

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

PROJECT VOTE/VOTING FOR)	
AMERICA, INC.,)	
)	
Plaintiff/Counterclaim Defendant,)	
)	
vs.)	
)	
ASHAWNITA MONCRIEF,)	
)	Case No. 09-cv-01109-RWR
Defendant/Counterclaim Plaintiff,)	
)	
JOHN DOE,)	
)	
Defendant,)	
)	
vs.)	
)	
ASSOCIATION OF COMMUNITY)	
ORGANIZATIONS FOR REFORM NOW, INC.,)	
)	
Counterclaim Defendant.)	
)	

COUNTERCLAIM OF DEFENDANT
ASHAWNITA MONCRIEF

Defendant Ashawnita MonCrief states for her counterclaim against Project Vote\Voting for America, Inc. (“Project Vote”) and the Association of Community Organizations for Reform Now (“ACORN”) as follows:

Parties

1. Defendant Ashawnita (“Anita”) MonCrief is a citizen of Maryland residing in the city of Fort Washington.

2. Project Vote is a corporation incorporated under the laws of Louisiana, upon information and belief, and which maintains an office located at 739 8th Street, S.E., Washington D.C. 20003.

3. ACORN is a corporation incorporated under the laws of Arkansas, upon information and belief, and which maintains an office at 739 8th Street, S.E., Washington D.C. 20003.

Jurisdiction and Venue

4. This Court has subject matter jurisdiction over this counterclaim because it is between citizens of different states and the amount in controversy exceeds \$75,000. 28 U.S.C. § 1332(a)(1)

5. Subject matter jurisdiction also exists because Project Vote has asserted claims that arise under federal law, 28 U.S.C § 1331, and this counterclaim arises from the “same case or controversy” and derives from the same nucleus of facts. 28 U.S.C. § 1367(a).

6. Venue is proper pursuant to 28 U.S.C. § 1391(a)-(b).

7. This Court has personal jurisdiction over Project Vote in that Project Vote regularly does business in the District of Columbia, maintains an office in the District of Columbia, and has availed itself of this Court in this matter. Fed. Civ. P. Rule 4(k)(1)(A), D.C. Code §§ 13-422, 13-423.

8. This Court has personal jurisdiction over ACORN in that ACORN regularly does business in the District of Columbia, maintains an office in the District of Columbia, and this cause of action arises from its contacts in the District in Columbia. Fed. Civ. P. Rule 4(k)(1)(A), D.C. Code §§ 13-422, 13-423.

9. This Court also has personal jurisdiction over ACORN because Project Vote is the alter ego of ACORN. Therefore, because Project Vote is subject to personal jurisdiction in the District of Columbia, ACORN is as well.

Facts

10. MonCrief was a Project Vote employee and served as a Development Associate from October 2005 until January 11, 2008.

11. Project Vote is one of many affiliate entities controlled by ACORN. Together, many of these entities are referred to as the COUNCIL of organizations.

12. There is overlap and exchange of employees and officers between ACORN and Project Vote. Many employees of Project Vote simultaneously serve as staff members of ACORN and/or other affiliated organizations of ACORN.

13. Before she began working at Project Vote, MonCrief believed she was applying for a staff position with ACORN. She sent her resume to an ACORN employee, at an ACORN email address, and interviewed with an ACORN official. She was subsequently offered a job in the political operations department of ACORN. However, upon arriving at the ACORN office for her first day of work, MonCrief was informed that a decision had been made to have her employed instead by an organization called Project Vote.

14. On information and belief, the decision to hire MonCrief at Project Vote was made by ACORN.

15. Moreover, while serving as a Development Associate at Project Vote, MonCrief was simultaneously considered to be a member of the “political operations” staff of ACORN. At the outset of her employment with Project Vote MonCrief was issued an

ACORN email address (polnatdev2@acorn.org). It was not until July of 2007 that MonCrief was given a Project Vote email address (devassociate@projectvote.org) as well.

16. ACORN and Project Vote share office space in both Louisiana and Washington, D.C.

17. Citizens Consulting, Inc. (“CCI”) which like Project Vote is an affiliated entity of ACORN and member of the COUNCIL, handles all accounting, payroll, and other administrative matters for both ACORN and Project Vote.

18. On information and belief, ACORN has controlled Project Vote’s financial transactions.

19. On information and belief, ACORN has controlled the accounting for and receipt of contributions at Project Vote.

20. On information and belief, ACORN has controlled the authorization of and allocation of Project Vote expenditures.

21. On information and belief, ACORN and Project Vote have regularly engaged in transactions, financial and other, which are not conducted at arms-length.

22. On information and belief, both Project Vote and ACORN have failed to maintain proper corporate formalities, including failing to take and/or record minutes, and board meetings have been infrequently held.

23. Project Vote is, or has been at times relevant to this lawsuit, operated as a mere division of ACORN.

MonCrief's Whistle-blowing Activities

24. Beginning in the summer of 2008 and continuing through the present, MonCrief has engaged in an effort to shed light on unethical, inappropriate, and potentially illegal activities conducted by both Project Vote and ACORN while MonCrief was an employee of Project Vote.

25. MonCrief initially attempted to contact members of the press, including Stephanie Strom of the New York Times, to share her information. MonCrief participated in ongoing discussions with Strom, contributing information that Strom used in various ACORN exposes during 2008. However, just weeks before the 2008 presidential elections, Strom told MonCrief that her editors had asked her not to follow up on or print damaging information regarding ACORN due to its potentially deleterious effects (Strom used the term “game-changer”) on the electoral success of then-candidate Barack Obama.

26. MonCrief, also a supporter of Barack Obama, nonetheless persisted in her efforts to bring her information to the public. She created a personal blog for herself in November of 2008 (<http://anitamoncrief.blogspot.com>) and began regularly posting entries to that blog.

27. MonCrief's blog posts primarily contain political speech about current events, issues, candidates, public figures, and organizations. They also include personal, biographical reflections. Many of MonCrief's blog posts have been critical of what she viewed as unethical, inappropriate, and potentially illegal activities on the part of Project Vote and ACORN, as well as other ACORN affiliated entities such as Citizen Services, Inc. (“CSI”), and CCI.

28. MonCrief also published many of her blog posts on other websites such as Blog Town Hall (<http://anitamoncrief.blogtownhall.com>), The Next Right

(<http://thenextright.com>), Big Government (<http://biggovernment.com>), Publius' Forum (www.publiusforum.com), and Hot Air (<http://hotair.com>).

29. MonCrief has published articles for the DC Examiner (www.examiner.com) that are critical of ACORN and Project Vote and accuse them of unethical, inappropriate, and potentially illegal activities.

30. In addition to her blogging and other writing, MonCrief frequently engages in dialogue and debate relating to Project Vote and ACORN via other forms of media, including Twitter and Facebook.

31. MonCrief has appeared on the Fox News Channel for interviews and has been critical of ACORN and Project Vote in such appearances.

32. MonCrief has appeared on various nationally syndicated radio programs and has been critical of ACORN and Project Vote in such appearances.

33. On October 29, 2008, MonCrief testified in a lawsuit filed in Pennsylvania against both ACORN and Project Vote alleging various forms of wrongdoing on their part.

MonCrief's testimony covered a variety of topics, including ACORN's control over its affiliated entities, inappropriate political activities undertaken by Project Vote and ACORN, and various issues related to voter registration fraud.

34. On March 19, 2009, portions of MonCrief's testimony from the Pennsylvania lawsuit were read into the record as testimony before the Subcommittee on the Constitution of the Judiciary Committee of the United States House of Representatives. That Committee was considering an investigation into potentially illegal activities on the part of ACORN.

MonCrief's testimony again indicated unethical and potentially illegal activities on the part

of ACORN and Project Vote, including potential violations of the United States Internal Revenue Code and the Federal Election Campaign Act.

35. In July of 2009, the Committee of Oversight and Governmental Reform of the United States House of Representatives issued a report on ACORN titled “Is ACORN Intentionally Structured As a Criminal Enterprise?,” which accused ACORN of multiple violations of federal law. The report relied in part on information provided by MonCrief, who had previously met with members of the Committee to discuss wrongdoing on the part of ACORN and Project Vote.

36. On June 17, 2009, Project Vote filed its current complaint against MonCrief in the United States District Court for the District of Columbia. Project Vote purports to seek recovery for approximately \$2,700 relating to MonCrief’s alleged misuse of a company credit card in 2007 and failure to pay back all of a cash advance MonCrief allegedly received from Project Vote during her employment.

37. Project Vote’s sole basis for bringing these claims in federal court (not counting their minimal contribution to Project Vote’s claim for \$5 million in economic damages, which implicates diversity jurisdiction) is supplemental jurisdiction—their supposed “common nucleus of operative fact” with Project Vote’s claims regarding MonCrief’s email and blog postings, which are discussed below.

38. Project Vote also brings claims against MonCrief, based purportedly on her spring 2009 blog posts and emails critical of ACORN and CSI, among others.

39. Project Vote asserts causes of action based upon trademark violations, trespass to chattels, misappropriation of trade secrets, interference with business expectancies, conversion, misrepresentation, breach of contract, and civil conspiracy.

40. Project Vote prays for damages over \$5 million as to its trade secrets, tortious interference, trespass to chattels, and civil conspiracy claims. Moreover, Project Vote seeks treble damages related to its trademark claims.

41. Project Vote's theory of damages on its tortious interference claims is that MonCrief attempted to "embarrass Project Vote" and "drive a wedge" between itself and ACORN, CSI, Kevin Whelan, Zach Polett, and donors to Project Vote.

42. Project Vote has not identified any contribution it has lost, any financial loss that it has sustained with respect to its contributors, or any reputational or financial damage it has sustained with its own admittedly affiliated organizations (ACORN and CSI) as a proximate cause of MonCrief's email or posting.

43. Contemporaneously with its Complaint, Project Vote filed a motion seeking leave from this Court to undertake emergency discovery of MonCrief in order to determine what third parties might be providing MonCrief with damaging information about Project Vote.

Count I -- Alter Ego Liability

44. Defendant incorporates by reference paragraphs 1 through 43 as though fully set forth herein.

45. ACORN and Project Vote share a unity of interest, ownership, and control to the extent that they do not have separate personalities or identities.

46. Project Vote is a mere instrumentality of ACORN as ACORN has exercised complete domination and control over Project Vote.

47. Failing to pierce the corporate veil of Project Vote to reach ACORN would permit ACORN to hide behind the corporate fiction of Project Vote to shield itself from liability for its wrongful actions.

48. ACORN has attempted to use its allegedly separate existence from Project Vote to manufacture a claim that by posting critical emails or blog entries, MonCrief has (or somehow could) damage the allegedly arms-length relationships between ACORN, CSI, and Project Vote. Under this damage theory, such reputational or financial harms would proximately cause loss to Project Vote. But in reality, this is impossible because Project Vote is an organization that, like its sibling CSI, is a mere instrumentality of ACORN. Thus, ACORN has attempted to use the fiction of separate corporate existences to create causes of action that could otherwise not be pled.

49. ACORN and Project Vote are alter egos of one another and any liability on the part of Project Vote for abuse of process in this litigation must also be attributed to ACORN.

Count II – Abuse of Process

50. Defendant incorporates by reference paragraphs 1 through 49 as though fully set forth herein.

51. ACORN, Project Vote, and CSI are alter entities of one another and have attempted to use the fiction of independent corporate identities to create the possibility of damages and to manufacture a good faith basis for this lawsuit.

52. The primary purposes and intentions of this lawsuit against MonCrief are not to seek recovery and redress for the causes pled, but (a) to silence MonCrief's criticism and pressure her to cease her whistle-blowing activities that shed light on wrongdoing on the part of Project Vote, ACORN, and other affiliated organizations of ACORN, and (b) to obtain information from MonCrief as to the current and former sources of her information in order to discover their identity and engage in similar retaliation.

53. ACORN and Project Vote have no legal right to silence MonCrief's criticism or to prohibit her from exercising her First Amendment right to convey her message and ideas.

54. ACORN and Project Vote have no legal right to prohibit MonCrief from participating in various investigations of Project Vote and ACORN, and have no legal right to prohibit her from engaging in public discourse related to wrongdoing on the part of ACORN and Project Vote.

55. ACORN and Project Vote have no legal right to compel MonCrief to disclose the sources of her information.

56. On information and belief, prior to filing this lawsuit, ACORN and/or Project Vote terminated staff members whom they suspected of providing information to MonCrief, but believe that other sources of information remain in the organization.

57. ACORN and Project Vote are using this lawsuit in an effort to identify these sources of information.

58. ACORN and Project Vote's lawsuit is manifestly improper because it attempts to pervert the judicial process to achieve ends (namely, silencing of MonCrief's criticism and forcing her to disclose her sources) which they cannot otherwise legally or regularly compel, but which are also collateral to the relief (payment of over \$5 million, presumably accounting for unidentified, unalleged lost contributions and MonCrief's alleged outstanding loan and credit card balance) which they purport to seek.

59. MonCrief has suffered damages as a result of Project Vote's and ACORN's abuse of process, including but not limited to the costs associated with defending herself against Project Vote's lawsuit and the chilling of her First Amendment rights.

WHEREFORE, Defendant MonCrief prays for:

1. Damages in excess of \$100,000;
2. Dismissal of Project Vote's complaint with prejudice.

Respectfully submitted,

GRAVES BARTLE MARCUS & GARRETT LLC

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