

U.S.

Conservative Nonprofit Acts as a Stealth Business Lobbyist

By MIKE McINTIRE APRIL 21, 2012

Desperate for new revenue, Ohio lawmakers introduced legislation last year that would make it easier to recover money from businesses that defraud the state.

It was quickly flagged at the Washington headquarters of the American Legislative Exchange Council, or ALEC, a business-backed group that views such “false claims” laws as encouraging frivolous lawsuits. ALEC’s membership includes not only corporations, but nearly 2,000 state legislators across the country — including dozens who would vote on the Ohio bill.

One of them, Bill Seitz, a prominent Republican state senator, wrote to a fellow senior lawmaker to relay ALEC’s concerns about “the recent upsurge” in false-claims legislation nationwide. “While this is understandable, as states are broke, the considered advice from our friends at ALEC was that such legislation is not well taken and should not be approved,” he said in a private memorandum.

The legislation was reworked to ease some of ALEC’s concerns, making it one of many bills the group has influenced by mobilizing its lawmaker members, a vast majority of them Republicans.

Despite its generally low profile, ALEC has drawn scrutiny recently for promoting gun rights policies like the Stand Your Ground law at the center of the Trayvon Martin shooting case in Florida, as well as bills to weaken labor unions and tighten voter identification rules. Amid the controversies, several companies,

including Coca-Cola, Intuit and Kraft Foods, have left the group.

Most of the attention has focused on ALEC's role in creating model bills, drafted by lobbyists and lawmakers, that broadly advance a pro-business, socially conservative agenda. But a review of internal ALEC documents shows that this is only one facet of a sophisticated operation for shaping public policy at a state-by-state level. The records offer a glimpse of how special interests effectively turn ALEC's lawmaker members into stealth lobbyists, providing them with talking points, signaling how they should vote and collaborating on bills affecting hundreds of issues like school vouchers and tobacco taxes.

The documents — hundreds of pages of minutes of private meetings, member e-mail alerts and correspondence — were obtained by the watchdog group Common Cause and shared with The New York Times. Common Cause, which said it got some of the documents from a whistle-blower and others from public record requests in state legislatures, is using the files to support an Internal Revenue Service complaint asserting that ALEC has abused its tax-exempt status, something ALEC denies.

“We know its mission is to bring together corporations and state legislators to draft profit-driven, anti-public-interest legislation, and then help those elected officials pass the bills in statehouses from coast to coast,” said the president of Common Cause, Bob Edgar. “If that’s not lobbying, what is?”

ALEC argues that it provides a forum for lawmakers to network and to hear from constituencies that share an interest in promoting free-market, limited-government policies. Lobbying laws differ by state, and ALEC maintains that if any of its members' interactions with one another happen to qualify as lobbying in a particular state, that does not mean ALEC, as an organization, lobbies.

Mr. Seitz, who sits on ALEC's governing board, said he believed that liberal groups like Common Cause are attacking the organization out of frustration that “they don't have a comparable group that is as effective as ALEC in enacting policies into law.” He said that ALEC was not much different from other professional associations that represent state legislators, and that members were free to ignore or disagree with the group's policy positions.

“This concept that private companies are writing the bills and handing them to gullible legislators to trundle off and pass is false,” Mr. Seitz said. “There is nothing new, surprising or sinister about private-sector organizations coming together with legislators to share ideas and learn from each other.”

Even so, the effectiveness of ALEC’s bill-production system is a major part of the group’s appeal to businesses. A membership brochure last year boasted that ALEC lawmakers typically introduced more than 1,000 bills based on model legislation each year and passed about 17 percent of them. A members-only newsletter from 1995, found in an online archive of tobacco company documents, bluntly characterized that success ratio as “a good investment.”

“Nowhere else can you get a return that high,” it said.

ALEC, which is registered as a public charity under section 501(c)(3) of the tax code, traces its roots to 1973, when the conservative activist Paul M. Weyrich and several other Republicans sought to create a state-level clearinghouse for conservative ideas. Although its board is made up of legislators, who pay \$50 a year to belong, ALEC is primarily financed by more than 200 private-sector members, whose annual dues of \$7,000 to \$25,000 accounted for most of its \$7 million budget in 2010.

Some companies give much more, all of it tax deductible: AT&T, Pfizer and Reynolds American each contributed \$130,000 to \$398,000, according to a copy of ALEC’s 2010 tax returns, obtained by The Times, that included donors’ names, which are normally withheld from public inspection. The returns show that corporate members pay stipends — it calls them “scholarships” — for lawmakers to travel to annual conferences, including a four-day retreat where ALEC spends as much as \$250,000 on child care for members’ families.

At the conferences, internal records show, representatives of corporations sit with legislators on eight task forces dealing with issues like telecommunications, health care and product liability. (ALEC announced last week that it was disbanding a ninth task force on public safety and elections, which was the focus of much of the recent scrutiny of the group.) Each task force is led by a legislator and someone from the private sector. Corporate members in recent years have included Bank of

America, Walmart, Verizon, Microsoft and Connections Education, an online learning company.

The task forces develop model bills that legislators then introduce in their home states. The provenance of those bills is not always apparent to those being asked to vote on them. But minutes of task force meetings, not available to the public, show how some of the bills were produced and who within ALEC sponsored them.

Last December, ALEC adopted model legislation, based on a Texas law, addressing the public disclosure of chemicals in drilling fluids used to extract natural gas through hydraulic fracturing, or fracking. The ALEC legislation, which has since provided the basis for similar bills submitted in five states, has been promoted as a victory for consumers' right to know about potential drinking water contaminants.

A close reading of the bill, however, reveals loopholes that would allow energy companies to withhold the names of certain fluid contents, for reasons including that they have been deemed trade secrets. Most telling, perhaps, the bill was sponsored within ALEC by ExxonMobil, one of the largest practitioners of fracking — something not explained when ALEC lawmakers introduced their bills back home.

ALEC says that its lawmaker members have the ultimate say over its policy deliberations, and that no model bills are adopted unless its governing board, made up entirely of legislators, approves it. But the organization's rules give corporations a great deal of influence on the task forces, where model legislation must first clear a preliminary vote before going to the board. As a result, meeting minutes show, draft bills that are preferred by a majority of lawmakers are sometimes killed by the corporate members at the table.

In August, the telecommunications task force met and considered a model resolution regarding online piracy that had been introduced by the U.S. Chamber of Commerce. Although AT&T, Verizon and AOL could not agree on the details, the lawmakers present overwhelmingly supported the resolution in a 17-to-1 vote. However, because the corporate members deadlocked 8 to 8, the bill failed.

ALEC's bylaws also grant its corporate members greater power over task force appointments. They say lawmakers can be removed from a task force leadership

position for any reason, while private-sector members can be removed only “with cause,” like nonpayment of dues.

Beyond creating model bills, ALEC keeps careful track of state legislation, as well as national issues, and tries to mobilize its lawmaker members to take action. Aides on ALEC task forces keep detailed, color-coded spreadsheets on “good bills” and “problematic bills” in all 50 states, and they regularly send e-mails to alert legislators about ones that ALEC opposes or supports.

ALEC also sends talking points to its lawmakers to use when speaking publicly about issues like President Obama’s health care law. Last month, on the day that Supreme Court arguments on the law began, ALEC sent an e-mail to legislators with a bullet-point list of criticisms of it, to be used “in your next radio interview, town hall meeting, op-ed or letter to the editor.”

Alan P. Dye, a lawyer for ALEC, acknowledged that the group’s practice of communicating with lawmakers about specific bills could meet the federal definition of lobbying, if not for an exception that he said applied when such interactions were a result of “nonpartisan research and analysis.” ALEC simply offers independently produced material for elected officials to consider, Mr. Dye said.

“If you look at the ALEC method of operating, it’s all based on nonpartisan research and analysis,” he said. “They have consensus building, pros and cons, everyone has a say.”

Critics dismiss that argument as misleading. Lisa Graves, the executive director of the Center for Media and Democracy, which teamed up with The Nation magazine to publicize a cache of 800 ALEC model bills last year, said that as of last August, all but one of 104 leadership positions within the organization were filled by Republicans and that the policies ALEC promoted were almost uniformly conservative.

“They talk a good game about being bipartisan,” Ms. Graves said, “but the record shows the opposite.”

Mr. Seitz, the Ohio state senator, said concerns about partisanship, lobbying

and the shaping of model bills were beside the point, because whatever emerged from the ALEC process would be subjected to “endless public vetting” in legislatures before becoming law.

As for his decision to write a memo raising objections to the Ohio false-claims bill, Mr. Seitz, a lawyer and member of the Senate Judiciary Committee, said that occurred after he attended an ALEC task force meeting and talked about it with his co-chairman, a Washington lawyer and lobbyist who represents the U.S. Chamber of Commerce and other businesses. He said he learned that the bill, as originally written, would have been “a trial lawyer’s bonanza,” and so he has been working with the state attorney general to draft legislation more acceptable to himself — and to ALEC.

“I expect there could be hearings on it within the next month,” Mr. Seitz said.

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