



MEMORANDUM

December 22, 2009

To: House Judiciary Committee

Subject: Association of Community Organizations for Reform Now (ACORN)

In response to your request that CRS research several issues relating to the Association of Community Organizations for Reform Now (ACORN) and its affiliates, CRS has compiled the following information.

- 1. Investigations concerning ACORN.** You asked for a list giving the status and results of a) all pending or previous federal, state or local criminal or agency investigations concerning ACORN; b) all pending or previous congressional investigations concerning ACORN; c) all pending or previous internal ACORN investigations; and d) all pending requests (other than those made to CRS) for investigation of ACORN by any Member of Congress or any committee. The following memorandum, *ACORN Investigations*, contains information on pending and previous federal, state, local, and internal investigations concerning ACORN obtained from news sources. The tables in the memorandum include basic details about the investigation and direct quotations taken from the source document; however, CRS did not verify the information in the source.
- 2. Federal funding received by ACORN.** You asked for a description of all federal funding received by ACORN over the last five fiscal years and a description of instances where ACORN violated the terms of federal funding. The following memorandum, *Federal Funding to the Association of Community Organizations for Reform Now (ACORN)*, presents information on federal funding received by ACORN. A search of reports of federal agency inspectors general did not identify instances in which ACORN violated the terms of federal funding in the last five years.
- 3. Effect of alleged false voter registrations by ACORN workers.** You asked CRS to research improper voter registrations that resulted in people being placed on the voting rolls and attempting to vote improperly at the polls. As discussed, a NEXIS search of the ALL NEWS file did not identify any reported instances of individuals who were improperly registered by ACORN attempting to vote at the polls.
- 4. Recent "sting" activity concerning ACORN.** You asked CRS to research and report on the federal and state laws that could apply to the recent videotaping of ACORN workers and the distribution of conversations with ACORN workers without consent. This issue is addressed in the following memorandum, *Allegations of Recording Conversations With Various ACORN Affiliated Individuals Without Their Consent: Implications Under Various Federal and State Laws Relating to the Interception of Oral Communications*. The memorandum explains that "as a general matter federal law permits private individuals to record face to face conversations, as long as the recording is not done for criminal or tortious purposes. New York law seems even more forgiving, for it only

reaches those who record remotely. The laws of the District of Columbia mirror federal law prior to the 1986 amendments to the federal statute. D.C. law permits one-party consent recordings, although the consequences of the want of complete symmetry with federal provisions are unclear. In contrast, the laws of Maryland and California appear to ban private recording of face to face conversations, absent the consent of all of the participants.”

5. **Effects of ACORN activity concerning housing.** You asked CRS to research and describe the extent to which ACORN has assisted the homeless and provided housing opportunities to for low-income individuals. CRS did not identify any rigorous and independent evaluation of the effectiveness of ACORN’s affordable housing activities. The following literature review, *Acorn Activities Concerning Housing*, lists reported examples of ACORN’s activities to promote the development of affordable housing, to provide counseling to first-time homebuyers and homeowners facing foreclosure, and to support individuals affected by Hurricane Katrina. Please note that CRS did not verify the information provided in these reports.
6. **Analysis of legislation to prohibit funding to ACORN.** This issue is addressed in the attached CRS Report R40826, *The Proposed “Defund ACORN Act” and Related Legislation: Are They Bills of Attainder?* The report states that “while the regulatory purpose of ensuring that federal funds are properly spent is a legitimate one, it is not clear that imposing a permanent government-wide ban on contracting with or providing grants to ACORN under the proposed Defund ACORN Act fits that purpose, at least when the ban is applied only to ACORN and all its affiliates. The brevity of the funding moratorium imposed on ACORN and its affiliates under the 2010 Continuing Appropriation Resolution, however, could arguably be justified as an expedience necessary to address an issue of immediate congressional concern, while allowing Congress sufficient time to consider a longer term solution.”

Attachments referenced in the following memoranda are provided in a separate file.



MEMORANDUM

October 20, 2009

To: House Committee on the Judiciary

Subject: ACORN Investigations

We are sending you the following in response to your request for information on investigations concerning the Association of Community Organizations for Reform Now (ACORN). Specifically, we are responding to the first question from the letter sent to CRS Director Dan Mulhollan from Chairmen Conyers and Frank dated September 22, 2009.

We searched for news articles using the LexisNexis Major U.S. Newspapers file, CQ.com TopDocs database and GalleryWatch HotDocs database.¹ Then, we compiled the information into tables with details about the investigation such as the person initiating the investigation, the person it was directed to, and direct quotations taken from the source of the information.

Table 1 below addresses question 1(a) from the letter. It contains information on pending and previous federal, state, and local criminal or agency investigations concerning ACORN. We searched for the word *ACORN* or the phrase *Association of Community Organizations for Reform Now* within the same sentence as the word *investigate* and its variations. We excluded editorials and op-ed pieces. The search included articles loaded through October 20, 2009. To avoid duplicating information in the chart, we only cited one source in instances where multiple sources reported on the same investigation.

Table 2 below addresses questions 1(b). It has information on pending or previous congressional investigations concerning ACORN. We searched for the word *ACORN* or the phrase *Association of Community Organizations for Reform Now* within the same sentence as the word *investigate* and its variations, as well as the terms *senator* or *congressman* or *congresswoman* or *representative*. We also searched the CQ.com Top Docs and GalleryWatch.com HotDocs databases for documents with "ACORN" in the title. In addition to investigations, we included requests for audits.

Table 3 below addresses question 1(c) from the letter. It contains information on pending or previous internal ACORN investigations. We searched for the word *ACORN* or the phrase *Association of Community Organizations for Reform Now* within the same sentence as the phrases *own investigation* or *internal investigation*. The search included articles loaded through October 20, 2009. Although we used

¹ Please note, due to interest, some or all of the information we retrieved may be used to answer other congressional requests.

the search methodology described above to answer this question, information and articles retrieved from searches to answer the other questions and that were relevant to this question were included in this table.

Table 4 below addresses questions 1(d) from the letter. Specifically, it details all pending or previous congressional investigations or requests for investigations concerning ACORN. We searched for the word *ACORN* or the phrase *Association of Community Organizations for Reform Now* within the same sentence as the word *investigate* and its variations, as well as the terms *senator* or *congressman* or *congresswoman* or *representative*. We also searched CQ.com Top Docs and GalleryWatch.com HotDocs for documents with *ACORN* in the title. Although you requested investigations, we also included requests for audits.

For your convenience, we have attached a complete citation list for all the searches we performed, as retrieved from the LexisNexis database. The citation list may contain duplicate articles that are not included in the tables below.

Finally, please note that CRS did not independently verify the information contained within the articles cited.

Table I. Federal, State, Local, or Agency Investigations Concerning ACORN

Investigation by	Source	Details
Federal		
Department of Housing & Urban Development, Office of the Inspector General	"Ex-Mass. AG to Run Inquiry for ACORN," <i>Newsday</i> , September 23, 2009.	The inspectors general for the Department of Housing and Urban Development and the Justice Department have confirmed they are investigating their agencies' involvement with ACORN.
Department of Justice, Federal Bureau of Investigation	"FBI Probing Pr. George's Officials; Separate Investigations Scrutinize Council, Hornsby," <i>Washington Post</i> , November 6, 2004.	The official who confirmed the FBI investigation said yesterday that Michael's name and that of the group that organized the petition drive -- the county chapter of the Association of Community Organizations for Reform Now (ACORN) -- had surfaced in connection with the inquiry. It was unclear what role, if any, each party played in the matter under investigation, the official said.
	"Officials Say ACORN Target Of FBI Investigation; Group Defends Voter Registration Effort, Denies Fraud," <i>Sun-Sentinel</i> , October 17, 2008.	The FBI is investigating whether the community activist group ACORN helped foster voter registration fraud around the nation before the presidential election. A senior law enforcement official confirmed the investigation, and a second senior law enforcement official says the FBI was looking at results of inquiries in several states, including a raid on ACORN's office in Las Vegas, for any evidence of a coordinated national effort.

Investigation by	Source	Details
	<p>“FBI Investigating ACORN Voter Registrations In KC,” <i>Kansas City Star</i>, October 17, 2008.</p>	<p>The FBI has launched a national investigation into the voter registration activities of the community group ACORN - including, apparently, its work in Kansas City.</p> <p>Shawn Kieffer, the Republican director of the Kansas City Election Board, said Thursday the FBI plans as early as today to pick up copies of 600 to 800 "questionable" voter registrations at board headquarters.</p>
<p>Department of Justice, Grand Jury</p>	<p>“Group Supports Prosecution,” <i>Kansas City Star</i>, January 14, 2007.</p>	<p>A community organization whose voter registration employees came under fire last fall supports the federal prosecution of some of its former workers. Last week a federal grand jury indicted Carmen Davis, 37, on identity theft and vote fraud charges. Davis and three other former employees of ACORN are accused of submitting false voter registrations. Claudie Harris, the president of ACORN's Kansas City board, said in a news release her organization was cooperating with the investigation and asked that charges against workers not overshadow her group's efforts.</p>
<p>Department of Justice, Office of the Inspector General</p>	<p>“Justice Dept. Inspector General Plans Internal ACORN Probe,” <i>Washington Post</i>, September 22, 2009.</p>	<p>Maryland's top law enforcement officer also moved to launch an investigation into ACORN. Attorney General Douglas F. Gansler (D) announced Monday that he had asked for and received permission from Gov. Martin O'Malley (D) to investigate and, if necessary, prosecute "conduct involving" ACORN.</p>
<p>Department of Justice, U.S. Attorney (Missouri)</p>	<p>“ACORN Starts To 'Clean Up The Mess' In Its Chapter Here,” <i>St. Louis Post-Dispatch</i>, November 30, 2006.</p> <p>“Justice Department Reportedly Bent Rules On Voter Fraud Charges; A Senate Panel Hears Testimony On How Four Liberal Activists Were Indicted Right Before The Midterm Election,” <i>Los Angeles Times</i>, June 6, 2007.</p>	<p>Right before the Nov. 7 election, federal authorities in Kansas City indicted four ACORN workers on charges of filing false registrations. National ACORN leaders note that they turned in the workers after an internal investigation.</p> <p>In St. Louis, Lewis blames most of the faulty cards submitted here to improper oversight by the former ACORN leaders who have been tossed out. The U.S. attorney's office here continues to investigate.</p> <p>In Kansas City, the U.S. attorney's office had long been investigating the Assn. of Community Organizations for Reform Now, or ACORN, and its efforts to register liberal voters.</p>

Investigation by	Source	Details
	<p>“Ex-ACORN Worker Indicted In Voter Fraud Case ACORN Launched Own Inquiry, Gave Results To Election Officials,” <i>St. Louis Post-Dispatch</i>, January 6, 2009.</p>	<p>A voter registration worker with the group ACORN has been indicted on two felony counts of voter registration fraud.</p> <p>Deidra Humphrey, 44, of East St. Louis, is expected to appear in U.S. District Court in St. Louis this week after a grand jury indicted her on the charges Dec. 31, according to the U.S. attorney’s office.</p> <p>Humphrey is accused of submitting forged and false voter registration cards for the Nov. 8 general election - including forging cards for nursing home residents - U.S. Attorney Catherine Hanaway said Monday.</p> <p>Humphrey worked for the Association of Community Organizations for Reform Now (ACORN) and the Missouri Progressive Vote Coalition (ProVote), not-for-profit organizations active during campaign seasons in registering low-income and minority voters.</p> <p>The indictment says some of the voter registrations Humphrey collected and submitted to election boards in St. Louis and St. Louis County between June and August were false. Humphrey worked separately for ACORN and ProVote...</p> <p>ACORN workers have been tied to voter registration problems all over the country. In 2007, eight ACORN workers were indicted in St. Louis for fraudulent registration cards submitted for the previous year's general election.</p>
<p>Department of Justice, U.S. Attorney (New Mexico)</p>	<p>“GOP In Push To Erase Voters Purges ACORN Over Drive To Register Low Income,” <i>Daily News</i>, October 10, 2008.</p>	<p>Republican leaders in New Mexico raised the same claims against an ACORN registration drive in the last presidential vote. Then they tried to pressure New Mexico’s U.S. attorney, David Iglesias, an appointee of President Bush, to bring a voter fraud indictment just before the 2006 congressional election.</p> <p>After an investigation, Iglesias concluded there wasn’t enough evidence. A few months later, he was fired by Attorney General Alberto Gonzales in what became a big Justice Department scandal.</p>

Investigation by	Source	Details
Department of the Treasury, Office of the Inspector General	"Giant ACORN Nuts In 'Shell Game': Report," <i>New York Post</i> , September 25, 2009.	<p>Also yesterday, the Treasury Department's top auditor announced it was conducting a review of ACORN - whose members recently were caught on video offering fake clients advice on how to set up a brothel - and IRS oversight of nonprofit fraud.</p> <p>The investigation by Treasury's inspector general follows probes undertaken by the Justice Department, Brooklyn DA Charles Hynes and ACORN itself.</p>
State		
Arkansas	"Police Investigate ACORN Speech Protest; Group's State Chairman Calls Inquiry 'Retaliation'; KTHV-TV Subpoenaed For Videotape," <i>Arkansas Democrat-Gazette</i> , May 1, 1998.	The Arkansas State Police is investigating whether the several hundred ACORN protesters broke any laws when they prevented Gov. Mike Huckabee from giving a civil rights speech Tuesday, a police spokesman said Thursday.
California	"Tapes Prompt State Investigation; ACORN SCANDAL; Attorney General Also Weighs Recordings' Privacy Issues," <i>San Francisco Chronicle</i> , October 2, 2009.	<p>State Attorney General Jerry Brown's office said Thursday that he is investigating the community activist group ACORN at Gov. Arnold Schwarzenegger's request, after undercover videos at two California offices appeared to show staffers offering to help two purported clients break the law.</p> <p>Spokesman Scott Gerber said Brown sent a letter to Schwarzenegger last week agreeing to look into whether the group's employees did anything illegal. Brown said he would also investigate whether the surreptitious recording of the meetings in ACORN's San Diego and San Bernardino offices violated California privacy laws, a subject the governor did not raise.</p>

Investigation by	Source	Details
Colorado	<p data-bbox="505 275 829 386">"Group Fears Ties To Bad Voter Forms Registrations Sent To Attorney General," <i>Denver Post</i>, August 6, 2004.</p> <p data-bbox="505 877 829 989">"Prosecutors Charge Another Man in Registration Fraud," <i>Rocky Mountain News</i>, November 2, 2004.</p>	<p data-bbox="873 275 1425 386">A Denver-based community activist group said Thursday it may be responsible for some of the potentially fraudulent voter registration applications being investigated by state prosecutors.</p> <p data-bbox="873 405 1409 541">"We fear that some of these cards may have been submitted from our office. We are investigating the situation and reviewing our systems to see if this is the case," wrote Betty Wilkins, board chairwoman of Colorado ACORN. ...</p> <p data-bbox="873 569 1425 814">Wilkins wrote Secretary of State Donetta Davidson after learning that Davidson has forwarded hundreds of voter registration forms to Attorney General Ken Salazar's office for investigation. The state probe centers on suspicious forms filed in at least four Denver metro-area counties with problems ranging from phony addresses to suspicious signatures. In some cases, several applications were apparently filled out by the same person.</p> <p data-bbox="873 877 1425 961">Denver prosecutors have charged another person with filling out false voter forms to get more money in a paid registration drive.</p> <p data-bbox="873 989 1425 1073">Lloyd "Frosty" Herrera, 30, is accused of filling out several phony registration forms for Monique Mora and Pelonne Page so that they would get paid for their work.</p> <p data-bbox="873 1100 1349 1129">Herrera was charged with five counts of perjury.</p> <p data-bbox="873 1157 1393 1213">Mora, 20, and Page, 21, were charged last week with procuring false registrations.</p> <p data-bbox="873 1241 1382 1346">They worked for the Association of Community Organizations for Reform Now, known as ACORN, which is one of a number of organizations that paid people to sign up voters this year. ...</p> <p data-bbox="873 1367 1382 1423">Investigations by the Colorado attorney general and other metro district attorneys' offices are ongoing.</p>
Florida	<p data-bbox="505 1472 781 1556">"1,500 Voter Forms Under Investigation," <i>Miami Herald</i>, October 6, 2004.</p>	<p data-bbox="873 1472 1414 1591">The Florida Department of Law Enforcement is investigating 1,500 voter registration forms received by the Leon County elections office that apparently were altered to register local students as Republicans. ...</p> <p data-bbox="873 1598 1398 1661">State Attorney Bernie McCabe said all appeared to be turned in by ACORN.</p>

Investigation by	Source	Details
	<p data-bbox="505 281 841 331">"Voter Drives Investigated," <i>Tampa Tribune</i>, October 22, 2004.</p>	<p data-bbox="873 281 1398 388">Authorities are investigating widespread allegations of fraudulent voter registration drives and other voting-related problems across Florida involving groups on both sides of the political spectrum. ...</p> <p data-bbox="873 407 1365 485">The Florida Department of Law Enforcement said Thursday that it has opened criminal investigations throughout the state.</p> <p data-bbox="873 504 1419 642">FDLE also said the state attorney's office in Jacksonville is conducting its own investigation into similar problems there. In all, more than 4,100 suspicious voter registration applications have been received by Florida election offices, according to local elections officials. ...</p> <p data-bbox="873 669 1398 833">FDLE said one of the voter registration groups it is investigating is the Association of Community Organizations for Reform Now, a liberal-leaning advocacy group known as ACORN. The group also is sponsoring the ballot measure to boost Florida's minimum wage.</p>
	<p data-bbox="505 898 829 976">"Voter Fraud Charges Collapse," <i>St. Petersburg Times</i>, December 5, 2005.</p>	<p data-bbox="873 898 1419 976">An investigation by the Florida Department of Law Enforcement also found no evidence of criminal activity at ACORN, department officials confirmed Wednesday.</p>
	<p data-bbox="505 1041 813 1119">"ACORN Chaos Engulfs Crist," <i>St. Petersburg Times</i>, September 18, 2009.</p>	<p data-bbox="873 1041 1403 1148">Since last summer, the Florida Department of Law Enforcement has been involved in an investigation into fraudulent voter registration forms submitted by signature gatherers in Miami.</p> <p data-bbox="873 1167 1425 1331">Last week, the FDLE announced it was arresting 11 people in connection with the bogus applications. Of 260 reviewed, 197 appeared fraudulent. ACORN flagged the applications itself and turned them over to authorities, saying it showed internal accountability checks worked.</p>
Indiana	<p data-bbox="505 1394 837 1558">"ACORN Followed Law On Suspect Registrations; Voter Group Is Required To Turn In All Forms It Collects, Told Officials Of Dubious Ones," <i>Indianapolis Star</i>, October 18, 2008.</p>	<p data-bbox="873 1394 1403 1472">In Indiana, Rokita, a Republican, last week called for an investigation in Lake County and asked Attorney General Steve Carter to join in the probe.</p> <p data-bbox="873 1499 1425 1606">In a written reply Wednesday, Deputy Attorney General Richard Bramer said the authority for such investigations lies not with the attorney general but instead falls to county and federal prosecutors.</p> <p data-bbox="873 1640 1393 1717">Gavin, the secretary of state's spokesman, said Friday that investigators from his office are wrapping up a review of the evidence collected in Lake County.</p>

Investigation by	Source	Details
	<p>“Rokita Wants ACORN Charged; Left-Leaning Group Says It Obeyed Law, Calls GOP Secretary Of State’s Actions Partisan,” <i>Indianapolis Star</i>, October 28, 2008.</p>	<p>Secretary of State Todd Rokita's office announced Monday that an investigation by his office had uncovered "multiple criminal violations" in voter registration applications filed by the community activist group. ...</p> <p>Rokita stated that his preliminary investigation into 1,438 Lake County applications "reveals significant, credible evidence that (ACORN), its officers, agents and employees, through direct action, conspiracy or inducement: ...</p>
Louisiana	<p>“State, Federal Officials Cut Off Money To ACORN; La. Attorney General Investigating Agency,” <i>Times-Picayune</i>, September 18, 2009.</p> <p>“Caldwell Steps Up Probe Into ACORN; But Group Calls \$5 Million Figure In Embezzlement Case Overblown,” <i>Times-Picayune</i>, October 6, 2009.</p>	<p>From Baton Rouge to Washington, the effort to cut off public financing for ACORN proceeded Thursday along with word that the Louisiana attorney general is investigating whether the group and its affiliates failed to pay employee withholding taxes to the state. ...</p> <p>Louisiana Attorney General Buddy Caldwell said his investigation started after he received a complaint from former members of ACORN's board of directors claiming that the group and its subsidiaries were violating state employee tax law, obstructing justice and violating the Employee Retirement Security Act, according to subpoenas issued last month by the attorney general's office.</p> <p>Louisiana's attorney general has broadened the scope of an investigation of ACORN to include a possible embezzlement of \$5 million a decade ago within the community organization, five times more than previously reported.</p>
Maryland	<p>“Justice Dept. Inspector General Plans Internal ACORN Probe,” <i>Washington Post</i>, September 22, 2009.</p>	<p>Maryland's top law enforcement officer also moved to launch an investigation into ACORN. Attorney General Douglas F. Gansler (D) announced Monday that he had asked for and received permission from Gov. Martin O'Malley (D) to investigate and, if necessary, prosecute "conduct involving" ACORN.</p>

Investigation by	Source	Details
Michigan	<p data-bbox="505 279 831 390">"Bad Voter Applications Found; Clerks See Fraudulent, Duplicate Forms From Group," <i>Detroit Free Press</i>, September 14, 2008.</p> <p data-bbox="505 1058 842 1136">"ACORN's Policy: Send All Voter Forms," <i>Detroit News</i>, October 15, 2008.</p> <p data-bbox="505 1255 824 1362">"Michigan Attorney General Charges ACORN Worker With Forgery," <i>Detroit News</i>, October 15, 2008.</p>	<p data-bbox="872 279 1409 415">Several municipal clerks across the state are reporting fraudulent and duplicate voter registration applications, most of them from a nationwide community activist group working to help low- and moderate-income families.</p> <p data-bbox="872 447 1422 638">The majority of the problem applications are coming from the group ACORN, Association of Community Organizations for Reform Now, which has a large voter registration program among its many social service programs. ACORN's Michigan branch, based in Detroit, has enrolled 200,000 voters statewide in recent months, mostly with the use of paid, part-time employees.</p> <p data-bbox="872 667 1422 774">"There appears to be a sizeable number of duplicate and fraudulent applications," said Kelly Chesney, spokeswoman for the Michigan Secretary of State's Office. "And it appears to be widespread."</p> <p data-bbox="872 806 1422 997">Chesney said her office has had discussions with ACORN officials after local clerks reported the questionable applications to the state. Chesney said some of the applications are duplicates and some appear to be names that have been made up. The Secretary of State's Office has turned over several of the applications to the U.S. Attorney's Office.</p> <p data-bbox="872 1058 1427 1194">Secretary of State Terri Lynn Land turned information regarding ACORN's activities over to the U.S. Attorney's Office in the summer, but there was no word from federal authorities Tuesday on whether an investigation is under way.</p> <p data-bbox="872 1255 1427 1362">Michigan Atty. Gen. Mike Cox on Tuesday charged a former ACORN worker with forgery in connection with voter registration applications he submitted in the city of Jackson.</p>
Nevada	<p data-bbox="505 1425 769 1503">"Group's Offices Raided in Nevada," <i>Washington Post</i>, October 8, 2008.</p>	<p data-bbox="872 1425 1393 1562">Nevada state officials raided the Las Vegas office of ACORN as part of an investigation into alleged voter fraud by the organization, which conducts voter registration drives nationally in its work with low-income communities.</p> <p data-bbox="872 1593 1427 1835">About seven agents from the offices of the Nevada secretary of state and attorney general served a search warrant Tuesday and removed boxes and computers after being admitted by the landlord, said Bob Walsh, spokesman for Secretary of State Ross Miller. He said no staff was present during the raid of ACORN, the Association of Community Organizations for Reform Now. Walsh would not describe what prompted the search.</p>

Investigation by	Source	Details
	<p data-bbox="506 281 841 359">"Nevada Alleges Fraud By ACORN," <i>Orlando Sentinel</i>, May 5, 2009.</p>	<p data-bbox="873 281 1425 415">Nevada authorities filed criminal charges Monday against the political-advocacy group ACORN and two former employees, alleging they illegally paid canvassers to sign up new voters during last year's presidential campaign. ...</p> <p data-bbox="873 436 1425 571">Law-enforcement agencies in about a dozen states investigated fake voter-registration cards submitted by ACORN during the 2008 presidential election campaign, but Nevada is the first to bring charges against the organization, ACORN officials said.</p>
New Mexico	<p data-bbox="506 638 815 716">"County Investigates Voter Registration Fraud," <i>Pittsburgh Post-Gazette</i>, October 10, 2008.</p>	<p data-bbox="873 638 1409 772">The FBI and law enforcement agencies in New Mexico, Nevada, Missouri, Indiana, Michigan, Ohio, Wisconsin and Pennsylvania are looking into thousands of voter registration forms submitted by ACORN during this year's primary and presidential election seasons.</p>
New York	<p data-bbox="506 835 831 913">"Another ACORN Scandal Blooming: Elex Board," <i>New York Post</i>, October 23, 2008.</p> <p data-bbox="506 1060 841 1165">"NY Dems Give ACORN Pimp-Slap - Cuomo Probe & Council \$\$ Freeze In 'Brothel' Affair," <i>New York Post</i>, September 16, 2009.</p> <p data-bbox="506 1260 831 1337">"Brooklyn DA to Head ACORN Probe," <i>Newsday</i>, September 17, 2009.</p>	<p data-bbox="873 835 1425 997">Republican members of the state Board of Elections were seeking an emergency meeting yesterday to investigate a charge that the Working Families Party may have illegally funneled nearly \$32,000 to ACORN, the left-wing group accused of voter fraud in several parts of the country.</p> <p data-bbox="873 1060 1425 1194">State Attorney General Andrew Cuomo yesterday launched an investigation into pork-barrel grants given to ACORN by state lawmakers, as City Council Speaker Christine Quinn froze all city funding earmarked for the scandal-scared community-activism organization.</p> <p data-bbox="873 1260 1425 1503">State officials are letting Brooklyn District Attorney Charles Hynes take the lead on investigating ACORN, though state money going to the group has been frozen.</p> <p data-bbox="873 1367 1393 1501">Hynes began a criminal probe Monday after ACORN employees in Brooklyn were caught advising conservative activists posing as a prostitute and her pimp to lie about the woman's occupation to get housing aid.</p>

Investigation by	Source	Details
	<p>“State Halts ACORN Funding Pending Probe,” <i>Daily News</i>, September 19, 2009.</p>	<p>In another blow to ACORN, Gov. Paterson put a hold yesterday on all state contracts with the embattled anti-poverty agency.</p> <p>Paterson's budget director and director of state operations ordered agencies not to move forward on contracts with the group.</p> <p>The hold will stay in place during a 30-day review of \$400,000 worth of state contracts with ACORN and its parent, New York Agency for Community Affairs.</p>
North Carolina	<p>“CAMPAIGN 2008; ACORN Voter Registrations Probed,” <i>Houston Chronicle</i>, October 14, 2008.</p>	<p>The State Board of Elections in North Carolina is investigating suspicious voter registration forms submitted by a grass-roots organization whose problems have drawn national attention.</p> <p>The Association of Community Organizations for Reform Now conducted a voter drive that registered nearly 28,000 in North Carolina. But some forms it filed had information that may have been copied from phone books, local election officials said.</p> <p>Durham County's elections office turned over about 120 suspect forms to the state for investigation about three weeks ago, and Wake County's elections office sent in about 30 suspicious forms last week.</p> <p>Gary Bartlett, the state board's executive director, said ACORN has cooperated with the investigation into the questionable Durham forms. The office received information about the Wake forms Friday, Bartlett said.</p>
South Carolina	<p>“ACORN Followed Law On Suspect Registrations; Voter Group Is Required To Turn In All Forms It Collects, Told Officials Of Dubious Ones,” <i>Indianapolis Star</i>, October 18, 2009.</p>	<p>[...] Those complaints have prompted fraud investigations in about 12 states, including Ohio, Nevada, Pennsylvania, Florida, Missouri, Nevada and South Carolina.</p>
Texas	<p>“Fort Worth ACORN Office Closed; Offices Statewide Temporarily Stop Most Of Their Work,” <i>Fort Worth Star-Telegram</i>, September 18, 2009.</p>	<p>ACORN officials say they've ordered an independent investigation into the video. Texas Attorney General Greg Abbott has said he's looking into "aspects" of ACORN's activities; the state comptroller's office has said the group received no state funding in 2008 or 2009, the Austin American-Statesman reported.</p>

Investigation by	Source	Details
Wisconsin	<p>“More Voter Fraud Probed; Another Organization Implicated,” <i>Milwaukee Journal Sentinel</i>, August 13, 2008.</p>	<p>Workers from a second activist organization have been implicated in falsifying Milwaukee voter registration forms, bringing to 15 the number of voter registration workers who could face scrutiny for trying to sign up dead, imprisoned or fictitious voters, according to the Milwaukee Election Commission and the organizations that paid the workers. ...</p> <p>Assistant District Attorney Bruce Landgraf confirmed he is working with Milwaukee police to decide whether criminal charges are warranted, but he declined to say how many individuals are under investigation. Castore said investigators contacted her about one former ACORN worker, and Carroo said investigators contacted her Milwaukee staff about two of their former workers.</p>
	<p>“More Voter Registration Workers Under Scrutiny,” <i>Milwaukee Journal Sentinel</i>, August 21, 2008.</p>	<p>Milwaukee's election chief on Wednesday turned 32 more voter registration workers in to the district attorney's office for possible prosecution, saying they tried to submit falsified registration cards.</p> <p>That brings to 39 the number of registration workers under scrutiny, and the number could grow, Election Commission Executive Director Sue Edman said. An organization warned the commission staff late Wednesday afternoon about some questionable cards in the latest batch collected by its workers, Edman said.</p> <p>All of the workers targeted for investigation were paid employees of two liberal groups running voter registration drives, the Association of Community Organizations for Reform Now (ACORN) and the Community Voters Project.</p>

Investigation by	Source	Details
	<p data-bbox="506 279 837 359">"Woman Pleads Guilty To Election Fraud," <i>Milwaukee Journal Sentinel</i>, February 27, 2009.</p>	<p data-bbox="873 279 1422 359">A Milwaukee woman has pleaded guilty to election fraud for submitting dozens of fake names and addresses to city election officials during a voter registration drive.</p> <p data-bbox="873 390 1422 554">Endalyn Adams, 22, is to be sentenced by Milwaukee County Circuit Judge Thomas Donegan on March 31. She could face up to 3 1/2 years in prison and a \$10,000 fine on the felony count, but Assistant District Attorney Bruce Landgraf is seeking three years of probation under a plea agreement.</p> <p data-bbox="873 585 1377 665">Adams was one of three voter registration workers charged with fraud in connection with the 2008 presidential election, and the first to plead guilty.</p> <p data-bbox="873 697 1403 777">Another worker, Adam Mucklin, is due in court March 23, and a third, Frank Walton, remains at large. Other cases remain under investigation.</p> <p data-bbox="873 808 1414 938">All of those charged were paid by the Community Voters Project to sign up voters; some of those under investigation also were paid by the voters project or by the Association of Community Organizations for Reform Now. ...</p>

Local

<p data-bbox="193 1052 451 1077">Pulaski County (Arkansas)</p>	<p data-bbox="506 1052 833 1157">"Project Vote Worker Suspected In Forged-Forms Case," <i>Arkansas Democrat-Gazette</i>, October 24, 1998.</p>	<p data-bbox="873 1052 1382 1157">A lone temporary employee hired for a voter registration drive apparently handled the 400 to 500 forms that have become the subject of a fraud investigation, an investigator said Friday.</p> <p data-bbox="873 1178 1398 1341">The organization behind the voter registration drive -- Project Vote -- filed a complaint with the prosecuting attorney Thursday. The group said it had turned in forms to the circuit-county clerk's office without realizing that a temporary employee may have forged them.</p> <p data-bbox="873 1362 1409 1470">James Vandiver, a criminal investigator for the Pulaski County prosecuting attorney's office, said he could not release documents about the case Friday. He said the investigation is still under way.</p> <p data-bbox="873 1470 1422 1577">"We're finding addresses that just absolutely do not exist," Vandiver said. "Vacant lots, boarded up buildings, houses that have been abandoned. Most of them are just addresses that don't exist."</p> <p data-bbox="873 1598 1409 1728">Maxine Nelson of Project Vote and the Rev. Delton Jones of Pulaski County ACORN said in a joint written statement that they knew nothing about voter fraud until the prosecutor's office contacted them and that they're cooperating with the investigation.</p>
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Investigation by	Source	Details
San Diego County (California)	<p>“ACORN Signed Up Many In County; Group Is Blaming Workers For Errors In Voter Registration,” <i>San Diego Union-Tribune</i>, October 17, 2008.</p> <p>“County Won’t Investigate ACORN; Group Fired Worker From National City,” <i>San Diego Union Tribune</i>, September 23, 2009.</p> <p>“ACORN Case Sent To DA’s Office; Secretary Of State Looked At Voter Drive,” <i>San Diego Union Tribune</i>, October 4, 2009.</p>	<p>The local FBI office would not comment, but San Diego County Registrar of Voters Deborah Seiler said she has forwarded a handful of problem registrations to the secretary of state for investigation of possible fraud. ...</p> <p>Kate Folmar, the secretary of state’s spokeswoman, declined to say whether the state is investigating ACORN, but said, “The secretary of state has not received substantiated reports of widespread voter registration fraud.”</p> <p>San Diego County won’t open an investigation into ACORN, the community organizing nonprofit that has become embroiled in a national scandal over video showing employees advising potential criminals.</p> <p>Instead, county officials will assist the state attorney general and the district attorney in any review of ACORN’s voter registration drive last year.</p> <p>After the voter complaints were filed last year, the California secretary of state has opened five investigations into San Diego ACORN’s voter drive.</p>
Bridgeport (Connecticut)	<p>“I Voter, 72 Registrations - ACORN Paid Me In Cash & Cigs,” <i>New York Post</i>, October 10, 2008.</p>	<p>It’s even under investigation in Bridgeport, Conn., for allegedly registering a 7-year-old girl to vote, according to the State Elections Enforcement Commission.</p>
Brevard County (Florida)	<p>“Vote Drives Defended, Despite Fake Names,” <i>St. Petersburg Times</i>, October 14, 2008.</p>	<p>Brevard County elections officials have turned over 23 suspect registrations from ACORN to prosecutors. The state Division of Elections has received two ACORN-related complaints, in Orange and Broward counties.</p>
Leon County (Florida)	<p>“Voter Drives Investigated,” <i>Tampa Tribune</i>, October 22, 2004.</p>	<p>“The level of fraudulent activity in this election is far exceeding the level that I have seen in 16 years of supervising elections,” said Ion Sancho, supervisor of elections in Leon County, where authorities are investigating thousands of suspicious voter registrations.</p>

Investigation by	Source	Details
Lake County (Indiana)	<p data-bbox="505 275 841 470">“ACORN Followed Law On Suspect Registrations; Voter Group Is Required To Turn In All Forms It Collects, Told Officials Of Dubious Ones,” <i>Indianapolis Star</i>, October 18, 2008.</p>	<p data-bbox="873 275 1409 415">Ruthann Hoagland, assistant registration administrator with the Lake County Board of Elections and Voter Registration, confirmed that about 2,500 applications ACORN submitted were divided into three groups, as Jackson described.</p> <p data-bbox="873 443 1419 527">Those last-minute applications were among about 5,000 in total submitted in the county by ACORN, said Hoagland, a Republican member of the board.</p> <p data-bbox="873 554 1424 638">Election officials have so far reviewed about 2,500 of the ACORN applications and have found nearly half of them are bad, she said.</p>
Hennepin County (Minnesota)	<p data-bbox="505 695 841 863">“High-Stakes Registration Efforts Fuel An Industry; Controversy Can Sometimes Follow The Groups Helping The Major Parties,” <i>Star Tribune</i>, October 18, 2004.</p> <p data-bbox="505 1010 829 1087">“Hennepin County Probes Late Entry,” <i>Star Tribune</i>, October 15, 2008.</p>	<p data-bbox="873 695 1419 947">When police stopped a former ACORN canvasser in September for speeding, they found 323 completed registration forms in his car. ACORN had fired the canvasser in July after the Hennepin County attorney's office told the organization that he was suspected of submitting duplicates of completed registration cards to double his fee, said Becky Gomer, head organizer for ACORN in Minnesota. He was charged Friday with failure to turn in voter registration cards.</p> <p data-bbox="873 1010 1430 1115">In Minnesota, the Hennepin County attorney's office said it is investigating whether a voter registration lapse at the Minnesota ACORN office falls within guidelines for prosecution.</p> <p data-bbox="873 1136 1425 1325">A malfunctioning scanner at ACORN's St. Paul offices in August created a backlog that caused a batch of cards to be submitted late to the Hennepin County Elections Board. All of the registrations were processed in time to allow voters to participate in both the primary and general elections. None was discarded for fraud or ineligibility.</p>

Investigation by	Source	Details
	<p>“The Trail: ACORN; Voter Sign-Up Sets Off A Furor; Charges, Countercharges About Voter Registration Fraud Center On The Community Group ACORN,” <i>Star Tribune</i>, October 24, 2008.</p> <p>“Under Attack, ACORN Holds Tight; With Activity In Minnesota On Hold, Backers Distance Themselves From The Group's National Woes,” <i>Star Tribune</i>, September 19, 2009.</p>	<p>But despite calls by state and national GOP groups to investigate ACORN, election officials in Hennepin and Ramsey counties say there is scant evidence of fraud, other than a few hundred late registration filings. ...</p> <p>So far officials have found 16 potentially fraudulent voter registration cards in Ramsey County, and none in Hennepin County.</p> <p>"We don't have any ACORN-related voter registration problems," said Hennepin County Attorney Mike Freeman, a DFLer. "Not a single one.</p> <p>"What we have ... are some cards that were handed over to the registrar late. That's not fraud. It's a technical mistake."</p> <p>Nevertheless, Freeman said his office is investigating one incident of tardy registration card submissions, which, if intentional, is a potential felony.</p> <p>If charges are pressed, it would be the first time in Minnesota since 2004, when a 19-year-old ex-ACORN worker pleaded guilty to having stashed hundreds of registration cards in his car's trunk.</p> <p>While ACORN's voter registration drives have not led to widespread criminal complaints in Minnesota, the group has been described by local officials as too often lacking "quality controls." Pat Diamond, an assistant Hennepin County attorney, said his office investigated a case where an ACORN canvasser submitted multiple voter registration cards for the same person, but said the case was dropped when the canvasser died.</p>
<p>Ramsey County (Minnesota)</p>	<p>“Now Ramsey County Is Looking At ACORN Over Vote Cards; Nearly Half Of The 800 Given To County Were Held Too Long,” <i>Star Tribune</i>, October 19, 2008.</p>	<p>The community action group Minnesota ACORN is under investigation in Ramsey County for allegedly mishandling voter registration cards.</p> <p>Nearly half of about 800 voter registration cards the group submitted to county election officials Tuesday had been held longer than the 10 days permitted by state law. Some of the cards had been signed by would-be voters as long as 27 days ago, according to Ramsey County officials.</p>
	<p>“The Trail: ACORN; Voter Sign-Up Sets Off A Furor; Charges, Countercharges About Voter Registration Fraud Center On The Community Group ACORN,” <i>Star Tribune</i>, October 24, 2008.</p>	<p>But despite calls by state and national GOP groups to investigate ACORN, election officials in Hennepin and Ramsey counties say there is scant evidence of fraud, other than a few hundred late registration filings. ...</p> <p>So far officials have found 16 potentially fraudulent voter registration cards in Ramsey County, and none in Hennepin County.</p>

Investigation by	Source	Details
St. Louis (Missouri)	<p>“Suspect Voter Cards Found Election Board Calls 1,492 Registrations Potentially Fraudulent,” <i>St. Louis Post-Dispatch</i>, October 11, 2006.</p>	<p>St. Louis Election Board officials say they've discovered at least 1,492 "potentially fraudulent" voter registration cards -- including three from dead people and one from a 16-year-old -- among the thousands pouring in before today's voter registration deadline for the Nov. 7 election. ...</p> <p>The board says all the questionable cards were turned in by one group -- the Association of Community Organizations for Reform Now, commonly known as ACORN. ...</p> <p>In St. Louis three years ago, the city Election Board reported finding more than 1,000 suspicious voter registration cards turned in by ACORN. No one appears to have been prosecuted in that case, although Joyce's office has obtained convictions regarding fraudulent voter-registration cards turned in by people working for other, now-defunct groups.</p>
	<p>“Voters Say They Were Duped; A Firm Hired By The GOP Is Accused Of Using Petitions To Trick People Into Switching Party Registration,” <i>Los Angeles Times</i>, October 18, 2008.</p>	<p>In April, eight ACORN officials in St. Louis pleaded guilty to federal election fraud for submitting false registration cards in 2006.</p>
Kansas City (Missouri)	<p>“ACORN Accused Of Submitting False Voter Registration Forms Again,” <i>Kansas City Star</i>, October 9, 2008.</p>	<p>Shelley McThomas, Democratic director of the Kansas City Board of Election Commissioners, said ACORN submitted 19,200 voter registrations by early September and none since. Of those, she said, about 6,500 were "questionable" and are being checked.</p>
New York (New York)	<p>“Levy Orders Probe Of Edison Foes,” <i>New York Post</i>, March 22, 2001.</p>	<p>Schools Chancellor Harold Levy yesterday ordered a probe into whether opponents of his plan to privatize five of the city's worst schools illegally obtained parents' phone numbers and addresses.</p> <p>Levy said he directed the Board of Education's office of school investigations to see if any employees leaked confidential information to ACORN or other groups trying to convince parents to vote against Edison Schools Inc.</p>

Investigation by	Source	Details
Troy (New York)	"Ballot Fraud Probe Hits Dems And WFP," <i>New York Post</i> , September 30, 2009.	<p>The controversial, ACORN-connected Working Families Party and local Democrats are under investigation by a special prosecutor after a rash of allegedly forged absentee ballots and ballot applications were filed on behalf of candidates in the shadow of the state Capitol, officials said yesterday.</p> <p>A judge in Troy named Rensselaer County's former chief assistant district attorney, Trey Smith, as the special prosecutor on Monday after the DA, a Democrat, recused himself from the case.</p>
Columbus (Ohio)	"Alleged Fraudulent Voter Cards Scrutinized," <i>Cincinnati Enquirer</i> , October 8, 2004.	Officials in Columbus are also investigating possible improprieties by an ACORN worker there.
Cuyahoga County (Ohio)	"Voter Registrations Examined For Fakes," <i>Plain Dealer</i> , August 11, 2006.	<p>Potentially fraudulent voter registration cards have turned up in at least three Ohio counties, and 500 have been turned over to a prosecutor to determine if a crime has been committed. ...</p> <p>Election workers in Cuyahoga County are reviewing an unspecified number of cards that appear to be duplicates of those already on file, except for one piece of information such as a birth date or Social Security number.</p> <p>They cannot tie those cards to any group, Board of Elections spokeswoman Jane Platten said.</p> <p>She said it will be up to the board to decide whether to hand the cards over to the prosecutor.</p>
	"ACORN Accused Of Registering Fake Voters," <i>Plain Dealer</i> , August 28, 2008.	<p>A national organization that registers low-income people to vote has cut back its push in Cuyahoga County after workers were accused of registering phantom voters.</p> <p>The Cuyahoga County elections board is investigating ACORN, the Association of Community Organizations for Reform Now, which has submitted about 75,000 voter registration cards to the Cuyahoga board this year.</p>
	"Vote Probe 'Not Being Brushed Aside'," <i>Plain Dealer</i> , March 23, 2009.	After five months, detectives with the Cuyahoga County Sheriff's Office are still gathering and reviewing evidence for the "ongoing" investigation.

Investigation by	Source	Details
Franklin County (Ohio)	"Voter Registrations Examined For Fakes," <i>Plain Dealer</i> , August 11, 2006.	<p>Potentially fraudulent voter registration cards have turned up in at least three Ohio counties, and 500 have been turned over to a prosecutor to determine if a crime has been committed.</p> <p>Matt Damschroder, director of the Franklin County Board of Elections, said the 500 cards his office referred to County Prosecutor Ron O'Brien Wednesday were collected between March and July by workers for ACORN, the Association of Community Organizations for Reform Now.</p>
	"FEDERAL RULING; Brunner Loses Lawsuit To GOP; Let County Boards Check New Voters' Names, Judge Says," <i>Columbus Dispatch</i> , October 10, 2008.	Franklin County had problems with ACORN in 2004 after authorities discovered dozens of voter registration forms with fake names or false information. A part-time worker for the group was indicted on charges he forged a registration form.
	"Alzheimer's Patient Voted, Records Show," <i>Columbus Dispatch</i> , October 30, 2008.	<p>None has any apparent links to Franklin County; four don't seem to have any links to Ohio whatsoever. ...</p> <p>Their registrations and ballots have been segregated by the Franklin County Board of Elections because mailed confirmations of their registrations were returned by the post office as undeliverable. ...</p> <p>If necessary, the board can issue subpoenas, as it has in the past when it investigated iffy registrations turned in the by Association of Community Organizations for Reform Now (ACORN). The group has come under fire again this year in several states.</p>
	"ACORN Offices In Ohio To Close Temporarily," <i>Columbus Dispatch</i> , September 18, 2009.	<p>Some ACORN-paid solicitors turned in some questionable voter-registration applications that were rejected in Franklin County in 2004 and 2006, said Michael Stinziano, director of the Board of Elections.</p> <p>"Our staff took steps to communicate more with ACORN upfront and we had no problems in 2008 with registrations. In terms of current practice, they are not a concern in Franklin County," he said.</p>
Hamilton County (Ohio)	"Alleged Fraudulent Voter Cards Scrutinized," <i>Cincinnati Enquirer</i> , October 8, 2004.	Hamilton County election officials will meet this morning to discuss 19 voter registrations for people who may not exist, which would be a rare case of election fraud. ... The cards were turned in, Williams said, by someone affiliated with the Association of Community Organizations for Reform Now (ACORN), a group that represents low-income people.

Investigation by	Source	Details
	<p>“Thousands Of New-Voter Cards In Ohio Undeliverable,” <i>Cincinnati Enquirer</i>, October 20, 2004.</p>	<p>Thousands of cards mailed by county election boards to newly registered voters in Hamilton County and throughout the state are being returned because the people can't be found.</p> <p>John Williams, director of the Hamilton County Board of Elections, said the situation indicates that there might not be as many new voters as some expect in a state deemed crucial in the presidential election. ...</p> <p>Williams is currently investigating fraud by someone working for ACORN who he said submitted voter registrations for about 35 people who don't exist.</p>
	<p>“Voter Fraud Battle Heats Up,” <i>Cincinnati Enquirer</i>, October 15, 2008.</p>	<p>The Hamilton County Board of Elections is checking whether ACORN fraudulently submitted multiple voter registrations for people who don't exist. The board has received at least 10,000 duplicate voter registrations this year and possibly thousands of fictitious ones, Deputy Director John Williams said earlier. Julie Wilson, a spokeswoman for Hamilton County Prosecutor Joe Deters, said Tuesday that she could not comment on cases, but said, "Any violation of Ohio law, Joe is going to treat seriously."</p>
Summit County (Ohio)	<p>“Voter Registrations Examined For Fakes,” <i>Plain Dealer</i>, August 11, 2006.</p>	<p>Potentially fraudulent voter registration cards have turned up in at least three Ohio counties, and 500 have been turned over to a prosecutor to determine if a crime has been committed. ...</p> <p>In Summit County, Board of Elections Director Bryan Williams said this week he will ask the board to investigate about a dozen potentially bogus registration cards submitted by people believed to have been hired by ACORN.</p>
	<p>“ACORN Accused Of Registering Fake Voters,” <i>Plain Dealer</i>, August 28, 2008.</p>	<p>In August 2006, elections boards in Franklin and Summit counties investigated potentially bogus registration cards submitted by ACORN.</p>
Allegheny County (Pennsylvania)	<p>“County Investigates Voter Registration Fraud,” <i>Pittsburgh Post-Gazette</i>, October 10, 2008.</p>	<p>Allegheny County District Attorney Stephen A. Zappala Jr. and county police Superintendent Charles Moffatt yesterday said they are investigating and considering charges against ACORN staffers and other voter registration groups.</p>

Investigation by	Source	Details
	<p>“7 ACORN Workers Charged With Forgery,” <i>Pittsburgh Post-Gazette</i>, May 8, 2009.</p>	<p>The Allegheny County District Attorney yesterday charged seven people with a combined 51 counts of forgery and other violations, saying they worked with the group ACORN to deliver forged registrations during the 2008 election.</p>
Philadelphia (Pennsylvania)	<p>“D.A. Asked To Investigate Vote-Registration Forms / The Acting Board Of Elections Turned Over About 400 Cards With Irregularities From One Grassroots Group,” <i>Philadelphia Inquirer</i>, April 2, 1999.</p> <p>“City Reminds Philadelphia Of March 24 Voter-Registration Deadline,” <i>Philadelphia Daily News</i>, March 13, 2008.</p> <p>“Pa. Democrats Now Outnumber GOP By Almost 1.2 Million,” <i>Philadelphia Inquirer</i>, October 17, 2008.</p>	<p>About one-third of the 1,200 voter-registration cards submitted to the city by a grassroots political group are being turned over to the District Attorney's Office for investigation of possible fraud.</p> <p>ACORN spokesman Stephen Leshinski said the group was "outraged" at the problem and was conducting its own investigation.</p> <p>... Tartaglione said the commissioners are asking the District Attorney's Office to investigate ACORN's registration efforts.</p> <p>A senior Philadelphia election official said yesterday that the city had discovered about 1,200 possibly fraudulent voter registrations - almost all of them submitted by ACORN - and had turned them over to the U.S. Attorney's Office for criminal investigation.</p> <p>Patty Hartman, a spokeswoman for the U.S. Attorney's Office, said she couldn't confirm or deny any investigation. But she said, "We are aware that there are allegations out there against ACORN, and we are reviewing the allegations appropriately."</p>
Pittsburgh (Pennsylvania)	<p>“RACY STUFF; Polls Show Obama With Big Lead In Pa., But Are They For Real?,” <i>Pittsburgh Post-Gazette</i>, October 19, 2008.</p>	<p>[...] ACORN has come under investigation in Pittsburgh and elsewhere for possible use of fictitious names in registering voters, and GOP officials said they would file suit to ensure "a fair election."</p>
Harris County (Texas)	<p>“ACORN Sign-Ups Here Seem Legitimate; Nearly 40% Of Vote Forms Denied, But Registrar Sees No Intentional Foul,” <i>Houston Chronicle</i>, October 16, 2008.</p>	<p>Although nearly 40 percent of the 35,000 voter registration applications submitted in Harris County by a community-organizing group accused of fraud in other states were rejected, there is no evidence of intentional manipulation of the voter rolls here, according to the county's voter registrar. ...</p> <p>Bettencourt said his staff checked the voting rolls and did not find any obviously phony registered voters. ...</p>

Investigation by	Source	Details
Houston (Texas)	<p>“City Taking Look At ACORN Grant Mayor Orders Probe After Group Comes Under Fire ACORN: Leader Defends Group’s Work Here,” <i>Houston Chronicle</i>, September 19, 2009.</p>	<p>Houston Mayor Bill White expressed concern this week to reporters after undercover videos showed ACORN representatives in five cities appearing to advise a couple posing as a pimp and a prostitute about such things as buying a home and laundering the money. ...</p> <p>White said he had no reason to believe anything inappropriate has happened in Houston. He has asked his staff to review the \$155,000 grant given ACORN last year to provide mortgage counseling to those facing possible foreclosure.</p>
Pierce County (Washington)	<p>“Officials Examine Possible Voter Fraud; Suspicious Registrations - Pierce County Investigates Cards Left Unclaimed,” <i>Seattle Times</i>, July 21, 2007.</p>	<p>Pierce County authorities are investigating whether hundreds of voter-registration cards were fraudulently filled out by paid canvassers before the 2006 election.</p> <p>The criminal investigation, acknowledged Friday by Deputy Prosecuting Attorney Al Rose, comes on top of a continuing probe in King County. The King County investigation began after election workers in October spotted apparently forged voter-registration cards turned in by the community-organizing group ACORN, the Association of Community Organizations for Reform Now.</p>
	<p>“7 Charged In Vote-Fraud Scheme,” <i>Seattle Times</i>, July 27, 2007.</p>	<p>Prosecutors in King and Pierce counties filed felony charges Thursday against seven employees of ACORN, the Association of Community Organizations for Reform Now, claiming they turned in more than 1,800 phony voter-registration forms, including an estimated 55 in Pierce County.</p>
	<p>“Pierce County To Remove Names From Voter Rolls; 230 To Be Struck - Group Submitted False Registration Information,” <i>Seattle Times</i>, February 4, 2008.</p>	<p>Pierce County is scheduled to strike 230 names from its voter rolls this week as it wraps up a probe of voter-registration fraud.</p> <p>The investigation centered on registrations submitted by employees of the Association of Community Organizations for Reform Now, or ACORN, a national advocacy group for low-income people.</p> <p>ACORN workers submitted more than 1,800 registration forms in King County and about 1,400 in Pierce County in the fall of 2006.</p> <p>Last summer, King County prosecutors charged seven ACORN employees with submitting false information on voter-registration cards.</p> <p>Five of the seven have since pleaded guilty. Two ACORN employees admitted falsifying registrations in Pierce County.</p>

Investigation by	Source	Details
King County (Washington)	<p>“King County Looks Into Claims Of '06 Voter-Registration Fraud; Hundreds Of Cards May Have Been Forged - Election Office Publicly Raised Concerns In February,” <i>Seattle Times</i>, March 17, 2007.</p>	<p>King County prosecutors are investigating apparent voter-registration fraud in the 2006 general election.</p> <p>Dan Satterberg, chief deputy to King County Prosecutor Norm Maleng, confirmed late Thursday that attorneys from his office will meet next week to brief their federal counterparts regarding evidence that hundreds of voter-registration cards submitted in King County were forged.</p> <p>Satterberg said "there are significant irregularities" among a batch of more than 1,800 voter-registration cards submitted to the county by canvassers for the Association of Community Organizations for Reform Now (ACORN), a national group that represents the interests of low- and moderate-income citizens.</p> <p>County prosecutors, aided by King County sheriff's investigators, have been looking into the allegations of forgery since an election official noticed that hundreds of the cards submitted by ACORN canvassers appeared to be in the same handwriting. A King County election spokeswoman publicly noted the potential fraud in February. ...</p>
	<p>“7 Charged In Vote-Fraud Scheme,” <i>Seattle Times</i>, July 27, 2007.</p>	<p>Prosecutors in King and Pierce counties filed felony charges Thursday against seven employees of ACORN, the Association of Community Organizations for Reform Now, claiming they turned in more than 1,800 phony voter-registration forms, including an estimated 55 in Pierce County.</p>
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Investigation by	Source	Details
	<p>“Local ACORN Cleans Up Act After Scandal,” <i>Seattle Times</i>, October 29, 2008.</p>	<p>It was early last year and Maleng's office was preparing to file charges against six canvassers who had filled out nearly 1,800 voter-registration cards the previous fall with names they made up using phone directories and books of baby names. Jones' organization, the state chapter of the Association of Community Organizations for Reform Now commonly known as ACORN had paid the workers \$8 an hour to sign up low-income voters in King and Pierce counties. ...</p> <p>Clifton Mitchell Sr., a Tacoma father of two, was one of six ACORN canvassers charged in connection with the 2006 voter-registration scandal. Mitchell served more than 90 days in jail after pleading guilty to two counts of providing false information on a voter registration. ...</p> <p>Three members of Mitchell's voter-registration crew also served jail time, and a fourth person, a woman who was pregnant at the time, was sentenced to 96 days of electronic home monitoring, said Ian Goodhew, deputy chief of staff for King County Prosecutor Dan Satterberg. An arrest warrant was issued for canvasser Kendra Thill, of Tacoma, who failed to show up in court and has since disappeared.</p> <p>Charges against an ACORN employee were dismissed because prosecutors couldn't prove she knew the voter-registration cards she submitted to King County Elections were frauds.</p>

Source: LexisNexis Major U.S. Newspapers database.

Table 2. Congressional Investigations Concerning ACORN

Investigation by	Source(s)	Details
House Committee on the Judiciary	Letter to House Judiciary Ranking Member Lamar Smith from Justice Department Inspector General Glenn Fine (Sept. 21, 2009) (GalleryWatch)	This is in response to your letter dated September 15, 2009, regarding the Association of Community Organizations for Reform Now or ACORN. Your letter asked the Department of Justice (DOJ) Office of the Inspector General (OIG) to investigate whether ACORN applied for or received any DOJ grant funds, and if so did DOJ conduct any audits or reviews of ACORN's use of such funds.
House Committee on Education	House Education and Labor Ranking Member Kline Writes Education Secretary Duncan Regarding Information on ACORN Involvement (October 6, 2009) (CQ.com)	I respectfully request specific information from the Department of Education regarding its involvement, if any, with the Association of Community Organizations for Reform Now (ACORN).

Investigation by	Source(s)	Details
	House Education and Labor Ranking Member Kline Writes Labor Secretary Solis Regarding Information on ACORN Involvement (October 6, 2009) (CQ.com)	I respectfully request specific information from the Department of Labor regarding its involvement, if any, with the Association of Community Organizations for Reform Now (ACORN).
	House Education and Labor Ranking Member Kline Writes HHS Secretary Sebelius Regarding Information on ACORN Involvement (October 6, 2009) (CQ.com)	I respectfully request specific information from the Department of Health and Human Services regarding its involvement, if any, with the Association of Community Organizations for Reform Now (ACORN).
House Committee on Oversight and Government Reform	Letter to Homeland Security Secretary Janet Napolitano From House Oversight and Government Reform Ranking Member Darrell Issa and Senate Homeland Security and Governmental Affairs Ranking Member Susan Collins (October 7, 2009) (GalleryWatch.com)	So Congress can better understand the relationship of ACORN and ACORN affiliated entities with DHS, please provide the following information and documents:
	House Oversight Ranking Member Issa Writes IRS Commissioner Regarding ACORN Investigation (Aug. 11, 2009) (CQ)	<p>The Committee staff has been investigating the Association of Community Organizations for Reform Now's ("ACORN") lack of compliance with various federal laws. ...</p> <p>The ACORN Report found ACORN conspired to defraud the United States by using taxpayer funds for partisan political activities. ACORN submitted false filings to the IRS, in addition to failing to report and pay excise taxes on Dale Rathke's excess benefit transactions. Additionally, ACORN falsified and concealed facts concerning an illegal transaction between related parties in violation of the Employee Retirement Income Security Act of 1974 ("ERISA"). I am concerned ACORN has failed to comply with §§ 501(c), 527(f) of the Internal Revenue Code ("IRC") and other Internal Revenue Service ("IRS") regulations.</p>

Investigation by	Source(s)	Details
House Oversight Ranking Member Issa Writes FEC Commissioner Regarding ACORN Investigation (Aug. 11, 2009) (CQ)		<p>The Committee staff has been investigating the Association of Community Organizations for Reform Now's ("ACORN") lack of compliance with various federal laws. ...</p> <p>The ACORN Report documents ACORN and its affiliates' fundraising for several Congressmen and a former Governor. The Report also found that ACORN, a taxable state-registered nonprofit corporation, directs the activities of Project Vote, a tax-exempt 501(c)(3). Citizens Consulting Inc. ("CCI"), a taxable state-registered nonprofit corporation, appears to control the accounts of both politically active and non-political ACORN affiliates, many of which are tax-exempt. I am concerned ACORN has failed to comply with the Federal Election Campaign Act ("FECA") and other Federal Election Commission ("FEC") regulations,</p>
House Oversight Ranking Member Issa Writes HUD Secretary Regarding ACORN Investigation (Aug. 11, 2009) (CQ)		<p>The Committee staff has been investigating the Association of Community Organizations for Reform Now's ("ACORN") lack of compliance with various federal laws. ...</p> <p>ACORN and its affiliates have received over \$53 million of taxpayer dollars from 1994 to the present. President Obama's \$75 billion "Making Home Affordable" program would extend more federal resources to ACORN. As I understand it, the Department of Housing and Urban Development ("HUD") has disbursed at least \$11,011,175 in grants to ACORN affiliates between 2000 and 2007.</p>
House Oversight Ranking Member Issa Writes Labor Secretary Regarding ACORN Investigation (Aug. 11, 2009) (CQ)		<p>The Committee staff has been investigating the Association of Community Organizations for Reform Now's ("ACORN") lack of compliance with various federal laws.</p> <p>The ACORN Report found ACORN conspired to defraud the United States by using taxpayer funds for partisan political activities. ACORN has submitted false filings to the DOL, in addition to violating the Fair Labor Standards Act ("FLSA"). ACORN falsified and concealed facts concerning an illegal transaction between related parties in violation of ERISA. I am concerned ACORN has failed to comply with the Labor-Management Reporting and Disclosure Act of 1959 ("LMRDA") as well as the Employee Retirement Income Security Act of 1974 ("ERISA").</p>
House Oversight Ranking Member Issa Writes SBA Administrator Regarding ACORN Investigation (Aug. 11, 2009) (CQ)		<p>The Committee staff has been investigating the Association of Community Organizations for Reform Now's ("ACORN") lack of compliance with various federal laws. ...</p> <p>ACORN and its affiliates have received over \$53 million of taxpayer dollars from 1994 to the present. As I understand it, in 2006, the Small Business Administration ("SBA") disbursed \$25,000 in grants to ACORN affiliates between 2000 and 2007.</p>
ACORN Report		<p>The report that follows presents evidence obtained from former ACORN insiders that completes the picture of a criminal enterprise.</p>

Investigation by	Source(s)	Details
Senate Committee on Homeland Security and Governmental Affairs	Letter to Homeland Security Secretary Janet Napolitano From House Oversight and Government Reform Ranking Member Darrell Issa and Senate Homeland Security and Governmental Affairs Ranking Member Susan Collins (October 7, 2009) (GalleryWatch.com)	So Congress can better understand the relationship of ACORN and ACORN affiliated entities with DHS, please provide the following information and documents:
	Letter to Senate Homeland Security and Governmental Affairs Ranking Member Susan Collins from Treasury Inspector General J. Russell George (Sept. 23, 2009) (Gallerywatch)	This is to acknowledge receipt of your September 18, 2009, letter, cosigned by Representative Darrell Issa, expressing concern regarding the activities of the Association of Community Organizations for Reform Now (ACORN) and its affiliates, their receipt of Federal funds, and their compliance with Internal Revenue Code Sections 501 (c)(3) and 527(f). You requested that the Treasury Inspector General for Tax Administration (TIGTA) review the Internal Revenue Service (IRS) Criminal Investigations Division's enforcement efforts with respect to taxable nonprofit corporations engaging in political activities that go unreported. In addition, you asked that TIGTA review whether ACORN or its affiliates used Section 501 (c)(3) resources for impermissible partisan work, or engaged in lobbying or made political expenditures or contributions without reporting these activities to the IRS.
Senate Committee on Finance	Letter to IRS Commissioner Mark Everson from Senate Finance Committee Chairman Charles Grassley (Nov. 8, 2006) (GalleryWatch)	I have recently written to ACORN asking a number of questions as part of the Finance Committee's ongoing review of nonprofit organizations being utilized as political campaign or lobbying vehicles. ACORN has failed to respond to the deadline provided in the Finance Committee letter and I have heard nothing to date from ACORN officials.
	Letter to Association of Community Organizations for Reform Now National President Maude Hurd from Senate Finance Committee Chairman Grassley (Oct. 25, 2006) (GalleryWatch)	Congress has become increasingly aware of many issues regarding tax-exempt organizations and has been conducting a series of investigations throughout the sector. ... As part of the Finance Committee's ongoing review of charities and particularly the participation of charities in elections and lobbying, I request the following information from ACORN.

Source: LexisNexis Major U.S. Newspapers, CQ.com TopDocs and Gallerywatch.com HotDocs databases.

Table 3. Internal Investigations by ACORN

Source	Details
"Caldwell Steps Up Probe Into ACORN; But Group Calls \$5 Million Figure In Embezzlement Case Overblown," <i>Times-Picayune</i> , October 6, 2009.	"Current high-ranking members of ACORN have publicly acknowledged that embezzlement did in fact occur, but the exact amount of the embezzlement was unknown until it was recently acknowledged in a board of directors meeting on Oct. 17, 2008, by Bertha Lewis and Liz Wolf that an internal review had determined that the amount embezzled was \$5 million," the new subpoena says.
"ACORN Cracking The Advocacy Group's Troubles Deserve A Full, Nonpartisan Investigation," <i>Houston Chronicle</i> , September 25, 2009.	On Tuesday, ACORN announced the hiring of former Massachusetts Attorney General Scott Harshbarger to conduct its own internal investigation.
"For ACORN, Video Is Only Latest Crisis," <i>Washington Post</i> , September 20, 2009.	In a June 2008 report to ACORN, Washington lawyer Elizabeth Kingsley, who conducted an independent review of the group's finances, expressed concern that inadequate documentation of money transfers between ACORN and an allied organization, Project Vote, would make it difficult for either group to respond effectively to questions about whether tax-deductible charitable contributions were used for political purposes. She also noted conflicts created when decision-makers at the tax-exempt entity had roles in political activities carried out by other groups.
"As ACORN's Clout Grew, So Did Its Problems The Group At Center Of Firestorm Is Now To Obama What Halliburton Was To Cheney," <i>Houston Chronicle</i> , September 20, 2009.	[...] ACORN this past week announced an internal investigation into the video scandal and said it won't accept new clients into its housing program in the meantime. ACORN chief executive Bertha Lewis has pledged to "go to whatever lengths necessary to re-establish the public trust." She condemned the actions of the two employees who appeared in the Brooklyn footage, but ACORN also has portrayed segments of the video shot there and in other cities by the hidden-camera couple as manipulated to make it look bad.
"Ex-ACORN Worker Indicted In Voter Fraud Case ACORN Launched Own Inquiry, Gave Results To Election Officials," <i>St. Louis Post-Dispatch</i> , January 6, 2009.	The ACORN regional director, Jeff Ordower, said the organization launched its own internal investigation, then forwarded the results to St. Louis County election officials in September. The group determined that Humphrey violated the group's operating procedures and left because of the internal investigation and before officials there had the chance to fire her.
"King County Looks Into Claims Of '06 Voter-Registration Fraud; Hundreds Of Cards May Have Been Forged - Election Office Publicly Raised Concerns In February," <i>Seattle Times</i> , March 17, 2007.	ACORN has come under scrutiny in several other states for alleged voter-registration irregularities. Four ACORN canvassers were indicted by a federal grand jury in Kansas City late last year. On March 6, ACORN submitted a letter to Maleng's office identifying three workers as suspects after an internal investigation indicated they "collected a substantial number of applications from two homeless shelters in Seattle.

Source	Details
<p>“ACORN Starts To 'Clean Up The Mess' In Its Chapter Here,” <i>St. Louis Post-Dispatch</i>, November 30, 2006.</p>	<p>Right before the Nov. 7 election, federal authorities in Kansas City indicted four ACORN workers on charges of filing false registrations. National ACORN leaders note that they turned in the workers after an internal investigation.</p>
<p>“Late Registration Forms Keep 1,500 From Voting In Primary,” <i>St. Petersburg Times</i>, August 19, 2004.</p>	<p>About 1,500 Hillsborough County residents recruited to vote in the Aug. 31 primary will not be taking part because their registration forms were not turned on time, according to Supervisor of Elections Buddy Johnson. ...</p> <p>"This is the first I've heard of it," Frank Houston, field director for Florida ACORN in its Miami office, said Wednesday. "If there was any mistake committed by us, we obviously apologize to voters."</p> <p>Houston said ACORN, a group established in 1970, plans to contact Johnson's office and investigate the problem.</p>
<p>“Group Fears Ties To Bad Voter Forms Registrations Sent To Attorney General,” <i>Denver Post</i>, August 6, 2004.</p>	<p>A Denver-based community activist group said Thursday it may be responsible for some of the potentially fraudulent voter registration applications being investigated by state prosecutors.</p> <p>"We fear that some of these cards may have been submitted from our office. We are investigating the situation and reviewing our systems to see if this is the case," wrote Betty Wilkins, board chairwoman of Colorado ACORN.</p>
<p>“D.A. Asked To Investigate Vote-Registration Forms / The Acting Board Of Elections Turned Over About 400 Cards With Irregularities From One Grassroots Group,” <i>Philadelphia Inquirer</i>, April 2, 1999.</p>	<p>About one-third of the 1,200 voter-registration cards submitted to the city by a grassroots political group are being turned over to the District Attorney's Office for investigation of possible fraud.</p> <p>ACORN spokesman Stephen Leshinski said the group was "outraged" at the problem and was conducting its own investigation.</p>

Source: LexisNexis Major U.S. Newspapers database.

Table 4. Investigation Requests of ACORN by Members of Congress or Committees

Source	Directed to	Details
<p>Letter to Minnesota State Sen. Ann Rest and State Rep. Michael Beard From Rep. Michelle Bachmann (October 14, 2009) (GalleryWatch)</p>	<p>Wisconsin State Senator & Representative</p>	<p>I am writing to request that the Legislative Audit Commission direct Minnesota's Legislative Auditor, Mr. Jim Nobles, to launch a comprehensive investigation into ACORN and its affiliates located in Minnesota.</p>

Source	Directed to	Details
Letter to Homeland Security Secretary Janet Napolitano From Seven House Homeland Security Republicans (October 9, 2009) (GalleryWatch.com)	Department of Homeland Security, Secretary	We must ensure that our limited homeland security resources are provided to state, local, tribal, and public and private organizations with security expertise and that will use this funding in a manner that most enhances our homeland security. To that end, we would appreciate your response to the following questions.
Letter to Homeland Security Secretary Janet Napolitano From House Oversight and Government Reform Ranking Member Darrell Issa and Senate Homeland Security and Governmental Affairs Ranking Member Susan Collins (October 7, 2009) (GalleryWatch.com)	Department of Homeland Security, Secretary	So Congress can better understand the relationship of ACORN and ACORN affiliated entities with DHS, please provide the following information and documents:
Letter to Homeland Security Inspector General Richard Skinner From House Oversight and Government Reform Ranking Member Darrell Issa and Senate Homeland Security and Governmental Affairs Ranking Member Susan Collins (October 7, 2009) (GalleryWatch.com)	Department of Homeland Security, Inspector General	We ask that you investigate why ACORN, which has no apparent homeland security mission, received funds from your Department.
House Education and Labor Ranking Member Kline Writes Education Secretary Duncan Regarding Information on ACORN Involvement (October 6, 2009) (CQ.com)	Department of Education	I respectfully request specific information from the Department of Education regarding its involvement, if any, with the Association of Community Organizations for Reform Now (ACORN).
House Education and Labor Ranking Member Kline Writes Labor Secretary Solis Regarding Information on ACORN Involvement (October 6, 2009) (CQ.com)	Department of Labor	I respectfully request specific information from the Department of Labor regarding its involvement, if any, with the Association of Community Organizations for Reform Now (ACORN).
House Education and Labor Ranking Member Kline Writes HHS Secretary Sebelius Regarding Information on ACORN Involvement (October 6, 2009) (CQ.com)	Department of Health & Human Services	I respectfully request specific information from the Department of Health and Human Services regarding its involvement, if any, with the Association of Community Organizations for Reform Now (ACORN).

Source	Directed to	Details
Letter to Attorney General Eric Holder From House Judiciary Ranking Member Lamar Smith (October 5, 2009) (GalleryWatch.com)	Department of Justice, Attorney General	I write to express my concern that President Obama's previous advocacy on behalf of and work with the Association of Community Organizations for Reform Now, also known as ACORN, may present a conflict of interest for any Department of Justice consideration of criminal allegations against ACORN. I therefore request that you appoint a Special Counsel to oversee any Department investigation of ACORN.
Letter from House Financial Services Ranking Member Bachus, House Oversight Ranking Member Issa and Judiciary Ranking Member Smith to Financial Institutions Regarding ACORN Funds (Sept. 25, 2009) (CQ.com)	Financial Institutions	We request a full and complete disclosure of funds provided by your corporation to the Association of Community Organizations for Reform Now (ACORN), and any of its subsidiaries and affiliates, including ACORN Housing Corporation.
"Vitter, Reid Trade Barbs On Probes Involving ACORN; They Accuse Each Other Of Political Motives," <i>Times-Picayune</i> , Sept. 24, 2009	Senator Majority Leader Harry Reid	Sen. David Vitter, R-La., joined by 27 other GOP senators, last week asked Senate Majority Leader Harry Reid to direct Senate committee investigations into misconduct allegations against ACORN, the New Orleans-based community activist group.
	Department of Justice, Attorney General	Also Wednesday, Vitter sent a letter to Attorney General Eric Holder suggesting he open an inquiry into ACORN under the Racketeer Influenced and Corrupt Organization statute.

Source	Directed to	Details
House Judiciary Committee Ranking Member Smith, Oversight Committee Ranking Member Issa Write GAO Requesting Investigation into ACORN (Sept. 23, 2009) (CQ.com)	Government Accountability Office, Acting Comptroller General	We write to request that the Government Accountability Office investigate the activities of ACORN, the Association of Community Organizations for Reform Now, to determine whether the organization misused congressionally appropriated funds. We ask that this review include whether such funds were used in support of potentially illegal activity.
House Oversight and Government Reform Ranking Member Issa Writes Judiciary Chairman Conyers Requesting ACORN Hearing (Sept. 23, 2009) (CQ.com)	House Judiciary Committee Chairman Conyers	I request that the Committee on the Judiciary immediately convene a hearing on ACORN ...
House Oversight and Government Reform Ranking Member Issa Writes Chairman Towns Requesting ACORN Hearing (Sept. 23, 2009) (CQ.com)	House Oversight and Government Reform Chairman Edolphus Towns	I request that the Committee on the Judiciary immediately convene a hearing on ACORN ...
"Bachmann Demands End To ACORN Funding; The Conservative Republican Congresswoman Asks The President To Authorize An Investigation Of The Group," <i>Minneapolis Star Tribune</i> , September 23, 2009.	Office of Management and Budget (via President Obama)	In the letter, Bachmann also asked that Obama authorize a formal investigation through the Office of Management and Budget of ACORN and its affiliates.
Letter to the Congressional Research Service from House Judiciary Chairman John Conyers and Financial Services Chairman Barney Frank (Sept. 22, 2009) (GalleryWatch.com)	Congressional Research Service	We are writing to request that the Congressional Research Service (CRS) research and issue a comprehensive report concerning proposed and pending Congressional and other activity relating to the Association of Community Organizations for Reform Now...
House Financial Services Committee Republicans Write HUD Inspector General Regarding ACORN Funding (Sept. 21, 2009) (CQ.com)	Department of Housing & Urban Development, Office of the Inspector General	... [W]e respectfully request that you immediately undertake a thorough and comprehensive audit of its financial activities and use of these funds.

Source	Directed to	Details
House Oversight Ranking Member Issa, Senate Homeland Security and Governmental Affairs Ranking Member Collins Write Corporation for National and Community Service Inspector General Regarding ACORN and Federal Funds (Sept. 16, 2009) (CQ.com)	Corporation for National and Community Service, Inspector General	[W]e are requesting that you review the Corporation's grant-making and AmeriCorps funding (including improper uses of AmeriCorps funds) to ACORN and its affiliates... Additionally, we are requesting that you look into ACORN's alleged failure to comply with the terms of a Corporation or AmeriCorps Vista grant.
House Oversight Ranking Member Issa, Senate Homeland Security and Governmental Affairs Ranking Member Collins Write HUD Inspector General Regarding ACORN and Federal Funds (Sept. 16, 2009) (CQ.com)	Department of Housing and Urban Affairs, Inspector General	[We] are requesting that you review HUD's grants, contracts, entitlements and other forms of assistance to ACORN and its affiliates. ... Additionally, we request that you ensure that ACORN and its affiliates used HUD funds in accordance with the terms of the grant, contract, entitlement or other form of assistance.
House Oversight Ranking Member Issa, Senate Homeland Security and Governmental Affairs Ranking Member Collins Write Small Business Administration Inspector General Regarding ACORN and Federal Funds (Sept. 16, 2009) (CQ.com)	Small Business Administration, Inspector General	[We] are requesting that you review the SBA's grant and loan-making to ACORN and its affiliates. ... Additionally, we request that you ensure that ACORN and its affiliates used SBA funds in accordance with the terms of the grant or loan.
"Without GOP, Baucus Forges Ahead On Health," <i>Boston Globe</i> , September 16, 2009.	Department of Justice, Attorney General	... [Y]esterday, Senator Mike Johanns, a Nebraska Republican, wrote to Attorney General Eric Holder requesting an investigation of ACORN, citing reports that the group may "have been engaged in illegal activity" by aiding and abetting tax evasion, prostitution, human trafficking, fraud, and conspiracy.

Source	Directed to	Details
Letter to President Barack Obama from 150 House Republicans (Sept. 15, 2009) (GalleryWatch.com)	President Barack Obama	We write to you today in the wake of news reports of potentially criminal activity involving associates of the Association of Community Organizations for Reform Now (ACORN) to respectfully request that you use your authority to publicly disclose and terminate all federal funding to ACORN and its affiliates.
House Judiciary Ranking Member Smith Writes FBI Director Mueller Regarding ACORN Investigation (Sept. 15, 2009) (CQ.com)	Department of Justice, Federal Bureau of Investigation	I am writing to encourage the FBI to open an investigation into the Association of Community Organizations for Reform Now, also known as ACORN, including a possible investigation under the Racketeering Influenced Corrupt Organization Act (RICO) as a criminal enterprise.
House Judiciary Ranking Member Smith Writes DOJ Inspector General Regarding ACORN Investigation (Sept. 15, 2009) (CQ.com)	Department of Justice, Inspector General	I am writing to request that your office investigate whether any Department of Justice grant funds have been applied for or received by the Association of Community Organizations for Reform Now, otherwise known as ACORN.
Letters to Senate Banking, Housing and Urban Affairs Chairman Chris Dodd and HUD Inspector General Kenneth Donohue from Sen. Richard Shelby (Sept. 15, 2009) (Gallerywatch.com)	Senate Banking, Housing and Urban Affairs Chairman Chris Dodd	I write to you today to request that you launch an immediate and thorough investigation into the activities of the Association for Community Organizations for Reform Now (ACORN). Specifically, this committee needs to determine if ACORN is acting legally and ethically in the expenditure of taxpayer dollars and whether the organization should continue to be eligible to receive those funds.

Source	Directed to	Details
	Department of Housing and Urban Affairs, Inspector General	I write to you today to request that you launch an immediate and thorough investigation into the activities of the Association for Community Organizations for Reform Now (ACORN). Specifically, I ask that you investigate whether ACORN is acting legally in the expenditure funding it has received from HUD and whether it is maintaining ethical standards throughout the entire organization to determine whether it should maintain its eligibility for these funds.
"ACORN Probe Urged; Bartlett Wants Investigation; Census Cuts Ties With Group," <i>Baltimore Sun</i> , September 12, 2009.	Congress	A Maryland congressman called for an investigation of ACORN after a second video surfaced that appeared to show its employees offering tax advice for criminal activities, but city prosecutors say the surreptitious recordings themselves might have violated state law.... Rep. Roscoe G. Bartlett, a Western Maryland Republican, said Congress should investigate the organization.
House Oversight Ranking Member Issa Writes Labor Secretary Regarding ACORN Investigation (Aug. 11, 2009) (CQ.com)	Department of Labor, Secretary	I am requesting that the DOL, if it has not already done so, begin an audit on ACORN and its affiliates' pension and benefit funds that should be or are filing forms with the Employee Security Benefits Administration ("ESBA"), as well as all labor organizations affiliated with ACORN, including but not limited to Local 100 or Local 880.

Source	Directed to	Details
House Judiciary Leaders Write Attorney General Mukasey and FBI Director Mueller About Attacks on ACORN and Other Voter Registers (Oct. 20, 2008) (CQ.com)	Department of Justice, Federal Bureau of Investigations Department of Justice, Attorney General	We urge the Department to look closely at these incidents, both with regard to its own allocation of investigative resources and with respect to the lawfulness of publicly accusing registered voters of fraud without a sufficient factual basis – if that is what occurred – and the other activities described above.
Senate Judiciary Republicans Write Chairman Leahy Requesting a Hearing on ACORN's Alleged Voter Fraud (Oct. 20, 2008) (CQ.com)	Senate Committee on the Judiciary Chairman Leahy	We write to request that the Judiciary Committee hold a hearing in Washington, D.C. to examine the widespread allegations of voter registration fraud committed by the Association of Community for Reform Now (ACORN).
"Vote Drives Defended, Despite Fake Names," <i>St. Petersburg Times</i> , October 14, 2008.	Department of Justice, Attorney General	This year, 39 members of the House of Representatives have asked Attorney General Michael Mukasey to investigate ACORN.
Sen. Voinovich Writes Attorney General Mukasey Requesting an Investigation into ACORN's Potential Voter Fraud (Oct. 15, 2008) (CQ.com)	Department of Justice, Attorney General	I am writing to request that you work with Secretary Brunner to investigate swiftly any allegations of fraud in Ohio's voter registration process.
Sen. Cornyn Writes Attorney General Mukasey Requesting a Criminal Probe of ACORN (Oct. 14, 2008) (CQ.com)	Department of Justice, Attorney General	... I urge you to launch a nationwide criminal probe into ACORN's voter registration activities.

Source	Directed to	Details
Wisconsin Congressmen Request Wisconsin State Attorney Biskupic Investigate Allegations of ACORN Voting Fraud (Oct. 14, 2008) (CQ.com)	Department of Justice, U.S. Attorney for the E.D. of WI	We respectfully call upon you to be extremely vigilant in investigating and preventing any attempts to unlawfully influence the upcoming Presidential election by ACORN or any other organization that would submit false voter registrations, encourage or engage in voter fraud, or otherwise use illegal means to disrupt this election.
Wisconsin Congressmen Request State Attorney Peterson Investigate Allegations of ACORN Voting Fraud (Oct. 14, 2008) (CQ.com)	Department of Justice, U.S. Attorney for the W.D. of WI	We respectfully call upon you to be extremely vigilant in investigating and preventing any attempts to unlawfully influence the upcoming Presidential election by ACORN or any other organization that would submit false voter registrations, encourage or engage in voter fraud, or otherwise use illegal means to disrupt this election.
Wisconsin Congressmen Request State Attorney General to Investigate Allegations of ACORN Voting Fraud (Oct. 14, 2008) (CQ.com)	State of Wisconsin, Attorney General	We respectfully call upon you to be extremely vigilant in investigating and preventing any attempts to unlawfully influence the upcoming Presidential election by ACORN or any other organization that would submit false voter registrations, encourage or engage in voter fraud, or otherwise use illegal means to disrupt this election.
House Financial Services Committee GOP Members Urge Inquiry on Fannie, Freddie and ACORN (Oct. 14, 2008) (CQ.com)	Senate Committee on Financial Services Chairman Barney Frank	We also request that you schedule immediate hearings in our Committee on the Association of Community Organizations for Reform Now (ACORN) and their alleged abuses of taxpayer dollars including the funding of fraudulent voter registration drives.

Source	Directed to	Details
House Judiciary and House Administration Committee Ranking Members and 4 Former State Secretaries of State Write Attorney General Mukasey About ACORN (Oct. 10, 2008) (CQ.com)	Department of Justice, Attorney General	We urge you to take all active and appropriate measure to ensure that both the Civil rights Division and the Criminal Division look into the actions of ACORN, including any violations of the federal law, and including but not limited to the National Voter Registration Act, the Help America Vote Act or any other civil or criminal laws covered by their alleged fraudulent activities.
39 GOP House Members Write Attorney General Mukasey Urging an Investigation into Whether ACORN is Participating in Criminal Voting Fraud (Sept. 16, 2008) (CQ.com)	Department of Justice, Attorney General	We are writing to request an immediate investigation into whether or not the Association of Community Organizations for Reform Now, or ACORN, is engaging in criminal voting fraud, promoting fraudulent registration, or criminally misusing taxpayer funds.

Source: LexisNexis Major U.S. Newspapers, CQ.com TopDocs and Gallerywatch.com HotDocs databases.



MEMORANDUM

October 30, 2009

To: House Judiciary Committee

Subject: Federal Funding to the Association of Community Organizations for Reform Now (ACORN)

As part of your request for information on the Association of Community Organizations for Reform Now (ACORN), you asked CRS to research federal funding in the last five years to ACORN or organizations affiliated with ACORN. You also asked for a description of all instances where ACORN violated the terms of the federal funding.¹

We contacted Steve Kest, Executive Director of ACORN, to request a list of state chapters of ACORN; organizations which share directors or employees with ACORN; and organizations whose finances are shared or controlled by ACORN. Mr. Kest provided us with the attached list of state chapters. Arthur Z. Schwartz, General Counsel for ACORN, provided a list of affiliated organizations that met all or part of the above criteria, as well as organizations that have been linked to ACORN because they are associated with Wade Rathke (ACORN's former CEO) or Service Employees International Union Local 100, entities affiliated with NY ACORN Housing, Inc., and entities affiliated with ACORN Housing, Inc. A more complete explanation of the list of affiliated organizations can be found in the attached memo from Mr. Schwartz. We researched federal funding awards to all of the organizations named by ACORN, as well as federal funding to "allied" organizations formerly listed on the ACORN Website.²

To identify federal funding that may have been received by ACORN or ACORN affiliates, we have compiled information from publicly available sources. As we discussed, these sources do not include subgrants and may not include all federal grants awarded directly to ACORN or ACORN affiliates. Due to these limitations, this memo may not provide a complete account of federal funding to ACORN or ACORN affiliates in the last five years. **Table 1** presents the results of our search.³ The table lists awards *announced* by federal agencies. Except where noted, CRS did not verify with the agency or the grantee that the funding was actually provided.

¹ For information on restrictions on the activities of federal grant recipients, see CRS Report RL34725, "Political" Activities of Private Recipients of Federal Grants or Contracts by Jack Maskell.

² The organizations listed were: ACORN Institute, WalMart Alliance for Reform Now, ACORN Housing Corporation, ACORN Living Wage Resource Center, KABF Radio, KNON Radio, Project Vote, Service Employees International Union - Local 100, Service Employees International Union - Local 880. Most, but not all, were included in the memo provided by ACORN. ACORN Website on August 22, 2008, accessed on the Internet Archive: <http://web.archive.org/web/20080822090025/www.acorn.org/index.php?id=12375>.

³ Due to the level of interest in this issue, some or all of this information will be used to respond to other congressional requests.

For information on instances in which ACORN violated the terms of federal funding, we searched Inspectors General reports of the Department of Housing and Urban Development (HUD), Department of Homeland Security (DHS) and Department of Justice (DOJ). We did not locate any relevant reports.

A brief discussion of the sources we consulted follows.

USAspending.gov

The Federal Funding Accountability and Transparency Act of 2006 (P.L. 109-282) required the creation of a single searchable website for the public to find information on federal funding awards, including the name of the entity receiving the award, the amount of the award, and the funding agency. The website USAspending.gov was created to provide this information to the public. However, USAspending.gov does not yet provide a complete and accurate account of federal assistance awards. According to the Office of Management and Budget: “data submitted for posting to USAspending.gov in the past has contained duplicates, missing transactions and data elements, and other data quality problems.”⁴ USAspending.gov data on grants, loans, insurance, and direct subsidies comes from the Federal Assistance Award Data System (FAADS). FAADS is a repository of data on federal financial assistance award transactions made by 33 federal agencies covering about 600 assistance programs. In addition to data quality problems, “funds reported in FAADS may differ from those reported in various accounting or finance systems. Some differences are due to agency reporting practices, while others result from differences in effective reporting dates or interpretations of definitions and requirements.”⁵

For our research, we used USAspending.gov to identify federal agencies and programs that may have awarded funding to ACORN or ACORN affiliates. However, the award information presented in **Table 1** is based on federal agency award announcements rather than award transactions from USAspending.gov.

Federal Register

Section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 requires the Department of Housing and Urban Development (HUD) to announce grant awards in the *Federal Register*.⁶ We searched the *Federal Register* for grants awarded by HUD to ACORN, its state chapters, and organizations listed in the ACORN general counsel list, and allied organizations listed on the ACORN Website. **Table 1** lists awards made with FY2005-FY2009 funds.

Federal Agency Websites

We also conducted general searches of federal agency websites. We performed additional searches on the websites of federal agencies cited in media reports as providing funding to ACORN, including the

⁴ Guidance on Data Submission under the Federal Funding Accountability and Transparency Act (FFATA) (OMB, June 2009). http://www.whitehouse.gov/omb/assets/memoranda_fy2009/m09-19.pdf

⁵ *Federal Assistance Award Data System Users' Guide for Federal FY2008*. (U. S. Census Bureau, March 2009) <http://ftp2.census.gov/govs/faads/guide2008.pdf>

⁶ This requirement applies to grants made directly by HUD. Recipients of HUD funding may choose to subgrant funds to other entities and those subgrants are not reflected in the *Federal Register*.

Department of Justice, the Environmental Protection Agency, and the Department of Homeland Security and HUD.

Congressional Quarterly

To identify congressionally directed funding to ACORN or organizations affiliated with ACORN that may have been included in appropriations conference reports, we searched Congressional Quarterly's database of committee reports. CQ's database allows searching in committee report tables, which often include information on congressionally directed funding.

Table I. Selected Federal Funding to ACORN and its Related Organizations
FY2005-FY2009

Recipient Name	Recipient Location	Agency	Program	Amount	Funding Year	CFDA Number	Source
ACORN Associates	Albuquerque, NM	HUD	Fair Housing Initiatives Program (Education and Outreach General Component)	\$99,974	FY2008	14.408	HUD Website
New York Agency for Community Affairs	Nassau County, NY	HUD	Fair Housing Initiatives Program (Education and Outreach General Component)	\$99,427	FY2008	14.408	HUD Website
ACORN Housing Corporation	Philadelphia, PA	HUD	Housing Counseling Program (Comprehensive)	\$1,623,570	FY2008	14.169	HUD press release
ACORN Housing Corporation	National ^a	Neighborworks ^b	National Foreclosure Mitigation Counseling Program (Legal Assistance)	\$1,200,000	FY2008	n/a	Neighborworks Website
ACORN Housing Corporation	National ^{Error! Reference source not found.}	Neighborworks ^b	National Foreclosure Mitigation Counseling Program (Counseling)	\$16,000,000	FY2008	n/a	Neighborworks Website
ACORN Housing Corporation	National ^a	Neighborworks ^b	National Foreclosure Mitigation Counseling Program (Counseling)	\$7,850,939	FY2008	n/a	Neighborworks Website
ACORN Institute	New Orleans, LA	FEMA	Fire Prevention and Safety Grants	\$997,402 ^c	FY2008	97.044	FEMA Website
ACORN Housing Corporation	Saint Paul, MN	HUD	Fair Housing Initiatives Program (Education and Outreach General Component)	\$100,000	FY2007	14.408	72 FR 65345
New Mexico ACORN Fair Housing	Albuquerque, NM	HUD	Fair Housing Initiatives Program (Education and Outreach General Component)	\$ 99,757	FY2007	14.408	72 FR 65345
American Institute for Social Justice	Denver, CO	HUD	Fair Housing Initiatives Program (Education and Outreach General Component)	\$99,887	FY2007	14.408	HUD Website
Arkansas Community Housing Corporation	Little Rock, AR	HUD	Fair Housing Initiatives Program (Education and Outreach General Component)	\$99,948	FY2007	14.408	HUD Website
ACORN Housing Corporation	Philadelphia, PA	HUD	Housing Counseling Program (Comprehensive)	\$1,628,829	FY2007	14.169	73 FR 16036
ACORN Institute	Washington, DC	HUD	Resident Opportunities for Self Sufficiency (Family and Homeownership Program)	\$124,324	FY2007	14.870 ^d	73 FR 66665

Recipient Name	Recipient Location	Agency	Program	Amount	Funding Year	CFDA Number	Source
ACORN Tenant Union Tenant Organizing Project	Las Vegas, NV	HUD	Resident Opportunities for Self Sufficiency (Family and Homeownership Program)	\$124,965	FY2007	14.870	73 FR 66665
ACORN Institute	Columbus, OH	HUD	Resident Opportunities for Self Sufficiency (Family and Homeownership Program)	\$189,171	FY2007	14.870	73 FR 66665
ACORN Institute	New Orleans, LA	DHS	Fire Prevention and Safety Grants	\$450,484	FY2007	97.044	FEMA Website
ACORN Fair Housing, A Project for the American Institute for Social Justice ^e	Washington, DC	HUD	Fair Housing Initiatives Program (Education and Outreach Initiative/General Component)	\$99,080	FY2006	14.408	72 FR 2001
New Mexico ACORN Fair Housing	Albuquerque, NM	HUD	Fair Housing Initiatives Program (Education and Outreach Initiative/General Component)	\$99,724	FY2006	14.408	72 FR 2001
American Environmental Justice Project	Baltimore, MD	HUD	Fair Housing Initiatives Program (Education and Outreach Initiative/General Component)	\$99,716	FY2006	14.408	HUD Website
ACORN Associates	Albuquerque, NM	HUD	Fair Housing Initiatives Program (Education and Outreach Initiative/Subprime Lending Component)	\$49,997	FY2006	14.408	72 FR 2001
Louisiana ACORN Fair Housing Organization, A Project of ACORN Community Land Association	New Orleans, LA	HUD	Fair Housing Initiatives Program (Education and Outreach Initiative/ Fair Housing Awareness Component)	\$100,000	FY2006	14.408	72 FR 2001
ACORN Housing Corporation	Philadelphia, PA	HUD	Housing Counseling Program (Comprehensive Counseling)	\$1,821,596	FY2006	14.169	73 FR 12189
ACORN Institute	Dallas, TX	HUD	Resident Opportunities and Self-Sufficiency (Family and Homeownership Program)	\$179,916	FY2006	14.870	72 FR 74320
ACORN Institute	Dallas, TX	HUD	Resident Opportunities and Self-Sufficiency (Family and Homeownership Program)	\$124,915	FY2006	14.870	72 FR 74320

Recipient Name	Recipient Location	Agency	Program	Amount	Funding Year	CFDA Number	Source
ACORN Institute	Dallas, TX	HUD	Resident Opportunities and Self-Sufficiency (Family and Homeownership Program)	\$124,693	FY2006	14.870	72 FR 74320
Project Vote	New Castle County, DE	U.S. Election Assistance Commission (EAC)	Help America Vote College Poll Worker Program	\$16,876	FY2006	90.400	EAC Website
ACORN Housing	St. Paul, MN	HUD	Fair Housing Initiatives Program (Education and Outreach Initiative)	\$100,000	FY2005	14.408	70 FR 73785
ACORN Institute	Dallas, TX	HUD	Fair Housing Initiatives Program (Education and Outreach Initiative)	\$96,953	FY2005	14.408	70 FR 73785
Arkansas Community Housing Corporation	Little Rock, AR	HUD	Fair Housing Initiatives Program (Education and Outreach Initiative)	\$100,000	FY2005	14.408	HUD Website
Missouri Tax Justice Research Project	St. Louis, MO	HUD	Fair Housing Initiatives Program (Education and Outreach Initiative)	\$100,000	FY2005	14.408	70 FR 73785
American Institute for Social Justice	Washington, DC	HUD	Fair Housing Initiatives Program (Education and Outreach Initiative/Homeownership Component)	\$100,000	FY2005	14.408	70 FR 73785
ACORN Housing Corporation	Philadelphia, PA	HUD	Housing Counseling Program (Comprehensive Counseling)	\$1,197,255	FY2005	14.169	71 FR 14236
ACORN Housing Corporation	Philadelphia, PA	HUD	Housing Counseling Program (Colonias)	\$78,354	FY2005	14.169	71 FR 14236
ACORN Housing Corporation	Philadelphia, PA	HUD	Housing Counseling Program (Predatory Lending)	\$323,439	FY2005	14.169	71 FR 14236
ACORN Housing Corporation	Philadelphia, PA	HUD	Housing Counseling Program (Homeownership Voucher)	\$275,000	FY2005	14.169	71 FR 14236
ACORN Associates	New Orleans, LA	HUD	Operation Lead Elimination Action Program	\$1,999,920	FY2005	14.903	71 FR 34384
ACORN Institute	Washington, DC	HUD	Resident Opportunities and Self Sufficiency (Resident Service Delivery Models—Family)	\$362,378	FY2005	14.870	73 FR 4891
ACORN Housing Corporation	Illinois	HUD	Self-Help Homeownership Opportunity Program	\$527,000	FY2005	14.247	71 FR 51207

Recipient Name	Recipient Location	Agency	Program	Amount	Funding Year	CFDA Number	Source
NY ACORN programs ^f	Brooklyn, NY	DOJ	Juvenile Justice Programs (congressionally directed funding)	\$140,000	FY2005	16.541	H.Rept. 108-792

Sources: *Federal Register*, HUD Website, EAC Website, FEMA Website, Neighborworks America, H. Rept. 108-792, *Catalog of Federal Domestic Assistance*.

Notes:

- a. A list of the locations of expected subgrantees for the February 2008 awards is available at http://www.nw.org/network/nfmcpc/documents/ProjectedRevised_LocationofNFMCAwardeesandSubGrantees.pdf; locations of expected subgrantees for the December 2008 awards is at: <http://www.nw.org/network/nfmcpc/documents/RD2DetailedStateProfileSummaryReport1201608.pdf>.
- b. The National Foreclosure Mitigation Counseling Program was created by the Consolidated Appropriations Act of 2008 (P.L. 110-161) in December 2007. The legislation appropriated \$180 million for the program and named NeighborWorks America to act as the administrator. An additional \$180 million was appropriated for the program through the Housing and Economic Recovery Act of 2008 (P.L. 110-289), including \$30 million for legal assistance. The Omnibus Appropriations Act of 2009 (P.L. 111-8) appropriated \$50 million for NFMCA.
- c. This award was announced just prior to the passage of the Continuing Resolution Appropriations Resolution (CR, P.L. 111-68) which included a provision prohibiting federal funding under the CR or “any prior Act” to ACORN or “any of its affiliates, subsidiaries, or allied organizations.” According to FEMA, no grant was awarded and the grant will not be restored when the CR expires on October 31, 2009.
- d. In FY2008, Resident Opportunities and Self Sufficiency (ROSS)-Family & Homeownership and ROSS-Elderly/Persons with Disabilities were combined into one ROSS-Service Coordinators program.
- e. Listed as American Institute for Social Justice in the *Federal Register*.
- f. USASpending.gov lists this award to N.Y Agency For Community Affairs, an organization included in the affiliates list provided by ACORN. Location information is from USASpending.gov



Memorandum

October 9, 2009

SUBJECT: Allegations of Recording Conversations With Various ACORN Affiliated Individuals Without Their Consent: Implications Under Various Federal and State Laws Relating to the Interception of Oral Communications

FROM: American Law Division

This is in response to requests concerning the implications under federal and state interception laws of the alleged video and audio taping of various ACORN affiliated individuals without their consent in Washington, D.C., New York City, Baltimore, San Bernardino and San Diego.

As a general matter, federal law permits private individuals to record face to face conversations, as long as the recording is not done for criminal or tortious purposes. New York law seems even more forgiving, for it only reaches those who record remotely. The laws of the District of Columbia mirror federal law prior to the 1986 amendments to the federal statute. D.C. law permits one-party consent recordings, although the consequences of the want of complete symmetry with federal provisions are unclear. In contrast, the laws of Maryland and California appear to ban private recording of face to face conversations, absent the consent of all of the participants.

Federal Law

The Electronic Communications Privacy Act (ECPA), in 18 U.S.C. ch. 119, prohibits:

- the intentional interception of wire, oral, or electronic communications, 18 U.S.C. 2511(1)(a);
- the intentional interception of an electronic, mechanical, or other device to intercept an oral communication under any of a variety of jurisdictional circumstances, 18 U.S.C. 2511(1)(b);
- the intentional disclosure of information, knowing or having reason to know that the information was through an interception proscribed in paragraph 2511(1)(a) or (b), 18 U.S.C. 2511(1)(c);
- the intentional use of information, knowing or having reason to know that the information was through an interception proscribed in paragraph 2511(1)(a) or (b), 18 U.S.C. 2511(1)(d).

The mental element is the same for each offense. The accused must be shown to have engaged in the proscribed conduct, consciously, purposely, rather than inadvertently, S.Rept. 99-541, at 23 (1986); *In re Pharmatruk, Inc.*, 329 F.3d 9, 23 (1st Cir. 2003). He need not, however, be shown to have known that his conduct was unlawful, *Narducci v. Village of Bellwood*, 444 F.Supp.2d 924, 935 (N.D.Ill. 2006). “Interception” as used in section 2511(1) means the “aural or other acquisition of the contents of a wire, oral, or electronic communication through the use of any electronic, mechanical, or other device,” 18 U.S.C. 2510(4). Although section 2511 does not reach silent video taping, *Doe v. Smith*, 429 F.3d 706, 709 (7th Cir. 2005), the courts have regularly concluded that video taping together with audio taping implicates the section, *United States v. Shryock*, 342 F.3d 948, 977 (9th Cir. 2003); *Pitts Sales, Inc. v. King World Productions, Inc.*, 383 F.Supp.2d 1354, 1357-358 (S.D.Fla., 2005). Yet, the section only applies to the interception of those oral communications “uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation,” 18 U.S.C. 2510(2). Thus for example, it has no application to the taping of a conversation held on a public street that might easily be overheard by passers by, S. Rept. 90-1097, at 90 (1968).

The ban on intentional interception under section 2511(1)(b) only applies in the presence of certain jurisdictional circumstances. One such circumstance occurs when the accused knows or has reason to know that the device has been transported in interstate or foreign commerce, 18 U.S.C. 2511(1)(b)(iii). Another occurs when the use takes place on the premises of a business whose operations affect interstate or foreign commerce, 18 U.S.C. 2511(1)(b)(iv); a third when the use occurs in the District of Columbia, 18 U.S.C. 2511(1)(b)(v).

Violations of section 2511 are punishable by fine and/or imprisonment, 18 U.S.C. 2511(4), and subject offenders to civil liability, 18 U.S.C. 2520. The results of an interception may not be introduced in evidence in federal proceedings if its disclosure would be a violation of chapter 119.

Section 2511(2) creates several other exceptions to prohibitions of section 2511(1). For example, it is not unlawful under chapter 119 for an individual acting under color of law to intercept an oral communication with the consent of one of the parties to the conversation, 18 U.S.C. 2511(2)(c). Nor is it unlawful under chapter 119 for an individual not acting under color of law to intercept an oral communication with the consent of one of the parties to the conversation, as long as the purpose of the interception is not “criminal or tortious,” 18 U.S.C. 2511(2)(d). This second consent exception remains in play as long as the purpose for interception is neither criminal nor tortious, even if recording without the consent of all parties to the conversation is itself a crime or a tort under state law, *Sussman v. American Broadcasting Cos.* 186 F.3d 1200, 1201-203 (9th Cir. 1999); *In re Doubleclick Inc. Privacy Litigation*, 154 F.Supp.2d 497, 515-19 (S.D.N.Y. 2001)(collecting cases in accord).

The allegations concerning recording the conversation with ACORN affiliated individuals without their consent and subsequently disclosing the results seem to describe violations, at a minimum, of 18 U.S.C. 2511(1)(a), (b), and (c). Yet, they also seem to qualify for the one party consent exception of 18 U.S.C. 2511(2)(d), meaning the alleged conduct would not be considered unlawful under ECPA.

The elements of a section 2511(1)(a) violation are: (1) intentionally, (2) acquiring, (3) by means of an electronic, mechanical, or other device, (4) the content of an oral communication, uttered under circumstances objectively and subjective justifying an expectation of privacy.

The media accounts of the alleged ACORN taping do not suggest that the taping was done inadvertently.¹ In fact, they suggest just the opposite. They indicate that the taping captured, by means of a recording device, the content of face to face conversations with ACORN affiliated individuals in five cities. They describe the conversations as occurring in various offices under circumstances which, without more specific information, seem to indicate that the participants might reasonably have expected the conversations to be private.

Section 2511(b) is a replica of section 2511(a) with jurisdictional elements added. Evidence sufficient to prove a violation of section 2511(a) should be sufficient to prove a violation of 2511(b), provided at least one of the jurisdiction factors can be established as well. Congress enacted the section 2511(b) alternative out of an abundance of caution. The legislative authority to enact a federal interception proscription rests on two possible foundations. The committee report accompanying enactment pointed to Congress's authority under section 5 of the Fourteenth Amendment (legislation to enforce the due process clause of that Amendment, including the right to free of unreasonable governmental searches and seizures), S.Rept.No. 90-1097, at 92 (1968). The findings which introduce section 2511 also point to commerce clause grounds, U.S. Const. Art. I, §8, cls.3, 17. They conclude that interstate commerce facilitated the manufacture and sale of interception devices and that the use of evidence derived from intercepted communications had an impact on federal judicial and administrative proceedings and upon litigants whose activities affected interstate commerce, 82 Stat. 211 (1968).

Congress acknowledged, however, that the application of the section "could in some cases lead to a constitutional challenge that can be avoided by a clear statutory specification of an alternative constitutional basis for the prohibition," S.Rept.No. 90-1097, at 92. The Department of Justice recommends that its prosecutors use section 2511(1)(b) alternative for the same reason, U.S. Department of Justice, CRIMINAL RESOURCE MANUAL §1050.

In the case of the alleged ACORN interceptions if the same interception devices were used in the interviews in each of the three states and the District of Columbia, there would seem to be little doubt that the recording devices were known to have been transported in interstate commerce as section 2511(1)(b)(iii) requires. Moreover, the ACORN offices are likely to qualify as the "premises of business or other commercial establishments the operations of which affect interstate or foreign commerce," as required in section 2511(1)(b)(iv). Finally, the requirements of section 2511(1)(b)(v) are satisfied when an interception occurs within the District of Columbia.

The purported ACORN recordings have been shared widely with the media and their content has been widely reported, which suggests a violation of section 2511(1)(c). The First Amendment limits the reach of section 2511(1)(c) because "a stranger's illegal conduct does not suffice to remove the First Amendment shield from speech about a matter of public concern," *Bartnicki v. Vopper*, 532 U.S. 514, 535 (2001). *Bartnicki*, however, stopped well short of declaring that the First Amendment shields from a disclosure proscription one who unlawfully records a matter of public interest, *id.* at 532 n.19 (quoting from *Bransburg v. Hayes*, 408 U.S. 665, 691 (1972), the observation that, "[a]lthough . . . private wiretapping could provide newsworthy information, neither reporter nor source is immune from conviction for such conduct, whatever the impact on the flow of news").

¹ *E.g.*, Breitbard, *Planting Seeds: The Politicized Art of ACORN*, WASHINGTON TIMES A4 (Sept. 21, 2009); Fears & Leonnig, *Due in ACORN Videos Say Effort Was Independent*, WASHINGTON POST (Sept. 18, 2009).

Be that as it may, the one-party consent provision of section 2511(2)(d) seems to negate any prospect of liability under sections 2511(1)(a), (b), (c), or any other chapter 119 section for the purported ACORN recordings – unless it can be shown that they were recorded for criminal or tortious purposes. Section 2511(2)(d) declares that it shall not be unlawful under ECPA to intercept an oral communication with the consent of a party unless the purpose for the interception is criminal or tortious. The purpose of the alleged ACORN recordings appears to have been neither criminal nor tortious, but rather for the purpose of public disclosure of matters arguably of public concern. On the other hand, the section 2511(2)(d) shield is no longer available should it develop that the purpose – rather than the means or result – of the recording was tortious under state law. The possible theories, which for various reasons seem remote without further evidence, include intentional infliction of emotional distress,² interference with a prospective economic advantage,³ and publicly displaying private matters in a false light.⁴

Chapter 119 anticipates corresponding provisions in state law, S.Rept.No. 90-1097, at 93 (1968). Consequently federal law aside, those alleged to have recorded their conversations with ACORN affiliated personnel in the District of Columbia, New York, Maryland, and California may incur liability under the laws of those jurisdictions.

² “The tort has four elements: (i) extreme and outrageous conduct; (ii) intent to cause, or disregard of a substantial probability of causing, severe emotional distress; (iii) a causal connection between the conduct and injury; and (iv) severe emotional distress,” *Howell v. New York Post Co., Inc.*, 81 N.Y.2d 115, 123, 612 N.E.2d 699, 703, 596 N.Y.S.2d 350, 354 (1993). The law in California, the District of Columbia, and Maryland is comparable, *Ess v. Eskaton Properties, Inc.*, 97 Cal.App.4th 120, 129, 118 Cal.Rptr. 2d 240, 247 (2002); *Hill v. Medlantic Health Care Group*, 933 A.2d 314 (D.C.App. 2007); *Mitchell v. Baltimore Sun Co.*, 164 Md.App. 497, 525, 883 A.2d 1008, 1024 (2005).

³ “To prevail on a claim for tortious interference with prospective economic advantage, a plaintiff must show: (1) the existence of an established business relationship or expectancy, (2) knowledge of the relationship or expectancy on the part of the interferor, (3) intentional interference inducing or causing a breach or termination of the relationship or expectancy, and (4) resultant damage, *Bannum, Inc. v. Citizens for a Safe Ward Five, Inc.*, 383 F.Supp.2d 32, 45 (D.D.C. 2005); the law in Maryland, New York, California is comparable, *Volcjak v. Washington County Hospital Ass’n*, 124 Md.App. 481, 512, 723 A.2d 463, 479 (1999); *Kirch v. Liberty Media Corp.*, 449 F.3d 388, 400 (2d Cir. 2006); *Sybersound Records, Inc. v. UAV Corp.*, 517 F.3d 1137, (9th Cir. 2008).

⁴ “Under Maryland law: One who gives publicity to a matter concerning another that places the other before the public in a false light is subject to liability to the other for invasion of privacy, if (a) the false light in which the other person was placed would be highly offensive to a reasonable person, and (b) the actor had knowledge of or acted in reckless disregard as to the falsity of the publicized matter and the false light in which the other would be placed,” *Ostrzenski v. Seigel*, 177 F.3d 245, 252 (4th Cir. 1999); the law in California and the District of Columbia is comparable, *Solano v. Playgirl, Inc.*, 292 F.3d 1078, 1082 (9th Cir. 2002); *Jankovic v. International Crisis Group*, 494 F.3d 1080, 1092(D.C.Cir. 2007). New York does not recognize a common law false light cause of action, *Howell v. New York Post Co., Inc.*, 81 N.Y.2d 115, 123, 612 N.E.2d 699, 703, 596 N.Y.S.2d 350, 354 (1993).

District of Columbia

Interception law of the District of Columbia is patterned after federal law, although some of the 1986 federal amendments to chapter 119 have no counterpart in the District law. Section of 23-542 of the D.C. Code makes it a crime to willfully intercept any oral communication or to willfully disclose the contents of any oral communication knowing that it was acquired through such an interception, D.C. CODE §23-542(a)(1), (2). The term “interception” is defined as “aural acquisition of the contents of any . . . oral communication through the use” of a “electronic, mechanical, or other device. . . .” D.C. CODE §23-541(3), (4). An “oral communication” is one “uttered by a person exhibiting an expectation that the communication is not subject to interception under circumstances justifying the expectation,” D.C. CODE §23-541(2). Those who violate the statute’s proscriptions face fines, imprisonment, and civil liability, D.C. CODE §§23-541(a), 23-554.

D.C. law features a one-party consent exception for persons acting under color of law, D.C. CODE §23-542(2); and – unless the interception is committed for criminal, tortious, or other injurious purpose – a one-party consent exception for persons not acting under color of law, D.C. CODE §23-542(3).

In three instances, D.C. law reads as did federal law prior to the 1986 amendments. Those amendments (1) expanded the definition of interception from “aural acquisition” to “aural or other acquisition” of the contents of a communication; (2) changed the mental element in the interception proscriptions from willfully to intentionally; and (3) dropped the reference to “other injurious acts” from the disqualification clause of the private one-party consent exception.

The phrase “other acquisition” added to the definition in 1986 reflects the expansion of federal interception law to cover electronic and other nonverbal communications in addition to pre-existing coverage of telephone and face to face conversations, S.Rept. 99-541, at 13. Before the amendments, “aural acquisition” was understood to include surreptitiously recording private face to face conversations, *United States v. Turk*, 526 F.2d 654, 657 (5th Cir. 1976). Therefore, the absence of a corresponding amendment in D.C. law would seem to be of little consequence for purposes of the alleged ACORN taping.

The difference between willful and intentional, on the other hand, might be significant. Under 18 U.S.C. 2511(1)(a), (b), and (c), as they were originally enacted, interceptions were condemned if they were committed with a “willful” state of mind, 18 U.S.C. 2511(1)(1984 ed.). Some courts understood the term to require proof that the defendant had acted with a bad or evil motive, *United States v. McIntyre*, 582 F.2d 1221, 1225 (9th Cir. 1978); others that he had intentionally or recklessly violated a legal obligation, *Malouche v. JH Management Co., Inc.*, 839 F.2d 1024, 1026 (4th Cir. 1988). Congress changed “willfully” to “intentionally” to quell the confusion and make it clear that violation required no more than that the defendant intercepted or disclosed purposely rather than inadvertently, S.Rept.No. 99-541, at 23-4 (1986). The new standard is clearly less demanding than its predecessor.

Faced with a similar dilemma under Maryland law, the court there declared “an interception . . . is done willfully if it is done intentionally - purposely. That excludes interceptions arising from inadvertence or simple negligence. . . .” *Deibler v. State*, 365 Md. 185, 199, 776 A.2d 657, 665 (2001). It remains to be seen how the courts in the District would react.

Finally, Congress modified section 2511(2)(d) by dropping the phrase “or other injurious act” from the disqualification clause in the private (not under color of law) one-party consent exception. The phrase had originally been added to section 2511(2)(d) during floor debate where it had been described as an attempt to remove from the one-party consent exception instances when the purpose for an interception was to blackmail, threaten, or embarrass the speaker, 114 *Cong. Rec.* 14694 (1968). The “injurious act” phrase in section 2511(2)(d) posed three related problems: (1) its precise meaning was unclear, *Meredith v. Gavin*, 446 F.2d 794, 799 (8th Cir. 1971); (2) it could be construed to chill the exercise of First Amendment rights, S.Rept.No. 99-541, at 17 (1986); and (3) at least one court considered it unconstitutionally vague, *Boddie v. American Broadcasting Cos.*, 881 F.3d 267, 270-72 (6th Cir. 1989). The meaning of the phrase within the D.C. statute is no more certain than it was in the original.

New York

New York’s eavesdropping statute outlaws “unlawfully engaging in wiretapping, mechanical overhearing of a conversation, or intercepting or accessing of an electronic communication,” N.Y. PENAL LAW §250.05. The statute only covers recording a face to face conversation when it involves mechanically overhearing a conversation. “Mechanical overhearing of a conversation” encompasses only “the intentional overhearing or recording of a conversation or discussion, without the consent of at least one party thereto, by a person not present thereat, by means of any instrument, device or equipment,” N.Y. PENAL LAW §250.00[1.].

The purported New York taping of ACORN affiliated personnel reportedly involved the consent of at least one party to the conversation and was recorded by a person “present thereat.”

Maryland

The Maryland Wiretap Act is modeled after the federal statute, *Schmerling v. Injured Workers’ Insurance Fund*, 368 Md. 434, 446, 795 A.2d 715, 721 (2002). It makes it unlawful (1) to “willfully intercept . . . any . . . oral . . . communication;” or (2) to “willfully disclose . . . the contents of any . . . oral communication, knowing . . . that the information was obtained through the interception of a . . . oral . . . communication . . . violation of” the Maryland Wiretap Act; or (3) to “willfully use . . . the contents of any . . . oral . . . communication, knowing that the information was” so obtained, MD. CODE ANN., CTS. & JUD. PROC. §10-402(a)(1), (2), (3). Violations are punishable by fine and/or imprisonment, MD. CODE ANN., CTS. & JUD. PROC. §10-402(d); and evidence secured in violation of section 10-402 is of limited admissibility, MD. CODE ANN., CTS. & JUD. PROC. §10-405. Offenders are subject to civil liability, as well, MD. CODE ANN., CTS. & JUD. PROC. §10-410.

Maryland defines an oral communication as “any conversation or words spoken to or by any person in private conversation,” MD. CODE ANN., CTS. & JUD. PROC. §10-401(2)(i). “When an oral communication is intercepted, determining whether a violation of the Wiretap Act occurred hinges on a jury determination that at least one of the parties had a reasonable expectation of privacy,” *Fearnow v. C & P Telephone Co.*, 342 Md. 363, 376, 676 A.2d 65, 71 (1996). When an individual shouts loudly enough to be heard in an adjacent apartment, his shouts do not constitute an oral communication; nor does recording them constitute an interception in violation of the Wiretap Act, *Malpas v. State*, 116 Md.App. 69, 83-4, 695 A.2d 588, 595 (1997).

“For purposes of §10-402(a) . . . an interception . . . is done willfully if it is done intentionally - purposely. That excludes interceptions arising from inadvertence or simple negligence. . . .” *Deibler v. State*, 365 Md. 185, 199, 776 A.2d 657, 665 (2001). Like federal law, the use of silent video is not a violation of the Maryland Wiretap Act, *Ricks v. State*, 312 Md. 11, 24, 537 A.2d 612, 618 (1988). Maryland law permits interception during the course of a law enforcement investigation of certain crimes with the consent of one party to the conversation in some instances, MD. CODE ANN., CTS. & JUD. PROC. §10-402(c)(2). Otherwise, unlike federal law, it permits interception of oral communications only with the consent of all of the parties to the conversation, MD. CODE ANN., CTS. & JUD. PROC. §10-402(c)(3); *Miles v. State*, 365 Md. 488, 508, 781 A.2d 787, 798 (2001).

California

Section 632 of the California Penal Code makes it a crime to eavesdrop upon or record a confidential communication, intentionally, without the consent of all the parties to the communication, and by means of an electronic amplifying or recording device. Section 632 describes “confidential communications” to include those “carried on in circumstances as may reasonably indicate that any party to the communication desires it to be confined to the parties thereto, but excludes a communication made in a public gathering or . . . proceeding. . . or in any other circumstance in which the parties to the communication may reasonably expect that the communication may be overheard or recorded,” CAL.PENAL CODE §632(c). The California statute does not prohibit subsequent disclosure of an unlawfully recorded confidential communication, *Lieberman v. KCOP Television, Inc.*, 110 Cal.App.4th 156, 167, 1 Cal.Rptr.3d 536, 543 (2003). A communication does not lose its confidential character, however, even if the party (who reasonably believes the conversation will not be overheard or recorded) expects that the content of the conversation may subsequently be disclosed, *Flanagan v. Flanagan*, 27 Cal.4th 766, 774-75, 41 P.3d 575, 580-81, 117 Cal.Rptr.2d 574, 580 (2002).

For purposes of section 632, “recording of a confidential conversation is intentional if the person using the recording equipment does so with the purpose or desire of recording a confidential conversation . . .” *Marich v. MGM/UA Telecommunications, Inc.*, 113 Cal.App.4th 415, 421, 7 Cal.Rptr.3d 60, 64 (2003).

Violations of section 632 are punishable by fine and/or imprisonment, CAL.PENAL CODE §632(a). Evidence secured in violation of the section is inadmissible in state proceedings except as evidence of a violation, CAL.PENAL CODE §632(d). Victims are entitled to the greater of actual or statutory damages and injunctive relief, CAL.PENAL CODE §637.2.

In a situation roughly comparable to the purported records of ACORN personnel, the court concluded the plaintiff had made a prima facie case for violation of section 632. *Lieberman v. KCOP Television, Inc.*, 110 Cal.App.4th 156, 169, 1 Cal.Rptr.3d 536, 545 (2003).

In summary, as a general matter federal law permits private individuals to record face to face conversations, as long as the recording is not done for criminal or tortious purposes. New York law seems even more forgiving, for it only reaches those who record remotely. The laws of the District of Columbia mirror federal law prior to the 1986 amendments to the federal statute. D.C. law permits one-party consent recordings, although the consequences of the want of complete symmetry with federal provisions are unclear. In contrast, the laws

of Maryland and California appear to ban private recording of face to face conversations, absent the consent of all of the participants.



TRANSMITTAL

October 30, 2009

To: House Judiciary Committee

Subject: ACORN Activities Concerning Housing

As part of your request on the Association of Community Organizations for Reform Now (ACORN), you asked CRS to research ACORN's activities to promote affordable housing and assist the homeless in the last five years. As we discussed, there has been no independent and rigorous evaluation of the effectiveness of ACORN's affordable housing activities. In light of this lack of information, we agreed to limit our research to finding examples of ACORN's activities to promote affordable housing and assist the homeless. CRS conducted a literature review to identify scholarly resources, congressional hearings, media reports, and ACORN's statements regarding its housing-related activities. CRS has not verified any of the information included in these reports. We also identified information on recent evaluations of federal programs that have provided funding to ACORN, although these evaluations are not specific to ACORN projects.

Summary of Search Results

Based on the materials retrieved by our search, ACORN and its affiliated organizations have been involved in a number of affordable housing related activities.

In terms of promoting the development of affordable housing, ACORN has been involved in advocating for the production of affordable housing units. According to ACORN's most recent annual report¹, in 2006, ACORN Housing Corporation's (AHC) development program secured over \$140 million in construction financing to develop 735 new units of affordable housing in Houston, Phoenix, Chicago, and New York. According to news reports, ACORN has lobbied municipal governments to require private developers to build more affordable housing units and to reform local affordable housing programs. We also located reports of ACORN activities related to improving housing conditions, including organizing tenants to demand repairs and conducting lead-paint outreach programs.

AHC has been involved in providing housing counseling services to prospective homebuyers and troubled homeowners. In 2006, AHC reported counseling 13,738 first-time homeowners and refinancing 1,474

¹ Association of Community Organizations for Reform Now. *2006 Annual Report*, http://acorn.org/usfiles/2006_Annual_Report.pdf. We contacted ACORN Housing Corporation for more current statistics but have not received a response.

homeowners into more affordable mortgages.² ACORN has also been involved in efforts to combat lending practices that it deems abusive. Activities included publishing reports analyzing mortgage lending patterns across the country and protesting the practices of specific lenders.

ACORN also appears to have been very involved in housing activities in the Gulf Coast following Hurricane Katrina. ACORN reports assisting in the clean-up of 1,850 homes and organizing 10,000 hurricane survivors into the ACORN Katrina Survivors Association.³ ACORN sued the Federal Emergency Management Agency (FEMA) on behalf of several thousand Hurricane Katrina and Rita evacuees to continue short-term housing assistance the evacuees had been receiving under the Stafford Act. And, in partnership with several academic institutions, ACORN and AHC developed policy recommendations on rebuilding New Orleans.

Our search did not identify information on activities related specifically to homelessness.

Bibliography of Search Results

This bibliography contains the results of our searches. It includes article abstracts if one was provided by the publisher. For materials not available online, we are attaching the full-text if it is available in the CRS or Library of Congress (LC) collections (“Articles_and_Reports.pdf”). The PDF file also includes the results of a Nexis search for newspaper and magazine articles reporting individual instances of ACORN activities related to housing; these articles are not listed on the bibliography.

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Affordable Housing

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² Ibid.

³ Ibid.

⁴ According to their website, *Social Policy* is published by The Labor Neighbor Research and Training Center in cooperation with the Organizers’ Forum. [<http://www.socialpolicy.org/index.php?id=804>] In 2008, the Social Policy Website indicated that (continued...)

This article discusses efforts by the community organization ACORN to advocate on behalf of tenants who use Section eight housing vouchers. The difficulties faced by low income families seeking to find housing in places like New York City are described. A New York City ordinance prohibiting discrimination against tenants based on their sources of income is presented as one solution to these challenges. The political challenges to these efforts by landlords who advocate reform in New York Housing Authority rather than compulsory acceptance of the vouchers, are assessed. (attached)

Atlas, John. 2005. The Battle in Brooklyn. Shelterforce, no. 144 (December).

<http://www.nhi.org/online/issues/144/brooklynbattle.html>.

New York ACORN's deal with a major private developer to incorporate a higher-than-average number of affordable housing units could provide an unprecedented strategy for collaboration and partnership.

U.S. Congress. House. Subcommittee on Housing and Community Opportunity, Committee on Financial Services. Affordable Housing Needs in the City of Houston: Unique Challenges and Opportunities, Hearing, 110th Congress, first session, Committee on Financial Services Serial No. 110-76. Oct. 29, 2007. http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_house_hearings&docid=f:39914.pdf
Testimony by Toni McElroy, Board President, Texas ACORN.

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(...continued)

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The article discusses resident-led national recovery movements in the Gulf Coast region of the U.S. following Hurricane Katrina and the issues these movements face. The article specifically discusses the Gulf Coast Civil Works Act, a movement which focuses on rebuilding community infrastructure and making jobs available so that families can return to their homes. The article also discusses the U.S. Stafford Act of 1988, a federal disaster response law which some feel is to blame for the long recovery process. Details are also included about H.R. 4048, a U.S. House of Representatives bill which gives residents a lead role in recovery and was introduced by U.S. Representatives Zoe Lofgren, Charlie Melancon, and Gene Taylor. (attached).

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Local chapters of the two other organizing networks—the Industrial Areas Foundation (IAF) and the Pacific Institute for Community Organizing (PICO)—have, along with ACORN and several other community groups, kept up the pressure on the city, state, and federal governments to address the problems facing Katrina survivors. [...] the media has reported on the recovery effort, but much less consistently.
These papers' reporters found lots of individual human interest stories of loss, tragedy, and even resilience and courage, but when hundreds of individuals join together to demand respect and rights from government and business leaders, their efforts rarely find their way into the nation's most prestigious newspapers, news magazines, and news broadcasts. (attached)
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- Reardon, Kenneth M, Rebekah Green, Lisa K Bates, and Richard C Kiely. 2009. Overcoming the Challenges of Post-disaster Planning in New Orleans: Lessons from the ACORN Housing/University Collaborative/Response to "Post-Disaster Planning in New Orleans": Necessary Conditions for Community Partnerships/Response to "Post-Disaster Planning in New Orleans"/Response to "Post-Disaster Planning in New Orleans": It Isn't as Simple as It Seems. *Journal of Planning Education and Research* 28, no. 3 (Spring).
This article describes how New Orleans ACORN members established a highly productive partnership with more than ninety urban planning students and faculty from Cornell, Columbia and Illinois in 2006 to produce a resident-inspired recovery plan for the Ninth Ward. The article explains how participants in this complex community/university partnership overcame significant racial, class, and age barriers to produce "The People's Plan for Overcoming the Hurricane Katrina Blues" that successfully used primary data regarding building conditions and residents' rate of return to encourage public officials, in the spirit of Paul Davidoff, to reinvest in this historic area of the city. (Not available in the CRS or LC collections; please contact CRS if you would like us to acquire it for you.)
- Reardon, Kenneth M., Marcel Ionescu-Heroiu, and Andrew J. Rumbach. 2008. Equity Planning in Post-Hurricane Katrina New Orleans: Lessons From the Ninth Ward. *Cityscape: A Journal of Policy Development and Research* 10, no. 3.
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This article describes how grassroots activists and community leaders representing poor and working class residents of New Orleans, together with planning students and faculty from three research universities, overcame racial, class, and cultural barriers to collaboration to create and promote a comprehensive Hurricane Katrina recovery plan for the neighborhoods that make up the city's Ninth Ward.
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community group for low- and moderate-income families, is part of a growing number of activist groups that are working to organize Hurricane Katrina evacuees and help them find roles in the rebuilding of their communities. Tisserand highlights ACORN's activities to help New Orleans hurricane victims organize to gain a voice in rebuilding their communities. (attached)

U.S. Congress. House. Subcommittee on Housing and Community Opportunity, Committee on Financial Services. Solving the Affordable Housing Crisis in the Gulf Coast Region Post-Katrina, Part I. Hearing, 110th Congress, first session, Committee on Financial Services Serial No. 110-5. February 22, 2007. http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_house_hearings&docid=f:34675.pdf
Testimony by Stephen Bradberry, Head Organizer, ACORN: Louisiana.

U.S. Congress. Senate. Committee on Health, Education, Labor, and Pensions. Roundtable: "Answering the Call: The Response of Community-Based Organizations to the 2005 Gulf Coast Hurricane" Hearing, 109th Congress, second session, S. Hrg. 109-440. Mar. 7, 2006. http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=109_senate_hearings&docid=f:26611.pdf
Testimony by Tanya Harris, Lead Organizer, Lower Ninth Ward, New Orleans, La., ACORN.

Recent Evaluations of Federal Programs

Abt Associates. 2008. The State of the Housing Counseling Industry: 2008 Report. http://www.huduser.org/publications/affhsg/hsg_counseling.html
In 2007, approximately 1.7 million individuals and families in communities throughout the country received housing education and counseling from more than 1,800 non-profit organizations approved by the U.S. Department of Housing and Urban Development (HUD). The types of services provided by these agencies address a broad spectrum of housing issues, including helping renters to become homeowners, helping homeowners to maintain, improve, or refinance their home or to avoid foreclosure, helping people experiencing homelessness to find housing, and helping people of all types with fair housing complaints or financial management challenges.

NeighborWorks America. 2009. National Foreclosure Mitigation Counseling (NFMC) Program Third Congressional Report. <http://www.nw.org/network/nfmcp/documents/June2009FullCongressionalReport.pdf>
NeighborWorks contracted with Urban Institute to conduct both process and program evaluation of NFMC. This report "includes a preliminary look at the effectiveness of the NFMC Program through a matching effort conducted by the Urban Institute that looks at the post-counseling status of loans held by NFMC Program clients." Funding provided to ACORN Housing is not explicitly addressed. The report also briefly discusses the audit report of Mayer Hoffman McCann, which has a contract with NeighborWorks to conduct quality control and compliance monitoring of grantees and applicable sub-grantees. Mayer Hoffman McCann submitted their report to NeighborWorks on March 10, 2009, with "results pertaining to Grantee compliance with their Grant Agreement and mandatory certifications; delivery of counseling services; financial transparency (expenditure verification, review of financial statements, etc.); compliance with program requirements, including record retention and adequate insurance coverage; appropriate Sub-grantee oversight; and verification of service delivery through clients reported to the program."



The Proposed “Defund ACORN Act” and Related Legislation: Are They Bills of Attainder?

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November 30, 2009

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7-5700

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Summary

In September of 2009, the House passed the "Defund ACORN Act" as part of H.R. 3221, 111th Congress, the Student Aid and Fiscal Responsibility Act of 2009. This act would limit certain organizations from receiving any federal contracts or grants if the organization has ever been indicted for a violation of various campaign finance or election laws; has lost a state corporate charter for failure to comply with lobbying disclosure requirements; or has filed a fraudulent form with any federal or state regulatory agency. The limitations would also apply to any organization that has an employment or agency relationship with an individual indicted for a violation of election law. Once excluded, the organization would never be eligible to receive federal contracts or grants again. In addition, the bill specifically provides for the application of the above criteria jointly and severally to the Association of Community Organizations for Reform Now ("ACORN") and any ACORN-related affiliates.

This focus on defunding ACORN is also found in various appropriations bills, some of which have been signed into law. The limitations in these legislative vehicles are generally much shorter term, however, as the limits are imposed only on the appropriations made by the act. For instance, § 163 of the 2010 Continuing Appropriation Resolution provides that:

[n]one of the funds made available by this joint resolution or any prior Act may be provided to the Association of Community Organization[s] for Reform Now (ACORN) or any of its affiliates, subsidiaries, or allied organizations.

The argument has been made that these legislative vehicles violate the prohibition on bills of attainder found in Article I, § 9, cl. 3 of the Constitution. The two main criteria which the courts use to determine whether legislation is a bill of attainder are (1) whether "specific" individuals or entities are affected by the statute, and (2) whether the legislation inflicts a "punishment" on those individuals. Under the instant bills, the fact that ACORN and its affiliates are named in the legislation for differential treatment would appear to meet a *per se* criteria for specificity.

The U.S. Supreme Court has also identified three types of legislation which would fulfill the "punishment" prong of the test: (1) where the burden is such as has "traditionally" been found to be punitive; (2) where the type and severity of burdens imposed are the "functional equivalent" of punishment because they cannot reasonably be said to further "non-punitive legislative purposes"; and (3) where the legislative record evinces a "congressional intent to punish." The withholding of federal contracts or grants does not appear to be a "traditional" punishment, nor does the legislative record so far appear to clearly evince an intent to punish. The question of whether the instant legislation serves as the functional equivalent of a punishment, however, is more difficult to ascertain.

While the regulatory purpose of ensuring that federal funds are properly spent is a legitimate one, it is not clear that imposing a permanent government-wide ban on contracting with or providing grants to ACORN under the proposed Defund ACORN Act fits that purpose, at least when the ban is applied only to ACORN and all its affiliates. The brevity of the funding moratorium imposed on ACORN and its affiliates under the 2010 Continuing Appropriation Resolution, however, could arguably be justified as an expedience necessary to address an issue of immediate congressional concern, while allowing Congress sufficient time to consider a longer term solution.

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Introduction

On September 17, 2009, the House passed the Defund ACORN Act as part of the Student Aid and Fiscal Responsibility Act of 2009. This act would provide limitations on certain organizations, so that these organizations may not: be a party to any federal contract, grant, cooperative agreement, or any other form of agreement (including a memorandum of understanding); receive federal funds; and no federal employee or contractor may promote or recommend the organization in any way.¹ This disability would apply to any organization that has been indicted for a violation under any federal or state law governing campaign financing or election administration; any organization that had its state corporate charter terminated due to its failure to comply with federal or state lobbying disclosure requirements; and any organization that has filed a fraudulent form with any federal or state regulatory agency.² The limitations would also apply to any organization that either employs an individual who has been indicted for a violation under federal or state law relating to an election for federal or state office; has such individual under contract; or provides for such individual to act with the express or apparent authority of the organization.³

The bill also specifically addresses the application of the above limitations to the Association of Community Organizations for Reform Now ("ACORN") and any ACORN-related affiliates. The language in question would provide that the term "organization" shall include the Association of Community Organizations for Reform Now ("ACORN") and any ACORN-related affiliates. By providing that ACORN and its affiliates are an "organization," the proposed bill would appear to establish that the proposed bill would apply jointly and severally to ACORN and its affiliates. In other words, a violation of one of the specified disqualifiers for federal contracts or grants in ACORN or in one affiliate would result in the disqualification of ACORN and all its affiliates.

This focus on defunding ACORN is also found in various appropriations bills, some of which have been signed into law. The limitations in these legislative vehicles are generally much shorter term, however, as the limits are imposed only on the appropriations made by the act.⁴ For instance, § 163 of the 2010 Continuing Appropriation Resolution (hereinafter Continuing Resolution) provides that:

[n]one of the funds made available by this joint resolution or any prior Act may be provided to the Association of Community Organization[s] for Reform Now (ACORN) or any of its affiliates, subsidiaries, or allied organizations.⁵

¹ Defund ACORN Act, § 602(a) (amendment to H.R. 3221, 111th Congress, 1st Sess., the Student Aid and Fiscal Responsibility Act of 2009).

² Section 602(b)(1)-(3).

³ Section 602(b)(4); § 602 (c)(3)

⁴ For instance, an amendment directing that no monies authorized be distributed to ACORN and its subsidiaries was approved in the Senate as an amendment to the 2010 Appropriations bill for Department of Transportation, Department of Housing and Urban Development, and related agencies, see 155 Cong. Rec. S9318 (daily ed. September 14, 2009) (considering H.R. 3288), and the 2010 Appropriations bill for Department of the Interior, Environment and related agencies, 155 Cong. Rec. S9542 (daily ed. September 17, 2009) (considering H.R. 2996).

⁵ Continuing Appropriations Resolution, 2010, H.R. 2918, 111th Cong. § 163 (2009), Division B of P.L. 111-68 (CR) § 163. It should be noted that Department of Justice has interpreted this language as not applicable to pre-existing contractual obligations between the United States and ACORN. See David J. Barron, Acting Assistant Attorney General, Memorandum Opinion for the Deputy General Counsel, Department of Housing and Urban Development (October 23, 2009)(available at <http://www.justice.gov/olc/2009/obligations-public-law11168.pdf>).

Section 163 went into effect on October 1, 2009, was extended, and is currently due to expire on December 18, 2009.⁶

Bills of Attainder

Background

The question has been raised whether the implementation of the proposed Defund ACORN Act or of the Continuing Resolution would be an unconstitutional bill of attainder.⁷ The United States Constitution expressly prohibits the federal government from enacting bills of attainder,⁸ and the Supreme Court has defined a bill of attainder as a "law that legislatively determines guilt and inflicts punishment upon an identifiable individual without provision of the protections of a judicial trial."⁹ The basis for the prohibition arises from the separation of powers concern that the enforcement of a bill of attainder would allow Congress to usurp the power of the judicial branch.¹⁰

By passing a bill of attainder,

the legislature assumes judicial magistracy, pronouncing upon the guilt of the party without any of the common forms and guards of trial, and satisfying itself with proofs, when such proofs are within its reach, whether they are conformable to the rules of evidence, or not. In short, in all such cases, the legislature exercises the highest power of sovereignty, and what may be properly deemed an irresponsible despotic discretion, being governed solely by what it deems political necessity or expediency, and too often under the influence of unreasonable fears, or unfounded suspicions.¹¹

At common law, a bill of attainder was a parliamentary act that sentenced a named individual or identifiable member of a group to death.¹² It was most often used to punish political activities that Parliament or the sovereign found threatening or treasonous.¹³ A bill of pains and penalties was identical to a bill of attainder, except that it prescribed a punishment short of death such as banishment, deprivation of the right to vote, exclusion of the designated individual's sons from

⁶ Further Continuing Appropriations Resolution, 2010, H.R. 2296, 111th Cong. § 101 (2009), Division B of P.L. 111-88, § 101.

⁷ ACORN has sued the United States based on the limitations found in the Continuing Resolution. *See* http://ccrjustice.org/files/acorn/CCR_ACORN_Memo_of_Law.pdf. Although the lawsuit contains challenges to the law based on constitutional issues including bill of attainder, freedom of association, and due process, this report is limited to an analysis of bill of attainder issues.

⁸ U.S. Const art. I, § 9, cl. 3, provides "No Bill of Attainder or ex post facto Law shall be passed."

⁹ *United States v. Brown*, 381 U.S. 437, 468 (1965).

¹⁰ "The best available evidence, the writings of the architects of our constitutional system, indicates that the Bill of Attainder Clause was intended not as a narrow, technical (and therefore soon to be outmoded) prohibition, but rather as an implementation of the separation of powers, a general safeguard against legislative exercise of the judicial function, or more simply, trial by legislature." *Brown*, 381 U.S. at 443.

¹¹ 3 J. Story, *Commentaries on the Constitution of the United States* 1338 (1833).

¹² *Nixon v. Administrator of Gen. Serv.*, 433 U.S. 425, 473 (1977).

¹³ Jane Welsh, *The Bill of Attainder Clause: An Unqualified Guarantee of Due Process*, 50 *Brook L. Rev.* 77, 81 (1983).

Parliament, or the punitive confiscation of property.¹⁴ The prohibition on bills of pains and penalties has been subsumed into the prohibitions of the Bill of Attainder Clause, so that a variety of penalties less severe than death may trigger its provisions.¹⁵

The two main criteria which the courts look to in order to determine whether legislation is a bill of attainder are (1) whether specific individuals are affected by the statute (specificity prong), and (2) whether the legislation inflicts a punishment on those individuals (punishment prong).

Specificity

The Supreme Court has held that legislation meets the criteria of specificity if it either specifically identifies a person, a group of people, or readily ascertainable members of a group,¹⁶ or identifies such a person or group by past conduct.¹⁷ It has been suggested that a court's determination that a statute referencing a specific group of persons is based on past conduct may in some cases be treated as a *per se* violation of the specificity prong.¹⁸ For instance, in the case of *United States v. Lovett*,¹⁹ Congress passed Section 304 of the Urgent Deficiency Appropriation Act of 1943, which named three government employees, labeled them as subversive, and then provided that no salary should be paid to them.²⁰ The employees brought suit, and the Supreme Court ruled in their favor, holding that Section 304 was a punishment of named individuals without a judicial trial.²¹

As will be discussed later, it is a defense to a bill of attainder challenge to establish that a statute is not intended to punish, but rather to implement a legitimate regulatory scheme. Although this analysis is generally considered under the second prong of the test (whether the law is punitive), it may have implications for the specificity prong. For instance, in the case of *Nixon v. Administrator of General Service*,²² the Court evaluated the Presidential Recordings and Materials Preservation Act,²³ which required that former President Richard Nixon, whose papers and tape recording were specifically named in the act,²⁴ turn those papers and tape recordings

¹⁴ *Brown*, 381 U.S. at 441-42.

¹⁵ *See, e.g.*, *Fletcher v. Peck*, 10 U.S. (6 Cranch) 87, 138 (1810) (“[a] bill of attainder may affect the life of an individual, or may confiscate his property, or may do both”).

¹⁶ *United States v. Lovett*, 328 U.S. 303, 315 (1946); *Cummings v. Missouri*, 71 U.S. (4 Wall.) 277, 323 (1866).

¹⁷ *Selective Serv. Sys. v. Minnesota Pub. Interest Research Group.*, 468 U.S. 841, 851 (1984). Although the law appears unsettled, it appears likely that corporations are also protected against bills of attainder. *See Consol. Edison Co. of N.Y., Inc. v. Pataki*, 292 F.3d 338 (2nd Cir. 2002).

¹⁸ *See* Case Note, Fifth Circuit Holds That the Special Provisions of the Telecommunications Act of 1996 Are Not a Bill of Attainder. - *SBC Communications, Inc. v. FCC*, 154 F.3d 226 (5th Cir. 1998), cert. denied, 119 S. Ct. 889 (1999), 112 Harv. L. Rev. 1385, 1388 (1999). *See, e.g.*, *United States v. Brown*, 381 U.S. 437, 438-39 n.1 (1965) (striking down statute that made it a crime for anyone “who is or has been a member of the Communist Party” to serve as an officer or employee of a labor union); *United States v. Lovett*, 328 U.S. 303, 305 n.5 (1946) (striking down a statute prohibiting payment of government salaries to alleged Communists “Goodwin B. Watson, William E. Dodd, Junior, and Robert Morss Lovett”).

¹⁹ 328 U.S. 303 (1946).

²⁰ *Id.* at 304-05, 311-12.

²¹ *Id.* at 315.

²² 433 U.S. 425 (1977).

²³ P.L. 93-526.

²⁴ Section 101(a) of Title I of the Presidential Recordings and Materials Preservation Act directs that the Administrator of General Services

(continued...)

over to an official of the Executive Branch. The former President challenged the constitutionality of the act as a bill of attainder, arguing that it was based on a congressional determination of the former President's blameworthiness and represented a desire to punish him.

It would appear that the identification of papers and recordings under the control of a named person (the former President) would meet the *per se* requirement. The Court in *Nixon*, however, found that the statute was constitutional despite this specificity. In *Nixon*, the Court found that the bill failed the second prong (punishment) of the test for bill of attainder, since the act fulfilled the valid regulatory purpose of preserving information which was needed to prosecute Watergate-related crimes and was of historical interest.²⁵ As part of this analysis, however, the Court even questioned whether the statute in question met the specificity prong of the two-part test, finding that naming an individual could be "fairly and rationally understood" as designating a "legitimate class of one."²⁶ Thus, it has been suggested that *Nixon* stands for the proposition that any level of specificity is acceptable, even the naming of individuals, as long as a rational, non-punitive basis for the legislation can be established.²⁷

It seems apparent that the Continuing Resolution, which specifically applies the funding ban only to ACORN and its affiliates, would meet the *per se* requirement of specificity. The Defund ACORN Act, on the other hand, is more complex. This proposal would limit particular entities from entering into agreements with, receiving federal funds from, or being promoted by the federal government. This disability would apply to a potentially broad array of organizations that have either been indicted for violation of specific laws, had a charter revoked for failing to comply with certain disclosure requirements, or have filed a fraudulent document to a government agency. Although the legislation does not specify, it would appear that such limitations would apply both to organizations that have engaged in such behaviors in the past, and organizations that engage in such behavior in the future.

There does not appear to be a significant argument that these general provisions of the Defund ACORN Act would meet the element of specificity required for establishing that legislation is a bill of attainder. While the legislation would affect an ascertainable group of entities based on past behaviors, it would also appear to apply to entities that met the specified criteria in the future. Further, a court would most likely be able to discern a rational, non-punitive purpose for the application of these criteria: a desire to prevent federal funds being used for activities that violate federal or state law. While the application of this disability to entities that have been indicted (but perhaps not been convicted) under certain laws would appear to be an uneasy fit,

(...continued)

shall receive, obtain, or retain, complete possession and control of all original tape recordings of conversations which were recorded or caused to be recorded by any officer or employee of the Federal Government and which - (1) involve former President Richard M. Nixon or other individuals who, at the time of the conversation, were employed by the Federal Government; (2) were recorded in the White House or in the office of the President in the Executive Office Buildings located in Washington, District of Columbia; Camp David, Maryland; Key Biscayne, Florida; or San Clemente, California; and (3) were recorded during the period beginning January 20, 1969, and ending August 9, 1974.

²⁵ *Nixon*, 433 U.S. at 476-77.

²⁶ 433 U.S. at 472.

²⁷ See Case Note, *Fifth Circuit Holds That the Special Provisions of the Telecommunications Act of 1996 Are Not a Bill of Attainder*. - *SBC Communications, Inc. v. FCC*, 154 F.3d 226 (5th Cir. 1998), cert. denied, 119 S. Ct. 889 (1999), 112 Harv. L. Rev. 1385, 1388 (1999).

courts are likely to grant Congress significant deference in identifying the parameters of groups eligible for contracting with, receiving federal funds from, or being promoted by the federal government.

A different question arises, however, as to those portions of the proposed bill that specifically name ACORN, and then provide a different set of rules to that organization. Under the proposed Defund ACORN Act, the ACORN organization is defined to include both ACORN and all ACORN-related affiliates. Thus it would appear that, unlike other organizations identified under this act, ACORN and its affiliates would each be held "jointly and severally liable" for the behavior of ACORN, any one of its affiliates, and all employees thereof. In other words, if ACORN or one of its affiliates were to come under the limitations of the proposed act, then ACORN and all of its affiliates would be similarly affected.

Thus, the naming of ACORN and its affiliates under either the proposed act or the Continuing Resolution would appear to support a *per se* finding of the required element of specificity.²⁸ The Supreme Court, however, has noted that cases regarding bills of attainder cannot be analyzed in the abstract, as each "turns on its own highly particularized context."²⁹ Thus, the application of the proposed bill and the Continuing Resolution to ACORN and its affiliates would appear to require a close examination of the legislation and its particular application to ACORN. For instance, the question can be asked whether the apparent specificity of the proposal or the Continuing Resolution can be justified by some regulatory purpose.

While the Continuing Resolution clearly applies to ACORN and its affiliates, the proposed Defund ACORN Act would require an additional finding of specified behaviors for joint and several liability to apply. Since the proposed Act applies both retrospectively and prospectively, the proposed legislation could theoretically be applied to ACORN and its affiliates based on future behavior. It does not appear to be fatal to a bill of attainder challenge, however, that the statute in question applies to both past and future behavior. In one of the relatively few cases in which a successful bill of attainder challenge was made, the Court in *United States v. Brown* invalidated Section 504 of the Labor-Management Reporting and Disclosure Act, which made it a crime for anyone "who is or has been a member of the Communist Party to serve as an officer or employee of a labor union ... during or for five years after the termination of his membership in the Communist Party."³⁰

In *Brown*, the Court did not find it significant that future members of the Communist Party would be included in the group affected. Rather, the Court focused on the fact that once a person had entered the Communist Party, his or her withdrawal did not relieve the disability for five years.³¹ So, the requirement of specificity is not defeated by the potential of future persons being added to the identified group, as long as the persons or entities identified cannot withdraw from such specified group.³² Thus, to the extent that ACORN and one of its affiliates could fall under the

²⁸ It appears to be relatively unusual for the Congress to identify individuals or entities for detrimental treatment. *But see* *Arjay Assocs., Inc. v. Bush*, 891 F.2d 894 (Fed. Cir. 1989) (denying standing to importers to challenge an import ban on products from Toshiba Machine Corporation and Konigsberg Corporation, imposed after those entities diverted military technology to the Soviet Union).

²⁹ *Flemming v. Nestor*, 363 U.S. 603, 616 (1959).

³⁰ *See Brown*, 381 U.S. at 438-39 n.1.

³¹ 381 U.S. at 458.

³² *See also* *Selective Service System v. Minn. Pub. Interest Research Group*, 468 U.S. 841, 851 (1984) (affected class must be defined by past conduct that makes their ineligibility for a particular benefit "irreversible.")

Defund ACORN Act provisions based on future behavior, the fact that the proposed law could be applied based on past behavior, and that ACORN and its affiliates cannot meaningfully withdraw,³³ would appear to meet a *per se* criteria for specificity.

However, a *per se* finding of specificity can still fail to meet the first prong if the group specified by the statute can be justified by the nature of the regulatory purpose. This would require an analysis of the nexus between this specificity and the regulatory purposes served by the proposed law. In this regard, a court might consider legislative purposes that might be articulated in the legislative history of the proposals in question.

The legislative record regarding the Defund ACORN Act does appear to indicate that the Congress identified ACORN and its affiliates as being likely to fall under its various provisions. There does not appear to be an indication, however, of why, within the large group of entities that might be subject to the proposed act, only ACORN and its affiliates will be subject to special rules regarding joint and several application. Similarly, the legislative history of the Continuing Resolution does not address why ACORN is being treated differently from other entities that may have engaged in similar behaviors.

Although one might speculate that ACORN and its affiliates represent a special class of organizational entities that cannot be treated as other organizations, it is not clear on what factual basis such a distinction has been made by the Congress. Further, since any number of other organizations with affiliates may have engaged in alleged misbehavior, it would be difficult to establish why ACORN and its affiliates are deserving of differential treatment. Consequently, it would appear likely that a court would find that the proposed Defund Acorn Act and the Continuing Resolution met the required element of specificity.

Punishment

The mere fact that focused legislation imposes burdensome consequences does not require that a court find such legislation to be an unconstitutional bill of attainder. Rather, the Court has identified three types of "punitive" legislation that are barred by the ban on bills of attainder: (1) where the burden is such as has traditionally been found to be punitive; (2) where the type and severity of burdens imposed cannot reasonably be said to further non-punitive legislative purposes; and (3) where the legislative record evinces a congressional intent to punish. Thus, the question can be considered as to whether the legislation at issue would fit into one of these three categories.

Traditional Punishments

The Supreme Court has identified various types of punishments which have historically been associated with bills of attainder. These traditionally have included capital punishment, imprisonment, fines, banishment, confiscation of property, and more recently, the barring of individuals or groups from participation in specified employment or vocations.³⁴ There do not

³³ Although ACORN and its entities might, in theory, disband their corporate structures and reconstitute as new and separate entities, this would not diminish the affect of the bill of attainder on the corporate entities when they existed. In other words, although it is an unsettled area of law, it would appear that the corporate entity itself has the right to not be subjected to a bill of attainder. *See* *Consol. Edison Co. of N.Y., Inc. v. Pataki*, 292 F.3d 338 (2nd Cir. 2002).

³⁴ 433 U.S. at 474-75.

appear to be any cases where the Court has found that denial of federal benefits to organizations is the type of "punishment" traditionally engaged in by legislatures as a means of punishing individuals for wrongdoing.

"Functional" Punishment

The Supreme Court has also indicated that some legislative burdens not traditionally associated with bills of attainder might nevertheless "functionally" serve as punishment.³⁵ The Court has indicated, however, that in those cases, the type and severity of the legislatively imposed burden would need to be examined to see whether it could reasonably be said to further a non-punitive legislative purpose.³⁶

It is clear that a denial of the ability to engage financially with the United States can fulfill the punishment prong of the test. The Court has specified that "legislative acts, no matter what their form, that apply either to named individuals or to easily ascertainable members of a group in such a way as to inflict punishment on them without a judicial trial are bills of attainder prohibited by the Constitution."³⁷ For instance, in *United States v. Lovett*, the Court struck down a statute prohibiting individuals from being employed by the United States as a bill of attainder.³⁸

In *Lovett*, the respondents, Robert Lovett, Goodwin Watson and William Dodd, Jr. were federal government employees in good standing. Congress, however, passed a statute naming those individuals and providing that no federal salary or compensation could be paid to them unless they were reappointed to their jobs by the President with the advice and consent of the Senate. The statute was passed as a result of concerns in the House Committee on Un-American Activities that "subversives" were occupying influential positions in the Government and elsewhere, and that Congress had the responsibility to identify and remove those individuals.³⁹

The Court noted that the character of the legislation was informed by both the particulars of the legislation and the context in which it arose. In this case, the Court found that the statute operated to bar the named individuals not only from their current jobs, but also from employment by any branch of the federal government for perpetuity.⁴⁰ The Court also noted that the congressional proceedings relevant to the legislation had the elements of judicial process. For instance, the Chairman of the House Committee on Un-American Activities, Congressman Dies, told the House that the three named individuals, among others, were unfit to "hold a Government position," and other statements made during the debate included discussion of "charges" against the individuals and of having sufficient proof of "guilt."⁴¹

³⁵ 433 U.S. at 475.

³⁶ *Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 168-69 (1963); *Nixon v. Administrator of General Services*, 433 U.S. at 476. *But see* *Flemming v. Nestor*, 363 U.S. 603, 614 (1959) (upholding termination of Social Security benefits to persons deported for events occurring before the passage of the legislation terminating benefits).

³⁷ *United States v. Lovett*, 328 U.S. 303, 315 (1946). Steven J. Eagle, *Property Tests, Due Process Tests and Regulatory Takings Jurisprudence*, 2007 B.Y.U.L. Rev. 899, 930-31 (2007).

³⁸ 328 U.S. 303 (1946),

³⁹ 328 U.S. at 308.

⁴⁰ 328 U.S. at 313-14.

⁴¹ 328 U.S. at 309-10. (citations omitted).

A special counsel for the House noted that the legislation in question was within the discretion of Congress's power under the Spending Clause.⁴² However, the Court in *Lovett* noted that other Supreme Court decisions have invalidated legislation barring specified persons or groups from pursuing various professions where the employment bans were imposed as a brand of disloyalty.⁴³ For instance, the Court has found that a ban on lawyers practicing before the Supreme Court⁴⁴ was punishment for purposes of bill of attainder analysis, as was a ban on persons holding positions of trust related to legal proceedings.⁴⁵ Consequently, the Court in *Lovett* held that the denial of the contractual right to federal employment fell squarely into the type of punishment susceptible to bill of attainder analysis.⁴⁶

Thus, the question in the instant case is whether the limitations found in the Continuing Resolution or the Defund ACORN Act could be interpreted as punishment. One could argue that a government-wide prohibition on receiving federal funds would be analogous to the ban on federal employment found in the *Lovett* case. As with *Lovett*, the legislation has potential to exclude ACORN or its affiliates from ever contracting with the federal government. While Congress clearly has the discretion to designate how federal funds are allocated, a ban on ACORN or its affiliates applying for any government contracts or benefits, regardless of context, appears to be similar to the limitation imposed in *Lovett* where the named individuals were deemed ineligible for any government employment.

The question does arise, however, whether the burden imposed by the legislation is susceptible to explanation by a valid regulatory (non-punitive) purpose. In such a case, a court would be likely to find that such legislation is not intended to be punitive. For instance, in *Flemming v. Nestor*,⁴⁷ the Court upheld termination of Social Security benefits to persons deported for events occurring before the passage of the legislation terminating benefits, reasoning that Congress was within its authority to find that the purposes of Social Security were not served by providing benefits to persons living overseas. In reaching this conclusion, the Court noted that

[O]nly the clearest proof could suffice to establish the unconstitutionality of a statute on [bill of attainder grounds]. Judicial inquiries into Congressional motives are at best a hazardous matter, and when that inquiry seeks to go behind objective manifestations it becomes a dubious affair indeed. Moreover, the presumption of constitutionality with which this enactment, like any other, comes to us forbids us lightly to choose that reading of the statute's setting which will invalidate it over that which will save it. 'It is not on slight

⁴² Article I, § 8., Clause 1 provides that Congress has the power to "To lay and collect Taxes ... to pay the Debts and provide for the common Defence and general Welfare of the United States."

⁴³ *Nixon v. Adm'r of Gen. Servs.*, 433 U.S. 425, 474-75 (1977) (citing cases).

⁴⁴ See *Ex parte Garland*, 4 Wall. 333 (1867) (Act of Congress which required attorneys practicing before this Court to take a oath indicating that they had never "been a member of, or connected with, any order, society, or organization, inimical to the government of the United States ..." held a bill of attainder.)

⁴⁵ See *Cummings v. State of Missouri*, 71 U.S. 277, 320 (1867) ("disqualification from the pursuits of a lawful avocation, or from positions of trust, or from the privilege of appearing in the courts, or acting as an executor, administrator, or guardian, may also, and often has been, imposed as punishment.") See also *Foretich v. United States*, 351 F.3d 1198 (2003) (legislation limiting custodial rights was a bill of attainder).

⁴⁶ 328 U.S. at 315-16 ("The fact that the punishment is inflicted through the instrumentality of an Act specifically cutting off the pay of certain named individuals found guilty of disloyalty, makes it no less galling or effective than if it had been done by an Act which designated the conduct as criminal.")

⁴⁷ 363 U.S. 603, 614 (1959).

implication and vague conjecture that the legislature is to be pronounced to have transcended its powers, and its acts to be considered as void.’ *Fletcher v. Peck*, 6 Cranch 87, 128.⁴⁸

However, it should be noted that the legislation in question in *Flemming* was but a small part of a larger regulatory scheme—the Social Security program—making any punitive intent less apparent.⁴⁹ Thus the question arises as to whether the scope of the Continuing Resolution or the proposed Defund Acorn Act fit into current regulations regarding government grants and contracts.

For this, one would need to look at what legislative purposes are generally accorded to barring individuals or corporations from access to federal benefits or contracts. Currently, extensive government regulation exists establishing who is eligible to receive federal grants or benefits. If there is an adequate relationship between the restriction imposed by the instant legislation and the presumably legitimate, non-punitive governmental purpose of assuring proper awarding and expenditures of federal funds, then the legislation would be likely to be found constitutional.⁵⁰

For instance, the Code of Federal Regulations contains extensive regulations regarding government-wide debarment and suspensions of eligibility for government grants.⁵¹ Under these guidelines, an agency may, in the public interest, suspend a participant in a program or activity based on a variety of bases, including the existence of an indictment, conviction, civil judgment, or other official findings by federal, state, or local bodies against the participant. Although an agency has significant discretion in making this decision, it is required to consider a variety of particularized criteria to make its determination.⁵²

There are also extensive regulations for the debarment of federal contractors from contracting with the government.⁵³ As a matter of policy, the federal government seeks to “prevent improper dissipation of public funds”⁵⁴ in its contracting activities by dealing only with responsible contractors.⁵⁵ Debarment and suspension promote this policy by precluding agencies from entering into new contractual dealings with contractors whose prior violations of federal or state law, or failure to perform under contract, suggest they are nonresponsible.⁵⁶ Because exclusions

⁴⁸ 363 U.S. at 618.

⁴⁹ 363 U.S. at 618.

⁵⁰ See *BellSouth II*, 162 F.3d 678, 688 (1998) (upholding a statute which required local operating companies to open their local telephone markets to competition to avoid the creation of monopolies); *Dehainaut v. Pena*, 32 F.3d 1066, 1072 (7th Cir. 1994) (upholding indefinite disbarment of former air traffic controllers from reemployment with the Federal Aviation Administration).

⁵¹ 2 C.F.R. Ch. 1, Part 180 (dealing with nonprocurement programs or activities).

⁵² 2 C.F.R. § 180.705.

⁵³ See generally CRS Report RL34753, *Debarment and Suspension of Government Contractors: An Overview of the Law Including Recently Enacted and Proposed Amendments*, by Kate M. Manuel.

⁵⁴ *United States v. Bizzell*, 921 F.2d 263, 267 (10th Cir. 1990) (“It is the clear intent of debarment to purge government programs of corrupt influences and to prevent improper dissipation of public funds. Removal of persons whose participation in those programs is detrimental to public purposes is remedial by definition.”) (internal citations omitted).

⁵⁵ 48 C.F.R. § 9.402(a) (directing agency contracting officers to “solicit offers from, award contracts to, and consent to subcontracts with responsible contractors only”).

⁵⁶ See *id.* (“Debarment and suspension are discretionary actions that ... are appropriate means to effectuate [the] policy [of dealing only with responsible contractors].”).

under the Federal Acquisition Regulations are designed to protect the government's interests, they may not be imposed solely to punish prior contractor misconduct.⁵⁷

Debarments last for a "period commensurate with the seriousness of the cause(s)," generally not exceeding three years.⁵⁸ Debarment-worthy conduct can be imputed from officers, directors, shareholders, partners, employees, or other individuals associated with a contractor to the contractor, and vice versa, as well as between contractors participating in joint ventures or similar arrangements.⁵⁹ Due process requires that contractors receive written notice of proposed debarments and of debarring officials' decisions, as well as the opportunity to present evidence within the decision-making process for all debarments except those based upon contractors' convictions.⁶⁰

Thus, it appears that there are already significant existing regulations regarding whether specified entities can be excluded from government programs or activities. Further, suspending organizations based on past criminal behavior would appear to need to fit within the regulatory purpose of the scheme that is already in existence. Although the automatic exclusion of entities from federal contracts or grants based only on indictments of specified laws by the entities or their employees or agencies may not fit comfortably within the existing scheme, it would seem that such a regulation would share a similar rational non-punitive regulatory purpose of ensuring that federal benefits and contracts be administered properly.

In determining how closely they fit with this regulatory regime, the Continuing Resolution and the proposed Defund Acorn Act should be considered separately. In particular, the specifics of the proposed Defund Acorn Act appear to differ substantially from the regulatory goals of the existing regime. For instance, it is not clear why violation of campaign financing, election laws, or disclosure requirements would be seen as meeting the goals of preventing improper dissipation of public funds, when other more serious criminal violations are not addressed by the legislation. Further, it is not clear why these particular legal violations would result in permanent debarment of the organization. While current regulations may limit organizations to relatively short debarments, generally no more than three years, the proposed Defund Acorn Act has no mechanism for these organizations to be relieved of their disability.

Of even more concern is that this permanent debarment would be imposed jointly and severally on ACORN and its affiliates. It would appear that investigating affiliates in order to determine whether they had colluded in illegal behavior might be an appropriate procedure for an agency to engage in. For an agency to make a *per se* assumption that all entities affiliated with a disqualified entity should also be disqualified, however, is not consistent with the goals of the current regulations, which require that such matters be considered individually. Since affiliations

⁵⁷ 48 C.F.R. § 9.402(b) ("The serious nature of debarment and suspension requires that these sanctions be imposed only in the public interest for the Government's protection and not for purposes of punishment.").

⁵⁸ 48 C.F.R. § 9.406-4(a)(1). Debarments are limited to one year for violations of the Immigration and Nationality Act, but can last up to five years for violations of the Drug-Free Workplace Act. 48 C.F.R. § 9.406-4(a)(1)(i)-(ii). The FAR allows debarring officials to extend the debarment for an additional period if they determine that an extension is necessary to protect the government's interests. 48 C.F.R. § 9.406-4(b). Extension cannot be based solely upon the facts and circumstances upon which the initial debarment was based, however. *Id.*

⁵⁹ 48 C.F.R. § 9.406-5(a)-(c).

⁶⁰ 48 C.F.R. § 9.406-3. When debarment is based on a conviction, the hearing that the contractor received prior to the conviction suffices for due process in the debarment proceeding.

with other entities are often voluntary, and may represent a relationship with little or no coordination, current law would not allow such a *per se* exclusion.

The further step of finding that just one organization and its affiliates would be subject to such limitations jointly and severally seems even further from the existing regulatory scheme. It should be noted that there are 361 ACORN affiliates in 120 cities, 43 states and the District of Columbia.⁶¹ Under existing regulations, an agency seeking to evaluate disqualification of these affiliates would most likely need to evaluate them separately. It is not clear on what basis the Congress dispensed with such distinctions, and why the Congress found it necessary to provide that, if even one employee from one ACORN affiliated organization were to commit one of the specified offenses, that ACORN and the rest of its affiliates would lose access to government grants or contracts. While there have been allegations of wrongdoing by ACORN and some of its affiliates, it does not appear that such allegations have been made against all ACORN-related affiliates.⁶²

In general, the permanent exclusion of all of these organizations would be difficult to justify as regulatory in nature. While the Court has noted that the courts will generally defer to Congress as to the regulatory purpose of a statute absent clear proof of punitive intent, there appear to be problems with finding a rational non-punitive regulatory purpose for this legislation. Thus, it appears that a court would have a sufficient basis to overcome the presumption of constitutionality, and find that it violates the prohibition against bills of attainder.

There would appear to be similar concerns with the Continuing Resolution. For instance, the legislative justification for the application of the federal funding limitation to both ACORN and all its 361 ACORN affiliates is not clear. As noted, while allegations of wrongdoing have been made against ACORN and some of its affiliates, it does not appear that such allegations have been made against all ACORN-related affiliates. This lack of individualized consideration would appear to be inconsistent with the stated regulatory purpose of assuring the proper spending of federal funds.

One significant distinction, however, between the proposed Defund Acorn Act and the Continuing Resolution is the duration of the limitations. While the proposed Act would impose a permanent ban on the organization, the Continuing Resolution ban only operates for a period of weeks. In examining legislation to determine whether there is a non-punitive regulatory purpose, the Court will consider a number of factors, including the duration of the burden. For instance the Court in *Lovett* specifically focused on the fact that the legislation in that case constituted a "lifetime ban," and it was because the ban was for an indeterminate period that the Court found that it closely resembled a criminal punishment.⁶³ Thus, the short-term nature of the funding ban in the Continuing Resolution would appear to make it less likely that the nature of the limitation would be found to be punitive in nature.

The argument might also be made that the specificity and short duration of the Continuing Resolution are consistent with Congress having to act quickly to address a particular situation, with an understanding that more general legislation would be forthcoming in the future. For

⁶¹ See Staff Report, "Is ACORN Intentionally Structured as a Criminal Enterprise?," Committee on Oversight and Government Reform at 3 (111th Cong., July 23, 2009).

⁶² See generally *id.*

⁶³ See text accompanying footnotes 38-40.

instance, in the case of *SeaRiver Maritime Financial Holdings, Inc. v. Mineta*,⁶⁴ the United States Court of Appeals suggests that the need for quick resolution of a particular regulatory concern might require a degree of specificity which would not otherwise be considered acceptable. The *SeaRiver* case is closely related to an oil spill that occurred on March 23, 1989, when the Exxon Valdez ran aground onto Bligh Reef in Alaska, spilling nearly eleven million gallons of oil into the Prince William Sound. The following year, Congress passed the Oil Pollution Act of 1990,⁶⁵ which, among other things, excluded from the waters of Prince William Sound any vessel that had spilled more than one million gallons of oil into the marine environment after March 22, 1989. The act effectively barred the Exxon Valdez from operating in Prince William Sound.

The owner of the Exxon Valdez brought suit, arguing that the exclusion of the Exxon Valdez under the Oil Pollution Act constituted an unconstitutional bill of attainder. While the Ninth Circuit held that the legislation in question did meet the specificity prong of the bill of attainder analysis, it found that the legislation was not intended to punish the owners of the Exxon Valdez, and thus did not violate the punishment prong of the bill of attainder test. Rather, the Ninth Circuit found that the legislation furthered a rational, non-punitive regulatory purpose.

In the Oil Pollution Act, Congress recognized the Prince William Sound as an “environmentally sensitive area,” and included various provisions designed to protect the Sound's environment and reduce the likelihood of future oil spills.⁶⁶ The act established the Prince William Sound Oil Spill Recovery Institute and an Oil Terminal and Oil Tanker Environmental Oversight and Monitoring Demonstration Program for Prince William Sound; provided for a Bligh Reef navigation light and a vessel tracking and alarm system; and increased equipment and requirements for oil spill response.⁶⁷

The Ninth Circuit found that the exclusion of the Exxon Valdez from the Prince William Sound was consistent with this legislative purpose, and Congress could legitimately conclude that a vessel that spilled over one million gallons of oil posed a greater risk to Prince William Sound than other tank vessels, either because of a pre-existing defect, damage incurred as a result of the spill, or because the spill calls into question the practices of its operators.⁶⁸ The court found this case similar to the Supreme Court case of *Nixon v. Adm'r of General Services*,⁶⁹ which held that the Presidential Recordings and Materials Preservation Act,⁷⁰ which only applied to the preservation of documentary materials relating to the Presidency of Richard Nixon, was not a bill of attainder.

In both of these cases, the reasoning was that there was a specific need for quick legislative action regarding specific situations. As regards the Exxon Valdez, legislative action was needed to avoid another oil spill, while legislation specifically affecting President Nixon was deemed necessary to avoid the possible loss of important historical documents. In both cases, the need for Congress to “proceed with dispatch” allowed Congress to pass legislation which established “a legitimate

⁶⁴ 309 F.3d 662 (9th Cir. 2002).

⁶⁵ 33 U.S.C. §§ 2701-61.

⁶⁶ 33 U.S.C. § 2732(a)(2)(A).

⁶⁷ 33 U.S.C. §§ 2731-35.

⁶⁸ *SeaRiver*, 309 F.3d at 675-76.

⁶⁹ 433 U.S. 425 (1977).

⁷⁰ P.L. 93-526, §§ 104-5.

class of one.”⁷¹ The holdings in both of these cases appeared to assume that further regulation which applied to persons or entities outside of these “legitimate class[es] of one” would be forthcoming.

Thus, the question arises as to whether, under the *SeaRiver* and *Nixon* cases, ACORN and its affiliates represent a “legitimate class of one” such that a court would find that there was a specific need for quick legislative action. It would appear that, in order to qualify as a “legitimate class of one,” a court would have to find that ACORN and each of its individual 361 affiliates represented relatively unique threats to the federal grant and contracting system, and that these differences from other federal grantees and contractors were sufficient to justify either the temporary or permanent debarment of ACORN and all its affiliates on an expedited basis. Thus, the question arises as to whether there is sufficient legislative history to support this argument.

Legislative History

The process for the passage of the Defund ACORN Act has not been completed, so it is difficult to tell what legislative history a court would draw on to evaluate legislative intent. Existing legislative history for this proposed act and the Continuing Resolution, however, can be evaluated to determine whether it is consistent with a legitimate regulatory purpose. As noted, it would appear that, to the extent that a regulatory purpose exists, it would be that Congress wishes to ensure that federal benefits and contracts be administered properly by organizations that receive federal funds.

It would appear, however, that there was little discussion of the specific provision of the bills during their passage. Debate regarding both bills only referred generally to alleged misdeeds to ACORN, and there seems to have been little evaluation of the provisions of the act. Specifically, no indication was given why ACORN and its affiliates, were being treated differently from other organizations and their affiliates that might have engaged in similar activities. Thus, it is difficult to evaluate the strength of the regulatory purpose arguments for this particular provision from the existing legislative history, and factual justifications for such a distinction would need to be developed separately from existing legislative history.

There are significant indications that some Members of Congress are concerned that ACORN and its affiliates have engaged in criminal behavior and that they receive federal funds.⁷² Remarks made regarding the legislative vehicles in question also seem to indicate a concern regarding the past behaviors of ACORN and its affiliates.⁷³ These remarks appear to express both moral and

⁷¹ *SeaRiver*, 309 F.3d at 676.

⁷² See Staff Report, “Is ACORN Intentionally Structured as a Criminal Enterprise?,” Committee on Oversight and Government Reform at 3 (111th Cong., July 23, 2009)

⁷³ 155 Cong. Rec. H9675 (daily ed. September 17, 2009) (statement of Representative Issa). Congressman Issa, who sponsored the proposed language as an amendment to the appropriations bill, stated that

ACORN has been linked to multiple instances of voter registration fraud and other illicit activity. In recent days, media accounts have detailed ACORN employees’ alleged complicity in illegal schemes too unseemly to discuss in this chamber. To continue funding this organization would not just be indefensible—it would be an outrage.

An analysis of federal data shows that ACORN has received more than \$53 million in direct funding from the Federal Government since 1994, and has likely received substantially more indirectly through States and localities that receive Federal block grants.

The Census Bureau recently decided to sever all ties with ACORN to ensure the integrity of their
(continued...)

regulatory objections to these entities receiving federal funds, and could certainly be read as indicating that Congress had made certain factual evaluations regarding alleged past behaviors of ACORN. Punitive intent, however, does not appear to be clearly expressed on the face of the existing legislative history.

Conclusion

As noted, the two main criteria which the courts will look to in order to determine whether legislation is a bill of attainder are (1) whether "specific" individuals or entities are affected by the statute, and (2) whether the legislation inflicts a "punishment" on those individuals. The "specificity" prong of this test can be met by a finding that legislation identifies persons based on their past conduct. Further, the requirement of specificity is not necessarily defeated by the potential of future persons being added to the identified group, as long as the persons or entities identified cannot withdraw from such specified group. Thus, under the proposed Defund ACORN Act or the Continuing Resolution, the fact that ACORN and its affiliates are either named and/or can be included in the legislation based on past behavior would appear to meet a *per se* criteria for specificity.

The Court has also identified three types of legislation which would fulfill the "punishment" prong of the test: (1) where the burden is such as has "traditionally" been found to be punitive; (2) where the type and severity of burdens imposed are the "functional equivalent" of punishment because they cannot reasonably be said to further "non-punitive legislative purposes"; and (3) where the legislative record evinces a "congressional intent to punish." The withholding of federal contracts or grants does not appear to be a "traditional" punishment, nor does the legislative record at this point clearly evince an intent to punish. The question of whether the instant legislation serves as the functional equivalent of a punishment, however, is more difficult to ascertain.

The specifics of the proposed Defund ACORN Act and the Continuing Resolution appear to differ substantially from the regulatory goals of the existing legal regime regarding federal contracting and federal grants. Unlike the existing regime, both legislative vehicles appear to be concerned with a limited class of legal violations such as campaign financing, election laws, or disclosure requirements. The proposed Defund ACORN Act seems particularly at odds with the existing regulatory structure; while current regulations may limit organizations to relatively short debarments, generally no more than three years, the proposed Defund ACORN Act has no mechanism for these organizations to be relieved of their disability. In addition, this permanent exclusion would be imposed jointly and severally on ACORN and its affiliates, essentially establishing a *per se* rule that all affiliates and ACORN would be held responsible for the behavior of any other affiliates or ACORN, or an employee thereof. The Continuing Resolution, while it applies to both ACORN and its affiliates, is only effective for a short period of time, and thus would appear more consistent with the existing debarment scheme.

(...continued)

operations. This was the right decision. Unfortunately, ACORN's links to the Federal Government do not stop with the Census Bureau. This organization has infiltrated a host of federal programs, consuming taxpayer dollars even as it has repeatedly been found to engage in criminal activity.

To fully protect taxpayers, we must enact a comprehensive ban on Federal funding for this corrupt and criminal organization. This motion to recommit will do exactly that.

In general, absent an agency proceeding to determine that ACORN and every one of its affiliates have engaged in unlawful behavior, the permanent exclusion of all of these organizations under the proposed Defund ACORN Act would be difficult to justify as regulatory in nature. While the Supreme Court has noted that courts will generally defer to Congress as to the regulatory purpose of a statute absent clear proof of punitive intent, there appear to be several potential problems raised by attempts to find a rational non-punitive regulatory purpose for this legislation. Thus, it appears that a court may have a sufficient basis to overcome the presumption of constitutionality, and find that the proposed Defund ACORN Act violates the prohibition against bills of attainder.

The question of whether the Continuing Resolution would be found to be a bill of attainder is a closer question. The brevity of the limitations imposed on ACORN under that law could arguably be justified as an expedience necessary to address an issue of immediate congressional concern, allowing Congress sufficient time to consider a longer term solution. The application of this limitation to ACORN and all its affiliates, on the other hand, would appear to present more of a concern, since there appears to be little information contained in the legislative history to suggest that all ACORN affiliates have engaged in significant misdeeds. Ultimately, it would appear that a successful defense of this legislation would require the development of a significant factual record not presently found in the legislative history of these provisions.

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MEMORANDUM

March 15, 2010

To: House Committee on the Judiciary

Subject: **Revised Research on Association of Community Organizations for Reform Now (ACORN)**

CRS sent you a memorandum on December 22, 2009 that responded to the Committee's September 22, 2009 request for information related to the Association of Community Organizations for Reform Now (ACORN). We thereafter learned that our answer to question number three (alleged false voter registrations and voting) may not have been accurate. We alerted you to this concern by telephone. Accordingly, we proceeded to construct a new broader search and completed an exhaustive review of the corresponding search results. We attach an updated memorandum which includes citations to articles responsive to question number three.

We sincerely regret this situation and apologize for any inconvenience that it may cause.



MEMORANDUM

March 15, 2010

To: House Judiciary Committee

Subject: Association of Community Organizations for Reform Now (ACORN)

In response to your request that CRS research several issues relating to the Association of Community Organizations for Reform Now (ACORN) and its affiliates, CRS has compiled the following information. This memorandum updates and corrects information on the effect of alleged false voter registrations provided to you on December 22, 2009 (Number 3). Numbers 1, 2, and 4-6 remain the same as of December 22, 2009, the date of our initial response.

- 1. Investigations concerning ACORN.** You asked for a list giving the status and results of a) all pending or previous federal, state or local criminal or agency investigations concerning ACORN; b) all pending or previous congressional investigations concerning ACORN; c) all pending or previous internal ACORN investigations; and d) all pending requests (other than those made to CRS) for investigation of ACORN by any Member of Congress or any committee. The following memorandum, *ACORN Investigations*, contains information on pending and previous federal, state, local, and internal investigations concerning ACORN obtained from news sources. The tables in the memorandum include basic details about the investigation and direct quotations taken from the source document; however, CRS did not verify the information in the source.
- 2. Federal funding received by ACORN.** You asked for a description of all federal funding received by ACORN over the last five fiscal years and a description of instances where ACORN violated the terms of federal funding. The following memorandum, *Federal Funding to the Association of Community Organizations for Reform Now (ACORN)*, presents information on federal funding received by ACORN. A search of reports of federal agency inspectors general did not identify instances in which ACORN violated the terms of federal funding in the last five years.
- 3. Effect of alleged false voter registrations by ACORN workers.** You asked CRS to research improper voter registrations that resulted in people being placed on the voting rolls and attempting to vote improperly at the polls. The following memorandum, *Allegations of Fraudulent Voting by Voters Registered by ACORN*, contains information on allegations of fraudulent voting obtained from news sources. The table in the memorandum provides a basic description of the allegation; however, CRS did not verify the information in the source.
- 4. Recent “sting” activity concerning ACORN.** You asked CRS to research and report on the federal and state laws that could apply to the recent videotaping of ACORN workers and the distribution of conversations with ACORN workers without consent. This issue is addressed in the following memorandum, *Allegations of Recording Conversations With*

Various ACORN Affiliated Individuals Without Their Consent: Implications Under Various Federal and State Laws Relating to the Interception of Oral Communications. The memorandum explains that “as a general matter federal law permits private individuals to record face to face conversations, as long as the recording is not done for criminal or tortious purposes. New York law seems even more forgiving, for it only reaches those who record remotely. The laws of the District of Columbia mirror federal law prior to the 1986 amendments to the federal statute. D.C. law permits one-party consent recordings, although the consequences of the want of complete symmetry with federal provisions are unclear. In contrast, the laws of Maryland and California appear to ban private recording of face to face conversations, absent the consent of all of the participants.”

5. **Effects of ACORN activity concerning housing.** You asked CRS to research and describe the extent to which ACORN has assisted the homeless and provided housing opportunities to for low-income individuals. CRS did not identify any rigorous and independent evaluation of the effectiveness of ACORN’s affordable housing activities. The following literature review, *ACORN Activities Considering Housing*, lists reported examples of ACORN’s activities to promote the development of affordable housing, to provide counseling to first-time homebuyers and homeowners facing foreclosure, and to support individuals affected by Hurricane Katrina. Please note that CRS did not verify the information provided in these reports.
6. **Analysis of legislation to prohibit funding to ACORN.** This issue is addressed in the attached CRS Report R40826, *The Proposed “Defund ACORN Act” and Related Legislation: Are They Bills of Attainder?* The report states that “while the regulatory purpose of ensuring that federal funds are properly spent is a legitimate one, it is not clear that imposing a permanent government-wide ban on contracting with or providing grants to ACORN under the proposed Defund ACORN Act fits that purpose, at least when the ban is applied only to ACORN and all its affiliates. The brevity of the funding moratorium imposed on ACORN and its affiliates under the 2010 Continuing Appropriation Resolution, however, could arguably be justified as an expedience necessary to address an issue of immediate congressional concern, while allowing Congress sufficient time to consider a longer term solution.”

Attachments referenced in the following memoranda are provided in a separate file.



MEMORANDUM

March 15, 2010

To: House Committee on the Judiciary

Subject: Allegations of Fraudulent Voting by Voters Registered by ACORN

CRS is sending you the following in response to your request for information on the Association of Community Organizations for Reform Now (ACORN) and allegations of “improper voter registrations that resulted in people being improperly placed on the voting rolls and actually attempting to vote improperly at the polls.” In contrast to the earlier telephone response, we are providing a written response to the third question from the letter sent to CRS Director Dan Mulhollan from Chairmen Conyers and Frank dated September 22, 2009. This memo incorporates a new broader search and an exhaustive review of the search results.

Specifically, CRS searched for news articles using the LexisNexis *News, All* file and the following search terms (including variations of some of these terms): registration, ACORN, fraud, illegal, improper, ballot, and vote.¹ The search included articles loaded through November 19, 2009, but excluded editorials and op-ed pieces. CRS reviewed the search result and compiled the information in **Table 1** below.² To avoid duplicating relevant information in the table, CRS did not include all citations where multiple sources reported on the same allegation. The table is organized by jurisdiction and includes citations to sources along with relevant passages.

Finally, please note CRS did not independently verify the information contained within the articles cited.

Table 1. Allegations of Fraudulent Voting by Voters Registered by ACORN

State	Source	Details
New Mexico	Jeff Jones, “N.M. Republicans Take Aim at ACORN,” <i>Albuquerque Journal</i> , October 17, 2008.	State Rep. Justine Fox-Young, R-Albuquerque, said at a news conference Thursday that the Republican Party searched public records for 92 newly registered Albuquerque voters who cast ballots in the June primary election. She said there were “highly suspect” voter

¹ Information in this memorandum is drawn from publicly available sources and is of general interest to Congress. As such, all or part of this information may be provided in memoranda or reports for general distribution to the Congress.

² The search produced over 1700 citations. A team of CRS information professionals assisted with the initial review of the search results.

State	Source	Details
		<p>registrations on file for 28 of those voters, with many of them listing Social Security numbers used by other people.</p> <p>She said the majority of the questionable registrations were handled by ACORN.</p>
New York	<p>Jeff Jones, "Group Confirms Some Suspect Voters As Legitimate; ACORN Responds," <i>Albuquerque Journal</i>, October 18, 2008.</p> <p>Fredric U. Dicker, "Ballot Fraud Probe Hits Dems and WFP," <i>New York Post</i>, September 30, 2009.</p>	<p>State Republicans this week said their search of public records for 92 newly registered Albuquerque voters who cast ballots in the June primary uncovered "highly suspect" voter registrations on file in 28 of those cases. The party provided names for 10 of the 28 suspect registrations and said five of those 10 were registrations submitted by ACORN.</p> <p>The controversial, ACORN-connected Working Families Party and local Democrats are under investigation by a special prosecutor after a rash of allegedly forged absentee ballots and ballot applications were filed on behalf of candidates in the shadow of the state Capitol, officials said yesterday.</p> <p>Republicans in Troy, where the fraud is said to have taken place, are calling for a federal probe.</p> <p>The fraud allegations focus on claims by several-public housing residents that their names were forged on absentee ballot applications as well as on ballots filed on behalf of Working Families Party candidates in the Sept. 8 primary.</p> <p>As many as 50 absentee-ballot applications may be involved.</p>
Ohio	<p>Mark Niquette, "Brunner Won't Need to Change Voter Lists; Appeals Court Reverses Ruling on Registrations," <i>Columbus Dispatch</i>, October 11, 2008</p> <p>Jeane MacIntosh and Maggie Haberman, "Bogus Voter Booted Amid Probe of ACORN – 4,000 of Left-Wing Group's Sign-Ups Are Shady," <i>The New York Post</i>,</p>	<p>Franklin County Prosecutor Ron O'Brien said yesterday that he is investigating two complaints. One involves a woman from Colorado who called to say local relatives associated with ACORN were registering and voting improperly; the other centers on an Ohio State University student who reportedly registered with a phony name and cast a ballot.</p> <p>Investigators probing ACORN have learned that an Ohio man registered to vote several times and cast a bogus ballot with a fake address, officials said yesterday, as they</p>

State	Source	Details
	October 14, 2008.	<p>revealed that nearly 4,000 registration applications supplied by the left-leaning activist group were suspect.</p> <p>The vote of Darnell Nash, one of four people subpoenaed in a Cuyahoga County probe of ACORN's voter-registration activities, was canceled and his case was turned over to local prosecutors and law enforcement, Board of Elections officials said yesterday.</p> <p>Nash had registered to vote repeatedly from an address that belonged to a legitimately registered voter, officials said during a hearing at which the subpoenaed voters were to testify.</p> <p>Board officials had contacted Nash this summer, questioned his address and told him to stop repeat registering.</p> <p>But still, he breezed into Ohio election offices - the state allows early voting for president - reregistered with a fake address and cast a paper ballot, officials said.</p> <p>"He came in on 9/30 and Mr. Nash again registered to vote at [someone else's] address, and he cast a ballot," said board official Jane Platten.</p>
	Matt Kelley, "Campaigns Take Aim As New Voter-Fraud Allegations Emerge," <i>USA Today</i> , October 15, 2008.	<p>Having fake names or ineligible voters on the rolls "absolutely and definitely translates into fraudulent ballots cast," Republican election lawyer Thor Hearne said.</p> <p>He cited the case of a man in Cleveland who cast an absentee ballot under the name of Darnell Nash. Jane Platten, director of the Cuyahoga County Board of Elections, said Nash was one of several people registered by ACORN to vote using addresses of actual voters. He has been stricken from the voter rolls, and the elections board will consider disqualifying his ballot, she said.</p>
	Mark Hemingway, "Community-Organizer-in-Chief," <i>National Review</i> , October 15, 2008.	<p>The same morning as ACORN's press conference, the New York Post reported that "Investigators probing ACORN have learned that an Ohio man registered to vote several times and cast a bogus ballot with a fake address, officials said yesterday, as they revealed that nearly 4,000 registration applications supplied by the left-leaning activist group were suspect." In other words, there's no evidence ACORN is enabling "illegal voting as a result of phony</p>

State	Source	Details
		voter registration" except, coincidentally, in the pages of one of America's largest newspapers, on the very day they hold a press conference to profess their innocence.
	John Fund, "Falsified Registrations Become Votes," <i>Politico.com</i> , November 2, 2008.	There are already documented examples of fraudulent registrations being converted into fraudulent votes in Ohio, where ACORN and other groups were active. Darrell Nash, an ACORN registration worker, submitted an illegal form for himself and then cast a paper ballot during the state's "early voting" period.
	"Ohio Man Accused of Multiple Voter Registrations," <i>Associated Press</i> , June 4, 2009.	<p>A grand jury in Cleveland has indicted a man on charges accusing him of registering to vote nine times last year using fraudulent names and addresses.</p> <p>Cuyahoga (keye-uh-HOH'-guh) County Prosecutor Bill Mason said Thursday that Darnell Nash registered and voted at the elections board Sept. 30.</p> <p>Nash was charged with nine counts of record tampering, nine counts of false registration and one count of illegal voting.</p> <p>The prosecutor says multiple registrations were taken by the community organization ACORN.</p>
	Tom Feran, "Man Indicted in Illegal Voting Investigation," <i>Plain Dealer</i> , June 6, 2009.	<p>A man who cast a ballot using a fake address in last fall's presidential election was indicted Thursday on charges of tampering with records, false registration and illegal voting.</p> <p>The indictment of Darnell Nash - who address was unknown - was the first by the Cuyahoga County prosecutor's office from a seven-month investigation of voter registration practices. Assistant prosecutor Rick Bell said detectives with the Cuyahoga County Sheriff's Office continue to investigate.</p>
	Matthew Vadum, "Community-Organized Crime," <i>American Spectator</i> , July 24, 2009.	ACORN is also under investigation in Cuyahoga County, Ohio. The Democratic local prosecutor there is probing ACORN after a man registered to vote multiple times by the group was indicted by a grand jury for fraudulent voting.

State	Source	Details
	Matthew Vadum, "ACORN'S Useful Idiots," <i>American Spectator</i> , September 21, 2009.	ACORN is under indictment in Nevada for conspiracy to commit election fraud and under investigation in Cleveland, Ohio. In Ohio, a person named Darnell Nash was indicted by a grand jury for casting a fraudulent ballot. Nash was registered multiple times by ACORN. ACORN remains under investigation in Cleveland by the local prosecutor, a Democrat.
	Matthew Vadum, "The Nine Voting Lives of ACORN's Darnell Nash," <i>American Spectator</i> , October 8, 2009.	While ACORN has not yet been charged in Cuyahoga County, Ohio, the fact that an individual voter registered by ACORN has been convicted of actually casting a fraudulent ballot appears to be a historic first for the embattled radical advocacy group.
	Matthew Vadum, "Bertha Lies," <i>American Spectator</i> , October 20, 2009.	Darnell Nash of Cleveland, Ohio, was registered to vote by ACORN nine times for last year's election. Nash cast a fraudulent ballot and was convicted of vote fraud and voter registration fraud. He's currently serving a six-month prison term. A spokesman for Cleveland's Democratic prosecutor Bill Mason told me earlier this month that a local investigation of ACORN remains wide open.

Source: LexisNexis News, All Database.