

AFFIDAVIT OF HANS A. von SPAKOVSKY

Commonwealth of Virginia
County of Fairfax

I, Hans A. von Spakovsky, do hereby state the following based on my own personal knowledge:

1. I submit this sworn affidavit to the U.S. Commission on Civil Rights freely and without any mental reservations.
2. I have been a lawyer for twenty-six years and am licensed to practice law in Georgia, Tennessee, and the District of Columbia.
3. I am a graduate of the Vanderbilt University School of Law (1984) and the Massachusetts Institute of Technology (1981).
4. I am a former Commissioner on the Federal Election Commission (2006-2007) and am currently a Senior Legal Fellow in the Center for Legal & Judicial Studies at the Heritage Foundation.
5. I was employed as a career lawyer in the Civil Rights Division ("Division") of the U.S. Department of Justice from December 2001 through December 2005.
6. From December 2001 through December 2002, I was a trial attorney in the Voting Section of the Division.
7. From January 2003 through December 2005, I was a Counsel to the Assistant Attorney General for Civil Rights. My specific responsibility was to monitor and review all activities of the Voting Section on behalf of the Assistant Attorney General and to provide recommendations to the Assistant Attorney General and senior officials of the Justice Department on all voting and election law matters.
8. I have reviewed the testimony presented by J. Christian Adams, a former career lawyer in the Voting Section of the Division, before the U.S. Commission on Civil Rights on July 6, 2010.
9. I was at the Division when Mr. Adams was hired as a career attorney in the Voting Section. In my capacity as a Counsel, I worked with Mr. Adams, as well as other attorneys in the Voting Section, on various cases, and reviewed his work product.
10. In my judgment, Mr. Adams was an outstanding lawyer and an experienced professional. During my tenure in the Division, Adams was one of the most productive lawyers in the Voting Section and always received the highest performance reviews from his supervisors (all of whom were career employees) for his work.

11. During my tenure in the Division, Mr. Adams never exhibited any bias or partisanship in his handling of cases or his relationships with other lawyers and staff. To the contrary, he always acted in a completely professional manner. Moreover, he handled numerous cases and other matters in which the Voting Section was acting to protect black, Hispanic, and other minority voters and was clearly dedicated to enforcing the law on behalf of all voters.
12. I can confirm a number of facts stated by Mr. Adams in his testimony before the U.S. Commission on Civil Rights about the voter intimidation lawsuit filed against the New Black Panther Party and several individual defendants. In my four years in the Division, I do not recall a single instance of the Appellate Section ever being asked to review the merits of a Voting Section case that was in default status because the defendants had failed to answer the complaint. Nor do I recall any case ever being dismissed by the Voting Section (or any other Section within the Division) without obtaining either a judgment or a settlement with the defendants. To the best of my knowledge, the actions of the Division's leadership in the *New Black Panther Party* case were unprecedented.
13. Kristen Clarke of the NAACP Legal Defense Fund – who according to Adams' testimony initiated a conversation with Laura Coates, a line attorney in the Voting Section, in which Clarke asked when the *New Black Panther Party* case was going to be dismissed – was actually a trial attorney in the Voting Section during part of the time that I was employed in the Division. During the course of Clarke's employment in the Voting Section, I was forced to recommend changes in her annual performance review after I discovered that she had provided incomplete and inaccurate information about a voting rights lawsuit in an apparent effort to convince the Division to intervene in the litigation.
14. During my time in the Division, I also worked closely with Christopher Coates, the former Chief of the Voting Section, although he was not yet the Chief when I worked with him. Mr. Coates was the most experienced and knowledgeable voting rights litigator in the Voting Section. He had more experience in the courtroom by far than any other lawyer in the Section. He was also an outstanding professional and one of the best litigators I have ever worked with in my legal career.
15. I can also confirm that while the Voting Section has filed hundreds of cases in its history against white defendants to protect minority voters, it has only ever filed two cases against black defendants (both of which were filed to protect white voters, black voters and black poll watchers). These two cases were *U.S. v. New Black Panther Party* and *U.S. v. Ike Brown*. I was at the Division when the *Brown* case first arose and I personally reviewed the legal memoranda prepared for that case. The Bush administration filed or settled almost 60 cases to enforce various provisions of the Voting Rights Act (the Clinton administration filed less than 30).
16. Mr. Coates told me directly while I was still at the Division that other lawyers within the Voting Section were harassing him over his work on the *Brown* case because they did not believe that the Justice Department should file any lawsuit under the Voting Rights Act

against black defendants, no matter how egregious their violations of the law. Mr. Coates further advised me that other lawyers in the Voting Section were refusing to work on the case. The then-Deputy Chief of the Voting Section, Robert Kengle, expressed his disgust to Mr. Coates that lawyers from the Voting Section were going down to Mississippi to help white voters who were being discriminated against by local black officials.

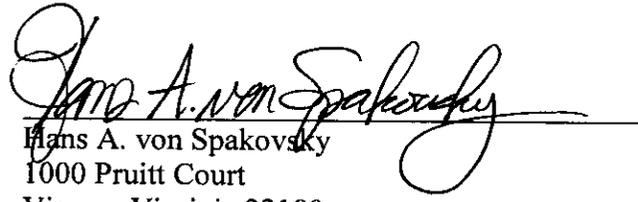
17. Consistent with the testimony provided by Mr. Adams to the Commission, I called Mr. Coates directly when I received a legal memorandum from Joseph Rich, who was at that time the Chief of the Voting Section, about the *Brown* investigation because the memorandum did not have the usual recommendation on whether a lawsuit should be commenced. Mr. Coates was very surprised because the memorandum he had prepared for the Voting Section Chief had contained an extensive discussion as to why a civil case should be brought under the Voting Rights Act to remedy the serious (and ongoing) violations of the law that had been uncovered during the investigation. Mr. Rich, without informing Mr. Coates, had entirely deleted the recommendation to file suit. Apparently, Mr. Rich wanted to mislead his political supervisors about the nature of the case and prevent a lawsuit from being filed, and then misrepresented that the attorney investigating the case, Mr. Coates, shared his position.
18. Only after the Office of the Assistant Attorney General for Civil Rights (the “front office”) ordered Mr. Rich to undelete Mr. Coates’ recommended disposition of the *Brown* matter was a lawsuit able to be commenced and the case litigated. This eventually resulted in a judgment against the defendants for violating the Voting Rights Act by engaging in intentional and blatant racial discrimination and voter fraud to deny and dilute the ballots of white voters. *U.S. v. Brown*, 494 F.Supp.2d 440 (S.D. Miss. 2007), *affirmed*, 561 F.3d 420 (5th Cir. 2009).
19. Following this incident, Mr. Rich was reprimanded by the Division's front office for engaging in unprofessional and politically motivated conduct. He also received a highly negative annual performance review based on his misconduct in the *Brown* matter. (Mr. Rich appealed this performance review, but it was affirmed by then-Principal Deputy Assistant Attorney General Sheldon Bradshaw.) It is ironic that Mr. Rich has been one of the most outspoken defenders of the dismissal of the New Black Panther Party case by the Division's new political leadership, and that he has been treated by the media as nothing more than a long-time apolitical career civil servant. The reality, in my experience, is that Mr. Rich was always one of the most partisan individuals in the Division. His wrongful handling of the *Brown* matter only underscores that point.
20. Mr. Adams was assigned to the *Brown* case in addition to Mr. Coates. I was informed directly by Mr. Adams while I was still at the Division about harassment being directed towards him from other staff in the Voting Section over his work on the *Brown* case.
21. Another employee assigned to the *Brown* case also informed me that he was harassed by an attorney colleague over his Christian religious views because of his past work on the *Brown* case and another matter he investigated in Hale County, Alabama, involving white victims of political violence. The colleague engaging in this harassment was named

Avner Shapiro, who is married to Julie Fernandes, the current Deputy Assistant Attorney General for Civil Rights. Mr. Adams testified that Ms. Fernandes told Voting Section management that no cases were going to be brought by the Voting Section against any black or other minority defendants.

22. While I was not at the Division when the *New Black Panther Party* case arose, I can confirm from my own experience as a career lawyer that there was a dominant attitude within the Division and the Voting Section of hostility towards the race-neutral enforcement of voting rights law by many of the career lawyers and other staff.
23. When I was at the Division, I discovered that while different lawsuits had been filed to enforce various sections of the National Voter Registration Act (“NVRA”) during the Clinton administration when Ms. Fernandez was a political appointee in the front office, no case had ever been filed to enforce Section 8 of the NVRA. I further discovered that the Voting Section had an unwritten but understood policy that no resources would be devoted to enforcing this provision. Section 8 requires state and local election officials to implement “a general program that makes a reasonable effort to remove the names of ineligible voters from the official lists of eligible voter by reason of...the death of the registrant; or...a change in the residence of the registrant.” 42 U.S.C. 1973gg-6(a)(4).
24. Instead of continuing this intentionally unlawful policy of non-enforcement of federal voting rights law, once Mr. Rich finally retired from the Division, Voting Section employees were directed to investigate whether any states were violating Section 8 by failing to regularly maintain their voter registration lists. I was told by some lawyers working on this project that other lawyers within the Voting Section had told them that Section 8 should not be enforced and that no resources should be devoted to such cases. These lawyers wanted the Voting Section to continue its prior policy of ignoring this provision of the NVRA and turning a blind eye to those states (such as Indiana and Missouri) that were in blatant violation of the statute’s requirements.
25. Notwithstanding this hostility to even-handed enforcement of the voting rights laws, a lawsuit was filed by the Division in 2006 against Indiana for its failure to comply with Section 8. It was settled by the Secretary of State (Todd Rokita – R) after he agreed to implement a voter registration list maintenance program that complied with Section 8. Another lawsuit was filed by the Division against Missouri in 2005 for its failure to comply with Section 8; however, this lawsuit was voluntarily dismissed – without explanation – by the Division in 2009 after the Obama administration took control of the Justice Department. The dismissal occurred shortly after the defendant in the lawsuit, the Secretary of State (Robin Carnahan – D), announced that she would be running for the U.S. Senate seat as a Democratic candidate.
26. The testimony of Mr. Adams that Julie Fernandes told employees of the Voting Section that the Obama administration had “no interest in enforcing this provision of the law [because] it has nothing to do with increasing turnout” is fully in accord with the general attitude I found among many of the career staff within the Voting Section of the Division.

27. While the Clinton administration filed eight lawsuits to enforce the NVRA, with the exception of Section 8, the Bush administration filed or settled twelve lawsuits to enforce all of the requirements of the NVRA, including Section 8.

Signed as true and correct under pain and penalty of perjury this 15th day of July, 2010


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