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Voter fraud fixation needs a good airing

By JUSTIN LEVITT

The U.S. Department of Justice may just now be working its way back from a six-year snipe hunt. It's been off in the undergrowth, with gunny sack and flashlight, searching for voter fraud. The gunny sack is still empty, but the hunt itself has caused ample damage, along lines that seem disturbingly partisan.

In the Senate Rules Committee today, we have a chance to ask those in charge of the hunt exactly why the people's lawyers are spending so much time in the woods.

By many accounts, one of the principal masters of the hunt was Georgia lawyer Hans von Spakovsky. After a stint in the Department of Justice's newly formed "Ballot Access and Voter Integrity Initiative," in 2003 von Spakovsky became special counsel to the assistant attorney general for civil rights, focusing on voting issues.

The assistant attorney general for civil rights once acted as the voter's champion: Think of the gentlemen in horn-rimmed glasses



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and flannel suits plunging in to enforce the Voting Rights Act. Yet in decision after decision, Spakovsky has promoted policies that restrict eligible voters' rights to cast meaningful ballots: restrictive photo identification; aggressive purges of voting rolls; limited access to the courts.

Most of these decisions have been premised on the need to guard against widespread voter fraud. There are two plausible explanations for his fixation. Both are alarming.

First, it is possible that von Spakovsky is impermissibly acting with his partisan hunting hat on. The cries of voter fraud have been used to justify policies that typically disadvantage young, poor, or minority voters — that is to say, voters perceived to lean toward Democratic

candidates.

Royal Masset, former political director of the Texas Republican Party, made the connection most directly in a recent *Houston Chronicle* article:

"Among Republicans it is an 'article of religious faith that voter fraud is causing us to lose elections,' Masset said. He doesn't agree with that, but does believe that requiring photo IDs could cause enough of a dropoff in legitimate Democratic voting to add 3 percent to the Republican vote."

Alternatively, von Spakovsky may be one of the true believers Masset mentioned, pure of motive but blind to facts. He knows that the snipes are out there, no matter what the data reveal, and so evidence that doesn't fit his preconceived conclusions is simply ignored.

This might explain, for example, why the Department of Justice pre-cleared Georgia's controversial photo identification law just one day after longtime career staff submitted a 51-page memo recommending that the law be blocked, and without considering relevant

new data that arrived on the eve of the decision.

Today, Spakovsky comes before the Senate Rules Committee for a hearing on his nomination to the Federal Election Commission — 17 months after his recess appointment to that body. There should finally be the opportunity during this hearing to investigate his role in the snipe hunt.

Some criticize this call for further investigation and contend that his conduct at the DOJ has little bearing on his suitability for the FEC. It looks like von Spakovsky either helped to manipulate government entities for partisan ends, or ignored law and fact to arrive at preordained results. If either concern — or both — should prove valid, it would be directly relevant to his capacity for impartial and reasoned enforcement of the nation's election laws.

The master of the snipe hunt should be thoroughly questioned about his tenure at the DOJ before any final decision is made on his confirmation. We don't want to be left in the woods. Again.