

09-5172-cv;

10-992-cv

---

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

---

ASSOCIATION OF COMMUNITY ORGANIZATIONS FOR REFORM NOW;  
ACORN INSTITUTE; NEW YORK ACORN HOUSING COMPANY, INC.,  
*Plaintiffs – Appellees*

v.

UNITED STATES OF AMERICA, et al  
*Defendants - Appellants*

---

On Appeal from the United States District Court  
For the Eastern District of New York

---

BRIEF OF ALLIANCE FOR JUSTICE; CITIZEN ACTION OF NEW YORK;  
HAKEEM JEFFRIES; The LABOR EDUCATION & RESEARCH PROJECT  
(LERP); The LEGAL AID SOCIETY OF NEW YORK CITY;  
MARTY MARKOWITZ; KEVIN POWELL; WESTERN STATES CENTER;  
JUMAANE D. WILLIAMS AS *AMICI CURIAE* IN SUPPORT OF ACORN.

[Counsel listed on following page]

**COUNSEL FOR AMICUS**

David B. Rankin

Mark Taylor

RANKIN & TAYLOR

350 Broadway

New York, NY 10013-3911

212.226.4507

**TABLE OF CONTENTS**

A. SUMMARY OF ARGUMENT ..... 1

B. INTRODUCTION OF PARTIES FILING THIS BRIEF ..... 4

C. THE IMPORTANCE OF ACORN ..... 9

D. THE IMPORTANCE OF  
ORGANIZATIONAL ADVOCACY ..... 11

E. CONCLUSION..... 14

**TABLE OF AUTHORITIES**

| <b>CASES</b>  | <b>PAGES</b> |
|---|--------------|
| <i>Jenkins v. NYC Dept. of Homeless Services</i> ,<br>643 F. Supp. 2d 507 - Dist. Court, SDNY 2009.....   | 6            |
| <i>NAACP v Alabama</i> ,<br>357 US 449 (1958).....  | 11           |
| <i>NAACP v Button</i> ,<br>371 U.S. 415 (1963).....   | 12           |
| <i>Roberts v U.S. Jaycees</i> ,<br>468 U.S. 609 (1984).....   | 12           |
| <br><b>CONSTITUTION AND DECLARATION OF INDEPENDENCE</b>   |              |
| Declaration of Independence .....   | 13           |
| First Amendment.....  | 13           |
| <br><b>OTHER AUTHORITIES</b>  |              |
| Martin Luther King, Jr., <i>A Testament of Hope:<br/>The Essential Writings and Speeches of<br/>Martin Luther King, Jr.</i> (1991) .....                      | 14           |
| Gregory A. Mark, “The Vestigial Constitution:<br>The History and Significance of the Right to Petition,”<br><i>Fordham Law Review</i> 2153, 2163 (1998) ..... | 11, 13       |
| Theodore Parker, Unitarian Minister, Speech, 1853 .....   | 1            |
| Frances Fox Piven and Lorraine C. Minnite,<br>“Why We Need ACORN,” April 22, 2010, <i>Los Angeles Times</i> .....   | 9, 10        |

Jay Alan Sekulow, Erik M. Zimmerman,  
“Weeding Them Out by the Roots: The Unconstitutionality  
of Regulating Grass Roots Advocacy,”  
*Stanford Law and Policy Review* 164 (2008) ..... 11

## **BRIEF FOR AMICI**<sup>1</sup>

### A. SUMMARY OF ARGUMENT

“I do not pretend to understand the moral universe; the arc is a long one...and from what I see I am sure it bends towards justice.”<sup>2</sup>

We ask this Court for justice. We seek justice for ACORN. If this Court rules justly for ACORN it will provide the assurance of justice for other community organizations that engage in controversial actions and challenge government.

This friend of the court brief is filed in support of ACORN to help the Court understand the significance of ACORN in particular and the importance of organizational advocacy in general as part of this court’s determination of whether the actions of Congress in de-funding ACORN and any other organization affiliated with ACORN is legal or not.

We understand that Congress has decided, primarily on the basis of news reports, to cut off all federal funds from ACORN and any and all other organizations that are affiliated with ACORN without conducting any Congressional investigation or hearings or trials.

---

<sup>1</sup> Pursuant to FRAP 29(a) and Local rule 29(b) disclosures - This brief is filed with the consent of all parties and was authored with contribution by Bill Quigley of the Center for Constitutional Rights. No money has been contributed by any party or counsel.

<sup>2</sup> Theodore Parker, Unitarian Minister, 1853. This quote was often used by Dr. Martin Luther King, Jr. and was included in the Inauguration Address of President Barack Obama in 2009.

We have been advised that those who reviewed the “hidden-camera” video tapes on which these news reports were based, including the Attorney General of California, the Brooklyn District Attorney and former Massachusetts Attorney General Scott Harshbarger, all found that the video tapes to which Congress so hastily reacted had in fact been heavily manipulated to present a misleading picture of what actually occurred in the ACORN offices.

But the point of this brief is not to argue that the conclusion Congress reached was wrong. It is to say that organizations have a right to due process before they are deprived of important rights and that the court must be especially vigilant to protect those rights when controversy arises.

We support the importance of government investigating allegations of fraud. We know there are many ways for the governments on the federal and local and state level to investigate allegations of fraud. We support fair and legal investigations. We support full due process rights to a full and fair hearing. If a full due process hearing finds that fraud occurred, then it is right to suspend the program in which fraud occurred or to punish the individual who committed the fraud.

The details of the many ways that the federal government can investigate and make fair decisions about community organizations are discussed by other briefs in this matter.

Merely saying there is fraud and then passing a law that de-funds a national organization and any other organization affiliated with it is not right or legal, as the Judge in this matter has already ruled.

This brief seeks to help this court understand how critically important community organizations like ACORN are to the healthy functioning of our democracy and the wellbeing of its citizens.

We know ACORN has challenged actions of local, state and federal governments, and registered hundreds of thousands of low-income and minority voters. There can be little doubt that its successful advocacy and community organizing—seen as a threat to supporters of the status quo-- was a major reason that ACORN was targeted by political opponents. Controversy alone is not a reason to de-fund any organization.

We support ACORN's position in this case because it is not fair to ACORN or any other community organization, no matter how controversial they are, to be treated in an unconstitutional or illegal manner just to score political points.

If Congress can defund ACORN without any investigations or hearings and without the constitutionally required due process of law, then no organization is safe from similar actions.

Our nation's history and key decisions of the U.S. Supreme Court illustrate why citizens of the U.S. have to be allowed to advocate in organized fashion and why this Court should protect the constitutional rights of ACORN and all community organizations.

#### **B. INTRODUCTION OF PARTIES FILING THIS BRIEF**

This friend of the court brief is being filed to support ACORN and is filed on behalf of:

ALLIANCE FOR JUSTICE is a national association of more than 100 organizations dedicated to advancing justice and democracy. For 30 years we have been leaders in the fight for a more equitable society on behalf of a broad constituency of environmental, consumer, civil and women's rights, children's, senior citizens' and other groups. The Alliance for Justice believes that organizations that advocate on behalf of low-income communities and politically disenfranchised groups play a vital role in our democracy. It has an interest in ensuring that they are not chilled in doing so.

CITIZEN ACTION OF NEW YORK is a grassroots organization in New York State that works for social, racial and economic justice. We are concerned that all organizations have due process before any governmental actions are taken against them.

HAKEEM JEFFRIES is a New York State Assembly representative for the Brooklyn neighborhoods of Fort Greene, Clinton Hill, Crown Heights, Prospect Heights and Bedford Stuyvesant. Affordable housing and matters of social and economic justice are at the forefront of his legislative agenda. The Association for Community Reform Now (ACORN) has been an invaluable asset to the neighborhoods he represents in that the organization takes a holistic and expansive approach to addressing the needs of low and moderate income communities. Given this invaluable and at often times unprecedented contribution, ACORN deserves the fullest protection of the law.

The LABOR EDUCATION & RESEARCH PROJECT (LERP), commonly referred to as Labor Notes, is a national media and organizing project based in Detroit, Michigan. We see the labor movement as a critical force in the broader movement for social change, and we help build labor-community networks of activists and leaders who share the goal of expanding democracy and empowering workers. We serve as a bridge

between worker centers based in the community and more traditional labor organizations. Labor Notes' aim is to connect activists across the whole spectrum of social justice movements—from different regions, industries, organizations, and racial and ethnic groups—so as to help them be catalysts for change in their unions, workplaces, and communities. Through our magazine, our conferences, and our weekend schools, we are able to connect rank-and-file activists with other struggles, breaking through their sense of isolation and powerlessness. Labor Notes is greatly interested in the issues before the Court, which have potential to affect the rights of any organization or group to organize on behalf of disempowered workers and community members.

The LEGAL AID SOCIETY OF NEW YORK CITY is the oldest and largest legal services provider in the United States. Legal Aid's Civil Practice handles approximately 32,000 legal matters for vulnerable clients each year. The Society's clients are the most vulnerable members of our society: children, seniors, persons with disabilities, immigrants, people with HIV/AIDS, homeless children and families, families facing eviction, and people with mental illnesses. The Society has been granted amici status before this Court in many cases but most recently, in 2010, in *Jenkins v. NYC Dept. of Homeless Services*, No. 09-3400-cv. The Society has an

interest in the outcome of this decision because of the impact reversal would have on organizations who organize and advocate for the interests of low income people.

Brooklyn Borough President MARTY MARKOWITZ agrees to sign on in support of ACORN's right to due process. The Borough President supports ACORN on the basis of fundamental fairness and the firm belief that community organizations, no matter what their position, should not be suppressed by unconstitutional means for the purposes of political expediency. He states: "Some of the basic rights that we hold dear as American citizens were won by the advocacy of our community groups. We must protect them from any inequities that they may face, especially when they are created by our government. ACORN, along with many other community organizations, have fought for the rights of the people of Brooklyn. By joining in this brief, Brooklyn in turn is fighting for the rights and fundamental fair treatment of all community organizations."

KEVIN POWELL is the author of 10 books and has been an activist and a community organizer for 25 years, in New York City, and throughout America, working on issues ranging from Hurricane Katrina relief, to affordable housing, to voter education and registration. He fully supports the work of ACORN, for this organization has always represented the best

interests of the less fortunate in our nation. ACORN's work has been selfless and in the grand spirit of democracy for all. Powell believes that everyone needs to continue to support organizations like ACORN so that all citizens have an opportunity to achieve the American dream.

Since 1987 WESTERN STATES CENTER has been at the forefront of building a movement for progressive social change in the eight western states of Alaska, Idaho, Montana, Nevada, Oregon, Utah, Washington, and Wyoming. In that capacity we have worked with hundreds of community based organizations, ACORN among them. Congress' actions against ACORN have clearly caused much irreparable harm, singling out the organization for retribution before any possible legal actions against the organization had been resolved. We believe groups who advocate for justice should be free to do so without fear of such intimidation.

JUMAANE D. WILLIAMS is the council member for District 45. He has been fighting for affordable housing for and tenants' rights through organizing and advocacy for over 15 years. As an ardent supporter of civic engagement and community empowerment, Council Member Williams believes that organizations that advocate for working families play a vital role in the protection of our rights and should be afforded due process before any sanctions are brought against them that could jeopardize positive social

change. The decision from Congress to withhold funds from an organization without an official charge of wrongdoing is a precedent that cannot be allowed to stand in a society where civil rights is at the core of its foundation.

### C. THE IMPORTANCE OF ACORN

ACORN has been the largest community-based grassroots organization in the U.S. for years. ACORN focused on local, state and national issues of justice for low and moderate income people, primarily in and with African-American, Latino, and other communities.

ACORN has had hundreds of thousands of members in dozens of states across this country. ACORN has been involved in living wage campaigns, neighborhood challenges to blight and safety problems, assistance in stopping wrongful foreclosures of family homes, voter registration, assistance in preparing income tax returns, and literally every kind of local, state and national advocacy campaign that assists poor and working people in recent years.

Professor Frances Fox Piven, author and long-time social justice advocate, recently co-authored an article in the Los Angeles Times pointing out the importance of ACORN:

“More than any other national organization, ACORN succeeded in bringing the voices of the poor into domestic politics. The group had its roots in the welfare rights movement of the mid-1960s, when impoverished Americans joined to demand benefits they were entitled to but often denied. By 1966, these small local groups had banded together to become the National Welfare Rights Organization. Their campaign attracted young activists who called themselves community organizers, and in 1970 the movement gave birth to ACORN, which set out to organize a broader swath of low-income Americans.”

“...The community organizers at ACORN were deeply committed to expanding our democracy to include people whose interests and needs otherwise get short shrift. They were highly effective in reaching out to people in poor and working-class neighborhoods, identifying their concerns and fashioning strategies to resolve them. Their small victories built community organizations, ultimately making the group a force not only in local politics but in state and national politics as well. ACORN held a profoundly optimistic view of democratic possibility in America, and those who ridicule that vision do our country a serious disservice.

“...One study by an independent analyst put the monetary value of legislative and other victories won by ACORN in behalf of its constituents at \$1.5 billion a year between 1995 and 2005. Meanwhile, ACORN campaigns nurtured an amazing cadre of proud local leaders, most of them black women.”<sup>3</sup>

We know ACORN’s history of working in our communities and support its right to continue to exist and follow the laws which apply to all organizations.

---

<sup>3</sup> Frances Fox Piven and Lorraine C. Minnite, “Why We Need ACORN,” April 22, 2010, Los Angeles Times.

## D. THE IMPORTANCE OF ORGANIZATIONAL ADVOCACY

ACORN's history as an organization is one of petitioning and challenging government on the local, state and national level to address the grievances of low and moderate income grassroots, otherwise infrequently listened to and heard, people.

The legal history of the U.S. rests on the actions of individuals and organizations which bore considerable burdens to challenge government.<sup>4</sup>

For example, in 1958, the U.S. Supreme Court proclaimed in *NAACP v Alabama*, 357 US 449 (1958):

“Effective advocacy of both public and private points of view, particularly controversial ones, is undeniably enhanced by group association, as this Court has more than once recognized by remarking upon the close nexus between the freedoms of speech and assembly. It is beyond debate that freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of the "liberty" assured by the Due Process Clause of the Fourteenth Amendment, which embraces freedom of speech. Of course, it is immaterial whether the beliefs sought to be advanced by association pertain to political, economic, religious or cultural matters, and state action which may have the effect of curtailing the freedom to associate is subject to the closest scrutiny.” (internal citations omitted). 357 U.S. 460.

---

<sup>4</sup> Jay Alan Sekulow, Erik M. Zimmerman, “Weeding Them Out by the Roots: The Unconstitutionality of Regulating Grass Roots Advocacy,” 19 Stanford Law and Policy Review 164 (2008); Gregory A. Mark, “The Vestigial Constitution: The History and Significance of the Right to Petition,” 66 Fordham L. Review 2153, 2163 (1998).

Later the U.S. Supreme Court, in the 1963 decision of *NAACP v Button*, 371 U.S. 415 (1963) reaffirmed that the

“the activities of the NAACP, its affiliates and legal staff...are modes of expression and association protected by the First and Fourteenth Amendments...the First Amendment protects vigorous advocacy, certainly of lawful ends, against governmental intrusion.”

In 1984, the U.S. Supreme Court underscored the importance of group advocacy in *Roberts v U.S. Jaycees*, 468 U.S. 609 (1984).

“An individual’s freedom . . . to petition the government for the redress of grievances could not be vigorously protected from interference by the State unless a correlative freedom to engage in group effort toward those ends were not also guaranteed. According protection to collective effort on behalf of shared goals is especially important in preserving political and cultural diversity and in shielding dissident expression from suppression by the majority. Consequently, we have long understood as implicit in the right to engage in activities protected by the First Amendment a corresponding right to associate with others in pursuit of a wide variety of political, social, economic, educational, religious, and cultural ends.” 468. U.S. at 622.

Indeed, the history of our laws and our democracy is built on the ability of individuals and organizations to challenge the actions of government.

This history formally started in 1215, when the Magna Carta recognized the right of some to petition the monarch for “transgressions.” In

1628, the Petition of Right was raised by Parliament to challenge wrongs committed by the monarch. In 1688, the right to petition the government was formally placed into the English Bill of Rights.<sup>5</sup> The Colonial period of U.S. history built upon the English right and guaranteed the right to petition in the Massachusetts and Virginia colonies.<sup>6</sup>

In 1776, the Declaration of Independence specifically included the fact that the revolutionary freedom fighters had repeatedly tried to petition the English government for their grievances but “have been answered only by repeated injury.”<sup>7</sup>

The First Amendment to the U.S. Constitution, ratified in 1791, specifically protects the right “to petition the Government for a redress of grievances.”

There are many times when local, state or federal government will not listen to one person, even if that person is right. These are the times when people must come together to petition their local, state or federal government.

ACORN and community organizations like them must be protected from illegal actions.

---

<sup>5</sup> Gregory Mark, *supra*, at 2163-2174.

<sup>6</sup> Gregory Mark, *supra*, at 2174-2191.

<sup>7</sup> The Declaration of Independence paragraph 30 (U.S. 1776).

The powerful and those with economic resources have ways to have their voices heard and have their ideas be listened to.

The community of people of modest means, the low and moderate income people who make up ACORN and other organizations like ACORN, have to bring their voices together to make sure they are heard.

Our democracy needs strong community organizations to counterbalance the economic special interests which have the resources to tilt the playing field in their favor.

We ask this Court to consider the importance of community organizations and community advocacy when weighing the merits of this case.

## E. CONCLUSION

Dr. Martin Luther King, Jr. challenged all of us “to question the fairness and justice of many of our past and present policies” in his address to Riverside Church.<sup>8</sup>

We conclude by asking this Court to follow Dr. King’s advice and question the fairness and justice of what happened to ACORN. We are

---

<sup>8</sup> Martin Luther King, Jr., *A Testament of Hope: The Essential Writings and Speeches of Martin Luther King, Jr.* 240 (1991).

confident this Court will do so. And we are confident that when this Court does this, the constitutional rights of ACORN and all other community organizations will be protected.

Dated: New York, New York  
May 21, 2010

Submitted by  
Counsel for Amicus

---

David B. Rankin  
Mark Taylor  
Rankin & Taylor  
350 Broadway  
New York, NY 10013-3911  
212.226.4507

**Federal Rules of Appellate Procedure Form 6. Certificate of Compliance With Rule 32(a)**

Certificate of Compliance With Type-Volume Limitation,  
Typeface Requirements and Type Style Requirements

1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because:

this brief contains [ **2844** ] words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii), *or*

this brief uses a monospaced typeface and contains [*state the number of*] lines of text, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because:

this brief has been prepared in a proportionally spaced typeface using [*microsoft word 2003*] in [14 pt Times New Roman], *or*

this brief has been prepared in a monospaced typeface using [*state name and version of word processing program*] with [*state number of characters per inch and name of type style*].

(s) \_\_\_\_\_

Attorney for \_\_\_\_\_ amici curiae \_\_\_\_\_

Dated: \_\_\_\_\_ May 21, 2010 \_\_\_\_\_