The Heritage Foundation

LEGAL MEMORANDUM

No. 136 | AUGUST 18, 2014

The Obama Administration's Attempt to Balkanize Hawaii

Hans A. von Spakovsky

Abstract

In its latest assault on the U.S. Constitution, the Obama Administration has issued an Advance Notice of Proposed Rulemaking (ANPR)—new regulations that would require the Administration to recognize so-called Native Hawaiians as an Indian tribe entitled to separate and independent sovereignty. Such a move would implicitly authorize government-sanctioned discriminatory conduct against any residents of Hawaii who do not meet the explicit ancestry and blood-quantum requirements that one must meet to be considered a "Native." Both unconstitutional and bad public policy, this action would balkanize Hawaii, dividing the islands into separate racial and ethnic enclaves, and undo "the political bargain through which Hawaii secured its admission into the Union." Accordingly, the APNR should be withdrawn and rescinded.

In its latest attempt to violate the limits of its constitutional authority, the Obama Administration has issued an Advance Notice of Proposed Rulemaking (ANPR) —new regulations that will determine whether the Department of the Interior will "reestablish" a "government-to-government relationship between the United States and the Native Hawaiian community."[1] The ANPR would require the Administration to recognize so-called Native Hawaiians as an Indian tribe entitled to separate and independent sovereignty. Such a move would implicitly authorize government-sanctioned discriminatory conduct against any residents of Hawaii who do not meet the explicit ancestry and blood-quantum requirements that one must meet to be considered a "Native."

This paper, in its entirety, can be found at **http://report.heritage.org/lm136**

The Heritage Foundation
214 Massachusetts Avenue, NE
Washington, DC 20002
(202) 546-4400 | heritage.org

Key Points

- The Obama Administration has issued an Advance Notice of Proposed Rulemaking that would recognize so-called Native Hawaiians as an Indian tribe entitled to separate and independent sovereignty.
- This would implicitly authorize government-sanctioned, discriminatory conduct against any residents of Hawaii who do not meet the explicit ancestry and blood-quantum requirements to be considered a "Native."
- The Administration's proposal would implement a balkanization that is the antithesis of Hawaii's historical and cultural experience.
- Congress has specifically refused to provide tribal recognition to Native Hawaiians, and there is no constitutional basis for granting what would amount to secession for certain residents from the state of Hawaii.
- Because the proposed rule is "at worst unconstitutional, and at best offensive to the character of a country devoted to the advancement of all its citizens regardless of race," it should be withdrawn and rescinded.

Both unconstitutional and bad public policy, this action would balkanize Hawaii, dividing the islands into separate racial and ethnic enclaves. It would also undo "the political bargain through which Hawaii secured its admission into the Union ... when native Hawaiians themselves voted for statehood, thus voluntarily and democratically relinquishing any residual sovereignty to the United States."[2]

Advance Notice of Proposed Rulemaking

On June 20, 2014, the Department of the Interior (Interior) published the Advance Notice of Proposed Rulemaking, with public comments due by August 19, 2014.[3] The ANPR seeks comments on five "threshold" questions:

- Should Interior implement a rule reestablishing "a government-to-government relationship with the Native Hawaiian community?"
- Should Interior assist the Native Hawaiian community in "reorganizing its government?"
- If so, "what process should be established for drafting and ratifying a reorganized Native Hawaiian government's constitution or other governing document?"
- Should Interior "instead rely on the reorganization of a Native Hawaiian government through a process established by the Native Hawaiian community and facilitated by the state of Hawaii?"
- If so, what conditions should Interior "establish as prerequisites to Federal acknowledgment of a government-to-government relationship with the reorganized Native Hawaiian government?"[4]

The ANPR includes a long "Background" section discussing the "unique political and trust relationship" between the federal government and "federally recognized tribes across the country"—an attempt to justify the ANPR. Native Hawaiians, however, have never been recognized by Congress as a tribe in the same category as American Indians. In fact, Congress has specifically rejected such recognition. For more than a decade, former U.S. Senator Daniel Inouye (D–HI), along with Senator Daniel Akaka (D–HI), tried unsuccessfully to convince Congress to pass the Native Hawaiian Recognition Act (also known as the Akaka bill), which would have provided such recognition.[5]

The ANPR claims that Interior is considering this rule because:

> In recent years, the Department has increasingly heard from Native Hawaiians who assert that their community's opportunities to thrive would be significantly bolstered by reorganizing a sovereign Native Hawaiian government that could ... exercise inherent sovereign powers of self-governance and self-determination, and enhance the implementation of programs and services that Congress has created specifically to benefit the Native Hawaiian community.[6]

1. Press Release, U.S. Department of the Interior, Interior Considers Procedures to Reestablish a Government-to-Government Relationship with the Native Hawaiian Community (June 18, 2014), *available at* http://www.doi.gov/news/pressreleases/interior-considers-procedures-to-reestablish-a-government-to-government-relationship-with-the-native-hawaiian-community.cfm.
2. *Hearing on S. 310, The Native Hawaiian Government Reorganization Act of 2007*, *Before the S. Comm. on Indian Affairs*, 100th Cong. 4 (2008) (statement of Gregory G. Katsas, Principal Deputy Associate Attorney General, U.S. Department of Justice), *available at* http://www.indian.senate.gov/sites/default/files/upload/files/Katsas050307.pdf.
3. Procedures for Reestablishing a Government-to-Government Relationship with the Native Hawaiian Community, 79 Fed. Reg. 35296 (June 20, 2014).
4. *Id.* at 35297.
5. *See* S. 2899, 106th Cong. (2000) *See also Akaka Urges Senate to Pass Recognition Bill in Inouye's Honor*, Honolulu Star Advertiser (Dec. 20, 2012), http://www.staradvertiser.com/news/breaking/184348641.html?id=184348641.
6. Procedures for Reestablishing a Government-to-Government Relationship with the Native Hawaiian Community, 79 Fed. Reg. at 35298 (2014).

What the Interior Department does not mention, however, is that it encountered strong opposition at a series of ANPR hearings held in Hawaii.[7] At one such hearing, "the vast majority of native Hawaiians who testified" were "indignant and even outraged, that the federal government would try to insert itself or side with any faction of native Hawaiians," and "they scolded, shouted at and questioned the motives of Interior Department officials."[8] Colette Machado, chairperson of the state Office of Hawaiian Affairs, "encountered loud protests and boos when she declared her support for the federal government and encouraged officials to move forward" with the proposal.[9]

According to another media report, "an overwhelming majority of Native Hawaiians at the emotionally charged meeting expressed anger and mistrust of the federal government."[10] In fact, "judging from the response of Native Hawaiians," the answer to Interior's question of whether the United States should enter a government-to-government relationship is "a resounding 'No.'"[11]

Furthermore, Keli'I Akina, president of the Grassroot Institute of Hawaii, says that the "support simply isn't there for the creation of divisive, race-based government" because it is "counter to the spirit and history of our islands."[12] This analysis is supported by an online poll conducted by the *Honolulu Star Advertiser*. When asked whether the Department of the Interior should "keep open the process for federal recognition of Native Hawaiians," an overwhelming 67 percent of respondents voted "no."[13]

Lack of Legal Authority for Tribal Recognition and the ANPR

The ANPR provides an extensive history of the relationship between Hawaii and the United States, including the islands' formation as a territory in 1900 and admission to the Union as a state in 1959. This proposal attempts to lay the groundwork for a general authority to issue this ANPR through its citation to various federal statutes that have "expressly identified Native Hawaiians as 'a distinct and unique indigenous people with a historical continuity to the original inhabitants of the Hawaiian archipelago.'"[14] The ANPR also cites to the Interior's Office of Native Hawaiian Relations (ONHR), which was established by Congress in 2004 to "discharge the Secretary's responsibilities for matters related to the Native Hawaiian community."[15]

Although the proposal gives a long description of the Akaka bill and other similar legislation that, had it been enacted, would have provided official recognition of Native Hawaiians, nowhere in the ANPR does the Interior Department cite any legal authority actually giving it the power to recognize Native Hawaiians as an Indian tribe or to establish a government-to-government relationship. Such failure, however, should come as little surprise: No such legal authority exists. Moreover, Article I, Section 8, Clause 3 of the Constitution provides that Congress, not the President, has the power "to regulate Commerce with ... the Indian Tribes."[16]

Nor do general statements by Congress about Hawaii and the establishment of an executive branch

7. Interior held 20 hearings in Hawaii from June 23 through July 8, 2014. Press Release, U.S. Department of the Interior, *supra* note 1.
8. Malia Zimmerman, *Obama Plan to Benefit Native Hawaiians Runs Into Trouble*, Watchdog.org (June 25, 2014), *available at* http://watchdog.org/156202/incite-racial-disputes-hawaii/.
9. *Nearly 150 Testify for and Against Native Hawaiian Government*, khon2.com (June 23, 2014), http://khon2.com/2014/06/23/nearly-150-testify-for-and-against-native-hawaiian-government/.
10. Gale Courey Toensing, *No Aloha: Native Hawaiians Against Interior's Relationship Proposal*, Indian Country Today (June 27, 2014), http://indiancountrytodaymedianetwork.com/2014/06/27/no-aloha-native-hawaiians-against-interiors-relationship-proposal-155519.
11. *Id.*
12. Malia Hill, *Experts Cast Doubt on the Viability of Hawaiian Nation-Building*, Grassroot Institute of Hawaii (June 21, 2014), http://new.grassrootinstitute.org/2014/06/experts-cast-doubt-on-the-viability-of-hawaiian-nation-building/.
13. *See Poll Question*, Honolulu-Star (July 15, 2014), http://poll.staradvertiser.com/honolulu-star-advertiser-poll-archive/page/10/.
14. 79 Fed. Reg. at 35299 (citations omitted).
15. *Id.*
16. For additional information about Congress's plenary authority over Indian tribes, see The Heritage Guide to the Constitution 108 (2005) and sources cited therein, *available at* http://www.heritage.org/constitution#!/search/indian+tribes/articles/1/essays/39/commerce-with-the-indian-tribes.

office such as ONHR give the Interior Department such authority. As one commentator noted:

> There is a formidable Constitutional gap in the logic of this proposal for tribalization. Congress must be involved in the recognition of tribal status and it is simply too big a leap from declaration of specific Hawaiian interests vested in an Executive agency to a declaration of tribal status by Congress. The passive approval of a set of modest goals for a modest executive Office is not a direct and specific approval of tribal status for Hawaiians.[17]

In fact, as recently as a year ago, Interior admitted it had no such legal authority. On March 19, 2013, the head of Indian Affairs at Interior, Assistant Secretary Kevin K. Washburn, told the House Subcommittee on Indian and Alaska Native Affairs that the Interior Department did not "have the authority to recognize Native Hawaiians." Washburn told Rep. Eni Faleomavaega (D–AS) that "we would need legislation to be able to proceed down that road."[18] Yet, suddenly, the Interior Department is proceeding down the very road that it recently acknowledged it lacks the authority to travel.

According to former Hawaii Attorney General Michael Lilly, the Department of the Interior's efforts are "unconstitutional because, under the Constitution, it is the Congress that has the plenary power to recognize tribes and ratify treaties. That power does not reside in the executive branch of the federal government or with the various states. So the current effort aimed at creating a tribe of Hawaiians has no legal basis."[19] Lilly adds that there was never a Hawaiian tribe with whom the U.S. had a treaty relationship and that if "there was such a tribe, then all the multi-ethnic peoples who were citizens of the Hawaiian Monarchy would be members of that tribe" since the "U.S. Supreme Court has held that a 'tribe' is a political and not a racial entity."[20]

Opinion of U.S. Commission on Civil Rights

Four members of the U.S. Commission on Civil Rights echoed Lilly's opinion about the unconstitutionality of the executive branch's actions in Hawaii. Specifically, they sent a letter to President Obama on September 16, 2013, expressing their concern that the Administration was considering implementing the Akaka bill through executive action.[21]

In 2006, the commission had held a hearing on the Akaka bill itself and had issued a highly critical report saying that Hawaii was "in a league by itself" when it comes to officially sanctioned discriminatory conduct.[22] In discussing the Akaka bill, the commission recommended against "any other legislation that would discriminate on the basis of race or national origin and further subdivide the American people into discrete subgroups accorded varying degrees of privilege."[23] The report concluded that the bill was both "unwise and unconstitutional." Vice-Chair Abigail Thernstrom and Commissioners Gail Heriot, Peter Kirsanow, and Todd Gaziano reiterated that conclusion in their 2013 letter, stating that similar executive action "would be at least as unwise and unconstitutional."[24]

In their letter, the commissioners also pointed out that neither Congress nor the President has the power to "create" an Indian tribe or "any other entity with attributes of sovereignty." Nor do they have the power "to reconstitute a tribe or other sovereign

17. James Ching, *Hawaiian Sovereignty by Fiat?*, Law.com (May 30, 2014), http://www.law.com/sites/jamesching/2014/05/30/hawaiian-soverignty-by-fiat-interior-department-considers-granting-quasi-nation-status-through-administrative-rule-despite-bay-mills-indian-community-supreme-court-decision-on-tribal-status/.
18. *Oversight Hearing Before the Subcomm. on Indian and Alaska Native Affairs of H. Comm. on Natural Resources*, 113th Cong. Ser. No. 113-5, 28–29 (2013).
19. Malia Zimmerman, *Obama Plan to Benefit Native Hawaiians Runs into Trouble*, Hawaii Free Press (June 25, 2014).
20. Hill, *supra* note 12.
21. Letter from Commissioners Abigail Thernstrom, Gail Heriot, Peter Kirsanow, and Todd Gaziano to President Barack Obama (September 16, 2013) (hereinafter Sept. 16, 2013, USCCR Letter), *available at* http://www.ceousa.org/attachments/article/731/Akaka%20Letter%20September%202013%20Final.pdf.
22. The Native Hawaiian Government Reorganization Act of 2005, U.S. Commission on Civil Rights Briefing Report, *available at* http://www.usccr.gov/pubs/060531NatHawBriefReport.pdf.
23. *Id.* at 15.
24. Sept. 16, 2013, USCCR Letter, *supra* note 21.

entity that has ceased to exist as a polity in the past." Indian tribes are not created or reconstituted: They are recognized. The types of Indian tribes that the federal government can recognize "are defined by political structure and the maintenance of a separate society, not by bloodline." A "mere shared blood quantum among the members of a group is not sufficient," and the federal regulations governing recognition "focus on the cohesiveness of the group and evidence of a functioning polity of long duration."[25]

Despite these facts, state officials in Hawaii who are responsible for administering a huge public trust that provides benefits exclusively for "Native" Hawaiians have established a spoils system premised on racial and ethnic discrimination. The Hawaiian Homes Commission, for example, provides "special" loans and homesteading leases for Native Hawaiians, who are defined as "any descendant of not less than one-half part of the blood of races inhabiting the Hawaiian Islands previous to 1778."[26]

As Commissioner Kirsanow has written, this definition for Native Hawaiians is similar to "the odious 'one drop rule' contained in the racial-segregation codes of the 19th and early 20th centuries."[27] In his dissent in *Fullilove v. Klutznick*, U.S. Supreme Court Justice John Paul Stevens pointed out that if a government "is to make a serious effort to define racial classes" by this type of criterion, it must study such appalling precedents as the First Regulation to the Reichs Citizenship Law of November 14, 1935, which defined Jews based on their blood quantum ancestry.[28] According to Stevens, "the very attempt to define with precision a beneficiary's qualifying racial characteristics is repugnant to our constitutional ideals."

Apparently, however, such racial classifications are not repugnant to the Department of the Interior, which "seeks input on which individuals, as members of the Native Hawaiian community, should be eligible to participate in the process of reorganizing a sovereign Native Hawaiian government."[29]

However, as the commissioners pointed out in their letter to President Obama, there is "no native Hawaiian entity, let alone a governing body of such native Hawaiians." The Kingdom of Hawaii was a multi-racial society in which the royal family had intermarried with British and American immigrants. By 1893, when Queen Liliuokalani abdicated and the Republic of Hawaii was formed, Native Hawaiians were a minority of the population, and there was no distinctive tribe "of native Hawaiians living separately from the rest of society."[30]

Unlike American Indians, writes James Ching, "Hawaii has a clear political lineage distinct from Native American tribes." It went from being a kingdom to a republic to being incorporated into the United States. This "seemingly unalterable assimilation has no parallel in the history of the Native American tribes. The latter have always been dealt with as nominal nations, whatever the power balance between the tribes and the United States."[31]

In fact, as the U.S. Supreme Court has found, Indian tribes are "'domestic dependent nations' that exercise 'inherent sovereign authority' ... subject to plenary control by Congress."[32] There is no Native Hawaiian government that exercises inherent sovereign authority with which Interior could establish a relationship, because "it is an extinguished government, and therefore, no government at all."[33]

25. *Id.*
26. *See Hawaiian Homes Commission Act*, Hawaii Department of Hawaiian Home Land, http://dhhl.hawaii.gov/hhc/laws-and-rules (last visited August 10, 2014).
27. Peter Kirsanow, *A Pandora's Box of Ethnic Sovereignty*, National Review Online (June 6, 2006), http://www.nationalreview.com/articles/217832/pandoras-box-ethnic-sovereignty/peter-kirsanow#.
28. 448 U.S. 448, 534 (1980), fn. 5.
29. 79 Fed. Reg. at 35301.
30. Sept. 16, 2013, USCCR Letter, *supra* note 21.
31. James Ching, *New Native American Tribal Regulations Implicate Hawaiian Sovereignty*, Hawaii Free Press (July 15, 2014), http://hawaiifreepress.com/ArticlesMain/tabid/56/ID/13083/New-Native-American-Tribal-Regulations-Implicate-Hawaiian-Sovereignty.aspx.
32. Michigan v. Bay Mills Indian Community, 134 S.Ct. 2024, 2030 (2014) (citations omitted).
33. Ching, *supra* note 31. In fact, the ability of the United States to establish a treaty giving "recognition" to any "Indian nation or tribe within the territory of the United States" for which a treaty was not already in existence on March 3, 1871, was eliminated by 25 U.S.C. §71.

U.S. Supreme Court on "Native" Hawaiians

The U.S. Supreme Court's decision in *Rice v. Cayetano* further calls into question the legitimacy of the Interior Department's proposal.[34] In *Rice*, the Court held that a provision of the Hawaii constitution that limited the right to vote for nine trustees of the Office of Hawaiian Affairs only to "native Hawaiians" was a violation of the Fifteenth Amendment. Accordingly, the voting structure set up by Hawaii was "neither subtle nor indirect" since it specifically granted "the vote to persons of defined ancestry and to no others."[35]

Hawaii tried to defend the law by claiming that the restriction was not racial, "but instead [was] a classification limited to those whose ancestors were in Hawaii at a particular time, regardless of their race."[36] However, as the Court noted, ancestry can be a proxy for race, and Hawaii was using it as a proxy:

> Such an ancestral inquiry mandated by the State implicates the same grave concerns as a classification specifying a particular race by name. One of the principal reasons race is treated as a forbidden classification is that it demeans the dignity and worth of a person to be judged by ancestry instead of by his or her own merit and essential qualities. An inquiry into ancestral lines is not consistent with respect based on the unique personality each of us possesses, a respect the Constitution itself secures in its concern for person and citizens.[37]

In *Arakaki v. Hawaii*, the Ninth Circuit subsequently held that a requirement that candidates for election as trustees of the Office of Hawaiian Affairs be Native Hawaiians violated the Fifteenth Amendment and Section 2 of the Voting Rights Act.[38]

Additionally, as the Supreme Court held in another case, "distinctions between citizens solely because of their ancestry are, by their very nature, odious to a free people whose institutions are founded upon the doctrine of equality."[39] Interior's proposal, just like the Akaka bill that Congress has declined to pass, is "an attempted end-run around the Supreme Court's decisions."[40]

A number of current Senators have criticized the ANPR, saying that it "fails to pass constitutional muster" since it "epitomizes the type of arbitrary race-based classification that the Supreme Court has found anathema to the Constitution."[41] These Senators further note that some have suggested that there is no way to "credibly distinguish this proposal for special treatment of Native Hawaiians from possible requests by other groups, such as the Amish of Pennsylvania."[42]

These concerns echo the comments made by the Civil Rights Commissioners in their letter to President Obama:

> Rewriting history to create a tribe out of the Native Hawaiian race would open a Pandora's box for other groups to seek tribal status. Cajuns are an identifiable ethnic group in Louisiana who have had a continuous presence there for over two hundred years.... Should Cajuns be allowed to

34. Rice v. Cayetano, 528 U.S. 495 (2000).
35. *Id.* at 514.
36. *Id.*
37. *Id.* at 517.
38. 314 F.3d 1091 (9th Cir. 2002).
39. Hirabayashi v. United States, 320 U.S. 81, 100 (1943).
40. Letter from U.S. Commission on Civil Rights to Members of Congress (August 28, 2009), *available at* http://www.usccr.gov/correspd/NativeHawaiianReorganization82809.pdf.
41. Letter from Senators Lamar Alexander (R–TN), Tom Coburn (R–OK), Jeff Flake (R–AZ), and Mike Lee (R–UT) to Sally Jewell, Secretary of the Department of the Interior (August 1, 2014), *available at* http://new.grassrootinstitute.org/wp-content/uploads/2014/08/Letter-fr-Sens-Flake-Alexander-Coburn-Lee-to-Sec-Jewell-opposing-Native-Hawaiian-ANPRM-Aug-1-2014.pdf.
42. *Id.*

> seek tribal status? Should the Amish of Pennsylvania or the Hasidic Jews of New York be allowed to seek tribal status? Both groups have far more separation from mainstream society, much lower rates of intermarriage, and all-encompassing rules governing the lives of members than do Native Hawaiians.[43]

In essence, the Supreme Court in *Rice* "ruled explicitly that Native Hawaiians are an ethnic group, and that it is illegal to give anyone preferential treatment on account of their membership in that group."[44] This means that Congress cannot "pass a law that gives Native Hawaiians the special right to organize into a separate group that can claim, in turn, still more special rights."[45] And the Department of the Interior cannot help propagate such a separate group and provide it with governmental recognition that sanctions such special rights.

In the past, the Department of Justice supported this view. For example, in testimony to Congress in 2007 on the Akaka bill, a representative from the Department of Justice testified that unless it could be justified as an exercise of Congress's unique constitutional power with respect to Indian tribes—which was doubtful—the "creation of a separate governing body for native Hawaiians would be subject to (and would almost surely fail) strict scrutiny under the equal protection component of the Fifth Amendment, because it singles persons out for distinct treatment based on their ancestry and race."[46]

In any event, based on the *Rice* and *Arakaki* opinions, no official attempt to "reorganize" a Native Hawaiian "government" could restrict either candidates for the leadership of that government or those eligible to vote for such candidates to Native Hawaiians: All residents of Hawaii would have to be eligible. Indeed, Hawaiian residents already have such a government—the sovereign state government of Hawaii.

Conclusion

To answer the questions posed by the Department of the Interior's ANPR, neither the Department of the Interior nor the President has the authority to "reestablish" a relationship with a nonexistent Native Hawaiian government or to recognize Native Hawaiians as an Indian tribe. The "relationship between an independent Kingdom and the US cannot be reestablished after Hawaii's 1959 admission to statehood."[47] Further, Congress has specifically refused to provide tribal recognition to Native Hawaiians. The Administration has no constitutional basis for granting what would amount to secession for certain residents from the state of Hawaii.

From a public policy point of view, such an action would go against Hawaii's multiracial character and would give official approval by the federal government to the "odious" blood quantum test already used by the state of Hawaii. In 1959, 94.3 percent of Hawaiians voted for statehood, thereby clearly indicating that they did not want "separatist enclaves" in their future state since "their representatives rejected separate tribal enclaves in Hawaii that were being created at the same time in Alaska for the Inuit and other native Alaskans."[48]

Hawaii is a melting pot of citizens of many different racial, ethnic, and national origins. Yet the Obama Administration's proposal would sanction even more discriminatory treatment based on ancestry and race than already exists in Hawaii—implementing a balkanization of Hawaii that is the antithesis of the state's historical and cultural experience. The proposed rule is "at worst unconstitutional, and at best offensive to the character of a country devoted to the advancement of all its citizens regardless of race."[49]

Accordingly, the Department of the Interior's June 20 Advance Notice of Proposed Rulemak-

43. Sept. 16, 2013, USCCR Letter, *supra* note 21.
44. *Briefing Before the Hawaii State Advisory Committee to the U.S. Commission on Civil Rights* (August 20, 2007) (testimony of Roger Clegg, President and General Counsel of Center for Equal Opportunity), *available at* http://the.honoluluadvertiser.com/2007/Aug/26/op/Clegg.html.
45. *Id.*
46. Katsas, *supra* note 2 at 8.
47. Ching, *supra* note 17.
48. Sept. 16, 2013 USCCR, Letter, *supra* note 21.
49. Letter from Senators Alexander, Coburn, Flake, & Lee, *supra* note 41.

ing should be withdrawn and rescinded. No further steps should be taken to implement such an unconstitutional, unwise, and facially discriminatory policy.

*—**Hans A. von Spakovsky** is a Senior Legal Fellow and Manager of the Election Law Reform Initiative in the Edwin Meese III Center for Legal and Judicial Studies at The Heritage Foundation.*