

# IN RE: ASSOCIATION OF COMMUNITY ORGANIZATIONS FOR REFORM NOW

Karen Inman, Marcel Reid, Coya Mobley, Robert Smith, Adrianna Jones, Yvonne Stafford, Louis Davis and Fannie Brown, *et. al.*

Complainants

vs.

Wade Rathke, Dale Rathke, Steven Kest, Jon Kest, Mike Shea, Zach Pollett, Helene O'Brien, Amy Schur, Liz Wolf, Beth Butler, Mildred Brown, Maud Hurd, Alton Bennett, Bertha Lewis, Beth Kingsley and other unknown individuals.

Defendants

January 7, 2009

## ALLEGATIONS

18 U.S.C. §§1961-68 (RICO Act)  
18 U.S.C. §1001 (False Statements to Agents of the U.S. Government),  
18 U.S.C. §1341 (Mail Fraud),  
18 U.S.C. §1027 (ERISA Violations), and 18 U.S.C. §241 (Conspiracy Against Civil Rights).

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## JUSTICE DEPARTMENT COMPLAINT

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The undersigned State Board delegates and National Board members of the Association of Community Organizations for Reform Now (“ACORN”) file this criminal complaint against ACORN Staff and Executive Board members for fraud, embezzlement, conspiracy and concealment, and criminal civil rights violations. Additionally, since there has already been the public admission that a felony was committed, it is also possible that other federal offenses have also been committed including but not limited to; Title 18 U.S.C. §1341, Mail Fraud, 18 U.S.C. §1001, Presenting a False Document to the an Agent of the United States Government; 18 U.S.C. §1027 False statements and concealment of facts in relation to documents required by the Employee Retirement Income Security Act of 1974 and other possible offenses including civil and/or criminal RICO violations.

Finally, the complainants contend that full investigations of a RICO conspiracy under 18 U.S.C. §1962(c) are warranted because they assert that (1) the defendant persons (2) were employed by or associated with an enterprise (3) that engaged in or affected interstate commerce and that (4) the defendant persons operated or managed the enterprise (5) through a pattern (6) of racketeering activity, and (7) the complaints were injured in its business or property by reason of the pattern of racketeering activity. Thus, the complainants feel that a formal RICO investigation is also warranted.

### **1. The Alleged Offense:**

The Complainants hereby allege a violation of Title 18 U.S.C. §241 – Conspiracy Against Constitutional Rights – which prohibits in relevant part, “two or more persons (from conspiring) to injure, oppress, threaten, or intimidate any person in any State, Territory, Commonwealth, Possession, or District in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same . . .” *See, 18 U.S.C. §241.*

## **BACKGROUND**

ACORN, or the Association of Community Organizations for Reform Now, is a community-based advocacy organization founded in 1970. ACORN became part of the story of the 2008 presidential election as news reports and allegations surfaced against ACORN in a number of states. These complaints refer primarily to alleged irregularities with voter registration drives conducted by the organization. (*National Review Online: Inside Obama's ACORN, May 29, 2008.*) But also included significant embezzlement and concealment by Senior Staff and Executive Committee members.

ACORN registered as a non-profit corporation with the Secretary of State in Louisiana in 1977. Its Charter Organization ID is 04700320X. According to its corporate filings, ACORN's principle place of business is New Orleans, Louisiana, and approximately 294 related entities and related non-profits are also located at this place of business. ACORN is not registered as a tax-exempt organization. ACORN's top three officers are President Maude Hurd of Dorchester,

MA, Vice President Maria Polanco of Brooklyn, NY, and Secretary Maxine A. Nelson of Pine Bluff, AR. Maxine A. Nelson is also the director of Project Vote.

Citizen's Consulting, Inc. (CCI) provides bookkeeping, human resource and financial management services exclusively for ACORN and related entities. All of CCI's "clients" reside at ACORN office locations, utilize common management and staff. CCI is the financial "nerve center" for ACORN and its affiliated organizations which houses the corporate books and records for all ACORN entities.

### ***ACORN Structure***

ACORN was founded by Wade Rathke, an activist on issues of labor unions and low income workers, and Gary Delgado, an activist on issues of race and social justice. It has national headquarters in New York, New Orleans and Washington, D.C. The organization describes itself as a non-profit, non-partisan social justice organization. In 2003, ACORN opened operations in 20 new cities, including 5 state capitals. The group claims about 350,000 members across the country. (Wall Street Journal: Obama and ACORN, October 14, 2008.). Since 1970, ACORN has grown to more than 400,000 member families, organized in 1,200 neighborhood chapters in 110 cities across the U.S. and in cities in Canada, Mexico, the Dominican Republic, Peru, Argentina and India.

### ***ACORN Funding***

#### **Government grants**

According to an October 8, 2008 article in the New York Post, 40% of ACORN's operations are funded through grants it receives from various governmental entities. (New York Post: The Pro-Barack Vote-Fraud Drive, Michelle Malkin, Oct. 8, 2008.) Grants have been issued to ACORN by the Department of Housing and Urban Development, which gave \$8.2 million to ACORN in the years between 2003 and 2006, as well as \$1.6 million to ACORN affiliates. The Environmental Protection Agency gave a \$100,000 grant to ACORN in 2004 for a Louisiana Justice Project, which removed lead from the homes of low income families. The Justice Department also gave a grant to ACORN in 2005 for a juvenile delinquency program. (NPR: ACORN's Money Tree Has Many Branches, October 15, 2008.)

## **Organized Labor**

ACORN also receives money from organized labor. According to Department of Labor statistics, ACORN has received approximately \$4 million from the Service Employees International Union as well as its local affiliates. The Illinois Homecare Workers and Home Childcare Providers, a local Chicago SEIU union, which was formed through ACORN's efforts pays rent to ACORN as well as contributing through the SEIU. (*NPR: ACORN's Money Tree Has Many Branches, October 15, 2008*) According to a recent NPR investigation, ACORN also receives funding from the Change to Win labor federation, the Food and Commercial Workers Union and the United Federation of Teachers.

## **Private Foundations**

ACORN receives funding from a variety of private charitable organizations that are widely recognized as “liberal,” including the Bauman Family Foundation, George Soros' Open Society Institute and the Charles Stewart Mott Foundation. (*NPR: ACORN's Money Tree Has Many Branches, October 15, 2008*).

ACORN and its affiliates also receive funding from more traditional sources, such as corporate foundations, including the JP Morgan Chase Foundation, Ben & Jerry's foundation, the Bank of America Charitable Foundation, and Citigroup, as well as the Bill and Melinda Gates Foundation, the Ford Foundation, and foundations affiliated with the founder of United Parcel Service (UPS). (*NPR: ACORN's Money Tree Has Many Branches, October 15, 2008*). A full list of ACORN and ACORN affiliate donors is available from the Capital Research Center, a non-profit organization which studies political advocacy groups. (*Foundation Watch, 2008: Capital Research Center Cracks the ACORN*)

## ***Interrelated Corporations***

ACORN and its affiliated entities make up a network that has drawn criticism for its complexity and internal relationships.

Elizabeth Kingsley, an ACORN attorney, wrote a 2008 report expressing concerns that ACORN and Project Vote may have violated federal laws because of how they interacted.

Project Vote, the report says, hires ACORN to perform voter registration drives.. Project Vote is a 501(c)(3) federally tax-exempt organization, which means that it is subject to prohibitions on partisan political activity. ACORN, however, is not subject to those same restrictions, because it is not federally tax exempt.

Michael Slater, executive director of Project Vote, told the **New York Times** that, “Project Vote and Acorn have a written agreement that specifies that all work is nonpartisan.”

Kingsley, however, claims that the way records were kept made it impossible for her to tell whether or not PV's money had, at the end of the day, been used for strictly non-partisan purposes. Until 2007, Project Vote's board was exclusively composed of ACORN staff.

- Kingsley said about this, "As a result, we may not be able to prove that 501(c)3 resources are not being directed to specific regions based on impermissible partisan considerations."
- Kingsley also claims that governance issues plagued the organizations, writing, "Board meetings are not held, or if they are, minutes are not kept, or if minutes are kept, they never make it into the files."

Several Project Vote board members claim that they were unaware that they served on Project Vote's board:

- George Hampton, listed as a board member on federal tax filings from 1994-2006, said that he had never heard of Project Vote.
- Cleo Mata, listed as a board member on tax forms from 1997 to 2006, also said she was not aware she was on the Project Vote board.

Although ACORN represents itself as separate from its related or associated entities; these companies are in reality all ACORN. The entities share common goals, management, control, locations, financial management and interlocking directors and staff. (In a presentation to ACORN Funders, Steve Kest describes the Association or “ACORN Family” of as one corporation.)

**2. Complaint Overview** – “ACORN has become a cornucopia of power and wealth, wielded by people who patronize and exploit more than empower or even help the poor and moderate income people ACORN purports to serve; and any civil or constitutional right to dissent is a casualty of their intent to retain that control.” *Marcel Reid, chairperson – The ACORN 8.*

**“Pay no attention to that man behind the curtain.”**  
*The Wizard of Oz*

ACORN is the acronym for “Association of Community Organizations for Reform Now.” It is often described as a “community based” advocate for low and moderate income people. In fact ACORN’s corporate governance is presumably supplied and controlled by people it represents. The association’s bylaws confirm that its national operation is an outgrowth of local community organizations, affiliating on a district and statewide basis. (*See, ACORN Bylaws – Article One: Local Groups Affiliation / Article Three: Local Groups Operation / Article Four: District Boards / Article Five: State Level Co-ordination*). “The number of the board of Directors shall be equal to one plus twice the number of state ACORN organizations affiliated with the Association, . . . – in other words, one director being the Association president, and two directors coming from each state.” (*ACORN Bylaws – Article Six: Association Board of Directors, 2*).

Though proverbially “of, for, and by” its constituents, ACORN interestingly vests considerable power in its “Chief Organizer,” a paid staffer who need not be an ACORN member. “The Chief Organizer shall have the right to employ such other staff personnel as s/he deems appropriate and necessary to carry out (ACORN affairs).” (*AB – Article Nine: Staff, 3*); they need not emerge from communities ACORN serves. The organization’s daily affairs “shall be carried out by . . . staff under the supervision of a Chief Organizer.” (*AB – Article Nine: Staff, 1*).

So, ACORN, in effect, sanctions and funds a patronage system for its Chief Organizer. But even the division of power or lines of authority underlying that odd arrangement are proving illusory. They are subject to bylaws and other provisions the complainants find increasingly difficult to enforce. And for their corresponding dissent, each said complainant has been or is in the course of being purportedly removed from ACORN in any and all capacities.

In affirmatively acting to eject the complainants from ACORN, the respondents and each of them have conspired to “injure, oppress, threaten, (and) intimidate” said complainants “in the free exercise or enjoyment of (their rights or privileges) secured to (them) by the Constitution” and as dues-paying ACORN members; entailing their First Amendment right to speak out on matters of importance to ACORN and petition government for related relief. Moreover, one or more of said respondents may have so acted in violation of 18 U.S.C. §241 to avert liability for a reported embezzlement or misappropriation of ACORN funds, the unlawful concealment of that crime, and/or other breaches of fiduciary obligations. This complaint accordingly implicates the interests of all 500,000 families reportedly represented by ACORN; its dues paying members; as well as all the private and public sector benefactors, helping sustain ACORN’s multi-million dollar, direct and indirect operations.

### **3. Personal Jurisdiction Considerations:**

ACORN is a nonprofit corporation, organized under the laws of the State of Arkansas. The nonprofit is reportedly headquartered in New Orleans, Louisiana. But it has “national offices” in Washington, D.C., and New York City, NY.

ACORN’s Executive Committee consists of the following board members, who respectively reside in the indicated states:

- Maude Hurd - Massachusetts
- Maria Planco - New York
- Maxine Brown - Arkansas
- Carol Hemingway - Pennsylvania
- Marie Pierre - New York
- Vanessa Guidry - Louisiana
- Pedro Rivera - New Jersey
- Alicia Russell - Arizona

ACORN’s Executive Committee members may also include the following people:

- Tony McElroy - Texas
- Alton Bennett - Minnesota
- Paul Satriano - Minnesota

Corresponding with their respective state of residence, the complainants have been or in the process of being purportedly removed from ACORN by its following state boards:

- ACORN Minnesota State Board;
- ACORN Board for the District of Columbia;
- ACORN Ohio State Board;
- ACORN Michigan State Board;
- ACORN Texas State Board;
- ACORN North Carolina State Board;
- ACORN California State Board.

#### 4. Complainants' Statement of Facts and Legal Contentions:

##### A. BACKGROUND:

**(1). ACORN's former Chief Organizer recently admitted that he and the organization's "Staff Management Council", concealed an embezzlement or misappropriation of ACORN funds for nearly a decade. The organization's General Counsel, board president, former board treasurer, and various mid to upper level managers have publicly admitted to knowing of and acquiescing to or actively participating in that concealment.**

Eight years ago, during 1999 and 2000, the aggregate budgets of ACORN and its affiliate organizations totaled about \$41.5 million. During this time frame, Dale Rathke embezzled nearly \$1 million from ACORN and affiliated charitable organizations in 1999 and 2000. Moreover, due to the admission that a felony has been committed, other federal offenses may have also been committed including but not limited to; Title 18 U.S.C. 1341, Mail Fraud, 18 U.S.C. 1001, Presenting a False Document to the an Agent of the United States Government; 18 U.S.C. § 1027 False statements and concealment of facts in relation to documents required by the Employee Retirement Income Security Act of 1974 and other possible offenses.

ACORN Staff members Steven Kest, Jon Kest, Mike Shea, Zach Pollett, Helene O'Brien, Amy Schur, Liz Wolf, Beth Butler, Mildred Brown and Bertha Lewis knew but conspired to conceal the embezzlement and decided to keep the information from the full Association Board and not to alert law enforcement. Additionally, ACORN executive committee members Maud Hurd (President) and Alton Bennett (Treasurer) knew but conspired to conceal the embezzlement and decided to keep the information from the full Association Board and not to alert law enforcement.

An ACORN founder, Wade Rathke, was the organization's Chief Organizer for nearly all of the approximately 32 years that the position has existed. "The Chief Organizer, unless otherwise incapacitated, shall be present at all meetings of the (ACORN) Board of Directors in order to make reports as requested and instructed by the Board, and to insure that Board decisions, policies, rules, and regulations are communicated and carried out by the staff." (*AB – Article Nine: Staff, 4*).

Yet on June 20, 2008, Wade disclosed for the first time to the full ACORN board that his brother, Dale Rathke, embezzled or misappropriated funds from the organization over the course of 1999 to 2000. (*See, ACORN Annual Meeting Minutes – June 20, 2008*). Wade acknowledged initially addressing the matter with "Staff Management Council", consisting at the time of Steve Kest, ACORN's current Executive Director; Zach Polett, ACORN's Political Director; and Helene O'Brien who was then ACORN's National Field Director. (*See, ACORN Minutes – 6/20/08*).<sup>1</sup>

A whistleblower reportedly exposed Dale Rathke's referenced embezzlement or misappropriation to at least one of ACORN's funders, precipitating his termination as the group's Chief Financial Officer. The logistics of Dale's termination and Wade's related, preliminary suspension are unclear as both were accomplished before being reported to the full ACORN board. In any event, on June 20, 2008, ACORN's board of directors determined that Wade Rathke "shall immediately and permanently be terminated from all employment" and "removed from all boards (and) any leadership roles with ACORN (and) its affiliated organizations (and) corporations." (*See, ACORN Minutes – 6/20/08*). ACORN board members subsequently selected fellow directors Karen Inman and Marcel Reid by secret paper ballots, from among multiple candidates, to join a committee of ACORN staff members, temporarily charged with the organization's daily management in Wade's absence. (*See, ACORN Minutes – 6/20/08*).

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<sup>1</sup> According to Steve Kest, "(t)he following people were on the management council eight years ago, and were made aware of the embezzlement: Steve Kest, Jon Kest, Madeline Talbott, Keith Kelleher, Mike Shea, Zach Polett, Helene O'Brien, Amy Schur, Liz Wolff, and Beth Butler." (*See, Document from Ralph McCloud CCHD*).

Indiana attorney Steve Bachmann identifies himself as ACORN's general counsel. (*See, June 27, 2008 - 17:43:12 - Bachmann Email / Sent by Bertha Lewis to Carol Hemingway, Marcel Reid, Maria Polanco, and Marie Pierre* ). He essentially admits to washing his hands of the Dale Rathke embezzlement or misappropriation once Wade Rathke claimed to have brought alternative legal counsel in on it. (*See, June 27, 2008 - 17:43:12 - Bachmann Email / Sent by Bertha Lewis to Carol Hemingway, Marcel Reid, Maria Polanco, and Marie Pierre* ).

B. OPERATIVE FACTS:

**(1). A literal revolt has been waged against addressing the apparent embezzlement or misappropriation of ACORN assets by Dale Rathke through state court intervention.**

ACORN board member Karen Inman was to generally address legal matters and her fellow board member Marcel Reid was to propose ACORN's organizational growth and development as part of what began as the group's Interim Staff Committee. (*See, ACORN Minutes – 6/20/08*). By July 13, 2008, the ACORN board voted unanimously "that funds be created to allow that the board members appointed by the board to sit on the Interim Management Committee have access to professional consultants needed to carry on the work so that the will of the Association Board be carried out." (*See, ACORN Special Meeting Minutes – July 13, 2008*). But ACORN's staff proceeded, substantially independent of Inman and Reid's efforts. In fact the organization's Interim Chief Organizer and Executive Director circulated a September 2008 joint statement entitled "Moving Forward" in which they outline critical and sometimes costly action, purportedly taken by ACORN without prior knowledge or consent of its full board. (*See, Lewis and S. Kest's 9/2008 "Moving Forward"*).<sup>2</sup>

In accord with their July 13, 2008 mandate, ACORN board and Interim Management Committee (IMC) members Inman and Reid engaged a certified community development

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<sup>2</sup> When asked to summarize the transition strategy their opponents support, Inman and Reid explain it is "substantially managed by Wade's former accomplices; entails private negotiations with Wade with no legal compulsion of anything on his part, usurps the prerogative entrusted to them by board vote, and is being implemented through unauthorized contracting." By accomplices, Inman and Reid say they mean people who reportedly helped Wade conceal his brother's embezzlement from ACORN. Both Inman and Reid complain that "such deference over the years nearly transformed ACORN into a Rathke family alter-ego."

financial institution, Kappa Alpha Psi Federal Credit Union, to oversee a team of professionals needed to identify, preserve, account for, and otherwise protect ACORN assets and interests. The team includes attorneys who secured a temporary restraining order on August 21, 2008, to preclude destruction of ACORN's corporate records and books. (*See, ACORN – vs- Rathke, et al.*, case no. 08-8342 before the Civil District Court for the Parish of Orleans, State of Louisiana). The Washington, D.C. law firm of Harmon, Curran, Spielberg & Eisenberg, L.L.P., by attorney Beth Kingsley, responded by spearheading a literal revolt against Inman and Reid, in complete disregard of applicable rules of professional conduct. (*See, Kingsley Memo of 9/2/2008 and Legal Ethics Analysis of attorney Jesselyn Radack*).

- (2). **The prospect of ACORN employees and/or consultants exerting more than incidental control over the membership based, nonprofit corporation signals a conflict appreciably different than intra-organizational power struggles.**

A New York Times article recently appeared in print and online, entitled “Lawsuit Adds to Turmoil for Community Group.” The community group being referenced is of course ACORN. The writer, Stephanie Strom, indicates that “(t)he suit is a sign of the turmoil that has rocked Acorn since the embezzlement by Dale Rathke, Wade Rathke’s brother, was revealed to the board in June.” (Stephanie Strom, “*Lawsuit Adds to Turmoil for Community Group*”, New York Times – September 10, 2008). The Associated Press was even more poignant: “The embezzlement case, a recent revelation to some board members, has spawned a lawsuit and set off a power struggle inside ACORN at a time when the liberal group’s voter registration practices are the subject of fraud investigations and fodder for presidential campaign attacks.” (“*Acorn Falls into More Trouble*”, Associated Press, October 18, 2008).

As valuable and sound as their insights and guidance may be, ACORN’s staff and paid consultants hardly discern<sup>3</sup> the desires and will of ACORN constituents better than their duly elected representatives do collectively. So it would be inappropriate for ACORN staff and/or independent contractors (as nonmembers or unelected agents) to control the membership based, nonprofit corporation in more than an incidental way. The prospect of ACORN employees

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<sup>3</sup> Their expertise in fulfilling the expressed desires and will of ACORN constituents is another matter.

and/or consultants exerting any other manner of control entails a situation more illicit than an intra-organizational power struggle. At issue is whether some of them are doing so by circumventing the sometimes unwieldy, but democratic voting process of ACORN’s board of directors.

Should nonmembers and/or unelected corporate agents essentially operate ACORN, the organization and its governance would be something other than what they are purported to be. (*See, ACORN Bylaws: Articles One – Six*). Dues paying ACORN members need not tolerate such a sham or farce, particularly when it subjects them or any one of them and the nonprofit to widespread public ridicule if not civil and/or criminal liability. Several ACORN members have expressed and continue expressing corresponding dissent, some of which escalated to a pending state court petition for writ of mandamus. (*See, ACORN –vs– Rathke, et al.*, case no. 08-8342 before the Civil District Court for the Parish of Orleans, State of Louisiana).

**(3). With or without cause, the ACORN board “can remove officers with . . . a vote equal in number to three-fourths of the members sitting on the Board.”**

An account of state court proceedings culminating with this criminal complaint are provided by certain correspondence of attorney James Grey, II of the Louisiana-based law firm, Gray & Gray, which correspondence is attached hereto, incorporated herein by reference, and listed below:

<b>Date</b>	<b>Addressee</b>	<b>Subject</b>
August 24, 2008	IMC and ACORN board of directors	“Association Board Explanation of TRO Petition”
October 18, 2008	Maud Hurd ( <i>sic</i> ), Steve Kest, and ACORN board of directors	“Offer to Withdraw Writ of Mandamus” with attached “Request for Corporate Records to Association Board”
November 13, 2008	Andrew A. Lemmon, Esq.	“Removal of ACORN 8”

With or without cause derived from circumstances of the indicated correspondence, the ACORN board “can remove officers with . . . a vote equal in number to three-fourths of the members sitting on the Board.” (*See, ACORN Bylaws – Article Seven: Officers, 2*). Should those

circumstances provoke one or more statewide disputes, “(e)ach state Executive Board (is supposed to have) a system for settling grievances within local groups in the state, to the end that ACORN’s organizational democracy, harmony and unity might be maintained.” (*See, AB – Article Eleven: Grievances*).

On or about November 11, 2008, Maude Hurd, president of ACORN’s board of directors, issued the following statement, purportedly on behalf of “ACORN(’s) Executive Board”, to ACORN directors Karen Inman, Marcel Reid, Coya Mobley, Adrianna Jones, Yvonne Stafford, Fannie Brown, and Louis Davis:

On November 9, 2008 the ACORN Executive Committee met and considered the resolutions of the majority of state boards. The feedback from the states was clear, and the Executive Committee acted upon it by voting that any member participating in the mandamus action, now or in the future, shall not be eligible to hold office or serve on any Association Board committee. Accordingly, you are hereby removed from any office or committee position you may have held.

*(See, 11/11/08 Memo – ACORN Executive Board by Maude Hurd, President ACORN Association Board – to “Mandamus 7”).*

As ACORN Negotiation Committee Chair, Sonja Merchant Jones served ACORN directors Marcel Reid, Karen Inman, and Coya Mobley with the following written notice, on or about November 11, 2008:

This is to inform you that after consideration of the resolutions of the majority of state boards, the Association Executive Committee has determined that your demands are not accepted and there will be no further negotiations with the individuals participating in the petition for Writ of Mandamus. We therefore have nothing further to negotiate at this time.

*(See, 11/11/08 Memo – Negotiations committee chair (Sonja Merchant-Jones) to Mandamus negotiating group (Marcel Reid/Karen Inman/Coya Mobley).*

Maude Hurd expounds on the foregoing notices in separate memos dated November 11, 2008 to “Association Board Delegates” and “DC and MN affiliates” respectively. (*See, 11/11/08 Memos – Executive Committee by Maude Hurd, President ACORN Association Board – to Association Board Delegates; and DC and MN affiliates, respectively*). She further provides that

“(a)ny state, region, or local groups that seeks to undermine these decisions may be subject to administratorship according to Article 13 of the Bylaws”, which “shall be understood to mean a situation wherein the usual rights of ACORN regional authorities to direct policies, affairs and activities of their particular region shall be temporarily suspended; and given to an administrator.” (See, 11/11/08 Memo – Executive Committee by Maude Hurd, President ACORN Association Board – to DC and MN affiliates; and AB – Article Thirteen: Administratorship, 2a.) “The objective of (that) bylaw (is) to preserve ACORN’s integrity as an effective, harmonious, unified, and democratic organization.” (See, AB – Article Thirteen: Administratorship, 1.)

**(4). There would have to be advance notice of any board vote purportedly empowering ACORN’s Executive Committee to expel fellow members from the organization and/or its offices.**

According to Stephanie Strom of the New York Times, ACORN’s Interim Chief Organizer contends that “the board’s executive committee . . . is charged with making decisions between the board’s two annual meetings.” (Stephanie Strom, “Acorn Working on Deal to Sever Ties With Founder”, New York Times – October 16, 2008). On July 13, 2008, ACORN’s General Counsel represented that “the Exec Comm’s power are (*sic*) Not in the bylaws and are determined from meeting to meeting –”. (See, July 13, 2008 - 7:15 PM - Bachmann Email to [nyexdirector@acorn.org](mailto:nyexdirector@acorn.org) and Karen Inman). Arguably without a “meeting” at which there is a “quorum”, no such determination can be made by ACORN’s board of directors. (AB – Article Six: Association Board of Directors, 11).

A quorum is unlikely to spontaneously convene; vote, on a totally impromptu basis, in adequate numbers to empower ACORN’s Executive Committee as the organization’s Interim Chief Organizer reportedly envisions; while simultaneously waiving prior notice. So, as a practical matter, there would have to be some kind of advance notice of any board vote purportedly empowering ACORN’s Executive Committee to expel fellow members from the organization and/or its offices. (AB – Article Six: Association Board of Directors, 9 & 10). The complainants hereby attest that they have never been provided any such notice.

### C. LEGAL CONTENTIONS:

- (1). “A corporation is held responsible for acts not within the agent’s corporate powers strictly construed, but which the agent has assumed to perform for the corporation when employing the corporate powers actually authorized, and in such cases, there need be no written authority under seal or vote of the corporation in order to constitute the agency or to authorize the act.” *New York Central R. Co. –vs- U. S.*, 212 U.S. 481 at 493-494 (1909). *See also*, American Criminal Law Review, March 22, 2008 – *Corporate Criminal Liability, §II. A. -C.*;
- (2). “It is true that there are some crimes which, in their nature, cannot be committed by corporations. But there is a large class of offenses . . . wherein the crime consists in purposely doing the things prohibited by statute. In that class of crimes, (there is) no good reason why corporations may not be held responsible for and charged with the knowledge and purposes of their agents, acting within the authority conferred upon them.” *New York Central R. Co. at 494-495*;
- (3). “(T)he intracorporate conspiracy doctrine does not apply to alleged intracorporate criminal conspiracies.” *McAndrew –vs- Lockheed Martin Corp.*, 206 F.3d 1031 (11<sup>th</sup> Cir. *En Banc* 2000);
- (4). “Courts . . . have interpreted the . . . requirement, ‘with intent to benefit the corporation,’ almost out of existence” as a criteria for imposing corporate criminal liability. *See, American Standards of Corporate Criminal Liability*;
- (5). “The basic purpose of requiring that an agent have acted with the intent to benefit the corporation . . . is to insulate the corporation from criminal liability for actions of its agents which be inimical to the interests of the corporation or which may have been undertaken *solely* to advance the interests of that agent or of a party other than the corporation.” *See, “Bringing Criminal Charges Against Corporations”*, Memorandum by Deputy Attorney General to “All Component Heads and United States Attorneys”;
- (6). “(A)bsent proof of false statements knowingly or recklessly made . . . , exercise of (the) right to speak on issues of public importance may not furnish the basis for . . . dismissal . . .” *See, Pickering v. Board of Education*, 391 U.S. 563 at 574 (1968);
- (7). “(T)he freedom of speech, assembly, and petition guaranteed by the First and Fourteenth Amendments given petitioner the right to hire attorneys . . . to assist . . . in the assertion of . . . legal rights.” *Mine Workers –vs- Illinois Bar Assn*, 389 U.S. 217 at 221-222 (1967);
- (8). “(T)he rights to assemble peaceably and to petition for a redress of grievances are among the most precious of the liberties safeguarded by the Bill of Rights.” *Id. at 222*.
- (9). “Groups which find themselves unable to achieve their objectives through (legitimate voting processes) frequently turn to the courts . . . (a)nd litigation may well be

the sole practicable avenue open to a minority to petition for redress of grievances.” *NAACP –vs- Button*, 371 U.S. 415 at 429 (1963);

(10). “Directors may be removed from office, for good cause, by a majority vote of the board of directors or the members. What constitutes ‘good cause’ depends on the nature and circumstances of the organization, but it is not simply a desire by the majority to be rid of an opposing faction. Directors should be removed pursuant to procedural provisions contained in the bylaws or charter.” *Glover, et al. v. Dean Overstreet, et al.*, 984 S.W.2d 406 at 409 (1999).

(11) “(T)o be guilty of conspiracy, a defendant (need not) have know that his conduct violated federal law.” *U. S. –vs- Feola*, 420 U.S. 671 at 687 (1975).

### **3. The Direct Victims:**

- 1) Karen Inman of St. Paul, Minnesota;
- 2) Marcel Reid of Washington, DC;
- 3) Coya Mobley of Dayton, Ohio;
- 4) Adrianna Jones of Grand Rapids, Michigan;
- 5) Robert Smith of Fort Worth, Texas;
- 6) Yvonne Stafford of Charlotte, North Carolina;
- 7) Fannie Brown of Oakland, California;
- 8) Louis Davis of Washington, D.C.
- 9) Robert Mills of Wyoming, Michigan;
- 10) Stephanie Cannady of Rhode Island;
- 11) Pochantas Outlaw of Washington, D.C.;
- 12) Charles Turner of Washington, D.C.;
- 13) Ronald Sykes of Washington, D.C.;
- 14) Rosyln Valeary of Texas;
- 15) Gwendolyn Cogshell of Missouri;
- 16) Yvonne Woods of Kentucky;
- 17) Diana Barnes of Mississippi; and
- 18) Dana Williams of Georgia.

Complainant, Karen Inman is an Association Board Delegate from Minnesota and member of the Interim Management Committee. Karen resides at 690 LaFond Ave. St. Paul, MN 55104.

Complainant, Marcel Reid is a DC Delegate to the Association Board and member of the Interim Management Committee. Marcel resides at 3790 Martin Luther King Jr., Blvd, SE, Apartment B-1, Washington, DC 20032.

Complainant, Coya Mobley is an Association Board Delegate from Ohio. Coya resides at 346 Kenwood Ave. Dayton, OH 45405.

Complainant, Adrianna Jones is an Association Board Delegate from Michigan. Adrianna resides at 842 SE Logan St., Grand Rapids MI 49506.

Complainant, Robert Smith is an ACORN Texas State Board Delegate. Robert resides at 1121 East Ramsey Ave. Fort Worth, TX 76104.

Complainant, Yvonne Stafford is an Association Board Delegate from North Carolina. Yvonne resides at 1018 Everett Place, Charlotte, NC 28205.

Complainant, Fannie Brown is an ACORN California State Board Delegate. Fannie resides at 7438 Weld St. Oakland, CA.

Complainant, Louis Davis is a DC National Board Delegate and Finance Committee Member. Louis resides at 729 Congress St., S.E., Washington, DC 20032.

Complainant, Robert Mills is a Michigan State Board Treasurer and alternate National Board Delegate. Robert resides at 2043 Clyde Park SW, Wyoming, MI 49509.

Complainant, Stephanie Cannady is a National Board Delegate State Co-chair for Rhode Island. Stephanie resides at 58 Julian Street #2, Providence, Rhode Island, 02909.

Complainant, Pochantas Outlaw is the Chair of ACORN PAC and a State Board Delegate for Washington DC. Pochantas resides at 214 Tenth Street NE, Washington, DC.

Complainant, Charles Turner is a member in good standing and Chair of DC ACORN housing programs. Charles resides at 2201 Savannah Street, SE, Apartment 301, Washington, DC.

Complainant, Ronald Sykes is the Treasurer of ACORN PAC in Washington DC. Ronald resides at 635 Tenth Street, NE, Washington, DC.

Complainant, Roslyn Valeary is a member of good standing and local ACORN chapter chair. Roslyn resides at Robin Hill Lane, Garland, TX 75044.

Complainant, Gwendolyn Cogshell is a National Board Delegate from Missouri. Gwendolyn resides at 5229 Maple Street, St. Louis, MO 63113.

Complainant, Yvonne Woods is a National Board Delegate and State Board Chair from Kentucky. Yvonne resides at 4201 Shady Villa Drive, Louisville, KY 40219.

Complainant, Diana Barnes is a National Board Delegate from Mississippi. Diana resides a 2037 East Drive, Jackson, MS 39204.

Complainant, Deacon Dana Williams is a National Board Delegate from Georgia. Dana resides at 37 Wadley St., NW, Atlanta, GA 30314.

#### **4. The Alleged Motive - To Thwart a Comprehensive Investigation of a Previously Concealed Embezzlement or Misappropriation**

The current complainants who joined ACORN at its annual board meeting in October, 2008, distributed to those attending that gathering, among other things, the attached tri-fold and legal as well as operational reports. (*See, "Scrubbing The Stain from White Collar Crime; Inman Legal Report; and Reid Organizational Report – October 16, 2008*). As these items, attorney Gray's attached correspondence, and the complainants' many published statements confirm their underlying objective is truth and transparency, it would seem the mechanisms for reaching that goal could be determined by candid resort to ACORN's democratic voting processes. Given that they have not been; the arguably unreasonable resistance to the complainants' related demands; and the clear transgression of First Amendment rights at hand – the respondents seem intent on thwarting a comprehensive investigation of Dale Rathke's previously concealed embezzlement or misappropriation.

A reasonable investigation prompted by this complaint is likely to confirm:

- ACORN bylaw violations;

- corresponding breaches of fiduciary duties;
- state law torts (including but not limited to legal malpractice);

and may establish one or more violations of 18 U.S.C. §§ 3 (*Accessory after the fact*); 4 (*Misprison of felony*); 245 (*Federally protected activities*); 371 (*Conspiracy to commit offense or to defraud United States*); 1341 (*Mail fraud*); 1343 (*Wire fraud*) 26 U.S.C. §7206 (*Fraud and false statements*) among other federal and/or state crimes in addition to the alleged conspiracy against rights prohibited by 18 U.S.C. §241.

Moreover, through the investigation following the embezzlement and subsequent acts of concealment and retaliation; the complainants have discovered that ACORN has become the victim of its Senior Staff and Executive Committee members through the course of an association-in-fact enterprise and RICO conspiracy.

The Defendants have engaged in these acts knowingly and intentionally with a common purpose of controlling ACORN its and its associated/affiliated entities and denying its membership the benefits of any true democratic process. Thus, there appears to be a pattern of misuse and/or conversion of funds, abuse of management authorization, concealment of assets and evidence of management collusion, throughout ACORN and related organizations.

### ***Funding Draws Criticism***

Donations to ACORN from traditionally “progressive” groups has drawn criticism to the social justice organization from other political organizations. The **Consumer Rights League** (CRL), in particular, has focused on ACORN's funding. They assert that ACORN's budget is “is fed by extracting immense resources from labor unions, government grants, private foundations, its members, and ‘settlements’ with targeted businesses”. (Employment Policies Institute, Rotten ACORN: America's Bad Seed, July 2006.)

A press release from CRL on June 18, 2008 claimed, “The ACORN Housing Association (AHC), an ACORN affiliate that receives over 40% of its funding from government sources, claims to be a consumer advocate. In a newly-released report from CRL, however, a series of documents obtained from a whistleblower source reveals hypocritical and potentially illegal use of taxpayer dollars by ACORN and its related organizations.” (June 18, 2008 press release by the Washington, DC-based Consumer Rights League).

ACORN's financial construction has also led to investigation by authorities. According to an October 21, 2008 article in the **New York Times**, "Acorn faces demands for back taxes by the Internal Revenue Service and various state tax authorities."

### ***Requests To End Government Funding***

On October 22, 2008 House Republican leader John Boehner asked President Bush to block all federal funds to ACORN because of the voter fraud allegations surrounding the group. Boehner said, "It is evident that ACORN is incapable of using federal funds in a manner that is consistent with the law," Boehner, R-Ohio, wrote Bush, saying that funds should be blocked until all federal investigations into the Association of Community Organizations for Reform Now are completed. (AP: House GOP leader asks Bush to cut off ACORN funds, Oct 22, 2008.)

Thus, ACORN is the victim of an association-in-fact enterprise, i.e., senior staff and insiders, and is being operated through a pattern of racketeering activity including extorting monetary settlements and fraudulently acquiring public financing through the means of interstate commerce, without the full knowledge and consent of the Association Board and its members. And there is a substantial probability that substantial ACORN assets and resources are being concealed, dissipated and transferred into offshore accounts.

In all relevant respects, the defendants and accomplices conspired and acted in concert with each other in order to further their fraudulent schemes. The RICO Defendants and their accomplice's acts of concealment took a number of forms, many of which were unknown to the complainants because such actions and concealment are within the exclusive knowledge of the Defendants.

### **5. The Alleged Perpetrators:**

- 1) National ACORN;
- 2) The consenting members of ACORN's national Executive Committee;
- 3) The consenting members of the following ACORN, state boards:
  - ACORN Minnesota State Board;
  - ACORN Board for the District of Columbia;
  - ACORN Ohio State Board;

- ACORN Michigan State Board;
- ACORN Texas State Board;
- ACORN North Carolina State Board;
- ACORN California State Board; and

3) Various ACORN staff members and independent contractors to be determined.

Defendant, Dale Rathke (former Chief Financial Officer) has admitted to embezzling nearly \$1 Million dollars from ACORN and Dale is domiciled in Orleans Parish, Louisiana.

Defendant, Wade Rathke (former Chief Organizer) knew but conspired to conceal the embezzlement and decided to keep the information from the full Association Board and not to alert law enforcement. Wade is domiciled in Orleans Parish, Louisiana.

Defendant, Steven Kest (Executive Director) knew but conspired to conceal the embezzlement and decided to keep the information from the full Association Board and not to alert law enforcement. Steve is domiciled in New York.

Defendant, Jon Kest (New York Head Organizer) knew but conspired to conceal the embezzlement and decided to keep the information from the full Association Board and not to alert law enforcement. Steve is domiciled in New York.

Defendant, Mike Shea (Executive Director, ACORN Housing) knew but conspired to conceal the embezzlement and decided to keep the information from the full Association Board and not to alert law enforcement. Mike is domiciled in Minnesota.

Defendant, Zach Pollett (Political Director) knew but conspired to conceal the embezzlement and decided to keep the information from the full Association Board and not to alert law enforcement. Zach is domiciled in Little Rock, Arkansas.

Defendant, Helene O'Brien (National Field Director) knew but conspired to conceal the embezzlement and decided to keep the information from the full Association Board and not to alert law enforcement. Helene is domiciled in Arizona.

Defendant, Amy Schur (Campaign Director) knew but conspired to conceal the embezzlement and decided to keep the information from the full Association Board and not to alert law enforcement. Amy is domiciled in California.

Defendant, Liz Wolf (Western Regional Director) knew but conspired to conceal the embezzlement and decided to keep the information from the full Association Board and not to alert law enforcement. Liz is domiciled in Orleans Parish, Louisiana.

Defendant, Beth Butler (Southern Regional Director) knew but conspired to conceal the embezzlement and decided to keep the information from the full Association Board and not to alert law enforcement. Beth is domiciled in Orleans Parish, Louisiana.

Defendant, Mildred Brown (Legislative Director) knew but conspired to conceal the embezzlement and decided to keep the information from the full Association Board and not to alert law enforcement. Mildred is domiciled in Washington, DC.

Defendant, Bertha Lewis (Chief Organizer) knew but conspired to conceal the embezzlement and decided to keep the information from the full Association Board and not to alert law enforcement. Bertha is domiciled in New York.

Defendant, Maud Hurd (President) knew but conspired to conceal the embezzlement and decided to keep the information from the full Association Board and not to alert law enforcement. Maud is domiciled in Boston, Massachusetts.

Defendant, Alton Bennett (former Treasurer) knew but conspired to conceal the embezzlement and decided to keep the information from the full Association Board and not to alert law enforcement. Alton is domiciled in Minnesota.

Defendant, Beth Kingsley, Esq. (Harmon, Curran, Spielberg & Eisenberg, LLP) is the attorney representing ACORN insiders and staff, and who is aiding and abetting in the conspiracy and cover-up. Beth Kingsley is domiciled in Washington, DC.

## **6. The People and Institutions Indirectly Impacted:**

As a reasonable government investigation premised on the allegations at hand could confirm extensive embezzlement and/or other misappropriation of ACORN funds, other related crimes, breaches of fiduciary duties, and systemic, organizational mismanagement – this complaint implicates the interests of all 400,000 families reportedly represented by ACORN; its dues paying members; as well as all the private and public sector benefactors, helping sustain ACORN’s multi-million dollar, direct and indirect operations.

ACORN’s annual budget is estimated to exceed \$100 million dollars. The amount of corresponding membership fees is uncertain. However:

(s)tate and local ACORN offices (reportedly) pay (the following percentage of their income) to cover (the indicated) expenses . . . 4.55% goes to Citizens Consulting for account, audit and corporate services. 0.47% goes to cover the salaries of ACORN executive director Steve Kest and for the salary of AISJ executive director Carolyn Carr. 0.79% goes to cover a portion of the communication department budget which creates and maintains (the ACORN) website as well (as) works with local offices on press work. 0.23% goes into a fund to provide some funds for the expenses of the interim chief organizer and the Interim Management Committee.

*See, Document from Ralph McCloud CCHD*

However, even these numbers are suspect since ACORN refuses to provide actually audited financial statements for it, or its related organizations, to Association Board Members or the public. Therefore, without an audit or a forensic examination, Association Board Members do not know the true financial picture or organizational structure of ACORN.

More than forty percent (40%) of ACORN’s operations are reportedly funded by various government entities. *See, New York Post, Michelle Malkin, October 8, 2008.* “Over the last ten years, (the Catholic Church alone has reportedly) given \$7.3 million . . . dollars to . . . ACORN . . .” ( -- insert citation --). ACORN’s other private benefactors are reported to regularly include J.P. Morgan Chase Foundation, Bank of America Charitable Foundation, Citigroup and others. ( -- insert citation --).

**7. The Substantial Lack of Available Redress through Civil Process**

As indicated, this complaint was substantially prompted by the state court petition for writ of mandamus pending as *ACORN –vs- Rathke, et al.*, case no. 08-8342 before the Civil District Court for the Parish of Orleans, State of Louisiana. Theoretically that proceeding could be expanded to include various counts premised on the alleged facts of this complaint. Such causes of actions could possibly sustain other state and/or federal civil litigation as well. However, the complainants are unable to pay the substantial costs of that private redress. They have been unable to compensate attorney Gray for representing them to date and he will not proceed indefinitely on those terms.

While the interests of ACORN’s most wealthy benefactors are implicated by the allegations of this complaint, direct civil action may be counterproductive for them to pursue. Of course a government investigation to curtail the requisite, private discovery may change those dynamics. In any event, the complainants and all of the families ACORN purports to represent, including but not limited to dues payment members, are unlikely to have any viable avenue of redress unless the U. S. Department of Justice undertakes a thorough investigation premised on the allegations of this complaint.

Submitted on the 7<sup>th</sup> day of January, 2009 –

*Karen Inman*

Karen Inman

*Adrianna Jones*

Adrianna Jones

*Marcel Reid*

Marcel Reid

*Yvonne Stafford*

Yvonne Stafford

*Coya Mobley*

Coya Mobley

*Louis Davis*

Louis Davis

*Robert Smith*

Robert Smith

*Fannie Brown*

Fannie Brown

*Stephanie Cannady*

Stephanie Cannady

*Pocahantas Outlaw*

Pocahantas Outlaw

*Roslyn Valeary*

Roslyn Valeary

*Gwendolyn Cogshell*

Gwendolyn Cogshell

*Diana Barnes*

Diana Barnes

*Robert Mills*

Robert Mills

*Ronald Sykes*

Ronald Sykes

*Charles Turner*

Charles Turner

*Yvonne Woods*

Yvonne Woods

*Dana Williams*

Deacon Dana Williams