



**ACORN & Fraudulent Voter Registrations:**

**A Concerned Citizen's Guide to Helping**

**Ensure the Integrity of Elections**

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**For the Republican National Lawyers Association**

**February 26, 2009**

## ***ACORN & Fraudulent Voter Registrations: A Concerned Citizens' Guide to Helping Ensure the Integrity of Elections***

“Confidence in the integrity of our electoral processes is essential to the functioning of our participatory democracy. Voter fraud drives honest citizens out of the democratic process and breeds distrust of our government. Voters who fear their legitimate votes will be outweighed by fraudulent ones will feel disenfranchised.”<sup>1</sup>

If past is prologue, concerned citizens should worry about ACORN's effect on election integrity. During the 2008 cycle, ACORN and its affiliates engaged in a nationwide effort to submit 1.3 million registration applications, up to 400,000 of which were fraudulent, duplicate, or incomplete.<sup>2</sup> These applications often overwhelmed local election officials and appear to have allowed ineligible voters to cast ballots. In Ohio, for example, one voter admitted that he cast an absentee ballot using a bogus registration, and in Florida, “Mickey Mouse” tried to register. As recent history has shown, even a small number of such fraudulent registrations could tip the balance in a close election.

This paper provides concerned citizens with guidance on ACORN's tactics, and ideas on how to counter them. While this paper addresses only ACORN, other groups often mimic ACORN's tactics in conducting large voter registration drives.

This paper first describes ACORN's methods and recounts examples of its dubious behavior. It then outlines specific methods to counter ACORN's tactics, both before and on Election Day. In particular, concerned citizens should educate local

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<sup>1</sup> *Purcell v. Gonzalez*, 549 U.S. 1, 3-4 (2006).

<sup>2</sup> Greg J. Borowski, “ACORN Suspicion Swells As McCain Camp Questions Obama's Ties,” *Milwaukee Journal Sentinel* (Oct. 10, 2008); Mike Underwood, “Experts Fear Voter Roadblocks, Fraud,” *The Boston Herald* (Nov. 3, 2008).

elections officials, legislators, and the media about potential abuses, and request that their legislatures and local election officials implement safeguards well in advance of an election. Concerned citizens should also document problems, both to assist the media and policymakers and also, if needed, to litigate as a last resort.

Above all, concerned citizens must keep in mind that the ultimate goal is to have an honest, open, and fair election in which every eligible voter has the opportunity to cast a ballot and have that vote count. Everyone should encourage all eligible voters to register and to vote, consistent with state and federal law. Unfortunately, concerned citizens may face slander and smears if they attempt to monitor groups, such as ACORN, that sometimes register ineligible voters. ACORN and its partisans may sound the alarm of “voter suppression” and “voter caging,” and even allege improper racial motives if anyone dares to question their tactics.<sup>3</sup> While it goes without saying that everyone wants fair elections, concerned citizens absolutely must ensure that their words and actions underscore that overriding principle. At the same time, however, concerned citizens should stress that ACORN and its affiliates must not facilitate the dilution of eligible ballots with those of ineligible votes, or, through sloppiness or tardiness, prevent eligible voters from casting ballots.

#### **I. ACORN’s Tactics Cast Doubt on the Integrity of the Electoral Process**

According to its website, ACORN, or the Association of Community Organizations for Reform Now, is “the largest grassroots community organization in the United States, comprised of over 450,000 member families organized into 1000+ neighborhood chapters across the country.” ACORN is also a massive political

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<sup>3</sup> See Marc Ambinder, “ACORN Rallies its Troops,” *available at* [http://marcambinder.theatlantic.com/archives/2008/10/acorn\\_rallies\\_its\\_troops.php](http://marcambinder.theatlantic.com/archives/2008/10/acorn_rallies_its_troops.php) (Oct. 9, 2008) (last visited Feb. 19, 2009) (quoting an ACORN memo defending itself).

enterprise that includes as many as 150 subsidiary organizations, including two affiliated labor union locals, TV and radio, immense housing counseling operations, and a number of lobbying and political organizations.<sup>4</sup> ACORN strongly supported then-Senator Obama's presidential aspirations, both during the primary and the general election. According to Federal Election Commission filings, ACORN's political wing endorsed Senator Obama, and during the 2008 primary, the Obama campaign paid an ACORN affiliate more than \$800,000 for political services.<sup>5</sup> In Minnesota, where ACORN claims credit for 75% of all new voter registrations for 2008,<sup>6</sup> ACORN endorsed Al Franken for Senate.<sup>7</sup> ACORN also endorsed and funded Secretary of State Mark Ritchie, the state official who engineered the recount against Republican Senator Norm Coleman, causing one Minneapolis Star-Tribune columnist to note that "the referee in the contest appears to be wearing the colors of one of the teams."<sup>8</sup> Although ACORN has not been accused of fraud in the Minnesota election contest, ACORN's actions in other states may give average citizens significant cause for concern, particularly given the closeness of the recount.<sup>9</sup>

During the 2008 election cycle, ACORN submitted thousands of registration applications, many of them fraudulent, in numerous battleground states. ACORN's tactics were simple. ACORN hired employees to collect applications from prospective

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<sup>4</sup> James Terry, "Written Testimony to the U.S. House of Representatives Judiciary Subcommittee on the Constitution, Civil Rights and Civil Liberties and Administration Subcommittee on Elections Joint Hearing on 'Federal, State and Local Efforts to Prepare for the General 2008 Election,'" available at <http://judiciary.house.gov/hearings/pdf/Terry080924.pdf> (Sept. 24, 2008) (last visited Oct. 17, 2008).

<sup>5</sup> David M. Brown, "Obama To Amend Report On \$800,000 In Spending," *Pittsburgh Tribune Review* (Aug. 22, 2008).

<sup>6</sup> Maria Elena Baca, "Hennepin County investigating ACORN registrations," *Star Tribune* available at <http://www.startribune.com/politics/state/30956979.html> (Oct. 14, 2008) (last visited Feb. 23, 2009).

<sup>7</sup> Franken website at <http://blog.alfranken.com/2008/07/16/minnesota-acorn-endorses-al-franken/>

<sup>8</sup> Patten, "ACORN, Soros Linked to Vote Grab," *Newsmax.com* available at (Dec. 22, 2008) (last visited Feb. 19, 2009).

<sup>9</sup> <http://www.plnewsforum.com/index.php/forums/viewthread/46984/P15/> (comments of Trochilus).

voters, and incentivized those employees to collect as many signatures as possible – often, if legal, by paying them by the number of unique (though not necessarily new) voter registrations. When ACORN could not pay by the registration card, ACORN often pushed production quotas to keep the emphasis on the numbers of registrations collected per day. In many places, ACORN imposed little quality control.<sup>10</sup> For example, ACORN hired hundreds of people, some with criminal histories, and apparently made little or no effort to screen out such people, even in states where its employees had to collect social security numbers as a part of the voter registration process.<sup>11</sup> ACORN often submitted illegitimate applications, and obviously fictitious applications, and expected elections officials to weed them out. A few states require third-party groups to submit all registrations collected, including those they believe are fraudulent, but in most states, this tactic merely burdened overworked and understaffed elections offices, increasing the chaos of the elections process and the risk of mistakes. Moreover, ACORN often submitted applications to election officials as close to the registration deadline as possible, thereby overwhelming local officials and limiting their ability to screen out ineligible, forged, or duplicate applications.

As a result of these activities, both the FBI and state law enforcement agencies investigated ACORN across the country. According to news reports,

Some ACORN employees have been accused of submitting false voter registration forms—including some signed ‘Mickey Mouse’ or other fictitious characters. Those voter registration cards have become the focus of fraud investigations in Nevada, Connecticut, Missouri and at least

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<sup>10</sup> Alex Roarty, “State GOP Reveals New Witness In ACORN Suit,” *PolitickerPA.com* (Oct. 24, 2008).

<sup>11</sup> KRQE News 13, Albuquerque, New Mexico (Aug. 6, 2008).

five other states. Election officials in Ohio and North Carolina also recently questioned the group's voter forms.<sup>12</sup>

## II. Pennsylvania 2008 – An Example of ACORN's Modus Operandi

Pennsylvania, a key battleground state in 2008, exemplified some of the problems with ACORN's tactics. In Pennsylvania, three different district attorneys criminally investigated current or former ACORN employees for submitting forged or otherwise illegitimate registration forms.<sup>13</sup> Similarly, Philadelphia election officials sent more than 800 voter registration forms to the U.S. Attorney for the Eastern District of Pennsylvania for possible prosecution.<sup>14</sup> City investigators specifically learned of six individuals who said that "they didn't complete or sign the application and it wasn't their handwriting" on forms submitted by ACORN.<sup>15</sup> One Philadelphia election official blasted ACORN for "do[ing] things that are not appropriate" and turning in "extremely sloppy" work.<sup>16</sup> As that official detailed, ACORN submitted applications from individuals who supposedly lived at an empty lot, baseball field, church, and factory. Moreover, ACORN intentionally delayed submitting applications to deceive local election officials:

a lot of the Obama ones [applications] were dates back in August. They mixed them in with current dates to try to fool us, but it didn't work. I have been here too long. Same with ACORN, they do the same thing. They mix in earlier dates with current dates and it's just ridiculous.<sup>17</sup>

Many of the problems stemmed from ACORN's lack of quality control in hiring and paying employees. According to Philadelphia's election officials,

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<sup>12</sup> Jordan, "Officials: FBI Investigates ACORN for voter fraud," *The Associated Press* (Oct. 16, 2008).

<sup>13</sup> Andy Sheehan, "Voter Fraud Probed in Allegheny County," *available at* <http://kdka.com/kdkainvestigators/Voter.fraud.allegheny.2.836775.html> (Oct. 9, 2008) (last visited Oct. 18, 2008); Deborah Hastings, "Parties Spar on ACORN, sign-ups," *Philadelphia Inquirer* (Oct. 11, 2008); Richard Fellingner, "Alleged Voter Fraud Decried," *The Evening Sun* (Oct. 14, 2008).

<sup>14</sup> Meeting of Philadelphia's City Commissioners 59-60 (Sept. 24, 2008).

<sup>15</sup> *Id.* at 59-60. Meeting of Philadelphia's City Commissioners 14-17, 25-30 (Sept. 10, 2008).

<sup>16</sup> *Id.*

<sup>17</sup> Meeting of Philadelphia's City Commissioners 52 (Oct. 1, 2008).

Everyday these organizations come in, I plead with them to turn in completed applications. They are not doing that. The agents that they hire to go out on the street are given quotas and if they don't meet those quotas, they get fired, not paid. *They are hiring people who are desperate for money, and when people are losing their job, they are going to do things that are not appropriate*, and that's just what's been happening with all the organizations.<sup>18</sup>

ACORN's methods threatened to disenfranchise voters in several ways. First, of course, ACORN's methods may have diluted the ballots of eligible voters. Given the volume of ineligible applications, some of them likely slipped through the cracks and result in the registration of ineligible, unqualified, or even non-existent voters. In Philadelphia, one election official explained that some "rejected" applications nevertheless end up on the voting rolls, raising the danger of fraudulent voting:

Another 1100 [applications] is waiting to go through the HAVA verification process. There are also 7000 sitting out there where they were in a stack on the HAVA process. We mailed the letters out and we wait a month for them to come back. *If they don't come back undeliverable, we override them and approve them and put them on the rolls. If they come back undeliverable we can't [reject them].*<sup>19</sup>

In this way, fraudulent and duplicative registration forms are processed and placed on the rolls – creating the potential for an individual to vote fraudulently or numerous times.

In addition, ACORN's sloppiness and purposeful tardiness also threatened to prevent some eligible electors from voting at all. According to election officials in Pennsylvania, "The work that is being turned in is sloppy. They're missing dates of birth, they're missing signatures. They're not putting addresses in for these applicants. I don't understand how – if you're trying to enfranchise people to vote in this election and you let a person walk away from your table with an application that is not

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<sup>18</sup> Tim Dowling, Meeting of Philadelphia's City Commissioners 14-17, 25-30 (Sept. 10, 2008) (emphasis added).

<sup>19</sup> Meeting of Philadelphia's City Commissioners 58 (Sept. 24, 2008) (emphasis added).

completed, it's just ridiculous."<sup>20</sup> Unfortunately, an eligible voter who attempted to register through ACORN may not have discovered ACORN's error until Election Day, costing that voter the right to cast a ballot and have that vote count. Moreover, by inundating election officials at the last minute, ACORN created a risk that some eligible voters would not have their legitimate applications processed in time for the election. ACORN's practices delayed, hindered, and interrupted the important work of election officials, many of whom work twelve hours a day, seven days a week, in advance of a presidential election. ACORN's practices increased the risk of errors and cost the taxpayers "huge sums of money" by forcing election officials to devise a system to determine "exactly what group did what when and where."<sup>21</sup>

### **III. Similar Problems Occurred in Other States**

Pennsylvania is just one example. According to news reports, similar incidents occurred throughout the country just in 2008. Additionally, since voter registrations now typically stay on voter rolls for a minimum of five years due to the federal National Voter Registration Act,<sup>22</sup> ACORN's recent actions could impact several election cycles yet to come.

- In one city in Connecticut, ACORN's errors amounted to about 20 percent of thousands of registrations it filed. ACORN's conduct cost that city's taxpayers thousands of dollars in overtime to corroborate the registrations.<sup>23</sup>
- In Florida, ACORN submitted thousands of fraudulent or duplicate applications, including one from "Mickey Mouse."<sup>24</sup> An ACORN field director admitted that

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<sup>20</sup> Tim Dowling, Meeting of Philadelphia's City Commissioners 14-17, 25-30 (Sept. 10, 2008).

<sup>21</sup> *Id.*

<sup>22</sup> National Voter Registration Act, 42 U.S.C.S. 1973gg-6 (which provides that states may only remove registered voters from the rolls under certain limited circumstances.)

<sup>23</sup> Ken Dixon, "Voter Registrations Questioned," *Connecticut Post* (Aug. 15, 2008).

“ACORN failed to deliver registration cards that were marked ‘Republican,’ accepted applications from felons, and falsified information.”<sup>25</sup>

- In California, election officials flagged 17% of ACORN’s submissions, more than three times the number from other groups, due to missing or invalid information. One official concluded that some of the errors “were intentional” based on continued problems after special training, and that they were “similar to what we have been seeing in other parts of the country.”<sup>26</sup>
- In Indiana, election officials in Lake County (an Obama stronghold) found that ACORN submitted thousands of fraudulent registrations.<sup>27</sup> A Democratic election official acknowledged the fraud and noted that, due to the volume and tardiness of ACORN submissions, the office “won’t have enough time to research, complete, and enter legitimate voter registrations before the mid-month deadline.”<sup>28</sup> The Secretary of State found evidence of “multiple criminal violations, including possible state and federal racketeering laws.”<sup>29</sup>

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<sup>24</sup> Richard Danielson, “Vote Drives Defended, Despite Fake Names,” *The St. Petersburg Times* (Oct. 14, 2008).

<sup>25</sup> Amanda Carpenter, “Voter ID Fraud Doesn’t Exist Says ACORN,” Townhall.com (November 26, 2007).

<sup>26</sup> Hiram Soto and Helen Gao, “ACORN Active In Voter Registration In County,” *The San Diego Union Tribune* available at <http://www.signonsandiego.com/news/metro/20081016-1250-bn16acorn.html> (Oct. 16, 2008) (last visited Feb. 23, 2009).

<sup>27</sup> Drew Griffin and Kathleen Johnston, “Thousands of voter registration forms faked, officials say,” CNN.com (October 10, 2008) viewed at <http://www.cnn.com/2008/POLITICS/10/09/acorn.fraud.claims/index.html> .

<sup>28</sup> Bill Dolan, “County rejects large number of invalid voter registrations,” NWI.com (October 2, 2008).

<sup>29</sup> Tim Evans, “As Voter Registration Rises, So Do Fears of Fraud,” *The Indianapolis Star’s* “Election 2008” Blog (Oct. 10, 2008); Tim Evans, “Rokita: ACORN Linked To Voter Irregularities,” *The Indianapolis Star* (Oct. 27, 2008). See also CNN’s “America Votes 2008” (Oct. 13, 2008).

- In Michigan, several municipal clerks reported that ACORN submitted significant numbers of fraudulent or duplicate registrations. The Secretary of State's office confirmed that the problem "appears to be widespread."<sup>30</sup>
- In Missouri, the FBI and local election officials investigated hundreds of suspect or duplicate registrations submitted by ACORN. Election officials complained that the bogus applications slowed the processing of legitimate applications.<sup>31</sup> In April 2008, eight former ACORN employees pled guilty to election fraud for misconduct stemming from previous election cycles.<sup>32</sup>
- In Nevada, law enforcement officials seized ACORN's computer records after receiving reports of fraud.<sup>33</sup> One registrar stated that he saw "rampant fraud in the 2,000-3,000 registrations ACORN turns in every week."<sup>34</sup> According to Nevada's Secretary of State, officials received fraudulent forms from members of a National Football League franchise: "Some of these [forms] were facially fraudulent; we basically had the starting lineup for the Dallas Cowboys . . . Tony Romo is not registered to vote in Nevada. Anyone trying to pose as Terrell Owens won't be allowed to cast a ballot."<sup>35</sup>
- In New Mexico, ACORN hired convicted criminals to collect information. Some of these individuals had been convicted of child rape, forgery, and identity theft.<sup>36</sup>

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<sup>30</sup> L.L. Brasier, "Bad Voter Applications Found," *Detroit Free Press* (Sept. 14, 2008).

<sup>31</sup> Bill Draper, "Missouri Officials Suspect Fake Voter Registration," *The Associated Press* (Oct. 8, 2008).

<sup>32</sup> "8 St. Louis Voter Registration Workers Admit To Fraud," *The Associated Press* (April 2, 2008).

<sup>33</sup> "Voter-Fraud Task Force Raids Office Backing Obama," *The Washington Times* (Oct. 8, 2008).

<sup>34</sup> Molly Ball, "New Voter Sign-Ups Up," *Las Vegas Review-Journal* (July 7, 2008).

<sup>35</sup> Editorial, "Encouraging Voter Fraud: ACORN Fiasco highlights danger of lax election laws," *Las Vegas Review-Journal* (Oct. 10, 2008).

<sup>36</sup> KRQE News 13, Albuquerque, New Mexico (Aug. 6, 2008).

According to a law enforcement officer, “If this information is in the hands of the wrong person it can be devastating.”<sup>37</sup>

- In North Carolina, election officials investigated ACORN for submitting duplicate or otherwise bogus registrations. Some officials noted that the names appeared to have been copied from phone books. According to one official, “A lot of ACORN people just filled out the same name multiple times, so they would be paid.”<sup>38</sup>
- In Ohio, ACORN gave its employees quotas to fill, and the employees, in turn, paid voters to register and knowingly submitted duplicate registrations.<sup>39</sup> In Cuyahoga County, for instance, ACORN registered one voter 15 times. As that voter described ACORN, “[y]ou can tell them you’re registered as many times as you want - they do not care. They will follow you to the buses, they will follow you home, it does not matter.”<sup>40</sup> Another man “was given cash and cigarettes by aggressive ACORN activists in exchange for registering an astonishing 72 times, in apparent violation of Ohio laws.”<sup>41</sup> Another individual cast an absentee ballot using a bogus registration.<sup>42</sup>

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<sup>37</sup> *Id* (quoting Albuquerque Police Chief Ray Shultz).

<sup>38</sup> Lynn Bonner, “State Reviewing ACORN Voter Forms,” *The News & Observer* (Oct. 14, 2008).

<sup>39</sup> Adam Nichols & Jeane MacIntosh, “ACORN Instilled Fear: Workers,” *The New York Post* (Oct. 20, 2008); Joe Guillen, “Cuyahoga Board Probes ACORN Voter Registration Drive,” *The Plain Dealer* (Aug. 27, 2008); “ACORN Voter Fraud Investigations Underway in Key Swing State of Ohio,” *The Cleveland Leader* (Oct. 10, 2008).

<sup>40</sup> “ACORN Voter Fraud Investigations Underway in Key Swing State of Ohio,” *The Cleveland Leader* (Oct. 9, 2008).

<sup>41</sup> Jeane MacIntosh, “1 Voter, 71 Registrations,” *The New York Post* (Oct. 12, 2008); see also, *Miller v. ACORN*, No. 08CV-72630, available at <http://www.buckeyeinstitute.org/acorn.pdf>, (Oct. 14, 2008) (last visited Feb. 23, 2009).

<sup>42</sup> Jeane MacIntosh and Maggie Haberman, “Bogus Voter Booted Amid Probe Of ACORN,” *The New York Post* (Oct. 14, 2008).

- In Texas, Harris County officials noted that they rejected, or held for further investigation, 40% of ACORN's 27,000 registration forms.<sup>43</sup>
- In Wisconsin, officials investigated 39 ACORN employees for possible prosecution for attempting to add dead, imprisoned, or imaginary voters to the rolls.<sup>44</sup> ACORN hired at least seven convicted felons to register voters. These employees had been convicted of crimes such as robbery and possession of cocaine.<sup>45</sup>
- And in the 2006 election cycle in the state of Washington, prosecutors indicted seven ACORN employees for what they termed the "worst case of voter registration fraud in the history of the state."<sup>46</sup> ACORN ultimately entered into a settlement agreement that subjected it to extensive oversight within the state.

#### **IV. Fraudulent Registrations Undermine the Integrity of Elections**

The U.S. Supreme Court has recognized that voter fraud imperils an elector's right to vote just as much as denying that elector the opportunity to cast a ballot at all. "The right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise."<sup>47</sup>

Why exactly should anyone care if "Mickey Mouse" registers to vote, so long as

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<sup>43</sup> Alan Bernstein, "ACORN Planting Voter Registrars In Certain Areas," *Houston Chronicle* (Aug. 18, 2008); John Fund, speaking on Fox News' "Hannity's America" (Oct. 5, 2008).

<sup>44</sup> Larry Sandler, "More Voter Registration Workers Under Scrutiny," *Milwaukee Journal Sentinel* (Aug. 21, 2008).

<sup>45</sup> Scott Bauer, "Felons Paid To Register Wisconsin Voters," *The Associated Press* (Oct. 1, 2008).

<sup>46</sup> Keith Ervin, "Felony Charges Filed Against 7 In State's Biggest Case Of Voter-Registration Fraud," *The Seattle Times* (July 26, 2007).

<sup>47</sup> *Purcell v. Gonzalez*, 549 U.S. 1, 7 (2006).

Mickey doesn't vote on Election Day? Fraudulent registrations matter because they can, and do, lead to fraud at the polls. As one circuit court judge explained, "Maintaining voter rolls that include persons who no longer reside in a precinct, or who reside there but do not vote, conduces to fraud. Pennsylvania discovered that political operatives knowledgeable of the status of such registrants and weaknesses in the system were able to cast votes in the non-voters' names."<sup>48</sup>

It may be easy to catch Mickey Mouse, but it is more difficult to detect a fraudulent John Smith or Bill Jones. Bogus, duplicate, or lapsed registrations provide an opportunity for those with fraudulent registrant information to take a chance and cheat the system by having someone else appear and vote, or more likely, apply and vote absentee. Many of the groups who collect voter registrations also keep copies of the registrations, and in some cases, as described above, bogus registrations have been voted.

After Election Day, no one can un-ring the bell. After the ballots are counted, no one can sort out the legitimate ballots from the fraudulent ones. Prior to the 2008 election, experts were "concerned ineligible people will cast votes after being wrongly registered by community activist groups such as ACORN, which reportedly submitted as many as 400,000 fraudulent, incomplete or duplicate registrations."<sup>49</sup> According to one political science professor, there was "a real possibility that something could go wrong."<sup>50</sup> And fraud occurs, according to another researcher, who found that while

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<sup>48</sup> *Ortiz v. City of Philadelphia Office of City Com'rs Voter Registration Div.*, 28 F.3d 306, 318 (3d Cir. 1994) (Scirica, concurring). See also *American Assoc. of People with Disabilities*, 2008 WL 4368941, at \*47 (D. N.M. Sept. 17, 2008) ("The prevention of voter fraud and voter registration fraud is indispensable to the integrity of the electoral process and the accuracy of voter registration rolls.")

<sup>49</sup> Mike Underwood, "Experts Fear Voter Roadblocks, Fraud," *The Boston Herald* (Nov. 3, 2008)

<sup>50</sup> *Id.* (quoting Professor George Serra).

approximately 12% of Indiana voters polled had seen or heard about voter fraud at their polling places, where photo ID was required of voters, almost 19% of Mississippi and Maryland voters had seen or heard about voter fraud at their polling places, where no photo ID was required.<sup>51</sup>

A recent, thorough, non-partisan investigation of an election in Wisconsin concluded that vote fraud poses a major problem, but that spotty record-keeping makes proof difficult. In a *Report of the Investigation of the November 2, 2004 General Election in the City of Milwaukee*, written by a Special Task Force of the Milwaukee Police Department (“Milwaukee Report”), Milwaukee police analyzed Milwaukee’s 2004 election and concluded that there was an intentional scheme to defraud the elections. The report further stated “[t]he Task Force cannot stress enough that the Milwaukee Election Commission employees allowed obviously ineligible voters to cast ballots in races that were contested.” Disturbingly, “investigators found that throughout the Election the ease in which a person could cast multiple ballots and not be discovered was evident.”<sup>52</sup> The Milwaukee Report specifically blasted ACORN, which had sponsored many of the election employees: “Of the 15 felons that listed a sponsoring organization, eight named ACORN as their sponsoring agency.”<sup>53</sup>

Nevertheless, the Report found that it was difficult to prove voter fraud because election workers often were unable or unwilling to properly follow statutorily mandated

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<sup>51</sup> Pastor, et al., “Voter IDs Are Not the Problem: A Survey of Three States,” *available at* <http://www.american.edu/ia/cdem/pdfs/VoterIDFinalReport1-9-08.pdf> (Jan. 9, 2008) (last visited Feb. 19, 2009).

<sup>52</sup> Special Task Force of the Milwaukee Police Department, “The Report of the Investigation into the Nov. 2, 2004 General Election in the City of Milwaukee,” 58 (Feb. 2008).

<sup>53</sup> *Id.* at 28.

elections guidelines.<sup>54</sup> On Election Day, election workers sometimes are overwhelmed and may unintentionally allow bogus registrants to vote, particularly in same-day registration states. Without proper records, however, prosecutors could not prove beyond a reasonable doubt in court exactly who acted to defraud in Wisconsin. Still, some people are prosecuted and convicted every year for voter fraud, despite evidentiary and resource problems. [See an appendix with a list of over a hundred convictions in 20 states.]

Courts have also recognized that fraudulent and duplicative registration forms can lead to the dilution of legitimate votes.<sup>55</sup> In *Crawford v. Marion County Election Board*, the U.S. Supreme Court upheld Indiana's voter identification law after finding that the state had a legitimate interest in deterring and detecting fraudulent registrations. Writing for a 6-3 majority, Justice John Paul Stevens – no conservative -- noted that the state of Indiana “has a particular interest in preventing voter fraud in response to a problem that is in part the product of its own maladministration - namely, that Indiana's voter registration rolls include a large number of names of persons who are either deceased or no longer live in Indiana.” As a result, the Court held that these inflated registration lists justified the State's imposition of a photo identification requirement to reduce fraud: “Even though Indiana's own negligence may have contributed to the serious inflation of its registration lists when [the Indiana identification statute] was enacted, the fact of inflated voter rolls does provide a neutral and nondiscriminatory reason supporting the State's decision to require photo identification.”<sup>56</sup> As the Supreme Court recognized, inflated registration rolls create a risk of fraud – and justify a

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<sup>54</sup> *Id.* at 41.

<sup>55</sup> See *Crawford v. Marion County Election Bd.*, 553 U.S. \_\_\_\_, 128 S.Ct. 1610, 1611 (2008).

<sup>56</sup> *Id.*

response from state legislatures.

## **V. Concerned Citizens Can and Should Address the ACORN Challenge within their State**

Concerned citizens can employ a variety of tools to ensure that third-party groups register voters in full compliance with state and federal law. In employing these tools, concerned citizens must keep in mind that most voters are legitimate, and that anti-fraud efforts must not discourage the legitimate voter. Most Republicans and Democrats, indeed all those concerned with the integrity of elections, want every eligible voter to have the opportunity to cast a ballot, consistent with state and federal law. Concerned citizens simply want to ensure that ineligible votes do not dilute the ballots of eligible electors, that state and local officials comply with all provisions of state and federal law, and that third-party organizations such as ACORN impose quality-control measures to avoid fraudulent activities, or sloppiness, that could cost some electors the right to cast ballots and have them count.

### **a. Work with Elections Officials**

As a first step, concerned citizens should meet with their state and local election officials and encourage them to enforce existing provisions of state and federal law. For example, the federal Help America Vote Act (HAVA) directs states to assure the accuracy of all counties' registration records. Section 303 of HAVA requires that states create a computerized statewide voter registration list that contains the name and registration information of every legally registered voter.<sup>57</sup> HAVA also requires that a

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<sup>57</sup> 42 U.S.C. § 15483(a).

state's chief election official match information in the database and make the match information available to county boards of election.<sup>58</sup> As courts have noted, these requirements help to deter fraud.<sup>59</sup> Accordingly, every state should have a functioning computer system that matches other state databases with information that helps determine eligible and potentially ineligible registrants. And election officials should verify the eligibility of those registrants who fail a computer match.

If election officials lack sufficient resources to clean up the voter rolls, concerned citizens can help. All concerned citizens need are a copy of the statewide voter registration rolls and a little time. With these tools, they can easily find potentially problematic registrations within their statewide database and bring problems to the attention of election officials, or, if necessary to get action, to the media. Such publicity can create pressure to find additional resources for elections officials, because in most cases, elections officials recognize the challenge, but lack sufficient resources to tackle all the issues. Concerned citizens can help ensure that officials focus on maintaining accurate voter rolls among their competing demands, but do so in a way that increases the resources, rather than trading off with something else that is also important.

State and federal law also require that election officials have timely access to the computerized data matching information in order to effectively verify the registration data of new applicants. HAVA requires the state's chief election officer to make matching data available to county officials in timely, usable manner. In *Brunner*, the Sixth Circuit Court of Appeals sitting *en banc* held that "[a] mismatch that [the chief official] does not track down and does not allow the county boards of election

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<sup>58</sup> 42 U.S.C. § 15483(a)(5)(B)(i).

<sup>59</sup> See, e.g., *Ohio Rep. Party v. Brunner*, No. 08-4322, 2008 WL 4568682, slip op. at 3 (6th Cir. Oct. 14, 2008) (*en banc*), *rev'd on other grounds*, 555 U.S. \_\_\_\_ (Oct. 17, 2008) (*per curiam*).

meaningfully to track down is not a usable mismatch.”<sup>60</sup> The court rejected the Secretary’s argument that technical problems would preclude compliance: “The bureaucrat’s lament – that this will be difficult to do – is a hard sell given that the Secretary’s office previously shared this kind of information with the county boards.”<sup>61</sup> State election officials should have created a system that provides the matching in a timely fashion.

Finally, concerned citizens should encourage election officials to obtain the cooperation of third-party groups in detecting and deterring fraudulent applications. Many specific best practices are mandated in a settlement agreement involving ACORN from the state of Washington.<sup>62</sup> These mandates, many of which ACORN could adopt voluntarily, would improve the quality of applications submitted by ACORN, or other voter registration groups, and help give election officials adequate time to review registration applications.

#### **b. Work with your legislature**

Concerned citizens also can encourage their states to adopt better election laws, including voter identification laws. Indiana, Georgia, and Arizona have been in the forefront of these fights in recent years. In 2008, the U.S. Supreme Court upheld a stringent voter identification law in Indiana, thereby settling the question of the legality of such laws in general.<sup>63</sup> And polls consistently show that Americans support voter

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<sup>60</sup> *Brunner*, slip op. at 3.

<sup>61</sup> *Id.* at 5.

<sup>62</sup> In relevant part, the Washington state consent decree requires ACORN to cooperate with election officials in detecting ineligible voters. See Washington Settlement Agreement ¶¶ 7-10, available at <http://seattletimes.nwsourc.com/ABPub/2007/07/26/2003807088.pdf>.

<sup>63</sup> See *Crawford*, 128 S.Ct. at 1611.

identification laws.<sup>64</sup> Moreover, election results have repeatedly shown that voter identification laws increase public confidence and do not disenfranchise voters.<sup>65</sup> Further, research has shown that voter identification laws also can increase voters' confidence in the electoral system; in 2008, a team at American University's Center for Democracy and Elections Management, led by Dr. Robert Pastor, found that nearly 70% of registered voters surveyed in three states (Mississippi, Maryland and Indiana) thought that "the U.S. electoral system would be more trusted if people had to show a photo ID to vote." The study also found that voters in Indiana, the state with the strongest voter ID requirements, were significantly more confident their votes would be counted accurately, than voters in states with less stringent requirements.<sup>66</sup> This empirical evidence eviscerates the main concerns of critics of voter identification laws.

In addition, concerned citizens should work with their legislators to enact new rules to increase the accountability of third-party groups that conduct large voter registration drives. For example, Florida now requires that third-party groups submit applications within a certain time period, in order to give election officials more time to

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<sup>64</sup> Pastor, et al., "Voter IDs Are Not the Problem: A Survey of Three States," *available at* <http://www.american.edu/ia/cdem/pdfs/VoterIDFinalReport1-9-08.pdf> (Jan. 9, 2008) (last visited Feb. 19, 2009). See also, Ansolabehere, "Access versus Integrity in Voter Identification Requirements," *available at* [http://vote.caltech.edu/drupal/files/working\\_paper/vtp\\_wp58.pdf](http://vote.caltech.edu/drupal/files/working_paper/vtp_wp58.pdf) (last visited Feb. 19, 2009) (showing over 75% support).

<sup>65</sup> Hans von Spakovsky, "Voter ID Was a Success in November: Turnout was higher in states that took a simple step to prevent fraud," *Heritage Foundation Commentary available at* <http://www.heritage.org/Press/Commentary/ed013009b.cfm> (Jan. 31, 2009) (last visited Feb. 19, 2009) (finding that "[w]ith every election that has occurred since states have begun to implement voter ID, the evidence is overwhelming that it does not depress the turnout of voters. Indeed, it may actually increase the public's confidence that their votes will count").

<sup>66</sup> *Id.*

review them.<sup>67</sup> Other states require that third-party groups screen their employees for criminal histories, train them, and pay them in ways that do not impose quotas.

**c. Work with the public and the media**

Perhaps most importantly, concerned citizens should educate the public, the media, and elected officials about the importance of fair elections, and about past abuses. Such education will lay the groundwork for all other endeavors. Concerned citizens must, however, keep in mind that ACORN and its partisans may attempt to smear any critics.<sup>68</sup>

**d. Prepare for litigation**

If ACORN, or a group with similar tactics, starts a massive voter registration effort, concerned citizens should collect information about problems. They should document abuses and work with local election officials. For example, as detailed above in Section III, ACORN's employees often hassle potential registrants into signing up, even when they have already registered. Concerned citizens should collect such information and provide it to local elections officials, investigative reporters, and prosecutors. And prepare for litigation as a last resort. If a group of concerned citizens decide to file suit themselves, they should act promptly in order to gain meaningful relief. Examples of past lawsuits are publicly available and should provide guidance on how to proceed.

**e. Register Voters**

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<sup>67</sup> See Florida Code, *available at* [http://www.leg.state.fl.us/Statutes/index.cfm?App\\_mode=Display\\_Statute&Search\\_String=&URL=Ch0097/SEC0575.HTM&Title](http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=Ch0097/SEC0575.HTM&Title) (provision for third party voter registrations).

<sup>68</sup> See Marc Ambinder, "ACORN Rallies its Troops," *available at* [http://marcambinder.theatlantic.com/archives/2008/10/acorn\\_rallies\\_its\\_troops.php](http://marcambinder.theatlantic.com/archives/2008/10/acorn_rallies_its_troops.php) (Oct. 9, 2008) (last visited Feb. 19, 2009) (quoting an ACORN memo defending itself).

Finally, the most effective way to rebut smears is to vigorously register new voters, in full compliance with state and federal law. Concerned citizens should conduct voter registration drives wherever there are new voters, regardless of the area's income level or demographics. These efforts will demonstrate, more powerfully than any other tool, a commitment to ensuring that every eligible voter has the opportunity to cast a ballot.

## **VI. Conclusion**

All citizens should want every eligible voter to have the opportunity to cast a ballot and have that ballot count, consistent with state and federal law, and undiluted by fraudulent votes. All of the proposals in this paper should help increase confidence in the electoral system without adverse effect on any eligible voter. These remedies would give local election officials the necessary tools to detect and prevent fraud. Yet, none of these remedies should deter, dissuade, or deny any eligible voter the right to cast a ballot.

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