

U.S. House of Representatives  
**Committee on Oversight and Government Reform**  
Darrell Issa (CA-49), Ranking Member



**Is ACORN Intentionally Structured As a  
Criminal Enterprise?**

Staff Report  
U.S. House of Representatives  
111<sup>th</sup> Congress  
Committee on Oversight and Government Reform  
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## I. Executive Summary

*We should be unfaithful to ourselves if we should ever lose sight of the danger to our liberties if anything partial or extraneous should infect the purity of our free, fair, virtuous, and independent elections.*

*President John Adams, Inaugural Address, 1797*

The Association of Community Organizations for Reform Now (ACORN) has repeatedly and deliberately engaged in systemic fraud. Both structurally and operationally, ACORN hides behind a paper wall of nonprofit corporate protections to conceal a criminal conspiracy on the part of its directors, to launder federal money in order to pursue a partisan political agenda and to manipulate the American electorate.

Emerging accounts of widespread deceit and corruption raise the need for a criminal investigation of ACORN. By intentionally blurring the legal distinctions between 361 tax-exempt and non-exempt entities, ACORN diverts taxpayer and tax-exempt monies into partisan political activities. Since 1994, more than \$53 million in federal funds have been pumped into ACORN, and under the Obama administration, ACORN stands to receive a whopping \$8.5 billion in available stimulus funds.

Operationally, ACORN is a shell game played in 120 cities, 43 states and the District of Columbia through a complex structure designed to conceal illegal activities, to use taxpayer and tax-exempt dollars for partisan political purposes, and to distract investigators. Structurally, ACORN is a chess game in which senior management is shielded from accountability by multiple layers of volunteers and compensated employees who serve as pawns to take the fall for every bad act.

The report that follows presents evidence obtained from former ACORN insiders that completes the picture of a criminal enterprise.

**First, ACORN has evaded taxes, obstructed justice, engaged in self dealing, and aided and abetted a cover-up of embezzlement by Dale Rathke, the brother of ACORN founder Wade Rathke.**

Committee investigators have established that a violation of corporate duties led to gross abuses of tax laws and other federal regulations. According to documents obtained from insiders, ACORN was made aware of its lax management structure but chose to ignore the problems and continue a cover-up of criminal activity. By refusing to report Dale Rathke's embezzlement of \$948,607.50 as an excess benefit transaction, ACORN appears to have violated the Internal Revenue Code. ACORN's cover-up of the embezzlement for more than eight years would also constitute obstruction of justice.

**Second, ACORN has committed investment fraud, deprived the public of its right to honest services, and engaged in a racketeering enterprise affecting interstate commerce.**

Committee investigators have documented ACORN's use of charitable contributions against donor intent, typified by ACORN's secret transfer of donor funds to recover losses due to embezzlement. Moreover, ACORN comingles the accounts of federally-funded affiliates with politically-active affiliates and lacks sufficient oversight to safeguard taxpayer and donor interests, even though it receives millions of federal dollars.

ACORN's purposeful lack of quality control translates into the employment of convicted felons and other suspect persons. Through a strategy of providing financial incentives to employees who meet voter registration quotas, ACORN conducts voter drives that routinely produce fraudulent registrations. In fact, ACORN's employment practices have the intentional effect of encouraging voter registration fraud while linking criminal culpability to the lowest-level employees rather than the directors who contrive the illegal schemes.

To date, nearly 70 ACORN employees have been convicted in 12 states for voter registration fraud, though no federal charges have been filed against ACORN's directors. In fact, Pennsylvania judge Richard Zoller – after holding a low-level ACORN employee liable for election law violations – noted that “somebody has to go after ACORN.”

**Third, ACORN has committed a conspiracy to defraud the United States by using taxpayer funds for partisan political activities.**

Committee investigators have unearthed documentation that ACORN and its affiliates conducted meticulous research that fed aggressive campaign initiatives designed to elect Democratic candidates in targeted races. ACORN forged both formal and informal connections with former Illinois Governor Rod Blagojevich, Ohio Senator Sherrod Brown and President Barack Obama, among others. Each of these campaigns received financial and personnel resource contributions from ACORN and its affiliates as part of a scheme to use taxpayer monies to support a partisan political agenda. These actions are a clear violation of numerous tax and election laws.

Documents contained in this report reveal ACORN's political agenda. ACORN's 2005-2007 Strategic Plan states that “just as important as . . . mobilizing existing progressive voters, ACORN and similar groups actually create new progressive voters.” In the same document, ACORN acknowledges that its “issue campaigns play the dual role . . . of attracting new members, and educating or politicizing existing members.” One particular issue where ACORN claims success is “fighting key elements of the national Republican program.”

In other documents, ACORN affiliates take credit for the election of former-Illinois Governor Rod Blagojevich. In the 2006 year-end report of ACORN affiliate Service Employees International Union (SEIU) Local 880, efforts to elect Blagojevich and advance partisan political agendas are called “flawless.”

Labor organizations, unions, and other tax-exempt entities stretched Chicago-style political manipulation and back room schemes beyond Illinois to other state-wide and national campaign efforts. In the State of Ohio, where ACORN directors drafted a political plan contained in this report, overt partisan goals are enumerated. The ACORN Ohio Political Plan states:

*ACORN will target three competitive Ohio congressional districts as well as a half dozen state rep seats nested within the districts. Our electoral work will mobilize and educate voters [and] our paid professional canvass will execute tightly managed Voter ID and GOTV canvasses moving our core constituency of base and swing voters to the polls to vote for the candidates who most closely align with a progressive Working Families Agenda.*

Moreover, documents provided by former ACORN employees and contained in this report demonstrate the degree to which ACORN and ACORN affiliates organized to elect President Barack Obama in 2008.

**Fourth, ACORN has submitted false filings to the Internal Revenue Service (IRS) and the Department of Labor, in addition to violating the Fair Labor Standards Act (FLSA).**

Committee investigators have tracked ACORN's numerous failures to comply with federal laws that required the payment of excise taxes on excess benefits to Dale Rathke. SEIU Local 100 – under the direction of ACORN founder Wade Rathke – filed bogus reports with the Labor Department in order to conceal embezzlement. ACORN violated the overtime and record-keeping provisions of FLSA. All of these fraudulent acts would constitute a violation of 18 U.S.C. § 1001 by presenting false documents to the United States government.

**Fifth, ACORN falsified and concealed facts concerning an illegal transaction between related parties in violation of the Employee Retirement Income Security Act of 1974 (ERISA).**

Committee investigators have concluded that ACORN plundered employee benefits and violated fiduciary responsibilities under ERISA by relieving corporate debts through prohibited loans to a related party. Moreover, ACORN affiliates lack independent control of their own assets and maintain shoddy accounting practices that serve to hide ACORN's secret and illegal use of monies.

ACORN conspired to conceal information concerning prohibited transactions from its board in violation of its corporate charter. ACORN's termination of board members who sought to uncover its illegal activities perpetuates a cover-up at the expense of adherence to its own bylaws.

The evidence contained in this report proves that ACORN's stated purpose to promote grassroots civic participation has been perverted through fraudulent and illegal acts. The weight of evidence against ACORN and its affiliates is astounding. This syndicate of tax-exempt organizations has coordinated and implemented a nation-wide strategy of tax fraud, racketeering, money-laundering and manipulating the American electorate.

Scrutiny is essential to lift a dark cloud of suspicion from nonprofit community organizations; to bring to justice the responsible parties who have heretofore been shielded from prosecution by ACORN's obscure organizational structure; to protect the American system of democratic self-government from manipulation and disruption; and to free our political climate from the choke of corruption that threatens to strangle free and fair elections.

## II. Findings

- Piercing ACORN's corporate veil in order to determine which individuals own or control the organization is a necessary step for preventing waste, fraud and abuse of federal funds in the hands of corporate control.
- When ACORN commits bad acts, the individuals who are harmed are the low to moderate income workers whom ACORN was founded to protect.
- Dale Rathke's embezzlement and ACORN's subsequent cover-up are violations of ACORN's corporate duties and constitute fraud. The identities and roles of those involved must be disclosed.
- ACORN failed to observe its corporate articles by loaning money without proper legal documentation, by ignoring its duties under the corporate bylaws, by misusing corporate funds, and by terminating its members without honoring the process setup in its Articles of Incorporation. ACORN has not complied with IRS filing requirements or ERISA.
- ACORN's inadequate management structure nurtured a breakdown of corporate integrity, encouraged improper political walls, fostered violations of the tax code, cultivated the illegal use of federal funds and supported an inadequate response to corporate embezzlement. ACORN accepts federal grant funds yet lacks any whistleblower policy, fails to comply with IRS laws and lacks an ongoing relationship with duly qualified legal counsel. Project Vote lacks hiring standards and routinely employs convicted felons. The executive directors of several ACORN affiliates lack sufficient control of their own funds, ACORN affiliates lack independent boards that they can report to, and directors wear hats that jeopardize their ability to act solely in the interests of their organizations. ACORN is responsible for Project Vote's fraudulent registrations because ACORN authorizes the selection of members engaged in voter registration.

- An essential aspect of Project Vote, CCI, Citizens Services Inc. (“CSI”), Communities Voting Together (“CVT”), and other ACORN affiliated 501(c)(3)s is to promote desirable governmental policies consistent with its objectives through legislation.
- ACORN and its affiliates cannot delineate their 501(c)(3) work from their non-501(c)(3) work. Ignoring ACORN’s nonprofit protections reveals the same individuals made strategic decisions about which regions do 501(c)(3) versus non-501(c)(3) voter registration work.
- Lobbying is a substantial part of what ACORN does. It has endorsed Senator Sherrod Brown (D-OH), Representative Albert Wynn (D-MD), and Representative Donna Edwards (D-MD). ACORN keeps donor records from the Clinton, Kerry and Obama campaigns with the intent to engage in prohibited communications. ACORN receives federal funding yet engages in improper lobbying. ACORN and its nonprofit affiliates do not have separate accounts. Neither ACORN nor any of its affiliates have properly reported their political activities to the IRS. These harms fly under the legal radar because the IRS rarely checks for compliance. The “no substantial part” test is rarely enforced and the accounts of ACORN and its affiliates are illegally commingled.

### III. The ACORN Hangs from Many Branches

The Association of Community Organizations for Reform Now (“ACORN”) was founded by Wade Rathke in 1970 in Little Rock, Arkansas.<sup>1</sup> Since that time, ACORN has grown large. It now has hundreds of affiliates in 41 states and registered 1.3 million people to vote in the 2008 election.<sup>2</sup>

ACORN has gained a reputation in the news because of assertions that it committed voter registration fraud, embezzled funds, mismanaged its operations and engaged in political activity.

#### A. Voter Registration Fraud

One-third of the 1.3 million voter registration cards turned in by ACORN in 2008 were invalid.<sup>3</sup> ACORN has been investigated for voter registration fraud in Nevada, Connecticut, Missouri, Ohio and North Carolina.<sup>4</sup> ACORN has faced a series of alleged inadequacies and indictable offenses: In 1998, an Arkansas ACORN employee was arrested for falsifying voter registration forms.<sup>5</sup> In 1999, Philadelphia authorities found

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<sup>1</sup> Claire Suddath, *A Brief History of ACORN*, TIME, Oct. 14, 2008, available at <http://www.time.com/time/politics/article/0,8599,1849867,00.html> (last visited May 11, 2009).

<sup>2</sup> *Id.*

<sup>3</sup> John Fund, *An Acorn Whistleblower Testifies in Court*, WALL STREET J., Oct. 30, 2008, available at <http://online.wsj.com/article/SB122533169940482893.html> (last visited May 11, 2009).

<sup>4</sup> Lara Jakes Jordan, *Officials: FBI investigates ACORN for voter fraud*, AP, Oct. 16, 2008, available at [http://www.breitbart.com/article.php?id=D93RNJOG2&show\\_article=1](http://www.breitbart.com/article.php?id=D93RNJOG2&show_article=1) (last visited May 7, 2009).

<sup>5</sup> Suddath, *supra* note 1.

hundreds of fraudulent registration forms by ACORN.<sup>6</sup> In October 2008, ACORN's Nevada offices were raided by federal agents.<sup>7</sup> In May 2009, Nevada officials charged ACORN, its regional director, and its Las Vegas field director with voter registration fraud.<sup>8</sup> Several days later, seven ACORN employees were charged in Pittsburgh for voter registration fraud.<sup>9</sup>

The *Wall Street Journal*, quoting Nevada Attorney General Catherine Cortez Masto, reported "Acorn's [sic] training manuals 'clearly detail, condone and . . . require illegal acts,' such as requiring its workers to meet strict voter-registration targets to keep their jobs."<sup>10</sup> Fred Voigt, Philadelphia's deputy election commissioner, claimed ACORN "submitted at least 1,500 fraudulent registrations last fall."<sup>11</sup> According to Lake County Elections Board administrator Ruthann Hoagland, ACORN submitted at least 2,100 fraudulent registrations in Indiana.<sup>12</sup> According to the *Wall Street Journal*, prosecutors fined ACORN and entered into a deal requiring ACORN to either increase its oversight or risk criminal prosecution after several Washington state-based ACORN employees were convicted of voter registration fraud in 2007.<sup>13</sup> During the 2008 election, ACORN was investigated in fourteen other states.<sup>14</sup> In June 2009, judge Richard Zoller, after holding an ACORN employee liable for election law violations, stated, "[s]omebody has to go after ACORN[.]"<sup>15</sup>

## **B. Embezzlement**

According to a July 9, 2008 article in the *New York Times*, Dale Rathke, the brother of ACORN's founder, Wade Rathke, "embezzled nearly \$1 million from Acorn [sic] and affiliated charitable organizations in 1999 and 2000."<sup>16</sup> The *Times* reported Dale Rathke embezzled \$948,607.50, "carried as a loan on the books of Citizens Consulting Inc. ["CCI"], which provides bookkeeping, accounting and other financial

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<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> John Fund, *More Acorn Voter Fraud Comes to Light: Congressional Democrats still want the group to be eligible for federal money*, WALL STREET J. May 9, 2009, available at <http://online.wsj.com/article/SB124182750646102435.html> (last visited May 11, 2009).

<sup>9</sup> *Id.* See also Joe Mandak, *7 Pa. ACORN workers facing voter-form charges*, AP, May 7, 2009, available at: [http://www.breitbart.com/article.php?id=D981H0JG3&show\\_article=1](http://www.breitbart.com/article.php?id=D981H0JG3&show_article=1) (last visited July 7, 2009).

<sup>10</sup> *Id.*

<sup>11</sup> Fred Voigt, *Economic Hard Times; Voter Registration Scandal; Global Economy Rescue; Campaign Trail Update; Water Charity; Resale Shop Comeback*, CNN NEWS TRANSCRIPT, Oct. 15, 2008, available at <http://transcripts.cnn.com/TRANSCRIPTS/0810/15/cnr.01.html> (last visited May 11, 2009).

<sup>12</sup> Ruthann Hoagland, *Economic Hard Times; Voter Registration Scandal; Global Economy Rescue; Campaign Trail Update; Water Charity; Resale Shop Comeback*, CNN NEWS TRANSCRIPT, October 12, 2008, available at <http://edition.cnn.com/TRANSCRIPTS/0810/12/sm.02.html> (last visited May 11, 2009).

<sup>13</sup> John Fund, *Whose Ox Is Gored*, WALL STREET J., July 30, 2007, available at <http://www.opinionjournal.com/diary/?id=110010400> (last visited July 8, 2009).

<sup>14</sup> *Id.*

<sup>15</sup> Walter F. Roche Jr., *'Go after ACORN,' judge says*, PITT TRIBUNE-REVIEW, June 30, 2009, available at [http://www.pittsburghlive.com/x/pittsburghtrib/news/s\\_631577.html](http://www.pittsburghlive.com/x/pittsburghtrib/news/s_631577.html) (last visited July 1, 2009).

<sup>16</sup> Stephanie Strom, *Funds Misappropriated at 2 Nonprofit Groups*, N.Y. TIMES, Jul. 9, 2008, available at <http://www.nytimes.com/2008/07/09/us/09embezzle.html> (last visited May 7, 2009).



management services to Acorn [sic] and many of its affiliated entities.”<sup>17</sup> ACORN “chose to treat the embezzlement of nearly \$1 million eight years ago as an internal matter and did not even notify its board.”<sup>18</sup> According to an October 10, 2008 *New York Times* report, ACORN “had failed to disclose the theft for eight years.”<sup>19</sup> Dale Rathke remained on ACORN’s payroll until June 2008, when news broke of his wrongdoing.<sup>20</sup>

### **C. Organizational Mismanagement**

*National Public Radio* (“NPR”) stated “ACORN has dozens of subsidiaries” and “[s]ome get federal funds.”<sup>21</sup> NPR reported “ACORN moves money around among the subsidiaries” and ACORN’s mismanagement “essentially gives them a cloak that prevents people from seeing really how they’re spending money that comes, in some cases, from the taxpayers, in other cases, comes from members of their organization who pay dues.”<sup>22</sup> In response to Dale Rathke’s embezzlement, ACORN’s “executives decided to keep the information from almost all of the group’s board members and not to alert law enforcement.”<sup>23</sup> According to the *New York Times*, Maude Hurd, the president of ACORN, thought concealing the embezzlement and “deal[ing] with it in-house” was “best at the time.”<sup>24</sup> The “in-house” remedy included firing two ACORN board members for investigating Dale Rathke’s embezzlement and its concealment.<sup>25</sup>

According to the *New York Times*, former board members Marcel Reid and Karen Inman sought “a court order to force [ACORN] to hand over financial documents” in addition to “seeking to sever . . . continuing ties between Acorn [sic] and its founder, Wade Rathke” who they contend “continues to direct the staff and expenditures” even though he resigned.<sup>26</sup> The paper reported ACORN is being sued for preventing Reid and Inman from fulfilling their fiduciary responsibilities as board members. In the complaint, the plaintiffs stated, “money is being spent improperly and that important documents are being destroyed.”<sup>27</sup> According to the complaint, Wade Rathke’s continued relationship

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<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> Stephanie Strom, *On Obama, Acorn and Voter Registration*, N.Y. TIMES, Oct. 10, 2008, available at <http://www.nytimes.com/2008/10/11/us/politics/11acorn.html> (last visited May 7, 2009).

<sup>20</sup> Suddath, *supra* note 1.

<sup>21</sup> Peter Overby, *ACORN Has Long Been In Republicans’ Cross Hairs*, NAT’L PUB. RADIO, Oct. 15, 2008, available at <http://www.npr.org/templates/story/story.php?storyId=95696267> (last visited May 8, 2009).

<sup>22</sup> *Id.* (quoting Tim Miller, director of the Employment Policies Institute).

<sup>23</sup> Stephanie Strom, *Funds Misappropriated at 2 Nonprofit Groups*, N.Y. TIMES, Jul. 9, 2008, available at <http://www.nytimes.com/2008/07/09/us/09embezzle.html> (last visited May 7, 2009).

<sup>24</sup> *Id.* See Nicholas Confessore, *Perspectives on the Atlantic Yards Development Through the Prism of Race*, Nov. 12, 2006, available at <http://www.nytimes.com/2006/11/12/nyregion/12yards.html> (last visited May 8, 2009); But see Stephanie Strom, *Head of Foundation Bailed Out Nonprofit Group After Its Funds Were Embezzled*, N.Y. TIMES, Aug. 17, 2008, available at <http://www.nytimes.com/2008/08/17/us/17acorn.html> (last visited May 11, 2009).

<sup>25</sup> Drew Griffin and Kathleen Johnston, *ACORN fires two who were probing embezzlement allegations*, CNN, Nov. 13, 2008, <http://www.cnn.com/2008/POLITICS/11/13/acorn.investigation/index.html> (last visited July 7, 2009).

<sup>26</sup> Stephanie Strom, *Lawsuit Adds to Turmoil for Community Group*, N.Y. TIMES, Sept. 10, 2008, available at <http://www.nytimes.com/2008/09/10/us/10acorn.html> (last visited May 11, 2009).

<sup>27</sup> *Id.*

with ACORN, despite his being fired, “impede[d] the ability of the interim management committee to perform its function.”<sup>28</sup>

ACORN passed a resolution in 2008, after the embezzlement was revealed, creating a special investigative board, led by Marcel Reid and Karen Inman, whose purpose was to determine how ACORN could be improved so embezzlement-like situations could be avoided in the future.<sup>29</sup> Reid and Inman sued ACORN to protect the integrity of this board.<sup>30</sup>

According to the *Wall Street Journal*, ACORN’s “quality-control efforts were ‘minimal or nonexistent’ and largely window dressing.”<sup>31</sup> According to ACORN organizers quoted in the *Journal*, ACORN lacks quality control “on purpose” and it has a “longstanding practice to blame bogus registrations on lower-level employees who then often face criminal charges.”<sup>32</sup> The *Journal* reported ACORN employees are told “to engage in deceptive fund-raising tactics.”<sup>33</sup>

#### **D. Political Activity**

It is undisputed that ACORN engages in politically partisan activity.<sup>34</sup> The *Wall Street Journal* reported ACORN had direct involvement with the Obama campaign.<sup>35</sup> According to John Fund of the *Journal*, Citizens Consulting, Inc., which controls ACORN’s finances, was paid \$832,000 by the Obama campaign for get-out-the-vote efforts.<sup>36</sup> Nonprofits participating in partisan activity are barred from receiving federal funds, yet ACORN has received \$53 million in federal funds since 1994 and could receive up to \$8.5 billion more.<sup>37</sup> In March 2009, ACORN became a national partner with the U.S. Census Bureau to assist with the recruitment of 1.4 million workers needed to go door-to-door to count every person in the United States.<sup>38</sup> The *Wall Street Journal* reported ACORN was selected to assist the U.S. Census Bureau in “reaching out to minority communities and recruiting census enumerators for the count next year.”<sup>39</sup>

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<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> John Fund, *supra* note 3.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> See e.g. Glenn Beck, *Investigating ACORN*, FOX NEWS, May 8, 2009, available at <http://www.foxnews.com/story/0,2933,519520,00.html> (last visited May 8, 2009).

<sup>35</sup> Fund, *supra* note 3.

<sup>36</sup> *Id.*

<sup>37</sup> Kevin Mooney, *ACORN got \$53 million in federal funds since 94, now eligible for up to \$8 billion more*, WASH EXAMINER, May 6, 2009, available at <http://www.washingtonexaminer.com/opinion/columns/special-editorial-reports/ACORN-got-53-million-in-federal-funds-since-94-now-eligible-for-up-to-8-billion-more-44406217.html> (last visited May 8, 2009).

<sup>38</sup> Cristina Corbin, *ACORN to Play Role in 2010 Census*, FOXNEWS.COM, Mar. 18, 2009, available at <http://www.foxnews.com/politics/2009/03/17/lawmakers-concerned-role-acorn-census/> (last visited May 15, 2009).

<sup>39</sup> Fund, *supra* note 8.

In a March 19, 2009 hearing, House Judiciary Committee Chairman John Conyers called for an investigation of ACORN:

Well since we are at a hearing on ACORN is there anybody to hear from ACORN that can testify? May I ask respectfully that the Chairman consider such a hearing so we can get to the bottom of this. . . . [T]his is a member of the bar here who got a successful partial injunction against ACORN and we have our distinguished colleague on the committee here, he's asserted that people, they fraudulently vote in every county in the state – that's a pretty serious matter, I would just like the Chairman who is a fierce supporter of constitutional rights, civil rights and human rights to take this matter up. I think this would be something that would be worth our time.<sup>40</sup>

Three months later, Representative Conyers “backed off his plan to investigate purported wrongdoing by . . . ACORN” because “[t]he powers that be decided against it.”<sup>41</sup> A provision inserted by Representative Michele Bachmann (R-MN) into the proposed Mortgage Reform and Anti-Predatory Lending Act blocked organizations indicted for voter registration fraud from receiving housing counseling grants and legal assistance grants and was unanimously approved by a voice vote in the House.<sup>42</sup> But soon after the Financial Services Committee, led by Representative Barney Frank (D-MA), approved the stipulation, Frank claimed he made a mistake and planned to take out the “anti-ACORN provision” from the Act.<sup>43</sup>

#### **IV. ACORN Uses Its Complex Organizational Structure to Facilitate Fraudulent and Illegal Acts.**

**FINDING:** *Piercing ACORN's corporate veil in order to determine which individuals own or control the organization is a necessary step for preventing waste, fraud and abuse of federal funds in the hands of corporate control.*

**FINDING:** *When ACORN commits bad acts, the individuals who are harmed are the low to moderate income workers whom ACORN was founded to protect.*

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<sup>40</sup> *Lessons Learned From the 2008 Election, Hearing Before the H. Comm. on the Judiciary*, 111th Cong. (2009) (statement of Representative John Conyers, Chairman).

<sup>41</sup> S.A. Miller, *Conyers Backs Off Probe of ACORN*, WASH. TIMES, June 26, 2009, available at: [http://washingtontimes.com/news/2009/jun/26/conyers-backs-off-probe-of-acorn-practices/?feat=home\\_headlines&page=2](http://washingtontimes.com/news/2009/jun/26/conyers-backs-off-probe-of-acorn-practices/?feat=home_headlines&page=2) (last visited June 22, 2009); see also Kevin Mooney, *Rep. Conyers Reverses Stance on ACORN Investigation*, WASH EXAMINER, May 6, 2009, available at <http://www.washingtonexaminer.com/opinion/blogs/Examiner-Opinion-Zone/Rep-Conyers-Reverses-Stance-on-ACORN-Investigation--44485482.html> (last visited May 11, 2009).

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

The Association of Community Organizations for Reform Now (“ACORN”) is a Louisiana incorporated 501(c)(4) nonprofit corporation for organizing a constituency of low- to moderate-income people across the United States.<sup>44</sup> ACORN is registered to do business in 43 states and the District of Columbia.<sup>45</sup> ACORN has over 1200 neighborhood chapters in 104 cities.<sup>46</sup> ACORN’s nonprofit corporate status grants it the privilege of limited liability by creating a distinction between the corporate entity of ACORN and the individuals who control its acts.

ACORN loses its tax-exempt privileges if it abuses its corporate privileges and disregards corporate formalities.<sup>47</sup> By ignoring ACORN’s legal distinctions (“piercing the corporate veil”) investigative bodies may ignore the corporate form of a nonprofit corporation for purposes of preventing fraudulent behavior.<sup>48</sup> Under Louisiana law, officers or directors, the organization, compensated employees and volunteers accused of acting willfully or wantonly are not protected against lawsuits.<sup>49</sup>

Piercing the veil of a nonprofit corporation in order to determine which individuals own or control the organization is a necessary step for preventing waste, fraud and abuse of federal funds in the hands of corporate control.<sup>50</sup> The Eighth Circuit is instructive in these matters and in *HOK Sport, Inc. v. FC Des Moines, L.C.*, the court held, “[d]isregarding an entity’s corporate form by piercing the corporate veil is appropriate if ‘the corporation is a mere shell, serving no legitimate business purpose, and used primarily as an intermediary to perpetuate fraud or promote injustice.’”<sup>51</sup> Once the corporate veil is pierced, officers and directors can be found liable as alter egos of the nonprofit corporation.<sup>52</sup>

Piercing the corporate veil is a tool for knocking down the corporate walls used to shield those responsible for bad acts. By ignoring ACORN’s otherwise opaque corporate structure and nonprofit legal protections, it is possible to determine how ACORN’s leadership committed bad acts.<sup>53</sup> Some ACORN affiliates lobby, yet they are required to

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<sup>44</sup> ACORN WEBSITE, available at <http://www.acorn.org/index.php?id=12378> (last visited May 4, 2009).

<sup>45</sup> Ralph McCloud CCHD (Nov. 11, 2008) (ACORN 004785) at 5.

<sup>46</sup> ACORN Grant Request to the Democracy Alliance at 2 (Mar. 24, 2006) (ACORN\_004338).

<sup>47</sup> *HOK Sport, Inc. v. FC Des Moines, L.C.*, 495 F.3d 927 (8th Cir. 2007). In *HOK Sport, Inc.*, the defendant’s finances were not kept separate from the finances of other entities, which were controlled by the defendant. The Court held that “Although The Menace and Kum & Go are corporate entities that are nominally separate from Krause, this factor still weighs in favor of piercing TSF’s veil because a reasonable jury could conclude Krause treated each entity as his own slush fund. TSF’s finances were not kept separate from The Menace’s and Kum & Go’s finances, and by extension, Krause’s finances.” *Id.* at 942.

<sup>48</sup> *Id.* See also WILLIAM MEADE FLETCHER, FLETCHER CYCLOPEDIA OF THE LAW OF CORPORATIONS § 41.75 (2006).

<sup>49</sup> See *Matlock v. Hankel*, 707 So. 2d 1016 (La. Ct. App. 1998)

<sup>50</sup> *HOK Sport, Inc. v. FC Des Moines, L.C.*, at 935-36; See also *United States v. Bestfoods*, 524 U.S. 51, 62 (1998).

<sup>51</sup> *Id.*

<sup>52</sup> §8.30 Revised Model Non-profit Corporation Act

<sup>53</sup> Memorandum from Harmon, Curran, Spielberg, & Eisenberg, LLP [HCSE] on Organization Review to ACORN Beneficial Association, ACORN Housing Corporation, ACORN Institute, ACORN Votes,

be walled off from the affiliates receiving federal funds. Likewise, ACORN's 501(c)(3) affiliates, which receive tax-deductible contributions, are presumably walled off from ACORN's political functions. As shown in this Report, there is evidence which questions whether taxpayer money and tax-deductible contributions are being kept separate from those resources used to endorse legislation or fund participation in the campaigns of candidates for public office. The public interest is best served if the opacity behind ACORN's corporate structure and legal protections is removed.

“Piercing” through ACORN's legal protections would remove the distinctions between ACORN and its affiliates. This Report will show how ACORN walls off its bad acts by creating nominal affiliates both through a separate tax structure (Project Vote is a 501(c)(3)) or a separate name and state of incorporation (e.g. ACORN Fair Housing Corporation Orlando, FL).<sup>54</sup>

ACORN's walls are artificial. It fails to maintain the necessary legal formalities required for many of its affiliated and subsidiary entities. ACORN's opacity has allowed it to avoid responsibility, which is why during a debate Senator Barbara Mikulski (D-MD) stated, “ACORN has never, to my knowledge, been convicted of a Federal crime.”<sup>55</sup> Yet Senator Mikulski ignores how ACORN's opacity makes the organization too byzantine to be legally controlled. Many ACORN affiliates lack real boards or executive directors, making the legal channel of holding individuals or organizations liable practically un-navigable.<sup>56</sup> Sadly, when ACORN's leaders commit bad acts, the individuals who get caught tend to be low or moderate income workers – the types of individuals ACORN was founded to protect.<sup>57</sup>

This reality is illustrated by recent events. In June 2009, seven ACORN workers in Pennsylvania were charged with forging 51 signatures and violating election laws in advance of the 2008 presidential election.<sup>58</sup> In May 2009, two ACORN staff members were prosecuted in Clark County, Nevada for paying bonuses to workers who registered over 21 individuals per day.<sup>59</sup> In July 2008, three ACORN workers were convicted of voter fraud in Kansas City because they flooded voter registration rolls with over 35,000 false or questionable registration forms.<sup>60</sup> In March 2008, an ACORN employee in West Reading, Pennsylvania, was sentenced to up to 23 months in prison for identity theft and

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American Institute for Social Justice, Association of Community Organizations for Reform Now, Citizens Consulting, Inc., Citizens Services Inc., Communities Voting Together, Pennsylvania Institute for Community Affairs, Inc., Project Vote/Voting for America, Inc. (June 19, 2008) [hereinafter HCSE Memo] at 1 (ACORN\_004927).

<sup>54</sup> See Appendix 1, *infra*.

<sup>55</sup> 155 CONG. REC. S3822-41 (Mar. 26, 2009) (statement of Sen. Mikulski).

<sup>56</sup> HCSE Memo (June 19, 2008) at 1 (ACORN\_004927).

<sup>57</sup> See notes 3-15, *supra*.

<sup>58</sup> Walter F. Roche Jr., *Another Allegheny ex-ACORN worker will stand trial*, PITT. TRIBUNE-REVIEW, June 5, 2009, available at [http://www.pittsburghlive.com/x/pittsburghtrib/news/pittsburgh/s\\_628302.html](http://www.pittsburghlive.com/x/pittsburghtrib/news/pittsburgh/s_628302.html) (last visited June 11, 2009).

<sup>59</sup> See ATTORNEY GENERAL'S COMPLAINT, available at <http://sos.state.nv.us/information/news/press/2009/pdf/complaint-acorn> (last visited June 22, 2009).

<sup>60</sup> Department of Justice Press Release, available at <http://kansascity.fbi.gov/dojpressrel/pressrel07/identitythft010507.htm> (last visited May 4, 2009)



tampering with records,<sup>61</sup> and forging 29 voter registration forms in order to collect a cash bonus.<sup>62</sup> In 2007, three ACORN employees pled guilty, and four more were charged, in the worst case of voter registration fraud in Washington state history.<sup>63</sup> In 2007, a man in Reynoldsburg, Ohio was indicated on two felony courts of illegal voting and false registration, after being registered by ACORN to vote in two separate counties.<sup>64</sup> In 2006, eight ACORN employees in St. Louis, Missouri were indicted on federal election fraud charges.<sup>65</sup> In 2005, two ex-ACORN employees were convicted in Denver, CO of perjury for submitting false voter registrations.<sup>66</sup> In 2004, a grand jury indicted a Columbus, Ohio ACORN worker for submitting a false signature and false voter registration form.<sup>67</sup> In 1998, a contractor with ACORN-affiliated Project Vote was arrested in Arkansas for falsifying 400 voter registration cards.<sup>68</sup> In addition to Nevada, Missouri, Pennsylvania, Washington, Arkansas, Colorado, Kansas, and Ohio, there have been prosecutions against ACORN workers in Connecticut, Texas, Wisconsin, and Michigan.<sup>69</sup>

By ignoring ACORN's nonprofit walls, information about those members of its Board and the board of its affiliates who had knowledge and control over its corporate actions can be revealed. ACORN has ignored its corporate duties and has perpetuated fraud. As a result, ACORN's legal protections must be ignored and, as a matter of law, federal funds must be denied to a partisan lobbying organization.

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<sup>61</sup> News Staff, *West Reading man gets jail for phony forms*, READING EAGLE (Mar. 1, 2008), available at <http://www.readingeagle.com/article.aspx?id=82467> (last visited July 8, 2009).

<sup>62</sup> Editorial, *RNC: Obama & Acorn Fact Sheet*, FOX. BUS. NEWS, Oct. 4, 2008, available at: <http://www.foxbusiness.com/story/rnc-obama--acorn-fact-sheet/> (last visited June 1, 2009).

<sup>63</sup> Keith Ervin, *Three plead guilty in fake voter scheme*, SEATTLE TIMES, Oct. 30, 2007, at B5; *See also* Shaila Dewan, *A Vote Drive By Democrats In Louisiana Stirs Concern*, N.Y. TIMES, Jun. 15, 2008, available at: <http://www.nytimes.com/2008/06/15/us/politics/15vote.html> (last visited June 10, 2009).

<sup>64</sup> Bruce Cadwallader, *Man voted in 2 counties in 1 election*, COLUMBUS DISPATCH, May 9, 2007, at 04B.

<sup>65</sup> *Guilty pleas in election fraud*, AP, Apr. 3, 2008, available at: <http://query.nytimes.com/gst/fullpage.html?res=9D00E7DB153DF930A35757C0A96E9C8B63&partner=ssnyt&emc=rss> (last visited June 22, 2009).

<sup>66</sup> *Briefing*, ROCKY MTN NEWS, Jan. 4, 2005 at 21A.

<sup>67</sup> Terrence Scanlon, *Democratic Deception*, WASH. TIMES, Oct. 18, 2004, available at <http://washingtontimes.com/news/2004/oct/18/20041018-093522-3974r/> (last visited June 2, 2009).

<sup>68</sup> Claire Suddath, *A Brief History of ACORN*, TIME, Oct. 14, 2008, available at <http://www.time.com/time/politics/article/0,8599,1849867,00.html> (last visited May 11, 2009).

<sup>69</sup> *See generally* Reggie Sheffield, *Former temp worker accused of bogus voter registrations*, THE PATRIOT-NEWS, Jul. 24, 2008 at B02; Ken Dixon, *ACORN voter signups questioned*, CONNECTICUT POST, Aug 16, 2008, available at: [http://www.connpost.com/news/ci\\_10219729](http://www.connpost.com/news/ci_10219729) (last visited March 10, 2009); Alan Bernstein, *ACORN planting voter registrars in certain areas*, HOUSTON CHRONICLE, Aug. 17, 2008 at B1; Molly Ball, *Election fraud task force formed; Investigators already looking into voter registration issues*, LAS VEGAS REVIEW-JOURNAL, Aug. 1, 2008 at 2B; Larry Sandler, *Vote workers investigated*, MILWAUKEE JOURNAL-SENTINEL, Aug. 29, 2008 at B3; Larry Sandler, *More voter registration workers under scrutiny*, MILWAUKEE JOURNAL-SENTINEL, Aug. 20, 2008 at B1; L.L. Brasier, *Bad voter applications found*, DETROIT FREE PRESS, Sept. 14, 2008 at 1.

## **A. ACORN Fails to Fulfill Its Corporate Duties**

Once a nonprofit organization is incorporated under the law of a state, it becomes a corporation and is subject to state corporation laws.<sup>70</sup> The Uniform Management of Institutional Funds Act, which provides guidance to the governing boards of charitable organizations, directs, “members of a governing board of an institution shall exercise ordinary business care and prudence.”<sup>71</sup> Courts apply the same standards to directors of nonprofit corporations as those applicable to directors of for-profit corporations.<sup>72</sup>

The Revised Model Nonprofit Corporation Act requires a director to “discharge his or her duties as a director in good faith, with the care that an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner the director reasonably believes to be in the best interests of the corporation.”<sup>73</sup>

Officers and directors of a nonprofit corporation owe a fiduciary duty to members of the association, and their failure to assume this duty can result in liability to both the association and the individual directors and officers.<sup>74</sup> As fiduciaries, board members bear a duty of loyalty to the corporation and cannot improperly profit at the expense of the corporation.<sup>75</sup> Nonprofits can breach duties of diligence<sup>76</sup> and duties of loyalty,<sup>77</sup> as well as duties to uphold the organizational mission and bylaws.<sup>78</sup> In Louisiana, where ACORN is incorporated, “[o]fficers and directors of nonprofit corporations are required to discharge their duties in good faith, with the diligence, care, judgment and skill of an ordinarily prudent person.”<sup>79</sup>

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<sup>70</sup> *Id.*

<sup>71</sup> *Id.* See also §6 of UMIFA, codified, e.g. at Ohio Rev. Code § 1715.56.

<sup>72</sup> See Colin T. Moran, *Why Revlon Applies to Nonprofit Corporations*, 53 BUS. LAW. 373, 373-95 (2008).

<sup>73</sup> Revised Model Nonprofit Corporation Act Section §8.30(a).

<sup>74</sup> *Schweickart v. Powers*, 613 N.E.2d 403 (Ill. App. 1993).

<sup>75</sup> *Martha Graham Sch. & Dance Found., Inc. v. Martha Graham Ctr. of Contemporary Dance, Inc.*, 153 F. Supp. 2d 512, 522 (S.D.N.Y. 2001).

<sup>76</sup> See *Davis v. Black*, 591 N.E.2d 11 (Oh. 1991); see also *Blankenship v. Boyle*, 329 F. Supp. 1089 (D.D.C. 1971).

<sup>77</sup> See *California v. Larkin*, 413 F. Supp. 978 (N.D. Cal. 1976) (Trustee was sued for hypothecation of the assets of a charitable trust as security for a \$320,000 loan to the trustee’s closely held for-profit corporation to be used by it to earn profits for the trust); see also *Spitzer v. Schussel*, 792 N.Y.S. 2d 798 (2005) (Dance group director sued by New York Attorney General for self-dealing and using the organization to facilitate a tax-avoidance scheme. Co-directors sued for failing to prevent alleged misconduct).

<sup>78</sup> See *Monroe v. Brown*, 381 N.E.2d 1151 (Ohio App. 1978) (The owners of a casino-type gambling facility, allegedly operated on behalf of charitable entities, were sued by Ohio’s Attorney General to open their books and disclose whether the operations were conducted for the benefit of the charities or for the private gain of the operators); see also *In re Manhattan Eye, Ear & Throat Hosp.*, 715 N.Y.S.2d 575 (Sup. Ct. 1999) (The board of directors of a charitable corporation was sued for violation of its duty to ensure the mission of the corporation was carried out).

<sup>79</sup> See La. R.S. 12:226.

## 1. ACORN Breached Its Fiduciary Duties by Covering up Dale Rathke's Embezzlement

**FINDING:** *Dale Rathke's embezzlement and ACORN's subsequent cover-up are violations of ACORN's corporate duties and constitute fraud. The identities and roles of those involved must be disclosed.*

According to the notes from an ACORN meeting held on August 15, 2008 in Los Angeles, Dale Rathke, ACORN Chief Organizer Wade Rathke's brother, embezzled at least \$948,000 between 1999 and 2000.<sup>80</sup> The money was alleged to have been spent on a Concorde flight, credit cards, meals and trips.<sup>81</sup>

This Committee obtained an internal report prepared for numerous ACORN-entities by the Washington, D.C. law firm of Harmon, Curran, Spielberg & Eisenberg, LLP (hereinafter "HCSE"). The firm was retained as outside legal counsel for eleven separate ACORN affiliates to "conduct a review of the operations and inter-relationships of the set of . . . corporations addressed on this memo."<sup>82</sup> The firm was retained to provide advice about the "legally appropriate ways of structuring their relationships."<sup>83</sup>

The Memo identifies numerous problems with ACORN's management structure, in addition to problems involving a lack of corporate integrity, improper political walls, tax code non-compliance, concerns about the legal use of federal funds, lack of administrative capabilities and ACORN's inadequate response to the embezzlement by Dale Rathke.<sup>84</sup>

The HCSE Memo raises questions about the degree to which ACORN affiliates that received federal funds improperly comingled those funds with other ACORN affiliated entities.

Concerning the embezzlement, HCSE stated:

[T]here was contradictory information about who at the board level had been told about the embezzlement and proposed handling of it in 2000. The management council may have been told that the information was shared with the entire executive committee when in fact only the President had been informed. There should be further investigation to determine who was told, and what representations the management council relied on in taking action.<sup>85</sup>

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<sup>80</sup> Notes from West Regional Meeting at 1 (Aug. 15, 2008) (ACORN\_000314); *see also* Strom, *supra* note 16.

<sup>81</sup> *Id.*

<sup>82</sup> HCSE Memo (June 19, 2008) at 1 (ACORN\_004927).

<sup>83</sup> *Id.*

<sup>84</sup> HCSE Memo (June 19, 2008) at 1-2 (ACORN\_004927-004928).

<sup>85</sup> *Id.* at 12 (ACORN\_004938).



According to a memorandum from Wade Rathke on February 11, 2008, Louis Robein was hired as special counsel to assist ACORN's in-house legal department and to audit "everything from reporting to record retention and compliance along with handling a series of issues with the IRS."<sup>86</sup> However, the HCSE Memo alleged "that there is also contradictory information about the role played by legal counsel in vetting the settlement of the Dale [Rathke] matter."<sup>87</sup> The HCSE Memo stated:

**In December 2000, Wade Rathke told Steve Bachmann as attorney and the management council (as upper level management) that the legal problems of solving Dale's embezzlements would be turned over to Louis Robein, longtime counsel for Local 100, and regionally reputable labor lawyer who could reasonably be expected to provide reliable advice in managing this sort of situation. On June 10, 2008, [HCSE] met with Louis Robein who informed [us] that his role was far more limited. He related how around December 2000, Wade had a conversation with Louis to the effect that Dale had been caught in some embezzlement. No amount was mentioned. The discussion was mainly over what liabilities Wade might have to worry about, and Louis provided [some] general and preliminary advice. Neither Louis Robein nor his firm was retained to structure or review any sort of resolution to the Rathke embezzlement. . . . It appears that this settlement was never reviewed by ACORN's general counsel nor the attorney supposedly retained to do so. A hostile investigator might conclude that Wade deliberately told Steve Bachmann that he had retained different counsel on the matter in order to exclude legal counsel from meaningful participation in review of the proposed plan. And unfortunately, this is an organization that has to be prepared to be scrutinized by a hostile investigator.**<sup>88</sup>

The Service Employees International Union ("SEIU") Local 100 Form LM-2 filed with the Labor Department shows that SEIU made payments to Citizens Consulting Inc. ("CCI") and the Elysian Fields Corporation.<sup>89</sup> According to the HCSE Memo, Wade Rathke disclosed his brother Dale's embezzlement to Louis Robein of Local 100. Local 100's Form LM-2 identifies Wade Rathke as the administrator of SEIU Local 100.<sup>90</sup> Yet in filing its LM-2, Local 100, with Wade Rathke as its agent, claimed the labor organization did not "discover any loss or shortage of funds or other assets . . . even if

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<sup>86</sup> Wade Rathke Memo (Feb. 11, 2008) at 3 (ACORN\_004861).

<sup>87</sup> HCSE Memo (June 19, 2008) at 12 (ACORN\_004938).

<sup>88</sup> *Id.* at 12-13. (ACORN\_004938-004939) (emphasis added).

<sup>89</sup> *See Form LM-2 Labor Organization Annual Report*, SEIU Local 100, DEP'T OF LABOR, (2007), SEIU LM2 2007 at 11 (March 30, 2007) (ACORN\_004912).

<sup>90</sup> *Id.* at 1 (ACORN\_004902-004926).

there has been repayment or recovery.”<sup>91</sup> In a July 22, 2008 email, Steve Bachmann stated:

**To what extent does the Local 100 Board and Local 100 members know about the perfidy of their Chief Organizer? Do they know how hokey their LM-2 filings are?**<sup>92</sup>

An internal ACORN press release authored by the Interim Management Committee (“IMC”), a board-designated committee temporarily charged with managing ACORN in Wade Rathke’s absence,<sup>93</sup> discussed the role played by legal counsel:

[Marcel] Reid elaborates, saying ‘the Rathkes so dominated ACORN, that in approximately 2000, the organization’s general counsel admittedly deferred to Wade Rathke in addressing his brother’s alleged embezzlement.’ Indiana attorney Steve Bachmann identifies himself as ACORN’s general counsel. He essentially admits to washing his hands of the Dale Rathke matter once Wade claimed to bring alternative legal counsel in on it. On the day of Wade’s termination, he confessed to actually working with certain ACORN staffers to conceal the embezzlement. Maude Hurd admitted to knowing of the arrangement which a whistleblower apparently revealed nearly one decade later.<sup>94</sup>

A memorandum written by former members of the IMC, who were subsequently terminated, alleged:

ACORN staff members Steven Kest, Jon Kest, Mike Shea, Zach Pollett (sic), Helene O’Brien, Amy Schur, Liz Wolf, Beth Butler, Mildred Brown and Bertha Lewis knew but conspired to conceal the embezzlement and decided to keep the information from the full Association Board and not to alert law enforcement. Additionally, ACORN executive committee members Maude Hurd (President) and Alton Bennett (Treasurer) knew but conspired to conceal the embezzlement and decided to keep the information from the full Association Board and not to alert law enforcement.<sup>95</sup>

In a letter from James Gray, the IMC’s legal counsel, to the ACORN Association Board (hereinafter “Board”), Gray wrote:

Unfortunately, our preliminary investigation has uncovered evidence which indicates Senior Staff and Executive Committee involvement in the commission and/or concealment of a variety of

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<sup>91</sup> *Id.* at 2, question 13 (ACORN\_004903).

<sup>92</sup> Email from Steve Bachmann (July 22, 2008) at 4 (ACORN\_004328) (emphasis added and in original).

<sup>93</sup> IMC Allegations (Jan. 7, 2009) at 10, 14, 16, 23 (ACORN\_004866-004890).

<sup>94</sup> IMC Transparency (Jan. 7, 2009) at 1 (ACORN\_004864).

<sup>95</sup> IMC Allegations (Jan. 7, 2009) at 8 (ACORN\_004873).

unlawful and criminal acts, which could result in a duty for the Association Board members to report these acts to local or federal law enforcement agencies. Consequently, the IMC desires to identify and preserve all ACORN assets, and protect them from dissipation and concealment for the benefit of the Association Board. To that end, a Temporary Restraining Order has been granted (a copy is attached), which prohibits Dale Rathke, Wade Rathke Citizen's Consulting Inc. and their agents from signing contracts or destroying documents, and has scheduled a preliminary hearing on August 21, 2008. The Rathkes, Senior Staff and Executive Committee members, who knew but did not divulge the embezzlement of funds to the full Association Board, have placed the entire association board in legal and financial jeopardy.<sup>96</sup>

Gray's memorandum informed the Board members of their liability for failing to disclose Dale Rathke's embezzlement to the entire Board:

Thus, the acts of Dale Rathke and the subsequent failure to divulge this embezzlement to the entire Association Board have created individual liability for all Association Board members. Actual ignorance of the fraud is not an excuse. Because Executive Committee members knew of the incident and cover-up, the entire Association Board is legally presumed to have known about the embezzlement in 1999 – 2000.<sup>97</sup>

Gray recommended the Board complete individual financial audits and a forensic examination.<sup>98</sup> On October 18, 2008, Gray wrote a letter to the ACORN Association Board agreeing to withdraw a complaint against the ACORN Board, filed in a New Orleans court, as long as ACORN conducted an internal investigation including:

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<sup>96</sup> Letter to the Board [James Gray] (Aug. 15, 2008) at 1-2 (ACORN\_004896-ACORN\_004897).

<sup>97</sup> *Id.* at 3 (ACORN\_004898).

<sup>98</sup> *Id.* at 4 (ACORN\_004899).

2. Forensic Examination of the known embezzlement followed by an –
3. Independent Audit of ACORN and related organizations performed by a licensed CPA firm hired by, supervised by and reporting directly to an –
4. Audit Committee composed exclusive of executive committee members and senior staff officials.<sup>99</sup>

The letter further stated:

**The Interim Management Committee members must be given full and complete access to all corporate records.** And all board members and staff should be directed to cooperate in any subsequent audit or investigation. These actions are part of the fiduciary function of the Board of Directors and are necessary to preserve the organizational integrity of ACORN and to prevent the commission or concealment of any other illegal acts.<sup>100</sup>

In an email sent from Ralph McCloud of the Catholic Campaign for Human Development (an ACORN funder) to Steven Kest, Executive Director of ACORN, McCloud asked “[w]ho are the people who did not disclose the fraud over [ ] eight years ago? Do they have roles with ACORN now?”<sup>101</sup> Kest stated, “[t]he following people were on the management council eight years ago, and were made aware of the embezzlement.”<sup>102</sup>

Steve Kest  
Jon Kest  
Madeline Talbott  
Keith Kelleher  
Mike Shea  
Zach Polett  
Helene O’Brien  
Amy Schur  
Liz Wolff  
Beth Butler<sup>103</sup>

Kest stated, “[t]he following people are still working for ACORN:”<sup>104</sup>

Steve Kest: National Executive Director

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<sup>99</sup> Letter to the Board [Withdraw Mandamus] at 1 (Oct. 18, 2008) (ACORN\_004900).

<sup>100</sup> *Id.* at 2 (ACORN\_004901) (emphasis added).

<sup>101</sup> Email from Marcel Reid to Michael McCray (Mar. 24, 2009) (forwarding email from Steven Kest to Ralph McCloud) at 5 (ACORN\_004785) [hereinafter “Ralph McCloud CCHD”].

<sup>102</sup> *Id.* at 5-6 (ACORN\_004785-004786).

<sup>103</sup> *Id.*

<sup>104</sup> *Id.*

Jon Kest: NY ACORN Head Organizer  
Helene O'Brien: National Field Director  
Beth Butler, Southern Regional Director<sup>105</sup>

Kest further stated, "the following people are working for affiliated organizations:"<sup>106</sup>

Mike Shea: Executive Director, ACORN Housing Corporation  
Liz Wolff: Special Projects, CCI<sup>107</sup>

Ralph McCloud asked Steve Kest to "explain Wade Rathke's current role at ACORN? He stepped down as ACORN's chief organizer but remains chief organizer for Acorn International LLC? Please explain the difference"<sup>108</sup> Kest responded:

By action of the ACORN Board on June 3 and then on June 20, **Wade Rathke has no current role with ACORN. He is no longer Chief Organizer, and he is no longer employed in any capacity by ACORN.** ACORN International (actually Inc, not LLC) is a separate corporation that works solely with ACORN affiliates outside the US, in Peru, Argentina, Mexico, the Dominican Republic, Canada, and India. Its board is made up of representatives from those non-US organizations. (ACORN US is represented on the board by Maude Hurd.) As of today, the Board of **ACORN International continues to employ Wade as its chief organizer. However, representatives from the ACORN Board will be meeting with Wade later this month and will be asking him to step down from this role.** As well, Wade Rathke has (and never had) any role with [the American Institute for Social Justice ("AISJ")].<sup>109</sup>

According to the August 15, 2008 notes of the ACORN East Regional meeting in Washington, D.C., Wade Rathke had not yet been removed from his role with ACORN.<sup>110</sup>

#### COUNCIL CORPORATIONS

Tricky question of how acorn board relates to all of the other boards on the COUNCIL (i.e. ACORN & ACORN International)

CCI Board had one board mbr and now has 4-5 board mbrs.

Over 146 corporations in COUNCIL (ACORN family)

Dale & Wade affiliated with over 100 of them

Legally removing Wade & Dale from this stuff is complicated & will take time to sort out

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<sup>105</sup> *Id.*

<sup>106</sup> *Id.*

<sup>107</sup> *Id.*

<sup>108</sup> *Id.* at 3 (ACORN\_004783).

<sup>109</sup> *Id.* at 3-4 (ACORN\_004783-004784) (emphasis added).

<sup>110</sup> Notes from East Regional Meeting (Aug. 15, 2008) at 3 (ACORN\_00323).

The internal report on ACORN by Harmon, Curran, Spielberg & Eisenberg, LLP (“HCSE Memo”) stated, “[the embezzlement] raises major concerns about transparency and accountability.”<sup>111</sup> It claimed:

[I]nvestigation is needed into questions about [Wade Rathke’s] failure to inform the board, or possibly even the full executive committee; the degree to which legal counsel and upper management may have been affirmatively misled; the identities and roles of those involved creating and implementing the response to the embezzlement; and the inter-corporate transfers made out of certain funds in response to the loss. These key questions must be investigated, confronted, and disclosed to appropriate parties.<sup>112</sup>

The *New York Times* reported that “[the] embezzlement of nearly \$1 million eight years ago” was treated “as an internal matter” and ACORN “did not even notify its board.”<sup>113</sup> According to the *Times*, ACORN’s President, Maude Hurd, refused to disclose the embezzlement to the IRS:

**‘We thought it best at the time to protect the organization, as well as to get the funds back into the organization, to deal with it in-house,’ said Maude Hurd, president of Acorn** [sic]. ‘It was a judgment call at the time, and looking back, people can agree or disagree with it, but we did what we thought was right.’<sup>114</sup>

The IRS requires exempt organizations to report embezzlements on its federal tax information return (Form 990, Form W-2, or Form 1099) or on an amended federal tax information return.<sup>115</sup> Section 4958 of the Internal Revenue Code imposes an excise tax on excess benefit transactions between a disqualified person and an applicable tax-exempt organization.<sup>116</sup> A disqualified person is liable for a twenty-five percent (“25%”) tax on the excess benefit.<sup>117</sup> An organization manager may also be liable for a ten percent (“10%”) excise tax on the excess benefit transaction, if he or she “knowingly, willfully, and without reasonable cause” participated in the excess benefit transaction.<sup>118</sup>

According to the Congressional Research Service, tax-exempt “[o]rganizations that owe the penalty and excise taxes . . . must file an excise tax return (e.g., Form 4720

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<sup>111</sup> HCSE Memo (June 19, 2008) at 2 (ACORN\_004928).

<sup>112</sup> *Id.* at 1 (ACORN\_004927).

<sup>113</sup> Stephanie Strom, *Funds Misappropriated at 2 Nonprofit Groups*, N.Y. TIMES, July 9, 2008, available at <http://www.nytimes.com/2008/07/09/us/09embezzle.html> (last visited May 7, 2009).

<sup>114</sup> *Id.* (emphasis added).

<sup>115</sup> Economic Benefit Transactions, INTERNAL REVENUE SERVICE, available at: <http://www.irs.gov/pub/irs-tege/eotopice04>.

<sup>116</sup> Intermediate Sanctions, *Tax Information for Charitable Organizations*, INTERNAL REVENUE SERVICE, available at <http://www.irs.gov/charities/charitable/article/0,,id=123298,00.html>.

<sup>117</sup> 2007 Instructions for Form 990 and Form 990-EZ, *Tax Information for Charities & Other Non-Profits*, INTERNAL REVENUE SERVICE, available at <http://www.irs.gov/pub/irs-pdf/i990-ez>.

<sup>118</sup> *Id.*

or Form 1120-POL).”<sup>119</sup> The excise tax return includes the aggregate totals of the taxable expenditures and taxes owed and the names of managers who approved the activities.<sup>120</sup> The filings identify inter-corporate transfers made out of certain funds in response to the loss (embezzlement).<sup>121</sup>

The IRS allows for a disqualified person to correct an excess benefit by making a payment directly to the applicable tax-exempt organization.<sup>122</sup> If a disqualified person fails to correct an excess benefit by a certain date, the tax on the excess benefit increases to 200%.<sup>123</sup>

Based upon the documents cited above, ACORN’s failure to report Dale Rathke’s embezzlement to the IRS constitutes fraud. Tax fraud is intentional wrongdoing on the part of a taxpayer with the specific intent to evade a tax known to be owed.<sup>124</sup> Fraud may be inferred from conduct intended to conceal, mislead, or otherwise prevent the collection of such taxes.<sup>125</sup> According to the Supreme Court, because direct proof of the taxpayer’s intent is rarely available, fraud may be proven by circumstantial evidence and reasonable inferences drawn from the facts.<sup>126</sup> In *Bradford v. Commissioner*,<sup>127</sup> the Ninth Circuit Court of Appeals held that fraudulent intent can be inferred from various kinds of circumstantial evidence, setting forth the “badges of fraud” demonstrating fraudulent intent. Fraud may be presumed by: understatement of income; inadequate records; failure to file tax returns; implausible or inconsistent explanations of behavior; concealment of assets; and failure to cooperate with tax authorities.<sup>128</sup>

### **a) ACORN Violated ERISA**

ACORN violated its fiduciary responsibilities under the Employee Retirement Income Security Act of 1974 (“ERISA”), which protects the benefit rights of employees.<sup>129</sup> Stephanie Strom, in an October 22, 2008 report in the *New York Times*, stated ACORN Fund, a health care benefits fund, “had advanced ‘a large amount of

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<sup>119</sup> Erika Lunder, *Tax-Exempt Organizations: Political Activity Restrictions and Disclosure Requirements*, CRS RPT. FOR CONG., Sept. 11, 2007 at 24; see also IRC § 6104(b) and (d).

<sup>120</sup> *Id.*

<sup>121</sup> *Id.* See also Developments Editor, *Developments in the Law – Nonprofit Corporations*, 105 HARV. L. REV. 1578, at 1599 (1992) (The Internal Revenue Code “imposes an absolute prohibition on almost every conceivable transaction between a private foundation” and an officer or director).

<sup>122</sup> Economic Benefit Transactions, INTERNAL REVENUE SERVICE, available at: <http://www.irs.gov/pub/irs-tege/eotopice04>.

<sup>123</sup> 2007 Instructions for Form 990 and Form 990-EZ, *Tax Information for Charities & Other Non-Profits*, INTERNAL REVENUE SERVICE, available at <http://www.irs.gov/pub/irs-pdf/i990-ez>.

<sup>124</sup> See *Bradford v. Commissioner*, 796 F.2d 303, 307 (9th Cir. 1986).

<sup>125</sup> See *Graves v. Commissioner*, T.C. Memo 1994-616 (T.C. 1994).

<sup>126</sup> *Spies v. United States*, 317 U.S. 492 (1943).

<sup>127</sup> 796 F.2d 303 (9th Cir. 1986).

<sup>128</sup> *Id.* at 307-308.

<sup>129</sup> 29 U.S.C. §1105.

money” to ACORN and “it appeared that the money was used to cover ‘the cash shortfall caused by the embezzlement.’”<sup>130</sup>

The June 19, 2008 HCSE Memo identified ACORN’s current pension fund as “Council Beneficial Association, or CBA” and its health plan as “Council Health Plan, or CHP.”<sup>131</sup> The memo stated:

Two other revelations need to be further investigated. These pertain to ACORN Beneficial Association, or ABA, a discretionary plan in place before the creation of CBA that was intended not to be a true pension fund covered by the ERISA law, and to ACORN Fund, a similar discretionary health care fund that was in place before the creation [of] CHP. **A large part of the embezzled funds (\$215,000) were charged through ACORN’s AmEx account to ABA. When the theft was discovered, this meant that Dale owed ACORN this amount, and ACORN in turn owed ABA for the overpayment. [We are] told that ABA decided to write this debt off as a gift to ACORN** (though the debt from Dale naturally was not forgiven). Although it is the organizations’ legal position that this fund was not covered by ERISA and therefore not subject to its rules that would prohibit this sort of gift, **it is nonetheless the case that a number of organizations, possibly including unions and charities, paid funds into ABA for entirely different purposes. They did not make those contributions in order to make a gift to ACORN.** [We] have not gotten information about who authorized this decision, but those questions need to be asked. Either the board was involved in the decision and can explain the rationale, or they were not, and there are serious questions to ask as to who authorized this expenditure.

As for **ACORN fund**, it apparently had advanced a large amount of money to ACORN. If the Fund was not covered by ERISA, it may have had the discretion to do this. **If it were covered by ERISA . . . this would be a prohibited loan to a related party.** In any case, after resolution of the embezzlement and **execution of the note between Dale Rathke and CCI, the situation was that Dale owed CCI, CCI owed ACORN, and ACORN owed ACORN Fund.** It was agreed to take ACORN out of this picture, so that now it is **CCI that owes this money to ACORN Fund.** [We] have not gotten information to determine how this decision was made or approved, but **it certainly creates concern. There is the appearance, at least, that money was taken out of (or not**

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<sup>130</sup> Stephanie Strom, *Acorn Report Raises Issues of Legality*, N.Y. TIMES, Oct. 22, 2008, available at <http://www.nytimes.com/2008/10/22/us/22acorn.html> (last visited May 7, 2009).

<sup>131</sup> HCSE Memo (June 19, 2008) at 12 (ACORN\_004938).



**paid back to) a fund established to cover employee health care costs in order to cover the cash shortfall caused by the embezzlement. This decision, combined with the apparent failure to notify the governing boards of affected organizations or obtain adequate legal counsel, could generate significant liabilities for the Fund and its directors.** Again, there must be inquiry into the decisions about moving these funds, the advice if any that was relied on, and the best response now to minimize legal concern. As with ABA, if the board of directors does not have answers to questions about this organization, we need to ask why not.<sup>132</sup>

One month later, on July 22, 2008, Steve Bachmann, ACORN's General Counsel, confirmed HCSE's concerns in an email suggesting:

**[Wade Rathke] might be sued as a trustee under ERISA, given his record of behavior with the ERISA funds that has been uncovered.** For better or worse this is a trigger that should not be pulled until November or December . . . **[Wade Rathke] might be sued for his abuse of ABA and AFund, two charitable funds, both quasi-ERISA funds.** . . . *The point here is that corporate law generally says that corporate formalities and protections are ignored when they are being abused for purposes of fraud. So to the degree that [Wade Rathke] wants to play that game and we show that he's a crook, the courts will ignore his games[.]*<sup>133</sup>

Bachmann suggested a number of legal positions could be used to induce Wade Rathke, ACORN's historic Chief Organizer, into a limited role in ACORN.<sup>134</sup> Bachmann discussed the liabilities involved with ACORN's opaque corporate structure:

Beyond [HCSE's] research into whether or not the [Dale Rathke] note can be sold at a better price is the fundamental question of whether the **Rathkes got any releases signed when they signed their promises and pledges.** In other words, the theory is that **they signed them in exchange for a release for all liabilities.** **There is a LOT of liability here, the money owed, the interest owed, damages to reputation, cost of recovery, etc., etc.** But it appears that ACORN, CCI, and all the other organizations signed nothing when they got the papers from the Rathkes. So presumably they may still be able to sue them for losses for which they have not yet been compensated.<sup>135</sup>

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<sup>132</sup> HCSE Memo (June 19, 2008) at 13 (ACORN\_004939) (emphasis added).

<sup>133</sup> Email from Steve Bachmann (July 22, 2008) at 3-4 (ACORN\_004327-004328) (emphasis in original and added).

<sup>134</sup> *Id.*

<sup>135</sup> *Id.* (emphasis added).

According to Bachmann, ACORN board members could have sued Wade Rathke as a trustee under ERISA for his abuse of the ACORN Beneficial Fund (“ABA”) and ACORN Fund (“AFund”), “two quasi-ERISA, charitable funds,” and can sue under common law theories of negligence for Rathke’s ignoring corporate formalities and protections, the lack thereof being abused for purposes of fraud.<sup>136</sup> A December 15, 2006 year end report by SEIU Local 880, an affiliate of ACORN, discusses the millions of dollars in health care funding it received:

Childcare Health Fund - Contained within our most recent contract covering the 40,000 childcare providers, there is a provision guaranteeing \$27 million paid out over 18 months (beginning in July, 2007) to local 880 to set up a health benefit for the childcare providers. We had wanted \$150 million over three years, but “only” won \$27 million. We believe that we can cover thousands of providers, depending on the plan and schedule of benefits. Preliminary numbers show that about 8000 providers would qualify and about 4000 would use this comprehensive benefit we are putting together now. Toward that end, we are in the negotiating process with United Healthcare, the largest insurer in the world to fashion a plan like this for our members. It is scary and hopeful at the same time, that we could fashion a health benefit for thousands and bring much-needed health care to a population that has been denied health care for so long.<sup>137</sup>

According to the Local 880 report, CCI performs Local 880’s legal services and ex-ACORN head organizer Robert Bloch has helped Local 880’s political activities:

Legal Representation - **In the past we have used Steve Bachmann and the CCI legal team; SEIU counsel, Craig Becker; Art Martin in Southern Illinois; and most recently, ex-ACORN head organizer, Robert Bloch’s law firm.** We plan to continue using these legal resources in the future. But we have been increasingly using Robert Bloch[’]s law firm for a lot of legal needs in 2006. **Robert[’]s firm has been a key help in FLSA and neutrality wins.** We are moving more business their way and will continue to do so.<sup>138</sup>

Notes from the August 15, 2008 ACORN East Regional Meeting in Washington, D.C., show the embezzled money was paid back through ACORN’s health fund:<sup>139</sup>

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<sup>136</sup> *Id.* Negligence under 26 U.S.C. § 6653 is defined as the lack of due care or the failure to do what a reasonable and prudent person would do under similar circumstances. 26 U.S.C. § 6653 (a)(1)(A) and (B); *see also Allen v. Commissioner*, 925 F.2d 348, 353 (9th Cir. 1991).

<sup>137</sup> Local 880 at 9-10 (Dec. 15, 2006) (ACORN\_004358-004359).

<sup>138</sup> *Id.* at 13-14 (ACORN\_004362-004363) (emphasis added).

<sup>139</sup> Notes from East Regional Meeting (Aug. 15, 2008) at 1 (ACORN\_00321).

REPORT ON THE STATUS OF THE ORGANIZATION – what happened, board response

943k embezzlement thru credit card and false reimbursements

Agreed to repay 30k a year in order to not be prosecuted

Decision by wade along with management council

Understanding that wade would inform EC of theft & decision to keep dale

Came out that mbrs of AB not informed of this

Was revealed after a nat'l funder found out

AB met at convention

At convention asked wade to step down from acorn & all affiliates

Dale asked to leave

Formed IMC & AB voted to have 3 AB mbrs on IMC – finance (carol hemingway from PA) legal (Karen Inman from MN) organizational development (marcel Reid from DC)

AB trusting IMC to assess organization & make recommendations for going forward

After dale's theft there were procedures put in place to prevent that kind of theft from happening again.

The laxity and loophole that enabled dale to steal that much money has been closed

There are other ways people could steal money and others have stolen much smaller amounts locally

As far as we know all have been caught

IMC is reviewing credentials of a firm that can do an outside accounting review to make sure money can't be stolen and to assess cci overall and make recommendations

Looking into hiring a company named Mesiroto to help assess cci and make recommendations for moving forward

The \$943k has been paid back in full now and is in a protected bank acct. It will go back to the corporations that it came from. A range of different entities.

i.e. a precursor to the current health fund (that will benefit the health fund)

Leadership has no faith in staff. Wade betrayed them

HCSE's June 2008 concerns about ACORN's health fund appear to be confirmed in the August 2008 meeting notes.<sup>140</sup>

ACORN owes health fund roughly \$500k to bail out health fund

If we don't do this then we'll have to pay more when the health fund runs out of money

Big ny ally forest city ratner agreed to loan us \$1M at 2% and grant us \$500k to pay back health fund and to use for other transition costs. Board will decide how much to allocate to IRS payment and how much to allocate to lawyers

Also trying to get money from Bloomberg and other NY and other wealthy allies for this

Also asking cabal of 30 funders for transition funds

We've started going out aggressively to a bunch of wealthy allies and some are excited to fund building a new acorn

Pension fund is in fairly good shape

Issues are more with Health fund. It is short of money and it needs to be bidded out to commercial insurance companies

According to the East Regional meeting notes, Forest City Ratner provided the loan alleged in the HCSE Memo to have been used to pay back ACORN's health fund, not from the accounts directly embezzled.<sup>141</sup> The agreement was as follows:<sup>142</sup>

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<sup>140</sup> *Id.* at 2 (ACORN\_00322).

<sup>141</sup> *Id.*

<sup>142</sup> Executed FCR (Aug. 19, 2008) at 1-2 (ACORN\_000094-000095).

**FOREST CITY RATNER COMPANIES, LLC**  
1 MetroTech Center North  
Brooklyn, New York 11201

August 19, 2008

Association of Community Organizations  
for Reform Now (ACORN)  
2609 Canal Street  
New Orleans, LA 70119  
Attn.: Bertha Lewis

ACORN Institute  
2609 Canal Street  
New Orleans, LA 70119  
Attn: Bertha Lewis

Dear Ms. Lewis,

This is to memorialize our agreement for a loan to ACORN and grant to the Acorn Institute to be made by Forest City Ratner Companies, LLC (FCRC) as follows:

1. FCRC shall, simultaneously herewith: (i) loan to ACORN the sum of \$1,000,000 upon the terms and conditions set forth in the Note signed by ACORN, a copy of which is attached hereto as Exhibit A, and (ii) grant to the Acorn Institute the sum of \$300,000;
2. In each of August 2009 and August 2010, FCRC shall make an additional grant of \$100,000 to the Acorn Institute.

Please acknowledge that the foregoing complies with your understanding of our agreement by executing this letter.

Very truly yours,

Forest City Ratner Companies, LLC  
By: Forest City East Coast, Inc.

By:   
David Berliner  
Sr. Vice President

Acknowledged on behalf of Association of  
Community Organizations for Reform  
Now and ACORN Institute:

By:   
Bertha Lewis, Interim Chief Organizer

As stated in the HCSE Memo, this transaction – where a charity grants money to a 501(c)(3) in order to pay off a debt for a health fund – is a prohibited loan to a related party, violating the fiduciary responsibilities directors have under ERISA.<sup>143</sup> As stated in the HCSE Memo, ACORN and its directors covered up the embezzlement loss by taking money out of and failing to pay back a fund established to cover employee health care costs, failing to notify the governing boards of the affected organizations and failing to obtain adequate legal counsel.<sup>144</sup>

## b) ACORN Breached Its Duty of Care

Dale Rathke’s embezzlement violated ACORN’s duty of care to its members because Rathke did not “act in good faith” nor was his transaction “inherently fair from the corporation’s point of view.”<sup>145</sup> A nonprofit corporation’s duty of loyalty requires directors to act in good faith and in a manner they reasonably believe is in the best interests of the organization.<sup>146</sup>

Dale Rathke was secretary-treasurer and director of internal operations of Citizens Consulting, Inc. (CCI), a non-profit entity handling ACORN and all of its affiliates accounting, and “actively manage[d], supervise[d] and direct[ed] the business affairs and operations of CCI.”<sup>147</sup> According to an affidavit by ACORN legal counsel Brian Mellor, ACORN and its affiliates still use CCI:

**MELLOR stated that ACORN use an online payroll system identified as CCI OMS.** . . . The information from the timesheets is then entered into the online system by the political organizers supervising the canvassers. When a bonus is paid, there is a comments section in the payroll system that should be used to explain the reason for the bonus. **MELLOR stated that he caused payroll reports to be generated from the data in the CCI payroll system.** He provided me with an electronic copy of four such reports. MELLOR opened one of the reports on his laptop and showed the columns titled “Incentive” and ‘Comments’. MELLOR pointed out that some of the entries reflect the payment of ‘Blackjack’ or ‘21+’.<sup>148</sup>

In an email between ACORN National Executive Director Steven Kest and Ralph McCloud, of the Catholic Campaign for Human Development (“CCHD”), Kest described CCI as follows:

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<sup>143</sup> See *ERISA Fiduciary Prohibited Transaction Rules*, K&L GATES ALERT, available at [http://www.klgates.com/files/Publication/7e40b6c6-2c73-4243-b353-ae156790b296/Presentation/PublicationAttachment/af13fd44-86ef-4b2a-8a04-b49f5e613a4c/IM-ERISA\\_0806\\_Fiduciary\\_Prohibited\\_Transaction\\_Rules](http://www.klgates.com/files/Publication/7e40b6c6-2c73-4243-b353-ae156790b296/Presentation/PublicationAttachment/af13fd44-86ef-4b2a-8a04-b49f5e613a4c/IM-ERISA_0806_Fiduciary_Prohibited_Transaction_Rules) (last visited June 22, 2009).

<sup>144</sup> HCSE Memo (June 19, 2008) at 13 (ACORN\_004939).

<sup>145</sup> *Boston Children’s Heart Found., Inc. v. Nadal-Ginard*, 73 F.3d 429, 433 (1st Cir. 1996).

<sup>146</sup> §8.30 Revised Model Non-profit Corporation Act.

<sup>147</sup> *Herman v. Citizens' Consulting*, 1997 U.S. Dist. LEXIS 7376 at \*1, 8 (D. La. 1997)

<sup>148</sup> ACORN AFFIDAVIT, available at: <http://sos.state.nv.us/information/news/press/2009/pdf/AFFIDAVIT-ACORN.pdf>, at 9, lines 14-25 (last visited June 22, 2009) (emphasis added).

**Citizens Consulting, Inc. is an independent organization. It is a non-profit corporation with no special tax status run by a self-perpetuating board.** Both AISJ and ACORN have contracts with **CCI to do their accounting work and corporate record keeping.** . . . CCI has two staff members who are assistant officers of ACORN with authority to act on behalf of ACORN solely on administrative matters. (For example: opening up bank accounts at the direction of ACORN management.) This is standard corporate practice. Paul Satriano, the national Treasurer for ACORN, is a new board member of CCI.<sup>149</sup>

Seven years prior to Dale Rathke's embezzlement, Dale Rathke and CCI were sued by the Secretary of Labor in the federal district court in New Orleans for violating overtime and record-keeping provisions of the Fair Labor Standards Act.<sup>150</sup> Federal agents from the Department of Labor were concerned about the recent suit filed against ACORN in New Orleans, and in an October 13, 2008 letter, James Gray, writing to Maude Hurd, ACORN's President, and Steve Kest, ACORN's Executive Director, stated:

You have been previously advised that due to the admission that a felony has been committed, that other federal offenses may have also been committed including but not limited to; Title 18 U.S.C. 1341, Mail Fraud, 18 U.S.C. (sic) 1001, Presenting a False Document to the (sic) an Agent of the United States Government; 18 U.S.C. § 1027 False statements and concealment of facts in relation to documents required by the Employee Retirement Income Security Act of 1974 and other possible offenses. Due to which federal Agents from the Department of Labor attended the October 2, 2008 preliminary hearing.<sup>151</sup>

According to an October 16, 2008 Legal Report by the Interim Management Committee, ACORN's ERISA concerns had not been addressed.<sup>152</sup>

### **c) The Embezzlement Is An “Excess Benefit” Transaction Prohibited By The IRS**

Since 1996, the Internal Revenue Service (“IRS”) has been empowered to fine and otherwise penalize executives of nonprofit corporations who receive excessive compensation for services and benefits, as well as officers, directors or trustees who approve such arrangements.<sup>153</sup> The Internal Revenue Code imposes initial taxes, additional taxes and excise taxes on the executives who receive excess benefits, as well

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<sup>149</sup> Ralph McCloud CCHD at 3 (Nov. 11, 2008) (ACORN\_004783) (emphasis added).

<sup>150</sup> *Herman v. Citizens' Consulting*, 1997 U.S. Dist. LEXIS 7376 at \*1 (D. La. 1997). The Department of Labor alleged that “since November 1992, CCI and Rathke . . . have violated Sections 7, 11 (c) and 15 (a) (2) and 15 (a) (5) of the Act, 29 U.S.C. §§ 207, 211 (c), 215 (a) (2) and (5).” *Id.* at \*8.

<sup>151</sup> Letter to Board (Oct. 13, 2008) at 2 (ACORN\_004492) (emphasis in original).

<sup>152</sup> IMC Legal Report [Karen Inman] (Oct. 16, 2008) at 3 (ACORN\_004497).

<sup>153</sup> 1-12 Liability of Corporate Officers and Directors §12.01.

as upon organization managers who participate in excess benefit transactions.<sup>154</sup> Under the Code, the sale, transfer or use for the benefit of “a disqualified person” of income or assets of the foundation are prohibited transactions.<sup>155</sup>

According to the ACORN internal report by the law firm of Harmon, Curran, Spielberg & Eisenberg, LLP (“HCSE Memo”), the embezzlement occurred in 1999 to 2000 and was not reported until 2008, yet the statute of limitations for an excess benefit transaction is generally three or six years, depending upon whether the transaction was reported.<sup>156</sup>

Under 2 U.S.C. § 1606, whoever knowingly fails to remedy a defective filing is subject to a civil fine, and depending on the extent and gravity of the violation, can be imprisoned or fined, or both, under title 18 of the United States Code.<sup>157</sup> The ACORN Board, which had knowledge of and control over ACORN’s IRS reporting, did not properly report Dale Rathke’s excess benefit transaction, i.e. the embezzlement.

## **2. ACORN Breached Its Corporate Duties by Failing to Abide by its Bylaws**

**FINDING:** *ACORN failed to observe its corporate articles by loaning money without proper legal documentation, by ignoring its duties under the corporate bylaws, by misusing corporate funds, and by terminating its members without honoring the process setup in its Articles of Incorporation. ACORN has not complied with IRS filing requirements or ERISA.*

A nonprofit’s articles of incorporation or “articles . . . includes the trust instrument, the corporate charter, the articles of association, or any other written instrument by which an organization is created.”<sup>158</sup> A nonprofit fails to observe corporate formalities when it “loans[] money back and forth without any legal documentation[,]” when “the ‘officers ignored their obligations under the corporate articles and bylaws’ and ‘the officers personally controlled the business and misused corporate funds.’”<sup>159</sup>

The unreported Rathke embezzlement meets the first criterion for failing to heed corporate formalities. ACORN insiders produced a presentation from the ACORN Board outlining the ACORN Board’s fiduciary duties and documenting the ACORN Board’s knowledge of its fiduciary responsibilities.<sup>160</sup> Article 6 of the ACORN Bylaws requires

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<sup>154</sup> 26 U.S.C. §4958(c)(1)(A) and (f)(1)(A)-(B). Self-dealing transactions that would benefit an officer, director or employee are prohibited by this statute.

<sup>155</sup> See 26 U.S.C. §§ 4941-4946.

<sup>156</sup> I.R.C. 6501(a), (e)(3), (l). See also IRS Internal Revenue Manual § 7.27.30.9 (Period of Limitations), paragraphs 3 and 4, [http://www.irs.gov/irm/part7/irm\\_07-027-030.html](http://www.irs.gov/irm/part7/irm_07-027-030.html) (last visited June 22, 2009).

<sup>157</sup> 2 U.S.C. §1606.

<sup>158</sup> 26 CFR 1.501(c)(3)-1.

<sup>159</sup> *Supra* note 47 at 942.

<sup>160</sup> Board of Directors Fiduciary Responsibilities (undated) at 1-16 (ACORN\_004517-004532).

all checks drawn on the bank accounts of the corporation to be authorized by the Board.<sup>161</sup>

Documents produced by former ACORN employees illustrate how ACORN's officers ignored their duties under their corporate articles and bylaws. ACORN's Bylaws describe ACORN's national operations as an outgrowth of local community organizations affiliating on a district and statewide basis.<sup>162</sup> Under the Bylaws, the ACORN board "can remove officers with . . . a vote equal in number to three-fourths of the members sitting on the Board."<sup>163</sup> After the embezzlement was disclosed, the ACORN Board established an Interim Staff Management Committee ("ISM" Committee) to elect three members (the Interim Management Committee "IMC") to serve on the Committee and report to the Board every month.<sup>164</sup> Karen Inman, Carol Hemingway, and Marcel Reid were selected to the IMC.<sup>165</sup> The Bylaws require, "[e]ach state Executive Board [have] a system for settling grievances within local groups in the state, to the end that ACORN's organizational democracy, harmony and unity might be maintained."<sup>166</sup> According to the ACORN Bylaws, the Chief Organizer serves at the pleasure of the Board of Directors.<sup>167</sup> The Bylaws also require local chapters to be placed under administratorships when necessary to ensure against corruption.<sup>168</sup>

In a July 13, 2008 teleconference of the ACORN Association Board, the Board approved for funds to be directed to the investigation and auditing activities of the IMC.<sup>169</sup>

Karen Inman (MN) gave a report on legal matters and indicated that the IMC was met with delays in getting all the information it needed and actions that were to have been taken were delayed. She also reported that board may or may not have directors' insurance. Zach stated that he and Bertha would check on this with the Legal Department and get a report back to the board.

^ Carol Hemingway (PA) gave a report on fiscal matters and indicated that the board members on the IMC need authorization to contact and employ on behalf of the organization independent consultants,

Gloria Swearingen (MD) moved that funds be created to allow that the board members appointed by the board to sit on the Interim Management Committee have access to professional consultants needed to carry on the work so that the will of the Association Board be carried out. The motion was seconded by Coya Mobley and passed unanimously.

The IMC filed a complaint on August 12, 2008 against Wade Rathke and members of the ACORN board. Although the IMC withdrew its complaint, eight ACORN board members continued the lawsuit. An August 24, 2008 letter sent to the ACORN Board from the eight former ACORN employees ("ACORN 8") of the Interim Management Committee ("IMC") stated, "(1) staff is not being paid, (2) payroll taxes are

<sup>161</sup> IMC Transparency (Jan. 7, 2009) at 6; ACORN Bylaws, Art. 9, at 8-9 (on file with author); IMC Transparency (Jan. 7, 2009) at 4 (ACORN\_004869).

<sup>162</sup> *Id.* Art.1,3-5, 6, cl. 15, at 7.

<sup>163</sup> *Id.* Art. 7, cl. 2, at 7-8.

<sup>164</sup> *Id.* at 2.

<sup>165</sup> *Id.* at 3.

<sup>166</sup> *Id.* Art 11: Grievances.

<sup>167</sup> *Id.*

<sup>168</sup> *Id.* at 11.

<sup>169</sup> ACORN Association Board Meeting (July 13, 2008) at 1 (ACORN\_00391).



not being paid, (3) member checking accounts have been overdrawn, and (4) ACORN operational accounts have been depleted.”<sup>170</sup> According to an October 16, 2008 legal report prepared by IMC member Karen Inman, the ACORN Board failed to provide an insurer with audited financial statements and there are ongoing issues with IRS compliance and with state taxing authorities.<sup>171</sup>

Although the Bylaws require three-fourths vote for removal, because members of the IMC (“ACORN 8”) filed an action against ACORN’s Board, Maude Hurd, President of ACORN, wrote to ACORN 8:

On November 9, 2008 the ACORN Executive Committee met and considered the resolutions of the majority of state boards. The feedback from the states was clear, and the Executive Committee acted upon it by voting that **any member participating in the mandamus action, now or in the future, shall not be eligible to hold office or serve on any Association Board committee. Accordingly, you are hereby removed from any office or committee position you may have held.**<sup>172</sup>

According to Maude Hurd, no member participating in the suit against ACORN, including Karen Inman and Marcel Reid, was permitted to attend the scheduled Bylaws Committee meeting:

[T]he membership of Karen Inman and Marcel Reid in ACORN is cancelled, and they are removed from the Association Board, and that any other members participating in the mandamus action shall not be eligible to hold office or serve on any committee of the Association Board.<sup>173</sup>

Hurd further stated:

These actions were taken in order to protect the Association against the harm caused by the unauthorized and reckless lawsuit, the insistence on airing internal disputes in the press, and the failure to abide by the democratically-made decisions of the full organization. Any state, region, or local group that seeks to undermine these decisions may be subject to administratorship according to Article 13 of the Bylaws.<sup>174</sup>

The purported firings of Karen Inman, Marcel Reid and Carol Hemingway were executive decisions made without following the three-fourths voting requirement specified in the ACORN Bylaws.

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<sup>170</sup> TRO Summary for Association Board (Aug. 24, 2008) at 2 (ACORN\_004472).

<sup>171</sup> IMC Legal Report [Karen Inman] (Oct. 16, 2008) at 2 (ACORN\_004496).

<sup>172</sup> IMC Allegations at 13 (Jan. 7, 2009) (ACORN\_004878) (emphasis added).

<sup>173</sup> Acorn Termination Notices (Nov. 11, 2008) at 1 (on file with author).

<sup>174</sup> *Id.* at 2.

ACORN 8 claimed the ACORN executive committee lacked the authority it exercised because the board ignored the bylaws.<sup>175</sup>

According to Stephanie Strom of the New York Times, ACORN's Interim Chief Organizer contends that "the board's executive committee . . . is charged with making decisions between the board's two annual meetings." (Stephanie Strom, "Acorn Working on Deal to Sever Ties With Founder", New York Times – October 16, 2008). On July 13, 2008, ACORN's General Counsel represented that "the Exec Comm's power are (sic) Not in the bylaws and are determined from meeting to meeting – ". (See, July 13, 2008 - 7:15 PM - Bachmann Email to [myexdirector@acorn.org](mailto:myexdirector@acorn.org) and Karen Inman). Arguably without a "meeting" at which there is a "quorum", no such determination can be made by ACORN's board of directors. (AB – Article Six: Association Board of Directors, 11).

A quorum is unlikely to spontaneously convene; vote, on a totally impromptu basis, in adequate numbers to empower ACORN's Executive Committee as the organization's Interim Chief Organizer reportedly envisions; while simultaneously waiving prior notice. So, as a practical matter, there would have to be some kind of advance notice of any board vote purportedly empowering ACORN's Executive Committee to expel fellow members from the organization and/or its offices. (AB – Article Six: Association Board of Directors, 9 & 10). The complainants hereby attest that they have never been provided any such notice.

According to a letter from ACORN 8 attorney James Gray, Liz Wolf, an ACORN staff member, continued to receive and spend corporation money even after being told to stop by the IMC.<sup>176</sup> ACORN 8's temporary restraining order enjoined and prohibited the defendants from continuing "to enter into contracts and waste money of the Corporation and [make] any payments on behalf of the Corporation other than for wages already earned until further orders of the Court."<sup>177</sup> A Louisiana court required ACORN to "disclose the location of all banking accounts, deposits of money and contracts belonging to ACORN."<sup>178</sup> According to ACORN 8, these disclosures have not been made. ACORN 8 claimed the Board ignored their attorney James Gray's October 13, 2008 letter to the ACORN Executive Board, including Maude Hurd and Steven Kest, requesting ACORN to cease entering into any agreements or negotiating any contracts intended to divest ACORN assets or property to Wade Rathke without the full Association Board's approval.<sup>179</sup>

### **3. ACORN's Financial and Structural Mismanagement Has Led to Its Failure to Uphold Its Corporate Duties**

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<sup>175</sup> IMC Allegations (January 7, 2009) at 14 (ACORN\_004879).

<sup>176</sup> 6-Amended TRO Petition [James Gray] at 3 (ACORN\_000024).

<sup>177</sup> *Id.* at 4 (ACORN\_000025); *See also* Writ of Mandamus (Sept. 19, 2008) at 3-4 (ACORN\_000040-000041).

<sup>178</sup> *Id.* at 6-7 (ACORN\_000027-000028).

<sup>179</sup> Letter to Board (Oct. 13, 2008) at 1-2 (ACORN\_004491-004492).

**FINDING:** *ACORN's inadequate management structure nurtured a breakdown of corporate integrity, encouraged improper political walls, fostered violations of the tax code, cultivated the illegal use of federal funds and supported an inadequate response to corporate embezzlement. ACORN accepts federal grant funds yet lacks any whistleblower policy, fails to comply with IRS laws and lacks an ongoing relationship with duly qualified legal counsel. Project Vote lacks hiring standards and routinely employs convicted felons. The executive directors of several ACORN affiliates lack sufficient control of their own funds, ACORN affiliates lack independent boards that they can report to, and directors wear hats that jeopardize their ability to act solely in the interests of their organizations. ACORN is responsible for Project Vote's fraudulent registrations because ACORN authorizes the selection of members engaged in voter registration.*

ACORN exercises control over housing corporations,<sup>180</sup> media entities,<sup>181</sup> labor organizations,<sup>182</sup> building corporations,<sup>183</sup> service providers,<sup>184</sup> 501(c)(3)'s,<sup>185</sup> political action committees,<sup>186</sup> and health funds,<sup>187</sup> among others.<sup>188</sup> According to the Louisiana Secretary of State database, Wade Rathke is on the board of 30 ACORN-affiliated corporations, many of which are defunct.<sup>189</sup> The ACORN COUNCIL is composed of ACORN and ACORN International.<sup>190</sup> Over 361 corporations compose the COUNCIL and Dale and Wade Rathke are affiliated with over 100 of them.<sup>191</sup> The law firm of Harmon, Curran, Spielberg & Eisenberg LLP ("HCSE"), ACORN's outside counsel, identified numerous problems with ACORN's management structure, including a lack of corporate integrity, the existence of improper political walls, a failure to comply with the tax code, concerns about the legal use of federal funds, a lack of administrative capabilities, and an inadequate response to the embezzlement.<sup>192</sup> According to the HCSE

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<sup>180</sup> ACORN Corporate Structure (undated) at 2-3 (ACORN Center for Housing, Inc., Desert Rose Homes, L.L.C.) (on file with author).

<sup>181</sup> *Id.* at 4 (ACORN Television in Action for Communities, Inc.).

<sup>182</sup> *Id.* at 5 (Local 100, Local 880, American Home Day Care Workers Association, Inc., United Security Workers of America).

<sup>183</sup> *Id.* at 6 (Broad Street Corporation, Elysian Fields Corporation, New York Organizing and Support Center, Inc.).

<sup>184</sup> *Id.* at 7 (ACORN Associates, Inc., ACORN Campaign Services, Inc., Citizens Consulting, Inc., Citizen Services, Inc.).

<sup>185</sup> *Id.* at 8 (ACORN Institute, Inc.; American Institute for Social Justice, Inc.; Project Vote/Voting for America, Inc.; ACORN Law for Education Representation & Training, Inc.).

<sup>186</sup> *Id.* at 9 (ACORN Political Action Committee, Inc.).

<sup>187</sup> *Id.* (ACORN Beneficial Association, Inc., McLellan Multi-Family Corporation).

<sup>188</sup> *Id.*

<sup>189</sup> Email from Steve Bachmann (July 22, 2008) at 1 (ACORN\_004325).

<sup>190</sup> ACORN Grant Request to the Democracy Alliance at 12-13 (Mar. 24, 2006) (ACORN\_004348-004349).

<sup>191</sup> *Id.* See also Appendix 1, *infra*.

<sup>192</sup> HCSE Memo (June 19, 2008) at 1-2 (ACORN\_004927-004928).

Memo, ACORN accepts federal grant funds yet lacks a whistleblower policy, fails to meet federal audit requirements, and lacks an ongoing relationship with legal counsel.<sup>193</sup>

Private foundations, like Citizens Consulting Inc. (“CCI”) and Project Vote (ACORN’s get-out-the-vote organization) must pay an excise tax on any lobbying expenditures they make, yet, according to their Form 990’s, they never reported their expenditures to the IRS.<sup>194</sup> On the basis of their joint representation before the United States District Court in Louisiana, ACORN Fair Housing, CCI, and SEIU Local 100 all share lawyers.<sup>195</sup> According to testimony made before the House Judiciary Committee, all donations to ACORN or any of its approximately 361 affiliates are deposited into bank accounts held by CCI; thereafter, CCI transfers money into various affiliate accounts:

**Project Vote in 2007 had a \$28 million dollar budget which was funded by CCI, an affiliate of ACORN. CCI is an acronym for Citizens Consulting Incorporated. Ms. Moncrief [sic] testified: ‘CCI is basically the accounting arm for all of the money, the payments, who gets what, the – how the organization operates and flows and makes sure its bills are paid. All of that goes through CCI. . . . CCI makes disbursements to them either directly into their account or does transfers between I guess the different organizations.’ All donations to ACORN or any of its approximately 175 affiliates are deposited into bank accounts held by CCI. Thereafter, CCI transfers money into various affiliates, one being Project Vote.**<sup>196</sup>

HCSE stated it was difficult to determine whether ACORN’s 501(c)(3) funds were always disbursed for 501(c)(3)-appropriate purposes:

All 501(c)(3)s must also ensure that their funds are spent only with appropriate corporate approval. This does not mean that the board should approve [each] expenditure. Authority may be delegated to an appropriate staff person, and may be further delegated by that person. Such delegation must be explicit and in writing. **[Citizens Consulting Inc., (“CCI”)], which controls the bank accounts, must be instructed not to disburse funds without appropriate approval. It must be given copies of the written expenditure authority delegation, and maintain lists of authorized**

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<sup>193</sup> *Id.* at 10 (ACORN\_004936).

<sup>194</sup> See 2000-2008 Form 990s (Project Vote, ACORN International, AISJ, ACORN Institute, ACORN Housing Corporation), available at <http://www.guidestar.org/> (see *id.* at 11, 15 and 16 where ACORN does not disclose excess benefit transactions or political activity) (hereinafter “Form 990”); See also IRC §4945 and Tax Reform Act of 1969 (P.L. 91-172).

<sup>195</sup> Compare *Local 100, Serv. Empl. Int’l Union v. Assumption Parish Sch. Bd.*, 1996 U.S. Dist. LEXIS 5577 (D. La. 1996) with *Louisiana Acorn Fair Hous. v. Quarter House*, 952 F. Supp. 352 (D. La. 1997).

<sup>196</sup> *What went wrong with the 2008 election?: Hearing Before the H. Judiciary Comm.*, 111TH CONG. 5 (2009) (statement of Heather Heidelbaugh) (emphasis added).

**individuals. The organizations must also inform CCI when a staff person leaves, moves, or otherwise should no longer be on the authorized list. They should have explicit written revocation of expenditure authority in their files. All staff must understand that CCI cannot disburse any funds without proper approval.**

An example where this comes up is when organizations have agreements to work jointly on a project, or for one to provide grant funding to the other. A contract or grant letter is necessary to establish that relationship, but not sufficient to authorize a payment. **Just as with outside parties, only a person with legal authority for a pavor should disburse its funds. I have seen at least one instance where that did not happen, although the payment was for a 501(c)(3)-permissible project, and one that apparently the 501(c)(3) in question was participating in. The point is that general agreement to provide funding to a project is not the same as making payments, and the other organization seeking funds should not be the one to control the making of payments. Otherwise, there is danger that we cannot demonstrate that 501(c)(3) funds are always disbursed for 501(c)(3)-appropriate purposes.**<sup>197</sup>

HCSE stated “[r]ecent administrative problems relating to ERISA and IRS filings and payments further indicate the need to call in outside vendors, expand capacity, or rethink CCI’s role.”<sup>198</sup>

Based upon this Committee’s review of the Form 990s of several ACORN-affiliates, Project Vote paid ACORN \$10,861,825 from 2000 through 2006.<sup>199</sup> Project Vote also paid ACORN affiliate CSI \$1,206,942 in 2005 and 2006, and paid \$1,266,967 to ACORN affiliate CCI from 2000 through 2004.<sup>200</sup> Since 2000, AISJ paid ACORN \$1,926,831.<sup>201</sup> In 2000, AISJ paid CCI \$362,464 and ACORN Associates, Inc.<sup>202</sup> \$258,593.<sup>203</sup> As reported in *The Washington Examiner*:

Federal tax records also show the ACORN Institute paid CCI \$61,443 in 2006 and \$50,134 in 2007. . . ACORN Housing tax records showed a 2006 payment of \$238,953 to CCI for ‘administrative services.’<sup>204</sup>

<sup>197</sup> HCSE Memo at 8-9 (ACORN\_004934-004935) (emphasis added).

<sup>198</sup> *Id.* at 11 (ACORN\_004937).

<sup>199</sup> Form 990, *supra* note 194.

<sup>200</sup> *Id.*

<sup>201</sup> *Id.*

<sup>202</sup> *Id.*

<sup>203</sup> *Id.*

<sup>204</sup> Kevin Mooney, *Tax documents show ACORN link to affiliates*, May 19, 2009, available at <http://www.washingtonexaminer.com/opinion/columns/special-editorial-reports/Tax-documents-show-ACORN-link-to-affiliates-45443062.html> (last visited June 19, 2009).

ACORN insider Anita MonCrief said the accounts were commingled:

The money goes into accounts at CCI. CCI has dozens – dozens and dozens of accounts. Some of them are Project Vote. Some of them are ACORN . . . Those checks were usually copied, and [Ms. MonCrief] would have PDF access to them. The checks that [Ms. MonCrief] received [she] would copy and send them over to Little Rock for processing.<sup>205</sup>

According to documents ACORN insiders Anita MonCrief and Marcel Reid produced to this Committee, ACORN engaged in unreported transactions between its affiliates. According to an email by Steve Bachmann, SEIU Local 100, ACORN Institute (a 501(c)(3)), ACORN Community Labor Organizing Center (“ACLOC”),<sup>206</sup> ACORN International,<sup>207</sup> Affiliated Media Foundation Movement (“AMFM”), the Association for the Rights of Citizens, Inc. (“ARC”),<sup>208</sup> the Elysian Fields Corporation, and Citizens Consulting Inc. (“CCI”), are interchangeably controlled by ACORN:

**Local 100 was nurtured by ACORN**, but I think US Labor law prevents ACORN from interfering in Local 100 affairs. And it is not clear that ACORN wants to bother with Local 100 anymore, except to collect money **Local 100 has borrowed from ACORN affiliates (some \$250,000)**. . . . **Acorn Institute. I think this is clearly an ACORN corporation**, but I have to observe that it seems to me that [Wade Rathke] has been trying to fill it with skills. **I think it is one of ACORN’s major 501c3s, and control of it needs to be monitored** . . . . **ACLOC. I think control of this organization is up for grabs, but the more critical question is who gets business from SEIU and ACORN**. . . . **AINT. This is ACORN International**. [Wade Rathke] should probably start his own darn international org. If he wants this one, he has to use it without the ACORN name. . . . **AMFM. This was founded as a media resource corporation. I thought there was nothing to this corporation until I found out that it is, in theory, owed some \$45,000 once the \$750,000 [Dale Rathke] moneys are distributed**. WR has no moral right to this money—or the corporation, for that matter. In any case, he has been scrambling to make this corporation “real” and had some Board meeting on July 2. . . . **ARC. This used to be a key 501c3 feeder for labor projects**. Right now the Board supposedly consists of Steve Bachmann and Mildred Edmond. And Dale Rathke and Cornelia have supposedly left this Board. **ACORN should advise Wade Rathke that this corporation is going to be cleaned up, and should probably be closed down**. . . . **CCI. The point here is**

<sup>205</sup> *Id.*

<sup>206</sup> A-CLOC, available at: <http://www.acloc.org/> (last visited June 13, 2009).

<sup>207</sup> Acorn International, available at: <http://www.acorninternational.org/> (last visited June 13, 2009).

<sup>208</sup> ARC WEBSITE, available at: <http://www.arc.org/> (last visited June 13, 2009).

**that if ACORN wants nothing to do with [Wade Rathke], then presumably CCI needs to terminate its contracts with any WR tainted organization. These conflict of interest issues are about to come to a head with CCI attorneys.** . . . In the present crisis the CCI lawyers may have to face these issues shortly. As an ethical if not a legal matter, the whole of CCI will have to face these issues also. . . . **COUNCIL.** If ACORN wants to have nothing to do with [Wade Rathke], then any [Wade Rathke] organization is going to have to be ejected from the COUNCIL, in particular, **Local 100 and its subsidiaries.** . . . **EFC. There may be problems with other building corporations, but this is the Big Mama because there is so much property held by EFC. [Elizabeth Kingsley] is working hard to get on top of this situation which is a byzantine empire until itself.** However, it does appear that it has been misused and abused by the Rathke brothers, and ACORN may have some self-help options available to it.<sup>209</sup>

According to a petition for a temporary restraining order, preliminary injunction and permanent injunction filed against ACORN's board, CCI, which functions as a management center for ACORN, facilitated ACORN's mismanagement:

Defendant CCI is either an affiliate of or a contractor for ACORN and provides paycheck and cash management services for ACORN. Defendant Mike Jones is a principal of CCI. On information and belief, all assets belonging to ACORN or its affiliates are administered in some way by CCI. CCI knew or should have known that it was obligated to disclose to Acorn's full Board of Directors Dale Rathke's embezzlement and the Rathke family's subsequent assumption of the debt. Further, CCI breached its duties and its trust to ACORN, ACORN's affiliates, and ACORN's contributors by deceptively carrying the agreement with [the] Rathke family as a loan to an officer on its books when no such loan occurred without knowledge or authority of ACORN's full Board of Directors. Such clandestine and deceptive practices were continued when CCI, through its principal, Mike Jones, informed a disinterested ACORN Board member that she was prohibited from reviewing the financial records of ACORN or its affiliates because CCI was an independent payroll service with no connection to ACORN or its affiliates (despite the fact that all of ACORN's assets were administered by CCI). CCI and ACORN's respective brochures and marketing materials refer to each other as interrelated entities. Moreover, the records of the Louisiana Secretary of State show that at least seventy-five

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<sup>209</sup> Email from Steve Bachmann (July 22, 2008), at 2-3 (ACORN\_004326-004327) (emphasis added).

corporations have boards of directors interlocking with ACORN, many of which list a principal place of business identical to that of ACORN.<sup>210</sup>

A 2008 CCI organizational chart provided to Committee staff identifies Michael Jones, CPA as the Chief Financial Officer,<sup>211</sup> and Steve Bachmann as the General Counsel of the CCI Legal Department.<sup>212</sup> According to HCSE's analysis, "CCI has no chief organizer, nor any agreement with any other entity with such a person that would allow them to exercise such authority."<sup>213</sup>

A July 22, 2008 memorandum prepared by Bachmann reflected CCI's control of 400 bank accounts for 170 ACORN affiliates, many of them defunct.<sup>214</sup> CCI provides consulting services, including administrative, financial, bookkeeping, and legal support, primarily to nonprofit organizations.<sup>215</sup> CCI controls ACORN and its affiliates' bank accounts.<sup>216</sup> CCI controls the account of CVT, whose funds are readily available to ACORN.<sup>217</sup>

This Committee obtained internal ACORN financial documents reflecting cross-over financial transfers between ACORN and its affiliates. These documents reflect transactions between ACORN local chapters, the American Institute for Social Justice ("AISJ"), and Citizens Consulting Inc. ("CCI"), in addition to a number of corporate and governmental vendors.<sup>218</sup>

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<sup>210</sup> Petition for Temporary Restraining Order, Preliminary Injunction, and Permanent Injunction, *Acorn v. Rathke*, 08-8342 (La. Dist. Ct. 24 Dist. 8/21/08); \_\_\_ So. 2d. \_\_\_, at 2 (ACORN\_00375).

<sup>211</sup> CCI-ACORN Entities (July 29, 2008) at 2 (ACORN\_004506).

<sup>212</sup> *Id.* at 11 (ACORN\_004515).

<sup>213</sup> HCSE Memo (June 19, 2008) at 3 (ACORN\_004929).

<sup>214</sup> Email from Steve Bachmann (July 22, 2008) at 1 (ACORN\_004325); *See also* Notes from West Regional Meeting (August 15, 2008) at 1 (ACORN\_000314).

<sup>215</sup> HCSE Memo (June 19, 2008) at 8-9 (ACORN\_004934-004935).

<sup>216</sup> HCSE Memo (June 19, 2008) at 8 (ACORN\_004934).

<sup>217</sup> *Id.*

<sup>218</sup> AISJ-LA-03.21.01 – Political ops at 1-11 (Mar. 21, 2001) (ACORN\_00106).



ORGANIZATION	OFFICE	REC'Q BY	ACCOUNT	DATE SENT	DATE REC'D
AISJ	Washington DC	Carolyn Carr	CA AISJ	03/21/01	
<b>ACCT BALANCE</b>	<b>TRANSFER</b>	<b>CKOFF</b>	<b>ALLOC TOT</b>	<b>BAL FRWD</b>	<b>DEPT. CODE</b>
3,600.00			3,600.00	0.00	
AUDIT		1010	This is a transfer from one account to another so no shared costs are incurred.	Total Allocations	3,600.00
CCI		1020		Total Shared	0.00
CCI GENERAL		1025		Grand Total	3,600.00
CCI CORPORATE/LEGAL ASSOCIATION		4220			
COF		2830			
BACK SHARED COSTS					
(1)			(2)		
Vendor	Acct/Invoice #	Send To	Vendor	Acct/Invoice #	Send To
CA ACORN-Los Angeles		Los Angeles			Los Angeles
Amount	Receipts		Amount	Receipts	
3,600.00					
Coding	Acct	Ck#	Coding	Acct	Ck#
(3)			(4)		
Vendor	Acct/Invoice #	Send To	Vendor	Acct/Invoice #	Send To
		Los Angeles			Los Angeles
Amount	Receipts		Amount	Receipts	
Coding	Acct	Ck#	Coding	Acct	Ck#
(5)			(6)		
Vendor	Acct/Invoice #	Send To	Vendor	Acct/Invoice #	Send To
		Los Angeles			Los Angeles
Amount	Receipts		Amount	Receipts	
Coding	Acct	Ck#	Coding	Acct	Ck#

ORGANIZATION	OFFICE	REC'Q BY	ACCOUNT	DATE SENT	DATE REC'D
ACORN	Los Angeles	Amy Schur	CA ACORN	05/24/99	
<b>ACCT BALANCE</b>	<b>TRANSFER</b>	<b>CKOFF</b>	<b>ALLOC TOT</b>	<b>BAL FRWD</b>	<b>DEPT. CODE</b>
8,790.92			4,246.14	4,544.78	62
AUDIT	158.74	1010		Total Allocations	3,657.63
CCI	145.94	1020		Total Shared	588.51
CCI GENERAL	52.67	1025		Grand Total	4,246.14
CCI CORPORATE/LEGAL ASSOCIATION	103.88	4220			
COF	82.66	2860			
BACK SHARED COST	8.05	2830			
(1)			(2)		
Vendor	Acct/Invoice #	Send To	Vendor	Acct/Invoice #	Send To
LA Unified School District		Los Angeles	Printoo Printers		Los Angeles
Amount	Receipts		Amount	Receipts	
614.48	Attached		1,970.16	Attached	
Coding	Acct	Ck#	Coding	Acct	Ck#
062-9800			062-5440		
(3)			(4)		
Vendor	Acct/Invoice #	Send To	Vendor	Acct/Invoice #	Send To
1st United Methodist C Lease		Los Angeles	Capital Messenger Srv.		Los Angeles
Amount	Receipts		Amount	Receipts	
912.50	On File		153.00	Attached	
Coding	Acct	Ck#	Coding	Acct	Ck#
062-6200			062-9200		
(5)			(6)		
Vendor	Acct/Invoice #	Send To	Vendor	Acct/Invoice #	Send To
Nathan Henderson-Jar reimbursement		Los Angeles			Los Angeles
Amount	Receipts		Amount	Receipts	
7.49	Attached				
Coding	Acct	Ck#	Coding	Acct	Ck#
062-5420					

ORGANIZATION	OFFICE	REC'Q BY	ACCOUNT	DATE SENT	DATE REC'D
ACORN	Oakland	Amy Schur	CA.ACORN-Oak	05/24/99	
ACCT BALANCE	TRANSFER	CKOFF	ALLOC TOT	BAL FRWD	DEPT. CODE
30,117.17			1,266.92	28,848.25	31
AUDIT	47.44	1010			
CCI	43.61	1020		Total Allocations	1,093.05
CCI GENERAL	15.74	1025		Total Shared	175.87
CCI CORPORATE/LE	31.04	4220		Grand Total	1,266.92
ASSOCIATION	24.70	2860			
COF	2.40	2830			
BACK SHARED COST	10.93				
(1)				(2)	
Vendor	Acct/Invoice #	Send To		Vendor	Acct/Invoice #
Pacific Bell	5104355690	Oakland		UC Regents, Career Ctr	Oakland
Amount	Receipts			Amount	Receipts
549.05	Attached			35.00	Attached
Coding	Acct	Ck#		Coding	Acct
031-8600				062-5800	
(3)				(4)	
Vendor	Acct/Invoice #	Send To		Vendor	Acct/Invoice #
Nathan Henderson-Jar	reimbursement	Oakland		Brian Ketterring	reimbursement
Amount	Receipts			Amount	Receipts
433.00	attached			76.00	attached
Coding	Acct	Ck#		Coding	Acct
031-5010				031-5010	
(5)				(6)	
Vendor	Acct/Invoice #	Send To		Vendor	Acct/Invoice #
		Oakland			Oakland
Amount	Receipts			Amount	Receipts
Coding	Acct	Ck#		Coding	Acct

The HCSE Memo described one of ACORN's affiliates, Communities Voting Together ("CVT"), a political organization, as lacking independent control:

CVT may have been treated like a pot of money available to ACORN to carry out state-level political work. Funds were committed and activities undertaken in its name without the knowledge of the CVT officers or key staff person.<sup>219</sup>

According to the HCSE Memo, CVT, if not operated as a "properly 'nonconnected' organization," can not legally make communications about federal candidates, "which it continues to do."<sup>220</sup> HCSE then warned: "[i]f it does so anyways, it will create tremendous liability for itself, and likely for both ACORN and ACORN Votes."<sup>221</sup> According to the memo, CCI "must not allow any CVT funds to be disbursed without proper authorization."<sup>222</sup> According to HCSE's analysis, ACORN affiliates lack independent control because CCI has actual authority over them.<sup>223</sup> According to HCSE, CCI cannot simultaneously authorize decisions over federally-funded organizations and lobbying organizations: "If [CCI allows CVT funds to be disbursed without authorization], CVT should be moved out of CCI."<sup>224</sup>

According to ACORN insiders, the Service Employees International Union ("SEIU") has given ACORN \$4 million.<sup>225</sup> A December 10, 2006 report from Wade

<sup>219</sup> HCSE Memo (June 19, 2008) at 8 (ACORN\_004934).

<sup>220</sup> *Id.*

<sup>221</sup> *Id.*

<sup>222</sup> *Id.*

<sup>223</sup> *Id.*

<sup>224</sup> *Id.*

<sup>225</sup> IMC Transparency (January 7, 2009) at 4 (ACORN\_004869).

Rathke describes a building services partnership between ACORN and SEIU.<sup>226</sup> Rathke stated ACORN's incentive in using CCI to control accounts:

[M]y inability to convince SEIU 880 not to leave the shared collective of our family of organizations around the **shared services of CCI** was my major disappointment of the year and represents . . . the largest internal threat to our family of organizations.<sup>227</sup>

According to HCSE, CCI lacks a legitimate board and yet it is the “nerve center” of ACORN's administrative functions.<sup>228</sup> CCI has no in-house or third-party capabilities for monitoring its own problems.<sup>229</sup> HCSE presented concerns about CCI's capacity and performance, citing “administrative problems relating to ERISA and IRS filings.”<sup>230</sup>

Recent administrative problems relating to ERISA and IRS filings and payments further indicate the need to call in outside vendors, expand capacity, or rethink CCI's role . . . CCI itself needs to put a real Board in place ASAP.<sup>231</sup>

State-based ACORN chapters share funds with ACORN COUNCIL and CCI.<sup>232</sup> The American Institute for Social Justice (“AISJ”) has wired money to ACORN, which then transferred the money to CCI accounts, without making any disclosures to the IRS.<sup>233</sup> Additionally, American Express has a \$125,000 garnishment action against Dale Rathke.<sup>234</sup> Any sort of fraud committed by a nonprofit is subject to federal and state securities laws.<sup>235</sup>

A March 11, 2003 memo from Nathan Henderson-James, Development Director of ACORN-California to Amy Schur, Management Council member of ACORN, discusses the political issues involved with CCI and its ACORN accounts, as well as the charitable donation account for the Catholic Campaign for Human Development (“CCHD”):

If part of the problem is that **CCI doesn't get accurate reporting from the field on income**, then why don't we create a system that ensures accuracy? . . . **Many cities have more than one account.** For example, **Sacramento has the ACORN account, the CCHD account, and the Sacramento Living Wage Campaign account.**

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<sup>226</sup> Chief Organizer Report 2006 (Dec. 10, 2006) at 7 (ACORN\_004824).

<sup>227</sup> *Id.* (emphasis added).

<sup>228</sup> HCSE Memo (June 19, 2008) at 2 (ACORN\_004928).

<sup>229</sup> *Id.*

<sup>230</sup> *Id.* at 10, n.7. *See e.g. id.* at 11.

<sup>231</sup> *Id.* at 11.

<sup>232</sup> AISJ-LA-03.21.01 – Political ops at 1-11 (Mar. 21, 2001) (ACORN\_00106).

<sup>233</sup> *Id.*

<sup>234</sup> Email from Steve Bachmann (July 22, 2008) at 1 (ACORN\_004325).

<sup>235</sup> Timothy L. Horner & Hugh. H. Makens, *Nonprofit Symposium: Securities Regulation of Fundraising Activities of Religious and Other Nonprofit Organizations*, 27 STETSON L. REV. 473, 474 (1997).

**We need accurate accounting for each account, independently of the other. Not having this causes some measure of political trouble with allies in Sacramento (though this has now been more or less resolved).**<sup>236</sup>

On June 20, 2008, at an ACORN Association Board meeting in Detroit, HCSE told ACORN President Maude Hurd, “there are at least 100 separate corporations within ACORN and . . . corporate relationships should be re-examined and regularized.”<sup>237</sup> In a July 22, 2008 memorandum, ACORN General Counsel Steve Bachmann stated, “[t]he fact that [Wade Rathke] and his brother [Dale Rathke] used their positions as ACORN agents to insinuate themselves into positions of power in [affiliate] corporations suggest[s] the degree to which fiduciary duty requires them to leave.”<sup>238</sup> Bachmann identified the ACORN Institute as a 501(c)(3) but claimed, “control of it needs to be monitored.”<sup>239</sup>

Despite the apparent abuses of federal funds by CCI, HCSE claimed these abuses persisted because ACORN lacked a whistleblower policy:

First and foremost, any entity receiving government funding should have in place a serious and enforced whistleblower policy. Any employee, or an employee of another organization, or a member of the public, who has any information about the misuse of grant funds or related conduct should have a clear avenue to report the concern without fear of reprisal.<sup>240</sup>

### **a) ACORN Lacks Quality Control in Hiring and Supervision of Employees**

Nonprofit 501(c)(3)'s, like Project Vote – an ACORN affiliate – have fiduciary duties.<sup>241</sup> According to the *Wall Street Journal*, Project Vote purposefully lacks hiring standards so allegations of wrongdoing ensnare low-level employees, not directors.<sup>242</sup> According to a former Justice Department attorney involved in ACORN investigations, ACORN hired ex-convicts to conduct voting registrations and ACORN volunteers had a history of not turning in Republican registrations.<sup>243</sup> According to the Eighth Circuit Court of Appeals, ACORN not only has a history of hiring those with arrest records, but hiring embezzlers as well:

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<sup>236</sup> CCI Memo (Mar. 11, 2003) at 2-3 (ACORN\_004308-004309) (emphasis added).

<sup>237</sup> ACORN Association Board Meeting (July 13, 2008) at 1 (ACORN\_00391).

<sup>238</sup> Email from Steve Bachmann (July 22, 2008) at 1 (ACORN\_004325).

<sup>239</sup> *Id.*

<sup>240</sup> HCSE Memo (June 19, 2008) at 10 (ACORN\_004936).

<sup>241</sup> 1-12 Liability of Corporate Officers and Directors §12.01.

<sup>242</sup> John Fund, *An Acorn Whistleblower Testifies in Court*, WALL STREET J., Oct. 30, 2008, available at <http://online.wsj.com/article/SB122533169940482893.html> (last visited May 11, 2009).

<sup>243</sup> Interview with Asheesh Agarwal, former Deputy Assistant Attorney General, Department of Justice, in Wash., D.C. (Mar. 30, 2009) [hereinafter Agarwal Interview].

**Pending sentencing in federal court**, Hipenbecker was released on bond. While free on bond, **Hipenbecker became employed by the Minnesota Association of Community Organizations for Reform Now (ACORN). Soon after being hired, Hipenbecker embezzled approximately \$ 1500 from ACORN.** Upon learning of Hipenbecker's latest crime, the district court revoked Hipenbecker's bond and informed her that the district court was contemplating an upward sentencing departure.<sup>244</sup>

In response to voter registration fraud during the 2004 General Election, the Special Investigations Unit of the Milwaukee Police Department reported:

**[T]wo persons who had entered guilty pleas to misdemeanor charges of Election Fraud within one year of the November General Election also were employed as Election Inspectors for the Election Commission on November 2, 2004. . . . These reviews lead the Task Force to find that 18 persons were sworn in as Deputy Registrars in 2004 that were convicted felons and under Department of Correction supervision. Of the 15 felons that listed a sponsoring organization, eight named ACORN as their sponsoring agency.**<sup>245</sup>

ACORN disregarded the risks of hiring those with criminal records to register voters. ACORN attorney Brian Mellor, writing to King County, Washington prosecutor Norm Maleng concerning a voter registration fraud case, wrote “my review of the [voter registration] applications has led me to decide to refer these three employees to your office to investigate them for possible voter-registration fraud[.]”<sup>246</sup>

According to testimony before the House Judiciary Committee:

[ACORN] knew there was a problem with “the quality of the people they were getting. Some of the people didn’t know how to use basic office . . . systems, which made it very hard for copying

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<sup>244</sup> United States v. Hipenbecker, 115 F.3d 581, 583 (8th Cir. 1997) (emphasis added).

<sup>245</sup> Milwaukee Police Dep’t, Special Investigations Unit, *Report of the Investigation into the November 2, 2004 General Election in the City of Milwaukee*, available at:

[http://graphics2.jsonline.com/graphics/news/MPD\\_2004voterfraudprobe\\_22608.pdf](http://graphics2.jsonline.com/graphics/news/MPD_2004voterfraudprobe_22608.pdf) (emphasis added).

<sup>246</sup> Mike Carter, *King County investigates apparent forgery of hundreds of voter cards*, SEATTLE TIMES, Mar. 16, 2007, available at:

[http://seattletimes.nwsourc.com/html/localnews/2003621500\\_webfraud17m.html](http://seattletimes.nwsourc.com/html/localnews/2003621500_webfraud17m.html) (last visited June 16, 2009); See also Settlement Agreement from Sam Reed, Washington Secretary of State and Daniel Satterberg, King County Prosecuting Attorney, to Brian Mellor, ACORN Senior Counsel and Steve Bachmann, ACORN General Counsel (July 25, 2007), available at:

<http://www.secstate.wa.gov/office/pdf/Settlement%20and%20Compliance%20Agreement.pdf>.

the registration card and making sure that they were turning in accurate counts and work ethic issues.”<sup>247</sup>

On February 24, 2009 Project Vote General Counsel Brian Mellor told a Nevada state criminal investigator the following concerning bonuses for voter registrations:

In regard to “Blackjack,” MELLOR stated that it was not ACORN policy to pay performance related bonuses to their staff. MELLOR stated that back in 2003, ACORN engaged in a voter registration drive during which they compensated their canvassers through bonuses linked to the number of voter registration forms collected by each canvasser. This policy turned out to be a bad policy and since then, ACORN has not compensated canvassers based on performance.<sup>248</sup>

According to notes produced from former ACORN insider Anita MonCrief, the federally-funded Project Vote actively maintained registration quotas and provided monetary incentives based on registrations:

Standards for canvassers – 20 cards/day – is this a realistic number? In Cincinnati, canvassers tended to stop at the number instead of go on; problems with duplicates (voters registering with ACORN multiple times), Missouri (KC and St. Louis) had lots of people who did this; saturation leads to duplicates; not because standard is unrealistic but because not enough people working on developing new sites; 20 standard can create practical equivalent of pay-per-card, legal concern . . . .<sup>249</sup>

A 2004 ACORN voter registration manual stated, “[a]nyone who performs at less than three voter registrations per hour should not be on the staff [sic].”<sup>250</sup>

Heather Heidelbaugh testified before the House Judiciary Committee that ACORN’s voter registration programs lacked on-going training of canvassers<sup>251</sup> as well as other problems such as a practice ACORN encouraged of its canvassers turning in duplicate registrations.<sup>252</sup> Regarding voter registration, Anita MonCrief testified,

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<sup>247</sup> *What went wrong with the 2008 election?: Hearing Before the H. Judiciary Comm.*, 111TH CONG. 1-17 (2009) (statement of Heather Heidelbaugh).

<sup>248</sup> ACORN AFFIDAVIT, available at: <http://sos.state.nv.us/information/news/press/2009/pdf/AFFIDAVIT-ACORN.pdf>, at 8, lines 17-22 (last visited June 22, 2009).

<sup>249</sup> POLOPS VR NOTES (undated) at 1-2 (ACORN\_000372-000373).

<sup>250</sup> Brad Bumsted & Walter F. Roche Jr., *Reform association's manual suggests use of quota system*, PITT. TRIBUNE REVIEW, June 14, 2009, available at: [http://www.pittsburghlive.com/x/pittsburghtrib/news/regional/s\\_629482.html](http://www.pittsburghlive.com/x/pittsburghtrib/news/regional/s_629482.html) (last visited July 6, 2009).

<sup>251</sup> *What went wrong with the 2008 election?: Hearing Before the H. Judiciary Comm.*, 111TH CONG. 7 (2009) (statement of Heather Heidelbaugh).

<sup>252</sup> *Id.* at 8. See also Lara Lakes Jordan, *Officials: FBI Investigates ACORN for voter fraud*, ABC NEWS, Oct. 17, 2008, available at <http://abcnews.go.com/Politics/wireStory?id=6054185> (last visited Apr. 29, 2009).

“ACORN was more interested in the total number of submitted registrations than the total number of valid registrations.”<sup>253</sup>

While ACORN aspires to institute quality control mechanisms for its voting efforts, these guidelines failed on a regular basis.<sup>254</sup> Documents obtained by the Committee show ACORN authorizing the selection of members charged with voter registration. Accordingly, ACORN can be held responsible for any fraudulent conduct having arisen from Project Vote’s registration efforts.<sup>255</sup>

A nonprofit corporation’s legal protections are disregarded if “its finances are not kept separate from individual finances . . . the corporation is used to promote fraud or illegality,” or “corporate formalities are not followed.”<sup>256</sup> If just one of these factors is proven, then the tax-exempt privileges of ACORN and its affiliates are dissolved and what remains is the absolute uncertainty about ACORN’s having complied with election and tax laws, among others.<sup>257</sup> In a settlement agreement between ACORN and the King County prosecutor in Seattle, Washington, ACORN acknowledged its liability “as a corporate entity” for the submission of “fraudulently collected” voter registrations “not reviewed pursuant to the quality control procedures” and “willfully turning in fraudulent cards.”<sup>258</sup>

## ***B. ACORN and Its Affiliates Are Not in Compliance With The IRS***

Nonprofits are exempt from taxation because corporations organized and operated exclusively for charitable or educational purposes benefit the public.<sup>259</sup> Based upon the legislative history behind 501(c)(3), tax-exempt status was designed to serve an economic benefit: “the Government is compensated for the loss of revenue by its relief from financial burden which would otherwise have to be met by appropriations from public funds.”<sup>260</sup> Compliance with tax laws was assumed to ensure the effective management of nonprofit corporations.<sup>261</sup>

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<sup>253</sup> *Id.* (Page 51, line 1-4).

<sup>254</sup> Quality Control (Jan. 2004) (ACORN\_000397-000405); *See also* PV Voter Registration Organizing Manual (Jan. 2004) (ACORN\_004310-004319).

<sup>255</sup> *See e.g. New York Central R. Co. v. U.S.*, 212 U.S. 481 at 493-494 (1909).

<sup>256</sup> HOK Sport, *supra note 47* at 936. (quoting *Lakota Girl Scout Council, Inc. v. Havey Fund-Raising Mgmt., Inc.*, 519 F.2d 634, 638 (8th Cir. 1975).

<sup>257</sup> *Id.*

<sup>258</sup> Settlement Agreement from Sam Reed, Washington Secretary of State and Daniel Satterberg, King County Prosecuting Attorney, to Brian Mellor, ACORN Senior Counsel and Steve Bachmann, ACORN General Counsel (July 27, 2007), *available at*:

<http://www.secstate.wa.gov/office/pdf/Settlement%20and%20Compliance%20Agreement.pdf>.

<sup>259</sup> *Christian Echoes Nat’l Ministry v. United States*, 470 F.2d 849, 853-854 (10th Cir. 1972).

<sup>260</sup> H.R. Rep. No. 1860, 75th Cong., 3d Sess. 19 (1939).

<sup>261</sup> *United Cancer Council, Inc. v. Comm’r*, 165 F.3d 1173, 1179 (7th Cir. 1999).



## 1. Congress, In Regulating Nonprofits, Intended Nonprofits As Not-For-Politics

**FINDING:** *An essential aspect of Project Vote, CCI, Citizens Services Inc. (“CSI”), Communities Voting Together (“CVT”), and other ACORN affiliated 501(c)(3)s is to promote desirable governmental policies consistent with its objectives through legislation.*

Section 501(c)(3) is limited to activities whose purpose is to neither influence legislation nor support participation or intervention in political campaigns on behalf of candidates for public office.<sup>262</sup> This limitation in Section 501(c)(3) originated from the Revenue Act of 1934, which allowed organizations tax exempt status if “no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation.”<sup>263</sup> The legislation was drafted after the decision in *Slee v. Commissions of Internal Revenue*, where the Second Circuit upheld the IRS’s denial of an exemption to a group whose purposes were not exclusively charitable, educational or scientific.<sup>264</sup> Section 501(c)(3) was further limited when, in 1954, Congress barred participation or intervention in political campaigns on behalf of candidates for public office.<sup>265</sup>

Based upon the legislative history of Section 501(c), when a corporate activity has a political purpose, the corporation is no longer “exclusively” charitable or educational. Congress intended nonprofit political activity to be interpreted broadly.<sup>266</sup> According to this interpretation, a nonprofit influences legislation whenever it makes “appeals to the public to react to certain issues.”<sup>267</sup> If an “essential part of the program” is “to promote desirable governmental policies consistent with its objectives through legislation” then a substantial part of the corporation’s activities are “influencing or attempting to influence legislation.”<sup>268</sup> “[A]ttempts to elect or defeat certain political leaders” reflect an “objective to change the composition of the federal government.”<sup>269</sup>

## 2. ACORN And Its Affiliates Violate Their Restrictions as Nonprofits

**FINDING:** *ACORN and its affiliates cannot delineate their 501(c)(3) work from their non-501(c)(3) work. Ignoring ACORN’s nonprofit protections reveals the same individuals made strategic decisions about which regions do 501(c)(3) versus non-501(c)(3) voter registration work.*

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<sup>262</sup> See *Dickinson v. United States*, 346 U.S. 389 (1953).

<sup>263</sup> 26 U.S.C. §501(c)(3).

<sup>264</sup> 42 F.2d 184 (2nd Cir. 1930).

<sup>265</sup> See *Christian Echoes*, *supra* note 259 at 854.

<sup>266</sup> *Id.* at 856.

<sup>267</sup> *Id.*

<sup>268</sup> *Id.*

<sup>269</sup> *Id.*



According to a March 24, 2006 funding request prepared by ACORN's Executive Director Steve Kest and Political Director Zach Polett, ACORN receives funding from membership dues, fundraising initiatives and contributions, foundation support, corporate contributions, and individual high donor contributions.<sup>270</sup> In 2007, ACORN raised \$4,171,000 in small-dollar unrestricted non-(c)3 dues and other income from their membership.<sup>271</sup> By the end of 2008, ACORN increased this annual amount to over \$7 million.<sup>272</sup>

According to the internal report on ACORN by the law firm of Harmon, Curran, Spielberg & Eisenberg, LLP ("HCSE Memo"), it is absolutely uncertain whether ACORN and its affiliates, including CCI and Project Vote, have "done things right:"

**[L]ack an adequately documented delineation of 501(c)(3) from non-501(c)(3) work . . . However, [we] cannot confirm that strategic decisions about which regions do 501(c)(3) versus non-501(c)(3) voter engagement work are not being made by the same person or people. At a minimum, there is not adequate demonstrable separation between these functions. As a result, we may not be able to prove that 501(c)(3) resources are not being directed to specific regions based on impermissible partisan considerations. Remember, it is the IRS that enforces the rules for 501(c)(3)s. In general the government has the burden of proving you have done something wrong, but when it comes to tax compliance, the burden is on the organization to maintain records to document it has done things right.**<sup>273</sup>

If ACORN is improperly managing its inter-corporate relations, it is difficult to determine whether ACORN has complied with federal tax laws.

HCSE's analysis shows ACORN failed to properly account for its disbursements:

**Just as with outside parties, only a person with legal authority for a payor should disburse its funds. [We] have seen at least one instance where that did not happen, although the payment was for a 501(c)(3)-permissible project, and one that apparently the 501(c)(3) in question was participating in. . . . Otherwise, there is danger that we cannot demonstrate that 501(c)(3) funds are always disbursed for 501(c)(3)-appropriate purposes.**<sup>274</sup>

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<sup>270</sup> ACORN Grant Request to the Democracy Alliance at 12 (Mar. 24, 2006) (ACORN\_004348); Note that "membership dues" refers to the service fees ACORN charges its low and moderate income constituents.

<sup>271</sup> *Id.* at 5 (Mar. 24, 2006) (ACORN\_004341).

<sup>272</sup> *Id.*

<sup>273</sup> HCSE Memo (June 19, 2008) at 7 (ACORN\_004933) (emphasis added).

<sup>274</sup> *Id.* at 9 (emphasis added).

According to HCSE, ACORN, a 501(c)(4), has actual control over the decisions of Project Vote, a 501(c)(3):

**Project Vote has on paper a procedure to select regions where it will do voter registration, but [we] have heard reports in the past that in practice those decisions may be communicated to [Project Vote] from ACORN. . . . Project Vote (and PICA, the other voter registration corporation) needs to really be in charge of deciding where 501(c)(3) resources will be focused. The [Project Vote] and PICA Executive Director(s) must be charged with implementing the procedures (or supervising that work) to set strategic priorities for the organization without answering to any other entity or person. These corporations and their chief staff people must control their own funds; the ED must report only to her/his own board, unless a formal, legally vetted written agreement appropriately delegates that authority elsewhere. And the ED must not be wearing other ‘hats’ that jeopardize her ability to act solely in the interest of these 501(c)(3)s.**<sup>275</sup>

Project Vote is a 501(c)(3) organization.<sup>276</sup> Project Vote’s revenue in 2008 was \$28,676,637.<sup>277</sup> Project Vote does business with ACORN Voter Registration, Citizens Consulting Inc. (“CCI”), CCI Legal, and Citizens Servicing Inc. (“CSI”).<sup>278</sup> In 2005, there were over a thousand transactions, amounting to nearly \$12 million between ACORN and its affiliates.<sup>279</sup> In a March 11, 2003 memorandum from Nathan Henderson-James of the California ACORN chapter to Amy Schur, ACORN Management Council member, Henderson-James summarized the financial difficulties at CA ACORN and recommended CCI change its budgetary practices with respect to local ACORN chapters.<sup>280</sup> Henderson-James has held simultaneous titles at ACORN and CSI.<sup>281</sup>

According to the HCSE Memo, ACORN and one of its affiliates, American Institute of Social Justice (“AISJ”) failed to meet the IRS reporting back requirements necessary for grantors to demonstrate how their money was spent by the grantees.<sup>282</sup> HCSE found problems with ACORN’s compliance with § 501(c)(3) of the tax code, suggesting:

[We] have recently provided documents for [American Institute for Social Justice (hereinafter “AISJ”)] to use governing its

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<sup>275</sup> *Id.* at 7; IMC Allegations (Jan. 7, 2009) at 5 (Project Vote is a 501(c)(3) that hires ACORN to perform voter registration drives) (ACORN\_004870) (emphasis added).

<sup>276</sup> Project Vote 501(c)(3) IRS letter (Nov. 8, 2004) (ACORN\_00103).

<sup>277</sup> Project Vote Revenues 07-08 (undated) (ACORN\_000356).

<sup>278</sup> Project Vote 2004-2005 (undated) (ACORN\_005063-005105).

<sup>279</sup> *Id.*

<sup>280</sup> CCI Memo (Mar. 11, 2003) at 2-3 (ACORN\_004308-004309) (emphasis added).

<sup>281</sup> Email from Nathan Henderson-James to Anita MonCrief (Dec. 8, 2006) (on file with author).

<sup>282</sup> HCSE Memo (June 19, 2008) at 8 (ACORN\_004934).

relationship with ACORN. There is an overall agreement, and two transmittal letters that can be used for specific types of funding. Similar documents should be used by [ACORN International (hereinafter “AI”)], and any other 501(c)(3) that makes grants to ACORN.

We believe those documents have been or will be implemented. However, merely papering the transfer of money is not sufficient. **The c3s must be able to demonstrate that their funds were actually used as intended, for c3 purposes. Any grant to a non-501(c)(3) requires reporting back to the grantor can prove how its money was spent by the grantee. Historically, this has not happened. The new grant documents require this reporting, and if it does not happen, [We] would advise the [ACORN International] and [American Institute for Social Justice] boards and key staff that no further grants should be made to any office that has outstanding reports on previous grants.**<sup>283</sup>

HCSE advised ACORN concerning the importance of protecting corporate formalities in its financial transactions amongst affiliates, finding:

**Many of the corporate entities in the COUNCIL would have not operated with sufficient formalities. Staff roles have not been clearly delineated, and in various instances funds have been raised and spent by people with no official relationship to a given corporation.** Boards have not always been maintained, much less met and exercised their governance role. Board meetings are not held, or if they are, minutes are not kept, or if minutes are kept, they never make it into the files at CCI. There is no point in having these different corporations in place if they are not respected. If not properly operated, they create difficulties (e.g., potential conflicts of interest for lawyers, non-trivial administrative burden of state filings, and the appearance that someone is trying to hide something under a byzantine corporate structure) without generating the desired benefits, whatever those may be.<sup>284</sup>

ACORN’s insufficient screening off of separate entities from one another makes it difficult to ensure compliance. For instance, Local 100 made a \$15,941 loan to SEIU Local 880.<sup>285</sup> Local 100 paid \$122,346 to ACORN and Project Vote’s accounting firm of Duplantier, Hrapman, Hogan, and Maher LLP, \$73,984 to Elysian Fields Corporation, and \$48,188 to Citizens Consulting Inc.<sup>286</sup> Local 100 received \$14,214 in loans from

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<sup>283</sup> *Id.* (emphasis added).

<sup>284</sup> *Id.* at 2-3 (ACORN\_004928-004929) (emphasis added).

<sup>285</sup> See *Form LM-2 Labor Organization Annual Report*, SEIU Local 100, DEP’T OF LABOR, (2007), SEIU LM2 2007 at 6 (March 30, 2007) (ACORN\_004907).

<sup>286</sup> *Id.* at 11 (ACORN\_004912).

CCI.<sup>287</sup> Local 100 provided \$71,899 in gifts to the Service Workers Action Team and \$5,000 to the SEIU Local 1991.<sup>288</sup> Local 100 paid legal counsel Karim Shabazz \$5,184.<sup>289</sup> An additional \$5,670 was paid to CCI.<sup>290</sup> The Local 100 Political Action Committee files Form 8872 with the IRS, reflecting its status as a 527 political organization.<sup>291</sup>

According to the Congressional Research Service (“CRS”), the IRS lacks the resources and administrative diligence necessary to investigate illicit activities.<sup>292</sup> Because the IRS assumes 501(c)(3) funds are not used by affiliated 501(c)(4)’s for lobbying purposes, the IRS is unlikely to detect a violation of the Lobbying Disclosure Act by a 501(c)(4) such as ACORN.<sup>293</sup> Because the IRS chooses which organizations it audits, a scheme used in which private foundation money goes into a social welfare organization’s lobbying expenditures could be promulgated without detection under the IRS’s legal radar.<sup>294</sup> According to CRS, Internal Revenue Code (“IRC”) 501(c)(3) organizations are required to report “their aggregate political expenditures and any excise taxes imposed during the year on their lobbying and political expenditures.”<sup>295</sup>

### **3. ACORN And Its Affiliates Engage In Substantial Lobbying Activities**

**FINDING:** *Lobbying is a substantial part of what ACORN does. It has endorsed Senator Sherrod Brown (D-OH), Representative Albert Wynn (D-MD), and Representative Donna Edwards (D-MD). ACORN keeps donor records from the Clinton, Kerry and Obama campaigns with the intent to engage in prohibited communications. ACORN receives federal funding yet engages in improper lobbying. ACORN and its nonprofit affiliates do not have separate accounts. Neither ACORN nor any of its affiliates have properly reported their political activities to the IRS. These harms fly under the legal radar because the IRS rarely checks for compliance. The “no substantial part” test is rarely enforced and the accounts of ACORN and its affiliates are illegally commingled.*

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<sup>287</sup> *Id.* at 12 (ACORN\_004913).

<sup>288</sup> *Id.* at 20 (ACORN\_004921).

<sup>289</sup> *Id.* at 21 (ACORN\_004922).

<sup>290</sup> *Id.* at 22 (ACORN\_004923).

<sup>291</sup> *Id.* at 25(ACORN\_004926).

<sup>292</sup> Interview with Erika Lunder, Attorney, Congressional Research Service, in Wash., D.C. (May 14, 2009); *See also* Email from Erika Lunder, CRS attorney, to Oversight and Government Reform minority staff (Mar. 17, 2009, 12:06 PM EST) (on file with author).

<sup>293</sup> *Id.*

<sup>294</sup> *Id.* Donald Tobin, *The Law of Politics: The Role of Law in Advancing Democracy: Political Campaigning by Churches and Charities: Hazardous for 501(c)(3)s, Dangerous for Democracy*, 95 GEO. L.J. 1313, 1318-19.

<sup>295</sup> Erika Lunder, *Tax-Exempt Organizations: Political Activity Restrictions and Disclosure Requirements*, CRS RPT. FOR CONG., Sept. 11, 2007 at 28.

The tax code permits 501(c)(4)s and 501(c)(3)s to lobby, although lobbying may not be a “substantial part” of a 501(c)(3)’s (Project Vote, ACORN Institute, American Institute for Social Justice (“AISJ”)) activities.<sup>296</sup> Internal Revenue Code (“IRC”) §501(c)(3) organizations may conduct nonpartisan voter registration and get-out-the-vote drives.<sup>297</sup> The activities may not indicate a preference for any candidate or party.<sup>298</sup> The communication must not identify any candidates for a given public office.<sup>299</sup> Candidates must be named or depicted on an equal basis.<sup>300</sup> The activity is limited to urging acts such as voting and registering and to describing the hours and places of registration and voting, and all registration and get-out-the-vote drive services are made available without regard to the voter’s political preference.<sup>301</sup> 501(c)(4) organizations such as ACORN may participate in an unrestricted amount of lobbying so long as the lobbying is related to the organization’s exempt purpose.<sup>302</sup> Section 18 of the Lobbying Disclosure Act of 1995<sup>303</sup> prohibits organizations described in IRC §501(c)(4) from receiving “federal grants, loans, or other awards if they engage in lobbying activities”<sup>304</sup> Participating in political campaigns cannot be the organization’s primary activity.<sup>305</sup>

A 501(c)(4) can participate in lobbying activities, but under the U.S. Code, a 501(c)(4), such as ACORN Housing, cannot lobby if it receives federal funding.<sup>306</sup> A 501(c)(4) must have separate accounts from 501(c)(3)’s under Section 18 of the Lobbying Disclosure Act, which placed restrictions on “lobbying activities” by certain nonprofit groups, as a condition to receiving federal grants and loans.<sup>307</sup> In other words, CCI cannot control the accounts of both ACORN Housing Corporation and Project Vote, which the HCSE Memo alleges to be the case. Section 18 of the Lobbying Disclosure Act of 1995 places statutory restrictions upon the lobbying activities of nonprofit civic and social welfare organizations, such as ACORN, which are tax-exempt under section 501(c)(4) of the Internal Revenue Code.<sup>308</sup> Section 501(c)(4) civic leagues and social welfare organizations are prevented from engaging in any “lobbying activities,” if the organization receives any federal grant, loan, or award even with their *own* private

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<sup>296</sup> See Rev. Rul. 2007-41, 2007-25 I.R.B. 1421

<sup>297</sup> *Id.*

<sup>298</sup> *Id.*; See also Judith E. Kindell and John Francis Reilly, *Election Year Issues*, IRS 2002 EO CPE Text, 448-451 (2002).

<sup>299</sup> Rev. Rul. 2007-41, 2008-25 I.R.B. 1421; 20082 EO CPE Text, at 376-77.

<sup>300</sup> IRS 2002 EO CPE Text, 448-451 (2002); Judith E. Kindell and John Francis Reilly, *Election Year Issues*, FY 2002 IRS EXEMPT ORGANIZATIONS TECHNICAL INSTRUCTION PROGRAM, at 379, available at <http://www.irs.gov/pub/irs-tege/eotopic02.pdf> (last visited June 22, 2009).

<sup>301</sup> *Id.*

<sup>302</sup> Erika Lunder and L. Paige Whitaker, *501(c)(4) Organizations and Campaign Activity: Analysis Under Tax and Campaign Finance Laws*, CRS RPT. FOR CONG., Mar. 30, 2009, at 5.

<sup>303</sup> P.L. 104-65.

<sup>304</sup> Erika Lunder, *Tax-Exempt Organizations: Political Activity Restrictions and Disclosure Requirements*, CRS RPT. FOR CONG., Sept. 11, 2007, at 14.

<sup>305</sup> See also Treas. Reg. § 1.501(c)(4)-1(a)(2)(ii); Gen. Couns. Mem. 34233 (December 30, 1969).

<sup>306</sup> Email from Erika Lunder, CRS attorney, to Oversight and Government Reform minority staff (Mar. 17, 2009, 12:06 PM EST) (on file with author).

<sup>307</sup> *Id.*

<sup>308</sup> P.L. 104-65, 109 Stat. 691, 703-704, as amended by P.L. 104-99, Section 129, 110 Stat. 34; see also H.Rept. 104-339, 104TH CONG. 24 (1995).

funds.<sup>309</sup> There is a presumption that ACORN used federal funds for lobbying because the HCSE Memo stated it is undeterminable whether federal funds were commingled with lobbying accounts and was addressed to ACORN Housing, which received federal funds.

Under section 501(c)(3) of the Internal Revenue Code, organizations may not make statements endorsing or opposing a candidate, publish or distribute campaign literature, or make any type of contribution, monetary or otherwise, to a political campaign.<sup>310</sup> Section 501(c)(3) prohibits charitable organizations from “participat[ing] in, or interven[ing] in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.”<sup>311</sup>

While 501(c)(4) social welfare organizations are not barred from engaging in campaign activity,<sup>312</sup> “[t]he promotion of social welfare does not include direct or indirect participation or intervention in political campaigns on behalf of or in opposition to any candidate for public office.”<sup>313</sup> Because under the tax code, a 501(c)(4) organization’s primary activity must be promoting social welfare, campaign activity (and any other activities not in furtherance of an exempt purpose) cannot be the organization’s primary activity.<sup>314</sup> So long as ACORN’s primary activity is promoting social welfare, their lawful participation in campaign activity does not affect their 501(c)(4) status.<sup>315</sup> However, according to ACORN’s 2005-2007 Strategic Plan, ACORN might be in every respect a political organization:

But just as important as our organizations’ role in mobilizing existing progressive voters, **ACORN and similar groups actually create new progressive voters.** We reach out to people who are perhaps apolitical, or whose connection to politics is mediated through right-wing media, and their **experiences in organizations like ACORN turn them into politically engaged citizens who cast their votes based on what they learn through their work with the organization. They join a campaign to increase the minimum wage, or to win more affordable housing, or to end predatory financial practices – and they find out which political leaders are on their side on these issues, and which ones aren’t. Candidates who purport to stand with low and moderate income voters by promoting tax cuts and so-called “family values” are then measured against a different yardstick – and are caught short when voters realize they are**

<sup>309</sup> See 2 U.S.C. § 1611; See also Jack Maskell, *Lobbying Regulations on Non-Profit Organizations*, CRS RPT. FOR CONG., May 7, 2008 at 7.

<sup>310</sup> Erika Lunder, *Tax-Exempt Organizations: Political Activity Restrictions and Disclosure Requirements*, CRS RPT. FOR CONG., Sept. 11, 2007 at 11.

<sup>311</sup> *Id.*

<sup>312</sup> *Id.*

<sup>313</sup> Treas. Reg. § 1.501(c)(4)-1(a)(2).

<sup>314</sup> Erika K. Lunder and L. Paige Whitaker, *501(c)(4) Organizations and Campaign Activity: Analysis Under Tax and Campaign Finance Laws*, CRS RPT. FOR CONG., Mar. 30, 2009 at 8.

<sup>315</sup> See Rev. Rul. 81-95, 1981-1 C.B. 332.

**really standing with the corporate interests.** In summary, **groups like ACORN are creating an expanded progressive electorate.**<sup>316</sup>

While section 501(c)(4) organizations are permitted to engage in campaign activity, they are subject to tax if they make an expenditure for a section 527 “exempt function” defined under the Code as “influencing or attempting to influence the selection, nomination, election, or appointment of any individual to any federal, State, or local public office or office in a political organization, or the election of Presidential or Vice-Presidential electors.”<sup>317</sup> Both the tax and campaign finance laws are relevant for determining whether 501(c)(3)s and 501(c)(4)s may engage in campaign activity.<sup>318</sup>

Under the Code, 501(c)(4) organizations are required to file an annual information return (Form 990) with the IRS.<sup>319</sup> The IRS has revised the form in order to encourage tax compliance, accountability, and transparency.<sup>320</sup> Filing organizations are now required to report information regarding their political activities on the new Schedule C.<sup>321</sup> According to the IRS, section 501(c)(4) organizations filing the Form 990 must:

- (1) Describe their direct and indirect political campaign activities;
- (2) Report the amount spent conducting campaign activities and the number of volunteer hours used to conduct those activities;
- (3) Report the amount directly spent for § 527 exempt function activities;
- (4) Report the amount of funds contributed to other organizations for § 527 exempt function activities;
- (5) Report whether a Form 1120-POL (the tax return filed by organizations owing the section 527 tax) was filed for the year; and
- (6) Report the name, address, and employer identification number of every section 527 political organization to which a payment was made and the amount of such payments, and indicate whether the amounts were paid from internal funds or were contributions received and directly transferred to a separate political organization.<sup>322</sup>

Section 501(c)(4) organizations must also report the names and addresses of donors who contributed at least \$5,000 during the year on the Schedule B of the Form 990.<sup>323</sup> Because ACORN has delayed its reporting to the IRS, as evidenced by the HCSE

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<sup>316</sup> ACORN Strategic Plan at (Apr. 2005) at 1 (ACORN-00278) (emphasis added and in original).

<sup>317</sup> I.R.C. § 527(f); I.R.C. § 527(e)(2); Erika Lunder, *Tax-Exempt Organizations: Political Activity Restrictions and Disclosure Requirements*, Sept. 11, 2007, at 19.

<sup>318</sup> See Erika K. Lunder and L. Paige Whitaker, *501(c)(4) Organizations and Campaign Activity: Analysis Under Tax and Campaign Finance Laws*, CRS RPT. FOR CONG., Mar. 30, 2009 at 8.

<sup>319</sup> See I.R.C. § 6033.

<sup>320</sup> IRS Form 990, available at <http://www.irs.gov/charities/article/0,,id=185561,00.html> (last visited May 4, 2009).

<sup>321</sup> IRS SCHEDULE C, available at <http://www.irs.gov/pub/irs-pdf/f990sc.pdf> (last visited June 22, 2009).

<sup>322</sup> See I.R.C. § 6033(e).

<sup>323</sup> I.R.C. § 6104(b) and (d).

Memo and the email from Steve Kest to Ralph McCloud, ACORN used its funds for impermissible political purposes. According to an article in the *Quarterly Journal of Economics*, not all those entities whose noncompliance has been discovered will be subject to enforcement action because the IRS does not have the resources to proceed against every known transgressor.<sup>324</sup> According to the notes from ACORN's August 15, 2008 East Regional meeting, ACORN owes over \$800,000 to the IRS.<sup>325</sup> According to CRS, the IRS does not actively investigate violations of its reporting rules and does not enforce the "no substantial part" test, giving ACORN a free pass to violate these regulations.<sup>326</sup>

Under the Lobbying Disclosure Act, ACORN, a 501(c)(4), must be separately incorporated, keep separate books, and spend and use resources which are not part of or otherwise paid for by the tax-deductible contributions to its 501(c)(3) affiliate organizations.<sup>327</sup> According to CRS, "[i]n cases where an organization creates an IRC §501(c)(4) organization and an IRC §501(c)(3) organization, the organizations must be legally separate entities, and their activities and funds must be kept separate."<sup>328</sup>

Under the Lobbying Disclosure Act, lobbying activities include direct "lobbying contacts and efforts in support of such contacts" such as preparation, planning, research and other background work intended for use in such direct contacts.<sup>329</sup> A "lobbying contact" under the Lobbying Disclosure Act is an "oral or written communication (including an electronic communication) to a covered executive branch official or a covered legislative branch official" which concerns the formulation, modification or adoption of legislation, rules, regulations, policies or programs of the federal government.<sup>330</sup>

According to the *Wall Street Journal*, ACORN and its affiliates operate as a political organization:

Acorn [sic] – made up of several legally distinct groups under that name – has become an important player in the Democrats' effort to win the White House. Its voter mobilization arm is co-managing a \$15.9 million campaign with the group Project Vote to register 1.2 million low-income Hispanics and African-Americans, who are among those most likely to vote Democratic. Technically nonpartisan, the effort is one of the largest such voter-registration drives on record. The organization's main advocacy group lobbied

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<sup>324</sup> Jennifer F. Reinganum and Louis L. Wilde, *A Note on Enforcement Uncertainty and Taxpayer Compliance*, Q. J. OF ECON (1998).

<sup>325</sup> Notes from East Regional Meeting (Aug. 15, 2008) at 1 (ACORN\_000321).

<sup>326</sup> Erika Lunder, *Tax-Exempt Organizations: Political Activity Restrictions and Disclosure Requirements*, CRS RPT. FOR CONG., Sept. 11, 2007 at 7; See also Jack Maskell, *Lobbying Regulations on Non-Profit Organizations*, CRS RPT. FOR CONG., May 7, 2008 at 7.

<sup>327</sup> Jack Maskell, *Lobbying Regulations on Non-Profit Organizations*, CRS RPT. FOR CONG., May 7, 2008 at 6.

<sup>328</sup> *Id.*

<sup>329</sup> Lobbying Disclosure Act, 2 U.S.C. § 1602(7), P.L. 104-65, §3(7).

<sup>330</sup> 2 U.S.C. § 1602(8), P.L. 104-65, § 3(8).



hard for passage of the housing bill, which provides nearly \$5 billion for affordable housing, financial counseling and mortgage restructuring for people and neighborhoods affected by the housing meltdown. A third Acorn [sic] arm, its housing corporation, does a large share of that work on the ground.<sup>331</sup>

According to the finance plan of the Friends of Sherrod Brown,<sup>332</sup> ACORN sought to:

Raise \$1.5 million out of Cleveland over the next 10 months. This is based on what past US Senate races raised as well as the target populations that exist in Cleveland and who is capable of giving and raising.<sup>333</sup>

In its year end report dated on December 15, 2006, the Local 880 chapter of the Service Employees International Union (“SEIU”) stated:

Because we were key in the early organizing and moving this national campaign by both **ACORN and SEIU**, we were well-positioned to win. **Our early support of Governor Blagojevich** and his commitment to support an Executive Order allowing homecare and home child care workers to organize put us far ahead of the other states.<sup>334</sup>

In discussing SEIU’s joint campaigns with ACORN, the document stated:

This year, thanks to a **flawless campaign led by Illinois ACORN, Local 880, and the SEIU Illinois Council and our allies**, on July 1st, 2007 the Illinois minimum wage will rise to \$7.50 per hour and then rise in three other steps to \$8.25 by 2010. This is a \$1.75 increase over the present state minimum wage of \$6.50 and \$3.10 over the present federal minimum wage of \$5.15. This increase will do more than raise over 600,000 Illinoisans over the current minimum wage. It will also force the state to raise reimbursement rates for thousands of homecare and other workers and trigger increases in all of our contracts. **If not for the work of our sister organization, ACORN, this would never have happened.**<sup>335</sup>

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<sup>331</sup> Elizabeth Williamson and Brody Mullins, *Democratic Ally Mobilizes In Housing Crunch*, WALL STREET J, July 31, 2008, at A1.

<sup>332</sup> “Friends of Sherrod Brown” is a fundraising committee for U.S. Senator Sherrod Brown (D-OH). See <http://www.sherrodbrown.com/> (last visited July 7, 2009).

<sup>333</sup> SB Finance Plan at 1 (undated) (ACORN\_00294).

<sup>334</sup> Local 880 at 5 (Dec. 15, 2006) (ACORN\_004354) (emphasis added); Illinois Governor Rod Blagojevich was arrested on federal corruption charges on December 9, 2008. See Press Release, Department of Justice, Illinois Gov. Rod R. Blagojevich and His Chief of Staff John Harris Arrested on Federal Corruption Charges, (Dec. 9, 2008), available at: [http://chicago.fbi.gov/dojpressrel/pressrel08/dec09\\_08.htm](http://chicago.fbi.gov/dojpressrel/pressrel08/dec09_08.htm) (last visited July 7, 2009).

<sup>335</sup> *Id.* See also *id.* at 7-8, discussing several joint SEIU-ACORN campaigns (emphasis added).

According to the year end report, SEIU shares lawyers with CCI, an ACORN affiliate which, as alleged previously, manages the accounts of 501(c)(3) nonprofits which must be separated from political activities:

**Legal Representation - In the past we have used Steve Bachmann and the CCI legal team; SEIU counsel, Craig Becker; Art Martin in Southern Illinois; and most recently, ex-ACORN head organizer, Robert Bloch's law firm. We plan to continue using these legal resources in the future.**<sup>336</sup>

It further states, “[h]igh level Blagojevich staff credited us later with helping move the vote that allowed him to win”<sup>337</sup>

The Local 880 document also lists Keith Kelleher as the Head Organizer.<sup>338</sup> In the email ACORN Executive Director Steven Kest wrote to CCHD director Ralph McCloud, he stated “[t]he following people were on the management council eight years ago, and were made aware of the [Dale Rathke] embezzlement.” and lists Keith Kelleher.<sup>339</sup>

HCSE stated, “[it] cannot confirm that strategic decisions about which regions do 501(c)(3) versus non-501(c)(3) voter engagement work are not being made by the same person or people.”<sup>340</sup> HCSE also stated, “[f]ences need to be erected to wall off types of election-related activity that must be kept completely separate.”<sup>341</sup> ACORN does not have strict walls of separation between its 501(c)(3) activities and its 501(c)(4) activities. HCSE stated, “ACORN lacks the protective ‘walls’ needed to ensure that various types of activity are kept sufficiently separate.”<sup>342</sup> In a November 22, 2006 memorandum, Zach Polett, ACORN’s political director, stated his organizational plans for Project Vote, a 501(c)(3):

Develop and promote a Project Youth Vote, as a branded project of Project Vote/Voting for America, Inc., thus taking advantage of the fact that Project Vote and its work with ACORN were, by far, the largest Youth voter registration program in the country in 2004 . . . Expand Project Vote’s 2005 – 2006 anti-voter suppression work by raising the funds to enable Project Vote to serve as the national clearinghouse for voter suppression state legislation (stopping the bad bills) and begin the work of expanding the franchise by introducing Voter Bill of Rights legislation in a targeted set of states.<sup>343</sup>

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<sup>336</sup> *Id.* at 13-14. (emphasis added).

<sup>337</sup> *Id.* at 18.

<sup>338</sup> *Id.* at 1.

<sup>339</sup> Ralph McCloud CCHD at 5-6 (Nov. 11, 2008) (ACORN 004785-004786).

<sup>340</sup> HCSE Memo (June 19, 2008) at 7 (ACORN\_004933).

<sup>341</sup> HCSE Memo (June 19, 2008) at 1 (ACORN\_004927).

<sup>342</sup> *Id.* at 6 (ACORN\_004932).

<sup>343</sup> PolOps 2007-2008 Projects (Nov. 22, 2006) at 3 (ACORN\_004322).

As stated in a 2006 ACORN National Political Operations report (hereinafter “ACORN Political Report”), ACORN controls the accounts of Project Vote:

[T]hrough a joint effort with ACORN National Operations, Political Operations migrated our database functions to DonorPerfect. [ACORN National Political Operations Strategic Writing and Research Department (“SWORD”)] has provided the administrative support to this project and provides the on-going development associate-level of support for tracking our grant-based fundraising for our various 501c3 voter participation efforts.<sup>344</sup>

Another instance of the lack of separation between activities involves CCI. In an email between ACORN National Executive Director Steven Kest and Ralph McCloud, of the Catholic Campaign for Human Development (“CCHD”), Kest described CCI as follows:

Citizens Consulting, Inc. is an independent organization. It is a non-profit corporation with no special tax status run by a self-perpetuating board. Both [American Institute for Social Justice (“AISJ”)] and ACORN have contracts with CCI to do their accounting work and corporate record keeping . . . CCI has two staff members who are assistant officers of ACORN with authority to act on behalf of ACORN solely on administrative matters. (For example: opening up bank accounts at the direction of ACORN management.) This is standard corporate practice. Paul Satriano, the national Treasurer for ACORN, is a new board member of CCI.<sup>345</sup>

As stated in the IRS Form 990 filed by Project Vote, CCI performs Project Vote’s accounting services as well.<sup>346</sup> HCSE found ACORN’s lack of clearly delineated staff roles created “the appearance that someone is trying to hide something under a byzantine corporate structure,” further noting, “funds have been raised and spent by people with no official relationship to a given corporation.”<sup>347</sup> The lack of separation is problematic, for, according to HCSE, 501(c)(3) funds are being used for ACORN’s political activities.

According to the *Associated Press*, ACORN and its affiliates have received over \$31 million of taxpayer dollars from 1998 to 2007.<sup>348</sup> ACORN affiliates received nearly

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<sup>344</sup> ACORN Political Operations Report at 2 (2006) (ACORN\_4788).

<sup>345</sup> Ralph McCloud CCHD at 3 (Nov. 11, 2008) (ACORN\_004783).

<sup>346</sup> Project Vote 2007 990, *supra* note 194 at 10.

<sup>347</sup> HCSE Memo (June 19, 2008) at 2-3 (ACORN\_004928-004929).

<sup>348</sup> Jim Abrams, *House GOP leader asks Bush to cut off ACORN funds*, AP, Oct. 23, 2008, available at LEXIS.

\$10 million in federal taxpayer funding in 2008 alone.<sup>349</sup> ACORN's 2008 budget was estimated at \$110 million.<sup>350</sup>

ACORN Executive Director Steven Kest and Political Director Zach Polett, writing in a 2006 grant request to the Democracy Alliance, stated:

ACORN's core organizational budget for 2006 – not including our voter participation work – is just over \$38 million. (Note: this total includes budgets of c3 organizations that share ACORN's mission.) Income sources are a mix of small-dollar self-financing through membership dues and other membership fundraising and contributions; foundation support; contributions from corporations with whom we have entered into partnerships; and individual high donor contributions. We have concrete plans for growing each of these sources over the next three years; in particular, we are significantly expanding our development department, and are working with allies in the foundation and individual donor communities on these strategies.<sup>351</sup>

The ACORN Housing Corporation (AHC), an ACORN affiliate, received \$7.8 million in federal grant funding in 2008.<sup>352</sup> AHC received \$687,000 from the Fannie Mae Foundation in 2007 alone.<sup>353</sup> AHC received over forty percent of its funding from taxpayers.<sup>354</sup> As stated in documents produced to the Committee by former ACORN insiders, government grants constituted forty percent of ACORN's operational funding.<sup>355</sup> The Department of Housing and Urban Development ("HUD") gave \$8.2 million to ACORN from 2003 to 2006 and \$1.6 million to ACORN affiliates.<sup>356</sup>

The ACORN Political Report describes ACORN's federal funding as follows:

In 2006, we helped win grant awards for \$912,378 in federal funding from HUD. Overall, we helped write and submit 13 federal grants to HUD for FY2006, four of which are still outstanding. With Valerie Coffin, Fair Housing Director, we helped raise \$450,000 in FY2006 FHIP funding for fair housing education and outreach. This year New Orleans also received an additional \$100,000 in new funding from reallocated FY2005

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<sup>349</sup> *Id.*

<sup>350</sup> James Terry, *Ensuring the Integrity of the U.S. Electoral System*, Testimony, JUDICIARY SUBCOMM. ON THE CONST., CIVIL RIGHTS AND CIVIL LIBERTIES AND H. ADM. SUBCOMM. ON ELECTIONS, *Joint Hearing on Federal, State and Local efforts to Prepare for the General 2008 Election*, Sep. 24, 2008, at 4.

<sup>351</sup> ACORN Grant Request to the Democracy Alliance at 12 (Mar. 24, 2006) (ACORN\_004348).

<sup>352</sup> Kim Horner, *ACORN helping many keep homes: Nonprofit group provides counseling, assists with mortgage payment plans*, DALLAS MORNING NEWS, May 2, 2008, at 12B.

<sup>353</sup> 2007 FANNIE MAE GRANTS & SPONSORED EVENTS/CONFERENCES, ACORN HOUSING CORPORATION INC 1 (2007), [http://www.fanniemaecom/aboutfm/pdf/2007giving\\_report.pdf](http://www.fanniemaecom/aboutfm/pdf/2007giving_report.pdf).

<sup>354</sup> Peter J. Parisi, *ACORN, meet RICO: Let the prosecution begin*, WASH. TIMES, Dec. 9, 2008, at A04.

<sup>355</sup> IMC Allegations (January 7, 2009) at 3 (ACORN\_004868).

<sup>356</sup> *Id.* at 4 (ACORN\_004869).

FHIP funding. In Dallas, the ACORN Institute received a ROSS grant for \$362,378 over three years from reallocated FY2005 funds to provide services and training to public housing residents in that city. We have also continued to provide support on reporting and other requirements for approximately \$4 million in LEAP grant funds (FY2004 and FY2005).

In a June 4, 2007 email from Nathan Henderson-James, Director, Strategic Writing and Research Department, Project Vote wrote the following to Apryl Walker, Head Organizer, Delaware ACORN:

Apryl,

**I[n] an effort to ensure that we are in compliance with government regs about these [Election Assistance Commission (“EAC”)] grants and whatnot, I'm going to ask you to take the report you did back in December about the DE poll worker project (which I am attaching) on ACORN letterhead** with a cover letter saying something like "Here's the report of our activities for the Poll Worker Project." [ . . . ] Actually here's some suggested language:

‘Please find enclosed a summary of the work undertaken by DE ACORN for the Young Poll Worker Recruitment Project. As you can see we met or exceeded our numeric goals for numbers of workers recruited. We consider this project a success. It was great to partner with Project Vote on this project and we look forward to working with you again when circumstances warrant it. If you have any comments or questions do not hesitate to contact me at (number) or (e-mail).

Regards,

Apryl Walker  
Head Organizer  
Delaware ACORN.<sup>357</sup>

ACORN staff have used federal Election Assistance Commission (“EAC”) grants interchangeably between the 501(c)(4) and 501(c)(3) affiliates.<sup>358</sup> According to an internal Project Vote report, “Project Vote’s Poll Worker Recruitment Project in Delaware, part of the EAC’s Help America Vote College Program, was a success.”<sup>359</sup> The email above reflects ACORN’s attempt to create the impression ACORN was

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<sup>357</sup> Email from Nathan Henderson James (June 4, 2007) (on file with author) (emphasis added).

<sup>358</sup> DE ACORN Stud. Pollworker Proj. 12-22-06 Report (Dec. 22, 2006) at 1-2 (ACORN\_004377-004378).

<sup>359</sup> PV-Pollworkers Report (May 7, 2007) at 1 (ACORN\_004828).

separating its federal funds from Project Vote's activities, when, in essence, ACORN staff used federal EAC grants interchangeably between the 501(c)(4) and 501(c)(3) affiliates. Project Vote won grants of \$912,378 in federal funding from HUD.<sup>360</sup>

ACORN's 2005-2007 Strategic Plan stated:

**Issue campaigns** play the dual role **within ACORN** of attracting new members, and educating or politicizing existing members (in addition to their obvious value in winning concrete improvements in the lives of our members and our broader constituency). Over the next three years we plan to continue our work on a set of **issues where we have a proven track record: increasing state and local minimum wages; combating predatory financial practices, ranging from predatory mortgage lending to rip-off tax-prep services to abusive credit card scams; working to improve public schools; promoting the development of affordable housing; protecting the franchise/making every vote count; and fighting key elements of the national Republican program, including social security privatization, cuts to Medicaid and other critical programs, and additional tax breaks for the rich.**<sup>361</sup>

A January 2009 complaint by several ACORN insiders stated ACORN receives millions in federal funding:

**Grants have been issued to ACORN by the Department of Housing and Urban Development, which gave \$8.2 million to ACORN in the years between 2003 and 2006, as well as \$1.6 million to ACORN affiliates. The Environmental Protection Agency gave a \$100,000 grant to ACORN in 2004 for a Louisiana Justice Project, which removed lead from the homes of low income families. The Justice Department also gave a grant to ACORN in 2005 for a juvenile delinquency program.**<sup>362</sup>

ACORN has a national political operations capability called Strategic Writing and Research Department that, according to the complaint, directs "demographic and elections research, development of major fundraising proposals and supporting materials, policy analysis support for the Election Administration program, and . . . telling the story of the COUNCIL's involvement in the electoral process."<sup>363</sup> According to Nathan Henderson-James, ACORN National Political Operation's director:

In 2006 SWORD had five main priorities: **fundraising, developing local political plans, eligible voter demographic**

<sup>360</sup> ACORN Political Operations Report at 2 (2006) (ACORN\_4788).

<sup>361</sup> ACORN Strategic Plan (Apr. 2005) at 2 (ACORN-00279) (emphasis added).

<sup>362</sup> IMC Allegations (Jan. 7, 2009) at 3 (ACORN\_004866-004890) (emphasis added).

<sup>363</sup> ACORN Political Operations Report at 4 (2006) (ACORN\_004790).

**research, presentations, and reports and other forms of telling the story of electoral participation by ACORN members and staff. . . . Almost all of the work supported the election administration and voter participation programs of various COUNCIL organizations.**<sup>364</sup>

In the same document where Henderson-James reported on Project Vote's research activities in relation to its Election Assistance Commission ("EAC") grants, ACORN's partisan activities:

As 2006 draws to a close, we are completing the **compilation of a document that will give us a list of all the upcoming elections in every county with an ACORN office or that is on the official Expansion List. This list includes elections at all levels and covers both primaries, generals, and run-offs. The information on this list will be made available generally as soon as it is completed and by request until that point.**<sup>365</sup>

According to USASpending.gov, a federal government website for tracking government grants, ACORN Housing Corporation received \$1,623,570 in Fiscal Year 2009.<sup>366</sup> According to the ACORN political report, ACORN Housing and several affiliates have a history of receiving federal grants:

**Federal Funding:** In 2006, we helped win grant awards for \$912,378 in federal funding from HUD. Overall, we helped write and submit 13 federal grants to HUD for FY2006, four of which are still outstanding. With Valerie Coffin, Fair Housing Director, we helped raise \$450,000 in FY2006 FHIP funding for fair housing education and outreach. This year New Orleans also received an additional \$100,000 in new funding from reallocated FY2005 FHIP funding. In Dallas, the ACORN Institute received a ROSS grant for \$362,378 over three years from reallocated FY2005 funds to provide services and training to public housing residents in that city. We have also continued to provide support on reporting and other requirements for approximately \$4 million in LEAP grant funds (FY2004 and FY2005).<sup>367</sup>

According to a 1995 Report from the Office of the Inspector General of the Corporation for National and Community Service, the federal government audited and investigated the ACORN Housing Corporation's activities and stated:

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<sup>364</sup> ACORN Political Operations Report at 1 (2006) (ACORN\_004787) (emphasis added).

<sup>365</sup> *Id.* at 2 (ACORN\_004788) (emphasis added).

<sup>366</sup> *Grants to ACORN Housing*, USA SPENDING.GOV, available at: [http://www.usaspending.gov/faads/faads.php?reptype=r&detail=1&datatype=T&sortby=t&database=faads&recip\\_id=5920&fiscal\\_year=2009&record\\_num=f500](http://www.usaspending.gov/faads/faads.php?reptype=r&detail=1&datatype=T&sortby=t&database=faads&recip_id=5920&fiscal_year=2009&record_num=f500) (last visited June 17, 2009).

<sup>367</sup> ACORN Political Operations Report at 6 (2006) (004792) (emphasis in original).

We determined that **AHC and ACORN are separate corporate entities, but that they do not always operate at ‘arms length.’** Finally, **we questioned approximately \$95 thousand of costs charged to the grant because the documentation and information to support the costs was inadequate to establish that they were allowable under the grant and applicable regulations. CNS terminated the grant because evidence obtained in a separate OIG investigation . . . indicated that AHC violated the National and Community Service Act, as amended, CNS Regulations and policies as well as the grant agreement.**<sup>368</sup>

Allegations that ACORN has been inappropriately involved in partisan politics have dogged the nonprofit for years. As far back as 1997, the former House Committee on Economic and Educational Opportunities identified numerous problems with ACORN-affiliated entities involving improper participation in partisan political activities. The Report stated:

Most notable in this regard is . . . the **apparent cross-over funding between ACORN, a political advocacy group and ACORN Housing Corp. (AHC), a non profit, AmeriCorps grantee . . . .** [I]t was learned that AHC and ACORN shared office space and equipment and failed to assure that activities and funds were wholly separate . . . . **[I]t was revealed that AmeriCorps members of AHC raised funds for ACORN, performed voter registration activities, and gave partisan speeches.** In one instance, an AmeriCorps member was directed by ACORN staff to assist the White House in preparing a press conference in support of legislation. AmeriCorps members were also directed to encourage their clients to lobby on behalf of legislation.<sup>369</sup>

These problems still exist. Anita MonCrief’s cited testimony before the House Judiciary Committee suggested that the federally-funded 501(c)(3) Project Vote and the politically partisan, active lobbyist ACORN were practically inseparable. She testified:

Project Vote is basically considered ACORN political operations.” Ms. MonCrief testified: [page 44, line 1-25] “There was active cooperation between ACORN’s political wing and Project Vote...[They] basically had the same staff. Nathan Henderson James was the strategic writing and research department...director of ACORN and he was the research director of Project Vote. Zach

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<sup>368</sup> OFFICE OF THE INSPECTOR GENERAL, CORPORATION FOR NATIONAL AND COMMUNITY SERVICE, SEMI-ANNUAL REP. TO THE CONGRESS, at 3-4 (1995) (emphasis added).

<sup>369</sup> SUBCOMM. ON OVERSIGHT AND INVESTIGATIONS, 104TH CONG., “Report on the Activities of the Committee on Economic and Educational Opportunities,” H. REP. NO. 104-875, at 69-70 (Comm. Print 1997) (emphasis added).



[Polett] was the executive director of Project Vote and the executive director of ACORN political. All of the organizations and the entities worked together. We shared the same space.” Further, Ms. MonCrief testified: “...there’s no real separation between the organizations for real. So when you have the same people that are working, that are—like, I was getting paid through Project Vote’s checkbook, but I was working on ACORN stuff. I even did PowerPoints during the midterm elections for Jeffrey Robinson where they were like, okay, don’t vote for Albert Win [sic] (ph) or vote for this person. And they had doorknob – door hangers that they would go and put on people’s doors, and we turned this into a PowerPoint presentation. So there was never any division between the staff where you would say, okay, this is (2)(3) stuff and this (c)(4) stuff. It was just—I don’t want to say business as usual, but it was a lot of collaboration between the organizations.” [page 89, lines 21-25, page 90 1-25, page 91, lines 1-3].<sup>370</sup>

More factually, former Oklahoma Congresswoman Clela Mitchell was concerned about ACORN violating the Federal Election Campaign Act of 1971:

A not-for-profit corporation is treated *no* differently from a for-profit corporation for purposes of the federal campaign finance laws, which absolutely prohibit corporate contributions to campaigns of federal candidates and / or corporate expenditures to support or oppose a federal candidate. The FECA further prohibit expenditures by non-profit corporations such as ACORN and Project Vote which are made in coordination with, at the request, behest, suggestion or with the material involvement of a federal campaign (such as the Obama presidential campaign). The solicitation of funds by an organization for purposes of engaging in partisan campaign activities or to support or assist a federal campaign and/or candidate convert the organization into a Section 527 political organization and further [instantiate] a federal political committee required to register with the Federal Election Commission (“FEC”). Contributions to such an organization are limited to \$5,000 per calendar year and may not be received / accepted from corporations. Further, expenditures made by an organization in coordination with a candidate or political committee are considered contributions to that committee and are subject to the \$5,000 per election limit.<sup>371</sup>

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<sup>370</sup> *What went wrong with the 2008 election?: Hearing Before the H. Judiciary Comm.*, 111TH CONG. 1-17 (2009) (statement of Heather Heidelbaugh).

<sup>371</sup> *Id.* at 15-16.

With over 360 ACORN-affiliated organizations,<sup>372</sup> ACORN's counsel, the law firm of Harmon, Curran, Spielberg & Eisenberg LLP ("HCSE"), advised:

Corporate forms must be maintained and respected . . . This includes having real boards and a real principal staff person/Executive Director for each."<sup>373</sup>

HCSE stated ACORN's lack of clearly delineated staff roles created "the appearance that someone is trying to hide something under a byzantine corporate structure," further noting, "funds have been raised and spent by people with no official relationship to a given corporation."<sup>374</sup> The American Institute for Social Justice, Inc.'s ("AISJ") 2006 990 shows AISJ paid ACORN \$566,136<sup>375</sup> and \$4,952,288.<sup>376</sup> According to HCSE:

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.<sup>377</sup>

HCSE stated, "[f]ences need to be erected to wall off types of election-related activity that must be kept completely separate."<sup>378</sup> HCSE stated, "ACORN lacks the protective 'walls' needed to ensure that various types of activity are kept sufficiently separate."<sup>379</sup>

In a March 24, 2006 grant request from ACORN director Steven Kest and political director Zach Polett to The Democracy Alliance, both Kest and Polett write about ACORN's political activities in the same context in which they discuss ACORN Housing and get out the vote initiatives – both of which receive federal funding:

**Each ACORN office carries out multiple issue campaigns at all times. Among our current priorities: campaigns to raise the minimum wage or enact living wage policies, through state or local legislation or ballot initiatives (see below); campaigns to eliminate predatory financial practices by mortgage lenders, payday lenders, and tax preparation companies; campaigns to win the development of affordable housing through inclusionary zoning policies and community benefits agreements; campaigns to improve the quality of and funding for urban public schools; and a campaign that has organized displaced New Orleans residents and is fighting for the equitable rebuilding of that city. . . . ACORN and its affiliated organizations provide extensive services to our members and**

<sup>372</sup> ACORN Universe of Corporations (undated) (ACORN\_00001-000012).

<sup>373</sup> HCSE Memo (June 19, 2008) at 1 (ACORN\_004927).

<sup>374</sup> *Id.* at 2-3.

<sup>375</sup> AISJ 2006 990 at 10, *supra* note 194.

<sup>376</sup> *Id.* at 20.

<sup>377</sup> HCSE Memo (June 19, 2008) at 5 (ACORN\_004931).

<sup>378</sup> *Id.* at 1.

<sup>379</sup> *Id.* at 6.

**constituency**, as a vehicle for building and strengthening our local chapters. These include: free tax preparation focusing on the Earned Income Tax Credit; **screening for eligibility for federal and state benefit programs; and, through the ACORN Housing Corporation, first time homeowner mortgage counseling and foreclosure prevention assistance, and low income housing development. . . . Building on our success with a statewide ballot initiative to raise the minimum wage in Florida in 2004, we have initiated similar campaigns to place minimum wage increases on the November 2006 ballot in OH, MI, AZ, MO and CO. . . . Finally, ACORN runs one of the most extensive voter participation projects in the country, as a fully integrated component of our overall community organizing program.**<sup>380</sup>

In the grant request, Kest and Polett describe ACORN's political wins:

Among the hundreds of victories over the past 4 years, here are a few of the most significant . . . . Won increases in the state minimum wage, through legislation or ballot initiative, in FL, IL, NJ, NY. . . . Won huge reforms in the subprime/predatory mortgage industry, including a \$500 million-plus settlement with Household Finance, significant reforms by Citigroup, Wells, and many others; and the passage of anti-predatory lending legislation in CA, NM, NJ, NY, and additional states. . . . Forced the nation's largest tax preparation companies (H&R Block, Jackson-Hewitt, and Liberty) to reform their pricing and practices for low income consumers. . . . Expanded access to prime credit for low income home-buyers, and helped over 25,000 families directly get first-time mortgages. . . . Over the last two election cycles (2001-02 through 2003-04), we registered 1,353,473 low- and moderate-income and minority voters and in 2004 we targeted a GOTV universe of 2.3 million low- and moderate-income and minority voters with over 8.7 million contact attempts.<sup>381</sup>

According to a SEIU Local 880 report dated December 15, 2006, ACORN maintains Political Action Committees ("APACs") and has volunteer committees of members who raise funds for to participate in partisan electoral work and communicate messages in support of candidates to the ACORN membership and constituency.<sup>382</sup>

According to internal ACORN documents produced to the Committee, ACORN has performed political work for former Illinois Governor Rod Blagojevich and several Senate Democrats:

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<sup>380</sup> ACORN Grant Request to the Democracy Alliance at 2-3 (Mar. 24, 2006) (ACORN\_004338-004339) (emphasis added).

<sup>381</sup> *Id.* at 7 (ACORN\_004343).

<sup>382</sup> ACORN Grant Request to the Democracy Alliance at 12-13 (Mar. 24, 2006) (ACORN\_004348-004349).

Local 880 2006 Legislative/Political Analysis - **We have had a great year on the legislative front - which is directly related to our past political work with Blagojevich and the Senate Dems.** . . . With the elections in 2007 (Aldermen and Mayor) just around the corner, we will need to build and maintain a much bigger political infrastructure statewide in '07. And we need to get ready for the big one in '08 – **OBAMA FOR PRESIDENT!** . . . . Although **Governor Blagojevich** did not have a serious challenger, Cook County Board President Stroger, who had a massive stroke right before the election, did. It was a very tight race and turnout was key. **Local 880 moved between 50-100 members and staff to work the precincts for Blago and Stroger in March,** and while Blago blew out his challenger, Stroger, in the hospital and close to death, barely squeaked by with 52% of the vote and 880's and SEIU's and APAC's volunteers in the high turnout precincts on the south side, brought it home. **High level Blagojevich staff credited us later with helping move the vote that allowed him to win.** Later, in the general election, we had even more success. . . . Local 880 Political Director, Rochelle Prather, in coordination with Local 880 organizing staff statewide, trained and turned out hundreds of our members and staff for the final push – not only in the Governor's race, but in five targeted races in southern and western Illinois the Dems needed to defend or pick up. **We won all of the races we worked in and received a lot of credit for our work.**<sup>383</sup>

The document continues with:

Because we were key in the early organizing and moving this national campaign by both ACORN and SEIU, **we were well-positioned to win. Our early support of Governor Blagojevich and his commitment to support an Executive Order** allowing homecare and home child care workers to organize **put us far ahead of the other states.**<sup>384</sup>

In the 2006 Democracy Alliance request, Kest and Polett explicitly discuss the cross-over of funding between ACORN's 501(c)(4), 501(c)(3), and 527 affiliates:

ACORN's voter participation budget varies with the election cycle, from a high of \$24 million in the 2004 cycle to expenditures of \$4 million in 2005 and a projected \$12 million in 2006. (Note: these totals include support for ACORN and c3 and 527 organizations that share ACORN's mission) Funding comes largely from foundation and high-donor sources. As with ACORN's core

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<sup>383</sup> Local 880 at 17-18 (Dec. 15, 2006) (ACORN\_004366-004367) (emphasis added).

<sup>384</sup> Local 880 at 5 (Dec. 15, 2006) (ACORN\_04354) (emphasis added).

organizational budget, we have recently expanded our development department working on voter participation fundraising, and are aggressively seeking to diversify the number of funders who support our work.<sup>385</sup>

According to a press release from the Department of Justice, ACORN's labor affiliate, the Service Employees International Union ("SEIU"), was involved in a discussion with Blagojevich concerning his potential Senate appointment.<sup>386</sup>

ACORN directly lobbied political officers, and there is a credible presumption that ACORN induced its constituent members to subscribe to partisan ideological preferences.<sup>387</sup> Such circumstances might have contributed to numerous incidences of illegal political activity in the 2008 election. According to the Campaign Finance Institute, section 501(c) organizations, including section 501(c)(4) groups, spent approximately \$400 million attempting to influence federal elections in 2008, which the Institute described as "a big step up from the last two elections."<sup>388</sup> During the 2008 election cycle, a nonprofit tax law specialist at the IRS claimed the agency planned to take a closer look at the campaign activities of § 501(c)(4) organizations.<sup>389</sup> Public concern about violations of the campaign intervention prohibition by § 501(c) organizations prompted the IRS to develop the Political Activity Compliance Initiative (PACI).<sup>390</sup>

ACORN's political plan for Ohio (hereinafter "Ohio Political Plan"), authored by Katy Gall, Ohio ACORN Head Organizer, Mark Engelhardt, ACORN Political Director, Midwest, and Jeremy Mitchell, Ohio ACORN Legislative Director, stated that ACORN's voter education efforts have overtly partisan goals:

ACORN will target three competitive Ohio congressional districts as well as a half dozen state rep seats nested within the districts. Our electoral work will mobilize and educate voters about candidates who support issues important to working families. Our paid professional canvass will execute tightly managed Voter ID and GOTV canvasses moving our core constituency of base and

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<sup>385</sup> ACORN Grant Request to the Democracy Alliance at 13 (Mar. 24, 2006) (ACORN\_004349).

<sup>386</sup> DOJ Press Release, available at [http://chicago.fbi.gov/dojpressrel/pressrel08/dec09\\_08.htm](http://chicago.fbi.gov/dojpressrel/pressrel08/dec09_08.htm) (last visited May 3, 2009).

<sup>387</sup> See Erika Lunder and L. Paige Whitaker, *501(c)(3) Organizations and Campaign Activity: Analysis Under Tax and Campaign Finance Laws*, CRS RPT. FOR CONG., Jan. 14, 2009, at 6.

<sup>388</sup> Campaign Finance Institute, *Outside Soft Money Groups Approaching \$400 Million in Targeted Spending in 2008 Election*, Oct. 31, 2008, available at <http://www.cfinst.org/pr/prRelease.aspx?ReleaseID=214> (last visited June 22, 2009).

<sup>389</sup> See Diane Freda, *IRS Considering Project to Examine Political Activity of 501(c)(4) Groups*, BNA DAILY TAX REPORT, May 13, 2008.

<sup>390</sup> The 2004 report is available at [http://www.irs.gov/pub/irs-tege/final\\_paci\\_report.pdf](http://www.irs.gov/pub/irs-tege/final_paci_report.pdf) (last visited June 22, 2009). The 2006 report, which includes updated 2004 statistics, is available at [http://www.irs.gov/pub/irs-tege/2006paci\\_report\\_5-30-07.pdf](http://www.irs.gov/pub/irs-tege/2006paci_report_5-30-07.pdf).

swing voters to the polls to vote for the candidates who most closely align with a progressive Working Families Agenda.<sup>391</sup>

According to the Ohio Political Plan, ACORN paid for poll research in Ohio's congressional districts.<sup>392</sup>

**Targets**

Congressional District	State Leg. District	2004/06 Margin of Victory		Winning Party	2002 %	2004 %
		# Votes	Winning %			
<b>CD-1</b>		105,680	52.25%	R	64.8	59.8
CD-1	<b>HD-28</b>	21,104	51.96%	R	58.9	53.6
CD-1	<b>HD-31</b>	15,557	67.33%	D	65.2	69.36
<b>CD-2</b>		120,112	50.45%	R	74	71.7
CD-2	<b>HD-34</b>	23,191	53.88%	R	63.1	60.04
CD-2	<b>HD-35</b>	30,884	64.79%	R	100	72.64
<i>CD-10/11</i>	<b>HD-16</b>	25,521	50.95	D	40.9	38.26
<b>CD-15</b>		109,659	50.19%	R	66.6	60.02
CD-15	<b>HD-22</b>	26,156	53.9%	R	65.3	60.8
CD-15	<b>HD-24</b>	23,633	54.96%	D	39.9	43.65
<b>CD-18</b>		129,646	62.06%	D	100 (R)	66.16 (R)
CD-18	<b>SD-22</b>	116,588	100%	R	[64.4]	[53.71]
CD-18	<b>SD-30</b>	100,824	66.9%	D	[100]	[66.9]
CD-18	<b>HD-69</b>	26,302	55.47%	R	60.2	55.33

A spreadsheet provided to this Committee by former ACORN employee Anita MonCrief shows ACORN's analysis of 14 nationwide congressional districts where the 2006 winning margin of Republican members were less than the amount of voters produced by ACORN voter registration drives.<sup>393</sup> Documents produced to this Committee reflect ACORN's meticulous research into Project Vote's new registration numbers,<sup>394</sup> analyses of campaign spending by Republicans,<sup>395</sup> an internal memorandum from Sanford Newman, one of Project Vote's founders, on voter registration drives,<sup>396</sup> donor lists from the Democratic National Committee (DNC), the Democratic Senatorial Campaign Committee (DSCC) and the Democratic Congressional Campaign Committee (DCCC),<sup>397</sup> donor lists of unions, lists of contributors to Senator John Kerry (D-MA),<sup>398</sup> documents

<sup>391</sup> 2007-08 OHIO Pol Plan-Draft2b – Copy at 10 (Apr. 2007) (ACORN\_000368).

<sup>392</sup> *Id.* at 10.

<sup>393</sup> Project Vote Registration Projections, Appendix 2, 14 CD (Apr. 11, 2007) at 1-2 (ACORN\_000357-00358).

<sup>394</sup> 2005 PV new registration summary-2 (ACORN\_004452-004453).

<sup>395</sup> Campaign spending at 1 (ACORN\_000107).

<sup>396</sup> Project Vote Registration Projections (Apr. 14, 2007) at 1-14 (ACORN\_000298-000311).

<sup>397</sup> DSCC DNC SCCC 10k and up (2004) (ACORN\_004084-004293) (listing 5,054 donations of above \$10,000 to the DSCC, DNC, and SCCC).

<sup>398</sup> JFK List (ACORN\_000406-000489).

reflecting over 37,000 campaign contributions to former President Bill Clinton, as well as information about 347 donations to Clinton campaign coffers from 61 different unions.<sup>399</sup>

ACORN maintains a list of 59,995 campaign contributors to President Barack Obama's election efforts.<sup>400</sup> The Obama campaign made a substantial contribution to Citizens Services Inc. ("CSI"), a nonprofit corporation. However, in notes dated April 6, 2006 about ACORN affiliate America Votes, the document stated:

We prefer that political money go to us in the form of a vendor, which would be CSI, our for-profit business, which doesn't have to report the cash because it's a business, like the phone company.<sup>401</sup>

In a memorandum from Zach Polett to the ACORN Political Operations Senior Staff, Polett wrote, "[h]ave CSI play a major field role in the general election and, possibly, in the primaries."<sup>402</sup> In the memo, Polett discussed ACORN's congressional district strategy, coordination with Project Vote, and lobbying strategies:

Working with **ACORN Research Dept, Campaign Department** and others, **identify a set of potential "asks" for gubernatorial and mayoral candidates** that directly impact ACORN's membership growth goals . . . . Work with a targeted set of ACORN Head Organizers and their Regional Field Directors to **develop long-term political power-building plans** for those cities and states, including development and training of full-time state political directors in those states. . . . **Register 1,000,000 voters in the 2007 – 2008 election cycle** . . . . **Develop and promote** a Project Youth Vote, as a branded project of **Project Vote/Voting for America, Inc.**, thus taking advantage of the fact that **Project Vote and its work with ACORN** were, by far, the largest Youth voter registration program in the country in 2004. . . . **Establish and fund a "Voter Participation Research Institute" for doing voter engagement experiments and then writing plans and methodologies based on the results of that research.** . . . . Expand **Project Vote's** 2005 – 2006 anti-voter suppression work by raising the funds to enable Project Vote to serve as the national clearinghouse for voter suppression state legislation (stopping the bad bills) and begin the work of expanding the franchise by introducing Voter Bill of Rights legislation in a targeted set of states. . . . **Define a national ACORN-identified values and policy issue** that defines **ACORN's policy and political work** this election cycle. . . . **Get candidates from the presidency on down to identify themselves as supporters of the issue[.]** Use the issue to increase turnout among base voters and to **get independent and**

<sup>399</sup> Clinton 2nd Q (ACORN\_000490-004059) and union donors (ACORN\_004060-004083).

<sup>400</sup> Obama 2nd Q (on file with author).

<sup>401</sup> America Votes Overview Notes (Apr. 6, 2006) at 1 (ACORN\_000312).

<sup>402</sup> PolOps 2007-2008 Projects (Nov. 22, 2006) at 2 (ACORN\_004321).

**swing voters to support candidates who actively support the issue and campaign on it. . . . Congressional District Strategy:** Develop a plan, for 2007 implementation and funding, that targets organizing, communications and **political work in a set of marginal CDs that changed party in the 2006 election.** [Also develop list of seats in which current party holds a seat that went the opposite way in the last presidential election – these will contain a number of seats likely to be closely contested in 08.] . . . Identify issues (generally federal) around which to conduct earned media grasstips [sic] issue advocacy campaigns with a **goal of providing support for the new Congressperson when they take stands on popular progressive issues.** . . . **Build a political operation,** perhaps using 2007 elections when they exist, **that puts in place electoral field capacity and lists that can be used in 2008.** . . . **Establish a federal PAC and a funding plan for it . . . Expand our CSI campaign consulting business . . . Develop CSI as a profit center for the work of Political Operations.** . . . Expand ACORN’s power and reach by creating the in-house capacity to deliver political capacity when it’s needed: **managing ballot measure campaigns; collecting signatures; running large electoral field campaigns; running campaigns of local candidates for office; conducting grasstips [sic] lobbying campaigns; etc.** . . . **Write a business plan for CSI,** including marketing plan and pricing plan. . . . Identify or hire a Managing Director for CSI’s external business. . . . **Identify a list of potential funded ballot measure campaigns that CSI should pursue for full-service and/or signature collection management contracts.** . . . **Identify a list of 2007 and 2008 candidate campaigns that CSI should pursue for contracts and relationships.** . . . **Secretaries of State: Identify 2007 and 2008 Secretary of State races in which we should play, with the goal of getting responsible, pro-voter, competent people in these offices.**<sup>403</sup>

An internal document shows ACORN Political Director Zach Polett controlling the activities of ACORN, Communities Voting Together (“CVT”) and Citizens Services Inc. (“CSI”):

Story for Election Day will be makeup of the House. Places where voter mob can be a factor in these races is where we should think pushing a strong program. **CVT (527) is one of the ways that this could be done smartly and legally. Did work in Corzine 2005 and in Wynn 2006. CSI ran Edwards field under contract.**

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<sup>403</sup> PolOps 2007-2008 Projects (Nov. 22, 2006) at 3-5 (ACORN\_004321-004323) (emphasis added).



**CVT could do something similar to its 2005/06 work in other CD's where it makes sense.**<sup>404</sup>

According to a document provided by former ACORN employees, the ACORN Community Labor Organizing Center (“ACLOC”) led important campaigns including the Texas for Obama Campaign.<sup>405</sup> According to the document, ACLOC raised 1.3 million dollars from political campaigns and delivered the funds directly to ACORN offices.<sup>406</sup> The document noted, “[d]oes the ACORN association board want Wade to be this intimately involved in coordinating campaigns this close to ACORN?”<sup>407</sup> ACORN readily acknowledged its partisan behavior.

## **V. Conclusion**

American nonprofits generate \$1.3 trillion in revenues, have assets over \$2 trillion, and employ 15 million people.<sup>408</sup> Nonprofits represent a substantial portion of the activities directed toward public service, a mission obstructed by the fraud of groups like ACORN. On the basis of this Report, the legal protections distinguishing ACORN and its affiliates must be ignored because the ability to ascertain whether federal moneys are being walled off from ACORN’s political activities is impracticable. As a result, ACORN and its Council of affiliates represent a politically partisan lobbying organization. ACORN and its affiliates’ nonprofit exemptions and receipt of federal grants must therefore bear greater scrutiny.

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<sup>404</sup> Notes-Pol Ops Mgt Mtg (Sept. 15, 2006) at 1 (ACORN\_004371) (emphasis added).

<sup>405</sup> 02-04-2009 (Feb. 4, 2009) at 1-4 (ACORN\_000018-000021).

<sup>406</sup> *Id.*

<sup>407</sup> *Id.* at 2.

<sup>408</sup> INTERNAL REVENUE SERVICE, CHARITIES & OTHER TAX-EXEMPT ORGANIZATIONS STATISTICS, available at <http://www.irs.gov/taxstats/charitablestats> (follow Charities & Other Tax-Exempt Organizations link) (last visited June 22, 2009).

## **VI. Appendix 1: ACORN Council**

The following 361 entities compose the **ACORN COUNCIL**

1. Association of Community Organizations for Reform Now (“ACORN”)
2. ACORN National Office: Brooklyn, NY
3. ACORN Bronx, NY
4. ACORN Brooklyn, NY
5. ACORN Buffalo, NY
6. ACORN Hempstead, NY
7. ACORN HOUSING CORPORATION Brooklyn, NY
8. PROJECT VOTE Brooklyn, NY
9. MHANY Brooklyn, NY
10. ACORN National Office: Washington, D.C.
11. ACORN Washington, DC
12. ACORN HOUSING CORPORATION Washington, DC
13. ACORN Political 1334 G St, NW Suite B Washington, DC 20005
14. AISJ Washington, DC
15. ACORN National Office: Little Rock, AR
16. ACORN Pine Bluff, AR
17. ACORN Housing Corporation Little Rock, AR
18. AHC Little Rock, AR
19. ANP Little Rock, AR
20. PROJECT VOTE Little Rock, AR
21. KABF Little Rock, AR
22. SEIU LOCAL 100 Little Rock, AR 72206
23. ACORN National Office: Phoenix, AZ
24. ACORN Glendale, AZ
25. ACORN Mesa, AZ
26. ACORN Tucson, AZ
27. ACORN Housing Corporation Phoenix, AZ
28. ACORN National Office: Dallas, TX
29. ACORN Arlington, TX
30. ACORN Dallas, TX
31. ACORN El Paso, TX
32. ACORN Ft. Worth, TX
33. ACORN Houston, TX
34. ACORN Irving, TX
35. ACORN San Antonio, TX
36. ACORN Research Dallas, TX
37. ACORN HOUSING CORPORATION Dallas, TX
38. ACORN HOUSING CORPORATION Houston, TX
39. ACORN HOUSING CORPORATION San Antonio, TX
40. AGAPE Dallas, TX
41. SEIU LOCAL 100 Corpus Christi, TX
42. SEIU LOCAL 100 Dallas, TX

43. SEIU LOCAL 100 Houston, TX
44. SEIU LOCAL 100 San Antonio, TX
45. ACORN National Office: Boston, MA
46. ACORN Boston, MA
47. ACORN Brockton, MA
48. ACORN Springfield, MA
49. ACORN HOUSING CORPORATION Boston, MA
50. ACORN HOUSING CORPORATION Springfield, MA
51. ACORN National Office: New Orleans, LA
52. ACORN Baton Rouge, LA
53. ACORN Lake Charles, LA
54. ACORN New Orleans, LA
55. ACORN HOUSING CORPORATION New Orleans, LA
56. Louisiana ACORN Fair Housing Organization New Orleans, LA
57. ALERT New Orleans, LA
58. AISJ New Orleans, LA
59. SEIU LOCAL 100 Baton Rouge, LA
60. SEIU LOCAL 100 Lake Charles, LA
61. SEIU LOCAL 100 New Orleans, LA
62. SEIU LOCAL 100 Shreveport, LA
63. HOTROC New Orleans, LA
64. ACORN Bay Point, CA
65. ACORN Fresno, CA
66. ACORN Los Angeles, CA
67. ACORN Oakland, CA
68. ACORN Sacramento, CA
69. ACORN San Bernardino, CA
70. ACORN San Diego, CA
71. ACORN San Francisco, CA
72. ACORN San Jose, CA
73. ACORN Santa Ana, CA
74. ACORN HOUSING CORPORATION Fresno, CA
75. ACORN HOUSING CORPORATION Los Angeles, CA
76. ACORN HOUSING CORPORATION Oakland, CA
77. ACORN HOUSING CORPORATION Sacramento, CA
78. ACORN HOUSING CORPORATION San Diego, CA
79. ACORN HOUSING CORPORATION San Jose, CA
80. ACORN HOUSING CORPORATION Santa Ana, CA
81. ACORN Aurora, CO
82. ACORN Denver, CO
83. ACORN HOUSING CORPORATION Denver, CO
84. ACORN Bridgeport, CT
85. ACORN Hartford, CT
86. ACORN Waterbury, CT
87. ACORN HOUSING CORPORATION Bridgeport, CT
88. ACORN HOUSING CORPORATION New Haven, CT

89. ACORN 408 East 8th St. Wilmington, DE
90. ACORN Ft. Lauderdale, FL
91. ACORN Hialeah, FL
92. ACORN Jacksonville, FL
93. ACORN Lake Worth, FL
94. ACORN Miami, FL
95. ACORN Orlando, FL
96. ACORN St. Petersburg, FL
97. ACORN c/o the Progressive Center Tallahassee, FL
98. ACORN Tampa, FL
99. ACORN HOUSING CORPORATION Miami, FL
100. ACORN HOUSING CORPORATION Orlando, FL
101. Floridians For All Miami, FL
102. ACORN Atlanta, GA
103. ACORN HOUSING CORPORATION Atlanta, GA
104. ACORN Honolulu, HI
105. ACORN Chicago, IL
106. ACORN Springfield, IL
107. ACORN HOUSING CORPORATION Chicago, IL
108. ACORN HOUSING CORPORATION of IL
109. SEIU LOCAL 880 Chicago, IL
110. SEIU LOCAL 880 East St. Louis, IL
111. SEIU LOCAL 880 Harvey, IL
112. SEIU LOCAL 880 Peoria, IL
113. SEIU LOCAL 880 Rock Island, IL
114. SEIU LOCAL 880 Springfield, IL
115. ACORN Indianapolis, IN
116. ACORN IA
117. Peace and Social Justice Center of South Central Kansas Wichita, KS
118. ACORN Louisville, KY
119. ACORN Baltimore, MD
120. ACORN Hyattsville, MD
121. ACORN HOUSING CORPORATION Baltimore, MD
122. ACORN Detroit, MI
123. ACORN HOUSING CORPORATION Detroit, MI
124. Edison Neighborhood Center Kalamazoo, MI
125. ACORN St. Paul, MN
126. ACORN HOUSING CORPORATION St. Paul, MN
127. ACORN Financial Justice Center St. Paul, MN
128. ACORN Kansas City, MO
129. ACORN St. Louis, MO
130. ACORN HOUSING CORPORATION Kansas City, MO
131. ACORN HOUSING CORPORATION St. Louis, MO
132. SEIU LOCAL 880 East St. Louis, MO
133. SEIU LOCAL 880 St. Louis, MO
134. ACORN Jersey City, NJ

135. ACORN Newark, NJ
136. ACORN Paterson, NJ
137. ACORN HOUSING CORPORATION Jersey City, NJ
138. ACORN Albuquerque, NM
139. ACORN Las Cruces, NM
140. ACORN HOUSING CORPORATION Albuquerque, NM
141. ACORN Charlotte, NC
142. ACORN Cincinnati, OH
143. ACORN Cleveland, OH
144. ACORN Columbus, OH
145. ACORN Toledo, OH
146. Lagrange Village Council Toledo, OH
147. ACORN Portland, OR
148. ACORN HOUSING CORPORATION Portland, OR
149. ACORN Allentown, PA
150. ACORN Harrisburg, PA
151. ACORN Philadelphia, PA
152. ACORN Pittsburgh, PA
153. ACORN HOUSING CORPORATION Philadelphia, PA
154. ACORN HOUSING CORPORATION Philadelphia, PA
155. ACORN HOUSING CORPORATION Pittsburgh, PA
156. ACORN Providence, RI
157. ACORN HOUSING CORPORATION Providence, RI
158. ACORN Memphis, TN 38104
159. ACORN Norfolk, VA
160. ACORN Richmond, VA
161. ACORN Burien, WA
162. ACORN Milwaukee, WI
163. ACORN HOUSING CORPORATION Milwaukee, WI
164. ACORN Beverly, L.L.C.
165. ACORN Center for Housing, Inc.
166. Arkansas Community Housing Corporation
167. ACORN Community Land Association, Inc.
168. ACORN Community Land Association Albuquerque NM
169. ACORN Community Land Association of Louisiana Baltimore MD
170. ACORN Community Land Association of Louisiana New Orleans LA
171. ACORN Community Land Association of Pennsylvania, Inc.
172. ACORN Community Land Association of IL.
173. ACORN Community Labor Organizing Center, Inc.
174. ACORN Fair Housing, A Project Of American Institute Washington DC
175. Arkansas ACORN Fair Housing, Inc.
176. New Mexico ACORN Fair Housing Albuquerque NM
177. ACORN Fair Housing Washington DC
178. ACORN Housing 1 Associates, LP (limited partnership)
179. ACORN Housing 2 Associates, LP (limited partnership)
180. ACORN Housing 2, Inc.

181. ACORN Housing Affordable Loans, LLC
182. ACORN Housing Corporation, Inc.
183. Desert Rose Homes, L.L.C.
184. Franklin ACORN Housing, Inc.
185. Mott Haven ACORN Housing Development Fund
186. Mutual Housing Association of New York, Inc.
187. New Orleans Community Housing Organization, Inc.
188. ACORN Community Land Association of Illinois
189. Massachusetts ACORN Housing Corporation
190. Broad Street Corporation
191. Elysian Fields Corporation
192. ACORN 2004 Housing Development Fund Corporation
193. ACORN 2005 Housing Development FUND CORPORATION
194. ACORN Dumont-Snediker Housing Development Fund Corporation
195. Dumont Avenue Housing Development Fund
196. Elysian Fields Partnership
197. Fifteenth Street Corporation
198. New York ACORN Housing Company Inc
199. Development Fund Corporation
200. New York Organizing and Support Center, Inc
201. Baltimore Organizing and Support Center, Inc.
202. Chicago Organizing and Support Center, Inc.
203. Houston Organizing and Support Center, Inc.
204. 5301 McDougall Corporation
205. New Mexico Organizing and Support Center, Inc.
206. New York Organizing and Support Center, Inc.
207. Phoenix Organizing and Support Center, Inc.
208. 385 Palmetto Street Housing Development Fund Corporation
209. Sixth Avenue Corporation
210. 4415 San Jacinto Street Corporation
211. St. Louis Organizing and Support Center, Inc.
212. St. Louis Tax Reform Group, Inc.
213. Greenwell Springs Corporation
214. Austin Organizing and Support Center, Inc.
215. Boston Organizing and Support Center, Inc.
216. American Home Day Care Workers Association, Inc.
217. American Workers Association
218. Baton Rouge Association of School Employees, Inc.
219. Hospitality Hotel and Restaurant Organizing Council
220. Illinois Home Child Care Workers Association, Inc.
221. Labor Link, Inc.
222. Labor Neighbor Research and Training Center, Inc.
223. Missouri Home Child Care Workers Association, Inc.
224. Middle South Home Day Care Workers Association, Inc.
225. Wal-Mart Alliance for Reform Now, Inc.
226. Wal-Mart Association for Reform Now

- 227. Working Families Association, Inc.
- 228. Wal-Mart Workers Association, Inc.
- 229. People Organizing Workfare Workers/ACORN/CWA, Inc.  
Workers/ACORN/CWA, Inc.
- 230. Texas United City-County Employees, Inc.
- 231. Texas United School Employees, Inc.
- 232. United Labor Foundation of Greater New Orleans, Inc.
- 233. United Security Workers of America
- 234. Orleans Criminal Sheriffs
- 235. SEIU Local 100
- 236. SEIU Local 880
- 237. Arkansas Broadcasting Foundation, Inc.
- 238. Agape Broadcasting Foundation, Inc.
- 239. Affiliated Media Foundation Movement, Inc.
- 240. Allied Media Projects, Inc.
- 241. ACORN National Broadcasting Network, Inc.
- 242. Alabama Radio Movement, Inc. (Dissolved)
- 243. ACORN Television in Action for Communities, Inc.
- 244. California Community Television Network
- 245. Flagstaff Broadcasting Foundation, Inc.
- 246. Iowa ACORN Broadcasting Corporation
- 247. Maricopa Community Television Project, Inc.
- 248. Montana Radio Network, Inc.
- 249. Radio New Mexico, Inc.
- 250. Shreveport Community Television, Inc.
- 251. Crescent City Broadcasting Corporation
- 252. KABF Radio
- 253. KNON Radio
- 254. ACORN Institute, Inc.
- 255. ACORN Institute Inc. Washington DC
- 256. ACORN Institute Dallas TX
- 257. ACORN Institute Inc. New Orleans LA
- 258. American Institute for Social Justice, Inc.
- 259. Association for Rights of Citizens, Inc.
- 260. New York Agency for Community Affairs, Inc.
- 261. Pennsylvania Institute for Community Affairs, Inc.
- 262. Project Vote/Voting for America, Inc.
- 263. ACORN Tenant Union Training & Organizing Project, Inc.
- 264. ACORN Law for Education Representation & Training, Inc.
- 265. American Environmental Justice Project, Inc.
- 266. ACORN International, Inc.
- 267. Environmental Justice Training Project, Inc.
- 268. Movement for Economic Justice, Education & Training Center, Inc.
- 269. Missouri Tax Justice Research Project, Inc.
- 270. ACORN Beneficial Association, Inc.
- 271. ACORN Canada

272. ACORN Children's Beneficial Association, Inc.
273. ACORN Campaign to Raise the Minimum Wage, Inc.
274. ACORN Cultural Trust, Inc.
275. ACORN Dual Language Community Academy
276. ACORN Fund, Inc.
277. ACORN Foster Parents, Inc.
278. ACORN Institute Canada
279. ACORN Political Action Committee, Inc.
280. ACORN Tenants' Union, Inc.
281. Community Training for Environmental Justice, Inc.
282. Connecticut Working Families
283. Democracy for America
284. Hammurabi Fund, Inc.
285. McLellan Multi-Family Corporation
286. Metro Technical Institute, Inc.
287. New Party National Committee, Inc.
288. Volunteers for America, Inc.
289. Volunteers for California, Inc.
290. Volunteers for Missouri, Inc.
291. ACORN Management Corporation
292. Associated Regional Maintenance Systems
293. ACORN Associates, Inc.
294. ACORN Associates Inc. Albuquerque NM
295. ACORN Campaign Services, Inc.
296. ACORN Services, Inc.
297. Citizens Consulting, Inc.
298. Chief Organizer Fund, Inc.
299. Citizens Services, Inc.
300. People's Equipment Resource Corporation, Inc.
301. National Center for Jobs & Justice
302. Service Workers Action Team
303. Living Wage Resource Center
304. American Home Childcare Providers Association
305. Association for the Rights of Citizens Inc
306. California Community Network
307. Child Care Providers for Action Franklin
308. Citizens Action Research Project
309. Citizens Campaign for Work, Living Wage & Labor Peace
310. Citizens for Future Progress
311. Citizens Campaign for Finance Reform
312. Floridians for All PAC
313. Greenville Community Charter School Inc
314. Student Minimum Wage Action Campaign
315. Site Fighters
316. Social Policy
317. Southern Training Center



318. ACORN Votes
319. Communities Voting Together
320. Arkansas ACORN Political Action Committee
321. Arkansas New Party
322. California APAC
323. Citizens for April Troope
324. Colorado Organizing and Support Center, Inc.
325. Citizens Campaign for Fair Work
326. Citizens Services Society, Inc.
327. Clean Government APAC
328. Community Voices Together
329. Community Real Estate Processing, Inc.
330. Council Beneficial Association
331. Council Health Plan
332. Desert Rose Homeowners' Association
333. District of Columbia APAC
334. Friends of Wendy Foy
335. Illinois APAC
336. Illinois New Party
337. Institute for Worker Education
338. Jefferson Area Public Employees
339. Jefferson Area School Employees
340. Local 100 Health & Welfare Fund
341. Local 100 Political Action Committee
342. Local 100 Retirement Fund
343. Local 880 PAC
344. Local 880 Political PAC
345. Louisiana APAC
346. Maryland APAC
347. Massachusetts APAC
348. Missouri APAC
349. Mutual Housing Association of New York Neighborhood Restore
350. Neighbors for Arthelia Ray
351. Neighbors for Maria Torres
352. Neighbors for Ted Thomas
353. New Mexico APAC
354. New Orleans Campaign for Living Wage Committee
355. New York APAC
356. Oregon APAC
357. Orleans Criminal Sheriffs Workers Organization, Inc.
358. Pennsylvania APAC
359. Progressive Houston
360. Progressive St. Louis
361. Rhode Island APAC

## VII. Appendix 2: RICO Analysis

ACORN 8 alleged RICO violations under 18 U.S.C. §1962(c):

(1) the defendant persons (2) were employed by or associated with an enterprise (3) that engaged in or affected interstate commerce and that (4) the defendant persons operated or managed the enterprise (5) through a pattern (6) of racketeering activity, and (7) the complaints [sic] were injured in its business or property by reason of the pattern of racketeering activity. Thus, the complainants feel that a formal RICO investigation is also warranted.<sup>409</sup>

Asheesh Agarwal, a former Justice Department attorney, produced to the Committee a memorandum (“Memo”) analyzing whether Project Vote could be sued under the civil provisions of the Racketeer Influenced Corrupt Organization Act (“RICO”).<sup>410</sup> The Memo concluded, “such a claim would face a very high hurdle in satisfying the ‘business or property’ element of a [civil] RICO claim. We could probably get by a Rule 11 motion, but probably not a motion to dismiss.”<sup>411</sup>

The Memo analyzed the predicate offenses of mail and wire fraud, stating “[a]lthough the federal mail and wire fraud statutes do not themselves establish a private right of action, such a claim is permitted under the [criminal] RICO statute itself.”<sup>412</sup>

The federal civil RICO provision provides, “[a]ny person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court...”<sup>413</sup> While the Memo analyzed whether “voters [had] been ‘injured in... business or property[,]’ it did not analyze whether Project Vote, or its affiliate, ACORN, caused taxpayers or donors to be injured in their business or property.”<sup>414</sup> The Memo characterized the “right to vote or to a fair election process” as “property.”<sup>415</sup>

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<sup>409</sup> IMC Allegations (Jan. 7, 2009) at 2 (ACORN\_004867).

<sup>410</sup> The Committee staff believed that the memorandum was the work product of the Department of Justice. Asheesh Agarwal has informed the Committee that the Department of Justice's Civil Rights Division did not author the memorandum that analyzed a possible civil RICO suit against ACORN. Mr. Agarwal has informed the Committee that he, as former Deputy Assistant Attorney General, did not author the memorandum.

<sup>411</sup> Memo (received March 30, 2009) at 1 (ACORN\_004776). Asheesh Agarwal sent the memorandum to the Committee staff on March 30, 2009. The staff was under the impression that the memo was authored by Mr. Agarwal during his time at the Department of Justice (“DOJ”). As of August 3, 2009, Mr. Agarwal claims the memo was not authored by him and was not the work product of the Department of Justice.

<sup>412</sup> *Id.* (emphasis added).

<sup>413</sup> 18 U.S.C § 1964.

<sup>414</sup> Agarwal Memo (received March 30, 2009) at 2 (ACORN\_004777).

<sup>415</sup> *Id.* (ACORN\_004777).

The Memo analyzed “property” under the Supreme Court’s decision in *McNally v. United States*<sup>416</sup> and the Sixth Circuit decision, *United States v. Debs*.<sup>417</sup> In *McNally*, decided five years before *Debs*, the Court limited the definition of “property” under the mail and wire fraud statutes. The *McNally* Court considered whether a patronage scheme by a Kentucky public official had deprived the citizens of Kentucky of the property right to have the state government’s affairs conducted honestly. Under *McNally*, “property” under the mail and wire fraud acts did not include intangible rights such as “the right of the citizenry to good government.”<sup>418</sup> However, the *Debs* Court interpreted the Hobbs Act to hold the loss of the opportunity to vote as a loss of property not a “deprivation of rights.”<sup>419</sup> The Memo analyzed the distinction as follows:

After discussing the implications of *McNally*’s holding in some detail, the *Debs* court nonetheless concluded that ‘property’ under the Hobbs Act included the right to elect union officials. The *Debs* court argued that the *McNally* decision could be explained by the fact that there, the Court had been motivated by concerns of federalism and had not wanted to interfere with ‘setting standards of disclosure and good government for local and state officials.’ See *Debs* at 202 (quoting *McNally* at 360). The *Debs* Court found these same federalism concerns were not implicated in union elections.<sup>420</sup>

According to the Memo, the *McNally* case was later explicitly overturned by 18 U.S.C. §1346, which held that a “scheme or artifice to defraud” under the mail and wire fraud statutes included the deprivation of the “intangible right of honest services.”<sup>421</sup>

The Memo addressed the criminal provisions of RICO under 18 U.S.C. §1962. The criminal RICO statute instructs:

It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.<sup>422</sup>

According to the Memo, ACORN can be easily established as an “enterprise” under the RICO statute “as that term is defined to include ‘any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity[.]’”<sup>423</sup> The Memo also held, “we should be able to

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<sup>416</sup> *McNally v. United States*, 483 US 350 (1987).

<sup>417</sup> 949 F. 2d 199 (6th Cir. 1992).

<sup>418</sup> *McNally* at 356.

<sup>419</sup> *Id.* at 201 (emphasis in original).

<sup>420</sup> Agarwal Memo (received March 30, 2009) at 2 (ACORN\_004777).

<sup>421</sup> See *United States v. Ames Sintering Co.*, 927 F.2d 232 (6th Cir 1990) (recognizing that section 1346 overturned or superseded *McNally*).

<sup>422</sup> 18 U.S.C. § 1962(c).

<sup>423</sup> Agarwal Memo (received March 30, 2009) at 3 (ACORN\_004778), citing 18 U.S.C. §1961.

demonstrate that [ACORN's] racketeering constitutes a 'pattern' which, under the statute, is 'at least two acts of racketeering activity,'"<sup>424</sup> The Memo claimed ACORN's activities constituted "racketeering" under §1341 (mail fraud) and §1343 (wire fraud) of the code.<sup>425</sup>

18 U.S.C. §1341's requirements are met if the mail is used to execute a scheme involving money or property. 18 U.S.C. §1341 specifies:

Whoever, having devised or intending to devise **any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses**, representations, or promises, or to sell, dispose of, loan, exchange, alter, give away, distribute, supply, or furnish or procure for unlawful use any counterfeit or spurious coin, obligation, security, or other article, or anything represented to be or intimated or held out to be such counterfeit or spurious article, for the purpose of **executing such scheme** or artifice or attempting so to do, **places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Postal Service**, or deposits or causes to be deposited any matter or thing whatever to be sent or delivered by any private or commercial interstate carrier, or takes or receives therefrom, any such matter or thing, or knowingly causes to be delivered by mail or such carrier according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such matter or thing, shall be fined under this title or imprisoned not more than 20 years, or both.<sup>426</sup>

18 U.S.C. §1343 is analogous to the mail fraud language but refers to the use of wire transmission:

Whoever, having devised or intending to devise **any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses**, representations, or promises, **transmits or causes to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce, any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice**, shall be fined under this title or imprisoned not more than 20 years, or both. If the violation occurs in relation to, or involving any benefit authorized, transported, transmitted, transferred, disbursed, or paid in connection with, a presidentially declared major disaster or emergency (as those terms are defined in section 102 of the

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<sup>424</sup> *Id.*

<sup>425</sup> 18 U.S.C. §§ 1341, 1343.

<sup>426</sup> Agarwal Memo at 3-4 (ACORN\_004778-004779), citing 18 U.S.C. § 1341 (emphasis in original).

Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122)), or affects a financial institution, such person shall be fined not more than \$1,000,000 or imprisoned not more than 30 years, or both.<sup>427</sup>

The Memo claimed “[ACORN] engaged in a scheme to defraud voters of their intangible right to honest government services.”<sup>428</sup>

The federal criminal RICO statute defines property as real property “including things growing on, affixed to, and found in land” and tangible and intangible personal property “including rights, privileges, interests, claims, and securities.”<sup>429</sup> In discussing “money or property” the Memo stated, “Congress specifically accepted *McNally*’s invitation to clarify the definition of ‘property’ when it passed section 1346.”<sup>430</sup> §1346 states:

For the purposes of this chapter, the term ‘scheme or artifice to defraud’ includes a scheme or artifice to deprive another of the intangible right of honest services.<sup>431</sup>

“[I]ntangible personal property” under §1964 is thus defined to include “a scheme or artifice to deprive another of the intangible right of honest services.” The Memo concluded, “[t]hus, the property requirement under section 1346 is explicitly an easier hurdle than the property requirement under the civil provision of RICO more broadly.”<sup>432</sup> The Memo stated, “If [Americans Coming Together]/ACORN used the mails in any way to facilitate the scheme, their conduct should fall under these provisions.”<sup>433</sup> ACORN would therefore be liable under RICO if it used mail or wire transmissions which deprived others of their money or rights.

While the Memo focused on the use of the mail to further Project Vote’s alleged fraudulent voter registrations, the Memo did not discuss whether ACORN or any of its affiliates used mail or wire transmissions to further other forms of fraud depriving individuals of their money or “intangible right of honest services.” Dale Rathke’s embezzlement violated RICO because, according to the Harmon, Curran, Spielberg & Eisenberg, LLP (“HCSE”) Memo, it involved a fraudulent wire-based transfer of funds violating first, ACORN’s fiduciary duties to its donors, second, ERISA, third, the Internal Revenue Code, and potentially fourth, FEC regulations.

This report cites evidence showing ACORN to have committed two forms of misconduct, organizational and purposeful, which have triggered fraudulent and

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<sup>427</sup> 18 U.S.C. §1343 (emphasis added).

<sup>428</sup> Agarwal Memo at 4 (ACORN\_004779).

<sup>429</sup> 18 U.S.C. § 1963.

<sup>430</sup> *Id.*

<sup>431</sup> 18 U.S.C. § 1346.

<sup>432</sup> Agarwal Memo at 4 (ACORN\_004779).

<sup>433</sup> *Id.*

potentially illegal acts.<sup>434</sup> According to this report, ACORN's organizational misconduct involved:

1. Failed to regard corporate formalities and fiduciary duties, failed to report Dale Rathke's embezzlement to the Board;
2. Wade Rathke lied to the Board about ACORN's legal counsel (Louis Robein);
3. Wade Rathke filed a fraudulent LM-2 form;
4. Failed to comply with its own board-created Interim Management Committee;
5. Violated ERISA because Citizens Consulting Inc.'s (CCI) removal of money from a charity-sponsored health fund (ACORN Fund) is a prohibited loan to a related party under ERISA and a large part of the embezzled funds (\$215,000) were charged through ACORN's American Express account to the ACORN Beneficial Association;
6. Breached its duty of care to its donors because CCI approved the use of donor funds to cover the debt caused by embezzlement;
7. Violated the Internal Revenue Code by failing to report the embezzlement to the IRS;
8. Ignored its bylaws;
9. Terminated members of its Interim Management Committee without cause;
10. Mismanaged the organization because CCI controls the accounts of federally funded ACORN affiliates as well as politically active affiliates;
11. Organized the ACORN Council as a web of affiliates with no real boards or oversight; and
12. Lacked quality control because ACORN lacks hiring standards, negligently supervised its employees and lacked a whistleblower policy.

According to this report, ACORN's purposeful misconduct involved:

1. Ignored its responsibilities under the Internal Revenue Code;
2. Engaged in illegal partisan activity because Project Vote, ACORN Housing Corporation, the American Institute for Social Justice, the ACORN Institute, and the Pennsylvania Institute for Community Affairs, Inc. received federal funds, yet ACORN lobbied in support of legislation and candidates for public office by having endorsed Senator Sherrod Brown (D-OH), Representative Albert Wynn (D-MD) and Representative Donna Edwards (D-MD) and by using donor

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<sup>434</sup> *Id.*

- records from the Clinton, Kerry and Obama presidential campaigns;
3. Failed to supervise those ACORN employees prosecuted for filing fraudulent voter registrations; and
  4. Failed to wall off its political activities from the organizations receiving federal funds or tax-deductible charitable contributions, thus potentially violating FEC rules.

If these allegations are true, ACORN financially deprived its donors by wiring their funds to cover the debt caused by Dale Rathke's embezzlement, it deprived federal taxpayers and the government of money and the right to honest services by wiring federal grant money to political accounts and mailing fraudulent forms to the Labor Department and the IRS, and it deprived its former employees of money by mailing them notice of their termination in violation of ACORN's bylaws.

ACORN acknowledged these violations and their connection to the RICO statute. In an email from Steve Bachmann to Steven Kest of ACORN, Karen Inman, formerly of ACORN, and Elizabeth Kingsley, of the law firm Harmon, Curran, Spielberg & Eisenberg ("HCSE"), Bachmann quoted a *New York Times* article released about ACORN and responded to its claims:

The *New York Times* stated:

The brother, Dale Rathke, embezzled nearly \$1 million from Acorn and affiliated charitable organizations in 1999 and 2000, Acorn officials said, but a small group of executives decided to keep the information from almost all of the group's board members and not to alert law enforcement.<sup>435</sup>

Bachmann commented:

**As I say, check [Wade Rathke]'s blog, and we need to get tight on what happened precisely on this matter--WR says he recused himself and put it to the management council. I dont' [sic] know about the politics of the board, but as to the solution to the embezzlement [sic] he told me that Louis Robein was going to solve it. Isn't that what he told the management council when he supposedly recused himself? I THINK THIS THIS [sic] A CRITICAL ISSUE AND WILL HAVE TO COME OUT AT SOME POINT...Sidley Austin needs to read that WR blog, because--at the risk of repeating myself--if I were a rightwing prosecutor I would think "RICO, coverup," blah blah blah--and WR is fingering the management council,**

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<sup>435</sup> Stephanie Strom, *Funds Misappropriated at 2 Nonprofit Groups*, N.Y. TIMES, Jul. 9, 2008, available at <http://www.nytimes.com/2008/07/09/us/09embezzle.html> (last visited May 7, 2009).

**claiming he had nothing to do with it, and not mentioning his promises regarding Robein**<sup>436</sup>

Moreover, minutes from a July 2008 ACORN Board meeting reflect the degree to which the ACORN's donors felt their fiduciary duties were violated.<sup>437</sup>

\*\* Bertha Lewis, Steve Kest and Zach Polett have been working with funders. Bertha reported that a group of approximately 30 funders have gotten together and talked about how to deal with ACORN. She added that we are working with them and hope that they don't try to dictate ACORN's courses of action. An effort was made to defund ACORN from the national Health Care Action Now (HCAN) plan, but that defunding was unsuccessful and ACORN's participation and funding continues. Zach reported that We Are America Alliance funding for ACORN has also been threatened, but that funding was now secure.

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<sup>436</sup> Email from Steve Bachmann to Steve Kest, Karen Inman, and Elizabeth Kingsley (July 9, 2008) at 1-4 (on file with author) (emphasis in original).

<sup>437</sup> ACORN Association Board Meeting (July 13, 2008) at 2 (ACORN\_00392).



## VIII. Appendix 3: Updated and New Information (9/23/09)

This Appendix updates the July 23, 2009 staff report (“ACORN Report”). The Committee’s investigation of the Association of Community Organizations for Reform Now (“ACORN”) is ongoing and this Appendix focuses on recent findings concerning ACORN’s tax status and clarifies questions that have arisen concerning ACORN whistleblowers and the Racketeer Influenced Corrupt Organization Act (“RICO”) analysis from the ACORN Report’s original appendices.

### **A. ACORN’s tax status and political activities**

In its first release, the ACORN Report claimed, on the basis of congressional testimony, whistleblower and employee accounts, and the media, that ACORN was a tax-exempt 501(c)(4) nonprofit corporation. The overwhelming majority of policy makers, media sources, and legal and political analysts have identified ACORN as a tax-exempt nonprofit corporation. The Committee staff has now been presented with information that serves to clarify ACORN’s tax-exempt status. Upon further investigation, the Committee staff has learned that ACORN, the parent company, is not a 501(c)(4), but rather a taxable nonprofit corporation. ACORN is apparently registered in every state where it hosts a chapter.

This is where ACORN’s tentacles become even more complex. The Committee staff contacted the American Law Division of the Congressional Research Service (“CRS”) to ascertain why a nonprofit would elect to pay corporate income taxes. The CRS stated they were aware of only one corporation in the United States structured that way: ACORN. But CRS could not explain why ACORN would structure itself this way.

CRS recommended that the Committee staff call a preeminent nonprofit tax lawyer to get answers – which it did. This attorney explained that the **ONLY** reason a nonprofit would want a non-exempt status would be to conduct political activities without reporting them to the Internal Revenue Service (“IRS”).<sup>438</sup>

### **1. ACORN and its web of affiliates have slipped under the legal radars of the FEC and the IRS**

The ACORN Report found that ACORN conspires to defraud the United States by using taxpayer funds for partisan political activities.<sup>439</sup> The Committee staff is concerned that ACORN has failed to comply with § 501(c) and § 527(f) of the Internal Revenue Code (“IRC”) and the accompanying Internal Revenue Service (“IRS”) regulations. It appears that ACORN, a taxable non-exempt corporation, has intentionally used gaps in the IRC and the Federal Election Campaign Act (“FECA”) to engage in

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<sup>438</sup> Interview with Bruce Hopkins, Director, Nonprofit Law Center (July 28, 2009).

<sup>439</sup> See Minority staff report, *Is ACORN Intentionally Structured As a Criminal Enterprise?* COMM. OVERSIGHT AND GOV’T REFORM (2009) at 3-6, available at: <http://republicans.oversight.house.gov/media/pdfs/20090723ACORNReport.pdf>.

activities that would be subject to either prohibition or taxation under any reasonable application of FECA and the IRC.

ACORN files Form 1120 corporate income tax with the IRS, has no tax-exempt status with the IRS, and is registered in multiple states as a nonprofit corporation.

FECA<sup>440</sup> generally prohibits corporations from making a contribution or expenditure in connection with any election to any political office<sup>441</sup> and from using Treasury funds to pay for electioneering communications.<sup>442</sup> However, there are several exceptions to FECA's general prohibition on corporations making contributions or expenditures. Under 2 U.S.C. § 441b(b)(2), corporations may make expenditures: (1) to communicate with stockholders and executive or administrative personnel and their families; (2) to engage in nonpartisan voter registration or get-out-the-vote campaigns aimed at stockholders and executive or administrative personnel and their families; and (3) to establish, administer, and solicit contributions to a separate segregated fund for political purposes.

FECA's exceptions, however, would not apply to ACORN, or any state-registered taxable nonprofit corporation. It appears that these exceptions apply only to nonprofits classified as "qualified nonprofit corporations ("QNCs")."<sup>443</sup> The FEC defines a QNC as a tax-exempt § 501(c)(4) corporation whose (1) only express purpose is the promotion of political ideas, which (2) does not engage in business activities, (3) has no shareholders or other persons with an ownership interest or claim on the organization's assets, and (4) was not established by and does not accept donations from business corporations.<sup>444</sup>

The Committee's Ranking Member, Darrell Issa (R, Calif.), has requested that the FEC identify how it classifies ACORN or any of its affiliates, especially whether ACORN or any of ACORN's affiliates are qualified nonprofit corporations ("QNCs") under FECA.

While questions remain about ACORN's legal status, it is also important that the activities of ACORN's 501(c) affiliates like Project Vote, the American Institute for Social Justice ("AISJ"), ACORN Housing Corporation ("AHC"), ACORN Institute, Service Employees International Union ("SEIU") Local 100 and Local 880, Communities Voting Together ("CVT," also known as "Community Voices Together"), ACORN Votes, Elysian Fields Corporation ("EFC"), the Association for the Rights of Citizens ("ARC"), and the Working Families Party ("WFP") do not escape the regulatory attention of the IRS and the FEC.

In enacting § 501(c), Congress intended nonprofit political activity to be interpreted broadly.<sup>445</sup> According to this interpretation, a nonprofit influences legislation

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<sup>440</sup> 2 U.S.C. § 431 *et seq.*

<sup>441</sup> 2 U.S.C. § 441(a).

<sup>442</sup> 2 U.S.C. § 441b(b)(2).

<sup>443</sup> 11 C.F.R. § 114.10(d)(2).

<sup>444</sup> 11 C.F.R. § 114.10(c).

<sup>445</sup> *Christian Echoes Nat'l Ministry v. United States*, 470 F.2d 849, 856 (10th Cir. 1972).

whenever it makes “appeals to the public to react to certain issues.”<sup>446</sup> If an “essential part of the program” is “to promote desirable governmental policies consistent with its objectives through legislation” then a substantial part of the corporation’s activities are “influencing or attempting to influence legislation.”<sup>447</sup> “[A]ttempts to elect or defeat certain political leaders” reflect an “objective to change the composition of the federal government.”<sup>448</sup>

Section 527(f) of the IRC subjects § 501(c) organizations to taxation if they make an expenditure for a § 527 “exempt function.” Lobbying, or the “influencing or attempting to influence the selection, nomination, election, or appointment of any individual to any Federal, State, or local public office or office in a political organization, or the election of Presidential or Vice-Presidential electors . . . ” would constitute a § 527 “exempt function” under the IRC.<sup>449</sup>

According to the IRC, if a § 501(c) organization sets up a separate segregated fund, the fund will be treated as a separate § 527 political organization for tax purposes.<sup>450</sup> However, a § 501(c) organization cannot set up a fund to conduct activities it cannot do – e.g. a §501(c)(3) organization, which is prohibited from engaging in campaign activity under the tax laws, cannot set up a fund to engage in those types of activities.<sup>451</sup>

Treasury Regulation § 1.527-6(b)(1) states that FECA-permitted expenditures are taxable only to the extent provided by regulation. The Treasury Department has not yet promulgated a regulation stating what that extent is.<sup>452</sup>

For purposes of applying FECA, the FEC does not distinguish between tax-exempt nonprofit corporations, like Project Vote, and taxable nonprofit corporations, like ACORN. However, the American Law Division of CRS has informed Committee staff that “for the purposes of determining whether a corporation is exempt from certain FECA prohibitions, the tax-exempt status of a corporation is relevant.”<sup>453</sup> These ambiguities increase the concern that ACORN is exploiting the situation to improperly claim IRC exemptions to engage in improper lobbying activities.

The IRC, FECA, IRS and FEC regulations require political funds to be separate and segregated from tax-exempt accounts. The ACORN Report disclosed an audit by ACORN’s outside counsel, finding ACORN and its affiliates lack an adequately documented delineation of 501(c)(3) from non-501(c)(3) work,<sup>454</sup> ACORN cannot prove

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<sup>446</sup> *Id.*

<sup>447</sup> *Id.*

<sup>448</sup> *Id.*

<sup>449</sup> IRC § 527(e)(2).

<sup>450</sup> IRC § 527(f)(3); Treas. Reg. § 1.527-6(f).

<sup>451</sup> Treas. Reg. §1.527-6(g).

<sup>452</sup> Treas. Reg. § 1.527-6(b)(3).

<sup>453</sup> *Id.*

<sup>454</sup> Memorandum from Harmon, Curran, Spielberg, & Eisenberg, LLP [HCSE] on Organization Review to ACORN Beneficial Association, ACORN Housing Corporation, ACORN Institute, ACORN Votes, American Institute for Social Justice, Association of Community Organizations for Reform Now, Citizens

that 501(c)(3) resources are not being directed to specific regions based on impermissible partisan considerations,<sup>455</sup> ACORN and its affiliates lack protective walls separating their various activities<sup>456</sup> and Communities Voting Together (“CVT”), a § 527 organization, is “treated like a pot of money available to ACORN to carry out state-level political work.”<sup>457</sup>

The ACORN Report alleged that Citizens Consulting Inc. (“CCI”), a taxable nonprofit ACORN-affiliate, simultaneously managed the accounts of political and private donor-funded organizations. If accurate, CCI’s co-management of various tax-exempt and non-exempt affiliate accounts, many of which receive federal funds and some of which are 527s, would violate § 527(f) of the IRC as well as FECA. CCI co-manages ACORN affiliate accounts that are legally required to be separate and segregated. The IRC requires the transfer of political contributions and dues meet the three requirements that the § 501(c) use procedures that satisfy federal and state campaign laws; the § 501(c) organization maintain adequate records to show the transferred monies and political contributions and dues; and the transferred monies were not used to earn investment income for the § 501(c) organization.<sup>458</sup>

Ranking Member Issa has requested that the IRS provide information concerning any criminal investigation (“CI”), civil audit, or examination, review of whistleblower-informant claims, published alerts or abusive tax scheme investor lists concerning ACORN or its affiliates. Mr. Issa has also requested that the FEC provide information concerning any formal investigation or Commission audit, issued committee report, response to complaints, referrals from other government agencies, or issued enforcement decision or matter under review (“MUR”) concerning ACORN or its affiliates.

## **2. Senior ACORN employees lobby the Federal Government on ACORN’s behalf yet ACORN has failed to register as a lobbying organization under the Lobbying Disclosure Act**

The ACORN Report traced the way ACORN erected a complex corporate structure of overlapping nonprofit community initiatives and political lobbying activities. Moreover, the ACORN Report revealed the shell-game of corporate financing that enables ACORN to commingle funds and potentially divert federal monies into partisan activities in violation of federal law.

Since the release of the ACORN Report, Committee staff has continued to pursue evidence of ACORN’s corporate deceit. It now seems that in addition to blurred corporate structures and commingled funds, ACORN has attempted to evade federal law governing lobbyist disclosures.

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Consulting, Inc., Citizens Services Inc., Communities Voting Together, Pennsylvania Institute for Community Affairs, Inc., Project Vote/Voting for America, Inc. (June 19, 2008) at 7 (ACORN\_004933).

<sup>455</sup> *Id.*

<sup>456</sup> *Id.* at 6.

<sup>457</sup> *Id.* at 8.

<sup>458</sup> Treas. Reg. § 1.527-6(e).

The Lobbying Disclosure Act of 1995 (“Lobbying Disclosure Act”) states, “[a] person or entity whose employees act as lobbyists on its own behalf is both a client and an employer of such employees.”<sup>459</sup> Steve Kest is the executive director of ACORN.<sup>460</sup> According to ACORN-affiliate Citizens Consulting Inc.’s (“CCI”) 2007 lobbying report for ACORN, Steve Kest is also CCI’s executive director.<sup>461</sup> Even a broad interpretation of the Lobbying Disclosure Act would mandate ACORN, with Steve Kest as its director and principal lobbyist, to register with Congress. ACORN has failed to do so.

Steve Kest is an employee of CCI, which is a wholly owned subsidiary of ACORN, and Steve Kest’s lobbying activities advance the interests of both ACORN and CCI.<sup>462</sup> Because ACORN contributes \$5,000 or more to Steve Kest’s lobbying activities during a quarterly period and actively participates in the planning, supervision, or control of his lobbying activities, ACORN must be listed on CCI’s Form LD 1, Line 13.<sup>463</sup> Unfortunately, ACORN is listed nowhere in the Congressional registration database.<sup>464</sup>

Congress has both civil and criminal penalties for failing to comply with the Lobbying Disclosure Act:

Whoever knowingly fails . . . to comply with any other provision of the Act, may be subject to a civil fine of not more than \$200,000, and whoever knowingly and corruptly fails to comply with any provision of this Act may be imprisoned for not more than 5 years or fined under title 18, United States Code, or both.<sup>465</sup>

ACORN, an organization that routinely files forms, pays fees, and writes grants to several federal and state agencies, would not have been burdened by the prospect of registering Steve Kest as its lobbyist and employee. Registering with both the House and the Senate under the Lobbying Disclosure Act is free<sup>466</sup> and can be completed in a few minutes online.<sup>467</sup> But what seems like an easy fix would have enormous ramifications for ACORN. Our first report demonstrated that ACORN is prohibited by law from managing and controlling the accounts of its tax-exempt affiliates. Moreover, ACORN is prohibited from using taxpayer dollars to fund lobbying or electioneering activities. It is obvious why ACORN registered CCI as its lobbyist while failing to register itself: the

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<sup>459</sup> LOBBYING DISCLOSURE ACT, available at: <http://lobbyingdisclosure.house.gov/index.html>.

<sup>460</sup> ACORN WEBSITE, available at: <http://www.acorn.org/contactus/national.html>.

<sup>461</sup> See Citizen Consulting, Inc. (CCI), 2007 LOBBYING REPORT, LOBBYING DISCLOSURE ACT OF 1995 (SECTION 5), at 2-10, available at: <http://lobbyingdisclosure.house.gov>.

<sup>462</sup> LOBBYING DISCLOSURE ACT GUIDE, available at: [http://lobbyingdisclosure.house.gov/amended\\_lda\\_guide.html](http://lobbyingdisclosure.house.gov/amended_lda_guide.html).

<sup>463</sup> *Id.*

<sup>464</sup> QUERY THE LOBBYING DISCLOSURE DATABASE, available at: <http://soprweb.senate.gov/index.cfm?event=chooseFields> (hyperlink “Search Filings” ACORN, Association of Community Organizations for Reform Now).

<sup>465</sup> LOBBYING DISCLOSURE ACT GUIDE, available at: [http://lobbyingdisclosure.house.gov/amended\\_lda\\_guide.html](http://lobbyingdisclosure.house.gov/amended_lda_guide.html).

<sup>466</sup> Interview with HOUSE LEGISLATIVE RESOURCE CENTER, (Sept. 7, 2009).

<sup>467</sup> SENATE PUBLIC DISCLOSURE INDEX, available at: [http://www.senate.gov/legislative/Public\\_Disclosure/new\\_filings.htm](http://www.senate.gov/legislative/Public_Disclosure/new_filings.htm).

negligible cost of disclosing its affairs to the government is too high a price to pay for an organization that has covered-up illegal activities. If ACORN was to register under the Lobbying Disclosure Act, ACORN's ability to access public funds would be limited, or meet higher scrutiny, and more public disclosure of their activities would be required.

ACORN's state and federal lobbying disclosures depict the organization as practically indistinguishable from its various affiliates. For example, Citizens Consulting, Inc.'s ("CCI") 2008 lobbying disclosure with Congress identifies its address as 1024 Elysian Fields Avenue New Orleans, LA 70117.<sup>468</sup> ACORN is listed as CCI's client. In ACORN's 2005 lobbying disclosure with the New York City government, ACORN lists an identical address as CCI: 1024 Elysian Fields Avenue, New Orleans, LA 70117.<sup>469</sup> According to the New York Secretary of State database, ACORN is incorporated in New York State under the name "Association of Community Organizations for Reform Now."<sup>470</sup> ACORN is currently a client of the Advance Group, led by ACORN national spokesman Scott Levenson, which lobbies for ACORN both on the federal and city level.<sup>471</sup>

ACORN's commingling of funds, detailed in the ACORN Report,<sup>472</sup> reflects a complex, systemic effort to escape detection. For instance, in its 2006 report, Citizens Consulting, Inc. ("CCI") listed Ronald Sykes as one of its lobbyists.<sup>473</sup> In an email dated August 13, 2009 from Sykes to the Lobbying Disclosure Act clerk, Sykes stated, "I would like this memorandum to serve as record that I have not registered myself as an active [l]obbyist nor was I informed that ACORN's National Legislative Office had registered for me. . . . [t]his is a form of [i]dentity theft and I would like to know who from [Citizen Consulting, Inc] registered me so that I can proceed with further action."<sup>474</sup>

CCI's 2009 lobbying issues for ACORN includes foreclosure related legislation, predatory lending, housing counseling funding, loan modifications, mandatory mediation, credit card issues, securitization, TARP, financial re-regulation, voter registration, election reform/administration issues, health issues, paid sick days, "Green" jobs, the

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<sup>468</sup> Citizen Consulting, Inc. (CCI), 2008 LOBBYING REPORT, LOBBYING DISCLOSURE ACT OF 1995 (SECTION 5), at 2-9, available at: <http://disclosures.house.gov/ld/pdfform.aspx?id=300081580>.

<sup>469</sup> Office of the City Clerk, City of New York, LOBBYING DISCLOSURE SEARCH, available at: <http://www.nyc.gov/lobbyistsearch/> (follow "Search" hyperlink).

<sup>470</sup> Secretary of State, State of New York, CORPORATION DISCLOSURE SEARCH, available at: <http://appsext8.dos.state.ny.us/> (follow "Corporation Search" hyperlink).

<sup>471</sup> The Advance Group, 2008 LOBBYING REPORT, LOBBYING DISCLOSURE ACT OF 1995 (SECTION 5), at 1, available at: <http://disclosures.house.gov/ld/pdfform.aspx?id=300043479>.

<sup>472</sup> See Minority staff report, *Is ACORN Intentionally Structured As a Criminal Enterprise?* COMM. OVERSIGHT AND GOV'T REFORM (2009) at 38, 54, available at:

<http://republicans.oversight.house.gov/media/pdfs/20090723ACORNReport.pdf>

<sup>473</sup> See Citizen Consulting, Inc. (CCI), 2006 LOBBYING REPORT, LOBBYING DISCLOSURE ACT OF 1995 (SECTION 5), at 2-9, available at: <http://lobbyingdisclosure.house.gov>.

<sup>474</sup> Email from Ronald Sykes (ros8967@me.com) to lobbyinfo@mail.house.gov, Aug. 13, 2009 6:18 PM E.S.T. (on file with author).

Employee Free Choice Act (“EFCA”), the stimulus, budget, fair housing, and immigration issues.<sup>475</sup>

Because ACORN receives no tax-exempt privileges, it is not required to report its political activities to the IRS. The Committee staff has found that ACORN’s abuses on the federal level, as described in the ACORN Report, are also occurring within the states where it hosts chapters as well.<sup>476</sup>

Recent reports claim that ACORN has abused its non-profit status by failing to properly separate and segregate lobbying funds from funds used to promote its nonprofit purpose. For example, in New York City, city council candidate Mark Winston Griffith is one of many candidates who claimed Citizens Services, Inc., a for-profit incorporated in New York,<sup>477</sup> commingled its finances with ACORN.<sup>478</sup> ACORN, through its § 527 political action committee, allegedly finances the endorsements of these same candidates with commingled funds.<sup>479</sup>

The reports above portray ACORN as a full-time lobbying organization. Several members of Congress have expressed their concern that ACORN is nothing more than a for-profit lobbying firm.<sup>480</sup>

The ACORN Report exposed many instances of lobbying by ACORN and its affiliates, including support for specific legislation as well as support for the candidacies for several members of Congress and one former Governor.<sup>481</sup> The Lobbying Disclosure Act requires organizations which engage in a certain amount of lobbying activities through personnel compensated to lobby on the organization’s behalf to register and to file disclosure reports.<sup>482</sup> Lobbying firms or individual lobbyists who are retained and compensated over a threshold amount to lobby for ACORN or its affiliates, and who engage in the requisite lobbying contacts, are required to file as lobbyists and to identify their client organizations.<sup>483</sup> There is no general exclusion or exception from the disclosure and registration requirements for nonprofit organizations that otherwise meet

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<sup>475</sup> See Citizen Consulting, Inc. (CCI), 2009 LOBBYING REPORT, LOBBYING DISCLOSURE ACT OF 1995 (SECTION 5), at 2-10, available at: <http://lobbyingdisclosure.house.gov>.

<sup>476</sup> See Minority staff report, *Is ACORN Intentionally Structured As a Criminal Enterprise?* COMM. OVERSIGHT AND GOV’T REFORM (2009) at *passim*, available at: <http://republicans.oversight.house.gov/media/pdfs/20090723ACORNReport.pdf>.

<sup>477</sup> Secretary of State, State of New York, CORPORATION DISCLOSURE SEARCH, available at: <http://appsex8.dos.state.ny.us/> (follow “Corporation Search” hyperlink).

<sup>478</sup> Edward-Isaac Dove, *Four Candidates Pour Cash Into Company with Apparent ACORN Ties*, CITY HALL NEWS, Aug. 26, 2009, at 1-2, available at: <http://www.cityhallnews.com/news/132/ARTICLE/2105/2009-08-26.html>.

<sup>479</sup> *Id.*

<sup>480</sup> Letter from Representatives Tom Feeney, Jeb Hensarling and Ed Royce to House Financial Services Committee Chairman Barney Frank, June 20, 2008 (on file with author).

<sup>481</sup> See Minority staff report, *Is ACORN Intentionally Structured As a Criminal Enterprise?* COMM. OVERSIGHT AND GOV’T REFORM (2009) at 3-6, available at: <http://republicans.oversight.house.gov/media/pdfs/20090723ACORNReport.pdf>.

<sup>482</sup> 2 U.S.C. § 1603(a)(2), note definitions in §§ 1602(10) and 1602(2).

<sup>483</sup> 2 U.S.C. § 1603(a)(1).



the threshold requirements on lobbying contacts.<sup>484</sup> Moreover, because ACORN and several of its affiliates received federal funds, the Byrd Amendment requires these recipients to declare and certify when they use their own funds to compensate a registered lobbyist to influence covered federal actions.<sup>485</sup>

An employee engages in lobbying if he or she makes more than one “lobbying contact,” and spends at least 20% of his or her time for that employer on “lobbying activities” over a three-month reporting period.<sup>486</sup> Under the Lobbying Disclosure Act, lobbying activities include direct “lobbying contacts and efforts in support of such contacts” such as preparation, planning, research and other background work intended for use in such direct contacts.<sup>487</sup> A “lobbying contact” under the Lobbying Disclosure Act is an “oral or written communication (including an electronic communication) to a covered executive branch official or a covered legislative branch official” which concerns the formulation, modification or adoption of legislation, rules, regulations, policies or programs of the federal government.<sup>488</sup> The term “lobbying activities” includes “lobbying contacts” as well as background activities and other efforts in support of such lobbying contacts.<sup>489</sup> The Lobbying Disclosure Act requires the organization, rather than the individual employee or lobbyist, to register when the organization engages in covered “lobbying contacts” through its own staff.<sup>490</sup> The organization must file its lobbying registrations and reports electronically with the Secretary of the Senate’s Office and the Office of the Clerk of the House.<sup>491</sup>

The Lobbying Disclosure Act was intended to reach “professional lobbyists,” who are *compensated* to engage in lobbying activities on behalf of an employer or a client.<sup>492</sup> The ACORN Report produced credible evidence that ACORN and its affiliates have one or more compensated employees who engage in covered “lobbying,”<sup>493</sup> and spend \$10,000 or more in a quarterly reporting period for lobbying activities.<sup>494</sup> If the Report’s findings are accurate, ACORN and its affiliates would be required to register under the Lobbying Disclosure Act.<sup>495</sup> ACORN has not provided the United States Congress with accurate information concerning its lobbying activities.

ACORN’s substantial lobbying portfolio, together with its receipt of federal funds, presents a significant risk of fraud, waste and abuse. Because ACORN and several of its affiliates are recipients of federal grants, they must use the federal funds for the

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<sup>484</sup> Jack Maskell, “Political” Activities of Private Recipients of Federal Grants or Contracts, CRS REPORT RL34725, Oct. 21, 2008 at 12.

<sup>485</sup> *Id.*

<sup>486</sup> 2 U.S.C. § 1602(10).

<sup>487</sup> Lobbying Disclosure Act, 2 U.S.C. § 1602(7), P.L. 104-65, §3(7).

<sup>488</sup> 2 U.S.C. § 1602(8), P.L. 104-65, § 3(8).

<sup>489</sup> 2 U.S.C. § 1602(7).

<sup>490</sup> 2 U.S.C. §1603(a)(2).

<sup>491</sup> LOBBYING DISCLOSURE ACT, available at: <http://lobbyingdisclosure.house.gov/index.html>.

<sup>492</sup> Jack Maskell, *Lobbying Regulations on Non-Profit Organizations*, CRS Report 96-809, May 7, 2008 at 7-10.

<sup>493</sup> H.Rept. 104-339, 104th Cong., 1st Sess. at 2 (1995).

<sup>494</sup> 2 U.S.C. § 1603(a)(3)(A)(i).

<sup>495</sup> *Id.*



purposes and programs that were intended to be supported within the statutory scheme that authorized the grant.<sup>496</sup> As shown in the ACORN Report, ACORN had previously used federal funds for partisan purposes.<sup>497</sup> Additionally, the ACORN Report produced evidence that Project Vote employee Nathan Henderson-James directed an ACORN employee to report to the Election Assistance Commission (“EAC”) on ACORN letterhead for activities that were carried out by Project Vote, not ACORN – the purported grant recipient.<sup>498</sup> Concerted activities by individuals that cause federal funds from a federal program to be disbursed or used in contravention of the purposes of that program, in violation of established regulations of laws, and to be used instead for partisan or improper advocacy purposes, could constitute a scheme to “impair[ ], obstruct[ ], or defeat[ ] the lawful function of any Department of the Government,” such as to constitute a conspiracy to “defraud the United States” in violation of 18 U.S.C. §371.<sup>499</sup>

The Committee’s first report, together with our new findings, reflects (1) ACORN commingles its funds, (2) ACORN blurs corporate distinctions, and now (3) ACORN shares personnel with its affiliates. These findings render ACORN indistinguishable from affiliated organizations that are legally required to be separate. If two organizations cannot be distinguished through personnel, finances, or corporate structure, then no distinction exists. The missing piece of the ACORN puzzle is the reality that actual persons are impermissibly serving dual functions. These findings place another layer of transparency upon ACORN’s illegal activities and its complex network of deceit.

### ***B. Clarifications concerning ACORN’s insiders***

After the ACORN Report was released, former members of ACORN’s board and current members of a reform group called “ACORN 8” asked the Committee to clarify to the public the distinction between ACORN 8 and the Interim Management Committee (“IMC”).

The ACORN Board established an Interim Staff Management Committee (“ISM” Committee) to elect three members (the Interim Management Committee “IMC”) to serve on the Committee and report to the Board every month.<sup>500</sup> The IMC was a board-designated committee temporarily charged with managing ACORN in Wade Rathke’s absence. Karen Inman, Carol Hemingway, and Marcel Reid were selected to the IMC.<sup>501</sup> Karen Inman and Marcel Reid were terminated from the ACORN Board. Several members of the IMC joined with former ACORN employees and board members to form the ACORN 8, a tax-exempt organization whose purpose is to reform ACORN. The

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<sup>496</sup> United States Government Accountability Office, Office of the General Counsel, 2 PRINCIPLES OF FEDERAL APPROPRIATIONS LAW, at 10-71 (2006).

<sup>497</sup> See Minority staff report, *Is ACORN Intentionally Structured As a Criminal Enterprise?* COMM. OVERSIGHT AND GOV’T REFORM (2009) at 63-64, available at: <http://republicans.oversight.house.gov/media/pdfs/20090723ACORNReport.pdf>

<sup>498</sup> *Id.* at 61.

<sup>499</sup> See *Dennis v. United States*, 384 U.S. 855, 861 (1966).

<sup>500</sup> IMC Allegations (Jan. 7, 2009) at 10, 14, 16, 23 (ACORN\_004866-004890).

<sup>501</sup> *Id.*

ACORN 8, former IMC board members, and former employees of any of ACORN's affiliates are separate sources.

### ***C. Clarifications concerning the RICO analysis***

In February 2009, the Republican National Lawyers Association (“RNLA”) released a report by Asheesh Agarwal concerning ACORN and voter registration fraud.<sup>502</sup> In March 2009, after the House Committee on the Judiciary held hearings on voter registration fraud, the RNLA issued a press release linking to Asheesh Agarwal’s report. On March 30, 2009, the Committee staff contacted Mr. Agarwal to discuss his RNLA report, and, because Mr. Agarwal had formerly been an attorney with the Department of Justice (“DOJ”), inquired whether the DOJ had investigated voter fraud during his time there. On the basis of this conversation, Mr. Agarwal sent the Committee a memorandum analyzing whether Project Vote could be sued under the civil provisions of the Racketeer Influenced Corrupt Organization Act (“RICO”). Mr. Agarwal sent the memo to the Committee staff from his personal email account. The memo was untitled and without an identifying letterhead. These documents and the Committee’s conversation with Mr. Agarwal constituted the basis of the information presented in the report. After the release of the ACORN Report, Mr. Agarwal contacted Committee staff stating he did not identify the memo to the Committee as the work product of the DOJ’s Civil Rights Division. Mr. Agarwal stated he received the memo from a McCain-Palin campaign special counsel. Mr. Agarwal would not name this individual or identify the date or circumstances of the memo’s creation.

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<sup>502</sup> REPORT, available at: <http://www.rnla.org/ACORNw-pfinal.pdf>.

## **About the Committee**

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The Committee on Oversight and Government Reform is the main investigative committee in the U.S. House of Representatives. It has authority to investigate the subjects within the Committee's legislative jurisdiction as well as "any matter" within the jurisdiction of the other standing House Committees. The Committee's mandate is to investigate and expose waste, fraud and abuse.

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