

# Congress of the United States

Washington, DC 20515

April 23, 2010

The Honorable Peter Orzag  
Director  
Office of Management and Budget  
Washington, D.C. 20503

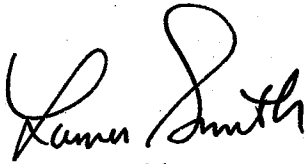
Dear Director Orzag,

We urge you to immediately rescind your March 16, 2010, directive to federal agencies allowing the Association of Community Organizations for Reform Now (ACORN) to receive federal funds in light of the stay of the federal district court ruling striking down congressional spending prohibitions issued earlier this week by the Second Circuit Court of Appeals.

On April 21, 2010, the Second Circuit Court of Appeals issued an emergency stay pending appeal of the March 10, 2010, ruling out of the Eastern District of New York declaring various congressional spending prohibitions related to ACORN to be unconstitutional bills of attainder. Congress enacted these spending prohibitions after considering significant evidence of the waste, fraud, and abuse surrounding ACORN's receipt of federal funds. Accordingly, it is imperative that the Office of Management and Budget make clear to federal agencies that these spending prohibitions enacted by Congress are again in effect.

Thank you for your attention to this important matter.

Sincerely,



Lamar Smith  
Ranking Member  
Committee on the Judiciary



Darrell Issa  
Ranking Member  
Committee on Oversight  
and Government Reform

cc: The Honorable Eric H. Holder, Jr.  
The Honorable John Conyers, Jr.

Enclosures

E.D.N.Y. - Bklyn  
09-cv-4888  
Gershon, J.

United States Court of Appeals  
FOR THE  
SECOND CIRCUIT

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At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 21<sup>st</sup> day of April, two thousand ten,

Present:

Roger J. Miner,  
José A. Cabranes,  
Richard C. Wesley,  
*Circuit Judges.*

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ACORN, *et al.*,

*Plaintiffs-Appellees,*

v.

09-5172-cv (L)  
10-992-cv (Con)

United States of America, *et al.*,

*Defendants-Appellants.*

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Appellants move for an emergency stay pending appeal of the district court order granting the Appellees a declaratory judgment declaring certain acts of Congress unconstitutional under the Bill of Attainder Clause and permanently enjoining the Government from enforcing those acts. Upon due consideration, it is hereby ORDERED that the motion is GRANTED and the appeal is EXPEDITED. The Appellant's brief is due April 30, 2010. Appellee's brief is due by May 14, 2010. Appellant's reply brief is due by May 24, 2010. Oral argument shall be scheduled for shortly thereafter.

FOR THE COURT:  
Catherine O'Hagan Wolfe, Clerk




EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

THE DIRECTOR

March 16, 2010

M-10-12

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

FROM: Peter R. Orszag  
Director

SUBJECT: District Court ruling on appropriations provisions regarding the Association of Community Organizations for Reform Now (ACORN)

This is to inform you that on March 10, 2010, the United States District Court for the Eastern District of New York issued the attached opinion, declaratory judgment, and permanent injunction in Association of Community Organizations for Reform Now (ACORN), et al. v. United States, et al., 1:09-cv-4888 (E.D.N.Y.).

In its opinion, the District Court concluded that the funding prohibitions regarding ACORN and related entities, in the FY 2010 Continuing Resolution and in several of the FY 2010 appropriations acts, are unconstitutional "bills of attainder" under Article I, Section 9 of the United States Constitution. The ACORN provisions that are covered by the District Court's ruling are Section 163 of the Continuing Appropriations Resolution, 2010 (Public Law 111-68, Division B); Section 427 of the Department of the Interior, Environment, and Related Agencies Appropriations Act, 2010 (Public Law 111-88, Division A); and the following sections of the Consolidated Appropriations Act, 2010 (Public Law 111-117): Division A, Section 418; Division B, Section 534; and Division E, Section 511; and Section 8123 of the Department of Defense Appropriations Act of 2010 (Public Law 111-118, Division A). (Section 163 of the Continuing Resolution had previously expired, at the end of December 18, 2009.)

The Department of Justice is filing an appeal of the District Court's decision and seeking a stay pending appeal, and we will keep agencies informed of any developments. In the meanwhile, in accordance with the District Court's permanent injunction:

- The Memorandum of October 7, 2009 regarding "Guidance on section 163 of the Continuing Resolution regarding the Association of Community Organizations for Reform Now (ACORN)" (Memorandum M-10-02), is hereby rescinded;
- Federal agencies are hereby advised that the District Court has declared the above-listed legislative provisions unconstitutional, and has enjoined enforcement of the provisions by defendant agencies (Departments of Housing and Urban Development, Treasury, Commerce, and Defense, and the Environmental Protection Agency).
- All Federal agencies should advise their contractors and grantees that the above-listed legislative provisions have been declared unconstitutional by the District Court for the Eastern District of New York.

Attachments