

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

ASSOCIATION OF COMMUNITY )  
ORGANIZATIONS FOR REFORM )  
NOW (ACORN), )

Plaintiff, )

v. )

TOM CORBETT, Attorney General, )  
Commonwealth of Pennsylvania, and )  
STEPHEN A. ZAPPALA, JR., )  
District Attorney for Allegheny County, )  
Pennsylvania, )

Defendants. )

Civil Action No. \_\_\_\_\_

**COMPLAINT**

**INTRODUCTION**

Plaintiff ACORN is a national not-for-profit-community organization dedicated to advancing social and economic justice for low- to moderate-income people. Assisting eligible voters to register in low-income and minority communities is one of the organization’s most important political activities. In this civil rights action, ACORN challenges the constitutionality of a Pennsylvania election statute, 25 Pa. Cons. Stat. § 1713, entitled *Solicitation of Registration*, which makes it a crime to “give, solicit or accept payment or financial incentive to obtain a voter registration if the payment or incentive is based upon the number of registrations or applications obtained.” District Attorneys, including in Allegheny County, are applying the law to prohibit not only payment per registration, but also any reliance on performance standards or goals that

refer to the number of registrations. This application essentially precludes ACORN from hiring and paying employees to advance the organization's goal of registering eligible voters, thereby imposing a severe burden on ACORN's First and Fourteenth Amendment rights. ACORN seeks a declaration that the statute is unconstitutional and an injunction to block its enforcement.

### **JURISDICTION AND VENUE**

1. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1343(3) and (4). Declaratory relief is authorized by 28 U.S.C. § 2201 and Fed. R. Civ. P. 57. Injunctive relief is authorized by Fed. R. Civ. P. 65.
2. Venue lies in the United States District Court for the Western District of Pennsylvania because a substantial part of the events giving rise to Plaintiff's claims have occurred and will occur in Allegheny County and Defendant Corbett has offices in the District. 28 U.S.C. § 1391(b)(1) and (2).

### **PARTIES**

#### Plaintiffs

3. Plaintiff Association of Community Organizations for Reform Now (ACORN) is a national not-for-profit organization incorporated in Louisiana with offices in about 40 states. It currently has three staffed offices in Pennsylvania, including one in Pittsburgh.
4. ACORN is the nation's largest community organization of low- and moderate-income families. Since 1970, ACORN has grown to more than 175,000 member families, organized in 850 member chapters in 75 cities across the United States.

5. ACORN has over the course of its nearly forty-year history worked to promote social and economic justice for low-to-moderate-income people and their communities. ACORN has used community-organizing techniques, like direct action, education, negotiation, legislative advocacy and increased political participation by members, to achieve successes on thousands of issues that affect people in low- and moderate-income communities. These issues include, but are not limited to, affordable housing (and during the recent recession, protecting home ownership), better schools, improved public services, access to healthcare, safer neighborhoods and fighting discrimination. In short, ACORN has been one of the country's leading advocates on social and economic justice issues for low to moderate-income people.

#### Defendants

6. Defendant Tom Corbett is, and at all relevant times was, Attorney General for the Commonwealth of Pennsylvania and as such was operating under color of state law. Mr. Corbett is sued in his official capacity. As attorney general, Defendant Corbett has the duty "to uphold and defend the constitutionality of all statutes so as to prevent their suspension or abrogation in the absence of a controlling decision by a court of competent jurisdiction." 71 Pa. Cons. Stat. § 732-204(a)(3). Defendant Corbett also has the power to prosecute criminal cases: (1) when requested to do so by a district attorney who lacks the resources to conduct an adequate investigation or prosecution of the case or who represents that there is the potential for an actual or apparent conflict of interest on the part of the district attorney or his office; (2) by order of court if he establishes by a preponderance of the evidence that the district attorney has failed or refused to prosecute

and such failure or refusal constitutes abuse of discretion; and (3) when the president judge requests that he intervene in a criminal prosecution. 71 Pa. Cons. Stat. § 732-205.

7. Stephen A. Zappala, Jr. is, and at all relevant times was, the District Attorney for the County of Allegheny, and as such was operating under color of state law. As the District Attorney, Mr. Zappala is the chief law enforcement officer in Allegheny County with the responsibility for prosecuting people who violate 25 Pa. Cons. Stat. § 1713. 25 Pa. Cons. Stat. § 1802. Mr. Zappala is sued in his official capacity.

## **FACTUAL ALLEGATIONS**

### **Voter Registration is a Crucial Component of ACORN's Political Advocacy**

8. Voter registration, which promotes political empowerment, is an indispensable component of ACORN's effort to improve the social and economic conditions of its members and the communities it serves.
9. ACORN's voter-registration campaigns further its political advocacy by, among other things:
  - a. Expanding the number of voters from communities that ACORN serves, which allows the organization and its members to advocate more effectively with government entities that provide services to those communities and to influence political decisions that affect those communities;
  - b. Providing opportunities for face-to-face interactions with prospective registrants, during which ACORN workers not only inquire whether they are registered to vote, but also discuss with individuals ACORN's priority issues -- be they challenging housing foreclosures or promoting safer neighborhoods -- and seek to

enlist them to help with ACORN's advocacy work on behalf of their community;  
and

- c. Increasing representation of low-income citizens and people of color among registered voters, who are significantly less likely to be registered voters than more affluent citizens. According to the U.S. Census Bureau, in 2006 65% of eligible voters were registered to vote in Pennsylvania. Only 60% of eligible voters earning less than \$40,000 were registered to vote, compared to 76% of those earning more than \$40,000. Disparities were also pronounced when examined along racial lines, with 67% of the eligible white voters in Pennsylvania registered to vote in 2006, but only 50% of the eligible black voters registered.
10. Minority citizens are more likely to rely on voter-registration drives to register to vote than are Caucasian citizens, which further enhances the importance of voter-registration activities to ACORN. In 2008, 13.5% of African-American citizens who filled out voter-registration applications did so through voter-registration drives compared to only 6.2% of Caucasian citizens.
  11. ACORN's focus on voter-registration issues is longstanding. ACORN championed passage of the National Voter Registration Act of 1993 — which required states to offer voter registration at government agency offices — and was the lead plaintiff in several legal challenges against states that refused to implement it. In 2005 and 2006 ACORN led a coalition of organizations in Pennsylvania that successfully lobbied against a proposed state statute that would have restricted voting rights, including disenfranchising ex-felons.

12. Recognizing the low voter-registration rates among poor and minority citizens and the importance of encouraging its members to exercise their right to the franchise, ACORN has been conducting non-partisan voter-registration drives since 1982.
13. In 2006, ACORN collected and submitted more than 30,000 voter-registration applications to the Allegheny County Elections Division.
14. Prior to the 2008 election, ACORN was aware that there were thousands of minority and low-income residents in Allegheny County who were eligible to vote but had not registered. In anticipation of the November election, ACORN made it a priority to expand its voter-registration operations in an effort to alleviate this problem.
15. During 2008, ACORN hired more than 300 registration canvassers. As a result, ACORN was able to collect and submit about 40,000 voter-registration applications to the Allegheny County Elections Division between January and October 2008.

#### **ACORN'S Training and Quality-Control Programs**

16. ACORN has developed standardized training programs to teach registration canvassers how to do the job correctly. During the 2008 training program in Allegheny County, for instance, registration canvassers were informed of, *inter alia*: a) the lawful qualifications for registering to vote in Pennsylvania; b) the proper method of completing a voter registration application; and c) the criminal consequences of falsifying a voter-registration application.
17. ACORN's training program emphasized to registration canvassers the consequences of violating voter-registration laws and/or committing fraud. ACORN informed workers that it would report to election officials any suspicions that a canvasser had falsified a

voter-registration application and that ACORN would cooperate in prosecuting those individuals.

18. ACORN required all registration canvassers to sign statements affirming that they understood these consequences and even posted a sign on the wall of the Pittsburgh office advising workers that if they committed fraud ACORN would turn the perpetrator in to prosecuting authorities and would testify against the individual.
19. Recognizing that in any employment situation even an excellent training program will result in some percentage of employees who cannot or will not do the job correctly, ACORN supplemented its training program with rigorous quality-control practices.
20. Employees were informed that every voter-registration application they submitted would be checked in order to deter misconduct by those who might be inclined to cheat.
21. ACORN's verification process included a supervisor visually inspecting each application for completion errors or suspicious content, calling the applicants that provided phone numbers to confirm the accuracy and veracity of the information on the registration application, and investigating applications that appeared to contain inaccurate or incomplete data.
22. If the supervisor detected applications that were suspicious, *e.g.*, the handwriting on every application from a particular worker looked the same, the registrant's name was a fictional character (*i.e.*, Mickey Mouse), or the same name appeared on multiple applications, the supervisor would open an investigation and, if the investigation did not disprove the suspicion, complete a "problematic card package" that was then attached to the application(s) before being submitted to election officials.

23. ACORN supervisors paid particular attention to and investigated workers who submitted problematic registration applications.

**ACORN's Voter-Registration Activities  
Were Attacked Unfairly During the 2008 Presidential Campaign**

24. During the 2008 Presidential Campaign, ACORN's voter-registration efforts came under attack from various fronts.

25. The charges against ACORN stemmed from the fact that some of the registration applications the organization submitted to election authorities were duplicates for people who were already registered, filled out on behalf of non-existent people, or otherwise improper.

26. Election officials across the country pointed out that the submission of defective or fraudulent voter registrations did not actually result in fraudulently cast ballots. Under federal law, every "Mickey Mouse" and "Abraham Lincoln" who registered to vote would, as first-time voters, have to produce identification in order to vote.

27. Moreover, county elections officials review the registration applications submitted by ACORN or anyone else to ensure that the applicant is not already registered and is legally eligible to vote before officially registering the person and issuing a voter card.

28. Contrary to claims made by ACORN's critics, the organization derives no benefit, financial or otherwise, from workers who engage in fraud or submit deficient voter-registration applications. ACORN's goal is not to register as many people as possible, but to increase the number of people who are legally registered to vote so that they can and hopefully will exercise their right to vote. Deficient or fraudulent applications do not increase the pool of registered voters or lead to more voters.



29. In fact, the submission of fraudulent or deficient voter-registration applications harms ACORN's effectiveness and ability to advance the organizational mission by wasting valuable staff time and resources to process defective applications, hindering membership donations and other forms of fundraising, embarrassing staff and board members, and besmirching the organization's reputation with the government officials it is often trying to influence.
30. Consequently, registration canvassers who committed fraud or submitted deficient voter-registration applications during the 2008 voter-registration drive not only worked counter to ACORN's mission, but caused harm to the organization. ACORN was the victim of a relatively small number of registration canvassers who did not perform honestly and in accordance with the organization's policies and procedures.

**ACORN Cooperated With Election Officials to Identify and Minimize Fraud**

31. Although fraudulent voter registrations are unlikely to lead to actual voter fraud, ACORN nevertheless instituted in its operations across the country carefully designed training programs for employees and quality-control systems to minimize deficient and fraudulent voter-registration applications.
32. ACORN's internal policy, which applies nationwide, requires that the organization submit to election officials *every* voter-registration application collected by the organization's employees. The rationale is that the potential for disenfranchising voters is too great to allow the registration-application collectors to be given discretion to decide which applications should or should not be turned in. ACORN deviated from this practice only in response to local election officials' request.

33. In Allegheny County, the Elections Division specifically requested that ACORN submit *every* registration application it collected, including ones that appeared to be deficient or problematic. ACORN advised the Elections Division in January 2008 that it would comply with that request, which already reflected ACORN's policy and practice.
34. ACORN also advised the Allegheny County Elections Division in January 2008 that it would a) separate out those applications identified as problematic by its quality-control system and turn them in separately with a Problematic Card Cover Sheet; and b) cooperate with any investigation of workers who submitted problematic cards.
35. During this exchange of correspondence and a meeting with the Allegheny County Elections Division, ACORN requested that the Election Division provide regular feedback to ACORN so that it could improve its performance and identify any registration canvassers who were not performing adequately.
36. ACORN adhered to the foregoing policies and practices throughout the 2008 voter-registration campaign.
37. Beginning in March 2008 and at several points throughout the year, as a result of the stringent quality-control measures ACORN adopted, ACORN's Allegheny County supervisors became suspicious that some workers might be falsifying voter-registration applications. The supervisors turned over to the Allegheny County Elections Division the possibly defective applications and the identity of the registration canvassers who had submitted them.
38. As the result of an internal investigation, ACORN terminated employees it suspected of submitting fraudulent registrations and other workers resigned after ACORN supervisors

confronted them with their suspicions. ACORN advised the Elections Division of these personnel changes.

39. When the allegations of fraud against ACORN were escalating nationwide in October 2008, Allegheny County detectives requested that ACORN provide information on thirty of its Pittsburgh-based canvassers, a request which subsequently was narrowed to thirteen canvassers, all of whom were no longer employed by ACORN.
40. ACORN provided the requested employment records for all but two of the people identified by County detectives. ACORN did not provide information on those two individuals because it had no record of those people ever working for the organization. ACORN also provided the detectives with additional information about applications it believed were suspicious.
41. Between March and October 2008, ACORN identified approximately 216 problematic registration applications collected by its canvassers. ACORN submitted those applications to the Allegheny County Elections Division as part of a “Problematic Card package.”
42. On May 7, 2009, the Allegheny County District Attorney filed criminal charges against five former ACORN employees, and two others about whom ACORN had no records, alleging that they committed various crimes of fraud in connection with the submission of voter-registration applications.
43. All five of the former ACORN employees had been fired by the organization or resigned after ACORN supervisors confronted them with the problematic applications.
44. ACORN either turned individuals in to the proper authorities or cooperated in the criminal investigation of each of the five employees.

45. Among the criminal charges filed against each former employee was one brought under 25 Pa. Cons. Stat. § 1713, *Solicitation of Registration*.

46. The charges against all seven individuals are still pending.

**Application of 25 Pa. Cons. Stat. § 1713, Solicitation of Registration, to ACORN**

47. The *Solicitation of Registration* statute is a 2002 law that reads as follows:

- a. Prohibition. – A person may not give, solicit or accept payment or financial incentive to obtain a voter registration if the payment or incentive is based upon the number of registrations or applications obtained.
- b. Penalty. – A person who violates subsection (a) commits a misdemeanor of the third degree and shall, upon conviction, be sentenced to pay a fine of not less than \$500 nor more than \$2,500 or to imprisonment for not less than one month nor more than one year, or both.

25 Pa. Cons. Stat. §1713.

48. The probable-cause affidavits filed by the Allegheny County District Attorney on May 7 with the charges against the former ACORN employees state that the employees told detectives that they were working under a “quota” whereby ACORN insisted that they deliver a minimum number of registration applications each day. Additionally, the Allegheny County District Attorney and assistant district attorneys have been quoted in various news reports saying that ACORN had a “quota system” for employees and that such a system is a crime under Pennsylvania law, specifically 25 Pa. Cons. Stat. § 1713.

49. The term “quota” is not found in the statute. The Allegheny County District Attorney has indicated that 25 Pa. Cons. Stat. § 1713 prohibits quotas, which it interprets to mean a prohibition both on paying canvassers per registration collected *and* applying performance and productivity standards that in any way correlates with the number of registrations collected.

50. ACORN pays its canvassers by the hour based on the number of hours worked.

51. In Pittsburgh during the 2008 campaign, canvassers typically worked 6-hour shifts and were paid \$8 per hour. The salary paid to canvassers did not vary based on the number of registrations submitted. In other words, for a full 6-hour shift a canvasser would be paid \$48 regardless of whether he or she submitted one or twenty registration applications.
52. ACORN does, however, apply performance standards to canvassers based on the number and quality of the applications they collect.
53. For instance, ACORN has a performance, or aspirational, goal that canvassers strive to collect about twenty registration applications per shift. ACORN supervisors did not deduct pay from anyone who failed to meet the performance goal.
54. In fact, 81% of ACORN's Allegheny County canvassers did not meet the performance goal in 2008. The average canvasser collected slightly more than thirteen voter-registration applications per shift.
55. ACORN did not fire any Pittsburgh canvassers solely because they failed to meet the performance goal on a particular shift.
56. Supervisors would, however, work with canvassers who did not meet the performance goal. For example, they would review the canvassers' techniques and assess whether the area they were sent into was suitably productive. Supervisors would model proper canvassing techniques by going out with canvassers who were having difficulty.
57. No employer can afford to have unproductive employees. Likewise, ACORN cannot afford to pay people who gather no registrations or very few. Canvassers must be efficient and productive in order for ACORN to meet its goal to substantially increase by the thousands the number of registered voters living in ACORN communities.

58. As with any employer, ACORN must be able to hold its canvassers accountable for collecting a reasonable number of registration applications or it will not be able to meet its objective of substantially increasing the number of registered voters in its communities.
59. If ACORN cannot terminate employees who fail to collect even one application, it will be impossible for the organization to run a *paid* voter-registration drive.
60. Prohibiting ACORN from paying registration canvassers will impose a severe burden on the organization's ability to engage in voter registration and communicate its message.
61. Registration drives staffed entirely by volunteers are far less productive and efficient than ones staffed by paid workers. ACORN has found that it is difficult to recruit volunteers to do the canvassing work. Even if it can recruit a sufficient number of volunteers to staff a particular drive, ACORN's experience has been that volunteers collect significantly fewer registrations than do paid canvassers.
62. For example, in 2007 ACORN attempted to conduct an all-volunteer registration drive with a goal of gathering 1000 signatures. With great difficulty, ACORN recruited the necessary 40 volunteer canvassers, but they registered only about 100 people for the entire drive, or 2.5 new registrants per canvasser.
63. At that rate, in order for ACORN to have collected the 40,000 registrations it submitted in 2008 without using paid canvassers, ACORN would have had to attract about 16,000 volunteers. That is, realistically, an unattainable number of volunteers.
64. While 25 Pa. Cons. Stat. § 1713 is ostensibly an anti-fraud measure, the state has more direct and efficient means to combat voter-registration fraud, ones that do not restrict core First Amendment-protected political expression. For instance:

- a. Falsification of a voter-registration application is directly prohibited under 25 Pa. Cons. Stat. § 1703, which makes it a misdemeanor of the first degree — carrying a fine of up to \$10,000, imprisonment of up to five years, and a forfeiture of the right of suffrage for ten years — to intentionally impersonate another in an application for registration.
  - b. Under 25 Pa. Cons. Stat. § 1707, no person may intentionally insert material into a voter “registration record” — which includes voter-registration applications (25 Pa. Cons. Stat. § 1101A) — that is not in accordance with Title 25.
  - c. 25 Pa. Cons. Stat. § 1714 makes the provisions of 18 Pa. Cons. Stat. §§ 4902 (relating to perjury), 4903 (relating to false swearing) and 4904 (relating to unsworn falsification to authorities) applicable to violations of the Election Code (Title 25).
65. 25 Pa. Cons. Stat. § 1713 imposes a severe burden on ACORN by raising the specter of criminal prosecution if it continues to pay canvassers to register voters and applies productivity or performance criteria to its employees, which it must do in order to maintain minimal standards of quality and effectiveness.
66. Absent injunctive relief, preliminary and permanent thereafter, ACORN and other organizations involved in voter registration will continue to be irreparably harmed by the mere existence of 25 Pa. Cons. Stat. § 1713 because the statute restricts core political expression protected by the First Amendment to the U.S. Constitution, an injury for which there is no adequate remedy at law.

## CAUSES OF ACTION

### **Count 1 – 25 Pa. Cons. Stat. § 1713 Violates the First Amendment to the U.S. Constitution Both on its Face and as Applied**

67. Conducting a voter-registration drive, encouraging people to vote and discussing important contemporary political issues implicate expressive, associational and petition-related rights, all of which are protected by the First Amendment.
68. The Solicitation of Registration statute, 25 Pa. Cons. Stat. § 1713, which on its face bans third-party voter-registration organizations from linking registration canvassers' pay to the number of voter-registration applications they obtain, constitutes a severe burden on constitutionally protected political speech.
69. The application of the Solicitation of Registration statute, 25 Pa. Cons. Stat. § 1713, to ACORN's employment of commonly accepted practices of performance evaluation in conducting a paid voter-registration drive constitutes a severe burden on constitutionally protected political speech.
70. The existence of criminal statutes that more directly prohibit the fraudulent activities ostensibly targeted by 25 Pa. Cons. Stat. § 1713 — statutes that do not inflict the same burden on constitutionally protected political activities — demonstrates that 25 Pa. Cons. Stat. § 1713 is not narrowly tailored to advance a compelling government interest.
71. Therefore, 25 Pa. Cons. Stat. § 1713 is unconstitutional on its face and as applied to ACORN's conduct in violation of the First Amendment to the U.S. Constitution.

### **Count 2 – 25 Pa. C.S.A. § 1713 is Unconstitutionally Vague and Overbroad in Violation of the First and Fourteenth Amendments**

72. Even if the Court were to determine that a narrowed construction of 25 Pa. Cons. Stat. § 1713 might be constitutional (and it is far from clear that such a narrowing construction is possible or legally permissible), the statute is still substantially overbroad in that it makes



illegal a significant amount of protected speech and political activity, and thereby violates the First and Fourteenth Amendments to the U.S. Constitution.

73. Furthermore, as demonstrated by the Allegheny County District Attorney's application of the statute to prohibit "quotas," by which he means performance or production standards, 25 Pa. Cons. Stat. § 1713 is so vague as to make it impossible for people regulated thereunder to know what conduct is prohibited and to give law enforcement and election officials sufficiently clear guidance to avoid unconstitutional applications, thereby violating the First and Fourteenth Amendments to the U.S. Constitution.

**Count 3 – Application of 25 Pa. C.S.A. § 1713 to Prohibit Performance and Production Standards for Paid Registration Canvassers Violates the Fourteenth Amendment's Due Process Clause**

74. Enforcement of 25 Pa. Cons. Stat. § 1713 to make criminal the use of performance or productivity standards by ACORN and other voter-registration groups is an unreasonable, unforeseeable expansion of the statute that violates the Fourteenth Amendment's Due Process Clause.

**PRAYER FOR RELIEF**

Whereas the Plaintiff prays that this Court:

- A. Enter a declaratory judgment that 25 Pa. Cons. Stat. § 1713 violates the First and Fourteenth Amendments to the U.S. Constitution;
- B. Issue preliminary and permanent injunctions enjoining enforcement of 25 Pa. Cons. Stat. § 1713;

- C. Award Plaintiff costs, including reasonable attorney fees, pursuant to 42 U.S.C. § 1988;  
and
- D. Grant such other and further relief as may be just, fair and appropriate.

Respectfully submitted,

/s/ Witold J. Walczak

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