



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

To: Commission
From: Commission Staff
Date: January 19, 2022
Re: Interim Staff Memo - Possible In-Kind Contributions from the American Legislative Exchange Council

Initiation of Investigation

This memo is to report back to you on the status of the staff's investigation into the ALEC CARE software that you voted to pursue on September 29, 2021. In recent years, the American Legislative Exchange Council (ALEC) has made ALEC CARE available to legislators who are members of the organization. In late July 2021, the Ethics Commission received a complaint from the Center for Media and Democracy (CMD) signed by Arn Pearson arguing that the software constitutes an in-kind contribution to legislative candidates in Maine. Mr. Pearson contended that ALEC CARE is essentially the same as Voter Gravity, a software application designed for political candidates to manage contacts with voters. The Commission received written responses from ALEC through its attorney, Jason Torchinsky, and from Sen. Trey Stewart and Rep. Harrington, through their attorney Joshua Tardy. According to ALEC, the software is intended to assist members in communicating more effectively with constituents and to keep track of their constituent research and engagement.

The Commission considered the complaint at its meeting on September 29, 2021. It received testimony from Sen. Stewart and Rep. Harrington, and legal presentations from Arn Pearson, Jason Torchinsky, and Joshua Tardy. The Commission found there were sufficient grounds to investigate whether the ALEC violated 21-A M.R.S. § 1015(2) by making contributions to candidates that exceeded \$400 per election and directed its staff to review the ALEC CARE software, its value and the Voter Gravity software. The Commission found there were insufficient grounds to investigate Sen. Stewart and Rep. Harrington.

Relevant Maine Election Law

Standard for Initiating an Investigation. The Commission is required to review every request to investigate an alleged violation of campaign finance law and to conduct an “investigation if the reasons stated for the request show sufficient grounds for believing that a violation may have occurred.” 21-A M.R.S. § 1003(2).

Definition of Contribution. The term “contribution” includes “[a] gift, subscription, loan, advance or deposit of money or anything of value made for the purpose of influencing the nomination or election of any person to state, county or municipal office” 21-A M.R.S. § 1012(2)(A)(1). Influence means “to promote, support, oppose or defeat.” 21-A M.R.S. § 1012(4-A).

The Commission’s Rules define an in-kind contribution as follows: “Unless specifically exempted under 21-A M.R.S. §§ 1012 and 1052 or this section, the provision of any goods or services without charge or at a charge that is less than the usual and customary charge for such goods or services is an in-kind contribution. Examples of such goods and services include, but are not limited to: equipment, facilities, supplies, personnel, advertising, and campaign literature. If goods or services are provided at less than the usual and customary charge, the amount of the in-kind contribution is the difference between the usual and customary charge and the amount charged the candidate or political committee.” 94-270 C.M.R. Ch. 1, § 6(4).

Content of Reports – Itemized Contributions. Candidates are required to disclose all contributions (cash and in-kind) in regularly scheduled campaign finance reports. 21-A M.R.S. § 1017(5).

Limits on Contributions to Candidates. A political committee or organization may not make contributions to a traditionally financed candidate to promote their election that exceed the contribution limits in 21-A M.R.S. § 1015(2). For the 2020 elections, the contribution limit for legislative candidates was \$400 per election. Section 1015(2) focuses on the *making* of a contribution to a candidate by a political committee, corporation or other organization. If a candidate *accepts* a contribution that exceeds the limits in § 1015, the candidate is subject to a penalty under 21-A M.R.S. § 1004-A(2). Once certified to receive public campaign funding, an MCEA candidate may not accept any cash or in-kind contributions. 21-A M.R.S. § 1125(6).

Developments since September 29, 2021

On October 1, 2021, the Commission staff wrote to ALEC's attorney to inquire whether ALEC would provide access to the ALEC CARE software for purposes of the investigation. We asked for an opportunity to navigate a test version of the application for part of a business day, and an interview of ALEC's employee (Aaron Gilham) who trains members on ALEC CARE. ALEC's counsel wrote a six-page letter dated October 29, 2021 describing his client's concerns with the Commission's investigation. The Commission staff responded, but on November 30, 2021 ALEC's counsel replied that ALEC would not commit to voluntarily cooperating with the Commission's investigation because of ongoing concerns with its legitimacy. One fact cited in the letter is the lack of any evidence that ALEC members in Maine used the software for purposes of the 2020 elections. The correspondence is attached for your reference. The Commission also received a letter from the owner of Voter Gravity software stating that it was respectfully declining to participate in the Commission's investigation.

Because ALEC declined to provide the Commission staff with first-hand access to the software for purposes of the investigation, the staff examined all other evidence available. In December 2021, I reviewed the written materials that were submitted by all parties prior to the September 29 meeting and more closely examined the complaint by CMD to the Internal Revenue Service challenging ALEC's federal exemption (available on the internet).

Exhibit 5 of that IRS complaint includes screenshots of the ALEC CARE software that apparently were created by a state legislator who has been providing information about ALEC to CMD. I recommend that you review Exhibit 5 (attached directly after this memo), because it can provide you with a general sense of the software's features. The software includes a user dashboard which displays totals for certain activities that have been recorded by the user, such as numbers of doors knocked, phone calls made, identified supporters, and social media likes and followers. The software allows the user to set a goal for these activities and tells the user how close he or she has advanced toward their goal. The left-hand navigation menu lists topic areas such as such as Walklists, Phone Bank, Email, SMS, Touchstone Surveys, Voter Data, Contact Data, Strikelists, Reports, and Survey. The software contains data for some residents of the user's legislative district. The data is displayed as a "Voter Profile" for each resident in the database. Information about the voter is displayed under six tabs: Overview, Election Details

(voting history), Household, Notes, Tags, and Demographics. This allows the user to create lists of voters for different communication purposes.

On December 17, 2021, a few members of the Commission staff interviewed the state legislator who has been providing information to CMD. During the interview, the legislator did not show us the software. Rather, we referred to screenshots that were in Exhibit 5 to CMD's complaint to the IRS. The legislator asked not to be disclosed by name. In this memo, I will be referring to the legislator as "the legislator" or "he/she."

The legislator confirmed that he/she made screenshots of the ALEC CARE software and provided them to CMD. He/she drew our attention to various aspects of the software that the legislator believed were focused on campaigning, such as elements of the Voter Profile data. For example, the legislator said he/she had never heard of legislators using an RNC ID number for legislative business in his/her state capitol. He/she expressed that, as a legislator, it would be inappropriate to be looking at a constituent's turnout score when receiving a call from the constituent on a legislative or state government issue.

The legislator also referred to the goal tracking elements on the user dashboard. She observed this looked a lot like campaign software he/she had used previously. The legislator elaborated that he/she had previously paid a fee to access campaign software, NGP VAN, which allowed the legislator to create lists of people to reach out to for campaign purposes through filtering by party and other demographic information. He/she said she has never seen a legislator rely on totals of door knocks or total supports for purposes of carrying out legislative work. He/she expressed his/her view that the focus of these elements was campaigning. The legislator believed that both software applications – NGP VAN and ALEC CARE – allow users to create lists for campaign communications such as phone banking, and to record the results of those activities.

The legislator stated that when he/she does a search for specific voters in the district who are enrolled in the Democratic Party and who vote consistently, the legislator does not find a majority of such voters in the database. The legislator estimates that, when conducting these searches, she had been able to find only about one-third of consistent voters who are Democrats.

The legislator has concluded that the ALEC CARE does not include a complete list of all registered voters in the district.

The legislator confirmed that ALEC CARE does not contain features of some case tracking and management software. (Some public offices use case tracking software that will allow for assignment of cases to staff members or departments, link cases raising the same issue, assign due dates to specific cases, generate notices for cases to be escalated, or create reports of unresolved or aging cases.) The legislator said that he/she can enter a note or tag for each resident as part of their Voter Profile, but does not have other case tracking features.

Interim Staff Opinion

Based on our review of the screenshots and our interview of the state legislator, the opinion of the Commission staff is that ALEC CARE contains elements of value to Legislators in conducting a political re-election campaigns, such as:

- Data about individual voters such as the voter's turnout score, history of voting in elections, and RNC ID number.
- Tools that would be helpful in setting goals for campaign activities and creating lists of voters to engage in those activities: knocking on doors, creating walklists, engaging in phone banks, identifying "supporters" in a database.

Although not necessarily conclusive, the presence of these elements in ALEC CARE tend to support CMD's contention that one purpose of ALEC in providing ALEC CARE is to provide them with a tool that they can use for campaigning. It is possible that ALEC has explanations on these features, but we have not heard them. ALEC did not address them at the September 29 meeting and is not providing Aaron Gilham for an interview.

Options for the Commission

The Commission staff sees three options for the Commission. First, the Commission could authorize its staff to use the agency's subpoena power to gather additional information about the features of the software, its value, its purpose, and other relevant evidence. The Commission staff is ready to pursue this option if you would like. We believe the workload of preparing and serving two subpoenas will not adversely impact other work of the Commission. Enforcing a

subpoena against a non-cooperative witness, however, could require court proceedings requiring several months and staff time of the Office of the Attorney General. The witnesses could raise legal objections to the subpoenas or to the investigation itself (*e.g.*, it is not known whether any candidates in Maine actually used the ALEC CARE software in 2020). Although we are hopeful we would prevail in court and the subpoenas would lead to relevant information, that is not guaranteed.

A middle option would be to direct the Commission staff to analyze all available evidence and report back at a future meeting whether it is ready to recommend any findings of violation. We are not sure we would be able to recommend any enforcement action at this point, however, given the legal issues and factual information presently available.

A third option is to decide to take no further action on the complaint. Under the Commission's rules, the Commission controls any investigation it has undertaken. In the opinion of the Commission staff, it has the discretion to suspend an investigation based on factors such as insufficient likelihood that further fact-gathering will lead to evidence supporting a finding of violation, legal obstacles in pursuing an investigation, insufficient public interest or lack of demonstrated harm to the election process, or availability of other solutions (*i.e.*, education) to address a problem of non-compliance.

Thank you for your consideration of this memo.

Exhibit 5

Voter Profile

voter information and history

[Home](#) > [Voter Profile](#)

[Overview](#)

[Election Details](#)

[Household](#)

[Notes](#)

[Tags](#)

[Demographics](#)



[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
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[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

Voter Profile voter information and history

Home > Voter Profile

- Overview
- Election Details
- Household
- Notes
- Tags
- Demographics



[Redacted]

Gender: [Redacted]
Party Affiliation: [Redacted]
Registration Date: [Redacted]
Turnout Score: [Redacted]

Home Phone: 
Cell Phone: 
Home Email Address: 
Work Email Address: 
Other Email Address: 
Twitter: 

Aristotle ID: [Redacted]

RNC ID: [Redacted]

[Overview](#)

[Election Details](#)

[Household](#)

[Notes](#)

[Tags](#)

[Demographics](#)



Vote History

2020 General

2020 Primary

2020 Presidential Primary

2019 Spring

2018 Primary

2018 Spring

2018 General

2017 Spring

2017 General

2017 Primary

2016 Primary

2016 General

2016 Presidential Primary

2015 Primary

2015 General

Voter Profile

voter information and history

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[Tags](#)

[Demographics](#)



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Voter Data Search

[Home](#) > [Voter Data](#) > [Search](#)

Search Voter

Address

Abbreviated Address

Submit

Name

Address

Twitter

Email Address

RNC ID

Aristotle ID

Middle Name

Last Name

g address search try abbreviating address (i.e. 10 S Main St).

Showing 0 to 0 of 0 entries

SurveyMonkey

Link SurveyMonkey Account

RNC Integration

Access Token

Save

Eventbrite Integration

Link EventBrite Account

Anedot Integration

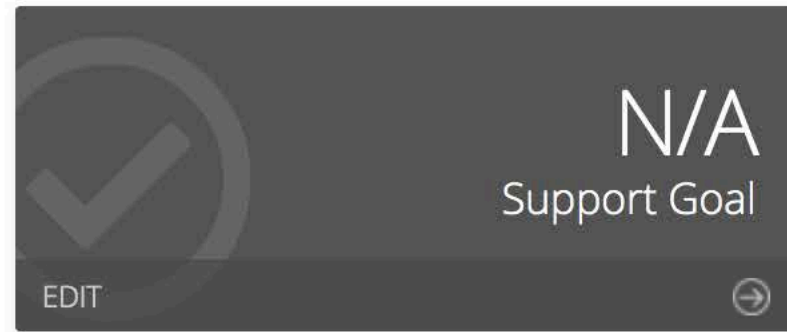
Username



API Key

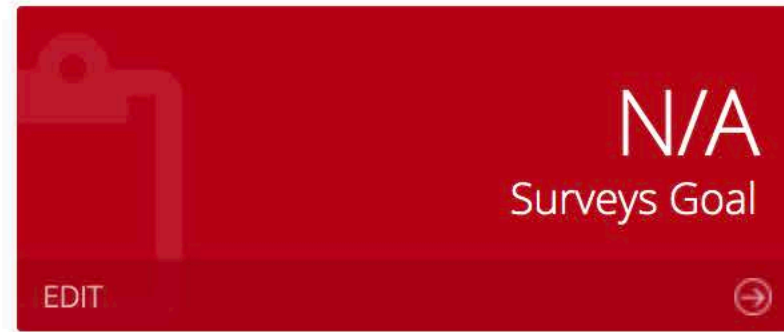
Save

GOAL TRACKING



N/A
Support Goal

EDIT



N/A
Surveys Goal

EDIT



N/A
Doors Knocked Goal

EDIT



N/A
Phones Called Goal

EDIT



Identified Supporters

(Add a goal in the dashboard settings to track your progress)



Completed Surveys

(Add a goal in the dashboard settings to track your progress)



Door Knocks

(Add a goal in the dashboard settings to track your progress)



Phones Called

(Add a goal in the dashboard settings to track your progress)

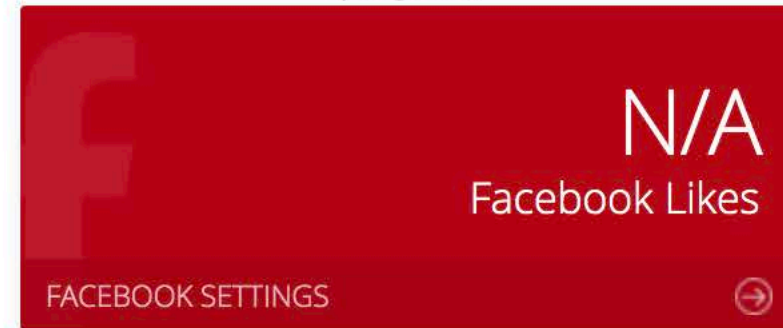


N/A
Supporters

TAG: SELECT IN DASHBOARD SETTINGS

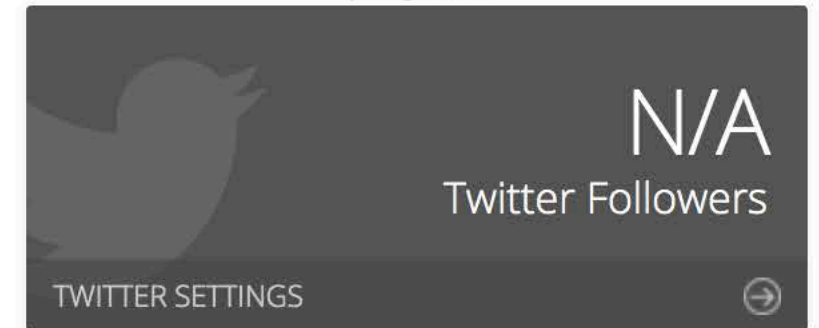


0
Total Surveys Completed



N/A
Facebook Likes

FACEBOOK SETTINGS



N/A
Twitter Followers

TWITTER SETTINGS

WALKLIST STATS



Walklist Survey
Completion
Rate



Walklist
Supporter
Identification

Doors Knocked
By Day

Walklist
Surveys
Completed By

PHONE BANK STATS



Phone Survey
Completion
Rate



Phone
Supporter
Identification

Phones Called
By Day

Phone Surveys
Completed By
Day

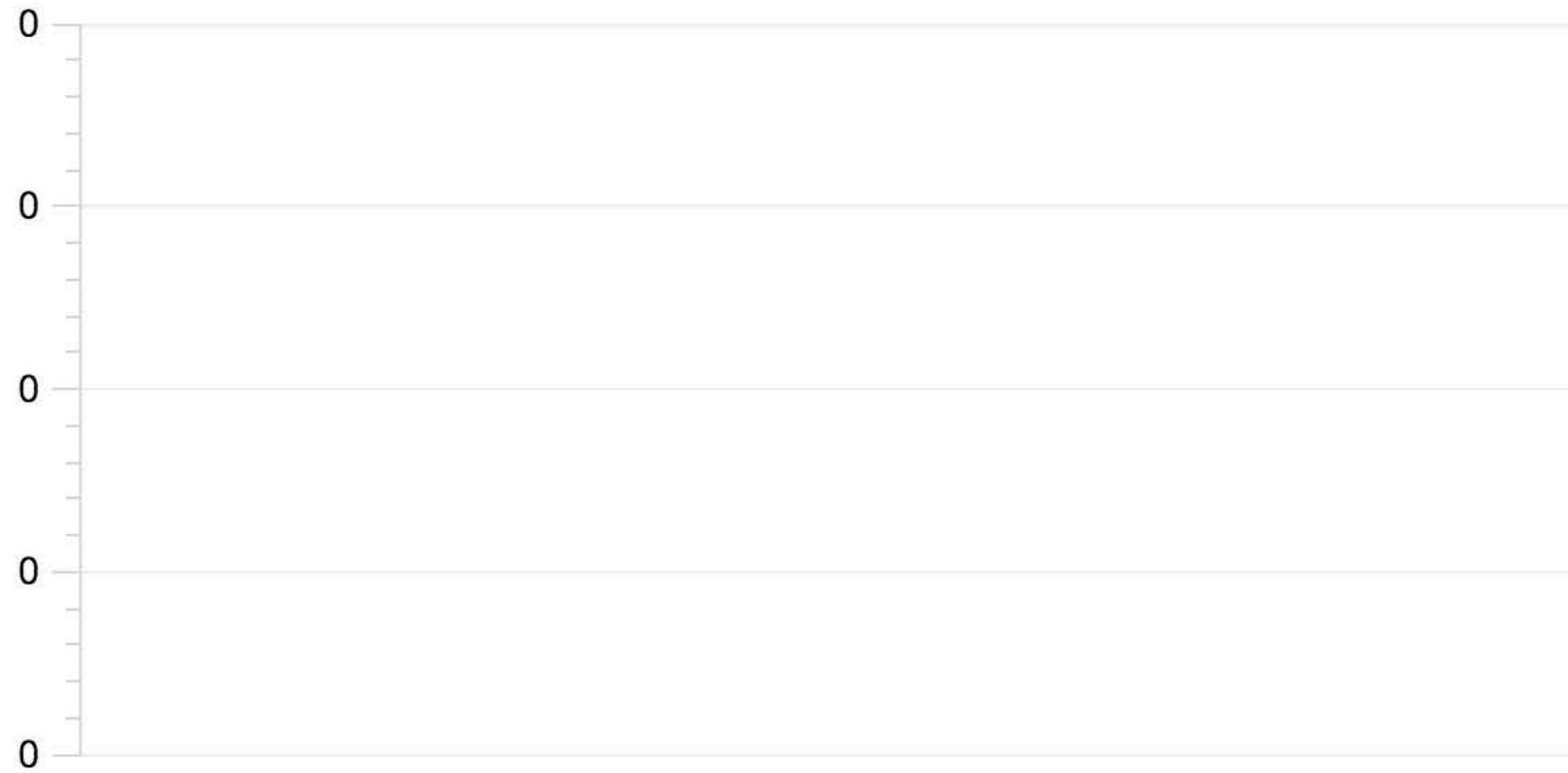
 **WALKLIST ACTIVITY**

User	Reached	Surveyed
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 **PHONE ACTIVITY**

User	Reached	Surveyed
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 **GOAL TRACKING**



 **COUNTDOWN CLOCK** (Time zone: America/New_York)

0 DAYS 0 HRS 00 MIN 00 SEC

 **SURVEY SNAPSHOT**

Select a survey and question under Manage Dashboard Settings

 Dashboard

 Walklists



 Phone Bank




 Email



 Campaigns

 Content Blocks

 Lists

 Settings

ETH - 10

 SMS



Voter Profile

voter information and history

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[Tags](#)

[Demographics](#)



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Voter Profile

voter information and history

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Voter Profile voter information and history

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Overview

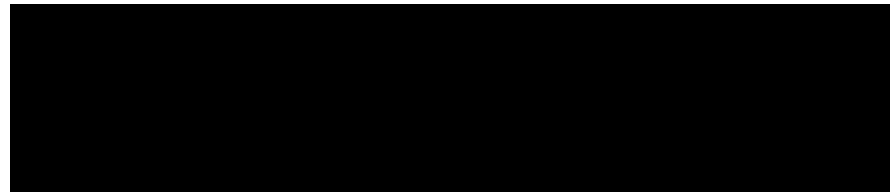
[Election Details](#)

[Household](#)

[Notes](#)

[Tags](#)

[Demographics](#)



Gender:



Party Affiliation:



Registration Date:



Turnout Score:



Home Phone:



Cell Phone:



Home Email Address:



Work Email Address:



Other Email Address:



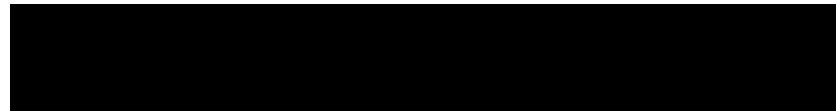
Twitter:



Aristotle ID:



RNC ID:





STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

October 1, 2021

(Re-Mailed 10/13/2021 to below address)

Jason Torchinsky, Esq.
Holtzman Vogel Josefiak PLLC
15405 John Marshall Hwy
Haymarket, VA 20169

Dear Mr. Torchinsky:

Thank you for your presentation to the Maine Commission on Governmental Ethics and Election Practices at its September 29, 2021 meeting concerning the ALEC CARE software provided by the American Legislative Exchange Council (ALEC) to its members. The Commission directed its staff to investigate whether ALEC violated 21-A M.R.S. § 1015(2) by making a contribution to 2020 legislative candidates in excess of \$400 for the purpose of influencing their election. In the near term, the Commission limited the investigation to reviewing the ALEC CARE software, its value, and relationship to the Voter Gravity software.

The Commission staff is intending for three employees to conduct the review. I am writing to inquire whether ALEC would provide us with access to the ALEC CARE software for this purpose. We would welcome any introduction or explanation of the software by Aaron Gillham, but I believe our review of it would be most thorough if we could spend part of a business day navigating it on our own if there were a test environment that would provide us with a user experience similar to what 2020 users in Maine members would have experienced. Following that, we would appreciate an opportunity to interview Mr. Gillham to make sure we accurately understood the software's features. Would you please let us know if this would be feasible? Thank you for your consideration.

Sincerely,

Jonathan Wayne
Executive Director

cc: Commissioners (by forwarded email)

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October 29, 2021

State of Maine Commission on Governmental Ethics and Election Practices
Attn: Jonathan Wayne
135 State House Station
Augusta, ME 04333-0135
Submitted via email to: Jonathan.Wayne@maine.gov
RE: ALEC's Response to the Commission Staff's October 1, 2021 Letter

Mr. Wayne,

We appreciated the opportunity of appearing before the Maine Commission on Governmental Ethics and Election Practices (the "Commission") in the matter of the Center for Media and Democracy's ("CMD") July 23, 2021 Complaint against our client, the American Legislative Exchange Council ("ALEC"). We received your October 1, 2021 letter, and we will continue to work with Commission Staff to resolve its investigation efficiently. In order for us to submit a complete response, however, we ask that you provide clarification on the below points. At present, the standard by which the Commission authorized an investigation, the scope of that investigation, and the feasibility of such an investigation are unclear. We request further guidance at your earliest convenience.

Standard for Initiating an Investigation

The record clearly demonstrates that there are no allegations of a Maine legislator using ALEC's Constituent Analytics Research Exchange ("ALEC CARE") software for any reason, let alone for impermissible campaign purposes.¹ In fact, the Commission dismissed the Complaint against Senator Stewart and Representative Harrington after unanimously finding that there were "insufficient grounds to conduct any investigation of Senator Stewart and Representative Harrington for the violations alleged by [CMD]" because they never used ALEC CARE during the relevant period.² Nevertheless, the Commission, by a 3-2 vote, decided that "there are sufficient grounds to investigate whether [ALEC] violated 21-A M.R.S. § 1015(2) by making a contribution to a candidate in excess of \$400 for the purpose of influencing an election."³ Consequently, ALEC asks the Staff to list the grounds upon which the Commission believed that 21-A M.R.S. § 1015(2) may have been violated, and explain why those grounds are sufficient to initiate an investigation under 21-A M.R.S. § 1003(2). We note for the Commission that on or about October 7, 2021, the Ohio Election Commission dismissed CMD's identical complaint filed in Ohio against ALEC.

¹ See, e.g., September 22, 2021 Letter from Commission Staff to the Commission at 4 (hereinafter "Staff Memo"); Compl. ¶ 20; September 17, 2021 Letter from ALEC to Commission Staff at 3 (hereinafter "ALEC Response").

² See Maine Commission on Governmental Ethics & Election Practices, September 29, 2021 Commission Hearing, available at <https://www.maine.gov/ethics/meeting/2021-09-29>.

³ *Id.*

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First, does the Commission have the authority and/or jurisdiction to initiate an investigation after the Commission unanimously found that there were insufficient grounds to investigate Senator Stewart or Representative Harrington, and there are no allegations or other evidence in the record that any other legislator in the state of Maine is a member of ALEC? Without an allegation that another legislator in Maine is a member of ALEC, there cannot be an allegation that ALEC may have made an impermissible contribution to a Maine legislator. Please explain this discrepancy.

Second, ALEC asks the Staff to explain whether the mere making of a benefit available to a Maine elected official can meet the definition of a “contribution” under Maine law. During the Commission’s September 29, 2021 meeting (hereinafter, the “Meeting”), there appeared to be some confusion on this issue.⁴ For example, Commissioner Schneider took the position that “for a contribution to be effective it has to be made and accepted.”⁵ Commissioner Lee posited that “unless the recipient accepts it then there’s no violation by the recipient but there . . . under the same set of facts, there could be a violation found on the part of the contributor,” and Mr. Bolton responded that “I don’t think the statute answers that question squarely one way or the other.”⁶ In addition to providing guidance on the definition of a “contribution” under Maine law, ALEC asks whether it is appropriate for the Commission to initiate an investigation when a material component of the pertinent law is unknown and/or undefined? For example, how could the Commission find that there are sufficient grounds to believe that a violation may have occurred when during the meeting it could not agree on whether or not a mere offer could even be a violation in the first place?

Third, if the Commission finds that a component of the definition of “contribution” includes “acceptance,” please define what constitutes “acceptance” in the relevant context. For example, ALEC CARE software is accessed online through a website, and it is not downloaded. Would a legislator “accept” ALEC CARE if s/he merely became an ALEC member, and thereby was offered ALEC CARE as a member benefit? What about if a different legislator asked ALEC for ALEC CARE credentials but never logged in to their account? What about if a member only used ALEC CARE during a time period that predated the 2020 election cycle? What if a member accessed ALEC CARE while physically in another state, and never while present in the state of Maine?

Similar to the second point above, ALEC notes that during the Meeting Mr. Bolton stated that “I think there is potential grey area there in the statute in that we don’t know exactly what it means to or the statute doesn’t make clear exactly what it means to make a contribution and you know you could read that as requiring some kind of acceptance in order for that contribution to

⁴ Meeting Video, available at <https://www.youtube.com/watch?v=jzMwjf8uiN0>. (Note: We used this video to create an unofficial transcript of the Meeting. Due to the quality of the YouTube video, some quotes to this source may contain slight inaccuracies, and the timestamps may have minor deviations, although the substance is materially accurate.)

⁵ Meeting Video at 2:08:51 – 2:09:51.

⁶ Meeting Video at 2:11:40 – 2:14:09.

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actually be effectuated.”⁷ ALEC requests clarification on how the Commission could have found that there were sufficient grounds to believe that a violation may have occurred when the statute is so ambiguous that Commissioners and Staff could not agree on the types of conduct that are subject to it.

Fourth, the term “contribution” does not include “[t]he use of offices, telephones, computers and similar equipment when that use does not result in additional cost to the provider.” 21-A M.R.S. § 1012(2)(B)(9). Does the ALEC CARE software fall under the “computers and similar equipment” provision? Please provide guidance on this aspect of the statute.

Fifth, how do the Commission and the Staff evaluate “purpose” in the “for the purpose of influencing the nomination or election of any person to state, county or municipal office” portion of 21-A M.R.S. § 1012(2)(A)(1)? During the Meeting there appeared to be similar confusion about this material term. For example, Mr. Wayne stated that “one of the challenges of applying the law is to what the purpose in which the service is being provided to the legislator slash candidate and it could be hard to interpret.”⁸ ALEC has set forth uncontradicted evidence that it provides ALEC CARE as a membership benefit, and it is solely to be used for constituent relationship services. Thus, is “purpose” evaluated from the perspective of the provider, the recipient, or both? If both, how does the Staff assess the proportion or weight to be assigned to each perspective for purposes of the statute? Commissioner Hastings noted that “we can’t overlook the fact that even if [ALEC CARE] has value and even if it could be used for campaigning it has to be given for the purpose of that” and “that the purpose of the transaction is as important as anything else.”⁹ Given the key significance of the term, ALEC asks the Staff to provide further clarification on its meaning.

Sixth, if the Commission found that there were sufficient grounds to investigate ALEC because of the unsupported allegations that ALEC CARE is “the exact same” as Voter Gravity, then will the Staff be investigating every constituent relationship service to see if it bears a similar resemblance to Voter Gravity?

Seventh, to what extent was the Commission’s finding that there were sufficient grounds to investigate ALEC based on a desire to research these issues and subsequently promulgate an advisory opinion to Maine legislators and potential candidates? For example, Commissioner LeClaire stated that “what I’d like to see this Commission do is investigate what it is and give fair notice to the legislators in this state, the elected officials in this state, that this is, if it is a contribution, if it is a subscription under the law that they be notified of that.”¹⁰ She later added that “I think we need to know what it is and give fair warning.”¹¹ As discussed above, it is clear that there is ambiguity and disagreement over material provisions of applicable statutes. To the extent that the Commission wants to investigate ALEC as a test case to resolve those issues and

⁷ Meeting Video at 2:31:04 – 2:32:32.

⁸ Meeting Video at 1:52:36 – 1:54:02.

⁹ Meeting Video at 2:47:11 – 2:50:46.

¹⁰ Meeting Video at 2:24:24 – 2:27:07.

¹¹ *Id.*

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alert Maine legislatures of its findings, ALEC believes such motivations are inappropriate and irrelevant to an analysis of whether sufficient grounds exist to believe that a violation may have occurred. Please ALEC of the extent to which the Commission's decision to initiate an investigation was influenced by such considerations.

Eighth, are ALEC's due process rights violated if Commissioners willfully ignored evidence cited in the ALEC Response? Specifically, Footnote 9 of the ALEC Response cites three publicly available YouTube videos that provide training on ALEC CARE. Although Staff watched the videos,¹² it appears that the Commissioners did not review them prior to the Meeting, and they refused to watch them during the Meeting.¹³ Contrary to CMD's unsubstantiated allegations, ALEC offered direct, concrete evidence that seemingly was ignored by the Commission. To what extent is the Commission obligated to review and consider evidence submitted in response to a complaint? Were ALEC's rights violated if it is determined that the Commission did not abide by these obligations? What recourse does ALEC have if the Commission did not follow applicable laws, regulations, policies, and/or procedures?

Scope of the Investigation

The Commission found that "there are sufficient grounds to investigate whether [ALEC] violated 21-A M.R.S. § 1015(2) by making a contribution to a candidate in excess of \$400 for the purpose of influencing an election and, at the present time for purposes of this investigation, only to review the ALEC CAREs [sic] software and its value and the Voter Gravity software referenced in today's discussion."¹⁴ The issues raised by comparing ALEC CARE to any Voter Gravity software are discussed more fully in the section below. In a more general sense, however, the Commission's decision raises a number of issues.

First, how will Staff and the Commission "value" ALEC CARE software in the context of "influencing an election"? Does the Staff intend to assign individual economic values for each feature of ALEC CARE, or to the product overall? How will it calculate that economic value? If the Staff determines that a particular feature could be used for either constituent relationship services or for campaign purposes, will the Staff assign different values? For example, the exact same feature might be worth \$20 for campaign services but \$40 in the context of constituent relationship services because of the different contexts.

Second, during the meeting Staff admitted that it lacks the expertise necessary to value the ALEC CARE software. Specifically, Mr. Wayne stated that "I think at best we could give you sort of our recommendation to you but you have to understand that we don't have legislative

¹² See Meeting Video at 1:44:30 – 1:48:25.

¹³ See Meeting Video at 2:04:47 – 2:08:37 (where Mr. Torchinsky asks the Commission to view the videos, no Commissioner states that they have seen the videos, and Commissioner LeClaire states that watching the videos would be inappropriate).

¹⁴ Maine Commission on Governmental Ethics & Election Practices, September 29, 2021 Commission Hearing, available at <https://www.maine.gov/ethics/meeting/2021-09-29>.

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experience. Mostly on the Staff here. So, is this really something that would be a useful tool for interacting with constituents or is this mostly an election tool, we could offer you our view but I think you'd have to take it with a grain of salt at the end of the day.”¹⁵ The Staff's October 1, 2021 letter states that it “is intending for three employees to conduct the review.” Please provide their resumes and an explanation of their qualifications for evaluating the ALEC CARE software. Also, please let us know whether Staff intends to hire experts to assist in their review. Although ALEC wishes to resolve this matter as efficiently as possible, given the potential consequences to ALEC, hearing Staff inform the Commission that it should take Staff recommendations with a grain of salt does not encourage ALEC to participate in this investigation.

Third, what is the relevant timeframe, and how does that impact any valuation determinations? A donor may contribute \$400 to a traditionally financed candidate for both their primary and general elections. Consequently, understanding the economic value of each feature at a particular point in time is essential. Thus, will the Staff assign a value to each feature, divide that value by 365 days, and then multiply that value by the number of days that that legislator has been both a member of ALEC and running for nomination or election? If so, does that take into account that economic values change over time, and the value of a feature that may be used for electioneering purposes may rise in the lead up to an election and fall afterwards? How does the Staff propose to account for this? Relatedly will Staff assess the probability that a feature that could be used for both campaign purposes and constituent management purposes to be more likely closer to an election?

Feasibility of the Investigation

The Commission's decision confined the Staff's investigation by stating that “at the present time for purposes of this investigation,” the Staff is “only to review the ALEC CAREs [sic] software and its value *and the Voter Gravity software referenced in today's discussion.*”¹⁶ This instruction is ambiguous and may not be possible. ALEC therefore asks the Staff to provide clarity regarding the Commission's decision and to explain the ramifications if the Staff finds that it cannot comply with the Commission's directive.

First, how will the Staff obtain access to the Voter Gravity software that it identifies in response to the above request? Voter Gravity is not a party to the Complaint,¹⁷ and there are no allegations that Voter Gravity violated Maine law. Does the Commission have the authority to compel Voter Gravity to provide access to its software? If not, how could the Staff compare the ALEC CARE software to the relevant Voter Gravity software?

Second if the Staff is unable to access the relevant Voter Gravity software, and therefore cannot comply with the Commission's directive, then how does that impact the investigation? For

¹⁵ Meeting Video at 1:44:30 - 1:47:09.

¹⁶ Maine Commission on Governmental Ethics & Election Practices, September 29, 2021 Commission Hearing, available at <https://www.maine.gov/ethics/meeting/2021-09-29> (emphasis added).

¹⁷ Meeting at 3:00:41 – 3:03:39.

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example, must ALEC make its software available if it is not possible for the Staff to complete the investigation authorized by the Commission? As it currently stands, ALEC takes the position that it has no obligations unless and until the Staff obtains access to the relevant version of the Voter Gravity software.

* * * * *

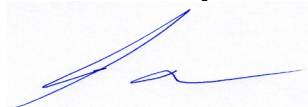
ALEC remains committed to resolving this matter as quickly and as efficiently as possible, but it seeks the above information and clarifications to mitigate the burden of responding to CMD's groundless Complaint. CMD has not alleged that any Maine legislator used ALEC CARE for any purpose whatsoever, let alone for impermissible campaign purposes. Moreover, the Complaint only alleges that Senator Stewart and Representative Harrington are members of ALEC, and there is no basis in the record to believe that any other legislators in Maine are members of ALEC. There is no evidence that—contrary to ALEC's express conditions and instructions regarding ALEC CARE's use—anyone ever misused the software for campaign purposes. On the other hand, however, the record is replete with evidence that ALEC took appropriate steps to ensure that ALEC CARE would be used as prescribed.

ALEC continues to maintain that there are not sufficient grounds to believe that a violation may have occurred, and the Complaint should be dismissed—just as the Commission unanimously voted to dismiss the Complaint as to Senator Stewart and Representative Harrington and just as the Ohio Election Commission dismissed an identical CMD complaint. ALEC bears a significant burden in responding to CMD's Complaint, in Maine as well as in at least ten other states, therefore it respectfully asks the Commission and Staff to provide further guidance and clarity regarding the investigation. This information will also be essential for any other provider of constituent management software in Maine, as they may soon face an investigation based on the grounds that they may have offered their software to an unnamed Maine legislator or candidate at a discount, even though there are no allegations that no one in the State used their software at any point.

Nothing in this response should be interpreted as a waiver of any assertion of privilege, objection, defense, or argument that ALEC may have. In fact, ALEC preserves all privileges, objections, defenses, and/or arguments that it may have.

ALEC thanks the Commission and its Staff for their time and consideration.

Sincerely,



Jason Torchinsky
Counsel to ALEC



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

November 17, 2021

By Email and Regular Mail

Jason Torchinsky, Esq.
Holtzman Vogel Josefiak PLLC
15405 John Marshall Hwy
Haymarket, VA 20169

Dear Mr. Torchinsky:

Thank you for your October 29, 2021 letter. As you are aware, at its September 29, 2021 meeting, the Maine Ethics Commission directed its staff to investigate whether the American Legislative Exchange Council (ALEC) made a contribution in excess of \$400 in violation of 21-A M.R.S. § 1015(2) by providing software to ALEC's members for the purpose of influencing their elections. The Commission limited the initial investigation to reviewing the software (ALEC CARE), its value, and its relationship to the Voter Gravity software.

The Commission is fully authorized to conduct this investigation. As part of our duty to administer Maine's campaign finance laws, the Commission is directed to investigate possible campaign finance violations under 1 M.R.S. § 1008(2) and 21-A M.R.S. § 1003. The Commission was presented with a request for investigation by the Center for Media and Democracy that included evidence that ALEC CARE contains features that could have value to legislative candidates in conducting their political campaigns. Maine campaign finance law defines contribution in 21-A M.R.S. § 1012(2)(A)(1) as a gift or subscription of money or anything of value made for the purpose of influencing the nomination or election of any person to state, county or municipal office.

At the September 29, 2021 meeting, the Commission considered the evidence and legal arguments offered by all parties. A majority of the Commission found that sufficient evidence had been received to warrant an investigation under 21-A M.R.S. § 1003. Although Sen. Stewart and Rep. Harrington stated that they did not use the software, other ALEC members in Maine who were running for office in 2020 could have used the ALEC CARE software.

The Commission staff remains hopeful that that ALEC will voluntarily cooperate with the Commission's investigation. Please be aware, however, that the Commission has extraterritorial subpoena authority under 21-A M.R.S. § 1003(1).

Jason Torchinsky, Esq.

Page 2

November 17, 2021

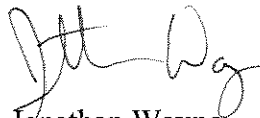
With respect to your questions of statutory interpretation, the Commission staff believes that, generally, providing candidates with access to a web-based software or voter data would *not* be covered by the exception to the contribution definition in 21-A M.R.S. § 1012(2)(B)(9). The language of that exception suggests it is limited to the use of offices and office equipment. Software and voter data are not equipment. The Commission has not issued any guidance as to whether the “purpose” element in the contribution definition (§ 1012(2)(A)(1)) refers the intention of the person providing a gift to a candidate or the purpose of the candidate in receiving the gift.

On page three of your October 29, 2021 letter, you asked whether the Commission’s investigation was motivated by a “desire to research these issues and subsequently promulgate an advisory opinion to Maine legislators and potential candidates.” The Commission staff is not aware of any intent by the Commission to issue an advisory opinion arising out of this matter.

At the present time, without an opportunity to review the ALEC CARE software, the Commission staff cannot answer questions concerning whether we would be attempting place an economic value on each feature of the software. Similarly, it is not possible for us to know at this juncture whether the Commission would need to engage any experts to judge the value of the software.

At this point in the investigation, we are seeking access to the ALEC CARE software to determine whether it would have value to candidates in their election campaigns, as alleged by the Center for Media and Democracy. Any informational requests to the owner(s) of Voter Gravity as a non-party witness would be made at a later time. *Please let me know by November 30, 2021 if ALEC will voluntarily participate in the Commission’s investigation as I outlined in my October 1 letter.* Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Jonathan Wayne".

Jonathan Wayne
Executive Director

Holtzman Vogel

HOLTZMAN VOGEL BARAN TORCHINSKY & JOSEFIAK PLLC

November 30, 2021

State of Maine Commission on Governmental Ethics and Election Practices
Attn: Jonathan Wayne
135 State House Station
Augusta, ME 04333-0135
Submitted via email to: Jonathan.Wayne@maine.gov
RE: ALEC's Response to the Commission Staff's October 1, 2021 Letter

Mr. Wayne,

Thank you for your November 17, 2021 letter ("Staff Response"). As we stated in our October 29, 2021 correspondence (the "ALEC Request"), the American Legislative Exchange Council ("ALEC") "remains committed to resolving this matter as quickly and as efficiently as possible, but it seeks . . . information and clarifications to mitigate the burden of responding to [the Center For Media and Democracy's] groundless Complaint."¹ In particular, ALEC sought additional guidance on the standard by which the Commission authorized an investigation, the scope of that investigation, and the feasibility of such an investigation.² While we appreciate the Staff Response, it did not address the majority of the questions and concerns raised in the ALEC Request.³ Consequently, without additional guidance from Commission Staff, ALEC is unable to respond to the Staff's request for access to the ALEC Constituent Analytics Research Exchange ("ALEC CARE") software.

ALEC respectfully asks the Staff to respond to each of the questions in the ALEC Request so that ALEC may formulate its own response. As demonstrated in the ALEC Request, there are fundamental issues concerning the Commission's jurisdiction and whether it has the authority to initiate an investigation in this matter, and the Staff Response has not addressed them. For example, the ALEC Request asked whether "the Commission ha[s] the authority and/or jurisdiction to initiate an investigation" when "there are no allegations or evidence in the record that any other legislator in the state of Maine is a member of ALEC"?⁴ The Staff Response, however, states that "[a] majority of the Commission found that sufficient evidence had been received to warrant an investigation" because "[a]lthough Sen. Stewart and Rep. Harrington stated that they did not use the software, *other ALEC members in Maine* who were running for office in 2020 *could have*

¹ ALEC Request at 6.

² *Id.* at 1.

³ ALEC is also concerned by the fact that the YouTube video of the Maine Commission on Governmental Ethics and Election Practices (the "Commission") September 29, 2021 Hearing was made private after we submitted the ALEC Request. *See* <https://www.youtube.com/watch?v=jzMwjf8uiN0>. That video was a primary source in the ALEC Request, so making it nonpublic while simultaneously ignoring ALEC's legitimate requests for information is deeply troubling.

⁴ ALEC Request at 2.

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used the ALEC CARE Software.”⁵ To reiterate, other than Senator Stewart and Representative Harrington, there is no allegation that any legislator in Maine is a member of ALEC. How can the allegation that ALEC may have made an impermissible contribution to a Maine legislator survive after the Commission dismissed the Complaint as to the only named Maine ALEC members? As it stands, the Commission initiated an investigation into a Virginia-based organization even though there are no longer any allegations that it has a presence in Maine.

The above example illustrates why ALEC cannot commit to voluntarily cooperate with the investigation, as there are genuine concerns about its legitimacy. ALEC bears a significant burden in responding to the Center for Media and Democracy’s Complaint, in Maine as well as in at least ten other states. Therefore, ALEC respectfully asks the Commission and Staff to provide further guidance and clarity regarding the investigation. Once these issues are addressed, and if the Commission has established its jurisdiction and authority in this matter, then ALEC will finally have sufficient information to be able to respond to the Staff’s October 1, 2021 letter.

* * * * *

ALEC continues to maintain that there are insufficient grounds to believe that a violation may have occurred, and the Complaint should be dismissed—just as the Commission unanimously voted to dismiss the Complaint as to Senator Stewart and Representative Harrington, and just as the Minnesota Campaign Finance Board, Ohio Election Commission, and Texas Ethics Commission dismissed identical CMD complaints.⁶

Nothing in this response should be interpreted as a waiver of any assertion of privilege, objection, defense, or argument that ALEC may have. In fact, ALEC preserves all privileges, objections, defenses, and/or arguments that it may have.

ALEC thanks the Commission and its Staff for their time and consideration.

Sincerely,



Jason Torchinsky
Counsel to ALEC

⁵ Staff Response at 1 (emphasis added).

⁶ Further details will be provided in forthcoming correspondence.



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

November 30, 2021

Nathaniel C. Ryun
Voter Gravity
104 North Bailey Lane, #200
Purcellville, Virginia 20132

Dear Mr. Ryun:

I am writing on behalf of the Maine Commission on Governmental Ethics and Election Practices, which is the campaign finance agency for the State of Maine. In July 2021, the Commission received a complaint alleging that the American Legislative Exchange Council violated state limits on contributions to legislative candidates by providing ALEC CARE software to its members. At a meeting on September 29, 2021, the Commission directed its staff to conduct an investigation.

This letter is to request an opportunity by the Commission staff to receive a demonstration of the Voter Gravity software by videoconference for purposes of comparing it to ALEC CARE and to interview you or an appropriate employee concerning the features and cost of Voter Gravity. Voter Gravity, Inc. is not alleged to have violated any law and is not the subject of the investigation.

Within two weeks, would you please let me know whether a demonstration and interview would be possible? My email address is Jonathan.Wayne@maine.gov. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink that reads 'Jonathan Wayne'.

Jonathan Wayne
Executive Director

cc: Voter Gravity, 121 E. Main Street, Purcellville, Virginia 20132
Voter Gravity, P.O. Box 1132, Purcellville, Virginia 20132
by email to sales@votergravity.com

votergavity

TURNING DATA INTO VOTES

Received

JAN 11 2022

Maine Ethics Commission

January 6, 2022

Mr. Jonathan Wayne
State of Maine
Commission on Governmental Ethics
and Election Practices
135 State House Station
Augusta, Maine 04333-0135

Dear Mr. Wayne:

I am in receipt of your correspondence dated November 30, 2021 requesting a demonstration of the Voter Gravity software and an interview concerning the features and cost of the product. I understand that Voter Gravity is not alleged to have violated any law and is not the subject of the investigation.

On the advice of counsel, I respectfully decline to participate as the Commission has no jurisdiction over proprietary software.

Thank you for an opportunity to respond to your request.

Sincerely,



Ned Ryun
CEO



Cover Sheet for Complaint Alleging Violation of Legislative Ethics

Instructions: Under 1 M.R.S.A. § 1013, any person may file a complaint alleging a violation of legislative ethics. The complaint must be filed in writing, signed under oath before a notary public, and must specify the facts of the alleged violation and the provisions of Sections 1014 and 1015 (attached) that are alleged to have been violated. A complaint that does not meet these criteria will be returned to the complainant. The complaint may be in the form of a letter or memorandum addressed to the Commission. Please attach your sworn complaint to this cover sheet and submit it to the attention of the Commission's executive director. The Commission may consider only complaints against Legislators in office at the time of the filing of the complaint and which relate to activity that occurred or was ongoing within 2 years of the complaint.

Party making the complaint: Center for Media and Democracy

Contact person: Arn Pearson

Contact's mailing address: Center for Media and Democracy
520 University Ave., Suite 305 Madison, WI 53703

Contact's e-mail address: arn@prwatch.com

Contact's telephone number(s): 608-260-9713 (o), 207-272-2886 (c)

Legislators named in complaint: Rep. Matthew Harrington and Sen. Harold "Trey" Stewart III

Brief summary of violation:
(include dates of activity) As a benefit of their membership in ALEC, ALEC gave, and Sen. Stewart and Rep. Harrington received, free sophisticated voter management and campaign software for the 2020 election cycle worth thousands of dollars, despite ALEC's status as a 501(c)(3) tax-exempt corporation barred from engaging in electoral activity under federal law and in violation of 21-A M.R.S.A. §§1004, 1015(2), and 1017.

Specific provisions of 1 M.R.S.A.
§§ 1014 or 1015 allegedly violated: §§1015(2)

Confidentiality Agreement

I agree not to disclose any information about the complaint during the time the Commission is determining whether to pursue the complaint and during the investigation of the complaint.

I understand that any person who knowingly breaches this confidentiality restriction has committed a Class D crime under 1 M.R.S.A. § 1013(3-A).


Signature of person making the complaint

7/26/21
Date

Unsworn falsification is a Class D crime. 17-A M.R.S.A. § 453.

The original written complaint which has been signed under oath must be submitted with this cover sheet.

**COMPLAINT FOR VIOLATION OF MAINE
CAMPAIGN FINANCE LAWS**

SUBMITTED BY THE CENTER FOR MEDIA AND DEMOCRACY

Introduction

The Center for Media and Democracy (CMD) hereby files a complaint based on information providing reason to believe the American Legislative Exchange Council (ALEC), ALEC state chair Rep. Matthew Harrington, and ALEC state chair and national board member Sen. Harold “Trey” Stewart III have violated Maine’s contribution limits, reporting requirements, and the Maine Clean Elections Act through the giving and receipt of illegal in-kind campaign contributions as follows:

1. As a benefit of their membership in ALEC, ALEC gave, and Sen. Stewart and Rep. Harrington received, free sophisticated voter management and campaign software for the 2020 election cycle worth thousands of dollars, despite ALEC’s status as a 501(c)(3) tax-exempt corporation barred from engaging in electoral activity under federal law and in violation of 21-A M.R.S.A. §§1015(2), 1017, and 1125.
2. CMD has only named ALEC and its state chairs in this complaint because ALEC keeps its membership list secret from the public. However, as the same violations of law potentially apply to all ALEC members, CMD respectfully requests that the Maine Commission on Governmental Ethics and Election Practices (Commission) initiate a broader investigation into the alleged violations with respect to all members of ALEC who ran for election in 2020 and require ALEC to provide it with a full membership list.
3. In addition to this complaint, CMD has filed an Internal Revenue Service (IRS) whistleblower action against ALEC for violating its 501(c)(3) status by illegally engaging in political activity by virtue of its provision of the voter management software, training, and support to hundreds of Republican legislators. Ex. 1.

Parties of Interest

4. ALEC is a national 501(c)(3) organization that brings legislators together with corporate lobbyists to develop and promote model legislation for passage in at least 47 states. In recruiting legislative members, ALEC describes itself as “one of America’s most dynamic public-private partnerships with nearly 300 corporate and private foundation members” who “work together to develop policies and programs.” Ex. 2.
5. Although ALEC claims to the IRS that it spends \$0 on lobbying, the Minnesota Campaign Finance and Public Disclosure Board found in 2015 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.” Ex. 3.
6. ALEC’s lobbying activities have been thoroughly documented in a 2012 IRS whistleblower complaint and three supplemental submissions by Common Cause and CMD. The filings and supporting documents can be found at <https://www.commoncause.org/resource/alec-whistleblower-complaint/>.
7. Sen. Trey Stewart and Rep. Matthew Harrington are ALEC’s current Maine public sector state chairs.
8. Sen. Stewart also serves on ALEC’s Board of Directors.
9. Voter Gravity is a for-profit company run by Ned Ryun, founder and president of American Majority, a right-wing candidate training operation, and American Majority Action, its voter mobilization affiliate. The organizations were the subject of an IRS complaint for excessive political activity and self-dealing filed by the Campaign for Accountability in July 2020. Ex. 4. American Majority Action holds an 84% ownership stake in Voter Gravity and shares the same P.O. Box address. Ex. 5. at p. 42. Voter Gravity’s website claims that it gives candidates everything they need to “turn [] data into votes.” Ex. 6.

Factual Background

10. Since at least 2016, ALEC has provided its dues-paying members with “ALEC CARE” (Constituent Analytics Research Exchange) software, training, and assistance as an exclusive

membership benefit. While ALEC describes CARE as a “constituent services” program, it is in fact a “voter contact platform” developed by the company Voter Gravity and linked to the Republican National Committee’s (RNC) voter database. *See* David Armiak and Arn Pearson, “ALEC Gives Lawmakers Free Data Program Run by Republican Operatives,” Center for Media and Democracy (Feb. 8, 2021), <https://www.exposedbycmd.org/2021/02/05/alec-gives-lawmakers-free-data-program-run-republican-operatives/> (also attached as Ex. 13).

11. In its ALEC CARE promotional materials, ALEC claims purchasing an equivalent service “typically costs legislators thousands of dollars.” Ex. 7. ALEC members pay dues of \$100 per year.
12. Voter Gravity’s pricing structure shows that non-ALEC members pay between \$99 and \$5,000 a month for the service depending on the size of the voter file provided. Ex. 8. This non-ALEC member pricing constitutes the fair market value of this service. Based on the size of their districts, Sen. Stewart and Rep. Harrington would have had to pay \$99 per month to purchase this service without ALEC CARE, for a total of \$2,376 each over the course of the 2020 election cycle.
13. Alternatively, in a recent email obtained by CMD. ALEC claims that the software would normally cost \$3,000, “but is a member benefit.” Ex. 9
14. While ALEC publicly emphasizes the “constituent research and engagement” benefits of the service, the voter database and management software provided by ALEC is clearly designed to help ALEC legislators win reelection. Voter Gravity explicitly markets the software as a “powerful” tool for political campaigns from “an approved mobile app vendor for the Republican National Committee and fully integrated with the RNC’s database.” Ex 8.
15. Voter Gravity’s website extensively extolls the electoral purpose of its software package, which is exactly the same suite that ALEC provides to its members as “CARE,” stating that, “Voter Gravity empowers campaigns to unleash their voter contact efforts, making your strategy bigger, faster, and more targeted than ever before.” Indeed, Voter Gravity’s “Demo”

page on its website is captioned “Ready to Win?” and comes preloaded with a box to check if you are a member of ALEC. Ex. 10.

16. In 2015, Voter Gravity issued a press release announcing its “full integration” with the RNC, which its CEO Need Ryun said would “allow any candidate or state party who chooses to use Voter Gravity on the front end to put data back in real time into the RNC.” The company’s head of operations stated that, “We believe that this is going to help Republican candidates win in 2016.” Ryun added that the program’s goal was to “fully leverage all of our data technology” in order “to outmaneuver the left philosophically and politically.” Ex. 11.
17. ALEC’s legislative membership is almost exclusively Republican, and all of the 82 state chairs listed on ALEC’s website, including Sen. Stewart and Rep. Harrington, are members of the Republican party.
18. ALEC claims to have more than 2,000 legislative members. Using ALEC’s stated value of \$3,000 per member for the ALEC CARE program, CMD estimates that ALEC made more than \$6 million in unreported and illegal in-kind campaign contributions across the country in the 2020 elections.
19. Information provided to CMD by a whistleblower shows that ALEC members using CARE have access to party affiliation, ideology, issue interest, income, education, religion, Tea Party support, voter history, precinct information, and “turnout score” data for voters in their districts, and services that they can use to create walking lists for door-knocking, set door-knocking and phone calling goals, track supporters, and create Election Day “strike lists” to maximize the turnout of their supporters. Ex. 12; *see also* Ex. 10 at p. 5.
20. ALEC provided free access to Voter Gravity’s voter management software through its ALEC CARE program to Sen. Stewart and Rep. Harrington as a benefit of their membership, but CMD does not possess sufficient information to determine if they used it for their campaigns.
21. Neither Sen. Stewart nor Rep. Harrington have reported ALEC’s in-kind contribution on their campaign finance reports.

22. Sen. Stewart participated in the Maine Clean Elections Act in 2020 and was therefore not permitted to accept campaign contributions of any kind from a corporation.

Applicable Law

23. Under Maine law, a campaign contribution is “A gift, subscription, loan, advance or deposit of money or *anything of value* made for the purpose of influencing the nomination or election of any person to state, county or municipal office...” 21-A M.R.S.A. §1012 (emphasis added)

24. During the 2020 election cycle, individuals and organizations were limited to contributing \$400 to a privately funded legislative candidate in any one election, for a total of \$800 per cycle to a candidate who ran in both the primary and general elections. 21-A M.R.S.A. §1015.

25. Making or accepting a contribution in violation of Maine campaign finance laws, or making a false statement on a campaign finance report, is a Class E crime. 21-A M.R.S.A. §1004.

26. Candidates must disclose all campaign contributions and expenditures under 21-A M.R.S.A. §1017.

27. Candidates who participate in the Maine Clean Election Act (MCEA) public financing program may not accept any private contributions once they qualify, and are not permitted to accept contributions from corporations at any time during their candidacy. 21-A M.R.S.A. §1125(2)

28. Participating candidates found to have accepted improper donations may be decertified, required to return all funds distributed to the campaign, and subjected to a civil penalty under 21-A M.R.S.A. §1127.

Violations of Law

29. By providing free RNC-linked Voter Gravity software through ALEC CARE to Rep. Harrington and Sen. Stewart, ALEC knowingly made an illegal in-kind campaign contribution worth between \$2,376 and \$3,000 (i.e., the fair market value of the service) to

each as an entity barred by federal law from engaging in political activity and in excess of Maine's contribution limits in violation of 21-A M.R.S.A. §1015(2).

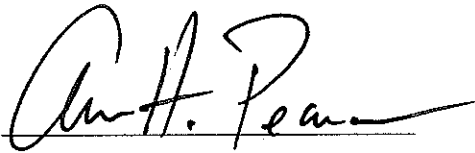
30. Provision of the voter management software to support election campaigns constitutes an illegal in-kind campaign contribution by ALEC whether or not ALEC members ultimately used it for their campaigns. ALEC's disclaimers and transparent repackaging of a powerful campaign tool as "constituent communications" do nothing to reduce its campaign value. The RNC-integrated software comes fully loaded with all campaign data and functions, and data entered by ALEC members get added to the RNC's database, thereby directly benefiting the Republican Party. ALEC's promotional pitch that, "With the opportunities afforded by CARE, our members can be ahead of their colleagues," is just coded language for what VoterGravity says to its users at its demo page: "Ready to win?" *See* Ex. 1 at p. 15-17; Ex. 10.
31. If Rep. Harrington used the Voter Gravity software provided by ALEC to support his campaign, he received an in-kind campaign contribution worth between \$2,376 and \$3,000 in excess of Maine's contribution limits and in violation of 21-A M.R.S.A. §1015(2).
32. If Sen. Stewart used the Voter Gravity software provided by ALEC to support his campaign, he received an in-kind campaign contribution worth between \$2,376 and \$3,000 as a Maine Clean Election Act candidate in violation of 21-A M.R.S. §1125(2).
33. If Sen. Stewart and Rep. Harrington used the Voter Gravity software provided by ALEC to support their campaigns, their failure to disclose it as an in-kind contribution on their campaign finance reports is a violation of 21-A M.R.S. §1017.

Action Requested

34. CMD respectfully requests that the Commission initiate an investigation into the above alleged violations of Maine campaign finance law by ALEC, Sen. Stewart, and Rep. Harrington, and impose the appropriate penalties for all violations of law found.
35. In light of the seriousness and scope of the alleged violations, CMD further requests that the Commission use its power of subpoena to obtain additional information, including:

- a. The full list of ALEC members in Maine who received free RNC-linked voter management software for their 2020 campaigns;
- b. Whether the RNC-linked voter management software was used by legislators or their staff on state time or in state offices; and
- c. The original funder or funders paying Voter Gravity to grant ALEC members the in-kind campaign contribution of free use of its voter management software.

Respectfully submitted,



Arn H. Pearson, Esq.
Executive Director
Center for Media and Democracy

Sworn to and subscribed before me this 23 day of July, 2021



Signature of Person Administering the Oath

Notary
Title of Person Administering the Oath

TERESA M. MCIRVIN
Notary Public, State of Maine
My Commission Expires JULY 1, 2027

Exhibit 1

**SUBMISSION TO THE
INTERNAL REVENUE SERVICE
UNDER THE TAX WHISTLEBLOWER ACT,
26 U.S.C. § 7623(b)**

**REGARDING IMPERMISSABLE ELECTORAL ACTIVITY
OF THE
AMERICAN LEGISLATIVE EXCHANGE COUNCIL
IN CONTRAVENTION OF 26 U.S.C. § 501(c)(3)
TAX-EXEMPT CHARITABLE STATUS**

July 20, 2021

**CONSTANTINE CANNON LLP
By: /s/ Eric Havian
Eric Havian
Max Voldman
150 California St.
Suite 1600
San Francisco, CA 94111**

Introduction

The Center for Media & Democracy (CMD) submits this Form 211 exposing the American Legislative Exchange Council's (ALEC) severe and repeated violations of the prohibition on political campaign intervention by a tax-exempt nonprofit organization, under 26 U.S.C. § 501(c)(3). As reflected in prior submissions to the IRS, ALEC has abused its non-profit status for many years. Common Cause has filed a separate Form 211 submission to the IRS in collaboration with CMD, detailing ALEC's extensive lobbying activity and its actions for the private inurement of its corporate sponsors in violation of its 501(c)(3) status.¹ Moreover, a 2015 ruling by Minnesota's Campaign Finance and Public Disclosure Board found 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."²

ALEC is highly selective in the candidates it assists and the lobbying it performs. The organization is dedicated exclusively to advancing the agenda of its corporate members and the Republican Party and helping to elect conservative candidates. This submission describes the latest of ALEC's partisan schemes that masquerade as charitable activities and reveals information never before made public.

Based on information provided by ALEC's legislative members and other documents obtained through its investigations and open records requests, CMD has obtained conclusive evidence that ALEC has been providing sophisticated voter management and campaign software, run by partisan political operatives and linked to the Republican National Committee's voter file,

¹ See Common Cause, *ALEC Whistleblower Complaint* (Oct. 1, 2016), <https://www.commoncause.org/resource/alec-whistleblower-complaint/> (providing Common Cause's original April 2012 submission to the IRS, as well as their supplemental submissions from July 2013, May 2015, and October 2016).

² See Exhibit 1, Minn. Campaign Fin. & Pub. Disclosure Bd., *Findings of Fact, Conclusions of Law, and Order in the Matter of the Complaint of Common Cause Minnesota Regarding the American Legislative Exchange Council* (Feb. 3, 2015), at 6.

to its legislative members since at least 2016 in continuing violation of its 501(c)(3) status. By ALEC's own admission, and other evidence provided below, these unreported in-kind campaign contributions to ALEC's 2,000-plus members, almost all of whom are Republicans, have a total value of more than \$6 million per election cycle.

As a registered tax-exempt organization under 26 U.S.C. § 501(c)(3), ALEC is forbidden from engaging in partisan political campaign activities. This prohibition is absolute: even *de minimis* interventions in political campaigns are prohibited under penalty of fines, sanctions, and revocation of nonprofit status. Yet since at least 2016, ALEC has provided valuable campaign assistance to its legislative members in the form of free, sophisticated voter management software and voter data, constituting an illegal and unreported in-kind campaign contribution.

The information in this submission is based upon two primary sources. First, CMD has conducted its own exhaustive investigation of ALEC's activities, resulting in extensive evidence that demonstrates ALEC's repeated violations of the tax laws. Second, as stated above, CMD has received confidential assistance from a current legislative member of ALEC ("Legislator"), a classic "insider" who wishes to remain anonymous. This unprecedented look inside ALEC's highly secretive operations provides irrefutable evidence of ALEC's longstanding unlawful electoral assistance provided to the overwhelmingly Republican legislative members of ALEC.

Pursuant to 26 U.S.C. § 7623 *et seq.* (the "Tax Whistleblower Act"), this Memorandum and accompanying Form 211 comprise CMD's submission to the Internal Revenue Service detailing ALEC's violations. CMD is also filing campaign finance complaints with the appropriate oversight agencies in 15 states.

I. Factual Summary

Legislator is a state legislator, candidate for public office, and dues-paying member of ALEC. As a “membership benefit,” Legislator has been provided by ALEC with an expensive and sophisticated voter management software suite, called “Constituent Analytics and Research Exchange,” or ALEC CARE.

According to ALEC staff, who advertise CARE as an inducement for renewing membership in ALEC, the CARE software is a tool for constituent service: “[Y]our ALEC Membership comes with access to technology such as . . . **ALEC CARE**, the exclusive CRM [Constituent Relationship Management] tool for members,” one email, from ALEC’s legislative outreach coordinator to a GOP member of the Texas Statehouse, said (emphasis in original). “This program, developed by VoterGravity, typically costs legislators thousands of dollars.”³ Indeed, the value of the CARE software and voter database exceed the \$100 annual dues charged to ALEC’s legislative members by many orders of magnitude.⁴

Upon further examination, however, Legislator realized that ALEC CARE was not like any other CRM software he had seen before. And while the CARE login page states that the tool cannot be used for political campaigns,⁵ many of its features can have no other plausible use. The software came preloaded with individual-level *voting* information, including voter history and political party ideology; views on “hot button” electoral issues like taxation and gun control; income and donor status; metrics like “Turnout Score” and Republican National Committee (RNC)

³ See Exhibit 2, E-mail from Hunter Hamberlin to Ben Leman, *ALEC Membership Renewal 2020* (Sept. 24, 2020).

⁴ See Exhibit 3, E-mail from Will Davies to Sine Kerr, Russell Smoldon & T.J. Shope, *ALEC State Chair Follow Up* (Jan. 7, 2021).

⁵ See Exhibit 4, Screenshots of training video by American Legislative Exchange Council (ALEC), *What is ALEC CARE?*, YOUTUBE (Sept. 14, 2020), available at <https://www.youtube.com/watch?v=sbOpHimIm0s>, at 1 (referring to 0:11).

voter identification numbers;⁶ and numerous other data points exceedingly helpful for a re-election campaign but largely irrelevant to “constituent service.”⁷ Moreover, Legislator noted that CARE’s analytical and dashboard tools were also primarily campaign related and not particularly useful for constituent service, tracking elements like “Identified Supporters,” “Door Knocks,” “Walklist Stats,” and “Phone Bank Stats.”⁸

Understanding that as a legislator this sort of political information was subject to strict regulation, Legislator felt compelled to speak up regarding ALEC’s brazen electioneering. He informed CMD that legislators are not permitted to access this type of electoral software or voter data on state-run computers.

Legislator’s information confirmed other intelligence CMD had obtained from ALEC insider notes, documents, promotional materials, meetings, and correspondence regarding CARE. These insider materials, discussed in greater detail below, along with additional analysis and information acquired by CMD, form the basis of this Submission.

A. ALEC’s CARE software donation goes far beyond “sharing research and educational info.”

ALEC claims to the IRS on its Forms 990 that its mission and most significant activities are to “Assist State Legislators, Congress & the public by sharing research and educational info.”⁹ This submission demonstrates ALEC’s representation to be undeniably false and fraudulent. CMD provides detailed evidence that ALEC has belied its stated mission and violated its tax status:

⁶ Voter identification numbers are used by political organizations, such as national political committees, to identify and track voters, often as part of their voter files. For more information on the contents and purpose of voter files, see generally Drew Desilver, *Q&A: The growing use of ‘voter files’ in studying the U.S. electorate*, PEW RESEARCH CENTER (Feb. 15, 2018), <https://www.pewresearch.org/fact-tank/2018/02/15/voter-files-study-qa/>.

⁷ See Exhibit 5, Screenshots of ALEC CARE software by Legislator under his own login (redacted), at 1-4, 10-12.

⁸ See *id.* at 7-9.

⁹ See, e.g., American Legislative Exchange Council, *Return of Organization Exempt from Income Tax (Form 990)*, available at <https://projects.propublica.org/nonprofits/organizations/520140979> (signed Nov. 7, 2019).

ALEC has been providing services that benefit the political campaigns and fortunes of its legislative members since at least 2016, when it began testing the CARE software platform.¹⁰

An ALEC internal promotional document from that election year touts CARE as a “game-changing tool for legislators” to “gather and store information for targeted, insightful, and immediate reporting on constituent attitudes and policy positions.”¹¹ It also noted that a full rollout would follow in 2017, with CARE being “offered to all ALEC member legislators as a member benefit.” Moreover, ALEC’s partisan assistance is multi-layered. In addition to providing its legislative members with electioneering software, it has used the CARE platform to contribute in-kind voter data and information directly to the Republican National Committee.¹²

ALEC claims that the CARE platform is intended for “constituent management.”¹³ Yet CMD’s analysis reveals that CARE has, from its inception, been (1) conceived, (2) built, (3) promoted, and (4) distributed for an entirely different purpose: benefitting the political campaigns of ALEC’s 2,000-plus legislative members and using their input of private voter information to augment the RNC’s voter file.

1. *The roots of ALEC CARE: software developed from the outset by Ned Ryun and VoterGravity to facilitate electioneering for conservative Republican candidates.*

The proprietary software behind ALEC CARE, called VoterGravity, was designed as a highly partisan tool from the beginning. It was conceived by Ned Ryun, conservative political operative, activist, and founder of the “campaign operative training group” American Majority,¹⁴ with the explicit goal of creating a political campaign technology to “outmaneuver the left

¹⁰ See Exhibit 6, ALEC promotional flyer, *ALEC Constituent Analytics and Research Exchange (CARE)* (no date).

¹¹ *Id.*

¹² See Section I.B, *infra* 18-19.

¹³ See Screenshots of ALEC training video, *supra* note 5, at 1; see generally Hunter Hamberlin e-mail, *supra* note 3 (“ALEC CARE . . . allows you to keep track of constituent research and engagement”).

¹⁴ See Warner T. Huston, *CPAC 2015 Digital Action: Conservatives Have Fallen Behind in Campaign Tech*, BREITBART NEWS NETWORK (Feb. 27, 2015), <https://www.breitbart.com/politics/2015/02/27/cpac-2015-digital-action-conservatives-have-fallen-behind-in-campaign-tech>.

philosophically and politically . . . leverag[ing] all of our data technology for the center Right.”¹⁵

The software, rebranded by ALEC as “CARE,” was originally intended to be distributed in conjunction with American Majority—Ned Ryun’s conservative political operative and activist training group. Before the VoterGravity company and software took shape in 2012, it was called just “Gravity,” developed by a company called Political Gravity (formerly at www.politicalgravity.com).¹⁶ According to an article in *The Hill* from April 2012, the Ryun brothers were directly involved in the software’s original development: “[Drew] Ryun is working with his brother Ned, founder and president of American Majority, an affiliated educational organization. . . . American Majority Action developed the software in partnership with Political Gravity, a technology firm.”¹⁷ At the time, the software was targeted at empowering Tea Party activists:

American Majority Action, a rising force among the conservative grass roots, has made a nearly \$1 million investment in technology to put Tea Party activists on even footing with President Obama’s election campaign. . . . The leadership at American Majority Action wants conservative candidates to do a better job of reaching independent voters likely to support them. . . . Its solution is **Gravity**, campaign management software that allows field directors to organize volunteers in real time through smartphones.

“**Gravity** will rocket conservatives past the high-tech approaches of the DNC and other progressive political groups,” said Drew Ryun, president of American Majority Action. “This is the fusion of old-school grassroots tactics with the state-of-the-art technology. In recent years, conservatives have been out-gunned by their more liberal counterparts in utilizing technology as a means of promoting their message and mobilizing voters” (emphasis added).¹⁸

¹⁵ See Press Release by Ned Ryun, *Voter Gravity Announces Integration with the RNC Database*, VOTER GRAVITY NEWS/BLOG (Aug. 25, 2015), <https://votergravity.com/integration-with-rnc-database>.

¹⁶ See Exhibit 7, LinkedIn page of William Hogsett (screen print), available at <https://www.linkedin.com/in/williamhogsett> (taken July 14, 2021), at 2 (indicating by Hogsett, the former CEO of Political Gravity, that “Political Gravity [is] Now VoterGravity.com”). See also Alexander Bolton, *Conservative group makes \$1M high-tech investment to help Tea Party*, THE HILL (Apr. 12, 2012), <https://thehill.com/policy/technology/221151-conservative-group-makes-1m-high-tech-investment-to-help-tea-party-groups>.

¹⁷ See Bolton, *supra* note 16.

¹⁸ *Id.*

According to *The Hill*, “Their [the Ryun brothers’] plan [was] to distribute the software for free to local Tea Party groups, which often have plenty of motivation but little funding.”

In fact, the partnership with American Majority Action was originally thought to be critical to Gravity’s widespread adoption and success. According to a joint press release between the two organizations from July 2011, “The American Majority Action partnership adds **national distribution and a training vehicle** to get this technology in the hands of the people who can impact elections” (emphasis added).¹⁹ In order to facilitate Gravity’s dissemination, and echoing the software’s later evolution into CARE, Political Gravity’s then CEO William Hogsett noted that, “We have also built a version of our toolbox that is **available at no cost to conservative grassroots groups**” (emphasis added).²⁰

This partnership for development and distribution eventually precipitated a wholesale change in ownership. In December 2012, just after the 2012 elections, Hogsett sold Political Gravity to Ned Ryun, who re-branded the company to VoterGravity as its new “Founder and CEO.”²¹ From this point on, VoterGravity has described itself as “the first integrated database platform on the center-right”; a “Voter Canvassing [tool] for Republican Operatives”; and, following a 2014 state senate race in Indiana, an indispensable program for unseating incumbent Democrats in “large, or small, size campaigns.”²²

¹⁹ See Press Release by Political Gravity and American Majority Action, *Political Gravity and American Majority Action Form Powerful Partnership to Effect Political Change* (July 26, 2011), republished on Scribd by TEA_Party_Rockwall at <https://www.scribd.com/document/61051661/American-Majority-and-Political-Gravity-Partnership-Announcement>, at 1.

²⁰ *Id.*

²¹ See Exhibit 8, LinkedIn page of Ned Ryun (screen print), available at <https://www.linkedin.com/in/nedryun> (taken July 14, 2021), at 1 (indicating that Ryun started as “Founder and CEO” of Voter Gravity in November 2012, with no mention of Political Gravity); see also William Hogsett LinkedIn, *supra* note 16, at 2 (indicating that “Political Gravity (Now VoterGravity.com)” was sold on December 21, 2012).

²² See Exhibit 9, Screenshots of Voter Gravity website, available generally at <https://votergravity.com> (taken July 14, 2021), at 1-3.

After founding the new corporation, Ryun quickly began making good on VoterGravity’s grand ambitions. Within a few years, he closed a \$2 million round in new capital funding,²³ added to its board senior Republican leader Matt Schlapp,²⁴ and launched a “2.0” version of its software for a “bigger, faster, and more targeted voter contact effort.”²⁵

In 2015, Ryun hosted several sessions at the Conservative Political Action Conference (CPAC), an annual meeting of officials, activists, legislators, and political operatives.²⁶ Among Ryun’s presentations was a session entitled “Back to the Future: Catching up on Political Technology,” for attendees of the conference’s “Operatives in Training—Candidate, Campaign Manager & Campaign Operative Track.”²⁷ According to a subsequent profile in Breitbart News Network, Ryun warned during this session that “the center right is woefully behind the curve in campaign technology, and if things don’t change, it will seriously hamper the electoral future of conservatives and Republicans both.”²⁸ Ryun then proceeded to introduce VoterGravity as his “new campaign data system,” which Breitbart noted at the time was “devised with the backing of the Koch brothers.”

But Ryun’s biggest win, by far, was securing a colossal distributional partner in ALEC. Previously, Gravity’s top institutional clients had been American Majority Action, FreedomWorks, the Republican Governor’s Association, and the (now-defunct) Scott Walker

²³ See Byron Tau, *GOP data firm adds big name*, POLITICO (Dec. 4, 2013), <https://www.politico.com/story/2013/12/voter-gravity-matt-schlapp-100644> (“A new Republican technology firm has raised \$2 million in new capital and is adding a veteran political hand to its board”).

²⁴ See *id.* Politico describes Schlapp as “the former White House political director under President George W. Bush[.]. . . Schlapp was previously involved in fundraising for the Republican National Committee’s abandoned Data Trust project — which sought to outsource the committee’s voter file to a private company . . . [and] previously worked as vice president of federal affairs at Koch Industries.”

²⁵ See Allen Fuller, *Voter Gravity 2.0 arms campaigns with the power to turn data into votes*, VOTER GRAVITY NEWS/BLOG (June 26, 2013), <https://votergravity.com/voter-gravity-2-0-arms-campaigns-with-the-power-to-turn-data-into-votes>.

²⁶ See Exhibit 10, Agenda, CPAC “Pre-Game”: *Operatives in Training—Candidate, Campaign Manager & Campaign Operative Track* (Feb. 27, 2015).

²⁷ See *id.*; see also Huston, *supra* note 14.

²⁸ Huston, *supra* note 14.

Defense Fund;²⁹ ALEC, meanwhile, boasted higher annual revenues than these organizations *combined*.³⁰ Sometime around his noted 2015 CPAC “Operatives in Training” presentation, Ryun struck an agreement with ALEC to distribute VoterGravity’s voter management software across its entire 2,000-plus member Republican legislator base, and ALEC CARE was born.

That same year, VoterGravity announced another major win for the company: direct data integration into the Republican National Committee voter database. “We’re excited about these API integrations [connecting two otherwise separate databases via software],” Ryun said in a press release, which “will allow any candidate . . . to put data back in real time into the RNC.”³¹ API is the acronym for Application Programming Interface, which is a software intermediary that allows two applications to talk to each other. Ryun’s head of operations Chris Littleton added candidly, “We believe that this is going to help more Republican candidates win in 2016.”

Throughout this period, Ryun continued to pursue a grand vision and aspirations for VoterGravity as a “campaign technology” company. “Our ultimate goal,” Ryun explained, “is to outmaneuver the left philosophically and politically. And the best way to accomplish this is to fully leverage all of our data technology for the center Right, while always keeping true to our strongly held beliefs.”³² At the time of its integration with the RNC, VoterGravity already offered an impressive suite of political campaign tools, including mobile deployment, phone systems,

²⁹ These were the clients featured on ex-CEO Hogsett’s LinkedIn page. *See* William Hogsett LinkedIn, *supra* note 16, at 2 (“Gravity clients include(d) Ted Cruz, American Majority Action, FreedomWorks, Republican Governors Association, Scott Walker Defense Fund and a multitude of Federal, State and local political candidates”).

³⁰ *See generally* Total Revenue (line 12), *Return[s] of Organization[s] Exempt from Income Tax (Form[s] 990)*, available at <https://projects.propublica.org/nonprofits/organizations/520140979> (pertaining to tax years 2015-18).

³¹ *See* Ryun press release, *supra* note 15.

³² *Id.*

touchstone surveys, Esri-based mapping, and walk-list cutting³³—with more features promised.³⁴

Today, the software’s additional features include voter-level information preloaded directly from the RNC voter file;³⁵ donor, voter, and volunteer management functionality; door knocking and mobile canvassing tools; and a “Campaign Intelligence Dashboard” to “Track and manage your campaign.”³⁶

2. Despite efforts to conceal the connection, ALEC simply rebranded the VoterGravity software as CARE for its own dissemination and use.

ALEC credits the CARE software as being “developed by VoterGravity,”³⁷ but the true relationship between CARE and VoterGravity is actually more simple: ALEC CARE is VoterGravity, simply re-branded or “white labeled” as a separate (ostensibly non-electoral) product.

According to the “About Us” page of an archived, now-defunct version of VoterGravity’s website from 2017, “Gravity CRM and ALEC CARE” are *jointly* a “Solution for ALEC Members”; the two are listed side-by-side as being the *same tool*, “[o]ffered as an ALEC membership benefit.”³⁸ On Gravity CRM’s erstwhile homepage, meanwhile, the “Sign-Up” and “About Us” buttons under “ALEC CARE” and “Gravity CRM” contain the exact same links³⁹—

³³ Esri is a widely used supplier of geographic information system (GIS) software for location-based analysis. *See generally* Esri, <https://www.esri.com/en-us/home>. A walk list is a (sometimes computer generated) sequence of potential voters to door-to-door in an efficient manner as part of political campaign efforts. *See, e.g.,* Dan Gookin, *How to Create Voter Lists for Your Political Campaign*, DUMMIES: A WILEY BRAND, <https://www.dummies.com/education/politics-government/how-to-create-voter-lists-for-your-political-campaign> (last visited July 19, 2021).

³⁴ *See* Exhibit 11, Voter Gravity promotional document, *We Turn Data into Votes—We Engineer Victory: VoterGravity Features* (no date) [hereinafter “VoterGravity Features PDF”].

³⁵ *See supra* note 24.

³⁶ *See* VoterGravity Features PDF, *supra* note 34.

³⁷ *See, e.g.,* Hunter Hamberlin e-mail, *supra* note 3

(“This program [CARE], developed by VoterGravity, typically costs legislators thousands of dollars”).

³⁸ *See* Exhibit 12, Archived versions and screenshots of Gravity CRM website, *Gravity CRM and ALEC CARE* (archived Sept. 11, 2017), at 1. Today, VoterGravity’s website is available at <https://votergravity.com>, while versions of its former website, www.gravitycrm.org, are still available for various dates at <https://web.archive.org>. *See, e.g.,* <http://web.archive.org/web/20170911121057/http://www.gravitycrm.org/about-us> (archiving Gravity CRM’s “About Us” page on Sept. 11, 2017).

³⁹ *Id.* at 3-5 (archived July 14, 2017).

with the Sign-Up button leading to a description of how CARE is an ALEC benefit “powered by Gravity CRM.”⁴⁰

Apparently realizing its tax law exposure, ALEC tried to erase these connections with VoterGravity. Sometime between 2017 and 2020, archived versions of Gravity CRM’s website cease to function, indicating that the above cited content was removed.⁴¹ On ALEC’s own website, however, there are still traces of the former branding. One page describes an “ALEC CARE Training,” urging “ALEC Legislators [to] . . . Come see how ALEC CARE can benefit you.”⁴² Underneath that description is a link to “sign up today at www.gravitycrm.org.”

Meanwhile, in 2018, the VoterGravity Client Relations Specialist responsible for servicing ALEC left VoterGravity to join ALEC directly. Aaron Gillham, previously the “Campaign Hacks” author for VoterGravity’s blog,⁴³ started at ALEC as a “C.A.R.E. Associate” in March 2018 according to that month’s ALEC State Chair Call Minutes.⁴⁴ Gillham’s LinkedIn page describes his role at ALEC as “Spearheading the full implementation of the [CARE] platform as a member benefit within ALEC,” among others tasks, and his job at VoterGravity as “providing the onboarding for all new clients” and “turn[ing] data into votes” at “the premier platform for Center-Right, voter contact tools.”⁴⁵

3. *The features of ALEC CARE are largely irrelevant to “constituent management” but highly effective as electioneering tools.*

⁴⁰ *Id.* at 6 (archived June 4, 2017).

⁴¹ The websites and web archives display, as is still the case today with “gravitycrm.org,” pages which are active (that is, the domain can be accessed) but which show a permanent “loading” screen. *Id.* at 7 (taken July 13, 2021); see also Later archived versions at <https://web.archive.org>, *supra* note 38.

⁴² See Exhibit 13, Screenshot of ALEC website, *ALEC CARE Training*, available at <https://www.alec.org/meeting-session/alec-care-training> (advertising an event on May 4, 2017).

⁴³ See, e.g., Aaron Gillham, *Campaign Hack: Creating a Better Target Audience*, VOTER GRAVITY BLOG (Jan. 6, 2016), <https://votergravity.com/campaign-hack-target-audience>.

⁴⁴ See Exhibit 14, Email from Wes Fisher to Wes Fisher, *March ALEC State Chair Call Minutes* (Apr. 2, 2018), at 1 (Introducing Gillham as “the newest staff member leading the charge on ALEC CARE . . . working in every state”).

⁴⁵ See Exhibit 15, LinkedIn page of Aaron G. (screen print), available at <https://www.linkedin.com/in/aarongillham> (taken July 14, 2021), at 2-3.

As discussed above, the Republican-leaning, campaign-focused nature of ALEC CARE has been sanitized and is no longer prominently advertised: there is little mention of ALEC on VoterGravity’s current website, nor much the other way. Indeed, ALEC is careful to brand CARE today as a “Constituent Relationship Management (CRM)” tool, as opposed to a political campaign platform.⁴⁶ But the partisan and political nature of CARE is still manifest in the software’s interface, features, functionality, and design.

As discussed above, the graphical user interface of ALEC CARE is exactly the same as that of VoterGravity, besides the “VoterGravity” banner topping the web page.⁴⁷ Comparing in-depth screenshots of Legislator’s CARE account to VoterGravity’s public website and promotional materials, CMD notes that the boxes, dials, buttons, and visual elements are identical between the two—including the red-and-white color scheme.⁴⁸ (ALEC’s typical colors resemble a cobalt blue,⁴⁹ but this aspect of the software was apparently not re-branded.) On VoterGravity’s website, next to “technology will completely change politics over the next few elections” and “[w]e place powerful data . . . into the hands of political campaigns . . . on the center-right,” are images of “Support Goal” (check mark), “Surveys Goal” (doc icon); “Doors Knocked Goal” (house icon); and “Phones Called Goal” (handset icon).⁵⁰ These same Goals and icons are also featured in ALEC’s “What is ALEC CARE” introductory video posted to its YouTube channel.⁵¹

But CARE’s purpose as a political campaign software goes beyond its associations with

⁴⁶ See, e.g., Exhibit 16, Agenda of 45th ALEC Annual Meeting, *Louisiana: Welcome to the ALEC Annual Meeting* (Aug. 8, 2018), at 3-7 (“As one of the benefits of your ALEC membership, ALEC CARE is an internet-based, one-stop shop for Constituent Relationship Management (CRM) for lawmakers”) [hereinafter “ALEC annual meeting agenda”]; Hunter Hamberlin email, *supra* note 3.

⁴⁷ CARE is an internet-based tool that does not require downloading or installing a separate application. See *id.*

⁴⁸ Compare Screenshots of ALEC CARE, *supra* note 7, at 7, with Screenshots of Voter Gravity website, *supra* note 22, at 1.

⁴⁹ See, e.g., Screenshot of ALEC website, *supra* note 7.

⁵⁰ See Screenshots of Voter Gravity website, *supra* note 22, at 1.

⁵¹ Compare Screenshots of ALEC CARE, *supra* note 7, at 1-4, 7 & 10-12, with Screenshots of ALEC training video, *supra* note 5, at 2-4 (referring to 0:35, 0:38, & 0:40).

VoterGravity—the very metrics and data fields CARE is built to track suggest a partisan and political use. Screenshots of CARE provided by Legislator show various examples of individual-level “Voter Profiles.”⁵² Another ALEC legislator who attended a live CARE training session reported that according to the trainer, these “voter information and history” pages for a given legislator’s constituents are pre-populated directly from the RNC’s voter file, confirming claims made by VoterGravity.⁵³ Not surprisingly, many of the fields are thus highly electoral and partisan in nature, including:

- Political Ideology and Party Status with a partisan slant, including “Inferred Republican” and “Tea Party Supporter”
- Income and Donor Status
- “Election Details” (voting history), by election, down to primary vs. general elections
- Interest in partisan conservative issues, including “Tax Issues,” “Second Amendment Supporter,” etc.
- Turnout Score, Aristotle ID, and RNC ID
- Other election-related parameters, such as “Persuadable Voter”⁵⁴

ALEC CARE also allows for filtering of constituents by RNC ID and Aristotle ID,⁵⁵ although the software does not provide any equivalent filtering functionality for Democratic or third-party attributes as far as Legislator and CMD can tell. In fact, while CARE even contains built-in API integrations for RNC Access (with an “Access Token”) and Anedot⁵⁶—the noted favorite electronic donation platform of Never-Trump Republicans like the Lincoln Project⁵⁷—

⁵² See Screenshots of ALEC CARE, *supra* note 7, at 1-4 & 10-12.

⁵³ See, e.g., Ryun press release, *supra* note 15.

⁵⁴ See Screenshots of ALEC CARE, *supra* note 7, at 1-4 & 10-12.

⁵⁵ See *id.* at 5.

⁵⁶ See *id.* at 6.

⁵⁷ See, e.g., Michael Graham, *In Fundraising Fight, Anti-Trump Republicans Embrace Anedot Software*, INSIDE SOURCES (May 29, 2020), <https://insidesources.com/in-fundraising-fight-anti-trump-republicans-embrace-anedot-software>.

there are no known integrations to any Democratic or third-party platforms or software as of this submission.

Despite ALEC’s re-branding of CARE as a constituent relationship platform, its purpose and provenance are clear. CARE started as, and still is, VoterGravity: a conservative-focused campaign management software package founded and funded by highly partisan Republican operatives and allies. As VoterGravity asks on its “Ready to win?” demo page, “Are you a member of the American Legislative Exchange Council?”⁵⁸ The implication being apparent that, if you are an ALEC member, you presumably already have access to their product—a product designed to help you win your election.

4. *ALEC promotes the CARE software as a “fundamental game changer” for Republican campaigns, not as a constituent management tool.*

Not only are the features of CARE plainly tailored to electioneering, but such a purpose is also how ALEC touts the software, at least in unguarded moments and private venues. According to notes obtained by CMD from an anonymous source, ALEC’s leaders were uncharacteristically blunt about their partisan objectives for rolling out CARE during an ALEC internal meeting in 2016. At that meeting, ALEC CEO Lisa Nelson declared (in reference to constituent analytics), “[W]hen you get into a campaign, you can take it one step further,” and CMO Bill Meierling called CARE a “fundamental game changer.” Later, the ALEC executives laid out a tantalizing and highly partisan vision for the program:

[A] federal Senate campaign doing statewide polling only needs 600 to 700 respondents . . . imagine if we could do that for all ALEC members in every state, and imagine if *you* were at the vanguard of that. ALEC serves as the backbone . . . Each member provided with a tool, in this case **Gravity CRM, from VoterGravity** . . . Having fundraisers . . . and using Gravity to integrate . . . 6 tools integrated into a back end . . . Analyze with ALEC staff assistance . . . **Individual and small group meetings with Voter Gravity team, as a member benefit** . . . Hope to routinize as a major ALEC function

⁵⁸ See Screenshots of Voter Gravity website, *supra* note 22, at 4.

. . . Part of a long-term transition of ALEC; **not only a model policy creating org, but “trusted convenor”** (emphasis added).⁵⁹

ALEC’s pivot from legislative idea exchange, as claimed on its Form 990, to “trusted convenor” for partisan political gain, violates its status as a 501(c)(3) nonprofit.

Since CARE’s rollout in 2017, ALEC has provided multiple training sessions for the “member benefit” at each of its annual meetings.⁶⁰ Although the CARE login page forbids use for “campaign related purpose[s]”⁶¹ and CARE’s promotion has reframed its electoral and campaign elements as “constituent management,”⁶² this is mere window dressing belied by the facts.

In addition to the previously described links to VoterGravity, CARE’s dissemination has also featured more direct references to electioneering. For example, in the introductory video on ALEC’s YouTube page from September 2020, the narrator introduces the CARE platform while Aaron Gillham’s email address appears; soon, viewers are told about features such as text messaging, touchtone polling, and “geomapped walklists,” while elements like “Voter Data,” “Door Knocks,” and “Turnout Score,” scroll by.⁶³ Yet a legislator doing constituent service would hardly need information like voting history or turnout score, which are core electoral elements.

ALEC even displays in its CARE training video a “Strikelists” feature, designed to mark people who have voted; this, as Ned Ryun himself explained on a VoterGravity blog post, is for “Maximizing GOTV [Get Out the Vote]” of the user’s supporters:

In order to make sure your identified supporters vote, you can use our **Voter Gravity Mobile Strike List feature** to mark down people who have voted. Do this on your phone at every polling location on election day, instantly sending the information to your campaign. This enables the campaign to contact any supporters which haven’t yet voted and track strike

⁵⁹ See Exhibit 17, Notes from a 2016 ALEC internal meeting about CARE provided to CMD by an anonymous source.

⁶⁰ See, e.g., ALEC annual meeting agenda, *supra* note 46.

⁶¹ See Screenshots of ALEC training video, *supra* note 5, at 1.

⁶² See *id.*

⁶³ See Screenshots of ALEC training video, *supra* note 5, at 2-4.

list progress as it happens.

How do you do this? Simply create a target list of voters, assign the targeted voters to volunteers by precinct and make sure they select who has voted on their Voter Gravity app as lists of voters become available at each polling location.

As your campaign strikes voters off the list of those who should be voting, add those who still need to vote to phone and contact lists and give them friendly reminders.

Don't waste your hard work. Give your campaign the best chance to make sure every identified supporter and target voter makes it to the polls. (emphasis added)⁶⁴

If ALEC were genuinely aiming to ensure that CARE would not be used for “any campaign related purpose,” then there would be no reason for distinctly election-minded features like Turnout Score and “Strikelists” to be promoted through the platform.⁶⁵

5. *A \$3,000 campaign contribution, from ALEC to its member candidates.*

ALEC's provision of the CARE software suite free of charge to its legislative members cements its violation of the political campaign prohibition, and its approach to distributing CARE to its overwhelmingly Republican members is as brazenly partisan as the software's design.

ALEC openly touts to its members that CARE is a highly valuable benefit provided free of charge. In internal emails obtained by CMD, ALEC's Member Engagement Manager Will Davies and Legislative Outreach Coordinator Hunter Hamberlin share the following three facts:

- ALEC CARE is developed by VoterGravity⁶⁶
- The CARE “software would cost \$3,000 if bought by a member”⁶⁷

⁶⁴ See Ned Ryun, *Maximizing GOTV*, VOTER GRAVITY BLOG (Oct. 29, 2014), <https://votergravity.com/maximizing-gotv>.

⁶⁵ While *non-partisan* Get-Out-the-Vote activity can lawfully be provided by a 501(c)(3) organization, ALEC's CARE tool is provided exclusively to ALEC's legislative members, who are overwhelmingly (perhaps exclusively) Republican and/or politically conservative, and the specific features of the software are clearly designed with partisan goals in mind. This partisan bias makes the behavior a prohibited political campaign intervention.

⁶⁶ See Hunter Hamberlin e-mail, *supra* note 3.

⁶⁷ See Will Davies e-mail, *supra* note 4.

- It is provided completely free of charge to its legislative members, who pay just \$100 per year to renew their membership in ALEC⁶⁸

ALEC's internal valuation of the CARE software package tracks the software subscription price advertised by VoterGravity. The company's promotion sheet, boasting the bold title "We Turn Data into Votes—We Engineer Victory," contains a pricelist based on the number of voters in the subscriber's electoral district.⁶⁹ For most state legislative districts, the price is \$99 per month, which works out to \$2,376 for a two-year election cycle. VoterGravity subscriptions for larger state House races are \$240 per month, and \$558 per month for larger state Senate races. That means for some ALEC members, the true market value of CARE may be up to \$13,392 per election cycle. The pricelist tops out at \$5,000 per month for statewide candidates with above 10 million voters.

Using ALEC's own \$3,000 valuation—and given that ALEC boasts more than 2,000 legislative members—the value of ALEC's illegal in-kind campaign contributions is approximately \$6 million annually.

Despite ALEC's careful packaging, the free CARE tool constitutes a naked in-kind campaign contribution, designed specifically to advance partisan Republican interests and provided almost exclusively to Republican legislators. It also represents the audacious go-to-market of Ned Ryun's conservative data operation, first lauded at the 2015 CPAC conference.⁷⁰ And it functions, fundamentally, as a software for political campaign intervention by candidates for office—something no amount of "constituent management" verbiage can mask.

B. ALEC also uses the CARE software to make in-kind contributions to the Republican National Committee.

⁶⁸ *Id.*

⁶⁹ See VoterGravity Features PDF, *supra* note 34, at 3.

⁷⁰ See Huston, *supra* note 14.

VoterGravity is, and was always intended to be,⁷¹ a for-profit enterprise—yet it’s unclear how or whether the company is being compensated by ALEC for the distribution, maintenance, and support of its product. What VoterGravity *does* gain from the partnership, though, is *voter data*. Ryun’s company—and by extension the RNC—not only *provides* the voter file information that feeds CARE’s voter profiles,⁷² but it also *receives* the data that is fed into CARE by its legislator users. Consider the aforementioned CARE training video on ALEC’s YouTube channel. In a testimonial for CARE, state Rep. Timothy Barr (R-GA) noted that, “There was a lady who needed some help, and I was able to make some notes right there while we were talking, get her information, populate the fields, and it—it’s amazing.”⁷³

What Rep. Barr fails to mention is that *the personal constituent data he is entering into CARE is feeding real-time back into the RNC’s voter file*. Recall Ned Ryun’s press release from August 2015 announcing VoterGravity’s integration with the RNC database, in which he expresses excitement about “the[] API integrations. . . [which] will **allow any candidate or state party who chooses to use Voter Gravity on the front end to put data back in real time into the RNC**” (emphasis added).⁷⁴

As noted above, VoterGravity’s board member Matt Schlapp formerly worked on the RNC’s project “to outsource the [C]ommittee’s voter file to a private company.”⁷⁵ That project, called Data Trust, may have been abandoned, but the RNC’s desire for a live-updating voter file apparently has not. While ALEC may claim that CARE is somehow distinct from VoterGravity’s two-way linkage with the RNC, Legislator’s screenshots show that CARE contains the same “RNC

⁷¹ See Bolton, *supra* note 16 (“The effort has been funded by investors but the founders stress it is a for-profit venture. They hope to recoup the costs of software development by selling Gravity to larger advocacy organizations”).

⁷² See *supra* note 52.

⁷³ See Screenshots of ALEC training video, *supra* note 5, at 5 (referring to 0:26).

⁷⁴ See *supra* note 15.

⁷⁵ See Tau, *supra* note 23.

Integration” feature—which users access by entering an “RNC Access Token”—as featured in the paid VoterGravity suite.⁷⁶

In fact, this two-way production of voter data is not a bug but rather a sought-after feature of VoterGravity, which was conceived from the start to prevent campaign “data loss.” As *The Hill* reports:

The drawback to [the] old-school hard-copy model, according to Drew Ryun, is that campaigns lose data. The Gravity program is designed to better capture voter data that gets lost. . . . [T]he stacks of hard-copy data [volunteers] return to headquarters do not get entered properly into campaign databases. American Majority Action hopes **conservative candidates can avoid this data loss by using the Gravity smartphone technology, which immediately updates voter profiles with the answers to survey questions**” (emphasis added).⁷⁷

The big win for Ned Ryun was elevating his data-sharing operation from the individual campaign-level, to the national party-level, through his much-touted RNC integration—but for ALEC, a tax-exempt nonprofit, to participate in Ryun’s enterprise via CARE represents yet another instance of prohibited partisan electoral activity.

ALEC’s real-time delivery of voter data to the RNC constitutes an independent violation of the § 501(c)(3) prohibition on political campaign intervention. For VoterGravity, the data inputted by ALEC’s legislative members may serve as an attractive reason to “give away” its valuable software suite for free. But for ALEC, not only does the production of data for voter management purposes during ostensible “constituent service” interactions raise privacy and ethics concerns, more importantly, the sharing of this data with the RNC amounts to an unlawful in-kind campaign contribution, independent of ALEC’s provision of CARE to its members.

⁷⁶ See Screenshots of ALEC CARE, *supra* note 7, at 6.

⁷⁷ See Bolton, *supra* note 16.

II. Law

The Internal Revenue Code § 501(c)(3) absolutely forbids the participation of tax-exempt, tax-deductible organizations in any partisan political campaign activities. The relevant provisions of the Internal Revenue Code, 26 U.S.C. § 501, include the following: Section 501(a) provides that certain organizations are exempt from federal income taxation, § 501(b) specifies that these organizations are still subject to taxation to the extent of their “unrelated business income and certain other activities,” and § 501(c) details a “list of exempt organizations,” including, in § 501(c)(3):

Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition . . . , or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation . . . , and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

Scholars have noted that this provision amounts to a test, applied by the Internal Revenue Service, with five parts: (i) the organizational test; (ii) the operational test; (iii) the prohibition on private inurement; (iv) the limitation on lobbying activity; and (v) the prohibition on political campaign intervention.⁷⁸ ALEC’s in-kind contributions of the CARE software and associated voter data violate this test for two independent reasons.

The (v) prohibition on political campaign intervention is a specific prohibition on any partisan political campaign activities by 501(c)(3) nonprofit organizations. It forbids “directly or indirectly participating in, or intervening in, any political campaign on behalf of (or in opposition

⁷⁸ Terri L. Helge, *Rejecting Charity: Why the IRS Denies Tax Exemption to 501(C)(3) Applicants*, 14 PITT. TAX REV. 1, 3-4 (2016).

to) any candidate for elective public office.”⁷⁹ This includes funding, contributions, support, oral or written statements of position made on behalf of the organization, etc.—all of which violate the prohibition and destroy the organization’s exempt status.⁸⁰ As numerous scholars have pointed out, the (v) prohibition on political campaign intervention is an absolute standard, wherein “even a *de minimis* amount of involvement in political campaign activities by [501(c)(3)] charities” will lead to their being re-classified as 501(c)(4) “action organization[s].”⁸¹

Under this unequivocal bar, it is forbidden for a 501(c)(3) organization to make “cash [] or ‘in kind’ contributions of services or use of facilities to particular candidates or political parties.”⁸² Any contribution of this sort is absolutely prohibited by the Code and Treasury Regulations, as they violate the prohibition on political campaign intervention.

Critically, this prohibition bars contribution of services to facilitate political campaigns *even if such services are provided on a non-partisan basis*. The only question is whether the contribution constitutes electioneering on a candidate’s behalf. A 501(c)(3) organization cannot

⁷⁹ See IRS, *The Restriction of Political Campaign Intervention by Section 501(c)(3) Tax-Exempt Organizations*, <https://www.irs.gov/charities-non-profits/charitable-organizations/the-restriction-of-political-campaign-intervention-by-section-501c3-tax-exempt-organizations> (last updated July 1, 2021). This is the Service’s main landing page on the political campaign prohibition, cited as authority in *Citizens Union of City of N.Y. v. AG of N.Y.*, 408 F. Supp. 3d 478, 483 nn. 4-5 (S.D.N.Y. 2019). See also, IRS, *Political Campaign Intervention by 501(c)(3) Tax Exempt Organizations - Educating Exempt Organizations*, <https://www.irs.gov/charities-non-profits/charitable-organizations/political-campaign-intervention-by-501c3-tax-exempt-organizations-educating-exempt-organizations> (last updated June 26, 2021) (Compiling “an array of educational tools” from the Service for section 501(c)(3) organizations to “educate[them] about the ban and put[] them on notice of the enforcement program,” including Published Guidance, News Release & Fact Sheets, training materials, FAQs, and other resources).

⁸⁰ See Rev. Rul. 2007-41, 2007-1 C.B. 1421 (June 18, 2007).

⁸¹ Helge, *supra* note 78, at 16-17 (citing I.R.C. § 501 (c)(3); Treas. Reg. § 1.501 (c)(3)-1 (c)(3)(iv) (2014) & Treas. Reg. § 1.501(c)(3)-1(c)(3)(iii) (2014)) (internal citations omitted). See also, e.g., John P. Persons, John J. Osborn, Jr. & Charles F. Feldman, *Criteria for Exemption under Section 501(c)(3)*, 4 RESEARCH PAPERS IN WASH. DEPT. OF TREAS. 1909, 1931 (1977) (“As the *Exempt Organizations Handbook* states, the first point to be noted is that this is an absolute prohibition”) (internal quotations omitted); J. Patrick Whaley, *Political Activities of Section 501(c)(3) Organizations*, 29 MAJOR TAX PLAN. 195, 209 (1977) (“[I]t would seem that any participation in a campaign for or against a candidate for public office is absolutely prohibited. This is certainly the position of the Service.”) (citing Reg. § 1.501(c)(3)-1(b)(3) & (c)(3)(iii); Rev. Rul. 67-71, 1967-1 C.B. 125); David A. Wimmer, *Curtauling the Political Influence of Section 501(c)(3) Tax-Exempt Machines*, 11 VA. TAX REV. 605, 620 (1992) (“This is an absolute prohibition, one without the substantiality exception. . . .”) (citing I.R.C. § 501(h)(2)(A)).

⁸² See Helge, *supra* note 78, at 17.

avoid the prohibition by making in-kind electioneering contributions to candidates of both parties. Unlike, say, voter education or turnout efforts, campaign contributions are equally impermissible even if given to both Republicans and Democrats.

Here, it is beyond dispute that the very purpose of the CARE software is to facilitate campaigning. This purpose is confirmed by explicit statements made by its creators and users, by the fact that its features and tools make sense only if used for electioneering, and by the express rationale for the tool's creation in the first instance. Without more, such in-kind contributions violate ALEC's 501(c)(3) tax-exempt status.

Alternatively, while ALEC's persistent partisan bias is not necessary to finding that ALEC has violated the law, such partisan bias provides an independent basis for holding ALEC's in-kind contributions to be unlawful. For a tax-exempt, tax-deductible organization, even when a given activity or contribution would *otherwise* be permissible, if that activity or contribution is conducted in a *biased manner* or has a *partisan effect*, then the activity or contribution will still be deemed unlawful. In other words, an act or contribution by a nonprofit organization necessarily constitutes unlawful political campaign intervention when that act or contribution demonstrates partisan bias for a candidate or candidates for public office.

This partisan bias rule has been the subject of increasing guidance and enforcement by the Service over time:

In 2004, the IRS initiated a process, although still informal, to address in real time allegations of partisanship by 501(c)(3) organizations during the time period around national elections, through targeted examinations, rather than just through the process of auditing returns . . . now known as the Political Activity Compliance Initiative . . . Also after a long hiatus, the IRS has issued precedential "revenue rulings" in recent years addressing the contours of what constitutes partisan election

intervention. More may be forthcoming.⁸³

The rule was most recently detailed in a 2007 IRS Revenue Ruling entitled “Exempt organizations; political campaigns.”⁸⁴ The Ruling states that whether political campaign intervention has occurred turns primarily on whether an action or activity “shows a bias or preference . . . with respect to the views of a particular candidate . . . [or] for or against a particular candidate.” In order to evaluate the existence of bias (and therefore unlawful campaign intervention), the Rule further states that such a determination “depends upon all of the facts and circumstances of each case.” It gives note of the specific “facts and circumstances” which prove dispositive in twenty-one potentially ambiguous hypothetical fact patterns. Scholars conclude, based on this Ruling and others, that “the Service approaches these issues on a case-by-case basis under a highly factual inquiry and looks to see if the organization is supporting a candidate or remaining neutral.”⁸⁵

In terms of the relevant “facts and circumstances,” the 2007 Ruling explains that bias or preference can be reflected in “content,” “structure,” “timing,” “distribution,” “procedure,” or any other such dimensions of a given act or contribution.⁸⁶ It can even be implicated in “coded” language, “such as ‘conservative,’ ‘liberal,’ ‘pro-life,’ ‘pro-choice,’ ‘anti-choice’ . . . etc.” which,

⁸³ Rosemary E. Fei, Laurence E. Gold & David A. Levitt, *The Rules of the Game: A Guide to Election-Related Activities for 501(c)(3) Organizations*, ALLIANCE FOR JUSTICE ADVOCACY RESOURCE (2d. ed. 2010), at 9. Several publications by the Alliance for Justice are cited with favor in *Citizens Union*, *supra* note 79, e.g., nn. 2, 6, & 8.

⁸⁴ Rev. Rul. 2007-41, *supra* note 80, at 1421. This official Revenue Ruling, published in the Internal Revenue Bulletin on June 18, 2007, first began as a “Fact Sheet” release from the IRS Media Relations Office in February 2006. IRS, *Election Year Activities and the Prohibition on Political Campaign Intervention for Section 501(c)(3) Organizations*, FS-2006-17 (Feb. 2006), <https://www.irs.gov/pub/irs-news/fs-06-17.pdf>. In the release’s introduction, the IRS explained its goal of “provid[ing] information to help section 501(c)(3) organizations stay in compliance with the federal tax law,” since “[m]any of the types of political intervention activities addressed in the fact sheet were those that came under scrutiny during the 2004 election cycle.” At the same time, the IRS also stepped up its enforcement of the political activity restriction: “With the 2006 campaign season approaching, the IRS is launching enhanced education and enforcement efforts, based on the findings and analysis of the 2004 election cycle. The IRS is providing this fact sheet to help ensure that charities have enough advance notice of the types of problems that have occurred, the legal strictures against engaging in political activities and how to avoid these problems.”

⁸⁵ C. Joseph Boatwright, *Should the 501(c)(3) Political Prohibition Be Revoked*, 6 INT’L J. CIV SOC’Y L. 7, 14 (2008) (citing Rev. Rul. 80-282, 1980-2 C.B. 178 (1980)).

⁸⁶ Rev. Rul. 2007-41, *supra* note 80, at 1421-22.

when referencing a candidate or election, can constitute a violation.⁸⁷ The issue, according to commentators, is one of intent: the Service’s factual inquiry seeks to determine whether the organization *intended* to bias or favor a specific candidate or slate of candidates. If it did, then the non-profit has violated its tax-exempt status.⁸⁸

When the specific campaign intervention at issue is a cash or in-kind contribution, the relevant “facts and circumstances” typically include: the nature of the item contributed, the parties to whom it was provided, and what level of fees (if any) was charged, among others. As explained in the 2007 Ruling,

In the context of a business activity of the organization . . . some of the factors to be considered in determining whether the organization has engaged in political campaign intervention include the following:

- Whether the good, service or facility is available to candidates in the same election on an equal basis,
- Whether the good, service, or facility is available only to candidates and not to the general public,
- Whether the fees charged to candidates are at the organization’s customary and usual rates, and
- Whether the activity is an ongoing activity of the organization or whether it is conducted only for a particular candidate.⁸⁹

Each of these factors is independently sufficient to constitute bias or preference: If the contribution was offered to one candidate but not another candidate or the general public, if the prices charged to one candidate were different from those charged to another candidate or the general public, or if the contribution otherwise reflected inconsistent availability or treatment for a given candidate

⁸⁷ See Boatwright, *supra* note 85, at 14 (citing Judith E. Kindell & John Francis Reilly, *Election Year Issues*, IRS 2002 EO CPE TEXT, 345 (2002)).

⁸⁸ *Id.* at 14-15.

⁸⁹ Rev. Rul. 2007-41, *supra* note 80, at 1425. See also Cong. Research Serv., *Tax-Exempt Organizations: Political Activity Restrictions and Disclosure Requirements*, RL33377 (Sept. 24, 2010), at 10 (“According to the IRS, factors that tend to indicate the activity is not biased towards any candidate or party include . . .”) (citing Rev. Rul. 2007-41, *supra* note 80; Kindell & Reilly, *supra* note 87, at 383-84).

or set of candidates, then a prohibited campaign activity has occurred.

Here, ALEC's in-kind contributions violate each of the four factors set forth in the 2007 Revenue Ruling. The CARE tool is not available to all candidates "on an equal basis"; the tool is not available "to the general public"; the tool is provided free of charge and worth many times the dues paid by ALEC's legislative members; and the tool is available only to "particular candidates," *i.e.*, conservatives and Republicans who are members of ALEC. This bias provides an independent basis upon which to find ALEC in violation of its tax-exempt status.

In 1983, the Supreme Court held in *Regan v. Taxation Without Representation of Wash.*, 461 U.S. 540, 544 (1983) that the classifications of various tax-exempt and tax-deductible organizations, such as 501(c)(3) nonprofit organizations and 501(c)(4) action organizations, reflected Congress's desire to subsidize some nonprofit activities more than others, and that the proscriptions placed upon 501(c)(3) organizations' political activities were to prevent "public funds [from] be[ing] spent on an activity Congress chose not to subsidize." This belief that tax-exempt, tax-deductible organizations should refrain from certain political activities—so as not to misuse taxpayers' subsidies—remains at the core of what it means to be a 501(c)(3) charity today.

ALEC has long pursued a non-charitable set of activities: it has brazenly helped to conceive, design, promote, and distribute partisan political campaign software under the guise of constituent service. It has also supplied the voter data from this software directly to the Republican National Committee on an ongoing basis. CMD thus submits to the Service that ALEC has intervened in countless political campaigns, on behalf of its overwhelmingly Republican membership, in stark violation of its duties under 26 U.S.C. § 501(c)(3).

Exhibit 2



With over 2,000 members, ALEC is the nation's largest nonpartisan, individual membership association of state legislators. ALEC is one of America's most dynamic public-private partnerships with nearly 300 corporate and private foundation members. ALEC provides its public and private sector members with a unique opportunity to work together to develop policies and programs that effectively promote the Jeffersonian principles of free markets, limited government, federalism, and individual liberty.

Questions? Contact us by phone at (703) 373-0933

Exhibit 3

**STATE OF MINNESOTA
CAMPAIGN FINANCE AND PUBLIC DISCLOSURE BOARD**

**Findings of Fact, Conclusions of Law, and Order
In the Matter of the Complaint of Common Cause Minnesota Regarding the
American Legislative Exchange Council**

I. The complaint

On May 15, 2012, the Campaign Finance and Public Disclosure Board received a complaint from Common Cause Minnesota (Complainant) alleging violations by the American Legislative Exchange Council (ALEC) and an individual named Amy Kjose of certain of Minnesota's statutes related to lobbying.

The complaint alleges that as the director of an ALEC task force in 2011, Ms. Kjose was required to register as a lobbyist in Minnesota, but failed to do so or to file the required reports. The complaint further alleges that in 2011 ALEC was a "principal" as defined in Minnesota Statutes section 10A.01, subdivision 33, either by virtue of employing Ms. Kjose as a lobbyist, or by virtue of spending more than \$50,000 in a year on activities to influence Minnesota legislative action. The complaint alleges that ALEC failed to provide the annual report of expenditures required of every principal.

The Board notes that the complaint includes a significant amount of legal citation and argument with regard to ALEC's nonprofit tax status and its lobbying reporting obligation under federal law. Additionally, although the complaint specifically notes certain issue alerts sent to Minnesota legislators and identifies expenses reported by three Minnesota legislators to attend ALEC events, most of the allegations of the complaint are of a more general nature applicable to ALEC's activities to influence legislation in the various 50 states rather than only to ALEC's Minnesota activities. Apparently the Minnesota complaint is a derivation of a complaint on the same subject that Common Cause filed with the Internal Revenue Service. The Board has not considered any of the federal questions raised by the complaint.

During the course of the investigation the Board obtained and considered ALEC documents beyond those submitted by Complainant. These documents include internal ALEC documents that were initially disclosed in connection with a news report in *The Guardian* newspaper as well as additional documents from ALEC's public website and documents from other sources that are deemed reliable.

II. The response

On May 22, 2012, Board staff notified ALEC of the complaint and offered ALEC an opportunity to provide a general response.

Because of other Board matters more closely related to the 2012 election, in which two constitutional amendment questions were on the ballot, the Board laid the matter over at its June and July meetings. At its August meeting the Board directed the Executive Director to use staff resources on matters related to the upcoming election and to defer further work on the ALEC matter until resources were available. ALEC was notified of this approach in a letter dated August 8, 2012, and expressed no objection.

On March 13, 2013, the Board notified ALEC by letter that staff resources were now available to undertake investigation of the Common Cause complaint. The letter asked ALEC to provide comprehensive information that would allow the Board to make a determination of the legal status of ALEC under Minnesota's lobbying statutes. On April 12, 2013, ALEC responded through its legal counsel, Mike Wittenwyler. Mr. Wittenwyler provided general information about ALEC and its structure and operations, but did not address the Board's specific requests for information.

Board staff compared the information provided in ALEC's April 12 letter to the Board's March 13 request and concluded that the letter was almost entirely nonresponsive. Staff sent this analysis to ALEC on July 11, 2013, and asked ALEC to respond to the Board's specific requests. In a letter dated July 26, 2013, Mr. Wittenwyler provided an additional response that consisted of an explanation of why ALEC was not required to respond to the Board's requests.

The matter was subsequently laid over at successive Board meetings as staff researched the issues raised by the complaint and ALEC's response and sought additional documentary evidence from the internet and other sources. At its November 2013 meeting the Board reviewed in detail the status of the investigation and the difficulties posed by the continued refusal of ALEC to provide anything but the most basic information about its operations. At that time, the Executive Director explained that staff planned to make a request for information from ALEC that would be more limited than previous requests and would not require ALEC to identify any of its members; an approach that would address one of ALEC's key objections.

On February 13, 2014, staff sent ALEC the narrower request for information. On March 10, 2014, ALEC responded and once again declined to provide any information beyond that which was included in its initial response.

In general, the substance of ALEC's response is that it is an educational organization that does not engage in lobbying as that term is defined by the Internal Revenue Code. ALEC also claims that it cannot be required to disclose either its members or its communications with its members under constitutional law principles.

ALEC also argues that it is not a principal under Minnesota law because it employs no lobbyists and because it has never spent more than \$50,000 in a year to influence Minnesota officials; which is the financial trigger that makes an association a principal even if it does not employ lobbyists.

III. Further background

At its meeting of April 1, 2014, the Board reviewed ALEC's reasons for declining to provide information and its contention that it did not fall under Minnesota's lobbying disclosure laws. The Board also reviewed the options available to compel ALEC to provide additional information. After discussion, the Board directed the Executive Director to develop a detailed legal and factual analysis that would allow the Board to evaluate whether the matter could be decided based on information provided by Complainant and assembled by staff from public sources.

The Board discussed staff's detailed analysis at its meeting of July 8, 2014. Mr. Wittenwyler also appeared at the meeting to urge the Board to dismiss the complaint. At its meeting of August 13, the Board further discussed the status of the matter, voted to set the scope of the investigation to include the years 2011 through 2014, and again laid the matter over.

At its meeting of September 2, 2014, the Board directed the Executive Director to continue the investigation by taking sworn testimony from individuals named as the public sector state co-chairs and the private sector state chair of ALEC. Sworn testimony was taken in November 2014 from Senator Mary Kiffmeyer and Representative Pat Garafalo, the ALEC public sector co-chairs, and from John Gibbs, the ALEC private sector state chair.

The Board discussed this matter at its November 2014 and January 2015 meetings. The Board considered draft findings, conclusions, and order at its February 2015 meeting.

IV. Analysis

ALEC argues that neither it nor its employees engage in lobbying under the Internal Revenue Code definition. That definition is, of course, not relevant in Minnesota. The Board's analysis considers whether Amy Kjose is a lobbyist under Minnesota Statutes section 10A.01, subdivision 21, and whether ALEC is a principal under section 10A.01, subdivision 33.

Is Amy Kjose a Minnesota lobbyist?

The complaint alleges that Amy Kjose is a lobbyist because she is paid by ALEC for activities that constitute lobbying. In Minnesota, a lobbyist is defined as follows:

[A]n individual engaged for pay or other consideration of more than \$3,000 from all sources in any year for the purpose of attempting to influence legislative or administrative action, or the official action of a metropolitan governmental unit, by communicating or urging others to communicate with public or local officials, or

who spends more than \$250, not including the individual's own traveling expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action, or the official action of a metropolitan governmental unit, by communicating or urging others to communicate with public or local officials.

Minn. Stat. § 10A.01, subd. 21.

The complaint alleges, and ALEC does not dispute, that Ms. Kjose was the director of ALEC's Civil Justice Task Force during the time relevant to this matter. The complaint further alleges that Ms. Kjose's responsibilities require drafting and lobbying on model legislation and that Ms. Kjose has spent more than \$250 in a calendar year on lobbying. The complaint also alleges that the cost of the email system used to send issue alerts and the cost of ALEC conferences should be included when determining if Ms. Kjose spent more than \$250 on lobbying.

However, the Board interprets the \$250 spending trigger to apply only to individuals spending their own money, not to persons authorized by an association to spend the association's money.¹ The complaint does not allege that Ms. Kjose spent any of her own money to communicate with officials and the materials reviewed for this investigation do not suggest that she did so. Thus, Ms. Kjose is a lobbyist only if she was paid more than \$3,000 in a calendar year to communicate with Minnesota legislators or to urge others to do so.

¹ The position that the \$250 threshold applies to spending personal funds is of longstanding application. The interpretation is in part based on the statutory language in the same provision that excludes costs of the subject individual's own travel expenses. This principle was recently restated in the Matter of the Complaint Regarding the Coalition for Sensible Siting and others, where the Board said that "An individual who spends more than \$250 of **their personal funds** in a calendar year on lobbying" is required to register as a lobbyist. (Emphasis added.)

The Board notes that the complaint does not allege that Ms. Kjose communicated with others to urge them to communicate with Minnesota legislators to influence legislative action and the Board has found no evidence that she did so. Thus, if a determination is to be made that Ms. Kjose is a lobbyist, it must be based on actions taken by her that constitute communication with Minnesota legislators to influence legislative action.

The evidence submitted by the Complainant includes four issue alerts that Ms. Kjose sent to certain Minnesota legislators in 2011.² The complaint also alleges that as a task force director, Ms. Kjose drafted model legislation and lobbied to get it passed.

In its response to the complaint, ALEC indicates that the value of staff time to prepare and send each issue alert is approximately \$30. The issue alerts provided by Complainant and those provided by ALEC indicate that issue alerts were sent by various ALEC staff members. The response confirms that four of the alerts sent in 2011 were from Ms. Kjose. Even assuming that the full cost of staff time for drafting the alert is included in the compensation paid to the staff member, and assuming a reasonable amount of time to draft the alert and a reasonable salary for the staff member, Ms. Kjose would not become a lobbyist based on the drafting and sending of issue alerts alone.

In its purest sense, communicating with an official takes the form of a direct interaction. However, such direct communication is not required and actions beyond the actual exchange of words between the individual and the official are included in the communication. If a person is paid to write a letter to officials to influence official action, the time spent writing the letter is a part of the communication.³ Similarly, the Board has concluded that the creation of a website urging others to communicate with officials for the purpose of influencing a specific Minnesota administrative action is a communication that is included in the amount spent that can make an individual a lobbyist.⁴

Complainant is apparently arguing that all of the time Ms. Kjose spends drafting and editing model bills, researching and writing supporting papers and talking points, and preparing other materials⁵ that *might* be used later in support of a direct communication with a Minnesota legislator should be counted as time spent communicating with Minnesota officials. However, these activities, undertaken with no particular Minnesota purpose, are significantly broader in scope than the activities the Board has previously included when deciding if an individual is a lobbyist.

The problem with this approach is that although it can be assumed that all of the work of an ALEC task force director is undertaken in furtherance of ALEC's overall mission, ALEC's overall mission is not to influence legislative action in Minnesota. It is to influence public attitudes and legislative action in the nation as a whole. With the exception of the Minnesota issue alerts,

² ALEC's response also shows that Ms. Kjose sent one issue alert to Minnesota legislators in 2009 and no alerts in 2010. Although these years are outside the scope of the investigation, they demonstrate that Ms. Kjose's direct communication with Minnesota legislators over the years has been limited.

³ In the Matter of a Complaint Regarding the Minnesota Licensed Beverage Association and others. http://www.cfboard.state.mn.us/bdinfo/investigation/06_03_2014_Findings_Griffith_Bail_MLBA.pdf. Last visited January 27, 2015

⁴ In the Matter of the Complaint Regarding Coalition for Sensible Siting, and others. http://www.cfboard.state.mn.us/bdinfo/investigation/04_03_2012_CSS_GWT.pdf. Last visited January 27, 2015.

⁵ For the purpose of this analysis, the Board assumes that these activities actually took place. Because the Board concludes that they are not within the scope of activities that constitute communicating with a Minnesota official, it is not necessary to determine the exact scope of an ALEC task force director's duties.

virtually all of a task force director's work is done in the abstract, without any specific Minnesota connection.

While some part of a task force director's work may eventually support a communication with a Minnesota legislator (if a legislator happens to attend a task force meeting or otherwise interacts with the task force director), most of the work of a task force director will never be used to support any communication with a Minnesota legislator. The nexus between the task force director's work and some future hypothetical communication with a Minnesota legislator therefore is insufficient to justify its inclusion in the scope of activities that would make a task force director a lobbyist.⁶

For the reasons discussed above, the Board does not adopt such a broad scope of activities to be included when determining if an individual meets the threshold of compensation to become a lobbyist. As a result, the Board concludes that Amy Kjose does not meet the compensation threshold to be a lobbyist in Minnesota.⁷

The criteria for determining whether an association is a principal

An association that pays a lobbyist more than \$500 in a calendar year or that spends more than \$50,000 in a year on specified activities is a principal. Minn. Stat. § 10A.01, subd. 33. The Board concluded above that ALEC task force directors are not lobbyists. As a result, ALEC is a principal only if it spends more than \$50,000 in a year on the statutorily specified activities

The types of activities that are included to determine if the \$50,000 threshold is met are specified in Minnesota Statutes section 10A.04, subdivision 6, as follows:

all expenditures for advertising, mailing, research, analysis, compilation and dissemination of information, and public relations campaigns related to legislative action, administrative action, or the official action of metropolitan governmental units in this state

and

all salaries and administrative expenses attributable to activities of the principal relating to efforts to influence legislative action, administrative action, or the official action of metropolitan governmental units in this state.

In addition to listing the types of activities that can make an association a principal, the statute includes another important requirement. The activities must be "related to legislative action . . . in this state" or "to influence legislative action . . . in this state." *Ibid.*

To clarify the statute and to ensure that its application does not extend to communications in which the state may not have a substantially significant disclosure interest, the Board interprets the phrases "related to legislative action" and "to influence legislative action" to mean "for the purpose of influencing legislative action." This narrowing construction ensures that

⁶ Because the relationship between bill drafting or similar activities and communication with Minnesota legislators is so tentative in the immediate matter, the Board need not determine here exactly how close the nexus must be before an individual's actions are a part of the individual's communication with officials.

⁷ The Board recognizes that Complainant has provided evidence that three Minnesota legislators attended ALEC events in 2010 and that this investigation has disclosed other instances of Minnesota legislators attending ALEC events. However, neither the information provided by Complainant nor the evidence disclosed by this investigation suggests that any single task force director had sufficient contact with Minnesota legislators to support a conclusion that the task force director was paid more than \$3,000 in a calendar year for that Minnesota communication.

communication that is merely *about* legislation or legislative action, but does not try to influence official action will not make an association a principal.

Equally important is the limiting clause "in this state," which the Board interprets as modifying the legislative action under examination. In other words, the association's activities need not occur "in this state," but those activities must be for the purpose of influencing Minnesota legislative action.

Is ALEC a principal?

ALEC's mission is to work "to advance limited government, free markets, and federalism at the state level. . . ." In advancing that mission, ALEC task forces have "considered, written and approved hundreds of model bills on a wide range of issues;" bills that ALEC considers to be "model legislation that will frame the debate today and far into the future."⁸

Beyond drafting legislation, "ALEC staff provides research, policy analysis, scholarly articles, reference materials, and expert testimony on a wide spectrum of issues."⁹ ALEC's website and its publications make it clear that ALEC's mission is national rather than uniquely targeted to any particular state. As a result, ALEC bears many similarities to any number of associations operating as so-called "think tanks" whose overall mission is to change public opinion and to support those who want to advance the principles espoused by the association. Likewise, ALEC bears similarities to other associations that create and urge the adoption of model legislation.

If a distinction is to be made between ALEC and other national "think tanks" or model-law-writing organizations, that distinction must be based on the association's purpose with respect to influencing Minnesota legislative action, not on the question of *who* develops the policies advanced by the association.

Clearly, ALEC spends more than \$50,000 per calendar year to advance its mission. The types of activities that ALEC undertakes to advance this mission include the same activities that can make an association a principal. However, to decide that ALEC is a principal, it is also necessary to conclude that ALEC's activities are for the purpose of influencing legislative action *in this state*.

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 free-market system."¹⁰ 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."¹¹

Although 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, such a conclusion is not sufficient to further conclude that ALEC's activities are for the purpose of influencing legislative action *in this state* as the definition of principal requires.

⁸ The quotes in this paragraph are from the ALEC website at <http://www.alec.org/about-alec/history/> and <http://www.alec.org/about-alec/history/> last visited January 27, 2015.

⁹ ALEC Private Sector Membership brochure, Exhibit 2 to the complaint.

¹⁰ *ibid.*

¹¹ ALEC Bylaws, Exhibit 3 to the complaint.

The Board concludes that an activity directed at all 50 states in the abstract does not constitute an activity conducted for the purpose of influencing legislation *in this state* even though it may in some instances have that effect. Before an association's activity will be included in the activities that may make the association a principal, there must be some specific connection to Minnesota. With ALEC, that nexus is insufficient.

The Board reaches this conclusion based on its construction of Chapter 10A and the requirement that it give meaning to all of the words of each statute. In this case, the phrase "in this state" will be meaningless if all the activities of every national advocacy association are included when deciding if that association is a principal. Under such an approach, national associations whose activities never actually influence specific Minnesota legislative action might still be found to be principals in Minnesota.

The Board recognizes that over the years a small number of Minnesota legislators have attended ALEC conferences. As noted, it is possible that the communication by individual ALEC employees with Minnesota legislators at such conferences would be included when deciding if an ALEC employee is a lobbyist. However, the fact that ALEC offers conferences which Minnesota legislators may attend does not result in the cost of each conference being an expenditure "to influence legislation in this state."

Based on the same analysis, the Board concludes that the creation by an association of a public website and of content published on that website does not make the association a principal when the site has no specific Minnesota nexus. To conclude otherwise would result in principal status being determined based on who visits the site, rather than on a determination of whether the site and its content were produced for the purpose of influencing legislative action in Minnesota.

For these reasons, the Board concludes that ALEC has not reached the \$50,000 threshold necessary to be a principal in Minnesota.

Based on the investigation and the record in this matter, the Board makes the following:

Findings of Fact

1. ALEC is an association organized as a nonprofit corporation.
2. ALEC's primary purpose is to promote its "free market" principles throughout the United States. It does this in various ways, including by producing model state legislation that, if adopted, would incorporate its principles into state law.
3. ALEC's activities are conducted on a national platform. Although ALEC attempts to be active in every state, its programs and activities have no specific Minnesota connection.
4. Much of ALEC's efforts are directed toward advancing its principles through changing public perceptions and through advocacy of legislative action in the various states.
5. ALEC spends more than \$50,000 in each calendar year on communications in the form of publications, model legislation, conferences, and other activities to advance its principles.

6. ALEC's efforts have no particular nexus with Minnesota. Rather, they are directed at all of the states generally.
7. In at least some cases, Minnesota legislators have attended ALEC conferences and introduced legislation that is based on ALEC model legislation.
8. Amy Kjose had minimal communication with Minnesota legislators in 2009 and 2011 in the form of issue alerts she sent by email.
9. It is possible that Amy Kjose may have had additional minimal communications with Minnesota legislators at one or more ALEC events.
10. Amy Kjose did not spend any of her own money to influence Minnesota legislative action.
11. The total compensation paid to Amy Kjose in any calendar year for communications with Minnesota legislators did not exceed \$3,000.

Conclusions of Law

1. To become a lobbyist based on spending \$250 or more under Minnesota Statutes section 10A.01, subdivision 21(a)(2), only the spending of the individual's own money is considered.
2. Amy Kjose is not a lobbyist under section 10A.02, subdivision 21(a)(2) because she did not spend any of her own money for communications to influence legislative action in Minnesota.
3. Amy Kjose is not a lobbyist under section 10A.01, subdivision 21(a)(1) because she was not paid more than \$3,000 in a calendar year for communications to influence legislative action in Minnesota.
4. Because Amy Kjose is not a lobbyist, ALEC is not a principal based on spending more than \$500 in a calendar year to compensate a lobbyist.
5. Although ALEC spends more than \$50,000 per year to advance its principles through activities that include promotion of model legislation in the various states, ALEC does not specifically target Minnesota in such a way that its general spending constitutes spending for activities conducted for the purpose of influencing legislation in this state.
6. ALEC is not a principal based on its spending to advance its principles or to influence legislation in the fifty states generally.

Order

The investigation of this matter is concluded and the complaint is dismissed.

/s/ George A. Beck
George A. Beck, Chair

February 3, 2015
Date

Documents incorporated into these Findings by reference:

Complaint of Common Cause Minnesota Regarding the American Legislative Exchange Council Exhibits to the complaint

May 22, 2012, letter advising ALEC of the complaint

March 13, 2013, letter requesting information from ALEC

Response from ALEC, April 12, 2013

July 11, 2013, letter requesting information from ALEC

Response from ALEC, July 26, 2013

Letter to ALEC February 13, 2014

Response from ALEC March 10, 2014

Referenced statutes

10A.01 Definitions

. . . .

Subd. 21. **Lobbyist.** (a) "Lobbyist" means an individual:

(1) engaged for pay or other consideration of more than \$3,000 from all sources in any year for the purpose of attempting to influence legislative or administrative action, or the official action of a metropolitan governmental unit, by communicating or urging others to communicate with public or local officials;

. . . .

Subd. 33. **Principal.** "Principal" means an individual or association that:

(1) spends more than \$500 in the aggregate in any calendar year to engage a lobbyist, compensate a lobbyist, or authorize the expenditure of money by a lobbyist; or

(2) is not included in clause (1) and spends a total of at least \$50,000 in any calendar year on efforts to influence legislative action, administrative action, or the official action of metropolitan governmental units, as described in section 10A.04, subdivision 6.

10A.04 Lobbyist reports.

Subd. 6. **Principal reports.** (a) A principal must report to the board as required in this subdivision by March 15 for the preceding calendar year.

(b) Except as provided in paragraph (d), the principal must report the total amount, rounded to the nearest \$20,000, spent by the principal during the preceding calendar year to influence legislative action, administrative action, and the official action of metropolitan governmental units.

(c) Except as provided in paragraph (d), the principal must report under this subdivision a total amount that includes:

(1) all direct payments by the principal to lobbyists in this state;

(2) all expenditures for advertising, mailing, research, analysis, compilation and dissemination of information, and public relations campaigns related to legislative action, administrative action, or the official action of metropolitan governmental units in this state; and

(3) all salaries and administrative expenses attributable to activities of the principal relating to efforts to influence legislative action, administrative action, or the official action of metropolitan governmental units in this state.

(d) A principal that must report spending to influence administrative action in cases of rate setting, power plant and powerline siting, and granting of certificates of need under section 216B.243 must report those amounts as provided in this subdivision, except that they must be reported separately and not included in the totals required under paragraphs (b) and (c).

Exhibit 4

C A M P A I G N F O R
ACCOUNTABILITY

July 30, 2020

BY EMAIL: eoclass@irs.gov

IRS EO Classification
Mail Code 4910DAL
1100 Commerce St.
Dallas, TX 75242-1198

BY EMAIL: DFICharitableOrgs@wi.gov

Wisconsin Department of Financial Institutions
PO Box 7879
Madison, WI 53707-7879

BY EMAIL: Complaints@doj.ca.gov

Registry of Charitable Trusts
Office of Attorney General
P.O. Box 903447
Sacramento, CA 94203-4470

Re: Tax-Exempt Organization Complaint Against American Majority Inc (EIN: 26-1501154) and American Majority Action Inc (26-3594713)

Dear Sir or Madam:

Campaign for Accountability (“CfA”), a non-partisan, nonprofit public watchdog organization, respectfully requests that the IRS, the Wisconsin Department of Financial Institutions (“DFI”), and the Office of the Attorney General of California investigate whether American Majority Inc (EIN: 26-1501154), a 501(c)(3) nonprofit, and its related 501(c)(4) advocacy arm, American Majority Action Inc (EIN: 26-3594713), violated their tax exempt status or relevant state laws by spending more than 50 percent of expenses on political purposes, submitting inaccurate information to regulators, and executing inappropriate transactions with related parties. Forms 13909, 2255, and CT-9 are enclosed.

Background

Ned Ryun, a former presidential writer, founded American Majority Inc (“AM”) in 2007 and American Majority Action Inc (“AMA”) in 2008.¹ AM received its Determination Letter from the IRS effective December 3, 2007, and AMA received its determination letter effective September 30, 2008, under its previous name, Madison Majority Project.² AM’s website states that the organization is “the nation’s premier conservative training organization, helping put in place a truly unique, separate political infrastructure—for use before, during and after election dates. As a 501c(3) non-partisan, nonprofit, American Majority continually trains, organizes, mobilizes, and equips new grassroots conservative leaders.”³ AMA’s website states that it “is a national conservative organization dedicated to engaging citizens in the political process by mobilizing them in support of candidates who favor limited government, individual freedom and protecting the free market.”⁴ Between 2008 and 2018, AM and AMA received more than \$27 million in contributions and grants.⁵

In addition to their own activities, AM and AMA have been involved in several other entities. In 2011, the organizations set up a holding company called AM Action LLC. The holding company, in turn, set up a for profit data firm called Voter Gravity Inc in 2012. AM Action LLC also briefly invested in another data firm called Political Gravity. In subsequent years, the nonprofit entities extended loans to the for-profit companies, and they paid for some of the expenses for the for-profit companies. Additionally, board members and employees of the nonprofits have served in various roles at the for-profit companies.

The annual 990 tax filings for the nonprofit organizations, annual audits, and public records reveal a complicated web of interconnected transactions that raise questions as to whether the organizations deserve their charitable status or violated state laws.

Excessive Spending on Political Activity

AMA appears to have violated requirements that 501(c)(4) organizations spend less than 50 percent of their expenditures on political activity. According to its annual 990 for the 2016 calendar year, AMA’s total expenses amounted to \$414,059.⁶ AMA disclosed on its Schedule C filing that it spent \$350,000 on “direct and indirect political campaign activities” or approximately

¹ <http://nedryun.com/about-ned/>.

² IRS Determination Letter, American Majority Inc, Aug. 19, 2008, *available at* <https://www.documentcloud.org/documents/6788560-AM-IRS-Determination-Letter.html>; IRS Determination Letter, American Majority Action (filed as Madison Majority Project Inc), Mar. 30, 2009, *available at* <https://www.documentcloud.org/documents/6788559-AMA-IRS-Determination-Letter.html>; **2009 Return of Organization Exempt from Income Tax, Form 990**, American Majority Action, Inc., June 1, 2010, *available at* https://projects.propublica.org/nonprofits/display_990/263594713/2010_07_EO%2F26-3594713_990EO_200906.

³ <https://www.americanmajority.org/about/>.

⁴ <https://americanmajorityaction.org/>.

⁵ <https://projects.propublica.org/nonprofits/organizations/261501154>;

⁶ **2016 Return of Organization Exempt from Income Tax, Form 990**, American Majority Action, Inc., Nov. 15, 2017, *available at* [https://projects.propublica.org/nonprofits/display_990/263594713/12_2017_prefixes_26-27%2F263594713_2016\[2_990O_2017\]22915067215](https://projects.propublica.org/nonprofits/display_990/263594713/12_2017_prefixes_26-27%2F263594713_2016[2_990O_2017]22915067215).

85 percent of its expenses for the entire year.⁷ Nonprofits organized under section 501(c)(4) must exist primarily for social welfare, and therefore, are prohibited from spending a majority of their expenses on politics.⁸

Financial Irregularities

Failure to Accurately Disclose Donors to Regulators

Based on an analysis of AM's audit reports and 990s published on Guidestar, AM may have reported inaccurate donor information to the IRS and California regulators. Specifically, AM appears to have represented the name of a major donor incorrectly on either its 2016 or 2015 990 or both.

According to 990s uploaded to Guidestar, in 2016 AM received \$500,000 from the Donors Capital Fund of Alexandria, Virginia.⁹ In 2015, AM reported a \$500,000 contribution from Leonard Leo at a different address in Alexandria.¹⁰ While Mr. Leo reportedly has been linked to the Donors Capital Fund in the past, he does not appear to be an employee or officer of the organization.¹¹

Despite claiming these separate sources as contributors, AM's audits suggest that this donation came from the same donor. By comparing the percentages listed in the donor concentration section of AM's 2016 and 2015 audits and the donor amounts listed on its 990s for those years, it is clear that "Contributor B" on the audits for both years is same entity – either Donors Capital Fund, Leonard Leo, or some other mystery donor.¹² While the audits make it clear that contributor B is the same entity, the 990s appear to be labeling that entity as Leonard Leo in one year and Donors Trust in the other.

⁷ *Id.*

⁸ <https://www.irs.gov/pub/irs-tege/eotopic103.pdf>.

⁹ 2016 Return of Organization Exempt from Income Tax, Form 990, American Majority Inc., Form 199, Statement 1, page 48, prepared Nov. 14, 2017, available at <https://www.documentcloud.org/documents/6788667-American-Majority-2016-Form-990.html>.

¹⁰ 2015 Return of Organization Exempt from Income Tax, Form 990, American Majority Inc., Form 199, Statement 1, prepared Jan. 12, 2017, available at <https://www.documentcloud.org/documents/6788670-American-Majority-2015-Form-990.html>.

¹¹ <https://www.prwatch.org/news/2018/03/13329/donors-trust-right-wing-secret-money-machine-doled-out-667-million-2016>.

990s

¹² Financial Statements and Independent Auditor's Report for 2016 and 2015, American Majority, Inc., Nov. 15, 2017, available at <https://www.documentcloud.org/documents/6788674-American-Majority-2016-Audit.html>; Financial Statements and Independent Auditor's Report for 2015 and 2014, American Majority, Inc., Nov. 30, 2016, available at <https://www.documentcloud.org/documents/6788673-American-Majority-2015-Audit.html>.

AM's 2016 990

<u>CONTRIBUTOR'S NAME</u>	<u>AMOUNT</u>
THE LYNDE & HARRY BRADLEY FOUNDATION	345,000.
ED UIHLEIN FAMILY FOUNDATION	125,000.
DONORS CAPITAL FUND, INC.	500,000.
TOTAL INCLUDED ON LINE 3	970,000.

AM's 2015 990

<u>CONTRIBUTOR'S NAME</u>	<u>AMOUNT</u>
THE LYNDE & HARRY BRADLEY FOUNDATION	200,000.
RETAIL INDUSTRY LEADERS ASSOCIATION	40,000.
BRADLEY IMPACT FUND, INC.	42,000.
LEONARD LEO	500,000.
ED UIHLEIN FAMILY FOUNDATION	125,000.
TOTAL INCLUDED ON LINE 3	907,000.

AM's 2016 Audit

	<u>2016</u>	<u>2015</u>
	<u>Contributions</u>	<u>Contributions</u>
Contributor A	34.2%	14.3%
Contributor B	44.0%	35.7%
Contributor C	11.0%	8.9%

AM's 2015 Audit

	<u>2015</u>	<u>2014</u>
	<u>Contributions</u>	<u>Contributions</u>
	14.3%	50.7%
	35.7%	16.3%

Donors Capital Fund and its related entity Donors Trust have received attention in the media for acting as a pass through for conservative donors.¹³ Rather than a clerical error, AM's inaccurate disclosure may be a direct attempt to deceive regulators by failing to disclose the true source its funding.

Related Party Transactions

Undisclosed Transactions Between AM and AMA

Throughout their histories, AM and AMA have transferred a substantial amount of money between the two organizations. Each organization has disclosed some of the transactions but not others. Below is a chart of all of the related transactions between the two organization that they have disclosed on their annual 990s. Generally, the 501(c)(3) organization paid for, took out loans for, and contributed money to the 501(c)(4) organization. However, the transactions are not consistently reported across both organizations. For instance, on its fiscal year 2011 990, AMA

¹³ *Id.*

reported receiving a \$34,000 contribution from AM. That donation, however, does not appear on AM's 2010 or 2011 calendar year 990s.¹⁴

Schedule R Transactions Between AM and AMA					
Disclosed by American Majority			Disclosed by American Majority Action		
Calendar Year	Schedule R Designations	Amount	Tax Year	Schedule R Designations	Amount
2011	D	\$11,601.00	2011	C	\$34,000.00
2011	M		2011	E	\$117,800.00
2011	N		2011	M	\$14,627.00
2011	P	\$118,401.00	2011	N	\$14,649.00
2012	B	\$100,000.00	2011	O	\$174,500.00
2012	L	\$1.00	2012	C	\$100,000.00
2012	N	\$1.00	2012	E	\$75,000.00
2012	O	\$1.00	2014	D	\$142,458.00
2012	Q	\$12,971.00	2014	L	
2013	Q	\$7,943.00	2014	N	
2016	D	\$54,253.00	2014	P	
2016	E	\$145,411.00			
2017	Q	\$93,461.00			
2018	Q	\$134,154			

In addition to the inconsistent disclosure, there are several other conflicts of interest between the two organizations including largely overlapping boards of directors. For instance, in 2017, the two nonprofits had identical boards of directors. In 2016, both organizations had eight members on their boards, and seven individuals served on both boards. In 2015, both organizations again had eight members and six individuals served on both boards.¹⁵

The conflicts extend beyond the boards. According to AMA's 990 for the tax year beginning on 7/1/2013 and ending 6/30/2014, "One member of the board is an investor in a

¹⁴ <https://projects.propublica.org/nonprofits/organizations/261501154>;
<https://projects.propublica.org/nonprofits/organizations/263594713>.

¹⁵ Calendar Year 2015 Return of Organization Exempt from Income Tax, Form 990, American Majority Action, Inc., Schedule R, Part IV, filed Aug. 25, 2017, available at <https://www.documentcloud.org/documents/6789633-American-Majority-Action-990-July-2015-to.html>; see also 2015 Return of Organization Exempt from Income Tax, Form 990, American Majority Inc., Form 199, Statement 1, prepared Jan. 12, 2017, available at <https://www.documentcloud.org/documents/6788670-American-Majority-2015-Form-990.html>.

company started and operated by another board member.”¹⁶ Additionally, in 2012 and in preceding years, Mr. Ryun’s brother, Andrew, served on the boards of both AMA and AM.¹⁷

AM Action LLC

Beyond the conflicts between the two nonprofits, the organizations have also executed many transactions with for-profit entities that draw into question their tax-exempt status. In 2011, a company called AM Action LLC filed Articles of Organization with the State Corporation Commission of Virginia.¹⁸ According to AMA’s 990 for the tax year beginning July 1, 2011 and ending July 30, 2012, both AMA and AM invested in AM Action LLC. The 990 states that AMA is the “direct controlling entity” of AM Action LLC with 67 percent ownership.¹⁹ The purpose of AM Action LLC is to “invest in, develop and make use of software to be used in organizations functions or made available to others.”²⁰ AM’s 2012 990 indicates AM acquired a 33 percent ownership stake in the company that year while AMA’s 2012 990 indicated it owned the rest of the company and was in control of it.²¹

AM and AMA have delivered hundreds of thousands of dollars to AM Action LLC, yet the company has lost a staggering amount of money.²² Between 2011 and 2014, AM and AMA awarded grants to and issued loans to AM Action LLC of more than \$750,000 while receiving less than \$35,000 in interest. During that same time period, AM Action LLC reported a negative income totaling nearly \$150,000. Since 2015, the nonprofits have not disclosed any additional contributions or loans to the company, but AM Action LLC has reported a negative income totaling more than \$1.7 million. Perhaps as a recognition of this poor investment, AMA’s 2016 990 includes a negative \$953,544 adjustment to total revenue for “Book Share of Investment in AM Action, LLC.”²³

¹⁶ 2014 Return of Organization Exempt from Income Tax, Form 990, American Majority Action, Inc., Schedule O Supplemental Information to Part VI, Line 2, filed June 12, 2015, *available at* https://projects.propublica.org/nonprofits/display_990/263594713/2015_07_EO%2F26-3594713_990O_201406.

¹⁷ 2012 Return of Organization Exempt from Income Tax, Form 990, American Majority Action, Inc., filed June 27, 2013, *available at* https://projects.propublica.org/nonprofits/display_990/263594713/2013_07_EO%2F26-3594713_990O_201206; 2012 Return of Organization Exempt from Income Tax, Form 990, American Majority, Inc., filed Feb. 3, 2014, *available at* https://projects.propublica.org/nonprofits/display_990/261501154/2014_02_EO%2F26-1501154_990_201212.

¹⁸ Articles of Organization, AM Action LLC, Virginia State Corporation Commission, filed Dec. 2, 2011, *available at* <https://www.documentcloud.org/documents/6775030-AM-Action-Llc-Articles-of-Organization.html>.

¹⁹ 2012 Return of Organization Exempt from Income Tax, Form 990, American Majority Action, Inc., Schedule L, Part IV, filed June 27, 2013, *available at* https://projects.propublica.org/nonprofits/display_990/263594713/2013_07_EO%2F26-3594713_990O_201206.

²⁰ *Id.*

²¹ *Id.*; 2012 Return of Organization Exempt from Income Tax, Form 990, American Majority, Inc., Schedule R, Part V, filed Feb. 3, 2014, *available at* https://projects.propublica.org/nonprofits/display_990/261501154/2014_02_EO%2F26-1501154_990_201212.

²² This paragraph is drawn from an analysis of the annual tax forms filed by AM and AMA. *See* <https://projects.propublica.org/nonprofits/organizations/261501154>; <https://projects.propublica.org/nonprofits/organizations/263594713>.

²³ 2016 Return of Organization Exempt from Income Tax, Form 990, American Majority Action Inc., Schedule D, Part XIII, filed Nov. 15, 2017, *available at* <https://projects.propublica.org/nonprofits/organizations/263594713/201703199349309560/full>.

Political Gravity

In 2011 or 2012, AM Action LLC purchased a 30 percent ownership stake in a company called Political Gravity LLC (“Political Gravity”), based in Texas.²⁴ Political Gravity’s creation and affiliation with AM and AMA deserves additional scrutiny. For instance, the timing of the partnership is questionable. Political Gravity and AMA issued a press release on July 26, 2011, announcing their collaboration.²⁵ The two organizations planned to “deliver leading edge mobile campaign technology to Conservative candidates and grassroots groups.”²⁶ Nevertheless, Political Gravity did not file a Certificate of Formation with the Secretary of State of Texas until December 21, 2011 with an effective date of January 2, 2012.²⁷ AMA’s 990 for the fiscal year ending June 30, 2012, does not mention Political Gravity, but states that the organization “[e]stablished relationship with software provider and made software available to 501(c)(3) groups consistent with principles and goals of organization.”²⁸

In fact, Political Gravity worked with many explicitly partisan groups and candidates. For instance, during the 2012 election cycle, Political Gravity was paid more than \$50,000 by Republican candidates and party committees in Texas.²⁹ The company also seems to have been supported by much larger organizations. Reportedly, the conservative group FreedomWorks relied heavily on the app created by Political Gravity.³⁰

Notably, there are conflicts of interest involved in this relationship as well. Andrew Ryun, Mr. Ryun’s brother, is one of two directors listed Political Gravity’s Certificate of Formation.³¹ At the time, Andrew Ryun also served on the boards of AM and AMA.³² The same year that Andrew Ryun created Political Gravity, AM purchased \$100,000 worth of assets from the

²⁴ Financial Statements and Independent Auditor’s Report for 2013 and 2012, American Majority, Inc. prepared Feb. 6, 2015, *available at* <https://www.documentcloud.org/documents/6789615-American-Majority-2013-Audit.html>.

²⁵ Press Release, Political Gravity and American Majority Action Form Powerful Partnership to Effect Political Change, Political Gravity and American Majority Action, July 26, 2011, *available at* <http://www.teaparty911.com/articles/american-majority-political-gravity-press-release.pdf>.

²⁶ *Id.*

²⁷ Certificate of Formation, Political Gravity, Inc., Secretary of State of Texas, Dec. 21, 2011, *available at* <https://www.documentcloud.org/documents/6775548-Political-Gravity-Certificate-of-Formation.html>.

²⁸ 2012 Return of Organization Exempt from Income Tax, Form 990, American Majority Action, Inc., Schedule O, filed June 27, 2013, *available at* https://projects.propublica.org/nonprofits/display_990/263594713/2013_07_EO%2F26-3594713_990O_201206.

²⁹ Campaign Finance Search, Texas Ethics Commission, accessed Feb. 14, 2020, *available at* <https://www.ethics.state.tx.us/search/cf/AdvancedSearch.php>.

³⁰ David Weigel, Why the Tea Party Failed, *Slate*, Nov. 9, 2012, *available at* <https://slate.com/news-and-politics/2012/11/the-tea-party-lost-big-on-election-night-and-must-now-work-with-gop-to-bounce-back.html>.

³¹ Certificate of Formation, Political Gravity, Inc., Secretary of State of Texas, Dec. 21, 2011, *available at* <https://www.documentcloud.org/documents/6775548-Political-Gravity-Certificate-of-Formation.html>.

³² Return of Organization Exempt from Income Tax, Form 990, American Majority Action, Inc., Schedule L, Part IV, filed June 27, 2013, *available at* https://projects.propublica.org/nonprofits/display_990/263594713/2013_07_EO%2F26-3594713_990O_201206; 2012 Return of Organization Exempt from Income Tax, Form 990, American Majority, Inc., filed Feb. 3, 2014, *available at* https://projects.propublica.org/nonprofits/display_990/261501154/2014_02_EO%2F26-1501154_990_201212.

company.³³ In 2012, AM purchased a 5 percent ownership stake in Political Gravity.³⁴ Essentially, Andrew Ryun was on both sides of these transactions.

Ned Ryun also appears to have drummed up support for the company without disclosing his conflict of interest. After the 2012 election, Mr. Ryun wrote an op-ed in *Human Events* praising the company:

Where most on the Right have struggled is in taking what is useful data and actually having a front-end interface or application that makes it deliverable in a practical, on-the-ground way for the grassroots user.

That's one of the aspects of the technology that American Majority Action and the tech firm Political Gravity have delivered with their joint product, Gravity: not only super-solid data, but also a practical online system in which grassroots workers can punch in a precinct, put in filter (e.g., every female Republican who voted in 2010 primaries in the precinct), and then come up with a list of the voter files requested. From there, identified voting households can be put into the most efficient walk route on a volunteer's iPad, tablet or smartphone.³⁵

Mr. Ryun also submitted a positive review on Political Gravity's Facebook page stating, "It was a bit of a no brainer for me to use Voter Contact: they saved me lots of money and got me a better product."³⁶ A review of campaign finance disbursement data indicates Political Gravity may have stopped acting as a vendor for political campaigns after the 2012 election.³⁷

Voter Gravity

Following his relationship with Political Gravity, Mr. Ryun started another data analytics firm called Voter Gravity, LLC ("Voter Gravity"). Mr. Ryun is listed as the initial registered agent, and an initial director of the company, which filed its Articles of Incorporation on December 24, 2012.³⁸ The company operates an app that provides data about campaign donors, voters, and activists to political campaigns.³⁹ In 2013, AM appears to have acquired a 29.9 percent stake in Voter Gravity.⁴⁰

³³ *Id.*

³⁴ *Id.*; 2011 Return of Organization Exempt from Income Tax, Form 990, American Majority, Inc., filed Nov. 20, 2012, available at https://projects.propublica.org/nonprofits/display_990/261501154/2012_12_EO%2F26-1501154_990_201112.

³⁵ Ned Ryun, Invest in Grassroots Now, or Lose Again, *Human Events*, Dec. 19, 2012, available at <https://humanevents.com/2012/12/19/ned-ryun-invest-in-grassroots-now-or-lose-again/>.

³⁶ <https://www.facebook.com/pg/votercontact.org/reviews/>.

³⁷ Campaign Finance Search, Federal Election Commission, accessed February 20, 2019, available at <https://www.fec.gov/data/>.

³⁸ Articles of Incorporation, Voter Gravity Inc, Virginia State Corporation Commission, filed Dec. 24, 2012, available at <https://www.documentcloud.org/documents/6789624-Voter-Gravity-Articles-of-Incorporation.html>.

³⁹ <http://votergravity.com>.

⁴⁰ Return of Organization Exempt from Income Tax, Form 990, American Majority, Inc., filed Aug. 14, 2014, available at https://projects.propublica.org/nonprofits/display_990/261501154/2015_02_EO%2F26-1501154_990_201312

Notably, Mr. Ryun receives compensation from AM, AMA, and Voter Gravity. According to 2017 990s for the nonprofits, Mr. Ryun received \$64,800 from AMA, \$78,201 from AM, and an estimated \$27,000 from Voter Gravity, for a total of \$170,001.⁴¹ In 2016, Mr. Ryun received \$48,600 from AMA, \$53,726 from AM, and an estimated \$64,800 from Voter Gravity, for a total of \$167,126.⁴² According to the 2018 990 for AM, Mr. Ryun received \$75,517 from AM, and a combined \$108,733 from AMA and Voter Gravity, for a total of \$184,250.⁴³

Beyond Mr. Ryun's conflicted compensation, the nonprofits also invested in Voter Gravity, yet do not appear to have received a return on their investment. The numbers disclosed for Voter Gravity roughly parallel the investments for AM Action LLC, which is the controlling entity of Voter Gravity, and also represent a staggering loss of money for the nonprofits. Initially, the nonprofits reported receiving some compensation from Voter Gravity, but eventually the company became a major drag on the nonprofits' finances. While most of the financial information for Voter Gravity is reported on AMA's tax returns, in 2014 AM reported nearly \$200,000 in negative income from Voter Gravity.⁴⁴ AMA, for its part, reported in its 990 for the tax year starting July 1, 2013 and ending June 30, 2014, that Voter Gravity had assets of nearly \$1.3 million and received \$6,630 in income.⁴⁵

Voter Gravity's financial outlook declined dramatically in subsequent years. In 2015, AMA reported negative income for Voter Gravity of nearly \$1.9 million while listing its assets at more than \$1.2 million by the end of the reporting period.⁴⁶ In 2016, income was more than

⁴¹ 2017 Return of Organization Exempt from Income Tax, Form 990, American Majority Action, Inc., filed May 18, 2018, *available at* https://projects.propublica.org/nonprofits/display_990/261501154/02_2019_prefixes_25-26%2F261501154_201712_990_2019021116085208; 2017 Return of Organization Exempt from Income Tax, Form 990, American Majority Inc., filed Nov. 14, 2018, *available at* https://projects.propublica.org/nonprofits/display_990/261501154/02_2019_prefixes_25-26%2F261501154_201712_990_2019021116085208.

⁴² 2016 Return of Organization Exempt from Income Tax, Form 990, American Majority Action, Inc., filed Nov. 15, 2017, *available at* https://projects.propublica.org/nonprofits/display_990/263594713/12_2017_prefixes_26-27%2F263594713_201612_990O_2017122915067215; 2016 Return of Organization Exempt from Income Tax, Form 990, American Majority Inc., prepared Nov. 14, 2017, *available at* <https://www.documentcloud.org/documents/6788667-American-Majority-2016-Form-990.html>.

⁴³ <https://projects.propublica.org/nonprofits/organizations/261501154/201903199349312700/full>

⁴⁴ 2014 Return of Organization Exempt from Income Tax, Form 990, American Majority Inc., Schedule R, Part IV, filed March 21, 2016, *available at* https://projects.propublica.org/nonprofits/display_990/261501154/2016_07_EO%2F26-1501154_990_201412.

⁴⁵ 2014 Return of Organization Exempt from Income Tax, Form 990, American Majority Action, Inc., Schedule R, Part IV, filed June 12, 2015, *available at* https://projects.propublica.org/nonprofits/display_990/263594713/2015_07_EO%2F26-3594713_990O_201406.

⁴⁶ This includes an 18-month window from July 1, 2014 to December 31, 2015, when AMA switched its reporting cycle from fiscal year to calendar year. See *Fiscal Year 2015 Return of Organization Exempt from Income Tax, Form 990, American Majority Action, Inc., Schedule R, Part IV*, filed Oct. 27, 2016, *available at* <https://www.documentcloud.org/documents/6789632-American-Majority-Action-990-July-2014-to-June.html>; *Calendar Year 2015 Return of Organization Exempt from Income Tax, Form 990, American Majority Action, Inc., Schedule R, Part IV*, filed Aug. 25, 2017, *available at* <https://www.documentcloud.org/documents/6789633-American-Majority-Action-990-July-2015-to.html>.

\$800,000 in the red and assets had plummeted to less than \$500,000.⁴⁷ In 2017, income was nearly \$400,000 in the negative and assets consisted of nearly \$250,000.⁴⁸ AMA appears to have reported to the IRS that the value of Voter Gravity declined dramatically and that AMA's ownership interest share in Voter Gravity is now negative.

Beyond the income loss, AMA also took out loans on behalf of Voter Gravity. In 2015, AMA reported a loan of \$157,513 for Voter Gravity, and in 2016, reported a loan of more than \$150,000.⁴⁹ In 2017, AMA reported a loan of nearly \$300,000.⁵⁰ Most recently, in 2018, AMA loaned Voter Gravity more than \$300,000.⁵¹ Despite this bleak financial picture, Voter Gravity continued to pay a salary to Mr. Ryun.

Jurisdiction

IRS

The IRS is charged with investigating possible violations of federal tax law. As 501(c)(3) and 501(c)(4) organizations, AM and AMA must adhere to all federal tax laws to maintain their tax-exempt status.

DFI

DFI is charged with enforcing Chapter 202, subchapters I and II, of the Wisconsin Statutes, which govern charitable organizations operating in Wisconsin.⁵² AM and AMA have been actively involved in Wisconsin, and they have received DFI licenses to operate. AM first received

⁴⁷ 2016 Return of Organization Exempt from Income Tax, Form 990, American Majority Action, Inc., Schedule R, Part IV, Nov. 15, 2017, available at https://projects.propublica.org/nonprofits/display_990/263594713/12_2017_prefixes_26-27%2F263594713_201612_990O_2017122915067215.

⁴⁸ 2017 Return of Organization Exempt from Income Tax, Form 990, American Majority Action, Inc., Schedule R, Part IV, filed May 18, 2018, available at https://projects.propublica.org/nonprofits/display_990/261501154/02_2019_prefixes_25-26%2F261501154_201712_990_2019021116085208.

⁴⁹ Calendar Year 2015 Return of Organization Exempt from Income Tax, Form 990, American Majority Action, Inc., Schedule R, Part V, filed Aug. 25, 2017, available at <https://www.documentcloud.org/documents/6789633-American-Majority-Action-990-July-2015-to.html>; 2016 Return of Organization Exempt from Income Tax, Form 990, American Majority Action, Inc., Schedule R, Part V, Nov. 15, 2017, available at https://projects.propublica.org/nonprofits/display_990/263594713/12_2017_prefixes_26-27%2F263594713_201612_990O_2017122915067215.

⁵⁰ 2017 Return of Organization Exempt from Income Tax, Form 990, American Majority Action, Inc., Schedule R, Part V, filed May 18, 2018, available at https://projects.propublica.org/nonprofits/display_990/261501154/02_2019_prefixes_25-26%2F261501154_201712_990_2019021116085208.

⁵¹ 2018 Return of Organization Exempt from Income Tax, Form 990, American Majority Action, Inc., Schedule R, Part V, Nov. 14, 2019, available at https://apps.irs.gov/pub/epostcard/cor/263594713_201812_990O_2020021817155283.pdf.

⁵² <https://wdfi.org/CharitableOrganizations/>.

a license in 2010 and received an updated license in 2017, which expired on July 31, 2018. AMA first received a license in 2012 and received an updated license on February 6, 2020.⁵³

Additionally, one of AM's major donors is located in Wisconsin. In 2018, AM received \$200,000 from the Lynde & Harry Bradley Foundation, Inc, which is based in Milwaukee, Wisconsin.⁵⁴ Between 2015 and 2017, the foundation contributed \$645,000 to AM.⁵⁵ In 2016, Bradley's \$345,000 contribution constituted around 34 percent of AM's total contributions and grants.⁵⁶ Beyond Bradley, AM has received donations from other nonprofits based in Wisconsin including the Einhorn Family Foundation and the John N & Kathleen S MacDonough Foundation.⁵⁷

To lead its Wisconsin efforts, AM maintains an office in the state, which hosts events.⁵⁸ Additionally, AM and AMA have financially supported candidates running for office in Wisconsin. According to quotation from an AM representative in a press release on its website:

Since opening our Wisconsin office in October 2010, we have trained 169 new leaders who've gone on to victory across Wisconsin. American Majority is helping to bring conservative reform to the state of Wisconsin by providing candidates the tools to be successful in their campaigns. We're very proud of the results thus far, and we will continue to build on these successes in the future.⁵⁹

⁵³ Credential Lookup, Wisconsin Department of Financial Institutions, accessed Feb. 28, 2020, *available at* <https://wdfi.org/ice/berg/Registration/OrgCredentialSearchResults.aspx?CredentialType=800&LicenseNumber=&FirmName=american+majority>.

⁵⁴ 2018 Return of Private Foundation, Form 990, The Lynde and Harry Bradley Foundation, Inc., filed Nov. 13, 2019, *available at* https://projects.propublica.org/nonprofits/display_990/396037928/12_2019_prefixes_38-42%2F396037928_201812_990PF_2019122716981869.

⁵⁵ 2017 Return of Private Foundation, Form 990, The Lynde and Harry Bradley Foundation, Inc., filed Nov. 12, 2018, *available at* https://projects.propublica.org/nonprofits/display_990/396037928/02_2019_prefixes_38-41%2F396037928_201712_990PF_2019020716072237; 2016 Return of Organization Exempt from Income Tax, Form 990, American Majority Inc., Form 199, Statement 1, prepared Nov. 14, 2017, *available at* <https://www.documentcloud.org/documents/6788667-American-Majority-2016-Form-990.html>; 2015 Return of Organization Exempt from Income Tax, Form 990, American Majority Inc., Form 199, Statement 1, prepared Jan. 12, 2017, *available at* <https://www.documentcloud.org/documents/6788670-American-Majority-2015-Form-990.html>.

⁵⁶ Financial Statements and Independent Auditor's Report for 2016 and 2015, American Majority, Inc., Nov. 15, 2017, *available at* <https://www.documentcloud.org/documents/6788674-American-Majority-2016-Audit.html>.

⁵⁷ 2016 Return of Private Foundation, Form 990, Einhorn Family Foundation Inc, filed April 28, 2017, *available at* <https://projects.propublica.org/nonprofits/organizations/396643717/201721219349101027/IRS990PF>; 2013 Return of Private Foundation, Form 990, John N & Kathleen S MacDonough Foundation Inc., filed May 14, 2014, *available at* <https://projects.propublica.org/nonprofits/organizations/391924028/201441349349100319/IRS990PF>.

⁵⁸ <https://www.americanmajority.org/wisconsin/>; <https://www.americanmajority.org/events/appleton-wi-new-leaders-training/>.

⁵⁹ <https://www.americanmajority.org/blog-2/32-american-majority-trained-new-leaders-win/>.

California

AM registered as a charity with the Attorney General of California on September 22, 2009.⁶⁰ AMA registered on August 9, 2013. Since then, both organizations have ceased to maintain their registration. On January 9, 2017, the Attorney General issued a delinquency notice to AMA highlighting several problems with AMA's registration. On July 9, 2018, the Attorney General issued a final notice of revocation, which, according to the Attorney General's website, was ultimately revoked on January 11, 2019. On February 7, 2020, the Attorney General issued a notice of intent to suspend AM following several problems with AM's registration paperwork.

Despite its problematic registration, AM has continued to receive contributions in California. In 2014, the Jim Hicks Family Foundation, which is based in Hacienda Heights, California, contributed to AM.⁶¹ In 2015, the Motion Picture Association of America, which is based in Sherman Oaks, California, contributed to AM.⁶² In 2017, the Lebherz Family Foundation, based in San Mateo, California, contributed to AM.⁶³

Alleged Violations

Excessive Political Spending

A section 501(c)(4) organization may participate in political activities provided that those activities are not the primary purpose of the organization.⁶⁴ In determining whether a particular activity is political campaign activity, the IRS will look at all relevant facts and circumstances.⁶⁵ Accordingly, some activities that are not explicitly regulated under state or federal campaign finance law may be still be considered to be political campaign activities under the Code. Factors the IRS considers in determining whether an activity should be treated as political campaign activity, include but are not limited to:

- whether an individual is identified in her capacity as a candidate instead of as a public official;
- whether the activity occurred during an electoral campaign, targeted at voters in a particular election;
- whether it identifies a candidate's position on a public policy issue that has been raised during the campaign to distinguish the candidate from others; and,

⁶⁰ Registry Verification Search, California Office of the Attorney General, *available at* <http://rct.doj.ca.gov/Verification/Web/Search.aspx?facility=Y>.

⁶¹ **2014 Return of Private Foundation, Form 990**, The Jim Hicks Family Foundation, filed Feb. 9, 2016, *available at* <https://projects.propublica.org/nonprofits/organizations/271357705/201620409349100207/IRS990PF>.

⁶² **2015 Return of Organization Exempt From Income Tax, Form 990**, Motion Picture Association of America, filed Nov. 2, 2016, *available at* <https://projects.propublica.org/nonprofits/organizations/131068220/201613209349309586/IRS990ScheduleI>.

⁶³ **2017 Return of Private Foundation, Form 990**, The Lebherz Family Foundation, filed Nov. 14, 2018, *available at* <https://projects.propublica.org/nonprofits/organizations/273048346/201843189349101324/IRS990PF>.

⁶⁴ Treas. Reg. § 1.501(c)(4)-1(a)(2).

⁶⁵ Rev. Rul. 2004-6 I.R.B. (Jan. 26, 2004). *See also* Rev. Rul. 2007-41, 2007-25 I.R.B. (June 18, 2007) (discussing what is "political" activity under the Code in the context of prohibited activities by a section 501(c)(3) organization).

- whether it is part of an ongoing advocacy campaign on public policy issues.⁶⁶

The limitation on political activity is implicit in the statutory requirement that a section 501(c)(4) organization must be “operated exclusively for the promotion of social welfare” and that political activity is not promoting social welfare.⁶⁷ IRS regulations state that “operated exclusively” means “primarily engaged in” but no exact percentage or test has been provided to determine when an organization may be found to operating with a political purpose instead of one for the betterment of social welfare. “Primarily” therefore suggests that political activity must at least be less than 50 percent.

Although there are no numerical guidelines as to the precise level of political campaign activity that would be impermissible for a 501(c)(4) organization, the IRS’s creation of a streamlined application option available to certain section 501(c)(4) applicant organizations offers some indication of acceptable spending and activity levels. Organizations can receive 501(c)(4) status more quickly if they can certify: (i) they devote 60 percent or more of their spending and time on activities that promote social welfare, and (ii) political campaign intervention consumes 40 percent or less of both their spending and time.⁶⁸ AMA cannot make such a certification, especially during election years.

AMA’s activities, however, clearly violate this threshold. As noted above, in 2016, AMA spent more than 85 percent of its expenditures on politics, far exceeding the 50 percent threshold.

Failure to Accurately Disclose Donor Information

As noted above, according to AM’s returns uploaded on Guidestar, AM appears to have submitted incorrect information regarding a major donor to the state of California on its 2015 or 2016 990s or both. Notably, the California return states:

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Additionally, California Government Code Section 12591.1(a) states that anyone who violates any provision of the Uniform Supervision of Trustees for Charitable Purposes Act may be liable for civil penalties of up to \$10,000 and Section 12591.1(b)(2) states that the Attorney General may

⁶⁶ Rev. Rul. 2004-6 I.R.B. (Jan. 26, 2004).

⁶⁷ Treas. Reg. § 1.501(c)(4)-1(a)(2)(ii).

⁶⁸ IRS Fact Sheet 2013-8, *IRS Offers New Streamlined Option to Certain 501(c)(4) Groups Caught in Application Backlog*, June 2013 (FS 2013-8, 06/24/2013).

issue a cease and desist letter to anyone who “[h]as made a material false statement in an application, statement, or report required to be filed...”⁶⁹

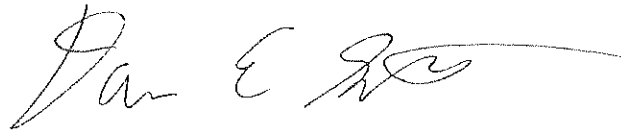
Related Transactions

AM and AMA have used their nonprofit status to preside over a web of interlocking transactions involving multiple nonprofit and for-profit entities. The organizations have disclosed some but not all of these transactions to the IRS. Additionally, the nonprofits have provided substantial sums of money to for profit entities, yet they have received little in return. Given this complicated web of transactions, it is incumbent on the IRS, DFI, and the California Attorney General to determine whether any of these disclosed transactions or other undisclosed transactions violated the nonprofits’ tax-exempt status.

Conclusion

Tax-exempt status is a privilege and organizations that receive that status must adhere to the federal and state laws governing nonprofits. AM and AMA appear to have directly violated laws governing spending on politics. The organizations may have violated other provisions requiring the accurate disclosure of their donors and conducting inappropriate transactions with related entities. Therefore, CfA requests that the IRS, DFI, and the California Attorney General investigate AM and AMA and, if they have violated the law, assess appropriate penalties for the organizations.

Sincerely,



Daniel E. Stevens
Executive Director

Encls: Form 13909
Form 2255
Form CT-9

⁶⁹ <https://oag.ca.gov/sites/all/files/agweb/pdfs/charities/gov-12580-12599.8.pdf>.

Exhibit 5

Form 990

Return of Organization Exempt From Income Tax

OMB No 1545-0047

2018

Open to Public Inspection

Department of the Treasury Internal Revenue Service

Under section 501(c), 527, or 4947(a)(1) of the Internal Revenue Code (except private foundations)

Do not enter social security numbers on this form as it may be made public

Go to www.irs.gov/Form990 for instructions and the latest information.

A For the 2019 calendar year, or tax year beginning 01-01-2018, and ending 12-31-2018

- B Check if applicable: Address change, Name change, Initial return, Final return/terminated, Amended return, Application pending

C Name of organization: AMERICAN MAJORITY ACTION INC. Doing business as: Number and street (or P O box if mail is not delivered to street address) Room/suite: PO BOX 309 City or town, state or province, country, and ZIP or foreign postal code: PURCELLVILLE, VA 20134

D Employer identification number: 26-3594713

E Telephone number: (540) 338-1251

G Gross receipts \$ 848,205

F Name and address of principal officer: NED RYUN, PO BOX 309, PURCELLVILLE, VA 20134

H(a) Is this a group return for subordinates? Yes No. H(b) Are all subordinates included? Yes No. If "No," attach a list (see instructions)

I Tax-exempt status: 501(c)(3) 501(c)(4) 4947(a)(1) or 527

J Website: AMERICANMAJORITYACTION.ORG

H(c) Group exemption number

K Form of organization: Corporation Trust Association Other

L Year of formation: 2010

M State of legal domicile: VA

Part I Summary

Table with 3 main sections: 1. Briefly describe the organization's mission or most significant activities (PROMOTING SOCIAL WELFARE AND CIVIC BETTERMENT THROUGH PROMOTION OF CONSERVATIVE PRINCIPLES); 2. Check this box if the organization discontinued its operations or disposed of more than 25% of its net assets; 3. Revenue (8-12); 4. Expenses (13-19); 5. Net Assets or Fund Balances (20-22). Includes comparison of Prior Year and Current Year data.

Part II Signature Block

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than officer) is based on all information of which preparer has any knowledge.

Sign Here: Signature of officer (NED C RYUN, CEO) and Date (2019-11-14)

Paid Preparer Use Only: Print/Type preparer's name, Preparer's signature, Date (2019-11-13), Check if self-employed, PTIN (PO1227829), Firm's name (SPONSEL CPA GROUP LLC), Firm's EIN (27-0851983), Firm's address (251 N ILLINOIS ST STE 450 INDIANAPOLIS, IN 46204), Phone no (317) 608-6699

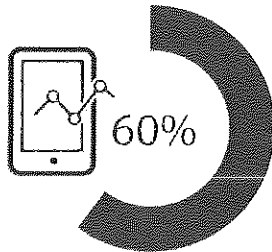
ETH-93

May the IRS discuss this return with the preparer shown above? (see instructions) Yes No

Exhibit 6

We turn data into votes

Innovative political leaders always look for better ways to make an impact with limited resources. Good news: Data and technology can now be integrated into our decision making, get out the vote operations, and messaging efforts, making it part of our political DNA. We believe that technology will completely change politics over the next few elections and the time to integrate is now.



By 2016, 60% of the US population will have a smartphone



Targeted, insightful and immediate information for your campaign

Voter Gravity is a map and mobile based voter contact platform with an integrated suite of tools. We place powerful data and user friendly technology into the hands of political campaigns and groups of every size. Voter Gravity is the first integrated database platform on the center-right. Our tools are battle tested and ready to enable candidates and activists to get the right message to the right people as efficiently as possible this year and beyond.

Exhibit 7

From: [Hunter Hamberlin](#)
To: [Ben Leman](#)
Subject: ALEC Membership Renewal 2020
Date: Thursday, September 24, 2020 9:13:06 AM

Hi Representative Leman,

My name is Hunter Hamberlin and I am the ALEC Legislative Outreach Coordinator for Texas. Your annual [ALEC Membership](#) will be ending at the end of 2020 and will be up for renewal. We do not want you to miss out on the valuable ALEC resources that you have been taking advantage of since 2019.

The demand of everyday life from your family, to your career, to your other obligations, can wear you thin. As you've come to expect throughout your membership, the entire ALEC team is at your beckon call to provide decisionmakers with the necessary tools to create free-market policy solutions that your constituents deserve.

Beyond industry-leading policy resources, your ALEC Membership comes with access to technology resources such as ALEC CARE and CONNECT.

ALEC CARE, the exclusive CRM tool for members, allows you to keep track of constituent research and engagement to better serve your community. CARE allows you to customize constituent profiles, set up push text messages, and visualize data trends to improve legislative interactions. This program, developed by VoterGravity, typically costs legislators thousands of dollars. CARE is just one of the many great member benefits you get with your ALEC membership.

ALEC CONNECT, an online collaboration space for the 21st century, puts the ALEC national network of state leaders and partners at your fingertips. On ALEC CONNECT, you can join discussion pages to collaborate with partners, register for upcoming meetings, view the ALEC events calendar and much more.

With the winter meeting around the corner, [renew today](#) as legislators around the country come together to set their 2021 agendas.

Renew your membership by replying to this email or complete the online form at: www.alec.org/join

As always, please let me know if you have any questions at 770-363-6076 or hhamberlin@alec.org.

Thank you,

Hunter C. Hamberlin

Exhibit 8

WE TURN DATA INTO VOTES—WE ENGINEER VICTORY



Voter Gravity is a map and mobile-based voter contact platform with an integrated suite of tools. We place powerful data and user-friendly technology into the hands of political campaigns and groups of every size.

Voter Gravity is an approved mobile app vendor of the Republican National Committee and fully integrated with the RNC's database. Clients access voter data, connect with voters through mobile canvassing, conduct surveys and phone banks, and analyze results via a user-friendly dashboard.

Voter Gravity Features



Voter Data: Access a statewide voter database with vote histories and rooftop geocodes. Pinpoint any voter in seconds with maps from Esri and its ArcGIS (Geographic Information System) maps and data.



Customer Relationship Management System (CRM): Better understand and manage donors, voters, and volunteers with editable individual profiles. Quickly create walk-lists and call-lists based on targeted criteria.



Customized Dynamic Surveys: Build and run an unlimited amount of surveys simultaneously for door knocking, phone banks or events. Smoothly switch surveys on a mobile device while speaking with voters at their doorsteps.



Mobile Canvassing: Gather voter data with any mobile device. Pull up walk-lists and run surveys that upon completion upload to the Voter Gravity database in real-time.



Phone System: Run a live phone bank with the Voter Gravity phone system or run an automated touch-tone survey “flash poll” on candidates and issues of any targeted voter universe you choose. Predictive dialing can also be set up through the Voter Gravity system to re-target voters.



Web-based Integration Tools: Integrate with hundreds of web apps including Facebook, MailChimp, Anedot, Survey Monkey, and Eventbrite in an automated process.



Campaign Intelligence Dashboard: Track and manage your campaign with the Intelligence Dashboard that gives you a real-time visualization of your most important data-points.



Website Setup: Clients can receive a fully-built and integrated website that is desktop, tablet, and mobile friendly, secure, stable, integrated, and SEO charged.



24/7 Support: Rely on a dedicated support team. In addition to a self-help center, our team of full-time software engineers is on call 24/7.





Targeted, Insightful and Immediate Information

With all of its features, Voter Gravity produces targeted, insightful and immediate information about voters, donors, and activists that mean the most to a campaign. Easily access all of the voter data you need and turn that data into votes.

Pricing

NUMBER OF VOTERS IN ACCOUNT	MONTHLY FEE
Up to 50,000	\$99 - All small races
50,000 - 150,000	\$240 - Larger state house and smaller counties
150,000 - 300,000	\$558 - State senate, medium counties
300,000 - 1,500,000	\$999 - Large county, Congressional, up to small statewide
LARGER STATEWIDE PRICING	MONTHLY FEE
1,500,000 to 3,000,000	\$1,500
3,000,000 to 5,000,000	\$2,000
5,000,000 to 8,000,000	\$2,500
8,000,000 to 10,000,000	\$3,000
Over 10,000,000	\$5,000

We challenge you to take voter contact to the next level. Contact our team at sales@votergravity.com or register for a demo at votergravity.com/demo.

Exhibit 9

Norm Moore

From: Will Davies <wdavies@alec.org>
Sent: Thursday, January 7, 2021 1:10 PM
To: Sine Kerr; Russell Smoldon; T.J. Shope
Cc: Emily Rice
Subject: ALEC State Chair Call Follow Up
Attachments: Arizona ALEC Membership Document.docx

Follow Up Flag: Follow up
Flag Status: Flagged

Hello Everyone,

I wanted to pass along the document Bill and I referenced during the call we had on Tuesday. The document has folks whose memberships are current, those whose memberships expired at the end of 2020 and those whose memberships expired at the end of 2019 or later. It also contains the amount of money in the travel reimbursement fund.

Below are some top-line things we covered during the call. Also, there will be a FAQ sheet in the State Chair Box we are sending out next week with everything you need to know.

State Chair Monthly Touch Points

- **Week 1-Action Item Sent the First Wednesday of Every Month** – This updates you on the ALEC agenda for the month and a recruitment letter that is tailored for you to send to your delegation.
- **Week 2-The State Chairs Call Agenda and Calendar Invite and the State Intelligence Digest:** The agenda is what you should expect and look forward to the following week and the State Intelligence Digest is a comprehensive document put together by the membership team that highlights the political news and events happening in all 50 States.
- **Week 3-The State Chairs Call on the 3rd Friday of every month at Noon EST:** This 30-40 minute call serves as a check-in call. State Chairs hear about what is taking place at ALEC, they hear from an outside speaker such as pollster Scott Rasmussen or an ALEC policy expert who talks about a hot button policy issue taking place in the states.
- **Week 4-State Intelligence Digest is sent out**

New Member Information

- Membership Costs: \$100 a year
- New this year...the ability to join two task forces.
- Within a week of joining they get a call from their membership representative.
- They receive a new member packet that has a welcome letter confirming their membership and task force, relevant information related to their Task Force choice, ALEC Member benefits such as CARE, CONNECT and other valuable information.
- 4-week email series
 - Welcome to ALEC
 - Taskforce Information
 - Policy Resources
 - Breakdown of ALEC Member Benefits (CARE and CONNECT)
 - CARE-Constituent Analytic Research Exchange is a CRM that allows legislators to communicate effectively with their constituents. This software would cost \$3,000 if bought by a member, but is a member benefit.

- CONNECT-Half search engine, half online forum. CONNECT is designed to help members find the policy documents they need while also allowing dialogue between legislators from all parts of the country.

I know things are in limbo in Arizona on whether the session will be in person or virtual. Once those details get hammered out, I will be happy to schedule an issue briefing on whatever y'all would like.

All the best,

Will

Will Davies
Manager, Member Engagement
American Legislative Exchange Council
o: 571-482-5033

wdavies@alec.org



Upcoming Meetings:

2021 Annual Meeting, July 28 – 30, Salt Lake City UT

2021 States and Nation Policy Summit, December 1 – 3, San Diego CA

The American Legislative Exchange Council is a 501(c)3 nonprofit organization and is the largest nonpartisan, voluntary membership organization of state legislators in the United States dedicated to the principles of limited government, free markets and federalism. The Council is governed by state legislators who comprise the National Board of Legislators and is advised by the Private Enterprise Advisory Council, a group of private, foundation and think tank members.

STATEMENT OF CONFIDENTIALITY

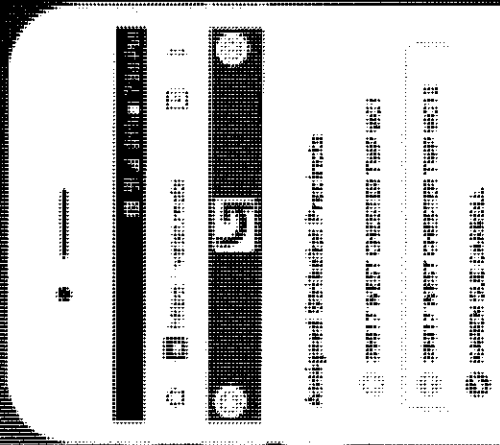
The information contained in this electronic message and any attachments to this message are intended for the exclusive use of the addressee(s) and may contain confidential and/or privileged information. This message or any part thereof must not be disclosed, copied, distributed or retained by any person without specific and direct authorization from the addressee(s). If you are not the intended recipient, please notify Will Davies, ALEC, immediately at (571) 482-5033 and at wdavies@alec.org and destroy all copies of this message and any attachments.

Exhibit 10

Request a demo

At the City of Chicago, we've developed a modern, secure, and compliant solution for managing your company's paper, forms, and workflow. Request this tool before a competitor has to take your City's business.

demo





Demo

Ready to win?

Voter Gravity empowers campaigns to unleash their voter contact efforts, making your strategy bigger, faster, and more targeted than ever before.

Let's start a conversation today. Fill out the form below to get started.

Full Name *

Organization

Email *

Phone

Are you interested in speaking with someone about your direct mail or printing needs? *

Are you a member of the American Legislative Exchange Council?

What else?

Please share any other thoughts or background information we should know before contacting you.

additional questions / comments

Submit

Voter Canvassing for Republican Operatives



In the Trenches: What Republican Operatives Need to Know About Voter Canvassing

When it comes to actually turning out voters, one of the most effective campaign methods is also the oldest: door-to-door canvassing. For decades, political scientists have analyzed and debated the effectiveness of various campaign tactics, and the utility of canvassing remains one of the few undisputed conclusions reached by major scholars of the subject.

In the Trenches:



votergravity

This voter Gravity report brings you the latest research in door-to-door effectiveness:

What you'll learn:

Search

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How Social Media Impacts Elections

Does Direct Mail Still Matter for Your Campaign?

The Stats: Why The Ground Game is Key to Winning

Download Studies to Discover Impact of Social Media, Direct Mail, Voter Canvassing, and More



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PARTNERS

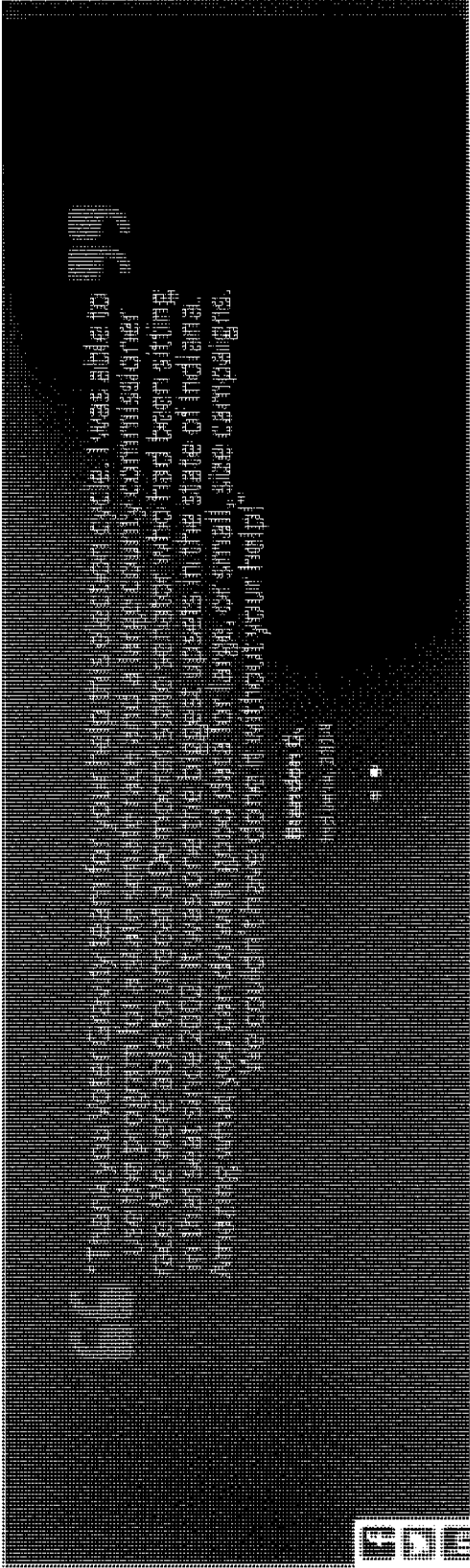
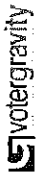
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HOME



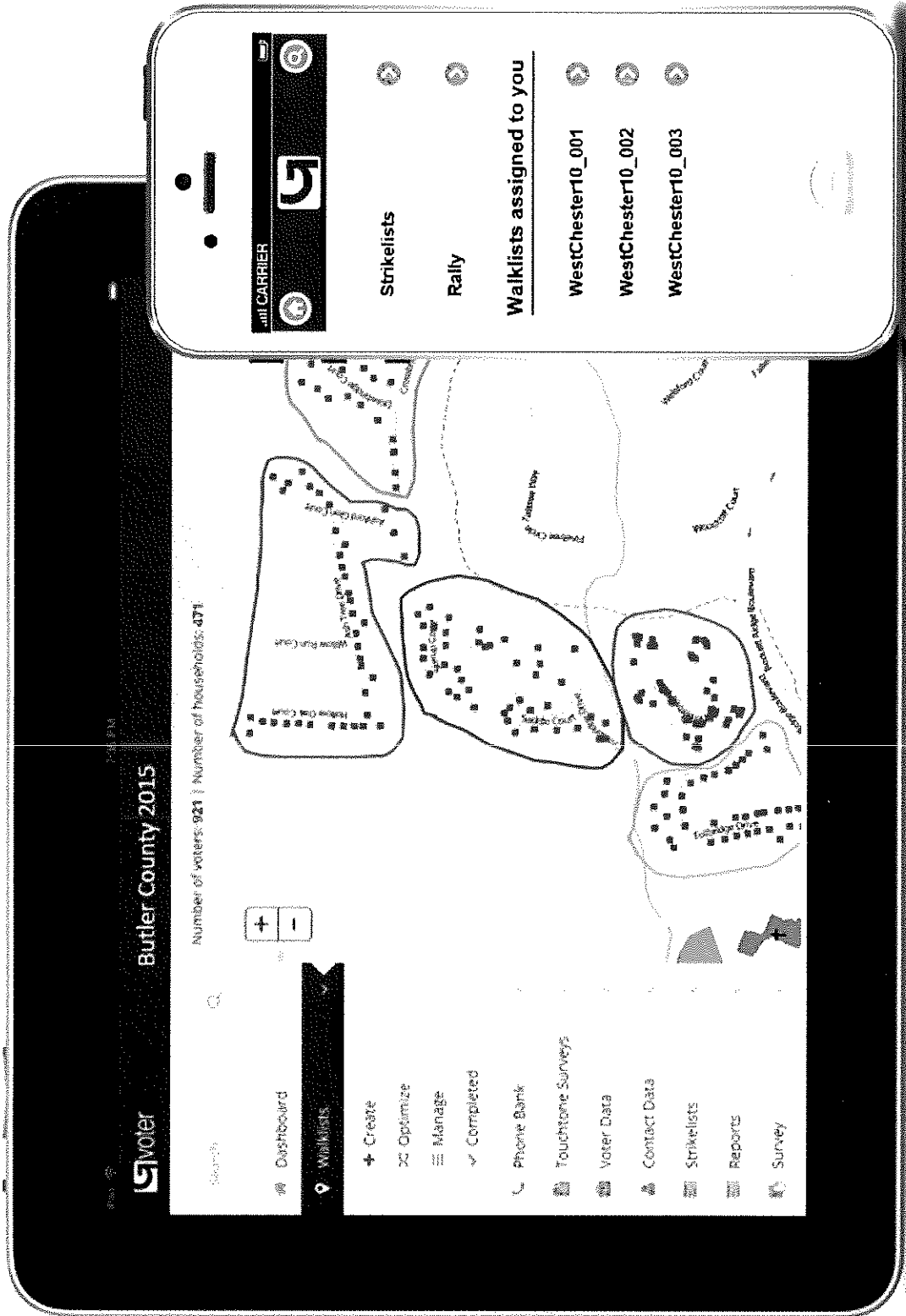
Support

For user support and helpful instructions, please follow the button below. If you don't find what you're looking for, please feel free to contact us for further assistance.

Newsletter

Receive exclusive news, updates and information from Voter Gravity.

Sign Up



G/voiler

Butler County 2015

Number of voters: 921 | Number of households: 471

Search



Dashboard

Walklists

+

Optimize

Manage

✓ Completed

Phone Bank

Touchtone Surveys

Voter Data

Contact Data

Strikelists

Reports

Survey

Strikelists

Rally

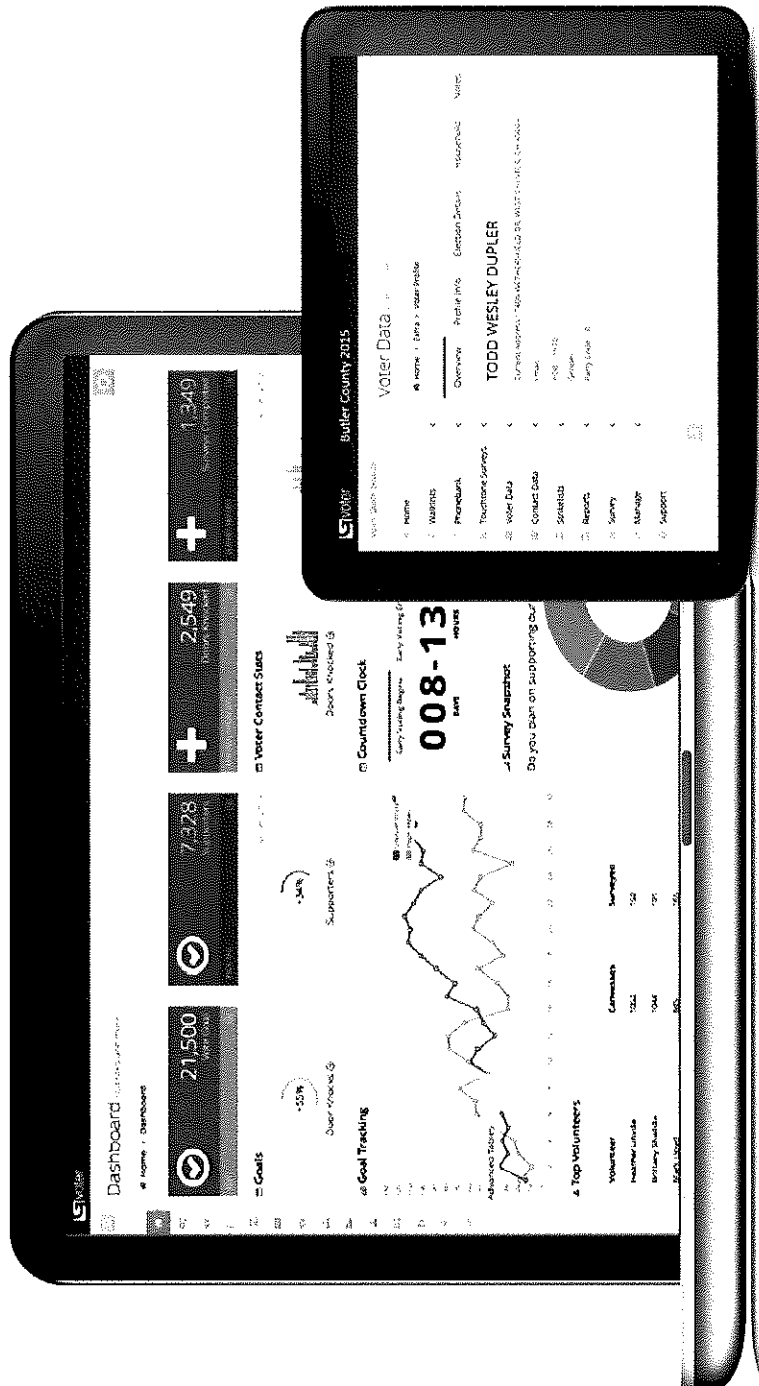
Walklists assigned to you

WestChester10_001

WestChester10_002

WestChester10_003

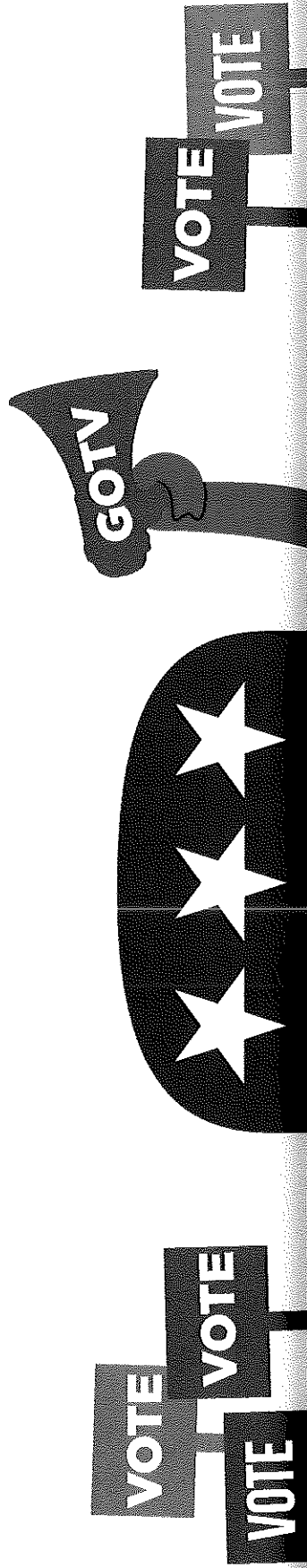
© 2015 G/voiler



In the Trenches:

What Republican Operatives Need to Know About Voter Canvassing

By Dr. George Hawley, Assistant Professor of Political Science, The University of Alabama



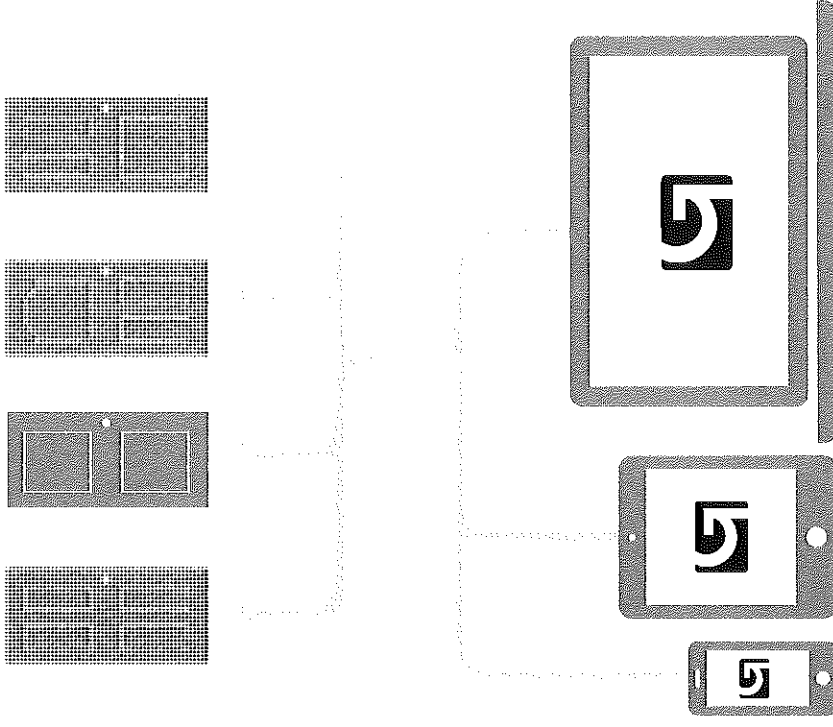
Introduction

When it comes to actually turning out voters, one of the most effective campaign methods is also the oldest: door-to-door canvassing. Even in this age of expensive consultants and slick advertising, nothing beats face-to-face contact with actual voters. For decades, political scientists have analyzed and debated the effectiveness of various means of campaigning, and the utility of canvassing remains one of the few undisputed conclusions reached by major scholars of the subject.

Unfortunately, canvassing requires a colossal amount of time and lots of hard work. Even worse, if it is not conducted correctly, it can be useless or even counterproductive. It rarely makes sense to knock on every door in a neighborhood. It is waste of time to ring someone's doorbell if they are committed to voting for the opposing candidate and cannot be persuaded otherwise. Time – a candidate's own and that of volunteers – is a precious commodity of any campaign. To be effective, canvassing efforts must be properly targeted.

The good news is that the technology exists to coordinate a precisely targeted campaign. President Obama's reelection campaign represented a new peak in campaign technology. The techniques implemented by the president's campaign staff are ideologically neutral. What worked for them can work for others.

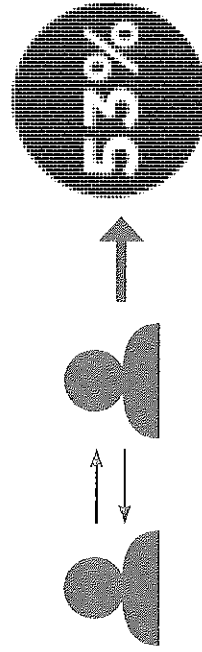
However, advanced technology alone is not enough to assure effective voter contact. Fortunately, the political science literature provides useful guidance for how to reach your potential voters and get them to the polls.



Voter canvassing works

Donald Green and Alan Gerber are the most renowned scholars of campaign techniques. In a 2000 study, they estimated that face-to-face voter mobilization increases voter turnout by 53 percent among those canvassed in a local election.ⁱ These results are congruent with older studies, such as those conducted by Rosenstone and Hansenⁱⁱ and Verba, Schlozman, and Brady.ⁱⁱⁱ

In their analysis of all the major studies conducted on voter canvassing, Green and Gerber found that the overwhelming majority of all research on the subject indicates that voter canvassing boosts turnout. Based on their thorough examination of all the relevant research, they concluded that **one additional vote is generated for every fourteen voters that canvassers contact.**^{iv} In a tight race, effective voter contact can make the difference between victory and defeat. As they noted in the conclusion of a 2003 study of canvassing in local elections (which concluded that as few as twelve face-to-face contacts with voters were necessary to earn an additional vote), at a large scale, voter canvassing can have an impressive effect and be worth the expense:



Face-to-face voter mobilization increases voter turnout by 53 percent

*Consider what this finding implies for a large scale GOTV campaign. Suppose one were to hire campaign workers at a rate of \$10 per hour. According to our records for Bridgeport and Columbus, where canvassers traveled in pairs but approached different doors, canvassers contacted eight voters per hour. In Raleigh and St. Paul, the rate was five contacts per hour, but this figure reflects the fact that in these sites canvassers not only traveled in pairs but also went in pairs up to every door. Had the teams of canvassers split up, the contacts per hour would presumably have doubled. If we imagine that **the average canvasser makes eight contacts per hour**, the cost per vote would be \$15.*

It is worth noting that voter canvassing has a different effect on different elements of the electorate. Importantly, canvassing has a greater impact on intended non-voters than intended voters.

When someone who claims he or she is not going to vote is exposed to campaign efforts, this person becomes more likely to later decide to vote.^v

When it comes to vote choice, party identification is key

The primacy of party identification when it comes to vote choice was one of the most important findings of political science in the 20th century. The party with which a voter identifies is a powerful predictor of who he or she will vote for in this election and many elections to come. For most people, party identification is stable over long periods in the absence of a major exogenous shock like a war or depression.

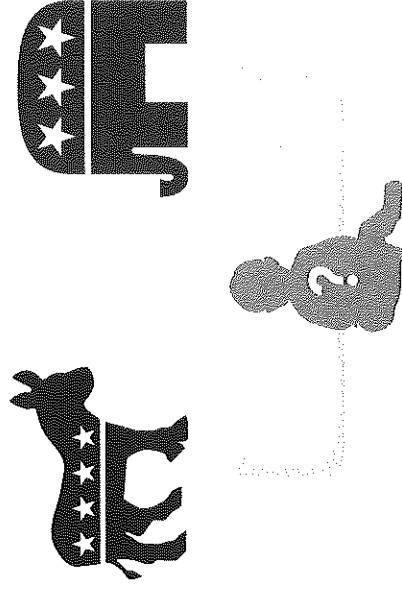
There are many competing theories of party identification. Some contend that party identification stems from early socialization, starting as early as childhood.^{vi} Others have argued that party identification stems from our key social identities.^{vii} A prominent political scientist has argued that our partisan identities are the result of our “running tallies” of government performance – if the party we typically support is leading to worse outcomes, we may abandon that party.^{viii} Ultimately, however, the roots of party identification are not important for our purposes. Party identification is important because it predicts voter behavior.

Using party identification to target voters is easier in some states than in others. In many states, voters specifically register as members of political parties, and these membership lists are publicly available. Records of voting in closed primaries can also allow you to pinpoint party identifiers.

When identifying your core voters, these lists can be indispensable, but they are not enough.

Official party listings can become out of date. This can be a particular problem in the South where many older voters joined the Democratic Party decades ago, but have consistently voted Republican in all recent elections. More importantly, many people consistently support a political party in every general election cycle, but do not formally belong to a party.

Oftentimes, the best way to determine a voter’s party identification is to ask. However, even this has pitfalls.



**Party identification is important
because it predicts voter behavior.**

Don't immediately take independents at their word

During the 1970s, many scholars and commentators examined data indicating that the political parties were in trouble. Americans were ceasing to identify with either of the two major parties at an alarming rate. More and more Americans described themselves as “independents” when asked to name their political party. Many speculated that we had entered a new era in American politics, when campaigns would be issue and personality driven and voters would pay little attention to partisan labels when making decisions. Split ticket voting was expected to rise.

It turned out that these proclamations about the death of partisanship were premature. Yes, many Americans were calling themselves “independent,” but their voting behavior was not congruent with that classification.

Political scientists have since learned that party identification should not be categorized as a variable with only three possible values. It became clear that voters needed to be asked an important follow-up question. We now typically treat party identification as a seven-point scale, ranging from “strong Republican” to “strong Democrat.”

The common procedure in political science surveys is to ask self-described independents the following question: “If you had to choose, would you say you lean more toward the Republicans or the Democrats, or do you have no preference?”

It turns out that most of these so-called independents will admit to preferring one party over the other. The number of true independents is actually small, and always has been. More importantly, these independent “leaners” are often just as partisan as people who immediately admit to supporting a political party.^{ix} In fact, they may be more dedicated to their party.

To demonstrate what I mean, we can look at the most recent American National Election Study, conducted during the 2012 presidential election. Below we see the vote choice of respondents based on their stated party identification.

First, let's take a look at the distribution when party identification is treated as a variable with three categories.



Percentage Voted for Romney

Don't immediately take independents at their word (cont.)

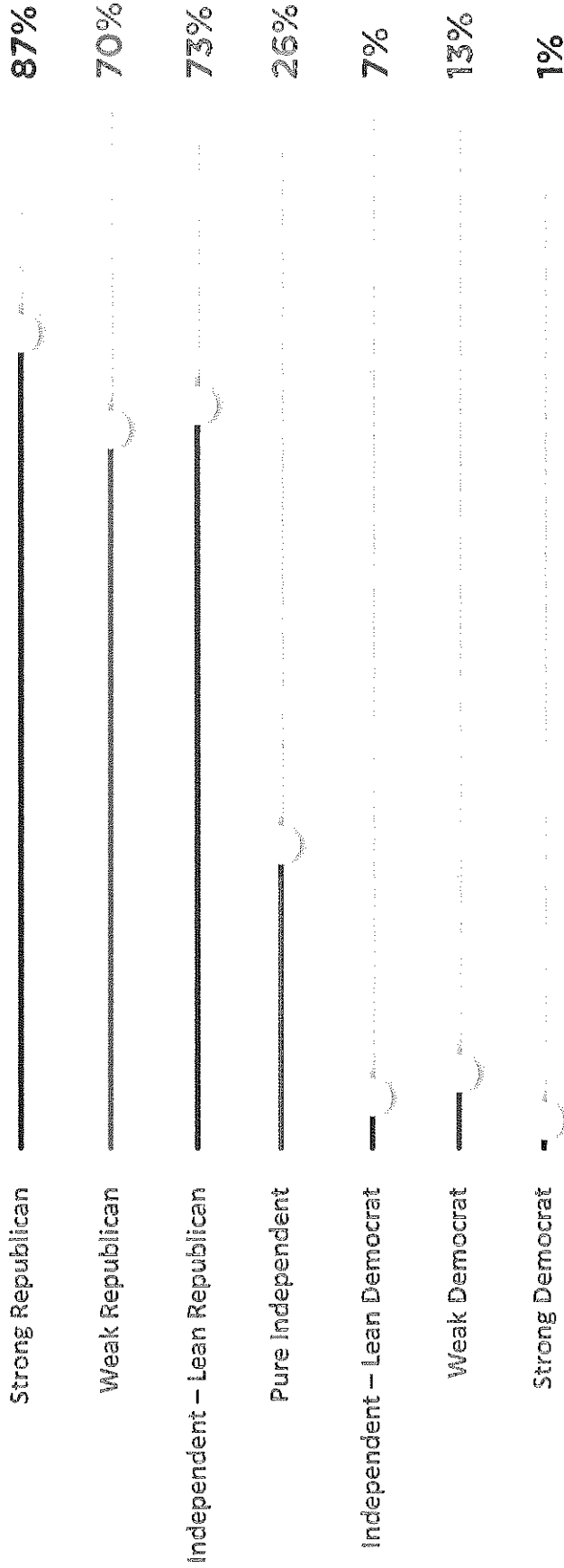
When we consider party identification this way, it appears that independents are split – though a strong majority of self-described independents voted against Romney in 2012.

Now it should become clear why some “independents” deserve more attention from your campaign than others.

When we expand our partisan categories, however, a different picture emerges.

Independents who, when pushed, admitted that they leaned toward the Republican Party, were actually *more likely* to vote for Romney than Republicans who said their party allegiance was not strong.

Percentage Voted for Romney



The geography of campaign donations is not the same as the geography of partisan voting

Where a party can find money is not the same as where it can find votes. This is especially true of the Republican Party. As Gimpel, Lee, and Kaminski demonstrated, a community that gives a lot of money to one party is likely also a place where the opposing party can raise money.^x It makes sense to write off certain communities as a major source of votes, but even if

a large majority of people within a geographic unit vote for the opposing party, that community may nonetheless contain many wealthy people willing to write your party a check. Republicans are able to raise a lot of money in Boston and San Francisco, even though the voters in those cities are overwhelmingly Democratic.

Demographic classifications are not perfect predictors of vote choice, but they can offer clues

Following the 2004 presidential election, political analysts were quick to attribute the sophisticated “microtargeting” techniques of the Bush campaign for the president’s reelection. It was said that by accumulating massive amounts of consumer information, the Bush campaign was able to precisely target potential voters based on seemingly non-political attributes. Whether a person preferred Dr. Pepper or Pepsi supposedly told you how a person was going to vote.

It is my opinion that the hype about microtargeting was unjustified.



Gathering this kind of consumer information is expensive, and it is very unlikely that is worth the effort. For one, the relationship between consumer choices and voter behavior is likely spurious in many cases. After controlling for age, race, geographic location, home ownership, marital status, and income, whether

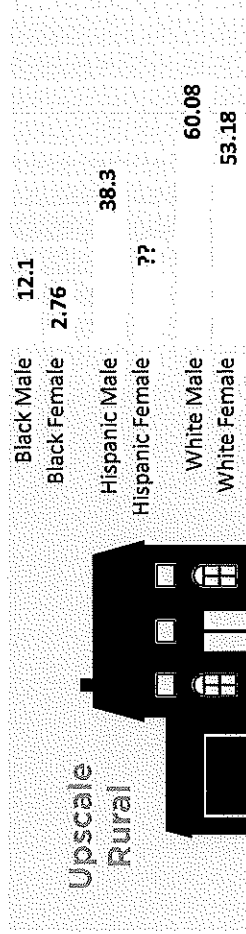
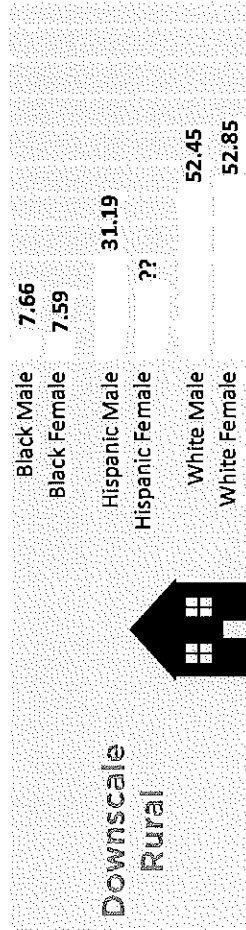
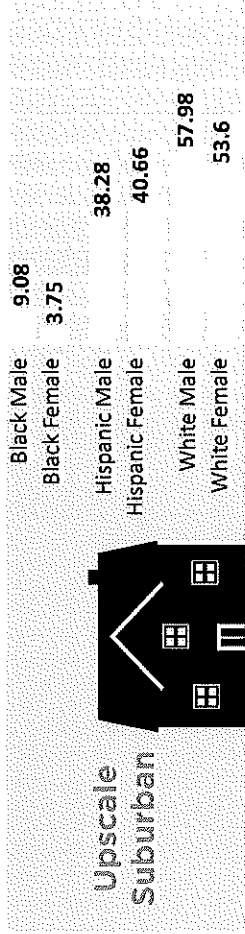
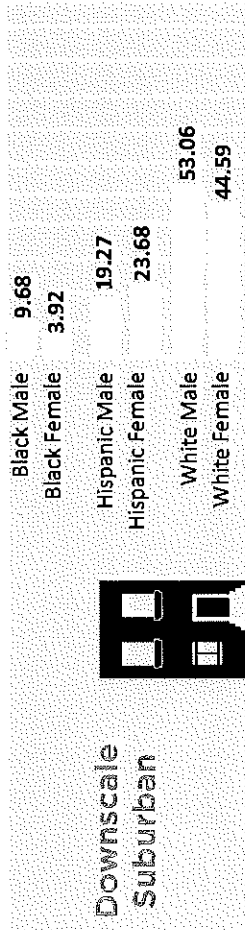
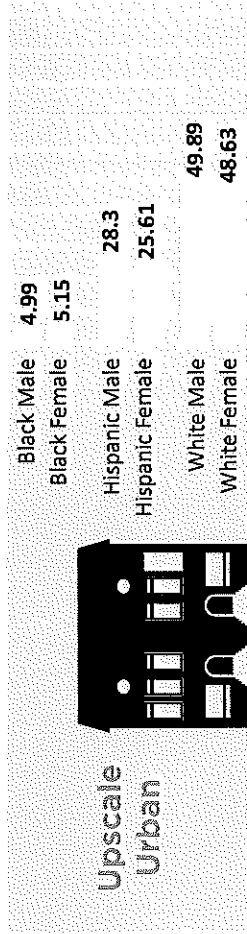
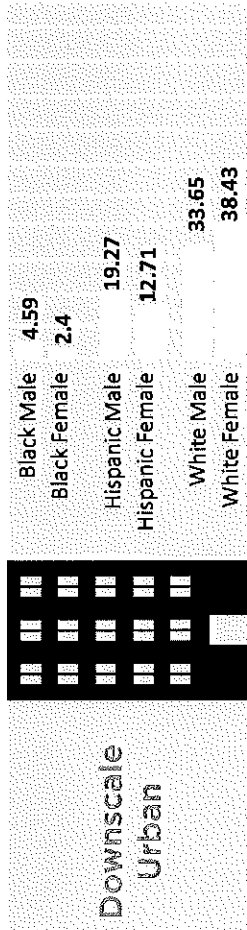
someone likes Busch Lite more than German Rieslings will almost certainly cease to be a statistically or substantively significant predictor of vote choice.

The good news is that other voter characteristics, which are publicly available, remain valuable predictors of voter behavior. Looking at exit polls for House elections from 2008 (I would have used 2012, but those raw data are not yet posted to ICPSR), we can plainly see that huge percentages of certain demographic categories vote for candidates of one party, and relatively few groups are evenly split.

I generated the figure using four very simple demographic and geographic predictors: race, gender, neighborhood type, and whether the voter lived in an upscale or a downscale neighborhood. It is true that we improve our accuracy as we include additional characteristics, but even a very simple analysis like this yields important information about where a campaign should look for votes, and where a campaign should not bother.



Percentage that Voted Republican in 2008 U.S. House Elections



Wedge issues are real, and can be used to peel away voters from the opposing candidate

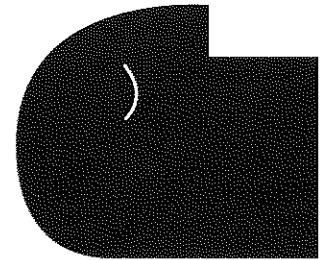
Affiliating with a party is one of the most important predictors of vote choice, but many of those who affiliate with the opposing party can be peeled away. Hillygus and Shields describe a category within the electorate called “persuadable voters.”^{xi} These voters typically describe themselves as members of a political party, but they disagree with that party on one or more very important issue. Without a push, this issue is not likely

going to sway their standing decision to vote for a particular party. However, if a campaign pushes that issue, either through a targeted message or more generally, such voters can be persuaded to abandon their party on Election Day.

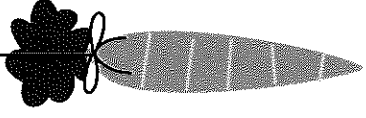
When it comes to voter canvassing, the method seems to matter more than the message

One may be concerned about relying on an army of volunteers to engage in voter canvassing. Will volunteers stay on message? Will they be able to precisely gauge how to best present information to a potential voter? While proper training is important, training does not have to take long and one does not need to be a professional to be an effective canvasser.

Scholars have attempted to discern whether certain scripts are more effective than others when it comes to voter outreach. There is little evidence at this point that the content of the message matters very much. It is the personal contact, ideally with someone from the potential voter’s community^{xii}, which matters the most.



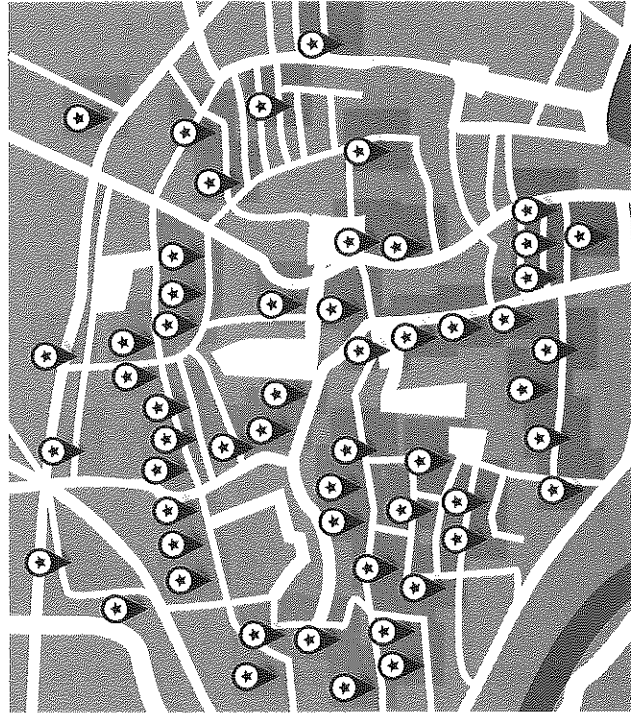
It's personal contact . . . which matters the most



Voter canvassing is important to voter turnout *and* voter persuasion

The majority of all studies conducted on the effects of voter canvassing have focused on voter turnout. Does canvassing get voters to the polls? Whether canvassing can actually *change* vote choice is less examined. This is not because the subject is uninteresting or unimportant, but it is extraordinarily difficult to measure. Because states record whether a person voted, but not who they voted for, we do not have individual data on vote choice. Post-election surveys have value, but they are expensive and responses are not always perfectly reliable.

However, a handful of studies have considered whether or not voter canvassing can actually change minds, and we see some compelling evidence that this is the case. Kevin Arceneaux found that both door-to-door canvassing and the use of commercial phone banks can increase support for a candidate.^{xiii} Lam and Peyton reached similar conclusions.^{xiv}



Additional useful tips

Experimental studies confirm what common sense already tells you. The most effective canvassers are dressed professionally, polite, appear to be upstanding citizens, and are adults in the prime of their lives. The least effective canvassers wear offensive clothing and express an inappropriate attitude.^{xv}

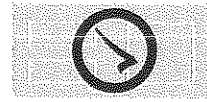
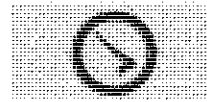
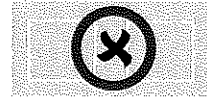
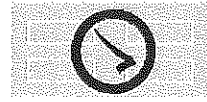
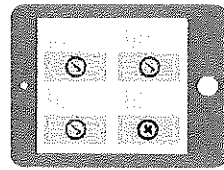
Voters, on average, prefer canvassers who are co-ethnics.^{xvi}

The weather impacts the efficacy of canvassing. For whatever reason, door-to-door canvassing that occurs during unseasonably hot weather tends to be less effective when it comes to voter mobilization. The effectiveness of phone calls tends to decrease during precipitation.^{xvii}

Summary

... until we directly ask them, we do not know for sure if a person is planning vote, for whom they plan to vote, or whether they can be persuaded

To conclude, voter canvassing is an excellent use of campaign resources. In a close race, effective canvassing can make the difference between victory and defeat. However, in a world of limited time, money, and volunteers, you need to target your canvassing efforts on those who can be persuaded to vote for your candidate. Because we are dealing with human beings, there is always a stochastic element – until we directly ask them, we do not know for sure if a person is planning vote, for whom they plan to vote, or whether they can be persuaded. However, we now know enough about turnout and vote choice to make reasonable decisions regarding whom to target, and possess the technology to put that knowledge to work.



About the Author

George Hawley is an assistant professor of political science at the University of Alabama. He received his PhD from the University of Houston. His research interests include demography, electoral behavior, political parties, immigration policy, and the U.S. Congress, and his doctoral dissertation and first book, *Voting and Migration Patterns in the U.S.*, focused on migration and the geographic partisan sort in the United States -- that is, he examined the degree to which migration is leading to an increasing number of politically homogeneous geographic units throughout the United States. His forthcoming book, *White Voters in 21st Century America*, examines the voting behavior of non-Hispanic whites, and speculates on how the changing demographic profile of the United States will influence American politics in the decades ahead.

He earned BA degrees in journalism and political science at Central Washington University, and earned his MA in political science at the University of Houston. He also has years of work experience in Washington, DC.

Dr. Hawley is a proud native of northwest Washington State, but presently enjoys life in Alabama with his wife and son.

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- xi D. Sunshine Hillygus and Todd Shields. 2008. *The Persuadable Voter: Wedge Issues in Presidential Campaigns*. Princeton, NJ: Princeton University Press.
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Voter Gravity is a campaign technology company that brings a powerful voter database, voter acquisition technology and a user-friendly mobile canvassing solution to campaigns and advocacy groups. Voter Gravity integrates innovative voter contact tools, an extensive voter database, and a user-friendly dashboard to capture voter contact information. For further product features, visit Voter Gravity's features page at www.VoterGravity.com/features.



Exhibit 11



FOR IMMEDIATE RELEASE
August 25, 2015

Contact: Aubrey Blankenship
aubrey@votergravity.com

Voter Gravity Announces Integration with the RNC Database

Purcellville, VA- Voter Gravity (www.VoterGravity.com), a campaign technology company that helps users turn data into votes, announced today that it has fully integrated with the Republican National Committee database.

"We're excited about these API integrations," said Ned Ryun, CEO of Voter Gravity. "This will allow any candidate or state party who chooses to use Voter Gravity on the front end to put data back in real time into the RNC."

"We believe that this is going to help more Republican candidates win in 2016," said Chris Littleton, head of operations at Voter Gravity. "We're going to continue pushing the envelope on our software and make Voter Gravity an even more powerful, user-friendly system."

Voter Gravity's suite of tools and features include a mobile app, phone system, CRM, touchtone surveys, Esri-based maps and walk-list cutting, with more features being rolled out Fall of 2015.

"Our ultimate goal is to outmaneuver the left philosophically and politically," Ryun added. "And the best way to accomplish this is to fully leverage all of our data technology for the center Right, while always keeping true to our strongly held beliefs."

About Voter Gravity

Voter Gravity, a campaign technology company, gives users access to their voter data and the ability to integrate that data, leverage an up-to-date voter database, connect with voters through mobile canvassing and other tools, and analyze results via a user-friendly dashboard. For further product features, media should go to Voter Gravity's features page at www.VoterGravity.com/features.

###

Exhibit 12

Voter Profile voter information and history

[Home](#) > [Voter Profile](#)

[Overview](#) [Election Details](#) [Household](#) [Notes](#) [Tags](#) [Demographics](#)



Political Ideology - Conservative

Interested in Tax Issues

Children Present

Income ██████████

Donor

Education - High School

Religion ██████████

Tea Party Supporter

Voter Profile voter information and history

[Home](#) > [Voter Profile](#)

[Overview](#) [Election Details](#) [Household](#) [Notes](#) [Tags](#) [Demographics](#)



Gender: Male

Party Affiliation: Inferred Republican

Registration Date: [Redacted]

Turnout Score: 30

Home Phone: [Redacted]

Cell Phone: [Redacted]

Home Email Address: [Redacted]

Work Email Address: [Redacted]

Other Email Address: [Redacted]

Twitter: [Redacted]

Aristotle ID: [Redacted]

RNC ID: [Redacted]

Voter Profile voter information and history

[Home](#) > [Voter Profile](#)

[Overview](#) [Election Details](#) [Household](#) [Notes](#) [Tags](#) [Demographics](#)



Vote History

2020 General	✓
2020 Primary	✓
2020 Presidential Primary	✓
2019 Spring	✓
2018 Primary	✓
2018 Spring	✓
2018 General	✓
2017 Spring	✓
2017 General	✓
2017 Primary	✓
2016 Primary	✓
2016 General	✓
2016 Presidential Primary	✓
2015 Primary	✓
2015 General	✓

Voter Profile voter information and history

[Home](#) > [Voter Profile](#)

[Overview](#) [Election Details](#) [Household](#) [Notes](#) [Tags](#) [Demographics](#)



Second Amendment Supporter

Environmentalist

Persuadable Voter

Political Ideology - Conservative

Interested in Tax Issues

Children Present

Income [REDACTED]

Education - Graduate School

Religion [REDACTED]

Voter Data Search

[Home](#) > [Voter Data](#) > [Search](#)

Search Voter

Address
<input type="text"/>
Name
Address
Twitter
Email Address
RNC ID
Aristotle ID

Abbreviated Address

Submit

Last Name

Middle Name

g address search try abbreviating address (i.e. 10 S Main St).

Showing 0 to 0 of 0 entries

SurveyMonkey

Link SurveyMonkey Account

RNC Integration

Access Token

Enter RNC Access Token

Save

Eventbrite Integration

Link EventBrite Account

Anedot Integration

Username

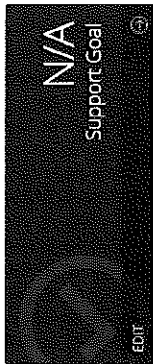
Username

API Key

API Key

Save

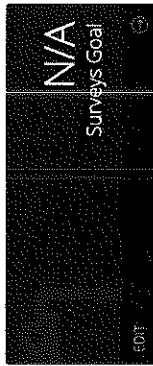
GOAL TRACKING



N/A%

Identified Supporters

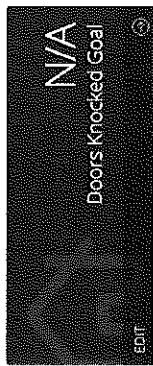
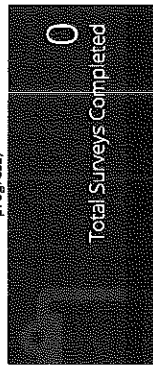
(Add a goal in the dashboard settings to track your progress)



N/A%

Completed Surveys

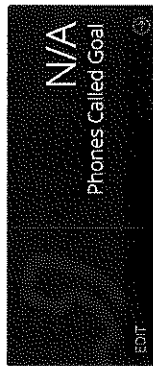
(Add a goal in the dashboard settings to track your progress)



N/A%

Door Knocks

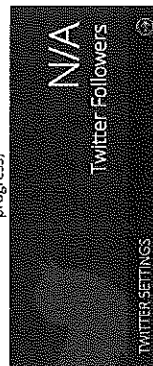
(Add a goal in the dashboard settings to track your progress)



N/A%

Phones Called

(Add a goal in the dashboard settings to track your progress)



WALKLIST STATS

N/A%

Walklist Survey Completion Rate

Walklist Supporter Identification

N/A%

Phone Survey Completion Rate

Phone Supporter Identification

PHONE BANK STATS

N/A%

Phones Called By Day

Phone Surveys Completed By Day

WALKLIST ACTIVITY

User Reached Surveyed

PHONE ACTIVITY

User Reached Surveyed

GOAL TRACKING

0

0

0

0

0

COUNTDOWN CLOCK (Time zone: America/New_York)

0 DAYS 0 HRS 00 MIN 00 SEC

SURVEY SNAPSHOT

Select a survey and question under Manage Dashboard Settings

 Dashboard

 Walklists 

 Phone Bank 

 Email 

 Campaigns

 Content Blocks

 Lists

 Settings

 SMS 

Voter Profile voter information and history

[Home](#) > [Voter Profile](#)

Overview Election Details Household Notes Tags Demographics



[Redacted]

Military Supporter

Persuadable Voter

Political Ideology - Conservative

Interested In Tax Issues

Veteran

Children Present

Income [Redacted]

Donor

Education - High School

Religion [Redacted]

Voter Profile voter information and history

[Home](#) > [Voter Profile](#)

[Overview](#) [Election Details](#) [Household](#) [Notes](#) [Tags](#) [Demographics](#)



Environmentalist

Political Ideology - Conservative

Interested in Tax Issues

Children Present

Income ██████████

Donor

Education - High School

Religion ██████████

Tea Party Donor

Voter Profile voter information and history

[Home](#) > [Voter Profile](#)

- Overview
- Election Details
- Household
- Notes
- Tags
- Demographics



Gender: Female
Party Affiliation: Inferred Republican
Registration Date: [Redacted]
Turnout Score: 31
Home Phone: [Redacted]

Cell Phone: [Redacted]

Home Email Address: [Redacted]

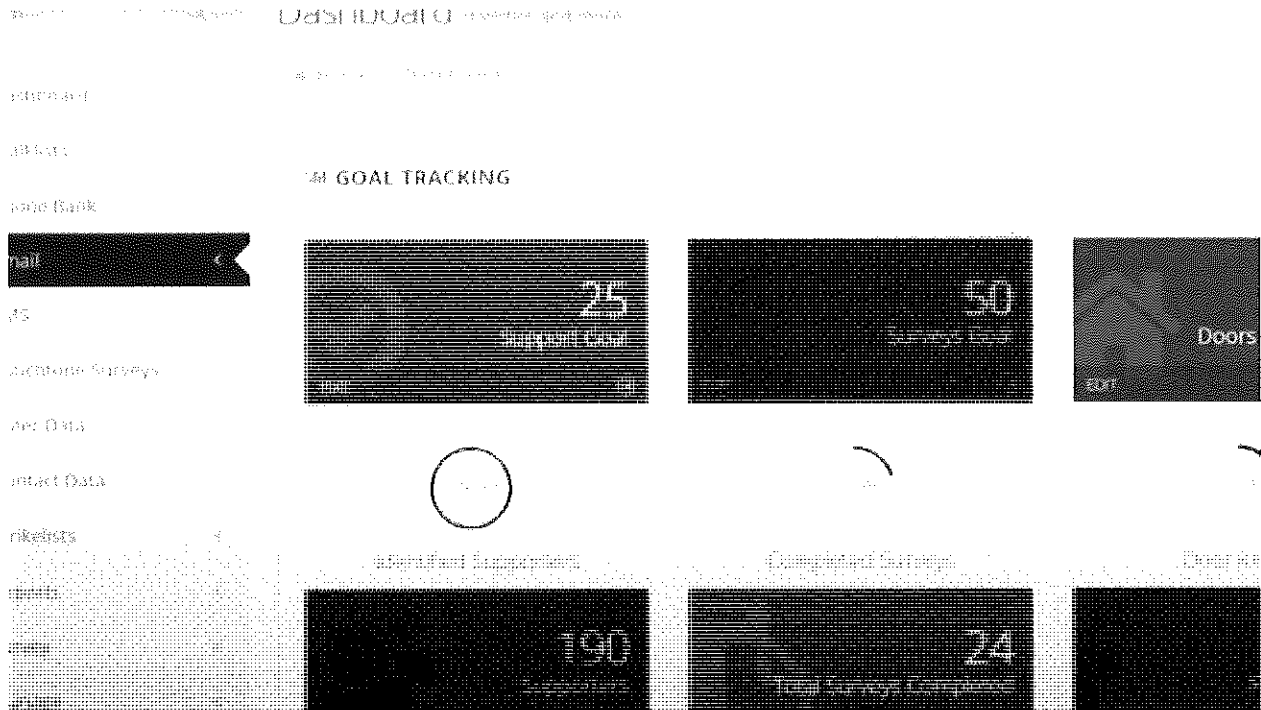
Work Email Address: [Redacted]

Other Email Address: [Redacted]

Twitter: [Redacted]

Aristotle ID: [Redacted]
RNC ID: [Redacted]

Exhibit 13



Credit: ALEC/YouTube

ALEC Gives Lawmakers Free Data Program Run by Republican Operatives

By David Armiak and Arn Pearson | February 8th, 2021 at 7:32 AM (CST)

ALEC, Bradley Files, Democracy, Featured Investigations, News

The American Legislative Exchange Council provides a “constituent management program” worth thousands of dollars and run by a leading Republican political data operation to its overwhelmingly Republican legislative members at no charge, in potential violation of its charitable tax status and state gift and campaign finance laws, the Center for Media and Democracy has learned.

As a registered 501(c)(3) nonprofit, the American Legislative Exchange Council (ALEC) is prohibited from engaging in any electoral activity as a condition of its charitable

tax-exempt status, and in most states, contributing something of value to legislators or their campaigns would trigger gift or campaign contribution limits subject to public disclosure.

In an email obtained by the Center for Media and Democracy (CMD) through an open records request, ALEC promotes the constituent communication software, called ALEC CARE (for “Constituent Analytics Research Exchange”), to a Texas legislator as an inducement for renewing his membership.

“ALEC CARE, the exclusive CRM tool for members, allows you to keep track of constituent research and engagement to better serve your community,” wrote Hunter Hamberlin, ALEC’s legislative outreach coordinator for Texas, in an email to Texas Rep. Ben Leman.

“The program, developed by VoterGravity, typically costs legislators thousands of dollars,” Hamberlin said.

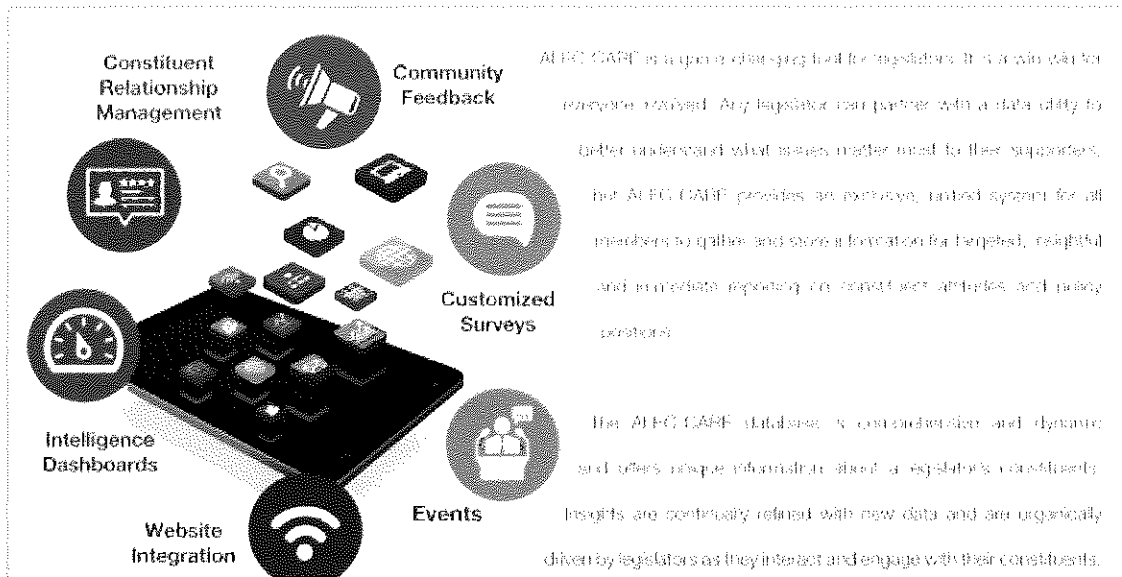
ALEC CARE “developed by VoterGravity, typically costs legislators thousands of dollars”
(p. 1)

ALEC CARE, the exclusive CRM tool for members, allows you to keep track of constituent research and engagement to better serve your community. CARE allows you to customize constituent profiles, set up push text messages, and visualize data trends to improve legislative interactions. This program, developed by VoterGravity, typically costs legislators thousands of dollars. CARE is just one of the many great member benefits you get with your ALEC membership.

[View the entire document with DocumentCloud](#)

According to ALEC CARE training materials obtained by CMD, the program comes “preloaded with constituent information,” and can enable robocalls or send text messages to constituents. The training also revealed that the “data vendor” (Voter Gravity) has access to users’ data.

ALEC CARE Description (p. 1)



[View the entire document with DocumentCloud](#)

ALEC frames its CARE platform as a constituent relations service, but screenshots from its promotional video include clear electoral elements, such as door-knocking goals, party affiliation, precinct, and ward information, and a “turnout score.”



“With the opportunities afforded by CARE, our members can be ahead of their colleagues,” the video’s narrator states.

Unlike ALEC, the company is explicit about the electoral value of the services it offers. “Voter Gravity produces targeted, insightful and immediate information about voters,

donors, and activists that mean the most to a campaign,” its website claims, giving candidates everything they need to “turn that data into votes.”

Voter Gravity’s demo page states that, “Voter Gravity empowers campaigns to unleash their voter contact efforts, making your strategy bigger, faster, and more targeted than ever before,” and asks if the user is a member of ALEC.

ALEC provides multiple ALEC CARE training sessions for its legislative members at its annual meeting and other events.

The company was founded by its CEO, Ned Ryun, who is also the founder and president of a right-wing candidate training operation, American Majority, and its voter mobilization affiliate, American Majority Action, which are closely allied with the Tea Party.

American Majority Action’s latest available IRS filing shows that it owns 84 percent of Voter Gravity, and both list a post office box in Purcellville, Virginia as their address.

Part IV Identification of Related Organizations Taxable as a Corporation or Trust Complete if the organization answered "Yes" on Form 990, Part IV, line 34 because it had one or more related organizations treated as a corporation or trust during the tax year.									
(a) Name, address, and EIN of related organization	(b) Primary activity	(c) Legal domicile (state or foreign country)	(d) Direct controlling entity	(e) Type of entity (C corp, S corp, or trust)	(f) Share of total income	(g) Share of end-of-year assets	(h) Percentage ownership	(i) Section 512(b)(13) controlled entity?	
								Yes	No
VOTER GRAVITY INC PO BOX 1112 PURCELLVILLE, VA 20124 46-1923442	SOFTWARE DEVELOPMENT	VA	AMERICAN MAJORITY ACTION INC	C	-11,968	101,187	84.350 %		

In March 2018, ALEC hired Voter Gravity’s client relations specialist, Aaron Gillham, to implement its ALEC CARE program. Gillham’s role at the company was “providing the onboarding for all new clients,” and he describes Voter Gravity as “the premier platform for Center-Right, voter contact tools” offering “map-based walkbook creation with smartphone executed canvassing.”

“We take voter contact to the next level, making your efforts efficient and meaningful,” Gillham wrote on his LinkedIn page.

Although ALEC tells its members that ALEC CARE data is “not shared with anybody,” a 2020 investigation by the cybersecurity firm UpGuard found that this is not the case. UpGuard’s research into a security vulnerability with the Republican canvassing app Campaign Sidekick revealed a “close relationship” with Voter Gravity. Campaign Sidekick is run by Ned Ryun’s twin brother Drew, which UpGuard says explains “how they fit within the ecosystem of GOP campaign apps.”

UpGuard also uncovered the “intermingling of code and sharing of data” between Voter Gravity and Campaign Sidekick with the Republican National Committee and FreedomWorks.

This follows a 2015 blog post where Voter Gravity announced that it was “fully integrated with the Republican National Committee database.” Ned Ryun added, “Our ultimate goal is to outmaneuver the left philosophically and politically.”

In 2014, voter data operations on the Right, including the Koch’s i360, the RNC, the NRCC, and Ryun, met with GOP operatives and candidates “behind closed doors to discuss how to synchronize their sometimes competing tech efforts,” Politico reported.

The previous year, Voter Gravity received an infusion of \$2 million from an unknown investor, and Matt Schlapp, a former lobbyist for Koch Industries, joined its board of directors. Koch Industries is a major funder of ALEC and holds a seat on ALEC’s corporate board.

The 2017 and 2018 IRS filings and a 2019 Annual Report from the Milwaukee-based Bradley Foundation, a consistent funder of American Majority’s Wisconsin efforts, show that the right-wing foundation earmarked \$1.1 million for ALEC CARE.

Ryun presented on Voter Gravity’s voter data operation at a 2015 Conservative Political Action Conference (CPAC) “Pre-Game: Operatives in Training” session attended by ALEC’s chief marketing officer, Bill Meierling.

Meierling described the data platform as a “fundamental game changer” in a subsequent ALEC CARE meeting.

According to Marcus Owens, former Director of the Exempt Organizations Division of the Internal Revenue Service, “The fact that ALEC’s constituent management program typically costs ‘thousands of dollars,’ but it is being provided free of charge to selected legislators, would constitute a contribution to the legislator, quite possibly violating the [IRS] proscription on electioneering...or, potentially, an illegal gift to a legislator, depending on relevant state law.”

“The fact that there may well be *sub rosa* links between databases created by the management program and organizations engaged in partisan political activity suggests another potential electioneering event,” Owens said.

On July 30, 2020, the public watchdog Campaign for Accountability filed a complaint with the IRS, the state of Wisconsin, and the California attorney general’s office claiming American Majority and American Majority Action are operating in violation of the federal tax code and various state laws.

The complaint argues that American Majority Action engages primarily in political activity in violation of its federal tax status and that Ned Ryun set up the nonprofits to further enrich himself and his for-profit companies.



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

August 4, 2021

VIA EMAIL AND USPS

Senator Harold "Trey" L. Stewart, III
312 State Street
Presque Isle, ME 04769
trey@treystewart.com

Representative Matthew A. Harrington
P.O. Box 457
Sanford, ME 04073
harringtonforhouse@yahoo.com

Re: Request to Investigate Potential Campaign Finance Law Violations

Dear Senator Stewart and Representative Harrington:

As you are aware, the Maine Ethics Commission (the "Commission") received the enclosed request for investigation from the Center for Media and Democracy, which alleges that as a benefit to your membership with the American Legislative Exchange Council (ALEC):

- You received access to the ALEC CARE (Constituent Analytics Research Exchange) software during the 2020 election cycle, and
- Since you received access to this software you may be in violation of Maine's contribution limits, reporting requirements, and the Maine Clean Election Act (MCEA) through the receipt of in-kind contributions to your 2020 campaigns.

This letter is to provide you with an opportunity to respond to the request for investigation and to provide any factual information or legal argument that you believe is relevant to whether the Commission should conduct an investigation into this matter.

Commission's Decision Whether to Investigate

The Commission will consider whether to investigate or take any further action on this matter at a public meeting at 10:00 a.m., Wednesday, September 29, 2021 at the Commission's office. The Commission staff recommends that you attend the meeting to respond to the request for investigation and to answer any questions from the Commissioners.

OFFICE LOCATED AT: 45 MEMORIAL CIRCLE, AUGUSTA, MAINE
WEBSITE: WWW.MAINE.GOV/ETHICS

Relevant Law

Standard for Initiating an Investigation. The Commission is required to review every request to investigate an alleged violation of campaign finance law and to conduct an “investigation if the reasons stated for the request show sufficient grounds for believing that a violation may have occurred.” 21-A M.R.S. § 1003(2).

Definitions of Contribution. The term contribution includes “[a] gift, subscription, loan, advance or deposit of money or anything of value made for the purpose of influencing the nomination or election of any person to state, county or municipal office” 21-A M.R.S. § 1012(2)(A)(1). Influence means “to promote, support, oppose or defeat.” 21-A M.R.S. § 1012(4-A).

The Commission’s Rules define an in-kind contribution as follows: “Unless specifically exempted under 21-A M.R.S. §§ 1012 and 1052 or this section, the provision of any goods or services without charge or at a charge that is less than the usual and customary charge for such goods or services is an in-kind contribution. Examples of such goods and services include, but are not limited to: equipment, facilities, supplies, personnel, advertising, and campaign literature. If goods or services are provided at less than the usual and customary charge, the amount of the in-kind contribution is the difference between the usual and customary charge and the amount charged the candidate or political committee.” 94-270 C.M.R. Ch. 1, § 6(4).

Content of Reports – Itemized Contributions. Candidates are required to disclose all contributions (cash and in-kind) in regularly scheduled campaign finance reports. 21-A M.R.S. § 1017(5).

Limits on Contributions to Traditionally Financed Candidates. A political committee or organization may not contribute to a traditionally financed candidate to promote their election that exceeds the contribution limits in 21-A M.R.S. § 1015(2). For the 2020 elections, the contribution limit for legislative candidates was \$400 per election.

Limits on Contributions to MCEA Candidates. Once certified, a MCEA candidate cannot accept any cash or in-kind contributions. 21-A M.R.S. § 1125(6)

August 4, 2021

Request for Response

Please submit a written response to the request for investigation by Friday, September 3, 2021 with any information or legal argument you believe relevant to the Commission's decision whether to investigate. The Commission staff requests that your response address the following:

- Have you received access to the ALEC CARE software? If so, when?
- Was access to the ALEC CARE software part of your membership to ALEC, or was it charged separately? If separately, how much were you charged?
- Did you use the ALEC CARE software during the 2020 campaign? If so, please provide a general description of how you utilized this software.
- Should access to the ALEC CARE software program be considered in-kind contributions to your 2020 legislative campaign?

Thank you for your cooperation with this request and submitting a response to this office on or before September 3, 2021.

Sincerely,



Martha Currier
Assistant Director

Enc.

cc: Mr. Arn Pearson, Center for Media and Democracy (arn@prwatch.com)



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

August 18, 2021

By Email and Regular Mail

Bartlett P. Cleland, Esq., Counsel
American Legislative Exchange Council
2900 Crystal Drive, 6th Floor
Arlington, VA 22202

Re: Complaint by Center for Media and Democracy

Dear Mr. Cleland:

I am writing you on behalf of Maine's campaign finance agency, the Commission on Governmental Ethics and Election Practices. The Commission received the enclosed complaint from the Center for Media and Democracy (CMD) concerning the American Legislative Exchange Council (ALEC) and two members of the Maine Legislature. CMD alleges that ALEC knowingly made in-kind contributions of voter management software (ALEC CARE) to legislative candidates in Maine that may have violated contribution limits and restrictions.

At a meeting on September 29, 2021, the members of the Commission are tentatively scheduled to consider whether to conduct an investigation into the complaint. You are invited to voluntarily provide any information that you believe is relevant to this matter, including any argument whether the Commission should or should not conduct an investigation. This is ALEC's opportunity to correct any inaccurate or misleading information in CMD's complaint prior to the Commission's decision whether to conduct an investigation.

Relevant Maine Election Law

Standard for Initiating an Investigation. The Commission is required to review every request to investigate an alleged violation of campaign finance law and to conduct an "investigation if the reasons stated for the request show sufficient grounds for believing that a violation may have occurred." 21-A M.R.S. § 1003(2).

OFFICE LOCATED AT: 45 MEMORIAL CIRCLE, AUGUSTA, MAINE
WEBSITE: WWW.MAINE.GOV/ETHICS

PHONE: (207) 287-4179

FAX: (207) 287-**ETH** 150

Definition of Contribution. The term contribution includes “[a] gift, subscription, loan, advance or deposit of money or anything of value made for the purpose of influencing the nomination or election of any person to state, county or municipal office” 21-A M.R.S. § 1012(2)(A)(1). Influence means “to promote, support, oppose or defeat.” 21-A M.R.S. § 1012(4-A).

The Commission’s Rules define an in-kind contribution as follows: “Unless specifically exempted under 21-A M.R.S. §§ 1012 and 1052 or this section, the provision of any goods or services without charge or at a charge that is less than the usual and customary charge for such goods or services is an in-kind contribution. Examples of such goods and services include, but are not limited to: equipment, facilities, supplies, personnel, advertising, and campaign literature. If goods or services are provided at less than the usual and customary charge, the amount of the in-kind contribution is the difference between the usual and customary charge and the amount charged the candidate or political committee.” 94-270 C.M.R. Ch. 1, § 6(4).

Content of Reports – Itemized Contributions. Candidates are required to disclose all contributions (cash and in-kind) in regularly scheduled campaign finance reports. 21-A M.R.S. § 1017(5).

Limits on Contributions to Traditionally Financed Candidates. A political committee or organization may not contribute to a traditionally financed candidate to promote their election that exceeds the contribution limits in 21-A M.R.S. § 1015(2). For the 2020 elections, the contribution limit for legislative candidates was \$400 per election.

Limits on Contributions to Maine Clean Election Act (MCEA) Candidates. Once certified to receive public campaign funding, a MCEA candidate cannot accept any cash or in-kind contributions. 21-A M.R.S. § 1125(6)

Commission’s Decision Whether to Investigate

The Commission will consider whether to investigate or take any further action on this matter at a public meeting at 10:00 a.m., Wednesday, September 29, 2021 at the Commission’s office. In addition to providing any written information, you are invited to participate in the meeting through a zoom videoconference.

Bartlett P. Cleland, Esq.

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August 18, 2021

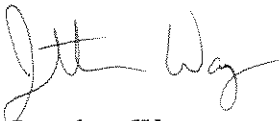
Opportunity to Respond

ALEC is welcome to provide any information it deems relevant, including any argument whether the Commission should or should not investigate this matter. If you are able to respond by Friday, September 10, 2021, the staff will be able to consider your response and include it in a packet of written materials we will distribute to the Commission members prior to the September 29 meeting. To the extent that you are comfortable sharing this information, the Commission staff believes that responses to the following questions would assist the Commission in deciding whether to investigate:

- For what legislative or electoral purposes did ALEC provide the ALEC CARE software to members since January 1, 2019?
- In 2019-2020, could ALEC CARE be used for the electoral activities described in paragraph 19 of the complaint, such as creating walking lists, tracking supporters, creating strike lists for getting out the vote, etc.? Please elaborate.
- Is CMD correct that the ALEC CARE software provided to members in 2019-2020 is a repackaging of the Voter Gravity product? If not, please explain.

Thank you. If you have any questions about the Commission's consideration of the CMD complaint, please email me at Jonathan.Wayne@maine.gov or call me at (207) 287-4179.

Sincerely,



Jonathan Wayne
Executive Director

cc: Mr. Arn Pearson, Center for Media and Democracy (arn@prwatch.com)
Hon. Matt Harrington
Hon. Harold Stewart

Joshua A. Tardy, Esq.
jtardy@rudmanwinchell.com

Michael A. Hockenbury, Esq.
mhockenbury@rudmanwinchell.com

September 15, 2021

Martha Currier
Assistant Director – Maine Ethics Commission
135 S.H.S
Augusta, ME 04333-0135

RE: Senator Harold “Trey” L. Stewart, III and Representative Matthew A. Harrington
Investigation into Potential Campaign Finance Law Violations

Dear Ms. Currier:

This firm represents Senator Harold “Trey” Stewart and Representative Matthew Harrington with regard to your letter dated August 4, 2021. Accordingly, please accept this letter as their response to your request for information.

First, it should be known that nearly identical complaints have been filed in: Arizona, Connecticut, Florida, Maine, Michigan, Minnesota, New Mexico, Ohio, Oklahoma, New York, Pennsylvania, Tennessee, Texas, Utah and Wisconsin, in what can only be dubbed a “fishing expedition” based upon speculation and conjecture in an attempt to drag various state agencies into what appears to be a decade long dispute.

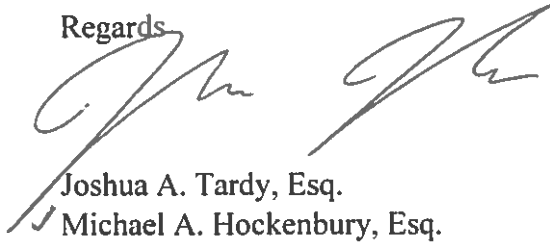
Arn Pearson, the complainant, makes three suppositional allegations in paragraphs 31, 32 and 33. The Complaint does not assert knowledge whether either Senator Stewart or Representative Harrington has made use of the software. In fact, it would appear that not none of the fifteen complaints filed by Arn Pearson across the various state agencies assert any knowledge or supporting evidence that any of the named lawmakers used the software. Hiding behind the word “if”, Mr. Pearson alleges that “if” our clients used the ALEC Care software in campaign activity, the Maine election law reporting requirements would be triggered. Each of the allegations in paragraphs 31, 32 and 33 is denied.

Neither Senator Stewart nor Representative Harrington has ever used the ALEC Care software for any campaign activity. Further, neither have ever used the software for any other non-campaign activity, including activity that might be referred to as “constituent services.”

Our clients acknowledge that they had access to the software product. They were never charged separately for that access and agree that it was available through their ALEC membership. Voter Gravity presented at an ALEC conference prior to the 2020 election cycle (it may have occurred in 2017). Organizations such as ALEC and its affiliated vendors frequently market their products and offerings to members and prospective members. Notwithstanding the marketing efforts, our clients have not used the product beyond the product introduction and their independent assessments concluded that the software would be of no value to their respective campaigns.

We hope this is helpful. Please let us know if you would like additional information.

Regards,

Handwritten signatures of Joshua A. Tardy and Michael A. Hockenbury. The signature on the left is for Joshua A. Tardy, Esq., and the signature on the right is for Michael A. Hockenbury, Esq.

Joshua A. Tardy, Esq.

Michael A. Hockenbury, Esq.

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September 17, 2021

State of Maine Commission on Governmental Ethics and Election Practices

Attn: Jonathan Wayne

135 State House Station

Augusta, ME 04333-0135

Submitted via email to: Jonathan.Wayne@maine.gov

RE: ALEC's Response to the Center for Media and Democracy's Complaint

Mr. Wayne,

We represent the American Legislative Exchange Council, Inc. ("ALEC") in responding to the Complaint filed by the Center for Media and Democracy ("CMD") with your office on July 23, 2021. On August 18, 2021, you informed ALEC that the State of Maine Commission on Governmental Ethics and Election Practices (the "Commission") is "tentatively scheduled to consider whether to conduct an investigation into the complaint" and that ALEC may respond to the "alleg[ations] that ALEC knowingly made in-kind contributions of voter management software (ALEC CARE) to legislative candidates in Maine that may have violated contribution limits and restrictions." For the reasons stated below, the Commission should dismiss the Complaint and not initiate an investigation because there are not "sufficient grounds for believing that a violation may have occurred." *See* 21-A M.R.S. § 1003(2).

SUMMARY OF FACTS

ALEC is a nonpartisan organization with a voluntary membership of state legislators who are dedicated to the principles of limited government, free markets, and federalism. It has existed for almost 50 years. Under the Internal Revenue Code, it is tax-exempt as an educational 501(c)(3) organization. ALEC's mission and activities are listed on its publicly available website, www.alec.org, and ALEC does not intervene in election campaigns. Senator Harold "Trey" Stewart III and Representative Matthew Harrington are members of ALEC.

Among the activities and information made available to ALEC's members is a data-software resource entitled ALEC Constituent Analytics Research Exchange ("ALEC CARE"). As a condition of using the software, ALEC prohibits usage for election-campaign purposes. The Complaint acknowledges that Complainants do not know whether Senator Stewart or Representative Harrington ever used the software.

Attached to this response is an affidavit from ALEC's Manager of Legislative Membership and Engagement. This affidavit confirms that neither Senator Stewart nor Representative

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Harrington used ALEC CARE for campaign purposes, nor did they use ALEC CARE at all during the period when the 2020 election cycle took place.

LEGAL DISCUSSION

In Maine, a “corporation . . . may not make contributions to a candidate in support of the candidacy of one person” that exceed certain amounts when that candidate is a traditionally financed candidate. 21-A M.R.S. § 1015(2). If a candidate chooses to receive public campaign funding under the Maine Clean Election Act, however, then the candidate may not accept any contributions. 21-A M.R.S. § 1125(6). A “contribution” may be “[a] gift, subscription, loan, advance or deposit of money or anything of value,” M.R.S. § 1012(2)(A)(1), and “the provision of any goods or services without charge or at a charge that is less than the usual and customary charge for such goods or services is an in-kind contribution,” 94-270 C.M.R. Ch. 1, § 6(4). Critically, to be a “contribution” it must be “made for the purpose of influencing the nomination or election of any person to state, county or municipal office,” 21-A M.R.S. § 1012(2)(A)(1) (emphasis added), with “[i]nfluence’ mean[ing] to promote, support, oppose or defeat,” 21-A M.R.S. § 1012(4-A). Thus, there must be a connection between any expenditure or contribution and an election campaign to be considered a “contribution” under Maine law.

Consequently, the provision of Maine law regarding the promotion or defeat of an individual campaigning for office limits the statute’s reach. For example, CMD alleges that ALEC’s disclaimer prohibiting legislators from using ALEC CARE for campaign purposes “do[es] nothing to reduce [ALEC CARE’s] campaign value.” Compl. ¶ 30. But this is wrong as a matter of law. By making ALEC CARE available to legislative members on the express condition that they do not use the software for campaign purposes, ALEC prevents this membership benefit from transforming into an in-kind contribution. *See, e.g., McCutcheon v. FEC*, 572 U.S. 185, 193 n.2 (2014) (stating that the federal base and aggregate contribution limits apply to committees that make contributions to candidates, but not to committees that only make independent expenditures); *SpeechNow.org. v. FEC*, 599 F.3d 686, 692, 695–96 (D.C. Cir. 2010) (*en banc*) (holding that while the First Amendment *permits* Congress to impose limits on contributions to committees that make contributions to candidates, it nonetheless *prohibits* contribution limits imposed on political committees that make only independent expenditures). Money, like data, may be fungible. But the purpose, usage, and conditions imposed on money and data by ALEC make all the difference under the law.

The Complaint acknowledges this limitation. The mere provision of (what the Complaint calls) “voter management software” is not a violation of Maine law. Rather, Maine law is violated if a contribution is given “to support election campaigns.” Compl. ¶ 30. The Complaint further underscores this point noting that if either Senator Stewart or Representative Harrington used the software “to support his campaign, he received an in-kind contribution.” *Id.* at ¶¶ 31–32 (emphasis added). Of course, the inverse of this argument is if ALEC made the software available to

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legislative members only on the condition that the members use the software for constituent relationship management purposes—and not campaign purposes—then it has not violated the law.

Moreover, the provision that defines “an in-kind contribution” states that “[a] commercial vendor that has provided a discount to a candidate or political committee because of a defect in performance or *other business reason has not made a contribution if the vendor grants substantially similar discounts to other customers in the ordinary course of the vendor’s business.*” 94-270 C.M.R. Ch. 1, § 6(4)(A) (emphasis added). This exception is in accord with federal law. *See, e.g.*, FEC A.O. 2018-11 at 1, 3 (stating that it would not be a prohibited in-kind contribution for Microsoft “to offer a package of enhanced online account security services at no additional charge on a nonpartisan basis to its election-sensitive customers, including federal candidates and national party committees” since it “would be providing such services based on commercial and not political considerations, in the ordinary course of its business, and not merely for promotional consideration or to generate goodwill”); *id.* at 4 (“Indeed, a corporation ‘may charge different fees to political committee clients than it charges to non-political clients,’ with no in-kind contribution resulting, as long as ‘any variation in fees will be based on business considerations and will not be based on political considerations.’” (quoting FEC A.O. 2018-05 at 5)).

As discussed more fully in Part I below, making ALEC CARE available as a benefit not only increases the likelihood that a potential member will join ALEC, but using ALEC CARE enhances the worth of ALEC’s membership to all members. For example, a legislator member can use ALEC CARE to gather feedback on upcoming or potential legislation and then share that data with other ALEC members. Such information amplifies the effectiveness of ALEC’s discussions about its initiatives and increases the overall likelihood of their success. Consequently, even though ALEC is a nonprofit, the value proposition of ALEC CARE is akin to the commercial offerings in the for-profit scenarios above.

ALEC HAS NOT MADE ANY CONTRIBUTIONS

The Complaint essentially claims that ALEC ran afoul of Maine’s campaign finance laws because providing ALEC CARE to its members allegedly constituted an in-kind campaign contribution that exceeded relevant contribution limits. However, the Complaint fails to provide any evidence that any member ever used ALEC CARE for campaign purposes or that ALEC members like Senator Stewart and Representative Harrington accepted or used ALEC CARE. In this case, neither member has ever used ALEC CARE for campaign purposes. Moreover, neither Senator Stewart nor Representative Harrington used ALEC CARE at any point during the period when the 2020 election cycle occurred. Even if they had, there can be no violation of Maine law unless such software—contrary to ALEC’s express conditions and instructions regarding ALEC CARE’s use—were used for campaign purposes. There is no evidence or allegation that any member used ALEC CARE for that purpose. Accordingly, ALEC made no contribution at all, let alone an illegal corporate contribution.

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Before discussing why the allegations in the Complaint are insufficient to state a violation, we note that this is not the first time CMD has filed a complaint against ALEC. CMD has filed nearly identical complaints with the relevant campaign finance authorities in multiple states. Decl. of Gillham ¶ 14. CMD jointly filed several of these complaints with Common Cause, who also joined CMD in similar attacks lodged against ALEC before the Internal Revenue Service. Decl. of Gillham ¶ 15; Compl. ¶ 3; Ex. 1 at 1. These complaints evidence a concerted campaign to harass ALEC, as well as a pattern of less than reputable tactics. For example, the Complaint mentions that Minnesota’s Campaign Finance and Public Disclosure Board previously found “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.’” Compl. ¶ 5. CMD spins that past finding as evidence that ALEC is improperly engaging in political activities. What it actually demonstrates, however, is CMD’s lack of transparency. Here is the whole sentence with omitted portions in bold:

Although 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, such a conclusion is not sufficient to further conclude that ALEC’s activities are for the purpose of influencing legislative action *in this state* as the definition of principal requires.

Ex. 3 at 6 (*italics in the original*). The very same sentence cited by the Complaint effectively concludes that Minnesota’s Board must dismiss that complaint. *See* Ex. 3. Furthermore, Minnesota’s Board found that the nexus between an ALEC employee’s work supporting its mission, and that “some future hypothetical communication with a Minnesota legislator” is insufficient for ALEC to qualify as a lobbyist. *See id.* at 5.

Moreover, CMD did not disclose that Common Cause was the one who filed that complaint, which similarly asserted groundless allegations that ALEC violated lobbying laws. *See id.* In fact, like the Complaint here, Minnesota’s Board noted that the allegations that Common Cause made and referenced in Exhibit 3 were “more of a general nature” and referenced ALEC’s activities nationwide, rather than its activities in Minnesota. *Id.* at 1. Similarly, the Minnesota Board found that “the Minnesota complaint [wa]s a derivation of a complaint on the same subject that Common Cause filed with the Internal Revenue Service,” which is precisely the situation with the complaint submitted to this Commission. *See id.* Because CMD and Common Cause have joined forces to file similar (and similarly baseless) complaints in multiple states—like the Complaint at issue here—their claims depend on substantially similar, and equally ineffective, arguments that they have recycled since 2012. For example, although the Complaint alleges that ALEC has violated IRS rules, Compl. ¶ 6, it does not mention that the IRS has refrained from initiating any investigation against ALEC (to ALEC’s knowledge), nor has ALEC received any

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notice from the IRS that its tax-exempt status is in jeopardy, despite the 2012 Common Cause IRS complaint and the supplemental submissions filed by both CMD and Common Cause. *See id.*; Ex. 1 at 1 n.1.

Accordingly, the Commission should dismiss the Complaint for failing to allege sufficient grounds to believe that a violation may have occurred.

I. ALEC CARE Is Only Available to Members for Non-Campaign Purposes.

ALEC is “the largest nonpartisan, voluntary membership organization of state legislators dedicated to the principles of limited government, free markets and federalism.”¹ Its legislative members include members of both the Republican and Democratic parties, and ALEC also has private sector members who include both for-profit and non-profit corporations. With this inclusive array of stakeholders, ALEC serves as a forum for the robust debate of ideas and policies, and it has left its mark on the marketplace of ideas for the past five decades.²

In furtherance of its mission, ALEC remains committed to the ideological diversity of its membership and to hearing all sides of a debate.³ For example, both Republicans and Democrats have served as ALEC State Chairs.⁴ Additionally, through participation in ALEC, business leaders are able to express their policy concerns to legislators, and legislators from one state can share their experiences with certain policies with legislators from other states. As such, “ALEC provides its public and private sector members with a unique opportunity to work together to develop policies and programs that effectively promote the Jeffersonian principles of free markets, limited government, federalism, and individual liberty.” Ex. 2. ALEC therefore serves as the critical forum in this Nation’s Public Square.

ALEC did not simply come by its legislative members. Rather, for the past several years, ALEC has assiduously built its membership base, attracting new members across the country.⁵ Part of this effort has included providing its members with benefits, as well as studies and educational forums, while keeping the cost of membership low. One of these benefits is ALEC CARE, which helps members “keep track of constituent research and engagement to better serve [their] community.” Ex. 7. It is critical for legislative members to actively engage with their constituents about current and potential legislation, and ALEC CARE enables legislative members to communicate more effectively with them about such issues. As a result, ALEC CARE benefits ALEC’s entire membership, because legislative members are able to share what they’ve learned

¹ See Br. of Amicus Curiae at 1, *Americans for Prosperity Foundation, et al. v. Bonta*, Nos. 19-251, 19-255 (U.S. March 1, 2021) (hereinafter, “AFP Brief”).

² *See id.*

³ *See id.* at 7–8.

⁴ *See id.* at 8.

⁵ *See* AFP Brief at 7.

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from their constituents with the other ALEC members, and it also benefits legislative members' constituents, as it helps legislative members share what they've learned about "policies and programs that effectively promote the Jeffersonian principles of free markets, limited government, federalism, and individual liberty." See Ex. 2. ALEC CARE therefore is a powerful tool used to advance these ideals and further relevant legislation.

II. ALEC Prohibits Its Members from Using ALEC CARE for Campaign Purposes.

A. ALEC Advises Its Members that They Cannot Use ALEC CARE for Campaign-Related Purposes.

The ALEC CARE software program assists legislators in communicating with their constituents and acquiring a better understanding of what motivates the residents of a legislator's district.⁶ The software includes several tools that allow a legislator to "track district events, and solicit direct feedback from constituents with customized surveys through text messaging and automated phone calls."⁷

ALEC also provides its members with training on the ALEC CARE software as well as consistent technical support.⁸ Importantly, in all its training videos, ALEC shows the ALEC CARE login page, which reads:

ALEC CARE is a constituency management system that helps members better understand and communicate with constituents.

By signing in, you agree this system will not be used for any campaign related purpose.⁹

⁶ LEGISLATIVE MEMBERSHIP, <https://www.alec.org/membership-type/legislative-membership/> (last visited September 13, 2021).

⁷ *Id.*

⁸ *Id.*

⁹ WHAT IS A DIGITAL CONSTITUENCY SERVICE, at 0:41–0:43, https://www.youtube.com/watch?v=uoBF9a4_ue8 (last visited Sept. 13, 2021); WHAT IS ALEC CARE?, at 0:12–0:14, <https://www.youtube.com/watch?v=sbOpHimIm0s> (last visited Sept. 13, 2021); *see also* ALEC CARE SMS, at 0:03–0:14 <https://www.alec.org/app/uploads/2018/07/CARE-Video-SMS.mp4> (last visited Sept. 13, 2021); ALEC CARE TAGS, at 0:02–0:14; <https://www.alec.org/app/uploads/2018/07/CARE-Video-Tags.mp4> (last visited Sept. 13, 2021); ALEC CARE DATA, at 0:02–0:15, <https://www.alec.org/app/uploads/2018/07/CARE-Video-Data.mp4> (last visited Sept. 13, 2021).

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ALEC requires each legislative member to go through this page before accessing the constituency service functions.

ALEC's Manager of Legislative Membership & Engagement, and the one responsible for the ALEC CARE platform, Aaron Gillham, provides training to legislators on how to use the ALEC CARE software. Decl. of Gillham ¶ 9. During his tenure as the Manager of Legislative Membership & Engagement, Mr. Gillham has provided approximately 150 trainings. *Id.* at ¶ 10. During these training sessions, Mr. Gillham consistently and repeatedly emphasizes to the legislators that they cannot use ALEC CARE for any campaign related purpose. *Id.* at ¶ 11. While demonstrating how the software functions, Mr. Gillham shows the legislators the login page for the software and consistently highlights the language: "By signing in, you agree this system will not be used for any campaign related purpose." *Id.* at ¶ 12.

B. The Complaint Does Not Allege that ALEC Made any Contribution, as Defined Under Maine Law.

The Complaint never alleges that ALEC gave ALEC CARE to a legislator "for the purpose of influencing the nomination or election of any person to state, county or municipal office." The Complaint uses conclusory language, e.g., ALEC "knowingly made an illegal in-kind campaign contribution," but never alleges that ALEC gave the software to help Senator Stewart and Representative Harrington in their elections. *See* Compl. ¶ 29. Instead, the Complaint meekly alleges that, in Complainants' estimation, the ALEC CARE software has features that could be helpful for electioneering purposes. *See id.* at ¶ 19. But then the Complaint alleges that ALEC provided the software to Senator Stewart and Representative Harrington "as a benefit of their membership[]" not to benefit their campaigns. *Id.* at ¶ 20. And the Complaint admits they "do not possess sufficient information to determine *if* [Senator Stewart and Representative Harrington] used it for their campaigns." *Id.* (emphasis added). The Complaint never alleges that ALEC gave the software to Senator Stewart or Representative Harrington to promote their candidacies or defeat their opponent. Thus, the Complaint is based on speculation. Because the allegations of a legal violation are no more than conjecture based on how ALEC CARE *might* be misused (despite ALEC's express conditions and instructions not to use it for campaign purposes), the complaint must be dismissed.

Simply put, the Complaint cannot allege a legally sufficient violation. ALEC repeatedly told members that they could not use the software for electioneering or campaign purposes. In addition to affirming that they would not use ALEC CARE for campaign purposes before accessing the software, ALEC members are reminded of the prohibition during trainings and throughout the onboarding process when they become members. Furthermore, Senator Stewart and Representative Harrington did not even access the ALEC CARE software during the period when the 2020 election cycle occurred. Accordingly, the Commission should dismiss the Complaint and it should not initiate an investigation.

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C. ALEC Members, Senator Stewart and Representative Harrington, Have Not Accessed or Used the ALEC CARE Software.

Because ALEC has the capability to provide technical support to each of its members, ALEC can determine who creates an account. Furthermore, the users of the software typically leave a digital trail when users login and use the software. Thus, ALEC is also able to ascertain who is using the software. Decl. of Gillham ¶¶ 3–4.

Mr. Gillham has reviewed the ALEC CARE software logs. *Id.* at ¶¶ 5, 7. Upon review, he was able to determine that Representative Harrington created an ALEC CARE account, but Mr. Gillham affirms that it appears that Representative Harrington never used the software because there is no trace of his logging into the software program and using it. *Id.* at ¶¶ 7–8.

Mr. Gillham was also able to determine that Senator Stewart created an ALEC CARE account. *Id.* at ¶ 5. Mr. Gillham ascertained that Senator Stewart used the ALEC CARE software to a limited extent, and his last use was in June 2017. *Id.* at ¶ 6. It therefore appears that to the extent that Mr. Stewart used the ALEC CARE software, he did so as a member of Maine’s House of Representatives rather than as a member of Maine’s Senate.¹⁰ Mr. Gillham affirms that there is no indication that Senator Stewart used ALEC CARE for anything other than constituent relationship management.

CONCLUSION

For the foregoing reasons, this Commission should dismiss the Complaint and not initiate an investigation.

Nothing in this response should be interpreted as a waiver of any assertion of privilege, objection, defenses, or arguments that ALEC may have. In fact, ALEC preserves all privileges, objections, defenses, or arguments that it may have.

ALEC thanks the Commission for its time and consideration.

Sincerely,



Jason Torchinsky

¹⁰ See Senator Trey Stewart, <https://mesenategop.com/senator-trey-stewart/> (last visited Sept. 15, 2021).

Holtzman Vogel

HOLTZMAN VOGEL BARAN TORCHINSKY & JOSEFIAK PLLC

Counsel to ALEC¹¹

¹¹ Although I am not admitted to practice law in the State of Maine, it is my understanding that the Maine Rules of Professional Conduct 5.5(c)(4) permit an out-of-state lawyer to practice law before this tribunal when the subject-matter before the Commission is one that is reasonably related to the attorney's home practice. I have practiced political law for 20 years and am a partner at a law firm that is considered a political law boutique firm. If, however, this Commission deems that I must have local counsel in order to comply with Maine's rules regarding the practice of law, please let me know and we will make those arrangements promptly.

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State of Maine Commission on Governmental Ethics and Election Practices

Comes Now Aaron Gillham, Manager, Legislative Membership & Engagement, at the American Legislative Exchange Council (“ALEC”), and states as follows:

1. ALEC is a 501(c)(3) organization with its principal place of business located at 2900 Crystal Drive, 6th Floor, Arlington, VA 22202. I have been employed at ALEC since March 2018, and I am responsible for the ALEC Constituent Analytics Research Exchange (“ALEC CARE”) platform. I am over the age of 18 and authorized to make these statements on behalf of ALEC.

2. I make the statements below based on my personal knowledge, information, and belief.

3. In my position as Manager, Legislative Membership & Engagement, I have access to see which ALEC members have activated their ALEC CARE accounts.

4. When a legislator logs into the ALEC CARE software, the user generally leaves behind an electronic trail. This allows me to see that the legislator has used the system.

5. On August 4, 2021, I reviewed ALEC’s records and ascertained that ALEC member and Maine state chair Senator Harold “Trey” Stewart III had activated his ALEC CARE account.

6. However, after reviewing ALEC’s records, there is no indication that Senator Stewart accessed or used the account outside of a brief period in June 2017, which is shortly after Senator Stewart activated his account and likely during a training period. There is no indication that the account was used for campaign purposes.

7. On August 4, 2021, I reviewed ALEC's records and ascertained that ALEC member and Maine state chair Representative Matthew Harrington had activated his ALEC CARE account.

8. However, after reviewing ALEC's records, there is no indication that Representative Harrington accessed or used his account.

9. As part of my duties as ALEC's Manager of Legislative Membership & Engagement, I provide training on ALEC CARE software to legislative members.

10. During my tenure as the Manager of Legislative Membership & Engagement, I have provided approximately 150 trainings.

11. During these training sessions with legislators, I consistently and repeatedly emphasize that the legislators cannot use the ALEC CARE software for any campaign related purposes.

12. Part of the training sessions includes me showing the legislators the login page for ALEC CARE. I consistently highlight the language that reads: "By signing in, you agree this system will not be used for any campaign related purpose."

13. As part of my duties as ALEC's Manager of Legislative Membership & Engagement, I respond to inquiries about ALEC CARE. In that role, I am made aware when a state's campaign finance agency alerts ALEC of a complaint involving ALEC CARE.

14. At a minimum, the Center for Media and Democracy ("CMD") submitted complaints that are substantively similar to the complaint in this matter with the relevant campaign finance authorities in Arizona and Utah.

15. At a minimum, CMD and Common Cause submitted complaints that are substantively similar to the complaint in this matter with the relevant campaign finance authorities in Connecticut, Minnesota, Ohio, Texas, and Wisconsin.

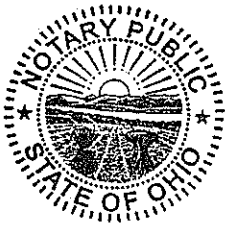
I declare under penalty of perjury that everything I have stated in this document is true and correct.

Signed: *Aaron Gillham*
Aaron Gillham

Date: 9/16/21

County: Hamilton

State: OH



STEVEN ARGENTIERO
Notary Public, State of Ohio
My Comm. Expires 10-20-2025

This 16th day of Sep, 2021. Before me
Aaron Gillham signed.

St. Lthi
9/16/2021

Title 21-A Maine Revised Statutes

§ 1003. Investigations by commission

...

2. Investigations requested. A person may apply in writing to the commission requesting an investigation as described in subsection 1. The commission shall review the application and shall make the investigation if the reasons stated for the request show sufficient grounds for believing that a violation may have occurred.

...

§ 1004-A. Penalties

The commission may assess the following penalties in addition to the other monetary sanctions authorized in this chapter.

...

2. Contribution in excess of limitations. A person that accepts or makes a contribution that exceeds the limitations set out in section 1015, subsections 1 and 2 may be assessed a penalty of no more than the amount by which the contribution exceeded the limitation.

...

§ 1012. Definitions

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

...

2. Contribution. The term “contribution:”

A. Includes:

- (1) A gift, subscription, loan, advance or deposit of money or anything of value made for the purpose of influencing the nomination or election of any person to state, county or municipal office or for the purpose of liquidating any campaign deficit of a candidate, except that a loan of money to a candidate by a financial institution in this State made in accordance with applicable banking laws and regulations and in the ordinary course of business is not included;
- (2) A contract, promise or agreement, express or implied, whether or not legally enforceable, to make a contribution for such purposes;
- (3) Funds received by a candidate or a political committee that are transferred to the candidate or committee from another political committee or other source; and

(4) The payment, by any person other than a candidate or a political committee, of compensation for the personal services of other persons that are provided to the candidate or political committee without charge for any such purpose; and

...

4-A. Influence. “Influence” means to promote, support, oppose or defeat.

...

§ 1015. Limitations on contributions and expenditures

...

2. Contributions by party committees and political action committees. Except as provided in paragraph A, a party committee under section 1013-A, subsection 3, a political action committee and any other committee may not make contributions to a candidate.

A. A party committee under section 1013-A, subsection 3, a leadership political action committee, a separate segregated fund committee, a caucus political action committee and any other political action committee may make contributions to a candidate in support of the candidacy of one person aggregating no more than the amount that an individual may contribute to that candidate under subsection 1, except that the committee may not make any monetary contributions to a candidate using funds that derive, in whole or in part, from a business entity. Nothing in this paragraph prohibits a separate segregated fund committee that receives nonmonetary contributions from a business entity under section 1056-D, subsection 2, paragraph A from making monetary contributions to a candidate within the limits described in this paragraph.

...

§ 1017. Reports by candidates

...

5. Content. A report required under this section must contain the itemized accounts of contributions received during that report filing period, including the date a contribution was received, and the name, address, occupation, principal place of business, if any, and the amount of the contribution of each person who has made a contribution or contributions aggregating in excess of \$50. The report must contain the itemized expenditures made or authorized during the report filing period, the date and purpose of each expenditure and the name and address of each payee and creditor and any refund that a payee has made to the candidate or an agent of the candidate. If the payee is a member of the candidate’s household or immediate family, the candidate shall disclose the candidate’s relationship to the payee in a manner prescribed by the commission. The report must contain a statement of any loan to a candidate by a financial institution in connection with that candidate’s candidacy that is made during the period covered by the report, whether or not the loan is defined as a contribution under section 1012, subsection 2,

paragraph A. The candidate and the treasurer are jointly and severally responsible for the timely and accurate filing of each required report.

...

§ 1125. Terms of participation

...

6. Restrictions on contributions and expenditures for certified candidates. After certification, a candidate must limit the candidate's campaign expenditures and obligations, including outstanding obligations, to the revenues distributed to the candidate from the fund and may not accept any contributions unless specifically authorized by the commission. Candidates may also accept and spend interest earned on fund revenues in campaign bank accounts. All revenues distributed to a certified candidate from the fund must be used for campaign-related purposes. The candidate, the treasurer, the candidate's committee authorized pursuant to section 1013-A, subsection 1 or any agent of the candidate and committee may not use these revenues for any but campaign-related purposes. The candidate, the treasurer, the candidate's committee authorized pursuant to section 1013-A, subsection 1 or any agent of the candidate and committee may not use these revenues for post-election parties. This section does not prohibit a candidate from using personal funds for post-election parties as governed by rules of the commission. The commission shall publish guidelines outlining permissible campaign-related expenditures.

...

Code of Maine Rules 94-270

Chapter 1 PROCEDURES

...

SECTION 6. CONTRIBUTIONS AND OTHER RECEIPTS

...

4. Unless specifically exempted under Title 21-A M.R.S.A. §§ 1012 and 1052 or this section, the provision of any goods or services without charge or at a charge that is less than the usual and customary charge for such goods or services is an in-kind contribution. Examples of such goods and services include, but are not limited to: equipment, facilities, supplies, personnel, advertising, and campaign literature. If goods or services are provided at less than the usual and customary charge, the amount of the in-kind contribution is the difference between the usual and customary charge and the amount charged the candidate or political committee.

A. A commercial vendor that has provided a discount to a candidate or political committee because of a defect in performance or other business reason has not made a contribution if the vendor grants substantially similar discounts to other customers in the ordinary course of the vendor's business.

B. If a candidate is a public official who is provided a vehicle for transportation by a public entity for the purpose of conducting official duties, the use of such vehicle for campaign purposes is considered to be an in-kind contribution to the candidate from the public entity unless the candidate reimburses the public entity for the use of the vehicle.

...