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F O R J U S T I C E

Brennan Center for Justice  
*at New York University School of Law*

161 Avenue of the Americas  
12th Floor  
New York, New York 10013  
212.998.6730 Fax 212.995.4550  
[www.brennancenter.org](http://www.brennancenter.org)

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Dear Senator:

Four candidates for the Federal Election Commission (FEC) were recently reported out of committee without recommendation, which amounts to an unprecedented and significant vote of no confidence based on one particularly controversial nominee. We believe that each candidate should be considered individually, on his own merits. In particular, we believe that one of the nominees, Mr. Hans von Spakovsky, has failed to allay concerns that he will be able to administer the nation's election laws fairly and without pre-judgment or undue partisan interest. We therefore urge you to oppose Mr. von Spakovsky's appointment to the FEC.

In committee, substantial and justifiable concerns were raised with respect to Mr. von Spakovsky's record of using federal government office to promote an agenda adverse to American voters. Documents that Mr. von Spakovsky has acknowledged drafting or signed as his own, as Counsel to the Assistant Attorney General for the Civil Rights Division, demonstrate that he repeatedly advanced policies that closed poll site and courthouse doors to eligible American voters. For example, Mr. von Spakovsky claimed that states need not provide "fail-safe" provisional ballots to certain voters, despite a new federal law demanding "fail-safe" ballots to avert the demonstrated disenfranchisement that occurred in elections when no such ballots were available. He also enthusiastically promoted registration policies keeping new registrants off the voter rolls if their registration information did not "match" that in another government database, effectively disenfranchising voters in the event of a typographical error.

Though we find Mr. von Spakovsky's preferred policies seriously misguided, ours is not merely a policy dispute. In addition to disturbing personnel-related allegations well-publicized by others, Mr. von Spakovsky has also been involved in decisions that have called into question his ability to collect and dispassionately analyze data relevant to government action affecting elections. For example, two months after the passage of a controversial photo identification law from his home state, which was subject to preclearance by his office, Mr. von Spakovsky published a highly unusual anonymous law review article extolling the virtues of photo identification requirements. In the preclearance process, only one day after career voting rights staff submitted a detailed 51-page factual analysis of the law and its likely

retrogressive effect on racial minorities, Mr. von Spakovsky apparently acceded to a decision reversing the career staff recommendation. In response to questions from Members of the Senate Rules Committee, Mr. von Spakovsky provided no confidence that the law was carefully evaluated on its own merits. Rather, it appears now as it appeared then that, despite the data available at the time, the decision regarding the photo identification law was predetermined to fit the prevailing ideology.

The Federal Election Commission is charged, *inter alia*, with enforcing the federal campaign finance laws, and in the course of these duties, Commissioners must gather and weigh detailed evidence concerning entities' compliance with these laws. They must be able to evaluate claims carefully and on their merits alone, in order to give the public confidence that election campaigns are conducted fairly and with integrity. We submit that given the controversy surrounding Mr. von Spakovsky's tenure at the Department of Justice, and his failure to alleviate that controversy in his responses to questions submitted in committee, serious questions remain concerning his ability to discharge his duties on the FEC with the unbiased care required. Our elections deserve better.

We therefore urge you to oppose Mr. von Spakovsky's appointment to the Federal Election Commission.

Respectfully submitted,



Michael Waldman  
Executive Director