



February 2015

U.S. COMMISSION ON CIVIL RIGHTS

Management Improvements Are Needed to Better Achieve Its Mission

GAO Highlights

Highlights of [GAO-15-92](#), a report to congressional committees

Why GAO Did This Study

The U.S. Commission on Civil Rights, first established by the Civil Rights Act of 1957, is an independent, bipartisan, fact-finding agency responsible for investigating and reporting on the status of citizens' civil rights. In fiscal year 2014, the commission had a \$9 million budget and about 40 people, including 8 commissioners. The Senate and House Appropriations Committees mandated GAO to review the commission's management.

GAO examined (1) the extent to which the commission has met its performance goals over the last 5 years, and (2) how well the commission is positioned to achieve its mission. GAO reviewed the commission's achievement of its performance goals related to its major functions, use of SACs to help identify civil rights issues, leadership structure, external communications, and workforce planning. GAO interviewed commissioners and staff and reviewed commission documents and relevant federal laws and regulations.

What GAO Recommends

Congress may wish to consider clarifying the roles and responsibilities of commissioners and the staff director. GAO also recommends that the commission make improvements for SACs and engage in comprehensive workforce planning. All the commissioners, except the chair, disagreed with our recommendations to clarify leadership roles and engage in workforce planning. GAO continues to believe these recommendations are appropriate, as discussed in the report.

View [GAO-15-92](#). For more information, contact Andrew Sherrill at (202) 512-7215 or sherrilla@gao.gov.

February 2015

U.S. COMMISSION ON CIVIL RIGHTS

Management Improvements Are Needed to Better Achieve Its Mission

What GAO Found

The U.S. Commission on Civil Rights met about half its performance targets under its four strategic goals for fiscal years 2009 through 2013. Under its goal covering the use of its state advisory committees (SACs), which study civil rights issues within each state, the commission met only 7 of 35 targets. For two goals related to the commission's reporting on civil rights issues and oversight of federal enforcement of civil rights laws, the commission met 31 of 58 targets. The commission met 16 of its 22 targets under its goal for internal operations.

The commission's ability to achieve its mission is impaired by management challenges that stem, in part, from the unclear roles and responsibilities of commission leaders. Although having clearly defined roles and responsibilities is a key internal control, those for commissioners and the staff director are not clearly specified in the commission's statute. This has contributed to internal disagreements and affected internal and external operations, including the following:

- **State Advisory Committee approvals:** Although the commission is required by law to establish a SAC in each state, it has had difficulty approving SAC membership slates, which has resulted in some SACs being unable to operate for years. The commission's staff director said she plans to help address this problem by revising the internal procedures for SAC appointments, but several commissioners said she is not authorized to make such revisions independently. In the absence of clearly specified roles for revising internal procedures, the commission may not be able to address its challenges with SAC approvals and other aspects of its operations.
- **External communications:** Individual commissioners, without the backing of a majority of commissioners, have used commission letterhead to send letters advocating policies and expressing their individual views on civil rights issues to a variety of entities. For example, two commissioners sent a letter to more than 70 colleges and universities in 2014 questioning the institutions' admissions policies. These types of letters have created confusion about the commission's position and could jeopardize its credibility as a fact-finding civil rights agency. The commission's general counsel has told commissioners these types of letters may violate ethics rules, but the letters have continued.
- **Workforce planning:** The commission has not engaged in comprehensive workforce planning in response to a stagnant budget. The commission excluded from its workforce planning the commissioners' eight special assistants, who accounted for 18 percent of the commission's fiscal year 2014 salary expenditures. The staff director said she cannot consider adjusting the number of assistant positions because commissioners view the commission's appropriations language as entitling them each to an assistant. As a result, GAO found that offices performing certain functions that help fulfill the agency's statutory requirements to issue reports and maintain SACs may have proportionally low staffing relative to their responsibilities.

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Abbreviations

ACLU	American Civil Liberties Union
AI	Administrative Instruction
CRT	Civil Rights Division
DOJ	Department of Justice
EEOC	Equal Employment Opportunity Commission
FTE	Full-Time Equivalent
GPRAMA	GPRA Modernization Act of 2010
NAACP	National Association for the Advancement of Colored People
OCRE	Office of Civil Rights Evaluation
OGE	The United States Office of Government Ethics
OIG	Office of Inspector General
SAC	State Advisory Committee

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February 3, 2015

The Honorable Richard Shelby
Chairman
The Honorable Barbara A. Mikulski
Ranking Member
Subcommittee on Commerce, Justice, Science, and Related Agencies
Committee on Appropriations
United States Senate

The Honorable John Culberson
Chairman
The Honorable Chaka Fattah
Ranking Member
Subcommittee on Commerce, Justice, Science, and Related Agencies
Committee on Appropriations
House of Representatives

The U.S. Commission on Civil Rights was originally established by the Civil Rights Act of 1957 to serve as an independent, bipartisan, fact-finding agency charged with investigating and reporting on the status of civil rights in the United States.¹ Since its inception, the commission has conducted hearings and issued reports highlighting controversial civil rights issues, including racial segregation, impediments to voting rights, and affirmative action. To carry out its mission, the commission is required, among other things, to submit at least one report annually to the President and Congress on federal civil rights enforcement efforts.² To complement its work at the national level, the commission is required to have at least one advisory committee in each state and the District of Columbia that investigates issues within the state and reports its findings to the commission.³ The State Advisory Committees (SACs) are composed of unpaid volunteers appointed by the commission. The

¹Pub. L. No. 85-315, § 101, 71 Stat. 634, 634. The latest authorizing language was enacted under the Civil Rights Commission Amendments Act of 1994. Pub. L. No. 103-419, § 2, 108 Stat. 4338, 4338 (codified as amended at 42 U.S.C. § 1975). The 1994 act included a sunset provision terminating it altogether on September 30, 1996 (42 U.S.C. § 1975d) but the commission has continued to operate pursuant to annual appropriations.

²42 U.S.C. § 1975a(c)(1).

³42 U.S.C. § 1975a(d).

commission's six regional offices assist the SACs in their planning, fact-finding, and reporting activities.

GAO conducted several reviews of the commission between 1997 and 2006 and identified many management and internal control problems. In response to a mandate from the Senate and House Appropriations Committees to review the commission's management,⁴ we conducted this review to address the following questions:

(1) To what extent has the commission met its performance goals during the past 5 years?

(2) How well is the commission positioned to achieve its mission?

To determine the extent to which the commission met its performance goals for the past 5 years, we analyzed the commission's Performance and Accountability Reports for fiscal years 2009 to 2013. To assess how well the commission is positioned to achieve its mission, we reviewed the commission's management structure, use of SACs, external communications, and workforce planning. We interviewed officials at the commission, including the six commissioners who were in their positions as of May 2014, the staff director, the general counsel, and various commission staff. We reviewed the commission's published reports, meeting transcripts, and records on SAC status, as well as letters sent by commissioners on commission letterhead. We also reviewed relevant federal laws and regulations, as well as the commission's internal procedures, referred to as Administrative Instructions (AI). Further, we reviewed data on the commission's expenditures and staffing. To assess the reliability of these data, we compared them to other available related data, and we determined the data to be sufficiently reliable for the purposes of our review. In addition, we attended several of the commission's monthly business meetings and a commission briefing on a civil rights issue. We assessed recent SAC activity by reviewing *Federal Register* notices of SAC meetings from October 2012 to September 2014. We also obtained and analyzed data from an August 2013 survey of SAC chairs conducted by GAO's Office of the Inspector General (OIG) during

⁴160 Cong. Rec. H475, H517 (daily ed. Jan. 15, 2014) (Explanatory Statement Submitted by Mr. Rogers of Kentucky, Chairman of the House Committee on Appropriations Regarding the House Amendment to the Senate Amendment on H.R. 3547, Consolidated Appropriations Act, 2014).

the period it was acting as the commission's OIG.⁵ The OIG sent the survey to the chairperson of every SAC whose charter was active at the time of the survey or had expired on or after November 1, 2012. The OIG sent the survey to 36 SAC chairs and 32 responded to the survey. We determined that the OIG's survey data were sufficiently reliable for the purposes of this review.⁶ In addition, we interviewed officials at the Office of Government Ethics, which was conducting a review of the commission. For background information about how the commission's work compares to that of other federal agencies involved in civil rights, we interviewed officials at the Civil Rights Division of the Department of Justice (DOJ) and at the Equal Employment Opportunity Commission (EEOC). Also for background information, we interviewed representatives from civil rights organizations with locations in Washington, D.C., including the Leadership Conference on Civil and Human Rights, which recently conducted a study of the commission,⁷ and three of its member organizations – the American Civil Liberties Union (ACLU), the Lawyers' Committee for Civil Rights Under Law, and the National Association for the Advancement of Colored People (NAACP). We also interviewed a representative of the Southern Poverty Law Center located in Alabama to obtain a regional perspective.

We conducted our review from March 2014 to January 2015 in accordance with generally accepted government auditing standards.

⁵Consolidated and Further Continuing Appropriations Act, 2012, Pub. L. No. 112-55, 125 Stat. 552, 628 (providing for the inspector general of the GAO to serve as inspector general of the Commission on Civil Rights). Consolidated Appropriations Act, 2014, Pub. L. No. 113-76, 128 Stat. 5, 75 (providing for the close out and termination of all activities related to the duties of the inspector general of the GAO serving as inspector general of the Commission on Civil Rights).

⁶According to the survey methodologists who assisted with the OIG survey, the OIG took various steps to ensure the reliability of the survey results. To minimize nonsampling errors, the OIG pretested the questionnaire with three SAC chairpersons to ensure that the questions were clear and unbiased, the information was readily obtainable, and the questionnaire did not place an undue burden on respondents. The OIG had an independent survey specialist review the draft of the questionnaire prior to its administration and then made appropriate revisions to the content and format of the questionnaire after the pretests and independent review. After receiving survey responses, the OIG had all data analysis programs that were used to generate survey results independently verified for accuracy.

⁷Leadership Conference on Civil Rights Education Fund, *Restoring the Conscience of a Nation: A Report on the U.S. Commission on Civil Rights* (Washington, D.C.: March 2009).

Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

Overview of the Commission

The U.S. Commission on Civil Rights was established to serve as an independent, bipartisan, fact-finding agency whose mission is to investigate and report on the status of civil rights in the United States.⁸ It is required, among other things, to study the impact of federal civil rights laws and policies with regard to discrimination or denial of equal protection of the laws.⁹ The commission also investigates allegations of discrimination in voting, and it collects information on and serves as a national clearinghouse for information related to discrimination based on color, race, religion, sex, age, disability, or national origin, and studies and collects information on alleged discrimination.¹⁰ For the purpose of carrying out its mission, the commission is expressly authorized to hold hearings, administer oaths, issue subpoenas, compensate witnesses, take depositions, and use written interrogatories to obtain information about matters that are the subject of a commission hearing or report.

By statute, the structure of the commission has three components—the commissioners,¹¹ the staff director and other personnel, and the state advisory committees (SACs):

- The commission has eight commissioners who serve part-time¹² for 6-year staggered terms¹³ and are compensated at level IV of the

⁸H.R. Rep. No. 98-187, at 2 (1983), reprinted in 1983 U.S.C.C.A.N. 1989, 1990.

⁹42 U.S.C. § 1975a(a)(2)(B).

¹⁰42 U.S.C. § 1975a(a)(1), and (2)(A) and (C).

¹¹ Technically, the commission itself is composed solely of its 8 commissioners (42 U.S.C. § 1975(b)), but for ease of reference, in this report we also use the term “commission” to refer more broadly to the entire commission organization.

Executive Schedule, prorated on a daily basis for time spent in the work of the commission.¹⁴ Four commissioners are appointed by the President, two by the President pro tempore of the Senate, and two by the Speaker of the House of Representatives. Commissioner appointments are not subject to Senate confirmation. By statute, not more than four commissioners shall at any time be of the same political party.¹⁵ With the concurrence of a majority of the commissioners, the President designates a chairperson and vice chairperson from among the commissioners.¹⁶ The chairperson's responsibilities, as described in the commission's regulations, involve planning and conducting the commission's meetings.¹⁷

- A staff director, who is appointed by the President with the concurrence of a majority of the commissioners, serves as the administrative head of the commission.¹⁸ For a 2.5-year period from January 2011 to June 2013, the commission did not have a permanent staff director, and during that period a commission employee served as the acting staff director.
- The commission's SACs study civil rights issues within their states and provide findings and recommendations to the commission. Since its establishment, the commission has been authorized to create SACs; however, beginning with passage of the Civil Rights Commission Act of 1978, the commission has been required to have

¹²Applicable appropriation provisions for fiscal year 2014 provided that none of its appropriated funds could be used to reimburse commissioners for more than 75 billable days, with the exception of the chairperson, who was permitted 125 billable days. Consolidated Appropriations Act, 2014, Pub. L. No. 113-76, 128 Stat. 5, 75.

¹³According to data compiled by the Congressional Research Service on commissions, boards, and groups with presidentially appointed members, eight is an unusual number of members for such organizations. Generally, the number of members of such organizations is an odd number and lower than eight. See Congressional Research Service, *Presidential Appointments to Full-Time Positions on Regulatory and Other Collegial Boards and Commissions*, 111th Congress, R43238 (Washington, D.C.: Sept. 2, 2013).

¹⁴42 U.S.C. § 1975b(b).

¹⁵42 U.S.C. § 1975(b).

¹⁶42 U.S.C. § 1975(d).

¹⁷45 C.F.R. § 701.11.

¹⁸42 U.S.C. § 1975b(a)(1).

at least one SAC established in every state.¹⁹ SACs are comprised of private citizens appointed by the commission as unpaid volunteers. SACs may study any subject within the purview of the commission's statute and are authorized to hold fact-finding meetings and invite government officials and private persons to provide information. SACs are also charged with receiving reports, suggestions, and recommendations pertinent to SAC topics of inquiry. To operate, a SAC must be approved for operation by the commission, and that approval is valid for a 2-year period. SACs are supported by six commission regional offices whose primary function is to assist the SACs in their planning, fact-finding, and reporting activities.

The Commission Has a Unique Role That Does Not Focus on Enforcement Like Other Federal Civil Rights Agencies

The commission's unique mission includes conducting objective, comprehensive research to provide new information and analysis on civil rights issues and acting as a civil rights watchdog over the federal government. The commission does not have enforcement authority over civil rights issues. Other federal entities are charged with enforcing civil rights laws, such as the Department of Justice's (DOJ) Civil Rights Division (CRT)²⁰ and the Equal Employment Opportunity Commission (EEOC), which have the statutory authority to prosecute discriminatory conduct and secure relief for victims of discrimination.²¹ Like the commission, the CRT had its origins in the Civil Rights Act of 1957,²² and it has broad authority over anti-discrimination laws across multiple areas such as voting, education, housing, and public access.²³ CRT combats civil rights violations through litigation, mediation, regulation and policy development, as well as training and prevention. The EEOC, led by a five-member commission, enforces federal statutes prohibiting employment discrimination through litigation, mediation, and outreach and

¹⁹Pub. L. No. 95-444, § 5, 92 Stat. 1067, 1068 (codified at 42 U.S.C. § 1975a(d)). In addition, the Civil Rights Commission Amendments Act of 1994 requires the Commission to also establish at least one advisory committee in the District of Columbia. Pub. L. No. 103-419, § 3, 108 Stat. 4338, 4340.

²⁰ This is the abbreviation used by the division.

²¹28 C.F.R. §§ 0.1 and 42 U.S.C. § 2000e-5, respectively.

²²Pub. L. No. 85-315, §§ 111 and 121, 71 Stat. 634, 637 (establishing an additional assistant attorney general and strengthening civil rights laws).

²³28 C.F.R. § 0.50.

education.²⁴ EEOC has authority to investigate allegations in the private, state, local, and federal government sectors.

Past GAO Reviews of the Commission

The commission has been subject to long-standing congressional concerns over the adequacy of its management practices and procedures, concerns that were reinforced by several GAO reports. In 1997, we issued a report in which we found broad management problems at the commission, including limited awareness of how its resources were used.²⁵ In later reports we found that the commission lacked adequate project management and transparency in its contracting procedures,²⁶ that the agency needed improved strategic planning,²⁷ and that the commission had deficiencies in its financial management and internal controls.²⁸ In our last report, issued in 2006, we found that the commission needed to strengthen its quality assurance policies and make better use of its state advisory committees.²⁹

²⁴42 U.S.C. §§ 2000e-4(a) and 2000e-5.

²⁵GAO, *U.S. Commission on Civil Rights: Agency Lacks Basic Management Controls*, [GAO/HEHS-97-125](#) (Washington, D.C.: July 8, 1997).

²⁶GAO, *U.S. Commission on Civil Rights: More Operational and Financial Oversight Needed*, [GAO-04-18](#) (Washington, D.C.: Oct. 31, 2003).

²⁷GAO, *U.S. Commission on Civil Rights: Management Could Benefit from Improved Strategic Planning and Increased Oversight*, [GAO-05-77](#) (Washington, D.C.: Oct. 8, 2004).

²⁸GAO, *U.S. Commission on Civil Rights: Deficiencies Found in Financial Management and Internal Controls*, [GAO-05-68R](#), (Washington, D.C.: March 7, 2005).

²⁹GAO, *U.S. Commission on Civil Rights: The Commission Should Strengthen Its Quality Assurance Policies and Make Better Use of Its State Advisory Committees*, [GAO-06-343](#) (Washington, D.C.: May 1, 2006).

The Commission Met About Half Its Performance Targets in the Past 5 Years and Does Not Use State Advisory Committees Effectively

For fiscal years 2009 to 2013, the commission met about half of the performance targets it has set for itself.³⁰ The commission's strategic plan for this 5-year time period included four strategic goals: (1) shape a national conversation on current and future civil rights issues that identifies civil rights priorities for policy makers, (2) expand the capacity of federal agencies to raise public awareness of civil rights and efficiently and effectively execute the civil rights enforcement responsibilities of those agencies by engaging in strategic partnerships, (3) serve as an authoritative national clearinghouse and repository of civil rights data and information, and (4) normalize the commission's financial and operational controls, and modernize its information technology management and dissemination. For each strategic goal, the commission developed performance measures and annual performance targets related to each measure. After the conclusion of each fiscal year, the commission prepared Performance and Accountability Reports chronicling how the commission performed relative to each performance target (see table 1). For fiscal years 2009 to 2013, the commission met the highest proportion of performance targets (16 of 22) under its strategic goal to normalize financial and operational controls and modernize information technology management. However, the commission fell short of fully achieving that strategic goal because, for example, it did not meet the corresponding performance target to "evaluate the agency's organizational structure to support increased effectiveness and efficiency."

³⁰Current requirements for federal performance planning and reporting were established by the GPRA Modernization Act of 2010. Pub. L. No. 111-352, §§ 3 and 4, 124 Stat. 3866, 3867-3873, (2011) (codified at 31 U.S.C. §§ 1115 and 1116). The 2010 act revised the Government Performance and Results Act of 1993, Pub. L. No. 103-62, 107 Stat. 285. Congress intended performance targets to contribute to an agency's strategic plan. When the current requirements were enacted, there was recognition that credible performance information is essential for accurately assessing an agency's progress towards its goals. S. Rep. 111-372, at 6 (2010).

Table 1: U.S. Commission on Civil Rights Strategic Goals and the Percentage of Performance Targets Met under Each Goal, Fiscal Years 2009 to 2013

Strategic Goal	Number of Performance Targets Met from Fiscal Years 2009 through 2013	Example of Performance Measures for which Targets Were Frequently Met ^a	Example of Performance Measures for which Targets Were Rarely or Never Met ^b
1. Shape a national conversation on current and future civil rights issues	7 of 35 targets met	None	Increase the number of State Advisory Committees (SACs) approved for operation Obtain input from SACs as part of national program planning
2. Expand the capacity of federal agencies to raise public awareness of civil rights and efficiently and effectively execute their civil rights enforcement responsibilities by engaging in strategic partnerships	21 of 40 targets met	Produce a report that addresses how civil rights agencies might enhance their effectiveness, including conducting exit or follow-up activities with agencies	Increase participation in public policy symposia and venues in which the commission shares its views concerning civil rights policies ^c
3. Serve as an authoritative national clearinghouse and repository of civil rights data and information	10 of 18 targets met	Issue reports assessing the credibility of claims of systemic or pervasive discrimination	Incorporate original social scientific research into commission reports
4. Normalize the commission's financial and operational controls, and modernize its information technology management and dissemination	16 of 22 targets met	Receive a "clean" or unqualified financial audit	Evaluate the agency's organizational structure to support increased effectiveness and efficiency ^d
Number of measures met for all four goals combined	54 of 115 targets met		

Source: GAO analysis of U.S. Commission on Civil Rights Performance and Accountability Reports for fiscal years 2009 through 2013. | GAO-15-92

^aPerformance targets shown as "frequently met" were met in at least 3 of 5 years.

^bPerformance targets shown as "rarely or never met" were met, at most, in 2 years.

^cPerformance target was used in fiscal years 2009 and 2010, was not met, and was not used in the next 3 fiscal years.

^dPerformance target was used in fiscal year 2009, was not met, and was not used in the next 4 fiscal years.

The commission met only a fifth (7 of 35) of the performance targets under its strategic goal to "shape a national conversation on current and future civil rights issues." The performance measures under this goal include activities such as obtaining input and ideas from SACs. The commission's limited effort to seek input from SACs dates back to at least 2006, when we reported that the commission had not fully integrated the

SACs into the accomplishment of its mission.³¹ Although three commissioners and the staff director said that more communication and coordination with SACs is needed, transcripts from recent commission business meetings include little or no mention of SAC work. While four commissioners said they consider SAC work to be valuable, two commissioners said SACs are not useful and that some SAC reports are of poor quality.

An August 2013 survey of current and past SAC chairs further documents the commission's limited efforts to seek ideas from and communicate with SACs.³² Even though obtaining input from SACs is listed as a performance measure, only 10 of 30 SAC chairs who responded to the survey question reported that the commission's national office, which includes the commissioners and offices other than the regional offices, had solicited ideas from the SACs for national office projects during the previous 2 years. In response to two open-ended survey questions about working with the commission's national office, two of the 23 respondents who wrote comments said that they have good communication with the national office. On the other hand, 12 respondents wrote comments saying that they wanted more communication with the national office or that such communication was infrequent, nonexistent, or a challenge. An additional respondent expressed frustration about not hearing back about a draft SAC report that was sent to the national office for review. Other survey respondents wrote comments such as the national office "needs to become user friendly," and the national office is "a black hole where things go to get lost or delayed."³³

The commission's chairperson and staff director noted several steps to improve communication with SACs taken by the commission since the survey. For instance, the commission is setting up a web page to cover

³¹In [GAO-06-343](#), we recommended that the commission integrate the SACs' mission and work into its strategic planning and decision-making processes.

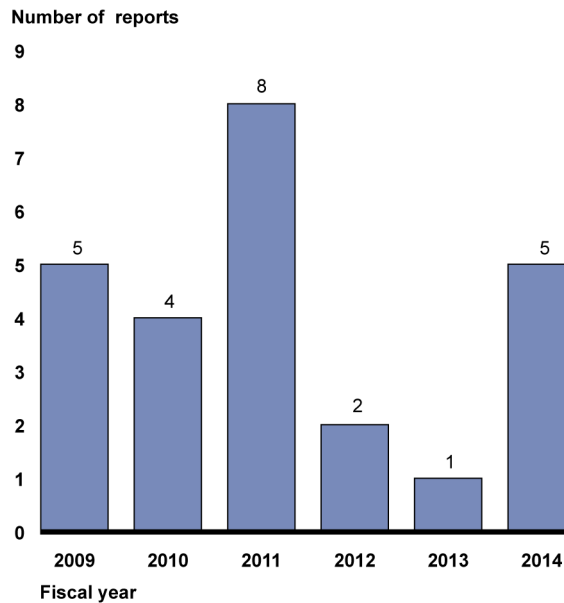
³²The survey was conducted by the Office of Inspector General (OIG) of the GAO at the time it also served as the OIG for the commission.

³³Federal agencies are responsible for establishing and maintaining internal controls to achieve their objectives, and effective communications within an agency and between an agency and its external stakeholders is a standard element of internal control. See OMB Circular A-123, "Management's Responsibility for Internal Control," revised December 21, 2004, and GAO, *Standards for Internal Control in the Federal Government*, [GAO/AIMD-00-21.3.1](#) (Washington, D.C.: November 1999.)

SAC work and facilitate communication between SACs and the national office. National office staff recently attended a meeting with SACs in the eastern region, and SAC members participated in an October 2014 briefing held by the commission in Florida on Stand Your Ground laws. Further, the chairs of the Illinois and Georgia SACs presented findings from their recent reports on immigration issues at the commission's December 12, 2014 business meeting.

When we asked about key commission accomplishments, commissioners pointed to national reports which are written by the commission's Office of Civil Rights Evaluation. During the 6-year period from fiscal year 2009 to 2014, the commission issued 25 national office reports (see fig. 1). Six of the reports are referred to as statutory enforcement reports because the commission's statute requires an annual report that monitors federal civil rights enforcement efforts. The six statutory enforcement reports covered topics on (1) patient dumping, (2) sexual assault in the military, (3) redistricting and the 2010 Census, (4) peer-to-peer violence and bullying, (5) DOJ's litigation of a case involving the New Black Panther Party, and (6) civil rights and the mortgage crisis. The other 19 reports covered briefings held by the commission on topics such as the EEOC's policy on criminal background checks, school discipline, and English-only policies in the workplace.

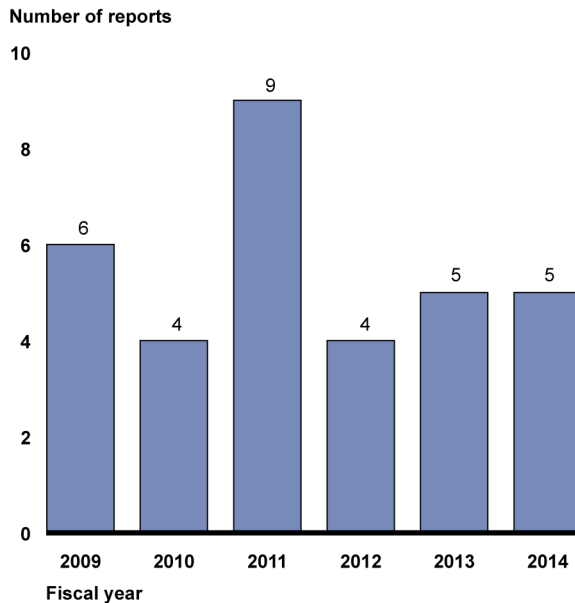
Figure 1: Reports Issued by the National Office of the U.S. Commission on Civil Rights, Fiscal Years 2009 to 2014



Source: GAO. | GAO-15-92

In contrast to commissioners, regional office staff identified as key commission accomplishments SAC activities and SAC reports, which are drafted by the commission's regional office staff, reviewed by SAC members, and issued by the commission. Since fiscal year 2009, the commission has issued 33 SAC reports (see fig. 2).

Figure 2: State Advisory Committee Reports Issued by the U.S. Commission on Civil Rights, Fiscal Years 2009 to 2014



Source: GAO. | GAO-15-92

During fiscal years 2013 and 2014, at least 37 SACs held public meetings. For 26 of these SACs, one or more of the meetings covered specific civil rights issues in their states. For the other 11 SACs, the meetings were for planning, for example, to select a topic for a future SAC project. Examples of civil rights issues covered during SAC public meetings include human trafficking, racial disparities in the criminal justice system, criminalization of school discipline, ex-felon voting rights, and immigration. For example, in August 2014, the Missouri SAC held a meeting to discuss steps for monitoring activity related to a recent police shooting in Ferguson, Missouri.

According to commission staff, public meetings and reports by SACs can draw attention to civil rights issues occurring on the state and local levels and help stimulate action to address issues. For example:

-
- In 2009, the Vermont SAC issued a report about racial profiling in traffic stops by Vermont police.³⁴ According to testimony by Vermont's Attorney General and a representative of Vermont's State Police, the SAC report led to a variety of reforms in the state, including revised training for state troopers, and enactment of a state statute requiring local law enforcement to adopt a model bias-free policing policy, and to collect and review complaints about biased law enforcement.³⁵
 - In 2011, a report by the New Hampshire SAC highlighted the poor conditions and services at the state's prison for women and noted that New Hampshire is one of the only states in the country with a recidivism rate for women that exceeds the comparable rate for men.³⁶ The SAC report helped motivate the state to build a new prison for women starting in August 2014.
-

Management Challenges Hinder the Commission's Ability to Achieve Its Mission

Management Roles and Responsibilities Are Not Clearly Specified

The roles that the commissioners and the staff director should play in managing the commission's operations are not clearly specified.³⁷ We found that while the statute explicitly authorizes commissioners to hold hearings, issue subpoenas, compensate witnesses, take depositions, and use written interrogatories to obtain information about matters that are the

³⁴Vermont State Advisory Committee to the U.S. Commission on Civil Rights, *Racial Profiling in Vermont* (Washington, D.C., 2009).

³⁵Vermont officials testified about the state's response to the Vermont SAC report during a hearing held by the Vermont SAC in August 2014.

³⁶New Hampshire State Advisory Committee to the U.S. Commission on Civil Rights, *Unequal Treatment: Women Incarcerated in New Hampshire's State Prison System* (Washington, D.C., September 2011).

³⁷ Having clearly defined roles and responsibilities is a key aspect of internal controls, as defined by GAO, *Standards for Internal Control in the Federal Government*, [GAO/AIMD-00-21.3.1](#) (Washington, D.C.: Nov. 1999), 9.

subject of a commission hearing or report,³⁸ it does not specify what role commissioners, including the commission's chairperson, are to have in managing the commission's operations.³⁹ The majority of commissioners read the authorizing statute as granting them ultimate authority over all aspects of the commission's operations, including administrative matters, which they may delegate to the staff director at their discretion. The statute explicitly identifies the staff director as the administrative head of the agency but does not specify the functions that the staff director is expected to perform.⁴⁰ The commission's regulations provide more detail than the statute about the role and responsibilities of the staff director but little information about how the director's role fits with that of the commissioners.⁴¹ For example, the regulations state, among other things, that the Office of Staff Director "defines and disseminates to staff the policies established by the commissioners" and "manages the administrative affairs of the agency." However, the regulations do not specify who has authority to develop the commission's internal operating procedures, a function over which several commissioners said they have oversight. According to some commission staff, the lack of clarity regarding staff director and commissioner roles has led to internal disputes. We observed strong disagreements over roles and responsibilities at a public commission meeting in October 2014.⁴² Based on the current state of disagreement among the commissioners and the

³⁸ Commissioners highlighted several other duties they perform, including preparing for hearings and researching the topic being covered, drafting questions for witnesses, and working with the staff director to develop the commission's strategic plan and set budget priorities.

³⁹ 42 U.S.C. § 1975a

⁴⁰ While we did not undertake an exhaustive review of the authorizing statutes for various commissions created by law, we did note that some such statutes contain more detail than the commission's statute. For example, the law authorizing the EEOC, which enforces a number of federal civil rights laws, explicitly assigns the EEOC chairman responsibility for the administrative operations of the EEOC and specifies that he or she is generally responsible for the appointment and compensation of commission personnel. 42 U.S.C. § 2000e-4(a).

⁴¹ 45 C.F.R. § 701.13.

⁴² The commission held a public meeting to discuss a personnel action taken by the staff director. The meeting revealed strong disagreements among commissioners, the staff director, and the general counsel about the staff director's authority to make personnel decisions and the commissioners' authority to direct the staff director to reverse personnel decisions.

staff director, their ability to reach agreement on clear roles and responsibilities is uncertain. As discussed below, a lack of clearly specified leadership roles and responsibilities, among other factors, has contributed to management challenges in the areas of approving SACs for operation, external communications, and workforce planning which hinder the commission's ability to serve as an effective, credible, fact-finding authority on civil rights issues.

The Commission Has Had Long-Standing Difficulties Approving State Advisory Committees for Operation

Although the applicable statute directs the commission to establish at least one SAC in each state and the District of Columbia,⁴³ at the end of fiscal years 2012 and 2013, roughly half the 51 SACs were not approved for operation.⁴⁴ To operate, a SAC must be approved by the commission, and that approval is valid for a 2-year period. However, the Virginia SAC's approval expired in August 2011 and had not been reapproved as of September 2014. Missouri had gone without an operating SAC for over 2 years before the commission approved its SAC in July 2014. Having numerous states without operating SACs may reduce the potential influence and effectiveness of the commission because those states do not have SACs investigating and raising concerns about state civil rights issues. The difficulties in approving SACs for operation date back to 2005, when the SAC membership guidelines were changed to limit members from serving more than five 2-year terms. According to commission staff, this resulted in many longtime SAC members being ineligible for continued service.⁴⁵

In fiscal year 2014, the commission made progress in approving SACs for operation after a new staff director made development of SAC membership rosters a top priority for regional staff. Forty-seven of the 51 SACs were approved for operation as of December 12, 2014, leaving four states without an approved SAC (see fig. 3). The 47 approved SACs are

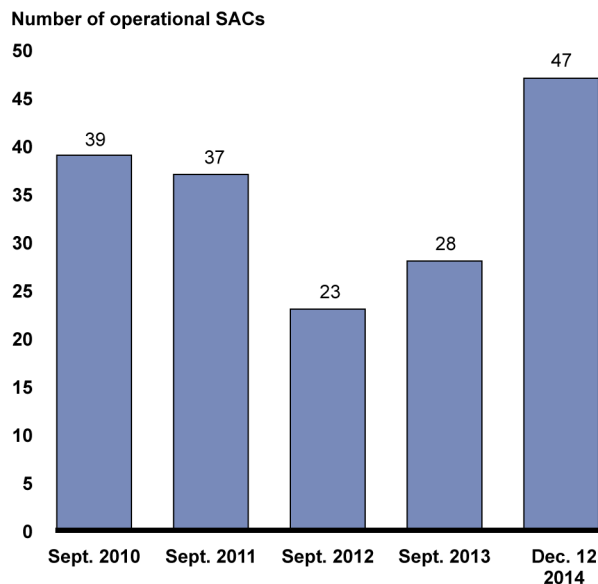
⁴³42 U.S.C. § 1975a(d).

⁴⁴Prior to fiscal year 2013, the commission authorized each SAC to operate for a 2-year period when it approved the SAC's charter, which included the SAC's membership roster. In fiscal year 2013, the commission adopted a universal charter that covers all 51 SACs. Now, the commission authorizes each SAC to operate for a 2-year period when it approves the SAC's membership roster.

⁴⁵Our prior report on the commission also discussed commission changes to membership criteria and found that as of February 2006, only 13 of the 51 SACs were approved for operation. See [GAO-06-343](#).

19 to 24 more than were approved at the end of each of the two prior fiscal years, which the commission spent, for the most part, without a permanent staff director.

Figure 3: Number of State Advisory Committees the U.S. Commission on Civil Rights Had Approved for Operation from September 2010 to December 12, 2014



Source: GAO analysis of U.S. Commission on Civil Rights data. | GAO-15-92

Note: For the first four bars, the figure shows the number of State Advisory Committees approved for operation as of September 30 of each fiscal year.

Several factors have contributed to SAC approval difficulties, such as understaffing in regional offices (as discussed later in this report), the previous lack of a permanent staff director between January 2011 and June 2013, and commissioner objections to proposed SAC members. Regional offices are responsible for developing SAC membership slates, which include all proposed SAC members, by recruiting and obtaining applications from individuals who meet the selection guidelines. A commission Administrative Instruction establishes the selection guidelines for SAC membership, such as the SAC being broadly diverse, having members with knowledge about state and local government, and who represent both major political parties. After regional office staff develop the SAC membership slates and the staff director reviews the slates to determine if they meet the selection criteria, the proposed slates are provided to commissioners for approval. The commissioners review the proposed slates and, at the commission's monthly business meetings,

vote whether or not to approve the slates. According to commission staff, commissioners often raise objections about proposed membership slates, and this results in delays in SAC approval. Several commissioners said that even though their objections may result in delays, such objections are for legitimate reasons and are part of their duties.

According to regional office staff, finding 11 to 19 qualified individuals willing to serve and compiling the needed applications is very time-consuming. A regional office director reported that increased focus on compiling SAC membership slates in 2014 decreased the attention that could be spent on other duties such as drafting SAC reports. Further, the SAC slates that were approved in the past year will expire again in 2016. Then the effort to reapprove SACs will need to resume, and challenges with the process could result in more non-operating SACs.

The lack of clearly specified roles and responsibilities hinders the commission's ability to make improvements in the commission's procedures for SAC memberships. The staff director is planning to revise procedures for approving SAC memberships, but several commissioners have questioned the staff director's authority to independently revise the commission's procedures. According to the staff director, she is reviewing the commission's Administrative Instructions for approving SAC memberships to determine what needs to be improved in the process. For example, the staff director wants to revise from 2 years to 4 years the period of time for which SAC membership slates are approved.⁴⁶ Allowing SAC slates to remain for an additional 2 years would reduce the turnover of SAC slates and lessen the amount of work required to keep SACs operational.⁴⁷ While the staff director said that she has independent authority to develop AIs, including the AI on approving SACs, she indicated that some commissioners have said that the staff director must obtain their approval for changes to AIs.⁴⁸ The staff director said that if

⁴⁶ Two commissioners said that this idea has been around for a long time, and several commissioners said that they would support extending SAC member terms.

⁴⁷ Changing the term of SAC membership slates from 2 to 4 years would necessitate an adjustment to the 10-year term limit for individual SAC members to prevent members from reaching the 10-year term limit in the middle of a 4-year SAC term.

⁴⁸ The commission's administrative manual, the official primary medium for describing administrative policies, is comprised of AIs which provide guidance on a range of issues, such as the agency's absence and leave policy, as well as topics that are more closely aligned with the agency's mission, such as criteria for SAC membership and the process for developing and implementing investigations and reports on civil rights issues.

she independently issues an AI that changes SAC membership procedures, commissioners are likely to disregard or otherwise undermine the SAC approval process if they disagree with the revised procedures.⁴⁹

Letters from Individual Commissioners Have Confused External Organizations and Jeopardized the Commission's Effectiveness

Individual commissioners have used commission letterhead to send letters to the President and Congress expressing their individual views on the legality and effectiveness of various civil rights policies and advocating for or against various government actions. They have also sent letters to federal agencies, colleges and universities, and at least one city government indicating that such entities have policies that may violate federal civil rights laws. Using agency letterhead suggests to some recipients that the letters represent official business of and are backed by the commission. Therefore, commissioners' use of agency letterhead to express their individual views and advocate for and against specific actions can create confusion and undermine effective communication with stakeholders.⁵⁰ For example, in 2014, two commissioners mailed a letter to over 70 public and private colleges and universities questioning the constitutionality of the institutions' admissions policies.⁵¹ An association that represents institutions of higher education contacted the chair of the commission to inquire whether the letter represented the views of the commission as a whole. As a result, the chair clarified that the letter did not represent the official view of the commission and that recipients did not need to take action in response to the letter. In addition, these letters also jeopardize the commission's effectiveness because they can undermine its ability to collaborate with other organizations. The commission needs to collaborate with other organizations to serve as a national clearinghouse for civil rights information, as required by the

⁴⁹For example, she noted that since the commission's administrative manual charges commissioners with appointing SAC members, commissioners could refuse to approve membership slates.

⁵⁰[GAO/AIMD-00-21.3.1](#). Internal control standards state that an entity's management should ensure there are adequate means of communicating with, and obtaining information from, external stakeholders that may have a significant impact on the agency achieving its goals.








⁵¹The letter discussed a recent Supreme Court decision, *Fisher v. Univ. of Tex.*, 133 S. Ct. 2411 (2013), which concerned how colleges and universities may take race into account in their admissions processes without violating the Equal Protection Clause.

commission's statute.⁵² Representatives from several organizations that we interviewed expressed concern that such letters can damage the credibility of the commission and its relationships with governmental and nongovernmental organizations. Figure 4 shows illustrative examples of the letters sent by commissioners since 2009 without the backing of a majority of the commission.⁵³

⁵²42 U.S.C. 1375A(2)(c). As stated in the commission's FY 2014-2018 strategic plan, part of the clearinghouse function involves cooperating with other federal agencies. In addition, another strategic goal is to improve the commission's profile and effectiveness in communicating with the general public.

⁵³We obtained these letters from a variety of sources, including the commission's staff director, a commissioner, a blog maintained by two commissioners' special assistants, and internet searches. However, we did not obtain all letters sent by commissioners since 2009 on commission letterhead which lacked the backing of a majority of commissioners, and the examples included in the figure should not be considered representative of all such letters.

Figure 4: Examples of Letters Commissioners on the U.S. Commission on Civil Rights Have Issued Without the Backing of a Majority of the Commission, 2009 to 2014

Recipients	Letter topics
President 	<p>Asking the President to decline to issue an executive order granting legal status and work authorization to undocumented workers</p> <p>Asking the President to decline to issue an executive order allowing federal recognition of indigenous Hawaiians as an Indian tribe or other sovereign entity</p>
Congress 	<p>Asking the House Appropriations Committee to consider withholding funding for EEOC's litigation and enforcement activities related to its guidance on criminal background checks</p> <p>Asking the Congressional Black Caucus to publicly state that it opposes any grant of work authorization to undocumented aliens and any legislation that would increase the overall number of guest workers admitted to the U.S. each year</p> <p>Expressing opposition to a competitive grant program the commissioners believe will create incentives for colleges to use preferences to attract more minority and female students in their Science, Technology, Engineering and Math fields of study and offering support for developing legislation that creates incentives for race- and gender-neutral admissions</p>
Department of Justice 	<p>Objecting to the manner in which the majority of the commission investigated the Department of Justice's handling of a voter intimidation case against the New Black Panther Party, calling the majority's handling of the case irregular and ideological, and commending the Department of Justice for its decision to perform its own inquiry into the matter</p>
Department of Housing and Urban Development 	<p>Opposing proposed guidelines for Housing and Urban Development program participants intended to promote fair housing choice</p>
Consumer Financial Protection Bureau 	<p>Asking the CFPB to provide to the commissioner internal investigation reports, an itemized list of all formal and informal EEO complaints filed against managers at the agency, and other information related to EEO complaints</p>
Clothing Retail Chain 	<p>Asking the company to conduct an immediate, public review of its diversity and cultural awareness programs following reported offensive behavior of its models at the opening of a store in South Korea</p>
70+ Colleges and Universities 	<p>Suggesting to colleges and universities that their admissions programs may violate the Equal Protection Clause, providing a copy of one commissioner's essay concluding that affirmative action leads to fewer minorities graduating than if schools used race-neutral policies, and encouraging schools to use the information in the letter and essay to more narrowly tailor their admissions policies consistent with the two commissioners' legal views</p>

Source: GAO analysis of commissioner letters. | GAO-15-92

Senior commission officials have attempted to curb the use of letterhead, but have been unsuccessful. The commission's general counsel stated that in his role as the commission's designated agency ethics official⁵⁴ he has 1) advised commissioners against using letterhead in an individual capacity because doing so gives the false impression that such correspondence represents the views of the commission as a whole and may run afoul of the federal ethics rules regarding the use of public office for private gain;⁵⁵ and 2) provided this information in annual ethics training. During a commission meeting in 2011, the chairperson proposed to modify the commission's administrative policies to restrict the use of letterhead to the chairperson and the staff director, or when the majority of commissioners have approved its use. A majority of commissioners did not support this proposal but instead agreed to modify correspondence that uses letterhead by including a disclaimer indicating that they are writing in their individual capacities and not on behalf of the commission as a whole. The use of a disclaimer, however, has not eliminated the confusion these letters create. The letter that commissioners sent to numerous colleges and universities included a disclaimer but, as previously noted, these institutions still questioned whether the views expressed in the letter represented the official view of the commission. Further, the inclusion of a disclaimer does not address the ethical concerns that may arise when individual commissioners use agency letterhead for letters that reflect their individual views and not the agency's official position. The general counsel noted that even though he is authorized to develop policies to curb commissioners' use of

⁵⁴ A designated agency ethics official is an officer or employee designated by the head of the agency to coordinate and manage the agency's ethics program and act as liaison to the Office of Government Ethics. 5 U.S.C. Appx. § 109(3).

⁵⁵ Ethics regulations prohibit federal employees from using their government positions or titles in a manner that could reasonably be construed to imply that their agency or the government sanctions or endorses their personal activities. 5 C.F.R. § 2635.702. The Office of Government Ethics (OGE), which promulgates ethics rules for executive branch agencies, reviewed these issues as part of its recent review of the commission. OGE recommended, among other things, that the commission develop policy documents making it clear that when speaking or writing in a personal capacity, a commissioner may not use agency letterhead. See United States Office of Government Ethics, Compliance Division, *Ethics Program Review: U.S. Commission on Civil Rights*, 15-04 (Washington, D.C.: November 2014).

letterhead,⁵⁶ he has no realistic means of enforcing such a policy.⁵⁷ In addition, he noted that some commissioners have expressed the view that they are not bound by requirements not specifically included in statute.

The Commission Has Not Engaged in Comprehensive Workforce Planning to Ensure that Its Workforce Is Properly Aligned to Support Its Mission

A stagnant budget has reduced the size of the commission's workforce over the past two decades. The commission's annual appropriation has remained at about \$9 million since fiscal year 1995 and has generally not been adjusted for inflation, which has reduced the real value of its budget.⁵⁸ This decline in resources has led to a decline in the number of commission staff, from 95 full-time equivalents (FTE)⁵⁹ in fiscal year 1995 to 33, according to commission officials, in fiscal year 2014 (see fig.5). In fiscal year 2014, 54 percent of the commission's expenditures were for employee salaries and benefits.

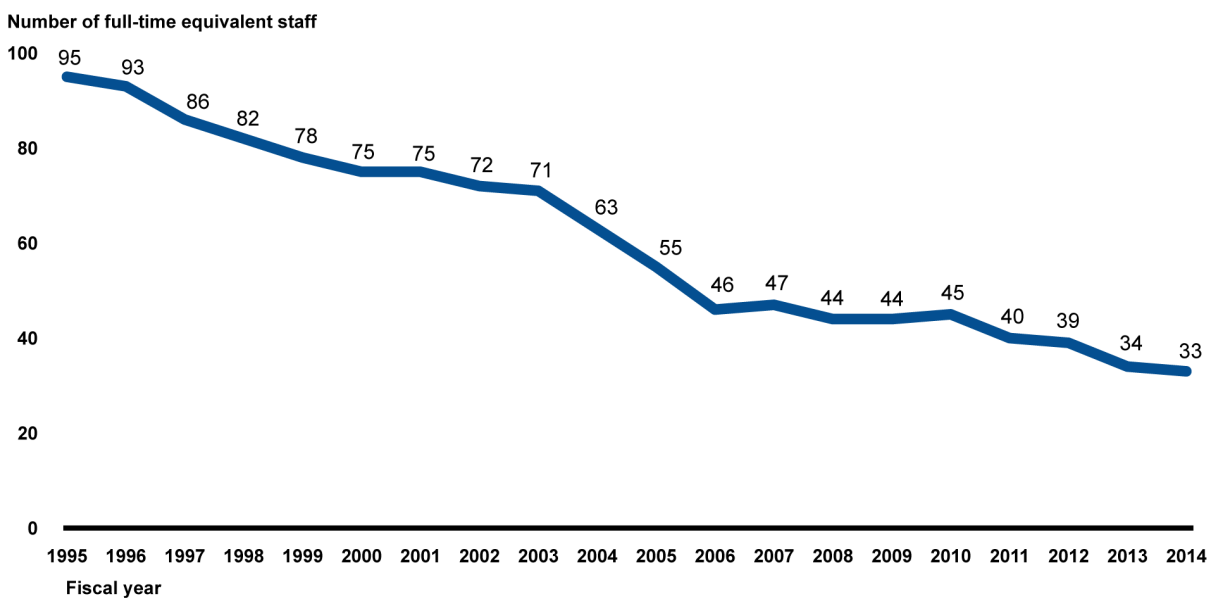
⁵⁶Office of Government Ethics officials acknowledged that in the absence of a clear agency rule or policy defining what constitutes official business of the commission, it may not be possible to sanction or punish agency officials for their individual use of agency letterhead because it is not clear whether such use is for personal purposes or official business.

⁵⁷Commissioners may be removed from office only by the President for neglect of duty or malfeasance in office. 42 U.S.C. § 1975(e).

⁵⁸ The appropriation for the commission for fiscal year 2015 is \$9.2 million. Consolidated and Further Continuing Appropriations Act, 2015, Pub. L. No. 113-235, 128 Stat._____, _____.

⁵⁹The number of FTEs is the total number of hours worked by employees divided by the number of compensable hours applicable to each fiscal year.

Figure 5: Full-Time Equivalent Employees at the U.S. Commission on Civil Rights, Fiscal Years 1995 to 2014



Source: U.S. Budget Appendices for fiscal years 1997 through 2015 and data from the U.S. Commission on Civil Rights. | GAO-15-92

Despite the workforce challenges that it faces due to its budget, the commission has not engaged in comprehensive workforce planning.⁶⁰ The commission's fiscal year 2010-2015 strategic human capital plan identifies several human capital challenges, such as an aging workforce and insufficient staffing levels, along with strategies to address these challenges.⁶¹ However, the plan is not comprehensive because although it considers several mission critical positions such as attorneys and civil rights analysts, it does not include a segment of the commission's

⁶⁰ In response to a congressional directive in 2013 (159 Cong. Rec. S1287, S1310 (daily ed. Mar. 11, 2013) (Explanatory Statement Submitted by Sen. Mikulski Regarding H.R. 933)), the commission submitted to the Committees on Appropriations a proposal for realignment of positions at the commission. Among other things, the proposal outlined the commission's plans for changing its workforce by transferring a position from the Office of the Staff Director to the Office of the General Counsel. The proposal did not consider special assistants to commissioners.

⁶¹ U.S. Commission on Civil Rights, *Strategic Human Capital Plan for Fiscal Years 2010-2015* (Washington, D.C.: March 31, 2010).

workforce — commissioner special assistants.⁶² Each commissioner has a special assistant who is a full-time employee responsible for supporting that commissioner. In fiscal year 2014, special assistant positions, which range from the GS-12 to the GS-14 level,⁶³ accounted for 18 percent of the commission’s salary expenditures. Several commission staff — as well as one commissioner — indicated that the commission needs to reduce the number of special assistant positions because the functions they perform do not closely align with the agency’s mission. One commission staff member explained that these special assistants are not involved in the day-to-day report writing process central to the commission’s mission. However, several commissioners told us that special assistants provide valuable support to commissioners. For example, special assistants perform background research to help commissioners prepare for hearings, draft questions for commissioners to ask at hearings, help commissioners edit reports, and help commissioners prepare their personal statements that are included in reports.

The staff director told us that she cannot consider the commissioners’ special assistants in any workforce planning efforts because, as she and the general counsel noted, the commission’s appropriations language specifically mentions the special assistants, and the commissioners are generally of the view that such language entitles them each to their own special assistant.⁶⁴ The staff director and the general counsel stated that this appropriations language would need to be modified in order to be able to reassess the number of assistant positions.

In the absence of a comprehensive workforce analysis, the commission’s workforce may be misaligned with the agency’s mission, and offices that

⁶²Effective management of an entity’s workforce is an important part of internal control and essential in order for an organization to achieve its objectives. Internal control standards further state that management should continually assess an organization’s skills so that the organization is able to obtain a workforce that has the required skills that match those necessary to achieve organizational goals. See [GAO/AIMD-00-21.3.1](#).

⁶³ The General Schedule (GS) is a classification system used by the federal government to define and organize federal positions, primarily to assign rates of pay.

⁶⁴Specifically, the current provision reads: “Provided, that none of the funds appropriated in this paragraph shall be used to employ in excess of four full-time individuals under Schedule C of the Excepted Service exclusive of one special assistant for each Commissioner.” Pub. L. No. 113-325, 128 Stat. ____, ____.

directly support the mission may have proportionally low staffing relative to their responsibility. We found that offices that perform certain functions essential to fulfilling the commission's statutory requirements to issue reports on civil rights issues and maintain SACs – the regions and the Office of Civil Rights Evaluation (OCRE) – operate with minimal staff relative to their responsibilities (see fig. 6).

Figure 6: Distribution of Personnel within the U.S. Commission on Civil Rights, as of Sept. 30, 2014

Positions or offices	Selected responsibilities	Personnel as of September 30, 2014 ^a
National office		
Commissioners and their special assistants	<ul style="list-style-type: none"> Attending hearings Selecting topics for study Approving national level reports on civil rights issues <i>(special assistants assist the commissioners)</i> 	
Office of Civil Rights Evaluation	<ul style="list-style-type: none"> Monitoring, evaluating, and reporting on civil rights enforcement efforts of the federal government Preparing documents that articulate the commission's views and concerns Receiving and referring complaints alleging denial of civil rights 	
Office of Management	<ul style="list-style-type: none"> All administrative, management, and facilitative services necessary to operate the agency, including financial management, human resources, oversight of the library, and distribution of publications 	
Office of the General Counsel	<ul style="list-style-type: none"> Providing legal counsel to the commissioners and agency Conducting hearings and legal studies Contributing to the preparation of reports 	
Office of the Staff Director	<ul style="list-style-type: none"> Serving as administrative head of agency Supervising and coordinating agency work Developing program plans Evaluating program results Conducting agency liaison with Executive Office of the President, Congress, and other federal agencies 	
Regional Programs Coordination Unit	<ul style="list-style-type: none"> Ensuring that the individual regional programs are sufficiently coordinated across regions and with headquarters Providing headquarters support and guidance to the regions 	
Regions		
Central Regional Office	<ul style="list-style-type: none"> Coordinating and supervising the work of the region's 9 State Advisory Committees (SACs), including recruiting SAC members, completing required paperwork to authorize SACs, planning and attending SAC meetings, and drafting SAC reports 	
Eastern Regional Office	<ul style="list-style-type: none"> Coordinating and supervising the work of the region's 14 State Advisory Committees (SACs), including recruiting SAC members, completing required paperwork to authorize SACs, planning and attending SAC meetings, and drafting SAC reports 	
Midwestern Regional Office	<ul style="list-style-type: none"> Coordinating and supervising the work of the region's 6 State Advisory Committees (SACs), including recruiting SAC members, completing required paperwork to authorize SACs, planning and attending SAC meetings, and drafting SAC reports 	
Rocky Mountain Regional Office	<ul style="list-style-type: none"> Coordinating and supervising the work of the region's 7 State Advisory Committees (SACs), including recruiting SAC members, completing required paperwork to authorize SACs, planning and attending SAC meetings, and drafting SAC reports 	
Southern Regional Office	<ul style="list-style-type: none"> Coordinating and supervising the work of the region's 6 State Advisory Committees (SACs), including recruiting SAC members, completing required paperwork to authorize SACs, planning and attending SAC meetings, and drafting SAC reports 	
Western Regional Office	<ul style="list-style-type: none"> Coordinating and supervising the work of the region's 9 State Advisory Committees (SACs), including recruiting SAC members, completing required paperwork to authorize SACs, planning and attending SAC meetings, and drafting SAC reports 	
Position required by authorizing statute Other filled position		

Source: U.S. Commission on Civil Rights data. | GAO-15-92

^aThese data reflect permanent commission personnel only and do not include temporary personnel.

^bThe special assistants are referenced in the commission's annual appropriation act language. One commissioner did not have a special assistant at the time of our review. Two new special assistants – who are shown above – began working in October 2014.

^cOne attorney in the Office of the General Counsel began working in October 2014. However, this individual filled a position that was vacated prior to September 30, 2014.

^dAt the time of our review, the Regional Programs Coordination Unit director also served as the director of the Midwestern Regional Office and the acting director of the Central Regional Office. However, this individual is only shown once above – in the Regional Programs Coordination Unit. In addition, one staff in the Midwestern Regional Office was hired prior to September 30, 2014, but did not begin working until October.

Regional offices are responsible for coordinating state and local-level studies and fact-finding activities of the commission's SACs. In fiscal year 2014, the regions accounted for 23 percent of the commission's total salary expenditures. Regional offices perform a variety of activities, including recruiting SAC members, planning and attending SAC meetings, and drafting reports. As described previously, regional offices have struggled to fulfill their responsibilities to develop SAC membership slates and issue SAC reports. At the time of our review, 4 of the 6 regional offices had just two staff each to manage between 6 and 14 SACs. In addition, two regional offices shared staff. The director of the Midwestern Regional Office also served as the acting director of the Central Regional Office. This individual is responsible for managing the work of 15 SACs.

The Office of Civil Rights Evaluation performs a variety of activities to support the commission, such as researching and reporting on civil rights issues at the national level, evaluating the federal government's civil rights enforcement efforts, and receiving and referring complaints alleging denial of civil rights. OCRE had 5 staff as of September 30, 2014— a newly hired director, 2 civil rights analysts, a social scientist, and an administrative assistant. In fiscal year 2014, OCRE accounted for 10 percent of the commission's salary expenditures.

Congress Recently Directed the Commission to Provide Recommendations to Improve Its Management Structure

Shortly after we provided the commission a draft version of this report for comment, an omnibus appropriations act was enacted providing the commission's fiscal year 2015 appropriations.⁶⁵ The explanatory statement for the act directs the commission to submit a report with recommendations for improving the management structure of the commission.⁶⁶ The explanatory statement reads as follows: "The Commission shall submit a report to the Committees on Appropriations no later than 60 days after the enactment of this Act on recommendations for improving the management structure of the Commission. The report, developed through the Chair and with approval of the Staff Director, should focus on the issues of the Commission acting as one unified body, the workload for the special assistants assigned to each Commissioner, and the impacts of these factors on the function of the organization as a whole. Alternative staffing structures for the Commissioners should be developed and evaluated in the report so that they can be considered as part of the fiscal year 2016 budget submission."

Conclusions

The Commission on Civil Rights' continuing management challenges underscore the need for changes to the agency's administrative operations so that it can effectively meet its mission to serve as an independent, bipartisan, fact-finding agency that reports on the status of civil rights. The commission's resource levels have been essentially flat, but the commission's challenges go beyond resource constraints. By making limited effort to consider input from State Advisory Committees, which play a role in helping the commission achieve its mission, the commission constrains the lines of communication on important civil rights issues from the local level to the national level. In addition, the lack of clearly specified roles and responsibilities at the commission contributes to a weak leadership structure. The lack of clearly specified roles also creates challenges for updating and revising internal policies and procedures that could help the commission operate more efficiently and effectively. Disputes between commissioners and the staff director have resulted in uncertainty in the commission's ability to make

⁶⁵ Consolidated and Further Continuing Appropriations Act, 2015, Pub. L. No. 113-235, 128 Stat. ____, ____. The act was signed into law on December 16, 2014.

⁶⁶ 160 Cong. Rec. H9307, H9350 (daily ed. Dec. 11, 2014) (Explanatory Statement Submitted by Mr. Rogers of Kentucky, Chairman of the House Committee on Appropriations Regarding the House Amendment to the Senate Amendment on H.R. 83).

improvements to its management structure, and statutory changes are needed to better ensure the effective operation of the commission moving forward. The commission may continue to have challenges approving 51 State Advisory Committees, keeping them operating, and reporting on civil rights issues in future years as directed by statute. Finally, the commission has not engaged in comprehensive workforce planning that considers all staff, including special assistants to the commissioners, which is of particular concern for an organization with a small, stagnant budget. Based on our interviews with commission staff, and the contentious disagreements over commissioner and staff director authority that we observed, it would be challenging for commission leaders on their own to work together to clearly specify leadership roles and responsibilities, effectively manage external communications, or engage in comprehensive workforce planning.

Matter for Congressional Consideration

To promote effective operation of the U.S. Commission on Civil Rights, Congress may wish to consider amending the commission's authorizing statute to clearly specify the roles and responsibilities of the commission chairperson, commissioners, and staff director, such as who has the authority to develop and implement commission operating policies and procedures, to manage commission staff, and to represent commission decisions and views, including those views expressed on commission letterhead.

Recommendations

1. To enhance the commission's consideration of State Advisory Committee work in planning its National Office projects, we recommend that the commission increase the visibility of SAC work at commission meetings. For example, the commission could invite SACs to present the results of their work during monthly commission business meetings.
2. To address challenges in approving SACs, we recommend that the commission extend the term for which SAC membership slates are approved.
3. To more fully inform congressional consideration of the commission's fiscal year 2016 budget submission, we recommend that the commission develop and submit to the appropriate congressional committees a comprehensive workforce plan that assesses skills needed and the appropriate distribution of commission staff to fulfill the agency's mission and statutory responsibilities. This plan should

incorporate relevant information from the report that Congress recently directed the commission to provide.

Agency Comments and Our Evaluation

The U.S. Commission on Civil Rights provided three sets of comments on a draft of this report. We received comments from (1) chairman Castro, (2) commissioners Achtenberg, Kladney, Narasaki, Timmons-Goodson, and Yaki, and (3) commissioners Heriot and Kirsanow. The commissioners' comments are printed in appendix I. However, we redacted portions of the comments from commissioners Heriot and Kirsanow that contained personal information about commission staff. The comments from commissioners also included a number of technical comments, which we incorporated as appropriate.

The draft report we provided to the commission for comment included two matters for congressional consideration. The final report includes the first matter suggesting Congress consider clarifying the roles and responsibilities of commissioners and the staff director. We removed the second matter, which suggested that Congress consider directing the commission to submit to the appropriate congressional committees a comprehensive workforce plan that fully considers all commission personnel, including special assistants, and assesses the skills needed and the appropriate distribution of staff to fulfill the agency's mission and statutory responsibilities. We removed the second matter in acknowledgment of the recent congressional directive to the commission to submit a report with recommendations for improving the management structure of the commission, including developing and evaluating alternative staffing structures for the commissioners. In place of this matter, we revised the report to add a recommendation to the commission to develop a comprehensive workforce plan that incorporates relevant information from the report to be submitted to Congress. We believe that such a plan would ensure provision of a more complete perspective on the appropriate distribution of commission staff and more fully inform congressional consideration of the commission's fiscal year 2016 budget submission.

Leadership Roles and Responsibilities

All of the commissioners, except for the chairman, disagreed with our finding that the commission's ability to achieve its mission is impaired by management challenges that stem, in part, from unclear leadership roles and responsibilities. Commissioners said that the leadership roles and responsibilities are clear and do not impede the commission's operations.

They said that the commission's statute states that the commission is composed of eight commissioners. They added that the commissioners have ultimate authority over all aspects of the commission's operations. However, Chairman Castro commented that there have been many times when the roles and responsibilities of commission leaders have been in dispute, and clarity would have been welcome. We continue to believe that it would be beneficial for Congress to clarify leadership roles and responsibilities within the commission. Although many commissioners believe that the commission's statute adequately specifies commissioner and staff director roles and responsibilities, our discussions with the chairman and staff director—two individuals who play a significant role in the commission's operations—demonstrate that this sentiment is not held across the commission's organization. In particular, our work highlighted a lack of clarity with respect to the staff director's roles and responsibilities as the administrative head of the commission. Clarifying roles and responsibilities of commission leaders would reduce the potential for disagreement, which would better allow the staff director and the commissioners to work together to address management challenges.

Commissioners Achtenberg, Kladney, Narasaki, Timmons-Goodson, and Yaki said that the draft report did not sufficiently capture the role of commissioners and asked that we add to our description of commissioners' duties. The draft report described the express statutory responsibilities of commissioners such as holding hearings and issuing subpoenas. However, in response to the commissioners' comments, we revised the report to highlight other duties commissioners perform, including preparing for hearings and researching the topic being covered, drafting questions for witnesses, and working with the staff director to develop the commission's strategic plan and set budget priorities. 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.

Lack of Financial Resources and Other Obstacles

Chairman Castro stated that the greatest challenge to the commission's efforts to achieve its mission is the lack of financial resources, which adversely impacts every aspect of the commission's management and should be the primary focus of our report. Commissioners Achtenberg, Kladney, Narasaki, Timmons-Goodson, and Yaki agreed that the lack of adequate resources has been a real obstacle to fully achieving the commission's mission, along with the lack of a permanent staff director for 2½ years, and of a general counsel for much of that same time period. Our report recognizes the commission's resource constraints. In fact, we specifically mention that the commission's budget has been stagnant since fiscal year 1995, which has led to a decline in the number of commission staff from 95 FTEs in fiscal year 1995 to 33 in fiscal year 2014. Further, our report notes that the commission did not have a permanent staff director for 2½ years.

State Advisory Committee (SAC) Approvals

All of the commissioners highlighted the commission's recent progress in approving SACs. In response, we updated our report to indicate that 47 of the 51 SACs had been approved as of December 12, 2014. With regard to our recommendation to extend SAC members' terms, seven of the eight commissioners agreed that SAC term limits should be extended—the chairman did not comment on this recommendation. We revised the report to indicate that several commissioners supported extending SAC member terms. Commissioners Heriot and Kirsanow commented that our report gives the impression that the idea for extending SAC terms came from the Office of the Staff Director, and explained that this idea has been around for a long time. We revised the report to add this point.

Commissioners Achtenberg, Kladney, Narasaki, Timmons-Goodson, and Yaki said that a lack of clearly specified leadership roles and responsibilities is not a factor that has contributed to management challenges in approving SACs. They said that the roles and responsibilities in the SAC approval process are unambiguous. Instead, they said the lack of a permanent staff director for 2½ years contributed to difficulties approving SACs. While our draft report cited several factors that had contributed to SAC approval difficulties in prior years—including the lack of a permanent staff director—unclear leadership roles and responsibilities was not one of these factors. Rather, the draft report cited unclear leadership roles and responsibilities as a factor that hinders the

commission's ability to make improvements in the procedures for SAC memberships. More specifically, the draft report indicated that the staff director wants to revise from 2 years to 4 years the period of time for which SAC membership slates are approved, but there is disagreement within the commission about whether the staff director has authority to independently revise these procedures. In their comments, the commissioners also noted that even though their review of potential SAC members may slow down the SAC approval process, it serves a legitimate purpose--to ensure that SACs have qualified members. In response, we revised the report to indicate that even though commissioner objections may result in delays approving SACs, commissioners believe such objections are for legitimate reasons and are part of their duties.

Commission Engagement with SACs

Chairman Castro and commissioners Heriot and Kirsanow commented on our findings regarding the commission's level of engagement with SACs. The chairman highlighted examples of his interactions with SACs as well as the commission's actions to incorporate SAC reports into its monthly meetings. He said additional resources would allow the commission to better engage with SACs. In response, we updated the report to indicate that the chairs of the Illinois and Georgia SACs presented findings from their recent reports on immigration issues at the commission's December 12, 2014 business meeting. Commissioners Heriot and Kirsanow dismissed concerns about the level of interaction between SACs and the commission, pointing out the commission's small size and speculating that every advisory committee to every federal agency has likely complained about a lack of communication. We believe that our recommendation to increase the visibility of SAC work at commission meetings can assist the commission in accomplishing its mission and that the commission's recent efforts to better engage with SACs represent a step in the right direction.

Commissioners Heriot and Kirsanow offered what they characterized as a partial solution to improving the commission's level of engagement with SACs, suggesting that each commissioner take on six or seven SACs and serve as an alternative point of contact at headquarters if SAC members prefer not to communicate through regional directors. They said that such an arrangement would help increase opportunities for communication between SACs and commissioners.

Assessing Commission Performance

Commissioners Heriot and Kirsanow questioned the value of using the quantitative performance targets included in the commission's strategic plan as a benchmark for evaluating the commission's performance. For example, they said that institutions are susceptible to setting modest goals and performance targets that are easy to achieve. They added that it would be more appropriate to assess the commission's performance by reading the commission's reports, which they view as the commission's core accomplishments, and judging them on their merits. While we agree that assessing an agency's performance can be challenging, our focus on analyzing the extent to which the commission met the performance targets it set for itself is consistent with the performance accountability framework in the GPRA Modernization Act (GPRAMA). GPRAMA provides an important tool that can help inform congressional and executive branch oversight of federal agency performance. In addition, while we did not attempt to assess the quality of the commission's reports, we did broadly characterize them.

Commissioners' Use of Letterhead

Commissioners Heriot and Kirsanow objected to our findings regarding commissioners' use of commission letterhead. They stated that (1) Congress intended for all commissioners to have a voice, (2) their use of letterhead has not run afoul of federal ethics rules, and (3) the use of a disclaimer indicating that commissioners are not writing on behalf of the commission as a whole addresses the issue of potential confusion. We believe that the use of letterhead to express individual views can create confusion because it may suggest that the letters are backed by the commission as an agency. Thus, we continue to believe that this is one area that should be addressed as part of our suggestion that Congress consider clarifying the roles and responsibilities of commission leaders.

Comprehensive Workforce Planning

All the commissioners expressed concern with our finding about the need to develop a comprehensive workforce plan that includes special assistants to commissioners. The chairman views the language in the commission's appropriations act as a hindrance to including special assistants in the plan. All other commissioners viewed our discussion of comprehensive workforce planning as being a suggestion to eliminate or reduce the number of special assistants. They strongly objected to this idea, explaining that the assistants are critical to the commissioners' work

and highlighting their various duties. Commissioners said that special assistants play a key role in keeping the commissioners aware of the day-to-day work of the agency, and perform vital substantive work to aid the commissioners in fully exploring a vast range of complex civil rights issues. The commissioners said that special assistants must maintain a confidential relationship with their commissioners so that each commissioner's independence is not undermined by political differences among the commissioners or between the commissioners and staff. In response to commissioners' comments, we revised our report to include additional examples of special assistants' duties, including performing background research to help commissioners prepare for hearings, drafting questions for commissioners to ask at hearings, helping commissioners edit reports, and helping commissioners prepare their personal statements for inclusion in reports.

With respect to the commissioners' concerns, it is important to note that our report takes no position on the appropriate number of special assistants to the commissioners. We believe that the report Congress has directed the commission to provide, which is to include an assessment of alternative staffing structures for commissioners, is an important step in assessing the commission's workforce. We continue to believe that a comprehensive workforce analysis that includes all staff positions is warranted. Such a comprehensive and in-depth examination of the roles filled by various staff could provide a foundation to help the commission ensure that its limited resources are being used in the most effective manner to help achieve its mission.

Finally, commissioners Achtenberg, Kladney, Narasaki, Timmons-Goodson, and Yaki said that our report should be updated to more accurately capture the portion of the agency staff that is comprised of special assistants, since the commission has recently hired new staff in offices such as the Office of Civil Rights Evaluation. Our draft report stated that special assistants accounted for 20 percent of the commission's salary expenditures in fiscal year 2013. Based on updated data from the commission, we revised the report to show the percentage of the commission's salary expenditures in fiscal year 2014 accounted for by special assistants is 18 percent.

We are sending copies of this report to the appropriate congressional committees and the U.S. Commission on Civil Rights. In addition, the report will be available at no charge on the GAO website at <http://www.gao.gov>.

If you or your staff have any questions concerning this report, please contact me at (202) 512-7215 or sherrilla@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report are listed in Appendix II.

A handwritten signature in black ink that reads "Andrew Sherrill". The signature is written in a cursive, flowing style.

Andrew Sherrill
Director, Education, Workforce
and Income Security Issues

Appendix I: Comments from the U.S. Commission on Civil Rights

Chairman Martin R. Castro

U.S. Commission on Civil Rights

Response to the Government Accountability Office report on the U.S. Commission on Civil Rights

I want to start by thanking the Government Accountability Office (the GAO) for its work on this report on the U.S. Commission on Civil Rights' [hereafter "Commission"] progress over the last five fiscal years (2009-2013).

The report raises several important points, some of which I am in agreement, and others of which I am not. While there are elements of my fellow Commissioners' letters with which I agree, there are also elements of their letters with which I differ. However, I feel that it is important that as Chairman, I provide you with my own, independent comments, rather than to join my colleagues' responses. While I, too, am a Commissioner, my role, responsibilities and duties go beyond those of my fellow Commissioners, due to my being the Chair. Therefore, I submit this letter to address a few points highlighted by the GAO in its report.

The GAO states that the management challenges that hinder the Commission "stem, in part from unclear roles and responsibilities of commission leaders." While that may be one of the challenges, it is not the only one, nor the most adverse of the challenges that have faced the Commission as we have tried to resurrect it as the "nation's conscience on civil rights."

When the President appointed me Chair of the Commission, the Commission was in a state of crisis. The Commission that served just prior to ours was going through a civil war over the New Black Panther Party case and commissioners routinely engaged in *ad hominem* attacks on one another in public or stormed out of meetings to deny quorum, and was issuing reports which many viewed as counter-productive to civil rights. When we walked in the door, the Commission was suffering the consequences of six years of turmoil- there was no Presidentially-appointed staff director, the general counsel had quit without a successor appointed, civil rights organizations were boycotting the Commission's hearings and actively lobbying Congress to cut the agency's appropriations, a majority of the State Advisory Committees (SACS) were unchartered and un-appointed, no party had a majority on the Commission, positions key to the agency's renewed vigor were vacant and unfunded, and career staff at headquarters and in the regions were demoralized. This is the backdrop into which we walked into and it is from this virtually impossible place, from which we have risen to an agency that, while by no means perfect --or where we would like to be-- should be viewed as a management success and moving in the right direction.

Since joining the Commission, I can say that there have been many times when the roles and responsibilities of Commission leaders have been in dispute, and clarity would have been--and will likely be--of assistance and would be welcomed by this Chair. However, the greatest challenge to our efforts to move the agency forward and to our very existence, have been, and continue to be, a lack of financial resources. Our budget, as is pointed out in the report, has been flat for years, and in real dollars, that has equated with an actual cut in appropriations. This adversely impacts every aspect of the agency's

management and functioning and should be the primary focus of the report and efforts to assist the Commission move forward.

Furthermore, the two and half years the Commission experienced without a Staff Director without question adversely impacted the agency, making it difficult to address (and even contributed to causing) the issues that the GAO report has focused on. However, in that period of time we were creative in finding ways to utilize career staff to manage the agency, which was no substitute for a Presidentially-named administrative head to the agency. Despite internal and external challenges, we persevered.

Since the appointment by the President of a Staff Director, however, the Commission has, without question, seen an upward trajectory. I would submit to the GAO and to those who read the GAO's report, that they should judge us from that period forward as it better represents what we are capable of accomplishing when we have some of the human capital resources we need and redeploy some of the financial resources we have been appropriated.

Since the appointment of the Staff Director in June 2013, the agency has seen our workforce increase by eight (8) key positions. This was in direct response to Congress's language in FY2013's Appropriations Bill which directed the Commission to "examine its staffing structure, realign positions as appropriate, based on available resources, and report the results to the Committees on Appropriations within the 90 days of enactment of the Act. This report [was] expected to include details on staffing at the Commission's regional offices, as well as an assessment of the roles of these offices in carrying out the work of the Commission." And this was accomplished without additional appropriations!

The additions included an Assistant Staff Director for the Office of Civil Rights Evaluation, as well the immediate hire of a social scientist in the wake of a retirement, and also a civil rights analyst- all of whom have already contributed to the quality and quantity of research and reports of the Commission. Similarly, the regional staff experienced growth by the addition of a regional director for the Southern Region, an important role to fill as the regional staff helps our State Advisory Committees with their examinations of civil rights violations in their individual state; the hiring of a civil rights analyst, one of the newly-created positions which will positively impact the research and writing of the SAC reports; and the agency now has a permanent Regional Program Coordination Unit Chief (RPCU Chief), an integral role in setting priorities for the regions and now also charged with management authority over regional staff, something previously lacking in the post. This will also help ensure future SAC productivity. Finally, the agency was able to immediately replace an attorney in the Office of the General Counsel and hire a general counsel, a spot long vacant.

As a result of staff realignment, performance plans for staff were revised, after 15 years of inattention, to align with the agency's strategic plan. The strategic plan, in turn, was aligned with the agency's capital plan.

I believe that we can be more effective if given the tools and resources to continue to build the Commission to become a more self-sufficient agency. Right now, for instance, the Commission's Organizational Structure calls for a Public Affairs Unit and a Congressional Affairs Unit. At this time, those units remain on the chart but are unstaffed given the lack of funds to fully staff these

components. The tasks, therefore, fall on the Office of the Staff Director to not only direct the administrative functions of the agency but to also be our liaison on Capitol Hill, as well as well as respond to interviews, issue press releases and other requests as they arrive. If properly staffed, the visibility of the agency as a civil rights watchdog and its access to the general public would increase tremendously.

The GAO report suggests that Congress direct Commission staff to develop a comprehensive workforce plan that includes all agency personnel, including commissioner special assistants. I know that the inclusion of special assistants in such a plan is a point of contention for commissioners. However, I can say that over the last four years some of us Commissioners have had conversations along those lines, but for various reasons, most notably, the inability to do anything innovative given the existence of the appropriations language, has hindered further exploration of the topic. Now, whether or not we reconfigure how our special assistants may be utilized in the future, the fact remains that unless we receive additional much-needed financial resources, we will be forced to look at all options. We have already shown that we can redeploy stagnant financial resources to hire new personnel. However merely moving around the existing chess pieces may not be enough to get our agency back to its former prominence.

As I stated earlier, we have accomplished much under trying circumstances and diminished financial support.

By the end of FY2014 we had decreased the backlog of reports and issued reports that examined ongoing civil rights issues such as *Sex Trafficking: A Gender-based Violation of Civil Rights* and *Federal Civil Rights Engagements with Arab and Muslim-American Communities Post 9/11, Sexual Assault in the U.S. Military*, and more. Furthermore, with the addition of new Commissioners, and working in a bi-partisan fashion, the reports in FY14 included sound findings and recommendations to Congress and the President that could serve as a framework for improving the services to the affected groups and decreasing the instances of civil rights violations.

We have also increased the chartering and re-appointment of SACs. Instead of chartering each SAC individually, we created a universal charter for each of the 51 SACs, so they could be chartered simultaneously. By the end of FY14, we re-appointed 46 out of 51 SACs—the most of any commission leadership in quite a while. I do agree that there is more we can do to engage our SACs. However, budget is a major constraint in our doing more in this regard. Since becoming Chair, I have personally attended SAC briefings or met with SAC leaders in Georgia, Illinois, Ohio, Wisconsin, California and Minnesota. We have invited SAC members to testify at a number of our national briefings. I have sent SAC reports to members of the Congressional Delegations of the respective states of our SACs. I also sent the New Hampshire prisons report to the Governor of that State, which resulted in the positive state action the GAO acknowledges in its report. Further, we have already begun to include reports from SAC members during the Commission's monthly meetings. However, a lack of reference to the work of the SACs in the minutes of our meetings could give rise to a conclusion that Commissioners do not keep track of the SACs work, where in fact there are detailed reports on SAC status and progress that are distributed to us every month as part of our meeting materials. In the end, we could do more to

engage our SACs with additional financial resources. We could create regular platforms for communication between and among the SAC leaders and the Commission; we could conduct SAC leadership summits, and so much more.

In closing, I wish to state that as Chair, I stand ready, and look forward to, working with my fellow Commissioners, our Staff Director, agency staff, and also with our appropriators, our oversight committees and with the Executive branch to determine how we can best strengthen the Commission, not only for this generation of Americans, but for the generations that come.

Sincerely,



Martin R. Castro
Chairman

December 17, 2014

Dear Mr. Sherrill:

Thank you for your draft report regarding the management of the United States Commission on Civil Rights (“the Commission”). The undersigned Commissioners hereby provide you with comments and feedback on the report. We respectfully disagree with some assessments and prescriptions as outlined below.

1. Statute Gives Clear Authority to Commissioners

We strongly disagree with one of the central statements made in this report that “the Commission’s ability to achieve its mission is impaired by management challenges that stem, in part, from unclear roles and responsibilities of commission leaders.” The work of the Staff Director and the career staff is extremely important to the success of the Commission. We are fortunate to have staff that is very committed to the Commission’s mission. We believe that the statute and historic practices of the Commission are clear as to the roles and responsibilities of the Commission leaders, and that the real obstacles to fully achieving the mission have been the lack of adequate resources, the lack of a permanently appointed staff director for 2.5 years, the lack of a general counsel for much of that time, and the lack of sufficient staff to carry out the work since the Commission’s budget had not been increased for well over a decade. It has taken time for the current management team and Commission to recover from those deficits. The current staff director has only recently completed hiring to fully staff the Commission.

The Commission’s organic statute defines the parameters of the roles and responsibilities of the Commissioners and the Staff Director. “The Commission shall be comprised of 8 members.” 42 U.S.C. § 1975(b); *see also* 45 C.F.R. § 701.10. Therefore, the Commissioners, and no one else, are the Commission. As discussed further below, they bear ultimate responsibility for all of the Commission’s endeavors, successes, and shortcomings. The Commission’s statute relieves the Commissioners of the task of involvement in all administrative matters necessary for day-to-day operations. “There shall be a full-time staff director for the Commission who shall ... serve as the administrative head of the Commission.” 42 U.S.C. § 1975b(a)(1)(A); *see also* 45 C.F.R. §§ 701.12 and 701.13 (a)-(b). The statute which grants the Commission a staff director in no way diminishes its authority to act in administrative matters. Rather, the statute allows the Commission – which is comprised of the Commissioners alone – to delegate to the staff director the implementation of administrative decisions which the Commission deems necessary and appropriate to make.

2. Lack of Clear Authority has not Hampered SAC Approvals

While the GAO Report cites a number of factors that contribute to difficulties in approving SAC slates, a “lack of clearly specified leadership roles and responsibilities” does not contribute to management challenges in approving state advisory committees. The roles and responsibilities in the SAC approval process are unambiguous: regional

staff develops and reviews slates, the staff director reviews and provides slates to the Commissioners, and Commissioners review and approve the slates.¹ The Commission must review and approve the slates and is not intended to act as a rubber stamp. Commissioners may have knowledge of candidates or concern about balance not held by staff. Although Commissioner objections to SAC candidates may slow down the approval process, it is for legitimate reasons and not because of issues over authority. The result is a SAC with highly qualified members. Given the limited resources of staff to fully vet candidates, Commissioners and their Special Assistants provide an important – and often critical – third level of review of slates.

Furthermore, any issue regarding a backlog stems from a decision made by the Commission 8 years ago that imposed retroactive term limits on SAC members. That decision, while rooted in a desire to inject the SACs with new blood, also had the practical effect of requiring starting anew in all 50 states and the District of Columbia in recruiting completely new SAC members. At the same time, Congress reduced the agency's budget, creating a perfect storm that impacted the Commission's timely rechartering of SACs.

Increasing the term lengths from two years to four for SAC members would indeed reduce the time staff spends to develop SAC slates, although the Commission and staff have been able to make the current rules work. As of December 2014, the Commission has approved 46 out of 51 SACs (90%) and is well on its way to 100%. The fact is the Commission lacked a permanent Staff Director for two and half years and the recent improvement in SAC levels coincided with the arrival of the Staff Director and her making SACs a "top priority" for regional staff.

Finally, while it is clear from historic practice that Commissioners must approve revisions to Administrative Instructions regarding SAC appointments, a majority (perhaps all) of the Commissioners agree that SAC terms should be extended. This extension would improve the functioning of the SACs and reduce the time staff spends developing slates and Commissioners spend reviewing them. We anticipate receiving a set of proposed rule changes from the Staff Director and are prepared to approve this change. Issues of authority are not what are delaying improvement of the SAC nominations approval process.

3. The Draft Report Does not Sufficiently Capture the Role of Commissioners

The Commissioners suggest that the GAO add to the description of their duties contained in this report. A more detailed review of the Commissioners' duties than the one given in the report is vital to understanding the functioning of the Commission. An excellent historical analysis of the duties of the Commissioners is provided in the accompanying response of Commissioners Heriot and Kirsanow. Given the thoroughness of that analysis, we see no reason to repeat it here. Crucially, although the Commissioners are limited to working 600 hours/year (approximately quarter-time), their duties go beyond

¹See Administrative Instruction 5-9

the three selected responsibilities listed: attending hearings, selecting topics for study, and approving national level reports on civil rights issues.

The Commissioners set the agency's direction in all regards and are responsible for conducting hearings on civil rights topics that are the basis for the reports the Commission issues. This means that before a briefing or hearing on a civil rights issue takes place, the Commissioners prepare proposals on what topics should be studied. They research emerging civil rights issues and draft concept papers that encapsulate the necessity of studying an issue and include the broad outlines of what a briefing would entail. They must also review concept papers prepared by other Commissioners to prepare for scheduled votes.

Commissioners must prepare for hearings by researching the issue being covered, drafting questions for witnesses, and reviewing information compiled by staff. At the hearing, they perform much of the fact-finding mission of the Commission by asking questions of the witnesses that appear. After a hearing, they review and suggest changes to draft reports prepared by staff, only approving the reports once they are in a form that is acceptable to a majority of Commissioners. Commissioners also compose their own statements on the topic of the report to be published with the report. Statements include any aspects of the topic a Commissioner would like to highlight, add, dispute or put in context. Statements require research and careful editing to ensure their accuracy.

In addition to their duties around hearings, Commissioners also oversee, develop and implement internal Commission policy through the use of Administrative Instructions. They work with the Staff Director to develop the strategic plans and set budget priorities. They also draft statements for release on important civil rights issues, including letters to decision-makers, reports on Commission business and comments on current events. They meet with Congress, relevant government agencies and the White House. They work to recruit SAC members, meet with stakeholders in the civil rights community, and speak on panels at civil rights events. They are important ambassadors for the Commission throughout the country.

4. The Draft Report Mischaracterizes the Role of Special Assistants

I) The draft report mischaracterizes the role of Special Assistants

The draft report states that some staff "indicated that the Commission needs to reduce the number of Special Assistant positions because the functions they perform do not closely align with the agency's mission." This statement is incorrect. The Commissioners are the foundation of the agency – the very reason that the agency exists. However, Commissioners are not full-time agency employees – they largely have other time-consuming occupations and commitments. They live throughout the country. Accordingly, Special Assistants play a key role in keeping the Commissioners aware of the day-to-day work of the agency, and perform vital substantive work to aid the Commissioners in fully exploring a vast range of complex civil rights issues. The following are among the services Special Assistants provide the Commissioners:

- Helping Commissioners to develop proposals for in-depth reports on specific civil rights matters under our jurisdiction;
- Performing background research to prepare Commissioners for briefings and hearings;
- Drafting proposed questions for Commissioners to ask at briefings and hearings, and highlighting the key issues panelists may address;
- Drafting statements and/or editing and providing citations for statements of Commissioners;
- Reviewing and briefing statutory reports and advising Commissioners on suggested edits and on their decision when the reports come to a vote;
- Developing proposed findings and recommendations for the specific civil rights issues discussed at a briefing or hearing;
- Aiding Commissioners in identifying possible panelists for briefings;
- Advising Commissioners on the quality of proposed State Advisory Committee members; identifying possible committee members;
- Tracking civil rights legislation;
- Updating the Commissioners on emerging civil rights issues; aiding Commissioners in developing a response to breaking civil rights-related news;
- Advising Commissioners on administrative factors at the agency, including staffing and budget; and
- Assisting Commissioners in planning their schedules and travel arrangements.

II) Reducing the Number of Special Assistants would Endanger the Sensitive, Confidential Relationship Commissioners have with Their Special Assistants.²

It is particularly important for the GAO to note that the Commission is an independent agency. Unlike some Commissions where the Commissioners are solely appointed by the White House, half of the Commission is selected by Congress. In addition, the partisan make-up of the Commission is legislatively prescribed. If the Commissioners do not each have adequate support working on their individual behalf, the independence of the agency would be compromised. Career staff cannot provide that support (nor fill that role) because the interests of the Commissioners may diverge. Similarly, the Special Assistants must maintain a confidential relationship with their Commissioners so that each Commissioner's independence is not undermined by political differences among the Commissioners or between the Commissioners and staff. Given the structure of the Commission, the different perspectives and interests of each Commissioner would make it impossible to share a Special Assistant on a permanent basis.

² The job description for the position of Special Assistant reads in part "[b]ased on incumbent's confidential knowledge of the Commissioner's viewpoints on a wide range of issues, reviews all written materials and other documents related to the USCCR's hearings, consultations, studies, et.; advises on modifications or acceptance; prepares confidential draft correspondence for the Commissioner's signature that sets forth his/her position." The one-on-one relationship is crucial, as each Special Assistant must have "[v]ery thorough knowledge of the Commissioner's policies/priorities to be able to represent his/her position in liaison activities with other Commissioners' staff, or organizations to assure that projects are carried out consistent with such views and priorities. Ability to generate and develop new projects/initiatives based on own knowledge and knowledge of the Commissioner's viewpoint."

The importance of Special Assistants is recognized in our annual appropriations; Congress has, for decades, put in our annual appropriations funding special language providing for a Special Assistant for each Commissioner. In the last two Omnibus Appropriations bills, they are the only Special Assistants enumerated specifically in the entire legislation. Congress understands that it is vitally important that each Commissioner of our independent agency has a confidential assistant.

Each Commissioner develops his or her own project proposals, statements, and other documents designed to advance the civil rights matters he or she finds most critical. While several Commissioners may share goals and have similar ideas regarding individual projects, this is not always the case. In order to fulfill their important roles, Commissioners must be able to rely on assistants who will keep their views and wishes confidential and who will focus exclusively on advancing their specific plans. If Commissioners were required to share Special Assistants, they would not be able to depend on thorough and secure support. In addition, critically, a Special Assistant required to serve multiple Commissioners could easily be placed in untenable conflict of interest situations when his or her Commissioners did not agree on all issues.

**III) The Draft Report Should be Corrected to More Accurately
Capture the Portion of Agency Staff that is Comprised of Special
Assistants**

The draft report states that in 2013 Special Assistants accounted for 20 percent of the Commission's salary expenditures. This is no longer the case – in recent months the agency hired several new employees, including an attorney and multiple members of the Office of Civil Rights Evaluation. These hires constituted approximately a 25% increase in the career staff roster.

**5. Continued and Increased Support for the Commission, not Reducing Critical
Staff Will Help Achieve the Commission's Mission**

Given the clearly defined roles and responsibilities of the Special Assistants, the part-time nature of the Commissioners' available duty hours, and the Commissioners' necessarily confidential relationships with their Special Assistants, the Special Assistants' function is critical to the execution of the agency's mission to investigate and report on the status of civil rights in the United States. While the Special Assistants are not involved in the one day-to-day task of report writing, they perform many critical functions as discussed above. A reduction in the number of Special Assistants would complicate, rather than ameliorate, the agency's overall workforce challenges.³ Instead, Congress should increase the budget so that all necessary career staff positions may be filled on a regular and ongoing basis. Therefore, the appropriations language regarding the Special Assistants should not be modified, and each Commissioner should continue to

³ It is critical to note that during a time in the mid-2000s when Congress reduced the Commission's budget, the Executive Branch also imposed hiring freezes that meant that retired employee FTEs were not allowed to be filled, further complicating the budget ratios cited by GAO. In fact, during this period of time, Special Assistants – who were not impacted by the freeze – served critical roles in assisting the Staff Director and agency career staff in the operation of the Commission.

receive the confidential support of a full-time Special Assistant at the GS-12 to the GS-14 level.

In addition to the important work of the Special Assistants, the Commission's critical functions are being increasingly met because of the filling of critical career staff positions. Because the Commission has a full-time Staff Director, the Commission's staff roster has increased approximately 25% in the last year. In addition, the backlog of Commission reports has decreased significantly. Finally, Congress's appropriation of an additional \$200,000 for Fiscal Year 2015 has given some additional, much-needed support to the Commission.

Sincerely,

Commissioner Roberta Achtenberg

Commissioner David Kladney

Commissioner Karen K. Narasaki

Commissioner Patricia Timmons-Goodson

Commissioner Michael Yaki

Andrew Sherrill
Director, Education, Workforce, and Income Security Issues
Government Accountability Office
441 G St NW
Washington, DC,

Dear Mr. Sherrill:

Thank you for sending us your draft of *U.S. Commission on Civil Rights: Management Improvements Are Needed to Better Achieve Its Mission* (“GAO Draft Report”). Alas, we believe some corrections are needed, as there are a few misunderstandings as to the Commission’s organizational structure that are running through the piece as well as a few of what we regard as misinterpretations of the Commission’s accomplishments and challenges. The GAO Draft Report seems to buy into the “Yes, Minister” narrative—“*Wouldn’t it be ever so much better if those Commissioners would just sit back and let the staff handle things?*”—a little too heavily. We believe the answer to that question is “no.” More importantly, we believe the statutory scheme set up by Congress requires that “no.”

If you are not inclined to make the very heavy revisions we think are necessary to make your report accurate, we ask that you attach this letter (or any updated version of this letter that you receive prior to your report being finalized) to the report.

**A. There Is No Lack of Clarity in the Commission’s Organizing Statute:
Contrary to the GAO Draft Report, the Commission Does Not Consist of
“Three Components,”¹ But Rather of “8 Commissioners.”**

Our statute is clear: “The Commission shall be composed of 8 members.” 42 U.S.C. § 1975(a). Note that it does not say that the Commission shall be composed of “8 members plus the Staff Director” or “8 members plus the Staff Director and the staff” or “8 members plus the Staff Director, the staff and the Advisory Committees.” The Staff Director and staff members work for the Commission, and the Advisory Committees offer advice to the Commission. But they are not “components” of the Commission as the GAO Draft Report suggests.²

Congress’s conception of the Commission as an entity composed of eight Commissioners (and not more than that) is reinforced in the title it gave to the Staff Director. She is the “*Staff* Director,” not the “*Commission* Director.” In this respect, the position is like the White House Chief of Staff. That is a crucial job, to be sure, but not one to be confused with the President, whose bidding the Chief of Staff is expected to carry out.

¹ See Draft Report at 4 (stating that “the commission has three components—the commissioners, the staff director and other personnel, and the state advisory committees”). For the reasons outlined in Section A, we beg to differ.

² An appropriate analogy might be the GAO’s relationship to Congress. We checked the internet, and no one has ever referred to the GAO as a “component of Congress.” That is because Congress is Congress. The GAO is not Congress.

Appendix I: Comments from the U.S. Commission on Civil Rights

Congress must be presumed to mean what it says. See *United States v. Ron Pair Enterprises*, 489 U.S. 235, 240-41 (1989) (stating that courts must “enforce [the plain language of a statute] according to its terms”).

The statute confers all substantive duties on the Commission—i.e. on the eight commissioners acting as a Commission—and not on the Staff Director, the staff or the advisory committees.³ For example, it states that the “*Commission* shall investigate allegations ... relating to deprivations ... because of color, race, religion, sex, age, disability, or national origin ... of the right of citizens of the United States to vote and have votes counted” 42 U.S.C. § 1975a(a)(1) (emphasis added). It also states that “[t]he *Commission* ... shall ... make appraisals of the laws and policies of the Federal government with respect to ... discrimination or denials of equal protection of the laws under the Constitution of the United States because of color, race, religion, sex, age, disability, or national origin, or in the administration of justice.” 42 U.S.C. § 1975a(a)(2) (emphasis added). And “[t]he *Commission* shall submit reports to the President and the Congress” 42 U.S.C. § 1975a(c)(2) (emphasis added).

The duty to establish state advisory committees, which receives a significant amount of attention in the GAO Draft Report, is similarly placed on the shoulders of the Commission and not the Staff Director or the staff. The statute reads, “The *Commission* shall establish at least one [advisory committee] in each State and the District of Columbia composed of citizens of that State or District.” 42 U.S.C. § 1975a(d) (emphasis added).

So what does the Staff Director do? She administrates. Like the Noble Duke of York in the children’s nursery rhyme, she has 10,000 men (or, in the case of the Commission, somewhat fewer). She can march them up the hill and then march them down again. But when it comes to substantive activities, she must get her marching orders from the Commission. Like the White House Chief of Staff, she is not a policymaker. Moreover, she does not issue directives to the Commissioners; directives are issued in the other direction.⁴

³ The GAO Draft Report seems to acknowledge this when it states that “the statute ... does not specify the functions that the staff director is expected to perform.” But the report treats this as an oversight by Congress. We believe it was deliberate policy. The Staff Director’s very considerable authority over substantive matters comes from delegation by the Commission, not from the statute. Given the part-time nature of the Commissioner’s positions, a contrary organizational structure would dramatically shrink their ability to function effectively.

⁴ We were surprised to learn that the Commission’s general counsel, a recently-hired career employee, claims to have the authority to create “polic[ie]s to curb commissioners’ use of letterhead (though he concedes he has no mechanism by which to enforce any such policy).” See GAO Draft Report at 20. This is part of a disturbing pattern that has developed in the last several months. In September, the Staff Director, acting on the advice of the general counsel, took the unprecedented step of firing (or purporting to fire) the special assistant of one of the Democratic Commissioners. This can be analogized to a clerk of the court firing an appellate judge’s confidential clerk (or to anyone other than the relevant Congressman firing a member of his personal staff). It is simply *ultra vires*; no Staff Director has ever claimed such power—in part because a significant portion of the special assistant’s job is to keep an eye on the Staff Director and staff and communicate what she sees to her Commissioner. But things got worse from there. When Commissioners attempted to schedule an emergency meeting at which to clarify the Commission’s policy against vesting the Staff Director with such authority, they were told by the general counsel that holding such a meeting would constitute a felony under 18 U.S.C. § 205, which prohibits federal employees from acting “as agent or attorney for anyone before any department, agency, court, court-martial, officer, or civil, military, or naval commission in connection with any covered matter in which the United States is a party or has a direct and substantial interest.” This was

Her good counsel, as well as the good counsel of members of the Commission's staff or anyone else who catches the ear of a Commissioner on matters of policy, is certainly welcome and desirable, but in the end, it is the Commission that has the duty to investigate and to issue reports, the Commission that must establish advisory committees and the Commission that charts its future course. Put differently, the Commission, not the Staff Director and not the staff, is the Commission.

This does not mean that the Staff Director is a robot who must simply follow orders. The Commission has and will continue to delegate considerable discretionary authority to the Staff Director in putting together hearings, briefings, reports and advisory committees. This is necessary in order for part-time Commissioners to get things done. Like a President who micro-manages his Chief of Staff and staff,⁵ a Commission that micromanages its Staff Director and staff (or a Staff Director who micromanages her staff) can be rightly accused of poor judgment. But as a legal matter, this issue is clear: The decision of how much of its authority to delegate is the Commission's. The Commission can choose to delegate, choose not to delegate and can "undelegate" that which has been delegated in the past.

We do not believe that the current Commission can be accused of stinginess in the delegation of authority. To the contrary, if anything, the Commission has been guilty of the opposite vice: Delegating so much authority that the Staff Director and staff have lately come to think of the Commission as more akin to an advisory committee or a corporate board of directors.⁶ But this is error.

An example of this attitude can be found on page 16 of the Draft Report. It states, "According to commission staff, commissioners often raise objections about proposed membership slates, and this results in delays in SAC approval." This is true, but it's a peculiar way of putting it.⁷ It is a little like Congressional committee staff members complaining that things would go better if only Congress would promptly approve the bills they draft for them as written. Representative democracy doesn't work that way. Congressional staffs are not a "component" of Congress; they work for Congress. Congress is Congress, and its members have a duty to do what they believe is in the best interests of the country. They were not elected to be "Yes Men" and "Yes Women" for their unelected staff members. Nor were we appointed to be so.

B. The Framework That Congress Created for the Commission Was Wise.

immediately recognized to be incorrect by a majority of the Commission's members and the meeting was scheduled. The point of relating these facts is to show that there have been quite a few implausible interpretations of the law around the Commission lately, which if taken seriously would result in an increase in the authority of the Staff Director and corresponding decrease in the ability of the Commission to carry out its responsibilities.

⁵ President Carter is said to have personally reviewed all requests to use the White House tennis court. Whether this is true or a fanciful tale is a question better left to history.

⁶ In law school, corporations professors delight in asking students which individuals embody the corporations "will" or "spirit"? Is it the board of directors? The stockholders? The chief executive officer? The answer is that there is no answer. The "corporation" is something separate from all of them. The Commission is by comparison a far simpler beast. It consists of its eight Commissioners. How do we know that? Congress said so.

⁷ We note that to our knowledge there is no backlog of proposed slates awaiting approval by the Commission. The bottleneck is not there.

Short of adding “and we really mean it,” it is not clear to us how Congress can clarify the work it has already done in organizing the Commission. But perhaps to understand that better, it makes sense to write a few words on exactly what it did and why. If we had more time we could elaborate on this more. But we received the GAO’s draft late Thursday on the day before a Commission meeting (for which this topic was not on the agenda) and have had to attend to other things. We may wish to supplement our remarks in the coming weeks.

There have really been two Commissions, not one. The first was established under the Civil Rights Act of 1957. It had six members, all of them appointed by the President and subject to the advice and consent of the Senate. The terms of the members were unlimited as the Commission was intended to be temporary. Surprisingly to some today, its members included prominent (though by the standards of the American South in those days moderate) proponents of segregation.

The purpose of the Commission on Civil Rights of that period was mainly to establish facts. It may be hard to believe now, but in 1957 it was not widely agreed, for example, that states in the Old Confederacy were discriminating on the basis of race in voting rights. Some believed that the literacy tests that were being administered fairly separated those who could read from those who could not and that registrars were simply letting the chips fall where they may. As then-Senate Majority Leader Lyndon Baines Johnson put it, the Commission’s task is to “gather facts instead of charges.” “It can sift out the truth from the fancies; and it can return with recommendations which will be of assistance to reasonable men.” 103 Cong. Rec. 13,897 (1957)(statement of Sen. Lyndon Johnson). For that reason, it was thought prudent for President Eisenhower to appoint individuals like former Florida governor Doyle Carlton and former Virginia governor John Battle, who would have some credibility with Southern whites who harbored doubts about whether literacy tests were being unfairly administered. It was a different time.

In 1983, the structure of the Commission and its purpose changed significantly. In the lead up to the change, President Reagan sought to replace a member of the Commission—Mary Frances Berry—with a Commissioner of his own choice. Dr. Berry, who had a penchant for carrying around Chairman Mao’s Little Red Book of Quotations, was not the kind of commissioner that Reagan would have selected himself.

Hardly any lawyer or Constitutional scholar would disagree today (and few disagreed then) that Reagan was within his rights to replace Berry. A Presidential appointee (in Berry’s case an appointee of President Carter) who is appointed to an indefinite term is ordinarily presumed to serve at the President’s pleasure, and to put it mildly Reagan was not feeling pleasure. But Congress was also within its rights to reconfigure the Commission in such a way as to guarantee its independence. It chose to exercise that power in passing the United States Commission on Civil Rights Act of 1983, Pub. L. 98-183. In doing so, Congress created the Commission we know today.

Rather than six commissioners appointed by the President to indefinite terms and subject to confirmation by the Senate, Congress created a commission of eight, half

appointed by the President and half by Congress, with six-year terms and a presumption of tenure on good behavior.⁸ The Congressional appointees would be divided between Senate and House and between Majority and Minority Leaders. Senate confirmation would be unnecessary. As in the past, all Commissioners would be part time.

The fact-finding mission articulated by Johnson would remain. But times had changed. In 1957, the flurry of modern-era civil rights legislation had not yet begun. The federal government had little in the way of bureaucracy devoted to civil rights enforcement. But by 1983, this was no longer true. Congress wanted an independent body that could keep a sharp eye on the bureaucracy it had created—from the Civil Rights Division at the Department of Justice to the Equal Employment Opportunity Commission to the Office for Civil Rights at the Department of Education.

We seldom agree with Mary Frances Berry (who was then made a Congressional appointee to the new Commission and was later made Chair) on issues of substantive civil rights law or policy. But nobody has described the function of the Commission as established by the 1983 Act better than she: “If we don’t have people irritated, we’re not doing our job,” she said. “We’re the gadfly. We’re the watchdog that bites you on the leg, keeps tugging at you and says, ‘How about this?’” See Will Lester, *Election Watchdog Riles Fla. Leaders*, *Lakeland Ledger* (April 16, 2001).

The part-time nature of the job was crucial to the Congressional plan. For one thing, over the years, the Commission has been lucky to have the services of some individuals of rare talent. We don’t wish to slight anyone, so we will name only two, one from each side of the political spectrum: Christopher Edley, Jr., former dean of the University of California at Berkeley’s law school and Princeton University’s Robert George, one of the world’s leading experts on law and religion. There certainly have been others. There is no chance individuals of their stature would have left their positions to work full time at the Commission.

We do not claim to have the stature of Dean Edley or Dr. George. But we do share a quality that is common to many of our present and former colleagues on the Commission, again on both sides of the political spectrum: We are from outside the Beltway and do not identify with the individuals who operate the machinery of government on a day-to-day basis. Moreover, we are beholden to no one in government for our livelihood. Congress could close down the Commission next Tuesday, and we would do just fine, thank you very much. Anyone who can’t say that can never be an effective watchdog as Congress conceived of that role.

There is thus a reason that the Staff Director and staff members were not placed at the apex of the hierarchy with the Commissioners as mere advisors: Such an organizational structure would be less willing to take the kind of risks necessary to ensure the effective protection of civil rights. Its leaders would be less willing, in Berry’s words, to “bite you on the leg.”

⁸ Because this structure violates the Appointments Clause of the Constitution, Congress could not vest the Commission with executive powers and the Commission is best construed as an agency nested in the legislative branch. *Buckley v. Valeo*, 424 U.S. 1, 118-140 (1976).

A further crucial element of Congress's plan for the Commission is its guarantee of a diversity of viewpoints that are valued by elected officials of both major parties. The Commission will frequently be ideologically deadlocked at 4-4 and can never be more than 6-2 in terms of the party affiliation of the appointing authorities. Ideological deadlock can, of course, be debilitating for many executive agencies. But the Commission is not charged with executive responsibilities. When the eight members speak as one, they may have a great deal of authority. But even when they do not speak as one, they may assist the President and Congress by fleshing out the arguments, pro and con, on the various issues that come before our nation. That is often just as valuable if not more so.

All of this depends upon the organizational structure that Congress put into operation—which puts the Commission, contentious though it might be, in charge and not the Staff Director.

C. Commissioners Have Long Sought to Improve the SAC Re-Chartering Process and to Establish Better Communication with SACs.

We largely agree with the GAO's decision to highlight in its report the Commission's tardiness in establishing of advisory committees. Our statute requires the Commission to perform only two tasks: (1) to issue a report on a civil rights "enforcement" issue at least every year (which the Commission has done); and (2) to establish an advisory committee in each state and the District of Columbia (which it has failed to do or at least failed to keep current).

We understand that the Commission had a staff of around 200 at the time Congress promulgated this requirement. It now has a tiny fraction of that. That is the main reason for its repeated difficulties fulfilling this responsibility. Nevertheless, it is not a good enough reason. If Congress had instructed us to compute the value of pi to the last digit, then that's what we would need to do—or knock ourselves out trying. Fortunately, we seem to be catching up. If the figures in the GAO Draft Report are correct, we were up to 42 out of 51 as of September of 2014. See GAO Draft Report at 16.

The regional office director who told the GAO that the "increased focus on compiling SAC membership slates in 2014 decreased the attention that could be spent on to [sic] other duties such as drafting SAC reports" (GAO Draft Report at 17) is no doubt correct. But our statute doesn't require the advisory committees to issue reports. It only requires the Commission to "establish them." Something has to give and something has.

All is not lost, however. There are solutions. For many years, we have advocated lengthening the terms of advisory committee members so as to get off the re-chartering treadmill. But back then we were told by staff members (wrongly, it seems, in retrospect) that this was not legally permissible under the Federal Advisory Committee Act. See 5 U.S.C. App. 14. In more recent years, better-informed staff members have assured us that this is not so. Six-year terms (which we tended to favor when this was discussed in 2012) would reduce Commissioner and staff time on establishing advisory committees by two thirds. Four-year terms (which some of our colleagues tended to favor at the time) cut the work in

half. Either would be a vast improvement on the current state of affairs. We also favor reducing the minimum size for advisory committees, since members tend to resign over time, sometimes causing the charter to lapse on account of insufficient membership.

Back in late 2012, there was substantial agreement among Commission and staff that these changes should be made. (There was no Staff Director or Acting Staff Director at the time, which is why the Commission was having more difficulty than usual in chartering SACs.) If memory serves, we were advised by staff that at least some of the rules at issue were part of the Code of Federal Regulations and thus would likely require an elaborate notice-and-comment procedure to amend.⁹ Shortly after President Obama's re-election, one of us (Heriot), who was on a special subcommittee to deal with advisory committee issues, was told by one of the Democratic appointees to the Commission that they would prefer to wait until the President had an opportunity to make further appointment(s) before moving forward with the advisory committee reforms.

The way the GAO Draft Report reads now, it is easy to get the impression that the plan to extend the terms of the advisory committee members came out of the Office of the Staff Director. For good or ill, that is untrue. The idea has been around for a long time (and so have similar labor-saving ideas). But we agree with the Staff Director that it is long past time to act. We don't think any of our colleagues would disagree at this point.

On the other hand, we are troubled by the vague suggestions in the report that the Staff Director believes she may have authority to revise advisory committee policy without approval by the Commission. We are not sure who is confused here—the GAO or the Staff Director. But here are some thoughts that may help clarify matters: The GAO Draft Report notes on page 14 that “[t]he commission’s regulations provide more detail than the statute about the role and responsibilities of the staff director but little information about the role of the commissioners.” Yes, of course. And you will find that the so-called Administrative Instructions (or “AIs”) are also largely devoid of rules applicable to Commissioners. That is because the regulations were promulgated by the Commission to guide the Staff Director and staff. Similarly, many AIs are instructions directly or indirectly from the Commission to the Staff Director and staff about how to conduct the Commission’s business. The Commission does not promulgate regulations or issue administrative instructions to itself. Some AIs, on the other hand, were promulgated by the Staff Director (or by previous Staff Directors) and these may be modified by the Staff Director at will, so long as they do not conflict with policies established by the Commission. But the Staff Director has no authority to issue instructions to the Commission.

Everyone seems to agree that the AIs as a whole are not in good shape. Over the decades, some contradictory and confused ones have been issued. Sometimes it is difficult to tell whether they were expressly adopted and issued by the Commission, issued by the Staff Director in order to comply with an expressly adopted policy of the Commission or

⁹ In connection with writing this letter, we took a look at 45 C.F.R. § 703, which contains the Commission’s rules on advisory committees. It contains an 11-member minimum for advisory committees, but does not mention two-year terms. Without more time to examine the issue, we cannot comment further on the procedures that would be necessary to change these rules. Suffice it to say that we were led to believe in 2012 that it would require notice and comment.

issued by the Staff Director wholly on her own authority. The Commission needs to take a look at the AIs as a whole and decide where it wishes to provide guidance to the Staff Director and staff and where it wishes to leave the Staff Director and staff discretion. As for streamlining the procedures for establishing advisory committees by extending term lengths and minimum numbers of committee members, this is surely a matter of policy for the Commission that is very unlikely to be controversial.

While we were not surprised you devoted a substantial part of the GAO Draft Report to the Commission's difficulties in establishing advisory committees in a timely manner, we were a little surprised at the long discussion of the need to improve communication between the advisory committees and the Commission and its staff. We suspect that every advisory committee to every federal agency, department, commission or board that has ever been has complained of lack of communication. And they usually have a point. But the Commission has a better excuse than most federal entities. We have a tiny Commission and staff, but are responsible for 51 advisory committees.

We believe that the GAO Draft Report would greatly benefit by mentioning one potential partial solution: Establishing a Commissioner-Liaison for each of the advisory committees. Each Commissioner would take on six or seven advisory committee as an alternative official contact at headquarters if an advisory committee member prefers not to communicate through the Regional Director for that committee. Advisory committee members would, of course, be free to communicate through any Commission member or staff member, but this would give them reason to believe a particular Commission member is ready and willing to listen.

Such an arrangement would help solve two problems: (1) it would increase the opportunities for communication between advisory committee members and Commissioners; and (2) it would help break down the total vertical integration that currently characterizes state advisory committees.

Under current practices, the same staff member is responsible for putting together slates of candidates for each committee, calling a meeting for the committee, determining procedures for selecting a research topic for the committee, selecting and inviting witnesses to testify before the committee and (most importantly) drafting the report on behalf of the committee. It is therefore a real stretch to call most of the reports independent from the Commission's staff. This staff member has tremendous influence on the advisory committee he "assists"—more influence than we think is healthy for a single individual.

One of us (Heriot) indeed has a bad experience with a now-retired Regional Director when she was briefly Chair of the California Advisory Committee prior to being appointed to the Commission itself. The experienced left her feeling strong-armed into a passive role in the Committee that she was supposed to chair. She would have objected, but in the middle of the experience she was appointed to the Commission.

We believe our current Regional Directors are very competent and conscientious. But that doesn't make the "vertically integrated" relationship between them and their respective advisory committees a good thing. For example, one of our Regional Directors used to tell advisory committees that he would pressure them hard to issue a unanimous report. We

believe that unanimous reports can be very useful. On the other hand, the result can be a milquetoast report that accomplishes nothing. There is something to be said for allowing a diversity of opinions to appear in a report. We do not believe it should be up to the Regional Director to push hard for unanimity.

The advisory committee system needs counterweights to the influence of the Regional Directors. An official Commissioner-Liaison would be a step in that direction. Unfortunately, the culture of the Commission and its staff has generally pushed in the opposite direction. For example, the Commission now forbids Commissioners who had been serving on advisory committees prior to their appointment from continuing to serve on those committees. The stated reason was that advisory committee members may be intimidated by the knowledge that the Commissioner could refuse to re-appoint them if they cross the Commissioner.

The problem is that it is the *Regional Director*, not the Commissioner, who is in the best position to retaliate against advisory committee members if he or she ever wanted to do so. By making it less likely that advisory committee members will have contact with a representative of the Commission other than the assigned Regional Director, the Commission has increased the chance for intimidation rather than decreased it.

Another example of increased rather than decreased influence of the individual Regional Director is this: The Commission in recent years has followed a policy of employing a presumption in favor of re-appointment of advisory committee members who have not reached the end of their term limits and has given such members an opportunity to argue their case for re-appointment if the Regional Director has opted not to include them on the proposed slate. Very recently, however, the Commission's general counsel has (implausibly) suggested such a presumption is illegal.¹⁰

We strongly believe that the GAO Draft Report should be amended to address (1) the Commissioner-Liaison model as a partial solution to both the lack of communication problem and to the need for counterweights to the influence of a single Commission staff member on the advisory committee; and (2) the presumption of re-appointment as an additional counterweight to that influence.

D. Measuring the Commission's Value Is ... Well ... Tricky.

We sympathize with GAO's predicament here. The success of government offices must be measured some way, and sometimes the use of self-generated strategic goals combined with "performance targets" or "benchmarks" is the only available method. But you may

¹⁰ The General Counsel's view is based on a provision of the Federal Advisory Committee Act that states that no one has a property right in their appointment or reappointment. This provision was designed to prevent lawsuits by disappointed former advisory committee members who were not re-appointed. Cf. *Goldberg v Kelly*, 397 U.S. 254 (1970) (holding that a welfare recipient has a right to an evidentiary hearing before his benefits can be terminated, because he has a property right in those benefits subject to due process protection). Suffice it to say that it does not follow that the Commission may not, for its own purposes, establish a presumption that currently-serving SAC members will be reappointed.

want to soft pedal this a bit. While such a method may be better than nothing, that doesn't make it good. A few disclaimers may be a good idea.

It is difficult not to be reminded of the old story about the Soviet nail factory when we read in the GAO draft report that the Commission had met "about half of its performance targets." GAO Draft Report at 7. When the nail factory was assigned a crude statistical goal in terms of nail count, it turned out tiny, useless nails in very large numbers; when the goal was changed to measure output by weight, it turned out a small number of equally useless nails as large as railroad spikes.

The self-generated "strategic goals" combined with measurable "performance targets" method may be an improvement over the Soviet-style system of goals set by poorly informed outsiders. But if so, it is only very slight. Because the former is under the control of the institution that is being evaluated, the temptation will be to set modest goals and performance targets that are easy to achieve (or at least arrange for more numerous easy-to-achieve performance targets than hard ones). Another technique (used a lot in academic settings these days when applying for funding) is to set goals that have already been achieved, so when the deadline arrives, establishing success is a snap. Such a system is deeply corrupt. The winners will tend to be those with the street smarts to work the system. Tiny offices like the Commission will often come up short.

By the way, the two of us were at the National Archives today. On the floor, we spied a crumpled piece of paper.¹¹ Here's what it said:

January 1, 1861: President-Elect Lincoln's Strategic Goals and Performance Targets for March 1861 to March 1865:

Strategic Goal #1: Effectively Deal With Calls for Secession in Southern States

Performance Targets:

1. Persuade South Carolina to rescind its declaration of secession.
2. Reassure leaders in Mississippi, Florida, Alabama, Georgia, Louisiana and Texas of the deep regard I have for them and for the interests of their citizens. Dissuade them from following South Carolina's example.
3. If Performance Targets #1 and #2 are not met, appoint the nation's most distinguished military officer—General Robert E. Lee—to head the army and assign him the task of suppressing the rebellion.
4. Offer up a show of military resolve ... maybe in a location like Bull Run in Virginia ... sufficient to send a message to those who believe that I will allow the Union to be dissolved without a fight that they are wrong.
5. Keep bloodshed to a minimum.

As we all know, Lincoln failed to achieve any of these performance targets in his first term. Lee's surrender at Appomattox Court House did not occur until the early weeks of

¹¹ Yes, we are teasing. Since there are laws against making false statements to a federal official, we figured we'd better disclose that. You can't be too careful these days.

Lincoln's second term in office. Despite his strong anti-slavery principles, Lincoln would not have dared listed emancipation as one of his strategic goals, since doing so would have been decidedly impolitic in January of 1861, and in any event, Lincoln's long-term plan to end slavery was quite different from what he actually ended up accomplishing.

One thing we can all be sure of. Any method of evaluating performance that has the Commission's performance (at 50%) looking better than Lincoln's (at 0%) must have something wrong with it. The Commission may try hard, but it is no Abraham Lincoln. In the end, there is no substitute for examining Lincoln's actual accomplishments (or the Commission's output in all its complexities or lack thereof). In the Commission's case, that means reading the reports and judging them on their merits, not by the word count, the number of pages, or by the pound.

We are proud of some of the reports that the Commission has issued in the last few years. Others ... not so much. We wish the Commission had produced more.¹² Still, we were surprised by the short shrift that the report gives to those reports, since they are the Commission's core accomplishments. We urge you to spend a bit more effort describing them in your report. We also disagree with the statement that what the report refers to as "national reports" (i.e. Commission reports) "are written by the commission's Office of Civil Rights Evaluation."¹³ GAO Draft Report at 11. The Commissioner Statements are as much a part of the report as the staff-generated portions. In some reports—like the *Peer-to-Peer Violence + Bullying Report: Examining the Federal Response*—they take up a larger portion of the report than the staff-generated sections. Indeed, in that report, the dissenting statements alone are nearly as long as the staff-generated sections. Even when they are not as long, the Commissioner statements frequently contain far more analysis than the staff-generated portions of the reports (which for briefing reports are usually just summaries of what the witnesses who testified at the briefing said).

By the way, we would be remiss if we failed to note that we have serious doubts about the "scores" that GAO appears to have given the Commission on pages 8 to 9. Did we really meet 7 out of 35 of our "performance targets" for "strategic goal #1"? Not 8? Not 6? And 21 out of 40 for "strategic goal #2? Note that "strategic goal #1 is "*Shape a national conversation on current and future civil rights issues.*" That's something that's hard to reduce to "performance targets."

Again, we know it's hard to write a report of this type without sounding shallow and overly bureaucratic. We're glad you were assigned to write it and not us. But we believe that the report would be strengthened by acknowledging these difficulties over and over again. They are important.

¹² We note that Harper Lee wrote only one short novel—*To Kill a Mockingbird*. But it was a doozie. We are still hoping to hit one or two out of the park.

¹³ The statement is also false in that the Office of Civil Rights Evaluation is by no means the only office within the Commission's staff that writes reports. Some are written by staff members who work in the Office of the Staff Director and some are written by staff members who work in the Office of the General Counsel. Staff members who work in the Regional Offices have also been known to help.

D. Writing Letters Expounding on Civil Rights Issues Should be Regarded as Part of Our Accomplishments as Commissioners; It is Not, as Some Have Recklessly Suggested, a Breach of Federal Ethics Regulations.

There is a good deal of confusion about Commissioner letter-writing in the GAO Draft Report. Here again an analogy to a more well-known and more powerful arm of the government might be useful—like Congress. The Constitution permits members of Congress to legislate only when they act as a body. But to our knowledge, no one has ever taken the position that Members of Congress should not write letters expressing their own opinion about issues of public policy, or that if they do, they are not writing in their capacities as Members of Congress.

No doubt when they do so, they irritate those who disagree with them. But the notion that an individual Member of Congress could not write such letters on Congressional letterhead, because to do so would jeopardize Congress's effectiveness would be dismissed with hoots of laughter.

Yet that is the argument being offered in the GAO Draft Report: “[T]hese letters also jeopardize the commission’s effectiveness because they can undermine its ability to collaborate with other organizations. The commission needs to collaborate with other organizations to serve as a national clearinghouse for civil rights information, as required by the commission’s statute.” GAO Draft Report at 18.

Remember back to the Mary Frances Berry description of the Commission that we quoted in Part B? We like it so much, we want to quote it again: “If we don’t have people irritated, we’re not doing our job,” she said. “We’re the gadfly. We’re the watchdog that bites you on the leg, keeps tugging at you and says, ‘How about this?’” See Will Lester, Election Watchdog Riles Fla. Leaders, *Lakeland Ledger* (April 16, 2001). Contrary to the suggestion in the GAO Draft Report, pleasing potential collaborators is not what we’re about, whether acting as individual commissioners or as a body.¹⁴

Is there some reason to believe that Members of Congress would reserve for themselves the authority to issue letters on Congressional letterhead in which they discuss their views on issues of public policy, but would have wished to deny analogous authority to individual Commissioners issuing letters on Commission letterhead? We can’t think of any. When Congress re-organized the Commission in 1983, it was careful to ensure that at least two Commissioners always be appointed by officials from the party out of power in the White House (and sometimes out of power in the Congress too). They obviously intended for them to have a voice. Moreover, since Members of Congress and their staffs sometimes go

¹⁴ If the GAO were looking to interview only organizations and agencies that would be “irritated” by letters written by us, it could not have done much better than to interview the organizations that it did. Both the Civil Rights Division of the Department of Justice and the Equal Employment Opportunity Commission have come under criticism by the Commission and by us as individual commissioners. Similarly, the private organizations listed in the report—the Leadership Conference on Civil and Human Rights, the American Civil Liberties Union, the Lawyers’ Committee for Civil Rights Under Law, the National Association for the Advancement of Colored People and the Southern Poverty Law Center all advocate for policies that have come under criticism in some letters sent by individual commissioners. We would appreciate it if you could reveal to us the names of any organizations you contacted with a different perspective on the issues.

out of their way to thank us for our letters, sometimes profusely, it is hard to imagine that they regard the use of letterhead to be irregular in any way.

In our view, we are simply doing what the Commission as a whole should have done. We surely would have preferred to issue the letters under the signatures of all eight Commissioners.

The draft report repeats a defamatory statement made by the Commission's General Counsel that letters on Commission letterhead sent by individual commissioners "may run afoul of the federal ethics rules regarding the use of public office for private gain." GAO Draft Letter at 20. The notion that we "may" have received some "private gain" for sending these letters is pure fancy. The argument is purely a makeweight. If we were using public office for private gain, it would be a violation of the law whether it was in connection with a letter on letterhead or part of a report by the full Commission. But no "private gain" is involved, so the argument never should have been made. Waging political wars with unfounded threats of prosecution or sanctions for violations of ethics laws is ugly and deforms the rule of law. Yet the General Counsel has now done so on multiple occasions. We are surprised the GAO would encourage this by devoting ink to it.

The only circumstance under which letters of the kind discussed in the report would present a problem would be if the letters were genuinely misleading. But the Commission developed a policy years ago to deal with this possibility. Each letter begins with a required disclaimer following the formula, "I write as one member of the eight-member U.S. Commission on Civil Rights, and not on behalf of the Commission as a whole"¹⁵ If the recipients of the letters are unable to comprehend that the letter is sent only on behalf of the signatories and not on behalf of the entire Commission, they are beyond help.¹⁶

E. Comprehensive Workforce Planning is Fine, But Contrary to Suggestions by Commission Staff Quoted in the GAO Draft Report, the Functions Performed by Special Assistants Do Indeed Align with the Agency's Mission.

As this section is currently worded, it will likely be interpreted by readers as an effort to lay a foundation for the elimination or reduction of the current numbers of special assistants. If undermining Congress's Commission-centered organizational structure is the aim, then eliminating or reducing the numbers of special assistants is a useful idea. It would

¹⁵ If the letter has two signatories, the sentence would appear as "We write as two members of the eight-member U.S. Commission on Civil Rights, and not on behalf of the Commission as a whole," with the number of course changing if the letter has three, four or more signatories.

¹⁶ The draft report also prominently mentions a news article in which a spokesperson for the American Council on Education said that a letter from two individual Commissioners might "confuse" or "mislead" some universities. That letter discussed legal constraints on universities' use of race preferences in admissions. By way of context, it should be noted that ACE is a pre-eminent advocate of giving universities broad discretion to use race in admissions decisions. See, e.g., Brief of Amici Curiae American Council of Education and 39 Other Higher Education Organizations in Support of the University of Texas, available at <http://www.acenet.edu/news-room/Documents/Amicus-FisherTexas-081312.pdf>. GAO should therefore take seriously the possibility that ACE was not at all confused by the letter, but instead brought up the letterhead issue as a makeweight to discredit legal opinions with which it has had longstanding public disagreements.

be very difficult for any Commissioner to keep tabs on the Staff Director, Commission staff or SACs without a special assistant of his or her own to regularly interact with staff, draft concept papers, assist in editing reports and keep a sharp eye on developments at the Commission's national office. Special assistants are also important in researching Commissioner statements, which as we have said above, are central components of reports and frequently contain far more analysis than the staff-generated portions of the report. Under the circumstances, it would be easy for Commissioners to become passive and for the Commission to become more like a corporate board of directors—distant and uninvolved. On the other hand, if the “independent civil rights watch dog” metaphor for the Commission is an appealing one, then the special assistants are an important element and should be retained. We believe that if special assistants are eliminated or their numbers reduced, the better course of action would be to eliminate the Commission entirely.¹⁷

F. Errata

There are a number of random mistakes. We doubt we have caught them all, but will supplement this response when we can.

1. GAO Draft Report at 4: “*Presidents Bush and Obama appointed independents to the commission who had previously been members of each President’s political party.*” This is a false statement. President Bush appointed only Republicans to the Commission—Peter Kirsanow (his first and second terms), Ashley Taylor, Jr., Gerald Reynolds, Jennifer Bracer and Abigail Thernstrom (her second term). Abigail Thernstrom was initially appointed to the Commission as the appointee of Speaker Hastert and at that point was an independent.¹⁸ Gail Heriot, who had previously been registered as both a Democrat and later a Republican before switching to independent well before her appointment, was appointed as independent by Sen. McConnell. Todd Gaziano, who was appointed by Speaker Boehner, was appointed as an independent. As far as we know, he was never registered as a Republican.

¹⁷ There is a fundamental problem with the assumption that the Commission’s workforce should be restructured to replace special assistants with career staff. This approach undermines the idea of representative government. The Commissioners are appointed by the President and Congress, who are themselves elected by the American people. The Commissioners therefore are the only people at the Commission who can be said to be in some sense representatives of the American people. The Staff Director is appointed by the President, but her role is primarily administrative and she is dependent upon the federal bureaucracy for her livelihood. Although we fiercely defend the independence of the Commission, that is not the same thing as believing the Commission should be directed by people who are accountable to the American people in only the most tenuous way.

¹⁸ As we understand it, Commissioner Thernstrom, while living in Massachusetts, had never registered under either party, although she had sometimes chosen to vote in the “open to all” Republican primary. On at least one occasion she was listed as Republican without her knowledge or consent by the registrar of voters after voting in the “open to all” Republican primary. The practice of so listing voters was apparently heavily criticized in Massachusetts, and it was abandoned. After moving to Virginia, Commissioner Thernstrom decided she wished to register as a Republican. At some point, she was re-appointed to the Commission by President Bush as a Republican to fill the seat vacated by Commissioner Bracer. Presumably, at this point, she registered as a Republican. In any event, President Bush never appointed anyone to the Commission as an independent, much less someone who was previously a member of the Republican party.

We have no knowledge of whether President Obama's independent appointees—Karen Narasaki and Patricia Timmons-Goodson—were Democrats before they were independents. But if they were, I don't think it would be a good idea to imply that President Obama is the first to make such an appointment. As far as we know, the statute has always been interpreted (correctly in our view) to forbid only the appointment of more than four persons who are active members of a particular political party. Mary Frances Berry herself was Assistant Secretary for Education at the then-existing Department of Health, Education and Welfare under President Carter and widely viewed as a Democrat, but was appointed as an independent, since she was not registered as a Democrat at the time.

2. GAO Draft Report at 5-6—You repeatedly refer to the Civil Rights Division as “CRD.” The abbreviation “CRD” is used to refer to the Criminal Division. The accepted abbreviation for the Civil Rights Division is “CRT.”
3. GAO Draft Report at 4: “For a two and a half year period from January 2011 to June 2013, the commission did not have a permanent staff director, and during that period a commission employee served as the acting staff director.” This is incorrect. After the departure of Martin Dannenfelser as Staff Director, Christopher Byrnes became the Acting Staff Director. When Chairman Martin Castro and Commissioner Roberta Achtenberg were appointed to the Commission, they wished to replace Christopher Byrnes with Kimberly Tolhurst, and this was done. At some point (we don't recall when), Ms. Tolhurst resigned from that post, and the Commission had neither a permanent Staff Director nor an acting one.

One thing that the GAO Draft Report fails to acknowledge that we believe in fairness it should is the rotten luck that the Commission has had with the health of its key employees. When an office is as small as ours is, the death or illness of a single employee is a major problem. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Large offices have economies of scale that we don't have.

4. We note that the GAO Draft Report presents data on the Commission's report output, but it fails to specify one important reason why the count is as small as it is. When Chairman Castro and Commissioner Achtenberg came on board, a majority of the Commission voted to abort two projects that were already substantially underway—our Discrimination Against Women in Colleges and Universities project (which had entailed considerable original

- One thing that the GAO Draft Report fails to acknowledge that we believe in fairness it should is the rotten luck that the Commission has had with the health of its key employees. When an office is as small as ours is, the death or illness of a single employee is a major problem. [REDACTED]

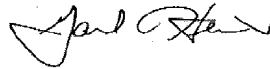
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 offices have economies of scale that we don't have.

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research) and our Cy Pres project. Later, a majority of the Commission voted to kill our Report on Entrepreneurship Report, which was already in completed draft form. We believe all three of those decisions were misguided and suspect that in retrospect some of our colleagues may agree. We believe that this information should in fairness be mentioned in the report. The Commission and its staff were actually more productive than they look in your chart on page 11.

We hope this letter is useful to you in making the extensive revisions to your draft that we believe are necessary. If you have any questions or comments, please do not hesitate to call us at the telephone numbers or email addresses listed below. Our special assistants, Alison Somin (Heriot) and Carissa Mulder (Kirsanow) may be contacted at aschmauch@usccr.gov and cmulder@usccr.gov.

Sincerely yours,



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Appendix II: GAO Contact and Staff Acknowledgments

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In addition to the contact above, Blake L. Ainsworth (Assistant Director), Sherwin Chapman, Kristy L. Kennedy, Revae Moran, Kathy Peyman, and Shannon N. Smith made key contributions to this report. Other contributors included Daniel R. Concepcion, Holly A. Dye, Joel A. Green, Jill N. Lacey, Sheila R. McCoy, Mimi Nguyen, Rachel H. Pittenger, Monica P. Savoy, and Craig H. Winslow.

Related GAO Products

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