

June 18, 2007

The Honorable Dianne Feinstein
The Honorable Bob Bennett
Senate Committee on Rules and Administration
SR-305 Russell Senate Office Building
Washington, DC 20510

Dear Chairperson Feinstein and Ranking Member Bennett:

We are writing as a follow up to our letter of June 11 in opposition to Mr. Hans von Spakovsky's nomination to the Federal Election Commission (FEC). We have reviewed his testimony to the Committee on June 13 and write to address some concerns we have over these statements.

Specifically, the following areas of testimony conflict with our recollection of events at the Voting Section in the Department of Justice's Civil Rights Division:

1. Mr. von Spakovsky attempted to paint a picture of his role in the Civil Rights Division's front office as one of a simple "middle manager," merely providing legal advice and recommendations to his superiors and then delivering the decisions made by his superiors to Voting Section staff.

This characterization differs significantly from our experience with Mr. von Spakovsky. From the time he assumed the role of Counsel to the Assistant Attorney General in early 2003 until he left in December 2005, Mr. von Spakovsky spent virtually all of his time on voting matters and assumed the role of de facto Voting Section chief replacing the career Section Chief in most of his statutory responsibilities and traditional duties managing the Section. Mr. von Spakovsky assumed a position on the EAC Advisory Board that was reserved explicitly by Section 214(a)(13) of the Help America Vote Act (HAVA) for "the chief of the voting section . . . or the chief's designee" even though the Section chief had never designated Mr. von Spakovsky for this position; assigned staff to cases; took over lead review in a major case; rewrote performance evaluations of career staff; and set Section priorities. During our combined tenure at the Voting Section, we have never seen a political appointee exercise this level of control over the day to day operations of the Voting Section. Indeed, testimony previously given by Bradley Scholzman, Mr. von Spakovsky's supervisor, to the Senate Judiciary Committee reinforces

the degree to which front office oversight of the Section was delegated to Mr. von Spakovsky.

Moreover, as discussed in our June 11 letter, he consistently used this position to promote partisan political interests through narrow interpretations of HAVA, refocusing the Department's National Voter Registration Act (NVRA) enforcement activities, refusing to allow investigations under the Voting Rights Act based on discrimination in African-American and Native American communities, and redirecting limited resources to a partisan search for unsubstantiated allegations of voter fraud.

2. Mr. von Spakovsky conceded that he wrote an April 15, 2005 letter to Arizona, which opined that the state did not need to provide provisional ballots to voters who did not present identification when voting. This was a reversal of the Division's previous interpretation, and in direct conflict with the letter and spirit of HAVA. In fact, five months later Mr. von Spakovsky admitted drafting another letter reversing this position after a disagreement with the Election Assistance Commission that led one of the EAC's commissioners to protest that Mr. von Spakovsky was unnecessarily pressuring him to change his position on the issue.

In addition, contrary to his testimony, Mr. von Spakovsky did not seek information or input from career staff when he wrote the April 15, 2005 letter. After the April 15 letter was received by Arizona, an Arizona government official contacted Voting Section career staff seeking more information about the Department's new position on provisional balloting. Neither the attorney who fielded the call nor the Section chief had ever seen nor heard of the letter. The Section chief sent an email to other staff attorneys about the letter and none had seen nor heard of it. The Section chief called then-Assistant Attorney General Alex Acosta for an explanation of why and under what process the policy of the Section on provisional ballots had changed. Mr. Acosta indicated to the Section chief that he had never seen this letter.

According to the letter's signature, the policy was approved by former Principal Deputy Assistant Attorney General Sheldon Bradshaw. Curiously, however, Mr. Bradshaw left the Division approximately five days before the letter was sent.

3. Mr. von Spakovsky testified that he received approval from appropriate Department officials before he published *Securing the Integrity of American Elections: The Need for Change*, 9 Tex. Rev. Law & Pol. 277. The article, which advocated on behalf of restrictive

