SECRETARY OF STATE
STATE OF INDIANA

Todd Rokita
Secretary of State

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

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

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

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

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

Examples of recent election reforms in Indiana include…

1. Indiana's model Voter ID law which serves as a high example of our state's commitment to integrity. Since Indiana's voter-ID law went into place, participation in our elections has increased – a sign of improved voter confidence. Opinion polls tell us our citizens have overwhelmingly favored this reform.

2. Indiana was one of the first states in the nation to build and activate a fully functioning Statewide Voter Registration System. Our state-of-the-art centralized database provides real-time access to every county in the state. Through this improvement more than 600,000 duplicate or inactive voter registrations have been identified and removed. Because the system prevents double voting, some of our counties now offer voters the

Todd Rokita
Secretary of State

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

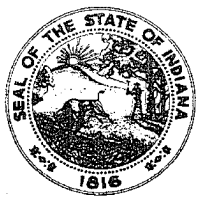
3. Recent absentee voting reforms in Indiana now require a voter's signed affidavit, restrict third-party handling of ballots, and set harsh punishments for electioneering, tampering, or fraud.

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

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

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

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



Todd Rokita
Secretary of State

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

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

- 61% of the applications had one or more critical defects observable on the face of the applications - rendering them invalid and useless.

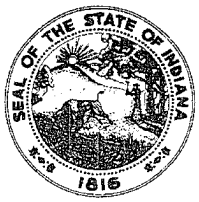
- 88% of the names on the 1,438 ACORN supplied applications could not be verified through the Indiana Bureau of Motor Vehicles database or by 4-digit Social Security Number matching with other name and address verification databases.

- 26% of the applications evidenced that a third party had assisted the intended voter in completing, correcting or altering required data. Indiana law requires the *identification of anyone* altering, completing, or updating a voter registration application. However only three of the altered applications identified the third party.

- 22% of the ACORN applications appeared to be multiple applications prepared by the same individual.

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

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



Todd Rokita
Secretary of State

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

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

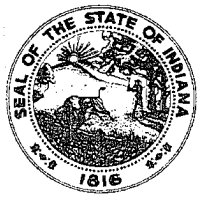
ACORN's defenders also claim that the organization should not be responsible for the actions of their paid employees. Again however, the laws of agency – and common sense, refute this defense.

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

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

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

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



Todd Rokita
Secretary of State

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

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

  - "Section 241 makes it a federal offense for two or more persons to "conspire to injure, oppress, threaten, or intimidate any person in any state… in the free exercise or enjoyment of any right or privilege secured by the Constitution or laws of the United States."… (This law) "has been interpreted to include any effort to derogate a right which flows from the Constitution or from federal law."[2] Including: (1) destroying voter registration applications[3] and illegal registration of voters.[4] "The election fraud conspiracy need not be successful to violate this statute.[5] Nor need there be proof of an overt act.[6]

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

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

2 Donsanto & Simmons Page 29 – 30.
3 United States v. Haynes, 977 F. 2d 583 (6th Cir. 1992).
4 United States v. Weston, 417 F. 2d 181 (4th Cir. 1969), cert. denied, 396 U.S. 1062 (1970).
5 United States v. Brandberry, 517 F. 2d 498 (7th Cir. 1975).
6 Williams v. United States, 179 F. 2d 644 (5th Dir. 1950).
7 Donsanto & Simmons Page 30; United States v. Nathan, 238 F. 2d 401 (7th Cir. 1956), cert. denied, 353 U.S. 910 (1957).

Todd Rokita
Secretary of State

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

- **Federal RICO statutes (18 U.S.C. 1962 (c).**

  - ACORN's voter registration activity in Indiana was clearly a well organized and orchestrated activity. Reports of voter registration fraud investigation in several other states suggest that ACORN's 2008 voter registration activity was more in the nature of a national political campaign than the "grass roots" activity that its attorneys and leaders suggest.

    Racketeer Influenced and Corrupt Organization laws are designed to focus on the patterns of criminal "enterprise," not just individual criminals. A RICO case requires three elements: (i) a "person," who is part of an (ii) "enterprise" which includes any legal entity (including a non-profit organization or association) (iii) which engages in a pattern of racketeering activity" (defined as committing any 2 of 35 named crimes within a 10-year period). Fraud is one of the crimes that can trigger RICO.[8]

  - **Indiana's Racketeer Influenced and Corrupt Organization's Law** (RICO), virtually mirrors federal RICO law: "A person who is employed by or associated with an enterprise and who knowingly or intentionally conducts or participates in the activities of that enterprise through a pattern of racketeering activity (including forgery and perjury) commits Corrupt Business Influence, a Class C Felony" (Indiana Code 35-45-6 *et. seq.*).

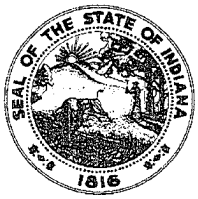
I am attaching and submitting a copy of the report supplied to the U.S. Attorney and Lake County Prosecutor with my written testimony for the record.

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

---

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

SECRETARY OF STATE
STATE OF INDIANA



Todd Rokita
Secretary of State

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

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

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

Todd Rokita,
Indiana Secretary of State

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

The Statehouse, Indianapolis, Indiana 46204, (317) 232-6531, Fax (317) 233-3283