



May 12, 2015

Hon. John Koskinen
Commissioner, Internal Revenue Service
1111 Constitution Avenue NW
Washington, DC 20224

Dear Commissioner Koskinen:

Common Cause and the Center for Media and Democracy write to request an immediate investigation into the American Legislative Exchange Council (“ALEC”) for misclassification as a 501(c)(3) organization, in light of the group’s primary purpose to influence the passage of state legislation and operation for the private benefit of its corporate members. Today we are submitting powerful new evidence that further bolsters the case that ALEC is a corporate lobbying group masquerading as a public charity.

The text of this letter substantially tracks a supplemental memorandum to the IRS Whistleblower Office filed today by Eric R. Havian, Esq. of Constantine Canon LLP, in IRS Submission No. 2012-004434 (“Second Supplement”). Three years ago, on April 29, 2012, Complainant submitted a Form 211 (“Original Submission”) pursuant to the Tax Whistleblower Act, along with more than 4,000 pages of evidence documenting massive underreporting of lobbying activities by ALEC.

A supplemental memorandum (“First Supplement”) was filed on July 29, 2013, with new evidence exposing a “scholarship” scheme, in which ALEC’s state legislative chairs directly solicit tax-exempt donations from corporations and their lobbyists to an ALEC fund to pay for the travel of lawmakers and their families to ALEC conferences. These conferences are hosted at luxury hotel resorts in vacation destinations, and provide yet another forum within ALEC’s organizational structure by which ALEC members – corporations and lawmakers – meet exclusively and behind closed doors to drive legislation.

The Second Supplement and this letter draw on over 200 pages of new evidence, collected by both Common Cause and the Center for Media and Democracy, documenting the central non-exempt lobbying purpose of ALEC and the private benefit it confers on member

corporations. The new evidence reveals admissions by twenty ALEC member corporations and sponsors that their purpose in joining ALEC is to influence legislation for the private benefit of those corporations, as well as the findings of Minnesota's ethics commission following a lengthy investigation, that ALEC's primary purpose is to influence legislation.

The new evidence also includes ALEC documents revealing superficial changes to its internal policy, organizational structure, and tax filings that amount to a tacit admission of the group's historic non-exempt purpose, without curing the group's tax-status problems. ALEC has clearly reacted to the issues set out in the Original Submission and the First Supplement, yet all of its responses have consisted of formalistic changes at the margins of its core activity, intended to obfuscate rather than alter the nature of the organization. Despite ALEC's creation of a 501(c)(4) entity for limited activities, and modification of some of its Form 990 entries, ALEC cannot evade the implications of its core mission – to provide a forum in which corporations have direct access to lawmakers for the purpose of advancing legislation of interest.

This letter references documents submitted along with Common Cause's Original Submission in April 2012, the First Supplement in July 2013, and the Second Supplement filed today. Exhibit numbers track those submissions, and all exhibits can be found at www.commoncause.org/alec.

1. ALEC'S CORPORATE MEMBERS AND SPONSORS EXPLICITLY ADMIT THAT THEY PARTICIPATE IN ALEC TO INFLUENCE LEGISLATION.

Well after Common Cause and the Center for Media and Democracy unmasked ALEC's central lobbying purpose, and after ALEC responded by making superficial changes to its operations, ALEC members have continued to go "off script," revealing that ALEC has not changed its mission. Recent responses from ALEC member corporations and sponsors to queries by socially responsible investors, and to correspondence with Common Cause and the Center for Media and Democracy, contain numerous admissions that the purpose of joining ALEC is still to influence legislation that benefits those corporations.

ALEC would only qualify as a tax-exempt organization pursuant to the Internal Revenue Code if it were "organized and operated *exclusively* for . . . charitable . . . or educational purposes . . . [and] no substantial part of [its activities] is carrying on propaganda, or otherwise attempting, to influence legislation . . ." 26 U.S.C. § 501(c)(3) (emphasis added). An "organization is not organized or operated exclusively" for these purposes "unless it serves a public rather than a

private interest.” Treas. Reg. §1.501(c)(3)-1(d)(1)(ii). Moreover, the regulations clarify that an organization attempts to influence legislation if it “[a]dvocates the adoption or rejection of legislation.” Treas. Reg. § 1.501(c)(3)-1(c)(3)(ii)(b).

However, ALEC is misclassified as a tax-exempt organization because its primary purpose remains unchanged: to influence legislation. The following recent communications from past and present ALEC corporate members and sponsors make this non-exempt lobbying purpose clear:

1. Yelp terminated its membership once it was successful in advancing its target legislation. As the company explained:

Yelp allowed its membership in ALEC to expire months ago When we joined in 2013, we were very specific and transparent about our goals: to encourage the adoption of model anti-SLAPP legislation. . . . We found ALEC provided a unique forum to bring a good idea to the table. Our approach was not without irony and it invited a backlash, yet to ALEC’s credit, our model bill passed unanimously: the Public Participation Protection Act – a model bill we advanced to protect consumers from bullying – is live on ALEC.org today, and we hope lawmakers in states across the country are able to draw inspiration from it for years to come. Given that our very specific goal was achieved, we allowed our membership to expire. (Ex. 30.)

2. In its correspondence, Pfizer

reiterate[s] some of the benefits to Pfizer and its stakeholders from [its] continued association with ALEC. In 2014, Pfizer chose to continue this relationship because our Company and its stakeholders have benefited directly from the organization’s model legislation and resolutions to support the repeal of the Independent Payment Advisory Board in addition to its efforts to combat the production and distribution of counterfeit pharmaceuticals, promote innovation and intellectual property protection, assist with the PhRMA Code and Self-Regulation, and to [sic] model bills in area of tax policy. (Ex. 31.)

3. AT&T explains that its

main focus within ALEC has been on state legislation aimed at achieving and maintaining a favorable business climate. AT&T participates in the Communications & Technology and Tax & Fiscal Policy task forces, and our focus has been limited to those issues that may impact our company. [The company] believe[s]

ALEC can continue to make valuable contributions toward helping businesses like AT&T achieve the sort of government reforms that are good for the economy and for society. In light of the fact that more than a quarter of all of the nation's state legislators are engaged in ALEC, AT&T views our relationship with the group to be an important part of our public policy outreach. (Ex. 32.)

4. According to Verizon,

ALEC is made up of almost 200 [sic¹] members of state legislatures, and it provides input on a wide range of state legislative issues. Our involvement with ALEC has been focused on legislative issues of direct importance to Verizon, such as consumer-oriented policies and telecommunications and taxation issues. [Verizon] routinely engages with elected officials at the federal, state, and local level, [and] participate[s] in organizations that allow [it] to constructively engage with these policymakers on issues of importance to our company and our customers. . . . When we engage with elected officials individually or as members of a group, we advocate for positions on certain issues, primarily those related to communications and tax policy. (Ex. 33.)

5. Comcast describes that it

participates as a member of the ALEC Communications and Technology and the Tax and Fiscal Policy Task Forces, which address a range of communications and technology related policy matters impacting our business, including VoIP deregulation, increased spectrum in the 5GHz band, and extending the Internet Tax Freedom Act. (Ex. 34.)

6. Honeywell

participate[s] in trade associations and organizations such as ALEC who may engage in political activity. . . . Our membership in these organization is intended to accomplish a wide range of objectives [which include] . . . assist[ance] in political advocacy and outreach, particularly related to public education efforts regarding major issues common to our industries. . . . In instances where trade associations or public policy organizations that we're associated with take positions or promote policies that detrimental [sic] to

¹ This is a typographical error; ALEC claims approximately 2,000 state legislative members. See <http://www.alec.org/membership/legislative-membership/> (last accessed Apr. 24, 2015) (ALEC legislative membership consists of nearly one-third of the country's 7,383 state legislators).

Honeywell, we work independently to advocate for the position that is in our best interest. (Ex. 35.)

7. Before it withdrew from ALEC, Yahoo explained that

At Yahoo, we engage in the political process in a variety of ways to promote and to protect the long-term interests of our users and our company. One of the ways we do so is through memberships in organizations that help advance our business objectives. (Ex. 36.)

8. Before leaving ALEC, eBay described that it

engage[s] with a diverse range of trade associations and public policy advocacy groups. We only work with ALEC on one area and that is to support small businesses and help to protect them from threats including unfair tax legislation and state and local legislative issues. (Ex. 37.)

9. Eli Lilly explains that, “[i]n the case of ALEC, our involvement is limited to the Health and Human Services Task Force, which works to promote free-market, pro-patient health care reforms at the state level.” (Ex. 38.)

10. Duke Energy’s participation in ALEC and similar organizations is compelled by its intent “to represent the interests of our customers and shareholders with these groups, and monitor their developments and provide input into their approach to and advocacy for issues at the state and federal policy levels.” (Ex. 39.)

Similarly, Solar Energy Industries Association terminated its membership when its model bill did not pass ALEC’s Task Force on Energy, Environment and Agriculture. (See ALEC 40th Annual Meeting Board Book, Ex.50 at 38.)

As an organization comprised of lawmakers and corporations, it is significant that corporate representatives consistently continue to admit, as they have admitted many times in the past, that their participation in ALEC is driven by the access it affords to lawmakers to advance a corporate legislative agenda. The explanations listed above are consistent with those offered by past and present corporate members and sponsors Altria, American Electric Power, Anheuser-Busch, BP, Chevron, Cox Communications, CSX, ExxonMobil, Overstock, and Peabody Energy. (See Ex.’s 40 – 49.)

2. MINNESOTA’S INVESTIGATION INTO ALEC’S LOBBYING ACTIVITIES FURTHER CONFIRMS THAT ALEC’S CENTRAL PURPOSE IS TO INFLUENCE LEGISLATION.

Minnesota’s Campaign Finance and Public Disclosure Board recently conducted an in-depth investigation into ALEC’s lobbying activities in February of 2015. Although the Minnesota Board held there was insufficient evidence that ALEC met the \$50,000 financial threshold for having to register as a lobbying principal in that state, the Board noted:

ALEC itself acknowledges that part of its goal is “to ensure that each of its legislative members is fully armed with the information, research, and ideas they need to be an ally of the freemarket system.” Ultimately, the only way for legislators to be such an ally is by passing legislation that advances ALEC’s principles. In fact, ALEC’s bylaws require it to work to influence legislative action. One of ALEC’s stated purposes is “to disseminate model legislation and promote the introduction of companion bills in Congress and state legislatures.”

(Opinion, State of Minn. Campaign Finance and Public Disclosure Board, Ex. 51 at 6.)

Notably, the Minnesota Board found that “the evidence supports a conclusion that ALEC’s primary purpose is the passage of state legislation in the various states and that all of its wide-ranging activities are in support of this primary purpose.” (*Id.*)

3. ALEC CANNOT FIX ITS 501(c)(3) MISCLASSIFICATION BY CREATING AN AFFILIATED 501(c)(4) SPIN-OFF.

ALEC’s primary response to its unmasking by Common Cause and the Center for Media and Democracy has been to create a Section 501(c)(4) spin-off through which to conduct some of its most blatant lobbying activities. In 2013, ALEC’s Board of Directors created a Section 501(c)(4) affiliate called “the Jeffersonian Project.” (*See* Ex. 57.) ALEC’s internal discussions about the Jeffersonian Project included apparent admissions that, for much of its previous forty years of existence, ALEC has been violating its tax-exempt status and misleading the IRS about its lobbying activities as laid out below. But the Jeffersonian Project cannot salvage ALEC’s 501(c)(3) designation even prospectively, because ALEC’s central mission is fundamentally inconsistent with Section 501(c)(3)’s requirements. Despite shifting some of its lobbying efforts to the new affiliate, which ALEC fully controls, ALEC’s primary purpose continues without

change – to develop and advance legislation that benefits its corporate members. Tinkering with tactics has not changed that purpose.

A legal memorandum related to creation of the Jeffersonian Project and submitted to the ALEC Board explains that “[t]hough we do not believe that any activity carried on by ALEC is lobbying, the IRS could disagree. If that is the case, it would be possible to resolve any such issue with the IRS by agreeing to transfer the activity in question from ALEC to the Jeffersonian Project.” (Ex. 50 at 15.) The memorandum also states that the Jeffersonian Project should be established because “ALEC does not wish to be perceived as a lobbying organization and therefore does not wish to register as a lobbyist in any state. The Jeffersonian Project can be used to distribute communications in states that have broad lobbying definitions. The Project would be required to register as a lobbyist in some states, but ALEC would not.” (Id. at 15.) An internal ALEC document identifies two specific activities that could be conducted by the new 501(c)(4) entity: “[a]ll ALEC Policy Briefs can be sent out as Issue Alerts by the Jeffersonian Project, which can include legislative bill numbers and Support or Oppose positions;” and “ALEC can again freely provide testimony on pending legislation.” (Ex. 50 at 14.)

This hollow and formalistic response to ALEC’s IRS dilemma misses the point. To be sure, the activities that ALEC has nominally “transferred” to the Jeffersonian Project – sending state legislators so-called “Issue Alerts” urging the support or defeat of specific state legislation, and ALEC’s hearing testimony in support of legislation that benefited its corporate members (OS at 14-15, 17) – are among those that Common Cause identified in its Original Submission as clear examples that ALEC was engaged in impermissible lobbying under IRS regulations. The Original Submission proved that ALEC has engaged in these (and many other) lobbying activities for many years, but consistently told the IRS, under penalty of perjury, that it engaged in “zero” lobbying.

But ALEC’s shell game of shifting particular lobbying tactics to the Jeffersonian Project does not ameliorate ALEC’s tax violations. First, ALEC’s response to the Common Cause submission tacitly admits that ALEC has been lying to the IRS for years and that these decades-long, transparent lobbying activities violated Section 501(c)(3). That conduct alone justifies the imposition of penalties for ALEC’s past misconduct. Moreover, ALEC’s efforts at damage control are unavailing even prospectively. Transfer of particular tactics to another arm of the organization does not change the very reason for ALEC’s existence – to provide a vehicle for its

corporate members to lobby legislators. It is that central purpose, not merely the tactics ALEC uses to achieve it, that disqualifies ALEC from 501(c)(3) status.

As described at length in the Original Submission:

ALEC is extensively involved in lobbying because its primary activities – including communications with legislators – are designed to influence the outcome of specific legislation, and because its basic practice is to contact state legislators to express its views on specific legislation. Those views reflect the positions of ALEC’s corporate “private sector” members that draft ALEC’s legislation alongside “public sector” lawmaker members. ALEC is explicit that it operates to “connect” state lawmakers with corporations to pass its agenda.

(OS at 9.)

Consistent with ALEC’s core goals, many of the most blatant lobbying activities continue unchanged under the “new” ALEC. The Task Forces, vacation junkets, and other ALEC-sponsored meetings remain under the control of ALEC. All of these activities have a single purpose – to provide a forum for ALEC’s corporate members to lobby ALEC’s legislator members. Activity that is plainly “lobbying” when it occurs in a state capitol is not transformed when it is conducted in warm climates near sandy beaches or at a fancy hotel in another state.

The Jeffersonian Project does not alter ALEC’s structure or purpose, as evidenced by ALEC’s recruitment pitch to its corporate members. ALEC’s website continues to advertise that it “provides the private sector with an unparalleled opportunity to have its voice heard, and its perspective appreciated, by the legislative members.”² Moreover, “[u]nique to ALEC Task Forces is their public-private partnership, a synergistic alliance that identifies issues and then responds with common sense, results-oriented policies. Legislators welcome their private sector counterparts to the table as equals, working in unison to solve the challenges facing the nation.”³

Even after creation of the Jeffersonian Project, ALEC continues to engage in extensive lobbying activity. One recent, high-profile example of this is its aggressive advocacy for legislatures to pass resolutions calling for a constitutional convention to adopt a balanced budget

² See <http://www.alec.org/membership/> (last accessed Apr. 30, 2015).

³ See <http://www.alec.org/membership/private-sector-membership/> (last accessed Apr. 30, 2015).

amendment to the U.S. Constitution. ALEC is promoting a convention resolution⁴ developed by its Tax and Fiscal Policy Task Force, and has even posted a handbook on its website on how legislators can get those resolutions passed. “State legislators must take the long-sighted view and exercise our rights within the Constitution to limit Congress’s ability to drive our nation into further economic decay,” ALEC’s website says.⁵ “This Handbook is your guide to achieving that goal.”

Finally, even if ALEC could avoid revocation of its tax exempt status by transferring isolated lobbying tactics to an independent organization, the Jeffersonian Project is not independent. The Project was recommended for adoption by the ALEC Board of Directors under the following operating rules, which demonstrate that ALEC continues to direct and control even the narrow lobbying activities that it has chosen to “delegate” to the new entity:

- All of the Jeffersonian Project’s Board members will be chosen by ALEC’s Board of Directors.
- No action can be taken by the Jeffersonian Project unless it is supported by a current ALEC policy.
- All ALEC Issue Alerts and testimony will be done by the Jeffersonian Project.
- Any activity that could be done by ALEC may be done by Jeffersonian Project if legal counsel advises it would provide greater legal protection or lessen ethics concerns.

(Id. at 13.)

ALEC’s fundamental organizational structure belies any chimera that it is a public charity or education-based organization. It is an association created to draft and promote legislation benefitting its corporate members, and cannot evade federal tax laws through the sleight of hand of calling its target audience of legislators members, creating an affiliated subordinate 501(c)(4) organization, or pretending that it does not advocate for the legislation it develops. ALEC’s “Task Forces,” resort holidays, and other expense-paid venues (all of which continue under ALEC’s umbrella) provide the vehicles for corporations to lobby lawmakers and deduct their

⁴ See <http://www.alec.org/model-legislation/application-under-article-v-of-the-u-s-constitution-for-a-convention-to-propose-a-balanced-budget-amendment-and-further-fiscal-restraints> (last accessed Apr. 30, 2015).

⁵ See <http://www.alec.org/publications/article-v-handbook/> (last accessed Apr. 30, 2015).

expenses as charitable donations, circumventing the statutory purpose of the exemption and cheating law-abiding taxpayers in the process.

4. ALEC DID NOT FIX ITS 501(c)(3) MISCLASSIFICATION BY CHANGING ITS POLICY TO ONLY ALLOW ITS LEGISLATIVE MEMBERS, AND NOT ITS PRIVATE-SECTOR MEMBERS, TO PROPOSE MODEL LEGISLATION.

At around the same time it created the Jeffersonian Project, ALEC made another change in tactics in response to the Common Cause submission. In the spring of 2013, ALEC tweaked its policy to allow only legislative members of ALEC, and not private-sector members of ALEC, to propose model bills to be adopted by ALEC.⁶ This policy change accompanied an effort by ALEC to rebrand itself as a “legislator-driven organization.”⁷ Like the creation of the Jeffersonian Project, this shift in tactics does not alter the fundamental goals of the organization, does not eliminate the Task Force meetings, the vacation junkets, the thinly disguised “scholarships,” and thus cannot save ALEC’s 501(c)(3) status. Moreover, documents recently obtained by the Center for Media and Democracy through public records requests demonstrate that the new policy is merely window dressing, and that ALEC’s private sector and corporate members continue to steer ALEC’s model legislation. Specifically, ALEC’s private sector members continue to tap ALEC legislators to propose bills for them and even provide complete scripts for legislators to parrot at ALEC meetings. The *Wisconsin State Journal* wrote that the documents show “the lobbying group pulling legislators’ strings.”⁸

For example, in advance of ALEC’s 2013 Spring Task Force Summit, Christie Herrera, former director of ALEC’s Health and Human Services Task Force and current Senior Fellow with the Florida-based Foundation for Government Accountability, an ALEC private-sector member,⁹ wrote to several legislators thanking them for agreeing to sponsor a resolution

⁶ See Matt DeFour, “Documents Released in Open Records Lawsuit Show Lobbying Group Pulling Legislators’ Strings,” *Wisconsin State Journal*, Apr. 4, 2013, available at http://host.madison.com/news/local/govt-and-politics/documents-released-in-open-records-lawsuit-show-lobbying-group-pulling/article_1e33edf4-857d-507c-92c7-ec6948c5fc02.html.

⁷ See Dana Milbank, “ALEC Stands Its Ground,” *Washington Post*, Dec. 4, 2013, available at http://www.washingtonpost.com/opinions/dana-milbank-alec-stands-its-ground/2013/12/04/ad593320-5d2c-11e3-bc56-c6ca94801fac_story.html.

⁸ See footnote 6, *supra*.

⁹ See http://www.sourcewatch.org/index.php?title=Foundation_for_Government_Accountability.

opposing the Medicaid expansion pursuant to the Affordable Care Act, and providing specific instructions about what to say at the ALEC meeting. (See Herrera Medicaid Correspondence, Ex. 52.) “Each of you will need to introduce the bill,” Herrera wrote. “As such I have written opening remarks that are also attached to this e-mail.” (Id. at 1.) These remarks are more than talking points. Herrera wrote three one-page scripts tailored for each legislator to recite. Herrera instructed Oklahoma Senator Kim David to say, “I have spoken to many constituents about whether our state should expand Medicaid.” (Id. at 3.) She told Arizona Senator Nancy Barto to claim that in her state, “we’ve already experimented with Medicaid expansion, to disastrous results.” (Id. at 4.) Herrera directed Missouri Representative Sue Allen to repeat the line, “My cosponsors and I hope that this resolution can serve as a template for other lawmakers who choose to oppose Medicaid expansion with a formal resolution.” (Id. at 2.)

A similar pattern emerged with other ALEC model bill proposals, based on documents obtained from different public records requests. In advance of ALEC’s Spring 2014 Task Force Summit, Paul Kersey of the Illinois Policy Institute, an ALEC private-sector member,¹⁰ contacted ALEC legislators asking that they recommend a bill he drafted concerning binding arbitration in public sector collective bargaining agreements. (See Thompson Arbitration Correspondence, Ex. 53.) Ohio State Representative Andy Thompson agreed to propose the bill to ALEC, but acted merely as a figurehead: Kersey fielded questions, drafted amendments, and communicated with ALEC about logistics. (Id. at 7-12.) At one point, Rep. Thompson asked Kersey, “Do I need a speech to go with this, or just scattered remarks?” (Id. at 7.) ALEC staff were included in the email chains and fully aware that the private sector was the driving force behind the bill. (Id. at 8-9, 11.)

Rep. Thompson also proposed a model ALEC bill on behalf of another ALEC-connected nonprofit, the Competitive Enterprise Institute. Marc Scribner, a research fellow at the Institute, contacted Rep. Thompson to propose a bill on self-driving vehicles at ALEC’s December 2013 States and Nation Policy Summit. (See Thompson Autonomous Vehicles Correspondence, Ex. 54.) Scribner put together a slideshow for Rep. Thompson to use when proposing the bill and prepared the legislator for his presentation. (Id. at 1-5.) After the bill was approved as model ALEC legislation, Rep. Thompson emailed Scribner to thank him, and acknowledged the

¹⁰ See http://www.sourcewatch.org/index.php/Illinois_Policy_Institute.

minimal role he played in the proposal: “I could have been more help, I’m sure.” (Id. at 8.) Again, ALEC staff were aware that the private sector was the driving force behind the bill. (Id. at 9-10.)

This cynical change, allowing only an ALEC legislative member to recommend a model bill to ALEC, alters nothing. It only means that an ALEC private sector member will hand-hold an ALEC lawmaker to propose and advocate for a measure that will then be voted on by both ALEC corporate and legislative members. It is absurd to suggest that ALEC no longer engages in lobbying simply because the process is kicked off and coached by the private sector ALEC members but formally presented by an ALEC lawmaker.

Thus, although ALEC claims to have enacted a policy change, new documents demonstrate that the organization is still structured to advance the private interests of its funders by providing a venue for funders to access and influence state legislators so they may promote legislation favorable to the private sector’s interests.

5. RECENT CHANGES IN ALEC’S TAX FILINGS DO NOT CURE ITS TAX VIOLATIONS, AND ONLY HIGHLIGHT THE NEED FOR IMMEDIATE INVESTIGATION INTO ITS LOBBYING ACTIVITIES.

Finally, in yet another apparent response to the Common Cause Submission, ALEC has changed its method of tax reporting in at least two ways: 1) It appears to have made a Section 501(h) election as of the 2011 tax year; and 2) As of 2012, ALEC acknowledges responsibility for the “scholarship” fund it uses to pay for legislators’ travel. Neither change has any bearing on the merits, however, because ALEC still misreports its lobbying activity, exists for the primary purpose of writing and passing legislation, and operates for the private gain of its corporate members. The alterations in ALEC’s Form 990s once again acknowledge that ALEC has falsely reported its activities to the IRS in the past, thus highlighting the need for an immediate investigation by the IRS.

As Common Cause pointed out in its Original Submission, ALEC was unable to rely upon a formula to set its lobbying limits, as permitted by Section 501(h), because ALEC never filed for the 501(h) election. Starting with its 2011 Form 990, ALEC has checked the Section 501(h) box and filled out the requisite Schedule C. (See Ex’s. 23, 55, 56.) The change is irrelevant, however, because ALEC still falsely insists that it spends \$0 on lobbying, despite overwhelming evidence to the contrary. Moreover, as the Original Submission demonstrates, the

overwhelming bulk of ALEC's activity constitutes lobbying, so it could not possibly meet the criteria of Section 501(h) if it filed an accurate report, even though it has now claimed the election. There is no indication that ALEC has transferred its legislative drafting, approval and promotion process – such as closed-door Task Force meetings where corporations and legislators vote side-by-side on legislation to advance under the ALEC brand – to the Jeffersonian Project. In addition, as discussed above, the lobbying activities of the Jeffersonian Project are under the complete control of ALEC, from the makeup of its board to what legislation it can or cannot lobby on.

The change in ALEC's reporting of its "scholarship funds" is similarly ineffective to bring ALEC into compliance with the law. As described in the First Supplement, these funds are used to pay the expenses for legislators and their families to attend ALEC junkets. The First Supplement detailed how ALEC misrepresented scholarship funds as liabilities and used deceptive reporting tactics to conceal its funding while encouraging corporate donors that their gifts to the fund were tax-deductible. Indeed, for several years ALEC denied that it funded state legislators' luxury travel at all, and ALEC significantly underreported its funding of such travel in its 2010 and 2011 tax returns. (See FS at 3-4.) The First Supplement attached public records revealing that ALEC spent at least \$90,413 to subsidize lawmakers' travel in 2010 – nearly double what it reported in its 2010 tax returns (\$49,499). For 2011, spending data reveals that although ALEC spent roughly \$600,000 on such expenses, the organization only reported about one-fifth of these expenses in its 2011 tax returns (\$125,722). (Id.)

Acknowledging that it previously misrepresented the character of these contributions from members, ALEC now accepts responsibility for the corporate money it raises and spends to pay for legislators to travel to meet with ALEC corporate members' executives and lobbyists. ALEC has restructured the scholarship program, renaming it the State Legislative Reimbursement Program. (See Ex. 55, at 37.) In its 2012 tax return, it explains: "At the time of the approved restructuring, the various State Chairs approved the transfer of the net funds for this program to ALEC and ALEC recognized this gift as revenue. In future years, ALEC will recognize funds raised for this program as revenue and disbursements approved by ALEC as expenses." (Id.)

Yet ALEC's forced reporting of these gifts merely reveals that the "scholarship" funds are used to finance the same impermissible lobbying as ALEC's other activities. ALEC's

belated disclosure does not address the problem of having a 501(c)(3) raise money from corporations and lobbyists to pay for legislators' travel expenses to resort hotels, where the legislators meet with agents of those corporations about moving bills drafted by those corporations. ALEC's reimbursement scheme still constitutes a lobbying expense and serves a private rather than a public benefit, in circumvention of the Internal Revenue Code and applicable Treasury Regulations governing 501(c)(3) status organizations.

CONCLUSION

The materials referenced in this letter, and in the Original Submission, the First Supplement, and the Second Supplement, demonstrate that ALEC operates primarily for the non-exempt purpose of advancing legislation of interest to its corporate members, has massively underreported its lobbying activities, and has misrepresented its travel reimbursement scheme to the IRS and the public. ALEC's corporate members and sponsors explicitly admit that they participate in ALEC in order to drive legislation. Minnesota's ethics commission concluded that ALEC's primary purpose is the passage of state legislation. Moreover, ALEC's recent changes to its organizational structure, internal policies and tax filing practices are tacit admissions that its prior behavior was improper and unlawful, and are still inadequate to cure its fundamental 501(c)(3) misclassification.

As a result, taxpayers have been damaged by ALEC's abuse of a narrow tax exemption intended to facilitate the work of genuinely charitable organizations, and also by the loss of tax revenue from ALEC's private corporate members and sponsors. Therefore, we respectfully urge that the IRS conduct an immediate investigation, revoke ALEC's 501(c)(3) status, impose necessary civil and criminal penalties, and collect unpaid back and present taxes for corporate lobbying that is inconsistent with ALEC's tax-exempt status.

Respectfully submitted,



Miles Rapoport
President
Common Cause



Lisa Graves
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Center for Media and Democracy