ARIZONA CIVIL RIGHTS ADVISORY BOARD

Minutes of Public Meeting

Thursday, May 27, 2010

Board Members Present
Jeff Lavender, Chairperson
Jesus Cordova
Kenneth Moore
Daisy Flores
Beverly Dupree (via telephone for part of the meeting)

Board Members Not Present
Laura Mims, Vice Chairperson

Staff Members Present
Melanie V. Pate, Executive Director
Sandra Kane, Legal Counsel
Kathy Grant, Legal Secretary

I. Call to Order.

Jeff Lavender called the meeting to order on Thursday, May 27, 2010 at 1:30 p.m. at the Basement Conference Room of the Cap Center, 15 S. 15th Ave., Phoenix, Arizona 85007 with the following board members in attendance: Jeff Lavender, Jesus Cordova, Ken Moore and Daisy Flores.

II. Approval of Minutes.

Jesus Cordova moved to approve the minutes of the March 18, 2010 and April 1, 2010 meetings. Ken Moore seconded the motion. All board members in attendance voted in favor of the motion.

Chairperson Jeff Lavender directed that the agenda item regarding the status of AZ POST revision of training program and SB 1070 guidance be moved up to Item No. 3.

III. Racial Profiling

a. Status of AZ POST revision of training program and SB 1070 guidance

AZ POST Executive Director Lyle Mann thanked the Board for moving this item up on the agenda. Mr. Mann distributed to board members a letter that AZ POST had sent to the Governor and an outline of the proposed training program for law enforcement officers to implement SB 1070. AZ POST had been in the process of interviewing Daisy Flores in preparation of a bias-based policing training program when it received word from the Governor that it would be training law enforcement on reasonable suspicion for purposes of SB 1070. Mr. Mann stated that the conversation regarding bias-based policing provided AZ POST with an opportunity to focus on bias and racial profiling and to come out strongly against racial profiling. The training is described in the letter and outline, will be done via digital media as supplemented by a federal brochure on immigration documents, and will last approximately an hour to an hour and twenty minutes. AZ POST has identified and taped subject matter experts from the legal community, has retained a private attorney who is also a trainer at AZ POST, and has retained two outside experts who have worked for the federal Immigration and Naturalization Service to provide training regarding immigration documents

and finding reasonable suspicion. The training will not be immigration training and will not have the intensity employed by the federal government in its eight-week 287(g) training program. Rather, the training will be on how to apply the Arizona law in finding reasonable suspicion and to contact INS, ICE, Border Patrol or a certified officer. AZ POST believes that race cannot play any part in formulating reasonable suspicion to believe that someone is not in the country legally or in the development of probable cause for underlying crimes. The training will be based on factors that have been recognized in court cases to demonstrate reasonable suspicion and will mirror what is used by the federal government. Reasonable suspicion does not mean whether or not a person speaks English. AZ POST is using the substantive definition of racial profiling from Janet Napolitano's 2001 Model Policy on Racial Profiling. AZ POST expects to be sued by people who believe that its policies impact an officer's ability to fully enforce the federal immigration law as well as by people who believe that an officer violated their rights based on racial profiling. They also expect individual officers to be sued. They want to give officers as much discretion as possible. The DVD and all other training materials will be distributed by June 30, 2010. That will give twenty-nine days to accomplish the training before SB 1070's scheduled effective date. AZ POST does not have authority to mandate the training, but expects that 70% of Arizona officers will take the training during the initial period. The other 30% are not first responders and have little need to complete the training initially. AZ POST has established an electronic format for tracking who is making use of the training. Mr. Mann reviewed the training outline with the board members. Under SB 1070, officers must have the immigration status of everyone who is arrested verified by the federal government prior to release. In Arizona, there are approximately 43,000 misdemeanor arrests every year. The new law may cause officers to defer to prosecutors before arresting people. At this point, Board Member Beverly Dupree joined the meeting telephonically.

b. Status of Racial Profiling Investigation of Sheriff and Sweeps
Not discussed at this meeting.

IV. Arizona Civil Rights Initiative

Max McPhail, Executive Director of the Arizona Civil Rights Initiative, stated that the Initiative is simple. It states that no one can be treated differently on the basis of race, sex, gender or national origin in the areas of public contracting, public employment or public education. The Initiative would not trump or affect a federal mandate or bona fide qualifications based on sex, such as different sex restrooms. Contrary to affirmative action to level the playing field as initially intended by President Kennedy, affirmative action is now being used by the government to subcategorize people and treat them differently based on race. This is racial gerrymandering and should not be used to achieve diversity. Rather, government should provide benefits on a race-neutral basis of socio-economic status. If the Initiative is passed by the voters in November, it would do away with preferences for minority and women owned businesses in Phoenix and Tucson contracting laws, and law school admission preferences based on race. States that have already passed similar laws are California, Washington, Michigan and Nebraska. Beverly Dupree indicated that she was having difficulty hearing the comments telephonically, requested that the Board not take action until she had an opportunity to

review the minutes of the meeting, and indicated that she would be leaving the call before the meeting ended.

Mel Hannah addressed the Board. He stated that he strongly disagrees with what Mr. McPhail said with the exception of the comment he made about the playing field not being level. Mr. Hannah recently retired from the Greater Phoenix Urban League. The Urban League and a lot of other civil rights organizations are strongly against this Initiative. Mr. Hannah is now speaking on behalf of an organization called Protect Arizona's Freedom which is composed of community, business, faith and educational leaders that came together a few years ago to oppose previous efforts by Ward Connerly and his out of state organization who is going around the country including Arizona to promote anti equal opportunity initiatives. With efforts by Protect Arizona's Freedom, the Arizona Civil Rights Initiative did not get on the ballot the first time around mainly because some necessary petition signatures were not legitimate. In a second attempt to get the Initiative passed in Arizona, Ward Connerly came to Arizona and convinced the Arizona Legislature to use a process called the continuing resolution to completely eliminate the petition signature process to put the initiative on the ballot, under HCR 2019. The public will be able to vote on this Initiative in November. The Initiative intentionally uses language that sounds like it is pro equal opportunity, but it is actually anti equal opportunity and would eliminate numerous community programs in Arizona. Mr. Hannah asked Annie Lai of the ACLU for information regarding programs that would be affected should the Arizona Civil Rights Initiative be approved by voters. Ms. Lai stated that a list of such programs was prepared in December 2007 by the Goldwater Institute which has favored the Initiative, and is still on the Institute's website in an article entitled: "Dividing Line: Racial Preferences in Arizona." If the Initiative were to pass, numerous successful programs would be affected including: the City of Phoenix Teen Parents Program which helps mothers obtain life skills so they can get off welfare and provide for their children, the YMCA Bright Futures Program, Upward Bound and the ASU Hispanic Mother/Daughter Program. Mr. Hannah urged the Board to take a public position on this issue, and noted that prompt action would be important if comments are to be included in the election brochure. He reiterated that he would like organizations to be more aggressive in taking public positions regarding this issue.

Upon motion made by Jesus Cordova and seconded by Ken Moore, the Board members in attendance voted to express in writing the Board's opposition to the Arizona Civil Rights Initiative. Ms. Dupree had left the meeting prior to the vote.

V. Legislative Report

a. SB 1232 and HB 2363 – amendment of Arizona Civil Rights Act

Ms. Pate reported that the SB 1232 and HB 2363, which mirror the federal ADA Amendments Act, were passed by the Legislature and signed into law by the Governor. This is a significant victory for the Civil Rights Division.

b. HB 2209 – new procedures needed due to amendment of Open Meeting Law

Ms. Kane reported that this bill is an amendment to the Open Meeting Law. It requires that a board such as the Arizona Civil Rights Advisory Board (ACRAB), have a website and post on that website a notice of where it will be posting notices of its meetings and post its meeting notices on the website. Going forward, a website will need to be established for the posting of minutes and

notices. A page will be added to the Arizona Attorney General's website to accommodate ACRAB.

c. SB 1070 and related legislation re immigration law enforcement

Upon motion made my Ken Moore and seconded by Jeff Lavender, the Board voted to go on record in opposition to SB 1070 with a vote of three in favor, and one abstention by Daisy Flores

VI. Call to Public.

Diane D'Angelo, Vice Chair of the City of Phoenix Human Relations Commission, commended the Board for taking a stand against SB 1070 and the Arizona Civil Rights Initiative.

VII. Sexual Orientation

a. Board member discussion re review of draft policies from cities and towns and businesses

b. Report on putative complaints received by ACRD re sexual orientation

Upon motion by Jeff Lavender and seconded by Ken Moore the Board unanimously agreed to table the discussion on sexual orientation policies.

VIII. Division Report

Ms. Pate reported that the Harkins case came down from the 9th Circuit Court of Appeals after a ruling favorable to the Division, and was sent back to Judge Silver for further proceedings. The Civil Rights Division anticipates that the case will be resolved now that they have the 9th Circuit decision. Mike Walker, who was the Division's Litigation Section Chief resigned to work for the U.S. Attorney's Office. Melanie Pate is now filling both roles. The Division will be ramping up its DOJ grant activities on immigration outreach to include print and radio ads and public appearances.

IX. Planning for Future Meetings

a. Discuss other civil rights groups to invite to meeting

A telephonic meeting will be held on June 4, 2010 at 2:00 pm to discuss making a statement regarding the Arizona Civil Rights Initiative in the election brochure. Sandra Kane will contact Beverly Dupree regarding the June 4, 2010 meeting. Prior to the June 4, 2010 meeting, the Division will research whether the Board or individuals on the Board may submit a position for the election brochure in opposition to the Arizona Civil Rights Initiative if they pay the cost of doing so. The next in person meeting of the Board will take place on July 29, 2010 at 1:30 pm.

X. Announcements and Current Events

None

XI. Adjournment

Daisy Flores made a motion to adjourn the meeting and Jesus Cordova seconded the motion. The Board duly voted to adjourn the meeting at 3:35 p.m.

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