



Advocates for Government Accountability

A 501(c)(3) Nonprofit Corporation

August 22, 2012

VIA CERTIFIED MAIL

The Honorable Douglas L. Shulman
Commissioner
Internal Revenue Service
1111 Constitution Avenue NW
Washington, DC 20224

RE: UPDATE ON OCTOBER 21, 2011 REQUEST FOR THE REVOCATION OF TAX-EXEMPT STATUS OF NEW YORK COMMUNITIES ORGANIZATION FUND, NEW YORK AGENCY FOR COMMUNITY AFFAIRS, AMERICAN ENVIRONMENTAL JUSTICE PROJECT AND REQUEST FOR INVESTIGATION OF NEW YORK COMMUNITIES FOR CHANGE

Dear Commissioner Shulman:

We write on behalf of Cause of Action, a nonprofit, nonpartisan organization that uses investigative, legal, and communications tools to educate the public on how government accountability and transparency protects taxpayer interests and economic opportunity.

As you might be aware, on November 7, 2011, Chairman Darrell Issa of the United States House of Representatives Committee on Government Oversight and Reform, sent the U.S. Attorney for the Eastern District of New York a letter outlining his concerns that “New York Communities for Change (NYCC)-an organization closely tied to the now-defunct New York chapter of The Association of Community Organizations for Reform Now (ACORN)-engaged in fraud through its participation in the Occupy Wall Street protests. Specifically, it is alleged that NYCC solicited donations from union members under false pretenses and misappropriated those funds to support the protesters.”¹ Chairman Issa went on to note that “NYCC’s office is located in a space formerly held by ACORN, and NYCC employs many former ACORN staffers, including New York’s former ACORN director.”²

We write to update our October 21, 2011 request that you investigate New York Communities for Change (NYCC). In our request, we detailed how ACORN used and abused

¹ Letter from Hon. Darrell Issa, Chairman, Committee on Government Oversight and Reform, U.S. House of Representatives to Hon. Loretta Lynch, U.S. Attorney, Eastern District of New York (Nov. 7, 2011), *available at* <http://crocodoc.com/uoT2npG?embedded=true> [hereinafter “Issa Letter”].

² *Id.*, citing Jana Winter, *Exclusive: ACORN Playing Behind Scenes Role in ‘Occupy’ Movement*, FOX NEWS, October 26, 2011, *available at* <http://www.foxnews.com/us/2011/10/26/exclusive-acorn-playing-behind-scenes-role-in-occupy-movement/?test=latestnews>.

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fiscal sponsorships in order to receive tax-exempt dollars for non-exempt activities.³ As the IRS has stated, a “fiscal sponsorship” occurs “when one or more charities choose to financially support another charity or nonexempt project.”⁴ In essence, ACORN’s 501(c)(3) fiscal sponsors collected tax-exempt donations, which they then funneled to ACORN for non-exempt activities. This form of conduit activity, when misused, is the equivalent of money laundering. As you may know, ACORN has rebranded itself into a number of affiliate entities, including NYCC.⁵

We are now concerned that NYCC may be engaged in improper fiscal sponsorship arrangements with New York Communities Organizing Fund, Inc. (NYCOF), the American Environmental Justice Project (AEJP),⁶ and the New York Agency for Community Affairs, Inc. (NYACA), all 501(c)(3) tax-exempt organizations.

In its 2010-2011 Annual Report, NYCOF described NYCC as its “sister organization”⁷ and noted that the two organizations shared space,⁸ which was the same space formerly occupied by ACORN.⁹ Similarly, filings NYCC made with the Internal Revenue Service notes that it expects to receive \$9,500 from AEJP in 2010.¹⁰ According to AEJP’s 2009 Form 990, AEJP’s offices are located on the same floor of the same building that once housed ACORN Institute: 2609 Canal Street, 4th Floor, New Orleans, Louisiana.¹¹ Also occupying space in 2609 Canal Street, 4th Floor, was NYACA, which the Justice Department Office of Inspector General found “NYACA to be an affiliate of ACORN because it acted as a fiscal agent for ACORN[.]”¹² According to NYCC documents, NYACA has entered into an agreement with NYCC to “carry out their complimentary purposes in an economical and efficient manner.”¹³

³ Letter from J. Keith Gates, Senior Attorney, Cause of Action to Hon. Douglas Shulman, Commissioner, Internal Revenue Service (Oct. 21, 2011) (enclosed).

⁴ 94 TNT 71-46.

⁵ NYCC is located at 24 Nevins St., Second Floor, Brooklyn, NY 11217-1010. This was the address of numerous ACORN organizations (e.g. ACORN 1 Associates, LP; ACORN Dumont-Snediker Housing Development Fund) for many years. Marie Pierre, former President of ACORN Brownsville, is the current President of NYCC. See NEW YORK COMMUNITIES FOR CHANGE, INC., FORM 990, available at <http://www.guidestar.org/FinDocuments/2010/271/359/2010-271359103-07c91c77-90.pdf>.

⁶ As AEJP is located in New Orleans, Louisiana, we have copied the Hon. Jim Letten, U.S. Attorney for the Eastern District of Louisiana, on this letter.

⁷ 2010-2011 Annual Report, New York Communities Organizing Fund, Inc., available at <http://www.nycofi.org/wp-content/uploads/2011/10/NYCOFI-Annual-Report-2010-2011.pdf>.

⁸ *Id.*

⁹ See Issa Letter, *supra* note 1.

¹⁰ New York Communities for Change, Inc., Application for Recognition of Exemption Under Section 501(a) (Apr. 8, 2010), available at http://www.charitiesnys.com/RegistrySearch/show_details.jsp?id={3C609CC7-8A12-4AAA-9834-082B887AE317}.

¹¹ Cf. AMERICAN ENVIRONMENTAL JUSTICE PROJECT, INC., FORM 990, filed Nov. 16, 2009.

¹² U.S. DEPARTMENT OF JUSTICE, OFFICE OF INSPECTOR GENERAL: REVIEW OF DEPARTMENT OF JUSTICE GRANTS TO THE ASSOCIATION OF COMMUNITY ORGANIZATIONS FOR REFORM NOW, INC. (ACORN) AND ITS AFFILIATED ORGANIZATIONS (2009) (attached hereto in Exhibits, p. 6).

¹³ New York Communities for Change, Inc., Application for Recognition of Exemption Under Section 501(a), *supra* note 10.

The similarities between NYCOF and NYCC, the financial relationship between AEJP and NYCC, and the above-described agreement between NYACA and NYCC all raise suspicion that NYCC is being improperly fiscally sponsored by one or more of these 501(c)(3) organizations. Conduit funding of NYCC by a 501(c)(3) organization would be alarming on its own, but would be especially concerning if NYCC had sought to influence the 2012 presidential election. On August 15, 2012, the *New York Times* described how NYCC's organizing director Jonathan Westin "design[ed] [an] anti-Romney campaign" with the objective of linking Governor Romney to defenders of Mayor Michael R. Bloomberg's education policies.¹⁴ This blatant electioneering activity would not only subject NYCC to tax, but it would impute liability onto any 501(c)(3) entity that could be held out as a sponsoring organization of NYCC's political activities.

The Internal Revenue Service (IRS) requires tax-exempt entities to pay a tax for electioneering activities. Treasury Regulation § 1.527-6(b)(1) states that electioneering expenditures are taxable to the extent provided by regulation. However, the Treasury Department has not yet promulgated a regulation stating what that extent is.¹⁵ According to the Congressional Research Service, "[u]ntil the regulation addresses this matter, it appears a § 501(c) organization may engage in [electioneering] activities without tax consequences under IRC § 527(f)."¹⁶ It sets an alarming precedent that a 501(c) corporation can engage in electioneering activities without being subject to tax penalties.

In addition to our concerns about NYCC and its affiliates' financial transactions, we are also concerned that NYCC is engaging in unreported lobbying activities. An employee engages in lobbying if he or she makes more than one "lobbying contact," and spends at least 20% of his or her time for that employer on "lobbying activities" over a three-month reporting period.¹⁷ Under the Lobbying Disclosure Act, lobbying activities include direct "lobbying contacts and efforts in support of such contacts" such as preparation, planning, research and other background work intended for use in such direct contacts.¹⁸ A "lobbying contact" under the Lobbying Disclosure Act is an "oral or written communication (including an electronic communication) to a covered executive branch official or a covered legislative branch official" which concerns the formulation, modification or adoption of legislation, rules, regulations, policies or programs of the federal government.¹⁹ The term "lobbying activities" includes "lobbying contacts" as well as

¹⁴ Michael Grynbaum, *Coalition Aims to Link School Group and Romney*, N.Y. TIMES, Aug. 15, 2012, available at <http://www.nytimes.com/2012/08/16/nyregion/coalition-aims-to-link-romney-to-backers-of-bloombergs-education-agenda.html>.

¹⁵ TREAS. REG. § 1.527-6(B)(3).

¹⁶ MEMORANDUM FROM L. PAIGE WHITAKER, LEGISLATIVE ATTORNEY, CONGRESSIONAL RESEARCH SERVICE AND ERIKA LUNDER, LEGISLATIVE ATTORNEY, CONGRESSIONAL RESEARCH SERVICE, 2 (Aug. 4, 2009) (on file with author). See T.D. 7744, 1981-1 C.B. 360 (stating that when the matter is eventually addressed, the regulation will apply on a prospective basis); see also JUDITH E. KINDELL AND JOHN FRANCIS REILLY, ELECTION YEAR ISSUES, IRS 2002 EO CPE TEXT, AT 437 (2002), available at <http://www.irs.gov/pub/irs-tege/eotopic02.pdf>.

¹⁷ 2 U.S.C. § 1602(10).

¹⁸ Lobbying Disclosure Act, 2 U.S.C. § 1602(7), P.L. 104-65, §3(7).

¹⁹ 2 U.S.C. § 1602(8), P.L. 104-65, § 3(8).

background activities and other efforts in support of such lobbying contacts.²⁰ The Lobbying Disclosure Act requires the organization, rather than the individual employee or lobbyist, to register when the organization engages in covered “lobbying contacts” through its own staff.²¹ The organization must file its lobbying registrations and reports electronically with the Secretary of the Senate’s Office and the Office of the Clerk of the House.²²

Jon Kest, the Executive Director of NYCC, is a registered lobbyist in New York for NYCC.²³ He also worked as a lobbyist for New York ACORN from 2005 to 2010.²⁴ For several years during that time period, New York ACORN was registered as a client under the Lobbying Disclosure Act for lobbying activities associated with requests for federal grant funding.²⁵ New York ACORN hired the Advance Group to conduct its federal lobbying activities.²⁶ The Lobbying Disclosure Act of 1995 states, “[a] person or entity whose employees act as lobbyists on its own behalf is both a client and an employer of such employees.”²⁷ Jon Kest is an employee of NYCC, and has lobbied on its behalf.²⁸ However, NYCC is not registered on the Lobbying Disclosure Act database.

Moreover, NYCC and its 501(c)(3) affiliate, New York Communities Organizing Fund, Inc. (NYCOFI), recently hired the Advance Group to conduct a fundraiser honoring Senator Kirsten Gillibrand.²⁹ NYCOFI has likely received federal funds given that its website claims “NYCOFI launched programs reaching thousands of New Yorkers, including the Volunteer Income Tax Assistance (VITA) program that prepared 576 returns and helped families claim almost \$300,000 in Earned Income Tax Credits.”³⁰ NYCOFI’s Executive Director, Carlie Steen’s, LinkedIn profile states that her responsibilities including “[e]ngaging in public education and advocacy for policy and administrative reforms.”³¹ Yet NYCOFI’s most recently

²⁰ 2 U.S.C. § 1602(7).

²¹ 2 U.S.C. §1603(a)(2).

²² LOBBYING DISCLOSURE ACT, *available at* <http://lobbyingdisclosure.house.gov/index.html>.

²³ Letter from Jon Kest, Executive Director, NYCC, to the New York State Commission on Public Integrity (March 14, 2011), *available at*

https://apps.jcope.ny.gov/lrr/Administration/UploadDocuments/Temp/A57_communitiesforchange-same-24591.tif.

²⁴ Letter from Barbara Faherty, Assistant Treasurer of Association of Community Organizations for Reform Now, to the New York Temporary State Commission of Lobbying (June 2, 2005), *available at*

https://apps.jcope.ny.gov/lrr/Administration/UploadDocuments/Temp/L904_11084.tif; Letter from Patricia Boone, Member of the Board of Directors, NY ACORN, to New York State Commission on Public Integrity (April 28, 2009), *available at*

[https://apps.jcope.ny.gov/lrr/Administration/UploadDocuments/Temp/A34_assocforcommunityorganizations\(ny\)-\(same\)-18111.tif](https://apps.jcope.ny.gov/lrr/Administration/UploadDocuments/Temp/A34_assocforcommunityorganizations(ny)-(same)-18111.tif).

²⁵ See QUERY THE LOBBYING DISCLOSURE DATABASE, *available at*

<http://soprweb.senate.gov/index.cfm?event=chooseFields> (hyperlink “Search Filings” type “ACORN” in “client name”).

²⁶ LOBBYING DISCLOSURE ACT, *available at* <http://lobbyingdisclosure.house.gov/index.html>.

²⁷ *Id.*

²⁸ See *infra* fn 23.

²⁹ NYCC Invitation, *available at* <http://www.humanservicescouncil.org/documents/NYCC%20Invitation.pdf> (“For more information contact Jim at . . . Jim@theadvancegroup.com”).

³⁰ Website, NYCOFI, *available at* http://nycofi.nationbuilder.com/our_work.

³¹ LINKEDIN PROFILE, CARLIE STEEN, *available at* <http://www.linkedin.com/pub/carlie-steen/3/53a/685>.

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disclosed 990 answered the question, "Did the organization engage in lobbying activities[?]" with "No".³² Even a broad interpretation of the IRS provisions concerning lobbying would indicate that it is highly likely that NYCOFI has failed to report its lobbying activities.

The Lobbying Disclosure Act was intended to reach "professional lobbyists," who are *compensated* to engage in lobbying activities on behalf of an employer or a client.³³ Our investigation reveals that NYCC may have one or more compensated employees who engage in covered "lobbying."³⁴ If NYCC spends more than \$10,000 quarterly, it would be required to register under the Lobbying Disclosure Act.³⁵ Congress has both civil and criminal penalties for failing to comply with the Lobbying Disclosure Act:

Whoever knowingly fails . . . to comply with any other provision of the Act, may be subject to a civil fine of not more than \$200,000, and whoever knowingly and corruptly fails to comply with any provision of this Act may be imprisoned for not more than 5 years or fined under title 18, United States Code, or both.³⁶

Given Mr. Kest's position at NYCC, the potentially improper fiscal relationships between NYCC and various 501(c)(3) organizations with ties to ACORN, and Mr. Kest's status as a paid lobbyist,³⁷ we encourage you to investigate whether NYCC and/or any of the above-mentioned 501(c)(3) organizations have violated the Internal Revenue Code and to take appropriate action, including assessment of any appropriate penalties and/or revocation of an exempt status. Should you have any questions, comments, or concerns, please do not hesitate to contact me (Karen.Groen.Olea@causeofaction.org) or Jack Thorlin (Jack.Thorlin@causeofaction.org) at 202-507-5880. Thank you for your attention to this matter.

Sincerely,



KAREN GROEN
CHIEF COUNSEL FOR OVERSIGHT

³² NEW YORK COMMUNITIES ORGANIZING FUND, INC., FORM 990 (2010), Part IV at 3, *available at* <http://www.guidestar.org/FinDocuments/2010/272/332/2010-272332649-07c6984f-9.pdf>.

³³ Jack Maskell, *Lobbying Regulations on Non-Profit Organizations*, CRS Report 96-809, May 7, 2008 at 7-10.

³⁴ H. Rept. 104-339, 104th Cong., 1st Sess. at 2 (1995).

³⁵ 2 U.S.C § 1603(a)(3)(A)(i).

³⁶ LOBBYING DISCLOSURE ACT GUIDE, *available at*: http://lobbyingdisclosure.house.gov/amended_lda_guide.html.

³⁷ See New York City Lobbyist Search, "Jon Kest", *available at* <http://www.nyc.gov/lobbyistsearch/search;jsessionid=QnHN631nwGSv8cmym4DwF4PT4cVBH5bQDrfncmmBr0sFvRcD2t!1834708824>.

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Encl. Letter from J. Keith Gates, Senior Attorney, Cause of Action to Hon. Douglas Shulman,
Commissioner, Internal Revenue Service (Oct. 21, 2011).