

## **JOINT FORUM ON ACORN**

### **Before Members of Oversight and Government Reform Committee and Judiciary Committee House of Representatives**

**December 1, 2009**

#### **Statement of Hans A. von Spakovsky**

Thank you for the opportunity to testify at your investigative forum about the possibly illegal activities of the Association of Community Organizations for Reform Now (ACORN) and its many affiliates and subsidiaries. I am currently a Senior Legal Fellow and Manager of the Civil Justice Reform Initiative at the Heritage Foundation. However, the opinions I am expressing are my own and not those of the Heritage Foundation.

Prior to my work at the Heritage Foundation, I spent two years as a Commissioner on the Federal Election Commission and four years as a career lawyer at the Department of Justice, my last three as a Counsel to the Assistant Attorney General for Civil Rights.

What do we know about ACORN? A great deal of work has been done looking at ACORN from the outside with publicly available information including by the Capital Research Center and the Employment Policies Institute. It is a far flung operation with dozens if not hundreds of affiliates – one report discovered almost 200 ACORN affiliates operating out of its headquarters in New Orleans and ACORN itself claims operations in 110 cities. Some of these organizations engage in political work while others have a tax-exempt, charitable status. Yet the \$126.4 million in donations and tax dollars that ACORN is reported to have taken in since 1993 are apparently moved around its network of organizations and commingled with no concern over the propriety or legality of doing so.

Congressman Darrell Issa released a report on July 24 that concluded that ACORN “has repeatedly and deliberately engaged in systemic fraud.” According to the report, “[b]oth structurally and operationally, ACORN hides behind a paper wall of nonprofit corporate protections to conceal a criminal conspiracy on the part of its directors, to launder federal money in order to pursue a partisan political agenda and to manipulate the American electorate.”

The report accuses ACORN of evading taxes, obstructing justice, covering up a \$1 million dollar embezzlement, committing investment fraud, submitting false filings to the IRS and the Dept of Labor, as well violating the Fair Labor Standards Act. In fact, the reported million dollar embezzlement may actually

have been \$5 million according to information uncovered by the Louisiana Attorney General and hidden by ACORN for ten years.

On September 22, Senator Grassley released a review of ACORN's abuse of the tax-exempt status of its subsidiary organizations (ACORN itself is not a tax-exempt organization). Senator Grassley found almost 50 such tax-exempt subsidiaries and affiliates, many of which receive charitable contributions. He concluded that "the flow of money among the ACORN family of organizations is a big shell game. Dollars raised for charitable activity appear to be used for impermissible lobbying and political activity."

As the *Washington Post* reported, the "leaders of the ACORN community organizing network transferred several million dollars in charitable and government money meant for the poor to arms of the group that have political and sometime profit-making missions." ACORN's affiliate, Citizens Services Inc., alone received more than \$800,000 from the Obama presidential campaign in 2008 for get-out-the-vote activity.

In 2008, Elizabeth Kingsley, a Washington lawyer hired by ACORN, prepared a report dated June 18, 2008, that was labeled "Sensitive report – do not distribute beyond initial recipient list." The leaked report outlines the internal organization of ACORN with its interlocking directorates, its lack of documentation about transfers of money between ACORN and its affiliates, the possible use of tax-deductible charitable contributions for political purposes, and the conflicts of interest between ACORN employees who have dual roles in tax-exempt entities and other affiliates that engaged in political activity.

Kingsley concluded that ACORN "may not be able to prove that 501(c)(3) resources are not being directed....based on impermissible partisan considerations," an obvious reference to the provisions of the federal tax code governing charitable organizations. ACORN fired some of its own directors after they started asking for information on the flow of money and the internal operations of the organization.

The internal structure of ACORN, a tangled mess of interlocking directorates where a small group controls all of the dozens of shell companies that routinely (and possibly illegally) transfer millions of dollars, is the classic pattern used by criminals to launder money and control their operations. In fact, the *Arkansas Democrat-Gazette* reported that former Arkansas ACORN chair Dorothy Perkins said ACORN was "run like a Jim Jones cult" where all the ACORN money ended up under the control of Wade Rathke, the founder and long-time head of the organization.

Then we get to the undercover videos. They show ACORN employees providing willing assistance and advice to a couple posing as a prostitute and

her pimp on how to commit tax and mortgage fraud. The couple also make clear they are smuggling in underage girls from South America for prostitution. Not only do the employees not disapprove of human trafficking in sex slaves for prostitution, they provide advice on how to successfully cover up such an operation from authorities.

This did not just occur in one office, it occurred in five. As the Inspector General of the Department of Justice summarized in a report released in November on DOJ grants to ACORN, the videos show ACORN employees “providing advice on operating an illegal business, tax evasion, and money laundering,” all of which are illegal under various provisions of state and federal laws.

ACORN has had dozens of its employees convicted of voter registration fraud in many different states over the course of numerous elections. In Washington State, ACORN agreed to a civil settlement in which it paid a large fine and agreed to follow strict rules in its voter registration practices to avoid prosecution. There are many different organizations that engage in voter registration activity on both a partisan and nonpartisan basis, but there is only one with such a record of repeated criminal activity by its employees, a clear and obvious sign of problems within the organization itself, including its supervision and training of employees. One former ACORN employee, Nate Toler, said “There’s no quality control on purpose, no checks and balances.” Such voter registration fraud is a criminal violation of federal law, 42 U.S.C. 1973gg-10, punishable by up to five years in prison.

This criminal activity by ACORN not only results in the submission of fraudulent voter registration forms to election officials, it interferes with the ability of regular voters to participate in the election process. Election officials will tell you that they dread the arrival of ACORN at their offices. ACORN has a habit of dumping voter registration forms on local election officials just before the registration deadline for an upcoming election.

At a time when officials are trying to process the registration forms of legitimate voters so they will be able to vote, they have to spend disproportionate amounts of limited time and resources sorting through thousands of incomplete and fraudulent forms created by ACORN employees. One state audit alone in Virginia found that 83% of registrations filed by ACORN and its affiliate, Project Vote, were invalid. ACORN lawyer Kingsley found that the “tight relationship between Project Vote and Acorn made it impossible to document that Project Vote’s money had been used in a strictly nonpartisan manner.”

Thus, there appear to be numerous possible violations of federal law by an organization that has received millions of federal tax dollars in grants and that may have abused its tax-exempt and charitable status under federal tax

law. Yet to date, the executive branch department that is the chief law enforcement agency of the United States, the U.S. Department of Justice, and the Federal Bureau of Investigation, which is part of the Justice Department, has been almost entirely silent and seemingly negligent in carrying out its duty to investigate and prosecute violations of federal law. As has been the Internal Revenue Service. A number of states have opened local investigations, such as Nevada and Louisiana, and full credit should go to the officials of those states for doing so.

But as the reports make clear, ACORN is a sprawling, multi-layer organization with offices all over the country. It operates in a multitude of different areas, from elections and voting to housing and radio and television stations – it even provided tax assistance through the Internal Revenue Service’s Volunteer Income Tax Assistance Program until the IRS recently terminated its participation.

Only the FBI and the Justice Department have the power to perform a complete and thorough, nationwide investigation of such a large organization. There is more than enough evidence from the undercover videos and various other reports to provide a basis for a federal investigation. The government has initiated major investigations of businesses and government contractors on much less evidence of possible wrongdoing.

The complexity of the internal operations of ACORN as outlined by their own lawyer, Elizabeth Kingsley, and its transfer of millions of tax dollars and charitable contributions between its many different affiliates, also make it clear that only a forensic audit would come anywhere close to uncovering what ACORN has been doing with the money it has been receiving. Such an audit is necessary to answer the question of whether ACORN has violated federal tax, mortgage, election and campaign finance laws – or even the federal RICO statute.

The use ACORN made of its charitable arms alone is, as Senator Grassley’s report termed it, “similar to the use of charities by Jack Abramoff.” We all know about the vigorous investigation and prosecution of Abramoff. So where is the federal investigation of ACORN’s similar activities?

Immediate action by federal law enforcement is particularly important given the recent actions of ACORN in California. After California Attorney General Jerry Brown announced he was going to open an investigation into ACORN’s activities in San Diego, one of the offices targeted in an undercover video, news reports indicate that office dumped more 20,000 pages of its documents into the trash. If true, it is possible evidence of the willingness of ACORN to destroy potential evidence and obstruct a law enforcement investigation.

Congress should not only hold direct hearings on ACORN and its activities, but also oversight hearings of the FBI, the Justice Department, and the Internal Revenue Service to obtain information on any investigations they are conducting into ACORN. If those agencies are not conducting any investigations, they should be required to explain why they are not carrying out their enforcement duties to investigate and prosecute violations of federal law.