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STATE OF INDIANA



Todd Rokita
Secretary of State

**Comments to US House of Representatives Joint Committee Hearing on ACORN –
Washington, DC, Tuesday, December 1st 2009**

Thank you to Ranking Members Issa and Smith and the other leaders and members of the House Oversight and Government Reform and the Judiciary Committees for recognizing the need for today's hearing on the matter of ACORN.

Today, as Indiana's Chief Election Officer, I will overview for the Committee evidence of ACORN involvement in "large scale" – criminal voter registration fraud in Lake County during the 2008 Election cycle.

As you know, Indiana has successfully seen itself through an era of tremendous reform when it comes to the election process. We've worked hard to ensure that the great strides our state and nation have taken to increase voter participation and turnout are not accompanied by loss of integrity, accountability, and voter confidence.

We are fortunate that through the efforts of many, systemic voter disenfranchisement has been eradicated from our electoral system. However, another type of disenfranchisement still plagues our elections. Disenfranchisement also occurs when honest votes are diluted by overzealous supporters of candidates, causes, or parties who would intentionally cheat the system. Important election reforms in Indiana have served Hoosiers well through a balancing of access and integrity.

Examples of recent election reforms in Indiana include...

1. Indiana's model Voter ID law which serves as a high example of our state's commitment to integrity. Since Indiana's voter-ID law went into place, participation in our elections has increased – a sign of improved voter confidence. Opinion polls tell us our citizens have overwhelmingly favored this reform.
2. Indiana was one of the first states in the nation to build and activate a fully functioning Statewide Voter Registration System. Our state-of-the-art centralized database provides real-time access to every county in the state. Through this improvement more than 600,000 duplicate or inactive voter registrations have been identified and removed. Because the system prevents double voting, some of our counties now offer voters the

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convenience of “vote anywhere” vote centers. Our statewide voter registration system has also paved the way for online voter registration – which Indiana will inaugurate next summer.

3. Recent absentee voting reforms in Indiana now require a voter’s signed affidavit, restrict third-party handling of ballots, and set harsh punishments for electioneering, tampering, or fraud.

My job as Indiana’s Chief Election Officer is to increase participation in elections and maintain public confidence in the process. To accomplish this, we rely on and welcome, responsible partners to help with the registration of voters. I find it intolerable, however, that any participant in our open elections process, a volunteer, a paid worker, partisan, or nonpartisan... might be allowed to engage in practices that damage voter confidence in our elections. Obviously the solution doesn’t lie in more bureaucracy and limiting voter registration assistance to government workers. In a truly free society, government doesn’t conduct elections – *people* conduct elections. People – not government – select their representatives in government. The distinction is an important one, but lost on many. It is important to recognize the role that responsible, third-party organizations can and should play in our elections.

As early as February, 2008, in the year that was to be an historic election for Indiana, my office began receiving alarming reports from constituents in Lake County, Indiana, about the voter registration activities of the Northwest Indiana ACORN Chapter located in Gary, Indiana.

In early October, my office was flooded with reports that Northwest Indiana ACORN “dropped” approximately 5,000 voter registration applications at the Lake County Voter Registration Office during the last few days, even hours, of the voter registration period for the 2008 General Election. Many of these forms appeared to the Lake County Board of Elections and Registration to be suspicious, incomplete, or unverifiable. Officials at the county voter registration office reported that there was hardly enough time to adequately verify the information on the applications, but that on quick review, thousands of the applications appeared invalid.

Because these reports – which were widely published and not even disputed by the director of the local ACORN chapter – had the potential to significantly impact voter confidence in the region, I asked Lake County election officials to preserve the original

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voter registration applications and send copies of the questionable applications to my office for review.

My office studied copies of 1,438 voter registration applications that had been flagged by the Lake County Board of Elections and Registration. Evidence of a pattern of voter registration fraud was striking:

- 61% of the applications had one or more critical defects observable on the face of the applications - rendering them invalid and useless.
- 88% of the names on the 1,438 ACORN supplied applications could not be verified through the Indiana Bureau of Motor Vehicles database or by 4-digit Social Security Number matching with other name and address verification databases.
- 26% of the applications evidenced that a third party had assisted the intended voter in completing, correcting or altering required data. Indiana law requires the *identification of anyone* altering, completing, or updating a voter registration application. However only three of the altered applications identified the third party.
- 22% of the ACORN applications appeared to be multiple applications prepared by the same individual.

Attorneys for ACORN defended the submission of only a handful of the voter registration applications in Indiana (including one in the name of "Jimmy John's" – with the address of a local sandwich shop) offering a tortured interpretation of law. ACORN attorneys and staff viewed Indiana's law making it a crime to destroy a voter registration application as a large loophole in the law – authorizing the organization to submit any semblance of a voter registration application – without regard to incompleteness or the likelihood that forgery or fraud was involved. For example, though it may well be a crime to destroy someone else's income tax return, surely no one would seriously think that such a law would allow a paid tax return preparer to submit knowingly false returns. At least in Indiana, no court of law has yet had the opportunity to consider ACORN's defenses.

ACORN's defenders also failed to explain what legitimate purpose the organization would have had to collect and hold onto thousands of voter registration applications for

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months, only to submit them in large batches very near the close of voter registration for the 2008 General Election.

Of various alternatives that ACORN could have chosen – the most obvious of which might have included proper training, not providing financial incentives to workers to defraud or cut corners, and careful compliance with the law, ACORN took a route that appeared most likely to result in the election board's acceptance of numerous fraudulent or incomplete registrations.

ACORN's defenders also claim that the organization should not be responsible for the actions of their paid employees. Again however, the laws of agency – and common sense, refute this defense.

It was apparent from my office's relatively quick analysis, that strong evidence exists that ACORN violated multiple state and federal election laws.

The evidence, which our office promptly turned over to the United States Attorney for the Northern District and the Lake County Prosecutor suggests that ACORN may have violated the following criminal Federal election Laws:

- **The National Voter Registration Act (42 U.S.C. 1973-10(2) (c)).**
 - “Section 1973i(3) makes it a federal offense, in an election in which a federal candidate is on the ballot, to knowingly and willfully (1) give false information as to name, address, or period of residence to an election official for the purpose of establishing one's eligibility to register or to vote; (2) to pay, offer to pay, or accept payment for registering to vote or for voting; or (3) conspire with another person to vote illegally. Violations are punishable by imprisonment for up to five years.”¹
- **In Indiana** it is illegal to:
 - (a) conspire to submit a false application for voter registration;
 - (b) knowingly conspire with an individual for the purpose of encouraging an individual to submit a false application;
 - (c) pay or offer to pay an individual for registering to vote;

¹ Donsanto, C. & Simmons, N. (1995). Federal Prosecution of Election Offenses. The Department of Justice, Sixth Ed. Page 32.

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- (d) knowingly apply or procure a false application for voter registration;
- (e) fraudulently subscribe another person's name to an affidavit of registration;
- (f) subscribe the name of another person on a voter registration affidavit without writing on it the person's own name and address as an attesting witness;
- (g) recklessly registering to vote more than once;
- (h) destruction of failure to file or deliver a registration affidavit;
- (i) knowingly applying to vote in one's own name and a false name (Indiana Code 3-14-2 *et. seq.*). These crimes are classified as either Class A misdemeanors or Class D felonies.

- **Conspiracy against the exercise of voting rights (18 U.S.C. 241).**

- “Section 241 makes it a federal offense for two or more persons to “conspire to injure, oppress, threaten, or intimidate any person in any state... in the free exercise or enjoyment of any right or privilege secured by the Constitution or laws of the United States.”... (This law) “has been interpreted to include any effort to derogate a right which flows from the Constitution or from federal law.”² Including: (1) destroying voter registration applications³ and illegal registration of voters.⁴ “The election fraud conspiracy need not be successful to violate this statute.⁵ Nor need there be proof of an overt act.⁶

“Section 241 reaches conduct affecting the integrity of the federal election process as a whole, and does not require fraudulent action with respect to any particular voter.”⁷

- **In Indiana**, it is a Class D felony to:
 - (a) interfere with free and equal elections;
 - (b) knowingly submit or procure false, fictitious or fraudulent registration

² Donsanto & Simmons Page 29 – 30.

³ United States v. Haynes, 977 F. 2d 583 (6th Cir. 1992).

⁴ United States v. Weston, 417 F. 2d 181 (4th Cir. 1969), cert. denied, 396 U.S. 1062 (1970).

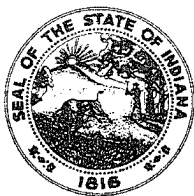
⁵ United States v. Brandberry, 517 F. 2d 498 (7th Cir. 1975).

⁶ Williams v. United States, 179 F. 2d 644 (5th Cir. 1950).

⁷ Donsanto & Simmons Page 30; United States v. Nathan, 238 F. 2d 401 (7th Cir. 1956), cert. denied, 353 U.S. 910 (1957).

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applications or:

(c) obstruct or interfere with an election officer in the discharge of the officer's duty (Indiana Code 3-14-3-1.1 and 3-14-3-4).

- **Federal RICO statutes (18 U.S.C. 1962 (c)).**
 - ACORN's voter registration activity in Indiana was clearly a well organized and orchestrated activity. Reports of voter registration fraud investigation in several other states suggest that ACORN's 2008 voter registration activity was more in the nature of a national political campaign than the "grass roots" activity that its attorneys and leaders suggest.
- Racketeer Influenced and Corrupt Organization laws are designed to focus on the patterns of criminal "enterprise," not just individual criminals. A RICO case requires three elements: (i) a "person," who is part of an (ii) "enterprise" which includes any legal entity (including a non-profit organization or association) (iii) which engages in a pattern of racketeering activity" (defined as committing any 2 of 35 named crimes within a 10-year period). Fraud is one of the crimes that can trigger RICO.⁸
- **Indiana's Racketeer Influenced and Corrupt Organization's Law (RICO),** virtually mirrors federal RICO law: "A person who is employed by or associated with an enterprise and who knowingly or intentionally conducts or participates in the activities of that enterprise through a pattern of racketeering activity (including forgery and perjury) commits Corrupt Business Influence, a Class C Felony" (Indiana Code 35-45-6 *et. seq.*).

I am attaching and submitting a copy of the report supplied to the U.S. Attorney and Lake County Prosecutor with my written testimony for the record.

Though I serve as Indiana's Chief Election Officer, my authority to investigate election law violations is limited under Indiana Law, to the extent that my office is without authority to issue subpoenas, conduct formal investigations, or file criminal charges. The examination conducted in 2008 was undertaken without the resources and authority of a law enforcement agency. Therefore, I presume that oversight and law enforcement agents with sufficient resources would provide a much clearer picture of ACORN's activities.

⁸ <http://niagaratimes.blogspot.com/2009/09/why-isnt-acorn-vote-fraud-criminal-rico.html>.

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Over the past year, I have received assurances from the Office of the U.S. Attorney and Lake County Prosecutor that an investigation is ongoing. I have attached a copy of a recent letter to the U.S. Attorney for the Northern District, on behalf of the citizens of the state of Indiana, reiterating our interest in this case.

For the sake of the rule of law, as well as public confidence in elections, I would respectfully ask your committees to demand the engagement of federal government investigation and law enforcement agencies to bring about clarity and justice in the matter of ACORN's voter registration activities in Indiana and elsewhere. Nothing less than public confidence in our grand Constitutional election process is at stake.

Again, I wish to sincerely thank the minority committee's leadership and members for this opportunity to testify on this important matter. I welcome your questions and comments.

Todd Rokita,
Indiana Secretary of State

Enc.: - Summary of Investigation on '08 Voter Registration fraud in Lake County.
- Letter to U.S. Attorney for the Northern District of Indiana.

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Secretary of State

October 22, 2008

To: The Honorable Todd Rokita, Secretary of State of Indiana

From: Jerry Bonnet, General Counsel

Re: Summary of Investigation on '08 Voter Registration fraud in Lake County, Indiana

1) Background

In Indiana, the voter registration season for the 2008 election year extended from December 1, 2007, to the hour of the close of business in each voter registration office, on October 6, 2008.¹² During this period voter registration application affidavits, on a VRG-7 form, may be submitted to the county voter registration office, circuit court clerk or in some counties, separately established voter registration offices. In order to be eligible to vote in the November 6, 2008, General Election, individuals who were not already registered voters³ would have to have submitted their VRG-7 forms to their voter registration offices by the close of business on October 6, 2008.⁴

During the week prior to the close of voter registration for the 2008 General Election, the Indiana Secretary of State, the state's Chief Election Official, received information that between 4,700 and 5,000 voter registration applications had just recently been delivered to the Lake County Board of Elections and Voter Registration (LCEB). Eric Weathersby, Executive Director of the North West Indiana Chapter of the Association of Community Organizations for Reform Now (NWI-ACORN) has acknowledged that the Gary, Indiana affiliate office of ACORN was the source of these

¹ IC 3-7-13-10.

² With the exception of April 8 through May 20, 2008 (the Primary Election period).

³ Individuals who were already registered and have been voting in previous elections are not required to register every election year, in fact, pursuant to IC 3-14-2-4 it is a Class-A misdemeanor for a person to recklessly register or offer to register more than one time.

⁴ Or had their applications postmarked by October 6, if mailed.

applications.⁵ NWI-ACORN has also acknowledged that during the summer months, the organization paid 82 employees to solicit voter registration applications in and around Gary, Indiana.

Almost immediately Sally LaSota, Director of the LCEB and Ruthann Hoagland, LCEB Assistant Registration Administrator, reported to state election officials that “many” of these applications appeared to be incomplete, forged or fraudulent. NWI-ACORN officials acknowledge that the organization was aware that many of the applications “appeared suspicious” or “could not be verified” by their staff, but that their interpretation of the law was that the applications had to be submitted to the LCEB anyway.

Eric Weathersby, of NWI-ACORN and Charles Jackson, spokesman for the national ACORN organization have made statements indicating that *some* of the 5,000 applications (approximately 2,500) were sorted into three groups, bundles or stacks: “ones which were verified, ones which were incomplete and ones which were questionable or suspicious.”⁶

On October 10, 2008, the Secretary of State requested copies of the suspect voter registration applications turned in by NWI-ACORN and requested that the LCEB take steps to retain and preserve the original applications, even if the board determined that they were incomplete, forged or fraudulent. The LCEB provided copies of 1,438 completed VRG-7 forms. Though the LCEB advises that the forms were turned in by NWI-ACORN, and NWI-ACORN acknowledges this, the forms examined do not contain any markings to indicate that they were collected by NWI-ACORN, that they had been pre-screened by NWI-ACORN or the date that they were submitted to the LCEB.

The Office of the Secretary of State (the Agency) has examined the copies provided by the LCEB to determine if criminal activity has occurred which would warrant further investigation and prosecution and if non-criminal election laws have been systematically violated to the extent that injunctions against further violations are warranted.

⁵ www.post-trib.com/news/lake/1224594.lcvote.articl “Lake County vote fight takes new turn.” Retrieved 10/16/2008.

⁶ <http://www.indystar.com/apps/pbcs.dll/article?AID=/20081017/NEWS0502/810170513> “ACORN followed the law on suspect registrations”. Retrieved 1-/18/2008.

2) Issues:

- a) Did NWI-ACORN violate, conspire with or induce others to violate Indiana law pertaining to the solicitation, completion, verification and submission of incomplete, forged or fraudulent voter registration applications?
- b) Did NWI-ACORN violate, conspire with or induce others to violate Indiana law pertaining to the submission of *multiple* voter registration applications?
- c) In submitting thousands of voter registration applications, some of which were known to be or suspected of being incomplete, forged or fraudulent, did NWI-ACORN violate Indiana law pertaining to the interference with election administration?
- d) Did NWI-ACORN's method and practice of voter registration activity violate Indiana's Racketeer Influenced and Corrupt Organizations Law (RICO)?
- e) Did NWI-ACORN's method and pattern of vote registration activity result in the obstruction of individuals rights to register to vote and vote under state and federal law?
- f) Was NWI-ACORN *required* under Indiana law, to submit voter registration applications which the organization knew or suspected were incomplete, forged or fraudulent? And did the submission of voter registration applications which NWI-ACORN knew or suspected to be incomplete, forged or fraudulent shield the organization or others from criminal liability?

3) Summary of Statutes Referred to:

- 1. **IC 3-7-22-5(3)** A voter registration application must contain the acknowledgement that the voter is a U.S. citizen.
- 2. **IC 3-7-22-5(4)** A voter registration application must contain the acknowledgement that the voter is 18 years old or will be 18 years old on or before Election Day.

3. **IC 3-7-13-13(a)** *If an individual has a driver's license* they are **required** to place their driver's license number on their voter registration application.
4. **IC 3-7-13-13(b)** If an individual does not have a driver's license, then they are **required** to put the last four digits of their Social Security Number on their voter registration application.
5. **IC 3-7-22-5 etc.** Voter registration form must contain: a) the prime voter eligibility requirements (U.S. Citizenship and age); b) an attestation (affidavit) the voter meets the eligibility requirements and; c) the voter's signature under the penalty of perjury.
6. **IC 3-7-22-9** Voter registration forms may be accepted by the county voter registration office from: 1) the U.S. postal service; 2) the individual or; 3) a person presenting the form on behalf of the individual who is registering.
7. **IC 3-7-32-1 (a)** Each voter **shall** execute an original registration form. (b) an applicant's original registration form **may not** be signed by a person acting for the applicant under IC 30-5-5-14 (power of attorney).
8. **IC 3-7-32-2** Applications must be signed in indelible ink or indelible pencil.
9. **IC 3-7-32-7** *If* the voter is unable to write, **the voter** may procure another individual to write the voter's name...that person **shall** also write the person's own name and address on the affidavit.
10. **IC 3-7-34-2** A complete voter registration application is one which allows the county voter registration office to determine if the voter is eligible to register. If a voter registration form is incomplete the VRB shall make one attempt to contact the voter by mail (if possible) and one attempt to contact the voter by phone if a phone number has been given.
11. **IC 3-7-34-3** An incomplete voter registration form (lacking affirmation of citizenship and age) that is submitted to the VRB may only be corrected with a written statement received from the applicant no later than the end of the voter registration period. Other errors or omissions may be corrected by the voter registration office upon receiving information **from the voter**.

12. **IC 3-14-2-1 (1)** Conspiracy to submit false application for registration to vote illegally. Knowingly conspiring with an individual for the purpose of encouraging an individual to submit a false application for registration is a Class D felony.
13. **IC 3-14-2-1 (3)** Paying or offering to pay an individual for registering to vote is a Class D felony.
14. **IC 3-14-2-1 (4)** Accepting payment of any property for registering to vote is a Class D felony.
15. **IC 3-14-2-2** Fraudulent application for registration or procurement of registration. A person who, knowing that the person is not a voter and will not be a voter at the next election who applies or procures registration as a voter commits a Class A misdemeanor.
16. **IC 3-14-2-3** Fraudulent subscription of another person's name to affidavit of registration or absentee ballot. A person who (1) subscribes the name of another person to an affidavit of registration... knowing that the application contains a false statement...or subscribes the name of another person to an affidavit of registration...without writing on it the person's own name and address as an attesting witness commits a Class D felony.
17. **IC 3-14-2-4** Registering to vote more than once. A person who recklessly registers or offers to register to vote more than once commits a Class A misdemeanor.
18. **IC 3-14-2-5 (b)** Destruction or failure to file or deliver a registration affidavit or form after execution. A person who recklessly destroys or fails to file or deliver to the proper officer a registration affidavit or form of registration after the affidavit or form has been executed commits a Class A misdemeanor.
19. **IC 3-14-2-12 (1)** Voting or applying to vote in false name and own name. A person who knowingly votes or makes application to vote in an election in a name other than the person's own name...commits a Class D felony.
20. **IC 3-14-3-1.1** Interference with Free and Equal Elections. False, fictitious or fraudulent registration applications or ballots. A person who knowingly does any of the following commits a Class D felony:

- (a) Procures or submits voter registration applications known by the person to be materially false, fictitious or fraudulent.
21. **IC 3-14-3-4** Obstruction of, interference with, or injury of election officer or voter. (a) A person who knowingly obstructs or interferes with an election officer in the discharge of the officer's duty commits a Class D felony.
22. **IC 3-14-3-21.5** Voter intimidation. A person who knowingly or intentionally intimidates, threatens, or coerces an individual for: (3) exercising any power or duty under this title concerning registration or voting commits voter intimidation, a Class D felony.
23. **IC 35-41-2-3** Liability of corporation, partnership, or unincorporated association. (a) A corporation, limited liability company, partnership or unincorporated association may be prosecuted for any offense; it may be convicted of an offense only if it is proved that the offense was committed by its agent acting within the scope of his authority.
24. **IC 3-14-5-3** Enforcement Provisions. Duty to report violations to prosecuting attorney and violator; presentation to grand jury.⁷ (b) The Indiana Election Commission and each county election board shall report a felony or misdemeanor violation of the election code to the appropriate prosecuting attorney and the alleged violator. (c) The commission and boards may have the report transmitted and presented to the grand jury of the county in which the violation was committed at its first session. The commission and boards shall furnish the grand jury any evidence at their command necessary in the investigation and prosecution of the violation.
25. **IC 35-41-2-1** Voluntary conduct. (a) A person commits an offense only if he voluntarily engages in conduct in violation of the statute defining the offense. However, a person who omits to perform an act commits an offense only if he has a statutory duty, common law or contractual duty to perform the act.
26. **IC 35-41-2-2** Culpability.
- a) A person engages in conduct "intentionally" if, when he engages in the conduct, it is his conscious objective to do so.
- b) A person engages in conduct "knowingly" if, when he engages in the conduct, he is aware of a high probability that he is doing so.

⁷ Note: This section does not apply to violations of the NVRA or IC 3-7

- c) A person engages in conduct “recklessly” if he engages in the conduct in plain, conscious, and unjustifiable disregard of harm that might result and the disregard involves a substantial deviation from acceptable standards of conduct.
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- 27. **IC 35-41-2-4** Aiding, inducing, or causing an offense. A person who knowingly or intentionally aids, induces, or causes another person to commit an offense commits that offense, even if the other person: (1) has not been prosecuted for the offense; (2) has not been convicted of the offense; or (3) has been acquitted of the offense.
 - 28. **IC 35-43-5-2** Forgery. A person who knowingly or intentionally makes or utters a written instrument in such a manner that it purports to have been made by another, at another time, with different provisions, or by authority of those who did not give authority, commits a Class D felony.
 - 29. **IC 35-44-2-1 Perjury.** A person who makes a false, material statement under oath of affirmation, knowing the statement to be false or not believing it to be true, commits a Class D felony.
 - 30. **IC 35-45-6 et. seq.** Indiana’s Racketeer Influenced and Corrupt Organizations Law (RICO). Corrupt business influence. IC 35-43-5-2 Forgery, IC 35-43-5 (1 – 10) Fraud, IC 35-44-2-1 Perjury. A person who is employed by or associated with an enterprise and who knowingly or intentionally conducts or participates in the activities of that enterprise through a pattern of racketeering activity (including forgery and perjury) commits Corrupt Business Influence, a Class C Felony.
 - 31. **IC 35-50-3-1** A person who commits a Class A misdemeanor shall be imprisoned for a fixed term of not more than 1 year and may be fined not more than \$5,000.00.
 - 32. **IC 35-50-2-1** A person who commits a Class C felony shall be imprisoned for a fixed term of between 2 and 8 years, in addition the person may be fined not more than \$10,000.00.
 - 33. **IC 35-50-2-7** A person who commits a Class D felony shall be imprisoned for a fixed term of between 6 months and 3 years, in addition the person may be fined up to \$10,000.00.

34. **42-USC Chapter 20**, Subchapter I-HH National Voter Registration (NVRA). Sec. 1973gg Requirements with respect to administration of voter registration (a) (5) (B) Penalties (to be) provided by law for submission of a false voter registration application.

4) Allegation of Illegal Activity

Information in the form of reports received from local and state election officials⁸, media reports and complaints from individuals suggest the strong likelihood that with the assistance, coordination and financial support of the national ACORN organization(s), officials, employees, agents and associates of NWI-ACORN through corporate and individual actions, with knowledge, intent, recklessness or both, engaged in an organized enterprise activity to collect and create voter registration applications, thousands of which were submitted to the LCEB, which were known by NWI-ACORN to be incomplete, fraudulent or forged, in violation of state and federal laws.

It is further alleged that some 83 paid employees of NWI-ACORN, acting in the capacity of supervised, authorized agents of the organization, engaged in individual and conspiratorial actions to procure or produce voter registration applications through encouragement, deception, or bribery, which were incomplete, fraudulent or forged, with knowledge, intent or recklessness in violation of state and federal laws.

It is further alleged that the timing of NWI-ACORN's submission of approximately 5,000 voter registration applications (more than 1,000 of which NWI-ACORN, has acknowledged, were likely to be incomplete, forged or fraudulent) evidences enterprise intent to obstruct or interfere with an election and election officer's duties, in violation of Indiana law.

5) Evidence Examined by the Agency

At the request of the Agency, on October 10, 2008, the LCEB provided copies of 1,438 voter registration applications (Form VRG-7) which they report had been submitted the previous week by NWI-ACORN, for review. Each of the applications was given a serial number (45-0001 – 45-1438) for identification and digitally scanned into a

⁸ Letter from Thomas Wheeler, Chairman of the Indiana Election Commission, dated 10/1/2008, in which an e-mail communication from Michelle R. Fajman, LCEB Election Administrator, dated 9/24/2008, is quoted and paraphrased.

series of PC data files for ease of handling and safe keeping. Over a five day period (October 12-16, 2008) the Agency reviewed the applications for evidence of incompleteness, fraud or forgery as well as evidence of organized, corporate activity.⁹

Investigators for the Agency examined each application and used statistical analysis to determine the following:

- 1) 61% of the applications had one or more critical defects, observable on the face of the applications. A critical defect was defined as: a) incomplete data; b) indications of fraud; or c) indications of forgery. See Exhibits A, B, C, D, E, F and G attached.
- 2) 39% of the applications did not have an apparent critical defect, however, an independent random sampling (n=1,438) suggested that 88% of the applications **did not** show a match on the STARS¹⁰ database for name, driver's license, address or last 4-digits of a Social Security number. 54% of the applications which did not have a STARS match had **no** verifiable information, suggesting that they may be entirely fictitious.
- 3) On facial examination (no reference to external data) 30% of the applications displayed information that was obviously incorrect, incomplete or illegible.
- 4) 26% of the applications evidenced that someone had assisted the intended voter by the pre- or post, filling in of data, making corrections or altering the information (i.e. changing the affidavit signature date). However only 3 of the applications (< .1%) contained the identification of the person assisting the voter with the application (as required by IC 3-7-32-7).
- 5) 22% of the applications appeared to be multiple applications prepared by the same individuals. On many of these, the affidavits appear to be forgeries.

⁹ The LCEB had previously determined that approximately 400 of the 1,438 applications were incomplete, could not be verified, or appeared to be fraudulent or forged.

- 6) The majority of these applications indicate having originated within five zip code areas in and around Gary, Indiana.
- 7) Based on LCEB spot checking, verified by the Agency on the SVRS¹¹ system, it appears that many of the voter registration applications were submitted on behalf of persons already registered to vote.

Given the significant findings and indication of a pattern of incomplete, forged or fraudulent voter registration applications, the Agency believes that further investigation is warranted. With sufficient time and resources all of the 5,000 voter registration applications submitted by NWI-ACORN should be verified by:

- a) STARS database matching;
- b) SVRS database matching;
- c) Public Records database matching;
- d) Phone directory and reverse phone directory matching;
- e) Locating and interviewing individuals indicated as registrants;
- f) Analyzing LCEB voter registration acknowledgement notices (post cards sent during the first two weeks of October) which were returned as undeliverable;
- g) Interviewing the 83 NWI-ACORN employees hired to solicit voter registration applications;
- h) Analyzing NWI-ACORN payroll records to identify employees most active in voter registration solicitation and those who were allegedly fired for falsification of voter registration applications;
- i) Identifying and interviewing NWI-ACORN employees who were involved in training, supervision and oversight of the voter registration gathering employees;
- j) Indiana State Police expert handwriting and forged document analysis.

¹⁰ Indiana BMV System Transaction and Data Support system.

¹¹ Statewide Voter Registration System.

6) Analysis

A. Did the NWI-ACORN organization, its officers, agents and/or employees commit D felony and Class A misdemeanor crimes involving incomplete, fraudulent or forged voter registration applications?

Several Indiana statutes in Title 3 (Indiana Election Code) identify crimes related to the submission of a false application for registration, conspiracy to submit a false registration application, giving or receiving any type of payment for a registration application (whether false or not), subscription of another's name unless they are actually unable to subscribe their own name, and then only when the subscriber includes their own name and address on the application, recklessly registering more than once, conspiring, inducing or coercing a voter to register more than one time. See: IC 3-14-2-1 (2), IC 3-14-2-1 (3), IC 3-14-2-1 (4), IC 3-14-2-1, IC 2-14-2-3, IC 3-14-2-4, IC 3-14-2-12 (1) and IC 3-14-3-21.5¹ attached.

From the brief review of the 1,438 voter registration applications reviewed by the Agency, it would be difficult not to conclude that incomplete, fraudulent or fictitious voter registration applications were collected by NWI-ACORN employees and submitted to the LCEB by NWI-ACORN officials, in violation of numerous Indiana statutes.

Indiana election law prescribes specific statutory duties and obligations on individuals who would engage in assisting voters with the completion or submission of voter registration forms. Pursuant to IC 35-41-2 (1) - (3) **ignoring** a statutory duty or intentionally or knowingly violating a law, or conspiring, inducing or coercing others to violate a law, or acting with reckless disregard of laws, would give rise to individual or corporate (organizational) criminal liability.

B. Did ACORN, NWI-ACORN, its officers, agents and/or employees violate, conspire with, or induce voters to violate Indiana law prohibiting the reckless submission of multiple voter registration applications from the same or previously registered voters?

Pursuant to IC 3-14-2-4, a person who recklessly registers or offers to register to vote more than once commits a Class A misdemeanor. Pursuant to IC 53-41-2-3 (Aiding,

inducing, or causing an offense) a person who knowingly or intentionally aids, or causes another person to commit an offense, even if that person is not charged, convicted or acquitted of the offense, is liable for the commission of that offense. The evidence and reports suggests that NWI-ACORN advised voters that they should register multiple times, that it was “o.k.” and a “safe, even wise practice” to complete additional voter registration applications, and that NWI-ACORN employees disregarded voter’s protests that they were already registered to vote.

It is the Agency’s conclusion that officials, agents and employees of NWI-ACORN with knowledge and intent caused multiple registrations for voters to be submitted to the LCEB.

C. Did NWI-ACORN, its officials, employees or agents (with intent, knowledge or reckless disregard) interfere with free and equal elections or obstruct and interfere with the duties of election officers in submitting 5,000 voter registration applications (more than 1,000 of which were known or suspected to be incomplete, fraudulent or forged) during the very last days of an 11 month long voter registration season?¹²

The evidence and reports indicate that NWI-ACORN “dropped” its lot of 5,000 voter registration applications very late in the voter registration season (December 1, 2007 – October 6, 2008) knowing that some, many or all, were incomplete, fraudulent or forged, with the intention that the LCEB would not have sufficient time to perform lawful verification duties in time to meet statutory deadlines for entering registrations into the local rolls and statewide voter registration database. The facts suggest that NWI-ACORN knowingly and intentionally placed itself in a position where either of two statutes have been violated. Pursuant to IC 3-14-2-12 (1) it is a Class D felony (interference with free and equal elections) – in the procurement or submission of voter registration applications known to be false, fictitious or fraudulent. Also, however,

¹² Over 100 NWI-ACORN voter registration applications reviewed by the Agency appeared to have the affidavit signing date changed (moved forward in all cases) in an apparent attempt to create the illusion that the applications had been acquired in late September. Individual and media reports however suggest that in fact NWI-ACORN employees were engaged in collecting voter registration applications throughout the spring and summer months.

pursuant to IC 3-14-3-4 it is a Class D felony to obstruct or interfere with an election officer in the discharge of their official duties.

Based on the evidence and information received, the Agency concludes that officials, agents employees of NWI-ACORN with intent and knowledge, acted in such a way as to obstruct and interfere with the LCEB's duties and obligations with respect to voters and its administration of the 2008 General Election.

D. Is the pattern of methodology, conduct and business practice employed by ACORN and NWI-ACORN in violation of the Indiana Racketeer Influenced and Corrupt Practices Act (RICO)?

Pursuant to IC 35-45-6, a person who is employed by or associated with an enterprise and who knowingly or intentionally conducts or participates in activities of that enterprise through a pattern of racketeering activity commits Corrupt Business Influence, a Class C felony. Racketeering activity is defined as the commission, attempt to commit, or conspiracy to commit, in a multiple pattern, any of a series of crimes, of which *forgery* and *perjury* are included.

It appears that NWI-ACORN uses a practiced, refined business model using money from political organizations (it is unclear whether political organizations "contribute" to ACORN or "hire" the organization) to train and employ "independent contractors" to solicit voter registration applications. ACORN's business practices appear to be quite intentionally arranged in an attempt to "shield" or "screen" the political organization sponsors, the ACORN organization, its affiliated organization and its officers from criminal liability. RICO statutes are designed to deal with this type of activity.

The Agency is aware of reports of the ACORN organization and its affiliated organizations engaging in the same pattern of using contract employees, who are placed in situations and environments where they are likely to knowingly engage in multiple or serial violations of state election laws. It appears that ACORN workers are encouraged and even rewarded for engaging in illegal conduct and encouraging others to do so as well.

The Agency believes that NWI-ACORN has engaged in an intentional, knowing conspiracy to commit multiple, serial violations of Indiana Election laws. The state RICO statute should be employed in the prosecution of the offenses they have caused, aided or induced. For a more complete picture of the ACORN's business and political activity, see Exhibits H, I, J and K. Additional investigation by law enforcement is called for.

E. Has NWI-ACORN's method and pattern of voter registration activity resulted in the obstruction of individual's rights to register to vote under state and federal law?

The Agency has viewed evidence and received reports that the NWI-ACORN organization, its officers, agents or employees have with intent, knowledge or recklessness disregard for the statutory obligations and duties of an organization or individual that assists an individual with a voter registration application and undertakes the obligation of submitting an individual's voter registration form. Pursuant to IC 3-14-2-5 (b) it is a crime to destroy or fail to deliver a voter registration application.

The Agency has been advised by LCEB officials that they have received several complaints from individuals who provided a voter registration application to employees of NWI-ACORN *who have not subsequently received notice of their registration from the LCEB*. NWI-ACORN's practice and method of gathering voter registration applications from individuals seems to have increased the likelihood that individuals who responded to their solicitation to register to vote will be disenfranchised.

F. Was NWI-ACORN required to submit voter registration applications which they know or suspect to be incomplete, fraudulent or forged – and did this submission absolve the organization or individuals involved from criminal liability?

Logical reasoning would hold that a *predicate event* to the submission of a voter registration application is the application be completed, i.e. the blanks on the form filled in, the questions answered and the affidavit signed by the voter. IC 3-14-3-1.1 makes it a Class D felony to knowingly *procure* or submit "voter registration applications known by the person to be materially false, fictitious or fraudulent." IC 3-14-2-3 provides that it is

a Class D felony for a person to “subscribe(s) the name of another person to an affidavit of registration. It appears from the voter registration applications examined that these crimes were statutorily complete at the time the voter registration forms were filled out. Based on their claim that “their hands were tied” by IC 3-14-2-5 (b) (a Class A misdemeanor) NWI-ACORN officials submitted applications which they knew were incomplete and “suspicious” to the LCEB. However what they choose to do with the voter registration applications that they knew or suspected were already tainted with criminal acts would not affect the status of the predicate Felony crimes.

Similarly, IC 3-14-2-1 makes it a Class D felony for a person to conspire “with an individual for the purpose of encouraging the individual for the purpose of encouraging the individual to submit a false application for registration.” The act of conspiring or encouraging the submission of a false application would logically happen before the actual submission of a false application. Whether or not actual submission of a false application is a required element of this crime does not appear to be statutorily defined, and would likely be a matter of judicial fact finding and determination.

It is evident that the NWI-ACORN organization, through its officers, agents and employees engaged in, and likely encouraged violations of laws with the more serious penalty (IC: 3-14-2-1) - (leading to outcome the organization desired). Because it also suited their objectives (and multiplied the difficulty of LCEB’s pre-election work) it appears that NWI-ACORN chose to strictly follow only the law with the lesser penalty. NWI-ACORN cannot reasonably argue that their feeling of “obligation” to follow one particular law (of their choosing) will absolve the organization or its members from the consequences of other (more serious) laws which were previously violated.¹³

VII Conclusion

A cursory examination of 1,438 voter registration application forms submitted by NWI-ACORN to the LCEB during the last week of September, 2008, reveals significant, credible evidence that the organization, its officers, agents and employees, through direct action, conspiracy or inducement:

¹³ See Exhibit L attached. Memo from J. Bradley King, Indiana Election Division Co-Director.

- Violated Indiana election laws with respect to the solicitation, completion and submission of incomplete, forged or fraudulent voter registration applications.
- Violated Indiana election law with respect to the submission of multiple voter registration applications for the same person.
- Violated Indiana election laws with respect to obstruction of elections and interference with election officials.
- Violated Indiana's Racketeer Influenced and Corrupt Organizations law.
- Violated Indiana and Federal laws protecting individual rights to register and vote in elections.

The evidence provided by the LCEB was not comprehensive. The documents were analyzed by the General Counsel and staff of the office of the state's Chief Election Officer and not by an investigative law enforcement agency such as the Indiana Attorney General, the United States Attorney for the Northern District, the F.B.I. or the Lake County Prosecutor. The investigation and analysis of the activities of NWI-ACORN, its officers, agents and employees during the 2008 voter registration season is incomplete and should be continued and expanded all of the organizations and individuals involved.

Based on information received, media reports and expressions of great concern and distress from Indiana citizens, the Indiana Secretary of State, as the Chief Election Officer for the state of Indiana, strongly urges the appropriate law enforcement agencies to conduct a thorough investigation of these matters as quickly as possible.

ⁱ Published reports, reports in court records and reports received by the Agency indicate that ACORN employees approach individuals on the street and at their homes and harass them, to the point of intimidation to sign voter registration form, disregarding information that the individuals have already registered to vote. ACORN will offer compensation, such as a cigarette or the opportunity to be left alone, if a person will sign a voter registration application. ACORN employees have also been reported to provide misinformation to individuals in order to induce them to sign a voter registration application for example telling an individual that: a) they are no longer registered to vote; b) that their name, or all of the names of Democrats in a neighborhood have been purged from voter registration rolls or; c) that is lawful, even wise to submit multiple registrations to vote – “just to be safe”.

SECRETARY OF STATE
STATE OF INDIANA



TODD ROKITA
SECRETARY OF STATE

October 5, 2009

David Capp, Esq.
United States Attorney
Office for the Northern District of Indiana
5400 Federal Plaza, Suite 1500
Hammond, IN 46320

Re: ACORN organization 2008 General Election voter registration activities

Dear Mr. Capp:

As the anniversary of our historic 2008 General Election approaches – and my office begins work with county election officials to prepare for 2010 elections, I would appreciate an update from your office detailing any progress that has been made in the ACORN voter registration investigation and the likelihood that indictments will be sought.

During the months leading up to the 2008 General Election in Indiana, my office and the Indiana Election Division received complaints and evidence implicating the ACORN organization and its employees in numerous instances of violation of voter registration laws. A preliminary investigation conducted by my staff indicated that the complaints of felony voter registration fraud were credible, with the largest concentration of incidents occurring in Lake County. In October of 2008, my office provided you and the Lake County Prosecutor with our report and copies of the suspicious voter registration affidavits.

Based on our meetings and conversations during the past year, it was my understanding that your attorneys and investigators were making significant strides in the development of a case. I would like to be updated on the progress. Also, please advise if there is any way that my office can be of assistance.

Truly yours,

Todd Rokita
Indiana Secretary of State