

**Testimony
of
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**Prepared for the
Committee on the Judiciary
Subcommittee on the Constitution, Civil Rights and Civil Liberties**

Hearing on “Lessons From the 2008 Election”

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Thank you, Chairman Nadler, Chairman Conyers, Ranking Member Sensenbrenner and Members of the Committee.

My name is James Terry and I am the chief public advocate at the Consumers Rights League, a non-profit education and advocacy organization dedicated to preserving consumer choice in a broad array of issue areas.

I appreciate the opportunity to return to follow up our testimony from September about threats to the integrity of the U.S. voting system and the ramifications for citizens. We hope our perspective will shed light on the matter before this committee today: that ,while the 2008 election was not close, our system is still vulnerable to voter registration fraud and, despite some claims to the contrary, to voter fraud.

In September we examined the issue of voter registration fraud and voter fraud through the prism of the actions of the Association of Community Organizations for Reform Now, or ACORN. As we noted, the group with more than a \$100 million budget in 2008¹ continued its multi-year record of sloppy, erroneous, and fraudulent voter registration activities.

As you will recall, we highlighted ACORN's troubling pattern that spans multiple election cycles:

¹ Projection by ACORN founder Wade Rathke in June 2008.

- In 2003, ACORN employees in Missouri turned in more than a thousand suspicious voter registration cards, with one woman saying a card was turned in under the name of her infant.²
- Following Colorado's 2004 election, two ex-ACORN employees were convicted of perjury for submitting false voter registration forms³; one ex-ACORN employee admitted to registering her friends 40 times.⁴
- In 2004, police arrested a former ACORN employee who had more than 300 completed voter registration cards in the trunk of his car, many of which had not been turned in within the legal time limit.⁵
- In 2005, Virginia authorities found that of a sample of Project Vote-gathered registrations, 83% were rejected for using false or questionable information.⁶
- In 2007, King County, Washington officials announced the indictment of seven workers ACORN had hired to register voters, calling the episode the "worst case of voter registration fraud in the history of the state."⁷ At least three of those individuals have pleaded guilty and ACORN was forced to pay a \$25,000 settlement.⁸
- In April 2008, federal prosecutors announced guilty pleas for federal election fraud by eight former ACORN employees in Missouri, based on their activities in the 2006 election. They submitted false addresses and

² "Voter registration fraud dogs St. Louis." Association Press. September 19, 2003.

³ "Briefing." Rocky Mountain News. January 4, 2005.

⁴ "Investigation reveals potentially fraudulent voter forms." Associated Press. October 12, 2004.

⁵ Sweeney, Patrick. "Voter registration cards bring felony charge." Saint Paul Pioneer Press. October 16, 2004.

⁶ Jones, Matthew. "State: Voter registrar did no wrong." The Virginian-Pilot." October 22, 2005.

⁷ Ervin, Keith. "Felony charges filed against 7 in state's biggest case of voter-registration fraud." Seattle Times. July 26, 2007.

⁸ "Ervin, Keith. "Three plead guilty in fake voter scheme." Seattle Times. October 30, 2007.

names, as well as forged signatures. At least one former ACORN employee was sentenced to 15 months in prison.⁹

We also demonstrated a list of ACORN actions that posed widespread problems in 2008, including:

- ACORN was forced to announce that it would begin running background checks on its signature gatherers in New Mexico after it was learned that nine employees had felony criminal records¹⁰ ranging from forgery to identity theft to child rape.¹¹
- In Ohio, ACORN's continuing pattern of voter registration fraud apparently included the 73 registration cards turned in this year for just one individual.¹²
- The citizens of Wisconsin were among the greatest victims of ACORN's fraud in 2008. There ACORN allegedly offered to bribe citizens with pre-paid gasoline cards or restaurant gift cards to induce them to register. Further voter registration problems include apparently falsified drivers license numbers, Social Security numbers, and similar personal information. By the end of August, Milwaukee's Election Commission Executive Director had referred over 49 individuals to prosecutors for suspected voter registration fraud — of them, 37 were ACORN employees.¹³

⁹ Associated Press. "Guilty pleas in election fraud." April 3, 2008.

¹⁰ Associated Press. "ACORN starts background checks for NM registrars." August 9, 2008.

¹¹ See report from KRQE: <http://www.youtube.com/watch?v=EvJE3SMHRTs>

¹² O'Mara, Michael. "Voter registration problems investigated in Cleveland." WKYC. August 28, 2008.

¹³ Sandler, Larry. "10 more voter registration workers face investigation." Milwaukee Journal-Sentinel. August 29, 2008.

- Durham County, North Carolina’s elections officials asked for an investigation of dozens of cards submitted by ACORN. One was for a fourteen-year-old boy.¹⁴

Since then, the problems associated with ACORN’s voter efforts only continued:

- In October, Michigan authorities held Antonio Johnson for six counts of forging applications for two women.¹⁵ Meanwhile, ACORN continued its efforts to expand the franchise to our youth, turning in a voter registration form for a seven-year-old girl in Connecticut.¹⁶
- In November, former ACORN employee Jemar Barksdale pleaded guilty to charges of forgery, identity theft, and tampering with public records in Delaware County, Pennsylvania in November.¹⁷ Of the 18 existing voters for whom Barksdale turned in fraudulent forms, six were elderly and one attends a facility for the mentally disabled.¹⁸
- In January, Missouri officials indicted former ACORN employee Deidre Humphrey for allegedly submitting forged and false voter registration cards, including those for nursing home residents.¹⁹

¹⁴ Milliken, Mathew. “Elections chief asks for voter fraud probe.” Durham Herald-Sun. September 19, 2008.

¹⁵ Hepker, Steven. “Man accused of forging voter applications to head to jail.” Jackson Citizen Patriot. October 27, 2008.

¹⁶ Otis, Giner Adams et al. “7-yr-old gets an Acorn vote.” New York Post. October 12, 2008.

¹⁷ “Ex-ACORN worker admits voter-registration fraud.” PhillyNews.com. November 25, 2008. See: http://www.philly.com/philly/news/pennsylvania/20081125_Ex-ACORN_worker_admits_voter-registration_fraud_1.html.

¹⁸ Bender, William. “Ex-ACORN aide held in vote fraud.” Philadelphia Daily News. October 22, 2008.

¹⁹ O’Connell, Patrick M. “ACORN worker indicted in voter fraud case ACORN launched own inquiry, gave results to election officials.” St. Louis Post-Dispatch. January 6, 2009.

Perhaps the most powerful commentary on ACORN's nationwide machine of voter fraud may be that Newsday found it appropriate to report that there *were not* problems with ACORN's drive on Long Island.²⁰

All told, local and state officials called for investigations of ACORN in about a dozen states. There were some small, disparate investigations by local and state authorities. There were even reports that the Federal Bureau of Investigation raided ACORN offices in October.²¹ Numerous parties, including internal reformers, have sought federal intervention to investigate the organization.

Yet we have heard little to nothing since the election about the results of investigations from state or federal authorities.

It is simply not acceptable to forget these problems because the results of the presidential election were not close. Other elections were, and future elections will be again. Each citizen must be convinced of the integrity of our electoral system and, consequently, be confident of the importance of their vote. As The Wall Street Journal reminds us:

Vote fraud is real and can affect elections. In 2001, the Palm Beach Post reported that more than 5,600 people who voted in Florida in the 2000 Presidential election had names and data that perfectly matched a statewide list of suspected felons who were barred from voting. Florida was decided by about 500 votes.

²⁰ Amon, Michael. "No problems reported with ACORN's LI branch." Newsday. October 13, 2008.

²¹ Jordan, Lara Jakes. "Officials: FBI investigates ACORN for voter fraud." Associated Press. October 16, 2008.

In 2003, the Indiana Supreme Court overturned the result of a mayor's race because of absentee ballot fraud -- a case that led to a stricter Indiana ID law recently upheld by the U.S. Supreme Court. A 2005 Tennessee state Senate race was voided after evidence of voting by felons, nonresidents and the deceased. A Washington State Superior Court judge found that the state's 2004 gubernatorial race, which Democrat Christine Gregoire won by 133 votes, had included at least 1,678 illegal votes.²²

Nor is it acceptable to heed the fatalistic argument that bizarrely defends voter registration fraud as a byproduct of efforts to increase participation. It is indeed a danger to our system.

A half-dozen former attorneys for the Department of Justice wrote a letter arguing the Department “must protect the rights of voters from fraud.” The former Justice lawyers correctly argued:

It is the protection of legitimate voting activities that demands immediate and uncompromising pursuit of voter registration fraud especially during election cycles. Otherwise, the legitimate votes of both minority and nonminority voters will be threatened with vote dilution by those who fraudulently register and cast a fraudulent ballot ... Preventing fraudulent voter registration forms from being submitted cannot possibly chill ‘legitimate voting and campaign activities,’ but can only positively ‘affect

²² “Justice and Vote Fraud.” The Wall Street Journal. October 27, 2008.

the election itself” by fostering the appearance and reality of an honest election.²³

As we contemplate the possibility that fraudulent registrations can dilute legitimate votes, our attention returns to ACORN. Their record from 2008 alone is stunning. According to the New York Times, ACORN was forced to admit of the 1.3 million voters they claimed to have registered nationwide there were “...roughly 400,000 that were rejected by election officials for a variety of reasons, including duplicate registrations, incomplete forms and fraudulent submissions from low-paid field workers trying to please their supervisors...”²⁴

Now, let that sink in: the American electoral system was burdened by 400,000 bad forms from just one group trying to make money and influence the election. For reference, the U.S. Census Bureau estimated that the entire population of the state of Wyoming in 2007 was only slightly larger at 522,000.

Voter registration fraud is not just a problem for “the system”; it causes the types of disenfranchisement that Congress and this Committee have addressed many times such as havoc in voting lines and long wait times that drive busy citizens out of the process. Perhaps even more directly disenfranchising is the risk that it can lead to people thinking they are registered when in fact they may not be. Whether due to human error or fraud these factors become barriers to participation.

²³ Spakovsky, Hans A. et al. “Justice Must Protect the Rights of Voters From Fraud.” The Wall Street Journal. November 6, 2008.

²⁴ Falcone, Michael and Michael Moss. “Group’s tally of new voters was vastly overstated.” The New York Times. October 24, 2008.

We need look no further than the most recent election to see examples of such disenfranchisement and fraud:

- In October, the Republican Party of New Mexico identified 28 alleged fraudulent votes in just one state House district during the June primary. Several of the suspect voters were registered by ACORN.²⁵
- In Ohio, officials investigating ACORN's activities alleged that a man registered to vote several times was able to cast a fraudulent ballot using the address of a legitimately registered voter.²⁶
- As citizens lined up in Bridgeport, Connecticut to cast their ballots the Connecticut Post reported that, "Nearly 500 voters, many of whom thought they were registered to vote by the Association of Community Organizations for Reform Now, were sent to City Hall late Tuesday after their names did not appear on voter registration lists. Once there, they found out they could only vote for president."²⁷

Many have attempted to dismiss such voter registration irregularities as the natural side effects of simple human error often associated with such large efforts. But as we have shown, this is a problem that has persisted in every election for over ten years. And recent statements and sworn testimony from ACORN employees further highlight that the problem is not one of simple error:

²⁵ "Republican Party finds 28 suspect voters." The Lawrence Journal-World. October 17, 2008.

²⁶ MacIntosh Jeane and Maggie Haberman. "Bogus voter booted amid probe of ACORN." New York Post. October 14, 2008.

²⁷ Mayko, Michael P. "Some not on voting rolls blame ACORN." Connecticut Post. November 4, 2008.

- A former ACORN employee testified in a Pennsylvania courtroom that the group’s voter registration safeguards were “minimal or nonexistent.”²⁸ The Philadelphia Inquirer reported Anita Moncrief testified that ACORN “knew that most new voter registration forms it had gathered were fraudulent” and “barely trained its workers in how to register voters properly, and would fire employees if they did not meet a quota of 20 new voter applicants daily. And, if they were caught committing fraud, the group ‘threw them under the bus’ as scapegoats to take all the legal blame...”²⁹
- Moncrief’s testimony is further corroborated by Clifton Mitchell, responsible for the 2006 Washington State voter registration fraud that gained national attention. CNN interviewed Mitchell in 2008 and reported “Mitchell said ACORN threatened to close the office if he and his team didn’t meet their quota to register 13 to 20 voters a day.”³⁰
- Multiple ACORN employees working in Ohio added similar allegations. One said, “Every day, there was pressure on us. Every single day ... [management] would sit us down and say if you didn’t do better, they’d suspend you. They’d say, ‘Try harder next time,’ [and] if you didn’t get it, you’d be fired.”³¹ A woman who identified herself as an ACORN staff director said of supposedly rogue canvassers, “We know who they are; we’ve told them not to do it. But they weren’t among the people fired.”³²

²⁸ Fund, John. “An Acorn Whistleblower Testifies in Court.” The Wall Street Journal. October 30, 2008.

²⁹ Cattabiani, Mario F. “ACORN knew of fraudulent voter registration forms, ex-employee of Project Vote says.” The Philadelphia Inquirer. October 30, 2008.

³⁰ Lawrence, Chris. “Ex-ACORN worker: ‘I paid the price’ for voter registration fraud.” CNN. October 22, 2008.

³¹ Nichols, Adam and Jeane MacIntosh. “Acorn instilled fear in workers.” New York Post. October 20, 2008.

³² Nichols, Adam and Jeane MacIntosh. “Acorn instilled fear in workers.” New York Post. October 20, 2008.

The size and scope of ACORN's efforts make it one of the most visible examples of the vulnerability to manipulation of our system. Whether ACORN's actions are the result of fraudulent intent, negligence or simple incompetence, the overarching conclusions should be the same—any system that enables and continues to allow such behavior is broken and must be addressed.

While it appears that local and state authorities have run out of resources or focus to fully follow the trail of fraud and address this issue, we are heartened that this Committee is still looking for answers. It is a certainty that there will be close elections again in the future, and we must be prepared to ensure that every proper vote counts. Further, even when elections are not terribly close, it remains important to remember that the right to have one's legitimate vote counted is sacred in this republic and no one should be forced to worry that their voice will not count because of fraud.

Thank you. I look forward to answering your questions and to assist in any way I can.