

UNEDITED

U.S. COMMISSION ON CIVIL RIGHTS

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BUSINESS MEETING

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FRIDAY, APRIL 21, 2023

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The Commission convened at 12:13 p.m. in Suite 1150 at 1331 Pennsylvania Avenue, NW, Washington, D.C., Mauro Morales, Staff Director, presiding.

PRESENT:

J. CHRISTIAN ADAMS, Commissioner
STEPHEN GILCHRIST, Commissioner
ROCHELLE GARZA, Commissioner
GAIL HERIOT, Commissioner
MONDAIRE JONES, Commissioner
PETER N. KIRSANOW, Commissioner
GLENN MAGPANTAY, Commissioner
VICTORIA NOURSE, Commissioner

MAURO MORALES, Staff Director
DAVID GANZ, General Counsel

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STAFF PRESENT:

CODY BOWLER

MARIK-XAVIER BRIER

SHERYL COZART

PAMELA DUNSTON, CHIEF ASCD

HYUNG KIM

JULIAN NELSON-SAUNDERS, ASCD

ESSENCE PERRY, ASCD

JOHN RATCLIFFE

ANGELIA RORISON

MICHELE YORKMAN-RAMEY, ASCD

COMMISSIONER ASSISTANTS PRESENT:

ALEXIS FRAGOSA

JOHN K. MASHBURN

CARISSA MULDER

THOMAS SAMUEL

IRENA VIDULOVIC

A G E N D A

APPROVAL OF AGENDA 5

BUSINESS MEETING

Discussion and Vote on Presidential Designation
of Commissioner Rochelle Mercedes Garza as
Chairperson and Victoria Frances Nourse as
Vice Chair of the U.S. Commission on Civil
Rights.35

Discussion and vote on Changing Friday,
May 19 USCCR Business Meeting to Thursday,
May 18.65

ADJOURN MEETING68

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

(12:12 p.m.)

MR. MORALES: Good afternoon and welcome to everybody, and welcome to the business meeting for the U.S. Commission on Civil Rights.

This meeting comes to order at -- I'll get the time correct here -- at 12:12 Eastern Standard Time on Friday, April 21, 2023.

I am Staff Director Mauro Morales. I am not substantively participating in this meeting, but because of the current absence of a chair and vice chair, I am administering it pursuant to our administrative functions set out in 42 U.S.C. 1975(b). And I would like to confirm the commissioners present and will take a roll call. Please say present when I say your name. Commissioner Adams?

COMMISSIONER ADAMS: Present.

MR. MORALES: Commissioner Garza.

COMMISSIONER GARZA: Present.

MR. MORALES: Commissioner Gilchrist?

COMMISSIONER GILCHRIST: Present.

MR. MORALES: Commissioner Heriot?

COMMISSIONER HERIOT: I'm here.

MR. MORALES: Commissioner Jones?

COMMISSIONER JONES: Present.

1 MR. MORALES: Commissioner Kirsanow?

2 COMMISSIONER KIRSANOW: Here.

3 MR. MORALES: Commissioner Magpantay?

4 COMMISSIONER MAGPANTAY: Here.

5 MR. MORALES: Commissioner Nourse?

6 COMMISSIONER NOURSE: I'm here.

7 MR. MORALES: Based on the response, a
8 quorum of commissioners is present. Is the court
9 reporter present?

10 COURT REPORTER: Present.

11 I. APPROVAL OF AGENDA

12 MR. MORALES: I am the staff director, and
13 I am present. The meeting will now come to order.
14 The first order of business is a vote to approve the
15 agenda.

16 MR. MORALES: All those in favor say --

17 COMMISSIONER HERIOT: No. No, I move to
18 amend the agenda.

19 MR. MORALES: Well, let's approve -- okay.
20 Yes, are there any amendment to amend the --

21 COMMISSIONER HERIOT: Yes. Yes, there is
22 one.

23 MR. MORALES: Please state your motion.

24 COMMISSIONER HERIOT: I move to amend the
25 proposed agenda to put first that is under -- I got it

1 here, under Section 2, Business Meeting, before what
2 is currently A, I would move to include a discussion
3 and vote of our 30/30/10 Policy and a discussion and
4 vote of the Crime Victims Report, including the
5 discovery documents and the proposed schedule.

6 MR. MORALES: Is there a second?

7 COMMISSIONER GILCHRIST: Second.

8 MR. MORALES: It is open for discussion.

9 COMMISSIONER ADAMS: A point of personal
10 privilege, my microphone doesn't turn on.

11 COMMISSIONER NOURSE: Mine doesn't either.
12 I guess they don't like us.

13 MR. MORALES: You've got to push it hard.

14 COMMISSIONER ADAMS: There we go. Thank
15 you.

16 COMMISSIONER NOURSE: Oh, I see.

17 MR. MORALES: You have the floor.

18 COMMISSIONER ADAMS: Thank you. The
19 reason for this motion is fairly simple and hopefully
20 the action of the Commission will reflect its
21 simplicity. Regarding the 30/30/10, I will reserve to
22 other commissioners to talk about it. But in the last
23 Commission, two meetings or three meetings ago, we
24 approved the second paper that we are required to do
25 by Congress as part of our regular business. We had

1 a statutory report we were working on. We had
2 hearings on. And we approved the second one.

3 And we had an agreement to approve the
4 discovery plan, which the staff drew up. I would note
5 that Commissioner Heriot's motion reflects a staff
6 proposal, not a proposal that Commissioner Adams
7 wrote. And we had an agreement to approve that
8 discovery plan last fall, and we were double-crossed,
9 plain and simple.

10 And we need to do, as some have said, I
11 agree, the work of the Commission and do the work for
12 the people. It related to an issue that I think has
13 broad agreement. It is an important issue in the
14 United States.

15 This is not a difficult lift. And that is
16 what I think is behind Commissioner Heriot's motion to
17 amend the agenda to take this up and approve it and
18 get about the Commission's business. It's not tough.
19 I don't think it's even controversial.

20 MR. MORALES: Thank you. Any other
21 discussion?

22 COMMISSIONER HERIOT: Yeah.

23 MR. MORALES: Commissioner Heriot?

24 COMMISSIONER HERIOT: Yeah. I mean, we
25 all know the thing that has been noticed that is most

1 significant on our agenda is the approval of President
2 Biden's nominations for chair and vice chair. I think
3 I speak for three other colleagues of mine,
4 Commissioner Adams, Commissioner Gilchrist and
5 Commissioner Kirsanow, we would very much like to be
6 able to vote in favor of those nominations. But
7 before we do so, we feel that it is very important to
8 set certain ground rules, and we didn't think this
9 would even be controversial. We thought this was
10 going to be easy stuff here.

11 We've had previous negotiations with
12 previous chairs and vice chairs, and they have all
13 gone, I think, ultimately quite smoothly. This one
14 seems to be an exception in that we are being required
15 to vote before we have been able to resolve these
16 ground rules.

17 And we actually pared down what we needed
18 to what we thought would be really uncontroversial.
19 The 30/30/10 policy, I think, is really one of the
20 most significant things about this Commission. Under
21 our 30/30/10 policy, when a report is approved by the
22 Commission, each commissioner then has 30 days to
23 write a statement that will be part of that report.

24 Those reports are then -- those statements
25 are then traded so that we then have an additional 30

1 days to respond to things that the other commissioners
2 have said. And I think these statements have been
3 extremely valuable in the Commission reports, often
4 far more valuable than the report itself, the part
5 that is generated by the staff, because it allows us
6 to flesh out arguments from all sides in addition, in
7 rare occasions, and I think this has only been invoked
8 once, we have an additional 10 days for surrebuttal if
9 new material has been brought up during the rebuttal
10 period, and three commissioners agree that there ought
11 to be a 10 day surrebuttal. And I think that has
12 worked out extremely well.

13 Previous chairs have readily accepted this
14 and have gone on the record saying that they will
15 always vote in favor of retaining the policy. And
16 that way even though, you know, Commission majorities,
17 you know, come and go, there will always be a majority
18 in favor of retaining the policy.

19 You know, I don't think that should be
20 controversial. And yet because we have been hurried
21 in this case, we haven't gotten that guarantee. And
22 I would very much like to see that. And I think there
23 is a problem that the policy was adopted some time
24 ago. And I believe there was a controversy over
25 whether or not the policy should take the form of an

1 AI or whether given that it applies to the
2 commissioners rather than to the staff that it doesn't
3 need to be an AI.

4 I think it will be nice to have it
5 codified in some way whether you call it an AI or call
6 it Fred. I mean, I don't much care what it's called
7 as long as it is in writing, and it can all be clear
8 for everyone.

9 The other issue is, of course, what
10 Commissioner Adams brought up, and that is the Crime
11 Victims Report. We're frankly, you know, the four of
12 us feel that like we were chumps, that we agreed to
13 the anti-Asian briefing on the condition that we also
14 have a crime victims.

15 This is 4/4 Commission. You would expect
16 that, you know, when you have a 4/4 Commission there
17 is going to be a one for you, one for me. Both of
18 these reports were approved. And then much to our
19 shock, while we happily voted in favor of the
20 discovery plan and accompanying documents for the
21 anti-Asian, the accompanying documents for the
22 discovery plan and accompanying documents for the
23 Crime Victims Report were voted down.

24 We felt that we were double-crossed. And
25 that doesn't make for a happy Commission. So that is

1 why I have moved to put these things first. If we
2 could agree on these things and get all that settled,
3 then we could have, you know, a much easier meeting.
4 But otherwise, I don't see how we can approve the
5 nominations at this time.

6 I would hope that at least we can get them
7 done by notational vote in the coming days because I
8 think that once members of the Commission focus on the
9 notion that these requests are really very, very fair.
10 We are just trying to ensure that we will be treated
11 fairly on the Commission. I think once that is clear,
12 this is going to be smooth sailing.

13 MR. MORALES: Turn off your mics, please.
14 Commissioner Heriot, has this proposed AI that you're
15 asking for codification, has it been submitted to
16 general counsel's office, OCRE, for a review?

17 COMMISSIONER HERIOT: This was voted on a
18 decade ago. This was a failure of that office to
19 codify it in the past, not that that makes much
20 difference here. The thing is, we need these to be
21 done. We cannot vote in favor of these nominations
22 until this is done.

23 The agenda, which made this the issue for
24 the agenda, was not promulgated properly with our
25 rules. It is not up to the staff director to

1 promulgate an agenda.

2 In the case of our last chair, Norma
3 Cantu, it was two months and almost three weeks before
4 the nomination was confirmed because it was necessary
5 to undergo these negotiations. And suddenly the staff
6 director, who has no authority to promulgate an
7 agenda, is telling us we absolutely must vote on this
8 now.

9 You know, that means unnecessary
10 embarrassment to everybody. We don't want to vote
11 down these nominations. What we would like to do is
12 be able to happily approve these, but with these very
13 fair proposals of ours. They haven't been acted on,
14 and they need to be acted on before we can vote.

15 MR. MORALES: So your answer is they have
16 not been submitted to the general counsel's office.

17 COMMISSIONER HERIOT: They were submitted
18 --

19 MR. MORALES: Please don't talk over me.

20 COMMISSIONER HERIOT: -- a decade ago.

21 MR. MORALES: Please don't talk over me.
22 You can answer when I am finished. So your answer is
23 they have not been submitted --

24 COMMISSIONER HERIOT: No, it's not.

25 MR. MORALES: -- to the general counsel's

1 office, and they have not been submitted to the Office
2 of Civil Rights Evaluation for review, which is the
3 minimum for all AIs that should be accomplished. And
4 so that has not been done.

5 These were just sent to our office or to
6 me or to the staff less than three days ago. So I'm
7 not sure why you have the rush to put this through
8 without a thorough evaluation and making sure that it
9 follows and adheres to the AIs and the statutes so.

10 COMMISSIONER HERIOT: This has been our
11 policy since November of 2011.

12 MR. MORALES: It was never acted upon, so
13 it is not the policy of the Commission.

14 COMMISSIONER GARZA: I'm going to exercise
15 a point of personal privilege here -- Commissioner
16 Garza. I just want to back up a little bit and make
17 it very clear that there are four new commissioners on
18 this Commission.

19 I was sworn in on March 17. We had a
20 briefing on March 24. We received the designation
21 from President Biden's office for chair and vice chair
22 on April 6. And there has been plenty of time to have
23 a conversation about these issues and yet notice
24 wasn't given until this week prior to our meeting
25 today.

1 I am sorry to hear about the things that
2 have happened in the past that I had nothing to do
3 with. You know, I am here in good faith. I would
4 like to have the opportunity to work across the aisle
5 with all commissioners to enact the mission of this
6 Commission, which is to serve the American public, to
7 inform the President and Congress of the status of
8 civil rights in this country. And all we are asking
9 for is an opportunity to serve and to work together at
10 this point.

11 You know, I myself do not have a special
12 assistant and neither do two of my colleagues on the
13 Democratic side. We are at a blatant disadvantage
14 when it comes to understanding the rules and what goes
15 into this process.

16 So to me, considering that, it is
17 inappropriate to consider this kind of amendment. I
18 would like for us to wrap this portion up so that we
19 can get to what we are really here about, which has
20 been duly notified to the public, which is the vote on
21 the President's designation of chair and vice chair
22 and to also change our meeting for May.

23 So I would like to move us forward on this
24 point. I want to reiterate to all of my colleagues
25 that I am here to work in good faith across the aisle,

1 but I cannot do that unless we move forward with these
2 designations. So thank you very much.

3 COMMISSIONER HERIOT: I would just point
4 out --

5 MR. MORALES: Any further discussion?

6 COMMISSIONER HERIOT: Yes.

7 MR. MORALES: Commissioner Heriot, please.

8 COMMISSIONER HERIOT: Yes. I would just
9 point out that as of Tuesday of last week,
10 Commissioner Garza was aware that we did have two
11 issues that we wished to discuss. I discussed them
12 last week with Commissioner Nourse. My understanding
13 is that she shared those with you.

14 And, again, in the past we have had some
15 time to negotiate before such a vote. I am not aware
16 of any case before where the staff director usurped
17 the power to make an agenda and move forward this
18 issue before the commissioners have had an opportunity
19 to negotiate on the vote. I think this is highly
20 improper, and I therefore support my own motion that
21 we amend the agenda.

22 COMMISSIONER GARZA: I would just like to
23 correct the record on that point. I did not have a
24 conversation with anyone from the Republican caucus
25 until Tuesday and was not given anything in writing as

1 to what was being requested until Wednesday. And
2 there has been no time to check how this would impact
3 the function of this Commission. So I take umbrage
4 with falsifying the facts. That is not what happened.

5 As I said, we had over a month to have a
6 conversation about this. I have been reaching out
7 since my appointment to each of the individual
8 commissioners to introduce myself, to say, you know,
9 I am here to work with all of you. And I mean that.
10 I understand that there have been issues in the past.
11 But I am not privy to them. And I don't believe my
12 colleagues on the Democratic side are as well.

13 And we need to have a clean slate and move
14 forward if we're going to get anything done. So I
15 wanted to make sure that that was correct. That it
16 was on the record. That we have not had ample
17 opportunity. And I do not want to be forced into a
18 vote just because we haven't been given ample
19 opportunity to discuss these things.

20 COMMISSIONER HERIOT: Speaking of not
21 wanting to be forced into a vote, we don't want to be
22 forced into a vote either. We would prefer not to
23 have to vote down your nomination, but you seem to
24 want that. I would correct the record. You were
25 nominated to be chair not a month ago, but on April 6.

1 That was just before the Easter weekend.

2 Our caucus promptly met on what we were
3 going to do in response to that. I emailed on Tuesday
4 to Commissioner Nourse what our -- that we had two
5 plans. You were forwarded that email on that day so
6 you knew that that was the case.

7 I am sorry that you did not have an
8 opportunity to talk in person with Commissioner
9 Kirsanow until Tuesday, but it was last week that
10 these issues came out, not this week.

11 Even so, even if it had been this week,
12 the point is, we are the ones who are being rushed
13 into voting upon your nomination and that I think is
14 highly inappropriate. As I said before, last time
15 with Commissioner Cantu when she was made chair, we
16 conducted negotiations over the course of two months
17 and almost three weeks. I think we actually moved
18 very promptly in this case, but there was no way that
19 we could negotiate this prior to knowing who was being
20 nominated.

21 COMMISSIONER ADAMS: Very briefly,
22 whomever I should ask for recognition.

23 MR. MORALES: Please.

24 COMMISSIONER ADAMS: On the issue of
25 surprise, look, we and everyone on this Commission

1 knows this, as soon as we had an opportunity to talk
2 about this, this was the first thing out of my mouth
3 with every new nominee was this issue. And it went
4 back months.

5 And I don't think there were surprises. I
6 endeavored probably to the point of boorishness of
7 explaining to every new nominee that I could talk to
8 about this, this was the issue. This is a big issue.
9 And there is no surprise that I have a Washington
10 Times opinion piece about this from two months ago.

11 So I just want to make sure that from my
12 perspective, I bent over backwards to make sure
13 everybody knew this was a deal breaker before this
14 meeting.

15 MR. MORALES: Thank you. Any further
16 discussion? Hearing none --

17 COMMISSIONER KIRSANOW: I'm still here.

18 MR. MORALES: Oh, go ahead.

19 COMMISSIONER KIRSANOW: Very briefly, I
20 echo what Commissioners Heriot and Adams had to say,
21 and simply know this. That these two issues, the one
22 with respect to 30/30/10 frankly should be a no
23 brainer. It is to the benefit of all commissioners,
24 and it is not heavy lift to understand what it means.
25 We simply have 30 days in which to write the

1 statements related to whatever report the Commission.
2 It is 30 days for rebuttal and 10 days for
3 surrebuttal. That is not complicated.

4 In most cases, most attorneys could figure
5 that out within 5 to 10 minutes and agree or disagree.
6 With respect to the concept papers, again, a no
7 brainer. I like to give you as much advanced notice
8 as possible that this is something that had been
9 decided on by the Commission in the past. It is
10 fairly simple. We like to examine the issue of crime
11 victims. It is not a difficult task in terms of
12 assessing what precisely this mission is.

13 So we hope -- it would be nice to have a
14 year to think about these things, but in truth these
15 are issues that can be resolved or thought about
16 within, frankly, 10, 15 minutes.

17 MR. MORALES: Thank you. Any further
18 comment?

19 COMMISSIONER JONES: Yes.

20 MR. MORALES: Mr. Jones?

21 COMMISSIONER JONES: Let me start by
22 saying what a pleasure it is to be here with all of
23 you today and how I'm looking forward to serving with
24 you and fulfilling the purpose of this Commission,
25 which as the chair designee has said is to inform

1 Congress, the President and the public about the
2 status of civil rights in this country. And I am very
3 hopeful that we can agree on a definition of civil
4 rights that is consistent with what I've always
5 understood it to be and what I think history teaches
6 us and certainly what our civil rights laws reflect.

7 I also would like to think that I have
8 served in more contentious environments than even this
9 one. And so I am optimistic that we can get through
10 this probably with continued deliberation. Maybe some
11 of it won't even happen today. We'll see how that
12 goes.

13 As we develop the record today, which is
14 clear that some people are trying to do, Commissioner
15 Heriot has said repeatedly now that the staff director
16 has usurped the authority of the Commission in setting
17 the agenda.

18 And I just wanted to know, Mauro, if there
19 is some general counsel opinion or other text that you
20 have relied on in setting the agenda so that is
21 abundantly clear to people who are either ready the
22 transcript or who are paying attention to this
23 proceeding today?

24 MR. MORALES: Thank you, Mr. Jones. You
25 are correct. And I will let general counsel opine,

1 but under our administrative instructions and our
2 statute, the chair and the staff director create the
3 agenda for the Commission for each business meeting.

4 And therefore since we don't have a chair,
5 I consulted with a variety of commissioners as to what
6 the agenda should be. And we received a letter, which
7 I have sent to all commissioners, from the President,
8 which has designated and requested that the
9 Commission, and I'll read it, consistent with 42
10 U.S.C. 1975, the President seeks concurrence from the
11 majority of the members of the U.S. Commission to
12 designate Rochelle Mercedes Garza as chairperson and
13 Victoria Frances Nourse as vice chair of the
14 Commission. It would be appreciated if you could
15 inform of the Commission's decision at your earliest
16 convenience.

17 While this business had been scheduled
18 over a year ago by commissioners, and this was the
19 first opportunity, I was requested to withhold a
20 business meeting by commissioners on March 6. So this
21 was the earliest and quickest that we could create an
22 agenda. And I was requested to also add to that
23 agenda the movement of a Commission business meeting
24 from May 19 to May 18.

25 So those were the two items. They were

1 presented to commissioners well over a week in
2 advance. I had received no objections at that time
3 until Monday afternoon, I received an email saying
4 that they wanted -- from Commissioner Adams,
5 Gilchrist, Heriot and Kirsanow, they wanted the
6 meeting cancelled because they were either not going
7 to come to the meeting or they were going to vote
8 against the President's request.

9 So I don't have the authority to
10 unilaterally cancel the meeting. And so we are
11 holding this meeting now. If you want to amend, as
12 Commissioner Heriot has, the agenda then so be it.
13 But the meeting should take place, and the vote should
14 take place. And the President deserves a vote on yes
15 or no of his designation. There is no reason not to
16 hold the vote.

17 If you feel that you want to negotiate and
18 have time to negotiate, so be it. You will have a new
19 chair, and you can sit down with her and the rest of
20 the new commissioners and work out an opportunity.
21 But you shouldn't force them into a corner. You
22 shouldn't coerce them to take your orders --

23 COMMISSIONER ADAMS: Point of order --
24 objection to the term coerce. Point of order.

25 MR. MORALES: Well, I withdraw coerce. I

1 would say force them to, you know, take these two
2 amendments or else you are going to vote no. That's
3 just not right.

4 COMMISSIONER ADAMS: Point of order.
5 Staff director --

6 MR. MORALES: I don't recognize the point
7 of order.

8 COMMISSIONER ADAMS: May I ask the
9 question of staff director?

10 MR. MORALES: Thank you.

11 COMMISSIONER ADAMS: Staff director, I
12 have a question, please. You indicated, and I think
13 you lay out a sound argument, that the statute and the
14 guiding regulations designate the chair and the staff
15 director to set the agenda. That's essentially what
16 you said --

17 MR. MORALES: That's not true.

18 COMMISSIONER ADAMS: But that's what you
19 said. Was there a regulation that prevented you from
20 putting 30/30/10 or the crime discovery plan on the
21 agenda today, prevented?

22 MR. MORALES: Yes. There is an AI that
23 requires the -- there is a seven day notice in order
24 to post on the website and in the Federal Register.
25 And so when I received the request, I believe one of

1 the special assistants to add two items to the agenda,
2 I informed all commissioners at that time that it was
3 inappropriate to add those two items, but they could
4 be added if you amend the agenda.

5 COMMISSIONER ADAMS: Okay. I don't think
6 you understand my question.

7 MR. MORALES: That's where we are now.

8 COMMISSIONER ADAMS: I don't think you
9 understood my question. Let me restate it. Prior to
10 last week, could you have done it on your own volition
11 is my question?

12 MR. MORALES: If I had been requested,
13 yes, we could have, but it wasn't.

14 COMMISSIONER NOURSE: I would like to --
15 I have not spoken yet. And I am delighted to be here
16 with such amazing people, Commissioner Magpantay and
17 Mondaire Jones, Commissioner Jones and the future
18 chair, Rochelle Garza.

19 It is no secret that I worked for the
20 President in the White House when he was Vice
21 President as his chief lawyer, the year his son died.
22 And why did they ask me to do that? Well, I've known
23 him since I was a baby lawyer, even younger than our
24 esteemed commissioners here.

25 And I worked with him when he was on the

1 Senate. And he taught me everything I know about
2 bipartisanship. I know that we can work together.
3 I've done it before on -- the first duty of a state,
4 which is to keep people safe. But I want to remind
5 everyone that the statute and the regulations depend
6 upon statutes that provide protections, as
7 Commissioner Jones said, for civil rights.

8 So I need the time. I don't have an
9 office. I don't have a lawyer. These last two weeks
10 -- I'm a professor at Georgetown. You know, I haven't
11 had time to look at these documents in a way that
12 would be consistent with the statute and regulations.
13 And I know that the President has asked me to be
14 Rochelle's veep because I'm a stickler for the rule of
15 law. Thank you.

16 COMMISSIONER HERIOT: I need to correct
17 the record on the issue of who promulgates the agenda.
18 The rule actually says the chairperson, after
19 consulting with the staff director, shall establish
20 the agenda, not that the chairperson and the staff
21 director establish the agenda. That's what the rule
22 actually says.

23 Chairperson is defined as chairperson or
24 acting chairperson. And that means, okay, who is the
25 acting chairperson? And as of last month, we showed

1 that Pete, as the most senior person in the absence of
2 any other decision by the Commission, is the person
3 who assumes the chair. The Commission can then
4 appoint someone else as acting chair. But the staff
5 director is not authorized to establish the agenda.

6 But most importantly, nobody is authorized
7 to say, look, we're going to shove this down your
8 throat. We have people now telling us that they don't
9 have time to consider these things. Well, but they
10 need to be considered before we vote on who is going
11 to be confirmed as chair or vice chair. Why? Because
12 this is the only moment at which we have any leverage
13 and that is important here.

14 We feel that we have been outrageously
15 double-crossed on the issue of the Crime Victims
16 Report. For some reason, the members of the
17 Commission, who have now rotated off, thought that it
18 was okay to make such a deal and then to back away
19 from the deal by, you know, after we had already
20 committed to allowing the Anti-Asian Report.

21 That's pretty bad mistreatment of the four
22 of us, I believe. Therefore, it shouldn't be a
23 surprise that we would want some commitment before we
24 vote. And the reason that we suggested that this
25 meeting be postponed is we didn't want to embarrass

1 the candidates by having to vote no. And I still
2 don't want to embarrass the candidates by having to
3 vote no. But, you know, here we are.

4 COMMISSIONER NOURSE: I would just like to
5 note for the record that based on the statute, the
6 nature of this Commission, the President has the
7 authority to name the chair and the vice chair. And
8 under the Constitution, we all serve the current
9 President of the United States.

10 COMMISSIONER HERIOT: I would just like to
11 point out that that same law says that the nomination
12 has to be approved by the Commission as a whole.

13 COMMISSIONER NOURSE: The Constitution
14 surpasses any statute.

15 COMMISSIONER HERIOT: The Constitution
16 does not say that we don't have the power to approve.
17 I mean, that's just a silly argument.

18 MR. MORALES: All right. I think we've
19 had a vigorous debate. Why don't we call the question
20 and have a vote on Commissioner Heriot's motion to add
21 the two items to the agenda. We will do a roll call
22 vote. Sorry. I'll get the list out correctly.
23 Commissioner Adams, how do you vote?

24 COMMISSIONER ADAMS: Yes.

25 MR. MORALES: Commissioner Garza, how do

1 you vote?

2 COMMISSIONER GARZA: No.

3 MR. MORALES: Commissioner Gilchrist, how
4 do you vote?

5 COMMISSIONER GILCHRIST: Yes.

6 MR. MORALES: Commissioner Heriot, how do
7 you vote?

8 COMMISSIONER HERIOT: I vote yes.

9 MR. MORALES: Commissioner Jones, how do
10 you vote?

11 COMMISSIONER JONES: No. Commissioner
12 Jones votes no for the record. I'm sorry. My mic is
13 off. I turned my mic off.

14 MR. MORALES: I'll get it right.
15 Commissioner Kirsanow, how do you vote?

16 COMMISSIONER KIRSANOW: Yes.

17 MR. MORALES: Commissioner Magpantay, how
18 do you vote?

19 COMMISSIONER MAGPANTAY: Nay, no.

20 MR. MORALES: Commissioner Nourse, how do
21 you vote?

22 COMMISSIONER NOURSE: No.

23 MR. MORALES: It's a 4-4 tie. The motion
24 fails. We move to the first order of business as
25 noted in the agenda in the Federal Register. We will

1 turn to a discussion of the vote on the designation of
2 the designation of Rochelle Mercedes Garza --

3 COMMISSIONER ADAMS: Point of order. We
4 still have to vote to approve the agenda.

5 MR. MORALES: Good point. Thank you. Is
6 there a motion?

7 COMMISSIONER ADAMS: So moved.

8 MR. MORALES: Is there a second?

9 COMMISSIONER MAGPANTAY: I'll second it.

10 COMMISSIONER JONES: Seconded.

11 MR. MORALES: We have two seconds, but
12 we'll go with the first one. Any discussion on the
13 agenda, the two items, which are the vote on the
14 President's designation of the chair and the vice
15 chair and the motion to change the meeting date from
16 May 19 to May 18.

17 COMMISSIONER ADAMS: Discussion.

18 MR. MORALES: Please, Commissioner Adams.

19 COMMISSIONER ADAMS: I hope we can change
20 the meeting date to accommodate Commissioner Jones if
21 by no other means by a notational vote. I will
22 certainly vote yes on that. I will certainly vote yes
23 on future Chairman Garza's chairmanship.

24 We have bent over backwards to try to
25 avoid conflict here. I cannot wait to vote for the

1 vice chair. But unfortunately, this is a good lesson
2 for everyone watching how this Commission,
3 unfortunately, can frequently devolve into something
4 that reminded me of when I was in high school.

5 So I will -- I want to emphasize how
6 enthusiastic I am to vote for these two designations
7 despite all the other votes that might happen. That's
8 all.

9 MR. MORALES: Anybody else? Vote on the
10 agenda. All those in favor, aye?

11 (Chorus of aye.)

12 MR. MORALES: All those opposed?

13 (Chorus of nay.)

14 MR. MORALES: Okay. Call the question.
15 Commissioner Adams, how do you vote?

16 COMMISSIONER ADAMS: No, no.

17 MR. MORALES: Commissioner Garza, how do
18 you vote?

19 COMMISSIONER GARZA: I'm sorry.

20 MR. MORALES: On approving the agenda.

21 COMMISSIONER GARZA: Yes.

22 MR. MORALES: Commissioner Gilchrist, how
23 do you vote?

24 COMMISSIONER GILCHRIST: No.

25 MR. MORALES: Gilchrist votes no.

1 Commissioner Heriot, how do you vote?

2 COMMISSIONER HERIOT: No.

3 MR. MORALES: Commissioner Jones, how do
4 you vote?

5 COMMISSIONER JONES: Yes.

6 MR. MORALES: Commissioner Kirsanow, how
7 do you vote?

8 COMMISSIONER KIRSANOW: No.

9 MR. MORALES: Commissioner Magpantay, how
10 do you vote?

11 COMMISSIONER MAGPANTAY: Yes.

12 MR. MORALES: Commissioner Nourse, how do
13 you vote?

14 COMMISSIONER NOURSE: Yes.

15 MR. MORALES: No agenda is -- the agenda
16 fails. There is no agenda. There is nothing left to
17 discuss at this meeting.

18 COMMISSIONER ADAMS: Move to adjourn.

19 MR. MORALES: Before we adjourn, I would
20 like to make a comment.

21 COMMISSIONER ADAMS: It is not debatable.
22 It is not a debatable motion.

23 MR. MORALES: Is that correct?

24 COMMISSIONER GARZA: I have a point of
25 order.

1 MR. MORALES: Point of order.

2 COMMISSIONER GARZA: I am under the belief
3 that since this agenda was duly notified to the public
4 that this is duplicative that we vote it down. You
5 know, I would like an opinion from legal counsel on
6 whether or not this has been appropriately done.

7 MR. GANZ: Just for the record, I am David
8 Ganz. I am the general counsel here at the
9 Commission. I understand it is the past practice of
10 USCCR to vote for agendas. However, it is not
11 consistent with the regulation that provides that the
12 agenda is set by the chair and the staff director. It
13 does not do that. So it is simply a past practice
14 that has been done here, but it is not consistent with
15 our regulations.

16 COMMISSIONER NOURSE: I move to vitiate
17 the vote.

18 COMMISSIONER GARZA: Second.

19 MR. MORALES: Commissioner Nourse, I'm
20 sorry. I couldn't hear what you said.

21 (Simultaneous speaking.)

22 COMMISSIONER NOURSE: I withdraw.

23 COMMISSIONER ADAMS: There is a motion to
24 adjourn that was seconded. Now that we have a ruling
25 from the general counsel --

1 COMMISSIONER HERIOT: A motion to adjourn
2 is in order now.

3 MR. MORALES: The motion to adjourn on the
4 Robert's Rules is not debatable.

5 COMMISSIONER HERIOT: So let's vote.

6 MR. MORALES: Nevertheless, it needs a
7 majority vote in order to adjourn.

8 COMMISSIONER HERIOT: So let's vote.

9 MR. MORALES: How do you vote to adjourn?
10 Hold on. Let me get my -- Commissioner Adams, how do
11 you vote --

12 COMMISSIONER ADAMS: Yes.

13 MR. MORALES: -- to adjourn?

14 COMMISSIONER ADAMS: Yes.

15 MR. MORALES: Commissioner Garza, how do
16 you vote to adjourn?

17 COMMISSIONER GARZA: No.

18 MR. MORALES: Commissioner Gilchrist, how
19 do you vote to adjourn?

20 COMMISSIONER GILCHRIST: Yes.

21 MR. MORALES: Commissioner Heriot, how do
22 you vote to adjourn?

23 COMMISSIONER HERIOT: Yes.

24 MR. MORALES: Commissioner Jones, how do
25 you vote to adjourn?

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COMMISSIONER JONES: No.

MR. MORALES: Commissioner Kirsanow, how do you vote to adjourn?

COMMISSIONER KIRSANOW: Yes.

MR. MORALES: Commissioner Magpantay, how do you vote to adjourn?

COMMISSIONER MAGPANTAY: No.

MR. MORALES: Commissioner Nourse, how do you vote to adjourn?

COMMISSIONER NOURSE: No.

II. BUSINESS MEETING

DISCUSSION AND VOTE ON PRESIDENTIAL DESIGNATION OF
COMMISSIONER ROCHELLE MERCEDES GARZA AS CHAIRPERSON
AND VICTORIA FRANCES NOURSE AS VICE CHAIR OF THE
U.S. COMMISSION ON CIVIL RIGHTS

MR. MORALES: The motion fails. We are still in a meeting. So with that in mind, I would say we should turn to a discussion and a vote on the designation of Rochelle Mercedes Garza to serve as the chair and Victoria Frances Nourse to serve as the vice chair for the U.S. Commission on Civil Rights pursuant to the request of President Joseph Biden.

COMMISSIONER GILCHRIST: So moved.

MR. MORALES: I will proceed to open the floor for discussion. Any debate?

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COMMISSIONER GILCHRIST: So moved.

COMMISSIONER GARZA: I would like to make a few comments for the record.

MR. MORALES: Please

COMMISSIONER GARZA: So I want to just start off by saying that it is an honor of a lifetime to be President Biden's nominee for chair of the U.S. Commission on Civil Rights. It is also an honor to serve the American public alongside my fellow commissioners, who have incredible life journeys of their own that represent the American spirit of progress, resilience and determination.

As someone who has dedicated my life to advocating for justice and equality, I take the responsibility we have been tasked with to heart. And I want to reflect on my personal -- on what the personal significance of this nomination means for me and for my family.

My family is from deep south Texas, on the border with Mexico. On my father's side, my grandmother married as a teenager. She bore 13 children and worked the land picking cotton, okra and tomatoes. She would give birth at home with the help of my great grandmother, a midwife. She would rest for a few days and then continue working the land and

1 making food for the family.

2 She often told me especially during my
3 teen years and even after I graduated from college to
4 continue my education, to not get married, to keep
5 working towards the life that I wanted. And I don't
6 believe for a second that my grandmother regretted her
7 life, as hard as it was. She just didn't have the
8 choices or opportunities that she fought so hard to
9 have for her children, grandchildren and every
10 generation after her.

11 And as I sit here today, I am reminded of
12 the responsibility that I carry for my 13-month-old
13 daughter and for every generation that follows her.
14 My hope for this Commission is that together we can
15 continue the legacy of bipartisan progress that has
16 been made possible by the resilience of many
17 generations of Americans before us.

18 I sought President Biden's nomination.
19 And I promise to work tirelessly alongside my
20 colleagues on both sides of the aisle to ensure that
21 the U.S. Commission on Civil Rights remains a powerful
22 force for change and progress in our country.

23 MR. MORALES: Thank you. Commissioner
24 Nourse, do you have a comment?

25 COMMISSIONER NOURSE: Thank you so much.

1 And I am so delighted to be Commissioner Garza's veep,
2 having worked for a veep. She inspires me every day.
3 I have had a life, you know, that spans far more than
4 hers. I am old enough so that when I was born in
5 Florida, not only could my mother -- she would have to
6 apply to sit on a jury, and yet her daughter became
7 counsel to the Vice President of the United States.

8 A lot has changed. And I know, and I have
9 worked in the past across the aisle to do things that
10 sometimes my liberal colleagues don't like. But I am
11 delighted to be here. And I know that with
12 Commissioner Garza's tremendous story and with
13 Commissioner Jones and Magpantay, that we will come to
14 agreement on the nature of civil rights. We will
15 forge forward.

16 And I know that the folks in the White
17 House are watching. There is a reason they asked me
18 to be here. The President has spent many years
19 thinking, oh, man -- you know how he talks -- I didn't
20 do enough during the '60s. He goes to Selma every
21 year. So I know we can get this done. And we just
22 have to follow regular order. And good fences make
23 great neighbors. Thank you.

24 MR. MORALES: Any further discussion? I
25 call the question.

1 COMMISSIONER ADAMS: There was. We just
2 can't turn our mics on.

3 MR. MORALES: Go ahead.

4 COMMISSIONER GILCHRIST: Mr. Chairman, I
5 just want to first of all welcome our four new
6 commissioners and the nominees for both vice chair and
7 chair.

8 Let me just say for the record that I have
9 had the pleasure of talking to all of you. And in no
10 way have I sensed any nefarious attempt on your part
11 to stifle the business of the American people to the
12 Civil Rights Commission.

13 I want to echo my colleagues concerns
14 about the issues we have brought to this discussion
15 today regarding 30/30/10 and the Crime Victims Report.
16 You know, both of these things were negotiated --
17 well, at least the Crime Victims Report was negotiated
18 in good faith -- I had the pleasure of being on the
19 negotiating team during that time -- all but to be
20 very disappointed at the eleventh hour that we
21 operated in good faith and then did not receive the
22 same type of consideration for our proposal. And so
23 I think my colleagues are fair in their assessment of
24 what occurred and more specifically what we think
25 should occur going forward.

1 I would also echo my colleagues regarding
2 the nominees for chair and vice chair. I don't think
3 anybody on our side wants to delay or deny that. But
4 we also want to make sure that in good faith, and I
5 know we are going to use that term a lot, in good
6 faith, that we come together, and we find ways to make
7 sure that we are working good faith. And the
8 presumptive chair, I want to thank you for, you know,
9 your willingness to acknowledge that.

10 Unfortunately today, I am somewhat
11 disappointed that we did not have an opportunity to
12 amend our agenda to include those two items going
13 forward. So I wanted to make those comments, and I
14 will defer to my colleague to my left.

15 MR. MORALES: Please proceed.

16 COMMISSIONER ADAMS: I want to echo what
17 Commissioner Gilchrist said. The question right now
18 on the table is, I believe, the nomination, is that
19 correct, parliamentary procedure?

20 MR. MORALES: Yes.

21 COMMISSIONER ADAMS: We will have a chair
22 in short order, but the issue that we are facing right
23 now is one that is supported by enormous poll
24 majorities to examine how minority communities around
25 the country are being victimized by the increasing

1 crime. Now who is responsible, but are we collecting
2 the right data? Is it disproportionately affecting
3 minorities?

4 This is not some sort of bizarre quest to
5 pin blame for any crime increase. So let's be clear
6 about that. I know some of you haven't had time to
7 read the materials. So this is not this bipolar or
8 binary fight between law and order versus civil
9 rights.

10 We carefully crafted a proposal. The
11 staff did, too, by the way. What we are arguing about
12 is staff work right now. Not Christian Adams's work.
13 It is staff work, whether that becomes a discovery
14 plan.

15 So we have attempted to bend over
16 backwards today with procedural motion after
17 procedural motion to avoid a vote because nobody wants
18 to vote no. We all want to vote yes. And we are hung
19 up over a discovery plan and a right of the
20 commissioners to voice an opinion. Just so the record
21 reflects that for all of those watching.

22 COMMISSIONER NOURSE: Well, for all of
23 those watching, crime has gone down. This motion was
24 a year ago. We had a pandemic. And we have an entire
25 Justice Department that investigates crime. My intern

1 is now the Deputy Attorney General. She has a Crime
2 Commission. I need the time, Commissioner Adams, to
3 look at that discovery plan given the change of
4 events.

5 COMMISSIONER ADAMS: Well, that would
6 infer that you are going to be against voting on the
7 discovery plan in the future.

8 COMMISSIONER GARZA: No. If I may
9 interject, I just want to be very, very clear, and
10 this has been communicated to Commissioner Kirsanow.
11 I communicated this with Commissioner Gilchrist. I
12 have made it very clear, we are not here to undo
13 anything that the Commission has already decided upon.

14 They decided upon a concept paper and what
15 was missing was a discovery plan. To my knowledge,
16 okay, as someone who has only been on this Commission
17 for about a month, I do not know all the things I need
18 to know. You don't know what you don't know. And I
19 think that it is unfair to hold this vote hostage just
20 so you can get what you want.

21 And I want to make that very clear. We
22 are happy to work with you. I am not here to obstruct
23 the work of this Commission. But by not voting for a
24 chair and vice chair at this point in time, it is
25 obstruction.

1 COMMISSIONER ADAMS: Why couldn't we move
2 on a discovery plan without a chair?

3 MR. MORALES: Your mic, please.

4 COMMISSIONER ADAMS: How would it be
5 obstruction? We could still work on a discovery plan
6 without a chair. There is nothing that this
7 Commission is limited in doing by not having a chair
8 unless I'm missing something.

9 MR. MORALES: But you can't vote on a
10 discovery plan without it --

11 COMMISSIONER ADAMS: With it being on the
12 agenda.

13 MR. MORALES: And without the
14 commissioners. But it wasn't on the agenda.

15 COMMISSIONER ADAMS: Because you chose not
16 to put it on.

17 MR. MORALES: No. Because it wasn't
18 submitted.

19 COMMISSIONER ADAMS: Yes. You could have
20 put it on of your own volition.

21 MR. MORALES: But it wasn't submitted.

22 COMMISSIONER ADAMS: Well, put it on the
23 next one then.

24 MR. MORALES: It wasn't submitted.

25 COMMISSIONER ADAMS: Put it on the next

1 one then. Motion to table the motion that is on the
2 table right now. Motion to table the nominations.

3 COMMISSIONER HERIOT: Second.

4 COMMISSIONER ADAMS: It's debatable.

5 MR. MORALES: You've got to have a
6 majority. Do you want to take a vote?

7 COMMISSIONER ADAMS: No. It's debatable.

8 COMMISSIONER HERIOT: It's debatable, yes.

9 COMMISSIONER KIRSANOW: We made a motion.

10 MR. MORALES: Then debate it.

11 COMMISSIONER ADAMS: Recognized?

12 MR. MORALES: Recognized.

13 COMMISSIONER ADAMS: Okay. We're doing
14 everything procedurally possible to get a
15 confirmation. Now, somebody said, I'm not here to
16 oppose what the Commission has already done. Others
17 have voiced, well, the discovery plan is out of date.
18 All these are ominous warnings for our ability to do
19 the discovery plan.

20 So I would move to table the nominations
21 until we have time to sort this out in a collegial
22 bipartisan way, and there is no doubt that we will
23 sort this out and that the chair will be voted on and
24 the vice chair will be voted on.

25 COMMISSIONER HERIOT: Recognized?

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MR. MORALES: Please proceed,
Commissioner.

COMMISSIONER HERIOT: Just getting back to
what I consider to be the core issue here and that is
that I don't see how any of us can vote on a chair or
a vice chair. We have a responsibility under our
statute to vote on whether or not to accept the
President's nomination.

We have independent duties as individual
commissioners to satisfy ourselves that the
nominations are for people who will do a good job.
That's why it is in statute.

I anticipate being able to do this, but my
doubts are greater now than they were at the beginning
of this meeting. I can't vote in good faith for any
nomination for chair or vice chair unless I know that
they are willing to support our basic rule that each
commissioner has an opportunity to file a statement,
given 30 days to write that statement, given an
additional 30 days after they have had an opportunity
to see other commissioners' statements to respond to
that. That's how we flesh out arguments on civil
rights issues.

And it is extremely important that we have
commissioners who understand that these are our basic

1 ground rules, and this is how the Commission proceeds.
2 You know, if you need more time, you know, we have
3 always been happy to give more time. But that means
4 that we have to put the vote off. I can't vote in
5 favor of someone who isn't in favor of the 30/30/10
6 rule. It is as easy as that.

7 And I will note that the Commission
8 usually moves much, much faster than the United States
9 Senate in their role as confirming the President's
10 various nominations. Our Commission works a little
11 bit differently. We are not Senate confirmed. The
12 chair and vice chair have to be confirmed by the
13 Commission as a whole.

14 We have a duty to take that role seriously
15 and not to have the issue rammed down our throats
16 before we have had an opportunity to negotiate. You
17 are conceding -- the nominees have conceded that they
18 don't feel they are ready to negotiate on that issue.
19 Well, then we are not ready to vote on the
20 nominations. It is as easy as that.

21 COMMISSIONER GILCHRIST: May I be
22 recognized?

23 MR. MORALES: I will recognize
24 Commissioner Nourse and then Commissioner Gilchrist.

25 COMMISSIONER GILCHRIST: Okay.

1 COMMISSIONER NOURSE: I defer to
2 Commissioner Gilchrist.

3 MR. MORALES: Please, Commissioner
4 Gilchrist.

5 COMMISSIONER GILCHRIST: Okay. I just
6 wanted to ask staff director, I mean, the general
7 counsel, if there is anything within our rules that
8 prevent us from being able to take these nominations
9 up through a notational vote.

10 MR. GANZ: Please repeat the question so
11 I got it.

12 COMMISSIONER GILCHRIST: Is there anything
13 in our rules that prevent us from being able to take
14 these nominations up through a notational vote?

15 MR. GANZ: It is my view that the AIs
16 aren't limited to any subject matter. So, you know,
17 a vote for chair or vice chair could be done via a
18 notational vote as per our policies and administrative
19 instructions.

20 COMMISSIONER GILCHRIST: Thank you.

21 MR. GANZ: I would add that the AI does
22 require, I believe, it's not in front of me, but it
23 requires that no one objects to a vote being held on
24 a paper ballot or electronically. So there are some
25 requirements for it, I believe. But --

1 COMMISSIONER GILCHRIST: So it would --

2 MR. GANZ: -- nothing in the AI limits it.

3 COMMISSIONER GILCHRIST: So it would
4 require the full Commission in favor or against those
5 votes, is that right?

6 MR. GANZ: It doesn't require a unanimous
7 vote as far as the subject matter. It is just that if
8 someone objects to the vote being held --

9 COMMISSIONER GILCHRIST: I one person --

10 MR. GANZ: -- in a notational vote.

11 COMMISSIONER GILCHRIST: -- if one
12 commissioner objects, right.

13 MR. GANZ: In that format, yes --

14 COMMISSIONER GILCHRIST: Right, right.

15 Okay. Thank you.

16 MR. GANZ: -- versus person.

17 COMMISSIONER GILCHRIST: Thank you.

18 MR. GANZ: Sure.

19 MR. MORALES: Commissioner Magpantay, you
20 had a question?

21 COMMISSIONER MAGPANTAY: No.

22 MR. MORALES: I'm sorry. Any further
23 discussion?

24 COMMISSIONER NOURSE: I would just like to
25 make one note for the record with the analogy to a

1 concept of a confirmation. Forgive me for being very
2 law professorial about this, but I did work for the
3 Senate Judiciary Committee, and it is generally not
4 the practice.

5 And I am just stating a fact. It is not
6 the practice of senators who are confirming judges to
7 require substantive matters that they will be
8 deciding. The confirmation is on the qualifications
9 of the nominees and to advise and consent our
10 President, President Biden, on whether you think we
11 are qualified.

12 COMMISSIONER HERIOT: I have also worked
13 for the Senate Judiciary Committee. And I think that
14 the Commissioner is correct that it would not be
15 appropriate to do that with judicial officers. But it
16 is frequently done with executive officers.

17 There are understandings between members
18 of the Senate and executive officers about how they
19 intend to go about their work. And that is a lot more
20 analogous to what we are doing here. And, again,
21 there is a reason this is in the statute.

22 The statute does not say that
23 commissioners must vote yes. They need not vote yes.
24 There wouldn't be any point in putting the
25 confirmation in the statute if Congress did not fully

1 intend that we indeed work hard to make sure that the
2 Commission will be run properly.

3 And it is part of what makes a nominee
4 qualified to be chair or vice chair that they are in
5 fact willing to make sure that this bipartisan
6 Commission will have in its reports the issues fully
7 fleshed out and that each commissioner get the
8 opportunity to state their case about how the issues
9 should be resolved. This is fundamental to who we
10 are.

11 COMMISSIONER GILCHRIST: May I speak?

12 MR. MORALES: Yes, please.

13 COMMISSIONER GILCHRIST: I would like to
14 make an amended motion to Commissioner Adams's motion
15 to defer to also defer to a notational vote to allow
16 the Commission as a whole to work on some of the
17 concerns regarding the two issues that some of the
18 commissioners have indicated they need more time to
19 consider and to move that we vote in a notational
20 manner regarding the chair and vice chair going
21 forward.

22 COMMISSIONER ADAMS: I view that as a
23 friendly amendment to my motion to table. And I would
24 therefore rewrite my motion to table to include the
25 idea of resolving this through a notational vote

1 through what I am sure will be a unanimous vote if it
2 were a notational vote.

3 COMMISSIONER NOURSE: Could I have a
4 parliamentary inquiry? Given the fact that, and this
5 really is a question of procedure. So a notational
6 vote allows any individual to bar -- you know, you can
7 say it requires unanimity.

8 COMMISSIONER ADAMS: It does.

9 COMMISSIONER NOURSE: So the question for
10 me is whether you are actually re-writing the statute,
11 which is to say it requires the concurrence of the
12 majority, the word majority is there. If you change
13 it to a notational vote, have you changed it to a
14 single negative vote?

15 COMMISSIONER ADAMS: And being the author
16 of the amendment, both the original motion supporter,
17 I don't have an answer for you. I don't know.

18 COMMISSIONER NOURSE: All right.

19 COMMISSIONER HERIOT: No, under the rules,
20 any commissioner can object to a notational vote so
21 that it can't be taken as a notational vote. But that
22 would at most delay it until the next meeting. I
23 don't think anybody wants to object to the notational
24 vote. I'm sure nobody wants to object to that.
25 Whether or not -- are you saying you do want to object

1 to a notational --

2 COMMISSIONER MAGPANTAY: I'm putting my
3 hand up, when you're done.

4 COMMISSIONER HERIOT: Okay, okay. I'm
5 sorry. We all want to get this done, but we also want
6 to make sure that our two requirements for a yes vote
7 are -- you know, we get that. We believe that these
8 are more than fair and are frankly quite shocked that
9 this has become the least bit controversial. But,
10 okay.

11 COMMISSIONER NOURSE: I still don't have
12 an answer to the question about whether you changed
13 the statute. The statute uses the word majority.

14 COMMISSIONER HERIOT: No, no. No, it
15 would not change the statute and that what you object
16 to is not whether or not to confirm but whether or not
17 to hold a notational vote. So it would mean the vote
18 hasn't yet been taken. That's all.

19 COMMISSIONER NOURSE: I really don't quite
20 understand this. It seems like a lot of procedural --
21 you know, there is a possibility, given what the
22 general counsel said, that any single commissioner can
23 then say we don't do a notational vote. So that
24 changes the voting rules that should apply --

25 COMMISSIONER HERIOT: It just delays.

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COMMISSIONER NOURSE: -- under the statute.

COMMISSIONER HERIOT: It just delays, that's all. And I'm quite willing to say I am not going to object to a notational vote.

COMMISSIONER NOURSE: Well, all of the commissioners would have to agree on the record that you wouldn't object to a notational vote, otherwise there is the possibility that we would have one person who would in effect negate the President's, your President's nominations.

COMMISSIONER HERIOT: No, it would just delay it, that's all because it's not a vote on the actual matter. I am sure you can get everybody, at least everybody on this side of the aisle, to say --

COMMISSIONER NOURSE: Well, I would like to hear it on the record.

COMMISSIONER HERIOT: I will not be objecting to a notational vote.

COMMISSIONER KIRSANOW: Kirsanow doesn't object to taking a notational vote.

COMMISSIONER GILCHRIST: Gilchrist certainly does not object.

COMMISSIONER ADAMS: It's my motion.

COMMISSIONER MAPANTAY: Chair, Glenn

1 Magpantay. So, I'm sorry, I think to echo
2 Commissioner Adams's point, I actually am very
3 interested in talking about the two proposals. And I
4 have questions. Actually, I need just more time to
5 study it. I don't know everything. I do have some
6 ideas. So I am very much looking forward to voting on
7 these two issues.

8 So I want to echo that and say that my
9 only concern with the notational vote, especially on
10 the two issues, the 30/40 rebuttal and the discovery
11 plan is I don't know if we have an opportunity to
12 discussion. And I just have some questions. And I
13 don't know if I have to ask questions on that research
14 plan in a notational vote.

15 It just seems that if we move forward on
16 a notational plan, there wouldn't be even any
17 conversation on the substance of that plan. And I
18 would actually ask for some conversation, you know,
19 and just try to understand it better. And the 20/40
20 dissenting -- which I very much support a dissenting
21 opinion.

22 I was on the New York Advisory Committee,
23 and we very much encouraged dissenting opinions on
24 both sides. So I really do think that it is an
25 appropriate procedural matter.

1 I don't understand the form of it, and I
2 don't understand why it is a rebuttal as opposed to a
3 dissent. And I'm not opposed to it conceptually. I
4 just don't understand the history and why. So it's a
5 good faith, I don't understand, and I don't think that
6 is getting answered in a notational vote. But if you
7 can do it, I'll listen.

8 COMMISSIONER HERIOT: That is why I wanted
9 to amend the agenda to have a discussion of that, you
10 know. And I feel like we are trying to get this done
11 and get these nominations, you know, through. Then,
12 you know, what we need to do is not vote on it today
13 because if we reject the nominations, which is what I
14 think we are going to have to do until these issues
15 are resolved, that means the White House has to go
16 through and do all of this again. And I don't see the
17 point in throwing the ball back to the White House.

18 COMMISSIONER ADAMS: Which is why I made
19 a motion to table, right, which is still the live
20 motion. I'm going to withdraw the part that I
21 accepted as a friendly amendment as a notational vote
22 just to simplify things and make this a motion to
23 table so we can all avoid doing what everybody has
24 pointed out will happen.

25 COMMISSIONER GARZA: I just have a point

1 of order because you are making a motion to table the
2 first agenda item on our agenda. And I don't believe
3 that is appropriate under the rules.

4 COMMISSIONER ADAMS: Of course, it is.

5 COMMISSIONER GARZA: But I could be wrong.

6 COMMISSIONER ADAMS: It is totally --

7 COMMISSIONER GARZA: I'm going to ask for

8 --

9 COMMISSIONER ADAMS: -- totally
10 acceptable.

11 COMMISSIONER GARZA: -- I'm going to ask
12 for legal counsel.

13 COMMISSIONER ADAMS: It's not a close
14 call. You can table anything by a majority vote.

15 MR. MORALES: Mr. Ganz?

16 MR. GANZ: Robert's Rules state that a
17 motion may be taken from the table after one item of
18 business has been conducted.

19 COMMISSIONER ADAMS: This is not a motion
20 to take from the table. This is a motion to lay on
21 the table. Those are different motions.

22 COMMISSIONER GARZA: This is a motion to
23 table the first agenda item.

24 COMMISSIONER ADAMS: But what the general
25 counsel just cited was the motion to take off the

1 table, not to take off the agenda. Those are two
2 different things. This was a motion to table Item 2A,
3 to table, not to pick up from the table.

4 MR. GANZ: Yes. I only have to go by the
5 Robert's Rules I have in front of me, you know. So
6 I'm not sure I can provide much more clarity than
7 motions may be taken from the table after one item of
8 business has been conducted.

9 COMMISSIONER GARZA: Can we take a recess?

10 COMMISSIONER ADAMS: My understanding is

11 --

12 MR. MORALES: Let's take a 10 minute
13 recess.

14 (Whereupon, the above-entitled matter went
15 off the record at 1:18 p.m. and resumed at 1:31 p.m.)

16 MR. MORALES: We are under a discussion on
17 the motion to table. Any further discussion? I call
18 the question on the motion to table. All in favor say
19 aye.

20 (Chorus of aye.)

21 MR. MORALES: All those opposed?

22 (Chorus of nay.)

23 MR. MORALES: We'll do a division.

24 Commissioner Adams, how do you vote?

25 COMMISSIONER ADAMS: Yes, table.

1 MR. MORALES: Commissioner Garza, how do
2 you vote?

3 COMMISSIONER GARZA: No.

4 MR. MORALES: Commissioner Gilchrist, how
5 do you vote?

6 COMMISSIONER GILCHRIST: Yes, table.

7 MR. MORALES: Commissioner Heriot, how do
8 you vote?

9 COMMISSIONER HERIOT: I vote yes.

10 MR. MORALES: Commissioner Jones, how do
11 you vote?

12 COMMISSIONER JONES: I vote no.

13 MR. MORALES: Commissioner Kirsanow, how
14 do you vote?

15 COMMISSIONER KIRSANOW: Yes.

16 MR. MORALES: Commissioner Magpantay, how
17 do you vote?

18 COMMISSIONER MAGPANTAY: No.

19 MR. MORALES: Commissioner Nourse, how do
20 you vote?

21 COMMISSIONER NOURSE: No.

22 MR. MORALES: The motion fails. Now we
23 are back on the motion, discussion, and now call a
24 question on the vote to designate Rochelle Mercedes
25 Garza to serve as the chair, Victoria Frances Nourse

1 to serve as the vice chair of the U.S. Commission of
2 Civil Rights pursuant to the request of President
3 Joseph Biden.

4 COMMISSIONER ADAMS: Divide the motion.

5 MR. MORALES: I call for the vote.

6 COMMISSIONER ADAMS: Motion to divide.

7 COMMISSIONER HERIOT: Second.

8 COMMISSIONER ADAMS: Well, you are very
9 familiar with this motion, Mr. Staff Director, because
10 we did it a lot the last two years. This is a dual
11 motion. I'm suggesting we divide the motion as we did
12 multiple times in recent Commission meetings to
13 segregate the vote.

14 MR. MORALES: So you are proposing that we
15 have two separate votes?

16 COMMISSIONER ADAMS: You know full well
17 what I am proposing because we did it over and over
18 again in previous Commission meetings, and you backed
19 it up.

20 MR. MORALES: I am asking you to explain
21 it for the record.

22 COMMISSIONER ADAMS: But you know, don't
23 you?

24 MR. MORALES: I don't know.

25 COMMISSIONER ADAMS: Okay.

1 COMMISSIONER NOURSE: Parliamentary
2 inquiry. Commissioner Adams, you have to state what
3 the motion is.

4 COMMISSIONER ADAMS: All right. So I am
5 moving that the two issues be divided. It is not
6 debatable. In fact, we learned from Mr. Mauro and
7 perhaps even the general counsel.

8 MR. MORALES: My name is not Mr. Mauro.

9 COMMISSIONER ADAMS: Staff Director Mauro.

10 MR. MORALES: It is Mauro Morales. I am
11 Staff Director Morales, please. You may not like me,
12 but please respect me. Please respect the office.

13 COMMISSIONER ADAMS: Apologies. We
14 learned last year and the year before that when a
15 motion is bundled with multiple items, for which there
16 are here, that it is perfectly appropriate, in fact,
17 we learned that it is not even debatable. That it
18 must be divided upon request. Remember all that?
19 Remember all those or should we --

20 MR. MORALES: I don't know what you are
21 talking about.

22 COMMISSIONER ADAMS: Okay. There were
23 multiple motions, in fact, in the October meeting, I
24 believe, one occurred, where we had items related to
25 the concept paper and the crime report appearing

1 together, and Commissioner Kladney was very good at
2 the motion to divide. He usually made it. And the
3 issue was divided. I mean, surely you remember this.

4 MR. MORALES: Commissioners agreed to
5 that, I didn't.

6 COMMISSIONER ADAMS: But surely you
7 remember it happening. And it wasn't one instance.

8 MR. MORALES: It can't be because it is
9 one letter on the agenda.

10 COMMISSIONER ADAMS: Okay. But there are
11 two -- so it was one item on the agenda previously
12 that got divided. You debundled it repeatedly.

13 COMMISSIONER NOURSE: What are you asking,
14 Commissioner Adams?

15 COMMISSIONER ADAMS: Separate motions.

16 COMMISSIONER NOURSE: Votes on the chair
17 and me, is that what you are asking? There are
18 several things on this agenda --

19 COMMISSIONER ADAMS: Well, the question --

20 COMMISSIONER NOURSE: -- I mean, that you
21 have wanted to be on the agenda.

22 COMMISSIONER ADAMS: -- before us right
23 now, the pending question that has been called is the
24 motion on the vote. Perhaps the general counsel could
25 refresh everyone's recollection.

1 MR. MORALES: We will ask the general
2 counsel to opine.

3 MR. GANZ: According to our Robert's
4 Rules, a motion to divide is not debatable and
5 requires a majority vote.

6 COMMISSIONER ADAMS: For the record, this
7 is the first time the motion to divide required a
8 majority vote on this Commission. The last two years,
9 it was just done.

10 MR. MORALES: You asked for a legal
11 opinion of the general counsel.

12 COMMISSIONER ADAMS: All right. I'm sure
13 the practice will change eventually, but I'll withdraw
14 the motion to divide.

15 MR. MORALES: Okay then. Then we call the
16 question to vote again on the designation of Rochelle
17 Mercedes Garza to serve as chair, Victoria Frances
18 Nourse to serve as vice chair of the U.S. Commission
19 on Civil Rights pursuant to the request of President
20 Joseph Biden. I will proceed to the vote.
21 Commissioner Adams, how do you vote?

22 COMMISSIONER ADAMS: Under the authority
23 of 42 U.S.C. 1975(d), I vote no.

24 MR. MORALES: It's a no vote.
25 Commissioner Garza --

1 COMMISSIONER NOURSE: Could you clarify --
2 parliamentary inquiry -- why under 1975(d) you are
3 voting no?

4 COMMISSIONER ADAMS: No, I can't. At
5 least, I choose not to.

6 COMMISSIONER NOURSE: I would like 1975(d)
7 to be read into the record. Counsel, could you do
8 that?

9 COMMISSIONER ADAMS: Or perhaps we could
10 get the general counsel's opinion on what 1975(d) says
11 because it was offered last week in writing to the
12 commissioners.

13 MR. MORALES: One moment.

14 COMMISSIONER NOURSE: I need a better
15 citation because there are several d's.

16 MR. GANZ: The president shall, with the
17 concurrence of a majority of the Commission's members,
18 fill a vacancy by designating a chairperson or vice
19 chairperson among the Commission's members.

20 The President may, with the concurrence of
21 a majority of the Commission members, designate a
22 chairperson or vice chairperson as may be from the
23 Commission's members. That is various parts.

24 COMMISSIONER NOURSE: That doesn't apply
25 here. I seek further clarification from Commissioner

1 Adams on the precise textual language.

2 COMMISSIONER ADAMS: Well, we had an
3 opinion of general counsel last week that I am relying
4 on. And we can argue about this until the cows come
5 home, but my vote is no pursuant to the powers I have
6 under 42 U.S.C. 1975(d).

7 COMMISSIONER NOURSE: D is what you are
8 saying? Well, I think you should really -- well.

9 COMMISSIONER ADAMS: I have it front of
10 me, it's D, delta.

11 COMMISSIONER NOURSE: Could you read that
12 into the record?

13 COMMISSIONER ADAMS: No. We are taking a
14 vote. That would be out of order.

15 COMMISSIONER NOURSE: The public is not
16 well served by this.

17 MR. MORALES: So your vote is no. Okay.
18 Moving along, Commissioner Garza, how do you vote?

19 COMMISSIONER GARZA: Yes.

20 MR. MORALES: Commissioner Gilchrist, how
21 do you vote?

22 COMMISSIONER GILCHRIST: Before I cast my
23 vote, I want to just say to my colleagues how
24 disappointed I am that we have not been able to, in my
25 opinion, handle some various simplified business here

1 today, particularly with regard to some of the issues
2 that my colleagues on the other side have brought up
3 regarding 30/30/10 and the Crime Victims Report.

4 COMMISSIONER GARZA: Point of order. I am
5 sorry to interrupt you. I think we are just in the
6 middle of a vote, and we should just vote.

7 COMMISSIONER GILCHRIST: Okay. Well --

8 COMMISSIONER GARZA: I think we had enough
9 time.

10 COMMISSIONER GILCHRIST: I vote no.

11 MR. MORALES: Commissioner Heriot, how do
12 you vote?

13 COMMISSIONER HERIOT: I cannot in good
14 faith vote for anyone who cannot commit to support our
15 policy of allowing each commissioner to file a dissent
16 with each --

17 MR. MORALES: Just a vote. We are just
18 asking for a yes or no vote.

19 COMMISSIONER HERIOT: Nope, nope, nope.

20 MR. MORALES: Nope, nope, nope is not a
21 vote. That means no?

22 COMMISSIONER KIRSANOW: Mr. Staff
23 Director, under what authority are you directing
24 Commissioner Heriot to vote?

25 MR. MORALES: Because we are asking for

1 the vote, yes or no.

2 (Simultaneous speaking.)

3 COMMISSIONER KIRSANOW: -- staff director,
4 not the Commission director.

5 MR. MORALES: Then go ahead and speak all
6 you want.

7 COMMISSIONER HERIOT: In any event, I vote
8 no. I am shocked that this has come to this, but I do
9 vote no.

10 MR. MORALES: Commissioner Jones, how do
11 you vote?

12 COMMISSIONER JONES: I vote yea.

13 MR. MORALES: Commissioner Kirsanow, how
14 do you vote?

15 COMMISSIONER KIRSANOW: Well, what do we
16 -- no.

17 MR. MORALES: Commissioner Magpantay, how
18 do you vote?

19 COMMISSIONER MAGPANTAY: I vote yea.

20 MR. MORALES: Commissioner Nourse, how do
21 you vote?

22 COMMISSIONER NOURSE: Yes.

23 MR. MORALES: The motion fails, 4-4.
24 Should we attempt to pass the change of the date for
25 commissioners?

1 COMMISSIONER GARZA: I will move that --
2 DISCUSSION AND VOTE ON CHANGING FRIDAY, MAY 19

3 USCCR BUSINESS MEETING TO THURSDAY MAY 18

4 MR. MORALES: Yeah, okay. Yeah, so we
5 would like to have a discussion and vote on changing
6 the Friday, May 19, USCCR business meeting to
7 Thursday, May 18, 2023.

8 COMMISSIONER ADAMS: Second.

9 MR. MORALES: Any discussion?

10 COMMISSIONER ADAMS: Yes.

11 MR. MORALES: Please proceed.

12 COMMISSIONER ADAMS: This is an example of
13 how the Republican members of this caucus have voted
14 to be accommodating, to be respectful, to move the
15 ball to vote for reports over and over and over again.
16 Over and over again. So I -- I have no more
17 discussion on that.

18 COMMISSIONER JONES: Staff director.

19 MR. MORALES: Yes, Commissioner Jones?

20 COMMISSIONER JONES: Yes. I would like to
21 express my deep gratitude for the indulgences of my
22 Republican colleagues on this Commission and to
23 reiterate my excitement about working through the
24 issues that have been identified today that have not
25 yet been resolved. Thank you.

1 MR. MORALES: Any further discussion?
2 Hearing none, I will proceed to the vote. Do we want
3 to do this -- do you want to divide or do you want to
4 just have it a voice vote?

5 COMMISSIONER GARZA: Let's divide.

6 MR. MORALES: Commissioner Adams, how do
7 you vote?

8 COMMISSIONER ADAMS: Microphone, I can't
9 -- I vote yes.

10 MR. MORALES: Commissioner Garza, how do
11 you vote?

12 COMMISSIONER GARZA: Yes.

13 MR. MORALES: Commissioner Gilchrist, how
14 do you vote?

15 COMMISSIONER GILCHRIST: Yes.

16 MR. MORALES: Commissioner Heriot, how do
17 you vote?

18 COMMISSIONER HERIOT: I vote yes.

19 MR. MORALES: Commissioner Jones, how do
20 you vote?

21 COMMISSIONER JONES: Yes.

22 MR. MORALES: Commissioner Kirsanow, how
23 do you vote?

24 COMMISSIONER KIRSANOW: Yes.

25 MR. MORALES: Commissioner Magpantay, how

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do you vote?

COMMISSIONER MAGPANTAY: Yea.

MR. MORALES: Commissioner Nourse, how do you vote?

COMMISSIONER NOURSE: Yea.

MR. MORALES: Thank you. The motion passes. The business meeting has been changed to Thursday, May 18. We'll have to circle back and find out what time works best for all commissioners. We can do it at noon again or earlier if that works out. We are open to whatever works best for commissioners so with that --

COMMISSIONER GARZA: Motion to adjourn.

COMMISSIONER ADAMS: Second.

MR. MORALES: All in favor of adjourning say aye.

(Chorus of aye.)

MR. MORALES: All those opposed?

The meeting is adjourned.

(Whereupon, the above-entitled matter went off the record at 1:42 p.m.)

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In the matter of: Business Meeting

Before: US CCR

Date: 04-21-23

Place: teleconference

was duly recorded and accurately transcribed under my direction; further, that said transcript is a true and accurate complete record of the proceedings.



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