

REPUBLICAN NATIONAL LAWYERS ASSOCIATION



September 15, 2009

David A. Norcross
Chair

Cleta Mitchell
Co-Chair

Charles H. Bell, Jr.
President

Heather Heidelbaugh
First Vice-President

Charles Cooper
Vice-Chair

Ralph Johnson
*Vice-President,
Judicial Affairs*

James Bopp, Jr.
*Vice-President,
Election Education*

Manuel E. Iglesias
*Vice-President,
Finance*

Douglas Chalmers
*Vice-President,
Membership*

Randy Evans
*Vice-President,
Programming*

Elliot S. Berke
*Vice-President,
Washington Operations*

Robert J. Horn
Founding Chair

Michael B. Thielen
Executive Director

P.O. Box 18965
Washington, DC 20036

Phone: (703) 719-6335

www.RNLA.org

Kenneth M. Donohue, Sr.
Inspector General
U.S. Department of Housing and Urban Development
Office of the Inspector General
451 7th Street S.W.
Washington, DC 20410

Office of Public Integrity
U.S. Department of Justice
Criminal Division
950 Pennsylvania Ave.
Washington, D.C. 20530-0001

RE: Demand for Investigation of the Association of Community Organizations
for Reform Now ("ACORN")

Dear Sirs:

Based upon publicly available documents, records, news reports, and other public information, the undersigned officers and directors of the Republican National Lawyers Association ("RNLA"), on behalf of the organization, do hereby formally request your offices to immediately undertake a thorough investigation of apparent ongoing and serious violations of federal law and regulations by a recipient of substantial federal taxpayer dollars, namely, the Association of Community Organizations for Reform Now and its hundreds of affiliated entities, collectively referred to herein as ACORN.

A July 23, 2009 report issued by the minority staff of the United States House of Representatives Committee on Oversight and Government Reform has identified 361 entities that comprise and are somehow affiliated with ACORN. The organization in its myriad forms has a presence in 120 cities, 43 states and the District of Columbia. *Attachment A, Report of the U.S. House of Representatives Committee on Oversight and Government Reform, "Is ACORN Intentionally Structured As a Criminal Enterprise?" ("House Report")* Over the past decade, ACORN and its various affiliates have received at least \$54,243,305 in federal grants from various programs operated by the Department of Housing and Urban Development. *Attachment B, Spreadsheet Listing Department of Housing and Urban Development Grants Awarded to ACORN and ACORN Affiliates.*

During the past several years, ACORN has been charged with criminal activities involving fraudulent voter registration activities in Nevada and taken preemptive action to avoid charges in Pennsylvania and Washington State. ACORN employees in multiple states have been charged and convicted for committing voter registration fraud.

Within the past week, news reports have published documented evidence of ACORN employees in ACORN offices receiving federal funds engaged in counseling individuals as to how to evade prostitution laws, IRS tax obligations and income reporting requirements, in order to take advantage of programs funded through the Department of Housing and Urban Development ("HUD"), among other illegal actions.

As evidence of ACORN's criminal and fraudulent activities has continued to mount, the United States Census Bureau has terminated its partnership with the organization. *Attachment C, September 11, 2009 Letter from Robert M. Groves to Maude Hurd*. The Census Bureau severed ties with ACORN because it "no longer has confidence that our national partnership agreement is being effectively managed through [ACORN's] many offices." *Attachment C*.

Despite continuing and ongoing evidence of a pattern and practice of potentially illegal activities, ACORN continues to receive millions of dollars in federal grants, contracts, and other payments.

ACORN, by and through a web of organizations and entities and its officers, directors, and employees have engaged in or disregarded evidence of a seeming pattern of criminal and fraudulent conduct that demands a thorough forensic investigation and audit by the Office of the Inspector General of HUD ("OIG-HUD") and the Office of Public Integrity of the Department of Justice ("DOJ"). All federal funding of ACORN should be immediately suspended until a thorough independent audit and investigation is concluded and published, and all wrongdoers subjected to the full prosecution of any and all violations of federal law, including, but not limited to, repayment of all misspent or misappropriated tax dollars.

FACTUAL BACKGROUND

THE FINANCIAL STRUCTURE OF ACORN

The House Report concluded that ACORN is intentionally structured as a criminal enterprise. *Attachment A*. The report identifies 361 ACORN entities. Of the ACORN affiliates at least 45 report having a 501(c)(3) tax-exempt status. ACORN is believed to be a 501(c)(4) entity, but which has neither sought nor received tax exempt status from the Internal Revenue Service ("IRS").

The RNLA has compiled evidence to demonstrate interlocking control by many of the same individuals of multiple ACORN affiliates. *Attachment D, Spreadsheet Listing ACORN Directors and Employees*. Historical data shows that it is not uncommon for one ACORN officer or employee to sit on the board of over 30 ACORN affiliates. *Attachment D*. There have been allegations that ACORN staff lack clearly defined roles and responsibilities, and that ACORN commingles funds between and among its various entities, notwithstanding that such accounting failures violate federal law.

ACORN is well aware of the conflicts posed by these interlocking directorates and lack of clearly defined staff roles and responsibilities. In 2008, certain ACORN board members became aware of the embezzlement of nearly \$1 million in ACORN funds, perpetrated against

ACORN by the brother of Wade Rathke, ACORN's founder. *Attachment E, Article Regarding Dale Rathke Embezzlement.*

The OIG-HUD is obligated to investigate the embezzlement to ascertain whether the theft involved federal dollars from HUD and, if so, to secure repayment of all misappropriated funds. Further, following the 2008 discovery of the theft, Wade Rathke continued to serve as Chief Organizer of ACORN International, LLC. The OIG-HUD should immediately review the accounts of ACORN International to ascertain whether any federal funds have flowed through ACORN to ACORN International and for what purposes.

As a result of the discovery in 2008 by certain ACORN board members of the Dale Rathke embezzlement, attorney Elizabeth Kingsley was retained to conduct an internal review of ACORN operations and to provide the ACORN Board of Directors a report of the internal review, as well as to advise the ACORN Board of Directors as to the steps necessary for ACORN to properly structure its operations. *Attachment F, Elizabeth Kingsley Memorandum.* Kingsley specifically noted that: “inter-corporate relationships need to be formalized. Where services of staff are shared, or are provided on a contractual basis, the relationships should be reduced to writing and reviewed by the board or primary staff person. Those contracts should be policed to ensure that actual operations are consistent with what’s on paper.” As an example of the organizational problems of assuring compliance with federal funding requirements and tax laws, Kingsley noted that “ACORN’s communications director is on the payroll of AISJ, and another AISJ employee manages the building on Canal Street where many different corporations reside. This is not appropriate, although those people might, depending on circumstances, be able to split their time working for two or more corporations.” *See Page 5 of Attachment F.*

The House Report concluded that ACORN and its myriad of affiliates function as one entity. The report also reflected a commingling of funds between tax-exempt ACORN affiliates and other ACORN affiliates engaged in non-exempt activities, including both commercial *and* partisan political campaign activities. *See Attachment A.* Affidavits obtained by the Consumer Rights League reinforce and substantiate these findings. *Attachment G, Consumer Rights League Affidavits.* One affidavit from a former ACORN Housing Corporation (AHC) employee reveals that the ex-employee has “knowledge that AHC has subsidized and believe that AHC continues to subsidize ACORN activities.” *Attachment G.*

The RNLA has compiled evidence supporting the House Oversight and Government Reform Committee conclusion that ACORN has commingled funds between its tax-exempt and non-exempt affiliates. The RNLA has compiled data from Form 990 financial reports that have been filed by various ACORN affiliates over the past decade. The Form 990 requires that each filer list the compensation of its five highest paid independent contractors for “professional services” and for “other services.” An analysis of the financial transactions reported by the various ACORN entities on their tax returns over the past ten years reveals transfers of over \$85 million dollars between and among ACORN affiliates. *Attachment H, Spreadsheet Listing ACORN Affiliate Transfer of Funds.*

This significant transfer of funds between tax-exempt and non-exempt entities gives rise to concern that federal funds made available to ACORN for a specific purpose may have been

diverted to other programs or entities, and may be further evidence of evasion of IRS regulations and prohibitions regarding commercial and/or political activities by exempt organizations. A complete audit and investigation of all ACORN funds and entities by the OIG-HUD is absolutely necessary to trace all federal funding of ACORN to ascertain its use and disposition. An investigation by DOJ is further necessary to pursue evidence of illegal activities occurring in ACORN offices.

VOTER REGISTRATION FRAUD

ACORN and its employees have engaged in widespread voter registration fraud. The leadership of ACORN has created a system which incentivizes workers to submit fraudulent voter registration applications. The RNLA has documented and submitted information to Congress regarding ACORN's ongoing commission of voter registration fraud in multiple states. *Attachment I, July 2, 2009 Letter from Heather Heidelbaugh to Rep. Jerrold Nadler. Attachment J, July 24, 2008, Testimony of Cleta Mitchell before House Judiciary Committee, requesting DOJ Investigation of ACORN.*

ACORN entered into an agreement with the King County Washington District Attorney to avoid criminal prosecution of the organization after six ACORN voter registration canvassers were charged with filing false information on voter registration and one ACORN supervisor was charged with providing false information and making a false statement to a public official. ACORN also “agreed to pay King County \$25,000 for its investigative costs and acknowledged that the national organization could be subject to criminal prosecution if fraud occurs again.” *Attachment K, Article Regarding King County Settlement, Attachment L, King County Settlement and Compliance Agreement.*

Additionally, ACORN employees have been charged and convicted for submitting fraudulent voter registration applications:

- ∄ In Ohio, a former ACORN canvasser was charged with tampering with records, false registration and illegal voting for having registered to vote nine times in Cuyahoga County under false names. *Attachment M, Article Regarding Ohio ACORN Voter Registration Fraud.*
- ∄ In Michigan a former ACORN employee and convicted felon has been charged with felony forgery for having submitted false voter registration forms. *Attachment N, Press Release Regarding Michigan ACORN Voter Registration Fraud.*
- ∄ In Missouri an ACORN employee pleaded guilty to fraud charges for submitting fraudulent voter registration cards. *Attachment O, Press Release Regarding Missouri ACORN Voter Registration Fraud.*
- ∄ Seven ACORN canvassers have been charged in Allegheny County, Pennsylvania for forging signatures and submitting fraudulent applications in connection with the 2008 election cycle. *Attachment P, Article Regarding Pennsylvania ACORN Voter Registration Fraud.*

€ September 2009, charges were brought in Miami-Dade County against eleven former ACORN employees. The former ACORN workers have been charged with third degree felonies for submitting 888 fraudulent voter registration cards. *Attachment Q, Article Regarding Florida ACORN Voter Registration Fraud.*

ACORN employees have also been charged for implementing a voter registration system that incentivizes workers to submit fraudulent voter registration applications. In Nevada, ACORN and two former employees have been charged for operating a voter registration drive that paid individuals on a per registration basis. The Nevada charges involved a program ACORN organized called “Blackjack” which provided a bonus to ACORN employees that completed twenty-one voter registration applications per shift. Christopher Edwards, the former Las Vegas Field Director pled guilty and has agreed to testify against ACORN and his former colleague. *Attachment R, Article Regarding Nevada ACORN Charges and Guilty Plea.*

ACORN and its employees have engaged in a pattern of fraudulent activity which directly impacts the integrity of our nation’s electoral system. This pattern of fraudulent voter registration as well as partisan campaign activities engaged in by ACORN charitable entities demand investigation by DOJ and a determination by both DOJ and OIG-HUD regarding possible criminal prosecution and termination of all federal funding, as well as restitution to the taxpayers of funds that may have been misappropriated and otherwise used for ACORN's unlawful voter registration or political activities.

**PROVIDING COUNSEL IN SUPPORT OF
POTENTIAL CRIMINAL ACTIVITY, DEFRAUDING THE IRS AND FRAUDULENT
PARTICIPATION IN HUD FUNDED PROGRAM(S)**

On September 10, 2009 a documentary filmmaker released footage showing ACORN employees in ACORN’s Baltimore, Maryland office providing counsel to two individuals, one posing as a law student and the other a prostitute, on how to obtain assistance from ACORN in receiving a home loan for a house of prostitution. The ACORN employees advised the two to falsify tax information to conceal the prostitution and qualify for federal assistance. The ACORN employee(s) further directed them to participate in a federally funded (HUD/ACORN) seminar intended to assist first time home buyers, and how to participate while avoiding detection of the criminal enterprise described to the ACORN workers by the filmmakers. See www.biggovernment.com, *Attachment S, Baltimore ACORN Investigation Transcript.*

This scenario was repeated in the Washington, DC ACORN office. Again, two ACORN employees counseled the couple on how to submit false tax paperwork concealing the prostitution in order to participate in HUD financed programs designed to assist low-income home buyers. The video footage was posted on www.biggovernment.com on September 11, 2009. The transcript again shows ACORN employees offering tax advice to a couple claiming their intent to purchase a house in order to establish a brothel staffed by underage illegal alien prostitutes. *Attachment T, Washington DC ACORN Investigation Transcript.*

On September 12, 2009 ACORN's Chief Organizer Bertha Lewis denounced the videos and claimed that "[t]his recent scam, which was attempted in San Diego, Los Angeles, Miami, New York, Philadelphia to name a few places, had failed for months before the results we've all recently seen." *Attachment U, Statement of Bertha Lewis.*

However, on September 14, 2009 www.biggovernment.com released a video in which the exact scenario of ACORN employees counseling the couple on tax avoidance and other illegal acts was repeated in the Brooklyn offices of ACORN. *Attachment V, New York City ACORN Investigation Transcript.*

These repeated instances demonstrate that HUD funding is being used by ACORN for unlawful purposes and OIG-HUD must conduct a thorough national audit of all funds flowing from HUD to ACORN. DOJ should investigate whether ACORN, its officers, employees and agents are fostering illegal enterprises in and through its network of entities and organizations.

POTENTIAL VIOLATIONS OF FEDERAL LAW AND REGULATIONS

Numerous federal laws and regulations may have been violated by ACORN and its employees. Potential violations include, but are not limited to:

- € Federal False Claims Act – 31 U.S.C. § 3729-3733 – The False Claims Act prohibits knowingly presenting or causing to be presented to the “United States Government a false or fraudulent claim for payment or approval.” Due to ACORN’s intentionally complicated financial structure, commingling of funds and lack of clearly defined staff roles and employees, activities and projects, ACORN would be hard pressed to demonstrate that it has utilized all federal funds received only for the purposes for which the funding was made available and only for clearly lawful activities. Any claim(s) by ACORN for receipt of federal funding must be matched by OIG-HUD with the financial and accounting records to demonstrate that the funds were used for the intended and legal purposes.
- € False Statements Act – 18 U.S.C. § 1001 – The False Statements Act provides that: “whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully— (1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact; (2) makes any materially false, fictitious, or fraudulent statement or representation; or (3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry” shall be subject to a fine and possibly imprisoned for up to five years.
- € 18 U.S.C. § 1002 – Section 1002 similarly states: “Whoever, knowingly and with intent to defraud the United States, or any agency thereof, possesses any false, altered, forged, or counterfeited writing or document for the purpose of enabling another to obtain from the United States, or from any agency, officer or agent thereof, any sum of money, shall be fined under this title or imprisoned not more than five years, or both.”

- € Debarment and Suspension (Non-Procurement) – 2 C.F.R. Part 180 – The OMB guidelines for government-wide debarment and suspension set forth a procedure to be implemented whereby a grant recipient may be barred from continuing to receive grants or contracts from the federal government. Convictions of an organization’s employees may be imputed to the organization. The procedure is to be used in the most serious of cases. Evidence of ACORN’s criminal and fraudulent activity surely warrants such investigation.

In addition to the previous potential violations the HUD Office of the Inspector General has an interest in preventing waste, fraud, and abuse. ACORN and its various affiliates have received over \$54 million dollars of grant money from various Housing and Urban Development programs. There is clear and documented evidence that ACORN employees have engaged in criminal and fraudulent activity in the course of their employment warranting the investigation by OIG-HUD as to the correct, accurate, and lawful use of all federal funding of ACORN.

REQUEST FOR INVESTIGATION

According to published report after published report, ACORN has created a national enterprise which supports and promotes unlawful and reprehensible conduct, funded with millions of dollars from hardworking American taxpayers.

Every allegation of illegal conduct by ACORN is *always* defended by ACORN leaders as "isolated." And yet it is apparent that ACORN is engaged in a pattern of fraudulent and criminal behavior. The House Report concluded that ACORN has intentionally structured itself as a criminal enterprise. The RNLA has compiled evidence that bolsters such a conclusion. ACORN has deliberately created a complex web of interlocking entities transferring funds between and among its affiliates, employees and projects – which demand the resources of OIG-HUD to audit and scrutinize.

There is also widespread documented evidence that ACORN has engaged in and promoted voter registration fraud through programs conducted and sponsored by ACORN organizations in receipt of federal funding. Former ACORN employees have been charged with and convicted of these offenses in several states. ACORN as an organization has been charged with violating Nevada state election laws and entered into a settlement agreement with prosecutors in the state of Washington to avoid similar charges.

ACORN employees in Maryland and the District of Columbia are seen and heard counseling individuals as to how to secure federal housing assistance through evading IRS obligations and falsifying tax filings.

The varied and diverse forms of potential and actual criminal conduct and fraudulent behavior linked to ACORN highlight the need for federal investigation. ACORN has created a system which fosters such activity. The United States Census Bureau has “lost confidence” in ACORN, and has terminated its relationship with the organization.

Only with a thorough investigation of ACORN by the appropriate and responsible agencies of the federal government can ACORN be held to account for its expenditures of more than \$50 million taxpayer dollars.

All statements in this letter are made on the basis of our information and belief and our good faith reliance upon publicly available documents, articles and records, including criminal enforcement actions in several states.

Please contact any one of the undersigned if we can provide further information. Thank you for your attention to this serious matter.

Respectfully Submitted on behalf of the
Republican National Lawyers Association,

David A. Norcross

Cleta Mitchell

Chuck Bell

Heather S. Heidelbaugh

David A. Norcross, Chair
Cleta Mitchell, Co-Chair
Charles H. Bell, Jr., President
Heather Heidelbaugh, Vice-President

Contact Information:

Michael Thielen
Executive Director
Republican National Lawyers Association
P.O. Box 18965
Washington, DC 20036
Phone: (703) 719-6335