

## Fraud Commission Member Hans von Spakovsky Previously Pursued Politically-Motivated Agendas on Voting

Hans von Spakovsky is a Senior Legal Fellow at the Heritage Foundation, and writes frequently on election issues. In that capacity, he is a prominent advocate for strict photo ID requirements and other related measures as necessary to prevent frequent impersonation fraud and non-citizen voting. He has authored a number of papers on the topic, and with John Fund, co-authored *Who's Counting?: How Fraudsters and Bureaucrats Put Your Vote at Risk*.

As Counsel to the Assistant Attorney General for Civil Rights in the Bush Administration Justice Department, von Spakovsky participated in what critics regarded as the inappropriate politicization of Department matters. In one key example, von Spakovsky overruled career attorneys who wanted to block Georgia from enforcing a strict photo ID requirement. The attorneys submitted a 51-page report on the issue that noted an array of problems associated with the bill. That included remarks by a prime sponsor of the legislation, who the report described as discussing how “when black voters in her black precinct are not paid to vote, they do not go to the polls.”<sup>1</sup> Von Spakovsky and the DOJ political leadership approved the law. Voting rights organizations viewed his participation as problematic for two reasons. First, federal law blocks DOJ officials from participating in matters where they may appear to have a conflict of interest — and von Spakovsky was a former Republican election official from Georgia and a longtime advocate for voter ID laws in that state and elsewhere. Second, while the Justice Department’s review was pending, von Spakovsky published an anonymous law-review article appraising ID laws and asserting their legality. Because federal law prohibits DOJ employees from engaging in activities outside the workplace that conflict with their workplace duties, including the duty of impartiality, experts claimed von Spakovsky should have recused himself from the voter ID matter because of his article.<sup>2</sup>

The DOJ leadership at the time prioritized the pursuit of voter fraud investigations to an extent that it led to the improper firing of several U.S. Attorneys, government investigations, fourteen congressional hearings, and the resignation of Attorney General Alberto Gonzales.<sup>3</sup>

Upon leaving DOJ, Von Spakovsky received a recess appointment to the Federal Election Commission and was nominated to a permanent seat in 2006.<sup>4</sup> At the time, the Brennan Center

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<sup>1</sup> Memorandum from Robert Berman, Deputy Chief, U.S. Dep’t of Justice Voting Section, et al. (Aug. 25, 2005), available at <https://www.brennancenter.org/sites/default/files/analysis/08-25-05%20Georgia%20ID%20Preclearance%20Memo%20-%20DOJ%20Staff.pdf>.

<sup>2</sup> Adam Gitlin & Wendy R. Weiser, THE JUSTICE DEPARTMENT’S VOTER FRAUD SCANDAL: LESSONS, BRENNAN CENTER FOR JUSTICE 8, [https://www.brennancenter.org/sites/default/files/publications/Justice\\_Department\\_Voter\\_Fraud\\_Scandal\\_Lessons\\_0.pdf](https://www.brennancenter.org/sites/default/files/publications/Justice_Department_Voter_Fraud_Scandal_Lessons_0.pdf).

<sup>3</sup> See *id.*

<sup>4</sup> *Id.* at 8, citing John Bresnahan, *Hans von Spakovsky Withdraws FEC Nomination*, POLITICO (May 15, 2008, 5:19 PM), <http://www.politico.com/blogs/politico-now/2008/05/hans-von-spakovsky-withdraws-fec-nomination-008856>; Press Release, Brennan Ctr. for Justice, Brennan Center & Lawyers’ Committee Applaud Senate for

joined other advocates in opposition to his nomination and wrote: “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.”<sup>5</sup> Von Spakovsky withdrew his nomination in 2007. His position on the Presidential Advisory Commission on Election Integrity is his first federal government position since.

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Blocking Von Spakovsky Nomination (Dec. 21, 2007, <http://www.brennancenter.org/press-release/brennan-center-lawyers-committee-applaud-senate-blocking-von-spakovsky-nomination>).

<sup>5</sup> Letter from Brennan Center to U.S. Senators regarding Hans von Spakovsky nomination to Federal Election Commission, Oct. 3, 2007, <https://www.brennancenter.org/sites/default/files/analysis/10-03-07%20BC%20full%20Senate%20letter.pdf>.