

Rules of the Game

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ACORN's Rights

HAS THE GOP-LED CAMPAIGN AGAINST THE SHAMED LIBERAL GROUP VIOLATED THE CONSTITUTION?

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by Eliza Newlin Carney

On the surface, the GOP assault on the liberal activist group known as ACORN looks more than justifiable.

After all, who would want to defend an organization whose rap sheet now includes embezzlement, registering fake voters and facilitating prostitution? In a rare show of bipartisanship, Congress this fall voted to strip ACORN of all federal funding, and **President Obama** lost no time signing the bill.

Donors have gone scurrying from the group, formally known as the Association of Community Organizations for Reform Now, and Republicans have stepped up calls for investigations by Congress, the Justice Department and the IRS.

Some progressive activists warn that the assault on ACORN is the first salvo in a full-bore GOP assault on progressive groups.

Given ACORN's well-deserved status as a political pariah, it's all the more surprising that a small handful of people, including one member of Congress and an Obama administration lawyer, have stuck their necks out to call a halt. Their simple but sensible warning: ACORN has constitutional rights, and trampling on those rights sets a dangerous precedent that threatens activist groups of all stripes.

The bill defunding ACORN is "blatantly unconstitutional and a threat to unpopular organizations everywhere," stated Rep. **Jerrold Nadler**, D-N.Y., when the House first approved the GOP-authored amendment in September. Nadler cited the Constitution's so-called bill of attainder clause, which bans legislative acts that punish named individuals or groups without a judicial trial. The ban's original intent was to prevent politically repressive punishments like the ones the British monarchy had meted out to dissidents.

Some legal experts say calling ACORN's defunding a bill of attainder is far-fetched. At the libertarian Cato Institute, an organization well known for defending constitutional and First Amendment rights, legal affairs vice president **Roger Pilon** says that simply withholding federal funding doesn't rise to the level of punishment.

"Given the large discretion that Congress has to spend funds, this is not likely to be construed as punishment," said Pilon. Still, asked whether the ACORN scandal suggests that Congress should take steps to strengthen erratic IRS oversight of nonprofits, Pilon demurred. "It's one thing to guard against the abuse of public expenditures -- quite another to intrude on First Amendment rights," he cautioned.

Indeed, some progressive activists warn that the assault on ACORN is the first salvo in what they expect

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to be a full-bore GOP assault on progressive groups in the run-up to the 2010 elections. The Alliance for Justice, a national association of progressive groups, is organizing a coalition of civil rights, labor, environmental and other activists to ensure that, should other left-leaning players come into the GOP's line of fire, they will not stand alone.

"This is our fear: That Congress will now attack any organization that is very vocal and visibly pushing for change, or doing things that they don't approve of," said Alliance for Justice President **Nan Aron**. Aron said progressive activists remember well when then-Rep. **Ernest Istook**, R-Okla., led a campaign in the 1990s to impose limits on lobbying by nonprofit groups that receive federal funds. The GOP anti-ACORN assault suggests that another Istook-style campaign is in store, Aron said.

"With Congress so polarized, and with Republicans clamoring to... make a comeback in 2010, I think their work on ACORN demonstrates a growing appetite to target organizations that could be perceived [as] registering voters," she said.

After Congress defunded ACORN, the alliance rallied testimonials from several progressive leaders, acknowledging the group's problems but praising its work to help low-income Americans.

ACORN itself has lashed back with a [lawsuit](#) claiming that in stripping its federal funding, Congress violated the bill of attainder ban. Filed by the Center for Constitutional Rights, the lawsuit maintains that Congress rushed to judgment, acting as "judge, jury and executioner," and violated the group's Fifth Amendment right to due process. The congressional action, which also targeted groups affiliated or allied with ACORN, has had a chilling effect on groups separate from the national organization, the suit maintains.

The suit cites a September [Congressional Research Service report](#) that concludes the defunding may well constitute an unconstitutional bill of attainder.

A recent [Justice Department memorandum](#) on ACORN funding also cites the bill of attainder ban. In the memo, acting Assistant Attorney General **David J. Barron** concludes that the Obama administration must honor federal contracts that were signed before the law defunding ACORN took effect.

In part, Barron points to "particular constitutional concerns" that might arise from abrogating binding contracts. In a footnote, he cites the Supreme Court's 1946 ruling in a bill of attainder case, *United States v. Lovett*, that references the ban on legislative acts that punish named individuals or groups "without a judicial trial."

To Republicans, the Justice Department memo is just one more piece of evidence that Obama, who had an affiliation with ACORN in his early days as a young community organizer, is covering up for the group. Certainly the widespread abuses at ACORN cry out for a full investigation. But conservatives have been awfully quick to cast aside their traditional role as defenders of free speech by unpopular groups. As Aron noted: "This kind of activity can have a chilling effect on nonprofits across the political spectrum."