

REPUBLICAN NATIONAL LAWYERS ASSOCIATION



July 2, 2009

The Honorable Jerrold Nadler
Chairman
Subcommittee on the Constitution, Civil Rights, and Civil Liberties

c/o Matthew Morgan
Committee on the Judiciary
B-353 Rayburn House Office Building
Washington, DC 20515

Delivered via Fax

Dear Representative Nadler:

Thank you for your June 17, 2009 letter forwarding a request from Representative Sheila Jackson Lee for additional information regarding the voter registration efforts and practices of the Association of Community Organizations for Reform Now (ACORN).

I am glad to see that you have continued to take an interest in this important issue. ACORN and its related entities are being investigated in a number of jurisdictions for voter registration fraud. After hearing my testimony that reiterated the testimony of former ACORN employee Anita MonCrief, regarding the actions of ACORN, the U.S. House Committee on the Judiciary Chairman John Conyers Jr. requested that hearings be held to further investigate ACORN. The continuing investigations of widespread voter registration fraud linked to ACORN and its affiliates demonstrate the need for a thorough and complete investigation of ACORN and its practices. Though Chairman Conyers has indicated that “the powers that be decided against” further hearings, I trust that you will hold hearings regarding this serious matter.

Below you will find the responses to the two specific questions contained in your letter.

1. Do you think ACORN staff was simply untrained and that there was no systematic attempt by ACORN to engage in voter fraud?

ANSWER: Based on the evidence I have seen, my opinion is that the ACORN staff were not adequately trained to conduct proper voter registration drives. Further, I question whether the system of compensation in place for the staff obtaining voter registration cards both for the worker and for ACORN encouraged voter registration fraud. It is also my opinion based on the evidence that I have seen that it was not a simple matter of poor training. Lastly, it is my opinion based on the evidence I have seen from the King County Settlement Agreement, the testimony in the Pennsylvania case, and the news reports from other criminal investigations that ACORN as an organization has either willfully failed to properly train its workers or grossly negligently failed to train its workers. Further information is needed in order to

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determine which is closer to the actual scenario. In addition, since ACORN operated in so many states, each state or local operation may differ in its training efforts.

Allegations of voter registration fraud have been made against ACORN and its affiliates, including Project Vote, in the 2004, 2006 and 2008 election cycles. Many question whether ACORN has failed to properly train and supervise its staff. Apparently, ACORN has failed to correct this perception, based on the fact that criminal investigations for voter registration fraud are taking place nationwide. ACORN has appeared to have ignored this systemic problem and its “defenders protest that they are the victim of a few bad apples.” (“Mickey Mouse for Obama?” *The Economist*, October 18, 2008)

Cases of voter registration fraud linked to ACORN have occurred in states including Florida, Michigan, Missouri, Nevada, Ohio, Pennsylvania and Washington. This appears to be an organization-wide problem and not isolated occurrences. The cases are varied in location and have persisted over at least three national election cycles. Part of the problem appears to be a lack of training and supervision. ACORN should correct this problem by imposing more rigorous and thorough training and supervision programs nationwide. However, ACORN has been forced to create such a program in Washington State in order to avoid litigation.

In King County, Washington, seven ACORN workers were charged in the “worst case of voter-registration fraud in state history.” (“7 Charged With Voter Registration Fraud”, AP, July 26, 2007) The prosecutor noted, “this was an act of vandalism upon the voter rolls of King County.” (Id.) The workers produced fraudulent cards in order to keep their office from being shut down. (Id.) “ACORN’s oversight of the workers was virtually nonexistent – to the extent that civil charges could have been warranted,” noted the King County prosecutor. (Id.) Rather than face litigation ACORN entered into a settlement and compliance agreement.

The agreement that ACORN entered into in King County clearly sets forth a system for conducting voter registration efforts in compliance with state law. The system established included common sense practices such as placing a salaried “responsible organizer” in charge of any local voter registration operations, tasking an employee to serve as a “quality control officer,” the production of a training video, and overall better training for workers. The agreement also required ACORN to maintain a list of its employees and their initials. (Each employee is required to initial registration cards that he or she submits, so that one will be accountable for their submissions.) These protections were necessary to ensure the integrity of the electoral system. “Acting Seattle U.S. Attorney Jeff Sullivan said he believes the agreement could become a model for other states in dealing with organizations like ACORN.” (“7 Charged With Voter Registration Fraud”, AP, July 26, 2007)

The facts that led to the King County agreement are familiar and appear to be present in ACORN voter registration operations across the country. News reports indicate that untrained workers are given a financial incentive to complete registration cards, and then are left to their own devices allegedly without adequate supervision. Upon information and belief, ACORN has not implemented the terms of this agreement nationwide. The protections of the settlement and compliance agreement provide a minimum safeguard necessary to prevent voter registration fraud. As I have previously testified, on October 29, 2008, I represented a candidate, Pennsylvania voters and the Republican State Committee of the Commonwealth of Pennsylvania in a preliminary injunction before the Commonwealth Court in Harrisburg, Pennsylvania against ACORN. Among the injunctive requests sought against ACORN was the application and implementation of the protections found in the King County agreement in Pennsylvania.

ACORN's failure to implement rigorous training and oversight of its employees nationwide is part of a larger program that results in the submission of fraudulent voter registration cards.

As will be further explained in the response to Question 2, it appears that ACORN has imposed registration quotas upon workers and has paid workers on a per registration basis. A 2004 management directive produced by ACORN affiliate Project Vote stated that “[a]nyone who performs at less than three voter registrations per hour SHOULD NOT BE ON THE STAFF.” (“Reform Association’s Manual Suggests Use of Quota System”, The Pittsburgh Tribune Review, June 14, 2009) When contacted for comment by the Pittsburgh Tribune Review a Project Vote spokesperson “acknowledged that canvassers are expected to produce 20 voter registrations per day.” (Id.)

There have also been specific allegations of ACORN employees being paid based on the total number of registrations submitted or on a per registration basis. These allegations have been made in Colorado, Minnesota, Nevada, and New Mexico. You can find a complete discussion of these allegations in the response to Question 2.

Whether motivated to collect additional signatures in exchange for a payment per signature, or by the knowledge that if one does not meet their “performance standard” one may lose their job, ACORN workers are financially incentivized to create additional voter registration cards, whether valid or fraudulent.

ACORN has operated an aggressive voter registration program that ACORN claims registered 1,315,037 voters throughout its 2007 and 2008 campaign. During this campaign, ACORN claims to have registered 153,898 voters in Pennsylvania, 247,335 in Ohio, and an additional 23,090 in Indiana.

The scale of these voter registration efforts often overwhelms and overtaxes the limited resources of local registrars’ offices. These offices have limited resources available to process and investigate voter registrations. CNN has reported that in Indiana ACORN “tried to register as many new voters in Lake County as they possibly could. The deadline was October 6. They came in with 5,000 new applications. And when the registration office began going through them, they found a pattern -- every single one of them was fraudulent.” (Lou Dobbs Tonight, October 9, 2008). CNN further reported that:

[T]hey're all in the same hand. You can tell they're all written by the same person. They showed us the death certificates of some of these people who are registered there.

The workers have been diligently trying to go through all these new ones. But finally, they had to just put them aside. 2,100 of these applications are fraudulent. The other 2900 have been placed to the side. They haven't even looked at them yet.

They want to take care of the actual good applications of real new voters who really want to vote in this election. But they're scared. They're scared they don't know what's out there and who or what is going to show up at the polls when voting actually begins in the ballot boxes.

(Lou Dobbs Tonight, October 9, 2008)

The massive number of voter registrations thrust upon local registrars by ACORN makes it increasingly likely that due to limited office resources valid registration forms may not be processed. Furthermore, fraudulent names may be added to the voter rolls because registrars lack the resources to properly investigate the volume of registrations, both valid and fraudulent, that ACORN has submitted.

In conclusion, the lack of training of ACORN employees is part of a more systematic effort that may result in voter fraud. The lack of worker training, the use of financial incentives to motivate workers, the massive scope of its unchecked voter registration efforts, and ACORN's refusal to correct system-wide problems, continue to tax the already overburdened election offices throughout the United States.

2. Do the workers with ACORN get paid based upon how many registrations they complete?

ANSWER: There have been widespread allegations from former ACORN employees that ACORN does pay its employees on a per registration basis and has imposed a quota system upon its employees. These allegations have been raised in states including Florida, Michigan, Missouri, Nevada, Ohio, Pennsylvania and Washington. These allegations have been the basis of charges brought against ACORN representatives in the state of Nevada.

ACORN'S PAYMENT FOR PERFORMANCE

News reports suggest that in many states ACORN does pay individuals on a per registration basis, or ties payment to the total number of voter registration cards submitted. Such pay for performance programs have been reported in the 2002 and 2004 election cycles and persist today.

In 2002, ACORN acknowledged turning in "numerous flawed voter registration cards" in New Mexico. ("Flawed Voter Sign-Ups Piling Up", Albuquerque Tribune, August 7, 2004) While explaining the New Mexico ACORN operation, "Seana Silver, a crew leader with ACORN, said ... the typical ACORN voter registration worker earns \$8 per hour. Workers who register 24 voters in a day get a \$50 bonus for that day's work." (Id.)

In Colorado in 2004, then Attorney General Ken Salazar investigated suspicious voter registrations tied to ACORN. While ACORN did work with Attorney General Salazar once the investigation had commenced, the payments for making specific performance targets appear to have been a root cause of the problem. The head organizer for Colorado ACORN was interviewed by the Denver Post regarding the suspicious registrations. "He said ACORN employs about 50 people in Colorado to register voters. It pays them \$8 an hour with a bonus of \$1 more per hour for those who sign up more than five new voters." (Susan Greene, "Group Fears Ties to Bad Voter Forms," The Denver Post, 8/6/04)

One Colorado woman “claims she not only registered to vote 25 times, but also signed up three of her friends 40 times, all to help her boyfriend who was making \$2 for every application, working for ACORN.” (CNN Live Transcript, October 14, 2004).

In 2004 in Minnesota, “ACORN paid \$1 for each new voter registration they secured.” (“Stash of Voter Cards Probed”, Saint Paul Pioneer Press, October 8, 2004) The head organizer of Minnesota ACORN admitted that one employee was let go “because representatives of the county attorney warned ACORN that they suspected he was registering some voters twice to double his fee.” (Id.)

These payments tied to specific performance have persisted throughout the 2008 election cycle. Nevada’s Attorney General Catherine Cortez Masto, a Democrat, has filed charges against ACORN and two of its employees. The complaint charges that payments were made based on the number of registrations submitted. It alleges that throughout the 2008 election cycle ACORN management established a program known as “Blackjack.” The Blackjack program was an incentive “which rewarded employees with \$5 extra per shift if they brought in 21 or more completed registrations.” (“ACORN Lawyers: Case Just Political” Las Vegas Review-Journal, June 4, 2009) ACORN CEO Bertha Lewis claims, “the group stopped the practice after learning about it.” (Id.) While it is appropriate that ACORN has moved to curtail this specific incentive program, the fact that such programs exist is troubling.

ACORN’S USE OF PERFORMANCE STANDARDS AND QUOTAS

A 2004 Project Vote management directive stated that “[a]nyone who performs at less than three voter registrations per hour SHOULD NOT BE ON THE STAFF.” (“Reform Association’s Manual Suggests Use of Quota System”, The Pittsburgh Tribune Review, June 14, 2009) Michael McDunnah, the spokesman for Project Vote has stated that the directive is no longer in effect, but “acknowledged that canvassers are expected to produce 20 voter registrations per day.” (Id.) McDunnah explains that “based on years of experience conducting community based voter registration drives, Project Vote estimates 20 completed applications per shift as a reasonable performance standard.” (Id.)

ACORN officials have claimed that “performance standards” are not quotas: “Performance standards do not represent a ‘quota,’ or payment per registration, but simply a baseline for job performance. And, as the complaint itself makes clear, failing to meet this standard does not result in automatic termination.” (Steve Kest, “News from Nevada”, May 4, 2009 email to “Friends of ACORN”) Despite the protestations of ACORN management, former employees felt pressured to meet these quotas out of fear for their jobs.

Clifton Mitchell, a former ACORN employee, was convicted of voter registration fraud in Washington State where he submitted nearly 2,000 fraudulent voter registrations. Mr. Mitchell was interviewed by CNN where he confessed that he falsified applications out of fear of losing his job. His interview also explains how he and his cohorts went about creating the fraudulent applications:

Mitchell said he scammed the system because, “I needed money; I had to support my family and I was new to the area. It was the only job I had.”

Mitchell said ACORN threatened to close the office if he and his team didn't meet their quota to register 13 to 20 voters a day. So, without consulting their supervisors, he said, they came up with a plan.

"We came up with the idea: Let's make fraudulent cards. I tell my crew, 'I don't care how you get 'em, just get 'em,'" Mitchell recalled.

They took addresses from homeless shelters, used fake birthdays and Social Security numbers and took names from baby books to create voters out of thin air.

"Every day I'd go to the library and get a newspaper," Mitchell said. "I had one guy who'd go to the phone book. Everyone had different methods."

("Ex-ACORN worker: 'I paid the price' for voter registration fraud", <http://www.cnn.com/2008/POLITICS/10/22/voter.fraud/>, October 22, 2008)

In Ohio, ACORN employees also reported that their jobs were in jeopardy if they did not meet their daily quotas.

"Every day, there was pressure on us. Every single day," said Teshika Elder, a Cleveland single mom of three who worked for ACORN this summer.

"We had meetings every morning where they'd go over your quota; they'd yell at you if you were low," said Elder, 21. "They'd sit us down and say if you didn't do better, they'd suspend you. They'd say, Try harder next time, [and] if you didn't get it, you'd be fired."

Desperate canvassers sometimes resorted to trading cigarettes, cash and food in exchange for registrations, according to Elder and two other former ACORN workers, Jaymes Sanford, 18 and Selvin Cunningham 23.

("ACORN Instilled Fear: Workers", New York Post, October 20, 2008)

This story is all too familiar. In Missouri, ACORN representatives have acknowledged the use of a quota system and implied that it may have motivated workers to create fraudulent registrations.

Ken McKoy, ACORN's executive director, blamed most of his group's bogus cards on four temporary employees who have been fired after admitting that they filled out the cards themselves with fake names, addresses and Social Security numbers. The four were among 39 people hired for the drive. McKoy said the workers were paid \$7 an hour and had to meet a daily quota of filled-out cards. 'We warned people that it was a crime to turn in bad cards,' McKoy said.

("Voter Registration Fraud Dogs City", St. Louis Post-Dispatch, September 19, 2003)

Stories like these are present across the country. While it is ACORN's official position that it does not utilize a quota system, the stories of its past employees tell a different tale. By

requiring hourly workers to satisfy a performance standard based on the number of voter registration cards completed, ACORN and its affiliates, including Project Vote, have imposed a quota system that indirectly places a dollar value on voter registration cards.

Whether ACORN and Project Vote have placed a dollar value on each registration card, or imposed a quota per shift worked, the result is the same. An ACORN employee is financially motivated and incentivized to complete voter registration cards whether valid or fraudulent. The worker who is paid by the card will do so for an increased reward, while the worker who is paid hourly, but subject to a quota, will do so to meet his quota and retain his job. Both payment methods are reportedly widespread, and foster an environment where workers may feel compelled to cheat.

Numerous national organizations engage in voter registration drives. Many of these organizations run effective and accurate voter registration drives. For example, both the Democratic Party and the League of Women Voters engage in voter registration drives that result in legal and valid registrations. They do not produce the same abnormally high number of fraudulent voter registration submissions that ACORN does. There are problems endemic to ACORN and its voter registration drives that warrant additional investigation and scrutiny.

I encourage you to initiate a thorough and complete investigation of ACORN regarding the voter registration activities detailed within this letter and the financial improprieties to which I have previously testified. This is a serious issue that requires a meaningful, transparent and complete investigation. I look forward to working with you to provide additional information at subsequent hearings on this matter.

Sincerely,

A handwritten signature in black ink, reading "Heather S. Heidelbaugh". The signature is written in a cursive, flowing style.

Heather S. Heidelbaugh
First Vice President