and 1 Independent who leans in no direction. Slate did not include Scott Yenor.
        - From Carissa: They are not willing to move forward with it without Scott Yenor, and it is unbalanced.
            - Carissa relayed that they continue to not want to move forward without Yenor.
            - Staff wants to confirm that Yenor is still interested in joining, given his published article.
    - District of Columbia 10/20/20 – Alex, Irena
        - (as of 12/17) 11 applicants: 9 men, 2 women; 6 Ds, 4 Rs, 1 something else
        - Need more Rs and better diversity
    - Iowa 11/17/20 – Carissa, Amy/Rukku
        - (as of 11/17) 11 applicants: 7 men, 4 women; 5 Ds, 4 Rs, 2 Ind.
        - Need at least one more R.
        - Amy to check in with Carissa to see if she has any more leads.
    - Ohio 11/17/20 – Carissa, Rukku
        - (as of 12/17) 16 applicants: 11 Ds, 4 Rs, 1 Ind.
        - Need more Rs. Carissa to work on recruitment.
    - New Mexico 12/1/20 – Alex, Amy/Irena/Rukku
        - 5 applicants. Need more candidates.
        - Rukku reached out to Haaland's office for candidates, Rukku to follow up.
    - Wyoming 12/1/20 – Alex, Alec
        - 6 applicants. Need more candidates.
        - Alec reached out to Shepard Foundation and confirmed that Judy Shepard will apply for the SAC.

AMERICAN OVERSIGHT

- In general: Irena recommended we reach out to new Members' offices. Rukku circulated Congressional letter + updated 2 pager to share with offices.
- Florida 3/2021 – Irena
- Louisiana 3/2021 – Rukku
- Nebraska 3/2021 – Alec
- Texas 3/2021 – Amy
- New advisory committees (Puerto Rico, Virgin Islands, Northern Mariana Islands, Guam, American Samoa)
    - Rukku to check in with David on how he wants to move forward with that

- Broken Promises pandemic update
    - ABA will be reaching out to Catherine to do a webinar on the testimony. Details to come.
    - Pursue social media strategy using briefing video/materials
        - Can we generate clips from the briefing video, into individual panelist testimony or other excerpts. Rukku to check in with Ang.
    - Catherine wants to raise this project again, to see if we can get to common ground with the Republicans. Catherine wants to revisit when we discuss project planning re FY22 (/FEMA, Comm. Adams' proposal, etc.).
        - Catherine spoke to Gilchrist over the holidays and he seemed open to reconsidering the report; Rukku will reach out to Thomas to see about next steps.
        - Amy will check with Dave on process to see if there has been a prior time when the Commissioners voted down a draft report but then later considered (do we need to reopen the project? Vote on a new timeline? Etc.)
- Other SAC activity
    - AI 5-9 - SAC member conduct.
        - Rukku and Irena met with OGC to discuss proposed revisions to the AI.
        - OGC is reviewing the redline, and will have additional comments / feedback in early January. Irena will send a check in email mid week to check on status with OGC.
        - Rukku, Irena to meet with OGC on Wednesday morning to get feedback.
    - SAC letters – Rukku is working on moving out of backlog of Commissioner letters sharing publications from SACs. Sent Indiana and Arkansas last week.
- Project proposals for FY21/22
    - Catherine tabled this item until next business meeting, not for this business meeting (most likely December, if ready).
    - New proposals for FY22? Dave is working on a proposal. Dave has reached out to Comm. Gilchrist on new topic. Orlando will check in with Dave on the status of a possible collaboration with Commissioner Gilchrist.
    - Rukku checked with John to see if Commissioner Adams will submit new project proposals. John is working with Commissioner Adams on project priorities and check back on timeline. Rukku to follow up with John this week.
        - John (at all SA meeting) said that Comm. Adams had a proposal, so Rukku will generate a timeline for consideration.

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    - Rukku to discuss with Catherine about other projects that could garner a majority vote
    - Project planning calendar will in part depend on whether we want to propose the FEMA Project as a FY22 statutory enforcement report.
    - Move forward with FY22 project planning calendar?
- Personnel
    - OGC vacancy – update? Mauro is working to interview candidates for new GC position.
        - Conservative Commissioners had reached out to Mauro to get more information about who had applied for GC; not appropriate as Mauro responded.
    - Summer 2021 interns – Irena and Rukku to follow up based on writing samples this week and finally make the offer. Rukku to create a shared folder and populate all the cover letters and resumes.
        - Rukku and Irena to sign up for GW interviews in January, Amy will join.
- Commission on the Social Status of Black Men and Boys was signed into law, more details to come on what this means.
    - Appointments from White House
    - Call rescheduled with Congresswoman Wilson
    - Women/Girls bill
- Budget questions
    - Mauro sent out survey for Commissioner IT needs. Rukku to follow up on timing.
    - Website update – contract secured. Update to occur over the next year. Check in with Ang on things moving forward, Rukku to push for SA involvement.
    - SA computers were shipped in the last couple of weeks.
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- Budget priorities for FY21/22?
    - Forward funding for site visits in Puerto Rico and Texas
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    - Mauro shared calendar of when ASCD can do Speaker Series events (Rukku will share), we could have one in January. It would be a Zoom direct stream, without a contractor to assist. Ang and Zakee will coordinate, Rukku to follow up with Mauro on more information.
- Monday.com
    - Ang walked through the platform at all SA meeting
    - Ang will also prompt more office use of it for our next project planning (likely the bail briefing in February)
    - Rukku will start building out project boards
- Election Assistance Commission
    - Question about appointments
- January business meeting
    - Statement on Dr. Walter Williams
        - Catherine said she would abstain
        - Debo is still considering his position, particularly given the lack of a civil rights nexus evidenced in the statement / materials on Williams
- Consider: should we do a caucus call before January 26 with our bosses?
    - Likely week of 1/11? Rukku to check with Catherine

AMERICAN OVERSIGHT

    - Jan. 29 business
    - Project planning
    - Budget
    - AIs
- Vice Chair nomination
    - No nomination paperwork submitted

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AMERICAN OVERSIGHT

Date : 1/19/2021 10:05:53 AM
From : "Rukku Singla" rsingla@usccr.gov
To : "Irena Vidulovic" ividulovic@usccr.gov, "Alec Deull" adeull@usccr.gov
Cc : "Amy Royce" aroyce@usccr.gov
Subject : Caucus meeting 1/19

Hi all,

Below are my items for today's meeting. I'd like to specifically pay attention to files or items that other people want from me. I'm moving a lot of my files into the shared folder we have (RAJASI), but I'm not sure how long it'll be live since it's housed in my SecuriSync, so please download files from there by midday tomorrow.

- Chair appointment
  - AI on Acting Chair
- Vice Chair nomination
  - No nomination paperwork submitted, will depend on the next Administration
- Closeout
  - Catherine will send email to all staff later this afternoon or tomorrow morning
  - Catherine will pull down business meeting for 1/29
- All SA meeting this afternoon
  - Plan for Chair
  - SAC appointments
  - Budget priorities
- Maternal health
  - Second draft delivered to Commissioners on 1/15, comments from Commissioners due on 2/3. Plan for review?
  - Ang has access to the YouTube channel, but still needs to be able to download the video (right now because it is a livestream, only the contractor can download the video). Rukku flagged for Mauro, who said he would check in with Ang.
  - OCRE sent out follow up questions to panelists, due by 1/8. Responses put in the shared folder, Irena sent out an update to all SAs.
  - No response from agencies on interrogatories yet. Want to think strategically about where to direct questions (using former officials from our roster of experts).
    - Irena to work with OCRE on timeline for following up on interrogatories in time leading up to affected agency review.
  - Irena and Rukku to follow up with Mauro on media debrief items.
  - Briefing transcript – Rukku flagged for Mauro/Kathy, Kathy said that Nick would handle. Unedited transcript is in the shared folder.
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  - OCRE sent first draft on 11/20. Commissioners submitted comments on 12/21. Carissa shared high level thoughts on the draft with Rukku.
  - Briefing invitations went out before the holidays. Briefing will follow same template as maternal health briefing, with 3 virtual panels and one in writing. Briefing will be on Friday 2/26 from 10am – 2pm. Test will be on Tuesday 2/23, at 1pm ET.

AMERICAN OVERSIGHT

        - Rukku sent out an updated list of invitees to all SAs.
        - Rukku meeting with OCRE this afternoon to discuss alternate invitations. Irena/Debo will follow up with Eric Gonzalez to see if we can get a response, Irena will reach out to Marik for invitation for Debo to reach out. Update?
    - Mauro began briefing planning meetings in December. Meetings will happen every week on Tuesday at 11am.
    - Oregon SAC had their last briefing on Friday 12/11, Catherine attended. Rukku shared briefing notes with OCRE in the comments on the first draft.
- FEMA / Puerto Rico
    - OCRE circulated draft project planning materials with Commissioners and SAs on 1/14.
        - Goal for the documents will be for the Commissioners to vote at the January business meeting.
    - Commissioners should be cognizant of budget considerations for the two site visits, and make sure that we can account for that in FY22 budget – can we set up particular contracts etc. to forward fund from the FY21 surplus?
        - Catherine mentioned this to Mauro. Should add to priority budget items.
    - Texas SAC held briefings on disaster preparedness in December; flagged for OCRE
    - FEMA is holding civil rights stakeholder calls, OCRE will attend to prep
- SAC recruitment
    - Indiana 12/1/20 – Mauro circulated slate on Friday
        - Amy to vet slate, which includes 7 Ds, 7 Rs, and 1 Ind.
        - Objections are due by Thurs 1/21.
        - Amy circulated vet memo.
    - Vermont (expired in June).
        - Mauro circulated slate, which included 5 Rs, 5 Ds, and 2 Ind. (including Reed and Martin). Catherine and Debo objected to Lefavour for lack of experience; need to recruit another R.
        - Irena will reach out to Leahy's office and ping Ang to see if she has any candidates.
    - Colorado: Rukku
        - Slate failed to get a majority vote on Friday 10/30.
        - 12 candidates, 6 Republicans (including one Independent who leans Republican), 6 Democrats (including one Independent who leans Democrat). No particular flags on any candidates.
        - Comm. Heriot had objected to Prof. Chen, on the basis of a recent article that Prof. Chen published called Colorblind Nationalism.
            - Rukku is checking in with Alex on whether Comm. Heriot's objection is ongoing. Alex said he would update last week. No update.
    - North Carolina: Irena
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AMERICAN OVERSIGHT

        - Comm. Kirsanow (and Adams) objected to the balance of the slate, and requested that it be shifted to 7 Republicans and 7 Democrats (removing one Dem).
        - They further objected to the inclusion of Jennifer Lechner as they don't consider her a "true Republican." In her stead they would like to replace her with a Mr. Patrick Mincey who Carissa recruited. Replacing Lechner with Mincey takes the gender balance of the slate to 11 men and 4 women. Mincey has no civil rights experience, based on his application and a review of his public record.
        - Rukku spoke to Thomas; Thomas proposed that we consider a slate of 9 Republicans (including Lechner) and 8 Democrats, and they would work on recruiting Republicans who would assist with balance of slate with respect to gender and other diversity factors. Catherine's current position is that she will not vote for unbalanced slate with 9 Republicans and 8 Democrats.
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        - From Carissa: They are not willing to move forward with it without Scott Yenor, and it is unbalanced.
            - Carissa relayed that they continue to not want to move forward without Yenor.
            - Staff confirmed that Yenor is still interested in joining.
    - District of Columbia 10/20/20 – Alex, Irena
        - (as of 12/17) 11 applicants: 9 men, 2 women; 6 Ds, 4 Rs, 1 something else
        - Need more Rs and better diversity
    - Iowa 11/17/20 – Carissa, Amy/Rukku
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        - Need at least one more R.
        - Amy to check in with Carissa to see if she has any more leads. Carissa has exhausted her recruitment efforts, but John may have more leads.
    - Ohio 11/17/20 – Carissa, Rukku
        - (as of 12/17) 16 applicants: 11 Ds, 4 Rs, 1 Ind.
        - Need more Rs. Carissa to work on recruitment.
    - New Mexico 12/1/20 – Alex, Amy/Irena/Rukku
        - 5 applicants. Need more candidates.
        - Rukku reached out to Haaland's office for candidates, Rukku to follow up.
    - Wyoming 12/1/20 – Alex, Alec
        - 6 applicants. Need more candidates.

AMERICAN OVERSIGHT

        - Alec reached out to Shepard Foundation and confirmed that Judy Shepard will apply for the SAC.
    - In general: Irena recommended we reach out to new Members' offices. Rukku circulated Congressional letter + updated 2 pager to share with offices.
    - Florida 3/2021 – Irena
    - Louisiana 3/2021 – Rukku
    - Nebraska 3/2021 – Alec
    - Texas 3/2021 – Amy
    - New advisory committees (Puerto Rico, Virgin Islands, Northern Mariana Islands, Guam, American Samoa)
        - Rukku to check in with David on how he wants to move forward with that
- Broken Promises pandemic update
    - ABA will be reaching out to Catherine to do a webinar on the testimony. Details to come.
    - Pursue social media strategy using briefing video/materials
        - Can we generate clips from the briefing video, into individual panelist testimony or other excerpts. Rukku to check in with Ang.
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        - Catherine spoke to Gilchrist over the holidays and he seemed open to reconsidering the report; Rukku will reach out to Thomas to see about next steps.
        - Amy will check with Dave on process to see if there has been a prior time when the Commissioners voted down a draft report but then later considered (do we need to reopen the project? Vote on a new timeline? Etc.)
- Other SAC activity
    - AI 5-9 - SAC member conduct.
        - Rukku, Irena, Carissa met with OGC to discuss proposed revisions to the AI. Irena and Carissa are taking OGC's redline and comments to Commissioners to get feedback.
    - SAC letters – Rukku is working on moving out of backlog of Commissioner letters sharing publications from SACs. Sent Indiana and Arkansas last week.
- Project proposals for FY21/22
    - Rukku checked with John to see if Commissioner Adams will submit new project proposals. John is working with Commissioner Adams on project priorities and check back on timeline. Rukku to follow up with John this week.
        - John (at all SA meeting) said that Comm. Adams had a proposal, so Rukku will generate a timeline for consideration.
    - We will proceed with the FEMA Project as the FY22 statutory enforcement report.
    - Move forward with FY22 project planning calendar – Rukku will generate a project planning calendar, with emphasis on time early in the process for bipartisan discussion.
    - Dave is working on a concept paper on race discrimination and small business lending, perhaps focusing on the recipients of the PPP loan.

AMERICAN OVERSIGHT

        - Dave spoke with Comm. Gilchrist about potential interest.
- Personnel
    - OGC vacancy – update? Mauro made an offer and new GC will start soon.
    - Summer 2021 interns – Amy and Irena signed up for GW interviews in January.
    - Fulbright fellows –
        - Irena has lead on a candidate with interest in bail reform, Irena will connect with Rukku
        - Rukku will raise with Mauro the possibility of a Comms person to help Ang
- Commission on the Social Status of Black Men and Boys was signed into law, more details to come on what this means.
    - Appointments from White House
    - Call rescheduled with Congresswoman Wilson
    - Women/Girls bill
- Budget questions
    - Mauro sent out survey for Commissioner IT needs. Rukku to follow up on timing.
    - Website update – contract secured. Update to occur over the next year. Check in with Ang on things moving forward, Rukku to push for SA involvement.
    - SA computers were shipped in the last couple of weeks.
    - FY22 budget timeline – John M. emailed Mauro to ask about status
- Budget priorities for FY21/22?
    - Forward funding for site visits in Puerto Rico and Texas
    - Regional staffing – at least one staffer for territory SACs
    - Please check with your bosses and send priorities to Rukku by the end of this week (1/15).
- Speaker Series
    - Mauro shared calendar of when ASCD can do Speaker Series events (Rukku will share), we could have one in January. It would be a Zoom direct stream, without a contractor to assist. Ang and Zakee will coordinate, Rukku to follow up with Mauro on more information.
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    - Ang will also prompt more office use of it for our next project planning (likely the bail briefing in February)
    - Rukku will start building out project boards
- Election Assistance Commission
    - Question about appointments
- January business meeting
    - Statement on Dr. Walter Williams
        - Catherine said she would abstain
        - Debo is still considering his position, particularly given the lack of a civil rights nexus evidenced in the statement / materials on Williams
    - SAC Presentations (3)

AMERICAN OVERSIGHT

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AMERICAN OVERSIGHT

Date : 1/25/2021 9:53:59 AM
From : "Irena Vidulovic" ividulovic@usccr.gov
To : "Amy Royce" aroyce@usccr.gov, "Alec Deull" adeull@usccr.gov
Subject : IMPORTANT Caucus Meeting 1/25

Hello Team,

Please see below items for discussion. Amy is going to access Rukku's Zoom account to use for the purpose of this meeting and if we have any issues I will use my personal account and send around. There is loads to discuss. Look forward to our meeting.

- Cancelled January business meeting + New Date if February * **Feb 17** from 12-2pm ET and **Feb 23rd** from 12-2pm ET.
- Discussion Reg Kirsanow's letter to the staff director: The added items to the discussion are following :
- ****Discussion regarding the appointment of Chair.**
  - Discussion and vote on FEMA discovery plan
  - **Project planning?**
  - **AI 1-18B ? ** We need to search for AI 1-18 (Alec/Amy?)**
  - Memorial Statement Honoring Dr. Walter Williams
- **Caucus Call among Commissioners. Does Tuesday still work or should we look for another day/time. I think that there is much for our bosses to discuss.**
-
  - Alec status of Commissioner Yaki on February dates?
  - Statement on Dr. Walter Williams
  - SAC Presentations (3)
- Chair appointment
  - AI on Acting Chair
- Vice Chair nomination
  - No nomination paperwork submitted, will depend on the next Administration
- **Maternal health**
  - Second draft delivered to Commissioners on 1/15, comments from Commissioners due early next week on **2/3**. **Can the caucus meet on Thursday before 2pm ET to discuss? Irena will circulate high level thoughts by Wednesday.**
  - **Irena to meet with Nick on Friday to discuss. Irena to schedule a call with Thomas to discuss + schedule a call between Debo and Gilchrist.**
  - Ang has access to the YouTube channel, but still needs to be able to download the video (right now because it is a livestream, only the contractor can download the video). Rukku flagged for Mauro, who said he would check in with Ang.
  - No response from agencies on interrogatories yet. Want to think strategically about where to direct questions (using former officials from our roster of experts). * Irena meeting with Nick today to discuss. Plan is to have 5-10 questions to send out to HHS and ask them to respond since the idea that they will respond to ROG's are slim to none.

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- Irena to work with OCRE on timeline for following up on interrogatories in time leading up to affected agency review.
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    - Summer 2021 interns – Amy and Irena interviewed 20 potential interns last Friday. *Irena and Amy will both hire interns for this summer. Let's discuss top candidates, and reach out to Carissa to see how many interns the R's plan to use.
    - Fulbright fellows –
        - We have on February 5th a Fullbright Virtual Visit. Looking to have a Fullbright fellow ASAP.
    - Irena has lead on a candidate with interest in bail reform.
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- **Budget priorities for FY21/22?**
    - Forward funding for site visits in Puerto Rico and Texas
    - Regional staffing – at least one staffer for territory SACs
    - **Please check with your bosses and send priorities by the end of this week.**
- Speaker Series

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    - Mauro shared calendar of when ASCD can do Speaker Series events (Rukku will share), we could have one in January. It would be a Zoom direct stream, without a contractor to assist. Ang and Zakee will coordinate, Irena to follow up with Mauro on more information.
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From : "Irena Vidulovic" ividulovic@usccr.gov
To : "Amy Royce" aroyce@usccr.gov, "Alec Deull" adeull@usccr.gov
Subject : Caucus Meeting 2/1

Good Morning Team,
Looking forward to our meeting. Please see agenda below:

- Cancelled January business meeting + New Date if February * Possible new dates if Chair is appointed **Feb 17** from 12-2pm ET and **Feb 23rd** from 12-2pm ET.
- ****Discussion regarding the appointment of Chair.**
  - Discussion and vote on FEMA discovery plan
  - Reaching out to R's regarding **Project planning (Amy?)**
  - **AI 1-18B . We need to make sure out bosses are aware of the possibility or R's bringing this to the agenda in February**
  - Memorial Statement Honoring Dr. Walter Williams (this will for certain be back on the agenda in Feb. Please make sure that your boss is aware.
    - SAC Presentations (3)
- Chair appointment
  - AI on Acting Chair
- Vice Chair nomination
  - No nomination paperwork submitted, will depend on the next Administration
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To : "Irena Vidulovic" ividulovic@usccr.gov, "Alec Deull" adeull@usccr.gov
Subject : Re: Changing time of our meeting today

Meeting notes

- Cancelled January business meeting + New Date in February *
  - **February 23rd** from 12-2pm ET.
  - Mauro should notice today – check in with him?
- **Need to schedule a caucus call with new Chair this week**
  - Availability?
- Business meeting agenda – 2/23
  - Vote on Chair
  - Discussion and vote on FEMA discovery plan
  - Reaching out to R's regarding **Project planning (Amy?)**
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- Comm. Kirsanow (and Adams) objected to the balance of the slate, and requested that it be shifted to 7 Republicans and 7 Democrats (removing one Dem).
- They further objected to the inclusion of Jennifer Lechner as they don't consider her a "true Republican." In her stead they would like to replace her with a Mr. Patrick Mincey who Carissa recruited. Replacing Lechner with Mincey takes the gender balance of the slate to 11 men and 4 women. Mincey has no civil rights experience, based on his application and a review of his public record.
- Rukku spoke to Thomas; Thomas proposed that we consider a slate of 9 Republicans (including Lechner) and 8 Democrats, and they would work on recruiting Republicans who would assist with balance of slate with respect to gender and other diversity factors. Catherine's current position is that she will not vote for unbalanced slate with 9 Republicans and 8 Democrats.

- Rukku proposed to Thomas the following: get another R, and add to the slate, to move to a balance of 8-8; added R cannot be Patrick Mincey (no civil rights experience). Might consider Mincey if he submits revised application with more justification for his civil rights experience.

◦ Idaho (expired in July).

- Rukku shared proposal with Carissa: 4 Republicans, 5 Democrats, 1 Independent leaning Democrat, and 1 Independent who leans in no direction. Slate did not include Scott Yenor.
- From Carissa: They are not willing to move forward with it without Scott Yenor, and it is unbalanced.

- Carissa relayed that they continue to not want to move forward without Yenor.
- Staff confirmed that Yenor is still interested in joining.

◦ District of Columbia 10/20/20 – Alex, Irena

- (as of 12/17) 11 applicants: 9 men, 2 women; 6 Ds, 4 Rs, 1 something else
- Need more Rs and better diversity

◦ Iowa 11/17/20 – Carissa, Amy/Rukku

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        - (as of 11/17) 11 applicants: 7 men, 4 women; 5 Ds, 4 Rs, 2 Ind.
        - Need at least one more R.
        - Amy to check in with Carissa to see if she has any more leads. Carissa has exhausted her recruitment efforts, but John may have more leads.
    - Ohio 11/17/20 – Carissa, Rukku
        - (as of 12/17) 16 applicants: 11 Ds, 4 Rs, 1 Ind.
        - Need more Rs. Carissa to work on recruitment.
    - New Mexico 12/1/20 – Alex, Amy/Irena/Rukku
        - 5 applicants. Need more candidates.
        - Rukku reached out to Haaland's office for candidates, Rukku to follow up.
    - Wyoming 12/1/20 – Alex, Alec
        - 6 applicants. Need more candidates.
        - Alec reached out to Shepard Foundation and confirmed that Judy Shepard will apply for the SAC.
    - In general: Irena recommended we reach out to new Members' offices. Rukku circulated Congressional letter + updated 2 pager to share with offices.
    - Florida 3/2021 – Irena
    - Louisiana 3/2021 – Rukku
    - Nebraska 3/2021 – Alec
    - Texas 3/2021 – Amy
    - New advisory committees (Puerto Rico, Virgin Islands, Northern Mariana Islands, Guam, American Samoa)
        - Irena to check in with David on how he wants to move forward with that
- Broken Promises pandemic update
    - ABA will be reaching out to Catherine to do a webinar on the testimony. Details to come.
    - Pursue social media strategy using briefing video/materials
    - Can we generate clips from the briefing video, into individual panelist testimony or other excerpts. Rukku to check in with Ang.
    - Catherine wants to raise this project again, to see if we can get to common ground with the Republicans. Catherine wants to revisit

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when we discuss project planning re FY22 (/FEMA, Comm. Adams' proposal, etc.).

- Catherine spoke to Gilchrist over the holidays and he seemed open to reconsidering the report; Rukku will reach out to Thomas to see about next steps.
- Amy will check with Dave on process to see if there has been a prior time when the Commissioners voted down a draft report but then later considered (do we need to reopen the project? Vote on a new timeline? Etc.)

- **Other SAC activity**

  - AI 5-9 - SAC member conduct.

  - Rukku, Irena, Carissa met with OGC to discuss proposed revisions to the AI. Irena and Carissa are taking OGC's redline and comments to Commissioners to get feedback.

  - SAC letters – Rukku is working on moving out of backlog of Commissioner letters sharing publications from SACs. Sent Indiana and Arkansas last week.
    - Amy/Irena will raise with Ang/David that Staff Director could take over these letters while waiting for a new Chair.

- Project proposals for FY21/22

  - Rukku checked with John to see if Commissioner Adams will submit new project proposals. John is working with Commissioner Adams on project priorities and check back on timeline. Rukku to follow up with John this week.

  - John (at all SA meeting) said that Comm. Adams had a proposal, so Rukku will generate a timeline for consideration.

  - We will proceed with the FEMA Project as the FY22 statutory enforcement report.
  - Move forward with FY22 project planning calendar – Rukku generated the program planning schedule with emphasis on time early in the process for bipartisan discussion.
  - Dave is working on a concept paper on race discrimination and small business lending, perhaps focusing on the recipients of the PPP loan.

  - Dave spoke with Comm. Gilchrist about potential interest.

- Personnel

  - OGC vacancy – New GC Starts on Feb 16

AMERICAN OVERSIGHT

- Summer 2021 interns – Amy and Irena interviewed 20 potential interns last Friday. *Irena and Amy will both hire interns for this summer. Irena reached out to Carissa their caucus will have 4, ours will have 2.

- Fulbright fellows –
  - We have on February 5th a Fullbright Virtual Visit. Looking to have a Fullbright fellow ASAP.

- Irena has lead on a candidate with interest in bail reform.

- Commission on the Social Status of Black Men and Boys was signed into law, more details to come on what this means.

  - Appointments from White House
  - Call rescheduled with Congresswoman Wilson
  - Women/Girls bill

- **Budget questions**

  - Mauro sent out survey for Commissioner IT needs. Rukku to follow up on timing.
  - Website update – contract secured. Update to occur over the next year. Check in with Ang on things moving forward, Rukku to push for SA involvement.
  - SA computers were shipped in the last couple of weeks.
  - FY22 budget timeline – John M. emailed Mauro to ask about status
  - All Commissioners should send their priorities, might be best to put in one doc for Mauro. Let's discuss.

- **Budget priorities for FY21/22?**

  - Forward funding for site visits in Puerto Rico and Texas
  - Regional staffing – at least one staffer for territory SACs
  - **Please check with your bosses and send priorities by the end of this week.**

- Speaker Series

  - Mauro shared calendar of when ASCD can do Speaker Series events (Rukku will share), we could have one in January. It would be a Zoom direct stream, without a contractor to assist. Ang and Zakee will coordinate, Irena to follow up with Mauro on more information.

- Monday.com

  - Ang walked through the platform at all SA meeting

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- Ang will also prompt more office use of it for our next project planning (likely the bail briefing in February)
- Rukku will start building out project boards

- **Election Assistance Commission**
  - Question about appointments

From: Amy Royce <aroyce@usccr.gov>
Sent: Tuesday, February 16, 2021 8:10:14 AM
To: Irena Vidulovic; Alec Deull
Subject: Changing time of our meeting today

Irena let me know she needs to meet later today, so setting this for 2pm. Calendar to come!

Sent from my iPhone

AMERICAN OVERSIGHT

Date : 2/17/2021 10:02:14 AM
From : "Irena Vidulovic" ividulovic@usccr.gov
To : "Debo P. Adegbile" dadegbile@usccr.gov, "Adegbile, Debo" Debo.Adegbile@wilmerhale.com
Cc : "Zervoudis, Flor" Flor.Zervoudis@wilmerhale.com
Subject : IMPORTANT TO DO LIST AND USCCR UPDATES

Adegbile,

Please see the updated TO DO LIST especially the hours. Would love to discuss all the developments.

TO DO LIST:

1. USCCR Hours below (due today)
2. Caucus Call this week and next , gave caucus the time on Thursday
3. **Security Training**

USCCR Hours:

1/31-2/13

2/1 1h Weekly Priority call with SA + 2 hour review of maternal mortality
2/2 .5 call with SA + 2.5 review of maternal mortality
2/3 1.5 prep for AR call and AR call +3 hour maternal mortality
2/4 1.5 review of maternal mortality +1 hour call with Commissioner Gilchrist
2/5 2 hour review of maternal mortality
2/8 1h Weekly Priority call with SA
2/9 1.5 call with SA
2/12 .5 review +.5 meeting SAC interns

- Cancelled January business meeting + New Date in February *
  - **February 23rd** from 2-3pm ET.
  - Mauro should notice today – check in with him
- Business meeting agenda – 2/23
  - Vote on Chair
  - Discussion and vote on FEMA discovery plan
  - Memorial Statement Honoring Dr. Walter Williams (this will for certain be back on the agenda in Feb. Please make sure that your boss is aware.

- **Maternal health**
  - Second draft delivered to Commissioners on 1/15, comments from Commissioners due early next week on **2/3**.

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- Plan is to have 5-10 questions to send out to HHS and ask them to respond since the idea that they will respond to ROG's are slim to none.
- Landing page complete and include: transcript,
-

- **Bail reform**
  - Comm. Kladney taking over as lead on the project
  - OCRE sent first draft on 11/20. Commissioners submitted comments on 12/21. Carissa shared high level thoughts on the draft with Rukku.
  - Briefing invitations went out before the holidays. Briefing will follow same template as maternal health briefing, with 3 virtual panels and one in writing. Briefing will be on Friday 2/26 from 10am – 2pm. Test will be on **Tuesday 2/23, at 1pm ET (Confirm your Commissioners attendance).**
  - Mauro began briefing planning meetings in December. Meetings will happen every week on Tuesday at 11am.
  - Oregon SAC had their last briefing on Friday 12/11, Catherine attended. Rukku shared briefing notes with OCRE in the comments on the first draft.
- **FEMA / Puerto Rico**
  - OCRE circulated draft project planning materials with Commissioners and SAs on 1/14.
  - Goal for the documents will be for the Commissioners to vote at the January business meeting.
  - Commissioners should be cognizant of budget considerations for the two site visits, and make sure that we can account for that in FY22 budget – can we set up particular contracts etc. to forward fund from the FY21 surplus?
  - **Catherine mentioned this to Mauro. Should add to priority budget items**. *If we don't have a notational vote for the discovery materials we should make sure that Commissioners are on record that budget considerations should be included for both site visits to Puerto Rico and Texas.
  - Texas SAC held briefings on disaster preparedness in December; flagged for OCRE

AMERICAN OVERSIGHT

- FEMA is holding civil rights stakeholder calls, OCRE will attend to prep
-
    -

- Project proposals for FY21/22
    - Rukku checked with John to see if Commissioner Adams will submit new project proposals. John is working with Commissioner Adams on project priorities and check back on timeline. Rukku to follow up with John this week.
    - John (at all SA meeting) said that Comm. Adams had a proposal, so Rukku will generate a timeline for consideration.
    - We will proceed with the FEMA Project as the FY22 statutory enforcement report.
    - Move forward with FY22 project planning calendar – Rukku generated the program planning schedule with emphasis on time early in the process for bipartisan discussion.
    - Dave is working on a concept paper on race discrimination and small business lending, perhaps focusing on the recipients of the PPP loan.
    - Dave spoke with Comm. Gilchrist about potential interest.
- Personnel
    - OGC vacancy – New GC Starts on Feb 16
    -
- Commission on the Social Status of Black Men and Boys was signed into law, more details to come on what this means.
    - Appointments from White House
    - Call rescheduled with Congresswoman Wilson
    - Women/Girls bill
- **Budget questions**
    - Mauro sent out survey for Commissioner IT needs. Rukku to follow up on timing.
    - Website update – contract secured. Update to occur over the next year. Check in with Ang on things moving forward, Rukku to push for SA involvement.
    - SA computers were shipped in the last couple of weeks.
    - FY22 budget timeline – John M. emailed Mauro to ask about status

AMERICAN OVERSIGHT

- All Commissioners should send their priorities, might be best to put in one doc for Mauro. Let's discuss.

- **Budget priorities for FY21/22?**
  - Forward funding for site visits in Puerto Rico and Texas
  - Regional staffing – at least one staffer for territory SACs
  - **Please check with your bosses and send priorities by the end of this week.**
  -

- **Election Assistance Commission**
  - Question about appointments

AMERICAN OVERSIGHT

Date : 2/22/2021 10:52:50 AM
From : "Irena Vidulovic" ividulovic@usccr.gov
To : "Debo P. Adegbile" dadegbile@usccr.gov, "Adegbile, Debo" Debo.Adegbile@wilmerhale.com
Cc : "Zervoudis, Flor" Flor.Zervoudis@wilmerhale.com
Subject : IMPORTANT TO DO LIST AND USCCR UPDATES

Adegbile,
Looking forward to our call today. We have loads to discuss. Will call you in a few.

TO DO LIST:

1. Caucus Call tomorrow , Bail Reform IT test tomorrow
2. FEMA discussion
3. Bail Reform Briefing
4. February Business Meeting
5. **Security Training**

- Cancelled January business meeting + New Date in February *
  - **February 26th at 3:30pm ET post Bail Reform**
- Business meeting agenda – 2/26
  - Vote on Chair
  - Discussion and vote on FEMA discovery plan + Michael comments which has not shared
  - Memorial Statement Honoring Dr. Walter Williams

- **Maternal health**

  - Second draft delivered to Commissioners on 1/15, comments from Commissioners due early next week on **2/3**.
  - Plan is to have 5-10 questions to send out to HHS and ask them to respond since the idea that they will respond to ROG's are slim to none.
  - Landing page complete and include: transcript,
  -
  - **Bail reform**

  - Comm. Kladney taking over as lead on the project
  - OCRE sent first draft on 11/20. Commissioners submitted comments on 12/21. Carissa shared high level thoughts on the draft with Rukku.

  - Briefing invitations went out before the holidays. Briefing will follow same template as maternal health briefing, with 3 virtual panels and one in writing. Briefing will be on Friday 2/26 from 10am – 2pm. Test will be on **Tuesday 2/23**

AMERICAN OVERSIGHT

- Mauro began briefing planning meetings in December. Meetings will happen every week on Tuesday at 11am.

- Oregon SAC had their last briefing on Friday 12/11, Catherine attended. Rukku shared briefing notes with OCRE in the comments on the first draft.

- **FEMA / Puerto Rico**

  - OCRE circulated draft project planning materials with Commissioners and SAs on 1/14.

  - Goal for the documents will be for the Commissioners to vote at the January business meeting.

  - Commissioners should be cognizant of budget considerations for the two site visits, and make sure that we can account for that in FY22 budget – can we set up particular contracts etc. to forward fund from the FY21 surplus?

  - **Catherine mentioned this to Mauro. Should add to priority budget items**. *If we don't have a notational vote for the discovery materials we should make sure that Commissioners are on record that budget considerations should be included for both site visits to Puerto Rico and Texas.

  - Texas SAC held briefings on disaster preparedness in December; flagged for OCRE
  - FEMA is holding civil rights stakeholder calls, OCRE will attend to prep
  -
    -

- Project proposals for FY21/22

  - Rukku checked with John to see if Commissioner Adams will submit new project proposals. John is working with Commissioner Adams on project priorities and check back on timeline. Rukku to follow up with John this week.

  - John (at all SA meeting) said that Comm. Adams had a proposal, so Rukku will generate a timeline for consideration.

  - We will proceed with the FEMA Project as the FY22 statutory enforcement report.
  - Move forward with FY22 project planning calendar
  - Dave is working on a concept paper on race discrimination and small business lending, perhaps focusing on the recipients of the

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PPP loan.

- Dave spoke with Comm. Gilchrist about potential interest.

- Personnel
  - New GC David Gantz Started on Feb 16
  -

- Commission on the Social Status of Black Men and Boys was signed into law, more details to come on what this means.
  - Appointments from White House
  - Call rescheduled with Congresswoman Wilson
  - Women/Girls bill

- **Budget questions**
  - Mauro sent out survey for Commissioner IT needs. Rukku to follow up on timing.
  - Website update – contract secured. Update to occur over the next year. Check in with Ang on things moving forward, Rukku to push for SA involvement.
  - SA computers were shipped in the last couple of weeks.
  - FY22 budget timeline – John M. emailed Mauro to ask about status
  - All Commissioners should send their priorities, might be best to put in one doc for Mauro. Let's discuss.

- **Budget priorities for FY21/22?**
  - Forward funding for site visits in Puerto Rico and Texas
  - Regional staffing – at least one staffer for territory SACs
  - **Please check with your bosses and send priorities by the end of this week.**
  -

- **Election Assistance Commission**
  - Question about appointments

AMERICAN OVERSIGHT

Date : 2/22/2021 10:57:56 AM
From : "Irena Vidulovic" ividulovic@usccr.gov
To : "Amy Royce" aroyce@usccr.gov, "Alec Deull" adeull@usccr.gov
Subject : Caucus Meeting Agenda 2/22

- Cancelled January business meeting + New Date in February *
  - **February 26th at 3:30pm ET post Bail Reform**
  - **Caucus call tomorrow/email Commissioner Cantu all the details**
  - **IT test tomorrow**
  - **Bail Reform prep (Amy, possible questions?)**
- Business meeting agenda – 2/26
  - Vote on Chair
  - Discussion and vote on FEMA discovery plan + Michael comments??
  - Memorial Statement Honoring Dr. Walter Williams
  - **Bail reform**
  - Comm. Kladney taking over as lead on the project
  - Briefing invitations went out before the holidays. Briefing will follow same template as maternal health briefing, with 3 virtual panels and one in writing. Briefing will be on Friday 2/26 from 10am – 2pm. Test will be on **Tuesday 2/23**
  - Mauro began briefing planning meetings in December. Meetings will happen every week on Tuesday at 11am.
  - Oregon SAC had their last briefing on Friday 12/11, Catherine attended. Rukku shared briefing notes with OCRE in the comments on the first draft.
- **FEMA / Puerto Rico**
  - OCRE circulated draft project planning materials with Commissioners and SAs on 1/14.
  - Goal for the documents will be for the Commissioners to vote at the February business meeting.
  - OCRE will share the updated documents ASAP.
  - Commissioners should be cognizant of budget considerations for the two site visits, and make sure that we can account for that in FY22 budget – can we set up particular contracts etc. to forward fund from the FY21 surplus?

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- **Catherine mentioned this to Mauro. Should add to priority budget items**. *If we don't have a notational vote for the discovery materials we should make sure that Commissioners are on record that budget considerations should be included for both site visits to Puerto Rico and Texas.

- Texas SAC held briefings on disaster preparedness in December; flagged for OCRE
- FEMA is holding civil rights stakeholder calls, OCRE will attend to prep
- ▪

- Project proposals for **FY21/22**

  - Rukku checked with John to see if Commissioner Adams will submit new project proposals. John is working with Commissioner Adams on project priorities and check back on timeline. Rukku to follow up with John this week.

  - John (at all SA meeting) said that Comm. Adams had a proposal

  - We will proceed with the FEMA Project as the FY22 statutory enforcement report.
  - Move forward with FY22 project planning calendar
  - Dave is working on a concept paper on race discrimination and small business lending, perhaps focusing on the recipients of the PPP loan.

  - Dave spoke with Comm. Gilchrist about potential interest.

- **Personnel**

  - New GC David Gantz Started on Feb 16

- Commission on the Social Status of Black Men and Boys was signed into law, more details to come on what this means.

  - Appointments from White House
  - Call rescheduled with Congresswoman Wilson
  - Women/Girls bill

- **Budget questions**

  - Mauro sent out survey for Commissioner IT needs. Rukku to follow up on timing.
  - Website update – contract secured. Update to occur over the next year. Check in with Ang on things moving forward, Rukku to push

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for SA involvement.
    - SA computers were shipped in the last couple of weeks.
    - FY22 budget timeline – John M. emailed Mauro to ask about status
    - All Commissioners should send their priorities, might be best to put in one doc for Mauro. Let's discuss.

- **Budget priorities for FY21/22?**
    - Forward funding for site visits in Puerto Rico and Texas
    - Regional staffing – at least one staffer for territory SACs
    - **Please check with your bosses and send priorities by the end of this week.**

- **Election Assistance Commission**
    - Question about appointments (let's find out the expiration date)

AMERICAN OVERSIGHT

Date : 2/22/2021 11:59:10 AM
From : "Amy Royce" aroyce@usccr.gov
To : "Irena Vidulovic" ividulovic@usccr.gov, "Alec Deull" adeull@usccr.gov
Subject : Re: Caucus Meeting Agenda 2/22

Notes below

From: Irena Vidulovic
Sent: Monday, February 22, 2021 10:57 AM
To: Amy Royce; Alec Deull
Subject: Caucus Meeting Agenda 2/22

- Cancelled January business meeting + New Date in February *
  - **February 26th at 3:30pm ET post Bail Reform**
    - **Norma, Dave, Debo and Michael are available. Waiting on R's, Amy to email**
  - **Caucus call tomorrow/email Commissioner Cantu all the details**
    - **Norma update on conversations with Commissioners**
      - **Project planning/speaker series?**
    - **FEMA discovery materials**
      - **Irena to ask OCRE to recirculate with adjusted timelines**
      - **Alec to update with any comments from Michael**
      - **Language on the record regarding budget priorities?**
    - **Walter Williams statement**
    - **Agenda amendment procedures**
      - **AI 1-18?**
      - **Project Planning?**
      - **Amy to find transcript with examples**
    - **Bail Reform Briefing**
      - **IT test tomorrow - confirm attendance**
      - **Possible questions? Questions for the record?**
    - **Budget priorities**
- Business meeting agenda – 2/26
  - Vote on Chair
  - Discussion and vote on FEMA discovery plan + Michael comments??
  - Memorial Statement Honoring Dr. Walter Williams
  - **Bail reform**
  - Comm. Kladney taking over as lead on the project
  - Briefing invitations went out before the holidays. Briefing will follow same template as maternal health briefing, with 3 virtual panels and one in writing. Briefing will be on Friday 2/26 from 10am – 2pm. Test will be on **Tuesday 2/23**

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- Mauro began briefing planning meetings in December. Meetings will happen every week on Tuesday at 11am.

- Oregon SAC had their last briefing on Friday 12/11, Catherine attended. Rukku shared briefing notes with OCRE in the comments on the first draft.

- **FEMA / Puerto Rico**

  - OCRE circulated draft project planning materials with Commissioners and SAs on 1/14.

  - Goal for the documents will be for the Commissioners to vote at the February business meeting.
  - OCRE will share the updated documents ASAP.

  - Commissioners should be cognizant of budget considerations for the two site visits, and make sure that we can account for that in FY22 budget – can we set up particular contracts etc. to forward fund from the FY21 surplus?

  - **Catherine mentioned this to Mauro. Should add to priority budget items**. *If we don't have a notational vote for the discovery materials we should make sure that Commissioners are on record that budget considerations should be included for both site visits to Puerto Rico and Texas.

  - Texas SAC held briefings on disaster preparedness in December; flagged for OCRE
  - FEMA is holding civil rights stakeholder calls, OCRE will attend to prep
  -
    - ▪

- Project proposals for **FY21/22**

  - Rukku checked with John to see if Commissioner Adams will submit new project proposals. John is working with Commissioner Adams on project priorities and check back on timeline. Rukku to follow up with John this week.

  - John (at all SA meeting) said that Comm. Adams had a proposal

  - We will proceed with the FEMA Project as the FY22 statutory enforcement report.
  - Move forward with FY22 project planning calendar
  - Dave is working on a concept paper on race discrimination and small business lending, perhaps focusing on the recipients of the

AMERICAN OVERSIGHT

PPP loan.

- Dave spoke with Comm. Gilchrist about potential interest.

- **Personnel**
  - New GC David Gantz Started on Feb 16
  - Set up meeting with Commissioners/Mauro?
    - Plan around new Chair and SA

- Commission on the Social Status of Black Men and Boys was signed into law, more details to come on what this means.
  - Appointments from White House
  - Call rescheduled with Congresswoman Wilson
  - Women/Girls bill
  - Staff posting closed
  - Commission appointments needed
    - Irena to contact Mauro next week

- OCRE Director posting closed
  - Set up meeting with Commissioners/Mauro?
- Interns
  - Irena's intern to start 3/18 - Alana Thomas
  - Amy still interviewing

- **Budget questions**
  - Mauro sent out survey for Commissioner IT needs. Rukku to follow up on timing.
  - Website update – contract secured. Update to occur over the next year. Check in with Ang on things moving forward, Rukku to push for SA involvement.
  - SA computers were shipped in the last couple of weeks.
  - FY22 budget timeline – John M. emailed Mauro to ask about status
  - All Commissioners should send their priorities, might be best to put in one doc for Mauro. Let's discuss.

- **Budget priorities for FY21/22?**
  - Forward funding for site visits in Puerto Rico and Texas
  - Regional staffing – at least one staffer for territory SACs

- **Election Assistance Commission**
  - Question about appointments (let's find out the expiration date)

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Date : 3/8/2021 10:18:58 AM
From : "Irena Vidulovic" ividulovic@usccr.gov
To : "Amy Royce" aroyce@usccr.gov, "Alec Deull" adeull@usccr.gov
Subject : Caucus Meeting 2/8

Looking forward to our meeting today,
Irena

- **FEMA / Puerto Rico**
  - Mauro circulated the notational vote, please have your boss vote by Wednesday morning
  - Irena heard back from Heriot who is a yes, Gilchrist looks promising
  - Need to add to the record in March Yaki and Debo that both site visits need to happen
  - After the vote Irena needs to urge Mauro to start planning meetings
  - **Catherine mentioned this to Mauro. Should add to priority budget items**. *If we don't have a notational vote for the discovery materials we should make sure that Commissioners are on record that budget considerations should be included for both site visits to Puerto Rico and Texas.
  - Texas SAC held briefings on disaster preparedness in December; flagged for OCRE
  - FEMA is holding civil rights stakeholder calls, OCRE will attend to prep

- **Bail reform**
  - Comm. Kladney taking over as lead on the project
  - Debrief Meeting ?
  - Kladney/Amy negotiations with R's
  - Follow up questions to panelists?
  - Oregon SAC had their last briefing on Friday 12/11, Catherine attended. Rukku shared briefing notes with OCRE in the comments on the first draft.

- SAC recruitment
- Alex reached out to Irena to discuss CO and Indiana
  - Indiana 12/1/20 – Mauro circulated slate on Friday
  - Amy to vet slate, which includes 7 Ds, 7 Rs, and 1 Ind.
  - Amy circulated vet memo. Carissa objected to the balance, the same type of objection as with a NC. Spoke to Carissa and she will check with their caucus if we add a R or if we add an R and a D however she did say that they probably will not vote for slates that are not balanced.
  - Vermont (expired in June).
  - Mauro circulated slate, which included 5 Rs, 5 Ds, and 2 Ind. (including Reed and Martin). Catherine and Debo objected to

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Lefavour for lack of experience; need to recruit another R.

- Irena will reach out to Leahy's office and ping Ang to see if she has any candidates.
- Colorado: Irena
- Slate failed to get a majority vote on Friday 10/30.
- 12 candidates, 6 Republicans (including one Independent who leans Republican), 6 Democrats (including one Independent who leans Democrat). No particular flags on any candidates.
- Comm. Heriot had objected to Prof. Chen, on the basis of a recent article that Prof. Chen published called Colorblind Nationalism.
- Irena is checking in with Alex on whether Comm. Heriot's objection is ongoing. Alex said he would update last week. No update.
- North Carolina: Irena
- Slate failed to get a majority vote on Friday 10/30.
- 15 candidates, 8 Democrats (including two Independents who lean Democrat), 7 Republicans (including one candidate who identified as "something else"). Note that Olga Wright, the returning Chair, identifies herself as a Democrat but ran for public office as a Republican in 2012.
- Comm. Kirsanow (and Adams) objected to the balance of the slate, and requested that it be shifted to 7 Republicans and 7 Democrats (removing one Dem).
- They further objected to the inclusion of Jennifer Lechner as they don't consider her a "true Republican." In her stead they would like to replace her with a Mr. Patrick Mincey who Carissa recruited. Replacing Lechner with Mincey takes the gender balance of the slate to 11 men and 4 women. Mincey has no civil rights experience, based on his application and a review of his public record.
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- Carissa relayed that they continue to not want to move forward without Yenor.
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- Irena to check in with David on how he wants to move forward with that

- Broken Promises pandemic update
- Senator Warren's office has reached out to me to schedule a meeting this week on the report update + will invite Julie to the meeting.
  - ABA will be reaching out to Catherine to do a webinar on the testimony. Details to come.
  - Pursue social media strategy using briefing video/materials
  - Can we generate clips from the briefing video, into individual panelist testimony or other excerpts. Rukku to check in with Ang.
  - Catherine wants to raise this project again, to see if we can get to common ground with the Republicans. Catherine wants to revisit when we discuss project planning re FY22 (/FEMA, Comm. Adams' proposal, etc.).

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- Catherine spoke to Gilchrist over the holidays and he seemed open to reconsidering the report; Rukku will reach out to Thomas to see about next steps.
- Amy will check with Dave on process to see if there has been a prior time when the Commissioners voted down a draft report but then later considered (do we need to reopen the project? Vote on a new timeline? Etc.)

- **Other SAC activity**
  - AI 5-9 - SAC member conduct.
  - Rukku, Irena, Carissa met with OGC to discuss proposed revisions to the AI. Irena and Carissa are taking OGC's redline and comments to Commissioners to get feedback.
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    - We have on February 5th a Fullbright Virtual Visit. Looking to have a Fullbright fellow ASAP.
  - Irena has lead on a candidate with interest in bail reform.
- Commission on the Social Status of Black Men and Boys was signed into law, more details to come on what this means.
  - Appointments from White House
  - Call rescheduled with Congresswoman Wilson

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- Women/Girls bill

- **Budget questions**
  - Appropriations reached out to me + need to follow up with Mauro
  - Mauro sent out survey for Commissioner IT needs. Amy to follow up on timing.
  - Website update – contract secured. Update to occur over the next year. Check in with Ang on things moving forward, Amy to push for SA involvement.
  - SA computers were shipped in the last couple of weeks.
  - FY22 budget timeline – John M. emailed Mauro to ask about status
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- **Budget priorities for FY21/22?**
  - Forward funding for site visits in Puerto Rico and Texas
  - Regional staffing – at least one staffer for territory SACs
  - **Please check with your bosses and send priorities by the end of this week.**
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- **Election Assistance Commission**
  - Question about appointments. When do the terms expire?

AMERICAN OVERSIGHT

Date : 3/8/2021 11:46:33 AM
From : "Amy Royce" aroyce@usccr.gov
To : "Irena Vidulovic" ividulovic@usccr.gov, "Alec Deull" adeull@usccr.gov
Subject : Re: Caucus Meeting 2/8

Notes below

From: Irena Vidulovic
Sent: Monday, March 8, 2021 10:18 AM
To: Amy Royce; Alec Deull
Subject: Caucus Meeting 2/8

Looking forward to our meeting today,
Irena

- **FEMA / Puerto Rico**
  - Mauro circulated the notational vote, please have your boss vote by **Wednesday morning**
  - Irena heard back from Heriot who is a yes, Gilchrist looks promising
  - Need to add to the record in March Yaki and Debo that both site visits need to happen
  - After the vote Irena needs to urge Mauro to start planning meetings
  - **Catherine mentioned this to Mauro. Should add to priority budget items**.
    - To be addressed at March business meeting: put Commissioners on record that budget considerations should be included for both site visits to Puerto Rico and Texas.
  - Texas SAC held briefings on disaster preparedness in December; flagged for OCRE
  - FEMA is holding civil rights stakeholder calls, OCRE will attend to prep

- **Bail reform**
  - Comm. Kladney taking over as lead on the project
  - Amy to reach out Mauro about scheduling debrief
  - Kladney/Amy negotiations with R's ongoing
  - Amy to ask OCRE about follow up questions to panelists
  - Oregon SAC had their last briefing on Friday 12/11, Catherine attended. Rukku shared briefing notes with OCRE in the comments
  - on the first draft.

- SAC recruitment
- Alex reached out to Irena to discuss CO and Indiana
  - Indiana 12/1/20 – Mauro circulated slate on Friday

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- Amy circulated vet memo. Slate includes 7 Ds, 7 Rs, and 1 Ind.
- Carissa objected to the balance, the same type of objection as with a NC. Spoke to Carissa and she will check with their caucus if we add a R or if we add an R and a D however she did say that they probably will not vote for slates that are not balanced.
- Vermont (expired in June).
- Mauro circulated slate, which included 5 Rs, 5 Ds, and 2 Ind. (including Reed and Martin). Catherine and Debo objected to Lefavour for lack of experience; need to recruit another R.
- Irena will reach out to Leahy's office and ping Ang to see if she has any candidates.
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- Slate failed to get a majority vote on Friday 10/30.
- 12 candidates, 6 Republicans (including one Independent who leans Republican), 6 Democrats (including one Independent who leans Democrat). No particular flags on any candidates.
- Comm. Heriot had objected to Prof. Chen, on the basis of a recent article that Prof. Chen published called Colorblind Nationalism.
- Irena is checking in with Alex on whether Comm. Heriot's objection is ongoing. Alex said he would update last week. No update.
- North Carolina: Irena
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rights experience.
    - Idaho (expired in July).
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- Senator Warren's office has reached out to Irena to schedule a meeting this week on the report update + will invite Julie to the meeting.
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- **All SA Meeting**
- AI 5-9
- Project propsals
- "Balance" SAC AI
- **Expired SACs**
- **Meeting with Mauro**
  - Irena to reach out Mauro regarding scheduling a meeting to update
  - us on pending items
    - Website update – contract secured. Update to occur over the next year. Check in with Ang on things moving forward

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- Personnel
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  - Call rescheduled with Congresswoman Wilson
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- **Election Assistance Commission**
  - Question about appointments. When do the terms expire?
  - Alec to follow up on term expirations

AMERICAN OVERSIGHT

Date : 3/15/2021 1:46:09 PM
From : "Alec Deull" adeull@usccr.gov
To : "Irena Vidulovic" ividulovic@usccr.gov, "Amy Royce" aroyce@usccr.gov
Subject : Re: Caucus Call

I give up. I have no idea what is going on with my phone.

Question regarding the EAC appointment proposal: from whom did that originate? Michael may already know about it and just not have communicated it with me, but if I need to discuss it with him, it would be helpful to know the background.

thanks! - Alec

From: Alec Deull
Sent: Monday, March 15, 2021 1:21:17 PM
To: Irena Vidulovic; Amy Royce
Subject: Re: Caucus Call

my phone keeps shutting down as I am trying to call back in. still trying.

From: Alec Deull
Sent: Monday, March 15, 2021 1:02:48 PM
To: Irena Vidulovic; Amy Royce
Subject: Re: Caucus Call

Just called in. I was on hold and call dropped. Calling back in.

From: Alec Deull
Sent: Monday, March 15, 2021 11:19:26 AM
To: Irena Vidulovic; Amy Royce
Subject: Re: Caucus Call

Thanks. Talk to you at 1. Sorry to respond late. I've accepted the calendar invitation. Thanks to Amy for grabbing my attention.

all best, Alec

From: Irena Vidulovic
Sent: Monday, March 15, 2021 10:55:10 AM
To: Amy Royce; Alec Deull
Subject: Re: Caucus Call

Amy,

Let's meet at 1pm ET today, hoping that you can join Alec.
Amy can you move the calendar invitation?

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Thanks,
Irena

From: Irena Vidulovic
Sent: Monday, March 15, 2021 10:26:46 AM
To: Amy Royce; Alec Deull
Subject: Re: Caucus Call

Thanks Amy! Alec please let us know what time works best for you. There is loads to discuss and a need to create and send out the caucus call agenda for tomorrow's call at 3pm. Please see the list of items below from Commissioner Cantu.

- Language on 30/30/10 for rebuttals and surrebuttals-Gail-vehicle AI
- Language on bipartisan nominations to Elect.Adv.Council at end of June 2021. Appointments to EAC will be made by Commission as a whole, with a majority vote. Proposed that Dem.Caucus nominates 2 people for one slot and R+I Caucus chooses the appointee. R+I Caucus nominates 2 people for one slot and Dem. caucus chooses the appointee. In future nominations to external agencies, the Chair will consult with the whole Commission before communicating any nominations. Vehicle-motion from floor at mtg. on March 19
- Canceling the Chair's speakers series. Vehicle-email from Norma Cantu to Commissioners.
- Already have language that half of State Adv. Council slots will be Dem. and half Rep. Need to add language on each Commissioners' Caucus will take ____days to nominate and vet new members of State Adv. Councils. At end of ___ days, the staff are expected to provide assistance in recruiting and vetting people to fill vacancies. Staff nominations take no longer than ____days. All nominations by Commissioners and staff come back to the full Commissioner for a discussion and vote to approve new members. Vehicle-motion from floor at mtg. on March 19.
- Language about agreeing that AIs, as more specific agreements, govern process of Commissioners; in absence of relevant AI, Commissioners will apply Roberts' Rules of Order. Vehicle-Memo of Understanding approved by majority of Commissioners.
- Chair proposes agenda for Commissioners' meeting, with Commissioners having ability to propose to amend agenda before meeting and also at the beginning the meeting, subject to majority vote. Vehicle-AI
- A majority of Commissioners is needed to cancel a called Commissioner meeting. Vehicle-AI
- Proposed by Norma, in absence of Chair available to moderate the meeting, the most senior Dem. and Rep. Commissioners will alternate chairing meetings. Vehicle-AI or memo. of understanding
- Language that any Commissioner from each Caucus may sit in on OCRE interviews provided the Commissioner's request to attend does not cause a

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scheduling delay. Vehicle?

- Memorial/obits require a majority vote of the Commission and the proposed language for the memorial shall be circulated to all the Commissioners. Vehicle-AI

- **FEMA / Puerto Rico**
  - The notational vote failed
  - OGC and OCRE finalizing the added language from Commissioner Adams
  - Hoping we can schedule another notational vote in order to untangle this procedural vote from all of the items that are on the agenda on Friday.
  - Irena to follow up with OGC/OCRE regarding the finalized FEMA discovery
  - documents

- **Bail reform**
  - Comm. Kladney taking over as lead on the project
  - debrief update?
  - Kladney/Amy negotiations with R's update? Status of follow up questions/update?
  - Oregon SAC had their last briefing on Friday 12/11, Catherine attended. Rukku shared briefing notes with OCRE in the comments
  - on the first draft.

- SAC recruitment
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- The Republican's via Alex would like to make a deal Yeanor for Dr. Chen. Please let your boss know and let's disscuss during out caucus call tomorrow.
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- Project propsals
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    - Fulbright fellows – Media fellow recommendation for Ang + possibly HQ fellow.
        - Ang is looking to hire a Fullbright fellow ASAP.

AMERICAN OVERSIGHT

- Irena has lead on a candidate with interest in bail reform.

- Commission on the Social Status of Black Men and Boys was signed into law, more details to come on what this means.
  - Appointments from White House
  - Call rescheduled with Congresswoman Wilson
  - Women/Girls bill
  - Irena to follow up on status of staffer
- **Budget questions**
  - Appropriations reached out to Irena + held a meeting last week, Irena to update.
  - Website update – contract secured. Update to occur over the next year. Check in with Ang on things moving forward
  - FY22 budget timeline – John M. emailed Mauro to ask about status
- **Budget priorities for FY21/22?**
  - Forward funding for site visits in Puerto Rico and Texas
  - Regional staffing – at least one staffer for territory SACs
  - **Please check with your bosses and send priorities by the end of this week.**
- **Election Assistance Commission**
  - Question about appointments. When do the terms expire?
  - Alec to follow up on term expirations

From: Amy Royce
Sent: Monday, March 15, 2021 10:00:15 AM
To: Irena Vidulovic; Alec Deull
Subject: Re: Caucus Call

Sure thing. Either time works for me

From: Irena Vidulovic
Sent: Monday, March 15, 2021 9:59:28 AM
To: Amy Royce; Alec Deull
Subject: Caucus Call

Hey Team,

I now have to attend a last minute 11:00am ET meeting. Can we move our caucus call to 12noon or 1pm ET. We have a lot to discuss. I will work on the agenda.

Please let me know what works.

Irena

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Date : 3/15/2021 1:49:45 PM
From : "Alec Deull" adeull@usccr.gov
To : "Amy Royce" aroyce@usccr.gov, "Irena Vidulovic" ividulovic@usccr.gov
Subject : Re: Caucus Call

About the EAC proposal? Is it the Rs' idea? Thanks.

From: Amy Royce
Sent: Monday, March 15, 2021 1:47:02 PM
To: Irena Vidulovic; Alec Deull
Subject: Re: Caucus Call

Thanks. I don't believe we have any more information on the back and forth

---

From: Amy Royce
Sent: Monday, March 15, 2021 1:46:15 PM
To: Irena Vidulovic; Alec Deull
Subject: Re: Caucus Call

Notes below

Alec, please let us know if there is any objection to proceeding with the notational vote on the FEMA materials today. Per your email on Friday we understood that to be Michael's preference. Irena is checking with Mauro on how to move forward.

From: Irena Vidulovic
Sent: Monday, March 15, 2021 10:26 AM
To: Amy Royce; Alec Deull
Subject: Re: Caucus Call

Thanks Amy! Alec please let us know what time works best for you. There is loads to discuss and a need to create and send out the caucus call agenda for tomorrow's call at 3pm. Please see the list of items below from Commissioner Cantu.

To be discussed on caucus call tomorrow - Amy to send business meeting agenda (attach sunshine act notice and email from Alex) and negotiations

1. Negotiations (list below)
2. FEMA discovery materials and notational vote -
    - Updated language has been vetted by OCRE/OGC and language the conservatives proposed has been adopted (attach materials)
    - Change in briefing date for virtual briefing (June instead of May)
3. Bail reform
4. Colorado and Idaho Advisory Committees
    - R's proposal - Dr. Chen in CO if we allow Mr. Yenor in ID

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    - Attach document with Dr. Chen response and Yenor response
- Language on 30/30/10 for rebuttals and surrebuttals-Gail-vehicle AI
- Language on bipartisan nominations to Elect.Adv.Council at end of June 2021. Appointments to EAC will be made by Commission as a whole, with a majority vote. Proposed that Dem.Caucus nominates 2 people for one slot and R+I Caucus chooses the appointee. R+I Caucus nominates 2 people for one slot and Dem. caucus chooses the appointee. In future nominations to external agencies, the Chair will consult with the whole Commission before communicating any nominations. Vehicle-motion from floor at mtg. on March 19
- Canceling the Chair's speakers series. Vehicle-email from Norma Cantu to Commissioners.
- Already have language that half of State Adv. Council slots will be Dem. and half Rep. Need to add language on each Commissioners' Caucus will take ____days to nominate and vet new members of State Adv. Councils. At end of ___ days, the staff are expected to provide assistance in recruiting and vetting people to fill vacancies. Staff nominations take no longer than ____days. All nominations by Commissioners and staff come back to the full Commissioner for a discussion and vote to approve new members. Vehicle-motion from floor at mtg. on March 19.
- Language about agreeing that AIs, as more specific agreements, govern process of Commissioners; in absence of relevant AI, Commissioners will apply Roberts' Rules of Order. Vehicle-Memo of Understanding approved by majority of Commissioners.
- Chair proposes agenda for Commissioners' meeting, with Commissioners having ability to propose to amend agenda before meeting and also at the beginning the meeting, subject to majority vote. Vehicle-AI
- A majority of Commissioners is needed to cancel a called Commissioner meeting. Vehicle-AI
- Proposed by Norma, in absence of Chair available to moderate the meeting, the most senior Dem. and Rep. Commissioners will alternate chairing meetings. Vehicle-AI or memo. of understanding
- Language that any Commissioner from each Caucus may sit in on OCRE interviews provided the Commissioner's request to attend does not cause a scheduling delay. Vehicle?
- Memorial/obits require a majority vote of the Commission and the proposed language for the memorial shall be circulated to all the Commissioners. Vehicle-AI

- **FEMA / Puerto Rico**
    - The notational vote failed
    - New notational vote attempt this week?
    - OGC and OCRE finalizing the added language from Commissioner Adams
    - Hoping we can schedule another notational vote in order to untangle this procedural vote from all of the items that are on the agenda on Friday.
    - Irena to follow up with OGC/OCRE regarding the finalized FEMA discovery documents

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- **Bail reform**
  - Comm. Kladney taking over as lead on the project
  - Kladney/Amy negotiations with R's update?
    Status of follow up questions/update?
    Amy to ask Mauro today
  - Oregon SAC had their last briefing on Friday 12/11, Catherine attended. Rukku shared briefing notes with OCRE in the comments on the first draft.

- SAC recruitment
- So far 10 SAC's have expired and not been reappointed, and 4 more expire this month
- Alex reached out to Irena to discuss CO and Idaho
- The Republican's via Alex would like to make a deal Yenor for Dr. Chen. Please let your boss know and let's disscuss during out caucus call tomorrow.
  - Indiana 12/1/20 – Mauro circulated slate on Friday
  - Amy circulated vet memo. Slate includes 7 Ds, 7 Rs, and 1 Ind.
  - Carissa objected to the balance, the same type of objection as with a NC. Spoke to Carissa and she will check with their caucus if we add a R or if we add an R and a D however she did say that they probably will not vote for slates that are not balanced.
  - Vermont (expired in June).
  - Mauro circulated slate, which included 5 Rs, 5 Ds, and 2 Ind. (including Reed and Martin). Catherine and Debo objected to Lefavour for lack of experience; need to recruit another R.
  - Irena will reach out to Leahy's office and ping Ang to see if she has any candidates.
  - Colorado: Irena
  - Slate failed to get a majority vote on Friday 10/30.
  - 12 candidates, 6 Republicans (including one Independent who leans Republican), 6 Democrats (including one Independent who leans Democrat). No particular flags on any candidates.
  - Comm. Heriot had objected to Prof. Chen, on the basis of a recent article that Prof. Chen published called Colorblind Nationalism.
  - Irena is checking in with Alex on whether Comm. Heriot's objection is ongoing. Alex said he would update last week. No update.
  - North Carolina: Irena
  - Slate failed to get a majority vote on Friday 10/30.
  - 15 candidates, 8 Democrats (including two Independents who lean Democrat), 7 Republicans (including one candidate who identified as "something else"). Note that Olga Wright, the returning Chair, identifies herself as a Democrat but ran for public office as a

AMERICAN OVERSIGHT

Republican in 2012.
- Comm. Kirsanow (and Adams) objected to the balance of the slate, and requested that it be shifted to 7 Republicans and 7 Democrats (removing one Dem).
- They further objected to the inclusion of Jennifer Lechner as they don't consider her a "true Republican." In her stead they would like to replace her with a Mr. Patrick Mincey who Carissa recruited. Replacing Lechner with Mincey takes the gender balance of the slate to 11 men and 4 women. Mincey has no civil rights experience, based on his application and a review of his public record.
- Rukku spoke to Thomas; Thomas proposed that we consider a slate of 9 Republicans (including Lechner) and 8 Democrats, and they would work on recruiting Republicans who would assist with balance of slate with respect to gender and other diversity factors. Catherine's current position is that she will not vote for unbalanced slate with 9 Republicans and 8 Democrats.
- Rukku proposed to Thomas the following: get another R, and add to the slate, to move to a balance of 8-8; added R cannot be Patrick Mincey (no civil rights experience). Might consider Mincey if he submits revised application with more justification for his civil rights experience.
- Idaho (expired in July).
- Rukku shared proposal with Carissa: 4 Republicans, 5 Democrats, 1 Independent leaning Democrat, and 1 Independent who leans in no direction. Slate did not include Scott Yenor.
- From Carissa: They are not willing to move forward with it without Scott Yenor, and it is unbalanced.
- Carissa relayed that they continue to not want to move forward without Yenor.
- Staff confirmed that Yenor is still interested in joining.
- District of Columbia 10/20/20 – Alex, Irena
- (as of 12/17) 11 applicants: 9 men, 2 women; 6 Ds, 4 Rs, 1 something else
- Need more Rs and better diversity
- Iowa 11/17/20 – Carissa, Amy/Rukku
- (as of 11/17) 11 applicants: 7 men, 4 women; 5 Ds, 4 Rs, 2 Ind.
- Need at least one more R.
- Amy to check in with Carissa to see if she has any more leads. Carissa has exhausted her recruitment efforts, but John may have more leads.
- Ohio 11/17/20 – Carissa, Rukku
- (as of 12/17) 16 applicants: 11 Ds, 4 Rs, 1 Ind.
- Need more Rs. Carissa to work on recruitment.
- New Mexico 12/1/20 – Alex, Amy/Irena/Rukku
- 5 applicants. Need more candidates.
- Rukku reached out to Haaland's office for candidates, Rukku to follow up.

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- Wyoming 12/1/20 – Alex, Alec
- 6 applicants. Need more candidates.
- Alec reached out to Shepard Foundation and confirmed that Judy Shepard will apply for the SAC.
- In general: Irena recommended we reach out to new Members' offices. Rukku circulated Congressional letter + updated 2 pager to share with offices.
- Florida 3/2021 – Irena
- Louisiana 3/2021 – Rukku
- Nebraska 3/2021 – Alec
- Texas 3/2021 – Amy
- New advisory committees (Puerto Rico, Virgin Islands, Northern Mariana Islands, Guam, American Samoa)
- Irena checked in with David on how he wants to move forward with new advisory committees - on hold for the moment

- Broken Promises pandemic update
- Senator Warren's office has reached out to Irena to schedule a meeting this week on the report update + will invite Julie to the meeting.
  - Interested to find out spokesperson for Commission. Irena provided public material and plan to reconnect when a Commissioner can be designated to speak for the Commission
  - Pursue social media strategy using briefing video/materials
  - Can we generate clips from the briefing video, into individual panelist testimony or other excerpts. Rukku to check in with Ang.
  - Catherine wants to raise this project again, to see if we can get to common ground with the Republicans. Catherine wants to revisit when we discuss project planning re FY22 (/FEMA, Comm. Adams' proposal, etc.).
  - Catherine spoke to Gilchrist over the holidays and he seemed open to reconsidering the report; Rukku will reach out to Thomas to see about next steps.
  -

- **All SA Meeting**
- AI 5-9
- Project propsals
- "Balance" SAC AI
- **Expired SACs (14)**
- **Meeting with Mauro**
  - Alex reached out to Mauro about scheduling a meeting and it was scheduled for tomorrow but Mauro cancelled it and scheduled it for next week.
    - Website update – contract secured. Update to occur over the next year. Check in with Ang on things moving forward

- **Other SAC activity**
- AI 5-9 - SAC member conduct.
  - Rukku, Irena, Carissa met with OGC to discuss proposed revisions to the AI. Irena and Carissa are taking OGC's redline and comments to Commissioners to get feedback.

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- SAC letters – Rukku is working on moving out of backlog of Commissioner letters sharing publications from SACs. Sent Indiana and Arkansas last week.
    - Irena will raise with Ang/David that Staff Director could take over these letters while waiting for a new Chair.

- Project proposals for FY21/22
    - Rukku checked with John to see if Commissioner Adams will submit new project proposals. John is working with Commissioner Adams on project priorities and check back on timeline. Rukku to follow up with John this week.
    - John (at all SA meeting) said that Comm. Adams had a proposal, so Rukku will generate a timeline for consideration.
    - We will proceed with the FEMA Project as the FY22 statutory enforcement report.
    - Move forward with FY22 project planning calendar – Rukku generated the program planning schedule with emphasis on time early in the process for bipartisan discussion.
    - Dave is working on a concept paper on race discrimination and small business lending, perhaps focusing on the recipients of the PPP loan.
    - Dave spoke with Comm. Gilchrist about potential interest.
- Personnel
    - Cantu Special Assistant?
    - OCRE Director ?
    - Commission on Black Man and Boys
    - Irena to follow up with Mauro about these two positions
    - Summer 2021 interns – Irena hired a spring intern. Am? Irena reached out to Carissa their caucus will have 4, ours will have 2.
    - Irena's intern to start this week, Amy hired an intern to start 5/24
    - Fulbright fellows – Media fellow recommendation for Ang + possibly HQ fellow.
        - Ang is looking to hire a Fullbright fellow ASAP.
    - Irena has lead on a candidate with interest in bail reform.
- Commission on the Social Status of Black Men and Boys was signed into law, more details to come on what this means.
    - Appointments from White House
    - Call rescheduled with Congresswoman Wilson
    - Women/Girls bill
    - Irena to follow up on status of staffer
- **Budget questions**
    - Appropriations reached out to Irena + held a meeting last week, Irena to update.
    - Call regarding budget happened, John to provide additional information comparing requests to actuals
    - Website update – contract secured. Update to occur over the next year. Check in with Ang on things moving forward
    - FY22 budget timeline – John M. emailed Mauro to ask about status
- **Budget priorities for FY22?**

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- Forward funding for site visits in Puerto Rico and Texas
- Regional staffing – at least one staffer for territory SACs
- Irena to ask Alex to add to the agenda for the All SA meeting on Monday

- **Election Assistance Commission**
  - Question about appointments

From: Amy Royce
Sent: Monday, March 15, 2021 10:00:15 AM
To: Irena Vidulovic; Alec Deull
Subject: Re: Caucus Call

Sure thing. Either time works for me

From: Irena Vidulovic
Sent: Monday, March 15, 2021 9:59:28 AM
To: Amy Royce; Alec Deull
Subject: Caucus Call

Hey Team,

I now have to attend a last minute 11:00am ET meeting. Can we move our caucus call to 12noon or 1pm ET. We have a lot to discuss. I will work on the agenda.

Please let me know what works.

Irena

AMERICAN OVERSIGHT

Date : 4/16/2021 11:19:18 AM
From : "Mauro Morales" mmorales@usccr.gov
To : "Norma Cantu" ncantu@usccr.gov
Cc : "Juana Silverio" jsilverio@usccr.gov
Subject : RE: Speaker Series---memorializing that we completed negotiations

You should not send the email about the speaker series that Gail is requesting. It is inaccurate. When the time comes simply say:

- "I (we) agree to end holding the speaker series as request by Commissioners Adams, Gilchrist, Kirsanow and Heriot."
- "I (we) agree to have bipartisan appointments to the Election Assistance Commission"
- "I (we) agree to continue the policy of allowing the filing of Rebuttals and Sur-rebuttals to Commission Reports voted on by Commissioners."

From: Norma Cantu
Sent: Friday, April 16, 2021 10:26 AM
To: Mauro Morales <mmorales@usccr.gov>
Subject: FW: Speaker Series---memorializing that we completed negotiations

See below

From: Norma Cantu <ncantu@usccr.gov>
Date: Friday, April 16, 2021 at 9:23 AM
To: Gail Heriot <gheriot@usccr.gov>, Norma Cantú <normavcantu@gmail.com>
Cc: Peter Kirsanow <pkirsanow@beneschlaw.com>, Peter Kirsanow " <michael@michaelyaki.com>
Subject: Re: Speakers Series

Yes, Gail, Peter,
I have kept circling back to the Progressive Caucus on all the items, from the proposals first raised in February, to the one we drafted last night.

Last night, at 8:30, I thought we had an agreement on all the concepts. This is because we withdrew the language of no objection from the Conservative Caucus about language to the Vice Chair. You withdrew the language on needing to complete the SACs language before the Chair vote. We also made a concession to a last-minute request about Commissioners observing and participating in OCRE content interviews.

Earlier this week, in response to your request for A-Is, Michael gave you and Peter the language for A-Is on the 30/30/10 and for Commission appointments. Michael told you and Peter these were the only A -I s. I can share with you the Progressive Caucus would not consider any other A-s as necessary to proceed to the Chair vote. Putting form over substance is causing unnecessary delay. As an alternative, we had told you and Peter that oral statements on the record would suffice to memorialize the other agreements.

We are ready to discuss and vote on the items you proposed at the business meeting today. But, if not handled and decided today by Progressives and Conservatives together,

AMERICAN OVERSIGHT

all our concessions are withdrawn.
Norma V. Cantu

From: Gail Heriot <gheriot@usccr.gov>
Date: Friday, April 16, 2021 at 9:03 AM
To: Norma Cantu <ncantu@usccr.gov>, Norma Cantú <normavcantu@gmail.com>
Cc: Peter Kirsanow <pkirsanow@beneschlaw.com>, Peter Kirsanow <pkirsanow@usccr.gov>
Subject: Re: Speakers Series

Norma—What about the rest of the things on the list? Is the Progressive Caucus ready to vote on all of them? Or should the meeting be put off?

The conservatives are not inclined to negotiate further at the meeting. We are happy to get this done by notational vote if that allows the progressives the time they need to absorb all this.

Gail Heriot
Professor of Law
University of San Diego

> On Apr 15, 2021, at 7:36 PM, Norma Cantu <ncantu@usccr.gov> wrote:
>
> Good
> Norma
>
> ---
>
> **From:** Gail Heriot <gheriot@usccr.gov>
> **Date:** Thursday, April 15, 2021 at 8:22 PM
> **To:** Norma Cantú <normavcantu@gmail.com>, Norma Cantu <ncantu@usccr.gov>
> **Subject:** Speakers Series
>
> Norma— I think that the members of the conservative caucus are satisfied that this will work for the speakers series. I'm working on the other issues.
> Gail

DRAFT: Email from Commissioner Norma V. Cantú Rescinding the Speakers Series Activity Conducted at Commissioners' Meetings:
April 16, 2021

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I write to rescind any directives concerning a "Speakers Series" activity conducted during meetings of the Commission. I understand the Speakers Series was announced by email from a chairperson, not memorialized in any A-I or other rule. In light of several Commissioners' concerns that the activity should have included Commissioner input on speakers from both parties, I express my serious commitment to not reinstitute this activity. If it happens that a majority of the Commissioners were to consent in the future to support this endeavor by a majority vote of the members of the Commission, I wouldpersonally ascertain whether the proposed speaker would be bipartisan in the number of speakers or timing and scheduling of speakers; and if it is not, while I am on the Commission, I will vote against this proposal.

Gail Heriot
Professor of Law
University of San Diego

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Date : 4/20/2021 9:34:36 AM
From : "Irena Vidulovic" ividulovic@usccr.gov
To : "Debo P. Adegbile" dadegbile@usccr.gov, "Adegbile, Debo" Debo.Adegbile@wilmerhale.com
Cc : "Zervoudis, Flor" Flor.Zervoudis@wilmerhale.com
Subject : TO DO + USCCR Updates
Attachment : AI on Appointment Authority (general and EAC) AR notes (1).docx;AI Letter to the Staff Director.docx;

Good Morning Adegbile,

Please see the updated TO DO list for this week, the AI information and USCCR updates.

TO DO LIST:

1. Letter to the Staff Director from all Commissioner's regarding making all the AI's available electronically in one place. Please see the letter attached that all the SA's worked on. Once we get the green light from all the Commissioners we can send to the Staff Director.
2. Review the attached EAC AI that is redlined. Please add any additional thoughts or approve as is so we can share with the rest of the caucus.
3. Scheduling an April 30th business meeting at noon. Will send a calendar invitation, we also need to schedule a caucus meeting on Tuesday, April 27th at 3pm ET.

AI's

EAC appointing authority (redline attached)

- We have worked on the language that you emphasized during the calls.
- That the Chairperson still retains the authority to appoint with the consultation from Commissioners.
- That the Commissioners selected by respective caucus are willing and able to serve
- Finally, should the person by the choosing party not be able to serve, the chairperson shall be free to choose any other member of the Commission, including said chairperson, to serve on the U.S. Election Assistance Commission

The other 2 AI's will be reviewed by OGC and OCRE because it requires their input. However both of the AI have been non-starters for you and Dave.

OCRE Witness Interviews

The R's are wanting to attend interviews that OCRE conducts in order to obtain information for our investigations. Such interviews were conducted for the Sub-Minimum Wages, as well as for Bail Reform.

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- ADA requirements for interviews may not allow for this
- Bail reform interviews also conducted with focus jurisdictions
- Statutory requirements for separation of staff and Commissioners – GC to weigh in.

Panelist requests for briefings

- Explanations from OCRE on why panelists are not being invited
- What do our current AI's and rules require for Commissioner recommendations to be invited
- Resources may not be used effectively if we institute this system
- Need to preserve the independence of the agency

USCCR Updates:

- FEMA/Puerto Rico

  * The notational vote passed
  * FEMA panelist recommendations + briefing book recommendations. The panelist recommendations were due by this Friday, April 2nd. There were numerous recommendations from Irena, Alex, John Mashburn. Carissa and Thomas had one recommendation.
  * OCRE send the invitations last week. No confirmations to date. Irena spoke to Jason and has some updates.

- Commissioners may need to assist in getting the invitations to the principals – particularly Congressman Peters. Irena to update

  Briefing book recommendations are due on Friday, May 7th.
  * Virtual briefing moved to June 25
  * 2 site visits scheduled - Houston 11/19/21, Puerto Rico 12/10/21
  * Third briefing planning meeting will take place on Tuesday, April 20th at 11am ET.

  Bail Reform

  * Kladney/Amy negotiations with R's ongoing
  * Oregon SAC had their last briefing on Friday 12/11, Catherine attended. Rukku shared briefing notes with OCRE in the comments on the first draft.

- Draft coming on 4/26

  Maternal Health

  * OCRE, Debo and Irena met last week to discuss the final draft. Productive meeting, Irena to update the caucus.
  * Focus on Chapter 3 – Federal response, as area for potential bi-partisan consensus
  * New HHS leadership – OCRE sent HHS and CDC targeted questions for affected agency review
  * Need current data for programs that received funding
  * OCRE sent updated ROG's to HHS and also sent the draft report for agency review two weeks ago. No response from HHS, Irena advised

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Nick and OCRE to reach out to panelist including Congresswoman Ayanna Pressley and ask them to put pressure on HHS to respond especially since it was Black Maternal Health week last week and HHS and CDC was participating in all these various events with the partner organizations. Irena will follow up with OCRE this week and see if she can share what OCRE sent and to which programs
    * Final draft coming to Commissioners in May
    * 3 weeks to return edits before vote in June
    * Irena discussing with Republicans whether they will support

Broken Promises pandemic update

* Senator Warren's office has reached out to Irena to schedule a meeting this week on the report update + will invite Julie to the meeting.
* Interested to find out spokesperson for Commission. Irena provided public material and
* Pursue social media strategy using briefing video/materials
* Can we generate clips from the briefing video, into individual panelist testimony or other excerpts? **Irena to reach out to Ang.
* Revisit when we discuss project planning re FY22? (/FEMA, Comm. Adams' proposal, etc.).

Follow ups with Mauro

* The SA's have requested a follow up meeting with Mauro, we were trying to reinstitute the bi-weekly meetings, Mauro has cancelled our April 20th meeting. However Mauro has not been amenable to meeting, our last SA Meeting was held on 3/23.
* Mauro scheduled the meeting with the SA's next week on Tuesday, April 20th at 3pm. Juana you need to be added to the calendar invitation.
* The items raised at the last meeting for which we don't have updates:
    * AI's available online
    * Commissioner IT needs
    * Website update
    * Budget priorities
        * Forward funding for site visits in Puerto Rico and Texas
        * Regional staffing – at least one staffer for territory SACs
        * IT and website
    * SAC letters

Other outstanding items for all SA's

* AI 5-9
    * OCG provided redline and comments for Commissioner consideration for standards for removal for SAC members and procedures the Commission should adopt
* Project proposals
* "Balance" SAC AI?
* Expired SACs (14)

Project proposals for FY21/22

* Rukku checked with John to see if Commissioner Adams will submit new project proposals. John is working with Commissioner Adams on project priorities and check back on timeline. Rukku to follow up with John this week.
* John (at all SA meeting) said that Comm. Adams had a proposal, so Rukku

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will generate a timeline for consideration.
* We will proceed with the FEMA Project as the FY22 statutory enforcement report.
* Need a new FY22 project planning calendar – Rukku generated the program planning schedule with emphasis on time early in the process for bipartisan discussion.

Personnel

* OCRE Director - posting closed. Interviews completed and offer should be going out soon.
* Commission on Black Man and Boys - posting closed + interviews scheduled
* Two regional positions for civil rights analysts – closes 3/31
* Summer 2021 interns – Irena hired a spring intern. Amy hired Clara Malkin – to start 5/24
* Irena's intern Alana Thomas started on March 16th Alana Thomas is currently a second year law student at Georgetown. She is currently pursuing a Master of Public Policy degree from Loyola University Chicago, and received her BS in Psychology from Virginia Tech. Alana has focused her studies on affordable housing and race in law. She currently serves as the Vice President of Marketing Strategy at Citi. Alana is from Chicago, and will be supporting Commissioner Adegbile
* Fulbright fellows – Media fellow recommendation for Ang.
    * Ang hired a Fullbright fellow!

Commission on the Social Status of Black Men and Boys

* Was signed into law, more details to come on what this means.
* Appointments from White House
* Call rescheduled with Congresswoman Wilson
* Women/Girls bill?

Irena Vidulovic
Special Assistant to Commissioner Debo P. Adegbile
U.S. Commission on Civil Rights
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ividulovic@usccr.gov
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Washington D.C. 20425

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ADMINISTRATIVE INSTRUCTION __- __

COMMISSION APPOINTMENTS TO OTHER FEDERAL ENTITIES

Section 1.

.01 Any authority specifically granted the Commission of Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc. shall be exercised by the Commission Chairperson in consultation with all members of the commission.~~as a whole by majority vote~~.

Section 2

.02

(1) For the two (2) appointments to the U.S. Election Assistance Commission, the members appointed by Democratic authorities shall nominate two individuals of their membership that are ready willing and able to serve, and the members appointed by the Republican authorities shall nominate two individuals of their membership that are ready willing and able to serve.

(2) The members appointed by the Democratic authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Democratic authorities.

(3) Should the person by the choosing party not be able to serve, the chairperson shall be free to choose any other member of the Commission, including said chairperson, to serve on the U.S. Election Assistance Commission/

(~~3~~4) ~~————~~ The members selected shall be placed in nomination and ratified in conformance with Section 1.

NOTE: I don't see the AI for the rebuttal/surrebuttal,…but I will not vote for it if that crap stays in their about understanding the individual commissioners point-of-vote or vote.

Commented [1]:
Past practice has been that the Chair makes these appointments. This reduces the power of the Chair.

We should find out all the boards and other groups the Commission appoints to in order to understand the full scope of what appointing authority the Chair is relinquishing

Commented [2]:
These requirements do not belong in an AI to be binding on all future compositions of the Commission. If Norma wants to agree to this process for the current appointments, that would be understandable since we are currently 4-4. In the future, if the Commission is 6-2 again, it would be less understandable to give 2 Commissioners this much control.

Alternative: Create a rule committing to bipartisan

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UNITED STATES COMMISSION ON CIVIL RIGHTS

1331 Pennsylvania Avenue, NW• Suite 1150 • Washington, DC 20425 www.usccr.gov

April 15, 2021

Mauro Morales
Staff Director
1331 Pennsylvania Ave NW
Washington, DC 20425

Dear Mr. Morales:

We, the undersigned Commissioners, write today to request the promulgation of a searchable digital collection of the Commission's Administrative Instructions (AIs). In order to efficiently serve as Commissioners, we must have easy access to the AIs. Thus, we request that you provide us with the following:

- One updated digital file containing every AI that is in effect, in its proper order, and with the date and manner of each AI's ratification
- Physical copies of that digital file by request

The general counsel has sent some of this information piece-by-piece via email to us over the past few weeks. But those AIs have not been updated or organized, and they have not been collected into a single digital document. As matters stand, accessing the AIs requires that we attempt to assemble a complete list from the documents we have been sent piecemeal. Thus, this effort is inadequate.

This is simply a matter of good governance. Please provide us with a timeline for completion of the above tasks.

Sincerely,

AMERICAN OVERSIGHT

Date : 7/28/2021 11:30:30 AM
From : "Mauro Morales" mmorales@usccr.gov
To : "Commissioners" Commissioners@usccr.gov
Cc : "David Ganz" dganz@usccr.gov, "CommissionerAssistants" CommissionerAssistants@usccr.gov
Subject : Commissioner Appointments to the Election Assistance Commission
Attachment : image001.gif;image002.gif;

Dear Commissioners-

At the request and in consultation with the Chair, I am sending this email to start the EAC nomination process for Commissioners.

Per the AI voted on during the April 30th meeting (language included below), each caucus is requested to submit two candidates for consideration by COB Friday, July 30, 2021. Once the names are submitted, OGC will conduct an ethics check to be completed by Wednesday, August 4, 2021. Each caucus will then have 24 hours to submit caucus strikes (Thursday, August 5, 2021 COB). The Chair will communicate the two names to EAC no later than Friday, August 6, 2021.

Please let the Chair or I know if you have any questions or concerns.

--
AI language:

Section 1.
.01 Any authority specifically granted the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Commission as a whole by majority vote.

.02 Any authority specifically granted the Staff Director of the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Staff Director.

.03 Any authority specifically granted the Chair of the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Chair.

Section 2
.02
(1) For the two (2) appointments to the U.S. Election Assistance Commission, the members appointed by Democratic authorities shall nominate two individuals who are ready, willing, and able to serve, and the members appointed by the

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Republican authorities shall nominate two individuals who are ready, willing, and able to serve.

(2) The members appointed by the Democratic authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Democratic authorities

(3) The members selected shall be placed in nomination and ratified in conformance with Section 1.

Mauro Morales
Staff Director
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Mmorales@usccr.gov
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Washington D.C. 20425

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Date : 7/28/2021 12:27:44 PM
From : "Norma Cantu" ncantu@usccr.gov
To : "Mauro Morales" mmorales@usccr.gov
Cc : "Juana Silverio" jsilverio@usccr.gov
Subject : RE: Commissioner Appointments to the Election Assistance Commission
Attachment : image001.gif;image002.gif;

Thank you. I expect the Commissioners will ask for more time, so be prepared a couple of days of extension, without checking back in with me.
Norma

From: Mauro Morales <mmorales@usccr.gov>
Sent: Wednesday, July 28, 2021 10:31 AM
To: Commissioners <Commissioners@usccr.gov>
Cc: David Ganz <dganz@usccr.gov>; CommissionerAssistants <CommissionerAssistants@usccr.gov>
Subject: Commissioner Appointments to the Election Assistance Commission

Dear Commissioners-

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Please let the Chair or I know if you have any questions or concerns.

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AI language:

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.02

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(3) The members selected shall be placed in nomination and ratified in conformance with Section 1.

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Date : 7/28/2021 12:28:29 PM
From : "Mauro Morales" mmorales@usccr.gov
To : "Norma Cantu" ncantu@usccr.gov
Cc : "Juana Silverio" jsilverio@usccr.gov
Subject : RE: Commissioner Appointments to the Election Assistance Commission
Attachment : image001.gif;image002.gif;

Sounds good and will do.

From: Norma Cantu <ncantu@usccr.gov>
Sent: Wednesday, July 28, 2021 12:28 PM
To: Mauro Morales <mmorales@usccr.gov>
Cc: Juana Silverio <jsilverio@usccr.gov>
Subject: RE: Commissioner Appointments to the Election Assistance Commission

Thank you. I expect the Commissioners will ask for more time, so be prepared a couple of days of extension, without checking back in with me.
Norma

From: Mauro Morales <mmorales@usccr.gov>
Sent: Wednesday, July 28, 2021 10:31 AM
To: Commissioners <Commissioners@usccr.gov>
Cc: David Ganz <dganz@usccr.gov>; CommissionerAssistants <CommissionerAssistants@usccr.gov>
Subject: Commissioner Appointments to the Election Assistance Commission

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Please let the Chair or I know if you have any questions or concerns.

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Section 2
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(1) For the two (2) appointments to the U.S. Election Assistance Commission, the members appointed by Democratic authorities shall nominate two individuals who are ready, willing, and able to serve, and the members appointed by the Republican authorities shall nominate two individuals who are ready, willing, and able to serve.

(2) The members appointed by the Democratic authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Democratic authorities

(3) The members selected shall be placed in nomination and ratified in conformance with Section 1.

Mauro Morales
Staff Director
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Washington D.C. 20425

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Date : 7/28/2021 1:29:54 PM
From : "Amy Royce" aroyce@usccr.gov
To : "Juana Silverio" jsilverio@usccr.gov, "Alec Deull" adeull@usccr.gov, "Irena Vidulovic" ividulovic@usccr.gov
Subject : FW: Commissioner Appointments to the Election Assistance Commission
Attachment : image001.gif;image002.gif;

Hey Juana,
Should we send any nominations to you? When would you like them by?
Thanks,
Amy

From: Mauro Morales <mmorales@usccr.gov>
Sent: Wednesday, July 28, 2021 11:31 AM
To: Commissioners <Commissioners@usccr.gov>
Cc: David Ganz <dganz@usccr.gov>; CommissionerAssistants <CommissionerAssistants@usccr.gov>
Subject: Commissioner Appointments to the Election Assistance Commission

Dear Commissioners-

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Please let the Chair or I know if you have any questions or concerns.

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AI language:

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Date : 7/28/2021 3:39:08 PM
From : "Juana Silverio" jsilverio@usccr.gov
To : "Amy Royce" aroyce@usccr.gov, "Alec Deull" adeull@usccr.gov, "Irena Vidulovic" ividulovic@usccr.gov
Subject : RE: Commissioner Appointments to the Election Assistance Commission
Attachment : image001.gif;image002.gif;

Please send to me and chair, cc mauro but the Chair will be managing the names. She suggested an ethics check hence why they are going to OGC.

Friday is what we stated but whenever before then you are ready to submit please do.

From: Amy Royce <aroyce@usccr.gov>
Sent: Wednesday, July 28, 2021 1:30 PM
To: Juana Silverio <jsilverio@usccr.gov>; Alec Deull <adeull@usccr.gov>; Irena Vidulovic <ividulovic@usccr.gov>
Subject: FW: Commissioner Appointments to the Election Assistance Commission

Hey Juana,
Should we send any nominations to you? When would you like them by?
Thanks,
Amy

From: Mauro Morales <mmorales@usccr.gov>
Sent: Wednesday, July 28, 2021 11:31 AM
To: Commissioners <Commissioners@usccr.gov>
Cc: David Ganz <dganz@usccr.gov>; CommissionerAssistants <CommissionerAssistants@usccr.gov>
Subject: Commissioner Appointments to the Election Assistance Commission

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Please let the Chair or I know if you have any questions or concerns.

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(3) The members selected shall be placed in nomination and ratified in conformance with Section 1.

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Date : 7/28/2021 4:24:01 PM
From : "David Ganz" dganz@usccr.gov
To : "Pilar McLaughlin" pmclaughlin@usccr.gov
Subject : FW: Commissioner Appointments to the Election Assistance Commission
Attachment : image001.gif;image002.gif;

The April 30, AI doesn't set out a vetting or ethics process.

From: Mauro Morales <mmorales@usccr.gov>
Sent: Wednesday, July 28, 2021 11:31 AM
To: Commissioners <Commissioners@usccr.gov>
Cc: David Ganz <dganz@usccr.gov>; CommissionerAssistants <CommissionerAssistants@usccr.gov>
Subject: Commissioner Appointments to the Election Assistance Commission

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Date : 7/30/2021 11:54:45 AM
From : "Alec Deull" adeull@usccr.gov
To : "Mauro Morales" mmorales@usccr.gov, "Norma Cantu" ncantu@usccr.gov, "Juana Silverio" jsilverio@usccr.gov
Subject : Re: Commissioner Appointments to the Election Assistance Commission
Attachment : image001.gif;image002.gif;

hello All --

Please be advised that Commissioner Yaki nominates himself for an additional term on the EAC.

all best, Alec

From: Mauro Morales
Sent: Wednesday, July 28, 2021 11:30:30 AM
To: Commissioners
Cc: David Ganz; CommissionerAssistants
Subject: Commissioner Appointments to the Election Assistance Commission

Dear Commissioners-

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AMERICAN OVERSIGHT

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Date : 8/2/2021 4:57:22 PM
From : "David Ganz" dganz@usccr.gov
To : "Mauro Morales" mmorales@usccr.gov
Subject : RE: Commissioner Appointments to the Election Assistance Commission
Attachment : image001.gif;image002.gif;

You don't need to attend to attend this tomorrow.

From: Juana Silverio <jsilverio@usccr.gov>
Sent: Monday, August 2, 2021 4:43 PM
To: David Ganz <dganz@usccr.gov>; Norma Cantu <ncantu@usccr.gov>
Cc: Pilar McLaughlin <pmclaughlin@usccr.gov>; Mauro Morales <mmorales@usccr.gov>
Subject: RE: Commissioner Appointments to the Election Assistance Commission

Would you like to send the zoom or shall we?

From: David Ganz <dganz@usccr.gov>
Sent: Monday, August 2, 2021 4:13 PM
To: Juana Silverio <jsilverio@usccr.gov>; Norma Cantu <ncantu@usccr.gov>
Cc: Pilar McLaughlin <pmclaughlin@usccr.gov>; Mauro Morales <mmorales@usccr.gov>
Subject: RE: Commissioner Appointments to the Election Assistance Commission

Tomorrow at noon works for us.

From: Juana Silverio <jsilverio@usccr.gov>
Sent: Monday, August 2, 2021 3:45 PM
To: David Ganz <dganz@usccr.gov>; Norma Cantu <ncantu@usccr.gov>
Cc: Pilar McLaughlin <pmclaughlin@usccr.gov>; Mauro Morales <mmorales@usccr.gov>
Subject: RE: Commissioner Appointments to the Election Assistance Commission

Does noon EST (11a CST) Work?

From: Juana Silverio
Sent: Monday, August 2, 2021 3:41 PM
To: David Ganz <dganz@usccr.gov>; Norma Cantu <ncantu@usccr.gov>
Cc: Pilar McLaughlin <pmclaughlin@usccr.gov>; Mauro Morales <mmorales@usccr.gov>
Subject: RE: Commissioner Appointments to the Election Assistance Commission

Hi David- this wasn't an EAC request. Rather it is the request of the Chair to include it in our process.

I will get times for you.

Juana

From: David Ganz <dganz@usccr.gov>
Sent: Monday, August 2, 2021 2:24 PM
To: Juana Silverio <jsilverio@usccr.gov>; Norma Cantu <ncantu@usccr.gov>

AMERICAN OVERSIGHT

Cc: Pilar McLaughlin <pmclaughlin@usccr.gov>; Mauro Morales <mmorales@usccr.gov>
Subject: RE: Commissioner Appointments to the Election Assistance Commission

Hi Juana and Chair Cantu,

In the past few days I have received several emails about the EAC appointments. I understand that one of the caucuses hasn't finalized its two selections as outlined in the below AI and Mauro' email. The 'ethics check' isn't prescribed by the below AI. OGC held a call with General Counsel of the EAC and would like to meet with you to discuss the requested ethics check. What is your availability tomorrow and Wednesday? Thanks,

David

From: Mauro Morales <mmorales@usccr.gov>
Sent: Wednesday, July 28, 2021 11:31 AM
To: Commissioners <Commissioners@usccr.gov>
Cc: David Ganz <dganz@usccr.gov>; CommissionerAssistants <CommissionerAssistants@usccr.gov>
Subject: Commissioner Appointments to the Election Assistance Commission

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AMERICAN OVERSIGHT

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Section 2
.02

(1) For the two (2) appointments to the U.S. Election Assistance Commission, the members appointed by Democratic authorities shall nominate two individuals who are ready, willing, and able to serve, and the members appointed by the Republican authorities shall nominate two individuals who are ready, willing, and able to serve.

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(3) The members selected shall be placed in nomination and ratified in conformance with Section 1.

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Date : 8/3/2021 10:34:41 AM
From : "Mauro Morales" mmorales@usccr.gov
To : "David Ganz" dganz@usccr.gov
Subject : RE: Commissioner Appointments to the Election Assistance Commission
Attachment : image001.gif;image002.gif;

I will just to listen. I let you and Juana drive the meeting.

From: David Ganz <dganz@usccr.gov>
Sent: Monday, August 2, 2021 4:57 PM
To: Mauro Morales <mmorales@usccr.gov>
Subject: RE: Commissioner Appointments to the Election Assistance Commission

You don't need to attend to attend this tomorrow.

From: Juana Silverio <jsilverio@usccr.gov>
Sent: Monday, August 2, 2021 4:43 PM
To: David Ganz <dganz@usccr.gov>; Norma Cantu <ncantu@usccr.gov>
Cc: Pilar McLaughlin <pmclaughlin@usccr.gov>; Mauro Morales <mmorales@usccr.gov>
Subject: RE: Commissioner Appointments to the Election Assistance Commission

Would you like to send the zoom or shall we?

From: David Ganz <dganz@usccr.gov>
Sent: Monday, August 2, 2021 4:13 PM
To: Juana Silverio <jsilverio@usccr.gov>; Norma Cantu <ncantu@usccr.gov>
Cc: Pilar McLaughlin <pmclaughlin@usccr.gov>; Mauro Morales <mmorales@usccr.gov>
Subject: RE: Commissioner Appointments to the Election Assistance Commission

Tomorrow at noon works for us.

From: Juana Silverio <jsilverio@usccr.gov>
Sent: Monday, August 2, 2021 3:45 PM
To: David Ganz <dganz@usccr.gov>; Norma Cantu <ncantu@usccr.gov>
Cc: Pilar McLaughlin <pmclaughlin@usccr.gov>; Mauro Morales <mmorales@usccr.gov>
Subject: RE: Commissioner Appointments to the Election Assistance Commission

Does noon EST (11a CST) Work?

From: Juana Silverio
Sent: Monday, August 2, 2021 3:41 PM
To: David Ganz <dganz@usccr.gov>; Norma Cantu <ncantu@usccr.gov>
Cc: Pilar McLaughlin <pmclaughlin@usccr.gov>; Mauro Morales <mmorales@usccr.gov>
Subject: RE: Commissioner Appointments to the Election Assistance Commission

Hi David- this wasn't an EAC request. Rather it is the request of the Chair to include it in our process.

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I will get times for you.

Juana

From: David Ganz <dganz@usccr.gov>
Sent: Monday, August 2, 2021 2:24 PM
To: Juana Silverio <jsilverio@usccr.gov>; Norma Cantu <ncantu@usccr.gov>
Cc: Pilar McLaughlin <pmclaughlin@usccr.gov>; Mauro Morales <mmorales@usccr.gov>
Subject: RE: Commissioner Appointments to the Election Assistance Commission

Hi Juana and Chair Cantu,

In the past few days I have received several emails about the EAC appointments. I understand that one of the caucuses hasn't finalized its two selections as outlined in the below AI and Mauro' email. The 'ethics check' isn't prescribed by the below AI. OGC held a call with General Counsel of the EAC and would like to meet with you to discuss the requested ethics check. What is your availability tomorrow and Wednesday? Thanks,

David

From: Mauro Morales <mmorales@usccr.gov>
Sent: Wednesday, July 28, 2021 11:31 AM
To: Commissioners <Commissioners@usccr.gov>
Cc: David Ganz <dganz@usccr.gov>; CommissionerAssistants <CommissionerAssistants@usccr.gov>
Subject: Commissioner Appointments to the Election Assistance Commission

Dear Commissioners-

At the request and in consultation with the Chair, I am sending this email to start the EAC nomination process for Commissioners.

Per the AI voted on during the April 30th meeting (language included below), each caucus is requested to submit two candidates for consideration by COB Friday, July 30, 2021. Once the names are submitted, OGC will conduct an ethics check to be completed by Wednesday, August 4, 2021. Each caucus will then have 24 hours to submit caucus strikes (Thursday, August 5, 2021 COB). The Chair will communicate the two names to EAC no later than Friday, August 6, 2021.

Please let the Chair or I know if you have any questions or concerns.

--
AI language:

Section 1.
.01 Any authority specifically granted the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be

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exercised by the Commission as a whole by majority vote.

.02 Any authority specifically granted the Staff Director of the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Staff Director.

.03 Any authority specifically granted the Chair of the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Chair.

Section 2
.02

(1) For the two (2) appointments to the U.S. Election Assistance Commission, the members appointed by Democratic authorities shall nominate two individuals who are ready, willing, and able to serve, and the members appointed by the Republican authorities shall nominate two individuals who are ready, willing, and able to serve.

(2) The members appointed by the Democratic authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Democratic authorities

(3) The members selected shall be placed in nomination and ratified in conformance with Section 1.

Mauro Morales
Staff Director
U.S. Commission on Civil Rights
P: 202-376-7796| F: 202-376-7672
Mmorales@usccr.gov
http://usccr.gov/
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425

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Date : 8/6/2021 1:24:52 PM
From : "Mauro Morales" mmorales@usccr.gov
To : "Carissa Mulder" CMulder@usccr.gov
Cc : "Juana Silverio" jsilverio@usccr.gov, "David Ganz" dganz@usccr.gov
Subject : RE: EAC Selection
Attachment : image001.gif;image002.gif;

As I understand the AI, each side must make a final selection from the other's two nominations. The final two selections then go forward to be ratified with a vote from all Commissioners.

AI language:

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From: Carissa Mulder
Sent: Friday, August 06, 2021 1:14 PM
To: Mauro Morales <mmorales@usccr.gov>
Cc: Juana Silverio <jsilverio@usccr.gov>; David Ganz <dganz@usccr.gov>
Subject: Re: EAC Selection

Hi Mauro,

Sorry, I thought the vote decision was coming first! I will check with them and let you know. Thanks!

From: Mauro Morales
Sent: Friday, August 6, 2021 12:53:31 PM
To: Carissa Mulder
Cc: Juana Silverio; David Ganz
Subject: EAC Selection

Carissa,

Will the conservative caucus be informing me when they have made their selection of one of the two candidates to the EAC? I have received the selection from the progressive caucus. I intend to announce the selections in a joint email so both sides can see each other's final selection at the same time. I will then schedule a vote to confirm the two selections to send to the EAC. Per the preference of Commissioners, I can schedule the confirming vote either as a notational vote or as a regular vote on August 20th. Thank you for your assistance.

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Washington D.C. 20425

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Date : 8/6/2021 1:41:51 PM
From : "David Ganz" dganz@usccr.gov
To : "Mauro Morales" mmorales@usccr.gov, "Carissa Mulder" CMulder@usccr.gov
Cc : "Juana Silverio" jsilverio@usccr.gov
Subject : Re: EAC Selection
Attachment : image002.gif;image002.gif;image001.gif;

That is my understanding of the Administrative Instruction as well.

From: Mauro Morales <mmorales@usccr.gov>
Sent: Friday, August 6, 2021, 1:24 PM
To: Carissa Mulder
Cc: Juana Silverio; David Ganz
Subject: RE: EAC Selection

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Sent: Friday, August 06, 2021 1:14 PM
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Date : 11/16/2021 12:44:18 PM
From : "David Ganz" dganz@usccr.gov
To : "Angelia Rorison" arorison@usccr.gov
Cc : "Mauro Morales" mmorales@usccr.gov
Subject : FW: EAC Selection
Attachment : image002.gif;image002.gif;image001.gif;image002.jpg;

Below is the email sent out to the SAs and Comms regarding the appointment; if you or Chair Cantu want me to review the statement, I'm happy to do so.

From: David Ganz <dganz@usccr.gov>
Sent: Friday, August 6, 2021 1:42 PM
To: Mauro Morales <mmorales@usccr.gov>; Carissa Mulder <CMulder@usccr.gov>
Cc: Juana Silverio <jsilverio@usccr.gov>
Subject: Re: EAC Selection

That is my understanding of the Administrative Instruction as well.

From: Mauro Morales <mmorales@usccr.gov>
Sent: Friday, August 6, 2021, 1:24 PM
To: Carissa Mulder
Cc: Juana Silverio; David Ganz
Subject: RE: EAC Selection

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Sent: Friday, August 6, 2021 12:53:31 PM
To: Carissa Mulder
Cc: Juana Silverio; David Ganz
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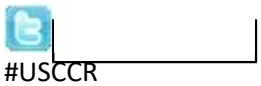
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Date : 11/16/2021 1:15:56 PM
From : "Norma Cantu" ncantu@usccr.gov
To : "Kevin Rayburn" KRayburn@eac.gov
Cc : "Juana Silverio" jsilverio@usccr.gov, "Mauro Morales" mmorales@usccr.gov
Subject : RE: [EXTERNAL] RE: EAC Representative for USCCR

We have our second appointment named, and she will be voted upon during our Friday, November 19th meeting.
We have some press calls. I assume you do, too.
Norma

From: Kevin Rayburn <KRayburn@eac.gov>
Sent: Tuesday, November 16, 2021 8:58 AM
To: Norma Cantu <ncantu@usccr.gov>
Cc: Juana Silverio <jsilverio@usccr.gov>
Subject: [EXTERNAL] RE: EAC Representative for USCCR

> CAUTION: This email is from outside USCCR.

Cantú,

Do you have an anticipated timeline on when the second appointment will be made?

Thanks,

Kevin Rayburn | General Counsel
U.S. Election Assistance Commission
633 3rd Street NW, Suite 200 | Washington, DC 20001
www.eac.gov

From: Kevin Rayburn
Sent: Wednesday, November 3, 2021 11:50 AM
To: 'Norma Cantu' <ncantu@usccr.gov>
Cc: Juana Silverio <jsilverio@usccr.gov>
Subject: RE: EAC Representative for USCCR

Good Morning Chairwoman Cantú,

I am confirming receipt and look forward to receiving the 2nd appointment.

Sincerely,

Kevin Rayburn | General Counsel
U.S. Election Assistance Commission
633 3rd Street NW, Suite 200 | Washington, DC 20001
www.eac.gov

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From: Norma Cantu <ncantu@usccr.gov>
Sent: Wednesday, November 3, 2021 11:27 AM
To: Kevin Rayburn <KRayburn@eac.gov>
Cc: Juana Silverio <jsilverio@usccr.gov>
Subject: EAC Representative for USCCR

Good morning-

Please find one of the 2 representatives for the EAC on behalf of the USCCR. We will forward the second representative shortly.

Thank you.

Norma V. Cantú

Chairwoman, USCCR

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Date : 12/14/2020 10:24:05 AM
From : "Rukku Singla" rsingla@usccr.gov
To : "Irena Vidulovic" ividulovic@usccr.gov, "Alec Deull" adeull@usccr.gov
Subject : Caucus meeting 12/14

Hi all,

Below are my items for check in today. As always, please let me know if you have any additional items.

- Maternal health
  - Ang has access to the YouTube channel, but still needs to be able to download the video (right now because it is a livestream, only the contractor can download the video). Rukku flagged for Mauro, who said he would check in with Ang.
  - OCRE sent out follow up questions to panelists, due by 12/4.
    - Irena sent questions for panelists from caucus.
    - John requested that we find out more information about improving current programs rather than just discussing new programs, and flagged for OCRE.
  - No response from agencies on interrogatories yet. Want to think strategically about where to direct questions (using former officials from our roster of experts).
  - Irena to work with OCRE on timeline for following up on interrogatories in time leading up to affected agency review.
  - Public comment follow up (deadline is 12/14): Irena to work on, Rukku to follow up with other orgs.
  - Debrief meeting scheduled for 12/3 at 11am. Irena and Rukku to follow up with Mauro on media debrief items.
  - Briefing transcript – Irena will follow up with Ang on who should handle
  - Debo and Irena had meeting scheduled with Comm. Gilchrist and Thomas on Wednesday to discuss next steps for maternal health project.
- Bail reform
  - OCRE sent first draft on 11/20. Comments from Commissioners are due on 12/21.
    - Caucus meeting on draft later this week? Thursday morning?
  - Briefing panelist suggestions were due by 12/8. Invitations will go out by 12/14. Briefing will follow same template as maternal health briefing, with 3 virtual panels and one in writing.
    - Rukku shared panelist list as it stood for May briefing.
  - Mauro began briefing planning meetings in December. Meetings will happen every week on Tuesday at 11am.
- FEMA / Puerto Rico
  - Texas SAC is holding briefing on disaster preparedness this month; flagged for OCRE
  - FEMA is holding civil rights stakeholder calls, OCRE will attend to prep
  - Alec and Irena to work together on next steps for planning, including discussing project timeline, outline, and discovery plan. Rukku is happy to help with timeline or other pieces as needed.
    - Irena circulated draft edits to concept paper.

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- SAC recruitment
    - Vermont (expired in June).
        - Mauro circulated slate last week, which included 5 Rs, 5 Ds, and 2 Ind. (including Reed and Martin).
        - Irena updated vet memo and circulated. Note that Bradford Lefavour has no relevant civil rights experience, Irena to check if Debo will object.
            - Debo and Catherine objected, because this objection changed the balance of the slate, Catherine pulled down for 12/4 meeting.
        - Rukku to follow up with Ang and Carissa to see if they have any other leads on recruitment.
    - Colorado: Rukku
        - Slate failed to get a majority vote on Friday 10/30.
        - 12 candidates, 6 Republicans (including one Independent who leans Republican), 6 Democrats (including one Independent who leans Democrat). No particular flags on any candidates.
        - Comm. Heriot had objected to Prof. Chen, on the basis of a recent article that Prof. Chen published called Colorblind Nationalism.
            - Rukku is checking in with Alex on whether Comm. Heriot's objection is ongoing. No update. Rukku to follow up with Alex on Colorado.
    - North Carolina: Irena
        - Slate failed to get a majority vote on Friday 10/30.
        - 15 candidates, 8 Democrats (including two Independents who lean Democrat), 7 Republicans (including one candidate who identified as "something else"). Note that Olga Wright, the returning Chair, identifies herself as a Democrat but ran for public office as a Republican in 2012.
        - Comm. Kirsanow (and Adams) objected to the balance of the slate, and requested that it be shifted to 7 Republicans and 7 Democrats (removing one Dem).
        - They further objected to the inclusion of Jennifer Lechner as they don't consider her a "true Republican." In her stead they would like to replace her with a Mr. Patrick Mincey who Carissa recruited. Replacing Lechner with Mincey takes the gender balance of the slate to 11 men and 4 women. Mincey has no civil rights experience, based on his application and a review of his public record.
        - Potential proposal to move forward: get another R, and add to the slate, to move to a balance of 8-8; added R cannot be Patrick Mincey (no civil rights experience). Rukku to check with Catherine, others to check with bosses. If yes, Rukku will reach out to Thomas to pitch.
        - Thomas raised at all SA meeting. Rukku to follow up with Thomas on potential compromise.
    - Idaho (expired in July).
        - Rukku shared proposal with Carissa: 4 Republicans, 5 Democrats, 1 Independent leaning Democrat, and 1 Independent who leans in no direction. Slate did not include Scott Yenor.
        - From Carissa: They are not willing to move forward with it without Scott Yenor, and it is unbalanced.

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        - Carissa relayed that they continue to not want to move forward without Yenor.
        - Staff wants to confirm that Yenor is still interested in joining, given his published article.
    - District of Columbia 10/20/20 – Alex, Irena
        - (as of 11/10) 10 applicants: 8 men, 2 women; 6 Ds, 3 Rs, 1 something else
        - Need more Rs and better diversity
        - Rukku will raise at all SA meeting, and also raise with Ang
    - Iowa 11/17/20 – Carissa, Amy/Rukku
        - (as of 11/17) 11 applicants: 7 men, 4 women; 5 Ds, 4 Rs, 2 Ind.
        - Need at least one more R.
        - Rukku to check in with Carissa to see if she has any more leads.
    - Ohio 11/17/20 – Carissa, Rukku
        - (as of 11/8) 15 applicants: 10 Ds, 4 Rs, 1 Ind.
        - Need more Rs. Carissa to work on recruitment.
    - Indiana 12/1/20 – Carissa, Irena
        - (as of 11/19) 16 applicants, including: 7 Rs, 4 Ds, 1 Ind.
        - Need more Ds. Rukku to work with Irena on recruitment.
    - New Mexico 12/1/20 – Alex, Amy/Irena/Rukku
        - 5 applicants. Need more candidates.
        - Rukku reached out to Haaland's office for candidates.
    - Wyoming 12/1/20 – Alex, Alec
        - 6 applicants. Need more candidates.
        - Alec to reach out to Sheppard Foundation; if no contact, then can reach out to Marik/OCRE for contact information for Cynthia Deitle.
    - Next slates don't expire until March 2021: Florida, Louisiana, Nebraska, Texas
        - Rukku will assign for recruitment responsibilities for week after Thanksgiving
            - Florida – Irena
            - Louisiana – Rukku
            - Nebraska – Alec
            - Texas – Rukku/Amy
        - Rukku will also draft timelines for January consideration.
            - December: recruitment, encourage people to get in applications before the end of the year
            - Tuesday January 5: circulation of slates
            - Tuesday January 19: objections due
            - Friday January 22: Staff Director makes decisions on final slate
            - Friday January 29: vote on slates
- Broken Promises pandemic update
    - ABA will be reaching out to Catherine to do a webinar on the testimony. Details to come.
    - Pursue social media strategy using briefing video/materials
        - Can we generate clips from the briefing video, into individual panelist testimony or other excerpts. Rukku to check in with Ang.
    - Catherine wants to raise this project again, to see if we can get to common ground with the Republicans. Catherine wants to revisit when we discuss

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project planning re FY22 (/FEMA, Comm. Adams' proposal, etc.).

- Other SAC activity
  - AI 5-9 - SAC member conduct.
    - Rukku and Irena meeting with OGC to discuss proposed revisions to the AI.
    - OGC is reviewing the redline, and will have additional comments / feedback in early January.
  - SAC letters – Rukku is working on moving out of backlog of Commissioner letters sharing publications from SACs
    - Nebraska, Hawaii
    - Project for Staff Director's office?
- Project proposals for FY21/22
  - Catherine tabled this item until next business meeting, not for this business meeting (most likely December, if ready).
  - New proposals for FY22? Dave is working on a proposal. Dave has reached out to Comm. Gilchrist on new topic. Orlando will check in with Dave on the status of a possible collaboration with Commissioner Gilchrist.
  - Rukku checked with John to see if Commissioner Adams will submit new project proposals. John is working with Commissioner Adams on project priorities and check back on timeline. Rukku to follow up with John this week.
    - John (at all SA meeting) said that Comm. Adams had a proposal, so Rukku will generate a timeline for consideration.
  - Rukku to discuss with Catherine about other projects that could garner a majority vote
- December letter of priorities for new Administration / new Congress
  - Orlando to work on research re diversity training
  - Rukku to work on draft of letter
  - Rukku to work on drafts of letters to agency transition teams
- Personnel
  - OGC vacancy – update? Mauro is working to interview candidates for new GC position.
    - Conservative Commissioners had reached out to Mauro to get more information about who had applied for GC; not appropriate as Mauro responded.
  - Summer 2021 interns – Irena and Rukku to follow up based on writing samples this week and finally make the offer. Rukku to create a shared folder and populate all the cover letters and resumes.
    - Rukku and Irena to sign up for GW interviews in January
- Commission on the Social Status of Black Men and Boys was signed into law, more details to come on what this means.
  - Appointments from White House
  - Call scheduled with Congresswoman Wilson
  - Women/Girls bill
- Budget questions
  - Mauro sent out survey for Commissioner IT needs. Rukku to follow up on timing.
  - Website update – contract secured. Update to occur over the next year. Check in with Ang on things moving forward, Rukku to push for SA involvement.

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    - SA computers were shipped in the last couple of weeks.
- Speaker Series
    - Mauro is getting calendar of when ASCD can do Speaker Series events
- Monday.com
    - Ang walked through the platform at all SA meeting
    - Ang will also prompt more office use of it for our next project planning (likely the bail briefing in February)
    - Rukku will start building out project boards
- Election Assistance Commission
    - Question about appointments

Rukku Singla
Special Assistant to Chair Catherine E. Lhamon
U.S. Commission on Civil Rights
1331 Pennsylvania Avenue, NW Suite 1150
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rsingla@usccr.gov
Follow us on Twitter and Facebook

AMERICAN OVERSIGHT

Date : 12/21/2020 10:02:05 AM
From : "Rukku Singla" rsingla@usccr.gov
To : "Alec Deull" adeull@usccr.gov, "Irena Vidulovic" ividulovic@usccr.gov, "Amy Royce" aroyce@usccr.gov
Subject : Caucus meeting today 12/21

Hi all,

Hope everyone is staying safe and warm, and HUGE welcome back to Amy!! Items below for our check in this morning, as always please bring any additional items on your list.

- Maternal health
  - Ang has access to the YouTube channel, but still needs to be able to download the video (right now because it is a livestream, only the contractor can download the video). Rukku flagged for Mauro, who said he would check in with Ang.
  - OCRE sent out follow up questions to panelists, due by 12/4.
    - Irena sent questions for panelists from caucus.
    - John requested that we find out more information about improving current programs rather than just discussing new programs, and flagged for OCRE.
  - No response from agencies on interrogatories yet. Want to think strategically about where to direct questions (using former officials from our roster of experts).
  - Irena to work with OCRE on timeline for following up on interrogatories in time leading up to affected agency review.
  - Irena and Rukku to follow up with Mauro on media debrief items.
  - Briefing transcript – Rukku flagged for Mauro/Kathy, Kathy said that Nick would handle.
  - Debo and Irena had meeting with Comm. Gilchrist and Thomas to discuss next steps for maternal health project.
- Bail reform
  - OCRE sent first draft on 11/20. Comments from Commissioners are due on 12/21.
    - Caucus met on Thursday to discuss draft, comments are due today. Rukku circulated redline and draft high level comments on Friday, revised redline and comments to come later today.
  - Briefing panelist suggestions were due by 12/8. Invitations will go out by 12/14. Briefing will follow same template as maternal health briefing, with 3 virtual panels and one in writing.
    - Rukku shared panelist list as it stood for May briefing.
    - Rukku met with OCRE on Friday to go over panel composition, and arrived at a final initial list. Invitations were sent out last week, and we have four confirmations already. Rukku will send update tomorrow after meeting with OCRE.
  - Mauro began briefing planning meetings in December. Meetings will happen every week on Tuesday at 11am.
  - Briefing will be on Friday 2/26 from 10am – 2pm. Test will be on Tuesday 2/23, at 1pm ET.

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- Oregon SAC had their last briefing on Friday, Catherine attended. Rukku to share briefing notes with OCRE.

- FEMA / Puerto Rico
  - Texas SAC is holding briefing on disaster preparedness this month; flagged for OCRE
  - FEMA is holding civil rights stakeholder calls, OCRE will attend to prep
  - Alec and Irena to work together on next steps for planning, including discussing project timeline, outline, and discovery plan.
    - Irena circulated draft edits to concept paper. Rukku and Irena to work on timeline draft to send to OCRE; OCRE is working on draft outline and discovery plan that aligns with what Irena circulated for edits to the briefing plan.
  - Revisit meeting transcript from vote at which FEMA was moved out of the FY21 statutory enforcement report spot; what did the Commissioners vote to do?
- SAC recruitment
  - Vermont (expired in June).
    - Mauro circulated slate last week, which included 5 Rs, 5 Ds, and 2 Ind. (including Reed and Martin).
    - Irena updated vet memo and circulated. Note that Bradford Lefavour has no relevant civil rights experience, Irena to check if Debo will object.
      - Debo and Catherine objected, because this objection changed the balance of the slate, Catherine pulled down for 12/4 meeting.
    - Rukku to follow up with Ang and Carissa to see if they have any other leads on recruitment. Ang is working on this. David will also reach out to Lefavour to see if he wants to amend his application to add more about his qualifications to serve on committee.
  - Colorado: Rukku
    - Slate failed to get a majority vote on Friday 10/30.
    - 12 candidates, 6 Republicans (including one Independent who leans Republican), 6 Democrats (including one Independent who leans Democrat). No particular flags on any candidates.
    - Comm. Heriot had objected to Prof. Chen, on the basis of a recent article that Prof. Chen published called Colorblind Nationalism.
      - Rukku is checking in with Alex on whether Comm. Heriot's objection is ongoing. No update. Rukku to follow up with Alex on Colorado.
  - North Carolina: Irena
    - Slate failed to get a majority vote on Friday 10/30.
    - 15 candidates, 8 Democrats (including two Independents who lean Democrat), 7 Republicans (including one candidate who identified as "something else"). Note that Olga Wright, the returning Chair, identifies herself as a Democrat but ran for public office as a Republican in 2012.
    - Comm. Kirsanow (and Adams) objected to the balance of the slate, and requested that it be shifted to 7 Republicans and 7 Democrats (removing one Dem).
    - They further objected to the inclusion of Jennifer Lechner as they don't consider her a "true Republican." In her stead they would like to

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replace her with a Mr. Patrick Mincey who Carissa recruited. Replacing Lechner with Mincey takes the gender balance of the slate to 11 men and 4 women. Mincey has no civil rights experience, based on his application and a review of his public record.
        - Potential proposal to move forward: get another R, and add to the slate, to move to a balance of 8-8; added R cannot be Patrick Mincey (no civil rights experience). Rukku to check with Catherine, others to check with bosses. If yes, Rukku will reach out to Thomas to pitch.
        - Thomas raised at all SA meeting. Rukku spoke to Thomas last week; Thomas proposed that we consider a slate of 9 Republicans (including Lechner) and 8 Democrats, and they would work on recruiting Republicans who would assist with balance of slate with respect to gender and other diversity factors. Catherine's current position is that she will not vote for unbalanced slate with 9 Republicans and 8 Democrats.
    - Idaho (expired in July).
        - Rukku shared proposal with Carissa: 4 Republicans, 5 Democrats, 1 Independent leaning Democrat, and 1 Independent who leans in no direction. Slate did not include Scott Yenor.
        - From Carissa: They are not willing to move forward with it without Scott Yenor, and it is unbalanced.
            - Carissa relayed that they continue to not want to move forward without Yenor.
            - Staff wants to confirm that Yenor is still interested in joining, given his published article.
    - District of Columbia 10/20/20 – Alex, Irena
        - (as of 11/10) 10 applicants: 8 men, 2 women; 6 Ds, 3 Rs, 1 something else
        - Need more Rs and better diversity
        - Rukku will raise at all SA meeting, and also raise with Ang
    - Iowa 11/17/20 – Carissa, Amy/Rukku
        - (as of 11/17) 11 applicants: 7 men, 4 women; 5 Ds, 4 Rs, 2 Ind.
        - Need at least one more R.
        - Rukku to check in with Carissa to see if she has any more leads.
    - Ohio 11/17/20 – Carissa, Rukku
        - (as of 11/8) 15 applicants: 10 Ds, 4 Rs, 1 Ind.
        - Need more Rs. Carissa to work on recruitment.
    - Indiana 12/1/20 – Carissa, Irena
        - (as of 11/19) 16 applicants, including: 8 Rs, 7 Ds, 1 Ind.
        - Might have enough candidates for slate, Irena to review and see if qualified candidates.
    - New Mexico 12/1/20 – Alex, Amy/Irena/Rukku
        - 5 applicants. Need more candidates.
        - Rukku reached out to Haaland's office for candidates, Rukku to follow up.
    - Wyoming 12/1/20 – Alex, Alec
        - 6 applicants. Need more candidates.
        - Alec to reach out to Sheppard Foundation; if no contact, then can reach out to Marik/OCRE for contact information for Cynthia Deitle.

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- Next slates don't expire until March 2021: Florida, Louisiana, Nebraska, Texas
  - Rukku will assign for recruitment responsibilities for week after Thanksgiving
    - Florida – Irena
    - Louisiana – Rukku
    - Nebraska – Alec
    - Texas – Rukku/Amy
  - Rukku will also draft timelines for January consideration.
    - December: recruitment, encourage people to get in applications before the end of the year
    - Tuesday January 5: circulation of slates
    - Tuesday January 19: objections due
    - Friday January 22: Staff Director makes decisions on final slate
    - Friday January 29: vote on slates

- Broken Promises pandemic update
  - ABA will be reaching out to Catherine to do a webinar on the testimony. Details to come.
  - Pursue social media strategy using briefing video/materials
    - Can we generate clips from the briefing video, into individual panelist testimony or other excerpts. Rukku to check in with Ang.
  - Catherine wants to raise this project again, to see if we can get to common ground with the Republicans. Catherine wants to revisit when we discuss project planning re FY22 (/FEMA, Comm. Adams' proposal, etc.).
- Other SAC activity
  - AI 5-9 - SAC member conduct.
    - Rukku and Irena meeting with OGC to discuss proposed revisions to the AI.
    - OGC is reviewing the redline, and will have additional comments / feedback in early January.
  - SAC letters – Rukku is working on moving out of backlog of Commissioner letters sharing publications from SACs
    - Nebraska, Hawaii
    - Project for Staff Director's office?
- Project proposals for FY21/22
  - Catherine tabled this item until next business meeting, not for this business meeting (most likely December, if ready).
  - New proposals for FY22? Dave is working on a proposal. Dave has reached out to Comm. Gilchrist on new topic. Orlando will check in with Dave on the status of a possible collaboration with Commissioner Gilchrist.
  - Rukku checked with John to see if Commissioner Adams will submit new project proposals. John is working with Commissioner Adams on project priorities and check back on timeline. Rukku to follow up with John this week.
    - John (at all SA meeting) said that Comm. Adams had a proposal, so Rukku will generate a timeline for consideration.
  - Rukku to discuss with Catherine about other projects that could garner a majority vote
- December letter of priorities for new Administration / new Congress
  - Orlando to work on research re diversity training

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    - Rukku to work on draft of letter – circulated last week, will aim to get out this week.
    - Rukku to work on drafts of letters to agency transition teams
- Personnel
    - OGC vacancy – update? Mauro is working to interview candidates for new GC position.
        - Conservative Commissioners had reached out to Mauro to get more information about who had applied for GC; not appropriate as Mauro responded.
    - Summer 2021 interns – Irena and Rukku to follow up based on writing samples this week and finally make the offer. Rukku to create a shared folder and populate all the cover letters and resumes.
        - Rukku and Irena to sign up for GW interviews in January
- Commission on the Social Status of Black Men and Boys was signed into law, more details to come on what this means.
    - Appointments from White House
    - Call scheduled with Congresswoman Wilson
    - Women/Girls bill
- Budget questions
    - Mauro sent out survey for Commissioner IT needs. Rukku to follow up on timing.
    - Website update – contract secured. Update to occur over the next year. Check in with Ang on things moving forward, Rukku to push for SA involvement.
    - SA computers were shipped in the last couple of weeks.
    - FY22 budget timeline – John M. emailed Mauro to ask about status
- Speaker Series
    - Mauro shared calendar of when ASCD can do Speaker Series events, we could have one in January. It would be a Zoom direct stream, without a contractor to assist. Ang and Zakee will coordinate, Rukku to follow up with Mauro on more information.
- Monday.com
    - Ang walked through the platform at all SA meeting
    - Ang will also prompt more office use of it for our next project planning (likely the bail briefing in February)
    - Rukku will start building out project boards
- Election Assistance Commission
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AMERICAN OVERSIGHT

Date : 3/2/2021 5:06:10 PM
From : "Pilar McLaughlin" pmclaughlin@usccr.gov
To : "David Ganz" dganz@usccr.gov
Subject : RE: Appointment

Definitely. You want me to take this one?

From: David Ganz <dganz@usccr.gov>
Sent: Tuesday, March 2, 2021 5:01 PM
To: Pilar McLaughlin <pmclaughlin@usccr.gov>
Subject: FW: Appointment

Interesting issue, especially about the Chair's powers.

From: Mauro Morales <mmorales@usccr.gov>
Sent: Tuesday, March 2, 2021 4:36 PM
To: David Ganz <dganz@usccr.gov>
Cc: Norma Cantu <ncantu@usccr.gov>; Pilar McLaughlin <pmclaughlin@usccr.gov>
Subject: Appointment

David,

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Thank you.

Mauro Morales
Staff Director
USCCR

AMERICAN OVERSIGHT

Date : 3/2/2021 4:45:13 PM
From : "David Ganz" dganz@usccr.gov
To : "Mauro Morales" mmorales@usccr.gov
Cc : "Norma Cantu" ncantu@usccr.gov, "Pilar McLaughlin" pmclaughlin@usccr.gov
Subject : RE: Appointment

We will begin working on this legal opinion and reach out to you if we need additional facts/information. Thanks,

David

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Mauro Morales
Staff Director
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AMERICAN OVERSIGHT

Date : 3/2/2021 5:10:41 PM
From : "David Ganz" dganz@usccr.gov
To : "Pilar McLaughlin" pmclaughlin@usccr.gov
Subject : RE: Appointment

Yes please.

Here is the EAC's appointment statute referenced in the letter:
https://www.law.cornell.edu/uscode/text/52/20944

From: Pilar McLaughlin <pmclaughlin@usccr.gov>
Sent: Tuesday, March 2, 2021 5:06 PM
To: David Ganz <dganz@usccr.gov>
Subject: RE: Appointment

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Thank you.

Mauro Morales
Staff Director
USCCR

AMERICAN OVERSIGHT

Date : 3/4/2021 10:15:41 AM
From : "David Ganz" dganz@usccr.gov
To : "Mauro Morales" mmorales@usccr.gov
Subject : RE: Appointment

Does a date of March 10 or 11, for this opinion work for Commissioner Cantu and you?

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Mauro Morales
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AMERICAN OVERSIGHT

Date : 3/4/2021 10:31:28 AM
From : "Pilar McLaughlin" pmclaughlin@usccr.gov
To : "David Ganz" dganz@usccr.gov
Subject : RE: Appointment

Ok.

From: David Ganz <dganz@usccr.gov>
Sent: Thursday, March 4, 2021 10:31 AM
To: Pilar McLaughlin <pmclaughlin@usccr.gov>
Subject: FW: Appointment

Per Mauro, please expediate an opinion and have a draft to me by March 8, around 2 pm. Please make this a priority and let me know what I can handle so you can do this opinion.

From: Mauro Morales <mmorales@usccr.gov>
Sent: Thursday, March 4, 2021 10:29 AM
To: David Ganz <dganz@usccr.gov>
Subject: Re: Appointment

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USCCR

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Date : 3/4/2021 10:34:33 AM
From : "David Ganz" dganz@usccr.gov
To : "Pilar McLaughlin" pmclaughlin@usccr.gov
Subject : RE: Appointment

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From: Pilar McLaughlin <pmclaughlin@usccr.gov>
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To: David Ganz <dganz@usccr.gov>
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We respectfully request a legal opinion on the authority of the Chair to appoint other Commissioners to entities external to the USCCR. In this particular situation, Chair Catherine Lhamon made two appointments to the Election Assistance Commission (EAC). She appointed Commissioner Kladney and Commissioner Yaki to be advisory members in 2019. I believe former Commission Chair Marty Castro made two appointment to the EAC with Commissioners Timmons-Goodson and Commissioner Yaki. In a conversation a few months ago, the general counsel of EAC sent me the attached letter from Adams, Gilchrist, Heriot and Kirsanow. In our conversation the EAC GC informed me that other organizations that make such appointments to the EAC do so in a bipartisan manner. He told me that bipartisan appoints were not a rule or requirement but a best practice. I believe that the appointments to the EAC for the next submission are scheduled for April of 2021 (I believe the appointments are for two year terms). The Republican members of the USCCR wrote a letter to EAC demanding action on the EAC appointments. The four Commissioners have verbally insisted that when Commissioner Cantu becomes Chair that she appoint a Republican Commissioner to the EAC. I believe that Commissioner Cantu is evaluating appointments to the EAC but wants to know her legal authority to do so or whether or not a vote is required to make such appointments. Please be advised that the Staff Director has not been previously involved in the selection or the appoint to the EAC. I am not aware of other such appointments. I have cc'd Pilar because she was the initial contact for this matter several months ago. Commissioner Cantu and I are available for additional consultation if that would be useful to you.

Thank you.

Mauro Morales
Staff Director
USCCR

AMERICAN OVERSIGHT

Date : 3/4/2021 10:28:33 AM
From : "Mauro Morales" mmorales@usccr.gov
To : "David Ganz" dganz@usccr.gov
Subject : Re: Appointment

Since your opinion will serve as a basis for decision making between the Chair and several other Commissioners before we can create the agenda, sooner rather than later is important. If possible a decision by Monday, March 8th would be helpful to her.

Sent from my iPhone

On Mar 4, 2021, at 10:15 AM, David Ganz <dganz@usccr.gov> wrote:

Does a date of March 10 or 11, for this opinion work for Commissioner Cantu and you?

From: Mauro Morales <mmorales@usccr.gov>
Sent: Tuesday, March 2, 2021 4:36 PM
To: David Ganz <dganz@usccr.gov>
Cc: Norma Cantu <ncantu@usccr.gov>; Pilar McLaughlin <pmclaughlin@usccr.gov>
Subject: Appointment

David,

We respectfully request a legal opinion on the authority of the Chair to appoint other Commissioners to entities external to the USCCR. In this particular situation, Chair Catherine Lhamon made two appointments to the Election Assistance Commission (EAC). She appointed Commissioner Kladney and Commissioner Yaki to be advisory members in 2019. I believe former Commission Chair Marty Castro made two appointment to the EAC with Commissioners Timmons-Goodson and Commissioner Yaki. In a conversation a few months ago, the general counsel of EAC sent me the attached letter from Adams, Gilchrist, Heriot and Kirsanow. In our conversation the EAC GC informed me that other organizations that make such appointments to the EAC do so in a bipartisan manner. He told me that bipartisan appoints were not a rule or requirement but a best practice. I believe that the appointments to the EAC for the next submission are scheduled for April of 2021 (I believe the appointments are for two year terms). The Republican members of the USCCR wrote a letter to EAC demanding action on the EAC appointments. The four Commissioners have verbally insisted that when Commissioner Cantu becomes Chair that she appoint a Republican Commissioner to the EAC. I believe that Commissioner Cantu is evaluating appointments to the EAC but wants to know her legal authority to do so or whether or not a vote is required to make such appointments. Please be advised that the Staff Director has not been previously involved in the

AMERICAN OVERSIGHT

selection or the appoint to the EAC. I am not aware of other such appointments. I have cc'd Pilar because she was the initial contact for this matter several months ago. Commissioner Cantu and I are available for additional consultation if that would be useful to you.

Thank you.

Mauro Morales
Staff Director
USCCR

AMERICAN OVERSIGHT

Date : 3/9/2021 12:20:37 PM
From : "Mauro Morales" mmorales@usccr.gov
To : "Pamela Dunston" Pdunston@usccr.gov
Subject : RE: Draft March 19th Business Agenda

Good question. I will spell it out. EAC stand for the Election Assistance Commission.

From: Pamela Dunston <Pdunston@usccr.gov>
Sent: Tuesday, March 9, 2021 12:17 PM
To: Mauro Morales <mmorales@usccr.gov>
Subject: RE: Draft March 19th Business Agenda

Hi Mauro,

Can you tell me what the acronym "EAC" stands for

Thanks.

Sent from my Verizon, Samsung Galaxy smartphone

-------- Original message --------
From: Mauro Morales <mmorales@usccr.gov>
Date: 3/9/21 11:21 AM (GMT-05:00)
To: Pamela Dunston <Pdunston@usccr.gov>, TinaLouise Martin <tmartin@usccr.gov>, David Ganz <dganz@usccr.gov>, Angelia Rorison <arorison@usccr.gov>, Zakee Martin <zmartin@usccr.gov>
Subject: FW: Draft March 19th Business Agenda

All,

I have attached a draft agenda for the March 19th business meeting. Commissioner Cantu is speaking with Commissioners and the agenda may still be adjusted. In the interim, we should acquire the call in phone numbers. Please review for additional needed edits. I will let you know when it is approved for posting.

Maur

From: Mauro Morales
Sent: Tuesday, March 9, 2021 11:16 AM
To: 'ncantu@usccr.gov' <ncantu@usccr.gov>; Norma Cantú <normavcantu@gmail.com>
Subject: Draft March 19th Business Agenda

Norma,

Good morning. Please review this draft business meeting agenda for the March 19th Business meeting. We should post it on our website no later than tomorrow by COB in

AMERICAN OVERSIGHT

order to provide the proper eight day calendar notice required under the Sunshine Act. We also will secure the telephone numbers for the public and also commissioners to call in for the meeting. Please let me know if you have questions or wish to change the agenda. Thank you.

Mauro Morales
Staff Directorlease
USCCR

AMERICAN OVERSIGHT

Date : 7/27/2021 3:44:50 PM
From : "Juana Silverio" jsilverio@usccr.gov
To : "Mauro Morales" mmorales@usccr.gov
Cc : "Norma Cantu" ncantu@usccr.gov
Subject : RE: eac email + rankings
Attachment : image001.gif;image002.gif;image003.gif;

DRAFT EMAIL- EAC

Dear Commissioners-

In consultation with the Chair, I am sending this email to start the EAC nomination process.

Per the AI voted on during the April 30th meeting (language included below), I am asking each caucus to submit two candidates for consideration by COB Friday, July 30, 2021. Once the names are submitted, OGC will conduct an ethics check to be completed by Wednesday, August 4, 2021. Each caucus will then have 24 hours to submit caucus strikes (Thursday, August 5, 2021 COB). The Chair will communicate the two names to EAC no later than Friday, August 6, 2021.

Please let the Chair or I know if you have any questions or concerns.

--
AI language:

Section 1.
.01 Any authority specifically granted the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Commission as a whole by majority vote.

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.02
(1) For the two (2) appointments to the U.S. Election Assistance Commission, the members appointed by Democratic authorities shall nominate two individuals who are ready, willing, and able to serve, and the members appointed by the Republican authorities shall nominate two individuals who are ready, willing, and able to serve.

AMERICAN OVERSIGHT

(2) The members appointed by the Democratic authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Democratic authorities

(3) The members selected shall be placed in nomination and ratified in conformance with Section 1.

From: Mauro Morales <mmorales@usccr.gov>
Sent: Tuesday, July 27, 2021 1:11 PM
To: Juana Silverio <jsilverio@usccr.gov>
Subject: RE: eac email + rankings

Yes, I can do it. Go ahead and draft the email you want and the way you want it.

Yes, on rankings. It has been done but, I am waiting for Irena. Debo's is the only one missing.

From: Juana Silverio <jsilverio@usccr.gov>
Sent: Tuesday, July 27, 2021 12:57 PM
To: Mauro Morales <mmorales@usccr.gov>
Subject: eac email + rankings

Hi Mauro- I spoke to the Chair briefly this morning. Will you be sending out the email to Commissioners asking for the names of their nominees on behalf of the Chair and explaining the process?

Also- can we expect the rankings today?

--
Juana Silverio *(she/her/ella)*
Special Assistant to Commissioner Norma V. Cantú
U.S. Commission on Civil Rights
E: jsilverio@usccr.gov
http://usccr.gov/
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425
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Date : 7/27/2021 6:02:57 PM
From : "Mauro Morales" mmorales@usccr.gov
To : "Juana Silverio" jsilverio@usccr.gov
Cc : "Norma Cantu" ncantu@usccr.gov
Subject : RE: eac email + rankings
Attachment : image004.gif;image005.gif;image006.gif;

Looks good. I will get it out ASAP.

From: Juana Silverio <jsilverio@usccr.gov>
Sent: Tuesday, July 27, 2021 3:45 PM
To: Mauro Morales <mmorales@usccr.gov>
Cc: Norma Cantu <ncantu@usccr.gov>
Subject: RE: eac email + rankings

DRAFT EMAIL- EAC

Dear Commissioners-

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Please let the Chair or I know if you have any questions or concerns.

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AI language:

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Section 2
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(2) The members appointed by the Democratic authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Democratic authorities

(3) The members selected shall be placed in nomination and ratified in conformance with Section 1.

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Sent: Tuesday, July 27, 2021 12:57 PM
To: Mauro Morales <mmorales@usccr.gov>
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Hi Mauro- I spoke to the Chair briefly this morning. Will you be sending out the email to Commissioners asking for the names of their nominees on behalf of the Chair and explaining the process?

Also- can we expect the rankings today?

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Juana Silverio *(she/her/ella)*
Special Assistant to Commissioner Norma V. Cantú
U.S. Commission on Civil Rights
E: jsilverio@usccr.gov
http://usccr.gov/
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425
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Date : 7/28/2021 4:25:00 PM
From : "Pilar McLaughlin" pmclaughlin@usccr.gov
To : "Kevin Rayburn" KRayburn@eac.gov
Cc : "David Ganz" dganz@usccr.gov
Subject : RE: [EXTERNAL] RE: Question about vetting and/or ethics checks of Commission Appointees
Attachment : image001.gif;image002.gif;

Hi Kevin:

How about noon or 1:00 pm?

Pilar

From: Kevin Rayburn <KRayburn@eac.gov>
Sent: Wednesday, July 28, 2021 3:32 PM
To: Pilar McLaughlin <pmclaughlin@usccr.gov>
Subject: [EXTERNAL] RE: Question about vetting and/or ethics checks of Commission Appointees

> CAUTION: This email is from outside USCCR.

Good Afternoon Pilar,

I'm available any time tomorrow and Friday afternoon.

Kevin Rayburn | General Counsel
U.S. Election Assistance Commission
633 3rd Street NW, Suite 200 | Washington, DC 20001
www.eac.gov

From: Pilar McLaughlin <pmclaughlin@usccr.gov>
Sent: Wednesday, July 28, 2021 1:54 PM
To: Kevin Rayburn <KRayburn@eac.gov>
Subject: Question about vetting and/or ethics checks of Commission Appointees

HI Kevin:

We have a few questions regarding whether we have to do an ethics check on our appointees. Do you have time for a quick call this week?

Thanks,
Pilar

Pilar Velasquez McLaughlin
Senior Counsel, Office of the General Counsel
U.S. Commission on Civil Rights

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1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425
https://www.usccr.gov/

Email: pmclaughlin@usccr.gov
Direct: 703.855.8866

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Date : 8/2/2021 2:23:55 PM
From : "David Ganz" dganz@usccr.gov
To : "Juana Silverio" jsilverio@usccr.gov, "Norma Cantu" ncantu@usccr.gov
Cc : "Pilar McLaughlin" pmclaughlin@usccr.gov, "Mauro Morales" mmorales@usccr.gov
Subject : RE: Commissioner Appointments to the Election Assistance Commission
Attachment : image001.gif;image002.gif;

Hi Juana and Chair Cantu,

In the past few days I have received several emails about the EAC appointments. I understand that one of the caucuses hasn't finalized its two selections as outlined in the below AI and Mauro' email. The 'ethics check' isn't prescribed by the below AI. OGC held a call with General Counsel of the EAC and would like to meet with you to discuss the requested ethics check. What is your availability tomorrow and Wednesday? Thanks,

David

From: Mauro Morales <mmorales@usccr.gov>
Sent: Wednesday, July 28, 2021 11:31 AM
To: Commissioners <Commissioners@usccr.gov>
Cc: David Ganz <dganz@usccr.gov>; CommissionerAssistants <CommissionerAssistants@usccr.gov>
Subject: Commissioner Appointments to the Election Assistance Commission

Dear Commissioners-

At the request and in consultation with the Chair, I am sending this email to start the EAC nomination process for Commissioners.

Per the AI voted on during the April 30th meeting (language included below), each caucus is requested to submit two candidates for consideration by COB Friday, July 30, 2021. Once the names are submitted, OGC will conduct an ethics check to be completed by Wednesday, August 4, 2021. Each caucus will then have 24 hours to submit caucus strikes (Thursday, August 5, 2021 COB). The Chair will communicate the two names to EAC no later than Friday, August 6, 2021.

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(3) The members selected shall be placed in nomination and ratified in conformance with Section 1.

Mauro Morales
Staff Director
U.S. Commission on Civil Rights
P: 202-376-7796| F: 202-376-7672
Mmorales@usccr.gov
http://usccr.gov/
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425

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OVERSTOCK

Date : 8/2/2021 3:40:33 PM
From : "Juana Silverio" jsilverio@usccr.gov
To : "David Ganz" dganz@usccr.gov, "Norma Cantu" ncantu@usccr.gov
Cc : "Pilar McLaughlin" pmclaughlin@usccr.gov, "Mauro Morales" mmorales@usccr.gov
Subject : RE: Commissioner Appointments to the Election Assistance Commission
Attachment : image001.gif;image002.gif;

Hi David- this wasn't an EAC request. Rather it is the request of the Chair to include it in our process.

I will get times for you.

Juana

From: David Ganz <dganz@usccr.gov>
Sent: Monday, August 2, 2021 2:24 PM
To: Juana Silverio <jsilverio@usccr.gov>; Norma Cantu <ncantu@usccr.gov>
Cc: Pilar McLaughlin <pmclaughlin@usccr.gov>; Mauro Morales <mmorales@usccr.gov>
Subject: RE: Commissioner Appointments to the Election Assistance Commission

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David

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To: Commissioners <Commissioners@usccr.gov>
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AMERICAN OVERSIGHT

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Please let the Chair or I know if you have any questions or concerns.

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Mauro Morales
Staff Director
U.S. Commission on Civil Rights
P: 202-376-7796| F: 202-376-7672
Mmorales@usccr.gov
http://usccr.gov/

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1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425

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Date : 11/10/2021 2:47:52 PM
From : "Christian Adams" a@electionlawcenter.com
To : "'Kirsanow, Peter'" pkirsanow@Beneschlaw.com, "'Carissa Mulder'" carissa.mulder@gmail.com
Cc : "'Carissa Mulder'" CMulder@usccr.gov
Subject : [EXTERNAL] RE: Action Requested: EAC Representative Replacement for Commissioner Yaki
Attachment : image001.jpg;

CAUTION: This email is from outside USCCR.

1000000 Percent. Anyone in the USA besides Riggs.

From: Kirsanow, Peter <pkirsanow@Beneschlaw.com>
Sent: Wednesday, November 10, 2021 2:44 PM
To: Christian Adams (a@electionlawcenter.com) <a@electionlawcenter.com>; Carissa Mulder (carissa.mulder@gmail.com) <carissa.mulder@gmail.com>
Cc: Carissa Mulder (CMulder@usccr.gov) <CMulder@usccr.gov>
Subject: FW: Action Requested: EAC Representative Replacement for Commissioner Yaki

Christian

Am I correct that Riggs is the person we don't want?

From: Carissa Mulder <CMulder@usccr.gov>
Sent: Wednesday, November 10, 2021 1:56 PM
To: Kirsanow, Peter <pkirsanow@Beneschlaw.com>
Subject: Fw: Action Requested: EAC Representative Replacement for Commissioner Yaki

---

From: Norma Cantu
Sent: Wednesday, November 10, 2021 1:53 PM
To: Gail Heriot; Peter Kirsanow; J. Christian Adams; Stephen Gilchrist
Cc: Alexander Heideman; Carissa Mulder; John Mashburn; Thomas Simuel
Subject: Action Requested: EAC Representative Replacement for Commissioner Yaki

Dear Commissioners-

In response to Commissioner Yaki recently resigning from his position on the EAC as a representative of USCCR, the Progressive Caucus is putting for 2 names for consideration. I am asking that the candidate you strike be sent to me by Monday, November 15th, 2021 by 5pm EST so that we can include the candidate's confirmation vote at our November 19th business meeting.

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Allison Riggs- https://southerncoalition.org/staff/allison-riggs/

Allison Riggs - Southern Coalition for Social Justice

southerncoalition.org

Allison Riggs leads the voting rights program at the Southern Coalition for Social Justice, an organization she joined in 2009. In March of 2020, she also took over as Interim Executive Director of the organization. Her voting rights work over the last decade at SCSJ has been focused on fighting for fair redistricting plans, fighting against voter suppression, and advocating for electoral reforms that would expand access to voting.

Alabama SAC Chair Jenny Carroll - https://www.congress.gov/116/meeting/house/109456/witnesses/HHRG-116-HA08-Wstate-CarrollJ-20190513.pdf

Per the AI voted on during the April 30th meeting (language included below), each caucus will then have 24 hours to submit caucus strikes. In this instance, I am allowing 48 business day hours given that tomorrow is a holiday. The first representative, Cleta Mitchell, was already communicated to the EAC.

Please submit your strike no later than Monday, November 15th by 5pm EST.

Please let me know if you have any questions or concerns.

Norma

--

AI language:

Section 1.

AMERICAN OVERSIGHT

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AMERICAN OVERSIGHT

AMERICAN OVERSIGHT

Date : 11/10/2021 2:44:27 PM
From : "Kirsanow, Peter" pkirsanow@Beneschlaw.com
To : "Christian Adams (a@electionlawcenter.com)" a@electionlawcenter.com, "Carissa Mulder (carissa.mulder@gmail.com)" carissa.mulder@gmail.com
Cc : "Carissa Mulder (CMulder@usccr.gov)" CMulder@usccr.gov
Subject : [EXTERNAL] FW: Action Requested: EAC Representative Replacement for Commissioner Yaki
Attachment : image001.jpg;

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Christian

Am I correct that Riggs is the person we don't want?

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To: Kirsanow, Peter <pkirsanow@Beneschlaw.com>
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---

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Allison Riggs -
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Social Justice

southerncoalition.org

AMERICAN OVERSIGHT

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Alabama SAC Chair Jenny Carroll -
https://www.congress.gov/116/meeting/house/109456/witnesses/HHRG-116-HA08-Wstate-CarrollJ-20190513.pdf

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Please submit your strike no later than Monday, November 15th by 5pm EST.

Please let me know if you have any questions or concerns.

Norma
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.01 Any authority specifically granted the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Commission as a whole by majority vote.

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AMERICAN OVERSIGHT

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Section 2
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(1) For the two (2) appointments to the U.S. Election Assistance Commission, the members appointed by Democratic authorities shall nominate two individuals who are ready, willing, and able to serve, and the members appointed by the Republican authorities shall nominate two individuals who are ready, willing, and able to serve.

(2) The members appointed by the Democratic authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Democratic authorities

(3) The members selected shall be placed in nomination and ratified in conformance with Section 1.

AMERICAN OVERSIGHT

AMERICAN OVERSIGHT

Date : 11/10/2021 2:49:05 PM
From : "Christian Adams" a@electionlawcenter.com
To : "'Kirsanow, Peter'" pkirsanow@Beneschlaw.com, "'Carissa Mulder'" carissa.mulder@gmail.com
Cc : "'Carissa Mulder'" CMulder@usccr.gov
Subject : [EXTERNAL] RE: Action Requested: EAC Representative Replacement for Commissioner Yaki
Attachment : image001.jpg;

> CAUTION: This email is from outside USCCR.

Carroll is a lightweight compared to Riggs. She is the one that had the wet noodle report on the SAC report from AL.

From: Kirsanow, Peter <pkirsanow@Beneschlaw.com>
Sent: Wednesday, November 10, 2021 2:44 PM
To: Christian Adams (a@electionlawcenter.com) <a@electionlawcenter.com>; Carissa Mulder (carissa.mulder@gmail.com) <carissa.mulder@gmail.com>
Cc: Carissa Mulder (CMulder@usccr.gov) <CMulder@usccr.gov>
Subject: FW: Action Requested: EAC Representative Replacement for Commissioner Yaki

Christian

Am I correct that Riggs is the person we don't want?

From: Carissa Mulder <CMulder@usccr.gov>
Sent: Wednesday, November 10, 2021 1:56 PM
To: Kirsanow, Peter <pkirsanow@Beneschlaw.com>
Subject: Fw: Action Requested: EAC Representative Replacement for Commissioner Yaki

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From: Norma Cantu
Sent: Wednesday, November 10, 2021 1:53 PM
To: Gail Heriot; Peter Kirsanow; J. Christian Adams; Stephen Gilchrist
Cc: Alexander Heideman; Carissa Mulder; John Mashburn; Thomas Simuel
Subject: Action Requested: EAC Representative Replacement for Commissioner Yaki

Dear Commissioners-

In response to Commissioner Yaki recently resigning from his position on the EAC as a representative of USCCR, the Progressive Caucus is putting for 2 names for consideration. I am asking that the candidate you strike be sent to me by Monday, November 15th, 2021 by 5pm EST so that we can include the candidate's

AMERICAN OVERSIGHT

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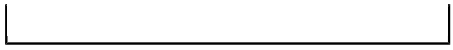
Allison Riggs- https://southerncoalition.org/staff/allison-riggs/



Allison Riggs - Southern Coalition for Social Justice

southerncoalition.org

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AMERICAN OVERSIGHT

AMERICAN OVERSIGHT

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From : "John Mashburn" jmashburn@usccr.gov
Subject : FW: Action Requested: EAC Representative Replacement for Commissioner Yaki
Attachment : Carroll-Jenny-cv.pdf;

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Date: Wednesday, November 10, 2021 at 2:04 PM
To: Gail Heriot <gheriot@usccr.gov>, Peter Kirsanow <pkirsanow@usccr.gov>, "J. Christian Adams" <jadams@usccr.gov>, Stephen Gilchrist <sgilchrist@usccr.gov>
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AMERICAN OVERSIGHT

Jenny E. Carroll

University of Alabama School of Law
Box 870382
Tuscaloosa, AL 35487-0382

Phone: 205-348-1116
Email: jcarroll@law.ua.edu
Papers: http://ssrn.com/author=1245554

ACADEMIC APPOINTMENTS

University of Alabama School of Law, Tuscaloosa AL
Professor Law: Teach Crim. Law, Crim. Procedure, Juvenile Justice and Counter Terrorism, 2016–present.
***Associate Professor of Law*:** 2014–2016.

Seton Hall University School of Law, Newark, New Jersey
***Associate Professor of Law*:** Taught Crim. Law, Crim. Procedure, Evidence, and Juvenile Justice. 2010–2014.

University of Cincinnati College of Law, Cincinnati, Ohio
***Visiting Assistant Professor of Law*:** Taught Crim. Law, Crim. Procedure, Evidence, White Collar Crime, and Mental Health and Criminal Law. 2008–2010.

University of Cincinnati College of Law, Cincinnati, Ohio
Assistant Professor of Clinical Law; Academic Director of the Ohio Innocence Project/ Rosenthal Institute for Justice: Designed and taught course on criminal post-conviction law and procedure, investigation and direct client representation; co-taught Criminal Defense Investigation and Trial Practice for the Indigent Defense Clinic. 2005–2008.

Georgetown University Law Center, Washington, D.C.
Prettyman Fellow, Criminal Justice Clinic: Co-taught clinical course for third-year law students and represented indigent defendants on misdemeanor and felony matters in the Superior Court of the District of Columbia. 1998–2000.

PUBLICATIONS

The Problem with Inference for Juvenile Defendants, 45 F.S.U.L. REV. 1 (*forthcoming* 2017)

Bathroom Laws as Status Crimes (with Stephen Rushin), 86 FORDHAM L. REV. 1 (*forthcoming* 2017).

Afterword: Death and the State in FINAL JUDGMENTS: THE DEATH PENALTY AND AMERICAN LAW (Austin Sarat, ed., Cambridge University Press, *forthcoming* 2017)

Brain Science and the Theory of Juvenile Mens Rea, 94 N.C.L. REV. 539 (2016)

- *Featured in* THE CHAMPION *"Getting Scholarship into Courts"*
- Included in the National Juvenile Defender Conference's Resource Guide for 2015–2016
- Available on SSRN at: http://ssrn.com/abstract=2603647

AMERICAN OVERSIGHT

The Jury as Democracy, 66 ALABAMA L. REV. 825 (2015)

- Available on SSRN at: http://ssrn.com/abstract=2585564

Nullification as Law, 102 GEORGETOWN L.J. 579 (2014)

- Available on SSRN at: http://ssrn.com/abstract=2190703

The Resistance Defense, 64 ALABAMA L. REV. 589 (2013)

- Available on SSRN at: http://ssrn.com/abstract=2053378

The Jury's Second Coming, 100 GEORGETOWN L.J. 657 (2012)

- Available on SSRN at: http://ssrn.com/abstract=1486188

Rethinking the Constitutional Criminal Procedure of Juvenile Transfer Hearings: Apprendi*, Adult Punishment, and Adult Process*, 61 HASTINGS L.J. 175 (2009)

- *Featured in* THE CHAMPION *"Getting Scholarship into Courts"*
- Included in the National Juvenile Defender Conference's Resource Guide for 2009–2010
- Available on SSRN at: http://ssrn.com/abstract=1375189

Images of Women and Capital Sentencing Among Female Offenders: Exploring the Outer Limits of the Eighth Amendment and Articulated Theories of Justice, 75 TEXAS L. REV. 1413 (1997)

ABA Juvenile Law Publication, "Practice Paper on Applications of *Apprendi* to Juvenile Transfer Proceedings," November, 2002

WORKS IN PROGRESS

Realizing Touby*'s Promise of Meaningful Constraint in Executive Discretion to Criminalize*

Secondary Emotions and Adolescent Neuroscience

Criminal Regulation of Speech
Privacy in the National Security World

The Jury as Open Government

THE DEMOCRACY OF THE JURY

AMICUS CURIAE BRIEFS

National Association of Criminal Defense Lawyers (NACDL) Amicus Brief, Ayala v. State (Florida Supreme Court, 2017)

National Association of Criminal Defense Lawyers (NACDL) Amicus Brief, State. v.

AMERICAN OVERSIGHT

Kelly Mathis (Eleventh Circuit, 2015)

National Association of Criminal Defense Lawyers (NACDL) Amicus Brief, U.S. v. Keith Cooper (Third Circuit, 2013)

NACDL Amicus Brief, United States v. Andrew "Weev" Auernheimer (Third Circuit, 2013)

NACDL Amicus Brief, United States v. Richard Caraballo-Rodriguez (Third Circuit, 2013)

NACDL Amicus Brief, United States v. Harry Katzin (Third Circuit, 2012)

NACDL Amicus Brief, United States v. Keenan Quinn (Third Circuit, 2012)

Law Professors' Amicus Brief, U.S. v. Charles Lynch (Ninth Circuit, 2012)

Law Professors' Amicus Brief, U.S. v. Salim Ahmed Hamdan (D.C. Circuit, 2011)

SELECTED SHORTER WORKS AND MEDIA

Government Collection of Cellphone Data and Privacy, Op-Ed, THE RECORD, August, 2013

License, Registration, Cellphone, Op-Ed, THE RECORD, June 11, 2013

Why Process Matters in Military Commission, Truthout.org, October 12, 2012

Why Are We Turning Our Backs on the Constitution?, Truthout.org, August, 29, 2012

Is Punishment in the Webcam Case Excessive?, Op-Ed, THE RECORD, March 21, 2012
.
Now There's Caylee's Law of Good Intentions, Op-Ed, THE RECORD, July 18, 2011

ABA Juvenile Law Publication, "Practice Paper on Applications of *Apprendi* to Juvenile Transfer Proceedings," November, 2002

Media appearances include NBC News, ESPN, BBC World News, Hollywood.com, Fox News, WMBC TV, WNBC TV, NPR, WNBC Radio, WHYY-FM Radio, *Associated Press, Boston Globe, New York Times,* AL.com, *Birmingham News, Star Ledger*, *The Record*, *Asbury Park Press*, *Orlando Sentinal* and the *New Jersey Law Journal*

CNN Criminal Law Advisor, 2011-2014

ACTIVITIES

American Association of Law Schools, Criminal Law Section, Executive Committee Member, 2017-present.

AMERICAN OVERSIGHT

Member of Juvenile Detention Alternative Initiative, Alabama, 2015-present

Co-Founder, Transnational Justice Project, Seton Hall University, 2010-2014

Authorized Observer to Guantanamo Military Commissions, 2010-present

NACDL Amicus Vice-Chair, Eleventh Circuit, 2014-present

NACDL Amicus Vice-Chair, Third Circuit, 2010-2014

NACDL Pretrial Justice Task Force, Member, 2011-2014

Advisor to the New York City Department of Education regarding restorative justice projects in public schools, 2013- 2015

EDUCATION

Georgetown University, Washington, D.C. LL.M. in Advocacy, 2005.

The University of Texas School of Law, Austin, Texas. J.D. with Honors, 1997.
Order of the Coif; TEXAS LAW REVIEW, Symposium Editor; TEXAS JOURNAL OF WOMEN AND THE LAW, Community Service Organizer; Thad Hutchinson Moot Court, Quarter-Finalist; Dean's Achievement Award, Highest Grade in Criminal Law; Endowed Presidential Scholarships; Texas Law Fellowships, Director; Women's Law Caucus, Director

Duke University, Durham, North Carolina. A.B., *Summa Cum Laude* with Highest Distinction in Political Science and Women's Studies, 1993.
Dean's Award for Best Undergraduate Thesis; William Griffith Award for Community Service;
Margaret Rose Knight Sanford Scholar; Anne Flexner Award for Creative Writing; John Hope Franklin Award and Julia Harper Day Awards for Documentary Studies; Co-Editor, DISTAFF MAGAZINE

LAW PRACTICE EXPERIENCE

The Defender Association, Seattle, Washington
Juvenile and Felony Staff Attorney: Represented indigent defendants in criminal and mental health matters in adult and juvenile court. 2000–2004.

Georgetown University Law Center, Washington, D.C.
Prettyman Fellow, Criminal Justice Clinic: (See "Academic Appointments," Above). 1998–2000.

Hon. William Wayne Justice, U.S. District Court, Eastern District of Texas, Tyler, Texas, and U.S. District Court, Western District of Texas, Austin, Texas
Judicial Clerk: 1997–1998.

AMERICAN OVERSIGHT

Bredhoff & Kaiser, Washington, D.C.
Law Clerk: Summer 1997.

Allison, Yeager, and Bassett, Austin, Texas
Law Clerk: January 1997 – May 1997.

Skadden, Arps, Slate, Meagher & Flom, Washington, D.C.
Summer Associate: Summer 1996

Texas Rural Legal Aid, Edinburg, Texas
Law Student Associate: Researched remedying systemic violation of criminally accused indigents' civil rights through § 1983 litigation, including a class action suit to insure timely appointment of counsel in border counties in Texas; assisted in litigation involving civil rights, housing, consumer protection, public benefits, family law, and employment matters. 1995–1996.

Project Esperanza, Raleigh, North Carolina
Board Member: Appointed by Governor Hunt to board to secure funding for and establish North Carolina's first domestic violence support services for migrant and rural women. 1992–1994.

Farmworker's Legal Services, Newton Grove, North Carolina
Farmworker Educator and Intern: Performed outreach to migrant labor camps throughout Eastern North Carolina to provide information about immigration issues, worker's rights and other legal matters; served as legal intern to attorneys in the Newton Grove and Raleigh offices. Summer 1992.

SELECTED PRESENTATIONS

Speaker, Free Speech Forum, Charles Pazmany University, Budapest, Hungary, 2017.

Invited Speaker, Bio LawLaPaLooza, Stanford University School of Law, 2017

Invited Speaker, Alabama Juvenile Defender's Conference, 2016

Invited Speaker, Alabama Public Defender's Conference, 2016

Panelist, Moderator, and Discussion Group Organizer, SEALS, 2016

Speaker, CrimFest, 2016

Invited Presenter, Southern Regional Juvenile Defender's Conference, 2016

Invited Speaker, Université Paris – Dauphine, 2016

Invited Speaker, Université Paris-Sorbonne, 2016

Invited Speaker, Richmond College of Law, 2016

AMERICAN OVERSIGHT

Invited Speaker, Tuscaloosa Bar Association, 2014-2016

Invited Speaker, Louis D. Brandeis School of Law, University of Louisville, 2015

Invited Speaker, National Juvenile Defender's Conference, 2015

Panelist, Law and Society Annual Conference, 2015

Panelist, Law and Society Annual Conference, 2013

Panelist, Albany New Teacher's Conference, Albany Law School, 2013

Invited Speaker, Touro Law Center, Faculty Colloquium, 2013

Invited Speaker, The Georgetown University Law Center Advanced Constitutional Law Series, 2012

Participant, Ohio Legal Scholars Workshop, 2009, 2010

"The Jury's Second Coming," University of Dayton School of Law, Faculty Workshop, 2010

Invited Speaker, ABA Juvenile Defender Leadership Summit, 2009

Invited Instructor, Indiana Juvenile Defender Training Summit, 2004–2009

Invited Instructor, Indiana Juvenile Defender Continuing Legal Education Summit, 2009

Invited Instructor, Children's Law Center Defender Training Conference, 2007

Invited Instructor, Ohio Public Defender Training Conference, 2005–2006

Invited Participant, Voices for Children Panel on Juvenile Law Reform in Ohio, 2006

Invited Participant, Ohio Panel on Discovery Reform, 2006

Invited Speaker, ABA Juvenile Defender Leadership Summit, 2002

Invited Participant in Washington (2003) and Texas (2000) assessment studies of Public and Appointed Defender Systems

BAR ADMISSIONS

District of Columbia; Ohio; Texas; Washington (inactive in all).

AMERICAN OVERSIGHT

Date : 11/10/2021 3:41:13 PM
From : "Christian Adams" a@electionlawcenter.com
To : "'John Mashburn'" jmashburn@usccr.gov
Subject : [EXTERNAL] RE: Action Requested: EAC Representative Replacement for Commissioner Yaki

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Riggs is 1000 times worse. She is the worst possible person in the entire United States.

From: John Mashburn <jmashburn@usccr.gov>
Sent: Wednesday, November 10, 2021 3:40 PM
To: Christian Adams <a@electionlawcenter.com>
Subject: FW: Action Requested: EAC Representative Replacement for Commissioner Yaki

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From: Alexander Heideman <aheideman@usccr.gov>
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AI language:

Section 1.
.01 Any authority specifically granted the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Commission as a whole by majority vote.

.02 Any authority specifically granted the Staff Director of the Commission on Civil Rights by statute or regulation or executive order to appoint members to

AMERICAN OVERSIGHT

serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Staff Director.

.03 Any authority specifically granted the Chair of the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Chair.

Section 2
.02

(1) For the two (2) appointments to the U.S. Election Assistance Commission, the members appointed by Democratic authorities shall nominate two individuals who are ready, willing, and able to serve, and the members appointed by the Republican authorities shall nominate two individuals who are ready, willing, and able to serve.

(2) The members appointed by the Democratic authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Democratic authorities

(3) The members selected shall be placed in nomination and ratified in conformance with Section 1.

AMERICAN OVERSIGHT

Jenny E. Carroll

University of Alabama School of Law
Box 870382
Tuscaloosa, AL 35487-0382

Phone: 205-348-1116
Email: jcarroll@law.ua.edu
Papers: http://ssrn.com/author=1245554

ACADEMIC APPOINTMENTS

University of Alabama School of Law, Tuscaloosa AL
Professor Law: Teach Crim. Law, Crim. Procedure, Juvenile Justice and Counter Terrorism, 2016–present.
***Associate Professor of Law*:** 2014–2016.

Seton Hall University School of Law, Newark, New Jersey
***Associate Professor of Law*:** Taught Crim. Law, Crim. Procedure, Evidence, and Juvenile Justice. 2010–2014.

University of Cincinnati College of Law, Cincinnati, Ohio
***Visiting Assistant Professor of Law*:** Taught Crim. Law, Crim. Procedure, Evidence, White Collar Crime, and Mental Health and Criminal Law. 2008–2010.

University of Cincinnati College of Law, Cincinnati, Ohio
Assistant Professor of Clinical Law; Academic Director of the Ohio Innocence Project/ Rosenthal Institute for Justice: Designed and taught course on criminal post-conviction law and procedure, investigation and direct client representation; co-taught Criminal Defense Investigation and Trial Practice for the Indigent Defense Clinic. 2005–2008.

Georgetown University Law Center, Washington, D.C.
Prettyman Fellow, Criminal Justice Clinic: Co-taught clinical course for third-year law students and represented indigent defendants on misdemeanor and felony matters in the Superior Court of the District of Columbia. 1998–2000.

PUBLICATIONS

The Problem with Inference for Juvenile Defendants, 45 F.S.U.L. REV. 1 (*forthcoming* 2017)

Bathroom Laws as Status Crimes (with Stephen Rushin), 86 FORDHAM L. REV. 1 (*forthcoming* 2017).

Afterword: Death and the State in FINAL JUDGMENTS: THE DEATH PENALTY AND AMERICAN LAW (Austin Sarat, ed., Cambridge University Press, *forthcoming* 2017)

Brain Science and the Theory of Juvenile Mens Rea, 94 N.C.L. REV. 539 (2016)

- *Featured in* THE CHAMPION *"Getting Scholarship into Courts"*
- Included in the National Juvenile Defender Conference's Resource Guide for 2015–2016
- Available on SSRN at: http://ssrn.com/abstract=2603647

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The Jury as Democracy, 66 ALABAMA L. REV. 825 (2015)

- Available on SSRN at: http://ssrn.com/abstract=2585564

Nullification as Law, 102 GEORGETOWN L.J. 579 (2014)

- Available on SSRN at: http://ssrn.com/abstract=2190703

The Resistance Defense, 64 ALABAMA L. REV. 589 (2013)

- Available on SSRN at: http://ssrn.com/abstract=2053378

The Jury's Second Coming, 100 GEORGETOWN L.J. 657 (2012)

- Available on SSRN at: http://ssrn.com/abstract=1486188

Rethinking the Constitutional Criminal Procedure of Juvenile Transfer Hearings: Apprendi*, Adult Punishment, and Adult Process*, 61 HASTINGS L.J. 175 (2009)

- *Featured in* THE CHAMPION *"Getting Scholarship into Courts"*
- Included in the National Juvenile Defender Conference's Resource Guide for 2009–2010
- Available on SSRN at: http://ssrn.com/abstract=1375189

Images of Women and Capital Sentencing Among Female Offenders: Exploring the Outer Limits of the Eighth Amendment and Articulated Theories of Justice, 75 TEXAS L. REV. 1413 (1997)

ABA Juvenile Law Publication, "Practice Paper on Applications of *Apprendi* to Juvenile Transfer Proceedings," November, 2002

WORKS IN PROGRESS

Realizing Touby*'s Promise of Meaningful Constraint in Executive Discretion to Criminalize*

Secondary Emotions and Adolescent Neuroscience

Criminal Regulation of Speech
Privacy in the National Security World

The Jury as Open Government

THE DEMOCRACY OF THE JURY

AMICUS CURIAE BRIEFS

National Association of Criminal Defense Lawyers (NACDL) Amicus Brief, Ayala v. State (Florida Supreme Court, 2017)

National Association of Criminal Defense Lawyers (NACDL) Amicus Brief, State. v.

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Kelly Mathis (Eleventh Circuit, 2015)

National Association of Criminal Defense Lawyers (NACDL) Amicus Brief, U.S. v. Keith Cooper (Third Circuit, 2013)

NACDL Amicus Brief, United States v. Andrew "Weev" Auernheimer (Third Circuit, 2013)

NACDL Amicus Brief, United States v. Richard Caraballo-Rodriguez (Third Circuit, 2013)

NACDL Amicus Brief, United States v. Harry Katzin (Third Circuit, 2012)

NACDL Amicus Brief, United States v. Keenan Quinn (Third Circuit, 2012)

Law Professors' Amicus Brief, U.S. v. Charles Lynch (Ninth Circuit, 2012)

Law Professors' Amicus Brief, U.S. v. Salim Ahmed Hamdan (D.C. Circuit, 2011)

SELECTED SHORTER WORKS AND MEDIA

Government Collection of Cellphone Data and Privacy, Op-Ed, THE RECORD, August, 2013

License, Registration, Cellphone, Op-Ed, THE RECORD, June 11, 2013

Why Process Matters in Military Commission, Truthout.org, October 12, 2012

Why Are We Turning Our Backs on the Constitution?, Truthout.org, August, 29, 2012

Is Punishment in the Webcam Case Excessive?, Op-Ed, THE RECORD, March 21, 2012
.
Now There's Caylee's Law of Good Intentions, Op-Ed, THE RECORD, July 18, 2011

ABA Juvenile Law Publication, "Practice Paper on Applications of *Apprendi* to Juvenile Transfer Proceedings," November, 2002

Media appearances include NBC News, ESPN, BBC World News, Hollywood.com, Fox News, WMBC TV, WNBC TV, NPR, WNBC Radio, WHYY-FM Radio, *Associated Press, Boston Globe, New York Times,* AL.com, *Birmingham News, Star Ledger*, *The Record*, *Asbury Park Press*, *Orlando Sentinal* and the *New Jersey Law Journal*

CNN Criminal Law Advisor, 2011-2014

ACTIVITIES

American Association of Law Schools, Criminal Law Section, Executive Committee Member, 2017-present.

AMERICAN OVERSIGHT

Member of Juvenile Detention Alternative Initiative, Alabama, 2015-present

Co-Founder, Transnational Justice Project, Seton Hall University, 2010-2014

Authorized Observer to Guantanamo Military Commissions, 2010-present

NACDL Amicus Vice-Chair, Eleventh Circuit, 2014-present

NACDL Amicus Vice-Chair, Third Circuit, 2010-2014

NACDL Pretrial Justice Task Force, Member, 2011-2014

Advisor to the New York City Department of Education regarding restorative justice projects in public schools, 2013- 2015

EDUCATION

Georgetown University, Washington, D.C. LL.M. in Advocacy, 2005.

The University of Texas School of Law, Austin, Texas. J.D. with Honors, 1997.
Order of the Coif; TEXAS LAW REVIEW, Symposium Editor; TEXAS JOURNAL OF WOMEN AND THE LAW, Community Service Organizer; Thad Hutchinson Moot Court, Quarter-Finalist; Dean's Achievement Award, Highest Grade in Criminal Law; Endowed Presidential Scholarships; Texas Law Fellowships, Director; Women's Law Caucus, Director

Duke University, Durham, North Carolina. A.B., *Summa Cum Laude* with Highest Distinction in Political Science and Women's Studies, 1993.
Dean's Award for Best Undergraduate Thesis; William Griffith Award for Community Service;
Margaret Rose Knight Sanford Scholar; Anne Flexner Award for Creative Writing; John Hope Franklin Award and Julia Harper Day Awards for Documentary Studies; Co-Editor, DISTAFF MAGAZINE

LAW PRACTICE EXPERIENCE

The Defender Association, Seattle, Washington
Juvenile and Felony Staff Attorney: Represented indigent defendants in criminal and mental health matters in adult and juvenile court. 2000–2004.

Georgetown University Law Center, Washington, D.C.
Prettyman Fellow, Criminal Justice Clinic: (See "Academic Appointments," Above). 1998–2000.

Hon. William Wayne Justice, U.S. District Court, Eastern District of Texas, Tyler, Texas, and U.S. District Court, Western District of Texas, Austin, Texas
Judicial Clerk: 1997–1998.

AMERICAN OVERSIGHT

Bredhoff & Kaiser, Washington, D.C.
Law Clerk: Summer 1997.

Allison, Yeager, and Bassett, Austin, Texas
Law Clerk: January 1997 – May 1997.

Skadden, Arps, Slate, Meagher & Flom, Washington, D.C.
Summer Associate: Summer 1996

Texas Rural Legal Aid, Edinburg, Texas
Law Student Associate: Researched remedying systemic violation of criminally accused indigents' civil rights through § 1983 litigation, including a class action suit to insure timely appointment of counsel in border counties in Texas; assisted in litigation involving civil rights, housing, consumer protection, public benefits, family law, and employment matters. 1995–1996.

Project Esperanza, Raleigh, North Carolina
Board Member: Appointed by Governor Hunt to board to secure funding for and establish North Carolina's first domestic violence support services for migrant and rural women. 1992–1994.

Farmworker's Legal Services, Newton Grove, North Carolina
Farmworker Educator and Intern: Performed outreach to migrant labor camps throughout Eastern North Carolina to provide information about immigration issues, worker's rights and other legal matters; served as legal intern to attorneys in the Newton Grove and Raleigh offices. Summer 1992.

SELECTED PRESENTATIONS

Speaker, Free Speech Forum, Charles Pazmany University, Budapest, Hungary, 2017.

Invited Speaker, Bio LawLaPaLooza, Stanford University School of Law, 2017

Invited Speaker, Alabama Juvenile Defender's Conference, 2016

Invited Speaker, Alabama Public Defender's Conference, 2016

Panelist, Moderator, and Discussion Group Organizer, SEALS, 2016

Speaker, CrimFest, 2016

Invited Presenter, Southern Regional Juvenile Defender's Conference, 2016

Invited Speaker, Université Paris – Dauphine, 2016

Invited Speaker, Université Paris-Sorbonne, 2016

Invited Speaker, Richmond College of Law, 2016

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Invited Speaker, Tuscaloosa Bar Association, 2014-2016

Invited Speaker, Louis D. Brandeis School of Law, University of Louisville, 2015

Invited Speaker, National Juvenile Defender's Conference, 2015

Panelist, Law and Society Annual Conference, 2015

Panelist, Law and Society Annual Conference, 2013

Panelist, Albany New Teacher's Conference, Albany Law School, 2013

Invited Speaker, Touro Law Center, Faculty Colloquium, 2013

Invited Speaker, The Georgetown University Law Center Advanced Constitutional Law Series, 2012

Participant, Ohio Legal Scholars Workshop, 2009, 2010

"The Jury's Second Coming," University of Dayton School of Law, Faculty Workshop, 2010

Invited Speaker, ABA Juvenile Defender Leadership Summit, 2009

Invited Instructor, Indiana Juvenile Defender Training Summit, 2004–2009

Invited Instructor, Indiana Juvenile Defender Continuing Legal Education Summit, 2009

Invited Instructor, Children's Law Center Defender Training Conference, 2007

Invited Instructor, Ohio Public Defender Training Conference, 2005–2006

Invited Participant, Voices for Children Panel on Juvenile Law Reform in Ohio, 2006

Invited Participant, Ohio Panel on Discovery Reform, 2006

Invited Speaker, ABA Juvenile Defender Leadership Summit, 2002

Invited Participant in Washington (2003) and Texas (2000) assessment studies of Public and Appointed Defender Systems

BAR ADMISSIONS

District of Columbia; Ohio; Texas; Washington (inactive in all).

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Date : 11/15/2021 12:28:26 PM
From : "Bert Benavides" bbenavides@eac.gov
To : "mcott@nga.org" mcott@nga.org, "mwoods@nga.org" mwoods@nga.org, "Kevin.Bratcher@LRC.KY.GOV" Kevin.Bratcher@LRC.KY.GOV, "daniel.ivey-soto@nmlegis.gov" daniel.ivey-soto@nmlegis.gov, "Iveysoto@usa.net" Iveysoto@usa.net, "Kyle Ardoin" kyle.ardoin@sos.la.gov, "Joel Watson" joel.watson@sos.la.gov, "Clayton Smith" clayton.smith@sos.la.gov, "Nancy Landry" Nancy.landry@sos.la.gov, "Maggie Toliver" maggie.toliver@state.nm.us, "Theresa Romero" theresa.romero@state.nm.us, "reynolds@sso.org" reynolds@sso.org, "kingram@sos.texas.gov" kingram@sos.texas.gov, "linda.lamone@maryland.gov" linda.lamone@maryland.gov, "Amy Cohen" acohen@nased.org, "nikki.charlson@maryland.gov" nikki.charlson@maryland.gov, "rhatch@co.weber.ut.us" rhatch@co.weber.ut.us, "Alysoun" Alysoun.Mclaughlin@montgomerycountymd.gov, "howardl@brennan.law.nyu.edu" howardl@brennan.law.nyu.edu, "tmattice@electioncenter.org" tmattice@electioncenter.org, "dlogan@rrcc.lacounty.gov" dlogan@rrcc.lacounty.gov, "mwinn@cco.hctx.net" mwinn@cco.hctx.net, "Neal.kelley@rov.ocgov.com" Neal.kelley@rov.ocgov.com, "dkladney@usccr.gov" dkladney@usccr.gov, "cleta@cletamitchell.com" cleta@cletamitchell.com, "mguthrie52@gmail.com" mguthrie52@gmail.com, "guthrie@access-board.gov" guthrie@access-board.gov, "Patrick Cannon (secondary)" pat.cannon@comcast.net, "Patrick Cannon" cannon@access-board.gov, "Bruce Bailey" bailey@access-board.gov, "Richard Pilger" richard.pilger@usdoj.gov, "Chris Herren" chris.herren@usdoj.gov, "David Beirne" david.e.beirne.civ@mail.mil, "stark@stat.berkeley.edu" stark@stat.berkeley.edu, "pbstark@gmail.com" pbstark@gmail.com, "eberke@berkefarah.com" eberke@berkefarah.com, "Sarah Johnson" Sarah.Johnson@coloradosprings.gov, "simons@acm.org" simons@acm.org, "gregmoore151@gmail.com" gregmoore151@gmail.com, "nordenl@brennan.law.nyu.edu" nordenl@brennan.law.nyu.edu, "jfogarty@clarkhill.com" jfogarty@clarkhill.com, "Don Gray" don.gray@co.sangamon.il.us, "james.charles.dickson@gmail.com" james.charles.dickson@gmail.com, "donaldmarkritchie@gmail.com" donaldmarkritchie@gmail.com, "Rick Stream" rstream@stlouisco.com, "sschoeller@greenecountymo.gov" sschoeller@greenecountymo.gov, "Christy McCormick" cmccormick@eac.gov, "Tina Barton" TBarton@eac.gov, "Tyler Herrmann" THerrmann@eac.gov, "Bert Benavides" bbenavides@eac.gov
Cc : "Kevin Rayburn" KRayburn@eac.gov, "Amanda Joiner" AJoiner@eac.gov, "Robin Sargent" rsargent@eac.gov
Subject : [EXTERNAL] EAC Bd. of Advisors - New USCCR appointment
Attachment : BOA - 2021 Roster Contact Info with Emails, Rev. 11-15-21.doc;BOA - 2021 Roster, Emails Only, Rev. 11-15-21.doc;

CAUTION: This email is from outside USCCR.

AMERICAN OVERSIGHT

Good afternoon, all. On behalf of Commissioner/Designated Federal Officer (DFO) Christy McCormick and Alternate DFO Tina Barton, attached are two lists revised on 11-15-21 for the Board of Advisors. The first attachment is the **Roster with Affiliation and Contact information**, and the second attachment is a **Group Email List**. The 11-15-21 Revision reflects the appointment of Cleta Mitchell, Senior Legal Fellow, Conservative Partnership Institute, effective 11-03-21, to the United States Commission on Civil Rights.

Let me know if you have any questions. Thank you.

Ms. Bert Benavides
bbenavides@eac.gov
202.294-9580

AMERICAN OVERSIGHT

2021 EAC Board of Advisors with Affiliation Contact and Information

Revised 11-15-21

NATIONAL GOVERNORS ASSOCIATION (2 appointments)	
Mary Catherine Ott Legislative Director 444 North Capitol St. NW Suite 267 Washington DC 20001 mcott@nga.org **Appointed: 4-26-21** ***Expires: 04-13-23*** ***Charter renews every two years; Appointment renews until replaced***	Michelle Woods Program Director, Homeland Security National Governor's Association 444 N. Capitol St., NW, Suite 267 Washington DC 20001 **mwoods@nga.org** **Appointed: 4-26-21** ***Expires: 04-13-23*** ***Charter renews every two years; Appointment renews until replaced***
NATIONAL CONFERENCE OF STATE LEGISLATURES (2 appointments)	
Representative Kevin O. Bratcher KY House of Representatives State Capitol, Rm. 357-E Frankfort KY 40801 Kevin.Bratcher@LRC.KY.GOV **Appointed: 04-01-21** ***Expires: 04-13-23*** ***Charter renews every two years; Appointment renews until replaced***	Senator Daniel Ivey-Soto New Mexico State Legislature 1420 Carlisle Blvd., NE, Suite 208 Albuquerque NM 87110 daniel.ivey-soto@nmlegis.gov Iveysoto@usa.net **Appointed: 05-03-17** ***Expires: 04-13-23*** ***Charter renews every two years; Appointment renews until replaced***
NATIONAL ASSOCIATION OF SECRETARIES OF STATE (2 appointments)	
The Honorable Kyle Ardoin LA Secretary of State, and NASS President P. O. Box 94125 Baton Rouge, LA 70804-9125 kyle.ardoin@sos.la.gov joel.watson@sos.la.gov clayton.smith@sos.la.gov Nancy.landry@sos.la.gov Leslie Reynolds, NASS Executive Director reynolds@sso.org **Appointed: 9-10-21** ***Expires: 04-13-23*** ***Charter renews every two years; Appointment renews until replaced***	The Honorable Maggie Toulouse-Oliver NM Secretary of State, and NASS Immediate Past President New Mexico Capitol Annex North 325 Don Gaspar, Suite 300 Santa Fe, NM 87501 maggie.toliver@state.nm.us theresa.romero@state.nm.us Leslie Reynolds, NASS Executive Director reynolds@sso.org **Appointed: 09-10-21** ***Expires: 04-13-23*** ***Charter renews every two years; Appointment renews until replaced***

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NATIONAL ASSOCIATION OF STATE ELECTION DIRECTORS (2 appointments)	
Keith Ingram Director, Elections Division Texas Secretary of State P.O. Box 12060 Austin, TX 78711 kingram@sos.texas.gov Amy Cohen, NASED Executive Director acohen@nased.org **Appointed: 03-04-20** ***Expires: 04-13-23*** ***Charter renews every two years; Appointment renews until replaced***	Linda H. Lamone Administrator of Elections Maryland State Board of Elections 151 West Street, Suite 200 P.O. Box 6486 Annapolis, MD 21401-0486 linda.lamone@maryland.gov Amy Cohen, NASED Executive Director acohen@nased.org **Appointed: 04-28-15** ***Expires: 04-13-23*** ***Charter renews every two years; Appointment renews until replaced***
NATIONAL ASSOCIATION OF COUNTIES (2 appointments)	
Ricky Hatch Weber County Clerk/Auditor 2380 Washington Blvd., Suite 320 Ogden UT 84401 rhatch@co.weber.ut.us **Appointed: 12-15-17** ***Expires: 04-13-23*** ***Charter renews every two years; Appointment renews until replaced***	Alysoun McLaughlin Deputy Election Director Montgomery County 18753 N. Frederick Ave. Ste. 210 Gaithersburg MD 20879 Alysoun.mclaughlin@montgomerycountymd.gov **Appointed: 04-11-17** ***Expires: 04-13-23*** ***Charter renews every two years; Appointment renews until replaced***
UNITED STATES CONFERENCE OF MAYORS (2 appointments)	
VACANT **Appointed:** ***Expires: 04-13-23*** ***Charter renews every two years; Appointment renews until replaced***	Elizabeth (Liz) Howard Counsel, Brennan Center for Justice 920 I St NW #507 Washington DC 20001 howardl@brennan.law.nyu.edu **Appointed: 06-30-20** ***Expires: 04-13-23*** ***Charter renews every two years; Appointment renews until replaced***

AMERICAN OVERSIGHT

THE ELECTION CENTER (2 appointments)	
Tim Mattice Executive Director The Election Center 21946 Royal Montreal Katy, TX 77450 tmattice@electioncenter.org **Appointed: 04-28-15** ***Expires: 04-13-23*** ***Charter renews every two years; Appointment renews until replaced***	Dean Logan Registrar-Recorder/County Clerk, Los Angeles County 12400 Imperial Highway Norwalk CA 90650 Dlogan@rrcc.lacounty.gov **Appointed: 07-09-19** ***Expires: 04-13-23*** ***Charter renews every two years; Appointment renews until replaced***
INTERNATIONAL ASSOCIATION OF GOVERNMENT OFFICIALS (2 appointments)	
Michael B. Winn Harris County Director of Elections 1001 Preston, 4th floor. Houston, TX 77002 mwinn@cco.hctx.net **Appointed: 04-11-17** ***Expires: 04-13-23*** ***Charter renews every two years; Appointment renews until replaced***	Neal Kelley Registrar of Voters, Orange County P.O. Box 11298 Santa Ana, CA 92711 neal.kelley@rov.ocgov.com **Appointed: 04-11-17** ***Expires: 04-13-23*** ***Charter renews every two years; Appointment renews until replaced***
UNITED STATES COMMISSION ON CIVIL RIGHTS (2 appointments)	
Cleta Mitchell Senior Legal Fellow Conservative Partnership Institute 300 Independence Ave., SE Washington DC 20003 cleta@cletamitchell.com **Appointed: 11-03-21** ***Expires: 04-13-23*** ***Charter renews every two years; Appointment renews until replaced***	David Kladney U.S. Commission on Civil Rights Commissioner 905 Joy Lake Road Reno, NV 89511 dkladney@usccr.gov **Appointed: 04-28-15** ***Expires: 04-13-23*** ***Charter renews every two years; Appointment renews until replaced***

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<table>
<tr><th colspan="2">ARCHITECTURAL AND TRANSPORTATION BARRIER COMPLIANCE BOARD
(2 appointments)</th></tr>
<tr><td>Marc Guthrie
Public Member, U.S. Access Board
4455 Hunts Landing Rd, Mallory Square 16-B
Hebron OH 43025

mguthrie52@gmail.com
guthrie@access-board.gov

IT Asst: bailey@access-board.gov

Appointed: 04-28-15
Expires: 04-13-23
Charter renews every two years; Appointment renews until replaced</td><td>Patrick D. Cannon
Public Board Member
2700 Marfitt Road, #307
East Lansing, MI 48823

pat.cannon@comcast.net
cannon@access-board.gov

IT Asst: bailey@access-board.gov

Appointed: 12-20-20
Expires: 04-13-23
Charter renews every two years; Appointment renews until replaced</td></tr>
<tr><th>CHIEF, OFFICE OF PUBLIC INTEGRITY, UNITED STATES DEPARTMENT OF JUSTICE
(1 appointment)</th><th>CHIEF, VOTING SECTION
CIVIL RIGHTS DIVISION
U.S. DEPARTMENT OF JUSTICE
(1 appointment)</th></tr>
<tr><td>Richard C. Pilger
Senior Trial Attorney, Criminal Division
U. S. Department of Justice
1400 New York Avenue NW
Room 12100
Washington, DC 20530

richard.pilger@usdoj.gov

Appointed: 04-28-15
Expires: 04-13-23
Charter renews every two years; Appointment renews until replaced</td><td>Chris Herren, Chief, Voting Section
Civil Rights Division
U. S. Department of Justice
1800 G Street, NW
Room 7264-NWB
Washington, DC 20006

chris.herren@usdoj.gov

Appointed: 04-28-15
Expires: 04-13-23
Charter renews every two years; Appointment renews until replaced</td></tr>
<tr><th colspan="2">DIRECTOR, FEDERAL VOTING ASSISTANCE PROGRAM
U.S. DEPARTMENT OF DEFENSE
(1 appointment)</th></tr>
<tr><td colspan="2">David Beirne, Director
Federal Voting Assistance Program, U.S. Dept. of Defense
4800 Mark Center Dr., Ste. 03J25-02
Alexandria, VA 22350-5000

david.e.beirne.civ@mail.mil

Appointed: 01-01-17
Expires: 04-13-23
Charter renews every two years; Appointment renews until replaced</td></tr>
</table>

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SPEAKER OF THE HOUSE (1 appointment)	**HOUSE MINORITY LEADER (1 appointment)**
Philip B. Stark Associate Dean, Mathematical & Physical Sciences and Professor of Statistics University of California - Berkeley 1157 Cragmont Avenue Berkeley CA 94708 stark@stat.berkeley.edu **Appointed: 09-20-16** ***Expires: 04-13-23*** ***Charter renews every two years; Appointment renews until replaced***	Elliot Berke Managing Partner Berke Farah LLP 701 8th St, NW Suite 601 Washington DC 20001 eberke@berkefarah.com **Appointed: 12-10-17** ***Expires: 04-13-23*** ***Charter renews every two years; Appointment renews until replaced***
SENATE MAJORITY LEADER (1 appointment)	**SENATE MINORITY LEADER (1 appointment)**
Sarah Ball Johnson City Clerk, Colorado Springs CO 30 S. Nevada Ave., Ste. 101 Colorado Springs CO 80903 Sarah.Johnson@coloradosprings.gov **Appointed: 04-28-15** ***Expires: 04-13-23*** ***Charter renews every two years; Appointment renews until replaced***	Barbara Simons, PhD Association for Computing Machinery 301 Mission Street, Unit 45D San Francisco, CA 94105 simons@acm.org **Appointed: 04-28-15** ***Expires: 04-13-23*** ***Charter renews every two years; Appointment renews until replaced***
HOUSE ADMINISTRATION – CHAIR (2 appointments)	
Gregory T. Moore President, GTM Consulting Services, LLC 14319 Gov. Lee Pl Upper Marlboro MD 20771 gregorytmoore@aol.com **Appointed: 04-28-15** ***Expires: 04-13-23*** ***Charter renews every two years; Appointment renews until replaced***	Lawrence Norden Deputy Director, Brennan Center for Justice Democracy Program 120 Broadway, Suite 1750 New York, NY 10271 nordenl@brennan.law.nyu.edu **Appointed: 04-22-19** ***Expires: 04-13-23*** ***Charter renews every two years; Appointment renews until replaced***

AMERICAN OVERSIGHT

HOUSE ADMINISTRATION – RANKING MEMBER (2 appointments)	
John G. Fogarty Senior Counsel 130 E. Randolph St., Ste 3900 Chicago IL 60601 jfogarty@clarkhill.com **Appointed: 04-04-19** ***Expires: 04-13-23*** ***Charter renews every two years; Appointment renews until replaced***	Don Gray County Clerk 200 South Ninth St. Springfield IL 62701 don.gray@co.sangamon.il.us **Appointed: 04-04-19** ***Expires: 04-13-23*** ***Charter renews every two years; Appointment renews until replaced***
SENATE RULES & ADMINISTRATION COMMITTEE – RANKING MEMBER (2 appointments)	
James C. Dickson Co-Chair, Voting Rights Task Force National Council on Independent Living 4429 Colorado Avenue NW Washington, DC 20011 james.charles.dickson@gmail.com **Appointed: 04-28-15** ***Expires: 04-13-23*** ***Charter renews every two years; Appointment renews until replaced***	Mark Ritchie President MN World's Fair Bid Committee 1813 Girard Avenue South Minneapolis MN donaldmarkritchie@gmail.com **Appointed: 05-08-17** ***Expires: 04-13-23*** ***Charter renews every two years; Appointment renews until replaced***
SENATE RULES & ADMINISTRATION COMMITTEE – CHAIR (2 appointments)	
Rick Stream Republican Director of Elections St. Louis County, MO 725 Northwest Plaza Drive St. Ann, MO 63074 rstream@stlouisco.com **Appointed: 03-17-21** ***Expires: 04-13-23*** ***Charter renews every two years; Appointment renews until replaced***	Shane Schoeller Greene County Clerk 940 N. Boonville Avenue – Room 113 Springfield MO 65802 sschoeller@greenecountymo.gov **Appointed: 04-28-15** ***Expires: 04-13-23*** ***Charter renews every two years; Appointment renews until replaced***

AMERICAN OVERSIGHT

Designated Federal Officer (DFO) **Alternate Designated Federal Officer (ADFO)** **EAC Staff Point of Contact**	
Commissioner Christy McCormick Designated Federal Officer 633 3rd Street NW, Suite 200 Washington DC 20001 cmccormick@eac.gov	Tina Barton Alternate Designated Federal Officer 633 3rd Street NW, Suite 200 Washington DC 20001 tbarton@eac.gov

NOTE: The appointment expiration date is tied to the BOA charter renewal date. Currently there are 34 Board of Advisor Members, and 1 vacancy

EAC Staff Point of Contact:

Ms. Bert A. Benavides
633 3rd Street NW, Suite 200
Washington DC 20001

202-294-9580 cell
bbenavides@eac.gov

AMERICAN OVERSIGHT

U.S. Election Assistance Commission
Board of Advisors
Revised 11-15-21

BOA member group E-mail list (incl assts) – listed in order of roster organizations:

mcott@nga.org

mwoods@nga.org

Kevin.Bratcher@LRC.KY.GOV

daniel.ivey-soto@nmlegis.gov

Iveysoto@usa.net

kyle.ardoin@sos.la.gov

joel.watson@sos.la.gov

Clayton.smith@sos.la.gov

nancy.landry@sos.la.gov

maggie.toliver@state.nm.us

theresa.romero@state.nm.us

reynolds@sso.org

kingram@sos.texas.gov

linda.lamone@maryland.gov

acohen@nased.org

nikki.charlson@maryland.gov

rhatch@co.weber.ut.us

Alysoun.Mclaughlin@montgomerycountymd.gov

howardl@brennan.law.nyu.edu

tmattice@electioncenter.org

Dlogan@rrcc.lacounty.gov

mwinn@cco.hctx.net

neal.kelley@rov.ocgov.com

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dkladney@usccr.gov

cleta@cletamitchell.com

mguthrie52@gmail.com

guthrie@access-board.gov

pat.cannon@comcast.net

cannon@access-board.gov

bailey@access-board.gov

richard.pilger@usdoj.gov

chris.herren@usdoj.gov

david.e.beirne.civ@mail.mil

stark@stat.berkeley.edu

pbstark@gmail.com

eberke@berkefarah.com

Sarah.Johnson@coloradosprings.gov

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nordenl@brennan.law.nyu.edu

jfogarty@clarkhill.com

don.gray@co.sangamon.il.us

james.charles.dickson@gmail.com

donaldmarkritchie@gmail.com

rstream@stlouisco.com

sschoeller@greenecountymo.gov

cmccormick@eac.gov

tbarton@eac.gov

therrmann@eac.gov

bbenavides@eac.gov

AMERICAN OVERSIGHT

Date : 9/17/2020 12:08:00 PM
From : "Christian Adams" a@electionlawcenter.com
To : "'Gail Heriot'" gheriot@me.com, "'Carissa Mulder'" CMulder@usccr.gov, "'Thomas Simuel'" tjsimuel32@gmail.com, "'stephen gilchrist'" thegilchristassociates@gmail.com, "Peter Kirsanow" pkirsanow@Beneschlaw.com, "'Alexander Heideman'" aheideman@usccr.gov, "'John Mashburn'" jmashburn@usccr.gov
Subject : [EXTERNAL] FW: Kevin Rayburn work #

CAUTION: This email is from outside USCCR.

Don Palmer suggested we learn what sort of official document EAC relied on to appoint these two. He says Rayburn is the general counsel and would answer that question.
From: Donald Palmer <lcdrpalmer@gmail.com>
Sent: Thursday, September 17, 2020 8:10 AM
To: Christian Adams (updated) <a@electionlawcenter.com>
Subject: Kevin Rayburn work #

2027406546

AMERICAN OVERSIGHT

Date : 11/16/2021 9:51:41 AM
From : "Carissa Mulder" carissa.mulder@gmail.com
To : "Kirsanow, Peter" pkirsanow@beneschlaw.com
Cc : "Peter Kirsanow" pkirsanow@usccr.gov, "Carissa Mulder" cmulder@usccr.gov
Subject : [EXTERNAL] EAC

CAUTION: This email is from outside USCCR.

Hi Pete,

Are you ok with going with Christian's recommendation for the EAC (Jenny Carroll)?

--
Carissa B. Mulder

AMERICAN OVERSIGHT

Date : 11/16/2021 9:58:08 AM
From : "Kevin Rayburn" KRayburn@eac.gov
To : "Norma Cantu" ncantu@usccr.gov
Cc : "Juana Silverio" jsilverio@usccr.gov
Subject : [EXTERNAL] RE: EAC Representative for USCCR

> CAUTION: This email is from outside USCCR.

Good Morning Charwoman Cantú,

Do you have an anticipated timeline on when the second appointment will be made?

Thanks,

Kevin Rayburn | General Counsel
U.S. Election Assistance Commission
633 3rd Street NW, Suite 200 | Washington, DC 20001
www.eac.gov

From: Kevin Rayburn
Sent: Wednesday, November 3, 2021 11:50 AM
To: 'Norma Cantu' <ncantu@usccr.gov>
Cc: Juana Silverio <jsilverio@usccr.gov>
Subject: RE: EAC Representative for USCCR

Good Morning Chairwoman Cantú,

I am confirming receipt and look forward to receiving the 2nd appointment.

Sincerely,

Kevin Rayburn | General Counsel
U.S. Election Assistance Commission
633 3rd Street NW, Suite 200 | Washington, DC 20001
www.eac.gov

From: Norma Cantu <ncantu@usccr.gov>
Sent: Wednesday, November 3, 2021 11:27 AM
To: Kevin Rayburn <KRayburn@eac.gov>
Cc: Juana Silverio <jsilverio@usccr.gov>
Subject: EAC Representative for USCCR

Good morning-

AMERICAN OVERSIGHT

Please find one of the 2 representatives for the EAC on behalf of the USCCR. We will forward the second representative shortly.

Thank you.

Norma V. Cantú

Chairwoman, USCCR

AMERICAN OVERSIGHT

Date : 11/16/2021 12:25:47 PM
From : "Irena Vidulovic" ividulovic@usccr.gov
To : "Jenny Carroll" jcarroll@law.ua.edu
Subject : Re: [EXTERNAL] Re: Appointment to EAC Board of Advisors
Attachment : image001.png;

Dear Jenny,

My apologies that this process has been so long and protracted. I wanted to let you know that the Commission has officially nominated you to the EAC and that the vote will be ratified this Friday.

Congratulations again and we are very happy to have you serve.

Please let me know if you have any questions,
Irena

On Jul 30, 2021, at 7:43 PM, Jenny Carroll <jcarroll@law.ua.edu> wrote:

> CAUTION: This email is from outside USCCR.

Dear Irena,

Thank you. Please let me know if you need anything. I've attached a resume (which I'm not sure if you need) just in case you need it.

Jenny

From: Irena Vidulovic <ividulovic@usccr.gov>
Date: Friday, July 30, 2021 at 5:27 AM
To: Jenny Carroll <jcarroll@law.ua.edu>
Subject: [EXTERNAL] Re: Appointment to EAC Board of Advisors

Dear Jenny,

Thank you so much for your quick response. We are so very delighted that you are willing and able to serve. We will be submitting your name for our nomination and will keep you posted on what happens next.

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Best,

Irena

From: Jenny Carroll <jcarroll@law.ua.edu>
Sent: Thursday, July 29, 2021 3:39:12 PM
To: Irena Vidulovic
Subject: Re: [EXTERNAL] Appointment to EAC Board of Advisors

> CAUTION: This email is from outside USCCR.

Thank you for reaching out. It is always great to hear from you. Please thank Commissioner Adegbile for the honor of his consideration. I would be thrilled for the nomination and would be happy to continue to work to make voting accessible.

Please let me know if you require any additional information from me. I am happy to provide an updated resume or any other information y'all require.

Best,

Jenny

Jenny E. Carroll
Wiggins, Child, Quinn & Pantazis Professor of Law
School of Law
The University of Alabama
315 Law Center
Box 870382
Tuscaloosa, AL 35487
Office: 205-346-1116
jcarroll@law.ua.edu | https://www.law.ua.edu

Facebook | **Twitter** | **Instagram**

AMERICAN OVERSIGHT

From: Irena Vidulovic <ividulovic@usccr.gov>
Date: Thursday, July 29, 2021 at 1:25 PM
To: Jenny Carroll <jcarroll@law.ua.edu>
Subject: [EXTERNAL] Appointment to EAC Board of Advisors

Dear Ms. Carroll,

The U.S. Commission on Civil Rights has the privilege and authority to appoint two members to the EAC Board of Advisors. The Board of Advisors are appointed to a two year term . The Members meet quarterly and the appointees are referred to as members of the Board of Advisors to the Election Assistance Commission.

Commissioner Adegbile would like to take this opportunity to inquire if you would consider serving on the Board of Advisors. If you are willing and able he would like to nominate you to serve. The Commission has a internal process on nominations but if you would be selected then we would go forward with the appointment.

The description and statute is included below. Please take a look and feel free to email me with any questions.

The EAC Board of Advisors is a 35-member board composed of representatives from the National Governors Association; National Conference of State Legislatures; National Association of Secretaries of State; The National Association of State Election Directors; National Association of Counties; the International Association of Government Officials (created from the merger of the National Association of County Recorders, Election Officials and Clerks and the International Association of Clerks, Recorders, Election Officials, and Treasurers); Election Center; International Association of Clerks, Recorders, Election Officials, and Treasurers; **U.S. Commission on Civil Rights**; and Architectural and Transportation Barriers Compliance Board.

Other members include representatives from the U.S. Department of Justice, Office of Public Integrity, and the Civil Rights Division;

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the director of the U.S. Department of Defense Federal Voting Assistance Program; four professionals from the field of science and technology, one each appointed by the Speaker and the Minority Leader of the U.S. House of Representatives, and the Majority and Minority leaders of the U.S. Senate; and eight members representing voter interests, with the chairs and the ranking minority members of the U.S. House of Representatives Committee on House Administration and the U.S. Senate Committee on Rules and Administration each appointing two members. Following the passage of HAVA, the National Association of County Recorders, Election Officials and Clerks and the International Association of Clerks, Recorders, Election Officials, and Treasurers merged to form the International Association of Government Officials.

Statute:
52 U.S. Code § 20944 - Membership of Board of Advisors
(a)In general
The Board of Advisors shall be composed of 37 members appointed as follows:
(1)Two members appointed by the National Governors Association.
(2)Two members appointed by the National Conference of State Legislatures.
(3)Two members appointed by the National Association of Secretaries of State.
(4)Two members appointed by the National Association of State Election Directors.
(5)Two members appointed by the National Association of Counties.
(6)Two members appointed by the National Association of County Recorders, Election Administrators, and Clerks.[1]
(7)Two members appointed by the United States Conference of Mayors.
(8)Two members appointed by the Election Center.
(9)Two members appointed by the International Association of County Recorders, Election Officials, and Treasurers.[2]
(10)Two members appointed by the United States Commission on Civil Rights.
(11)Two members appointed by the Architectural and Transportation Barrier [3] Compliance Board under section 792 of title 29.
(12)The chief of the Office of Public Integrity of the Department of Justice,[4] or the chief's designee.
(13)The chief of the Voting Section of the Civil Rights Division of the Department of Justice or the chief's designee.
(14)The director of the Federal Voting Assistance Program of the Department of Defense.

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(15)Four members representing professionals in the field of science and technology, of whom—
(A)one each shall be appointed by the Speaker and the Minority Leader of the House of Representatives; and
(B)one each shall be appointed by the Majority Leader and the Minority Leader of the Senate.
(16)Eight members representing voter interests, of whom—
(A)four members shall be appointed by the Committee on House Administration of the House of Representatives, of whom two shall be appointed by the chair and two shall be appointed by the ranking minority member; and
(B)four members shall be appointed by the Committee on Rules and Administration of the Senate, of whom two shall be appointed by the chair and two shall be appointed by the ranking minority member.

(b)Manner of appointments
Appointments shall be made to the Board of Advisors under subsection (a) in a manner which ensures that the Board of Advisors will be bipartisan in nature and will reflect the various geographic regions of the United States.

(c)Term of service; vacancy
Members of the Board of Advisors shall serve for a term of 2 years, and may be reappointed. Any vacancy in the Board of Advisors shall be filled in the manner in which the original appointment was made.

(d)Chair
The Board of Advisors shall elect a Chair from among its members.

Website:

https://www.eac.gov/about_the_eac/board_of_advisors

Irena Vidulovic
Special Assistant to Commissioner Debo P. Adegbile
U.S. Commission on Civil Rights
M: 202-591-9969
ividulovic@usccr.gov
http://usccr.gov/
1331 Pennsylvania Avenue, NW Suite 1150

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Washington D.C. 20425

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<Jenny_Carroll_CV_July_2021.pdf>

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ALABAMALAW

THE UNIVERSITY OF ALABAMA

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Date : 11/16/2021 1:15:56 PM
From : "Norma Cantu" ncantu@usccr.gov
To : "Kevin Rayburn" KRayburn@eac.gov
Cc : "Juana Silverio" jsilverio@usccr.gov, "Mauro Morales" mmorales@usccr.gov
Subject : RE: [EXTERNAL] RE: EAC Representative for USCCR

We have our second appointment named, and she will be voted upon during our Friday, November 19th meeting.
We have some press calls. I assume you do, too.
Norma

From: Kevin Rayburn <KRayburn@eac.gov>
Sent: Tuesday, November 16, 2021 8:58 AM
To: Norma Cantu <ncantu@usccr.gov>
Cc: Juana Silverio <jsilverio@usccr.gov>
Subject: [EXTERNAL] RE: EAC Representative for USCCR

> CAUTION: This email is from outside USCCR.

Cantú,

Do you have an anticipated timeline on when the second appointment will be made?

Thanks,

Kevin Rayburn | General Counsel
U.S. Election Assistance Commission
633 3rd Street NW, Suite 200 | Washington, DC 20001
www.eac.gov

From: Kevin Rayburn
Sent: Wednesday, November 3, 2021 11:50 AM
To: 'Norma Cantu' <ncantu@usccr.gov>
Cc: Juana Silverio <jsilverio@usccr.gov>
Subject: RE: EAC Representative for USCCR

Good Morning Chairwoman Cantú,

I am confirming receipt and look forward to receiving the 2nd appointment.

Sincerely,

Kevin Rayburn | General Counsel
U.S. Election Assistance Commission
633 3rd Street NW, Suite 200 | Washington, DC 20001
www.eac.gov

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From: Norma Cantu <ncantu@usccr.gov>
Sent: Wednesday, November 3, 2021 11:27 AM
To: Kevin Rayburn <KRayburn@eac.gov>
Cc: Juana Silverio <jsilverio@usccr.gov>
Subject: EAC Representative for USCCR

Good morning-

Please find one of the 2 representatives for the EAC on behalf of the USCCR. We will forward the second representative shortly.

Thank you.

Norma V. Cantú

Chairwoman, USCCR

AMERICAN OVERSIGHT

Date : 11/16/2021 4:44:24 PM
From : "Irena Vidulovic" ividulovic@usccr.gov
To : "Debo P. Adegbile" dadegbile@usccr.gov, "Adegbile, Debo" Debo.Adegbile@wilmerhale.com, "David Kladney" dkladney@usccr.gov, "Joshua Dansby" jdansby@usccr.gov
Subject : USCCR Statement on EAC Nomination
Attachment : United States Commission on Civil Rights Statement on Appointment to Election Assistance Commission 35.pdf;

Please see attached!

AMERICAN OVERSIGHT

United States Commission on Civil Rights Statement on Appointment to Election Assistance Commission 35-member Board of Advisors

November 16, 2021

Ms. Cleta Mitchell's nomination was put forth by Commissioners appointed by Republican authorities, including former President Trump, Senate Minority Leader McConnell, and House Minority McCarthy. Ms. Mitchell is not a member of the Commission on Civil Rights.

The Elections Assistance Commission (EAC), which solicits nominations, requested the U.S. Commission on Civil Rights (Commission) nominate two advisors to the EAC 35-member board of advisors.

Ms. Mitchell is one of two Commission appointees selected by Commissioners to serve on Board of Advisors to the Election Assistance Commission.

The EAC nominee by Commissioners appointed by Democratic authorities was unable to serve and the Commissioners have re-nominated their candidate-to the Commission's remaining appointment to the EAC. There will be a discussion and vote on this matter at the Commission's November 19, 2021, business meeting.

By way of background, Commissioners of the Commission of Civil Rights (USCCR) have the sole authority to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, which is exercised by majority vote of Commissioners.

USCCR is governed by the following agency instruction process regarding nominations to the Board of Advisors to the EAC:

- Commissioners appointed by Democratic authorities nominated two individuals of their membership, and the members appointed by the Republican authorities nominated two individuals of their membership.
- Once nominated, the members appointed by the Democratic authorities, selects one of two individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one of the two individuals nominated by the members appointed by the Democratic authorities.
- Appointments are ratified by majority vote of Commissioners.

Cleta Mitchell was nominated by Commissioners that were appointed by Republican authorities; and was ratified by majority vote of Commissioners.

AMERICAN OVERSIGHT

Date : 9/18/2020 2:13:03 PM
From : "John Mashburn" jmashburn@usccr.gov
To : "Alexander Heideman" aheideman@usccr.gov, "Carissa Mulder" CMulder@usccr.gov
Subject : Re: [EXTERNAL] EAC Board of Advisors

Alex – is this the latest you have on this issue?

I talked to folks over at the EAC to see if the Cmn would be able -- from EAC's perspective – to change out one or both of the Bd of Advisors folks from the USCCR, or if once they are there that they are "stuck" for the term of the appointment

and the USCCR cannot change them out.

From: Alexander Heideman <aheideman@usccr.gov>
Date: Wednesday, September 16, 2020 at 5:20 PM
To: Christian Adams <a@electionlawcenter.com>, 'Gail Heriot' <gheriot@me.com>
Cc: Carissa Mulder <CMulder@usccr.gov>, 'Peter Kirsanow' <pkirsanow@beneschlaw.com>, 'stephen gilchrist' <thegilchristassociates@gmail.com>, 'John Mashburn' <jkmash@comcast.net>, 'Thomas Simuel' <tjsimuel32@gmail.com>
Subject: Re: [EXTERNAL] EAC Board of Advisors

More from Maureen:

Alex,

I haven't found much more than what we discussed. The meeting transcripts are here (and looks like we've almost completed uploading them back to 2006): https://www.usccr.gov/calendar/transcripts.php I did do a very quick glance through the transcripts and did not find any votes for the EAC positions. I did find the email below from 2015 in which the then- Chair's special assistant asked all Commissioners who wanted to be appointed. I wasn't at USCCR for this one - I found the email in securi sync. Sorry to not be of more help. -Maureen

---

From: Juana Silverio
Sent: Wednesday, March 04, 2015 6:09 PM
To: Martin Castro; Patricia Timmons-Goodson; Roberta Achtenberg; David Kladney; Michael Yaki; Karen Narasaki; Gail Heriot; Peter Kirsanow
Cc: Sheryl Cozart; Alec Deull; Amy Royce; Kimberly Tolhurst; Jason T. Lagria; Alison Somin; Carissa Mulder
Subject: US Election Assistance Commission

I am sending on behalf of Chairman Castro. Please let him and I know if you'd be interested in representing the Commission on the U.S. EAC's Advisory Board.

Commissioners Achtenberg & Thernstrom represented us in the past. The EAC has a quorum now and would appreciate the Commission's participation.

Best,
Juana Silverio, Esq.

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From: Alexander Heideman <aheideman@usccr.gov>
Date: Wednesday, September 16, 2020 at 1:31 PM
To: Christian Adams <a@electionlawcenter.com>, 'Gail Heriot' <gheriot@me.com>
Cc: Carissa Mulder <CMulder@usccr.gov>, 'Peter Kirsanow' <pkirsanow@beneschlaw.com>, 'stephen gilchrist' <thegilchristassociates@gmail.com>, 'John Mashburn' <jkmash@comcast.net>, 'Thomas Simuel' <tjsimuel32@gmail.com>
Subject: Re: [EXTERNAL] EAC Board of Advisors

I spoke with Maureen. She said that she was not asked about these appointments in 2019, but she thought that the Commissioners had had a conversation about them.

It seems to me that these appointments were unlawful if they were not (1) made by the Commission and (2) bipartisan and geographically varied. And Google Maps says Reno (Kladney) is a short 3.5 hour drive from San Fran (Yaki).

I'll try to locate the 2015, 2013, & 2011 transcripts to see if appointments were voted on in the past.

From: Christian Adams <a@electionlawcenter.com>
Date: Wednesday, September 16, 2020 at 12:55 PM
To: 'Gail Heriot' <gheriot@me.com>, Alexander Heideman <aheideman@usccr.gov>
Cc: Carissa Mulder <CMulder@usccr.gov>, 'Peter Kirsanow' <pkirsanow@beneschlaw.com>, 'stephen gilchrist' <thegilchristassociates@gmail.com>, 'John Mashburn' <jkmash@comcast.net>, 'Thomas Simuel' <tjsimuel32@gmail.com>
Subject: RE: [EXTERNAL] EAC Board of Advisors

> CAUTION: This email is from outside USCCR.

ree with Gail. And the "appointments" did not comply with the admonition of the law that the board should be bipartisan.

From: Gail Heriot <gheriot@me.com>
Sent: Wednesday, September 16, 2020 12:15 PM
To: Alexander Heideman <aheideman@usccr.gov>
Cc: Christian Adams <a@electionlawcenter.com>; Carissa Mulder <CMulder@usccr.gov>; Peter Kirsanow <pkirsanow@beneschlaw.com>; stephen gilchrist <thegilchristassociates@gmail.com>; John Mashburn <jkmash@comcast.net>; Thomas Simuel <tjsimuel32@gmail.com>
Subject: Re: [EXTERNAL] EAC Board of Advisors

If the statute says the Commission makes the appointments, I don't see how it can be that the chair makes them. My recollection of the appointments under the Reynolds years is

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that Abby and maybe Yaki were our delegates. If there are transcripts going back that far they may show whether the Commission voted on these appointments.

On Sep 16, 2020, at 8:51 AM, Alexander Heideman <aheideman@usccr.gov> wrote:

Maureen says:

> To my knowledge, there are not any internal rules about these appointments. The practice has been that the Chair makes the appointments. (Note though that I only have records going back to 2015 for these appointments and I do not know what the practice was before 2015). The statute (52 U.S.C. 20944(a)(10)) says "Two members appointed by the United States Commission on Civil Rights." 52 U.S.C. 20944(b) says "Appointments shall be made to the Board of Advisors under subsection (a) in a manner which ensures that the Board of Advisors will be bipartisan in nature and will reflect the various geographic regions of the United States." The terms are 2 year appointments; I believe the current USCCR appointments are Yaki and Kladney, and that their terms end 4/13/2021. I provided the above information, i.e., bipartisan and geographic scope, before the 2019 appointments, though did not provide any input beyond this. I've also attached the House report for the Help American Vote Act (establishes the advisory committees) - discussion of advisory boards is on page 33.

I have a call scheduled with her at 1 pm to discuss further. Please let me know if there are any specific questions I should ask.

Alex

From: Alexander Heideman <aheideman@usccr.gov>
Date: Wednesday, September 16, 2020 at 11:02 AM
To: Christian Adams <a@electionlawcenter.com>, 'Gail Heriot' <gheriot@me.com>
Cc: Carissa Mulder <CMulder@usccr.gov>, 'Peter >, 'John Mashburn' <jkmash@comcast.net>, 'Thomas Simuel' <tjsimuel32@gmail.com>
Subject: Re: [EXTERNAL] EAC Board of Advisors

Yes, happy to.

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From: Christian Adams <a@electionlawcenter.com>
Date: Wednesday, September 16, 2020 at 11:02 AM
To: 'Gail Heriot' <gheriot@me.com>
Cc: Carissa Mulder <CMulder@usccr.gov>, 'Peter >, 'John Mashburn' <jkmash@comcast.net>, 'Thomas Simuel' <tjsimuel32@gmail.com>, Alexander Heideman <aheideman@usccr.gov>
Subject: RE: [EXTERNAL] EAC Board of Advisors

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ple people aren't asking her different times, can the SA's get to the bottom of this with maureen.

From: Gail Heriot <gheriot@me.com>
Sent: Wednesday, September 16, 2020 10:46 AM
To: Christian Adams <a@electionlawcenter.com>
Cc: Carissa Mulder <CMulder@usccr.gov>; Peter Kirsanow <pkirsanow@beneschlaw.com>; stephen gilchrist <thegilchristassociates@gmail.com>; John Mashburn <jkmash@comcast.net>; Thomas Simuel <tjsimuel32@gmail.com>; Alexander Heideman <aheideman@usccr.gov>
Subject: Re: [EXTERNAL] EAC Board of Advisors

I don't think there are any rules. In the absence of an explicit delegation of power, the Commission as a whole has that power. But you need to be sure it wasn't done properly. I have a vague recollection of talking about this in a meeting in the last decade. The straight shooter on the staff is Maureen Rudolph. You might want to ask her.

Gail Heriot
Professor of Law
University of San Diego

> On Sep 15, 2020, at 2:17 PM, Christian Adams <a@electionlawcenter.com> wrote:
>
> I don't know the rules for USCCR appointing ANYONE yet, but if there are no minutes showing a vote appointing them in regular business, it would seem that their "appointment" is

void.

From: Carissa Mulder <CMulder@usccr.gov>
Sent: Tuesday, September 15, 2020 4:01 PM
To: Christian Adams <a@electionlawcenter.com>; 'Peter Kirsanow' <pkirsanow@Beneschlaw.com>; 'Gail Heriot' <gheriot@me.com>; 'stephen gilchrist' <thegilchristassociates@gmail.com>
Cc: 'John Mashburn' <jkmash@comcast.net>; 'Thomas Simuel' <tjsimuel32@gmail.com>; Alexander Heideman <aheideman@usccr.gov>
Subject: Re: [EXTERNAL] EAC Board of Advisors

Looking at the document about the appointment of the advisory board members, I think that is correct, Christian. Catherine probably appointed them without ever bringing it up.

From: Christian Adams <a@electionlawcenter.com>
Sent: Tuesday, September 15, 2020 3:55:45 PM
To: Carissa Mulder; 'Peter Kirsanow'; 'Gail Heriot'; 'stephen gilchrist'
Cc: 'John Mashburn'; 'Thomas Simuel'; Alexander Heideman
Subject: RE: [EXTERNAL] EAC Board of Advisors

> CAUTION: This email is from outside USCCR.

It probably NEVER came up in a business meeting and therefore we should, as a commission have the authority to take it up in a business meeting and appoint-anew.

From: Carissa Mulder <CMulder@usccr.gov>
Sent: Tuesday, September 15, 2020 3:34 PM
To: Christian Adams <a@electionlawcenter.com>; Peter Kirsanow <pkirsanow@Beneschlaw.com>; 'Gail Heriot' <gheriot@me.com>; 'stephen gilchrist' <thegilchristassociates@gmail.com>
>; Alexander Heideman <aheideman@usccr.gov>
Subject: Re: [EXTERNAL] EAC Board of Advisors

Good question! I had no idea the USCCR got two designees to the EAC Board of Advisors. Here's the .

From: Christian Adams <a@electionlawcenter.com>
Sent: Tuesday, September 15, 2020 3:15:28 PM
To: Peter Kirsanow; 'Gail Heriot'; 'stephen gilchrist'

AMERICAN OVERSIGHT

Cc: John Mashburn; 'Thomas Simuel'; Carissa Mulder; Alexander Heideman
Subject: [EXTERNAL] EAC Board of Advisors

> CAUTION: This email is from outside USCCR.

AC commission saying that Yaki is acting absurdly and exercising power over the EAC by threatening the Pelosi pick on the EAC with removal if he doesn't do what he wants, effectively making Yaki a commissioner on the EAC on many issues. He is causing mischief I don't even detail here.

My question is how does he get UNDONE from the EAC oversight commission? How does that get revoked and replaced?

<Help America Vote Act House Report 107_329[1].pdf>

AMERICAN OVERSIGHT

Date : 11/16/2021 4:15:25 PM
From : "Cannan, Georgina" Georgina.Cannan@mail.house.gov
To : "ividulovic@usccr.gov" ividulovic@usccr.gov
Cc : "Nasta, Sarah" Sarah.Nasta@mail.house.gov
Subject : [EXTERNAL] EAC Statement

CAUTION: This email is from outside USCCR.

Hi Irena,

Thank you so much for taking the time to talk to us this afternoon. It was great to meet you. Here is the EAC press release.

Best,
Georgina

Georgina Cannan | Elections Counsel
Committee on House Administration
Democratic Staff
United States House of Representatives
1309 Longworth House Office Building
Washington, DC 20515

AMERICAN OVERSIGHT

Date : 11/16/2021 4:27:50 PM
From : "Irena Vidulovic" ividulovic@usccr.gov
To : "Cannan, Georgina" Georgina.Cannan@mail.house.gov
Cc : "Nasta, Sarah" Sarah.Nasta@mail.house.gov
Subject : Re: [EXTERNAL] EAC Statement
Attachment : United States Commission on Civil Rights Statement on Appointment to Election Assistance Commission 35.pdf;

Thank you Georgina. USCCR has issued the following statement on the appointment to the EAC Board of Advisors.

From: Cannan, Georgina <Georgina.Cannan@mail.house.gov>
Sent: Tuesday, November 16, 2021 4:15:22 PM
To: Irena Vidulovic
Cc: Nasta, Sarah
Subject: [EXTERNAL] EAC Statement

CAUTION: This email is from outside USCCR.

Hi Irena,

Thank you so much for taking the time to talk to us this afternoon. It was great to meet you. Here is the EAC press release.

Best,
Georgina

Georgina Cannan | Elections Counsel
Committee on House Administration
Democratic Staff
United States House of Representatives
1309 Longworth House Office Building
Washington, DC 20515

AMERICAN OVERSIGHT

United States Commission on Civil Rights Statement on Appointment to Election Assistance Commission 35-member Board of Advisors

November 16, 2021

Ms. Cleta Mitchell's nomination was put forth by Commissioners appointed by Republican authorities, including former President Trump, Senate Minority Leader McConnell, and House Minority McCarthy. Ms. Mitchell is not a member of the Commission on Civil Rights.

The Elections Assistance Commission (EAC), which solicits nominations, requested the U.S. Commission on Civil Rights (Commission) nominate two advisors to the EAC 35-member board of advisors.

Ms. Mitchell is one of two Commission appointees selected by Commissioners to serve on Board of Advisors to the Election Assistance Commission.

The EAC nominee by Commissioners appointed by Democratic authorities was unable to serve and the Commissioners have re-nominated their candidate-to the Commission's remaining appointment to the EAC. There will be a discussion and vote on this matter at the Commission's November 19, 2021, business meeting.

By way of background, Commissioners of the Commission of Civil Rights (USCCR) have the sole authority to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, which is exercised by majority vote of Commissioners.

USCCR is governed by the following agency instruction process regarding nominations to the Board of Advisors to the EAC:

- Commissioners appointed by Democratic authorities nominated two individuals of their membership, and the members appointed by the Republican authorities nominated two individuals of their membership.
- Once nominated, the members appointed by the Democratic authorities, selects one of two individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one of the two individuals nominated by the members appointed by the Democratic authorities.
- Appointments are ratified by majority vote of Commissioners.

Cleta Mitchell was nominated by Commissioners that were appointed by Republican authorities; and was ratified by majority vote of Commissioners.

AMERICAN OVERSIGHT

Date : 11/16/2021 9:26:02 PM
From : "Joshua Dansby" jdansby@usccr.gov
To : "David Kladney" dkladney@usccr.gov, "Irena Vidulovic" ividulovic@usccr.gov, "Debo P. Adegbile" dadegbile@usccr.gov
Subject : Yahoo Article EAC Appointment

Most comprehensive article I have found so far.

https://www.yahoo.com/now/trump-adviser-appointed-panel-us-231913763.html

-Joshua

Joshua W. Dansby (he/him)
Special Assistant to Commissioner David Kladney
U.S. Commission on Civil Rights
E: jdansby@usccr.gov
http://usccr.gov/
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425

AMERICAN OVERSIGHT

Date : 11/17/2021 8:01:02 AM
From : "Ben S." bsswieringa@gmail.com
To : "publicaffairs@usccr.gov" publicaffairs@usccr.gov
Subject : [EXTERNAL]

CAUTION: This email is from outside USCCR.

The Commission should be ashamed of nominating corrupt Cleta Mitchell to the EAC and all members who nominated her should resign.

AMERICAN OVERSIGHT

Date : 11/17/2021 11:56:01 AM
From : "Irena Vidulovic" ividulovic@usccr.gov
To : "Debo P. Adegbile" dadegbile@usccr.gov, "Adegbile, Debo" Debo.Adegbile@wilmerhale.com
Subject : Re: Yahoo Article EAC Appointment

Adegbile,

Here is some updated coverage with hyperlinks.

- Original AP Story
  - Notable publications that ran:
    - Washington Post
    - NBC
    - SF Chronicle
    - Yahoo
    - Over 260 outlets have run the AP story across the US & a few in India
- Fox News
  - The Fox piece also cites the Commission's statement; the subhead notes that the EAC advisory board doesn't have power to make policy. It includes Cleta's quote a bit higher up and doesn't as directly cite the cause of her resignation from her law firm.
  - It cites the AP story and includes an image of and link to the Twitter post from Jessica Huseman, which was also mentioned in the AP piece
  - Also republished on Yahoo
- HillReporter.com
  - Goes a little deeper into Cleta's background and doesn't mention the nominations of the two board members but also calls the EAC and the USCCR "bodies with little authority."
  - It also includes an image of and link to Jessica Huseman's post on Twitter as well as a Nov. 1 post from Cleta

These are the major highlights – these stories all cite your statement and mention the nomination of 2 board members and the nomination process.

- Newsweek released an updated story, but didn't name J. Christian Adams as the other nominee. It cites the statement from yesterday.

From: Joshua Dansby
Sent: Tuesday, November 16, 2021 9:26:02 PM
To: David Kladney; Irena Vidulovic; Debo P. Adegbile
Subject: Yahoo Article EAC Appointment

Most comprehensive article I have found so far.

https://www.yahoo.com/now/trump-adviser-appointed-panel-us-

AMERICAN OVERSIGHT

231913763.html

-Joshua

Joshua W. Dansby (he/him)
Special Assistant to Commissioner David Kladney
U.S. Commission on Civil Rights
E: jdansby@usccr.gov
http://usccr.gov/
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425

AMERICAN OVERSIGHT

Date : 9/21/2020 8:43:05 AM
From : "Alexander Heideman" aheideman@usccr.gov
To : "John Mashburn" jmashburn@usccr.gov, "Carissa Mulder" CMulder@usccr.gov
Subject : Re: [EXTERNAL] EAC Board of Advisors

I have nothing new to report here.

From: John Mashburn <jmashburn@usccr.gov>
Date: Friday, September 18, 2020 at 2:13 PM
To: Alexander Heideman <aheideman@usccr.gov>, Carissa Mulder <CMulder@usccr.gov>
Subject: Re: [EXTERNAL] EAC Board of Advisors

Alex – is this the latest you have on this issue?

I talked to folks over at the EAC to see if the Cmn would be able -- from EAC's perspective – to change out one or both of the Bd of Advisors folks from the USCCR, or if once they are there that they are "stuck" for the term of the appointment

and the USCCR cannot change them out.

From: Alexander Heideman <aheideman@usccr.gov>
Date: Wednesday, September 16, 2020 at 5:20 PM
To: Christian Adams <a@electionlawcenter.com>, 'Gail Heriot' <gheriot@me.com>
Cc: Carissa Mulder <CMulder@usccr.gov>, 'Peter Kirsanow' <pkirsanow@beneschlaw.com>, 'stephen gilchrist' <thegilchristassociates@gmail.com>, 'John Mashburn' <jkmash@comcast.net>, 'Thomas Simuel' <tjsimuel32@gmail.com>
Subject: Re: [EXTERNAL] EAC Board of Advisors

More from Maureen:

Alex,

I haven't found much more than what we discussed. The meeting transcripts are here (and looks like we've almost completed uploading them back to 2006): https://www.usccr.gov/calendar/transcripts.php I did do a very quick glance through the transcripts and did not find any votes for the EAC positions. I did find the email below from 2015 in which the then- Chair's special assistant asked all Commissioners who wanted to be appointed. I wasn't at USCCR for this one - I found the email in securi sync. Sorry to not be of more help. -Maureen

---

From: Juana Silverio
Sent: Wednesday, March 04, 2015 6:09 PM
To: Martin Castro; Patricia Timmons-Goodson; Roberta Achtenberg; David Kladney; Michael Yaki; Karen Narasaki; Gail Heriot; Peter Kirsanow
Cc: Sheryl Cozart; Alec Deull; Amy Royce; Kimberly Tolhurst; Jason T. Lagria; Alison Somin;

AMERICAN OVERSIGHT

Carissa Mulder
Subject: US Election Assistance Commission

I am sending on behalf of Chairman Castro. Please let him and I know if you'd be interested in representing the Commission on the U.S. EAC's Advisory Board.

Commissioners Achtenberg & Thernstrom represented us in the past. The EAC has a quorum now and would appreciate the Commission's participation.

Best,
Juana Silverio, Esq.

From: Alexander Heideman <aheideman@usccr.gov>
Date: Wednesday, September 16, 2020 at 1:31 PM
To: Christian Adams <a@electionlawcenter.com>, 'Gail Heriot' <gheriot@me.com>
Cc: Carissa Mulder <CMulder@usccr.gov>, 'Peter Kirsanow' <pkirsanow@beneschlaw.com>, 'stephen gilchrist' <thegilchristassociates@gmail.com>, 'John Mashburn' <jkmash@comcast.net>, 'Thomas Simuel' <tjsimuel32@gmail.com>
Subject: Re: [EXTERNAL] EAC Board of Advisors

I spoke with Maureen. She said that she was not asked about these appointments in 2019, but she thought that the Commissioners had had a conversation about them.

It seems to me that these appointments were unlawful if they were not (1) made by the Commission and (2) bipartisan and geographically varied. And Google Maps says Reno (Kladney) is a short 3.5 hour drive from San Fran (Yaki).

I'll try to locate the 2015, 2013, & 2011 transcripts to see if appointments were voted on in the past.

From: Christian Adams <a@electionlawcenter.com>
Date: Wednesday, September 16, 2020 at 12:55 PM
To: 'Gail Heriot' <gheriot@me.com>, Alexander Heideman <aheideman@usccr.gov>
Cc: Carissa Mulder <CMulder@usccr.gov>, 'Peter Kirsanow' <pkirsanow@beneschlaw.com>, 'stephen gilchrist' <thegilchristassociates@gmail.com>, 'John Mashburn' <jkmash@comcast.net>, 'Thomas Simuel' <tjsimuel32@gmail.com>
Subject: RE: [EXTERNAL] EAC Board of Advisors

> CAUTION: This email is from outside USCCR.

ree with Gail. And the "appointments" did not comply with the admonition of the law that the board should be bipartisan.

From: Gail Heriot <gheriot@me.com>
Sent: Wednesday, September 16, 2020 12:15 PM

AMERICAN OVERSIGHT

To: Alexander Heideman <aheideman@usccr.gov>
Cc: Christian Adams <a@electionlawcenter.com>; Carissa Mulder <CMulder@usccr.gov>; Peter Kirsanow <pkirsanow@beneschlaw.com>; stephen gilchrist <thegilchristassociates@gmail.com>; John Mashburn <jkmash@comcast.net>; Thomas Simuel <tjsimuel32@gmail.com>
Subject: Re: [EXTERNAL] EAC Board of Advisors

If the statute says the Commission makes the appointments, I don't see how it can be that the chair makes them. My recollection of the appointments under the Reynolds years is that Abby and maybe Yaki were our delegates. If there are transcripts going back that far they may show whether the Commission voted on these appointments.

On Sep 16, 2020, at 8:51 AM, Alexander Heideman <aheideman@usccr.gov> wrote:

Maureen says:

> To my knowledge, there are not any internal rules about these appointments. The practice has been that the Chair makes the appointments. (Note though that I only have records going back to 2015 for these appointments and I do not know what the practice was before 2015). The statute (52 U.S.C. 20944(a)(10)) says "Two members appointed by the United States Commission on Civil Rights." 52 U.S.C. 20944(b) says "Appointments shall be made to the Board of Advisors under subsection (a) in a manner which ensures that the Board of Advisors will be bipartisan in nature and will reflect the various geographic regions of the United States." The terms are 2 year appointments; I believe the current USCCR appointments are Yaki and Kladney, and that their terms end 4/13/2021. I provided the above information, i.e., bipartisan and geographic scope, before the 2019 appointments, though did not provide any input beyond this. I've also attached the House report for the Help American Vote Act (establishes the advisory committees) - discussion of advisory boards is on page 33.

I have a call scheduled with her at 1 pm to discuss further. Please let me know if there are any specific questions I should ask.

Alex

From: Alexander Heideman <aheideman@usccr.gov>
Date: Wednesday, September 16, 2020 at 11:02 AM

AMERICAN OVERSIGHT

To: Christian Adams <a@electionlawcenter.com>, 'Gail Heriot' <gheriot@me.com>
Cc: Carissa Mulder <CMulder@usccr.gov>, 'Peter >, 'John Mashburn' <jkmash@comcast.net>, 'Thomas Simuel' <tjsimuel32@gmail.com>
Subject: Re: [EXTERNAL] EAC Board of Advisors

Yes, happy to.

From: Christian Adams <a@electionlawcenter.com>
Date: Wednesday, September 16, 2020 at 11:02 AM
To: 'Gail Heriot' <gheriot@me.com>
Cc: Carissa Mulder <CMulder@usccr.gov>, 'Peter >, 'John Mashburn' <jkmash@comcast.net>, 'Thomas Simuel' <tjsimuel32@gmail.com>, Alexander Heideman <aheideman@usccr.gov>
Subject: RE: [EXTERNAL] EAC Board of Advisors

> CAUTION: This email is from outside USCCR.

ple people aren't asking her different times, can the SA's get to the bottom of this with maureen.

From: Gail Heriot <gheriot@me.com>
Sent: Wednesday, September 16, 2020 10:46 AM
To: Christian Adams <a@electionlawcenter.com>
Cc: Carissa Mulder <CMulder@usccr.gov>; Peter Kirsanow <pkirsanow@beneschlaw.com>; stephen gilchrist <thegilchristassociates@gmail.com>; John Mashburn <jkmash@comcast.net>; Thomas Simuel <tjsimuel32@gmail.com>; Alexander Heideman <aheideman@usccr.gov>
Subject: Re: [EXTERNAL] EAC Board of Advisors

I don't think there are any rules. In the absence of an explicit delegation of power, the Commission as a whole has that power. But you need to be sure it wasn't done properly. I have a vague recollection of talking about this in a meeting in the last decade. The straight shooter on the staff is Maureen Rudolph. You might want to ask her.

Gail Heriot
Professor of Law
University of San Diego

AMERICAN OVERSIGHT

On Sep 15, 2020, at 2:17 PM, Christian Adams <a@electionlawcenter.com> wrote:

I don't know the rules for USCCR appointing ANYONE yet, but if there are no minutes showing a vote appointing them in regular business, it would seem that their "appointment" is void.

From: Carissa Mulder <CMulder@usccr.gov>
Sent: Tuesday, September 15, 2020 4:01 PM
To: Christian Adams <a@electionlawcenter.com>; 'Peter Kirsanow' <pkirsanow@Beneschlaw.com>; 'Gail Heriot' <gheriot@me.com>; 'stephen gilchrist' <thegilchristassociates@gmail.com>
Cc: 'John Mashburn' <jkmash@comcast.net>; 'Thomas Simuel' <tjsimuel32@gmail.com>; Alexander Heideman <aheideman@usccr.gov>
Subject: Re: [EXTERNAL] EAC Board of Advisors

Looking at the document about the appointment of the advisory board members, I think that is correct, Christian. Catherine probably appointed them without ever bringing it up.

From: Christian Adams <a@electionlawcenter.com>
Sent: Tuesday, September 15, 2020 3:55:45 PM
To: Carissa Mulder; 'Peter Kirsanow'; 'Gail Heriot'; 'stephen gilchrist'
Cc: 'John Mashburn'; 'Thomas Simuel'; Alexander Heideman
Subject: RE: [EXTERNAL] EAC Board of Advisors

> CAUTION: This email is from outside USCCR.

It probably NEVER came up in a business meeting and therefore we should, as a commission have the authority to take it up in a business meeting and appoint-anew.

From: Carissa Mulder <CMulder@usccr.gov>
Sent: Tuesday, September 15, 2020 3:34 PM
To: Christian Adams <a@electionlawcenter.com>; Peter Kirsanow <pkirsanow@Beneschlaw.com>; 'Gail Heriot' <gheriot@me.com>; 'stephen

AMERICAN OVERSIGHT

gilchrist' <thegilchristassociates@gmail.com>
>; Alexander Heideman <aheideman@usccr.gov>
Subject: Re: [EXTERNAL] EAC Board of Advisors

Good question! I had no idea the USCCR got two designees to the EAC Board of Advisors. Here's the .

From: Christian Adams <a@electionlawcenter.com>
Sent: Tuesday, September 15, 2020 3:15:28 PM
To: Peter Kirsanow; 'Gail Heriot'; 'stephen gilchrist'
Cc: John Mashburn; 'Thomas Simuel'; Carissa Mulder; Alexander Heideman
Subject: [EXTERNAL] EAC Board of Advisors

CAUTION: This email is from outside USCCR.

AC commission saying that Yaki is acting absurdly and exercising power over the EAC by threatening the Pelosi pick on the EAC with removal if he doesn't do what he wants, effectively making Yaki a commissioner on the EAC on many issues. He is causing mischief I don't even detail here.

My question is how does he get UNDONE from the EAC oversight commission? How does that get revoked and replaced?

<Help America Vote Act House Report 107_329[1].pdf>

AMERICAN OVERSIGHT

Date : 9/23/2020 9:54:36 AM
From : "John Mashburn" jmashburn@usccr.gov
To : "Christian Adams" a@electionlawcenter.com
Subject : Quick Update on Things

Below is where we stand on various issues:

1. **Blue Ink Electronic Signature** – USCCR needs one from you to attach to letters. Angela Rorison sent you an email requesting it. (FYI – she is one week on the job.)

2. **Nov. 13 Maternal Health Disparity/Mortality Briefing Witness AGREED TO**– first off, you should know that Kirsanow joined with us in requesting a witness. Bridget Wagner's recommendation of Ms. Kathleen Bravo -- who founded and runs OBRIA Medical Group (which runs 21 pro-life maternal health clinics and 11 mobile centers) -- was finally agreed to by Cullington-Gonzalez. She initially rejected Ms. Bravo as not having "appropriate background" and preferred the first proposed witness instead. However, Star Parker's witness Ms. Catherine Davis felt (and I agree) that if she could not talk about the disparate impact abortion has on the minority community (per the USCCR authorizing statute) she would not have a lot to contribute. After I sent Kathy a 2-page detailed defense on why Bravo does have appropriate experience and why perhaps some of their 13 current witnesses might not have -- based on the materials they sent out regarding the purpose of the hearing -- she relented and agreed to invite Ms. Bravo (who I am reaching out to today with her invitation letter, etc.)

    a. **Nov. 10 TEST RUN for Zooming this Hearing at 10 am or 11 am**– they want to know if you can participate in this test run on Nov. 10 at one of those times.

3. **EAC** – I talked with Kevin Rayburn last Friday late afternoon and he agreed to look into the issues. Will touch base with him again today. Alex has nothing new from his end looking into this.

4. **Vice-Chair** – talked to Andrew, etc. Today is Andrew's first day at his new job at OPM. Spencer is taking over for him. **We need to discuss this**.

5. **GC Vacancy** – I reached out to Carrie Lee as you asked. She will apply, but had some concerns that we should discuss.

6. **USA Today Criticism**– Alex found the "Economic Liberty" report Heriot mentioned that was rejected when the Dem majority first took over back in 2012 or so, and is looking for other reports that were also rejected.

7. **Oct. 30 Cmn Business Mtg** – the Oct. 16th Cmn Business Meeting has been moved from Oct. 16 to Oct. 30th -- at 12 noon.

At a staff level we are reviewing several 150-plus page report DRAFTS (Native American COVID-19 Impacts; Maternal Health Disparity – yes, written before the Nov. 13 hearing;

AMERICAN OVERSIGHT

etc.) Carissa is taking the lead on them. Carissa is also taking the lead in identifying folks for expiring State Advisory Cmtees (SACs).

AMERICAN OVERSIGHT

Date : 9/30/2020 10:52:45 AM
From : "Kevin Rayburn" krayburn@eac.gov
To : "jmashburn@usccr.gov" jmashburn@usccr.gov
Subject : [EXTERNAL] United States Commission on Civil Rights - EAC BOA Notice of Representation
Attachment : CLhamon signed - USCCR EAC Notice of Representation Form.pdf;Commission on Civil Rights Letter.pdf;

CAUTION: This email is from outside USCCR.

Good Morning Mr. Mashburn,

As requested, please find attached a copy of the most recent BOA Notice of Representation submitted by the U.S. Commission on Civil Rights as well as the letter sent by the EAC asking for the form to be completed. The current term of BOA members ends on April 13, 2021. In Q1 of 2021, I will send out new Notice of Representation forms for BOA representatives to be made for the new term.

Sincerely,

Kevin Rayburn, General Counsel

U.S. Election Assistance Commission

1335 East West Highway Suite 4300

Silver Spring, MD 20910

Cell: (202) 740-6546

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Notice of Representation
United States Election Assistance Commission
Board of Advisors

In accordance with 52 USC 20901 of the Help America Vote Act of 2002, the (U.S. Commission on Civil Rights) submits the following individual(s) as a member of the Election Assistance Commission Board of Advisors:

Designated Representative

Name:	Michael Yaki
Title:	Commissioner, U.S. Commission on Civil Rights
Address:	268 Bush Street #3333 San Francisco, CA 94104
Phone/FAX:	415-601-4008
Email:	myaki@usccr.gov
Party Affiliation:	Democratic

Designated Representative

Name:	David Kladney
Title:	Commissioner, U.S. Commission on Civil Rights
Address:	905 Joy Lake Road Reno, NV 89511
Phone/FAX:	775-849-0545
Email:	dkladney@usccr.gov
Party Affiliation:	Democratic

NAME / TITLE OF APPOINTING OFFICIAL

Print Name: Catherine Lhamon / Chair, U.S. Commission on Civil Rights

Sign Name: _____ Date: 3/22/2019

Please return the completed form via email to Clifford Tatum (Ctatum@eac.gov), facsimile transmission, at (301) 734-3108, or your notice can be mailed to: U.S. Election Assistance Commission; 1335 East West Highway, Suite 4300; Silver Spring, MD 20910.

1/2019 version

AMERICAN OVERSIGHT

U.S. ELECTION ASSISTANCE COMMISSION
1335 East West Highway – Suite 4300
Silver Spring, MD 20910

February 22, 2019

United States Commission on Civil Rights
Catherine E. Lhamon, Chair
1331 Pennsylvania Avenue NW
Suite 1150
Washington DC 20425
Email: Rsingla@usccr.gov

Re: U.S. Election Assistance Commission
Board of Advisors Membership Appointment

Dear Ms. Lhamon:

As you know, the Help America Vote Act of 2002 (HAVA), 52 U.S.C. 20901 et seq., created the U.S. Election Assistance Commission (EAC) and established three Advisory Boards[15] to assist the EAC with the development of Voluntary Voting System Guidelines. The Advisory Boards are primarily charged with providing advice, guidance and support to the EAC on the development of the Voluntary Voting System Guidelines.

The membership of the respective Advisory Boards is set forth in Section 213, 214 and 221[16]. Under Section 214, your organization is authorized to appoint two members to the Board of Advisors.

Please be advised that it is time to reappoint your designated representatives to the Board of Advisors. If you do not appoint someone new, your existing representatives will continue to serve and be reappointed.

Your current representatives are:

Patricia Timmons-Goodson
Michael Yaki

Each member representative serves for a period of two years unless replaced and may be reappointed if no replacement is named. The term of your member representatives will renew on April 13, 2019 with the renewal of the Advisory Board's Charter.

---

[15] Standards Board and Board of Advisors created in Section 211; and the Technical Guidelines Development Committee created in Section 221.
[16] 52 USC 20943, 52 USC 20944 and 52 USC 20961

AMERICAN OVERSIGHT

This year we anticipate having important discussions about voting system guidelines development, election systems as part of the nation's critical infrastructure and cyber security. Therefore, your prompt response to this letter is greatly appreciated.

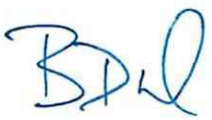
Please use the enclosed Notice of Representation form to advise us of the designated representative to serve on the EAC Board of Advisors. Please return your Notice of Representation no later than March 15, 2019, as the Board will hold its annual meeting during the week of April 22, 2019.

Please return the completed form via facsimile to (301) 734-3108, Attn: Brian Newby, by email to Bnewby@eac.gov or by mail to:

U.S. Election Assistance Commission
Advisory Board
1335 East West Highway, Suite 4300
Silver Spring, MD 20910

Thank you for your attention to this matter. If we can be of assistance, please feel free to contact us at (301) 563-3937.

Sincerely,



Brian Newby
Executive Director

AMERICAN OVERSIGHT

Date : 9/30/2020 11:02:28 AM
From : "John Mashburn" jmashburn@usccr.gov
To : "Kevin Rayburn" krayburn@eac.gov
Subject : Re: [EXTERNAL] United States Commission on Civil Rights - EAC BOA Notice of Representation

Thanks

From: Kevin Rayburn <krayburn@eac.gov>
Date: Wednesday, September 30, 2020 at 10:52 AM
To: John Mashburn <jmashburn@usccr.gov>
Subject: [EXTERNAL] United States Commission on Civil Rights - EAC BOA Notice of Representation

> CAUTION: This email is from outside USCCR.

As requested, please find attached a copy of the most recent BOA Notice of Representation submitted by the U.S. Commission on Civil Rights as well as the letter sent by the EAC asking for the form to be completed. The current term of BOA members ends on April 13, 2021. In Q1 of 2021, I will send out new Notice of Representation forms for BOA representatives to be made for the new term.

Sincerely,

Kevin Rayburn, General Counsel
U.S. Election Assistance Commission
1335 East West Highway Suite 4300
Silver Spring, MD 20910
Cell: (202) 740-6546

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AMERICAN OVERSIGHT

Date : 9/30/2020 2:02:55 PM
From : "John Mashburn" jmashburn@usccr.gov
To : "Christian Adams" a@electionlawcenter.com
Subject : - EAC BOA Notice of Representation
Attachment : CLhamon signed - USCCR EAC Notice of Representation Form.pdf;Commission on Civil Rights Letter.pdf;

Attached is the letter from Chair Lhamon to EAC appointing Yaki and Kladney to the EAC's Board of Advisors. Rayburn says there is no meeting of the BOA prior to current BOA representatives' terms expiring on April 13, 2021. However, USCCR could still technically remove and replace its representatives on the BOA prior to that time.

He did note that removing Yaki would create an administrative issue for the BOA since Yaki is the current Chair of the BOA -- and was recently reelected to serve as Chair again. In February, the EAC (Rayburn) will send a notice to USCCR asking whom it wants its representatives to be. As noted in the EAC letter to the USCCR (2nd attachment), if USCCR does not act to change its representatives prior to April 13, 2021, then the terms of the current USCCR representatives on the BOA (Yaki/Kladney) will be *automatically renewed*.

From: Kevin Rayburn <krayburn@eac.gov>
Date: Wednesday, September 30, 2020 at 10:52 AM
To: John Mashburn <jmashburn@usccr.gov>
Subject: [EXTERNAL] United States Commission on Civil Rights - EAC BOA Notice of Representation

> CAUTION: This email is from outside USCCR.

As requested, please find attached a copy of the most recent BOA Notice of Representation submitted by the U.S. Commission on Civil Rights as well as the letter sent by the EAC asking for the form to be completed. The current term of BOA members ends on April 13, 2021. In Q1 of 2021, I will send out new Notice of Representation forms for BOA representatives to be made for the new term.

Sincerely,

Kevin Rayburn, General Counsel
U.S. Election Assistance Commission
1335 East West Highway Suite 4300
Silver Spring, MD 20910
Cell: (202) 740-6546

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Notice of Representation
United States Election Assistance Commission
Board of Advisors

In accordance with 52 USC 20901 of the Help America Vote Act of 2002, the (U.S. Commission on Civil Rights) submits the following individual(s) as a member of the Election Assistance Commission Board of Advisors:

Designated Representative

Name:	Michael Yaki
Title:	Commissioner, U.S. Commission on Civil Rights
Address:	268 Bush Street #3333 San Francisco, CA 94104
Phone/FAX:	415-601-4008
Email:	myaki@usccr.gov
Party Affiliation:	Democratic

Designated Representative

Name:	David Kladney
Title:	Commissioner, U.S. Commission on Civil Rights
Address:	905 Joy Lake Road Reno, NV 89511
Phone/FAX:	775-849-0545
Email:	dkladney@usccr.gov
Party Affiliation:	Democratic

NAME / TITLE OF APPOINTING OFFICIAL

Print Name: Catherine Lhamon / Chair, U.S. Commission on Civil Rights

Sign Name: _____ Date: 3/22/2019

Please return the completed form via email to Clifford Tatum (Ctatum@eac.gov), facsimile transmission, at (301) 734-3108, or your notice can be mailed to: U.S. Election Assistance Commission; 1335 East West Highway, Suite 4300; Silver Spring, MD 20910.

1/2019 version

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U.S. ELECTION ASSISTANCE COMMISSION
1335 East West Highway – Suite 4300
Silver Spring, MD 20910

February 22, 2019

United States Commission on Civil Rights
Catherine E. Lhamon, Chair
1331 Pennsylvania Avenue NW
Suite 1150
Washington DC 20425
Email: Rsingla@usccr.gov

Re: U.S. Election Assistance Commission
Board of Advisors Membership Appointment

Dear Ms. Lhamon:

As you know, the Help America Vote Act of 2002 (HAVA), 52 U.S.C. 20901 et seq., created the U.S. Election Assistance Commission (EAC) and established three Advisory Boards[15] to assist the EAC with the development of Voluntary Voting System Guidelines. The Advisory Boards are primarily charged with providing advice, guidance and support to the EAC on the development of the Voluntary Voting System Guidelines.

The membership of the respective Advisory Boards is set forth in Section 213, 214 and 221[16]. Under Section 214, your organization is authorized to appoint two members to the Board of Advisors.

Please be advised that it is time to reappoint your designated representatives to the Board of Advisors. If you do not appoint someone new, your existing representatives will continue to serve and be reappointed.

Your current representatives are:

Patricia Timmons-Goodson
Michael Yaki

Each member representative serves for a period of two years unless replaced and may be reappointed if no replacement is named. The term of your member representatives will renew on April 13, 2019 with the renewal of the Advisory Board's Charter.

---

[15] Standards Board and Board of Advisors created in Section 211; and the Technical Guidelines Development Committee created in Section 221.
[16] 52 USC 20943, 52 USC 20944 and 52 USC 20961

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This year we anticipate having important discussions about voting system guidelines development, election systems as part of the nation's critical infrastructure and cyber security. Therefore, your prompt response to this letter is greatly appreciated.

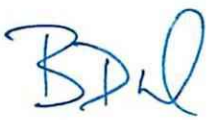
Please use the enclosed Notice of Representation form to advise us of the designated representative to serve on the EAC Board of Advisors. Please return your Notice of Representation no later than March 15, 2019, as the Board will hold its annual meeting during the week of April 22, 2019.

Please return the completed form via facsimile to (301) 734-3108, Attn: Brian Newby, by email to Bnewby@eac.gov or by mail to:

U.S. Election Assistance Commission
Advisory Board
1335 East West Highway, Suite 4300
Silver Spring, MD 20910

Thank you for your attention to this matter. If we can be of assistance, please feel free to contact us at (301) 563-3937.

Sincerely,



Brian Newby
Executive Director

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Date : 9/30/2020 7:57:10 PM
From : "Christian Adams" a@electionlawcenter.com
To : "'John Mashburn'" jmashburn@usccr.gov
Subject : [EXTERNAL] RE: - EAC BOA Notice of Representation

> CAUTION: This email is from outside USCCR.

Thanks.

From: John Mashburn <jmashburn@usccr.gov>
Sent: Wednesday, September 30, 2020 2:03 PM
To: Christian Adams <a@electionlawcenter.com>
Subject: - EAC BOA Notice of Representation

Attached is the letter from Chair Lhamon to EAC appointing Yaki and Kladney to the EAC's Board of Advisors. Rayburn says there is no meeting of the BOA prior to current BOA representatives' terms expiring on April 13, 2021. However, USCCR could still technically remove and replace its representatives on the BOA prior to that time.

He did note that removing Yaki would create an administrative issue for the BOA since Yaki is the current Chair of the BOA -- and was recently reelected to serve as Chair again. In February, the EAC (Rayburn) will send a notice to USCCR asking whom it wants its representatives to be. As noted in the EAC letter to the USCCR (2nd attachment), if USCCR does not act to change its representatives prior to April 13, 2021, then the terms of the current USCCR representatives on the BOA (Yaki/Kladney) will be *automatically renewed*.

From: Kevin Rayburn <krayburn@eac.gov>
Date: Wednesday, September 30, 2020 at 10:52 AM
To: John Mashburn <jmashburn@usccr.gov>
Subject: [EXTERNAL] United States Commission on Civil Rights - EAC BOA Notice of Representation

> CAUTION: This email is from outside USCCR.

As requested, please find attached a copy of the most recent BOA Notice of Representation submitted by the U.S. Commission on Civil Rights as well as the letter sent by the EAC asking for the form to be completed. The current term of BOA members ends on April 13, 2021. In Q1 of 2021, I will send out new Notice of Representation forms for BOA representatives to be made for the new term.

Sincerely,

Kevin Rayburn, General Counsel
U.S. Election Assistance Commission

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1335 East West Highway Suite 4300
Silver Spring, MD 20910
Cell: (202) 740-6546

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Date : 12/2/2020 2:36:33 PM
From : "John Mashburn" jkmash@comcast.net
To : "Kirsanow, Peter" pkirsanow@Beneschlaw.com, "Peter Kirsanow" pkirsanow@usccr.gov, "Gail Heriot" gheriot@usccr.gov, "Gail Heriot" gheriot@sandiego.edu, "Christian Adams" adams@electionlawcenter.com, "stephen gilchrist" thegilchristassociates@gmail.com, "Stephen Gilchrist" sgilchrist@usccr.gov
Cc : "Thomas Simuel" tsimuel@usccr.gov, "Carissa Mulder" CMulder@usccr.gov, "Alexander Heideman" alexanderheideman@gmail.com
Subject : [EXTERNAL] Re: Letter to EAC regarding EAC Board of Advisor Appointees
Attachment : Caucus Letter to EAC - 1.docx;HAVA SEC- 214.docx;EAC to Commission on Civil Rights Letter.pdf;CLhamon signed - USCCR EAC Notice of Representation Form.pdf;

CAUTION: This email is from outside USCCR.

The attached first document is a draft letter for the caucus to send to the EAC regarding what steps the EAC takes to ensure the statutorily designated entities that appoint BOA members appoint them by the agency as a whole -- and are not just unilaterally appointed by the “head” of a designated agency. It also asks what the EAC does to “ensure” that the members of the BOA are appointed in a “bipartisan manner” as is statutorily required by Section 214(b) of the HAVA act.

The other attachments are documents that would accompany the draft letter.

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December 2, 2020

Chair Benjamin Hovland
Vice Chair Donald Palmer
U.S. Election Assistance Commission
633 3rd Street NW, Suite 200
Washington, DC 20001

Dear Chairman Hovland and Vice Chairman Palmer:

As you know, the Help America Vote Act of 2002 (HAVA), 52 U.S.C. 2091 et seq., created the U.S. Election Assistance Commission (EAC) and established three Advisory Boards to provide advice, guidance and support to the EAC on the development of Voluntary Voting System Guidelines. In Section 214(a), the United States Commission for Civil Rights (USCCR) *as a whole* is authorized to appoint two members of the EAC's 37-member Board of Advisors (BOA). Section 214(b) requires that "appointments shall be made to the Board of Advisors under subsection (a) in a manner which *ensures* that the Board of Advisors will be bipartisan in nature and will reflect the various geographic regions of the United States." [*emphasis added*].

In reviewing the USCCR's current appointees to the BOA, we note that both appointees are members of the same party -- and thus are not bipartisan as required by Section 214(b) -- and that the appointments were evidently made by the Chair of the USCCR unilaterally without approval of the USCCR as a whole. In addition to the USCCR, there are 9 other national associations authorized *as a whole* to each appoint two members to the EAC's 37-member BOA and section 214(b) requires that those appointments also be done "in a manner which ensures that the Board of Advisors will be bipartisan in nature …"

A letter sent to the Chair of the USCCR from the EAC on February 22, 2019 (*attached*) advised the Chair that it was time for the USCCR to "reappoint" its "designated representatives" to the BOA under Section 214(a) and stated that if no new designees were appointed, then the existing representatives would continue to serve and be automatically reappointed. The letter then asked the Chair to send in a "Notice of Representation" form by March 15, 2019 – which was less than 3 weeks later and thus provided little time for the USCCR as a whole to approve any designees. No mention is made in the EAC's letter that the appointment power under Section 214 is provided to the USCCR as a whole, and that it is not a power delegated to the USCCR Chair alone. The EAC letter to the USCCR Chair also failed to mention that Section 214(b) requires appointments made to the Board of Advisors be done "in a manner which *ensures* that the Board of Advisors will be bipartisan in nature …"

Put simply, there are significant doubts that this "appointment" was actually an appointment that followed our Commission's regular procedures for making an appointment.

In light of the unbalanced partisan way (both being of the same party) in which the current USCCR appointments were made to the BOA, we would like to know what steps, if any, the EAC takes to enforce the statutory requirements under Section 214 regarding its Board of Advisors as follows:

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a) that each of the national entities allowed to appoint members to the BOA (including the USCCR) actually approves the appointment of their representatives to the BOA *as a whole* – and that the nominal head of each entity does not make the appointments unilaterally on their own authority; and

b) that the appointments from each national entity are made in a manner that "*ensures*" the BOA will be "bipartisan in nature."

Sincerely,

Cc: Benjamin Hovland
Chairperson
U.S. Election Assistance Commission

Donald Palmer
Vice Chair
U.S. Election Assistance Commission

AMERICAN OVERSIGHT

Notice of Representation
United States Election Assistance Commission
Board of Advisors

In accordance with 52 USC 20901 of the Help America Vote Act of 2002, the (U.S. Commission on Civil Rights) submits the following individual(s) as a member of the Election Assistance Commission Board of Advisors:

Designated Representative

Name:	Michael Yaki
Title:	Commissioner, U.S. Commission on Civil Rights
Address:	268 Bush Street #3333 San Francisco, CA 94104
Phone/FAX:	415-601-4008
Email:	myaki@usccr.gov
Party Affiliation:	Democratic

Designated Representative

Name:	David Kladney
Title:	Commissioner, U.S. Commission on Civil Rights
Address:	905 Joy Lake Road Reno, NV 89511
Phone/FAX:	775-849-0545
Email:	dkladney@usccr.gov
Party Affiliation:	Democratic

NAME / TITLE OF APPOINTING OFFICIAL

Print Name: Catherine Lhamon / Chair, U.S. Commission on Civil Rights

Sign Name: [signature] Date: 3/22/2019

Please return the completed form via email to Clifford Tatum (Ctatum@eac.gov), facsimile transmission, at (301) 734-3108, or your notice can be mailed to: U.S. Election Assistance Commission; 1335 East West Highway, Suite 4300; Silver Spring, MD 20910.

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U.S. ELECTION ASSISTANCE COMMISSION
1335 East West Highway – Suite 4300
Silver Spring, MD 20910

February 22, 2019

United States Commission on Civil Rights
Catherine E. Lhamon, Chair
1331 Pennsylvania Avenue NW
Suite 1150
Washington DC 20425
Email: Rsingla@usccr.gov

Re: U.S. Election Assistance Commission
Board of Advisors Membership Appointment

Dear Ms. Lhamon:

As you know, the Help America Vote Act of 2002 (HAVA), 52 U.S.C. 20901 et seq., created the U.S. Election Assistance Commission (EAC) and established three Advisory Boards[15] to assist the EAC with the development of Voluntary Voting System Guidelines. The Advisory Boards are primarily charged with providing advice, guidance and support to the EAC on the development of the Voluntary Voting System Guidelines.

The membership of the respective Advisory Boards is set forth in Section 213, 214 and 221[16]. Under Section 214, your organization is authorized to appoint two members to the Board of Advisors.

Please be advised that it is time to reappoint your designated representatives to the Board of Advisors. If you do not appoint someone new, your existing representatives will continue to serve and be reappointed.

Your current representatives are:

Patricia Timmons-Goodson
Michael Yaki

Each member representative serves for a period of two years unless replaced and may be reappointed if no replacement is named. The term of your member representatives will renew on April 13, 2019 with the renewal of the Advisory Board's Charter.

---

[15] Standards Board and Board of Advisors created in Section 211; and the Technical Guidelines Development Committee created in Section 221.
[16] 52 USC 20943, 52 USC 20944 and 52 USC 20961

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This year we anticipate having important discussions about voting system guidelines development, election systems as part of the nation's critical infrastructure and cyber security. Therefore, your prompt response to this letter is greatly appreciated.

Please use the enclosed Notice of Representation form to advise us of the designated representative to serve on the EAC Board of Advisors. Please return your Notice of Representation no later than March 15, 2019, as the Board will hold its annual meeting during the week of April 22, 2019.

Please return the completed form via facsimile to (301) 734-3108, Attn: Brian Newby, by email to Bnewby@eac.gov or by mail to:

U.S. Election Assistance Commission
Advisory Board
1335 East West Highway, Suite 4300
Silver Spring, MD 20910

Thank you for your attention to this matter. If we can be of assistance, please feel free to contact us at (301) 563-3937.

Sincerely,

Brian Newby
Executive Director

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SEC. 214. MEMBERSHIP OF BOARD OF ADVISORS.

(a) IN GENERAL.—The Board of Advisors shall be composed of 37 members appointed as follows:

(1) Two members appointed by the National Governors Association.

(2) Two members appointed by the National Conference of State Legislatures.

(3) Two members appointed by the National Association of Secretaries of State.

(4) Two members appointed by the National Association of State Election Directors.

(5) Two members appointed by the National Association of Counties.

(6) Two members appointed by the National Association of County Recorders, Election Administrators, and Clerks.

(7) Two members appointed by the United States Conference of Mayors.

(8) Two members appointed by the Election Center.

(9) Two members appointed by the International Association of County Recorders, Election Officials, and Treasurers.

(10) Two members appointed by the United States Commission on Civil Rights.

(11) Two members appointed by the Architectural and Transportation Barrier Compliance Board under section 502 of the Rehabilitation Act of 1973 (29 U.S.C. 792).

(12) The chief of the Office of Public Integrity of the Department of Justice, or the chief's designee.

(13) The chief of the Voting Section of the Civil Rights Division of the Department of Justice or the chief's designee.

(14) The director of the Federal Voting Assistance Program of the Department of Defense.

(15) Four members representing professionals in the field of science and technology, of whom—

(A) one each shall be appointed by the Speaker and the Minority Leader of the House of Representatives; and

(B) one each shall be appointed by the Majority Leader and the Minority Leader of the Senate.

(16) Eight members representing voter interests, of whom—

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(A) four members shall be appointed by the Committee on House Administration of the House of Representatives, of whom two shall be appointed by the chair and two shall be appointed by the ranking minority member; and

(B) four members shall be appointed by the Committee on Rules and Administration of the Senate, of whom two shall be appointed by the chair and two shall be appointed by the ranking minority member.

(b) MANNER OF APPOINTMENTS.—Appointments shall be made to the Board of Advisors under subsection (a) in a manner which ensures that the Board of Advisors will be bipartisan in nature and will reflect the various geographic regions of the United States.

(c) TERM OF SERVICE; VACANCY.—Members of the Board of Advisors shall serve for a term of 2 years, and may be reappointed. Any vacancy in the Board of Advisors shall be filled in the manner in which the original appointment was made.

(d) CHAIR.—The Board of Advisors shall elect a Chair from among its members.

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Date : 12/3/2020 2:35:49 PM
From : "Alexander Heideman" aheideman@usccr.gov
To : "John Mashburn" jmashburn@usccr.gov, "John Mashburn" jkmash@comcast.net
Subject : FW: [EXTERNAL] EAC Board of Advisors

Looking over my notes and these emails from September. During my call with her, Maureen indicated that she thought that the Commissioners were not informed of the EAC appointments. I also believe she told me that she advised Catherine of the right way to make appointments and was ignored. Gail thought you might want that information for the letter.

From: Alexander Heideman <aheideman@usccr.gov>
Date: Wednesday, September 16, 2020 at 5:19 PM
To: Christian Adams <a@electionlawcenter.com>, 'Gail Heriot' <gheriot@me.com>
Cc: Carissa Mulder <CMulder@usccr.gov>, 'Peter Kirsanow' <pkirsanow@beneschlaw.com>, 'stephen gilchrist' <thegilchristassociates@gmail.com>, 'John Mashburn' <jkmash@comcast.net>, 'Thomas Simuel' <tjsimuel32@gmail.com>
Subject: Re: [EXTERNAL] EAC Board of Advisors

More from Maureen:

Alex,

I haven't found much more than what we discussed. The meeting transcripts are here (and looks like we've almost completed uploading them back to 2006): https://www.usccr.gov/calendar/transcripts.php I did do a very quick glance through the transcripts and did not find any votes for the EAC positions. I did find the email below from 2015 in which the then- Chair's special assistant asked all Commissioners who wanted to be appointed. I wasn't at USCCR for this one - I found the email in securi sync. Sorry to not be of more help. -Maureen

---

From: Juana Silverio
Sent: Wednesday, March 04, 2015 6:09 PM
To: Martin Castro; Patricia Timmons-Goodson; Roberta Achtenberg; David Kladney; Michael Yaki; Karen Narasaki; Gail Heriot; Peter Kirsanow
Cc: Sheryl Cozart; Alec Deull; Amy Royce; Kimberly Tolhurst; Jason T. Lagria; Alison Somin; Carissa Mulder
Subject: US Election Assistance Commission

I am sending on behalf of Chairman Castro. Please let him and I know if you'd be interested in representing the Commission on the U.S. EAC's Advisory Board.

Commissioners Achtenberg & Thernstrom represented us in the past. The EAC has a quorum now and would appreciate the Commission's participation.

Best,
Juana Silverio, Esq.

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From: Alexander Heideman <aheideman@usccr.gov>
Date: Wednesday, September 16, 2020 at 1:31 PM
To: Christian Adams <a@electionlawcenter.com>, 'Gail Heriot' <gheriot@me.com>
Cc: Carissa Mulder <CMulder@usccr.gov>, 'Peter Kirsanow' <pkirsanow@beneschlaw.com>, 'stephen gilchrist' <thegilchristassociates@gmail.com>, 'John Mashburn' <jkmash@comcast.net>, 'Thomas Simuel' <tjsimuel32@gmail.com>
Subject: Re: [EXTERNAL] EAC Board of Advisors

I spoke with Maureen. She said that she was not asked about these appointments in 2019, but she thought that the Commissioners had had a conversation about them.

It seems to me that these appointments were unlawful if they were not (1) made by the Commission and (2) bipartisan and geographically varied. And Google Maps says Reno (Kladney) is a short 3.5 hour drive from San Fran (Yaki).

I'll try to locate the 2015, 2013, & 2011 transcripts to see if appointments were voted on in the past.

From: Christian Adams <a@electionlawcenter.com>
Date: Wednesday, September 16, 2020 at 12:55 PM
To: 'Gail Heriot' <gheriot@me.com>, Alexander Heideman <aheideman@usccr.gov>
Cc: Carissa Mulder <CMulder@usccr.gov>, 'Peter Kirsanow' <pkirsanow@beneschlaw.com>, 'stephen gilchrist' <thegilchristassociates@gmail.com>, 'John Mashburn' <jkmash@comcast.net>, 'Thomas Simuel' <tjsimuel32@gmail.com>
Subject: RE: [EXTERNAL] EAC Board of Advisors

> CAUTION: This email is from outside USCCR.

ree with Gail. And the "appointments" did not comply with the admonition of the law that the board should be bipartisan.

From: Gail Heriot <gheriot@me.com>
Sent: Wednesday, September 16, 2020 12:15 PM
To: Alexander Heideman <aheideman@usccr.gov>
Cc: Christian Adams <a@electionlawcenter.com>; Carissa Mulder <CMulder@usccr.gov>; Peter Kirsanow <pkirsanow@beneschlaw.com>; stephen gilchrist <thegilchristassociates@gmail.com>; John Mashburn <jkmash@comcast.net>; Thomas Simuel <tjsimuel32@gmail.com>
Subject: Re: [EXTERNAL] EAC Board of Advisors

If the statute says the Commission makes the appointments, I don't see how it can be that the chair makes them. My recollection of the appointments under the Reynolds years is

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that Abby and maybe Yaki were our delegates. If there are transcripts going back that far they may show whether the Commission voted on these appointments.

On Sep 16, 2020, at 8:51 AM, Alexander Heideman <aheideman@usccr.gov> wrote:

Maureen says:

> To my knowledge, there are not any internal rules about these appointments. The practice has been that the Chair makes the appointments. (Note though that I only have records going back to 2015 for these appointments and I do not know what the practice was before 2015). The statute (52 U.S.C. 20944(a)(10)) says "Two members appointed by the United States Commission on Civil Rights." 52 U.S.C. 20944(b) says "Appointments shall be made to the Board of Advisors under subsection (a) in a manner which ensures that the Board of Advisors will be bipartisan in nature and will reflect the various geographic regions of the United States." The terms are 2 year appointments; I believe the current USCCR appointments are Yaki and Kladney, and that their terms end 4/13/2021. I provided the above information, i.e., bipartisan and geographic scope, before the 2019 appointments, though did not provide any input beyond this. I've also attached the House report for the Help American Vote Act (establishes the advisory committees) - discussion of advisory boards is on page 33.

I have a call scheduled with her at 1 pm to discuss further. Please let me know if there are any specific questions I should ask.

Alex

From: Alexander Heideman <aheideman@usccr.gov>
Date: Wednesday, September 16, 2020 at 11:02 AM
To: Christian Adams <a@electionlawcenter.com>, 'Gail Heriot' <gheriot@me.com>
Cc: Carissa Mulder <CMulder@usccr.gov>, 'Peter >, 'John Mashburn' <jkmash@comcast.net>, 'Thomas Simuel' <tjsimuel32@gmail.com>
Subject: Re: [EXTERNAL] EAC Board of Advisors

Yes, happy to.

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From: Christian Adams <a@electionlawcenter.com>
Date: Wednesday, September 16, 2020 at 11:02 AM
To: 'Gail Heriot' <gheriot@me.com>
Cc: Carissa Mulder <CMulder@usccr.gov>, 'Peter >, 'John Mashburn' <jkmash@comcast.net>, 'Thomas Simuel' <tjsimuel32@gmail.com>, Alexander Heideman <aheideman@usccr.gov>
Subject: RE: [EXTERNAL] EAC Board of Advisors

> CAUTION: This email is from outside USCCR.

ple people aren't asking her different times, can the SA's get to the bottom of this with maureen.

From: Gail Heriot <gheriot@me.com>
Sent: Wednesday, September 16, 2020 10:46 AM
To: Christian Adams <a@electionlawcenter.com>
Cc: Carissa Mulder <CMulder@usccr.gov>; Peter Kirsanow <pkirsanow@beneschlaw.com>; stephen gilchrist <thegilchristassociates@gmail.com>; John Mashburn <jkmash@comcast.net>; Thomas Simuel <tjsimuel32@gmail.com>; Alexander Heideman <aheideman@usccr.gov>
Subject: Re: [EXTERNAL] EAC Board of Advisors

I don't think there are any rules. In the absence of an explicit delegation of power, the Commission as a whole has that power. But you need to be sure it wasn't done properly. I have a vague recollection of talking about this in a meeting in the last decade. The straight shooter on the staff is Maureen Rudolph. You might want to ask her.

Gail Heriot
Professor of Law
University of San Diego

> On Sep 15, 2020, at 2:17 PM, Christian Adams <a@electionlawcenter.com> wrote:
>
> I don't know the rules for USCCR appointing ANYONE yet, but if there are no minutes showing a vote appointing them in regular business, it would seem that their "appointment" is

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void.

From: Carissa Mulder <CMulder@usccr.gov>
Sent: Tuesday, September 15, 2020 4:01 PM
To: Christian Adams <a@electionlawcenter.com>; 'Peter Kirsanow' <pkirsanow@Beneschlaw.com>; 'Gail Heriot' <gheriot@me.com>; 'stephen gilchrist' <thegilchristassociates@gmail.com>
Cc: 'John Mashburn' <jkmash@comcast.net>; 'Thomas Simuel' <tjsimuel32@gmail.com>; Alexander Heideman <aheideman@usccr.gov>
Subject: Re: [EXTERNAL] EAC Board of Advisors

Looking at the document about the appointment of the advisory board members, I think that is correct, Christian. Catherine probably appointed them without ever bringing it up.

From: Christian Adams <a@electionlawcenter.com>
Sent: Tuesday, September 15, 2020 3:55:45 PM
To: Carissa Mulder; 'Peter Kirsanow'; 'Gail Heriot'; 'stephen gilchrist'
Cc: 'John Mashburn'; 'Thomas Simuel'; Alexander Heideman
Subject: RE: [EXTERNAL] EAC Board of Advisors

> CAUTION: This email is from outside USCCR.

It probably NEVER came up in a business meeting and therefore we should, as a commission have the authority to take it up in a business meeting and appoint-anew.

From: Carissa Mulder <CMulder@usccr.gov>
Sent: Tuesday, September 15, 2020 3:34 PM
To: Christian Adams <a@electionlawcenter.com>; Peter Kirsanow <pkirsanow@Beneschlaw.com>; 'Gail Heriot' <gheriot@me.com>; 'stephen gilchrist' <thegilchristassociates@gmail.com>
>; Alexander Heideman <aheideman@usccr.gov>
Subject: Re: [EXTERNAL] EAC Board of Advisors

Good question! I had no idea the USCCR got two designees to the EAC Board of Advisors. Here's the .

From: Christian Adams <a@electionlawcenter.com>
Sent: Tuesday, September 15, 2020 3:15:28 PM
To: Peter Kirsanow; 'Gail Heriot'; 'stephen gilchrist'

AMERICAN OVERSIGHT

Cc: John Mashburn; 'Thomas Simuel'; Carissa Mulder; Alexander Heideman
Subject: [EXTERNAL] EAC Board of Advisors

CAUTION: This email is from outside USCCR.

AC commission saying that Yaki is acting absurdly and exercising power over the EAC by threatening the Pelosi pick on the EAC with removal if he doesn't do what he wants, effectively making Yaki a commissioner on the EAC on many issues. He is causing mischief I don't even detail here.

My question is how does he get UNDONE from the EAC oversight commission? How does that get revoked and replaced?

<Help America Vote Act House Report 107_329[1].pdf>

AMERICAN OVERSIGHT

Date : 12/3/2020 5:07:49 PM
From : "Alexander Heideman" alexanderheideman@gmail.com
To : "Alexander Heideman" aheideman@usccr.gov
Subject : Fwd: [EXTERNAL] EAC Board of Advisors

CAUTION: This email is from outside USCCR.

---------- Forwarded message ----------
From: John Mashburn <jkmash@comcast.net>
Date: Dec 3, 2020, 5:06 PM -0500
To: Christian Adams <a@electionlawcenter.com>, Gail Heriot <gheriot@me.com>, stephen gilchrist <thegilchristassociates@gmail.com>, Peter Kirsanow <pkirsanow@beneschlaw.com>
Cc: Carissa Mulder <carissa.mulder@gmail.com>, Alex Heidiman <alexanderheideman@gmail.com>, Thomas Simuel <tjsimuel32@gmail.com>
Subject: Fwd: [EXTERNAL] EAC Board of Advisors

> That is indeed what Maureen said to me as well.
>
> But the point of the letter going to the EAC Chair/Vice Chair instead of the USCCR Chair is that the EAC should be making sure that the USCCR [and the other nine group organizations that can appoint two members per section 214(a)] actually do so in a manner that is consistent with section 214(b)'s requirement that the appointments be made in a manner that is both bipartisan and geographically diverse.
>
> The EAC should also ensure that the authority granted to the organizations as a whole under section 214(a) to appoint members to the EAC's BOA is exercised by the organizations as a whole — and is not exercised unilaterally by the respective head of each organization.
>
> Whatever the practice was by each organization in the past should not matter and the statutory requirements should be enforced by the EAC itself going forward.
>
> Again, the EAC under the statute needs to enforce these mandatory statutory requirements against each organization vs. each organization enforcing them as each organization individually (or each organization's head) sees fit.
>
> Sent from my iPhone
>
> Begin forwarded message:
>
> > **From:** Alexander Heideman <aheideman@usccr.gov>
> > **Date:** December 3, 2020 at 2:35:55 PM EST
> > **To:** John Mashburn <jmashburn@usccr.gov>, John Mashburn <jkmash@comcast.net>
> > **Subject: FW: [EXTERNAL] EAC Board of Advisors**

AMERICAN OVERSIGHT

Looking over my notes and these emails from September. During my call with her, Maureen indicated that she thought that the Commissioners were not informed of the EAC appointments. I also believe she told me that she advised Catherine of the right way to make appointments and was ignored. Gail thought you might want that information for the letter.

From: Alexander Heideman <aheideman@usccr.gov>
Date: Wednesday, September 16, 2020 at 5:19 PM
To: Christian Adams <a@electionlawcenter.com>, 'Gail Heriot' <gheriot@me.com>
Cc: Carissa Mulder <CMulder@usccr.gov>, 'Peter Kirsanow' <pkirsanow@beneschlaw.com>, 'stephen gilchrist' <thegilchristassociates@gmail.com>, 'John Mashburn' <jkmash@comcast.net>, 'Thomas Simuel' <tjsimuel32@gmail.com>
Subject: Re: [EXTERNAL] EAC Board of Advisors

More from Maureen:

Alex,

I haven't found much more than what we discussed. The meeting transcripts are here (and looks like we've almost completed uploading them back to 2006): https://www.usccr.gov/calendar/transcripts.php I did do a very quick glance through the transcripts and did not find any votes for the EAC positions. I did find the email below from 2015 in which the then- Chair's special assistant asked all Commissioners who wanted to be appointed. I wasn't at USCCR for this one - I found the email in securi sync. Sorry to not be of more help. -Maureen

---

From: Juana Silverio
Sent: Wednesday, March 04, 2015 6:09 PM
To: Martin Castro; Patricia Timmons-Goodson; Roberta Achtenberg; David

AMERICAN OVERSIGHT

Kladney; Michael Yaki; Karen Narasaki; Gail Heriot; Peter Kirsanow
Cc: Sheryl Cozart; Alec Deull; Amy Royce; Kimberly Tolhurst; Jason T. Lagria; Alison Somin; Carissa Mulder
Subject: US Election Assistance Commission

I am sending on behalf of Chairman Castro. Please let him and I know if you'd be interested in representing the Commission on the U.S. EAC's Advisory Board.

Commissioners Achtenberg & Thernstrom represented us in the past. The EAC has a quorum now and would appreciate the Commission's participation.

Best,
Juana Silverio, Esq.

From: Alexander Heideman <aheideman@usccr.gov>
Date: Wednesday, September 16, 2020 at 1:31 PM
To: Christian Adams <a@electionlawcenter.com>, 'Gail Heriot' <gheriot@me.com>
Cc: Carissa Mulder <CMulder@usccr.gov>, 'Peter Kirsanow' <pkirsanow@beneschlaw.com>, 'stephen gilchrist' <thegilchristassociates@gmail.com>, 'John Mashburn' <jkmash@comcast.net>, 'Thomas Simuel' <tjsimuel32@gmail.com>
Subject: Re: [EXTERNAL] EAC Board of Advisors

I spoke with Maureen. She said that she was not asked about these appointments in 2019, but she thought that the Commissioners had had a conversation about them.

It seems to me that these appointments were unlawful if they were not (1) made by the Commission and (2) bipartisan and geographically varied. And Google Maps says Reno (Kladney) is a short 3.5 hour drive from San Fran (Yaki).

I'll try to locate the 2015, 2013, & 2011 transcripts to see if appointments were voted on in the past.

From: Christian Adams <a@electionlawcenter.com>
Date: Wednesday, September 16, 2020 at 12:55 PM

AMERICAN OVERSIGHT

To: 'Gail Heriot' <gheriot@me.com>, Alexander Heideman <aheideman@usccr.gov>
Cc: Carissa Mulder <CMulder@usccr.gov>, 'Peter Kirsanow' <pkirsanow@beneschlaw.com>, 'stephen gilchrist' <thegilchristassociates@gmail.com>, 'John Mashburn' <jkmash@comcast.net>, 'Thomas Simuel' <tjsimuel32@gmail.com>
Subject: RE: [EXTERNAL] EAC Board of Advisors

CAUTION: This email is from outside USCCR.

ree with Gail. And the "appointments" did not comply with the admonition of the law that the board should be bipartisan.

From: Gail Heriot <gheriot@me.com>
Sent: Wednesday, September 16, 2020 12:15 PM
To: Alexander Heideman <aheideman@usccr.gov>
Cc: Christian Adams <a@electionlawcenter.com>; Carissa Mulder <CMulder@usccr.gov>; Peter Kirsanow <pkirsanow@beneschlaw.com>; stephen gilchrist <thegilchristassociates@gmail.com>; John Mashburn <jkmash@comcast.net>; Thomas Simuel <tjsimuel32@gmail.com>
Subject: Re: [EXTERNAL] EAC Board of Advisors

If the statute says the Commission makes the appointments, I don't see how it can be that the chair makes them. My recollection of the appointments under the Reynolds years is that Abby and maybe Yaki were our delegates. If there are transcripts going back that far they may show whether the Commission voted on these appointments.

On Sep 16, 2020, at 8:51 AM, Alexander Heideman <aheideman@usccr.gov> wrote:

AMERICAN OVERSIGHT

Maureen says:

> To my knowledge, there are not any internal rules about these appointments. The practice has been that the Chair makes the appointments. (Note though that I only have records going back to 2015 for these appointments and I do not know what the practice was before 2015). The statute (52 U.S.C. 20944(a)(10)) says "Two members appointed by the United States Commission on Civil Rights." 52 U.S.C. 20944(b) says "Appointments shall be made to the Board of Advisors under subsection (a) in a manner which ensures that the Board of Advisors will be bipartisan in nature and will reflect the various geographic regions of the United States." The terms are 2 year appointments; I believe the current USCCR appointments are Yaki and Kladney, and that their terms end 4/13/2021. I provided the above information, i.e., bipartisan and geographic scope, before the 2019 appointments, though did not provide any input beyond this. I've also attached the House report for the Help American Vote Act (establishes the advisory committees) - discussion of advisory boards is on page 33.

I have a call scheduled with her at 1 pm to discuss further. Please let me know if there are any specific questions I should ask.

Alex

From: Alexander Heideman <aheideman@usccr.gov>
Date: Wednesday, September 16, 2020 at 11:02 AM
To: Christian Adams <a@electionlawcenter.com>, 'Gail Heriot' <gheriot@me.com>
Cc: Carissa Mulder <CMulder@usccr.gov>, 'Peter

AMERICAN OVERSIGHT

Kirsanow' <pkirsanow@beneschlaw.com>, 'stephen gilchrist' <thegilchristassociates@gmail.com>, 'John >
Subject: Re: [EXTERNAL] EAC Board of Advisors

Yes, happy to.

From: Christian Adams <a@electionlawcenter.com>
Date: Wednesday, September 16, 2020 at 11:02 AM
To: 'Gail Heriot' <gheriot@me.com>
Cc: Carissa Mulder <CMulder@usccr.gov>, 'Peter Kirsanow' <pkirsanow@beneschlaw.com>, 'stephen gilchrist' <thegilchristassociates@gmail.com>, 'John >, Alexander Heideman <aheideman@usccr.gov>
Subject: RE: [EXTERNAL] EAC Board of Advisors

CAUTION: This email is from outside USCCR.

ple people aren't asking her different times, can the SA's get to the bottom of this with maureen.

From: Gail Heriot <gheriot@me.com>
Sent: Wednesday, September 16, 2020 10:46 AM
To: Christian Adams <a@electionlawcenter.com>
Cc: Carissa Mulder <CMulder@usccr.gov>; Peter Kirsanow <pkirsanow@beneschlaw.com>; stephen gilchrist <thegilchristassociates@gmail.com>; John >; Alexander Heideman <aheideman@usccr.gov>
Subject: Re: [EXTERNAL] EAC Board of Advisors

I don't think there are any rules. In the absence of an explicit delegation of power, the Commission as a whole has that power. But you need to be sure it wasn't done properly. I have a vague recollection of talking about this in a meeting in the last decade. The straight shooter on the staff is Maureen Rudolph. You might want to ask her.

AMERICAN OVERSIGHT

Gail Heriot

Professor of Law

University of San Diego

On Sep 15, 2020, at 2:17 PM, Christian Adams <a@electionlawcenter.com> wrote:

I don't know the rules for USCCR appointing ANYONE yet, but if there are no minutes showing a vote appointing them in regular business, it would seem that their "appointment" is void.

From: Carissa Mulder <CMulder@usccr.gov>
Sent: Tuesday, September 15, 2020 4:01 PM
To: Christian Adams <a@electionlawcenter.com>; 'Peter Kirsanow' <pkirsanow@Beneschlaw.com>; 'Gail Heriot' <gheriot@me.com>; 'stephen gilchrist' <thegilchristassociates@gmail.com>
Cc: 'John Mashburn' <jkmash@comcast.net>; 'Thomas Simuel' <tjsimuel32@gmail.com>; Alexander Heideman <aheideman@usccr.gov>
Subject: Re: [EXTERNAL] EAC Board of Advisors

AMERICAN OVERSIGHT

Looking at the document about the appointment of the advisory board members, I think that is correct, Christian. Catherine probably appointed them without ever bringing it up.

From: Christian Adams <a@electionlawcenter.com>
Sent: Tuesday, September 15, 2020 3:55:45 PM
To: Carissa Mulder; 'Peter Kirsanow'; 'Gail Heriot'; 'stephen gilchrist'
Cc: 'John Mashburn'; 'Thomas Simuel'; Alexander Heideman
Subject: RE: [EXTERNAL] EAC Board of Advisors

CAUTION: This email is from outside USCCR.

It probably NEVER came up in a business meeting and therefore we should, as a commission have the authority to take it up in a business meeting and appoint-anew.

From: Carissa Mulder <CMulder@usccr.gov>
Sent: Tuesday, September 15, 2020 3:34 PM
To: Christian Adams <a@electionlawcenter.com>; Peter Kirsanow <pkirsanow@Beneschlaw.com>; 'Gail Heriot' <gheriot@me.com>; 'stephen gilchrist' <thegilchristassociates@gmail.com>
Cc: John Mashburn <jkmash@comcast.net>; 'Thomas

AMERICAN OVERSIGHT

Simuel' <tjsimuel32@gmail.com>;
Alexander Heideman
<aheideman@usccr.gov>
Subject: Re: [EXTERNAL] EAC Board of Advisors

Good question! I had no idea the USCCR got two designees to the EAC Board of Advisors. Here's the list of all .

From: Christian Adams
<a@electionlawcenter.com>
Sent: Tuesday, September 15, 2020 3:15:28 PM
To: Peter Kirsanow; 'Gail Heriot'; 'stephen gilchrist'
Cc: John Mashburn; 'Thomas Simuel'; Carissa Mulder; Alexander Heideman
Subject: [EXTERNAL] EAC Board of Advisors

CAUTION: This email is from outside USCCR.

AC commission saying that Yaki is acting absurdly and exercising power over the EAC by threatening the Pelosi pick on the EAC with removal if he doesn't do what he wants, effectively making Yaki a commissioner on the EAC on many issues. He is causing mischief I don't even detail here.

My question is how does he get UNDONE from the EAC oversight commission? How does that get revoked and replaced?

AMERICAN OVERSIGHT

<Help America Vote Act House Report 107_329[1].pdf>

AMERICAN OVERSIGHT

Date : 12/4/2020 1:04:08 PM
From : "Carissa Mulder" carissa.mulder@gmail.com
To : "Kirsanow, Peter" pkirsanow@beneschlaw.com
Cc : "Peter Kirsanow" pkirsanow@usccr.gov, "Carissa Mulder" cmulder@usccr.gov
Subject : [EXTERNAL] Letter to EAC

CAUTION: This email is from outside USCCR.

Hi Pete,

Are you ok with signing this letter to the EAC? Gail is ok with it.

--
Carissa B. Mulder

AMERICAN OVERSIGHT

Date : 12/9/2020 11:56:02 AM
From : "Carissa Mulder" carissa.mulder@gmail.com
To : "John Mashburn" jmashburn@usccr.gov
Cc : "Carissa Mulder" cmulder@usccr.gov
Subject : [EXTERNAL] EAC letter

CAUTION: This email is from outside USCCR.

Pete is fine with the EAC letter.

--
Carissa B. Mulder

AMERICAN OVERSIGHT

Date : 12/9/2020 11:40:11 AM
From : "Carissa Mulder" carissa.mulder@gmail.com
To : "Kirsanow, Peter" pkirsanow@beneschlaw.com
Cc : "Peter Kirsanow" pkirsanow@usccr.gov, "Carissa Mulder" cmulder@usccr.gov
Subject : [EXTERNAL] Caucus letter to EAC
Attachment : Caucus Letter to EAC - 1.docx;

CAUTION: This email is from outside USCCR.

Hi Pete,

Are you ok with signing this letter to the EAC (this is Christian's initiative, of course).

--
Carissa B. Mulder

AMERICAN OVERSIGHT

December 2, 2020

Chair Benjamin Hovland
Vice Chair Donald Palmer
U.S. Election Assistance Commission
633 3rd Street NW, Suite 200
Washington, DC 20001

Dear Chairman Hovland and Vice Chairman Palmer:

As you know, the Help America Vote Act of 2002 (HAVA), 52 U.S.C. 2091 et seq., created the U.S. Election Assistance Commission (EAC) and established three Advisory Boards to provide advice, guidance and support to the EAC on the development of Voluntary Voting System Guidelines. In Section 214(a), the United States Commission for Civil Rights (USCCR) *as a whole* is authorized to appoint two members of the EAC's 37-member Board of Advisors (BOA). Section 214(b) requires that "appointments shall be made to the Board of Advisors under subsection (a) in a manner which *ensures* that the Board of Advisors will be bipartisan in nature and will reflect the various geographic regions of the United States." [*emphasis added*].

In reviewing the USCCR's current appointees to the BOA, we note that both appointees are members of the same party -- and thus are not bipartisan as required by Section 214(b) -- and that the appointments were evidently made by the Chair of the USCCR unilaterally without approval of the USCCR as a whole. In addition to the USCCR, there are 9 other national associations authorized *as a whole* to each appoint two members to the EAC's 37-member BOA and section 214(b) requires that those appointments also be done "in a manner which ensures that the Board of Advisors will be bipartisan in nature …"

A letter sent to the Chair of the USCCR from the EAC on February 22, 2019 (*attached*) advised the Chair that it was time for the USCCR to "reappoint" its "designated representatives" to the BOA under Section 214(a) and stated that if no new designees were appointed, then the existing representatives would continue to serve and be automatically reappointed. The letter then asked the Chair to send in a "Notice of Representation" form by March 15, 2019 – which was less than 3 weeks later and thus provided little time for the USCCR as a whole to approve any designees. No mention is made in the EAC's letter that the appointment power under Section 214 is provided to the USCCR as a whole, and that it is not a power delegated to the USCCR Chair alone. The EAC letter to the USCCR Chair also failed to mention that Section 214(b) requires appointments made to the Board of Advisors be done "in a manner which *ensures* that the Board of Advisors will be bipartisan in nature …"

Put simply, there are significant doubts that this "appointment" was actually an appointment that followed our Commission's regular procedures for making an appointment.

In light of the unbalanced partisan way (both being of the same party) in which the current USCCR appointments were made to the BOA, we would like to know what steps, if any, the EAC takes to enforce the statutory requirements under Section 214 regarding its Board of Advisors as follows:

AMERICAN OVERSIGHT

a) that each of the national entities allowed to appoint members to the BOA (including the USCCR) actually approves the appointment of their representatives to the BOA *as a whole* – and that the nominal head of each entity does not make the appointments unilaterally on their own authority; and

b) that the appointments from each national entity are made in a manner that "*ensures*" the BOA will be "bipartisan in nature."

Sincerely,

Cc: Benjamin Hovland
Chairperson
U.S. Election Assistance Commission

Donald Palmer
Vice Chair
U.S. Election Assistance Commission

AMERICAN OVERSIGHT

Date : 12/9/2020 2:16:48 PM
From : "Alexander Heideman" alexanderheideman@gmail.com
To : "Alexander Heideman" aheideman@usccr.gov
Subject : [EXTERNAL] Fwd: EAC letter re BOA
Attachment : Caucus Letter to EAC - 2_withsignatures.docx;

CAUTION: This email is from outside USCCR.

---------- Forwarded message ---------
From: **Alexander Heideman** <alexanderheideman@gmail.com>
Date: Wed, Dec 9, 2020 at 2:16 PM
Subject: Re: EAC letter re BOA
To: John Mashburn <jkmash@comcast.net>
Cc: Carissa Mulder <carissa.mulder@gmail.com>

Let me know if this works.

On Wed, Dec 9, 2020 at 2:12 PM Alexander Heideman <alexanderheideman@gmail.com> wrote:

> Will do. One sec.
>
> On Wed, Dec 9, 2020 at 2:11 PM John Mashburn <jkmash@comcast.net> wrote:
>
> > Can one of you help me get the attached draft letter put on letterhead with the 4 Cmnr signatures attached?

AMERICAN OVERSIGHT

UNITED STATES COMMISSION ON CIVIL RIGHTS

1331 PENNSYLVANIA AVENUE , NW, WASHINGTON, DC 20425
www.usccr.gov

December 2, 2020

Chair Benjamin Hovland
Vice Chair Donald Palmer
U.S. Election Assistance Commission
633 3rd Street NW, Suite 200
Washington, DC 20001

Dear Chairman Hovland and Vice Chairman Palmer:

We write as four members of the U.S. Commission on Civil Rights, and not on behalf of the Commission as a whole, regarding enforcement of the legal requirements in EAC's authorizing statutes for making appointments to the EAC's Board of Advisors.

As you know, the Help America Vote Act of 2002 (HAVA), 52 U.S.C. 2091 et seq., created the U.S. Election Assistance Commission (EAC) and established three Advisory Boards to provide advice, guidance and support to the EAC on the development of Voluntary Voting System Guidelines. In Section 214(a), the United States Commission for Civil Rights (USCCR) *as a whole* is authorized to appoint two members of the EAC's 37-member Board of Advisors (BOA). Section 214(b) requires that "appointments shall be made to the Board of Advisors under subsection (a) in a manner which *ensures* that the Board of Advisors will be bipartisan in nature and will reflect the various geographic regions of the United States." [*emphasis added*].

In reviewing the USCCR's current appointees to the BOA, we note that both appointees are members of the same party -- and thus are not bipartisan as required by Section 214(b) -- and that the appointments were evidently made by the Chair of the USCCR unilaterally without approval of the USCCR as a whole. In addition to the USCCR, there are 9 other national associations authorized *as a whole* to each appoint two members to the EAC's 37-member BOA and section 214(b) requires that those appointments also be done "in a manner which ensures that the Board of Advisors will be bipartisan in nature …"

A letter sent to the Chair of the USCCR from the EAC on February 22, 2019 (*attached*) advised the Chair that it was time for the USCCR to "reappoint" its "designated representatives" to the BOA under Section 214(a) and stated that if no new designees were appointed, then the existing representatives would continue to serve and be automatically reappointed. The letter then asked the Chair to send in a "Notice of Representation" form by March 15, 2019 – which was less than 3 weeks later and thus provided little time for the USCCR as a whole to approve any designees. No mention is made in the EAC's letter that the appointment power under Section 214 is provided to the USCCR as a whole, and that it is not a power delegated to the USCCR Chair alone. The EAC letter to the USCCR Chair also failed to mention that Section 214(b) requires appointments made to the Board of Advisors be done "in a manner which *ensures* that the Board of Advisors will be bipartisan in nature …"

AMERICAN OVERSIGHT

UNITED STATES COMMISSION ON CIVIL RIGHTS

1331 PENNSYLVANIA AVENUE , NW, WASHINGTON, DC 20425
www.usccr.gov

Put simply, there are significant doubts that this "appointment" was actually an appointment that followed our Commission's regular procedures for making an appointment.

In light of the unbalanced partisan way (both being of the same party) in which the current USCCR appointments were made to the BOA, we would like to know what steps, if any, the EAC takes to enforce the statutory requirements under Section 214 regarding its Board of Advisors as follows:

a) that each of the national entities allowed to appoint members to the BOA (including the USCCR) actually approves the appointment of their representatives to the BOA *as a whole* – and that the nominal head of each entity does not make the appointments unilaterally on their own authority; and

b) that the appointments from each national entity are made in a manner that "*ensures*" the BOA will be "bipartisan in nature."

Sincerely,

Gail Heriot
Commissioner

Stephen Gilchrist
Commissioner

Peter Kirsanow
Commissioner

J. Christian Adams
Commissioner

Cc: Benjamin Hovland
Chair
U.S. Election Assistance Commission

Donald Palmer
Vice Chair
U.S. Election Assistance Commission

AMERICAN OVERSIGHT

UNITED STATES COMMISSION ON CIVIL RIGHTS

1331 PENNSYLVANIA AVENUE , NW, WASHINGTON, DC 20425
www.usccr.gov

AMERICAN OVERSIGHT

Date : 12/10/2020 10:09:16 AM
From : "John Mashburn" jmashburn@usccr.gov
To : "bhovland@eac.gov" bhovland@eac.gov, "Donald Palmer" dpalmer@eac.gov
Subject : 4 USCCR Commissioners' Letter to EAC Regarding Board of Advisors Appointments
Attachment : 4 USCCR Comissioners' Letter to EAC Regarding BOA Appointments.pdf;

Dear EAC Chairman Hovlan and Vice Chairman Palmer:

Attached is a letter from 4 Commissioners of the U.S. Commission on Civil Rights regarding EAC's enforcement of the legal requirements in its authorizing statutes for making appointments to the EAC's Board of Advisors. EAC's response should be directed to USCCR Commissioners Heriot, Kirsanow, Gilchrist and Adams who joined in signing the letter. Any questions may be directed to them, or to me at jmashburn@usccr.gov (or by phone at 202-236-2617).

John K. Mashburn
Special Assistant
USCCR Commissioner J. Christian Adams

AMERICAN OVERSIGHT

UNITED STATES COMMISSION ON CIVIL RIGHTS

1331 PENNSYLVANIA AVENUE , NW, WASHINGTON, DC 20425 www.usccr.gov

December 10, 2020

Chair Benjamin Hovland
Vice Chair Donald Palmer
U.S. Election Assistance Commission
633 3rd Street NW, Suite 200
Washington, DC 20001

Dear Chairman Hovland and Vice Chairman Palmer:

We write as four members of the U.S. Commission on Civil Rights, and not on behalf of the Commission as a whole, regarding enforcement of the legal requirements in EAC's authorizing statutes for making appointments to the EAC's Board of Advisors.

As you know, the Help America Vote Act of 2002 (HAVA), 52 U.S.C. 2091 et seq., created the U.S. Election Assistance Commission (EAC) and established three Advisory Boards to provide advice, guidance and support to the EAC on the development of Voluntary Voting System Guidelines. In Section 214(a), the United States Commission for Civil Rights (USCCR) *as a whole* is authorized to appoint two members of the EAC's 37-member Board of Advisors (BOA). Section 214(b) requires that "appointments shall be made to the Board of Advisors under subsection (a) in a manner which ***ensures*** that the Board of Advisors will be bipartisan in nature and will reflect the various geographic regions of the United States." [*emphasis added*].

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AMERICAN OVERSIGHT

Put simply, there are significant doubts that this "appointment" was actually an appointment that followed our Commission's regular procedures for making an appointment.

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a) that each of the national entities allowed to appoint members to the BOA (including the USCCR) actually approves the appointment of their representatives to the BOA *as a whole* – and that the nominal head of each entity does not make the appointments unilaterally on their own authority; and

b) that the appointments from each national entity are made in a manner that "*ensures*" the BOA will be "bipartisan in nature."

Sincerely,

Gail Heriot
Commissioner

Stephen Gilchrist
Commissioner

Peter Kirsanow
Commissioner

J. Christian Adams
Commissioner

Cc: Benjamin Hovland
Chair
U.S. Election Assistance Commission

Donald Palmer
Vice Chair
U.S. Election Assistance Commission

AMERICAN OVERSIGHT

Date : 12/10/2020 10:57:25 AM
From : "Carissa Mulder" CMulder@usccr.gov
To : "carissa.mulder@gmail.com" carissa.mulder@gmail.com
Subject : FW: 4 USCCR Commissioners' Letter to EAC Regarding Board of Advisors Appointments
Attachment : 4 USCCR Comissioners' Letter to EAC Regarding BOA Appointments.pdf;

From: John Mashburn
Sent: Thursday, December 10, 2020 10:57:23 AM (UTC-05:00) Eastern Time (US & Canada)
To: Gail Heriot; Peter Kirsanow; Stephen Gilchrist; J. Christian Adams
Cc: Carissa Mulder; Alexander Heideman; Thomas Simuel
Subject: FW: 4 USCCR Commissioners' Letter to EAC Regarding Board of Advisors Appointments

Just FYI – the attached letter was sent to EAC Chair Hovlan and Vice Chair Palmer this morning.

From: John Mashburn <jmashburn@usccr.gov>
Date: Thursday, December 10, 2020 at 10:09 AM
To: "bhovland@eac.gov" <bhovland@eac.gov>, Donald Palmer <dpalmer@eac.gov>
Subject: 4 USCCR Commissioners' Letter to EAC Regarding Board of Advisors Appointments

Dear EAC Chairman Hovlan and Vice Chairman Palmer:

> Attached is a letter from 4 Commissioners of the U.S. Commission on Civil Rights regarding EAC's enforcement of the legal requirements in its authorizing statutes for making appointments to the EAC's Board of Advisors. EAC's response should be directed to USCCR Commissioners Heriot, Kirsanow, Gilchrist and Adams who joined in signing the letter. Any questions may be directed to them, or to me at jmashburn@usccr.gov (or by phone at 202-236-2617).
>
> John K. Mashburn
> Special Assistant
> USCCR Commissioner J. Christian Adams

AMERICAN OVERSIGHT

UNITED STATES COMMISSION ON CIVIL RIGHTS

1331 PENNSYLVANIA AVENUE , NW, WASHINGTON, DC 20425 www.usccr.gov

December 10, 2020

Chair Benjamin Hovland
Vice Chair Donald Palmer
U.S. Election Assistance Commission
633 3rd Street NW, Suite 200
Washington, DC 20001

Dear Chairman Hovland and Vice Chairman Palmer:

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As you know, the Help America Vote Act of 2002 (HAVA), 52 U.S.C. 2091 et seq., created the U.S. Election Assistance Commission (EAC) and established three Advisory Boards to provide advice, guidance and support to the EAC on the development of Voluntary Voting System Guidelines. In Section 214(a), the United States Commission for Civil Rights (USCCR) *as a whole* is authorized to appoint two members of the EAC's 37-member Board of Advisors (BOA). Section 214(b) requires that "appointments shall be made to the Board of Advisors under subsection (a) in a manner which ***ensures*** that the Board of Advisors will be bipartisan in nature and will reflect the various geographic regions of the United States." [*emphasis added*].

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Commissioner

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Cc: Benjamin Hovland
Chair
U.S. Election Assistance Commission

Donald Palmer
Vice Chair
U.S. Election Assistance Commission

AMERICAN OVERSIGHT

Date : 12/10/2020 10:57:25 AM
From : "Peter Kirsanow" pkirsanow@usccr.gov
To : "pkirsanow@beneschlaw.com" pkirsanow@beneschlaw.com
Subject : FW: 4 USCCR Commissioners' Letter to EAC Regarding Board of Advisors Appointments
Attachment : 4 USCCR Comissioners' Letter to EAC Regarding BOA Appointments.pdf;

From: John Mashburn
Sent: Thursday, December 10, 2020 10:57:23 AM (UTC-05:00) Eastern Time (US & Canada)
To: Gail Heriot; Peter Kirsanow; Stephen Gilchrist; J. Christian Adams
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Subject: FW: 4 USCCR Commissioners' Letter to EAC Regarding Board of Advisors Appointments

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From: John Mashburn <jmashburn@usccr.gov>
Date: Thursday, December 10, 2020 at 10:09 AM
To: "bhovland@eac.gov" <bhovland@eac.gov>, Donald Palmer <dpalmer@eac.gov>
Subject: 4 USCCR Commissioners' Letter to EAC Regarding Board of Advisors Appointments

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AMERICAN OVERSIGHT

UNITED STATES COMMISSION ON CIVIL RIGHTS

1331 PENNSYLVANIA AVENUE , NW, WASHINGTON, DC 20425 www.usccr.gov

December 10, 2020

Chair Benjamin Hovland
Vice Chair Donald Palmer
U.S. Election Assistance Commission
633 3rd Street NW, Suite 200
Washington, DC 20001

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Commissioner

Stephen Gilchrist
Commissioner

Peter Kirsanow
Commissioner

J. Christian Adams
Commissioner

Cc: Benjamin Hovland
Chair
U.S. Election Assistance Commission

Donald Palmer
Vice Chair
U.S. Election Assistance Commission

AMERICAN OVERSIGHT

Date : 12/10/2020 12:24:26 PM
From : "michael@michaelyaki.com" michael@michaelyaki.com
To : "clhamon@usccr.gov" clhamon@usccr.gov
Subject : [EXTERNAL] The 4 are trying an end run to EAC
Attachment : 4 USCCR Comissioners' Letter to EAC Regarding BOA Appointments.pdf;

CAUTION: This email is from outside USCCR.

I guess they don't like the fact that I'm chair . . . the response back will be it's the USCCR decision, not EAC.

Thanks!
Michael

MICHAEL YAKI CONSULTING

This email and any files or attachments transmitted with it may contain privileged or otherwise confidential information. If you are not the intended recipient, or believe that you may have received this communication in error, please advise the sender via reply email and immediately delete the email you received.

UNITED STATES COMMISSION ON CIVIL RIGHTS

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December 10, 2020

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Vice Chair Donald Palmer
U.S. Election Assistance Commission
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Commissioner

Cc: Benjamin Hovland
Chair
U.S. Election Assistance Commission

Donald Palmer
Vice Chair
U.S. Election Assistance Commission

AMERICAN OVERSIGHT

Date : 12/11/2020 3:26:42 PM
From : "Catherine Lhamon" clhamon@usccr.gov
To : "michael@michaelyaki.com" michael@michaelyaki.com
Subject : Re: [EXTERNAL] The 4 are trying an end run to EAC

thank you for sending on

Catherine E. Lhamon
Chair
U.S. Commission on Civil Rights
1331 Pennsylvania Ave NW, Suite 1150
Washington, DC 20425
clhamon@usccr.gov
Follow us on Twitter and Facebook.

From: michael@michaelyaki.com <michael@michaelyaki.com>
Sent: Thursday, December 10, 2020 12:24 PM
To: Catherine Lhamon
Subject: [EXTERNAL] The 4 are trying an end run to EAC

> CAUTION: This email is from outside USCCR.

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MICHAEL YAKI CONSULTING

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AMERICAN OVERSIGHT

Date : 1/13/2021 1:05:33 PM
From : "Maureen Rudolph" mrudolph@usccr.gov
To : "Kevin Rayburn" KRayburn@eac.gov
Subject : Automatic reply: EAC Board of Advisors - USCCR Appointees

I no longer work for the U.S. Commission on Civil Rights. Please contact Pilar McLaughlin at pmclaughlin@usccr.gov. Thank you.

AMERICAN OVERSIGHT

Date : 1/13/2021 1:05:32 PM
From : "Kevin Rayburn" KRayburn@eac.gov
To : "mrudolph@usccr.gov" mrudolph@usccr.gov
Subject : [EXTERNAL] EAC Board of Advisors - USCCR Appointees
Attachment : 4 USCCR Comissioners' Letter to EAC Regarding BOA Appointments.pdf;

CAUTION: This email is from outside USCCR.

Good Afternoon Ms. Rudolph,

I am the General Counsel for the U.S. Election Assistance Commission, and we recently received the attached correspondence from 4 of the Commissioners of USCCR. I am reaching out to see if you have any time tomorrow (Jan 14) or Friday (Jan 15) to briefly discuss the letter and the USCCR process of selecting its two statutory appointments to our Board of Advisors. My availability is below:

Thursday January 14: (8AM – Noon), (2:30PM – 6:00PM)
Friday January 15: All day

I don't anticipate needing more than 15 minutes of your time. I look forward to hearing back from you.

Sincerely,

Kevin Rayburn, General Counsel
U.S. Election Assistance Commission
Mobile: (202) 740-6546

AMERICAN OVERSIGHT

UNITED STATES COMMISSION ON CIVIL RIGHTS

1331 PENNSYLVANIA AVENUE , NW, WASHINGTON, DC 20425 www.usccr.gov

December 10, 2020

Chair Benjamin Hovland
Vice Chair Donald Palmer
U.S. Election Assistance Commission
633 3rd Street NW, Suite 200
Washington, DC 20001

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Cc: Benjamin Hovland
Chair
U.S. Election Assistance Commission

Donald Palmer
Vice Chair
U.S. Election Assistance Commission

AMERICAN OVERSIGHT

Date : 1/13/2021 1:08:23 PM
From : "Kevin Rayburn" KRayburn@eac.gov
To : "pmclaughlin@usccr.gov" pmclaughlin@usccr.gov
Subject : [EXTERNAL] EAC Board of Advisors - USCCR Appointees
Attachment : 4 USCCR Comissioners' Letter to EAC Regarding BOA Appointments.pdf;

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U.S. Election Assistance Commission
Mobile: (202) 740-6546

AMERICAN OVERSIGHT

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Cc: Benjamin Hovland
Chair
U.S. Election Assistance Commission

Donald Palmer
Vice Chair
U.S. Election Assistance Commission

AMERICAN OVERSIGHT

Date : 1/13/2021 3:46:14 PM
From : "Kevin Rayburn" KRayburn@eac.gov
To : "pmclaughlin@usccr.gov" pmclaughlin@usccr.gov, "Mauro Morales" mmorales@usccr.gov
Subject : [EXTERNAL] FW: EAC Board of Advisors - USCCR Appointees
Attachment : 4 USCCR Comissioners' Letter to EAC Regarding BOA Appointments.pdf;Commission on Civil Rights Letter.pdf;CLhamon signed - USCCR EAC Notice of Representation Form.pdf;

> CAUTION: This email is from outside USCCR.

Thank you. I have attached the letter I referenced as well as prior correspondence between the EAC and USCCR for your awareness.

Sincerely,

Kevin Rayburn, General Counsel
U.S. Election Assistance Commission
Mobile: (202) 740-6546

From: Pilar McLaughlin <pmclaughlin@usccr.gov>
Sent: Wednesday, January 13, 2021 3:40 PM
To: Kevin Rayburn <KRayburn@eac.gov>
Cc: Mauro Morales <mmorales@usccr.gov>
Subject: RE: EAC Board of Advisors - USCCR Appointees

Hi Kevin:

I've copied our acting General Counsel, Mauro Morales, on my response. Let me see when he is available to discuss.

Thank you,
Pilar

From: Kevin Rayburn <KRayburn@eac.gov>
Sent: Wednesday, January 13, 2021 1:08 PM
To: Pilar McLaughlin <pmclaughlin@usccr.gov>
Subject: [EXTERNAL] EAC Board of Advisors - USCCR Appointees

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AMERICAN OVERSIGHT

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1331 PENNSYLVANIA AVENUE , NW, WASHINGTON, DC 20425 www.usccr.gov

December 10, 2020

Chair Benjamin Hovland
Vice Chair Donald Palmer
U.S. Election Assistance Commission
633 3rd Street NW, Suite 200
Washington, DC 20001

Dear Chairman Hovland and Vice Chairman Palmer:

We write as four members of the U.S. Commission on Civil Rights, and not on behalf of the Commission as a whole, regarding enforcement of the legal requirements in EAC's authorizing statutes for making appointments to the EAC's Board of Advisors.

As you know, the Help America Vote Act of 2002 (HAVA), 52 U.S.C. 2091 et seq., created the U.S. Election Assistance Commission (EAC) and established three Advisory Boards to provide advice, guidance and support to the EAC on the development of Voluntary Voting System Guidelines. In Section 214(a), the United States Commission for Civil Rights (USCCR) *as a whole* is authorized to appoint two members of the EAC's 37-member Board of Advisors (BOA). Section 214(b) requires that "appointments shall be made to the Board of Advisors under subsection (a) in a manner which ***ensures*** that the Board of Advisors will be bipartisan in nature and will reflect the various geographic regions of the United States." [*emphasis added*].

In reviewing the USCCR's current appointees to the BOA, we note that both appointees are members of the same party -- and thus are not bipartisan as required by Section 214(b) -- and that the appointments were evidently made by the Chair of the USCCR unilaterally without approval of the USCCR as a whole. In addition to the USCCR, there are 9 other national associations authorized *as a whole* to each appoint two members to the EAC's 37-member BOA and section 214(b) requires that those appointments also be done "in a manner which ensures that the Board of Advisors will be bipartisan in nature …"

A letter sent to the Chair of the USCCR from the EAC on February 22, 2019 (*attached*) advised the Chair that it was time for the USCCR to "reappoint" its "designated representatives" to the BOA under Section 214(a) and stated that if no new designees were appointed, then the existing representatives would continue to serve and be automatically reappointed. The letter then asked the Chair to send in a "Notice of Representation" form by March 15, 2019 – which was less than 3 weeks later and thus provided little time for the USCCR as a whole to approve any designees. No mention is made in the EAC's letter that the appointment power under Section 214 is provided to the USCCR as a whole, and that it is not a power delegated to the USCCR Chair alone. The EAC letter to the USCCR Chair also failed to mention that Section 214(b) requires appointments made to the Board of Advisors be done "in a manner which ***ensures*** that the Board of Advisors will be bipartisan in nature …"

AMERICAN OVERSIGHT

Put simply, there are significant doubts that this "appointment" was actually an appointment that followed our Commission's regular procedures for making an appointment.

In light of the unbalanced partisan way (both being of the same party) in which the current USCCR appointments were made to the BOA, we would like to know what steps, if any, the EAC takes to enforce the statutory requirements under Section 214 regarding its Board of Advisors as follows:

a) that each of the national entities allowed to appoint members to the BOA (including the USCCR) actually approves the appointment of their representatives to the BOA *as a whole* – and that the nominal head of each entity does not make the appointments unilaterally on their own authority; and

b) that the appointments from each national entity are made in a manner that "*ensures*" the BOA will be "bipartisan in nature."

Sincerely,

Gail Heriot
Commissioner

Stephen Gilchrist
Commissioner

Peter Kirsanow
Commissioner

J. Christian Adams
Commissioner

Cc: Benjamin Hovland
Chair
U.S. Election Assistance Commission

Donald Palmer
Vice Chair
U.S. Election Assistance Commission

AMERICAN OVERSIGHT

Notice of Representation
United States Election Assistance Commission
Board of Advisors

In accordance with 52 USC 20901 of the Help America Vote Act of 2002, the (U.S. Commission on Civil Rights) submits the following individual(s) as a member of the Election Assistance Commission Board of Advisors:

Designated Representative

Name:	Michael Yaki
Title:	Commissioner, U.S. Commission on Civil Rights
Address:	268 Bush Street #3333 San Francisco, CA 94104
Phone/FAX:	415-601-4008
Email:	myaki@usccr.gov
Party Affiliation:	Democratic

Designated Representative

Name:	David Kladney
Title:	Commissioner, U.S. Commission on Civil Rights
Address:	905 Joy Lake Road Reno, NV 89511
Phone/FAX:	775-849-0545
Email:	dkladney@usccr.gov
Party Affiliation:	Democratic

NAME / TITLE OF APPOINTING OFFICIAL

Print Name: Catherine Lhamon / Chair, U.S. Commission on Civil Rights

Sign Name: _____ Date: 3/22/2019

Please return the completed form via email to Clifford Tatum (Ctatum@eac.gov), facsimile transmission, at (301) 734-3108, or your notice can be mailed to: U.S. Election Assistance Commission; 1335 East West Highway, Suite 4300; Silver Spring, MD 20910.

1/2019 version

AMERICAN OVERSIGHT

U.S. ELECTION ASSISTANCE COMMISSION
1335 East West Highway – Suite 4300
Silver Spring, MD 20910

February 22, 2019

United States Commission on Civil Rights
Catherine E. Lhamon, Chair
1331 Pennsylvania Avenue NW
Suite 1150
Washington DC 20425
Email: Rsingla@usccr.gov

Re: U.S. Election Assistance Commission
Board of Advisors Membership Appointment

Dear Ms. Lhamon:

As you know, the Help America Vote Act of 2002 (HAVA), 52 U.S.C. 20901 et seq., created the U.S. Election Assistance Commission (EAC) and established three Advisory Boards[15] to assist the EAC with the development of Voluntary Voting System Guidelines. The Advisory Boards are primarily charged with providing advice, guidance and support to the EAC on the development of the Voluntary Voting System Guidelines.

The membership of the respective Advisory Boards is set forth in Section 213, 214 and 221[16]. Under Section 214, your organization is authorized to appoint two members to the Board of Advisors.

Please be advised that it is time to reappoint your designated representatives to the Board of Advisors. If you do not appoint someone new, your existing representatives will continue to serve and be reappointed.

Your current representatives are:

Patricia Timmons-Goodson
Michael Yaki

Each member representative serves for a period of two years unless replaced and may be reappointed if no replacement is named. The term of your member representatives will renew on April 13, 2019 with the renewal of the Advisory Board's Charter.

---

[15] Standards Board and Board of Advisors created in Section 211; and the Technical Guidelines Development Committee created in Section 221.
[16] 52 USC 20943, 52 USC 20944 and 52 USC 20961

AMERICAN OVERSIGHT

This year we anticipate having important discussions about voting system guidelines development, election systems as part of the nation's critical infrastructure and cyber security. Therefore, your prompt response to this letter is greatly appreciated.

Please use the enclosed Notice of Representation form to advise us of the designated representative to serve on the EAC Board of Advisors. Please return your Notice of Representation no later than March 15, 2019, as the Board will hold its annual meeting during the week of April 22, 2019.

Please return the completed form via facsimile to (301) 734-3108, Attn: Brian Newby, by email to Bnewby@eac.gov or by mail to:

U.S. Election Assistance Commission
Advisory Board
1335 East West Highway, Suite 4300
Silver Spring, MD 20910

Thank you for your attention to this matter. If we can be of assistance, please feel free to contact us at (301) 563-3937.

Sincerely,

Brian Newby
Executive Director

AMERICAN OVERSIGHT

Date : 1/13/2021 3:40:25 PM
From : "Pilar McLaughlin" pmclaughlin@usccr.gov
To : "Kevin Rayburn" KRayburn@eac.gov
Cc : "Mauro Morales" mmorales@usccr.gov
Subject : RE: EAC Board of Advisors - USCCR Appointees

Hi Kevin:

I've copied our acting General Counsel, Mauro Morales, on my response. Let me see when he is available to discuss.

Thank you,
Pilar

From: Kevin Rayburn <KRayburn@eac.gov>
Sent: Wednesday, January 13, 2021 1:08 PM
To: Pilar McLaughlin <pmclaughlin@usccr.gov>
Subject: [EXTERNAL] EAC Board of Advisors - USCCR Appointees

> CAUTION: This email is from outside USCCR.

Good Afternoon Ms. McLaughlin,

I am the General Counsel for the U.S. Election Assistance Commission, and we recently received the attached correspondence from 4 of the Commissioners of USCCR. I am reaching out to see if you have any time tomorrow (Jan 14) or Friday (Jan 15) to briefly discuss the letter and the USCCR process of selecting its two statutory appointments to our Board of Advisors. My availability is below:

Thursday January 14: (8AM – Noon), (2:30PM – 6:00PM)
Friday January 15: All day

I don't anticipate needing more than 15 minutes of your time. I look forward to hearing back from you.

Sincerely,

Kevin Rayburn, General Counsel
U.S. Election Assistance Commission
Mobile: (202) 740-6546

AMERICAN OVERSIGHT

Date : 1/14/2021 10:43:53 AM
From : "Mauro Morales" mmorales@usccr.gov
To : "Kevin Rayburn" KRayburn@eac.gov, "Pilar McLaughlin" pmclaughlin@usccr.gov
Subject : RE: EAC Board of Advisors - USCCR Appointees
Attachment : image001.gif;image002.gif;

Mr. Rayburn,

I am available to speak to you today. As Staff Director of USCCR, I am the head of agency and in the absence of a General Counsel , I serve as the agency acting General Counsel.

How does 3 pm work for you?

Mauro Morales
Staff Director
U.S. Commission on Civil Rights
P: 202-376-7796| F: 202-376-7672
Mmorales@usccr.gov
http://usccr.gov/
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425

Follow Us on Twitter & Facebook:

From: Kevin Rayburn <KRayburn@eac.gov>
Sent: Wednesday, January 13, 2021 3:46 PM
To: Pilar McLaughlin <pmclaughlin@usccr.gov>; Mauro Morales <mmorales@usccr.gov>
Subject: [EXTERNAL] FW: EAC Board of Advisors - USCCR Appointees

> CAUTION: This email is from outside USCCR.

Thank you. I have attached the letter I referenced as well as prior correspondence between the EAC and USCCR for your awareness.

Sincerely,

Kevin Rayburn, General Counsel
U.S. Election Assistance Commission
Mobile: (202) 740-6546

From: Pilar McLaughlin <pmclaughlin@usccr.gov>
Sent: Wednesday, January 13, 2021 3:40 PM
To: Kevin Rayburn <KRayburn@eac.gov>

AMERICAN OVERSIGHT

Cc: Mauro Morales <mmorales@usccr.gov>
Subject: RE: EAC Board of Advisors - USCCR Appointees

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AMERICAN OVERSIGHT

AMERICAN OVERSIGHT

AMERICAN OVERSIGHT

Date : 1/14/2021 10:49:12 AM
From : "Kevin Rayburn" KRayburn@eac.gov
To : "Mauro Morales" mmorales@usccr.gov, "Pilar McLaughlin" pmclaughlin@usccr.gov
Subject : [EXTERNAL] RE: EAC Board of Advisors - USCCR Appointees
Attachment : image001.gif;image002.gif;

> CAUTION: This email is from outside USCCR.

Good Morning,

3PM works. Please call into my conference line. I'll send an invite.

301-960-1839, room code: 614381#

Sincerely,

Kevin Rayburn, General Counsel
U.S. Election Assistance Commission
Mobile: (202) 740-6546

From: Mauro Morales <mmorales@usccr.gov>
Sent: Thursday, January 14, 2021 10:44 AM
To: Kevin Rayburn <KRayburn@eac.gov>; Pilar McLaughlin <pmclaughlin@usccr.gov>
Subject: RE: EAC Board of Advisors - USCCR Appointees

Mr. Rayburn,

I am available to speak to you today. As Staff Director of USCCR, I am the head of agency and in the absence of a General Counsel , I serve as the agency acting General Counsel.

How does 3 pm work for you?

Mauro Morales
Staff Director
U.S. Commission on Civil Rights
P: 202-376-7796| F: 202-376-7672
Mmorales@usccr.gov
http://usccr.gov/
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425

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Sent: Wednesday, January 13, 2021 3:46 PM
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U.S. Election Assistance Commission
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Cc: Mauro Morales <mmorales@usccr.gov>
Subject: RE: EAC Board of Advisors - USCCR Appointees

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AMERICAN OVERSIGHT

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Mobile: (202) 740-6546

AMERICAN OVERSIGHT

AMERICAN OVERSIGHT

AMERICAN OVERSIGHT

Date : 1/14/2021 10:50:00 AM
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To : "Kevin Rayburn" KRayburn@eac.gov, "Mauro Morales" mmorales@usccr.gov
Subject : Re: EAC Board of Advisors - USCCR Appointees
Attachment : image001.gif;image002.gif;

Thanks Kevin.

Get Outlook for iOS

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AMERICAN OVERSIGHT

1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425

Follow Us on Twitter & Facebook:

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U.S. Election Assistance Commission
Mobile: (202) 740-6546

AMERICAN OVERSIGHT

AMERICAN OVERSIGHT

AMERICAN OVERSIGHT

Date : 1/14/2021 7:42:20 PM
From : "Alexander Heideman" aheideman@usccr.gov
To : "Gail Heriot" gheriot@me.com
Cc : "Gail Heriot" gheriot@usccr.gov
Subject : Re: [EXTERNAL] Re: Zoom
Attachment : Caucus Letter to EAC - 2_withsignatures.docx;

When I spoke to Maureen about this stuff in September, she said that she had not been asked about the 2019 appointments to the EAC, but that she thought that they required the Commission as a whole to appoint.

Other than my notes from my phone call with her, I don't have this documented anywhere else.

The letter doesn't mention this. I think you all decided specifically to not call out Catherine here. I don't remember why.

From: Gail Heriot <gheriot@me.com>
Date: Thursday, January 14, 2021 at 7:35 PM
To: Alexander Heideman <aheideman@usccr.gov>
Cc: Gail Heriot <gheriot@usccr.gov>
Subject: [EXTERNAL] Re: Zoom

> CAUTION: This email is from outside USCCR.

e say that in the letter?

Gail Heriot
Professor of Law
University of San Diego

> On Jan 14, 2021, at 3:29 PM, Alexander Heideman <aheideman@usccr.gov> wrote:
>
> Here's a brief survey of some of the cases Catherine litigated that were published & available on Westlaw. I did not include those litigated in her position at Georgetown Law where she was the supervisor attorney for students. I can go back and look at those too, if you like.
>
> At the ACLU Foundation of Southern California, Catherine represented "people of color, many of whom live in areas of Los Angeles that have high crime rates, who have submitted uncontroverted declarations stating that they have suffered from, and are likely to continue to suffer from, the unconstitutional police misconduct that forms the basis of the United States'

AMERICAN OVERSIGHT

suit against the City defendants." *United States v. City of Los Angeles, Cal.*, 288 F.3d 391, 397 (9th Cir. 2002). She litigated against the CA Secretary of State, alleging that the state's planned use of "punch-card" balloting machines violated the Equal Protection Clause and the Voting Rights Act. *Sw. Voter Registration Educ. Project v. Shelley*, 344 F. 3d 914, 917 (9th Cir. 2003). She sued two school districts, alleging unlawful use of racial and ethnic preferences in certain district programs. *Am. Civil Rights Found. v. Los Angeles Unified Sch. Dist.*, 86 Cal. Rptr. 3d 754, 757 (Cal. Ct. App. 2008); *Am. Civil Rights Found. v. Berkeley Unified Sch. Dist.*, 90 Cal. Rptr. 3d 789, 796 (Cal. Ct. App. 2009).

At the Public Counsel Law Center, Catherine represented farm workers who sued for declaratory and injunctive relief challenging California's implementation of the workers' compensation provision of the state constitution. *Bautista v. State of California*, 133 Cal. Rptr. 3d 909, 913 (Cal. Ct. App. 2011). She also represented students at three schools who sued their school district and the State for declaratory and injunctive relief challenging teacher layoffs pursuant to their constitutional right to equal educational opportunities. *Reed v. United Teachers Los Angeles*, 145 Cal. Rptr. 3d 454, 458 (Cal. Ct. App. 2012).

From: Gail Heriot <gheriot@usccr.gov>
Date: Thursday, January 14, 2021 at 3:53 PM
To: Alexander Heideman <aheideman@usccr.gov>
Cc: Gail Heriot <gheriot@me.com>
Subject: Re: Zoom

Let's try 1:00 ET/10:00PT.

Gail Heriot
Professor of Law
University of San Diego

> On Jan 14, 2021, at 12:52 PM, Alexander Heideman <aheideman@usccr.gov> wrote:
>
> Of course---what time works best for you? I'll start digging into this right now.

> **From:** Gail Heriot <gheriot@usccr.gov>
> **Date:** Thursday, January 14, 2021 at 3:31 PM
> **To:** Alexander Heideman <aheideman@usccr.gov>, Gail Heriot <gheriot@me.com>

AMERICAN OVERSIGHT

Subject: Zoom

Are you up for a zoom tomorrow morning? In the meantime, if you have tiime, can you see if you can find out what sort of litigation Catherine worked on (as mentioned below)?

Gail

Gail Heriot
Professor of Law
University of San Diego

AMERICAN OVERSIGHT

UNITED STATES COMMISSION ON CIVIL RIGHTS

1331 PENNSYLVANIA AVENUE , NW, WASHINGTON, DC 20425
www.usccr.gov

December 2, 2020

Chair Benjamin Hovland
Vice Chair Donald Palmer
U.S. Election Assistance Commission
633 3rd Street NW, Suite 200
Washington, DC 20001

Dear Chairman Hovland and Vice Chairman Palmer:

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UNITED STATES COMMISSION ON CIVIL RIGHTS

1331 PENNSYLVANIA AVENUE , NW, WASHINGTON, DC 20425
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Put simply, there are significant doubts that this "appointment" was actually an appointment that followed our Commission's regular procedures for making an appointment.

In light of the unbalanced partisan way (both being of the same party) in which the current USCCR appointments were made to the BOA, we would like to know what steps, if any, the EAC takes to enforce the statutory requirements under Section 214 regarding its Board of Advisors as follows:

a) that each of the national entities allowed to appoint members to the BOA (including the USCCR) actually approves the appointment of their representatives to the BOA *as a whole* – and that the nominal head of each entity does not make the appointments unilaterally on their own authority; and

b) that the appointments from each national entity are made in a manner that "*ensures*" the BOA will be "bipartisan in nature."

Sincerely,

Gail Heriot
Commissioner

Stephen Gilchrist
Commissioner

Peter Kirsanow
Commissioner

J. Christian Adams
Commissioner

Cc: Benjamin Hovland
Chair
U.S. Election Assistance Commission

Donald Palmer
Vice Chair
U.S. Election Assistance Commission

AMERICAN OVERSIGHT

UNITED STATES COMMISSION ON CIVIL RIGHTS

1331 PENNSYLVANIA AVENUE , NW, WASHINGTON, DC 20425
www.usccr.gov

AMERICAN OVERSIGHT

Date : 1/15/2021 11:10:25 AM
From : "Gail Heriot" gheriot@usccr.gov
To : "Alexander Heideman" aheideman@usccr.gov
Cc : "Gail Heriot" gheriot@me.com
Subject : Re: [EXTERNAL] Re: Zoom

Argh. Can we put off our zoom meeting? Are you able to do it tomorrow?

Gail Heriot
Professor of Law
University of San Diego

> On Jan 14, 2021, at 4:42 PM, Alexander Heideman <aheideman@usccr.gov> wrote:
>
> When I spoke to Maureen about this stuff in September, she said that she had not been asked about the 2019 appointments to the EAC, but that she thought that they required the Commission as a whole to appoint.
>
> Other than my notes from my phone call with her, I don't have this documented anywhere else.
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> The letter doesn't mention this. I think you all decided specifically to not call out Catherine here. I don't remember why.
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> ---
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> **Date:** Thursday, January 14, 2021 at 7:35 PM
> **To:** Alexander Heideman <aheideman@usccr.gov>
> **Cc:** Gail Heriot <gheriot@usccr.gov>
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AMERICAN OVERSIGHT

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Here's a brief survey of some of the cases Catherine litigated that were published & available on Westlaw. I did not include those litigated in her position at Georgetown Law where she was the supervisor attorney for students. I can go back and look at those too, if you like.

At the ACLU Foundation of Southern California, Catherine represented "people of color, many of whom live in areas of Los Angeles that have high crime rates, who have submitted uncontroverted declarations stating that they have suffered from, and are likely to continue to suffer from, the unconstitutional police misconduct that forms the basis of the United States' suit against the City defendants." *United States v. City of Los Angeles, Cal.*, 288 F.3d 391, 397 (9th Cir. 2002). She litigated against the CA Secretary of State, alleging that the state's planned use of "punch-card" balloting machines violated the Equal Protection Clause and the Voting Rights Act. *Sw. Voter Registration Educ. Project v. Shelley*, 344 F. 3d 914, 917 (9th Cir. 2003). She sued two school districts, alleging unlawful use of racial and ethnic preferences in certain district programs. *Am. Civil Rights Found. v. Los Angeles Unified Sch. Dist.*, 86 Cal. Rptr. 3d 754, 757 (Cal. Ct. App. 2008); *Am. Civil Rights Found. v. Berkeley Unified Sch. Dist.,* 90 Cal. Rptr. 3d 789, 796 (Cal. Ct. App. 2009).

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From: Gail Heriot <gheriot@usccr.gov>
Date: Thursday, January 14, 2021 at 3:53 PM
To: Alexander Heideman <aheideman@usccr.gov>
Cc: Gail Heriot <gheriot@me.com>
Subject: Re: Zoom

Let's try 1:00 ET/10:00PT.

AMERICAN OVERSIGHT

Gail Heriot
Professor of Law
University of San Diego

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Of course---what time works best for you? I'll start digging into this right now.

From: Gail Heriot <gheriot@usccr.gov>
Date: Thursday, January 14, 2021 at 3:31 PM
To: Alexander Heideman <aheideman@usccr.gov>, Gail Heriot <gheriot@me.com>
Subject: Zoom

Are you up for a zoom tomorrow morning? In the meantime, if you have tiime, can you see if you can find out what sort of litigation Catherine worked on (as mentioned below)?

Gail

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Professor of Law
University of San Diego

<Caucus Letter to EAC - 2_withsignatures.docx>

AMERICAN OVERSIGHT

Date : 1/15/2021 12:00:52 PM
From : "Alexander Heideman" aheideman@usccr.gov
To : "Gail Heriot" gheriot@usccr.gov
Cc : "Gail Heriot" gheriot@me.com
Subject : Re: [EXTERNAL] Re: Zoom

Sure, no problem. I can do tomorrow before noon Eastern, but I know that's early for you. I can also do anytime today if there's a better time that works.

From: Gail Heriot <gheriot@usccr.gov>
Date: Friday, January 15, 2021 at 11:10 AM
To: Alexander Heideman <aheideman@usccr.gov>
Cc: Gail Heriot <gheriot@me.com>
Subject: Re: [EXTERNAL] Re: Zoom

Argh. Can we put off our zoom meeting? Are you able to do it tomorrow?

Gail Heriot
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> Other than my notes from my phone call with her, I don't have this documented anywhere else.
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> The letter doesn't mention this. I think you all decided specifically to not call out Catherine here. I don't remember why.

From: Gail Heriot <gheriot@me.com>
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Subject: [EXTERNAL] Re: Zoom

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e say

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<Caucus Letter to EAC - 2_withsignatures.docx>

AMERICAN OVERSIGHT

Date : 1/15/2021 12:25:14 PM
From : "Gail Heriot" gheriot@usccr.gov
To : "Alexander Heideman" aheideman@usccr.gov
Cc : "Gail Heriot" gheriot@me.com
Subject : Re: [EXTERNAL] Re: Zoom

Early evening ET today might work. Stay tuned.

Gail Heriot
Professor of Law
University of San Diego

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University of San Diego

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AMERICAN OVERSIGHT

Date : 1/28/2021 5:30:38 PM
From : "John Mashburn" jmashburn@usccr.gov
To : "Carissa Mulder" carissa.mulder@gmail.com, "Christian Adams" adams@electionlawcenter.com
Cc : "Gail Heriot" gheriot@me.com, "Kirsanow, Peter" pkirsanow@beneschlaw.com, "Alexander Heideman" aheideman@usccr.gov, "stephen gilchrist" thegilchristassociates@gmail.com, "Thomas Simuel" tsimuel@usccr.gov, "J. Christian Adams" jadams@usccr.gov, "Thomas Simuel" tjsimuel32@gmail.com, "Peter Kirsanow" pkirsanow@usccr.gov, "Gail Heriot" gheriot@usccr.gov, "Carissa Mulder" CMulder@usccr.gov, "Stephen Gilchrist" sgilchrist@usccr.gov
Subject : Re: [EXTERNAL] Re: Asks for when a new chair is appointed

And add an AI that all appointments that the USCCR is statutorily authorized make to advisory Boards, Cmtees, etc. for other agencies must be approved by a majority vote of the Cmnrs, and not just unilaterally appointed by the USCCR Chair.

(e.g. Election Assistance Cmn for which the Chair appointed 2 Dems from the USCCR to EAC's Board of Advisors when the law called for political balance in appointments to the EAC's Advisory Board.

From: Carissa Mulder <carissa.mulder@gmail.com>
Date: Thursday, January 28, 2021 at 4:09 PM
To: Christian Adams <adams@electionlawcenter.com>
Cc: Gail Heriot <gheriot@me.com>, "Kirsanow, Peter" <pkirsanow@beneschlaw.com>, Alexander Heideman <aheideman@usccr.gov>, stephen gilchrist <thegilchristassociates@gmail.com>, Thomas Simuel <tsimuel@usccr.gov>, "J. Christian Adams" <jadams@usccr.gov>, Thomas Simuel <tjsimuel32@gmail.com>, Peter Kirsanow <pkirsanow@usccr.gov>, Gail Heriot <gheriot@usccr.gov>, Carissa Mulder <CMulder@usccr.gov>, Stephen Gilchrist <sgilchrist@usccr.gov>, John Mashburn <jmashburn@usccr.gov>
Subject: [EXTERNAL] Re: Asks for when a new chair is appointed

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r possible conditions:

- All interviews conducted as part of Commission projects must be attended by two Commissioners (or their designees), representing both political parties.
- AI stipulating that the Staff Director has no authority over special assistants .
- AI stipulating that the Staff Director has no authority to call a meeting, and must publish the Sunshine Act notice if four commissioners direct him to do so.

On Thu, Jan 28, 2021 at 3:57 PM Christian Adams <adams@electionlawcenter.com> wrote:

> Agree in the extreme: Responsibility for choosing SAC members is shifted entirely to the Commissioners and away from career staff.

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From: Carissa Mulder <carissa.mulder@gmail.com>
Sent: Thursday, January 28, 2021 3:55 PM
To: Gail Heriot <gheriot@me.com>; Kirsanow, Peter <pkirsanow@beneschlaw.com>; Alexander Heideman <aheideman@usccr.gov>; Christian Adams >; Thomas Simuel <tsimuel@usccr.gov>; J. Christian Adams <jadams@usccr.gov>; Thomas Simuel <tjsimuel32@gmail.com>
Cc: Peter Kirsanow <pkirsanow@usccr.gov>; Gail Heriot <gheriot@usccr.gov>; Carissa Mulder <cmulder@usccr.gov>; Stephen Gilchrist <sgilchrist@usccr.gov>; John Mashburn <jmashburn@usccr.gov>
Subject: Asks for when a new chair is appointed

Mauro's intransigence and the Dems' continued blocking of Scott Yenor and Patrick Mincey have me thinking about what Gail called "big asks" for whenever a new chair is appointed. I was also thinking about something Thomas said about the need to keep commissioners from blocking SAC appointees. A few ideas:

- A new AI that specifies that Commissioners appointed by Ds get to pick 7 SAC members for each SAC, and Commissioners appointed by Rs get to pick 7 SAC members for each SAC. The choices are not subject to review by the Staff Director or objection from the other caucus. Responsibility for choosing SAC members is shifted entirely to the Commissioners and away from career staff.

- Fire Mauro - no agreement on new staff director.

--
Carissa B. Mulder

--
Carissa B. Mulder

AMERICAN OVERSIGHT

Date : 2/2/2021 12:58:44 PM
From : "Bert Benavides" bbenavides@eac.gov
To : "michael@michaelyaki.com" michael@michaelyaki.com, "myaki@usccr.gov" myaki@usccr.gov, "Thomas Hicks" thicks@eac.gov, "Mona Harrington" mharrington@eac.gov, "Kristen Muthig" KMuthig@eac.gov, "Amanda Joiner" AJoiner@eac.gov, "Robin Sargent" rsargent@eac.gov, "Phillip Olaya" POlaya@eac.gov
Subject : [EXTERNAL] BOA 2021 Annual Meeting - Dates and notice rqmts?

CAUTION: This email is from outside USCCR.

Hi, all. Regarding the BOA annual meeting which usually takes place mid to late April: For purposes of notice and Federal Register deadlines, might we now consider potential dates to be in compliance? The interim meeting of March 31st is on the heels of mid to late April.

Please let me know what dates for April (or May) are being considered so I may send a SAVE THE DATE for the BOA Annual Meeting. ***My understanding is Mona and Kristin will require coordination with Commissioners and the EAC event calendar for the 2021 BOA Annual meeting date. Thank you, all.***

Bert
bbenavides@eac.gov
202.2949580

From: Phillip Olaya <POlaya@eac.gov>
Sent: Tuesday, February 2, 2021 8:48 AM
To: Kevin Rayburn <KRayburn@eac.gov>; Thomas Hicks <thicks@eac.gov>; Mona Harrington <mharrington@eac.gov>; Bert Benavides <bbenavides@eac.gov>
Subject: RE: VVSG vote / BOA telophonic meeting

Great! I've calendared a reminder for myself. Thanks for clarifying.

From: Kevin Rayburn <KRayburn@eac.gov>
Sent: Tuesday, February 2, 2021 8:43 AM
To: Phillip Olaya <POlaya@eac.gov>; Thomas Hicks <thicks@eac.gov>; Mona Harrington <mharrington@eac.gov>; Bert Benavides <bbenavides@eac.gov>
Subject: RE: VVSG vote / BOA telophonic meeting

Phil I think we are good for March 31st. The 60 day notice is to the board members (email is sufficient). The Fed Reg publication notice requirement is only 15 days per bylaws.

Kevin Rayburn, General Counsel
U.S. Election Assistance Commission
Mobile: (202) 740-6546

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Subject: RE: VVSG vote / BOA telophonic meeting

(Minus Michael Yaki)

The 60-day notice requirement passed yesterday for the BOA meeting to occur March 31. I got the notice periods mixed up with the 45-day notice to submit bylaws changes to the DFO. Apologies.

Bert sent an email to the Board members last week with the original date of March 31. Should we now push this back one week to April 7? I can draft the Fed. Reg. notice today.

Thanks.

From: Kevin Rayburn <KRayburn@eac.gov>
Sent: Tuesday, January 26, 2021 9:56 AM
To: Thomas Hicks <thicks@eac.gov>; Mona Harrington <mharrington@eac.gov>; michael@michaelyaki.com; Phillip Olaya <POlaya@eac.gov>; Bert Benavides <bbenavides@eac.gov>
Subject: RE: VVSG vote / BOA telophonic meeting

To ensure we provide 60 days' notice as required by BOA Bylaws (Article VI(G)), I recommend the 30th or 31st.

Kevin Rayburn, General Counsel
U.S. Election Assistance Commission
Mobile: (202) 740-6546

From: Thomas Hicks <thicks@eac.gov>
Sent: Tuesday, January 26, 2021 9:49 AM
To: Mona Harrington <mharrington@eac.gov>; michael@michaelyaki.com; Kevin Rayburn <KRayburn@eac.gov>; Phillip Olaya <POlaya@eac.gov>; Bert Benavides <bbenavides@eac.gov>
Subject: Re: VVSG vote / BOA telophonic meeting

Dates that work for me for a telephonic meeting are March 23, 24, 30 or 31.

Bert or Phil can you work with Micheal to set up the meeting and notice it?

Thanks,

AMERICAN OVERSIGHT

Thomas Hicks
Commissioner
U.S. Election Assistance Commission
633 3rd St. NW, Suite 200
Washington, DC 20001
Email: thicks@eac.gov
Twitter:@redblue2024
Website: www.eac.gov

ANd9GcRJe2IKYbOQP755cFHFsqYyoIPQCRGT67e-qQbx7-EdWiRsXWwc7w

This email and any files transmitted with it are confidential and intended solely for the use of the individual or entity to which they are addressed. If you have received this email in error please notify the system manager. The recipient is advised to check this email and any attachments for the presence of viruses. The Election Assistance Commission accepts no liability for any virus transmitted by this email.

From: Mona Harrington <mharrington@eac.gov>
Sent: Monday, January 25, 2021 6:30:03 PM
To: michael@michaelyaki.com <michael@michaelyaki.com>; Thomas Hicks <thicks@eac.gov>
Subject: Re: VVSG vote / BOA telophonic meeting

We just noticed the meeting today for February 10. We are following NIST recommendation and what was presented to the TGDC. I'm sure Tom will respond but I wanted to chime in.

Get Outlook for iOS

From: michael@michaelyaki.com <michael@michaelyaki.com>
Sent: Monday, January 25, 2021 6:05:05 PM
To: Thomas Hicks <thicks@eac.gov>; Mona Harrington <mharrington@eac.gov>
Subject: VVSG vote / BOA telophonic meeting

Tom

Is the VVSG vote scheduled for February 10th?

A number of members of the Board of Advisors, as well as NGO's, have been communicating with me about the VVSG's allowing voting machines with modems *so long as they're turned off*. We both know that there are physical and cyber methods that could activate modems – how difficult would it be for the companies to simply require their removal or better, assembly without?

I thought during our quarterly call that the BOA would be notified of the meeting?

Finally, on our last pre-call before the quarterly I suggested a telephonic meeting in late March prior to our annual meeting to take care of some business prior to our annual meeting. I think we need to agree on a date and get that out this week.

Best Regards,

AMERICAN OVERSIGHT

Michael

MICHAEL YAKI
MICHAEL YAKI CONSULTING
e. michael@michaelyaki.com
m. 415.601.4008

This email and any files or attachments transmitted with it may contain privileged or otherwise confidential information. If you are not the intended recipient, or believe that you may have received this communication in error, please advise the sender via reply email and immediately delete the email you received.

AMERICAN OVERSIGHT

Date : 2/2/2021 1:40:53 PM
From : "Michael Yaki" michael@michaelyaki.com
To : "myaki@usccr.gov" myaki@usccr.gov, "Thomas Hicks" thicks@eac.gov, "Mona Harrington" mharrington@eac.gov, "Kristen Muthig" kmuthig@eac.gov, "Amanda Joiner" ajoiner@eac.gov, "Robin Sargent" rsargent@eac.gov, "Phillip Olaya" polaya@eac.gov, "Bert Benavides" bbenavides@eac.gov
Subject : [EXTERNAL] Re: BOA 2021 Annual Meeting - Dates and notice rqmts?

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Given the strange dates and late election we had, I'd suggest May or June for the annual meeting

Best regards,
Michael

MICHAEL YAKI CONSULTING
e: michael@michaelyaki.com
m: 415.601.4008

CONFIDENTIAL COMMUNICATION: This email message and any attachments are intended only for the use of the addressee named above and may contain information that is privileged and confidential. If you are not the intended recipient, any dissemination, distribution, or copying is strictly prohibited. If you received this email message in error, please immediately notify the sender by replying to this email message or by telephone.

On Tuesday, February 2, 2021, 09:58:44 AM PST, Bert Benavides <bbenavides@eac.gov> wrote:

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Sent: Tuesday, January 26, 2021 9:49 AM
To: Mona Harrington <mharrington@eac.gov>; michael@michaelyaki.com; Kevin Rayburn <KRayburn@eac.gov>; Phillip Olaya <POlaya@eac.gov>; Bert Benavides <bbenavides@eac.gov>
Subject: Re: VVSG vote / BOA telophonic meeting

Dates that work for me for a telephonic meeting are March 23, 24, 30 or 31.

Bert or Phil can you work with Micheal to set up the meeting and notice it?

Thanks,

Thomas Hicks
Commissioner
U.S. Election Assistance Commission
633 3rd St. NW, Suite 200
Washington, DC 20001
Email: thicks@eac.gov
Twitter:@redblue2024
Website: www.eac.gov

ANd9GcRJe2IKYbOQP755cFHFsqYyoIPQCRGT67e-qQbx7-EdWiRsXWwc7w
This email and any files transmitted with it are confidential and intended solely for the use of the individual or entity to which they are addressed. If you have received this email in error please notify the system manager. The recipient is advised to check this email and any attachments for the presence of viruses. The Election Assistance Commission accepts no liability for any virus transmitted by this email.

From: Mona Harrington <mharrington@eac.gov>
Sent: Monday, January 25, 2021 6:30:03 PM
To: michael@michaelyaki.com <michael@michaelyaki.com>; Thomas Hicks <thicks@eac.gov>
Subject: Re: VVSG vote / BOA telophonic meeting

We just noticed the meeting today for February 10. We are following NIST recommendation and what was presented to the TGDC. I'm sure Tom will respond but I wanted to chime in.

Get Outlook for iOS

From: michael@michaelyaki.com <michael@michaelyaki.com>
Sent: Monday, January 25, 2021 6:05:05 PM
To: Thomas Hicks <thicks@eac.gov>; Mona Harrington <mharrington@eac.gov>
Subject: VVSG vote / BOA telophonic meeting

Tom

Is the VVSG vote scheduled for February 10th?

A number of members of the Board of Advisors, as well as NGO's, have been communicating with me about the VVSG's allowing voting machines with modems *so long as they're turned off*. We both know that there are physical and cyber

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methods that could activate modems – how difficult would it be for the companies to simply require their removal or better, assembly without?

I thought during our quarterly call that the BOA would be notified of the meeting?

Finally, on our last pre-call before the quarterly I suggested a telephonic meeting in late March prior to our annual meeting to take care of some business prior to our annual meeting. I think we need to agree on a date and get that out this week.

Best Regards,
Michael

MICHAEL YAKI
MICHAEL YAKI CONSULTING
e. michael@michaelyaki.com
m. 415.601.4008

This email and any files or attachments transmitted with it may contain privileged or otherwise confidential information. If you are not the intended recipient, or believe that you may have received this communication in error, please advise the sender via reply email and immediately delete the email you received.

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Date : 2/22/2021 12:27:56 PM
From : "Mauro Morales" mmorales@usccr.gov
To : "Norma V. Cantú" normavcantu@gmail.com
Subject : EAC
Attachment : 4 USCCR Comissioners' Letter to EAC Regarding BOA Appointments.pdf;Commission on Civil Rights Letter.pdf;CLhamon signed - USCCR EAC Notice of Representation Form.pdf;EAC Board of Advisors - USCCR Appointees (14.4 KB);

Norma,

Per our conversation on the EAC and recent USCCR correspondence on the matter. Let's discuss when you are available and I think we should bring in the GC.

Mauro

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UNITED STATES COMMISSION ON CIVIL RIGHTS

1331 PENNSYLVANIA AVENUE , NW, WASHINGTON, DC 20425 www.usccr.gov

December 10, 2020

Chair Benjamin Hovland
Vice Chair Donald Palmer
U.S. Election Assistance Commission
633 3rd Street NW, Suite 200
Washington, DC 20001

Dear Chairman Hovland and Vice Chairman Palmer:

We write as four members of the U.S. Commission on Civil Rights, and not on behalf of the Commission as a whole, regarding enforcement of the legal requirements in EAC's authorizing statutes for making appointments to the EAC's Board of Advisors.

As you know, the Help America Vote Act of 2002 (HAVA), 52 U.S.C. 2091 et seq., created the U.S. Election Assistance Commission (EAC) and established three Advisory Boards to provide advice, guidance and support to the EAC on the development of Voluntary Voting System Guidelines. In Section 214(a), the United States Commission for Civil Rights (USCCR) *as a whole* is authorized to appoint two members of the EAC's 37-member Board of Advisors (BOA). Section 214(b) requires that "appointments shall be made to the Board of Advisors under subsection (a) in a manner which ***ensures*** that the Board of Advisors will be bipartisan in nature and will reflect the various geographic regions of the United States." [*emphasis added*].

In reviewing the USCCR's current appointees to the BOA, we note that both appointees are members of the same party -- and thus are not bipartisan as required by Section 214(b) -- and that the appointments were evidently made by the Chair of the USCCR unilaterally without approval of the USCCR as a whole. In addition to the USCCR, there are 9 other national associations authorized *as a whole* to each appoint two members to the EAC's 37-member BOA and section 214(b) requires that those appointments also be done "in a manner which ensures that the Board of Advisors will be bipartisan in nature …"

A letter sent to the Chair of the USCCR from the EAC on February 22, 2019 (*attached*) advised the Chair that it was time for the USCCR to "reappoint" its "designated representatives" to the BOA under Section 214(a) and stated that if no new designees were appointed, then the existing representatives would continue to serve and be automatically reappointed. The letter then asked the Chair to send in a "Notice of Representation" form by March 15, 2019 – which was less than 3 weeks later and thus provided little time for the USCCR as a whole to approve any designees. No mention is made in the EAC's letter that the appointment power under Section 214 is provided to the USCCR as a whole, and that it is not a power delegated to the USCCR Chair alone. The EAC letter to the USCCR Chair also failed to mention that Section 214(b) requires appointments made to the Board of Advisors be done "in a manner which ***ensures*** that the Board of Advisors will be bipartisan in nature …"

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Put simply, there are significant doubts that this "appointment" was actually an appointment that followed our Commission's regular procedures for making an appointment.

In light of the unbalanced partisan way (both being of the same party) in which the current USCCR appointments were made to the BOA, we would like to know what steps, if any, the EAC takes to enforce the statutory requirements under Section 214 regarding its Board of Advisors as follows:

a) that each of the national entities allowed to appoint members to the BOA (including the USCCR) actually approves the appointment of their representatives to the BOA *as a whole* – and that the nominal head of each entity does not make the appointments unilaterally on their own authority; and

b) that the appointments from each national entity are made in a manner that "*ensures*" the BOA will be "bipartisan in nature."

Sincerely,

Gail Heriot
Commissioner

Stephen Gilchrist
Commissioner

Peter Kirsanow
Commissioner

J. Christian Adams
Commissioner

Cc: Benjamin Hovland
Chair
U.S. Election Assistance Commission

Donald Palmer
Vice Chair
U.S. Election Assistance Commission

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Notice of Representation
United States Election Assistance Commission
Board of Advisors

In accordance with 52 USC 20901 of the Help America Vote Act of 2002, the (U.S. Commission on Civil Rights) submits the following individual(s) as a member of the Election Assistance Commission Board of Advisors:

Designated Representative

Name:	Michael Yaki
Title:	Commissioner, U.S. Commission on Civil Rights
Address:	268 Bush Street #3333 San Francisco, CA 94104
Phone/FAX:	415-601-4008
Email:	myaki@usccr.gov
Party Affiliation:	Democratic

Designated Representative

Name:	David Kladney
Title:	Commissioner, U.S. Commission on Civil Rights
Address:	905 Joy Lake Road Reno, NV 89511
Phone/FAX:	775-849-0545
Email:	dkladney@usccr.gov
Party Affiliation:	Democratic

NAME / TITLE OF APPOINTING OFFICIAL

Print Name: Catherine Lhamon / Chair, U.S. Commission on Civil Rights

Sign Name: _____ Date: 3/22/2019

Please return the completed form via email to Clifford Tatum (Ctatum@eac.gov), facsimile transmission, at (301) 734-3108, or your notice can be mailed to: U.S. Election Assistance Commission; 1335 East West Highway, Suite 4300; Silver Spring, MD 20910.

1/2019 version

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U.S. ELECTION ASSISTANCE COMMISSION
1335 East West Highway – Suite 4300
Silver Spring, MD 20910

February 22, 2019

United States Commission on Civil Rights
Catherine E. Lhamon, Chair
1331 Pennsylvania Avenue NW
Suite 1150
Washington DC 20425
Email: Rsingla@usccr.gov

Re: U.S. Election Assistance Commission
Board of Advisors Membership Appointment

Dear Ms. Lhamon:

As you know, the Help America Vote Act of 2002 (HAVA), 52 U.S.C. 20901 et seq., created the U.S. Election Assistance Commission (EAC) and established three Advisory Boards[15] to assist the EAC with the development of Voluntary Voting System Guidelines. The Advisory Boards are primarily charged with providing advice, guidance and support to the EAC on the development of the Voluntary Voting System Guidelines.

The membership of the respective Advisory Boards is set forth in Section 213, 214 and 221[16]. Under Section 214, your organization is authorized to appoint two members to the Board of Advisors.

Please be advised that it is time to reappoint your designated representatives to the Board of Advisors. If you do not appoint someone new, your existing representatives will continue to serve and be reappointed.

Your current representatives are:

Patricia Timmons-Goodson
Michael Yaki

Each member representative serves for a period of two years unless replaced and may be reappointed if no replacement is named. The term of your member representatives will renew on April 13, 2019 with the renewal of the Advisory Board's Charter.

---

[15] Standards Board and Board of Advisors created in Section 211; and the Technical Guidelines Development Committee created in Section 221.
[16] 52 USC 20943, 52 USC 20944 and 52 USC 20961

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This year we anticipate having important discussions about voting system guidelines development, election systems as part of the nation's critical infrastructure and cyber security. Therefore, your prompt response to this letter is greatly appreciated.

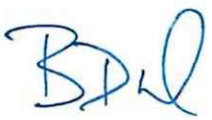
Please use the enclosed Notice of Representation form to advise us of the designated representative to serve on the EAC Board of Advisors. Please return your Notice of Representation no later than March 15, 2019, as the Board will hold its annual meeting during the week of April 22, 2019.

Please return the completed form via facsimile to (301) 734-3108, Attn: Brian Newby, by email to Bnewby@eac.gov or by mail to:

U.S. Election Assistance Commission
Advisory Board
1335 East West Highway, Suite 4300
Silver Spring, MD 20910

Thank you for your attention to this matter. If we can be of assistance, please feel free to contact us at (301) 563-3937.

Sincerely,



Brian Newby
Executive Director

AMERICAN OVERSIGHT

From: Mauro Morales <mmorales@usccr.gov>
Sent: Thursday, January 21, 2021 1:19 PM EST
To: Kevin Rayburn <KRayburn@eac.gov>
CC: Pilar McLaughlin <pmclaughlin@usccr.gov>
Subject: EAC Board of Advisors - USCCR Appointees

Kevin,

Thank you for our phone call last week about the letter you received from Commissioners, Adams, Heriot, Kirsanow and Gilchrist.

I wish you advise you that should ignore the letter and not respond in any manner. The use of Commission letterhead and office titles in communication is entirely inappropriate and unauthorized. These Commissioners are aware of the prohibition of using official letterhead and have been admonished about its use on several occasions.

Per our Administrative Instruction AI-9, only the Chair and Staff Director are the official spokespersons of the Commission. Letters submitted to anyone or any organization that have not been presented to the Commission for a vote and passed, do not represent the official position of the Commission and therefore are not permitted to be sent on Commission letterhead. The use of Commission letterhead to express personal opinions of Commissioners creates confusion as to the Commission's official position. Because the Commission's mission is to inform the President, Congress, and the public on the development of national civil rights policy, it is imperative that our constituents and stakeholders know where we stand on those issues. Commissioners, through improper use of the Commission's letterhead, erode constituent and stakeholder trust in our organization and create confusion as to our official position.

From an ethics standpoint, the unauthorized use of Commission letterhead is a violation of the Standards of Ethical Conduct for Employees in the Executive Branch (which apply to Special Government Employees). Specifically, unauthorized use of Commission letterhead violates 5 C.F.R. § 2635.702(b), Appearance of Governmental Sanction, and 5 C.F.R. § 2635.704, Use of Government Property. Congress and oversight agencies have repeatedly reprimanded the Commission on Commissioner's misuse of letterhead. The Senate, in its 2015 report of the Commission's authorization bill, instructed Commissioners not to use official letterhead when communicating their personal opinion. See S. Rep. No. 114-66 (June 16, 2015). Additionally, both the Government Accountability Office and the Office of Government Ethics have previously commented on the misuse of title by members of the Commission. See GAO Report 15-92, U.S. Commission on Civil Rights, Management Improvements Are Needed to Better Achieve Its Mission (February 2015) at 19-23 (discussing that the misuse of letterhead by individual Commissioners has confused external organizations and jeopardized the Commission's effectiveness); see also Office of Government Ethics Report No. 15-04, Ethics Program Review, U.S. Commission on Civil Rights (November 2014) at 17-18 (noting that a "Commissioner cannot use his/her official title, the agency seal, agency letterhead or otherwise leave a third party to think that the speaking or writing has the sanction of the Commission.").

The letter you received should be treated as though it was sent in the personal capacity of the public. It carries no significance whatsoever for Commission communication.

If you any additional have questions about the letter you received please contact or our senior attorney advisor Ms. Pilar Velasquez-McLaughlin. Thank you.

Mauro Morales
Staff Director
U.S. Commission on Civil Rights
P: 202-376-7796| F: 202-376-7672
Mmorales@usccr.gov
http://usccr.gov/
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425

Follow Us on Twitter & Facebook:
#USCCR

AMERICAN OVERSIGHT

Date : 2/23/2021 6:39:49 PM
From : "Christian Adams" adams@electionlawcenter.com
To : "'stephen gilchrist'" thegilchristassociates@gmail.com, "'Carissa Mulder'" carissa.mulder@gmail.com
Cc : "'Kirsanow, Peter'" pkirsanow@beneschlaw.com, "'Gail Heriot'" gheriot@me.com, "'Alexander Heideman'" aheideman@usccr.gov, "'John Mashburn'" jmashburn@usccr.gov, "'Thomas Simuel'" tsimuel@usccr.gov, "'Peter Kirsanow'" pkirsanow@usccr.gov, "'Stephen Gilchrist'" sgilchrist@usccr.gov, "'Gail Heriot'" gheriot@usccr.gov, "'Carissa Mulder'" cmulder@usccr.gov
Subject : [EXTERNAL] RE: Caucus Meeting tomorrow?

> CAUTION: This email is from outside USCCR.

I just talked to Cantu for an hour. Key takeaways

1. I told her she HAD to get up with Pete regarding details.
2. I gave her a heads up that there was a chance she would NOT have a quorum on Friday pending resolution of big issues. She should not be blindsided in my view. I put down the threat of a withheld quorum in order to remind her it was possible and that we needed to resolve things.
3. She said something that indicated to me that Yaki and Debo or someone else (Mauro?) are agitating to have Stephen and I removed by the President. I cannot recall her exact words, but it was along the lines "I tell people that the people we got are the people we got. President Reagan tried to remove commissioners and he got sued and lost for removing them." She would NOT HAVE BROUGHT THIS up unless that chatter is occurring somewhere. And after all, ask Roger Severino if the Biden people are thinking like this. Bottom Line: some members of the Commission may be thinking they can improve their bargaining position by altering the composition of the commission and getting rid of two of us. Whether or not they are correct is irrelevant to Yaki or Debo's potential perception of this option.
4. I repeatedly told her - "You need to get with Pete on that; he knows more about that than me." Among the topics falling under this category were EAC appointments, SAC issues, and all manner of administrative issues.
5. I made it plain to her we could stop the business of the commission if we were not treated fairly, and fairness is all we want.

From: stephen gilchrist <thegilchristassociates@gmail.com>
Sent: Tuesday, February 23, 2021 4:06 PM
To: Carissa Mulder <carissa.mulder@gmail.com>
Cc: Kirsanow, Peter <pkirsanow@beneschlaw.com>; Gail Heriot <gheriot@me.com>; Christian Adams (adams@electionlawcenter.com) <adams@electionlawcenter.com>; Alexander Heideman <aheideman@usccr.gov>; John Mashburn <jmashburn@usccr.gov>; Thomas Simuel <tsimuel@usccr.gov>; Peter Kirsanow <pkirsanow@usccr.gov>; Stephen Gilchrist <sgilchrist@usccr.gov>; Gail Heriot <gheriot@usccr.gov>; Carissa Mulder <cmulder@usccr.gov>
Subject: Re: Caucus Meeting tomorrow?

Carissa - I can do 1pm.

AMERICAN OVERSIGHT

On Tue, Feb 23, 2021, 3:45 PM Carissa Mulder <carissa.mulder@gmail.com> wrote:

> Pete would like to have a caucus meeting tomorrow to discuss how to proceed from here. Are people free at 1:00?
> --
> Carissa B. Mulder

AMERICAN OVERSIGHT

Date : 2/23/2021 6:53:34 PM
From : "Carissa Mulder" carissa.mulder@gmail.com
To : "Christian Adams" adams@electionlawcenter.com
Cc : "Alexander Heideman" aheideman@usccr.gov, "Carissa Mulder" cmulder@usccr.gov, "Gail Heriot" gheriot@usccr.gov, "Gail Heriot" gheriot@me.com, "John Mashburn" jmashburn@usccr.gov, "Kirsanow, Peter" pkirsanow@beneschlaw.com, "Peter Kirsanow" pkirsanow@usccr.gov, "Stephen Gilchrist" sgilchrist@usccr.gov, "Thomas Simuel" tsimuel@usccr.gov, "stephen gilchrist" thegilchristassociates@gmail.com
Subject : [EXTERNAL] Re: Caucus Meeting tomorrow?

CAUTION: This email is from outside USCCR.

It is insane that someone is trying to get you removed.

On Tue, Feb 23, 2021 at 6:39 PM Christian Adams <adams@electionlawcenter.com> wrote:

> I just talked to Cantu for an hour. Key takeaways
>
> 1. I told her she HAD to get up with Pete regarding details.
> 2. I gave her a heads up that there was a chance she would NOT have a quorum on Friday pending resolution of big issues. She should not be blindsided in my view. I put down the threat of a withheld quorum in order to remind her it was possible and that we needed to resolve things.
> 3. She said something that indicated to me that Yaki and Debo or someone else (Mauro?) are agitating to have Stephen and I removed by the President. I cannot recall her exact words, but it was along the lines "I tell people that the people we got are the people we got. President Reagan tried to remove commissioners and he got sued and lost for removing them." She would NOT HAVE BROUGHT THIS up unless that chatter is occurring somewhere. And after all, ask Roger Severino if the Biden people are thinking like this. Bottom Line: some members of the Commission may be thinking they can improve their bargaining position by altering the composition of the commission and getting rid of two of us. Whether or not they are correct is irrelevant to Yaki or Debo's potential perception of this option.
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> 5. I made it plain to her we could stop the business of the commission if we were not treated fairly, and fairness is all we want.
>
> **From:** stephen gilchrist <thegilchristassociates@gmail.com>
> **Sent:** Tuesday, February 23, 2021 4:06 PM
> **To:** Carissa Mulder <carissa.mulder@gmail.com>

AMERICAN OVERSIGHT

Cc: Kirsanow, Peter <pkirsanow@beneschlaw.com>; Gail Heriot >; Alexander Heideman <aheideman@usccr.gov>; John Mashburn <jmashburn@usccr.gov>; Thomas Simuel <tsimuel@usccr.gov>; Peter Kirsanow <pkirsanow@usccr.gov>; Stephen Gilchrist <sgilchrist@usccr.gov>; Gail Heriot <gheriot@usccr.gov>; Carissa Mulder <cmulder@usccr.gov>
Subject: Re: Caucus Meeting tomorrow?

Carissa - I can do 1pm.

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> --
>
> Carissa B. Mulder

--
Carissa B. Mulder

AMERICAN OVERSIGHT

Date : 2/23/2021 7:54:58 PM
From : "John Mashburn" jmashburn@usccr.gov
To : "stephen gilchrist" thegilchristassociates@gmail.com, "Gail Heriot" gheriot@usccr.gov
Cc : "Carissa Mulder" carissa.mulder@gmail.com, "Christian Adams" adams@electionlawcenter.com, "Alexander Heideman" aheideman@usccr.gov, "Carissa Mulder" CMulder@usccr.gov, "Gail Heriot" gheriot@me.com, "Kirsanow, Peter" pkirsanow@beneschlaw.com, "Peter Kirsanow" pkirsanow@usccr.gov, "Stephen Gilchrist" sgilchrist@usccr.gov, "Thomas Simuel" tsimuel@usccr.gov
Subject : Commissioner Appointment/Removal

Quick wiki excerpt:

> In 1983, Reagan attempted to fire three members of the commission. They sued the administration in federal court to stay on. The authorizing legislation stated that a president could only fire a commissioner for "misbehavior in office," and it was clear that the terminations were the result of disagreements over policy. A compromise brokered in the Senate resulted in the current hybrid group of eight, half appointed by the president and half by the Congress, **with six-year terms that do not expire with the inauguration of a new president**. Since that time the commission has struggled to remain independent, and its agenda has oscillated between liberal and conservative aims as factions among its members have ebbed and waned.[10]

USCCR Authorizing Statute excerpt:

> "Sec. 2. <42 USC 1975> ESTABLISHMENT OF COMMISSION.
>
> "(a) Generally.--There is established the United States**Commission on Civil Rights** (hereinafter in this Act referred to as the 'Commission').
>
> "(b) Membership.--The Commission shall be composed of 8 members. Not more than 4 of the members shall at any one time be of the same political party. The initial membership of the Commission shall be the members of the United States **Commission on Civil Rights** on September 30, 1994. Thereafter vacancies in the membership of the Commission shall continue to be appointed as follows:
>
> "(1) **4 members of the Commission shall be appointed by the President.**
>
> "(2) 2 members of the Commission shall be appointed by the President pro tempore of the Senate, upon the recommendations of the majority leader and the minority leader, and of the members appointed not more than one shall be appointed from the same political party.
>
> "(3) 2 members of the Commission shall be appointed by the Speaker of the House of Representatives upon the recommendations of the majority leader and the minority leader, and of the members appointed not more than one shall be appointed from the same political party.
>
> "(c) Terms.--**The term of office of each member of the Commission shall be 6 years**. The term of each member of the Commission **[**4339]** in the initial membership of the Commission shall expire on the date such term would have expired as of September 30, 1994.
> "(d) Chairperson.—
>
> (1) Except as provided in paragraphs (2) and (3), the individuals serving as Chairperson and Vice Chairperson of the United States **Commission on Civil Rights** on September 30, 1994 shall initially fill those roles on the Commission. "
>
> (2) Thereafter the President may, with the concurrence of a majority of the Commission's members, designate a Chairperson or Vice Chairperson, as the case may be, from among the Commission's members. "
>
> (3) The President shall, with the concurrence of a majority of the Commission's members, fill a vacancy by designating a Chairperson or Vice Chairperson, as the case may be, from among the Commission's members. "
>
> (4) The Vice Chairperson shall act in place of the Chairperson in the absence of the Chairperson. "
>
> (e) **Removal of Members.--The President may remove a member of the Commission only for neglect of duty or malfeasance in office.** "
>
> (f) Quorum.--5 members of the Commission constitute a quorum of the Commission.

AMERICAN OVERSIGHT

From: stephen gilchrist <thegilchristassociates@gmail.com>
Date: Tuesday, February 23, 2021 at 7:11 PM
To: Gail Heriot <gheriot@usccr.gov>
Cc: Carissa Mulder <carissa.mulder@gmail.com>, Christian Adams <adams@electionlawcenter.com>, Alexander Heideman <aheideman@usccr.gov>, Carissa Mulder <CMulder@usccr.gov>, Gail Heriot <gheriot@me.com>, John Mashburn <jmashburn@usccr.gov>, "Kirsanow, Peter" <pkirsanow@beneschlaw.com>, Peter Kirsanow <pkirsanow@usccr.gov>, Stephen Gilchrist <sgilchrist@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>
Subject: Re: [EXTERNAL] Re: Caucus Meeting tomorrow?

> CAUTION: This email is from outside USCCR.

On Tue, Feb 23, 2021, 7:09 PM Gail Heriot <gheriot@usccr.gov> wrote:

> Sounds like our colleagues are crazy. But I take it she didn't say straight out that Yaki (or someone) is trying to have you and Stephen removed?
>
> Gail Heriot
> Professor of Law
> University of San Diego
>
> > On Feb 23, 2021, at 3:53 PM, Carissa Mulder <carissa.mulder@gmail.com> wrote:
> >
> > > CAUTION: This email is from outside USCCR.
> >
> > o get you removed.
> >
> > On Tue, Feb 23, 2021 at 6:39 PM Christian Adams <adams@electionlawcenter.com> wrote:
> >
> > > I just talked to Cantu for an hour. Key takeaways
> > >
> > > 1. I told her she HAD to get up with Pete regarding details.
> > > 2. I gave her a heads up that there was a chance she would NOT have a quorum on Friday pending resolution of big issues. She should not be blindsided in my view. I put down the threat of a withheld quorum in order to remind her it was possible and that we needed to resolve things.

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From: stephen gilchrist <thegilchristassociates@gmail.com>
Sent: Tuesday, February 23, 2021 4:06 PM
To: Carissa Mulder <carissa.mulder@gmail.com>
Cc: Kirsanow, Peter <pkirsanow@beneschlaw.com>; Gail Heriot <gheriot@me.com>; Christian Adams (adams@electionlawcenter.com) <adams@electionlawcenter.com>; Alexander Heideman <aheideman@usccr.gov>; John Mashburn <jmashburn@usccr.gov>; Thomas Simuel <tsimuel@usccr.gov>; Peter Kirsanow <pkirsanow@usccr.gov>; Stephen Gilchrist <sgilchrist@usccr.gov>; Gail Heriot <gheriot@usccr.gov>; Carissa Mulder <cmulder@usccr.gov>
Subject: Re: Caucus Meeting tomorrow?

Carissa - I can do 1pm.

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> --
> Carissa B. Mulder

--
Carissa B. Mulder

AMERICAN OVERSIGHT

Date : 2/23/2021 7:55:53 PM
From : "Christian Adams" adams@electionlawcenter.com
To : "stephen gilchrist" thegilchristassociates@gmail.com, "Gail Heriot" gheriot@usccr.gov
Cc : "Carissa Mulder" carissa.mulder@gmail.com, "Alexander Heideman" aheideman@usccr.gov, "Carissa Mulder" CMulder@usccr.gov, "Gail Heriot" gheriot@me.com, "John Mashburn" jmashburn@usccr.gov, "Kirsanow, Peter" pkirsanow@beneschlaw.com, "Peter Kirsanow" pkirsanow@usccr.gov, "Stephen Gilchrist" sgilchrist@usccr.gov, "Thomas Simuel" tsimuel@usccr.gov
Subject : Re: [EXTERNAL] Re: Caucus Meeting tomorrow?

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See, actually think they are genius. Removing me or Stephen would seize the initiative and force an expensive, slow, litigious reaction. In the meantime, thier base would cheer, nobody in the middle would care or know, and cowards on the right will do nothing to help. They would also have the votes they need to move whatever they want. It comes with no cost to them to have a 4-2 commission.

-------- Original message --------
From: stephen gilchrist <thegilchristassociates@gmail.com>
Date: 2/23/21 7:11 PM (GMT-05:00)
To: Gail Heriot <gheriot@usccr.gov>
Cc: Carissa Mulder <carissa.mulder@gmail.com>, Christian Adams <adams@electionlawcenter.com>, Alexander Heideman <aheideman@usccr.gov>, Carissa Mulder <CMulder@usccr.gov>, Gail Heriot <gheriot@me.com>, John Mashburn <jmashburn@usccr.gov>, "Kirsanow, Peter" <pkirsanow@beneschlaw.com>, Peter Kirsanow <pkirsanow@usccr.gov>, Stephen Gilchrist <sgilchrist@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>
Subject: Re: [EXTERNAL] Re: Caucus Meeting tomorrow?

If this is the sentiment I would agree Gail.

On Tue, Feb 23, 2021, 7:09 PM Gail Heriot <gheriot@usccr.gov> wrote:

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>
> Gail Heriot
> Professor of Law
> University of San Diego
>
> > On Feb 23, 2021, at 3:53 PM, Carissa Mulder <carissa.mulder@gmail.com> wrote:

AMERICAN OVERSIGHT

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On Tue, Feb 23, 2021 at 6:39 PM Christian Adams <adams@electionlawcenter.com> wrote:

> I just talked to Cantu for an hour. Key takeaways
>
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> **From:** stephen gilchrist <thegilchristassociates@gmail.com>
> **Sent:** Tuesday, February 23, 2021 4:06 PM
> **To:** Carissa Mulder <carissa.mulder@gmail.com>
> **Cc:** Kirsanow, Peter <pkirsanow@beneschlaw.com>; Gail Heriot <gheriot@me.com>; Christian Adams (adams@electionlawcenter.com) <adams@electionlawcenter.com>; Alexander Heideman <aheideman@usccr.gov>; John Mashburn <jmashburn@usccr.gov>; Thomas Simuel <tsimuel@usccr.gov>;

AMERICAN OVERSIGHT

Peter Kirsanow <pkirsanow@usccr.gov>; Stephen Gilchrist <sgilchrist@usccr.gov>; Gail Heriot <gheriot@usccr.gov>; Carissa Mulder <cmulder@usccr.gov>
Subject: Re: Caucus Meeting tomorrow?

Carissa - I can do 1pm.

On Tue, Feb 23, 2021, 3:45 PM Carissa Mulder <carissa.mulder@gmail.com> wrote:

> Pete would like to have a caucus meeting tomorrow to discuss how to proceed from here. Are people free at 1:00?
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>
> Carissa B. Mulder

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Carissa B. Mulder

AMERICAN OVERSIGHT

Date : 2/23/2021 7:53:18 PM
From : "Christian Adams" adams@electionlawcenter.com
To : "Gail Heriot" gheriot@usccr.gov, "Carissa Mulder" carissa.mulder@gmail.com
Cc : "Alexander Heideman" aheideman@usccr.gov, "Carissa Mulder" CMulder@usccr.gov, "Gail Heriot" gheriot@me.com, "John Mashburn" jmashburn@usccr.gov, "Kirsanow, Peter" pkirsanow@beneschlaw.com, "Peter Kirsanow" pkirsanow@usccr.gov, "Stephen Gilchrist" sgilchrist@usccr.gov, "Thomas Simuel" tsimuel@usccr.gov, "stephen gilchrist" thegilchristassociates@gmail.com
Subject : Re: [EXTERNAL] Re: Caucus Meeting tomorrow?

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She said everything but that. The context was very clear.

-------- Original message --------
From: Gail Heriot <gheriot@usccr.gov>
Date: 2/23/21 7:09 PM (GMT-05:00)
To: Carissa Mulder <carissa.mulder@gmail.com>
Cc: Christian Adams <adams@electionlawcenter.com>, Alexander Heideman <aheideman@usccr.gov>, Carissa Mulder <CMulder@usccr.gov>, Gail Heriot <gheriot@me.com>, John Mashburn <jmashburn@usccr.gov>, "Kirsanow, Peter" <pkirsanow@beneschlaw.com>, Peter Kirsanow <pkirsanow@usccr.gov>, Stephen Gilchrist <sgilchrist@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>, stephen gilchrist <thegilchristassociates@gmail.com>
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AMERICAN OVERSIGHT

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From: stephen gilchrist <thegilchristassociates@gmail.com>
Sent: Tuesday, February 23, 2021 4:06 PM
To: Carissa Mulder <carissa.mulder@gmail.com>
Cc: Kirsanow, Peter <pkirsanow@beneschlaw.com>; Gail Heriot <gheriot@me.com>; Christian Adams (adams@electionlawcenter.com) <adams@electionlawcenter.com>; Alexander Heideman <aheideman@usccr.gov>; John Mashburn <jmashburn@usccr.gov>; Thomas Simuel <tsimuel@usccr.gov>; Peter Kirsanow <pkirsanow@usccr.gov>; Stephen Gilchrist <sgilchrist@usccr.gov>; Gail Heriot <gheriot@usccr.gov>; Carissa Mulder <cmulder@usccr.gov>
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AMERICAN OVERSIGHT

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Carissa B. Mulder

AMERICAN OVERSIGHT

Date : 2/23/2021 7:09:50 PM
From : "Gail Heriot" gheriot@usccr.gov
To : "Carissa Mulder" carissa.mulder@gmail.com
Cc : "Christian Adams" adams@electionlawcenter.com, "Alexander Heideman" aheideman@usccr.gov, "Carissa Mulder" CMulder@usccr.gov, "Gail Heriot" gheriot@me.com, "John Mashburn" jmashburn@usccr.gov, "Kirsanow, Peter" pkirsanow@beneschlaw.com, "Peter Kirsanow" pkirsanow@usccr.gov, "Stephen Gilchrist" sgilchrist@usccr.gov, "Thomas Simuel" tsimuel@usccr.gov, "stephen gilchrist" thegilchristassociates@gmail.com
Subject : Re: [EXTERNAL] Re: Caucus Meeting tomorrow?

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Professor of Law
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AMERICAN OVERSIGHT

Severino if the Biden people are thinking like this. Bottom Line: some members of the Commission may be thinking they can improve their bargaining position by altering the composition of the commission and getting rid of two of us. Whether or not they are correct is irrelevant to Yaki or Debo's potential perception of this option.

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Carissa B. Mulder

AMERICAN OVERSIGHT

Date : 2/23/2021 7:58:57 PM
From : "Christian Adams" adams@electionlawcenter.com
To : "John Mashburn" jmashburn@usccr.gov, "stephen gilchrist" thegilchristassociates@gmail.com, "Gail Heriot" gheriot@usccr.gov
Cc : "Carissa Mulder" carissa.mulder@gmail.com, "Alexander Heideman" aheideman@usccr.gov, "Carissa Mulder" CMulder@usccr.gov, "Gail Heriot" gheriot@me.com, "Kirsanow, Peter" pkirsanow@beneschlaw.com, "Peter Kirsanow" pkirsanow@usccr.gov, "Stephen Gilchrist" sgilchrist@usccr.gov, "Thomas Simuel" tsimuel@usccr.gov
Subject : [EXTERNAL] RE: Commissioner Appointment/Removal

> CAUTION: This email is from outside USCCR.

Cantu revealed something else we can talk about that is important. Ask me about "other boards" tommorow.

-------- Original message --------
From: John Mashburn <jmashburn@usccr.gov>
Date: 2/23/21 7:55 PM (GMT-05:00)
To: stephen gilchrist <thegilchristassociates@gmail.com>, Gail Heriot <gheriot@usccr.gov>
Cc: Carissa Mulder <carissa.mulder@gmail.com>, Christian Adams <adams@electionlawcenter.com>, Alexander Heideman <aheideman@usccr.gov>, Carissa Mulder <CMulder@usccr.gov>, Gail Heriot <gheriot@me.com>, "Kirsanow, Peter" <pkirsanow@beneschlaw.com>, Peter Kirsanow <pkirsanow@usccr.gov>, Stephen Gilchrist <sgilchrist@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>
Subject: Commissioner Appointment/Removal

Quick wiki excerpt:

> In 1983, Reagan attempted to fire three members of the commission. They sued the administration in federal court to stay on. The authorizing legislation stated that a president could only fire a commissioner for "misbehavior in office," and it was clear that the terminations were the result of disagreements over policy. A compromise brokered in the Senate resulted in the current hybrid group of eight, half appointed by the president and half by the Congress, **with six-year terms that do not expire with the inauguration of a new president**. Since that time the commission has struggled to remain independent, and its agenda has oscillated between liberal and conservative aims as factions among its members have ebbed and waned.[10]

USCCR Authorizing Statute excerpt:

> "Sec. 2. <42 USC 1975> ESTABLISHMENT OF COMMISSION.
>
> "(a) Generally.--There is established the United States **Commission on Civil Rights** (hereinafter in this Act referred to as the 'Commission').

AMERICAN OVERSIGHT

"(b) Membership.--The Commission shall be composed of 8 members. Not more than 4 of the members shall at any one time be of the same political party. The initial membership of the Commission shall be the members of the United States **Commission on Civil Rights** on September 30, 1994. Thereafter vacancies in the membership of the Commission shall continue to be appointed as follows:

"(1) **4 members of the Commission shall be appointed by the President.**

"(2) 2 members of the Commission shall be appointed by the President pro tempore of the Senate, upon the recommendations of the majority leader and the minority leader, and of the members appointed not more than one shall be appointed from the same political party.

"(3) 2 members of the Commission shall be appointed by the Speaker of the House of Representatives upon the recommendations of the majority leader and the minority leader, and of the members appointed not more than one shall be appointed from the same political party.

"(c) Terms.--**The term of office of each member of the Commission shall be 6 years**. The term of each member of the Commission **[**4339]** in the initial membership of the Commission shall expire on the date such term would have expired as of September 30, 1994. "(d) Chairperson.—

> (1) Except as provided in paragraphs (2) and (3), the individuals serving as Chairperson and Vice Chairperson of the United States **Commission on Civil Rights** on September 30, 1994 shall initially fill those roles on the Commission. "
>
> (2) Thereafter the President may, with the concurrence of a majority of the Commission's members, designate a Chairperson or Vice Chairperson, as the case may be, from among the Commission's members. "
>
> (3) The President shall, with the concurrence of a majority of the Commission's members, fill a vacancy by designating a Chairperson or Vice Chairperson, as the case may be, from among the Commission's members. "
>
> (4) The Vice Chairperson shall act in place of the Chairperson in the absence of the Chairperson. "

(e) **Removal of Members.--The President may remove a member of the Commission only for neglect of duty or malfeasance in office.** "

(f) Quorum.--5 members of the Commission constitute a quorum of the Commission.

AMERICAN OVERSIGHT

From: stephen gilchrist <thegilchristassociates@gmail.com>
Date: Tuesday, February 23, 2021 at 7:11 PM
To: Gail Heriot <gheriot@usccr.gov>
Cc: Carissa Mulder <carissa.mulder@gmail.com>, Christian Adams <adams@electionlawcenter.com>, Alexander Heideman <aheideman@usccr.gov>, Carissa Mulder <CMulder@usccr.gov>, Gail Heriot <gheriot@me.com>, John Mashburn <jmashburn@usccr.gov>, "Kirsanow, Peter" <pkirsanow@beneschlaw.com>, Peter Kirsanow <pkirsanow@usccr.gov>, Stephen Gilchrist <sgilchrist@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>
Subject: Re: [EXTERNAL] Re: Caucus Meeting tomorrow?

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AMERICAN OVERSIGHT

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Sent: Tuesday, February 23, 2021 4:06 PM
To: Carissa Mulder <carissa.mulder@gmail.com>
Cc: Kirsanow, Peter <pkirsanow@beneschlaw.com>; Gail Heriot <gheriot@me.com>; Christian Adams (adams@electionlawcenter.com) <adams@electionlawcenter.com>; Alexander Heideman <aheideman@usccr.gov>; John Mashburn <jmashburn@usccr.gov>; Thomas Simuel <tsimuel@usccr.gov>; Peter Kirsanow <pkirsanow@usccr.gov>; Stephen Gilchrist <sgilchrist@usccr.gov>; Gail Heriot <gheriot@usccr.gov>; Carissa Mulder <cmulder@usccr.gov>
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AMERICAN OVERSIGHT

Date : 2/23/2021 7:11:26 PM
From : "stephen gilchrist" thegilchristassociates@gmail.com
To : "Gail Heriot" gheriot@usccr.gov
Cc : "Carissa Mulder" carissa.mulder@gmail.com, "Christian Adams" adams@electionlawcenter.com, "Alexander Heideman" aheideman@usccr.gov, "Carissa Mulder" CMulder@usccr.gov, "Gail Heriot" gheriot@me.com, "John Mashburn" jmashburn@usccr.gov, "Kirsanow, Peter" pkirsanow@beneschlaw.com, "Peter Kirsanow" pkirsanow@usccr.gov, "Stephen Gilchrist" sgilchrist@usccr.gov, "Thomas Simuel" tsimuel@usccr.gov
Subject : Re: [EXTERNAL] Re: Caucus Meeting tomorrow?

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AMERICAN OVERSIGHT

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AMERICAN OVERSIGHT

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AMERICAN OVERSIGHT

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From : "Christian Adams" adams@electionlawcenter.com
To : "John Mashburn" jmashburn@usccr.gov, "stephen gilchrist" thegilchristassociates@gmail.com, "Gail Heriot" gheriot@usccr.gov
Cc : "Carissa Mulder" carissa.mulder@gmail.com, "Alexander Heideman" aheideman@usccr.gov, "Carissa Mulder" CMulder@usccr.gov, "Gail Heriot" gheriot@me.com, "Kirsanow, Peter" pkirsanow@beneschlaw.com, "Peter Kirsanow" pkirsanow@usccr.gov, "Stephen Gilchrist" sgilchrist@usccr.gov, "Thomas Simuel" tsimuel@usccr.gov
Subject : [EXTERNAL] RE: Commissioner Appointment/Removal

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Thier argument: Neglect of duty will include withholding a quorum [or any other nitpicking failure]

Mark my words, it is a smart play to find a reason to be rid of one of us.

-------- Original message --------
From: John Mashburn <jmashburn@usccr.gov>
Date: 2/23/21 7:55 PM (GMT-05:00)
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To: Gail Heriot <gheriot@usccr.gov>
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Cc : "stephen gilchrist" thegilchristassociates@gmail.com, "Gail Heriot" gheriot@usccr.gov, "Carissa Mulder" carissa.mulder@gmail.com, "Christian Adams" adams@electionlawcenter.com, "Alexander Heideman" aheideman@usccr.gov, "Carissa Mulder" CMulder@usccr.gov, "Kirsanow, Peter" pkirsanow@beneschlaw.com, "Peter Kirsanow" pkirsanow@usccr.gov, "Stephen Gilchrist" sgilchrist@usccr.gov
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Cc: Carissa Mulder <carissa.mulder@gmail.com>, Christian Adams <adams@electionlawcenter.com>, Alexander Heideman <aheideman@usccr.gov>, Carissa

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Mulder <CMulder@usccr.gov>, Gail Heriot <gheriot@me.com>, John Mashburn <jmashburn@usccr.gov>, "Kirsanow, Peter" <pkirsanow@beneschlaw.com>, Peter Kirsanow <pkirsanow@usccr.gov>, Stephen Gilchrist <sgilchrist@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>
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AMERICAN OVERSIGHT

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AMERICAN OVERSIGHT

Date : 2/23/2021 8:44:21 PM
From : "John Mashburn" jmashburn@usccr.gov
To : "Gail Heriot" gheriot@me.com
Cc : "stephen gilchrist" thegilchristassociates@gmail.com, "Gail Heriot" gheriot@usccr.gov, "Carissa Mulder" carissa.mulder@gmail.com, "Christian Adams" adams@electionlawcenter.com, "Alexander Heideman" aheideman@usccr.gov, "Carissa Mulder" CMulder@usccr.gov, "Kirsanow, Peter" pkirsanow@beneschlaw.com, "Peter Kirsanow" pkirsanow@usccr.gov, "Stephen Gilchrist" sgilchrist@usccr.gov, "Thomas Simuel" tsimuel@usccr.gov
Subject : Re: [EXTERNAL] Re: Commissioner Appointment/Removal

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Sent: Tuesday, February 23, 2021 8:38:41 PM
To: John Mashburn
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Date : 2/23/2021 9:26:38 PM
From : "Christian Adams" adams@electionlawcenter.com
To : "Gail Heriot" gheriot@usccr.gov, "Thomas Simuel" tsimuel@usccr.gov
Cc : "John Mashburn" jmashburn@usccr.gov, "Gail Heriot" gheriot@me.com, "stephen gilchrist" thegilchristassociates@gmail.com, "Carissa Mulder" carissa.mulder@gmail.com, "Alexander Heideman" aheideman@usccr.gov, "Carissa Mulder" CMulder@usccr.gov, "Kirsanow, Peter" pkirsanow@beneschlaw.com, "Peter Kirsanow" pkirsanow@usccr.gov, "Stephen Gilchrist" sgilchrist@usccr.gov
Subject : Re: [EXTERNAL] Re: Commissioner Appointment/Removal

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The real politik is that it costs lots of money and time and grief to get an order saying so.

The smart play for them is to seize the initiative. It comes at no short term cost and maybe no long term either. In the meantime, they subjugate the remaining R commissioners.

-------- Original message --------
From: Gail Heriot <gheriot@usccr.gov>
Date: 2/23/21 8:55 PM (GMT-05:00)
To: Thomas Simuel <tsimuel@usccr.gov>
Cc: John Mashburn <jmashburn@usccr.gov>, Gail Heriot <gheriot@me.com>, stephen gilchrist <thegilchristassociates@gmail.com>, Carissa Mulder <carissa.mulder@gmail.com>, Christian Adams <adams@electionlawcenter.com>, Alexander Heideman <aheideman@usccr.gov>, Carissa Mulder <CMulder@usccr.gov>, "Kirsanow, Peter" <pkirsanow@beneschlaw.com>, Peter Kirsanow <pkirsanow@usccr.gov>, Stephen Gilchrist <sgilchrist@usccr.gov>
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That's the statute that was passed in the 1980s as a result of the kerfuffle that was created when Reagan removed members. That law replaced the 1957 Act's provisions on the USCCR. I think that legally Reagan was clearly in the right when he acted. Members served at his pleasure, and as he put it, "She [Mary Frances Berry] wasn't giving me pleasure." Under the law that applies now, he would have been clearly in the wrong. That's why Congress changed it.

As for what applies to our situation, for Biden to be able to remove a Commissioner for not attending a meeting called by the Staff Director, I would think it would have to be true that the Staff Director has the authority to call a meeting. I don't see where that authority would come from.

Gail Heriot
Professor of Law
University of San Diego

AMERICAN OVERSIGHT

On Feb 23, 2021, at 5:46 PM, Thomas Simuel <tsimuel@usccr.gov> wrote:

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Sent from my Metro By T-Mobile 4G LTE Android Device

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1983 NYTimes article on USCCR statute compromise and differences in new vs. old appointment of Cmnrs

https://www.nytimes.com/1983/11/12/us/civil-rights-advocates-applaud-senate-action.html

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Date : 2/23/2021 10:03:32 PM
From : "Carissa Mulder" carissa.mulder@gmail.com
To : "Gail Heriot" gheriot@usccr.gov
Cc : "Thomas Simuel" tsimuel@usccr.gov, "John Mashburn" jmashburn@usccr.gov, "Gail Heriot" gheriot@me.com, "stephen gilchrist" thegilchristassociates@gmail.com, "Christian Adams" adams@electionlawcenter.com, "Alexander Heideman" aheideman@usccr.gov, "Carissa Mulder" CMulder@usccr.gov, "Kirsanow, Peter" pkirsanow@beneschlaw.com, "Peter Kirsanow" pkirsanow@usccr.gov, "Stephen Gilchrist" sgilchrist@usccr.gov
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To : "Carissa Mulder" carissa.mulder@gmail.com, "Gail Heriot" gheriot@usccr.gov
Cc : "Thomas Simuel" tsimuel@usccr.gov, "Gail Heriot" gheriot@me.com, "stephen gilchrist" thegilchristassociates@gmail.com, "Christian Adams" adams@electionlawcenter.com, "Alexander Heideman" aheideman@usccr.gov, "Carissa Mulder" CMulder@usccr.gov, "Kirsanow, Peter" pkirsanow@beneschlaw.com, "Peter Kirsanow" pkirsanow@usccr.gov, "Stephen Gilchrist" sgilchrist@usccr.gov
Subject : Re: [EXTERNAL] Re: Commissioner Appointment/Removal

Should the R Cmn then attend the meeting but not give a 5th vote To make her Chair? Then there is nothing to critique any of the 4 Rs about.

From: Carissa Mulder <carissa.mulder@gmail.com>
Sent: Tuesday, February 23, 2021 10:02:53 PM
To: Gail Heriot
Cc: Thomas Simuel; John Mashburn; Gail Heriot; stephen gilchrist; Christian Adams; Alexander Heideman; Carissa Mulder; Kirsanow, Peter; Peter Kirsanow; Stephen Gilchrist
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From : "Alexander Heideman" aheideman@usccr.gov
To : "Gail Heriot" gheriot@me.com, "John Mashburn" jmashburn@usccr.gov
Cc : "stephen gilchrist" thegilchristassociates@gmail.com, "Gail Heriot" gheriot@usccr.gov, "Carissa Mulder" carissa.mulder@gmail.com, "Christian Adams" adams@electionlawcenter.com, "Carissa Mulder" CMulder@usccr.gov, "Kirsanow, Peter" pkirsanow@beneschlaw.com, "Peter Kirsanow" pkirsanow@usccr.gov, "Stephen Gilchrist" sgilchrist@usccr.gov, "Thomas Simuel" tsimuel@usccr.gov, "Alexander Heideman" alexanderheideman@gmail.com
Subject : Re: [EXTERNAL] Re: Commissioner Appointment/Removal
Attachment : STATUTE-71-Pg634.pdf;

I'm sorry I'm late to this. The 1957 Act did not provide for the removal of a Commissioner. I've attached the act in PDF format.

From: Gail Heriot <gheriot@me.com>
Date: Tuesday, February 23, 2021 at 8:38 PM
To: John Mashburn <jmashburn@usccr.gov>
Cc: stephen gilchrist <thegilchristassociates@gmail.com>, Gail Heriot <gheriot@usccr.gov>, Carissa Mulder <carissa.mulder@gmail.com>, Christian Adams <adams@electionlawcenter.com>, Alexander Heideman <aheideman@usccr.gov>, Carissa Mulder <CMulder@usccr.gov>, "Kirsanow, Peter" <pkirsanow@beneschlaw.com>, Peter Kirsanow <pkirsanow@usccr.gov>, Stephen Gilchrist <sgilchrist@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>
Subject: [EXTERNAL] Re: Commissioner Appointment/Removal

> CAUTION: This email is from outside USCCR.

oner could be removed. If that's not so, could someone point me to the section of the 1957 Act that says that? Alex?

Gail Heriot
Professor of Law
University of San Diego

> On Feb 23, 2021, at 4:55 PM, John Mashburn <jmashburn@usccr.gov> wrote:
>
> Quick wiki excerpt:
>
> > In 1983, Reagan attempted to fire three members of the commission. They sued the administration in federal court to stay on. The authorizing legislation stated that a president could only

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fire a commissioner for "misbehavior in office," and it was clear that the terminations were the result of disagreements over policy. A compromise brokered in the Senate resulted in the current hybrid group of eight, half appointed by the president and half by the Congress, **with six-year terms that do not expire with the inauguration of a new president**. Since that time the commission has struggled to remain independent, and its agenda has oscillated between liberal and conservative aims as factions among its members have ebbed and waned.[10]

USCCR Authorizing Statute excerpt:

"Sec. 2. <42 USC 1975> ESTABLISHMENT OF COMMISSION.

"(a) Generally.--There is established the United States**Commission on Civil Rights** (hereinafter in this Act referred to as the 'Commission').

"(b) Membership.--The Commission shall be composed of 8 members. Not more than 4 of the members shall at any one time be of the same political party. The initial membership of the Commission shall be the members of the United States **Commission on Civil Rights** on September 30, 1994. Thereafter vacancies in the membership of the Commission shall continue to be appointed as follows:

"(1) **4 members of the Commission shall be appointed by the President.**

"(2) 2 members of the Commission shall be appointed by the President pro tempore of the Senate, upon the recommendations of the majority leader and the minority leader, and of the members appointed not more than one shall be appointed from the same political party.

"(3) 2 members of the Commission shall be appointed by the Speaker of the House of Representatives upon the recommendations of the majority leader and the minority leader, and of the members appointed not more than one shall be appointed from the same political party.

"(c) Terms.--**The term of office of each member of the Commission shall be 6 years**. The term of each member of the Commission **[**4339]** in the initial membership of the Commission shall expire on the date such term would have expired as of September 30, 1994. "(d) Chairperson.—

(1) Except as provided in paragraphs (2) and (3), the individuals serving as Chairperson and Vice Chairperson of the United States **Commission on Civil Rights** on September 30, 1994 shall initially fill those roles on the Commission. "

(2) Thereafter the President may, with the concurrence of a majority of the Commission's members, designate a Chairperson or Vice Chairperson, as the case may be, from among the Commission's members. "

(3) The President shall, with the concurrence of a majority of the Commission's members, fill a vacancy by designating a Chairperson or Vice Chairperson, as the case may be, from among the Commission's members. "

(4) The Vice Chairperson shall act in place of the Chairperson in the absence of the Chairperson. "

(e) **Removal of Members.--The President may remove a member of the Commission only for neglect of duty or malfeasance in office.** "

(f) Quorum.--5 members of the Commission constitute a quorum of the Commission.

From: stephen gilchrist <thegilchristassociates@gmail.com>
Date: Tuesday, February 23, 2021 at 7:11 PM
To: Gail Heriot <gheriot@usccr.gov>
Cc: Carissa Mulder <carissa.mulder@gmail.com>, Christian Adams <adams@electionlawcenter.com>, Alexander Heideman <aheideman@usccr.gov>, Carissa Mulder <CMulder@usccr.gov>, Gail Heriot <gheriot@me.com>, John Mashburn <jmashburn@usccr.gov>, "Kirsanow, Peter" <pkirsanow@beneschlaw.com>, Peter Kirsanow

AMERICAN OVERSIGHT

<pkirsanow@usccr.gov>, Stephen Gilchrist <sgilchrist@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>
Subject: Re: [EXTERNAL] Re: Caucus Meeting tomorrow?

> CAUTION: This email is from outside USCCR.

On Tue, Feb 23, 2021, 7:09 PM Gail Heriot <gheriot@usccr.gov> wrote:

> Sounds like our colleagues are crazy. But I take it she didn't say straight out that Yaki (or someone) is trying to have you and Stephen removed?
>
> Gail Heriot
> Professor of Law
> University of San Diego
>
> On Feb 23, 2021, at 3:53 PM, Carissa Mulder <carissa.mulder@gmail.com> wrote:
>
> > CAUTION: This email is from outside USCCR.
> >
> > o get you removed.
> >
> > On Tue, Feb 23, 2021 at 6:39 PM Christian Adams <adams@electionlawcenter.com> wrote:
> >
> > > I just talked to Cantu for an hour. Key takeaways
> > >
> > > 1. I told her she HAD to get up with Pete regarding details.
> > > 2. I gave her a heads up that there was a chance she would NOT have a quorum on Friday pending resolution of big issues. She should not be blindsided in my view. I put down the threat of a withheld quorum in order to remind her it was possible and that we needed to resolve things.
> > > 3. She said something that indicated to me that Yaki and Debo or someone else (Mauro?) are agitating to have Stephen and I removed by the President. I cannot recall her exact words, but it was along the lines "I tell people that the people we got are the people we got. President Reagan tried to remove commissioners and he got sued and lost for removing them." She would NOT HAVE BROUGHT THIS up unless that chatter is occurring

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somewhere. And after all, ask Roger Severino if the Biden people are thinking like this. Bottom Line: some members of the Commission may be thinking they can improve their bargaining position by altering the composition of the commission and getting rid of two of us. Whether or not they are correct is irrelevant to Yaki or Debo's potential perception of this option.

4. I repeatedly told her - "You need to get with Pete on that; he knows more about that than me." Among the topics falling under this category were EAC appointments, SAC issues, and all manner of administrative issues.
5. I made it plain to her we could stop the business of the commission if we were not treated fairly, and fairness is all we want.

From: stephen gilchrist <thegilchristassociates@gmail.com>
Sent: Tuesday, February 23, 2021 4:06 PM
To: Carissa Mulder <carissa.mulder@gmail.com>
Cc: Kirsanow, Peter <pkirsanow@beneschlaw.com>; Gail Heriot <gheriot@me.com>; Christian Adams >; Alexander Heideman <aheideman@usccr.gov>; John Mashburn <jmashburn@usccr.gov>; Thomas Simuel <tsimuel@usccr.gov>; Peter Kirsanow <pkirsanow@usccr.gov>; Stephen Gilchrist <sgilchrist@usccr.gov>; Gail Heriot <gheriot@usccr.gov>; Carissa Mulder <cmulder@usccr.gov>
Subject: Re: Caucus Meeting tomorrow?

Carissa - I can do 1pm.

On Tue, Feb 23, 2021, 3:45 PM Carissa Mulder <carissa.mulder@gmail.com> wrote:

> Pete would like to have a caucus meeting tomorrow to discuss how to proceed from here. Are people free at 1:00?
> --
> Carissa B. Mulder

--
Carissa B. Mulder

AMERICAN OVERSIGHT

Public Law 85-315

September 9, 1957
[H. R. 6127]

AN ACT

To provide means of further securing and protecting the civil rights of persons within the jurisdiction of the United States.

Civil Rights Act of 1957.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

PART I—ESTABLISHMENT OF THE COMMISSION ON CIVIL RIGHTS

SEC. 101. (a) There is created in the executive branch of the Government a Commission on Civil Rights (hereinafter called the "Commission").

(b) The Commission shall be composed of six members who shall be appointed by the President by and with the advice and consent of the Senate. Not more than three of the members shall at any one time be of the same political party.

(c) The President shall designate one of the members of the Commission as Chairman and one as Vice Chairman. The Vice Chairman shall act as Chairman in the absence or disability of the Chairman, or in the event of a vacancy in that office.

(d) Any vacancy in the Commission shall not affect its powers and shall be filled in the same manner, and subject to the same limitation with respect to party affiliations as the original appointment was made.

(e) Four members of the Commission shall constitute a quorum.

RULES OF PROCEDURE OF THE COMMISSION

SEC. 102. (a) The Chairman or one designated by him to act as Chairman at a hearing of the Commission shall announce in an opening statement the subject of the hearing.

(b) A copy of the Commission's rules shall be made available to the witness before the Commission.

(c) Witnesses at the hearings may be accompanied by their own counsel for the purpose of advising them concerning their constitutional rights.

(d) The Chairman or Acting Chairman may punish breaches of order and decorum and unprofessional ethics on the part of counsel, by censure and exclusion from the hearings.

(e) If the Commission determines that evidence or testimony at any hearing may tend to defame, degrade, or incriminate any person, it shall (1) receive such evidence or testimony in executive session; (2) afford such person an opportunity voluntarily to appear as a witness; and (3) receive and dispose of requests from such person to subpena additional witnesses.

(f) Except as provided in sections 102 and 105 (f) of this Act, the Chairman shall receive and the Commission shall dispose of requests to subpena additional witnesses.

Evidence or testimony. Release.

(g) No evidence or testimony taken in executive session may be released or used in public sessions without the consent of the Commission. Whoever releases or uses in public without the consent of the Commission evidence or testimony taken in executive session shall be fined not more than $1,000, or imprisoned for not more than one year.

(h) In the discretion of the Commission, witnesses may submit brief and pertinent sworn statements in writing for inclusion in the record. The Commission is the sole judge of the pertinency of testimony and evidence adduced at its hearings.

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USCCR-21-1814-A-003687

(i) Upon payment of the cost thereof, a witness may obtain a transcript copy of his testimony given at a public session or, if given at an executive session, when authorized by the Commission.

Witness fees.

(j) A witness attending any session of the Commission shall receive $4 for each day's attendance and for the time necessarily occupied in going to and returning from the same, and 8 cents per mile for going from and returning to his place of residence. Witnesses who attend at points so far removed from their respective residences as to prohibit return thereto from day to day shall be entitled to an additional allowance of $12 per day for expenses of subsistence, including the time necessarily occupied in going to and returning from the place of attendance. Mileage payments shall be tendered to the witness upon service of a subpena issued on behalf of the Commission or any subcommittee thereof.

(k) The Commission shall not issue any subpena for the attendance and testimony of witnesses or for the production of written or other matter which would require the presence of the party subpenaed at a hearing to be held outside of the State, wherein the witness is found or resides or transacts business.

COMPENSATION OF MEMBERS OF THE COMMISSION

SEC. 103. (a) Each member of the Commission who is not otherwise in the service of the Government of the United States shall receive the sum of $50 per day for each day spent in the work of the Commission, shall be reimbursed for actual and necessary travel expenses, and shall receive a per diem allowance of $12 in lieu of actual expenses for subsistence when away from his usual place of residence, inclusive of fees or tips to porters and stewards.

(b) Each member of the Commission who is otherwise in the service of the Government of the United States shall serve without compensation in addition to that received for such other service, but while engaged in the work of the Commission shall be reimbursed for actual and necessary travel expenses, and shall receive a per diem allowance of $12 in lieu of actual expenses for subsistence when away from his usual place of residence, inclusive of fees or tips to porters and stewards.

DUTIES OF THE COMMISSION

SEC. 104. (a) The Commission shall—

(1) investigate allegations in writing under oath or affirmation that certain citizens of the United States are being deprived of their right to vote and have that vote counted by reason of their color, race, religion, or national origin; which writing, under oath or affirmation, shall set forth the facts upon which such belief or beliefs are based;

(2) study and collect information concerning legal developments constituting a denial of equal protection of the laws under the Constitution; and

(3) appraise the laws and policies of the Federal Government with respect to equal protection of the laws under the Constitution.

Reports to President and Congress.

(b) The Commission shall submit interim reports to the President and to the Congress at such times as either the Commission or the President shall deem desirable, and shall submit to the President and to the Congress a final and comprehensive report of its activities, findings, and recommendations not later than two years from the date of the enactment of this Act.

Termination of Commission.

(c) Sixty days after the submission of its final report and recommendations the Commission shall cease to exist.

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POWERS OF THE COMMISSION

Staff director.

SEC. 105. (a) There shall be a full-time staff director for the Commission who shall be appointed by the President by and with the advice and consent of the Senate and who shall receive compensation at a rate, to be fixed by the President, not in excess of $22,500 a year. The President shall consult with the Commission before submitting the nomination of any person for appointment to the position of staff director. Within the limitations of its appropriations, the Commission may appoint such other personnel as it deems advisable, in accordance with the civil service and classification laws, and may procure services as authorized by section 15 of the Act of August 2, 1946 (60 Stat. 810; 5 U. S. C. 55a), but at rates for individuals not in excess of $50 per diem.

(b) The Commission shall not accept or utilize services of voluntary or uncompensated personnel, and the term "whoever" as used in paragraph (g) of section 102 hereof shall be construed to mean a person whose services are compensated by the United States.

(c) The Commission may constitute such advisory committees within States composed of citizens of that State and may consult with governors, attorneys general, and other representatives of State and local governments, and private organizations, as it deems advisable.

(d) Members of the Commission, and members of advisory committees constituted pursuant to subsection (c) of this section, shall be exempt from the operation of sections 281, 283, 284, 434, and 1914 of title 18 of the United States Code, and section 190 of the Revised Statutes (5 U. S. C. 99).

62 Stat. 697 *et seq.*

(e) All Federal agencies shall cooperate fully with the Commission to the end that it may effectively carry out its functions and duties.

Hearings, etc.

(f) The Commission, or on the authorization of the Commission any subcommittee of two or more members, at least one of whom shall be of each major political party, may, for the purpose of carrying out the provisions of this Act, hold such hearings and act at such times and places as the Commission or such authorized subcommittee may deem advisable.

Subpenas.

Subpenas for the attendance and testimony of witnesses or the production of written or other matter may be issued in accordance with the rules of the Commission as contained in section 102 (j) and (k) of this Act, over the signature of the Chairman of the Commission or of such subcommittee, and may be served by any person designated by such Chairman.

(g) In case of contumacy or refusal to obey a subpena, any district court of the United States or the United States court of any Territory or possession, or the District Court of the United States for the District of Columbia, within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the Attorney General of the United States shall have jurisdiction to issue to such person an order requiring such person to appear before the Commission or a subcommittee thereof, there to produce evidence if so ordered, or there to give testimony touching the matter under investigation; and any failure to obey such order of the court may be punished by said court as a contempt thereof.

APPROPRIATIONS

SEC. 106. There is hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, so much as may be necessary to carry out the provisions of this Act.

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PART II—TO PROVIDE FOR AN ADDITIONAL ASSISTANT ATTORNEY GENERAL

SEC. 111. There shall be in the Department of Justice one additional Assistant Attorney General, who shall be appointed by the President, by and with the advice and consent of the Senate, who shall assist the Attorney General in the performance of his duties, and who shall receive compensation at the rate prescribed by law for other Assistant Attorneys General.

PART III—TO STRENGTHEN THE CIVIL RIGHTS STATUTES, AND FOR OTHER PURPOSES

SEC. 121. Section 1343 of title 28, United States Code, is amended as follows: 62 Stat. 932.

(a) Amend the catch line of said section to read,

"§ 1343. Civil rights and elective franchise"

(b) Delete the period at the end of paragraph (3) and insert in lieu thereof a semicolon.

(c) Add a paragraph as follows:

"(4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote."

SEC. 122. Section 1989 of the Revised Statutes (42 U. S. C. 1993) is hereby repealed. Repeal.

PART IV—TO PROVIDE MEANS OF FURTHER SECURING AND PROTECTING THE RIGHT TO VOTE

SEC. 131. Section 2004 of the Revised Statutes (42 U. S. C. 1971), is amended as follows:

(a) Amend the catch line of said section to read, "Voting rights".

(b) Designate its present text with the subsection symbol "(a)".

(c) Add, immediately following the present text, four new subsections to read as follows:

"(b) No person, whether acting under color of law or otherwise, shall intimidate, threaten, coerce, or attempt to intimidate, threaten, or coerce any other person for the purpose of interfering with the right of such other person to vote or to vote as he may choose, or of causing such other person to vote for, or not to vote for, any candidate for the office of President, Vice President, presidential elector, Member of the Senate, or Member of the House of Representatives, Delegates or Commissioners from the Territories or possessions, at any general, special, or primary election held solely or in part for the purpose of selecting or electing any such candidate.

"(c) Whenever any person has engaged or there are reasonable grounds to believe that any person is about to engage in any act or practice which would deprive any other person of any right or privilege secured by subsection (a) or (b), the Attorney General may institute for the United States, or in the name of the United States, a civil action or other proper proceeding for preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order. In any proceeding hereunder the United States shall be liable for costs the same as a private person.

"(d) The district courts of the United States shall have jurisdiction of proceedings instituted pursuant to this section and shall exercise the same without regard to whether the party aggrieved shall have exhausted any administrative or other remedies that may be provided by law.

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USCCR-21-1814-A-003690

"(e) Any person cited for an alleged contempt under this Act shall be allowed to make his full defense by counsel learned in the law; and the court before which he is cited or tried, or some judge thereof, shall immediately, upon his request, assign to him such counsel, not exceeding two, as he may desire, who shall have free access to him at all reasonable hours. He shall be allowed, in his defense to make any proof that he can produce by lawful witnesses, and shall have the like process of the court to compel his witnesses to appear at his trial or hearing, as is usually granted to compel witnesses to appear on behalf of the prosecution. If such person shall be found by the court to be financially unable to provide for such counsel, it shall be the duty of the court to provide such counsel."

PART V—TO PROVIDE TRIAL BY JURY FOR PROCEEDINGS TO PUNISH CRIMINAL CONTEMPTS OF COURT GROWING OUT OF CIVIL RIGHTS CASES AND TO AMEND THE JUDICIAL CODE RELATING TO FEDERAL JURY QUALIFICATIONS

Criminal contempt. Penalties.

SEC. 151. In all cases of criminal contempt arising under the provisions of this Act, the accused, upon conviction, shall be punished by fine or imprisonment or both: *Provided however*, That in case the accused is a natural person the fine to be paid shall not exceed the sum of $1,000, nor shall imprisonment exceed the term of six months: *Provided further*, That in any such proceeding for criminal contempt, at the discretion of the judge, the accused may be tried with or without a jury: *Provided further, however*, That in the event such proceeding for criminal contempt be tried before a judge without a jury and the sentence of the court upon conviction is a fine in excess of the sum of $300 or imprisonment in excess of forty-five days, the accused in said proceeding, upon demand therefor, shall be entitled to a trial de novo before a jury, which shall conform as near as may be to the practice in other criminal cases.

Nonapplicability.

This section shall not apply to contempts committed in the presence of the court or so near thereto as to interfere directly with the administration of justice nor to the misbehavior, misconduct, or disobedience, of any officer of the court in respect to the writs, orders, or process of the court.

Nor shall anything herein or in any other provision of law be construed to deprive courts of their power, by civil contempt proceedings, without a jury, to secure compliance with or to prevent obstruction of, as distinguished from punishment for violations of, any lawful writ, process, order, rule, decree, or command of the court in accordance with the prevailing usages of law and equity, including the power of detention.

62 Stat. 951.

SEC. 152. Section 1861, title 28, of the United States Code is hereby amended to read as follows:

"§ 1861. Qualifications of Federal jurors

"Any citizen of the United States who has attained the age of twenty-one years and who has resided for a period of one year within the judicial district, is competent to serve as a grand or petit juror unless—

"(1) He has been convicted in a State or Federal court of record of a crime punishable by imprisonment for more than one year and his civil rights have not been restored by pardon or amnesty.

"(2) He is unable to read, write, speak, and understand the English language.

"(3) He is incapable, by reason of mental or physical infirmities to render efficient jury service."

Short title.

SEC. 161. This Act may be cited as the "Civil Rights Act of 1957".

Approved September 9, 1957.

AMERICAN OVERSIGHT USCCR-21-1814-A-003691

Date : 2/28/2021 10:47:06 AM
From : "Alexander Heideman" aheideman@usccr.gov
To : "Gail Heriot" gheriot@me.com, "Gail Heriot" gheriot@usccr.gov
Cc : "Alexander Heideman" alexanderheideman@gmail.com
Subject : Letter draft updated
Attachment : CantuLetter_Draft2_2.28.2021.docx;

Attached---my big edits:

- Changed all “Staff Director” to “staff director” to minimize the importance of the position;
- Standardized “Chair” and “Vice-Chair” to “chairperson” and “vice-chairperson” to be consistent with the statute;
- Deleted a couple small phrases/sentences that Cantu might read as hostile to her; and
- Added footnote 11 to cite authority for the Commission as a whole appointing EAC advisory board members, rather than chairperson as an individual appointing them.

I can Zoom or call about this any time after 3 PM Eastern that works for you.

Alex

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Commissioners Adams, Gilchrist,
Heriot, and Kirsanow
United States Commission on Civil Rights
1331 Pennsylvania Avenue NW
Washington, DC 20425

March 1, 2021

The Honorable Norma Cantú~~,~~
United States Commission on Civil Rights
1331 Pennsylvania Avenue NW
Washington, DC 20425

Dear Commissioner Cantú:

We write today to detail our concerns with Staff Director Mauro Morales's recent actions and to ensure that you understand why we were compelled not to attend Friday's briefing. We understand that you are new to the Commission and unfamiliar with its procedures and traditions. It's important that we be clear.

The staff director ~~Staff Director~~ began his unlawful actions on January 21, 2021, when he refused to honor our directive to him to reinstate the January 29 business meeting, which the Commission had voted to hold.[1] That meeting had been cancelled ~~(~~contrary to our rules~~)~~ by our former chairperson, Catherine Lhamon, as her last act prior to resigning on January 20.[2] The staff director ~~Staff Director~~ attempted to justify his refusal by stating that he "[found] ~~former Chairperson Lhamon's~~her decision to postpone the January 29 meeting as reasonable and appropriate."~~[3]~~[3] But that refusal was in contravention of our Administrative ~~Order~~ Instruction ("AI") 1-24(1), which provides:

> (1) If there is a vacancy in both the positions of Chairperson and Vice-Chairperson, the Commission may call a special meeting by majority vote pursuant to Regulations § 701.11(b).[4]

[1] Transcript of U.S. Commission on Civil Rights Telephonic Business Meeting September 11, 2020 at 17 (available at https://www.usccr.gov/files/2020-11-04-Commission-Business-Meeting-Transcript-for-09-11.pdf).
[2] Neither Chairperson Lhamon nor the staff director ~~Staff Director~~ had the authority to cancel a meeting that the Commission had voted to hold. *See* 45 C.F.R. § 701.11(d) (allowing for cancellation of meetings only after the chairperson ~~Chair~~ "determines that there are insufficient substantive items on a proposed meeting agenda" and after she has "consult[ed] with the members of the Commission and consider[ed] . . . the views of the members."). *See also* 45 C.F.R. § 701.12; 45 C.F.R. § 701.11(a). But there is no need to belabor this point ~~since~~ because it is very clear that a majority of the members of the Commission had the authority to require the staff director ~~Staff Director~~ to call a meeting when there is a vacancy in both the positions of c~~C~~hairperson and v~~V~~ice-c ~~C~~hairperson.
[3] Email from Mauro Morales, Staff Director, U.S. Comm'n on Civil Rights, to Commissioners, U.S. Comm'n on Civil Rights (Jan. 21, 2021, 13:02 EST) (on file with authors).
[4] Regulation § 701.11(b) permits a majority of the members of the Commission to call a meeting even in cases where the chairperson ~~Chair~~ and v~~V~~ice- ~~C~~chairperson ~~hair~~ are not absent.

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Note that AI 1-24(1) refers to "the Commission" "by majority vote" as the entity that can call a special meeting. The statute that constitutes the Commission tells us exactly what that means: "The Commission shall be composed of ~~eight~~ 8 members." ~~U.S.C. §~~ .[5] Significantly, it does *not* say that "the Commission shall be composed of ~~eight~~ 8 members and a staff director~~Staff Director~~," much less that it "shall be composed of ~~eight~~ 8 members under the leadership of ~~the~~ a staff director~~Staff Director~~." The staff director ~~Staff Director~~ directs the Commission's staff, not the Commission itself.[6] If leading the Commission were the staff director's ~~Staff Director's~~ job, his title would be "Commission Director."

It is also important to note that our statute assigns all responsibilities to the Commission. That's important to understanding how the Commission is designed by Congress to work. The staff director ~~Staff Director~~ is given no statutory authority at all (with the possible exception of the power to organize the work of the staff, assuming there is a staff, which arguably is inherent in the title). The power to undertake tasks must thus be delegated *by* the Commission *to* the staff director ~~Staff Director~~ (which the Commission has often done so through its Administrative Instructions).

But the staff director ~~Staff Director~~ may not arrogate power to himself that has not been delegated. AI 1-24(1) clearly states that when no c~~C~~hairperson or v~~V~~ice- c~~C~~hairperson exists, it is for the Commission to call a special meeting. There is no parallel provision that gives that same power to the staff director~~Staff Director~~. Nor do those rules give the staff director ~~Staff Director~~ the authority to ignore the Commission's call for such a meeting. On January 21, when the four of us made clear that we wished to reinstate the meeting that had been scheduled for January 29, we were the majority of the members of the Commission. It was up to the staff director ~~Staff Director~~ to execute that directive by posting a notice in the Federal Register. Yet the staff director continued to refuse~~d~~ to hold that meeting.[7]

Things got worse from there. After President Biden appointed you as a commissioner and nominated you to be our next chairperson, our staff director ~~Staff Director~~ arrogated to himself the power to call a special business meeting for February 26 (directly after our already-scheduled briefing on bail reform). This, again, is not his proper role. That authority belongs to the Commission itself. But that wasn't the worst of it. The staff director ~~Staff Director~~ then claimed the power to appoint the Acting c~~C~~hairperson of the Commission, pending your confirmation (which, for the record, we continue to believe can and should happen soon).

His claim was utter nonsense.[8] Our position ~~is~~ was and continues to be that the most senior member of the Commission (Kirsanow) should wield the gavel pending the election by the

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[5] 42 U.S.C. § 1975(b).

[6] In this respect, the staff director's ~~Staff Director's~~ job can be analogized to the White House Chief of Staff or the Chief of Staff of a U.S. Senator. Both are important jobs, but the White House Chief of Staff directs the White House staff, not the President, just as a U.S. Senator's Chief of Staff directs the Senator's staff, not the Senator. The only difference is the Commission is a multi-member body. In that way a useful analogy might be made to the Clerk of the Court for the U.S. Supreme Court: The Justices do not work at his direction.

[7] Email from Mauro Morales, Staff Director, U.S. Comm'n on Civil Rights, to Peter Kirsanow, Commissioner, U.S. Comm'n on Civil Rights (Jan. 22, 2021, 20:53 EST) (on file with authors).

[8] Although the staff director failed to cite the authority on which he acted, you informed us that the staff director believes AI 1-6 provides that authority. It does not. Section 4.07 of AI 1-6 (entitled "National Project Development

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AMERICAN OVERSIGHT

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(1) ***The s~~S~~taff d~~D~~irector cannot be the one to designate the a~~A~~cting c~~C~~hairperson.*** That task is for the Commission. AI 1-24 states in full:

> (1) If there is a vacancy in both the positions of Chairperson and Vice-Chairperson, the Commission may call a special meeting by majority vote pursuant to Regulations § 701.11(b).
> (2) There being no Chairperson or Vice-Chairperson, the Staff Director shall establish the agenda for this special meeting, whereby specific items may be added or deleted in accordance with Regulations § 701.11(c). However, the first item of business shall be the election of a designee of the functions of the Chairperson.

The Commission must call the meeting and elect the a~~A~~cting c~~C~~hairperson. The staff director's ~~Staff Director's~~ role is to undertake the ministerial tasks of noticing the meeting in the Federal Register and drawing up the agenda. He is not even permitted to put any business before that of electing an a~~A~~cting c~~C~~hairperson.

(2) ***The President's nominee cannot be the a~~A~~cting c~~C~~hairperson.*** This is in keeping with federal practice. When the President's nominee to a Senate-confirmable office has not yet been confirmed, he or she cannot be "acting" in that position. The contrary practice would essentially eviscerate the Senate's role. If you're doing the job anyway, why bother to cooperate with the Senate in the confirmation process? Why bother to give Members of the Senate assurances that the job will be performed in keeping with federal law and policy when you've already got the authority of the office? The same logic applies here.

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and Implementation"), provides, "All responsibilities not otherwise delegated are reserved to the Staff Director. The Staff Director may delegate any of these responsibilities to a member of the executive staff." AI 1-6 § 4.07. There are many reasons this provision does apply to the appointment of an a~~A~~cting c~~C~~hairperson. Most obviously, AI 1-24 explicitly delegates the designation of a commissioner to fill the functions of chairperson during a vacancy to "a majority of Commissioners," thereby negating any possible interpretation of AI 1-6 § 4.07 that would give this authority to the staff director~~Staff Director~~. Moreover, §4 is generally about how tasks are to be allocated among the various divisions of the Commission's staff—the O~~o~~ffice of the Staff Director (OSD), the Office of the General Counsel (OGC), the Office of Civil Rights Evaluation ("OCRE"), and the Office of Management (OM), etc. This is how the staff director ~~Staff Director~~ delegates responsibilities to the staff that have been delegated to him. But he cannot delegate responsibilities that were never delegated to him in the first place. That's why the section states that he "reserves" responsibilities that he has not otherwise delegated by him; the section is not itself a delegation of authority to him.

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We thought all this was obvious and appropriate, and for a while we thought you ~~understood and~~ agreed. To our astonishment, you ended up being willing to go along the staff director's ~~Staff Director's~~ arrogation of power.[9] Not only did you recognize his purported authority to designate the a~~A~~cting c~~C~~hairperson ~~(something we suspect you'll regret when you understand how the Commission works a little better)~~, but you also allowed him to designate you as a~~A~~cting chairperson~~Chair~~, knowing our reasonable objections to such a move.

As you will remember, we were very flexible as to how the Commission would select an a~~A~~cting c~~C~~hairperson for the February 26 bail reform hearing. We were willing to have our most senior member chair; we were willing to draw a Commissioner's name out of a hat; we were willing to split the a~~A~~cting c~~C~~hairperson's position between one Commissioner appointed by a Democrat and one Commission appointed by a Republican; we were willing to have Commissioner Kladney (who was appointed by a Democrat) serve as acting chairperson. All of these methods would have worked and ~~. Given a few more minutes of time to think about it,~~ we could have come up with even more alternatives.

Alas, the issue was resolved instead in a way that was contrary to our rules and (if we had acquiesced) would have set an extraordinarily bad precedent. We were baffled. Under the circumstances, we viewed it as necessary not to acquiesce. That is why we could not attend the briefing.

We don't blame you. We know that you are new at this. All institutions have their rules and traditions that outsiders are unfamiliar with. Soon enough you will be familiar with those that apply to the Commission. So, despite the staff director's ~~Staff Director's~~ continued unlawful actions, we remain confident that you can lead this Commission and that you can be confirmed as c~~C~~hairperson—soon. However, before we concur ~~her~~ your appointment as chairperson,[10] we still need an agreement on the record about the matters that we (~~Gail~~ Heriot and ~~Pete~~ Kirsanow) discussed with you earlier.

We understood from ~~Gail and Pete's~~ earlier discussions with you that (with the exception of the v~~V~~ice-c~~C~~hairmanship, which you felt you had no control over) that our proposals were fair and appropriate. All we are trying to do is ensure fairness and prevent the abuses that went on during Chairperson Lhamon's tenure.

We won't repeat those matters here. This letter is long enough as it is. But we did wish to mention one aspect of the matter that has been troubling us over the last couple of days.

One of our requests was that you follow that law when appointments are made. For example, the law gives the Commission (and *not* the chairperson ~~Chair~~ or the staff director~~Staff Director~~) the

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[9] At the February 26 briefing, "The Civil Rights Implications of Cash Bail," the staff director ~~Staff Director~~ designated Commissioner Cantú as moderator of the hearing, saying, "In the absence of a chairperson for the Commission, I will appoint a moderator to administer today's briefing." U.S. Comm'n on Civil Rights, *U.S. Comm'n on Civil Rights Public Briefing: The Civil Rights Implications of Cash Bail*, YOUTUBE (Feb. 26, 2021), https://www.youtube.com/watch?v=fWLcyC_kZqI&ab_channel=USCCR.

[10] Concurrence of the majority of the Commission is required by our authorizing statute. 42 U.S.C. § 1975(d).

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AMERICAN OVERSIGHT

authority to appoint two members of the Election Assistance Commission's Board of Advisors.[11] Yet cChairperson Lhamon arrogated that authority to herself and appointed the members without consulting or even notifying us. This act was simply a violation of the law. Yet when you spoke last with ~~Pete~~ Kirsanow (after consulting with our Progressive colleagues) on Thursday, you suggested a "compromise" under which you would appoint the members~~,~~ but promised that they would not be Democrats. Alas, we don't think the law can be compromised in that way. All we ~~are~~ ask~~ing~~ here is that you comply with the law.

We look forward to fruitful and constructive discussions stemming from our earlier ~~discussions~~ conversations with you and from this letter. We are still confident that we can reach an agreement ~~with you~~. We remain dedicated to the Commission's important and bipartisan work.

Sincerely,

Peter Kirsanow
Commissioner

J. Christian Adams
Commissioner

Gail Heriot
Commissioner

Stephen Gilchrist
Commissioner

[11] *See* 52 U.S.C. § 20944(a)(10)) ("Two members appointed [to the U.S. Election Assistance Commission] by the United States Commission on Civil Rights."); *see also* 52 U.S.C. § 20944(b) ("Appointments shall be made to the Board of Advisors [of the the U.S. Election Assistance Commission] under subsection (a) in a manner which ensures that the Board of Advisors will be bipartisan in nature and will reflect the various geographic regions of the United States.").

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AMERICAN OVERSIGHT

Date : 2/28/2021 12:20:18 PM
From : "Gail Heriot" gheriot@usccr.gov
To : "Alexander Heideman" aheideman@usccr.gov
Cc : "Gail Heriot" gheriot@me.com, "Alexander Heideman" alexanderheideman@gmail.com
Subject : Re: Letter draft updated

Sounds good. Let's figure on 4:00 pm your time for a zoom. It probably won't take very long ... just a few minutes.

Gail Heriot
Professor of Law
University of San Diego

On Feb 28, 2021, at 7:47 AM, Alexander Heideman <aheideman@usccr.gov> wrote:

Attached---my big edits:

- Changed all "Staff Director" to "staff director" to minimize the importance of the position;
- Standardized "Chair" and "Vice-Chair" to "chairperson" and "vice-chairperson" to be consistent with the statute;
- Deleted a couple small phrases/sentences that Cantu might read as hostile to her; and
- Added footnote 11 to cite authority for the Commission as a whole appointing EAC advisory board members, rather than chairperson as an individual appointing them.

I can Zoom or call about this any time after 3 PM Eastern that works for you.

Alex
<CantuLetter_Draft2_2.28.2021.docx>

AMERICAN OVERSIGHT

Date : 2/28/2021 2:07:07 PM
From : "Carissa Mulder" CMulder@usccr.gov
To : "Gail Heriot" gheriot@me.com
Cc : "Gail Heriot" gheriot@usccr.gov
Subject : Re: [EXTERNAL] Fwd: Letter draft updated
Attachment : CantuLetter_Draft2_2.28.2021.docx;

Just a few edits.

From: Gail Heriot <gheriot@me.com>
Sent: Sunday, February 28, 2021 1:36:15 PM
To: Carissa Mulder
Cc: Gail Heriot
Subject: [EXTERNAL] Fwd: Letter draft updated

CAUTION: This email is from outside USCCR.

Begin forwarded message:

From: Alexander Heideman <aheideman@usccr.gov>
Subject: Letter draft updated
Date: February 28, 2021 at 7:47:06 AM PST
To: Gail Heriot <gheriot@me.com>, Gail Heriot <gheriot@usccr.gov>
Cc: Alexander Heideman <alexanderheideman@gmail.com>

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I can Zoom or call about this any time after 3 PM Eastern that works for you.

Alex

AMERICAN OVERSIGHT

Commissioners Adams, Gilchrist,
Heriot, and Kirsanow
United States Commission on Civil Rights
1331 Pennsylvania Avenue NW
Washington, DC 20425

March 1, 2021

The Honorable Norma Cantú~~,~~
United States Commission on Civil Rights
1331 Pennsylvania Avenue NW
Washington, DC 20425

Dear Commissioner Cantú:

We write today to detail our concerns with Staff Director Mauro Morales's recent actions and to ensure that you understand why we were compelled not to attend Friday's briefing. We understand that you are new to the Commission and unfamiliar with its procedures and traditions. It's important that we be clear.

The staff director ~~Staff Director~~ began his unlawful actions on January 21, 2021, when he refused to honor our directive to him to reinstate the January 29 business meeting, which the Commission had voted to hold.[1] That meeting had been cancelled~~—(~~contrary to our rules~~—)~~ by our former chairperson, Catherine Lhamon, as her last act prior to resigning on January 20.[2] The staff director ~~Staff Director~~ attempted to justify his refusal by stating that he "[found] ~~former Chairperson Lhamon's~~her decision to postpone the January 29 meeting as reasonable and appropriate."~~[3]~~[3] But that refusal was in contravention of our Administrative ~~Order~~ Instruction ("AI") 1-24(1), which provides:

> (1) If there is a vacancy in both the positions of Chairperson and Vice-Chairperson, the Commission may call a special meeting by majority vote pursuant to Regulations § 701.11(b).[4]

[1] Transcript of U.S. Commission on Civil Rights Telephonic Business Meeting September 11, 2020 at 17 (available at https://www.usccr.gov/files/2020-11-04-Commission-Business-Meeting-Transcript-for-09-11.pdf).
[2] Neither Chairperson Lhamon nor the staff director ~~Staff Director~~ had the authority to cancel a meeting that the Commission had voted to hold. *See* 45 C.F.R. § 701.11(d) (allowing for cancellation of meetings only after the chairperson ~~Chair~~ "determines that there are insufficient substantive items on a proposed meeting agenda" and after she has "consult[ed] with the members of the Commission and consider[ed] . . . the views of the members."). *See also* 45 C.F.R. § 701.12; 45 C.F.R. § 701.11(a). But there is no need to belabor this point ~~since~~ because it is very clear that a majority of the members of the Commission had the authority to require the staff director ~~Staff Director~~ to call a meeting when there is a vacancy in both the positions of c~~C~~hairperson and v~~V~~ice-c ~~C~~hairperson.
[3] Email from Mauro Morales, Staff Director, U.S. Comm'n on Civil Rights, to Commissioners, U.S. Comm'n on Civil Rights (Jan. 21, 2021, 13:02 EST) (on file with authors).
[4] Regulation § 701.11(b) permits a majority of the members of the Commission to call a meeting even in cases where the chairperson ~~Chair~~ and v~~V~~ice- ~~C~~chairperson ~~hair~~ are not absent.

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Note that AI 1-24(1) refers to "the Commission" "by majority vote" as the entity that can call a special meeting. The statute that constitutes the Commission tells us exactly what that means: "The Commission shall be composed of ~~eight~~ 8 members." ~~U.S.C. §~~ .[5] Significantly, it does *not* say that "the Commission shall be composed of ~~eight~~ 8 members and a staff director~~Staff Director~~," much less that it "shall be composed of ~~eight~~ 8 members under the leadership of ~~the~~ a staff director~~Staff Director~~." The staff director ~~Staff Director~~ directs the Commission's staff, not the Commission itself.[6] If leading the Commission were the staff director's ~~Staff Director's~~ job, his title would be "Commission Director."

It is also important to note that our statute assigns all responsibilities to the Commission. That's important to understanding how the Commission is designed by Congress to work. The staff director ~~Staff Director~~ is given no statutory authority at all (with the possible exception of the power to organize the work of the staff, assuming there is a staff, which arguably is inherent in the title). The power to undertake tasks must thus be delegated *by* the Commission *to* the staff director ~~Staff Director~~ (which the Commission has often done so through its Administrative Instructions).

But the staff director ~~Staff Director~~ may not arrogate power to himself that has not been delegated. AI 1-24(1) clearly states that when no c~~C~~hairperson or v~~V~~ice- c~~C~~hairperson exists, it is for the Commission to call a special meeting. There is no parallel provision that gives that same power to the staff director~~Staff Director~~. Nor do those rules give the staff director ~~Staff Director~~ the authority to ignore the Commission's call for such a meeting. On January 21, when the four of us made clear that we wished to reinstate the meeting that had been scheduled for January 29, we were the majority of the members of the Commission. It was up to the staff director ~~Staff Director~~ to execute that directive by posting a notice in the Federal Register. Yet the staff director continued to refuse~~d~~ to hold that meeting.[7]

Things got worse from there. After President Biden appointed you as a commissioner and nominated you to be our next chairperson, our staff director ~~Staff Director~~ arrogated to himself the power to call a special business meeting for February 26 (directly after our already-scheduled briefing on bail reform). This, again, is not his proper role. That authority belongs to the Commission itself. But that wasn't the worst of it. The staff director ~~Staff Director~~ then claimed the power to appoint the Acting c~~C~~hairperson of the Commission, pending your confirmation (which, for the record, we continue to believe can and should happen soon).

His claim was utter nonsense.[8] Our position ~~is~~ was and continues to be that the most senior member of the Commission (Kirsanow) should wield the gavel pending the election by the

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AMERICAN OVERSIGHT

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The Commission must call the meeting and elect the a~~A~~cting c~~C~~hairperson. The staff director's ~~Staff Director's~~ role is to undertake the ministerial tasks of noticing the meeting in the Federal Register and drawing up the agenda. He is not even permitted to put any business before that of electing an a~~A~~cting c~~C~~hairperson.

Furthermore, there is no mention in the Commission's statutes, regulations, or administrative instructions of a "moderator" for Commission briefings. There is no example in at least the past twenty years of the Commission's history of such a practice. The role simply does not exist.

(2) ***The President's nominee cannot be the a~~A~~cting c~~C~~hairperson.*** This is in keeping with federal practice. When the President's nominee to a Senate-confirmable office has not yet been confirmed, he or she cannot be "acting" in that position. The contrary practice would essentially eviscerate the Senate's role. If you're doing the job anyway, why bother to cooperate with the Senate in the confirmation process? Why bother to give

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We won't repeat those matters here. This letter is long enough as it is. But we did wish to mention one aspect of the matter that has been troubling us over the last couple of days.

One of our requests was that you follow that law when appointments are made. For example, the law gives the Commission (and *not* the chairperson ~~Chair~~ or the staff director~~Staff Director~~) the authority to appoint two members of the Election Assistance Commission's Board of Advisors.[11] Yet ~~c~~Chairperson Lhamon arrogated that authority to herself and appointed the members without consulting or even notifying us. This act was simply a violation of the law. Yet when you spoke last with ~~Pete~~ Kirsanow (after consulting with our Progressive colleagues) on Thursday, you suggested a "compromise" under which you would appoint the members~~,~~ but promised that they would not be Democrats. Alas, we don't think the law can be compromised in that way. All we ~~are~~ ask~~ing~~ here is that you comply with the law.

We look forward to fruitful and constructive discussions stemming from our earlier ~~discussions~~ conversations with you and from this letter. We are still confident that we can reach an agreement ~~with you~~. We remain dedicated to the Commission's important and bipartisan work.

Sincerely,

Peter Kirsanow
Commissioner

J. Christian Adams
Commissioner

Gail Heriot
Commissioner

Stephen Gilchrist
Commissioner

[11] ~~,~~ *See* 52 U.S.C. § 20944(a)(10)) ("Two members appointed [to the U.S. Election Assistance Commission] by the United States Commission on Civil Rights."); *see also* 52 U.S.C. § 20944(b) ("Appointments shall be made to the Board of Advisors [of the the U.S. Election Assistance Commission] under subsection (a) in a manner which ensures that the Board of Advisors will be bipartisan in nature and will reflect the various geographic regions of the United States.").

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AMERICAN OVERSIGHT

Date : 3/8/2021 10:17:35 AM
From : "Mauro Morales" mmorales@usccr.gov
To : "Norma Cantú" normavcantu@gmail.com
Cc : "Norma Cantú" normavcantu@gmail.com
Subject : FW: Chairperson EAC appointment authority

Commissioner Cantu,

OGC and I are available to discuss issues about appointments to the EAC. Would you have time today via a conference call or zoom to discuss?

Mauro

From: David Ganz <dganz@usccr.gov>
Sent: Monday, March 8, 2021 10:11 AM
To: Mauro Morales <mmorales@usccr.gov>
Cc: Pilar McLaughlin <pmclaughlin@usccr.gov>
Subject: Chairperson EAC appointment authority

Good morning, Pilar has finished our analysis of this issue. Please let us know when you and Commissioner Cantu would like to discuss. Thanks,

David Ganz
General Counsel, Office of the General Counsel
U.S. Commission on Civil Rights
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425
(617) 669-6413

AMERICAN OVERSIGHT

Date : 3/8/2021 11:03:23 AM
From : "Zakee Martin" zmartin@usccr.gov
To : "Mauro Morales" mmorales@usccr.gov, "David Ganz" dganz@usccr.gov, "Pilar McLaughlin" pmclaughlin@usccr.gov, "Norma Cantu" ncantu@usccr.gov, "normavcantu@gmail.com" normavcantu@gmail.com
Subject : EAC Appointment Authority Discussion

Join Zoom Meeting
https://zoom.us/j/97595013884?pwd=cTF2WStvWGhpdzZ3N0poQVd2Y1pHZz09

Meeting ID: 975 9501 3884
Passcode: 520411
One tap mobile
+13017158592,,97595013884#,,,,*520411# US (Washington DC)
+13126266799,,97595013884#,,,,*520411# US (Chicago)

Dial by your location
+1 301 715 8592 US (Washington DC)
+1 312 626 6799 US (Chicago)
+1 929 205 6099 US (New York)
+1 346 248 7799 US (Houston)
+1 669 900 6833 US (San Jose)
+1 253 215 8782 US (Tacoma)
Meeting ID: 975 9501 3884
Passcode: 520411
Find your local number: https://zoom.us/u/abkSkGS4QD

AMERICAN OVERSIGHT

Date : 3/8/2021 1:51:16 PM
From : "Zoom" no-reply@zoom.us
To : "zmartin@usccr.gov" zmartin@usccr.gov
Subject : [EXTERNAL] Norma V. Cantú has joined your meeting - EAC Appointment Authority Discussion

CAUTION: This email is from outside USCCR.

Hi Zakee Martin,

Norma V. Cantú has joined your meeting:

Topic	**EAC Appointment Authority Discussion**
Meeting ID	975 9501 3884
Time	Mar 8, 2021 02:00 PM Eastern Time (US and Canada)

Start Meeting

Thank you for choosing Zoom.
-The Zoom Team

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Date : 3/10/2021 5:53:11 PM
From : "Norma Cantu" ncantu@usccr.gov
To : "michael@michaelyaki.com" michael@michaelyaki.com
Subject : I have an update for you from our legal counsel about the EAC nominations

Call me at your convenience.
Norma

AMERICAN OVERSIGHT

Date : 3/12/2021 12:19:02 PM
From : "Irena Vidulovic" ividulovic@usccr.gov
To : "Adegbile, Debo" Debo.Adegbile@wilmerhale.com
Subject : Fw: My notes from yesterday's working group on topics related to Vote on Commissioner--No quorum & no decisions made.

Hey D,

Please see below the email from Norma. I think it would be helpful to respond and say including our SA's to try to find a mutually convenient time for all to have a call.

From: Norma Cantu <ncantu@usccr.gov>
Sent: Friday, March 12, 2021 11:32 AM
To: David Kladney <dkladney@usccr.gov>; Michael Yaki <MYaki@usccr.gov>; Debo P. Adegbile <dadegbile@usccr.gov>
Subject: Fw: My notes from yesterday's working group on topics related to Vote on Commissioner--No quorum & no decisions made.

I have a zoom meeting today from 1-3 CST but am free to discuss the "housekeeping matters" I've described below. Call me as these email are subject to FOIA and it is better to deliberate and discuss draft language in a more informal setting.
Norma
cell 210 380 6380

From: Norma Cantu
Sent: Friday, March 12, 2021 10:19 AM
To: Gail Heriot; Michael Yaki; Peter Kirsanow
Subject: My notes from yesterday's working group on topics related to Vote on Commissioner--No quorum & no decisions made.

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AMERICAN OVERSIGHT

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9. Language that any Commissioner from each Caucus may sit in on OCRE interviews provided the Commissioner's request to attend does not cause a scheduling delay. Vehicle?
10. Memorial/obits require a majority vote of the Commission and the proposed language for the memorial shall be circulated to all the Commissioners. Vehicle-AI

AMERICAN OVERSIGHT

Date : 3/12/2021 11:44:43 AM
From : "Gail Heriot" gheriot@usccr.gov
To : "Alexander Heideman" aheideman@usccr.gov
Cc : "Gail Heriot" gheriot@me.com, "Alexander Heideman" alexanderheideman@gmail.com
Subject : Re: My notes from yesterday's working group on topics related to Vote on Commissioner--No quorum & no decisions made.

Okay. let's talk about it later today or tomorrow.

Gail Heriot
Professor of Law
University of San Diego

On Mar 12, 2021, at 8:42 AM, Alexander Heideman <aheideman@usccr.gov> wrote:

Okay—I'm working on this now and am meeting (in person!) with Carissa and John at 1 and will discuss with them then.

Some of her notes are different than what we had discussed yesterday. For example, her understanding of the EAC Comm'n appointments aligns with what you said, but her understanding of other appointments afterwards differs.

From: Gail Heriot <gheriot@usccr.gov>
Date: Friday, March 12, 2021 at 11:29 AM
To: Alexander Heideman <aheideman@usccr.gov>
Subject: Fwd: My notes from yesterday's working group on topics related to Vote on Commissioner--No quorum & no decisions made.

Gail Heriot
Professor of Law
University of San Diego

Begin forwarded message:

From: Norma Cantu <ncantu@usccr.gov>
Date: March 12, 2021 at 8:19:25 AM PST
To: Gail Heriot <gheriot@usccr.gov>, Michael Yaki <MYaki@usccr.gov>, Peter Kirsanow <pkirsanow@usccr.gov>
Subject: My notes from yesterday's working group on topics related to Vote on Commissioner--No quorum & no decisions

AMERICAN OVERSIGHT

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meetings. Vehicle-AI or memo. of understanding

9. Language that any Commissioner from each Caucus may sit in on OCRE interviews provided the Commissioner's request to attend does not cause a scheduling delay. Vehicle?
10. Memorial/obits require a majority vote of the Commission and the proposed language for the memorial shall be circulated to all the Commissioners. Vehicle-AI

AMERICAN OVERSIGHT

Date : 3/12/2021 11:42:03 AM
From : "Alexander Heideman" aheideman@usccr.gov
To : "Gail Heriot" gheriot@usccr.gov, "Gail Heriot" gheriot@me.com
Cc : "Alexander Heideman" alexanderheideman@gmail.com
Subject : Re: My notes from yesterday's working group on topics related to Vote on Commissioner--No quorum & no decisions made.

Okay—I'm working on this now and am meeting (in person!) with Carissa and John at 1 and will discuss with them then.

Some of her notes are different than what we had discussed yesterday. For example, her understanding of the EAC Comm'n appointments aligns with what you said, but her understanding of other appointments afterwards differs.

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Gail Heriot
Professor of Law
University of San Diego

Begin forwarded message:

> **From:** Norma Cantu <ncantu@usccr.gov>
> **Date:** March 12, 2021 at 8:19:25 AM PST
> **To:** Gail Heriot <gheriot@usccr.gov>, Michael Yaki <MYaki@usccr.gov>, Peter Kirsanow <pkirsanow@usccr.gov>
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AMERICAN OVERSIGHT

Date : 3/12/2021 1:09:47 PM
From : "Alec Deull" adeull@usccr.gov
To : "Michael Yaki" MYaki@usccr.gov, "michael@michaelyaki.com" michael@michaelyaki.com
Subject : Re: My notes from yesterday's working group on topics related to Vote on Commissioner--No quorum & no decisions made.

Correction: 4 pm Eastern or thereafter. Thanks.

From: Alec Deull
Sent: Friday, March 12, 2021 1:08:21 PM
To: Michael Yaki; michael@michaelyaki.com
Subject: Fw: My notes from yesterday's working group on topics related to Vote on Commissioner--No quorum & no decisions made.

Hello -- are you available at or after 3 pm today for a caucus call re: Norma's dealings with the Rs, as below? Thanks - Alec

---

From: Mauro Morales
Sent: Friday, March 12, 2021 12:29:42 PM
To: Norma Cantú
Cc: Irena Vidulovic; Amy Royce; Alec Deull
Subject: FW: My notes from yesterday's working group on topics related to Vote on Commissioner--No quorum & no decisions made.

Commissioner Cantu,

I have cc'd Commissioner Kladney, Yaki and Adegbile's SA's. They can communicate with their Commissioners, review their schedules and coordinate a call with you.

Mauro

From: Norma Cantu
Sent: Friday, March 12, 2021 11:32 AM
To: David Kladney <dkladney@usccr.gov>; Michael Yaki <MYaki@usccr.gov>; Debo P. Adegbile <dadegbile@usccr.gov>
Subject: Fw: My notes from yesterday's working group on topics related to Vote on Commissioner--No quorum & no decisions made.

I have a zoom meeting today from 1-3 CST but am free to discuss the "housekeeping matters" I've described below. Call me as these email are subject to FOIA and it is better to deliberate and discuss draft language in a more informal setting.
Norma
cell 210 380 6380

From: Norma Cantu
Sent: Friday, March 12, 2021 10:19 AM
To: Gail Heriot; Michael Yaki; Peter Kirsanow
Subject: My notes from yesterday's working group on topics related to Vote on Commissioner--No quorum & no decisions made.

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To: Norma Cantú
Cc: Irena Vidulovic; Amy Royce; Alec Deull
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Commissioner Cantu,

I have cc'd Commissioner Kladney, Yaki and Adegbile's SA's. They can communicate with their Commissioners, review their schedules and coordinate a call with you.

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From: Norma Cantu
Sent: Friday, March 12, 2021 11:32 AM
To: David Kladney <dkladney@usccr.gov>; Michael Yaki <MYaki@usccr.gov>; Debo P. Adegbile <dadegbile@usccr.gov>
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AMERICAN OVERSIGHT

Date : 3/12/2021 12:38:06 PM
From : "Irena Vidulovic" ividulovic@usccr.gov
To : "Debo P. Adegbile" dadegbile@usccr.gov, "Debo P. Adegbile" dadegbile@usccr.gov
Cc : "Zervoudis, Flor" Flor.Zervoudis@wilmerhale.com
Subject : SCHEDULING A CALL Fw: My notes from yesterday's working group on topics related to Vote on Commissioner--No quorum & no decisions made.

D,

What time are you available for a caucus call today? Commissioner Cantu would like to schedule a call anytime after 4pm ET today.

Thanks,
IV

From: Mauro Morales
Sent: Friday, March 12, 2021 12:29 PM
To: Norma Cantú
Cc: Irena Vidulovic; Amy Royce; Alec Deull
Subject: FW: My notes from yesterday's working group on topics related to Vote on Commissioner--No quorum & no decisions made.

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AMERICAN OVERSIGHT

Date : 3/13/2021 12:03:23 PM
From : "Alexander Heideman" aheideman@usccr.gov
To : "Gail Heriot" gheriot@usccr.gov, "Gail Heriot" gheriot@me.com
Cc : "Alexander Heideman" alexanderheideman@gmail.com
Subject : MOUs
Attachment : MOU SAC Membership Size.docx;MOU SAC Appointments.docx;MOU Commissions.docx;MOU Speaker Series.docx;

I've played around with these a bit. I include four MOUs:

1. Eliminating the "Speaker Series," and requiring any future series to be bipartisan
2. Requiring majority approval for appointments to other bodies (including but not limited to the EAC Board of Advisors)
3. Instituting a process for bipartisan SAC recruitment and nomination
4. Instructing Mauro to begin the notice-and-comment period to lower the SAC size to be consistent with our AIs

The EAC one is in line with what you and I talked about on Thursday; it is not in line with Norma's notes below. And I wrote the MOU directed at Mauro because Carissa told me that the Commissioners have asked him several times to do this and he's failed to act.

Carissa and John have the other things covered with AIs, which we discussed over coffee yesterday. I'll see if I can get Carissa to send them to me.

I can talk about this at any point today or tomorrow if you'd like. I'm going for a jog at some point today, and to mass in the morning tomorrow, but I'm 100% free otherwise.

Alex

From: Gail Heriot <gheriot@usccr.gov>
Date: Friday, March 12, 2021 at 11:29 AM
To: Alexander Heideman <aheideman@usccr.gov>
Subject: Fwd: My notes from yesterday's working group on topics related to Vote on Commissioner--No quorum & no decisions made.

Gail Heriot
Professor of Law
University of San Diego

Begin forwarded message:

> **From:** Norma Cantu <ncantu@usccr.gov>
> **Date:** March 12, 2021 at 8:19:25 AM PST
> **To:** Gail Heriot <gheriot@usccr.gov>, Michael Yaki <MYaki@usccr.gov>, Peter Kirsanow <pkirsanow@usccr.gov>
> **Subject: My notes from yesterday's working group on topics related to Vote on Commissioner--No quorum & no decisions made.**

AMERICAN OVERSIGHT

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AMERICAN OVERSIGHT

Memorandum of Understanding
Appointments to Other Bodies

That: The undersigned Commissioners of the United States Commission on Civil Rights (the Commission) agree that when appointments to external bodies are made—such as those to be made to the Election Assistance Commission's Board of Advisors in June 2021—such appointments will not be made without the consent of a majority vote of the Commission.

That: The internal procedure that the Commission will be: The Democratic caucus of the Commission will nominate two people to that other body, and then the Republican caucus of the Commission will choose one of those two people to fill that appointment.

That: The Republican caucus of the Commission will nominate two people to that other body, and then the Democratic caucus of the Commission will choose one of those two people to fill that appointment.

Agreed upon by Commissioners ___, ___, ___,
___, ___, ___, ___, and ___.
March 19, 2021.

AMERICAN OVERSIGHT

Memorandum of Understanding
SAC Appointments

That: The undersigned Commissioners of the United States Commission on Civil Rights (the Commission) agree that when vacancies occur on a State Advisory Committee (SAC) each caucus will have 30 calendar days to recruit and nominate five SAC members each.

That: Upon reaching the 30 calendar-day limit, and if a caucus has failed to recruit and nominate five SAC members, then Commission staff must provide assistance in recruiting additional members and will have 15 calendar days to do so.

That: Upon reaching the additional 15 calendar-day limit, the Commission staff must present all nominations to the Commission for discussion and voting per the Commission's administrative instructions.

Agreed upon by Commissioners ___, ___, ___,
___, ___, ___, ___, and ___.
March 19, 2021.

AMERICAN OVERSIGHT

Memorandum of Understanding
SAC Membership Size

That: The undersigned Commissioners of the United States Commission on Civil Rights (the Commission) instruct the staff director to begin the pertinent notice-and-comment period to reconcile the Commission's regulations with its administrative instructions which permit a minimum size of nine people for all State Advisory Committees (SAC).

Agreed upon by Commissioners ___, ___, ___,
___, ___, ___, ___, and ___.
March 19, 2021.

AMERICAN OVERSIGHT

Memorandum of Understanding
Speaker Series

That: The undersigned Commissioners of the United States Commission on Civil Rights (the Commission) agree to eliminate the "Speaker Series" as it currently exists at the Commission, that is to say as a series directed by the Chairperson of the Commission without the input or consent of other Commissioners.

That: If the Commission determines the need for any "Speaker Series" in the future, then such series will not be instituted and directed without the consent of a majority of the Commission.

That: If the majority of the Commission consents to a "Speaker Series," then such series must be bipartisan, allowing for each caucus to choose every other speaker.

Agreed upon by Commissioners ___, ___, ___,
___, ___, ___, ___, and ___.
March 19, 2021.

AMERICAN OVERSIGHT

Date : 3/14/2021 6:48:58 PM
From : "Gail Heriot" gheriot@usccr.gov
To : "Alexander Heideman" aheideman@usccr.gov
Cc : "Gail Heriot" gheriot@me.com, "Alexander Heideman" alexanderheideman@gmail.com
Subject : Re: MOUs

I will try to look at this tonight.

Gail Heriot
Professor of Law
University of San Diego

On Mar 13, 2021, at 9:03 AM, Alexander Heideman <aheideman@usccr.gov> wrote:

I've played around with these a bit. I include four MOUs:

1. Eliminating the "Speaker Series," and requiring any future series to be bipartisan
2. Requiring majority approval for appointments to other bodies (including but not limited to the EAC Board of Advisors)
3. Instituting a process for bipartisan SAC recruitment and nomination
4. Instructing Mauro to begin the notice-and-comment period to lower the SAC size to be consistent with our AIs

The EAC one is in line with what you and I talked about on Thursday; it is not in line with Norma's notes below. And I wrote the MOU directed at Mauro because Carissa told me that the Commissioners have asked him several times to do this and he's failed to act.

Carissa and John have the other things covered with AIs, which we discussed over coffee yesterday. I'll see if I can get Carissa to send them to me.

I can talk about this at any point today or tomorrow if you'd like. I'm going for a jog at some point today, and to mass in the morning tomorrow, but I'm 100% free otherwise.

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AMERICAN OVERSIGHT

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<MOU SAC Membership Size.docx>
<MOU SAC Appointments.docx>
<MOU Commissions.docx>
<MOU Speaker Series.docx>

AMERICAN OVERSIGHT

Date : 3/15/2021 3:23:18 PM
From : "Irena Vidulovic" ividulovic@usccr.gov
To : "Flor Zervoudis" Flor.Zervoudis@wilmerhale.com
Subject : Fwd: IMPORTANT TO DO LIST

Hey Flower,

Can you check back with Debo about our call today. There is a lot to discuss and I need his guidance on a couple of items.

Sent from my iPhone

Begin forwarded message:

> **From:** Irena Vidulovic <ividulovic@usccr.gov>
> **Date:** March 15, 2021 at 3:07:47 PM GMT+1
> **To:** "Debo P. Adegbile" <dadegbile@usccr.gov>, "Adegbile, Debo" <Debo.Adegbile@wilmerhale.com>
> **Cc:** "Zervoudis, Flor" <Flor.Zervoudis@wilmerhale.com>
> **Subject: IMPORTANT TO DO LIST**
>
> Adegbile,
>
> Looking forward to our call at 10:30am.
>
> Loads to discuss:
>
> 1. Notational vote for FEMA Discovery Materials
> 2. Caucus call tomorrow at6 3pm ET (please see items for discussion from Commissioner Cantu below)
> 3. USCCR Hours (will send a separate email)
> 4. Friday's Business Meeting (agenda)
> 5. Scheduling Zoom call with our law intern Alana Thomas
>
> ---
>
> **From:** Norma Cantu
> **Sent:** Friday, March 12, 2021 10:19 AM
> **To:** Gail Heriot; Michael Yaki; Peter Kirsanow
> **Subject:** My notes from yesterday's working group on topics related to Vote

AMERICAN OVERSIGHT

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AMERICAN OVERSIGHT

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AMERICAN OVERSIGHT

Date : 3/15/2021 3:32:30 PM
From : "Amy Royce" aroyce@usccr.gov
To : "David Kladney" dkladney@usccr.gov, "Debo P. Adegbile" dadegbile@usccr.gov, "Michael Yaki" MYaki@usccr.gov, "Norma Cantu" ncantu@usccr.gov, "normavcantu@gmail.com" normavcantu@gmail.com
Cc : "Irena Vidulovic" ividulovic@usccr.gov, "Alec Deull" adeull@usccr.gov
Subject : Caucus call tomorrow
Attachment : RE_ March 19th Business Meeting Agenda Posting - Amy Royce.pdf;03-19-Business-Meeting-Agenda-Sunshine-Act-Notice.pdf;FEMA Research Plan.OCRE_2.22.21.docx;FEMA Timeline.OCRE_3.15.2021.docx;FEMA Chapter Outline.3.15.2021.docx;CO SAC Dr. Chen.docx;ID SAC Dr. Yenor.docx;

Hello all,

We are scheduled for a caucus call tomorrow at 3:00 Eastern/ 12:00 Pacific. The number is 1-877-446-3914, passcode 858713#

Agenda items:

- Business meeting on Friday (Sunshine Act notice and email regarding the R caucus understanding for how the meeting will run, attached)
- Potential items for discussion at business meeting (list below)
- FEMA discovery materials (attached)
    - Materials may be considered by notational vote
    - Updated language has been vetted by OCRE/OGC and language the conservatives proposed has been adopted
    - Change in briefing date for virtual briefing (June instead of May)
- Bail reform pending report
- Colorado and Idaho Advisory Committee
    - R's proposal - Dr. Chen in CO if we allow Mr. Yenor in ID (objections and responses attached)

Items for discussion at business meeting:

- Language on 30/30/10 for rebuttals and surrebuttals-Gail-vehicle AI
- Language on bipartisan nominations to Elect.Adv.Council at end of June 2021. Appointments to EAC will be made by Commission as a whole, with a majority vote. Proposed that Dem.Caucus nominates 2 people for one slot and R+I Caucus chooses the appointee. R+I Caucus nominates 2 people for one slot and Dem. caucus chooses the appointee. In future nominations to external agencies, the Chair will consult with the whole Commission before communicating any nominations. Vehicle-motion from floor at mtg. on March 19
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AMERICAN OVERSIGHT

CIVIL RIGHTS COMMISSION

Sunshine Act Meeting Notice

AGENCY: United States Commission on Civil Rights.

ACTION: Notice of Commission public business meeting.

DATES: Friday, March 19, 2021, 12:00 p.m. EST.

FOR FURTHER INFORMATION CONTACT: Angelia Rorison: 202-376-7700; publicaffairs@usccr.gov.

ADDRESSES: Meeting to take place by telephone and is open to the public by telephone: 1-866-556-2429, Conference ID #6761392. Computer assisted real-time transcription (CART) will be provided. The web link to access CART (in English) on Friday, March 19th, 2021, is https://www.streamtext.net/player?event=USCCR. Please note that CART is text-only translation that occurs in real time during the meeting and is not an exact transcript.

MEETING AGENDA

I. Motion to Approve Commissioner Norma Cantú to Serve as USCCR Chair

II. Approval of Agenda

III. Business Meeting

A. Discussion and Vote on Statement of Walter E. Williams;

B. Discussion and Vote to continue the Policy of Rebuttals and Surrebuttals;

C. Discussion and Vote to suspend Speaker Series;

D. Discussion and Agreement to Appoint Bipartisan Commissioners to EAC

E. Discussion and Vote on FEMA Report Discovery Plan

F. Management and Operations

- Staff Director's Report

G. **Adjourn Meeting**

Dated: March 11, 2021
Angelia Rorison
USCCR Media and Communications Director

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COLORADO: 12 candidates, 6 Republicans (including one Independent who leans Republican), 6 Democrats (including one Independent who leans Democrat).

- Comm. Heriot objected to Prof. Ming Hsu Chen on the basis of an article she wrote called, "Colorblind Nationalism."
- Prof. Chen responded, and Mauro kept her on the slate on the basis of the response.
- Full objection from Comm. Heriot:

In her article, Prof. Chen says that racist and anti-immigrant "policies are cloaked in the neutral language of national protection, public health, and economic justice." Therefore, anyone who supports those facially colorblind policies is racist. More broadly, Prof. Chen suggests that anyone who favors any level of immigration restriction is a white supremacist.

It is inappropriate for a SAC member to make wild accusations of racism against entire groups of people. This article reveals Prof. Chen's bad faith. Additionally, her embrace of Ibram X. Kendi's "anti-racist" ideology is troubling, as that ideology in and of itself promotes discrimination.

Prof. Chen's article in the Yale Journal on Regulation, "Colorblind Nationalism," (available here) is particularly objectionable for a member of a State Advisory Committee.

- Full response from Prof. Chen:

Dear Mr. Mussatt and Mr. Morales,

Thank you for the opportunity to respond to Commissioner Heriot's objection. This objection seems to be based on a single sentence from an opinion piece, which I discuss below, but please note her objection paraphrases my essay in ways that mischaracterize the essay and my beliefs.

For example:

- *I do not say or believe that "anyone who supports facially colorblind policies is racist"*
- *I do not say that or believe that "anyone who favors any level of immigration restriction is a white supremacist"*
- *There is also no basis for her claim that I write or act in "bad faith" in her formal objection.*

As some background, I have served on the Colorado State Advisory Committee for 4-years (2016-2020). During that time, I worked collaboratively with all SAC members after my project proposal on the naturalization backlog was unanimously adopted in

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2018. This work included working together on a briefing with expert testimony from 12 speakers representing a range of perspectives, addressing all SAC member voices in when drafting our report, and incorporating suggestions during the subsequent revisions and adoption of the report. The resulting 2019 report has since been cited widely in media and other academic and policy research. A 2020 update and 2-page statement of concern was adopted unanimously by the CO SAC, and USCCR Chair Catherine Lhamon endorsed and sent her own letter to the impacted agency.

During my tenure, I also supported projects spearheaded by other SAC members, including ones sponsored by our more conservative members on religious freedom and racial disparities in infant/maternal mortality. In each of these projects, I was an active team member and made good faith efforts to listen to evidence from our hearings, to consider the divergent viewpoints, and to incorporate and suggest revisions on my reports and others that would build a broader consensus.

Outside of my service to SAC, my professional qualifications include a ten-year history of academic teaching and writing in immigration, civil rights, and administrative law at the University of Colorado Law School. This has included presentations with scholars from many viewpoints. Not infrequently I've been invited by members of conservative groups like the Federalist Society or the National Association of Attorney Generals to be a reasonable voice in their discussions. In these and other endeavors, I have never been accused of bias in my professional work.

In my personal capacity, I occasionally write short opinion pieces such as the essay that is cited in the objection and published in a special symposium on racism and the law for the online edition of the nation's premiere specialty journal on administrative law. I would describe my own views in the essay as advocating for greater racial equality for immigrants negatively impacted by travel bans and expressing an abiding concern that our federal government adhere to fair procedures in the issuance of such policies. There is no basis for saying that these views amount to "wild accusations of racism against entire groups of people" or that they "embrace Ibram X. Kendi's antiracist ideology… as that ideology itself promotes discrimination." I am not familiar with Ibram X Kendi's writings on antiracism and do not read, engage with, nor cite his work in this essay or my other scholarship. Moreover, the piece does not claim to represent the views of CO SAC or the USCCR. While I do not think the views expressed in the essay are objectionable, even if they were, I would not bring personal biases into my professional service.
In closing, I recognize that reasonable people disagree on the best means of achieving equality.

My sense is that Commissioner Heriot misunderstands my perspectives and seeks to associate me with views that are more extreme than my own. Rather than rely on her second-hand description of an opinion piece written in my personal capacity, I would encourage the USCCR to apply a fair minded consideration of my application that focuses on my actual statements and my record of service to the CO SAC and USCCR.

AMERICAN OVERSIGHT

Draft Chapter Outline
Federal Response to Hurricanes María and Harvey: Civil Rights and Protections Following a Natural Disaster

Executive Summary

CHAPTER 1: Introduction

I. Context & Background
   A. Introductory discussion of FEMA's response to natural disasters
      i. Why the Commission took on this issue (voted-upon Concept Paper)
      ii. Brief summary of report methodology, including briefing, testimony received and other key sources of information; and brief summary of OCRE research and methodology

II. Hurricanes María and Harvey
   A. Number of individuals/households impacted
      i. Fatalities
      ii. Hospitalizations
      iii. Structural damage
      iv. Individuals/households misplaced from homes
         1. Long-term displacement
      v. Job losses
      vi. Monetary information regarding damage
      vii. Flooding impacts
      viii. Loss of utilities
         1. Electricity
         2. Clean water
         3. Telecommunications
   B. Impacts on sectors
      i. Healthcare
      ii. Education
      iii. Business
      iv. Local government
   C. Pre-disaster challenges in Puerto Rico and Texas
      i. Economic issues including PROMESA in Puerto Rico
      ii. Existing infrastructure issues
      iii. Geographic issues
   D. Challenges faced by FEMA from the adequacy or inadequacy of state and local government responses to the disasters, as well as impacts on FEMA from private sector responses to the disaster
      i. Coordination of state and local governments with FEMA to authorize, arrange, organize, and prioritize delivery of aid

AMERICAN OVERSIGHT

ii. Technical assistance to FEMA in identifying, evaluating, and understanding infrastructure, transportation, distribution, and healthcare system failures
iii. Local private sector responses from suppliers, providers, contractors, labor unions, etc. that positively or adversely impacted FEMA's ability to supply or deliver needed disaster aid

III. Status and other local government issues
A. Overview of potential civil rights issues involved in the federal responses to the storms
i. Summary of testimony (including from the Texas SAC)
ii. Summary of data
iii. Summary of FEMA's responses to the Commission's inquiries
B. Overview of Applicable Civil Rights Protections
i. The Stafford Act's requirements that the federal government ensure all relief and assistance "… shall be accomplished in an equitable and impartial manner, without discrimination on the grounds of race, color, religion, nationality, sex, age, disability, English proficiency, or economic status."[1]
ii. Relevant constitutional and other federal law/policy guidance
1. Title VI of the Civil Rights Act
2. Rehabilitation Act of 1973
3. Executive Order 13,166 (LEP)
4. Executive Order 12,898 (Environmental Justice)
5. Fair Housing Act of 1968
iii. Relevant caselaw
iv. Challenges applicants seeking disaster relief resources may face, including accessibility issues, wait times, and sufficiency of aid; consequences of not receiving aid v. benefits of aid

IV. How did Hurricanes María and Harvey impact various demographic populations?
i. Racial and ethnic minorities
ii. People with disabilities
iii. Individuals with limited or no English language proficiency
iv. Individuals of low socioeconomic status

CHAPTER 2: Federal Government's Role in Disaster Response

I. Discussion of FEMA's role and obligations in natural disaster emergencies
i. Brief History
ii. Role and Responsibilities
iii. Resources provided before, during, and after a natural disaster

[1] 42 U.S.C. § 5151 (1988).

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A. Coordinating role with other federal agencies, state, local, territorial, and tribal governments, and nongovernmental organizations in providing aid
B. Summary of civil rights duties

II. FEMA's Response to Hurricanes María and Harvey (comparison of benchmarks to short- and long-term data, including but not limited to the factors listed below)

A. Hurricane María
   i. Disaster declaration proceedings
   ii. FEMA's Overall Estimated Monetary Damages
   iii. FEMA's Assessment of Infrastructure & Community Impacts (hospitals & schools closed, accessibility of food & water, etc.)
   iv. Federal Response/Demographics of:
      1. Requests for Assistance
      2. Location and staffing of Disaster Recovery Centers, phone assistance lines, and hiring of contractors for the individual and business assistance programs.
      3. Accessibility and Barriers to Aid Requests
      4. Assistance Provided
      5. Timeline of Relief & Rebuilding Aid Provided
   v. Ongoing rebuilding efforts
      1. Where do the impacted areas in Puerto Rico stand on any type of recovery timeline?
      2. Long-term/permanent displacement
      3. COVID-19 impacts on these efforts (including analysis of declaration of COVID-19 as a natural disaster)

B. Hurricane Harvey
   i. Disaster declaration proceedings
   ii. FEMA's Overall Estimated Monetary Damages
   iii. Infrastructure & Community Impacts (hospitals & schools closed, accessibility of food & water, etc.)
   iv. Federal Response/Demographics of:
      1. Requests for Assistance
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      3. Accessibility and Barriers to Aid Requests
      4. Assistance Provided
      5. Timeline of Relief & Rebuilding Aid Provided
   v. Ongoing rebuilding efforts
      1. Where do the impacted areas in Texas stand on any type of recovery timeline?
      2. Long-term/permanent displacement
      3. COVID-19 impacts on these efforts (including analysis of declaration of COVID-19 as a natural disaster)

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III. Trajectory and types of assistance provided (comparing any benchmarks to data/comparative data)
    i. Public assistance
    ii. Individual assistance
    iii. Block grants
    iv. Payment programs vs. programs providing shelter, housing, job assistance, food, education, etc.

IV. Considerations in providing FEMA aid
    A. What relevant factors are taken into consideration regarding relief appropriations?
        i. Community-wide analyses?
        ii. Environmental impact assessments?
    B. Is there a need to reduce any barriers for states/territories and/or individuals applying for disaster assistance and relief?
    C. How well has FEMA coordinated with intergovernmental agencies and organizations in planning, coordinating, and executing emergency management in administering aid relief?

V. Examination of whether local factors, practices, or guidelines, or other factors impact damage assessments and the delivery of resources - are there challenges in providing disaster relief and how can they be overcome? Factors may include:
    i. Infrastructure
    ii. Telecommunications
    iii. Logistics
    iv. Language
    v. Cultural competencies
    vi. Mainland states vs. U.S. territories

VI. FEMA's compliance efforts with the Stafford Act and other civil rights obligations in response to Hurricanes María and Harvey
    A. Review of access to disaster relief, including:
        1. Accessibility issues
        2. Any income or housing requirements for receiving aid
        3. Differential requirements or barriers based on territorial status or other qualities of local government
        4. Whether these types of barriers are reasonable
    B. Types of civil rights complaints received
    C. Have there been indications of discrimination in relief and assistance activity on the basis of race, color, religion, nationality, sex, age, disability, or English proficiency (LEP status)?

CHAPTER 3: Emerging Best Practices

I. Identification of potential civil rights issues & developing practices to address them (based on FEMA Summit as well as agency testimony and information provided)

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II. Local governments' identification of FEMA-related civil rights issues & recommendations for best practices
III. Impacted individuals, community stakeholders & nongovernmental actors' identification of potential civil rights issues & recommendations for best practices

CHAPTER 4: Findings and Recommendations

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USCCR-21-1814-A-003743

FEMA's Natural Disaster Response
Research Plan

Working Title: Federal Response to Hurricanes María and Harvey: Civil Rights and Protections Following a Natural Disaster

From January 2021 to June 2022, OCRE staff will seek information through a variety of sources (e.g., interrogatories, empirical research, qualitative and quantitative data, briefing testimony, and formal and informal outreach to government officials, scholars, and community stakeholders) to investigate the federal government's response to the original and ongoing impact of Hurricanes María in Puerto Rico and Harvey in Texas, and may possibly compare them to the federal response to other significant hurricane systems. OCRE will focus its data-gathering in the following areas:

- The role of the federal government in responding to natural disasters such as hurricanes
    - Federal obligations to provide aid for relief and rebuilding through FEMA under the Stafford Act, 42 U.S.C. § 5121 et. al., and related federal policy and practice
    - How federal disasters are determined by "the States" and declared by the President
    - How funding is budgeted for and allocated across disasters
    - How FEMA plans, coordinates, and executes emergency management in administering aid relief, in collaboration with other federal organizations, as well as with state, local, territorial, and tribal lands
    - Trajectory and types of assistance that may be provided, i.e., evacuation to safety, temporary shelter, health care, food, clothing, housing, unemployment benefits or training, and rebuilding, through individual or block assistance, programs entitling payments or programs entitling other relief
- Framework of relevant civil rights laws and regulations, and assessment, including:
    - The Stafford Act's requirements that the federal government ensure all relief and assistance "… shall be accomplished in an equitable and impartial manner, without discrimination on the grounds of race, color, religion, nationality, sex, age, disability, English proficiency, or economic status."[1]
    - Relevant constitutional and other federal law; any relevant federal policy guidance
        - ☐ Title VI of the Civil Rights Act
        - ☐ Rehabilitation Act of 1973
        - ☐ Executive Order 13,166 (LEP)

[1] 42 U.S.C. § 5151 (1988).

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- ☐ Executive Order 12,898 (Environmental Justice)
- ☐ Fair Housing Act of 1968

- Relevant legal rulings regarding the equities of federal responses to natural disasters
- Implications of differing local systems, such as U.S. territories v. states v. tribes, land classifications, etc.

- Study of essential data regarding Hurricanes María and Harvey including but not limited to demographics, including race, nationality, English proficiency (LEP status), disability status, and other data regarding the following potentially key factors, along with any others that are identified as relevant during the research process. Key factors may include:
  - Number of individuals/households impacted by:
    - ☐ Fatalities
    - ☐ Injuries requiring hospitalization
    - ☐ Households/structures demolished (completely/partially)
    - ☐ Individuals/households misplaced from homes
    - ☐ Job losses and other income losses (such as small business losses)
  - Cost of damage of structures
  - Geographical landmass information as to expansiveness of damage
  - Extent of flooding and its impacts
  - Loss of utilities (electricity, clean water)
  - Extent of homes impacted
  - Timeline of loss and repair where available
  - Federal response, to include:
    - ☐ Accessibility of requests for aid, and any barriers
    - ☐ Number of requests for assistance; outcomes
      - Demographic information available for individuals requesting assistance, experiencing barriers in requests
    - ☐ Number of individuals/households provided assistance
      - Demographic information available for individuals provided assistance
    - ☐ Any relevant disparities and inequities associated with access to relief aid, including placement and staffing of Disaster Recovery Centers, hot-line staffing, contractor hiring and staffing, and access to appeals procedures

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- ☐ Monetary amount of relief provided, including demographic and geographic distribution within a disaster declaration area
- ☐ Timeline of relief provided
- ☐ Logistical differences in administering disaster relief
- ☐ Types of civil rights complaints received
- ☐ Any community-wide analyses performed by the federal government, such as surveys, public fora; other assessments
- ☐ Environmental impact assessments

- Whether and how hurricanes María and Harvey can be compared to each other, and possibly whether other recent hurricanes may also be compared through data trends
- Whether data trends exist as to the federal disaster response to hurricanes in U.S. territories such as Puerto Rico
    - How these trends might differ from responses to hurricanes in U.S. states
        - ☐ Examination of historic and current qualitative and quantitative data
    - Trend data would include the amount of aid provided, the type of aid provided, the timeline of aid provided, the number of individuals to whom aid was provided, and demographics

OCRE will accomplish this research by:

- Holding a briefing before the Commission with a panel of expert witnesses (including government officials, scholars, community stakeholders, etc.) who can provide information, data, and insight into the impacts of Hurricanes María and Harvey, as well as the federal aid received, and information regarding the timeliness and amount of aid provided; and soliciting public comments. Testimony and public comments may be received in English and/or Spanish, or other languages as needed (such as Vietnamese in the Houston area). (this briefing may be virtual, depending on COVID-19 conditions). The briefing may be followed by a site visit to Puerto Rico and/or Texas in late 2021, if travel is feasible and resources are available.
- Examining publicly available data, research, and information from interrogatories provided by government offices and departments regarding resources provided to victims of and communities impacted by Hurricanes María and Harvey including (but not limited to):
    - Timeline of resources provided to victims and communities
    - Any formulas used to determine the amount of aid provided and the specific recipients of such aid
    - Extent to which federal agencies complied with federal civil rights laws and policies regarding aid provided to U.S. states and U.S. territories

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    - Information about how to apply for aid, number of applications received, outcomes, and appeals and/or complaints filed, and their resolution
    - Policies and procedures with regard to the location and staffing of Disaster Recovery Centers, including decisions regarding language and translation services
    - Policies and procedures for the hiring of contractors by FEMA to handle individual assistance claims and compliance with federal civil rights laws and policies
- Working with OGC to send Interrogatories and Document Requests to FEMA
- Collecting and analyzing FEMA briefings, USCCR State Advisory Committee panels and follow-up questions, additional testimony/field hearings conducted by Congress or other entities
- Examining relevant information from academic journals and nonpartisan research organizations
- Examining empirical research and analyzing relevant data from government and non-government sources regarding federal responses to hurricanes in the U.S., in both territories and mainland states, including demographic data
- Examining the data/reports/work product of federal agencies, advocates, and community stakeholders in order to assess:
    - Key players and their objectives
    - Efforts these agencies and comparable groups took in response to Hurricanes María and Harvey
    - Recommendations or best practices that may be drawn from the work of FEMA, as well as advocates and community stakeholders

Proposed Virtual Briefing Panels

A. State and Local Disaster Response Officials and Community Stakeholders
    - State and municipal Office of Emergency Services officials from Texas, Puerto Rico, and United States Virgin Islands.
    - Local mayoral offices
    - National Guard

B. FEMA
    - ODIC (Office of Disability Integration and Coordination)
    - Regional Administrators
    - Office of Response and Recovery
    - Office of Equal Rights
    - DHS - Center for Faith-Based and Neighborhood Partnerships

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- DHS - Office of Civil Rights and Civil Liberties
- Department of Defense
- Department of Housing and Urban Development

C. Outside Testimony and FEMA Voluntary Organizations

- Community stakeholders (representing and/or serving impacted persons)
- American Red Cross, other private relief organizations
- National Association of State Emergency Donations and Volunteer Coordinators, National Mass Care Council/Strategy, International Association of Emergency Managers, National Emergency Management Association
- Victims of Hurricanes María and Harvey
- The Corporation for National and Community Service (CNCS)

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FY 2021 / 2022 FEMA Timeline

I. Pre-Briefing	
OCRE circulates draft of discovery plan, outline, and timeline to lead SA's	Thursday, December 31, 2020
OCRE circulates draft of discovery plan, outline, and timeline to Commissioners and SAs	Thursday, January 14, 2021
Commissioners and SAs provide feedback to OCRE on draft of discovery plan, outline, and timeline	Friday, February 5, 2021
OCRE submits finalized discovery plan, outline, and timeline to Commissioners and SAs	Monday, March 15, 2021
Vote on discovery plan, outline, and timeline	Tuesday, March 16, 2021
OCRE request panelist recommendations for virtual briefing and briefing book recommendations	Tuesday, March 16, 2021
Commissioners & SAs submit names for potential panelists to OCRE	Friday, April 2, 2021
OCRE finalizes list of panelists	Friday, April 9, 2021
Send invites out to potential panelists	Monday, April 12, 2021
Article suggestions for Briefing Book due to OCRE	Friday, May 7, 2021
Briefing Book due to SAs and Commissioners	Tuesday, May 25, 2021
Briefing (Virtual) (2 expert panels)	**Friday, June 25, 2021**
1st Field Briefing (1 expert panel, Onsite Public Forum) – Texas	**Friday, November 19, 2021**
2nd Field Briefing (1 expert panel, Onsite Public Form) – Puerto Rico	**Friday, December 10, 2021**
End of first public comment period	Monday, July 26, 2021
End of second public comment period	Monday, January 10, 2022
II. Review of Report Drafts and Comments	
Initial Draft to Commissioners	**Monday, September 27, 2021**
Commissioners' Comments Due Back to OCRE	Wednesday, October 27, 2021
2nd draft to Commissioners	**Friday, January 21, 2022**
Commissioners' Comments Due Back to OCRE	Friday, February 18, 2022
Send Report for LSR	**Friday, March 4, 2022**
LSR Due	Friday, April 1, 2022
LSR incorporated	Friday, April 15, 2022
Send report for Affected Agency Review	**Friday, April 15, 2022**

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Affected Agency Review Due	Friday, May 13, 2022
III. Final Report and Vote	
Disseminate report to Commissioners for vote	**Friday, May 27, 2022**
Commissioner vote on report	**Friday, June 24, 2022**
IV. Post-Vote	
Commissioners statements due	Monday, July 25, 2022
Commissioners rebuttals due	Thursday, August 25, 2022
Commissioner surrebuttals due	Thursday, September 8, 2022
OCRE circulates formatted version for Commissioner edits	Thursday, September 8, 2022
Commissioner edits due	Wednesday, September 14, 2022
OCRE provides embargoed version	Friday, September 16, 2022
OCRE provides version for website upload	Monday, September 19, 2022
Publication	Wednesday, September 21, 2022

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IDAHO

Commissioner Yaki's objection

Dear Dr. Yenor:

Thank you for your service on the Idaho Advisory Committee and for your recent application for reappointment. Your name was included on the list of nominated individuals that is currently being reviewed by the Commissioners prior to appointment. As part of that review, Commissioner Yaki has made a formal objection to your nomination on the Committee because of an alleged comment you made.

Pursuant to our Administrative Instructions, when Commissioner objections pertain to a proposed member's public statement, then that nominee is provided the opportunity to respond in writing to the raised concern. The Staff Director will then consider the written response when making the final determination on whether to include the nominee on the list of individuals to be recommended for appointment.

The Commissioner has objected to your reappointment to the Idaho Advisory Committee because the Commissioner believes you are hostile to marriage equality and transgender rights. Furthermore, The Commissioner believes your public statements render you incapable of, and unable to, protect the constitutional rights supported by recent Supreme Court opinions. Citations to your most objectionable public statements on the issues at hand include:

- *https://startingpointsjournal.com/feminism-transgenderism-and-the-politics-of-identity/*
- *https://www.dailysignal.com/2017/07/18/radical-feminism-sowed-seeds-transgender-moment*
- *https://www.dailysignal.com/2017/08/02/transgender-activists-seeking-undermine-parental-rights/*
- *https://www.dailysignal.com/2017/08/02/transgender-activists-seeking-undermine-parental-rights/*
- *https://www.heritage.org/marriage-and-family/report/the-obligations-family-life-response-modern-liberalism.*

Mr. Yenor's Reponse

Dear Mr. Mussatt,
Thank you for forwarding the objections of Commissioner Michael Yaki and giving me two days to respond. I would like to know more about the process for how my response will be evaluated. Is the whole USCCR to respond? How will responses be tabulated? In any event, again thank you for forwarding these objections.

The objections to my re-nomination to the Idaho Advisory committee on civil rights are (1) that I am "hostile to marriage equality and transgender rights" as evidenced in my public writings and (2) that my "public statements render [me] incapable of, and unable to, protect (sic) the constitutional rights supported by recent Supreme Court opinions."

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Claims of discrimination under the current civil rights regime must be established through rational inquiry aided, where appropriate, by social science. Proposed policies to combat alleged discrimination must then be weighed through a rational public policy process. Policies must be evaluated critically if they are implemented.

Civil rights are hardly an all or nothing proposition. Some civil rights clash with other civil rights. Civil rights almost always require a balancing of various claims or a negotiation of the rights of various groups. In objecting to my participation on the commission, Commissioner Yaki seems to deny that civil rights matters involve such balancing or to deny that some important civil rights should be protected or to deny that some civil rights claims should be heard or entertained; he seems to want civil rights for only some groups and not for others. He gives civil rights a bad name in so doing.

Suppose a civil rights commission finds itself adjudicating a claim of transgender rights as civil rights. In making a fair-minded adjudication, the commission would have to consider the relation between such transgender rights and other civil rights in our tradition such as the free exercise of religion, parental rights, rights against sex discrimination. It would have to determine how transgender rights weigh against those rights. In doing so, it would be necessary to inquire into the rational basis for claims of transgender rights and the likely consequences of affirming them, just as it would be necessary to see what would happen from denying them.

My work raises questions about the evidence that proves discrimination and it concerns the clash of civil rights in politics. Claims of transgender rights can, in some circumstances, I have argued, clash with parental rights (as when a school insists on transitioning a child from one gender to another without informing the parents or against their will). Such instances are, as my research argues, more likely to harm the child and, if multiplied, are likely to have a corrosive effect on parental rights, a crucial civil right (as established in Meyer v. Nebraska and Pierce v. Society of Sisters). Seeing children as products of state mandates in these instances is more likely to undermine well-functioning institutions than it is to promote a good society or thriving individuals. Claims to marital equality have already compromised religious liberty, the freedom of association, and the free thought and discussion on many platforms.

Does Commissioner Yaki disagree that transgender rights clash with parental rights? Does he think that the Civil Rights Commissions nationwide should ignore questions about what it would mean to take the side of "transgender rights" against parental rights? Does he think religious liberty of so little importance that Civil Rights Commissions should ignore how it is compromised by so-called marriage equality? Does he think Civil Rights Commissions should refrain from investigating the future mental and physical health of children who have been transitioned, against the will of their parents, from one gender to another? Does he think we should cease investigating the mental or physical health of all those who have transitioned, even with parental support? Perhaps I should object to his continued participation as a Civil Rights Commissioner if he thinks all such questions are settled questions or based on sound science!

The inclusion of gender identity within the anti-discrimination regime of the 1964 Civil Rights Act is a cause for no little concern. Under such gender identity claims, a person's subjective,

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gendered self-image as woman, man or whatever supersedes the objective biological fact of sexual identity as female or male. This new gender identity further may come with a demand that governments and others citizens recognize that new gender as an objective fact—a huge abridgement on the civil rights and the freedom of mind of others. These ideas, taken together, are incoherent and compromise our commitment to limited government. They are incoherent because they nullify the categories of male and female to which the anti-discrimination principle applies. How can a school district remedy supposed unjust discrimination in girls' sports when anyone can qualify, simply on their own assertion, as woman? Does Fairness in Sports demand keeping biological men out of women's sports and aspiring to equal treatment of such sports or does it demand letting transgendered men in and, perhaps, decrease the opportunities for the formerly protected class of women? Idaho has taken the lead in protecting women's sports in these circumstances, and I look forward to participating in studies investigating how this affects opportunities. The demands that Commissioner Yaki makes contain the seeds of a new political order, much less committed to civil rights than our current order.

I am very skeptical of the idea that gender operates independently of sex. I would demand verification, from well-designed studies, that confirmed the proposition that conceiving of gender independently of sex leads to individual and social thriving. It think it is irresponsible to accept, without critical inquiry, the idea that affirming gender identity fosters all manner of social and individual good. It is not at all clear to me that it is better to recognize a person's concept of gender, apart from their biological sex, as authentic and salutary rather than as erroneous or pathological. I would be concerned that acknowledging such an idea compromises other, well-established and important civil rights.

Conservatives participate in Civil Rights Commissions across the country. We generally worry about how anti-discrimination laws, as applied and as construed, abridge fundamental freedoms and can upset prospects of social harmony. We often investigate the implications of such abridgements in our scholarship. On the Yaki standard, would Justice Sam Alito or Justice Clarence Thomas or Chief Justice John Roberts be ineligible to serve on a civil rights commission? They dissented, after all, from the same-sex marriage decisions in Windsor and Obergefell. Two of them dissented in the recent case re-interpreting the 1964 Civil Rights Act. More broadly, would any conservative be allowed to participate unless he or she abandoned his or her conservatism? Perhaps all of these opinions disqualify someone from sitting on an Advisory Board. If they do, it may be hard to justify continued government support for a strictly partisan organ.

Sincerely,
Scott Yenor

AMERICAN OVERSIGHT

RE: March 19th Business Meeting Agenda Posting

Mauro Morales

Thu 3/11/2021 8:45 PM

To: Alexander Heideman <aheideman@usccr.gov>;

Cc: Carissa Mulder <CMulder@usccr.gov>; Peter Kirsanow <pkirsanow@usccr.gov>; Gail Heriot <gheriot@usccr.gov>; Norma Cantu <ncantu@usccr.gov>; Michael Yaki <MYaki@usccr.gov>; Commissioners <Commissioners@usccr.gov>; CommissionerAssistants <CommissionerAssistants@usccr.gov>; ExecutiveStaff <ExecutiveStaff@usccr.gov>;

Alex,

You are welcome. I was not aware of agreements you mentioned between Commissioners. I now understand that you are serving as the representative for all Commissioners on the negotiations for the March 19th agenda. The posting of the agenda today was required for notice under the requirements of the Sunshine Act in order for the Commission to meet on the 19th. As I reminded Commissioners in my email, at the commencement of the meeting the agenda may be amended by the majority through a voice or roll call vote. Commissioners have the ability to remove or add items for consideration. If the desire of Commissioners is to create an omnibus motion containing a number of MOU's and AI's it can be done by a majority vote. I would recommend that the omnibus motion be read into the record to create a clear transcript of what Commissioners are voting to accomplish. AI's will need prior approval of the General Counsel to ensure legality and compliance with Commission procedures.

A joint chairmanship to conduct the meeting would be extraordinary and outside my six year experience serving as the staff director. I am unsure why you would not simplify the process by voting Commissioner Cantu into the Chair at the beginning of the meeting as requested by the President and thereby allowing her to conduct the business meeting as is the regular process for the Commission. However, if the Commissioners wish to a conduct a business meeting with two Commissioners acting as a joint Chair, I will have the GC look into how it can be accomplished. Lastly, there is no AI or statute that "requires" Commissioner Cantu's appointment to be listed first on the business meeting agenda. It is highly irregular and disruptive to operate the Commission without a Chair as you have witnessed in the past weeks. Listing the motion first on the agenda for a vote on the Chairmanship was done as a matter of respect to Commissioner Cantu, to honor the request of the President and as a practical way to undertake the work of the Commission. If the majority of Commissioners desire another process to commence the meeting on the 19th we will do our best to honor their wishes. I have cc'd all Commissioners, all SA's and the agency executive staff for transparency and to be prepared to take steps to carry out commissioner requests. I look forward to hearing from you and reviewing your MOU's and AI's as negotiated and deemed acceptable to Commissioners.

Mauro Morales
Staff Director
USCCR

From: Alexander Heideman <aheideman@usccr.gov>
Sent: Thursday, March 11, 2021 6:29 PMCom
To: Mauro Morales <mmorales@usccr.gov>
Cc: Carissa Mulder <CMulder@usccr.gov>; Peter Kirsanow <pkirsanow@usccr.gov>; Gail Heriot <gheriot@usccr.gov>; Norma Cantu <ncantu@usccr.gov>; Michael Yaki <MYaki@usccr.gov>
Subject: Re: March 19th Business Meeting Agenda Posting

Dear Mauro:

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Thank you for sending the meeting agenda for next Friday.

It is our understanding that several Commissioners agreed to allow Commissioners Yaki and Kirsanow to co-chair the start of the business meeting. Furthermore, it is our understanding that several Commissioners agreed for the agenda to list first an omnibus motion that would include President Biden's appointment of Commissioner Cantú as chairperson as well as several MOUs and AIs. All this assumes that the pre-meeting negotiations over exact wording go well (and we anticipate that they will).

On the other hand, we are unaware of any AI or statute that *requires* Commissioner Cantú's appointment to be listed first on a business-meeting agenda. If your position is different, then please provide us with the citation to the appropriate authority.

Sincerely,

Alex

Alexander M. Heideman
Special Assistant/Counsel to Commissioner Gail Heriot
U.S. Commission on Civil Rights
1331 Pennsylvania Avenue NW, Suite 1150
Washington DC 20425
aheideman@usccr.gov

From: Mauro Morales <mmorales@usccr.gov>
Date: Thursday, March 11, 2021 at 4:52 PM
To: Commissioners <Commissioners@usccr.gov>
Cc: CommissionerAssistants <CommissionerAssistants@usccr.gov>, ExecutiveStaff <ExecutiveStaff@usccr.gov>
Subject: March 19th Business Meeting Agenda Posting

Commissioners,

I have attached the hyperlink to the agenda for the March 19th Commission Business Meeting. As you are aware, Commissioners agreed to schedule this business meeting on September 11th , 2020 by a unanimous vote. In order to meet requirements for compliance with the Sunshine Act, the notice had to be posted today. Commissioner Cantu was consulted in creation of the agenda and it was developed pursuant to previous and ongoing communications she had with other Commissioners. The very first order of business must be the vote on President Biden's designation of Commissioner Cantu to become Commission Chair. I defer to Commissioners as to who they want to make the motion to vote on her Chairmanship. After the vote occurs and in anticipation of Commissioner Cantu becoming Chair, she can then run the rest of the business meeting as Chair. A motion to adopt or amend the agenda would be in order after she becomes Chair. I understand that there are ongoing discussions to potentially add items for Commissioner discussion and votes. As always, Commissioners may amend the agenda to add or remove items with a majority voice or roll call vote of Commissioners. Items not ready for consideration at that time may be deferred to the next business meeting scheduled for April if necessary.
https://www.usccr.gov/files/2021/03-19-Business-Meeting-Agenda-Sunshine-Act-Notice.pdf

Commissioner folders will be populated with relevant information on Friday and during the week leading up to the business meeting. In addition, you will receive the telephone conference call number that will enable you to join and speak during the meeting.

Please contact me if you have any questions.

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Mauro Morales
Staff Director
U.S. Commission on Civil Rights
P: 202-376-7796| F: 202-376-7672
Mmorales@usccr.gov
http://usccr.gov/
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425

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Date : 3/15/2021 6:11:44 PM
From : "Gail Heriot" gheriot@usccr.gov
To : "Norma Cantu" ncantu@usccr.gov, "Norma Cantú" normavcantu@gmail.com
Cc : "Michael Yaki" MYaki@usccr.gov, "Peter Kirsanow" pkirsanow@usccr.gov
Subject : Re: My notes from yesterday's working group on topics related to Vote on Commissioner--No quorum & no decisions made.

Hi Norma—I apologize for being slow on this project. I have been swamped. But I really do want to get this done. I still haven't read what the SAs produced. Nevertheless, we need to schedule at least one more meeting (and probably two) if we want to get this done by the end of the week.

I will likely have a little time tomorrow, but I will have no time at all on Wednesday. On Thursday, I will have lots of time. If we want to play it safe we probably need to at least confer briefly on Tuesday and be prepared to complete everything on Thursday.

Gail

Gail Heriot
Professor of Law
University of San Diego

> On Mar 12, 2021, at 8:19 AM, Norma Cantu <ncantu@usccr.gov> wrote:
>
> 1. Language on 30/30/10 for rebuttals and surrebuttals-Gail-vehicle AI
> 2. Language on bipartisan nominations to Elect.Adv.Council at end of June 2021. Appointments to EAC will be made by Commission as a whole, with a majority vote. Proposed that Dem.Caucus nominates 2 people for one slot and R+I Caucus chooses the appointee. R+I Caucus nominates 2 people for one slot and Dem. caucus chooses the appointee. In future nominations to external agencies, the Chair will consult with the whole Commission before communicating any nominations. Vehicle-motion from floor at mtg. on March 19
> 3. Canceling the Chair's speakers series. Vehicle-email from Norma Cantu to Commissioners.
> 4. Already have language that half of State Adv. Council slots will be Dem. and half Rep. Need to add language on each Commissioners' Caucus will take ____days to nominate and vet new members of State Adv. Councils. At end of ___ days, the

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staff are expected to provide assistance in recruiting and vetting people to fill vacancies. Staff nominations take no longer than ____days. All nominations by Commissioners and staff come back to the full Commissioner for a discussion and vote to approve new members. Vehicle-motion from floor at mtg. on March 19.

5. Language about agreeing that AIs, as more specific agreements, govern process of Commissioners; in absence of relevant AI, Commissioners will apply Roberts' Rules of Order. Vehicle-Memo of Understanding approved by majority of Commissioners.
6. Chair proposes agenda for Commissioners' meeting, with Commissioners having ability to propose to amend agenda before meeting and also at the beginning the meeting, subject to majority vote. Vehicle-AI
7. A majority of Commissioners is needed to cancel a called Commissioner meeting. Vehicle-AI
8. Proposed by Norma, in absence of Chair available to moderate the meeting, the most senior Dem. and Rep. Commissioners will alternate chairing meetings. Vehicle-AI or memo. of understanding
9. Language that any Commissioner from each Caucus may sit in on OCRE interviews provided the Commissioner's request to attend does not cause a scheduling delay. Vehicle?
10. Memorial/obits require a majority vote of the Commission and the proposed language for the memorial shall be circulated to all the Commissioners. Vehicle-AI

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Date : 3/15/2021 6:55:05 PM
From : "Michael Yaki" MYaki@usccr.gov
To : "Gail Heriot" gheriot@usccr.gov, "Norma Cantu" ncantu@usccr.gov, "Norma Cantú" normavcantu@gmail.com
Cc : "Peter Kirsanow" pkirsanow@usccr.gov
Subject : Re: My notes from yesterday's working group on topics related to Vote on Commissioner--No quorum & no decisions made.

Some proposed edits below

From: Gail Heriot
Sent: Monday, March 15, 2021 6:11 PM
To: Norma Cantu; Norma Cantú
Cc: Michael Yaki; Peter Kirsanow
Subject: Re: My notes from yesterday's working group on topics related to Vote on Commissioner--No quorum & no decisions made.

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7. A majority of Commissioners is needed to cancel a called Commissioner meeting. Vehicle-AI
8. Proposed by Norma, in absence of Chair or Vice Chair available to moderate the meeting, the most senior Dem. and Rep. Commissioners will alternate chairing meetings. Vehicle-AI or memo. of understanding
9. Language that any Commissioner from each Caucus may sit in on OCRE interviews provided the Commissioner's request to attend does not cause a scheduling delay. Vehicle?Should be an AI so staff will comply
10. Memorial/obits require a majority vote of the Commission and the proposed language for the memorial shall be circulated to all the Commissioners. Vehicle-AI

AMERICAN OVERSIGHT

Date : 3/15/2021 6:48:14 PM
From : "Michael Yaki" MYaki@usccr.gov
To : "Gail Heriot" gheriot@usccr.gov, "Norma Cantu" ncantu@usccr.gov, "Norma Cantú" normavcantu@gmail.com
Cc : "Peter Kirsanow" pkirsanow@usccr.gov
Subject : Re: My notes from yesterday's working group on topics related to Vote on Commissioner--No quorum & no decisions made.

Here's the Robert's Rules cite from the Election Assistance Commission which could be helpful:

Parliamentary Authority
The rules contained in the current edition of Robert's Rules of Order Newly Revised shall govern Commission activities in all cases to which they are applicable and in which they are not inconsistent with any AIs and any special rules of order the Commission may adopt.

From: Gail Heriot
Sent: Monday, March 15, 2021 6:11:44 PM
To: Norma Cantu; Norma Cantú
Cc: Michael Yaki; Peter Kirsanow
Subject: Re: My notes from yesterday's working group on topics related to Vote on Commissioner--No quorum & no decisions made.

Hi Norma—I apologize for being slow on this project. I have been swamped. But I really do want to get this done. I still haven't read what the SAs produced. Nevertheless, we need to schedule at least one more meeting (and probably two) if we want to get this done by the end of the week.

I will likely have a little time tomorrow, but I will have no time at all on Wednesday. On Thursday, I will have lots of time. If we want to play it safe we probably need to at least confer briefly on Tuesday and be prepared to complete everything on Thursday.

Gail

Gail Heriot
Professor of Law
University of San Diego

> On Mar 12, 2021, at 8:19 AM, Norma Cantu <ncantu@usccr.gov> wrote:

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1. Language on 30/30/10 for rebuttals and surrebuttals-Gail-vehicle AI
2. Language on bipartisan nominations to Elect.Adv.Council at end of June 2021. Appointments to EAC will be made by Commission as a whole, with a majority vote. Proposed that Dem.Caucus nominates 2 people for one slot and R+I Caucus chooses the appointee. R+I Caucus nominates 2 people for one slot and Dem. caucus chooses the appointee. In future nominations to external agencies, the Chair will consult with the whole Commission before communicating any nominations. Vehicle-motion from floor at mtg. on March 19
3. Canceling the Chair's speakers series. Vehicle-email from Norma Cantu to Commissioners.
4. Already have language that half of State Adv. Council slots will be Dem. and half Rep. Need to add language on each Commissioners' Caucus will take ____days to nominate and vet new members of State Adv. Councils. At end of ___ days, the staff are expected to provide assistance in recruiting and vetting people to fill vacancies. Staff nominations take no longer than ____days. All nominations by Commissioners and staff come back to the full Commissioner for a discussion and vote to approve new members. Vehicle-motion from floor at mtg. on March 19.
5. Language about agreeing that AIs, as more specific agreements, govern process of Commissioners; in absence of relevant AI, Commissioners will apply Roberts' Rules of Order. Vehicle-Memo of Understanding approved by majority of Commissioners.
6. Chair proposes agenda for Commissioners' meeting, with Commissioners having ability to propose to amend agenda before meeting and also at the beginning the meeting, subject to majority vote. Vehicle-AI
7. A majority of Commissioners is needed to cancel a called Commissioner meeting. Vehicle-AI
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9. Language that any Commissioner from each Caucus may sit in on OCRE interviews provided the Commissioner's request to attend does not cause a scheduling delay. Vehicle?
10. Memorial/obits require a majority vote of the Commission and the proposed language for the memorial shall be circulated to all the Commissioners. Vehicle-AI

AMERICAN OVERSIGHT

Date : 3/16/2021 11:20:29 AM
From : "Irena Vidulovic" ividulovic@usccr.gov
To : "Debo P. Adegbile" dadegbile@usccr.gov, "Adegbile, Debo" Debo.Adegbile@wilmerhale.com
Cc : "Zervoudis, Flor" Flor.Zervoudis@wilmerhale.com
Subject : Call: TO DO LIST
Attachment : RE_ March 19th Business Meeting Agenda Posting - Amy Royce.pdf;03-19-Business-Meeting-Agenda-Sunshine-Act-Notice.pdf;FEMA Research Plan.OCRE_2.22.21.docx;FEMA Timeline.OCRE_3.15.2021.docx;FEMA Chapter Outline.3.15.2021.docx;CO SAC Dr. Chen.docx;ID SAC Dr. Yenor.docx;

Hey Adegbile,

Please let me know what time works for you for a call prior to our caucus call at 3pm so I can brief you on all the things.

Thanks,
IV

From: Irena Vidulovic
Sent: Monday, March 15, 2021 3:36 PM
To: Debo Adegbile; Flor Zervoudis
Subject: Fwd: Caucus call tomorrow

Begin forwarded message:

> **From:** Amy Royce <aroyce@usccr.gov>
> **Date:** March 15, 2021 at 8:32:31 PM GMT+1
> **To:** David Kladney <dkladney@usccr.gov>, "Debo P. Adegbile" <dadegbile@usccr.gov>, Michael Yaki <MYaki@usccr.gov>, Norma Cantu <ncantu@usccr.gov>, normavcantu@gmail.com
> **Cc:** Irena Vidulovic <ividulovic@usccr.gov>, Alec Deull <adeull@usccr.gov>
> **Subject: Caucus call tomorrow**
>
> Hello all,
>
> We are scheduled for a caucus call tomorrow at 3:00 Eastern/ 12:00 Pacific. The number is 1-877-446-3914, passcode 858713#
>
> Agenda items:

AMERICAN OVERSIGHT

- Business meeting on Friday (Sunshine Act notice and email regarding the R caucus understanding for how the meeting will run, attached)
- Potential items for discussion at business meeting (list below)
- FEMA discovery materials (attached)
    - Materials may be considered by notational vote
    - Updated language has been vetted by OCRE/OGC and language the conservatives proposed has been adopted
    - Change in briefing date for virtual briefing (June instead of May)
- Bail reform pending report
- Colorado and Idaho Advisory Committee
    - R's proposal - Dr. Chen in CO if we allow Mr. Yenor in ID (objections and responses attached)

Items for discussion at business meeting:

- Language on 30/30/10 for rebuttals and surrebuttals-Gail-vehicle AI
- Language on bipartisan nominations to Elect.Adv.Council at end of June 2021. Appointments to EAC will be made by Commission as a whole, with a majority vote. Proposed that Dem.Caucus nominates 2 people for one slot and R+I Caucus chooses the appointee. R+I Caucus nominates 2 people for one slot and Dem. caucus chooses the appointee. In future nominations to external agencies, the Chair will consult with the whole Commission before communicating any nominations. Vehicle-motion from floor at mtg. on March 19
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CIVIL RIGHTS COMMISSION

Sunshine Act Meeting Notice

AGENCY: United States Commission on Civil Rights.

ACTION: Notice of Commission public business meeting.

DATES: Friday, March 19, 2021, 12:00 p.m. EST.

FOR FURTHER INFORMATION CONTACT: Angelia Rorison: 202-376-7700; publicaffairs@usccr.gov.

ADDRESSES: Meeting to take place by telephone and is open to the public by telephone: 1-866-556-2429, Conference ID #6761392. Computer assisted real-time transcription (CART) will be provided. The web link to access CART (in English) on Friday, March 19th, 2021, is https://www.streamtext.net/player?event=USCCR. Please note that CART is text-only translation that occurs in real time during the meeting and is not an exact transcript.

MEETING AGENDA

I. Motion to Approve Commissioner Norma Cantú to Serve as USCCR Chair

II. Approval of Agenda

III. Business Meeting

A. Discussion and Vote on Statement of Walter E. Williams;

B. Discussion and Vote to continue the Policy of Rebuttals and Surrebuttals;

C. Discussion and Vote to suspend Speaker Series;

D. Discussion and Agreement to Appoint Bipartisan Commissioners to EAC

E. Discussion and Vote on FEMA Report Discovery Plan

F. Management and Operations

- Staff Director's Report

G. **Adjourn Meeting**

Dated: March 11, 2021
Angelia Rorison
USCCR Media and Communications Director

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COLORADO: 12 candidates, 6 Republicans (including one Independent who leans Republican), 6 Democrats (including one Independent who leans Democrat).

- Comm. Heriot objected to Prof. Ming Hsu Chen on the basis of an article she wrote called, "Colorblind Nationalism."
- Prof. Chen responded, and Mauro kept her on the slate on the basis of the response.
- Full objection from Comm. Heriot:

In her article, Prof. Chen says that racist and anti-immigrant "policies are cloaked in the neutral language of national protection, public health, and economic justice." Therefore, anyone who supports those facially colorblind policies is racist. More broadly, Prof. Chen suggests that anyone who favors any level of immigration restriction is a white supremacist.

It is inappropriate for a SAC member to make wild accusations of racism against entire groups of people. This article reveals Prof. Chen's bad faith. Additionally, her embrace of Ibram X. Kendi's "anti-racist" ideology is troubling, as that ideology in and of itself promotes discrimination.

Prof. Chen's article in the Yale Journal on Regulation, "Colorblind Nationalism," (available here) is particularly objectionable for a member of a State Advisory Committee.

- Full response from Prof. Chen:

Dear Mr. Mussatt and Mr. Morales,

Thank you for the opportunity to respond to Commissioner Heriot's objection. This objection seems to be based on a single sentence from an opinion piece, which I discuss below, but please note her objection paraphrases my essay in ways that mischaracterize the essay and my beliefs.

For example:

- *I do not say or believe that "anyone who supports facially colorblind policies is racist"*
- *I do not say that or believe that "anyone who favors any level of immigration restriction is a white supremacist"*
- *There is also no basis for her claim that I write or act in "bad faith" in her formal objection.*

As some background, I have served on the Colorado State Advisory Committee for 4-years (2016-2020). During that time, I worked collaboratively with all SAC members after my project proposal on the naturalization backlog was unanimously adopted in

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2018. This work included working together on a briefing with expert testimony from 12 speakers representing a range of perspectives, addressing all SAC member voices in when drafting our report, and incorporating suggestions during the subsequent revisions and adoption of the report. The resulting 2019 report has since been cited widely in media and other academic and policy research. A 2020 update and 2-page statement of concern was adopted unanimously by the CO SAC, and USCCR Chair Catherine Lhamon endorsed and sent her own letter to the impacted agency.

During my tenure, I also supported projects spearheaded by other SAC members, including ones sponsored by our more conservative members on religious freedom and racial disparities in infant/maternal mortality. In each of these projects, I was an active team member and made good faith efforts to listen to evidence from our hearings, to consider the divergent viewpoints, and to incorporate and suggest revisions on my reports and others that would build a broader consensus.

Outside of my service to SAC, my professional qualifications include a ten-year history of academic teaching and writing in immigration, civil rights, and administrative law at the University of Colorado Law School. This has included presentations with scholars from many viewpoints. Not infrequently I've been invited by members of conservative groups like the Federalist Society or the National Association of Attorney Generals to be a reasonable voice in their discussions. In these and other endeavors, I have never been accused of bias in my professional work.

In my personal capacity, I occasionally write short opinion pieces such as the essay that is cited in the objection and published in a special symposium on racism and the law for the online edition of the nation's premiere specialty journal on administrative law. I would describe my own views in the essay as advocating for greater racial equality for immigrants negatively impacted by travel bans and expressing an abiding concern that our federal government adhere to fair procedures in the issuance of such policies. There is no basis for saying that these views amount to "wild accusations of racism against entire groups of people" or that they "embrace Ibram X. Kendi's antiracist ideology… as that ideology itself promotes discrimination." I am not familiar with Ibram X Kendi's writings on antiracism and do not read, engage with, nor cite his work in this essay or my other scholarship. Moreover, the piece does not claim to represent the views of CO SAC or the USCCR. While I do not think the views expressed in the essay are objectionable, even if they were, I would not bring personal biases into my professional service.
In closing, I recognize that reasonable people disagree on the best means of achieving equality.

My sense is that Commissioner Heriot misunderstands my perspectives and seeks to associate me with views that are more extreme than my own. Rather than rely on her second-hand description of an opinion piece written in my personal capacity, I would encourage the USCCR to apply a fair minded consideration of my application that focuses on my actual statements and my record of service to the CO SAC and USCCR.

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Draft Chapter Outline
Federal Response to Hurricanes María and Harvey: Civil Rights and Protections Following a Natural Disaster

Executive Summary

CHAPTER 1: Introduction

I. Context & Background
   A. Introductory discussion of FEMA's response to natural disasters
      i. Why the Commission took on this issue (voted-upon Concept Paper)
      ii. Brief summary of report methodology, including briefing, testimony received and other key sources of information; and brief summary of OCRE research and methodology

II. Hurricanes María and Harvey
   A. Number of individuals/households impacted
      i. Fatalities
      ii. Hospitalizations
      iii. Structural damage
      iv. Individuals/households misplaced from homes
         1. Long-term displacement
      v. Job losses
      vi. Monetary information regarding damage
      vii. Flooding impacts
      viii. Loss of utilities
         1. Electricity
         2. Clean water
         3. Telecommunications
   B. Impacts on sectors
      i. Healthcare
      ii. Education
      iii. Business
      iv. Local government
   C. Pre-disaster challenges in Puerto Rico and Texas
      i. Economic issues including PROMESA in Puerto Rico
      ii. Existing infrastructure issues
      iii. Geographic issues
   D. Challenges faced by FEMA from the adequacy or inadequacy of state and local government responses to the disasters, as well as impacts on FEMA from private sector responses to the disaster
      i. Coordination of state and local governments with FEMA to authorize, arrange, organize, and prioritize delivery of aid

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ii. Technical assistance to FEMA in identifying, evaluating, and understanding infrastructure, transportation, distribution, and healthcare system failures
iii. Local private sector responses from suppliers, providers, contractors, labor unions, etc. that positively or adversely impacted FEMA's ability to supply or deliver needed disaster aid

III. Status and other local government issues
A. Overview of potential civil rights issues involved in the federal responses to the storms
i. Summary of testimony (including from the Texas SAC)
ii. Summary of data
iii. Summary of FEMA's responses to the Commission's inquiries
B. Overview of Applicable Civil Rights Protections
i. The Stafford Act's requirements that the federal government ensure all relief and assistance "… shall be accomplished in an equitable and impartial manner, without discrimination on the grounds of race, color, religion, nationality, sex, age, disability, English proficiency, or economic status."[1]
ii. Relevant constitutional and other federal law/policy guidance
1. Title VI of the Civil Rights Act
2. Rehabilitation Act of 1973
3. Executive Order 13,166 (LEP)
4. Executive Order 12,898 (Environmental Justice)
5. Fair Housing Act of 1968
iii. Relevant caselaw
iv. Challenges applicants seeking disaster relief resources may face, including accessibility issues, wait times, and sufficiency of aid; consequences of not receiving aid v. benefits of aid

IV. How did Hurricanes María and Harvey impact various demographic populations?
i. Racial and ethnic minorities
ii. People with disabilities
iii. Individuals with limited or no English language proficiency
iv. Individuals of low socioeconomic status

CHAPTER 2: Federal Government's Role in Disaster Response

I. Discussion of FEMA's role and obligations in natural disaster emergencies
i. Brief History
ii. Role and Responsibilities
iii. Resources provided before, during, and after a natural disaster

[1] 42 U.S.C. § 5151 (1988).

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A. Coordinating role with other federal agencies, state, local, territorial, and tribal governments, and nongovernmental organizations in providing aid
B. Summary of civil rights duties

II. FEMA's Response to Hurricanes María and Harvey (comparison of benchmarks to short- and long-term data, including but not limited to the factors listed below)

A. Hurricane María
   i. Disaster declaration proceedings
   ii. FEMA's Overall Estimated Monetary Damages
   iii. FEMA's Assessment of Infrastructure & Community Impacts (hospitals & schools closed, accessibility of food & water, etc.)
   iv. Federal Response/Demographics of:
      1. Requests for Assistance
      2. Location and staffing of Disaster Recovery Centers, phone assistance lines, and hiring of contractors for the individual and business assistance programs.
      3. Accessibility and Barriers to Aid Requests
      4. Assistance Provided
      5. Timeline of Relief & Rebuilding Aid Provided
   v. Ongoing rebuilding efforts
      1. Where do the impacted areas in Puerto Rico stand on any type of recovery timeline?
      2. Long-term/permanent displacement
      3. COVID-19 impacts on these efforts (including analysis of declaration of COVID-19 as a natural disaster)

B. Hurricane Harvey
   i. Disaster declaration proceedings
   ii. FEMA's Overall Estimated Monetary Damages
   iii. Infrastructure & Community Impacts (hospitals & schools closed, accessibility of food & water, etc.)
   iv. Federal Response/Demographics of:
      1. Requests for Assistance
      2. Location and staffing of Disaster Recovery Centers, phone assistance lines, and hiring of contractors for the individual and business assistance programs.
      3. Accessibility and Barriers to Aid Requests
      4. Assistance Provided
      5. Timeline of Relief & Rebuilding Aid Provided
   v. Ongoing rebuilding efforts
      1. Where do the impacted areas in Texas stand on any type of recovery timeline?
      2. Long-term/permanent displacement
      3. COVID-19 impacts on these efforts (including analysis of declaration of COVID-19 as a natural disaster)

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III. Trajectory and types of assistance provided (comparing any benchmarks to data/comparative data)
    i. Public assistance
    ii. Individual assistance
    iii. Block grants
    iv. Payment programs vs. programs providing shelter, housing, job assistance, food, education, etc.

IV. Considerations in providing FEMA aid
    A. What relevant factors are taken into consideration regarding relief appropriations?
        i. Community-wide analyses?
        ii. Environmental impact assessments?
    B. Is there a need to reduce any barriers for states/territories and/or individuals applying for disaster assistance and relief?
    C. How well has FEMA coordinated with intergovernmental agencies and organizations in planning, coordinating, and executing emergency management in administering aid relief?

V. Examination of whether local factors, practices, or guidelines, or other factors impact damage assessments and the delivery of resources - are there challenges in providing disaster relief and how can they be overcome? Factors may include:
    i. Infrastructure
    ii. Telecommunications
    iii. Logistics
    iv. Language
    v. Cultural competencies
    vi. Mainland states vs. U.S. territories

VI. FEMA's compliance efforts with the Stafford Act and other civil rights obligations in response to Hurricanes María and Harvey
    A. Review of access to disaster relief, including:
        1. Accessibility issues
        2. Any income or housing requirements for receiving aid
        3. Differential requirements or barriers based on territorial status or other qualities of local government
        4. Whether these types of barriers are reasonable
    B. Types of civil rights complaints received
    C. Have there been indications of discrimination in relief and assistance activity on the basis of race, color, religion, nationality, sex, age, disability, or English proficiency (LEP status)?

CHAPTER 3: Emerging Best Practices

I. Identification of potential civil rights issues & developing practices to address them (based on FEMA Summit as well as agency testimony and information provided)

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II. Local governments' identification of FEMA-related civil rights issues & recommendations for best practices
III. Impacted individuals, community stakeholders & nongovernmental actors' identification of potential civil rights issues & recommendations for best practices

CHAPTER 4: Findings and Recommendations

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USCCR-21-1814-A-003773

FEMA's Natural Disaster Response
Research Plan

Working Title: Federal Response to Hurricanes María and Harvey: Civil Rights and Protections Following a Natural Disaster

From January 2021 to June 2022, OCRE staff will seek information through a variety of sources (e.g., interrogatories, empirical research, qualitative and quantitative data, briefing testimony, and formal and informal outreach to government officials, scholars, and community stakeholders) to investigate the federal government's response to the original and ongoing impact of Hurricanes María in Puerto Rico and Harvey in Texas, and may possibly compare them to the federal response to other significant hurricane systems. OCRE will focus its data-gathering in the following areas:

- The role of the federal government in responding to natural disasters such as hurricanes
    - Federal obligations to provide aid for relief and rebuilding through FEMA under the Stafford Act, 42 U.S.C. § 5121 et. al., and related federal policy and practice
    - How federal disasters are determined by "the States" and declared by the President
    - How funding is budgeted for and allocated across disasters
    - How FEMA plans, coordinates, and executes emergency management in administering aid relief, in collaboration with other federal organizations, as well as with state, local, territorial, and tribal lands
    - Trajectory and types of assistance that may be provided, i.e., evacuation to safety, temporary shelter, health care, food, clothing, housing, unemployment benefits or training, and rebuilding, through individual or block assistance, programs entitling payments or programs entitling other relief
- Framework of relevant civil rights laws and regulations, and assessment, including:
    - The Stafford Act's requirements that the federal government ensure all relief and assistance "… shall be accomplished in an equitable and impartial manner, without discrimination on the grounds of race, color, religion, nationality, sex, age, disability, English proficiency, or economic status."[1]
    - Relevant constitutional and other federal law; any relevant federal policy guidance
        - ☐ Title VI of the Civil Rights Act
        - ☐ Rehabilitation Act of 1973
        - ☐ Executive Order 13,166 (LEP)

[1] 42 U.S.C. § 5151 (1988).

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- ☐ Executive Order 12,898 (Environmental Justice)
- ☐ Fair Housing Act of 1968

- Relevant legal rulings regarding the equities of federal responses to natural disasters
- Implications of differing local systems, such as U.S. territories v. states v. tribes, land classifications, etc.

- Study of essential data regarding Hurricanes María and Harvey including but not limited to demographics, including race, nationality, English proficiency (LEP status), disability status, and other data regarding the following potentially key factors, along with any others that are identified as relevant during the research process. Key factors may include:
  - Number of individuals/households impacted by:
    - ☐ Fatalities
    - ☐ Injuries requiring hospitalization
    - ☐ Households/structures demolished (completely/partially)
    - ☐ Individuals/households misplaced from homes
    - ☐ Job losses and other income losses (such as small business losses)
  - Cost of damage of structures
  - Geographical landmass information as to expansiveness of damage
  - Extent of flooding and its impacts
  - Loss of utilities (electricity, clean water)
  - Extent of homes impacted
  - Timeline of loss and repair where available
  - Federal response, to include:
    - ☐ Accessibility of requests for aid, and any barriers
    - ☐ Number of requests for assistance; outcomes
      - Demographic information available for individuals requesting assistance, experiencing barriers in requests
    - ☐ Number of individuals/households provided assistance
      - Demographic information available for individuals provided assistance
    - ☐ Any relevant disparities and inequities associated with access to relief aid, including placement and staffing of Disaster Recovery Centers, hot-line staffing, contractor hiring and staffing, and access to appeals procedures

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- ☐ Monetary amount of relief provided, including demographic and geographic distribution within a disaster declaration area
- ☐ Timeline of relief provided
- ☐ Logistical differences in administering disaster relief
- ☐ Types of civil rights complaints received
- ☐ Any community-wide analyses performed by the federal government, such as surveys, public fora; other assessments
- ☐ Environmental impact assessments

- Whether and how hurricanes María and Harvey can be compared to each other, and possibly whether other recent hurricanes may also be compared through data trends
- Whether data trends exist as to the federal disaster response to hurricanes in U.S. territories such as Puerto Rico
    - How these trends might differ from responses to hurricanes in U.S. states
        - ☐ Examination of historic and current qualitative and quantitative data
    - Trend data would include the amount of aid provided, the type of aid provided, the timeline of aid provided, the number of individuals to whom aid was provided, and demographics

OCRE will accomplish this research by:

- Holding a briefing before the Commission with a panel of expert witnesses (including government officials, scholars, community stakeholders, etc.) who can provide information, data, and insight into the impacts of Hurricanes María and Harvey, as well as the federal aid received, and information regarding the timeliness and amount of aid provided; and soliciting public comments. Testimony and public comments may be received in English and/or Spanish, or other languages as needed (such as Vietnamese in the Houston area). (this briefing may be virtual, depending on COVID-19 conditions). The briefing may be followed by a site visit to Puerto Rico and/or Texas in late 2021, if travel is feasible and resources are available.
- Examining publicly available data, research, and information from interrogatories provided by government offices and departments regarding resources provided to victims of and communities impacted by Hurricanes María and Harvey including (but not limited to):
    - Timeline of resources provided to victims and communities
    - Any formulas used to determine the amount of aid provided and the specific recipients of such aid
    - Extent to which federal agencies complied with federal civil rights laws and policies regarding aid provided to U.S. states and U.S. territories

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    - Information about how to apply for aid, number of applications received, outcomes, and appeals and/or complaints filed, and their resolution
    - Policies and procedures with regard to the location and staffing of Disaster Recovery Centers, including decisions regarding language and translation services
    - Policies and procedures for the hiring of contractors by FEMA to handle individual assistance claims and compliance with federal civil rights laws and policies
- Working with OGC to send Interrogatories and Document Requests to FEMA
- Collecting and analyzing FEMA briefings, USCCR State Advisory Committee panels and follow-up questions, additional testimony/field hearings conducted by Congress or other entities
- Examining relevant information from academic journals and nonpartisan research organizations
- Examining empirical research and analyzing relevant data from government and non-government sources regarding federal responses to hurricanes in the U.S., in both territories and mainland states, including demographic data
- Examining the data/reports/work product of federal agencies, advocates, and community stakeholders in order to assess:
    - Key players and their objectives
    - Efforts these agencies and comparable groups took in response to Hurricanes María and Harvey
    - Recommendations or best practices that may be drawn from the work of FEMA, as well as advocates and community stakeholders

Proposed Virtual Briefing Panels

A. State and Local Disaster Response Officials and Community Stakeholders
    - State and municipal Office of Emergency Services officials from Texas, Puerto Rico, and United States Virgin Islands.
    - Local mayoral offices
    - National Guard

B. FEMA
    - ODIC (Office of Disability Integration and Coordination)
    - Regional Administrators
    - Office of Response and Recovery
    - Office of Equal Rights
    - DHS - Center for Faith-Based and Neighborhood Partnerships

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- DHS - Office of Civil Rights and Civil Liberties
- Department of Defense
- Department of Housing and Urban Development

C. Outside Testimony and FEMA Voluntary Organizations

- Community stakeholders (representing and/or serving impacted persons)
- American Red Cross, other private relief organizations
- National Association of State Emergency Donations and Volunteer Coordinators, National Mass Care Council/Strategy, International Association of Emergency Managers, National Emergency Management Association
- Victims of Hurricanes María and Harvey
- The Corporation for National and Community Service (CNCS)

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FY 2021 / 2022 FEMA Timeline

I. Pre-Briefing	
OCRE circulates draft of discovery plan, outline, and timeline to lead SA's	Thursday, December 31, 2020
OCRE circulates draft of discovery plan, outline, and timeline to Commissioners and SAs	Thursday, January 14, 2021
Commissioners and SAs provide feedback to OCRE on draft of discovery plan, outline, and timeline	Friday, February 5, 2021
OCRE submits finalized discovery plan, outline, and timeline to Commissioners and SAs	Monday, March 15, 2021
Vote on discovery plan, outline, and timeline	Tuesday, March 16, 2021
OCRE request panelist recommendations for virtual briefing and briefing book recommendations	Tuesday, March 16, 2021
Commissioners & SAs submit names for potential panelists to OCRE	Friday, April 2, 2021
OCRE finalizes list of panelists	Friday, April 9, 2021
Send invites out to potential panelists	Monday, April 12, 2021
Article suggestions for Briefing Book due to OCRE	Friday, May 7, 2021
Briefing Book due to SAs and Commissioners	Tuesday, May 25, 2021
Briefing (Virtual) (2 expert panels)	**Friday, June 25, 2021**
1st Field Briefing (1 expert panel, Onsite Public Forum) – Texas	**Friday, November 19, 2021**
2nd Field Briefing (1 expert panel, Onsite Public Form) – Puerto Rico	**Friday, December 10, 2021**
End of first public comment period	Monday, July 26, 2021
End of second public comment period	Monday, January 10, 2022
II. Review of Report Drafts and Comments	
Initial Draft to Commissioners	**Monday, September 27, 2021**
Commissioners' Comments Due Back to OCRE	Wednesday, October 27, 2021
2nd draft to Commissioners	**Friday, January 21, 2022**
Commissioners' Comments Due Back to OCRE	Friday, February 18, 2022
Send Report for LSR	**Friday, March 4, 2022**
LSR Due	Friday, April 1, 2022
LSR incorporated	Friday, April 15, 2022
Send report for Affected Agency Review	**Friday, April 15, 2022**

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Affected Agency Review Due	Friday, May 13, 2022
III. Final Report and Vote	
Disseminate report to Commissioners for vote	**Friday, May 27, 2022**
Commissioner vote on report	**Friday, June 24, 2022**
IV. Post-Vote	
Commissioners statements due	Monday, July 25, 2022
Commissioners rebuttals due	Thursday, August 25, 2022
Commissioner surrebuttals due	Thursday, September 8, 2022
OCRE circulates formatted version for Commissioner edits	Thursday, September 8, 2022
Commissioner edits due	Wednesday, September 14, 2022
OCRE provides embargoed version	Friday, September 16, 2022
OCRE provides version for website upload	Monday, September 19, 2022
Publication	Wednesday, September 21, 2022

AMERICAN OVERSIGHT

IDAHO

Commissioner Yaki's objection

Dear Dr. Yenor:

Thank you for your service on the Idaho Advisory Committee and for your recent application for reappointment. Your name was included on the list of nominated individuals that is currently being reviewed by the Commissioners prior to appointment. As part of that review, Commissioner Yaki has made a formal objection to your nomination on the Committee because of an alleged comment you made.

Pursuant to our Administrative Instructions, when Commissioner objections pertain to a proposed member's public statement, then that nominee is provided the opportunity to respond in writing to the raised concern. The Staff Director will then consider the written response when making the final determination on whether to include the nominee on the list of individuals to be recommended for appointment.

The Commissioner has objected to your reappointment to the Idaho Advisory Committee because the Commissioner believes you are hostile to marriage equality and transgender rights. Furthermore, The Commissioner believes your public statements render you incapable of, and unable to, protect the constitutional rights supported by recent Supreme Court opinions. Citations to your most objectionable public statements on the issues at hand include:

- *https://startingpointsjournal.com/feminism-transgenderism-and-the-politics-of-identity/*
- *https://www.dailysignal.com/2017/07/18/radical-feminism-sowed-seeds-transgender-moment*
- *https://www.dailysignal.com/2017/08/02/transgender-activists-seeking-undermine-parental-rights/*
- *https://www.dailysignal.com/2017/08/02/transgender-activists-seeking-undermine-parental-rights/*
- *https://www.heritage.org/marriage-and-family/report/the-obligations-family-life-response-modern-liberalism.*

Mr. Yenor's Reponse

Dear Mr. Mussatt,
Thank you for forwarding the objections of Commissioner Michael Yaki and giving me two days to respond. I would like to know more about the process for how my response will be evaluated. Is the whole USCCR to respond? How will responses be tabulated? In any event, again thank you for forwarding these objections.

The objections to my re-nomination to the Idaho Advisory committee on civil rights are (1) that I am "hostile to marriage equality and transgender rights" as evidenced in my public writings and (2) that my "public statements render [me] incapable of, and unable to, protect (sic) the constitutional rights supported by recent Supreme Court opinions."

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Claims of discrimination under the current civil rights regime must be established through rational inquiry aided, where appropriate, by social science. Proposed policies to combat alleged discrimination must then be weighed through a rational public policy process. Policies must be evaluated critically if they are implemented.

Civil rights are hardly an all or nothing proposition. Some civil rights clash with other civil rights. Civil rights almost always require a balancing of various claims or a negotiation of the rights of various groups. In objecting to my participation on the commission, Commissioner Yaki seems to deny that civil rights matters involve such balancing or to deny that some important civil rights should be protected or to deny that some civil rights claims should be heard or entertained; he seems to want civil rights for only some groups and not for others. He gives civil rights a bad name in so doing.

Suppose a civil rights commission finds itself adjudicating a claim of transgender rights as civil rights. In making a fair-minded adjudication, the commission would have to consider the relation between such transgender rights and other civil rights in our tradition such as the free exercise of religion, parental rights, rights against sex discrimination. It would have to determine how transgender rights weigh against those rights. In doing so, it would be necessary to inquire into the rational basis for claims of transgender rights and the likely consequences of affirming them, just as it would be necessary to see what would happen from denying them.

My work raises questions about the evidence that proves discrimination and it concerns the clash of civil rights in politics. Claims of transgender rights can, in some circumstances, I have argued, clash with parental rights (as when a school insists on transitioning a child from one gender to another without informing the parents or against their will). Such instances are, as my research argues, more likely to harm the child and, if multiplied, are likely to have a corrosive effect on parental rights, a crucial civil right (as established in Meyer v. Nebraska and Pierce v. Society of Sisters). Seeing children as products of state mandates in these instances is more likely to undermine well-functioning institutions than it is to promote a good society or thriving individuals. Claims to marital equality have already compromised religious liberty, the freedom of association, and the free thought and discussion on many platforms.

Does Commissioner Yaki disagree that transgender rights clash with parental rights? Does he think that the Civil Rights Commissions nationwide should ignore questions about what it would mean to take the side of "transgender rights" against parental rights? Does he think religious liberty of so little importance that Civil Rights Commissions should ignore how it is compromised by so-called marriage equality? Does he think Civil Rights Commissions should refrain from investigating the future mental and physical health of children who have been transitioned, against the will of their parents, from one gender to another? Does he think we should cease investigating the mental or physical health of all those who have transitioned, even with parental support? Perhaps I should object to his continued participation as a Civil Rights Commissioner if he thinks all such questions are settled questions or based on sound science!

The inclusion of gender identity within the anti-discrimination regime of the 1964 Civil Rights Act is a cause for no little concern. Under such gender identity claims, a person's subjective,

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gendered self-image as woman, man or whatever supersedes the objective biological fact of sexual identity as female or male. This new gender identity further may come with a demand that governments and others citizens recognize that new gender as an objective fact—a huge abridgement on the civil rights and the freedom of mind of others. These ideas, taken together, are incoherent and compromise our commitment to limited government. They are incoherent because they nullify the categories of male and female to which the anti-discrimination principle applies. How can a school district remedy supposed unjust discrimination in girls' sports when anyone can qualify, simply on their own assertion, as woman? Does Fairness in Sports demand keeping biological men out of women's sports and aspiring to equal treatment of such sports or does it demand letting transgendered men in and, perhaps, decrease the opportunities for the formerly protected class of women? Idaho has taken the lead in protecting women's sports in these circumstances, and I look forward to participating in studies investigating how this affects opportunities. The demands that Commissioner Yaki makes contain the seeds of a new political order, much less committed to civil rights than our current order.

I am very skeptical of the idea that gender operates independently of sex. I would demand verification, from well-designed studies, that confirmed the proposition that conceiving of gender independently of sex leads to individual and social thriving. It think it is irresponsible to accept, without critical inquiry, the idea that affirming gender identity fosters all manner of social and individual good. It is not at all clear to me that it is better to recognize a person's concept of gender, apart from their biological sex, as authentic and salutary rather than as erroneous or pathological. I would be concerned that acknowledging such an idea compromises other, well-established and important civil rights.

Conservatives participate in Civil Rights Commissions across the country. We generally worry about how anti-discrimination laws, as applied and as construed, abridge fundamental freedoms and can upset prospects of social harmony. We often investigate the implications of such abridgements in our scholarship. On the Yaki standard, would Justice Sam Alito or Justice Clarence Thomas or Chief Justice John Roberts be ineligible to serve on a civil rights commission? They dissented, after all, from the same-sex marriage decisions in Windsor and Obergefell. Two of them dissented in the recent case re-interpreting the 1964 Civil Rights Act. More broadly, would any conservative be allowed to participate unless he or she abandoned his or her conservatism? Perhaps all of these opinions disqualify someone from sitting on an Advisory Board. If they do, it may be hard to justify continued government support for a strictly partisan organ.

Sincerely,
Scott Yenor

AMERICAN OVERSIGHT

RE: March 19th Business Meeting Agenda Posting

Mauro Morales

Thu 3/11/2021 8:45 PM

To: Alexander Heideman <aheideman@usccr.gov>;

Cc: Carissa Mulder <CMulder@usccr.gov>; Peter Kirsanow <pkirsanow@usccr.gov>; Gail Heriot <gheriot@usccr.gov>; Norma Cantu <ncantu@usccr.gov>; Michael Yaki <MYaki@usccr.gov>; Commissioners <Commissioners@usccr.gov>; CommissionerAssistants <CommissionerAssistants@usccr.gov>; ExecutiveStaff <ExecutiveStaff@usccr.gov>;

Alex,

You are welcome. I was not aware of agreements you mentioned between Commissioners. I now understand that you are serving as the representative for all Commissioners on the negotiations for the March 19th agenda. The posting of the agenda today was required for notice under the requirements of the Sunshine Act in order for the Commission to meet on the 19th. As I reminded Commissioners in my email, at the commencement of the meeting the agenda may be amended by the majority through a voice or roll call vote. Commissioners have the ability to remove or add items for consideration. If the desire of Commissioners is to create an omnibus motion containing a number of MOU's and AI's it can be done by a majority vote. I would recommend that the omnibus motion be read into the record to create a clear transcript of what Commissioners are voting to accomplish. AI's will need prior approval of the General Counsel to ensure legality and compliance with Commission procedures.

A joint chairmanship to conduct the meeting would be extraordinary and outside my six year experience serving as the staff director. I am unsure why you would not simplify the process by voting Commissioner Cantu into the Chair at the beginning of the meeting as requested by the President and thereby allowing her to conduct the business meeting as is the regular process for the Commission. However, if the Commissioners wish to a conduct a business meeting with two Commissioners acting as a joint Chair, I will have the GC look into how it can be accomplished. Lastly, there is no AI or statute that "requires" Commissioner Cantu's appointment to be listed first on the business meeting agenda. It is highly irregular and disruptive to operate the Commission without a Chair as you have witnessed in the past weeks. Listing the motion first on the agenda for a vote on the Chairmanship was done as a matter of respect to Commissioner Cantu, to honor the request of the President and as a practical way to undertake the work of the Commission. If the majority of Commissioners desire another process to commence the meeting on the 19th we will do our best to honor their wishes. I have cc'd all Commissioners, all SA's and the agency executive staff for transparency and to be prepared to take steps to carry out commissioner requests. I look forward to hearing from you and reviewing your MOU's and AI's as negotiated and deemed acceptable to Commissioners.

Mauro Morales
Staff Director
USCCR

From: Alexander Heideman <aheideman@usccr.gov>
Sent: Thursday, March 11, 2021 6:29 PMCom
To: Mauro Morales <mmorales@usccr.gov>
Cc: Carissa Mulder <CMulder@usccr.gov>; Peter Kirsanow <pkirsanow@usccr.gov>; Gail Heriot <gheriot@usccr.gov>; Norma Cantu <ncantu@usccr.gov>; Michael Yaki <MYaki@usccr.gov>
Subject: Re: March 19th Business Meeting Agenda Posting

Dear Mauro:

AMERICAN OVERSIGHT

Thank you for sending the meeting agenda for next Friday.

It is our understanding that several Commissioners agreed to allow Commissioners Yaki and Kirsanow to co-chair the start of the business meeting. Furthermore, it is our understanding that several Commissioners agreed for the agenda to list first an omnibus motion that would include President Biden's appointment of Commissioner Cantú as chairperson as well as several MOUs and AIs. All this assumes that the pre-meeting negotiations over exact wording go well (and we anticipate that they will).

On the other hand, we are unaware of any AI or statute that *requires* Commissioner Cantú's appointment to be listed first on a business-meeting agenda. If your position is different, then please provide us with the citation to the appropriate authority.

Sincerely,

Alex

Alexander M. Heideman
Special Assistant/Counsel to Commissioner Gail Heriot
U.S. Commission on Civil Rights
1331 Pennsylvania Avenue NW, Suite 1150
Washington DC 20425
aheideman@usccr.gov

From: Mauro Morales <mmorales@usccr.gov>
Date: Thursday, March 11, 2021 at 4:52 PM
To: Commissioners <Commissioners@usccr.gov>
Cc: CommissionerAssistants <CommissionerAssistants@usccr.gov>, ExecutiveStaff <ExecutiveStaff@usccr.gov>
Subject: March 19th Business Meeting Agenda Posting

Commissioners,

I have attached the hyperlink to the agenda for the March 19th Commission Business Meeting. As you are aware, Commissioners agreed to schedule this business meeting on September 11th , 2020 by a unanimous vote. In order to meet requirements for compliance with the Sunshine Act, the notice had to be posted today. Commissioner Cantu was consulted in creation of the agenda and it was developed pursuant to previous and ongoing communications she had with other Commissioners. The very first order of business must be the vote on President Biden's designation of Commissioner Cantu to become Commission Chair. I defer to Commissioners as to who they want to make the motion to vote on her Chairmanship. After the vote occurs and in anticipation of Commissioner Cantu becoming Chair, she can then run the rest of the business meeting as Chair. A motion to adopt or amend the agenda would be in order after she becomes Chair. I understand that there are ongoing discussions to potentially add items for Commissioner discussion and votes. As always, Commissioners may amend the agenda to add or remove items with a majority voice or roll call vote of Commissioners. Items not ready for consideration at that time may be deferred to the next business meeting scheduled for April if necessary.
https://www.usccr.gov/files/2021/03-19-Business-Meeting-Agenda-Sunshine-Act-Notice.pdf

Commissioner folders will be populated with relevant information on Friday and during the week leading up to the business meeting. In addition, you will receive the telephone conference call number that will enable you to join and speak during the meeting.

Please contact me if you have any questions.

AMERICAN OVERSIGHT

Mauro Morales
Staff Director
U.S. Commission on Civil Rights
P: 202-376-7796| F: 202-376-7672
Mmorales@usccr.gov
http://usccr.gov/
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425

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Date : 3/16/2021 10:52:57 AM
From : "Norma V. Cantú" normavcantu@gmail.com
To : "Gail Heriot" gheriot@usccr.gov
Cc : "Norma Cantu" ncantu@usccr.gov, "Michael Yaki" MYaki@usccr.gov, "Peter Kirsanow" pkirsanow@usccr.gov
Subject : [EXTERNAL] Re: My notes from yesterday's working group on topics related to Vote on Commissioner--No quorum & no decisions made.

CAUTION: This email is from outside USCCR.

Dear Gail,
I totally understand.
Let me check with Michael's schedule.
Norma

On Mon, Mar 15, 2021 at 5:11 PM Gail Heriot <gheriot@usccr.gov> wrote:

> Hi Norma—I apologize for being slow on this project. I have been swamped. But I really do want to get this done. I still haven't read what the SAs produced. Nevertheless, we need to schedule at least one more meeting (and probably two) if we want to get this done by the end of the week.
>
> I will likely have a little time tomorrow, but I will have no time at all on Wednesday. On Thursday, I will have lots of time. If we want to play it safe we probably need to at least confer briefly on Tuesday and be prepared to complete everything on Thursday.
>
> Gail
>
> Gail Heriot
> Professor of Law
> University of San Diego
>
> > On Mar 12, 2021, at 8:19 AM, Norma Cantu <ncantu@usccr.gov> wrote:
> >
> > 1. Language on 30/30/10 for rebuttals and surrebuttals-Gail-vehicle AI
> > 2. Language on bipartisan nominations to Elect.Adv.Council at end of June 2021. Appointments to EAC will be made by Commission as a whole, with a majority vote. Proposed that Dem.Caucus nominates 2 people for one slot and R+I Caucus chooses the appointee. R+I Caucus nominates 2 people for one slot and Dem. caucus chooses the appointee. In future nominations to external agencies, the Chair will consult with

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the whole Commission before communicating any nominations. Vehicle-motion from floor at mtg. on March 19

3. Canceling the Chair's speakers series. Vehicle-email from Norma Cantu to Commissioners.
4. Already have language that half of State Adv. Council slots will be Dem. and half Rep. Need to add language on each Commissioners' Caucus will take ____days to nominate and vet new members of State Adv. Councils. At end of ___ days, the staff are expected to provide assistance in recruiting and vetting people to fill vacancies. Staff nominations take no longer than ____days. All nominations by Commissioners and staff come back to the full Commissioner for a discussion and vote to approve new members. Vehicle-motion from floor at mtg. on March 19.
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6. Chair proposes agenda for Commissioners' meeting, with Commissioners having ability to propose to amend agenda before meeting and also at the beginning the meeting, subject to majority vote. Vehicle-AI
7. A majority of Commissioners is needed to cancel a called Commissioner meeting. Vehicle-AI
8. Proposed by Norma, in absence of Chair available to moderate the meeting, the most senior Dem. and Rep. Commissioners will alternate chairing meetings. Vehicle-AI or memo. of understanding
9. Language that any Commissioner from each Caucus may sit in on OCRE interviews provided the Commissioner's request to attend does not cause a scheduling delay. Vehicle?
10. Memorial/obits require a majority vote of the Commission and the proposed language for the memorial shall be circulated to all the Commissioners. Vehicle-AI

AMERICAN OVERSIGHT

Date : 3/16/2021 3:07:16 PM
From : "Michael Yaki" MYaki@usccr.gov
To : "Norma V. Cantú" normavcantu@gmail.com, "Gail Heriot" gheriot@usccr.gov
Cc : "Norma Cantu" ncantu@usccr.gov, "Peter Kirsanow" pkirsanow@usccr.gov
Subject : Re: [EXTERNAL] Re: My notes from yesterday's working group on topics related to Vote on Commissioner--No quorum & no decisions made.

Gail -

Until we have some language to look at, I'm pretty full up today. But if you have anything you want to bounce off me, send it here AND to commissioner.yaki@gmail.com, and we can revert back and forth that way

---

From: Norma V. Cantú <normavcantu@gmail.com>
Sent: Tuesday, March 16, 2021 10:52:42 AM
To: Gail Heriot
Cc: Norma Cantu; Michael Yaki; Peter Kirsanow
Subject: [EXTERNAL] Re: My notes from yesterday's working group on topics related to Vote on Commissioner--No quorum & no decisions made.

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> I will likely have a little time tomorrow, but I will have no time at all on Wednesday. On Thursday, I will have lots of time. If we want to play it safe we probably need to at least confer briefly on Tuesday and be prepared to complete everything on Thursday.
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> Gail
>
> Gail Heriot
> Professor of Law
> University of San Diego

AMERICAN OVERSIGHT

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AMERICAN OVERSIGHT

10. Memorial/obits require a majority vote of the Commission and the proposed language for the memorial shall be circulated to all the Commissioners. Vehicle-AI

AMERICAN OVERSIGHT

Date : 3/16/2021 7:07:12 PM
From : "Gail Heriot" gheriot@usccr.gov
To : "Michael Yaki" MYaki@usccr.gov, "Michael Yaki" commissioner.yaki@gmail.com, "Peter Kirsanow" pkirsanow@beneschlaw.com
Cc : "Norma V. Cantú" normavcantu@gmail.com, "Norma Cantu" ncantu@usccr.gov, "Peter Kirsanow" pkirsanow@usccr.gov
Subject : Re: [EXTERNAL] Re: My notes from yesterday's working group on topics related to Vote on Commissioner--No quorum & no decisions made.

Dear Norma, Pete and Michael—

In just a little while, I will send a few of the documents the conservatives SAs sent me that attempt to memorialize the various pieces of our tentative agreement. They came up with a lot more ... uh ... words than I thought they would. I still haven't read through it all.

The SAs (and Christian and Stephen) are very concerned that our "book" of AIs is a mess. New AIs haven't always been integrated into the book in the right place. AIs that have been superseded by newer AIs haven't been deleted. Long since abandoned procedures are sometimes still in the book. So they've attempted a little clean up as they memorialize our tentative agreement

As I get a chance to read and digest what they've proposed, I will send more on to you. But let me get at least some of it out to you in the next few minutes.

Gail

Gail Heriot
Professor of Law
University of San Diego

> On Mar 16, 2021, at 12:07 PM, Michael Yaki <MYaki@usccr.gov> wrote:
>
> Gail -
>
> Until we have some language to look at, I'm pretty full up today. But if you have anything you want to bounce off me, send it here AND to commissioner.yaki@gmail.com, and we can revert back and forth that way

---

AMERICAN OVERSIGHT

From: Norma V. Cantú <normavcantu@gmail.com>
Sent: Tuesday, March 16, 2021 10:52:42 AM
To: Gail Heriot
Cc: Norma Cantu; Michael Yaki; Peter Kirsanow
Subject: [EXTERNAL] Re: My notes from yesterday's working group on topics related to Vote on Commissioner--No quorum & no decisions made.

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AMERICAN OVERSIGHT

Date : 3/17/2021 1:27:03 PM
From : "Alexander Heideman" aheideman@usccr.gov
To : "Gail Heriot" gheriot@usccr.gov, "Carissa Mulder" carissa.mulder@gmail.com, "Alexander Heideman" alexanderheideman@gmail.com, "Carissa Mulder" CMulder@usccr.gov
Subject : Re: My notes from yesterday's working group on topics related to Vote on Commissioner--No quorum & no decisions made.

That seems fine to me.

From: Gail Heriot <gheriot@usccr.gov>
Date: Wednesday, March 17, 2021 at 1:25 PM
To: Carissa Mulder <carissa.mulder@gmail.com>, Alexander Heideman <alexanderheideman@gmail.com>, Carissa Mulder <CMulder@usccr.gov>, Alexander Heideman <aheideman@usccr.gov>
Subject: Re: My notes from yesterday's working group on topics related to Vote on Commissioner--No quorum & no decisions made.

Do either of you have any objections to the language Yaki has proposed re Roberts Rules?

Gail Heriot
Professor of Law
University of San Diego

> On Mar 15, 2021, at 3:48 PM, Michael Yaki <MYaki@usccr.gov> wrote:
>
> Here's the Robert's Rules cite from the Election Assistance Commission which could be helpful:
>
> Parliamentary Authority
> The rules contained in the current edition of Robert's Rules of Order Newly Revised shall govern Commission activities in all cases to which they are applicable and in which they are not inconsistent with any AIs and any special rules of order the Commission may adopt.
>
> ---
>
> **From:** Gail Heriot
> **Sent:** Monday, March 15, 2021 6:11:44 PM
> **To:** Norma Cantu; Norma Cantú
> **Cc:** Michael Yaki; Peter Kirsanow
> **Subject:** Re: My notes from yesterday's working group on topics related to Vote on Commissioner--No quorum & no decisions made.

AMERICAN OVERSIGHT

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Gail

Gail Heriot
Professor of Law
University of San Diego

On Mar 12, 2021, at 8:19 AM, Norma Cantu <ncantu@usccr.gov> wrote:

1. Language on 30/30/10 for rebuttals and surrebuttals-Gail-vehicle AI
2. Language on bipartisan nominations to Elect.Adv.Council at end of June 2021. Appointments to EAC will be made by Commission as a whole, with a majority vote. Proposed that Dem.Caucus nominates 2 people for one slot and R +I Caucus chooses the appointee. R+I Caucus nominates 2 people for one slot and Dem. caucus chooses the appointee. In future nominations to external agencies, the Chair will consult with the whole Commission before communicating any nominations. Vehicle-motion from floor at mtg. on March 19
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AMERICAN OVERSIGHT

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AMERICAN OVERSIGHT

Date : 3/17/2021 1:25:21 PM
From : "Gail Heriot" gheriot@usccr.gov
To : "Carissa Mulder" carissa.mulder@gmail.com, "Alexander Heideman" alexanderheideman@gmail.com, "Carissa Mulder" CMulder@usccr.gov, "Alexander Heideman" aheideman@usccr.gov
Subject : Re: My notes from yesterday's working group on topics related to Vote on Commissioner--No quorum & no decisions made.

Do either of you have any objections to the language Yaki has proposed re Roberts Rules?

Gail Heriot
Professor of Law
University of San Diego

> On Mar 15, 2021, at 3:48 PM, Michael Yaki <MYaki@usccr.gov> wrote:
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> Here's the Robert's Rules cite from the Election Assistance Commission which could be helpful:
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> Parliamentary Authority
> The rules contained in the current edition of Robert's Rules of Order Newly Revised shall govern Commission activities in all cases to which they are applicable and in which they are not inconsistent with any AIs and any special rules of order the Commission may adopt.
>
> ---
>
> **From:** Gail Heriot
> **Sent:** Monday, March 15, 2021 6:11:44 PM
> **To:** Norma Cantu; Norma Cantú
> **Cc:** Michael Yaki; Peter Kirsanow
> **Subject:** Re: My notes from yesterday's working group on topics related to Vote on Commissioner--No quorum & no decisions made.
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AMERICAN OVERSIGHT

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AMERICAN OVERSIGHT

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AMERICAN OVERSIGHT

Date : 3/17/2021 1:27:22 PM
From : "Carissa Mulder" carissa.mulder@gmail.com
To : "Gail Heriot" gheriot@usccr.gov
Cc : "Alexander Heideman" alexanderheideman@gmail.com, "Carissa Mulder" CMulder@usccr.gov, "Alexander Heideman" aheideman@usccr.gov
Subject : [EXTERNAL] Re: My notes from yesterday's working group on topics related to Vote on Commissioner--No quorum & no decisions made.

CAUTION: This email is from outside USCCR.

It looks good to me.

On Wed, Mar 17, 2021 at 1:25 PM Gail Heriot <gheriot@usccr.gov> wrote:

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AMERICAN OVERSIGHT

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AMERICAN OVERSIGHT

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--
Carissa B. Mulder

AMERICAN OVERSIGHT

Date : 3/17/2021 3:16:41 PM
From : "Norma Cantu" ncantu@usccr.gov
To : "michael@michaelyaki.com" michael@michaelyaki.com, "Michael Yaki" MYaki@usccr.gov
Subject : Draft that includes the last paragraph.

Draft2
Dear Commissioners Heriot and Kirsanow,
It appears that your colleagues are adding new items to the list of requests. I am disappointed because we have already come close to running out of time for the 8, now 9, now 10 items on your Caucus's list of requests.
Item #1. We will not be able to change or add any Ais by Friday's meeting. I will ask for a Commissioner to offer a motion for vote in favor of continuing the current practice and policy of Commissioners. The language might go into an AI later but we have run out of time.
Item #2. I will ask for a Commissioner to offer a motion for a vote regarding the EAC Board of Advisors only. There are no other appointments pending and the vote on other bodies would be speculative.
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Item #6 We already have a rule in 7.01.11c that any Commissioner may make a motion at the beginning of a called meeting to add items to the agenda so I do not agree an AI would be needed to make amendments to the agenda before the meeting, even if we had time to write one by Friday. If we adopt Robert's Rules, this question would be answered.
Item #7 On the request that a majority of Commissioners is needed to cancel a meeting, this would impeded our ability to cancel meetings if conditions such as the Texas Ice Storm of 2021 were to cut WIFI. We need more discussion and we are out of time.
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To summarize, I know Gail can't free herself up today. If we-Gail, Peter, Norma and Michael- worked on it tonight or tomorrow, we might get Items without Ais

AMERICAN OVERSIGHT

done for votes on Friday. By this, I mean Items 1, 2, 3, and 5.

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Norma

AMERICAN OVERSIGHT

Date : 3/17/2021 1:36:16 PM
From : "Gail Heriot" gheriot@usccr.gov
To : "Michael Yaki" MYaki@usccr.gov
Cc : "Norma Cantu" ncantu@usccr.gov, "Norma Cantú" normavcantu@gmail.com, "Peter Kirsanow" pkirsanow@usccr.gov
Subject : Re: My notes from yesterday's working group on topics related to Vote on Commissioner--No quorum & no decisions made.

This language would be fine with me.

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Professor of Law
University of San Diego

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AMERICAN OVERSIGHT

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AMERICAN OVERSIGHT

Date : 3/17/2021 3:34:45 PM
From : "michael@michaelyaki.com" michael@michaelyaki.com
To : "'Norma Cantu'" ncantu@usccr.gov
Subject : [EXTERNAL] RE: Draft that includes the last paragraph.

CAUTION: This email is from outside USCCR.

Go for it

Thanks!
Michael

MICHAEL YAKI CONSULTING

This email and any files or attachments transmitted with it may contain privileged or otherwise confidential information. If you are not the intended recipient, or believe that you may have received this communication in error, please advise the sender via reply email and immediately delete the email you received.

From: Norma Cantu <ncantu@usccr.gov>
Sent: Wednesday, March 17, 2021 12:17 PM
To: michael@michaelyaki.com; Michael Yaki <MYaki@usccr.gov>
Subject: Draft that includes the last paragraph.

Draft2
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AMERICAN OVERSIGHT

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Norma

AMERICAN OVERSIGHT

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From : "Gail Heriot" gheriot@usccr.gov
To : "Norma Cantu" ncantu@usccr.gov, "Norma Cantú" normavcantu@gmail.com, "Michael Yaki" commissioner.yaki@gmail.com, "Michael Yaki" MYaki@usccr.gov, "Peter Kirsanow" pkirsanow@usccr.gov
Cc : "Kirsanow, Peter" pkirsanow@beneschlaw.com, "MICHAEL@michaelyaki.com" MICHAEL@michaelyaki.com
Subject : Re: Response to today's emails from Commissioner Heriot--Thank you

Hi Norma—Yes, it's okay with me if you want to cancel the Friday meeting. It's a good idea.

And you were right about the OCRE meetings. We were talking about content interviews, not job interviews. If you want to meet to iron this stuff out on Thursday and/or Friday, that works fine with me. We can get this done.

More later ...

Gail

Gail Heriot
Professor of Law
University of San Diego

> On Mar 17, 2021, at 1:24 PM, Norma Cantu <ncantu@usccr.gov> wrote:
>
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AMERICAN OVERSIGHT

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Norma

Cell 210 380 6380

AMERICAN OVERSIGHT

Date : 3/17/2021 5:12:02 PM
From : "Carissa Mulder" carissa.mulder@gmail.com
To : "Gail Heriot" gheriot@usccr.gov
Cc : "Carissa Mulder" CMulder@usccr.gov, "Alexander Heideman" aheideman@usccr.gov, "Alexander Heideman" alexanderheideman@gmail.com, "Peter Kirsanow" pkirsanow@usccr.gov, "Peter Kirsanow" pkirsanow@beneschlaw.com
Subject : [EXTERNAL] Re: Response to today's emails from Commissioner Heriot--Thank you

CAUTION: This email is from outside USCCR.

Hi Gail,

The short version is that Norma is pushing back on everything substantive, does not want these to go into AIs or MOUs ("I will gladly pay you tomorrow if you give me a hamburger today"), and says that her caucus wants our caucus to make concessions for these things. Apparently they still do not understand that the concession is that Norma becomes chair. Because of that, she wants to cancel the Friday business meeting and use that as a time for the working group to discuss these things.

Pete is not happy about this and he thinks this takes the pressure off them, but he doesn't want to do anything that pushes them into removing Christian or Stephen. He says he is willing to postpone the meeting for one week so the Sunshine Act notice can be published and so you can hold a meeting next Friday. Pete, one thought that occurred to me after we got off the phone - I don't know that they will agree to that. They may say that the scheduled April 16th meeting is soon enough.

On Wed, Mar 17, 2021 at 4:56 PM Gail Heriot <gheriot@usccr.gov> wrote:

> I don’t have time even to read this. Take a look.
>
> Gail Heriot
> Professor of Law
> University of San Diego
>
> Begin forwarded message:
>
> **From:** Norma Cantu <ncantu@usccr.gov>
> **Date:** March 17, 2021 at 1:24:01 PM PDT
> **To:** Gail Heriot <gheriot@usccr.gov>, "Kirsanow, Peter" <pkirsanow@beneschlaw.com>, MICHAEL@michaelyaki.com
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AMERICAN OVERSIGHT

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AMERICAN OVERSIGHT

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Norma

Cell 210 380 6380

--
Carissa B. Mulder

AMERICAN OVERSIGHT

Date : 3/17/2021 5:32:06 PM
From : "Kirsanow, Peter" pkirsanow@Beneschlaw.com
To : "Alexander Heideman" aheideman@usccr.gov, "Gail Heriot" gheriot@usccr.gov, "Carissa Mulder" carissa.mulder@gmail.com
Cc : "Carissa Mulder" CMulder@usccr.gov, "Alexander Heideman" alexanderheideman@gmail.com, "Peter Kirsanow" pkirsanow@usccr.gov
Subject : RE: [EXTERNAL] Re: Response to today's emails from Commissioner Heriot--Thank you

> CAUTION: This email is from outside USCCR.

I thought this was proceeding relatively well until now. Carissa, can you ask our caucus if they can make a Zoom call tomorrow afternoon after 3 EDT to briefly discuss?

From: Alexander Heideman <aheideman@usccr.gov>
Sent: Wednesday, March 17, 2021 5:23 PM
To: Gail Heriot <gheriot@usccr.gov>; Carissa Mulder <carissa.mulder@gmail.com>
Cc: Carissa Mulder <CMulder@usccr.gov>; Alexander Heideman <alexanderheideman@gmail.com>; Peter Kirsanow <pkirsanow@usccr.gov>; Kirsanow, Peter <pkirsanow@Beneschlaw.com>
Subject: Re: [EXTERNAL] Re: Response to today's emails from Commissioner Heriot--Thank you

***** External E-Mail - Use Caution *****

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This no longer feels like good-faith negotiations.

I'm also alarmed at the prospect of another Vice Chair nomination.

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Date: Wednesday, March 17, 2021 at 5:16 PM
To: Carissa Mulder <carissa.mulder@gmail.com>
Cc: Carissa Mulder <CMulder@usccr.gov>, Alexander Heideman <aheideman@usccr.gov>, Alexander Heideman <alexanderheideman@gmail.com>, Peter Kirsanow <pkirsanow@usccr.gov>, Peter Kirsanow <pkirsanow@beneschlaw.com>
Subject: Re: [EXTERNAL] Re: Response to today's emails from Commissioner Heriot--Thank you

AMERICAN OVERSIGHT

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> > > **Date:** March 17, 2021 at 1:24:01 PM PDT
> > > >, MICHAEL@michaelyaki.com
> > > **Cc:** Norma Cantu <ncantu@usccr.gov>
> > > **Subject: Response to today's emails from Commissioner**

AMERICAN OVERSIGHT

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AMERICAN OVERSIGHT

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Norma

Cell 210 380 6380

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Carissa B. Mulder

AMERICAN OVERSIGHT

Date : 3/17/2021 5:30:54 PM
From : "Carissa Mulder" carissa.mulder@gmail.com
To : "Gail Heriot" gheriot@usccr.gov
Cc : "Alexander Heideman" aheideman@usccr.gov, "Carissa Mulder" CMulder@usccr.gov, "Alexander Heideman" alexanderheideman@gmail.com, "Peter Kirsanow" pkirsanow@usccr.gov, "Peter Kirsanow" pkirsanow@beneschlaw.com
Subject : Re: [EXTERNAL] Re: Response to today's emails from Commissioner Heriot--Thank you

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I don't think she honestly thinks we were talking about job interviews. The entire section it is in is about OCRE and project planning. And she says, "This was added last week by Heriot and Kirsanow. I thought you were talking about content interviews, but realized you might be talking about job interviews. In either event, the Commission should not attend interviews so as to preserve the objectivity of the process and not bring in partisanship."

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AMERICAN OVERSIGHT

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Cell 210 380 6380

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Carissa B. Mulder

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Carissa B. Mulder

AMERICAN OVERSIGHT

Date : 3/17/2021 5:16:04 PM
From : "Gail Heriot" gheriot@usccr.gov
To : "Carissa Mulder" carissa.mulder@gmail.com
Cc : "Carissa Mulder" CMulder@usccr.gov, "Alexander Heideman" aheideman@usccr.gov, "Alexander Heideman" alexanderheideman@gmail.com, "Peter Kirsanow" pkirsanow@usccr.gov, "Peter Kirsanow" pkirsanow@beneschlaw.com
Subject : Re: [EXTERNAL] Re: Response to today's emails from Commissioner Heriot--Thank you

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> **Date:** March 17, 2021 at 1:24:01 PM PDT
> **To:** Gail Heriot <gheriot@usccr.gov>, "Kirsanow, Peter" <pkirsanow@beneschlaw.com>, MICHAEL@michaelyaki.com
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Item #10 I just saw it today and we don't have time for new items for Friday's meeting.

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Norma

Cell 210 380 6380

--
Carissa B. Mulder

AMERICAN OVERSIGHT

Date : 3/17/2021 4:56:42 PM
From : "Gail Heriot" gheriot@usccr.gov
To : "Carissa Mulder" CMulder@usccr.gov, "Carissa Mulder" carissa.mulder@gmail.com, "Alexander Heideman" aheideman@usccr.gov, "Alexander Heideman" alexanderheideman@gmail.com, "Peter Kirsanow" pkirsanow@usccr.gov, "Peter Kirsanow" pkirsanow@beneschlaw.com
Subject : Fwd: Response to today's emails from Commissioner Heriot--Thank you

I don't have time even to read this. Take a look.

Gail Heriot
Professor of Law
University of San Diego

Begin forwarded message:

From: Norma Cantu <ncantu@usccr.gov>
Date: March 17, 2021 at 1:24:01 PM PDT
To: Gail Heriot <gheriot@usccr.gov>, "Kirsanow, Peter" <pkirsanow@beneschlaw.com>, MICHAEL@michaelyaki.com
Cc: Norma Cantu <ncantu@usccr.gov>
Subject: Response to today's emails from Commissioner Heriot--Thank you

Dear Commissioners Heriot and Kirsanow,
It appears that your colleagues are adding new items to the list of requests. I am disappointed because we have already come close to running out of time for the 8, now 9, now 10 items on your Caucus's list of requests.
Item #1. We will not be able to change or add any Ais by Friday's meeting. I will ask for a Commissioner to offer a motion for vote in favor of continuing the current practice and policy of Commissioners. The language might go into an AI later but we have run out of time.
Item #2. I will ask for a Commissioner to offer a motion for a vote regarding the EAC Board of Advisors only. There are no other appointments pending and the vote on other bodies would be speculative.
Item #3. I have already offered to send you an email canceling the Speaker's series, once I am elected Chair. There is no need for an MOU. MOUs are for agreements between agencies, not within agencies.
Item #4. I still do not understand the problems about recruiting and vetting proposed members to the State Advisory Council. We will need a fuller discussion of why there appears to be a lag in numbers of Republicans in the nomination pools. We already have AI 59 Section 5 and Section 7.08 that require bipartisan participation on the SACs.
Item #5 I have no objection to using Robert's Rules provided we are using the same versions (there have been updates). I suggest a Commissioner offer a motion on this. I cannot agree on the AI's overruling Robert's Rules until I have read the "book" of Ais. Otherwise, I would not be performing my due diligence.

AMERICAN OVERSIGHT

Item #6 We already have a rule in 7.01.11c that any Commissioner may make a motion at the beginning of a called meeting to add items to the agenda so I do not agree an AI would be needed to make amendments to the agenda before the meeting, even if we had time to write one by Friday. If we adopt Robert's Rules, this question would be answered.
Item #7 On the request that a majority of Commissioners is needed to cancel a meeting, this would impeded our ability to cancel meetings if conditions such as the Texas Ice Storm of 2021 were to cut WIFI. We need more discussion and we are out of time.
Item #8. We should wait on the item regarding the absence of the Chair because I understand the Office of Presidential Personnel is working nominating a Vice Chair, subject to the Commission's vote.
Item #9 This was added last week by Heriot and Kirsanow. I thought you were talking about content interviews, but realized you might be talking about job interviews. In either event, the Commission should not attend interviews so as to preserve the objectivity of the process and not bring in partisanship.
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To summarize, I know Gail can't free herself up today. If we-Gail, Peter, Norma and Michael- worked on it tonight or tomorrow, we might get Items without Ais done for votes on Friday. By this, I mean Items 1, 2, 3, and 5.

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Norma

Cell 210 380 6380

AMERICAN OVERSIGHT

Date : 3/17/2021 5:22:31 PM
From : "Alexander Heideman" aheideman@usccr.gov
To : "Gail Heriot" gheriot@usccr.gov, "Carissa Mulder" carissa.mulder@gmail.com
Cc : "Carissa Mulder" CMulder@usccr.gov, "Alexander Heideman" alexanderheideman@gmail.com, "Peter Kirsanow" pkirsanow@usccr.gov, "Peter Kirsanow" pkirsanow@beneschlaw.com
Subject : Re: [EXTERNAL] Re: Response to today's emails from Commissioner Heriot--Thank you

I don't understand why she's pushing back on the MOUs… And her assertion regarding interviews is ludicrous ("the Commission should not attend interviews so as to preserve the objectivity of the process and not bring in partisanship").

This no longer feels like good-faith negotiations.

I'm also alarmed at the prospect of another Vice Chair nomination.

From: Gail Heriot <gheriot@usccr.gov>
Date: Wednesday, March 17, 2021 at 5:16 PM
To: Carissa Mulder <carissa.mulder@gmail.com>
Cc: Carissa Mulder <CMulder@usccr.gov>, Alexander Heideman <aheideman@usccr.gov>, Alexander Heideman <alexanderheideman@gmail.com>, Peter Kirsanow <pkirsanow@usccr.gov>, Peter Kirsanow <pkirsanow@beneschlaw.com>
Subject: Re: [EXTERNAL] Re: Response to today's emails from Commissioner Heriot--Thank you

I have a doctor's appointment and a faculty meeting and several other things on my schedule for next week. I am perfectly happy cancelling the meeting for this Friday—even delighted. I have too many things to do. I am perfectly happy putting this off till April 16th.

Gail Heriot
Professor of Law
University of San Diego

> On Mar 17, 2021, at 2:12 PM, Carissa Mulder <carissa.mulder@gmail.com> wrote:
>
> > CAUTION: This email is from outside USCCR.

AMERICAN OVERSIGHT

The short version is that Norma is pushing back on everything substantive, does not want these to go into AIs or MOUs ("I will gladly pay you tomorrow if you give me a hamburger today"), and says that her caucus wants our caucus to make concessions for these things. Apparently they still do not understand that the concession is that Norma becomes chair. Because of that, she wants to cancel the Friday business meeting and use that as a time for the working group to discuss these things.

Pete is not happy about this and he thinks this takes the pressure off them, but he doesn't want to do anything that pushes them into removing Christian or Stephen. He says he is willing to postpone the meeting for one week so the Sunshine Act notice can be published and so you can hold a meeting next Friday. Pete, one thought that occurred to me after we got off the phone - I don't know that they will agree to that. They may say that the scheduled April 16th meeting is soon enough.

On Wed, Mar 17, 2021 at 4:56 PM Gail Heriot <gheriot@usccr.gov> wrote:

> I don't have time even to read this. Take a look.
>
> Gail Heriot
> Professor of Law
> University of San Diego
>
> Begin forwarded message:
>
> **From:** Norma Cantu <ncantu@usccr.gov>
> **Date:** March 17, 2021 at 1:24:01 PM PDT
> >, MICHAEL@michaelyaki.com
> **Cc:** Norma Cantu <ncantu@usccr.gov>
> **Subject: Response to today's emails from Commissioner Heriot--Thank you**
>
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AMERICAN OVERSIGHT

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Item #5 I have no objection to using Robert's Rules provided we are using the same versions (there have been updates). I suggest a Commissioner offer a motion on this. I cannot agree on the AI's overruling Robert's Rules until I have read the "book" of Ais. Otherwise, I would not be performing my due diligence.
Item #6 We already have a rule in 7.01.11c that any Commissioner may make a motion at the beginning of a called meeting to add items to the agenda so I do not agree an AI would be needed to make amendments to the agenda before the meeting, even if we had time to write one by Friday. If we adopt Robert's Rules, this question would be answered.
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AMERICAN OVERSIGHT

Norma

Cell 210 380 6380

--
Carissa B. Mulder

AMERICAN OVERSIGHT

Date : 3/17/2021 5:31:35 PM
From : "Gail Heriot" gheriot@usccr.gov
To : "Carissa Mulder" carissa.mulder@gmail.com
Cc : "Carissa Mulder" CMulder@usccr.gov, "Alexander Heideman" aheideman@usccr.gov, "Alexander Heideman" alexanderheideman@gmail.com, "Peter Kirsanow" pkirsanow@usccr.gov, "Peter Kirsanow" pkirsanow@beneschlaw.com
Subject : Re: [EXTERNAL] Re: Response to today's emails from Commissioner Heriot--Thank you

Pete—Can I tell Norma that it's okay to cancel Friday? It actually makes my life easier to be able to do so. I would still like to meet with Norma and Michael Thursday or Friday.

Gail

Gail Heriot
Professor of Law
University of San Diego

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>
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AMERICAN OVERSIGHT

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AMERICAN OVERSIGHT

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AMERICAN OVERSIGHT

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AMERICAN OVERSIGHT

Norma

Cell 210 380 6380

--
Carissa B. Mulder

AMERICAN OVERSIGHT

Date : 3/18/2021 12:03:58 PM
From : "Alexander Heideman" aheideman@usccr.gov
To : "John Mashburn" jmashburn@usccr.gov, "Carissa Mulder" CMulder@usccr.gov, "Thomas Simuel" tsimuel@usccr.gov
Cc : "John Mashburn" jkmash@comcast.net, "Carissa Mulder" carissa.mulder@gmail.com, "Thomas Simuel" tjsimuel32@gmail.com, "Alexander Heideman" alexanderheideman@gmail.com
Subject : Re: Is this the corresponding 10-point list?

Full context:

From: Norma Cantu <ncantu@usccr.gov>
Date: March 12, 2021 at 8:19:25 AM PST
To: Gail Heriot <gheriot@usccr.gov>, Michael Yaki <MYaki@usccr.gov>, Peter Kirsanow <pkirsanow@usccr.gov>
Subject: My notes from yesterday's working group on topics related to Vote on Commissioner--No quorum & no decisions made.

1. Language on 30/30/10 for rebuttals and surrebuttals-Gail-vehicle AI
2. Language on bipartisan nominations to Elect.Adv.Council at end of June 2021. Appointments to EAC will be made by Commission as a whole, with a majority vote. Proposed that Dem.Caucus nominates 2 people for one slot and R+I Caucus chooses the appointee. R+I Caucus nominates 2 people for one slot and Dem. caucus chooses the appointee. In future nominations to external agencies, the Chair will consult with the whole Commission before communicating any nominations. Vehicle-motion from floor at mtg. on March 19
3. Canceling the Chair's speakers series. Vehicle-email from Norma Cantu to Commissioners.
4. Already have language that half of State Adv. Council slots will be Dem. and half Rep. Need to add language on each Commissioners' Caucus will take ____days to nominate and vet new members of State Adv. Councils. At end of ___ days, the staff are expected to provide assistance in recruiting and vetting people to fill vacancies. Staff nominations take no longer than ____days. All nominations by Commissioners and staff come back to the full Commissioner for a discussion and vote to approve new members. Vehicle-motion from floor at mtg. on March 19.
5. Language about agreeing that AIs, as more specific agreements, govern process of Commissioners; in absence of relevant AI, Commissioners will apply Roberts' Rules of Order. Vehicle-Memo of Understanding approved by majority of Commissioners.
6. Chair proposes agenda for Commissioners' meeting, with Commissioners having ability to propose to amend agenda before meeting and also at the beginning the meeting, subject to majority vote. Vehicle-AI
7. A majority of Commissioners is needed to cancel a called Commissioner meeting. Vehicle-AI
8. Proposed by Norma, in absence of Chair available to moderate the meeting, the most senior Dem. and Rep. Commissioners will alternate chairing

AMERICAN OVERSIGHT

meetings. Vehicle-AI or memo. of understanding

9. Language that any Commissioner from each Caucus may sit in on OCRE interviews provided the Commissioner's request to attend does not cause a scheduling delay. Vehicle?
10. Memorial/obits require a majority vote of the Commission and the proposed language for the memorial shall be circulated to all the Commissioners. Vehicle-AI

From: Alexander Heideman <aheideman@usccr.gov>
Date: Thursday, March 18, 2021 at 11:56 AM
To: John Mashburn <jmashburn@usccr.gov>, Carissa Mulder <CMulder@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>
Cc: John Mashburn <jkmash@comcast.net>, Carissa Mulder <carissa.mulder@gmail.com>, Thomas Simuel <tjsimuel32@gmail.com>, Alexander Heideman <alexanderheideman@gmail.com>
Subject: Is this the corresponding 10-point list?

1. Language on 30/30/10 for rebuttals and surrebuttals-Gail-vehicle AI
2. Language on bipartisan nominations to Elect.Adv.Council at end of June 2021. Appointments to EAC will be made by Commission as a whole, with a majority vote. Proposed that Dem.Caucus nominates 2 people for one slot and R+I Caucus chooses the appointee. R+I Caucus nominates 2 people for one slot and Dem. caucus chooses the appointee. In future nominations to external agencies, the Chair will consult with the whole Commission before communicating any nominations. Vehicle-motion from floor at mtg. on March 19
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AMERICAN OVERSIGHT

majority of Commissioners.

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8. Proposed by Norma, in absence of Chair available to moderate the meeting, the most senior Dem. and Rep. Commissioners will alternate chairing meetings. Vehicle-AI or memo. of understanding
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AMERICAN OVERSIGHT

Date : 3/18/2021 11:56:02 AM
From : "Alexander Heideman" aheideman@usccr.gov
To : "John Mashburn" jmashburn@usccr.gov, "Carissa Mulder" CMulder@usccr.gov, "Thomas Simuel" tsimuel@usccr.gov
Cc : "John Mashburn" jkmash@comcast.net, "Carissa Mulder" carissa.mulder@gmail.com, "Thomas Simuel" tjsimuel32@gmail.com, "Alexander Heideman" alexanderheideman@gmail.com
Subject : Is this the corresponding 10-point list?

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2. Language on bipartisan nominations to Elect.Adv.Council at end of June 2021. Appointments to EAC will be made by Commission as a whole, with a majority vote. Proposed that Dem.Caucus nominates 2 people for one slot and R+I Caucus chooses the appointee. R+I Caucus nominates 2 people for one slot and Dem. caucus chooses the appointee. In future nominations to external agencies, the Chair will consult with the whole Commission before communicating any nominations. Vehicle-motion from floor at mtg. on March 19
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AMERICAN OVERSIGHT

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AMERICAN OVERSIGHT

Date : 3/18/2021 12:00:16 PM
From : "Carissa Mulder" carissa.mulder@gmail.com
To : "Alexander Heideman" aheideman@usccr.gov
Cc : "John Mashburn" jmashburn@usccr.gov, "Carissa Mulder" CMulder@usccr.gov, "Thomas Simuel" tsimuel@usccr.gov, "John Mashburn" jkmash@comcast.net, "Thomas Simuel" tjsimuel32@gmail.com, "Alexander Heideman" alexanderheideman@gmail.com
Subject : [EXTERNAL] Re: Is this the corresponding 10-point list?

CAUTION: This email is from outside USCCR.

I think this is right. It also makes it even odder that Norma started backtracking, because Yaki sent back edits to this, and the only substantive thing he proposed was to make Point 9 an AI so the staff won't ignore us.

On Thu, Mar 18, 2021 at 11:56 AM Alexander Heideman <aheideman@usccr.gov> wrote:

> 1.
> Language on 30/30/10 for rebuttals and surrebuttals-Gail-vehicle AI
>
> 2. Language on bipartisan nominations to Elect.Adv.Council at end of June 2021. Appointments to EAC will be made by Commission as a whole, with a majority vote. Proposed that Dem.Caucus nominates 2 people for one slot and R+I Caucus chooses the appointee. R+I Caucus nominates 2 people for one slot and Dem. caucus chooses the appointee. In future nominations to external agencies, the Chair will consult with the whole Commission before communicating any nominations. Vehicle-motion from floor at mtg. on March 19
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>
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AMERICAN OVERSIGHT

of relevant AI, Commissioners will apply Roberts' Rules of Order. Vehicle-Memo of Understanding approved by majority of Commissioners.

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Carissa B. Mulder

AMERICAN OVERSIGHT

Date : 3/18/2021 3:43:56 PM
From : "John Mashburn" jmashburn@usccr.gov
To : "John Mashburn" jkmash@comcast.net
Subject : Re: FIRING CMN MEMBERS

Quick excerpt from Wiki:

> In 1983, Reagan attempted to fire three members of the commission. They sued the administration in federal court to stay on. The authorizing legislation stated that a president could only fire a commissioner for "misbehavior in office," and it was clear that the terminations were the result of disagreements over policy. A compromise brokered in the Senate resulted in the current hybrid group of eight, half appointed by the president and half by the Congress, **with six-year terms that do not expire with the inauguration of a new president**. Since that time the commission has struggled to remain independent, and its agenda has oscillated between liberal and conservative aims as factions among its members have ebbed and waned.[10]
>
> USCCR Authorizing Statute:

"Sec. 2. <42 USC 1975> ESTABLISHMENT OF COMMISSION.

"(a) Generally.--There is established the United States**Commission on Civil Rights** (hereinafter in this Act referred to as the 'Commission').

"(b) Membership.--The Commission shall be composed of 8 members. Not more than 4 of the members shall at any one time be of the same political party. The initial membership of the Commission shall be the members of the United States **Commission on Civil Rights** on September 30, 1994. Thereafter vacancies in the membership of the Commission shall continue to be appointed as follows: "(1) 4 members of the Commission shall be appointed by the President. "(2) 2 members of the Commission shall be appointed by the President pro tempore of the Senate, upon the recommendations of the majority leader and the minority leader, and of the members appointed not more than one shall be appointed from the same political party. "(3) 2 members of the Commission shall be appointed by the Speaker of the House of Representatives upon the recommendations of the majority leader and the minority leader, and of the members appointed not more than one shall be appointed from the same political party. "(c) Terms.--The term of office of each member of the Commission shall be 6 years. The term of each member of the Commission **[**4339]** in the initial membership of the Commission shall expire on the date such term would have expired as of September 30, 1994. "(d) Chairperson.--(1) Except as provided in paragraphs (2) and (3), the individuals serving as Chairperson and Vice Chairperson of the United States **Commission on Civil Rights** on September 30, 1994 shall initially fill those roles on the Commission. "(2) Thereafter the President may, with the concurrence of a majority of the Commission's members, designate a Chairperson or Vice Chairperson, as the case may be, from among the Commission's members. "(3) The President shall, with the concurrence of a majority of the Commission's members, fill a vacancy by designating a Chairperson or Vice Chairperson, as the case may be, from among the Commission's members. "(4) The Vice Chairperson shall act in place of the Chairperson in the absence of the Chairperson. "(e) Removal of Members.--The President may remove a member of the Commission only for neglect of duty or malfeasance in office. "(f) Quorum.--5 members of the Commission constitute a quorum of the Commission.

From: stephen gilchrist <thegilchristassociates@gmail.com>
Date: Tuesday, February 23, 2021 at 7:11 PM
To: Gail Heriot <gheriot@usccr.gov>
Cc: Carissa Mulder <carissa.mulder@gmail.com>, Christian Adams <adams@electionlawcenter.com>, Alexander Heideman <aheideman@usccr.gov>, Carissa Mulder <CMulder@usccr.gov>, Gail Heriot <gheriot@me.com>, John Mashburn <jmashburn@usccr.gov>, "Kirsanow, Peter" <pkirsanow@beneschlaw.com>, Peter Kirsanow <pkirsanow@usccr.gov>, Stephen Gilchrist <sgilchrist@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>

AMERICAN OVERSIGHT

Subject: Re: [EXTERNAL] Re: Caucus Meeting tomorrow?

> CAUTION: This email is from outside USCCR.

On Tue, Feb 23, 2021, 7:09 PM Gail Heriot <gheriot@usccr.gov> wrote:

> Sounds like our colleagues are crazy. But I take it she didn't say straight out that Yaki (or someone) is trying to have you and Stephen removed?
>
> Gail Heriot
> Professor of Law
> University of San Diego
>
> On Feb 23, 2021, at 3:53 PM, Carissa Mulder <carissa.mulder@gmail.com> wrote:
>
> > CAUTION: This email is from outside USCCR.
> >
> > o get you removed.
> >
> > On Tue, Feb 23, 2021 at 6:39 PM Christian Adams <adams@electionlawcenter.com> wrote:
> >
> > > I just talked to Cantu for an hour. Key takeaways
> > >
> > > 1. I told her she HAD to get up with Pete regarding details.
> > > 2. I gave her a heads up that there was a chance she would NOT have a quorum on Friday pending resolution of big issues. She should not be blindsided in my view. I put down the threat of a withheld quorum in order to remind her it was possible and that we needed to resolve things.
> > > 3. She said something that indicated to me that Yaki and Debo or someone else (Mauro?) are agitating to have Stephen and I removed by the President. I cannot recall her exact words, but it was along the lines "I tell people that the people we got are the people we got. President Reagan tried to remove commissioners and he got sued and lost for removing them." She would NOT HAVE BROUGHT THIS up unless that chatter is occurring somewhere. And after all, ask Roger Severino if the Biden people are thinking like this. Bottom Line: some members of the Commission may be thinking they can improve their bargaining position by altering the composition of the commission and getting rid of two of us. Whether or not they are correct is irrelevant to Yaki or Debo's potential perception of this option.

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4. I repeatedly told her - "You need to get with Pete on that; he knows more about that than me." Among the topics falling under this category were EAC appointments, SAC issues, and all manner of administrative issues.
5. I made it plain to her we could stop the business of the commission if we were not treated fairly, and fairness is all we want.

From: stephen gilchrist <thegilchristassociates@gmail.com>
Sent: Tuesday, February 23, 2021 4:06 PM
To: Carissa Mulder <carissa.mulder@gmail.com>
Cc: Kirsanow, Peter <pkirsanow@beneschlaw.com>; Gail Heriot <gheriot@me.com>; Christian Adams (adams@electionlawcenter.com) <adams@electionlawcenter.com>; Alexander Heideman <aheideman@usccr.gov>; John Mashburn <jmashburn@usccr.gov>; Thomas Simuel <tsimuel@usccr.gov>; Peter Kirsanow <pkirsanow@usccr.gov>; Stephen Gilchrist <sgilchrist@usccr.gov>; Gail Heriot <gheriot@usccr.gov>; Carissa Mulder <cmulder@usccr.gov>
Subject: Re: Caucus Meeting tomorrow?

Carissa - I can do 1pm.

On Tue, Feb 23, 2021, 3:45 PM Carissa Mulder <carissa.mulder@gmail.com> wrote:

> Pete would like to have a caucus meeting tomorrow to discuss how to proceed from here. Are people free at 1:00?
> --
> Carissa B. Mulder

--
Carissa B. Mulder

AMERICAN OVERSIGHT

Date : 3/24/2021 2:13:49 PM
From : "Kevin Rayburn" KRayburn@eac.gov
To : "mmorales@usccr.gov" mmorales@usccr.gov
Cc : "pmclaughlin@usccr.gov" pmclaughlin@usccr.gov
Subject : [EXTERNAL] RE: EAC Board of Advisors Membership Appointments
Attachment : EAC Letter to USCCR re Board of Advisors.pdf;Notice-of-Representation-Form-Board-Advisors-2021.pdf;

> CAUTION: This email is from outside USCCR.

Good Afternoon Mr. Morales,

I just wanted to follow-up on my previous email and see if you had any questions or concerns.

Thanks,

Kevin Rayburn, General Counsel
U.S. Election Assistance Commission
Mobile: (202) 740-6546

From: Kevin Rayburn
Sent: Friday, March 5, 2021 11:14 AM
To: mmorales@usccr.gov
Subject: EAC Board of Advisors Membership Appointments

Good Morning Mr. Morales,

Please find attached correspondence from the U.S. Election Assistance Commission regarding your organization's appointments to the EAC Board of Advisors. Also included is a Notice of Representation Form. We ask that you please return the completed form to krayburn@eac.gov by March 26, 2021. Let me know if you have any questions.

Sincerely,

Kevin Rayburn, General Counsel
U.S. Election Assistance Commission
Mobile: (202) 740-6546

AMERICAN OVERSIGHT

U.S. Election Assistance Commission

633 3rd Street NW, Suite 200
Washington, DC 20001

March 5, 2021

United States Commission on Civil Rights
Mauro Morales, Staff Director
1331 Pennsylvania Ave., NW, STE 1150
Washington, D.C. 20425
mmorales@usccr.gov

Re: U.S. Election Assistance Commission
Board of Advisors Membership Appointment

Dear Mr. Morales,

As you are aware, the Help America Vote Act of 2002 (HAVA) created the U.S. Election Assistance Commission (EAC) and established three advisory boards to assist the EAC: Board of Advisors, Standards Board, and Technical Guidelines Development Committee. The advisory boards are primarily charged with providing advice, guidance, and support to the EAC on the ongoing development of the Voluntary Voting System Guidelines (VVSG).

Under Section 214 of HAVA, your organization is authorized to appoint two members to the Board of Advisors. The Board of Advisors Charter and Bylaws govern the advisory board.

Please be advised that your designated representatives' two-year terms to the Board of Advisors expire on April 13, 2021. You can either reappoint your current representative(s) or appoint new representative(s) for a new two-year term. In compliance with HAVA, please make appointments "in a manner which ensures that the Board of Advisors will be bipartisan in nature and will reflect the various geographic regions of the United States." 52 U.S.C § 20944(b).

Your current representatives are:

Michael Yaki

David Kladney

The new term of your member representatives will begin on April 13, 2021 coinciding with the renewal of the Board of Advisor's Charter.

Please use the enclosed Notice of Representation form to advise us of your designated representatives to serve on the EAC Board of Advisors for the upcoming two-year term. **Please return this completed form by email to krayburn@eac.gov no later than March 26, 2021**.

While the EAC recently adopted VVSG 2.0, we are committed to an agile process that includes continually working with our advisory boards to identify enhancements to the VVSG. The

AMERICAN OVERSIGHT

usability, accessibility, and security of voting systems continue to be of critical importance, and recommendations from the advisory boards are as imperative as ever. Therefore, your prompt response to this letter is greatly appreciated.

Thank you for your attention to this matter. If we can be of assistance, please feel free to contact us at 202-740-6546 or krayburn@eac.gov.

Sincerely,

Mona Harrington
Executive Director
U.S. Election Assistance Commission

AMERICAN OVERSIGHT

Notice of Representation
United States Election Assistance Commission
Board of Advisors

In accordance with 52 U.S.C. § 20944 of the Help America Vote Act of 2002, your office submits the following individual(s) as a member of the Election Assistance Commission Board of Advisors:

Designated Representative

Name: _____

Title: _____

Address: _____

_____

Phone: _____

Email: _____

Party Affiliation: _____

Designated Representative

Name: _____

Title: _____

Address: _____

_____

Phone: _____

Email: _____

Party Affiliation: _____

Name and Title of Appointing Official

Print Name: _____

Print Title: _____

Signature: _____ Date: _____

Please return the completed form via email to EAC General Counsel Kevin Rayburn (krayburn@eac.gov).

AMERICAN OVERSIGHT

Date : 3/25/2021 5:12:22 PM
From : "Gail Heriot" gheriot@me.com
To : "Christian Adams" adams@electionlawcenter.com
Cc : "Gail Heriot" gheriot@usccr.gov, "Peter Kirsanow" pkirsanow@usccr.gov, "Peter Kirsanow" pkirsanow@beneschlaw.com, "Carissa Mulder" CMulder@usccr.gov, "Carissa Mulder" carissa.mulder@gmail.com, "John Mashburn" jkmash@comcast.net, "John Mashburn" jmashburn@usccr.gov, "stephen gilchrist" thegilchristassociates@gmail.com, "Alexander Heideman" alexanderheideman@gmail.com, "Alexander Heideman" aheideman@usccr.gov, "Stephen Gilchrist" sgilchrist@usccr.gov, "Thomas Simuel" tjsimuel32@gmail.com, "Thomas Simuel" tsimuel@usccr.gov, "J. Christian Adams" jadams@usccr.gov
Subject : [EXTERNAL] EAC

CAUTION: This email is from outside USCCR.

We are going to need nominees for the EAC Board of Advisors very soon. Christian, you know this area best. Among those who would be willing to serve, who would be best for this job? We probably will need two names (one of which will be vetoed by our colleagues).

Gail Heriot
Professor of Law
University of San Diego

AMERICAN OVERSIGHT

Date : 3/25/2021 4:56:05 PM
From : "Norma Cantu" ncantu@usccr.gov
To : "Gail Heriot" gheriot@me.com, "Carissa Mulder" CMulder@usccr.gov
Cc : "Michael Yaki" MYaki@usccr.gov, "pkirsanow@beneschlaw.com" pkirsanow@beneschlaw.com
Subject : Re: [EXTERNAL] Re: Noon meeting-how about Thursday at 6 pm EST?

Dear Gail, Peter,
I think we are there on the EAC topic.
Do you want to talk briefly?
The timing is a bit urgent because the EAC is eager to get our nominations.
Norma

From: Gail Heriot <gheriot@me.com>
Date: Thursday, March 25, 2021 at 2:21 PM
To: Carissa Mulder <CMulder@usccr.gov>
Cc: Michael Yaki <MYaki@usccr.gov>, Norma Cantu <ncantu@usccr.gov>, "pkirsanow@beneschlaw.com" <pkirsanow@beneschlaw.com>
Subject: [EXTERNAL] Re: Noon meeting-how about Thursday at 6 pm EST?

> CAUTION: This email is from outside USCCR.

Gail Heriot
Professor of Law
University of San Diego

> On Mar 25, 2021, at 12:18 PM, Carissa Mulder <CMulder@usccr.gov> wrote:
>
> I hope you feel better soon! Pete unfortunately just found out that he can't meet this evening either, due to an emergency in his practice.
>
> ---
>
> **From:** Michael Yaki
> **Sent:** Thursday, March 25, 2021 3:15:05 PM
> **To:** Carissa Mulder; Norma Cantu
> **Cc:** pkirsanow@beneschlaw.com; Gail Heriot
> **Subject:** Re: Noon meeting-how about Thursday at 6 pm EST?
>
> Hey everyone
>
> I am having a reaction to my Moderna shot and am out of commission today. Norma can meet if she wants to go forward to get some of the

AMERICAN OVERSIGHT

non controversial items out of the way. Sorry for the late notice, but it hit me this morning.

From: Carissa Mulder
Sent: Friday, March 19, 2021 11:46:11 AM
To: Norma Cantu; Michael Yaki
Cc: pkirsanow@beneschlaw.com; Gail Heriot
Subject: Re: Noon meeting-how about Thursday at 6 pm EST?

Dear Commissioners:

6 pm Eastern on Thursday works for both Commissioners Heriot and Kirsanow. They look forward to meeting with you then!

Sincerely,

Carissa

From: Norma Cantu
Sent: Friday, March 19, 2021 11:43:00 AM
To: Carissa Mulder; Michael Yaki
Cc: pkirsanow@beneschlaw.com; Gail Heriot
Subject: Re: Noon meeting-how about Thursday at 6 pm EST?

Dear Carissa,
I teach a class from 2 to 5 EST on Thursdays. I can meet after class at 6 p.m. EST this Thursday.
I also have Friday open until 3 p.m. EST.
Norma

From: Carissa Mulder <CMulder@usccr.gov>
Date: Friday, March 19, 2021 at 10:39 AM
To: Norma Cantu <ncantu@usccr.gov>, Michael Yaki <MYaki@usccr.gov>
Cc: "pkirsanow@beneschlaw.com" <pkirsanow@beneschlaw.com>, Gail Heriot <gheriot@me.com>
Subject: Noon meeting

Good morning, Commissioners Cantu and Yaki:

Commissioners Kirsanow and Heriot asked me to email you and tell you that they are not logistically prepared to negotiate today. Would you be available to meet Thursday at 1:30 PM EDT?

AMERICAN OVERSIGHT

Thank you,

Carissa

AMERICAN OVERSIGHT

Date : 3/25/2021 5:28:48 PM
From : "jcadams" adams@electionlawcenter.com
To : "gheriot@me.com" gheriot@me.com
Cc : "gheriot@usccr.gov" gheriot@usccr.gov, "pkirsanow@usccr.gov" pkirsanow@usccr.gov, "pkirsanow@beneschlaw.com" pkirsanow@beneschlaw.com, "CMulder@usccr.gov" CMulder@usccr.gov, "carissa.mulder@gmail.com" carissa.mulder@gmail.com, "jkmash@comcast.net" jkmash@comcast.net, "jmashburn@usccr.gov" jmashburn@usccr.gov, "thegilchristassociates@gmail.com" thegilchristassociates@gmail.com, "alexanderheideman@gmail.com" alexanderheideman@gmail.com, "aheideman@usccr.gov" aheideman@usccr.gov, "sgilchrist@usccr.gov" sgilchrist@usccr.gov, "tjsimuel32@gmail.com" tjsimuel32@gmail.com, "tsimuel@usccr.gov" tsimuel@usccr.gov, "jadams@usccr.gov" jadams@usccr.gov
Subject : [EXTERNAL] Re: EAC

I had assumed it would be Comissiners.

-------- Original Message --------
On Mar 25, 2021, 5:12 PM, Gail Heriot < gheriot@me.com> wrote:

> CAUTION: This email is from outside USCCR.
>
> We are going to need nominees for the EAC Board of Advisors very soon. Christian, you know this area best. Among those who would be willing to serve, who would be best for this job? We probably will need two names (one of which will be vetoed by our colleagues).
>
> Gail Heriot
> Professor of Law
> University of San Diego

AMERICAN OVERSIGHT

Date : 3/25/2021 6:28:01 PM
From : "Norma Cantu" ncantu@usccr.gov
To : "Michael Yaki" MYaki@usccr.gov, "Gail Heriot" gheriot@me.com, "Carissa Mulder" CMulder@usccr.gov
Cc : "pkirsanow@beneschlaw.com" pkirsanow@beneschlaw.com
Subject : Re: [EXTERNAL] Re: Noon meeting-how about Thursday at 6 pm EST?

Dear Michael,
I really am sorry you are not feeling well.
We are not replacing anyone on EAC yet. At our last meeting with Gail and Peter, I said to Gail and Peter the change would not happen until after June.
Norma

From: Michael Yaki <MYaki@usccr.gov>
Date: Thursday, March 25, 2021 at 4:46 PM
To: Norma Cantu <ncantu@usccr.gov>, Gail Heriot <gheriot@me.com>, Carissa Mulder <CMulder@usccr.gov>
Cc: "pkirsanow@beneschlaw.com" <pkirsanow@beneschlaw.com>
Subject: Re: [EXTERNAL] Re: Noon meeting-how about Thursday at 6 pm EST?

Hang on. You can't replace me yet b/c I have to chair the annual meeting in June. I will resign after the meeting in June.

If I sound belligerent it's bc i have a huge headache

From: Norma Cantu
Sent: Thursday, March 25, 2021 4:56:05 PM
To: Gail Heriot; Carissa Mulder
Cc: Michael Yaki; pkirsanow@beneschlaw.com
Subject: Re: [EXTERNAL] Re: Noon meeting-how about Thursday at 6 pm EST?

Dear Gail, Peter,
I think we are there on the EAC topic.
Do you want to talk briefly?
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Date: Thursday, March 25, 2021 at 2:21 PM
To: Carissa Mulder <CMulder@usccr.gov>
Cc: Michael Yaki <MYaki@usccr.gov>, Norma Cantu <ncantu@usccr.gov>, "pkirsanow@beneschlaw.com" <pkirsanow@beneschlaw.com>
Subject: [EXTERNAL] Re: Noon meeting-how about Thursday at 6 pm EST?

AMERICAN OVERSIGHT

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Gail Heriot
Professor of Law
University of San Diego

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To: Carissa Mulder; Norma Cantu
Cc: pkirsanow@beneschlaw.com; Gail Heriot
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Hey everyone

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Sent: Friday, March 19, 2021 11:46:11 AM
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Sincerely,

AMERICAN OVERSIGHT

Carissa

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Sent: Friday, March 19, 2021 11:43:00 AM
To: Carissa Mulder; Michael Yaki
Cc: pkirsanow@beneschlaw.com; Gail Heriot
Subject: Re: Noon meeting-how about Thursday at 6 pm EST?

Dear Carissa,

I teach a class from 2 to 5 EST on Thursdays. I can meet after class at 6 p.m. EST this Thursday.

I also have Friday open until 3 p.m. EST.

Norma

From: Carissa Mulder <CMulder@usccr.gov>
Date: Friday, March 19, 2021 at 10:39 AM
To: Norma Cantu <ncantu@usccr.gov>, Michael Yaki <MYaki@usccr.gov>
Cc: "pkirsanow@beneschlaw.com" <pkirsanow@beneschlaw.com>, Gail Heriot <gheriot@me.com>
Subject: Noon meeting

Good morning, Commissioners Cantu and Yaki:

Commissioners Kirsanow and Heriot asked me to email you and tell you that they are not logistically prepared to negotiate today. Would you be available to meet Thursday at 1:30 PM EDT?

Thank you,

Carissa

AMERICAN OVERSIGHT

Date : 3/25/2021 5:29:34 PM
From : "Gail Heriot" gheriot@me.com
To : "jcadams" adams@electionlawcenter.com
Cc : "Gail Heriot" gheriot@usccr.gov, "Peter Kirsanow" pkirsanow@usccr.gov, "pkirsanow@beneschlaw.com" pkirsanow@beneschlaw.com, "Carissa Mulder" CMulder@usccr.gov, "carissa.mulder@gmail.com" carissa.mulder@gmail.com, "jkmash@comcast.net" jkmash@comcast.net, "John Mashburn" jmashburn@usccr.gov, "thegilchristassociates@gmail.com" thegilchristassociates@gmail.com, "alexanderheideman@gmail.com" alexanderheideman@gmail.com, "Alexander Heideman" aheideman@usccr.gov, "Stephen Gilchrist" sgilchrist@usccr.gov, "tjsimuel32@gmail.com" tjsimuel32@gmail.com, "Thomas Simuel" tsimuel@usccr.gov, "J. Christian Adams" jadams@usccr.gov
Subject : Re: [EXTERNAL] Re: EAC

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It can be. But it doesn't have to be.

Gail Heriot
Professor of Law
University of San Diego

On Mar 25, 2021, at 2:28 PM, jcadams <adams@electionlawcenter.com> wrote:

I had assumed it would be Comissiners.

-------- Original Message --------
On Mar 25, 2021, 5:12 PM, Gail Heriot < gheriot@me.com> wrote:

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AMERICAN OVERSIGHT

Gail Heriot
Professor of Law
University of San Diego

AMERICAN OVERSIGHT

Date : 3/25/2021 6:01:07 PM
From : "jcadams" adams@electionlawcenter.com
To : "gheriot@me.com" gheriot@me.com
Cc : "gheriot@usccr.gov" gheriot@usccr.gov, "pkirsanow@usccr.gov" pkirsanow@usccr.gov, "pkirsanow@beneschlaw.com" pkirsanow@beneschlaw.com, "CMulder@usccr.gov" CMulder@usccr.gov, "carissa.mulder@gmail.com" carissa.mulder@gmail.com, "jkmash@comcast.net" jkmash@comcast.net, "jmashburn@usccr.gov" jmashburn@usccr.gov, "thegilchristassociates@gmail.com" thegilchristassociates@gmail.com, "alexanderheideman@gmail.com" alexanderheideman@gmail.com, "aheideman@usccr.gov" aheideman@usccr.gov, "sgilchrist@usccr.gov" sgilchrist@usccr.gov, "tjsimuel32@gmail.com" tjsimuel32@gmail.com, "tsimuel@usccr.gov" tsimuel@usccr.gov, "jadams@usccr.gov" jadams@usccr.gov
Subject : Re: [EXTERNAL] Re: EAC

1. Cleta Mitchell
2. Hans
3. ME.

-------- Original Message --------
On Mar 25, 2021, 5:29 PM, Gail Heriot < gheriot@me.com> wrote:

> CAUTION: This email is from outside USCCR.
>
> It can be. But it doesn't have to be.
>
> Gail Heriot
> Professor of Law
> University of San Diego
>
> > On Mar 25, 2021, at 2:28 PM, jcadams
> > <adams@electionlawcenter.com> wrote:
> >
> > I had assumed it would be Comissiners.

AMERICAN OVERSIGHT

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< gheriot@me.com> wrote:

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Gail Heriot
Professor of Law
University of San Diego

AMERICAN OVERSIGHT

Date : 3/25/2021 6:02:05 PM
From : "jcadams" adams@electionlawcenter.com
To : "thegilchristassociates@gmail.com" thegilchristassociates@gmail.com, "gheriot@me.com" gheriot@me.com
Cc : "gheriot@usccr.gov" gheriot@usccr.gov, "pkirsanow@usccr.gov" pkirsanow@usccr.gov, "pkirsanow@beneschlaw.com" pkirsanow@beneschlaw.com, "CMulder@usccr.gov" CMulder@usccr.gov, "carissa.mulder@gmail.com" carissa.mulder@gmail.com, "jkmash@comcast.net" jkmash@comcast.net, "jmashburn@usccr.gov" jmashburn@usccr.gov, "alexanderheideman@gmail.com" alexanderheideman@gmail.com, "aheideman@usccr.gov" aheideman@usccr.gov, "sgilchrist@usccr.gov" sgilchrist@usccr.gov, "tjsimuel32@gmail.com" tjsimuel32@gmail.com, "tsimuel@usccr.gov" tsimuel@usccr.gov, "jadams@usccr.gov" jadams@usccr.gov
Subject : [EXTERNAL] Re: EAC

CAUTION: This email is from outside USCCR.

Whatever is best. But Cleta Mitchell, Hans or Me.

-------- Original Message --------
On Mar 25, 2021, 5:49 PM, stephen gilchrist < thegilchristassociates@gmail.com> wrote:

> If the other side is gonna have a Commissioner I think we need to have a Commissioner as well.
>
> On Thu, Mar 25, 2021, 5:12 PM Gail Heriot <gheriot@me.com> wrote:
>
> > We are going to need nominees for the EAC Board of Advisors very soon. Christian, you know this area best. Among those who would be willing to serve, who would be best for this job? We probably will need two names (one of which will be vetoed by our colleagues).
> >
> > Gail Heriot
> > Professor of Law
> > University of San Diego

AMERICAN OVERSIGHT

Date : 3/25/2021 5:49:14 PM
From : "stephen gilchrist" thegilchristassociates@gmail.com
To : "Gail Heriot" gheriot@me.com
Cc : "Christian Adams" adams@electionlawcenter.com, "Gail Heriot" gheriot@usccr.gov, "Peter Kirsanow" pkirsanow@usccr.gov, "Peter Kirsanow" pkirsanow@beneschlaw.com, "Carissa Mulder" CMulder@usccr.gov, "Carissa Mulder" carissa.mulder@gmail.com, "John Mashburn" jkmash@comcast.net, "John Mashburn" jmashburn@usccr.gov, "Alexander Heideman" alexanderheideman@gmail.com, "Alexander Heideman" aheideman@usccr.gov, "Stephen Gilchrist" sgilchrist@usccr.gov, "Thomas Simuel" tjsimuel32@gmail.com, "Thomas Simuel" tsimuel@usccr.gov, "J. Christian Adams" jadams@usccr.gov
Subject : [EXTERNAL] Re: EAC

CAUTION: This email is from outside USCCR.

If the other side is gonna have a Commissioner I think we need to have a Commissioner as well.

On Thu, Mar 25, 2021, 5:12 PM Gail Heriot <gheriot@me.com> wrote:

> We are going to need nominees for the EAC Board of Advisors very soon. Christian, you know this area best. Among those who would be willing to serve, who would be best for this job? We probably will need two names (one of which will be vetoed by our colleagues).
>
> Gail Heriot
> Professor of Law
> University of San Diego

AMERICAN OVERSIGHT

Date : 3/25/2021 5:46:19 PM
From : "Michael Yaki" MYaki@usccr.gov
To : "Norma Cantu" ncantu@usccr.gov, "Gail Heriot" gheriot@me.com, "Carissa Mulder" CMulder@usccr.gov
Cc : "pkirsanow@beneschlaw.com" pkirsanow@beneschlaw.com
Subject : Re: [EXTERNAL] Re: Noon meeting-how about Thursday at 6 pm EST?

Hang on. You can't replace me yet b/c I have to chair the annual meeting in June. I will resign after the meeting in June.

If I sound belligerent it's bc i have a huge headache

From: Norma Cantu
Sent: Thursday, March 25, 2021 4:56:05 PM
To: Gail Heriot; Carissa Mulder
Cc: Michael Yaki; pkirsanow@beneschlaw.com
Subject: Re: [EXTERNAL] Re: Noon meeting-how about Thursday at 6 pm EST?

Dear Gail, Peter,
I think we are there on the EAC topic.
Do you want to talk briefly?
The timing is a bit urgent because the EAC is eager to get our nominations.
Norma

From: Gail Heriot <gheriot@me.com>
Date: Thursday, March 25, 2021 at 2:21 PM
To: Carissa Mulder <CMulder@usccr.gov>
Cc: Michael Yaki <MYaki@usccr.gov>, Norma Cantu <ncantu@usccr.gov>, "pkirsanow@beneschlaw.com" <pkirsanow@beneschlaw.com>
Subject: [EXTERNAL] Re: Noon meeting-how about Thursday at 6 pm EST?

> CAUTION: This email is from outside USCCR.

Gail Heriot
Professor of Law
University of San Diego

> On Mar 25, 2021, at 12:18 PM, Carissa Mulder <CMulder@usccr.gov> wrote:
>
> I hope you feel better soon! Pete unfortunately just found out that he can't meet this evening either, due to an emergency in his practice.

AMERICAN OVERSIGHT

From: Michael Yaki
Sent: Thursday, March 25, 2021 3:15:05 PM
To: Carissa Mulder; Norma Cantu
Cc: pkirsanow@beneschlaw.com; Gail Heriot
Subject: Re: Noon meeting-how about Thursday at 6 pm EST?

Hey everyone

I am having a reaction to my Moderna shot and am out of commission today. Norma can meet if she wants to go forward to get some of the non controversial items out of the way. Sorry for the late notice, but it hit me this morning.

From: Carissa Mulder
Sent: Friday, March 19, 2021 11:46:11 AM
To: Norma Cantu; Michael Yaki
Cc: pkirsanow@beneschlaw.com; Gail Heriot
Subject: Re: Noon meeting-how about Thursday at 6 pm EST?

Dear Commissioners:

6 pm Eastern on Thursday works for both Commissioners Heriot and Kirsanow. They look forward to meeting with you then!

Sincerely,

Carissa

From: Norma Cantu
Sent: Friday, March 19, 2021 11:43:00 AM
To: Carissa Mulder; Michael Yaki
Cc: pkirsanow@beneschlaw.com; Gail Heriot
Subject: Re: Noon meeting-how about Thursday at 6 pm EST?

Dear Carissa,
I teach a class from 2 to 5 EST on Thursdays. I can meet after class at 6 p.m. EST this Thursday.
I also have Friday open until 3 p.m. EST.
Norma

From: Carissa Mulder <CMulder@usccr.gov>
Date: Friday, March 19, 2021 at 10:39 AM
To: Norma Cantu <ncantu@usccr.gov>, Michael Yaki <MYaki@usccr.gov>
Cc: "pkirsanow@beneschlaw.com" <pkirsanow@beneschlaw.com>, Gail Heriot <gheriot@me.com>

AMERICAN OVERSIGHT

Subject: Noon meeting

Good morning, Commissioners Cantu and Yaki:

Commissioners Kirsanow and Heriot asked me to email you and tell you that they are not logistically prepared to negotiate today. Would you be available to meet Thursday at 1:30 PM EDT?

Thank you,

Carissa

AMERICAN OVERSIGHT

Date : 3/29/2021 9:58:29 PM
From : "Gail Heriot" gheriot@me.com
To : "Norma Cantu" ncantu@usccr.gov
Cc : "Michael Yaki" MYaki@usccr.gov, "Carissa Mulder" CMulder@usccr.gov, "pkirsanow@beneschlaw.com" pkirsanow@beneschlaw.com
Subject : [EXTERNAL] Meeting

CAUTION: This email is from outside USCCR.

Hi Norma, Pete, and Michael—

We need to get this show on the road. Is there a time late this week that we can all meet?

Gail

Gail Heriot
Professor of Law
University of San Diego

> On Mar 25, 2021, at 3:28 PM, Norma Cantu <ncantu@usccr.gov> wrote:
>
> Dear Michael,
> I really am sorry you are not feeling well.
> We are not replacing anyone on EAC yet. At our last meeting with Gail and Peter, I said to Gail and Peter the change would not happen until after June.
> Norma
>
> ---
>
> **From:** Michael Yaki <MYaki@usccr.gov>
> **Date:** Thursday, March 25, 2021 at 4:46 PM
> **To:** Norma Cantu <ncantu@usccr.gov>, Gail Heriot <gheriot@me.com>, Carissa Mulder <CMulder@usccr.gov>
> **Cc:** "pkirsanow@beneschlaw.com" <pkirsanow@beneschlaw.com>
> **Subject:** Re: [EXTERNAL] Re: Noon meeting-how about Thursday at 6 pm EST?
>
> Hang on. You can't replace me yet b/c I have to chair the annual meeting in June. I will resign after the meeting in June.

AMERICAN OVERSIGHT

If I sound belligerent it's bc i have a huge headache

From: Norma Cantu
Sent: Thursday, March 25, 2021 4:56:05 PM
To: Gail Heriot; Carissa Mulder
Cc: Michael Yaki; pkirsanow@beneschlaw.com
Subject: Re: [EXTERNAL] Re: Noon meeting-how about Thursday at 6 pm EST?

Dear Gail, Peter,
I think we are there on the EAC topic.
Do you want to talk briefly?
The timing is a bit urgent because the EAC is eager to get our nominations.
Norma

From: Gail Heriot <gheriot@me.com>
Date: Thursday, March 25, 2021 at 2:21 PM
To: Carissa Mulder <CMulder@usccr.gov>
Cc: Michael Yaki <MYaki@usccr.gov>, Norma Cantu <ncantu@usccr.gov>, "pkirsanow@beneschlaw.com" <pkirsanow@beneschlaw.com>
Subject: [EXTERNAL] Re: Noon meeting-how about Thursday at 6 pm EST?

CAUTION: This email is from outside USCCR.

Gail Heriot
Professor of Law
University of San Diego

> On Mar 25, 2021, at 12:18 PM, Carissa Mulder <CMulder@usccr.gov> wrote:
>
> I hope you feel better soon! Pete unfortunately just found out that he can't meet this evening either, due to an emergency in his practice.
>
> ---
>
> **From:** Michael Yaki
> **Sent:** Thursday, March 25, 2021 3:15:05 PM
> **To:** Carissa Mulder; Norma Cantu
> **Cc:** pkirsanow@beneschlaw.com; Gail Heriot

AMERICAN OVERSIGHT

Subject: Re: Noon meeting-how about Thursday at 6 pm EST?

Hey everyone

I am having a reaction to my Moderna shot and am out of commission today. Norma can meet if she wants to go forward to get some of the non controversial items out of the way. Sorry for the late notice, but it hit me this morning.

From: Carissa Mulder
Sent: Friday, March 19, 2021 11:46:11 AM
To: Norma Cantu; Michael Yaki
Cc: pkirsanow@beneschlaw.com; Gail Heriot
Subject: Re: Noon meeting-how about Thursday at 6 pm EST?

Dear Commissioners:

6 pm Eastern on Thursday works for both Commissioners Heriot and Kirsanow. They look forward to meeting with you then!

Sincerely,

Carissa

From: Norma Cantu
Sent: Friday, March 19, 2021 11:43:00 AM
To: Carissa Mulder; Michael Yaki
Cc: pkirsanow@beneschlaw.com; Gail Heriot
Subject: Re: Noon meeting-how about Thursday at 6 pm EST?

Dear Carissa,

I teach a class from 2 to 5 EST on Thursdays. I can meet after class at 6 p.m. EST this Thursday.

I also have Friday open until 3 p.m. EST.

Norma

AMERICAN OVERSIGHT

From: Carissa Mulder <CMulder@usccr.gov>
Date: Friday, March 19, 2021 at 10:39 AM
To: Norma Cantu <ncantu@usccr.gov>, Michael Yaki <MYaki@usccr.gov>
Cc: "pkirsanow@beneschlaw.com" <pkirsanow@beneschlaw.com>, Gail Heriot <gheriot@me.com>
Subject: Noon meeting

Good morning, Commissioners Cantu and Yaki:

Commissioners Kirsanow and Heriot asked me to email you and tell you that they are not logistically prepared to negotiate today. Would you be available to meet Thursday at 1:30 PM EDT?

Thank you,

Carissa

AMERICAN OVERSIGHT

Date : 4/8/2021 11:44:42 AM
From : "Norma Cantu" ncantu@usccr.gov
To : "Carissa Mulder" CMulder@usccr.gov, "Gail Heriot" gheriot@me.com
Cc : "Michael Yaki" MYaki@usccr.gov, "pkirsanow@beneschlaw.com" pkirsanow@beneschlaw.com, "michael@michaelyaki.com" michael@michaelyaki.com, "David Ganz" dganz@usccr.gov
Subject : Re: [EXTERNAL] Meeting--Times available for Norma to meet regarding vote on Chair

Hello, all,
Not hearing a response, I am checking in on a good time to complete our task on the proposed AI's, etc.

I will be in a two-hour meeting today and will be back at my desk at 11:30PST/ 1:30 CST/2:30 EST. After that, I have cleared off the rest of today and all of tomorrow for the four Commissioners to work on language. Of course, it won't take that much time, but I do estimate 1-2 hours for our discussion.

Please bear in mind that we should try to get the language together by Saturday, April 10, because we need to give the USCCR General Counsel time to review the language for AI's or other vehicles to be sure we are aligned to language in our statute and other federal laws.

FYI, I would rather be listening to your ideas than reading all the digitized AI's and the newest version of Robert's Rules. I can meet late in the day for the convenience of those of you on West Coast time.
Norma

From: Carissa Mulder <CMulder@usccr.gov>
Date: Friday, April 2, 2021 at 12:26 PM
To: Gail Heriot <gheriot@me.com>, Norma Cantu <ncantu@usccr.gov>
Cc: Michael Yaki <MYaki@usccr.gov>,
"pkirsanow@beneschlaw.com" <pkirsanow@beneschlaw.com>,
"michael@michaelyaki.com" <michael@michaelyaki.com>
Subject: Re: [EXTERNAL] Meeting--Times available for Norma to meet

Hello everyone,

Pete can do anytime Tuesday between 1-4 PM Eastern. Is there a time in there that works for everyone?

From: Gail Heriot <gheriot@me.com>
Sent: Thursday, April 1, 2021 4:46:24 PM
To: Norma Cantu
Cc: Carissa Mulder; Michael Yaki; pkirsanow@beneschlaw.com;

AMERICAN OVERSIGHT

MICHAEL@michaelyaki.com
Subject: Re: [EXTERNAL] Meeting--Times available for Norma to meet

> CAUTION: This email is from outside USCCR.

e to make Tuesday work.

Gail Heriot
Professor of Law
University of San Diego

On Apr 1, 2021, at 1:41 PM, Norma Cantu <ncantu@usccr.gov> wrote:

Dear Peter, Gail, Michael, Carissa,
Monday doesn't work.
I suggest Tuesday afternoon.
Norma

From: Gail Heriot <gheriot@me.com>
Date: Wednesday, March 31, 2021 at 3:19 PM
To: Carissa Mulder <CMulder@usccr.gov>
Cc: Norma Cantu <ncantu@usccr.gov>, "michael@michaeyaki.com" <michael@michaeyaki.com>, Michael Yaki <MYaki@usccr.gov>, "pkirsanow@beneschlaw.com" <pkirsanow@beneschlaw.com>
Subject: Re: [EXTERNAL] Meeting--Times available for Norma to meet

> CAUTION: This email is from outside USCCR.

Gail Heriot
Professor of Law
University of San Diego

On Mar 31, 2021, at 1:18 PM, Carissa Mulder <CMulder@usccr.gov> wrote:

I just got off the phone with Pete. He is tied up for the rest of the week. Would Monday work?

AMERICAN OVERSIGHT

Thank you!

From: Carissa Mulder
Sent: Wednesday, March 31, 2021 9:22:57 AM
To: Gail Heriot; Norma Cantu
Cc: michael@michaeyaki.com; Michael Yaki; pkirsanow@beneschlaw.com
Subject: Re: [EXTERNAL] Meeting--Times available for Norma to meet

Pete told me yesterday (sorry, I thought he had responded to this email) that he is only available later in the week. Pete, can you do any of these times Thursday or Friday?

From: Gail Heriot <gheriot@me.com>
Sent: Wednesday, March 31, 2021 12:28:04 AM
To: Norma Cantu
Cc: michael@michaeyaki.com; Michael Yaki; Carissa Mulder; pkirsanow@beneschlaw.com
Subject: Re: [EXTERNAL] Meeting--Times available for Norma to meet

CAUTION: This email is from outside USCCR.

You don't want to see me at 7:00 am PT on Thursday. But I can do any time after 9:00 am PT.

Friday is okay from 11:00 am PT till 1:30 pm or so PT.

I can do Saturday.

Gail Heriot
Professor of Law
University of San Diego

> On Mar 30, 2021, at 12:32 PM, Norma Cantu <ncantu@usccr.gov> wrote:
>
> Dear Michael, Peter, Gail,
>
> I would set up a doodle poll, but my USCCR email address is not compatible. Perhaps, Ms. Mulder

AMERICAN OVERSIGHT

would have better access to Doodle Poll?

I have Wednesday available at 7-2 PST/ 9-4 CST/ 10-5 EST

Thursday is fine from 7-11 PST/ 9-1 CST/ 10-12 EST. I also have time open 7-8 PST/ 5-7 CST/ 6-8 EST

Friday may be a religious holiday, but if it is not for you, I am open from 11-3 PST/ 1-5 CST/ 2-6 EST

Saturday, I am donating blood in the morning, but will be ready for a call between 9- 6 PST? 11 - 8 CST/ 120-9 EST.
Norma

From: Gail Heriot <gheriot@me.com>
Date: Monday, March 29, 2021 at 8:58 PM
To: Norma Cantu <ncantu@usccr.gov>
Cc: Michael Yaki <MYaki@usccr.gov>, Carissa Mulder <CMulder@usccr.gov>, "pkirsanow@beneschlaw.com" <pkirsanow@beneschlaw.com>
Subject: [EXTERNAL] Meeting

> CAUTION: This email is from outside USCCR.

We need to get this show on the road. Is there a time late this week that we can all meet?

Gail

Gail Heriot
Professor of Law
University of San Diego

> On Mar 25, 2021, at 3:28 PM,
> Norma Cantu <ncantu@usccr.gov>
> wrote:
>
> Dear Michael,

AMERICAN OVERSIGHT

I really am sorry you are not feeling well.
We are not replacing anyone on EAC yet. At our last meeting with Gail and Peter, I said to Gail and Peter the change would not happen until after June.
Norma

From: Michael Yaki <MYaki@usccr.gov>
Date: Thursday, March 25, 2021 at 4:46 PM
To: Norma Cantu <ncantu@usccr.gov>, Gail Heriot <gheriot@me.com>, Carissa Mulder <CMulder@usccr.gov>
Cc: "pkirsanow@beneschlaw.com" <pkirsanow@beneschlaw.com>
Subject: Re: [EXTERNAL] Re: Noon meeting-how about Thursday at 6 pm EST?

Hang on. You can't replace me yet b/c I have to chair the annual meeting in June. I will resign after the meeting in June.

If I sound belligerent it's bc i have a huge headache

From: Norma Cantu
Sent: Thursday, March 25, 2021 4:56:05 PM
To: Gail Heriot; Carissa Mulder
Cc: Michael Yaki; pkirsanow@beneschlaw.com
Subject: Re: [EXTERNAL] Re: Noon meeting-how about Thursday at 6 pm EST?

Dear Gail, Peter,
I think we are there on the EAC topic.

AMERICAN OVERSIGHT

Do you want to talk briefly?
The timing is a bit urgent because the EAC is eager to get our nominations.
Norma

From: Gail Heriot <gheriot@me.com>
Date: Thursday, March 25, 2021 at 2:21 PM
To: Carissa Mulder <CMulder@usccr.gov>
Cc: Michael Yaki <MYaki@usccr.gov>, Norma Cantu <ncantu@usccr.gov>, "pkirsanow@beneschlaw.com" <pkirsanow@beneschlaw.com>
Subject: [EXTERNAL] Re: Noon meeting-how about Thursday at 6 pm EST?

CAUTION: This email is from outside USCCR.

Gail Heriot
Professor of Law
University of San Diego

> On Mar 25, 2021, at 12:18 PM, Carissa Mulder <CMulder@usccr.gov> wrote:
>
> I hope you feel better soon! Pete unfortunately just found out that he can't meet this

AMERICAN OVERSIGHT

evening either, due to an emergency in his practice.

From: Michael Yaki
Sent: Thursday, March 25, 2021 3:15:05 PM
To: Carissa Mulder; Norma Cantu
Cc: pkirsanow@beneschlaw.com; Gail Heriot
Subject: Re: Noon meeting-how about Thursday at 6 pm EST?

Hey everyone

I am having a reaction to my Moderna shot and am out of commission today. Norma can meet if she wants to go forward to get some of the non controversial items out of the way. Sorry for the late notice, but it hit me this morning.

From: Carissa Mulder
Sent: Friday, March 19, 2021 11:46:11 AM
To: Norma Cantu; Michael Yaki
Cc: pkirsanow@beneschlaw.com; Gail Heriot
Subject: Re: Noon

AMERICAN OVERSIGHT

meeting-how about Thursday at 6 pm EST?

Dear Commissioners:

6 pm Eastern on Thursday works for both Commissioners Heriot and Kirsanow. They look forward to meeting with you then!

Sincerely,

Carissa

From: Norma Cantu
Sent: Friday, March 19, 2021 11:43:00 AM
To: Carissa Mulder; Michael Yaki
Cc: pkirsanow@beneschlaw.com; Gail Heriot
Subject: Re: Noon meeting-how about Thursday at 6 pm EST?

Dear Carissa,

I teach a class from 2 to 5 EST on Thursdays. I can meet after class at 6 p.m. EST this Thursday.

I also have Friday open until 3 p.m. EST.

Norma

AMERICAN OVERSIGHT

From: Carissa Mulder <CMulder@usccr.gov>
Date: Friday, March 19, 2021 at 10:39 AM
To: Norma Cantu <ncantu@usccr.gov>, Michael Yaki <MYaki@usccr.gov>
Cc: "pkirsanow@beneschlaw.com" <pkirsanow@beneschlaw.com>, Gail Heriot <gheriot@me.com>
Subject: Noon meeting

Good morning, Commissioners Cantu and Yaki:

Commissioners Kirsanow and Heriot asked me to email you and tell you that they are not logistically prepared to negotiate today. Would you be available to meet Thursday at 1:30 PM EDT?

Thank you,

Carissa

AMERICAN OVERSIGHT

Date : 4/9/2021 2:34:13 PM
From : "Carissa Mulder" carissa.mulder@gmail.com
To : "Kirsanow, Peter" pkirsanow@beneschlaw.com, "Peter Kirsanow" pkirsanow@usccr.gov, "Carissa Mulder" cmulder@usccr.gov
Subject : Fwd: FW: [EXTERNAL] Meeting--Times available for Norma to meet regarding vote on Chair

CAUTION: This email is from outside USCCR.

Pete, I think you are going to have to take a firm line about the general counsel being involved with this. The specifics of the negotiation do not involve him. And Norma invited him to join without consulting you or Gail.

---------- Forwarded message ---------
From: **Carissa Mulder** <CMulder@usccr.gov>
Date: Fri, Apr 9, 2021 at 2:28 PM
Subject: FW: [EXTERNAL] Meeting--Times available for Norma to meet regarding vote on Chair
To: carissa.mulder@gmail.com <carissa.mulder@gmail.com>

From: David Ganz
Sent: Friday, April 9, 2021 2:28:35 PM (UTC-05:00) Eastern Time (US & Canada)
To: Norma Cantu; Michael Yaki; Carissa Mulder; Gail Heriot
Cc: Michael Yaki; pkirsanow@beneschlaw.com
Subject: RE: [EXTERNAL] Meeting--Times available for Norma to meet regarding vote on Chair

Me as well.

From: Norma Cantu <ncantu@usccr.gov>
Sent: Friday, April 9, 2021 2:26 PM
To: Michael Yaki <michael@michaelyaki.com>; Carissa Mulder <CMulder@usccr.gov>; Gail Heriot <gheriot@me.com>
Cc: Michael Yaki <MYaki@usccr.gov>; pkirsanow@beneschlaw.com; David Ganz <dganz@usccr.gov>
Subject: Re: [EXTERNAL] Meeting--Times available for Norma to meet regarding vote on Chair

Dear Michael, Gail, Carissa, Peter,

Tuesday, at 4 p.m. EST works for me.

Norma

AMERICAN OVERSIGHT

From: Michael Yaki <michael@michaelyaki.com>
Reply-To: Michael Yaki <michael@michaelyaki.com>
Date: Thursday, April 8, 2021 at 12:21 PM
To: Carissa Mulder <CMulder@usccr.gov>, Gail Heriot <gheriot@me.com>
Cc:
" <pkirsanow@beneschlaw.com>, David Ganz <dganz@usccr.gov>
Subject: Re: [EXTERNAL] Meeting--Times available for Norma to meet regarding vote on Chair

CAUTION: This email is from outside USCCR.

Best regards,

Michael

MICHAEL YAKI CONSULTING

e: michael@michaelyaki.com

m: 415.601.4008

CONFIDENTIAL COMMUNICATION: This email message and any attachments are intended only for the use of the addressee named above and may contain information that is privileged and confidential. If you are not the intended recipient, any dissemination, distribution, or copying is strictly prohibited. If you received this email message in error, please immediately notify the sender by replying to this email message or by telephone.

On Thursday, April 8, 2021, 09:58:06 AM PDT, Gail Heriot <gheriot@me.com> wrote:

Yes.

Gail Heriot

Professor of Law

AMERICAN OVERSIGHT

University of San Diego

> On Apr 8, 2021, at 9:46 AM, Carissa Mulder <CMulder@usccr.gov> wrote:

Pete asks if Tuesday at 4 pm Eastern works.

From: Gail Heriot <gheriot@me.com>
Sent: Thursday, April 8, 2021 12:37 PM
To: Carissa Mulder <CMulder@usccr.gov>
Cc: Norma Cantu <ncantu@usccr.gov>; Michael Yaki <MYaki@usccr.gov>; pkirsanow@beneschlaw.com; MICHAEL@michaelyaki.com; David Ganz <dganz@usccr.gov>
Subject: Re: [EXTERNAL] Meeting--Times available for Norma to meet regarding vote on Chair

> CAUTION: This email is from outside USCCR.

Gail Heriot

Professor of Law

University of San Diego

> On Apr 8, 2021, at 9:01 AM, Carissa Mulder <CMulder@usccr.gov> wrote:
>
> Good morning, everyone:
>
> I just got off the phone with Pete. Unfortunately, he can't meet before Monday at 2 pm Eastern. Is there a time after that that would work for everyone? I realize this is after April 10, but he can't make it work before then.
>
> ---
>
> **From:** Norma Cantu <ncantu@usccr.gov>
> **Sent:** Thursday, April 8, 2021 11:45 AM
> **To:** Carissa Mulder <CMulder@usccr.gov>; Gail Heriot <gheriot@me.com>
> **Cc:** Michael Yaki <MYaki@usccr.gov>; pkirsanow@beneschlaw.com; michael@michaelyaki.com; David Ganz <dganz@usccr.gov>
> **Subject:** Re: [EXTERNAL] Meeting--Times available for Norma to meet regarding vote on Chair

AMERICAN OVERSIGHT

Hello, all,

Not hearing a response, I am checking in on a good time to complete our task on the proposed AI′s, etc.

I will be in a two-hour meeting today and will be back at my desk at 11:30PST/ 1:30 CST/2:30 EST. After that, I have cleared off the rest of today and all of tomorrow for the four Commissioners to work on language. Of course, it won′t take that much time, but I do estimate 1-2 hours for our discussion.

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Norma

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To: Gail Heriot <gheriot@me.com>, Norma Cantu <ncantu@usccr.gov>
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Sent: Thursday, April 1, 2021 4:46:24 PM
To: Norma Cantu
Cc: Carissa Mulder; Michael Yaki; pkirsanow@beneschlaw.com; MICHAEL@michaelyaki.com
Subject: Re: [EXTERNAL] Meeting--Times available for Norma to meet

AMERICAN OVERSIGHT

CAUTION: This email is from outside USCCR.

e to make Tuesday work.

Gail Heriot

Professor of Law

University of San Diego

On Apr 1, 2021, at 1:41 PM, Norma Cantu <ncantu@usccr.gov> wrote:

Dear Peter, Gail, Michael, Carissa,

Monday doesn't work.

I suggest Tuesday afternoon.

Norma

From: Gail Heriot <gheriot@me.com>
Date: Wednesday, March 31, 2021 at 3:19 PM
To: Carissa Mulder <CMulder@usccr.gov>
Cc: Norma Cantu <ncantu@usccr.gov>,
>, "pkirsanow@beneschlaw.com" <pkirsanow@beneschlaw.com>
Subject: Re: [EXTERNAL] Meeting--Times available for Norma to meet

CAUTION: This email is from outside USCCR.

Gail Heriot

Professor of Law

University of San Diego

On Mar 31, 2021, at 1:18 PM, Carissa Mulder <CMulder@usccr.gov> wrote:

AMERICAN OVERSIGHT

I just got off the phone with Pete. He is tied up for the rest of the week. Would Monday work?

Thank you!

From: Carissa Mulder
Sent: Wednesday, March 31, 2021 9:22:57 AM
To: Gail Heriot; Norma Cantu
Cc: michael@michaeyaki.com; Michael Yaki; pkirsanow@beneschlaw.com
Subject: Re: [EXTERNAL] Meeting--Times available for Norma to meet

Pete told me yesterday (sorry, I thought he had responded to this email) that he is only available later in the week. Pete, can you do any of these times Thursday or Friday?

From: Gail Heriot <gheriot@me.com>
Sent: Wednesday, March 31, 2021 12:28:04 AM
To: Norma Cantu
Cc: michael@michaeyaki.com; Michael Yaki; Carissa Mulder; pkirsanow@beneschlaw.com
Subject: Re: [EXTERNAL] Meeting--Times available for Norma to meet

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You don't want to see me at 7:00 am PT on Thursday. But I can do any time after 9:00 am PT.

Friday is okay from 11:00 am PT till 1:30 pm or so PT.

I can do Saturday.

Gail Heriot

Professor of Law

AMERICAN OVERSIGHT

University of San Diego

On Mar 30, 2021, at 12:32 PM, Norma Cantu <ncantu@usccr.gov> wrote:

Dear Michael, Peter, Gail,

I would set up a doodle poll, but my USCCR email address is not compatible. Perhaps, Ms. Mulder would have better access to Doodle Poll?

I have Wednesday available at 7-2 PST/ 9-4 CST/ 10-5 EST

Thursday is fine from 7-11 PST/ 9-1 CST/ 10-12 EST. I also have time open 7-8 PST/ 5-7 CST/ 6-8 EST

Friday may be a religious holiday, but if it is not for you, I am open from 11-3 PST/ 1-5 CST/ 2-6 EST

Saturday, I am donating blood in the morning, but will be ready for a call between 9- 6 PST? 11 - 8 CST/ 120-9 EST.

Norma

From: Gail Heriot <gheriot@me.com>
Date: Monday, March 29, 2021 at 8:58 PM
To: Norma Cantu <ncantu@usccr.gov>
Cc: Michael Yaki <MYaki@usccr.gov>, Carissa " <pkirsanow@beneschlaw.com>
Subject: [EXTERNAL] Meeting

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AMERICAN OVERSIGHT

We need to get this show on the road. Is there a time late this week that we can all meet?

Gail

Gail Heriot

Professor of Law

University of San Diego

> On Mar 25, 2021, at 3:28 PM, Norma Cantu <ncantu@usccr.gov> wrote:
>
> Dear Michael,
>
> I really am sorry you are not feeling well.
>
> We are not replacing anyone on EAC yet. At our last meeting with Gail and Peter, I said to Gail and Peter the change would not happen until after June.
>
> Norma

From: Michael Yaki <MYaki@usccr.gov>
Date: Thursday, March 25, 2021 at 4:46 PM
To: Norma Cantu <ncantu@usccr.gov>, Gail Heriot <gheriot@me.com>, Carissa Mulder <CMulder@usccr.gov>
Cc: "pkirsanow@beneschlaw.com" <pkirsanow@beneschlaw.com>
Subject: Re: [EXTERNAL] Re: Noon meeting-how about Thursday at 6 pm EST?

Hang on. You can't replace me yet b/c I have to chair the annual meeting

AMERICAN OVERSIGHT

in June. I will resign after the meeting in June.

If I sound belligerent it's bc i have a huge headache

From: Norma Cantu
Sent: Thursday, March 25, 2021 4:56:05 PM
To: Gail Heriot; Carissa Mulder
Cc: Michael Yaki; pkirsanow@beneschlaw.com
Subject: Re: [EXTERNAL] Re: Noon meeting-how about Thursday at 6 pm EST?

Dear Gail, Peter,

I think we are there on the EAC topic.

Do you want to talk briefly?

The timing is a bit urgent because the EAC is eager to get our nominations.

Norma

From: Gail Heriot <gheriot@me.com>
Date: Thursday, March 25, 2021 at 2:21 PM
To: Carissa Mulder <CMulder@usccr.gov>
Cc: Michael Yaki <MYaki@usccr.gov>, Norma Cantu " <pkirsanow@beneschlaw.com>
Subject: [EXTERNAL] Re: Noon meeting-how about Thursday at 6 pm EST?

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AMERICAN OVERSIGHT

Gail Heriot

Professor of Law

University of San Diego

On Mar 25, 2021, at 12:18 PM, Carissa Mulder <CMulder@usccr.gov> wrote:

I hope you feel better soon! Pete unfortunately just found out that he can't meet this evening either, due to an emergency in his practice.

From: Michael Yaki
Sent: Thursday, March 25, 2021 3:15:05 PM
To: Carissa Mulder; Norma Cantu
Cc: pkirsanow@beneschlaw.com; Gail Heriot
Subject: Re: Noon meeting- how about Thursday at 6 pm EST?

Hey everyone

I am having a reaction to my Moderna shot and am out of commission today. Norma can meet if she wants to go forward to get some of the non controversial items out of the way. Sorry for the late notice, but it hit me this morning.

AMERICAN OVERSIGHT

From: Carissa Mulder
Sent: Friday, March 19, 2021 11:46:11 AM
To: Norma Cantu; Michael Yaki
Cc: pkirsanow@beneschlaw.com; Gail Heriot
Subject: Re: Noon meeting- how about Thursday at 6 pm EST?

Dear Commissioners:

6 pm Eastern on Thursday works for both Commissioners Heriot and Kirsanow. They look forward to meeting with you then!

Sincerely,

Carissa

From: Norma Cantu
Sent: Friday, March 19, 2021 11:43:00 AM
To: Carissa Mulder; Michael Yaki
Cc: pkirsanow@beneschlaw.com; Gail Heriot
Subject: Re: Noon meeting- how about Thursday at 6 pm EST?

Dear Carissa,

AMERICAN OVERSIGHT

I teach a class from 2 to 5 EST on Thursdays. I can meet after class at 6 p.m. EST this Thursday.

I also have Friday open until 3 p.m. EST.

Norma

From:
>
Date: Friday, March 19, 2021 at 10:39 AM
To: Norma Cantu <ncantu@usccr.gov>, Michael Yaki <MYaki@usccr.gov>
Cc: "pkirsanow@beneschlaw.com" <pkirsanow@beneschlaw.com>, Gail Heriot <gheriot@me.com>
Subject: Noon meeting

Good morning, Commissioners Cantu and Yaki:

Commissioners Kirsanow and Heriot asked me to email you and tell you that they are not logistically prepared to negotiate today. Would you be available to meet Thursday at 1:30 PM EDT?

Thank you,

AMERICAN OVERSIGHT

Carissa

--
Carissa B. Mulder

AMERICAN OVERSIGHT

Date : 4/9/2021 2:31:50 PM
From : "Gail Heriot" gheriot@me.com
To : "Norma Cantu" ncantu@usccr.gov, "Gail Heriot" gheriot@usccr.gov, "Peter Kirsanow" pkirsanow@beneschlaw.com
Cc : "Norma Cantu" ncantu@usccr.gov, "Michael Yaki" michael@michaelyaki.com, "Carissa Mulder" CMulder@usccr.gov, "Michael Yaki" MYaki@usccr.gov, "pkirsanow@beneschlaw.com" pkirsanow@beneschlaw.com
Subject : Re: [EXTERNAL] Meeting--Times available for Norma to meet regarding vote on Chair

CAUTION: This email is from outside USCCR.

Why are we meeting with David Ganz?

Gail Heriot
Professor of Law
University of San Diego

> On Apr 9, 2021, at 11:28 AM, David Ganz <dganz@usccr.gov> wrote:
>
> Me as well.
>
> ---
>
> **From:** Norma Cantu <ncantu@usccr.gov>
> **Sent:** Friday, April 9, 2021 2:26 PM
> **To:** Michael Yaki <michael@michaelyaki.com>; Carissa Mulder <CMulder@usccr.gov>; Gail Heriot <gheriot@me.com>
> **Cc:** Michael Yaki <MYaki@usccr.gov>; pkirsanow@beneschlaw.com; David Ganz <dganz@usccr.gov>
> **Subject:** Re: [EXTERNAL] Meeting--Times available for Norma to meet regarding vote on Chair
>
> Dear Michael, Gail, Carissa, Peter,
> Tuesday, at 4 p.m. EST works for me.
> Norma
>
> ---
>
> **From:** Michael Yaki <michael@michaelyaki.com>
> **Reply-To:** Michael Yaki <michael@michaelyaki.com>
> **Date:** Thursday, April 8, 2021 at 12:21 PM
> **To:** Carissa Mulder <CMulder@usccr.gov>, Gail Heriot <gheriot@me.com>
> **Cc:**
> " <pkirsanow@beneschlaw.com>, David Ganz <dganz@usccr.gov>
> **Subject:** Re: [EXTERNAL] Meeting--Times available for Norma to meet regarding vote on Chair
>
> CAUTION: This email is from outside USCCR.

AMERICAN OVERSIGHT

Best regards,
Michael

MICHAEL YAKI CONSULTING
e: michael@michaelyaki.com
m: 415.601.4008

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On Thursday, April 8, 2021, 09:58:06 AM PDT, Gail Heriot <gheriot@me.com> wrote:

Yes.

Gail Heriot
Professor of Law
University of San Diego

> On Apr 8, 2021, at 9:46 AM, Carissa Mulder <CMulder@usccr.gov> wrote:
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> Pete asks if Tuesday at 4 pm Eastern works.

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To: Carissa Mulder <CMulder@usccr.gov>
Cc: Norma Cantu <ncantu@usccr.gov>; Michael Yaki <MYaki@usccr.gov>; pkirsanow@beneschlaw.com; MICHAEL@michaelyaki.com; David Ganz <dganz@usccr.gov>
Subject: Re: [EXTERNAL] Meeting--Times available for Norma to meet regarding vote on Chair

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Gail Heriot

Professor of Law

University of San Diego

> On Apr 8, 2021, at 9:01 AM, Carissa Mulder <CMulder@usccr.gov> wrote:
>
> Good morning, everyone:

AMERICAN OVERSIGHT

I just got off the phone with Pete. Unfortunately, he can't meet before Monday at 2 pm Eastern. Is there a time after that that would work for everyone? I realize this is after April 10, but he can't make it work before then.

From: Norma Cantu <ncantu@usccr.gov>
Sent: Thursday, April 8, 2021 11:45 AM
To: Carissa Mulder <CMulder@usccr.gov>; Gail Heriot <gheriot@me.com>
Cc: Michael Yaki <MYaki@usccr.gov>; pkirsanow@beneschlaw.com; michael@michaelyaki.com; David Ganz <dganz@usccr.gov>
Subject: Re: [EXTERNAL] Meeting--Times available for Norma to meet regarding vote on Chair

Hello, all,

Not hearing a response, I am checking in on a good time to complete our task on the proposed AI's, etc.

I will be in a two-hour meeting today and will be back at my desk at 11:30PST/ 1:30 CST/2:30 EST. After that, I have cleared off the rest of today and all of tomorrow for the four Commissioners to work on language. Of course, it won't take that much time, but I do estimate 1-2 hours for our discussion.

Please bear in mind that we should try to get the language together by Saturday, April 10, because we need to give the USCCR General Counsel time to review the language for AI's or other vehicles to be sure we are aligned to language in our statute and other federal laws.

FYI, I would rather be listening to your ideas than reading all the digitized AI's and the newest version of Robert's Rules. I can meet late in the day for the convenience of those of you on West Coast time.

Norma

From: Carissa Mulder <CMulder@usccr.gov>
Date: Friday, April 2, 2021 at 12:26 PM
To: Gail Heriot <gheriot@me.com>, Norma Cantu <ncantu@usccr.gov>
Cc: Michael Yaki <MYaki@usccr.gov>,
" <michael@michaelyaki.com>
Subject: Re: [EXTERNAL] Meeting--Times available for Norma to meet

AMERICAN OVERSIGHT

Hello everyone,

Pete can do anytime Tuesday between 1-4 PM Eastern. Is there a time in there that works for everyone?

From: Gail Heriot <gheriot@me.com>
Sent: Thursday, April 1, 2021 4:46:24 PM
To: Norma Cantu
Cc: Carissa Mulder; Michael Yaki; pkirsanow@beneschlaw.com; MICHAEL@michaelyaki.com
Subject: Re: [EXTERNAL] Meeting--Times available for Norma to meet

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e to make Tuesday work.

Gail Heriot

Professor of Law

University of San Diego

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> **Subject:** Re: [EXTERNAL] Meeting--Times available for Norma to meet

AMERICAN OVERSIGHT

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Professor of Law

University of San Diego

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Thank you!

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Professor of Law

University of San Diego

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AMERICAN OVERSIGHT

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Subject: [EXTERNAL] Meeting

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Professor of Law

University of San Diego

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Cc: "pkirsanow@beneschlaw.com" <pkirsanow@beneschlaw.com>
Subject: Re: [EXTERNAL] Re: Noon meeting-how about Thursday at 6 pm EST?

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Gail Heriot

Professor of Law

University of San Diego

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> **To:** Carissa Mulder;

AMERICAN OVERSIGHT

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Cc:
pkirsanow@beneschlaw.com;
Gail Heriot
Subject: Re: Noon
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Hey everyone

I am having a reaction to my Moderna shot and am out of commission today. Norma can meet if she wants to go forward to get some of the non controversial items out of the way. Sorry for the late notice, but it hit me this morning.

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To: Norma Cantu;
Michael Yaki
Cc:
pkirsanow@beneschlaw.com;
Gail Heriot
Subject: Re: Noon
meeting-how about
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Dear
Commissioners:

AMERICAN OVERSIGHT

6 pm Eastern on Thursday works for both Commissioners Heriot and Kirsanow. They look forward to meeting with you then!

Sincerely,

Carissa

From: Norma Cantu
Sent: Friday, March 19, 2021 11:43:00 AM
To: Carissa Mulder; Michael Yaki
Cc: pkirsanow@beneschlaw.com; Gail Heriot
Subject: Re: Noon meeting-how about Thursday at 6 pm EST?

Dear Carissa,

I teach a class from 2 to 5 EST on Thursdays. I can meet after class at 6 p.m. EST this Thursday.

I also have Friday open until 3 p.m. EST.

Norma

From: Carissa >
Date: Friday, March 19, 2021 at

AMERICAN OVERSIGHT

10:39 AM
To: Norma Cantu <ncantu@usccr.gov>, Michael Yaki <MYaki@usccr.gov>
Cc: "pkirsanow@beneschlaw.com" <pkirsanow@beneschlaw.com>, Gail Heriot <gheriot@me.com>
Subject: Noon meeting

Good morning, Commissioners Cantu and Yaki:

Commissioners Kirsanow and Heriot asked me to email you and tell you that they are not logistically prepared to negotiate today. Would you be available to meet Thursday at 1:30 PM EDT?

Thank you,

Carissa

AMERICAN OVERSIGHT

Date : 4/9/2021 4:26:02 PM
From : "Norma Cantu" ncantu@usccr.gov
To : "Gail Heriot" gheriot@me.com, "Gail Heriot" gheriot@usccr.gov, "Peter Kirsanow" pkirsanow@beneschlaw.com
Cc : "Michael Yaki" michael@michaelyaki.com, "Carissa Mulder" CMulder@usccr.gov, "Michael Yaki" MYaki@usccr.gov, "David Ganz" dganz@usccr.gov
Subject : Re: [EXTERNAL] Meeting--Times available for Norma to meet regarding vote on Chair

Dear Gail,

In my earlier email, I wrote that our General Counsel would need to review our language on proposed AI's and other vehicles to be sure we were consistent with applicable federal laws.
I copied David Ganz on that email so he could anticipate that we were working on language. Ganz replied that he received the email and would be available as needed.
It seems that you inferred that he was invited to join the call. That was not my intent.
We won't have language ready to share with General Counsel until *after* our meeting on Tuesday.
Norma

From: Gail Heriot <gheriot@me.com>
Date: Friday, April 9, 2021 at 1:31 PM
To: Norma Cantu <ncantu@usccr.gov>, Gail Heriot <gheriot@usccr.gov>, Peter Kirsanow <pkirsanow@beneschlaw.com>
Cc: Norma Cantu <ncantu@usccr.gov>, Michael Yaki <michael@michaelyaki.com>, Carissa Mulder <CMulder@usccr.gov>, Michael Yaki <MYaki@usccr.gov>, "pkirsanow@beneschlaw.com" <pkirsanow@beneschlaw.com>
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Gail Heriot
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> **Subject:** Re: [EXTERNAL] Meeting--Times available for Norma to meet regarding vote on Chair

AMERICAN OVERSIGHT

Dear Michael, Gail, Carissa, Peter,
Tuesday, at 4 p.m. EST works for me.
Norma

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Cc:
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Subject: Re: [EXTERNAL] Meeting--Times available for Norma to meet regarding vote on Chair

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Best regards,
Michael

MICHAEL YAKI CONSULTING
e: michael@michaelyaki.com
m: 415.601.4008

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Yes.

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Professor of Law
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AMERICAN OVERSIGHT

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Gail Heriot

Professor of Law

University of San Diego

On Apr 8, 2021, at 9:01 AM, Carissa Mulder <CMulder@usccr.gov> wrote:

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Please bear in mind that we should try to get the language together by Saturday, April 10, because we need to give the USCCR General Counsel time to review the language for AI's or other vehicles to be sure we are aligned to language in our statute and other federal laws.

AMERICAN OVERSIGHT

FYI, I would rather be listening to your ideas than reading all the digitized AI's and the newest version of Robert's Rules. I can meet late in the day for the convenience of those of you on West Coast time.

Norma

From: Carissa Mulder <CMulder@usccr.gov>
Date: Friday, April 2, 2021 at 12:26 PM
To: Gail Heriot <gheriot@me.com>, Norma Cantu <ncantu@usccr.gov>
Cc: Michael Yaki <MYaki@usccr.gov>,
" <michael@michaelyaki.com>
Subject: Re: [EXTERNAL] Meeting--Times available for Norma to meet

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To: Norma Cantu
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Subject: Re: [EXTERNAL] Meeting--Times available for Norma to meet

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Gail Heriot

Professor of Law

University of San Diego

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AMERICAN OVERSIGHT

I suggest Tuesday afternoon.

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Date: Wednesday, March 31, 2021 at 3:19 PM
To: Carissa Mulder <CMulder@usccr.gov>
Cc: Norma Cantu <ncantu@usccr.gov>, "michael@michaeyaki.com" <michael@michaeyaki.com>, Michael Yaki <MYaki@usccr.gov>, "pkirsanow@beneschlaw.com" <pkirsanow@beneschlaw.com>
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Professor of Law

University of San Diego

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> I just got off the phone with Pete. He is tied up for the rest of the week. Would Monday work?
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> Thank you!
>
> ---
>
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> **Sent:** Wednesday, March 31, 2021 9:22:57 AM
> **To:** Gail Heriot; Norma Cantu
> **Cc:** michael@michaeyaki.com; Michael Yaki; pkirsanow@beneschlaw.com
> **Subject:** Re: [EXTERNAL] Meeting--Times available for Norma to meet

AMERICAN OVERSIGHT

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Sent: Wednesday, March 31, 2021 12:28:04 AM
To: Norma Cantu
Cc: michael@michaeyaki.com; Michael Yaki; Carissa Mulder; pkirsanow@beneschlaw.com
Subject: Re: [EXTERNAL] Meeting--Times available for Norma to meet

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You don't want to see me at 7:00 am PT on Thursday. But I can do any time after 9:00 am PT.

Friday is okay from 11:00 am PT till 1:30 pm or so PT.

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Gail Heriot

Professor of Law

University of San Diego

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AMERICAN OVERSIGHT

I have Wednesday available at 7-2 PST/ 9-4 CST/ 10-5 EST

Thursday is fine from 7-11 PST/ 9-1 CST/ 10-12 EST. I also have time open 7-8 PST/ 5-7 CST/ 6-8 EST

Friday may be a religious holiday, but if it is not for you, I am open from 11-3 PST/ 1-5 CST/ 2-6 EST

Saturday, I am donating blood in the morning, but will be ready for a call between 9- 6 PST? 11 - 8 CST/ 120-9 EST.

Norma

From: Gail Heriot <gheriot@me.com>
Date: Monday, March 29, 2021 at 8:58 PM
To: Norma Cantu <ncantu@usccr.gov>
Cc: Michael Yaki <MYaki@usccr.gov>, " <pkirsanow@beneschlaw.com>
Subject: [EXTERNAL] Meeting

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We need to get this show on the road. Is there a time late this week that we can all meet?

Gail

Gail Heriot

Professor of Law

University of San Diego

AMERICAN OVERSIGHT

On Mar 25, 2021, at 3:28 PM, Norma Cantu <ncantu@usccr.gov> wrote:

Dear Michael,

I really am sorry you are not feeling well.

We are not replacing anyone on EAC yet. At our last meeting with Gail and Peter, I said to Gail and Peter the change would not happen until after June.

Norma

From: Michael Yaki <MYaki@usccr.gov>
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Cc: "pkirsanow@beneschlaw.com" <pkirsanow@beneschlaw.com>
Subject: Re: [EXTERNAL] Re: Noon meeting-how about Thursday at 6 pm EST?

Hang on. You can't replace me yet b/c I have to chair the annual meeting in June. I will resign after the meeting in June.

If I sound belligerent it's bc i have a huge headache

AMERICAN OVERSIGHT

From: Norma Cantu
Sent: Thursday, March 25, 2021 4:56:05 PM
To: Gail Heriot; Carissa Mulder
Cc: Michael Yaki; pkirsanow@beneschlaw.com
Subject: Re: [EXTERNAL] Re: Noon meeting-how about Thursday at 6 pm EST?

Dear Gail, Peter,

I think we are there on the EAC topic.

Do you want to talk briefly?

The timing is a bit urgent because the EAC is eager to get our nominations.

Norma

From: Gail Heriot <gheriot@me.com>
Date: Thursday, March 25, 2021 at 2:21 PM
To: Carissa Mulder <CMulder@usccr.gov>
Cc: Michael Yaki <MYaki@usccr.gov>, Norma " <pkirsanow@beneschlaw.com>
Subject: [EXTERNAL] Re: Noon meeting-how about Thursday at 6 pm EST?

CAUTION: This email is from outside USCCR.

Gail Heriot

Professor of Law

University of San Diego

AMERICAN OVERSIGHT

On Mar 25, 2021, at 12:18 PM, Carissa Mulder <CMulder@usccr.gov> wrote:

I hope you feel better soon! Pete unfortunately just found out that he can't meet this evening either, due to an emergency in his practice.

From: Michael Yaki
Sent: Thursday, March 25, 2021 3:15:05 PM
To: Carissa Mulder; Norma Cantu
Cc: pkirsanow@beneschlaw.com; Gail Heriot
Subject: Re: Noon meeting-how about Thursday at 6 pm EST?

Hey everyone

I am having a reaction to my Moderna shot and am out of commission today. Norma can meet if she wants to go forward to get some of the non controversial items out of the way. Sorry for the late notice, but it hit me this morning.

AMERICAN OVERSIGHT

From: Carissa Mulder
Sent: Friday, March 19, 2021 11:46:11 AM
To: Norma Cantu; Michael Yaki
Cc: pkirsanow@beneschlaw.com; Gail Heriot
Subject: Re: Noon meeting-how about Thursday at 6 pm EST?

Dear Commissioners:

6 pm Eastern on Thursday works for both Commissioners Heriot and Kirsanow. They look forward to meeting with you then!

Sincerely,

Carissa

From: Norma Cantu
Sent: Friday, March 19, 2021 11:43:00 AM
To: Carissa Mulder; Michael Yaki
Cc: pkirsanow@beneschlaw.com; Gail Heriot
Subject: Re: Noon meeting-how about

AMERICAN OVERSIGHT

Thursday at 6 pm
EST?

Dear Carissa,

I teach a class from 2
to 5 EST on
Thursdays. I can meet
after class at 6 p.m.
EST this Thursday.

I also have Friday
open until 3 p.m. EST.

Norma

From: Carissa
>
Date: Friday,
March 19, 2021 at
10:39 AM
To: Norma Cantu
<ncantu@usccr.gov>,
Michael Yaki
<MYaki@usccr.gov>
Cc:
"pkirsanow@beneschlaw.com" <pkirsanow@beneschlaw.com>,
Gail Heriot
<gheriot@me.com>
Subject: Noon
meeting

Good morning,
Commissioners
Cantu and Yaki:

Commissioners
Kirsanow and
Heriot asked me to
email you and tell
you that they are
not logistically
prepared to
negotiate today.

AMERICAN OVERSIGHT

Would you be
available to meet
Thursday at 1:30
PM EDT?

Thank you,

Carissa

AMERICAN OVERSIGHT

Date : 4/9/2021 4:54:26 PM
From : "David Ganz" dganz@usccr.gov
To : "Norma Cantu" ncantu@usccr.gov, "Gail Heriot" gheriot@me.com, "Gail Heriot" gheriot@usccr.gov, "Peter Kirsanow" pkirsanow@beneschlaw.com
Cc : "Michael Yaki" michael@michaelyaki.com, "Carissa Mulder" CMulder@usccr.gov, "Michael Yaki" MYaki@usccr.gov
Subject : RE: [EXTERNAL] Meeting--Times available for Norma to meet regarding vote on Chair

Hello all, please share the draft agreed-upon A.I.s with me whenever you are ready. Unless you request my assistance on Tuesday, I do not plan on attending the 4 o'clock meeting. Have a good weekend,

David

From: Norma Cantu <ncantu@usccr.gov>
Sent: Friday, April 9, 2021 4:26 PM
To: Gail Heriot <gheriot@me.com>; Gail Heriot <gheriot@usccr.gov>; Peter Kirsanow <pkirsanow@beneschlaw.com>
Cc: Michael Yaki <michael@michaelyaki.com>; Carissa Mulder <CMulder@usccr.gov>; Michael Yaki <MYaki@usccr.gov>; David Ganz <dganz@usccr.gov>
Subject: Re: [EXTERNAL] Meeting--Times available for Norma to meet regarding vote on Chair

Dear Gail,

In my earlier email, I wrote that our General Counsel would need to review our language on proposed AI's and other vehicles to be sure we were consistent with applicable federal laws.
I copied David Ganz on that email so he could anticipate that we were working on language. Ganz replied that he received the email and would be available as needed.
It seems that you inferred that he was invited to join the call. That was not my intent.
We won't have language ready to share with General Counsel until *after* our meeting on Tuesday.
Norma

From: Gail Heriot <gheriot@me.com>
Date: Friday, April 9, 2021 at 1:31 PM
To: Norma Cantu <ncantu@usccr.gov>, Gail Heriot <gheriot@usccr.gov>, Peter Kirsanow <pkirsanow@beneschlaw.com>
Cc: Norma Cantu <ncantu@usccr.gov>, Michael Yaki <michael@michaelyaki.com>, Carissa Mulder <CMulder@usccr.gov>, Michael Yaki <MYaki@usccr.gov>, "pkirsanow@beneschlaw.com" <pkirsanow@beneschlaw.com>
Subject: Re: [EXTERNAL] Meeting--Times available for Norma to meet regarding vote on Chair

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Gail Heriot
Professor of Law
University of San Diego

AMERICAN OVERSIGHT

On Apr 9, 2021, at 11:28 AM, David Ganz <dganz@usccr.gov> wrote:

Me as well.

From: Norma Cantu <ncantu@usccr.gov>
Sent: Friday, April 9, 2021 2:26 PM
To: Michael Yaki <michael@michaelyaki.com>; Carissa Mulder <CMulder@usccr.gov>; Gail Heriot <gheriot@me.com>
Cc: Michael Yaki <MYaki@usccr.gov>; pkirsanow@beneschlaw.com; David Ganz <dganz@usccr.gov>
Subject: Re: [EXTERNAL] Meeting--Times available for Norma to meet regarding vote on Chair

Dear Michael, Gail, Carissa, Peter,
Tuesday, at 4 p.m. EST works for me.
Norma

From: Michael Yaki <michael@michaelyaki.com>
Reply-To: Michael Yaki <michael@michaelyaki.com>
Date: Thursday, April 8, 2021 at 12:21 PM
To: Carissa Mulder <CMulder@usccr.gov>, Gail Heriot <gheriot@me.com>
Cc:
" <pkirsanow@beneschlaw.com>, David Ganz <dganz@usccr.gov>
Subject: Re: [EXTERNAL] Meeting--Times available for Norma to meet regarding vote on Chair

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Best regards,
Michael

MICHAEL YAKI CONSULTING
e: michael@michaelyaki.com
m: 415.601.4008

CONFIDENTIAL COMMUNICATION: This email message and any attachments are intended only for the use of the addressee named above and may contain information that is privileged and confidential. If you are not the intended recipient, any dissemination, distribution, or copying is strictly prohibited. If you received this email message in error, please immediately notify the sender by replying to this email message or by telephone.

On Thursday, April 8, 2021, 09:58:06 AM PDT, Gail Heriot <gheriot@me.com> wrote:

Yes.

Gail Heriot
Professor of Law
University of San Diego

On Apr 8, 2021, at 9:46 AM, Carissa Mulder <CMulder@usccr.gov> wrote:

AMERICAN OVERSIGHT

Pete asks if Tuesday at 4 pm Eastern works.

From: Gail Heriot <gheriot@me.com>
Sent: Thursday, April 8, 2021 12:37 PM
To: Carissa Mulder <CMulder@usccr.gov>
Cc: Norma Cantu <ncantu@usccr.gov>; Michael Yaki <MYaki@usccr.gov>; pkirsanow@beneschlaw.com; MICHAEL@michaelyaki.com; David Ganz <dganz@usccr.gov>
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Professor of Law

University of San Diego

> On Apr 8, 2021, at 9:01 AM, Carissa Mulder <CMulder@usccr.gov> wrote:
>
> Good morning, everyone:
>
> I just got off the phone with Pete. Unfortunately, he can't meet before Monday at 2 pm Eastern. Is there a time after that that would work for everyone? I realize this is after April 10, but he can't make it work before then.
>
> ---
>
> **From:** Norma Cantu <ncantu@usccr.gov>
> **Sent:** Thursday, April 8, 2021 11:45 AM
> **To:** Carissa Mulder <CMulder@usccr.gov>; Gail Heriot <gheriot@me.com>
> **Cc:** Michael Yaki <MYaki@usccr.gov>; pkirsanow@beneschlaw.com; michael@michaelyaki.com; David Ganz <dganz@usccr.gov>
> **Subject:** Re: [EXTERNAL] Meeting--Times available for Norma to meet regarding vote on Chair
>
> Hello, all,
>
> Not hearing a response, I am checking in on a good time to complete our task on the proposed AI's, etc.

AMERICAN OVERSIGHT

I will be in a two-hour meeting today and will be back at my desk at 11:30PST/ 1:30 CST/2:30 EST. After that, I have cleared off the rest of today and all of tomorrow for the four Commissioners to work on language. Of course, it won't take that much time, but I do estimate 1-2 hours for our discussion.

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AMERICAN OVERSIGHT

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Professor of Law

University of San Diego

AMERICAN OVERSIGHT

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AMERICAN OVERSIGHT

Gail

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Professor of Law

University of San Diego

On Mar 25, 2021, at 3:28 PM, Norma Cantu <ncantu@usccr.gov> wrote:

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Cc: "pkirsanow@beneschlaw.com" <pkirsanow@beneschlaw.com>
Subject: Re: [EXTERNAL] Re: Noon meeting-how about Thursday at 6 pm EST?

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AMERICAN OVERSIGHT

resign after the meeting in June.

If I sound belligerent it's bc i have a huge headache

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Cc: Michael Yaki; pkirsanow@beneschlaw.com
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Do you want to talk briefly?

The timing is a bit urgent because the EAC is eager to get our nominations.

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Gail Heriot

Professor of Law

University of San Diego

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Subject: Re: Noon meeting-how about Thursday at 6 pm EST?

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I am having a reaction to my Moderna shot and am out of commission today. Norma can meet if she wants to go

AMERICAN OVERSIGHT

forward to get some of the non controversial items out of the way. Sorry for the late notice, but it hit me this morning.

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Cc: pkirsanow@beneschlaw.com; Gail Heriot
Subject: Re: Noon meeting-how about Thursday at 6 pm EST?

Dear Commissioners:

6 pm Eastern on Thursday works for both Commissioners Heriot and Kirsanow. They look forward to meeting with you then!

Sincerely,

Carissa

From: Norma Cantu
Sent: Friday, March

AMERICAN OVERSIGHT

19, 2021 11:43:00 AM
To: Carissa Mulder; Michael Yaki
Cc: pkirsanow@beneschlaw.com; Gail Heriot
Subject: Re: Noon meeting-how about Thursday at 6 pm EST?

Dear Carissa,

I teach a class from 2 to 5 EST on Thursdays. I can meet after class at 6 p.m. EST this Thursday.

I also have Friday open until 3 p.m. EST.

Norma

From: Carissa >
Date: Friday, March 19, 2021 at 10:39 AM
To: Norma Cantu <ncantu@usccr.gov>, Michael Yaki <MYaki@usccr.gov>
Cc: "pkirsanow@beneschlaw.com" <pkirsanow@beneschlaw.com>, Gail Heriot <gheriot@me.com>
Subject: Noon meeting

Good morning, Commissioners Cantu and Yaki:

AMERICAN OVERSIGHT

Commissioners Kirsanow and Heriot asked me to email you and tell you that they are not logistically prepared to negotiate today. Would you be available to meet Thursday at 1:30 PM EDT?

Thank you,

Carissa

AMERICAN OVERSIGHT

Date : 4/12/2021 1:38:26 PM
From : "Amy Royce" aroyce@usccr.gov
To : "juanadelpilar@gmail.com" juanadelpilar@gmail.com, "Irena Vidulovic" ividulovic@usccr.gov
Subject : Draft agenda for Tuesday/ Wednesday caucus call
Attachment : 04-08-Business-Meeting-Agenda-for-04-16.pdf;ID SAC Dr. Yenor.docx;CO SAC Dr. Chen.docx;

Hey Juana,

Including here items we flagged for discussion on the caucus call. Irena, please let me know if I missed anything, and if we should attach materials regarding the NC SAC.

We will continue to hold the 3:00 pm time tomorrow unless we hear otherwise. Usually we would circulate an agenda the day before. Since Commissioner Cantu will be leading the call, she may want to use this agenda or may have her own, but I thought this would be helpful.

Agenda items:

- Update from Comms. Cantu and Yaki on discussions regarding Chair confirmation
- Business meeting on Friday (Sunshine Act notice attached)
    - Need for agenda amendments: remove FEMA discovery materials, as already approved by notational vote
    - Remove/combine other items?
        - Eliminating the Speaker Series
        - Rebuttal/surrebuttal time period
        - Bi-partisan appointment to EAC board of advisors
    - Statement on violence against AAPI community?
- SAC updates
    - Potential compromise on North Carolina SAC, adding one member for an 8/8 balance
    - Colorado and Idaho SACs
        - R's proposal - Dr. Chen in CO if we allow Mr. Yenor in ID (objections and responses attached)
    - Need for information from regional staff on status of recruiting for remainder of 14 expired committees
- Status of AI availability for Commissioners
    - A version of the AI's that was current in 2014 is available online, need information and a timeline from the GC for updating that version

AMERICAN OVERSIGHT

CIVIL RIGHTS COMMISSION

Sunshine Act Meeting Notice

AGENCY: United States Commission on Civil Rights.

ACTION: Notice of Commission public business meeting.

DATES: Friday, April 16, 2021, 12:00 p.m. EST.

FOR FURTHER INFORMATION CONTACT: Angelia Rorison: 202-376-7700; publicaffairs@usccr.gov.

ADDRESSES: Meeting to take place by telephone and is open to the public by telephone: 1-866-556-2537, Conference ID #896-5601. Computer assisted real-time transcription (CART) will be provided. The web link toaccess CART (in English) on Friday, April 16th, 2021, is https://www.streamtext.net/player?event=USCCR. Please note that CART is text-only translation that occurs in real time during the meeting and is not an exact transcript.

MEETING AGENDA

I. Motion to Approve Commissioner Norma Cantú to Serve as USCCR Chair

II. Approval of Agenda

III. Business Meeting

A. Discussion and Vote on Statement of Walter E. Williams;

B. Discussion and Vote to continue the Policy of Rebuttals and Surrebuttals;

C. Discussion and Vote to suspend Speaker Series;

D. Discussion and Agreement to Appoint Bipartisan Commissioners to EAC

E. Discovery and Vote on FEMA Report Discovery Plan

F. Management and Operations

- Staff Director's Report

IV. Adjourn Meeting

Dated: April 8, 2021

AMERICAN OVERSIGHT

COLORADO: 12 candidates, 6 Republicans (including one Independent who leans Republican), 6 Democrats (including one Independent who leans Democrat).

- Comm. Heriot objected to Prof. Ming Hsu Chen on the basis of an article she wrote called, "Colorblind Nationalism."
- Prof. Chen responded, and Mauro kept her on the slate on the basis of the response.
- Full objection from Comm. Heriot:

In her article, Prof. Chen says that racist and anti-immigrant "policies are cloaked in the neutral language of national protection, public health, and economic justice." Therefore, anyone who supports those facially colorblind policies is racist. More broadly, Prof. Chen suggests that anyone who favors any level of immigration restriction is a white supremacist.

It is inappropriate for a SAC member to make wild accusations of racism against entire groups of people. This article reveals Prof. Chen's bad faith. Additionally, her embrace of Ibram X. Kendi's "anti-racist" ideology is troubling, as that ideology in and of itself promotes discrimination.

Prof. Chen's article in the Yale Journal on Regulation, "Colorblind Nationalism," (available here) is particularly objectionable for a member of a State Advisory Committee.

- Full response from Prof. Chen:

Dear Mr. Mussatt and Mr. Morales,

Thank you for the opportunity to respond to Commissioner Heriot's objection. This objection seems to be based on a single sentence from an opinion piece, which I discuss below, but please note her objection paraphrases my essay in ways that mischaracterize the essay and my beliefs.

For example:

- *I do not say or believe that "anyone who supports facially colorblind policies is racist"*
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As some background, I have served on the Colorado State Advisory Committee for 4-years (2016-2020). During that time, I worked collaboratively with all SAC members after my project proposal on the naturalization backlog was unanimously adopted in

AMERICAN OVERSIGHT

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Outside of my service to SAC, my professional qualifications include a ten-year history of academic teaching and writing in immigration, civil rights, and administrative law at the University of Colorado Law School. This has included presentations with scholars from many viewpoints. Not infrequently I've been invited by members of conservative groups like the Federalist Society or the National Association of Attorney Generals to be a reasonable voice in their discussions. In these and other endeavors, I have never been accused of bias in my professional work.

In my personal capacity, I occasionally write short opinion pieces such as the essay that is cited in the objection and published in a special symposium on racism and the law for the online edition of the nation's premiere specialty journal on administrative law. I would describe my own views in the essay as advocating for greater racial equality for immigrants negatively impacted by travel bans and expressing an abiding concern that our federal government adhere to fair procedures in the issuance of such policies. There is no basis for saying that these views amount to "wild accusations of racism against entire groups of people" or that they "embrace Ibram X. Kendi's antiracist ideology… as that ideology itself promotes discrimination." I am not familiar with Ibram X Kendi's writings on antiracism and do not read, engage with, nor cite his work in this essay or my other scholarship. Moreover, the piece does not claim to represent the views of CO SAC or the USCCR. While I do not think the views expressed in the essay are objectionable, even if they were, I would not bring personal biases into my professional service.
In closing, I recognize that reasonable people disagree on the best means of achieving equality.

My sense is that Commissioner Heriot misunderstands my perspectives and seeks to associate me with views that are more extreme than my own. Rather than rely on her second-hand description of an opinion piece written in my personal capacity, I would encourage the USCCR to apply a fair minded consideration of my application that focuses on my actual statements and my record of service to the CO SAC and USCCR.

AMERICAN OVERSIGHT

IDAHO

Commissioner Yaki's objection

Dear Dr. Yenor:

Thank you for your service on the Idaho Advisory Committee and for your recent application for reappointment. Your name was included on the list of nominated individuals that is currently being reviewed by the Commissioners prior to appointment. As part of that review, Commissioner Yaki has made a formal objection to your nomination on the Committee because of an alleged comment you made.

Pursuant to our Administrative Instructions, when Commissioner objections pertain to a proposed member's public statement, then that nominee is provided the opportunity to respond in writing to the raised concern. The Staff Director will then consider the written response when making the final determination on whether to include the nominee on the list of individuals to be recommended for appointment.

The Commissioner has objected to your reappointment to the Idaho Advisory Committee because the Commissioner believes you are hostile to marriage equality and transgender rights. Furthermore, The Commissioner believes your public statements render you incapable of, and unable to, protect the constitutional rights supported by recent Supreme Court opinions. Citations to your most objectionable public statements on the issues at hand include:

- *https://startingpointsjournal.com/feminism-transgenderism-and-the-politics-of-identity/*
- *https://www.dailysignal.com/2017/07/18/radical-feminism-sowed-seeds-transgender-moment*
- *https://www.dailysignal.com/2017/08/02/transgender-activists-seeking-undermine-parental-rights/*
- *https://www.dailysignal.com/2017/08/02/transgender-activists-seeking-undermine-parental-rights/*
- *https://www.heritage.org/marriage-and-family/report/the-obligations-family-life-response-modern-liberalism.*

Mr. Yenor's Reponse

Dear Mr. Mussatt,
Thank you for forwarding the objections of Commissioner Michael Yaki and giving me two days to respond. I would like to know more about the process for how my response will be evaluated. Is the whole USCCR to respond? How will responses be tabulated? In any event, again thank you for forwarding these objections.

The objections to my re-nomination to the Idaho Advisory committee on civil rights are (1) that I am "hostile to marriage equality and transgender rights" as evidenced in my public writings and (2) that my "public statements render [me] incapable of, and unable to, protect (sic) the constitutional rights supported by recent Supreme Court opinions."

AMERICAN OVERSIGHT

Claims of discrimination under the current civil rights regime must be established through rational inquiry aided, where appropriate, by social science. Proposed policies to combat alleged discrimination must then be weighed through a rational public policy process. Policies must be evaluated critically if they are implemented.

Civil rights are hardly an all or nothing proposition. Some civil rights clash with other civil rights. Civil rights almost always require a balancing of various claims or a negotiation of the rights of various groups. In objecting to my participation on the commission, Commissioner Yaki seems to deny that civil rights matters involve such balancing or to deny that some important civil rights should be protected or to deny that some civil rights claims should be heard or entertained; he seems to want civil rights for only some groups and not for others. He gives civil rights a bad name in so doing.

Suppose a civil rights commission finds itself adjudicating a claim of transgender rights as civil rights. In making a fair-minded adjudication, the commission would have to consider the relation between such transgender rights and other civil rights in our tradition such as the free exercise of religion, parental rights, rights against sex discrimination. It would have to determine how transgender rights weigh against those rights. In doing so, it would be necessary to inquire into the rational basis for claims of transgender rights and the likely consequences of affirming them, just as it would be necessary to see what would happen from denying them.

My work raises questions about the evidence that proves discrimination and it concerns the clash of civil rights in politics. Claims of transgender rights can, in some circumstances, I have argued, clash with parental rights (as when a school insists on transitioning a child from one gender to another without informing the parents or against their will). Such instances are, as my research argues, more likely to harm the child and, if multiplied, are likely to have a corrosive effect on parental rights, a crucial civil right (as established in Meyer v. Nebraska and Pierce v. Society of Sisters). Seeing children as products of state mandates in these instances is more likely to undermine well-functioning institutions than it is to promote a good society or thriving individuals. Claims to marital equality have already compromised religious liberty, the freedom of association, and the free thought and discussion on many platforms.

Does Commissioner Yaki disagree that transgender rights clash with parental rights? Does he think that the Civil Rights Commissions nationwide should ignore questions about what it would mean to take the side of "transgender rights" against parental rights? Does he think religious liberty of so little importance that Civil Rights Commissions should ignore how it is compromised by so-called marriage equality? Does he think Civil Rights Commissions should refrain from investigating the future mental and physical health of children who have been transitioned, against the will of their parents, from one gender to another? Does he think we should cease investigating the mental or physical health of all those who have transitioned, even with parental support? Perhaps I should object to his continued participation as a Civil Rights Commissioner if he thinks all such questions are settled questions or based on sound science!

The inclusion of gender identity within the anti-discrimination regime of the 1964 Civil Rights Act is a cause for no little concern. Under such gender identity claims, a person's subjective,

AMERICAN OVERSIGHT

gendered self-image as woman, man or whatever supersedes the objective biological fact of sexual identity as female or male. This new gender identity further may come with a demand that governments and others citizens recognize that new gender as an objective fact—a huge abridgement on the civil rights and the freedom of mind of others. These ideas, taken together, are incoherent and compromise our commitment to limited government. They are incoherent because they nullify the categories of male and female to which the anti-discrimination principle applies. How can a school district remedy supposed unjust discrimination in girls' sports when anyone can qualify, simply on their own assertion, as woman? Does Fairness in Sports demand keeping biological men out of women's sports and aspiring to equal treatment of such sports or does it demand letting transgendered men in and, perhaps, decrease the opportunities for the formerly protected class of women? Idaho has taken the lead in protecting women's sports in these circumstances, and I look forward to participating in studies investigating how this affects opportunities. The demands that Commissioner Yaki makes contain the seeds of a new political order, much less committed to civil rights than our current order.

I am very skeptical of the idea that gender operates independently of sex. I would demand verification, from well-designed studies, that confirmed the proposition that conceiving of gender independently of sex leads to individual and social thriving. It think it is irresponsible to accept, without critical inquiry, the idea that affirming gender identity fosters all manner of social and individual good. It is not at all clear to me that it is better to recognize a person's concept of gender, apart from their biological sex, as authentic and salutary rather than as erroneous or pathological. I would be concerned that acknowledging such an idea compromises other, well-established and important civil rights.

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Sincerely,
Scott Yenor

AMERICAN OVERSIGHT

Date : 4/13/2021 11:44:48 AM
From : "Amy Royce" aroyce@usccr.gov
To : "David Kladney" dkladney@usccr.gov, "Debo P. Adegbile" dadegbile@usccr.gov, "Norma Cantu" ncantu@usccr.gov, "Michael Yaki" MYaki@usccr.gov
Cc : "normavcantu@gmail.com" normavcantu@gmail.com, "Irena Vidulovic" ividulovic@usccr.gov, "Alec Deull" adeull@usccr.gov, "juanadelpilar@gmail.com" juanadelpilar@gmail.com
Subject : Caucus call agenda
Attachment : 04-08-Business-Meeting-Agenda-for-04-16.pdf;ID SAC Dr. Yenor.docx;CO SAC Dr. Chen.docx;

Hello all,

We are scheduled for a caucus call today at 3:00 Eastern/ 12:00 Pacific. The number is 1-877-446-3914, passcode 858713#

Agenda items:

- Update from Comms. Cantu and Yaki on discussions regarding Chair confirmation
- Business meeting on Friday (Sunshine Act notice attached)
    - Need for agenda amendments: remove FEMA discovery materials, as already approved by notational vote
    - Remove/combine other items?
        - Eliminating the Speaker Series
        - Rebuttal/surrebuttal time period
        - Bi-partisan appointment to EAC board of advisors
    - Statement on violence against AAPI community?
- SAC updates
    - Potential compromise on North Carolina SAC, adding one member for an 8/8 balance
        - The Democratic caucus accepts adding Mincey *please see context below (no additional application needed)
        - The Republican caucus will remove the objection to Lechner *please see context below (no additional application needed)
        - Vote in the SAC w/8-8 balance
            - Slate failed to get a majority vote on Friday 10/30.
            - 15 candidates, 8 Democrats (including two Independents who lean Democrat), 7 Republicans (including one candidate who identified as “something else”).
            - Note that Olga Wright, the returning Chair, identifies herself as a Democrat but ran for public office as a Republican in all her past elections.
            - Comm. Kirsanow (and Adams) objected to the balance of the slate, and requested that it be shifted to 7 Republicans and 7 Democrats (removing one Dem).

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        - John/Adams objected to the inclusion of Jennifer Lechner as he don't consider her a true Republican." In her stead they would like to replace her with a Mr. Patrick Mincey who Carissa recruited. Replacing Lechner with Mincey takes the gender balance of the slate to 11 men and 4 women. Mincey is a white collar crime attorney and lacks major civil rights experience, however in our vetting process we did not find anything objectionable regarding his public statements or conduct
    - Colorado and Idaho SACs
        - R's proposal - Dr. Chen in CO if we allow Dr. Yenor in ID (objections and responses attached)
    - Need for information from regional staff on status of recruiting for remainder of 14 expired committees
- Status of AI availability for Commissioners
    - A version of the AI's that was current in 2014 is available online, need information and a timeline from the GC for updating that version

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CIVIL RIGHTS COMMISSION

Sunshine Act Meeting Notice

AGENCY: United States Commission on Civil Rights.

ACTION: Notice of Commission public business meeting.

DATES: Friday, April 16, 2021, 12:00 p.m. EST.

FOR FURTHER INFORMATION CONTACT: Angelia Rorison: 202-376-7700; publicaffairs@usccr.gov.

ADDRESSES: Meeting to take place by telephone and is open to the public by telephone: 1-866-556-2537, Conference ID #896-5601. Computer assisted real-time transcription (CART) will be provided. The web link toaccess CART (in English) on Friday, April 16th, 2021, is https://www.streamtext.net/player?event=USCCR. Please note that CART is text-only translation that occurs in real time during the meeting and is not an exact transcript.

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AMERICAN OVERSIGHT

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AMERICAN OVERSIGHT

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Sincerely,
Scott Yenor

AMERICAN OVERSIGHT

Date : 4/13/2021 3:10:47 PM
From : "David Ganz" dganz@usccr.gov
To : "Gail Heriot" gheriot@me.com, "Norma Cantu" ncantu@usccr.gov
Cc : "Gail Heriot" gheriot@usccr.gov, "Peter Kirsanow" pkirsanow@beneschlaw.com, "Michael Yaki" michael@michaelyaki.com, "Carissa Mulder" CMulder@usccr.gov, "Michael Yaki" MYaki@usccr.gov
Subject : RE: [EXTERNAL] Meeting--Times available for Norma to meet regarding vote on Chair

Hello all, this past Friday I received some email traffic indicating the Commissioners wanted me not be on the call today. I am happy to join today if that is what the group wants. Please let me know. Thanks,

David

From: Gail Heriot <gheriot@me.com>
Sent: Tuesday, April 13, 2021 3:06 PM
To: Norma Cantu <ncantu@usccr.gov>
Cc: Gail Heriot <gheriot@usccr.gov>; Peter Kirsanow <pkirsanow@beneschlaw.com>; Michael Yaki <michael@michaelyaki.com>; Carissa Mulder <CMulder@usccr.gov>; Michael Yaki <MYaki@usccr.gov>; David Ganz <dganz@usccr.gov>
Subject: Re: [EXTERNAL] Meeting--Times available for Norma to meet regarding vote on Chair

> CAUTION: This email is from outside USCCR.

Gail Heriot is inviting you to a scheduled Zoom meeting.

Topic: My Meeting with Norma et al.
Time: Apr 13, 2021 01:00 PM Pacific Time (US and Canada)

Join Zoom Meeting
https://sandiego.zoom.us/j/94847298845

Meeting ID: 948 4729 8845
One tap mobile
+16699006833,,94847298845# US (San Jose)
+13462487799,,94847298845# US (Houston)

Dial by your location
+1 669 900 6833 US (San Jose)
+1 346 248 7799 US (Houston)
+1 253 215 8782 US (Tacoma)
+1 312 626 6799 US (Chicago)
+1 646 876 9923 US (New York)
+1 301 715 8592 US (Washington DC)
Meeting ID: 948 4729 8845
Find your local number: https://sandiego.zoom.us/u/am6VwqyuA

AMERICAN OVERSIGHT

On Apr 9, 2021, at 1:26 PM, Norma Cantu <ncantu@usccr.gov> wrote:

Dear Gail,

In my earlier email, I wrote that our General Counsel would need to review our language on proposed AI's and other vehicles to be sure we were consistent with applicable federal laws.
I copied David Ganz on that email so he could anticipate that we were working on language. Ganz replied that he received the email and would be available as needed.
It seems that you inferred that he was invited to join the call. That was not my intent.
We won't have language ready to share with General Counsel until *after* our meeting on Tuesday.
Norma

From: Gail Heriot <gheriot@me.com>
Date: Friday, April 9, 2021 at 1:31 PM
To: Norma Cantu <ncantu@usccr.gov>, Gail Heriot <gheriot@usccr.gov>, Peter Kirsanow <pkirsanow@beneschlaw.com>
>, Michael Yaki <MYaki@usccr.gov>, "pkirsanow@beneschlaw.com" <pkirsanow@beneschlaw.com>
Subject: Re: [EXTERNAL] Meeting--Times available for Norma to meet regarding vote on Chair

CAUTION: This email is from outside USCCR.

Gail Heriot
Professor of Law
University of San Diego

> On Apr 9, 2021, at 11:28 AM, David Ganz <dganz@usccr.gov> wrote:
>
> Me as well.
>
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> **Sent:** Friday, April 9, 2021 2:26 PM
> **To:** Michael Yaki <michael@michaelyaki.com>; Carissa Mulder <CMulder@usccr.gov>; Gail Heriot <gheriot@me.com>
> **Cc:** Michael Yaki <MYaki@usccr.gov>; pkirsanow@beneschlaw.com; David Ganz <dganz@usccr.gov>
> **Subject:** Re: [EXTERNAL] Meeting--Times available for Norma to meet regarding vote on Chair
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> Dear Michael, Gail, Carissa, Peter,
> Tuesday, at 4 p.m. EST works for me.
> Norma

AMERICAN OVERSIGHT

From: Michael Yaki <michael@michaelyaki.com>
Reply-To: Michael Yaki <michael@michaelyaki.com>
Date: Thursday, April 8, 2021 at 12:21 PM
To: Carissa Mulder <CMulder@usccr.gov>, Gail Heriot <gheriot@me.com>
" <pkirsanow@beneschlaw.com>, David Ganz <dganz@usccr.gov>
Subject: Re: [EXTERNAL] Meeting--Times available for Norma to meet regarding vote on Chair

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Best regards,
Michael

MICHAEL YAKI CONSULTING
e: michael@michaelyaki.com
m: 415.601.4008

CONFIDENTIAL COMMUNICATION: This email message and any attachments are intended only for the use of the addressee named above and may contain information that is privileged and confidential. If you are not the intended recipient, any dissemination, distribution, or copying is strictly prohibited. If you received this email message in error, please immediately notify the sender by replying to this email message or by telephone.

On Thursday, April 8, 2021, 09:58:06 AM PDT, Gail Heriot <gheriot@me.com> wrote:

Yes.

Gail Heriot
Professor of Law
University of San Diego

On Apr 8, 2021, at 9:46 AM, Carissa Mulder <CMulder@usccr.gov> wrote:

Pete asks if Tuesday at 4 pm Eastern works.

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Gail Heriot

Professor of Law

University of San Diego

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Good morning, everyone:

I just got off the phone with Pete. Unfortunately, he can't meet before Monday at 2 pm Eastern. Is there a time after that that would work for everyone? I realize this is after April 10, but he can't make it work before then.

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Subject: Re: [EXTERNAL] Meeting--Times available for Norma to meet regarding vote on Chair

Hello, all,

Not hearing a response, I am checking in on a good time to complete our task on the proposed AI's, etc.

I will be in a two-hour meeting today and will be back at my desk at 11:30PST/ 1:30 CST/2:30 EST. After that, I have cleared off the rest of today and all of tomorrow for the four Commissioners to work on language. Of course, it won't take that much time, but I do estimate 1-2 hours for our discussion.

Please bear in mind that we should try to get the language together by Saturday, April 10, because we need to give the USCCR General Counsel time to review the language for AI's or other vehicles to be sure we are aligned to language in our statute and other federal laws.

FYI, I would rather be listening to your ideas than reading all the digitized AI's and the newest version of Robert's Rules. I can meet late in the day for the convenience of those of you on West Coast time.

AMERICAN OVERSIGHT

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Professor of Law

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AMERICAN OVERSIGHT

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University of San Diego

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> Thank you!
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> **Sent:** Wednesday, March 31, 2021 9:22:57 AM
> **To:** Gail Heriot; Norma Cantu
> **Cc:** michael@michaeyaki.com; Michael Yaki; pkirsanow@beneschlaw.com
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AMERICAN OVERSIGHT

Norma to meet

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You don‘t want to see me at 7:00 am PT on Thursday. But I can do any time after 9:00 am PT.

Friday is okay from 11:00 am PT till 1:30 pm or so PT.

I can do Saturday.

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Professor of Law

University of San Diego

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>
> I have Wednesday available at 7-2 PST/ 9-4 CST/ 10-5 EST
>
> Thursday is fine from 7-11 PST/ 9-1 CST/ 10-12 EST. I also have time open 7-8 PST/ 5-7 CST/ 6-8 EST
>
> Friday may be a religious holiday, but if it is not for you, I am open from 11-3 PST/ 1-5 CST/ 2-6 EST

AMERICAN OVERSIGHT

Saturday, I am donating blood in the morning, but will be ready for a call between 9- 6 PST? 11 - 8 CST/ 120-9 EST.

Norma

From: Gail Heriot <gheriot@me.com>
Date: Monday, March 29, 2021 at 8:58 PM
To: Norma Cantu <ncantu@usccr.gov>
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Subject: [EXTERNAL] Meeting

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We need to get this show on the road. Is there a time late this week that we can all meet?

Gail

Gail Heriot

Professor of Law

University of San Diego

> On Mar 25, 2021, at 3:28 PM, Norma Cantu <ncantu@usccr.gov> wrote:
>
> Dear Michael,

AMERICAN OVERSIGHT

I really am sorry you are not feeling well.

We are not replacing anyone on EAC yet. At our last meeting with Gail and Peter, I said to Gail and Peter the change would not happen until after June.

Norma

From: Michael Yaki <MYaki@usccr.gov>
Date: Thursday, March 25, 2021 at 4:46 PM
To: Norma Cantu <ncantu@usccr.gov>, Gail Heriot <gheriot@me.com>, Carissa Mulder <CMulder@usccr.gov>
Cc: "pkirsanow@beneschlaw.com" <pkirsanow@beneschlaw.com>
Subject: Re: [EXTERNAL] Re: Noon meeting-how about Thursday at 6 pm EST?

Hang on. You can't replace me yet b/c I have to chair the annual meeting in June. I will resign after the meeting in June.

If I sound belligerent it's bc i have a huge headache

From: Norma Cantu
Sent: Thursday, March 25, 2021 4:56:05 PM
To: Gail Heriot; Carissa Mulder

Subject: Re: [EXTERNAL] Re: Noon meeting-how about Thursday at 6 pm EST?

AMERICAN OVERSIGHT

Dear Gail, Peter,

I think we are there on the EAC topic.

Do you want to talk briefly?

The timing is a bit urgent because the EAC is eager to get our nominations.

Norma

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Gail Heriot

Professor of Law

University of San Diego

AMERICAN OVERSIGHT

On Mar 25, 2021, at 12:18 PM, Carissa > wrote:

I hope you feel better soon! Pete unfortunately just found out that he can't meet this evening either, due to an emergency in his practice.

From: Michael Yaki
Sent: Thursday, March 25, 2021 3:15:05 PM
To: Carissa Mulder; Norma Cantu
Cc: pkirsanow@beneschlaw.com; Gail Heriot
Subject: Re: Noon meeting- how about Thursday at 6 pm EST?

Hey everyone

I am having a reaction to my Moderna shot and am out of commission today.
Norma can meet if she wants to go forward to get some of

AMERICAN OVERSIGHT

the non controversial items out of the way. Sorry for the late notice, but it hit me this morning.

From: Carissa Mulder
Sent: Friday, March 19, 2021 11:46:11 AM
To: Norma Cantu; Michael Yaki
Cc: pkirsanow@beneschlaw.com; Gail Heriot
Subject: Re: Noon meeting- how about Thursday at 6 pm EST?

Dear Commissioners:

6 pm Eastern on Thursday works for both Commissioners Heriot and Kirsanow. They look forward to meeting with you then!

AMERICAN OVERSIGHT

Sincerely,

Carissa

From: Norma Cantu
Sent: Friday, March 19, 2021 11:43:00 AM
To: Carissa Mulder; Michael Yaki
Cc: pkirsanow@beneschlaw.com; Gail Heriot
Subject: Re: Noon meeting- how about Thursday at 6 pm EST?

Dear Carissa,
I teach a class from 2 to 5 EST on Thursdays. I can meet after class at 6 p.m. EST this Thursday.
I also have Friday open until 3 p.m. EST.
Norma

From: Carissa >
Date: Friday, March 19, 2021 at 10:39 AM
To: Norma >, Michael >
Cc: "pkirsanow@beneschlaw.com" <pkirsanow@beneschlaw.com>, >
Subject: Noon meeting

Good morning,

AMERICAN OVERSIGHT

Commissioners Cantu and Yaki:

Commissioners Kirsanow and Heriot asked me to email you and tell you that they are not logistically prepared to negotiate today. Would you be available to meet Thursday at 1:30 PM EDT?

Thank you,

Carissa

AMERICAN OVERSIGHT

Date : 4/13/2021 3:05:37 PM
From : "Gail Heriot" gheriot@me.com
To : "Norma Cantu" ncantu@usccr.gov
Cc : "Gail Heriot" gheriot@usccr.gov, "Peter Kirsanow" pkirsanow@beneschlaw.com, "Michael Yaki" michael@michaelyaki.com, "Carissa Mulder" CMulder@usccr.gov, "Michael Yaki" MYaki@usccr.gov, "David Ganz" dganz@usccr.gov
Subject : Re: [EXTERNAL] Meeting--Times available for Norma to meet regarding vote on Chair

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Gail Heriot is inviting you to a scheduled Zoom meeting.

Topic: My Meeting with Norma et al.
Time: Apr 13, 2021 01:00 PM Pacific Time (US and Canada)

Join Zoom Meeting
https://sandiego.zoom.us/j/94847298845

Meeting ID: 948 4729 8845
One tap mobile
+16699006833,,94847298845# US (San Jose)
+13462487799,,94847298845# US (Houston)

Dial by your location
+1 669 900 6833 US (San Jose)
+1 346 248 7799 US (Houston)
+1 253 215 8782 US (Tacoma)
+1 312 626 6799 US (Chicago)
+1 646 876 9923 US (New York)
+1 301 715 8592 US (Washington DC)
Meeting ID: 948 4729 8845
Find your local number: https://sandiego.zoom.us/u/am6VwqyuA

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AMERICAN OVERSIGHT

Michael

MICHAEL YAKI CONSULTING
e: michael@michaelyaki.com
m: 415.601.4008

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University of San Diego

On Mar 25, 2021, at 12:18 PM, Carissa

AMERICAN OVERSIGHT

> wrote:

I hope you feel better soon! Pete unfortunately just found out that he can't meet this evening either, due to an emergency in his practice.

From: Michael Yaki
Sent: Thursday, March 25, 2021 3:15:05 PM
To: Carissa Mulder; Norma Cantu
Cc: pkirsanow@beneschlaw.com; Gail Heriot
Subject: Re: Noon meeting- how about Thursday at 6 pm EST?

Hey everyone

I am having a reaction to my Moderna shot and am out of commission today.
Norma can meet if she wants to go forward to get some of the non controversial items out of the way.

AMERICAN OVERSIGHT

Sorry for the late notice, but it hit me this morning.

From: Carissa Mulder
Sent: Friday, March 19, 2021 11:46:11 AM
To: Norma Cantu; Michael Yaki
Cc: pkirsanow@beneschlaw.com; Gail Heriot
Subject: Re: Noon meeting- how about Thursday at 6 pm EST?

Dear Commissioners:

6 pm Eastern on Thursday works for both Commissioners Heriot and Kirsanow. They look forward to meeting with you then!

Sincerely,

Carissa

AMERICAN OVERSIGHT

From: Norma Cantu
Sent: Friday, March 19, 2021 11:43:00 AM
To: Carissa Mulder; Michael Yaki
Cc: pkirsanow@beneschlaw.com; Gail Heriot
Subject: Re: Noon meeting- how about Thursday at 6 pm EST?

Dear Carissa,

I teach a class from 2 to 5 EST on Thursdays. I can meet after class at 6 p.m. EST this Thursday.

I also have Friday open until 3 p.m. EST.

Norma

From: Carissa >
Date: Friday, March 19, 2021 at 10:39 AM
To: Norma >, Michael >
Cc: "pkirsanow@beneschlaw.com" <pkirsanow@beneschlaw.com>, >
Subject: Noon meeting

Good morning, Commissione

AMERICAN OVERSIGHT

rs Cantu and Yaki:

Commissioners Kirsanow and Heriot asked me to email you and tell you that they are not logistically prepared to negotiate today. Would you be available to meet Thursday at 1:30 PM EDT?

Thank you,

Carissa

AMERICAN OVERSIGHT

Date : 4/13/2021 2:53:06 PM
From : "Gail Heriot" gheriot@me.com
To : "Norma Cantu" ncantu@usccr.gov
Cc : "Michael Yaki" michael@michaelyaki.com, "Carissa Mulder" CMulder@usccr.gov, "Michael Yaki" MYaki@usccr.gov, "pkirsanow@beneschlaw.com" pkirsanow@beneschlaw.com
Subject : Re: [EXTERNAL] Meeting--Times available for Norma to meet regarding vote on Chair

CAUTION: This email is from outside USCCR.

I'll use zoom. It's the only thing I know how to use. I send it in a few minutes.

Gail Heriot
Professor of Law
University of San Diego

On Apr 13, 2021, at 11:51 AM, Norma Cantu <ncantu@usccr.gov> wrote:

Dear Gail,
Will you please send start the conference call today at 4 PM EST? I don't have my own managed account and password yet.
If you want to use Zoom, that would be great, too.
Norma

From: David Ganz <dganz@usccr.gov>
Date: Friday, April 9, 2021 at 1:28 PM
To: Norma Cantu <ncantu@usccr.gov>, Michael Yaki <michael@michaelyaki.com>, Carissa Mulder <CMulder@usccr.gov>, Gail Heriot <gheriot@me.com>
Cc: Michael Yaki <MYaki@usccr.gov>, "pkirsanow@beneschlaw.com" <pkirsanow@beneschlaw.com>
Subject: RE: [EXTERNAL] Meeting--Times available for Norma to meet regarding vote on Chair

Me as well.

From: Norma Cantu <ncantu@usccr.gov>
Sent: Friday, April 9, 2021 2:26 PM
To: Michael Yaki <michael@michaelyaki.com>; Carissa Mulder <CMulder@usccr.gov>; Gail Heriot <gheriot@me.com>
Cc: Michael Yaki <MYaki@usccr.gov>; pkirsanow@beneschlaw.com; David Ganz <dganz@usccr.gov>
Subject: Re: [EXTERNAL] Meeting--Times available for Norma to meet regarding vote on Chair

Dear Michael, Gail, Carissa, Peter,
Tuesday, at 4 p.m. EST works for me.
Norma

AMERICAN OVERSIGHT

From: Michael Yaki <michael@michaelyaki.com>
Reply-To: Michael Yaki <michael@michaelyaki.com>
Date: Thursday, April 8, 2021 at 12:21 PM
To: Carissa Mulder <CMulder@usccr.gov>, Gail Heriot <gheriot@me.com>
Cc:
" <pkirsanow@beneschlaw.com>, David Ganz <dganz@usccr.gov>
Subject: Re: [EXTERNAL] Meeting--Times available for Norma to meet regarding vote on Chair

CAUTION: This email is from outside USCCR.

Best regards,
Michael

MICHAEL YAKI CONSULTING
e: michael@michaelyaki.com
m: 415.601.4008

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On Thursday, April 8, 2021, 09:58:06 AM PDT, Gail Heriot <gheriot@me.com> wrote:

Yes.

Gail Heriot
Professor of Law
University of San Diego

On Apr 8, 2021, at 9:46 AM, Carissa Mulder <CMulder@usccr.gov> wrote:

Pete asks if Tuesday at 4 pm Eastern works.

From: Gail Heriot <gheriot@me.com>
Sent: Thursday, April 8, 2021 12:37 PM
To: Carissa Mulder <CMulder@usccr.gov>
Cc: Norma Cantu <ncantu@usccr.gov>; Michael Yaki <MYaki@usccr.gov>; pkirsanow@beneschlaw.com; MICHAEL@michaelyaki.com; David Ganz <dganz@usccr.gov>
Subject: Re: [EXTERNAL] Meeting--Times available for Norma to meet regarding vote on Chair

CAUTION: This email is from outside USCCR.

AMERICAN OVERSIGHT

Gail Heriot

Professor of Law

University of San Diego

On Apr 8, 2021, at 9:01 AM, Carissa Mulder <CMulder@usccr.gov> wrote:

Good morning, everyone:

I just got off the phone with Pete. Unfortunately, he can't meet before Monday at 2 pm Eastern. Is there a time after that that would work for everyone? I realize this is after April 10, but he can't make it work before then.

From: Norma Cantu <ncantu@usccr.gov>
Sent: Thursday, April 8, 2021 11:45 AM
To: Carissa Mulder <CMulder@usccr.gov>; Gail Heriot <gheriot@me.com>
Cc: Michael Yaki <MYaki@usccr.gov>; pkirsanow@beneschlaw.com; michael@michaelyaki.com; David Ganz <dganz@usccr.gov>
Subject: Re: [EXTERNAL] Meeting--Times available for Norma to meet regarding vote on Chair

Hello, all,

Not hearing a response, I am checking in on a good time to complete our task on the proposed AI's, etc.

I will be in a two-hour meeting today and will be back at my desk at 11:30PST/ 1:30 CST/2:30 EST. After that, I have cleared off the rest of today and all of tomorrow for the four Commissioners to work on language. Of course, it won't take that much time, but I do estimate 1-2 hours for our discussion.

Please bear in mind that we should try to get the language together by Saturday, April 10, because we need to give the USCCR General Counsel time to review the language for AI's or other vehicles to be sure we are aligned to language in our statute and other federal laws.

FYI, I would rather be listening to your ideas than reading all the digitized AI's and the newest version of Robert's Rules. I can meet late in the day for the convenience of those of you on West Coast time.

AMERICAN OVERSIGHT

Norma

From: Carissa Mulder <CMulder@usccr.gov>
Date: Friday, April 2, 2021 at 12:26 PM
To: Gail Heriot <gheriot@me.com>, Norma Cantu <ncantu@usccr.gov>
Cc: Michael Yaki <MYaki@usccr.gov>,
" <michael@michaelyaki.com>
Subject: Re: [EXTERNAL] Meeting--Times available for Norma to meet

Hello everyone,

Pete can do anytime Tuesday between 1-4 PM Eastern. Is there a time in there that works for everyone?

From: Gail Heriot <gheriot@me.com>
Sent: Thursday, April 1, 2021 4:46:24 PM
To: Norma Cantu
Cc: Carissa Mulder; Michael Yaki; pkirsanow@beneschlaw.com; MICHAEL@michaelyaki.com
Subject: Re: [EXTERNAL] Meeting--Times available for Norma to meet

CAUTION: This email is from outside USCCR.

e to make Tuesday work.

Gail Heriot

Professor of Law

University of San Diego

> On Apr 1, 2021, at 1:41 PM, Norma Cantu <ncantu@usccr.gov> wrote:
>
> Dear Peter, Gail, Michael, Carissa,
>
> Monday doesn't work.
>
> I suggest Tuesday afternoon.
>
> Norma

AMERICAN OVERSIGHT

From: Gail Heriot <gheriot@me.com>
Date: Wednesday, March 31, 2021 at 3:19 PM
To: Carissa Mulder <CMulder@usccr.gov>
Cc: Norma Cantu <ncantu@usccr.gov>, "michael@michaeyaki.com" <michael@michaeyaki.com>, Michael Yaki <MYaki@usccr.gov>, "pkirsanow@beneschlaw.com" <pkirsanow@beneschlaw.com>
Subject: Re: [EXTERNAL] Meeting--Times available for Norma to meet

CAUTION: This email is from outside USCCR.

Gail Heriot

Professor of Law

University of San Diego

> On Mar 31, 2021, at 1:18 PM, Carissa Mulder <CMulder@usccr.gov> wrote:
>
> I just got off the phone with Pete. He is tied up for the rest of the week. Would Monday work?
>
> Thank you!
>
> ---
>
> **From:** Carissa Mulder
> **Sent:** Wednesday, March 31, 2021 9:22:57 AM
> **To:** Gail Heriot; Norma Cantu
> **Cc:** michael@michaeyaki.com; Michael Yaki; pkirsanow@beneschlaw.com
> **Subject:** Re: [EXTERNAL] Meeting--Times available for Norma to meet
>
> Pete told me yesterday (sorry, I thought he had responded to this email) that he is only available later in the week. Pete, can you do any of these times Thursday or Friday?

AMERICAN OVERSIGHT

From: Gail Heriot <gheriot@me.com>
Sent: Wednesday, March 31, 2021 12:28:04 AM
To: Norma Cantu
Cc: michael@michaeyaki.com; Michael Yaki; Carissa Mulder; pkirsanow@beneschlaw.com
Subject: Re: [EXTERNAL] Meeting--Times available for Norma to meet

CAUTION: This email is from outside USCCR.

You don't want to see me at 7:00 am PT on Thursday. But I can do any time after 9:00 am PT.

Friday is okay from 11:00 am PT till 1:30 pm or so PT.

I can do Saturday.

Gail Heriot

Professor of Law

University of San Diego

> On Mar 30, 2021, at 12:32 PM, Norma Cantu <ncantu@usccr.gov> wrote:
>
> Dear Michael, Peter, Gail,
>
> I would set up a doodle poll, but my USCCR email address is not compatible. Perhaps, Ms. Mulder would have better access to Doodle Poll?
>
> I have Wednesday available at 7-2 PST/ 9-4 CST/ 10-5 EST
>
> Thursday is fine from 7-11 PST/ 9-1 CST/ 10-12 EST. I also have time open 7-8 PST/ 5-7 CST/ 6-8

AMERICAN OVERSIGHT

EST

Friday may be a religious holiday, but if it is not for you, I am open from 11-3 PST/ 1-5 CST/ 2-6 EST

Saturday, I am donating blood in the morning, but will be ready for a call between 9- 6 PST? 11 - 8 CST/ 120-9 EST.

Norma

From: Gail Heriot <gheriot@me.com>
Date: Monday, March 29, 2021 at 8:58 PM
To: Norma Cantu <ncantu@usccr.gov>
Cc: Michael Yaki <MYaki@usccr.gov>, " <pkirsanow@beneschlaw.com>
Subject: [EXTERNAL] Meeting

CAUTION: This email is from outside USCCR.

We need to get this show on the road. Is there a time late this week that we can all meet?

Gail

Gail Heriot

Professor of Law

University of San Diego

> On Mar 25, 2021, at 3:28 PM, Norma Cantu <ncantu@usccr.gov> wrote:
>
> Dear Michael,

AMERICAN OVERSIGHT

I really am sorry you are not feeling well.

We are not replacing anyone on EAC yet. At our last meeting with Gail and Peter, I said to Gail and Peter the change would not happen until after June.

Norma

From: Michael Yaki <MYaki@usccr.gov>
Date: Thursday, March 25, 2021 at 4:46 PM
To: Norma Cantu <ncantu@usccr.gov>, Gail Heriot <gheriot@me.com>, Carissa Mulder <CMulder@usccr.gov>
Cc: "pkirsanow@beneschlaw.com" <pkirsanow@beneschlaw.com>
Subject: Re: [EXTERNAL] Re: Noon meeting-how about Thursday at 6 pm EST?

Hang on. You can't replace me yet b/c I have to chair the annual meeting in June. I will resign after the meeting in June.

If I sound belligerent it's bc i have a huge headache

From: Norma Cantu
Sent: Thursday, March 25, 2021 4:56:05 PM
To: Gail Heriot; Carissa Mulder
Cc: Michael Yaki; pkirsanow@beneschlaw.com
Subject: Re: [EXTERNAL] Re: Noon meeting-how about Thursday at 6 pm EST?

AMERICAN OVERSIGHT

Dear Gail, Peter,

I think we are there on the EAC topic.

Do you want to talk briefly?

The timing is a bit urgent because the EAC is eager to get our nominations.

Norma

From: Gail Heriot <gheriot@me.com>
Date: Thursday, March 25, 2021 at 2:21 PM
To: Carissa Mulder <CMulder@usccr.gov>
Cc: Michael Yaki <MYaki@usccr.gov>, Norma " <pkirsanow@beneschlaw.com>
Subject: [EXTERNAL] Re: Noon meeting-how about Thursday at 6 pm EST?

CAUTION: This email is from outside USCCR.

Gail Heriot

Professor of Law

University of San Diego

On Mar 25, 2021, at 12:18 PM, Carissa Mulder <CMulder@usccr.gov>

AMERICAN OVERSIGHT

wrote:

I hope you feel better soon! Pete unfortunately just found out that he can't meet this evening either, due to an emergency in his practice.

From: Michael Yaki
Sent: Thursday, March 25, 2021 3:15:05 PM
To: Carissa Mulder; Norma Cantu
Cc: pkirsanow@beneschlaw.com; Gail Heriot
Subject: Re: Noon meeting-how about Thursday at 6 pm EST?

Hey everyone

I am having a reaction to my Moderna shot and am out of commission today. Norma can meet if she wants to go forward to get some of the non controversial items out of the way. Sorry for the late notice, but it hit me this morning.

From: Carissa Mulder
Sent: Friday, March

AMERICAN OVERSIGHT

19, 2021 11:46:11 AM
To: Norma Cantu; Michael Yaki
Cc: pkirsanow@beneschlaw.com; Gail Heriot
Subject: Re: Noon meeting-how about Thursday at 6 pm EST?

Dear Commissioners:

6 pm Eastern on Thursday works for both Commissioners Heriot and Kirsanow. They look forward to meeting with you then!

Sincerely,

Carissa

From: Norma Cantu
Sent: Friday, March 19, 2021 11:43:00 AM
To: Carissa Mulder; Michael Yaki
Cc: pkirsanow@beneschlaw.com; Gail Heriot
Subject: Re: Noon meeting-how about Thursday at 6 pm EST?

Dear Carissa,

I teach a class from 2 to 5 EST on

AMERICAN OVERSIGHT

Thursdays. I can meet after class at 6 p.m. EST this Thursday.

I also have Friday open until 3 p.m. EST.

Norma

From: Carissa >
Date: Friday, March 19, 2021 at 10:39 AM
To: Norma Cantu <ncantu@usccr.gov>, Michael Yaki <MYaki@usccr.gov>
Cc: "pkirsanow@beneschlaw.com" <pkirsanow@beneschlaw.com>, Gail Heriot <gheriot@me.com>
Subject: Noon meeting

Good morning, Commissioners Cantu and Yaki:

Commissioners Kirsanow and Heriot asked me to email you and tell you that they are not logistically prepared to negotiate today. Would you be available to meet Thursday at 1:30 PM EDT?

Thank you,

AMERICAN OVERSIGHT

Carissa

AMERICAN OVERSIGHT

Date : 4/13/2021 4:02:50 PM
From : "Michael Yaki" MYaki@usccr.gov
To : "David Ganz" dganz@usccr.gov, "Gail Heriot" gheriot@me.com, "Norma Cantu" ncantu@usccr.gov
Cc : "Gail Heriot" gheriot@usccr.gov, "Peter Kirsanow" pkirsanow@beneschlaw.com, "Michael Yaki" michael@michaelyaki.com, "Carissa Mulder" CMulder@usccr.gov
Subject : Re: [EXTERNAL] Meeting--Times available for Norma to meet regarding vote on Chair

No.

From: David Ganz
Sent: Tuesday, April 13, 2021 3:10:47 PM
To: Gail Heriot; Norma Cantu
Cc: Gail Heriot; Peter Kirsanow; Michael Yaki; Carissa Mulder; Michael Yaki
Subject: RE: [EXTERNAL] Meeting--Times available for Norma to meet regarding vote on Chair

Hello all, this past Friday I received some email traffic indicating the Commissioners wanted me not be on the call today. I am happy to join today if that is what the group wants. Please let me know. Thanks,

David

From: Gail Heriot <gheriot@me.com>
Sent: Tuesday, April 13, 2021 3:06 PM
To: Norma Cantu <ncantu@usccr.gov>
Cc: Gail Heriot <gheriot@usccr.gov>; Peter Kirsanow <pkirsanow@beneschlaw.com>; Michael Yaki <michael@michaelyaki.com>; Carissa Mulder <CMulder@usccr.gov>; Michael Yaki <MYaki@usccr.gov>; David Ganz <dganz@usccr.gov>
Subject: Re: [EXTERNAL] Meeting--Times available for Norma to meet regarding vote on Chair

> CAUTION: This email is from outside USCCR.

Gail Heriot is inviting you to a scheduled Zoom meeting.

Topic: My Meeting with Norma et al.
Time: Apr 13, 2021 01:00 PM Pacific Time (US and Canada)

Join Zoom Meeting
https://sandiego.zoom.us/j/94847298845

Meeting ID: 948 4729 8845
One tap mobile
+16699006833,,94847298845# US (San Jose)
+13462487799,,94847298845# US (Houston)

Dial by your location
+1 669 900 6833 US (San Jose)
+1 346 248 7799 US (Houston)
+1 253 215 8782 US (Tacoma)
+1 312 626 6799 US (Chicago)

AMERICAN OVERSIGHT

+1 646 876 9923 US (New York)
+1 301 715 8592 US (Washington DC)
Meeting ID: 948 4729 8845
Find your local number: https://sandiego.zoom.us/u/am6VwqyuA

On Apr 9, 2021, at 1:26 PM, Norma Cantu <ncantu@usccr.gov> wrote:

Dear Gail,

In my earlier email, I wrote that our General Counsel would need to review our language on proposed AI's and other vehicles to be sure we were consistent with applicable federal laws.
I copied David Ganz on that email so he could anticipate that we were working on language. Ganz replied that he received the email and would be available as needed.
It seems that you inferred that he was invited to join the call. That was not my intent.
We won't have language ready to share with General Counsel until *after* our meeting on Tuesday.
Norma

From: Gail Heriot <gheriot@me.com>
Date: Friday, April 9, 2021 at 1:31 PM
To: Norma Cantu <ncantu@usccr.gov>, Gail Heriot <gheriot@usccr.gov>, Peter Kirsanow <pkirsanow@beneschlaw.com>
>, Michael Yaki <MYaki@usccr.gov>, "pkirsanow@beneschlaw.com" <pkirsanow@beneschlaw.com>
Subject: Re: [EXTERNAL] Meeting--Times available for Norma to meet regarding vote on Chair

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Gail Heriot
Professor of Law
University of San Diego

On Apr 9, 2021, at 11:28 AM, David Ganz <dganz@usccr.gov> wrote:

Me as well.

From: Norma Cantu <ncantu@usccr.gov>
Sent: Friday, April 9, 2021 2:26 PM
To: Michael Yaki <michael@michaelyaki.com>; Carissa Mulder <CMulder@usccr.gov>; Gail Heriot <gheriot@me.com>
Cc: Michael Yaki <MYaki@usccr.gov>; pkirsanow@beneschlaw.com; David Ganz

AMERICAN OVERSIGHT

<dganz@usccr.gov>
Subject: Re: [EXTERNAL] Meeting--Times available for Norma to meet regarding vote on Chair

Dear Michael, Gail, Carissa, Peter,
Tuesday, at 4 p.m. EST works for me.
Norma

From: Michael Yaki <michael@michaelyaki.com>
Reply-To: Michael Yaki <michael@michaelyaki.com>
Date: Thursday, April 8, 2021 at 12:21 PM
To: Carissa Mulder <CMulder@usccr.gov>, Gail Heriot <gheriot@me.com>
" <pkirsanow@beneschlaw.com>, David Ganz <dganz@usccr.gov>
Subject: Re: [EXTERNAL] Meeting--Times available for Norma to meet regarding vote on Chair

> CAUTION: This email is from outside USCCR.

Best regards,
Michael

MICHAEL YAKI CONSULTING
e: michael@michaelyaki.com
m: 415.601.4008

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On Thursday, April 8, 2021, 09:58:06 AM PDT, Gail Heriot <gheriot@me.com> wrote:

Yes.

Gail Heriot
Professor of Law
University of San Diego

On Apr 8, 2021, at 9:46 AM, Carissa Mulder <CMulder@usccr.gov> wrote:

Pete asks if Tuesday at 4 pm Eastern works.

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Subject: Re: [EXTERNAL] Meeting--Times available for Norma to meet regarding vote on Chair

AMERICAN OVERSIGHT

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Gail Heriot
Professor of Law
University of San Diego

On Apr 8, 2021, at 9:01 AM, Carissa Mulder <CMulder@usccr.gov> wrote:

Good morning, everyone:

I just got off the phone with Pete. Unfortunately, he can't meet before Monday at 2 pm Eastern. Is there a time after that that would work for everyone? I realize this is after April 10, but he can't make it work before then.

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Subject: Re: [EXTERNAL] Meeting--Times available for Norma to meet regarding vote on Chair

Hello, all,
Not hearing a response, I am checking in on a good time to complete our task on the proposed AI's, etc.

I will be in a two-hour meeting today and will be back at my desk at 11:30PST/ 1:30 CST/2:30 EST. After that, I have cleared off the rest of today and all of tomorrow for the four Commissioners to work on language. Of course, it won't take that much time, but I do estimate 1-2 hours for our discussion.

Please bear in mind that we should try to get the language together by Saturday, April 10, because we need to give the USCCR General Counsel time to review the language for AI's or other vehicles to be sure we are aligned to language in our statute and other federal laws.

FYI, I would rather be listening to your ideas than reading all the digitized AI's and the newest version of Robert's Rules. I can meet late in the day for the convenience of those of you on West Coast time.
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Cc: Michael Yaki <MYaki@usccr.gov>,
" <michael@michaelyaki.com>
Subject: Re: [EXTERNAL] Meeting--Times available for Norma to meet

Hello everyone,

AMERICAN OVERSIGHT

Pete can do anytime Tuesday between 1-4 PM Eastern. Is there a time in there that works for everyone?

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Sent: Thursday, April 1, 2021 4:46:24 PM
To: Norma Cantu
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Subject: Re: [EXTERNAL] Meeting--Times available for Norma to meet

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e to make Tuesday work.

Gail Heriot
Professor of Law
University of San Diego

On Apr 1, 2021, at 1:41 PM, Norma Cantu <ncantu@usccr.gov> wrote:

Dear Peter, Gail, Michael, Carissa,
Monday doesn't work.
I suggest Tuesday afternoon.
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Date: Wednesday, March 31, 2021 at 3:19 PM
To: Carissa Mulder <CMulder@usccr.gov>
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Gail Heriot
Professor of Law
University of San Diego

On Mar 31, 2021, at 1:18 PM, Carissa Mulder <CMulder@usccr.gov> wrote:

I just got off the phone with Pete. He is tied up for the rest of the week. Would Monday work?

Thank you!

AMERICAN OVERSIGHT

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Friday is okay from 11:00 am PT till 1:30 pm or so PT.

I can do Saturday.

Gail Heriot
Professor of Law
University of San Diego

> On Mar 30, 2021, at 12:32 PM, Norma Cantu <ncantu@usccr.gov> wrote:
>
> Dear Michael, Peter, Gail,
>
> I would set up a doodle poll, but my USCCR email address is not compatible. Perhaps, Ms. Mulder would have better access to Doodle Poll?
>
> I have Wednesday available at 7-2 PST/ 9-4 CST/ 10-5 EST
>
> Thursday is fine from 7-11 PST/ 9-1 CST/ 10-12 EST. I also have time open 7-8 PST/ 5-7 CST/ 6-8 EST
>
> Friday may be a religious holiday, but if it is not for you, I am open from 11-3 PST/ 1-5 CST/ 2-6 EST

AMERICAN OVERSIGHT

Saturday, I am donating blood in the morning, but will be ready for a call between 9- 6 PST? 11 - 8 CST/ 120-9 EST.
Norma

From: Gail Heriot <gheriot@me.com>
Date: Monday, March 29, 2021 at 8:58 PM
To: Norma Cantu <ncantu@usccr.gov>
Cc: Michael Yaki <MYaki@usccr.gov>, Carissa Mulder " <pkirsanow@beneschlaw.com>
Subject: [EXTERNAL] Meeting

CAUTION: This email is from outside USCCR.

We need to get this show on the road. Is there a time late this week that we can all meet?

Gail

Gail Heriot
Professor of Law
University of San Diego

> On Mar 25, 2021, at 3:28 PM, Norma Cantu <ncantu@usccr.gov> wrote:
>
> Dear Michael,
> I really am sorry you are not feeling well.
> We are not replacing anyone on EAC yet. At our last meeting with Gail and Peter, I said to Gail and Peter the change would not happen until after June.
> Norma
>
> ---
>
> **From:** Michael Yaki <MYaki@usccr.gov>
> **Date:** Thursday, March 25, 2021 at 4:46 PM
> **To:** Norma Cantu <ncantu@usccr.gov>,

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Gail Heriot
<gheriot@me.com>,
Carissa Mulder
<CMulder@usccr.gov>
Cc: "pkirsanow@beneschlaw.com" <pkirsanow@beneschlaw.com>
Subject: Re:
[EXTERNAL] Re: Noon
meeting-how about
Thursday at 6 pm EST?

Hang on. You can't
replace me yet b/c I have
to chair the annual
meeting in June. I will
resign after the meeting in
June.

If I sound belligerent it's
bc i have a huge headache

From: Norma Cantu
Sent: Thursday, March 25,
2021 4:56:05 PM
To: Gail Heriot; Carissa
Mulder

Subject: Re: [EXTERNAL]
Re: Noon meeting-how about
Thursday at 6 pm EST?

Dear Gail, Peter,
I think we are there on the
EAC topic.
Do you want to talk briefly?
The timing is a bit urgent
because the EAC is eager to
get our nominations.
Norma

From: Gail Heriot
<gheriot@me.com>
Date: Thursday, March
25, 2021 at 2:21 PM
To: Carissa Mulder
<CMulder@usccr.gov>
Cc: Michael Yaki
<MYaki@usccr.gov>,
Norma Cantu
" <pkirsanow@beneschlaw.com>
Subject: [EXTERNAL]
Re: Noon meeting-how
about Thursday at 6 pm
EST?

AMERICAN OVERSIGHT

CAUTION: This email is from outside USCCR.

Gail Heriot
Professor of Law
University of San Diego

On Mar 25, 2021, at 12:18 PM, Carissa > wrote:

I hope you feel better soon! Pete unfortunately just found out that he can't meet this evening either, due to an emergency in his practice.

From: Michael Yaki
Sent: Thursday, March 25, 2021 3:15:05 PM
To: Carissa Mulder; Norma Cantu
Cc: pkirsanow@beneschlaw.com; Gail Heriot
Subject: Re: Noon meeting- how about Thursday at 6 pm EST?

Hey everyone

AMERICAN OVERSIGHT

I am having a reaction to my Moderna shot and am out of commission today. Norma can meet if she wants to go forward to get some of the non controversial items out of the way. Sorry for the late notice, but it hit me this morning.

From: Carissa Mulder
Sent: Friday, March 19, 2021 11:46:11 AM
To: Norma Cantu; Michael Yaki
Cc: pkirsanow@beneschlaw.com; Gail Heriot
Subject: Re: Noon meeting- how about Thursday at 6 pm EST?

Dear Commissioners:

6 pm Eastern on Thursday works for both Commissioners Heriot and

AMERICAN OVERSIGHT

Kirsanow.
They look
forward to
meeting with
you then!

Sincerely,

Carissa

From: Norma
Cantu
Sent: Friday,
March 19, 2021
11:43:00 AM
To: Carissa
Mulder;
Michael Yaki
Cc: pkirsanow@beneschlaw.com;
Gail Heriot
Subject: Re:
Noon meeting-
how about
Thursday at 6
pm EST?

Dear Carissa,
I teach a class
from 2 to 5 EST
on Thursdays. I
can meet after
class at 6 p.m.
EST this
Thursday.
I also have
Friday open
until 3 p.m.
EST.
Norma

From: Carissa
>
Date: Friday,
March 19,
2021 at 10:39
AM
To: Norma
>, Michael
>
Cc: "pkirsanow@beneschlaw.com" <pkirsanow@beneschlaw.com>,
>
Subject: Noon
meeting

Good
morning,

AMERICAN OVERSIGHT

Commissioners Cantu and Yaki:

Commissioners Kirsanow and Heriot asked me to email you and tell you that they are not logistically prepared to negotiate today. Would you be available to meet Thursday at 1:30 PM EDT?

Thank you,

Carissa

AMERICAN OVERSIGHT

Date : 4/15/2021 2:18:31 AM
From : "Michael Yaki" michael@michaelyaki.com
To : "Norma Cantu" ncantu@usccr.gov, "Gail Heriot" gheriot@me.com, "pkirsanow@beneschlaw.com" pkirsanow@beneschlaw.com
Cc : "Carissa Mulder" CMulder@usccr.gov
Subject : [EXTERNAL] Draft AI on meetings
Attachment : AI on Appointment Authority (general and EAC).docx;AI1-6Witnesses - Yaki revision.docx;

CAUTION: This email is from outside USCCR.

Gail & Pete

Attached is a draft AI on Commission app'tments, both general and a specific provision for the EAC, and the AI on witnesses. These are the only AI's that we negotiated. The MOU on Speaker series is non-controversial, and either Normal can announce the cancellation from the dais or agree to sign the draft your staff prepared; the MOU on the 30-30-10 is a personal pledge by Norma.

In return, you will agree to ratify the Vice Chair nomination when submitted by the President, and we will continue to negotiate on the SACs since that is, essentially, a pre-existing issue that should not affect Norma's Chair nomination.

Please review and if these are agreeable, let's move on with the meeting on Friday. I believe it is in our best interests to move forward with a meeting.

If we do not have a meeting, I am withdrawing these drafts from the table and will come back with a new set of documents and our own set of demands to move forward.

Best regards,
Michael

MICHAEL YAKI CONSULTING
e: michael@michaelyaki.com
m: 415.601.4008

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ADMINISTRATIVE INSTRUCTION __- __

COMMISSION APPOINTMENTS TO OTHER FEDERAL ENTITIES

Section 1.
.01 Any authority specifically granted the Commission of Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc. shall be exercised by the Commission as a whole by majority vote.

Section 2
.02

(1) For the two (2) appointments to the U.S. Election Assistance Commission, the members appointed by Democratic authorities shall nominate two individuals of their membership, and the members appointed by the Republican authorities shall nominate two individuals of their membership.

(2) The members appointed by the Democratic authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Democratic authorities

(3) The members selected shall be placed in nomination and ratified in conformance with Section 1.

AMERICAN OVERSIGHT

SECTION 11. COMMISSION HEARINGS

.01 The OGC is responsible for preparing and holding Commission hearings. This includes ensuring that the witnesses, when viewed as a whole, possess sufficient policy, legal, academic, advocacy, and other knowledge and experience necessary for a full and balanced inquiry into the issues.

.02 To document that hearing witnesses reflected varied and opposing views, opinions, and perspectives, OSD completes Section III of the *National Office Report Checklist for Hearing Reports* form. By completing this part of the form OSD certifies that the hearing included a numerical balance of witnesses between opposing views, opinions and perspectives or that a numerical balance could not be achieved or was not appropriate in light of the subject of the hearing and/or the availability of credible witnesses. Section IV is completed by the Staff Director before the proposed final draft report and checklist are provided to the external reviewer.

.03 Staff is encouraged to use various sources to gather suggestions for appropriate hearing witnesses. Commissioners are the primary source of suggestions for hearing witnesses. ~~These~~ Additional sources may include, but are not limited to, ~~Commissioners,~~ other program offices, regional directors, and appropriate external groups. If two Commissioners request that staff invite a particular witness, staff must invite that witness. No Commissioner may act jointly to invite more than two witnesses, which results in no more than 8 witnesses shall be required to be invited by staff by action of the Commission. Thereafter, a Commissioner or Commissioners may suggest as many witnesses as they deem advisable, but staff is not obligated to invite them, and staff may consult additional sources to invite additional witnesses for hearings.

.04 OGC prepares hearing proposals, design or implementation plans, and briefing or background books. When preparing hearing proposals this office should demonstrate a consideration of varied and opposing views, opinions, and perspectives. This office also verifies the accuracy of transcripts, drafts hearing reports, and maintains official hearing records.

.05 OGC is responsible for supplying a complete and correct transcript with appropriate exhibits to OSD and ASCD for publication. Hearing transcripts do not require editorial review.

.06 The hearing record will be kept open for a period of 30 days after the hearing or as otherwise established by a majority vote of the Commissioners. Any material or information placed in the record during this period will be available to the Commissioners upon request.

SECTION 12. COMMISSION BRIEFINGS

.01 Briefings are used by the Commission to provide Commissioners and the general public insight into civil rights issues without the formality of a hearing. Any program office may be assigned responsibility for conducting a briefing by the Staff Director.

.02 Staff is encouraged to use various sources to gather suggestions for appropriate briefing witnesses. Commissioners are the primary source of suggestions for briefing witnesses.

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Additional sources may include, but are not limited to, other program offices, regional directors, and appropriate external groups. If two Commissioners jointly request that staff invite a particular witness, staff must invite that witness. No Commissioner may act jointly to invite more than two witnesses, which results in no more than 8 witnesses shall be required to be invited by staff by action of the Commission. Thereafter, a Commissioner or Commissioners may suggest as many witnesses as they deem advisable, but staff is not obligated to invite them, and staff may consult additional sources to invite additional witnesses for hearings.

.032 Commissioners are provided a proposed final list of briefing presenters for approval. To document that the briefing witnesses reflected varied and opposing views, opinions, and perspectives, OSD completes Section III of the *National Office Report Checklist for Briefing Reports* form. By completing this part of the form, OSD certifies that the briefing included a numerical balance of witnesses between opposing views, opinions and perspectives or that a numerical balance could not be achieved or was not appropriate in light of the subject of the briefing and/or the availability of credible witnesses. Section IV of this form is completed by the Staff Director before the proposed final draft report and checklist is provided to the external reviewer.

.043 The briefing record will be kept open for a period of 30 days after the briefing or as otherwise established by a majority vote of the Commissioners. Any material or information placed in the record during this period will be available to the Commissioners upon request.

AMERICAN OVERSIGHT

Date : 4/15/2021 9:24:36 AM
From : "Norma Cantu" ncantu@usccr.gov
To : "Michael Yaki" michael@michaelyaki.com
Subject : Re: [EXTERNAL] Draft AI on meetings
Attachment : DRAFT.COMMITMENT.REBUTTALS.docx;

Michael,
I am still not convinced we can waive all the requirements for adding an A-I without the 48-hour notice, but if all 8 of us agree, I guess we can,
I read your language on appointments that we are talking only about Commissioner appointments and not career staff or Schedule C appointments or details, which are already covered by other rules.
Attached is my language on the rebuttals.
Norma

From: Michael Yaki <michael@michaelyaki.com>
Reply-To: Michael Yaki <michael@michaelyaki.com>
Date: Thursday, April 15, 2021 at 1:18 AM
To: Norma Cantu <ncantu@usccr.gov>, Gail Heriot <gheriot@me.com>, "pkirsanow@beneschlaw.com" <pkirsanow@beneschlaw.com>
Cc: Carissa Mulder <CMulder@usccr.gov>
Subject: [EXTERNAL] Draft AI on meetings

> CAUTION: This email is from outside USCCR.

Gail & Pete

Attached is a draft AI on Commission app'tments, both general and a specific provision for the EAC, and the AI on witnesses. These are the only AI's that we negotiated. The MOU on Speaker series is non-controversial, and either Normal can announce the cancellation from the dais or agree to sign the draft your staff prepared; the MOU on the 30-30-10 is a personal pledge by Norma.

In return, you will agree to ratify the Vice Chair nomination when submitted by the President, and we will continue to negotiate on the SACs since that is, essentially, a pre-existing issue that should not affect Norma's Chair nomination.

Please review and if these are agreeable, let's move on with the meeting on Friday. I believe it is in our best interests to move forward with a meeting.

If we do not have a meeting, I am withdrawing these drafts from the table and will come back with a new set of documents and our own set of demands to move forward.

Best regards,
Michael

MICHAEL YAKI CONSULTING
e: michael@michaelyaki.com
m: 415.601.4008

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message or by telephone.

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DRAFT
NORMA'S STATEMENT ON COMMISSIONER RESPONSES TO OFFICIAL REPORTS
APRIL 15, 2021

ON FEBRUARY 2, 2007, THE CHAIRPERSON OF THE COMMISSION AGREED AND PLACED IN THE RECORD CLARIFICATIONS THAT THE PROCESS IN ADMINISTRATION INSTRUCTIONS A-I, 1-6, SECTION 18, PART C PROVIDES FOR COMMISSION RESPONSES TO THE COMMISSION'S FINDINGS AND RECOMMENDATIONS. THESE RESPONSES CALLED REBUTTALS AND SURREBUTTALS ARE NOT INTENDED TO ECHO WHAT IS ALREADY IN THE REPORT; NOR ARE THEY MERELY DISSENTS. THE RESPONSES HELP MAKE THE COMMISSION MORE TRANSPARENT IN SHOWING HOW A COMMISSIONER VIEWED DATA COLLECTION AND LEGAL REASONING. I SUPPORT CONTINUING THIS PROCEDURE BECAUSE I HAVE BEEN ASSURED THAT THE OPPORTUNITY TO RESPOND TO THE REPORT WILL NOT BE USED AS A MEANS TO DELAY THE PUBLIC RELEASE OF THE FULL REPORT. WHILE I AM ON THIS COMMISSION, I WILL VOTE WITH MY COLLEAGUES TO KEEP THESE REBUTTALS AND SURREBUTTALS A PART OF THE COMMISSION'S EFFORTS TO GIVE VOICE TO OUR COMMISSIONERS' DIVERSE AND BALANCED VIEWS AND APPROACHES TO FULFILLING THE COMMISSION'S MISSION.

AMERICAN OVERSIGHT

Date : 4/15/2021 9:46:43 AM
From : "Carissa Mulder" carissa.mulder@gmail.com
To : "Kirsanow, Peter" pkirsanow@beneschlaw.com, "Gail Heriot" gheriot@me.com, "stephen gilchrist" thegilchristassociates@gmail.com, "Christian Adams (adams@electionlawcenter.com)" adams@electionlawcenter.com
Cc : "Alexander Heideman" aheideman@usccr.gov, "John Mashburn" jmashburn@usccr.gov, "Thomas Simuel" tsimuel@usccr.gov, "Carissa Mulder" cmulder@usccr.gov, "Peter Kirsanow" pkirsanow@usccr.gov, "Gail Heriot" gheriot@sandiego.edu, "J. Christian Adams" jadams@usccr.gov
Subject : [EXTERNAL] Update on negotiations
Attachment : AI on Appointment Authority (general and EAC).docx;AI1-6Witnesses - Yaki revision.docx;

CAUTION: This email is from outside USCCR.

Good morning, everyone:

In preparation for our meeting this afternoon, I wanted to pass along an email Yaki sent very early this morning. I've also attached the proposed AIs he has drafted.

Gail & Pete

Attached is a draft AI on Commission app'tments, both general and a specific provision for the EAC, and the AI on witnesses. These are the only AI's that we negotiated. The MOU on Speaker series is non-controversial, and either Normal can announce the cancellation from the dais or agree to sign the draft your staff prepared; the MOU on the 30-30-10 is a personal pledge by Norma.

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Please review and if these are agreeable, let's move on with the meeting on Friday. I believe it is in our best interests to move forward with a meeting.

If we do not have a meeting, I am withdrawing these drafts from the table and will come back with a new set of documents and our own set of demands to move forward.

Best regards,
Michael

--
Carissa B. Mulder

AMERICAN OVERSIGHT

ADMINISTRATIVE INSTRUCTION __- __

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AMERICAN OVERSIGHT

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AMERICAN OVERSIGHT

Date : 4/15/2021 3:49:54 PM
From : "Gail Heriot" gheriot@me.com
To : "Norma Cantu" ncantu@usccr.gov
Cc : "Michael Yaki" michael@michaelyaki.com, "Carissa Mulder" CMulder@usccr.gov, "Michael Yaki" MYaki@usccr.gov, "Peter Kirsanow" pkirsanow@beneschlaw.com
Subject : Re: [EXTERNAL] Meeting--Times available for Norma to meet regarding vote on Chair

CAUTION: This email is from outside USCCR.

Gail Heriot is inviting you to a scheduled Zoom meeting.

Topic: My Meeting with Norma et al.
Time: Apr 15, 2021 01:00 PM Pacific Time (US and Canada)

Join Zoom Meeting
https://sandiego.zoom.us/j/93506304367

Meeting ID: 935 0630 4367
One tap mobile
+16699006833,,93506304367# US (San Jose)
+13462487799,,93506304367# US (Houston)

Dial by your location
+1 669 900 6833 US (San Jose)
+1 346 248 7799 US (Houston)
+1 253 215 8782 US (Tacoma)
+1 646 876 9923 US (New York)
+1 301 715 8592 US (Washington DC)
+1 312 626 6799 US (Chicago)
Meeting ID: 935 0630 4367
Find your local number: https://sandiego.zoom.us/u/aczkfkVe3Y

On Apr 15, 2021, at 12:44 PM, Norma Cantu <ncantu@usccr.gov> wrote:

I can meet, Gail.
Have you heard from Peter?
Norma

From: Gail Heriot <gheriot@me.com>
Date: Thursday, April 15, 2021 at 2:40 PM
To: Norma Cantu <ncantu@usccr.gov>
" <pkirsanow@beneschlaw.com>
Subject: Re: [EXTERNAL] Meeting--Times available for Norma to meet regarding vote on Chair

AMERICAN OVERSIGHT

CAUTION: This email is from outside USCCR.

Gail Heriot
Professor of Law
University of San Diego

On Apr 9, 2021, at 11:26 AM, Norma Cantu <ncantu@usccr.gov> wrote:

Dear Michael, Gail, Carissa, Peter,
Tuesday, at 4 p.m. EST works for me.
Norma

From: Michael Yaki <michael@michaelyaki.com>
Reply-To: Michael Yaki <michael@michaelyaki.com>
Date: Thursday, April 8, 2021 at 12:21 PM
To: Carissa Mulder <CMulder@usccr.gov>, Gail Heriot <gheriot@me.com>
Cc: Norma Cantu <ncantu@usccr.gov>, Michael Yaki <MYaki@usccr.gov>, "pkirsanow@beneschlaw.com" <pkirsanow@beneschlaw.com>, David Ganz <dganz@usccr.gov>
Subject: Re: [EXTERNAL] Meeting--Times available for Norma to meet regarding vote on Chair

CAUTION: This email is from outside USCCR.

Best regards,
Michael

MICHAEL YAKI CONSULTING
e: michael@michaelyaki.com
m: 415.601.4008

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On Thursday, April 8, 2021, 09:58:06 AM PDT, Gail Heriot <gheriot@me.com> wrote:

Yes.

Gail Heriot
Professor of Law
University of San Diego

AMERICAN OVERSIGHT

On Apr 8, 2021, at 9:46 AM, Carissa Mulder <CMulder@usccr.gov> wrote:

Pete asks if Tuesday at 4 pm Eastern works.

From: Gail Heriot <gheriot@me.com>
Sent: Thursday, April 8, 2021 12:37 PM
To: Carissa Mulder <CMulder@usccr.gov>
Cc: Norma Cantu <ncantu@usccr.gov>; Michael Yaki <MYaki@usccr.gov>; pkirsanow@beneschlaw.com; MICHAEL@michaelyaki.com; David Ganz <dganz@usccr.gov>
Subject: Re: [EXTERNAL] Meeting--Times available for Norma to meet regarding vote on Chair

CAUTION: This email is from outside USCCR.

Gail Heriot

Professor of Law

University of San Diego

On Apr 8, 2021, at 9:01 AM, Carissa Mulder <CMulder@usccr.gov> wrote:

Good morning, everyone:

I just got off the phone with Pete. Unfortunately, he can't meet before Monday at 2 pm Eastern. Is there a time after that that would work for everyone? I realize this is after April 10, but he can't make it work before then.

From: Norma Cantu <ncantu@usccr.gov>
Sent: Thursday, April 8, 2021 11:45 AM
To: Carissa Mulder <CMulder@usccr.gov>; Gail Heriot <gheriot@me.com>
Cc: Michael Yaki <MYaki@usccr.gov>; pkirsanow@beneschlaw.com; michael@michaelyaki.com; David Ganz <dganz@usccr.gov>
Subject: Re: [EXTERNAL] Meeting--Times available for Norma to meet regarding vote on Chair

Hello, all,

Not hearing a response, I am checking in on a good time to complete our task on the proposed AI's, etc.

AMERICAN OVERSIGHT

I will be in a two-hour meeting today and will be back at my desk at 11:30PST/ 1:30 CST/2:30 EST. After that, I have cleared off the rest of today and all of tomorrow for the four Commissioners to work on language. Of course, it won't take that much time, but I do estimate 1-2 hours for our discussion.

Please bear in mind that we should try to get the language together by Saturday, April 10, because we need to give the USCCR General Counsel time to review the language for AI's or other vehicles to be sure we are aligned to language in our statute and other federal laws.

FYI, I would rather be listening to your ideas than reading all the digitized AI's and the newest version of Robert's Rules. I can meet late in the day for the convenience of those of you on West Coast time.

Norma

From: Carissa Mulder <CMulder@usccr.gov>
Date: Friday, April 2, 2021 at 12:26 PM
To: Gail Heriot <gheriot@me.com>, Norma Cantu <ncantu@usccr.gov>
Cc: Michael Yaki <MYaki@usccr.gov>, "pkirsanow@beneschlaw.com" <pkirsanow@beneschlaw.com>, "michael@michaelyaki.com" <michael@michaelyaki.com>
Subject: Re: [EXTERNAL] Meeting--Times available for Norma to meet

Hello everyone,

Pete can do anytime Tuesday between 1-4 PM Eastern. Is there a time in there that works for everyone?

From: Gail Heriot <gheriot@me.com>
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Cc: Carissa Mulder; Michael Yaki; pkirsanow@beneschlaw.com; MICHAEL@michaelyaki.com
Subject: Re: [EXTERNAL] Meeting--Times available for Norma to meet

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Gail Heriot

Professor of Law

AMERICAN OVERSIGHT

University of San Diego

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I suggest Tuesday afternoon.

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To: Carissa Mulder <CMulder@usccr.gov>
Cc: Norma Cantu <ncantu@usccr.gov>, "michael@michaeyaki.com" <michael@michaeyaki.com>, Michael Yaki <MYaki@usccr.gov>, "pkirsanow@beneschlaw.com" <pkirsanow@beneschlaw.com>
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University of San Diego

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AMERICAN OVERSIGHT

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Subject: Re: [EXTERNAL] Meeting--Times available for Norma to meet

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Professor of Law

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AMERICAN OVERSIGHT

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Saturday, I am donating blood in the morning, but will be ready for a call between 9- 6 PST? 11 - 8 CST/ 120-9 EST.

Norma

From: Gail Heriot <gheriot@me.com>
Date: Monday, March 29, 2021 at 8:58 PM
To: Norma Cantu <ncantu@usccr.gov>
Cc: Michael Yaki <MYaki@usccr.gov>, Carissa Mulder <CMulder@usccr.gov>, "pkirsanow@beneschlaw.com" <pkirsanow@beneschlaw.com>
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Professor of Law

University of San Diego

AMERICAN OVERSIGHT

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We are not replacing anyone on EAC yet. At our last meeting with Gail and Peter, I said to Gail and Peter the change would not happen until after June.

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Cc: "pkirsanow@beneschlaw.com" <pkirsanow@beneschlaw.com>
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Hang on. You can't replace me yet b/c I have to chair the annual meeting in June. I will resign after the meeting in June.

If I sound belligerent it's bc i have a huge headache

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Sent: Thursday, March 25, 2021 4:56:05 PM
To: Gail Heriot; Carissa Mulder
Cc: Michael Yaki; pkirsanow@beneschlaw.com
Subject: Re: [EXTERNAL] Re: Noon meeting-how about Thursday at 6 pm EST?

Dear Gail, Peter,

I think we are there on the EAC topic.

Do you want to talk briefly?

The timing is a bit urgent because the EAC is eager to get our nominations.

AMERICAN OVERSIGHT

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Professor of Law

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Cc: pkirsanow@beneschlaw.com; Gail Heriot
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Hey everyone

AMERICAN OVERSIGHT

I am having a reaction to my Moderna shot and am out of commission today. Norma can meet if she wants to go forward to get some of the non controversial items out of the way. Sorry for the late notice, but it hit me this morning.

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Cc: pkirsanow@beneschlaw.com; Gail Heriot
Subject: Re: Noon meeting-how about Thursday at 6 pm EST?

Dear Commissioners:

6 pm Eastern on Thursday works for both Commissioners Heriot and Kirsanow. They look forward to meeting with you then!

Sincerely,

Carissa

From: Norma Cantu
Sent: Friday, March 19, 2021 11:43:00 AM
To: Carissa Mulder; Michael Yaki
Cc: pkirsanow@beneschlaw.com; Gail Heriot
Subject: Re: Noon meeting-how about Thursday at 6 pm EST?

Dear Carissa,

AMERICAN OVERSIGHT

I teach a class from 2 to 5 EST on Thursdays. I can meet after class at 6 p.m. EST this Thursday.

I also have Friday open until 3 p.m. EST.

Norma

From: Carissa Mulder <CMulder@usccr.gov>
Date: Friday, March 19, 2021 at 10:39 AM
To: Norma Cantu <ncantu@usccr.gov>, Michael Yaki <MYaki@usccr.gov>
Cc: "pkirsanow@beneschlaw.com" <pkirsanow@beneschlaw.com>, Gail Heriot <gheriot@me.com>
Subject: Noon meeting

Good morning, Commissioners Cantu and Yaki:

Commissioners Kirsanow and Heriot asked me to email you and tell you that they are not logistically prepared to negotiate today. Would you be available to meet Thursday at 1:30 PM EDT?

Thank you,

Carissa

AMERICAN OVERSIGHT

Date : 4/15/2021 3:51:33 PM
From : "michael@michaelyaki.com" michael@michaelyaki.com
To : "'Gail Heriot'" gheriot@me.com, "'Norma Cantu'" ncantu@usccr.gov
Cc : "'Carissa Mulder'" CMulder@usccr.gov, "'Michael Yaki'" MYaki@usccr.gov, "pkirsanow@beneschlaw.com" pkirsanow@beneschlaw.com
Subject : RE: [EXTERNAL] Meeting--Times available for Norma to meet regarding vote on Chair

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I have a conflict in 9 minutes but I think Gail and Norma can handle it.

Thanks!
Michael

MICHAEL YAKI CONSULTING

This email and any files or attachments transmitted with it may contain privileged or otherwise confidential information. If you are not the intended recipient, or believe that you may have received this communication in error, please advise the sender via reply email and immediately delete the email you received.

From: Gail Heriot <gheriot@me.com>
Sent: Thursday, April 15, 2021 12:46 PM
To: Norma Cantu <ncantu@usccr.gov>
Cc: Michael Yaki <michael@michaelyaki.com>; Carissa Mulder <CMulder@usccr.gov>; Michael Yaki <MYaki@usccr.gov>; pkirsanow@beneschlaw.com
Subject: Re: [EXTERNAL] Meeting--Times available for Norma to meet regarding vote on Chair

I've talked to Pete. I think he can do 4:00 Eastern. I'll send a link in hopes everyone can meet then.

Gail Heriot
Professor of Law
University of San Diego

> On Apr 15, 2021, at 12:44 PM, Norma Cantu <ncantu@usccr.gov> wrote:
>
> I can meet, Gail.
> Have you heard from Peter?
> Norma
>
> ---
>
> **From:** Gail Heriot <gheriot@me.com>
> **Date:** Thursday, April 15, 2021 at 2:40 PM
> **To:** Norma Cantu <ncantu@usccr.gov>
> **Cc:** Michael Yaki <michael@michaelyaki.com>, Carissa Mulder <CMulder@usccr.gov>, Michael Yaki <MYaki@usccr.gov>, "pkirsanow@beneschlaw.com" <pkirsanow@beneschlaw.com>
> **Subject:** Re: [EXTERNAL] Meeting--Times available for Norma to meet regarding vote on Chair

AMERICAN OVERSIGHT

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Gail Heriot
Professor of Law
University of San Diego

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Tuesday, at 4 p.m. EST works for me.
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Cc:
" <pkirsanow@beneschlaw.com>, David Ganz <dganz@usccr.gov>
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Best regards,
Michael

MICHAEL YAKI CONSULTING
e: michael@michaelyaki.com
m: 415.601.4008

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Yes.

Gail Heriot
Professor of Law
University of San Diego

AMERICAN OVERSIGHT

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Gail Heriot

Professor of Law

University of San Diego

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I just got off the phone with Pete. Unfortunately, he can't meet before Monday at 2 pm Eastern. Is there a time after that that would work for everyone? I realize this is after April 10, but he can't make it work before then.

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Hello, all,

AMERICAN OVERSIGHT

Not hearing a response, I am checking in on a good time to complete our task on the proposed AI's, etc.

I will be in a two-hour meeting today and will be back at my desk at 11:30PST/ 1:30 CST/2:30 EST. After that, I have cleared off the rest of today and all of tomorrow for the four Commissioners to work on language. Of course, it won't take that much time, but I do estimate 1-2 hours for our discussion.

Please bear in mind that we should try to get the language together by Saturday, April 10, because we need to give the USCCR General Counsel time to review the language for AI's or other vehicles to be sure we are aligned to language in our statute and other federal laws.

FYI, I would rather be listening to your ideas than reading all the digitized AI's and the newest version of Robert's Rules. I can meet late in the day for the convenience of those of you on West Coast time.

Norma

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Date: Friday, April 2, 2021 at 12:26 PM
To: Gail Heriot <gheriot@me.com>, Norma Cantu <ncantu@usccr.gov>
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AMERICAN OVERSIGHT

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AMERICAN OVERSIGHT

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AMERICAN OVERSIGHT

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To : "Norma Cantu" ncantu@usccr.gov
Cc : "Michael Yaki" michael@michaelyaki.com, "Carissa Mulder" CMulder@usccr.gov, "Michael Yaki" MYaki@usccr.gov, "pkirsanow@beneschlaw.com" pkirsanow@beneschlaw.com
Subject : Re: [EXTERNAL] Meeting--Times available for Norma to meet regarding vote on Chair

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Are we planning on meeting today?

Gail Heriot
Professor of Law
University of San Diego

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MICHAEL YAKI CONSULTING
e: michael@michaelyaki.com
m: 415.601.4008

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AMERICAN OVERSIGHT

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Date: Friday, April 2, 2021 at 12:26 PM
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Cc: Michael Yaki <MYaki@usccr.gov>,
" <michael@michaelyaki.com>
Subject: Re: [EXTERNAL] Meeting--Times available for Norma to meet

Hello everyone,

Pete can do anytime Tuesday between 1-4 PM Eastern. Is there a time in there that works for everyone?

From: Gail Heriot <gheriot@me.com>
Sent: Thursday, April 1, 2021 4:46:24 PM

AMERICAN OVERSIGHT

To: Norma Cantu
Cc: Carissa Mulder; Michael Yaki; pkirsanow@beneschlaw.com; MICHAEL@michaelyaki.com
Subject: Re: [EXTERNAL] Meeting--Times available for Norma to meet

CAUTION: This email is from outside USCCR.

e to make Tuesday work.

Gail Heriot

Professor of Law

University of San Diego

On Apr 1, 2021, at 1:41 PM, Norma Cantu <ncantu@usccr.gov> wrote:

Dear Peter, Gail, Michael, Carissa,

Monday doesn't work.

I suggest Tuesday afternoon.

Norma

From: Gail Heriot <gheriot@me.com>
Date: Wednesday, March 31, 2021 at 3:19 PM
To: Carissa Mulder <CMulder@usccr.gov>
Cc: Norma Cantu <ncantu@usccr.gov>, "michael@michaeyaki.com" <michael@michaeyaki.com>, Michael Yaki <MYaki@usccr.gov>, "pkirsanow@beneschlaw.com" <pkirsanow@beneschlaw.com>
Subject: Re: [EXTERNAL] Meeting--Times available for Norma to meet

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Gail Heriot

Professor of Law

University of San Diego

AMERICAN OVERSIGHT

On Mar 31, 2021, at 1:18 PM, Carissa Mulder <CMulder@usccr.gov> wrote:

I just got off the phone with Pete. He is tied up for the rest of the week. Would Monday work?

Thank you!

From: Carissa Mulder
Sent: Wednesday, March 31, 2021 9:22:57 AM
To: Gail Heriot; Norma Cantu
Cc: michael@michaeyaki.com; Michael Yaki; pkirsanow@beneschlaw.com
Subject: Re: [EXTERNAL] Meeting--Times available for Norma to meet

Pete told me yesterday (sorry, I thought he had responded to this email) that he is only available later in the week. Pete, can you do any of these times Thursday or Friday?

From: Gail Heriot <gheriot@me.com>
Sent: Wednesday, March 31, 2021 12:28:04 AM
To: Norma Cantu
Cc: michael@michaeyaki.com; Michael Yaki; Carissa Mulder; pkirsanow@beneschlaw.com
Subject: Re: [EXTERNAL] Meeting--Times available for Norma to meet

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You don't want to see me at 7:00 am PT on Thursday. But I can do any time after 9:00 am PT.

Friday is okay from 11:00 am PT till 1:30 pm or so PT.

AMERICAN OVERSIGHT

I can do Saturday.

Gail Heriot

Professor of Law

University of San Diego

> On Mar 30, 2021, at 12:32 PM, Norma Cantu <ncantu@usccr.gov> wrote:
>
> Dear Michael, Peter, Gail,
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> I would set up a doodle poll, but my USCCR email address is not compatible. Perhaps, Ms. Mulder would have better access to Doodle Poll?
>
> I have Wednesday available at 7-2 PST/ 9-4 CST/ 10-5 EST
>
> Thursday is fine from 7-11 PST/ 9-1 CST/ 10-12 EST. I also have time open 7-8 PST/ 5-7 CST/ 6-8 EST
>
> Friday may be a religious holiday, but if it is not for you, I am open from 11-3 PST/ 1-5 CST/ 2-6 EST
>
> Saturday, I am donating blood in the morning, but will be ready for a call between 9- 6 PST? 11 - 8 CST/ 120-9 EST.
>
> Norma
>
> ---
>
> **From:** Gail Heriot <gheriot@me.com>
> **Date:** Monday, March 29, 2021 at 8:58 PM
> **To:** Norma Cantu <ncantu@usccr.gov>
> **Cc:** Michael Yaki <MYaki@usccr.gov>, " <pkirsanow@beneschlaw.com>
> **Subject:** [EXTERNAL] Meeting

AMERICAN OVERSIGHT

CAUTION: This email is from outside USCCR.

We need to get this show on the road. Is there a time late this week that we can all meet?

Gail

Gail Heriot

Professor of Law

University of San Diego

> On Mar 25, 2021, at 3:28 PM, Norma Cantu <ncantu@usccr.gov> wrote:
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> Dear Michael,
>
> I really am sorry you are not feeling well.
>
> We are not replacing anyone on EAC yet. At our last meeting with Gail and Peter, I said to Gail and Peter the change would not happen until after June.
>
> Norma

From: Michael Yaki <MYaki@usccr.gov>
Date: Thursday, March 25, 2021 at 4:46 PM
To: Norma Cantu <ncantu@usccr.gov>, Gail Heriot <gheriot@me.com>, Carissa Mulder

AMERICAN OVERSIGHT

<CMulder@usccr.gov>
Cc:
"pkirsanow@beneschlaw.com" <pkirsanow@beneschlaw.com>
Subject: Re: [EXTERNAL] Re: Noon meeting-how about Thursday at 6 pm EST?

Hang on. You can't replace me yet b/c I have to chair the annual meeting in June. I will resign after the meeting in June.

If I sound belligerent it's bc i have a huge headache

From: Norma Cantu
Sent: Thursday, March 25, 2021 4:56:05 PM
To: Gail Heriot; Carissa Mulder
Cc: Michael Yaki; pkirsanow@beneschlaw.com
Subject: Re: [EXTERNAL] Re: Noon meeting-how about Thursday at 6 pm EST?

Dear Gail, Peter,

I think we are there on the EAC topic.

Do you want to talk briefly?

The timing is a bit urgent because the EAC is eager to get our nominations.

Norma

From: Gail Heriot <gheriot@me.com>
Date: Thursday, March 25, 2021 at 2:21 PM
To: Carissa Mulder <CMulder@usccr.gov>
Cc: Michael Yaki <MYaki@usccr.gov>, Norma

AMERICAN OVERSIGHT

" <pkirsanow@beneschlaw.com>
Subject: [EXTERNAL] Re: Noon meeting-how about Thursday at 6 pm EST?

CAUTION: This email is from outside USCCR.

Gail Heriot

Professor of Law

University of San Diego

On Mar 25, 2021, at 12:18 PM, Carissa Mulder <CMulder@usccr.gov> wrote:

I hope you feel better soon! Pete unfortunately just found out that he can't meet this evening either, due to an emergency in his practice.

From: Michael Yaki
Sent: Thursday, March 25, 2021 3:15:05 PM
To: Carissa Mulder; Norma Cantu
Cc: pkirsanow@beneschlaw.com; Gail Heriot
Subject: Re: Noon meeting-how about Thursday at 6 pm EST?

AMERICAN OVERSIGHT

Hey everyone

I am having a reaction to my Moderna shot and am out of commission today. Norma can meet if she wants to go forward to get some of the non controversial items out of the way. Sorry for the late notice, but it hit me this morning.

From: Carissa Mulder
Sent: Friday, March 19, 2021 11:46:11 AM
To: Norma Cantu; Michael Yaki
Cc: pkirsanow@beneschlaw.com; Gail Heriot
Subject: Re: Noon meeting-how about Thursday at 6 pm EST?

Dear Commissioners:

6 pm Eastern on Thursday works for both Commissioners Heriot and Kirsanow. They look forward to meeting with you

AMERICAN OVERSIGHT

then!

Sincerely,

Carissa

From: Norma Cantu
Sent: Friday, March 19, 2021 11:43:00 AM
To: Carissa Mulder; Michael Yaki
Cc: pkirsanow@beneschlaw.com; Gail Heriot
Subject: Re: Noon meeting-how about Thursday at 6 pm EST?

Dear Carissa,

I teach a class from 2 to 5 EST on Thursdays. I can meet after class at 6 p.m. EST this Thursday.

I also have Friday open until 3 p.m. EST.

Norma

From: Carissa >
Date: Friday, March 19, 2021 at 10:39 AM
To: Norma Cantu <ncantu@usccr.gov>, Michael Yaki <MYaki@usccr.gov>
Cc: "pkirsanow@beneschlaw.com" <pkirsanow@beneschlaw.com>, Gail Heriot <gheriot@me.com>

AMERICAN OVERSIGHT

Subject: Noon meeting

Good morning, Commissioners Cantu and Yaki:

Commissioners Kirsanow and Heriot asked me to email you and tell you that they are not logistically prepared to negotiate today. Would you be available to meet Thursday at 1:30 PM EDT?

Thank you,

Carissa

AMERICAN OVERSIGHT

Date : 4/15/2021 3:52:38 PM
From : "michael@michaelyaki.com" michael@michaelyaki.com
To : "'Gail Heriot'" gheriot@me.com, "'Norma Cantu'" ncantu@usccr.gov
Cc : "'Carissa Mulder'" CMulder@usccr.gov, "'Michael Yaki'" MYaki@usccr.gov, "pkirsanow@beneschlaw.com" pkirsanow@beneschlaw.com
Subject : RE: [EXTERNAL] Meeting--Times available for Norma to meet regarding vote on Chair

CAUTION: This email is from outside USCCR.

My only condition is that you waive the 48 hours (I missed it by 3 hours) on the AAPI statement consideration.

Thanks!
Michael

MICHAEL YAKI CONSULTING

This email and any files or attachments transmitted with it may contain privileged or otherwise confidential information. If you are not the intended recipient, or believe that you may have received this communication in error, please advise the sender via reply email and immediately delete the email you received.

From: Gail Heriot <gheriot@me.com>
Sent: Thursday, April 15, 2021 12:41 PM
To: Norma Cantu <ncantu@usccr.gov>
Cc: Michael Yaki <michael@michaelyaki.com>; Carissa Mulder <CMulder@usccr.gov>; Michael Yaki <MYaki@usccr.gov>; pkirsanow@beneschlaw.com
Subject: Re: [EXTERNAL] Meeting--Times available for Norma to meet regarding vote on Chair

Are we planning on meeting today?

Gail Heriot
Professor of Law
University of San Diego

> On Apr 9, 2021, at 11:26 AM, Norma Cantu <ncantu@usccr.gov> wrote:
>
> Dear Michael, Gail, Carissa, Peter,
> Tuesday, at 4 p.m. EST works for me.
> Norma
>
> ---
>
> **From:** Michael Yaki <michael@michaelyaki.com>
> **Reply-To:** Michael Yaki <michael@michaelyaki.com>
> **Date:** Thursday, April 8, 2021 at 12:21 PM
> **To:** Carissa Mulder <CMulder@usccr.gov>, Gail Heriot <gheriot@me.com>
> **Cc:**
> " <pkirsanow@beneschlaw.com>, David Ganz <dganz@usccr.gov>
> **Subject:** Re: [EXTERNAL] Meeting--Times available for Norma to meet regarding vote on Chair

AMERICAN OVERSIGHT

CAUTION: This email is from outside USCCR.

Best regards,
Michael

MICHAEL YAKI CONSULTING
e: michael@michaelyaki.com
m: 415.601.4008

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On Thursday, April 8, 2021, 09:58:06 AM PDT, Gail Heriot <gheriot@me.com> wrote:

Yes.

Gail Heriot
Professor of Law
University of San Diego

On Apr 8, 2021, at 9:46 AM, Carissa Mulder <CMulder@usccr.gov> wrote:

Pete asks if Tuesday at 4 pm Eastern works.

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Subject: Re: [EXTERNAL] Meeting--Times available for Norma to meet regarding vote on Chair

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Gail Heriot

Professor of Law

University of San Diego

AMERICAN OVERSIGHT

On Apr 8, 2021, at 9:01 AM, Carissa Mulder <CMulder@usccr.gov> wrote:

Good morning, everyone:

I just got off the phone with Pete. Unfortunately, he can't meet before Monday at 2 pm Eastern. Is there a time after that that would work for everyone? I realize this is after April 10, but he can't make it work before then.

From: Norma Cantu <ncantu@usccr.gov>
Sent: Thursday, April 8, 2021 11:45 AM
To: Carissa Mulder <CMulder@usccr.gov>; Gail Heriot <gheriot@me.com>
Cc: Michael Yaki <MYaki@usccr.gov>; pkirsanow@beneschlaw.com; michael@michaelyaki.com; David Ganz <dganz@usccr.gov>
Subject: Re: [EXTERNAL] Meeting--Times available for Norma to meet regarding vote on Chair

Hello, all,

Not hearing a response, I am checking in on a good time to complete our task on the proposed AI's, etc.

I will be in a two-hour meeting today and will be back at my desk at 11:30PST/ 1:30 CST/2:30 EST. After that, I have cleared off the rest of today and all of tomorrow for the four Commissioners to work on language. Of course, it won't take that much time, but I do estimate 1-2 hours for our discussion.

Please bear in mind that we should try to get the language together by Saturday, April 10, because we need to give the USCCR General Counsel time to review the language for AI's or other vehicles to be sure we are aligned to language in our statute and other federal laws.

FYI, I would rather be listening to your ideas than reading all the digitized AI's and the newest version of Robert's Rules. I can meet late in the day for the convenience of those of you on West Coast time.

Norma

From: Carissa Mulder <CMulder@usccr.gov>
Date: Friday, April 2, 2021 at 12:26 PM
To: Gail Heriot <gheriot@me.com>, Norma Cantu <ncantu@usccr.gov>

AMERICAN OVERSIGHT

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Subject: Re: [EXTERNAL] Meeting--Times available for Norma to meet

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AMERICAN OVERSIGHT

"pkirsanow@beneschlaw.com" <pkirsanow@beneschlaw.com>
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Gail Heriot

Professor of Law

University of San Diego

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Professor of Law

University of San Diego

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AMERICAN OVERSIGHT

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Professor of Law

University of San Diego

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Cc: "pkirsanow@beneschlaw.com" <pkirsanow@beneschlaw.com>
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If I sound belligerent it's bc i have a huge headache

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Subject: [EXTERNAL] Re: Noon meeting-how about Thursday at 6 pm EST?

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Gail Heriot

Professor of Law

University of San Diego

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AMERICAN OVERSIGHT

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Subject: Re: Noon meeting-how about Thursday at 6 pm EST?

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To: Norma Cantu; Michael Yaki
Cc: pkirsanow@beneschla

AMERICAN OVERSIGHT

w.com; Gail Heriot
Subject: Re: Noon meeting-how about Thursday at 6 pm EST?

Dear Commissioners:

6 pm Eastern on Thursday works for both Commissioners Heriot and Kirsanow. They look forward to meeting with you then!

Sincerely,

Carissa

From: Norma Cantu
Sent: Friday, March 19, 2021 11:43:00 AM
To: Carissa Mulder; Michael Yaki
Cc: pkirsanow@beneschlaw.com; Gail Heriot
Subject: Re: Noon meeting-how about Thursday at 6 pm EST?

Dear Carissa,

I teach a class from 2 to 5 EST on Thursdays. I can meet after class at 6 p.m. EST this Thursday.

AMERICAN OVERSIGHT

I also have Friday
open until 3 p.m. EST.

Norma

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Date: Friday,
March 19, 2021 at
10:39 AM
To: Norma Cantu
<ncantu@usccr.gov>,
Michael Yaki
<MYaki@usccr.gov>
Cc:
"pkirsanow@beneschlaw.com" <pkirsanow@beneschlaw.com>,
Gail Heriot
<gheriot@me.com>
Subject: Noon
meeting

Good morning,
Commissioners
Cantu and Yaki:

Commissioners
Kirsanow and
Heriot asked me to
email you and tell
you that they are
not logistically
prepared to
negotiate today.
Would you be
available to meet
Thursday at 1:30
PM EDT?

Thank you,

AMERICAN OVERSIGHT

Carissa

AMERICAN OVERSIGHT

Date : 4/15/2021 5:06:17 PM
From : "Gail Heriot" gheriot@me.com
To : "Norma Cantu" ncantu@usccr.gov, "normavcantu@gmail.com" normavcantu@gmail.com
Cc : "Peter Kirsanow" pkirsanow@beneschlaw.com, "Michael Yaki" MYaki@usccr.gov, "Michael Yaki" commissioner.yaki@gmail.com
Subject : Re: [EXTERNAL] Meeting--zoom again please

CAUTION: This email is from outside USCCR.

Gail Heriot is inviting you to a scheduled Zoom meeting.

Topic: My Meeting with Norma et al.
Time: Apr 15, 2021 03:00 PM Pacific Time (US and Canada)

Join Zoom Meeting
https://sandiego.zoom.us/j/97357604063

Meeting ID: 973 5760 4063
One tap mobile
+16699006833,,97357604063# US (San Jose)
+13462487799,,97357604063# US (Houston)

Dial by your location
+1 669 900 6833 US (San Jose)
+1 346 248 7799 US (Houston)
+1 253 215 8782 US (Tacoma)
+1 312 626 6799 US (Chicago)
+1 646 876 9923 US (New York)
+1 301 715 8592 US (Washington DC)
Meeting ID: 973 5760 4063
Find your local number: https://sandiego.zoom.us/u/aesbQqWHnU

On Apr 15, 2021, at 2:01 PM, Norma Cantu <ncantu@usccr.gov> wrote:

Found Michael

From: Gail Heriot <gheriot@me.com>
Date: Thursday, April 15, 2021 at 3:02 PM
To: Norma Cantu <ncantu@usccr.gov>
Cc: "pkirsanow@beneschlaw.com" <pkirsanow@beneschlaw.com>
Subject: Re: [EXTERNAL] Meeting--Times available for Norma to meet regarding vote on Chair

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Gail Heriot
Professor of Law
University of San Diego

On Apr 15, 2021, at 12:44 PM, Norma Cantu <ncantu@usccr.gov> wrote:

I can meet, Gail.
Have you heard from Peter?
Norma

From: Gail Heriot <gheriot@me.com>
Date: Thursday, April 15, 2021 at 2:40 PM
To: Norma Cantu <ncantu@usccr.gov>
Cc: Michael Yaki <michael@michaelyaki.com>, Carissa Mulder <CMulder@usccr.gov>, Michael Yaki <MYaki@usccr.gov>, "pkirsanow@beneschlaw.com" <pkirsanow@beneschlaw.com>
Subject: Re: [EXTERNAL] Meeting--Times available for Norma to meet regarding vote on Chair

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Professor of Law
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Tuesday, at 4 p.m. EST works for me.
Norma

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Cc: Norma Cantu <ncantu@usccr.gov>, Michael Yaki <MYaki@usccr.gov>, "pkirsanow@beneschlaw.com" <pkirsanow@beneschlaw.com>, David Ganz <dganz@usccr.gov>
Subject: Re: [EXTERNAL] Meeting--Times available for Norma to meet regarding vote on Chair

CAUTION: This email is from outside USCCR.

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Best regards,
Michael

MICHAEL YAKI CONSULTING
e: michael@michaelyaki.com
m: 415.601.4008

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On Thursday, April 8, 2021, 09:58:06 AM PDT, Gail Heriot <gheriot@me.com> wrote:

Yes.

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Professor of Law
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Sent: Thursday, April 8, 2021 12:37 PM
To: Carissa Mulder <CMulder@usccr.gov>
Cc: Norma Cantu <ncantu@usccr.gov>; Michael Yaki <MYaki@usccr.gov>; pkirsanow@beneschlaw.com; MICHAEL@michaelyaki.com; David Ganz <dganz@usccr.gov>
Subject: Re: [EXTERNAL] Meeting--Times available for Norma to meet regarding vote on Chair

CAUTION: This email is from outside USCCR.

Gail Heriot

Professor of Law

University of San Diego

> On Apr 8, 2021, at 9:01 AM, Carissa Mulder <CMulder@usccr.gov> wrote:
>
> Good morning, everyone:

AMERICAN OVERSIGHT

I just got off the phone with Pete. Unfortunately, he can't meet before Monday at 2 pm Eastern. Is there a time after that that would work for everyone? I realize this is after April 10, but he can't make it work before then.

From: Norma Cantu <ncantu@usccr.gov>
Sent: Thursday, April 8, 2021 11:45 AM
To: Carissa Mulder <CMulder@usccr.gov>; Gail Heriot <gheriot@me.com>
Cc: Michael Yaki <MYaki@usccr.gov>; pkirsanow@beneschlaw.com; michael@michaelyaki.com; David Ganz <dganz@usccr.gov>
Subject: Re: [EXTERNAL] Meeting--Times available for Norma to meet regarding vote on Chair

Hello, all,

Not hearing a response, I am checking in on a good time to complete our task on the proposed AI's, etc.

I will be in a two-hour meeting today and will be back at my desk at 11:30PST/ 1:30 CST/2:30 EST. After that, I have cleared off the rest of today and all of tomorrow for the four Commissioners to work on language. Of course, it won't take that much time, but I do estimate 1-2 hours for our discussion.

Please bear in mind that we should try to get the language together by Saturday, April 10, because we need to give the USCCR General Counsel time to review the language for AI's or other vehicles to be sure we are aligned to language in our statute and other federal laws.

FYI, I would rather be listening to your ideas than reading all the digitized AI's and the newest version of Robert's Rules. I can meet late in the day for the convenience of those of you on West Coast time.

Norma

From: Carissa Mulder <CMulder@usccr.gov>
Date: Friday, April 2, 2021 at 12:26 PM
To: Gail Heriot <gheriot@me.com>, Norma Cantu <ncantu@usccr.gov>
Cc: Michael Yaki <MYaki@usccr.gov>, "pkirsanow@beneschlaw.com" <pkirsanow@beneschlaw.com>, "michael@michaelyaki.com" <michael@michaelyaki.com>
Subject: Re: [EXTERNAL] Meeting--Times available for Norma to meet

Hello everyone,

Pete can do anytime Tuesday between 1-4 PM Eastern. Is there a time in there that works for everyone?

AMERICAN OVERSIGHT

From: Gail Heriot <gheriot@me.com>
Sent: Thursday, April 1, 2021 4:46:24 PM
To: Norma Cantu
Cc: Carissa Mulder; Michael Yaki; pkirsanow@beneschlaw.com; MICHAEL@michaelyaki.com
Subject: Re: [EXTERNAL] Meeting--Times available for Norma to meet

CAUTION: This email is from outside USCCR.

e to make Tuesday work.

Gail Heriot

Professor of Law

University of San Diego

> On Apr 1, 2021, at 1:41 PM, Norma Cantu <ncantu@usccr.gov> wrote:
>
> Dear Peter, Gail, Michael, Carissa,
>
> Monday doesn′t work.
>
> I suggest Tuesday afternoon.
>
> Norma

From: Gail Heriot <gheriot@me.com>
Date: Wednesday, March 31, 2021 at 3:19 PM
To: Carissa Mulder <CMulder@usccr.gov>
Cc: Norma Cantu <ncantu@usccr.gov>, "michael@michaeyaki.com" <michael@michaeyaki.com>, Michael Yaki <MYaki@usccr.gov>, "pkirsanow@beneschlaw.com" <pkirsanow@beneschlaw.com>
Subject: Re: [EXTERNAL] Meeting--Times available for Norma to meet

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Gail Heriot

Professor of Law

University of San Diego

AMERICAN OVERSIGHT

On Mar 31, 2021, at 1:18 PM, Carissa Mulder <CMulder@usccr.gov> wrote:

I just got off the phone with Pete. He is tied up for the rest of the week. Would Monday work?

Thank you!

From: Carissa Mulder
Sent: Wednesday, March 31, 2021 9:22:57 AM
To: Gail Heriot; Norma Cantu
Cc: michael@michaeyaki.com; Michael Yaki; pkirsanow@beneschlaw.com
Subject: Re: [EXTERNAL] Meeting--Times available for Norma to meet

Pete told me yesterday (sorry, I thought he had responded to this email) that he is only available later in the week. Pete, can you do any of these times Thursday or Friday?

From: Gail Heriot <gheriot@me.com>
Sent: Wednesday, March 31, 2021 12:28:04 AM
To: Norma Cantu
Cc: michael@michaeyaki.com; Michael Yaki; Carissa Mulder; pkirsanow@beneschlaw.com
Subject: Re: [EXTERNAL] Meeting--Times available for Norma to meet

CAUTION: This email is from outside USCCR.

You don't want to see me at 7:00 am PT on Thursday. But I can do any time after 9:00 am PT.

Friday is okay from 11:00 am PT till 1:30 pm or so PT.

I can do Saturday.

Gail Heriot

Professor of Law

University of San Diego

AMERICAN OVERSIGHT

On Mar 30, 2021, at 12:32 PM, Norma Cantu <ncantu@usccr.gov> wrote:

Dear Michael, Peter, Gail,

I would set up a doodle poll, but my USCCR email address is not compatible. Perhaps, Ms. Mulder would have better access to Doodle Poll?

I have Wednesday available at 7-2 PST/ 9-4 CST/ 10-5 EST

Thursday is fine from 7-11 PST/ 9-1 CST/ 10-12 EST. I also have time open 7-8 PST/ 5-7 CST/ 6-8 EST

Friday may be a religious holiday, but if it is not for you, I am open from 11-3 PST/ 1-5 CST/ 2-6 EST

Saturday, I am donating blood in the morning, but will be ready for a call between 9- 6 PST? 11 - 8 CST/ 120-9 EST.

Norma

From: Gail Heriot <gheriot@me.com>
Date: Monday, March 29, 2021 at 8:58 PM
To: Norma Cantu <ncantu@usccr.gov>
" <pkirsanow@beneschlaw.com>
Subject: [EXTERNAL] Meeting

CAUTION: This email is from outside USCCR.

We need to get this show on the road. Is there a time late this week that we can all meet?

Gail

AMERICAN OVERSIGHT

Gail Heriot

Professor of Law

University of San Diego

On Mar 25, 2021, at 3:28 PM, Norma Cantu <ncantu@usccr.gov> wrote:

Dear Michael,

I really am sorry you are not feeling well.

We are not replacing anyone on EAC yet. At our last meeting with Gail and Peter, I said to Gail and Peter the change would not happen until after June.

Norma

From: Michael Yaki <MYaki@usccr.gov>
Date: Thursday, March 25, 2021 at 4:46 PM
To: Norma Cantu <ncantu@usccr.gov>, Gail Heriot <gheriot@me.com>, Carissa Mulder <CMulder@usccr.gov>
Cc: "pkirsanow@beneschlaw.com" <pkirsanow@beneschlaw.com>
Subject: Re: [EXTERNAL] Re: Noon meeting-how about Thursday at 6 pm EST?

Hang on. You can't replace me yet b/c I have to chair the annual meeting in June. I will resign after the meeting in June.

If I sound belligerent it's bc i have a huge headache

From: Norma Cantu
Sent: Thursday, March 25, 2021 4:56:05 PM
To: Gail Heriot; Carissa Mulder
Cc: Michael Yaki; pkirsanow@beneschlaw.com
Subject: Re: [EXTERNAL] Re: Noon meeting-how about Thursday at 6 pm EST?

Dear Gail, Peter,

AMERICAN OVERSIGHT

I think we are there on the EAC topic.

Do you want to talk briefly?

The timing is a bit urgent because the EAC is eager to get our nominations.

Norma

From: Gail Heriot <gheriot@me.com>
Date: Thursday, March 25, 2021 at 2:21 PM
To: Carissa Mulder <CMulder@usccr.gov>
" <pkirsanow@beneschlaw.com>
Subject: [EXTERNAL] Re: Noon meeting-how about Thursday at 6 pm EST?

CAUTION: This email is from outside USCCR.

Gail Heriot

Professor of Law

University of San Diego

On Mar 25, 2021, at 12:18 PM, Carissa Mulder <CMulder@usccr.gov> wrote:

I hope you feel better soon! Pete unfortunately just found out that he can't meet this evening either, due to an emergency in his practice.

From: Michael Yaki
Sent: Thursday, March 25, 2021 3:15:05 PM
To: Carissa Mulder; Norma Cantu
Cc: pkirsanow@beneschlaw.com; Gail Heriot
Subject: Re: Noon meeting-how about Thursday at 6 pm EST?

Hey everyone

AMERICAN OVERSIGHT

I am having a reaction to my Moderna shot and am out of commission today. Norma can meet if she wants to go forward to get some of the non controversial items out of the way. Sorry for the late notice, but it hit me this morning.

From: Carissa Mulder
Sent: Friday, March 19, 2021 11:46:11 AM
To: Norma Cantu; Michael Yaki
Cc: pkirsanow@beneschlaw.com; Gail Heriot
Subject: Re: Noon meeting-how about Thursday at 6 pm EST?

Dear Commissioners:

6 pm Eastern on Thursday works for both Commissioners Heriot and Kirsanow. They look forward to meeting with you then!

Sincerely,

Carissa

From: Norma Cantu
Sent: Friday, March 19, 2021 11:43:00 AM
To: Carissa Mulder; Michael Yaki
Cc: pkirsanow@beneschlaw.com; Gail Heriot
Subject: Re: Noon meeting-how about Thursday at 6 pm EST?

Dear Carissa,

I teach a class from 2 to 5 EST on Thursdays. I can meet after class at 6 p.m. EST this Thursday.

I also have Friday open until 3 p.m. EST.

Norma

AMERICAN OVERSIGHT

From: Carissa Mulder <CMulder@usccr.gov>
Date: Friday, March 19, 2021 at 10:39 AM
To: Norma Cantu <ncantu@usccr.gov>, Michael Yaki <MYaki@usccr.gov>
Cc: "pkirsanow@beneschlaw.com" <pkirsanow@beneschlaw.com>, Gail Heriot <gheriot@me.com>
Subject: Noon meeting

Good morning, Commissioners Cantu and Yaki:

Commissioners Kirsanow and Heriot asked me to email you and tell you that they are not logistically prepared to negotiate today. Would you be available to meet Thursday at 1:30 PM EDT?

Thank you,

Carissa

AMERICAN OVERSIGHT

Date : 4/15/2021 6:50:24 PM
From : "Gail Heriot" gheriot@usccr.gov
To : "Alexander Heideman" aheideman@usccr.gov
Cc : "Gail Heriot" gheriot@me.com, "Alexander Heideman" alexanderheideman@gmail.com, "Peter Kirsanow" pkirsanow@usccr.gov, "Carissa Mulder" CMulder@usccr.gov, "Christian Adams" adams@electionlawcenter.com, "cadams@usccr.gov" cadams@usccr.gov, "stephen gilchrist" thegilchristassociates@gmail.com, "Stephen Gilchrist" sgilchrist@usccr.gov, "Thomas Simuel" tjsimuel32@gmail.com, "Thomas Simuel" tsimuel@usccr.gov, "John Mashburn" jmashburn@usccr.gov, "John Mashburn" jkmash@comcast.net, "Kirsanow, Peter" pkirsanow@beneschlaw.com
Subject : Re: [EXTERNAL] RE: Comments please

Mandatory calling of witnesses that two of us nominate.

Gail Heriot
Professor of Law
University of San Diego

On Apr 15, 2021, at 3:49 PM, Alexander Heideman <aheideman@usccr.gov> wrote:

So the conservative caucus got four big items:

1. Bipartisan nominations to the EAC & other federal entities;
2. Cancelling the Speaker Series;
3. Sitting in on OCRE interviews; and
4. Committing to the 30-30-10 rule.

Also a soft promise on reevaluating the SAC issues at a later date. Am I missing anything else?

This seems like a big win, especially if the only concession was confirming the Chair's nomination.

From: Gail Heriot <gheriot@me.com>
Date: Thursday, April 15, 2021 at 6:38 PM
To: Alexander Heideman <alexanderheideman@gmail.com>
Cc: Gail Heriot <gheriot@usccr.gov>, Peter Kirsanow <pkirsanow@usccr.gov>, Alexander Heideman <aheideman@usccr.gov>, Carissa Mulder <CMulder@usccr.gov>, Christian Adams <adams@electionlawcenter.com>, "cadams@usccr.gov" <cadams@usccr.gov>, stephen gilchrist <thegilchristassociates@gmail.com>, Stephen Gilchrist

AMERICAN OVERSIGHT

<sgilchrist@usccr.gov>, Thomas Simuel <tjsimuel32@gmail.com>, Thomas Simuel <tsimuel@usccr.gov>, John Mashburn <jmashburn@usccr.gov>, John Mashburn <jkmash@comcast.net>, "Kirsanow, Peter" <pkirsanow@beneschlaw.com>
Subject: Re: [EXTERNAL] RE: Comments please

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They appear to be okay with an omnibus motion.

Gail Heriot
Professor of Law
University of San Diego

> On Apr 15, 2021, at 3:36 PM, Alexander Heideman <alexanderheideman@gmail.com> wrote:
>
> > CAUTION: This email is from outside USCCR.
>
> On Apr 15, 2021, 6:34 PM -0400, Kirsanow, Peter <pkirsanow@beneschlaw.com>, wrote:
>
> > I'm OK with it.
> >
> > What do the SAs think?
> >
> > ---
> >
> > **From:** Gail Heriot <gheriot@usccr.gov>
> > **Sent:** Thursday, April 15, 2021 6:22 PM
> > **To:** Peter Kirsanow <pkirsanow@usccr.gov>; Kirsanow, Peter <pkirsanow@Beneschlaw.com>; Alexander Heideman <alexanderheideman@gmail.com>; Alexander Heideman <aheideman@usccr.gov>; Carissa Mulder <CMulder@usccr.gov>; Carissa Mulder <CMulder@usccr.gov>; Christian Adams <adams@electionlawcenter.com>; cadams@usccr.gov; stephen gilchrist <thegilchristassociates@gmail.com>; Stephen Gilchrist <sgilchrist@usccr.gov>; Thomas Simuel <tjsimuel32@gmail.com>; Thomas Simuel <tsimuel@usccr.gov>; John Mashburn <jmashburn@usccr.gov>; John Mashburn

AMERICAN OVERSIGHT

<jkmash@comcast.net>; Gail Heriot <gheriot@me.com>
Subject: Comments please

***** External E-Mail - Use Caution *****

This is what Norma is proposing for the AI to govern the OCRE witness issue. She still intends to hold the meeting tomorrow. Let me know what you think of her proposal.

Gail Heriot
Professor of Law
University of San Diego

Begin forwarded message:

> **From:** "Cantu, Norma V" <NCantu@law.utexas.edu>
> **Date:** April 15, 2021 at 3:05:52 PM PDT
> **To:** Gail Heriot <gheriot@usccr.gov>
> **Subject: [EXTERNAL] FW: OCRE A-I**
>
> > CAUTION: This email is from outside USCCR.
>
> ---
>
> **From:** "Cantu, Norma V" <NCantu@law.utexas.edu>
> **Date:** Thursday, April 15, 2021 at 5:05 PM
> **To:** "Cantu, Norma V" <NCantu@law.utexas.edu>
> **Subject:** OCRE A-I

AMERICAN OVERSIGHT

Date : 4/15/2021 6:49:10 PM
From : "Alexander Heideman" aheideman@usccr.gov
To : "Gail Heriot" gheriot@me.com, "Alexander Heideman" alexanderheideman@gmail.com
Cc : "Gail Heriot" gheriot@usccr.gov, "Peter Kirsanow" pkirsanow@usccr.gov, "Carissa Mulder" CMulder@usccr.gov, "Christian Adams" adams@electionlawcenter.com, "cadams@usccr.gov" cadams@usccr.gov, "stephen gilchrist" thegilchristassociates@gmail.com, "Stephen Gilchrist" sgilchrist@usccr.gov, "Thomas Simuel" tjsimuel32@gmail.com, "Thomas Simuel" tsimuel@usccr.gov, "John Mashburn" jmashburn@usccr.gov, "John Mashburn" jkmash@comcast.net, "Kirsanow, Peter" pkirsanow@beneschlaw.com
Subject : Re: [EXTERNAL] RE: Comments please

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1. Bipartisan nominations to the EAC & other federal entities;
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AMERICAN OVERSIGHT

Gail Heriot
Professor of Law
University of San Diego

On Apr 15, 2021, at 3:36 PM, Alexander Heideman <alexanderheideman@gmail.com> wrote:

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On Apr 15, 2021, 6:34 PM -0400, Kirsanow, Peter <pkirsanow@beneschlaw.com>, wrote:

> I'm OK with it.
>
> What do the SAs think?
>
> ---
>
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> **Sent:** Thursday, April 15, 2021 6:22 PM
> **To:** Peter Kirsanow <pkirsanow@usccr.gov>; Kirsanow, Peter <pkirsanow@Beneschlaw.com>; Alexander Heideman <alexanderheideman@gmail.com>; Alexander Heideman <aheideman@usccr.gov>; Carissa Mulder <CMulder@usccr.gov>; Carissa Mulder <CMulder@usccr.gov>; Christian Adams <adams@electionlawcenter.com>; cadams@usccr.gov; stephen gilchrist <thegilchristassociates@gmail.com>; Stephen Gilchrist <sgilchrist@usccr.gov>; Thomas Simuel <tjsimuel32@gmail.com>; Thomas Simuel <tsimuel@usccr.gov>; John Mashburn <jmashburn@usccr.gov>; John Mashburn <jkmash@comcast.net>; Gail Heriot <gheriot@me.com>
> **Subject:** Comments please
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AMERICAN OVERSIGHT

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From: "Cantu, Norma V" <NCantu@law.utexas.edu>
Date: April 15, 2021 at 3:05:52 PM PDT
To: Gail Heriot <gheriot@usccr.gov>
Subject: [EXTERNAL] FW: OCRE A-I

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From: "Cantu, Norma V" <NCantu@law.utexas.edu>
Date: Thursday, April 15, 2021 at 5:05 PM
To: "Cantu, Norma V" <NCantu@law.utexas.edu>
Subject: OCRE A-I

AMERICAN OVERSIGHT

Date : 4/15/2021 7:27:13 PM
From : "Thomas Simuel" tsimuel@usccr.gov
To : "Alexander Heideman" aheideman@usccr.gov, "Gail Heriot" gheriot@me.com, "Alexander Heideman" alexanderheideman@gmail.com
Cc : "Gail Heriot" gheriot@usccr.gov, "Peter Kirsanow" pkirsanow@usccr.gov, "Carissa Mulder" CMulder@usccr.gov, "Christian Adams" adams@electionlawcenter.com, "cadams@usccr.gov" cadams@usccr.gov, "stephen gilchrist" thegilchristassociates@gmail.com, "Stephen Gilchrist" sgilchrist@usccr.gov, "Thomas Simuel" tjsimuel32@gmail.com, "John Mashburn" jmashburn@usccr.gov, "John Mashburn" jkmash@comcast.net, "Kirsanow, Peter" pkirsanow@beneschlaw.com
Subject : RE: [EXTERNAL] RE: Comments please

Did I read that they are also willing to drop the Vice-Chair issue?

I think the concessions helps the overall Commission. I agree with Alex & Comm. Heriot that we didn't expect to get all that we asked for, but it seem as though we got a good chunk.

If neither of the Dems agree to canceling the meeting then I believe we need to meet, however, are we really settled on where we are?

Are there specific motions that need to be made to change the agenda at the beginning of the meeting? If so, what are those? Are our side going to propose those changes, or their side?

To be clear- we are meeting tomorrow?

-------- Original message --------
From: Alexander Heideman <aheideman@usccr.gov>
Date: 4/15/21 6:49 PM (GMT-05:00)
To: Gail Heriot <gheriot@me.com>, Alexander Heideman <alexanderheideman@gmail.com>
Cc: Gail Heriot <gheriot@usccr.gov>, Peter Kirsanow <pkirsanow@usccr.gov>, Carissa Mulder <CMulder@usccr.gov>, Christian Adams <adams@electionlawcenter.com>, cadams@usccr.gov, stephen gilchrist <thegilchristassociates@gmail.com>, Stephen Gilchrist <sgilchrist@usccr.gov>, Thomas Simuel <tjsimuel32@gmail.com>, Thomas Simuel <tsimuel@usccr.gov>, John Mashburn <jmashburn@usccr.gov>, John Mashburn <jkmash@comcast.net>, "Kirsanow, Peter" <pkirsanow@beneschlaw.com>
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AMERICAN OVERSIGHT

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AMERICAN OVERSIGHT

Professor of Law

University of San Diego

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> **To:** Peter Kirsanow <pkirsanow@usccr.gov>; Kirsanow, Peter <pkirsanow@Beneschlaw.com>; Alexander Heideman <alexanderheideman@gmail.com>; Alexander Heideman <aheideman@usccr.gov>; Carissa Mulder <CMulder@usccr.gov>; Carissa Mulder <CMulder@usccr.gov>; Christian Adams <adams@electionlawcenter.com>; cadams@usccr.gov; stephen gilchrist <thegilchristassociates@gmail.com>; Stephen Gilchrist <sgilchrist@usccr.gov>; Thomas Simuel <tjsimuel32@gmail.com>; Thomas Simuel <tsimuel@usccr.gov>; John Mashburn <jmashburn@usccr.gov>; John Mashburn <jkmash@comcast.net>; Gail Heriot <gheriot@me.com>
> **Subject:** Comments please
>
> ***** External E-Mail - Use Caution *****
>
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AMERICAN OVERSIGHT

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Professor of Law

University of San Diego

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> **Date:** April 15, 2021 at 3:05:52 PM PDT
> **To:** Gail Heriot <gheriot@usccr.gov>
> **Subject: [EXTERNAL] FW: OCRE A-I**
>
> CAUTION: This email is from outside USCCR.

> **From:** "Cantu, Norma V" <NCantu@law.utexas.edu>
> **Date:** Thursday, April 15, 2021 at 5:05 PM
> **To:** "Cantu, Norma V" <NCantu@law.utexas.edu>
> **Subject:** OCRE A-I

AMERICAN OVERSIGHT

Date : 4/15/2021 8:37:15 PM
From : "Gail Heriot" gheriot@me.com
To : "Thomas Simuel" tsimuel@usccr.gov
Cc : "Alexander Heideman" aheideman@usccr.gov, "Alexander Heideman" alexanderheideman@gmail.com, "Gail Heriot" gheriot@usccr.gov, "Peter Kirsanow" pkirsanow@usccr.gov, "Carissa Mulder" CMulder@usccr.gov, "Christian Adams" adams@electionlawcenter.com, "cadams@usccr.gov" cadams@usccr.gov, "stephen gilchrist" thegilchristassociates@gmail.com, "Stephen Gilchrist" sgilchrist@usccr.gov, "Thomas Simuel" tjsimuel32@gmail.com, "John Mashburn" jmashburn@usccr.gov, "John Mashburn" jkmash@comcast.net, "Peter Kirsanow" pkirsanow@beneschlaw.com
Subject : Re: [EXTERNAL] RE: Comments please

CAUTION: This email is from outside USCCR.

Yes, Norma seemed ready to drop the Vice Chair demand. I am worried about being ready for this meeting tomorrow. Some of the language Norma is proposing isn't quite right. I am trying to edit what she sent me. But I am trying not to change it more than necessary.

I would still much rather have more time. I think we can get it done by Monday. But getting it done tonight isn't easy.

> On Apr 15, 2021, at 4:27 PM, Thomas Simuel <tsimuel@usccr.gov> wrote:
>
> Did I read that they are also willing to drop the Vice-Chair issue?
>
> I think the concessions helps the overall Commission. I agree with Alex & Comm. Heriot that we didn't expect to get all that we asked for, but it seem as though we got a good chunk.
>
> If neither of the Dems agree to canceling the meeting then I believe we need to meet, however, are we really settled on where we are?
>
> Are there specific motions that need to be made to change the agenda at the beginning of the meeting? If so, what are those? Are our side going to propose those changes, or their side?
>
> To be clear- we are meeting tomorrow?

AMERICAN OVERSIGHT

-------- Original message --------
From: Alexander Heideman <aheideman@usccr.gov>
Date: 4/15/21 6:49 PM (GMT-05:00)
To: Gail Heriot <gheriot@me.com>, Alexander Heideman <alexanderheideman@gmail.com>
Cc: Gail Heriot <gheriot@usccr.gov>, Peter Kirsanow <pkirsanow@usccr.gov>, Carissa Mulder <CMulder@usccr.gov>, Christian Adams <adams@electionlawcenter.com>, cadams@usccr.gov, stephen gilchrist <thegilchristassociates@gmail.com>, Stephen Gilchrist <sgilchrist@usccr.gov>, Thomas Simuel <tjsimuel32@gmail.com>, Thomas Simuel <tsimuel@usccr.gov>, John Mashburn <jmashburn@usccr.gov>, John Mashburn <jkmash@comcast.net>, "Kirsanow, Peter" <pkirsanow@beneschlaw.com>
Subject: Re: [EXTERNAL] RE: Comments please

So the conservative caucus got four big items:

1. Bipartisan nominations to the EAC & other federal entities;
2. Cancelling the Speaker Series;
3. Sitting in on OCRE interviews; and
4. Committing to the 30-30-10 rule.

Also a soft promise on reevaluating the SAC issues at a later date. Am I missing anything else?

This seems like a big win, especially if the only concession was confirming the Chair's nomination.

From: Gail Heriot <gheriot@me.com>
Date: Thursday, April 15, 2021 at 6:38 PM
To: Alexander Heideman <alexanderheideman@gmail.com>
Cc: Gail Heriot <gheriot@usccr.gov>, Peter Kirsanow <pkirsanow@usccr.gov>, Alexander Heideman <aheideman@usccr.gov>, Carissa Mulder <CMulder@usccr.gov>, Christian Adams <adams@electionlawcenter.com>, >, Stephen Gilchrist <sgilchrist@usccr.gov>, Thomas Simuel <tjsimuel32@gmail.com>, Thomas Simuel <tsimuel@usccr.gov>, John Mashburn <jmashburn@usccr.gov>, John Mashburn <jkmash@comcast.net>, "Kirsanow, Peter" <pkirsanow@beneschlaw.com>

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Subject: Re: [EXTERNAL] RE: Comments please

CAUTION: This email is from outside USCCR.

They appear to be okay with an omnibus motion.

Gail Heriot

Professor of Law

University of San Diego

On Apr 15, 2021, at 3:36 PM, Alexander Heideman <alexanderheideman@gmail.com> wrote:

CAUTION: This email is from outside USCCR.

On Apr 15, 2021, 6:34 PM -0400, Kirsanow, Peter <pkirsanow@beneschlaw.com>, wrote:

> I'm OK with it.
>
> What do the SAs think?
>
> ---
>
> **From:** Gail Heriot <gheriot@usccr.gov>
> **Sent:** Thursday, April 15, 2021 6:22 PM
> **To:** Peter Kirsanow <pkirsanow@usccr.gov>; Kirsanow, Peter <pkirsanow@Beneschlaw.com>; Alexander Heideman <alexanderheideman@gmail.com>; Alexander >; Carissa Mulder <CMulder@usccr.gov>; Christian

AMERICAN OVERSIGHT

Adams <adams@electionlawcenter.com>; cadams@usccr.gov; stephen gilchrist <thegilchristassociates@gmail.com>; Stephen Gilchrist <sgilchrist@usccr.gov>; Thomas Simuel <tjsimuel32@gmail.com>; Thomas Simuel <tsimuel@usccr.gov>; John Mashburn <jmashburn@usccr.gov>; John Mashburn <jkmash@comcast.net>; Gail Heriot <gheriot@me.com>
Subject: Comments please

***** External E-Mail - Use Caution *****

This is what Norma is proposing for the AI to govern the OCRE witness issue. She still intends to hold the meeting tomorrow. Let me know what you think of her proposal.

Gail Heriot

Professor of Law

University of San Diego

Begin forwarded message:

> **From:** "Cantu, Norma V" <NCantu@law.utexas.edu>
> **Date:** April 15, 2021 at 3:05:52 PM PDT
> **To:** Gail Heriot <gheriot@usccr.gov>
> **Subject: [EXTERNAL] FW: OCRE A-I**
>
> CAUTION: This email is from outside USCCR.
>
> ---
>
> **From:** "Cantu, Norma V" <NCantu@law.utexas.edu>
> **Date:** Thursday, April 15, 2021 at 5:05 PM
> **To:** "Cantu, Norma

AMERICAN OVERSIGHT

V" <NCantu@law.utexas.edu>
Subject: OCRE A-I

AMERICAN OVERSIGHT

Date : 4/16/2021 10:28:59 AM
From : "Michael Yaki" michael@michaelyaki.com
To : "Norma Cantu" ncantu@usccr.gov, "Gail Heriot" gheriot@usccr.gov, "Norma Cantú" normavcantu@gmail.com
Cc : "Peter Kirsanow" pkirsanow@beneschlaw.com, "Peter Kirsanow" pkirsanow@usccr.gov, "Michael Yaki" MYaki@usccr.gov
Subject : [EXTERNAL] Re: Speakers Series

CAUTION: This email is from outside USCCR.

Seriously folks

You got Norma's commitment on
30-30-10
speaker series

You have an AI on
1. Commission App'tment / EAC
2. Hearing/briefing witnesses

I am prepared to vote w Norma on the AI's to create a majority if we vote to confirm Norma now.

Otherwise I am with Norma and taking these off the table.

Best Regards,
Michael

MICHAEL YAKI CONSULTING
e. michael@michaelyaki.com
m. 415.601.4008

On Friday, April 16, 2021, 7:23 AM, Norma Cantu <ncantu@usccr.gov> wrote:

> Yes, Gail, Peter,
>
> I have kept circling back to the Progressive Caucus on all the items, from the proposals first raised in February, to the one we drafted last night.
>
> Last night, at 8:30, I thought we had an agreement on all the concepts. This is because we withdrew the language of no objection from the Conservative Caucus about language to the Vice Chair. You withdrew the language on needing to complete the SACs language before the Chair vote. We also made a concession to a last-minute request about Commissioners observing and participating in OCRE content

AMERICAN OVERSIGHT

interviews.

Earlier this week, in response to your request for A-Is, Michael gave you and Peter the language for A-Is on the 30/30/10 and for Commission appointments. Michael told you and Peter these were the only A -I s. I can share with you the Progressive Caucus would not consider any other A-s as necessary to proceed to the Chair vote. Putting form over substance is causing unnecessary delay. As an alternative, we had told you and Peter that oral statements on the record would suffice to memorialize the other agreements.

We are ready to discuss and vote on the items you proposed at the business meeting today. But, if not handled and decided today by Progressives and Conservatives together, all our concessions are withdrawn.

Norma V. Cantu

From: Gail Heriot <gheriot@usccr.gov>
Date: Friday, April 16, 2021 at 9:03 AM
To: Norma Cantu <ncantu@usccr.gov>, Norma Cantú <normavcantu@gmail.com>
Cc: Peter Kirsanow <pkirsanow@beneschlaw.com>, Peter Kirsanow <pkirsanow@usccr.gov>
Subject: Re: Speakers Series

Norma—What about the rest of the things on the list? Is the Progressive Caucus ready to vote on all of them? Or should the meeting be put off?

The conservatives are not inclined to negotiate further at the meeting. We are happy to get this done by notational vote if that allows the progressives the time they need to absorb all this.

Gail Heriot

Professor of Law

AMERICAN OVERSIGHT

University of San Diego

On Apr 15, 2021, at 7:36 PM, Norma Cantu <ncantu@usccr.gov> wrote:

Good

Norma

From: Gail Heriot <gheriot@usccr.gov>
Date: Thursday, April 15, 2021 at 8:22 PM
To: Norma Cantú <normavcantu@gmail.com>, Norma Cantu <ncantu@usccr.gov>
Subject: Speakers Series

Norma— I think that the members of the conservative caucus are satisfied that this will work for the speakers series. I'm working on the other issues. Gail

DRAFT: Email from Commissioner Norma V. Cantú Rescinding the Speakers Series Activity Conducted at Commissioners′ Meetings:

April 16, 2021

I write to rescind any directives concerning a "Speakers Series" activity conducted during meetings of the Commission. I understand the Speakers Series was announced by email from a chairperson, not memorialized in any A-I or other rule. In light of several Commissioners′ concerns that the activity should have included Commissioner input on speakers from both parties, I express my serious commitment to not

AMERICAN OVERSIGHT

reinstitute this activity. If it happens that a majority of the Commissioners were to consent in the future to support this endeavor by a majority vote of the members of the Commission, I wouldpersonally ascertain whether the proposed speaker would be bipartisan in the number of speakers or timing and scheduling of speakers; and if it is not, while I am on the Commission, I will vote against this proposal.

Gail Heriot

Professor of Law

University of San Diego

AMERICAN OVERSIGHT

Date : 4/16/2021 11:40:17 AM
From : "Gail Heriot" gheriot@usccr.gov
To : "stephen gilchrist" thegilchristassociates@gmail.com, "Alexander Heideman" alexanderheideman@gmail.com, "Carissa Mulder" CMulder@usccr.gov, "Carissa Mulder" carissa.mulder@gmail.com, "Christian Adams" adams@electionlawcenter.com, "Alexander Heideman" aheideman@usccr.gov, "John Mashburn" jkmash@comcast.net, "John Mashburn" jmashburn@usccr.gov, "Peter Kirsanow" pkirsanow@beneschlaw.com, "Peter Kirsanow" pkirsanow@usccr.gov, "Stephen Gilchrist" sgilchrist@usccr.gov, "Thomas Simuel" tjsimuel32@gmail.com, "Thomas Simuel" tsimuel@usccr.gov, "J. Christian Adams" jadams@usccr.gov
Subject : Fwd: [EXTERNAL] RE: Speakers Series

Note that Yaki is asking for a waiver of the 48 hour rule as part of the deal.

Gail Heriot
Professor of Law
University of San Diego

Begin forwarded message:

> **From:** Michael Yaki <michael@michaelyaki.com>
> **Date:** April 16, 2021 at 8:33:30 AM PDT
> **To:** Gail Heriot <gheriot@usccr.gov>, Norma Cantu <ncantu@usccr.gov>
> **Cc:** Norma Cantú <normavcantu@gmail.com>, Peter Kirsanow <pkirsanow@beneschlaw.com>, Peter Kirsanow <pkirsanow@usccr.gov>
> **Subject: Re: [EXTERNAL] RE: Speakers Series**
>
> CAUTION: This email is from outside USCCR.
>
> I want the waiver on the AAPI statement.
>
> Best Regards,
> Michael
>
> MICHAEL YAKI CONSULTING
> e. michael@michaelyaki.com
> m. 415.601.4908
>
> ---
>
> **From:** Gail Heriot <gheriot@usccr.gov>
> **Sent:** Friday, April 16, 2021 8:21:56 AM
> **To:** Norma Cantu <ncantu@usccr.gov>
> **Cc:** MICHAEL@michaelyaki.com <MICHAEL@michaelyaki.com>; Norma

AMERICAN OVERSIGHT

Cantú <normavcantu@gmail.com>; Peter Kirsanow <pkirsanow@beneschlaw.com>; Peter Kirsanow <pkirsanow@usccr.gov>
Subject: Re: [EXTERNAL] RE: Speakers Series

There are five altogether.

AI on EAC Board of Advisors and other appointments
AI on witness selection
AI on attending OCRE witness interviews

Statement on speaker series
Statement on 30-30-10 statements, rebuttals, etc.

Gail Heriot
Professor of Law
University of San Diego

> On Apr 16, 2021, at 8:18 AM, Norma Cantu <ncantu@usccr.gov> wrote:
>
> Let's be sure to name them.
> I have a statement on 30/30/10 and Carissa's draft A – I
> I have a Proposed A-1 on Office of Civil Rights Evaluation interviews
> I have a Proposed A-1 on Commission Appointments
> Norma
>
> ---
>
> **From:** "michael@michaelyaki.com" <michael@michaelyaki.com>
> **Date:** Friday, April 16, 2021 at 10:10 AM
> **To:** Gail Heriot <gheriot@usccr.gov>, Norma Cantu <ncantu@usccr.gov>
> **Cc:** 'Norma Cantú' <normavcantu@gmail.com>, 'Peter Kirsanow' <pkirsanow@beneschlaw.com>, Peter Kirsanow <pkirsanow@usccr.gov>
> **Subject:** [EXTERNAL] RE: Speakers Series
>
> CAUTION: This email is from outside USCCR.
>
> rd AI?
>
> Thanks!
> Michael
>
> **MICHAEL YAKI CONSULTING**

AMERICAN OVERSIGHT

This email and any files or attachments transmitted with it may contain privileged or otherwise confidential information. If you are not the intended recipient, or believe that you may have received this communication in error, please advise the sender via reply email and immediately delete the email you received.

From: Gail Heriot <gheriot@usccr.gov>
Sent: Friday, April 16, 2021 8:09 AM
To: Norma Cantu <ncantu@usccr.gov>
Cc: Norma Cantú <normavcantu@gmail.com>; Peter Kirsanow <pkirsanow@beneschlaw.com>; Peter Kirsanow <pkirsanow@usccr.gov>; Michael Yaki <MYaki@usccr.gov>; MICHAEL@michaelyaki.com
Subject: Re: Speakers Series

Norma—I just spoke with Pete about this. Our plan is for Pete to make an omnibus motion to confirm you and to adopt the three AIs. He will read the AIs into the record as part of the motion. Carissa is preparing a script for him now, so he'll have the wording ready before the meeting. Somebody will second the motion. (If we don't get an immediate second from a progressive, I will second, but the optics are better if a progressive seconds.) During the discussion, we will ask you your policy on 30-30-10 and on the speaker series. You should then read into the record your two policy statements. Have those statements ready for when we ask. When the discussion is over, we vote. Then you're Chair.

Gail

Gail Heriot
Professor of Law
University of San Diego

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>
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> I have kept circling back to the Progressive Caucus on all the items, from the proposals first raised in February, to the one we drafted last night.
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> Last night, at 8:30, I thought we had an agreement on all the concepts. This is because we withdrew the language of no objection from the Conservative Caucus about language to the Vice Chair. You withdrew the language on needing to complete the SACs language before the Chair vote. We also made a concession to a

AMERICAN OVERSIGHT

last-minute request about Commissioners observing and participating in OCRE content interviews.

Earlier this week, in response to your request for A-Is, Michael gave you and Peter the language for A-Is on the 30/30/10 and for Commission appointments. Michael told you and Peter these were the only A -I s. I can share with you the Progressive Caucus would not consider any other A-s as necessary to proceed to the Chair vote. Putting form over substance is causing unnecessary delay. As an alternative, we had told you and Peter that oral statements on the record would suffice to memorialize the other agreements.

We are ready to discuss and vote on the items you proposed at the business meeting today. But, if not handled and decided today by Progressives and Conservatives together, all our concessions are withdrawn.
Norma V. Cantu

From: Gail Heriot <gheriot@usccr.gov>
Date: Friday, April 16, 2021 at 9:03 AM
To: Norma Cantu <ncantu@usccr.gov>, Norma Cantú <normavcantu@gmail.com>
Cc: Peter Kirsanow <pkirsanow@beneschlaw.com>, Peter Kirsanow <pkirsanow@usccr.gov>
Subject: Re: Speakers Series

Norma—What about the rest of the things on the list? Is the Progressive Caucus ready to vote on all of them? Or should the meeting be put off?

The conservatives are not inclined to negotiate further at the meeting. We are happy to get this done by notational vote if that allows the progressives the time they need to absorb all this.

Gail Heriot
Professor of Law
University of San Diego

AMERICAN OVERSIGHT

On Apr 15, 2021, at 7:36 PM, Norma Cantu <ncantu@usccr.gov> wrote:

Good
Norma

From: Gail Heriot <gheriot@usccr.gov>
Date: Thursday, April 15, 2021 at 8:22 PM
To: Norma Cantú <normavcantu@gmail.com>, Norma Cantu <ncantu@usccr.gov>
Subject: Speakers Series

Norma— I think that the members of the conservative caucus are satisfied that this will work for the speakers series. I'm working on the other issues. Gail

DRAFT: Email from Commissioner Norma V. Cantú Rescinding the Speakers Series Activity Conducted at Commissioners' Meetings:

April 16, 2021

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AMERICAN OVERSIGHT

input on speakers from both parties, I express my serious commitment to not reinstitute this activity. If it happens that a majority of the Commissioners were to consent in the future to support this endeavor by a majority vote of the members of the Commission, I wouldpersonally ascertain whether the proposed speaker would be bipartisan in the number of speakers or timing and scheduling of speakers; and if it is not, while I am on the Commission, I will vote against this proposal.

Gail Heriot
Professor of Law
University of San Diego

AMERICAN OVERSIGHT

Date : 4/16/2021 11:42:43 AM
From : "Kirsanow, Peter" pkirsanow@Beneschlaw.com
To : "Gail Heriot" gheriot@usccr.gov, "stephen gilchrist" thegilchristassociates@gmail.com, "Alexander Heideman" alexanderheideman@gmail.com, "Carissa Mulder" CMulder@usccr.gov, "Carissa Mulder" carissa.mulder@gmail.com, "Christian Adams" adams@electionlawcenter.com, "Alexander Heideman" aheideman@usccr.gov, "John Mashburn" jkmash@comcast.net, "John Mashburn" jmashburn@usccr.gov, "Peter Kirsanow" pkirsanow@usccr.gov, "Stephen Gilchrist" sgilchrist@usccr.gov, "Thomas Simuel" tjsimuel32@gmail.com, "Thomas Simuel" tsimuel@usccr.gov, "J. Christian Adams" jadams@usccr.gov
Subject : RE: [EXTERNAL] RE: Speakers Series

> CAUTION: This email is from outside USCCR.

I don't object. I'm going to abstain on the letter itself.

From: Gail Heriot <gheriot@usccr.gov>
Sent: Friday, April 16, 2021 11:40 AM
To: stephen gilchrist <thegilchristassociates@gmail.com>; Alexander Heideman <alexanderheideman@gmail.com>; Carissa Mulder <CMulder@usccr.gov>; Carissa Mulder <carissa.mulder@gmail.com>; Christian Adams <adams@electionlawcenter.com>; Alexander Heideman <aheideman@usccr.gov>; John Mashburn <jkmash@comcast.net>; John Mashburn <jmashburn@usccr.gov>; Kirsanow, Peter <pkirsanow@Beneschlaw.com>; Peter Kirsanow <pkirsanow@usccr.gov>; Stephen Gilchrist <sgilchrist@usccr.gov>; Thomas Simuel <tjsimuel32@gmail.com>; Thomas Simuel <tsimuel@usccr.gov>; J. Christian Adams <jadams@usccr.gov>
Subject: Fwd: [EXTERNAL] RE: Speakers Series

***** External E-Mail - Use Caution *****

Note that Yaki is asking for a waiver of the 48 hour rule as part of the deal.

Gail Heriot
Professor of Law
University of San Diego

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> **Date:** April 16, 2021 at 8:33:30 AM PDT
> **To:** Gail Heriot <gheriot@usccr.gov>, Norma Cantu <ncantu@usccr.gov>

AMERICAN OVERSIGHT

>, Peter Kirsanow <pkirsanow@usccr.gov>
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I want the waiver on the AAPI statement.

Best Regards,
Michael

MICHAEL YAKI CONSULTING
e. michael@michaelyaki.com
m. 415.601.4908

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Sent: Friday, April 16, 2021 8:21:56 AM
To: Norma Cantu <ncantu@usccr.gov>
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Professor of Law
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> I have a Proposed A-1 on Office of Civil Rights Evaluation interviews
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> Norma

AMERICAN OVERSIGHT

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"michael@michaelyaki.com" <michael@michaelyaki.com>
Date: Friday, April 16, 2021 at 10:10 AM
To: Gail Heriot <gheriot@usccr.gov>, Norma Cantu <ncantu@usccr.gov>
Cc: 'Norma Cantú' <normavcantu@gmail.com>, 'Peter Kirsanow' <pkirsanow@beneschlaw.com>, Peter Kirsanow <pkirsanow@usccr.gov>
Subject: [EXTERNAL] RE: Speakers Series

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rd AI?

Thanks!
Michael

MICHAEL YAKI CONSULTING

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AMERICAN OVERSIGHT

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Cc: Peter Kirsanow <pkirsanow@beneschlaw.com>, Peter

AMERICAN OVERSIGHT

Kirsanow <pkirsanow@usccr.gov>
Subject: Re: Speakers Series

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Gail Heriot
Professor of Law
University of San Diego

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> Norma
>
> ---
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> **Date:** Thursday, April 15, 2021 at 8:22 PM
> **To:** Norma Cantú <normavcantu@gmail.com>, Norma Cantu <ncantu@usccr.gov>
> **Subject:** Speakers Series
>
> Norma— I think that the members of the conservative caucus are satisfied that this will work for the speakers series. I'm working on the other issues. Gail

DRAFT: Email from Commissioner Norma

AMERICAN OVERSIGHT

V. Cantú Rescinding the Speakers Series Activity Conducted at Commissioners' Meetings:

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Gail Heriot
Professor of Law
University of San Diego

AMERICAN OVERSIGHT

Date : 4/16/2021 11:21:57 AM
From : "Gail Heriot" gheriot@usccr.gov
To : "Norma Cantu" ncantu@usccr.gov
Cc : "MICHAEL@michaelyaki.com" MICHAEL@michaelyaki.com, "Norma Cantú" normavcantu@gmail.com, "Peter Kirsanow" pkirsanow@beneschlaw.com, "Peter Kirsanow" pkirsanow@usccr.gov
Subject : Re: [EXTERNAL] RE: Speakers Series

There are five altogether.

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AI on witness selection
AI on attending OCRE witness interviews

Statement on speaker series
Statement on 30-30-10 statements, rebuttals, etc.

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> **From:** "michael@michaelyaki.com" <michael@michaelyaki.com>
> **Date:** Friday, April 16, 2021 at 10:10 AM
> **To:** Gail Heriot <gheriot@usccr.gov>, Norma Cantu <ncantu@usccr.gov>
> **Cc:** 'Norma Cantú' <normavcantu@gmail.com>, 'Peter Kirsanow' <pkirsanow@beneschlaw.com>, Peter Kirsanow <pkirsanow@usccr.gov>
> **Subject:** [EXTERNAL] RE: Speakers Series
>
> CAUTION: This email is from outside USCCR.
>
> rd AI?
>
> Thanks!
> Michael

AMERICAN OVERSIGHT

MICHAEL YAKI CONSULTING

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AMERICAN OVERSIGHT

Date : 4/16/2021 11:33:29 AM
From : "Michael Yaki" michael@michaelyaki.com
To : "Gail Heriot" gheriot@usccr.gov, "Norma Cantu" ncantu@usccr.gov
Cc : "Norma Cantú" normavcantu@gmail.com, "Peter Kirsanow" pkirsanow@beneschlaw.com, "Peter Kirsanow" pkirsanow@usccr.gov
Subject : Re: [EXTERNAL] RE: Speakers Series

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I want the waiver on the AAPI statement.

Best Regards,
Michael

MICHAEL YAKI CONSULTING
e. michael@michaelyaki.com
m. 415.601.4908

From: Gail Heriot <gheriot@usccr.gov>
Sent: Friday, April 16, 2021 8:21:56 AM
To: Norma Cantu <ncantu@usccr.gov>
Cc: MICHAEL@michaelyaki.com <MICHAEL@michaelyaki.com>; Norma Cantú <normavcantu@gmail.com>; Peter Kirsanow <pkirsanow@beneschlaw.com>; Peter Kirsanow <pkirsanow@usccr.gov>
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AMERICAN OVERSIGHT

Date : 4/16/2021 11:43:06 AM
From : "stephen gilchrist" thegilchristassociates@gmail.com
To : "Gail Heriot" gheriot@usccr.gov
Cc : "Alexander Heideman" alexanderheideman@gmail.com, "Carissa Mulder" CMulder@usccr.gov, "Carissa Mulder" carissa.mulder@gmail.com, "Christian Adams" adams@electionlawcenter.com, "Alexander Heideman" aheideman@usccr.gov, "John Mashburn" jkmash@comcast.net, "John Mashburn" jmashburn@usccr.gov, "Peter Kirsanow" pkirsanow@beneschlaw.com, "Peter Kirsanow" pkirsanow@usccr.gov, "Stephen Gilchrist" sgilchrist@usccr.gov, "Thomas Simuel" tjsimuel32@gmail.com, "Thomas Simuel" tsimuel@usccr.gov, "J. Christian Adams" jadams@usccr.gov
Subject : Re: [EXTERNAL] RE: Speakers Series

CAUTION: This email is from outside USCCR.

Part of the negotiated deal? Or is this referencing his letter?

On Fri, Apr 16, 2021, 11:40 AM Gail Heriot <gheriot@usccr.gov> wrote:

> Note that Yaki is asking for a waiver of the 48 hour rule as part of the deal.
>
> Gail Heriot
> Professor of Law
> University of San Diego
>
> Begin forwarded message:
>
> **From:** Michael Yaki <michael@michaelyaki.com>
> **Date:** April 16, 2021 at 8:33:30 AM PDT
> **To:** Gail Heriot <gheriot@usccr.gov>, Norma Cantu <ncantu@usccr.gov>
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> **Cc:** 'Norma Cantú' <normavcantu@gmail.com>, 'Peter

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Kirsanow' <pkirsanow@beneschlaw.com>, Peter Kirsanow <pkirsanow@usccr.gov>
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rd AI?

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Professor of Law

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AMERICAN OVERSIGHT

Date : 4/16/2021 8:41:29 PM
From : "Christian Adams" a@electionlawcenter.com
To : "'Carissa Mulder'" CMulder@usccr.gov, "Peter Kirsanow" pkirsanow@Beneschlaw.com, "'Gail Heriot'" gheriot@me.com, "John Mashburn" jkmash@comcast.net, "'stephen gilchrist'" thegilchristassociates@gmail.com, "'Thomas Simuel'" tjsimuel32@gmail.com, "'Alexander Heideman'" alexanderheideman@gmail.com
Subject : [EXTERNAL] EAC Appointment

CAUTION: This email is from outside USCCR.

It occurred to me that the draft of the EAC amendment means I will not be picked by the Democrats. They will nominate Debo and Yaki, forcing us into a very problematic corner as Yaki is currently a problem and Debo is very dangerous on voting issues. We will face a very bad choice of the empirically problematic and bullying Yaki and the extremely venomous and extremely competent in the election space Debo. Their ability to pick one of our two choices means that I will not be picked. If we could have gone outside the commission, we could have blocked them with Hans or Cleta, whom they would never pick.

Just noticing this.

AMERICAN OVERSIGHT

Date : 4/20/2021 9:34:36 AM
From : "Irena Vidulovic" ividulovic@usccr.gov
To : "Debo P. Adegbile" dadegbile@usccr.gov, "Adegbile, Debo" Debo.Adegbile@wilmerhale.com
Cc : "Zervoudis, Flor" Flor.Zervoudis@wilmerhale.com
Subject : TO DO + USCCR Updates
Attachment : AI on Appointment Authority (general and EAC) AR notes (1).docx;AI Letter to the Staff Director.docx;

Good Morning Adegbile,

Please see the updated TO DO list for this week, the AI information and USCCR updates.

TO DO LIST:

1. Letter to the Staff Director from all Commissioner's regarding making all the AI's available electronically in one place. Please see the letter attached that all the SA's worked on. Once we get the green light from all the Commissioners we can send to the Staff Director.
2. Review the attached EAC AI that is redlined. Please add any additional thoughts or approve as is so we can share with the rest of the caucus.
3. Scheduling an April 30th business meeting at noon. Will send a calendar invitation, we also need to schedule a caucus meeting on Tuesday, April 27th at 3pm ET.

AI's

EAC appointing authority (redline attached)

- We have worked on the language that you emphasized during the calls.
- That the Chairperson still retains the authority to appoint with the consultation from Commissioners.
- That the Commissioners selected by respective caucus are willing and able to serve
- Finally, should the person by the choosing party not be able to serve, the chairperson shall be free to choose any other member of the Commission, including said chairperson, to serve on the U.S. Election Assistance Commission

The other 2 AI's will be reviewed by OGC and OCRE because it requires their input. However both of the AI have been non-starters for you and Dave.

OCRE Witness Interviews

The R's are wanting to attend interviews that OCRE conducts in order to obtain information for our investigations. Such interviews were conducted for the Sub-Minimum Wages, as well as for Bail Reform.

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- ADA requirements for interviews may not allow for this
- Bail reform interviews also conducted with focus jurisdictions
- Statutory requirements for separation of staff and Commissioners – GC to weigh in.

Panelist requests for briefings

- Explanations from OCRE on why panelists are not being invited
- What do our current AI's and rules require for Commissioner recommendations to be invited
- Resources may not be used effectively if we institute this system
- Need to preserve the independence of the agency

USCCR Updates:

- FEMA/Puerto Rico

  * The notational vote passed
  * FEMA panelist recommendations + briefing book recommendations. The panelist recommendations were due by this Friday, April 2nd. There were numerous recommendations from Irena, Alex, John Mashburn. Carissa and Thomas had one recommendation.
  * OCRE send the invitations last week. No confirmations to date. Irena spoke to Jason and has some updates.

- Commissioners may need to assist in getting the invitations to the principals – particularly Congressman Peters. Irena to update

  Briefing book recommendations are due on Friday, May 7th.
  * Virtual briefing moved to June 25
  * 2 site visits scheduled - Houston 11/19/21, Puerto Rico 12/10/21
  * Third briefing planning meeting will take place on Tuesday, April 20th at 11am ET.

  Bail Reform

  * Kladney/Amy negotiations with R's ongoing
  * Oregon SAC had their last briefing on Friday 12/11, Catherine attended. Rukku shared briefing notes with OCRE in the comments on the first draft.

- Draft coming on 4/26

  Maternal Health

  * OCRE, Debo and Irena met last week to discuss the final draft. Productive meeting, Irena to update the caucus.
  * Focus on Chapter 3 – Federal response, as area for potential bi-partisan consensus
  * New HHS leadership – OCRE sent HHS and CDC targeted questions for affected agency review
  * Need current data for programs that received funding
  * OCRE sent updated ROG's to HHS and also sent the draft report for agency review two weeks ago. No response from HHS, Irena advised

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Nick and OCRE to reach out to panelist including Congresswoman Ayanna Pressley and ask them to put pressure on HHS to respond especially since it was Black Maternal Health week last week and HHS and CDC was participating in all these various events with the partner organizations. Irena will follow up with OCRE this week and see if she can share what OCRE sent and to which programs
    * Final draft coming to Commissioners in May
    * 3 weeks to return edits before vote in June
    * Irena discussing with Republicans whether they will support

Broken Promises pandemic update

* Senator Warren's office has reached out to Irena to schedule a meeting this week on the report update + will invite Julie to the meeting.
* Interested to find out spokesperson for Commission. Irena provided public material and
* Pursue social media strategy using briefing video/materials
* Can we generate clips from the briefing video, into individual panelist testimony or other excerpts? **Irena to reach out to Ang.
* Revisit when we discuss project planning re FY22? (/FEMA, Comm. Adams' proposal, etc.).

Follow ups with Mauro

* The SA's have requested a follow up meeting with Mauro, we were trying to reinstitute the bi-weekly meetings, Mauro has cancelled our April 20th meeting. However Mauro has not been amenable to meeting, our last SA Meeting was held on 3/23.
* Mauro scheduled the meeting with the SA's next week on Tuesday, April 20th at 3pm. Juana you need to be added to the calendar invitation.
* The items raised at the last meeting for which we don't have updates:
    * AI's available online
    * Commissioner IT needs
    * Website update
    * Budget priorities
        * Forward funding for site visits in Puerto Rico and Texas
        * Regional staffing – at least one staffer for territory SACs
        * IT and website
    * SAC letters

Other outstanding items for all SA's

* AI 5-9
    * OCG provided redline and comments for Commissioner consideration for standards for removal for SAC members and procedures the Commission should adopt
* Project proposals
* "Balance" SAC AI?
* Expired SACs (14)

Project proposals for FY21/22

* Rukku checked with John to see if Commissioner Adams will submit new project proposals. John is working with Commissioner Adams on project priorities and check back on timeline. Rukku to follow up with John this week.
* John (at all SA meeting) said that Comm. Adams had a proposal, so Rukku

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will generate a timeline for consideration.
* We will proceed with the FEMA Project as the FY22 statutory enforcement report.
* Need a new FY22 project planning calendar – Rukku generated the program planning schedule with emphasis on time early in the process for bipartisan discussion.

Personnel

* OCRE Director - posting closed. Interviews completed and offer should be going out soon.
* Commission on Black Man and Boys - posting closed + interviews scheduled
* Two regional positions for civil rights analysts – closes 3/31
* Summer 2021 interns – Irena hired a spring intern. Amy hired Clara Malkin – to start 5/24
* Irena's intern Alana Thomas started on March 16th Alana Thomas is currently a second year law student at Georgetown. She is currently pursuing a Master of Public Policy degree from Loyola University Chicago, and received her BS in Psychology from Virginia Tech. Alana has focused her studies on affordable housing and race in law. She currently serves as the Vice President of Marketing Strategy at Citi. Alana is from Chicago, and will be supporting Commissioner Adegbile
* Fulbright fellows – Media fellow recommendation for Ang.
    * Ang hired a Fullbright fellow!

Commission on the Social Status of Black Men and Boys

* Was signed into law, more details to come on what this means.
* Appointments from White House
* Call rescheduled with Congresswoman Wilson
* Women/Girls bill?

Irena Vidulovic
Special Assistant to Commissioner Debo P. Adegbile
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UNITED STATES COMMISSION ON CIVIL RIGHTS

1331 Pennsylvania Avenue, NW• Suite 1150 • Washington, DC 20425 www.usccr.gov

April 15, 2021

Mauro Morales
Staff Director
1331 Pennsylvania Ave NW
Washington, DC 20425

Dear Mr. Morales:

We, the undersigned Commissioners, write today to request the promulgation of a searchable digital collection of the Commission's Administrative Instructions (AIs). In order to efficiently serve as Commissioners, we must have easy access to the AIs. Thus, we request that you provide us with the following:

- One updated digital file containing every AI that is in effect, in its proper order, and with the date and manner of each AI's ratification
- Physical copies of that digital file by request

The general counsel has sent some of this information piece-by-piece via email to us over the past few weeks. But those AIs have not been updated or organized, and they have not been collected into a single digital document. As matters stand, accessing the AIs requires that we attempt to assemble a complete list from the documents we have been sent piecemeal. Thus, this effort is inadequate.

This is simply a matter of good governance. Please provide us with a timeline for completion of the above tasks.

Sincerely,

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ADMINISTRATIVE INSTRUCTION __- __

COMMISSION APPOINTMENTS TO OTHER FEDERAL ENTITIES

Section 1.

.01 Any authority specifically granted the Commission of Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc. shall be exercised by the Commission Chairperson in consultation with all members of the commission.~~as a whole by majority vote~~.

Section 2

.02

(1) For the two (2) appointments to the U.S. Election Assistance Commission, the members appointed by Democratic authorities shall nominate two individuals of their membership that are ready willing and able to serve, and the members appointed by the Republican authorities shall nominate two individuals of their membership that are ready willing and able to serve.

(2) The members appointed by the Democratic authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Democratic authorities.

(3) Should the person by the choosing party not be able to serve, the chairperson shall be free to choose any other member of the Commission, including said chairperson, to serve on the U.S. Election Assistance Commission/

(~~3~~4) ———— The members selected shall be placed in nomination and ratified in conformance with Section 1.

NOTE: I don't see the AI for the rebuttal/surrebuttal,…but I will not vote for it if that crap stays in their about understanding the individual commissioners point-of-vote or vote.

Commented [1]: ¶
Past practice has been that the Chair makes these appointments. This reduces the power of the Chair. ¶
¶
We should find out all the boards and other groups the Commission appoints to in order to understand the full scope of what appointing authority the Chair is relinquishing

Commented [2]: ¶
These requirements do not belong in an AI to be binding on all future compositions of the Commission. If Norma wants to agree to this process for the current appointments, that would be understandable since we are currently 4-4. In the future, if the Commission is 6-2 again, it would be less understandable to give 2 Commissioners this much control. ¶
¶
Alternative: Create a rule committing to bipartisan appointments

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Date : 4/25/2021 5:36:28 PM
From : "Irena Vidulovic" ividulovic@usccr.gov
To : "Adegbile, Debo" Debo.Adegbile@wilmerhale.com
Subject : IMPORTANT Review and Recommendations on April 16th Proposed AI's
Attachment : Review and Recommendations on Proposed 4-16 Final PDF.pdf;image001.gif;image002.gif;

Adegbile,

Please see the attached Memo that the Staff Director, the Executive Team/Career Staff prepared. I have sent you the most important items via text and below. Please let me know if you need any additional information. Thanks IV! Alsoplease call me if you have any questions I will be on the road for the next 30-45 minutes.

The AI on Appointment of Commissioners to EAC:

The SD/Executive Committee gave the following opinions on the AI's. First they don't think that it should be an AI. Second, the proposed A.I. does not distinguish appointing authorities that provide appointments to the Commissioners themselves versus those that provide the Chair of the Commission or Staff Director with appointment authority. For example, the authorizing statute for the Commission on the Social Status of Black Men and Boys designates the Staff Director as the appointing authority for one (1) member.

If the proposed A.I., as written, was followed for the appointment to the Commission on the Social Status of Black Men and Boys, it would conflict and result in a violation of the statute. Lastly, the proposed A.I. provides a procedure to make appointments to the EAC, Board of Advisors, however it does not provide a
procedure to make appointments if the caucuses do not agree on their nominees.

The Staff Director and Executive Committee recommends that this A.I. be revised or withdrawn from consideration.

AI on interviews of panelist/witnesses.

Career staff and SD say that they do not interview folks but that they gather information for the investigation like in the case of Sub-Minimum wages and Bail Reform. That the process as it stands is transparent and provides opportunity for all Commissioners to ask follow up questions to briefing panelists but that those questions are funneled via OCRE so that there is a one stop shop of where the questions are coming from and where the questions are to be responded to. Commissioners provide no evidence, justification or

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rational for the necessity and creation of
this A.I. As a consequence, the Staff Director and Executive Committee recommend that this A.I. be withdrawn from further consideration.

Witness selection AI:

Basically the Career staff is saying that this would create a logistical nightmare, that it is inconsistent with A.I. 1-6, Sec. 4.06. Section 4.06 which enumerates the Commissioners' roles and functions, such as approving projects and concepts, commenting on draft reports, and approving reports, but it does not include witness selection.

The proposed A.I. would repudiate Sec. 4.07, which notes that "all responsibilities not otherwise delegated are reserved to the Staff Director who may redelegate any responsibilities to a member of the executive staff." That it would make it impossible to have all Commissioner witness recommendations honored when there are 8 Commissioners and no limit to how many they could nominate.

As written, it is unclear when Commissioners' ability to suggest witnesses ends, which may result in OCRE being unable to prepare a final witness or panelist roster/list.Commissioner selection of panelists and witnesses will also likely increase negotiation and debate among Commissioners, which could result in delays in confirming attendance.
Additionally, having a roster/list being selected by Commissioners and staff could result in the
need for briefings and hearings lasting multiple days, which will increase costs.

From: Mauro Morales
Sent: Friday, April 23, 2021 4:09 PM
To: Commissioners
Cc: CommissionerAssistants; ExecutiveStaff
Subject: Review and Recommendations on April 16th Proposed AI's

Commissioners,

As requested, I have attached a memorandum from the Commission staff in regard to the three AI's proposed during the April 16th Commission Business meeting. We have presented a joint analysis and legal review of how we believe these three proposed AI's would affect the operation and mission of the Commission. We thank you for the opportunity to present our viewpoint.

Mauro Morales
Staff Director
U.S. Commission on Civil Rights
P: 202-376-7796| F: 202-376-7672

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UNITED STATE COMMISSION ON CIVIL RIGHTS
Washington, DC

CONFIDENTIAL & PRIVILEGED/PRE-DELIBERATIVE

April 23, 2021

MEMORANDUM FOR: Commissioners

FROM: Staff Director and Executive Committee

SUBJECT: Review and Recommendations of Proposed Administrative Instructions submitted on April 16, 2021, during the Commission Business Meeting

The Staff Director and the Executive Committee of the U.S. Commission on Civil Rights, which includes the offices of the Staff Director, Office of Civil Rights Evaluation, General Counsel, Public Affairs, and Management, have jointly reviewed the three proposed Administrative Instructions (A.I.s) introduced by the Commissioners during an April 16th , 2021, Business Meeting. The Staff Director and Executive Committee believes the proposed A.I.s inappropriately conflict with existing Administrative Instructions and Commission regulations, and unreasonably create programmatic and operations problems for the Commission. It is our recommendation that the proposed A.I.s in their current form be revised or withdrawn.

A. Proposed A.I. on Commission Appointments to Other Federal Entities

The Executive Committee provides the following recommendations regarding this proposed A.I. First, Commission appointments pursuant to 52 U.S.C. § 20944 to the U.S. Election Assistance Commission (EAC), Board of Advisors, could be accomplished via a Commission vote rather than an A.I. Second, the proposed A.I. does not distinguish appointing authorities that provide appointments to the Commissioners themselves versus those that provide the Chair of the Commission or Staff Director with appointment authority. For example, the authorizing statute for the Commission on the Social Status of Black Men and Boys designates the Staff Director as the appointing authority for one (1) member.[1] If the proposed A.I., as written, was followed for the appointment to the Commission on the Social Status of Black Men and Boys, it would conflict and result in a violation of the statute. Lastly, the proposed A.I. provides a procedure to make appointments to the EAC, Board of Advisors, however it does not provide a procedure to make appointments if the caucuses do not agree on their nominees.

The Staff Director and Executive Committee recommends that this A.I. be revised or withdrawn from consideration.

[1] *See* https://www.congress.gov/bill/116th-congress/house-bill/1636/text?q=%7B%22search%22%3A%5B%22%5B2018-09-28+TO+2018-09-28%5D%22%5D%7D, Sec. 3(6).

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B. Proposed A.I. on OCRE Interviews of Panelists and Witnesses

This proposed A.I. provides that Commissioners attend staff "interviews" with external fact "witnesses or experts." OCRE does not conduct interviews of panelists or witnesses before or after briefings or hearings, but rather, as was the case for the Subminimum Wage and Bail Reform Reports, it holds meetings with stakeholders as part of its data collection process to develop and prepare concepts and documents for reports pursuant to its regulatory mandate contained in 45 C.F.R. § 701.13(e) (this Office is responsible for monitoring, evaluating and reporting on the civil rights enforcement effort of the Federal Government; developing concepts for programs, projects, and policies directed toward the achievement of Commission goals; preparing documents that articulate the Commission's views and concerns regarding Federal civil rights.) Commissioner participation in OCRE pre-briefings and pre-hearing meetings is inconsistent with the aforementioned regulation, which prescribes OCRE's function within the Commission.[2]

Further, 45 C.F.R. § 702.14(a) notes that an accurate transcript recorded by a court reporter shall be made of the testimony of all witnesses at all proceedings of the Commission. Consequently, as written, by defining OCRE meetings as "interviews" this A.I. would result in the financial cost of court reporters to be present whenever OCRE meets with stakeholders, panelists, or witnesses, in addition to the administrative burden of having to schedule and coordinate meeting time with Commissioners and their Special Assistants on a bipartisan basis and the panelist or witness. This A.I. is impractical and unnecessary.

Finally, the A.I. provides that Commissioners can individually provide follow-up questions to witnesses. This runs counter to the Commission's Privacy Act policy as OCRE staff would not have access to these additional individual Commissioner questions, requests or the information gathered; nor can OCRE ensure that the information collected from participants will be properly stored and managed for confidentiality or for inclusion in Commission Reports. Additionally, career staff in OCRE, as social scientists, follow the three principles of the Belmont Report (respect of persons, beneficence, and justice), which are needed to protect vulnerable interviewees, such as children, persons with disabilities, prisoners, and others. It is not clear that Commissioners or their Special Assistants, given their varied professional backgrounds, will follow the aforementioned principles.

The current practice is that OCRE sends a joint set of follow up questions from Commissioners which are forwarded to panelists to answer. All questions and answers are shared with Commissioners and their special assistants. Sending separate and individual questions confuses panelists, results in multiple & repetitive questions and prevents every Commissioner equal access to questions and answers.

[2] *See U.S. Lines, Inc. v. Fed. Mar. Comm'n,* 584 F.2d 519, 526 n. 20 (D.C.Cir.1978) *citing* to *U.S. v. Nixon,* 418 U.S. 683, 693-696 (1974) ("an agency is not free to ignore or violate its regulations while they remain in effect.")

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Commissioners provide no evidence, justification or rational for the necessity and creation of this A.I. As a consequence, the Staff Director and Executive Committee recommend that this A.I. be withdrawn from further consideration.

C. Proposed A.I. on Witness Selection

This proposed A.I. revises A.I. 1-6, "National Project Development and Implementation." Specifically, it revises Section 11, Commission Hearings, and Section 12, Commission Briefings. Staff reminds Commissioners that there is a significant difference between a Commission hearing and a Commission briefing.

The first sentences of Sections 11.03 and 12.02 respectively state that staff are to use "various" sources to gather suggestions for witnesses, but the subsequent sentences state that Commissioners are the "primary" source for "suggesting" witnesses. These two sentences are contradictory and the use of the term "suggest" in reference to witness selection by the Commissioners is inconsistent with the provision in these Sections that if two Commissioners request a particular witness, then staff must invite that witness.

Sections 11.03 and 12.02 mandate that staff invite a witness who is requested by two or more Commissioners. This mandate is inconsistent with A.I. 1-6, Sec. 4.06. Section 4.06 enumerates the Commissioners' roles and functions, such as approving projects and concepts, commenting on draft reports, and approving reports, but it does not include witness selection. The proposed A.I. would repudiate Sec. 4.07, which notes that "all responsibilities not otherwise delegated are reserved to the Staff Director who may redelegate any responsibilities to a member of the executive staff." Section 12.02's requirement to invite witnesses to Commission briefings when they are selected by two or more Commissioners is also inconsistent with 45 C.F.R. § 701.13(e), which makes project development and civil rights evaluation functions of OCRE. As noted above, federal agencies are not free to ignore its regulations while they remain in effect. *See U.S. Lines, Inc.,* 584 F.2d 519 at n. 20. Similarly, Section 11.03's requirement to invite witnesses to Commission hearings when they are selected by two or more Commissioners is inconsistent with 45 C.F.R. § 701.13(c), which notes that OGC "plans and conducts hearings."[3] Given that this proposed A.I. allows Commissioners to select witnesses for hearings, it prevents OGC from fulfilling its regulatory mandate to plan hearings. In the sixty-three year history of the Commission, Commissioners have never unilaterally selected witnesses. Such a change would alter the fundamental role of OCRE and undermine its ability to conduct an objective and substantive briefing.

Sections 11.03 and 12.02's witness mandate is also not consistent with 42 U.S.C. § 1975b. This statute notes that the Staff Director is the administrative head of the Commission, which includes things such as proposing employee discipline and conducting performance appraisals for career staff under Title 5. Commissioner interference in OCRE and OGC's operations as

[3] Although notice and comment rulemaking is not required for general statements of policy under 5 U.S.C. § 553(b)(A), an agency acts arbitrarily and capriciously if it acts in a manner that is contrary to its own regulations or a congressional statute. *Pol'y & Rsch., LLC v. United States Dep't of Health & Hum. Servs*., 313 F. Supp. 3d 62, 72 (D.D.C. 2018).

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proposed in the A.I. would result in contradictory or inconsistent orders from Commissioners. Additionally, designating Commissioners as the "primary" source for inviting and hearing from a specific witness would be an extraordinary change skewing the ability of OCRE to engage in objective investigations. It would send the Commission down a slippery slope of Commissioners and their special assistants themselves conducting investigations and writing reports. Such change would irreparably alter the mission of the Commission and be at odds with our enacting statue and Congressional history in creating the Commission. Please also note that Commissioner involvement in selecting witnesses pursuant to this proposed A.I., attending panelist and witness meetings in the aforementioned proposed A.I., or other involvement in the Commission's day-to-day operations, may implicate the 75-day billable cap in the Commission's fiscal year 2021 budget. *See* https://www.usccr.gov/pubs/2020/FY2021-Congressional-Budget-Justification.pdf.

Section 11.02 of the current A.I. 1-6 references a Hearing Report form, however it is unclear whether the Commission actually utilizes this form. This form certifies a numerical balance of witnesses with opposing views, opinions, and perspectives, and could safeguard that witnesses and panelists are ideologically balanced. However, such a form could also be used to impede in the selection of panelists for briefings and undermine the benefit the collaborative working relationship. OCRE already works with the lead Special Assistant/Commissioner regarding witness and panelist selection. Adding a new form or a new layer in the selection process would further delay the creation of panels and delay the release of the final report.

Logistically the proposed A.I. presents a number of potential scheduling issues for Commission staff. As written, it is unclear when Commissioners' ability to suggest witnesses ends, which may result in OCRE being unable to prepare a final witness or panelist roster/list. Commissioner selection of panelists and witnesses will also likely increase negotiation and debate among Commissioners, which could result in delays in confirming attendance. Additionally, having a roster/list being selected by Commissioners and staff could result in the need for briefings and hearings lasting multiple days, which will increase costs.

Lastly, while it is understandable that that Commissioners want to play a larger role in the selection process, they should do so by negotiating with each other prior to panelists suggestions being sent to OCRE. They should continue to work with OCRE to have diverse and objective panelists instead of attempting to force a selection reflecting their individual viewpoint. It is the view of the staff that unilateral Commissioner selection of witnesses and panelists would constrain OCRE's ability to collect bipartisan testimony and prohibit OCRE's ability to act independently. The panelist and witness evaluation process is independent of the Commissioners final assessment and report of civil rights enforcement. Further, OCRE remains committed to work with Commissioners regarding their recommendations and will continue to strive to accommodate the recommended expert or fact witness or panelist.

Commissioners provide no evidence, justification or rational for the necessity and creation of this A.I. As a consequence, the Staff Director and Executive Committee recommends that this A.I. be withdrawn from further consideration.

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D. Conclusion

The following are the recommendations of the Commission professional staff:

- Commissioners discuss and take a recorded vote on bipartisan appointments to other Federal entities or revise the proposed A.I. for Commission appointments;
- Commissioners withdraw from further consideration the proposed A.I. on Stakeholder Interviews; and,
- Commissioners withdraw from further consideration the proposed A.I. on Witnesses.

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Date : 4/26/2021 9:42:30 AM
From : "Irena Vidulovic" ividulovic@usccr.gov
To : "Debo P. Adegbile" dadegbile@usccr.gov, "Adegbile, Debo" Debo.Adegbile@wilmerhale.com
Cc : "Zervoudis, Flor" Flor.Zervoudis@wilmerhale.com
Subject : TO DO + USCCR Updates
Attachment : AI on Appointment Authority (general and EAC) AR notes (1).docx;AI Letter to the Staff Director.docx;Review and Recommendations on Proposed 4-16 Final PDF (1).pdf;

TO DO LIST:

1. USCCR Hour's Please see below DUE, Tuesday April 27th
2. Letter to the Staff Director from all Commissioner's regarding making all the AI's available electronically in one place. Please see the letter attached that all the SA's worked on. Once we get the green light from all the Commissioners we can send to the Staff Director.
3. Review the attached EAC AI that is redlined + Career Staff Recommendations
4. Scheduling an April 30th business meeting at 2pm ET. Will send a calendar invitation, we also need to schedule a caucus meeting on Tuesday, April 27th at 3pm ET.

AI's

EAC appointing authority (redline attached)

- We have worked on the language that you emphasized during the calls.
- That the Chairperson still retains the authority to appoint with the consultation from Commissioners.
- That the Commissioners selected by respective caucus are willing and able to serve
- Finally, should the person by the choosing party not be able to serve, the chairperson shall be free to choose any other member of the Commission, including said chairperson, to serve on the U.S. Election Assistance Commission

The other 2 AI's will be reviewed by OGC and OCRE because it requires their input. However both of the AI have been non-starters for you and Dave.

OCRE Witness Interviews

The R's are wanting to attend interviews that OCRE conducts in order to obtain information for our investigations. Such interviews were conducted for the Sub-Minimum Wages, as well as for Bail

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Reform.

- ADA requirements for interviews may not allow for this
- Bail reform interviews also conducted with focus jurisdictions
- Statutory requirements for separation of staff and Commissioners – GC to weigh in.

Panelist requests for briefings

- Explanations from OCRE on why panelists are not being invited
- What do our current AI's and rules require for Commissioner recommendations to be invited
- Resources may not be used effectively if we institute this system
- Need to preserve the independence of the agency

The AI on Appointment of Commissioners to EAC:

The SD/Executive Committee gave the following opinions on the AI's. First they don't think that it should be an AI. Second, the proposed A.I. does not distinguish appointing authorities that provide appointments to the Commissioners themselves versus those that provide the Chair of the Commission or Staff Director with appointment authority. For example, the authorizing statute for the Commission on the Social Status of Black Men and Boys designates the Staff Director as the appointing authority for one (1) member.

If the proposed A.I., as written, was followed for the appointment to the Commission on the Social Status of Black Men and Boys, it would conflict and result in a violation of the statute. Lastly, the proposed A.I. provides a procedure to make appointments to the EAC, Board of Advisors, however it does not provide a procedure to make appointments if the caucuses do not agree on their nominees.

The Staff Director and Executive Committee recommends that this A.I. be revised or withdrawn from consideration.

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Commissioners to ask follow up questions to briefing panelists but that those questions are funneled via OCRE so that there is a one stop shop of where the questions are coming from and where the questions are to be responded to. Commissioners provide no evidence, justification or rational for the necessity and creation of this A.I. As a consequence, the Staff Director and Executive Committee recommend that this A.I. be withdrawn from further consideration.

Witness selection AI:

Basically the Career staff is saying that this would create a logistical nightmare, that it is inconsistent with A.I. 1-6, Sec. 4.06. Section 4.06 which enumerates the Commissioners' roles and functions, such as approving projects and concepts, commenting on draft reports, and approving reports, but it does not include witness selection.

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Additionally, having a roster/list being selected by Commissioners and staff could result in the
need for briefings and hearings lasting multiple days, which will increase costs.

USCCR Hours

4/12 1.5 Weekly Priority Call with SA
4/13 2 hour prep + 1 hour caucus call
4/14 3 hour reviews of USCCR business meeting documents
4/15 1.5 call with SA regarding April Business Meeting +2 hour review
4/16 2 hour review + 1 hour April Business Meeting
4/17 1.5 hour call with SA
4/19 2 hour review of updated AI's

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4/22 1 hour review of USCCR materials

USCCR Updates:

- FEMA/Puerto Rico

  * The notational vote passed
  * FEMA panelist recommendations + briefing book recommendations. The panelist recommendations were due by this Friday, April 2nd. There were numerous recommendations from Irena, Alex, John Mashburn. Carissa and Thomas had one recommendation.
  * OCRE send the invitations last week. No confirmations to date. Irena spoke to Jason and has some updates.

- Commissioners may need to assist in getting the invitations to the principals – particularly Congressman Peters. Irena to update

  Briefing book recommendations are due on Friday, May 7th.
  * Virtual briefing moved to June 25
  * 2 site visits scheduled - Houston 11/19/21, Puerto Rico 12/10/21
  * Third briefing planning meeting will take place on Tuesday, April 20th at 11am ET.

  Bail Reform

  * Kladney/Amy negotiations with R's ongoing
  * Oregon SAC had their last briefing on Friday 12/11, Catherine attended. Rukku shared briefing notes with OCRE in the comments on the first draft.

- Draft coming on 4/26

  Maternal Health

  * OCRE, Debo and Irena met last week to discuss the final draft. Productive meeting, Irena to update the caucus.
  * Focus on Chapter 3 – Federal response, as area for potential bi-partisan consensus
  * New HHS leadership – OCRE sent HHS and CDC targeted questions for affected agency review
  * Need current data for programs that received funding
  * OCRE sent updated ROG's to HHS and also sent the draft report for agency review two weeks ago. No response from HHS, Irena advised Nick and OCRE to reach out to panelist including Congresswoman Ayanna Pressley and ask them to put pressure on HHS to respond especially since it was Black Maternal Health week last week and HHS and CDC was participating in all these various events with the partner organizations. Irena will follow up with OCRE this

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week and see if she can share what OCRE sent and to which programs
    * Final draft coming to Commissioners in May
    * 3 weeks to return edits before vote in June
    * Irena discussing with Republicans whether they will support

Broken Promises pandemic update

* Senator Warren's office has reached out to Irena to schedule a meeting this week on the report update + will invite Julie to the meeting.
* Interested to find out spokesperson for Commission. Irena provided public material and
* Pursue social media strategy using briefing video/materials
* Can we generate clips from the briefing video, into individual panelist testimony or other excerpts? **Irena to reach out to Ang.
* Revisit when we discuss project planning re FY22? (/FEMA, Comm. Adams' proposal, etc.).

Follow ups with Mauro

* The SA's have requested a follow up meeting with Mauro, we were trying to reinstitute the bi-weekly meetings, Mauro has cancelled our April 20th meeting. However Mauro has not been amenable to meeting, our last SA Meeting was held on 3/23.
* Mauro scheduled the meeting with the SA's next week on Tuesday, April 20th at 3pm. Juana you need to be added to the calendar invitation.
* The items raised at the last meeting for which we don't have updates:
    * AI's available online
    * Commissioner IT needs
    * Website update
    * Budget priorities
        * Forward funding for site visits in Puerto Rico and Texas
        * Regional staffing – at least one staffer for territory SACs
        * IT and website
    * SAC letters

Other outstanding items for all SA's

* AI 5-9
    * OCG provided redline and comments for Commissioner consideration for standards for removal for SAC members and procedures the Commission should adopt
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* John (at all SA meeting) said that Comm. Adams had a proposal, so Rukku will generate a timeline for consideration.
* We will proceed with the FEMA Project as the FY22 statutory enforcement report.
* Need a new FY22 project planning calendar – Rukku generated the program planning schedule with emphasis on time early in the process for bipartisan discussion.

Personnel

* OCRE Director - posting closed. Interviews completed and offer should be going out soon.
* Commission on Black Man and Boys - posting closed + interviews scheduled
* Two regional positions for civil rights analysts – closes 3/31
* Summer 2021 interns – Irena hired a spring intern. Amy hired Clara Malkin – to start 5/24
* Irena's intern Alana Thomas started on March 16th Alana Thomas is currently a second year law student at Georgetown. She is currently pursuing a Master of Public Policy degree from Loyola University Chicago, and received her BS in Psychology from Virginia Tech. Alana has focused her studies on affordable housing and race in law. She currently serves as the Vice President of Marketing Strategy at Citi. Alana is from Chicago, and will be supporting Commissioner Adegbile
* Fulbright fellows – Media fellow recommendation for Ang.
    * Ang hired a Fullbright fellow!

Commission on the Social Status of Black Men and Boys

* Was signed into law, more details to come on what this means.
* Appointments from White House
* Call rescheduled with Congresswoman Wilson
* Women/Girls bill?

Irena Vidulovic
Special Assistant to Commissioner Debo P. Adegbile
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UNITED STATES COMMISSION ON CIVIL RIGHTS

1331 Pennsylvania Avenue, NW• Suite 1150 • Washington, DC 20425 www.usccr.gov

April 15, 2021

Mauro Morales
Staff Director
1331 Pennsylvania Ave NW
Washington, DC 20425

Dear Mr. Morales:

We, the undersigned Commissioners, write today to request the promulgation of a searchable digital collection of the Commission's Administrative Instructions (AIs). In order to efficiently serve as Commissioners, we must have easy access to the AIs. Thus, we request that you provide us with the following:

- One updated digital file containing every AI that is in effect, in its proper order, and with the date and manner of each AI's ratification
- Physical copies of that digital file by request

The general counsel has sent some of this information piece-by-piece via email to us over the past few weeks. But those AIs have not been updated or organized, and they have not been collected into a single digital document. As matters stand, accessing the AIs requires that we attempt to assemble a complete list from the documents we have been sent piecemeal. Thus, this effort is inadequate.

This is simply a matter of good governance. Please provide us with a timeline for completion of the above tasks.

Sincerely,

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ADMINISTRATIVE INSTRUCTION __- __

COMMISSION APPOINTMENTS TO OTHER FEDERAL ENTITIES

Section 1.

.01 Any authority specifically granted the Commission of Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc. shall be exercised by the Commission Chairperson in consultation with all members of the commission.~~as a whole by majority vote~~.

Section 2

.02

(1) For the two (2) appointments to the U.S. Election Assistance Commission, the members appointed by Democratic authorities shall nominate two individuals of their membership that are ready willing and able to serve, and the members appointed by the Republican authorities shall nominate two individuals of their membership that are ready willing and able to serve.

(2) The members appointed by the Democratic authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Democratic authorities.

(3) Should the person by the choosing party not be able to serve, the chairperson shall be free to choose any other member of the Commission, including said chairperson, to serve on the U.S. Election Assistance Commission/

(~~3~~4) ———— The members selected shall be placed in nomination and ratified in conformance with Section 1.

NOTE: I don't see the AI for the rebuttal/surrebuttal,…but I will not vote for it if that crap stays in their about understanding the individual commissioners point-of-vote or vote.

Commented [1]: ¶
Past practice has been that the Chair makes these appointments. This reduces the power of the Chair. ¶
¶
We should find out all the boards and other groups the Commission appoints to in order to understand the full scope of what appointing authority the Chair is relinquishing

Commented [2]: ¶
These requirements do not belong in an AI to be binding on all future compositions of the Commission. If Norma wants to agree to this process for the current appointments, that would be understandable since we are currently 4-4. In the future, if the Commission is 6-2 again, it would be less understandable to give 2 Commissioners this much control. ¶
¶
Alternative: Create a rule committing to bipartisan appointments

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UNITED STATE COMMISSION ON CIVIL RIGHTS
Washington, DC

CONFIDENTIAL & PRIVILEGED/PRE-DELIBERATIVE

April 23, 2021

MEMORANDUM FOR: Commissioners

FROM: Staff Director and Executive Committee

SUBJECT: Review and Recommendations of Proposed Administrative Instructions submitted on April 16, 2021, during the Commission Business Meeting

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A. Proposed A.I. on Commission Appointments to Other Federal Entities

The Executive Committee provides the following recommendations regarding this proposed A.I. First, Commission appointments pursuant to 52 U.S.C. § 20944 to the U.S. Election Assistance Commission (EAC), Board of Advisors, could be accomplished via a Commission vote rather than an A.I. Second, the proposed A.I. does not distinguish appointing authorities that provide appointments to the Commissioners themselves versus those that provide the Chair of the Commission or Staff Director with appointment authority. For example, the authorizing statute for the Commission on the Social Status of Black Men and Boys designates the Staff Director as the appointing authority for one (1) member.[1] If the proposed A.I., as written, was followed for the appointment to the Commission on the Social Status of Black Men and Boys, it would conflict and result in a violation of the statute. Lastly, the proposed A.I. provides a procedure to make appointments to the EAC, Board of Advisors, however it does not provide a procedure to make appointments if the caucuses do not agree on their nominees.

The Staff Director and Executive Committee recommends that this A.I. be revised or withdrawn from consideration.

[1] *See* https://www.congress.gov/bill/116th-congress/house-bill/1636/text?q=%7B%22search%22%3A%5B%22%5B2018-09-28+TO+2018-09-28%5D%22%5D%7D, Sec. 3(6).

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B. Proposed A.I. on OCRE Interviews of Panelists and Witnesses

This proposed A.I. provides that Commissioners attend staff "interviews" with external fact "witnesses or experts." OCRE does not conduct interviews of panelists or witnesses before or after briefings or hearings, but rather, as was the case for the Subminimum Wage and Bail Reform Reports, it holds meetings with stakeholders as part of its data collection process to develop and prepare concepts and documents for reports pursuant to its regulatory mandate contained in 45 C.F.R. § 701.13(e) (this Office is responsible for monitoring, evaluating and reporting on the civil rights enforcement effort of the Federal Government; developing concepts for programs, projects, and policies directed toward the achievement of Commission goals; preparing documents that articulate the Commission's views and concerns regarding Federal civil rights.) Commissioner participation in OCRE pre-briefings and pre-hearing meetings is inconsistent with the aforementioned regulation, which prescribes OCRE's function within the Commission.[2]

Further, 45 C.F.R. § 702.14(a) notes that an accurate transcript recorded by a court reporter shall be made of the testimony of all witnesses at all proceedings of the Commission. Consequently, as written, by defining OCRE meetings as "interviews" this A.I. would result in the financial cost of court reporters to be present whenever OCRE meets with stakeholders, panelists, or witnesses, in addition to the administrative burden of having to schedule and coordinate meeting time with Commissioners and their Special Assistants on a bipartisan basis and the panelist or witness. This A.I. is impractical and unnecessary.

Finally, the A.I. provides that Commissioners can individually provide follow-up questions to witnesses. This runs counter to the Commission's Privacy Act policy as OCRE staff would not have access to these additional individual Commissioner questions, requests or the information gathered; nor can OCRE ensure that the information collected from participants will be properly stored and managed for confidentiality or for inclusion in Commission Reports. Additionally, career staff in OCRE, as social scientists, follow the three principles of the Belmont Report (respect of persons, beneficence, and justice), which are needed to protect vulnerable interviewees, such as children, persons with disabilities, prisoners, and others. It is not clear that Commissioners or their Special Assistants, given their varied professional backgrounds, will follow the aforementioned principles.

The current practice is that OCRE sends a joint set of follow up questions from Commissioners which are forwarded to panelists to answer. All questions and answers are shared with Commissioners and their special assistants. Sending separate and individual questions confuses panelists, results in multiple & repetitive questions and prevents every Commissioner equal access to questions and answers.

[2] *See U.S. Lines, Inc. v. Fed. Mar. Comm'n,* 584 F.2d 519, 526 n. 20 (D.C.Cir.1978) *citing* to *U.S. v. Nixon,* 418 U.S. 683, 693-696 (1974) ("an agency is not free to ignore or violate its regulations while they remain in effect.")

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Commissioners provide no evidence, justification or rational for the necessity and creation of this A.I. As a consequence, the Staff Director and Executive Committee recommend that this A.I. be withdrawn from further consideration.

C. Proposed A.I. on Witness Selection

This proposed A.I. revises A.I. 1-6, "National Project Development and Implementation." Specifically, it revises Section 11, Commission Hearings, and Section 12, Commission Briefings. Staff reminds Commissioners that there is a significant difference between a Commission hearing and a Commission briefing.

The first sentences of Sections 11.03 and 12.02 respectively state that staff are to use "various" sources to gather suggestions for witnesses, but the subsequent sentences state that Commissioners are the "primary" source for "suggesting" witnesses. These two sentences are contradictory and the use of the term "suggest" in reference to witness selection by the Commissioners is inconsistent with the provision in these Sections that if two Commissioners request a particular witness, then staff must invite that witness.

Sections 11.03 and 12.02 mandate that staff invite a witness who is requested by two or more Commissioners. This mandate is inconsistent with A.I. 1-6, Sec. 4.06. Section 4.06 enumerates the Commissioners' roles and functions, such as approving projects and concepts, commenting on draft reports, and approving reports, but it does not include witness selection. The proposed A.I. would repudiate Sec. 4.07, which notes that "all responsibilities not otherwise delegated are reserved to the Staff Director who may redelegate any responsibilities to a member of the executive staff." Section 12.02's requirement to invite witnesses to Commission briefings when they are selected by two or more Commissioners is also inconsistent with 45 C.F.R. § 701.13(e), which makes project development and civil rights evaluation functions of OCRE. As noted above, federal agencies are not free to ignore its regulations while they remain in effect. *See U.S. Lines, Inc.,* 584 F.2d 519 at n. 20. Similarly, Section 11.03's requirement to invite witnesses to Commission hearings when they are selected by two or more Commissioners is inconsistent with 45 C.F.R. § 701.13(c), which notes that OGC "plans and conducts hearings."[3] Given that this proposed A.I. allows Commissioners to select witnesses for hearings, it prevents OGC from fulfilling its regulatory mandate to plan hearings. In the sixty-three year history of the Commission, Commissioners have never unilaterally selected witnesses. Such a change would alter the fundamental role of OCRE and undermine its ability to conduct an objective and substantive briefing.

Sections 11.03 and 12.02's witness mandate is also not consistent with 42 U.S.C. § 1975b. This statute notes that the Staff Director is the administrative head of the Commission, which includes things such as proposing employee discipline and conducting performance appraisals for career staff under Title 5. Commissioner interference in OCRE and OGC's operations as

[3] Although notice and comment rulemaking is not required for general statements of policy under 5 U.S.C. § 553(b)(A), an agency acts arbitrarily and capriciously if it acts in a manner that is contrary to its own regulations or a congressional statute. *Pol'y & Rsch., LLC v. United States Dep't of Health & Hum. Servs*., 313 F. Supp. 3d 62, 72 (D.D.C. 2018).

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proposed in the A.I. would result in contradictory or inconsistent orders from Commissioners. Additionally, designating Commissioners as the "primary" source for inviting and hearing from a specific witness would be an extraordinary change skewing the ability of OCRE to engage in objective investigations. It would send the Commission down a slippery slope of Commissioners and their special assistants themselves conducting investigations and writing reports. Such change would irreparably alter the mission of the Commission and be at odds with our enacting statue and Congressional history in creating the Commission. Please also note that Commissioner involvement in selecting witnesses pursuant to this proposed A.I., attending panelist and witness meetings in the aforementioned proposed A.I., or other involvement in the Commission's day-to-day operations, may implicate the 75-day billable cap in the Commission's fiscal year 2021 budget. *See* https://www.usccr.gov/pubs/2020/FY2021-Congressional-Budget-Justification.pdf.

Section 11.02 of the current A.I. 1-6 references a Hearing Report form, however it is unclear whether the Commission actually utilizes this form. This form certifies a numerical balance of witnesses with opposing views, opinions, and perspectives, and could safeguard that witnesses and panelists are ideologically balanced. However, such a form could also be used to impede in the selection of panelists for briefings and undermine the benefit the collaborative working relationship. OCRE already works with the lead Special Assistant/Commissioner regarding witness and panelist selection. Adding a new form or a new layer in the selection process would further delay the creation of panels and delay the release of the final report.

Logistically the proposed A.I. presents a number of potential scheduling issues for Commission staff. As written, it is unclear when Commissioners' ability to suggest witnesses ends, which may result in OCRE being unable to prepare a final witness or panelist roster/list. Commissioner selection of panelists and witnesses will also likely increase negotiation and debate among Commissioners, which could result in delays in confirming attendance. Additionally, having a roster/list being selected by Commissioners and staff could result in the need for briefings and hearings lasting multiple days, which will increase costs.

Lastly, while it is understandable that that Commissioners want to play a larger role in the selection process, they should do so by negotiating with each other prior to panelists suggestions being sent to OCRE. They should continue to work with OCRE to have diverse and objective panelists instead of attempting to force a selection reflecting their individual viewpoint. It is the view of the staff that unilateral Commissioner selection of witnesses and panelists would constrain OCRE's ability to collect bipartisan testimony and prohibit OCRE's ability to act independently. The panelist and witness evaluation process is independent of the Commissioners final assessment and report of civil rights enforcement. Further, OCRE remains committed to work with Commissioners regarding their recommendations and will continue to strive to accommodate the recommended expert or fact witness or panelist.

Commissioners provide no evidence, justification or rational for the necessity and creation of this A.I. As a consequence, the Staff Director and Executive Committee recommends that this A.I. be withdrawn from further consideration.

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D. Conclusion

The following are the recommendations of the Commission professional staff:

- Commissioners discuss and take a recorded vote on bipartisan appointments to other Federal entities or revise the proposed A.I. for Commission appointments;
- Commissioners withdraw from further consideration the proposed A.I. on Stakeholder Interviews; and,
- Commissioners withdraw from further consideration the proposed A.I. on Witnesses.

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Date : 4/27/2021 3:35:35 AM
From : "Alec Deull" adeull@usccr.gov
To : "Michael Yaki" MYaki@usccr.gov, "michael@michaelyaki.com" michael@michaelyaki.com
Subject : info re: Caucus Call: 3 pm Eastern, Tues., April 30
Attachment : USCCR 2021-04-30 Special Business Meeting Agenda.pdf;OGC Review and Recommendations on Proposed 4-16 Final PDF.pdf;Review and Recommendations on Proposed 4-16 Final PDF.pdf;AI on Appointment Authority (general and EAC) DK DA.docx;

hello Michael --

Juana plans to release an agenda for the caucus call this morning.

In order to give you a heads-up and organize documents for you regarding anticipated agenda items:

A. Agenda for Friday's Business Meeting:

Attached. Mauro's link to the secure file is https://securisync.intermedia.net/us2/s/login?public_share=_XZOHVK92GU1VDGU925IM8. Password is Lieko#450. The Monday update of which Mauro speaks has not yet appeared.

B. Bipartisan/Negotiated A.I. proposals:

EAC: Dave and Debo submitted "non-negotiable" feedback on the language which you and Pete crafted, if in fact this issue needs to be addressed in an AI at all. The documents are attached. As per Amy:

"Sending edits from Dave and Debo on the appointing authority to external Commissions. Their preference is that this not be handled through an AI at all, as it will bind future Commissions to this process. They prefer a different vehicle to handle this round of appointments only. If it is necessary to adopt a new AI, I'm attaching here language that reflects their position."

The Debo/Dave document is attached.

The new GG submitted a memo opposing ALL THREE proffered A.I.s. It is attached.

The Staff Director submitted a memo recommending that the Commissioners take bipartisan votes on EAC members and withdraw the other two proposals. It is attached.

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Other A.I.s:

Debo and Dave oppose having the Commissioners get so deeply involved in the day-to-day operations of the career staff.

As above, the new GG submitted a memo opposing ALL THREE proffered A.I.s. It is attached.

As above, the Staff Director submitted a memo recommending that the Commissioners withdraw these two proposals. It is attached.

C. SACs:

NC will likely go forward upon bipartisan agreement long in the making.

ID is still stalled because the Rs disagree with your assertion that Yenor needs to apologize.

D. Anti-AAPI discrimination statement:

This item appears on the new agenda. Do you still want to go forward? If so, do you want to make any edits? Other Ds may suggest edits. If a new version is going forward on Friday, we must circulate by noon Eastern on Wednesday. I will be out of pocket for a while after the caucus meeting by can likely resume work late Tues. night.

Here is a relevant update: https://www.axios.com/asian-hate-crimes-bill-senate-2fdcec03-4157-453c-818a-07b45151edc3.html.

Please see the MD SAC's statement on anti-AAPI discrimination, also provided under separate cover: https://www.usccr.gov/files/2021/04-12-MD-SAC-Statement-of-Concern-Hate-Crimes-AAPI.pdf.

all best, Alec

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ADMINISTRATIVE INSTRUCTION __- __

COMMISSION APPOINTMENTS TO OTHER FEDERAL ENTITIES

Section 1.
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(~~3~~4) ~~———~~The members selected shall be placed in nomination and ratified in conformance with Section 1.

Commented [AR1]: Dave and Debo disagree with adopting a new AI to control the appointments process going forward. They believe commitments to an appointments process can be made through a different vehicle that would not bind future Commissions

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UNITED STATE COMMISSION ON CIVIL RIGHTS
Washington, DC

CONFIDENTIAL & PRIVILEGED/PRE-DELIBERATIVE

April 23, 2021

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FROM: Staff Director and Executive Committee

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The Staff Director and the Executive Committee of the U.S. Commission on Civil Rights, which includes the offices of the Staff Director, Office of Civil Rights Evaluation, General Counsel, Public Affairs, and Management, have jointly reviewed the three proposed Administrative Instructions (A.I.s) introduced by the Commissioners during an April 16th , 2021, Business Meeting. The Staff Director and Executive Committee believes the proposed A.I.s inappropriately conflict with existing Administrative Instructions and Commission regulations, and unreasonably create programmatic and operations problems for the Commission. It is our recommendation that the proposed A.I.s in their current form be revised or withdrawn.

A. Proposed A.I. on Commission Appointments to Other Federal Entities

The Executive Committee provides the following recommendations regarding this proposed A.I. First, Commission appointments pursuant to 52 U.S.C. § 20944 to the U.S. Election Assistance Commission (EAC), Board of Advisors, could be accomplished via a Commission vote rather than an A.I. Second, the proposed A.I. does not distinguish appointing authorities that provide appointments to the Commissioners themselves versus those that provide the Chair of the Commission or Staff Director with appointment authority. For example, the authorizing statute for the Commission on the Social Status of Black Men and Boys designates the Staff Director as the appointing authority for one (1) member.[1] If the proposed A.I., as written, was followed for the appointment to the Commission on the Social Status of Black Men and Boys, it would conflict and result in a violation of the statute. Lastly, the proposed A.I. provides a procedure to make appointments to the EAC, Board of Advisors, however it does not provide a procedure to make appointments if the caucuses do not agree on their nominees.

The Staff Director and Executive Committee recommends that this A.I. be revised or withdrawn from consideration.

[1] *See* https://www.congress.gov/bill/116th-congress/house-bill/1636/text?q=%7B%22search%22%3A%5B%22%5B2018-09-28+TO+2018-09-28%5D%22%5D%7D, Sec. 3(6).

AMERICAN OVERSIGHT

B. Proposed A.I. on OCRE Interviews of Panelists and Witnesses

This proposed A.I. provides that Commissioners attend staff "interviews" with external fact "witnesses or experts." OCRE does not conduct interviews of panelists or witnesses before or after briefings or hearings, but rather, as was the case for the Subminimum Wage and Bail Reform Reports, it holds meetings with stakeholders as part of its data collection process to develop and prepare concepts and documents for reports pursuant to its regulatory mandate contained in 45 C.F.R. § 701.13(e) (this Office is responsible for monitoring, evaluating and reporting on the civil rights enforcement effort of the Federal Government; developing concepts for programs, projects, and policies directed toward the achievement of Commission goals; preparing documents that articulate the Commission's views and concerns regarding Federal civil rights.) Commissioner participation in OCRE pre-briefings and pre-hearing meetings is inconsistent with the aforementioned regulation, which prescribes OCRE's function within the Commission.[2]

Further, 45 C.F.R. § 702.14(a) notes that an accurate transcript recorded by a court reporter shall be made of the testimony of all witnesses at all proceedings of the Commission. Consequently, as written, by defining OCRE meetings as "interviews" this A.I. would result in the financial cost of court reporters to be present whenever OCRE meets with stakeholders, panelists, or witnesses, in addition to the administrative burden of having to schedule and coordinate meeting time with Commissioners and their Special Assistants on a bipartisan basis and the panelist or witness. This A.I. is impractical and unnecessary.

Finally, the A.I. provides that Commissioners can individually provide follow-up questions to witnesses. This runs counter to the Commission's Privacy Act policy as OCRE staff would not have access to these additional individual Commissioner questions, requests or the information gathered; nor can OCRE ensure that the information collected from participants will be properly stored and managed for confidentiality or for inclusion in Commission Reports. Additionally, career staff in OCRE, as social scientists, follow the three principles of the Belmont Report (respect of persons, beneficence, and justice), which are needed to protect vulnerable interviewees, such as children, persons with disabilities, prisoners, and others. It is not clear that Commissioners or their Special Assistants, given their varied professional backgrounds, will follow the aforementioned principles.

The current practice is that OCRE sends a joint set of follow up questions from Commissioners which are forwarded to panelists to answer. All questions and answers are shared with Commissioners and their special assistants. Sending separate and individual questions confuses panelists, results in multiple & repetitive questions and prevents every Commissioner equal access to questions and answers.

---

[2] *See U.S. Lines, Inc. v. Fed. Mar. Comm'n,* 584 F.2d 519, 526 n. 20 (D.C.Cir.1978) *citing* to *U.S. v. Nixon,* 418 U.S. 683, 693-696 (1974) ("an agency is not free to ignore or violate its regulations while they remain in effect.")

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Commissioners provide no evidence, justification or rational for the necessity and creation of this A.I. As a consequence, the Staff Director and Executive Committee recommend that this A.I. be withdrawn from further consideration.

C. Proposed A.I. on Witness Selection

This proposed A.I. revises A.I. 1-6, "National Project Development and Implementation." Specifically, it revises Section 11, Commission Hearings, and Section 12, Commission Briefings. Staff reminds Commissioners that there is a significant difference between a Commission hearing and a Commission briefing.

The first sentences of Sections 11.03 and 12.02 respectively state that staff are to use "various" sources to gather suggestions for witnesses, but the subsequent sentences state that Commissioners are the "primary" source for "suggesting" witnesses. These two sentences are contradictory and the use of the term "suggest" in reference to witness selection by the Commissioners is inconsistent with the provision in these Sections that if two Commissioners request a particular witness, then staff must invite that witness.

Sections 11.03 and 12.02 mandate that staff invite a witness who is requested by two or more Commissioners. This mandate is inconsistent with A.I. 1-6, Sec. 4.06. Section 4.06 enumerates the Commissioners' roles and functions, such as approving projects and concepts, commenting on draft reports, and approving reports, but it does not include witness selection. The proposed A.I. would repudiate Sec. 4.07, which notes that "all responsibilities not otherwise delegated are reserved to the Staff Director who may redelegate any responsibilities to a member of the executive staff." Section 12.02's requirement to invite witnesses to Commission briefings when they are selected by two or more Commissioners is also inconsistent with 45 C.F.R. § 701.13(e), which makes project development and civil rights evaluation functions of OCRE. As noted above, federal agencies are not free to ignore its regulations while they remain in effect. *See U.S. Lines, Inc.,* 584 F.2d 519 at n. 20. Similarly, Section 11.03's requirement to invite witnesses to Commission hearings when they are selected by two or more Commissioners is inconsistent with 45 C.F.R. § 701.13(c), which notes that OGC "plans and conducts hearings."[3] Given that this proposed A.I. allows Commissioners to select witnesses for hearings, it prevents OGC from fulfilling its regulatory mandate to plan hearings. In the sixty-three year history of the Commission, Commissioners have never unilaterally selected witnesses. Such a change would alter the fundamental role of OCRE and undermine its ability to conduct an objective and substantive briefing.

Sections 11.03 and 12.02's witness mandate is also not consistent with 42 U.S.C. § 1975b. This statute notes that the Staff Director is the administrative head of the Commission, which includes things such as proposing employee discipline and conducting performance appraisals for career staff under Title 5. Commissioner interference in OCRE and OGC's operations as

[3] Although notice and comment rulemaking is not required for general statements of policy under 5 U.S.C. § 553(b)(A), an agency acts arbitrarily and capriciously if it acts in a manner that is contrary to its own regulations or a congressional statute. *Pol'y & Rsch., LLC v. United States Dep't of Health & Hum. Servs*., 313 F. Supp. 3d 62, 72 (D.D.C. 2018).

AMERICAN OVERSIGHT

proposed in the A.I. would result in contradictory or inconsistent orders from Commissioners. Additionally, designating Commissioners as the "primary" source for inviting and hearing from a specific witness would be an extraordinary change skewing the ability of OCRE to engage in objective investigations. It would send the Commission down a slippery slope of Commissioners and their special assistants themselves conducting investigations and writing reports. Such change would irreparably alter the mission of the Commission and be at odds with our enacting statue and Congressional history in creating the Commission. Please also note that Commissioner involvement in selecting witnesses pursuant to this proposed A.I., attending panelist and witness meetings in the aforementioned proposed A.I., or other involvement in the Commission's day-to-day operations, may implicate the 75-day billable cap in the Commission's fiscal year 2021 budget. *See* https://www.usccr.gov/pubs/2020/FY2021-Congressional-Budget-Justification.pdf.

Section 11.02 of the current A.I. 1-6 references a Hearing Report form, however it is unclear whether the Commission actually utilizes this form. This form certifies a numerical balance of witnesses with opposing views, opinions, and perspectives, and could safeguard that witnesses and panelists are ideologically balanced. However, such a form could also be used to impede in the selection of panelists for briefings and undermine the benefit the collaborative working relationship. OCRE already works with the lead Special Assistant/Commissioner regarding witness and panelist selection. Adding a new form or a new layer in the selection process would further delay the creation of panels and delay the release of the final report.

Logistically the proposed A.I. presents a number of potential scheduling issues for Commission staff. As written, it is unclear when Commissioners' ability to suggest witnesses ends, which may result in OCRE being unable to prepare a final witness or panelist roster/list. Commissioner selection of panelists and witnesses will also likely increase negotiation and debate among Commissioners, which could result in delays in confirming attendance. Additionally, having a roster/list being selected by Commissioners and staff could result in the need for briefings and hearings lasting multiple days, which will increase costs.

Lastly, while it is understandable that that Commissioners want to play a larger role in the selection process, they should do so by negotiating with each other prior to panelists suggestions being sent to OCRE. They should continue to work with OCRE to have diverse and objective panelists instead of attempting to force a selection reflecting their individual viewpoint. It is the view of the staff that unilateral Commissioner selection of witnesses and panelists would constrain OCRE's ability to collect bipartisan testimony and prohibit OCRE's ability to act independently. The panelist and witness evaluation process is independent of the Commissioners final assessment and report of civil rights enforcement. Further, OCRE remains committed to work with Commissioners regarding their recommendations and will continue to strive to accommodate the recommended expert or fact witness or panelist.

Commissioners provide no evidence, justification or rational for the necessity and creation of this A.I. As a consequence, the Staff Director and Executive Committee recommends that this A.I. be withdrawn from further consideration.

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D. Conclusion

The following are the recommendations of the Commission professional staff:

- Commissioners discuss and take a recorded vote on bipartisan appointments to other Federal entities or revise the proposed A.I. for Commission appointments;
- Commissioners withdraw from further consideration the proposed A.I. on Stakeholder Interviews; and,
- Commissioners withdraw from further consideration the proposed A.I. on Witnesses.

AMERICAN OVERSIGHT

CIVIL RIGHTS COMMISSION

Sunshine Act Meeting Notice

AGENCY: United States Commission on Civil Rights.

ACTION: Notice of Commission public business meeting.

DATES: Friday, April 30, 2021, 2:00 pm EST.

FOR FURTHER INFORMATION CONTACT: Angelia Rorison: 202-376-7700; publicaffairs@usccr.gov.

ADDRESSES: Meeting to take place by telephone and is open to the public by telephone: 1-855-710-4184, Conference ID #: 435-9779. Computer assisted real-time transcription (CART) will be provided. The web link to access CART (in English) on Friday, April 30th, 2021 is https://www.streamtext.net/player?event=USCCR. Please note that CART is text-only translation that occurs in real time during the meeting and is not an exact transcript.

MEETING AGENDA

I. Motion to Approve Commissioner Norma Cantú to Serve as USCCR Chair

II. Approval of Agenda

III. Business Meeting

A. Discussion and Vote on Statement of Walter E. Williams;

B. Discussion and Votes on Anti-Asian American Hate;

C. Discussion and Vote to continue the Policy of Rebuttals and Surrebuttals;

D. Discussion and Vote to suspend Speaker Series;

E. Discussion and Agreement to Appoint Bipartisan Commissioners to EAC

F. Discussion and Vote on NC SAC

G. Management and Operations

- Staff Director's Report

IV. Adjourn Meeting

Dated: April 21, 2021

AMERICAN OVERSIGHT

Date : 4/27/2021 10:08:07 AM
From : "John Mashburn" jkmash@comcast.net
To : "Alexander Heideman" aheideman@usccr.gov
Subject : Re: [EXTERNAL] Re: Friday's Agenda

> CAUTION: This email is from outside USCCR.

So will the agenda need to be modified at the beginning of the meeting?

From: Alexander Heideman <aheideman@usccr.gov>
Date: Tuesday, April 27, 2021 at 10:05 AM
To: Carissa Mulder <carissa.mulder@gmail.com>
Cc: Carissa Mulder <CMulder@usccr.gov>, John Mashburn <jmashburn@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>, John Mashburn <jkmash@comcast.net>, Thomas Simuel <tjsimuel32@gmail.com>, "alexanderheideman@gmail.com" <alexanderheideman@gmail.com>
Subject: Re: [EXTERNAL] Re: Friday's Agenda

And added the NC SAC…

From: Carissa Mulder <carissa.mulder@gmail.com>
Date: Tuesday, April 27, 2021 at 10:04 AM
To: Alexander Heideman <aheideman@usccr.gov>
Cc: Carissa Mulder <CMulder@usccr.gov>, John Mashburn <jmashburn@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>, John Mashburn <jkmash@comcast.net>, Thomas Simuel <tjsimuel32@gmail.com>, "alexanderheideman@gmail.com" <alexanderheideman@gmail.com>
Subject: [EXTERNAL] Re: Friday's Agenda

> CAUTION: This email is from outside USCCR.

ro went ahead and removed two of the AIs and renamed the AI about the EAC as "discussion and agreement".

On Tue, Apr 27, 2021 at 9:51 AM Alexander Heideman <aheideman@usccr.gov> wrote:

> Attached for your reference.
>
> Alex

--
Carissa B. Mulder

AMERICAN OVERSIGHT

Date : 4/27/2021 10:04:29 AM
From : "Carissa Mulder" carissa.mulder@gmail.com
To : "Alexander Heideman" aheideman@usccr.gov
Cc : "Carissa Mulder" CMulder@usccr.gov, "John Mashburn" jmashburn@usccr.gov, "Thomas Simuel" tsimuel@usccr.gov, "John Mashburn" jkmash@comcast.net, "Thomas Simuel" tjsimuel32@gmail.com, "alexanderheideman@gmail.com" alexanderheideman@gmail.com
Subject : [EXTERNAL] Re: Friday's Agenda

CAUTION: This email is from outside USCCR.

I see that Mauro went ahead and removed two of the AIs and renamed the AI about the EAC as "discussion and agreement".

On Tue, Apr 27, 2021 at 9:51 AM Alexander Heideman <aheideman@usccr.gov> wrote:

> Attached for your reference.
>
> Alex

--
Carissa B. Mulder

AMERICAN OVERSIGHT

Date : 4/27/2021 9:50:05 AM
From : "Irena Vidulovic" ividulovic@usccr.gov
To : "Debo P. Adegbile" dadegbile@usccr.gov, "Adegbile, Debo" Debo.Adegbile@wilmerhale.com
Subject : Caucus Call TODAY at 3pm
Attachment : AI on Appointment Authority (general and EAC) AR notes (1).docx;AI Letter to the Staff Director.docx;

1.
    - Update from Cantu and Yaki on the negotiations with the Rs
    - Make sure that the items are not presented as a omnimus bill but that it is delineated
    - Remove/combine other items?
    -
        - Eliminating the Speaker Series
        - Rebuttal/surrebuttal time period
        - Bi-partisan appointment to EAC board of advisors
        - AI's
    - Statement on violence against AAPI community? We have given Alec some ideas including the language from the legislation passed in the senate: The COVID-19 Hate Crimes Act cleared the chamber in a 94-1 vote Thursday. It would expedite the Justice Department's review of hate crimes and would designate an official at the department to oversee the effort.

AI's

EAC appointing authority (redline attached)

- We have worked on the language that you emphasized during the calls.
- That the Chairperson still retains the authority to appoint with the consultation from Commissioners.
- That the Commissioners selected by respective caucus are willing and able to serve
- Finally, should the person by the choosing party not be able to serve, the chairperson shall be free to choose any other member of the Commission, including said chairperson, to serve on the U.S. Election Assistance Commission

The other 2 AI's will be reviewed by OGC and OCRE because it requires their input. However both of the AI have been non-starters for you and Dave.

OCRE Witness Interviews

The R's are wanting to attend interviews that OCRE conducts in order to obtain information for our investigations. Such interviews were conducted for the Sub-Minimum Wages, as well as for Bail Reform.

- ADA requirements for interviews may not allow for this
- Bail reform interviews also conducted with focus jurisdictions

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- Statutory requirements for separation of staff and Commissioners – GC to weigh in.

Panelist requests for briefings

- Explanations from OCRE on why panelists are not being invited
- What do our current AI's and rules require for Commissioner recommendations to be invited
- Resources may not be used effectively if we institute this system
- Need to preserve the independence of the agency

The AI on Appointment of Commissioners to EAC:

The SD/Executive Committee gave the following opinions on the AI's. First they don't think that it should be an AI. Second, the proposed A.I. does not distinguish appointing authorities that provide appointments to the Commissioners themselves versus those that provide the Chair of the Commission or Staff Director with appointment authority. For example, the authorizing statute for the Commission on the Social Status of Black Men and Boys designates the Staff Director as the appointing authority for one (1) member.

If the proposed A.I., as written, was followed for the appointment to the Commission on the Social Status of Black Men and Boys, it would conflict and result in a violation of the statute. Lastly, the proposed A.I. provides a procedure to make appointments to the EAC, Board of Advisors, however it does not provide a procedure to make appointments if the caucuses do not agree on their nominees.

The Staff Director and Executive Committee recommends that this A.I. be revised or withdrawn from consideration.

AI on interviews of panelist/witnesses.

Career staff and SD say that they do not interview folks but that they gather information for the investigation like in the case of Sub-Minimum wages and Bail Reform. That the process as it stands is transparent and provides opportunity for all Commissioners to ask follow up questions to briefing panelists but that those questions are funneled via OCRE so that there is a one stop shop of where the questions are coming from and where the questions are to be responded to. Commissioners provide no evidence, justification or rational for the necessity and creation of this A.I. As a consequence, the Staff Director and Executive Committee recommend that this A.I. be withdrawn from further consideration.

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Witness selection AI:

Basically the Career staff is saying that this would create a logistical nightmare, that it is inconsistent with A.I. 1-6, Sec. 4.06. Section 4.06 which enumerates the Commissioners' roles and functions, such as approving projects and concepts, commenting on draft reports, and approving reports, but it does not include witness selection.

The proposed A.I. would repudiate Sec. 4.07, which notes that "all responsibilities not otherwise delegated are reserved to the Staff Director who may redelegate any responsibilities to a member of the executive staff." That it would make it impossible to have all Commissioner witness recommendations honored when there are 8 Commissioners and no limit to how many they could nominate.

As written, it is unclear when Commissioners' ability to suggest witnesses ends, which may result in OCRE being unable to prepare a final witness or panelist roster/list.Commissioner selection of panelists and witnesses will also likely increase negotiation and debate among Commissioners, which could result in delays in confirming attendance.
Additionally, having a roster/list being selected by Commissioners and staff could result in the
need for briefings and hearings lasting multiple days, which will increase costs.

Irena Vidulovic
Special Assistant to Commissioner Debo P. Adegbile
U.S. Commission on Civil Rights
M: 202-591-9969
ividulovic@usccr.gov
http://usccr.gov/
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Washington D.C. 20425

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UNITED STATES COMMISSION ON CIVIL RIGHTS

1331 Pennsylvania Avenue, NW• Suite 1150 • Washington, DC 20425 www.usccr.gov

April 15, 2021

Mauro Morales
Staff Director
1331 Pennsylvania Ave NW
Washington, DC 20425

Dear Mr. Morales:

We, the undersigned Commissioners, write today to request the promulgation of a searchable digital collection of the Commission's Administrative Instructions (AIs). In order to efficiently serve as Commissioners, we must have easy access to the AIs. Thus, we request that you provide us with the following:

- One updated digital file containing every AI that is in effect, in its proper order, and with the date and manner of each AI's ratification
- Physical copies of that digital file by request

The general counsel has sent some of this information piece-by-piece via email to us over the past few weeks. But those AIs have not been updated or organized, and they have not been collected into a single digital document. As matters stand, accessing the AIs requires that we attempt to assemble a complete list from the documents we have been sent piecemeal. Thus, this effort is inadequate.

This is simply a matter of good governance. Please provide us with a timeline for completion of the above tasks.

Sincerely,

AMERICAN OVERSIGHT

ADMINISTRATIVE INSTRUCTION __- __

COMMISSION APPOINTMENTS TO OTHER FEDERAL ENTITIES

Section 1.

.01 Any authority specifically granted the Commission of Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc. shall be exercised by the Commission Chairperson in consultation with all members of the commission.~~as a whole by majority vote~~.

Section 2

.02

(1) For the two (2) appointments to the U.S. Election Assistance Commission, the members appointed by Democratic authorities shall nominate two individuals of their membership that are ready willing and able to serve, and the members appointed by the Republican authorities shall nominate two individuals of their membership that are ready willing and able to serve.

(2) The members appointed by the Democratic authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Democratic authorities.

(3) Should the person by the choosing party not be able to serve, the chairperson shall be free to choose any other member of the Commission, including said chairperson, to serve on the U.S. Election Assistance Commission/

(~~3~~4) ———— The members selected shall be placed in nomination and ratified in conformance with Section 1.

NOTE: I don't see the AI for the rebuttal/surrebuttal,…but I will not vote for it if that crap stays in their about understanding the individual commissioners point-of-vote or vote.

Commented [1]: ¶
Past practice has been that the Chair makes these appointments. This reduces the power of the Chair. ¶
¶
We should find out all the boards and other groups the Commission appoints to in order to understand the full scope of what appointing authority the Chair is relinquishing

Commented [2]: ¶
These requirements do not belong in an AI to be binding on all future compositions of the Commission. If Norma wants to agree to this process for the current appointments, that would be understandable since we are currently 4-4. In the future, if the Commission is 6-2 again, it would be less understandable to give 2 Commissioners this much control. ¶
¶
Alternative: Create a rule committing to bipartisan appointments

AMERICAN OVERSIGHT

Date : 4/27/2021 10:09:00 AM
From : "Carissa Mulder" carissa.mulder@gmail.com
To : "John Mashburn" jkmash@comcast.net
Cc : "Alexander Heideman" aheideman@usccr.gov, "Carissa Mulder" CMulder@usccr.gov, "John Mashburn" jmashburn@usccr.gov, "Thomas Simuel" tsimuel@usccr.gov, "Thomas Simuel" tjsimuel32@gmail.com, "alexanderheideman@gmail.com" alexanderheideman@gmail.com
Subject : [EXTERNAL] Re: Friday's Agenda

CAUTION: This email is from outside USCCR.

Yes we will. Mauro just *had* to make everything more difficult. We'll also have to amend the agenda to reflect that we're passing that AI about the EAC, not whatever garbage Mauro has dreamed up.

On Tue, Apr 27, 2021 at 10:03 AM John Mashburn <jkmash@comcast.net> wrote:

> Note that only the AI regarding the "EAC" type appointments is listed as an agenda item. The AIs regarding selection of witnesses and attending witness interviews are not listed on this agenda.
>
> Will we need to modifiy the agenda at the beginning of the meeting on Friday to include those items?
>
> ---
>
> **From:** Alexander Heideman <aheideman@usccr.gov>
> **Date:** Tuesday, April 27, 2021 at 9:51 AM
> **To:** Carissa Mulder <CMulder@usccr.gov>, John Mashburn <jmashburn@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>
> **Cc:** Carissa Mulder <carissa.mulder@gmail.com>, John Mashburn " <alexanderheideman@gmail.com>
> **Subject:** Friday's Agenda
>
> Attached for your reference.
>
> Alex

--
Carissa B. Mulder

AMERICAN OVERSIGHT

AMERICAN OVERSIGHT

Date : 9/15/2020 3:34:29 PM
From : "Carissa Mulder" CMulder@usccr.gov
To : "Christian Adams" a@electionlawcenter.com, "Peter Kirsanow" pkirsanow@Beneschlaw.com, "'Gail Heriot'" gheriot@me.com, "'stephen gilchrist'" thegilchristassociates@gmail.com
Cc : "John Mashburn" jkmash@comcast.net, "'Thomas Simuel'" tjsimuel32@gmail.com, "Alexander Heideman" aheideman@usccr.gov
Subject : Re: [EXTERNAL] EAC Board of Advisors

Good question! I had no idea the USCCR got two designees to the EAC Board of Advisors. Here's the list of all the current advisors: https://www.eac.gov/sites/default/files/boardofadvisors/BOARoster_072720.pdf.

From: Christian Adams <a@electionlawcenter.com>
Sent: Tuesday, September 15, 2020 3:15:28 PM
To: Peter Kirsanow; 'Gail Heriot'; 'stephen gilchrist'
Cc: John Mashburn; 'Thomas Simuel'; Carissa Mulder; Alexander Heideman
Subject: [EXTERNAL] EAC Board of Advisors

> CAUTION: This email is from outside USCCR.

Apparently the EAC gets two designees over the Election Assistance Commission Board of Advisors. Currently it is Yaki and Kladney. I just got a call from an EAC commission saying that Yaki is acting absurdly and exercising power over the EAC by threatening the Pelosi pick on the EAC with removal if he doesn't do what he wants, effectively making Yaki a commissioner on the EAC on many issues. He is causing mischief I don't even detail here.

My question is how does he get UNDONE from the EAC oversight commission? How does that get revoked and replaced?

AMERICAN OVERSIGHT

Date : 4/27/2021 10:03:57 AM
From : "John Mashburn" jkmash@comcast.net
To : "Alexander Heideman" aheideman@usccr.gov, "Carissa Mulder" CMulder@usccr.gov, "John Mashburn" jmashburn@usccr.gov, "Thomas Simuel" tsimuel@usccr.gov
Cc : "Carissa Mulder" carissa.mulder@gmail.com, "Thomas Simuel" tjsimuel32@gmail.com, "alexanderheideman@gmail.com" alexanderheideman@gmail.com
Subject : [EXTERNAL] Re: Friday's Agenda

> CAUTION: This email is from outside USCCR.

Note that only the AI regarding the "EAC" type appointments is listed as an agenda item. The AIs regarding selection of witnesses and attending witness interviews are not listed on this agenda.

Will we need to modifiy the agenda at the beginning of the meeting on Friday to include those items?

From: Alexander Heideman <aheideman@usccr.gov>
Date: Tuesday, April 27, 2021 at 9:51 AM
To: Carissa Mulder <CMulder@usccr.gov>, John Mashburn <jmashburn@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>
Cc: Carissa Mulder <carissa.mulder@gmail.com>, John Mashburn <jkmash@comcast.net>, Thomas Simuel <tjsimuel32@gmail.com>, "alexanderheideman@gmail.com" <alexanderheideman@gmail.com>
Subject: Friday's Agenda

Attached for your reference.

Alex

AMERICAN OVERSIGHT

Date : 4/27/2021 9:36:42 AM
From : "Irena Vidulovic" ividulovic@usccr.gov
To : "Debo P. Adegbile" dadegbile@usccr.gov, "Adegbile, Debo" Debo.Adegbile@wilmerhale.com, "Zervoudis, Flor" Flor.Zervoudis@wilmerhale.com
Subject : Caucus Call

3:00 Eastern/ 12:00 Pacific. The number is 1-877-446-3914, passcode 858713#

Agenda items:

- Update from Comms. Cantu and Yaki on discussions regarding Chair confirmation
- Business meeting on Friday
    - Remove/combine other items?
    -
        - Eliminating the Speaker Series
        - Rebuttal/surrebuttal time period
        - Bi-partisan appointment to EAC board of advisors
    - Statement on violence against AAPI community?

AMERICAN OVERSIGHT

Date : 4/27/2021 10:41:16 AM
From : "Gail Heriot" gheriot@usccr.gov
To : "Carissa Mulder" carissa.mulder@gmail.com
Cc : "Kirsanow, Peter" pkirsanow@beneschlaw.com, "Gail Heriot" gheriot@me.com, "stephen gilchrist" thegilchristassociates@gmail.com, "Christian Adams (adams@electionlawcenter.com)" adams@electionlawcenter.com, "Alexander Heideman" aheideman@usccr.gov, "John Mashburn" jmashburn@usccr.gov, "Thomas Simuel" tsimuel@usccr.gov, "Carissa Mulder" CMulder@usccr.gov, "Peter Kirsanow" pkirsanow@usccr.gov, "J. Christian Adams" jadams@usccr.gov, "Stephen Gilchrist" sgilchrist@usccr.gov
Subject : Re: AIs for Friday's business meeting

Given that this is an omnibus motion, is it even necessary to amend the agenda?

Gail Heriot
Professor of Law
University of San Diego

> On Apr 27, 2021, at 7:39 AM, Carissa Mulder <carissa.mulder@gmail.com> wrote:
>
>
> Good morning, everyone:
>
> As you know, Mauro issued a memo opposing all the proposed AIs. Alex and John noticed this morning that he also posted an updated agenda for Friday's business meeting. He removed both the AIs having to do with OCRE from that agenda and also renamed the AI having to do with the EAC as an "agreement". I just looked at the materials he has posted for Friday's business meeting, and he removed all the AIs and has replaced them with his memo.
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> Because of this, the Commissioners are going to have to amend the agenda to include the AIs. We are also going to have to circulate the original AIs before 2 pm tomorrow in order to avoid another 48 hour objection. Gail and Pete - can you check with Norma and Yaki and make sure we are all still on the same page? I am happy to circulate the AIs, but I don't want to step on Norma and Yaki's toes.
>
> --
> Carissa B. Mulder
>
>

AMERICAN OVERSIGHT

Date : 4/27/2021 10:49:34 AM
From : "John Mashburn" jkmash@comcast.net
To : "Carissa Mulder" carissa.mulder@gmail.com, "Alexander Heideman" aheideman@usccr.gov
Subject : [EXTERNAL] Draft Motion to Drop Phrase from AI Regarding EAC
Attachment : Motion for April 30 Bus Mtg.docx;

CAUTION: This email is from outside USCCR.

Could you two take a quick look at the draft motion language and the explanation for it that follows below?

In addition, since we are going to have to resubmit the text of AI's tomorrow to meet the 48 hour deadline, can we just change the text to drop the phrase "of their membership" in what you submit tomorrow. I think not since the progressives might be surprised by it, but then Mauro necessitated this. Just asking?

I move that the phrase "of their membership" be removed in the two places that it appears in the proposed Administrative Instruction (AI) on 'Commission Appointments to Other Federal Entities.'"

The inclusion of this phrase in the proposed AI requires that USCCR's appointees to other federal entities must come from among the sitting USCCR commissioners themselves, even if that is not required by the statute authorizing the USCCR to make such appointments.

For instance, Section 214 of the "Help America Vote Act (HAVA) of 2002" (HR3295) states that the Board of Advisors to the Election Assistance Commission (EAC) shall consist of 37 members with: "(10) Two members appointed by the United States Commission on Civil Rights." The statute does not require that the appointees must come from among the ranks of the USCCR Commissioners themselves, but the AI as drafted would require that – which would set the terms of the AI above the terms of the statute itself.

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AMERICAN OVERSIGHT

Date : 9/15/2020 3:44:15 PM
From : "stephen gilchrist" thegilchristassociates@gmail.com
To : "Christian Adams" a@electionlawcenter.com
Cc : "Carissa Mulder" CMulder@usccr.gov, "Peter Kirsanow" pkirsanow@beneschlaw.com, "Gail Heriot" gheriot@me.com, "John Mashburn" jkmash@comcast.net, "Thomas Simuel" tjsimuel32@gmail.com, "Alexander Heideman" aheideman@usccr.gov
Subject : Re: [EXTERNAL] EAC Board of Advisors

CAUTION: This email is from outside USCCR.

Christian - I would support that 100%. Iam surprised to learn of this as well. Thomas please advise.

On Tue, Sep 15, 2020, 3:42 PM Christian Adams <a@electionlawcenter.com> wrote:

> Ok, we need to get one of them off and one of us on, period. We have leverage now for reasons we have spent a great deal of time already talking about. Obviously Yaki would be the best one to go, but either of them.
>
> Ideas: John Masburn and someone else (Carissa?) approach Yaki and Kladney's SA and explain the new circumstances and there needs to be equity. Other ideas?
>
> ---
>
> **From:** Carissa Mulder <CMulder@usccr.gov>
> **Sent:** Tuesday, September 15, 2020 3:34 PM
> **To:** Christian Adams <a@electionlawcenter.com>; Peter Kirsanow
> >
> **Cc:** John Mashburn <jkmash@comcast.net>; 'Thomas Simuel' <tjsimuel32@gmail.com>; Alexander Heideman <aheideman@usccr.gov>
> **Subject:** Re: [EXTERNAL] EAC Board of Advisors
>
> Good question! I had no idea the USCCR got two designees to the EAC Board of Advisors. Here's the list of all the current advisors: https://www.eac.gov/sites/default/files/boardofadvisors/BOARoster_072720.pdf .
>
> ---
>
> **From:** Christian Adams <a@electionlawcenter.com>
> **Sent:** Tuesday, September 15, 2020 3:15:28 PM
> **To:** Peter Kirsanow; 'Gail Heriot'; 'stephen gilchrist'
> **Cc:** John Mashburn; 'Thomas Simuel'; Carissa Mulder; Alexander Heideman
> **Subject:** [EXTERNAL] EAC Board of Advisors

AMERICAN OVERSIGHT

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Apparently the EAC gets two designees over the Election Assistance Commission Board of Advisors. Currently it is Yaki and Kladney. I just got a call from an EAC commission saying that Yaki is acting absurdly and exercising power over the EAC by threatening the Pelosi pick on the EAC with removal if he doesn't do what he wants, effectively making Yaki a commissioner on the EAC on many issues. He is causing mischief I don't even detail here.

My question is how does he get UNDONE from the EAC oversight commission? How does that get revoked and replaced?

AMERICAN OVERSIGHT

Date : 4/27/2021 10:44:25 AM
From : "Thomas Simuel" tsimuel@usccr.gov
To : "Carissa Mulder" carissa.mulder@gmail.com, "John Mashburn" jkmash@comcast.net
Cc : "Alexander Heideman" aheideman@usccr.gov, "Carissa Mulder" CMulder@usccr.gov, "John Mashburn" jmashburn@usccr.gov, "Thomas Simuel" tjsimuel32@gmail.com, "alexanderheideman@gmail.com" alexanderheideman@gmail.com
Subject : RE: [EXTERNAL] Re: Friday's Agenda

I agree Carissa...hopefully Yaki and Cantu will agree with us as well.

-------- Original message --------
From: Carissa Mulder <carissa.mulder@gmail.com>
Date: 4/27/21 10:09 AM (GMT-05:00)
To: John Mashburn <jkmash@comcast.net>
Cc: Alexander Heideman <aheideman@usccr.gov>, Carissa Mulder <CMulder@usccr.gov>, John Mashburn <jmashburn@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>, Thomas Simuel <tjsimuel32@gmail.com>, alexanderheideman@gmail.com
Subject: [EXTERNAL] Re: Friday's Agenda

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Yes we will. Mauro just *had* to make everything more difficult. We'll also have to amend the agenda to reflect that we're passing that AI about the EAC, not whatever garbage Mauro has dreamed up.

On Tue, Apr 27, 2021 at 10:03 AM John Mashburn <jkmash@comcast.net> wrote:

> Note that only the AI regarding the “EAC” type appointments is listed as an agenda item. The AIs regarding selection of witnesses and attending witness interviews are not listed on this agenda.
>
> Will we need to modifiy the agenda at the beginning of the meeting on Friday to include those items?
>
> ---
>
> **From:** Alexander Heideman <aheideman@usccr.gov>
> **Date:** Tuesday, April 27, 2021 at 9:51 AM

AMERICAN OVERSIGHT

To: Carissa Mulder <CMulder@usccr.gov>, John Mashburn <jmashburn@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>
Cc: Carissa Mulder <carissa.mulder@gmail.com>, John Mashburn " <alexanderheideman@gmail.com>
Subject: Friday's Agenda

Attached for your reference.

Alex

--
Carissa B. Mulder

AMERICAN OVERSIGHT

Date : 4/27/2021 10:39:55 AM
From : "Carissa Mulder" carissa.mulder@gmail.com
To : "Kirsanow, Peter" pkirsanow@beneschlaw.com, "Gail Heriot" gheriot@me.com, "stephen gilchrist" thegilchristassociates@gmail.com, "Christian Adams (adams@electionlawcenter.com)" adams@electionlawcenter.com, "Alexander Heideman" aheideman@usccr.gov, "John Mashburn" jmashburn@usccr.gov, "Thomas Simuel" tsimuel@usccr.gov
Cc : "Carissa Mulder" cmulder@usccr.gov, "Peter Kirsanow" pkirsanow@usccr.gov, "Gail Heriot" gheriot@usccr.gov, "J. Christian Adams" jadams@usccr.gov, "Stephen Gilchrist" sgilchrist@usccr.gov
Subject : [EXTERNAL] AIs for Friday's business meeting

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Good morning, everyone:

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AMERICAN OVERSIGHT

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From : "Christian Adams" adams@electionlawcenter.com
To : "'Carissa Mulder'" carissa.mulder@gmail.com, "'Kirsanow, Peter'" pkirsanow@beneschlaw.com, "'Gail Heriot'" gheriot@me.com, "'stephen gilchrist'" thegilchristassociates@gmail.com, "'Alexander Heideman'" aheideman@usccr.gov, "'John Mashburn'" jmashburn@usccr.gov, "'Thomas Simuel'" tsimuel@usccr.gov
Cc : "'Carissa Mulder'" cmulder@usccr.gov, "'Peter Kirsanow'" pkirsanow@usccr.gov, "'Gail Heriot'" gheriot@usccr.gov, "'J. Christian Adams'" jadams@usccr.gov, "'Stephen Gilchrist'" sgilchrist@usccr.gov
Subject : [EXTERNAL] RE: AIs for Friday's business meeting

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1. this is essentially mutiny. He is using his power to block what at least 5 or 6 commissioners have made a priority.
2. Should I also call Norma and tell her this and that I am wholly committed to working with her and others to make things better??

From: Carissa Mulder <carissa.mulder@gmail.com>
Sent: Tuesday, April 27, 2021 10:39 AM
To: Kirsanow, Peter <pkirsanow@beneschlaw.com>; Gail Heriot <gheriot@me.com>; stephen gilchrist <thegilchristassociates@gmail.com>; Christian Adams (adams@electionlawcenter.com) <adams@electionlawcenter.com>; Alexander Heideman <aheideman@usccr.gov>; John Mashburn <jmashburn@usccr.gov>; Thomas Simuel <tsimuel@usccr.gov>
Cc: Carissa Mulder <cmulder@usccr.gov>; Peter Kirsanow <pkirsanow@usccr.gov>; Gail Heriot <gheriot@usccr.gov>; J. Christian Adams <jadams@usccr.gov>; Stephen Gilchrist <sgilchrist@usccr.gov>
Subject: AIs for Friday's business meeting

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Carissa B. Mulder

AMERICAN OVERSIGHT

Date : 4/27/2021 10:50:49 AM
From : "Alexander Heideman" aheideman@usccr.gov
To : "John Mashburn" jkmash@comcast.net, "Carissa Mulder" carissa.mulder@gmail.com
Subject : Re: [EXTERNAL] Draft Motion to Drop Phrase from AI Regarding EAC

Looks good to me.

From: John Mashburn <jkmash@comcast.net>
Date: Tuesday, April 27, 2021 at 10:49 AM
To: Carissa Mulder <carissa.mulder@gmail.com>, Alexander Heideman <aheideman@usccr.gov>
Subject: [EXTERNAL] Draft Motion to Drop Phrase from AI Regarding EAC

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Date : 4/27/2021 11:07:12 AM
From : "Carissa Mulder" carissa.mulder@gmail.com
To : "John Mashburn" jkmash@comcast.net
Cc : "Alexander Heideman" aheideman@usccr.gov
Subject : Re: [EXTERNAL] Draft Motion to Drop Phrase from AI Regarding EAC

> CAUTION: This email is from outside USCCR.

Pete and Gail would have to get approval from Norma and Yaki. If we do that on our own without their ok, I think the whole deal will blow up.

On Tue, Apr 27, 2021 at 11:05 AM John Mashburn <jkmash@comcast.net> wrote:

> Change it in tomorrow's submissions?
>
> Sent from my iPhone
>
> > On Apr 27, 2021, at 10:54 AM, Carissa Mulder <carissa.mulder@gmail.com> wrote:
> >
> > Looks good to me!
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> > On Tue, Apr 27, 2021 at 10:50 AM Alexander Heideman <aheideman@usccr.gov> wrote:
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> > > **Date:** Tuesday, April 27, 2021 at 10:49 AM
> > > **To:** Carissa Mulder <carissa.mulder@gmail.com>, Alexander Heideman <aheideman@usccr.gov>
> > > **Subject:** [EXTERNAL] Draft Motion to Drop Phrase from AI Regarding EAC
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Cc : "Kirsanow, Peter" pkirsanow@beneschlaw.com, "Gail Heriot" gheriot@me.com, "stephen gilchrist" thegilchristassociates@gmail.com, "Christian Adams (adams@electionlawcenter.com)" adams@electionlawcenter.com, "Alexander Heideman" aheideman@usccr.gov, "John Mashburn" jmashburn@usccr.gov, "Thomas Simuel" tsimuel@usccr.gov, "Carissa Mulder" CMulder@usccr.gov, "Peter Kirsanow" pkirsanow@usccr.gov, "J. Christian Adams" jadams@usccr.gov, "Stephen Gilchrist" sgilchrist@usccr.gov
Subject : [EXTERNAL] Re: AIs for Friday's business meeting

CAUTION: This email is from outside USCCR.

Well, we'll at least have to amend the agenda to remove "Discussion and Agreement to Appoint Bipartisan Commissioners to EAC," because we're doing that as an AI in the omnibus motion.

On Tue, Apr 27, 2021 at 10:41 AM Gail Heriot <gheriot@usccr.gov> wrote:

> Given that this is an omnibus motion, is it even necessary to amend the agenda?
>
> Gail Heriot
> Professor of Law
> University of San Diego
>
> > On Apr 27, 2021, at 7:39 AM, Carissa Mulder <carissa.mulder@gmail.com> wrote:
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To : "Alexander Heideman" aheideman@usccr.gov
Cc : "John Mashburn" jkmash@comcast.net
Subject : Re: [EXTERNAL] Draft Motion to Drop Phrase from AI Regarding EAC

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On Tue, Apr 27, 2021 at 10:50 AM Alexander Heideman <aheideman@usccr.gov> wrote:

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Subject : [EXTERNAL] Re: AIs for Friday's business meeting

CAUTION: This email is from outside USCCR.

Yes! I have shared the something with Commissioner Cantu. It's only eight Commissioners not 9. We need to determine if Commissioners Cantu and Yaki are still in agreement on the negotiated items and if so call for a vote and move forward.

On Tue, Apr 27, 2021, 11:20 AM Christian Adams <adams@electionlawcenter.com> wrote:

1. this is essentially mutiny. He is using his power to block what at least 5 or 6 commissioners have made a priority.
2. Should I also call Norma and tell her this and that I am wholly committed to working with her and others to make things better??

From: Carissa Mulder <carissa.mulder@gmail.com>
Sent: Tuesday, April 27, 2021 10:39 AM
To: Kirsanow, Peter <pkirsanow@beneschlaw.com>; Gail Heriot <gheriot@me.com>; stephen gilchrist <thegilchristassociates@gmail.com>; Christian Adams (adams@electionlawcenter.com) <adams@electionlawcenter.com>; Alexander Heideman <aheideman@usccr.gov>; John Mashburn <jmashburn@usccr.gov>; Thomas Simuel <tsimuel@usccr.gov>
Cc: Carissa Mulder <cmulder@usccr.gov>; Peter Kirsanow <pkirsanow@usccr.gov>; Gail Heriot <gheriot@usccr.gov>; J. Christian Adams <jadams@usccr.gov>; Stephen Gilchrist <sgilchrist@usccr.gov>
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AMERICAN OVERSIGHT

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Carissa B. Mulder

AMERICAN OVERSIGHT

Date : 4/27/2021 11:28:23 AM
From : "Kirsanow, Peter" pkirsanow@Beneschlaw.com
To : "Christian Adams" adams@electionlawcenter.com, "'Carissa Mulder'" carissa.mulder@gmail.com, "'Gail Heriot'" gheriot@me.com, "'stephen gilchrist'" thegilchristassociates@gmail.com, "'Alexander Heideman'" aheideman@usccr.gov, "'John Mashburn'" jmashburn@usccr.gov, "'Thomas Simuel'" tsimuel@usccr.gov
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From: Christian Adams <adams@electionlawcenter.com>
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To: 'Carissa Mulder' <carissa.mulder@gmail.com>; Kirsanow, Peter <pkirsanow@Beneschlaw.com>; 'Gail Heriot' <gheriot@me.com>; 'stephen gilchrist' <thegilchristassociates@gmail.com>; 'Alexander Heideman' <aheideman@usccr.gov>; 'John Mashburn' <jmashburn@usccr.gov>; 'Thomas Simuel' <tsimuel@usccr.gov>
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AMERICAN OVERSIGHT

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AMERICAN OVERSIGHT

Date : 4/27/2021 12:36:17 PM
From : "Carissa Mulder" carissa.mulder@gmail.com
To : "Christian Adams" adams@electionlawcenter.com
Cc : "Kirsanow, Peter" pkirsanow@beneschlaw.com, "Gail Heriot" gheriot@me.com, "stephen gilchrist" thegilchristassociates@gmail.com, "Alexander Heideman" aheideman@usccr.gov, "John Mashburn" jmashburn@usccr.gov, "Thomas Simuel" tsimuel@usccr.gov, "Carissa Mulder" cmulder@usccr.gov, "Peter Kirsanow" pkirsanow@usccr.gov, "Gail Heriot" gheriot@usccr.gov, "J. Christian Adams" jadams@usccr.gov, "Stephen Gilchrist" sgilchrist@usccr.gov
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I don't have Norma's phone number, but thought you would like to see what Mauro just sent to all the SAs plus the "executive staff" in response to Alex's request for an SA meeting on Tuesday:

Thank you. Let me look at it and get back to you. I am rethinking the format for future meetings. I hold these meetings as a courtesy and for transparency about Commission matters and pending issues. My predecessor staff directors never held such meetings with SA's. I took a different approach. However, as of recent the meetings have become somewhat adversarial. I have been interrupted when speaking and feel the questioning is more akin to a cross-examination and not a conversation or discussion. I believe that in order to have future successful meetings and for transparency to work it has to be a two way conversation. For example, special assistants had been discussing an omnibus motion over eight weeks ago, yet three AI drafts were offered for a vote on the day of the business meeting with no staff input whatsoever. Two of those AI's in the package submitted on the 16th would significantly impact the ability of OCRE to operate and change the conduct of Commission investigations. Why these AI's were never shared with staff is confounding and disappointing to everyone. I desire to holding meetings with SA's in the near future with the hope that more transparency on Commissioner views concerning Commission matters will be more forthcoming. I will revisit this option after the Friday business meeting on the 30th and suggest a possible meeting time and date at that time.

Mauro

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Carissa B. Mulder

AMERICAN OVERSIGHT

--
Carissa B. Mulder

AMERICAN OVERSIGHT

Date : 9/15/2020 3:55:50 PM
From : "Christian Adams" a@electionlawcenter.com
To : "'Carissa Mulder'" CMulder@usccr.gov, "'Peter Kirsanow'" pkirsanow@Beneschlaw.com, "'Gail Heriot'" gheriot@me.com, "'stephen gilchrist'" thegilchristassociates@gmail.com
Cc : "'John Mashburn'" jkmash@comcast.net, "'Thomas Simuel'" tjsimuel32@gmail.com, "'Alexander Heideman'" aheideman@usccr.gov
Subject : RE: [EXTERNAL] EAC Board of Advisors

> CAUTION: This email is from outside USCCR.

My guess is the USCCR does their own "appointment" itself. How we un-appoint is going to be the issue. It probably NEVER came up in a business meeting and therefore we should, as a commission have the authority to take it up in a business meeting and appoint-anew.

From: Carissa Mulder <CMulder@usccr.gov>
Sent: Tuesday, September 15, 2020 3:34 PM
To: Christian Adams <a@electionlawcenter.com>; Peter Kirsanow <pkirsanow@Beneschlaw.com>; 'Gail Heriot' <gheriot@me.com>; 'stephen gilchrist' <thegilchristassociates@gmail.com>
Cc: John Mashburn <jkmash@comcast.net>; 'Thomas Simuel' <tjsimuel32@gmail.com>; Alexander Heideman <aheideman@usccr.gov>
Subject: Re: [EXTERNAL] EAC Board of Advisors

Good question! I had no idea the USCCR got two designees to the EAC Board of Advisors. Here's the list of all the current advisors: https://www.eac.gov/sites/default/files/boardofadvisors/BOARoster_072720.pdf .

From: Christian Adams <a@electionlawcenter.com>
Sent: Tuesday, September 15, 2020 3:15:28 PM
To: Peter Kirsanow; 'Gail Heriot'; 'stephen gilchrist'
Cc: John Mashburn; 'Thomas Simuel'; Carissa Mulder; Alexander Heideman
Subject: [EXTERNAL] EAC Board of Advisors

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Apparently the EAC gets two designees over the Election Assistance Commission Board of Advisors. Currently it is Yaki and Kladney. I just got a call from an EAC commission saying that Yaki is acting absurdly and exercising power over the EAC by threatening the Pelosi pick on the EAC with removal if he doesn't do what he wants, effectively making Yaki a commissioner on the EAC on many issues. He is causing mischief I don't even detail here.

My question is how does he get UNDONE from the EAC oversight commission? How does that get revoked and replaced?

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Date : 4/27/2021 1:12:46 PM
From : "Christian Adams" adams@electionlawcenter.com
To : "'Carissa Mulder'" carissa.mulder@gmail.com
Cc : "'Kirsanow, Peter'" pkirsanow@beneschlaw.com, "'Gail Heriot'" gheriot@me.com, "'stephen gilchrist'" thegilchristassociates@gmail.com, "'Alexander Heideman'" aheideman@usccr.gov, "'John Mashburn'" jmashburn@usccr.gov, "'Thomas Simuel'" tsimuel@usccr.gov, "'Carissa Mulder'" cmulder@usccr.gov, "'Peter Kirsanow'" pkirsanow@usccr.gov, "'Gail Heriot'" gheriot@usccr.gov, "'J. Christian Adams'" jadams@usccr.gov, "'Stephen Gilchrist'" sgilchrist@usccr.gov
Subject : [EXTERNAL] RE: AIs for Friday's business meeting

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again, more evidence as to why this needs to change. Even Culliton would not have been this bad. She was loony, but had an aversion to this type of petty, nonideological confrontation.

From: Carissa Mulder <carissa.mulder@gmail.com>
Sent: Tuesday, April 27, 2021 12:36 PM
To: Christian Adams <adams@electionlawcenter.com>
Cc: Kirsanow, Peter <pkirsanow@beneschlaw.com>; Gail Heriot <gheriot@me.com>; stephen gilchrist <thegilchristassociates@gmail.com>; Alexander Heideman <aheideman@usccr.gov>; John Mashburn <jmashburn@usccr.gov>; Thomas Simuel <tsimuel@usccr.gov>; Carissa Mulder <cmulder@usccr.gov>; Peter Kirsanow <pkirsanow@usccr.gov>; Gail Heriot <gheriot@usccr.gov>; J. Christian Adams <jadams@usccr.gov>; Stephen Gilchrist <sgilchrist@usccr.gov>
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Carissa B. Mulder

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Carissa B. Mulder

AMERICAN OVERSIGHT

Date : 4/27/2021 1:21:06 PM
From : "Amy Royce" aroyce@usccr.gov
To : "Juana Silverio" jsilverio@usccr.gov, "Norma Cantu" ncantu@usccr.gov, "Norma Cantu" normavcantu@gmail.com
Cc : "Irena Vidulovic" ividulovic@usccr.gov, "Debo P. Adegbile" dadegbile@usccr.gov, "David Kladney" dkladney@usccr.gov
Subject : Redline to EAC Appointments AI
Attachment : AI on Appointment Authority (general and EAC) DK DA.docx;

Hi Norma and Juana,

Resending the edits Dave and Debo had to the EAC Appointments AI for discussion on the call.

All the best,
Amy

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ADMINISTRATIVE INSTRUCTION __- __

COMMISSION APPOINTMENTS TO OTHER FEDERAL ENTITIES

Section 1.

.01 Any authority specifically granted the Commission of Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc. shall be exercised by the Commission Chairperson in consultation with all members of the commission.~~as a whole by majority vote~~.

Section 2

.02

(1) For the two (2) appointments to the U.S. Election Assistance Commission, the members appointed by Democratic authorities shall nominate two individuals of their membership that are ready willing and able to serve, and the members appointed by the Republican authorities shall nominate two individuals of their membership that are ready willing and able to serve.

(2) The members appointed by the Democratic authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Democratic authorities.

(3) Should the person by the choosing party not be able to serve, the chairperson shall be free to choose any other member of the Commission, including said chairperson, to serve on the U.S. Election Assistance Commission/

(~~3~~4) The members selected shall be placed in nomination and ratified in conformance with Section 1.

Commented [AR1]: Dave and Debo disagree with adopting a new AI to control the appointments process going forward. They believe commitments to an appointments process can be made through a different vehicle that would not bind future Commissions

AMERICAN OVERSIGHT

Date : 4/27/2021 3:34:56 PM
From : "John Mashburn" jmashburn@usccr.gov
To : "Christian Adams" a@electionlawcenter.com
Subject : Motion for Friday
Attachment : Motion for April 30 Bus Mtg.docx;AI on Appointment Authority (general and EAC)[3].docx;

I move that the phrase "of their membership" be removed in the two places that it appears in the proposed Administrative Instruction (AI) on "Commission Appointments to Other Federal Entities."

The inclusion of this phrase in the proposed AI requires that USCCR's appointees to other federal entities must come from among the sitting USCCR commissioners themselves, even if that is not required by the statute authorizing the USCCR to make such appointments.

For instance, Section 214 of the "Help America Vote Act (HAVA) of 2002" (HR3295) states that the Board of Advisors to the Election Assistance Commission (EAC) shall consist of 37 members with: "(10) Two members appointed by the United States Commission on Civil Rights." The statute does not require that the appointees must come from among the ranks of the USCCR Commissioners themselves, but the AI as drafted would require that – which would set the terms of the AI above the terms of the statute itself.

Dropping the phrase "of their membership" in the 2 places it appears would make the proposed AI comport with Congress' original intent when it passed HAVA, and allow the USCCR to appoint members to the EAC's Board of Advisors from among USCCR own members, or from the public at large as Congress intended. Dropping the phrase would ensure that such Congressional intent in other future or present statutes that authorize the USCCR to make appointments to other federal entities would be similarly protected.

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ADMINISTRATIVE INSTRUCTION __- __

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Section 1.
.01 Any authority specifically granted the Commission of Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc. shall be exercised by the Commission as a whole by majority vote.

Section 2
.02

(1) For the two (2) appointments to the U.S. Election Assistance Commission, the members appointed by Democratic authorities shall nominate two individuals of their membership, and the members appointed by the Republican authorities shall nominate two individuals of their membership.

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AMERICAN OVERSIGHT

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AMERICAN OVERSIGHT

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From : "Juana Silverio" jsilverio@usccr.gov
To : "Norma Cantu" ncantu@usccr.gov, "Michael Yaki" MYaki@usccr.gov, "michael@michaelyaki.com" michael@michaelyaki.com
Subject : Revisions to AI as recommended by Kladney & Adegbile
Attachment : AI on Appointment Authority (general and EAC) DKDPA.docx;

For your deliberations mtg tomorrow:

Kladney suggested revisions to interviews AI

- Require planning documents for each project, including discovery materials and timeline, to include instructions that any interviews conducted by staff or other oral testimony collected by staff for inclusion in the report be either simultaneously transcribed by a court reporter or recorded and subsequently transcribed
- Require planning documents to include that the transcripts of interviews or other testimony be circulated to all Commissioners at least two weeks in advance of any public briefing

EAC language as suggested by Kladney & Adegbile (attached)

Juana

From: Irena Vidulovic <ividulovic@usccr.gov>
Sent: Tuesday, April 27, 2021 4:21 PM
To: Carissa Mulder <CMulder@usccr.gov>; Commissioners <Commissioners@usccr.gov>
Cc: CommissionerAssistants <CommissionerAssistants@usccr.gov>; Mauro Morales <mmorales@usccr.gov>
Subject: Re: AIs for 4/30 business meeting

Thank you Carissa for sharing. Please find attached redline edits from Commissioner Kladney and Commissioner Adegbile on the AI that addresses Commissioner Appointments to Other Federal Agencies.

Thank you very much and please let us know if you have any questions.

Irena

From: Carissa Mulder
Sent: Tuesday, April 27, 2021 12:51:25 PM
To: Commissioners
Cc: CommissionerAssistants; Mauro Morales
Subject: AIs for 4/30 business meeting

Good afternoon:

AMERICAN OVERSIGHT

On behalf of Commissioners Heriot and Yaki, I am recirculating the AIs that will be proposed as part of an omnibus motion at Friday's business meeting.

Thank you,

Carissa

AMERICAN OVERSIGHT

ADMINISTRATIVE INSTRUCTION __- __

COMMISSION APPOINTMENTS TO OTHER FEDERAL ENTITIES

Section 1.
.01 Any authority specifically granted the Commission of Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc. shall be exercised by the Commission Chairperson in consultation with all members of the commission.~~as a whole by majority vote~~.

Section 2
.02

(1) For the two (2) appointments to the U.S. Election Assistance Commission, the members appointed by Democratic authorities shall nominate two individuals of their membership that are ready willing and able to serve, and the members appointed by the Republican authorities shall nominate two individuals of their membership that are ready willing and able to serve.

(2) The members appointed by the Democratic authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Democratic authorities.

(3) Should the person by the choosing party not be able to serve, the chairperson shall be free to choose any other member of the Commission, including said chairperson, to serve on the U.S. Election Assistance Commission/

(~~3~~4) The members selected shall be placed in nomination and ratified in conformance with Section 1.

AMERICAN OVERSIGHT

Date : 4/28/2021 2:31:09 PM
From : "Carissa Mulder" carissa.mulder@gmail.com
To : "Kirsanow, Peter" pkirsanow@beneschlaw.com, "Gail Heriot" gheriot@me.com
Cc : "Peter Kirsanow" pkirsanow@usccr.gov, "Carissa Mulder" cmulder@usccr.gov, "Alexander Heideman" aheideman@usccr.gov
Subject : [EXTERNAL] Question about meeting with Norma

CAUTION: This email is from outside USCCR.

Hi Pete and Gail,

Did you discuss Debo and Kladney's edits to the EAC appointment process with Norma and Yaki? Irena just emailed Alex and I and asked if our caucus is ok with them. I was going to respond that we are not ok with them, but didn't want to do that if you guys had agreed to them in your meeting with Norma and Yaki.

--
Carissa B. Mulder

AMERICAN OVERSIGHT

Date : 4/28/2021 3:33:15 PM
From : "Gail Heriot" gheriot@me.com
To : "Carissa Mulder" carissa.mulder@gmail.com
Cc : "Gail Heriot" gheriot@usccr.gov
Subject : [EXTERNAL] Re: Question about meeting with Norma

*** CAUTION: This email is from outside USCCR. ***

Carissa—I'll call you in a little bit. Gail

Gail Heriot
Professor of Law
University of San Diego

> On Apr 28, 2021, at 11:31 AM, Carissa Mulder <carissa.mulder@gmail.com> wrote:
>
>
> Hi Pete and Gail,
>
> Did you discuss Debo and Kladney's edits to the EAC appointment process with Norma and Yaki? Irena just emailed Alex and I and asked if our caucus is ok with them. I was going to respond that we are not ok with them, but didn't want to do that if you guys had agreed to them in your meeting with Norma and Yaki.
>
> --
> Carissa B. Mulder
>
>

AMERICAN OVERSIGHT

Date : 4/29/2021 12:47:15 PM
From : "Carissa Mulder" carissa.mulder@gmail.com
To : "Kirsanow, Peter" pkirsanow@beneschlaw.com, "Gail Heriot" gheriot@me.com, "Christian Adams (adams@electionlawcenter.com)" adams@electionlawcenter.com, "stephen gilchrist" thegilchristassociates@gmail.com
Cc : "Peter Kirsanow" pkirsanow@usccr.gov, "Gail Heriot" gheriot@usccr.gov, "J. Christian Adams" jadams@usccr.gov, "John Mashburn" jmashburn@usccr.gov, "Thomas Simuel" tsimuel@usccr.gov, "Alexander Heideman" aheideman@usccr.gov, "Carissa Mulder" cmulder@usccr.gov, "Stephen Gilchrist" sgilchrist@usccr.gov
Subject : [EXTERNAL] Revised EAC AI
Attachment : AI on Appointment Authority (general and EAC)(revised).docx;

CAUTION: This email is from outside USCCR.

Hi everyone,

Please see the attached revised EAC AI. It incorporates changes discussed by Pete, Gail, Norma, and Yaki yesterday, removes the requirement that nominees to the EAC be members of the Commission, and adds Debo's language that any nominees "be ready, able, and willing to serve". Pete is going to send this to Norma, and hopefully all goes well.

--
Carissa B. Mulder

AMERICAN OVERSIGHT

ADMINISTRATIVE INSTRUCTION __- __

COMMISSION APPOINTMENTS TO OTHER FEDERAL ENTITIES

Section 1.
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.02 Any authority specifically granted the Staff Director of the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Staff Director.

.03 Any authority specifically granted the Chair of the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Chair.

Section 2
.02

(1) For the two (2) appointments to the U.S. Election Assistance Commission, the members appointed by Democratic authorities shall nominate two individuals who are ready, willing, and able to serve ~~of their ,membership~~, and the members appointed by the Republican authorities shall nominate two individuals who are ready, willing, and able to serve ~~of their membership~~.

(2) The members appointed by the Democratic authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Democratic authorities

(3) The members selected shall be placed in nomination and ratified in conformance with Section 1.

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AMERICAN OVERSIGHT

Date : 4/29/2021 12:25:55 PM
From : "Kirsanow, Peter" pkirsanow@Beneschlaw.com
To : "Norma V. Cantú" normavcantu@gmail.com, "Norma Cantu" ncantu@usccr.gov, "Michael Yaki" MYaki@usccr.gov
Cc : "Gail Heriot (gheriot@me.com)" gheriot@me.com, "Gail Heriot (gheriot@usccr.gov)" gheriot@usccr.gov
Subject : [EXTERNAL] appointments
Attachment : AI on Appointment Authority (general and EAC)(revised).docx;

CAUTION: This email is from outside USCCR.

Dear Norma,

I've attached Michael's draft AI with the revisions we discussed regarding the Chair and Staff Director. I've also incorporated Debo's caveat that any prospective nominees be "ready, willing, and able to serve." I also removed the phrase "of their membership" from the description of the nominees. It may well be that there are not two commissioners from each caucus who are 'ready, willing, and able to serve" on the EAC, and therefore the Commission should be able to designate other individuals to serve. This does not conflict with the statute, which only states that the Commission shall designate two individuals to serve, but does not specify that they must be Commissioners. Looking forward to getting this done and confirming you as Chair tomorrow.

AMERICAN OVERSIGHT

ADMINISTRATIVE INSTRUCTION __- __

COMMISSION APPOINTMENTS TO OTHER FEDERAL ENTITIES

Section 1.
.01___-Any authority specifically granted the Commission on~~f~~ Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Commission as a whole by majority vote.

.02 Any authority specifically granted the Staff Director of the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Staff Director.

.03 Any authority specifically granted the Chair of the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Chair.

Section 2
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(1) For the two (2) appointments to the U.S. Election Assistance Commission, the members appointed by Democratic authorities shall nominate two individuals who are ready, willing, and able to serve ~~of their membership~~, and the members appointed by the Republican authorities shall nominate two individuals who are ready, willing, and able to serve ~~of their membership~~.

(2) The members appointed by the Democratic authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Democratic authorities

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AMERICAN OVERSIGHT

Date : 4/29/2021 1:01:37 PM
From : "Christian Adams" adams@electionlawcenter.com
To : "Carissa Mulder" carissa.mulder@gmail.com, "Kirsanow, Peter" pkirsanow@beneschlaw.com, "Gail Heriot" gheriot@me.com, "stephen gilchrist" thegilchristassociates@gmail.com
Cc : "Peter Kirsanow" pkirsanow@usccr.gov, "Gail Heriot" gheriot@usccr.gov, "J. Christian Adams" jadams@usccr.gov, "John Mashburn" jmashburn@usccr.gov, "Thomas Simuel" tsimuel@usccr.gov, "Alexander Heideman" aheideman@usccr.gov, "Carissa Mulder" cmulder@usccr.gov, "Stephen Gilchrist" sgilchrist@usccr.gov
Subject : [EXTERNAL] RE: Revised EAC AI

CAUTION: This email is from outside USCCR.

Where is the ready willing and able stuff coming from?? That's bizarre.

-------- Original message --------
From: Carissa Mulder <carissa.mulder@gmail.com>
Date: 4/29/21 12:47 PM (GMT-05:00)
To: "Kirsanow, Peter" <pkirsanow@beneschlaw.com>, Gail Heriot <gheriot@me.com>, "Christian Adams (adams@electionlawcenter.com)" <adams@electionlawcenter.com>, stephen gilchrist <thegilchristassociates@gmail.com>
Cc: Peter Kirsanow <pkirsanow@usccr.gov>, Gail Heriot <gheriot@usccr.gov>, "J. Christian Adams" <jadams@usccr.gov>, John Mashburn <jmashburn@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>, Alexander Heideman <aheideman@usccr.gov>, Carissa Mulder <cmulder@usccr.gov>, Stephen Gilchrist <sgilchrist@usccr.gov>
Subject: Revised EAC AI

Hi everyone,

Please see the attached revised EAC AI. It incorporates changes discussed by Pete, Gail, Norma, and Yaki yesterday, removes the requirement that nominees to the EAC be members of the Commission, and adds Debo's language that any nominees "be ready, able, and willing to serve". Pete is going to send this to Norma, and hopefully all goes well.

--
Carissa B. Mulder

AMERICAN OVERSIGHT

Date : 9/15/2020 3:42:28 PM
From : "Christian Adams" a@electionlawcenter.com
To : "'Carissa Mulder'" CMulder@usccr.gov, "'Peter Kirsanow'" pkirsanow@Beneschlaw.com, "'Gail Heriot'" gheriot@me.com, "'stephen gilchrist'" thegilchristassociates@gmail.com
Cc : "'John Mashburn'" jkmash@comcast.net, "'Thomas Simuel'" tjsimuel32@gmail.com, "'Alexander Heideman'" aheideman@usccr.gov
Subject : RE: [EXTERNAL] EAC Board of Advisors

> CAUTION: This email is from outside USCCR.

Ok, we need to get one of them off and one of us on, period. We have leverage now for reasons we have spent a great deal of time already talking about. Obviously Yaki would be the best one to go, but either of them.

Ideas: John Masburn and someone else (Carissa?) approach Yaki and Kladney's SA and explain the new circumstances and there needs to be equity. Other ideas?

From: Carissa Mulder <CMulder@usccr.gov>
Sent: Tuesday, September 15, 2020 3:34 PM
To: Christian Adams <a@electionlawcenter.com>; Peter Kirsanow <pkirsanow@Beneschlaw.com>; 'Gail Heriot' <gheriot@me.com>; 'stephen gilchrist' <thegilchristassociates@gmail.com>
Cc: John Mashburn <jkmash@comcast.net>; 'Thomas Simuel' <tjsimuel32@gmail.com>; Alexander Heideman <aheideman@usccr.gov>
Subject: Re: [EXTERNAL] EAC Board of Advisors

Good question! I had no idea the USCCR got two designees to the EAC Board of Advisors. Here's the list of all the current advisors: https://www.eac.gov/sites/default/files/boardofadvisors/BOARoster_072720.pdf .

From: Christian Adams <a@electionlawcenter.com>
Sent: Tuesday, September 15, 2020 3:15:28 PM
To: Peter Kirsanow; 'Gail Heriot'; 'stephen gilchrist'
Cc: John Mashburn; 'Thomas Simuel'; Carissa Mulder; Alexander Heideman
Subject: [EXTERNAL] EAC Board of Advisors

> CAUTION: This email is from outside USCCR.

Apparently the EAC gets two designees over the Election Assistance Commission Board of Advisors. Currently it is Yaki and Kladney. I just got a call from an EAC commission saying that Yaki is acting absurdly and exercising power over the EAC by threatening the Pelosi pick on the EAC with removal if he doesn't do what he wants, effectively making Yaki a commissioner on the EAC on many issues. He is causing mischief I don't even detail here.

My question is how does he get UNDONE from the EAC oversight commission? How does that get revoked and replaced?

AMERICAN OVERSIGHT

Date : 4/29/2021 11:59:15 AM
From : "Kirsanow, Peter" pkirsanow@Beneschlaw.com
To : "Gail Heriot (gheriot@me.com)" gheriot@me.com, "Gail Heriot (gheriot@usccr.gov)" gheriot@usccr.gov
Subject : [EXTERNAL] FW: Draft email to Norma and revised AI
Attachment : AI on Appointment Authority (general and EAC)(revised).docx;

CAUTION: This email is from outside USCCR.

FYI

From: Carissa Mulder <carissa.mulder@gmail.com>
Sent: Thursday, April 29, 2021 11:54 AM
To: Kirsanow, Peter <pkirsanow@Beneschlaw.com>
Cc: Peter Kirsanow <pkirsanow@usccr.gov>; Carissa Mulder <cmulder@usccr.gov>
Subject: Draft email to Norma and revised AI

*** External E-Mail - Use Caution ***

Hi Pete,

Alex just talked to Irena, and the only changes Debo cared about in the proposed EAC AI was that anyone nominated be "ready, willing, and able to serve". Maybe he is afraid he'll be pressed into service against his will! Anyway, I made the changes regarding the chair and staff director, removed "of their membership" and added "ready, willing, and able to serve". Here's a draft email to Norma that you can just cut and paste into an email:

Dear Norma,

I've attached Michael's draft AI with the revisions we discussed regarding the Chair and Staff Director. I've also incorporated Debo's caveat that any prospective nominees be "ready, willing, and able to serve." I also removed the phrase "of their membership" from the description of the nominees. It may well be that there are not two commissioners from each caucus who are 'ready, willing, and able to serve" on the EAC, and therefore the Commission should be able to designate other individuals to serve. This does not conflict with the statute, which only states that the Commission shall designate two individuals to serve, but does not specify that they must be Commissioners. Looking forward to getting this done and confirming you as Chair tomorrow!

--
Carissa B. Mulder

AMERICAN OVERSIGHT

ADMINISTRATIVE INSTRUCTION __- __

COMMISSION APPOINTMENTS TO OTHER FEDERAL ENTITIES

Section 1.
.01 -Any authority specifically granted the Commission onf Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Commission as a whole by majority vote.

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Section 2
.02

(1) For the two (2) appointments to the U.S. Election Assistance Commission, the members appointed by Democratic authorities shall nominate two individuals who are ready, willing, and able to serve ~~of their membership~~, and the members appointed by the Republican authorities shall nominate two individuals who are ready, willing, and able to serve ~~of their membership~~.

(2) The members appointed by the Democratic authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Democratic authorities

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AMERICAN OVERSIGHT

Date : 4/29/2021 12:59:07 PM
From : "John Mashburn" jmashburn@usccr.gov
To : "Carissa Mulder" carissa.mulder@gmail.com, "Kirsanow, Peter" pkirsanow@beneschlaw.com, "Gail Heriot" gheriot@me.com, "Christian Adams (adams@electionlawcenter.com)" adams@electionlawcenter.com, "stephen gilchrist" thegilchristassociates@gmail.com
Cc : "Peter Kirsanow" pkirsanow@usccr.gov, "Gail Heriot" gheriot@usccr.gov, "J. Christian Adams" jadams@usccr.gov, "Thomas Simuel" tsimuel@usccr.gov, "Alexander Heideman" aheideman@usccr.gov, "Carissa Mulder" CMulder@usccr.gov, "Stephen Gilchrist" sgilchrist@usccr.gov
Subject : Re: [EXTERNAL] Revised EAC AI

Other than allowing non-Cmnr nominees now (a biggie), I don't see as this makes any further substantive change to what the AI said before.

From: Carissa Mulder <carissa.mulder@gmail.com>
Date: Thursday, April 29, 2021 at 12:47 PM
To: "Kirsanow, Peter" <pkirsanow@beneschlaw.com>, Gail Heriot <gheriot@me.com>, "Christian Adams (adams@electionlawcenter.com)" <adams@electionlawcenter.com>, stephen gilchrist <thegilchristassociates@gmail.com>
Cc: Peter Kirsanow <pkirsanow@usccr.gov>, Gail Heriot <gheriot@usccr.gov>, "J. Christian Adams" <jadams@usccr.gov>, John Mashburn <jmashburn@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>, Alexander Heideman <aheideman@usccr.gov>, Carissa Mulder <CMulder@usccr.gov>, Stephen Gilchrist <sgilchrist@usccr.gov>
Subject: [EXTERNAL] Revised EAC AI

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Carissa B. Mulder

AMERICAN OVERSIGHT

Date : 4/29/2021 11:54:27 AM
From : "Carissa Mulder" carissa.mulder@gmail.com
To : "Kirsanow, Peter" pkirsanow@beneschlaw.com
Cc : "Peter Kirsanow" pkirsanow@usccr.gov, "Carissa Mulder" cmulder@usccr.gov
Subject : [EXTERNAL] Draft email to Norma and revised AI
Attachment : AI on Appointment Authority (general and EAC)(revised).docx;

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Carissa B. Mulder

AMERICAN OVERSIGHT

ADMINISTRATIVE INSTRUCTION __- __

COMMISSION APPOINTMENTS TO OTHER FEDERAL ENTITIES

Section 1.
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AMERICAN OVERSIGHT

Date : 4/29/2021 1:03:38 PM
From : "Alexander Heideman" aheideman@usccr.gov
To : "Christian Adams" adams@electionlawcenter.com, "Carissa Mulder" carissa.mulder@gmail.com, "Kirsanow, Peter" pkirsanow@beneschlaw.com, "Gail Heriot" gheriot@me.com, "stephen gilchrist" thegilchristassociates@gmail.com
Cc : "Peter Kirsanow" pkirsanow@usccr.gov, "Gail Heriot" gheriot@usccr.gov, "J. Christian Adams" jadams@usccr.gov, "John Mashburn" jmashburn@usccr.gov, "Thomas Simuel" tsimuel@usccr.gov, "Carissa Mulder" CMulder@usccr.gov, "Stephen Gilchrist" sgilchrist@usccr.gov
Subject : Re: [EXTERNAL] RE: Revised EAC AI

This is Debo's "baby," according to his SA. It didn't in any way substantially change the AI for us, so it seems like a minimal concession. It apparently bothers him that people get nominated for things despite the fact that they don't want the nomination. Weird, but whatever.

From: Christian Adams <adams@electionlawcenter.com>
Date: Thursday, April 29, 2021 at 1:01 PM
To: Carissa Mulder <carissa.mulder@gmail.com>, "Kirsanow, Peter" <pkirsanow@beneschlaw.com>, Gail Heriot <gheriot@me.com>, stephen gilchrist <thegilchristassociates@gmail.com>
Cc: Peter Kirsanow <pkirsanow@usccr.gov>, Gail Heriot <gheriot@usccr.gov>, "J. Christian Adams" <jadams@usccr.gov>, John Mashburn <jmashburn@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>, Alexander Heideman <aheideman@usccr.gov>, Carissa Mulder <CMulder@usccr.gov>, Stephen Gilchrist <sgilchrist@usccr.gov>
Subject: [EXTERNAL] RE: Revised EAC AI

> CAUTION: This email is from outside USCCR.

-------- Original message --------
From: Carissa Mulder <carissa.mulder@gmail.com>
Date: 4/29/21 12:47 PM (GMT-05:00)
To: "Kirsanow, Peter" <pkirsanow@beneschlaw.com>, Gail Heriot <gheriot@me.com>, "Christian Adams (adams@electionlawcenter.com)" <adams@electionlawcenter.com>, stephen gilchrist <thegilchristassociates@gmail.com>
Cc: Peter Kirsanow <pkirsanow@usccr.gov>, Gail Heriot <gheriot@usccr.gov>, "J. Christian Adams" <jadams@usccr.gov>, John Mashburn <jmashburn@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>, Alexander Heideman <aheideman@usccr.gov>, Carissa Mulder <cmulder@usccr.gov>, Stephen Gilchrist <sgilchrist@usccr.gov>
Subject: Revised EAC AI

AMERICAN OVERSIGHT

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--
Carissa B. Mulder

AMERICAN OVERSIGHT

Date : 4/29/2021 1:07:47 PM
From : "Carissa Mulder" carissa.mulder@gmail.com
To : "John Mashburn" jmashburn@usccr.gov
Cc : "Kirsanow, Peter" pkirsanow@beneschlaw.com, "Gail Heriot" gheriot@me.com, "Christian Adams (adams@electionlawcenter.com)" adams@electionlawcenter.com, "stephen gilchrist" thegilchristassociates@gmail.com, "Peter Kirsanow" pkirsanow@usccr.gov, "Gail Heriot" gheriot@usccr.gov, "J. Christian Adams" jadams@usccr.gov, "Thomas Simuel" tsimuel@usccr.gov, "Alexander Heideman" aheideman@usccr.gov, "Carissa Mulder" CMulder@usccr.gov, "Stephen Gilchrist" sgilchrist@usccr.gov
Subject : Re: [EXTERNAL] Revised EAC AI

CAUTION: This email is from outside USCCR.

It doesn't.

On Thu, Apr 29, 2021 at 12:59 PM John Mashburn <jmashburn@usccr.gov> wrote:

> Other than allowing non-Cmnr nominees now (a biggie), I don't see as this makes any further substantive change to what the AI said before.

From: Carissa Mulder <carissa.mulder@gmail.com>
Date: Thursday, April 29, 2021 at 12:47 PM
To: "Kirsanow, Peter" <pkirsanow@beneschlaw.com>, Gail Heriot <gheriot@me.com>, "Christian Adams (adams@electionlawcenter.com)" <adams@electionlawcenter.com>, stephen gilchrist <thegilchristassociates@gmail.com>
Cc: Peter Kirsanow <pkirsanow@usccr.gov>, Gail Heriot <gheriot@usccr.gov>, "J. Christian Adams" <jadams@usccr.gov>, John Mashburn <jmashburn@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>, Alexander Heideman <aheideman@usccr.gov>, Carissa Mulder <CMulder@usccr.gov>, Stephen Gilchrist <sgilchrist@usccr.gov>
Subject: [EXTERNAL] Revised EAC AI

CAUTION: This email is from outside USCCR.

Hi everyone,

AMERICAN OVERSIGHT

Please see the attached revised EAC AI. It incorporates changes discussed by Pete, Gail, Norma, and Yaki yesterday, removes the requirement that nominees to the EAC be members of the Commission, and adds Debo's language that any nominees "be ready, able, and willing to serve". Pete is going to send this to Norma, and hopefully all goes well.

--

Carissa B. Mulder

--
Carissa B. Mulder

AMERICAN OVERSIGHT

Date : 4/29/2021 3:23:52 PM
From : "Kirsanow, Peter" pkirsanow@Beneschlaw.com
To : "Christian Adams" adams@electionlawcenter.com, "Carissa Mulder" carissa.mulder@gmail.com, "Gail Heriot" gheriot@me.com, "stephen gilchrist" thegilchristassociates@gmail.com
Cc : "Peter Kirsanow" pkirsanow@usccr.gov, "Gail Heriot" gheriot@usccr.gov, "J. Christian Adams" jadams@usccr.gov, "John Mashburn" jmashburn@usccr.gov, "Thomas Simuel" tsimuel@usccr.gov, "Alexander Heideman" aheideman@usccr.gov, "Carissa Mulder" cmulder@usccr.gov, "Stephen Gilchrist" sgilchrist@usccr.gov
Subject : [EXTERNAL] RE: Revised EAC AI

CAUTION: This email is from outside USCCR.

Debo

The Commission is Bizarro World.

From: Christian Adams <adams@electionlawcenter.com>
Sent: Thursday, April 29, 2021 1:02 PM
To: Carissa Mulder <carissa.mulder@gmail.com>; Kirsanow, Peter <pkirsanow@Beneschlaw.com>; Gail Heriot <gheriot@me.com>; stephen gilchrist <thegilchristassociates@gmail.com>
Cc: Peter Kirsanow <pkirsanow@usccr.gov>; Gail Heriot <gheriot@usccr.gov>; J. Christian Adams <jadams@usccr.gov>; John Mashburn <jmashburn@usccr.gov>; Thomas Simuel <tsimuel@usccr.gov>; Alexander Heideman <aheideman@usccr.gov>; Carissa Mulder <cmulder@usccr.gov>; Stephen Gilchrist <sgilchrist@usccr.gov>
Subject: RE: Revised EAC AI

***** External E-Mail - Use Caution *****

Where is the ready willing and able stuff coming from?? That's bizarre.

-------- Original message --------
From: Carissa Mulder <carissa.mulder@gmail.com>
Date: 4/29/21 12:47 PM (GMT-05:00)
To: "Kirsanow, Peter" <pkirsanow@beneschlaw.com>, Gail Heriot <gheriot@me.com>, "Christian Adams (adams@electionlawcenter.com)" <adams@electionlawcenter.com>, stephen gilchrist <thegilchristassociates@gmail.com>
Cc: Peter Kirsanow <pkirsanow@usccr.gov>, Gail Heriot <gheriot@usccr.gov>, "J. Christian Adams" <jadams@usccr.gov>, John Mashburn <jmashburn@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>, Alexander Heideman <aheideman@usccr.gov>, Carissa Mulder <cmulder@usccr.gov>, Stephen Gilchrist <sgilchrist@usccr.gov>

AMERICAN OVERSIGHT

Subject: Revised EAC AI

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Please see the attached revised EAC AI. It incorporates changes discussed by Pete, Gail, Norma, and Yaki yesterday, removes the requirement that nominees to the EAC be members of the Commission, and adds Debo's language that any nominees "be ready, able, and willing to serve". Pete is going to send this to Norma, and hopefully all goes well.

--
Carissa B. Mulder

AMERICAN OVERSIGHT

Date : 4/29/2021 10:19:21 PM
From : "Michael Yaki" MYaki@usccr.gov
To : "Norma Cantu" ncantu@usccr.gov, "Kirsanow, Peter" pkirsanow@Beneschlaw.com, "Norma V. Cantú" normavcantu@gmail.com
Cc : "Gail Heriot (gheriot@me.com)" gheriot@me.com, "Gail Heriot" gheriot@usccr.gov
Subject : Re: appointments

Since this is an amendment to an item already noticed, Peter -- please circulate this to everyone tonight. It will be an amendment to an item already noticed for adoption.

From: Norma Cantu
Sent: Thursday, April 29, 2021 3:21:05 PM
To: Kirsanow, Peter; Norma V. Cantú ; Michael Yaki
Cc: Gail Heriot (gheriot@me.com); Gail Heriot
Subject: RE: appointments

Good drafting, Michael. That captures the discussion of the group of four.
I will leave it to the co-chair designees to decide whether to share this language with the whole commission.I

Norma

From: Kirsanow, Peter <pkirsanow@Beneschlaw.com>
Sent: Thursday, April 29, 2021 11:26 AM
To: Norma V. Cantú <normavcantu@gmail.com>; Norma Cantu <ncantu@usccr.gov>; Michael Yaki <MYaki@usccr.gov>
Cc: Gail Heriot (gheriot@me.com) <gheriot@me.com>; Gail Heriot <gheriot@usccr.gov>
Subject: [EXTERNAL] appointments

> CAUTION: This email is from outside USCCR.

Dear Norma,

I've attached Michael's draft AI with the revisions we discussed regarding the Chair and Staff Director. I've also incorporated Debo's caveat that any prospective nominees be "ready, willing, and able to serve." I also removed the phrase "of their membership" from the description of the nominees. It may well be that there are not two commissioners from each caucus who are 'ready, willing, and able to serve" on the EAC, and therefore the Commission should be able to designate other individuals to serve. This does not conflict with the statute, which only states that the Commission shall designate two individuals to serve, but does not specify that they must be Commissioners. Looking forward to getting this done and confirming you as Chair tomorrow.

AMERICAN OVERSIGHT

Date : 4/29/2021 10:24:23 PM
From : "Carissa Mulder" carissa.mulder@gmail.com
To : "Gail Heriot" gheriot@usccr.gov
Cc : "Carissa Mulder" CMulder@usccr.gov
Subject : [EXTERNAL] Re: appointments

CAUTION: This email is from outside USCCR.

Oh, Yaki just circulated it.

On Thu, Apr 29, 2021 at 10:22 PM Carissa Mulder <carissa.mulder@gmail.com> wrote:

> I'll do it. I didn't want to circulate it until I heard back about Norma's response.
>
> On Thu, Apr 29, 2021 at 10:21 PM Gail Heriot <gheriot@usccr.gov> wrote:
>
> > Has this been done already?
> >
> > Gail Heriot
> > Professor of Law
> > University of San Diego
> >
> > Begin forwarded message:
> >
> > **From:** Michael Yaki <MYaki@usccr.gov>
> > **Date:** April 29, 2021 at 7:19:24 PM PDT
> > >, "Norma V. Cantú" <normavcantu@gmail.com>
> > **Cc:** "Gail Heriot (gheriot@me.com)" <gheriot@me.com>, Gail Heriot <gheriot@usccr.gov>
> > **Subject: Re: appointments**
> >
> > Since this is an amendment to an item already noticed, Peter -- please circulate this to everyone tonight. It will be an amendment to an item already noticed for adoption.
> >
> > ---
> >
> > **From:** Norma Cantu
> > **Sent:** Thursday, April 29, 2021 3:21:05 PM
> > **To:** Kirsanow, Peter; Norma V. Cantú ; Michael Yaki
> > **Cc:** Gail Heriot (gheriot@me.com); Gail Heriot
> > **Subject:** RE: appointments

AMERICAN OVERSIGHT

Good drafting, Michael. That captures the discussion of the group of four.

I will leave it to the co-chair designees to decide whether to share this language with the whole commission.I

Norma

From: Kirsanow, Peter <pkirsanow@Beneschlaw.com>
Sent: Thursday, April 29, 2021 11:26 AM
To: Norma V. Cantú <normavcantu@gmail.com>; Norma Cantu <ncantu@usccr.gov>; Michael Yaki <MYaki@usccr.gov>
Cc: Gail Heriot (gheriot@me.com) <gheriot@me.com>; Gail Heriot <gheriot@usccr.gov>
Subject: [EXTERNAL] appointments

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Dear Norma,

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AMERICAN OVERSIGHT

--
Carissa B. Mulder

--
Carissa B. Mulder

AMERICAN OVERSIGHT

Date : 4/29/2021 10:23:35 PM
From : "Carissa Mulder" carissa.mulder@gmail.com
To : "Gail Heriot" gheriot@usccr.gov
Cc : "Carissa Mulder" CMulder@usccr.gov
Subject : [EXTERNAL] Re: appointments

CAUTION: This email is from outside USCCR.

I'll do it. I didn't want to circulate it until I heard back about Norma's response.

On Thu, Apr 29, 2021 at 10:21 PM Gail Heriot <gheriot@usccr.gov> wrote:

> Has this been done already?
>
> Gail Heriot
> Professor of Law
> University of San Diego
>
> Begin forwarded message:
>
> **From:** Michael Yaki <MYaki@usccr.gov>
> **Date:** April 29, 2021 at 7:19:24 PM PDT
> **To:** Norma Cantu <ncantu@usccr.gov>, "Kirsanow, Peter" <pkirsanow@beneschlaw.com>, "Norma V. Cantú" <normavcantu@gmail.com>
> **Cc:** "Gail Heriot (gheriot@me.com)" <gheriot@me.com>, Gail Heriot <gheriot@usccr.gov>
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> **From:** Norma Cantu
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> **To:** Kirsanow, Peter; Norma V. Cantú ; Michael Yaki
> **Cc:** Gail Heriot (gheriot@me.com); Gail Heriot
> **Subject:** RE: appointments
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AMERICAN OVERSIGHT

Norma

From: Kirsanow, Peter <pkirsanow@Beneschlaw.com>
Sent: Thursday, April 29, 2021 11:26 AM
To: Norma V. Cantú <normavcantu@gmail.com>; Norma Cantu <ncantu@usccr.gov>; Michael Yaki <MYaki@usccr.gov>
Cc: Gail Heriot (gheriot@me.com) <gheriot@me.com>; Gail Heriot <gheriot@usccr.gov>
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--
Carissa B. Mulder

AMERICAN OVERSIGHT

AMERICAN OVERSIGHT

Date : 4/29/2021 10:21:19 PM
From : "Gail Heriot" gheriot@usccr.gov
To : "Carissa Mulder" carissa.mulder@gmail.com, "Carissa Mulder" CMulder@usccr.gov
Subject : Fwd: appointments

Has this been done already?

Gail Heriot
Professor of Law
University of San Diego

Begin forwarded message:

> **From:** Michael Yaki <MYaki@usccr.gov>
> **Date:** April 29, 2021 at 7:19:24 PM PDT
> **To:** Norma Cantu <ncantu@usccr.gov>, "Kirsanow, Peter" <pkirsanow@beneschlaw.com>, "Norma V. Cantú" <normavcantu@gmail.com>
> **Cc:** "Gail Heriot (gheriot@me.com)" <gheriot@me.com>, Gail Heriot <gheriot@usccr.gov>
> **Subject: Re: appointments**
>
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>
> **From:** Norma Cantu
> **Sent:** Thursday, April 29, 2021 3:21:05 PM
> **To:** Kirsanow, Peter; Norma V. Cantú ; Michael Yaki
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>
> ---
>
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> **Sent:** Thursday, April 29, 2021 11:26 AM
> **To:** Norma V. Cantú <normavcantu@gmail.com>; Norma Cantu <ncantu@usccr.gov>; Michael Yaki <MYaki@usccr.gov>
> **Cc:** Gail Heriot (gheriot@me.com) <gheriot@me.com>; Gail Heriot <gheriot@usccr.gov>

AMERICAN OVERSIGHT

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AMERICAN OVERSIGHT

Date : 9/15/2020 4:01:35 PM
From : "Gail Heriot" gheriot@me.com
To : "Christian Adams" a@electionlawcenter.com
Cc : "Carissa Mulder" CMulder@usccr.gov, "Peter Kirsanow" pkirsanow@beneschlaw.com, "stephen gilchrist" thegilchristassociates@gmail.com, "John Mashburn" jkmash@comcast.net, "Thomas Simuel" tjsimuel32@gmail.com, "Alexander Heideman" aheideman@usccr.gov
Subject : Re: [EXTERNAL] EAC Board of Advisors

CAUTION: This email is from outside USCCR.

I think maybe usccr did elect these guys by majority vote. I remember Abby Thernstrom was our delegate years ago.

Gail Heriot
Professor of Law
University of San Diego

On Sep 15, 2020, at 12:56 PM, Christian Adams <a@electionlawcenter.com> wrote:

My guess is the USCCR does their own "appointment" itself. How we un-appoint is going to be the issue. It probably NEVER came up in a business meeting and therefore we should, as a commission have the authority to take it up in a business meeting and appoint-anew.

From: Carissa Mulder <CMulder@usccr.gov>
Sent: Tuesday, September 15, 2020 3:34 PM
To: Christian Adams <a@electionlawcenter.com>; Peter Kirsanow <pkirsanow@Beneschlaw.com>; 'Gail Heriot' <gheriot@me.com>; 'stephen gilchrist' <thegilchristassociates@gmail.com>
Cc: John Mashburn <jkmash@comcast.net>; 'Thomas Simuel' <tjsimuel32@gmail.com>; Alexander Heideman <aheideman@usccr.gov>
Subject: Re: [EXTERNAL] EAC Board of Advisors

Good question! I had no idea the USCCR got two designees to the .

From: Christian Adams <a@electionlawcenter.com>
Sent: Tuesday, September 15, 2020 3:15:28 PM
To: Peter Kirsanow; 'Gail Heriot'; 'stephen gilchrist'

AMERICAN OVERSIGHT

Cc: John Mashburn; 'Thomas Simuel'; Carissa Mulder; Alexander Heideman
Subject: [EXTERNAL] EAC Board of Advisors

CAUTION: This email is from outside USCCR.

Apparently the EAC gets two designees over the Election Assistance Commission Board of Advisors. Currently it is Yaki and Kladney. I just got a call from an EAC commission saying that Yaki is acting absurdly and exercising power over the EAC by threatening the Pelosi pick on the EAC with removal if he doesn't do what he wants, effectively making Yaki a commissioner on the EAC on many issues. He is causing mischief I don't even detail here.

My question is how does he get UNDONE from the EAC oversight commission? How does that get revoked and replaced?

AMERICAN OVERSIGHT

Date : 4/30/2021 8:55:46 AM
From : "Irena Vidulovic" ividulovic@usccr.gov
To : "Debo Adegbile" debo.adegbile@wilmerhale.com, "Debo Adegbile" debo.adegbile@wilmerhale.com
Subject : Fwd: appointments
Attachment : AI on Appointment Authority (general and EAC)(revised).docx;
Ready and able has been added to the AI language.

From: Michael Yaki <MYaki@usccr.gov>
Date: April 29, 2021 at 10:21:22 PM EDT
To: CommissionerAssistants <CommissionerAssistants@usccr.gov>, Commissioners <Commissioners@usccr.gov>
Cc: Mauro Morales <mmorales@usccr.gov>, David Ganz <dganz@usccr.gov>
Subject: Fw: appointments

This is a draft amendment to the AI on appointments that will be considered tomorrow. I have yet to review, but wanted to get this out to everyone.

From: Kirsanow, Peter <pkirsanow@Beneschlaw.com>
Sent: Thursday, April 29, 2021 12:25 PM
To: Norma V. Cantú ; Norma Cantu; Michael Yaki
Cc: Gail Heriot (gheriot@me.com); Gail Heriot
Subject: [EXTERNAL] appointments

> CAUTION: This email is from outside USCCR.

Dear Norma,

I've attached Michael's draft AI with the revisions we discussed regarding the Chair and Staff Director. I've also incorporated Debo's caveat that any prospective nominees be "ready, willing, and able to serve." I also removed the phrase "of their membership" from the description of the nominees. It may well be that there are not two commissioners from each caucus who are 'ready, willing, and able to serve" on the EAC, and therefore the Commission should be able to designate other individuals to serve. This does not conflict with the statute, which only states that the Commission shall designate two individuals to serve, but does not specify that they must be Commissioners. Looking forward to getting this done and confirming you as Chair tomorrow.

AMERICAN OVERSIGHT

AMERICAN OVERSIGHT

ADMINISTRATIVE INSTRUCTION __- __

COMMISSION APPOINTMENTS TO OTHER FEDERAL ENTITIES

Section 1.
.01___-Any authority specifically granted the Commission on~~f~~ Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Commission as a whole by majority vote.

.02 Any authority specifically granted the Staff Director of the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Staff Director.

.03 Any authority specifically granted the Chair of the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Chair.

Section 2
.02

(1) For the two (2) appointments to the U.S. Election Assistance Commission, the members appointed by Democratic authorities shall nominate two individuals who are ready, willing, and able to serve ~~of their membership~~, and the members appointed by the Republican authorities shall nominate two individuals who are ready, willing, and able to serve ~~of their membership~~.

(2) The members appointed by the Democratic authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Democratic authorities

(3) The members selected shall be placed in nomination and ratified in conformance with Section 1.

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Formatted: Font: (Default) Times New Roman, Complex Script Font: Times New Roman

AMERICAN OVERSIGHT

Date : 4/30/2021 9:27:42 AM
From : "Adegbile, Debo" Debo.Adegbile@wilmerhale.com
To : "Irena Vidulovic" ividulovic@usccr.gov
Subject : [EXTERNAL] Re: appointments

CAUTION: This email is from outside USCCR.

Will they be voted separately?

Sent from my iPhone

> On Apr 30, 2021, at 8:57 AM, Irena Vidulovic <ividulovic@usccr.gov> wrote:
>
> **EXTERNAL SENDER**
>
> Ready and able has been added to the AI language.
>
> **From:** Michael Yaki <MYaki@usccr.gov>
> **Date:** April 29, 2021 at 10:21:22 PM EDT
> **To:** CommissionerAssistants <CommissionerAssistants@usccr.gov>, Commissioners <Commissioners@usccr.gov>
> **Cc:** Mauro Morales <mmorales@usccr.gov>, David Ganz <dganz@usccr.gov>
> **Subject: Fw: appointments**
>
> This is a draft amendment to the AI on appointments that will be considered tomorrow. I have yet to review, but wanted to get this out to everyone.
>
> ---
>
> **From:** Kirsanow, Peter <pkirsanow@Beneschlaw.com>
> **Sent:** Thursday, April 29, 2021 12:25 PM
> **To:** Norma V. Cantú ; Norma Cantu; Michael Yaki
> **Cc:** Gail Heriot (gheriot@me.com); Gail Heriot
> **Subject:** [EXTERNAL] appointments
>
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AMERICAN OVERSIGHT

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<AI on Appointment Authority (general and EAC)(revised).docx>

AMERICAN OVERSIGHT

Date : 4/30/2021 9:39:20 AM
From : "Irena Vidulovic" ividulovic@usccr.gov
To : "Adegbile, Debo" Debo.Adegbile@wilmerhale.com
Subject : Re: [EXTERNAL] Re: appointments

It is one vote (it is an omnibus motion). They are lumping everything together! Also the new language added to the EAC AI:

It may well be that there are not two commissioners from each caucus who are 'ready, willing, and able to serve" on the EAC, and therefore the Commission should be able to designate other individuals to serve. This does not conflict with the statute, which only states that the Commission shall designate two individuals to serve, but does not specify that they must be Commissioners. Looking forward to getting this done and confirming you as Chair tomorrow.

Sent from my iPhone

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> Will they be voted separately?
>
> Sent from my iPhone
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> > **To:** CommissionerAssistants <CommissionerAssistants@usccr.gov>, Commissioners <Commissioners@usccr.gov>
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> > **Subject: Fw: appointments**

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To: Norma V. Cantú ; Norma Cantu; Michael Yaki
Cc: Gail Heriot (gheriot@me.com); Gail Heriot
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<AI on Appointment Authority (general and EAC) (revised).docx>

AMERICAN OVERSIGHT

Date : 4/30/2021 11:30:14 AM
From : "Gail Heriot" gheriot@me.com
To : "Carissa Mulder" carissa.mulder@gmail.com
Cc : "Kirsanow, Peter" pkirsanow@beneschlaw.com, "Christian Adams (adams@electionlawcenter.com)" adams@electionlawcenter.com, "stephen gilchrist" thegilchristassociates@gmail.com, "Peter Kirsanow" pkirsanow@usccr.gov, "Gail Heriot" gheriot@usccr.gov, "J. Christian Adams" jadams@usccr.gov, "John Mashburn" jmashburn@usccr.gov, "Thomas Simuel" tsimuel@usccr.gov, "Alexander Heideman" aheideman@usccr.gov, "Carissa Mulder" CMulder@usccr.gov, "Stephen Gilchrist" sgilchrist@usccr.gov
Subject : Re: [EXTERNAL] Revised EAC AI

*** CAUTION: This email is from outside USCCR. ***

We actually agreed (or at least I did) to make the second part a Memorandum of Understanding (since it is just a Commission policy and not directed to the staff).

Gail Heriot
Professor of Law
University of San Diego

> On Apr 29, 2021, at 9:47 AM, Carissa Mulder <carissa.mulder@gmail.com> wrote:
>
>
> Hi everyone,
>
> Please see the attached revised EAC AI. It incorporates changes discussed by Pete, Gail, Norma, and Yaki yesterday, removes the requirement that nominees to the EAC be members of the Commission, and adds Debo's language that any nominees "be ready, able, and willing to serve". Pete is going to send this to Norma, and hopefully all goes well.
>
> --
> Carissa B. Mulder
>
>
> <AI on Appointment Authority (general and EAC)(revised).docx>

AMERICAN OVERSIGHT

Date : 4/30/2021 11:33:41 AM
From : "Carissa Mulder" CMulder@usccr.gov
To : "Gail Heriot" gheriot@me.com, "Carissa Mulder" carissa.mulder@gmail.com
Cc : "Kirsanow, Peter" pkirsanow@beneschlaw.com, "Christian Adams (adams@electionlawcenter.com)" adams@electionlawcenter.com, "stephen gilchrist" thegilchristassociates@gmail.com, "Peter Kirsanow" pkirsanow@usccr.gov, "Gail Heriot" gheriot@usccr.gov, "J. Christian Adams" jadams@usccr.gov, "John Mashburn" jmashburn@usccr.gov, "Thomas Simuel" tsimuel@usccr.gov, "Alexander Heideman" aheideman@usccr.gov, "Stephen Gilchrist" sgilchrist@usccr.gov
Subject : Re: [EXTERNAL] Revised EAC AI

Yes, I changed that language in how Pete is introducing the motion to an MOU.

From: Gail Heriot <gheriot@me.com>
Sent: Friday, April 30, 2021 11:30:11 AM
To: Carissa Mulder
Cc: Kirsanow, Peter; Christian Adams (adams@electionlawcenter.com); stephen gilchrist; Peter Kirsanow; Gail Heriot; J. Christian Adams; John Mashburn; Thomas Simuel; Alexander Heideman; Carissa Mulder; Stephen Gilchrist
Subject: Re: [EXTERNAL] Revised EAC AI

*** CAUTION: This email is from outside USCCR. ***

We actually agreed (or at least I did) to make the second part a Memorandum of Understanding (since it is just a Commission policy and not directed to the staff).

Gail Heriot
Professor of Law
University of San Diego

> On Apr 29, 2021, at 9:47 AM, Carissa Mulder <carissa.mulder@gmail.com> wrote:
>
>
> Hi everyone,
>
> Please see the attached revised EAC AI. It incorporates changes discussed by Pete, Gail, Norma, and Yaki yesterday, removes the requirement that nominees to the EAC be members of the Commission, and adds Debo's language that any nominees "be ready, able, and willing to serve". Pete is going to send this to Norma, and hopefully all goes well.
>
> --
> Carissa B. Mulder
>
>
> <AI on Appointment Authority (general and EAC)(revised).docx>

AMERICAN OVERSIGHT

Date : 9/15/2020 4:00:33 PM
From : "Carissa Mulder" CMulder@usccr.gov
To : "Christian Adams" a@electionlawcenter.com, "'Peter Kirsanow'" pkirsanow@Beneschlaw.com, "'Gail Heriot'" gheriot@me.com, "'stephen gilchrist'" thegilchristassociates@gmail.com
Cc : "'John Mashburn'" jkmash@comcast.net, "'Thomas Simuel'" tjsimuel32@gmail.com, "Alexander Heideman" aheideman@usccr.gov
Subject : Re: [EXTERNAL] EAC Board of Advisors

Looking at the document about the appointment of the advisory board members, I think that is correct, Christian. Catherine probably appointed them without ever bringing it up.

From: Christian Adams <a@electionlawcenter.com>
Sent: Tuesday, September 15, 2020 3:55:45 PM
To: Carissa Mulder; 'Peter Kirsanow'; 'Gail Heriot'; 'stephen gilchrist'
Cc: 'John Mashburn'; 'Thomas Simuel'; Alexander Heideman
Subject: RE: [EXTERNAL] EAC Board of Advisors

> CAUTION: This email is from outside USCCR.

My guess is the USCCR does their own "appointment" itself. How we un-appoint is going to be the issue. It probably NEVER came up in a business meeting and therefore we should, as a commission have the authority to take it up in a business meeting and appoint-anew.

From: Carissa Mulder <CMulder@usccr.gov>
Sent: Tuesday, September 15, 2020 3:34 PM
To: Christian Adams <a@electionlawcenter.com>; Peter Kirsanow <pkirsanow@Beneschlaw.com>; 'Gail Heriot' <gheriot@me.com>; 'stephen gilchrist' <thegilchristassociates@gmail.com>
Cc: John Mashburn <jkmash@comcast.net>; 'Thomas Simuel' <tjsimuel32@gmail.com>; Alexander Heideman <aheideman@usccr.gov>
Subject: Re: [EXTERNAL] EAC Board of Advisors

Good question! I had no idea the USCCR got two designees to the EAC Board of Advisors. Here's the list of all the current advisors: https://www.eac.gov/sites/default/files/boardofadvisors/BOARoster_072720.pdf .

From: Christian Adams <a@electionlawcenter.com>
Sent: Tuesday, September 15, 2020 3:15:28 PM
To: Peter Kirsanow; 'Gail Heriot'; 'stephen gilchrist'
Cc: John Mashburn; 'Thomas Simuel'; Carissa Mulder; Alexander Heideman
Subject: [EXTERNAL] EAC Board of Advisors

> CAUTION: This email is from outside USCCR.

Apparently the EAC gets two designees over the Election Assistance Commission Board of Advisors. Currently it is Yaki and Kladney. I just got a call from an EAC commission saying that

AMERICAN OVERSIGHT

Yaki is acting absurdly and exercising power over the EAC by threatening the Pelosi pick on the EAC with removal if he doesn't do what he wants, effectively making Yaki a commissioner on the EAC on many issues. He is causing mischief I don't even detail here.

My question is how does he get UNDONE from the EAC oversight commission? How does that get revoked and replaced?

AMERICAN OVERSIGHT

Date : 9/15/2020 3:46:51 PM
From : "Christian Adams" a@electionlawcenter.com
To : "'stephen gilchrist'" thegilchristassociates@gmail.com
Cc : "'Carissa Mulder'" CMulder@usccr.gov, "'Peter Kirsanow'" pkirsanow@beneschlaw.com, "'Gail Heriot'" gheriot@me.com, "'John Mashburn'" jkmash@comcast.net, "'Thomas Simuel'" tjsimuel32@gmail.com, "'Alexander Heideman'" aheideman@usccr.gov
Subject : RE: [EXTERNAL] EAC Board of Advisors

CAUTION: This email is from outside USCCR.

To understand the significance of it: Yaki is throwing his weight around to badger the EAC and EAC staff to do what Pelosi wants regarding elections and states moving toward various mail systems. That which was in the report we just killed is being pushed as to what the EAC should be advocating. He is actually the CHAIR of the advisory commission I am told. Which is insanity.

From: stephen gilchrist <thegilchristassociates@gmail.com>
Sent: Tuesday, September 15, 2020 3:44 PM
To: Christian Adams <a@electionlawcenter.com>
Cc: Carissa Mulder <CMulder@usccr.gov>; Peter Kirsanow <pkirsanow@beneschlaw.com>; Gail Heriot <gheriot@me.com>; John Mashburn <jkmash@comcast.net>; Thomas Simuel <tjsimuel32@gmail.com>; Alexander Heideman <aheideman@usccr.gov>
Subject: Re: [EXTERNAL] EAC Board of Advisors

Christian - I would support that 100%. Iam surprised to learn of this as well. Thomas please advise.

On Tue, Sep 15, 2020, 3:42 PM Christian Adams <a@electionlawcenter.com> wrote:

> Ok, we need to get one of them off and one of us on, period. We have leverage now for reasons we have spent a great deal of time already talking about. Obviously Yaki would be the best one to go, but either of them.
>
> Ideas: John Masburn and someone else (Carissa?) approach Yaki and Kladney's SA and explain the new circumstances and there needs to be equity. Other ideas?
>
> ---
>
> **From:** Carissa Mulder <CMulder@usccr.gov>
> **Sent:** Tuesday, September 15, 2020 3:34 PM
> **To:** Christian Adams <a@electionlawcenter.com>; Peter Kirsanow
> >
> **Cc:** John Mashburn <jkmash@comcast.net>; 'Thomas Simuel' <tjsimuel32@gmail.com>; Alexander Heideman <aheideman@usccr.gov>
> **Subject:** Re: [EXTERNAL] EAC Board of Advisors
>
> Good question! I had no idea the USCCR got two designees to the EAC Board of Advisors. Here's the list of all the current advisors: https://www.eac.gov/sites/default/files/boardofadvisors/BOARoster_072720.pdf .

AMERICAN OVERSIGHT

From: Christian Adams <a@electionlawcenter.com>
Sent: Tuesday, September 15, 2020 3:15:28 PM
To: Peter Kirsanow; 'Gail Heriot'; 'stephen gilchrist'
Cc: John Mashburn; 'Thomas Simuel'; Carissa Mulder; Alexander Heideman
Subject: [EXTERNAL] EAC Board of Advisors

CAUTION: This email is from outside USCCR.

Apparently the EAC gets two designees over the Election Assistance Commission Board of Advisors. Currently it is Yaki and Kladney. I just got a call from an EAC commission saying that Yaki is acting absurdly and exercising power over the EAC by threatening the Pelosi pick on the EAC with removal if he doesn't do what he wants, effectively making Yaki a commissioner on the EAC on many issues. He is causing mischief I don't even detail here.

My question is how does he get UNDONE from the EAC oversight commission? How does that get revoked and replaced?

AMERICAN OVERSIGHT

Date : 7/19/2021 2:27:57 PM
From : "Juana Silverio" jsilverio@usccr.gov
To : "Norma Cantu" ncantu@usccr.gov, "David Kladney" dkladney@usccr.gov, "Debo P. Adegbile" dadegbile@usccr.gov, "Michael Yaki" MYaki@usccr.gov, "Irena Vidulovic" ividulovic@usccr.gov, "Amy Royce" aroyce@usccr.gov, "Alec Deull" adeull@usccr.gov
Cc : "michael@michaelyaki.com" michael@michaelyaki.com, "Zervoudis, Flor" Flor.Zervoudis@wilmerhale.com, "Adegbile, Debo" Debo.Adegbile@wilmerhale.com
Subject : (12P PST/2P CST) DEM Caucus Meeting re: July 23rd Business Mtg.

Agenda:

1. Discuss July 23rd business mtg votes
    a. Findings and recs for SER Maternal Health report
2. EAC nomination
3. FY22 concept paper rankings

__Please send in other agenda items at your earlies convenience__

AMERICAN OVERSIGHT

Date : 7/22/2021 4:09:07 PM
From : "Carissa Mulder" carissa.mulder@gmail.com
To : "Kirsanow, Peter" pkirsanow@beneschlaw.com
Cc : "Peter Kirsanow" pkirsanow@usccr.gov, "Carissa Mulder" cmulder@usccr.gov
Subject : [EXTERNAL] EAC - question from Christian
Attachment : image001.png;

CAUTION: This email is from outside USCCR.

Hi Pete,

I just talked to John. Christian is inclined to ask Mauro about the letter from the EAC (see attached) during the staff director's report tomorrow. John says that he thinks Christian is kind of spoiling for a fight with Mauro. I think a fight (and John kind of agrees) is likely to make things more difficult when it comes to getting things settled about EAC representatives, and that it would be better to approach Norma offline. As John understands it, Christian wants to ask Mauro when he received the letter, who he told about it, and what he did about it. What do you think?

--
Carissa B. Mulder

AMERICAN OVERSIGHT

11:19

EAC Letter to USCCR re Board of Advisors
PDF - 63 KB

U.S. Election Assistance Commission

633 3rd Street NW, Suite 200
Washington, DC 20001

March 5, 2021

United States Commission on Civil Rights
Mauro Morales, Staff Director
1331 Pennsylvania Ave., NW, STE 1150
Washington, D.C. 20425
mmorales@usccr.gov

Re: U.S. Election Assistance Commission
Board of Advisors Membership Appointment

Dear Mr. Morales,

As you are aware, the Help America Vote Act of 2002 (HAVA) created the U.S. Election Assistance Commission (EAC) and established three advisory boards to assist the EAC: Board of Advisors, Standards Board, and Technical Guidelines Development Committee. The advisory boards are primarily charged with providing advice, guidance, and support to the EAC on the ongoing development of the Voluntary Voting System Guidelines (VVSG).

Under Section 214 of HAVA, your organization is authorized to appoint two members to the Board of Advisors. The Board of Advisors Charter and Bylaws govern the advisory board.

Please be advised that your designated representatives' two-year terms to the Board of Advisors expire on April 13, 2021. You can either reappoint your current representative(s) or appoint new representative(s) for a new two-year term. In compliance with HAVA, please make appointments "in a manner which ensures that the Board of Advisors will be bipartisan in nature and will reflect the various geographic regions of the United States." 52 U.S.C § 20944(b).

Your current representatives are:

Michael Yaki

David Kladney

The new term of your member representatives will begin on April 13, 2021 coinciding with the renewal of the Board of Advisor's Charter.

Please use the enclosed Notice of Representation form to advise us of your designated representatives to serve on the EAC Board of Advisors for the upcoming two-year term. **Please return this completed form by email to krayburn@eac.gov no later than March 26, 2021.**

While the EAC recently adopted VVSG 2.0, we are committed to an agile process that includes continually working with our advisory boards to identify enhancements to the VVSG. The usability, accessibility, and security of voting systems continue to be of critical importance, and recommendations from the advisory boards are as imperative as ever. Therefore, your prompt response to this letter is greatly appreciated.

Thank you for your attention to this matter. If we can be of assistance, please feel free to contact us at 202-740-6546 or krayburn@eac.gov.

Sincerely,

Mona Harrington

Mona Harrington
Executive Director
U.S. Election Assistance Commission

AMERICAN OVERSIGHT

Date : 7/22/2021 4:17:21 PM
From : "Carissa Mulder" carissa.mulder@gmail.com
To : "John Mashburn" jkmash@comcast.net, "John Mashburn" jmashburn@usccr.gov, "Carissa Mulder" cmulder@usccr.gov
Subject : [EXTERNAL] EAC

CAUTION: This email is from outside USCCR.

Pete agrees with you and me that Christian shouldn't ask about the EAC during the business meeting. He says they should talk to Norma first.

--
Carissa B. Mulder

AMERICAN OVERSIGHT

Date : 7/22/2021 4:15:28 PM
From : "Kirsanow, Peter" pkirsanow@Beneschlaw.com
To : "Carissa Mulder" carissa.mulder@gmail.com
Cc : "Peter Kirsanow" pkirsanow@usccr.gov, "Carissa Mulder" cmulder@usccr.gov
Subject : [EXTERNAL] RE: EAC - question from Christian

CAUTION: This email is from outside USCCR.

I agree. Let's talk to Norma

From: Carissa Mulder <carissa.mulder@gmail.com>
Sent: Thursday, July 22, 2021 4:08 PM
To: Kirsanow, Peter <pkirsanow@Beneschlaw.com>
Cc: Peter Kirsanow <pkirsanow@usccr.gov>; Carissa Mulder <cmulder@usccr.gov>
Subject: EAC - question from Christian

Hi Pete,

I just talked to John. Christian is inclined to ask Mauro about the letter from the EAC (see attached) during the staff director's report tomorrow. John says that he thinks Christian is kind of spoiling for a fight with Mauro. I think a fight (and John kind of agrees) is likely to make things more difficult when it comes to getting things settled about EAC representatives, and that it would be better to approach Norma offline. As John understands it, Christian wants to ask Mauro when he received the letter, who he told about it, and what he did about it. What do you think?

--
Carissa B. Mulder

AMERICAN OVERSIGHT

Date : 7/23/2021 5:39:28 PM
From : "Kevin Rayburn" KRayburn@eac.gov
To : "mmorales@usccr.gov" mmorales@usccr.gov
Cc : "Christy McCormick" cmccormick@eac.gov, "Mona Harrington" mharrington@eac.gov, "Tina Barton" TBarton@eac.gov
Subject : [EXTERNAL] USCCR Appointments to EAC Board of Advisors
Attachment : EAC Letter to USCCR re BOA Appointments 7.23.21.pdf;Notice-of-Representation-Form-Board-Advisors-2021.pdf;

CAUTION: This email is from outside USCCR.

Good Afternoon Mr. Morales,

Please find attached a follow-up letter concerning the U.S. Commission on Civil Rights' appointments to the U.S. Election Assistance Commission Board of Advisors.

Sincerely,

Kevin Rayburn | General Counsel
U.S. Election Assistance Commission
633 3rd Street NW, Suite 200 | Washington, DC 20001
www.eac.gov

AMERICAN OVERSIGHT

U.S. ELECTION ASSISTANCE COMMISSION
633 3rd St. NW, Suite 200
Washington, DC 20001

July 23, 2021

United States Commission on Civil Rights
Mauro Morales, Staff Director
1331 Pennsylvania Ave., NW, STE 1150
Washington, D.C. 20425
mmorales@usccr.gov

Re: U.S. Election Assistance Commission
Board of Advisors Membership Appointments

Dear Mr. Morales,

This letter is to follow up on the previous letter sent on March 5, 2021 concerning the United States Commission on Civil Rights' representatives to the Unites States Election Assistance Commission (EAC) Board of Advisors. Under Section 214 of the Help America Vote Act of 2002 (HAVA), your organization is authorized to appoint two members to this federal advisory committee. The members serve two-year terms and are not term limited.

Your current representatives are:

Mr. Michael Yaki
Mr. David Kladney

The terms of the U.S. Commission on Civil Rights' designated representatives expired on April 13, 2021, coinciding with the renewal of the Board of Advisor's Charter. To date we have not received notice from the U.S. Commission on Civil Rights of its designated representatives for the term running from April 13, 2021 – April 13, 2023. Please use the enclosed Notice of Representation form to advise us of your designated representatives to serve on the EAC Board of Advisors for this two-year term. In compliance with HAVA, appointments must be made "in a manner which ensures that the Board of Advisors will be bipartisan in nature and will reflect the various geographic regions of the United States." 52 U.S.C § 20944(b).

Please return this completed form by email to krayburn@eac.gov.

Thank you for your attention to this matter. If we can be of assistance, please feel free to contact us at 202-740-6546 or krayburn@eac.gov.

Sincerely,

Kevin Rayburn
General Counsel
U.S. Election Assistance Commission

CC: Christy McCormick, EAC Commissioner and Board of Advisors DFO
Mona Harrington, EAC Executive Director
Tina Barton, EAC Senior Program Advisor and Board of Advisors ADFO

AMERICAN OVERSIGHT

Notice of Representation
United States Election Assistance Commission
Board of Advisors

In accordance with 52 U.S.C. § 20944 of the Help America Vote Act of 2002, your office submits the following individual(s) as a member of the Election Assistance Commission Board of Advisors:

Designated Representative

Name: _____

Title: _____

Address: _____

_____

Phone: _____

Email: _____

Party Affiliation: _____

Designated Representative

Name: _____

Title: _____

Address: _____

_____

Phone: _____

Email: _____

Party Affiliation: _____

Name and Title of Appointing Official

Print Name: _____

Print Title: _____

Signature: _____ Date: _____

Please return the completed form via email to EAC General Counsel Kevin Rayburn (krayburn@eac.gov).

AMERICAN OVERSIGHT

Date : 7/28/2021 1:47:51 PM
From : "Adegbile, Debo" Debo.Adegbile@wilmerhale.com
To : "Irena Vidulovic" ividulovic@usccr.gov
Subject : [EXTERNAL] RE: IMPORTANT Fw: Commissioner Appointments to the Election Assistance Commission
Attachment : image001.gif;image002.gif;

> CAUTION: This email is from outside USCCR.

Jenny Carroll and Alison Riggs and Leah Aden.

Do I need to know if they are willing to serve?

Debo P. Adegbile | WilmerHale
7 World Trade Center
250 Greenwich Street
New York, NY 10007 USA
+1 212 295 6717 (t)
+1 212 230 8888 (f)
debo.adegbile@wilmerhale.com

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From: Irena Vidulovic <ividulovic@usccr.gov>
Sent: Wednesday, July 28, 2021 1:44 PM
To: Adegbile, Debo <Debo.Adegbile@wilmerhale.com>
Subject: IMPORTANT Fw: Commissioner Appointments to the Election Assistance Commission

EXTERNAL SENDER

Adegbile,

Can you please send me your nominations for the EAC by tomorrow. I know you mentioned some folks including Stacey Abrams but I also know it should be folks willing and able to serve. I know we also discussed the Alabama SAC Chair Jenny Caroll.

Let me know.

AMERICAN OVERSIGHT

Thanks,

Irena

From: Mauro Morales
Sent: Wednesday, July 28, 2021 11:30 AM
To: Commissioners
Cc: David Ganz; CommissionerAssistants
Subject: Commissioner Appointments to the Election Assistance Commission

Dear Commissioners-

At the request and in consultation with the Chair, I am sending this email to start the EAC nomination process for Commissioners.

Per the AI voted on during the April 30th meeting (language included below), each caucus is requested to submit two candidates for consideration by COB Friday, July 30, 2021. Once the names are submitted, OGC will conduct an ethics check to be completed by Wednesday, August 4, 2021. Each caucus will then have 24 hours to submit caucus strikes (Thursday, August 5, 2021 COB). The Chair will communicate the two names to EAC no later than Friday, August 6, 2021.

Please let the Chair or I know if you have any questions or concerns.

--

AI language:

Section 1.

.01 Any authority specifically granted the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Commission as a whole by majority vote.

AMERICAN OVERSIGHT

.02 Any authority specifically granted the Staff Director of the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Staff Director.

.03 Any authority specifically granted the Chair of the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Chair.

Section 2

.02

(1) For the two (2) appointments to the U.S. Election Assistance Commission, the members appointed by Democratic authorities shall nominate two individuals who are ready, willing, and able to serve, and the members appointed by the Republican authorities shall nominate two individuals who are ready, willing, and able to serve.

(2) The members appointed by the Democratic authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Democratic authorities

(3) The members selected shall be placed in nomination and ratified in conformance with Section 1.

Mauro Morales

Staff Director

U.S. Commission on Civil Rights

P: 202-376-7796| F: 202-376-7672

AMERICAN OVERSIGHT

Mmorales@usccr.gov

http://usccr.gov/

1331 Pennsylvania Avenue, NW Suite 1150

Washington D.C. 20425

Follow Us on Twitter & Facebook:

#USCCR

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AMERICAN OVERSIGHT

Date : 7/28/2021 1:49:34 PM
From : "Irena Vidulovic" ividulovic@usccr.gov
To : "Adegbile, Debo" Debo.Adegbile@wilmerhale.com
Subject : Re: [EXTERNAL] RE: IMPORTANT Fw: Commissioner Appointments to the Election Assistance Commission
Attachment : image001.gif;image002.gif;

I think that it would be best, I can reach out to Jenny. Can you reach out to Alison and Leah and see if they would be interested?

From: Adegbile, Debo <Debo.Adegbile@wilmerhale.com>
Sent: Wednesday, July 28, 2021 1:47:34 PM
To: Irena Vidulovic
Subject: [EXTERNAL] RE: IMPORTANT Fw: Commissioner Appointments to the Election Assistance Commission

> CAUTION: This email is from outside USCCR.

Jenny Carroll and Alison Riggs and Leah Aden.

Do I need to know if they are willing to serve?

Debo P. Adegbile | WilmerHale
7 World Trade Center
250 Greenwich Street
New York, NY 10007 USA
+1 212 295 6717 (t)
+1 212 230 8888 (f)
debo.adegbile@wilmerhale.com

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For more information about WilmerHale, please visit us at http://www.wilmerhale.com.

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Sent: Wednesday, July 28, 2021 1:44 PM
To: Adegbile, Debo <Debo.Adegbile@wilmerhale.com>
Subject: IMPORTANT Fw: Commissioner Appointments to the Election Assistance Commission

EXTERNAL SENDER

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AMERICAN OVERSIGHT

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Let me know.

Thanks,
Irena

From: Mauro Morales
Sent: Wednesday, July 28, 2021 11:30 AM
To: Commissioners
Cc: David Ganz; CommissionerAssistants
Subject: Commissioner Appointments to the Election Assistance Commission

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Please let the Chair or I know if you have any questions or concerns.

--
AI language:

Section 1.
.01 Any authority specifically granted the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Commission as a whole by majority vote.

.02 Any authority specifically granted the Staff Director of the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Staff Director.

.03 Any authority specifically granted the Chair of the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Chair.

AMERICAN OVERSIGHT

Section 2
.02

(1) For the two (2) appointments to the U.S. Election Assistance Commission, the members appointed by Democratic authorities shall nominate two individuals who are ready, willing, and able to serve, and the members appointed by the Republican authorities shall nominate two individuals who are ready, willing, and able to serve.

(2) The members appointed by the Democratic authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Democratic authorities

(3) The members selected shall be placed in nomination and ratified in conformance with Section 1.

Mauro Morales
Staff Director
U.S. Commission on Civil Rights
P: 202-376-7796| F: 202-376-7672
Mmorales@usccr.gov
http://usccr.gov/
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425

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AMERICAN OVERSIGHT

AMERICAN OVERSIGHT

AMERICAN OVERSIGHT

Date : 7/28/2021 3:45:22 PM
From : "Irena Vidulovic" ividulovic@usccr.gov
To : "Juana Silverio" jsilverio@usccr.gov, "Mauro Morales" mmorales@usccr.gov
Cc : "Debo P. Adegbile" dadegbile@usccr.gov, "Amy Royce" aroyce@usccr.gov, "Alec Deull" adeull@usccr.gov
Subject : EAC Nominations

Dear Juana and Mauro,

Commissioner Adegbile intends to nominate the following folks to the EAC. We will be reaching out to them to make sure that they are able and willing to serve.

Alabama SAC Chair Jenny Carroll https://www.law.ua.edu/directory/People/view/Jenny_Carroll

Jenny Carroll | University of Alabama School of Law

www.law.ua.edu

For more than 140 years, the University of Alabama School of Law has produced attorneys who become leaders locally, nationally and globally. Alabama Law provides a top-rate education at an affordable cost in a supportive and diverse environment.

Alison Riggs https://southerncoalition.org/staff/allison-riggs/

Allison Riggs - Southern Coalition for Social Justice

southerncoalition.org

Allison Riggs leads the voting rights program at the Southern Coalition for Social Justice, an organization she joined in 2009. In March of 2020, she also took over

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against voter suppression, and advocating for electoral reforms that would expand access to voting.

Leah Aden https://www.naacpldf.org/about-us/staff/leah-c-aden/

Leah C. Aden

www.naacpldf.org

Leah C. Aden has served as a Deputy Director of Litigation at the NAACP Legal Defense & Educational Fund, Inc. (LDF) since October 2018, assisting in the

Irena Vidulovic
Special Assistant to Commissioner Debo P. Adegbile
U.S. Commission on Civil Rights
M: 202-591-9969
ividulovic@usccr.gov
http://usccr.gov/
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425

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Date : 7/28/2021 6:52:23 PM
From : "John Mashburn" jmashburn@usccr.gov
To : "Christian Adams" a@electionlawcenter.com
Subject : Fw: Commissioner Appointments to the Election Assistance Commission
Attachment : image001.gif;image002.gif;

So after months they give us 2 days to submit names.

Hans is one.

Do you want you or Cleta to be the other?

I will clear through Heriot, Kirsanow and Gilchrist.

From: Mauro Morales
Sent: Wednesday, July 28, 2021 11:30:30 AM
To: Commissioners
Cc: David Ganz; CommissionerAssistants
Subject: Commissioner Appointments to the Election Assistance Commission

Dear Commissioners-

At the request and in consultation with the Chair, I am sending this email to start the EAC nomination process for Commissioners.

Per the AI voted on during the April 30th meeting (language included below), each caucus is requested to submit two candidates for consideration by COB Friday, July 30, 2021. Once the names are submitted, OGC will conduct an ethics check to be completed by Wednesday, August 4, 2021. Each caucus will then have 24 hours to submit caucus strikes (Thursday, August 5, 2021 COB). The Chair will communicate the two names to EAC no later than Friday, August 6, 2021.

Please let the Chair or I know if you have any questions or concerns.

--
AI language:

Section 1.
.01 Any authority specifically granted the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Commission as a whole by majority vote.

.02 Any authority specifically granted the Staff Director of the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Staff Director.

.03 Any authority specifically granted the Chair of the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Chair.

Section 2
.02
(1) For the two (2) appointments to the U.S. Election Assistance Commission, the members appointed by Democratic authorities shall nominate two individuals who are ready, willing, and able to serve, and the members appointed by the Republican authorities shall nominate two individuals who are ready, willing, and able to serve.

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appointed by the Republican authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Democratic authorities

(3) The members selected shall be placed in nomination and ratified in conformance with Section 1.

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Mmorales@usccr.gov<mailto:Mmorales@usccr.gov>
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Date : 7/29/2021 4:01:10 AM
From : "Christian Adams" a@electionlawcenter.com
To : "John Mashburn" jmashburn@usccr.gov
Subject : [EXTERNAL] RE: Fw: Commissioner Appointments to the Election Assistance Commission

CAUTION: This email is from outside USCCR.

me or Hans. 100 percent NOT cleta.

-------- Original message --------
From: John Mashburn <jmashburn@usccr.gov>
Date: 7/29/21 12:52 AM (GMT+01:00)
To: Christian Adams <a@electionlawcenter.com>
Subject: Fw: Commissioner Appointments to the Election Assistance Commission

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Do you want you or Cleta to be the other?

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Please let the Chair or I know if you have any questions or concerns.

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AI language:

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(2) The members appointed by the Democratic authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Democratic authorities

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<https://www.facebook.com/USCCRgov/>
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Date : 7/29/2021 5:52:20 AM
From : "Christian Adams" a@electionlawcenter.com
To : "John Mashburn" jmashburn@usccr.gov
Subject : [EXTERNAL] RE: Fw: Commissioner Appointments to the Election Assistance Commission

CAUTION: This email is from outside USCCR.

this is nuts. eac should do the ethics check, not usccr

-------- Original message --------
From: John Mashburn <jmashburn@usccr.gov>
Date: 7/29/21 12:52 AM (GMT+01:00)
To: Christian Adams <a@electionlawcenter.com>
Subject: Fw: Commissioner Appointments to the Election Assistance Commission

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<https://www.facebook.com/USCCRgov/>
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Date : 7/29/2021 5:53:08 AM
From : "Christian Adams" a@electionlawcenter.com
To : "John Mashburn" jmashburn@usccr.gov
Subject : [EXTERNAL] RE: Fw: Commissioner Appointments to the Election Assistance Commission

CAUTION: This email is from outside USCCR.

to be clear, me and Hans.

-------- Original message --------
From: John Mashburn <jmashburn@usccr.gov>
Date: 7/29/21 12:52 AM (GMT+01:00)
To: Christian Adams <a@electionlawcenter.com>
Subject: Fw: Commissioner Appointments to the Election Assistance Commission

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<https://www.facebook.com/USCCRgov/>
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Date : 7/29/2021 9:06:28 AM
From : "John Mashburn" jmashburn@usccr.gov
To : "Christian Adams" a@electionlawcenter.com
Subject : Re: [EXTERNAL] RE: Fw: Commissioner Appointments to the Election Assistance Commission

Got it

From: Christian Adams <a@electionlawcenter.com>
Sent: Thursday, July 29, 2021 5:53:05 AM
To: John Mashburn
Subject: [EXTERNAL] RE: Fw: Commissioner Appointments to the Election Assistance Commission

> CAUTION: This email is from outside USCCR.

to be clear, me and Hans.

-------- Original message --------
From: John Mashburn <jmashburn@usccr.gov>
Date: 7/29/21 12:52 AM (GMT+01:00)
To: Christian Adams <a@electionlawcenter.com>
Subject: Fw: Commissioner Appointments to the Election Assistance Commission

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<https://www.facebook.com/USCCRgov/>

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Date : 7/29/2021 10:58:52 AM
From : "Stephen Gilchrist" sgilchrist@usccr.gov
To : "John Mashburn" jmashburn@usccr.gov, "Kirsanow, Peter" pkirsanow@Beneschlaw.com, "Gail Heriot" gheriot@usccr.gov, "Christian Adams" a@electionlawcenter.com
Cc : "Carissa Mulder" CMulder@usccr.gov, "Thomas Simuel" tsimuel@usccr.gov, "Alexander Heideman" aheideman@usccr.gov
Subject : Re: Commissioner Appointments to the Election Assistance Commission
Attachment : image001.gif;image002.gif;

I am fine with Comm. Adams suggestion.

From: John Mashburn
Sent: Thursday, July 29, 2021 10:43:10 AM
To: Kirsanow, Peter; Stephen Gilchrist; Gail Heriot; Christian Adams
Cc: Carissa Mulder; Thomas Simuel; Alexander Heideman
Subject: FW: Commissioner Appointments to the Election Assistance Commission

Per the Caucus discussion a few months back about USCCR's two designees to the EAC's Bd. of Advisors, Cmnr Adams would like the Caucus to recommend Cleta Mitchell and himself as the two nominees from the Republican Commissioners -- per the new AI on the issue (*see below in Mauro's email*). Democrat Cmnrs would then need to choose between Cleta Mitchell and Cmnr Adams as one of USCCR's two designees to the EAC Bd. of Advisors.

Cmnr Adams wanted me to double check that this is still OK with the 3 of you before he submits his and Cleta's names to Staff Director Morales by COB tomorrow, Friday July 30.

Please email me back to confirm that each of you is OK with submitting Cleta's and Cmnr Adams' names for the EAC .

From: Mauro Morales <mmorales@usccr.gov>
Date: Wednesday, July 28, 2021 at 11:30 AM
To: Commissioners <Commissioners@usccr.gov>
Cc: David Ganz <dganz@usccr.gov>,
"CommissionerAssistants@usccr.gov" <CommissionerAssistants@usccr.gov>
Subject: Commissioner Appointments to the Election Assistance Commission

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AMERICAN OVERSIGHT

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Date : 9/15/2020 5:15:46 PM
From : "Christian Adams" a@electionlawcenter.com
To : "'Carissa Mulder'" CMulder@usccr.gov, "'Peter Kirsanow'" pkirsanow@Beneschlaw.com, "'Gail Heriot'" gheriot@me.com, "'stephen gilchrist'" thegilchristassociates@gmail.com
Cc : "'John Mashburn'" jkmash@comcast.net, "'Thomas Simuel'" tjsimuel32@gmail.com, "'Alexander Heideman'" aheideman@usccr.gov
Subject : RE: [EXTERNAL] EAC Board of Advisors

> CAUTION: This email is from outside USCCR.

John Mashburn found this in HAVA. Sections 214-216 of HAVA – note in sec. 214 (in yellow below) it says that appointments must be made in a manner which ensures that the Board of Advisors will be bipartisan in nature and will reflect the various geographic regions of the United States.

I could go through member by member, but two democrats from the USCCR almost ensures the board is not bipartisan but probably has a 5 vote D majority if you count Chris Herren as a D, which I do. Same with Richard PILGER.

From: Carissa Mulder <CMulder@usccr.gov>
Sent: Tuesday, September 15, 2020 4:01 PM
To: Christian Adams <a@electionlawcenter.com>; 'Peter Kirsanow' <pkirsanow@Beneschlaw.com>; 'Gail Heriot' <gheriot@me.com>; 'stephen gilchrist' <thegilchristassociates@gmail.com>
Cc: 'John Mashburn' <jkmash@comcast.net>; 'Thomas Simuel' <tjsimuel32@gmail.com>; Alexander Heideman <aheideman@usccr.gov>
Subject: Re: [EXTERNAL] EAC Board of Advisors

Looking at the document about the appointment of the advisory board members, I think that is correct, Christian. Catherine probably appointed them without ever bringing it up.

From: Christian Adams <a@electionlawcenter.com>
Sent: Tuesday, September 15, 2020 3:55:45 PM
To: Carissa Mulder; 'Peter Kirsanow'; 'Gail Heriot'; 'stephen gilchrist'
Cc: 'John Mashburn'; 'Thomas Simuel'; Alexander Heideman
Subject: RE: [EXTERNAL] EAC Board of Advisors

> CAUTION: This email is from outside USCCR.

My guess is the USCCR does their own "appointment" itself. How we un-appoint is going to be the issue. It probably NEVER came up in a business meeting and therefore we should, as a commission have the authority to take it up in a business meeting and appoint-anew.

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From: Carissa Mulder <CMulder@usccr.gov>
Sent: Tuesday, September 15, 2020 3:34 PM
To: Christian Adams <a@electionlawcenter.com>; Peter Kirsanow
>
Cc: John Mashburn <jkmash@comcast.net>; 'Thomas Simuel' <tjsimuel32@gmail.com>; Alexander Heideman <aheideman@usccr.gov>
Subject: Re: [EXTERNAL] EAC Board of Advisors

Good question! I had no idea the USCCR got two designees to the EAC Board of Advisors. Here's the list of all the current advisors: https://www.eac.gov/sites/default/files/boardofadvisors/BOARoster_072720.pdf .

From: Christian Adams <a@electionlawcenter.com>
Sent: Tuesday, September 15, 2020 3:15:28 PM
To: Peter Kirsanow; 'Gail Heriot'; 'stephen gilchrist'
Cc: John Mashburn; 'Thomas Simuel'; Carissa Mulder; Alexander Heideman
Subject: [EXTERNAL] EAC Board of Advisors

> CAUTION: This email is from outside USCCR.

Apparently the EAC gets two designees over the Election Assistance Commission Board of Advisors. Currently it is Yaki and Kladney. I just got a call from an EAC commission saying that Yaki is acting absurdly and exercising power over the EAC by threatening the Pelosi pick on the EAC with removal if he doesn't do what he wants, effectively making Yaki a commissioner on the EAC on many issues. He is causing mischief I don't even detail here.

My question is how does he get UNDONE from the EAC oversight commission? How does that get revoked and replaced?

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Date : 7/29/2021 11:00:32 AM
From : "Kirsanow, Peter" pkirsanow@Beneschlaw.com
To : "John Mashburn" jmashburn@usccr.gov, "Stephen Gilchrist" sgilchrist@usccr.gov, "Gail Heriot" gheriot@usccr.gov, "Christian Adams" a@electionlawcenter.com
Cc : "Carissa Mulder" CMulder@usccr.gov, "Thomas Simuel" tsimuel@usccr.gov, "Alexander Heideman" aheideman@usccr.gov
Subject : [EXTERNAL] RE: Commissioner Appointments to the Election Assistance Commission
Attachment : image001.gif;image002.gif;

> CAUTION: This email is from outside USCCR.

Works for me

From: John Mashburn <jmashburn@usccr.gov>
Sent: Thursday, July 29, 2021 10:43 AM
To: Kirsanow, Peter <pkirsanow@Beneschlaw.com>; Stephen Gilchrist <sgilchrist@usccr.gov>; Gail Heriot <gheriot@usccr.gov>; Christian Adams <a@electionlawcenter.com>
Cc: Carissa Mulder <CMulder@usccr.gov>; Thomas Simuel <tsimuel@usccr.gov>; Alexander Heideman <aheideman@usccr.gov>
Subject: FW: Commissioner Appointments to the Election Assistance Commission

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From: Mauro Morales <mmorales@usccr.gov>
Date: Wednesday, July 28, 2021 at 11:30 AM
To: Commissioners <Commissioners@usccr.gov>
Cc: David Ganz <dganz@usccr.gov>, "CommissionerAssistants@usccr.gov" <CommissionerAssistants@usccr.gov>
Subject: Commissioner Appointments to the Election Assistance Commission

Dear Commissioners-

AMERICAN OVERSIGHT

At the request and in consultation with the Chair, I am sending this email to start the EAC nomination process for Commissioners.

Per the AI voted on during the April 30th meeting (language included below), each caucus is requested to submit two candidates for consideration by COB Friday, July 30, 2021. Once the names are submitted, OGC will conduct an ethics check to be completed by Wednesday, August 4, 2021. Each caucus will then have 24 hours to submit caucus strikes (Thursday, August 5, 2021 COB). The Chair will communicate the two names to EAC no later than Friday, August 6, 2021.

Please let the Chair or I know if you have any questions or concerns.

--
AI language:

Section 1.
.01 Any authority specifically granted the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Commission as a whole by majority vote.

.02 Any authority specifically granted the Staff Director of the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Staff Director.

.03 Any authority specifically granted the Chair of the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Chair.

Section 2
.02
(1) For the two (2) appointments to the U.S. Election Assistance Commission, the members appointed by Democratic authorities shall nominate two individuals who are ready, willing, and able to serve, and the members appointed by the Republican authorities shall nominate two individuals who are ready, willing, and able to serve.

(2) The members appointed by the Democratic authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Democratic authorities

AMERICAN OVERSIGHT

(3) The members selected shall be placed in nomination and ratified in conformance with Section 1.

Mauro Morales
Staff Director
U.S. Commission on Civil Rights
P: 202-376-7796| F: 202-376-7672
Mmorales@usccr.gov
http://usccr.gov/
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425

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Date : 7/29/2021 10:43:10 AM
From : "John Mashburn" jmashburn@usccr.gov
To : "Kirsanow, Peter" pkirsanow@Beneschlaw.com, "Stephen Gilchrist" sgilchrist@usccr.gov, "Gail Heriot" gheriot@usccr.gov, "Christian Adams" a@electionlawcenter.com
Cc : "Carissa Mulder" CMulder@usccr.gov, "Thomas Simuel" tsimuel@usccr.gov, "Alexander Heideman" aheideman@usccr.gov
Subject : FW: Commissioner Appointments to the Election Assistance Commission
Attachment : image001.gif;image002.gif;

Per the Caucus discussion a few months back about USCCR's two designees to the EAC's Bd. of Advisors, Cmnr Adams would like the Caucus to recommend Cleta Mitchell and himself as the two nominees from the Republican Commissioners -- per the new AI on the issue (*see below in Mauro's email*). Democrat Cmnrs would then need to choose between Cleta Mitchell and Cmnr Adams as one of USCCR's two designees to the EAC Bd. of Advisors.

Cmnr Adams wanted me to double check that this is still OK with the 3 of you before he submits his and Cleta's names to Staff Director Morales by COB tomorrow, Friday July 30.

Please email me back to confirm that each of you is OK with submitting Cleta's and Cmnr Adams' names for the EAC .

From: Mauro Morales <mmorales@usccr.gov>
Date: Wednesday, July 28, 2021 at 11:30 AM
To: Commissioners <Commissioners@usccr.gov>
Cc: David Ganz <dganz@usccr.gov>,
"CommissionerAssistants@usccr.gov" <CommissionerAssistants@usccr.gov>
Subject: Commissioner Appointments to the Election Assistance Commission

Dear Commissioners-

At the request and in consultation with the Chair, I am sending this email to start the EAC nomination process for Commissioners.

Per the AI voted on during the April 30th meeting (language included below), each caucus is requested to submit two candidates for consideration by COB Friday, July 30, 2021. Once the names are submitted, OGC will conduct an ethics check to be completed by Wednesday, August 4, 2021. Each caucus will then have 24 hours to submit caucus strikes (Thursday, August 5, 2021 COB). The Chair will communicate the two names to EAC no later than Friday, August 6, 2021.

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AMERICAN OVERSIGHT

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(2) The members appointed by the Democratic authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Democratic authorities

(3) The members selected shall be placed in nomination and ratified in conformance with Section 1.

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Staff Director
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Date : 7/29/2021 11:09:10 AM
From : "Gail Heriot" gheriot@usccr.gov
To : "John Mashburn" jmashburn@usccr.gov
Cc : "Kirsanow, Peter" pkirsanow@beneschlaw.com, "Stephen Gilchrist" sgilchrist@usccr.gov, "Christian Adams" a@electionlawcenter.com, "Carissa Mulder" CMulder@usccr.gov, "Thomas Simuel" tsimuel@usccr.gov, "Alexander Heideman" aheideman@usccr.gov
Subject : Re: Commissioner Appointments to the Election Assistance Commission
Attachment : image001.gif;image002.gif;

Okay with me.

Gail Heriot
Professor of Law
University of San Diego

On Jul 29, 2021, at 7:43 AM, John Mashburn <jmashburn@usccr.gov> wrote:

Per the Caucus discussion a few months back about USCCR's two designees to the EAC's Bd. of Advisors, Cmnr Adams would like the Caucus to recommend Cleta Mitchell and himself as the two nominees from the Republican Commissioners -- per the new AI on the issue (*see below in Mauro's email*). Democrat Cmnrs would then need to choose between Cleta Mitchell and Cmnr Adams as one of USCCR's two designees to the EAC Bd. of Advisors.

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To: Commissioners <Commissioners@usccr.gov>
Cc: David Ganz <dganz@usccr.gov>, "CommissionerAssistants@usccr.gov" <CommissionerAssistants@usccr.gov>
Subject: Commissioner Appointments to the Election Assistance Commission

Dear Commissioners-

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AMERICAN OVERSIGHT

by the Republican authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Democratic authorities

(3) The members selected shall be placed in nomination and ratified in conformance with Section 1.

Mauro Morales
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<image001.gif>
<image002.gif>

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Date : 7/29/2021 2:25:01 PM
From : "Irena Vidulovic" ividulovic@usccr.gov
To : "jcarroll@law.ua.edu" jcarroll@law.ua.edu
Subject : Appointment to EAC Board of Advisors

Dear Ms. Carroll,

The U.S. Commission on Civil Rights has the privilege and authority to appoint two members to the EAC Board of Advisors . The Board of Advisors are appointed to a two year term . The Members meet quarterly and t he appointees are referred to as members of the Board of Advisors to the Election Assistance Commission.

Commissioner Adegbile would like to take this opportunity to inquire if you would consider serving on the Board of Advisors. If you are willing and able he would like to nominate you to serve. The Commission has a internal process on nominations but if you would be selected then we would go forward with the appointment.

The description and statute is included below. Please take a look and feel free to email me with any questions.

The EACBoard of Advisors is a 35-member board composed of representatives from the National Governors Association; National Conference of State Legislatures; National Association of Secretaries of State; The National Association of State Election Directors; National Association of Counties; the International Association of Government Officials (created from the merger of the National Association of County Recorders, Election Officials and Clerks and the International Association of Clerks, Recorders, Election Officials, and Treasurers); Election Center; International Association of Clerks, Recorders, Election Officials, and Treasurers; **U.S. Commission on Civil Rights**; and Architectural and Transportation Barriers Compliance Board.

Other members include representatives from the U.S. Department of Justice, Office of Public Integrity, and the Civil Rights Division; the director of the U.S. Department of Defense Federal Voting Assistance Program; four professionals from the field of science and technology, one each appointed by the Speaker and the Minority Leader of the U.S. House of Representatives, and the Majority and Minority leaders of the U.S. Senate; and eight members representing voter interests, with the chairs and the ranking minority members of the U.S. House of Representatives Committee on House Administration and the U.S. Senate Committee on Rules and Administration each appointing two members. Following the passage of HAVA, the National Association of County Recorders, Election Officials and Clerks and the International Association of Clerks, Recorders, Election Officials, and Treasurers merged to form the International Association of Government Officials.

Statute:

AMERICAN OVERSIGHT

52 U.S. Code § 20944 - Membership of Board of Advisors

(a)In general

The Board of Advisors shall be composed of 37 members appointed as follows:

(1)Two members appointed by the National Governors Association.

(2)Two members appointed by the National Conference of State Legislatures.

(3)Two members appointed by the National Association of Secretaries of State.

(4)Two members appointed by the National Association of State Election Directors.

(5)Two members appointed by the National Association of Counties.

(6)Two members appointed by the National Association of County Recorders, Election Administrators, and Clerks.[1]

(7)Two members appointed by the United States Conference of Mayors.

(8)Two members appointed by the Election Center.

(9)Two members appointed by the International Association of County Recorders, Election Officials, and Treasurers.[2]

(10)Two members appointed by the United States Commission on Civil Rights.

(11)Two members appointed by the Architectural and Transportation Barrier [3] Compliance Board under section 792 of title 29.

(12)The chief of the Office of Public Integrity of the Department of Justice,[4] or the chief's designee.

(13)The chief of the Voting Section of the Civil Rights Division of the Department of Justice or the chief's designee.

(14)The director of the Federal Voting Assistance Program of the Department of Defense.

(15)Four members representing professionals in the field of science and technology, of whom—

(A)one each shall be appointed by the Speaker and the Minority Leader of the House of Representatives; and

(B)one each shall be appointed by the Majority Leader and the Minority Leader of the Senate.

(16)Eight members representing voter interests, of whom—

(A)four members shall be appointed by the Committee on House Administration of the House of Representatives, of whom two shall be appointed by the chair and two shall be appointed by the ranking minority member; and

(B)four members shall be appointed by the Committee on Rules and Administration of the Senate, of whom two shall be appointed by the chair and two shall be appointed by the ranking minority member.

(b)Manner of appointments

Appointments shall be made to the Board of Advisors under subsection (a) in a manner which ensures that the Board of Advisors will be bipartisan in nature and will reflect the various geographic regions of the United States.

(c)Term of service; vacancy

Members of the Board of Advisors shall serve for a term of 2 years, and may be reappointed. Any vacancy in the Board of Advisors shall be filled in the manner in which the original appointment was made.

AMERICAN OVERSIGHT

(d)Chair
The Board of Advisors shall elect a Chair from among its members.

Website:
https://www.eac.gov/about_the_eac/board_of_advisors

Irena Vidulovic
Special Assistant to Commissioner Debo P. Adegbile
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Date : 7/29/2021 2:25:50 PM
From : "Irena Vidulovic" ividulovic@usccr.gov
To : "Debo P. Adegbile" dadegbile@usccr.gov, "Adegbile, Debo" Debo.Adegbile@wilmerhale.com
Subject : Draft Email to EAC/Board of Advisors Nomination

The U.S. Commission on Civil Rights has the privilege and authority to appoint two members to the EAC Board of Advisors. The Board of Advisors are appointed to a two year term . The Members meet quarterly and the appointees are referred to as members of the Board of Advisors to the Election Assistance Commission.

I would like to take this opportunity to inquire if you would consider serving on the Board of Advisors. If you are willing and able I would like to nominate you to serve. The Commission has a internal process on nominations but if you would be selected then we would go forward with the appointment.

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Other members include representatives from the U.S. Department of Justice, Office of Public Integrity, and the Civil Rights Division; the director of the U.S. Department of Defense Federal Voting Assistance Program; four professionals from the field of science and technology, one each appointed by the Speaker and the Minority Leader of the U.S. House of Representatives, and the Majority and Minority leaders of the U.S. Senate; and eight members representing voter interests, with the chairs and the ranking minority members of the U.S. House of Representatives Committee on House Administration and the U.S. Senate

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Committee on Rules and Administration each appointing two members. Following the passage of HAVA, the National Association of County Recorders, Election Officials and Clerks and the International Association of Clerks, Recorders, Election Officials, and Treasurers merged to form the International Association of Government Officials.

Statute:
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(8)Two members appointed by the Election Center.
(9)Two members appointed by the International Association of County Recorders, Election Officials, and Treasurers.[2]
(10)Two members appointed by the United States Commission on Civil Rights.
(11)Two members appointed by the Architectural and Transportation Barrier [3] Compliance Board under section 792 of title 29.
(12)The chief of the Office of Public Integrity of the Department of Justice,[4] or the chief's designee.
(13)The chief of the Voting Section of the Civil Rights Division of the Department of Justice or the chief's designee.
(14)The director of the Federal Voting Assistance Program of the Department of Defense.
(15)Four members representing professionals in the field of science and technology, of whom—
(A)one each shall be appointed by the Speaker and the Minority Leader of the House of Representatives; and
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(b)Manner of appointments

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Appointments shall be made to the Board of Advisors under subsection (a) in a manner which ensures that the Board of Advisors will be bipartisan in nature and will reflect the various geographic regions of the United States.

(c)Term of service; vacancy
Members of the Board of Advisors shall serve for a term of 2 years, and may be reappointed. Any vacancy in the Board of Advisors shall be filled in the manner in which the original appointment was made.

(d)Chair
The Board of Advisors shall elect a Chair from among its members.

Website:

https://www.eac.gov/about_the_eac/board_of_advisors

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Date : 7/29/2021 3:48:08 PM
From : "Irena Vidulovic" ividulovic@usccr.gov
To : "Juana Silverio" jsilverio@usccr.gov, "Mauro Morales" mmorales@usccr.gov, "Norma Cantu" ncantu@usccr.gov
Cc : "Debo P. Adegbile" dadegbile@usccr.gov, "Amy Royce" aroyce@usccr.gov, "Alec Deull" adeull@usccr.gov
Subject : Re: EAC Nominations

Alabama SAC Chair Jenny Carroll is willing, able and would be honored to serve.

Sent from my iPhone

> On Jul 28, 2021, at 9:45 PM, Irena Vidulovic <ividulovic@usccr.gov> wrote:
>
> Dear Juana and Mauro,
>
> Commissioner Adegbile intends to nominate the following folks to the EAC. We will be reaching out to them to make sure that they are able and willing to serve.
>
> Alabama SAC Chair Jenny Carroll https://www.law.ua.edu/directory/People/view/Jenny_Carroll

---

Jenny Carroll | University of Alabama School of Law

www.law.ua.edu

For more than 140 years, the University of Alabama School of Law has produced attorneys who become leaders locally, nationally and globally. Alabama Law provides a top-rate education at an affordable cost in a supportive and diverse environment.

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Alison Riggs https://southerncoalition.org/staff/allison-riggs/

Allison Riggs - Southern Coalition for Social Justice

southerncoalition.org

Allison Riggs leads the voting rights program at the Southern Coalition for Social Justice, an

Leah Aden https://www.naacpldf.org/about-us/staff/leah-c-aden/

Leah C. Aden

www.naacpldf.org

Leah C. Aden has served as a Deputy Director of Litigation at the NAACP Legal Defense & Educational

Irena Vidulovic
Special Assistant to Commissioner Debo P. Adegbile
U.S. Commission on Civil Rights
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ividulovic@usccr.gov
http://usccr.gov/

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Date : 7/29/2021 3:10:10 PM
From : "Irena Vidulovic" ividulovic@usccr.gov
To : "allisonriggs@scsj.org" allisonriggs@scsj.org
Subject : Appointment to EAC Board of Advisors

Dear Ms. Riggs,

My name is Irena Vidulovic and I am the Special Assistant to Commissioner Debo Adegbile. **The U.S. Commission on Civil Rights** has the privilege and authority to appoint two members to the EAC Board of Advisors . The Board of Advisors are appointed to a two year term . The Members meet quarterly and the appointees are referred to as members of the Board of Advisors to the Election Assistance Commission.

Commissioner Adegbile would like to take this opportunity to inquire if you would consider serving on the Board of Advisors. If you are willing and able he would like to nominate you to serve. The Commission has a internal process on nominations but if you would be selected then we would go forward with the appointment.

The description and statute is included below. Please take a look and feel free to email me with any questions.

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(b)Manner of appointments
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in which the original appointment was made.

(d)Chair
The Board of Advisors shall elect a Chair from among its members.

Website:
https://www.eac.gov/about_the_eac/board_of_advisors

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Special Assistant to Commissioner Debo P. Adegbile
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Washington D.C. 20425

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AMERICAN OVERSIGHT

Date : 9/15/2020 5:17:44 PM
From : "Christian Adams" a@electionlawcenter.com
To : "'Carissa Mulder'" CMulder@usccr.gov, "'Peter Kirsanow'" pkirsanow@Beneschlaw.com, "'Gail Heriot'" gheriot@me.com, "'stephen gilchrist'" thegilchristassociates@gmail.com
Cc : "'John Mashburn'" jkmash@comcast.net, "'Thomas Simuel'" tjsimuel32@gmail.com, "'Alexander Heideman'" aheideman@usccr.gov
Subject : RE: [EXTERNAL] EAC Board of Advisors

> CAUTION: This email is from outside USCCR.

I don't know the rules for USCCR appointing ANYONE yet, but if there are no minutes showing a vote appointing them in regular business, it would seem that their "appointment" is void.

From: Carissa Mulder <CMulder@usccr.gov>
Sent: Tuesday, September 15, 2020 4:01 PM
To: Christian Adams <a@electionlawcenter.com>; 'Peter Kirsanow' <pkirsanow@Beneschlaw.com>; 'Gail Heriot' <gheriot@me.com>; 'stephen gilchrist' <thegilchristassociates@gmail.com>
Cc: 'John Mashburn' <jkmash@comcast.net>; 'Thomas Simuel' <tjsimuel32@gmail.com>; Alexander Heideman <aheideman@usccr.gov>
Subject: Re: [EXTERNAL] EAC Board of Advisors

Looking at the document about the appointment of the advisory board members, I think that is correct, Christian. Catherine probably appointed them without ever bringing it up.

From: Christian Adams <a@electionlawcenter.com>
Sent: Tuesday, September 15, 2020 3:55:45 PM
To: Carissa Mulder; 'Peter Kirsanow'; 'Gail Heriot'; 'stephen gilchrist'
Cc: 'John Mashburn'; 'Thomas Simuel'; Alexander Heideman
Subject: RE: [EXTERNAL] EAC Board of Advisors

> CAUTION: This email is from outside USCCR.

My guess is the USCCR does their own "appointment" itself. How we un-appoint is going to be the issue. It probably NEVER came up in a business meeting and therefore we should, as a commission have the authority to take it up in a business meeting and appoint-anew.

From: Carissa Mulder <CMulder@usccr.gov>
Sent: Tuesday, September 15, 2020 3:34 PM
To: Christian Adams <a@electionlawcenter.com>; Peter Kirsanow
>
Cc: John Mashburn <jkmash@comcast.net>; 'Thomas Simuel' <tjsimuel32@gmail.com>; Alexander Heideman <aheideman@usccr.gov>
Subject: Re: [EXTERNAL] EAC Board of Advisors

AMERICAN OVERSIGHT

Good question! I had no idea the USCCR got two designees to the EAC Board of Advisors. Here's the list of all the current advisors: https://www.eac.gov/sites/default/files/boardofadvisors/BOARoster_072720.pdf .

From: Christian Adams <a@electionlawcenter.com>
Sent: Tuesday, September 15, 2020 3:15:28 PM
To: Peter Kirsanow; 'Gail Heriot'; 'stephen gilchrist'
Cc: John Mashburn; 'Thomas Simuel'; Carissa Mulder; Alexander Heideman
Subject: [EXTERNAL] EAC Board of Advisors

CAUTION: This email is from outside USCCR.

Apparently the EAC gets two designees over the Election Assistance Commission Board of Advisors. Currently it is Yaki and Kladney. I just got a call from an EAC commission saying that Yaki is acting absurdly and exercising power over the EAC by threatening the Pelosi pick on the EAC with removal if he doesn't do what he wants, effectively making Yaki a commissioner on the EAC on many issues. He is causing mischief I don't even detail here.

My question is how does he get UNDONE from the EAC oversight commission? How does that get revoked and replaced?

AMERICAN OVERSIGHT

Date : 7/29/2021 3:36:16 PM
From : "Alec Deull" adeull@usccr.gov
To : "michael@michaelyaki.com" michael@michaelyaki.com
Subject : Fw: EAC Nominations

Hello Michael - FYI - Alec

From: Irena Vidulovic
Sent: Wednesday, July 28, 2021 3:45:21 PM
To: Juana Silverio; Mauro Morales
Cc: Debo P. Adegbile; Amy Royce; Alec Deull
Subject: EAC Nominations

Dear Juana and Mauro,

Commissioner Adegbile intends to nominate the following folks to the EAC. We will be reaching out to them to make sure that they are able and willing to serve.

Alabama SAC Chair Jenny Carroll https://www.law.ua.edu/directory/People/view/Jenny_Carroll

Jenny Carroll | University of Alabama School of Law

www.law.ua.edu

For more than 140 years, the University of Alabama School of Law has produced attorneys who become leaders locally, nationally and globally. Alabama Law provides a top-rate education at an affordable cost in a supportive and diverse environment.

Alison Riggs https://southerncoalition.org/staff/allison-riggs/

Allison Riggs - Southern Coalition for Social Justice

southerncoalition.org

Allison Riggs leads the voting rights program at the Southern Coalition for Social Justice, an organization she joined in 2009. In March of 2020, she also took over

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the organization. Her voting rights work over the last decade at SCSJ has been focused on fighting for fair redistricting plans, fighting against voter suppression, and

Leah Aden https://www.naacpldf.org/about-us/staff/leah-c-aden/

Leah C. Aden

www.naacpldf.org

Leah C. Aden has served as a Deputy Director of Litigation at the NAACP Legal Defense & Educational Fund, Inc. (LDF) since October 2018, assisting in the

Irena Vidulovic
Special Assistant to Commissioner Debo P. Adegbile
U.S. Commission on Civil Rights
M: 202-591-9969
ividulovic@usccr.gov
http://usccr.gov/
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Washington D.C. 20425

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Date : 7/29/2021 3:39:51 PM
From : "Jenny Carroll" jcarroll@law.ua.edu
To : "Irena Vidulovic" ividulovic@usccr.gov
Subject : Re: [EXTERNAL] Appointment to EAC Board of Advisors
Attachment : image001.png;

> CAUTION: This email is from outside USCCR.

Dear Irena,

Thank you for reaching out. It is always great to hear from you. Please thank Commissioner Adegbile for the honor of his consideration. I would be thrilled for the nomination and would be happy to continue to work to make voting accessible.

Please let me know if you require any additional information from me. I am happy to provide an updated resume or any other information y'all require.

Best,

Jenny

Jenny E. Carroll
Wiggins, Child, Quinn & Pantazis Professor of Law
School of Law
The University of Alabama
315 Law Center
Box 870382
Tuscaloosa, AL 35487
Office: 205-346-1116
jcarroll@law.ua.edu | https://www.law.ua.edu

ALABAMALAW
THE UNIVERSITY OF ALABAMA
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From: Irena Vidulovic <ividulovic@usccr.gov>
Date: Thursday, July 29, 2021 at 1:25 PM
To: Jenny Carroll <jcarroll@law.ua.edu>
Subject: [EXTERNAL] Appointment to EAC Board of Advisors

Dear Ms. Carroll,

AMERICAN OVERSIGHT

The U.S. Commission on Civil Rights has the privilege and authority to appoint two members to the EAC Board of Advisors. The Board of Advisors are appointed to a two year term . The Members meet quarterly and the appointees are referred to as members of the Board of Advisors to the Election Assistance Commission.

Commissioner Adegbile would like to take this opportunity to inquire if you would consider serving on the Board of Advisors. If you are willing and able he would like to nominate you to serve. The Commission has a internal process on nominations but if you would be selected then we would go forward with the appointment.

The description and statute is included below. Please take a look and feel free to email me with any questions.

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Other members include representatives from the U.S. Department of Justice, Office of Public Integrity, and the Civil Rights Division; the director of the U.S. Department of Defense Federal Voting Assistance Program; four professionals from the field of science and technology, one each appointed by the Speaker and the Minority Leader of the U.S. House of Representatives, and the Majority and Minority leaders of the U.S. Senate; and eight members representing voter interests, with the chairs and the ranking minority members of the U.S. House of Representatives Committee on House Administration and the U.S. Senate Committee on Rules and Administration each appointing two members. Following the passage of HAVA, the National Association of County Recorders, Election Officials and Clerks and the International Association of Clerks, Recorders, Election Officials, and Treasurers merged to form the International Association of Government Officials.

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Statute:
52 U.S. Code § 20944 - Membership of Board of Advisors
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(4)Two members appointed by the National Association of State Election Directors.
(5)Two members appointed by the National Association of Counties.
(6)Two members appointed by the National Association of County Recorders, Election Administrators, and Clerks.[1]
(7)Two members appointed by the United States Conference of Mayors.
(8)Two members appointed by the Election Center.
(9)Two members appointed by the International Association of County Recorders, Election Officials, and Treasurers.[2]
(10)Two members appointed by the United States Commission on Civil Rights.
(11)Two members appointed by the Architectural and Transportation Barrier [3] Compliance Board under section 792 of title 29.
(12)The chief of the Office of Public Integrity of the Department of Justice,[4] or the chief's designee.
(13)The chief of the Voting Section of the Civil Rights Division of the Department of Justice or the chief's designee.
(14)The director of the Federal Voting Assistance Program of the Department of Defense.
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(A)one each shall be appointed by the Speaker and the Minority Leader of the House of Representatives; and
(B)one each shall be appointed by the Majority Leader and the Minority Leader of the Senate.
(16)Eight members representing voter interests, of whom—
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(b)Manner of appointments
Appointments shall be made to the Board of Advisors under subsection (a) in a manner which ensures that the Board of Advisors will be bipartisan in nature and will reflect the various geographic regions of the United States.

(c)Term of service; vacancy

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Members of the Board of Advisors shall serve for a term of 2 years, and may be reappointed. Any vacancy in the Board of Advisors shall be filled in the manner in which the original appointment was made.

(d)Chair
The Board of Advisors shall elect a Chair from among its members.

Website:

https://www.eac.gov/about_the_eac/board_of_advisors

Irena Vidulovic
Special Assistant to Commissioner Debo P. Adegbile
U.S. Commission on Civil Rights
M: 202-591-9969
ividulovic@usccr.gov
http://usccr.gov/
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425

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ALABAMALAW

THE UNIVERSITY OF ALABAMA

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Date : 7/29/2021 3:52:27 PM
From : "Michael Yaki" michael@michaelyaki.com
To : "Alec Deull" adeull@usccr.gov
Subject : [EXTERNAL] Re: EAC Nominations

CAUTION: This email is from outside USCCR.

I intend to nominate myself. Tell them that

Best Regards,
Michael

MICHAEL YAKI CONSULTING
e. michael@michaelyaki.com
m. 415.601.4008

On Thursday, July 29, 2021, 12:36 PM, Alec Deull <adeull@usccr.gov> wrote:

> Hello Michael - FYI - Alec
>
> ---
>
> **From:** Irena Vidulovic
> **Sent:** Wednesday, July 28, 2021 3:45:21 PM
> **To:** Juana Silverio; Mauro Morales
> **Cc:** Debo P. Adegbile; Amy Royce; Alec Deull
> **Subject:** EAC Nominations
>
> Dear Juana and Mauro,
>
> Commissioner Adegbile intends to nominate the following folks to the EAC. We will be reaching out to them to make sure that they are able and willing to serve.
>
> Alabama SAC Chair Jenny Carroll https://www.law.ua.edu/directory/People/view/Jenny_Carroll
>
> Jenny Carroll | University of Alabama School of Law
>
> www.law.ua.edu
>
> For more than 140 years, the University of Alabama School of Law has produced attorneys who become leaders locally, nationally and globally. Alabama Law provides a top-rate education at an affordable cost in a supportive and diverse environment.

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Alison Riggs https://southerncoalition.org/staff/allison-riggs/

Allison Riggs - Southern Coalition for Social Justice

southerncoalition.org

Allison Riggs leads the voting rights program at the Southern Coalition for Social Justice, an

Leah Aden https://www.naacpldf.org/about-us/staff/leah-c-aden/

Leah C. Aden

www.naacpldf.org

Leah C. Aden has served as a Deputy Director of Litigation at the NAACP Legal Defense & Educational

Irena Vidulovic
Special Assistant to Commissioner Debo P. Adegbile
U.S. Commission on Civil Rights
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Washington D.C. 20425

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Date : 7/29/2021 5:31:08 PM
From : "Allison Riggs" AllisonRiggs@southerncoalition.org
To : "Irena Vidulovic" ividulovic@usccr.gov
Subject : [EXTERNAL] RE: [External]Appointment to EAC Board of Advisors

> CAUTION: This email is from outside USCCR.

Irena,

Thank you so much for reaching out. I'd be honored to be nominated, and I would be thrilled to serve in this capacity.

Please let me know what information I can provide moving forward.

Sincerely,

Allison Riggs
Co-Executive Director, Programs
Chief Counsel for Voting Rights
Southern Coalition for Social Justice
1415 West Highway 54, Ste. 101
Durham, NC 27707
919-323-3380 ext. 117
919-323-3942 (fax)
allison@southerncoalition.org

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From: Irena Vidulovic <ividulovic@usccr.gov>
Sent: Thursday, July 29, 2021 3:10 PM
To: Allison Riggs <AllisonRiggs@southerncoalition.org>
Subject: [External]Appointment to EAC Board of Advisors

Dear Ms. Riggs,

My name is Irena Vidulovic and I am the Special Assistant to Commissioner Debo Adegbile. **The U.S. Commission on Civil Rights** has the privilege and authority to appoint two members to the EAC Board of Advisors. The Board of Advisors are appointed to a two year term . The Members meet quarterly and the appointees are referred to as members of the Board of Advisors to the

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Election Assistance Commission.

Commissioner Adegbile would like to take this opportunity to inquire if you would consider serving on the Board of Advisors. If you are willing and able he would like to nominate you to serve. The Commission has a internal process on nominations but if you would be selected then we would go forward with the appointment.

The description and statute is included below. Please take a look and feel free to email me with any questions.

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(13)The chief of the Voting Section of the Civil Rights Division of the Department of Justice or the chief's designee.
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(d)Chair
The Board of Advisors shall elect a Chair from among its members.

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Website:

https://www.eac.gov/about_the_eac/board_of_advisors

Irena Vidulovic
Special Assistant to Commissioner Debo P. Adegbile
U.S. Commission on Civil Rights
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http://usccr.gov/
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425

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Date : 7/30/2021 6:27:41 AM
From : "Irena Vidulovic" ividulovic@usccr.gov
To : "Jenny Carroll" jcarroll@law.ua.edu
Subject : Re: [EXTERNAL] Appointment to EAC Board of Advisors
Attachment : image001.png;

Dear Jenny,

Thank you so much for your quick response. We are so very delighted that you are willing and able to serve. We will be submitting your name for our nomination and will keep you posted on what happens next.

Best,
Irena

From: Jenny Carroll <jcarroll@law.ua.edu>
Sent: Thursday, July 29, 2021 3:39:12 PM
To: Irena Vidulovic
Subject: Re: [EXTERNAL] Appointment to EAC Board of Advisors

> CAUTION: This email is from outside USCCR.

Dear Irena,

Thank you for reaching out. It is always great to hear from you. Please thank Commissioner Adegbile for the honor of his consideration. I would be thrilled for the nomination and would be happy to continue to work to make voting accessible.

Please let me know if you require any additional information from me. I am happy to provide an updated resume or any other information y'all require.

Best,

Jenny

Jenny E. Carroll
Wiggins, Child, Quinn & Pantazis Professor of Law
School of Law
The University of Alabama
315 Law Center
Box 870382
Tuscaloosa, AL 35487
Office: 205-346-1116
jcarroll@law.ua.edu | https://www.law.ua.edu

AMERICAN OVERSIGHT

ALABAMALAW
THE UNIVERSITY OF ALABAMA
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From: Irena Vidulovic <ividulovic@usccr.gov>
Date: Thursday, July 29, 2021 at 1:25 PM
To: Jenny Carroll <jcarroll@law.ua.edu>
Subject: [EXTERNAL] Appointment to EAC Board of Advisors

Dear Ms. Carroll,

The U.S. Commission on Civil Rights has the privilege and authority to appoint two members to the EAC Board of Advisors. The Board of Advisors are appointed to a two year term . The Members meet quarterly and the appointees are referred to as members of the Board of Advisors to the Election Assistance Commission.

Commissioner Adegbile would like to take this opportunity to inquire if you would consider serving on the Board of Advisors. If you are willing and able he would like to nominate you to serve. The Commission has a internal process on nominations but if you would be selected then we would go forward with the appointment.

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Irena Vidulovic
Special Assistant to Commissioner Debo P. Adegbile
U.S. Commission on Civil Rights
M: 202-591-9969
ividulovic@usccr.gov
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1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425

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ALABAMALAW

THE UNIVERSITY OF ALABAMA

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Date : 7/30/2021 6:27:58 AM
From : "Irena Vidulovic" ividulovic@usccr.gov
To : "Allison Riggs" AllisonRiggs@southerncoalition.org
Subject : Re: [EXTERNAL] RE: [External]Appointment to EAC Board of Advisors

Dear Allison,

Thank you so much for your quick response. We are so very delighted that you are willing and able to serve. We will be submitting your name for our nomination and will keep you posted on what happens next.

Best,
Irena

From: Allison Riggs <AllisonRiggs@southerncoalition.org>
Sent: Thursday, July 29, 2021 5:31:04 PM
To: Irena Vidulovic
Subject: [EXTERNAL] RE: [External]Appointment to EAC Board of Advisors

> CAUTION: This email is from outside USCCR.

Irena,

Thank you so much for reaching out. I'd be honored to be nominated, and I would be thrilled to serve in this capacity.

Please let me know what information I can provide moving forward.

Sincerely,

Allison Riggs
Co-Executive Director, Programs
Chief Counsel for Voting Rights
Southern Coalition for Social Justice
1415 West Highway 54, Ste. 101
Durham, NC 27707
919-323-3380 ext. 117
919-323-3942 (fax)
allison@southerncoalition.org

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From: Irena Vidulovic <ividulovic@usccr.gov>
Sent: Thursday, July 29, 2021 3:10 PM
To: Allison Riggs <AllisonRiggs@southerncoalition.org>
Subject: [External]Appointment to EAC Board of Advisors

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The description and statute is included below. Please take a look and feel free to email me with any questions.

The EAC Board of Advisors is a 35-member board composed of representatives from the National Governors Association; National Conference of State Legislatures; National Association of Secretaries of State; The National Association of State Election Directors; National Association of Counties; the International Association of Government Officials (created from the merger of the National Association of County Recorders, Election Officials and Clerks and the International Association of Clerks, Recorders, Election Officials, and Treasurers); Election Center; International Association of Clerks, Recorders, Election Officials, and Treasurers; **U.S. Commission on Civil Rights**; and Architectural and Transportation Barriers Compliance Board.

Other members include representatives from the U.S. Department of Justice, Office of Public Integrity, and the Civil Rights Division; the director of the U.S. Department of Defense Federal Voting Assistance Program; four professionals from the field of science and technology, one each appointed by the Speaker and the Minority Leader of the U.S. House of Representatives, and the Majority and Minority leaders of the U.S. Senate; and eight members representing voter interests, with the chairs and the ranking minority members of the U.S. House of Representatives Committee on House Administration and the U.S. Senate Committee on Rules and Administration each appointing two members. Following the passage of HAVA, the National Association of County Recorders, Election Officials and Clerks and the International Association of Clerks, Recorders, Election Officials, and Treasurers merged to form the International Association of Government Officials.

Statute:

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52 U.S. Code § 20944 - Membership of Board of Advisors

(a)In general

The Board of Advisors shall be composed of 37 members appointed as follows:

(1)Two members appointed by the National Governors Association.

(2)Two members appointed by the National Conference of State Legislatures.

(3)Two members appointed by the National Association of Secretaries of State.

(4)Two members appointed by the National Association of State Election Directors.

(5)Two members appointed by the National Association of Counties.

(6)Two members appointed by the National Association of County Recorders, Election Administrators, and Clerks.[1]

(7)Two members appointed by the United States Conference of Mayors.

(8)Two members appointed by the Election Center.

(9)Two members appointed by the International Association of County Recorders, Election Officials, and Treasurers.[2]

(10)Two members appointed by the United States Commission on Civil Rights.

(11)Two members appointed by the Architectural and Transportation Barrier [3] Compliance Board under section 792 of title 29.

(12)The chief of the Office of Public Integrity of the Department of Justice,[4] or the chief's designee.

(13)The chief of the Voting Section of the Civil Rights Division of the Department of Justice or the chief's designee.

(14)The director of the Federal Voting Assistance Program of the Department of Defense.

(15)Four members representing professionals in the field of science and technology, of whom—

(A)one each shall be appointed by the Speaker and the Minority Leader of the House of Representatives; and

(B)one each shall be appointed by the Majority Leader and the Minority Leader of the Senate.

(16)Eight members representing voter interests, of whom—

(A)four members shall be appointed by the Committee on House Administration of the House of Representatives, of whom two shall be appointed by the chair and two shall be appointed by the ranking minority member; and

(B)four members shall be appointed by the Committee on Rules and Administration of the Senate, of whom two shall be appointed by the chair and two shall be appointed by the ranking minority member.

(b)Manner of appointments

Appointments shall be made to the Board of Advisors under subsection (a) in a manner which ensures that the Board of Advisors will be bipartisan in nature and will reflect the various geographic regions of the United States.

(c)Term of service; vacancy

Members of the Board of Advisors shall serve for a term of 2 years, and may be reappointed. Any vacancy in the Board of Advisors shall be filled in the manner in which the original appointment was made.

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(d)Chair
The Board of Advisors shall elect a Chair from among its members.

Website:
https://www.eac.gov/about_the_eac/board_of_advisors

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Special Assistant to Commissioner Debo P. Adegbile
U.S. Commission on Civil Rights
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http://usccr.gov/
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Washington D.C. 20425

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Date : 7/30/2021 9:18:30 AM
From : "Alec Deull" adeull@usccr.gov
To : "Michael Yaki" michael@michaelyaki.com
Subject : Re: [EXTERNAL] Re: EAC Nominations

Hello Michael -

Done!

all best, Alec

From: Michael Yaki <michael@michaelyaki.com>
Sent: Thursday, July 29, 2021 3:52:19 PM
To: Alec Deull
Subject: [EXTERNAL] Re: EAC Nominations

> CAUTION: This email is from outside USCCR.

I intend to nominate myself. Tell them that

Best Regards,
Michael

MICHAEL YAKI CONSULTING
e. michael@michaelyaki.com
m. 415.601.4008

On Thursday, July 29, 2021, 12:36 PM, Alec Deull <adeull@usccr.gov> wrote:

> Hello Michael - FYI - Alec
>
> ---
>
> **From:** Irena Vidulovic
> **Sent:** Wednesday, July 28, 2021 3:45:21 PM
> **To:** Juana Silverio; Mauro Morales
> **Cc:** Debo P. Adegbile; Amy Royce; Alec Deull
> **Subject:** EAC Nominations
>
> Dear Juana and Mauro,
>
> Commissioner Adegbile intends to nominate the following folks to the EAC. We will be reaching out to them to make sure that they are able and willing to serve.
>
> Alabama SAC Chair Jenny Carroll https://www.law.ua.edu/directory/People/view/Jenny_Carroll

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Jenny Carroll | University of Alabama School of Law

www.law.ua.edu

For more than 140 years, the University of Alabama School of Law has produced attorneys who become leaders locally, nationally and globally. Alabama Law provides a top-rate education at an affordable cost in a supportive and diverse environment.

Alison Riggs https://southerncoalition.org/staff/allison-riggs/

Allison Riggs - Southern Coalition for Social Justice

southerncoalition.org

Allison Riggs leads the voting rights program at the Southern Coalition for Social Justice, an

Leah Aden https://www.naacpldf.org/about-us/staff/leah-c-aden/

Leah C. Aden

www.naacpldf.org

Leah C. Aden has served as a Deputy Director of Litigation at the NAACP Legal Defense & Educational

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planning, strategy, and supervision of LDF's voting rights work. In light of the upcoming post-Census

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AMERICAN OVERSIGHT

Date : 7/30/2021 11:00:15 AM
From : "Alec Deull" adeull@usccr.gov
To : "michael@michaelyaki.com" michael@michaelyaki.com
Subject : Fw: EAC Nominations

hello Michael --

FYI -- Debo intends to nominate the following 2 people for the EAC.

all best, Alec

Alabama SAC Chair Jenny Carroll https://www.law.ua.edu/directory/People/view/Jenny_Carroll

Jenny Carroll | University of Alabama School of Law

www.law.ua.edu

For more than 140 years, the University of Alabama School of Law has produced attorneys who become leaders locally, nationally and globally. Alabama Law provides a top-rate education at an affordable cost in a supportive and diverse environment.

Allison Riggs https://southerncoalition.org/staff/allison-riggs/

AMERICAN OVERSIGHT

Date : 7/30/2021 11:30:23 AM
From : "Alec Deull" adeull@usccr.gov
To : "Michael Yaki" michael@michaelyaki.com
Subject : Re: [EXTERNAL] Re: EAC Nominations

Sorry for any confusion.

From: Michael Yaki <michael@michaelyaki.com>
Sent: Friday, July 30, 2021 11:05:59 AM
To: Alec Deull
Subject: [EXTERNAL] Re: EAC Nominations

> CAUTION: This email is from outside USCCR.

You sent this to me 2 days ago

Best Regards,
Michael

MICHAEL YAKI CONSULTING
e. michael@michaelyaki.com
m. 415.601.4008

On Friday, July 30, 2021, 8:00 AM, Alec Deull <adeull@usccr.gov> wrote:

> hello Michael --
>
> FYI -- Debo intends to nominate the following 2 people for the EAC.
>
> all best, Alec
>
> Alabama SAC Chair Jenny Carroll https://www.law.ua.edu/directory/People/view/Jenny_Carroll

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Jenny Carroll | University of Alabama School of Law

www.law.ua.edu

For more than 140 years, the University of Alabama School of Law has produced attorneys who become leaders locally, nationally and globally. Alabama Law provides a top-rate education at an affordable cost in a supportive and diverse environment.

Allison Riggs https://southerncoalition.org/staff/allison-riggs/

AMERICAN OVERSIGHT

Date : 8/2/2021 8:20:22 AM
From : "Irena Vidulovic" ividulovic@usccr.gov
To : "Debo P. Adegbile" dadegbile@usccr.gov, "Adegbile, Debo" Debo.Adegbile@wilmerhale.com
Subject : TO DO LIST

1. 2X of USCCR Hours (IV to send) DUE TODAY
2. Financial Disclosure form (DUE THIS WEEK)
3. Written Document for Sen. Warren's Office (This Week)
4. EAC Submissions (IV to email Juana today)
5. Senator Schatz request fro Fines and Fees (IV to forward along)

Irena Vidulovic
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http://usccr.gov/
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Date : 8/2/2021 8:53:31 AM
From : "Irena Vidulovic" ividulovic@usccr.gov
To : "Juana Silverio" jsilverio@usccr.gov
Cc : "Debo P. Adegbile" dadegbile@usccr.gov, "Norma Cantu" ncantu@usccr.gov
Subject : EAC Nominations

Good Morning Juana,

Unfortunately Commissioner Adegbile will not be able to connect with the Chair today regarding the EAC nominations.
As you know we have nominated 3 people for the EAC who are all willing and able to serve (we have provided these nominations to the caucus and Mauro) . After review of all three candidates and taking into consideration that Commissioner Yaki would like to be reappointed Commissioner Adegbile strongly recommends that we as a caucus nominate along with Commissioner Yaki LDF's voting rights expert who testified in front of the Commission on our voting rights report Leah Aden (her information is below).

Please let me know if you have any questions and if I could be helpful in any way.

Leah Aden https://www.naacpldf.org/about-us/staff/leah-c-aden/

Leah C. Aden

www.naacpldf.org

Leah C. Aden has served as a Deputy Director of Litigation at the NAACP Legal Defense & Educational Fund, Inc. (LDF) since October 2018, assisting in the planning, strategy, and supervision of LDF's voting rights work. In light of the upcoming post-Census redistricting cycle, Leah will assist in the planning, strategy, and supervision of LDF's [...]

Irena Vidulovic
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Date : 8/2/2021 8:57:05 AM
From : "Irena Vidulovic" ividulovic@usccr.gov
To : "Juana Silverio" jsilverio@usccr.gov
Cc : "Debo P. Adegbile" dadegbile@usccr.gov, "Norma Cantu" ncantu@usccr.gov
Subject : Re: EAC Nominations

My apologies Juana,

I meant to say Allison Riggs per the earlier emails.

Her bio is below:

Alison Riggs https://southerncoalition.org/staff/allison-riggs/

Allison Riggs - Southern Coalition for Social Justice

southerncoalition.org

Allison Riggs leads the voting rights program at the Southern Coalition for Social Justice, an organization she joined in 2009. In March of 2020, she also took over as Interim Executive Director of the organization. Her voting rights work over the last decade at SCSJ has been focused on fighting for fair redistricting plans, fighting against voter suppression, and advocating for electoral reforms that would expand access to voting.

From: Irena Vidulovic
Sent: Monday, August 2, 2021 8:53:30 AM
To: Juana Silverio
Cc: Debo P. Adegbile; Norma Cantu
Subject: EAC Nominations

Good Morning Juana,

Unfortunately Commissioner Adegbile will not be able to connect with the Chair today regarding the EAC nominations.
As you know we have nominated 3 people for the EAC who are all willing and able to serve (we have provided these nominations to the caucus and Mauro) . After review of all three candidates and taking into consideration that Commissioner Yaki would like to be reappointed Commissioner Adegbile strongly recommends that we as a caucus nominate along with Commissioner Yaki LDF's voting rights expert who testified in front of the Commission on our voting rights report Leah Aden (her information is below).

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Please let me know if you have any questions and if I could be helpful in any way.

Leah Aden https://www.naacpldf.org/about-us/staff/leah-c-aden/

Leah C. Aden

www.naacpldf.org

Leah C. Aden has served as a Deputy Director of Litigation at the NAACP Legal Defense & Educational Fund, Inc. (LDF) since October 2018, assisting in the planning, strategy, and supervision of LDF's voting rights work. In light of the upcoming post-Census redistricting cycle, Leah will assist in the planning, strategy, and supervision of LDF's [...]

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Date : 8/3/2021 5:36:11 PM
From : "Mauro Morales" mmorales@usccr.gov
To : "Commissioners" Commissioners@usccr.gov
Cc : "CommissionerAssistants" CommissionerAssistants@usccr.gov, "David Ganz" dganz@usccr.gov
Subject : Nominations for Appointment to the EAC
Attachment : image001.gif;image002.gif;

Commissioners,

Pursuant to the AI voted on during the April 30th Business meeting, you have nominated the following individuals to the Election Assistance Commission (EAC):

Commissioners Cantu, Adegbile, Kladney and Yaki have nominated the following individuals to the EAC:

- Commissioner Michael Yaki;
- Ms. Allison Riggs , Co-Executive Director, Southern Coalition for Social Justice.

Commissioners Adams, Gilchrist, Heriot and Kirsanow have nominated the following individuals to the EAC:

- Commissioner Christian Adams;
- Cleta Michell, Chair, Conservative Partnership Institute Election Integrity Network.

Under the AI adopted by Commissioners, the members appointed by the Democratic authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Democratic authorities. The final members selected shall be placed in nomination and ratified by a majority vote. Please inform me how you would like to proceed for a majority vote either by placing it on the agenda for the next USCCR business meeting or by a notational vote.

Mauro Morales
Staff Director
U.S. Commission on Civil Rights
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Date : 8/4/2021 7:09:41 AM
From : "Alec Deull" adeull@usccr.gov
To : "michael@michaelyaki.com" michael@michaelyaki.com
Subject : Fw: Commissioner Appointments to the Election Assistance Commission

hello Michael --

So you are on the list of our caucus' 2 EAC nominees, as you probably know. Fingers crossed!

all best, Alec

From: Juana Silverio
Sent: Tuesday, August 3, 2021 4:30 PM
To: Irena Vidulovic; Mauro Morales; Norma Cantu
Cc: Debo P. Adegbile; Michael Yaki; David Kladney; Alec Deull
Subject: RE: Commissioner Appointments to the Election Assistance Commission

Mauro- due to new information received, please replace Leah with Ms. Allison Riggs.

Juana

From: Irena Vidulovic <ividulovic@usccr.gov>
Sent: Tuesday, August 3, 2021 4:12 PM
To: Juana Silverio <jsilverio@usccr.gov>; Mauro Morales <mmorales@usccr.gov>; Norma Cantu <ncantu@usccr.gov>
Cc: Debo P. Adegbile <dadegbile@usccr.gov>; Michael Yaki <MYaki@usccr.gov>; David Kladney <dkladney@usccr.gov>; Alec Deull <adeull@usccr.gov>
Subject: Re: Commissioner Appointments to the Election Assistance Commission

Unfortunately Leah Aden is unable to serve. Commissioner Adebile reached out to all the candidates that we proposed including Leah to make sure that they would be willing and able to serve and we have been notified that Leah is unavailable to serve.

From: Juana Silverio
Sent: Tuesday, August 3, 2021 3:38:23 PM
To: Mauro Morales; Norma Cantu
Cc: Debo P. Adegbile; Michael Yaki; David Kladney; Irena Vidulovic; Alec Deull
Subject: RE: Commissioner Appointments to the Election Assistance Commission

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Good afternoon Mauro.

The Dem caucus had a tie:

Commissioner Michael Yaki
Leah Aden (Cantu and Yaki)
Allison Riggs (Adegbile and Kladney)

The Chairwoman, in the interest of observing the deadline, is submitting the following names for EAC consideration:

Commissioner Michael Yaki
Leah Aden - https://www.naacpldf.org/about-us/staff/leah-c-aden/

Leah C. Aden

www.naacpldf.org

Leah C. Aden has served as a Deputy Director of Litigation at the NAACP Legal Defense & Educational Fund, Inc. (LDF) since October 2018, assisting in the

Thank you.
Juana

From: Mauro Morales <mmorales@usccr.gov>
Sent: Monday, August 2, 2021 11:47 AM
To: Norma V. Cantú <normavcantu@gmail.com>; Juana Silverio <jsilverio@usccr.gov>
Subject: Fwd: Commissioner Appointments to the Election Assistance Commission

FYI

Sent from my iPhone

Begin forwarded message:

> **From:** Mauro Morales <mmorales@usccr.gov>
> **Date:** August 2, 2021 at 8:45:25 AM MST
> **To:** John Mashburn <jmashburn@usccr.gov>
> **Cc:** Carissa Mulder <CMulder@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>, Alexander Heideman <aheideman@usccr.gov>

AMERICAN OVERSIGHT

Subject: Re: Commissioner Appointments to the Election Assistance Commission

My flight was canceled and returning today. Your selections were forwarded to Chair Cantu. Thank you.

Sent from my iPhone

> On Jul 30, 2021, at 9:34 AM, John Mashburn <jmashburn@usccr.gov> wrote:
>
> Mauro – after canvassing the Republican Commissioners, the two nominees they wish to put forward for one of the two USCCR designees for the EAC's Board of Advisors (per your email below) are:
>
> Cleta Mitchell – Chair, Conservative Partnership Institute Election Integrity Network, and
>
> Christian Adams – USCCR Commissioner.
>
> ---
>
> **From:** Mauro Morales <mmorales@usccr.gov>
> **Date:** Wednesday, July 28, 2021 at 11:30 AM
> **To:** Commissioners <Commissioners@usccr.gov>
> **Cc:**
> " <CommissionerAssistants@usccr.gov>
> **Subject:** Commissioner Appointments to the Election Assistance Commission
>
> Dear Commissioners-
>
> At the request and in consultation with the Chair, I am sending this email to start the EAC nomination process for Commissioners.
>
> Per the AI voted on during the April 30th meeting (language included below), each caucus is requested to submit two candidates for consideration by COB Friday, July 30, 2021. Once the names are submitted, OGC will conduct an ethics check to be completed by Wednesday, August 4, 2021. Each caucus will then have 24 hours to submit caucus strikes (Thursday, August 5, 2021 COB). The Chair will communicate the two names to EAC no later than Friday, August 6, 2021.

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Please let the Chair or I know if you have any questions or concerns.

--
AI language:

Section 1.
.01 Any authority specifically granted the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Commission as a whole by majority vote.

.02 Any authority specifically granted the Staff Director of the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Staff Director.

.03 Any authority specifically granted the Chair of the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Chair.

Section 2
.02
(1) For the two (2) appointments to the U.S. Election Assistance Commission, the members appointed by Democratic authorities shall nominate two individuals who are ready, willing, and able to serve, and the members appointed by the Republican authorities shall nominate two individuals who are ready, willing, and able to serve.

(2) The members appointed by the Democratic authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Democratic authorities

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(3) The members selected shall be placed in nomination and ratified in conformance with Section 1.

Mauro Morales
Staff Director
U.S. Commission on Civil Rights
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Washington D.C. 20425

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<image001.gif>
<image002.gif>

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Date : 8/5/2021 1:30:29 PM
From : "Debo P. Adegbile" dadegbile@usccr.gov
To : "Norma Cantu" ncantu@usccr.gov, "Michael Yaki" commissioner.yaki@gmail.com, "David Kladney" dkladney@usccr.gov
Cc : "Irena Vidulovic" ividulovic@usccr.gov
Subject : Fwd: Nominations for Appointment to the EAC
Attachment : image001.gif;image002.gif;

Cleta Mitchell is my pick of those they nominated.

Sent from my iPhone

Begin forwarded message:

From: Mauro Morales <mmorales@usccr.gov>
Date: August 3, 2021 at 5:36:12 PM EDT
To: Commissioners <Commissioners@usccr.gov>
Cc: CommissionerAssistants <CommissionerAssistants@usccr.gov>, David Ganz <dganz@usccr.gov>
Subject: Nominations for Appointment to the EAC

Commissioners,

Pursuant to the AI voted on during the April 30th Business meeting, you have nominated the following individuals to the Election Assistance Commission (EAC):

Commissioners Cantu, Adegbile, Kladney and Yaki have nominated the following individuals to the EAC:

- Commissioner Michael Yaki;
- Ms. Allison Riggs , Co-Executive Director, Southern Coalition for Social Justice.

Commissioners Adams, Gilchrist, Heriot and Kirsanow have nominated the following individuals to the EAC:

- Commissioner Christian Adams;
- Cleta Michell, Chair, Conservative Partnership Institute Election Integrity Network.

Under the AI adopted by Commissioners, the members appointed by the Democratic authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Democratic authorities. The final members selected shall be placed in nomination and ratified by a

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majority vote. Please inform me how you would like to proceed for a majority vote either by placing it on the agenda for the next USCCR business meeting or by a notational vote.

Mauro Morales
Staff Director
U.S. Commission on Civil Rights
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Date : 8/6/2021 1:23:00 PM
From : "Gail Heriot" gheriot@me.com
To : "Carissa Mulder" CMulder@usccr.gov
Cc : "pkirsanow@beneschlaw.com" pkirsanow@beneschlaw.com, "stephen gilchrist" thegilchristassociates@gmail.com, "Christian Adams" adams@electionlawcenter.com, "Alexander Heideman" aheideman@usccr.gov, "John Mashburn" jmashburn@usccr.gov, "Thomas Simuel" tsimuel@usccr.gov, "Peter Kirsanow" pkirsanow@usccr.gov, "Gail Heriot" gheriot@usccr.gov, "Stephen Gilchrist" sgilchrist@usccr.gov, "J. Christian Adams" jadams@usccr.gov
Subject : [EXTERNAL] Re: Nominations for Appointment to the EAC

CAUTION: This email is from outside USCCR.

We could politely ask the Progressives which person they vetoed. Yaki at least has an incentive to tell us if it's Cleta. If it is Cleta, such that Christian will be the appointee, it might be seen as accommodating to let Yaki be re-appointed. If he declines to say, that will be evidence that they vetoed Christian.

Gail Heriot
Professor of Law
University of San Diego

> On Aug 6, 2021, at 1:17 PM, Carissa Mulder <CMulder@usccr.gov> wrote:
>
> Hi everyone,
>
> Mauro emailed and asked if the conservative commissioners have selected their EAC nominee. He said the progressives have notified him of their selection, and once we notify him of ours, he will circulate either a notational vote or arrange for it to be voted on at the August business meeting.
>
> Christian, you are the voting expert - do you think Yaki or Allison Riggs is a less damaging choice?

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Thanks!

From: Mauro Morales
Sent: Tuesday, August 3, 2021 5:36 PM
To: Commissioners
Cc: CommissionerAssistants; David Ganz
Subject: Nominations for Appointment to the EAC

Commissioners,

Pursuant to the AI voted on during the April 30th Business meeting, you have nominated the following individuals to the Election Assistance Commission (EAC):

Commissioners Cantu, Adegbile, Kladney and Yaki have nominated the following individuals to the EAC:

- Commissioner Michael Yaki;
- Ms. Allison Riggs , Co-Executive Director, Southern Coalition for Social Justice.

Commissioners Adams, Gilchrist, Heriot and Kirsanow have nominated the following individuals to the EAC:

- Commissioner Christian Adams;
- Cleta Michell, Chair, Conservative Partnership Institute Election Integrity Network.

Under the AI adopted by Commissioners, the members appointed by the Democratic authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one (1) of the two (2) individuals nominated by

AMERICAN OVERSIGHT

the members appointed by the Democratic authorities. The final members selected shall be placed in nomination and ratified by a majority vote. Please inform me how you would like to proceed for a majority vote either by placing it on the agenda for the next USCCR business meeting or by a notational vote.

Mauro Morales

Staff Director

U.S. Commission on Civil Rights

P: 202-376-7796| F: 202-376-7672

Mmorales@usccr.gov

http://usccr.gov/

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Washington D.C. 20425

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<image001.gif>
<image002.gif>

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Date : 8/6/2021 1:17:10 PM
From : "Carissa Mulder" CMulder@usccr.gov
To : "pkirsanow@beneschlaw.com" pkirsanow@beneschlaw.com, "Gail Heriot" gheriot@me.com, "stephen gilchrist" thegilchristassociates@gmail.com, "Christian Adams" adams@electionlawcenter.com, "Alexander Heideman" aheideman@usccr.gov, "John Mashburn" jmashburn@usccr.gov, "Thomas Simuel" tsimuel@usccr.gov
Cc : "Peter Kirsanow" pkirsanow@usccr.gov, "Gail Heriot" gheriot@usccr.gov, "Stephen Gilchrist" sgilchrist@usccr.gov, "J. Christian Adams" jadams@usccr.gov
Subject : Fw: Nominations for Appointment to the EAC
Attachment : image001.gif;image002.gif;

Hi everyone,

Mauro emailed and asked if the conservative commissioners have selected their EAC nominee. He said the progressives have notified him of their selection, and once we notify him of ours, he will circulate either a notational vote or arrange for it to be voted on at the August business meeting.

Christian, you are the voting expert - do you think Yaki or Allison Riggs is a less damaging choice?

Thanks!

From: Mauro Morales
Sent: Tuesday, August 3, 2021 5:36 PM
To: Commissioners
Cc: CommissionerAssistants; David Ganz
Subject: Nominations for Appointment to the EAC

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- Ms. Allison Riggs , Co-Executive Director, Southern Coalition for Social Justice.

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AMERICAN OVERSIGHT

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Mauro Morales
Staff Director
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P: 202-376-7796| F: 202-376-7672
Mmorales@usccr.gov
http://usccr.gov/
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425

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#USCCR

AMERICAN OVERSIGHT

AMERICAN OVERSIGHT

AMERICAN OVERSIGHT

Date : 8/6/2021 1:31:27 PM
From : "John Mashburn" jmashburn@usccr.gov
To : "Gail Heriot" gheriot@me.com, "Carissa Mulder" CMulder@usccr.gov
Cc : "pkirsanow@beneschlaw.com" pkirsanow@beneschlaw.com, "stephen gilchrist" thegilchristassociates@gmail.com, "Christian Adams" adams@electionlawcenter.com, "Alexander Heideman" aheideman@usccr.gov, "Thomas Simuel" tsimuel@usccr.gov, "Peter Kirsanow" pkirsanow@usccr.gov, "Gail Heriot" gheriot@usccr.gov, "Stephen Gilchrist" sgilchrist@usccr.gov, "J. Christian Adams" jadams@usccr.gov
Subject : Re: [EXTERNAL] Re: Nominations for Appointment to the EAC

Allison Riggs

https://southerncoalition.org/staff/allison-riggs/

From: Gail Heriot <gheriot@me.com>
Date: Friday, August 6, 2021 at 1:23 PM
To: Carissa Mulder <CMulder@usccr.gov>
Cc: "pkirsanow@beneschlaw.com" <pkirsanow@beneschlaw.com>, stephen gilchrist <thegilchristassociates@gmail.com>, Christian Adams <adams@electionlawcenter.com>, Alexander Heideman <aheideman@usccr.gov>, John Mashburn <jmashburn@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>, Peter Kirsanow <pkirsanow@usccr.gov>, Gail Heriot <gheriot@usccr.gov>, Stephen Gilchrist <sgilchrist@usccr.gov>, "J. Christian Adams" <jadams@usccr.gov>
Subject: [EXTERNAL] Re: Nominations for Appointment to the EAC

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Gail Heriot
Professor of Law
University of San Diego

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<image001.gif>
<image002.gif>

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AMERICAN OVERSIGHT

Date : 8/6/2021 1:42:16 PM
From : "stephen gilchrist" thegilchristassociates@gmail.com
To : "Carissa Mulder" CMulder@usccr.gov
Cc : "Peter Kirsanow" pkirsanow@beneschlaw.com, "Gail Heriot" gheriot@me.com, "Christian Adams" adams@electionlawcenter.com, "Alexander Heideman" aheideman@usccr.gov, "John Mashburn" jmashburn@usccr.gov, "Thomas Simuel" tsimuel@usccr.gov, "Peter Kirsanow" pkirsanow@usccr.gov, "Gail Heriot" gheriot@usccr.gov, "Stephen Gilchrist" sgilchrist@usccr.gov, "J. Christian Adams" jadams@usccr.gov
Subject : [EXTERNAL] Re: Fw: Nominations for Appointment to the EAC
Attachment : image001.gif;image002.gif;image002.gif;

CAUTION: This email is from outside USCCR.

I can support Allison.

On Fri, Aug 6, 2021, 1:17 PM Carissa Mulder <CMulder@usccr.gov> wrote:

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>
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> **Sent:** Tuesday, August 3, 2021 5:36 PM
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AMERICAN OVERSIGHT

Mmorales@usccr.gov

http://usccr.gov/

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Washington D.C. 20425

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AMERICAN OVERSIGHT

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AMERICAN OVERSIGHT

Date : 9/15/2020 6:56:08 PM
From : "John Mashburn" jkmash@comcast.net
To : "Carissa Mulder" CMulder@usccr.gov
Subject : Re: [EXTERNAL] EAC Board of Advisors

CAUTION: This email is from outside USCCR.

By statute there are 37 folks on the advisory Board

Sent from my iPhone

> On Sep 15, 2020, at 5:55 PM, Carissa Mulder <CMulder@usccr.gov> wrote:
>
> Good question! I had no idea the USCCR got two designees to the EAC .
>
> ---
>
> **From:** Christian Adams <a@electionlawcenter.com>
> **Sent:** Tuesday, September 15, 2020 3:15:28 PM
> **To:** Peter Kirsanow; 'Gail Heriot'; 'stephen gilchrist'
> **Cc:** John Mashburn; 'Thomas Simuel'; Carissa Mulder; Alexander Heideman
> **Subject:** [EXTERNAL] EAC Board of Advisors
>
> CAUTION: This email is from outside USCCR.
>
> Apparently the EAC gets two designees over the Election Assistance Commission Board of Advisors. Currently it is Yaki and Kladney. I just got a call from an EAC commission saying that Yaki is acting absurdly and exercising power over the EAC by threatening the Pelosi pick on the EAC with removal if he doesn't do what he wants, effectively making Yaki a commissioner on the EAC on many issues. He is causing mischief I don't even detail here.
>
> My question is how does he get UNDONE from the EAC oversight commission? How does that get revoked and replaced?

AMERICAN OVERSIGHT

Date : 8/6/2021 1:51:47 PM
From : "stephen gilchrist" thegilchristassociates@gmail.com
To : "John Mashburn" jmashburn@usccr.gov
Cc : "Gail Heriot" gheriot@me.com, "Carissa Mulder" CMulder@usccr.gov, "Peter Kirsanow" pkirsanow@beneschlaw.com, "Christian Adams" adams@electionlawcenter.com, "Alexander Heideman" aheideman@usccr.gov, "Thomas Simuel" tsimuel@usccr.gov, "Peter Kirsanow" pkirsanow@usccr.gov, "Gail Heriot" gheriot@usccr.gov, "Stephen Gilchrist" sgilchrist@usccr.gov, "J. Christian Adams" jadams@usccr.gov
Subject : Re: [EXTERNAL] Re: Nominations for Appointment to the EAC

> CAUTION: This email is from outside USCCR.

John are suggesting Christian would vote for Allison?

On Fri, Aug 6, 2021, 1:31 PM John Mashburn <jmashburn@usccr.gov> wrote:

> Allison Riggs
>
> https://southerncoalition.org/staff/allison-riggs/
>
> ---
>
> **From:** Gail Heriot <gheriot@me.com>
> **Date:** Friday, August 6, 2021 at 1:23 PM
> **To:** Carissa Mulder <CMulder@usccr.gov>
> **Cc:** "pkirsanow@beneschlaw.com" <pkirsanow@beneschlaw.com>, stephen gilchrist <thegilchristassociates@gmail.com>, Christian Adams <adams@electionlawcenter.com>, Alexander Heideman <aheideman@usccr.gov>, John Mashburn <jmashburn@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>, Peter Kirsanow <pkirsanow@usccr.gov>, Gail Heriot <gheriot@usccr.gov>, Stephen Gilchrist <sgilchrist@usccr.gov>, "J. Christian Adams" <jadams@usccr.gov>
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Professor of Law

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>
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>
> **From:** Mauro Morales
> **Sent:** Tuesday, August 3, 2021 5:36 PM
> **To:** Commissioners
> **Cc:** CommissionerAssistants; David Ganz
> **Subject:** Nominations for Appointment to the EAC
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Date : 8/6/2021 1:54:03 PM
From : "John Mashburn" jmashburn@usccr.gov
To : "stephen gilchrist" thegilchristassociates@gmail.com
Cc : "Gail Heriot" gheriot@me.com, "Carissa Mulder" CMulder@usccr.gov, "Peter Kirsanow" pkirsanow@beneschlaw.com, "Christian Adams" adams@electionlawcenter.com, "Alexander Heideman" aheideman@usccr.gov, "Thomas Simuel" tsimuel@usccr.gov, "Peter Kirsanow" pkirsanow@usccr.gov, "Gail Heriot" gheriot@usccr.gov, "Stephen Gilchrist" sgilchrist@usccr.gov, "J. Christian Adams" jadams@usccr.gov
Subject : Re: [EXTERNAL] Re: Nominations for Appointment to the EAC

Yes – better her than Yaki.

From: stephen gilchrist <thegilchristassociates@gmail.com>
Date: Friday, August 6, 2021 at 1:51 PM
To: John Mashburn <jmashburn@usccr.gov>
Cc: Gail Heriot <gheriot@me.com>, Carissa Mulder <CMulder@usccr.gov>, Peter Kirsanow <pkirsanow@beneschlaw.com>, Christian Adams <adams@electionlawcenter.com>, Alexander Heideman <aheideman@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>, Peter Kirsanow <pkirsanow@usccr.gov>, Gail Heriot <gheriot@usccr.gov>, Stephen Gilchrist <sgilchrist@usccr.gov>, "J. Christian Adams" <jadams@usccr.gov>
Subject: Re: [EXTERNAL] Re: Nominations for Appointment to the EAC

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On Fri, Aug 6, 2021, 1:31 PM John Mashburn <jmashburn@usccr.gov> wrote:

> Allison Riggs
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> https://southerncoalition.org/staff/allison-riggs/
>
> ---
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> **To:** Carissa Mulder <CMulder@usccr.gov>
> **Cc:** "pkirsanow@beneschlaw.com" <pkirsanow@beneschlaw.com>, stephen gilchrist <thegilchristassociates@gmail.com>, Christian Adams <adams@electionlawcenter.com>, Alexander Heideman <aheideman@usccr.gov>, John Mashburn <jmashburn@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>, Peter Kirsanow <pkirsanow@usccr.gov>, Gail Heriot <gheriot@usccr.gov>, Stephen Gilchrist <sgilchrist@usccr.gov>, "J. Christian Adams" <jadams@usccr.gov>

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Date : 8/6/2021 3:13:48 PM
From : "Gail Heriot" gheriot@me.com
To : "John Mashburn" jmashburn@usccr.gov
Cc : "stephen gilchrist" thegilchristassociates@gmail.com, "Carissa Mulder" CMulder@usccr.gov, "Peter Kirsanow" pkirsanow@beneschlaw.com, "Christian Adams" adams@electionlawcenter.com, "Alexander Heideman" aheideman@usccr.gov, "Thomas Simuel" tsimuel@usccr.gov, "Peter Kirsanow" pkirsanow@usccr.gov, "Gail Heriot" gheriot@usccr.gov, "Stephen Gilchrist" sgilchrist@usccr.gov, "J. Christian Adams" jadams@usccr.gov
Subject : Re: [EXTERNAL] Re: Nominations for Appointment to the EAC

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I am willing to go with Christian's recommendation on this UNLESS he thinks it's a close case. If he thinks it's a close case AND IF we have reason to believe that the Progressives vetoed Cleta and not Christian, THEN I think we should consider a bit of reciprocity and let Yaki have the job. My impression is that he wants it. If it's really close to six of one half dozen of the other, pleasing him has its benefits.

Of course, so far the evidence is running against the possibility that the Progressives vetoed Cleta and not Christian. If they had vetoed Cleta, my guess is that they would have wanted us to know that. Nevertheless, if this is a close case, it would be a good idea to try to find out what the Progressives did.

Gail Heriot
Professor of Law
University of San Diego

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AMERICAN OVERSIGHT

Date : 8/8/2021 4:20:49 PM
From : "Christian Adams" adams@electionlawcenter.com
To : "Gail Heriot" gheriot@me.com, "John Mashburn" jmashburn@usccr.gov
Cc : "stephen gilchrist" thegilchristassociates@gmail.com, "Carissa Mulder" CMulder@usccr.gov, "Peter Kirsanow" pkirsanow@beneschlaw.com, "Alexander Heideman" aheideman@usccr.gov, "Thomas Simuel" tsimuel@usccr.gov, "Peter Kirsanow" pkirsanow@usccr.gov, "Gail Heriot" gheriot@usccr.gov, "Stephen Gilchrist" sgilchrist@usccr.gov, "J. Christian Adams" jadams@usccr.gov
Subject : Re: [EXTERNAL] Re: Nominations for Appointment to the EAC

CAUTION: This email is from outside USCCR.

sorry, just returning.

they picked Allison Riggs for a reason. I can explain offline but there is no way I will be part of giving her a single thing.i would rather work with Yaki

-------- Original message --------
From: Gail Heriot <gheriot@me.com>
Date: 8/6/21 3:13 PM (GMT-05:00)
To: John Mashburn <jmashburn@usccr.gov>
Cc: stephen gilchrist <thegilchristassociates@gmail.com>, Carissa Mulder <CMulder@usccr.gov>, Peter Kirsanow <pkirsanow@beneschlaw.com>, Christian Adams <adams@electionlawcenter.com>, Alexander Heideman <aheideman@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>, Peter Kirsanow <pkirsanow@usccr.gov>, Gail Heriot <gheriot@usccr.gov>, Stephen Gilchrist <sgilchrist@usccr.gov>, "J. Christian Adams" <jadams@usccr.gov>
Subject: Re: [EXTERNAL] Re: Nominations for Appointment to the EAC

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Gail Heriot
Professor of Law
University of San Diego

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AMERICAN OVERSIGHT

Yes – better her than Yaki.

From: stephen gilchrist <thegilchristassociates@gmail.com>
Date: Friday, August 6, 2021 at 1:51 PM
To: John Mashburn <jmashburn@usccr.gov>
Cc: Gail Heriot <gheriot@me.com>, Carissa Mulder <CMulder@usccr.gov>, Peter Kirsanow <pkirsanow@beneschlaw.com>, Christian Adams <adams@electionlawcenter.com>, Alexander Heideman <aheideman@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>, Peter Kirsanow <pkirsanow@usccr.gov>, Gail Heriot <gheriot@usccr.gov>, Stephen Gilchrist <sgilchrist@usccr.gov>, "J. Christian Adams" <jadams@usccr.gov>
Subject: Re: [EXTERNAL] Re: Nominations for Appointment to the EAC

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On Fri, Aug 6, 2021, 1:31 PM John Mashburn <jmashburn@usccr.gov> wrote:

> Allison Riggs
>
> https://southerncoalition.org/staff/allison-riggs/
>
> ---
>
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> **Date:** Friday, August 6, 2021 at 1:23 PM
> **To:** Carissa Mulder <CMulder@usccr.gov>
> **Cc:** "pkirsanow@beneschlaw.com" <pkirsanow@beneschlaw.com>, stephen gilchrist <thegilchristassociates@gmail.com>, Christian Adams <adams@electionlawcenter.com>, Alexander Heideman <aheideman@usccr.gov>, John Mashburn <jmashburn@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>, Peter Kirsanow <pkirsanow@usccr.gov>, Gail Heriot <gheriot@usccr.gov>, Stephen Gilchrist <sgilchrist@usccr.gov>, "J. Christian Adams" <jadams@usccr.gov>
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AMERICAN OVERSIGHT

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Gail Heriot
Professor of Law
University of San Diego

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>
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>
> ---
>
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> **Sent:** Tuesday, August 3, 2021 5:36 PM
> **To:** Commissioners
> **Cc:** CommissionerAssistants; David Ganz
> **Subject:** Nominations for Appointment to the EAC
>
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>
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AMERICAN OVERSIGHT

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Mauro Morales
Staff Director
U.S. Commission on Civil Rights
P: 202-376-7796| F: 202-376-7672
Mmorales@usccr.gov
http://usccr.gov/
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425

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<image001.gif>
<image002.gif>

#USCCR

AMERICAN OVERSIGHT

AMERICAN OVERSIGHT

Date : 8/8/2021 5:39:25 PM
From : "Gail Heriot" gheriot@me.com
To : "Christian Adams" adams@electionlawcenter.com
Cc : "John Mashburn" jmashburn@usccr.gov, "stephen gilchrist" thegilchristassociates@gmail.com, "Carissa Mulder" CMulder@usccr.gov, "Peter Kirsanow" pkirsanow@beneschlaw.com, "Alexander Heideman" aheideman@usccr.gov, "Thomas Simuel" tsimuel@usccr.gov, "Peter Kirsanow" pkirsanow@usccr.gov, "Gail Heriot" gheriot@usccr.gov, "Stephen Gilchrist" sgilchrist@usccr.gov, "J. Christian Adams" jadams@usccr.gov
Subject : Re: [EXTERNAL] Re: Nominations for Appointment to the EAC

> CAUTION: This email is from outside USCCR.

Should we have a caucus zoom tomorrow about this?

Gail Heriot
Professor of Law
University of San Diego

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>
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>
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AMERICAN OVERSIGHT

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> **Cc:** Gail Heriot <gheriot@me.com>, Carissa Mulder <CMulder@usccr.gov>, Peter Kirsanow <pkirsanow@beneschlaw.com>, Christian Adams <adams@electionlawcenter.com>, Alexander Heideman <aheideman@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>, Peter Kirsanow <pkirsanow@usccr.gov>, Gail Heriot <gheriot@usccr.gov>, Stephen Gilchrist <sgilchrist@usccr.gov>, "J. Christian Adams" <jadams@usccr.gov>
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> CAUTION: This email is from outside USCCR.
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AMERICAN OVERSIGHT

Allison Riggs

https://southerncoalition.org/staff/allison-riggs/

From: Gail Heriot <gheriot@me.com>
Date: Friday, August 6, 2021 at 1:23 PM
To: Carissa Mulder <CMulder@usccr.gov>
Cc: "pkirsanow@beneschlaw.com" <pkirsanow@beneschlaw.com>, stephen gilchrist <thegilchristassociates@gmail.com>, Christian Adams <adams@electionlawcenter.com>, Alexander Heideman <aheideman@usccr.gov>, John Mashburn <jmashburn@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>, Peter Kirsanow <pkirsanow@usccr.gov>, Gail Heriot <gheriot@usccr.gov>, Stephen Gilchrist <sgilchrist@usccr.gov>, "J. Christian Adams" <jadams@usccr.gov>
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>
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AMERICAN OVERSIGHT

progressives have notified him of their selection, and once we notify him of ours, he will circulate either a notational vote or arrange for it to be voted on at the August business meeting.

Christian, you are the voting expert - do you think Yaki or Allison Riggs is a less damaging choice?

Thanks!

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Sent: Tuesday, August 3, 2021 5:36 PM
To: Commissioners
Cc: CommissionerAssistants; David Ganz
Subject: Nominations for Appointment to the EAC

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AMERICAN OVERSIGHT

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Mmorales@usccr.gov
http://usccr.gov/
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425

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<image002.gif>

#USCCR

AMERICAN OVERSIGHT

Date : 8/8/2021 5:52:03 PM
From : "stephen gilchrist" thegilchristassociates@gmail.com
To : "Christian Adams" adams@electionlawcenter.com
Cc : "Gail Heriot" gheriot@me.com, "John Mashburn" jmashburn@usccr.gov, "Carissa Mulder" CMulder@usccr.gov, "Peter Kirsanow" pkirsanow@beneschlaw.com, "Alexander Heideman" aheideman@usccr.gov, "Thomas Simuel" tsimuel@usccr.gov, "Peter Kirsanow" pkirsanow@usccr.gov, "Gail Heriot" gheriot@usccr.gov, "Stephen Gilchrist" sgilchrist@usccr.gov, "J. Christian Adams" jadams@usccr.gov
Subject : Re: [EXTERNAL] Re: Nominations for Appointment to the EAC

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Christian I yield to you on this one.
On Sun, Aug 8, 2021, 4:20 PM Christian Adams <adams@electionlawcenter.com> wrote:

> sorry, just returning.
>
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> From: Gail Heriot <gheriot@me.com>
> Date: 8/6/21 3:13 PM (GMT-05:00)
> To: John Mashburn <jmashburn@usccr.gov>
> Cc: stephen gilchrist <thegilchristassociates@gmail.com>, Carissa Mulder <CMulder@usccr.gov>, Peter Kirsanow <pkirsanow@beneschlaw.com>, Christian Adams <adams@electionlawcenter.com>, Alexander Heideman <aheideman@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>, Peter Kirsanow <pkirsanow@usccr.gov>, Gail Heriot <gheriot@usccr.gov>, Stephen Gilchrist <sgilchrist@usccr.gov>, "J. Christian Adams" <jadams@usccr.gov>
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> Professor of Law
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AMERICAN OVERSIGHT

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Staff Director

U.S. Commission on Civil Rights

P: 202-376-7796| F: 202-376-7672

Mmorales@usccr.gov

http://usccr.gov/

1331 Pennsylvania Avenue, NW Suite 1150

Washington D.C. 20425

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AMERICAN OVERSIGHT

Date : 8/8/2021 10:38:43 PM
From : "Christian Adams" adams@electionlawcenter.com
To : "stephen gilchrist" thegilchristassociates@gmail.com, "John Mashburn" jmashburn@usccr.gov
Cc : "Gail Heriot" gheriot@me.com, "Carissa Mulder" CMulder@usccr.gov, "Peter Kirsanow" pkirsanow@beneschlaw.com, "Alexander Heideman" aheideman@usccr.gov, "Thomas Simuel" tsimuel@usccr.gov, "Peter Kirsanow" pkirsanow@usccr.gov, "Gail Heriot" gheriot@usccr.gov, "Stephen Gilchrist" sgilchrist@usccr.gov, "J. Christian Adams" jadams@usccr.gov
Subject : Re: [EXTERNAL] Re: Nominations for Appointment to the EAC

CAUTION: This email is from outside USCCR.

there is zero chance I would support anything Allison Riggs touches.

-------- Original message --------
From: stephen gilchrist <thegilchristassociates@gmail.com>
Date: 8/6/21 1:51 PM (GMT-05:00)
To: John Mashburn <jmashburn@usccr.gov>
Cc: Gail Heriot <gheriot@me.com>, Carissa Mulder <CMulder@usccr.gov>, Peter Kirsanow <pkirsanow@beneschlaw.com>, Christian Adams <adams@electionlawcenter.com>, Alexander Heideman <aheideman@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>, Peter Kirsanow <pkirsanow@usccr.gov>, Gail Heriot <gheriot@usccr.gov>, Stephen Gilchrist <sgilchrist@usccr.gov>, "J. Christian Adams" <jadams@usccr.gov>
Subject: Re: [EXTERNAL] Re: Nominations for Appointment to the EAC

John are suggesting Christian would vote for Allison?

On Fri, Aug 6, 2021, 1:31 PM John Mashburn <jmashburn@usccr.gov> wrote:

> Allison Riggs
>
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AMERICAN OVERSIGHT

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Washington D.C. 20425

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<image002.gif>

#USCCR

AMERICAN OVERSIGHT

Date : 8/8/2021 10:34:57 PM
From : "Christian Adams" adams@electionlawcenter.com
To : "Gail Heriot" gheriot@me.com
Cc : "John Mashburn" jmashburn@usccr.gov, "stephen gilchrist" thegilchristassociates@gmail.com, "Carissa Mulder" CMulder@usccr.gov, "Peter Kirsanow" pkirsanow@beneschlaw.com, "Alexander Heideman" aheideman@usccr.gov, "Thomas Simuel" tsimuel@usccr.gov, "Peter Kirsanow" pkirsanow@usccr.gov, "Gail Heriot" gheriot@usccr.gov, "Stephen Gilchrist" sgilchrist@usccr.gov, "J. Christian Adams" jadams@usccr.gov
Subject : Re: [EXTERNAL] Re: Nominations for Appointment to the EAC

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sure. Riggs is a nonstarter with me. she is a brilliant pick on thier part because they know my history with her. they know she us wholly unacceptable.

-------- Original message --------
From: Gail Heriot <gheriot@me.com>
Date: 8/8/21 5:39 PM (GMT-05:00)
To: Christian Adams <adams@electionlawcenter.com>
Cc: John Mashburn <jmashburn@usccr.gov>, stephen gilchrist <thegilchristassociates@gmail.com>, Carissa Mulder <CMulder@usccr.gov>, Peter Kirsanow <pkirsanow@beneschlaw.com>, Alexander Heideman <aheideman@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>, Peter Kirsanow <pkirsanow@usccr.gov>, Gail Heriot <gheriot@usccr.gov>, Stephen Gilchrist <sgilchrist@usccr.gov>, "J. Christian Adams" <jadams@usccr.gov>
Subject: Re: [EXTERNAL] Re: Nominations for Appointment to the EAC

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Professor of Law
University of San Diego

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> From: Gail Heriot <gheriot@me.com>
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> To: John Mashburn <jmashburn@usccr.gov>

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Subject: Re: [EXTERNAL] Re: Nominations for Appointment to the EAC

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Thanks!

From: Mauro Morales
Sent: Tuesday, August 3, 2021 5:36 PM
To: Commissioners
Cc: CommissionerAssistants; David Ganz
Subject: Nominations for Appointment to the EAC

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Mauro Morales
Staff Director
U.S. Commission on Civil Rights
P: 202-376-7796| F: 202-376-7672
Mmorales@usccr.gov
http://usccr.gov/

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1331 Pennsylvania Avenue, NW Suite
1150
Washington D.C. 20425

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<image001.gif>
<image002.gif>

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Date : 8/8/2021 10:41:29 PM
From : "Christian Adams" adams@electionlawcenter.com
To : "Gail Heriot" gheriot@usccr.gov
Cc : "Gail Heriot" gheriot@me.com, "John Mashburn" jmashburn@usccr.gov, "stephen gilchrist" thegilchristassociates@gmail.com, "Carissa Mulder" CMulder@usccr.gov, "Peter Kirsanow" pkirsanow@beneschlaw.com, "Alexander Heideman" aheideman@usccr.gov, "Thomas Simuel" tsimuel@usccr.gov, "Peter Kirsanow" pkirsanow@usccr.gov, "Stephen Gilchrist" sgilchrist@usccr.gov, "J. Christian Adams" jadams@usccr.gov
Subject : Re: [EXTERNAL] Re: Nominations for Appointment to the EAC

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earlier the better. I have been out of the office for 2 weeks without email.

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AMERICAN OVERSIGHT

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1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425

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<image001.gif>
<image002.gif>

#USCCR

AMERICAN OVERSIGHT

Date : 9/16/2020 10:45:33 AM
From : "Gail Heriot" gheriot@me.com
To : "Christian Adams" a@electionlawcenter.com
Cc : "Carissa Mulder" CMulder@usccr.gov, "Peter Kirsanow" pkirsanow@beneschlaw.com, "stephen gilchrist" thegilchristassociates@gmail.com, "John Mashburn" jkmash@comcast.net, "Thomas Simuel" tjsimuel32@gmail.com, "Alexander Heideman" aheideman@usccr.gov
Subject : Re: [EXTERNAL] EAC Board of Advisors

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I don't think there are any rules. In the absence of an explicit delegation of power, the Commission as a whole has that power. But you need to be sure it wasn't done properly. I have a vague recollection of talking about this in a meeting in the last decade. The straight shooter on the staff is Maureen Rudolph. You might want to ask her.

Gail Heriot
Professor of Law
University of San Diego

> On Sep 15, 2020, at 2:17 PM, Christian Adams <a@electionlawcenter.com> wrote:
>
> I don't know the rules for USCCR appointing ANYONE yet, but if there are no minutes showing a vote appointing them in regular business, it would seem that their "appointment" is void.
>
> ---
>
> **From:** Carissa Mulder <CMulder@usccr.gov>
> **Sent:** Tuesday, September 15, 2020 4:01 PM
> **To:** Christian Adams <a@electionlawcenter.com>; 'Peter Kirsanow' <pkirsanow@Beneschlaw.com>; 'Gail Heriot' <gheriot@me.com>; 'stephen gilchrist' <thegilchristassociates@gmail.com>
> **Cc:** 'John Mashburn' <jkmash@comcast.net>; 'Thomas Simuel' <tjsimuel32@gmail.com>; Alexander Heideman <aheideman@usccr.gov>
> **Subject:** Re: [EXTERNAL] EAC Board of Advisors
>
> Looking at the document about the appointment of the advisory board members, I think that is correct, Christian. Catherine probably appointed them without ever bringing it up.

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From: Christian Adams <a@electionlawcenter.com>
Sent: Tuesday, September 15, 2020 3:55:45 PM
To: Carissa Mulder; 'Peter Kirsanow'; 'Gail Heriot'; 'stephen gilchrist'
Cc: 'John Mashburn'; 'Thomas Simuel'; Alexander Heideman
Subject: RE: [EXTERNAL] EAC Board of Advisors

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My guess is the USCCR does their own "appointment" itself. How we un-appoint is going to be the issue. It probably NEVER came up in a business meeting and therefore we should, as a commission have the authority to take it up in a business meeting and appoint-anew.

From: Carissa Mulder <CMulder@usccr.gov>
Sent: Tuesday, September 15, 2020 3:34 PM
To: Christian Adams <a@electionlawcenter.com>; Peter Kirsanow <pkirsanow@Beneschlaw.com>; 'Gail Heriot' <gheriot@me.com>; 'stephen gilchrist' <thegilchristassociates@gmail.com>
Cc: John Mashburn <jkmash@comcast.net>; 'Thomas Simuel' <tjsimuel32@gmail.com>; Alexander Heideman <aheideman@usccr.gov>
Subject: Re: [EXTERNAL] EAC Board of Advisors

Good question! I had no idea the USCCR got two designees to the .

From: Christian Adams <a@electionlawcenter.com>
Sent: Tuesday, September 15, 2020 3:15:28 PM
To: Peter Kirsanow; 'Gail Heriot'; 'stephen gilchrist'
Cc: John Mashburn; 'Thomas Simuel'; Carissa Mulder; Alexander Heideman
Subject: [EXTERNAL] EAC Board of Advisors

> CAUTION: This email is from outside USCCR.

Apparently the EAC gets two designees over the Election Assistance Commission Board of Advisors. Currently it is Yaki and Kladney. I just got a call from an EAC commission saying that Yaki is acting absurdly and exercising power over the EAC by threatening the Pelosi pick on the EAC with removal if he doesn't do what he wants, effectively making Yaki a commissioner on the EAC on many issues. He is causing mischief I don't even detail here.

My question is how does he get UNDONE from the EAC oversight commission? How does that get revoked and replaced?

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Date : 8/8/2021 10:37:47 PM
From : "Gail Heriot" gheriot@usccr.gov
To : "Christian Adams" adams@electionlawcenter.com
Cc : "Gail Heriot" gheriot@me.com, "John Mashburn" jmashburn@usccr.gov, "stephen gilchrist" thegilchristassociates@gmail.com, "Carissa Mulder" CMulder@usccr.gov, "Peter Kirsanow" pkirsanow@beneschlaw.com, "Alexander Heideman" aheideman@usccr.gov, "Thomas Simuel" tsimuel@usccr.gov, "Peter Kirsanow" pkirsanow@usccr.gov, "Stephen Gilchrist" sgilchrist@usccr.gov, "J. Christian Adams" jadams@usccr.gov
Subject : Re: [EXTERNAL] Re: Nominations for Appointment to the EAC

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- Commissioner Michael Yaki;
- Ms. Allison Riggs , Co-Executive Director, Southern Coalition for Social Justice.

AMERICAN OVERSIGHT

Commissioners Adams, Gilchrist, Heriot and Kirsanow have nominated the following individuals to the EAC:

- Commissioner Christian Adams;
- Cleta Michell, Chair, Conservative Partnership Institute Election Integrity Network.

Under the AI adopted by Commissioners, the members appointed by the Democratic authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Democratic authorities. The final members selected shall be placed in nomination and ratified by a majority vote. Please inform me how you would like to proceed for a majority vote either by placing it on the agenda for the next USCCR business meeting or by a notational vote.

Mauro Morales
Staff Director

AMERICAN OVERSIGHT

U.S. Commission on Civil Rights
P: 202-376-7796| F: 202-376-7672
Mmorales@usccr.gov
http://usccr.gov/
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425

Follow Us on Twitter & Facebook:
<image001.gif>
<image002.gif>

#USCCR

AMERICAN OVERSIGHT

Date : 9/16/2020 11:02:01 AM
From : "Christian Adams" a@electionlawcenter.com
To : "'Gail Heriot'" gheriot@me.com
Cc : "'Carissa Mulder'" CMulder@usccr.gov, "'Peter Kirsanow'" pkirsanow@beneschlaw.com, "'stephen gilchrist'" thegilchristassociates@gmail.com, "'John Mashburn'" jkmash@comcast.net, "'Thomas Simuel'" tjsimuel32@gmail.com, "'Alexander Heideman'" aheideman@usccr.gov
Subject : RE: [EXTERNAL] EAC Board of Advisors

CAUTION: This email is from outside USCCR.

So multiple people aren't asking her different times, can the SA's get to the bottom of this with maureen.

From: Gail Heriot <gheriot@me.com>
Sent: Wednesday, September 16, 2020 10:46 AM
To: Christian Adams <a@electionlawcenter.com>
Cc: Carissa Mulder <CMulder@usccr.gov>; Peter Kirsanow <pkirsanow@beneschlaw.com>; stephen gilchrist <thegilchristassociates@gmail.com>; John Mashburn <jkmash@comcast.net>; Thomas Simuel <tjsimuel32@gmail.com>; Alexander Heideman <aheideman@usccr.gov>
Subject: Re: [EXTERNAL] EAC Board of Advisors

I don't think there are any rules. In the absence of an explicit delegation of power, the Commission as a whole has that power. But you need to be sure it wasn't done properly. I have a vague recollection of talking about this in a meeting in the last decade. The straight shooter on the staff is Maureen Rudolph. You might want to ask her.

Gail Heriot
Professor of Law
University of San Diego

> On Sep 15, 2020, at 2:17 PM, Christian Adams <a@electionlawcenter.com> wrote:
>
> I don't know the rules for USCCR appointing ANYONE yet, but if there are no minutes showing a vote appointing them in regular business, it would seem that their "appointment" is void.
>
> ---
>
> **From:** Carissa Mulder <CMulder@usccr.gov>
> **Sent:** Tuesday, September 15, 2020 4:01 PM
> **To:** Christian Adams <a@electionlawcenter.com>; 'Peter Kirsanow' <pkirsanow@Beneschlaw.com>; 'Gail Heriot' <gheriot@me.com>; 'stephen gilchrist' <thegilchristassociates@gmail.com>
> **Cc:** 'John Mashburn' <jkmash@comcast.net>; 'Thomas

Simuel' <tjsimuel32@gmail.com>; Alexander Heideman <aheideman@usccr.gov>
Subject: Re: [EXTERNAL] EAC Board of Advisors

Looking at the document about the appointment of the advisory board members, I think that is correct, Christian. Catherine probably appointed them without ever bringing it up.

From: Christian Adams <a@electionlawcenter.com>
Sent: Tuesday, September 15, 2020 3:55:45 PM
To: Carissa Mulder; 'Peter Kirsanow'; 'Gail Heriot'; 'stephen gilchrist'
Cc: 'John Mashburn'; 'Thomas Simuel'; Alexander Heideman
Subject: RE: [EXTERNAL] EAC Board of Advisors

> CAUTION: This email is from outside USCCR.

My guess is the USCCR does their own "appointment" itself. How we un-appoint is going to be the issue. It probably NEVER came up in a business meeting and therefore we should, as a commission have the authority to take it up in a business meeting and appoint-anew.

From: Carissa Mulder <CMulder@usccr.gov>
Sent: Tuesday, September 15, 2020 3:34 PM
To: Christian Adams <a@electionlawcenter.com>; Peter Kirsanow <pkirsanow@Beneschlaw.com>; 'Gail Heriot' <gheriot@me.com>; 'stephen gilchrist' <thegilchristassociates@gmail.com>
Cc: John Mashburn <jkmash@comcast.net>; 'Thomas Simuel' <tjsimuel32@gmail.com>; Alexander Heideman <aheideman@usccr.gov>
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Good question! I had no idea the USCCR got two designees to the .

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Sent: Tuesday, September 15, 2020 3:15:28 PM
To: Peter Kirsanow; 'Gail Heriot'; 'stephen gilchrist'
Cc: John Mashburn; 'Thomas Simuel'; Carissa Mulder; Alexander Heideman
Subject: [EXTERNAL] EAC Board of Advisors

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Apparently the EAC gets two designees over the Election Assistance Commission Board of Advisors. Currently it is Yaki and Kladney. I just got a

AMERICAN OVERSIGHT

call from an EAC commission saying that Yaki is acting absurdly and exercising power over the EAC by threatening the Pelosi pick on the EAC with removal if he doesn't do what he wants, effectively making Yaki a commissioner on the EAC on many issues. He is causing mischief I don't even detail here.

My question is how does he get UNDONE from the EAC oversight commission? How does that get revoked and replaced?

AMERICAN OVERSIGHT

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To : "Christian Adams" a@electionlawcenter.com, "'Gail Heriot'" gheriot@me.com
Cc : "Carissa Mulder" CMulder@usccr.gov, "'Peter Kirsanow'" pkirsanow@beneschlaw.com, "'stephen gilchrist'" thegilchristassociates@gmail.com, "'John Mashburn'" jkmash@comcast.net, "'Thomas Simuel'" tjsimuel32@gmail.com
Subject : Re: [EXTERNAL] EAC Board of Advisors

Yes, happy to.

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Cc: Carissa Mulder <CMulder@usccr.gov>, 'Peter Kirsanow' <pkirsanow@beneschlaw.com>, 'stephen gilchrist' <thegilchristassociates@gmail.com>, 'John Mashburn' <jkmash@comcast.net>, 'Thomas Simuel' <tjsimuel32@gmail.com>, Alexander Heideman <aheideman@usccr.gov>
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Professor of Law
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Cc: John Mashburn; 'Thomas Simuel'; Carissa Mulder; Alexander Heideman
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My question is how does he get UNDONE from the EAC oversight commission? How does that get revoked and replaced?

AMERICAN OVERSIGHT

Date : 8/8/2021 10:45:35 PM
From : "stephen gilchrist" thegilchristassociates@gmail.com
To : "Gail Heriot" gheriot@usccr.gov
Cc : "Christian Adams" adams@electionlawcenter.com, "Gail Heriot" gheriot@me.com, "John Mashburn" jmashburn@usccr.gov, "Carissa Mulder" CMulder@usccr.gov, "Peter Kirsanow" pkirsanow@beneschlaw.com, "Alexander Heideman" aheideman@usccr.gov, "Thomas Simuel" tsimuel@usccr.gov, "Peter Kirsanow" pkirsanow@usccr.gov, "Stephen Gilchrist" sgilchrist@usccr.gov, "J. Christian Adams" jadams@usccr.gov
Subject : Re: [EXTERNAL] Re: Nominations for Appointment to the EAC

> CAUTION: This email is from outside USCCR.

I can do tomorrow but would have a window around 11am on.

On Sun, Aug 8, 2021, 10:37 PM Gail Heriot <gheriot@usccr.gov> wrote:

> I am available tomorrow and more or less on Eastern time (still in Richmond).
>
> Gail Heriot
> Professor of Law
> University of San Diego
>
> > On Aug 8, 2021, at 10:34 PM, Christian Adams <adams@electionlawcenter.com> wrote:
> >
> > > CAUTION: This email is from outside USCCR.
> >
> > sure. Riggs is a nonstarter with me. she is a brilliant pick on thier part because they know my history with her. they know she us wholly unacceptable.
> >
> > -------- Original message --------
> > From: Gail Heriot <gheriot@me.com>
> > Date: 8/8/21 5:39 PM (GMT-05:00)
> > To: Christian Adams <adams@electionlawcenter.com>
> > >, Carissa Mulder <CMulder@usccr.gov>, Peter Kirsanow <pkirsanow@beneschlaw.com>, Alexander Heideman <aheideman@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>, Peter Kirsanow <pkirsanow@usccr.gov>, Gail Heriot <gheriot@usccr.gov>, Stephen Gilchrist <sgilchrist@usccr.gov>, "J. Christian Adams" <jadams@usccr.gov>
> > Subject: Re: [EXTERNAL] Re: Nominations for Appointment to the EAC

AMERICAN OVERSIGHT

Should we have a caucus zoom tomorrow about this?

Gail Heriot
Professor of Law
University of San Diego

> On Aug 8, 2021, at 4:20 PM, Christian Adams <adams@electionlawcenter.com> wrote:
>
> sorry, just returning.
>
> they picked Allison Riggs for a reason. I can explain offline but there is no way I will be part of giving her a single thing.i would rather work with Yaki
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> Date: 8/6/21 3:13 PM (GMT-05:00)
> To: John Mashburn <jmashburn@usccr.gov>
> Cc: stephen gilchrist <thegilchristassociates@gmail.com>, >, Christian Adams <adams@electionlawcenter.com>, Alexander Heideman <aheideman@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>, Peter Kirsanow <pkirsanow@usccr.gov>, Gail Heriot <gheriot@usccr.gov>, Stephen Gilchrist <sgilchrist@usccr.gov>, "J. Christian Adams" <jadams@usccr.gov>
> Subject: Re: [EXTERNAL] Re: Nominations for Appointment to the EAC
>
> I am willing to go with Christian's recommendation on this UNLESS he thinks it's a close case. If he thinks it's a close case AND IF we have reason to believe that the Progressives vetoed Cleta and not Christian, THEN I think we should consider a bit of reciprocity and let Yaki have the job. My impression is that he wants it. If it's really close to six of one half dozen of the other, pleasing him has its benefits.
>
> Of course, so far the evidence is running against the possibility that the Progressives vetoed Cleta and not Christian. If they had vetoed Cleta, my guess is that they would have wanted us to know that. Nevertheless, if this is a close case, it would be a good idea to try to find out what the Progressives did.
>
> Gail Heriot

AMERICAN OVERSIGHT

Professor of Law
University of San Diego

On Aug 6, 2021, at 1:54 PM, John Mashburn <jmashburn@usccr.gov> wrote:

Yes – better her than Yaki.

From: stephen gilchrist <thegilchristassociates@gmail.com>
Date: Friday, August 6, 2021 at 1:51 PM
To: John Mashburn <jmashburn@usccr.gov>
Cc: Gail Heriot <gheriot@me.com>, Carissa Mulder <CMulder@usccr.gov>, Peter Kirsanow <pkirsanow@beneschlaw.com>, Christian Adams <adams@electionlawcenter.com>, Alexander Heideman <aheideman@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>, Peter Kirsanow <pkirsanow@usccr.gov>, Gail Heriot <gheriot@usccr.gov>, Stephen Gilchrist <sgilchrist@usccr.gov>, "J. Christian Adams" <jadams@usccr.gov>
Subject: Re: [EXTERNAL] Re: Nominations for Appointment to the EAC

CAUTION: This email is from outside USCCR.

On Fri, Aug 6, 2021, 1:31 PM John Mashburn <jmashburn@usccr.gov> wrote:

> Allison Riggs

AMERICAN OVERSIGHT

https://southerncoalition.org/staff/allison-riggs/

From: Gail Heriot <gheriot@me.com>
Date: Friday, August 6, 2021 at 1:23 PM
To: Carissa Mulder <CMulder@usccr.gov>
Cc: "pkirsanow@beneschlaw.com" <pkirsanow@beneschlaw.com>, stephen gilchrist <thegilchristassociates@gmail.com>, Christian Adams <adams@electionlawcenter.com>, Alexander Heideman >, Thomas Simuel <tsimuel@usccr.gov>, Peter Kirsanow <pkirsanow@usccr.gov>, Gail Heriot <gheriot@usccr.gov>, Stephen Gilchrist <sgilchrist@usccr.gov>, "J. Christian Adams" <jadams@usccr.gov>
Subject: [EXTERNAL] Re: Nominations for Appointment to the EAC

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they vetoed. Yaki at least has an incentive to tell us if it's Cleta. If it is Cleta, such that Christian will be the appointee, it might be seen as accommodating to let Yaki be re-appointed. If he declines to say, that will be evidence that they vetoed Christian.

Gail Heriot

Professor of Law

University of San Diego

AMERICAN OVERSIGHT

On Aug 6, 2021, at 1:17 PM, Carissa Mulder <CMulder@usccr.gov> wrote:

Hi everyone,

Mauro emailed and asked if the conservative commissioners have selected their EAC nominee. He said the progressives have notified him of their selection, and once we notify him of ours, he will circulate either a notational vote or arrange for it to be voted on at the August business meeting.

Christian, you are the voting expert - do you think Yaki or Allison Riggs is a less damaging choice?

Thanks!

From: Mauro Morales
Sent: Tuesday, August 3, 2021 5:36 PM
To: Commissioners
Cc: CommissionerAssistants; David Ganz
Subject: Nominations for Appointment to the EAC

Commissioners,

AMERICAN OVERSIGHT

Pursuant to the AI voted on during the April 30th Business meeting, you have nominated the following individuals to the Election Assistance Commission (EAC):

Commissioners Cantu, Adegbile, Kladney and Yaki have nominated the following individuals to the EAC:

- Commissioner Michael Yaki;
- Ms. Allison Riggs , Co-Executive Director, Southern Coalition for Social Justice.

Commissioners Adams, Gilchrist, Heriot and Kirsanow have nominated the following individuals to the EAC:

- Commissioner Christian Adams;
- Cleta Michell, Chair, Conservative Partnership Institute Election Integrity Network.

AMERICAN OVERSIGHT

Under the AI adopted by Commissioners, the members appointed by the Democratic authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Democratic authorities. The final members selected shall be placed in nomination and ratified by a majority vote. Please inform me how you would like to proceed for a majority vote either by placing it on the agenda for the next USCCR business meeting or by a notational vote.

Mauro Morales

Staff Director

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http://usccr.gov/

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Washington D.C. 20425

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<image001.gif>

<image002.gif>

#USCCR

AMERICAN OVERSIGHT

Date : 8/9/2021 9:32:16 AM
From : "stephen gilchrist" thegilchristassociates@gmail.com
To : "Gail Heriot" gheriot@usccr.gov
Cc : "Christian Adams" adams@electionlawcenter.com, "Gail Heriot" gheriot@me.com, "John Mashburn" jmashburn@usccr.gov, "Carissa Mulder" CMulder@usccr.gov, "Peter Kirsanow" pkirsanow@beneschlaw.com, "Alexander Heideman" aheideman@usccr.gov, "Thomas Simuel" tsimuel@usccr.gov, "Peter Kirsanow" pkirsanow@usccr.gov, "Stephen Gilchrist" sgilchrist@usccr.gov, "J. Christian Adams" jadams@usccr.gov
Subject : Re: [EXTERNAL] Re: Nominations for Appointment to the EAC

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Gail I can do that.

On Mon, Aug 9, 2021, 8:55 AM Gail Heriot <gheriot@usccr.gov> wrote:

> Should we do a zoom at 11:00 ET?
>
> Gail Heriot
> Professor of Law
> University of San Diego
>
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AMERICAN OVERSIGHT

sure. Riggs is a nonstarter with me. she is a brilliant pick on thier part because they know my history with her. they know she us wholly unacceptable.

-------- Original message --------
From: Gail Heriot <gheriot@me.com>
Date: 8/8/21 5:39 PM (GMT-05:00)
To: Christian Adams <adams@electionlawcenter.com>
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AMERICAN OVERSIGHT

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AMERICAN OVERSIGHT

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AMERICAN OVERSIGHT

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Mauro Morales

Staff Director

U.S. Commission on Civil Rights

P: 202-376-7796| F: 202-376-7672

Mmorales@usccr.gov

http://usccr.gov/

1331 Pennsylvania Avenue, NW Suite 1150

Washington D.C. 20425

AMERICAN OVERSIGHT

Follow Us on Twitter & Facebook:

<image001.gif>

<image002.gif>

#USCCR

AMERICAN OVERSIGHT

Date : 8/9/2021 9:37:49 AM
From : "Carissa Mulder" CMulder@usccr.gov
To : "pkirsanow@beneschlaw.com" pkirsanow@beneschlaw.com, "Gail Heriot" gheriot@me.com, "stephen gilchrist" thegilchristassociates@gmail.com, "Christian Adams" adams@electionlawcenter.com, "Thomas Simuel" tsimuel@usccr.gov, "John Mashburn" jmashburn@usccr.gov, "Alexander Heideman" aheideman@usccr.gov
Subject : EAC Discussion

Carissa Mulder is inviting you to a scheduled Zoom meeting.

Topic: EAC Discussion
Time: Aug 9, 2021 11:00 AM Eastern Time (US and Canada)

Join Zoom Meeting
https://us02web.zoom.us/j/82752150046?pwd=a3JVckRINHhqY21ZYkpDNVcybFdZQT09

Meeting ID: 827 5215 0046
Passcode: 154517
One tap mobile
+16465588656,,82752150046# US (New York)
+13017158592,,82752150046# US (Washington DC)

Dial by your location
+1 646 558 8656 US (New York)
+1 301 715 8592 US (Washington DC)
+1 312 626 6799 US (Chicago)
+1 669 900 6833 US (San Jose)
+1 253 215 8782 US (Tacoma)
+1 346 248 7799 US (Houston)
855 880 1246 US Toll-free
877 369 0926 US Toll-free
833 548 0276 US Toll-free
833 548 0282 US Toll-free
Meeting ID: 827 5215 0046
Find your local number: https://us02web.zoom.us/u/kcE59a6V2f

Join by SIP
82752150046@zoomcrc.com

Join by H.323
162.255.37.11 (US West)
162.255.36.11 (US East)
115.114.131.7 (India Mumbai)
115.114.115.7 (India Hyderabad)

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213.19.144.110 (Amsterdam Netherlands)
213.244.140.110 (Germany)
103.122.166.55 (Australia Sydney)
103.122.167.55 (Australia Melbourne)
149.137.40.110 (Singapore)
64.211.144.160 (Brazil)
149.137.68.253 (Mexico)
69.174.57.160 (Canada Toronto)
65.39.152.160 (Canada Vancouver)
207.226.132.110 (Japan Tokyo)
149.137.24.110 (Japan Osaka)
Meeting ID: 827 5215 0046
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AMERICAN OVERSIGHT

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Cc : "Christian Adams" adams@electionlawcenter.com, "Gail Heriot" gheriot@me.com, "John Mashburn" jmashburn@usccr.gov, "Peter Kirsanow" pkirsanow@Beneschlaw.com, "Alexander Heideman" aheideman@usccr.gov, "Thomas Simuel" tsimuel@usccr.gov, "Peter Kirsanow" pkirsanow@usccr.gov, "Stephen Gilchrist" sgilchrist@usccr.gov, "J. Christian Adams" jadams@usccr.gov
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Subject: Re: [EXTERNAL] Re: Nominations for Appointment to the EAC

Should we do a zoom at 11:00 ET?

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Professor of Law
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AMERICAN OVERSIGHT

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Kirsanow <pkirsanow@usccr.gov>, Gail Heriot <gheriot@usccr.gov>, Stephen Gilchrist <sgilchrist@usccr.gov>, "J. Christian Adams" <jadams@usccr.gov>
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EAC

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> Thanks!

AMERICAN OVERSIGHT

From: Mauro Morales
Sent: Tuesday, August 3, 2021 5:36 PM
To: Commissioners
Cc: CommissionerAssistants; David Ganz
Subject: Nominations for Appointment to the EAC

Commissioners,

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- Commissioner Michael Yaki;
- Ms. Allison Riggs , Co-Executive Director, Southern Coalition for Social Justice.

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- Commissioner

AMERICAN OVERSIGHT

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1331 Pennsylvania
Avenue, NW Suite 1150
Washington D.C. 20425

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Facebook:
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<image002.gif>

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Date : 9/16/2020 11:09:08 AM
From : "Alexander Heideman" aheideman@usccr.gov
To : "Maureen Rudolph" mrudolph@usccr.gov
Subject : USCCR & Election Assistance Commission Board of Advisors

Hi Maureen,

I hope you're having a great week.

I've got a few questions about USCCR & the EAC Board of Advisors that I'm hoping you'll be able to answer. Do you have time for a quick phone call today or would you prefer I email you?

Thanks!
Alex

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Date : 8/9/2021 9:36:20 AM
From : "Carissa Mulder" CMulder@usccr.gov
To : "Gail Heriot" gheriot@usccr.gov
Cc : "stephen gilchrist" thegilchristassociates@gmail.com, "Christian Adams" adams@electionlawcenter.com, "Gail Heriot" gheriot@me.com, "John Mashburn" jmashburn@usccr.gov, "Peter Kirsanow" pkirsanow@Beneschlaw.com, "Alexander Heideman" aheideman@usccr.gov, "Thomas Simuel" tsimuel@usccr.gov, "Peter Kirsanow" pkirsanow@usccr.gov, "Stephen Gilchrist" sgilchrist@usccr.gov, "J. Christian Adams" jadams@usccr.gov
Subject : Re: [EXTERNAL] Re: Nominations for Appointment to the EAC

Pete is available.

From: Gail Heriot
Sent: Monday, August 9, 2021 9:33:52 AM
To: Carissa Mulder
Cc: stephen gilchrist; Christian Adams; Gail Heriot; John Mashburn; Peter Kirsanow; Alexander Heideman; Thomas Simuel; Peter Kirsanow; Stephen Gilchrist; J. Christian Adams
Subject: Re: [EXTERNAL] Re: Nominations for Appointment to the EAC

I think we're all willing to defer to Christian on this. But a meeting is still useful to hear from him if 11:00 works. I'm sure it will be brief.

Sent from my iPhone

> On Aug 9, 2021, at 9:28 AM, Carissa Mulder <CMulder@usccr.gov> wrote:
>
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> **Cc:** Christian Adams; Gail Heriot; John Mashburn; Carissa Mulder; Peter Kirsanow; Alexander Heideman; Thomas Simuel; Peter Kirsanow; Stephen Gilchrist; J. Christian Adams
> **Subject:** Re: [EXTERNAL] Re: Nominations for Appointment to the EAC
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Allison Riggs

https://southerncoalition.org/staff/allison-iggs/

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> **Cc:** Gail Heriot <gheriot@me.com>, Carissa Mulder <CMulder@usccr.gov>, Peter Kirsanow <pkirsanow@beneschlaw.com>, Christian Adams <adams@electionlawcenter.com>, Alexander Heideman <aheideman@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>, Peter Kirsanow <pkirsanow@usccr.gov>, Gail Heriot <gheriot@usccr.gov>, Stephen Gilchrist <sgilchrist@usccr.gov>, "J. Christian Adams" <jadams@usccr.gov>
> **Subject:** Re: [EXTERNAL] Re: Nominations for Appointment to the

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EAC

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On Fri, Aug 6, 2021, 1:31 PM John Mashburn <jmashburn@usccr.gov> wrote:

> Allison Riggs
>
> https://southerncoalition.org/staff/allison-iggs/
>
> ---
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> **Date:** Friday, August 6, 2021 at 1:23 PM
> **To:** Carissa Mulder <CMulder@usccr.gov>
> **Cc:** "pkirsanow@beneschlaw.com" <pkirsanow@beneschlaw.com>, stephen gilchrist <thegilchristassociates@gmail.com>, Christian Adams <adams@electionlawcenter.com>, Alexander Heideman <aheideman@usccr.gov>, John Mashburn <jmashburn@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>, Peter Kirsanow <pkirsanow@usccr.gov>, Gail Heriot <gheriot@usccr.gov>,

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Gail Heriot

Professor of Law

University of San Diego

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AMERICAN OVERSIGHT

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Christian, you are the voting expert - do you think Yaki or Allison Riggs is a less damaging choice?

Thanks!

From: Mauro Morales
Sent: Tuesday, August 3, 2021 5:36 PM
To: Commissioners
Cc: CommissionerAssistants; David Ganz
Subject: Nominations for Appointment to the EAC

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Commissioners Cantu, Adegbile, Kladney and Yaki have nominated the following individuals to

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the EAC:

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- Ms. Allison Riggs , Co-Executive Director, Southern Coalition for Social Justice.

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- Cleta Michell, Chair, Conservative Partnership Institute Election Integrity Network.

Under the AI adopted by Commissioners, the members appointed by the Democratic authorities shall select one (1) of the two (2) individuals nominated by the members appointed

AMERICAN OVERSIGHT

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Mauro Morales

Staff Director

U.S. Commission on Civil Rights

P: 202-376-7796| F: 202-376-7672

Mmorales@usccr.gov

http://usccr.gov/

1331 Pennsylvania Avenue, NW Suite 1150

Washington D.C. 20425

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<image001.gif>

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#USCCR

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Date : 8/9/2021 9:33:53 AM
From : "Gail Heriot" gheriot@usccr.gov
To : "Carissa Mulder" CMulder@usccr.gov
Cc : "stephen gilchrist" thegilchristassociates@gmail.com, "Christian Adams" adams@electionlawcenter.com, "Gail Heriot" gheriot@me.com, "John Mashburn" jmashburn@usccr.gov, "Peter Kirsanow" pkirsanow@beneschlaw.com, "Alexander Heideman" aheideman@usccr.gov, "Thomas Simuel" tsimuel@usccr.gov, "Peter Kirsanow" pkirsanow@usccr.gov, "Stephen Gilchrist" sgilchrist@usccr.gov, "J. Christian Adams" jadams@usccr.gov
Subject : Re: [EXTERNAL] Re: Nominations for Appointment to the EAC

I think we're all willing to defer to Christian on this. But a meeting is still useful to hear from him if 11:00 works. I'm sure it will be brief.

Sent from my iPhone

> On Aug 9, 2021, at 9:28 AM, Carissa Mulder <CMulder@usccr.gov> wrote:
>
> I'm happy to set it up, but I don't know if Pete is available. I think he will defer to Christian on this.
>
> ---
>
> **From:** Gail Heriot
> **Sent:** Monday, August 9, 2021 8:55:45 AM
> **To:** stephen gilchrist
> **Cc:** Christian Adams; Gail Heriot; John Mashburn; Carissa Mulder; Peter Kirsanow; Alexander Heideman; Thomas Simuel; Peter Kirsanow; Stephen Gilchrist; J. Christian Adams
> **Subject:** Re: [EXTERNAL] Re: Nominations for Appointment to the EAC
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> Should we do a zoom at 11:00 ET?
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AMERICAN OVERSIGHT

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Avenue, NW Suite
1150

Washington D.C.
20425

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Facebook:

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<image002.gif>

#USCCR

AMERICAN OVERSIGHT

Date : 8/9/2021 10:22:42 AM
From : "Kirsanow, Peter" pkirsanow@Beneschlaw.com
To : "Christian Adams" adams@electionlawcenter.com, "'Gail Heriot'" gheriot@usccr.gov, "'stephen gilchrist'" thegilchristassociates@gmail.com
Cc : "'Gail Heriot'" gheriot@me.com, "'John Mashburn'" jmashburn@usccr.gov, "'Carissa Mulder'" CMulder@usccr.gov, "'Alexander Heideman'" aheideman@usccr.gov, "'Thomas Simuel'" tsimuel@usccr.gov, "'Peter Kirsanow'" pkirsanow@usccr.gov, "'Stephen Gilchrist'" sgilchrist@usccr.gov, "'J. Christian Adams'" jadams@usccr.gov
Subject : RE: [EXTERNAL] Re: Nominations for Appointment to the EAC

> CAUTION: This email is from outside USCCR.

ok

From: Christian Adams <adams@electionlawcenter.com>
Sent: Monday, August 9, 2021 10:19 AM
To: 'Gail Heriot' <gheriot@usccr.gov>; 'stephen gilchrist' <thegilchristassociates@gmail.com>
Cc: 'Gail Heriot' <gheriot@me.com>; 'John Mashburn' <jmashburn@usccr.gov>; 'Carissa Mulder' <CMulder@usccr.gov>; Kirsanow, Peter <pkirsanow@Beneschlaw.com>; 'Alexander Heideman' <aheideman@usccr.gov>; 'Thomas Simuel' <tsimuel@usccr.gov>; 'Peter Kirsanow' <pkirsanow@usccr.gov>; 'Stephen Gilchrist' <sgilchrist@usccr.gov>; 'J. Christian Adams' <jadams@usccr.gov>
Subject: RE: [EXTERNAL] Re: Nominations for Appointment to the EAC

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Sent: Monday, August 9, 2021 8:56 AM
To: stephen gilchrist <thegilchristassociates@gmail.com>
Cc: Christian Adams <adams@electionlawcenter.com>; Gail Heriot <gheriot@me.com>; John >; Alexander Heideman <aheideman@usccr.gov>; Thomas Simuel <tsimuel@usccr.gov>; Peter Kirsanow <pkirsanow@usccr.gov>; Stephen Gilchrist <sgilchrist@usccr.gov>; J. Christian Adams <jadams@usccr.gov>
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<image002.gif>

#USCCR

AMERICAN OVERSIGHT

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Professor of Law
University of San Diego

> On Aug 8, 2021, at 4:20 PM, Christian Adams <adams@electionlawcenter.com> wrote:
>
> sorry, just returning.
>
> they picked Allison Riggs for a reason. I can explain offline but there is no way I will be part of giving her a single thing.i would rather work with Yaki
>
> -------- Original message --------
> From: Gail Heriot <gheriot@me.com>
> Date: 8/6/21 3:13 PM (GMT-05:00)
> To: John Mashburn <jmashburn@usccr.gov>
> Cc: stephen gilchrist <thegilchristassociates@gmail.com>, Carissa Mulder <CMulder@usccr.gov>, Peter Kirsanow
> >, Alexander Heideman <aheideman@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>, Peter Kirsanow <pkirsanow@usccr.gov>, Gail Heriot <gheriot@usccr.gov>, Stephen Gilchrist

AMERICAN OVERSIGHT

<sgilchrist@usccr.gov>, "J. Christian Adams" <jadams@usccr.gov>
Subject: Re: [EXTERNAL] Re: Nominations for Appointment to the EAC

I am willing to go with Christian's recommendation on this UNLESS he thinks it's a close case. If he thinks it's a close case AND IF we have reason to believe that the Progressives vetoed Cleta and not Christian, THEN I think we should consider a bit of reciprocity and let Yaki have the job. My impression is that he wants it. If it's really close to six of one half dozen of the other, pleasing him has its benefits.

Of course, so far the evidence is running against the possibility that the Progressives vetoed Cleta and not Christian. If they had vetoed Cleta, my guess is that they would have wanted us to know that. Nevertheless, if this is a close case, it would be a good idea to try to find out what the Progressives did.

Gail Heriot
Professor of Law
University of San Diego

On Aug 6, 2021, at 1:54 PM, John Mashburn <jmashburn@usccr.gov> wrote:

Yes – better her than Yaki.

From:
>
Date: Friday, August 6, 2021 at 1:51 PM
To: John Mashburn <jmashburn@usccr.gov>
Cc: Gail Heriot <gheriot@me.com>, Carissa Mulder <CMulder@usccr.gov>, Peter Kirsanow <pkirsanow@beneschlaw.com>, Christian Adams <adams@electionlawcenter.com>, Alexander Heideman <aheideman@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>, Peter Kirsanow <pkirsanow@usccr.gov>, Gail Heriot <gheriot@usccr.gov>, Stephen

AMERICAN OVERSIGHT

Gilchrist <sgilchrist@usccr.gov>, "J. Christian Adams" <jadams@usccr.gov>
Subject: Re: [EXTERNAL] Re: Nominations for Appointment to the EAC

> CAUTION: This email is from outside USCCR.

On Fri, Aug 6, 2021, 1:31 PM John Mashburn <jmashburn@usccr.gov> wrote:

> Allison Riggs
>
> https://southerncoalition.org/staff/allison-iggs/
>
> ---
>
> **From:** Gail Heriot <gheriot@me.com>
> **Date:** Friday, August 6, 2021 at 1:23 PM
> **To:** Carissa Mulder <CMulder@usccr.gov>
> **Cc:** "pkirsanow@beneschlaw.com" <pkirsanow@beneschlaw.com>, stephen gilchrist <thegilchristassociates@gmail.com>, Christian Adams <adams@electionlawcenter.com>, Alexander Heideman <aheideman@usccr.gov>, John Mashburn <jmashburn@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>, Peter Kirsanow >, Stephen Gilchrist <sgilchrist@usccr.gov>, "J. Christian Adams" <jadams@usccr.gov>
> **Subject:** [EXTERNAL] Re: Nominations for Appointment to the EAC
>
> > CAUTION: This email is from outside USCCR.

AMERICAN OVERSIGHT

they vetoed. Yaki at least has an incentive to tell us if it's Cleta. If it is Cleta, such that Christian will be the appointee, it might be seen as accommodating to let Yaki be re-appointed. If he declines to say, that will be evidence that they vetoed Christian.

Gail Heriot
Professor of Law
University of San Diego

> On Aug 6, 2021, at 1:17 PM, Carissa Mulder <CMulder@usccr.gov> wrote:
>
> Hi everyone,
>
> Mauro emailed and asked if the conservative commissioners have selected their EAC nominee. He said the progressives have notified him of their selection, and once we notify him of ours, he will circulate either a notational vote or arrange for it to be voted on at the August business meeting.
>
> Christian, you are the voting expert - do you think Yaki or Allison Riggs is a less damaging choice?
>
> Thanks!

AMERICAN OVERSIGHT

From: Mauro Morales
Sent: Tuesday, August 3, 2021 5:36 PM
To: Commissioners
Cc: CommissionerAssistants; David Ganz
Subject: Nominations for Appointment to the EAC

Commissioners,

Pursuant to the AI voted on during the April 30th Business meeting, you have nominated the following individuals to the Election Assistance Commission (EAC):

Commissioners Cantu, Adegbile, Kladney and Yaki have nominated the following individuals to the EAC:

- Commissioner Michael Yaki;

- Ms. Allison Riggs , Co-Executive Director, Southern Coalition for Social Justice.

Commissioners Adams, Gilchrist, Heriot and Kirsanow have

AMERICAN OVERSIGHT

nominated the following individuals to the EAC:

- Commissioner Christian Adams;
- Cleta Michell, Chair, Conservative Partnership Institute Election Integrity Network.

Under the AI adopted by Commissioners, the members appointed by the Democratic authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Democratic authorities. The final members selected shall be placed in nomination and ratified by a majority vote. Please inform me how you would like to proceed for a majority vote either by placing it on the agenda for the next USCCR business meeting or by a

AMERICAN OVERSIGHT

notational vote.

Mauro Morales
Staff Director
U.S. Commission on Civil Rights
P: 202-376-7796| F: 202-376-7672
Mmorales@usccr.gov
http://usccr.gov/
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425

Follow Us on Twitter & Facebook:
<image001.gif>
<image002.gif>

#USCCR

AMERICAN OVERSIGHT

Date : 9/16/2020 11:13:33 AM
From : "Maureen Rudolph" mrudolph@usccr.gov
To : "Alexander Heideman" aheideman@usccr.gov
Subject : Re: USCCR & Election Assistance Commission Board of Advisors

Either is fine. If you'd like to chat, does 1pm work? Also, do you have the statutory citation, etc., or is there anything you'd like before talking? Thanks much, Maureen

---

From: Alexander Heideman
Sent: Wednesday, September 16, 2020 11:09:08 AM
To: Maureen Rudolph
Subject: USCCR & Election Assistance Commission Board of Advisors

Hi Maureen,

I hope you're having a great week.

I've got a few questions about USCCR & the EAC Board of Advisors that I'm hoping you'll be able to answer. Do you have time for a quick phone call today or would you prefer I email you?

Thanks!
Alex

AMERICAN OVERSIGHT

Date : 8/9/2021 10:23:06 AM
From : "Kirsanow, Peter" pkirsanow@Beneschlaw.com
To : "Carissa Mulder" CMulder@usccr.gov
Subject : Accepted: EAC Discussion

CAUTION: This email is from outside USCCR.

AMERICAN OVERSIGHT

Date : 8/9/2021 10:52:08 AM
From : "Carissa Mulder" CMulder@usccr.gov
To : "carissa.mulder@gmail.com" carissa.mulder@gmail.com
Subject : FW: [EXTERNAL] johnmashburn has joined your meeting - EAC Discussion

---

From: Zoom
Sent: Monday, August 9, 2021 10:52:05 AM (UTC-05:00) Eastern Time (US & Canada)
To: Carissa Mulder
Subject: [EXTERNAL] johnmashburn has joined your meeting - EAC Discussion

CAUTION: This email is from outside USCCR.

Hi Carissa Mulder,

johnmashburn has joined your meeting:

Topic	**EAC Discussion**
Meeting ID	827 5215 0046
Time	Aug 9, 2021 11:00 AM Eastern Time (US and Canada)

Start Meeting

Thank you for choosing Zoom.
-The Zoom Team

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AMERICAN OVERSIGHT

Date : 8/9/2021 1:01:44 PM
From : "Irena Vidulovic" ividulovic@usccr.gov
To : "Debo P. Adegbile" dadegbile@usccr.gov, "Adegbile, Debo" Debo.Adegbile@wilmerhale.com
Cc : "Zervoudis, Flor" Flor.Zervoudis@wilmerhale.com
Subject : UPDATED TO DO LIST

Adegbile,

Looking forward to our meeting:

1. Financial Disclosure Form
2. EAC Submissions (we submitted Cleta as a caucus)
3. Senator Schatz request fro Fines and Fees (please review)
4. Written Documents from Senator Warren's Office (this week)
5. August Business Meeting: Bail Reform vote + SAC's

Irena Vidulovic
Special Assistant to Commissioner Debo P. Adegbile
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M: 202-591-9969
ividulovic@usccr.gov
http://usccr.gov/
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425

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AMERICAN OVERSIGHT

Date : 8/10/2021 3:01:56 PM
From : "stephen gilchrist" thegilchristassociates@gmail.com
To : "Christian Adams" adams@electionlawcenter.com
Cc : "Gail Heriot" gheriot@usccr.gov, "Gail Heriot" gheriot@me.com, "John Mashburn" jmashburn@usccr.gov, "Carissa Mulder" CMulder@usccr.gov, "Peter Kirsanow" pkirsanow@beneschlaw.com, "Alexander Heideman" aheideman@usccr.gov, "Thomas Simuel" tsimuel@usccr.gov, "Peter Kirsanow" pkirsanow@usccr.gov, "Stephen Gilchrist" sgilchrist@usccr.gov, "J. Christian Adams" jadams@usccr.gov
Subject : Re: [EXTERNAL] Re: Nominations for Appointment to the EAC

> CAUTION: This email is from outside USCCR.

We should make them vote at the meeting and not notational vote for the EAC. I'm willing to let Mauro know this.

Please advise.

On Sun, Aug 8, 2021, 10:41 PM Christian Adams <adams@electionlawcenter.com> wrote:

> earlier the better. I have been out of the office for 2 weeks without email.
>
> -------- Original message --------
> From: Gail Heriot <gheriot@usccr.gov>
> Date: 8/8/21 10:37 PM (GMT-05:00)
> To: Christian Adams <adams@electionlawcenter.com>
> Cc: Gail Heriot <gheriot@me.com>, John Mashburn <jmashburn@usccr.gov>, stephen gilchrist <thegilchristassociates@gmail.com>, Carissa Mulder <CMulder@usccr.gov>, Peter Kirsanow <pkirsanow@beneschlaw.com>, Alexander Heideman <aheideman@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>, Peter Kirsanow <pkirsanow@usccr.gov>, Stephen Gilchrist <sgilchrist@usccr.gov>, "J. Christian Adams" <jadams@usccr.gov>
> Subject: Re: [EXTERNAL] Re: Nominations for Appointment to the EAC
>
> I am available tomorrow and more or less on Eastern time (still in Richmond).
>
> Gail Heriot
> Professor of Law
> University of San Diego
>
> > On Aug 8, 2021, at 10:34 PM, Christian Adams <adams@electionlawcenter.com> wrote:
> >
> > > CAUTION: This email is from outside USCCR.

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sure. Riggs is a nonstarter with me. she is a brilliant pick on thier part because they know my history with her. they know she us wholly unacceptable.

-------- Original message --------
From: Gail Heriot <gheriot@me.com>
Date: 8/8/21 5:39 PM (GMT-05:00)
To: Christian Adams <adams@electionlawcenter.com>
>, Carissa Mulder <CMulder@usccr.gov>, Peter Kirsanow <pkirsanow@beneschlaw.com>, Alexander Heideman <aheideman@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>, Peter Kirsanow <pkirsanow@usccr.gov>, Gail Heriot <gheriot@usccr.gov>, Stephen Gilchrist <sgilchrist@usccr.gov>, "J. Christian Adams" <jadams@usccr.gov>
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Professor of Law
University of San Diego

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AMERICAN OVERSIGHT

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Professor of Law
University of San Diego

> On Aug 6, 2021, at 1:54 PM, John Mashburn <jmashburn@usccr.gov> wrote:
>
> Yes – better her than Yaki.
>
> ---
>
> **From:** stephen gilchrist <thegilchristassociates@gmail.com>
> **Date:** Friday, August 6, 2021 at 1:51 PM
> **To:** John Mashburn <jmashburn@usccr.gov>
> **Cc:** Gail Heriot <gheriot@me.com>, Carissa Mulder <CMulder@usccr.gov>, Peter Kirsanow <pkirsanow@beneschlaw.com>, Christian Adams <adams@electionlawcenter.com>, Alexander Heideman <aheideman@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>, Peter Kirsanow <pkirsanow@usccr.gov>, Gail Heriot <gheriot@usccr.gov>, Stephen Gilchrist <sgilchrist@usccr.gov>, "J. Christian Adams" <jadams@usccr.gov>
> **Subject:** Re: [EXTERNAL] Re: Nominations for Appointment to the EAC

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CAUTION: This email is from outside USCCR.

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> **Cc:** "pkirsanow@beneschlaw.com" <pkirsanow@beneschlaw.com>, stephen gilchrist <thegilchristassociates@gmail.com>, Christian Adams <adams@electionlawcenter.com>, Alexander Heideman >, Thomas Simuel <tsimuel@usccr.gov>, Peter Kirsanow <pkirsanow@usccr.gov>, Gail Heriot <gheriot@usccr.gov>, Stephen Gilchrist <sgilchrist@usccr.gov>, "J. Christian Adams" <jadams@usccr.gov>
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AMERICAN OVERSIGHT

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Gail Heriot

Professor of Law

University of San Diego

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>
> Hi everyone,
>
> Mauro emailed and asked if the conservative commissioners have selected their EAC nominee. He said the progressives have notified him of their selection, and once we notify him of ours, he will circulate either a notational vote or arrange for it to be voted on at the August business meeting.
>
> Christian, you are the voting expert - do you think Yaki or Allison Riggs is a less damaging choice?
>
> Thanks!

AMERICAN OVERSIGHT

From: Mauro Morales
Sent: Tuesday, August 3, 2021 5:36 PM
To: Commissioners
Cc: CommissionerAssistants; David Ganz
Subject: Nominations for Appointment to the EAC

Commissioners,

Pursuant to the AI voted on during the April 30th Business meeting, you have nominated the following individuals to the Election Assistance Commission (EAC):

Commissioners Cantu, Adegbile, Kladney and Yaki have nominated the following individuals to the EAC:

- Commissioner Michael Yaki;
- Ms. Allison Riggs , Co-Executive Director, Southern Coalition for Social Justice.

Commissioners Adams, Gilchrist, Heriot and Kirsanow have nominated the following individuals to the EAC:

AMERICAN OVERSIGHT

- Commissioner Christian Adams;
- Cleta Michell, Chair, Conservative Partnership Institute Election Integrity Network.

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Mauro Morales

Staff Director

U.S. Commission on Civil Rights

AMERICAN OVERSIGHT

P: 202-376-7796| F: 202-376-7672

Mmorales@usccr.gov

http://usccr.gov/

1331 Pennsylvania Avenue, NW Suite 1150

Washington D.C. 20425

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<image001.gif>

<image002.gif>

#USCCR

AMERICAN OVERSIGHT

Date : 9/16/2020 11:28:49 AM
From : "Alexander Heideman" aheideman@usccr.gov
To : "Maureen Rudolph" mrudolph@usccr.gov
Subject : Re: USCCR & Election Assistance Commission Board of Advisors

1PM works perfectly for me. Do you happen to have our internal rules on how the two Commissioners are appointed to the EAC Board of Advisors?

From: Maureen Rudolph <mrudolph@usccr.gov>
Date: Wednesday, September 16, 2020 at 11:13 AM
To: Alexander Heideman <aheideman@usccr.gov>
Subject: Re: USCCR & Election Assistance Commission Board of Advisors

Either is fine. If you'd like to chat, does 1pm work? Also, do you have the statutory citation, etc., or is there anything you'd like before talking? Thanks much, Maureen

---

From: Alexander Heideman
Sent: Wednesday, September 16, 2020 11:09:08 AM
To: Maureen Rudolph
Subject: USCCR & Election Assistance Commission Board of Advisors

Hi Maureen,

I hope you're having a great week.

I've got a few questions about USCCR & the EAC Board of Advisors that I'm hoping you'll be able to answer. Do you have time for a quick phone call today or would you prefer I email you?

Thanks!
Alex

AMERICAN OVERSIGHT

Date : 8/10/2021 4:52:24 PM
From : "Thomas Simuel" tsimuel@usccr.gov
To : "Mauro Morales" mmorales@usccr.gov
Cc : "Stephen Gilchrist" sgilchrist@usccr.gov, "stephen gilchrist" thegilchristassociates@gmail.com
Subject : RE: EAC Final Selections

Hey Mauro,

Commissioner Gilchrist prefer to have the EAC vote at the business meeting.

Thanks,

Thomas

-------- Original message --------
From: Mauro Morales <mmorales@usccr.gov>
Date: 8/10/21 2:57 PM (GMT-05:00)
To: Commissioners <Commissioners@usccr.gov>
Cc: CommissionerAssistants <CommissionerAssistants@usccr.gov>, David Ganz <dganz@usccr.gov>
Subject: EAC Final Selections

Commissioners,

Pursuant to the AI voted on during the April 30th Business meeting, I received the following names for appointment the Election Assistance Commission (EAC):

Commissioners Cantu, Adegbile, Kladney and Yaki have selected for appointment to the EAC:

- Cleta Michell, Chair, Conservative Partnership Institute Election Integrity Network.

Commissioners Adams, Gilchrist, Heriot and Kirsanow have selected for appointment to the EAC:

- Commissioner Michael Yaki;

Under the AI adopted by Commissioners, these two members selected shall be placed in nomination and ratified by a majority vote. Please inform me how you would like to proceed for a majority vote either by placing it on the agenda for the next USCCR business meeting or by a notational vote. Thank you.

Mauro Morales
Staff Director

AMERICAN OVERSIGHT

U.S. Commission on Civil Rights
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Mmorales@usccr.gov
http://usccr.gov/
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425

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Sent from my iPhone

AMERICAN OVERSIGHT

Date : 8/11/2021 10:23:46 AM
From : "Irena Vidulovic" ividulovic@usccr.gov
To : "Debo P. Adegbile" dadegbile@usccr.gov, "Adegbile, Debo" Debo.Adegbile@wilmerhale.com
Cc : "Zervoudis, Flor" Flor.Zervoudis@wilmerhale.com
Subject : Re: UPDATED TO DO LIST

Adegbile,

Wanted to send you an updated TO DO LIST. I have finalized the Bail Reform project and have send the redline version to the SA's. I also sent your quote to Sen. Schatz's office.

1. Financial Disclosure Form (this week)
2. ~~EAC Submissions (we submitted Cleta as a caucus)~~
3. ~~Senator Schatz request fro Fines and Fees (please review)~~
4. Written Documents from Senator Warren's Office (this week)
5. August Business Meeting: Bail Reform vote + SAC's

From: Irena Vidulovic
Sent: Monday, August 9, 2021 1:01:44 PM
To: Debo P. Adegbile; Adegbile, Debo
Cc: Zervoudis, Flor
Subject: UPDATED TO DO LIST

Adegbile,

Looking forward to our meeting:

1. Financial Disclosure Form
2. EAC Submissions (we submitted Cleta as a caucus)
3. Senator Schatz request fro Fines and Fees (please review)
4. Written Documents from Senator Warren's Office (this week)
5. August Business Meeting: Bail Reform vote + SAC's

Irena Vidulovic
Special Assistant to Commissioner Debo P. Adegbile
U.S. Commission on Civil Rights
M: 202-591-9969
ividulovic@usccr.gov
http://usccr.gov/
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425

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Date : 8/12/2021 11:54:44 AM
From : "Irena Vidulovic" ividulovic@usccr.gov
To : "Debo P. Adegbile" dadegbile@usccr.gov, "Adegbile, Debo" Debo.Adegbile@wilmerhale.com
Cc : "Zervoudis, Flor" Flor.Zervoudis@wilmerhale.com
Subject : UPDATED TO DO LIST- AUGUST BUSINESS MEETING NEXT WEEK
Attachment : 08-20-USCCR-Business-Meeting-Sunshine-Act-Notice.pdf;

Adegbile,

I just wanted to give you an updated TO DO LIST since I will be out on vacation next week. As you know the most important item on this entire list is the Financial Disclosure Form. As you know you don't have any more extensions.

1. Financial Disclosure Form (this week)!
2. USCCR Hours (today) 8/1-14
   8/2 1hour Weekly Priority Call with SA
   8/3 1.5 hours Review USCCR Documents
   8/5 .5 Call with SA regarding FEMA briefing
   8/6 3 hours review USCCR documents
   8/9 1.5 hours Weekly Priority call with SA
   8/10 2 hours review financial disclosure form
   8/11 1.5 hours review Fines and Fees Quote
   8/12 1 hour call with SA regarding August Business Meeting

3. August Business Meeting Agenda (the Sunshine notice has posted and attached)
   A. Presentations from Advisory Committees to the Commission on Recent 2 Reports/Memo Releases
   B. Discussion and Vote on Iowa Advisory Committee Chair Appointment
   C. Discussion and Vote on Advisory Committee Appointments (Florida). Juana, David should circulate and then if we could have your legal intern do the vet memo that would be great.
   D. Discussion and Vote on the Release of The Civil Rights Implications of Cash Bail: Briefing Report Before the U.S. Commission on Civil Rights. I have circulated the final version to the SA's and will circulate to Commissioners, Mauro + OGC today.
4. E. Management and Operations
   **It looks like the only item that is missing is the EAC nominations. So someone would need to amend the agenda to add that item and have a vote on Commissioner Yaki and Cleta Mitchell for EAC.
5. Written Documents from Senator Warren's Office

Please let me know if you have any questions,

Irena

AMERICAN OVERSIGHT

Irena Vidulovic
Special Assistant to Commissioner Debo P. Adegbile
U.S. Commission on Civil Rights
M: 202-591-9969
ividulovic@usccr.gov
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COMMISSION ON CIVIL RIGHTS

Sunshine Act Meetings

AGENCY: United States Commission on Civil Rights.

ACTION: Notice of Commission public business meeting.

DATES: Friday, August 20, 2021, 12:00 pm EST.

ADDRESSES: Meeting to take place by telephone and is open to the public by telephone: 1-800-635-7637, Conference ID #: 8000136.

FOR FURTHER INFORMATION CONTACT: Angelia Rorison: 202-376-7700; publicaffairs@usccr.gov.

SUPPLEMENTARY INFORMATION:

In accordance with the Government in Sunshine Act (5 U.S.C. 552b), the Commission on Civil Rights is holding a meeting to discuss the Commission's business for the month of August. This meeting is open to the public. Computer assisted real-time transcription (CART) will be provided. The web link to access CART (in English) on Friday, August 20, 2021, is https://www.streamtext.net/player?event=USCCR. Please note that CART is text-only translation that occurs in real time during the meeting and is not an exact transcript.

Meeting Agenda

I. Approval of Agenda

II. Business Meeting

A. Presentations from Advisory Committees to the Commission on Recent

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Reports/Memo Releases

B. Discussion and Vote on Iowa Advisory Committee Chair Appointment

C. Discussion and Vote on Advisory Committee Appointments

D. Discussion and Vote on the Release of The Civil Rights Implications of Cash Bail: Briefing Report Before the U.S. Commission on Civil Rights

E. Management and Operations

- Staff Director's Report

III. Adjourn Meeting

Dated: August 11, 2021

AMERICAN OVERSIGHT

Date : 8/12/2021 12:26:40 PM
From : "Juana Silverio" jsilverio@usccr.gov
To : "Norma Cantu" ncantu@usccr.gov, "Debo P. Adegbile" dadegbile@usccr.gov, "David Kladney" dkladney@usccr.gov, "Michael Yaki" MYaki@usccr.gov, "Alec Deull" adeull@usccr.gov, "Irena Vidulovic" ividulovic@usccr.gov
Cc : "Adegbile, Debo" Debo.Adegbile@wilmerhale.com, "michael@michaelyaki.com" michael@michaelyaki.com
Subject : (12P PST/2P CST) DEM Caucus Meeting re: Aug. 20th Business Mtg.

Agenda

1. Aug 20th meeting
    a. Bail Reform report vote; findings?
2. EAC notational vote
3. SAC territories acknowledgement by Commissioners (notational vote)

Please add agenda items I may have missed

Sunshine notice - https://www.usccr.gov/files/2021/08-20-USCCR-Business-Meeting-Sunshine-Act-Notice.pdf

AMERICAN OVERSIGHT

Date : 8/13/2021 11:58:34 AM
From : "Michael Yaki" commissioner.yaki@gmail.com
To : "Debo P. Adegbile" dadegbile@usccr.gov
Subject : [EXTERNAL] Re: EAC

CAUTION: This email is from outside USCCR.

I'm reconsidering. Stuff has come up in my life that may require me to ditch some extracurriculars so we may have to go back and present your two. I'm discussing it with folks now.

On Thu, Aug 12, 2021 at 9:33 AM Debo P. Adegbile <dadegbile@usccr.gov> wrote:

> Congrats Michael.
>
> Debo
>
> Sent from my iPhone

--
MICHAEL YAKI, Commissioner
U.S. Commission on Civil Rights
415-601-4008

AMERICAN OVERSIGHT

Date : 8/13/2021 1:38:19 PM
From : "Alexander Heideman" aheideman@usccr.gov
To : "Gail Heriot" gheriot@me.com, "Gail Heriot" gheriot@usccr.gov
Subject : Call with Thomas

I spoke with Thomas re: the proposed notational vote.

Comm. Gilchrist connected with Comm. Adams. Gilchrist wants to force a public vote on the EAC selection because he thinks it's shameful that they didn't pick their USCCR colleague and he wants it on the public record.

I gently mentioned your concern about setting a precedent for notational votes, but I think Gilchrist is set on this.

AMERICAN OVERSIGHT

Date : 8/13/2021 1:40:34 PM
From : "Gail Heriot" gheriot@usccr.gov
To : "Alexander Heideman" aheideman@usccr.gov
Cc : "Gail Heriot" gheriot@me.com
Subject : Re: Call with Thomas

Okay. I think that's all we can do.

Gail Heriot
Professor of Law
University of San Diego

> On Aug 13, 2021, at 10:38 AM, Alexander Heideman <aheideman@usccr.gov> wrote:
>
> I spoke with Thomas re: the proposed notational vote.
>
> Comm. Gilchrist connected with Comm. Adams. Gilchrist wants to force a public vote on the EAC selection because he thinks it's shameful that they didn't pick their USCCR colleague and he wants it on the public record.
>
> I gently mentioned your concern about setting a precedent for notational votes, but I think Gilchrist is set on this.

AMERICAN OVERSIGHT

Date : 8/14/2021 2:03:55 PM
From : "Debo P. Adegbile" dadegbile@usccr.gov
To : "Michael Yaki" commissioner.yaki@gmail.com
Subject : Re: [EXTERNAL] Re: EAC

I hope everything is ok Michael.

Best,

Debo

Sent from my iPhone

> On Aug 13, 2021, at 9:58 AM, Michael Yaki <commissioner.yaki@gmail.com> wrote:
>
> CAUTION: This email is from outside USCCR.
>
> I'm reconsidering. Stuff has come up in my life that may require me to ditch some extracurriculars so we may have to go back and present your two. I'm discussing it with folks now.
>
> On Thu, Aug 12, 2021 at 9:33 AM Debo P. Adegbile <dadegbile@usccr.gov> wrote:
>
> > Congrats Michael.
> >
> > Debo
> >
> > Sent from my iPhone
>
> --
> MICHAEL YAKI, Commissioner
> U.S. Commission on Civil Rights
> 415-601-4008

AMERICAN OVERSIGHT

Date : 8/16/2021 2:20:54 PM
From : "Thomas Simuel" tsimuel@usccr.gov
To : "Mauro Morales" mmorales@usccr.gov
Cc : "stephen gilchrist" thegilchristassociates@gmail.com
Subject : FW: EAC Final Selections

Hey Mauro,

You might've missed this email.

Thomas

-------- Original message --------
From: Thomas Simuel <tsimuel@usccr.gov>
Date: 8/10/21 4:52 PM (GMT-05:00)
To: Mauro Morales <mmorales@usccr.gov>
Cc: Stephen Gilchrist <sgilchrist@usccr.gov>, stephen gilchrist <thegilchristassociates@gmail.com>
Subject: RE: EAC Final Selections

Hey Mauro,

Commissioner Gilchrist prefer to have the EAC vote at the business meeting.

Thanks,

Thomas

-------- Original message --------
From: Mauro Morales <mmorales@usccr.gov>
Date: 8/10/21 2:57 PM (GMT-05:00)
To: Commissioners <Commissioners@usccr.gov>
Cc: CommissionerAssistants <CommissionerAssistants@usccr.gov>, David Ganz <dganz@usccr.gov>
Subject: EAC Final Selections

Commissioners,

Pursuant to the AI voted on during the April 30th Business meeting, I received the following names for appointment the Election Assistance Commission (EAC):

Commissioners Cantu, Adegbile, Kladney and Yaki have selected for appointment to the EAC:

AMERICAN OVERSIGHT

- Cleta Michell, Chair, Conservative Partnership Institute Election Integrity Network.

Commissioners Adams, Gilchrist, Heriot and Kirsanow have selected for appointment to the EAC:

- Commissioner Michael Yaki;

Under the AI adopted by Commissioners, these two members selected shall be placed in nomination and ratified by a majority vote. Please inform me how you would like to proceed for a majority vote either by placing it on the agenda for the next USCCR business meeting or by a notational vote. Thank you.

Mauro Morales
Staff Director
U.S. Commission on Civil Rights
P: 202-376-7796 | F: 202-376-7672
Mmorales@usccr.gov
http://usccr.gov/
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425

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TwiFB
#USCCR

Sent from my iPhone

AMERICAN OVERSIGHT

Date : 8/16/2021 3:50:47 PM
From : "Mauro Morales" mmorales@usccr.gov
To : "Thomas Simuel" tsimuel@usccr.gov
Cc : "stephen gilchrist" thegilchristassociates@gmail.com
Subject : RE: EAC Final Selections

Only three Commissioners responded to my inquiry in addition to Commissioner Gilchrist. All the responses were different. As a consequence, there was no consensus on my request for instructions. Changes to the agenda before posted must coordinated with the Chair. The Chair is in charge of the agenda. But as I have previously stated, the agenda can always be amended by majority vote at the beginning of the meeting. I recommend you reach out to her on what you want or believe should occur for the next business meeting

---

From: Thomas Simuel <tsimuel@usccr.gov>
Sent: Monday, August 16, 2021 2:21 PM
To: Mauro Morales <mmorales@usccr.gov>
Cc: stephen gilchrist <thegilchristassociates@gmail.com>
Subject: FW: EAC Final Selections

Hey Mauro,

You might've missed this email.

Thomas

-------- Original message --------
From: Thomas Simuel <tsimuel@usccr.gov>
Date: 8/10/21 4:52 PM (GMT-05:00)
To: Mauro Morales <mmorales@usccr.gov>
Cc: Stephen Gilchrist <sgilchrist@usccr.gov>, stephen gilchrist <thegilchristassociates@gmail.com>
Subject: RE: EAC Final Selections

Hey Mauro,

Commissioner Gilchrist prefer to have the EAC vote at the business meeting.

Thanks,

Thomas

-------- Original message --------
From: Mauro Morales <mmorales@usccr.gov>
Date: 8/10/21 2:57 PM (GMT-05:00)
To: Commissioners <Commissioners@usccr.gov>

AMERICAN OVERSIGHT

Cc: CommissionerAssistants <CommissionerAssistants@usccr.gov>, David Ganz <dganz@usccr.gov>
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1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425

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AMERICAN OVERSIGHT

Date : 8/16/2021 3:52:35 PM
From : "Thomas Simuel" tsimuel@usccr.gov
To : "Mauro Morales" mmorales@usccr.gov
Cc : "stephen gilchrist" thegilchristassociates@gmail.com
Subject : Re: EAC Final Selections

Thanks!

Thomas

From: Mauro Morales
Sent: Monday, August 16, 2021 3:50:47 PM
To: Thomas Simuel
Cc: stephen gilchrist
Subject: RE: EAC Final Selections

Only three Commissioners responded to my inquiry in addition to Commissioner Gilchrist. All the responses were different. As a consequence, there was no consensus on my request for instructions. Changes to the agenda before posted must coordinated with the Chair. The Chair is in charge of the agenda. But as I have previously stated, the agenda can always be amended by majority vote at the beginning of the meeting. I recommend you reach out to her on what you want or believe should occur for the next business meeting

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Sent: Monday, August 16, 2021 2:21 PM
To: Mauro Morales <mmorales@usccr.gov>
Cc: stephen gilchrist <thegilchristassociates@gmail.com>
Subject: FW: EAC Final Selections

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From: Thomas Simuel <tsimuel@usccr.gov>
Date: 8/10/21 4:52 PM (GMT-05:00)
To: Mauro Morales <mmorales@usccr.gov>
Cc: Stephen Gilchrist <sgilchrist@usccr.gov>, stephen gilchrist <thegilchristassociates@gmail.com>
Subject: RE: EAC Final Selections

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AMERICAN OVERSIGHT

Thanks,

Thomas

-------- Original message --------
From: Mauro Morales <mmorales@usccr.gov>
Date: 8/10/21 2:57 PM (GMT-05:00)
To: Commissioners <Commissioners@usccr.gov>
Cc: CommissionerAssistants <CommissionerAssistants@usccr.gov>, David Ganz <dganz@usccr.gov>
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- Commissioner Michael Yaki;

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Washington D.C. 20425

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Sent from my iPhone

AMERICAN OVERSIGHT

Date : 8/18/2021 1:55:27 PM
From : "Alexander Heideman" aheideman@usccr.gov
To : "Gail Heriot" gheriot@usccr.gov, "Gail Heriot" gheriot@me.com
Subject : EAC vote

I just got off the phone with John. Apparently nobody asked Mauro/Cantu to place the EAC vote on the agenda; but our colleagues are just assuming bad faith. John is emailing Mauro & Juana now to ask.

AMERICAN OVERSIGHT

Date : 8/18/2021 2:01:49 PM
From : "Alexander Heideman" aheideman@usccr.gov
To : "Gail Heriot" gheriot@me.com
Cc : "Gail Heriot" gheriot@usccr.gov
Subject : Re: [EXTERNAL] Re: EAC vote

I'll send you the email that John just sent to Mauro. I'll ask him & Thomas if they think there should be a caucus meeting.

From: Gail Heriot <gheriot@me.com>
Date: Wednesday, August 18, 2021 at 1:57 PM
To: Alexander Heideman <aheideman@usccr.gov>
Cc: Gail Heriot <gheriot@usccr.gov>
Subject: [EXTERNAL] Re: EAC vote

> CAUTION: This email is from outside USCCR.

Gail Heriot
Professor of Law
University of San Diego

> On Aug 18, 2021, at 10:55 AM, Alexander Heideman <aheideman@usccr.gov> wrote:
>
> I just got off the phone with John. Apparently nobody asked Mauro/Cantu to place the EAC vote on the agenda; but our colleagues are just assuming bad faith. John is emailing Mauro & Juana now to ask.

AMERICAN OVERSIGHT

Date : 8/18/2021 2:27:20 PM
From : "John Mashburn" jmashburn@usccr.gov
To : "stephen gilchrist" thegilchristassociates@gmail.com, "J. Christian Adams" jadams@usccr.gov
Cc : "Christian Adams" adams@electionlawcenter.com, "Gail Heriot" gheriot@usccr.gov, "Gail Heriot" gheriot@me.com, "Carissa Mulder" CMulder@usccr.gov, "Peter Kirsanow" pkirsanow@beneschlaw.com, "Alexander Heideman" aheideman@usccr.gov, "Thomas Simuel" tsimuel@usccr.gov, "Peter Kirsanow" pkirsanow@usccr.gov, "Stephen Gilchrist" sgilchrist@usccr.gov
Subject : Re: [EXTERNAL] Re: Nominations for Appointment to the EAC

I sent an email to Mauro and Cantu's SA asking why it is not on the agenda, but have not heard back.

From: stephen gilchrist <thegilchristassociates@gmail.com>
Date: Wednesday, August 18, 2021 at 2:16 PM
To: "J. Christian Adams" <jadams@usccr.gov>
Cc: Christian Adams <adams@electionlawcenter.com>, Gail Heriot <gheriot@usccr.gov>, Gail Heriot <gheriot@me.com>, John Mashburn <jmashburn@usccr.gov>, Carissa Mulder <CMulder@usccr.gov>, Peter Kirsanow <pkirsanow@beneschlaw.com>, Alexander Heideman <aheideman@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>, Peter Kirsanow <pkirsanow@usccr.gov>, Stephen Gilchrist <sgilchrist@usccr.gov>
Subject: Re: [EXTERNAL] Re: Nominations for Appointment to the EAC

> CAUTION: This email is from outside USCCR.

I did not see it on the agenda as well? I did speak to the staff director to inform him that I would like to have the vote placed on the business agenda. Did not receive confirmation. I have also not spoken to the Chair.

On Tue, Aug 17, 2021, 1:46 PM J. Christian Adams <jadams@usccr.gov> wrote:

> Why isn't this on the agenda for Friday??
>
> ---
>
> **From:** stephen gilchrist <thegilchristassociates@gmail.com>
> **Sent:** Tuesday, August 10, 2021 3:01:40 PM
> **To:** Christian Adams
> **Cc:** Gail Heriot; Gail Heriot; John Mashburn; Carissa Mulder; Peter Kirsanow; Alexander Heideman; Thomas Simuel; Peter Kirsanow; Stephen Gilchrist; J. Christian Adams
> **Subject:** Re: [EXTERNAL] Re: Nominations for Appointment to the EAC
>
> > CAUTION: This email is from outside USCCR.
>
> We should make them vote at the meeting and not notational vote for the EAC. I'm willing to let Mauro know this.

AMERICAN OVERSIGHT

Please advise.

On Sun, Aug 8, 2021, 10:41 PM Christian Adams <adams@electionlawcenter.com> wrote:

> earlier the better. I have been out of the office for 2 weeks without email.
>
> -------- Original message --------
> From: Gail Heriot <gheriot@usccr.gov>
> Date: 8/8/21 10:37 PM (GMT-05:00)
> To: Christian Adams <adams@electionlawcenter.com>
> Cc: Gail Heriot <gheriot@me.com>, John Mashburn <jmashburn@usccr.gov>, stephen gilchrist <thegilchristassociates@gmail.com>, Carissa Mulder <CMulder@usccr.gov>, Peter Kirsanow <pkirsanow@beneschlaw.com>, Alexander Heideman <aheideman@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>, Peter Kirsanow <pkirsanow@usccr.gov>, Stephen Gilchrist <sgilchrist@usccr.gov>, "J. Christian Adams" <jadams@usccr.gov>
> Subject: Re: [EXTERNAL] Re: Nominations for Appointment to the EAC
>
> I am available tomorrow and more or less on Eastern time (still in Richmond).
>
> Gail Heriot
> Professor of Law
> University of San Diego
>
> > On Aug 8, 2021, at 10:34 PM, Christian Adams <adams@electionlawcenter.com> wrote:
> >
> > > CAUTION: This email is from outside USCCR.
> >
> > sure. Riggs is a nonstarter with me. she is a brilliant pick on thier part because they know my history with her. they know she us wholly unacceptable.
> >
> > -------- Original message --------
> > From: Gail Heriot <gheriot@me.com>
> > Date: 8/8/21 5:39 PM (GMT-05:00)
> > To: Christian Adams <adams@electionlawcenter.com>
> > Cc: John Mashburn <jmashburn@usccr.gov>, stephen gilchrist <thegilchristassociates@gmail.com>, Carissa Mulder <CMulder@usccr.gov>, Peter Kirsanow <pkirsanow@beneschlaw.com>, Alexander Heideman <aheideman@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>, Peter Kirsanow <pkirsanow@usccr.gov>, Gail Heriot <gheriot@usccr.gov>, Stephen Gilchrist <sgilchrist@usccr.gov>, "J. Christian Adams" <jadams@usccr.gov>
> > Subject: Re: [EXTERNAL] Re: Nominations for Appointment to the EAC
> >
> > Should we have a caucus zoom tomorrow about this?

AMERICAN OVERSIGHT

Gail Heriot
Professor of Law
University of San Diego

> On Aug 8, 2021, at 4:20 PM, Christian Adams <adams@electionlawcenter.com> wrote:
>
> sorry, just returning.
>
> they picked Allison Riggs for a reason. I can explain offline but there is no way I will be part of giving her a single thing.i would rather work with Yaki
>
> -------- Original message --------
> From: Gail Heriot <gheriot@me.com>
> Date: 8/6/21 3:13 PM (GMT-05:00)
> To: John Mashburn <jmashburn@usccr.gov>
> Cc: stephen gilchrist <thegilchristassociates@gmail.com>, >, Christian Adams <adams@electionlawcenter.com>, Alexander Heideman <aheideman@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>, Peter Kirsanow <pkirsanow@usccr.gov>, Gail Heriot <gheriot@usccr.gov>, Stephen Gilchrist <sgilchrist@usccr.gov>, "J. Christian Adams" <jadams@usccr.gov>
> Subject: Re: [EXTERNAL] Re: Nominations for Appointment to the EAC
>
> I am willing to go with Christian's recommendation on this UNLESS he thinks it's a close case. If he thinks it's a close case AND IF we have reason to believe that the Progressives vetoed Cleta and not Christian, THEN I think we should consider a bit of reciprocity and let Yaki have the job. My impression is that he wants it. If it's really close to six of one half dozen of the other, pleasing him has its benefits.
>
> Of course, so far the evidence is running against the possibility that the Progressives vetoed Cleta and not Christian. If they had vetoed Cleta, my guess is that they would have wanted us to know that. Nevertheless, if this is a close case, it would be a good idea to try to find out what the Progressives did.
>
> Gail Heriot
> Professor of Law
> University of San Diego
>
> > On Aug 6, 2021, at 1:54 PM, John Mashburn <jmashburn@usccr.gov> wrote:

AMERICAN OVERSIGHT

Yes – better her than Yaki.

From: stephen gilchrist <thegilchristassociates@gmail.com>
Date: Friday, August 6, 2021 at 1:51 PM
To: John Mashburn <jmashburn@usccr.gov>
Cc: Gail Heriot <gheriot@me.com>, Carissa Mulder <CMulder@usccr.gov>, Peter Kirsanow <pkirsanow@beneschlaw.com>, Christian Adams <adams@electionlawcenter.com>, Alexander Heideman <aheideman@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>, Peter Kirsanow <pkirsanow@usccr.gov>, Gail Heriot <gheriot@usccr.gov>, Stephen Gilchrist <sgilchrist@usccr.gov>, "J. Christian Adams" <jadams@usccr.gov>
Subject: Re: [EXTERNAL] Re: Nominations for Appointment to the EAC

> CAUTION: This email is from outside USCCR.

On Fri, Aug 6, 2021, 1:31 PM John Mashburn <jmashburn@usccr.gov> wrote:

> Allison Riggs
>
> https://southerncoalition.org/staff/allison-riggs/
>
> ---
>
> **From:** Gail Heriot <gheriot@me.com>
> **Date:** Friday, August 6, 2021 at 1:23 PM
> **To:** Carissa Mulder <CMulder@usccr.gov>
> **Cc:** "pkirsanow@beneschlaw.com" <pkirsanow@beneschlaw.com>, stephen gilchrist <thegilchristassociates@gmail.com>, Christian Adams <adams@electionlawcenter.com>, Alexander Heideman >, Thomas Simuel <tsimuel@usccr.gov>,

AMERICAN OVERSIGHT

Peter Kirsanow <pkirsanow@usccr.gov>, Gail Heriot <gheriot@usccr.gov>, Stephen Gilchrist <sgilchrist@usccr.gov>, "J. Christian Adams" <jadams@usccr.gov>
Subject: [EXTERNAL] Re: Nominations for Appointment to the EAC

CAUTION: This email is from outside USCCR.

they vetoed. Yaki at least has an incentive to tell us if it's Cleta. If it is Cleta, such that Christian will be the appointee, it might be seen as accommodating to let Yaki be re-appointed. If he declines to say, that will be evidence that they vetoed Christian.

Gail Heriot
Professor of Law
University of San Diego

On Aug 6, 2021, at 1:17 PM, Carissa Mulder <CMulder@usccr.gov> wrote:

Hi everyone,

Mauro emailed and asked if the conservative commissioners have selected their EAC nominee. He said the progressives have notified him of their selection, and once we notify him of ours, he will circulate either a notational vote or arrange for it to be voted on at the August business meeting.

Christian, you are the voting expert - do you think Yaki or Allison Riggs is a less damaging choice?

AMERICAN OVERSIGHT

Thanks!

From: Mauro Morales
Sent: Tuesday, August 3, 2021 5:36 PM
To: Commissioners
Cc: CommissionerAssistants; David Ganz
Subject: Nominations for Appointment to the EAC

Commissioners,

Pursuant to the AI voted on during the April 30th Business meeting, you have nominated the following individuals to the Election Assistance Commission (EAC):

Commissioners Cantu, Adegbile, Kladney and Yaki have nominated the following individuals to the EAC:

- Commissioner Michael Yaki;
- Ms. Allison Riggs , Co-Executive Director, Southern Coalition for Social Justice.

Commissioners Adams, Gilchrist, Heriot and Kirsanow have nominated the following individuals to the EAC:

AMERICAN OVERSIGHT

- Commissioner Christian Adams;

- Cleta Michell, Chair, Conservative Partnership Institute Election Integrity Network.

Under the AI adopted by Commissioners, the members appointed by the Democratic authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Democratic authorities. The final members selected shall be placed in nomination and ratified by a majority vote. Please inform me how you would like to proceed for a majority vote either by placing it on the agenda for the next USCCR business meeting or by a notational vote.

Mauro Morales
Staff Director
U.S. Commission on Civil Rights
P: 202-376-7796| F: 202-376-7672
Mmorales@usccr.gov
http://usccr.gov/

AMERICAN OVERSIGHT

1331 Pennsylvania Avenue,
NW Suite 1150
Washington D.C. 20425

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Facebook:
<image001.gif>
<image002.gif>

#USCCR

AMERICAN OVERSIGHT

Date : 9/16/2020 11:51:32 AM
From : "Alexander Heideman" aheideman@usccr.gov
To : "Christian Adams" a@electionlawcenter.com, "'Gail Heriot'" gheriot@me.com
Cc : "Carissa Mulder" CMulder@usccr.gov, "'Peter Kirsanow'" pkirsanow@beneschlaw.com, "'stephen gilchrist'" thegilchristassociates@gmail.com, "'John Mashburn'" jkmash@comcast.net, "'Thomas Simuel'" tjsimuel32@gmail.com
Subject : Re: [EXTERNAL] EAC Board of Advisors
Attachment : Help America Vote Act House Report 107_329[1].pdf;

Maureen says:

> To my knowledge, there are not any internal rules about these appointments. The practice has been that the Chair makes the appointments. (Note though that I only have records going back to 2015 for these appointments and I do not know what the practice was before 2015). The statute (52 U.S.C. 20944(a)(10)) says "Two members appointed by the United States Commission on Civil Rights." 52 U.S.C. 20944(b) says "Appointments shall be made to the Board of Advisors under subsection (a) in a manner which ensures that the Board of Advisors will be bipartisan in nature and will reflect the various geographic regions of the United States." The terms are 2 year appointments; I believe the current USCCR appointments are Yaki and Kladney, and that their terms end 4/13/2021. I provided the above information, i.e., bipartisan and geographic scope, before the 2019 appointments, though did not provide any input beyond this. I've also attached the House report for the Help American Vote Act (establishes the advisory committees) - discussion of advisory boards is on page 33.

I have a call scheduled with her at 1 pm to discuss further. Please let me know if there are any specific questions I should ask.

Alex

From: Alexander Heideman <aheideman@usccr.gov>
Date: Wednesday, September 16, 2020 at 11:02 AM
To: Christian Adams <a@electionlawcenter.com>, 'Gail Heriot' <gheriot@me.com>
Cc: Carissa Mulder <CMulder@usccr.gov>, 'Peter Kirsanow' <pkirsanow@beneschlaw.com>, 'stephen gilchrist' <thegilchristassociates@gmail.com>, 'John Mashburn' <jkmash@comcast.net>, 'Thomas Simuel' <tjsimuel32@gmail.com>
Subject: Re: [EXTERNAL] EAC Board of Advisors

Yes, happy to.

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From: Christian Adams <a@electionlawcenter.com>
Date: Wednesday, September 16, 2020 at 11:02 AM
To: 'Gail Heriot' <gheriot@me.com>
Cc: Carissa Mulder <CMulder@usccr.gov>, 'Peter Kirsanow' <pkirsanow@beneschlaw.com>, 'stephen gilchrist' <thegilchristassociates@gmail.com>, 'John Mashburn' <jkmash@comcast.net>, 'Thomas Simuel' <tjsimuel32@gmail.com>, Alexander Heideman <aheideman@usccr.gov>
Subject: RE: [EXTERNAL] EAC Board of Advisors

> CAUTION: This email is from outside USCCR.

ple people aren't asking her different times, can the SA's get to the bottom of this with maureen.

From: Gail Heriot <gheriot@me.com>
Sent: Wednesday, September 16, 2020 10:46 AM
To: Christian Adams <a@electionlawcenter.com>
Cc: Carissa Mulder <CMulder@usccr.gov>; Peter Kirsanow <pkirsanow@beneschlaw.com>; stephen gilchrist <thegilchristassociates@gmail.com>; John Mashburn <jkmash@comcast.net>; Thomas Simuel <tjsimuel32@gmail.com>; Alexander Heideman <aheideman@usccr.gov>
Subject: Re: [EXTERNAL] EAC Board of Advisors

I don't think there are any rules. In the absence of an explicit delegation of power, the Commission as a whole has that power. But you need to be sure it wasn't done properly. I have a vague recollection of talking about this in a meeting in the last decade. The straight shooter on the staff is Maureen Rudolph. You might want to ask her.

Gail Heriot
Professor of Law
University of San Diego

> On Sep 15, 2020, at 2:17 PM, Christian Adams <a@electionlawcenter.com> wrote:
>
> I don't know the rules for USCCR appointing ANYONE yet, but if there are no minutes showing a vote appointing them in regular business, it would seem that their "appointment" is void.
>
> ---
>
> **From:** Carissa Mulder <CMulder@usccr.gov>
> **Sent:** Tuesday, September 15, 2020 4:01 PM
> **To:** Christian Adams <a@electionlawcenter.com>; 'Peter Kirsanow' <pkirsanow@Beneschlaw.com>; 'Gail Heriot' <gheriot@me.com>;

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'stephen gilchrist' <thegilchristassociates@gmail.com>
Cc: 'John Mashburn' <jkmash@comcast.net>; 'Thomas Simuel' <tjsimuel32@gmail.com>; Alexander Heideman <aheideman@usccr.gov>
Subject: Re: [EXTERNAL] EAC Board of Advisors

Looking at the document about the appointment of the advisory board members, I think that is correct, Christian. Catherine probably appointed them without ever bringing it up.

From: Christian Adams <a@electionlawcenter.com>
Sent: Tuesday, September 15, 2020 3:55:45 PM
To: Carissa Mulder; 'Peter Kirsanow'; 'Gail Heriot'; 'stephen gilchrist'
Cc: 'John Mashburn'; 'Thomas Simuel'; Alexander Heideman
Subject: RE: [EXTERNAL] EAC Board of Advisors

> CAUTION: This email is from outside USCCR.

It probably NEVER came up in a business meeting and therefore we should, as a commission have the authority to take it up in a business meeting and appoint-anew.

From: Carissa Mulder <CMulder@usccr.gov>
Sent: Tuesday, September 15, 2020 3:34 PM
To: Christian Adams <a@electionlawcenter.com>; Peter Kirsanow <pkirsanow@Beneschlaw.com>; 'Gail Heriot' <gheriot@me.com>; 'stephen gilchrist' <thegilchristassociates@gmail.com>
Cc: John Mashburn <jkmash@comcast.net>; 'Thomas Simuel' <tjsimuel32@gmail.com>; Alexander Heideman <aheideman@usccr.gov>
Subject: Re: [EXTERNAL] EAC Board of Advisors

Good question! I had no idea the USCCR got two designees to the .

From: Christian Adams <a@electionlawcenter.com>
Sent: Tuesday, September 15, 2020 3:15:28 PM
To: Peter Kirsanow; 'Gail Heriot'; 'stephen gilchrist'
Cc: John Mashburn; 'Thomas Simuel'; Carissa Mulder; Alexander Heideman
Subject: [EXTERNAL] EAC Board of Advisors

> CAUTION: This email is from outside USCCR.

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AC commission saying that Yaki is acting absurdly and exercising power over the EAC by threatening the Pelosi pick on the EAC with removal if he doesn't do what he wants, effectively making Yaki a commissioner on the EAC on many issues. He is causing mischief I don't even detail here.

My question is how does he get UNDONE from the EAC oversight commission? How does that get revoked and replaced?

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107TH CONGRESS } HOUSE OF REPRESENTATIVES { REPT. 107–329
1st Session } { Part 1

HELP AMERICA VOTE ACT OF 2001

DECEMBER 10, 2001.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. NEY, from the Committee on House Administration, submitted the following

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany H.R. 3295]

[Including cost estimate of the Congressional Budget Office]

The Committee on House Administration, to whom was referred the bill (H.R. 3295) to establish a program to provide funds to States to replace punch card voting systems, to establish the Election Assistance Commission to assist in the administration of Federal elections and to otherwise provide assistance with the administration of certain Federal election laws and programs, to establish minimum election administration standards for States and units of local government with responsibility for the administration of Federal elections, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Help America Vote Act of 2001".

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—PUNCH CARD VOTING MACHINES

Subtitle A—Replacement of Machines

Sec. 101. Establishment of program.
Sec. 102. Eligibility.
Sec. 103. Amount of payment.
Sec. 104. Audit and repayment of funds.
Sec. 105. Punch card voting system defined.

99–006

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USCCR-21-1814-A-004582

Subtitle B—Enhancing Performance of Existing Systems

Sec. 111. Establishment of program.
Sec. 112. Eligibility.
Sec. 113. Amount of payment.
Sec. 114. Audit and repayment of funds.

Subtitle C—General Provisions

Sec. 121. Authorization of appropriations.
Sec. 122. Punch card voting system defined.

TITLE II—COMMISSION

Subtitle A—Establishment and General Organization

PART 1—ELECTION ASSISTANCE COMMISSION

Sec. 201. Establishment.
Sec. 202. Duties.
Sec. 203. Membership and appointment.
Sec. 204. Staff.
Sec. 205. Powers.
Sec. 206. Limitation on rulemaking authority.
Sec. 207. Authorization of appropriations.

PART 2—ELECTION ASSISTANCE COMMISSION STANDARDS BOARD AND BOARD OF ADVISORS

Sec. 211. Establishment.
Sec. 212. Duties.
Sec. 213. Membership of Standards Board.
Sec. 214. Membership of Board of Advisors.
Sec. 215. Powers of boards; no compensation for service.
Sec. 216. Status of boards and members for purposes of claims against board.

Subtitle B—Voluntary Election Standards

Sec. 221. Development of voluntary election standards.
Sec. 222. Technical standards development committee.
Sec. 223. Process for adoption of voluntary standards.
Sec. 224. Certification and testing of voting systems.
Sec. 225. Dissemination of information.

Subtitle C—Election Assistance

PART 1—ELECTION FUND PAYMENTS TO STATES FOR VOTING SYSTEM IMPROVEMENTS

Sec. 231. Election fund payments to States for voting system improvements.
Sec. 232. Allocation of funds.
Sec. 233. Conditions for receipt of funds.
Sec. 234. Authorization of appropriations.

PART 2—GRANTS FOR RESEARCH ON VOTING TECHNOLOGY IMPROVEMENTS

Sec. 241. Grants for research on voting technology improvements.
Sec. 242. Report.
Sec. 243. Authorization of appropriations.

PART 3—PILOT PROGRAM FOR TESTING OF EQUIPMENT AND TECHNOLOGY

Sec. 251. Pilot program.
Sec. 252. Report.
Sec. 253. Authorization of appropriations.

PART 4—MISCELLANEOUS

Sec. 261. Role of National Institute of Standards and Technology.
Sec. 262. Reports.
Sec. 263. Audit.

TITLE III—HELP AMERICA VOTE COLLEGE PROGRAM

Sec. 301. Establishment of Program.
Sec. 302. Activities under Program.
Sec. 303. Authorization of appropriations.

TITLE IV—HELP AMERICA VOTE FOUNDATION

Sec. 401. Help America Vote Foundation.

TITLE V—MINIMUM STANDARDS FOR STATE ELECTION SYSTEMS

Sec. 501. Minimum standards for State election systems.
Sec. 502. Standards described.
Sec. 503. Enforcement.
Sec. 504. Effective date.

TITLE VI—VOTING RIGHTS OF MILITARY MEMBERS AND OVERSEAS CITIZENS

Sec. 601. Voting assistance programs.
Sec. 602. Designation of single State office to provide information on registration and absentee ballots for all voters in State.
Sec. 603. Report on absentee ballots transmitted and received after general elections.
Sec. 604. Simplification of voter registration and absentee ballot application procedures for absent uniformed services and overseas voters.
Sec. 605. Additional duties of Presidential designee under Uniformed and Overseas Citizens Absentee Voting Act.
Sec. 606. Use of buildings on military installations and reserve component facilities as polling places.

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TITLE VII—REDUCED POSTAGE RATES FOR OFFICIAL ELECTION MAIL

Sec. 701. Reduced postage rates for official election mail.

TITLE VIII—TRANSITION PROVISIONS

Subtitle A—Transfer to Commission of Functions Under Certain Laws

Sec. 801. Federal Election Campaign Act of 1971.
Sec. 802. National Voter Registration Act of 1993.
Sec. 803. Transfer of property, records, and personnel.
Sec. 804. Effective date; transition.

Subtitle B—Coverage of Commission Under Certain Laws and Programs

Sec. 811. Treatment of Commission personnel under certain civil service laws.
Sec. 812. Coverage under Inspector General Act of 1978.

TITLE IX—MISCELLANEOUS PROVISIONS

Sec. 901. State defined.
Sec. 902. Miscellaneous provisions to protect integrity of election process.
Sec. 903. No effect on other laws.

TITLE I—PUNCH CARD VOTING MACHINES

Subtitle A—Replacement of Machines

SEC. 101. ESTABLISHMENT OF PROGRAM.

(a) IN GENERAL.—Not later than 30 days after the date of the enactment of this Act, the Administrator of General Services (hereafter in this title referred to as the "Administrator") shall establish a program under which the Administrator shall make a one-time payment to each eligible State or unit of local government which used a punch card voting system to administer the regularly scheduled general election for Federal office held in November 2000.

(b) USE OF FUNDS.—A State or unit of local government shall use the funds provided under a payment under this subtitle (either directly or as reimbursement) to replace its punch card voting system with a voting system which does not use punch cards (by purchase, lease, or such other arrangement as may be appropriate).

(c) DEADLINE.—

(1) IN GENERAL.—A State or unit of local government receiving a payment under the program under this subtitle shall—

(A) obligate the funds provided for the uses described in subsection (b) not later than the date of the regularly scheduled general election for Federal office to be held in November 2002; and

(B) ensure that all of the punch card voting systems under its jurisdiction have been replaced in time for the regularly scheduled general election for Federal office to be held in November 2004.

(2) WAIVER.—If a State or unit of local government provides the Election Assistance Commission (established under section 201) (not later than the date of the regularly scheduled general election for Federal office to be held in November 2002) with a notice that the State or unit will not meet the deadlines described in paragraph (1) and includes in the notice the reasons for the failure to meet such deadlines, and the Commission finds that there is good cause for the failure to meet such deadlines, paragraph (1) shall apply to the State or unit as if—

(A) the reference in paragraph (1)(A) to "November 2002" were a reference to "November 2004"; and

(B) the reference in paragraph (1)(B) to "November 2004" were a reference to "November 2006".

SEC. 102. ELIGIBILITY.

(a) STATES.—A State is eligible to receive a payment under the program under this subtitle if it submits to the Administrator an application not later than 120 days after the date of the enactment of this Act (in such form as the Administrator may require) which contains—

(1) assurances that the State will use the payment (either directly or as reimbursement) to replace punch card voting systems in jurisdictions within the State which used such systems to carry out the general Federal election held in November 2000;

(2) assurances that in replacing punch card voting systems the State will continue to meets its duties under the Voting Accessibility for the Elderly and Handicapped Act (42 U.S.C. 1973ee et seq.) and the Americans With Disabilities Act;

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(3) assurances that in replacing punch card voting systems the State will provide for alternative language accessibility for individuals with limited English proficiency, consistent with the requirements of the Voting Rights Act of 1965 and any other applicable provisions of law; and

(4) such other information and assurances as the Administrator may require which are necessary for the administration of the program.

(b) UNIT OF LOCAL GOVERNMENT.—A unit of local government is eligible to receive a payment under the program under this subtitle if it submits to the Administrator—

(1) not later than the date of the regularly scheduled general election for Federal office to be held in November 2002, a statement of its intent to participate in the program, including assurances that the State in which the unit is located—

(A) failed to submit an application under subsection (a) within the deadline specified under such subsection,

(B) is otherwise not eligible to receive a payment under the program, or

(C) will not use the payment to replace punch card voting systems in the unit; and

(2) an application (at such time and in such form as the Administrator may require) which contains similar assurances to those required to be provided by a State in its application under subsection (a).

SEC. 103. AMOUNT OF PAYMENT.

(a) IN GENERAL.—The amount of payment made to a State or unit of local government under the program under this subtitle shall be equal to the applicable per precinct matching rate of the cost to the State or unit (as the case may be) of replacing the punch card voting systems used in each precinct in the State or unit (as the case may be), except that in no case may the amount of the payment exceed the product of—

(1) the number of voting precincts administered by the State or unit which used a punch card voting system to carry out the general Federal election held in November 2000; and

(2) $6,000.

(b) APPLICABLE PER PRECINCT MATCHING RATE DEFINED.—In subsection (a), the "applicable per precinct matching rate" is—

(1) 90 percent; or

(2) 95 percent, in the case of a precinct whose average per capita income is within the lowest quartile of average per capita incomes for all precincts in the United States (as determined by the 2000 decennial census).

SEC. 104. AUDIT AND REPAYMENT OF FUNDS.

(a) AUDIT.—Funds provided under the program under this subtitle shall be subject to audit by the Administrator.

(b) REPAYMENT FOR FAILURE TO MEET DEADLINES.—If a State or unit of local government (as the case may be) receiving funds under the program under this subtitle fails to meet the deadlines applicable to the State or unit under section 101(c), the State or unit shall pay to the Administrator an amount equal to the amount of the funds provided to the State or unit under the program.

SEC. 105. PUNCH CARD VOTING SYSTEM DEFINED.

For purposes of this subtitle, a "punch card voting system" means any of the following voting systems:

(1) C.E.S.
(2) Datavote.
(3) PBC Counter.
(4) Pollstar.
(5) Punch Card.
(6) Vote Recorder.
(7) Votomatic.

Subtitle B—Enhancing Performance of Existing Systems

SEC. 111. ESTABLISHMENT OF PROGRAM.

(a) IN GENERAL.—Not later than 30 days after the date of the enactment of this Act, the Administrator shall establish a program under which the Administrator shall make a one-time payment to each eligible State or unit of local government

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which used a punch card voting system to administer the regularly scheduled general election for Federal office held in November 2000.

(b) USE OF FUNDS.—A State or unit of local government shall use the funds provided under a payment under this subtitle (either directly or as reimbursement) to make technical enhancements to the performance of its punch card voting system (by any arrangement as may be appropriate).

(c) DEADLINE.—

(1) IN GENERAL.—A State or unit of local government receiving a payment under the program under this subtitle shall—

(A) obligate the funds provided for the uses described in subsection (b) not later than the date of the regularly scheduled general election for Federal office to be held in November 2002; and

(B) ensure that technical enhancements have been made to the performance of all of the punch card voting systems under its jurisdiction in time for the regularly scheduled general election for Federal office to be held in November 2004.

(2) WAIVER.—If a State or unit of local government provides the Election Assistance Commission (established under section 201) (not later than the date of the regularly scheduled general election for Federal office to be held in November 2002) with a notice that the State or unit will not meet the deadlines described in paragraph (1) and includes in the notice the reasons for the failure to meet such deadlines, and the Commission finds that there is good cause for the failure to meet such deadlines, paragraph (1) shall apply to the State or unit as if—

(A) the reference in paragraph (1)(A) to "November 2002" were a reference to "November 2004"; and

(B) the reference in paragraph (1)(B) to "November 2004" were a reference to "November 2006".

SEC. 112. ELIGIBILITY.

(a) STATES.—Subject to subsection (c), a State is eligible to receive a payment under the program under this subtitle if it submits to the Administrator an application not later than 120 days after the date of the enactment of this Act (in such form as the Administrator may require) which contains—

(1) assurances that the State will use the payment (either directly or as reimbursement) to make technical enhancements to the performance of punch card voting systems in jurisdictions within the State which used such systems to carry out the general Federal election held in November 2000;

(2) assurances that in enhancing the performance of such voting systems the State will continue to meets its duties under the Voting Accessibility for the Elderly and Handicapped Act (42 U.S.C. 1973ee et seq.) and the Americans With Disabilities Act; and

(3) such other information and assurances as the Administrator may require which are necessary for the administration of the program.

(b) UNITS OF LOCAL GOVERNMENT.—Subject to subsection (c), a unit of local government is eligible to receive a payment under the program under this subtitle if it submits to the Administrator—

(1) not later than the date of the regularly scheduled general election for Federal office to be held in November 2002, a statement of its intent to participate in the program, including assurances that the State in which the unit is located—

(A) failed to submit an application under subsection (a) within the deadline specified under such subsection,

(B) is otherwise not eligible to receive a payment under the program, or

(C) will not use the payment to enhance the performance of punch card voting systems in the unit; and

(2) an application (at such time and in such form as the Administrator may require) which contains similar assurances to those required to be provided by a State in its application under subsection (a).

(c) PROHIBITING PARTICIPATION IN PUNCH CARD REPLACEMENT PROGRAM.—A State or unit of local government is not eligible to receive a payment under the program under this subtitle if the State or unit receives a payment under the program under subtitle A.

SEC. 113. AMOUNT OF PAYMENT.

(a) IN GENERAL.—The amount of payment made to a State or unit of local government under the program under this subtitle shall be equal to the applicable per precinct matching rate of the cost to the State or unit (as the case may be) of the activities to be funded with the payment under the program in each precinct in the State

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or unit (as the case may be) , except that in no case may the amount of the payment exceed the product of—

(1) the number of voting precincts administered by the State or unit which used a punch card voting system to carry out the general Federal election held in November 2000; and

(2) $2,000.

(b) APPLICABLE PER PRECINCT MATCHING RATE DEFINED.—In subsection (a), the "applicable per precinct matching rate" is—

(1) 90 percent; or

(2) 95 percent, in the case of a precinct whose average per capita income is within the lowest quartile of average per capita incomes for all precincts in the United States (as determined by the 2000 decennial census).

SEC. 114. AUDIT AND REPAYMENT OF FUNDS.

(a) AUDIT.—Funds provided under the program under this subtitle shall be subject to audit by the Administrator.

(b) REPAYMENT FOR FAILURE TO MEET REQUIREMENTS.—If a State or unit of local government (as the case may be) receiving funds under the program under this subtitle fails to meet the deadlines applicable to the State or unit under section 111(c), the State or unit shall pay to the Administrator an amount equal to the amount of the funds provided to the State or unit under the program.

Subtitle C—General Provisions

SEC. 121. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There are authorized to be appropriated for payments under this title $400,000,000, to remain available until expended (subject to subsection (b)).

(b) USE OF RETURNED FUNDS AND FUNDS REMAINING UNEXPENDED FOR ELECTION FUND PAYMENTS.—

(1) IN GENERAL.—The amounts referred to in paragraph (2) shall be transferred to the Election Assistance Commission (established under title II) and used by the Commission to make Election Fund payments under part 1 of subtitle C of title II.

(2) AMOUNTS DESCRIBED.—The amounts referred to in this paragraph are as follows:

(A) Any amounts appropriated pursuant to the authorization under this section which remain unobligated as of the date of the regularly scheduled general election for Federal office held in November 2002.

(B) Any amounts paid to the Administrator by a State or unit of local government under section 104(b).

(B) Any amounts paid to the Administrator by a State or unit of local government under section 114(b).

SEC. 122. PUNCH CARD VOTING SYSTEM DEFINED.

For purposes of this title, a "punch card voting system" means any of the following voting systems:

(1) C.E.S.
(2) Datavote.
(3) PBC Counter.
(4) Pollstar.
(5) Punch Card.
(6) Vote Recorder.
(7) Votomatic.

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TITLE II—COMMISSION

Subtitle A—Establishment and General Organization

PART 1—ELECTION ASSISTANCE COMMISSION

SEC. 201. ESTABLISHMENT.

There is hereby established as an independent entity in the executive branch the Election Assistance Commission (hereafter in this title referred to as the "Commission"), consisting of—

(1) the members appointed under this part;

(2) the Election Assistance Commission Standards Board established under part 2 (including the Executive Board of such Board); and

(3) the Election Assistance Commission Board of Advisors established under part 2.

SEC. 202. DUTIES.

The Commission shall serve as a national clearinghouse and resource for the compilation of information and review of procedures with respect to the administration of Federal elections by—

(1) carrying out the duties described in subtitle B (relating to voluntary election standards);

(2) carrying out the duties described in subtitle C (relating to election assistance); and

(3) developing and carrying out the Help America Vote College Program under title III.

SEC. 203. MEMBERSHIP AND APPOINTMENT.

(a) MEMBERSHIP.—

(1) IN GENERAL.—The Commission shall have 4 members appointed by the President, by and with the consent of the Senate, of whom—

(A) 1 shall be appointed from among a list of nominees submitted by the majority leader of the Senate;

(B) 1 shall be appointed from among a list of nominees submitted by the minority leader of the Senate;

(C) 1 shall be appointed from among a list of nominees submitted by the Speaker of the House of Representatives; and

(D) 1 shall be appointed from among a list of nominees submitted by the minority leader of the House of Representatives.

(2) QUALIFICATIONS.—Each member of the Commission shall have experience with or expertise in election administration or the study of elections, except that no individual may serve as a member of the Commission if the individual is an officer or employee of the Federal Government at any time during the period of service on the Commission.

(3) DATE OF APPOINTMENT.—The appointments of the members of the Commission shall be made not later than 30 days after the date of enactment of this Act.

(b) TERM OF SERVICE.—

(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), members shall serve for a term of 4 years and may be reappointed for not more than one additional term.

(2) TERMS OF INITIAL APPOINTEES.—As designated by the President at the time of appointment, of the members first appointed—

(A) 2 of the members (not more than 1 of whom may be affiliated with the same political party) shall be appointed for a term of 2 years; and

(B) 2 of the members (not more than 1 of whom may be affiliated with the same political party) shall be appointed for a term of 4 years.

(3) VACANCIES.—

(A) IN GENERAL.—A vacancy on the Commission shall be filled in the manner in which the original appointment was made and shall be subject to any conditions which applied with respect to the original appointment.

(B) EXPIRED TERMS.—A member of the Commission may serve on the Commission after the expiration of the member's term until the successor of such member has taken office as a member of the Commission.

(C) UNEXPIRED TERMS.—An individual chosen to fill a vacancy shall be appointed for the unexpired term of the member replaced.

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(c) CHAIR AND VICE CHAIR.—The Commission shall select a chair and vice chair from among its members for a term of 1 year, except that the chair and vice chair may not be affiliated with the same political party.

(d) COMPENSATION.—

(1) IN GENERAL.—Members of the Commission shall each be paid at an annual rate equal to $30,000.

(2) TRAVEL EXPENSES.—Members of the Commission shall each receive travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Commission.

(3) OUTSIDE EMPLOYMENT PERMITTED.—A member of the Commission may hold any other office or employment not inconsistent or in conflict with the member's duties, responsibilities, and powers as a member of the Commission.

SEC. 204. STAFF.

(a) EXECUTIVE DIRECTOR AND OTHER STAFF.—

(1) IN GENERAL.—The Commission shall have an Executive Director, who shall be paid at a rate not to exceed the rate of basic pay for level V of the Executive Schedule.

(2) TERM OF SERVICE FOR EXECUTIVE DIRECTOR.—Except as provided in paragraph (3)(C), the Executive Director shall serve for a term of 4 years. An Executive Director may be reappointed for additional terms.

(3) PROCEDURE FOR APPOINTMENT.—

(A) IN GENERAL.—When a vacancy exists in the position of the Executive Director, the Election Assistance Commission Standards Board and the Election Assistance Commission Board of Advisors (described in part 2) shall each appoint a search committee to recommend not fewer than 3 nominees for the position.

(B) REQUIRING CONSIDERATION OF NOMINEES.—Except as provided in subparagraph (C), the Commission shall consider the nominees recommended by the Standards Board and the Board of Advisors in appointing the Executive Director.

(C) SPECIAL RULES FOR FIRST EXECUTIVE DIRECTOR.—

(i) CONVENING OF SEARCH COMMITTEES.—The Standards Board and the Board of Advisors shall each appoint a search committee and recommend nominees for the position of Executive Director in accordance with subparagraph (A) as soon as practicable after the appointment of their members.

(ii) INTERIM INITIAL APPOINTMENT.—Notwithstanding subparagraph (B), the Commission may appoint an individual to serve as the first Executive Director prior to the recommendation of nominees for the position by the Standards Board or the Board of Advisors, except that such individual's term of service may not exceed 6 months. Nothing in the previous sentence may be construed to prohibit the individual serving as the first Executive Director from serving any additional term.

(4) OTHER STAFF.—Subject to rules prescribed by the Commission, the Executive Director may appoint and fix the pay of such additional personnel as the Executive Director considers appropriate.

(5) APPLICABILITY OF CERTAIN CIVIL SERVICE LAWS.—The Executive Director and staff of the Commission may be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of that title relating to classification and General Schedule pay rates, except that an individual so appointed may not receive pay in excess of the annual rate of basic pay for level V of the Executive Schedule.

(b) EXPERTS AND CONSULTANTS.—Subject to rules prescribed by the Commission, the Executive Director may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, with the approval of a majority of the members of the Commission.

(c) STAFF OF FEDERAL AGENCIES.—Upon request of the Chair, the head of any Federal department or agency may detail, on a reimbursable basis, any of the personnel of that department or agency to the Commission to assist it in carrying out its duties under this Act.

(d) ARRANGING FOR ASSISTANCE FOR BOARD OF ADVISORS AND STANDARDS BOARD.—At the request of the Election Assistance Commission Board of Advisors or the Election Assistance Commission Standards Board established under part 2, the Executive Director shall enter into such arrangements as the Executive Director considers appropriate to make personnel available to assist the Boards with car-

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rying out their duties under this title (including contracts with private individuals for providing temporary personnel services or the temporary detailing of personnel of the Commission).

(e) CONSULTATION WITH BOARD OF ADVISORS AND STANDARDS BOARD ON CERTAIN MATTERS.—In preparing the program goals, long-term plans, mission statements, and related matters for the Commission, the Executive Director and staff of the Commission shall consult with the Election Assistance Commission Board of Advisors and the Election Assistance Commission Standards Board established under part 2.

SEC. 205. POWERS.

(a) HEARINGS AND SESSIONS.—The Commission may hold such hearings for the purpose of carrying out this Act, sit and act at such times and places, take such testimony, and receive such evidence as the Commission considers advisable to carry out this Act. The Commission may administer oaths and affirmations to witnesses appearing before the Commission.

(b) INFORMATION FROM FEDERAL AGENCIES.—The Commission may secure directly from any Federal department or agency such information as the Commission considers necessary to carry out this Act. Upon request of the Chair of the Commission, the head of such department or agency shall furnish such information to the Commission.

(c) POSTAL SERVICES.—The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

(d) ADMINISTRATIVE SUPPORT SERVICES.—Upon the request of the Chair of the Commission, the Administrator of General Services shall provide to the Commission, on a reimbursable basis, the administrative support services that are necessary to enable the Commission to carry out its duties under this Act.

(e) CONTRACTS.—The Commission may contract with and compensate persons and Federal agencies for supplies and services without regard to section 3709 of the Revised Statutes of the United States (41 U.S.C. 5).

SEC. 206. LIMITATION ON RULEMAKING AUTHORITY.

The Commission shall not have any authority to issue any rule, promulgate any regulation, or take any other action which imposes any requirement on any State or unit of local government, except to the extent permitted under the National Voter Registration Act of 1993.

SEC. 207. AUTHORIZATION OF APPROPRIATIONS.

In addition to the amounts authorized for payments and grants under subtitle C and the amounts authorized to be appropriated for the program under section 303, there are authorized to be appropriated for each of the fiscal years 2002 through 2004 such sums as may be necessary (but not to exceed $10,000,000 for each such year) for the Commission to carry out its duties under this title.

PART 2—ELECTION ASSISTANCE COMMISSION STANDARDS BOARD AND BOARD OF ADVISORS

SEC. 211. ESTABLISHMENT.

There are hereby established the Election Assistance Commission Standards Board (hereafter in this title referred to as the "Standards Board") and the Election Assistance Commission Board of Advisors (hereafter in this title referred to as the "Board of Advisors").

SEC. 212. DUTIES.

The Standards Board and the Board of Advisors shall each, in accordance with the procedures described in section 223, review any of the voluntary engineering and procedural performance standards described in section 221(a)(1), any of the voluntary standards described in section 221(a)(4), and any of the voluntary election management practice standards described in section 221(a)(6) (and any modifications to such standards) which are recommended by the Commission under subtitle B.

SEC. 213. MEMBERSHIP OF STANDARDS BOARD.

(a) COMPOSITION.—

(1) IN GENERAL.—Subject to certification by the chair of the Federal Election Commission under subsection (b), the Standards Board shall be composed of 110 members as follows:

(A) 55 shall be the chief State election officials of each State.

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(B) 55 shall be local election officials selected in accordance with paragraph (2).

(2) LIST OF LOCAL ELECTION OFFICIALS.—Each State's local election officials shall select (under a process supervised by the chief election official of the State) a representative local election official from the State for purposes of paragraph (1)(B). In the case of the District of Columbia, Guam, and American Samoa, the chief election official shall establish a procedure for selecting an individual to serve as a local election official for purposes of such paragraph, except that under such a procedure the individual selected may not be a member of the same political party as the chief election official.

(3) REQUIRING MIX OF POLITICAL PARTIES REPRESENTED.—The 2 members of the Standards Board who represent the same State may not be members of the same political party.

(b) PROCEDURES FOR NOTICE AND CERTIFICATION OF APPOINTMENT.—

(1) NOTICE TO CHAIR OF FEDERAL ELECTION COMMISSION.—Not later than 90 days after the date of the enactment of this Act, a State shall transmit a notice to chair of the Federal Election Commission containing—

(A) a statement that the chief election official of the State agrees to serve on the Standards Board under this title; and

(B) the name of the representative local election official from the State selected under subsection (a)(2) who will serve on the Standards Board under this title.

(2) CERTIFICATION.—Upon receiving a notice from a State under paragraph (1), the chair of the Federal Election Commission shall publish a certification that the chief election official and the representative local election official are appointed as members of the Standards Board under this title.

(3) EFFECT OF FAILURE TO PROVIDE NOTICE.—If a State does not transmit a notice to the chair of the Federal Election Commission under paragraph (1) within the deadline described in such paragraph, no representative from the State may participate in the selection of the Executive Board under subsection (c).

(4) ROLE OF COMMISSION.—Upon the appointment of the members of the Election Assistance Commission, the Election Assistance Commission shall carry out the duties of the Federal Election Commission under this subsection.

(c) EXECUTIVE BOARD.—

(1) IN GENERAL.—Not later than 60 days after the last day on which the appointment of any of its members may be certified under subsection (b), the Standards Board shall select 9 of its members to serve as the Executive Board of the Standards Board, of whom—

(A) not more than 5 may be chief State election officials;

(B) not more than 5 may be local election officials; and

(C) not more than 5 may be members of the same political party.

(2) TERMS.—Except as provided in paragraph (3), members of the Executive Board of the Standards Board shall serve for a term of 2 years and may not serve for more than 3 consecutive terms.

(3) STAGGERING OF INITIAL TERMS.—Of the members first selected to serve on the Executive Board of the Standards Board—

(A) 3 shall serve for one term;

(B) 3 shall serve for 2 consecutive terms; and

(C) 3 shall serve for 3 consecutive terms,

as determined by lot at the time the members are first appointed.

(4) DUTIES.—In addition to any other duties assigned under this title, the Executive Board of the Standards Board may carry out such duties of the Standards Board as the Standards Board may delegate.

SEC. 214. MEMBERSHIP OF BOARD OF ADVISORS.

(a) IN GENERAL.—The Board of Advisors shall be composed of 25 members appointed as follows:

(1) 2 members appointed by the United States Commission on Civil Rights.

(2) 2 members appointed by the Architectural and Transportation Barrier Compliance Board under section 502 of the Rehabilitation Act of 1973 (29 U.S.C. 792).

(3) 2 members appointed by the National Governors Association.

(4) 2 members appointed by the National Conference of State Legislatures.

(5) 2 members appointed by the National Association of Secretaries of State.

(6) 2 members appointed by the National Association of State Election Directors.

(7) 2 members appointed by the National Association of Counties.

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(8) 2 members appointed by the National Association of County Recorders, Election Administrators, and Clerks.

(9) 2 members appointed by the United States Conference of Mayors.

(10) 2 members appointed by the Election Center.

(11) 2 members appointed by the International Association of County Recorders, Election Officials, and Treasurers.

(12) 2 members representing professionals in the field of science and technology, of whom 1 shall be appointed by the Speaker of the House of Representatives and 1 shall be appointed by the majority leader of the Senate (or, if the majority leader is a member of the same political party as the Speaker, by the minority leader of the Senate).

(13) The chief of the Office of Public Integrity of the Department of Justice, or the chief's designee.

(b) DIVERSITY IN APPOINTMENTS.—Appointments shall be made to the Board of Advisors under subsection (a) in a manner which ensures that the Board of Advisors will be bipartisan in nature and will reflect the various geographic regions of the United States.

(c) TERM OF SERVICE; VACANCY.—Members of the Board of Advisors shall serve for a term of 2 years, and may be reappointed. Any vacancy in the Board of Advisors shall be filled in the manner in which the original appointment was made.

(d) CHAIR.—The Board of Advisors shall elect a Chair from among its members.

SEC. 215. POWERS OF BOARDS; NO COMPENSATION FOR SERVICE.

(a) HEARINGS AND SESSIONS.—

(1) IN GENERAL.—To the extent that funds are made available by the Commission, the Standards Board (acting through the Executive Board) and the Board of Advisors may each hold such hearings for the purpose of carrying out this Act, sit and act at such times and places, take such testimony, and receive such evidence as each such Board considers advisable to carry out this title, except that the Boards may not issue subpoenas requiring the attendance and testimony of witnesses or the production of any evidence.

(2) MEETINGS.—The Standards Board and the Board of Advisors shall each hold a meeting of its members—

(A) not less frequently than once every year for purposes of voting on the standards referred to it under section 223;

(B) in the case of the Standards Board, not less frequently than once every 2 years for purposes of selecting the Executive Board; and

(C) at such other times as it considers appropriate for purposes of conducting such other business as it considers appropriate consistent with this title.

(b) INFORMATION FROM FEDERAL AGENCIES.—The Standards Board and the Board of Advisors may each secure directly from any Federal department or agency such information as the Board considers necessary to carry out this Act. Upon request of the Executive Board (in the case of the Standards Board) or the Chair (in the case of the Board of Advisors), the head of such department or agency shall furnish such information to the Board.

(c) POSTAL SERVICES.—The Standards Board and the Board of Advisors may use the United States mails in the same manner and under the same conditions as a department or agency of the Federal Government.

(d) ADMINISTRATIVE SUPPORT SERVICES.—Upon the request of the Executive Board (in the case of the Standards Board) or the Chair (in the case of the Board of Advisors), the Administrator of the General Services Administration shall provide to the Board, on a reimbursable basis, the administrative support services that are necessary to enable the Board to carry out its duties under this title.

(e) NO COMPENSATION FOR SERVICE.—Members of the Standards Board and members of the Board of Advisors shall not receive any compensation for their service, but shall be paid travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Board.

SEC. 216. STATUS OF BOARDS AND MEMBERS FOR PURPOSES OF CLAIMS AGAINST BOARD.

(a) IN GENERAL.—The provisions of chapters 161 and 171 of title 28, United States Code, shall apply with respect to the liability of the Standards Board, the Board of Advisors, and their members for acts or omissions performed pursuant to and in the course of the duties and responsibilities of the Board.

(b) EXCEPTION FOR CRIMINAL ACTS AND OTHER WILLFUL CONDUCT.—Subsection (a) may not be construed to limit personal liability for criminal acts or omissions, willful or malicious misconduct, acts or omissions for private gain, or any other act

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or omission outside the scope of the service of a member of the Standards Board or the Board of Advisors.

Subtitle B—Voluntary Election Standards

SEC. 221. DEVELOPMENT OF VOLUNTARY ELECTION STANDARDS.

(a) IN GENERAL.—The Commission shall:

(1) In accordance with section 223, develop (through the Executive Director of the Commission), adopt, and update (not less often than every 4 years thereafter) voluntary engineering and procedural performance standards for voting systems used in Federal elections which shall meet the following requirements:

(A) The scope of the standards should include security (including a documentary audit for non-ballot systems), the procedures for certification and decertification of software and hardware, the assessment of usability, and operational guidelines for the proper use and maintenance of equipment.

(B) The standards should provide that voters have the opportunity to correct errors at the precinct or other polling place, either within the voting equipment itself or in the operational guidelines to administrators for using the equipment, under conditions which assure privacy to the voter.

(C) Each voting tally system certified for use should include as part of the certification a proposed statement of what constitutes a proper vote in the design and operation of the system.

(D) New voting equipment systems certified either by the Federal government or by any State should provide a practical and effective means for voters with physical disabilities to cast a secret ballot.

(2) Maintain a clearinghouse of information on the experiences of State and local governments in implementing the voluntary standards described in paragraph (1) and in operating voting systems in general.

(3) In accordance with section 224, provide for the voluntary testing, certification, decertification, and recertification of voting systems.

(4) Advise States and units of local government regarding compliance with the requirements of the Voting Accessibility for the Elderly and Handicapped Act (42 U.S.C. 1973ee et seq.) and compliance with other Federal laws regarding accessibility of registration facilities and polling places. Additionally, in accordance with section 223, the Commission shall develop (through the Executive Director of the Commission), adopt, and update (not less often than every 4 years thereafter) voluntary standards for maintaining and enhancing the accessibility and privacy of registration facilities, polling places, and voting methods with the goal of promoting for all individuals, including the elderly and individuals with disabilities, the accessibility of polling places and the effective use of voting systems and voting equipment which provide the opportunity for casting a secure and secret ballot, and shall include in such standards voluntary guidelines regarding accessibility and ease-of-use for States and units of local government to use when obtaining voting equipment and selecting polling places. In carrying out this paragraph, the Commission shall consult with the Architectural and Transportation Barrier Compliance Board under section 502 of the Rehabilitation Act of 1973 (29 U.S.C. 792) and other individuals and entities with expertise in the accessibility of facilities for individuals with disabilities.

(5) Make periodic studies available to the public regarding the election administration issues described in subsection (b), with the goal of promoting methods of voting and administering elections which—

(A) will be the most convenient, accessible, and easy to use for voters, including members of the uniformed services, blind and disabled voters, and voters with limited English proficiency;

(B) will yield the most accurate, secure, and expeditious system for voting and tabulating election results;

(C) will be nondiscriminatory and afford each registered and eligible voter an equal opportunity to vote; and

(D) will be efficient and cost-effective for use.

(6) In accordance with section 223, develop (through the Executive Director of the Commission), adopt, and update (not less often than every 4 years) voluntary election management practice standards for State and local election officials to maintain and enhance the administration of Federal elections, including standards developed in consultation with the Secretary of Defense to govern the treatment of absent uniformed services voters (as defined in section 107(1) of the Uniformed and Overseas Citizens Absentee Voting Act) and overseas voters (as defined in section 107(5) of such Act) which will include provisions to address each of the following:

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(A) The rights of residence of uniformed services voters absent due to military orders.

(B) The rights of absent uniformed services voters and overseas voters to register to vote and cast absentee ballots.

(C) The rights of absent uniformed services voters and overseas voters to submit absentee ballot applications early during an election year.

(D) The appropriate pre-election deadline for mailing absentee ballots to absent uniformed services voters and overseas voters.

(E) The appropriate minimum period between the mailing of absentee ballots to absent uniformed services voters and overseas voters and the deadline for receipt of such ballots.

(F) The timely transmission of balloting materials to absent uniformed services voters and overseas voters.

(G) Security and privacy concerns in the transmission, receipt, and processing of ballots from absent uniformed services voters and overseas voters, including the need to protect against fraud.

(H) The use of a single application by absent uniformed services voters and overseas voters for absentee ballots for all Federal elections occurring during a year.

(I) The use of a single application for voter registration and absentee ballots by absent uniformed services voters and overseas voters.

(J) The use of facsimile machines and electronic means of transmission of absentee ballot applications and absentee ballots to absent uniformed services voters and overseas voters.

(K) Other issues related to the rights of absent uniformed services voters and overseas voters to participate in elections.

(7) Carry out the provisions of section 9 of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg–7) regarding mail voter registration.

(8) Make information on the Federal election system available to the public and the media.

(9) At the request of State officials, assist such officials in the review of election or vote counting procedures in Federal elections, through bipartisan panels of election professionals assembled by the Commission for such purpose.

(10) Compile and make available to the public the official certified results of general elections for Federal office and reports comparing the rates of voter registration, voter turnout, voting system functions, and ballot errors among jurisdictions in the United States.

(11) Gather information and serve as a clearinghouse concerning issues relating to Federal, State, and local elections.

(b) ELECTION ADMINISTRATION ISSUES DESCRIBED.—The election administration issues described in this subsection are as follows:

(1) Current and alternate methods and mechanisms of voting and counting votes in elections for Federal office.

(2) Current and alternate ballot designs for elections for Federal office.

(3) Current and alternate methods of voter registration, maintaining secure and accurate lists of registered voters (including the establishment of a centralized, interactive, statewide voter registration list linked to relevant agencies and all polling sites), and ensuring that all registered voters appear on the polling list at the appropriate polling site.

(4) Current and alternate methods of conducting provisional voting.

(5) Current and alternate methods of ensuring the accessibility of voting, registration, polling places, and voting equipment to all voters, including disabled voters and voters with limited English proficiency.

(6) Current and alternate methods of voter registration for members of the uniformed services and overseas voters, and methods of ensuring that such voters receive timely ballots that will be properly and expeditiously handled and counted.

(7) Current and alternate methods of recruiting and improving the performance of poll workers.

(8) Federal and State laws governing the eligibility of persons to vote.

(9) Current and alternate methods of educating voters about the process of registering to vote and voting, the operation of voting mechanisms, the location of polling places, and all other aspects of participating in elections.

(10) Matters particularly relevant to voting and administering elections in rural and urban areas.

(11) Conducting elections for Federal office on different days, at different places, and during different hours, including the advisability of establishing a uniform poll closing time.

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(12) The ways that the Federal Government can best assist State and local authorities to improve the administration of elections for Federal office and what levels of funding would be necessary to provide such assistance.

(c) CONSULTATION WITH STANDARDS BOARD AND BOARD OF ADVISORS.—The Commission shall carry out its duties under this subtitle in consultation with the Standards Board and the Board of Advisors.

SEC. 222. TECHNICAL STANDARDS DEVELOPMENT COMMITTEE.

(a) ESTABLISHMENT.—There is hereby established the Technical Standards Development Committee (hereafter in this subtitle referred to as the "Development Committee").

(b) DUTIES.—

(1) IN GENERAL.—The Development Committee shall assist the Executive Director of the Commission in the development of voluntary standards under this subtitle by recommending standards (and modifications to standards) to ensure the usability, accuracy, security, accessibility, and integrity of voting systems and voting equipment.

(2) DEADLINE FOR INITIAL SET OF RECOMMENDATIONS.—The Development Committee shall provide its first set of recommendations under this section to the Executive Director of the Commission not later than 9 months after all of its members have been appointed.

(c) MEMBERSHIP.—

(1) IN GENERAL.—The Development Committee shall be composed of the Director of the National Institute of Standards and Technology (who shall serve as its chair), together with a group of 14 other individuals appointed jointly by the Commission and the Director of the National Institute of Standards and Technology, consisting of the following:

(A) An equal number of each of the following:

(i) Members of the Standards Board.

(ii) Members of the Board of Advisors.

(iii) Members of the Architectural and Transportation Barrier Compliance Board under section 502 of the Rehabilitation Act of 1973 (29 U.S.C. 792).

(B) A representative of the American National Standards Institute.

(C) Other individuals with technical and scientific expertise relating to voting systems and voting equipment.

(2) QUORUM.—A majority of the members of the Development Committee shall constitute a quorum, except that the Development Committee may not conduct any business prior to the appointment of all of its members.

(d) NO COMPENSATION FOR SERVICE.—Members of the Development Committee shall not receive any compensation for their service, but shall be paid travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Development Committee.

(e) TECHNICAL SUPPORT FROM NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY.—At the request of the Development Committee, the Director of the National Institute of Standards and Technology shall provide the Development Committee with technical support necessary for the Development Committee to carry out its duties under this subtitle.

(f) PUBLICATION OF RECOMMENDATIONS IN FEDERAL REGISTER.—At the time the Commission adopts any standard pursuant to section 223, the Development Committee shall cause to have published in the Federal Register the recommendations it provided under this section to the Executive Director of the Commission concerning the standard adopted.

SEC. 223. PROCESS FOR ADOPTION OF VOLUNTARY STANDARDS.

(a) CONSIDERATION OF RECOMMENDATIONS OF DEVELOPMENT COMMITTEE; SUBMISSION OF PROPOSED VOLUNTARY STANDARDS TO BOARD OF ADVISORS AND STANDARDS BOARD.—

(1) CONSIDERATION OF RECOMMENDATIONS OF DEVELOPMENT COMMITTEE.—In developing standards and modifications for purposes of this section, the Executive Director of the Commission shall take into consideration the recommendations provided by the Technical Standards Development Committee under section 222.

(2) BOARD OF ADVISORS.—The Executive Director of the Commission shall submit each of the voluntary engineering and procedural performance standards (described in section 221(a)(1)), each of the voluntary standards described in section 221(a)(4), and each of the voluntary election management practice

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standards (described in section 221(a)(6)) developed by the Executive Director (or any modifications to such standards) to the Board of Advisors.

(3) STANDARDS BOARD.—The Executive Director of the Commission shall submit each of the voluntary engineering and procedural performance standards (described in section 221(a)(1)), each of the voluntary standards described in section 221(a)(4), and each of the voluntary election management practice standards (described in section 221(a)(6)) developed by the Executive Director (or any modifications to such standards) to the Executive Board of the Standards Board, who shall review the standard (or modification) and forward its recommendations to the Standards Board.

(b) REVIEW.—Upon receipt of a voluntary standard described in subsection (a) (or modification of such a standard) from the Executive Director of the Commission, the Board of Advisors and the Standards Board shall each review and submit comments and recommendations regarding the standard (or modification) to the Commission.

(c) FINAL APPROVAL.—

(1) IN GENERAL.—A voluntary standard described in subsection (a) (or modification of such a standard) shall not be considered to be finally adopted by the Commission unless the majority of the members of the Commission vote to approve the final adoption of the standard (or modification), taking into consideration the comments and recommendations submitted by the Board of Advisors and the Standards Board under subsection (b).

(2) MINIMUM PERIOD FOR CONSIDERATION OF COMMENTS AND RECOMMENDATIONS.—The Commission may not vote on the final adoption of a voluntary standard described in subsection (a) (or modification of such a standard) until the expiration of the 90-day period which begins on the date the Executive Director of the Commission submits the standard (or modification) to the Board of Advisors and the Standards Board under subsection (a).

SEC. 224. CERTIFICATION AND TESTING OF VOTING SYSTEMS.

(a) CERTIFICATION AND TESTING.—

(1) IN GENERAL.—The Commission shall provide for the testing, certification, decertification, and recertification of voting system hardware and software by accredited laboratories.

(2) OPTIONAL USE BY STATES.—At the option of a State, the State may provide for the testing, certification, decertification, or recertification of its voting system hardware and software by the laboratories accredited by the Commission under this section.

(b) LABORATORY ACCREDITATION.—

(1) RECOMMENDATIONS BY NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY.—Not later than 6 months after the Commission first adopts voluntary engineering and procedural performance standards under this subtitle, the Director of the National Institute of Standards and Technology shall conduct an evaluation of independent, non-Federal laboratories and shall submit to the Commission a list of those laboratories the Director proposes to be accredited to carry out the testing, certification, decertification, and recertification provided for under this section.

(2) APPROVAL BY COMMISSION.—The Commission shall vote on the proposed accreditation of each laboratory on the list submitted under paragraph (1), and no laboratory may be accredited for purposes of this section unless its accreditation is approved by a majority vote of the members of the Commission.

(c) CONTINUING REVIEW BY NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY.—

(1) IN GENERAL.—In cooperation with the Commission and in consultation with the Standards Board and the Board of Advisors, the Director of the National Institute of Standards and Technology shall monitor and review, on an ongoing basis, the performance of the laboratories accredited by the Commission under this section, and shall make such recommendations to the Commission as it considers appropriate with respect to the continuing accreditation of such laboratories, including recommendations to revoke the accreditation of any such laboratory.

(2) APPROVAL BY COMMISSION REQUIRED FOR REVOCATION.—The accreditation of a laboratory for purposes of this section may not be revoked unless the revocation is approved by a majority vote of the members of the Commission.

SEC. 225. DISSEMINATION OF INFORMATION.

On an ongoing basis, the Commission shall disseminate to the public (through the Internet, published reports, and such other methods as the Commission considers appropriate) information on the activities carried out under this subtitle, including—

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(1) the voluntary election standards adopted by the Commission, together with guidelines for applying the standards and other information to assist in their implementation;

(2) the list of laboratories accredited to carry out testing, certification, decertification, and recertification of voting system hardware and software under section 224; and

(3) a list of voting system hardware and software products which have been certified pursuant to section 224 as meeting the applicable voluntary standards adopted by the Commission under this subtitle.

Subtitle C—Election Assistance

PART 1—ELECTION FUND PAYMENTS TO STATES FOR VOTING SYSTEM IMPROVEMENTS

SEC. 231. ELECTION FUND PAYMENTS TO STATES FOR VOTING SYSTEM IMPROVEMENTS.

(a) IN GENERAL.—The Commission shall make an Election Fund payment each year in an amount determined under section 232 to each State which meets the requirements described in section 233 for the year.

(b) USE OF FUNDS.—A State receiving an Election Fund payment shall use the payment for any or all of the following activities:

(1) Establishing and maintaining accurate lists of eligible voters.

(2) Encouraging eligible voters to vote.

(3) Improving verification and identification of voters at the polling place.

(4) Improving equipment and methods for casting and counting votes.

(5) Recruiting and training election official and poll workers.

(6) Improving the quantity and quality of available polling places.

(7) Educating voters about their rights and responsibilities.

(8) Assuring access for voters with physical disabilities.

(9) Carrying out other activities to improve the administration of elections in the State.

(c) ADOPTION OF COMMISSION STANDARDS NOT REQUIRED TO RECEIVE PAYMENT.—Nothing in this part may be construed to require a State to implement any of the voluntary standards adopted by the Commission with respect to any matter as a condition for receiving an Election Fund payment.

(d) SCHEDULE OF PAYMENTS.—As soon as practicable after all members of the Commission are appointed (but in no event later than 6 months thereafter), and not less frequently than once each calendar year thereafter, the Commission shall make Election Fund payments to States under this part.

SEC. 232. ALLOCATION OF FUNDS.

(a) IN GENERAL.—Subject to subsection (c), the amount of an Election Fund payment made to a State for a year shall be equal to the product of—

(1) the total amount appropriated for Election Fund payments for the year under section 234; and

(2) the State allocation percentage for the State (as determined under subsection (b)).

(b) STATE ALLOCATION PERCENTAGE DEFINED.—The "State allocation percentage" for a State is the amount (expressed as a percentage) equal to the quotient of—

(1) the voting age population of the State; and

(2) the total voting age population of all States.

(c) MINIMUM AMOUNT OF PAYMENT.—The amount of an Election Fund payment made to a State for a year may not be less than—

(1) in the case of any of the several States or the District of Columbia, ½ of 1 percent of the total amount appropriated for Election Fund payments for the year under section 234; or

(2) in the case of the Commonwealth of Puerto Rico, Guam, American Samoa, or the United States Virgin Islands, 20% of the amount described in paragraph (1).

(d) CONTINUING AVAILABILITY OF FUNDS AFTER APPROPRIATION.—An Election Fund payment made to a State under this part shall be available to the State without fiscal year limitation.

SEC. 233. CONDITIONS FOR RECEIPT OF FUNDS.

(a) IN GENERAL.—In order to receive an Election Fund payment for a fiscal year, the chief State election official of the State shall provide the Commission with the following certifications:

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(1) A certification that the State has authorized and appropriated funds for carrying out the activities for which the Election Fund payment is made in an amount equal to 25 percent of the total amount to be spent for such activities (taking into account the Election Fund payment and the amount spent by the State).

(2) A certification that the State has set a uniform Statewide benchmark for voting system performance in each local jurisdiction administering elections, expressed as a percentage of residual vote in the contest at the top of the ballot, and requires local jurisdictions to report data relevant to this benchmark after each general election for Federal office.

(3) A certification that the State is in compliance with the voluntary voting system standards and certification processes adopted by the Commission or that the State has enacted legislation establishing its own State voting system standards and processes which (at a minimum) ensure that new voting mechanisms have the audit capacity to produce a record for each ballot cast.

(4) A certification that—

(A) in each precinct or polling place in the State, there is at least one voting system available which is fully accessible to individuals with physical disabilities; and

(B) if the State uses any portion of its Election Fund payment to obtain new voting machines, at least one voting machine in each polling place in the State will be fully accessible to individuals with physical disabilities.

(5) A certification that the State has established a fund described in subsection (b) for purposes of administering its activities under this part.

(6) A certification that, in administering election systems, the State is in compliance with the existing applicable requirements of the Voting Rights Act of 1965 (42 U.S.C. 1973 et seq.), the National Voter Registration Act of 1993 (42 U.S.C. 1973gg et seq.), the Voting Accessibility for the Elderly and Handicapped Act (42 U.S.C. 1973ee et seq.), and the Americans With Disabilities Act of 1990 (42 U.S.C. 12101 et seq.).

(7) A certification that the State provides for voter education and poll worker training programs to improve access to and participation in the electoral process, and provides relevant training in the requirements of the National Voter Registration Act of 1993 for personnel of State motor vehicle authority offices and other voter registration agencies designated by the State under such Act.

(8) A certification that the Election Fund payment has not and will not supplant funds provided under existing programs funded in the State for carrying out the activities for which the Election Fund payment is made.

(b) REQUIREMENTS FOR ELECTION FUND.—

(1) ELECTION FUND DESCRIBED.—For purposes of subsection (a)(5), a fund described in this subsection with respect to a State is a fund which is established in the treasury of the State government, which is used in accordance with paragraph (2), and which consists of the following amounts:

(A) Amounts appropriated or otherwise made available by the State for carrying out the activities for which the Election Fund payment is made to the State under this part.

(B) The Election Fund payment made to the State under this part.

(C) Such other amounts as may be appropriated under law.

(D) Interest earned on deposits of the fund.

(2) USE OF FUND.—Amounts in the fund shall be used by the State exclusively to carry out the activities for which the Election Fund payment is made to the State under this part.

(c) METHODS OF COMPLIANCE LEFT TO DISCRETION OF STATE.—The specific choices on the methods of complying with the requirements described in subsection (a) shall be left to the discretion of the State.

(d) CHIEF STATE ELECTION OFFICIAL DEFINED.—In this subtitle, the "chief State election official" of a State is the individual designated by the State under section 10 of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg–8) to be responsible for coordination of the State's responsibilities under such Act.

SEC. 234. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated for Election Fund payments under this part an aggregate amount of $2,250,000,000 for fiscal years 2002 through 2004.

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PART 2—GRANTS FOR RESEARCH ON VOTING TECHNOLOGY IMPROVEMENTS

SEC. 241. GRANTS FOR RESEARCH ON VOTING TECHNOLOGY IMPROVEMENTS.

(a) IN GENERAL.—The Commission shall make grants to assist entities in carrying out research and development to improve the quality, reliability, accuracy, accessibility, affordability, and security of voting equipment, election systems, and voting technology.

(b) ELIGIBILITY.—An entity is eligible to receive a grant under this part if it submits to the Commission (at such time and in such form as the Commission may require) an application containing—

(1) assurances that the research and development funded with the grant will take into account the need to make voting equipment fully accessible for individuals with disabilities (including blind individuals), the need to ensure that such individuals can vote independently and with privacy, and the need to provide alternative language accessibility for individuals with limited proficiency in the English language (consistent with the requirements of the Voting Rights Act of 1965); and

(2) such other information and assurances as the Commission may require.

(c) APPLICABILITY OF REGULATIONS GOVERNING PATENT RIGHTS IN INVENTIONS MADE WITH FEDERAL ASSISTANCE.—Any invention made by the recipient of a grant under this part using funds provided under this part shall be subject to chapter 18 of title 35, United States Code (relating to patent rights in inventions made with Federal assistance).

SEC. 242. REPORT.

(a) IN GENERAL.—Each entity which receives a grant under this part shall submit to the Commission, Congress, and the President a report describing the activities carried out with the funds provided under the grant.

(b) DEADLINE.—An entity shall submit a report required under subsection (a) not later than 60 days after the end of the fiscal year for which the entity received the grant which is the subject of the report.

SEC. 243. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated for grants under this part $20,000,000 for fiscal year 2002.

PART 3—PILOT PROGRAM FOR TESTING OF EQUIPMENT AND TECHNOLOGY

SEC. 251. PILOT PROGRAM.

(a) IN GENERAL.—The Commission shall make grants to carry out pilot programs under which new technologies in voting systems and equipment are implemented on a trial basis.

(b) ELIGIBILITY.—An entity is eligible to receive a grant under this part if it submits to the Commission (at such time and in such form as the Commission may require) an application containing—

(1) assurances that the pilot programs funded with the grant will take into account the need to make voting equipment fully accessible for individuals with disabilities (including blind individuals), the need to ensure that such individuals can vote independently and with privacy, and the need to provide alternative language accessibility for individuals with limited proficiency in the English language (consistent with the requirements of the Voting Rights Act of 1965); and

(2) such other information and assurances as the Commission may require.

SEC. 252. REPORT.

(a) IN GENERAL.—Each entity which receives a grant under this part shall submit to the Commission, Congress, and the President a report describing the activities carried out with the funds provided under the grant.

(b) DEADLINE.—An entity shall submit a report required under subsection (a) not later than 60 days after the end of the fiscal year for which the entity received the grant which is the subject of the report.

SEC. 253. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated for grants under this part $10,000,000 for fiscal year 2002.

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PART 4—MISCELLANEOUS

SEC. 261. ROLE OF NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY.

(a) RECOMMENDATION OF TOPICS FOR RESEARCH UNDER VOTING RESEARCH GRANTS AND PILOT PROGRAMS.—The Director of the National Institute of Standards and Technology (hereafter in this section referred to as the "Director") shall submit to the Commission an annual list of the Director's suggestions for issues which may be the subject of research funded with grants awarded under part 2 and part 3 during the year.

(b) REVIEW OF GRANT APPLICATIONS RECEIVED BY COMMISSION.—The Commission shall submit each application it receives for a grant under part 2 or part 3 to the Director, who shall review the application and provide the Commission with such comments as the Director considers appropriate.

(c) MONITORING AND ADJUSTMENT OF GRANT ACTIVITIES.—After the Commission has awarded a grant under part 2 or part 3, the Director shall monitor the grant and (to the extent permitted under the terms of the grant as awarded) may recommend to the Commission that the recipient of the grant modify and adjust the activities carried out under the grant.

(d) EVALUATION OF COMPLETED GRANTS.—

(1) IN GENERAL.—After the recipient of a grant awarded by the Commission has completed the terms of the grant, the Director shall prepare and submit to the Commission an evaluation of the grant and the activities carried out under the grant.

(2) INCLUSION IN REPORTS.—The Commission shall include the evaluations submitted under paragraph (1) for a year in the report submitted for the year under section 262.

(e) INTRAMURAL RESEARCH AND DEVELOPMENT.—The Director shall establish a program for intramural research and development in areas to support the development of voluntary technical standards for voting products and systems, including—

(1) the security of computers, computer networks, and computer data storage used in voting products and systems, including the Statewide voter registration networks required under the minimum standard described in section 502(1);

(2) methods to detect and prevent fraud;

(3) the protection of voter privacy;

(4) the role of human factors in the design and application of voting products and systems, including assistive technologies for individuals with disabilities and varying levels of literacy; and

(5) remote access voting, including voting through the Internet.

SEC. 262. REPORTS.

(a) ANNUAL REPORTS ON ACTIVITIES.—Not later than 90 days after the end of each fiscal year, the Commission shall submit a report to the Committee on House Administration of the House of Representatives and the Committee on Rules and Administration of the Senate on the activities carried out by the Commission under this subtitle during the previous fiscal year, and shall include in the report a description of all applications for Election Fund payments and grants received by the Commission during the year under this subtitle and the disposition of such applications.

(b) REPORT ON HUMAN FACTOR RESEARCH.—Not later than 1 year after the date of the enactment of this Act, the Commission, in consultation with the Director of the National Institute of Standards and Technology, shall submit a report to Congress which assesses the areas of human factor research, including usability engineering and human-computer and human-machine interaction, which feasibly could be applied to voting products and systems design to ensure the usability and accuracy of voting products and systems, including methods to improve access for individuals with disabilities and to reduce voter error and the number of spoiled ballots in elections.

SEC. 263. AUDIT.

(a) IN GENERAL.—As a condition of receiving funds under this subtitle, a State or entity described in part 2 or part 3 shall agree that such funds shall be subject to audit if 2 or more members of the Commission vote to require an audit.

(b) MANDATORY AUDIT.—In addition to audits conducted pursuant to subsection (a), all funds provided under this subtitle shall be subject to mandatory audit at least once during the lifetime of the programs under this subtitle.

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TITLE III—HELP AMERICA VOTE COLLEGE PROGRAM

SEC. 301. ESTABLISHMENT OF PROGRAM.

(a) IN GENERAL.—Not later than 1 year after the appointment of its members, the Election Assistance Commission shall develop a program to be known as the "Help America Vote College Program" (hereafter in this title referred to as the "Program").

(b) PURPOSES OF PROGRAM.—The purpose of the Program shall be—

(1) to encourage students enrolled at institutions of higher education (including community colleges) to assist State and local governments in the administration of elections by serving as nonpartisan poll workers or assistants; and

(2) to encourage State and local governments to use the services of the students participating in the Program.

SEC. 302. ACTIVITIES UNDER PROGRAM.

(a) IN GENERAL.—In carrying out the Program, the Commission (in consultation with the chief election official of each State) shall develop materials, sponsor seminars and workshops, engage in advertising targeted at students, make grants, and take such other actions as it considers appropriate to meet the purposes described in section 301(b).

(b) REQUIREMENTS FOR GRANT RECIPIENTS.—In making grants under the Program, the Commission shall ensure that the funds provided are spent for projects and activities which are carried out without partisan bias or without promoting any particular point of view regarding any issue, and that each recipient is governed in a balanced manner which does not reflect any partisan bias.

(c) COORDINATION WITH INSTITUTIONS OF HIGHER EDUCATION.—The Commission shall encourage institutions of higher education (including community colleges) to participate in the Program, and shall make all necessary materials and other assistance (including materials and assistance to enable the institution to hold workshops and poll worker training sessions) available without charge to any institution which desires to participate in the Program.

SEC. 303. AUTHORIZATION OF APPROPRIATIONS.

In addition to any funds authorized to be appropriated to the Commission under section 207, there are authorized to be appropriated to carry out this title—

(1) $5,000,000 for fiscal year 2002; and

(2) such sums as may be necessary for each succeeding fiscal year.

TITLE IV—HELP AMERICA VOTE FOUNDATION

SEC. 401. HELP AMERICA VOTE FOUNDATION.

(a) IN GENERAL.—Part B of subtitle II of title 36, United States Code, is amended by inserting after chapter 1525 the following:

"CHAPTER 1526—HELP AMERICA VOTE FOUNDATION

"Sec.
"152601. Organization.
"152602. Purposes.
"152603. Board of directors.
"152604. Officers and employees.
"152605. Powers.
"152606. Principal office.
"152607. Service of process.
"152608. Annual audit.
"152609. Civil action by Attorney General for equitable relief.
"152610. Immunity of United States Government.
"152611. Authorization of appropriations.
"152612. Annual report.

"§ 152601. Organization

"(a) FEDERAL CHARTER.—The Help America Vote Foundation (in this chapter, the 'foundation') is a federally chartered corporation.

"(b) NATURE OF FOUNDATION.—The foundation is a charitable and nonprofit corporation and is not an agency or establishment of the United States Government.

"(c) PERPETUAL EXISTENCE.—Except as otherwise provided, the foundation has perpetual existence.

"§ 152602. Purposes

"(a) IN GENERAL.—The purposes of the foundation are to—

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"(1) mobilize secondary school students (including students educated in the home) in the United States to participate in the election process in a nonpartisan manner as poll workers or assistants;

"(2) place secondary school students (including students educated in the home) as nonpartisan poll workers or assistants to local election officials in precinct polling places across the United States; and

"(3) establish cooperative efforts with State and local election officials, local educational agencies, superintendents and principals of public and private secondary schools, and other appropriate nonprofit charitable and educational organizations exempt from taxation under section 501(a) of the Internal Revenue Code of 1986 as an organization described in section 501(c)(3) of such Code to further the purposes of the foundation.

"(b) REQUIRING ACTIVITIES TO BE CARRIED OUT ON NONPARTISAN BASIS.—The foundation shall carry out its purposes without partisan bias or without promoting any particular point of view regarding any issue, and shall ensure that each participant in its activities is governed in a balanced manner which does not reflect any partisan bias.

"(c) CONSULTATION WITH STATE ELECTION OFFICIALS.—The foundation shall carry out its purposes under this section in consultation with the chief election officials of the States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, and the United States Virgin Islands.

"§ 152603. Board of directors

"(a) GENERAL.—The board of directors is the governing body of the foundation.

"(b) MEMBERS AND APPOINTMENT.—(1) The board consists of 12 directors, who shall be appointed not later than 60 days after the date of the enactment of this chapter as follows:

"(A) 4 directors (of whom not more than 2 may be members of the same political party) shall be appointed by the President.

"(B) 2 directors shall be appointed by the Speaker of the House of Representatives.

"(C) 2 directors shall be appointed by the minority leader of the House of Representatives.

"(D) 2 directors shall be appointed by the majority leader of the Senate.

"(E) 2 directors shall be appointed by the minority leader of the Senate.

"(2) In addition to the directors described in paragraph (1), the chair and ranking minority member of the Committee on House Administration of the House of Representatives (or their designees) and the chair and ranking minority member of the Committee on Rules and Administration of the Senate (or their designees) shall each serve as an ex officio nonvoting member of the board.

"(3) A director is not an employee of the Federal government and appointment to the board does not constitute appointment as an officer or employee of the United States Government for the purpose of any law of the United States (except as may otherwise be provided in this chapter).

"(4) The terms of office of the directors are 4 years.

"(5) A vacancy on the board shall be filled in the manner in which the original appointment was made.

"(c) CHAIR.—The directors shall select one of the directors as the chair of the board. The individual selected may not be a current or former holder of any partisan elected office or a current or former officer of any national committee of a political party.

"(d) QUORUM.—The number of directors constituting a quorum of the board shall be established under the bylaws of the foundation.

"(e) MEETINGS.—The board shall meet at the call of the chair of the board for regularly scheduled meetings, except that the board shall meet not less often than annually.

"(f) REIMBURSEMENT OF EXPENSES.—Directors shall serve without compensation but may receive travel expenses, including per diem in lieu of subsistence, in accordance with sections 5702 and 5703 of title 5.

"(g) LIABILITY OF DIRECTORS.—Directors are not personally liable, except for gross negligence.

"§ 152604. Officers and employees

"(a) APPOINTMENT OF OFFICERS AND EMPLOYEES.—The board of directors appoints, removes, and replaces officers and employees of the foundation.

"(b) STATUS AND COMPENSATION OF EMPLOYEES.—

"(1) IN GENERAL.—Officers and employees of the foundation—

"(A) are not employees of the Federal government (except as may otherwise be provided in this chapter);

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"(B) shall be appointed and removed without regard to the provisions of title 5 governing appointments in the competitive service; and

"(C) may be paid without regard to chapter 51 and subchapter III of chapter 53 of title 5.

"(2) AVAILABILITY OF FEDERAL EMPLOYEE RATES FOR TRAVEL.—For purposes of any schedules of rates negotiated by the Administrator of General Services for the use of employees of the Federal government who travel on official business, officers and employees of the foundation who travel while engaged in the performance of their duties under this chapter shall be deemed to be employees of the Federal government.

"§ 152605. Powers

"(a) GENERAL.—The foundation may—

"(1) adopt a constitution and bylaws;

"(2) adopt a seal which shall be judicially noticed; and

"(3) do any other act necessary to carry out this chapter.

"(b) POWERS AS TRUSTEE.—To carry out its purposes, the foundation has the usual powers of a corporation acting as a trustee in the District of Columbia, including the power—

"(1) to accept, receive, solicit, hold, administer, and use any gift, devise, or bequest, either absolutely or in trust, of property or any income from or other interest in property;

"(2) to acquire property or an interest in property by purchase or exchange;

"(3) unless otherwise required by an instrument of transfer, to sell, donate, lease, invest, or otherwise dispose of any property or income from property;

"(4) to borrow money and issue instruments of indebtedness;

"(5) to make contracts and other arrangements with public agencies and private organizations and persons and to make payments necessary to carry out its functions;

"(6) to sue and be sued; and

"(7) to do any other act necessary and proper to carry out the purposes of the foundation.

"(c) ENCUMBERED OR RESTRICTED GIFTS.—A gift, devise, or bequest may be accepted by the foundation even though it is encumbered, restricted, or subject to beneficial interests of private persons, if any current or future interest is for the benefit of the foundation.

"(d) CONTRACTS.—The foundation may enter into such contracts with public and private entities as it considers appropriate to carry out its purposes.

"(e) ANNUAL CONFERENCE IN WASHINGTON METROPOLITAN AREA.—During each year (beginning with 2003), the foundation may sponsor a conference in the Washington, D.C., metropolitan area to honor secondary school students and other individuals who have served (or plan to serve) as poll workers and assistants and who have otherwise participated in the programs and activities of the foundation.

"§ 152606. Principal office

"The principal office of the foundation shall be in the District of Columbia unless the board of directors determines otherwise. However, the foundation may conduct business throughout the States, territories, and possessions of the United States.

"§ 152607. Service of process

"The foundation shall have a designated agent to receive service of process for the foundation. Notice to or service on the agent, or mailed to the business address of the agent, is notice to or service on the foundation.

"§ 152608. Annual audit

"The foundation shall enter into a contract with an independent auditor to conduct an annual audit of the foundation.

"§ 152609. Civil action by Attorney General for equitable relief

"The Attorney General may bring a civil action in the United States District Court for the District of Columbia for appropriate equitable relief if the foundation—

"(1) engages or threatens to engage in any act, practice, or policy that is inconsistent with the purposes in section 152602 of this title; or

"(2) refuses, fails, or neglects to carry out its obligations under this chapter or threatens to do so.

"§ 152610. Immunity of United States Government

"The United States Government is not liable for any debts, defaults, acts, or omissions of the foundation. The full faith and credit of the Government does not extend to any obligation of the foundation.

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"§ 152611. Authorization of appropriations

"There are authorized to be appropriated to the foundation for carrying out the purposes of this chapter—

"(1) $5,000,000 for fiscal year 2002; and

"(2) such sums as may be necessary for each succeeding fiscal year.

"§ 152612. Annual report

"As soon as practicable after the end of each fiscal year, the foundation shall submit a report to the Commission, the President, and Congress on the activities of the foundation during the prior fiscal year, including a complete statement of its receipts, expenditures, and investments. Such report shall contain information gathered from participating secondary school students describing the nature of the work they performed in assisting local election officials and the value they derived from the experience of educating participants about the electoral process.".

(b) CLERICAL AMENDMENT.—The table of chapters for part B of subtitle II of title 36, United States Code, is amended by inserting after the item relating to chapter 1525 the following new item:

"1526. Help America Vote Foundation ..... 152601".

TITLE V—MINIMUM STANDARDS FOR STATE ELECTION SYSTEMS

SEC. 501. MINIMUM STANDARDS FOR STATE ELECTION SYSTEMS.

(a) IN GENERAL.—The chief State election official of each State shall certify in writing to the Election Assistance Commission that—

(1) in administering election systems, the State is in compliance with the existing applicable requirements of the Voting Rights Act of 1965, the National Voter Registration Act of 1993, the Uniformed and Overseas Citizens Absentee Voting Act, the Voting Accessibility for the Elderly and Handicapped Act, and the Americans With Disabilities Act of 1990; and

(2) the State has enacted legislation to enable the State to meet each of the minimum standards for State election systems described in section 502.

(b) METHODS OF IMPLEMENTATION LEFT TO DISCRETION OF STATE.—The specific choices on the methods of implementing the legislation enacted pursuant to subsection (a)(2) shall be left to the discretion of the State.

(c) CHIEF STATE ELECTION OFFICIAL DEFINED.—In this title, the "chief State election official" of a State is the individual designated by the State under section 10 of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg–8) to be responsible for coordination of the State's responsibilities under such Act.

SEC. 502. STANDARDS DESCRIBED.

The minimum standards for State election systems described in this section are as follows:

(1) The State will implement a Statewide voter registration system networked to every local jurisdiction in the State, with provisions for sharing data with other States, except that this paragraph shall not apply in the case of a State in which, under law in effect continuously on and after the date of the enactment of this Act, there is no voter registration requirement for any voter in the State with respect to an election for Federal office.

(2) The State election system includes provisions to ensure that voter registration records in the State are accurate and are updated regularly, including the following:

(A) A system of file maintenance which removes registrants who are ineligible to vote from the official list of eligible voters. Under such system, consistent with the National Voter Registration Act of 1993, registrants who have not voted in 2 or more consecutive general elections for Federal office and who have not responded to a notice shall be removed from the official list of eligible voters, except that no registrant may be removed solely by reason of a failure to vote.

(B) Safeguards to ensure that eligible voters are not removed in error from the official list of eligible voters.

(3) The State permits, by the deadline required under section 504(b), in-precinct provisional voting by every voter who claims to be qualified to vote in the State, or has adopted an alternative which achieves the same objective, except that this paragraph shall not apply in the case of a State in which, under law in effect continuously on and after the date of the enactment of this Act, all votes in the State in general elections for Federal office are cast by mail.

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(4) The State has adopted uniform standards that define what will constitute a vote on each category of voting equipment certified for use in the State.

(5) The State has implemented safeguards to ensure that absent uniformed services voters (as defined in section 107(1) of the Uniformed and Overseas Citizens Absentee Voting Act) and overseas voters (as defined in section 107(5) of such Act) in the jurisdiction have the opportunity to vote and to have their votes counted.

(6) The State requires new voting systems to provide a practical and effective means for voters with physical disabilities to cast a secret ballot.

(7) If the State uses voting systems which give voters the opportunity to correct errors, the State shall ensure that voters are able to check for and correct errors under conditions which assure privacy. States, and units of local government within the States, replacing all voting machines within their jurisdiction shall ensure that the new voting system gives voters the opportunity to correct errors before the vote is cast.

SEC. 503. ENFORCEMENT.

(a) REPORT BY COMMISSION TO ATTORNEY GENERAL.—If a State does not provide a certification under section 501 to the Election Assistance Commission, or if the Commission has credible evidence that a State's certification is false or that a State is carrying out activities in violation of the terms of the certification, the Commission shall notify the Attorney General.

(b) ACTION BY ATTORNEY GENERAL.—After receiving notice from the Commission under subsection (a), the Attorney General may bring a civil action against a State in an appropriate district court for such declaratory or injunctive relief as may be necessary to remedy a violation of this title.

SEC. 504. EFFECTIVE DATE.

(a) IN GENERAL.—Except as provided in subsection (b), the requirements of this title shall take effect upon the expiration of the 2-year period which begins on the date of the enactment of this Act, except that if the chief State election official of a State certifies that good cause exists to waive the requirements of this title with respect to the State until the date of the regularly scheduled general election for Federal office held in November 2004, the requirements shall apply with respect to the State beginning on the date of such election.

(b) DEADLINES FOR IMPLEMENTATION OF PROVISIONAL VOTING.—The minimum standard described in section 502(3) (relating to permitting in-precinct provisional voting) shall apply with respect to the regularly scheduled general election for Federal office held in November 2002 and each succeeding election for Federal office, except that if the chief State election official of a State certifies that good cause exists to delay the implementation of such standard in the State, the standard shall apply in the State with respect to the regularly scheduled general election for Federal office held in November 2004 and each succeeding election for Federal office held in the State.

TITLE VI—VOTING RIGHTS OF MILITARY MEMBERS AND OVERSEAS CITIZENS

SEC. 601. VOTING ASSISTANCE PROGRAMS.

(a) IN GENERAL.—(1) Chapter 80 of title 10, United States Code, is amended by adding at the end the following new section:

"§ 1566. Voting assistance: compliance assessments; assistance

"(a) REGULATIONS.—The Secretary of Defense shall prescribe regulations to require that the Army, Navy, Air Force, and Marine Corps ensure their compliance with any directives issued by the Secretary of Defense in implementing any voting assistance program.

"(b) VOTING ASSISTANCE PROGRAMS DEFINED.—In this section, the term 'voting assistance programs' means—

"(1) the Federal Voting Assistance Program carried out under the Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff et seq.); and

"(2) any similar program.

"(c) ANNUAL EFFECTIVENESS AND COMPLIANCE REVIEWS.—(1) The Inspector General of each of the Army, Navy, Air Force, and Marine Corps shall conduct—

"(A) an annual review of the effectiveness of voting assistance programs; and

"(B) an annual review of the compliance with voting assistance programs of that armed force.

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"(2) Upon the completion of each annual review under paragraph (1), each Inspector General specified in that paragraph shall submit to the Inspector General of the Department of Defense a report on the results of each such review. Such report shall be submitted in time each year to be reflected in the report of the Inspector General of the Department of Defense under paragraph (3).

"(3) Not later than March 31 each year, the Inspector General of the Department of Defense shall submit to Congress a report on—

"(A) the effectiveness during the preceding calendar year of voting assistance programs; and

"(B) the level of compliance during the preceding calendar year with voting assistance programs of each of the Army, Navy, Air Force, and Marine Corps.

"(d) INSPECTOR GENERAL ASSESSMENTS.—(1) The Inspector General of the Department of Defense shall periodically conduct at Department of Defense installations unannounced assessments of the compliance at those installations with—

"(A) the requirements of the Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff et seq.);

"(B) Department of Defense regulations regarding that Act and the Federal Voting Assistance Program carried out under that Act; and

"(C) other requirements of law regarding voting by members of the armed forces.

"(2) The Inspector General shall conduct an assessment under paragraph (1) at not less than 10 Department of Defense installations each calendar year.

"(3) Each assessment under paragraph (1) shall include a review of such compliance—

"(A) within units to which are assigned, in the aggregate, not less than 20 percent of the personnel assigned to duty at that installation;

"(B) within a representative survey of members of the armed forces assigned to that installation and their dependents; and

"(C) within unit voting assistance officers to measure program effectiveness.

"(e) REGULAR MILITARY DEPARTMENT ASSESSMENTS.—The Secretary of each military department shall include in the set of issues and programs to be reviewed during any management effectiveness review or inspection at the installation level an assessment of compliance with the Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff et seq.) and with Department of Defense regulations regarding the Federal Voting Assistance Program.

"(f) VOTING ASSISTANCE OFFICERS.—(1) Voting assistance officers shall be appointed or assigned under Department of Defense regulations. Commanders at all levels are responsible for ensuring that unit voting officers are trained and equipped to provide information and assistance to members of the armed forces on voting matters. Performance evaluation reports pertaining to a member who has been assigned to serve as a voting assistance officer shall comment on the performance of the member as a voting assistance officer. The Secretary of each military department shall certify to Congress that (at a minimum) a voting assistance officer has been appointed or assigned for each military installation and major command under the jurisdiction of the department and that a replacement will be appointed if the original officer is no longer able to serve.

"(2) Under regulations and procedures prescribed by the Secretary, a member of the armed forces appointed or assigned to duty as a voting assistance officer shall, to the maximum extent practicable, be given the time and resources needed to perform the member's duties as a voting assistance officer during the period in advance of a general election when members and their dependents are preparing and submitting absentee ballots.

"(3) As part of each assessment prepared by the Secretary of a military department under subsection (e), the Secretary shall—

"(A) specify the number of members of the armed forces under the jurisdiction of the Secretary who are appointed or assigned to duty as voting assistance officers;

"(B) specify the ratio of voting assistance officers to active duty members of the armed forces under the jurisdiction of the Secretary;

"(C) indicate whether this number and ratio comply with the requirements of the Federal Voting Assistance Program; and

"(D) describe the training such members receive to perform their duties as voting assistance officers.

"(g) REGISTRATION AND VOTING INFORMATION FOR MEMBERS AND DEPENDENTS.—(1) The Secretary of each military department, using a variety of means including both print and electronic media, shall, to the maximum extent practicable, ensure that members of the armed forces and their dependents who are qualified to vote have ready access to information regarding voter registration requirements and deadlines (including voter registration), absentee ballot application requirements

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and deadlines, and the availability of voting assistance officers to assist members and dependents to understand and comply with these requirement.

"(2) The Secretary of each military department shall make the national voter registration form prepared for purposes of the Uniformed and Overseas Citizens Absentee Voting Act by the Federal Election Commission available so that each person who enlists, reenlists, or voluntarily extends an enlistment or who completes a permanent change of station in an active or reserve component of the Army, Navy, Air Force, or Marine Corps shall receive such form at the time of the enlistment, reenlistment, extension, or completion of the permanent change of station, or as soon thereafter as practicable.

"(3) Where practicable, a special day or days shall be designated at each military installation for the purpose of informing members of the armed forces and their dependents of election timing, registration requirements, and voting procedures.

"(h) DELIVERY OF MAIL FROM OVERSEAS PRECEDING FEDERAL ELECTIONS.—(1) During the four months preceding a general Federal election month, the Secretary of Defense shall periodically conduct surveys of all overseas locations and vessels at sea with military units responsible for collecting mail for return shipment to the United States and all port facilities in the United States and overseas where military-related mail is collected for shipment to overseas locations or to the United States. The purpose of each survey shall be to determine if voting materials are awaiting shipment at any such location and, if so, the length of time that such materials have been held at that location. During the fourth and third months before a general Federal election month, such surveys shall be conducted biweekly. During the second and first months before a general Federal election month, such surveys shall be conducted weekly.

"(2) The Secretary shall ensure that voting materials are transmitted expeditiously by military postal authorities at all times. The Secretary shall, to the maximum extent practicable, implement measures to ensure that a postmark or other official proof of mailing date is provided on each absentee ballot collected at any overseas location or vessel at sea whenever the Department of Defense is responsible for collecting mail for return shipment to the United States. The Secretary shall submit to Congress a report describing the measures to be implemented to ensure the timely transmittal and postmarking of voting materials and identifying the persons responsible for implementing such measures.

"(3) The Secretary of each military department, utilizing the voting assistance officer network established for each military installation, shall, to the maximum extent practicable, provide notice to members of the armed forces stationed at that installation of the last date before a general Federal election for which absentee ballots mailed from a postal facility located at that installation can reasonably be expected to be timely delivered to the appropriate State and local election officials.

"(4) In this section, the term 'general Federal election month' means November in an even-numbered year.".

(2) The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"1566. Voting assistance: compliance assessments; assistance.".

(b) INITIAL REPORT.—The first report under section 1566(c)(3) of title 10, United States Code, as added by subsection (a), shall be submitted not later than March 31, 2003.

SEC. 602. DESIGNATION OF SINGLE STATE OFFICE TO PROVIDE INFORMATION ON REGISTRATION AND ABSENTEE BALLOTS FOR ALL VOTERS IN STATE.

Section 102 of the Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff–1) is amended—

(1) by inserting "(a) IN GENERAL.—" before "Each State"; and

(2) by adding at the end the following new subsection:

"(b) DESIGNATION OF SINGLE STATE OFFICE TO PROVIDE INFORMATION ON REGISTRATION AND ABSENTEE BALLOT PROCEDURES FOR ALL VOTERS IN STATE.—

"(1) IN GENERAL.—Each State shall designate a single office which shall be responsible for providing information regarding voter registration procedures and absentee ballot procedures (including procedures relating to the use of the Federal write-in absentee ballot) to all absent uniformed services voters and overseas voters who wish to register to vote or vote in any jurisdiction in the State.

"(2) RECOMMENDATION REGARDING USE OF OFFICE TO ACCEPT AND PROCESS MATERIALS.—Congress recommends that the State office designated under paragraph (1) be responsible for carrying out the State's duties under this Act, including accepting valid voter registration applications, absentee ballot applications, and absentee ballots (including Federal write-in absentee ballots) from all

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absent uniformed services voters and overseas voters who wish to register to vote or vote in any jurisdiction in the State.".

SEC. 603. REPORT ON ABSENTEE BALLOTS TRANSMITTED AND RECEIVED AFTER GENERAL ELECTIONS.

(a) IN GENERAL.—Section 102 of the Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff–1), as amended by section 602, is amended by adding at the end the following new subsection:

"(c) REPORT ON NUMBER OF ABSENTEE BALLOTS TRANSMITTED AND RECEIVED.—Not later than 90 days after the date of each regularly scheduled general election for Federal office, each State and unit of local government which administered the election shall (through the State, in the case of a unit of local government) submit a report to the Election Assistance Commission (established under the Help America Vote Act of 2001) on the number of absentee ballots transmitted to absent uniformed services voters and overseas voters for the election and the number of such ballots which were returned by such voters and cast in the election, and shall make such report available to the general public.".

(b) DEVELOPMENT OF STANDARDIZED FORMAT FOR REPORTS.—The Election Assistance Commission, working with the Election Assistance Commission Board of Advisors and the Election Assistance Commission Standards Board, shall develop a standardized format for the reports submitted by States and units of local government under section 102(c) of the Uniformed and Overseas Citizens Absentee Voting Act (as added by subsection (a)), and shall make the format available to the States and units of local government submitting such reports.

SEC. 604. SIMPLIFICATION OF VOTER REGISTRATION AND ABSENTEE BALLOT APPLICATION PROCEDURES FOR ABSENT UNIFORMED SERVICES AND OVERSEAS VOTERS.

(a) REQUIRING STATES TO ACCEPT OFFICIAL FORM FOR SIMULTANEOUS VOTER REGISTRATION AND ABSENTEE BALLOT APPLICATION; DEADLINE FOR PROCESSING APPLICATION.—

(1) IN GENERAL.—Section 102(a) of the Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff–1), as amended by section 602, is amended—

(A) by amending paragraph (2) to read as follows:

"(2) accept and process, with respect to any election for Federal office, any otherwise valid voter registration application and absentee ballot application from an absent uniformed services voter or overseas voter, if the application is received by the appropriate State election official not less than 30 days before the election;";

(B) by striking the period at the end of paragraph (3) and inserting "; and"; and

(C) by adding at the end the following new paragraph:

"(4) use the official post card form (prescribed under section 101) for simultaneous voter registration application and absentee ballot application.".

(2) CONFORMING AMENDMENTS.—Section 101(b)(2) of such Act (42 U.S.C. 1973ff(b)(2)) is amended by striking "as recommended in section 104" and inserting "as required under section 102(4)".

(b) USE OF SINGLE APPLICATION FOR ALL SUBSEQUENT ELECTIONS.—Section 104 of such Act (42 U.S.C. 1973ff–3) is amended to read as follows:

"SEC. 104. USE OF SINGLE APPLICATION FOR ALL SUBSEQUENT ELECTIONS.

"(a) IN GENERAL.—If a State accepts and processes an official post card form (prescribed under section 101) submitted by an absent uniformed services voter or overseas voter for simultaneous voter registration and absentee ballot application (in accordance with section 102(a)(4)) and the voter requests that the application be considered an application for an absentee ballot for each subsequent election for Federal office held in the State during that year, the State shall provide an absentee ballot to the voter for each subsequent election for Federal office held in the State during that year.

"(b) EXCEPTION FOR VOTERS CHANGING REGISTRATION.—Subsection (a) shall not apply with respect to a voter registered to vote in a State for any election held after the voter notifies the State that the voter no longer wishes to be registered to vote in the State or after the State determines that the voter has registered to vote in another State.

"(c) REVISION OF OFFICIAL POST CARD FORM.—The Presidential designee shall revise the official post card form (prescribed under section 101) to enable a voter using the form to—

"(1) request an absentee ballot for each election for Federal office held in a State during a year; or

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"(2) request an absentee ballot for only the next scheduled election for Federal office held in a State.

"(d) NO EFFECT ON VOTER REMOVAL PROGRAMS.—Nothing in this section may be construed to prevent a State from removing any voter from the rolls of registered voters in the State under any program or method permitted under section 8 of the National Voter Registration Act of 1993.".

SEC. 605. ADDITIONAL DUTIES OF PRESIDENTIAL DESIGNEE UNDER UNIFORMED AND OVERSEAS CITIZENS ABSENTEE VOTING ACT.

(a) EDUCATING ELECTION OFFICIALS ON RESPONSIBILITIES UNDER ACT.—Section 101(b)(1) of the Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff(b)(1)) is amended by striking the semicolon at the end and inserting the following: ", and ensuring that such officials are aware of the requirements of this Act;".

(b) DEVELOPMENT OF STANDARD OATH FOR USE WITH MATERIALS.—

(1) IN GENERAL.—Section 101(b) of such Act (42 U.S.C. 1973ff(b)) is amended—

(A) by striking "and" at the end of paragraph (5);

(B) by striking the period at the end of paragraph (6) and inserting "; and"; and

(C) by adding at the end the following new paragraph:

"(7) prescribe a standard oath for use with any document under this title affirming that a material misstatement of fact in the completion of such a document may constitute grounds for a conviction for perjury.".

(2) REQUIRING STATES TO USE STANDARD OATH.—Section 102(a) of such Act (42 U.S.C. 1973ff–1(b)), as amended by sections 603 and 605(a), is amended—

(A) by striking "and" at the end of paragraph (3);

(B) by striking the period at the end of paragraph (4) and inserting "; and"; and

(C) by adding at the end the following new paragraph:

"(5) if the State requires an oath or affirmation to accompany any document under this title, use the standard oath prescribed by the Presidential designee under section 101(b)(7).".

(c) PROVIDING BREAKDOWN BETWEEN OVERSEAS VOTERS AND ABSENT UNIFORMED SERVICES VOTERS IN STATISTICAL ANALYSIS OF VOTER PARTICIPATION.—Section 101(b)(6) of such Act (42 U.S.C. 1973ff(b)(6)) is amended by inserting after "participation" the following: "(listed separately for overseas voters and absent uniformed services voters)".

SEC. 606. USE OF BUILDINGS ON MILITARY INSTALLATIONS AND RESERVE COMPONENT FACILITIES AS POLLING PLACES.

(a) LIMITED USE OF MILITARY INSTALLATIONS AUTHORIZED.—Section 2670 of title 10, United States Code, is amended—

(1) by striking "Under" and inserting "(a) USE BY RED CROSS.—Under";

(2) by striking "this section" and inserting "this subsection"; and

(3) by adding at the end the following new subsection:

"(b) USE AS POLLING PLACES.—(1) Notwithstanding any other provision of law, the Secretary of a military department may make a building located on a military installation under the jurisdiction of the Secretary available for use as a polling place in any Federal, State, or local public election, but only if such use is limited to eligible voters who reside on that military installation.

"(2) If a building located on a military installation is made available under paragraph (1) as the site of a polling place, the Secretary shall continue to make the building available for subsequent elections unless the Secretary provides to the appropriate State or local election officials advance notice, in a reasonable and timely manner, of the reasons why the building will no longer be made available as a polling place.

"(3) In this section, the term 'military installation' has the meaning given the term in section 2687(e) of this title.".

(b) USE OF RESERVE COMPONENT FACILITIES.—(1) Section 18235 of title 10, United States Code, is amended by adding at the end the following new subsection:

"(c) Pursuant to a lease or other agreement under subsection (a)(2), the Secretary may make a facility covered by subsection (a) available for use as a polling place in any Federal, State, or local public election notwithstanding any other provision of law. If a facility is made available as the site of a polling place with respect to an election, the Secretary shall continue to make the facility available for subsequent elections unless the Secretary provides to the appropriate State or local election officials advance notice, in a reasonable and timely manner, of the reasons why the facility will no longer be made available as a polling place.".

(2) Section 18236 of such title is amended by adding at the end the following:

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"(e) Pursuant to a lease or other agreement under subsection (c)(1), a State may make a facility covered by subsection (c) available for use as a polling place in any Federal, State, or local public election notwithstanding any other provision of law.".

(c) CONFORMING AMENDMENTS TO TITLE 18.—(1) Section 592 of title 18, United States Code, is amended by adding at the end the following new sentence:

"This section shall not apply to the actions of members of the Armed Forces at any polling place on a military installation where a general or special election is held in accordance with section 2670(b), 18235, or 18236 of title 10.".

(2) Section 593 of such title is amended by adding at the end the following new sentence:

"This section shall not apply to the actions of members of the Armed Forces at any polling place on a military installation where a general or special election is held in accordance with section 2670(b), 18235, or 18236 of title 10.".

(d) CONFORMING AMENDMENT TO VOTING RIGHTS LAW.—Section 2003 of the Revised Statutes of the United States (42 U.S.C. 1972) is amended by adding at the end the following new sentence: "Making a military installation or reserve component facility available as a polling place in a Federal, State, or local public election in accordance with section 2670(b), 18235, or 18236 of title 10, United States Code, is deemed to be consistent with this section.".

(e) CLERICAL AMENDMENTS.—(1) The heading of section 2670 of title 10, United States Code, is amended to read as follows:

"§ 2670. Buildings on military installations: use by American National Red Cross and as polling places in Federal, State, and local elections".

(2) The item relating to such section in the table of sections at the beginning of chapter 159 of such title is amended to read as follows:

"2670. Buildings on military installations: use by American National Red Cross and as polling places in Federal, State, and local elections.".

TITLE VII—REDUCED POSTAGE RATES FOR OFFICIAL ELECTION MAIL

SEC. 701. REDUCED POSTAGE RATES FOR OFFICIAL ELECTION MAIL.

(a) IN GENERAL.—Section 3629 of title 39, United States Code, is amended to read as follows:

"§ 3629. Reduced rates for official election mail

"(a) Notwithstanding any other provision of this title, the rate of postage for any first-class mail matter shall, in the case of official election mail, be equal to 50 percent of the regular first-class rate, subject to subsection (c).

"(b) For purposes of this section, the term 'official election mail' means any mailing by a State or local election official that—

"(1) is mailed in the course of official business;

"(2) consists of voter registration or election information or assistance prepared and mailed in a nonpartisan manner; and

"(3) bears such logo or other markings as the Postal Service may require.

Such term does not include any mailing that includes any mail matter intended to promote government action unrelated to the conduct of an election.

"(c) Nothing in this section shall, with respect to any official election mail, be considered to make unavailable—

"(1) any free mailing privilege under section 3406 or any other provision of law for which such mail otherwise qualifies; or

"(2) any reduced rate of postage under section 3626 or any other provision of law for which such mail otherwise qualifies, if lower than the rate that would otherwise apply under subsection (a).".

(b) CLERICAL AMENDMENT.—The table of sections for chapter 36 of title 39, United States Code, is amended by striking the item relating to section 3629 and inserting the following:

"3629. Reduced rates for official election mail.".

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TITLE VIII—TRANSITION PROVISIONS

Subtitle A—Transfer to Commission of Functions Under Certain Laws

SEC. 801. FEDERAL ELECTION CAMPAIGN ACT OF 1971.

(a) TRANSFER OF FUNCTIONS OF OFFICE OF ELECTION ADMINISTRATION OF FEDERAL ELECTION COMMISSION.—There are transferred to the Election Assistance Commission established under section 201 all functions which the Office of the Election Administration, established within the Federal Election Commission, exercised before the date of enactment of this Act.

(b) CONFORMING AMENDMENT.—Section 311(a) of the Federal Election Campaign Act of 1971 (2 U.S.C. 438(a)) is amended—

(1) in paragraph (8), by inserting "and" at the end;

(2) in paragraph (9), by striking "; and" and inserting a period; and

(3) by striking paragraph (10) and the second and third sentences.

SEC. 802. NATIONAL VOTER REGISTRATION ACT OF 1993.

(a) TRANSFER OF FUNCTIONS.—There are transferred to the Election Assistance Commission established under section 201 all functions which the Federal Election Commission exercised under the National Voter Registration Act of 1993 before the date of enactment of this Act.

(b) CONFORMING AMENDMENT.—Section 9(a) of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg–7(a)) is amended by striking "Federal Election Commission" and inserting "Election Assistance Commission".

SEC. 803. TRANSFER OF PROPERTY, RECORDS, AND PERSONNEL.

(a) PROPERTY AND RECORDS.—The contracts, liabilities, records, property, and other assets and interests of, or made available in connection with, the offices and functions of the Federal Election Commission which are transferred by this subtitle are transferred to the Election Assistance Commission for appropriate allocation.

(b) PERSONNEL.—

(1) IN GENERAL.—The personnel employed in connection with the offices and functions of the Federal Election Commission which are transferred by this subtitle are transferred to the Election Assistance Commission.

(2) EFFECT.—Any full-time or part-time personnel employed in permanent positions shall not be separated or reduced in grade or compensation because of the transfer under this subsection during the 1-year period beginning on the date of the enactment of this Act.

SEC. 804. EFFECTIVE DATE; TRANSITION.

(a) EFFECTIVE DATE.—This title and the amendments made by this title shall take effect upon the appointment of all members of the Election Assistance Commission under section 203.

(b) TRANSITION.—With the consent of the entity involved, the Election Assistance Commission is authorized to utilize the services of such officers, employees, and other personnel of the entities from which functions have been transferred to the Election Assistance Commission under this title or the amendments made by this title for such period of time as may reasonably be needed to facilitate the orderly transfer of such functions.

Subtitle B—Coverage of Commission Under Certain Laws and Programs

SEC. 811. TREATMENT OF COMMISSION PERSONNEL UNDER CERTAIN CIVIL SERVICE LAWS.

(a) COVERAGE UNDER HATCH ACT.—Section 7323(b)(2)(B)(i)(I) of title 5, United States Code, is amended by inserting "or the Election Assistance Commission" after "Commission".

(b) EXCLUSION FROM SENIOR EXECUTIVE SERVICE.—Section 3132(a)(1)(C) of title 5, United States Code, is amended by inserting "or the Election Assistance Commission" after "Commission".

SEC. 812. COVERAGE UNDER INSPECTOR GENERAL ACT OF 1978.

(a) IN GENERAL.—Section 8G(a)(2) of the Inspector General Act of 1978 (5 U.S.C. App.) is amended by inserting "the Election Assistance Commission," after "Federal Election Commission,".

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(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect 180 days after the appointment of all members of the Election Assistance Commission under section 203.

TITLE IX—MISCELLANEOUS PROVISIONS

SEC. 901. STATE DEFINED.

In this Act, the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, and the United States Virgin Islands.

SEC. 902. MISCELLANEOUS PROVISIONS TO PROTECT INTEGRITY OF ELECTION PROCESS.

(a) CLARIFICATION OF ABILITY OF ELECTION OFFICIALS TO REMOVE REGISTRANTS FROM OFFICIAL LIST OF VOTERS ON GROUNDS OF CHANGE OF RESIDENCE.—Section 8(b)(2) of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg–6(b)(2)) is amended by striking the period at the end and inserting the following: ", except that nothing in this paragraph may be construed to prohibit a State from using the procedures described in subsections (c) and (d) to remove an individual from the official list of eligible voters if the individual has not voted or appeared to vote in 2 or more consecutive general elections for Federal office and has not notified the applicable registrar (in person or in writing) or responded to a notice sent by the applicable registrar during the period in which such elections are held that the individual intends to remain registered in the registrar's jurisdiction.".

(b) PROHIBITING EFFORTS BY POLL WORKERS TO COERCE VOTERS TO CAST VOTES FOR EVERY OFFICE ON BALLOT.—Section 594 of title 18, United States Code, is amended—

(1) by striking "Whoever" and inserting "(a) Whoever"; and

(2) by adding at the end the following new subsection:

"(b) For purposes of subsection (a), a poll worker who urges or encourages a voter who has not cast a vote for each office listed on the ballot to return to the voting booth to cast votes for every office, or who otherwise intimidates, harasses, or coerces the voter to vote for each such office (or who attempts to intimidate, harass, or coerce the voter to vote for each such office), shall be considered to have intimidated, threatened, or coerced (or to have attempted to intimidate, threaten, or coerce) the voter for the purpose of interfering with the voter's right to vote as the voter may choose. Nothing in this subsection shall prohibit a poll worker from providing information to a voter who requests assistance.".

SEC. 903. NO EFFECT ON OTHER LAWS.

(a) IN GENERAL.—Nothing in this Act and no action taken pursuant to this Act shall supersede, restrict, or limit the application of the Voting Rights Act of 1965, the National Voter Registration Act of 1993, the Voting Accessibility for the Elderly and Handicapped Act, or the Americans with Disabilities Act of 1990.

(b) NO CONDUCT AUTHORIZED WHICH IS PROHIBITED UNDER OTHER LAWS.—Nothing in this Act authorizes or requires any conduct which is prohibited by the Voting Rights Act of 1965, the National Voter Registration Act of 1993, or the Americans with Disabilities Act of 1990.

(c) APPLICATION TO STATES, LOCAL GOVERNMENTS, AND COMMISSION.—Except as specifically provided in the case of the National Voter Registration Act of 1993, nothing in this Act may be construed to affect the application of the Voting Rights Act of 1965, the National Voter Registration Act of 1993, or the Americans with Disabilities Act of 1990 to any State, unit of local government, or other person, or to grant to the Election Assistance Commission the authority to carry out activities inconsistent with such Acts.

PURPOSE OF THE LEGISLATION

The purpose of H.R. 3295, the Help America Vote Act of 2001, can be stated very simply—it is to improve our country's election system. The circumstances surrounding the election that took place in November 2000 brought an increased focus on the process of election administration, and highlighted the need for improvements. The Help America Vote Act of 2001 will make it possible to implement needed improvements.

Historically, elections in this country have been administered at the state and local level. This system has many benefits that must

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be preserved. The dispersal of responsibility for election administration has made it impossible for a single centrally controlled authority to dictate how elections will be run, and thereby be able to control the outcome. This leaves the power and responsibility for running elections where it should be, in the hands of the citizens of this country. Local control has the further added benefit of allowing for flexibility, so that local authorities can tailor their procedures to meet the demands of disparate and unique communities. Further by leaving the responsibility for election administration in the hands of local authorities, if a problem arises, the citizens who live within their jurisdictions know whom to hold accountable. The local authorities who bear the responsibility cannot now, and should not in the future be able to, point the finger of blame at some distant, unaccountable, centralized bureaucracy.

While local control must be preserved, it is time to recognize that the federal government can play a valuable roll by assisting state and local government in modernizing their election systems. H.R. 3295 will, for the first time, give the state and local governments some financial assistance, from the federal government, to improve their election infrastructure.

SUMMARY OF THE LEGISLATION

PUNCH CARD REPLACEMENT PROGRAM

The disadvantages of punch card voting systems were highlighted during the recount that took place in Florida following the November 2000 election. Large portions of the American public have lost confidence in them. For systems that use a blank punch card, a failure to properly align the card behind the ballot can result in the casting of a vote for a candidate the voter did not mean to select. The perforated chad on the punch card may not be completely punched out, so the machine counter does not register any vote for that office. In the event of a close election, punch cards are ill suited to a recount. Running the ballots through a counter repeatedly during a recount can result in the detachment of additional chads, essentially creating votes that were never meant to be cast. If a manual recount must be resorted to, officials are faced with the unenviable task of attempting to divine the intent of a voter based on the amount of depression or partial detachment of a chad.

H.R. 3295 seeks to make punch card systems a part of our history, not our future. It authorizes $400 million to replace them. Any State or jurisdiction that used punch card voting systems in the November 2000 general election is eligible to receive up to $6000 per precinct to replace them. They must obligate the funds before the next federal election in November 2002, and must have all their punch card systems replaced before the election in November 2004 (though they can get either deadline extended by 2 years for good cause shown). To hasten the dispersal of these dollars, this program will be administered by the General Services Administration.

Some jurisdictions may choose not to replace their punch card systems, but H.R. 3295 makes funds available to those jurisdictions that want to modernize their systems. Additionally, the bill makes available funds for enhancement of these systems. For example,

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punch card systems can be made far more reliable if they are counted at the precinct, rather than at a central location. The enhancement program will provide funds to make improvements that will restore public confidence in punch card machines where they remain in use.

ELECTION ASSISTANCE COMMISSION

H.R. 3295 creates a new federal commission that will be tasked with providing information and assistance to state and local governments on best practices to successfully administer elections. The Commission has been structured to perform an advisory, as opposed to an administrative roll, in elections. The Commission has no rule making authority. The four commissioners will be recommended by the congressional leadership and will be appointed by the President. No more than two commissioners may be of the same party, to assure that the Commission acts in a nonpartisan fashion. The Commissioners will have experience or expertise in election administration or the study of elections, and will serve on a part time basis.

In establishing this commission, the Committee sought to involve the state and local officials who will be tasked with carrying out its recommendations. Two boards were created under the Commission, the Advisory Board and the Standards Board. The twenty-five member Advisory Board will consist of representatives from various groups that are involved with or care about election administration issues. The Standards Board will consist of the chief state election official, and a local election official, from each of the 50 states, the District of Columbia and the territories. The Boards will review and comment on any proposed standards prior to consideration by the Commission. Since those who serve on the Board will determine if their jurisdictions will adopt any of the voluntary standards approved, their thoughts and comments will be given serious attention by the Commission.

There is also created under the Commission a Technical Standards Development Committee. The Development Committee will assist the Executive Director of the Commission in the development of voluntary standards by recommending standards pertaining to the usability, accuracy, security, accessibility and integrity of voting systems and equipment. The Development Committee will be chaired by the Director of the National Institute of Standards and Technology, and will consist of members of the Board of Advisors and members of the Standards Board, among others.

Once the Development Committee has developed proposed voluntary standards, it will submit them to the Executive Director. The Executive Director shall then forward the standards (as developed or with modifications) to the Boards for review and comment. After the Boards have had an opportunity to review or comment, the standards will be forwarded to the Commission, which can approve them by majority vote.

This process will ensure that the standards are developed in a way that involves persons with real world technical expertise and experience in election administration. It is a process designed to give the people who will be responsible for administering elections, the state and local elections officials, a voice in the standards development process. By heeding that voice, the Commission should

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be able to make recommendations that truly reflect the recognized best practices of election administration.

The Commission will have grant making power. In addition to distributing the election fund payments, the bill authorizes two grant programs. One grant program will be devoted to research on voting technology improvements, the second will distribute grants for pilot programs to test equipment and technology. The research and development program is designed to encourage innovative technological and management strategies that will improve the accessibility, efficiency and security of election systems. This program in conjunction with the pilot program should foster development of these strategies where it may not be cost effective for the private sector to conduct research on their own. Universities, local jurisdictions, and the private sector are eligible to participate alone or as partners. Ideas that can be explored could include, for example, developing ways to communicate in different ways to voters about their registration status before the election. This would avoid unnecessary confusion on Election Day about whether voters are registered and where they should vote. Use of the Internet or telephone systems in this initiative could preclude a great deal of confusion on Election Day and minimize unnecessary administrative burdens processing provisional ballots post election. These and other ideas could be explored to ensure that our election system and its associated technologies are constantly being improved.

FUNDING CONDITIONS

H.R. 3295 authorizes $2.25 billion over three years for Election Fund payments. These funds will be provided to states at a matching rate of 75% (federal) to 25% (state). States will be permitted to use these dollars for a range of activities which improve election administration. This will give states the opportunity to direct fund payments to the areas where the resources are most needed. Jurisdictions that want to modernize their voting equipment can use election fund payments for that purpose. Others may have more pressing needs for modernized statewide registration systems, or better education and training of voters and poll workers. The Election Fund is designed to allow states to determine their greatest needs, and direct resources where they are most needed.

While the States will have flexibility in deciding where to direct dollars, they will be required to meet certain requirements as a condition of receiving funds. These funding conditions are not intended to be unduly burdensome, or to require states to incur obligations that will exceed the amount of funds appropriated and made available to the States. They will, however, ensure that the federal dollars are being spent appropriately, and that recipients meet certain criteria. The Commission will disperse election fund payments, and will monitor compliance with the funding conditions.

HELP AMERICA VOTE FOUNDATION AND COLLEGE PROGRAM

There is a critical shortage of poll-workers in this country. Many election officials fear the problem will grow even worse as the volunteers they rely on, many of them retirees, grow older with little national effort to recruit new volunteers. Experienced and well trained poll workers are essential to making our elections run prop-

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erly. They provide assistance to voters, make sure proper procedures are followed, and guard the integrity of our elections.

A second well recognized problem in this country is the disengagement of our young people from the electoral process. For far too many of our young citizens, politics is a confusing and uninteresting side show in which they have no desire to participate.

The creation of the Help America Vote Foundation and College Program is designed to address both of these problems. These programs will encourage civic involvement by high school and college students by making them available for service as non-partisan poll workers and assistants to local election authorities. This will have the two-fold benefit of alleviating the shortage of volunteers, while also exposing our youth to the electoral process. Ideally, many of those who will become exposed to the election process for the first time through this program, will cultivate a life long interest in the process, and will continue to serve as election volunteers for many years, or at a minimum continue to be engaged in American civic life as informed citizens and voters.

The College Program will be administered by the Election Assistance Commission. The High School Program will be set up as a federally chartered corporation. The Commission will make grants for the college program, while the federal corporation created will administer the High School program. Both programs must be carried out without partisan bias, and without promoting any particular point of view regarding any issue.

MINIMUM STANDARDS

The minimum standards in H.R. 3295 require States to meet certain criteria, regardless of whether or not they accept election fund payments. While they impose minimum requirements, they allow the states to develop their own laws and procedures to fulfill the requirements. The goal of the minimum standards is to improve our election system without issuing dictates that would rob states of the ability to craft their own solutions.

The Minimum Standards are:

(1) The State will implement a Statewide voter registration system networked to every local jurisdiction in the State, with provisions for sharing data with other States, except that this paragraph shall not apply in the case of a State in which, under law in effect continuously on and after the date of the enactment of this Act, there is no voter registration requirement for any voter in the State with respect to an election for Federal office.

One of the most exciting and promising reforms that the Committee explored is statewide registration. In its June 2001 report to Congress, the bipartisan Federal Election Commission, after consulting with state and local election officials, recommended that states "1) develop and implement a statewide computerized voter registration database; 2) insure that all local registration offices are computerized; and 3) link their statewide computerized system, where feasible, with the computerized systems of the collateral public agencies relevant to the NVRA (motor-vehicle offices, public-assistance offices, etc.)". The bi-partisan National Commission on Federal Election Reform ("Ford/Carter Commission") also recommended states adopt such a system, as did the nation's election

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administrators in their non-partisan National Task Force on Election Reform.

Creation of such a system will make the registration lists more accurate, and easier to update. It should reduce the incidence of voters appearing at a polling place only to discover that no record of their registration can be found. When voters move from one jurisdiction to another within that state, the statewide system will be able to track that movement. If for some reason a voter remained registered at their old address, the election officials will be able to see that and take corrective action. Requiring states to develop statewide databases will modernize and improve registration nationwide.

People are mobile, but more than three-quarters of all residential moves are in-state. An effective statewide database can therefore be quite useful, including its capacity to address such common issues as the registration of in-state college students and people with second homes within a state. But perhaps the most important beneficiaries of statewide registration systems will be members of lower-income groups, who are more likely to move than higher-income groups within the same state.

The minimum standard requires states to create a single database that is official, centralized and administered at the state level. Databases which simply link existing local databases do not qualify as satisfying this requirement. Multiple databases linking various vendor or local government programs to a statewide system is not sufficient to satisfy this requirement. The intent of the minimum standard is to establish one database that is identical and is the same program throughout the state and local jurisdictions so that all training can be uniform, all records requirements are identical, and that the state has full authority for maintenance and quality matters related to the database. The intent is also to assure that there are not jurisdictional nor vendor issues in terms of operability, problem resolution, or other types of reasons for one part of the system not matching the other.

It is likely that states will find it necessary to create a unique identifier to distinguish registered voters who happen to have the same name and/or birth date. The unique identifier so created will be used to assure that list maintenance functions are attributable to the correct voter; so as to avoid removing registrants who happen to have the same name and birth date as a felon, for example. States are encouraged to use the unique identifier to share information with other governmental offices for purposes such as death certificates, court and tax records, etc., to assure proper maintenance of voter records, file integrity, and protection of voter rights. It is the intent of Congress to encourage the states to develop each statewide database system in such a manner that it will be possible at some point in the future for states to share data between them for the appropriate additions and removal of voters from their rolls.

(2) The State election system includes provisions to ensure that voter registration records in the State are accurate and are updated regularly, including the following:

(A) A system of file maintenance which removes registrants who are ineligible to vote from the official list of eligible voters. Under such system, consistent with the National Voter Registration Act of

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1993, registrants who have not voted in 2 or more consecutive general elections for federal office and who have not responded to a notice shall be removed from the official list of eligible voters, except that no registrant may be removed solely by reason of a failure to vote.

(B) Safeguards to ensure that eligible voters are not removed in error from the official list of eligible voters.

States must ensure that their registration list is accurate and is updated regularly. Leaving ineligible voters on the rolls leads to a number of problems. It increases costs as more ballots must be printed and more mailings must be sent out to voters that have died or moved away. This is a waste of vital resources that serves no purpose. One of the most damaging effects of inaccurate rolls is that they lead to the public perception that the process can be easily manipulated. When the number of voters on a registration list exceeds a jurisdiction's voting age population (itself an artificially high number because it includes non-citizens and person only temporarily in the jurisdiction), the perception is that the process has no integrity and accountability. Furthermore, when ineligible voters are left on rolls indefinitely, it invites fraud. Those who wish to commit fraud can vote in more than one jurisdiction, or more problematic, cast multiple votes in the names of those they know are no longer eligible.

A fraudulent vote that nullifies a legal one, disenfranchises the legal voter as surely as if his or her vote had never been cast at all. States are therefore obligated to maintain accurate lists, and thereby minimize the opportunities for and the incidence of fraud.

The minimum standard requires that removal of those deemed ineligible must be done in a manner consistent with the National Voter Registration Act. The procedures established by NVRA that guard against removal of eligible registrants remain in effect under this law. Accordingly, H.R. 3295 leaves NVRA intact, and does not undermine it in any way.

(3) The State permits, by the deadline required under section 504(b), in-precinct provisional voting by every voter who claims to be qualified to vote in the State, or has adopted an alternative which achieves the same objective, except that this paragraph shall not apply in the case of a State in which, under law in effect continuously on and after the date of the enactment of this Act, all votes in the State in general elections for Federal office are cast by mail.

The Committee spent considerable time and energy learning about in-precinct provisional voting. In spite of the statewide registration system and file maintenance requirements, there will still be some instances where a voter who is qualified to vote does not appear on the registration list when they present themselves to vote.

In-precinct provisional voting enables people whose eligibility is in doubt to vote in their precinct, without having to travel somewhere else to swear they are eligible to vote, and have their registration verified in the days following an election. The Committee believes provisional voting is necessary to the administration of a fair, democratic, and effective election system, and represents the ultimate safeguard to ensuring a person's right to vote. For these reasons, the Committee has included it in the bill. Under the bill,

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in-precinct provisional voting will be required in every jurisdiction except states that have or plan to adopt an alternative which achieves the same objective, such as same-day registration or voting-by-mail.

Studies of the nation's election system find that a significant problem voters experience is to arrive at the polling place believing that they are eligible to vote, and then to be turned away because the election workers cannot find their names on the list of qualified voters.

There are at least eight reasons this occurs:

1. Voters may be turned away because of administrative errors. Poll workers may overlook their names or not match them up with a different spelling. In most jurisdictions, poll workers work from printed lists of voters produced for each precinct. Staff in the offices that produce these lists can make clerical errors.

2. Poll workers may overlook a voter's name on the precinct roster, or may not be aware that the voter is listed on a supplemental roster containing the names of voters who registered shortly before the election.

3. Voters may have their names improperly removed from the voting rolls.

4. Voters may appear at the wrong precinct because they did not receive, or received but did not heed, a notice that their polling place had moved.

5. Motor-vehicle departments or social-service agencies that are supposed to make registration applications available to clients may improperly handle the applications or fail to forward them to proper election officials in a timely manner.

6. Voters may fail to notify their registrar, or fail to re-register, after a change of address.

7. Well-intentioned organizations seeking to register voters may mishandle registration materials.

8. Otherwise qualified citizens may simply fail to register.

Whatever the cause, eligible citizens may believe they have registered. Unfortunately, when they subsequently attempt to vote, they are not on the list. In-precinct provisional voting, or an alternative which achieves the same objective, such as same-day registration (currently used by Idaho, Maine, New Hampshire, Wisconsin, Wyoming, and Minnesota); voting-by-mail (used by Oregon and Washington State); or no voter registration requirement (North Dakota), can solve this problem.

In-precinct provisional voting has four key advantages:

1. Legally qualified voters are no longer turned away at the polls.

2. In-precinct provisional voting limits the ability of states to impose extra hurdles that may have the effect of deterring the use of provisional voting. For example, in Pennsylvania, voters whose names do not appear on the precinct rosters are required to travel to police stations to see an election judge, who determines whether or not they have the right to vote. Voters must then return to the polling location in order to cast their votes. Many voters, who are faced with the choice of traveling to the police station or leaving, ultimately do not vote either because they are intimidated by going to a police station or because it is logistically difficult or inconvenient.

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3. Voter participation is easier and more efficient, as poll workers can provide an option to voters who may be angry or frustrated by their absence from the registration list. These often ill-trained and low-paid temporary workers do not have to research or resolve cases on the spot, while other voters impatiently wait in line. Nor are more senior election officials tied down in resolving such questions during Election Day.

4. Voter registration becomes more accurate. The process becomes another way to amend registrations for people who evidently wish to vote. Officials can detect and correct mistakes and the research process, by helping senior administrators notice which problems are causing the mistakes, thus can help many other current and potential voters.

(4) The State has adopted uniform standards that define what will constitute a vote on each category of voting equipment certified for use in the State.

Requiring states to have a uniform standard for what constitutes a vote will ensure that voters receive the equal protection of the laws with respect to the counting of their ballots. Votes should be counted using objective standards put in place before an election contest. Whether or not a vote is counted should not depend on where a voter happens to live, nor should it depend on varying subjective interpretations of state laws by local election officials. Similarly marked ballots should not be discarded in one jurisdiction, but counted in another.

As Americans learned in November and December 2000, a major part of the problem in Florida was that the vote-counting process was subjective and inconsistent, with definitions of what constitutes a vote varying from jurisdiction to jurisdiction. The United States Supreme Court found such a standardless process to be a violation of the Equal Protection Clause of the Constitution.

As the Committee discovered, Florida is not alone. Most states do not prescribe a standard for election officials to follow in recounting votes. Amorphous statutory references to the "intent of the voter" invite still more confusion and ambiguity. "Intent of the voter" is not a standard but rather a subjective judgment, virtually guaranteeing litigation. It is unfair to voters, to candidates and to democracy.

The crux of the problem is that all systems that rely on individual ballots inherently raise questions as to whether a particular configuration is or is not a "vote." Such systems include traditional paper ballots, punch card ballots, connect the arrow ballots, or optical scan ballots, all of which the voter must alter in some manner to create a vote. Lever systems and DRE machines do not create a ballot with voter marks; therefore, there is no particular mark available to review.

Because every vote properly cast must be counted, and recounts are routinely conducted to make certain that all ballots have been properly counted, the Committee believes that uniform standards for what constitutes a vote must be adopted by all states. The definition of a vote shall be as objective as possible and spelled out in clear language before Election Day.

(5) The State has implemented safeguards to ensure that absent uniformed services voters (as defined in section 107(1) of the Uniformed and Overseas Citizens Absentee Voting Act) and overseas

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voters (as defined in section 107(5) of such Act) in the jurisdiction have the opportunity to vote and to have their votes counted.

States must implement safeguards to ensure that absent uniformed service personnel and overseas voters have the opportunity to vote and have their votes counted. Those serving in our military and citizens living abroad face many hurdles when it comes to registering, receiving ballots and casting them timely. States must take action to ensure that these voters have the opportunity to vote and have their votes counted. States need to recognize the difficulties faced by these voters, and take steps to see that their votes are counted. (See below for additional provisions affecting these voters).

(6) The State requires new voting systems to provide a practical and effective means for voters with physical disabilities to cast a secret ballot.

Advancements in technology make it possible for voters with physical disabilities to cast a secret ballot. New systems should strive to make it possible for voters with physical disabilities to cast secret ballots. (See below for additional provisions affecting these voters).

(7) If the State uses voting systems which give voters the opportunity to correct errors, the State shall ensure that voters are able to check for and correct errors under conditions which assure privacy. States, and units of local government within the States, replacing all voting machines within their jurisdiction shall ensure that the new voting system gives voters the opportunity to correct errors before the vote is cast.

In the 2000 presidential election, nearly two million voters, 2% of those who went to the polls, either did not mark their ballot, or marked it in a way that no vote was counted in the presidential contest. Election experts call these votes in which no choice is counted "residual votes." These millions of voters either spoiled their ballots by "overvoting" (appearing to vote for more than one candidate), or by "undervoting" (they marked their choice in a manner that could not be counted, or they marked no choice at all). Of course, an undervoted ballot is not necessarily "spoiled". Millions of voters intentionally do not vote in certain contests for various reasons, complicated the task of determining voter rates.

As the Committee learned in our June hearing, the consensus among engineers, computer scientists, and political scientists who study election systems is that the number of residual votes and the rate of voter error are greatly affected by the kind of equipment that is used. According to one expert who testified before the Committee on what is known as "human usability studies," predictably high levels of user error are evidence of system failure, flawed instructions, or faulty system design.

Whatever the specific causes for residual votes, the fact remains that some votes go uncounted because voters have no opportunity to detect and correct errors before they cast their ballots. Fortunately, there are voting systems available that permit voters to correct ballots in the precinct before they are cast.

The bill will ensure that as jurisdictions scrap obsolete voting systems, they replace them with systems that have the capability to detect errors, for poll site voting (the provisions for second chance voting cannot currently be applied to absentee or mail balloting since the ballot and the voter are separated before counting).

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To be sure, this provision will not instantly mandate that all machines in all polling places by a date certain have a second-chance voting capability. The Committee seriously explored the proposal to require all 200,000 jurisdictions nationwide to have second-chance voting by 2004 or, at the latest, 2006. Jurisdictions that failed to meet the deadline would be subject to suite in federal court. As the Committee learned more about the production capability of the voting machine industry, the timelines and procurement processes counties and states must go through to award contracts to voting-machine vendors, and the huge costs involved, the Committee decided that an aggressive deadline might cause more serious problems than it would solve. One disturbing possibility was that jurisdictions that could not meet the deadline, most likely poorer ones, might have their election systems shut down or seriously disrupted during an election while other jurisdictions in the state, most likely affluent ones, that met the deadline could proceed with their elections. The Committee was hard-pressed to imagine a more chilling 14th Amendment problem than this, where some eligible voters in a state could exercise the franchise while others could not.

As to whether the term "error" means overvote, undervote, or something else, the Committee referred to the findings of the National Commission on Federal Election Reform, commonly known as the "Ford-Carter Commission." The Commission's definition of "error" is set forth in the accompanying document.

As already noted, many voters intentionally do not vote in every race. The purpose of second chance technology is to provide voters information about their ballot. Voter privacy is an important right that must be protected. While voters should have the opportunity to verify the accuracy of their ballot, they should not be forced to do so under the scrutiny of a poll worker. Once a voter is satisfied of the accuracy of their ballot, it is not the roll or responsibility of a poll worker to inquire as to the voters intent.

Poll workers should, upon request, be available to provide assistance to voters, but voters should not be prompted by poll workers, or have to explain to poll workers why they have not voted in a certain race. The bill ensures voter privacy, by requiring that jurisdictions whose machines have second chance technology must ensure that voters are able to check for and correct errors on their ballots under conditions which assure privacy.

MILITARY AND OVERSEAS VOTERS

Those who serve in our military, and citizens living abroad, face peculiar hardships when attempting to vote. Relatively simple things like applying for and transmitting ballots can become a very difficult and lengthy process for these voters. Steps must be taken to protect the rights of these citizens. Military voters risk their very lives in defense of this country. We must repay them by doing everything possible to see that they are able to vote and have their votes counted.

A recent report by the General Accounting Office revealed that over 40% of the installations they visited had not assigned voting assistance officers. The Department of Defense must make certain that a sufficient number of voting assistance officers are assigned, and that those who are assigned are doing their duties. H.R. 3295 requires the Secretary of Defense to certify to Congress that, at a

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minimum, a voting assistance officer has been assigned to every installation and major command.

The bill also makes voter registration forms available to service personnel at the time of enlistment, reenlistment or extension of enlistment, to make it easier for them to register. The Secretary of Defense must also ensure that all ballots are properly postmarked, or marked with some other official mark, so that state officials can determine when the ballot left the voter's hands.

States are also required to designate a single point of contact for those in the service and living abroad, to make it easier for them to obtain needed information about elections, registration and voting.

The bill contains a number of the key provisions of the Uniformed and Overseas Citizen Absentee Voting Reform Act of 2001, H.R. 1997, which will help remove existing obstacles to absentee voting now confronting members of our armed services and overseas voters. Those obstacles contributed to the appallingly high level of rejected ballots in Florida and to the inability to vote of many others who wished to do so.

Similarly, the provision requiring the collection and publication of statistics on overseas voting by the states will fill one of the most serious gaps in our ability to monitor the adequacy of the overseas absentee voting regime. For the first time, we will all have the same information about voting access for overseas voters that we now have routinely for voters at home.

ACCESSIBILITY STANDARDS AND VOTING RIGHTS OF PERSONS WITH DISABILITIES

Sections 102, 112, 221, 233 and 501 and Compliance with the Americans with Disabilities Act and the Voting Accessibility for the Elderly and Handicapped Act

In this bill, the Committee reaffirms that public entities, such as States and localities and their responsible officials, must comply to the extent required by law with the Americans with Disabilities Act (ADA) and the Voting Accessibility for the Elderly and Handicapped Act (VAEHA).

The committee bill will enhance compliance with the ADA and VAEHA by enlisting a range of officials in the process of regulating accessibility problems and solutions. For example, the bill requires that the chief election official of each State certify the State's compliance with the applicable provisions of the ADA and the VAEHA, and requires that recipients of election funds provide assurance of compliance with such laws as a condition of their acceptance of federal money.

Section 903 and preservation of existing law

Section 903 expressly provides that noting in the bill will supersede, restrict, or limit the application of the VAEHA, the ADA, the Voting Rights Act or the National Voting Registration Act, nor will it authorize or require any conduct prohibited under any of these laws. Thus, the bill continues unchanged—the role of the Department of Justice (DOJ) as the agency responsible for authoritatively construing the ADA and promulgating regulations.

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Voluntary accessibility standards in sections 221 and 222

The Committee bill creates mechanisms for providing States and localities with technical guidance about improving accessibility through the adoption of voluntary standards by the Election Assistance Commission. The Committee expects that the voluntary standards will offer examples of achievable methods for ensuring accessibility. One example might include the moving of a polling place from an inaccessible historic library building to an accessible city hall building nearby.

These voluntary standards to be issued by the Commission would not, however, replace accessibility regulations and technical assistance provided by the DOJ for individuals with disabilities. Rather, these standards must be consistent with DOJ's regulations, and not serve as authorization for a level of accessibility lower than required by the regulations. In fact, this need for harmonious standards is the reason the bill directs the Commission to consult with the Architecture and Transportation Barrier Compliance Board in developing its voluntary standards.

If a state accepts election fund payments, the bill requires the state to certify its compliance with the voluntary standards for voting systems. This means that a state which accepts funds will be bound by at least two independent sources of law: the state's contractual duty to comply with the Commission's standards for voting systems, and the state's statutory duty to comply with the ADA. While the Committee anticipates that the Commission will take great care to create voluntary standards in a manner that conforms to existing law, compliance with the Commission's standards cannot provide any "safe harbor" against liability under the ADA or other applicable laws.

Eligibility for election assistance funding under section 233

One of the eligibility requirements for election assistance funding is that there must be at least one voting system available in each precinct or polling place that is fully accessible to individuals with disabilities. This means that if a State accepts any election assistance funding, the State is required to purchase a fully accessible voting system for each precinct or polling place that does not already have such a Summary

TITLE I—PUNCH CARD VOTING MACHINES

Subtitle A—Replacement of Machines

Sec. 101. Establishment of program

Provides for a one-time payment, through the General Services Administration, to State or local government to replace punch card voting systems with other kinds. Requires recipients to obligate funds by the November 2002 Federal election and complete replacement by the 2004 election, but deadlines may be extended two years if approved by the Election Assistance Commission established in Sec. 201.

Sec. 102. Eligibility

Requires that State applications include assurances that the State will use the payment to replace punch card systems used in

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the 2000 election, continue to comply with the Voting Accessibility for the Elderly and Handicapped Act and Americans With Disabilities Act, and provide for alternative language accessibility as required by the Voting Rights Act and other laws.

Permits a local government to apply if the State does not, is ineligible, or will not use the payment to replace punch card systems. Requires that the application include similar assurances as those required of States.

Sec. 103. Amount of payment

Sets payment at 90% of replacement cost, or 95% for precincts where per capita income is within the lowest quartile for the United States, with a maximum of $6,000 times the number of precincts using punch card systems in the jurisdiction during the 2000 election.

Sec. 104. Audit and repayment of funds

Makes payments subject to audit. Requires recipients that fail to meet deadlines to return the funds unless granted a waiver.

Sec. 105. Punch card voting system defined

Defines punch card voting systems to include C.E.S., Datavote, PBC Counter, Pollstar, Punch Card, Vote Recorder, and Votomatic.

Subtitle A—Enhancing Performance of Existing Systems

Sec. 111. Establishment of program

Provides for a one-time payment, through the General Services Administration, to State or local governments to enhance performance of punch card voting systems, with deadlines as in Sec. 101.

Sec. 112. Eligibility

Similiar to Sec. 102, except funds used for enhancement rather than replacement of systems; also, jurisdictions may not participate in both programs.

Sec. 113. Amount of payment

Similar to Sec. 103 except maximum is $2,000 times the number of covered precincts.

Sec. 113. Audit and repayment of funds

Makes payments subject to audit. Requires recipients that fail to meet deadlines to return the funds.

Subtitle C—General Provisions

Sec. 121. Authorization of appropriations

Authorizes appropriations of $400 million, to remain available until expended. Repaid or unobligated funds will be transferred to the Election Assistance Commission.

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TITLE II—COMMISSION

Subtitle A—Establishment and General Organization

PART I—ELECTION ASSISTANCE COMMISSION

Sec. 201. Establishment

Creates an independent executive branch agency called the Election Assistance Commission.

Sec. 202. Duties

Stipulates that the Commission will serve as a national clearinghouse and resource on the administration of Federal elections as described in this title and title III.

Sec. 203. Membership and appointment

Requires that the four Commission members have election-related experience or expertise and that they be appointed by the President with the consent of the Senate, with one member each chosen from nominees submitted by the President Pro Tempore of the Senate, the Senate minority leader, the Speaker of the House of Representatives, and the House minority leader.

Establishes staggered four-year terms for members, renewable once, and prohibits members from being officers or employees of the Federal government while serving. Requires members to select a chair and vice chair from different political parties.

Sets a commissioner's salary at $30,000, plus travel expenses, and permits outside employment.

Sec. 204. Staff

Creates position of Executive Director to be appointed by the Commission for a four-year renewable term and permits that person to appoint additional staff and use outside experts. Requires staff to consult with the two boards established in this title.

Sec. 205. Powers

Empowers the Commission to hold hearings, take testimony, receive evidence, let contracts, obtain information from Federal agencies and support from the General Services Administration, and to use the mails as do other Federal agencies.

Sec. 206. Limitation on rulemaking authority

Prohibits the Commission from imposing requirements on State or local governments except as permitted under the National Voter Registration Act.

Sec. 207. Authorization of appropriations

Authorizes a maximum appropriation of $10 million per year through FY2004.

PART II—ELECTION ASSISTANCE COMMISSION STANDARDS BOARD AND BOARD OF ADVISORS

Sec. 211. Establishment

Creates a Standards Board and a Board of Advisors under the Election Assistance Commission.

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Sec. 212. Duties

Requires that the two boards review the standards described in this title.

Sec. 213. Membership of Standards Board

Sets membership at 110, to include, from each State, the chief election official and a local election official chosen by peers in the State, with no two members from a State to be from the same political party.

Requires board to select a nine-member Executive Board, with no more than five to be chief election officials, local election officials, or from the same party. Sets two-year staggered terms with a maximum of two consecutive renewals.

Sec. 214. Membership of Board of Advisors

Sets membership at 25, two each appointed by the U.S. Commission on Civil Rights; the Architectural and Transportation Barrier Compliance Board; the National Governors Association; the National Conference of State Legislatures; the National Association of Secretaries of State; the National Association of State Election Directors; the National Association of Counties; the National Association of County Recorders, Election Administrators, and Clerks; the U.S. Conference of Mayors; the Election Center; and the International Association of County Recorders, Election Officials, and Treasurers; with the Speaker of the House and the Senate majority leader each appointing one professional in science and technology; and with the chief of the Office of Public Integrity of the Department of Justice or designee also a member. Requires bipartisan, geographically diverse appoints.

Sets two-year, renewable terms. Requires election of a chair from among the members.

Sec. 215. Powers of boards; no compensation for service

Empowers each board to hold hearings, take testimony, and receive evidence, obtain information from Federal agencies and support from the General Services Administration, and to use the mails as do other Federal agencies. Prohibits issuance of subpoenas. Requires each board to meet at least yearly to vote on standards, and the Standards Board to meet at least every two years to select the Executive Board. Prohibits compensation of board members, but permits payment of travel expenses.

Sec. 216. Status of boards and members for purposes of claims against board

Applies provisions of 28 U.S.C., Chapters 161 and 171, with respect to liability of boards and members, with an exception for criminal acts and other willful misconduct.

Subtitle B—Voluntary Election Standards

Sec. 221. Development of voluntary election standards

Requires the Commission, in consultation with the two boards, to develop and adopt voluntary voting system standards, accessibility standards, and election management standards, and update them at least every four years.

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Requires that the voting system standards include security, certification and decertification procedures, usability assessment, and operational guidelines; provide for error correction by voters; include for each certified system what is proposed to constitute a vote; and provide that certified new systems permit voters with disabilities to cast a secret ballot.

Requires the Commission to serve as a clearinghouse of information on experiences of State and local governments in implementing the standards and in operating voting systems; and to make available to the public studies on certain specified issues in election administration, information on the Federal election system, election results, and information concerning issues relating to Federal, State, and local elections.

Requires consultation with the Compliance Board and other experts with respect to accessibility standards, and that the election management standards address the treatment of uniformed and overseas voters, in consultation with the Secretary of Defense.

Requires the Commission to provide for voluntary testing, certification, decertification, and recertification of voting systems; to advise State and local governments on complying with Federal laws regarding accessibility of registration and polling places; to carry out the provisions of the National Voter Registration Act regarding voter registration by mail; and to assist State officials in review of Federal election procedures.

Sec. 222. Technical Standards Development Committee

Establishes a 15-member Technical Standards Development committee, to recommend voting system standards and modifications, to be chaired by the Director of the National Institute of Standards and Technology (NIST), and with members appointed jointly by the Director and the Commission and drawn from the Standards Board, the Board of Advisors, the Compliance Board, the American National Standards Institute, and other persons with relevant scientific and technical expertise. Requires NIST to provide technical support.

Prohibits compensation of members, but permits payment of travel expenses.

Requires, when the Commission adopts any standard, publication of corresponding recommendations of the Development Committee in the Federal Register.

Sec. 223. Process for adoption of voluntary standards

Requires the Executive Director of the Commission to take recommendations of the Development Committee into account in developing standards, and for the two boards to review the proposed standards, with majority vote of the Commission required for adoption.

Sec. 224. Certification and testing of voting systems

Requires that testing and certification of voting systems be performed by nonfederal laboratories accredited by the Commission, from a list of candidates submitted by the Director of NIST, who will also monitor and review laboratory performance and, when appropriate, make recommendations to the Commission regarding continuing accreditation.

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Sec. 225. Dissemination of information

Requires the Commission to disseminate to the public—via the Internet, published reports, and other means—information on the standards and guidelines for applying them, the list of accredited laboratories, a list of certified voting system hardware and software, and other activities carried out under this subtitle.

Subtitle C—Election Assistance

Part 1—Election Fund Payments to States for Voting System Improvements

Sec. 231. Election fund payments to States for voting system improvements

Requires the Commission to make payments to qualifying States to improve the administration of elections.

Sec. 232. Allocation of funds

Sets the size of payment to a State at the greater of either a percentage of the total amount appropriated for that year, based on the size of the voting age population in that State as compared to the total for all States; or 0.5 percent of the total appropriated, except 0.1 percent for Puerto Rico, Guam, American Samoa, or the U.S. Virgin Islands.

Sec. 233. Conditions for receipt of funds

Requires a State, to be eligible, to certify that it has established an Election Fund, provided a 25 percent match, and set benchmarks for voting system performance; complies with the voluntary voting system standards and certification processes described in subtitle B or has established statutory standards that provide for error correction by voters and for auditing of ballots; provides one or more fully accessible voting systems in each precinct; complies with Federal voting rights law; and provides for voter education and training of poll workers and personnel involved in voter registration. Also requires the State to certify that the Federal share will not supplant existing State funds. Gives States discretion to choose the method of compliance

Sec. 234. Authorization of appropriations

Authorizes appropriations totaling $2.25 billion through FY2004.

Part 2—Grants for Research on Voting Technology Improvements

Sec. 241. Grants for research on voting technology improvements

Establishes a grant program to be administered by the Commission for research and development to improve election systems and technology. Requires applicants to assure that funded activities will take accessibility needs into account. Applies 18 U.S.C. 35 with respect to patent rights.

Sec. 242. Report

Requires submission of a report describing activities under the grant.

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Sec. 243. Authorization of appropriations

Authorizes appropriations of $20 million for FY 2002.

PART 3—PILOT PROGRAM FOR TESTING OF EQUIPMENT AND TECHNOLOGY

Sec. 251. Pilot program

Establishes a grant program to be administered by the Commission to implement new voting technologies on a trial basis. Requires applicants to assure that the funded activities will take accessibility needs into account.

Sec. 252. Report

Requires submission of a report describing activities under the grant.

Sec. 253. Authorization of appropriations

Authorizes appropriations of $10 million for FY2002.

PART 4—MISCELLANEOUS

Sec. 261. Role of National Institute of Standards and Technology

Requires the Director of NIST to submit annually to the Commission a list of suggestions for issues to be addressed by the grant programs, review grant applications, monitor grant activities and recommend modifications as necessary, and evaluate completed grants. Also requires the Director to establish an intramural research and development program within NIST to support the development of voluntary technical standards.

Sec. 262. Reports

Requires submission of an annual report to Congress by the Commission and a report on the application of human factors research to voting systems.

Sec. 263. Audit

Provides for the Commission to audit recipients of funds and requires that each program established under the subtitle be audited at least once during its lifetime.

TITLE III—HELP AMERICA VOTE COLLEGE PROGRAM

Sec. 301. Establishment of program

Requires the Commission to establish the "Help America Vote Program," with the purpose of encouraging students at colleges, universities, and community colleges to serve as nonpartisan poll workers or assistants and to encourage State and local governments to use students in that capacity.

Sec. 302. Activities under program

Requires the Commission, in consultation with chief State election officials, to develop materials, sponsor seminars and workshops, advertise the program to students, make grants, assist any institution that wishes to participate, and take other appropriate

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actions. Limits grants to nonpartisan undertakings that do not promote a point of view or an issue.

Sec. 303. Authorization of appropriations

Authorizes appropriations of $5 million for FY2002 and sums necessary thereafter.

TITLE IV—HELP AMERICA VOTE FOUNDATION

Sec. 401. Help America Vote Foundation

Amends Part B of subtitle II of 36 U.S.C. to establish the federally chartered Help America Vote Foundation to mobilize secondary school students to participate as nonpartisan poll workers and assistants, and to establish cooperative efforts with election officials, local educational agencies, public and private school officials, and other appropriate nonprofit organizations.

Requires the foundation to act without partisan bias or promotion of any particular point of view and to consult with the chief State election officials.

Establishes a 12-member board of directors with four appointed by the President (not more than two from the same political party), two by the Speaker of the House of Representatives, two by the House minority leader, two by the Senate majority leader, and two by the Senate minority leader, and with the chairs and ranking Members of the House Administration Committee and the Senate Rules and Administration Committee as ex officio, nonvoting members.

Sets the term of office at four years and stipulates that members are not employees of the Federal government. Prohibits compensation of board members, but permits payment of travel expenses. Restricts personal liability of members to gross negligence.

Requires the board to meet at least yearly and to select a member as chair, who shall not hold or have held any partisan elected office or national political-party committee office.

Permits the board to appoint and remove officers and employees of the foundation and stipulates that they are not employees of the Federal government except as otherwise provided in this chapter.

Grants the foundation such powers as necessary to carry out this chapter and also the usual powers of a corporation acting as a trustee in the District of Columbia, where the foundation will be located. Permits it to conduct business throughout the United States. Requires the foundation to have a designated agent to receive service of process for it.

Permits the foundation to accept gifts, devises, and bequests for its benefit and to let contracts. Also permits it to sponsor an annual conference to honor persons who have served as poll workers or participated in foundation programs and activities.

Requires an annual audit by an independent auditor.

Permits the Attorney General to bring a civil action for relief for behavior by the foundation that is inconsistent with the purposes designated in this title.

Excludes the U.S. government from any liability or obligation incurred by the foundation.

Authorizes $5 million for FY 2002 and such sums as necessary thereafter.

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TITLE V—MINIMUM STANDARDS FOR STATE ELECTION SYSTEMS

Sec. 501. Minimum standards for State election systems

Requires each State to certify to the Commission that it is in compliance with the Voting Rights Act of 1965, the National Voter Registration Act of 1993, the Uniformed and Overseas Citizens Absentee Voting Act, the Voting Accessibility for the Elderly and Handicapped Act, and the Americans With Disabilities Act of 1990; and that it has, by statute, established standards for its election systems as described in this title. Gives States discretion to choose the method of implementation.

Sec. 502. Standards described

Sets minimum standards, to include a statewide, networked voter registration system in States requiring registration; provisions to ensure accurate, updated registration records; in-precinct provisional voting; uniform standards for what constitutes a vote for each certified voting system; safeguards for voting by uniformed and overseas voters; requirements that new voting systems provide for voters with physical disabilities to cast a secret ballot; and requirements that new voting systems give voters the opportunity to correct errors under conditions which assure privacy.

Sec. 503. Enforcement

Requires the Commission to notify the Attorney General if a State fails to comply, and authorizes the Attorney General, if so notified, to bring a civil action to remedy the violation.

Sec. 504. Effective date

Sets effective date for the provisional voting standard at the November 2002 Federal election and for other provisions in the title at two years from enactment, but permits an extension to the November 2004 Federal election.

TITLE VI—VOTING RIGHTS OF MILITARY MEMBERS AND OVERSEAS CITIZENS

Sec. 601. Voting assistance programs

Amends 10 U.S.C. Chapter 80 to require the Secretary of Defense to ensure compliance by the military services with the Federal Voting Assistance Program and any similar programs.

Requires the Inspector General of each service to conduct an annual review of the effectiveness of and compliance with the programs and to submit the review to the Inspector General for the Department of Defense (DOD), who will prepare an annual report to Congress. Requires the DOD Inspector General to conduct, at 10 or more installations each year, periodic, unannounced assessments of compliance with requirements of law regarding voting by members of the armed forces.

Requires the secretary of each military department to assess compliance as part of installation review or inspection, and to certify to Congress that, for each installation and major command, a voting assistance officer, has been appointed and given the time and resources to perform voting assistance duties. Also requires the

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secretaries to specify the number of voting action officers appointed and the ratio of voting action officers to active duty members, to assess compliance of those numbers with requirements, and to describe the training that voting action officers receive.

Requires the secretaries to ensure that members of the military and their dependents have access to information on voter registration and absentee ballot requirements and deadlines. Requires that each person who enlists, reenlists, or completes a permanent change of station receive the national voter registration form.

Requires the secretaries, through voting assistance officers, to provide notice to members of the armed forces of the last date before a general election for which ballots mailed at the facility can be expected to be delivered in a timely fashion to State and local election officials.

Requires the Secretary of Defense to ensure that voting materials are transmitted expeditiously, to conduct periodic surveys of mail shipments at all overseas locations and vessels at sea during the four months preceding an election, and to implement measures to ensure that a postmark or other proof of mailing date is provided on each absentee ballot.

Sec. 602. Designation of single State office to provide information on registration and absentee ballots for all voters in State

Amends the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) to require each State to designate a single office to provide information to members of the armed services concerning absentee registration and voting in the State. Recommends that the office be responsible for carrying out duties under this Act.

Sec. 603. Report on absentee ballots transmitted and received after general elections

Requires that after a Federal election, States submit a public report to the Commission on the number of absentee ballots transmitted to absent uniformed services and overseas voters and the number returned and cast in the election. Requires the Commission to develop a standardized format for such reports.

Sec. 604. Simplification of voter registration and absentee ballot application procedures for absent uniformed services and overseas voters

Amends UOCAVA to require States to accept the post card form as a simultaneous voter registration and absentee ballot application, and to require that an absentee ballot application pertain to all elections for Federal office held in the State during that year, if the applicant so requests. Requires the Presidential designee for UOCAVA to revise the official post card form to enable a voter to request an absentee ballot either for each Federal election held in a State during a year or for only the next schedules Federal election.

Sec. 605. Additional duties of presidential designee under Uniformed and Overseas Citizens Absentee Voting Act

Amends UOCAVA to require the Presidential designee to ensure that State officials are aware of the requirements of that Act, and to prescribe a standard oath regarding perjury in completion of a

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document required under the title. Requires States to use the standard oath if the State requires an oath or affirmation for any voting document.

Amends UOCAVA to require separate statistical analysis for overseas voters and absent uniformed services voters.

Sec. 606. Use of Buildings on Military Installations and Reserve Component Facilities as Polling Places

Amends 10 U.S.C. 2670 and 18235; 18 U.S.C. 592 and 593; and 42 U.S.C. 2003 to permit the secretary of a military department to make a building located on a military installation available for use as a polling place, in any Federal, State, or local election, for eligible voters who reside on that military installation. Requires that such a polling place continue to be available for subsequent elections unless the secretary provides appropriate advance notice to State and local officials of the reasons why it will not.

TITLE VII—REDUCED POSTAGE RATES FOR OFFICIAL ELECTION MAIL

Sec. 701. Reduced postage rates for official election mail

Amends 39 U.S.C. 3629 to establish a postage rate of 50% of the regular first-class rate for any State and local official election mail.

TITLE VIII—TRANSITION PROVISIONS

Subtitle A—Transfer to Commission of Functions Under Certain Laws

Sec. 801. Federal Election Campaign Act of 1971

Amends section 311 (a) of the Federal Election Campaign Act of 1971 (2 U.S.C. 438 (a)) Transfers to the Commission, upon appointment of all members, all functions of the Office of Election Administration of the Federal Election Commission.

Sec. 802 National Voter Registration Act of 1993

Amends section 9(a) of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg–7(a)). Transfers to the Commission all functions that the Federal Election Commission exercises under the National Voter Registration Act.

Sec. 803. Transfer of property, records, and personnel

Transfers to the Commission all personnel, contracts, liabilities, records, property, and other assets or interests of the offices and functions of the Federal Election Commission that are transferred by this subtitle.

Sec. 804. Effective date; transition

Requires that this title take effect upon the appointment of all members of the Commission, which is authorized to utilize services from the entities from which functions will be transferred as needed for an orderly transfer.

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Subtitle B—Coverage of Commission Under Certain Laws and Programs

Sec. 811. Treatment of commission personnel under certain civil service laws

Amends 5 U.S.C. 7323(b)(2)(B)(i)(I) and 3132(a)(1)(C) to specify that Commission personnel are covered by the Hatch Act and that the Commission is excluded from the Senior Executive Service.

Sec. 812. Coverage under Inspector General Act of 1978

Amends section 8G(a)(2) of the Inspector General Act of 1978 (5 U.S.C. App.) to provide for coverage under that Act.

TITLE IX—MISCELLANEOUS PROVISIONS

Sec. 901. State defined

Defines State to include the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, and the United States Virgin Islands.

Sec. 902. Miscellaneous provisions to protect integrity of election process

Amends the National Voter Registration Act of 1993 to clarify the ability of election officials to remove from the voter registration list the name of an individual who has not voted in two or more consecutive general elections for Federal office and who has not notified the registrar of an intent to remain registered in the registrar's jurisdiction or who has not responded to a notice from the registrar of voters. Amends 18 U.S.C. 594 to prohibit poll workers from intimidating, harassing, or coercing voters to cast votes for every office on the ballot, but not from providing information to a voter who requests assistance.

Sec. 903. No effect on other laws

Stipulates that nothing in the Act authorizes or requires conduct prohibited by the Voting Rights Act of 1965, the National Voter Registration Act of 1993, or the Americans With Disabilities Act of 1990; or may be construed to supersede, restrict, or limit those Acts or the Voting Accessibility for the Elderly and Handicapped Act.

COMMITTEE CONSIDERATION OF THE LEGISLATION

INTRODUCTION AND REFERRAL

On November 14, 2001, Mr. Ney, Mr. Hoyer, Mr. Blunt and Mr. Fattah introduced H.R. 3295, which was referred to the Committee on House Administration, the Committee on the Judiciary, the Committee on Armed Services, the Committee on Government Reform and the Committee on Science

HEARINGS

The Committee on House Administration held four hearings on election reform in the first session of the 107th Congress.

On April 25, 2001, the Committee held the first hearing on Election Reform.

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Members present: Mr. Ney, Mr. Ehlers, Mr. Mica, Mr. Linder, Mr. Reynolds, Mr. Hoyer, Mr. Fattah, Mr. Davis.

Witnesses: J. Kenneth Blackwell, Secretary of State, Ohio; Sharon Priest, Secretary of State, Arkansas; Katherine Harris, Secretary of State, Florida; Rebecca Vigil-Giron, Secretary of State, New Mexico; Ron Thornburgh, Secretary of State, Kansas; Martin Stephens, Speaker of the Utah House of Representatives; John Adams Hurson, Majority Leader, Maryland House of Delegates; Kenneth Mayfield, Commissioner, Dallas County, Texas; Deborah Phillips, President—The Voting Integrity Project; Kristen Cox, National Federation of the Blind; Hilary Shelton, Director NAACP Washington Bureau; Dennis Duggan, American Legion.

On May 10, 2001, the Committee held its second hearing on Election Reform.

Members present: Mr. Ney, Mr. Ehlers, Mr. Mica, Mr. Reynolds, Mr. Hoyer, Mr. Davis.

Witnesses: Doug Lewis, Director—The Election Center; Conny McCormack, Los Angeles County Registrar-Recorder/County Clerk; Connie Schmidt, Election Commissioner, Johnson County, Kansas; Carolyn Jackson, Administrator of Elections, Hamilton County, Tennessee; Pam Iorio, Supervisor of Elections, Hillsborough County, Florida; Linda Lamone, Administrator, Maryland State Administrative Board of Election Laws.

On May 17, 2001, the Committee held its third hearing on Election Reform.

Members present: Mr. Ney, Mr. Ehlers, Mr. Linder, Mr. Hoyer, Mr. Fattah, Mr. Davis.

Witnesses: Tom Davis, Managing Member, iPaper/Diversified Dynamics; William F. Welsh III, Chairman, Election Systems and Software; Brian O'Conner, Executive Vice President, Global Election Systems, Inc.; David E. Hart, Chairman, Hart InterCivic, Inc.; Richard Caruso, Chairman, Shoup Voting Solutions; Marlene Duffy Young, Regional Marketing Representative, Unilect; James Minadeo, Product Manager, Avante; Scott Faibaron, Regional Sales Manager, Envox (US) Ltd.; Mark Strama, Vice President, Public Elections, election.com; David Chaum, Founder, SureVote; Ralph Munro, Board of Directors, VoteHere; Dennis Vadura, CEO, Web Tools International.

On May 24, 2001, the Committee held its fourth hearing on Election Reform.

Members present: Mr. Ney, Mr. Ehlers, Mr. Doolittle, Mr. Hoyer, and Mr. Fattah.

Witnesses: Christopher Baum, Vice President, Gartner Group; Thomas R. Palfrey, Professor, California Institute of Technology; David Woods, Professor, Ohio State University; Ronald Rivest, Professor, Massachusetts Institute of Technology.

MARKUP

On Thursday November 15, 2001, the Committee met to mark up H.R. 3295. The Committee favorably reported H.R. 3295, as amended, by a recorded vote (8–0), a quorum being present.

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MATTERS REQUIRED UNDER THE RULES OF THE HOUSE

COMMITTEE RECORD VOTES

Clause 3(b) of House rule XIII requires the results of each record vote on an amendment or motion to report, together with the names of those voting for and against, to be printed in the committee report.

Amendment No. 1

Offered by Mr. Reynolds. The first vote during the markup came on the amendment offered by Mr. Reynolds.

The amendment would allow, but not require, military base commanders to locate polling places on their installations.

The amendment was approved by a voice vote a quorum being present.

Amendment No. 2

Offered by Mr. Hoyer. The second vote during the markup came on the amendment offered by Mr. Hoyer. This amendment would add additional voting system accessibility requirements for the disabled and those with limited proficiency in English.

The vote on the amendment was 3–4 and the amendment was not agreed to.

Member	Yes	No	Present
Mr. Ney		X	
Mr. Linder		X	
Mr. Doolittle		X	
Mr. Reynolds		X	
Mr. Hoyer	X		
Mr. Fattah	X		
Mr. Davis	X		
Total	3	4	

The Committee then voted on H.R. 3295, as amended. The bill as amended was agreed to by a recorded vote (8–0).

Member	Yes	No	Present
Mr. Ney	X		
Mr. Ehlers	X		
Mr. Linder	X		
Mr. Doolittle	X		
Mr. Reynolds	X		
Mr. Hoyer	X		
Mr. Fattah	X		
Mr. Davis	X		
Total	8	0	

The Committee then voted to report H.R. 3295 favorably, as amended. The vote to report favorably was approved by recorded vote (8–0).

Member	Yes	No	Present
Mr. Ney	X		
Mr. Ehlers	X		
Mr. Linder	X		
Mr. Doolittle	X		

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Member	Yes	No	Present
Mr. Reynolds	X		
Mr. Hoyer	X		
Mr. Fattah	X		
Mr. Davis	X		
Total	8	0	

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) rule XIII of the Rules of the House of Representatives, the Committee states that the findings and recommendations of the Convention Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

GENERAL PERFORMANCE GOALS AND OBJECTIVES

The Committee states, with respect to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, that the goal and objective of H.R. 3295 is to improve the election infrastructure in the United States.

CONSTITUTIONAL AUTHORITY

In compliance with clause 3(d)(1) of rule XIII, the Committee states that Article 1, Section 4 of the U.S. Constitution grants Congress the authority to make laws governing the time, place and manner of holding Federal elections.

FEDERAL MANDATES

The Committee states, with respect to section 423 of the Congressional Budget Act of 1974, that the bill does not include any significant Federal mandate.

PREEMPTION CLARIFICATION

Section 423 of the Congressional Budget Act of 1974 requires the report of any committee on a bill or joint resolution to include a committee statement on the extent to which the bill or joint resolution is intended to preempt state or local law. The Committee states that H.R. 3295 is not intended to preempt any state or local law.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

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U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, November 30, 2001.

Hon. ROBERT W. NEY,
Chairman, Committee on House Administration,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3295, the Help America Vote Act of 2001.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Mark Grabowicz and Matthew Pickford (for federal costs); Susan Sieg Tompkins (for the impact on state, local, and tribal governments): and Paige Piper/Bach (for the impact on the private sector).

Sincerely,

BARRY B. ANDERSON
(For Dan L. Crippen, Director).

Enclosure.

H.R. 3295, Help America Vote Act of 2001

Summary: H.R. 3295 would authorize the appropriation of about $2.8 billion over fiscal year 2002 through 2006, mostly for grants to states and localities to improve voting technology and election administration. The bill would establish the Election Assistance Commission to undertake activities to improve the administration of elections and would set minimum standards for national elections. H.R. 3295 also would require the Department of Defense to implement a voting assistance program for military personnel and other overseas U.S. citizens. Finally, the bill would provide reduced postage rates for official election mailings.

Assuming appropriation of the authorized amounts, CBO estimates that implementing H.R. 3295 would cost about $2.8 billion over the 2002–2006 period. In addition, we estimate that enacting the bill would increase costs to the U.S. Postal Service by about $100 million over the 2002–2003 period. (Postal Service spending is classified as off-budget and is not subject to pay-as-you-go procedures.) The bill would not otherwise affect direct spending or receipts so pay-as-you-go procedures would not apply.

Section 4 of the Unfunded Mandates Reform Act (UMRA) excludes from the application of that act any legislative provisions that enforce the constitutional rights of individuals. CBO has determined that title V and certain sections of title VI would fall within that exclusion. Other provisions of the bill would provide grants to states to improve voting procedures and technology. Any costs to state, local, or tribal governments as a result of participating in those programs would be incurred voluntarily. The remaining provisions of the bill contain no intergovernmental or private-sector mandates and would impose no costs on state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 3295 is shown in the following table. The costs of this legislation fall within budget functions 050 (national defense), 370 (commerce and housing credit), and 800 (general government).

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	By fiscal year, in millions of dollars—				
	2002	2003	2004	2005	2006
CHANGES IN SPENDING SUBJECT TO APPROPRIATION					
Grants to replace punch card voting machines:					
Authorization Level	400	0	0	0	0
Estimated Outlays	200	200	0	0	0
Voting system improvements:					
Authorization Level	750	750	750	0	0
Estimated Outlays	75	600	750	675	150
Election Assistance Commission:					
Estimated Authorization Level	3	4	4	4	4
Estimated Outlays	1	2	3	3	3
Other provisions:					
Estimated Authorization Level	37	14	12	12	14
Estimated Outlays	20	26	12	12	14
Total:					
Estimated Authorization Level	1,190	768	766	16	18
Estimated Outlays	296	828	765	690	167
CHANGES IN OFF-BUDGET DIRECT SPENDING					
U.S. Postal Service[1]					
Estimated Budget Authority	50	55	0	0	0
Estimated Outlays	50	55	0	0	0

[1] These estimated costs would be offset, overtime, by postal rate increases.

Basis of estimate: For this estimate, CBO assumes that the bill will be enacted by the end of calendar year 2001 and that the necessary amounts will be appropriated each year. CBO estimates that implementing H.R. 3295 would cost $2.8 billion over the 2002–2006 period, mostly for voting system improvements. The bill would also increase spending of the Postal Service, which is classified as off-budget.

Spending subject to appropriation

Grants to Replace Punch-Card Voting Machines. H.R. 3295 would authorize the appropriation of $400 million for fiscal year 2002 for payments for state and local governments to replace punch card voting systems. State and local governments that apply for these funds would be able to receive a maximum of $6,000 per precinct.

Voting System Improvements. The bill would authorize the appropriation of $2.25 billion over the 2002–2004 period to pay for grants to states and localities for improving voting technology and upgrading equipment, improving voter registration systems, increasing access for voters with disabilities, and enhancing training for poll workers. CBO expects that most of the funds to replace machines and so implement improvements would be spent in fiscal years 2003 through 2005.

Election Assistance Commission. Title II would authorize the appropriation of up to $10 million annually to establish the Election Assistance Commission. The four-member, bipartisan commission would advise state and local governments on election administration. This work would include developing voluntary election management standards, serving as a clearinghouse for information, and reviewing procedures affecting the administration of federal elections. The bill also would transfer all the functions of the Office of Election Administration of the Federal Election Commission to the new commission. CBO estimates that the commission would re-

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quire funding of $3 million to $4 million annually with estimated outlays of about $12 million over the 2002–2006 period.

Other Provisions. H.R. 3295 also would authorize appropriations for several other programs aimed at improving the election process, including grants to study and improve voting technology, pilot programs to test new technologies, and programs to encourage citizens to get involved in the election process. CBO estimates that, in total, implementing these programs would cost $84 million over the 2002–2006 period.

H.R. 3295 would direct the Secretary of Defense to coordinate all voting activities for members of the military and other overseas U.S. citizens, includes training voting assistance officers, conducting mail delivery surveys, and providing information on voter registration requirements and deadlines of the various states. Based on information from the Department of Defense, CBO estimates that implementing this section of the bill would result in no significant costs.

Off-budget costs (direct spending)

For official mailings sent to voters by local election officials via first-class mail, H.R. 3295 would reduce the postage rate by 50 percent. CBO expects that the reduced postage rate would apply to two mailings every year to each of the 150 million registered voters in the United States. The current first-class rate is 34 cents and is expected to rise to 37 cents by fiscal year 2003, so CBO estimates this provision would cost the Postal Service about $50 million in 2002 and about $55 million in 2003. Over time, there would be no net effect from this provision because the Postal Service is required to set rates so that it covers all costs. Postal Service spending and collections are classified as off-budget and would not be subject to pay-as-you-go procedures.

Pay-as-you-go considerations: None.

Intergovernmental and private-sector impact: Section 4 of UMRA excludes from the application of that act any legislative provisions that enforce the constitutional rights of individuals. CBO has determined that title V and certain sections of title VI would fall within that exclusion because they enforce an individual's right to vote, and to have that vote counted.

Other provisions of the bill would benefit state and local governments. Specifically, title I would provide grants to states to replace or upgrade punch card voting systems. Provisions of title II would provide payments to states to improve election administration and voter education. In both cases, states must provide up to 25 percent in matching funds to be eligible to receive the assistance. The matching requirement as well as any other costs to state, local, or tribal governments as a result of participating in these programs would be incurred voluntarily.

The remaining provisions of the bill contain no intergovernmental or private-sector mandates and would impose no costs on state, local, or tribal governments.

Estimate prepared by: Federal Costs: Mark Grabowicz and Matthew Pickford. Impact on State, Local, and Tribal Governments: Susan Sieg Tompkins. Impact on the Private Sector: Paige Piper/Bach.

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Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 36, UNITED STATES CODE

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SUBTITLE II—PATRIOTIC AND NATIONAL ORGANIZATIONS

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PART B—ORGANIZATIONS

201. AGRICULTURAL HALL OF FAME 20101

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1526. Help America Vote Foundation 152601

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PART B—ORGANIZATIONS

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CHAPTER 1526—HELP AMERICA VOTE FOUNDATION

Sec.
152601. Organization.
152602. Purposes.
152603. Board of directors.
152604. Officers and employees.
152605. Powers.
152606. Principal office.
152607. Service of process.
152608. Annual audit.
152609. Civil action by Attorney General for equitable relief.
152610. Immunity of United States Government.
152611. Authorization of appropriations.
152612. Annual report.

§ 152601. Organization

(a) FEDERAL CHARTER.—The Help America Vote Foundation (in this chapter, the "foundation") is a federally chartered corporation.

(b) NATURE OF FOUNDATION.—The foundation is a charitable and nonprofit corporation and is not an agency or establishment of the United States Government.

(c) PERPETUAL EXISTENCE.—Except as otherwise provided, the foundation has perpetual existence.

§ 152602. Purposes

(a) IN GENERAL.—The purposes of the foundation are to—

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(1) mobilize secondary school students (including students educated in the home) in the United States to participate in the election process in a nonpartisan manner as poll workers or assistants;

(2) place secondary school students (including students educated in the home) as nonpartisan poll workers or assistants to local election officials in precinct polling places across the United States; and

(3) establish cooperative efforts with State and local election officials, local educational agencies, superintendents and principals of public and private secondary schools, and other appropriate nonprofit charitable and educational organizations exempt from taxation under section 501(a) of the Internal Revenue Code of 1986 as an organization described in section 501(c)(3) of such Code to further the purposes of the foundation.

(b) REQUIRING ACTIVITIES TO BE CARRIED OUT ON NONPARTISAN BASIS.—The foundation shall carry out its purposes without partisan bias or without promoting any particular point of view regarding any issue, and shall ensure that each participant in its activities is governed in a balanced manner which does not reflect any partisan bias.

(c) CONSULTATION WITH STATE ELECTION OFFICIALS.—The foundation shall carry out its purposes under this section in consultation with the chief election officials of the States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, and the United States Virgin Islands.

§ 152603. Board of directors

(a) GENERAL.—The board of directors is the governing body of the foundation.

(b) MEMBERS AND APPOINTMENT.—(1) The board consists of 12 directors, who shall be appointed not later than 60 days after the date of the enactment of this chapter as follows:

(A) 4 directors (of whom not more than 2 may be members of the same political party) shall be appointed by the President.

(B) 2 directors shall be appointed by the Speaker of the House of Representatives.

(C) 2 directors shall be appointed by the minority leader of the House of Representatives.

(D) 2 directors shall be appointed by the majority leader of the Senate.

(E) 2 directors shall be appointed by the minority leader of the Senate.

(2) In addition to the directors described in paragraph (1), the chair and ranking minority member of the Committee on House Administration of the House of Representatives (or their designees) and the chair and ranking minority member of the Committee on Rules and Administration of the Senate (or their designees) shall each serve as an ex officio nonvoting member of the board.

(3) A director is not an employee of the Federal government and appointment to the board does not constitute appointment as an officer or employee of the United States Government for the purpose of any law of the United States (except as may otherwise be provided in this chapter).

(4) The terms of office of the directors are 4 years.

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(5) A vacancy on the board shall be filled in the manner in which the original appointment was made.

(c) CHAIR.—The directors shall select one of the directors as the chair of the board. The individual selected may not be a current or former holder of any partisan elected office or a current or former officer of any national committee of a political party.

(d) QUORUM.—The number of directors constituting a quorum of the board shall be established under the bylaws of the foundation.

(e) MEETINGS.—The board shall meet at the call of the chair of the board for regularly scheduled meetings, except that the board shall meet not less often than annually.

(f) REIMBURSEMENT OF EXPENSES.—Directors shall serve without compensation but may receive travel expenses, including per diem in lieu of subsistence, in accordance with sections 5702 and 5703 of title 5.

(g) LIABILITY OF DIRECTORS.—Directors are not personally liable, except for gross negligence.

§ 152604. Officers and employees

(a) APPOINTMENT OF OFFICERS AND EMPLOYEES.—The board of directors appoints, removes, and replaces officers and employees of the foundation.

(b) STATUS AND COMPENSATION OF EMPLOYEES.—

(1) IN GENERAL.—Officers and employees of the foundation—

(A) are not employees of the Federal government (except as may otherwise be provided in this chapter);

(B) shall be appointed and removed without regard to the provisions of title 5 governing appointments in the competitive service; and

(C) may be paid without regard to chapter 51 and subchapter III of chapter 53 of title 5.

(2) AVAILABILITY OF FEDERAL EMPLOYEE RATES FOR TRAVEL.—For purposes of any schedules of rates negotiated by the Administrator of General Services for the use of employees of the Federal government who travel on official business, officers and employees of the foundation who travel while engaged in the performance of their duties under this chapter shall be deemed to be employees of the Federal government.

§ 152605. Powers

(a) GENERAL.—The foundation may—

(1) adopt a constitution and bylaws;

(2) adopt a seal which shall be judicially noticed; and

(3) do any other act necessary to carry out this chapter.

(b) POWERS AS TRUSTEE.—To carry out its purposes, the foundation has the usual powers of a corporation acting as a trustee in the District of Columbia, including the power—

(1) to accept, receive, solicit, hold, administer, and use any gift, devise, or bequest, either absolutely or in trust, of property or any income from or other interest in property;

(2) to acquire property or an interest in property by purchase or exchange;

(3) unless otherwise required by an instrument of transfer, to sell, donate, lease, invest, or otherwise dispose of any property or income from property;

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(4) to borrow money and issue instruments of indebtedness;

(5) to make contracts and other arrangements with public agencies and private organizations and persons and to make payments necessary to carry out its functions;

(6) to sue and be sued; and

(7) to do any other act necessary and proper to carry out the purposes of the foundation.

(c) ENCUMBERED OR RESTRICTED GIFTS.—A gift, devise, or bequest may be accepted by the foundation even though it is encumbered, restricted, or subject to beneficial interests of private persons, if any current or future interest is for the benefit of the foundation.

(d) CONTRACTS.—The foundation may enter into such contracts with public and private entities as it considers appropriate to carry out its purposes.

(e) ANNUAL CONFERENCE IN WASHINGTON METROPOLITAN AREA.—During each year (beginning with 2003), the foundation may sponsor a conference in the Washington, D.C., metropolitan area to honor secondary school students and other individuals who have served (or plan to serve) as poll workers and assistants and who have otherwise participated in the programs and activities of the foundation.

§ 152606. Principal office

The principal office of the foundation shall be in the District of Columbia unless the board of directors determines otherwise. However, the foundation may conduct business throughout the States, territories, and possessions of the United States.

§ 152607. Service of process

The foundation shall have a designated agent to receive service of process for the foundation. Notice to or service on the agent, or mailed to the business address of the agent, is notice to or service on the foundation.

§ 152608. Annual audit

The foundation shall enter into a contract with an independent auditor to conduct an annual audit of the foundation.

§ 152609. Civil action by Attorney General for equitable relief

The Attorney General may bring a civil action in the United States District Court for the District of Columbia for appropriate equitable relief if the foundation—

(1) engages or threatens to engage in any act, practice, or policy that is inconsistent with the purposes in section 152602 of this title; or

(2) refuses, fails, or neglects to carry out its obligations under this chapter or threatens to do so.

§ 152610. Immunity of United States Government

The United States Government is not liable for any debts, defaults, acts, or omissions of the foundation. The full faith and credit of the Government does not extend to any obligation of the foundation.

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§ 152611. Authorization of appropriations

There are authorized to be appropriated to the foundation for carrying out the purposes of this chapter—

(1) $5,000,000 for fiscal year 2002; and

(2) such sums as may be necessary for each succeeding fiscal year.

§ 152612. Annual report

As soon as practicable after the end of each fiscal year, the foundation shall submit a report to the Commission, the President, and Congress on the activities of the foundation during the prior fiscal year, including a complete statement of its receipts, expenditures, and investments. Such report shall contain information gathered from participating secondary school students describing the nature of the work they performed in assisting local election officials and the value they derived from the experience of educating participants about the electoral process.

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TITLE 10, UNITED STATES CODE

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Subtitle A—General Military Law

* * * * * * *

PART II—PERSONNEL

* * * * * * *

CHAPTER 80—MISCELLANEOUS INVESTIGATION REQUIREMENTS AND OTHER DUTIES

Sec.

1561. Complaints of sexual harassment: investigation by commanding officers.

* * * * * * *

1566. Voting assistance: compliance assessments; assistance.

* * * * * * *

§ 1566. Voting assistance: compliance assessments; assistance

(a) REGULATIONS.—The Secretary of Defense shall prescribe regulations to require that the Army, Navy, Air Force, and Marine Corps ensure their compliance with any directives issued by the Secretary of Defense in implementing any voting assistance program.

(b) VOTING ASSISTANCE PROGRAMS DEFINED.—In this section, the term "voting assistance programs" means—

(1) the Federal Voting Assistance Program carried out under the Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff et seq.); and

(2) any similar program.

(c) ANNUAL EFFECTIVENESS AND COMPLIANCE REVIEWS.—(1) The Inspector General of each of the Army, Navy, Air Force, and Marine Corps shall conduct—

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(A) an annual review of the effectiveness of voting assistance programs; and

(B) an annual review of the compliance with voting assistance programs of that armed force.

(2) Upon the completion of each annual review under paragraph (1), each Inspector General specified in that paragraph shall submit to the Inspector General of the Department of Defense a report on the results of each such review. Such report shall be submitted in time each year to be reflected in the report of the Inspector General of the Department of Defense under paragraph (3).

(3) Not later than March 31 each year, the Inspector General of the Department of Defense shall submit to Congress a report on—

(A) the effectiveness during the preceding calendar year of voting assistance programs; and

(B) the level of compliance during the preceding calendar year with voting assistance programs of each of the Army, Navy, Air Force, and Marine Corps.

(d) INSPECTOR GENERAL ASSESSMENTS.—(1) The Inspector General of the Department of Defense shall periodically conduct at Department of Defense installations unannounced assessments of the compliance at those installations with—

(A) the requirements of the Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff et seq.);

(B) Department of Defense regulations regarding that Act and the Federal Voting Assistance Program carried out under that Act; and

(C) other requirements of law regarding voting by members of the armed forces.

(2) The Inspector General shall conduct an assessment under paragraph (1) at not less than 10 Department of Defense installations each calendar year.

(3) Each assessment under paragraph (1) shall include a review of such compliance—

(A) within units to which are assigned, in the aggregate, not less than 20 percent of the personnel assigned to duty at that installation;

(B) within a representative survey of members of the armed forces assigned to that installation and their dependents; and

(C) within unit voting assistance officers to measure program effectiveness.

(e) REGULAR MILITARY DEPARTMENT ASSESSMENTS.—The Secretary of each military department shall include in the set of issues and programs to be reviewed during any management effectiveness review or inspection at the installation level an assessment of compliance with the Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff et seq.) and with Department of Defense regulations regarding the Federal Voting Assistance Program.

(f) VOTING ASSISTANCE OFFICERS.—(1) Voting assistance officers shall be appointed or assigned under Department of Defense regulations. Commanders at all levels are responsible for ensuring that unit voting officers are trained and equipped to provide information and assistance to members of the armed forces on voting matters. Performance evaluation reports pertaining to a member who has been assigned to serve as a voting assistance officer shall comment on the performance of the member as a voting assistance officer. The

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Secretary of each military department shall certify to Congress that (at a minimum) a voting assistance officer has been appointed or assigned for each military installation and major command under the jurisdiction of the department and that a replacement will be appointed if the original officer is no longer able to serve.

(2) Under regulations and procedures prescribed by the Secretary, a member of the armed forces appointed or assigned to duty as a voting assistance officer shall, to the maximum extent practicable, be given the time and resources needed to perform the member's duties as a voting assistance officer during the period in advance of a general election when members and their dependents are preparing and submitting absentee ballots.

(3) As part of each assessment prepared by the Secretary of a military department under subsection (e), the Secretary shall—

(A) specify the number of members of the armed forces under the jurisdiction of the Secretary who are appointed or assigned to duty as voting assistance officers;

(B) specify the ratio of voting assistance officers to active duty members of the armed forces under the jurisdiction of the Secretary;

(C) indicate whether this number and ratio comply with the requirements of the Federal Voting Assistance Program; and

(D) describe the training such members receive to perform their duties as voting assistance officers.

(g) REGISTRATION AND VOTING INFORMATION FOR MEMBERS AND DEPENDENTS.—(1) The Secretary of each military department, using a variety of means including both print and electronic media, shall, to the maximum extent practicable, ensure that members of the armed forces and their dependents who are qualified to vote have ready access to information regarding voter registration requirements and deadlines (including voter registration), absentee ballot application requirements and deadlines, and the availability of voting assistance officers to assist members and dependents to understand and comply with these requirement.

(2) The Secretary of each military department shall make the national voter registration form prepared for purposes of the Uniformed and Overseas Citizens Absentee Voting Act by the Federal Election Commission available so that each person who enlists, reenlists, or voluntarily extends an enlistment or who completes a permanent change of station in an active or reserve component of the Army, Navy, Air Force, or Marine Corps shall receive such form at the time of the enlistment, reenlistment, extension, or completion of the permanent change of station, or as soon thereafter as practicable.

(3) Where practicable, a special day or days shall be designated at each military installation for the purpose of informing members of the armed forces and their dependents of election timing, registration requirements, and voting procedures.

(h) DELIVERY OF MAIL FROM OVERSEAS PRECEDING FEDERAL ELECTIONS.—(1) During the four months preceding a general Federal election month, the Secretary of Defense shall periodically conduct surveys of all overseas locations and vessels at sea with military units responsible for collecting mail for return shipment to the United States and all port facilities in the United States and overseas where military-related mail is collected for shipment to over-

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seas locations or to the United States. The purpose of each survey shall be to determine if voting materials are awaiting shipment at any such location and, if so, the length of time that such materials have been held at that location. During the fourth and third months before a general Federal election month, such surveys shall be conducted biweekly. During the second and first months before a general Federal election month, such surveys shall be conducted weekly.

(2) The Secretary shall ensure that voting materials are transmitted expeditiously by military postal authorities at all times. The Secretary shall, to the maximum extent practicable, implement measures to ensure that a postmark or other official proof of mailing date is provided on each absentee ballot collected at any overseas location or vessel at sea whenever the Department of Defense is responsible for collecting mail for return shipment to the United States. The Secretary shall submit to Congress a report describing the measures to be implemented to ensure the timely transmittal and postmarking of voting materials and identifying the persons responsible for implementing such measures.

(3) The Secretary of each military department, utilizing the voting assistance officer network established for each military installation, shall, to the maximum extent practicable, provide notice to members of the armed forces stationed at that installation of the last date before a general Federal election for which absentee ballots mailed from a postal facility located at that installation can reasonably be expected to be timely delivered to the appropriate State and local election officials.

(4) In this section, the term "general Federal election month" means November in an even-numbered year.

* * * * * * *

PART IV—SERVICE, SUPPLY, AND PROCUREMENT

* * * * * * *

CHAPTER 159—REAL PROPERTY; RELATED PERSONAL PROPERTY; AND LEASE OF NONEXCESS PROPERTY

Sec.
2661. Miscellaneous administrative provisions relating to real property.

* * * * * * *

[2670. Licenses: military installations; erection and use of buildings; American National Red Cross.**]**
2670. Buildings on military installations: use by American National Red Cross and as polling places in Federal, State, and local elections.

* * * * * * *

[§ 2670. Licenses: military installations; erection and use of buildings; American National Red Cross]

[Under**]**

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§ 2670. Buildings on military installations: use by American National Red Cross and as polling places in Federal, State, and local elections

(a) USE BY RED CROSS.—Under such conditions as he may prescribe, the Secretary of any military department may issue a revocable license to the American National Red Cross to—

(1) * * *

* * * * * * *

Supplies stored in buildings erected or used under this [section] *subsection* are available to aid the civilian population in a serious national disaster.

(b) USE AS POLLING PLACES.—(1) Notwithstanding any other provision of law, the Secretary of a military department may make a building located on a military installation under the jurisdiction of the Secretary available for use as a polling place in any Federal, State, or local public election, but only if such use is limited to eligible voters who reside on that military installation.

(2) If a building located on a military installation is made available under paragraph (1) as the site of a polling place, the Secretary shall continue to make the building available for subsequent elections unless the Secretary provides to the appropriate State or local election officials advance notice, in a reasonable and timely manner, of the reasons why the building will no longer be made available as a polling place.

(3) In this section, the term "military installation" has the meaning given the term in section 2687(e) of this title.

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Subtitle E—Reserve Components

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PART V—SERVICE, SUPPLY, AND PROCUREMENT

* * * * * * *

CHAPTER 1803—FACILITIES FOR RESERVE COMPONENTS

* * * * * * *

§ 18235. Administration; other use permitted by Secretary

(a) * * *

* * * * * * *

(c) Pursuant to a lease or other agreement under subsection (a)(2), the Secretary may make a facility covered by subsection (a) available for use as a polling place in any Federal, State, or local public election notwithstanding any other provision of law. If a facility is made available as the site of a polling place with respect to an election, the Secretary shall continue to make the facility available for subsequent elections unless the Secretary provides to the appropriate State or local election officials advance notice, in a reasonable and

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timely manner, of the reasons why the facility will no longer be made available as a polling place.

§ 18236. Contributions to States; other use permitted by States

(a) * * *

* * * * * * *

(e) Pursuant to a lease or other agreement under subsection (c)(1), a State may make a facility covered by subsection (c) available for use as a polling place in any Federal, State, or local public election notwithstanding any other provision of law.

* * * * * * *

UNIFORMED AND OVERSEAS CITIZENS ABSENTEE VOTING ACT

* * * * * * *

TITLE I—REGISTRATION AND VOTING BY ABSENT UNIFORMED SERVICES VOTERS AND OVERSEAS VOTERS IN ELECTIONS FOR FEDERAL OFFICE

SEC. 101. FEDERAL RESPONSIBILITIES.

(a) * * *

* * * * * * *

(b) DUTIES OF PRESIDENTIAL DESIGNEE.—The Presidential designee shall—

(1) consult State and local election officials in carrying out this title**[**;**]**, *and ensuring that such officials are aware of the requirements of this Act;*

(2) prescibe an official post card form, containing both an absentee voter registration application and an absentee ballot application, for use by the States **[**as recommended in section 104**]** *as required under section 102(4)*;

* * * * * * *

(5) compile and distribute (A) descriptive material on State absentee registration and voting procedures, and (B) to the extent practicable, facts relating to specific elections, including dates, offices involved, and the text of ballot questions; **[**and**]**

(6) not later than the end of each year after a Presidential election year, transmit to the President and the Congress a report on the effectiveness of assistance under this title, including a statistical analysis of uniformed services voter participation *(listed separately for overseas voters and absent uniformed services voters)*, a general assessment of overseas nonmilitary participation, and a description of State-Federal cooperation**[**.**]***; and*

(7) prescribe a standard oath for use with any document under this title affirming that a material misstatement of fact

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in the completion of such a document may constitute grounds for a conviction for perjury.

* * * * * * *

SEC. 102. STATE RESPONSIBILITIES.

(a) IN GENERAL.—Each State shall—

(1) * * *

[(2) accept and process, with respect to any general, special, primary, or runoff election for Federal office, any otherwise valid voter registration application from an absent uniformed services voter or overseas voter, if the application is received by the appropriate State election official not less than 30 days before the election; and**]**

(2) accept and process, with respect to any election for Federal office, any otherwise valid voter registration application and absentee ballot application from an absent uniformed services voter or overseas voter, if the application is received by the appropriate State election official not less than 30 days before the election;

(3) permit overseas voters to use Federal write-in absentee ballots (in accordance with section 103) in general elections for Federal office**[**.**]***;*

(4) use the official post card form (prescribed under section 101) for simultaneous voter registration application and absentee ballot application; and

(5) if the State requires an oath or affirmation to accompany any document under this title, use the standard oath prescribed by the Presidential designee under section 101(b)(7).

(b) DESIGNATION OF SINGLE STATE OFFICE TO PROVIDE INFORMATION ON REGISTRATION AND ABSENTEE BALLOT PROCEDURES FOR ALL VOTERS IN STATE.—

(1) IN GENERAL.—Each State shall designate a single office which shall be responsible for providing information regarding voter registration procedures and absentee ballot procedures (including procedures relating to the use of the Federal write-in absentee ballot) to all absent uniformed services voters and overseas voters who wish to register to vote or vote in any jurisdiction in the State.

(2) RECOMMENDATION REGARDING USE OF OFFICE TO ACCEPT AND PROCESS MATERIALS.—Congress recommends that the State office designated under paragraph (1) be responsible for carrying out the State's duties under this Act, including accepting valid voter registration applications, absentee ballot applications, and absentee ballots (including Federal write-in absentee ballots) from all absent uniformed services voters and overseas voters who wish to register to vote or vote in any jurisdiction in the State.

(c) REPORT ON NUMBER OF ABSENTEE BALLOTS TRANSMITTED AND RECEIVED.—Not later than 90 days after the date of each regularly scheduled general election for Federal office, each State and unit of local government which administered the election shall (through the State, in the case of a unit of local government) submit a report to the Election Assistance Commission (established under the Help America Vote Act of 2001) on the number of absentee ballots transmitted to absent uniformed services voters and overseas

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voters for the election and the number of such ballots which were returned by such voters and cast in the election, and shall make such report available to the general public.

* * * * * * *

[SEC. 104. RECOMMENDATION TO THE STATES TO MAXIMIZE ACCESS TO THE POLLS BY ABSENT UNIFORMED SERVICES VOTERS AND OVERSEAS VOTERS.

[To afford maximum access to the polls by absent uniformed services voters and overseas voters, it is recommended that the States—

[(1) use the official post card form (prescribed under section 101) for simultaneous voter registration application and absentee ballot application;

[(2) adopt the suggested design for absentee ballot mailing envelopes prescribed under section 101;

[(3) waive registration requirements for absent uniformed services voters and overseas voters who, by reason of service or residence, do not have an opportunity to register;

[(4) if an application other than an official post card form (prescribed under section 101) is required for absentee registration, provide that registration forms be sent with the absentee ballot and may be returned with it;

[(5) expedite processing of balloting materials with respect to absent uniformed services voters and overseas voters;

[(6) permit any oath required for a document under this title to be administered by a commissioned officer of the Armed Forces or any official authorized to administer oaths under Federal law or the law of the State or other place where the oath is administered;

[(7) assure that absentee ballots are mailed to absent uniformed services voters and overseas voters at the earliest opportunity;

[(8) assist the Presidential designee in compiling statistical and other information relating to this title; and

[(9) provide late registration procedures for persons recently separated from the Armed Forces.]

SEC. 104. USE OF SINGLE APPLICATION FOR ALL SUBSEQUENT ELECTIONS.

(a) IN GENERAL.—If a State accepts and processes an official post card form (prescribed under section 101) submitted by an absent uniformed services voter or overseas voter for simultaneous voter registration and absentee ballot application (in accordance with section 102(a)(4)) and the voter requests that the application be considered an application for an absentee ballot for each subsequent election for Federal office held in the State during that year, the State shall provide an absentee ballot to the voter for each subsequent election for Federal office held in the State during that year.

(b) EXCEPTION FOR VOTERS CHANGING REGISTRATION.—Subsection (a) shall not apply with respect to a voter registered to vote in a State for any election held after the voter notifies the State that the voter no longer wishes to be registered to vote in the State or after the State determines that the voter has registered to vote in another State.

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(c) REVISION OF OFFICIAL POST CARD FORM.—The Presidential designee shall revise the official post card form (prescribed under section 101) to enable a voter using the form to—

(1) request an absentee ballot for each election for Federal office held in a State during a year; or

(2) request an absentee ballot for only the next scheduled election for Federal office held in a State.

(d) NO EFFECT ON VOTER REMOVAL PROGRAMS.—Nothing in this section may be construed to prevent a State from removing any voter from the rolls of registered voters in the State under any program or method permitted under section 8 of the National Voter Registration Act of 1993.

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TITLE 18, UNITED STATES CODE

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PART I—CRIMES

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CHAPTER 29—ELECTIONS AND POLITICAL ACTIVITIES

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§ 592. Troops at polls

Whoever, being an officer of the Army or Navy, or other person in the civil, military, or naval service of the United States, orders, brings, keeps, or has under his authority or control any troops or armed men at any place where a general or special election is held, unless such force be necessary to repel armed enemies of the United States, shall be fined under this title or imprisoned not more than five years, or both; and be disqualified from holding any office of honor, profit, or trust under the United States.

This section shall not prevent any officer or member of the armed forces of the United States from exercising the right of suffrage in any election district to which he may belong, if otherwise qualified according to the laws of the State in which he offers to vote.

This section shall not apply to the actions of members of the Armed Forces at any polling place on a military installation where a general or special election is held in accordance with section 2670(b), 18235, or 18236 of title 10.

§ 593. Interference by armed forces

Whoever, being an officer or member of the Armed Forces of the United States, prescribes or fixes or attempts to prescribe or fix, whether by proclamation, order or otherwise, the qualifications of voters at any election in any State; or

Whoever, being such officer or member, prevents or attempts to prevent by force, threat, intimidation, advice or otherwise any qualified voter of any State from fully exercising the right of suffrage at any general or special election; or

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Whoever, being such officer or member, orders or compels or attempts to compel any election officer in any State to receive a vote from a person not legally qualified to vote; or

Whoever, being such officer or member, imposes or attempts to impose any regulations for conducting any general or special election in a State, different from those prescribed by law; or

Whoever, being such officer or member, interferes in any manner with an election officer's discharge of his duties—

Shall be fined under this title or imprisoned not more than five years, or both; and disqualified from holding any office of honor, profit or trust under the United States.

This section shall not prevent any officer or member of the Armed Forces from exercising the right of suffrage in any district to which he may belong, if otherwise qualified according to the laws of the State of such district.

This section shall not apply to the actions of members of the Armed Forces at any polling place on a military installation where a general or special election is held in accordance with section 2670(b), 18235, or 18236 of title 10.

§ 594. Intimidation of voters

(a) Whoever intimidates, threatens, coerces, or attempts to intimidate, threaten, or coerce, any other person for the purpose of interfering with the right of such other person to vote or to vote as he may choose, or of causing such other person to vote for, or not to vote for, any candidate for the office of President, Vice President, Presidential elector, Member of the Senate, Member of the House of Representatives, Delegate from the District of Columbia, or Resident Commissioner, at any election held solely or in part for the purpose of electing such candidate, shall be fined under this title or imprisoned not more than one year, or both.

(b) For purposes of subsection (a), a poll worker who urges or encourages a voter who has not cast a vote for each office listed on the ballot to return to the voting booth to cast votes for every office, or who otherwise intimidates, harasses, or coerces the voter to vote for each such office (or who attempts to intimidate, harass, or coerce the voter to vote for each such office), shall be considered to have intimidated, threatened, or coerced (or to have attempted to intimidate, threaten, or coerce) the voter for the purpose of interfering with the voter's right to vote as the voter may choose. Nothing in this subsection shall prohibit a poll worker from providing information to a voter who requests assistance.

* * * * * * *

SECTION 2003 OF THE REVISED STATUTES OF THE UNITED STATES

SEC. 2003. No officer of the Army or Navy of the United States shall prescribe or fix, or attempt to prescribe or fix, by proclamation, order, or otherwise, the qualifications of voters in any State, or in any manner interfere with the freedom of any election in any State, or with the exercise of the free right of suffrage in any State. *Making a military installation or reserve component facility available as a polling place in a Federal, State, or local public election*

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in accordance with section 2670(b), 18235, or 18236 of title 10, United States Code, is deemed to be consistent with this section.

TITLE 39, UNITED STATES CODE

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PART IV—MAIL MATTER

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CHAPTER 36—POSTAL RATES, CLASSES, AND SERVICES

SUBCHAPTER I—POSTAL RATE COMMISSION

Sec.
3601. Establishment.
* * * * * * *
SUBCHAPTER II—PERMANENT RATES AND CLASSES OF MAIL
3621. Authority to fix rates and classes.
* * * * * * *
[3629. Reduced rates for voter registration purposes.]
3629. Reduced rates for official election mail.
* * * * * * *

SUBCHAPTER II—PERMANENT RATES AND CLASSES OF MAIL

* * * * * * *

[§ 3629. Reduced rates for voter registration purposes

[The Postal Service shall make available to a State or local voting registration official the rate for any class of mail that is available to a qualified nonprofit organization under section 3626 for the purpose of making a mailing that the official certifies is required or authorized by the National Voter Registration Act of 1993.]

§ 3629. Reduced rates for official election mail

(a) Notwithstanding any other provision of this title, the rate of postage for any first-class mail matter shall, in the case of official election mail, be equal to 50 percent of the regular first-class rate, subject to subsection (c).

(b) For purposes of this section, the term "official election mail" means any mailing by a State or local election official that—

(1) is mailed in the course of official business;

(2) consists of voter registration or election information or assistance prepared and mailed in a nonpartisan manner; and

(3) bears such logo or other markings as the Postal Service may require.

Such term does not include any mailing that includes any mail matter intended to promote government action unrelated to the conduct of an election.

(c) Nothing in this section shall, with respect to any official election mail, be considered to make unavailable—

(1) any free mailing privilege under section 3406 or any other provision of law for which such mail otherwise qualifies; or

AMERICAN OVERSIGHT

(2) any reduced rate of postage under section 3626 or any other provision of law for which such mail otherwise qualifies, if lower than the rate that would otherwise apply under subsection (a).

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SECTION 311 OF THE FEDERAL ELECTION CAMPAIGN ACT OF 1971

ADMINISTRATIVE PROVISIONS

SEC. 311. (a) The Commission shall—

(1) * * *

* * * * * * *

(8) prescribe rules, regulations, and forms to carry out the provisions of this Act, in accordance with the provisions of subsection (d); *and*

(9) transmit to the President and to each House of the Congress no later than June 1 of each year, a report which states in detail the activities of the Commission in carrying out its duties under this Act, and any recommendations for any legislative or other action the Commission considers appropriate**[**; and**]**.

[(10) serve as a national clearinghouse for the compilation of information and review of procedures with respect to the administration of Federal elections. The Commission may enter into contracts for the purpose of conducting studies under this paragraph. Reports or studies made under this paragraph shall be available to the public upon the payment of the cost thereof, except that copies shall be made available without cost, upon request, to agencies and branches of the Federal Government.**]**

* * * * * * *

NATIONAL VOTER REGISTRATION ACT OF 1993

* * * * * * *

SEC. 8. REQUIREMENTS WITH RESPECT TO ADMINISTRATION OF VOTER REGISTRATION.

(a) * * *

* * * * * * *

(b) CONFIRMATION OF VOTER REGISTRATION.—Any State program or activity to protect the integrity of the electoral process by ensuring the maintenance of an accurate and current voter registration roll for elections for Federal office—

(1) * * *

(2) shall not result in the removal of the name of any person from the official list of voters registered to vote in an election for Federal office by reason of the person's failure to vote**[**.**]**, *except that nothing in this paragraph may be construed to prohibit a State from using the procedures described in subsections (c) and (d) to remove an individual from the official list of eligible voters if the individual has not voted or appeared to vote in*

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2 or more consecutive general elections for Federal office and has not notified the applicable registrar (in person or in writing) or responded to a notice sent by the applicable registrar during the period in which such elections are held that the individual intends to remain registered in the registrar's jurisdiction.

* * * * * * *

SEC. 9. FEDERAL COORDINATION AND REGULATIONS.

(a) IN GENERAL.—The [Federal Election Commission] *Election Assistance Commission*—

(1) * * *

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TITLE 5, UNITED STATES CODE

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PART III—EMPLOYEES

* * * * * * *

Subpart B—Employment and Retention

CHAPTER 31—AUTHORITY FOR EMPLOYMENT

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SUBCHAPTER II—THE SENIOR EXECUTIVE SERVICE

* * * * * * *

§ 3132. Definitions and exclusions

(a) For the purpose of this subchapter—

(1) "agency" means an Executive agency, except a Government corporation and the General Accounting Office, but does not include—

(A) * * *

* * * * * * *

(C) the Federal Election Commission *or the Election Assistance Commission*; or

* * * * * * *

Subpart F—Labor-Management and Employee Relations

* * * * * * *

CHAPTER 73—SUITABILITY, SECURITY, AND CONDUCT

* * * * * * *

SUBCHAPTER III—POLITICAL ACTIVITIES

* * * * * * *

AMERICAN OVERSIGHT

§ 7323. Political activity authorized; prohibitions

(a) * * *
(b)(1) * * *
(2)(A) * * *
(B) The provisions of subparagraph (A) shall apply to—
(i) an employee of—
(I) the Federal Election Commission *or the Election Assistance Commission*;

* * * * * * *

SECTION 8G OF THE INSPECTOR GENERAL ACT OF 1978

REQUIREMENTS FOR FEDERAL ENTITIES AND DESIGNATED FEDERAL ENTITIES

SEC. 8G. (a) Notwithstanding section 11 of this Act, as used in this section—

(1) * * *

(2) the term "designated Federal entity" means Amtrak, the Appalachian Regional Commission, the Board of Governors of the Federal Reserve System, the Board for International Broadcasting, the Commodity Futures Trading Commission, the Consumer Product Safety Commission, the Corporation for Public Broadcasting, the Equal Employment Opportunity Commission, the Farm Credit Administration, the Federal Communications Commission, the Federal Deposit Insurance Corporation, the Federal Election Commission, *the Election Assistance Commission,* the Federal Housing Finance Board, the Federal Labor Relations Authority, the Federal Maritime Commission, the Federal Trade Commission, the Legal Services Corporation, the National Archives and Records Administration, the National Credit Union Administration, the National Endowment for the Arts, the National Endowment for the Humanities, the National Labor Relations Board, the National Science Foundation, the Panama Canal Commission, the Peace Corps, the Pension Benefit Guaranty Corporation, the Securities and Exchange Commission, the Smithsonian Institution, the United States International Trade Commission, and the United States Postal Service;

* * * * * * *

AMERICAN OVERSIGHT

ADDITIONAL VIEWS OF HON. STENY H. HOYER

I write to offer my additional views regarding the importance of ensuring accessibility in voting for people with disabilities. The bill in its present form offers significant gains in voting accessibility for persons with disabilities, especially those with visual impairments. For example, the bill requires that, in a state receiving election fund payments, every polling place or precinct have at least one voting system (hardware and software) that is fully accessible. However, while I agree with everything in the committee report, I wish to emphasize the need to take further steps beyond this bill and beyond the Americans with Disabilities Act to ensure complete accessibility in voting and registration services for persons with disabilities.

Complete voting access must be assured for every voter regardless of whether a state or locality accepts federal election funds and without regard to any significant cost constraints. Voting is one of the fundamental rights of citizens in a Republic. As such, the right should not depend upon the vagaries of local budgets—certainly not in an affluent society like ours. Physical access to the ballot box should be unconditional. Every polling place in America should be accessible to persons with the full range of disabilities. Every polling place should have already at least one voting machine or method that is fully accessible, that is, a voting machine or method that allows a voter with a disability to vote in a manner that is as reliable, fraud-resistant, private, independent and anonymous as that available to anyone else.

One of our most profound accomplishments since the founding of the United States is the progressive broadening of the franchise to include African-Americans, women and others subject to pervasive discrimination. In this process, we have learned that few of the rights or interests of a particular group of Americans can be secure so long as that group lacks the right to vote for officials who will be accountable to them. We have also learned that, as more adult citizens become full participants in our polity, the democratic process is enriched for all. We are still in the process of learning this lesson with regard to persons with disabilities.

Most of the ongoing discrimination against persons with disabilities concerning voting is no longer motivated by deliberate efforts do exclude. However, as the recent GAO report on accessibility documents, the choice, design and administration of polling places, voting methods and machines continues in many instances to be driven by a careless assumption on the part of election administrators that all voters are able-bodied. The General Accounting Office recently found, for example, that many polling places have high door thresholds and inaccessible parking places, and that, even when ramps are installed, in many instances they are hazardous to users. Policymakers must strive to highlight the need to admin-

AMERICAN OVERSIGHT

USCCR-21-1814-A-004660

ister every aspect of elections in a way that recognizes that a portion of the electorate does not enjoy the full range of abilities, disabilities and impairments.

The right to vote is an almost sacred right that should not be casually traded off against other rights and interests. See, e.g., *Harper* v. *Virginia State Board of Elections,* 383 U.S. 663, 667 (voting is a fundamental right, any alleged infringement of which, must be meticulously scrutinized); *Kramer* v. *Union Free School District No. 15,* 395 U.S. 621, 626 (1969) ("statutes distributing the franchise constitute the foundation of our representative society [requiring careful examination of a State's stated interests]") Corresponding to the fundamental nature of this right, government officials and election administrators at all levels of government must recognize we have a fundamental obligation to guarantee full access to the ballot box for every qualified citizen. Thus, I hope the Senate will go beyond the achievements of this bill to provide a guarantee of full accessibility that is not dependent upon a state's acceptance of federal funds and that is not limited by any significant cost constraints. Further, I hope we then accept those additional requirements when we meet with the Senate in conference.

However, even before Congress takes additional steps, we should remember, as the committee report explains, that we already have powerful tools for electoral reform available to us, one of which is the Americans with Disabilities Act of 1990 (ADA). In the preamble to that Act, we found that voting is a "critical area" and that discrimination against individuals with disabilities, especially discrimination in the form of isolation and segregation, persists. To redress this discrimination, the ADA insists upon both equality and integration for persons with disabilities.

In the past decade, the ADA has already improved electoral access for persons with disabilities, both through voluntary compliance and through successful litigation in recent cases such as *New York* v. *Schoharie,* 82 F.Supp.2d 19 (N.D.N.Y. 2000) and *Doe* v. *Rowe,* 156 F.Supp.2d 35 (D. Me. 2001). But, as the GAO report documents, there is plenty of work left to be done to achieve compliance with the ADA. While the ADA provides an undue burden defense to its general mandates, it still provides a great deal of leverage for correcting the kinds of problems documented by the GAO.

Under the ADA, all voting and registration procedures and services must be accessible. Accessibility includes affording individuals with disabilities an opportunity to cast a ballot in a manner that is as private, independent and anonymous as that afforded other voters, and to vote in an integrated setting with other voters. The ADA includes an integration mandate that bars attempts to achieve accessibility through separate-but-equal kinds of arrangements, a mandate that is limited only by the undue burden defense. See, e.g., *Olmstead* v. *L.C. by Zimring,* 527 U.S. 581 (1999).

Of course, the ADA's mandate to offer equal and integrated voting methods to persons with disabilities does nothing to deny a State or local government the right to provide generally to the electorate alternative voting methods such as absentee balloting. Nor does it deny an individual with a disability the right to receive a reasonable accommodation in the form of an absentee ballot, curbside voting, or assistance from a poll worker or other indi-

AMERICAN OVERSIGHT

vidual of his or her choice (other than an individual who is the voter's employer or agent of that employer or officer or agent of the voter's union).

But the fact that an individual with a disability might want to use an absentee ballot or curbside voting as a means of gaining access to voting does not relieve a State or locality from its obligation to make polling places as integrated and accessible as possible. Thus, to comply with the ADA, a pubic entity (such as a State or unit of local government or a responsible government official) must first survey its polling places and move inaccessible polling places to accessible locations. The defense of undue burden is unavailable if there are accessible places that may reasonably serve as polling places. It will be a rare case in which the need to move a polling place to another location will create an undue burden.

Simple compliance with this requirement—that accessible polling places be chosen in the first place—will result in significant increased accessibility without costing any additional money. Normally, an alteration in polling location will only require a different way of thinking about what constitutes an appropriate polling place.

There may well be situations in which no accessible place is reasonably available as a polling place. In such cases, the public entity must make changes to existing polling places to ensure accessibility, such as installing a ramp providing access for those who use wheelchairs. This obligation, however, is subject to an "undue burden" defense. Thus, in some situations, the entity will not be required to make a polling place accessible, and instead, will be permitted to offer access to voting through such means as curbside voting or absentee balloting.

It is important to note, however, that a State or unit of local government may not, as a first resort, depend upon curbside voting or absentee balloting as its sole means to make polling places accessible. Rather, as noted, the government must first determine whether an integrated means of access can be achieved within the "undue burden" limitation. If such access cannot be achieved within that standard, the public entity may then rely upon alternative, less-integrated means of access to the act of voting, for example, curbside voting or absentee balloting.

The undue burden standard makes allowance for the limitations of poor or rural jurisdictions lacking the resources to achieve a level of accessibility equivalent to that of larger, wealthier or more populous areas. However, an undue burden defense must be assessed in terms of actual—rather than merely formal—resource constraints. An undue burden means significant difficulty or expense in light of the budget of the unit of government responsible for funding registration services, polling places and voting methods, together with any coordinated budget with, or budgetary resources available from, other units of State and local government. See, e.g., H.R. Rep. No. 101–485 (1990), reprinted in Comm. on Educ. and Labor, 101st Cong., Legislative History of the Americans with Dis-

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abilities Act, at 340–343 (1990) (providing guidance on the analogous undue hardship determination in the employment context.)

STENY H. HOYER.

○

AMERICAN OVERSIGHT

Date : 8/18/2021 5:17:34 PM
From : "John Mashburn" jmashburn@usccr.gov
To : "Christian Adams" a@electionlawcenter.com, "Stephen Gilchrist" sgilchrist@usccr.gov, "Peter Kirsanow" pkirsanow@usccr.gov, "Gail Heriot" gheriot@usccr.gov
Cc : "Thomas Simuel" tsimuel@usccr.gov, "Alexander Heideman" aheideman@usccr.gov, "Carissa Mulder" CMulder@usccr.gov
Subject : Fw: EAC Final Selections

FYI to all

From: Juana Silverio
Sent: Wednesday, August 18, 2021 5:13:04 PM
To: Mauro Morales; John Mashburn
Cc: Thomas Simuel; Alexander Heideman; Carissa Mulder; Norma Cantu
Subject: Re: EAC Final Selections

Thanks John. You are correct, the item is not on the agenda for Friday.

There were a few concerns raised on process before confirming the candidates to the EAC on behalf of the Commission. Please stand by snd advise your commissioners that further communication is forthcoming by the Chairwoman.

Please let us know if you have any further questions. We greatly appreciate your patience.

Juana

--
Juana Silverio (she/her/ella)
Special Assistant to Commissioner Norma V. Cantú
U.S. Commission on Civil Rights
E: jsilverio@usccr.gov
http://usccr.gov/
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425
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#USCCR

From: Mauro Morales
Sent: Wednesday, August 18, 2021 4:41:49 PM
To: John Mashburn
Cc: Juana Silverio; Thomas Simuel; Alexander Heideman; Carissa Mulder
Subject: Re: EAC Final Selections

That is a good question. It is a decision for Commissioners in consultation with the Chair to decide how they wish to proceed. Adams is welcome to make a motion to amend the agenda to request a discussion and a vote. If the majority supports his motion it can be added to agenda. In the alternative, if Commissioners desire to proceed by notational vote and no one objects then a notational vote can occur. As I

AMERICAN OVERSIGHT

have requested previously, please advise me how you wish to proceed. I recommend Commissioners express their desire to the Chair since the Chair controls the agenda.

Sent from my iPhone

> On Aug 18, 2021, at 12:57 PM, John Mashburn <jmashburn@usccr.gov> wrote:
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>
> ---
>
> **From:** Mauro Morales <mmorales@usccr.gov>
> **Date:** Tuesday, August 10, 2021 at 2:57 PM
> **To:** Commissioners <Commissioners@usccr.gov>
> **Cc:**
> "CommissionerAssistants@usccr.gov" <CommissionerAssistants@usccr.gov>, David Ganz <dganz@usccr.gov>
> **Subject:** EAC Final Selections
>
> Commissioners,
>
> Pursuant to the AI voted on during the April 30th Business meeting, I received the following names for appointment the Election Assistance Commission (EAC):
>
> Commissioners Cantu, Adegbile, Kladney and Yaki have selected for appointment to the EAC:
>
> - Cleta Michell, Chair, Conservative Partnership Institute Election Integrity Network.
>
> Commissioners Adams, Gilchrist, Heriot and Kirsanow have selected for appointment to the EAC:
>
> - Commissioner Michael Yaki;
>
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AMERICAN OVERSIGHT

meeting or by a notational vote. Thank you.

Mauro Morales
Staff Director
U.S. Commission on Civil Rights
P: 202-376-7796| F: 202-376-7672
Mmorales@usccr.gov
http://usccr.gov/
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425

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<image001.gif>
<image002.gif>

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Sent from my iPhone

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Date : 8/18/2021 5:29:16 PM
From : "Christian Adams" a@electionlawcenter.com
To : "'John Mashburn'" jmashburn@usccr.gov, "'Stephen Gilchrist'" sgilchrist@usccr.gov, "'Peter Kirsanow'" pkirsanow@usccr.gov, "'Gail Heriot'" gheriot@usccr.gov
Cc : "'Thomas Simuel'" tsimuel@usccr.gov, "'Alexander Heideman'" aheideman@usccr.gov, "'Carissa Mulder'" CMulder@usccr.gov
Subject : [EXTERNAL] RE: EAC Final Selections

CAUTION: This email is from outside USCCR.

This is unbelievable. The "process" was part of the AI we negotiated and voted on. What do you veterans read here?

From: John Mashburn <jmashburn@usccr.gov>
Sent: Wednesday, August 18, 2021 5:18 PM
To: Christian Adams <a@electionlawcenter.com>; Stephen Gilchrist <sgilchrist@usccr.gov>; Peter Kirsanow <pkirsanow@usccr.gov>; Gail Heriot <gheriot@usccr.gov>
Cc: Thomas Simuel <tsimuel@usccr.gov>; Alexander Heideman <aheideman@usccr.gov>; Carissa Mulder <CMulder@usccr.gov>
Subject: Fw: EAC Final Selections

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Please let us know if you have any further questions. We greatly appreciate your patience.

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Cc: Juana Silverio; Thomas Simuel; Alexander Heideman; Carissa Mulder
Subject: Re: EAC Final Selections

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Sent from my iPhone

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> **From:** Mauro Morales <mmorales@usccr.gov>
> **Date:** Tuesday, August 10, 2021 at 2:57 PM
> **To:** Commissioners <Commissioners@usccr.gov>
> **Cc:** "CommissionerAssistants@usccr.gov" <CommissionerAssistants@usccr.gov>, David Ganz <dganz@usccr.gov>
> **Subject:** EAC Final Selections
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AMERICAN OVERSIGHT

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- Commissioner Michael Yaki;

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Washington D.C. 20425

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<image002.gif>

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Sent from my iPhone

AMERICAN OVERSIGHT

Date : 9/16/2020 12:14:36 PM
From : "Gail Heriot" gheriot@me.com
To : "Alexander Heideman" aheideman@usccr.gov
Cc : "Christian Adams" a@electionlawcenter.com, "Carissa Mulder" CMulder@usccr.gov, "Peter Kirsanow" pkirsanow@beneschlaw.com, "stephen gilchrist" thegilchristassociates@gmail.com, "John Mashburn" jkmash@comcast.net, "Thomas Simuel" tjsimuel32@gmail.com
Subject : Re: [EXTERNAL] EAC Board of Advisors

CAUTION: This email is from outside USCCR.

If the statute says the Commission makes the appointments, I don't see how it can be that the chair makes them. My recollection of the appointments under the Reynolds years is that Abby and maybe Yaki were our delegates. If there are transcripts going back that far they may show whether the Commission voted on these appointments.

On Sep 16, 2020, at 8:51 AM, Alexander Heideman <aheideman@usccr.gov> wrote:

Maureen says:

> To my knowledge, there are not any internal rules about these appointments. The practice has been that the Chair makes the appointments. (Note though that I only have records going back to 2015 for these appointments and I do not know what the practice was before 2015). The statute (52 U.S.C. 20944(a)(10)) says "Two members appointed by the United States Commission on Civil Rights." 52 U.S.C. 20944(b) says "Appointments shall be made to the Board of Advisors under subsection (a) in a manner which ensures that the Board of Advisors will be bipartisan in nature and will reflect the various geographic regions of the United States." The terms are 2 year appointments; I believe the current USCCR appointments are Yaki and Kladney, and that their terms end 4/13/2021. I provided the above information, i.e., bipartisan and geographic scope, before the 2019 appointments, though did not provide any input beyond this. I've also attached the House report for the Help American Vote Act (establishes the advisory committees) - discussion of advisory boards is on page 33.

AMERICAN OVERSIGHT

I have a call scheduled with her at 1 pm to discuss further. Please let me know if there are any specific questions I should ask.

Alex

From: Alexander Heideman <aheideman@usccr.gov>
Date: Wednesday, September 16, 2020 at 11:02 AM
To: Christian Adams <a@electionlawcenter.com>, 'Gail Heriot' <gheriot@me.com>
Cc: Carissa Mulder <CMulder@usccr.gov>, 'Peter >, 'John Mashburn' <jkmash@comcast.net>, 'Thomas Simuel' <tjsimuel32@gmail.com>
Subject: Re: [EXTERNAL] EAC Board of Advisors

Yes, happy to.

From: Christian Adams <a@electionlawcenter.com>
Date: Wednesday, September 16, 2020 at 11:02 AM
To: 'Gail Heriot' <gheriot@me.com>
Cc: Carissa Mulder <CMulder@usccr.gov>, 'Peter >, 'John Mashburn' <jkmash@comcast.net>, 'Thomas Simuel' <tjsimuel32@gmail.com>, Alexander Heideman <aheideman@usccr.gov>
Subject: RE: [EXTERNAL] EAC Board of Advisors

> CAUTION: This email is from outside USCCR.

ple people aren't asking her different times, can the SA's get to the bottom of this with maureen.

From: Gail Heriot <gheriot@me.com>
Sent: Wednesday, September 16, 2020 10:46 AM
To: Christian Adams <a@electionlawcenter.com>
Cc: Carissa Mulder <CMulder@usccr.gov>; Peter Kirsanow <pkirsanow@beneschlaw.com>; stephen gilchrist <thegilchristassociates@gmail.com>; John Mashburn <jkmash@comcast.net>; Thomas Simuel <tjsimuel32@gmail.com>; Alexander Heideman <aheideman@usccr.gov>
Subject: Re: [EXTERNAL] EAC Board of Advisors

I don't think there are any rules. In the absence of an explicit delegation of power, the Commission as a whole has that power. But you need to be sure it wasn't done properly. I have a vague recollection of talking about this in a meeting in the last decade. The straight shooter on the staff is Maureen Rudolph. You might want to ask her.

AMERICAN OVERSIGHT

Gail Heriot
Professor of Law
University of San Diego

On Sep 15, 2020, at 2:17 PM, Christian Adams <a@electionlawcenter.com> wrote:

I don't know the rules for USCCR appointing ANYONE yet, but if there are no minutes showing a vote appointing them in regular business, it would seem that their "appointment" is void.

From: Carissa Mulder <CMulder@usccr.gov>
Sent: Tuesday, September 15, 2020 4:01 PM
To: Christian Adams <a@electionlawcenter.com>; 'Peter Kirsanow' <pkirsanow@Beneschlaw.com>; 'Gail Heriot' <gheriot@me.com>; 'stephen gilchrist' <thegilchristassociates@gmail.com>
Cc: 'John Mashburn' <jkmash@comcast.net>; 'Thomas Simuel' <tjsimuel32@gmail.com>; Alexander Heideman <aheideman@usccr.gov>
Subject: Re: [EXTERNAL] EAC Board of Advisors

Looking at the document about the appointment of the advisory board members, I think that is correct, Christian. Catherine probably appointed them without ever bringing it up.

From: Christian Adams <a@electionlawcenter.com>
Sent: Tuesday, September 15, 2020 3:55:45 PM
To: Carissa Mulder; 'Peter Kirsanow'; 'Gail Heriot'; 'stephen gilchrist'
Cc: 'John Mashburn'; 'Thomas Simuel'; Alexander Heideman
Subject: RE: [EXTERNAL] EAC Board of Advisors

CAUTION: This email is from outside USCCR.

It probably NEVER came up in a business meeting and therefore we should, as a commission have the authority to take it up in a business meeting and appoint-anew.

AMERICAN OVERSIGHT

From: Carissa Mulder <CMulder@usccr.gov>
Sent: Tuesday, September 15, 2020 3:34 PM
To: Christian Adams <a@electionlawcenter.com>; Peter Kirsanow <pkirsanow@Beneschlaw.com>; 'Gail Heriot' <gheriot@me.com>; 'stephen gilchrist' <thegilchristassociates@gmail.com>>; Alexander Heideman <aheideman@usccr.gov>
Subject: Re: [EXTERNAL] EAC Board of Advisors

Good question! I had no idea the USCCR got two designees to the EAC Board of Advisors. Here's the .

From: Christian Adams <a@electionlawcenter.com>
Sent: Tuesday, September 15, 2020 3:15:28 PM
To: Peter Kirsanow; 'Gail Heriot'; 'stephen gilchrist'
Cc: John Mashburn; 'Thomas Simuel'; Carissa Mulder; Alexander Heideman
Subject: [EXTERNAL] EAC Board of Advisors

> CAUTION: This email is from outside USCCR.

AC commission saying that Yaki is acting absurdly and exercising power over the EAC by threatening the Pelosi pick on the EAC with removal if he doesn't do what he wants, effectively making Yaki a commissioner on the EAC on many issues. He is causing mischief I don't even detail here.

My question is how does he get UNDONE from the EAC oversight commission? How does that get revoked and replaced?

<Help America Vote Act House Report 107_329[1].pdf>

AMERICAN OVERSIGHT

Date : 8/18/2021 5:24:36 PM
From : "Gail Heriot" gheriot@usccr.gov
To : "John Mashburn" jmashburn@usccr.gov
Cc : "Christian Adams" a@electionlawcenter.com, "Stephen Gilchrist" sgilchrist@usccr.gov, "Peter Kirsanow" pkirsanow@usccr.gov, "Thomas Simuel" tsimuel@usccr.gov, "Alexander Heideman" aheideman@usccr.gov, "Carissa Mulder" CMulder@usccr.gov
Subject : Re: EAC Final Selections

Hmm … not a good sign.

Gail Heriot
Professor of Law
University of San Diego

On Aug 18, 2021, at 2:17 PM, John Mashburn <jmashburn@usccr.gov> wrote:

FYI to all

From: Juana Silverio
Sent: Wednesday, August 18, 2021 5:13:04 PM
To: Mauro Morales; John Mashburn
Cc: Thomas Simuel; Alexander Heideman; Carissa Mulder; Norma Cantu
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AMERICAN OVERSIGHT

From: Mauro Morales
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To: John Mashburn
Cc: Juana Silverio; Thomas Simuel; Alexander Heideman; Carissa Mulder
Subject: Re: EAC Final Selections

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Sent from my iPhone

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>
> ---
>
> **From:** Mauro Morales <mmorales@usccr.gov>
> **Date:** Tuesday, August 10, 2021 at 2:57 PM
> **To:** Commissioners <Commissioners@usccr.gov>
> **Cc:**
> "CommissionerAssistants@usccr.gov" <CommissionerAssistants@usccr.gov>, David Ganz <dganz@usccr.gov>
> **Subject:** EAC Final Selections
>
> Commissioners,
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AMERICAN OVERSIGHT

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Washington D.C. 20425

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<image002.gif>

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Sent from my iPhone

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Date : 8/19/2021 11:26:04 AM
From : "John Mashburn" jmashburn@usccr.gov
To : "Christian Adams" a@electionlawcenter.com, "Stephen Gilchrist" sgilchrist@usccr.gov, "Gail Heriot" gheriot@usccr.gov, "Peter Kirsanow" pkirsanow@usccr.gov
Cc : "Thomas Simuel" tsimuel@usccr.gov, "Alexander Heideman" aheideman@usccr.gov, "Carissa Mulder" CMulder@usccr.gov
Subject : Fw: EAC Final Selections--not by notational vote

FYI- Cantu "welcomes" a motion for a vote on EAC nominations

From: Norma Cantu
Sent: Thursday, August 19, 2021 11:15:35 AM
To: Juana Silverio; Mauro Morales; John Mashburn; Irena Vidulovic; Mauro Morales
Cc: Thomas Simuel; Alexander Heideman; Carissa Mulder
Subject: RE: EAC Final Selections--not by notational vote

Dear John, Juana, and others,
I have already heard on Tuesday an objection from a Commissioner regarding using the notational vote to address the confirming of the EAC candidates. The concern, I understand, is that more discussion is needed on important items, such as length of term, duties to report back to USCCR, etc.
Since one objection stops the notational process, it will take a vote at a meeting to confirm.
I would welcome it if Commissioner Adams or others wish to make a motion at the meeting to add this item to the agenda.
Norma

From: Juana Silverio <jsilverio@usccr.gov>
Sent: Wednesday, August 18, 2021 4:13 PM
To: Mauro Morales <mmorales@usccr.gov>; John Mashburn <jmashburn@usccr.gov>
Cc: Thomas Simuel <tsimuel@usccr.gov>; Alexander Heideman <aheideman@usccr.gov>; Carissa Mulder <CMulder@usccr.gov>; Norma Cantu <ncantu@usccr.gov>
Subject: Re: EAC Final Selections

Thanks John. You are correct, the item is not on the agenda for Friday.

There were a few concerns raised on process before confirming the candidates to the EAC on behalf of the Commission. Please stand by snd advise your commissioners that further communication is forthcoming by the Chairwoman.

Please let us know if you have any further questions. We greatly appreciate your patience.

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Juana Silverio (she/her/ella)
Special Assistant to Commissioner Norma V. Cantú
U.S. Commission on Civil Rights
E: jsilverio@usccr.gov
http://usccr.gov/

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Washington D.C. 20425
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From: Mauro Morales
Sent: Wednesday, August 18, 2021 4:41:49 PM
To: John Mashburn
Cc: Juana Silverio; Thomas Simuel; Alexander Heideman; Carissa Mulder
Subject: Re: EAC Final Selections

That is a good question. It is a decision for Commissioners in consultation with the Chair to decide how they wish to proceed. Adams is welcome to make a motion to amend the agenda to request a discussion and a vote. If the majority supports his motion it can be added to agenda. In the alternative, if Commissioners desire to proceed by notational vote and no one objects then a notational vote can occur. As I have requested previously, please advise me how you wish to proceed. I recommend Commissioners express their desire to the Chair since the Chair controls the agenda.

Sent from my iPhone

> On Aug 18, 2021, at 12:57 PM, John Mashburn <jmashburn@usccr.gov> wrote:
>
> This vote is not on the agenda for Friday, and a notational vote was not sent, so where does it stand? Gilchrist and Adams would like a vote at the business meeting and Adams is willing to make a motion to vote on it.
>
> ---
>
> **From:** Mauro Morales <mmorales@usccr.gov>
> **Date:** Tuesday, August 10, 2021 at 2:57 PM
> **To:** Commissioners <Commissioners@usccr.gov>
> **Cc:**
> "CommissionerAssistants@usccr.gov" <CommissionerAssistants@usccr.gov>, David Ganz <dganz@usccr.gov>
> **Subject:** EAC Final Selections
>
> Commissioners,
>
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>
> Commissioners Cantu, Adegbile, Kladney and Yaki have selected for appointment to the EAC:

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- Commissioner Michael Yaki;

Under the AI adopted by Commissioners, these two members selected shall be placed in nomination and ratified by a majority vote. Please inform me how you would like to proceed for a majority vote either by placing it on the agenda for the next USCCR business meeting or by a notational vote. Thank you.

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U.S. Commission on Civil Rights
P: 202-376-7796| F: 202-376-7672
Mmorales@usccr.gov
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Washington D.C. 20425

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Date : 8/19/2021 11:32:46 AM
From : "John Mashburn" jmashburn@usccr.gov
To : "Christian Adams" a@electionlawcenter.com, "Stephen Gilchrist" sgilchrist@usccr.gov, "Peter Kirsanow" pkirsanow@usccr.gov, "Gail Heriot" gheriot@usccr.gov
Cc : "Thomas Simuel" tsimuel@usccr.gov, "Alexander Heideman" aheideman@usccr.gov, "Carissa Mulder" CMulder@usccr.gov
Subject : Re: [EXTERNAL] RE: EAC Final Selections

See email I just sent from my USCCR account. Cantu says she would welcome a motion to add EAC vote to tomorrow's agenda

---

From: Christian Adams <a@electionlawcenter.com>
Sent: Wednesday, August 18, 2021 5:29:14 PM
To: John Mashburn; Stephen Gilchrist; Peter Kirsanow; Gail Heriot
Cc: Thomas Simuel; Alexander Heideman; Carissa Mulder
Subject: [EXTERNAL] RE: EAC Final Selections

> CAUTION: This email is from outside USCCR.

This is unbelievable. The "process" was part of the AI we negotiated and voted on. What do you veterans read here?

From: John Mashburn <jmashburn@usccr.gov>
Sent: Wednesday, August 18, 2021 5:18 PM
To: Christian Adams <a@electionlawcenter.com>; Stephen Gilchrist <sgilchrist@usccr.gov>; Peter Kirsanow <pkirsanow@usccr.gov>; Gail Heriot <gheriot@usccr.gov>
Cc: Thomas Simuel <tsimuel@usccr.gov>; Alexander Heideman <aheideman@usccr.gov>; Carissa Mulder <CMulder@usccr.gov>
Subject: Fw: EAC Final Selections

FYI to all

From: Juana Silverio
Sent: Wednesday, August 18, 2021 5:13:04 PM
To: Mauro Morales; John Mashburn
Cc: Thomas Simuel; Alexander Heideman; Carissa Mulder; Norma Cantu
Subject: Re: EAC Final Selections

Thanks John. You are correct, the item is not on the agenda for Friday.

There were a few concerns raised on process before confirming the candidates to the EAC on behalf of the Commission. Please stand by snd advise your commissioners that further communication is forthcoming by the Chairwoman.

Please let us know if you have any further questions. We greatly appreciate your patience.

Juana

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From: Mauro Morales
Sent: Wednesday, August 18, 2021 4:41:49 PM
To: John Mashburn
Cc: Juana Silverio; Thomas Simuel; Alexander Heideman; Carissa Mulder
Subject: Re: EAC Final Selections

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Sent from my iPhone

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> **Cc:**
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> **Subject:** EAC Final Selections
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Date : 8/19/2021 12:48:33 PM
From : "John Mashburn" jmashburn@usccr.gov
To : "Christian Adams" a@electionlawcenter.com, "Stephen Gilchrist" sgilchrist@usccr.gov, "Gail Heriot" gheriot@usccr.gov, "Peter Kirsanow" pkirsanow@usccr.gov
Cc : "Thomas Simuel" tsimuel@usccr.gov, "Alexander Heideman" aheideman@usccr.gov, "Carissa Mulder" CMulder@usccr.gov
Subject : Re: EAC Final Selections Info
Attachment : Commission Telphonic Meeting Transcript 04.30.2021 UNEDITED.docx;

EAC Transcript re: MOU: Attached is the transcript of the April 30, 2021 Bus Mtg where the EAC nominations "Memorandum of Understanding" (not an AI) on the USCCR's nominations and appointments to the Board of Advisors for the EAC was approved on pages 8-9 (*which I have highlighted in yellow*) – in case the specifics of what was approved come up at tomorrow's bus mtg. The transcript is hard to track down on the USCCR website, but Alex fortunately had a copy of it already.

Motion: to add the EAC appointments to the bus meeting agenda tomorrow:

> "I move that a vote on the USCCR's appointments to the Board of Advisors for the Election Assistance Commission be added to the agenda."

From: John Mashburn <jmashburn@usccr.gov>
Date: Thursday, August 19, 2021 at 11:26 AM
To: Christian Adams <a@electionlawcenter.com>, Stephen Gilchrist <sgilchrist@usccr.gov>, Gail Heriot <gheriot@usccr.gov>, Peter Kirsanow <pkirsanow@usccr.gov>
Cc: Thomas Simuel <tsimuel@usccr.gov>, Alexander Heideman <aheideman@usccr.gov>, Carissa Mulder <CMulder@usccr.gov>
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David Ganz <dganz@usccr.gov>
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U.S. COMMISSION ON CIVIL RIGHTS

+ + + + + **UNEDITED**

TELEPHONIC SPECIAL BUSINESS MEETING

+ + + + +

FRIDAY, 30, 2021

+ + + + +

The Commission convened via teleconference, at 2:00 p.m. EDT, Peter Kirsanow and Michael Yaki, Co-Hosts, then Norma Cantu, Chair, presiding.

AMERICAN OVERSIGHT

PRESENT:

J. CHRISTIAN ADAMS, Commissioner

DEBO P. ADEGBILE, Commissioner

NORMA CANTU, Commissioner

GAIL HERIOT, Commissioner

STEPHEN GILCHRIST, Commissioner

PETER N. KIRSANOW, Commissioner

DAVID KLADNEY, Commissioner

MICHAEL YAKI, Commissioner

MAURO MORALES, Staff Director

DAVID GANZ, General Counsel

STAFF PRESENT:

PAMELA DUNSTON, Chief ASCD

TINALOUISE MARTIN, Director, OM

DAVID MUSSATT, Director, RPCU

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COMMISSIONER ASSISTANTS PRESENT:

ALEC DEULL

ALEXANDER HEIDEMAN

JOHN K. MASHBURN

CARISSA MULDER

AMY ROYCE

THOMAS SIMUEL

IRENA VIDULOVIC

JUANA SILVERIO

AMERICAN OVERSIGHT

A G E N D A

I. Omnibus Motion to Approve Commissioner Norma Cantu to Serve as USCCR Chair and to approve three Administrative Instructions 6

II. Approval of Agenda 16

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IV. Business meeting 37

V. Adjourn Meeting 52

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P R O C E E D I N G S

2:02 p.m.

OPERATOR: Good day and welcome to the Commission business meeting.

Today's conference is being recorded.

At this time, I would like to turn the conference over to Co-Hosts Commissioner Michael Yaki and Commissioner Peter Kirsanow. Please go ahead.

COMMISSIONER KIRSANOW: Thanks very much.

This is a meeting of the U.S. Commission on Civil Rights, and it is currently 2:02 p.m. Eastern Daylight Time, and the meeting is taking place over the phone.

I'm Commissioner Kirsanow. I'll be co-chairing the meeting with Commissioner Michael Yaki.

I'll now call the roll.

Commissioner Adams, are you present?

COMMISSIONER ADAMS: Present.

COMMISSIONER KIRSANOW: Commissioner Adegbile?

COMMISSIONER ADEGBILE: Present.

COMMISSIONER KIRSANOW: Commissioner Cantu?

COMMISSIONER CANTU: Present.

COMMISSIONER KIRSANOW: Commissioner

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Gilchrist?

COMMISSIONER GILCHRIST: Present.

COMMISSIONER KIRSANOW: Commissioner Heriot?

COMMISSIONER HERIOT: I'm here.

COMMISSIONER KIRSANOW: Commissioner Kladney?

COMMISSIONER KLADNEY: Here.

COMMISSIONER KIRSANOW: Commissioner Yaki?

COMMISSIONER YAKI: Here.

COMMISSIONER KIRSANOW: And Kirsanow is also present, and a quorum of the Commissioners is present.

Do we have a court reporter?

COURT REPORTER: Yes.

COMMISSIONER KIRSANOW: And the Staff Director. Mauro, present?

MR. MORALES: I am present.

COMMISSIONER KIRSANOW: Thank you.

All right. The meeting of the Civil Rights Commission will come to order.

I. OMNIBUS MOTION TO APPROVE COMMISSIONER NORMA CANTU TO SERVE AS CHAIR AND TO APPROVE THREE ADMINISTRATIVE INSTRUCTIONS

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COMMISSIONER KIRSANOW: And the first item on the agenda is an omnibus motion to confirm Commissioner Norma Cantu as the Chair, as well as making certain changes to the Commission's procedures.

I.D. TO APPROVE COMMISSIONER NORMA CANTU TO SERVE AS USCCR CHAIR

COMMISSIONER KIRSANOW: During our April 16th meeting, Commissioner Cantu confirmed that, if confirmed as Chair, she'll discontinue the Speaker Series that was in place for a while under the previous Chair, and that Commissioner Cantu will always vote to maintain the Commission's tradition of 30 days for Commissioners' statements, 30 days for rebuttals, and, if necessary, 10 days for surrebuttals. So, we don't need to revisit that today.

Therefore, I move, along with Co-Chair Commissioner Yaki, that the Commission confirm Norma Cantu as Chair; that the Commission adopt a Memorandum of Understanding regarding the appointment of members to the U.S. Election Assistance Commission Board of Advisors, and that the Commission adopt revisions to Administrative Instruction 1.

I'll read these into the record. Be

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patient. This will take a couple of minutes.

I.A. ADMINISTRATIVE INSTRUCTION REGARDING APPOINTMENTS BY THE COMMISSION

COMMISSIONER KIRSANOW: First, the Memorandum of Understanding regarding the appointment of members to the EAC Board of Advisors, Section 1.01, reads:

"Any authority not specifically granted the Commission on Civil Rights by statute or regulation or Executive Order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, et cetera, shall be exercised by the Commission as a whole by majority vote."

Paragraph .02. "Any authority specifically granted the Staff Director of the Commission on Civil Rights by statute or regulation or Executive Order to appoint members to serve on other federal entities such as advisory boards, tasks forces, other commissions, et cetera, shall be exercised by the Staff Director."

Paragraph .03. "Any authority specifically granted the Chair of the Commission on Civil Rights by statute or regulation or Executive Order to appoint members to serve on other federal

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entities such as advisory boards, task forces, other commissions, et cetera, shall be exercised by the Chair."

"Section 2.02(1). For the two appointments to the U.S. Election Assistance Commission, the members appointed by Democratic appointees shall nominate two individuals who are ready, willing, and able to serve, and the members appointed by the Republican authorities shall nominate two individuals who are ready, willing, and able to serve."

Subparagraph (2). "The members appointed by the Democratic authorities shall select one of the two individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one of the two individuals nominated by the members appointed by the Democratic authorities."

Subparagraph (3). "The members selected shall be placed in nomination and ratified in conformance with Section 1."

I.B. ADMINISTRATIVE INSTRUCTION ON INTERVIEWS WITH EXTERNAL FACT WITNESSES

COMMISSIONER KIRSANOW: Next, I'll read into the record the new section of AI 1 regarding

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witness interviews by staff. The Staff Director shall ensure that this provision is codified in the appropriate place of AI 1, and it reads as follows:

"As the staff persons arrange for interviews of external fact witnesses or experts for the purpose of informing writing of reports, et cetera, the Commissioners will be given notice of the names and titles of proposed witnesses, so that the Commissioners and their Special Assistants can observe the interview firsthand. The observations will help the Commissioners better understand the subject matters covered, and enable the Commissioner to conduct and follow up with questions of the witnesses. If more than one Commissioner (or Commissioner's Special Assistant) representing Democratic or Republican appointing authorities wishes to attend, the Staff Director may limit attendance to one representative from each (provided circumstances clearly warrant such a limit)."

I.C. ADMINISTRATIVE INSTRUCTION ON WITNESSES AT HEARINGS AND BRIEFINGS

COMMISSIONER KIRSANOW: Finally, I'll read into the record the revisions to AI 1.6, and that one reads:

"Section 11. Commission Hearings.

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".01 The OGC is responsible for preparing and holding Commission hearings. This includes ensuring that the witnesses, when viewed as a whole, possess sufficient policy, legal, academic, advocacy, and other knowledge and experience necessary for a full and balanced inquiry into the issues."

Paragraph .02. "To document that hearing witnesses reflected varied and opposing views, opinions, and perspectives, OSD completes Section III of the National Office Report Checklist for Hearing Reports form. By completing this form, OSD certifies that the hearing included a numerical balance of witnesses between opposing views, opinions and perspectives or that a numerical balance could not be achieved or was not appropriate in light of the subject of the hearing and/or the availability of credible witnesses. Section IV is completed by the Staff Director before the proposed final draft report and checklist are provided to the external reviewer."

Paragraph .03. "Staff is encouraged to use various sources to gather suggestions for appropriate hearing witnesses. Commissioners are the primary source of suggestions for hearing witnesses. Additional sources may include, but are not limited

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to, other program offices, regional directors, and appropriate external groups. If two Commissioners request that staff invite a particular witness, staff must invite that witness. No Commissioner may act jointly to invite more than two witnesses, which results in no more than 8 witnesses shall be required to be invited by staff by action of the Commission. Thereafter, a Commissioner or Commissioners may suggest as many witnesses as they deem advisable, but staff is not obligated to invite them, and staff may consult additional sources to invite additional witnesses for hearings."

Paragraph .04. We're almost there. That's not part of the AI. "OGC prepares hearing proposals, design or implementation plans, and briefing or background books. When preparing hearing proposals this office shall demonstrate a consideration of varied and opposing views, opinions, and perspectives. This office also verifies the accuracy of transcripts, drafts hearing reports, and maintains official hearing records."

Paragraph .05. "OGC is responsible for supplying a complete and correct transcript with appropriate exhibits to OSD and ASCD for publication. Hearing transcripts do not require editorial review."

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Paragraph .06. "The hearing record will be kept open for a period of 30 days after the hearing or as otherwise established by a majority vote of the Commissioners. Any material or information placed in the record during this period will be available to the Commissioners upon request."

Paragraph "Section 12. Commission Briefings."

Subparagraph .01. "Briefings are used by the Commission to provide Commissioners and the general public insight into civil rights without the formality of a hearing. Any program office may be assigned responsibility for conducting a briefing by the Staff Director."

Paragraph .02. "Staff is encouraged to use various sources to gather suggestions for appropriate briefing witnesses. Commissioners are the primary source of suggestions for briefing witnesses. Additional sources may include, but are not limited to, other program offices, regional directors, and appropriate external groups. If two Commissioners jointly request that staff invite a particular witness, staff must invite that witness. No Commissioner may act jointly to invite more than two witnesses, which results in no more than 8

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".03 Commissioners are provided a proposed final list of briefing presenters for approval. To document that the briefing witnesses reflected varied and opposing views, opinions, and perspectives, OSD completes Section III of the National Office Report Checklist for Briefing Reports form. By completing this part of the form, OSD certifies that the briefing included a numerical balance of witnesses between opposing views, opinions and perspectives or that a numerical balance could not be achieved or was not appropriate in light of the subject of the briefing and/or the availability of credible witnesses. Section IV of this form is completed by the Staff Director before the proposed final draft report and checklist is provided to the external reviewer."

Finally, ".04 The briefing record will be kept open for a period of 30 days after the briefing or as otherwise established by a majority

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vote of the Commissioners. Any material or information placed in the record during this period will be available to the Commissioners upon request."

Kirsanow now pauses for a drink of vodka.

(Laughter.)

And that's the motion. Is there a second?

COMMISSIONER ADAMS: Yes, second. Adams.

COMMISSIONER KIRSANOW: Okay. The floor is open for discussion, and I turn it over to Commissioner Yaki.

COMMISSIONER YAKI: Thank you very much, Co-Chair Kirsanow.

First, I have a point of clarification. You had indicated that the first document that you read, which was on the appointments issue, was a Memorandum of Understanding, but I actually believe that is an Administrative Instruction. Is that not correct?

COMMISSIONER KIRSANOW: Yes, that's right.

COMMISSIONER YAKI: Yes. Okay. So, I wanted to clarify that for the record.

COMMISSIONER KIRSANOW: Thank you.

COMMISSIONER YAKI: Secondly, for those

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of you who were listening, the last document that Commissioner Kirsanow read, Section 11.01, Section 11.03, Section 12.02 were the only sections of that entire document that were amended. The rest remain intact as current Commission policy. I just wanted to clarify that for people who were listening in.

So, there has been a motion and a second. I am first going to do a little parliamentary moving, which is I think we need to first move to accept, approve and amend the agenda.

II. APPROVAL OF AGENDA

COMMISSIONER YAKI: So, I am going to set aside the first motion for the time being and first ask, is there a motion to approve the agenda?

COMMISSIONER ADAMS: So moved. So moved. Adams.

COMMISSIONER YAKI: Commissioner Adams moves to approve the agenda. Is there a second?

COMMISSIONER GILCHRIST: Second. Gilchrist.

COMMISSIONER YAKI: Second by Commissioner Gilchrist.

On the motion to approve the agenda -- we still have time to amend the agenda -- but on the motion to approve the agenda, so we have this before

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us, is there any discussion?

COMMISSIONER HERIOT: Wait. I thought you had to do amendments first?

COMMISSIONER YAKI: No. Well, I would rather have the agenda approved first, and then, amend the agenda. And then, we'd move on the agenda as approved.

COMMISSIONER HERIOT: I don't think that's the right way to do that.

COMMISSIONER YAKI: Well, that may be, but I'm going to put the extra vote in, just to make sure that no one can argue that we didn't follow strict rules.

So, on the order to approve the agenda now, I'm going to call the roll.

Commissioner Kirsanow, since you have the roll sheet, could you call the roll?

COMMISSIONER KIRSANOW: Sure.

Commissioner Adams?

COMMISSIONER ADAMS: Yes.

COMMISSIONER KIRSANOW: Commissioner Adegbile?

COMMISSIONER ADEGBILE: Aye.

COMMISSIONER KIRSANOW: Commissioner Cantu?

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COMMISSIONER CANTU: Yes.

COMMISSIONER KIRSANOW: Commissioner Gilchrist?

COMMISSIONER GILCHRIST: Aye.

COMMISSIONER KIRSANOW: Commissioner Heriot?

COMMISSIONER HERIOT: No.

COMMISSIONER KIRSANOW: Commissioner Kladney?

COMMISSIONER KLADNEY: Yes.

COMMISSIONER KIRSANOW: Commissioner Yaki?

COMMISSIONER YAKI: Aye.

COMMISSIONER KIRSANOW: And this is Kirsanow. I say "yes," also.

COMMISSIONER YAKI: Thank you.

There are 8 ayes, no objections.

The agenda is now before us. Is there a motion to approve, to amend the agenda --

COMMISSIONER KIRSANOW: I believe, Commissioner Yaki, I think there were 7 ayes and 1 nay.

COMMISSIONER YAKI: Oh, 1 nay. I'm sorry. 7 ayes, 7 yeses; 1 no.

Okay. Now we will take before us the

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motion to amend the agenda to put forth an omnibus motion that will approve both Commissioner, that will approve Commissioner Cantu as Chair of the United States Commission on Civil Rights, as well as approve the three Administrative Instructions that were read into the record by Commissioner Kirsanow.

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COMMISSIONER YAKI: It has been moved, it has been seconded, moved by Commissioner Kirsanow, seconded by Commissioner Adams.

Is there any discussion?

COMMISSIONER ADEGBILE: Commissioner Adegbile.

COMMISSIONER YAKI: Commissioner Adegbile, the floor is yours.

COMMISSIONER ADEGBILE: Yes, I would have preferred that we move item by item and not have these things as an omnibus because there may be pieces that are acceptable and pieces that are unacceptable; and thus, it makes it hard to parse those things out. Because we're proceeding in omnibus fashion, it will affect my vote, though, obviously, I support Commissioner Cantu in her effort to chair our Commission in service of the people of the United States. But the omnibus motion will have impact on

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the way I will be voting.

COMMISSIONER YAKI: Thank you, Commissioner Adegbile.

Is there any further discussion?

COMMISSIONER KLADNEY: Dave Kladney.

COMMISSIONER YAKI: Commissioner Kladney?

COMMISSIONER KLADNEY: I concur with Commissioner Adegbile's assessment here, and this omnibus motion will affect my vote the same way. Thank you.

COMMISSIONER YAKI: Thank you, Commissioner Kladney.

If you can hang on just one second?

Is there any further discussion?

MR. MORALES: Staff Director Mauro Morales requests permission to address the Commissioners.

COMMISSIONER YAKI: Without objection, I will recognize Staff Director Morales.

MR. MORALES: Thank you, Commissioner. I appreciate the time.

I wanted to let you know that, and all the Commissioners know, that I and the Executive Committee have no opinion on the AI or the MOU about

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appointments to external commissions that the Commissioners are considering.

I will say that the Staff Director and the Executive Committee believe the proposed AIs concerning OCR witness selection and witness interviews -- I believe they're designated as AI 1 and AI 1.6 -- inappropriately conflict with existing Administrative Instructions and Commission regulations. Furthermore, we believe that they unreasonably create programmatic and operations problems for the Commission.

Commissioners provided no evidence, justification, or rationale for the necessity and the creation of these two AIs. As a consequence, the Staff Director and the Executive Committee respectfully object to them and recommend that these AIs be withdrawn from further consideration.

We thank you for your time and your consideration. Thank you.

COMMISSIONER YAKI: Thank you very much.

COMMISSIONER KLADNEY: Commissioner Yaki?

COMMISSIONER YAKI: Just one second. I just trying to get my phone back into where it should be.

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Thank you, Staff Director Morales.

Commissioner Kladney, were you speaking?

COMMISSIONER KLADNEY: Yes, Commissioner Yaki.

I would like to move to sever the items into individual votes.

COMMISSIONER YAKI: Thank you.

The motion to sever is a privileged motion and is not debatable or subject to a vote. So, we will have to take an individual vote on each one of these items.

However, in the discretion of the Co-Chair, I'm going to take them up in the order that I deem.

So, I'm going to first start with the AI on the Administrative Instruction regarding appointments by the Commission. That individual Instruction is before us.

And, Commissioner Kirsanow, would you please call the roll?

COMMISSIONER KIRSANOW: I'm sorry, are we voting on individual -- I'm lost as to what we're voting on right now. Are we voting on a separate issue or the omnibus?

COMMISSIONER YAKI: Well, the issue is

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that each of these items are individual items. They are put together as an omnibus. However, a Commissioner -- because they were originally noticed as individual items on the agenda, and the motion that you put and seconded and was put on the agenda was to combine them all into a single motion, a motion to sever, under Robert's Rules, is a privileged motion that is non-debatable and is -- well, it's self-executing. The Commission has actually done that before on previous occasions.

What I'm going to do, though, is call on AIs --

COMMISSIONER HERIOT: No, it's not self-executing.

COMMISSIONER YAKI: It is self-executing.

COMMISSIONER HERIOT: No, it's not.

COMMISSIONER YAKI: And if you would listen to me for a second, I am going to call the AIs first prior to the vote for Commissioner Cantu as Chair.

COMMISSIONER HERIOT: Okay.

COMMISSIONER YAKI: Okay?

COMMISSIONER HERIOT: But it's not self-executing. It's non-debatable. Nothing is self-executing. But --

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COMMISSIONER YAKI: But a motion to sever actually --

COMMISSIONER HERIOT: -- it's out of order, but that's okay with me.

COMMISSIONER YAKI: Okay. But I will tell you, under Robert's Rules, which is something I know you care about, a motion to sever is self-executing.

COMMISSIONER HERIOT: But it's not a motion, and that's --

COMMISSIONER YAKI: It is a motion to sever.

Anyway, that being the case --

COMMISSIONER HERIOT: Well, hold on. Hold on. Hold on. Okay. Are you saying that we are voting on the motion to sever --

COMMISSIONER YAKI: No.

COMMISSIONER HERIOT: -- or are you saying we are voting on the AI?

COMMISSIONER YAKI: We are voting on the AIs. And then, we will proceed to a vote on Commissioner Cantu, because the motion to sever is not something that is subject to a vote. I guess you would call it a request to sever, but it is one that, under Robert's Rules, is --

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COMMISSIONER HERIOT: No.

COMMISSIONER YAKI: -- is a privilege of --

COMMISSIONER HERIOT: I'm willing to let this go right now, but no.

COMMISSIONER YAKI: Okay. Well, I would disagree, and we can look it up, since you love Robert's Rules so much.

So, Commissioner --

COMMISSIONER ADAMS: Co-Chair Yaki, point of parliamentary inquiry. It's Commissioner Adams.

COMMISSIONER YAKI: Yes, Commissioner Adams.

COMMISSIONER ADAMS: Could you, for the record, tell us, because I can't find it, where is the request to sever in Robert's Rules?

COMMISSIONER YAKI: Okay.

COMMISSIONER HERIOT: Because if we do this in the order you're saying, let's just go.

COMMISSIONER ADAMS: Well, it's a point of parliamentary inquiry. I made a point of parliamentary inquiry, and I'm just asking, what is the number of Robert's Rules? Just help me find it. I can't find it.

COMMISSIONER YAKI: I'll find it, but

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I'll find it later.

As the Chair, I'm exercise my call.

So, Commissioner Kirsanow, on Administrative Instruction, Commissioner Kirsanow, would you please call the roll?

I.A. ADMINISTRATIVE INSTRUCTION REGARDING APPOINTMENTS BY THE COMMISSION

COMMISSIONER KIRSANOW: Commissioner Adams, how do you vote?

COMMISSIONER ADAMS: Yes.

COMMISSIONER KIRSANOW: Commissioner Adegbile?

COMMISSIONER ADEGBILE: No.

COMMISSIONER KIRSANOW: Commissioner Cantu?

COMMISSIONER CANTU: Yes.

COMMISSIONER KIRSANOW: Commissioner Gilchrist?

COMMISSIONER GILCHRIST: Yes.

COMMISSIONER KIRSANOW: Commissioner Heriot?

COMMISSIONER HERIOT: Yes.

COMMISSIONER KIRSANOW: Commissioner Kladney?

COMMISSIONER KLADNEY: No.

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COMMISSIONER KIRSANOW: Commissioner Yaki?

COMMISSIONER YAKI: Aye.

COMMISSIONER KIRSANOW: And I vote aye.

It is 6-to-2 aye.

COMMISSIONER YAKI: Thank you.

The Administrative Instruction on Commission appointments is passed.

Next, we will hear or we will have a vote on the Administrative Instruction on -- sorry, I have to put these all in order -- on the proposed AI on interviews with external fact witnesses. That was read into the record by Commissioner Kirsanow.

I.B. ADMINISTRATIVE INSTRUCTION ON INTERVIEWS WITH EXTERNAL FACT WITNESSES

COMMISSIONER YAKI: Would you please call the roll?

COMMISSIONER KIRSANOW: Commissioner Adams?

COMMISSIONER ADAMS: Yes.

COMMISSIONER KIRSANOW: Commissioner Adegbile?

COMMISSIONER ADEGBILE: Nay.

COMMISSIONER KIRSANOW: Commissioner Cantu?

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COMMISSIONER CANTU: Yes.

COMMISSIONER KIRSANOW: Commissioner Gilchrist?

COMMISSIONER GILCHRIST: Yes.

COMMISSIONER KIRSANOW: Commissioner Heriot?

COMMISSIONER HERIOT: Yes.

COMMISSIONER KIRSANOW: Commissioner Kladney?

COMMISSIONER KLADNEY: No.

COMMISSIONER KIRSANOW: Commissioner Yaki?

COMMISSIONER YAKI: Aye.

COMMISSIONER KIRSANOW: And I vote yes.

The motion passes 6-to-2.

COMMISSIONER YAKI: The motion on the Administrative Instruction on interviewing external fact witnesses passes 6-to-2.

We will now move to the last Administrative Instruction on witnesses at hearings and briefings, as read by Commissioner Kirsanow.

I.C. ADMINISTRATIVE INSTRUCTION ON WITNESSES AT HEARING AND BRIEFINGS

COMMISSIONER YAKI: Would you please call the roll?

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COMMISSIONER KIRSANOW: Commissioner Adams?

COMMISSIONER ADAMS: Yes.

COMMISSIONER KIRSANOW: Commissioner Adegbile?

COMMISSIONER ADEGBILE: Nay.

COMMISSIONER KIRSANOW: Commissioner Cantu?

COMMISSIONER CANTU: Yes.

COMMISSIONER KIRSANOW: Commissioner Gilchrist?

COMMISSIONER GILCHRIST: Yes.

COMMISSIONER KIRSANOW: Commissioner Heriot?

COMMISSIONER HERIOT: Yes.

COMMISSIONER KIRSANOW: Commissioner Kladney?

COMMISSIONER KLADNEY: No.

COMMISSIONER KIRSANOW: Commissioner Yaki?

COMMISSIONER YAKI: Aye.

COMMISSIONER KIRSANOW: And Kirsanow votes yes.

Passes 6-to-2.

COMMISSIONER YAKI: The Administrative

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Instruction on witnesses for briefings and hearings is hereby passed.

Finally, we come to the motion to confirm Commissioner Norma Cantu as Chair of the United States Commission on Civil Rights.

I.D. TO APPROVE COMMISSIONER NORMA CANTU TO SERVE AS USCCR CHAIR

COMMISSIONER YAKI: Commissioner Kirsanow, would you please call the roll in our last actions as Co-Chairs of the Commission?

COMMISSIONER KIRSANOW: Okay.

Commissioner Adams?

COMMISSIONER ADAMS: Yes.

COMMISSIONER KIRSANOW: Commissioner Adegbile?

COMMISSIONER ADEGBILE: Aye.

COMMISSIONER KIRSANOW: Commissioner Cantu?

COMMISSIONER CANTU: Yes.

COMMISSIONER KIRSANOW: Commissioner Gilchrist?

COMMISSIONER GILCHRIST: Yes.

COMMISSIONER KIRSANOW: Commissioner Heriot?

COMMISSIONER HERIOT: Yes.

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COMMISSIONER KIRSANOW: Commissioner Kladney?

COMMISSIONER KLADNEY: Yes.

COMMISSIONER KIRSANOW: Commissioner Yaki?

COMMISSIONER YAKI: Aye.

COMMISSIONER KIRSANOW: And I vote yes.

The motion passes 8-to-0.

And, Chairperson Cantu, congratulations. We'll pass the scepter to you.

(Applause.)

CHAIR CANTU: Thank you very much.

COMMISSIONER YAKI: Congratulations.

CHAIR CANTU: Thank you.

I really want to thank the White House, the U.S. Congress, the U.S. Senate, the Commissioners, those of you we call the "Group of Four" who were able to look very seriously at these matters of process. And I know that the result is one that will ultimately adhere. And we did work hard together to get to this place.

I also want to thank the Special Assistants, the staff who set up this call, all our staff, and your families who spared you all, so that we could get the Commission's work done.

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For those of you who are listening, this is what it looks like to be respectful. This is what it looks like to show that we can disagree, but do it in a very professional way. And I want to thank everyone on this call for providing this teachable moment for our audience.

We have an agenda that's been amended in terms of handling the first item. As a matter of procedure, I want to circle back to all the Commissioners.

III. AMENDMENTS TO THE AGENDA

CHAIR CANTU: Are there other items on the agenda that you need addressed today?

(No response.)

Hearing none, I would ask that --

COMMISSIONER YAKI: Wait. I'm sorry, I was on mute. I was on mute, Commissioner Cantu.

CHAIR CANTU: Okay. I hear you. I hear you. Please. That is why I offered -- this is my listening, and next time I will listen longer.

Do we have other items on today's agenda? Commissioner Yaki?

COMMISSIONER YAKI: Commissioner Cantu, I would simply say this: there are items on the agenda that I think have been adequately noticed and

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need to be addressed. However, in the interest of deferring to some concerns by my colleagues, I would ask that, if they are not discussed today, that they be subjected to a notational vote at their earliest convenience.

For me, especially the statement on Asian American/Pacific Islander hate and the continued concerns and struggles of our community with regard to the uptick in hate crimes, bias, and prejudice, stemming from or incited by the coronavirus pandemic, is one that continues to -- I think we need to reiterate to the new Administration our concerns, and I would like this addressed at the earliest possible convenience and by a notational vote, but I defer to my colleagues who have expressed some desire to have a shorter meeting today.

CHAIR CANTU: I'm sorry, are you making a motion, Commissioner Yaki, or are you suggesting an alternative way that we handle it?

COMMISSIONER YAKI: Yes, I was simply saying that I would like it to be moved on today. And so, I would like to move it. But if there is no second because of concerns of time, then I would simply ask the Chair, at her discretion, to put it on for a notational ballot approval at her earliest

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convenience.

I will formally move to take from the agenda Item III.B., the statement on Asian American hate, and ask for it to be approved today. If not, then it be brought up at the earliest convenience by the Chair for a notational vote.

CHAIR CANTU: We're discussing amending today's agenda. So, we have a motion to discuss today the Asian American statement.

COMMISSIONER KLADNEY: Kladney seconds. Kladney seconds.

CHAIR CANTU: Discussion?

COMMISSIONER HERIOT: Madam Chair, I'm getting a little confused here.

CHAIR CANTU: The motion is --

COMMISSIONER HERIOT: Is the motion about whether or not we're going to discuss this or whether or not we're removing it from the agenda? I'm just getting confused.

CHAIR CANTU: We're still talking about the agenda. Do we want to keep this on today's agenda?

COMMISSIONER HERIOT: My understanding is that some of my colleagues were going to offer an amendment, and that works better on the agenda than

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it does by notational vote.

CHAIR CANTU: Are you offering a friendly amendment to a motion that's been seconded on keeping it on today's agenda? Or are you agreeing --

COMMISSIONER HERIOT: That's just a reason to vote yes or no.

CHAIR CANTU: Okay.

COMMISSIONER HERIOT: I mean, if there's going to be an amendment, then it's better to discuss it today --

CHAIR CANTU: Okay.

COMMISSIONER HERIOT: -- than by notational vote, which doesn't lend itself to that very well.

CHAIR CANTU: I understand that.

By the way, the rule on dividing a question into subparts was 27.1.

So, any other discussion about going forward with adding the Asian American statement to today's agenda?

COMMISSIONER ADAMS: Chairman Cantu, Christian Adams.

CHAIR CANTU: Yes, Commissioner?

COMMISSIONER ADAMS: I don't have a strong view either way. I would urge Commissioner

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Yaki to take a look. There might be some fixes. There's some typos in the document, such as I think the last sentence in one of the documents, that I would have a better time dealing with it if those were fixed. And that may be a notational vote. I don't really have a view on that because there's some typos.

COMMISSIONER YAKI: Okay. Thank you for that consideration.

Look, I just want to express my view that we wanted to get this thing done. I'm going to withdraw my motion for the time being, since I think I confused everyone. So, I am going to withdraw my motion.

CHAIR CANTU: Thank you, Commissioner Yaki.

Other items that -- let me see if I can move this along. The rest of the items, C, D, E, were part of the vote that just took place. So, I can I use the discretion of the Chair to say we've already dealt with those items? That would be the rebuttals, Speaker Series, appointments.

Any objection to that?

COMMISSIONER KLADNEY: How did we deal with them, Madam Chair?

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CHAIR CANTU: In the meeting two weeks ago, I made a statement regarding the Speaker Series. In today's AI, we had an AI on the rebuttal/surrebuttal that passed. And on the appointments, we had a vote today on the bipartisan appointment that passed.

COMMISSIONER HERIOT: We haven't dealt with the Walter Williams thing.

CHAIR CANTU: Right. Do I hear a motion to keep that on today's agenda for discussion?

COMMISSIONER HERIOT: It's already there.

CHAIR CANTU: It's already there.

COMMISSIONER HERIOT: Yes.

CHAIR CANTU: It's been noticed a couple of times, you're correct.

IV. BUSINESS MEETING

CHAIR CANTU: So, at this point, I'm open to a motion and a second, so that we can have discussion on the Walter Williams memorial.

IV.A. DISCUSSION AND VOTE ON STATEMENT OF WALTER E. WILLIAMS

COMMISSIONER HERIOT: Okay. I move that we adopt the Walter Williams memorial.

COMMISSIONER KIRSANOW: Kirsanow seconds.

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CHAIR CANTU: I'm sorry, who seconded?

COMMISSIONER KIRSANOW: Kirsanow.

CHAIR CANTU: Kirsanow.

Commissioner Heriot moves, Commissioner Kirsanow seconds.

We are in discussion.

For those who are listening, in the past the individual Commissioners have been able to submit names of persons that they intend to recognize. It is not a policymaking. It is a statement and sign of respect.

COMMISSIONER HERIOT: Madam Chair?

CHAIR CANTU: Yes, Commissioner?

COMMISSIONER HERIOT: If you want, I'll talk about this. But, you know, it's just we've done this routinely now. I have voted for many of these when there have been people who have done significant work in this area.

This is one that matters to me, in the sense that Walter Williams is a hero of mine. And I think that he's also someone that many, many people think highly of.

I don't want to extend the meeting unnecessarily. Everybody has seen this statement now several times. And so, you know, I'd like to be able

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to say a kind word on Dr. Williams' passing.

CHAIR CANTU: You have my condolences and I offer condolences to the family.

Any other comments?

(No response.)

Could we do a voice vote or would you want to do a roll call vote? What is your preference?

COMMISSIONER HERIOT: Probably should do a roll call, given how confusing these things are over the phone.

CHAIR CANTU: I appreciate that.

Is there any further discussion? Does someone want to call the question?

COMMISSIONER ADAMS: Adams. Call the question.

CHAIR CANTU: Thank you.

We've had a question. The question is an aye vote supports the draft that has been duly circulated to us to honor Professor Walter Williams.

I would call alphabetically.

Adams?

COMMISSIONER ADAMS: Yes.

CHAIR CANTU: Adegbile?

COMMISSIONER ADEGBILE: Nay.

CHAIR CANTU: Gilchrist?

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COMMISSIONER GILCHRIST: Yes.

CHAIR CANTU: Heriot?

COMMISSIONER HERIOT: Yes.

CHAIR CANTU: Kirsanow?

COMMISSIONER KIRSANOW: Yes.

CHAIR CANTU: Kladney?

COMMISSIONER KLADNEY: No.

CHAIR CANTU: Yaki?

COMMISSIONER YAKI: Aye.

CHAIR CANTU: Cantu votes no.

Please note on the record, though, that, as Chair, I am cautious about the process of recognizing people where it's not clear, and has not been clear, what our criteria have been, but I do very deeply offer my condolences to those who knew the Professor and I do offer my prayers to the family.

Can we move to the next order of business? It is the item that has been noticed, the North Carolina State Advisory Council.

It is our responsibility on the Commission -- and it's a privilege to do this -- to approve --

COMMISSIONER YAKI: Point of order, Commissioner.

CHAIR CANTU: Yes, please. Yes, please.

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COMMISSIONER YAKI: Point of order, Chair Cantu.

CHAIR CANTU: Uh-hum.

IV.B. DISCUSSION AND VOTE ON ANTI-ASIAN AMERICAN HATE

COMMISSIONER YAKI: Commissioner Yaki.

One, on the item on Asian American/Pacific Islander hate, I saw the typo, "opposite" to "opposition". Thank you, Commissioner Adams for drawing that to my attention.

When I withdrew my motion, it was for consideration -- it was in light of the idea that perhaps we were going to not consider other items on the agenda and move on. But if we are considering other items on the agenda, then I wish that item to be heard in turn as Item III.B.

CHAIR CANTU: Is there an objection?

I think fair play would be we've heard from other Commissioners on their motions. So, as Chair, I'm exercising my management of time.

We will, hopefully, get these matters done pretty quickly. So, let's do our best.

On the Asian American statement regarding --

COMMISSIONER YAKI: As amended.

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CHAIR CANTU: As amended.

COMMISSIONER YAKI: As amended. Change the word "opposite" to "opposition".

CHAIR CANTU: Right. Your motion was seconded by?

COMMISSIONER KLADNEY: Kladney.

CHAIR CANTU: Kladney. Thank you, Commissioner.

And discussion?

COMMISSIONER ADAMS: Commissioner Adams.

CHAIR CANTU: Yes, Commissioner?

COMMISSIONER ADAMS: Commissioner Yaki, I had hoped to send a note. Take a look at that sentence because it seems to be relating to the previous Administration, but perhaps not.

COMMISSIONER YAKI: No, there's actually some continued controversy on this issue, Commissioner Adams.

COMMISSIONER ADAMS: Okay.

COMMISSIONER YAKI: So, I would like it to stand as is.

COMMISSIONER ADAMS: All right.

COMMISSIONER KIRSANOW: Madam Chair?

COMMISSIONER YAKI: In fact, there's been some controversy as to whether it went one way or

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backwards, or whatever. So, I think that putting our position firmly is important.

CHAIR CANTU: Who was acting to be recognized? I'm sorry. My ears --

COMMISSIONER KIRSANOW: Commissioner Kirsanow.

CHAIR CANTU: Oh, thank you, Commissioner.

COMMISSIONER KIRSANOW: Thank you, Madam Chair.

I would move to amend the letter to include the language to the following effect: that the federal government should withhold funding to any higher education institution if that institution has a policy in place or engages in a practice that discriminates against Asian Americans in recruitment or applicant review or admissions.

COMMISSIONER HERIOT: I second.

CHAIR CANTU: We have a motion --

COMMISSIONER YAKI: May I respond?

CHAIR CANTU: Yes, please.

COMMISSIONER YAKI: Commissioner Yaki responding.

Thank you, Commissioner Kirsanow, for that amendment. I will not accept it. This is

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dealing solely with the issue of the concerns regarding overt acts of bias and hate crime, as perpetrated against the Asian American community, stemming from, and incited by, in my view, the pandemic. The issue that you raise is one that I know that you care about, but I believe is not germane to this particular issue, and I ask my colleagues to oppose it.

COMMISSIONER HERIOT: And it has been seconded.

CHAIR CANTU: Is there further discussion?

COMMISSIONER ADEGBILE: Madam Chair?

CHAIR CANTU: Under the rules --

COMMISSIONER ADEGBILE: Commissioner Adegbile.

CHAIR CANTU: Yes, please. Commissioner?

COMMISSIONER ADEGBILE: It's my understanding that Title VI of the Civil Rights Act already creates a power for the federal government to withhold funding if there are findings of noncompliance with federal civil rights law. And so, in my view, this suggestion adds nothing to the current legal regime.

CHAIR CANTU: So, your contribution is

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that the amendment is unnecessary?

COMMISSIONER ADEGBILE: Yes.

CHAIR CANTU: Thank you.

COMMISSIONER YAKI: So, we need a vote on the motion to amend.

CHAIR CANTU: Has someone called the question on that motion, on the discussion on that?

COMMISSIONER KIRSANOW: There was a motion and it was seconded.

COMMISSIONER ADAMS: Adams. Call the question.

CHAIR CANTU: Thank you.

There's been a motion to amend, seconded, discussion.

Are you all ready to vote on the motion to amend to add language regarding higher education discrimination? Are you ready on that?

COMMISSIONER KIRSANOW: Yes.

CHAIR CANTU: Thank you.

So, a roll call vote would be Adams, please.

COMMISSIONER ADAMS: Yes.

CHAIR CANTU: Adegbile?

COMMISSIONER ADEGBILE: Nay.

CHAIR CANTU: Gilchrist?

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COMMISSIONER GILCHRIST: Yes.

CHAIR CANTU: Heriot?

COMMISSIONER HERIOT: Yes.

CHAIR CANTU: Kirsanow?

COMMISSIONER KIRSANOW: Yes.

CHAIR CANTU: Kladney?

COMMISSIONER KLADNEY: No.

CHAIR CANTU: And I vote no.

COMMISSIONER YAKI: You forgot me.

CHAIR CANTU: Oh, sorry. Where were you?

COMMISSIONER YAKI: You didn't call my name.

CHAIR CANTU: I'm so sorry.

Okay. Help me out.

COMMISSIONER YAKI: Commissioner Yaki votes no.

CHAIR CANTU: Thank you.

I saw your name and in my brain I thought I called you. I apologize.

So, we have -- I vote no. So, we have 4-4. The motion to amend does not carry.

We're back to the original motion.

COMMISSIONER YAKI: Yes, move to approve the -- move for the vote on the full motion.

CHAIR CANTU: All right. A roll call

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vote?

COMMISSIONER YAKI: Yes, please.

CHAIR CANTU: Adams?

COMMISSIONER ADAMS: Abstain.

CHAIR CANTU: Adegbile?

COMMISSIONER ADEGBILE: Aye.

CHAIR CANTU: Cantu? Well, skip me until the end.

Gilchrist?

COMMISSIONER GILCHRIST: Gilchrist abstains.

CHAIR CANTU: Heriot?

COMMISSIONER HERIOT: I abstain. There's something that I agree with in the letter, but, unfortunately, not all of it. So, I'm going to have to abstain.

CHAIR CANTU: Thank you.

Kirsanow?

COMMISSIONER KIRSANOW: Is that the famous director of "Rashomon"? Or is that Commissioner Kirsanow?

(Laughter.)

In any event, I'd rather be the director because I think he's a lot more entertaining and more important.

AMERICAN OVERSIGHT

But, nonetheless, Kirsanow abstains.

CHAIR CANTU: Thank you.

Kladney?

COMMISSIONER KLADNEY: Yes.

CHAIR CANTU: Yaki?

COMMISSIONER YAKI: Curacao is actually an alcohol. Kurosawa is a Japanese director.

(Laughter.)

COMMISSIONER KIRSANOW: It sounded like Kurosawa to me.

(Laughter.)

COMMISSIONER YAKI: And Commissioner Yaki votes aye.

CHAIR CANTU: Did I count correctly? With the abstentions, the ayes have it?

COMMISSIONER HERIOT: Yes.

COMMISSIONER ADEGBILE: Yes.

CHAIR CANTU: Thank you. Okay.

We have a little bit of time to do the North Carolina State Advisory Council motion on membership.

IV.C. DISCUSSION ON NC SAC

COMMISSIONER HERIOT: We haven't seen the list yet. So, I don't know think we can do this one.

CHAIR CANTU: I am sorry. Was the list

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in the -- were emails exchanged? But you're right, I don't believe that we have -- did we attach a list?

COMMISSIONER HERIOT: No, I haven't seen one.

CHAIR CANTU: Okay, okay.

COMMISSIONER GILCHRIST: Not the big list, no.

CHAIR CANTU: All right.

COMMISSIONER HERIOT: We should do this by notational vote. I think it's going to be an easy one. It's just that we have to confirm who's in and who's not.

CHAIR CANTU: And excuse me, but it's the first time I've done a notational vote. Do I direct the Staff Director to follow that process? Or does that require a vote?

COMMISSIONER HERIOT: I think you can just direct the Staff Director.

CHAIR CANTU: Okay. It's administrative, finally. A short item.

Speaking of the Staff Director, could we have a brief report on the item agenda on management on operations?

IV.D. MANAGEMENT AND OPERATIONS

☐ STAFF DIRECTOR'S REPORT

AMERICAN OVERSIGHT

MR. MORALES: Congratulations on becoming the Chair, Madam Chair.

CHAIR CANTU: Thank you.

MR. MORALES: In the interest of time, I have nothing further to add, other than is already contained in the report that was submitted to Commissioners. As always, I remain available to discuss any particular matter with a Commissioner.

And I thank you.

CHAIR CANTU: Thank you.

Normally, there would be an item called New Business, but, in the interest of letting everyone enjoy their family and go back to their other work, are there any other matters before we entertain a motion to adjourn?

COMMISSIONER KIRSANOW: Commissioner Kurosawa here, or Kirsanow.

(Laughter.)

CHAIR CANTU: Kirsanow.

(Laughter.)

COMMISSIONER KIRSANOW: I just want to thank Chairperson Cantu and congratulate her for being Chair. I'm looking forward to many more meetings with you as Chair.

CHAIR CANTU: I am looking forward to

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that, too -- thank you -- and to seeing you ultimately in person.

I understand Commissioner Adams will be having a one-year anniversary of his appointment next week and he's never seen the rest of you folks in person. So, these are unusual times that we're conducting business. But I'm optimistic, given the good faith shown in these conversations and the good faith shown as you all help this country through difficult times.

COMMISSIONER GILCHRIST: Chairwoman Canto, Stephen Gilchrist here.

CHAIR CANTU: Yes?

COMMISSIONER GILCHRIST: I just wanted to thank, also, Commissioner Kirsanow, Commissioner Heriot, Commissioner Yaki, and yourself for the good-faith effort that you guys put into the negotiations for the Commission. I am very pleased at the work that you've come up with, and certainly, we look forward to your tenure as our Chair. So, we look forward to working with you for sure.

CHAIR CANTU: I appreciate that.

Normally, when three new Commissioners show up, there would be a like a face-to-face retreat. There's a lot of conversations about how we look to

AMERICAN OVERSIGHT

each other to work together. We all had to have those kinds of conversations with a small group of four, and that group of four does deserve to be congratulated for helping us answer our questions about how we will be respectful of everyone's points of view and how we will incorporate and listen to each other's ideas.

So, thank you very much, Commissioner Adams and Gilchrist.

Anyone else for the good of the order?

COMMISSIONER HERIOT: Just congratulations from me.

CHAIR CANTU: Thank you. Thank you, and I will pop a virtual bottle of champagne.

(Laughter.)

COMMISSIONER ADAMS: Don't get virtually drunk.

(Laughter.)

CHAIR CANTU: Thank you all for having a wonderful sense of humor, and I'm really looking forward to our time together.

V. ADJOURN MEETING

CHAIR CANTU: The meeting is adjourned.

(Whereupon, at 2:54 p.m., the meeting was adjourned.)

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Date : 8/19/2021 1:00:12 PM
From : "Christian Adams" a@electionlawcenter.com
To : "'John Mashburn'" jmashburn@usccr.gov, "'Stephen Gilchrist'" sgilchrist@usccr.gov, "'Gail Heriot'" gheriot@usccr.gov, "'Peter Kirsanow'" pkirsanow@usccr.gov
Cc : "'Thomas Simuel'" tsimuel@usccr.gov, "'Alexander Heideman'" aheideman@usccr.gov, "'Carissa Mulder'" CMulder@usccr.gov
Subject : [EXTERNAL] RE: EAC Final Selections--not by notational vote

CAUTION: This email is from outside USCCR.

Tell her I will make a motion to amend the agenda to have an amended agenda with a vote. this has gotten ridiculous. Probably the same commissioner that would not allow a vote (and then voted no) on the Walter Williams commemoration. Just petty.

From: John Mashburn <jmashburn@usccr.gov>
Sent: Thursday, August 19, 2021 11:26 AM
To: Christian Adams <a@electionlawcenter.com>; Stephen Gilchrist <sgilchrist@usccr.gov>; Gail Heriot <gheriot@usccr.gov>; Peter Kirsanow <pkirsanow@usccr.gov>
Cc: Thomas Simuel <tsimuel@usccr.gov>; Alexander Heideman <aheideman@usccr.gov>; Carissa Mulder <CMulder@usccr.gov>
Subject: Fw: EAC Final Selections--not by notational vote

FYI- Cantu “welcomes” a motion for a vote on EAC nominations

From: Norma Cantu
Sent: Thursday, August 19, 2021 11:15:35 AM
To: Juana Silverio; Mauro Morales; John Mashburn; Irena Vidulovic; Mauro Morales
Cc: Thomas Simuel; Alexander Heideman; Carissa Mulder
Subject: RE: EAC Final Selections--not by notational vote

Dear John, Juana, and others,
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Since one objection stops the notational process, it will take a vote at a meeting to confirm.
I would welcome it if Commissioner Adams or others wish to make a motion at the meeting to add this item to the agenda.
Norma

From: Juana Silverio <jsilverio@usccr.gov>
Sent: Wednesday, August 18, 2021 4:13 PM
To: Mauro Morales <mmorales@usccr.gov>; John Mashburn <jmashburn@usccr.gov>
Cc: Thomas Simuel <tsimuel@usccr.gov>; Alexander Heideman <aheideman@usccr.gov>; Carissa Mulder <CMulder@usccr.gov>; Norma Cantu <ncantu@usccr.gov>
Subject: Re: EAC Final Selections

AMERICAN OVERSIGHT

Thanks John. You are correct, the item is not on the agenda for Friday.

There were a few concerns raised on process before confirming the candidates to the EAC on behalf of the Commission. Please stand by snd advise your commissioners that further communication is forthcoming by the Chairwoman.

Please let us know if you have any further questions. We greatly appreciate your patience.

Juana

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Juana Silverio (she/her/ella)
Special Assistant to Commissioner Norma V. Cantú
U.S. Commission on Civil Rights
E: jsilverio@usccr.gov
http://usccr.gov/
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425
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From: Mauro Morales
Sent: Wednesday, August 18, 2021 4:41:49 PM
To: John Mashburn
Cc: Juana Silverio; Thomas Simuel; Alexander Heideman; Carissa Mulder
Subject: Re: EAC Final Selections

That is a good question. It is a decision for Commissioners in consultation with the Chair to decide how they wish to proceed. Adams is welcome to make a motion to amend the agenda to request a discussion and a vote. If the majority supports his motion it can be added to agenda. In the alternative, if Commissioners desire to proceed by notational vote and no one objects then a notational vote can occur. As I have requested previously, please advise me how you wish to proceed. I recommend Commissioners express their desire to the Chair since the Chair controls the agenda.

Sent from my iPhone

> On Aug 18, 2021, at 12:57 PM, John Mashburn <jmashburn@usccr.gov> wrote:
>
> This vote is not on the agenda for Friday, and a notational vote was not sent, so where does it stand? Gilchrist and Adams would like a vote at the business meeting and Adams is willing to make a motion to vote on it.
>
> ---
>
> **From:** Mauro Morales <mmorales@usccr.gov>
> **Date:** Tuesday, August 10, 2021 at 2:57 PM

AMERICAN OVERSIGHT

To: Commissioners <Commissioners@usccr.gov>
Cc:
"CommissionerAssistants@usccr.gov" <CommissionerAssistants@usccr.gov>, David Ganz <dganz@usccr.gov>
Subject: EAC Final Selections

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Pursuant to the AI voted on during the April 30th Business meeting, I received the following names for appointment the Election Assistance Commission (EAC):

Commissioners Cantu, Adegbile, Kladney and Yaki have selected for appointment to the EAC:

- Cleta Michell, Chair, Conservative Partnership Institute Election Integrity Network.

Commissioners Adams, Gilchrist, Heriot and Kirsanow have selected for appointment to the EAC:

- Commissioner Michael Yaki;

Under the AI adopted by Commissioners, these two members selected shall be placed in nomination and ratified by a majority vote. Please inform me how you would like to proceed for a majority vote either by placing it on the agenda for the next USCCR business meeting or by a notational vote. Thank you.

Mauro Morales
Staff Director
U.S. Commission on Civil Rights
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http://usccr.gov/
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Washington D.C. 20425

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Sent from my iPhone

AMERICAN OVERSIGHT

Date : 8/19/2021 1:09:27 PM
From : "John Mashburn" jmashburn@usccr.gov
To : "Christian Adams" a@electionlawcenter.com
Subject : Re: [EXTERNAL] RE: EAC Final Selections--not by notational vote

I let Cantu know.

Does Cleta know she will be asked to serve on this BOA?

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AMERICAN OVERSIGHT

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Date : 8/19/2021 1:22:31 PM
From : "Christian Adams" a@electionlawcenter.com
To : "'John Mashburn'" jmashburn@usccr.gov
Subject : RE: [EXTERNAL] RE: EAC Final Selections--not by notational vote

CAUTION: This email is from outside USCCR.

She knows. She probably thinks it already happened.

From: John Mashburn <jmashburn@usccr.gov>
Sent: Thursday, August 19, 2021 1:09 PM
To: Christian Adams <a@electionlawcenter.com>
Subject: Re: [EXTERNAL] RE: EAC Final Selections--not by notational vote

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AMERICAN OVERSIGHT

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> **Date:** Tuesday, August 10, 2021 at 2:57 PM
> **To:** Commissioners <Commissioners@usccr.gov>
> **Cc:**
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> **Subject:** EAC Final Selections
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Sent from my iPhone

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Date : 9/16/2020 12:55:52 PM
From : "Christian Adams" a@electionlawcenter.com
To : "'Gail Heriot'" gheriot@me.com, "'Alexander Heideman'" aheideman@usccr.gov
Cc : "'Carissa Mulder'" CMulder@usccr.gov, "'Peter Kirsanow'" pkirsanow@beneschlaw.com, "'stephen gilchrist'" thegilchristassociates@gmail.com, "'John Mashburn'" jkmash@comcast.net, "'Thomas Simuel'" tjsimuel32@gmail.com
Subject : RE: [EXTERNAL] EAC Board of Advisors

CAUTION: This email is from outside USCCR.

Agree with Gail. And the "appointments" did not comply with the admonition of the law that the board should be bipartisan.

From: Gail Heriot <gheriot@me.com>
Sent: Wednesday, September 16, 2020 12:15 PM
To: Alexander Heideman <aheideman@usccr.gov>
Cc: Christian Adams <a@electionlawcenter.com>; Carissa Mulder <CMulder@usccr.gov>; Peter Kirsanow <pkirsanow@beneschlaw.com>; stephen gilchrist <thegilchristassociates@gmail.com>; John Mashburn <jkmash@comcast.net>; Thomas Simuel <tjsimuel32@gmail.com>
Subject: Re: [EXTERNAL] EAC Board of Advisors

If the statute says the Commission makes the appointments, I don't see how it can be that the chair makes them. My recollection of the appointments under the Reynolds years is that Abby and maybe Yaki were our delegates. If there are transcripts going back that far they may show whether the Commission voted on these appointments.

On Sep 16, 2020, at 8:51 AM, Alexander Heideman <aheideman@usccr.gov> wrote:

Maureen says:

> To my knowledge, there are not any internal rules about these appointments. The practice has been that the Chair makes the appointments. (Note though that I only have records going back to 2015 for these appointments and I do not know what the practice was before 2015). The statute (52 U.S.C. 20944(a)(10)) says "Two members appointed by the United States Commission on Civil Rights." 52 U.S.C. 20944(b) says "Appointments shall be made to the Board of Advisors under subsection (a) in a manner which ensures that the Board of Advisors will be bipartisan in nature and will reflect the various

AMERICAN OVERSIGHT

geographic regions of the United States." The terms are 2 year appointments; I believe the current USCCR appointments are Yaki and Kladney, and that their terms end 4/13/2021. I provided the above information, i.e., bipartisan and geographic scope, before the 2019 appointments, though did not provide any input beyond this. I've also attached the House report for the Help American Vote Act (establishes the advisory committees) - discussion of advisory boards is on page 33.

I have a call scheduled with her at 1 pm to discuss further. Please let me know if there are any specific questions I should ask.

Alex

From: Alexander Heideman <aheideman@usccr.gov>
Date: Wednesday, September 16, 2020 at 11:02 AM
To: Christian Adams <a@electionlawcenter.com>, 'Gail Heriot' <gheriot@me.com>
Cc: Carissa Mulder <CMulder@usccr.gov>, 'Peter >, 'John Mashburn' <jkmash@comcast.net>, 'Thomas Simuel' <tjsimuel32@gmail.com>
Subject: Re: [EXTERNAL] EAC Board of Advisors

Yes, happy to.

From: Christian Adams <a@electionlawcenter.com>
Date: Wednesday, September 16, 2020 at 11:02 AM
To: 'Gail Heriot' <gheriot@me.com>
Cc: Carissa Mulder <CMulder@usccr.gov>, 'Peter >, 'John Mashburn' <jkmash@comcast.net>, 'Thomas Simuel' <tjsimuel32@gmail.com>, Alexander Heideman <aheideman@usccr.gov>
Subject: RE: [EXTERNAL] EAC Board of Advisors

> CAUTION: This email is from outside USCCR.

ple people aren't asking her different times, can the SA's get to the bottom of this with maureen.

From: Gail Heriot <gheriot@me.com>
Sent: Wednesday, September 16, 2020 10:46 AM
To: Christian Adams <a@electionlawcenter.com>
Cc: Carissa Mulder <CMulder@usccr.gov>; Peter Kirsanow <pkirsanow@beneschlaw.com>; stephen gilchrist <thegilchristassociates@gmail.com>; John Mashburn

AMERICAN OVERSIGHT

<jkmash@comcast.net>; Thomas Simuel <tjsimuel32@gmail.com>; Alexander Heideman <aheideman@usccr.gov>
Subject: Re: [EXTERNAL] EAC Board of Advisors

I don't think there are any rules. In the absence of an explicit delegation of power, the Commission as a whole has that power. But you need to be sure it wasn't done properly. I have a vague recollection of talking about this in a meeting in the last decade. The straight shooter on the staff is Maureen Rudolph. You might want to ask her.

Gail Heriot
Professor of Law
University of San Diego

> On Sep 15, 2020, at 2:17 PM, Christian Adams <a@electionlawcenter.com> wrote:
>
> I don't know the rules for USCCR appointing ANYONE yet, but if there are no minutes showing a vote appointing them in regular business, it would seem that their "appointment" is void.
>
> ---
>
> **From:** Carissa Mulder <CMulder@usccr.gov>
> **Sent:** Tuesday, September 15, 2020 4:01 PM
> **To:** Christian Adams <a@electionlawcenter.com>; 'Peter Kirsanow' <pkirsanow@Beneschlaw.com>; 'Gail Heriot' <gheriot@me.com>; 'stephen gilchrist' <thegilchristassociates@gmail.com>
> **Cc:** 'John Mashburn' <jkmash@comcast.net>; 'Thomas Simuel' <tjsimuel32@gmail.com>; Alexander Heideman <aheideman@usccr.gov>
> **Subject:** Re: [EXTERNAL] EAC Board of Advisors
>
> Looking at the document about the appointment of the advisory board members, I think that is correct, Christian. Catherine probably appointed them without ever bringing it up.
>
> ---
>
> **From:** Christian Adams <a@electionlawcenter.com>
> **Sent:** Tuesday, September 15, 2020 3:55:45 PM
> **To:** Carissa Mulder; 'Peter Kirsanow'; 'Gail Heriot'; 'stephen gilchrist'
> **Cc:** 'John Mashburn'; 'Thomas Simuel'; Alexander Heideman
> **Subject:** RE: [EXTERNAL] EAC Board of Advisors

AMERICAN OVERSIGHT

CAUTION: This email is from outside USCCR.

It probably NEVER came up in a business meeting and therefore we should, as a commission have the authority to take it up in a business meeting and appoint-anew.

From: Carissa Mulder <CMulder@usccr.gov>
Sent: Tuesday, September 15, 2020 3:34 PM
To: Christian Adams <a@electionlawcenter.com>; Peter Kirsanow <pkirsanow@Beneschlaw.com>; 'Gail Heriot' <gheriot@me.com>; 'stephen gilchrist' <thegilchristassociates@gmail.com> >; Alexander Heideman <aheideman@usccr.gov>
Subject: Re: [EXTERNAL] EAC Board of Advisors

Good question! I had no idea the USCCR got two designees to the EAC Board of Advisors. Here's the .

From: Christian Adams <a@electionlawcenter.com>
Sent: Tuesday, September 15, 2020 3:15:28 PM
To: Peter Kirsanow; 'Gail Heriot'; 'stephen gilchrist'
Cc: John Mashburn; 'Thomas Simuel'; Carissa Mulder; Alexander Heideman
Subject: [EXTERNAL] EAC Board of Advisors

CAUTION: This email is from outside USCCR.

AC commission saying that Yaki is acting absurdly and exercising power over the EAC by threatening the Pelosi pick on the EAC with removal if he doesn't do what he wants, effectively making Yaki a commissioner on the EAC on many issues. He is causing mischief I don't even detail here.

My question is how does he get UNDONE from the EAC oversight commission? How does that get revoked and replaced?

<Help America Vote Act House Report 107_329[1].pdf>

AMERICAN OVERSIGHT

Date : 8/20/2021 7:08:00 AM
From : "stephen gilchrist" thegilchristassociates@gmail.com
To : "Gail Heriot" gheriot@usccr.gov
Cc : "Peter Kirsanow" pkirsanow@usccr.gov, "Christian Adams" adams@electionlawcenter.com, "Carissa Mulder" CMulder@usccr.gov, "Alexander Heideman" aheideman@usccr.gov, "John Mashburn" jmashburn@usccr.gov, "Peter Kirsanow" pkirsanow@beneschlaw.com, "Stephen Gilchrist" sgilchrist@usccr.gov, "Thomas Simuel" tsimuel@usccr.gov, "J. Christian Adams" jadams@usccr.gov, "Gail Heriot" gheriot@me.com, "Alexander Heideman" alexanderheideman@gmail.com
Subject : [EXTERNAL] Re: Bail Reform

CAUTION: This email is from outside USCCR.

Guys I will also be supporting Christians amendment to vote at the business meeting on the Nominations for the EAC.

On Fri, Aug 20, 2021, 7:03 AM stephen gilchrist <thegilchristassociates@gmail.com> wrote:

> I found the Bail Reform report to be one that did try to highlight the facts rather than persuade the commission to some remarkable bias place. I am inclined to support the report and to support the Florida SAC.
>
> On Fri, Aug 20, 2021, 12:54 AM Gail Heriot <gheriot@usccr.gov> wrote:
>
> > Dear all—Unless somebody wants to talk me out of it, my inclination is to abstain on the Bail Reform report. I think it has a lot of problems. But if we let it get through, we'll have the chance to file Statements commenting on it. If we abstain rather than affirmatively vote for it, nobody will be able to blame us for the report's flaws.
> >
> > I intend to vote in favor of the Florida SAC.
> >
> > Gail
> >
> > Gail Heriot
> > Professor of Law
> > University of San Diego

AMERICAN OVERSIGHT

Date : 8/20/2021 9:05:14 AM
From : "Gail Heriot" gheriot@usccr.gov
To : "stephen gilchrist" thegilchristassociates@gmail.com
Cc : "Peter Kirsanow" pkirsanow@usccr.gov, "Christian Adams" adams@electionlawcenter.com, "Carissa Mulder" CMulder@usccr.gov, "Alexander Heideman" aheideman@usccr.gov, "John Mashburn" jmashburn@usccr.gov, "Peter Kirsanow" pkirsanow@beneschlaw.com, "Stephen Gilchrist" sgilchrist@usccr.gov, "Thomas Simuel" tsimuel@usccr.gov, "J. Christian Adams" jadams@usccr.gov, "Gail Heriot" gheriot@me.com, "Alexander Heideman" alexanderheideman@gmail.com
Subject : Re: Bail Reform

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Professor of Law
University of San Diego

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> > > Gail
> > >
> > > Gail Heriot
> > > Professor of Law
> > > University of San Diego

AMERICAN OVERSIGHT

Date : 9/16/2020 1:31:27 PM
From : "Alexander Heideman" aheideman@usccr.gov
To : "Christian Adams" a@electionlawcenter.com, "'Gail Heriot'" gheriot@me.com
Cc : "Carissa Mulder" CMulder@usccr.gov, "'Peter Kirsanow'" pkirsanow@beneschlaw.com, "'stephen gilchrist'" thegilchristassociates@gmail.com, "'John Mashburn'" jkmash@comcast.net, "'Thomas Simuel'" tjsimuel32@gmail.com
Subject : Re: [EXTERNAL] EAC Board of Advisors

I spoke with Maureen. She said that she was not asked about these appointments in 2019, but she thought that the Commissioners had had a conversation about them.

It seems to me that these appointments were unlawful if they were not (1) made by the Commission and (2) bipartisan and geographically varied. And Google Maps says Reno (Kladney) is a short 3.5 hour drive from San Fran (Yaki).

I'll try to locate the 2015, 2013, & 2011 transcripts to see if appointments were voted on in the past.

From: Christian Adams <a@electionlawcenter.com>
Date: Wednesday, September 16, 2020 at 12:55 PM
To: 'Gail Heriot' <gheriot@me.com>, Alexander Heideman <aheideman@usccr.gov>
Cc: Carissa Mulder <CMulder@usccr.gov>, 'Peter Kirsanow' <pkirsanow@beneschlaw.com>, 'stephen gilchrist' <thegilchristassociates@gmail.com>, 'John Mashburn' <jkmash@comcast.net>, 'Thomas Simuel' <tjsimuel32@gmail.com>
Subject: RE: [EXTERNAL] EAC Board of Advisors

> CAUTION: This email is from outside USCCR.

ree with Gail. And the "appointments" did not comply with the admonition of the law that the board should be bipartisan.

From: Gail Heriot <gheriot@me.com>
Sent: Wednesday, September 16, 2020 12:15 PM
To: Alexander Heideman <aheideman@usccr.gov>
Cc: Christian Adams <a@electionlawcenter.com>; Carissa Mulder <CMulder@usccr.gov>; Peter Kirsanow <pkirsanow@beneschlaw.com>; stephen gilchrist <thegilchristassociates@gmail.com>; John Mashburn <jkmash@comcast.net>; Thomas Simuel <tjsimuel32@gmail.com>
Subject: Re: [EXTERNAL] EAC Board of Advisors

If the statute says the Commission makes the appointments, I don't see how it can be that the chair makes them. My recollection of the appointments under the Reynolds years is that Abby and maybe Yaki were our delegates. If there are transcripts going back that far they may show whether the Commission voted on these appointments.

AMERICAN OVERSIGHT

On Sep 16, 2020, at 8:51 AM, Alexander Heideman <aheideman@usccr.gov> wrote:

Maureen says:

> To my knowledge, there are not any internal rules about these appointments. The practice has been that the Chair makes the appointments. (Note though that I only have records going back to 2015 for these appointments and I do not know what the practice was before 2015). The statute (52 U.S.C. 20944(a)(10)) says "Two members appointed by the United States Commission on Civil Rights." 52 U.S.C. 20944(b) says "Appointments shall be made to the Board of Advisors under subsection (a) in a manner which ensures that the Board of Advisors will be bipartisan in nature and will reflect the various geographic regions of the United States." The terms are 2 year appointments; I believe the current USCCR appointments are Yaki and Kladney, and that their terms end 4/13/2021. I provided the above information, i.e., bipartisan and geographic scope, before the 2019 appointments, though did not provide any input beyond this. I've also attached the House report for the Help American Vote Act (establishes the advisory committees) - discussion of advisory boards is on page 33.

I have a call scheduled with her at 1 pm to discuss further. Please let me know if there are any specific questions I should ask.

Alex

From: Alexander Heideman <aheideman@usccr.gov>
Date: Wednesday, September 16, 2020 at 11:02 AM
To: Christian Adams <a@electionlawcenter.com>, 'Gail Heriot' <gheriot@me.com>
Cc: Carissa Mulder <CMulder@usccr.gov>, 'Peter >, 'John Mashburn' <jkmash@comcast.net>, 'Thomas Simuel' <tjsimuel32@gmail.com>
Subject: Re: [EXTERNAL] EAC Board of Advisors

Yes, happy to.

AMERICAN OVERSIGHT

From: Christian Adams <a@electionlawcenter.com>
Date: Wednesday, September 16, 2020 at 11:02 AM
To: 'Gail Heriot' <gheriot@me.com>
Cc: Carissa Mulder <CMulder@usccr.gov>, 'Peter >, 'John Mashburn' <jkmash@comcast.net>, 'Thomas Simuel' <tjsimuel32@gmail.com>, Alexander Heideman <aheideman@usccr.gov>
Subject: RE: [EXTERNAL] EAC Board of Advisors

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ple people aren't asking her different times, can the SA's get to the bottom of this with maureen.

From: Gail Heriot <gheriot@me.com>
Sent: Wednesday, September 16, 2020 10:46 AM
To: Christian Adams <a@electionlawcenter.com>
Cc: Carissa Mulder <CMulder@usccr.gov>; Peter Kirsanow <pkirsanow@beneschlaw.com>; stephen gilchrist <thegilchristassociates@gmail.com>; John Mashburn <jkmash@comcast.net>; Thomas Simuel <tjsimuel32@gmail.com>; Alexander Heideman <aheideman@usccr.gov>
Subject: Re: [EXTERNAL] EAC Board of Advisors

I don't think there are any rules. In the absence of an explicit delegation of power, the Commission as a whole has that power. But you need to be sure it wasn't done properly. I have a vague recollection of talking about this in a meeting in the last decade. The straight shooter on the staff is Maureen Rudolph. You might want to ask her.

Gail Heriot
Professor of Law
University of San Diego

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AMERICAN OVERSIGHT

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Sent: Tuesday, September 15, 2020 4:01 PM
To: Christian Adams <a@electionlawcenter.com>; 'Peter Kirsanow' <pkirsanow@Beneschlaw.com>; 'Gail Heriot' <gheriot@me.com>; 'stephen gilchrist' <thegilchristassociates@gmail.com>
Cc: 'John Mashburn' <jkmash@comcast.net>; 'Thomas Simuel' <tjsimuel32@gmail.com>; Alexander Heideman <aheideman@usccr.gov>
Subject: Re: [EXTERNAL] EAC Board of Advisors

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Cc: 'John Mashburn'; 'Thomas Simuel'; Alexander Heideman
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Cc: John Mashburn; 'Thomas Simuel'; Carissa Mulder; Alexander Heideman

AMERICAN OVERSIGHT

Subject: [EXTERNAL] EAC Board of Advisors

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<Help America Vote Act House Report 107_329[1].pdf>

AMERICAN OVERSIGHT

Date : 8/20/2021 12:05:06 PM
From : "Gail Heriot" gheriot@usccr.gov
To : "stephen gilchrist" thegilchristassociates@gmail.com
Cc : "Peter Kirsanow" pkirsanow@usccr.gov, "Christian Adams" adams@electionlawcenter.com, "Carissa Mulder" CMulder@usccr.gov, "Alexander Heideman" aheideman@usccr.gov, "John Mashburn" jmashburn@usccr.gov, "Peter Kirsanow" pkirsanow@beneschlaw.com, "Stephen Gilchrist" sgilchrist@usccr.gov, "Thomas Simuel" tsimuel@usccr.gov, "J. Christian Adams" jadams@usccr.gov, "Gail Heriot" gheriot@me.com, "Alexander Heideman" alexanderheideman@gmail.com
Subject : Re: Bail Reform

They are much more organized than we are. They've had a zoom and have a list of people to call on.

Gail Heriot
Professor of Law
University of San Diego

> On Aug 20, 2021, at 6:05 AM, Gail Heriot <gheriot@usccr.gov> wrote:
>
> Yes, I will be doing that too.
>
> Gail Heriot
> Professor of Law
> University of San Diego
>
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> > On Fri, Aug 20, 2021, 7:03 AM stephen gilchrist <thegilchristassociates@gmail.com> wrote:
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> > >
> > > On Fri, Aug 20, 2021, 12:54 AM Gail Heriot <gheriot@usccr.gov> wrote:

AMERICAN OVERSIGHT

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I intend to vote in favor of the Florida SAC.

Gail

Gail Heriot
Professor of Law
University of San Diego

AMERICAN OVERSIGHT

Date : 8/20/2021 12:09:34 PM
From : "Alexander Heideman" alexanderheideman@gmail.com
To : "Gail Heriot" gheriot@usccr.gov
Cc : "stephen gilchrist" thegilchristassociates@gmail.com, "Peter Kirsanow" pkirsanow@usccr.gov, "Christian Adams" adams@electionlawcenter.com, "Carissa Mulder" CMulder@usccr.gov, "Alexander Heideman" aheideman@usccr.gov, "John Mashburn" jmashburn@usccr.gov, "Peter Kirsanow" pkirsanow@beneschlaw.com, "Stephen Gilchrist" sgilchrist@usccr.gov, "Thomas Simuel" tsimuel@usccr.gov, "J. Christian Adams" jadams@usccr.gov, "Gail Heriot" gheriot@me.com
Subject : [EXTERNAL] Re: Bail Reform

CAUTION: This email is from outside USCCR.

Just so everyone has easy access to the MOU that was agreed upon in April:

COMMISSIONER KIRSANOW: First, the Memorandum of Understanding regarding the appointment of members to the EAC Board of Advisors, Section 1.01, reads: "Any authority not specifically granted the Commission on Civil Rights by statute or regulation or Executive Order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, et cetera, shall be exercised by the Commission as a whole by majority vote." Paragraph .02. "Any authority specifically granted the Staff Director of the Commission on Civil Rights by statute or regulation or Executive Order to appoint members to serve on other federal entities such as advisory boards, tasks forces, other commissions, et cetera, shall be exercised by the Staff Director." Paragraph .03. "Any authority specifically granted the Chair of the Commission on Civil Rights by statute or regulation or Executive Order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, et cetera, shall be exercised by the Chair." "Section 2.02(1). For the two appointments to the U.S. Election Assistance Commission, the members appointed by Democratic appointees shall nominate two individuals who are ready, willing, and able to serve, and the members appointed by the Republican authorities shall nominate two individuals who are ready, willing, and able to serve." Subparagraph (2). "The members appointed by the Democratic authorities shall select one of the two individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one of the two individuals nominated by the members appointed by the Democratic authorities." Subparagraph (3). "The members selected shall be placed in nomination and ratified in conformance with Section 1."

On Fri, Aug 20, 2021 at 12:05 PM Gail Heriot <gheriot@usccr.gov> wrote:

> They are much more organized than we are. They've had a zoom and have a list of people to call on.
>
> Gail Heriot
> Professor of Law
> University of San Diego

AMERICAN OVERSIGHT

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Gail Heriot
Professor of Law
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> > >
> > > Gail Heriot
> > > Professor of Law
> > > University of San Diego

AMERICAN OVERSIGHT

Date : 8/20/2021 12:13:38 PM
From : "stephen gilchrist" thegilchristassociates@gmail.com
To : "Alexander Heideman" aheideman@usccr.gov
Cc : "John Mashburn" jmashburn@usccr.gov, "Alexander Heideman" alexanderheideman@gmail.com, "Gail Heriot" gheriot@usccr.gov, "Peter Kirsanow" pkirsanow@usccr.gov, "Christian Adams" adams@electionlawcenter.com, "Carissa Mulder" CMulder@usccr.gov, "Peter Kirsanow" pkirsanow@beneschlaw.com, "Stephen Gilchrist" sgilchrist@usccr.gov, "Thomas Simuel" tsimuel@usccr.gov, "J. Christian Adams" jadams@usccr.gov, "Gail Heriot" gheriot@me.com
Subject : Re: [EXTERNAL] Re: Bail Reform

CAUTION: This email is from outside USCCR.

Yes Alex!

On Fri, Aug 20, 2021 at 12:13 PM Alexander Heideman <aheideman@usccr.gov> wrote:

> They're the ones who picked someone outside the Comm'n!
>
> ---
>
> **From:** John Mashburn <jmashburn@usccr.gov>
> **Date:** Friday, August 20, 2021 at 12:12 PM
> **To:** Alexander Heideman <alexanderheideman@gmail.com>, Gail Heriot <gheriot@usccr.gov>
> **Cc:** stephen gilchrist <thegilchristassociates@gmail.com>, Peter Kirsanow <pkirsanow@usccr.gov>, Christian Adams <adams@electionlawcenter.com>, Carissa Mulder <CMulder@usccr.gov>, Alexander Heideman <aheideman@usccr.gov>, Peter Kirsanow <pkirsanow@beneschlaw.com>, Stephen Gilchrist <sgilchrist@usccr.gov>, Thomas Simuel
> >
> **Subject:** Re: [EXTERNAL] Re: Bail Reform
>
> Nothing Requiring this for decades
>
> ---
>
> **From:** Alexander Heideman <alexanderheideman@gmail.com>
> **Sent:** Friday, August 20, 2021 12:09:20 PM
> **To:** Gail Heriot
> **Cc:** stephen gilchrist; Peter Kirsanow; Christian Adams; Carissa Mulder; Alexander Heideman; John Mashburn; Peter Kirsanow; Stephen Gilchrist; Thomas Simuel; J. Christian Adams; Gail Heriot

AMERICAN OVERSIGHT

Subject: [EXTERNAL] Re: Bail Reform

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> Professor of Law

AMERICAN OVERSIGHT

University of San Diego

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Gail Heriot

Professor of Law

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Gail

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University of San Diego

AMERICAN OVERSIGHT

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From : "Thomas Simuel" tsimuel@usccr.gov
To : "Alexander Heideman" aheideman@usccr.gov, "John Mashburn" jmashburn@usccr.gov, "Alexander Heideman" alexanderheideman@gmail.com, "Gail Heriot" gheriot@usccr.gov
Cc : "stephen gilchrist" thegilchristassociates@gmail.com, "Peter Kirsanow" pkirsanow@usccr.gov, "Christian Adams" adams@electionlawcenter.com, "Carissa Mulder" CMulder@usccr.gov, "Peter Kirsanow" pkirsanow@beneschlaw.com, "Stephen Gilchrist" sgilchrist@usccr.gov, "J. Christian Adams" jadams@usccr.gov, "Gail Heriot" gheriot@me.com
Subject : RE: [EXTERNAL] Re: Bail Reform

Exactly!!! Let's force the vote!

-------- Original message --------
From: Alexander Heideman <aheideman@usccr.gov>
Date: 8/20/21 12:13 PM (GMT-05:00)
To: John Mashburn <jmashburn@usccr.gov>, Alexander Heideman <alexanderheideman@gmail.com>, Gail Heriot <gheriot@usccr.gov>
Cc: stephen gilchrist <thegilchristassociates@gmail.com>, Peter Kirsanow <pkirsanow@usccr.gov>, Christian Adams <adams@electionlawcenter.com>, Carissa Mulder <CMulder@usccr.gov>, Peter Kirsanow <pkirsanow@beneschlaw.com>, Stephen Gilchrist <sgilchrist@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>, "J. Christian Adams" <jadams@usccr.gov>, Gail Heriot <gheriot@me.com>
Subject: Re: [EXTERNAL] Re: Bail Reform

They're the ones who picked someone outside the Comm'n!

From: John Mashburn <jmashburn@usccr.gov>
Date: Friday, August 20, 2021 at 12:12 PM
To: Alexander Heideman <alexanderheideman@gmail.com>, Gail Heriot <gheriot@usccr.gov>
Cc: stephen gilchrist <thegilchristassociates@gmail.com>, Peter Kirsanow <pkirsanow@usccr.gov>, Christian Adams <adams@electionlawcenter.com>, Carissa Mulder <CMulder@usccr.gov>, Alexander Heideman <aheideman@usccr.gov>, Peter Kirsanow <pkirsanow@beneschlaw.com>, Stephen Gilchrist <sgilchrist@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>, "J. Christian Adams" <jadams@usccr.gov>, Gail Heriot <gheriot@me.com>
Subject: Re: [EXTERNAL] Re: Bail Reform

Nothing Requiring this for decades

AMERICAN OVERSIGHT

From: Alexander Heideman <alexanderheideman@gmail.com>
Sent: Friday, August 20, 2021 12:09:20 PM
To: Gail Heriot
Cc: stephen gilchrist; Peter Kirsanow; Christian Adams; Carissa Mulder; Alexander Heideman; John Mashburn; Peter Kirsanow; Stephen Gilchrist; Thomas Simuel; J. Christian Adams; Gail Heriot
Subject: [EXTERNAL] Re: Bail Reform

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> > > Professor of Law
> > > University of San Diego

AMERICAN OVERSIGHT

Date : 8/20/2021 12:09:09 PM
From : "Gail Heriot" gheriot@me.com
To : "Gail Heriot" gheriot@usccr.gov
Cc : "stephen gilchrist" thegilchristassociates@gmail.com, "Peter Kirsanow" pkirsanow@usccr.gov, "Christian Adams" adams@electionlawcenter.com, "Carissa Mulder" CMulder@usccr.gov, "Alexander Heideman" aheideman@usccr.gov, "John Mashburn" jmashburn@usccr.gov, "Peter Kirsanow" pkirsanow@beneschlaw.com, "Stephen Gilchrist" sgilchrist@usccr.gov, "Thomas Simuel" tsimuel@usccr.gov, "J. Christian Adams" jadams@usccr.gov, "Alexander Heideman" alexanderheideman@gmail.com
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Why are they stalling on this?

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AMERICAN OVERSIGHT

Date : 8/20/2021 12:13:47 PM
From : "Gail Heriot" gheriot@usccr.gov
To : "Alexander Heideman" aheideman@usccr.gov
Cc : "John Mashburn" jmashburn@usccr.gov, "Alexander Heideman" alexanderheideman@gmail.com, "stephen gilchrist" thegilchristassociates@gmail.com, "Peter Kirsanow" pkirsanow@usccr.gov, "Christian Adams" adams@electionlawcenter.com, "Carissa Mulder" CMulder@usccr.gov, "Peter Kirsanow" pkirsanow@beneschlaw.com, "Stephen Gilchrist" sgilchrist@usccr.gov, "Thomas Simuel" tsimuel@usccr.gov, "J. Christian Adams" jadams@usccr.gov, "Gail Heriot" gheriot@me.com
Subject : Re: [EXTERNAL] Re: Bail Reform

Why don't we ask them if they are more comfortable with Christian?

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Professor of Law
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> **To:** Alexander Heideman <alexanderheideman@gmail.com>, Gail Heriot <gheriot@usccr.gov>
> **Cc:** stephen gilchrist <thegilchristassociates@gmail.com>, Peter Kirsanow <pkirsanow@usccr.gov>, Christian Adams <adams@electionlawcenter.com>, Carissa Mulder <CMulder@usccr.gov>, Alexander Heideman <aheideman@usccr.gov>, Peter Kirsanow <pkirsanow@beneschlaw.com>, Stephen Gilchrist <sgilchrist@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>, "J. Christian Adams" <jadams@usccr.gov>, Gail Heriot <gheriot@me.com>
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AMERICAN OVERSIGHT

Alexander Heideman; John Mashburn; Peter Kirsanow; Stephen Gilchrist; Thomas Simuel; J. Christian Adams; Gail Heriot
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AMERICAN OVERSIGHT

Date : 8/20/2021 12:12:19 PM
From : "John Mashburn" jmashburn@usccr.gov
To : "Alexander Heideman" alexanderheideman@gmail.com, "Gail Heriot" gheriot@usccr.gov
Cc : "stephen gilchrist" thegilchristassociates@gmail.com, "Peter Kirsanow" pkirsanow@usccr.gov, "Christian Adams" adams@electionlawcenter.com, "Carissa Mulder" CMulder@usccr.gov, "Alexander Heideman" aheideman@usccr.gov, "Peter Kirsanow" pkirsanow@beneschlaw.com, "Stephen Gilchrist" sgilchrist@usccr.gov, "Thomas Simuel" tsimuel@usccr.gov, "J. Christian Adams" jadams@usccr.gov, "Gail Heriot" gheriot@me.com
Subject : Re: [EXTERNAL] Re: Bail Reform

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To: Gail Heriot
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AMERICAN OVERSIGHT

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AMERICAN OVERSIGHT

Date : 8/20/2021 12:25:43 PM
From : "Christian Adams" adams@electionlawcenter.com
To : "'Gail Heriot'" gheriot@me.com, "'Gail Heriot'" gheriot@usccr.gov
Cc : "'stephen gilchrist'" thegilchristassociates@gmail.com, "'Peter Kirsanow'" pkirsanow@usccr.gov, "'Carissa Mulder'" CMulder@usccr.gov, "'Alexander Heideman'" aheideman@usccr.gov, "'John Mashburn'" jmashburn@usccr.gov, "'Peter Kirsanow'" pkirsanow@beneschlaw.com, "'Stephen Gilchrist'" sgilchrist@usccr.gov, "'Thomas Simuel'" tsimuel@usccr.gov, "'J. Christian Adams'" jadams@usccr.gov, "'Alexander Heideman'" alexanderheideman@gmail.com
Subject : [EXTERNAL] RE: Bail Reform

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Because this is the ballgame to them. Access to process and the tiny details of election process is a space they have incredible advantage. Someone might have gotten to them and told them it was a mistake to pick Cleta over me. She is relentless and isn't afraid to entirely disrupt a glideslope on the left.

From: Gail Heriot <gheriot@me.com>
Sent: Friday, August 20, 2021 12:09 PM
To: Gail Heriot <gheriot@usccr.gov>
Cc: stephen gilchrist <thegilchristassociates@gmail.com>; Peter Kirsanow <pkirsanow@usccr.gov>; Christian Adams <adams@electionlawcenter.com>; Carissa Mulder <CMulder@usccr.gov>; Alexander Heideman <aheideman@usccr.gov>; John Mashburn <jmashburn@usccr.gov>; Peter Kirsanow <pkirsanow@beneschlaw.com>; Stephen Gilchrist <sgilchrist@usccr.gov>; Thomas Simuel <tsimuel@usccr.gov>; J. Christian Adams <jadams@usccr.gov>; Alexander Heideman <alexanderheideman@gmail.com>
Subject: Re: Bail Reform

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AMERICAN OVERSIGHT

Date : 8/20/2021 12:24:00 PM
From : "Christian Adams" adams@electionlawcenter.com
To : "'Alexander Heideman'" alexanderheideman@gmail.com, "'Gail Heriot'" gheriot@usccr.gov
Cc : "'stephen gilchrist'" thegilchristassociates@gmail.com, "'Peter Kirsanow'" pkirsanow@usccr.gov, "'Carissa Mulder'" CMulder@usccr.gov, "'Alexander Heideman'" aheideman@usccr.gov, "'John Mashburn'" jmashburn@usccr.gov, "'Peter Kirsanow'" pkirsanow@beneschlaw.com, "'Stephen Gilchrist'" sgilchrist@usccr.gov, "'Thomas Simuel'" tsimuel@usccr.gov, "'J. Christian Adams'" jadams@usccr.gov, "'Gail Heriot'" gheriot@me.com
Subject : [EXTERNAL] RE: Bail Reform

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Cc: stephen gilchrist <thegilchristassociates@gmail.com>; Peter Kirsanow <pkirsanow@usccr.gov>; Christian Adams <adams@electionlawcenter.com>; Carissa Mulder <CMulder@usccr.gov>; Alexander Heideman <aheideman@usccr.gov>; John Mashburn <jmashburn@usccr.gov>; Peter Kirsanow <pkirsanow@beneschlaw.com>; Stephen Gilchrist <sgilchrist@usccr.gov>; Thomas Simuel <tsimuel@usccr.gov>; J. Christian Adams <jadams@usccr.gov>; Gail Heriot <gheriot@me.com>
Subject: Re: Bail Reform

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From : "Christian Adams" adams@electionlawcenter.com
To : "'Gail Heriot'" gheriot@usccr.gov, "'Alexander Heideman'" aheideman@usccr.gov
Cc : "'John Mashburn'" jmashburn@usccr.gov, "'Alexander Heideman'" alexanderheideman@gmail.com, "'stephen gilchrist'" thegilchristassociates@gmail.com, "'Peter Kirsanow'" pkirsanow@usccr.gov, "'Carissa Mulder'" CMulder@usccr.gov, "'Peter Kirsanow'" pkirsanow@beneschlaw.com, "'Stephen Gilchrist'" sgilchrist@usccr.gov, "'Thomas Simuel'" tsimuel@usccr.gov, "'J. Christian Adams'" jadams@usccr.gov, "'Gail Heriot'" gheriot@me.com
Subject : RE: [EXTERNAL] Re: Bail Reform

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"we were of that mindset also Commissioner Kladney and we resolved our concerns by picking Commissioner Yaki. One option for you to alleviate your concerns is to change your pick."

From: Gail Heriot <gheriot@usccr.gov>
Sent: Friday, August 20, 2021 12:14 PM
To: Alexander Heideman <aheideman@usccr.gov>
Cc: John Mashburn <jmashburn@usccr.gov>; Alexander Heideman <alexanderheideman@gmail.com>; stephen gilchrist <thegilchristassociates@gmail.com>; Peter Kirsanow <pkirsanow@usccr.gov>; Christian Adams <adams@electionlawcenter.com>; Carissa Mulder <CMulder@usccr.gov>; Peter Kirsanow <pkirsanow@beneschlaw.com>; Stephen Gilchrist <sgilchrist@usccr.gov>; Thomas Simuel <tsimuel@usccr.gov>; J. Christian Adams <jadams@usccr.gov>; Gail Heriot <gheriot@me.com>
Subject: Re: [EXTERNAL] Re: Bail Reform

Why don't we ask them if they are more comfortable with Christian?

Gail Heriot
Professor of Law
University of San Diego

> On Aug 20, 2021, at 9:13 AM, Alexander Heideman <aheideman@usccr.gov> wrote:
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> They're the ones who picked someone outside the Comm'n!
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> **From:** John Mashburn <jmashburn@usccr.gov>
> **Date:** Friday, August 20, 2021 at 12:12 PM

AMERICAN OVERSIGHT

To: Alexander Heideman <alexanderheideman@gmail.com>, Gail Heriot <gheriot@usccr.gov>
Cc: stephen gilchrist <thegilchristassociates@gmail.com>, Peter Kirsanow <pkirsanow@usccr.gov>, Christian Adams <adams@electionlawcenter.com>, Carissa Mulder <CMulder@usccr.gov>, Alexander Heideman <aheideman@usccr.gov>, Peter Kirsanow <pkirsanow@beneschlaw.com>, Stephen Gilchrist <sgilchrist@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>, "J. Christian Adams" <jadams@usccr.gov>, Gail Heriot <gheriot@me.com>
Subject: Re: [EXTERNAL] Re: Bail Reform

Nothing Requiring this for decades

From: Alexander Heideman <alexanderheideman@gmail.com>
Sent: Friday, August 20, 2021 12:09:20 PM
To: Gail Heriot
Cc: stephen gilchrist; Peter Kirsanow; Christian Adams; Carissa Mulder; Alexander Heideman; John Mashburn; Peter Kirsanow; Stephen Gilchrist; Thomas Simuel; J. Christian Adams; Gail Heriot
Subject: [EXTERNAL] Re: Bail Reform

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AMERICAN OVERSIGHT

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AMERICAN OVERSIGHT

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Gail

Gail Heriot
Professor of Law
University of San Diego

AMERICAN OVERSIGHT

Date : 8/20/2021 12:28:16 PM
From : "Christian Adams" adams@electionlawcenter.com
To : "'Thomas Simuel'" tsimuel@usccr.gov, "'Alexander Heideman'" aheideman@usccr.gov, "'John Mashburn'" jmashburn@usccr.gov, "'Alexander Heideman'" alexanderheideman@gmail.com, "'Gail Heriot'" gheriot@usccr.gov
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Subject : RE: [EXTERNAL] Re: Bail Reform

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Here's what is really irking them: The may have since learned Cleta was counsel to President Trump after the election.

From: Thomas Simuel <tsimuel@usccr.gov>
Sent: Friday, August 20, 2021 12:16 PM
To: Alexander Heideman <aheideman@usccr.gov>; John Mashburn <jmashburn@usccr.gov>; Alexander Heideman <alexanderheideman@gmail.com>; Gail Heriot <gheriot@usccr.gov>
Cc: stephen gilchrist <thegilchristassociates@gmail.com>; Peter Kirsanow <pkirsanow@usccr.gov>; Christian Adams <adams@electionlawcenter.com>; Carissa Mulder <CMulder@usccr.gov>; Peter Kirsanow <pkirsanow@beneschlaw.com>; Stephen Gilchrist <sgilchrist@usccr.gov>; J. Christian Adams <jadams@usccr.gov>; Gail Heriot <gheriot@me.com>
Subject: RE: [EXTERNAL] Re: Bail Reform

Exactly!!! Let's force the vote!

-------- Original message --------
From: Alexander Heideman <aheideman@usccr.gov>
Date: 8/20/21 12:13 PM (GMT-05:00)
To: John Mashburn <jmashburn@usccr.gov>, Alexander Heideman <alexanderheideman@gmail.com>, Gail Heriot <gheriot@usccr.gov>
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AMERICAN OVERSIGHT

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AMERICAN OVERSIGHT

Gail Heriot
Professor of Law
University of San Diego

AMERICAN OVERSIGHT

Date : 8/20/2021 12:27:56 PM
From : "Thomas Simuel" tsimuel@usccr.gov
To : "Christian Adams" adams@electionlawcenter.com, "Alexander Heideman" aheideman@usccr.gov, "John Mashburn" jmashburn@usccr.gov, "'Alexander Heideman'" alexanderheideman@gmail.com, "Gail Heriot" gheriot@usccr.gov
Cc : "'stephen gilchrist'" thegilchristassociates@gmail.com, "Peter Kirsanow" pkirsanow@usccr.gov, "Carissa Mulder" CMulder@usccr.gov, "'Peter Kirsanow'" pkirsanow@beneschlaw.com, "Stephen Gilchrist" sgilchrist@usccr.gov, "J. Christian Adams" jadams@usccr.gov, "'Gail Heriot'" gheriot@me.com
Subject : RE: [EXTERNAL] Re: Bail Reform

Definitely-they might want to change their vote!

Sent from my Metro By T-Mobile 4G LTE Android Device

-------- Original message --------
From: Christian Adams <adams@electionlawcenter.com>
Date: 8/20/21 12:26 PM (GMT-05:00)
To: Alexander Heideman <aheideman@usccr.gov>, John Mashburn <jmashburn@usccr.gov>, 'Alexander Heideman' <alexanderheideman@gmail.com>, Gail Heriot <gheriot@usccr.gov>
Cc: 'stephen gilchrist' <thegilchristassociates@gmail.com>, Peter Kirsanow <pkirsanow@usccr.gov>, Carissa Mulder <CMulder@usccr.gov>, 'Peter Kirsanow' <pkirsanow@beneschlaw.com>, Stephen Gilchrist <sgilchrist@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>, "J. Christian Adams" <jadams@usccr.gov>, 'Gail Heriot' <gheriot@me.com>
Subject: RE: [EXTERNAL] Re: Bail Reform

> CAUTION: This email is from outside USCCR.

Indeed. I am prepared to make note of that.

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Sent: Friday, August 20, 2021 12:13 PM
To: John Mashburn <jmashburn@usccr.gov>; Alexander Heideman <alexanderheideman@gmail.com>; Gail Heriot <gheriot@usccr.gov>
Cc: stephen gilchrist <thegilchristassociates@gmail.com>; Peter Kirsanow <pkirsanow@usccr.gov>; Christian Adams <adams@electionlawcenter.com>; Carissa Mulder <CMulder@usccr.gov>; Peter Kirsanow <pkirsanow@beneschlaw.com>; Stephen Gilchrist <sgilchrist@usccr.gov>; Thomas Simuel <tsimuel@usccr.gov>; J. Christian Adams <jadams@usccr.gov>; Gail Heriot <gheriot@me.com>
Subject: Re: [EXTERNAL] Re: Bail Reform

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AMERICAN OVERSIGHT

Gail Heriot
Professor of Law
University of San Diego

AMERICAN OVERSIGHT

Date : 8/20/2021 12:29:33 PM
From : "Christian Adams" adams@electionlawcenter.com
To : "'stephen gilchrist'" thegilchristassociates@gmail.com
Cc : "'Gail Heriot'" gheriot@usccr.gov, "'Alexander Heideman'" aheideman@usccr.gov, "'John Mashburn'" jmashburn@usccr.gov, "'Alexander Heideman'" alexanderheideman@gmail.com, "'Peter Kirsanow'" pkirsanow@usccr.gov, "'Carissa Mulder'" CMulder@usccr.gov, "'Peter Kirsanow'" pkirsanow@beneschlaw.com, "'Stephen Gilchrist'" sgilchrist@usccr.gov, "'Thomas Simuel'" tsimuel@usccr.gov, "'J. Christian Adams'" jadams@usccr.gov, "'Gail Heriot'" gheriot@me.com
Subject : RE: [EXTERNAL] Re: Bail Reform

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It is insane this small issue is now in its SIXTH month without appointments.

From: stephen gilchrist <thegilchristassociates@gmail.com>
Sent: Friday, August 20, 2021 12:28 PM
To: Christian Adams <adams@electionlawcenter.com>
Cc: Gail Heriot <gheriot@usccr.gov>; Alexander Heideman <aheideman@usccr.gov>; John Mashburn <jmashburn@usccr.gov>; Alexander Heideman <alexanderheideman@gmail.com>; Peter Kirsanow <pkirsanow@usccr.gov>; Carissa Mulder <CMulder@usccr.gov>; Peter Kirsanow <pkirsanow@beneschlaw.com>; Stephen Gilchrist <sgilchrist@usccr.gov>; Thomas Simuel <tsimuel@usccr.gov>; J. Christian Adams <jadams@usccr.gov>; Gail Heriot <gheriot@me.com>
Subject: Re: [EXTERNAL] Re: Bail Reform

Correct Christian.

On Fri, Aug 20, 2021 at 12:27 PM Christian Adams <adams@electionlawcenter.com> wrote:

> "we were of that mindset also Commissioner Kladney and we resolved our concerns by picking Commissioner Yaki. One option for you to alleviate your concerns is to change your pick."
>
> ---
>
> **From:** Gail Heriot <gheriot@usccr.gov>
> **Sent:** Friday, August 20, 2021 12:14 PM
> **To:** Alexander Heideman <aheideman@usccr.gov>
> **Cc:** John Mashburn <jmashburn@usccr.gov>; Alexander Heideman <alexanderheideman@gmail.com>; stephen gilchrist <thegilchristassociates@gmail.com>; Peter Kirsanow <pkirsanow@usccr.gov>; Christian Adams <adams@electionlawcenter.com>; Carissa Mulder <CMulder@usccr.gov>; Peter Kirsanow <pkirsanow@beneschlaw.com>; Stephen Gilchrist <sgilchrist@usccr.gov>; Thomas Simuel <tsimuel@usccr.gov>; J. Christian Adams <jadams@usccr.gov>; Gail Heriot <gheriot@me.com>
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From : "stephen gilchrist" thegilchristassociates@gmail.com
To : "Christian Adams" adams@electionlawcenter.com
Cc : "Gail Heriot" gheriot@usccr.gov, "Alexander Heideman" aheideman@usccr.gov, "John Mashburn" jmashburn@usccr.gov, "Alexander Heideman" alexanderheideman@gmail.com, "Peter Kirsanow" pkirsanow@usccr.gov, "Carissa Mulder" CMulder@usccr.gov, "Peter Kirsanow" pkirsanow@beneschlaw.com, "Stephen Gilchrist" sgilchrist@usccr.gov, "Thomas Simuel" tsimuel@usccr.gov, "J. Christian Adams" jadams@usccr.gov, "Gail Heriot" gheriot@me.com
Subject : Re: [EXTERNAL] Re: Bail Reform

CAUTION: This email is from outside USCCR.

Correct Christian.

On Fri, Aug 20, 2021 at 12:27 PM Christian Adams <adams@electionlawcenter.com> wrote:

> "we were of that mindset also Commissioner Kladney and we resolved our concerns by picking Commissioner Yaki. One option for you to alleviate your concerns is to change your pick."
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> ---
>
> **From:** Gail Heriot <gheriot@usccr.gov>
> **Sent:** Friday, August 20, 2021 12:14 PM
> **To:** Alexander Heideman <aheideman@usccr.gov>
> **Cc:** John Mashburn <jmashburn@usccr.gov>; Alexander Heideman <alexanderheideman@gmail.com>; stephen gilchrist <thegilchristassociates@gmail.com>; Peter Kirsanow <pkirsanow@usccr.gov>; Christian Adams <adams@electionlawcenter.com>; Carissa Mulder <CMulder@usccr.gov>; Peter Kirsanow <pkirsanow@beneschlaw.com>; Stephen Gilchrist <sgilchrist@usccr.gov>; Thomas Simuel <tsimuel@usccr.gov>; J. Christian Adams <jadams@usccr.gov>; Gail Heriot <gheriot@me.com>
> **Subject:** Re: [EXTERNAL] Re: Bail Reform
>
> Why don't we ask them if they are more comfortable with Christian?
>
> Gail Heriot
>
> Professor of Law
>
> University of San Diego

AMERICAN OVERSIGHT

On Aug 20, 2021, at 9:13 AM, Alexander Heideman <aheideman@usccr.gov> wrote:

They're the ones who picked someone outside the Comm'n!

From: John Mashburn <jmashburn@usccr.gov>
Date: Friday, August 20, 2021 at 12:12 PM
To: Alexander Heideman <alexanderheideman@gmail.com>, Gail Heriot <gheriot@usccr.gov>
Cc: stephen gilchrist <thegilchristassociates@gmail.com>, Peter Kirsanow <pkirsanow@usccr.gov>, Christian Adams <adams@electionlawcenter.com>, Carissa Mulder <CMulder@usccr.gov>, Alexander Heideman <aheideman@usccr.gov>, Peter Kirsanow <pkirsanow@beneschlaw.com>, Stephen Gilchrist <sgilchrist@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>, "J. Christian Adams" <jadams@usccr.gov>, Gail Heriot <gheriot@me.com>
Subject: Re: [EXTERNAL] Re: Bail Reform

Nothing Requiring this for decades

From: Alexander Heideman <alexanderheideman@gmail.com>
Sent: Friday, August 20, 2021 12:09:20 PM
To: Gail Heriot
Cc: stephen gilchrist; Peter Kirsanow; Christian Adams; Carissa Mulder; Alexander Heideman; John Mashburn; Peter Kirsanow; Stephen Gilchrist; Thomas Simuel; J. Christian Adams; Gail Heriot
Subject: [EXTERNAL] Re: Bail Reform

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COMMISSIONER KIRSANOW: First, the Memorandum of Understanding regarding the appointment of members to the EAC Board of Advisors, Section 1.01, reads: "Any authority not specifically granted the Commission on Civil Rights by statute or regulation or Executive Order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, et cetera, shall be exercised by the Commission as a whole by majority vote." Paragraph .02. "Any authority specifically granted the Staff Director of the Commission on Civil Rights by statute or regulation or Executive Order to appoint members to serve on other federal entities such as advisory boards, tasks forces, other commissions, et cetera, shall be exercised by the Staff Director." Paragraph .03. "Any authority specifically granted the Chair of the Commission on Civil Rights by statute or regulation or Executive Order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, et cetera, shall be exercised by the Chair." "Section 2.02(1). For the two appointments to the U.S. Election Assistance Commission, the members appointed by Democratic appointees shall nominate two individuals who are ready, willing, and able to serve, and the members appointed by the Republican authorities shall nominate two individuals who are ready, willing, and able to serve." Subparagraph (2). "The members appointed by the Democratic authorities shall select one of the two individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one of the two individuals nominated by the members appointed by the Democratic authorities." Subparagraph (3). "The members selected shall be placed in nomination and ratified in conformance with Section 1."

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AMERICAN OVERSIGHT

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I intend to vote in favor of the Florida SAC.

Gail

Gail Heriot
Professor of Law
University of San Diego

AMERICAN OVERSIGHT

Date : 8/20/2021 12:30:26 PM
From : "Gail Heriot" gheriot@usccr.gov
To : "Christian Adams" adams@electionlawcenter.com
Cc : "stephen gilchrist" thegilchristassociates@gmail.com, "Alexander Heideman" aheideman@usccr.gov, "John Mashburn" jmashburn@usccr.gov, "Alexander Heideman" alexanderheideman@gmail.com, "Peter Kirsanow" pkirsanow@usccr.gov, "Carissa Mulder" CMulder@usccr.gov, "Peter Kirsanow" pkirsanow@beneschlaw.com, "Stephen Gilchrist" sgilchrist@usccr.gov, "Thomas Simuel" tsimuel@usccr.gov, "J. Christian Adams" jadams@usccr.gov, "Gail Heriot" gheriot@me.com
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Yes, it is insane.

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Professor of Law
University of San Diego

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Sent: Friday, August 20, 2021 12:28 PM
To: Christian Adams <adams@electionlawcenter.com>
Cc: Gail Heriot <gheriot@usccr.gov>; Alexander Heideman <aheideman@usccr.gov>; John Mashburn <jmashburn@usccr.gov>; Alexander Heideman <alexanderheideman@gmail.com>; Peter Kirsanow <pkirsanow@usccr.gov>; Carissa Mulder <CMulder@usccr.gov>; Peter Kirsanow <pkirsanow@beneschlaw.com>; Stephen Gilchrist <sgilchrist@usccr.gov>; Thomas Simuel <tsimuel@usccr.gov>; J. Christian Adams <jadams@usccr.gov>; Gail Heriot <gheriot@me.com>
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AMERICAN OVERSIGHT

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AMERICAN OVERSIGHT

I intend to vote in favor of the Florida SAC.

Gail

Gail Heriot
Professor of Law
University of San Diego

AMERICAN OVERSIGHT

Date : 9/16/2020 5:19:58 PM
From : "Alexander Heideman" aheideman@usccr.gov
To : "Christian Adams" a@electionlawcenter.com, "'Gail Heriot'" gheriot@me.com
Cc : "Carissa Mulder" CMulder@usccr.gov, "'Peter Kirsanow'" pkirsanow@beneschlaw.com, "'stephen gilchrist'" thegilchristassociates@gmail.com, "'John Mashburn'" jkmash@comcast.net, "'Thomas Simuel'" tjsimuel32@gmail.com
Subject : Re: [EXTERNAL] EAC Board of Advisors

More from Maureen:

Alex,

I haven't found much more than what we discussed. The meeting transcripts are here (and looks like we've almost completed uploading them back to 2006): https://www.usccr.gov/calendar/transcripts.php I did do a very quick glance through the transcripts and did not find any votes for the EAC positions. I did find the email below from 2015 in which the then- Chair's special assistant asked all Commissioners who wanted to be appointed. I wasn't at USCCR for this one - I found the email in securi sync. Sorry to not be of more help. -Maureen

---

From: Juana Silverio
Sent: Wednesday, March 04, 2015 6:09 PM
To: Martin Castro; Patricia Timmons-Goodson; Roberta Achtenberg; David Kladney; Michael Yaki; Karen Narasaki; Gail Heriot; Peter Kirsanow
Cc: Sheryl Cozart; Alec Deull; Amy Royce; Kimberly Tolhurst; Jason T. Lagria; Alison Somin; Carissa Mulder
Subject: US Election Assistance Commission

I am sending on behalf of Chairman Castro. Please let him and I know if you'd be interested in representing the Commission on the U.S. EAC's Advisory Board.

Commissioners Achtenberg & Thernstrom represented us in the past. The EAC has a quorum now and would appreciate the Commission's participation.

Best,
Juana Silverio, Esq.

From: Alexander Heideman <aheideman@usccr.gov>
Date: Wednesday, September 16, 2020 at 1:31 PM
To: Christian Adams <a@electionlawcenter.com>, 'Gail Heriot' <gheriot@me.com>
Cc: Carissa Mulder <CMulder@usccr.gov>, 'Peter Kirsanow' <pkirsanow@beneschlaw.com>, 'stephen gilchrist' <thegilchristassociates@gmail.com>, 'John Mashburn' <jkmash@comcast.net>, 'Thomas Simuel' <tjsimuel32@gmail.com>
Subject: Re: [EXTERNAL] EAC Board of Advisors

I spoke with Maureen. She said that she was not asked about these appointments in 2019, but she thought that the Commissioners had had a conversation about them.

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It seems to me that these appointments were unlawful if they were not (1) made by the Commission and (2) bipartisan and geographically varied. And Google Maps says Reno (Kladney) is a short 3.5 hour drive from San Fran (Yaki).

I'll try to locate the 2015, 2013, & 2011 transcripts to see if appointments were voted on in the past.

From: Christian Adams <a@electionlawcenter.com>
Date: Wednesday, September 16, 2020 at 12:55 PM
To: 'Gail Heriot' <gheriot@me.com>, Alexander Heideman <aheideman@usccr.gov>
Cc: Carissa Mulder <CMulder@usccr.gov>, 'Peter Kirsanow' <pkirsanow@beneschlaw.com>, 'stephen gilchrist' <thegilchristassociates@gmail.com>, 'John Mashburn' <jkmash@comcast.net>, 'Thomas Simuel' <tjsimuel32@gmail.com>
Subject: RE: [EXTERNAL] EAC Board of Advisors

> CAUTION: This email is from outside USCCR.

ree with Gail. And the "appointments" did not comply with the admonition of the law that the board should be bipartisan.

From: Gail Heriot <gheriot@me.com>
Sent: Wednesday, September 16, 2020 12:15 PM
To: Alexander Heideman <aheideman@usccr.gov>
Cc: Christian Adams <a@electionlawcenter.com>; Carissa Mulder <CMulder@usccr.gov>; Peter Kirsanow <pkirsanow@beneschlaw.com>; stephen gilchrist <thegilchristassociates@gmail.com>; John Mashburn <jkmash@comcast.net>; Thomas Simuel <tjsimuel32@gmail.com>
Subject: Re: [EXTERNAL] EAC Board of Advisors

If the statute says the Commission makes the appointments, I don't see how it can be that the chair makes them. My recollection of the appointments under the Reynolds years is that Abby and maybe Yaki were our delegates. If there are transcripts going back that far they may show whether the Commission voted on these appointments.

> On Sep 16, 2020, at 8:51 AM, Alexander Heideman <aheideman@usccr.gov> wrote:
>
> Maureen says:
>
> > To my knowledge, there are not any internal rules about these appointments. The practice has been that the Chair makes the

AMERICAN OVERSIGHT

appointments. (Note though that I only have records going back to 2015 for these appointments and I do not know what the practice was before 2015). The statute (52 U.S.C. 20944(a)(10)) says "Two members appointed by the United States Commission on Civil Rights." 52 U.S.C. 20944(b) says "Appointments shall be made to the Board of Advisors under subsection (a) in a manner which ensures that the Board of Advisors will be bipartisan in nature and will reflect the various geographic regions of the United States." The terms are 2 year appointments; I believe the current USCCR appointments are Yaki and Kladney, and that their terms end 4/13/2021. I provided the above information, i.e., bipartisan and geographic scope, before the 2019 appointments, though did not provide any input beyond this. I've also attached the House report for the Help American Vote Act (establishes the advisory committees) - discussion of advisory boards is on page 33.

I have a call scheduled with her at 1 pm to discuss further. Please let me know if there are any specific questions I should ask.

Alex

From: Alexander Heideman <aheideman@usccr.gov>
Date: Wednesday, September 16, 2020 at 11:02 AM
To: Christian Adams <a@electionlawcenter.com>, 'Gail Heriot' <gheriot@me.com>
Cc: Carissa Mulder <CMulder@usccr.gov>, 'Peter >, 'John Mashburn' <jkmash@comcast.net>, 'Thomas Simuel' <tjsimuel32@gmail.com>
Subject: Re: [EXTERNAL] EAC Board of Advisors

Yes, happy to.

From: Christian Adams <a@electionlawcenter.com>
Date: Wednesday, September 16, 2020 at 11:02 AM
To: 'Gail Heriot' <gheriot@me.com>
Cc: Carissa Mulder <CMulder@usccr.gov>, 'Peter >, 'John Mashburn' <jkmash@comcast.net>, 'Thomas Simuel' <tjsimuel32@gmail.com>, Alexander Heideman <aheideman@usccr.gov>
Subject: RE: [EXTERNAL] EAC Board of Advisors

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AMERICAN OVERSIGHT

ple people aren't asking her different times, can the SA's get to the bottom of this with maureen.

From: Gail Heriot <gheriot@me.com>
Sent: Wednesday, September 16, 2020 10:46 AM
To: Christian Adams <a@electionlawcenter.com>
Cc: Carissa Mulder <CMulder@usccr.gov>; Peter Kirsanow <pkirsanow@beneschlaw.com>; stephen gilchrist <thegilchristassociates@gmail.com>; John Mashburn <jkmash@comcast.net>; Thomas Simuel <tjsimuel32@gmail.com>; Alexander Heideman <aheideman@usccr.gov>
Subject: Re: [EXTERNAL] EAC Board of Advisors

I don't think there are any rules. In the absence of an explicit delegation of power, the Commission as a whole has that power. But you need to be sure it wasn't done properly. I have a vague recollection of talking about this in a meeting in the last decade. The straight shooter on the staff is Maureen Rudolph. You might want to ask her.

Gail Heriot
Professor of Law
University of San Diego

> On Sep 15, 2020, at 2:17 PM, Christian Adams <a@electionlawcenter.com> wrote:
>
> I don't know the rules for USCCR appointing ANYONE yet, but if there are no minutes showing a vote appointing them in regular business, it would seem that their "appointment" is void.
>
> ---
>
> **From:** Carissa Mulder <CMulder@usccr.gov>
> **Sent:** Tuesday, September 15, 2020 4:01 PM
> **To:** Christian Adams <a@electionlawcenter.com>; 'Peter Kirsanow' <pkirsanow@Beneschlaw.com>; 'Gail Heriot' <gheriot@me.com>; 'stephen gilchrist' <thegilchristassociates@gmail.com>
> **Cc:** 'John Mashburn' <jkmash@comcast.net>; 'Thomas Simuel' <tjsimuel32@gmail.com>; Alexander Heideman <aheideman@usccr.gov>
> **Subject:** Re: [EXTERNAL] EAC Board of Advisors

AMERICAN OVERSIGHT

Looking at the document about the appointment of the advisory board members, I think that is correct, Christian. Catherine probably appointed them without ever bringing it up.

From: Christian Adams <a@electionlawcenter.com>
Sent: Tuesday, September 15, 2020 3:55:45 PM
To: Carissa Mulder; 'Peter Kirsanow'; 'Gail Heriot'; 'stephen gilchrist'
Cc: 'John Mashburn'; 'Thomas Simuel'; Alexander Heideman
Subject: RE: [EXTERNAL] EAC Board of Advisors

> CAUTION: This email is from outside USCCR.

It probably NEVER came up in a business meeting and therefore we should, as a commission have the authority to take it up in a business meeting and appoint-anew.

From: Carissa Mulder <CMulder@usccr.gov>
Sent: Tuesday, September 15, 2020 3:34 PM
To: Christian Adams <a@electionlawcenter.com>; Peter Kirsanow <pkirsanow@Beneschlaw.com>; 'Gail Heriot' <gheriot@me.com>; 'stephen gilchrist' <thegilchristassociates@gmail.com> >; Alexander Heideman <aheideman@usccr.gov>
Subject: Re: [EXTERNAL] EAC Board of Advisors

Good question! I had no idea the USCCR got two designees to the EAC Board of Advisors. Here's the .

From: Christian Adams <a@electionlawcenter.com>
Sent: Tuesday, September 15, 2020 3:15:28 PM
To: Peter Kirsanow; 'Gail Heriot'; 'stephen gilchrist'
Cc: John Mashburn; 'Thomas Simuel'; Carissa Mulder; Alexander Heideman
Subject: [EXTERNAL] EAC Board of Advisors

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AC commission saying that Yaki is acting absurdly and exercising power over the EAC by threatening the Pelosi pick on the EAC with removal if he doesn't do what he wants, effectively making Yaki a

AMERICAN OVERSIGHT

commissioner on the EAC on many issues. He is causing mischief I don't even detail here.

My question is how does he get UNDONE from the EAC oversight commission? How does that get revoked and replaced?

<Help America Vote Act House Report 107_329[1].pdf>

AMERICAN OVERSIGHT

Date : 8/20/2021 1:09:36 PM
From : "Thomas Simuel" tsimuel@usccr.gov
To : "Gail Heriot" gheriot@me.com
Subject : RE: [EXTERNAL] Re: Bail Reform

No...let's not allow a long delay?

-------- Original message --------
From: Gail Heriot <gheriot@me.com>
Date: 8/20/21 12:35 PM (GMT-05:00)
To: Gail Heriot <gheriot@usccr.gov>
Cc: Christian Adams <adams@electionlawcenter.com>, stephen gilchrist <thegilchristassociates@gmail.com>, Alexander Heideman <aheideman@usccr.gov>, John Mashburn <jmashburn@usccr.gov>, Alexander Heideman <alexanderheideman@gmail.com>, Peter Kirsanow <pkirsanow@usccr.gov>, Carissa Mulder <CMulder@usccr.gov>, Peter Kirsanow <pkirsanow@beneschlaw.com>, Stephen Gilchrist <sgilchrist@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>, "J. Christian Adams" <jadams@usccr.gov>
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The Utah SAC doesn't seem to understand the "wage gap" at all.

Gail Heriot
Professor of Law
University of San Diego

> On Aug 20, 2021, at 9:30 AM, Gail Heriot <gheriot@usccr.gov> wrote:
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From: John Mashburn <jmashburn@usccr.gov>
Date: Friday, August 20, 2021 at 12:12 PM
To: Alexander Heideman <alexanderheideman@gmail.com>, Gail Heriot <gheriot@usccr.gov>
Cc: stephen gilchrist <thegilchristassociates@gmail.com>, Peter Kirsanow <pkirsanow@usccr.gov>, Christian Adams <adams@electionlawcenter.com>, Carissa Mulder <CMulder@usccr.gov>, Alexander Heideman <aheideman@usccr.gov>, Peter Kirsanow <pkirsanow@beneschlaw.com>, Stephen Gilchrist <sgilchrist@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>, "J. Christian Adams" <jadams@usccr.gov>, Gail Heriot <gheriot@me.com>
Subject: Re: [EXTERNAL] Re: Bail Reform

Nothing Requiring this for decades

From: Alexander Heideman <alexanderheideman@gmail.com>
Sent: Friday, August 20, 2021 12:09:20 PM
To: Gail Heriot
Cc: stephen gilchrist; Peter Kirsanow; Christian Adams; Carissa Mulder; Alexander Heideman; John Mashburn; Peter Kirsanow; Stephen Gilchrist; Thomas Simuel; J. Christian Adams; Gail Heriot
Subject: [EXTERNAL] Re: Bail Reform

> CAUTION: This email is from outside USCCR.

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COMMISSIONER KIRSANOW: First, the Memorandum of Understanding regarding the appointment of members to the EAC Board of Advisors, Section 1.01, reads: "Any authority not specifically granted the Commission on Civil Rights by statute or regulation or Executive Order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, et cetera, shall be exercised by the Commission as a whole by majority vote." Paragraph .02. "Any authority specifically granted the Staff Director of the Commission on Civil Rights by statute or regulation or Executive Order to appoint members to serve on other federal entities such as advisory boards, tasks forces, other commissions, et cetera, shall be exercised by the Staff Director." Paragraph .03. "Any authority specifically granted the Chair of the Commission on Civil Rights by statute or regulation or Executive Order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, et cetera, shall be exercised by the Chair." "Section 2.02(1). For the two appointments to the U.S. Election Assistance Commission, the members appointed by Democratic appointees shall nominate two individuals who are ready, willing, and able to serve, and the members appointed by the Republican authorities shall nominate two individuals who are ready, willing, and able to serve." Subparagraph (2). "The members appointed by the Democratic authorities shall select one of the two individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one of the two individuals nominated by the members appointed by the Democratic authorities." Subparagraph (3). "The members selected shall be placed in nomination and ratified in conformance with Section 1."

On Fri, Aug 20, 2021 at 12:05 PM Gail Heriot <gheriot@usccr.gov> wrote:

> They are much more organized than we are. They've had a zoom and have a list of people to call on.

AMERICAN OVERSIGHT

Gail Heriot
Professor of Law
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AMERICAN OVERSIGHT

		Gail Gail Heriot Professor of Law University of San Diego

AMERICAN OVERSIGHT

Date : 8/20/2021 1:17:36 PM
From : "Thomas Simuel" tsimuel@usccr.gov
To : "Alexander Heideman" alexanderheideman@gmail.com
Subject : RE: [EXTERNAL] Re: Bail Reform

Why are we talking "removal" concerns already???

-------- Original message --------
From: Alexander Heideman <alexanderheideman@gmail.com>
Date: 8/20/21 1:16 PM (GMT-05:00)
To: Gail Heriot <gheriot@me.com>
Cc: Gail Heriot <gheriot@usccr.gov>, Christian Adams <adams@electionlawcenter.com>, stephen gilchrist <thegilchristassociates@gmail.com>, Alexander Heideman <aheideman@usccr.gov>, John Mashburn <jmashburn@usccr.gov>, Peter Kirsanow <pkirsanow@usccr.gov>, Carissa Mulder <CMulder@usccr.gov>, Peter Kirsanow <pkirsanow@beneschlaw.com>, Stephen Gilchrist <sgilchrist@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>, "J. Christian Adams" <jadams@usccr.gov>
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A bag of rocks would provide a better on-the-spot opinion than this guy.

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Correct Christian.

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Why don't we ask them if they are more comfortable with Christian?

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AMERICAN OVERSIGHT

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AMERICAN OVERSIGHT

problems. But if we let it get through, we'll have the chance to file Statements commenting on it. If we abstain rather than affirmatively vote for it, nobody will be able to blame us for the report's flaws.

I intend to vote in favor of the Florida SAC.

Gail

Gail Heriot Professor of Law University of San Diego

AMERICAN OVERSIGHT

Date : 9/16/2020 5:50:41 PM
From : "Thomas Simuel" tjsimuel32@gmail.com
To : "Alexander Heideman" aheideman@usccr.gov
Cc : "Christian Adams" a@electionlawcenter.com, "Gail Heriot" gheriot@me.com, "Carissa Mulder" CMulder@usccr.gov, "Peter Kirsanow" pkirsanow@beneschlaw.com, "stephen gilchrist" thegilchristassociates@gmail.com, "John Mashburn" jkmash@comcast.net
Subject : Re: [EXTERNAL] EAC Board of Advisors

CAUTION: This email is from outside USCCR.

If there is no documentation of a vote, then that bolster the position that a vote be cast according to the regulations and because that wasn't done we desire a vote. Ask Maureen for an opinion on this. If it's here opinion that we are correct then I believe we start from scratch. Kick both off and then let the negotiating begin.

If we get both kicked off the board then we are at a stalemate until a compromise can be reached on two diverse candidates.

Thomas

On Wed, Sep 16, 2020, 5:20 PM Alexander Heideman <aheideman@usccr.gov> wrote:

> More from Maureen:
>
> Alex,
>
> I haven't found much more than what we discussed. The meeting transcripts are here (and looks like we've almost completed uploading them back to 2006): https://www.usccr.gov/calendar/transcripts.php I did do a very quick glance through the transcripts and did not find any votes for the EAC positions. I did find the email below from 2015 in which the then- Chair's special assistant asked all Commissioners who wanted to be appointed. I wasn't at USCCR for this one - I found the email in securi sync. Sorry to not be of more help. - Maureen
>
> _____
> From: Juana Silverio
> Sent: Wednesday, March 04, 2015 6:09 PM
> To: Martin Castro; Patricia Timmons-Goodson; Roberta Achtenberg; David Kladney; Michael Yaki; Karen Narasaki; Gail Heriot; Peter Kirsanow
> Cc: Sheryl Cozart; Alec Deull; Amy Royce; Kimberly Tolhurst; Jason T. Lagria; Alison Somin; Carissa Mulder
> Subject: US Election Assistance Commission
>
> I am sending on behalf of Chairman Castro. Please let him and I know if you'd be interested in representing the Commission on the U.S. EAC's Advisory Board.
>
> Commissioners Achtenberg & Thernstrom represented us in the past. The EAC has a quorum now

AMERICAN OVERSIGHT

and would appreciate the Commission's participation.

Best,
Juana Silverio, Esq.

From: Alexander Heideman <aheideman@usccr.gov>
Date: Wednesday, September 16, 2020 at 1:31 PM
To: Christian Adams <a@electionlawcenter.com>, 'Gail Heriot' <gheriot@me.com>
Cc: Carissa Mulder <CMulder@usccr.gov>, 'Peter Kirsanow' <pkirsanow@beneschlaw.com>, 'stephen gilchrist' <thegilchristassociates@gmail.com>, 'John Mashburn' <jkmash@comcast.net>, 'Thomas Simuel' <tjsimuel32@gmail.com>
Subject: Re: [EXTERNAL] EAC Board of Advisors

I spoke with Maureen. She said that she was not asked about these appointments in 2019, but she thought that the Commissioners had had a conversation about them.

It seems to me that these appointments were unlawful if they were not (1) made by the Commission and (2) bipartisan and geographically varied. And Google Maps says Reno (Kladney) is a short 3.5 hour drive from San Fran (Yaki).

I'll try to locate the 2015, 2013, & 2011 transcripts to see if appointments were voted on in the past.

From: Christian Adams <a@electionlawcenter.com>
Date: Wednesday, September 16, 2020 at 12:55 PM
To: 'Gail Heriot' <gheriot@me.com>, Alexander Heideman <aheideman@usccr.gov>
Cc: Carissa Mulder <CMulder@usccr.gov>, 'Peter Kirsanow' <pkirsanow@beneschlaw.com>, 'stephen gilchrist' <thegilchristassociates@gmail.com>, 'John Mashburn' <jkmash@comcast.net>, 'Thomas Simuel' <tjsimuel32@gmail.com>
Subject: RE: [EXTERNAL] EAC Board of Advisors

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ree with Gail. And the "appointments" did not comply with the admonition of the law that the board should be bipartisan.

From: Gail Heriot <gheriot@me.com>
Sent: Wednesday, September 16, 2020 12:15 PM
To: Alexander Heideman <aheideman@usccr.gov>
Cc: Christian Adams <a@electionlawcenter.com>; Carissa Mulder <CMulder@usccr.gov>; Peter Kirsanow <pkirsanow@beneschlaw.com>; stephen gilchrist <thegilchristassociates@gmail.com>; John Mashburn <jkmash@comcast.net>; Thomas Simuel <tjsimuel32@gmail.com>
Subject: Re: [EXTERNAL] EAC Board of Advisors

If the statute says the Commission makes the appointments, I don't see how it can be that the chair makes them. My recollection of the appointments under the Reynolds years is that Abby and maybe Yaki were our delegates. If there are transcripts going back that far they may show whether the Commission voted on these appointments.

> On Sep 16, 2020, at 8:51 AM, Alexander Heideman <aheideman@usccr.gov> wrote:
>
> Maureen says:
>
> > To my knowledge, there are not any internal rules about these appointments. The practice has been that the Chair makes the appointments. (Note though that I only have records going back to 2015 for these appointments and I do not know what the practice was before 2015). The statute (52 U.S.C. 20944(a)(10)) says "Two members appointed by the United

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States Commission on Civil Rights." 52 U.S.C. 20944(b) says "Appointments shall be made to the Board of Advisors under subsection (a) in a manner which ensures that the Board of Advisors will be bipartisan in nature and will reflect the various geographic regions of the United States." The terms are 2 year appointments; I believe the current USCCR appointments are Yaki and Kladney, and that their terms end 4/13/2021. I provided the above information, i.e., bipartisan and geographic scope, before the 2019 appointments, though did not provide any input beyond this. I've also attached the House report for the Help American Vote Act (establishes the advisory committees) - discussion of advisory boards is on page 33.

I have a call scheduled with her at 1 pm to discuss further. Please let me know if there are any specific questions I should ask.

Alex

From: Alexander Heideman <aheideman@usccr.gov>
Date: Wednesday, September 16, 2020 at 11:02 AM
To: Christian Adams <a@electionlawcenter.com>, 'Gail Heriot' <gheriot@me.com>
>, 'stephen gilchrist' <thegilchristassociates@gmail.com>, 'John Mashburn' <jkmash@comcast.net>, 'Thomas Simuel' <tjsimuel32@gmail.com>
Subject: Re: [EXTERNAL] EAC Board of Advisors

Yes, happy to.

From: Christian Adams <a@electionlawcenter.com>
Date: Wednesday, September 16, 2020 at 11:02 AM
To: 'Gail Heriot' <gheriot@me.com>
>, 'stephen gilchrist' <thegilchristassociates@gmail.com>, 'John Mashburn' <jkmash@comcast.net>, 'Thomas Simuel' <tjsimuel32@gmail.com>, Alexander Heideman <aheideman@usccr.gov>
Subject: RE: [EXTERNAL] EAC Board of Advisors

AMERICAN OVERSIGHT

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ple people aren't asking her different times, can the SA's get to the bottom of this with maureen.

From: Gail Heriot <gheriot@me.com>
Sent: Wednesday, September 16, 2020 10:46 AM
To: Christian Adams <a@electionlawcenter.com>
>; stephen gilchrist <thegilchristassociates@gmail.com>; John Mashburn <jkmash@comcast.net>; Thomas Simuel <tjsimuel32@gmail.com>; Alexander Heideman <aheideman@usccr.gov>
Subject: Re: [EXTERNAL] EAC Board of Advisors

I don't think there are any rules. In the absence of an explicit delegation of power, the Commission as a whole has that power. But you need to be sure it wasn't done properly. I have a vague recollection of talking about this in a meeting in the last decade. The straight shooter on the staff is Maureen Rudolph. You might want to ask her.

Gail Heriot

Professor of Law

University of San Diego

> On Sep 15, 2020, at 2:17 PM, Christian Adams <a@electionlawcenter.com> wrote:
>
> I don't know the rules for USCCR appointing ANYONE yet, but if there are no minutes showing a vote

AMERICAN OVERSIGHT

appointing them in regular business, it would seem that their “appointment” is void.

From: Carissa Mulder <CMulder@usccr.gov>
Sent: Tuesday, September 15, 2020 4:01 PM
To: Christian Adams <a@electionlawcenter.com>; 'Peter Kirsanow' <pkirsanow@Beneschlaw.com>; 'Gail >
Cc: 'John Mashburn' <jkmash@comcast.net>; 'Thomas Simuel' <tjsimuel32@gmail.com>; Alexander Heideman <aheideman@usccr.gov>
Subject: Re: [EXTERNAL] EAC Board of Advisors

Looking at the document about the appointment of the advisory board members, I think that is correct, Christian. Catherine probably appointed them without ever bringing it up.

From: Christian Adams <a@electionlawcenter.com>
Sent: Tuesday, September 15, 2020 3:55:45 PM
To: Carissa Mulder; 'Peter Kirsanow'; 'Gail Heriot'; 'stephen gilchrist'
Cc: 'John Mashburn'; 'Thomas Simuel'; Alexander Heideman
Subject: RE: [EXTERNAL] EAC Board of Advisors

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It probably NEVER came up in a business meeting and therefore we should, as a commission have the authority to take it up in a business meeting and appoint-anew.

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From: Carissa Mulder <CMulder@usccr.gov>
Sent: Tuesday, September 15, 2020 3:34 PM
To: Christian Adams <a@electionlawcenter.com>; Peter Kirsanow <pkirsanow@Beneschlaw.com>; 'Gail
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Cc: John Mashburn <jkmash@comcast.net>; 'Thomas Simuel' <tjsimuel32@gmail.com>; Alexander Heideman <aheideman@usccr.gov>
Subject: Re: [EXTERNAL] EAC Board of Advisors

Good question! I had no idea the USCCR got two designees to the EAC Board of Advisors. Here's
.

From: Christian Adams <a@electionlawcenter.com>
Sent: Tuesday, September 15, 2020 3:15:28 PM
To: Peter Kirsanow; 'Gail Heriot'; 'stephen gilchrist'
Cc: John Mashburn; 'Thomas Simuel'; Carissa Mulder; Alexander Heideman
Subject: [EXTERNAL] EAC Board of Advisors

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AC commission saying that Yaki is acting absurdly and exercising power over the EAC by threatening the Pelosi pick on the EAC with removal if he doesn't do what he wants, effectively making Yaki a commissioner on the EAC on many issues. He is causing mischief I don't even detail here.

My question is how does he get UNDONE from the EAC oversight commission? How does that get revoked and replaced?

<Help America Vote Act House Report 107_329[1].pdf>

AMERICAN OVERSIGHT

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Why don't Kladney just say he does not want Cleta! ☺

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AMERICAN OVERSIGHT

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Subject: Re: [EXTERNAL] Re: Bail Reform

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To: Gail Heriot
Cc: stephen gilchrist; Peter Kirsanow; Christian Adams; Carissa Mulder; Alexander Heideman; John Mashburn; Peter Kirsanow; Stephen Gilchrist; Thomas Simuel; J. Christian Adams; Gail Heriot
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AMERICAN OVERSIGHT

University
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Diego

AMERICAN OVERSIGHT

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From : "Christian Adams" adams@electionlawcenter.com
To : "'stephen gilchrist'" thegilchristassociates@gmail.com, "'Alexander Heideman'" alexanderheideman@gmail.com
Cc : "'Gail Heriot'" gheriot@me.com, "'Gail Heriot'" gheriot@usccr.gov, "'Alexander Heideman'" aheideman@usccr.gov, "'John Mashburn'" jmashburn@usccr.gov, "'Peter Kirsanow'" pkirsanow@usccr.gov, "'Carissa Mulder'" CMulder@usccr.gov, "'Peter Kirsanow'" pkirsanow@beneschlaw.com, "'Stephen Gilchrist'" sgilchrist@usccr.gov, "'Thomas Simuel'" tsimuel@usccr.gov, "'J. Christian Adams'" jadams@usccr.gov
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AMERICAN OVERSIGHT

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AMERICAN OVERSIGHT

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AMERICAN OVERSIGHT

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From : "Thomas Simuel" tsimuel@usccr.gov
To : "Christian Adams" adams@electionlawcenter.com
Subject : RE: [EXTERNAL] Re: Bail Reform

Yea...not that gracious....kinda cantankerous.

-------- Original message --------
From: Christian Adams <adams@electionlawcenter.com>
Date: 8/20/21 1:50 PM (GMT-05:00)
To: 'stephen gilchrist' <thegilchristassociates@gmail.com>, 'Alexander Heideman' <alexanderheideman@gmail.com>
Cc: 'Gail Heriot' <gheriot@me.com>, Gail Heriot <gheriot@usccr.gov>, Alexander Heideman <aheideman@usccr.gov>, John Mashburn <jmashburn@usccr.gov>, Peter Kirsanow <pkirsanow@usccr.gov>, Carissa Mulder <CMulder@usccr.gov>, 'Peter Kirsanow' <pkirsanow@beneschlaw.com>, Stephen Gilchrist <sgilchrist@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>, "J. Christian Adams" <jadams@usccr.gov>
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> **Sent:** Friday, August 20, 2021 12:14 PM
> **To:** Alexander Heideman <aheideman@usccr.gov>
> **Cc:** John Mashburn <jmashburn@usccr.gov>; Alexander Heideman <alexanderheideman@gmail.com>; stephen gilchrist <thegilchristassociates@gmail.com>; Peter Kirsanow <pkirsanow@usccr.gov>; Christian Adams <adams@electionlawcenter.com>; Carissa Mulder <CMulder@usccr.gov>; Peter Kirsanow <pkirsanow@beneschlaw.com>; Stephen Gilchrist <sgilchrist@usccr.gov>; Thomas Simuel <tsimuel@usccr.gov>; J. Christian Adams <jadams@usccr.gov>; Gail Heriot <gheriot@me.com>
> **Subject:** Re: [EXTERNAL] Re: Bail Reform

AMERICAN OVERSIGHT

Why don't we ask them if they are more comfortable with Christian?

Gail Heriot

Professor of Law

University of San Diego

> On Aug 20, 2021, at 9:13 AM, Alexander Heideman <aheideman@usccr.gov> wrote:
>
> They're the ones who picked someone outside the Comm'n!
>
> ---
>
> **From:** John Mashburn <jmashburn@usccr.gov>
> **Date:** Friday, August 20, 2021 at 12:12 PM
> **To:** >, Gail Heriot <gheriot@usccr.gov>
> **Cc:** >, Peter Kirsanow <pkirsanow@usccr.gov>, Christian Adams <adams@electionlawcenter.com>, Carissa Mulder <CMulder@usccr.gov>, Alexander Heideman <aheideman@usccr.gov>, Peter Kirsanow <pkirsanow@beneschlaw.com>, Stephen Gilchrist <sgilchrist@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>, "J. Christian Adams" <jadams@usccr.gov>, Gail Heriot <gheriot@me.com>

AMERICAN OVERSIGHT

Subject: Re: [EXTERNAL] Re: Bail Reform

Nothing Requiring this for decades

From:
>
Sent: Friday, August 20, 2021 12:09:20 PM
To: Gail Heriot
Cc: stephen gilchrist; Peter Kirsanow; Christian Adams; Carissa Mulder; Alexander Heideman; John Mashburn; Peter Kirsanow; Stephen Gilchrist; Thomas Simuel; J. Christian Adams; Gail Heriot
Subject: [EXTERNAL] Re: Bail Reform

CAUTION: This email is from outside USCCR.

COMMISSIONER KIRSANOW: First, the Memorandum of Understanding regarding the appointment of members to the EAC Board of Advisors, Section 1.01, reads: "Any authority not specifically granted the Commission on Civil Rights by statute or regulation or Executive Order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, et cetera, shall be exercised by the Commission as a whole by majority vote." Paragraph .02.

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"Any authority specifically granted the Staff Director of the Commission on Civil Rights by statute or regulation or Executive Order to appoint members to serve on other federal entities such as advisory boards, tasks forces, other commissions, et cetera, shall be exercised by the Staff Director." Paragraph .03. "Any authority specifically granted the Chair of the Commission on Civil Rights by statute or regulation or Executive Order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, et cetera, shall be exercised by the Chair." "Section 2.02(1). For the two appointments to the U.S. Election Assistance Commission, the members appointed by Democratic appointees shall nominate two individuals who are ready, willing, and able to serve, and the members appointed by the Republican authorities shall nominate two individuals who are ready, willing, and able to serve." Subparagraph (2). "The members appointed by the Democratic authorities shall select one of the two individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one of the two individuals nominated by the members appointed by the Democratic authorities." Subparagraph (3). "The members selected shall be placed in nomination and ratified in conformance with Section 1."

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On Fri, Aug 20, 2021 at 12:05 PM Gail Heriot <gheriot@usccr.gov> wrote:

> They are much more organized than we are. They've had a zoom and have a list of people to call on.
>
> Gail Heriot
>
> Professor of Law
>
> University of San Diego
>
> > On Aug 20, 2021, at 6:05 AM, Gail Heriot <gheriot@usccr.gov> wrote:
> >
> > Yes, I will be doing that too.
> >
> > Gail Heriot
> >
> > Professor of Law
> >
> > University of San Diego
> >
> > > On Aug 20, 2021, at 4:08 AM, stephen gilchrist <thegilchristassociates@gmail.com> wrote:
> > >
> > > Guys I will

AMERICAN OVERSIGHT

also be supporting Christians amendment to vote at the business meeting on the Nominations for the EAC.

On Fri, Aug 20, 2021, 7:03 AM stephen gilchrist <thegilchristassociates@gmail.com> wrote:

> I found the Bail Reform report to be one that did try to highlight the facts rather than persuade the commission to some remarkable

AMERICAN OVERSIGHT

bias place. I am inclined to support the report and to support the Florida SAC.

On Fri, Aug 20, 2021, 12:54 AM Gail Heriot <gheriot@usccr.gov> wrote:

> Dear all Unless somebody wants to talk me out of it, my inclination is to abstain on the Bail Reform report. I think it

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has a lot of problems. But if we let it get through, we'll have the chance to file Statements commenting on it. If we abstain rather than affirmatively vote for it, nobody will be able to blame us for the report's flaws.

I intend to vote in favor of the

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							Florida SAC. Gail Gail Heriot Professor of Law University of San Diego

AMERICAN OVERSIGHT

Date : 9/16/2020 5:47:50 PM
From : "Christian Adams" a@electionlawcenter.com
To : "Alexander Heideman" aheideman@usccr.gov, "'Gail Heriot'" gheriot@me.com
Cc : "Carissa Mulder" CMulder@usccr.gov, "'Peter Kirsanow'" pkirsanow@beneschlaw.com, "'stephen gilchrist'" thegilchristassociates@gmail.com, "'John Mashburn'" jkmash@comcast.net, "'Thomas Simuel'" tjsimuel32@gmail.com
Subject : Re: [EXTERNAL] EAC Board of Advisors

CAUTION: This email is from outside USCCR.

If there is no regular appointment then we have a great deal of latitude here to act. Sooner the better. They are being severely disruptive to EAC affairs, right now.

-------- Original message --------
From: Alexander Heideman <aheideman@usccr.gov>
Date: 9/16/20 5:20 PM (GMT-05:00)
To: Christian Adams <a@electionlawcenter.com>, 'Gail Heriot' <gheriot@me.com>
Cc: Carissa Mulder <CMulder@usccr.gov>, 'Peter Kirsanow' <pkirsanow@beneschlaw.com>, 'stephen gilchrist' <thegilchristassociates@gmail.com>, 'John Mashburn' <jkmash@comcast.net>, 'Thomas Simuel' <tjsimuel32@gmail.com>
Subject: Re: [EXTERNAL] EAC Board of Advisors

More from Maureen:

Alex,

I haven't found much more than what we discussed. The meeting transcripts are here (and looks like we've almost completed uploading them back to 2006): https://www.usccr.gov/calendar/transcripts.php I did do a very quick glance through the transcripts and did not find any votes for the EAC positions. I did find the email below from 2015 in which the then- Chair's special assistant asked all Commissioners who wanted to be appointed. I wasn't at USCCR for this one - I found the email in securi sync. Sorry to not be of more help. -Maureen

---

From: Juana Silverio
Sent: Wednesday, March 04, 2015 6:09 PM
To: Martin Castro; Patricia Timmons-Goodson; Roberta Achtenberg; David Kladney; Michael Yaki; Karen Narasaki; Gail Heriot; Peter Kirsanow
Cc: Sheryl Cozart; Alec Deull; Amy Royce; Kimberly Tolhurst; Jason T. Lagria; Alison Somin; Carissa Mulder
Subject: US Election Assistance Commission

I am sending on behalf of Chairman Castro. Please let him and I know if you'd be interested in

AMERICAN OVERSIGHT

representing the Commission on the U.S. EAC's Advisory Board.

Commissioners Achtenberg & Thernstrom represented us in the past. The EAC has a quorum now and would appreciate the Commission's participation.

Best,
Juana Silverio, Esq.

From: Alexander Heideman <aheideman@usccr.gov>
Date: Wednesday, September 16, 2020 at 1:31 PM
To: Christian Adams <a@electionlawcenter.com>, 'Gail Heriot' <gheriot@me.com>
Cc: Carissa Mulder <CMulder@usccr.gov>, 'Peter Kirsanow' <pkirsanow@beneschlaw.com>, 'stephen gilchrist' <thegilchristassociates@gmail.com>, 'John Mashburn' <jkmash@comcast.net>, 'Thomas Simuel' <tjsimuel32@gmail.com>
Subject: Re: [EXTERNAL] EAC Board of Advisors

I spoke with Maureen. She said that she was not asked about these appointments in 2019, but she thought that the Commissioners had had a conversation about them.

It seems to me that these appointments were unlawful if they were not (1) made by the Commission and (2) bipartisan and geographically varied. And Google Maps says Reno (Kladney) is a short 3.5 hour drive from San Fran (Yaki).

I'll try to locate the 2015, 2013, & 2011 transcripts to see if appointments were voted on in the past.

From: Christian Adams <a@electionlawcenter.com>
Date: Wednesday, September 16, 2020 at 12:55 PM
To: 'Gail Heriot' <gheriot@me.com>, Alexander Heideman <aheideman@usccr.gov>
Cc: Carissa Mulder <CMulder@usccr.gov>, 'Peter Kirsanow' <pkirsanow@beneschlaw.com>, 'stephen gilchrist' <thegilchristassociates@gmail.com>, 'John Mashburn' <jkmash@comcast.net>, 'Thomas Simuel' <tjsimuel32@gmail.com>
Subject: RE: [EXTERNAL] EAC Board of Advisors

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CAUTION: This email is from outside USCCR.

ree with Gail. And the "appointments" did not comply with the admonition of the law that the board should be bipartisan.

From: Gail Heriot <gheriot@me.com>
Sent: Wednesday, September 16, 2020 12:15 PM
To: Alexander Heideman <aheideman@usccr.gov>
Cc: Christian Adams <a@electionlawcenter.com>; Carissa Mulder <CMulder@usccr.gov>; Peter Kirsanow <pkirsanow@beneschlaw.com>; stephen gilchrist <thegilchristassociates@gmail.com>; John Mashburn <jkmash@comcast.net>; Thomas Simuel <tjsimuel32@gmail.com>
Subject: Re: [EXTERNAL] EAC Board of Advisors

If the statute says the Commission makes the appointments, I don't see how it can be that the chair makes them. My recollection of the appointments under the Reynolds years is that Abby and maybe Yaki were our delegates. If there are transcripts going back that far they may show whether the Commission voted on these appointments.

> On Sep 16, 2020, at 8:51 AM, Alexander Heideman <aheideman@usccr.gov> wrote:
>
> Maureen says:
>
> > To my knowledge, there are not any internal rules about these appointments. The practice has been that the Chair makes the appointments. (Note though that I only have records going

AMERICAN OVERSIGHT

back to 2015 for these appointments and I do not know what the practice was before 2015). The statute (52 U.S.C. 20944(a)(10)) says "Two members appointed by the United States Commission on Civil Rights." 52 U.S.C. 20944(b) says "Appointments shall be made to the Board of Advisors under subsection (a) in a manner which ensures that the Board of Advisors will be bipartisan in nature and will reflect the various geographic regions of the United States." The terms are 2 year appointments; I believe the current USCCR appointments are Yaki and Kladney, and that their terms end 4/13/2021. I provided the above information, i.e., bipartisan and geographic scope, before the 2019 appointments, though did not provide any input beyond this. I've also attached the House report for the Help American Vote Act (establishes the advisory committees) - discussion of advisory boards is on page 33.

I have a call scheduled with her at 1 pm to discuss further. Please let me know if there are any specific questions I should ask.

Alex

From: Alexander Heideman <aheideman@usccr.gov>
Date: Wednesday, September 16, 2020 at 11:02 AM
To: Christian Adams <a@electionlawcenter.com>, 'Gail Heriot' <gheriot@me.com>
>, 'stephen gilchrist' <thegilchristassociates@gmail.com>, 'John Mashburn' <jkmash@comcast.net>, 'Thomas Simuel' <tjsimuel32@gmail.com>
Subject: Re: [EXTERNAL] EAC Board of Advisors

Yes, happy to.

From: Christian Adams <a@electionlawcenter.com>
Date: Wednesday, September 16, 2020 at 11:02 AM
To: 'Gail Heriot' <gheriot@me.com>
>, 'stephen gilchrist' <thegilchristassociates@gmail.com>, 'John Mashburn' <jkmash@comcast.net>, 'Thomas Simuel' <tjsimuel32@gmail.com>, Alexander Heideman <aheideman@usccr.gov>

AMERICAN OVERSIGHT

Subject: RE: [EXTERNAL] EAC Board of Advisors

CAUTION: This email is from outside USCCR.

ple people aren't asking her different times, can the SA's get to the bottom of this with maureen.

From: Gail Heriot <gheriot@me.com>
Sent: Wednesday, September 16, 2020 10:46 AM
To: Christian Adams <a@electionlawcenter.com>
>; stephen gilchrist <thegilchristassociates@gmail.com>; John Mashburn <jkmash@comcast.net>; Thomas Simuel <tjsimuel32@gmail.com>; Alexander Heideman <aheideman@usccr.gov>
Subject: Re: [EXTERNAL] EAC Board of Advisors

I don't think there are any rules. In the absence of an explicit delegation of power, the Commission as a whole has that power. But you need to be sure it wasn't done properly. I have a vague recollection of talking about this in a meeting in the last decade. The straight shooter on the staff is Maureen Rudolph. You might want to ask her.

Gail Heriot

Professor of Law

University of San Diego

On Sep 15, 2020, at 2:17 PM, Christian Adams <a@electionlawcenter.com> wrote:

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I don't know the rules for USCCR appointing ANYONE yet, but if there are no minutes showing a vote appointing them in regular business, it would seem that their "appointment" is void.

From: Carissa Mulder <CMulder@usccr.gov>
Sent: Tuesday, September 15, 2020 4:01 PM
To: Christian Adams <a@electionlawcenter.com>; 'Peter >; 'stephen gilchrist' <thegilchristassociates@gmail.com>
Cc: 'John Mashburn' <jkmash@comcast.net>; 'Thomas Simuel' <tjsimuel32@gmail.com>; Alexander Heideman <aheideman@usccr.gov>
Subject: Re: [EXTERNAL] EAC Board of Advisors

Looking at the document about the appointment of the advisory board members, I think that is correct, Christian. Catherine probably appointed them without ever bringing it up.

From: Christian Adams <a@electionlawcenter.com>
Sent: Tuesday, September 15, 2020 3:55:45 PM
To: Carissa Mulder; 'Peter Kirsanow'; 'Gail Heriot'; 'stephen gilchrist'
Cc: 'John Mashburn'; 'Thomas Simuel'; Alexander Heideman
Subject: RE: [EXTERNAL] EAC Board of Advisors

CAUTION: This email is from outside USCCR.

It probably NEVER came up in a business meeting and therefore we should, as a commission have the authority to take it up in a business meeting and appoint-anew.

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From: Carissa Mulder <CMulder@usccr.gov>
Sent: Tuesday, September 15, 2020 3:34 PM
To: Christian Adams <a@electionlawcenter.com>; Peter Kirsanow <pkirsanow@Beneschlaw.com>; 'Gail
>
Cc: John Mashburn <jkmash@comcast.net>; 'Thomas Simuel' <tjsimuel32@gmail.com>; Alexander Heideman <aheideman@usccr.gov>
Subject: Re: [EXTERNAL] EAC Board of Advisors

Good question! I had no idea the USCCR got two designees to the EAC Board of Advisors. Here's the
.

From: Christian Adams <a@electionlawcenter.com>
Sent: Tuesday, September 15, 2020 3:15:28 PM
To: Peter Kirsanow; 'Gail Heriot'; 'stephen gilchrist'
Cc: John Mashburn; 'Thomas Simuel'; Carissa Mulder; Alexander Heideman
Subject: [EXTERNAL] EAC Board of Advisors

CAUTION: This email is from outside USCCR.

AC
commission saying that Yaki is acting absurdly and exercising power over the EAC by threatening the Pelosi pick on the EAC with removal if he doesn't do what he wants, effectively making Yaki a commissioner on the EAC on many issues. He is causing mischief I don't even detail here.

My question is how does he get UNDONE from the EAC oversight commission? How does that get revoked and replaced?

<Help America Vote Act House Report 107_329[1].pdf>

AMERICAN OVERSIGHT

Date : 9/6/2021 7:08:11 AM
From : "Irena Vidulovic" ividulovic@usccr.gov
To : "Debo P. Adegbile" dadegbile@usccr.gov, "Adegbile, Debo" Debo.Adegbile@wilmerhale.com
Cc : "Zervoudis, Flor" Flor.Zervoudis@wilmerhale.com
Subject : USCCR UPDATES + TO DO

Adegbile,

Hope that you are having a lovely Labor Day! I look forward to connecting tomorrow, in the meantime I am including the updated TO DO LIST so that we can discuss:

1. Concept Paper Discussion (info below)
2. Email to Jenny and Allison EAC (draft emailed to you for review)
3. September 15th availability for Maternal Mortality Report Release. I sent Flor the request for 12noon for the Press call and 1pm for the Stakeholder call. There is much to discuss regarding the release and your role.
4. September Business Meeting Agenda: 1) Presentations from Advisory Committees to the Commission on Recent Reports/Memo Releases 2). Discussion and Vote on Advisory Committee Appointments Texas and New Mexico 3). Vote to Amend October 2022 Business Meeting Date 4). Discussion and Vote on Fiscal Year 2022 Concept Papers and Fiscal Year 2023 Statutory Enforcement Report 5) Discussion and Vote on Commission Statement Regarding School Safety 6). Management and Operations • Staff Director's Report.

SBA + PPP from Commissioner Gilchrest and Cantu. However Juana and Thomas have not presented a joint proposal yet for everyone to review so I am a little skeptical that we will be able to vote on a project that is the amalgamation of their two separate concept papers without seeing the join vision.

Covid and Digital Divide in Education from Commissioner Cantu.

The third and final project is HUD Home Values from Gilchrist. From Juana's email to the SA's it is my understanding that they are looking for a progressive Commissioner to join with Gilchrist on the HUD Home values concept paper and help him develop the concept paper. Juana and the Chair originally reached out to Commissioner Kladney as he mentioned in caucus meeting he'd be supportive of this topic and since he shared some ideas with Gilchrist already. However this too raises many red flags since that concept paper did not really score well with during the ranking and I fear that however takes over the writing of the concept paper will have to do all the work. I also don't see this being done in time for the vote this Friday.

AMERICAN OVERSIGHT

Irena Vidulovic
Special Assistant to Commissioner Debo P. Adegbile
U.S. Commission on Civil Rights
M: 202-591-9969
ividulovic@usccr.gov
http://usccr.gov/
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425

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TwiFB
#USCCR

AMERICAN OVERSIGHT

Date : 9/6/2021 7:08:12 AM
From : "Irena Vidulovic" ividulovic@usccr.gov
To : "Debo P. Adegbile" dadegbile@usccr.gov, "Adegbile, Debo" Debo.Adegbile@wilmerhale.com
Subject : Draft Email Reg: EAC

Dear _____,

Commissioner Adegbile wanted to extend his thanks yet again for your willingness to serve on the Board of ? for the EAC. He put forth your nomination to USCCR which went through our internal voting process which includes that the progressive commissioners put forth nominees and the conservative commissioners put forth their nominees. The conservatives then vote on a progressive nominee and the progressives then vote on the conservative nominee. However the conservative commissioners have voted that Commissioner Yaki (a Commissioner appointed by Speaker Pelosi) represent USCCR on the Board of EAC.

Thank you again for your service to the Alabama State Advisory and voting rights.

Irena

Irena Vidulovic
Special Assistant to Commissioner Debo P. Adegbile
U.S. Commission on Civil Rights
M: 202-591-9969
ividulovic@usccr.gov
http://usccr.gov/
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425

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TwiFB
#USCCR

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Date : 9/7/2021 12:06:04 PM
From : "Debo P. Adegbile" dadegbile@usccr.gov
To : "Michael Yaki" commissioner.yaki@gmail.com
Subject : Re: [EXTERNAL] Re: EAC

Michael, I hope that you are doing well.

Just for the sake of clarity, I take it that you have decided to continue your EAC service, is that correct?

Best,

Debo

Sent from my iPhone

> On Aug 13, 2021, at 11:58 AM, Michael Yaki <commissioner.yaki@gmail.com> wrote:
>
> CAUTION: This email is from outside USCCR.
>
> I'm reconsidering. Stuff has come up in my life that may require me to ditch some extracurriculars so we may have to go back and present your two. I'm discussing it with folks now.
>
> On Thu, Aug 12, 2021 at 9:33 AM Debo P. Adegbile <dadegbile@usccr.gov> wrote:
>
> > Congrats Michael.
> >
> > Debo
> >
> > Sent from my iPhone
>
> --
> MICHAEL YAKI, Commissioner
> U.S. Commission on Civil Rights
> 415-601-4008

AMERICAN OVERSIGHT

Date : 9/7/2021 2:57:52 PM
From : "Michael Yaki" commissioner.yaki@gmail.com
To : "Debo P. Adegbile" dadegbile@usccr.gov
Subject : Re: [EXTERNAL] Re: EAC

CAUTION: This email is from outside USCCR.

I haven't made up my mind yet. I've been distracted w family issues and a s—-ton of work.

On Tue, Sep 7, 2021 at 9:06 AM Debo P. Adegbile <dadegbile@usccr.gov> wrote:

> Michael, I hope that you are doing well.
>
> Just for the sake of clarity, I take it that you have decided to continue your EAC service, is that correct?
>
> Best,
>
> Debo
>
> Sent from my iPhone
>
> On Aug 13, 2021, at 11:58 AM, Michael Yaki <commissioner.yaki@gmail.com> wrote:
>
> CAUTION: This email is from outside USCCR.
>
> I'm reconsidering. Stuff has come up in my life that may require me to ditch some extracurriculars so we may have to go back and present your two. I'm discussing it with folks now.
>
> On Thu, Aug 12, 2021 at 9:33 AM Debo P. Adegbile <dadegbile@usccr.gov> wrote:
>
> > Congrats Michael.
> >
> > Debo
> >
> > Sent from my iPhone
>
> --
> MICHAEL YAKI, Commissioner
> U.S. Commission on Civil Rights
> 415-601-4008

--

AMERICAN OVERSIGHT

MICHAEL YAKI, Commissioner
U.S. Commission on Civil Rights
415-601-4008

AMERICAN OVERSIGHT

Date : 10/18/2021 11:02:51 AM
From : "Christian Adams" a@electionlawcenter.com
To : "'John Mashburn'" jmashburn@usccr.gov, "'Carissa Mulder'" CMulder@usccr.gov
Cc : "Peter Kirsanow" pkirsanow@Beneschlaw.com
Subject : [EXTERNAL] Cleta Mitchell has not been contacted by staff yet

CAUTION: This email is from outside USCCR.

John – Cleta Mitchell has not been contacted in any form by USCCR staff despite our naming her at least a month ago, maybe two months ago, to be the EAC designee.

Can you please get this fixed and let staff know that the time to onboard her was a few weeks ago. Thanks. Her contact info: Cleta Mitchell (cleta@cletamitchell.com). (202) 431-1950

AMERICAN OVERSIGHT

Date : 10/18/2021 11:05:06 AM
From : "Kirsanow, Peter" pkirsanow@Beneschlaw.com
To : "Christian Adams" a@electionlawcenter.com, "'John Mashburn'" jmashburn@usccr.gov, "'Carissa Mulder'" CMulder@usccr.gov
Subject : [EXTERNAL] RE: Cleta Mitchell has not been contacted by staff yet

> CAUTION: This email is from outside USCCR.

Perfect.

Thanks for taking the time to do this.

From: Christian Adams <a@electionlawcenter.com>
Sent: Monday, October 18, 2021 11:03 AM
To: 'John Mashburn' <jmashburn@usccr.gov>; 'Carissa Mulder' <CMulder@usccr.gov>
Cc: Kirsanow, Peter <pkirsanow@Beneschlaw.com>
Subject: Cleta Mitchell has not been contacted by staff yet

John – Cleta Mitchell has not been contacted in any form by USCCR staff despite our naming her at least a month ago, maybe two months ago, to be the EAC designee.

Can you please get this fixed and let staff know that the time to onboard her was a few weeks ago. Thanks. Her contact info: Cleta Mitchell (cleta@cletamitchell.com). (202) 431-1950

AMERICAN OVERSIGHT

Date : 9/16/2020 6:23:46 PM
From : "Christian Adams" a@electionlawcenter.com
To : "Thomas Simuel" tjsimuel32@gmail.com, "Alexander Heideman" aheideman@usccr.gov
Cc : "Gail Heriot" gheriot@me.com, "Carissa Mulder" CMulder@usccr.gov, "Peter Kirsanow" pkirsanow@beneschlaw.com, "stephen gilchrist" thegilchristassociates@gmail.com, "John Mashburn" jkmash@comcast.net
Subject : Re: [EXTERNAL] EAC Board of Advisors

CAUTION: This email is from outside USCCR.

The EAC may be apt to ask what is going on here also given the right circumstances.

-------- Original message --------
From: Thomas Simuel <tjsimuel32@gmail.com>
Date: 9/16/20 5:50 PM (GMT-05:00)
To: Alexander Heideman <aheideman@usccr.gov>
Cc: Christian Adams <a@electionlawcenter.com>, Gail Heriot <gheriot@me.com>, Carissa Mulder <CMulder@usccr.gov>, Peter Kirsanow <pkirsanow@beneschlaw.com>, stephen gilchrist <thegilchristassociates@gmail.com>, John Mashburn <jkmash@comcast.net>
Subject: Re: [EXTERNAL] EAC Board of Advisors

If there is no documentation of a vote, then that bolster the position that a vote be cast according to the regulations and because that wasn't done we desire a vote. Ask Maureen for an opinion on this. If it's here opinion that we are correct then I believe we start from scratch. Kick both off and then let the negotiating begin.

If we get both kicked off the board then we are at a stalemate until a compromise can be reached on two diverse candidates.

Thomas

On Wed, Sep 16, 2020, 5:20 PM Alexander Heideman <aheideman@usccr.gov> wrote:

> More from Maureen:
>
> Alex,
>
> I haven't found much more than what we discussed. The meeting transcripts are here (and looks like we've almost completed uploading them back to 2006): https://www.usccr.gov/calendar/transcripts.php I did do a very quick glance through the transcripts and did not find any votes for the EAC positions. I did find the email below from 2015 in which the then- Chair's special assistant asked all Commissioners who wanted to be appointed. I wasn't at USCCR for this one - I found the email in securi sync. Sorry to not be of more help. -

AMERICAN OVERSIGHT

Maureen

From: Juana Silverio
Sent: Wednesday, March 04, 2015 6:09 PM
To: Martin Castro; Patricia Timmons-Goodson; Roberta Achtenberg; David Kladney; Michael Yaki; Karen Narasaki; Gail Heriot; Peter Kirsanow
Cc: Sheryl Cozart; Alec Deull; Amy Royce; Kimberly Tolhurst; Jason T. Lagria; Alison Somin; Carissa Mulder
Subject: US Election Assistance Commission

I am sending on behalf of Chairman Castro. Please let him and I know if you'd be interested in representing the Commission on the U.S. EAC's Advisory Board.

Commissioners Achtenberg & Thernstrom represented us in the past. The EAC has a quorum now and would appreciate the Commission's participation.

Best,
Juana Silverio, Esq.

From: Alexander Heideman <aheideman@usccr.gov>
Date: Wednesday, September 16, 2020 at 1:31 PM
To: Christian Adams <a@electionlawcenter.com>, 'Gail Heriot' <gheriot@me.com>
Cc: Carissa Mulder <CMulder@usccr.gov>, 'Peter Kirsanow' <pkirsanow@beneschlaw.com>, 'stephen gilchrist' <thegilchristassociates@gmail.com>, 'John Mashburn' <jkmash@comcast.net>, 'Thomas Simuel' <tjsimuel32@gmail.com>
Subject: Re: [EXTERNAL] EAC Board of Advisors

I spoke with Maureen. She said that she was not asked about these appointments in 2019, but she thought that the Commissioners had had a conversation about them.

It seems to me that these appointments were unlawful if they were not (1) made by the Commission and (2) bipartisan and geographically varied. And Google Maps says Reno (Kladney) is a short 3.5 hour drive from San Fran (Yaki).

I'll try to locate the 2015, 2013, & 2011 transcripts to see if appointments were voted on in the past.

AMERICAN OVERSIGHT

From: Christian Adams <a@electionlawcenter.com>
Date: Wednesday, September 16, 2020 at 12:55 PM
To: 'Gail Heriot' <gheriot@me.com>, Alexander Heideman <aheideman@usccr.gov>
Cc: Carissa Mulder <CMulder@usccr.gov>, 'Peter Kirsanow' <pkirsanow@beneschlaw.com>, 'stephen gilchrist' <thegilchristassociates@gmail.com>, 'John Mashburn' <jkmash@comcast.net>, 'Thomas Simuel' <tjsimuel32@gmail.com>
Subject: RE: [EXTERNAL] EAC Board of Advisors

CAUTION: This email is from outside USCCR.

ree with Gail. And the "appointments" did not comply with the admonition of the law that the board should be bipartisan.

From: Gail Heriot <gheriot@me.com>
Sent: Wednesday, September 16, 2020 12:15 PM
To: Alexander Heideman <aheideman@usccr.gov>
Cc: Christian Adams <a@electionlawcenter.com>; Carissa Mulder <CMulder@usccr.gov>; Peter Kirsanow <pkirsanow@beneschlaw.com>; stephen gilchrist <thegilchristassociates@gmail.com>; John Mashburn <jkmash@comcast.net>; Thomas Simuel <tjsimuel32@gmail.com>
Subject: Re: [EXTERNAL] EAC Board of Advisors

If the statute says the Commission makes the appointments, I don't see how it can be that the chair makes them. My recollection of the appointments under the Reynolds years is that Abby and maybe Yaki were our delegates. If there are transcripts going back that far they may show whether the Commission voted on these appointments.

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On Sep 16, 2020, at 8:51 AM, Alexander Heideman <aheideman@usccr.gov> wrote:

Maureen says:

> To my knowledge, there are not any internal rules about these appointments. The practice has been that the Chair makes the appointments. (Note though that I only have records going back to 2015 for these appointments and I do not know what the practice was before 2015). The statute (52 U.S.C. 20944(a)(10)) says "Two members appointed by the United States Commission on Civil Rights." 52 U.S.C. 20944(b) says "Appointments shall be made to the Board of Advisors under subsection (a) in a manner which ensures that the Board of Advisors will be bipartisan in nature and will reflect the various geographic regions of the United States." The terms are 2 year appointments; I believe the current USCCR appointments are Yaki and Kladney, and that their terms end 4/13/2021. I provided the above information, i.e., bipartisan and geographic scope, before the 2019 appointments, though did not provide any input beyond this. I've also attached the House report for the Help American Vote Act (establishes the advisory committees) - discussion of advisory boards is on page 33.

I have a call scheduled with her at 1 pm to discuss further. Please let me know if there are any specific questions I should ask.

Alex

From: Alexander Heideman <aheideman@usccr.gov>
Date: Wednesday, September 16, 2020 at 11:02 AM
To: Christian Adams <a@electionlawcenter.com>, 'Gail Heriot' <gheriot@me.com>
>, 'stephen gilchrist' <thegilchristassociates@gmail.com>, 'John Mashburn' <jkmash@comcast.net>, 'Thomas Simuel' <tjsimuel32@gmail.com>
Subject: Re: [EXTERNAL] EAC Board of Advisors

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Yes, happy to.

From: Christian Adams <a@electionlawcenter.com>
Date: Wednesday, September 16, 2020 at 11:02 AM
To: 'Gail Heriot' <gheriot@me.com>
>, 'stephen gilchrist' <thegilchristassociates@gmail.com>, 'John Mashburn' <jkmash@comcast.net>, 'Thomas Simuel' <tjsimuel32@gmail.com>, Alexander Heideman <aheideman@usccr.gov>
Subject: RE: [EXTERNAL] EAC Board of Advisors

CAUTION: This email is from outside USCCR.

ple people aren't asking her different times, can the SA's get to the bottom of this with maureen.

From: Gail Heriot <gheriot@me.com>
Sent: Wednesday, September 16, 2020 10:46 AM
To: Christian Adams <a@electionlawcenter.com>
>; stephen gilchrist <thegilchristassociates@gmail.com>; John Mashburn <jkmash@comcast.net>; Thomas Simuel <tjsimuel32@gmail.com>; Alexander Heideman <aheideman@usccr.gov>
Subject: Re: [EXTERNAL] EAC Board of Advisors

I don't think there are any rules. In the absence of an explicit delegation of power, the Commission as a whole has that power. But you need to be sure it wasn't done properly. I have a vague recollection of talking about this in a meeting in the last decade. The straight shooter on the staff is Maureen Rudolph. You might want to ask her.

Gail Heriot

Professor of Law

AMERICAN OVERSIGHT

University of San Diego

On Sep 15, 2020, at 2:17 PM, Christian Adams <a@electionlawcenter.com> wrote:

I don't know the rules for USCCR appointing ANYONE yet, but if there are no minutes showing a vote appointing them in regular business, it would seem that their "appointment" is void.

From: Carissa Mulder <CMulder@usccr.gov>
Sent: Tuesday, September 15, 2020 4:01 PM
To: Christian Adams <a@electionlawcenter.com>; 'Peter Kirsanow' <pkirsanow@Beneschlaw.com>; 'Gail >
Cc: 'John Mashburn' <jkmash@comcast.net>; 'Thomas Simuel' <tjsimuel32@gmail.com>; Alexander Heideman <aheideman@usccr.gov>
Subject: Re: [EXTERNAL] EAC Board of Advisors

Looking at the document about the appointment of the advisory board members, I think that is correct, Christian. Catherine probably appointed them without ever bringing it up.

From: Christian Adams <a@electionlawcenter.com>
Sent: Tuesday, September 15, 2020 3:55:45 PM
To: Carissa Mulder; 'Peter Kirsanow'; 'Gail Heriot'; 'stephen gilchrist'
Cc: 'John Mashburn'; 'Thomas Simuel'; Alexander Heideman
Subject: RE: [EXTERNAL] EAC Board of Advisors

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CAUTION: This email is from outside USCCR.

It probably NEVER came up in a business meeting and therefore we should, as a commission have the authority to take it up in a business meeting and appoint-anew.

From: Carissa Mulder <CMulder@usccr.gov>
Sent: Tuesday, September 15, 2020 3:34 PM
To: Christian Adams <a@electionlawcenter.com>; Peter Kirsanow <pkirsanow@Beneschlaw.com>; 'Gail
>
Cc: John Mashburn <jkmash@comcast.net>; 'Thomas Simuel' <tjsimuel32@gmail.com>; Alexander Heideman <aheideman@usccr.gov>
Subject: Re: [EXTERNAL] EAC Board of Advisors

Good question! I had no idea the USCCR got two designees to the EAC Board of Advisors. Here's
.

From: Christian Adams <a@electionlawcenter.com>
Sent: Tuesday, September 15, 2020 3:15:28 PM
To: Peter Kirsanow; 'Gail Heriot'; 'stephen gilchrist'
Cc: John Mashburn; 'Thomas Simuel'; Carissa Mulder; Alexander Heideman
Subject: [EXTERNAL] EAC Board of Advisors

CAUTION: This email is from outside USCCR.

AC commission saying that Yaki is acting absurdly and exercising power over the EAC by threatening the Pelosi pick on the EAC with removal if he doesn't do what he wants, effectively making Yaki a commissioner on the EAC on many issues. He is causing mischief I

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don’t even detail here.

My question is how does he get UNDONE from the EAC oversight commission? How does that get revoked and replaced?

<Help America Vote Act House Report 107_329[1].pdf>

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Date : 11/1/2021 12:20:30 PM
From : "Irena Vidulovic" ividulovic@usccr.gov
To : "Debo P. Adegbile" dadegbile@usccr.gov, "Adegbile, Debo" Debo.Adegbile@wilmerhale.com
Subject : Fw: Commissioner Appointments to the Election Assistance Commission

Adegbile,

I think that this email is the one to forward to the caucus now that Commissioner Yaki is recused, nominating Allison Riggs and Jenny Carroll the Alabama SAC Chair. Both are willing and able to serve.

The email should go to Cantu, Kladney, Yaki, Juana, Alec and Joshua (email jdansby@usccr.gov).
The Chair can then send our nominees to the R's.

Thanks,
Irena

From: Juana Silverio
Sent: Tuesday, August 3, 2021 4:30 PM
To: Irena Vidulovic; Mauro Morales; Norma Cantu
Cc: Debo P. Adegbile; Michael Yaki; David Kladney; Alec Deull
Subject: RE: Commissioner Appointments to the Election Assistance Commission

Mauro- due to new information received, please replace Leah with Ms. Allison Riggs.

Juana

From: Irena Vidulovic <ividulovic@usccr.gov>
Sent: Tuesday, August 3, 2021 4:12 PM
To: Juana Silverio <jsilverio@usccr.gov>; Mauro Morales <mmorales@usccr.gov>; Norma Cantu <ncantu@usccr.gov>
Cc: Debo P. Adegbile <dadegbile@usccr.gov>; Michael Yaki <MYaki@usccr.gov>; David Kladney <dkladney@usccr.gov>; Alec Deull <adeull@usccr.gov>
Subject: Re: Commissioner Appointments to the Election Assistance Commission

Unfortunately Leah Aden is unable to serve. Commissioner Adebile reached out to all the candidates that we proposed including Leah to make sure that they would be willing and able to serve and we have been notified that Leah is unavailable to serve.

AMERICAN OVERSIGHT

From: Juana Silverio
Sent: Tuesday, August 3, 2021 3:38:23 PM
To: Mauro Morales; Norma Cantu
Cc: Debo P. Adegbile; Michael Yaki; David Kladney; Irena Vidulovic; Alec Deull
Subject: RE: Commissioner Appointments to the Election Assistance Commission

Good afternoon Mauro.

The Dem caucus had a tie:

Commissioner Michael Yaki
Leah Aden (Cantu and Yaki)
Allison Riggs (Adegbile and Kladney)

The Chairwoman, in the interest of observing the deadline, is submitting the following names for EAC consideration:

Commissioner Michael Yaki
Leah Aden - https://www.naacpldf.org/about-us/staff/leah-c-aden/

Leah C. Aden

www.naacpldf.org

Leah C. Aden has served as a Deputy Director of Litigation at the NAACP Legal Defense & Educational Fund, Inc. (LDF) since October 2018, assisting in the

Thank you.
Juana

From: Mauro Morales <mmorales@usccr.gov>
Sent: Monday, August 2, 2021 11:47 AM
To: Norma V. Cantú <normavcantu@gmail.com>; Juana Silverio <jsilverio@usccr.gov>
Subject: Fwd: Commissioner Appointments to the Election Assistance Commission

FYI
Sent from my iPhone

Begin forwarded message:

> **From:** Mauro Morales <mmorales@usccr.gov>
> **Date:** August 2, 2021 at 8:45:25 AM MST
> **To:** John Mashburn <jmashburn@usccr.gov>

AMERICAN OVERSIGHT

Cc: Carissa Mulder <CMulder@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>, Alexander Heideman <aheideman@usccr.gov>
Subject: Re: Commissioner Appointments to the Election Assistance Commission

My flight was canceled and returning today. Your selections were forwarded to Chair Cantu. Thank you.
Sent from my iPhone

> On Jul 30, 2021, at 9:34 AM, John Mashburn <jmashburn@usccr.gov> wrote:
>
> Mauro – after canvassing the Republican Commissioners, the two nominees they wish to put forward for one of the two USCCR designees for the EAC's Board of Advisors (per your email below) are:
>
> Cleta Mitchell – Chair, Conservative Partnership Institute Election Integrity Network, and
>
> Christian Adams – USCCR Commissioner.
>
> ---
>
> **From:** Mauro Morales <mmorales@usccr.gov>
> **Date:** Wednesday, July 28, 2021 at 11:30 AM
> **To:** Commissioners <Commissioners@usccr.gov>
> **Cc:**
> " <CommissionerAssistants@usccr.gov>
> **Subject:** Commissioner Appointments to the Election Assistance Commission
>
> Dear Commissioners-
>
> At the request and in consultation with the Chair, I am sending this email to start the EAC nomination process for Commissioners.
>
> Per the AI voted on during the April 30th meeting (language included below), each caucus is requested to submit two candidates for consideration by COB Friday, July 30, 2021. Once the names are submitted, OGC will conduct an ethics check to be completed by Wednesday, August 4, 2021. Each caucus will then have 24 hours to submit caucus strikes (Thursday, August 5, 2021 COB). The Chair will communicate the two names to EAC no later than Friday, August 6, 2021.
>
> Please let the Chair or I know if you have any questions or concerns.

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--
AI language:

Section 1.
.01 Any authority specifically granted the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Commission as a whole by majority vote.

.02 Any authority specifically granted the Staff Director of the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Staff Director.

.03 Any authority specifically granted the Chair of the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Chair.

Section 2
.02

(1) For the two (2) appointments to the U.S. Election Assistance Commission, the members appointed by Democratic authorities shall nominate two individuals who are ready, willing, and able to serve, and the members appointed by the Republican authorities shall nominate two individuals who are ready, willing, and able to serve.

(2) The members appointed by the Democratic authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Democratic authorities

(3) The members selected shall be placed in nomination and ratified in conformance with Section 1.

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Mauro Morales
Staff Director
U.S. Commission on Civil Rights
P: 202-376-7796| F: 202-376-7672
Mmorales@usccr.gov
http://usccr.gov/
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425

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Date : 11/3/2021 11:26:49 AM
From : "Norma Cantu" ncantu@usccr.gov
To : "krayburn@eac.gov" krayburn@eac.gov
Cc : "Juana Silverio" jsilverio@usccr.gov
Subject : EAC Representative for USCCR
Attachment : Notice-of-Representation-Form-Board-Advisors-2021_USCCR_Mitchell.pdf;

Good morning-

Please find one of the 2 representatives for the EAC on behalf of the USCCR. We will forward the second representative shortly.

Thank you.
Norma V. Cantú
Chairwoman, USCCR

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Notice of Representation
United States Election Assistance Commission
Board of Advisors

In accordance with 52 U.S.C. § 20944 of the Help America Vote Act of 2002, your office submits the following individual(s) as a member of the Election Assistance Commission Board of Advisors:

Designated Representative

Name: Cleta Mitchell

Title: Senior Legal Fellow, Conservative Partnership Institute

Address: 300 Independence Ave, SE

Washington, DC 20003

Phone: 202.431.1950

Email: cleta@cletamitchell.com

Party Affiliation: Republican (personal; CPI is nonpartisan)

Designated Representative

Name: _____

Title: _____

Address: _____

_____

Phone: _____

Email: _____

Party Affiliation: _____

Name and Title of Appointing Official

Print Name: Norma Cantu

Print Title: Chairwoman- USCCR

Signature: Norma V. Cantú Date: 11/3/2021

Please return the completed form via email to EAC General Counsel Kevin Rayburn (krayburn@eac.gov).

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Date : 11/3/2021 11:50:11 AM
From : "Kevin Rayburn" KRayburn@eac.gov
To : "Norma Cantu" ncantu@usccr.gov
Cc : "Juana Silverio" jsilverio@usccr.gov
Subject : [EXTERNAL] RE: EAC Representative for USCCR

> CAUTION: This email is from outside USCCR.

Good Morning Chairwoman Cantú,

I am confirming receipt and look forward to receiving the 2nd appointment.

Sincerely,

Kevin Rayburn | General Counsel
U.S. Election Assistance Commission
633 3rd Street NW, Suite 200 | Washington, DC 20001
www.eac.gov

From: Norma Cantu <ncantu@usccr.gov>
Sent: Wednesday, November 3, 2021 11:27 AM
To: Kevin Rayburn <KRayburn@eac.gov>
Cc: Juana Silverio <jsilverio@usccr.gov>
Subject: EAC Representative for USCCR

Good morning-

Please find one of the 2 representatives for the EAC on behalf of the USCCR. We will forward the second representative shortly.

Thank you.

Norma V. Cantú

Chairwoman, USCCR

AMERICAN OVERSIGHT

Date : 11/3/2021 12:41:26 PM
From : "Irena Vidulovic" ividulovic@usccr.gov
To : "Adegbile, Debo" Debo.Adegbile@wilmerhale.com
Subject : EAC Board of Advisors Info

The EACBoard of Advisors is a 35-member board composed of representatives from the National Governors Association; National Conference of State Legislatures; National Association of Secretaries of State; The National Association of State Election Directors; National Association of Counties; the International Association of Government Officials (created from the merger of the National Association of County Recorders, Election Officials and Clerks and the International Association of Clerks, Recorders, Election Officials, and Treasurers); Election Center; International Association of Clerks, Recorders, Election Officials, and Treasurers; **U.S. Commission on Civil Rights**; and Architectural and Transportation Barriers Compliance Board.

Other members include representatives from the U.S. Department of Justice, Office of Public Integrity, and the Civil Rights Division; the director of the U.S. Department of Defense Federal Voting Assistance Program; four professionals from the field of science and technology, one each appointed by the Speaker and the Minority Leader of the U.S. House of Representatives, and the Majority and Minority leaders of the U.S. Senate; and eight members representing voter interests, with the chairs and the ranking minority members of the U.S. House of Representatives Committee on House Administration and the U.S. Senate Committee on Rules and Administration each appointing two members. Following the passage of HAVA, the National Association of County Recorders, Election Officials and Clerks and the International Association of Clerks, Recorders, Election Officials, and Treasurers merged to form the International Association of Government Officials.

Statute:
52 U.S. Code § 20944 - Membership of Board of Advisors
(a)In general
The Board of Advisors shall be composed of 37 members appointed as follows:
(1)Two members appointed by the National Governors Association.
(2)Two members appointed by the National Conference of State Legislatures.
(3)Two members appointed by the National Association of Secretaries of State.
(4)Two members appointed by the National Association of State Election Directors.
(5)Two members appointed by the National Association of Counties.
(6)Two members appointed by the National Association of County Recorders, Election Administrators, and Clerks.[1]
(7)Two members appointed by the United States Conference of Mayors.
(8)Two members appointed by the Election Center.
(9)Two members appointed by the International Association of County Recorders, Election Officials, and Treasurers.[2]
(10)Two members appointed by the United States Commission on Civil Rights.

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(11)Two members appointed by the Architectural and Transportation Barrier [3] Compliance Board under section 792 of title 29.
(12)The chief of the Office of Public Integrity of the Department of Justice,[4] or the chief's designee.
(13)The chief of the Voting Section of the Civil Rights Division of the Department of Justice or the chief's designee.
(14)The director of the Federal Voting Assistance Program of the Department of Defense.
(15)Four members representing professionals in the field of science and technology, of whom—
(A)one each shall be appointed by the Speaker and the Minority Leader of the House of Representatives; and
(B)one each shall be appointed by the Majority Leader and the Minority Leader of the Senate.
(16)Eight members representing voter interests, of whom—
(A)four members shall be appointed by the Committee on House Administration of the House of Representatives, of whom two shall be appointed by the chair and two shall be appointed by the ranking minority member; and
(B)four members shall be appointed by the Committee on Rules and Administration of the Senate, of whom two shall be appointed by the chair and two shall be appointed by the ranking minority member.

(b)Manner of appointments
Appointments shall be made to the Board of Advisors under subsection (a) in a manner which ensures that the Board of Advisors will be bipartisan in nature and will reflect the various geographic regions of the United States.

(c)Term of service; vacancy
Members of the Board of Advisors shall serve for a term of 2 years, and may be reappointed. Any vacancy in the Board of Advisors shall be filled in the manner in which the original appointment was made.

(d)Chair
The Board of Advisors shall elect a Chair from among its members.

Website:

https://www.eac.gov/about_the_eac/board_of_advisors

Irena Vidulovic
Special Assistant to Commissioner Debo P. Adegbile
U.S. Commission on Civil Rights
M: 202-591-9969
ividulovic@usccr.gov
http://usccr.gov/
1331 Pennsylvania Avenue, NW Suite 1150

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Washington D.C. 20425

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Date : 11/16/2021 12:36:59 PM
From : "Mauro Morales" mmorales@usccr.gov
To : "mauro2morales@yahoo.com" mauro2morales@yahoo.com
Subject : Draft

Cleta Mitchell is *one of two* U.S. Commission on Civil Rights (the Commission) appointees selected by Commissioners to serve on the board of the Election Assistance Commission (EAC). Ms. Mitchell's nomination was put forth by Commissioners appointed by Republican authorities. Ms. Mitchell is not a member of the Commission on Civil Rights.

The EAC nominee by Commissioners appointed by Democratic authorities' declined the appointment and the Commissioners are now working to put forth their nominee for the Commission's remaining appointment to the EAC. There will be a discussion and vote on this matter at the Commission's November 19, 2021, business meeting.

By way of background, the Commission's, Commissioners of the Commission of Civil Rights have the sole authority to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, which is exercised by majority vote of Commissioners.

For the two USCCR EAC appointments, the appointment process was/is as follows:

- Commissioners appointed by Democratic authorities nominated two individuals of their membership, and the members appointed by the Republican authorities nominated two individuals of their membership.
- Once nominated, the members appointed by the Democratic authorities, selects one of the two individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one of the two individuals nominated by the members appointed by the Democratic authorities.
- Appointments are ratified by majority vote of Commissioners.

Cleta Mitchell was nominated by Commissioners that were appointed by Republican authorities; and was ratified by majority vote of Commissioners.

AMERICAN OVERSIGHT

Date : 11/16/2021 2:00:13 PM
From : "Ma2morales@gmail.com" ma2morales@gmail.com
To : "Mauro Morales" mmorales@usccr.gov
Subject : [EXTERNAL]

CAUTION: This email is from outside USCCR.

Ms. Mitchell's nomination was put forth by Commissioners appointed by Republican authorities, including former President Trump, Senate Minority Leader McConnell and House Minority Leader McCarthy. Ms. Mitchell is not a member of the Commission on Civil Rights.

Cleta Mitchell is *one of two* U.S. Commission on Civil Rights (the Commission) appointees selected by Commissioners to serve on Board of Advisors to the Election Assistance Commission (EAC) ~~board of the Election Assistance Commission (EAC)~~

The EAC nominee by Commissioners appointed by Democratic authorities' was ~~is~~ unable to serve ~~declined~~ ~~the appointment~~ and the Commissioner's have renominated their candidate ~~are now working to put forth their nominee for~~ to the Commission's remaining appointment to the EAC. There will be a discussion and vote on this matter at the Commission's November 19, 2021, business meeting.

By way of background, ~~the Commission's,~~Commissioners of the Commission of Civil Rights (USCCR) have the sole authority to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, which is exercised by majority vote of Commissioners.

~~For the two USCCR EAC appointments,~~USCCR is ~~appointment process~~ governed by the following agency instruction process regarding nominations to the Board of Advisors to the EAC: ~~was/is as follows:~~

- Commissioners appointed by Democratic authorities nominated two individuals of their membership, and the members appointed by the Republican authorities nominated

AMERICAN OVERSIGHT

two individuals of their membership.

- Once nominated, the members appointed by the Democratic authorities, selects one of the two individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one of the two individuals nominated by the members appointed by the Democratic authorities. (*we need to confirm this language)
- Appointments are ratified by majority vote of Commissioners.

Cleta Mitchell was nominated by Commissioners that were appointed by Republican authorities; and was ratified by majority vote of Commissioner

Sent from my iPhone

AMERICAN OVERSIGHT

Date : 3/3/2021 12:05:57 PM
From : "Mauro Morales" mmorales@usccr.gov
To : "ma2morales@gmail.com" ma2morales@gmail.com

Commissioner Cantu

I want to share my thoughts on going forward in response to the recent letter from Adams, Gilchrist, Heriot and Kirsanow.

First, the letter they sent was incorrect and inaccurate as to my actions and purpose. Nothing more be said. I would not change anything I wrote or action I took. It is a difference of opinion that should not be relitigated or discussed any further. We must move past this and schedule a vote on assuming your position as Chair.

Second, the letter states they did not participate in the briefing because they were unhappy about notice and scheduling. However, you had already agreed not to hold the business meeting in the afternoon on the 26th. That issue was settled by mutual agreement. Nevertheless, they still chose to not participate in the briefing. That was unfortunate because they had previously agreed to participate months in advance. They were involved in negotiations for witnesses and were aware we had committed over $10,000 in agency funds to hold the briefing. Refusing to participate in the business meeting was one thing, refusing to participate in the briefing was inexcusable and negligent.

Again, we need to move beyond Friday.

I recommend you propose in writing holding a business meeting on March 19th to be noticed by March 10th.

The agenda for March 19th should be limited to the following:

- Vote on Commissioner Norma Cantu as Chair of the US Commission on Civil Rights;
- Vote on FEMA Discovery Plan;
- Vote on Statement of Walter Williams;
- Vote to continue the policy of rebuttals and surrebuttals while you are Chair (No AI on Rebuttals);
- Vote to suspend speaker series while you are Chair (No AI); and
- Discussion and agreement to appoint an Republican to EAC (No AI)

If they want to continue to negotiate with you, you could consider offering:

- Discussion and agreement to create a working group to revise the AI on SAC creation to make it a 50-50 bipartisan membership.

However, they **in turn must** agree to the following:

- Never again use the agency letterhead to express their opinions or views without a Commission majority vote. This directive was ordered by Congress and by the GAO and is regularly violated by the Republicans. (*They won't agree to this, however it gives you leverage to ask them for something in return)*

Feel free to call me to discuss further or provide additional clarity.

Mauro

AMERICAN OVERSIGHT

Date : 3/12/2021 12:29:42 PM
From : "Mauro Morales" mmorales@usccr.gov
To : "Norma Cantú" normavcantu@gmail.com
Cc : "Irena Vidulovic" ividulovic@usccr.gov, "Amy Royce" aroyce@usccr.gov, "Alec Deull" adeull@usccr.gov
Subject : FW: My notes from yesterday's working group on topics related to Vote on Commissioner--No quorum & no decisions made.

Commissioner Cantu,

I have cc'd Commissioner Kladney, Yaki and Adegbile's SA's. They can communicate with their Commissioners, review their schedules and coordinate a call with you.

Mauro

From: Norma Cantu
Sent: Friday, March 12, 2021 11:32 AM
To: David Kladney <dkladney@usccr.gov>; Michael Yaki <MYaki@usccr.gov>; Debo P. Adegbile <dadegbile@usccr.gov>
Subject: Fw: My notes from yesterday's working group on topics related to Vote on Commissioner--No quorum & no decisions made.

I have a zoom meeting today from 1-3 CST but am free to discuss the "housekeeping matters" I've described below. Call me as these email are subject to FOIA and it is better to deliberate and discuss draft language in a more informal setting.
Norma
cell 210 380 6380

From: Norma Cantu
Sent: Friday, March 12, 2021 10:19 AM
To: Gail Heriot; Michael Yaki; Peter Kirsanow
Subject: My notes from yesterday's working group on topics related to Vote on Commissioner--No quorum & no decisions made.

1. Language on 30/30/10 for rebuttals and surrebuttals-Gail-vehicle AI
2. Language on bipartisan nominations to Elect.Adv.Council at end of June 2021. Appointments to EAC will be made by Commission as a whole, with a majority vote. Proposed that Dem.Caucus nominates 2 people for one slot and R+I Caucus chooses the appointee. R+I Caucus nominates 2 people for one slot and Dem. caucus chooses the appointee. In future nominations to external agencies, the Chair will consult with the whole Commission before communicating any nominations. Vehicle-motion from floor at mtg. on March 19
3. Canceling the Chair's speakers series. Vehicle-email from Norma Cantu to Commissioners.

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4. Already have language that half of State Adv. Council slots will be Dem. and half Rep. Need to add language on each Commissioners' Caucus will take ____days to nominate and vet new members of State Adv. Councils. At end of ___ days, the staff are expected to provide assistance in recruiting and vetting people to fill vacancies. Staff nominations take no longer than ____days. All nominations by Commissioners and staff come back to the full Commissioner for a discussion and vote to approve new members. Vehicle-motion from floor at mtg. on March 19.
5. Language about agreeing that AIs, as more specific agreements, govern process of Commissioners; in absence of relevant AI, Commissioners will apply Roberts' Rules of Order. Vehicle-Memo of Understanding approved by majority of Commissioners.
6. Chair proposes agenda for Commissioners' meeting, with Commissioners having ability to propose to amend agenda before meeting and also at the beginning the meeting, subject to majority vote. Vehicle-AI
7. A majority of Commissioners is needed to cancel a called Commissioner meeting. Vehicle-AI
8. Proposed by Norma, in absence of Chair available to moderate the meeting, the most senior Dem. and Rep. Commissioners will alternate chairing meetings. Vehicle-AI or memo. of understanding
9. Language that any Commissioner from each Caucus may sit in on OCRE interviews provided the Commissioner's request to attend does not cause a scheduling delay. Vehicle?
10. Memorial/obits require a majority vote of the Commission and the proposed language for the memorial shall be circulated to all the Commissioners. Vehicle-AI

AMERICAN OVERSIGHT

Date : 3/12/2021 3:28:51 PM
From : "Irena Vidulovic" ividulovic@usccr.gov
To : "Mauro Morales" mmorales@usccr.gov, "Norma Cantú" normavcantu@gmail.com, "Norma Cantu" ncantu@usccr.gov
Cc : "Amy Royce" aroyce@usccr.gov, "Alec Deull" adeull@usccr.gov
Subject : Re: My notes from yesterday's working group on topics related to Vote on Commissioner--No quorum & no decisions made.

Commissioner Cantu,

We have a call scheduled on Tuesday at 3pm ET. Does that work for you?

Thank you very much,
Irena

From: Mauro Morales
Sent: Friday, March 12, 2021 12:29:42 PM
To: Norma Cantú
Cc: Irena Vidulovic; Amy Royce; Alec Deull
Subject: FW: My notes from yesterday's working group on topics related to Vote on Commissioner--No quorum & no decisions made.

Commissioner Cantu,

I have cc'd Commissioner Kladney, Yaki and Adegbile's SA's. They can communicate with their Commissioners, review their schedules and coordinate a call with you.

Mauro

From: Norma Cantu
Sent: Friday, March 12, 2021 11:32 AM
To: David Kladney <dkladney@usccr.gov>; Michael Yaki <MYaki@usccr.gov>; Debo P. Adegbile <dadegbile@usccr.gov>
Subject: Fw: My notes from yesterday's working group on topics related to Vote on Commissioner--No quorum & no decisions made.

I have a zoom meeting today from 1-3 CST but am free to discuss the "housekeeping matters" I've described below. Call me as these email are subject to FOIA and it is better to deliberate and discuss draft language in a more informal setting.
Norma
cell 210 380 6380

From: Norma Cantu
Sent: Friday, March 12, 2021 10:19 AM
To: Gail Heriot; Michael Yaki; Peter Kirsanow
Subject: My notes from yesterday's working group on topics related to Vote on Commissioner--No quorum & no decisions made.

AMERICAN OVERSIGHT

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9. Language that any Commissioner from each Caucus may sit in on OCRE interviews provided the Commissioner's request to attend does not cause a scheduling delay. Vehicle?
10. Memorial/obits require a majority vote of the Commission and the proposed language for the memorial shall be circulated to all the Commissioners. Vehicle-AI

AMERICAN OVERSIGHT

Date : 3/24/2021 4:27:14 PM
From : "Mauro Morales" mmorales@usccr.gov
To : "Norma V. Cantú" normavcantu@gmail.com
Subject : FW: EAC Board of Advisors Membership Appointments
Attachment : image001.gif;image002.gif;

Norma,

I want to let you know that EAC has reached out to us on our appointments to their Commission. As soon as I have answers to these questions, I will inform you. Please call if you wish.

Mauro

From: Mauro Morales
Sent: Wednesday, March 24, 2021 4:11 PM
To: 'Kevin Rayburn' <KRayburn@eac.gov>
Cc: Pilar McLaughlin <pmclaughlin@usccr.gov>; David Ganz <dganz@usccr.gov>
Subject: RE: EAC Board of Advisors Membership Appointments

Kevin,

Thank you for getting back to us. Chair Catherine Lhamon resigned from the Commission on January 19th. Commissioner Norma Cantu has been sworn in to replace her and has been designated as the new Chair. Unfortunately, the Commissioners have been delayed in having a vote to confirm Commissioner Cantu as the new Chair. It is my understanding that Commissioner Cantu and the other commissioners wish to reach a mutual agreement on who they will select to fill the memberships. Commissioners Kladney and Yaki may be reappointed. On the other hand, Commissioners may agree to add a new member and keep one of the current members. It looks like the Commissioners will not be able to make a decision until the next US Commission on Civil Rights business meeting on April 16th.

Can you advise us as to the options we have available? If we are unable to make our appointments until April 16th, will the current appointments lapse or will Klandey and Yaki automatically be renewed for another term? If Kladney and Yaki are automatically renewed can they be changed once Commissioners reach a decision on who should be appointed. Please let us know if you wish to speak to us for clarity.

Thank you.

Mauro Morales
Staff Director
U.S. Commission on Civil Rights
P: 202-376-7796| F: 202-376-7672
Mmorales@usccr.gov
http://usccr.gov/
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425

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From: Kevin Rayburn [mailto:KRayburn@eac.gov]
Sent: Wednesday, March 24, 2021 2:14 PM
To: Mauro Morales <mmorales@usccr.gov>
Cc: Pilar McLaughlin <pmclaughlin@usccr.gov>
Subject: [EXTERNAL] RE: EAC Board of Advisors Membership Appointments

> CAUTION: This email is from outside USCCR.

Good Afternoon Mr. Morales,

I just wanted to follow-up on my previous email and see if you had any questions or concerns.

Thanks,

Kevin Rayburn, General Counsel
U.S. Election Assistance Commission
Mobile: (202) 740-6546

From: Kevin Rayburn
Sent: Friday, March 5, 2021 11:14 AM
To: mmorales@usccr.gov
Subject: EAC Board of Advisors Membership Appointments

Good Morning Mr. Morales,

Please find attached correspondence from the U.S. Election Assistance Commission regarding your organization's appointments to the EAC Board of Advisors. Also included is a Notice of Representation Form. We ask that you please return the completed form to krayburn@eac.gov by March 26, 2021. Let me know if you have any questions.

Sincerely,

Kevin Rayburn, General Counsel
U.S. Election Assistance Commission
Mobile: (202) 740-6546

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Date : 4/15/2021 9:55:29 AM
From : "Kevin Rayburn" KRayburn@eac.gov
To : "Mauro Morales" mmorales@usccr.gov
Cc : "Pilar McLaughlin" pmclaughlin@usccr.gov, "David Ganz" dganz@usccr.gov
Subject : [EXTERNAL] RE: EAC Board of Advisors Membership Appointments
Attachment : image001.gif;image002.gif;

CAUTION: This email is from outside USCCR.

Good Morning Mauro,

Our practice has been to allow appointed members to "holdover" past the expiration of their term unless and until the appointing body selects a replacement. We can receive the appointments from USCCR after April 16th without issue. I hope your meeting goes well tomorrow!

Sincerely,

Kevin Rayburn | General Counsel
U.S. Election Assistance Commission
633 3rd Street NW, Suite 200 | Washington, DC 20001
www.eac.gov

From: Mauro Morales <mmorales@usccr.gov>
Sent: Wednesday, March 24, 2021 4:11 PM
To: Kevin Rayburn <KRayburn@eac.gov>
Cc: Pilar McLaughlin <pmclaughlin@usccr.gov>; David Ganz <dganz@usccr.gov>
Subject: RE: EAC Board of Advisors Membership Appointments

Kevin,

Thank you for getting back to us. Chair Catherine Lhamon resigned from the Commission on January 19th. Commissioner Norma Cantu has been sworn in to replace her and has been designated as the new Chair. Unfortunately, the Commissioners have been delayed in having a vote to confirm Commissioner Cantu as the new Chair. It is my understanding that Commissioner Cantu and the other commissioners wish to reach a mutual agreement on who they will select to fill the memberships. Commissioners Kladney and Yaki may be reappointed. On the other hand, Commissioner may agree to add a new member and keep one of the current members. It looks like the Commissioners will not be able to make a decision until the next US Commission on Civil Rights business meeting on April 16th.

Can you advise us as to the options we have available? If we are unable to make our appointments until April 16th, will the current appointments lapse or will Klandey and Yaki automatically be renewed for another term? If Kladney and Yaki are automatically renewed can they be changed once Commissioners reach a decision on who should be

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appointed. Please let us know if you wish to speak to us for clarity.

Thank you.

Mauro Morales
Staff Director
U.S. Commission on Civil Rights
P: 202-376-7796| F: 202-376-7672
Mmorales@usccr.gov
http://usccr.gov/
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425

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From: Kevin Rayburn [mailto:KRayburn@eac.gov]
Sent: Wednesday, March 24, 2021 2:14 PM
To: Mauro Morales <mmorales@usccr.gov>
Cc: Pilar McLaughlin <pmclaughlin@usccr.gov>
Subject: [EXTERNAL] RE: EAC Board of Advisors Membership Appointments

CAUTION: This email is from outside USCCR.

I just wanted to follow-up on my previous email and see if you had any questions or concerns.

Thanks,

Kevin Rayburn, General Counsel
U.S. Election Assistance Commission
Mobile: (202) 740-6546

From: Kevin Rayburn
Sent: Friday, March 5, 2021 11:14 AM
To: mmorales@usccr.gov
Subject: EAC Board of Advisors Membership Appointments

AMERICAN OVERSIGHT

Good Morning Mr. Morales,

Please find attached correspondence from the U.S. Election Assistance Commission regarding your organization's appointments to the EAC Board of Advisors. Also included is a Notice of Representation Form. We ask that you please return the completed form to krayburn@eac.gov by March 26, 2021. Let me know if you have any questions.

Sincerely,

Kevin Rayburn, General Counsel
U.S. Election Assistance Commission
Mobile: (202) 740-6546

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Date : 7/29/2021 10:58:52 AM
From : "Stephen Gilchrist" sgilchrist@usccr.gov
To : "John Mashburn" jmashburn@usccr.gov, "Kirsanow, Peter" pkirsanow@Beneschlaw.com, "Gail Heriot" gheriot@usccr.gov, "Christian Adams" a@electionlawcenter.com
Cc : "Carissa Mulder" CMulder@usccr.gov, "Thomas Simuel" tsimuel@usccr.gov, "Alexander Heideman" aheideman@usccr.gov
Subject : Re: Commissioner Appointments to the Election Assistance Commission
Attachment : image001.gif;image002.gif;

I am fine with Comm. Adams suggestion.

From: John Mashburn
Sent: Thursday, July 29, 2021 10:43:10 AM
To: Kirsanow, Peter; Stephen Gilchrist; Gail Heriot; Christian Adams
Cc: Carissa Mulder; Thomas Simuel; Alexander Heideman
Subject: FW: Commissioner Appointments to the Election Assistance Commission

Per the Caucus discussion a few months back about USCCR's two designees to the EAC's Bd. of Advisors, Cmnr Adams would like the Caucus to recommend Cleta Mitchell and himself as the two nominees from the Republican Commissioners -- per the new AI on the issue (*see below in Mauro's email*). Democrat Cmnrs would then need to choose between Cleta Mitchell and Cmnr Adams as one of USCCR's two designees to the EAC Bd. of Advisors.

Cmnr Adams wanted me to double check that this is still OK with the 3 of you before he submits his and Cleta's names to Staff Director Morales by COB tomorrow, Friday July 30.

Please email me back to confirm that each of you is OK with submitting Cleta's and Cmnr Adams' names for the EAC .

From: Mauro Morales <mmorales@usccr.gov>
Date: Wednesday, July 28, 2021 at 11:30 AM
To: Commissioners <Commissioners@usccr.gov>
Cc: David Ganz <dganz@usccr.gov>,
"CommissionerAssistants@usccr.gov" <CommissionerAssistants@usccr.gov>
Subject: Commissioner Appointments to the Election Assistance Commission

Dear Commissioners-

At the request and in consultation with the Chair, I am sending this email to start the EAC nomination process for Commissioners.

Per the AI voted on during the April 30th meeting (language included below), each caucus is requested to submit two candidates for consideration by COB Friday, July 30, 2021. Once the names are submitted, OGC will conduct an ethics check to be completed by Wednesday, August 4, 2021. Each caucus will then have 24 hours to submit caucus strikes (Thursday, August 5, 2021 COB). The Chair will communicate

AMERICAN OVERSIGHT

the two names to EAC no later than Friday, August 6, 2021.

Please let the Chair or I know if you have any questions or concerns.

--
AI language:

Section 1.
.01 Any authority specifically granted the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Commission as a whole by majority vote.

.02 Any authority specifically granted the Staff Director of the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Staff Director.

.03 Any authority specifically granted the Chair of the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Chair.

Section 2
.02
(1) For the two (2) appointments to the U.S. Election Assistance Commission, the members appointed by Democratic authorities shall nominate two individuals who are ready, willing, and able to serve, and the members appointed by the Republican authorities shall nominate two individuals who are ready, willing, and able to serve.

(2) The members appointed by the Democratic authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Democratic authorities

(3) The members selected shall be placed in nomination and ratified in conformance with Section 1.

Mauro Morales
Staff Director
U.S. Commission on Civil Rights
P: 202-376-7796| F: 202-376-7672
Mmorales@usccr.gov
http://usccr.gov/

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1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425

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Date : 7/29/2021 10:43:10 AM
From : "John Mashburn" jmashburn@usccr.gov
To : "Kirsanow, Peter" pkirsanow@Beneschlaw.com, "Stephen Gilchrist" sgilchrist@usccr.gov, "Gail Heriot" gheriot@usccr.gov, "Christian Adams" a@electionlawcenter.com
Cc : "Carissa Mulder" CMulder@usccr.gov, "Thomas Simuel" tsimuel@usccr.gov, "Alexander Heideman" aheideman@usccr.gov
Subject : FW: Commissioner Appointments to the Election Assistance Commission
Attachment : image001.gif;image002.gif;

Per the Caucus discussion a few months back about USCCR's two designees to the EAC's Bd. of Advisors, Cmnr Adams would like the Caucus to recommend Cleta Mitchell and himself as the two nominees from the Republican Commissioners -- per the new AI on the issue (*see below in Mauro's email*). Democrat Cmnrs would then need to choose between Cleta Mitchell and Cmnr Adams as one of USCCR's two designees to the EAC Bd. of Advisors.

Cmnr Adams wanted me to double check that this is still OK with the 3 of you before he submits his and Cleta's names to Staff Director Morales by COB tomorrow, Friday July 30.

Please email me back to confirm that each of you is OK with submitting Cleta's and Cmnr Adams' names for the EAC .

From: Mauro Morales <mmorales@usccr.gov>
Date: Wednesday, July 28, 2021 at 11:30 AM
To: Commissioners <Commissioners@usccr.gov>
Cc: David Ganz <dganz@usccr.gov>,
"CommissionerAssistants@usccr.gov" <CommissionerAssistants@usccr.gov>
Subject: Commissioner Appointments to the Election Assistance Commission

Dear Commissioners-

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Per the AI voted on during the April 30th meeting (language included below), each caucus is requested to submit two candidates for consideration by COB Friday, July 30, 2021. Once the names are submitted, OGC will conduct an ethics check to be completed by Wednesday, August 4, 2021. Each caucus will then have 24 hours to submit caucus strikes (Thursday, August 5, 2021 COB). The Chair will communicate the two names to EAC no later than Friday, August 6, 2021.

Please let the Chair or I know if you have any questions or concerns.

--
AI language:

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.01 Any authority specifically granted the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Commission as a whole by majority vote.

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.03 Any authority specifically granted the Chair of the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Chair.

Section 2
.02

(1) For the two (2) appointments to the U.S. Election Assistance Commission, the members appointed by Democratic authorities shall nominate two individuals who are ready, willing, and able to serve, and the members appointed by the Republican authorities shall nominate two individuals who are ready, willing, and able to serve.

(2) The members appointed by the Democratic authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Democratic authorities

(3) The members selected shall be placed in nomination and ratified in conformance with Section 1.

Mauro Morales
Staff Director
U.S. Commission on Civil Rights
P: 202-376-7796| F: 202-376-7672
Mmorales@usccr.gov
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1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425

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Date : 7/29/2021 11:09:10 AM
From : "Gail Heriot" gheriot@usccr.gov
To : "John Mashburn" jmashburn@usccr.gov
Cc : "Kirsanow, Peter" pkirsanow@beneschlaw.com, "Stephen Gilchrist" sgilchrist@usccr.gov, "Christian Adams" a@electionlawcenter.com, "Carissa Mulder" CMulder@usccr.gov, "Thomas Simuel" tsimuel@usccr.gov, "Alexander Heideman" aheideman@usccr.gov
Subject : Re: Commissioner Appointments to the Election Assistance Commission
Attachment : image001.gif;image002.gif;

Okay with me.

Gail Heriot
Professor of Law
University of San Diego

On Jul 29, 2021, at 7:43 AM, John Mashburn <jmashburn@usccr.gov> wrote:

Per the Caucus discussion a few months back about USCCR's two designees to the EAC's Bd. of Advisors, Cmnr Adams would like the Caucus to recommend Cleta Mitchell and himself as the two nominees from the Republican Commissioners -- per the new AI on the issue (*see below in Mauro's email*). Democrat Cmnrs would then need to choose between Cleta Mitchell and Cmnr Adams as one of USCCR's two designees to the EAC Bd. of Advisors.

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Please email me back to confirm that each of you is OK with submitting Cleta's and Cmnr Adams' names for the EAC.

From: Mauro Morales <mmorales@usccr.gov>
Date: Wednesday, July 28, 2021 at 11:30 AM
To: Commissioners <Commissioners@usccr.gov>
Cc: David Ganz <dganz@usccr.gov>, "CommissionerAssistants@usccr.gov" <CommissionerAssistants@usccr.gov>
Subject: Commissioner Appointments to the Election Assistance Commission

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AMERICAN OVERSIGHT

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Please let the Chair or I know if you have any questions or concerns.

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.03 Any authority specifically granted the Chair of the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Chair.

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(2) The members appointed by the Democratic authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Republican authorities, and the members appointed

AMERICAN OVERSIGHT

by the Republican authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Democratic authorities

(3) The members selected shall be placed in nomination and ratified in conformance with Section 1.

Mauro Morales
Staff Director
U.S. Commission on Civil Rights
P: 202-376-7796| F: 202-376-7672
Mmorales@usccr.gov
http://usccr.gov/
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425

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<image002.gif>

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Date : 7/30/2021 12:34:11 PM
From : "John Mashburn" jmashburn@usccr.gov
To : "Mauro Morales" mmorales@usccr.gov
Cc : "Carissa Mulder" CMulder@usccr.gov, "Thomas Simuel" tsimuel@usccr.gov, "Alexander Heideman" aheideman@usccr.gov
Subject : Re: Commissioner Appointments to the Election Assistance Commission
Attachment : image001.gif;image002.gif;

Mauro – after canvassing the Republican Commissioners, the two nominees they wish to put forward for one of the two USCCR designees for the EAC's Board of Advisors (per your email below) are:

Cleta Mitchell – Chair, Conservative Partnership Institute Election Integrity Network, and

Christian Adams – USCCR Commissioner.

From: Mauro Morales <mmorales@usccr.gov>
Date: Wednesday, July 28, 2021 at 11:30 AM
To: Commissioners <Commissioners@usccr.gov>
Cc: David Ganz <dganz@usccr.gov>, "CommissionerAssistants@usccr.gov" <CommissionerAssistants@usccr.gov>
Subject: Commissioner Appointments to the Election Assistance Commission

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AI language:

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(2) The members appointed by the Democratic authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Democratic authorities

(3) The members selected shall be placed in nomination and ratified in conformance with Section 1.

Mauro Morales
Staff Director
U.S. Commission on Civil Rights
P: 202-376-7796| F: 202-376-7672
Mmorales@usccr.gov
http://usccr.gov/
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Washington D.C. 20425

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OVERSIGHT

OVERSTOCK

Date : 7/30/2021 12:37:07 PM
From : "John Mashburn" jmashburn@usccr.gov
To : "Mauro Morales" mmorales@usccr.gov, "David Ganz" dganz@usccr.gov
Cc : "Carissa Mulder" CMulder@usccr.gov, "Thomas Simuel" tsimuel@usccr.gov, "Alexander Heideman" aheideman@usccr.gov
Subject : Re: Commissioner Appointments to the Election Assistance Commission
Attachment : image001.gif;image002.gif;

David – I got a response email saying Mauro is not in today, so I am forwarding this email to you to meet the deadline of COB today for these nominations from the Republican Commissioners.

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Date: Friday, July 30, 2021 at 12:34 PM
To: Mauro Morales <mmorales@usccr.gov>
Cc: Carissa Mulder <CMulder@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>, Alexander Heideman <aheideman@usccr.gov>
Subject: Re: Commissioner Appointments to the Election Assistance Commission

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Christian Adams – USCCR Commissioner.

From: Mauro Morales <mmorales@usccr.gov>
Date: Wednesday, July 28, 2021 at 11:30 AM
To: Commissioners <Commissioners@usccr.gov>
Cc: David Ganz <dganz@usccr.gov>, "CommissionerAssistants@usccr.gov" <CommissionerAssistants@usccr.gov>
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Please let the Chair or I know if you have any questions or concerns.

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OVERSTOCK

Date : 7/30/2021 12:43:18 PM
From : "David Ganz" dganz@usccr.gov
To : "Mauro Morales" mmorales@usccr.gov
Subject : RE: Commissioner Appointments to the Election Assistance Commission
Attachment : image001.gif;image002.gif;

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To: Mauro Morales <mmorales@usccr.gov>; David Ganz <dganz@usccr.gov>
Cc: Carissa Mulder <CMulder@usccr.gov>; Thomas Simuel <tsimuel@usccr.gov>; Alexander Heideman <aheideman@usccr.gov>
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OVERSTOCK

Date : 8/2/2021 11:45:24 AM
From : "Mauro Morales" mmorales@usccr.gov
To : "John Mashburn" jmashburn@usccr.gov
Cc : "Carissa Mulder" CMulder@usccr.gov, "Thomas Simuel" tsimuel@usccr.gov, "Alexander Heideman" aheideman@usccr.gov
Subject : Re: Commissioner Appointments to the Election Assistance Commission
Attachment : image001.gif;image002.gif;

My flight was canceled and returning today. Your selections were forwarded to Chair Cantu. Thank you.

Sent from my iPhone

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> Cleta Mitchell – Chair, Conservative Partnership Institute Election Integrity Network, and
>
> Christian Adams – USCCR Commissioner.
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> **Date:** Wednesday, July 28, 2021 at 11:30 AM
> **To:** Commissioners <Commissioners@usccr.gov>
> **Cc:** David Ganz <dganz@usccr.gov>, "CommissionerAssistants@usccr.gov" <CommissionerAssistants@usccr.gov>
> **Subject:** Commissioner Appointments to the Election Assistance Commission
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AMERICAN OVERSIGHT

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Staff Director

AMERICAN OVERSIGHT

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<image002.gif>

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OVERSTOCK

Date : 8/2/2021 11:43:45 AM
From : "Mauro Morales" mmorales@usccr.gov
To : "David Ganz" dganz@usccr.gov
Subject : Re: Commissioner Appointments to the Election Assistance Commission
Attachment : image001.gif;image002.gif;

Yes.

Sent from my iPhone

On Jul 30, 2021, at 9:43 AM, David Ganz <dganz@usccr.gov> wrote:

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From: John Mashburn <jmashburn@usccr.gov>
Sent: Friday, July 30, 2021 12:37 PM
To: Mauro Morales <mmorales@usccr.gov>; David Ganz <dganz@usccr.gov>
Cc: Carissa Mulder <CMulder@usccr.gov>; Thomas Simuel <tsimuel@usccr.gov>; Alexander Heideman <aheideman@usccr.gov>
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AMERICAN OVERSIGHT

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AMERICAN OVERSIGHT

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OVERSTOCK

Date : 8/3/2021 3:38:23 PM
From : "Juana Silverio" jsilverio@usccr.gov
To : "Mauro Morales" mmorales@usccr.gov, "Norma Cantu" ncantu@usccr.gov
Cc : "Debo P. Adegbile" dadegbile@usccr.gov, "Michael Yaki" MYaki@usccr.gov, "David Kladney" dkladney@usccr.gov, "Irena Vidulovic" ividulovic@usccr.gov, "Alec Deull" adeull@usccr.gov
Subject : RE: Commissioner Appointments to the Election Assistance Commission

Good afternoon Mauro.

The Dem caucus had a tie:

Commissioner Michael Yaki
Leah Aden (Cantu and Yaki)
Allison Riggs (Adegbile and Kladney)

The Chairwoman, in the interest of observing the deadline, is submitting the following names for EAC consideration:

Commissioner Michael Yaki
Leah Aden - https://www.naacpldf.org/about-us/staff/leah-c-aden/

Thank you.
Juana

From: Mauro Morales <mmorales@usccr.gov>
Sent: Monday, August 2, 2021 11:47 AM
To: Norma V. Cantú <normavcantu@gmail.com>; Juana Silverio <jsilverio@usccr.gov>
Subject: Fwd: Commissioner Appointments to the Election Assistance Commission

FYI

Sent from my iPhone

Begin forwarded message:

> **From:** Mauro Morales <mmorales@usccr.gov>
> **Date:** August 2, 2021 at 8:45:25 AM MST
> **To:** John Mashburn <jmashburn@usccr.gov>
> **Cc:** Carissa Mulder <CMulder@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>, Alexander Heideman <aheideman@usccr.gov>
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Cc:
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Date : 8/3/2021 4:12:07 PM
From : "Irena Vidulovic" ividulovic@usccr.gov
To : "Juana Silverio" jsilverio@usccr.gov, "Mauro Morales" mmorales@usccr.gov, "Norma Cantu" ncantu@usccr.gov
Cc : "Debo P. Adegbile" dadegbile@usccr.gov, "Michael Yaki" MYaki@usccr.gov, "David Kladney" dkladney@usccr.gov, "Alec Deull" adeull@usccr.gov
Subject : Re: Commissioner Appointments to the Election Assistance Commission

Unfortunately Leah Aden is unable to serve. Commissioner Adebile reached out to all the candidates that we proposed including Leah to make sure that they would be willing and able to serve and we have been notified that Leah is unavailable to serve.

From: Juana Silverio
Sent: Tuesday, August 3, 2021 3:38:23 PM
To: Mauro Morales; Norma Cantu
Cc: Debo P. Adegbile; Michael Yaki; David Kladney; Irena Vidulovic; Alec Deull
Subject: RE: Commissioner Appointments to the Election Assistance Commission

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Commissioner Michael Yaki
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AMERICAN OVERSIGHT

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<image002.gif>

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From : "Juana Silverio" jsilverio@usccr.gov
To : "Irena Vidulovic" ividulovic@usccr.gov, "Mauro Morales" mmorales@usccr.gov, "Norma Cantu" ncantu@usccr.gov
Cc : "Debo P. Adegbile" dadegbile@usccr.gov, "Michael Yaki" MYaki@usccr.gov, "David Kladney" dkladney@usccr.gov, "Alec Deull" adeull@usccr.gov
Subject : RE: Commissioner Appointments to the Election Assistance Commission

Mauro- due to new information received, please replace Leah with Ms. Allison Riggs.

Juana

From: Irena Vidulovic <ividulovic@usccr.gov>
Sent: Tuesday, August 3, 2021 4:12 PM
To: Juana Silverio <jsilverio@usccr.gov>; Mauro Morales <mmorales@usccr.gov>; Norma Cantu <ncantu@usccr.gov>
Cc: Debo P. Adegbile <dadegbile@usccr.gov>; Michael Yaki <MYaki@usccr.gov>; David Kladney <dkladney@usccr.gov>; Alec Deull <adeull@usccr.gov>
Subject: Re: Commissioner Appointments to the Election Assistance Commission

Unfortunately Leah Aden is unable to serve. Commissioner Adebile reached out to all the candidates that we proposed including Leah to make sure that they would be willing and able to serve and we have been notified that Leah is unavailable to serve.

From: Juana Silverio
Sent: Tuesday, August 3, 2021 3:38:23 PM
To: Mauro Morales; Norma Cantu
Cc: Debo P. Adegbile; Michael Yaki; David Kladney; Irena Vidulovic; Alec Deull
Subject: RE: Commissioner Appointments to the Election Assistance Commission

Good afternoon Mauro.

The Dem caucus had a tie:

Commissioner Michael Yaki
Leah Aden (Cantu and Yaki)
Allison Riggs (Adegbile and Kladney)

The Chairwoman, in the interest of observing the deadline, is submitting the following names for EAC consideration:

AMERICAN OVERSIGHT

Commissioner Michael Yaki
Leah Aden - https://www.naacpldf.org/about-us/staff/leah-c-aden/

Thank you.
Juana

From: Mauro Morales <mmorales@usccr.gov>
Sent: Monday, August 2, 2021 11:47 AM
To: Norma V. Cantú <normavcantu@gmail.com>; Juana Silverio <jsilverio@usccr.gov>
Subject: Fwd: Commissioner Appointments to the Election Assistance Commission

FYI

Sent from my iPhone

Begin forwarded message:

> **From:** Mauro Morales <mmorales@usccr.gov>
> **Date:** August 2, 2021 at 8:45:25 AM MST
> **To:** John Mashburn <jmashburn@usccr.gov>
> **Cc:** Carissa Mulder <CMulder@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>, Alexander Heideman <aheideman@usccr.gov>
> **Subject: Re: Commissioner Appointments to the Election Assistance Commission**
>
> My flight was canceled and returning today. Your selections were forwarded to Chair Cantu. Thank you.
>
> Sent from my iPhone
>
> > On Jul 30, 2021, at 9:34 AM, John Mashburn <jmashburn@usccr.gov> wrote:
> >
> > Mauro – after canvassing the Republican Commissioners, the two nominees they wish to put forward for one of the two USCCR designees for the EAC's Board of Advisors (per your email below) are:
> >
> > Cleta Mitchell – Chair, Conservative Partnership Institute Election Integrity Network, and
> >
> > Christian Adams – USCCR Commissioner.
> >
> > ---
> >
> > **From:** Mauro Morales <mmorales@usccr.gov>
> > **Date:** Wednesday, July 28, 2021 at 11:30 AM
> > **To:** Commissioners <Commissioners@usccr.gov>
> > **Cc:**
> > " <CommissionerAssistants@usccr.gov>

AMERICAN OVERSIGHT

Subject: Commissioner Appointments to the Election Assistance Commission

Dear Commissioners-

At the request and in consultation with the Chair, I am sending this email to start the EAC nomination process for Commissioners.

Per the AI voted on during the April 30th meeting (language included below), each caucus is requested to submit two candidates for consideration by COB Friday, July 30, 2021. Once the names are submitted, OGC will conduct an ethics check to be completed by Wednesday, August 4, 2021. Each caucus will then have 24 hours to submit caucus strikes (Thursday, August 5, 2021 COB). The Chair will communicate the two names to EAC no later than Friday, August 6, 2021.

Please let the Chair or I know if you have any questions or concerns.

--
AI language:

Section 1.
.01 Any authority specifically granted the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Commission as a whole by majority vote.

.02 Any authority specifically granted the Staff Director of the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Staff Director.

.03 Any authority specifically granted the Chair of the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Chair.

Section 2

AMERICAN OVERSIGHT

.02

(1) For the two (2) appointments to the U.S. Election Assistance Commission, the members appointed by Democratic authorities shall nominate two individuals who are ready, willing, and able to serve, and the members appointed by the Republican authorities shall nominate two individuals who are ready, willing, and able to serve.

(2) The members appointed by the Democratic authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Democratic authorities

(3) The members selected shall be placed in nomination and ratified in conformance with Section 1.

Mauro Morales
Staff Director
U.S. Commission on Civil Rights
P: 202-376-7796| F: 202-376-7672
Mmorales@usccr.gov
http://usccr.gov/
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425

Follow Us on Twitter & Facebook:
<image001.gif>
<image002.gif>

#USCCR

AMERICAN OVERSIGHT

Date : 8/5/2021 1:30:29 PM
From : "Debo P. Adegbile" dadegbile@usccr.gov
To : "Norma Cantu" ncantu@usccr.gov, "Michael Yaki" commissioner.yaki@gmail.com, "David Kladney" dkladney@usccr.gov
Cc : "Irena Vidulovic" ividulovic@usccr.gov
Subject : Fwd: Nominations for Appointment to the EAC
Attachment : image001.gif;image002.gif;

Cleta Mitchell is my pick of those they nominated.

Sent from my iPhone

Begin forwarded message:

> **From:** Mauro Morales <mmorales@usccr.gov>
> **Date:** August 3, 2021 at 5:36:12 PM EDT
> **To:** Commissioners <Commissioners@usccr.gov>
> **Cc:** CommissionerAssistants <CommissionerAssistants@usccr.gov>, David Ganz <dganz@usccr.gov>
> **Subject: Nominations for Appointment to the EAC**
>
> Commissioners,
>
> Pursuant to the AI voted on during the April 30th Business meeting, you have nominated the following individuals to the Election Assistance Commission (EAC):
>
> Commissioners Cantu, Adegbile, Kladney and Yaki have nominated the following individuals to the EAC:
>
> - Commissioner Michael Yaki;
> - Ms. Allison Riggs , Co-Executive Director, Southern Coalition for Social Justice.
>
> Commissioners Adams, Gilchrist, Heriot and Kirsanow have nominated the following individuals to the EAC:
>
> - Commissioner Christian Adams;
> - Cleta Michell, Chair, Conservative Partnership Institute Election Integrity Network.
>
> Under the AI adopted by Commissioners, the members appointed by the Democratic authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Democratic authorities. The final members selected shall be placed in nomination and ratified by a

AMERICAN OVERSIGHT

majority vote. Please inform me how you would like to proceed for a majority vote either by placing it on the agenda for the next USCCR business meeting or by a notational vote.

Mauro Morales
Staff Director
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Washington D.C. 20425

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OVERSIGHT

OVERSTOCK

Date : 8/5/2021 4:03:06 PM
From : "Norma Cantu" ncantu@usccr.gov
To : "Mauro Morales" mmorales@usccr.gov, "Juana Silverio" jsilverio@usccr.gov
Cc : "David Ganz" dganz@usccr.gov
Subject : RE: Nominations for Appointment to the EAC
Attachment : image001.gif;image002.gif;

Dear Mauro,
The progressive caucus discussed the two options from the conservative caucus and unanimously selected Cleta Mitchell as nominee from the conservative caucus.
Norma

From: Mauro Morales <mmorales@usccr.gov>
Sent: Wednesday, August 4, 2021 11:25 AM
To: Juana Silverio <jsilverio@usccr.gov>
Cc: Norma Cantu <ncantu@usccr.gov>; David Ganz <dganz@usccr.gov>
Subject: RE: Nominations for Appointment to the EAC

That is a good idea and each caucus should send me their final selection. There are no real procedures since this is the first time we've done this. It would be simpler if each caucus provides me with their selection rather than each commissioner provide me their individual vote on the different candidates that I would then have to account for and tally. I shouldn't have a part of the caucus votes for the final candidates. Each caucus should make their own selection and then send it to me which I can then schedule for a final vote by all Commissioners to send to the EAC.

From: Juana Silverio <jsilverio@usccr.gov>
Sent: Wednesday, August 4, 2021 11:10 AM
To: Mauro Morales <mmorales@usccr.gov>
Cc: Norma Cantu <ncantu@usccr.gov>
Subject: RE: Nominations for Appointment to the EAC

Should we remind them to send their "strike" no latr than COB tomorrow?

From: Mauro Morales <mmorales@usccr.gov>
Sent: Tuesday, August 3, 2021 5:36 PM
To: Commissioners <Commissioners@usccr.gov>
Cc: CommissionerAssistants <CommissionerAssistants@usccr.gov>; David Ganz <dganz@usccr.gov>
Subject: Nominations for Appointment to the EAC

Commissioners,

Pursuant to the AI voted on during the April 30th Business meeting, you have nominated the following individuals to the Election Assistance Commission (EAC):

AMERICAN OVERSIGHT

Commissioners Cantu, Adegbile, Kladney and Yaki have nominated the following individuals to the EAC:

- Commissioner Michael Yaki;
- Ms. Allison Riggs , Co-Executive Director, Southern Coalition for Social Justice.

Commissioners Adams, Gilchrist, Heriot and Kirsanow have nominated the following individuals to the EAC:

- Commissioner Christian Adams;
- Cleta Michell, Chair, Conservative Partnership Institute Election Integrity Network.

Under the AI adopted by Commissioners, the members appointed by the Democratic authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Democratic authorities. The final members selected shall be placed in nomination and ratified by a majority vote. Please inform me how you would like to proceed for a majority vote either by placing it on the agenda for the next USCCR business meeting or by a notational vote.

Mauro Morales
Staff Director
U.S. Commission on Civil Rights
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AMERICAN OVERSIGHT

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OVERSTOCK

Date : 8/12/2021 11:25:50 AM
From : "Irena Vidulovic" ividulovic@usccr.gov
To : "Juana Silverio" jsilverio@usccr.gov, "Alec Deull" adeull@usccr.gov
Subject : Next Week/August Business Meeting

Good Morning Juana and Alec,

Since I will be on travel next week I just wanted to make sure that I had all our ducks in order and make sure that I am not missing anything in preparation for Debo and Dave.

August Business Meeting Agenda (the Sunshine notice has posted)

A. Presentations from Advisory Committees to the Commission on Recent 2 Reports/Memo Releases
B. Discussion and Vote on Iowa Advisory Committee Chair Appointment
C. Discussion and Vote on Advisory Committee Appointments (Florida). Juana, David should circulate and then if we could have your legal intern do the vet memo that would be great.
D. Discussion and Vote on the Release of The Civil Rights Implications of Cash Bail: Briefing Report Before the U.S. Commission on Civil Rights. I have circulated the final version to the SA's and will circulate to Commissioners, Mauro + OGC today.
E. Management and Operations

**It looks like the only item that is missing is the EAC nominations. So someone would need to amend the agenda to add that item and have a vote on Commissioner Yaki and Cleta Mitchell for EAC.

Please let me know if I am missing anything or that there is something we should discuss.

Irena

Irena Vidulovic
Special Assistant to Commissioner Debo P. Adegbile
U.S. Commission on Civil Rights
M: 202-591-9969
ividulovic@usccr.gov
http://usccr.gov/
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Washington D.C. 20425

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AMERICAN OVERSIGHT

Date : 8/12/2021 11:54:44 AM
From : "Irena Vidulovic" ividulovic@usccr.gov
To : "Debo P. Adegbile" dadegbile@usccr.gov, "Adegbile, Debo" Debo.Adegbile@wilmerhale.com
Cc : "Zervoudis, Flor" Flor.Zervoudis@wilmerhale.com
Subject : UPDATED TO DO LIST- AUGUST BUSINESS MEETING NEXT WEEK
Attachment : 08-20-USCCR-Business-Meeting-Sunshine-Act-Notice.pdf;

Adegbile,

I just wanted to give you an updated TO DO LIST since I will be out on vacation next week. As you know the most important item on this entire list is the Financial Disclosure Form. As you know you don't have any more extensions.

1. Financial Disclosure Form (this week)!
2. USCCR Hours (today) 8/1-14
   8/2 1hour Weekly Priority Call with SA
   8/3 1.5 hours Review USCCR Documents
   8/5 .5 Call with SA regarding FEMA briefing
   8/6 3 hours review USCCR documents
   8/9 1.5 hours Weekly Priority call with SA
   8/10 2 hours review financial disclosure form
   8/11 1.5 hours review Fines and Fees Quote
   8/12 1 hour call with SA regarding August Business Meeting

3. August Business Meeting Agenda (the Sunshine notice has posted and attached)
   A. Presentations from Advisory Committees to the Commission on Recent 2 Reports/Memo Releases
   B. Discussion and Vote on Iowa Advisory Committee Chair Appointment
   C. Discussion and Vote on Advisory Committee Appointments (Florida). Juana, David should circulate and then if we could have your legal intern do the vet memo that would be great.
   D. Discussion and Vote on the Release of The Civil Rights Implications of Cash Bail: Briefing Report Before the U.S. Commission on Civil Rights. I have circulated the final version to the SA's and will circulate to Commissioners, Mauro + OGC today.
4. E. Management and Operations
   **It looks like the only item that is missing is the EAC nominations. So someone would need to amend the agenda to add that item and have a vote on Commissioner Yaki and Cleta Mitchell for EAC.
5. Written Documents from Senator Warren's Office

Please let me know if you have any questions,

Irena

AMERICAN OVERSIGHT

Irena Vidulovic
Special Assistant to Commissioner Debo P. Adegbile
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COMMISSION ON CIVIL RIGHTS

Sunshine Act Meetings

AGENCY: United States Commission on Civil Rights.

ACTION: Notice of Commission public business meeting.

DATES: Friday, August 20, 2021, 12:00 pm EST.

ADDRESSES: Meeting to take place by telephone and is open to the public by telephone: 1-800-635-7637, Conference ID #: 8000136.

FOR FURTHER INFORMATION CONTACT: Angelia Rorison: 202-376-7700; publicaffairs@usccr.gov.

SUPPLEMENTARY INFORMATION:

In accordance with the Government in Sunshine Act (5 U.S.C. 552b), the Commission on Civil Rights is holding a meeting to discuss the Commission's business for the month of August. This meeting is open to the public. Computer assisted real-time transcription (CART) will be provided. The web link to access CART (in English) on Friday, August 20, 2021, is https://www.streamtext.net/player?event=USCCR. Please note that CART is text-only translation that occurs in real time during the meeting and is not an exact transcript.

Meeting Agenda

I. Approval of Agenda

II. Business Meeting

A. Presentations from Advisory Committees to the Commission on Recent

AMERICAN OVERSIGHT

Reports/Memo Releases

B. Discussion and Vote on Iowa Advisory Committee Chair Appointment

C. Discussion and Vote on Advisory Committee Appointments

D. Discussion and Vote on the Release of The Civil Rights Implications of Cash Bail: Briefing Report Before the U.S. Commission on Civil Rights

E. Management and Operations

- Staff Director's Report

III. Adjourn Meeting

Dated: August 11, 2021

AMERICAN OVERSIGHT

Date : 10/18/2021 12:33:57 PM
From : "John Mashburn" jmashburn@usccr.gov
To : "Mauro Morales" mmorales@usccr.gov, "Juana Silverio" jsilverio@usccr.gov
Cc : "Carissa Mulder" CMulder@usccr.gov
Subject : Cleta Mitchell Serving on EAC Advisory Bd

Mauro/Juana – Cleta Mitchell has not been contacted by USCCR or EAC staff about serving on the EAC Bd of Advisors. As you recall, her nomination to serve was approved at the August USCCR Bus Mtg. My boss and one other Cmnr asked me to find out what the process and status are regarding her appointment to the EAC Bd of Advisors.

Can either of you provide that info, or do I need to contact someone else at USCCR, or EAC?

AMERICAN OVERSIGHT

Date : 10/28/2021 8:40:44 AM
From : "John Mashburn" jmashburn@usccr.gov
To : "Mauro Morales" mmorales@usccr.gov, "Juana Silverio" jsilverio@usccr.gov, "David Ganz" dganz@usccr.gov
Subject : Fw: Cleta Mitchell Serving on EAC Advisory Bd

Is there an answer to this question?

From: John Mashburn
Sent: Monday, October 18, 2021 12:33:57 PM
To: Mauro Morales; Juana Silverio
Cc: Carissa Mulder
Subject: Cleta Mitchell Serving on EAC Advisory Bd

Mauro/Juana – Cleta Mitchell has not been contacted by USCCR or EAC staff about serving on the EAC Bd of Advisors. As you recall, her nomination to serve was approved at the August USCCR Bus Mtg. My boss and one other Cmnr asked me to find out what the process and status are regarding her appointment to the EAC Bd of Advisors.

Can either of you provide that info, or do I need to contact someone else at USCCR, or EAC?

AMERICAN OVERSIGHT

Date : 10/28/2021 9:50:48 AM
From : "Juana Silverio" jsilverio@usccr.gov
To : "John Mashburn" jmashburn@usccr.gov, "Mauro Morales" mmorales@usccr.gov, "David Ganz" dganz@usccr.gov
Cc : "Norma Cantu" ncantu@usccr.gov
Subject : Re: Cleta Mitchell Serving on EAC Advisory Bd

The Chair will address this shortly.

Juana

--
Juana Silverio *(she/her/ella)*
Special Assistant to Commissioner Norma V. Cantú
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http://usccr.gov/
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From: John Mashburn
Sent: Thursday, October 28, 2021 8:40:44 AM
To: Mauro Morales; Juana Silverio; David Ganz
Subject: Fw: Cleta Mitchell Serving on EAC Advisory Bd

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From: John Mashburn
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To: Mauro Morales; Juana Silverio
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Can either of you provide that info, or do I need to contact someone else at USCCR, or EAC?

AMERICAN OVERSIGHT

Date : 10/28/2021 9:59:56 AM
From : "John Mashburn" jmashburn@usccr.gov
To : "Juana Silverio" jsilverio@usccr.gov
Subject : Re: Cleta Mitchell Serving on EAC Advisory Bd

How shortly is “shortly?”

The Bd of Advisors have a business meeting soon evidently.

From: Juana Silverio <jsilverio@usccr.gov>
Date: Thursday, October 28, 2021 at 9:50 AM
To: John Mashburn <jmashburn@usccr.gov>, Mauro Morales <mmorales@usccr.gov>, David Ganz <dganz@usccr.gov>
Cc: Norma Cantu <ncantu@usccr.gov>
Subject: Re: Cleta Mitchell Serving on EAC Advisory Bd

The Chair will address this shortly.

Juana

--

Juana Silverio *(she/her/ella)*

Special Assistant to Commissioner Norma V. Cantú

U.S. Commission on Civil Rights

E: jsilverio@usccr.gov

http://usccr.gov/

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From: John Mashburn
Sent: Thursday, October 28, 2021 8:40:44 AM
To: Mauro Morales; Juana Silverio; David Ganz

AMERICAN OVERSIGHT

Subject: Fw: Cleta Mitchell Serving on EAC Advisory Bd

Is there an answer to this question?

From: John Mashburn
Sent: Monday, October 18, 2021 12:33:57 PM
To: Mauro Morales; Juana Silverio
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Subject: Cleta Mitchell Serving on EAC Advisory Bd

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Can either of you provide that info, or do I need to contact someone else at USCCR, or EAC?

AMERICAN OVERSIGHT

Date : 10/28/2021 10:35:02 AM
From : "Juana Silverio" jsilverio@usccr.gov
To : "John Mashburn" jmashburn@usccr.gov
Subject : Re: Cleta Mitchell Serving on EAC Advisory Bd

Thanks for letting me know John.

The Chair is aware. We will get back to you.

Juana

--
Juana Silverio *(she/her/ella)*
Special Assistant to Commissioner Norma V. Cantú
U.S. Commission on Civil Rights
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http://usccr.gov/
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425
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From: John Mashburn
Sent: Thursday, October 28, 2021 9:59:56 AM
To: Juana Silverio
Subject: Re: Cleta Mitchell Serving on EAC Advisory Bd

How shortly is “shortly?”

The Bd of Advisors have a business meeting soon evidently.

From: Juana Silverio <jsilverio@usccr.gov>
Date: Thursday, October 28, 2021 at 9:50 AM
To: John Mashburn <jmashburn@usccr.gov>, Mauro Morales <mmorales@usccr.gov>, David Ganz <dganz@usccr.gov>
Cc: Norma Cantu <ncantu@usccr.gov>
Subject: Re: Cleta Mitchell Serving on EAC Advisory Bd

The Chair will address this shortly.

Juana

--
Juana Silverio *(she/her/ella)*
Special Assistant to Commissioner Norma V. Cantú
U.S. Commission on Civil Rights
E: jsilverio@usccr.gov
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From: John Mashburn
Sent: Thursday, October 28, 2021 8:40:44 AM
To: Mauro Morales; Juana Silverio; David Ganz
Subject: Fw: Cleta Mitchell Serving on EAC Advisory Bd

Is there an answer to this question?

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Sent: Monday, October 18, 2021 12:33:57 PM
To: Mauro Morales; Juana Silverio
Cc: Carissa Mulder
Subject: Cleta Mitchell Serving on EAC Advisory Bd

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Can either of you provide that info, or do I need to contact someone else at USCCR, or EAC?

AMERICAN OVERSIGHT

Date : 10/29/2021 10:25:37 AM
From : "Juana Silverio" jsilverio@usccr.gov
To : "J. Christian Adams" jadams@usccr.gov, "John Mashburn" jmashburn@usccr.gov
Cc : "Norma Cantu" ncantu@usccr.gov
Subject : EAC Rep. Contact Info

Good morning,

Please provide the title, address, phone, email and party affiliation for Ms. Cleta Mitchell at your earliest convenience.

Thank you.
Juana

--
Juana Silverio *(she/her/ella)*
Special Assistant to Commissioner Norma V. Cantú
U.S. Commission on Civil Rights
E: jsilverio@usccr.gov
http://usccr.gov/
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425
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AMERICAN OVERSIGHT

Date : 10/29/2021 4:11:58 PM
From : "Norma Cantu" ncantu@usccr.gov
To : "Michael Yaki" MYaki@usccr.gov, "David Kladney" dkladney@usccr.gov, "Debo P. Adegbile" dadegbile@usccr.gov
Cc : "Juana Silverio" jsilverio@usccr.gov
Subject : Today's announcement appointing Cleta Mitchell and announcing opening on Board of Advisors due to declination of new term by M Yaki

Yes, I failed to persuade Michael Yaki to serve another term on the Board of Advisors for the US Elections Assistance Commission. He did a great job in the past six years. He's not going anywhere, but we have a vacant position to fill on the Board of Advisors.

Please send me and Juana two names of progressive candidates so we can offer two names to the conservative caucus and they can strike one, as the AI requires.
I will need names by End of Business on Tuesday, November 2, 2021

On Wednesday, I will send the two names to the conservative caucus and give them 48-hours notice to respond by striking one of the names. Ths is the process we memorialized in an AI.
Please tell me that you have confirmed with the person whose name you are forwarding that this person is willing to serve.

Thank you.

Norma

Cell phone 210 380 6380

AMERICAN OVERSIGHT

Date : 10/29/2021 4:30:04 PM
From : "Norma Cantu" ncantu@usccr.gov
To : "John Mashburn" jmashburn@usccr.gov
Cc : "Juana Silverio" jsilverio@usccr.gov
Subject : Notice-of-Representation-Form-Board-Advisors-2021.pdf

John,
This is the form I will be sending to the Elections Commission. Do you have the information for Ms. Cleta Mitchell so I can send this form out?
Many thanks.
Norma

You can view "Notice-of-Representation-Form-Board-Advisors-2021.pdf" at:
https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:dfc1d27f-9812-4c9c-af42-c2ca43a2cc05

_____
Sent with Adobe Document Cloud. Click on the link above to access the file online. No sign up or installation of Acrobat is required to access.

AMERICAN OVERSIGHT

Date : 10/29/2021 6:01:50 PM
From : "John Mashburn" jmashburn@usccr.gov
To : "Norma Cantu" ncantu@usccr.gov
Cc : "Juana Silverio" jsilverio@usccr.gov
Subject : Re: Notice-of-Representation-Form-Board-Advisors-2021.pdf

I talked to her and she was traveling by car to SC. She will send me the info once she arrives and can get online.

On 10/29/21, 4:30 PM, "Norma Cantu" <ncantu@usccr.gov> wrote:

John,
This is the form I will be sending to the Elections Commission. Do you have the information for Ms. Cleta Mitchell so I can send this form out?
Many thanks.
Norma

You can view "Notice-of-Representation-Form-Board-Advisors-2021.pdf" at:
https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:dfc1d27f-9812-4c9c-af42-c2ca43a2cc05

_____
Sent with Adobe Document Cloud. Click on the link above to access the file online. No sign up or installation of Acrobat is required to access.

AMERICAN OVERSIGHT

Date : 10/29/2021 6:02:18 PM
From : "John Mashburn" jmashburn@usccr.gov
To : "cleta@cletamitchell.com" cleta@cletamitchell.com
Subject : FW: Notice-of-Representation-Form-Board-Advisors-2021.pdf

FYI

On 10/29/21, 4:30 PM, "Norma Cantu" <ncantu@usccr.gov> wrote:

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_____
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AMERICAN OVERSIGHT

Date : 10/30/2021 10:13:16 AM
From : "Norma Cantu" ncantu@usccr.gov
To : "John Mashburn" jmashburn@usccr.gov
Cc : "Juana Silverio" jsilverio@usccr.gov
Subject : RE: Notice-of-Representation-Form-Board-Advisors-2021.pdf

Thank you, John.
Norma

-----Original Message-----
From: John Mashburn <jmashburn@usccr.gov>
Sent: Friday, October 29, 2021 5:02 PM
To: Norma Cantu <ncantu@usccr.gov>
Cc: Juana Silverio <jsilverio@usccr.gov>
Subject: Re: Notice-of-Representation-Form-Board-Advisors-2021.pdf

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_____
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AMERICAN OVERSIGHT

Date : 10/30/2021 12:12:09 PM
From : "John Mashburn" jmashburn@usccr.gov
To : "cleta@cletamitchell.com" cleta@cletamitchell.com
Subject : Re: Notice-of-Representation-Form-Board-Advisors-2021.pdf

Did you get this email?

No rush, just want to make sure it got thru to you.

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FYI

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_____
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AMERICAN OVERSIGHT

Date : 11/1/2021 12:20:30 PM
From : "Irena Vidulovic" ividulovic@usccr.gov
To : "Debo P. Adegbile" dadegbile@usccr.gov, "Adegbile, Debo" Debo.Adegbile@wilmerhale.com
Subject : Fw: Commissioner Appointments to the Election Assistance Commission

Adegbile,

I think that this email is the one to forward to the caucus now that Commissioner Yaki is recused, nominating Allison Riggs and Jenny Carroll the Alabama SAC Chair. Both are willing and able to serve.

The email should go to Cantu, Kladney, Yaki, Juana, Alec and Joshua (email jdansby@usccr.gov).
The Chair can then send our nominees to the R's.

Thanks,
Irena

From: Juana Silverio
Sent: Tuesday, August 3, 2021 4:30 PM
To: Irena Vidulovic; Mauro Morales; Norma Cantu
Cc: Debo P. Adegbile; Michael Yaki; David Kladney; Alec Deull
Subject: RE: Commissioner Appointments to the Election Assistance Commission

Mauro- due to new information received, please replace Leah with Ms. Allison Riggs.

Juana

From: Irena Vidulovic <ividulovic@usccr.gov>
Sent: Tuesday, August 3, 2021 4:12 PM
To: Juana Silverio <jsilverio@usccr.gov>; Mauro Morales <mmorales@usccr.gov>; Norma Cantu <ncantu@usccr.gov>
Cc: Debo P. Adegbile <dadegbile@usccr.gov>; Michael Yaki <MYaki@usccr.gov>; David Kladney <dkladney@usccr.gov>; Alec Deull <adeull@usccr.gov>
Subject: Re: Commissioner Appointments to the Election Assistance Commission

Unfortunately Leah Aden is unable to serve. Commissioner Adebile reached out to all the candidates that we proposed including Leah to make sure that they would be willing and able to serve and we have been notified that Leah is unavailable to serve.

AMERICAN OVERSIGHT

From: Juana Silverio
Sent: Tuesday, August 3, 2021 3:38:23 PM
To: Mauro Morales; Norma Cantu
Cc: Debo P. Adegbile; Michael Yaki; David Kladney; Irena Vidulovic; Alec Deull
Subject: RE: Commissioner Appointments to the Election Assistance Commission

Good afternoon Mauro.

The Dem caucus had a tie:

Commissioner Michael Yaki
Leah Aden (Cantu and Yaki)
Allison Riggs (Adegbile and Kladney)

The Chairwoman, in the interest of observing the deadline, is submitting the following names for EAC consideration:

Commissioner Michael Yaki
Leah Aden - https://www.naacpldf.org/about-us/staff/leah-c-aden/

Leah C. Aden
www.naacpldf.org

Leah C. Aden has served as a Deputy Director of Litigation at the NAACP Legal Defense & Educational Fund, Inc. (LDF) since October 2018, assisting in the

Thank you.
Juana

From: Mauro Morales <mmorales@usccr.gov>
Sent: Monday, August 2, 2021 11:47 AM
To: Norma V. Cantú <normavcantu@gmail.com>; Juana Silverio <jsilverio@usccr.gov>
Subject: Fwd: Commissioner Appointments to the Election Assistance Commission

FYI
Sent from my iPhone

Begin forwarded message:

> **From:** Mauro Morales <mmorales@usccr.gov>
> **Date:** August 2, 2021 at 8:45:25 AM MST
> **To:** John Mashburn <jmashburn@usccr.gov>

AMERICAN OVERSIGHT

Cc: Carissa Mulder <CMulder@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>, Alexander Heideman <aheideman@usccr.gov>
Subject: Re: Commissioner Appointments to the Election Assistance Commission

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Sent from my iPhone

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>
> Cleta Mitchell – Chair, Conservative Partnership Institute Election Integrity Network, and
>
> Christian Adams – USCCR Commissioner.
>
> ---
>
> **From:** Mauro Morales <mmorales@usccr.gov>
> **Date:** Wednesday, July 28, 2021 at 11:30 AM
> **To:** Commissioners <Commissioners@usccr.gov>
> **Cc:**
> " <CommissionerAssistants@usccr.gov>
> **Subject:** Commissioner Appointments to the Election Assistance Commission
>
> Dear Commissioners-
>
> At the request and in consultation with the Chair, I am sending this email to start the EAC nomination process for Commissioners.
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> Per the AI voted on during the April 30th meeting (language included below), each caucus is requested to submit two candidates for consideration by COB Friday, July 30, 2021. Once the names are submitted, OGC will conduct an ethics check to be completed by Wednesday, August 4, 2021. Each caucus will then have 24 hours to submit caucus strikes (Thursday, August 5, 2021 COB). The Chair will communicate the two names to EAC no later than Friday, August 6, 2021.
>
> Please let the Chair or I know if you have any questions or concerns.

AMERICAN OVERSIGHT

--
AI language:

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Section 2
.02

(1) For the two (2) appointments to the U.S. Election Assistance Commission, the members appointed by Democratic authorities shall nominate two individuals who are ready, willing, and able to serve, and the members appointed by the Republican authorities shall nominate two individuals who are ready, willing, and able to serve.

(2) The members appointed by the Democratic authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Democratic authorities

(3) The members selected shall be placed in nomination and ratified in conformance with Section 1.

AMERICAN OVERSIGHT

Mauro Morales
Staff Director
U.S. Commission on Civil Rights
P: 202-376-7796| F: 202-376-7672
Mmorales@usccr.gov
http://usccr.gov/
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425

Follow Us on Twitter & Facebook:
<image001.gif>
<image002.gif>

#USCCR

AMERICAN OVERSIGHT

Date : 11/4/2021 4:29:31 PM
From : "Irena Vidulovic" ividulovic@usccr.gov
To : "Norma Cantu" ncantu@usccr.gov
Cc : "Juana Silverio" jsilverio@usccr.gov, "Debo P. Adegbile" dadegbile@usccr.gov
Subject : Fw: Commissioner Appointments to the Election Assistance Commission

Dear Norma,

Commissioner Adegbile would like to thank you for thinking of him for the EAC nomination. While he appreciates it, he believes that Allison Riggs and Alabama SAC Chair Jenny Carroll should be nominated instead. They both have voting bona fides and have already expressed a willingness to serve.

Thank you again,
Irena

From: Juana Silverio
Sent: Tuesday, August 3, 2021 4:30 PM
To: Irena Vidulovic; Mauro Morales; Norma Cantu
Cc: Debo P. Adegbile; Michael Yaki; David Kladney; Alec Deull
Subject: RE: Commissioner Appointments to the Election Assistance Commission

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Sent: Tuesday, August 3, 2021 4:12 PM
To: Juana Silverio <jsilverio@usccr.gov>; Mauro Morales <mmorales@usccr.gov>; Norma Cantu <ncantu@usccr.gov>
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Sent: Tuesday, August 3, 2021 3:38:23 PM
To: Mauro Morales; Norma Cantu
Cc: Debo P. Adegbile; Michael Yaki; David Kladney; Irena Vidulovic; Alec Deull

AMERICAN OVERSIGHT

Subject: RE: Commissioner Appointments to the Election Assistance Commission

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Leah Aden (Cantu and Yaki)
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Leah C. Aden

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To: Norma V. Cantú <normavcantu@gmail.com>; Juana Silverio <jsilverio@usccr.gov>
Subject: Fwd: Commissioner Appointments to the Election Assistance Commission

FYI
Sent from my iPhone

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> **To:** John Mashburn <jmashburn@usccr.gov>
> **Cc:** Carissa Mulder <CMulder@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>, Alexander Heideman <aheideman@usccr.gov>
> **Subject: Re: Commissioner Appointments to the Election Assistance Commission**

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> Christian Adams – USCCR Commissioner.
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> --
> AI language:

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(3) The members selected shall be placed in nomination and ratified in conformance with Section 1.

Mauro Morales
Staff Director
U.S. Commission on Civil Rights

AMERICAN OVERSIGHT

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Mmorales@usccr.gov
http://usccr.gov/
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425

Follow Us on Twitter & Facebook:

<image002.gif>

#USCCR

AMERICAN OVERSIGHT

Date : 11/4/2021 5:15:04 PM
From : "Norma Cantu" ncantu@usccr.gov
To : "Irena Vidulovic" ividulovic@usccr.gov
Cc : "Juana Silverio" jsilverio@usccr.gov, "Debo P. Adegbile" dadegbile@usccr.gov
Subject : RE: Commissioner Appointments to the Election Assistance Commission

Thank you, Irena.
I am relieved the Commission delivered two peerless choices.
Norma

From: Irena Vidulovic <ividulovic@usccr.gov>
Sent: Thursday, November 4, 2021 3:30 PM
To: Norma Cantu <ncantu@usccr.gov>
Cc: Juana Silverio <jsilverio@usccr.gov>; Debo P. Adegbile <dadegbile@usccr.gov>
Subject: Fw: Commissioner Appointments to the Election Assistance Commission

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Thank you again,

Irena

From: Juana Silverio
Sent: Tuesday, August 3, 2021 4:30 PM
To: Irena Vidulovic; Mauro Morales; Norma Cantu
Cc: Debo P. Adegbile; Michael Yaki; David Kladney; Alec Deull
Subject: RE: Commissioner Appointments to the Election Assistance Commission

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Sent: Tuesday, August 3, 2021 4:12 PM
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AMERICAN OVERSIGHT

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Leah C. Aden

www.naacpldf.org

Leah C. Aden has served as a Deputy Director of Litigation at the NAACP Legal Defense & Educational Fund, Inc. (LDF) since October 2018, assisting in the planning, strategy, and supervision of LDF's voting rights work. In light of the upcoming post-Census redistricting cycle, Leah is leading the planning, strategy, and supervision of LDF's redistricting [...]

Thank you.

Juana

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To: Norma V. Cantú <normavcantu@gmail.com>; Juana Silverio <jsilverio@usccr.gov>
Subject: Fwd: Commissioner Appointments to the Election Assistance Commission

FYI

Sent from my iPhone

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P: 202-376-7796| F: 202-376-7672

Mmorales@usccr.gov

AMERICAN OVERSIGHT

http://usccr.gov/

1331 Pennsylvania Avenue, NW Suite 1150

Washington D.C. 20425

Follow Us on Twitter & Facebook:

<image001.gif>

<image002.gif>

#USCCR

AMERICAN OVERSIGHT

Date : 11/9/2021 2:10:38 PM
From : "Juana Silverio" jsilverio@usccr.gov
To : "Michael Yaki" MYaki@usccr.gov, "David Kladney" dkladney@usccr.gov
Cc : "Joshua Dansby" jdansby@usccr.gov, "Alec Deull" adeull@usccr.gov
Subject : FW: Commissioner Appointments to the Election Assistance Commission

Good afternoon,

Norma wanted me to make sure you both were ok with the below names before sending them over to the Rep Caucus for consideration re: our second rep on the EAC

Allison Riggs- https://southerncoalition.org/staff/allison-riggs/
Alabama SAC Chair Jenny Carroll-
https://www.congress.gov/116/meeting/house/109456/witnesses/HHRG-116-HA08-Wstate-CarrollJ-20190513.pdf

---

From: Norma Cantu <ncantu@usccr.gov>
Sent: Thursday, November 4, 2021 5:15 PM
To: Irena Vidulovic <ividulovic@usccr.gov>
Cc: Juana Silverio <jsilverio@usccr.gov>; Debo P. Adegbile <dadegbile@usccr.gov>
Subject: RE: Commissioner Appointments to the Election Assistance Commission

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Cc: Debo P. Adegbile; Michael Yaki; David Kladney; Alec Deull
Subject: RE: Commissioner Appointments to the Election Assistance Commission

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Subject: Re: Commissioner Appointments to the Election Assistance Commission

Unfortunately Leah Aden is unable to serve. Commissioner Adebile reached out to all the candidates that we proposed including Leah to make sure that they would be willing and able to serve and we have been notified that Leah is unavailable to serve.

From: Juana Silverio
Sent: Tuesday, August 3, 2021 3:38:23 PM
To: Mauro Morales; Norma Cantu
Cc: Debo P. Adegbile; Michael Yaki; David Kladney; Irena Vidulovic; Alec Deull
Subject: RE: Commissioner Appointments to the Election Assistance Commission

Good afternoon Mauro.

AMERICAN OVERSIGHT

The Dem caucus had a tie:

Commissioner Michael Yaki

Leah Aden (Cantu and Yaki)

Allison Riggs (Adegbile and Kladney)

The Chairwoman, in the interest of observing the deadline, is submitting the following names for EAC consideration:

Commissioner Michael Yaki

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Leah C. Aden

www.naacpldf.org

Leah C. Aden has served as a Deputy Director of Litigation at the NAACP Legal Defense & Educational Fund, Inc. (LDF) since October 2018, assisting in the planning, strategy, and supervision of LDF's voting rights work. In light of the upcoming post-Census redistricting cycle, Leah is leading the planning, strategy, and supervision of LDF's redistricting [...]

Thank you.

Juana

AMERICAN OVERSIGHT

From: Mauro Morales <mmorales@usccr.gov>
Sent: Monday, August 2, 2021 11:47 AM
To: Norma V. Cantú <normavcantu@gmail.com>; Juana Silverio <jsilverio@usccr.gov>
Subject: Fwd: Commissioner Appointments to the Election Assistance Commission

FYI

Sent from my iPhone

Begin forwarded message:

> **From:** Mauro Morales <mmorales@usccr.gov>
> **Date:** August 2, 2021 at 8:45:25 AM MST
> **To:** John Mashburn <jmashburn@usccr.gov>
> **Cc:** Carissa Mulder <CMulder@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>, Alexander Heideman <aheideman@usccr.gov>
> **Subject: Re: Commissioner Appointments to the Election Assistance Commission**
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> Sent from my iPhone
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> >
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> >
> > Cleta Mitchell – Chair, Conservative Partnership Institute Election Integrity Network, and
> >
> > Christian Adams – USCCR Commissioner.

AMERICAN OVERSIGHT

From: Mauro Morales <mmorales@usccr.gov>
Date: Wednesday, July 28, 2021 at 11:30 AM
To: Commissioners <Commissioners@usccr.gov>
Cc:
" <CommissionerAssistants@usccr.gov>
Subject: Commissioner Appointments to the Election Assistance Commission

Dear Commissioners-

At the request and in consultation with the Chair, I am sending this email to start the EAC nomination process for Commissioners.

Per the AI voted on during the April 30th meeting (language included below), each caucus is requested to submit two candidates for consideration by COB Friday, July 30, 2021. Once the names are submitted, OGC will conduct an ethics check to be completed by Wednesday, August 4, 2021. Each caucus will then have 24 hours to submit caucus strikes (Thursday, August 5, 2021 COB). The Chair will communicate the two names to EAC no later than Friday, August 6, 2021.

Please let the Chair or I know if you have any questions or concerns.

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AI language:

Section 1.

.01 Any authority specifically granted the Commission on Civil Rights by statute or regulation or executive order

AMERICAN OVERSIGHT

to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Commission as a whole by majority vote.

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Section 2

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(1) For the two (2) appointments to the U.S. Election Assistance Commission, the members appointed by Democratic authorities shall nominate two individuals who are ready, willing, and able to serve, and the members appointed by the Republican authorities shall nominate two individuals who are ready, willing, and able to serve.

(2) The members appointed by the Democratic authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Democratic authorities

(3) The members selected shall be placed in nomination and ratified in conformance with Section 1.

AMERICAN OVERSIGHT

Mauro Morales

Staff Director

U.S. Commission on Civil Rights

P: 202-376-7796| F: 202-376-7672

Mmorales@usccr.gov

http://usccr.gov/

1331 Pennsylvania Avenue, NW Suite 1150

Washington D.C. 20425

Follow Us on Twitter & Facebook:

<image001.gif>

<image002.gif>

#USCCR

AMERICAN OVERSIGHT

Date : 11/9/2021 4:02:53 PM
From : "Joshua Dansby" jdansby@usccr.gov
To : "Juana Silverio" jsilverio@usccr.gov
Cc : "David Kladney" dkladney@usccr.gov
Subject : RE: Commissioner Appointments to the Election Assistance Commission

Juana,

Commissioner Kladney is fine with this. Thank you.

-Joshua

From: Juana Silverio <jsilverio@usccr.gov>
Sent: Tuesday, November 9, 2021 2:11 PM
To: Michael Yaki <MYaki@usccr.gov>; David Kladney <dkladney@usccr.gov>
Cc: Joshua Dansby <jdansby@usccr.gov>; Alec Deull <adeull@usccr.gov>
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Good afternoon,

Norma wanted me to make sure you both were ok with the below names before sending them over to the Rep Caucus for consideration re: our second rep on the EAC

Allison Riggs- https://southerncoalition.org/staff/allison-riggs/
Alabama SAC Chair Jenny Carroll-
https://www.congress.gov/116/meeting/house/109456/witnesses/HHRG-116-HA08-Wstate-CarrollJ-20190513.pdf

---

From: Norma Cantu <ncantu@usccr.gov>
Sent: Thursday, November 4, 2021 5:15 PM
To: Irena Vidulovic <ividulovic@usccr.gov>
Cc: Juana Silverio <jsilverio@usccr.gov>; Debo P. Adegbile <dadegbile@usccr.gov>
Subject: RE: Commissioner Appointments to the Election Assistance Commission

Thank you, Irena.
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Sent: Thursday, November 4, 2021 3:30 PM
To: Norma Cantu <ncantu@usccr.gov>
Cc: Juana Silverio <jsilverio@usccr.gov>; Debo P. Adegbile <dadegbile@usccr.gov>
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AMERICAN OVERSIGHT

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Thank you again,

Irena

From: Juana Silverio
Sent: Tuesday, August 3, 2021 4:30 PM
To: Irena Vidulovic; Mauro Morales; Norma Cantu
Cc: Debo P. Adegbile; Michael Yaki; David Kladney; Alec Deull
Subject: RE: Commissioner Appointments to the Election Assistance Commission

Mauro- due to new information received, please replace Leah with Ms. Allison Riggs.

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AMERICAN OVERSIGHT

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Election Integrity Network, and

Christian Adams – USCCR Commissioner.

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Date: Wednesday, July 28, 2021 at 11:30 AM
To: Commissioners <Commissioners@usccr.gov>
Cc:
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Subject: Commissioner Appointments to the Election Assistance Commission

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AMERICAN OVERSIGHT

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AMERICAN OVERSIGHT

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1331 Pennsylvania Avenue, NW Suite 1150

Washington D.C. 20425

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<image001.gif>

<image002.gif>

#USCCR

AMERICAN OVERSIGHT

Date : 11/9/2021 4:18:59 PM
From : "Juana Silverio" jsilverio@usccr.gov
To : "Joshua Dansby" jdansby@usccr.gov
Cc : "David Kladney" dkladney@usccr.gov
Subject : RE: Commissioner Appointments to the Election Assistance Commission

Thank you!

From: Joshua Dansby <jdansby@usccr.gov>
Sent: Tuesday, November 9, 2021 4:03 PM
To: Juana Silverio <jsilverio@usccr.gov>
Cc: David Kladney <dkladney@usccr.gov>
Subject: RE: Commissioner Appointments to the Election Assistance Commission

Juana,

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To: Michael Yaki <MYaki@usccr.gov>; David Kladney <dkladney@usccr.gov>
Cc: Joshua Dansby <jdansby@usccr.gov>; Alec Deull <adeull@usccr.gov>
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To: Norma Cantu <ncantu@usccr.gov>

AMERICAN OVERSIGHT

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AMERICAN OVERSIGHT

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To: Commissioners <Commissioners@usccr.gov>
Cc:
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AMERICAN OVERSIGHT

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AMERICAN OVERSIGHT

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1331 Pennsylvania Avenue, NW Suite 1150

Washington D.C. 20425

Follow Us on Twitter & Facebook:

<image001.gif>

<image002.gif>

#USCCR

AMERICAN OVERSIGHT

AMERICAN OVERSIGHT

Date : 11/10/2021 1:53:30 PM
From : "Norma Cantu" ncantu@usccr.gov
To : "Gail Heriot" gheriot@usccr.gov, "Peter Kirsanow" pkirsanow@usccr.gov, "J. Christian Adams" jadams@usccr.gov, "Stephen Gilchrist" sgilchrist@usccr.gov
Cc : "Alexander Heideman" aheideman@usccr.gov, "Carissa Mulder" CMulder@usccr.gov, "John Mashburn" jmashburn@usccr.gov, "Thomas Simuel" tsimuel@usccr.gov
Subject : Action Requested: EAC Representative Replacement for Commissioner Yaki

Dear Commissioners-

In response to Commissioner Yaki recently resigning from his position on the EAC as a representative of USCCR, the Progressive Caucus is putting for 2 names for consideration. I am asking that the candidate you strike be sent to me by Monday, November 15th, 2021 by 5pm EST so that we can include the candidate's confirmation vote at our November 19th business meeting.

Allison Riggs- https://southerncoalition.org/staff/allison-riggs/

Allison Riggs - Southern Coalition for Social Justice

southerncoalition.org

Allison Riggs leads the voting rights program at the Southern Coalition for Social Justice, an organization she joined in 2009. In March of 2020, she also took over

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AMERICAN OVERSIGHT

Date : 11/10/2021 1:55:06 PM
From : "Norma Cantu" ncantu@usccr.gov
To : "Juana Silverio" jsilverio@usccr.gov
Subject : Fw: Action Requested: EAC Representative Replacement for Commissioner Yaki

FYI

From: Norma Cantu
Sent: Wednesday, November 10, 2021 12:53 PM
To: Gail Heriot; Peter Kirsanow; J. Christian Adams; Stephen Gilchrist
Cc: Alexander Heideman; Carissa Mulder; John Mashburn; Thomas Simuel
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(1) For the two (2) appointments to the U.S. Election Assistance Commission, the members appointed by Democratic authorities shall nominate two individuals who are ready, willing, and able to serve, and the members appointed by the Republican authorities shall nominate two individuals who are ready, willing, and able to serve.

(2) The members appointed by the Democratic authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Republican authorities, and the members appointed by the Republican authorities shall select one (1) of the two (2) individuals nominated by the members appointed by the Democratic authorities

(3) The members selected shall be placed in nomination and ratified in conformance with Section 1.

AMERICAN OVERSIGHT

AMERICAN OVERSIGHT

Date : 11/10/2021 2:04:01 PM
From : "Alexander Heideman" aheideman@usccr.gov
To : "Gail Heriot" gheriot@usccr.gov, "Peter Kirsanow" pkirsanow@usccr.gov, "J. Christian Adams" jadams@usccr.gov, "Stephen Gilchrist" sgilchrist@usccr.gov
Cc : "Carissa Mulder" CMulder@usccr.gov, "John Mashburn" jmashburn@usccr.gov, "Thomas Simuel" tsimuel@usccr.gov
Subject : Re: Action Requested: EAC Representative Replacement for Commissioner Yaki
Attachment : Carroll-Jenny-cv.pdf;

I've attached Jenny Carroll's resume to this email for everyone's reference. She's a professor of law at Alabama.

From: Norma Cantu <ncantu@usccr.gov>
Date: Wednesday, November 10, 2021 at 1:53 PM
To: Gail Heriot <gheriot@usccr.gov>, Peter Kirsanow <pkirsanow@usccr.gov>, "J. Christian Adams" <jadams@usccr.gov>, Stephen Gilchrist <sgilchrist@usccr.gov>
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Dear Commissioners-

In response to Commissioner Yaki recently resigning from his position on the EAC as a representative of USCCR, the Progressive Caucus is putting for 2 names for consideration. I am asking that the candidate you strike be sent to me by Monday, November 15th, 2021 by 5pm EST so that we can include the candidate's confirmation vote at our November 19th business meeting.

Allison Riggs- https://southerncoalition.org/staff/allison-riggs/

Allison Riggs - Southern Coalition for Social Justice

southerncoalition.org

Allison Riggs leads the voting rights program at the Southern Coalition for Social Justice, an organization she joined in 2009. In

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March of 2020, she also took over as Interim Executive Director of the organization. Her voting rights work over the last decade at SCSJ has been focused on fighting for fair redistricting plans, fighting against voter suppression, and advocating for electoral reforms that would expand access to voting.

Alabama SAC Chair Jenny Carroll - https://www.congress.gov/116/meeting/house/109456/witnesses/HHRG-116-HA08-Wstate-CarrollJ-20190513.pdf

Per the AI voted on during the April 30th meeting (language included below), each caucus will then have 24 hours to submit caucus strikes. In this instance, I am allowing 48 business day hours given that tomorrow is a holiday. The first representative, Cleta Mitchell, was already communicated to the EAC.

Please submit your strike no later than Monday, November 15th by 5pm EST.

Please let me know if you have any questions or concerns.

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AI language:

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.01 Any authority specifically granted the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Commission as a whole by majority vote.

.02 Any authority specifically granted the Staff Director of the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Staff Director.

AMERICAN OVERSIGHT

.03 Any authority specifically granted the Chair of the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Chair.

Section 2
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(1) For the two (2) appointments to the U.S. Election Assistance Commission, the members appointed by Democratic authorities shall nominate two individuals who are ready, willing, and able to serve, and the members appointed by the Republican authorities shall nominate two individuals who are ready, willing, and able to serve.

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Phone: 205-348-1116
Email: jcarroll@law.ua.edu
Papers: http://ssrn.com/author=1245554

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Law Clerk: January 1997 – May 1997.

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AMERICAN OVERSIGHT

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Invited Participant, Voices for Children Panel on Juvenile Law Reform in Ohio, 2006

Invited Participant, Ohio Panel on Discovery Reform, 2006

Invited Speaker, ABA Juvenile Defender Leadership Summit, 2002

Invited Participant in Washington (2003) and Texas (2000) assessment studies of Public and Appointed Defender Systems

BAR ADMISSIONS

District of Columbia; Ohio; Texas; Washington (inactive in all).

AMERICAN OVERSIGHT

Date : 11/10/2021 2:59:43 PM
From : "John Mashburn" jmashburn@usccr.gov
Subject : FW: Action Requested: EAC Representative Replacement for Commissioner Yaki
Attachment : Carroll-Jenny-cv.pdf;

Is Riggs still worse than Carroll?

From: Alexander Heideman <aheideman@usccr.gov>
Date: Wednesday, November 10, 2021 at 2:04 PM
To: Gail Heriot <gheriot@usccr.gov>, Peter Kirsanow <pkirsanow@usccr.gov>, "J. Christian Adams" <jadams@usccr.gov>, Stephen Gilchrist <sgilchrist@usccr.gov>
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AMERICAN OVERSIGHT

Image removed by sender.

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BAR ADMISSIONS

District of Columbia; Ohio; Texas; Washington (inactive in all).

AMERICAN OVERSIGHT

Date : 11/10/2021 3:40:00 PM
From : "John Mashburn" jmashburn@usccr.gov
To : "Christian Adams" a@electionlawcenter.com
Subject : FW: Action Requested: EAC Representative Replacement for Commissioner Yaki
Attachment : Carroll-Jenny-cv.pdf;

Is Riggs still worse than Carroll?

From: Alexander Heideman <aheideman@usccr.gov>
Date: Wednesday, November 10, 2021 at 2:04 PM
To: Gail Heriot <gheriot@usccr.gov>, Peter Kirsanow <pkirsanow@usccr.gov>, "J. Christian Adams" <jadams@usccr.gov>, Stephen Gilchrist <sgilchrist@usccr.gov>
Cc: Carissa Mulder <CMulder@usccr.gov>, John Mashburn <jmashburn@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>
Subject: Re: Action Requested: EAC Representative Replacement for Commissioner Yaki

I've attached Jenny Carroll's resume to this email for everyone's reference. She's a professor of law at Alabama.

From: Norma Cantu <ncantu@usccr.gov>
Date: Wednesday, November 10, 2021 at 1:53 PM
To: Gail Heriot <gheriot@usccr.gov>, Peter Kirsanow <pkirsanow@usccr.gov>, "J. Christian Adams" <jadams@usccr.gov>, Stephen Gilchrist <sgilchrist@usccr.gov>
Cc: Alexander Heideman <aheideman@usccr.gov>, Carissa Mulder <CMulder@usccr.gov>, John Mashburn <jmashburn@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>
Subject: Action Requested: EAC Representative Replacement for Commissioner Yaki

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Allison Riggs- https://southerncoalition.org/staff/allison-riggs/

Allison Riggs -
Southern Coalition for

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Image removed by sender.

Social Justice

southerncoalition.org

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Alabama SAC Chair Jenny Carroll - https://www.congress.gov/116/meeting/house/109456/witnesses/HHRG-116-HA08-Wstate-CarrollJ-20190513.pdf

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AMERICAN OVERSIGHT

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Section 2
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(3) The members selected shall be placed in nomination and ratified in conformance with Section 1.

AMERICAN OVERSIGHT

Jenny E. Carroll

University of Alabama School of Law
Box 870382
Tuscaloosa, AL 35487-0382

Phone: 205-348-1116
Email: jcarroll@law.ua.edu
Papers: http://ssrn.com/author=1245554

ACADEMIC APPOINTMENTS

University of Alabama School of Law, Tuscaloosa AL
Professor Law: Teach Crim. Law, Crim. Procedure, Juvenile Justice and Counter Terrorism, 2016–present.
***Associate Professor of Law*:** 2014–2016.

Seton Hall University School of Law, Newark, New Jersey
***Associate Professor of Law*:** Taught Crim. Law, Crim. Procedure, Evidence, and Juvenile Justice. 2010–2014.

University of Cincinnati College of Law, Cincinnati, Ohio
***Visiting Assistant Professor of Law*:** Taught Crim. Law, Crim. Procedure, Evidence, White Collar Crime, and Mental Health and Criminal Law. 2008–2010.

University of Cincinnati College of Law, Cincinnati, Ohio
Assistant Professor of Clinical Law; Academic Director of the Ohio Innocence Project/ Rosenthal Institute for Justice: Designed and taught course on criminal post-conviction law and procedure, investigation and direct client representation; co-taught Criminal Defense Investigation and Trial Practice for the Indigent Defense Clinic. 2005–2008.

Georgetown University Law Center, Washington, D.C.
Prettyman Fellow, Criminal Justice Clinic: Co-taught clinical course for third-year law students and represented indigent defendants on misdemeanor and felony matters in the Superior Court of the District of Columbia. 1998–2000.

PUBLICATIONS

The Problem with Inference for Juvenile Defendants, 45 F.S.U.L. REV. 1 (*forthcoming* 2017)

Bathroom Laws as Status Crimes (with Stephen Rushin), 86 FORDHAM L. REV. 1 (*forthcoming* 2017).

Afterword: Death and the State in FINAL JUDGMENTS: THE DEATH PENALTY AND AMERICAN LAW (Austin Sarat, ed., Cambridge University Press, *forthcoming* 2017)

Brain Science and the Theory of Juvenile Mens Rea, 94 N.C.L. REV. 539 (2016)

- *Featured in* THE CHAMPION *"Getting Scholarship into Courts"*
- Included in the National Juvenile Defender Conference's Resource Guide for 2015–2016
- Available on SSRN at: http://ssrn.com/abstract=2603647

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The Jury as Democracy, 66 ALABAMA L. REV. 825 (2015)

- Available on SSRN at: http://ssrn.com/abstract=2585564

Nullification as Law, 102 GEORGETOWN L.J. 579 (2014)

- Available on SSRN at: http://ssrn.com/abstract=2190703

The Resistance Defense, 64 ALABAMA L. REV. 589 (2013)

- Available on SSRN at: http://ssrn.com/abstract=2053378

The Jury's Second Coming, 100 GEORGETOWN L.J. 657 (2012)

- Available on SSRN at: http://ssrn.com/abstract=1486188

Rethinking the Constitutional Criminal Procedure of Juvenile Transfer Hearings: Apprendi*, Adult Punishment, and Adult Process*, 61 HASTINGS L.J. 175 (2009)

- *Featured in* THE CHAMPION *"Getting Scholarship into Courts"*
- Included in the National Juvenile Defender Conference's Resource Guide for 2009–2010
- Available on SSRN at: http://ssrn.com/abstract=1375189

Images of Women and Capital Sentencing Among Female Offenders: Exploring the Outer Limits of the Eighth Amendment and Articulated Theories of Justice, 75 TEXAS L. REV. 1413 (1997)

ABA Juvenile Law Publication, "Practice Paper on Applications of *Apprendi* to Juvenile Transfer Proceedings," November, 2002

WORKS IN PROGRESS

Realizing Touby*'s Promise of Meaningful Constraint in Executive Discretion to Criminalize*

Secondary Emotions and Adolescent Neuroscience

Criminal Regulation of Speech
Privacy in the National Security World

The Jury as Open Government

THE DEMOCRACY OF THE JURY

AMICUS CURIAE BRIEFS

National Association of Criminal Defense Lawyers (NACDL) Amicus Brief, Ayala v. State (Florida Supreme Court, 2017)

National Association of Criminal Defense Lawyers (NACDL) Amicus Brief, State. v.

AMERICAN OVERSIGHT

Kelly Mathis (Eleventh Circuit, 2015)

National Association of Criminal Defense Lawyers (NACDL) Amicus Brief, U.S. v. Keith Cooper (Third Circuit, 2013)

NACDL Amicus Brief, United States v. Andrew "Weev" Auernheimer (Third Circuit, 2013)

NACDL Amicus Brief, United States v. Richard Caraballo-Rodriguez (Third Circuit, 2013)

NACDL Amicus Brief, United States v. Harry Katzin (Third Circuit, 2012)

NACDL Amicus Brief, United States v. Keenan Quinn (Third Circuit, 2012)

Law Professors' Amicus Brief, U.S. v. Charles Lynch (Ninth Circuit, 2012)

Law Professors' Amicus Brief, U.S. v. Salim Ahmed Hamdan (D.C. Circuit, 2011)

SELECTED SHORTER WORKS AND MEDIA

Government Collection of Cellphone Data and Privacy, Op-Ed, THE RECORD, August, 2013

License, Registration, Cellphone, Op-Ed, THE RECORD, June 11, 2013

Why Process Matters in Military Commission, Truthout.org, October 12, 2012

Why Are We Turning Our Backs on the Constitution?, Truthout.org, August, 29, 2012

Is Punishment in the Webcam Case Excessive?, Op-Ed, THE RECORD, March 21, 2012
.
Now There's Caylee's Law of Good Intentions, Op-Ed, THE RECORD, July 18, 2011

ABA Juvenile Law Publication, "Practice Paper on Applications of *Apprendi* to Juvenile Transfer Proceedings," November, 2002

Media appearances include NBC News, ESPN, BBC World News, Hollywood.com, Fox News, WMBC TV, WNBC TV, NPR, WNBC Radio, WHYY-FM Radio, *Associated Press, Boston Globe, New York Times,* AL.com, *Birmingham News, Star Ledger*, *The Record*, *Asbury Park Press*, *Orlando Sentinal* and the *New Jersey Law Journal*

CNN Criminal Law Advisor, 2011-2014

ACTIVITIES

American Association of Law Schools, Criminal Law Section, Executive Committee Member, 2017-present.

AMERICAN OVERSIGHT

Member of Juvenile Detention Alternative Initiative, Alabama, 2015-present

Co-Founder, Transnational Justice Project, Seton Hall University, 2010-2014

Authorized Observer to Guantanamo Military Commissions, 2010-present

NACDL Amicus Vice-Chair, Eleventh Circuit, 2014-present

NACDL Amicus Vice-Chair, Third Circuit, 2010-2014

NACDL Pretrial Justice Task Force, Member, 2011-2014

Advisor to the New York City Department of Education regarding restorative justice projects in public schools, 2013- 2015

EDUCATION

Georgetown University, Washington, D.C. LL.M. in Advocacy, 2005.

The University of Texas School of Law, Austin, Texas. J.D. with Honors, 1997.
Order of the Coif; TEXAS LAW REVIEW, Symposium Editor; TEXAS JOURNAL OF WOMEN AND THE LAW, Community Service Organizer; Thad Hutchinson Moot Court, Quarter-Finalist; Dean's Achievement Award, Highest Grade in Criminal Law; Endowed Presidential Scholarships; Texas Law Fellowships, Director; Women's Law Caucus, Director

Duke University, Durham, North Carolina. A.B., *Summa Cum Laude* with Highest Distinction in Political Science and Women's Studies, 1993.
Dean's Award for Best Undergraduate Thesis; William Griffith Award for Community Service;
Margaret Rose Knight Sanford Scholar; Anne Flexner Award for Creative Writing; John Hope Franklin Award and Julia Harper Day Awards for Documentary Studies; Co-Editor, DISTAFF MAGAZINE

LAW PRACTICE EXPERIENCE

The Defender Association, Seattle, Washington
Juvenile and Felony Staff Attorney: Represented indigent defendants in criminal and mental health matters in adult and juvenile court. 2000–2004.

Georgetown University Law Center, Washington, D.C.
Prettyman Fellow, Criminal Justice Clinic: (See "Academic Appointments," Above). 1998–2000.

Hon. William Wayne Justice, U.S. District Court, Eastern District of Texas, Tyler, Texas, and U.S. District Court, Western District of Texas, Austin, Texas
Judicial Clerk: 1997–1998.

AMERICAN OVERSIGHT

Bredhoff & Kaiser, Washington, D.C.
Law Clerk: Summer 1997.

Allison, Yeager, and Bassett, Austin, Texas
Law Clerk: January 1997 – May 1997.

Skadden, Arps, Slate, Meagher & Flom, Washington, D.C.
Summer Associate: Summer 1996

Texas Rural Legal Aid, Edinburg, Texas
Law Student Associate: Researched remedying systemic violation of criminally accused indigents' civil rights through § 1983 litigation, including a class action suit to insure timely appointment of counsel in border counties in Texas; assisted in litigation involving civil rights, housing, consumer protection, public benefits, family law, and employment matters. 1995–1996.

Project Esperanza, Raleigh, North Carolina
Board Member: Appointed by Governor Hunt to board to secure funding for and establish North Carolina's first domestic violence support services for migrant and rural women. 1992–1994.

Farmworker's Legal Services, Newton Grove, North Carolina
Farmworker Educator and Intern: Performed outreach to migrant labor camps throughout Eastern North Carolina to provide information about immigration issues, worker's rights and other legal matters; served as legal intern to attorneys in the Newton Grove and Raleigh offices. Summer 1992.

SELECTED PRESENTATIONS

Speaker, Free Speech Forum, Charles Pazmany University, Budapest, Hungary, 2017.

Invited Speaker, Bio LawLaPaLooza, Stanford University School of Law, 2017

Invited Speaker, Alabama Juvenile Defender's Conference, 2016

Invited Speaker, Alabama Public Defender's Conference, 2016

Panelist, Moderator, and Discussion Group Organizer, SEALS, 2016

Speaker, CrimFest, 2016

Invited Presenter, Southern Regional Juvenile Defender's Conference, 2016

Invited Speaker, Université Paris – Dauphine, 2016

Invited Speaker, Université Paris-Sorbonne, 2016

Invited Speaker, Richmond College of Law, 2016

AMERICAN OVERSIGHT

Invited Speaker, Tuscaloosa Bar Association, 2014-2016

Invited Speaker, Louis D. Brandeis School of Law, University of Louisville, 2015

Invited Speaker, National Juvenile Defender's Conference, 2015

Panelist, Law and Society Annual Conference, 2015

Panelist, Law and Society Annual Conference, 2013

Panelist, Albany New Teacher's Conference, Albany Law School, 2013

Invited Speaker, Touro Law Center, Faculty Colloquium, 2013

Invited Speaker, The Georgetown University Law Center Advanced Constitutional Law Series, 2012

Participant, Ohio Legal Scholars Workshop, 2009, 2010

"The Jury's Second Coming," University of Dayton School of Law, Faculty Workshop, 2010

Invited Speaker, ABA Juvenile Defender Leadership Summit, 2009

Invited Instructor, Indiana Juvenile Defender Training Summit, 2004–2009

Invited Instructor, Indiana Juvenile Defender Continuing Legal Education Summit, 2009

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AMERICAN OVERSIGHT

Date : 11/11/2021 8:13:29 PM
From : "J. Christian Adams" jadams@usccr.gov
To : "Alexander Heideman" aheideman@usccr.gov, "Gail Heriot" gheriot@usccr.gov, "Peter Kirsanow" pkirsanow@usccr.gov, "Stephen Gilchrist" sgilchrist@usccr.gov
Cc : "Carissa Mulder" CMulder@usccr.gov, "John Mashburn" jmashburn@usccr.gov, "Thomas Simuel" tsimuel@usccr.gov
Subject : Re: Action Requested: EAC Representative Replacement for Commissioner Yaki

Her name is not Allison Riggs. Therefore she is the person to pick.

From: Alexander Heideman
Sent: Wednesday, November 10, 2021 2:04:01 PM
To: Gail Heriot; Peter Kirsanow; J. Christian Adams; Stephen Gilchrist
Cc: Carissa Mulder; John Mashburn; Thomas Simuel
Subject: Re: Action Requested: EAC Representative Replacement for Commissioner Yaki

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From: Norma Cantu <ncantu@usccr.gov>
Date: Wednesday, November 10, 2021 at 1:53 PM
To: Gail Heriot <gheriot@usccr.gov>, Peter Kirsanow <pkirsanow@usccr.gov>, "J. Christian Adams" <jadams@usccr.gov>, Stephen Gilchrist <sgilchrist@usccr.gov>
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AMERICAN OVERSIGHT

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AMERICAN OVERSIGHT

Date : 11/15/2021 8:53:19 PM
From : "Norma Cantu" ncantu@usccr.gov
To : "Gail Heriot" gheriot@usccr.gov, "Peter Kirsanow" pkirsanow@usccr.gov, "J. Christian Adams" jadams@usccr.gov, "Stephen Gilchrist" sgilchrist@usccr.gov
Cc : "Alexander Heideman" aheideman@usccr.gov, "Carissa Mulder" CMulder@usccr.gov, "John Mashburn" jmashburn@usccr.gov, "Thomas Simuel" tsimuel@usccr.gov, "Juana Silverio" jsilverio@usccr.gov
Subject : Re: Action Requested: EAC Representative Replacement for Commissioner Yaki

Good evening,

Was a decision made by the caucus?

Thanks.
Norma

From: Norma Cantu
Sent: Wednesday, November 10, 2021 12:53:30 PM
To: Gail Heriot; Peter Kirsanow; J. Christian Adams; Stephen Gilchrist
Cc: Alexander Heideman; Carissa Mulder; John Mashburn; Thomas Simuel
Subject: Action Requested: EAC Representative Replacement for Commissioner Yaki

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Alabama SAC Chair Jenny Carroll - https://www.congress.gov/116/meeting/house/109456/witnesses/HHRG-116-HA08-Wstate-CarrollJ-20190513.pdf

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AMERICAN OVERSIGHT

Date : 11/15/2021 10:00:27 PM
From : "Gail Heriot" gheriot@usccr.gov
To : "J. Christian Adams" jadams@usccr.gov
Cc : "Alexander Heideman" aheideman@usccr.gov, "Peter Kirsanow" pkirsanow@usccr.gov, "Stephen Gilchrist" sgilchrist@usccr.gov, "Carissa Mulder" CMulder@usccr.gov, "John Mashburn" jmashburn@usccr.gov, "Thomas Simuel" tsimuel@usccr.gov
Subject : Re: Action Requested: EAC Representative Replacement for Commissioner Yaki

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Gail Heriot
Professor of Law
University of San Diego

> On Nov 11, 2021, at 5:13 PM, J. Christian Adams <jadams@usccr.gov> wrote:
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> ---
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> **From:** Alexander Heideman
> **Sent:** Wednesday, November 10, 2021 2:04:01 PM
> **To:** Gail Heriot; Peter Kirsanow; J. Christian Adams; Stephen Gilchrist
> **Cc:** Carissa Mulder; John Mashburn; Thomas Simuel
> **Subject:** Re: Action Requested: EAC Representative Replacement for Commissioner Yaki
>
> I've attached Jenny Carroll's resume to this email for everyone's reference. She's a professor of law at Alabama.
>
> ---
>
> **From:** Norma Cantu <ncantu@usccr.gov>
> **Date:** Wednesday, November 10, 2021 at 1:53 PM
> **To:** Gail Heriot <gheriot@usccr.gov>, Peter Kirsanow <pkirsanow@usccr.gov>, "J. Christian Adams" <jadams@usccr.gov>, Stephen Gilchrist <sgilchrist@usccr.gov>
> **Cc:** Alexander Heideman <aheideman@usccr.gov>, Carissa Mulder <CMulder@usccr.gov>, John Mashburn <jmashburn@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>
> **Subject:** Action Requested: EAC Representative Replacement for Commissioner Yaki

AMERICAN OVERSIGHT

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Allison Riggs - Southern Coalition for Social Justice

southerncoalition.org

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Alabama SAC Chair Jenny Carroll - https://www.congress.gov/116/meeting/house/109456/witnesses/HHRG-16-HA08-Wstate-CarrollJ-20190513.pdf

AMERICAN OVERSIGHT

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AMERICAN OVERSIGHT

authorities

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AMERICAN OVERSIGHT

Date : 11/15/2021 10:10:00 PM
From : "Stephen Gilchrist" sgilchrist@usccr.gov
To : "Gail Heriot" gheriot@usccr.gov, "J. Christian Adams" jadams@usccr.gov
Cc : "Alexander Heideman" aheideman@usccr.gov, "Peter Kirsanow" pkirsanow@usccr.gov, "Carissa Mulder" CMulder@usccr.gov, "John Mashburn" jmashburn@usccr.gov, "Thomas Simuel" tsimuel@usccr.gov
Subject : Re: Action Requested: EAC Representative Replacement for Commissioner Yaki

Gail - I am fine with Jenny.

From: Gail Heriot
Sent: Monday, November 15, 2021 10:00:26 PM
To: J. Christian Adams
Cc: Alexander Heideman; Peter Kirsanow; Stephen Gilchrist; Carissa Mulder; John Mashburn; Thomas Simuel
Subject: Re: Action Requested: EAC Representative Replacement for Commissioner Yaki

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University of San Diego

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> **From:** Alexander Heideman
> **Sent:** Wednesday, November 10, 2021 2:04:01 PM
> **To:** Gail Heriot; Peter Kirsanow; J. Christian Adams; Stephen Gilchrist
> **Cc:** Carissa Mulder; John Mashburn; Thomas Simuel
> **Subject:** Re: Action Requested: EAC Representative Replacement for Commissioner Yaki
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> I've attached Jenny Carroll's resume to this email for everyone's reference. She's a professor of law at Alabama.
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>
> **From:** Norma Cantu <ncantu@usccr.gov>
> **Date:** Wednesday, November 10, 2021 at 1:53 PM
> **To:** Gail Heriot <gheriot@usccr.gov>, Peter Kirsanow <pkirsanow@usccr.gov>, "J. Christian Adams" <jadams@usccr.gov>,

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Stephen Gilchrist <sgilchrist@usccr.gov>
Cc: Alexander Heideman <aheideman@usccr.gov>, Carissa Mulder <CMulder@usccr.gov>, John Mashburn <jmashburn@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>
Subject: Action Requested: EAC Representative Replacement for Commissioner Yaki

Dear Commissioners-

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Image removed by sender.

Allison Riggs - Southern Coalition for Social Justice

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Alabama SAC Chair Jenny Carroll -
https://www.congress.gov/116/meeting/house/109456/witnesses/HHRG-16-HA08-Wstate-CarrollJ-20190513.pdf

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Please let me know if you have any questions or concerns.

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.01 Any authority specifically granted the Commission on Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, etc., shall be exercised by the Commission as a whole by majority vote.

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(3) The members selected shall be placed in nomination and ratified in conformance with Section 1.

AMERICAN OVERSIGHT

Date : 11/15/2021 11:26:27 PM
From : "Gail Heriot" gheriot@usccr.gov
To : "Norma Cantu" ncantu@usccr.gov
Subject : Re: Action Requested: EAC Representative Replacement for Commissioner Yaki

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AMERICAN OVERSIGHT

Date : 11/16/2021 9:46:33 AM
From : "Juana Silverio" jsilverio@usccr.gov
To : "Debo P. Adegbile" dadegbile@usccr.gov, "Norma Cantu" ncantu@usccr.gov
Cc : "Irena Vidulovic" ividulovic@usccr.gov
Subject : FW: Action Requested: EAC Representative Replacement for Commissioner Yaki

Good morning- the Rs did not get back to us by last night. While Carissa has said they will get back to us today, the Chair would like to coordinate on who the pick should be if they do not respond. FYI- the Rs had originally struck Ms. Riggs.

Juana

From: Norma Cantu <ncantu@usccr.gov>
Sent: Monday, November 15, 2021 8:53 PM
To: Gail Heriot <gheriot@usccr.gov>; Peter Kirsanow <pkirsanow@usccr.gov>; J. Christian Adams <jadams@usccr.gov>; Stephen Gilchrist <sgilchrist@usccr.gov>
Cc: Alexander Heideman <aheideman@usccr.gov>; Carissa Mulder <CMulder@usccr.gov>; John Mashburn <jmashburn@usccr.gov>; Thomas Simuel <tsimuel@usccr.gov>; Juana Silverio <jsilverio@usccr.gov>
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AMERICAN OVERSIGHT

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From : "Norma Cantu" ncantu@usccr.gov
To : "Gail Heriot" gheriot@usccr.gov
Cc : "Juana Silverio" jsilverio@usccr.gov
Subject : RE: Action Requested: EAC Representative Replacement for Commissioner Yaki

Dear Gail,
The deadline came and went.
Will you please contact Commissioner Kirsanow.
Norma

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Sent: Monday, November 15, 2021 10:26 PM
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From : "Gail Heriot" gheriot@usccr.gov
To : "Thomas Simuel" tsimuel@usccr.gov
Cc : "Stephen Gilchrist" sgilchrist@usccr.gov, "J. Christian Adams" jadams@usccr.gov, "Alexander Heideman" aheideman@usccr.gov, "Peter Kirsanow" pkirsanow@usccr.gov, "Carissa Mulder" CMulder@usccr.gov, "John Mashburn" jmashburn@usccr.gov
Subject : Re: Action Requested: EAC Representative Replacement for Commissioner Yaki

No, I never heard from Pete.

Gail Heriot
Professor of Law
University of San Diego

> On Nov 16, 2021, at 7:26 AM, Thomas Simuel <tsimuel@usccr.gov> wrote:
>
> Did Chair Cantu receive the caucus vote for Jenny?
>
> ---
>
> **From:** Stephen Gilchrist
> **Sent:** Monday, November 15, 2021 10:10:00 PM
> **To:** Gail Heriot; J. Christian Adams
> **Cc:** Alexander Heideman; Peter Kirsanow; Carissa Mulder; John Mashburn; Thomas Simuel
> **Subject:** Re: Action Requested: EAC Representative Replacement for Commissioner Yaki
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> **From:** Gail Heriot
> **Sent:** Monday, November 15, 2021 10:00:26 PM
> **To:** J. Christian Adams
> **Cc:** Alexander Heideman; Peter Kirsanow; Stephen Gilchrist; Carissa Mulder; John Mashburn; Thomas Simuel
> **Subject:** Re: Action Requested: EAC Representative Replacement for Commissioner Yaki
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Subject: Re: Action Requested: EAC Representative Replacement for Commissioner Yaki

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Social Justice

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To : "Stephen Gilchrist" sgilchrist@usccr.gov, "Gail Heriot" gheriot@usccr.gov, "J. Christian Adams" jadams@usccr.gov
Cc : "Alexander Heideman" aheideman@usccr.gov, "Peter Kirsanow" pkirsanow@usccr.gov, "Carissa Mulder" CMulder@usccr.gov, "John Mashburn" jmashburn@usccr.gov
Subject : Re: Action Requested: EAC Representative Replacement for Commissioner Yaki

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From: Stephen Gilchrist
Sent: Monday, November 15, 2021 10:10:00 PM
To: Gail Heriot; J. Christian Adams
Cc: Alexander Heideman; Peter Kirsanow; Carissa Mulder; John Mashburn; Thomas Simuel
Subject: Re: Action Requested: EAC Representative Replacement for Commissioner Yaki

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Sent: Monday, November 15, 2021 10:00:26 PM
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Cc: Alexander Heideman; Peter Kirsanow; Stephen Gilchrist; Carissa Mulder; John Mashburn; Thomas Simuel
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Cc : "Irena Vidulovic" ividulovic@usccr.gov, "Joshua Dansby" jdansby@usccr.gov, "Alec Deull" adeull@usccr.gov, "Norma Cantu" ncantu@usccr.gov
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Date : 11/16/2021 1:14:01 PM
From : "Norma Cantu" ncantu@usccr.gov
To : "Mauro Morales" mmorales@usccr.gov
Subject : FW: Action Requested: EAC Representative Replacement for Commissioner Yaki

FYI

From: Gail Heriot <gheriot@usccr.gov>
Sent: Tuesday, November 16, 2021 10:17 AM
To: Norma Cantu <ncantu@usccr.gov>
Cc: Juana Silverio <jsilverio@usccr.gov>; Peter Kirsanow <pkirsanow@usccr.gov>; J. Christian Adams <jadams@usccr.gov>; Stephen Gilchrist <sgilchrist@usccr.gov>; Alexander Heideman <aheideman@usccr.gov>; Carissa Mulder <CMulder@usccr.gov>
Subject: Re: Action Requested: EAC Representative Replacement for Commissioner Yaki

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AMERICAN OVERSIGHT

Date : 11/16/2021 1:29:25 PM
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To : "Irena Vidulovic" ividulovic@usccr.gov
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AMERICAN OVERSIGHT

Date : 11/16/2021 1:30:13 PM
From : "Mauro Morales" mmorales@usccr.gov
To : "Angelia Rorison" arorison@usccr.gov, "David Ganz" dganz@usccr.gov
Subject : RE: Action Requested: EAC Representative Replacement for Commissioner Yaki

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Subject: FW: Action Requested: EAC Representative Replacement for Commissioner Yaki

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AMERICAN OVERSIGHT

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AMERICAN OVERSIGHT

Date : 11/16/2021 2:45:05 PM
From : "Mauro Morales" mmorales@usccr.gov
To : "David Ganz" dganz@usccr.gov
Subject : RE: Action Requested: EAC Representative Replacement for Commissioner Yaki

You are correct, but I am just getting out of the way and let them have their vote.

From: David Ganz
Sent: Tuesday, November 16, 2021 2:44 PM
To: Mauro Morales <mmorales@usccr.gov>
Subject: RE: Action Requested: EAC Representative Replacement for Commissioner Yaki

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To : "Mauro Morales" mmorales@usccr.gov
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Date : 10/28/2021 10:58:20 AM
From : "David Ganz" dganz@usccr.gov
To : "Norma Cantu" ncantu@usccr.gov, "Mauro Morales" mmorales@usccr.gov, "Juana Silverio" jsilverio@usccr.gov
Subject : RE: Cleta Mitchell Serving on EAC Advisory Bd

Hello Chair Cantu,

We will research the A.I. and get back to you later today. Thanks.

From: Norma Cantu <ncantu@usccr.gov>
Sent: Thursday, October 28, 2021 10:51 AM
To: Mauro Morales <mmorales@usccr.gov>; David Ganz <dganz@usccr.gov>; Juana Silverio <jsilverio@usccr.gov>
Subject: RE: Cleta Mitchell Serving on EAC Advisory Bd

Dear Mauro, David,
The intent of the agreement on appointment to the EAC was that we would follow a bipartisan process. A few weeks back, I learned Michael Yaki had too many work commitments to take on the appointment to EAC. I tried, unsuccessfully, to convince him to start his new term. We are back to square one.
David, do you read the AI the same as I do? I read it that the bipartisan nature means both names have to be provided concurrently. What is your insight?
Norma

From: Juana Silverio <jsilverio@usccr.gov>
Sent: Thursday, October 28, 2021 8:51 AM
To: John Mashburn <jmashburn@usccr.gov>; Mauro Morales <mmorales@usccr.gov>; David Ganz <dganz@usccr.gov>
Cc: Norma Cantu <ncantu@usccr.gov>
Subject: Re: Cleta Mitchell Serving on EAC Advisory Bd

The Chair will address this shortly.

Juana

--

Juana Silverio *(she/her/ella)*

Special Assistant to Commissioner Norma V. Cantú

U.S. Commission on Civil Rights

E: jsilverio@usccr.gov

AMERICAN OVERSIGHT

http://usccr.gov/

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From: John Mashburn
Sent: Thursday, October 28, 2021 8:40:44 AM
To: Mauro Morales; Juana Silverio; David Ganz
Subject: Fw: Cleta Mitchell Serving on EAC Advisory Bd

Is there an answer to this question?

From: John Mashburn
Sent: Monday, October 18, 2021 12:33:57 PM
To: Mauro Morales; Juana Silverio
Cc: Carissa Mulder
Subject: Cleta Mitchell Serving on EAC Advisory Bd

Mauro/Juana – Cleta Mitchell has not been contacted by USCCR or EAC staff about serving on the EAC Bd of Advisors. As you recall, her nomination to serve was approved at the August USCCR Bus Mtg. My boss and one other Cmnr asked me to find out what the process and status are regarding her appointment to the EAC Bd of Advisors.

Can either of you provide that info, or do I need to contact someone else at USCCR, or EAC?

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Date : 10/28/2021 10:58:20 AM
From : "David Ganz" dganz@usccr.gov
To : "Pilar McLaughlin" pmclaughlin@usccr.gov
Cc : "Sheryl Cozart" sccozart@usccr.gov, "Andrew Gall" agall@usccr.gov
Subject : FW: Cleta Mitchell Serving on EAC Advisory Bd

Please research this issue and get back to me later this afternoon. I do not think the EAC statute is as prescriptive as Chair Cantu is reading it.

From: Norma Cantu <ncantu@usccr.gov>
Sent: Thursday, October 28, 2021 10:51 AM
To: Mauro Morales <mmorales@usccr.gov>; David Ganz <dganz@usccr.gov>; Juana Silverio <jsilverio@usccr.gov>
Subject: RE: Cleta Mitchell Serving on EAC Advisory Bd

Dear Mauro, David,
The intent of the agreement on appointment to the EAC was that we would follow a bipartisan process. A few weeks back, I learned Michael Yaki had too many work commitments to take on the appointment to EAC. I tried, unsuccessfully, to convince him to start his new term. We are back to square one.
David, do you read the AI the same as I do? I read it that the bipartisan nature means both names have to be provided concurrently. What is your insight?
Norma

From: Juana Silverio <jsilverio@usccr.gov>
Sent: Thursday, October 28, 2021 8:51 AM
To: John Mashburn <jmashburn@usccr.gov>; Mauro Morales <mmorales@usccr.gov>; David Ganz <dganz@usccr.gov>
Cc: Norma Cantu <ncantu@usccr.gov>
Subject: Re: Cleta Mitchell Serving on EAC Advisory Bd

The Chair will address this shortly.

Juana

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Juana Silverio *(she/her/ella)*

Special Assistant to Commissioner Norma V. Cantú

U.S. Commission on Civil Rights

E: jsilverio@usccr.gov

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Subject: Fw: Cleta Mitchell Serving on EAC Advisory Bd

Is there an answer to this question?

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Sent: Monday, October 18, 2021 12:33:57 PM
To: Mauro Morales; Juana Silverio
Cc: Carissa Mulder
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Can either of you provide that info, or do I need to contact someone else at USCCR, or EAC?

AMERICAN OVERSIGHT

Date : 10/28/2021 10:50:43 AM
From : "Norma Cantu" ncantu@usccr.gov
To : "Mauro Morales" mmorales@usccr.gov, "David Ganz" dganz@usccr.gov, "Juana Silverio" jsilverio@usccr.gov
Subject : RE: Cleta Mitchell Serving on EAC Advisory Bd

Dear Mauro, David,
The intent of the agreement on appointment to the EAC was that we would follow a bipartisan process. A few weeks back, I learned Michael Yaki had too many work commitments to take on the appointment to EAC. I tried, unsuccessfully, to convince him to start his new term. We are back to square one.
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Sent: Thursday, October 28, 2021 8:51 AM
To: John Mashburn <jmashburn@usccr.gov>; Mauro Morales <mmorales@usccr.gov>; David Ganz <dganz@usccr.gov>
Cc: Norma Cantu <ncantu@usccr.gov>
Subject: Re: Cleta Mitchell Serving on EAC Advisory Bd

The Chair will address this shortly.

Juana

--

Juana Silverio *(she/her/ella)*

Special Assistant to Commissioner Norma V. Cantú

U.S. Commission on Civil Rights

E: jsilverio@usccr.gov

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To: Mauro Morales; Juana Silverio
Cc: Carissa Mulder
Subject: Cleta Mitchell Serving on EAC Advisory Bd

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Can either of you provide that info, or do I need to contact someone else at USCCR, or EAC?

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Date : 10/29/2021 10:25:32 AM
From : "Juana Silverio" jsilverio@usccr.gov
To : "Norma Cantu" ncantu@usccr.gov
Subject : DRAFT- EMAIL to DEM CAUCUS re: EAC

Dear Commissioners -

I wanted to provide an update on the EAC appointments.

Commissioner Yaki is no longer able to serve; as a result, we will need to start the process of nominating and confirming a Dem candidate. As per the AI- we will provide 2 names to the Rs, have them strike one and we will confirm the candidate either by notational vote or at the Nov. 19th business meeting. To expedite the process, please provide your nominations to me by XXX. I will share wit the Rs and give them 48 hours to strike a candidate and we'll proceed with the confirmation vote shortly thereafter. In nominating the candidates, please ensure they are not only willing but able to serve.

In regards to the Rep candidate, after consultation with the Commission's GC, I will be submitting Cleta Mitchell's name to the EAC today. As the candidate was properly confirmed by the Commission, and the EAC board is scheduled to start meeting soon, I will submit the candidate to start her term.

Please let me know if you have any questions.
Norma
--
Juana Silverio *(she/her/ella)*
Special Assistant to Commissioner Norma V. Cantú
U.S. Commission on Civil Rights
E: jsilverio@usccr.gov
http://usccr.gov/
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Washington D.C. 20425
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#USCCR

AMERICAN OVERSIGHT

Date : 11/17/2021 11:57:48 AM
From : "Angelia Rorison" arorison@usccr.gov
To : "David Ganz" dganz@usccr.gov
Cc : "Mauro Morales" mmorales@usccr.gov
Subject : FW: [EXTERNAL] CNN FOIA request Re: Election Assistance Commission advisory board appointments

FOIA from CNN just came through as well.

From: Jeremy Herb (CNN) <FOIA@cnn.com>
Sent: Wednesday, November 17, 2021 11:57 AM
To: FOIA <foia@usccr.gov>
Cc: jeremy.herb@warnermedia.com
Subject: [EXTERNAL] CNN FOIA request Re: Election Assistance Commission advisory board appointments

CAUTION: This email is from outside USCCR.

Wednesday, November 17, 2021

Commission on Civil Rights
U.S. Commission on Civil Rights
Jennifer Cron Hepler, Attorney-Advisor, Suite 1150
1331 Pennsylvania Ave, NW
Washington, DC 20425
Phone: 202-376-2890
Fax: 202-376-1163
Email: foia@usccr.gov

Re: Election Assistance Commission advisory board appointments

This is a request for records pursuant to the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA").

Requested records

1. All email correspondence related to the commission's appointments to the Electoral Assistance Commission advisory board dating between August 2020 and the present.
2. Email correspondence between Cleta Mitchell and J Christian Adams between August 2020 and the present.

In addition to the records described above, provide any processing notes produced in the course of fulfilling this request and any records that, because of their nature or subject matter, are substantially the same as the records described above and have been previously disclosed, are the subject of currently pending requests or are likely to become the subject of subsequent requests.

Format of requested records

If this request is denied in whole or in part, justify all deletions or withholdings by reference to specific exemptions in the FOIA.

AMERICAN OVERSIGHT

When possible, produce responsive records in their native, digital formats and include their original metadata, not as hard copy facsimiles or PDFs. For example, spreadsheets created in Microsoft Excel should be provided in an `.xlsx` format. Emails should be provided in common email file formats, such as `.pst` files for collections of emails or `.eml` files for individual emails.

Data should be provided in a non-proprietary, machine-readable format, such as comma separated values (`.csv`). Included is a request for a record layout for the database and a data dictionary for any codes used in the database.

Limitations on fees

Because CNN is a representative of the news media and these records are sought as part of a newsgathering effort, waive or reduce search and duplication fees, where applicable.

If you determine that fees will apply to this request and expect such fees to exceed $500 USD, provide an itemized invoice of fees.

Time limits for response

If you expect this request to take longer than ten (10) working days to process, we expect an acknowledgment letter and tracking number within that time or no later than Wednesday, December 1, 2021.

We expect a final grant/denial determination on this request within twenty (20) working days after receipt by the appropriate office or no later than Wednesday, December 15, 2021.

If you are unable to fulfill this request within that period, produce information as it becomes available (i.e. on a “rolling” basis) and an explanation for the circumstances requiring an extension of time and an estimated date on which you expect to finish processing this request.

Expedited processing

Please expedite processing of this request.

As a journalist for CNN, a global news organization, I am a representative of the news media who is primarily engaged in disseminating the news.

There exists a compelling need for expedited processing of this request because the requested information relates to actual or alleged federal government activity; Specifically: the commission's recent appointment to the advisory board of the Election Assistance Commission.

There is an urgent need to inform the public about this activity because it will help explain the functioning of the federal government.

I hereby certify that the foregoing is true and correct to the best of my knowledge and belief.

We expect a determination regarding this request for expedited treatment within ten (10) calendar days, or no later than Saturday, November 27, 2021.

Please direct questions and responsive information concerning this request to jeremy.herb@warnermedia.com.

AMERICAN OVERSIGHT

Sincerely,

/s/ Jeremy Herb

Jeremy Herb
Reporter
CNN DC
CNND

o 202.596.4695 **m** 202.596.4695
jeremy.herb@warnermedia.com

820 First St. NE, DC | Washington, D.C. 20002

AMERICAN OVERSIGHT

Date : 11/17/2021 11:57:46 AM
From : "Mauro Morales" mmorales@usccr.gov
To : "Angelia Rorison" arorison@usccr.gov, "David Ganz" dganz@usccr.gov
Subject : RE: [EXTERNAL] Records Request - Cleta Mitchell Nomination

David, Please feel free to call me if you want to discuss. Otherwise, OGC should handle it as a normal FOIA request. Mauro

---

From: Angelia Rorison <arorison@usccr.gov>
Sent: Wednesday, November 17, 2021 11:56 AM
To: David Ganz <dganz@usccr.gov>
Cc: Mauro Morales <mmorales@usccr.gov>
Subject: FW: [EXTERNAL] Records Request - Cleta Mitchell Nomination
Importance: High

FYI – here is a FOIA re: EAC appointment

From: Jessica Huseman <jhuseman@votebeat.org>
Sent: Wednesday, November 17, 2021 11:45 AM
To: FOIA <foia@usccr.gov>
Subject: [EXTERNAL] Records Request - Cleta Mitchell Nomination

> CAUTION: This email is from outside USCCR.

Hello,

This is a request under the Freedom of Information Act.

I request copies of all emailed or written communication related to the nomination and vote on Cleta Mitchell's appointment to the Election Assistance Commission Board of Advisors. Please provide both the notional vote and any discussion of her appointment or the other nominees submitted by the Republican commissioners.

I request that this be given to me on a rolling basis as documents become available. If the commission intends to withhold part of this request or take additional time to consider the release of parts of this request, please release the information you are willing to provide in advance of that consideration.

I am a representative of Votebeat, a news organization, and this information is being collected for distribution to the public and not for commercial purposes.

I request a waiver of all fees for this request. Disclosure of the requested information to me is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in my commercial interest.

Further, **please grant expedited processing for this request.** Cleta Mitchell is currently under investigation in Georgia for her role in a January phone call, and the commission is

AMERICAN OVERSIGHT

meeting on Friday to discuss a second nomination. Because the commission has elected to discuss Ms. Mitchell's nomination only by email and not in public meetings, expedited processing is clearly necessary to offer the public clarity into this decision making.

--
Warmly,

Jessica Huseman
Editorial Director, Votebeat
Cell/Signal: 972-268-1882
@JessicaHuseman

AMERICAN OVERSIGHT

Date : 11/17/2021 11:55:51 AM
From : "Angelia Rorison" arorison@usccr.gov
To : "David Ganz" dganz@usccr.gov
Cc : "Mauro Morales" mmorales@usccr.gov
Subject : FW: [EXTERNAL] Records Request - Cleta Mitchell Nomination

FYI – here is a FOIA re: EAC appointment

From: Jessica Huseman <jhuseman@votebeat.org>
Sent: Wednesday, November 17, 2021 11:45 AM
To: FOIA <foia@usccr.gov>
Subject: [EXTERNAL] Records Request - Cleta Mitchell Nomination

> CAUTION: This email is from outside USCCR.

Hello,

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--
Warmly,

Jessica Huseman
Editorial Director, Votebeat

AMERICAN OVERSIGHT

Cell/Signal: 972-268-1882
@JessicaHuseman

AMERICAN OVERSIGHT

Date : 11/17/2021 12:37:48 PM
From : "Angelia Rorison" arorison@usccr.gov
To : "David Ganz" dganz@usccr.gov
Subject : RE: [EXTERNAL] Records Request - Cleta Mitchell Nomination

FYI – both have requested expedited response. To be honest, I don't know what that means. - Ang

---

From: David Ganz <dganz@usccr.gov>
Sent: Wednesday, November 17, 2021 12:31 PM
To: Mauro Morales <mmorales@usccr.gov>
Cc: Angelia Rorison <arorison@usccr.gov>
Subject: RE: [EXTERNAL] Records Request - Cleta Mitchell Nomination

No need to discuss anything at this point.

I will oversee the initial decision and firewall others from my staff so they can draft any appeal on your behalf.

Ang, is this logged per your normal practice?

From: Mauro Morales <mmorales@usccr.gov>
Sent: Wednesday, November 17, 2021 11:58 AM
To: Angelia Rorison <arorison@usccr.gov>; David Ganz <dganz@usccr.gov>
Subject: RE: [EXTERNAL] Records Request - Cleta Mitchell Nomination

David, Please feel free to call me if you want to discuss. Otherwise, OGC should handle it as a normal FOIA request. Mauro

---

From: Angelia Rorison <arorison@usccr.gov>
Sent: Wednesday, November 17, 2021 11:56 AM
To: David Ganz <dganz@usccr.gov>
Cc: Mauro Morales <mmorales@usccr.gov>
Subject: FW: [EXTERNAL] Records Request - Cleta Mitchell Nomination
Importance: High

FYI – here is a FOIA re: EAC appointment

From: Jessica Huseman <jhuseman@votebeat.org>
Sent: Wednesday, November 17, 2021 11:45 AM
To: FOIA <foia@usccr.gov>
Subject: [EXTERNAL] Records Request - Cleta Mitchell Nomination

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AMERICAN OVERSIGHT

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Further, **please grant expedited processing for this request.** Cleta Mitchell is currently under investigation in Georgia for her role in a January phone call, and the commission is meeting on Friday to discuss a second nomination. Because the commission has elected to discuss Ms. Mitchell's nomination only by email and not in public meetings, expedited processing is clearly necessary to offer the public clarity into this decision making.

--
Warmly,

Jessica Huseman
Editorial Director, Votebeat
Cell/Signal: 972-268-1882
@JessicaHuseman

AMERICAN OVERSIGHT

Date : 11/17/2021 12:35:56 PM
From : "Angelia Rorison" arorison@usccr.gov
To : "Jessica Huseman" jhuseman@votebeat.org, "FOIA" foia@usccr.gov
Subject : RE: [EXTERNAL] Records Request - Cleta Mitchell Nomination

Dear Jessica Huseman,

This email is to acknowledge receipt of your Freedom of Information Act (FOIA) request to the U.S. Commission on Civil Rights (USCCR). Additionally, I acknowledge your request for expedited response. There are no fees associated with this request.

Angelia Rorison
USCCR FOIA Public Liaison

From: Jessica Huseman <jhuseman@votebeat.org>
Sent: Wednesday, November 17, 2021 11:45 AM
To: FOIA <foia@usccr.gov>
Subject: [EXTERNAL] Records Request - Cleta Mitchell Nomination

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AMERICAN OVERSIGHT

--
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Jessica Huseman
Editorial Director, Votebeat
Cell/Signal: 972-268-1882
@JessicaHuseman

AMERICAN OVERSIGHT

Date : 11/17/2021 12:31:11 PM
From : "David Ganz" dganz@usccr.gov
To : "Mauro Morales" mmorales@usccr.gov
Cc : "Angelia Rorison" arorison@usccr.gov
Subject : RE: [EXTERNAL] Records Request - Cleta Mitchell Nomination

No need to discuss anything at this point.

I will oversee the initial decision and firewall others from my staff so they can draft any appeal on your behalf.

Ang, is this logged per your normal practice?

From: Mauro Morales <mmorales@usccr.gov>
Sent: Wednesday, November 17, 2021 11:58 AM
To: Angelia Rorison <arorison@usccr.gov>; David Ganz <dganz@usccr.gov>
Subject: RE: [EXTERNAL] Records Request - Cleta Mitchell Nomination

David, Please feel free to call me if you want to discuss. Otherwise, OGC should handle it as a normal FOIA request. Mauro

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From: Angelia Rorison <arorison@usccr.gov>
Sent: Wednesday, November 17, 2021 11:56 AM
To: David Ganz <dganz@usccr.gov>
Cc: Mauro Morales <mmorales@usccr.gov>
Subject: FW: [EXTERNAL] Records Request - Cleta Mitchell Nomination
Importance: High

FYI – here is a FOIA re: EAC appointment

From: Jessica Huseman <jhuseman@votebeat.org>
Sent: Wednesday, November 17, 2021 11:45 AM
To: FOIA <foia@usccr.gov>
Subject: [EXTERNAL] Records Request - Cleta Mitchell Nomination

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AMERICAN OVERSIGHT

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Jessica Huseman
Editorial Director, Votebeat
Cell/Signal: 972-268-1882
@JessicaHuseman

AMERICAN OVERSIGHT

Date : 11/17/2021 12:32:01 PM
From : "Angelia Rorison" arorison@usccr.gov
To : "David Ganz" dganz@usccr.gov, "Mauro Morales" mmorales@usccr.gov
Subject : RE: [EXTERNAL] Records Request - Cleta Mitchell Nomination

Yep – I will send acknowledgement emails now. Thanks David!

From: David Ganz <dganz@usccr.gov>
Sent: Wednesday, November 17, 2021 12:31 PM
To: Mauro Morales <mmorales@usccr.gov>
Cc: Angelia Rorison <arorison@usccr.gov>
Subject: RE: [EXTERNAL] Records Request - Cleta Mitchell Nomination

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To: David Ganz <dganz@usccr.gov>
Cc: Mauro Morales <mmorales@usccr.gov>
Subject: FW: [EXTERNAL] Records Request - Cleta Mitchell Nomination
Importance: High

FYI – here is a FOIA re: EAC appointment

From: Jessica Huseman <jhuseman@votebeat.org>
Sent: Wednesday, November 17, 2021 11:45 AM
To: FOIA <foia@usccr.gov>
Subject: [EXTERNAL] Records Request - Cleta Mitchell Nomination

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AMERICAN OVERSIGHT

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Warmly,

Jessica Huseman
Editorial Director, Votebeat
Cell/Signal: 972-268-1882
@JessicaHuseman

AMERICAN OVERSIGHT

Date : 11/17/2021 12:34:53 PM
From : "Angelia Rorison" arorison@usccr.gov
To : "jeremy.herb@warnermedia.com" jeremy.herb@warnermedia.com, "FOIA" foia@usccr.gov
Subject : RE: [EXTERNAL] CNN FOIA request Re: Election Assistance Commission advisory board appointments

Dear Jeremy Herb,

This email is to acknowledge receipt of your Freedom of Information Act (FOIA) request to the U.S. Commission on Civil Rights (USCCR). Additionally, I acknowledge your request for expedited response. There are no fees associated with this request.

Angelia Rorison
USCCR FOIA Public Liaison

From: Jeremy Herb (CNN) <FOIA@cnn.com>
Sent: Wednesday, November 17, 2021 11:57 AM
To: FOIA <foia@usccr.gov>
Cc: jeremy.herb@warnermedia.com
Subject: [EXTERNAL] CNN FOIA request Re: Election Assistance Commission advisory board appointments

> CAUTION: This email is from outside USCCR.

Wednesday, November 17, 2021

Commission on Civil Rights
U.S. Commission on Civil Rights
Jennifer Cron Hepler, Attorney-Advisor, Suite 1150
1331 Pennsylvania Ave, NW
Washington, DC 20425
Phone: 202-376-2890
Fax: 202-376-1163
Email: foia@usccr.gov

Re: Election Assistance Commission advisory board appointments

This is a request for records pursuant to the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA").

Requested records

1. All email correspondence related to the commission's appointments to the Electoral Assistance Commission advisory board dating between August 2020 and the present.
2. Email correspondence between Cleta Mitchell and J Christian Adams between August 2020 and the present.

In addition to the records described above, provide any processing notes produced in the course of fulfilling this request and any records that, because of their nature or subject matter, are substantially the same as the records described above and have been previously disclosed, are

AMERICAN OVERSIGHT

the subject of currently pending requests or are likely to become the subject of subsequent requests.

Format of requested records

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Time limits for response

If you expect this request to take longer than ten (10) working days to process, we expect an acknowledgment letter and tracking number within that time or no later than Wednesday, December 1, 2021.

We expect a final grant/denial determination on this request within twenty (20) working days after receipt by the appropriate office or no later than Wednesday, December 15, 2021.

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Expedited processing

Please expedite processing of this request.

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There is an urgent need to inform the public about this activity because it will help explain the functioning of the federal government.

I hereby certify that the foregoing is true and correct to the best of my knowledge and belief.

AMERICAN OVERSIGHT

We expect a determination regarding this request for expedited treatment within ten (10) calendar days, or no later than Saturday, November 27, 2021.

Please direct questions and responsive information concerning this request to jeremy.herb@warnermedia.com.

Sincerely,

/s/ Jeremy Herb

Jeremy Herb
Reporter
CNN DC
CNND

o 202.596.4695 **m** 202.596.4695
jeremy.herb@warnermedia.com

820 First St. NE, DC | Washington, D.C. 20002

AMERICAN OVERSIGHT

Date : 11/17/2021 12:53:10 PM
From : "David Ganz" dganz@usccr.gov
To : "Andrew Gall" agall@usccr.gov, "Pilar McLaughlin" pmclaughlin@usccr.gov, "Sheryl Cozart" sccozart@usccr.gov
Cc : "Angelia Rorison" arorison@usccr.gov, "Mauro Morales" mmorales@usccr.gov
Subject : Two new FOIAs
Attachment : image001.png;

Hello all,

USCCR has received two FOIA requests from media outlets related to the following story: https://www.newsweek.com/voter-fraud-conspiracy-theorist-us-elections-panel-cleta-mitchell-1650181.

Per Mauro and Ang's request, OGC will handle drafting the initial decision for Ang's office and any appeal for the Office of the Staff Director. To achieve impartiality between the initial decision and any appeal, I will work with Andrew on the initial decision and Pilar and Sheryl will independently work on any appeal.

David Ganz
General Counsel, Office of the General Counsel
U.S. Commission on Civil Rights
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425
(617) 669-6413

This message, including attachments, is confidential and may contain information protected by the attorney-client privilege or work product doctrine. If you are not the addressee, any disclosure, copying, distribution, or use of the contents of this message are prohibited. If you have received this email in error, please destroy it and notify me immediately.

Established as an independent, bipartisan, fact-finding federal agency, our mission is to inform the development of national civil rights policy and enhance enforcement of federal civil rights laws. We pursue this mission by studying alleged deprivations of voting rights and alleged discrimination based on race, color, religion, sex, age, disability, or national origin, or in the administration of justice. We play a vital role in advancing civil rights through objective and comprehensive investigation, research, and analysis on issues of fundamental concern to the federal government and the public.

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C005186
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Date : 11/17/2021 1:19:51 PM
From : "David Ganz" dganz@usccr.gov
To : "Andrew Gall" agall@usccr.gov
Subject : FW: [EXTERNAL] CNN FOIA request

Let's discuss.

From: Angelia Rorison <arorison@usccr.gov>
Sent: Wednesday, November 17, 2021 11:58 AM
To: David Ganz <dganz@usccr.gov>
Cc: Mauro Morales <mmorales@usccr.gov>
Subject: FW: [EXTERNAL] CNN FOIA request Re: Election Assistance Commission advisory board appointments

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Expedited processing

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I hereby certify that the foregoing is true and correct to the best of my knowledge and belief.

AMERICAN OVERSIGHT

We expect a determination regarding this request for expedited treatment within ten (10) calendar days, or no later than Saturday, November 27, 2021.

Please direct questions and responsive information concerning this request to jeremy.herb@warnermedia.com.

Sincerely,

/s/ Jeremy Herb

Jeremy Herb
Reporter
CNN DC
CNND

o 202.596.4695 **m** 202.596.4695
jeremy.herb@warnermedia.com

820 First St. NE, DC | Washington, D.C. 20002

AMERICAN OVERSIGHT

Date : 11/17/2021 1:22:47 PM
From : "David Ganz" dganz@usccr.gov
To : "Mauro Morales" mmorales@usccr.gov
Subject : RE: [EXTERNAL] CNN FOIA request

Just so you are aware, we are likely going to need to pull the Commissioners' emails so you may wish to inform them of these two (2) FOIA requests outside of monthly report. .

From: David Ganz
Sent: Wednesday, November 17, 2021 1:20 PM
To: Andrew Gall <agall@usccr.gov>
Subject: FW: [EXTERNAL] CNN FOIA request

Let's discuss.

From: Angelia Rorison <arorison@usccr.gov>
Sent: Wednesday, November 17, 2021 11:58 AM
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Cc: Mauro Morales <mmorales@usccr.gov>
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Subject: [EXTERNAL] CNN FOIA request Re: Election Assistance Commission advisory board appointments

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Wednesday, November 17, 2021

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U.S. Commission on Civil Rights
Jennifer Cron Hepler, Attorney-Advisor, Suite 1150
1331 Pennsylvania Ave, NW
Washington, DC 20425
Phone: 202-376-2890
Fax: 202-376-1163
Email: foia@usccr.gov

Re: Election Assistance Commission advisory board appointments

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AMERICAN OVERSIGHT

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Format of requested records

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I hereby certify that the foregoing is true and correct to the best of my knowledge and belief.

We expect a determination regarding this request for expedited treatment within ten (10) calendar days, or no later than Saturday, November 27, 2021.

Please direct questions and responsive information concerning this request to jeremy.herb@warnermedia.com.

Sincerely,

/s/ Jeremy Herb

Jeremy Herb
Reporter
CNN DC
CNND

o 202.596.4695 **m** 202.596.4695
jeremy.herb@warnermedia.com

820 First St. NE, DC | Washington, D.C. 20002

AMERICAN OVERSIGHT

Date : 11/17/2021 2:33:49 PM
From : "Mauro Morales" mmorales@usccr.gov
To : "David Ganz" dganz@usccr.gov
Cc : "Angelia Rorison" arorison@usccr.gov
Subject : RE: [EXTERNAL] CNN FOIA request

I will. Send a formal notice to me from OCG advising us of the request and our requirement to comply as well as with the attached FOIA demands from both organizations. I will attached those to my email to Commissioners and send it out tonight or tomorrow in am.

From: David Ganz <dganz@usccr.gov>
Sent: Wednesday, November 17, 2021 1:23 PM
To: Mauro Morales <mmorales@usccr.gov>
Subject: RE: [EXTERNAL] CNN FOIA request

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Wednesday, November 17, 2021

Commission on Civil Rights
U.S. Commission on Civil Rights
Jennifer Cron Hepler, Attorney-Advisor, Suite 1150

AMERICAN OVERSIGHT

1331 Pennsylvania Ave, NW
Washington, DC 20425
Phone: 202-376-2890
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Jeremy Herb
Reporter
CNN DC
CNND

o 202.596.4695 **m** 202.596.4695
jeremy.herb@warnermedia.com

820 First St. NE, DC | Washington, D.C. 20002

AMERICAN OVERSIGHT

Date : 11/17/2021 4:01:32 PM
From : "Angelia Rorison" arorison@usccr.gov
To : "David Ganz" dganz@usccr.gov
Cc : "Mauro Morales" mmorales@usccr.gov, "Andrew Gall" agall@usccr.gov
Subject : RE: [EXTERNAL] Reuters FOIA request

Thanks – hopefully our last one on this.

From: David Ganz <dganz@usccr.gov>
Sent: Wednesday, November 17, 2021 4:00 PM
To: Angelia Rorison <arorison@usccr.gov>
Cc: Mauro Morales <mmorales@usccr.gov>; Andrew Gall <agall@usccr.gov>
Subject: RE: [EXTERNAL] Reuters FOIA request

We will handle it.

From: Angelia Rorison <arorison@usccr.gov>
Sent: Wednesday, November 17, 2021 3:52 PM
To: David Ganz <dganz@usccr.gov>
Cc: Mauro Morales <mmorales@usccr.gov>
Subject: FW: [EXTERNAL] Reuters FOIA request

FYI - Another FOIA request from media. This one is from Reuters.

From: Ulmer, Alexandra (Reuters) <Alexandra.Ulmer@thomsonreuters.com>
Sent: Wednesday, November 17, 2021 3:26 PM
To: FOIA <foia@usccr.gov>
Subject: [EXTERNAL] Reuters FOIA request

> CAUTION: This email is from outside USCCR.

Dear Public Records Officer,

I am a reporter with Reuters. This is a request under the Freedom of Information Act. I would like to request the following records (in descending order of priority, please, and with a request to provide records as they become available; no need to provide them all together):

1. Copies of all meeting minutes of the April 30, 2021 vote to appoint Cleta Mitchell to the EAC.
2. Copies of all meeting minutes between Jan. 1, 2021 and April 29, 2021 that mention Cleta Mitchell ("Cleta," "Mitchell").
3. Copies of all emails from J. Christian Adams that mention Cleta Mitchell ("Cleta," "Mitchell") between Jan. 1, 2021 and April 29, 2021
4. Copies of all emails from Norma V. Cantú that mention Cleta Mitchell ("Cleta," "Mitchell") between Jan. 1, 2021 and April 29, 2021

If there are any fees for searching or copying these records, please inform me if the cost will exceed $25.00. However, as a member of the news media, I would also like to request

AMERICAN OVERSIGHT

a waiver of all fees in that the disclosure of the requested information is in the public interest and will contribute significantly to the public's understanding ofelections in the United States. This information is not being sought for commercial purposes.

If you expect a significant delay in responding to this request, please contact me with information about when I might expect copies or the ability to inspect the requested records.

If you conclude that portions of the records that I request are exempt from disclosure, please release copies of the remainder of such records, redacting only the portion or portions that you claim are exempt. I would prefer to inspect these records electronically.

If you deny any or all of this request, please cite each specific exemption you feel justifies the refusal to release the information and notify me of the appeal procedures available to me under the law. If you conclude that portions of the records that I request are exempt from disclosure, please release copies of the remainder of such records, redacting only the portion or portions that you claim are exempt.

Many thanks.

Bests,

Alexandra Ulmer
National Affairs Correspondent
Thomson Reuters

Cell: +14156053672
Twitter: @AlexandraUlmer
www.alexandraulmer.com

AMERICAN OVERSIGHT

Date : 11/17/2021 3:52:25 PM
From : "Angelia Rorison" arorison@usccr.gov
To : "David Ganz" dganz@usccr.gov
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AMERICAN OVERSIGHT

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Bests,

Alexandra Ulmer
National Affairs Correspondent
Thomson Reuters

Cell: +14156053672
Twitter: @AlexandraUlmer
www.alexandraulmer.com

AMERICAN OVERSIGHT

Date : 11/17/2021 4:00:06 PM
From : "David Ganz" dganz@usccr.gov
To : "Angelia Rorison" arorison@usccr.gov
Cc : "Mauro Morales" mmorales@usccr.gov, "Andrew Gall" agall@usccr.gov
Subject : RE: [EXTERNAL] Reuters FOIA request

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From: Angelia Rorison <arorison@usccr.gov>
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To: David Ganz <dganz@usccr.gov>
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AMERICAN OVERSIGHT

Date : 11/17/2021 4:15:50 PM
From : "David Ganz" dganz@usccr.gov
To : "Mauro Morales" mmorales@usccr.gov
Subject : Notice of FOIA Requests
Attachment : image001.png;

For you to share with Comms and SAs:

Mauro,

Today, November 17, 2021, USCCR has received three (3) FOIA requests from media outlets. These requests are from Reuters, CNN, and Voter Beat. These FOIA requests include requests for emails of Commissioners, meeting transcripts, and other records related to USCCR's recent appointment of Cleta Mitchell to the Election Assistance Commission's Board of Advisors. In the coming weeks, it will be necessary to collect, review, and potentially release the requested records consistent with FOIA, the Privacy Act, and DOJ guidance. I will keep you apprised of OGC's efforts and progress. Thanks,

David

David Ganz
General Counsel, Office of the General Counsel
U.S. Commission on Civil Rights
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425
(617) 669-6413

This message, including attachments, is confidential and may contain information protected by the attorney-client privilege or work product doctrine. If you are not the addressee, any disclosure, copying, distribution, or use of the contents of this message are prohibited. If you have received this email in error, please destroy it and notify me immediately.

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AMERICAN OVERSIGHT

C005203
AMERICAN OVERSIGHT

Date : 11/17/2021 4:14:57 PM
From : "David Ganz" dganz@usccr.gov
To : "Sheryl Cozart" sccozart@usccr.gov, "Pilar McLaughlin" pmclaughlin@usccr.gov
Cc : "Andrew Gall" agall@usccr.gov
Subject : RE: [EXTERNAL] Reuters FOIA request

For your awareness. The 3 FOIAs from today are CNN, Reuters, and Voter Beat.

From: David Ganz
Sent: Wednesday, November 17, 2021 4:00 PM
To: Angelia Rorison <arorison@usccr.gov>
Cc: Mauro Morales <mmorales@usccr.gov>; Andrew Gall <agall@usccr.gov>
Subject: RE: [EXTERNAL] Reuters FOIA request

We will handle it.

From: Angelia Rorison <arorison@usccr.gov>
Sent: Wednesday, November 17, 2021 3:52 PM
To: David Ganz <dganz@usccr.gov>
Cc: Mauro Morales <mmorales@usccr.gov>
Subject: FW: [EXTERNAL] Reuters FOIA request

FYI - Another FOIA request from media. This one is from Reuters.

From: Ulmer, Alexandra (Reuters) <Alexandra.Ulmer@thomsonreuters.com>
Sent: Wednesday, November 17, 2021 3:26 PM
To: FOIA <foia@usccr.gov>
Subject: [EXTERNAL] Reuters FOIA request

> CAUTION: This email is from outside USCCR.

Dear Public Records Officer,

I am a reporter with Reuters. This is a request under the Freedom of Information Act. I would like to request the following records (in descending order of priority, please, and with a request to provide records as they become available; no need to provide them all together):

1. Copies of all meeting minutes of the April 30, 2021 vote to appoint Cleta Mitchell to the EAC.
2. Copies of all meeting minutes between Jan. 1, 2021 and April 29, 2021 that mention Cleta Mitchell ("Cleta," "Mitchell").
3. Copies of all emails from J. Christian Adams that mention Cleta Mitchell ("Cleta," "Mitchell") between Jan. 1, 2021 and April 29, 2021
4. Copies of all emails from Norma V. Cantú that mention Cleta Mitchell ("Cleta," "Mitchell") between Jan. 1, 2021 and April 29, 2021

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If there are any fees for searching or copying these records, please inform me if the cost will exceed $25.00. However, as a member of the news media, I would also like to request a waiver of all fees in that the disclosure of the requested information is in the public interest and will contribute significantly to the public's understanding ofelections in the United States. This information is not being sought for commercial purposes.

If you expect a significant delay in responding to this request, please contact me with information about when I might expect copies or the ability to inspect the requested records.

If you conclude that portions of the records that I request are exempt from disclosure, please release copies of the remainder of such records, redacting only the portion or portions that you claim are exempt. I would prefer to inspect these records electronically.

If you deny any or all of this request, please cite each specific exemption you feel justifies the refusal to release the information and notify me of the appeal procedures available to me under the law. If you conclude that portions of the records that I request are exempt from disclosure, please release copies of the remainder of such records, redacting only the portion or portions that you claim are exempt.

Many thanks.

Bests,

Alexandra Ulmer
National Affairs Correspondent
Thomson Reuters

Cell: +14156053672
Twitter: @AlexandraUlmer
www.alexandraulmer.com

AMERICAN OVERSIGHT

Date : 11/18/2021 8:19:36 AM
From : "Angelia Rorison" arorison@usccr.gov
To : "Michele Ramey" myorkman@usccr.gov
Subject : RE: FOIA requests today
Attachment : image001.png;

Hey Michele – I am not sure why this request was so cryptic. Here is the background:

There has been a ton of public backlash on the decision to appoint Cleta Mitchell by Republicans to the Election Assistance Commission Board of Advisors. So media have all requested expedited processing of emails by Commissioners on a few key terms.

He did not share what those are for some reason and gave this hypothetical, "can you do this." Which I was very confused about yesterday.

Because these have been requested by media, they need to be addressed as soon as you are able. Sorry, this has fallen on you at such a busy time. The Commission is getting lots of negative attention on this so we hope fulfilling these requests will satisfy folks.

Hope this background info helps and I would be happy to jump on call if you like to discuss,
Ang

From: Michele Ramey <myorkman@usccr.gov>
Sent: Thursday, November 18, 2021 5:00 AM
To: David Ganz <dganz@usccr.gov>
Cc: Mauro Morales <mmorales@usccr.gov>; Angelia Rorison <arorison@usccr.gov>; Pamela Dunston <Pdunston@usccr.gov>; TinaLouise Martin <tmartin@usccr.gov>
Subject: RE: FOIA requests today

I have upcoming leave. What is the complete by date?

From: David Ganz <dganz@usccr.gov>
Sent: Wednesday, November 17, 2021 8:03 PM
To: Michele Ramey <myorkman@usccr.gov>
Cc: Mauro Morales <mmorales@usccr.gov>; Angelia Rorison <arorison@usccr.gov>; Pamela Dunston <Pdunston@usccr.gov>; TinaLouise Martin <tmartin@usccr.gov>
Subject: RE: FOIA requests today

Outstanding to hear we can cull down the data set on the front end with keywords. I was worried my staff would have tens of thousands of documents to review for potential relevance. I will send you the custodians, date ranges, and keywords tomorrow.

From: Michele Ramey <myorkman@usccr.gov>
Sent: Wednesday, November 17, 2021 6:57 PM
To: David Ganz <dganz@usccr.gov>
Cc: Mauro Morales <mmorales@usccr.gov>; Angelia Rorison <arorison@usccr.gov>; Pamela Dunston <Pdunston@usccr.gov>; TinaLouise Martin <tmartin@usccr.gov>
Subject: RE: FOIA requests today

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David:

Yes, we can search for emails using keywords. Please see the attached sample. If the files are on the shared drive then you search by keywords but it will bring up many documents. Also some users don't follow agency policy and save their files on the share drive.

MYR

From: David Ganz <dganz@usccr.gov>
Sent: Wednesday, November 17, 2021 3:06 PM
To: Michele Ramey <myorkman@usccr.gov>
Cc: Mauro Morales <mmorales@usccr.gov>; Angelia Rorison <arorison@usccr.gov>
Subject: RE: FOIA requests today

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Subject: FOIA requests today

Hey Michele, we received two FOIA requests today from media requesters. Can you pull documents using keywords, i.e., all documents sent by Chair Cantu that contains the word 'removal' or phrase 'White House'? If not, we can request documents from custodians in lieu of pulling everything down from Outlook.

David Ganz
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AMERICAN OVERSIGHT

C005209
AMERICAN OVERSIGHT

Date : 11/18/2021 9:19:29 AM
From : "Michele Ramey" myorkman@usccr.gov
To : "Angelia Rorison" arorison@usccr.gov
Subject : Re: FOIA requests today
Attachment : image001.png;

Thanks. I am still taking leave. The earlier I get the exact keywords the better. I agree with you . Yesterday with exact information would have been better. Once I get the amount of data I can determine when I get it done. I do have a contractor on standby to assist

Sent from my iPad

> On Nov 18, 2021, at 8:19 AM, Angelia Rorison <arorison@usccr.gov> wrote:
>
> Hey Michele – I am not sure why this request was so cryptic. Here is the background:
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> There has been a ton of public backlash on the decision to appoint Cleta Mitchell by Republicans to the Election Assistance Commission Board of Advisors. So media have all requested expedited processing of emails by Commissioners on a few key terms.
>
> He did not share what those are for some reason and gave this hypothetical, "can you do this." Which I was very confused about yesterday.
>
> Because these have been requested by media, they need to be addressed as soon as you are able. Sorry, this has fallen on you at such a busy time. The Commission is getting lots of negative attention on this so we hope fulfilling these requests will satisfy folks.
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> Hope this background info helps and I would be happy to jump on call if you like to discuss,
> Ang
>
> ---
>
> **From:** Michele Ramey <myorkman@usccr.gov>
> **Sent:** Thursday, November 18, 2021 5:00 AM
> **To:** David Ganz <dganz@usccr.gov>
> **Cc:** Mauro Morales <mmorales@usccr.gov>; Angelia Rorison <arorison@usccr.gov>; Pamela Dunston <Pdunston@usccr.gov>; TinaLouise Martin <tmartin@usccr.gov>
> **Subject:** RE: FOIA requests today
>
> I have upcoming leave. What is the complete by date?
>
> ---
>
> **From:** David Ganz <dganz@usccr.gov>
> **Sent:** Wednesday, November 17, 2021 8:03 PM

AMERICAN OVERSIGHT

To: Michele Ramey <myorkman@usccr.gov>
Cc: Mauro Morales <mmorales@usccr.gov>; Angelia Rorison <arorison@usccr.gov>; Pamela Dunston <Pdunston@usccr.gov>; TinaLouise Martin <tmartin@usccr.gov>
Subject: RE: FOIA requests today

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From: Michele Ramey <myorkman@usccr.gov>
Sent: Wednesday, November 17, 2021 6:57 PM
To: David Ganz <dganz@usccr.gov>
Cc: Mauro Morales <mmorales@usccr.gov>; Angelia Rorison <arorison@usccr.gov>; Pamela Dunston <Pdunston@usccr.gov>; TinaLouise Martin <tmartin@usccr.gov>
Subject: RE: FOIA requests today

David:

Yes, we can search for emails using keywords. Please see the attached sample. If the files are on the shared drive then you search by keywords but it will bring up many documents. Also some users don't follow agency policy and save their files on the share drive.

MYR

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Sent: Wednesday, November 17, 2021 3:06 PM
To: Michele Ramey <myorkman@usccr.gov>
Cc: Mauro Morales <mmorales@usccr.gov>; Angelia Rorison <arorison@usccr.gov>
Subject: RE: FOIA requests today

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AMERICAN OVERSIGHT

UNITED STATES COMMISSION ON CIVIL RIGHTS
C005213

Date : 11/18/2021 9:22:36 AM
From : "Angelia Rorison" arorison@usccr.gov
To : "Michele Ramey" myorkman@usccr.gov
Subject : RE: FOIA requests today

You absolutely should take your leave! AND ENJOY IT☐the circus will still be here!

If David doesn't send it soon, I will get on him to do it asap so you can get everything set up as needed.

Ang

From: Michele Ramey <myorkman@usccr.gov>
Sent: Thursday, November 18, 2021 9:19 AM
To: Angelia Rorison <arorison@usccr.gov>
Subject: Re: FOIA requests today

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AMERICAN OVERSIGHT

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<image001.png>
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AMERICAN OVERSIGHT

Date : 11/18/2021 12:24:16 PM
From : "David Ganz" dganz@usccr.gov
To : "Mauro Morales" mmorales@usccr.gov
Subject : RE: FOIA requests today
Attachment : image001.png;

DRAFT:

Hi Michele,

Here is what we need to have pulled for the current FOIAs and to capture potential responsive documents for future FOIA requests related to the same subject matter.

All email correspondence sent or received from all USCCR employees (all career staff, SAs, and Commissioners) to anyone with the following words or phrases "Election Assistance Commission" or "Board of Advisors" or "Cleta" or "Mitchell" from 8/1/20 to 11/18/21. If you are wondering, Adams was appointed in August 2020. The EAC asked us about appointments in March 2021, but one of the FOIA requests covers the period of 8/1/20 to the present so it is better to err on the side of caution. There is also a request for the following two items from the FOIA requests, but I believe the above request covers them:

1. All sent or received from Adams and Cantu to anyone from 1/1/21 to 4/29/21 with the words 'Mitchell' or 'Cleta.'
2. All sent or received from Adams to Mitchell from 8/1/20 to 11/18/21.

There is also a request for the following but I believe these are publicly available:

1. Copies of all meeting minutes of the April 30, 2021 vote to appoint Cleta Mitchell to the EAC.
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UNITED STATES COMMISSION ON CIVIL RIGHTS
C005220

Date : 11/18/2021 12:40:26 PM
From : "David Ganz" dganz@usccr.gov
To : "Michele Ramey" myorkman@usccr.gov
Cc : "Mauro Morales" mmorales@usccr.gov, "Angelia Rorison" arorison@usccr.gov, "Pamela Dunston" Pdunston@usccr.gov, "TinaLouise Martin" tmartin@usccr.gov
Subject : RE: FOIA requests today
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Hi Michele,

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All email correspondence sent or received from all USCCR employees (all career staff, SAs, and Commissioners) to anyone with the following words or phrases "Election Assistance Commission" or "Board of Advisors" or "Cleta" or "Mitchell" from **8/1/20 to the present (11/18/21).**

If you are wondering, Adams was appointed in August 2020. The EAC asked us about appointments as early as January 2021, but one of the FOIA requests covers the period of 8/1/20 to the present so it is better to err on the side of caution. There is also a request for the following two items from the FOIA requests, but I believe the above request covers them; if you disagree:

1. All sent or received from Adams and Cantu to anyone from 1/1/21 to 4/29/21 with the words 'Mitchell' or 'Cleta.'
2. All sent or received from Adams to Mitchell from 8/1/20 to 11/18/21.

There is no complete date, but please try to get us this ASAP as it has become a priority. Getting us documents on a rolling basis would be very helpful. My cell is 617 669 6413.

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Cc: Mauro Morales <mmorales@usccr.gov>; Angelia Rorison <arorison@usccr.gov>; Pamela Dunston <Pdunston@usccr.gov>; TinaLouise Martin <tmartin@usccr.gov>
Subject: RE: FOIA requests today

David:

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MYR

From: David Ganz <dganz@usccr.gov>
Sent: Wednesday, November 17, 2021 3:06 PM
To: Michele Ramey <myorkman@usccr.gov>
Cc: Mauro Morales <mmorales@usccr.gov>; Angelia Rorison <arorison@usccr.gov>
Subject: RE: FOIA requests today

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Sent: Wednesday, November 17, 2021 2:35 PM
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Cc: Mauro Morales <mmorales@usccr.gov>; Angelia Rorison <arorison@usccr.gov>
Subject: FOIA requests today

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David Ganz
General Counsel, Office of the General Counsel
U.S. Commission on Civil Rights
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425
(617) 669-6413

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the addressee, any disclosure, copying, distribution, or use of the contents of this message are prohibited. If you have received this email in error, please destroy it and notify me immediately.

Established as an independent, bipartisan, fact-finding federal agency, our mission is to inform the development of national civil rights policy and enhance enforcement of federal civil rights laws. We pursue this mission by studying alleged deprivations of voting rights and alleged discrimination based on race, color, religion, sex, age, disability, or national origin, or in the administration of justice. We play a vital role in advancing civil rights through objective and comprehensive investigation, research, and analysis on issues of fundamental concern to the federal government and the public.

AMERICAN OVERSIGHT

C005224
AMERICAN OVERSIGHT

Date : 11/18/2021 12:41:57 PM
From : "Joshua Dansby" jdansby@usccr.gov
To : "Mauro Morales" mmorales@usccr.gov
Cc : "David Ganz" dganz@usccr.gov
Subject : RE: FOIA Request for Information
Attachment : image001.gif;image002.gif;

Mauro,

Would it be possible to send me a copy of those FOIA requests, please?

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Sent: Wednesday, November 17, 2021 4:48 PM
To: Commissioners <Commissioners@usccr.gov>
Cc: David Ganz <dganz@usccr.gov>; CommissionerAssistants <CommissionerAssistants@usccr.gov>; ExecutiveStaff <ExecutiveStaff@usccr.gov>
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Thank you for your attention to this matter and request.

Mauro Morales
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U.S. Commission on Civil Rights
P: 202-376-7796| F: 202-376-7672
Mmorales@usccr.gov
http://usccr.gov/
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425

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AMERICAN OVERSIGHT

OVERSIGHT

OVERSTOCK

Date : 11/18/2021 12:52:50 PM
From : "Michele Ramey" myorkman@usccr.gov
To : "David Ganz" dganz@usccr.gov
Cc : "Mauro Morales" mmorales@usccr.gov, "Angelia Rorison" arorison@usccr.gov, "Pamela Dunston" Pdunston@usccr.gov, "TinaLouise Martin" tmartin@usccr.gov
Subject : RE: FOIA requests today
Attachment : image001.png;

Thank you. I will get back to you with the preliminary numbers of emails for:

All email correspondence sent or received from all USCCR employees (all career staff, SAs, and Commissioners) to anyone with the following words or phrases "Election Assistance Commission" or "Board of Advisors" or "Cleta" or "Mitchell" from **8/1/20 to the present (11/18/21).**

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If you are wondering, Adams was appointed in August 2020. The EAC asked us about appointments as early as January 2021, but one of the FOIA requests covers the period of 8/1/20 to the present so it is better to err on the side of caution. There is also a request for the following two items from the FOIA requests, but I believe the above request covers them; if you disagree:

1. All sent or received from Adams and Cantu to anyone from 1/1/21 to 4/29/21 with the words 'Mitchell' or 'Cleta.'
2. All sent or received from Adams to Mitchell from 8/1/20 to 11/18/21.

There is no complete date, but please try to get us this ASAP as it has become a priority. Getting us documents on a rolling basis would be very helpful. My cell is 617 669 6413.

AMERICAN OVERSIGHT

From: Michele Ramey <myorkman@usccr.gov>
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Subject: RE: FOIA requests today

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AMERICAN OVERSIGHT

C005231
AMERICAN OVERSIGHT

Date : 11/18/2021 12:43:23 PM
From : "Mauro Morales" mmorales@usccr.gov
To : "Joshua Dansby" jdansby@usccr.gov
Cc : "David Ganz" dganz@usccr.gov
Subject : RE: FOIA Request for Information
Attachment : image001.gif;image002.gif;

Why are you seeking them? You are not involved in their production.

From: Joshua Dansby <jdansby@usccr.gov>
Sent: Thursday, November 18, 2021 12:42 PM
To: Mauro Morales <mmorales@usccr.gov>
Cc: David Ganz <dganz@usccr.gov>
Subject: RE: FOIA Request for Information

Mauro,

Would it be possible to send me a copy of those FOIA requests, please?

-Joshua

From: Mauro Morales <mmorales@usccr.gov>
Sent: Wednesday, November 17, 2021 4:48 PM
To: Commissioners <Commissioners@usccr.gov>
Cc: David Ganz <dganz@usccr.gov>; CommissionerAssistants <CommissionerAssistants@usccr.gov>; ExecutiveStaff <ExecutiveStaff@usccr.gov>
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Washington D.C. 20425

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OVERSIGHT

OVERSTOCK

Date : 11/18/2021 1:04:34 PM
From : "Joshua Dansby" jdansby@usccr.gov
To : "Mauro Morales" mmorales@usccr.gov
Cc : "David Ganz" dganz@usccr.gov
Subject : RE: FOIA Request for Information
Attachment : image001.gif;image002.gif;

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Either way, please let me know what you decide.

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Washington D.C. 20425

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OVERSIGHT

OVERSTOCK

Date : 11/18/2021 1:25:51 PM
From : "Mauro Morales" mmorales@usccr.gov
To : "Joshua Dansby" jdansby@usccr.gov
Cc : "David Ganz" dganz@usccr.gov
Subject : RE: FOIA Request for Information
Attachment : image001.gif;image002.gif;

I defer to our GC on what to provide you.

From: Joshua Dansby <jdansby@usccr.gov>
Sent: Thursday, November 18, 2021 1:05 PM
To: Mauro Morales <mmorales@usccr.gov>
Cc: David Ganz <dganz@usccr.gov>
Subject: RE: FOIA Request for Information

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To: Joshua Dansby <jdansby@usccr.gov>
Cc: David Ganz <dganz@usccr.gov>
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OVERSIGHT

OVERSTOCK

Date : 11/18/2021 1:44:33 PM
From : "David Ganz" dganz@usccr.gov
To : "Mauro Morales" mmorales@usccr.gov, "Joshua Dansby" jdansby@usccr.gov
Subject : RE: FOIA Request for Information
Attachment : image001.gif;image002.gif;

Josh, I do not think it is appropriate or necessary to provide the actual FOIA requests to you or other SAs or Commissioners as, per USCCR's FOIA regulations and delegations of authority, our office handles FOIA requests and the documents are non-public in the sense they were sent specifically to our office and therefore I would not want them to be circulated publicly. I say the foregoing with the utmost respect for you and your colleagues. Please call my cell at 617 669 6413 if you have any questions about this. Thanks,

David

From: Mauro Morales <mmorales@usccr.gov>
Sent: Thursday, November 18, 2021 1:26 PM
To: Joshua Dansby <jdansby@usccr.gov>
Cc: David Ganz <dganz@usccr.gov>
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Washington D.C. 20425

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OVERSIGHT

OVERSTOCK

Date : 11/18/2021 2:13:09 PM
From : "David Ganz" dganz@usccr.gov
To : "Michele Ramey" myorkman@usccr.gov
Cc : "Mauro Morales" mmorales@usccr.gov, "Angelia Rorison" arorison@usccr.gov, "Pamela Dunston" Pdunston@usccr.gov, "TinaLouise Martin" tmartin@usccr.gov
Subject : RE: FOIA requests today
Attachment : image001.png;

Great; so everyone is aware, once we receive some preliminary numbers from Michele, OGC can do an estimate as to the review, redaction, and production timeline and update the requesters.

From: Michele Ramey <myorkman@usccr.gov>
Sent: Thursday, November 18, 2021 12:53 PM
To: David Ganz <dganz@usccr.gov>
Cc: Mauro Morales <mmorales@usccr.gov>; Angelia Rorison <arorison@usccr.gov>; Pamela Dunston <Pdunston@usccr.gov>; TinaLouise Martin <tmartin@usccr.gov>
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There is no complete date, but please try to get us this ASAP as it has become a priority. Getting us documents on a rolling basis would be very helpful. My cell is 617 669 6413.

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AMERICAN OVERSIGHT

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U.S. Commission on Civil Rights
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425
(617) 669-6413

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AMERICAN OVERSIGHT

C005252
AMERICAN OVERSIGHT

Date : 11/18/2021 2:33:09 PM
From : "Michele Ramey" myorkman@usccr.gov
To : "David Ganz" dganz@usccr.gov
Cc : "Mauro Morales" mmorales@usccr.gov, "Angelia Rorison" arorison@usccr.gov, "Pamela Dunston" Pdunston@usccr.gov, "TinaLouise Martin" tmartin@usccr.gov
Subject : RE: FOIA requests today
Attachment : image001.png;

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AMERICAN OVERSIGHT

C005256
AMERICAN OVERSIGHT

Date : 11/18/2021 3:00:27 PM
From : "David Ganz" dganz@usccr.gov
To : "Michele Ramey" myorkman@usccr.gov
Cc : "Mauro Morales" mmorales@usccr.gov
Subject : RE: FOIA requests today
Attachment : image001.png;

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AMERICAN OVERSIGHT

C005260
AMERICAN OVERSIGHT

Date : 11/18/2021 3:36:43 PM
From : "Michele Ramey" myorkman@usccr.gov
To : "David Ganz" dganz@usccr.gov
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AMERICAN OVERSIGHT

C005264
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To : "Michele Ramey" myorkman@usccr.gov
Subject : RE: FOIA requests today
Attachment : image001.png;

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AMERICAN OVERSIGHT

C005269
AMERICAN OVERSIGHT

Date : 11/18/2021 5:20:30 PM
From : "Michele Ramey" myorkman@usccr.gov
To : "David Ganz" dganz@usccr.gov
Subject : RE: FOIA requests today
Attachment : image001.png;

David

Here are the *internal users only sent and received first estimate*.

Thanks,

Michele

Internal Only @usccr.gov addresses Subject and Body 8/1/2020 to 11/18/2021 Estimates	
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Board of Advisors	426
Cleta	275
Mitchell	359

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Sent: Thursday, November 18, 2021 3:51 PM
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Cc: Mauro Morales <mmorales@usccr.gov>
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C005274
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Big thanks to Michele for pulling this information together today; not only does it help deal with the current FOIAs, but it will be helpful to have all the documents prepared for any new FOIAs we receive stemming from the EAC appointments.

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Cc: Mauro Morales <mmorales@usccr.gov>; Angelia Rorison <arorison@usccr.gov>
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AMERICAN OVERSIGHT

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C005289
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Date : 11/18/2021 7:11:25 PM
From : "Pamela Dunston" Pdunston@usccr.gov
To : "David Ganz" dganz@usccr.gov, "Michele Ramey" myorkman@usccr.gov
Cc : "Mauro Morales" mmorales@usccr.gov, "Angelia Rorison" arorison@usccr.gov, "TinaLouise Martin" tmartin@usccr.gov
Subject : RE: FOIA requests today
Attachment : image001.png;

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C005294
AMERICAN OVERSIGHT

Date : 11/18/2021 7:32:17 PM
From : "Angelia Rorison" arorison@usccr.gov
To : "Pamela Dunston" Pdunston@usccr.gov
Cc : "David Ganz" dganz@usccr.gov, "Michele Ramey" myorkman@usccr.gov, "Mauro Morales" mmorales@usccr.gov, "TinaLouise Martin" tmartin@usccr.gov
Subject : Re: FOIA requests today
Attachment : image001.png;

Yes ! Thank you Michele!

-

Angelia Rorison

Director of Media and Communications
FOIA Public Liaison
U.S. Commission on Civil Rights

M: 202-499-0263
(she/her)
arorison@usccr.gov
www.usccr.gov
Follow us on Twitter and Facebook

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UNITED STATES COMMISSION ON CIVIL RIGHTS
C005300

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To : "Angelia Rorison" arorison@usccr.gov, "Pamela Dunston" Pdunston@usccr.gov
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Attachment : image001.png;

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AMERICAN OVERSIGHT

C005306
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Date : 11/18/2021 8:03:29 PM
From : "David Ganz" dganz@usccr.gov
To : "Pilar McLaughlin" pmclaughlin@usccr.gov, "Sheryl Cozart" sccozart@usccr.gov, "Andrew Gall" agall@usccr.gov
Subject : FW: FOIA requests today
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Cc: David Ganz <dganz@usccr.gov>; Michele Ramey <myorkman@usccr.gov>; TinaLouise Martin <tmartin@usccr.gov>
Subject: RE: FOIA requests today

Get teamwork to everyone. I am sure we may get more FOIA requests and we have already done the work to be ready to respond.

From: Angelia Rorison <arorison@usccr.gov>
Sent: Thursday, November 18, 2021 7:32 PM
To: Pamela Dunston <Pdunston@usccr.gov>
Cc: David Ganz <dganz@usccr.gov>; Michele Ramey <myorkman@usccr.gov>; Mauro Morales <mmorales@usccr.gov>; TinaLouise Martin <tmartin@usccr.gov>
Subject: Re: FOIA requests today

Yes ☐☐ Thank you Michele!

-

Angelia Rorison

Director of Media and Communications
FOIA Public Liaison
U.S. Commission on Civil Rights

M: 202-499-0263

(she/her)
arorison@usccr.gov
www.usccr.gov

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> On Nov 18, 2021, at 7:11 PM, Pamela Dunston <Pdunston@usccr.gov> wrote:
>
> Awesome job Michele.

AMERICAN OVERSIGHT

From: David Ganz <dganz@usccr.gov>
Sent: Thursday, November 18, 2021 6:46 PM
To: Michele Ramey <myorkman@usccr.gov>
Cc: Mauro Morales <mmorales@usccr.gov>; Angelia Rorison <arorison@usccr.gov>; Pamela Dunston <Pdunston@usccr.gov>; TinaLouise Martin <tmartin@usccr.gov>
Subject: RE: FOIA requests today

Big thanks to Michele for pulling this information together today; not only does it help deal with the current FOIAs, but it will be helpful to have all the documents prepared for any new FOIAs we receive stemming from the EAC appointments.

From: David Ganz
Sent: Thursday, November 18, 2021 6:18 PM
To: Michele Ramey <myorkman@usccr.gov>
Cc: Mauro Morales <mmorales@usccr.gov>; Angelia Rorison <arorison@usccr.gov>; Pamela Dunston <Pdunston@usccr.gov>; TinaLouise Martin <tmartin@usccr.gov>
Subject: RE: FOIA requests today

For everyone's awareness, Michele's estimates regarding responsive documents are in the chart below. I have asked her to begin the process of collecting the data and moving it to SecuriSync for OGC's review. The below numbers are very manageable for OGC to review and redact and I do not foresee an issue meeting our deadlines. Once I receive an estimate from Michele about the data collection timeframe, I will alert the three FOIA requesters.

Internal Only @usccr.gov addresses Subject and Body 8/1/2020 to 11/18/2021 Estimates	
Election Assistance Commission	499
Board of Advisors	426
Cleta	275
Mitchell	359

From: Michele Ramey <myorkman@usccr.gov>
Sent: Thursday, November 18, 2021 2:33 PM
To: David Ganz <dganz@usccr.gov>
Cc: Mauro Morales <mmorales@usccr.gov>; Angelia Rorison

AMERICAN OVERSIGHT

<arorison@usccr.gov>; Pamela Dunston <Pdunston@usccr.gov>; TinaLouise Martin <tmartin@usccr.gov>
Subject: RE: FOIA requests today

For "or Mitchell", The system is generating a number of over 140K emails for the time period 8/1/2021 to present. Can you maybe add a first or last name or something else if this is not a name?

From: David Ganz <dganz@usccr.gov>
Sent: Thursday, November 18, 2021 12:40 PM
To: Michele Ramey <myorkman@usccr.gov>
Cc: Mauro Morales <mmorales@usccr.gov>; Angelia Rorison <arorison@usccr.gov>; Pamela Dunston <Pdunston@usccr.gov>; TinaLouise Martin <tmartin@usccr.gov>
Subject: RE: FOIA requests today

Hi Michele,

Here is what we need to have pulled for the current FOIAs and to capture potential responsive documents for future FOIA requests related to the same subject matter.

All email correspondence sent or received from all USCCR employees (all career staff, SAs, and Commissioners) to anyone with the following words or phrases "Election Assistance Commission" or "Board of Advisors" or "Cleta" or "Mitchell" from **8/1/20 to the present (11/18/21).**

If you are wondering, Adams was appointed in August 2020. The EAC asked us about appointments as early as January 2021, but one of the FOIA requests covers the period of 8/1/20 to the present so it is better to err on the side of caution. There is also a request for the following two items from the FOIA requests, but I believe the above request covers them; if you disagree:

1. All sent or received from Adams and Cantu to anyone from 1/1/21 to 4/29/21 with the words 'Mitchell' or 'Cleta.'
2. All sent or received from Adams to Mitchell from 8/1/20 to 11/18/21.

There is no complete date, but please try to get us this ASAP as it has become a priority. Getting us documents on a rolling basis would be very helpful. My cell is 617 669 6413.

From: Michele Ramey <myorkman@usccr.gov>
Sent: Thursday, November 18, 2021 5:00 AM
To: David Ganz <dganz@usccr.gov>
Cc: Mauro Morales <mmorales@usccr.gov>; Angelia Rorison <arorison@usccr.gov>; Pamela Dunston <Pdunston@usccr.gov>; TinaLouise

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Martin <tmartin@usccr.gov>
Subject: RE: FOIA requests today

I have upcoming leave. What is the complete by date?

From: David Ganz <dganz@usccr.gov>
Sent: Wednesday, November 17, 2021 8:03 PM
To: Michele Ramey <myorkman@usccr.gov>
Cc: Mauro Morales <mmorales@usccr.gov>; Angelia Rorison <arorison@usccr.gov>; Pamela Dunston <Pdunston@usccr.gov>; TinaLouise Martin <tmartin@usccr.gov>
Subject: RE: FOIA requests today

Outstanding to hear we can cull down the data set on the front end with keywords. I was worried my staff would have tens of thousands of documents to review for potential relevance. I will send you the custodians, date ranges, and keywords tomorrow.

From: Michele Ramey <myorkman@usccr.gov>
Sent: Wednesday, November 17, 2021 6:57 PM
To: David Ganz <dganz@usccr.gov>
Cc: Mauro Morales <mmorales@usccr.gov>; Angelia Rorison <arorison@usccr.gov>; Pamela Dunston <Pdunston@usccr.gov>; TinaLouise Martin <tmartin@usccr.gov>
Subject: RE: FOIA requests today

David:

Yes, we can search for emails using keywords. Please see the attached sample. If the files are on the shared drive then you search by keywords but it will bring up many documents. Also some users don't follow agency policy and save their files on the share drive.

MYR

From: David Ganz <dganz@usccr.gov>
Sent: Wednesday, November 17, 2021 3:06 PM
To: Michele Ramey <myorkman@usccr.gov>
Cc: Mauro Morales <mmorales@usccr.gov>; Angelia Rorison <arorison@usccr.gov>
Subject: RE: FOIA requests today

Just to clarify, the below are not the search terms for these FOIAs, but rather examples about our search term capabilities.

From: David Ganz
Sent: Wednesday, November 17, 2021 2:35 PM
To: Michele Ramey <myorkman@usccr.gov>
Cc: Mauro Morales <mmorales@usccr.gov>; Angelia Rorison <arorison@usccr.gov>

AMERICAN OVERSIGHT

Subject: FOIA requests today

Hey Michele, we received two FOIA requests today from media requesters. Can you pull documents using keywords, i.e., all documents sent by Chair Cantu that contains the word 'removal' or phrase 'White House'? If not, we can request documents from custodians in lieu of pulling everything down from Outlook.

David Ganz
General Counsel, Office of the General Counsel
U.S. Commission on Civil Rights
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425
(617) 669-6413

This message, including attachments, is confidential and may contain information protected by the attorney-client privilege or work product doctrine. If you are not the addressee, any disclosure, copying, distribution, or use of the contents of this message are prohibited. If you have received this email in error, please destroy it and notify me immediately.

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C005312
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Date : 11/18/2021 8:21:32 PM
From : "Joshua Dansby" jdansby@usccr.gov
To : "David Ganz" dganz@usccr.gov, "Mauro Morales" mmorales@usccr.gov
Subject : RE: FOIA Request for Information
Attachment : image001.gif;image002.gif;

I understand your position. To clarify, however, FOIA requests are public "records," as defined by FOIA, once received by an agency. *See* 5 U.S.C. sec. 552(f)(2); *see also Department of Justice Guide to the Freedom Information Act* at 11-18. The fact that they are received by a designated FOIA officer or office in no way grants them confidential status. The law requires that, if someone files a FOIA request about these FOIA requests, the later requests be turned over and that individual would be free to circulate them publicly. If we decide to pursue this issue, we will likely just file a FOIA request as laid out above. Thank you both for your time.

-Joshua

From: David Ganz <dganz@usccr.gov>
Sent: Thursday, November 18, 2021 1:45 PM
To: Mauro Morales <mmorales@usccr.gov>; Joshua Dansby <jdansby@usccr.gov>
Subject: RE: FOIA Request for Information

Josh, I do not think it is appropriate or necessary to provide the actual FOIA requests to you or other SAs or Commissioners as, per USCCR's FOIA regulations and delegations of authority, our office handles FOIA requests and the documents are non-public in the sense they were sent specifically to our office and therefore I would not want them to be circulated publicly. I say the foregoing with the utmost respect for you and your colleagues. Please call my cell at 617 669 6413 if you have any questions about this. Thanks,

David

From: Mauro Morales <mmorales@usccr.gov>
Sent: Thursday, November 18, 2021 1:26 PM
To: Joshua Dansby <jdansby@usccr.gov>
Cc: David Ganz <dganz@usccr.gov>
Subject: RE: FOIA Request for Information

I defer to our GC on what to provide you.

From: Joshua Dansby <jdansby@usccr.gov>
Sent: Thursday, November 18, 2021 1:05 PM
To: Mauro Morales <mmorales@usccr.gov>
Cc: David Ganz <dganz@usccr.gov>
Subject: RE: FOIA Request for Information

Mauro,

Your email indicates the "FOIA requests include requests for emails of Commissioners, meeting transcripts, and other records related to USCCR's recent appointment of Cleta

AMERICAN OVERSIGHT

Mitchell to the Election Assistance Commission's (EAC) Board of Advisors." That language is vague – and most FOIA requests are - but I wanted to see the language of the requests to ensure all relevant materials are held so when the time comes for them to be collected and produced by Commission staff (presumably OGC) we are compliant with FOIA. For example, a FOIA production may be underinclusive if, in response to a request for emails, only an email search of our system was conducted (e.g. the language of the request can make a difference as to whether a records requests reaches personal email related to a business topic). Again, I am new here so I do not know your practice, but previously in my governmental positions it was common to circulate the FOIA requests with a hold notice from counsel to ensure compliance.

Either way, please let me know what you decide.

-Joshua

From: Mauro Morales <mmorales@usccr.gov>
Sent: Thursday, November 18, 2021 12:43 PM
To: Joshua Dansby <jdansby@usccr.gov>
Cc: David Ganz <dganz@usccr.gov>
Subject: RE: FOIA Request for Information

Why are you seeking them? You are not involved in their production.

From: Joshua Dansby <jdansby@usccr.gov>
Sent: Thursday, November 18, 2021 12:42 PM
To: Mauro Morales <mmorales@usccr.gov>
Cc: David Ganz <dganz@usccr.gov>
Subject: RE: FOIA Request for Information

Mauro,

Would it be possible to send me a copy of those FOIA requests, please?

-Joshua

From: Mauro Morales <mmorales@usccr.gov>
Sent: Wednesday, November 17, 2021 4:48 PM
To: Commissioners <Commissioners@usccr.gov>
Cc: David Ganz <dganz@usccr.gov>; CommissionerAssistants <CommissionerAssistants@usccr.gov>; ExecutiveStaff <ExecutiveStaff@usccr.gov>
Subject: FOIA Request for Information

Commissioners,

Commissioners,

I want to make you aware of a matter that has developed. Today, November 17, 2021, USCCR has received three (3) Freedom of Information Act (FOIA) requests from several media outlets. These requests are from Reuters, CNN, and Voter Beat. These FOIA requests include requests for emails of Commissioners, meeting transcripts, and other records related to USCCR's recent appointment of Cleta Mitchell to the Election

AMERICAN OVERSIGHT

Assistance Commission's (EAC) Board of Advisors. In the coming weeks, it will be necessary to collect, review, and potentially release the requested records consistent with FOIA, the Privacy Act, and DOJ guidance. I will keep you apprised of OGC's efforts and progress in responding to these requests.

Thank you for your attention to this matter and request.

Mauro Morales
Staff Director
U.S. Commission on Civil Rights
P: 202-376-7796| F: 202-376-7672
Mmorales@usccr.gov
http://usccr.gov/
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425

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OVERSIGHT

OVERSTOCK

Date : 11/18/2021 10:06:11 PM
From : "David Ganz" dganz@usccr.gov
To : "Joshua Dansby" jdansby@usccr.gov, "Mauro Morales" mmorales@usccr.gov
Subject : RE: FOIA Request for Information
Attachment : image001.gif;image002.gif;

I'll discuss this with Mauro. Is it accurate to characterize your below message as standing for the proposition that a FOIA request record is within the scope of a second FOIA request? If so, I am not suggesting that is legally inaccurate, although it would be helpful to provide a more exact citation to the DOJ Guide. I do question whether employees making FOIA requests of their own employers is a beneficial way to conduct routine business.

From: Joshua Dansby <jdansby@usccr.gov>
Sent: Thursday, November 18, 2021 8:22 PM
To: David Ganz <dganz@usccr.gov>; Mauro Morales <mmorales@usccr.gov>
Subject: RE: FOIA Request for Information

I understand your position. To clarify, however, FOIA requests are public "records," as defined by FOIA, once received by an agency. *See* 5 U.S.C. sec. 552(f)(2); *see also Department of Justice Guide to the Freedom Information Act* at 11-18. The fact that they are received by a designated FOIA officer or office in no way grants them confidential status. The law requires that, if someone files a FOIA request about these FOIA requests, the later requests be turned over and that individual would be free to circulate them publicly. If we decide to pursue this issue, we will likely just file a FOIA request as laid out above. Thank you both for your time.

-Joshua

From: David Ganz <dganz@usccr.gov>
Sent: Thursday, November 18, 2021 1:45 PM
To: Mauro Morales <mmorales@usccr.gov>; Joshua Dansby <jdansby@usccr.gov>
Subject: RE: FOIA Request for Information

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AMERICAN OVERSIGHT

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Cc: David Ganz <dganz@usccr.gov>
Subject: RE: FOIA Request for Information

Mauro,

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Either way, please let me know what you decide.

-Joshua

From: Mauro Morales <mmorales@usccr.gov>
Sent: Thursday, November 18, 2021 12:43 PM
To: Joshua Dansby <jdansby@usccr.gov>
Cc: David Ganz <dganz@usccr.gov>
Subject: RE: FOIA Request for Information

Why are you seeking them? You are not involved in their production.

From: Joshua Dansby <jdansby@usccr.gov>
Sent: Thursday, November 18, 2021 12:42 PM
To: Mauro Morales <mmorales@usccr.gov>
Cc: David Ganz <dganz@usccr.gov>
Subject: RE: FOIA Request for Information

Mauro,

Would it be possible to send me a copy of those FOIA requests, please?

-Joshua

From: Mauro Morales <mmorales@usccr.gov>
Sent: Wednesday, November 17, 2021 4:48 PM

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To: Commissioners <Commissioners@usccr.gov>
Cc: David Ganz <dganz@usccr.gov>; CommissionerAssistants <CommissionerAssistants@usccr.gov>; ExecutiveStaff <ExecutiveStaff@usccr.gov>
Subject: FOIA Request for Information

Commissioners,

Commissioners,

I want to make you aware of a matter that has developed. Today, November 17, 2021, USCCR has received three (3) Freedom of Information Act (FOIA) requests from several media outlets. These requests are from Reuters, CNN, and Voter Beat. These FOIA requests include requests for emails of Commissioners, meeting transcripts, and other records related to USCCR's recent appointment of Cleta Mitchell to the Election Assistance Commission's (EAC) Board of Advisors. In the coming weeks, it will be necessary to collect, review, and potentially release the requested records consistent with FOIA, the Privacy Act, and DOJ guidance. I will keep you apprised of OGC's efforts and progress in responding to these requests.

Thank you for your attention to this matter and request.

Mauro Morales
Staff Director
U.S. Commission on Civil Rights
P: 202-376-7796| F: 202-376-7672
Mmorales@usccr.gov
http://usccr.gov/
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425

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OVERSTOCK

Date : 11/17/2021 11:57:48 AM
From : "Angelia Rorison" arorison@usccr.gov
To : "David Ganz" dganz@usccr.gov
Cc : "Mauro Morales" mmorales@usccr.gov
Subject : FW: [EXTERNAL] CNN FOIA request Re: Election Assistance Commission advisory board appointments

FOIA from CNN just came through as well.

From: Jeremy Herb (CNN) <FOIA@cnn.com>
Sent: Wednesday, November 17, 2021 11:57 AM
To: FOIA <foia@usccr.gov>
Cc: jeremy.herb@warnermedia.com
Subject: [EXTERNAL] CNN FOIA request Re: Election Assistance Commission advisory board appointments

CAUTION: This email is from outside USCCR.

Wednesday, November 17, 2021

Commission on Civil Rights
U.S. Commission on Civil Rights
Jennifer Cron Hepler, Attorney-Advisor, Suite 1150
1331 Pennsylvania Ave, NW
Washington, DC 20425
Phone: 202-376-2890
Fax: 202-376-1163
Email: foia@usccr.gov

Re: Election Assistance Commission advisory board appointments

This is a request for records pursuant to the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA").

Requested records

1. All email correspondence related to the commission's appointments to the Electoral Assistance Commission advisory board dating between August 2020 and the present.
2. Email correspondence between Cleta Mitchell and J Christian Adams between August 2020 and the present.

In addition to the records described above, provide any processing notes produced in the course of fulfilling this request and any records that, because of their nature or subject matter, are substantially the same as the records described above and have been previously disclosed, are the subject of currently pending requests or are likely to become the subject of subsequent requests.

Format of requested records

If this request is denied in whole or in part, justify all deletions or withholdings by reference to specific exemptions in the FOIA.

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When possible, produce responsive records in their native, digital formats and include their original metadata, not as hard copy facsimiles or PDFs. For example, spreadsheets created in Microsoft Excel should be provided in an `.xlsx` format. Emails should be provided in common email file formats, such as `.pst` files for collections of emails or `.eml` files for individual emails.

Data should be provided in a non-proprietary, machine-readable format, such as comma separated values (`.csv`). Included is a request for a record layout for the database and a data dictionary for any codes used in the database.

Limitations on fees

Because CNN is a representative of the news media and these records are sought as part of a newsgathering effort, waive or reduce search and duplication fees, where applicable.

If you determine that fees will apply to this request and expect such fees to exceed $500 USD, provide an itemized invoice of fees.

Time limits for response

If you expect this request to take longer than ten (10) working days to process, we expect an acknowledgment letter and tracking number within that time or no later than Wednesday, December 1, 2021.

We expect a final grant/denial determination on this request within twenty (20) working days after receipt by the appropriate office or no later than Wednesday, December 15, 2021.

If you are unable to fulfill this request within that period, produce information as it becomes available (i.e. on a “rolling” basis) and an explanation for the circumstances requiring an extension of time and an estimated date on which you expect to finish processing this request.

Expedited processing

Please expedite processing of this request.

As a journalist for CNN, a global news organization, I am a representative of the news media who is primarily engaged in disseminating the news.

There exists a compelling need for expedited processing of this request because the requested information relates to actual or alleged federal government activity; Specifically: the commission's recent appointment to the advisory board of the Election Assistance Commission.

There is an urgent need to inform the public about this activity because it will help explain the functioning of the federal government.

I hereby certify that the foregoing is true and correct to the best of my knowledge and belief.

We expect a determination regarding this request for expedited treatment within ten (10) calendar days, or no later than Saturday, November 27, 2021.

Please direct questions and responsive information concerning this request to jeremy.herb@warnermedia.com.

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Sincerely,

/s/ Jeremy Herb

Jeremy Herb
Reporter
CNN DC
CNND

o 202.596.4695 **m** 202.596.4695
jeremy.herb@warnermedia.com

820 First St. NE, DC | Washington, D.C. 20002

AMERICAN OVERSIGHT

Date : 11/17/2021 11:57:46 AM
From : "Mauro Morales" mmorales@usccr.gov
To : "Angelia Rorison" arorison@usccr.gov, "David Ganz" dganz@usccr.gov
Subject : RE: [EXTERNAL] Records Request - Cleta Mitchell Nomination

David, Please feel free to call me if you want to discuss. Otherwise, OGC should handle it as a normal FOIA request. Mauro

---

From: Angelia Rorison <arorison@usccr.gov>
Sent: Wednesday, November 17, 2021 11:56 AM
To: David Ganz <dganz@usccr.gov>
Cc: Mauro Morales <mmorales@usccr.gov>
Subject: FW: [EXTERNAL] Records Request - Cleta Mitchell Nomination
Importance: High

FYI – here is a FOIA re: EAC appointment

From: Jessica Huseman <jhuseman@votebeat.org>
Sent: Wednesday, November 17, 2021 11:45 AM
To: FOIA <foia@usccr.gov>
Subject: [EXTERNAL] Records Request - Cleta Mitchell Nomination

> CAUTION: This email is from outside USCCR.

Hello,

This is a request under the Freedom of Information Act.

I request copies of all emailed or written communication related to the nomination and vote on Cleta Mitchell's appointment to the Election Assistance Commission Board of Advisors. Please provide both the notional vote and any discussion of her appointment or the other nominees submitted by the Republican commissioners.

I request that this be given to me on a rolling basis as documents become available. If the commission intends to withhold part of this request or take additional time to consider the release of parts of this request, please release the information you are willing to provide in advance of that consideration.

I am a representative of Votebeat, a news organization, and this information is being collected for distribution to the public and not for commercial purposes.

I request a waiver of all fees for this request. Disclosure of the requested information to me is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in my commercial interest.

Further, **please grant expedited processing for this request.** Cleta Mitchell is currently under investigation in Georgia for her role in a January phone call, and the commission is

AMERICAN OVERSIGHT

meeting on Friday to discuss a second nomination. Because the commission has elected to discuss Ms. Mitchell's nomination only by email and not in public meetings, expedited processing is clearly necessary to offer the public clarity into this decision making.

--
Warmly,

Jessica Huseman
Editorial Director, Votebeat
Cell/Signal: 972-268-1882
@JessicaHuseman

AMERICAN OVERSIGHT

Date : 11/17/2021 11:55:51 AM
From : "Angelia Rorison" arorison@usccr.gov
To : "David Ganz" dganz@usccr.gov
Cc : "Mauro Morales" mmorales@usccr.gov
Subject : FW: [EXTERNAL] Records Request - Cleta Mitchell Nomination

FYI – here is a FOIA re: EAC appointment

From: Jessica Huseman <jhuseman@votebeat.org>
Sent: Wednesday, November 17, 2021 11:45 AM
To: FOIA <foia@usccr.gov>
Subject: [EXTERNAL] Records Request - Cleta Mitchell Nomination

CAUTION: This email is from outside USCCR.

Hello,

This is a request under the Freedom of Information Act.

I request copies of all emailed or written communication related to the nomination and vote on Cleta Mitchell's appointment to the Election Assistance Commission Board of Advisors. Please provide both the notional vote and any discussion of her appointment or the other nominees submitted by the Republican commissioners.

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--
Warmly,

Jessica Huseman
Editorial Director, Votebeat

AMERICAN OVERSIGHT

Cell/Signal: 972-268-1882
@JessicaHuseman

AMERICAN OVERSIGHT

Date : 11/17/2021 12:37:48 PM
From : "Angelia Rorison" arorison@usccr.gov
To : "David Ganz" dganz@usccr.gov
Subject : RE: [EXTERNAL] Records Request - Cleta Mitchell Nomination

FYI – both have requested expedited response. To be honest, I don't know what that means. - Ang

---

From: David Ganz <dganz@usccr.gov>
Sent: Wednesday, November 17, 2021 12:31 PM
To: Mauro Morales <mmorales@usccr.gov>
Cc: Angelia Rorison <arorison@usccr.gov>
Subject: RE: [EXTERNAL] Records Request - Cleta Mitchell Nomination

No need to discuss anything at this point.

I will oversee the initial decision and firewall others from my staff so they can draft any appeal on your behalf.

Ang, is this logged per your normal practice?

From: Mauro Morales <mmorales@usccr.gov>
Sent: Wednesday, November 17, 2021 11:58 AM
To: Angelia Rorison <arorison@usccr.gov>; David Ganz <dganz@usccr.gov>
Subject: RE: [EXTERNAL] Records Request - Cleta Mitchell Nomination

David, Please feel free to call me if you want to discuss. Otherwise, OGC should handle it as a normal FOIA request. Mauro

---

From: Angelia Rorison <arorison@usccr.gov>
Sent: Wednesday, November 17, 2021 11:56 AM
To: David Ganz <dganz@usccr.gov>
Cc: Mauro Morales <mmorales@usccr.gov>
Subject: FW: [EXTERNAL] Records Request - Cleta Mitchell Nomination
Importance: High

FYI – here is a FOIA re: EAC appointment

From: Jessica Huseman <jhuseman@votebeat.org>
Sent: Wednesday, November 17, 2021 11:45 AM
To: FOIA <foia@usccr.gov>
Subject: [EXTERNAL] Records Request - Cleta Mitchell Nomination

> CAUTION: This email is from outside USCCR.

Hello,

AMERICAN OVERSIGHT

This is a request under the Freedom of Information Act.

I request copies of all emailed or written communication related to the nomination and vote on Cleta Mitchell's appointment to the Election Assistance Commission Board of Advisors. Please provide both the notional vote and any discussion of her appointment or the other nominees submitted by the Republican commissioners.

I request that this be given to me on a rolling basis as documents become available. If the commission intends to withhold part of this request or take additional time to consider the release of parts of this request, please release the information you are willing to provide in advance of that consideration.

I am a representative of Votebeat, a news organization, and this information is being collected for distribution to the public and not for commercial purposes.

I request a waiver of all fees for this request. Disclosure of the requested information to me is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in my commercial interest.

Further, **please grant expedited processing for this request.** Cleta Mitchell is currently under investigation in Georgia for her role in a January phone call, and the commission is meeting on Friday to discuss a second nomination. Because the commission has elected to discuss Ms. Mitchell's nomination only by email and not in public meetings, expedited processing is clearly necessary to offer the public clarity into this decision making.

--
Warmly,

Jessica Huseman
Editorial Director, Votebeat
Cell/Signal: 972-268-1882
@JessicaHuseman

AMERICAN OVERSIGHT

Date : 11/17/2021 12:35:56 PM
From : "Angelia Rorison" arorison@usccr.gov
To : "Jessica Huseman" jhuseman@votebeat.org, "FOIA" foia@usccr.gov
Subject : RE: [EXTERNAL] Records Request - Cleta Mitchell Nomination

Dear Jessica Huseman,

This email is to acknowledge receipt of your Freedom of Information Act (FOIA) request to the U.S. Commission on Civil Rights (USCCR). Additionally, I acknowledge your request for expedited response. There are no fees associated with this request.

Angelia Rorison
USCCR FOIA Public Liaison

From: Jessica Huseman <jhuseman@votebeat.org>
Sent: Wednesday, November 17, 2021 11:45 AM
To: FOIA <foia@usccr.gov>
Subject: [EXTERNAL] Records Request - Cleta Mitchell Nomination

> CAUTION: This email is from outside USCCR.

Hello,

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AMERICAN OVERSIGHT

--
Warmly,

Jessica Huseman
Editorial Director, Votebeat
Cell/Signal: 972-268-1882
@JessicaHuseman

AMERICAN OVERSIGHT

Date : 11/17/2021 12:31:11 PM
From : "David Ganz" dganz@usccr.gov
To : "Mauro Morales" mmorales@usccr.gov
Cc : "Angelia Rorison" arorison@usccr.gov
Subject : RE: [EXTERNAL] Records Request - Cleta Mitchell Nomination

No need to discuss anything at this point.

I will oversee the initial decision and firewall others from my staff so they can draft any appeal on your behalf.

Ang, is this logged per your normal practice?

From: Mauro Morales <mmorales@usccr.gov>
Sent: Wednesday, November 17, 2021 11:58 AM
To: Angelia Rorison <arorison@usccr.gov>; David Ganz <dganz@usccr.gov>
Subject: RE: [EXTERNAL] Records Request - Cleta Mitchell Nomination

David, Please feel free to call me if you want to discuss. Otherwise, OGC should handle it as a normal FOIA request. Mauro

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From: Angelia Rorison <arorison@usccr.gov>
Sent: Wednesday, November 17, 2021 11:56 AM
To: David Ganz <dganz@usccr.gov>
Cc: Mauro Morales <mmorales@usccr.gov>
Subject: FW: [EXTERNAL] Records Request - Cleta Mitchell Nomination
Importance: High

FYI – here is a FOIA re: EAC appointment

From: Jessica Huseman <jhuseman@votebeat.org>
Sent: Wednesday, November 17, 2021 11:45 AM
To: FOIA <foia@usccr.gov>
Subject: [EXTERNAL] Records Request - Cleta Mitchell Nomination

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AMERICAN OVERSIGHT

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Warmly,

Jessica Huseman
Editorial Director, Votebeat
Cell/Signal: 972-268-1882
@JessicaHuseman

AMERICAN OVERSIGHT

Date : 11/17/2021 12:32:01 PM
From : "Angelia Rorison" arorison@usccr.gov
To : "David Ganz" dganz@usccr.gov, "Mauro Morales" mmorales@usccr.gov
Subject : RE: [EXTERNAL] Records Request - Cleta Mitchell Nomination

Yep – I will send acknowledgement emails now. Thanks David!

From: David Ganz <dganz@usccr.gov>
Sent: Wednesday, November 17, 2021 12:31 PM
To: Mauro Morales <mmorales@usccr.gov>
Cc: Angelia Rorison <arorison@usccr.gov>
Subject: RE: [EXTERNAL] Records Request - Cleta Mitchell Nomination

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I will oversee the initial decision and firewall others from my staff so they can draft any appeal on your behalf.

Ang, is this logged per your normal practice?

From: Mauro Morales <mmorales@usccr.gov>
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Subject: RE: [EXTERNAL] Records Request - Cleta Mitchell Nomination

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From: Angelia Rorison <arorison@usccr.gov>
Sent: Wednesday, November 17, 2021 11:56 AM
To: David Ganz <dganz@usccr.gov>
Cc: Mauro Morales <mmorales@usccr.gov>
Subject: FW: [EXTERNAL] Records Request - Cleta Mitchell Nomination
Importance: High

FYI – here is a FOIA re: EAC appointment

From: Jessica Huseman <jhuseman@votebeat.org>
Sent: Wednesday, November 17, 2021 11:45 AM
To: FOIA <foia@usccr.gov>
Subject: [EXTERNAL] Records Request - Cleta Mitchell Nomination

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AMERICAN OVERSIGHT

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Warmly,

Jessica Huseman
Editorial Director, Votebeat
Cell/Signal: 972-268-1882
@JessicaHuseman

AMERICAN OVERSIGHT

Date : 11/17/2021 12:34:53 PM
From : "Angelia Rorison" arorison@usccr.gov
To : "jeremy.herb@warnermedia.com" jeremy.herb@warnermedia.com, "FOIA" foia@usccr.gov
Subject : RE: [EXTERNAL] CNN FOIA request Re: Election Assistance Commission advisory board appointments

Dear Jeremy Herb,

This email is to acknowledge receipt of your Freedom of Information Act (FOIA) request to the U.S. Commission on Civil Rights (USCCR). Additionally, I acknowledge your request for expedited response. There are no fees associated with this request.

Angelia Rorison
USCCR FOIA Public Liaison

From: Jeremy Herb (CNN) <FOIA@cnn.com>
Sent: Wednesday, November 17, 2021 11:57 AM
To: FOIA <foia@usccr.gov>
Cc: jeremy.herb@warnermedia.com
Subject: [EXTERNAL] CNN FOIA request Re: Election Assistance Commission advisory board appointments

> CAUTION: This email is from outside USCCR.

Wednesday, November 17, 2021

Commission on Civil Rights
U.S. Commission on Civil Rights
Jennifer Cron Hepler, Attorney-Advisor, Suite 1150
1331 Pennsylvania Ave, NW
Washington, DC 20425
Phone: 202-376-2890
Fax: 202-376-1163
Email: foia@usccr.gov

Re: Election Assistance Commission advisory board appointments

This is a request for records pursuant to the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA").

Requested records

1. All email correspondence related to the commission's appointments to the Electoral Assistance Commission advisory board dating between August 2020 and the present.
2. Email correspondence between Cleta Mitchell and J Christian Adams between August 2020 and the present.

In addition to the records described above, provide any processing notes produced in the course of fulfilling this request and any records that, because of their nature or subject matter, are substantially the same as the records described above and have been previously disclosed, are

AMERICAN OVERSIGHT

the subject of currently pending requests or are likely to become the subject of subsequent requests.

Format of requested records

If this request is denied in whole or in part, justify all deletions or withholdings by reference to specific exemptions in the FOIA.

When possible, produce responsive records in their native, digital formats and include their original metadata, not as hard copy facsimiles or PDFs. For example, spreadsheets created in Microsoft Excel should be provided in an `.xlsx` format. Emails should be provided in common email file formats, such as `.pst` files for collections of emails or `.eml` files for individual emails.

Data should be provided in a non-proprietary, machine-readable format, such as comma separated values (`.csv`). Included is a request for a record layout for the database and a data dictionary for any codes used in the database.

Limitations on fees

Because CNN is a representative of the news media and these records are sought as part of a newsgathering effort, waive or reduce search and duplication fees, where applicable.

If you determine that fees will apply to this request and expect such fees to exceed $500 USD, provide an itemized invoice of fees.

Time limits for response

If you expect this request to take longer than ten (10) working days to process, we expect an acknowledgment letter and tracking number within that time or no later than Wednesday, December 1, 2021.

We expect a final grant/denial determination on this request within twenty (20) working days after receipt by the appropriate office or no later than Wednesday, December 15, 2021.

If you are unable to fulfill this request within that period, produce information as it becomes available (i.e. on a “rolling” basis) and an explanation for the circumstances requiring an extension of time and an estimated date on which you expect to finish processing this request.

Expedited processing

Please expedite processing of this request.

As a journalist for CNN, a global news organization, I am a representative of the news media who is primarily engaged in disseminating the news.

There exists a compelling need for expedited processing of this request because the requested information relates to actual or alleged federal government activity; Specifically: the commission's recent appointment to the advisory board of the Election Assistance Commission.

There is an urgent need to inform the public about this activity because it will help explain the functioning of the federal government.

I hereby certify that the foregoing is true and correct to the best of my knowledge and belief.

AMERICAN OVERSIGHT

We expect a determination regarding this request for expedited treatment within ten (10) calendar days, or no later than Saturday, November 27, 2021.

Please direct questions and responsive information concerning this request to jeremy.herb@warnermedia.com.

Sincerely,

/s/ Jeremy Herb

Jeremy Herb
Reporter
CNN DC
CNND

o 202.596.4695 **m** 202.596.4695
jeremy.herb@warnermedia.com

820 First St. NE, DC | Washington, D.C. 20002

AMERICAN OVERSIGHT

Date : 11/17/2021 1:19:51 PM
From : "David Ganz" dganz@usccr.gov
To : "Andrew Gall" agall@usccr.gov
Subject : FW: [EXTERNAL] CNN FOIA request

Let's discuss.

From: Angelia Rorison <arorison@usccr.gov>
Sent: Wednesday, November 17, 2021 11:58 AM
To: David Ganz <dganz@usccr.gov>
Cc: Mauro Morales <mmorales@usccr.gov>
Subject: FW: [EXTERNAL] CNN FOIA request Re: Election Assistance Commission advisory board appointments

FOIA from CNN just came through as well.

From: Jeremy Herb (CNN) <FOIA@cnn.com>
Sent: Wednesday, November 17, 2021 11:57 AM
To: FOIA <foia@usccr.gov>
Cc: jeremy.herb@warnermedia.com
Subject: [EXTERNAL] CNN FOIA request Re: Election Assistance Commission advisory board appointments

> CAUTION: This email is from outside USCCR.

Wednesday, November 17, 2021

Commission on Civil Rights
U.S. Commission on Civil Rights
Jennifer Cron Hepler, Attorney-Advisor, Suite 1150
1331 Pennsylvania Ave, NW
Washington, DC 20425
Phone: 202-376-2890
Fax: 202-376-1163
Email: foia@usccr.gov

Re: Election Assistance Commission advisory board appointments

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AMERICAN OVERSIGHT

the subject of currently pending requests or are likely to become the subject of subsequent requests.

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I hereby certify that the foregoing is true and correct to the best of my knowledge and belief.

AMERICAN OVERSIGHT

We expect a determination regarding this request for expedited treatment within ten (10) calendar days, or no later than Saturday, November 27, 2021.

Please direct questions and responsive information concerning this request to jeremy.herb@warnermedia.com.

Sincerely,

/s/ Jeremy Herb

Jeremy Herb
Reporter
CNN DC
CNND

o 202.596.4695 **m** 202.596.4695
jeremy.herb@warnermedia.com

820 First St. NE, DC | Washington, D.C. 20002

AMERICAN OVERSIGHT

Date : 11/17/2021 1:22:47 PM
From : "David Ganz" dganz@usccr.gov
To : "Mauro Morales" mmorales@usccr.gov
Subject : RE: [EXTERNAL] CNN FOIA request

Just so you are aware, we are likely going to need to pull the Commissioners' emails so you may wish to inform them of these two (2) FOIA requests outside of monthly report. .

From: David Ganz
Sent: Wednesday, November 17, 2021 1:20 PM
To: Andrew Gall <agall@usccr.gov>
Subject: FW: [EXTERNAL] CNN FOIA request

Let's discuss.

From: Angelia Rorison <arorison@usccr.gov>
Sent: Wednesday, November 17, 2021 11:58 AM
To: David Ganz <dganz@usccr.gov>
Cc: Mauro Morales <mmorales@usccr.gov>
Subject: FW: [EXTERNAL] CNN FOIA request Re: Election Assistance Commission advisory board appointments

FOIA from CNN just came through as well.

From: Jeremy Herb (CNN) <FOIA@cnn.com>
Sent: Wednesday, November 17, 2021 11:57 AM
To: FOIA <foia@usccr.gov>
Cc: jeremy.herb@warnermedia.com
Subject: [EXTERNAL] CNN FOIA request Re: Election Assistance Commission advisory board appointments

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Wednesday, November 17, 2021

Commission on Civil Rights
U.S. Commission on Civil Rights
Jennifer Cron Hepler, Attorney-Advisor, Suite 1150
1331 Pennsylvania Ave, NW
Washington, DC 20425
Phone: 202-376-2890
Fax: 202-376-1163
Email: foia@usccr.gov

Re: Election Assistance Commission advisory board appointments

This is a request for records pursuant to the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA").

Requested records

AMERICAN OVERSIGHT

1. All email correspondence related to the commission's appointments to the Electoral Assistance Commission advisory board dating between August 2020 and the present.
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Format of requested records

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/s/ Jeremy Herb

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Reporter
CNN DC
CNND

o 202.596.4695 **m** 202.596.4695
jeremy.herb@warnermedia.com

820 First St. NE, DC | Washington, D.C. 20002

AMERICAN OVERSIGHT

Date : 11/17/2021 2:33:49 PM
From : "Mauro Morales" mmorales@usccr.gov
To : "David Ganz" dganz@usccr.gov
Cc : "Angelia Rorison" arorison@usccr.gov
Subject : RE: [EXTERNAL] CNN FOIA request

I will. Send a formal notice to me from OCG advising us of the request and our requirement to comply as well as with the attached FOIA demands from both organizations. I will attached those to my email to Commissioners and send it out tonight or tomorrow in am.

From: David Ganz <dganz@usccr.gov>
Sent: Wednesday, November 17, 2021 1:23 PM
To: Mauro Morales <mmorales@usccr.gov>
Subject: RE: [EXTERNAL] CNN FOIA request

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Wednesday, November 17, 2021

Commission on Civil Rights
U.S. Commission on Civil Rights
Jennifer Cron Hepler, Attorney-Advisor, Suite 1150

AMERICAN OVERSIGHT

1331 Pennsylvania Ave, NW
Washington, DC 20425
Phone: 202-376-2890
Fax: 202-376-1163
Email: foia@usccr.gov

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There exists a compelling need for expedited processing of this request because the requested information relates to actual or alleged federal government activity; Specifically: the commission's recent appointment to the advisory board of the Election Assistance Commission.

There is an urgent need to inform the public about this activity because it will help explain the functioning of the federal government.

I hereby certify that the foregoing is true and correct to the best of my knowledge and belief.

We expect a determination regarding this request for expedited treatment within ten (10) calendar days, or no later than Saturday, November 27, 2021.

Please direct questions and responsive information concerning this request to jeremy.herb@warnermedia.com.

Sincerely,

/s/ Jeremy Herb

Jeremy Herb
Reporter
CNN DC
CNND

o 202.596.4695 **m** 202.596.4695
jeremy.herb@warnermedia.com

820 First St. NE, DC | Washington, D.C. 20002

AMERICAN OVERSIGHT

Date : 11/17/2021 4:15:50 PM
From : "David Ganz" dganz@usccr.gov
To : "Mauro Morales" mmorales@usccr.gov
Subject : Notice of FOIA Requests
Attachment : image001.png;

For you to share with Comms and SAs:

Mauro,

Today, November 17, 2021, USCCR has received three (3) FOIA requests from media outlets. These requests are from Reuters, CNN, and Voter Beat. These FOIA requests include requests for emails of Commissioners, meeting transcripts, and other records related to USCCR's recent appointment of Cleta Mitchell to the Election Assistance Commission's Board of Advisors. In the coming weeks, it will be necessary to collect, review, and potentially release the requested records consistent with FOIA, the Privacy Act, and DOJ guidance. I will keep you apprised of OGC's efforts and progress. Thanks,

David

David Ganz
General Counsel, Office of the General Counsel
U.S. Commission on Civil Rights
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425
(617) 669-6413

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AMERICAN OVERSIGHT

C005351
AMERICAN OVERSIGHT

Date : 11/17/2021 4:47:49 PM
From : "Mauro Morales" mmorales@usccr.gov
To : "Commissioners" Commissioners@usccr.gov
Cc : "David Ganz" dganz@usccr.gov, "CommissionerAssistants" CommissionerAssistants@usccr.gov, "ExecutiveStaff" ExecutiveStaff@usccr.gov
Subject : FOIA Request for Information
Attachment : image001.gif;image002.gif;

Commissioners,

Commissioners,

I want to make you aware of a matter that has developed. Today, November 17, 2021, USCCR has received three (3) Freedom of Information Act (FOIA) requests from several media outlets. These requests are from Reuters, CNN, and Voter Beat. These FOIA requests include requests for emails of Commissioners, meeting transcripts, and other records related to USCCR's recent appointment of Cleta Mitchell to the Election Assistance Commission's (EAC) Board of Advisors. In the coming weeks, it will be necessary to collect, review, and potentially release the requested records consistent with FOIA, the Privacy Act, and DOJ guidance. I will keep you apprised of OGC's efforts and progress in responding to these requests.

Thank you for your attention to this matter and request.

Mauro Morales
Staff Director
U.S. Commission on Civil Rights
P: 202-376-7796| F: 202-376-7672
Mmorales@usccr.gov
http://usccr.gov/
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425

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#USCCR

AMERICAN OVERSIGHT

OVERSIGHT

OVERSTOCK

Date : 11/18/2021 8:19:36 AM
From : "Angelia Rorison" arorison@usccr.gov
To : "Michele Ramey" myorkman@usccr.gov
Subject : RE: FOIA requests today
Attachment : image001.png;

Hey Michele – I am not sure why this request was so cryptic. Here is the background:

There has been a ton of public backlash on the decision to appoint Cleta Mitchell by Republicans to the Election Assistance Commission Board of Advisors. So media have all requested expedited processing of emails by Commissioners on a few key terms.

He did not share what those are for some reason and gave this hypothetical, "can you do this." Which I was very confused about yesterday.

Because these have been requested by media, they need to be addressed as soon as you are able. Sorry, this has fallen on you at such a busy time. The Commission is getting lots of negative attention on this so we hope fulfilling these requests will satisfy folks.

Hope this background info helps and I would be happy to jump on call if you like to discuss,
Ang

From: Michele Ramey <myorkman@usccr.gov>
Sent: Thursday, November 18, 2021 5:00 AM
To: David Ganz <dganz@usccr.gov>
Cc: Mauro Morales <mmorales@usccr.gov>; Angelia Rorison <arorison@usccr.gov>; Pamela Dunston <Pdunston@usccr.gov>; TinaLouise Martin <tmartin@usccr.gov>
Subject: RE: FOIA requests today

I have upcoming leave. What is the complete by date?

From: David Ganz <dganz@usccr.gov>
Sent: Wednesday, November 17, 2021 8:03 PM
To: Michele Ramey <myorkman@usccr.gov>
Cc: Mauro Morales <mmorales@usccr.gov>; Angelia Rorison <arorison@usccr.gov>; Pamela Dunston <Pdunston@usccr.gov>; TinaLouise Martin <tmartin@usccr.gov>
Subject: RE: FOIA requests today

Outstanding to hear we can cull down the data set on the front end with keywords. I was worried my staff would have tens of thousands of documents to review for potential relevance. I will send you the custodians, date ranges, and keywords tomorrow.

From: Michele Ramey <myorkman@usccr.gov>
Sent: Wednesday, November 17, 2021 6:57 PM
To: David Ganz <dganz@usccr.gov>
Cc: Mauro Morales <mmorales@usccr.gov>; Angelia Rorison <arorison@usccr.gov>; Pamela Dunston <Pdunston@usccr.gov>; TinaLouise Martin <tmartin@usccr.gov>
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AMERICAN OVERSIGHT

David:

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MYR

From: David Ganz <dganz@usccr.gov>
Sent: Wednesday, November 17, 2021 3:06 PM
To: Michele Ramey <myorkman@usccr.gov>
Cc: Mauro Morales <mmorales@usccr.gov>; Angelia Rorison <arorison@usccr.gov>
Subject: RE: FOIA requests today

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Subject: FOIA requests today

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AMERICAN OVERSIGHT

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AMERICAN OVERSIGHT

UNITED STATES COMMISSION ON CIVIL RIGHTS
C005358

Date : 11/18/2021 9:19:29 AM
From : "Michele Ramey" myorkman@usccr.gov
To : "Angelia Rorison" arorison@usccr.gov
Subject : Re: FOIA requests today
Attachment : image001.png;

Thanks. I am still taking leave. The earlier I get the exact keywords the better. I agree with you . Yesterday with exact information would have been better. Once I get the amount of data I can determine when I get it done. I do have a contractor on standby to assist

Sent from my iPad

> On Nov 18, 2021, at 8:19 AM, Angelia Rorison <arorison@usccr.gov> wrote:
>
> Hey Michele – I am not sure why this request was so cryptic. Here is the background:
>
> There has been a ton of public backlash on the decision to appoint Cleta Mitchell by Republicans to the Election Assistance Commission Board of Advisors. So media have all requested expedited processing of emails by Commissioners on a few key terms.
>
> He did not share what those are for some reason and gave this hypothetical, "can you do this." Which I was very confused about yesterday.
>
> Because these have been requested by media, they need to be addressed as soon as you are able. Sorry, this has fallen on you at such a busy time. The Commission is getting lots of negative attention on this so we hope fulfilling these requests will satisfy folks.
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> Hope this background info helps and I would be happy to jump on call if you like to discuss,
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>
> ---
>
> **From:** Michele Ramey <myorkman@usccr.gov>
> **Sent:** Thursday, November 18, 2021 5:00 AM
> **To:** David Ganz <dganz@usccr.gov>
> **Cc:** Mauro Morales <mmorales@usccr.gov>; Angelia Rorison <arorison@usccr.gov>; Pamela Dunston <Pdunston@usccr.gov>; TinaLouise Martin <tmartin@usccr.gov>
> **Subject:** RE: FOIA requests today
>
> I have upcoming leave. What is the complete by date?
>
> ---
>
> **From:** David Ganz <dganz@usccr.gov>
> **Sent:** Wednesday, November 17, 2021 8:03 PM

AMERICAN OVERSIGHT

To: Michele Ramey <myorkman@usccr.gov>
Cc: Mauro Morales <mmorales@usccr.gov>; Angelia Rorison <arorison@usccr.gov>; Pamela Dunston <Pdunston@usccr.gov>; TinaLouise Martin <tmartin@usccr.gov>
Subject: RE: FOIA requests today

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Cc: Mauro Morales <mmorales@usccr.gov>; Angelia Rorison <arorison@usccr.gov>; Pamela Dunston <Pdunston@usccr.gov>; TinaLouise Martin <tmartin@usccr.gov>
Subject: RE: FOIA requests today

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MYR

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Sent: Wednesday, November 17, 2021 3:06 PM
To: Michele Ramey <myorkman@usccr.gov>
Cc: Mauro Morales <mmorales@usccr.gov>; Angelia Rorison <arorison@usccr.gov>
Subject: RE: FOIA requests today

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AMERICAN OVERSIGHT

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AMERICAN OVERSIGHT

C005362

AMERICAN OVERSIGHT

Date : 11/18/2021 9:22:36 AM
From : "Angelia Rorison" arorison@usccr.gov
To : "Michele Ramey" myorkman@usccr.gov
Subject : RE: FOIA requests today

You absolutely should take your leave! AND ENJOY IT☐the circus will still be here!

If David doesn't send it soon, I will get on him to do it asap so you can get everything set up as needed.

Ang

From: Michele Ramey <myorkman@usccr.gov>
Sent: Thursday, November 18, 2021 9:19 AM
To: Angelia Rorison <arorison@usccr.gov>
Subject: Re: FOIA requests today

Thanks. I am still taking leave. The earlier I get the exact keywords the better. I agree with you . Yesterday with exact information would have been better. Once I get the amount of data I can determine when I get it done. I do have a contractor on standby to assist

Sent from my iPad

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>
> ---
>
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> **Sent:** Thursday, November 18, 2021 5:00 AM
> **To:** David Ganz <dganz@usccr.gov>

AMERICAN OVERSIGHT

Cc: Mauro Morales <mmorales@usccr.gov>; Angelia Rorison <arorison@usccr.gov>; Pamela Dunston <Pdunston@usccr.gov>; TinaLouise Martin <tmartin@usccr.gov>
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Subject: RE: FOIA requests today

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Cc: Mauro Morales <mmorales@usccr.gov>; Angelia Rorison <arorison@usccr.gov>; Pamela Dunston <Pdunston@usccr.gov>; TinaLouise Martin <tmartin@usccr.gov>
Subject: RE: FOIA requests today

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MYR

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Subject: RE: FOIA requests today

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AMERICAN OVERSIGHT

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Subject: FOIA requests today

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AMERICAN OVERSIGHT

Date : 11/18/2021 12:24:16 PM
From : "David Ganz" dganz@usccr.gov
To : "Mauro Morales" mmorales@usccr.gov
Subject : RE: FOIA requests today
Attachment : image001.png;

DRAFT:

Hi Michele,

Here is what we need to have pulled for the current FOIAs and to capture potential responsive documents for future FOIA requests related to the same subject matter.

All email correspondence sent or received from all USCCR employees (all career staff, SAs, and Commissioners) to anyone with the following words or phrases "Election Assistance Commission" or "Board of Advisors" or "Cleta" or "Mitchell" from 8/1/20 to 11/18/21. If you are wondering, Adams was appointed in August 2020. The EAC asked us about appointments in March 2021, but one of the FOIA requests covers the period of 8/1/20 to the present so it is better to err on the side of caution. There is also a request for the following two items from the FOIA requests, but I believe the above request covers them:

1. All sent or received from Adams and Cantu to anyone from 1/1/21 to 4/29/21 with the words 'Mitchell' or 'Cleta.'
2. All sent or received from Adams to Mitchell from 8/1/20 to 11/18/21.

There is also a request for the following but I believe these are publicly available:

1. Copies of all meeting minutes of the April 30, 2021 vote to appoint Cleta Mitchell to the EAC.
2. Copies of all meeting minutes between Jan. 1, 2021 and April 29, 2021 that mention Cleta Mitchell ("Cleta," "Mitchell").

From: Michele Ramey <myorkman@usccr.gov>
Sent: Thursday, November 18, 2021 5:00 AM
To: David Ganz <dganz@usccr.gov>
Cc: Mauro Morales <mmorales@usccr.gov>; Angelia Rorison <arorison@usccr.gov>; Pamela Dunston <Pdunston@usccr.gov>; TinaLouise Martin <tmartin@usccr.gov>
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Sent: Wednesday, November 17, 2021 8:03 PM

AMERICAN OVERSIGHT

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AMERICAN OVERSIGHT

C005369
AMERICAN OVERSIGHT

Date : 11/18/2021 12:40:26 PM
From : "David Ganz" dganz@usccr.gov
To : "Michele Ramey" myorkman@usccr.gov
Cc : "Mauro Morales" mmorales@usccr.gov, "Angelia Rorison" arorison@usccr.gov, "Pamela Dunston" Pdunston@usccr.gov, "TinaLouise Martin" tmartin@usccr.gov
Subject : RE: FOIA requests today
Attachment : image001.png;

Hi Michele,

Here is what we need to have pulled for the current FOIAs and to capture potential responsive documents for future FOIA requests related to the same subject matter.

All email correspondence sent or received from all USCCR employees (all career staff, SAs, and Commissioners) to anyone with the following words or phrases "Election Assistance Commission" or "Board of Advisors" or "Cleta" or "Mitchell" from **8/1/20 to the present (11/18/21).**

If you are wondering, Adams was appointed in August 2020. The EAC asked us about appointments as early as January 2021, but one of the FOIA requests covers the period of 8/1/20 to the present so it is better to err on the side of caution. There is also a request for the following two items from the FOIA requests, but I believe the above request covers them; if you disagree:

1. All sent or received from Adams and Cantu to anyone from 1/1/21 to 4/29/21 with the words 'Mitchell' or 'Cleta.'
2. All sent or received from Adams to Mitchell from 8/1/20 to 11/18/21.

There is no complete date, but please try to get us this ASAP as it has become a priority. Getting us documents on a rolling basis would be very helpful. My cell is 617 669 6413.

From: Michele Ramey <myorkman@usccr.gov>
Sent: Thursday, November 18, 2021 5:00 AM
To: David Ganz <dganz@usccr.gov>
Cc: Mauro Morales <mmorales@usccr.gov>; Angelia Rorison <arorison@usccr.gov>; Pamela Dunston <Pdunston@usccr.gov>; TinaLouise Martin <tmartin@usccr.gov>
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Sent: Wednesday, November 17, 2021 2:35 PM
To: Michele Ramey <myorkman@usccr.gov>
Cc: Mauro Morales <mmorales@usccr.gov>; Angelia Rorison <arorison@usccr.gov>
Subject: FOIA requests today

Hey Michele, we received two FOIA requests today from media requesters. Can you pull documents using keywords, i.e., all documents sent by Chair Cantu that contains the word 'removal' or phrase 'White House'? If not, we can request documents from custodians in lieu of pulling everything down from Outlook.

David Ganz
General Counsel, Office of the General Counsel
U.S. Commission on Civil Rights
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425
(617) 669-6413

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Established as an independent, bipartisan, fact-finding federal agency, our mission is to inform the development of national civil rights policy and enhance enforcement of federal civil rights laws. We pursue this mission by studying alleged deprivations of voting rights and alleged discrimination based on race, color, religion, sex, age, disability, or national origin, or in the administration of justice. We play a vital role in advancing civil rights through objective and comprehensive investigation, research, and analysis on issues of fundamental concern to the federal government and the public.

AMERICAN OVERSIGHT

C005373
AMERICAN OVERSIGHT

Date : 11/18/2021 12:41:57 PM
From : "Joshua Dansby" jdansby@usccr.gov
To : "Mauro Morales" mmorales@usccr.gov
Cc : "David Ganz" dganz@usccr.gov
Subject : RE: FOIA Request for Information
Attachment : image001.gif;image002.gif;

Mauro,

Would it be possible to send me a copy of those FOIA requests, please?

-Joshua

From: Mauro Morales <mmorales@usccr.gov>
Sent: Wednesday, November 17, 2021 4:48 PM
To: Commissioners <Commissioners@usccr.gov>
Cc: David Ganz <dganz@usccr.gov>; CommissionerAssistants <CommissionerAssistants@usccr.gov>; ExecutiveStaff <ExecutiveStaff@usccr.gov>
Subject: FOIA Request for Information

Commissioners,

Commissioners,

I want to make you aware of a matter that has developed. Today, November 17, 2021, USCCR has received three (3) Freedom of Information Act (FOIA) requests from several media outlets. These requests are from Reuters, CNN, and Voter Beat. These FOIA requests include requests for emails of Commissioners, meeting transcripts, and other records related to USCCR's recent appointment of Cleta Mitchell to the Election Assistance Commission's (EAC) Board of Advisors. In the coming weeks, it will be necessary to collect, review, and potentially release the requested records consistent with FOIA, the Privacy Act, and DOJ guidance. I will keep you apprised of OGC's efforts and progress in responding to these requests.

Thank you for your attention to this matter and request.

Mauro Morales
Staff Director
U.S. Commission on Civil Rights
P: 202-376-7796| F: 202-376-7672
Mmorales@usccr.gov
http://usccr.gov/
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425

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AMERICAN OVERSIGHT

OVERSIGHT

OVERSTOCK

Date : 11/18/2021 12:38:37 PM
From : "David Ganz" dganz@usccr.gov
To : "Mauro Morales" mmorales@usccr.gov
Subject : RE: EAC Board of Advisors - USCCR Appointees

No need for that time period.

From: Mauro Morales <mmorales@usccr.gov>
Sent: Thursday, November 18, 2021 12:38 PM
To: David Ganz <dganz@usccr.gov>
Subject: RE: EAC Board of Advisors - USCCR Appointees

I may have some before when Lhamon made appointments two years ago. But for these two appointments it was 1-13-21

From: David Ganz <dganz@usccr.gov>
Sent: Thursday, November 18, 2021 12:36 PM
To: Mauro Morales <mmorales@usccr.gov>
Subject: RE: EAC Board of Advisors - USCCR Appointees

So your earliest communication is 1/13/21; if we use the time frame of 8/1/20 to the present than there is no chance of any error so lets do that.

From: Mauro Morales <mmorales@usccr.gov>
Sent: Thursday, November 18, 2021 12:26 PM
To: David Ganz <dganz@usccr.gov>
Subject: FW: EAC Board of Advisors - USCCR Appointees

From: Kevin Rayburn <KRayburn@eac.gov>
Sent: Wednesday, January 13, 2021 3:46 PM
To: Pilar McLaughlin <pmclaughlin@usccr.gov>; Mauro Morales <mmorales@usccr.gov>
Subject: [EXTERNAL] FW: EAC Board of Advisors - USCCR Appointees

> CAUTION: This email is from outside USCCR.

Thank you. I have attached the letter I referenced as well as prior correspondence between the EAC and USCCR for your awareness.

Sincerely,

Kevin Rayburn, General Counsel
U.S. Election Assistance Commission
Mobile: (202) 740-6546

AMERICAN OVERSIGHT

From: Pilar McLaughlin <pmclaughlin@usccr.gov>
Sent: Wednesday, January 13, 2021 3:40 PM
To: Kevin Rayburn <KRayburn@eac.gov>
Cc: Mauro Morales <mmorales@usccr.gov>
Subject: RE: EAC Board of Advisors - USCCR Appointees

Hi Kevin:

I've copied our acting General Counsel, Mauro Morales, on my response. Let me see when he is available to discuss.

Thank you,
Pilar

From: Kevin Rayburn <KRayburn@eac.gov>
Sent: Wednesday, January 13, 2021 1:08 PM
To: Pilar McLaughlin <pmclaughlin@usccr.gov>
Subject: [EXTERNAL] EAC Board of Advisors - USCCR Appointees

> CAUTION: This email is from outside USCCR.

Good Afternoon Ms. McLaughlin,

I am the General Counsel for the U.S. Election Assistance Commission, and we recently received the attached correspondence from 4 of the Commissioners of USCCR. I am reaching out to see if you have any time tomorrow (Jan 14) or Friday (Jan 15) to briefly discuss the letter and the USCCR process of selecting its two statutory appointments to our Board of Advisors. My availability is below:

Thursday January 14: (8AM – Noon), (2:30PM – 6:00PM)
Friday January 15: All day

I don't anticipate needing more than 15 minutes of your time. I look forward to hearing back from you.

Sincerely,

Kevin Rayburn, General Counsel
U.S. Election Assistance Commission
Mobile: (202) 740-6546

AMERICAN OVERSIGHT

Date : 11/18/2021 12:38:16 PM
From : "Mauro Morales" mmorales@usccr.gov
To : "David Ganz" dganz@usccr.gov
Subject : RE: EAC Board of Advisors - USCCR Appointees

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From: David Ganz <dganz@usccr.gov>
Sent: Thursday, November 18, 2021 12:36 PM
To: Mauro Morales <mmorales@usccr.gov>
Subject: RE: EAC Board of Advisors - USCCR Appointees

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Sent: Thursday, November 18, 2021 12:26 PM
To: David Ganz <dganz@usccr.gov>
Subject: FW: EAC Board of Advisors - USCCR Appointees

From: Kevin Rayburn <KRayburn@eac.gov>
Sent: Wednesday, January 13, 2021 3:46 PM
To: Pilar McLaughlin <pmclaughlin@usccr.gov>; Mauro Morales <mmorales@usccr.gov>
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Kevin Rayburn, General Counsel
U.S. Election Assistance Commission
Mobile: (202) 740-6546

AMERICAN OVERSIGHT

Date : 11/18/2021 12:36:15 PM
From : "David Ganz" dganz@usccr.gov
To : "Mauro Morales" mmorales@usccr.gov
Subject : RE: EAC Board of Advisors - USCCR Appointees

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From: Mauro Morales <mmorales@usccr.gov>
Sent: Thursday, November 18, 2021 12:26 PM
To: David Ganz <dganz@usccr.gov>
Subject: FW: EAC Board of Advisors - USCCR Appointees

From: Kevin Rayburn <KRayburn@eac.gov>
Sent: Wednesday, January 13, 2021 3:46 PM
To: Pilar McLaughlin <pmclaughlin@usccr.gov>; Mauro Morales <mmorales@usccr.gov>
Subject: [EXTERNAL] FW: EAC Board of Advisors - USCCR Appointees

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Hi Kevin:

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Sent: Wednesday, January 13, 2021 1:08 PM

AMERICAN OVERSIGHT

To: Pilar McLaughlin <pmclaughlin@usccr.gov>
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CAUTION: This email is from outside USCCR.

Good Afternoon Ms. McLaughlin,

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Thursday January 14: (8AM – Noon), (2:30PM – 6:00PM)
Friday January 15: All day

I don't anticipate needing more than 15 minutes of your time. I look forward to hearing back from you.

Sincerely,

Kevin Rayburn, General Counsel
U.S. Election Assistance Commission
Mobile: (202) 740-6546

AMERICAN OVERSIGHT

Date : 11/18/2021 12:52:50 PM
From : "Michele Ramey" myorkman@usccr.gov
To : "David Ganz" dganz@usccr.gov
Cc : "Mauro Morales" mmorales@usccr.gov, "Angelia Rorison" arorison@usccr.gov, "Pamela Dunston" Pdunston@usccr.gov, "TinaLouise Martin" tmartin@usccr.gov
Subject : RE: FOIA requests today
Attachment : image001.png;

Thank you. I will get back to you with the preliminary numbers of emails for:

All email correspondence sent or received from all USCCR employees (all career staff, SAs, and Commissioners) to anyone with the following words or phrases "Election Assistance Commission" or "Board of Advisors" or "Cleta" or "Mitchell" from **8/1/20 to the present (11/18/21).**

From: David Ganz <dganz@usccr.gov>
Sent: Thursday, November 18, 2021 12:40 PM
To: Michele Ramey <myorkman@usccr.gov>
Cc: Mauro Morales <mmorales@usccr.gov>; Angelia Rorison <arorison@usccr.gov>; Pamela Dunston <Pdunston@usccr.gov>; TinaLouise Martin <tmartin@usccr.gov>
Subject: RE: FOIA requests today

Hi Michele,

Here is what we need to have pulled for the current FOIAs and to capture potential responsive documents for future FOIA requests related to the same subject matter.

All email correspondence sent or received from all USCCR employees (all career staff, SAs, and Commissioners) to anyone with the following words or phrases "Election Assistance Commission" or "Board of Advisors" or "Cleta" or "Mitchell" from **8/1/20 to the present (11/18/21).**

If you are wondering, Adams was appointed in August 2020. The EAC asked us about appointments as early as January 2021, but one of the FOIA requests covers the period of 8/1/20 to the present so it is better to err on the side of caution. There is also a request for the following two items from the FOIA requests, but I believe the above request covers them; if you disagree:

1. All sent or received from Adams and Cantu to anyone from 1/1/21 to 4/29/21 with the words 'Mitchell' or 'Cleta.'
2. All sent or received from Adams to Mitchell from 8/1/20 to 11/18/21.

There is no complete date, but please try to get us this ASAP as it has become a priority. Getting us documents on a rolling basis would be very helpful. My cell is 617 669 6413.

AMERICAN OVERSIGHT

From: Michele Ramey <myorkman@usccr.gov>
Sent: Thursday, November 18, 2021 5:00 AM
To: David Ganz <dganz@usccr.gov>
Cc: Mauro Morales <mmorales@usccr.gov>; Angelia Rorison <arorison@usccr.gov>; Pamela Dunston <Pdunston@usccr.gov>; TinaLouise Martin <tmartin@usccr.gov>
Subject: RE: FOIA requests today

I have upcoming leave. What is the complete by date?

From: David Ganz <dganz@usccr.gov>
Sent: Wednesday, November 17, 2021 8:03 PM
To: Michele Ramey <myorkman@usccr.gov>
Cc: Mauro Morales <mmorales@usccr.gov>; Angelia Rorison <arorison@usccr.gov>; Pamela Dunston <Pdunston@usccr.gov>; TinaLouise Martin <tmartin@usccr.gov>
Subject: RE: FOIA requests today

Outstanding to hear we can cull down the data set on the front end with keywords. I was worried my staff would have tens of thousands of documents to review for potential relevance. I will send you the custodians, date ranges, and keywords tomorrow.

From: Michele Ramey <myorkman@usccr.gov>
Sent: Wednesday, November 17, 2021 6:57 PM
To: David Ganz <dganz@usccr.gov>
Cc: Mauro Morales <mmorales@usccr.gov>; Angelia Rorison <arorison@usccr.gov>; Pamela Dunston <Pdunston@usccr.gov>; TinaLouise Martin <tmartin@usccr.gov>
Subject: RE: FOIA requests today

David:

Yes, we can search for emails using keywords. Please see the attached sample. If the files are on the shared drive then you search by keywords but it will bring up many documents. Also some users don't follow agency policy and save their files on the share drive.

MYR

From: David Ganz <dganz@usccr.gov>
Sent: Wednesday, November 17, 2021 3:06 PM
To: Michele Ramey <myorkman@usccr.gov>
Cc: Mauro Morales <mmorales@usccr.gov>; Angelia Rorison <arorison@usccr.gov>
Subject: RE: FOIA requests today

Just to clarify, the below are not the search terms for these FOIAs, but rather examples about our search term capabilities.

From: David Ganz
Sent: Wednesday, November 17, 2021 2:35 PM
To: Michele Ramey <myorkman@usccr.gov>
Cc: Mauro Morales <mmorales@usccr.gov>; Angelia Rorison <arorison@usccr.gov>
Subject: FOIA requests today

AMERICAN OVERSIGHT

Hey Michele, we received two FOIA requests today from media requesters. Can you pull documents using keywords, i.e., all documents sent by Chair Cantu that contains the word 'removal' or phrase 'White House'? If not, we can request documents from custodians in lieu of pulling everything down from Outlook.

David Ganz
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U.S. Commission on Civil Rights
1331 Pennsylvania Avenue, NW Suite 1150
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(617) 669-6413

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Established as an independent, bipartisan, fact-finding federal agency, our mission is to inform the development of national civil rights policy and enhance enforcement of federal civil rights laws. We pursue this mission by studying alleged deprivations of voting rights and alleged discrimination based on race, color, religion, sex, age, disability, or national origin, or in the administration of justice. We play a vital role in advancing civil rights through objective and comprehensive investigation, research, and analysis on issues of fundamental concern to the federal government and the public.

AMERICAN OVERSIGHT

UNITED STATES COMMISSION ON CIVIL RIGHTS
C005386

Date : 11/18/2021 12:43:23 PM
From : "Mauro Morales" mmorales@usccr.gov
To : "Joshua Dansby" jdansby@usccr.gov
Cc : "David Ganz" dganz@usccr.gov
Subject : RE: FOIA Request for Information
Attachment : image001.gif;image002.gif;

Why are you seeking them? You are not involved in their production.

From: Joshua Dansby <jdansby@usccr.gov>
Sent: Thursday, November 18, 2021 12:42 PM
To: Mauro Morales <mmorales@usccr.gov>
Cc: David Ganz <dganz@usccr.gov>
Subject: RE: FOIA Request for Information

Mauro,

Would it be possible to send me a copy of those FOIA requests, please?

-Joshua

From: Mauro Morales <mmorales@usccr.gov>
Sent: Wednesday, November 17, 2021 4:48 PM
To: Commissioners <Commissioners@usccr.gov>
Cc: David Ganz <dganz@usccr.gov>; CommissionerAssistants <CommissionerAssistants@usccr.gov>; ExecutiveStaff <ExecutiveStaff@usccr.gov>
Subject: FOIA Request for Information

Commissioners,

Commissioners,

I want to make you aware of a matter that has developed. Today, November 17, 2021, USCCR has received three (3) Freedom of Information Act (FOIA) requests from several media outlets. These requests are from Reuters, CNN, and Voter Beat. These FOIA requests include requests for emails of Commissioners, meeting transcripts, and other records related to USCCR's recent appointment of Cleta Mitchell to the Election Assistance Commission's (EAC) Board of Advisors. In the coming weeks, it will be necessary to collect, review, and potentially release the requested records consistent with FOIA, the Privacy Act, and DOJ guidance. I will keep you apprised of OGC's efforts and progress in responding to these requests.

Thank you for your attention to this matter and request.

Mauro Morales
Staff Director
U.S. Commission on Civil Rights
P: 202-376-7796| F: 202-376-7672
Mmorales@usccr.gov
http://usccr.gov/

AMERICAN OVERSIGHT

1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425

Follow Us on Twitter & Facebook:

#USCCR

AMERICAN OVERSIGHT

OVERSIGHT

OVERSTOCK

Date : 11/18/2021 1:04:34 PM
From : "Joshua Dansby" jdansby@usccr.gov
To : "Mauro Morales" mmorales@usccr.gov
Cc : "David Ganz" dganz@usccr.gov
Subject : RE: FOIA Request for Information
Attachment : image001.gif;image002.gif;

Mauro,

Your email indicates the "FOIA requests include requests for emails of Commissioners, meeting transcripts, and other records related to USCCR's recent appointment of Cleta Mitchell to the Election Assistance Commission's (EAC) Board of Advisors." That language is vague – and most FOIA requests are - but I wanted to see the language of the requests to ensure all relevant materials are held so when the time comes for them to be collected and produced by Commission staff (presumably OGC) we are compliant with FOIA. For example, a FOIA production may be underinclusive if, in response to a request for emails, only an email search of our system was conducted (e.g. the language of the request can make a difference as to whether a records requests reaches personal email related to a business topic). Again, I am new here so I do not know your practice, but previously in my governmental positions it was common to circulate the FOIA requests with a hold notice from counsel to ensure compliance.

Either way, please let me know what you decide.

-Joshua

From: Mauro Morales <mmorales@usccr.gov>
Sent: Thursday, November 18, 2021 12:43 PM
To: Joshua Dansby <jdansby@usccr.gov>
Cc: David Ganz <dganz@usccr.gov>
Subject: RE: FOIA Request for Information

Why are you seeking them? You are not involved in their production.

From: Joshua Dansby <jdansby@usccr.gov>
Sent: Thursday, November 18, 2021 12:42 PM
To: Mauro Morales <mmorales@usccr.gov>
Cc: David Ganz <dganz@usccr.gov>
Subject: RE: FOIA Request for Information

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AMERICAN OVERSIGHT

Subject: FOIA Request for Information

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Washington D.C. 20425

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AMERICAN OVERSIGHT

OVERSIGHT

OVERSTOCK

Date : 11/18/2021 1:25:51 PM
From : "Mauro Morales" mmorales@usccr.gov
To : "Joshua Dansby" jdansby@usccr.gov
Cc : "David Ganz" dganz@usccr.gov
Subject : RE: FOIA Request for Information
Attachment : image001.gif;image002.gif;

I defer to our GC on what to provide you.

From: Joshua Dansby <jdansby@usccr.gov>
Sent: Thursday, November 18, 2021 1:05 PM
To: Mauro Morales <mmorales@usccr.gov>
Cc: David Ganz <dganz@usccr.gov>
Subject: RE: FOIA Request for Information

Mauro,

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http://usccr.gov/
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Washington D.C. 20425

Follow Us on Twitter & Facebook:
#USCCR

AMERICAN OVERSIGHT

OVERSIGHT

OVERSTOCK

Date : 11/18/2021 1:44:33 PM
From : "David Ganz" dganz@usccr.gov
To : "Mauro Morales" mmorales@usccr.gov, "Joshua Dansby" jdansby@usccr.gov
Subject : RE: FOIA Request for Information
Attachment : image001.gif;image002.gif;

Josh, I do not think it is appropriate or necessary to provide the actual FOIA requests to you or other SAs or Commissioners as, per USCCR's FOIA regulations and delegations of authority, our office handles FOIA requests and the documents are non-public in the sense they were sent specifically to our office and therefore I would not want them to be circulated publicly. I say the foregoing with the utmost respect for you and your colleagues. Please call my cell at 617 669 6413 if you have any questions about this. Thanks,

David

From: Mauro Morales <mmorales@usccr.gov>
Sent: Thursday, November 18, 2021 1:26 PM
To: Joshua Dansby <jdansby@usccr.gov>
Cc: David Ganz <dganz@usccr.gov>
Subject: RE: FOIA Request for Information

I defer to our GC on what to provide you.

From: Joshua Dansby <jdansby@usccr.gov>
Sent: Thursday, November 18, 2021 1:05 PM
To: Mauro Morales <mmorales@usccr.gov>
Cc: David Ganz <dganz@usccr.gov>
Subject: RE: FOIA Request for Information

Mauro,

Your email indicates the "FOIA requests include requests for emails of Commissioners, meeting transcripts, and other records related to USCCR's recent appointment of Cleta Mitchell to the Election Assistance Commission's (EAC) Board of Advisors." That language is vague – and most FOIA requests are - but I wanted to see the language of the requests to ensure all relevant materials are held so when the time comes for them to be collected and produced by Commission staff (presumably OGC) we are compliant with FOIA. For example, a FOIA production may be underinclusive if, in response to a request for emails, only an email search of our system was conducted (e.g. the language of the request can make a difference as to whether a records requests reaches personal email related to a business topic). Again, I am new here so I do not know your practice, but previously in my governmental positions it was common to circulate the FOIA requests with a hold notice from counsel to ensure compliance.

Either way, please let me know what you decide.

-Joshua

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From: Mauro Morales <mmorales@usccr.gov>
Sent: Thursday, November 18, 2021 12:43 PM
To: Joshua Dansby <jdansby@usccr.gov>
Cc: David Ganz <dganz@usccr.gov>
Subject: RE: FOIA Request for Information

Why are you seeking them? You are not involved in their production.

From: Joshua Dansby <jdansby@usccr.gov>
Sent: Thursday, November 18, 2021 12:42 PM
To: Mauro Morales <mmorales@usccr.gov>
Cc: David Ganz <dganz@usccr.gov>
Subject: RE: FOIA Request for Information

Mauro,

Would it be possible to send me a copy of those FOIA requests, please?

-Joshua

From: Mauro Morales <mmorales@usccr.gov>
Sent: Wednesday, November 17, 2021 4:48 PM
To: Commissioners <Commissioners@usccr.gov>
Cc: David Ganz <dganz@usccr.gov>; CommissionerAssistants <CommissionerAssistants@usccr.gov>; ExecutiveStaff <ExecutiveStaff@usccr.gov>
Subject: FOIA Request for Information

Commissioners,

Commissioners,

I want to make you aware of a matter that has developed. Today, November 17, 2021, USCCR has received three (3) Freedom of Information Act (FOIA) requests from several media outlets. These requests are from Reuters, CNN, and Voter Beat. These FOIA requests include requests for emails of Commissioners, meeting transcripts, and other records related to USCCR's recent appointment of Cleta Mitchell to the Election Assistance Commission's (EAC) Board of Advisors. In the coming weeks, it will be necessary to collect, review, and potentially release the requested records consistent with FOIA, the Privacy Act, and DOJ guidance. I will keep you apprised of OGC's efforts and progress in responding to these requests.

Thank you for your attention to this matter and request.

Mauro Morales
Staff Director
U.S. Commission on Civil Rights
P: 202-376-7796| F: 202-376-7672
Mmorales@usccr.gov
http://usccr.gov/
1331 Pennsylvania Avenue, NW Suite 1150

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Washington D.C. 20425

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OVERSIGHT

OVERSTOCK

Date : 11/18/2021 2:13:09 PM
From : "David Ganz" dganz@usccr.gov
To : "Michele Ramey" myorkman@usccr.gov
Cc : "Mauro Morales" mmorales@usccr.gov, "Angelia Rorison" arorison@usccr.gov, "Pamela Dunston" Pdunston@usccr.gov, "TinaLouise Martin" tmartin@usccr.gov
Subject : RE: FOIA requests today
Attachment : image001.png;

Great; so everyone is aware, once we receive some preliminary numbers from Michele, OGC can do an estimate as to the review, redaction, and production timeline and update the requesters.

From: Michele Ramey <myorkman@usccr.gov>
Sent: Thursday, November 18, 2021 12:53 PM
To: David Ganz <dganz@usccr.gov>
Cc: Mauro Morales <mmorales@usccr.gov>; Angelia Rorison <arorison@usccr.gov>; Pamela Dunston <Pdunston@usccr.gov>; TinaLouise Martin <tmartin@usccr.gov>
Subject: RE: FOIA requests today

Thank you. I will get back to you with the preliminary numbers of emails for:

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If you are wondering, Adams was appointed in August 2020. The EAC asked us about appointments as early as January 2021, but one of the FOIA requests covers the period of 8/1/20 to the present so it is better to err on the side of caution. There

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There is no complete date, but please try to get us this ASAP as it has become a priority. Getting us documents on a rolling basis would be very helpful. My cell is 617 669 6413.

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To: David Ganz <dganz@usccr.gov>
Cc: Mauro Morales <mmorales@usccr.gov>; Angelia Rorison <arorison@usccr.gov>; Pamela Dunston <Pdunston@usccr.gov>; TinaLouise Martin <tmartin@usccr.gov>
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MYR

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To: Michele Ramey <myorkman@usccr.gov>

AMERICAN OVERSIGHT

Cc: Mauro Morales <mmorales@usccr.gov>; Angelia Rorison <arorison@usccr.gov>
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(617) 669-6413

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C005407

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To : "David Ganz" dganz@usccr.gov
Cc : "Mauro Morales" mmorales@usccr.gov, "Angelia Rorison" arorison@usccr.gov, "Pamela Dunston" Pdunston@usccr.gov, "TinaLouise Martin" tmartin@usccr.gov
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C005411

AMERICAN OVERSIGHT

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Attachment : image001.png;

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C005415

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To : "David Ganz" dganz@usccr.gov
Cc : "Mauro Morales" mmorales@usccr.gov
Subject : RE: FOIA requests today
Attachment : image001.png;

Sorry, Yes, I meant 8/1/20. Thanks for the update.

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(617) 669-6413

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AMERICAN OVERSIGHT

C005419

AMERICAN OVERSIGHT

Date : 11/18/2021 3:51:16 PM
From : "David Ganz" dganz@usccr.gov
To : "Michele Ramey" myorkman@usccr.gov
Subject : RE: FOIA requests today
Attachment : image001.png;

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C005424

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AMERICAN OVERSIGHT

C005429
AMERICAN OVERSIGHT

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From : "David Ganz" dganz@usccr.gov
To : "Michele Ramey" myorkman@usccr.gov
Subject : RE: FOIA requests today
Attachment : image001.png;

Great; these numbers are very manageable. Can you please begin the process of pulling down the emails and moving them into folders as PDF files like you did for the McCord/Bader FOIA? I will alert everyone about the estimates.

From: Michele Ramey <myorkman@usccr.gov>
Sent: Thursday, November 18, 2021 5:21 PM
To: David Ganz <dganz@usccr.gov>
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Here are the *internal users only sent and received first estimate*.

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UNITED STATES COMMISSION ON CIVIL RIGHTS
C005434

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From : "David Ganz" dganz@usccr.gov
To : "Michele Ramey" myorkman@usccr.gov
Cc : "Mauro Morales" mmorales@usccr.gov, "Angelia Rorison" arorison@usccr.gov, "Pamela Dunston" Pdunston@usccr.gov, "TinaLouise Martin" tmartin@usccr.gov
Subject : RE: FOIA requests today
Attachment : image001.png;

For everyone's awareness, Michele's estimates regarding responsive documents are in the chart below. I have asked her to begin the process of collecting the data and moving it to SecuriSync for OGC's review. The below numbers are very manageable for OGC to review and redact and I do not foresee an issue meeting our deadlines. Once I receive an estimate from Michele about the data collection timeframe, I will alert the three FOIA requesters.

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UNITED STATES COMMISSION ON CIVIL RIGHTS
C005439

Date : 11/18/2021 6:46:02 PM
From : "David Ganz" dganz@usccr.gov
To : "Michele Ramey" myorkman@usccr.gov
Cc : "Mauro Morales" mmorales@usccr.gov, "Angelia Rorison" arorison@usccr.gov, "Pamela Dunston" Pdunston@usccr.gov, "TinaLouise Martin" tmartin@usccr.gov
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C005444

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Date : 11/18/2021 7:47:25 PM
From : "Mauro Morales" mmorales@usccr.gov
To : "Angelia Rorison" arorison@usccr.gov, "Pamela Dunston" Pdunston@usccr.gov
Cc : "David Ganz" dganz@usccr.gov, "Michele Ramey" myorkman@usccr.gov, "TinaLouise Martin" tmartin@usccr.gov
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Subject: Re: FOIA requests today

Yes ☐☐ Thank you Michele!

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Director of Media and Communications
FOIA Public Liaison
U.S. Commission on Civil Rights

M: 202-499-0263

(she/her)
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C005450
AMERICAN OVERSIGHT

Date : 11/18/2021 8:03:29 PM
From : "David Ganz" dganz@usccr.gov
To : "Pilar McLaughlin" pmclaughlin@usccr.gov, "Sheryl Cozart" sccozart@usccr.gov, "Andrew Gall" agall@usccr.gov
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C005456
AMERICAN OVERSIGHT

Date : 11/18/2021 8:21:32 PM
From : "Joshua Dansby" jdansby@usccr.gov
To : "David Ganz" dganz@usccr.gov, "Mauro Morales" mmorales@usccr.gov
Subject : RE: FOIA Request for Information
Attachment : image001.gif;image002.gif;

I understand your position. To clarify, however, FOIA requests are public "records," as defined by FOIA, once received by an agency. *See* 5 U.S.C. sec. 552(f)(2); *see also Department of Justice Guide to the Freedom Information Act* at 11-18. The fact that they are received by a designated FOIA officer or office in no way grants them confidential status. The law requires that, if someone files a FOIA request about these FOIA requests, the later requests be turned over and that individual would be free to circulate them publicly. If we decide to pursue this issue, we will likely just file a FOIA request as laid out above. Thank you both for your time.

-Joshua

From: David Ganz <dganz@usccr.gov>
Sent: Thursday, November 18, 2021 1:45 PM
To: Mauro Morales <mmorales@usccr.gov>; Joshua Dansby <jdansby@usccr.gov>
Subject: RE: FOIA Request for Information

Josh, I do not think it is appropriate or necessary to provide the actual FOIA requests to you or other SAs or Commissioners as, per USCCR's FOIA regulations and delegations of authority, our office handles FOIA requests and the documents are non-public in the sense they were sent specifically to our office and therefore I would not want them to be circulated publicly. I say the foregoing with the utmost respect for you and your colleagues. Please call my cell at 617 669 6413 if you have any questions about this. Thanks,

David

From: Mauro Morales <mmorales@usccr.gov>
Sent: Thursday, November 18, 2021 1:26 PM
To: Joshua Dansby <jdansby@usccr.gov>
Cc: David Ganz <dganz@usccr.gov>
Subject: RE: FOIA Request for Information

I defer to our GC on what to provide you.

From: Joshua Dansby <jdansby@usccr.gov>
Sent: Thursday, November 18, 2021 1:05 PM
To: Mauro Morales <mmorales@usccr.gov>
Cc: David Ganz <dganz@usccr.gov>
Subject: RE: FOIA Request for Information

Mauro,

Your email indicates the "FOIA requests include requests for emails of Commissioners, meeting transcripts, and other records related to USCCR's recent appointment of Cleta

AMERICAN OVERSIGHT

Mitchell to the Election Assistance Commission's (EAC) Board of Advisors." That language is vague – and most FOIA requests are - but I wanted to see the language of the requests to ensure all relevant materials are held so when the time comes for them to be collected and produced by Commission staff (presumably OGC) we are compliant with FOIA. For example, a FOIA production may be underinclusive if, in response to a request for emails, only an email search of our system was conducted (e.g. the language of the request can make a difference as to whether a records requests reaches personal email related to a business topic). Again, I am new here so I do not know your practice, but previously in my governmental positions it was common to circulate the FOIA requests with a hold notice from counsel to ensure compliance.

Either way, please let me know what you decide.

-Joshua

From: Mauro Morales <mmorales@usccr.gov>
Sent: Thursday, November 18, 2021 12:43 PM
To: Joshua Dansby <jdansby@usccr.gov>
Cc: David Ganz <dganz@usccr.gov>
Subject: RE: FOIA Request for Information

Why are you seeking them? You are not involved in their production.

From: Joshua Dansby <jdansby@usccr.gov>
Sent: Thursday, November 18, 2021 12:42 PM
To: Mauro Morales <mmorales@usccr.gov>
Cc: David Ganz <dganz@usccr.gov>
Subject: RE: FOIA Request for Information

Mauro,

Would it be possible to send me a copy of those FOIA requests, please?

-Joshua

From: Mauro Morales <mmorales@usccr.gov>
Sent: Wednesday, November 17, 2021 4:48 PM
To: Commissioners <Commissioners@usccr.gov>
Cc: David Ganz <dganz@usccr.gov>; CommissionerAssistants <CommissionerAssistants@usccr.gov>; ExecutiveStaff <ExecutiveStaff@usccr.gov>
Subject: FOIA Request for Information

Commissioners,

Commissioners,

I want to make you aware of a matter that has developed. Today, November 17, 2021, USCCR has received three (3) Freedom of Information Act (FOIA) requests from several media outlets. These requests are from Reuters, CNN, and Voter Beat. These FOIA requests include requests for emails of Commissioners, meeting transcripts, and other records related to USCCR's recent appointment of Cleta Mitchell to the Election

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Assistance Commission's (EAC) Board of Advisors. In the coming weeks, it will be necessary to collect, review, and potentially release the requested records consistent with FOIA, the Privacy Act, and DOJ guidance. I will keep you apprised of OGC's efforts and progress in responding to these requests.

Thank you for your attention to this matter and request.

Mauro Morales
Staff Director
U.S. Commission on Civil Rights
P: 202-376-7796| F: 202-376-7672
Mmorales@usccr.gov
http://usccr.gov/
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425

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#USCCR

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OVERSIGHT

OVERSTOCK

Date : 11/18/2021 10:06:11 PM
From : "David Ganz" dganz@usccr.gov
To : "Joshua Dansby" jdansby@usccr.gov, "Mauro Morales" mmorales@usccr.gov
Subject : RE: FOIA Request for Information
Attachment : image001.gif;image002.gif;

I'll discuss this with Mauro. Is it accurate to characterize your below message as standing for the proposition that a FOIA request record is within the scope of a second FOIA request? If so, I am not suggesting that is legally inaccurate, although it would be helpful to provide a more exact citation to the DOJ Guide. I do question whether employees making FOIA requests of their own employers is a beneficial way to conduct routine business.

From: Joshua Dansby <jdansby@usccr.gov>
Sent: Thursday, November 18, 2021 8:22 PM
To: David Ganz <dganz@usccr.gov>; Mauro Morales <mmorales@usccr.gov>
Subject: RE: FOIA Request for Information

I understand your position. To clarify, however, FOIA requests are public "records," as defined by FOIA, once received by an agency. *See* 5 U.S.C. sec. 552(f)(2); *see also Department of Justice Guide to the Freedom Information Act* at 11-18. The fact that they are received by a designated FOIA officer or office in no way grants them confidential status. The law requires that, if someone files a FOIA request about these FOIA requests, the later requests be turned over and that individual would be free to circulate them publicly. If we decide to pursue this issue, we will likely just file a FOIA request as laid out above. Thank you both for your time.

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AMERICAN OVERSIGHT

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AMERICAN OVERSIGHT

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Cc: David Ganz <dganz@usccr.gov>; CommissionerAssistants <CommissionerAssistants@usccr.gov>; ExecutiveStaff <ExecutiveStaff@usccr.gov>
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Thank you for your attention to this matter and request.

Mauro Morales
Staff Director
U.S. Commission on Civil Rights
P: 202-376-7796| F: 202-376-7672
Mmorales@usccr.gov
http://usccr.gov/
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425

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#USCCR

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OVERSTOCK

Date : 11/17/2021 11:57:46 AM
From : "Mauro Morales" mmorales@usccr.gov
To : "Angelia Rorison" arorison@usccr.gov, "David Ganz" dganz@usccr.gov
Subject : RE: [EXTERNAL] Records Request - Cleta Mitchell Nomination

David, Please feel free to call me if you want to discuss. Otherwise, OGC should handle it as a normal FOIA request. Mauro

---

From: Angelia Rorison <arorison@usccr.gov>
Sent: Wednesday, November 17, 2021 11:56 AM
To: David Ganz <dganz@usccr.gov>
Cc: Mauro Morales <mmorales@usccr.gov>
Subject: FW: [EXTERNAL] Records Request - Cleta Mitchell Nomination
Importance: High

FYI – here is a FOIA re: EAC appointment

From: Jessica Huseman <jhuseman@votebeat.org>
Sent: Wednesday, November 17, 2021 11:45 AM
To: FOIA <foia@usccr.gov>
Subject: [EXTERNAL] Records Request - Cleta Mitchell Nomination

> CAUTION: This email is from outside USCCR.

Hello,

This is a request under the Freedom of Information Act.

I request copies of all emailed or written communication related to the nomination and vote on Cleta Mitchell's appointment to the Election Assistance Commission Board of Advisors. Please provide both the notional vote and any discussion of her appointment or the other nominees submitted by the Republican commissioners.

I request that this be given to me on a rolling basis as documents become available. If the commission intends to withhold part of this request or take additional time to consider the release of parts of this request, please release the information you are willing to provide in advance of that consideration.

I am a representative of Votebeat, a news organization, and this information is being collected for distribution to the public and not for commercial purposes.

I request a waiver of all fees for this request. Disclosure of the requested information to me is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in my commercial interest.

Further, **please grant expedited processing for this request.** Cleta Mitchell is currently under investigation in Georgia for her role in a January phone call, and the commission is

AMERICAN OVERSIGHT

meeting on Friday to discuss a second nomination. Because the commission has elected to discuss Ms. Mitchell's nomination only by email and not in public meetings, expedited processing is clearly necessary to offer the public clarity into this decision making.

--
Warmly,

Jessica Huseman
Editorial Director, Votebeat
Cell/Signal: 972-268-1882
@JessicaHuseman

AMERICAN OVERSIGHT

Date : 11/17/2021 11:55:51 AM
From : "Angelia Rorison" arorison@usccr.gov
To : "David Ganz" dganz@usccr.gov
Cc : "Mauro Morales" mmorales@usccr.gov
Subject : FW: [EXTERNAL] Records Request - Cleta Mitchell Nomination

FYI – here is a FOIA re: EAC appointment

From: Jessica Huseman <jhuseman@votebeat.org>
Sent: Wednesday, November 17, 2021 11:45 AM
To: FOIA <foia@usccr.gov>
Subject: [EXTERNAL] Records Request - Cleta Mitchell Nomination

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Hello,

This is a request under the Freedom of Information Act.

I request copies of all emailed or written communication related to the nomination and vote on Cleta Mitchell's appointment to the Election Assistance Commission Board of Advisors. Please provide both the notional vote and any discussion of her appointment or the other nominees submitted by the Republican commissioners.

I request that this be given to me on a rolling basis as documents become available. If the commission intends to withhold part of this request or take additional time to consider the release of parts of this request, please release the information you are willing to provide in advance of that consideration.

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--
Warmly,

Jessica Huseman
Editorial Director, Votebeat

AMERICAN OVERSIGHT

Cell/Signal: 972-268-1882
@JessicaHuseman

AMERICAN OVERSIGHT

Date : 7/22/2021 2:59:02 PM
From : "Carissa Mulder" CMulder@usccr.gov
To : "John Mashburn" jmashburn@usccr.gov, "Alexander Heideman" aheideman@usccr.gov
Subject : Re: [EXTERNAL] Stakeholders for input on strategic plan

John, one other thing that I mentioned to Alex. We want conservatives, but the strategic plan is concerned with essentially administrative matters, such as approving SACs, raising the Commission's profile, etc. We need to recommend people who have some experience with the Commission either through being witnesses (as Cleta Mitchell has been), SAC members, etc., so they aren't totally puzzled as to what they are being asked to do. (I know Star Parker is a SAC member as well, so that's good.)

From: John Mashburn
Sent: Thursday, July 22, 2021 2:49:21 PM
To: Alexander Heideman; Carissa Mulder
Subject: Re: [EXTERNAL] Stakeholders for input on strategic plan

Alex – I struck one of yours, based on personal knowledge.

I would add:

Cleta Mitchell – Conservative Partnership Institute
Mark Meadows – Conservative Partnership Institute
Chris Rufo – Manhattan Institute
Ken Blackwell – Family Research Council
Star Parker – CURE, Center for Urban Renewal and Education
Deroy Murdock – London Center for Policy Research.
Carol Swain – Law Professor Vanderbilt University
Ben Carson
Katrina Pierson
Deneen Borelli

and

Sen. Tim Scott
Sen. Tom Cotton
Sen. Ron Johnson
Rep. Burgess Owens
Rep. Byron Donalds
Rep. Jim Jordan
NC Lt. Gov. Mark Robinson

From: Alexander Heideman <aheideman@usccr.gov>
Date: Thursday, July 22, 2021 at 1:22 PM
To: John Mashburn <jmashburn@usccr.gov>

AMERICAN OVERSIGHT

Subject: FW: [EXTERNAL] Stakeholders for input on strategic plan

---

From: Alexander Heideman <aheideman@usccr.gov>
Date: Thursday, July 22, 2021 at 11:35 AM
To: Carissa Mulder <carissa.mulder@gmail.com>
Subject: Re: [EXTERNAL] Stakeholders for input on strategic plan

I would add:

Claremont Institute (John Eastman)
~~American Civil Rights Union (Susan A. Carleson)~~
The Becket Fund for Religious Liberty (William Mumma)
Southeastern Legal Foundation (Kim Hermann)
Institute for Justice (Scott Bullock)
Mississippi Center for Public Policy (Aaron Rice)
Center for Law & Religious Freedom (Kimberlee Wood Colby)
Napa Legal Institute (Josh Holdenried & John Peiffer)
Center for Individual Rights (Michael Rosman)
American Center for Law & Justice (Jay Sekulow)
E. Gregory Wallace, Campbell University Norman Adrian Wiggins School of Law
Shelby Steele, Hoover Institution
Glenn Loury, Brown University
John Locke Foundation (Jon Guze)
The Fairness Center (Nathan McGrath)

Also:

Sen. Josh Hawley
Sen. Mitt Romney
Sen. Marsha Blackburn

From: Carissa Mulder <carissa.mulder@gmail.com>
Date: Thursday, July 22, 2021 at 11:04 AM
To: "Kirsanow, Peter" <pkirsanow@beneschlaw.com>, Gail Heriot <gheriot@me.com>, Alexander Heideman <aheideman@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>, John Mashburn <jmashburn@usccr.gov>, "Maximos Nikitas (Commissioner Intern)" <mnikitas@usccr.gov>, "Christopher Ross (Commissioner Intern)" <cross@usccr.gov>
Cc: Carissa Mulder <CMulder@usccr.gov>, Peter Kirsanow <pkirsanow@usccr.gov>, Gail Heriot <gheriot@usccr.gov>
Subject: [EXTERNAL] Stakeholders for input on strategic plan

CAUTION: This email is from outside USCCR.

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We need to submit recommendations for "stakeholders" who will have the opportunity to submit comments on the Commission's 2022-2026 strategic plan. We need to recommend both outside organizations and members of Congress. I have taken a preliminary stab at a list. Can you all take a look and add your own recommendations? The recommendations are due by COB tomorrow.

Thank you!

--
Carissa B. Mulder

AMERICAN OVERSIGHT

Date : 7/22/2021 3:04:51 PM
From : "Carissa Mulder" CMulder@usccr.gov
To : "John Mashburn" jmashburn@usccr.gov, "Alexander Heideman" aheideman@usccr.gov
Subject : Re: [EXTERNAL] Stakeholders for input on strategic plan

No worries! I think it is mostly small ball administrative outlook. Did you look at the strategic plan? I'm happy to be corrected, but it seemed like small ball metrics to me.

From: John Mashburn
Sent: Thursday, July 22, 2021 3:03:14 PM
To: Carissa Mulder; Alexander Heideman
Subject: Re: [EXTERNAL] Stakeholders for input on strategic plan

---

Sorry. I thought it was broad view strategic vision, not small ball administration outlook.

From: Carissa Mulder <CMulder@usccr.gov>
Date: Thursday, July 22, 2021 at 2:59 PM
To: John Mashburn <jmashburn@usccr.gov>, Alexander Heideman <aheideman@usccr.gov>
Subject: Re: [EXTERNAL] Stakeholders for input on strategic plan

John, one other thing that I mentioned to Alex. We want conservatives, but the strategic plan is concerned with essentially administrative matters, such as approving SACs, raising the Commission's profile, etc. We need to recommend people who have some experience with the Commission either through being witnesses (as Cleta Mitchell has been), SAC members, etc., so they aren't totally puzzled as to what they are being asked to do. (I know Star Parker is a SAC member as well, so that's good.)

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NC Lt. Gov. Mark Robinson

From: Alexander Heideman <aheideman@usccr.gov>
Date: Thursday, July 22, 2021 at 1:22 PM
To: John Mashburn <jmashburn@usccr.gov>
Subject: FW: [EXTERNAL] Stakeholders for input on strategic plan

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AMERICAN OVERSIGHT

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From : "John Mashburn" jmashburn@usccr.gov
To : "Carissa Mulder" CMulder@usccr.gov, "Alexander Heideman" aheideman@usccr.gov
Subject : Re: [EXTERNAL] Stakeholders for input on strategic plan

I speed read it and figured they were hiding what they really wanted to strategically as far as policy and issues were concerned. If Adminstrative strategy is all they are after, then most folks on our lists should be scratched since they will not want to be bothered with That kind of stuff

---

From: Carissa Mulder
Sent: Thursday, July 22, 2021 3:04:50 PM
To: John Mashburn; Alexander Heideman
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Cc: Carissa Mulder <CMulder@usccr.gov>, Peter Kirsanow <pkirsanow@usccr.gov>, Gail Heriot <gheriot@usccr.gov>
Subject: [EXTERNAL] Stakeholders for input on strategic plan

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Thank you!

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Carissa B. Mulder

AMERICAN OVERSIGHT

Date : 7/23/2021 11:18:06 AM
From : "Carissa Mulder" CMulder@usccr.gov
To : "John Mashburn" jmashburn@usccr.gov
Subject : Re: [EXTERNAL] Stakeholders for input on strategic plan

Hey John, who was Alex's suggestion that you struck? I don't see it in the email. I'm putting together the master list. Thanks!

From: John Mashburn
Sent: Thursday, July 22, 2021 2:49:21 PM
To: Alexander Heideman; Carissa Mulder
Subject: Re: [EXTERNAL] Stakeholders for input on strategic plan

Alex – I struck one of yours, based on personal knowledge.

I would add:

Cleta Mitchell – Conservative Partnership Institute
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Star Parker – CURE, Center for Urban Renewal and Education
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and

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Sen. Tom Cotton
Sen. Ron Johnson
Rep. Burgess Owens
Rep. Byron Donalds
Rep. Jim Jordan
NC Lt. Gov. Mark Robinson

From: Alexander Heideman <aheideman@usccr.gov>
Date: Thursday, July 22, 2021 at 1:22 PM
To: John Mashburn <jmashburn@usccr.gov>
Subject: FW: [EXTERNAL] Stakeholders for input on strategic plan

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From: Alexander Heideman <aheideman@usccr.gov>
Date: Thursday, July 22, 2021 at 11:35 AM

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To: Carissa Mulder <carissa.mulder@gmail.com>
Subject: Re: [EXTERNAL] Stakeholders for input on strategic plan

I would add:

Claremont Institute (John Eastman)
~~American Civil Rights Union (Susan A. Carleson)~~
The Becket Fund for Religious Liberty (William Mumma)
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Institute for Justice (Scott Bullock)
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The Fairness Center (Nathan McGrath)

Also:

Sen. Josh Hawley
Sen. Mitt Romney
Sen. Marsha Blackburn

From: Carissa Mulder <carissa.mulder@gmail.com>
Date: Thursday, July 22, 2021 at 11:04 AM
To: "Kirsanow, Peter" <pkirsanow@beneschlaw.com>, Gail Heriot <gheriot@me.com>, Alexander Heideman <aheideman@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>, John Mashburn <jmashburn@usccr.gov>, "Maximos Nikitas (Commissioner Intern)" <mnikitas@usccr.gov>, "Christopher Ross (Commissioner Intern)" <cross@usccr.gov>
Cc: Carissa Mulder <CMulder@usccr.gov>, Peter Kirsanow <pkirsanow@usccr.gov>, Gail Heriot <gheriot@usccr.gov>
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Thank you!

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Carissa B. Mulder

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Date : 7/23/2021 11:42:59 AM
From : "John Mashburn" jmashburn@usccr.gov
To : "Carissa Mulder" CMulder@usccr.gov
Subject : Re: [EXTERNAL] Stakeholders for input on strategic plan
ACRU - Susan Carleson

From: Carissa Mulder
Sent: Friday, July 23, 2021 11:18:05 AM
To: John Mashburn
Subject: Re: [EXTERNAL] Stakeholders for input on strategic plan

Hey John, who was Alex's suggestion that you struck? I don't see it in the email. I'm putting together the master list. Thanks!

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Sent: Thursday, July 22, 2021 2:49:21 PM
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and

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Sen. Tom Cotton
Sen. Ron Johnson
Rep. Burgess Owens
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NC Lt. Gov. Mark Robinson

From: Alexander Heideman <aheideman@usccr.gov>
Date: Thursday, July 22, 2021 at 1:22 PM
To: John Mashburn <jmashburn@usccr.gov>
Subject: FW: [EXTERNAL] Stakeholders for input on strategic plan

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From: Alexander Heideman <aheideman@usccr.gov>
Date: Thursday, July 22, 2021 at 11:35 AM
To: Carissa Mulder <carissa.mulder@gmail.com>
Subject: Re: [EXTERNAL] Stakeholders for input on strategic plan

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To: "Kirsanow, Peter" <pkirsanow@beneschlaw.com>, Gail Heriot <gheriot@me.com>, Alexander Heideman <aheideman@usccr.gov>, Thomas Simuel <tsimuel@usccr.gov>, John Mashburn <jmashburn@usccr.gov>, "Maximos Nikitas (Commissioner Intern)" <mnikitas@usccr.gov>, "Christopher Ross (Commissioner Intern)" <cross@usccr.gov>
Cc: Carissa Mulder <CMulder@usccr.gov>, Peter Kirsanow <pkirsanow@usccr.gov>, Gail Heriot <gheriot@usccr.gov>
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Thank you!

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Carissa B. Mulder

AMERICAN OVERSIGHT

Date : 10/20/2020 4:22:14 PM
From : "John Mashburn" jmashburn@usccr.gov
To : "Maureen Rudolph" mrudolph@usccr.gov, "J. Christian Adams" jadams@usccr.gov, "Christian Adams" adams@electionlawcenter.com
Cc : "Angelia Rorison" arorison@usccr.gov
Subject : Re: [EXTERNAL] FOIA Request

I don't have any responsive documents since I joined the USCCR on Sept. 15.

This request is somewhat unclear since it says "records that relate to the meeting between January 1, 2020 through to the date of your final response." What "meeting?"

From: Maureen Rudolph <mrudolph@usccr.gov>
Date: Tuesday, October 20, 2020 at 2:55 PM
To: "J. Christian Adams" <jadams@usccr.gov>, Christian Adams <adams@electionlawcenter.com>
Cc: John Mashburn <jmashburn@usccr.gov>, Angelia Rorison <arorison@usccr.gov>
Subject: Fw: [EXTERNAL] FOIA Request

Commissioner Adams and John,

Please see the FOIA request below. The scope is for written communications between Commissioner Adams and the folks listed below in your official capacity. Please let me know if there are any such federal records. I have copied Ang Rorison on this email in her role as USCCR's FOIA Officer.

Thanks very much,

Maureen

To Whom It May Concern:

Pursuant to the Freedom of Information Act, I hereby request all records containing the following key words, email domains and individuals:

1. True the Vote
2. @truethevote.org

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3. Catherine Engelbrecht
4. Public Interest Legal Foundation
5. @publicinterestlegal.org
6. Hans von Spakovsky
7. Heritage Foundation
8. @heritage.org
9. Judicial Watch
10. @judicialwatch.org
11. Christopher Coates
12. Cleta Mitchell
13. CMitchell@foley.com

Please conduct a search for records that relate to the meeting between January 1, 2020 through to the date of your final response.

The scope of the request includes the Commissioner J. Christian Adams and all staff that report directly to the Commissioner including but not limited to a scheduler, executive assistant and chief of staff.

The search for records, whether in an electronic or print medium, original or copy, or draft or final form, should include but is not limited to sent and received correspondence (please include all attachments), scheduling records (i.e. .ics files), faxes, text messages (i.e., SMSmessages) and other mobile-phone-based/computer-based text communications, call logs, voicemails, minutes or notes of meetings, PowerPoint or other similar presentations, meeting brochures, meeting agendas, meeting handouts, meeting packets, travel records and receipts related to the event, memoranda, policies and any material obtained in person at any events.

EXPEDITED REQUEST

I also ask expedited processing of this request. Federal agencies are required to provide expedited processing of a FOIA request when a requester demonstrates a "compelling need" for the information requested. Here, there is an urgency to inform the public about any behind-the-scenes coordination taking place between the commissioner and the listed entities above who are actively involved in election integrity efforts, before the 2020 election cycle takes place. The importance of this information gathered and published, after the election, will be greatly diminished. This information fulfills a compelling need of providing public understanding of any imminent federal government actions as it relates to election integrity.

FEE WAIVER

I am requesting a waiver of fees incurred by the agency in responding to my request. Documented is a watchdog group that investigates how corporations

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manipulate public policy, harming our environment, communities, and democracy. The requested documents will be made available to the general public, and this request is not being made for commercial purposes.

In the event that there are fees, I would be grateful if you would inform me of the total charges in advance of fulfilling my request. I would prefer the request filled electronically, by e-mail attachment if available or CD-ROM if not.

Thank you in advance for your anticipated cooperation in this matter.

I look forward to receiving your response to this request within 20 business days, as the statute requires.

Sincerely,

Jamie Corey
PO Box 258084
Madison, WI 53725
608-208-5851

AMERICAN OVERSIGHT

Date : 7/22/2021 3:03:14 PM
From : "John Mashburn" jmashburn@usccr.gov
To : "Carissa Mulder" CMulder@usccr.gov, "Alexander Heideman" aheideman@usccr.gov
Subject : Re: [EXTERNAL] Stakeholders for input on strategic plan

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Sorry. I thought it was broad view strategic vision, not small ball administration outlook.

From: Carissa Mulder <CMulder@usccr.gov>
Date: Thursday, July 22, 2021 at 2:59 PM
To: John Mashburn <jmashburn@usccr.gov>, Alexander Heideman <aheideman@usccr.gov>
Subject: Re: [EXTERNAL] Stakeholders for input on strategic plan

John, one other thing that I mentioned to Alex. We want conservatives, but the strategic plan is concerned with essentially administrative matters, such as approving SACs, raising the Commission's profile, etc. We need to recommend people who have some experience with the Commission either through being witnesses (as Cleta Mitchell has been), SAC members, etc., so they aren't totally puzzled as to what they are being asked to do. (I know Star Parker is a SAC member as well, so that's good.)

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From: Alexander Heideman <aheideman@usccr.gov>
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To: John Mashburn <jmashburn@usccr.gov>
Subject: FW: [EXTERNAL] Stakeholders for input on strategic plan

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