FEDERAL ELECTION COMMISSION
Washington, DC 20463

June 29, 2007

The Honorable Dianne Feinstein
Chairman
Committee on Rules and Administration
United States Senate
Washington, D.C. 20510-0504

The Honorable Robert F. Bennett
Ranking Minority Member
Committee on Rules and Administration
United States Senate
Washington, D.C. 20510-4403

Dear Chairman Feinstein and Senator Bennett:

At the end of my nomination hearing, I was asked to provide a rebuttal to claims made in a letter sent to the Rules Committee dated June 11, 2007 ("the Letter"). The Authors of the Letter ("the Authors") sent a subsequent letter to the Rules Committee on June 18. I wish to note for the Committee that pursuant to Rule 1.6 of the Model Rules of Professional Conduct[1] and applicable rules of the states in which I am licensed to practice law, I am not able to reveal information regarding the contents of the legal advice I provided while employed at the Department of Justice due to attorney-client privilege. To the extent that the information requested has been revealed by the Department publicly or in response to Congressional oversight and inquiries, or otherwise waived, I will certainly provide that information.

With regard to the specific matters referenced in the Letter:

Hiring Practices and Personnel Matters

I did not make final decisions on who was hired in the Civil Rights Division or the Voting Section. Like other career employees, I was occasionally asked to interview candidates along with the Deputy Assistant Attorney General and/or the Section Chief. I provided my recommendations and observations on the candidate to the Deputy. Politics was not a part of the hiring process, no political litmus test existed, and no questions about any applicant's own political views were asked in any interview in which I participated.

[1] Model Rule 1.6, Confidentiality of Information (2007 version), is available on the American Bar Association's website, at http://www.abanet.org/cpr/mrpc/rule_1_6.html.

My own observation of the Deputies and the Assistant Attorney Generals for whom I worked is that they were interested in only one thing – hiring the best and brightest attorneys with demonstrated legal skills and abilities. Attorneys from a wide variety of educational backgrounds and professional experiences were always considered.

I refer the Committee to the written responses provided to the Senate Judiciary Committee by Assistant Attorney General Wan Kim, the last Assistant Attorney General for whom I worked before leaving the Division, following his oversight hearing on November 16, 2006. Mr. Kim stated that he was not aware of a change in the hiring process for lateral attorneys and that Section chiefs play a central role in the hiring of attorneys through both the Honors Program and lateral hiring process, including active participation in interviewing both lateral and Honors Program applicants. Mr. Kim added that he takes "very seriously the recommendations of Section Chiefs in all personnel matters."

The Letter alleges that a large number of employees have left the Voting Section. Since I am no longer employed at the Division, I do not have access to personnel information. However, in the previously referenced responses, Assistant Attorney General Kim stated that the "average Division attorney attrition rate from FY 2001 through FY 2005 was between 12 and 13 percent." The attrition rate during the previous Administration was virtually the same. Assistant Attorney General Kim added that "In FY 2005, the attrition rate was approximately 17 percent (16.6 percent for career attorneys), with 63 attorneys, 59 of whom were career attorneys, leaving the division that year." However, this rise in the attrition rate was apparently due to a special early retirement package that was offered to selected components within the Department of Justice by OPM, including the Civil Rights Division. A number of employees in the Division took advantage of this special program, including I believe, both Mr. Rich and Mr. Kengle. The Letter also states that a large number of attorneys have left the Voting Section since 2005. I have no information about that since I also left the Division in the first week of 2006.

The Letter discusses the alleged involuntary transfer of the Deputy Chief of the Voting Section. Although not identified by name, I assume the Authors are referring to Robert Berman. As I have stated, I had no hiring or firing authority within the Division, and no authority to transfer any employees. As I recall, Mr. Berman received approval from the Assistant Attorney General for his request to enter a special Department of Justice training program for the Senior Executive Service. Mr. Berman then requested a detail to the Administrative Office of the U.S. Courts in September of 2005 as part of the qualification process for the SES. He was still on that detail when I left the Department of Justice and started at the Federal Election Commission. I have no knowledge regarding his subsequent transfer when he returned to the Voting Section or the reasons for that transfer since it occurred after I left the Division.

The Letter also falsely states that I engaged in "retribution" against certain employees. That is simply untrue, particularly since I had no authority to transfer or terminate the employment of any employee. The Authors complain that performance evaluations were changed to supposedly "retaliate" against employees for disagreeing with the legal conclusions of the Front Office. That is categorically untrue and there is no evidence that any information included in any evaluation was false. The standard form used to evaluate attorney performance requires approval by both a rating official and a

reviewing official. In the Civil Rights Division, the rating official is typically the Section Chief who supervises the line attorneys. The reviewing official is usually one of the Deputy Assistant Attorney General's to whom the Section reports. I was tasked with looking at the evaluations forwarded by the Section Chief for review by the Deputy Assistant Attorney General and providing the Deputy Assistant Attorney General with my advice and opinion as to whether evaluations accurately reflected the performance of the employees that I had observed.

I reviewed evaluations for accuracy in rating the performance of the employee. For example, if an employee had written a legal memorandum that recited the wrong holding of an applicable legal case, or failed to discuss relevant case law, I might recommend that information be included in the performance evaluation. The vast majority of performance evaluations were ultimately approved with no changes; a small number that failed to include certain legal errors that had been made by the employee were brought to the attention of the Deputy Assistant Attorney General and the Chief of the Section. The Deputy Assistant Attorney General made the final decision on the content of the performance evaluation after discussions with the Section Chief. Under the rules governing career employees, they have the ability to appeal any part of their performance evaluations with which they disagree. I am unaware of any such appeals that were successful. I advised both the Section Chief and the Deputy Assistant Attorney General of instances in which material information regarding the legal performance of employees was not included in a performance evaluation. There was absolutely nothing improper in doing so – it was my job.

With regard to the issue of complaints filed with the Office of Professional Responsibility ("OPR"), I would respectfully refer the Committee to the letter of June 11, 2007, sent to the Senate Judiciary Committee by the Department of Justice that I understand provides information about these matters.

Redistricting and Section 5 Preclearance

1. Georgia's Voter Identification Statute

I answered extensively questions about the Division's review under Section 5 of a voter identification law submitted by the Georgia Attorney General during my nomination hearing. I would simply add that the Principal Deputy Assistant Attorney General as the Acting Assistant Attorney General approved the recommendation made by the Chief of the Voting Section to preclear this statute without objection.[2] I provided the Principal Deputy with my legal advice and recommendations on this case. Contrary to the Authors' claims, I was not required to recuse myself and I acted entirely in an ethical and professional manner when I was at the Division and published a law review article, in full compliance with 5 C.F.R. 2635.703(a) and 2635.807(b). In my article, I recommended very generally that voter identification requirements be adopted to improve the integrity of elections from a public policy standpoint. Most of the lawyers I worked with at the Division also had opinions on how certain laws could be improved or changed, and these opinions in no way

[2] Information about the recommendation of the Voting Section Chief that would normally be privileged has been previously provided to Congress by the Department of Justice.

interfered with their ability to enforce the requirements of the law. I have written extensively on public policy issues related to voting and elections. Writing on such issues does not pose a conflict of interest under any applicable rule of professional conduct and did not interfere with my ability to objectively review the application of Section 5 to a specific statute.

As a legal matter, the Authors are simply incorrect with respect to what constitutes a conflict of interest requiring recusal or disqualification. To borrow from a parallel situation, a judge is not required to recuse himself from a case simply because he has expressed views on the subject at issue. In fact, the Sixth Circuit specifically held that a judge was not required to recuse himself in an eminent domain case simply because he had previously written a law review article on the general subject. *See Goodpasture v. Tennessee Valley Authority*, 434 F.2d 760, 765 (6th Cir. 1970) ("We hold that District Judge William E. Miller did not err in failing to recuse himself because of a law review article written by him entitled 'Federal and State Condemnation Proceedings – Procedure and Statutory Background.'"). *See also Laird v. Tatum*, 409 U.S. 824, 831 (1972) (memorandum of Justice Rehnquist) ("My impression is that none of the former Justices of this Court since 1911 have followed a practice of disqualifying themselves in cases involving points of law with respect to which they had expressed an opinion or formulated policy prior to ascending to the bench."); *Rosquist v. Soo Line R.R.*, 692 F.2d 1107 (7th Cir. 1982) ("Judge Grady had, in the past, written and spoken on the subject of contingent fees. He was not required, however, to recuse himself merely because he holds and had expressed certain views on that general subject."); *U.S. v. Crowell*, 586 F.2d 1020, 1027 (4th Cir. 1978) ("The fact that the district judge had researched the problems in advance and was able to make an immediate ruling does not establish prejudgment."); *Lawton v. Tarr*, 327 F.Supp. 670, 673 (E.D.N.C. 1971) ("I do not believe that my strong aversion to the Vietnam War and my belief that it is the most tragic national mistake made in my lifetime will have the slightest effect or influence upon my judgment as to the time of termination of exposure under the selective service law. It is hornbook law that attitude or feeling a judge may entertain toward the subject matter of a case does not disqualify him.").

I would also note that Mr. Greenbaum, one of the Authors, was working for the Lawyers Committee for Civil Rights at the time this statute was being reviewed by the Division, and his organization participated in bringing suit against the State of Georgia over the statute. Mr. Greenbaum's name is on the Complaint that was filed in federal court in Georgia against the statute claiming that it violated various Constitutional provisions as well as the Voting Right Act.[3]

The Authors assert that the Division must have erred in approving this law because the "federal court in Georgia found that this law violated the poll tax provision of the Constitution." Even if a law violated the poll tax provision of the Constitution, that would have been completely irrelevant for Section 5 preclearance purposes. Under applicable Supreme Court precedent, the Division was not permitted in 2005 to consider constitutional violations (or violations of *other* provisions of the Voting Rights Act) when reviewing for preclearance a change in voting laws under Section 5 of the VRA. *See Reno v. Bossier Parish School Board,* 520 U.S. 471 (1997). In fact, the Department of Justice published a Notice on January 18, 2001, providing guidance to the public on the retrogression standard

[3] *See* http://moritzlaw.osu.edu/electionlaw/litigation/documents/CorrectCompleteComplaint.pdf at p. 45.

under Section 5. *See Guidance Concerning Redistricting and Retrogression Under Section 5 of the Voting Rights Act*, 66 Fed.Reg. 5412. This Guidance specifically explained that under the *Bossier Parish* decision, "[r]edistricting plans that are not retrogressive in purpose or effect *must be precleared, even if they violate other provisions of the Voting Rights Act or the Constitution.*" (emphasis added). The individual listed in the Guidance for anyone seeking further information was Joseph D. Rich, one of the Authors.

In *Bossier Parish*, the Supreme Court specifically stated that the Justice Department may only consider the retrogression standard of Section 5. Not only was the Department forbidden from considering possible constitutional violations when conducting a Section 5 review, it could not even consider possible violations of other provisions of the VRA, such as Section 2. In a second decision, *Reno v. Bossier Parish School Board*, 528 U.S. 320 (2000), the Supreme Court held that Section 5 requires preclearance of a redistricting plan enacted with a discriminatory but nonretrogressive purpose. The court in the Georgia identification case, *Common Cause/Georgia v. Billups,* 406 F.Supp.2d 1326 (N.D. Ga. 2005), entered its preliminary injunction based solely on the 14th and 24th Amendments of the U.S. Constitution. The court specifically refused to grant an injunction under Section 2 of the VRA because the plaintiffs failed to demonstrate "a substantial likelihood of succeeding on the merits," *i.e.*, it found an insufficient basis in the claim of racial discrimination. *Id.* at 1375. The court's finding on the constitutional issues which did not involve racial discrimination were completely irrelevant and unrelated to the Division's review and could not lawfully have served as the basis for a Department denial of preclearance under Section 5. To the extent that the Authors' suggest otherwise, they would appear to be taking the position that the Department should have disregarded the Supreme Court's decisions.

The Division's Section 5 analysis was based on the information received in the submission from Georgia's Attorney General, including four sets of data received from the state on driver's licenses. As the Assistant Attorney General of the Office of Legislative Affairs, William Moschella, explained in a letter to Senator Christopher Bond dated October 7, 2005, the data received by the Division showed the following:

- Almost 6.5 million Georgians possessed identification from the Department of Motor Vehicles ("DMV") acceptable under the state statute– more than the Census total projected voting age population of Georgia when ineligible individuals such as noncitizens and prisoners are subtracted.
- Thus, there were 2 million more issued state DMV identification cards then there were registered voters.
- The racial composition of the DMV data indicated that 28% were African American, a percentage slightly higher than the African-American percentage of the voting age population in Georgia.
- Information from the state university system, which issues identification cards to all students that are acceptable under the law, showed that the number of African-American students enrolled and thus possessing acceptable identification was slightly higher than the percentage of African-American students in the voting age population.
- Census data showed that about 14.3% of whites and 19.4% of African-American Georgians worked for governments at the local, state or federal level; therefore, a

higher percentage of African-Americans than whites would have access to acceptable government-issued employee identification cards.

- Individuals who were unable to afford an identification card could receive one without paying a fee and the state had a mobile licensing program traveling to counties without licensing offices.
- No identification card was needed to vote by absentee ballot.

Mr. Moschella's letter also cites other factors that were taken into account by the Division in making its decision. Applying the applicable retrogression standard under Section 5, as interpreted by the Supreme Court, the Section Chief concluded that the State of Georgia had met its burden and that no objection was warranted.

The facts and the applicable law make it clear that the Division's decision was entirely reasonable and well within the standards that applied to Section 5 reviews. The Georgia district court's issuance of a preliminary injunction based on the plaintiffs' ultimate likelihood of success on certain constitutional violations are not relevant to a Section 5 analysis under applicable Supreme Court precedent.[4] While Congress subsequently rejected certain aspects of the Supreme Court's Section 5 jurisprudence in 2006 when it renewed Section 5, the Division cannot be faulted for adhering to the law as it existed at the time.

2. Texas Redistricting Submission

I must point out as a general matter on the issue of redistricting, before discussing specifically the Texas redistricting submission, that while I was at the Division, the Voting Section reviewed literally hundreds of city, county, state and congressional redistricting plans drawn by both Republican and Democratic legislators and officials. Of course, hundreds of plans drawn by Democratic officials were precleared by the Division while I was there, without any objection by the Front Office. The Authors claim "partisanship" and "politics" played a role in the "unprecedented mid-decade" Texas redistricting submission and all other matters handled by the Division. If that is the case, however, why do the Authors not complain that the Division engaged in supposed "partisanship" in every other redistricting plan it reviewed? Obviously, the supposed "mishandling" of the many redistricting plans submitted to the Division could have dramatically affected elections throughout the states covered under Section 5 of the Voting Rights Act. When considering only congressional redistricting plans, for example, the Division approved plans without objection drawn by Democratic legislatures in States such as Alabama, Georgia, Louisiana, and North Carolina. In my experience, the Assistant Attorney Generals for whom I worked and the Front Office of the Division applied the applicable law and precedent without regard to politics, partisanship or which political party might benefit from a particular redistricting plan.

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[4] Notably, other Federal courts have disagreed with the Georgia court when confronted with the question of the constitutionality of voter identification requirements. The Seventh Circuit Court of Appeals found no violation of any federal law or constitutional provisions when it reviewed a very similar photo identification law enacted in the State of Indiana. *See Crawford v. Marion County Election Board*, 472 F.3d 949 (7th Cir. 2007) *petition for rehearing en banc denied* 484 F.3d 436; *see also Purcell v. Gonzalez*, 549 U.S. _____(2006) (Supreme Court vacated preliminary injunction issued by 9th Circuit against Arizona voter identification law).

I replied extensively at the hearing to questions raised over the Division's review of the Texas redistricting plan under Section 5. The final decision on this matter was made by the Principal Deputy Assistant Attorney General because Assistant Attorney General Acosta had recused himself from the matter. The Authors cite the subsequent Supreme Court decision as somehow indicative that the Division erred in preclearing the plan, implying that the real reason was political. That is simply not the case.

I provided my legal advice and recommendations to the senior leadership of the Division when the Chief of the Voting Section sent his memorandum on the Texas redistricting submission to the Front Office. The advice followed a very deliberate and careful review of every relevant fact, along with the governing legal standards under Section 5 of the Voting Rights Act. The preliminary internal legal memorandum that was leaked to the press did not reflect the Division's final analysis of the redistricting plan. The leaked memorandum contained several incorrect assessments. Most significantly, it asserted that Texas had eleven majority-minority congressional districts. As the subsequent courts decisions make perfectly clear, Texas had only eight majority-minority districts. This error was the basis for the staff recommendation to object to the redistricting plan.

Subsequent events, including two decisions by a three-judge panel finding no violation of the Voting Rights Act, the 2004 elections held under the new plan that resulted in the election of an additional African American legislator, Al Green, in the 9th District, and the Supreme Court's decision, prove that the Division's conclusion to preclear the redistricting plan was correct and the earlier recommendations made by staff attorneys in the leaked memorandum were flawed.

As noted above, the applicable standard under Section 5 was whether there would be retrogression (or backsliding) in the position of racial minorities in their effective exercise of the electoral franchise when compared to the existing or benchmark plan. *See Beer v. United States*, 425 U.S. 130 (1976); *Reno v. Bossier Parish School Board*, 520 U.S. 471 (1997) (The timing of the redistricting –even if it was an "unprecedented mid-decade redistricting plan" – is completely irrelevant to a Section 5 preclearance determination.) "Retrogression, by definition, requires a comparison of a jurisdiction's new voting plan with its existing plan." *Reno*, 520 U.S. at 478. The benchmark redistricting plan in Texas at the time the new plan was submitted for review to the Division was the plan that had been drawn by a three-judge federal panel in 2001 in *Balderas v. Texas*, Case No. 6:01-158, 2001 WL 35673968 (E.D. Tex. Nov. 14, 2001) (*per curiam*) *summarily aff'd*, 536 U.S. 9191 (2002). The three-judge panel in *Balderas* found that eight of the 32 congressional districts allocated to Texas were minority districts protected by the Voting Rights Act – six districts for Hispanic voters and two districts for African American voters. The congressional districting plan submitted by Texas to the Division in 2003, preserved, without question, eight minority districts - the sole requirement under Section 5. In fact, as the election of Congressman Al Green (TX-9) demonstrates, Texas actually created a third district in which African American voters could elect their candidate of choice. Far from being retrogressive, the plan that DOJ precleared was actually progressive under Section 5 with respect to minority voting rights.

After preclearance was granted, a group of plaintiffs filed suit under Section 2 of the Voting Rights Act alleging, *inter alia*, that Texas had not created enough minority

districts, *i.e.*, that eight districts were not enough districts given demographics and other factors present in the state.[5] Of course, Section 2 and Section 5 have different requirements and standards, and while Section 5 only requires preservation of the status quo, Section 2 involves a complex analysis under three factors set forth in *Thornburg v. Gingles*, 478 U.S. 30 (1986), as well as the "totality of circumstances," that in layman's terms prohibits not retrogression but dilution of minority voting strength.

However, even the plaintiffs' Section 2 claim that there were more than eight majority-minority districts in Texas was denied by a three-judge panel in 2004. *Session v. Perry*, 298 F.Supp.2d 451 (E.D.Tex. 2004). The court's denial of the claim under Section 2 lends support to the Division's decision under Section 5 to preclear the plan as non-retrogressive. Under established Supreme Court precedent, to obtain preclearance under the retrogression standard of Section 5, Texas was required to preserve the number of existing minority districts in the benchmark plan. As the court's Section 2 ruling confirmed, there were only eight protected minority districts in Texas. A second decision was issued by the same court in 2005 following remand from the Supreme Court, holding that there was no valid constitutional claim with respect to this redistricting plan. *Henderson v. Perry*, 399 F.Supp.2d 756 (E.D. Tex. 2005).

In 2006, the Supreme Court issued a 5-4 decision featuring opinions written by Chief Justice Roberts and Justices Kennedy, Stevens, Souter, Breyer and Scalia, holding that only one of the redistricting plan's newly formed Hispanic district was an insufficient substitute for another Hispanic district, and therefore violated Section 2 (not Section 5). That one district excepted, the rest of the redistricting plan was upheld. *See League of United Latin American Citizens (LULAC) v. Perry*, 126 S.Ct. 2594 (2006).

The Supreme Court's decision also lends support to the Division's Section 5 preclearance determination since it upheld the view that there were a total of eight protected minority districts in Texas, not eleven as was mistakenly asserted by staff attorneys in the leaked memorandum. In just one example of the mistakes made in the memorandum, it was claimed that there were four protected African-American districts in the benchmark plan, not two as had been determined in 2001 in the *Balderas* decision. The memorandum asserted that in addition to the two districts represented by African-American Congresswomen Sheila Jackson Lee and Bernice Johnson, districts 24 and 25, represented by Anglo Democrats Martin Frost and Chris Bell, were also protected minority districts because – supposedly – African-Americans in those districts were able to elect their candidates of choice (the key test for determining whether a district is a protected minority district).

The Supreme Court's Section 2 analysis considered whether Congressman Frost's district was a minority district and rejected that claim, affirming the lower court's decision that it was not a minority district. *See LULAC v. Perry*, 126 S.Ct. at 2624-2625 (citing testimony of Congresswoman Eddie Bernice Johnson that District 24 was drawn for an

[5] The three-judge panel that first heard the lawsuit filed in response to Texas' 2003 redistricting plan described plaintiff's challenge as follows: "Plaintiffs allege that Plan 1374C is invalid because (1) Texas may not redistrict mid-decade; (2) the Plan unconstitutionally discriminates on the basis of race; (3) the Plan is an unconstitutional partisan gerrymander; and (4) various districts in Plan 1374C dilute the voting strength of minorities in violation of §2 of the Voting Rights Act." *See Session v. Perry*, 298 F.Supp.2d 451, 457 (E.D.Tex. 2004).

Anglo Democrat (Martin Frost, in particular) in 1991 by *splitting* a minority community and testimony of State Representative Ron Wilson that African-Americans did not have the ability to elect their preferred candidate, particularly an African-American candidate, in District 24). The leaked memorandum also asserts that district 25, represented by Chris Bell, was a protected minority district, which was simply untenable under the facts and the law. Bell had been elected in an open seat race in 2002 in which his African-American Democratic opponent who lost had received the majority of the African-American vote – Bell was thus obviously not the "candidate of choice" of African-American voters. Yet the memorandum mistakenly claimed that this was a protected minority district in which African-American voters could elect their candidate of choice. The staff's "unanimous recommendation" was rejected not because of politics but because it was demonstrably wrong.

The Supreme Court did find that a new Hispanic District, number 25 under the new plan, was not a proper substitute for a Hispanic district established in the benchmark plan and represented by Henry Bonilla. The Court did not determine, however, that Texas must have seven Hispanic districts under Section 2 – as was claimed by the plaintiffs and in the leaked memorandum. Instead, the new district was considered not compact enough to substitute for the changes made in Congressman Bonilla's district. The view of the Division that there were six Hispanic districts in the benchmark plan that must be preserved in the new redistricting plan in order for Section 5 preclearance to be granted, was correct.

Help America Vote Act

1. Guidance Letters

The Authors' allegation that I "violated" decades-long traditions and policies against issuing advisory opinions by sending a series of letters to state officials on the requirements of the new Help America Vote Act ("HAVA") is incorrect. President Bush signed HAVA into law on October 29, 2002. Title III of HAVA contained a series of new requirements for states in the areas of provisional balloting, computerized voter registration lists, voter identification requirements, and others. All of the states and territories covered by these new federal requirements needed to pass implementing legislation and regulations if their state laws did not match the new requirements of HAVA. The Division began receiving telephone calls, emails, and letters from state and local election officials and legislators all over the country making inquiries about this new federal law and what its provisions required. Unfortunately, the new Election Assistance Commission ("the EAC") created by the statute was not yet in existence and did not start its operations until almost a year and a half later, and was not empowered by Congress to issue regulations, provide legal opinions, or enforce the statute.

The Division's leadership was very concerned with ensuring that the states implemented the new requirements of the law as soon as possible and apparently felt that objective would be handicapped if no one in the federal government in Washington could answer the numerous questions that state and local officials had regarding implementation. The Division attempted to provide guidance to state and local officials on the requirements of the law based on how the Division intended to enforce it. To that end, the Division established a web page devoted to explaining HAVA's requirements that provided answers

to some of the most commonly asked questions, and where the Division could post its responses to specific inquiries.[6] Contrary to the assertions made in the Letter, these were not "advisory opinions," as the letters themselves are careful to state. For example, one of these letters reads:

> The Attorney General has assigned to the Civil Rights Division the Department's enforcement responsibilities under Section 401 of HAVA. Although the Department states its formal positions with respect to statutes it enforces only through case-by-case litigation, the Department does on occasion offer its general views on the manner in which it intends to enforce a particular statue or set of laws. Therefore, while we cannot issue a formal advisory opinion, we will attempt to answer the questions posed in your letter to the extent we can based on our responsibilities to enforce Title III of HAVA, which imposes uniform and nondiscriminatory election technology and administration requirements on the 55 States and Territories..

See Letter of May 20, 2003 to Ann McGeehan, from ***Joseph D. Rich****, Chief, Voting Section*, available at http://www.usdoj.gov/crt/voting/hava/tx_ltr.pdf.[7]

On January 18, 2001, the Voting Section published a document for the States and local jurisdictions covered by Section 5 that stated "it is *appropriate* to issue guidance concerning the review of redistricting plans submitted to the Attorney General for preclearance pursuant to Section 5 of the Voting Rights Act." 66 Fed. Reg. 5412 (emphasis added).[8] Another example of guidance provided by the Division was the "ADA Checklist for Polling Places," released on February 20, 2004, which was intended to improve accessibility at polling places for disabled voters and available at http://www.usdoj.gov/crt/ada/votingck.htm.

The Authors' assertions that there was something wrong with the Division trying to provide guidance to the States on how to implement these new federal requirements is simply wrong. A review of the guidance letters on the Voting Section's webpage makes it clear that there is nothing improper about them, and that they are, in fact, rather unexceptional. The letters represent an attempt by the Division to carry out the intent of Congress in passing HAVA by helping the states come into compliance with a new federal statute that changed the way local jurisdictions administered federal elections. I think the Assistant Attorney General correctly decided to provide such guidance which not only helped states implement the law, but avoided forcing the Division having to file *more* enforcement actions under HAVA. The decision preserved Division resources. This was part of a comprehensive attempt to educate state and local officials on the requirements of HAVA that also included numerous presentations at meetings of election official

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[6] *See* http://www.usdoj.gov/crt/voting/hava/hava.html and http://www.usdoj.gov/crt/voting/misc/faq.htm#faq22.

[7] Additional letters signed by Mr. Rich include *Letter of August 24, 2004 to Donald H. Dwyer, Jr., from Joseph D. Rich, Chief, Voting Section available at* http://www.usdoj.gov/crt/voting/hava/MD_ltr2.pdf and *Letter of February 11, 2004 to William F. Galvin, from Joseph D. Rich, Chief, Voting Section available at* http://www.usdoj.gov/crt/voting/hava/MA_ltr.pdf.

[8] Mr. Rich was Chief of the Voting Section when this guidance was issued. Another example of such information provided by the Division is "Guidance Regarding the Use of Race by Federal Law Enforcement Agencies," issued in June 2003 and available on the Division's web site.

organizations, such as the National Association of Secretaries of State, the National Association of State Election Directors, the National Association of County Officials, the Election Center, and state election official associations.

The letters attempt to explain the requirements of different provisions of Title III and are signed by various officials at the Division, including Mr. Rich and me. The vast majority of these letters were produced after consultation and discussion by the lawyers assigned to enforcement of HAVA on what was the legally correct response.

Two letters in particular have attracted attention. As I informed the Committee at my hearing, I drafted two letters sent to Arizona on provisional balloting requirements at the direction of my supervisors. As I recall, I may not have consulted with the Section prior to drafting the first letter. I believe, however, that I did consult with the Section on the second letter and incorporated suggested edits. (The second letter is available at http://www.azsos.gov/Releases/2005/pressrelease10/DOJ_Opinion_on_PROP200.pdf.) Mr. Rich has erroneously claimed that Sheldon Bradshaw, the Principal Deputy Assistant Attorney General, could not have signed the letter of April 15, 2005, because he was no longer at the Division at the time. That is categorically untrue. Mr. Bradshaw can easily confirm that he was still at the Division on April 15 and that he both authorized and signed the letter in question.

The Authors raise in their letter a specific and similar guidance letter that I signed on September 8, 2003, in response to an inquiry from the Attorney General of Maryland. The Authors claim this letter "advocated for a policy keeping eligible citizens off the voter rolls for typos and other mistakes by election officials." That claim is completely false. The letter speaks for itself and is available on the Voting Section's web page at http://www.usdoj.gov/crt/voting/hava/maryland_ltr.pdf. The letter carefully cites the applicable provisions of both the National Voter Registration Act and HAVA. First of all, it explains that under the NVRA, covered States must "ensure that any eligible applicant is registered to vote in an election" if the "valid voter registration form of the applicant" is submitted, accepted, received or postmarked, as the case may be, within 30 days before the federal election in question. Second, it cites to the new provisions in HAVA that require state election officials and state motor vehicle officials "to match information in the database of the statewide voter registration system with information in the database of the motor vehicle authority to the extent required to enable each such official to **verify the accuracy of the information** provided on applications for voter registration." Section 303(a)(5)(B)(i) (emphasis added). Section 303(a)(5)(B)(ii) of HAVA also provides that state motor vehicle officials and the federal commissioner of Social Security shall "enter into an agreement...for the purpose of verifying applicable information" provided by voter registration applicants.

The September 8 letter makes it very clear that HAVA requires states to undertake the verification process outlined by Congress, but that the statute "leaves the ultimate decision of whether to register the applicant, including the decision of whether the information provided by the voter has been sufficiently verified, up to the State or local election official charged with that responsibility under State law." Nowhere in the letter do I state that States should refuse to register applicants because of "typos and mistakes by election officials."

2. The U.S. Election Assistance Commission

I am accused of "usurping" the role of Mr. Rich on the Board of Advisors of the U.S. Election Assistance Commission and failing to "consult" with him over EAC matters. Section 214 of HAVA provides that the Department of Justice has two representatives on the Board of Advisors, the Chief of the Office of Public Integrity and the Chief of the Voting Section or their "designees." 42 U.S.C. § 15344. The Assistant Attorney General of the Division made the decision that I would serve as the designated representative on behalf of the Voting Section and sent a letter to the EAC notifying the Commission of that decision.

As outlined in Section 202 of HAVA, Congress intended the EAC to help improve the administration of federal elections. 42 U.S.C. § 15322. The Board of Advisors was tasked in Section 212 with providing its best advice and recommendations to the EAC in preparing voluntary voting system guidelines, voluntary guidance under Title III of HAVA, and best practices recommendations for election administration. Unlike Mr. Rich, I have real-world experience in election administration and considerable knowledge of voting system guidelines. I served as a member of two separate committees developing standards for voting equipment and electronic data interchange in the election area: the Voting Standards Committee of the Institute of Electrical and Electronics Engineers (IEEE) and the Election and Voter Service Technical Committee of the Organization for the Advancement of Structured Information Standards (OASIS). Due to my experience, the Assistant Attorney General apparently believed I was better suited to serve on the Board of Advisors.

The Authors also criticize certain email communications between me, the EAC Commissioners and the leadership of the Board of Advisors. There was nothing inappropriate about that correspondence. First, there is nothing unusual or untoward about discussions occurring between two federal agencies with overlapping jurisdiction over a federal statute, particularly when the two agencies may have differing views on the statute's requirements. In fact, under such circumstances, one would hope that the agencies would consult with one another to reach consensus so the public and the regulated community are not faced with differing interpretations of the same statute. That is what in fact occurred on more than one occasion. Second, I was a member of the Board of Advisors that is *supposed* to give advice to the EAC Commissioners. I sent such advice and recommendations to the Commissioners and the Board on a number of issues – there was nothing inappropriate about that, either.

3. *Amicus* Briefs

The Authors accuse me of personally violating "established Department policy" by supposedly involving the Division in "contentious and partisan litigation" and for allegedly "draft[ing] legal briefs in lawsuits between the Republican and Democratic parties...all in favor of the Republican party's position." Though the Authors do not provide details, these accusations apparently refer to litigation filed in 2004 by private plaintiffs under HAVA over the new statute's provisional balloting requirements.

Amicus briefs are prepared by the Appellate Section and then reviewed by the senior leadership of the Division for final approval. No brief can be filed without the

Assistant Attorney General's authorization. A simple review of the briefs reveals the names of the attorneys at the Division who prepared and approved these briefs on behalf of the Department of Justice – they included Assistant Attorney General R. Alexander Acosta and the head of the Appellate Section, David K. Flynn, along with the lawyers in the Section who drafted the briefs, David White and Chris Wang. My name appears nowhere in the briefs, although I reviewed drafts prepared by Mr. Flynn and his Appellate Section lawyers, as did other lawyers in the Front Office of the Division. Decisions regarding the contents of these briefs, and whether to file them, were made by the Assistant Attorney General and the Principal Deputy Assistant Attorney General. This is entirely consistent with the law, regulations, and the usual and customary practices of the Division. The Authors vastly overstate my influence.

The cases in which these *amicus* briefs were filed in Florida, Michigan, and Ohio (including the Sixth Circuit) were the first major cases under HAVA. Each raised significant issues about the availability of a private right of action and the Section 302 requirement that states provide provisional ballots to certain voters. 42 U.S.C. §15482. The briefs at issue are available on the HAVA web page of the Voting Section at the Division's website at http://www.usdoj.gov/crt/voting/hava/hava.html.

Section 401 of HAVA gives the Attorney General authority to enforce the statute, so it should come as no surprise that the Assistant Attorney General believed it was important to provide the courts with the Department's views on the issues raised in the lawsuits. In fact, the Division files *amicus* briefs in a wide variety of cases that affect voting rights. The gravaman of the Authors' complaint is really that they disagree with the Division's position that HAVA did not permit a private right of action with respect to the statute's provisional balloting section. Once again, their criticism is policy-driven and they characterize these differences in policy as malfeasance. The briefs speak for themselves and in my opinion present a reasoned argument based on the text and structure of the statute, as well as its legislative history. In these briefs, the Department noted that other voting rights statutes, namely the Voting Rights Act and the National Voter Registration Act, clearly recognize a private right of action, while HAVA does not. This issue was even debated by members of Congress and Senator Dodd, one of HAVA's main sponsors, indicated that HAVA was not privately enforceable. Senator Dodd stated:

> While I would have preferred that we extend [a] private right of action..., the House simply would not entertain such an enforcement provision. Nor would they accept federal judicial review of any adverse decision by a State administrative body.

148 Cong. Rec. S10488-02, S10512 (Oct. 16, 2002).

The Sixth Circuit ultimately disagreed with the Department's position and held that although "HAVA does not create a private right of action," HAVA does create a right to cast a provisional ballot under certain circumstances that is enforceable against state officials under 42 U.S.C. § 1983.[9] While the Authors' preferred policy position may have prevailed on this issue, they are absolutely incorrect that the Division came to its position as a result of political considerations or that that position was unreasonable.

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[9] *See Sandusky Co. Democratic Party v. Blackwell*, 387 F.3d 565,572-573 (6th Cir. 2004).

With respect to the second issue raised in these cases, provisional ballots, the Authors fail to inform the Rules Committee that in each of these three cases, the Division's position prevailed. The Florida federal district court and the Sixth Circuit (which decided both the Ohio and Michigan cases) agreed with the Division's position on provisional balloting. *See Florida Democratic Party v. Hood*, 342 F.Supp.2d 1073 (N.D. Fla.2004); *Sandusky County Democratic Party v. Blackwell*, 386 F.3d815 (6th Cir. 2004) and 387 F.3d 565 (6th Cir. 2004).

The issue in each of these cases was whether Section 302 of HAVA requires states to count the provisional ballots of individuals who voted outside of their assigned precincts. The Division's *amicus* briefs addressed only the very narrow federal question – they did not address whether or not precinct-based voting is appropriate in any particular state. The Division's briefs argued that HAVA requires a state to provide a provisional ballot to an individual who does not appear on the registration list at a polling place, but believes he or she is registered and eligible to vote there. However, Congress did not prohibit a state from declining to count that ballot if the voter is not, in fact, eligible to vote at that polling place. The Sixth Circuit rejected the arguments advanced by the plaintiffs, and held that Congress did not intend to override traditional precinct-based voting by the states when it passed HAVA and that HAVA does not require a state to count a provisional ballot "if it is cast outside the precinct in which the voter resides." Thus, every final court of record in each of these cases agreed with the Division's position on provisional ballots.

4. *Spencer v. Blackwell*

The Authors also fault me for drafting a letter in another Ohio case, *Spencer v. Blackwell.* This letter was authorized and signed by the Assistant Attorney General and is available on the Voting Section's HAVA web page at http://www.usdoj.gov/crt/voting/hava/spencer.pdf and speaks for itself. It brought to the federal court's attention the new provisional balloting requirements set forth in HAVA and noted that if voters were challenged in the November 2 election pursuant to state law, "as a matter of federal law those challenged voters must be given the opportunity to cast a provisional ballot even if they are unable to answer the specific questions posed by election judges." *See Letter of October 29, 2004, from R. Alexander Acosta to Judge Susan J. Dlott.* The Authors claim that the Division's letter was somehow improper because "the law did not implicate any statue that the Department enforces." The state challenge law at issue, the Division noted, implicated HAVA's provisional balloting requirements. There was absolutely nothing improper about the Assistant Attorney General's decision to provide information to the judge in this case on the Division's views about a new federal statute. The Sixth Circuit found against the plaintiffs in their request for injunctive relief. *Spencer v. Blackwell*, 388 F.3d 547 (6th Cir. 2004).

National Voter Registration Act

The Authors accuse me of "chang[ing] the enforcement direction of the Department regarding the National Voter Registration Act." This complaint amounts to nothing more than the fact that the Division enforced Section 8 of the NVRA. Among its other requirements, Section 8 requires states to "conduct a general program that makes a reasonable effort to remove the names of ineligible voters from the official lists of eligible

voters by reason of (A) the death of the registrant; or (B) a change in the residence of the registrant." 42 U.S.C. § 1973gg(a)(4). Section 8 is an important part of the nation's voter rights laws, and the low esteem in which the Authors hold it is perplexing.

First, the Authors vastly overstate my authority. The enforcement priorities of each Section at the Division, including the Voting Section, are determined by the Assistant Attorney General, not a career Counsel. I certainly made recommendations to the senior leadership on what those priorities should be – that was part of my job - but I had no final decision making authority.

Second, under the current Administration, the Division has an outstanding NVRA enforcement record. The prior Administration did not file a single lawsuit to enforce the NVRA during the period 1997 to 2000. The first new lawsuits to enforce the statute were filed in 2001 against the State of Tennessee and the City of St. Louis, Missouri. Suit was filed against Tennessee over the state's failure to implement voter registration opportunities in state public assistance and driver's licenses offices. Suit was filed against St. Louis because of the city's failure to follow the specific notice provisions of Section 8 of the NVRA before removing voters from the registration list.

The Division also filed NVRA suits against New York for failing to offer voter registration to disabled students at public colleges and universities and against Pulaski County, Arkansas for violating a number of provisions of Section 8. The Division additionally settled two other NVRA problems out of court that involved jurisdictions not properly registering new voters.

The Authors complain specifically about a lawsuit filed against Missouri for the state's failure to properly maintain voter registration lists as required under Section 8, as well as improperly removing voters by failing to follow the required notice provisions.[10] This enforcement action was the result of an investigation conducted by career lawyers within the Voting Section (as described in the complaint) that showed that the Secretary of State and certain Missouri counties were not complying with the law. The suit had absolutely nothing to do with politics or partisanship or the fact that the Missouri Secretary of State is a Democrat – in fact, the Division filed an almost identical suit under the NVRA for the same failure to properly maintain the voter registration list against the Indiana Secretary of State, who happened to be a Republican.[11] The Authors criticize the filing of the Missouri suit because a federal judge dismissed the case, holding that DOJ needs to sue the individual counties at fault. However, it is my understanding that the dismissal is being appealed by the Division.

In the identical Indiana NVRA suit, the Secretary of State agreed to remedy the violation and entered into a Consent Decree that was approved by a federal judge. *See*

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[10] The complaint is available at http://www.usdoj.gov/crt/voting/nvra/mo_nvra_comp.htm. Paragraph 13 of the complaint states, in part, that there are local election jurisdictions that "have not always followed the notice and timing requirements of Section 8 of the NVRA with respect to voters who may have moved. These practices have resulted in the removal of voters from voter registration lists in elections for federal office prematurely in a manner not consistent with federal law."

[11] *See* http://www.usdoj.gov/crt/voting/nvra/in_nvra_comp.htm. The Indiana case was filed in 2006 when I was no longer at the Division, although the investigation that led to the suit was authorized by the Acting Assistant Attorney General while I was still at the Division.

http://www.usdoj.gov/crt/voting/nvra/in_nvra_cd.pdf. The same is true of the NVRA lawsuit in New Jersey mentioned by the Authors – the defendants entered into a Consent Decree approved by a federal court.[12]

The Authors criticize these three NVRA lawsuits, two of which were settled with the explicit approval of federal judges and one of which is on appeal. They fail to acknowledge that these three lawsuits were *not* the only NVRA lawsuits brought by the Division. Their disagreement is nothing more than a public policy dispute. They would have ordered the Division's enforcement priorities differently than did the leadership of the Division and the Department of Justice. The Division could not willfully ignore the list maintenance requirements of the NVRA, requirements that were reinforced by Congress in Section 303 of HAVA. List maintenance is required in both the NVRA and HAVA and it is the responsibility of DOJ to enforce those laws.

Georgia v. Ashcroft

Finally, the Authors claim that I failed to understand "that [my] role as a Department of Justice attorney was to represent the 'United States of America.' Instead, on several occasions [I] took actions indicating a stubborn view that the Department represented the Bush Administration, the Republican Party or the Assistant Attorney General." I agree that a DOJ lawyer represents the United States, and I also believe that the Executive Branch should be run by the appointees of the President of the United States.

The President's appointees are vested with decision-making authority. During my time at the Department of Justice, I represented the United States, but I also represented the Bush Administration – which appointed my superiors, including the Assistant Attorney General to whom I reported. Every federal employee in the Executive Branch represents *both* his country and whichever Administration happens to occupy the White House. (The suggestion that I neglected my duties as a Department employee to instead serve as a Republican Party operative while I worked at the Division is insulting.) I do not believe that any "career professional" (myself included) has the right to disobey, or otherwise disregard, a politically-appointed superior simply because he disagrees with that superior's policy choices and believes that he "represents the United States."

The final allegation the Authors bring to the Committee's attention is that I "took a leading role" in the *Georgia v. Ashcroft* case and somehow violated the Federal Rules of Civil Procedure by attending an oral hearing held in this case when it was on remand before the district court. One of my duties as a career Counsel in the Front Office of the Division was monitoring all litigation in which the Voting Section was involved and reporting developments to my supervisors, including the Deputy Assistant Attorney General and the Assistant Attorney General. I did not take an active role in the litigation itself, such as taking depositions, interviewing witnesses, signing pleadings, or presenting oral arguments to the judges, as the trial attorneys assigned to the case were, although I certainly reviewed the work done in the case. I was under no obligation to file a Notice of Appearance under the applicable federal rules and I certainly was not required to do so

[12] *United States v. State of New Jersey*, Civil No. 06-4889 (D. N.J. October 12, 2006). This lawsuit was filed over violations of Section 8 of the NVRA as well Section 303(a) of HAVA.

simply because I attended an oral hearing (as did other Voting Section career lawyers whose names were not on the pleadings filed with the court). I made no presentations of any kind to the judges in the matter and did not in any other way put in an appearance in the case.

Conclusion

I have been a lawyer for over two decades. I have always practiced law in a professional and completely ethical manner, and that includes the four years I worked at the Department of Justice. Partisanship and politics played no part in the decisions I made or the legal advice and recommendations that I gave to my supervisors at the Civil Rights Division, including all three of the Assistant Attorney Generals for whom I worked. I applied the law and prior precedent as I understood it to every case I was presented. I believe the facts and the subsequent court decisions show that the decisions the Division made while I worked there were reasonable, easily defensible, and legally correct, contrary to the claims made by the Authors.

The FEC can only function well when its commissioners engage in bipartisan consensus building to issue regulations, conduct audits, and enforce the law when conducting investigations of violations. The record that the four nominees have established over the past 18 months while they have served on the Commission demonstrates our ability to work together to enforce the Federal Election Campaign Act.

Enforcement

In enforcement matters, for example, we have cast 1,094 votes. Votes on enforcement matters are a true test of the ability of Commissioners to work together on a nonpartisan basis, because these are votes that determine whether or not the Commissioners believe that a political candidate or political party or political committee have violated the law based on the investigation conducted by the FEC's Office of General Counsel. In 2006, the percentage of split votes was only 0.9%, and in 2007, it was only 0.2% through June 5. This is a remarkable achievement that shows that the Commissioners of both parties are intent on enforcing the law without regard to partisan advantage.

Advisory Opinions

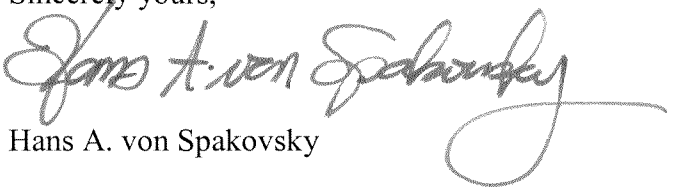
The current Commission has voted on 42 Advisory Opinions. *See* Attachment A. Twenty-three of these opinions were adopted unanimously. Nine were adopted with only one dissenting vote. In three cases, the Commission split and was unable to approve a response to the requestor. Of the 39 cases in which the Commission issued an Opinion, I have cast only five dissenting votes. The record shows that every current Commissioner has dissented more than once during this period. There is a healthy diversity of opinion among the Commissioners which is invaluable when considering the issues that come before us. Overall, I think this record demonstrates a remarkable ability on the part of each Commissioner to work with his colleagues to reach agreement on difficult issues.

Regulations

Since I was appointed to this position, the Commission has adopted seven (7) new Final Rules, and I voted as part of a bipartisan majority in each of those instances. The Commission also voted twice to retain existing rules. I dissented in one of those matters because I believed the Commission should undertake a rulemaking to produce *additional* regulations to provide guidance to the regulated community on the subject of when a 527 organization becomes a federally regulated "political committee."[13] The Commission's rulemakings are detailed at Attachment B.

I am proud of my record at the Commission because it shows in concrete terms that I work together with my fellow Commissioners every day to achieve our common goals and objectives. This record also refutes any suggestion that I am unable or unwilling to enforce the law as it is written. I thank the Committee for this opportunity to respond to the criticisms that have been leveled against me.

Sincerely yours,



Hans A. von Spakovsky

[13] My statement on this matter has previously been provided to the Committee and is available at http://www.fec.gov/members/von_Spakovsky/speeches/statement20060531.pdf.

ADVISORY OPINIONS

Date	*AO Number*	*AO Requestor*	*Vote*	*Dissenter(s)*
1/19/2006	2005-20	Pillsbury Winthrop Shaw Pitman	6-0	
3/9/2006	2006-01	PAC For A Change (Boxer)	6-0	
3/9/2006	2006-02	Robert Titley	5-1	Toner
3/9/2006	2006-06	Francine Busby for Congress	4-2	Toner, Mason
3/23/2006	2006-03	Whirlpool Corp. PAC	6-0	
3/29/2006	2006-04	Tancredo for Congress Committee	4-2	Toner, von Spakovsky
4/20/2006	2006-07	J.D. Hayworth for Congress	4-1	Weintraub
4/20/2006	2006-09	American Institute for Certified Public Accountants PAC	3-2	*AO not adopted.*
4/20/2006	2006-11	Washington Democratic State Central Committee	4-1	Lenhard
4/20/2006	2006-12	International Association of Machinists & Aerospace Workers	5-0	
5/4/2006	2006-08	Matthew Brooks	4-2	Weintraub, Walther
5/4/2006	2006-13	Dennis Spivak	6-0	
5/9/2006	2006-16	Nancy Detert	6-0	
5/18/2006	2006-15	TransCanada Corp.	5-1	Walther
6/5/2006	2006-19	Los Angeles County Democratic Party Central Committee	5-1	Walther
6/22/2006	2006-14	National Restaurant Association PAC	3-2	*AO not adopted.*
6/22/2006	2006-17	Berkeley Electric Cooperative Inc.	5-0	
6/22/2006	2006-18	Kay Granger Campaign Fund	4-1	Lenhard
6/30/2006	2006-10	EchoStar Satellite LLC	5-1	Toner
8/29/2006	2006-21	Cantwell 2006	6-0	
8/29/2006	2006-26	Texans for Henry Bonilla	6-0	
9/6/2006	2006-25	Jon Kyl for US Senate	6-0	
9/14/2006	2006-22	Wallace for Congress	6-0	
10/4/2006	2006-20	Unity '08	5-1	von Spakovsky
10/4/2006	2006-24	National Republican Senatorial Committee	4-2	Toner, von Spakovsky
10/13/2006	2006-31	Bob Casey for Pennsylvania Committee	3-3	*AO not adopted.*
11/2/2004	2006-29	Rep. Mary Bono	6-0	
11/9/2006	2006-30	ActBlue	4-2	Mason, Weintraub

Attachment A

Date	*AO Number*	*AO Requestor*	*Vote*	*Dissenter(s)*
11/21/2006	2006-32	Progress for America	4-2	Toner, von Spakovsky
12/21/2006	2006-33	National Association of Realtors PAC	4-2	Weintraub, Walther
1/25/2007	2006-35	Kolbe for Congress	4-0	
1/25/2007	2006-37	Kissin for Congress	4-0	
2/8/2007	2006-34	Working Assets, Inc.	6-0	
2/8/2007	2006-36	Green Senatorial Campaign Committee	6-0	
2/8/2007	2006-38	Sen. Casey State Committee	6-0	
3/1/2007	2007-03	Obama Exploratory Committee	5-0	
3/8/2007	2007-02	Arizona Libertarian Party	5-0	
3/22/2007	2007-01	Sen. Claire McCaskill	5-0	
4/19/2007	2007-04	Atlatl, Inc.	4-1	von Spakovsky
5/3/2007	2007-05	Erik Iverson	4-0	
5/3/2007	2007-06	Libertarian Party of Indiana	5-0	
5/31/2007	2007-07	Craig for US Congress	5-0	

Rulemaking Votes

1. Revised Explanation and Justification for Definitions of "Agent" for BCRA Regulations on Non-Federal Funds or Soft Money and Coordinated and Independent Expenditures (11 CFR 109.3 and 300.2(b)), 71 Fed. Reg. 4,975 (Jan. 31, 2006).
   - Final vote, 4-2, taken January 23, 2006. Commissioners Lenhard, Mason, Toner and von Spakovsky voted affirmatively for the decision. Commissioners Walther and Weintraub dissented.

2. Final Rules and Explanation and Justification on the Definition of Federal Election Activity (11 CFR 100.24), 71 Fed. Reg. 8,926 (Feb. 22, 2006).
   - Final vote, 6-0, taken February 9, 2006. Commissioners Lenhard, Mason, Toner, von Spakovsky, Walther, and Weintraub voted affirmatively for the decision.

3. Interim Final Rule on the Definition of Federal Election Activity (Modifying the Definition of "In Connection with an Election in which a Candidate for Federal Office Appears on the Ballot" (11 CFR 100.24(a)(1)(iii)), 71 Fed. Reg. 14,357 (Mar. 22, 2006).
   - Final vote, 4-2, taken February 9, 2006. Commissioners Mason, Toner, von Spakovsky, and Walther voted affirmatively for the decision. Commissioners Lenhard and Weintraub dissented.
   - Final Explanation and Justification adopted on March 16, 2006. Commissioners Mason, Toner, von Spakovsky, and Walther voted affirmatively for the decision. Commissioners Lenhard and Weintraub dissented.

4. Final Rules on the Definitions of "Solicit" and "Direct" (11 CFR 300.2(m) and (n)) , 71 Fed. Reg. 13,926 (Mar. 20, 2006).
   - Final vote, 4-2, taken March 13, 2006. Commissioners Mason, von Spakovsky, Toner, and Walther voted affirmatively for the decision. Commissioners Lenhard and Weintraub dissented.

5. Final Rules and Explanation and Justification on Internet Communications, 71 Fed. Reg. 18,589 (April 12, 2006).
   - Final vote, 6-0, taken March 27, 2006. Commissioners Lenhard, Mason, Toner, von Spakovsky, Walther, and Weintraub voted affirmatively for the decision.

6. Final Rules on Coordinated Communications, 71 Fed. Reg. 33,190 (June 8, 2006).
   - Final vote, 6-0, taken April 7, 2006. Commissioners Lenhard, Mason, Toner, von Spakovsky, Walther, and Weintraub voted affirmatively for the decision.

- Final Explanation and Justification adopted, 6-0, on June 2, 2006. Commissioners Lenhard, Mason, Toner, von Spakovsky, Walther, and Weintraub voted affirmatively for the decision.

7. Final Rules on Increase in Limitation on Authorized Committees Supporting Other Authorized Committees, 71 Fed. Reg. 54,899 (Sept. 20, 2006).

- Final vote, 6-0, taken September 14, 2006. Commissioners Lenhard, Mason, Toner, von Spakovsky, Walther, and Weintraub voted affirmatively for the decision.

8. Supplemental Explanation and Justification on Political Committee Status, 72 Fed. Reg. 5,595 (Feb. 7, 2007).

- Final vote, 4-2, taken January 31, 2007. Commissioners Lenhard, Mason, Walther, and Weintraub voted affirmatively for the decision. Commissioners Toner and von Spakovsky dissented.

9. Finals Rules on Best Efforts in Administrative Fines Challenges, 72 Fed. Reg. 14,662 (March 29, 2007).

- Final vote, 5-0, taken on March 22, 2007. Commissioners Lenhard, Mason, von Spakovsky, Walther, and Weintraub voted affirmatively for the decision.