

Official's Article on Voting Law Spurs Outcry

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When he was a senior lawyer in the Justice Department's Civil Rights Division, Hans von Spakovsky played a central role in approving a controversial Georgia voter identification program over the objections of staff lawyers.

But now, after leaving Justice for the Federal Election Commission, von Spakovsky has acknowledged writing a law review article that endorsed photo identification, which was Georgia's approach, before the state's proposal was even submitted to Justice for review. He also took the unusual step of using a pseudonym, "Publius," in publishing the article, which appeared in the spring 2005 issue of the Texas Review of Law & Politics

The article and its unusual authorship prompted a letter of complaint to the Justice Department last week from the Voting Rights Project, an arm of the American Civil Liberties Union that is opposed to Georgia's voter identification plans. The group said the article shows von Spakovsky had already made up his mind on the issue and that his attempt to hide his views may have violated Justice Department guidelines.

In addition, a link to the Publius article suddenly disappeared this week from the FEC Web site, which had featured the article among a list of von Spakovsky's writings.

"There appears to have been an intentional desire to prevent the public and, in particular, advocates with business before the Voting Section, from knowing the views of one of the senior officials involved," Neil Bradley, the ACLU group's associate director, wrote in his letter to Justice.

The episode marks the latest controversy involving von Spakovsky, who served as counsel to the assistant attorney general for civil rights before Bush named him as a recess appointment to the FEC in December. Von Spakovsky was a central figure in a contentious internal debate over civil rights cases at Justice, especially voting-related decisions that primarily benefited Republicans over the past five years.

A former head of the Fulton County GOP in Atlanta, von Spakovsky had long advocated more stringent voter identification laws before coming to Justice. But department officials had emphasized that his earlier views had no impact on how he handled the Georgia plan or any other cases.

Justice spokesman Eric W. Holland referred questions about the Publius article this week to von Spakovsky and said the department was reviewing the ACLU's complaint.

The article includes a disclaimer identifying Publius as "an attorney who specializes in election issues" and noting that the views were "the attorney's own and not that of the attorney's employer." Justice guidelines require such disclaimers for articles written under an official's name but do not address anonymous publication, a department official said.

Jill Mocheke, von Spakovsky's aide at the FEC, said this week that the commissioner could not comment because he was traveling. But Mocheke said the commissioner "strongly believes that people have the right to express their own opinions, and that's what he's done."

Mocheke said the FEC Web site link to the article was removed "because we wanted to focus on the recent accomplishments of the FEC." The 13 articles that remain were written by von Spakovsky from 1999 to 2005.

In the Publius article, subtitled "A Need for Change," von Spakovsky strongly advocates requirements for photo identification at the polls and scoffs at critics who argue that such rules disproportionately harm African Americans and other minority voters.

"The objections are merely anecdotal and based on the unproven perception that minority groups such as African-Americans do not possess identification documents to the same degree as Caucasians," von Spakovsky wrote.

A team of Justice lawyers who reviewed Georgia's proposal focused heavily on evidence that minority voters were less likely to have photo identification, eventually concluding 4 to 1 that the plan probably would harm black voters. The proposal was later blocked by a federal judge on constitutional grounds; Georgia Republicans have approved a revised plan that is under review at Justice for compliance with Section 5 of the Voting Rights Act.

The article's appearance on the FEC Web site was first noted last month by Loyola University law professor Rick Hasen on his Web site, <http://www.electionlawblog.org>. Its sudden disappearance was reported earlier this week by the Atlanta Journal-Constitution.

Hasen, an elections law expert, said von Spakovsky's anonymous authorship is "troubling" because it casts further doubt on his role in the Georgia case. He also said the episode could give more ammunition to Democratic critics who opposed von Spakovsky's recess appointment, which expires at the end of this year.