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June 12, 2012

Ron Scheberle
Executive Director
American Legislative Exchange Council
1101 Vermont Avenue, NW
11th Floor
Washington, DC 20005

Re: *Common Cause Submission to IRS*

Dear Mr. Scheberle:

I am writing as the attorney for Common Cause and Bob Edgar in connection with the above whistleblower claim to the Internal Revenue Service. In that submission, Common Cause observed that ALEC's Form 990 tax returns uniformly stated that ALEC engages in *no lobbying*. For example, in its Form 990s filed in 2008, 2009, and 2010, ALEC answered "no" in response to the question "Did the Organization engage in lobbying activities?" See Common Cause Submission, Exhibit 8. Moreover, ALEC did not complete the section of the Form 990 for organizations that elect to be governed by Section 501(h) of the Internal Revenue Code, which allows 501(c)(3) charities to engage in limited lobbying measured by a formula based on their total expenditures. See Submission at page 8.

ALEC not only told the IRS that it did not engage in any lobbying; its attorney has routinely made the same claim to the press. For example, an April 23, 2012 Reuters article quotes ALEC legal counsel Alan Dye as telling a conference call of reporters "The purpose of the organization is not to lobby, and it tries assiduously to avoid lobbying"

While Mr. Dye's assertions contradict the extensive record of ALEC's lobbying, they are at least consistent with ALEC's longstanding position as reflected in its IRS filings. Now, however, ALEC appears to have adopted an entirely different tack. A June 7 article in Advertising Age reports that ALEC National Chairman David Frizzell claimed that "the Common Cause whistle-blower suit is baseless because ALEC is registered with the IRS as a '501(h),' which allows a nonprofit to spend up to \$1 million a year on lobbying."

Common Cause calls upon ALEC, as a public "charity" taking advantage of taxpayer subsidies, to set the record straight. We ask that you clarify whether ALEC does indeed engage in "up to \$1 million a year on lobbying," as Mr. Frizzell indicated, and if so, how ALEC can

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square that admission with its longstanding and consistent sworn statements to the IRS that it engages in "no" lobbying.

Moreover, as you are aware, any organization that elects to be governed by Section 501(h) must file a Form 5768 with the IRS before the end of each tax year. *See* Submission at page 18. ALEC should state unambiguously whether it has timely filed these forms prior to the end of each tax year since the mid-1990s. Further, ALEC should clarify for which years it has elected 501(h) status, because on its Form 990 for 2010, ALEC checked the box "No" to the question: "Did the organization engage in lobbying activities, or have a section 501(h) election in effect during that tax year?"

Finally, Section 501(h) uses a formula to limit lobbying expenses based on a group's total expenditures. For ALEC to be allowed to spend \$1 million on lobbying, as Mr. Frizzel suggests, its annual expenditures would have to be \$17 million. Given that ALEC's actual expenditures equal approximately \$6 million according to its Form 990s, the actual lobbying limit would be \$450,000, not \$1 million. ALEC should explain whether it in fact expends as much as \$1 million per year lobbying, or some lesser amount.

For many years ALEC has deceived the public and the Internal Revenue Service by falsely claiming it does no lobbying. Now, its Chairman appears to concede that these statements were false. ALEC should explain fully to the IRS, and to the taxpayers who have long subsidized ALEC's quarterly lawmaker/lobbyist junkets, the basis for its 501(c)(3) status and the true extent of its lobbying activity.

Sincerely,

Handwritten signature of Eric R. Havian in black ink, with the initials "EHA" written at the end of the signature.

Eric R. Havian