



December 13, 2007

Mr. Kenneth Marcus
Staff Director
U.S. Commission on Civil Rights
624 Ninth Street, NW, Room 700
Washington, DC 20425

Dear Mr. Marcus:

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OFFICERS AND DIRECTORS
NADINE STROSSEN
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ANTHONY D. ROMERO
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RICHARD ZACKS
TREASURER

Thank you for your letter dated October 22, 2007 to Nadine Strossen seeking the ACLU's input into your project planning process for fiscal year 2010. We commend your commitment to strengthen your work products by reaching out to a variety of external groups. However, we have grown increasingly concerned with the politicization of the U.S. Commission on Civil Rights as demonstrated by a shift from its historic mission of vigorously investigating and reporting on civil rights abuses against minority and disenfranchised communities, to a new mission, which has called into question programs designed to ameliorate the historic effects of discrimination.

While your letter rightly touts the Commission's former work on the Civil Rights Act of 1964 and the Voting Rights Act of 1965, legislation giving protections to millions of Americans, the Commission has dramatically changed course. For example, in recent years it has reversed its long-standing positions on desegregation and affirmative action. In doing so, the Commission has concluded instead that there is little benefit to integrating schools, criticized the need for diversity in law schools, and urged the government to adopt only race-neutral alternatives rather than use demonstrated methods of helping minority-owned businesses win contracts. Indeed, one of your recent recommendations called upon the American Bar Association to revise a recently adopted standard to delete the requirement that law schools seeking accreditation demonstrate a commitment to diversity. In 2006, members of the Commission testified before Congress questioning the continuing utility of the expiring provisions of the Voting Rights Act, despite overwhelming bipartisan congressional support based on approximately 10,000 pages of testimony and evidence clearly documenting the continuing need for and constitutionality of the act.

The Commission's historic purpose was to be the government's civil rights watchdog. In the past, sometimes that would require undertaking a tough review of administration policy, using all the tools at the Commission's disposal including the proper issuance of subpoenas. We have become concerned about the Commission's undue deference to the administration's policies, as evidenced, in part, by the fact that you have been quoted as

saying that the issuing of subpoenas has “disrupted” relations with government agencies.

We are also troubled by reports of the Commission’s failure to use its authority in recent years to investigate serious allegations of civil rights abuses, such racial issues arising out of the Jena 6 case or the allegation that black neighborhoods in Ohio did not receive sufficient numbers of voting machines in the 2004 election.

It appears that much of this change can be explained by the political imbalance of the current Commission. Recent news stories have noted that two Commissioners switched their party registration from Republican to Independent shortly prior to their appointments to the Commission, effectively circumventing statutory limits of no more than four Commissioners from any one party. In addition, many of the “eyes and ears” of the Commission on the ground – its state advisory committee members – have recently left or been pushed out and replaced by anti-civil rights activists or individuals with little relevant experience.

Despite our concerns, we do appreciate the opportunity you have presented in your letter. In the past, the ACLU has welcomed opportunities to work with the Commission, such as testifying on important civil rights and civil liberties matters before the panel, and we hope to be able to continue to contribute in such matters in the future. Likewise, the ACLU would like to contribute to your project proposal process and continue to hold out that offer to you and your staff. However, without proper safeguards in place to ensure a fair and balanced process, the ACLU believes its efforts are better focused on advocating for vigorous Congressional oversight of the Commission and on considering long-term solutions to the aforementioned concerns during any reauthorization process. The Commission has in the past been a great force for good; we hope to support efforts to return the Commission to its former status, if possible.

Sincerely,



Caroline Fredrickson
Director

cc: Commissioner Gerald A. Reynolds, Chair
Commissioner Abigail Thernstrom, Vice-Chair
Commissioner Jennifer C. Bracer
Commissioner Peter N. Kirsanow
Commissioner Ashley L. Taylor, Jr.
Commissioner Michael Yaki
Commissioner Arlan D. Melendez
Commissioner Garil Heriot