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VIA UNITED PARCEL SERVICE AND FACSIMILE

September 26, 2007

The Honorable Dianne Feinstein
Chair
Senate Rules and Administration Committee
331 Hart Senate Office Building
Washington, D.C. 20510

The Honorable Robert Bennett
Ranking Member
Senate Rules and Administration Committee
431 Dirksen Building
Washington, D.C. 20510

Dear Chairperson Feinstein and Ranking Member Bennett:

Today, your Committee has planned an executive meeting to discuss the nominations of four candidates for the Federal Election Commission (FEC). We believe that each candidate should be considered individually, on his own merits. Moreover, 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 prejudice or undue partisan interest. We therefore urge the Committee to reject Mr. von Spakovsky's nomination.

In a previous hearing concerning Mr. von Spakovsky's nomination, members of this committee justifiably expressed concern with 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 the disturbing personnel-related allegations noted by members of this Committee and 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 this 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 enforces 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 by members of this Committee, serious questions remain concerning his ability to discharge his duties on the FEC with the unbiased care required.

We therefore urge the members of this committee to reject Mr. von Spakovsky’s nomination to the Federal Election Commission.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michael Waldman", with a long horizontal flourish extending to the right.

Michael Waldman
Executive Director