



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

To: Commission  
From: Jonathan Wayne, Executive Director  
Date: July 20, 2022  
Re: Draft Motion – ALEC Investigation

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At the June 22, 2022 meeting, the Commission staff reported back to the Commission on the status of the investigation into software provided by the American Legislative Exchange Council (ALEC) to its members in Maine and whether it violated contributions restrictions and limits applicable to 2020 legislative candidates. In the staff memo for that meeting, we provided a summary a May 18, 2022 demonstration of the software by ALEC. In the memo, we expressed the view that we did not think evidence presently available to the Commission was sufficient to support a conclusion that ALEC's provision of the software to its members qualifies as a contribution and we offered some prudential reasons for terminating the investigation.

Commission Chair William Schneider moved to discontinue the investigation. During the Commissioners' discussion, Commissioner Sarah LeClaire expressed some reservations that discontinuing the investigation could lead to an inference that the Commission concluded the software had no value or that it was appropriate for candidates to access the software for campaign purposes.

To reflect the motion and these comments, with assistance from counsel I drafted a motion (directly following this memo) that represents one possible option for the Commission. The complete meeting materials for the June 22, 2022 meeting are also attached for your reference.

I am happy to develop the draft motion with any changes you would like before the July 27, 2022 meeting. Also, the staff is prepared to head in any other direction that the Commission would like, for example, continuing the investigation through use of our agency's subpoena power. Thank you.

## DRAFT MOTION

I move that the Commission take the following actions:

1. discontinue the investigation into the provision of software by the American Legislative Exchange Council to its members, based on a finding that the risk that Maine candidates may receive access to free software to assist their campaigns would be more effectively reduced through educational materials from the Commission staff, and
2. direct the staff to communicate to candidates, through whatever means it deems effective, the following information:
  - a. that software often has a monetary value,
  - b. that receiving software for campaign purposes may constitute an in-kind contribution that violates the terms of the Maine Clean Election Act program or the contribution limits applicable to traditionally financed candidates, and
  - c. that if a candidate receives software that they intend to use for campaign purposes, the candidate should consider reimbursing the source to avoid the receipt of an in-kind contribution that could violate contribution restrictions in Maine law.



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04333-0135

To: Commission  
From: Commission Staff  
Date: June 15, 2022  
Re: Investigation of ALEC CARE Software

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### **Initiation of Investigation**

This memo is to report back to you concerning an investigation into the ALEC CARE software that the Commission voted to pursue on September 29, 2021. The American Legislative Exchange Council (ALEC) is a 501(c)(3) nonprofit corporation that promotes limited government and free market policies by working with state legislators nationwide who are members of ALEC. Among other activities, it develops model laws that its members may introduce in their legislatures. Its principal office is in Arlington, Virginia.

In recent years, ALEC has offered to its legislative members a software program, ALEC CARE, as a free membership benefit. In late July 2021, the Ethics Commission received a complaint from the Center for Media and Democracy (CMD) signed by Mr. Arn Pearson arguing that the software constituted an in-kind contribution to 2020 legislative candidates in Maine. ALEC CARE is a web-based application through which ALEC member-legislators may create lists of residents of their districts, based on criteria such as policy views or party affiliation. The legislator can use these lists to communicate with people in the district by visiting them door-to-door, phone-banking, or by sending automated messages by email, text, or phone. ALEC members may also record notes or tags about the constituents for future use, for example, to record an interaction with a district resident.

The July 2021 complaint was directed at ALEC and two Maine legislators (State Sen. Trey Stewart and State Rep. Matthew Harrington) who were ALEC's state co-chairs in Maine. CMD contended that ALEC had made a contribution to Maine legislators in 2020 that exceeded state limits and restrictions on contributions. It argued that Sen. Stewart and Rep. Harrington had accepted a contribution that exceeded these limits and restrictions. CMD inferred that Sen.

Stewart and Rep. Harrington, as state co-chairs in Maine, had access to the ALEC CARE software. Because the information is not publicly available, CMD is unable to identify other Maine legislators who have had access to the software by virtue of their ALEC membership or who may have specifically used the software for campaigning.

CMD contends that ALEC CARE is essentially the same as Voter Gravity, which is a software application designed for political candidates to manage contacts with voters. Voter Gravity is designed for campaigning. CMD's complaint relied on research from publicly available sources about the relationship between ALEC CARE and Voter Gravity. CMD is asking the Commission to accept the proposition that, because ALEC has offered a campaign tool to its members as a free benefit, its purpose in providing the software is to promote their election.

In a September 17, 2021 letter from its counsel, Jason Torchinsky, ALEC responded that as a 501(c)(3) tax exempt organization it does not intervene in election campaigns. According to ALEC, the software is provided for purposes of managing relations with constituents by assisting members in communicating more effectively with constituents and keeping track of their communications. When logging into the system, members see this message:

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.

ALEC stated that its employee, Aaron Gillham, has performed more than 150 trainings on how to use ALEC CARE and that he consistently and repeatedly emphasizes to the legislators that they cannot use ALEC CARE for any campaign-related purpose.

Counsel for Sen. Stewart and Rep. Harrington responded that they have not used the software for campaign purposes. In a supporting affidavit, Mr. Gillham stated that he could find no record in ALEC CARE indicating that Rep. Harrington had ever used the software and Sen. Stewart only used the software for a brief period in 2017.

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 and Jason Torchinsky. 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 motion passed by a vote of three to two (Commissioners Lee, Marble, and LeClaire in support and Commissioners Schneider and Hastings opposed). The Commission found there were insufficient grounds to investigate Sen. Stewart and Rep. Harrington.

In 2021, CMD filed at least 10 complaints concerning the ALEC CARE software with different state campaign finance departments arguing that ALEC CARE violated restrictions on contributions. CMD (working in collaboration with Common Cause) also filed a complaint with the U.S. Internal Revenue Service arguing that ALEC had violated restrictions on political activity for 501(c)(3) tax-exempt organizations. Nine years earlier in 2012, Common Cause filed an earlier whistleblower complaint against ALEC charging that it misused charity laws, did not comply with lobbying disclosure laws, and obtained improper tax breaks for its funders.

### **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**

*October-November 2021.* During October and November 2021, the Commission staff corresponded with ALEC’s attorney to inquire whether ALEC would provide access to the ALEC CARE software for purposes of the investigation. ALEC’s counsel, Jason Torchinsky, expressed a number of legal concerns and responded that ALEC cannot commit to voluntarily cooperating with the Commission’s investigation. 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. The Commission staff tentatively concluded that ALEC was not going to cooperate in any way, although it later changed its position.

*December 2021-February 2022.* During this period, the Commission staff interviewed a state legislator who has been cooperating with CMD. We also researched other states’ consideration of the ALEC CARE complaints in case other campaign finance departments could serve as an alternate source of information about the software. We reported back to the Commission at meetings on January 26 and February 28, 2022. In those meetings Commissioners Lee, LeClaire and Marble supported continuing to take investigative steps, and Commissioners Schneider and Hastings were opposed. On February 28, 2022, the Commission authorized staff to use its subpoena authority to investigate whether ALEC’s provision of the software violated state contribution limits and restrictions.

*March-May 2022.* In mid-March, ALEC’s counsel and Commission staff resumed correspondence. ALEC agreed to permit Commission staff to receive a demonstration of the software and to interview Mr. Gillham, provided that we reported back to you at a Commission meeting concerning the purpose of the software. The agreement did not constrain the contents or conclusions of the staff’s report. The demonstration and interview occurred on May 18, 2022.

### **May 18, 2022 Presentation by Aaron Gillham**

Aaron Gillham explained that ALEC provides a network for legislators to share ideas across states and members. Legislators join as part of their professional development. ALEC views ALEC CARE as a natural addition to its services. It is intended as a constituent service aid. Many legislators are left to their own devices when it comes to recording communications with constituents. ALEC CARE helps the members stay organized and keep track of correspondence with constituents.

Mr. Gillham explained that all ALEC members are trained to understand the software is only to be used for legislative work, and never for campaigning. He demonstrated the log-in screen by which members agree not to use the software for campaigning purposes.

*Data on constituents.* Mr. Gilham discussed the data concerning individual constituents that is stored in the application. ALEC is licensed to use the software by Voter Gravity. He stated his understanding that the data comes from a political consulting firm, which he identified by name. Mr. Gillham said that the data was “nonpartisan.” Legislators’ accounts are “walled off.” Data entered by the Legislator is not shared with ALEC or any other entity. Mr. Gillham specifically denied that data entered by Legislators is shared with the Republican National Committee. Data has never been used for that purpose, he said.<sup>1</sup>

He demonstrated the profile page that is available for each constituent in the database. The data on this page includes, among other things, the constituent’s gender, demographic information, party affiliation, voter history, and household information. Users can select different tabs to look at different categories of information. The “Demographics” tab includes

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<sup>1</sup> This comment by Mr. Gillham runs contrary to the contention by CMD that one of the purposes of ALEC and Voter Gravity in providing the software to ALEC members is to transfer data about constituents entered by ALEC members to the Republican National Committee database to enhance the value of that database to Republican organizations.

some information about political viewpoints, for example “Second Amendment Supporter,” “Environmentalism,” or “Persuadable Voter.” Mr. Gillham said that filtering by voting history or turnout score can help a member focus on constituents that are most engaged.

Mr. Gillham said that phone numbers and email addresses for constituents are not provided to members in the ALEC CARE software. Legislators need to enter that data themselves.<sup>2</sup>

*Notes and tags.* Mr. Gillham demonstrated the notes feature. Notes are open-ended text box fields where users can enter specific comments about a constituent, such as conversations or concerns.

Tags are customizable labels that the member can attach to a constituent in the database. ALEC members can use tags to indicate that a constituent is interested in a particular hot button issue in the district or state, has a position on a major policy issue (e.g., reproductive or gun rights), or supports or opposes a specific piece of legislation. They can also be used to further identify a constituent for purposes of future communications, such as “small business owner,” “parent of school-age children,” “caretaker of elderly parent.” Users can employ these tags to create lists of individuals for a number of purposes, including a phone-bank list or a district walk-list.

Mr. Gillham stressed the efficiencies for legislators in being able to generate a list of constituents with common attributes. For example, a legislator could create a list of veterans to alert them about an upcoming public hearing on legislation of interest to them or to invite them to testify.

*Text messages and emails.* Mr. Gillham presented SMS push text message and email features, which allow users to create custom messages to send to a number of individuals.

*Walk lists and phone banking.* Mr. Gillham demonstrated a walk-list feature. Using geographic data about the district, as well as the demographic data in the constituent profiles, and any tags created by the user, members can develop a walk-list in their district. He also discussed the phone-banking feature that allows members to generate a list of phone numbers of individuals.

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<sup>2</sup> Commission staff notes that this is a limitation of the system. Automated messages (for any purpose) can be sent by text, phone or email only if the Legislator has entered this contact information.



*User dashboard.* The last page covered in the presentation was the home page, or dashboard. The dashboard contains a number of widgets, which are essentially visual indicators of goals or tasks.

*“Holdover” elements in the software.* The Commission staff asked about areas in the software referring to “RNC Integration” and “Anedot Integration.” Anedot is a campaign fundraising website favored used by some candidates and political organizations. Mr. Gillham referred to these as “holdovers from Voter Gravity” that are not used in the ALEC CARE software.

*Changes to software.* Mr. Gillham volunteered that ALEC had listened to feedback from its members and had made changes to the software. He mentioned the addition of a newsletter function, and the removal of a strike-list function. We understand a strike-list to be a list of voters that a candidate or campaign organization would keep track of on election day to indicate who had voted or still needed to vote.

At the conclusion, Mr. Gillham stressed that the purpose of ALEC CARE is for legislators to manage their relationships with constituents. ALEC educates its members to use the software for this purpose. The software is one option available to Legislators to improve their effectiveness by keeping track of constituents’ concerns and opinions.

### **Staff Observations on Software**

The consensus view of the Commission staff is that is plausible that ALEC CARE could be used by an ALEC member for constituent relations purposes but it would probably be more useful as a tool for campaigning, assuming the legislator willfully disregards ALEC’s restrictions against campaign use. ALEC CARE is rooted in the Voter Gravity software and it appears the changes by ALEC have been modest (the insertion of a newsletter function and the removal of a strikelist).

The automated communication tools (emails, texts, phone calls) could be used for legislative purposes, such as notifying constituents of legislation of interest to them or alerting them to a development in a governmental issue. Mr. Gillham acknowledged that these same automated tools could be used to share an election-related message, but ALEC trains its members not to do that and members agree not to engage in election activity.

ALEC CARE contains features to create walking lists or maps for legislators to use when going door-to-door to meet district residents. It also contains a facility for phone-banking. The Commission staff typically hears about these large-scale communication activities in the context of election campaigns. These features could be used for legislative purposes, but we are unsure how much these features would be used for that purpose in practice.

Although we would not view this as dispositive, ALEC CARE does not contain features of some case tracking and management software. Some governmental offices use software that will allow for assignment of cases to staff members, 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. ALEC Members can create a customizable tags which would have some utility in managing specific cases, but otherwise lacks some elements in case tracking or management software.

### **Staff Recommendation on Investigation**

After conferring with counsel and discussing internally, the staff of the Commission is inclined toward the view that the evidence currently available is insufficient to conclude that the ALEC's provision of the software to its members qualifies as a contribution under 21-A M.R.S. 1012(2)(A)(1). A contribution is defined as a gift 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. The Commission staff believes our investigation to date has not revealed sufficient evidence to conclusively prove that ALEC's purpose was to influence elections. ALEC CARE is rooted in the Voter Gravity campaign software and may be substantially similar. Nevertheless, those facts would need to be weighed against the fact that ALEC members must agree not to use the software for campaign purposes each time they log in and the fact that the software plausibly could have some constituent relations value if an ALEC member wanted to use it for that purpose. CMD is asking the Commission to infer that ALEC CARE was intended to influence elections based on the derivation of the software and its similarity to Voter Gravity. The Commission staff's view is that the evidence acquired to date may be insufficient to support such an inference.

The staff can certainly continue investigating, but we believe some factors are present that argue against going forward. We would suggest considering the degree of the State of

Maine's interest in continuing the investigation given that we do not know if any 2020 Maine candidates actually used the software for campaign purposes. Counsel for the two ALEC co-chairs represented that both legislators determined that the software would have "no value to their respective campaigns." Due to their relative youth, these two legislators may be more adaptable to new software than their colleagues in the Legislature. One challenge going forward is that the Commission has received a generalized assertion from CMD that the software has been used in Maine for campaigning, but we have received no specific evidence to support that assertion. Our understanding is that state legislators join ALEC because they are aligned with its values and would appreciate the information and legislation that ALEC can provide. Presumably, the ALEC CARE software is not the primary reason people join ALEC.

One avenue to obtain additional information concerning ALEC's purpose in providing the software would be for the Commission to use its subpoena power to request written communications internally and/or with partners. ALEC is a nonprofit Virginia corporation. If ALEC raised legal objections to the subpoenas, it might require litigation in Virginia and months of activity by the State of Maine to obtain this information.

After collecting all available information, the Commission's resolution of this matter would require answering legal questions that are not straightforward:

- If a something of value has been given to a Legislator that could be used for dual purposes, how would a candidate practically assess the value of the software for electoral purposes if the candidate needed to reimburse ALEC to avoid receiving a contribution?
- If a source provided software to a candidate that could have campaign value but the candidate does not use it for that purpose, has the candidate received a contribution as defined in Maine Election Law?

For the above reasons, the Commission staff recommends discontinuing the investigation. We believe the risk that Maine candidates may receive free software to assist their campaigns would be more effectively reduced through educational materials from the Commission staff. For example, the Commission staff could send an advisory email in July on this topic and could update the description of in-kind contributions in the next Candidate Guidebook to specifically mention this issue. Thank you for your consideration of this memo.



## 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

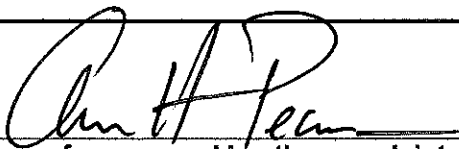
Brief summary of violation:  
(include dates of activity) As a benefit of their membership in ALEC, ALEC gave, and Sen. Stewart and Rep. Harrington received, free sophisticated voter management and campaign software for the 2020 election cycle worth thousands of dollars, despite ALEC's status as a 501(c)(3) 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).

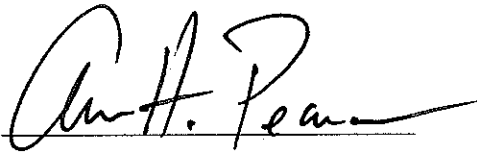
30. Provision of the voter management software to support election campaigns constitutes an illegal in-kind campaign contribution by ALEC whether or not ALEC members ultimately used it for their campaigns. ALEC's disclaimers and transparent repackaging of a powerful campaign tool as "constituent communications" 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.<sup>1</sup> 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."<sup>2</sup>

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,

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<sup>1</sup> 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).

<sup>2</sup> 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.”<sup>3</sup> 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.<sup>4</sup>

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,<sup>5</sup> 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)

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

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

<sup>5</sup> 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;<sup>6</sup> and numerous other data points exceedingly helpful for a re-election campaign but largely irrelevant to “constituent service.”<sup>7</sup> 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.”<sup>8</sup>

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.”<sup>9</sup> 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:

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<sup>6</sup> 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/>.

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

<sup>8</sup> See *id.* at 7-9.

<sup>9</sup> 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.<sup>10</sup>

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.”<sup>11</sup> 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.<sup>12</sup>

ALEC claims that the CARE platform is intended for “constituent management.”<sup>13</sup> 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,<sup>14</sup> with the explicit goal of creating a political campaign technology to “outmaneuver the left

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

<sup>11</sup> *Id.*

<sup>12</sup> See Section I.B, *infra* 18-19.

<sup>13</sup> 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”).

<sup>14</sup> 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.”<sup>15</sup>

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](http://www.politicalgravity.com)).<sup>16</sup> 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.”<sup>17</sup> 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).<sup>18</sup>

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<sup>15</sup> 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>.

<sup>16</sup> 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>.

<sup>17</sup> See Bolton, *supra* note 16.

<sup>18</sup> *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).<sup>19</sup> 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).<sup>20</sup>

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.”<sup>21</sup> 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.”<sup>22</sup>

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<sup>19</sup> 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.

<sup>20</sup> *Id.*

<sup>21</sup> 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).

<sup>22</sup> 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,<sup>23</sup> added to its board senior Republican leader Matt Schlapp,<sup>24</sup> and launched a “2.0” version of its software for a “bigger, faster, and more targeted voter contact effort.”<sup>25</sup>

In 2015, Ryun hosted several sessions at the Conservative Political Action Conference (CPAC), an annual meeting of officials, activists, legislators, and political operatives.<sup>26</sup> 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.”<sup>27</sup> 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.”<sup>28</sup> 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

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<sup>23</sup> 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”).

<sup>24</sup> 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.”

<sup>25</sup> 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>.

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

<sup>27</sup> See *id.*; see also Huston, *supra* note 14.

<sup>28</sup> Huston, *supra* note 14.

Defense Fund;<sup>29</sup> ALEC, meanwhile, boasted higher annual revenues than these organizations *combined*.<sup>30</sup> 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.”<sup>31</sup> 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.”<sup>32</sup> At the time of its integration with the RNC, VoterGravity already offered an impressive suite of political campaign tools, including mobile deployment, phone systems,

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<sup>29</sup> 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”).

<sup>30</sup> 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).

<sup>31</sup> See Ryun press release, *supra* note 15.

<sup>32</sup> *Id.*



touchstone surveys, Esri-based mapping, and walk-list cutting<sup>33</sup>—with more features promised.<sup>34</sup>

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

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,”<sup>37</sup> 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.”<sup>38</sup> On Gravity CRM’s erstwhile homepage, meanwhile, the “Sign-Up” and “About Us” buttons under “ALEC CARE” and “Gravity CRM” contain the exact same links<sup>39</sup>—

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<sup>33</sup> 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).

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

<sup>35</sup> *See supra* note 24.

<sup>36</sup> *See* VoterGravity Features PDF, *supra* note 34.

<sup>37</sup> *See, e.g.*, Hunter Hamberlin e-mail, *supra* note 3

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

<sup>38</sup> *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](http://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).

<sup>39</sup> *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.”<sup>40</sup>

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.<sup>41</sup> 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.”<sup>42</sup> Underneath that description is a link to “sign up today at [www.gravitycrm.org](http://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,<sup>43</sup> started at ALEC as a “C.A.R.E. Associate” in March 2018 according to that month’s ALEC State Chair Call Minutes.<sup>44</sup> 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.”<sup>45</sup>

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

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<sup>40</sup> *Id.* at 6 (archived June 4, 2017).

<sup>41</sup> 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.

<sup>42</sup> 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).

<sup>43</sup> 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>.

<sup>44</sup> 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”).

<sup>45</sup> 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.<sup>46</sup> 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.<sup>47</sup> 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.<sup>48</sup> (ALEC’s typical colors resemble a cobalt blue,<sup>49</sup> 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).<sup>50</sup> These same Goals and icons are also featured in ALEC’s “What is ALEC CARE” introductory video posted to its YouTube channel.<sup>51</sup>

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

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<sup>46</sup> See, e.g., Exhibit 16, Agenda of 45<sup>th</sup> 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.

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

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

<sup>49</sup> See, e.g., Screenshot of ALEC website, *supra* note 7.

<sup>50</sup> See Screenshots of Voter Gravity website, *supra* note 22, at 1.

<sup>51</sup> 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.”<sup>52</sup> 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.<sup>53</sup> 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”<sup>54</sup>

ALEC CARE also allows for filtering of constituents by RNC ID and Aristotle ID,<sup>55</sup> 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 Anedot<sup>56</sup>—the noted favorite electronic donation platform of Never-Trump Republicans like the Lincoln Project<sup>57</sup>—

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

<sup>53</sup> See, e.g., Ryun press release, *supra* note 15.

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

<sup>55</sup> See *id.* at 5.

<sup>56</sup> See *id.* at 6.

<sup>57</sup> 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?”<sup>58</sup> 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

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<sup>58</sup> 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).<sup>59</sup>

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.<sup>60</sup> Although the CARE login page forbids use for “campaign related purpose[s]”<sup>61</sup> and CARE’s promotion has reframed its electoral and campaign elements as “constituent management,”<sup>62</sup> 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.<sup>63</sup> 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

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

<sup>60</sup> See, e.g., ALEC annual meeting agenda, *supra* note 46.

<sup>61</sup> See Screenshots of ALEC training video, *supra* note 5, at 1.

<sup>62</sup> See *id.*

<sup>63</sup> 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)**<sup>64</sup>

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.<sup>65</sup>

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 VoterGravity<sup>66</sup>
- The CARE “software would cost \$3,000 if bought by a member”<sup>67</sup>

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

<sup>65</sup> 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.

<sup>66</sup> See Hunter Hamberlin e-mail, *supra* note 3.

<sup>67</sup> 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 ALEC<sup>68</sup>

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.<sup>69</sup> 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.<sup>70</sup> 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.***

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<sup>68</sup> *Id.*

<sup>69</sup> See VoterGravity Features PDF, *supra* note 34, at 3.

<sup>70</sup> See Huston, *supra* note 14.



VoterGravity is, and was always intended to be,<sup>71</sup> 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,<sup>72</sup> 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.”<sup>73</sup>

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).<sup>74</sup>

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.”<sup>75</sup> 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

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<sup>71</sup> 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”).

<sup>72</sup> See *supra* note 52.

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

<sup>74</sup> See *supra* note 15.

<sup>75</sup> See Tau, *supra* note 23.

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

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).<sup>77</sup>

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.

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<sup>76</sup> See Screenshots of ALEC CARE, *supra* note 7, at 6.

<sup>77</sup> 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.<sup>78</sup> 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

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<sup>78</sup> 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.”<sup>79</sup> 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.<sup>80</sup> 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].”<sup>81</sup>

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.”<sup>82</sup> 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

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<sup>79</sup> 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).

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

<sup>81</sup> 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, *Curtailling 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)).

<sup>82</sup> 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.<sup>83</sup>

The rule was most recently detailed in a 2007 IRS Revenue Ruling entitled “Exempt organizations; political campaigns.”<sup>84</sup> 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.”<sup>85</sup>

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.<sup>86</sup> It can even be implicated in “coded” language, “such as ‘conservative,’ ‘liberal,’ ‘pro-life,’ ‘pro-choice,’ ‘anti-choice’ . . . etc.” which,

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<sup>83</sup> 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.

<sup>84</sup> 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.”

<sup>85</sup> 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)).

<sup>86</sup> Rev. Rul. 2007-41, *supra* note 80, at 1421-22.

when referencing a candidate or election, can constitute a violation.<sup>87</sup> 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.<sup>88</sup>

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.<sup>89</sup>

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

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

<sup>88</sup> *Id.* at 14-15.

<sup>89</sup> 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.<sup>1</sup> 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.

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<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup>

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 materials<sup>5</sup> 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,

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<sup>2</sup> 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.

<sup>3</sup> 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](http://www.cfboard.state.mn.us/bdinfo/investigation/06_03_2014_Findings_Griffith_Bail_MLBA.pdf). Last visited January 27, 2015

<sup>4</sup> 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](http://www.cfboard.state.mn.us/bdinfo/investigation/04_03_2012_CSS_GWT.pdf). Last visited January 27, 2015.

<sup>5</sup> 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.<sup>6</sup>

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.<sup>7</sup>

### **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

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<sup>6</sup> 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.

<sup>7</sup> 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."<sup>8</sup>

Beyond drafting legislation, "ALEC staff provides research, policy analysis, scholarly articles, reference materials, and expert testimony on a wide spectrum of issues."<sup>9</sup> 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."<sup>10</sup> 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."<sup>11</sup>

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.

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<sup>8</sup> 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.

<sup>9</sup> ALEC Private Sector Membership brochure, Exhibit 2 to the complaint.

<sup>10</sup> *ibid.*

<sup>11</sup> 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](mailto:eoclass@irs.gov)

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

**BY EMAIL:** [DFICharitableOrgs@wi.gov](mailto:DFICharitableOrgs@wi.gov)

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

**BY EMAIL:** [Complaints@doj.ca.gov](mailto: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.<sup>1</sup> 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.<sup>2</sup> 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.”<sup>3</sup> 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.”<sup>4</sup> Between 2008 and 2018, AM and AMA received more than \$27 million in contributions and grants.<sup>5</sup>

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.<sup>6</sup> AMA disclosed on its Schedule C filing that it spent \$350,000 on “direct and indirect political campaign activities” or approximately

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<sup>1</sup> <http://nedryun.com/about-ned/>.

<sup>2</sup> 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](https://projects.propublica.org/nonprofits/display_990/263594713/2010_07_EO%2F26-3594713_990EO_200906).

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

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

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

<sup>6</sup> **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.<sup>7</sup> 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.<sup>8</sup>

### **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.<sup>9</sup> In 2015, AM reported a \$500,000 contribution from Leonard Leo at a different address in Alexandria.<sup>10</sup> 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.<sup>11</sup>

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.<sup>12</sup> 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.

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<sup>7</sup> *Id.*

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

<sup>9</sup> 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>.

<sup>10</sup> 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>.

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

990s

<sup>12</sup> 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.
<b>TOTAL INCLUDED ON LINE 3</b>	<b>970,000.</b>

**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.
<b>TOTAL INCLUDED ON LINE 3</b>	<b>907,000.</b>

**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.<sup>13</sup> 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

<sup>13</sup> *Id.*

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

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.<sup>15</sup>

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

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

<sup>15</sup> 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.”<sup>16</sup> Additionally, in 2012 and in preceding years, Mr. Ryun’s brother, Andrew, served on the boards of both AMA and AM.<sup>17</sup>

### *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.<sup>18</sup> 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.<sup>19</sup> 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.”<sup>20</sup> 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.<sup>21</sup>

AM and AMA have delivered hundreds of thousands of dollars to AM Action LLC, yet the company has lost a staggering amount of money.<sup>22</sup> 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.”<sup>23</sup>

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<sup>16</sup> 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](https://projects.propublica.org/nonprofits/display_990/263594713/2015_07_EO%2F26-3594713_990O_201406).

<sup>17</sup> 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](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](https://projects.propublica.org/nonprofits/display_990/261501154/2014_02_EO%2F26-1501154_990_201212).

<sup>18</sup> 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>.

<sup>19</sup> 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](https://projects.propublica.org/nonprofits/display_990/263594713/2013_07_EO%2F26-3594713_990O_201206).

<sup>20</sup> *Id.*

<sup>21</sup> *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](https://projects.propublica.org/nonprofits/display_990/261501154/2014_02_EO%2F26-1501154_990_201212).

<sup>22</sup> 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>.

<sup>23</sup> 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.<sup>24</sup> 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.<sup>25</sup> The two organizations planned to “deliver leading edge mobile campaign technology to Conservative candidates and grassroots groups.”<sup>26</sup> 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.<sup>27</sup> 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.”<sup>28</sup>

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.<sup>29</sup> 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.<sup>30</sup>

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.<sup>31</sup> At the time, Andrew Ryun also served on the boards of AM and AMA.<sup>32</sup> The same year that Andrew Ryun created Political Gravity, AM purchased \$100,000 worth of assets from the

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<sup>24</sup> 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>.

<sup>25</sup> 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>.

<sup>26</sup> *Id.*

<sup>27</sup> 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>.

<sup>28</sup> 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](https://projects.propublica.org/nonprofits/display_990/263594713/2013_07_EO%2F26-3594713_990O_201206).

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

<sup>30</sup> 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>.

<sup>31</sup> 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>.

<sup>32</sup> 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](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](https://projects.propublica.org/nonprofits/display_990/261501154/2014_02_EO%2F26-1501154_990_201212).

company.<sup>33</sup> In 2012, AM purchased a 5 percent ownership stake in Political Gravity.<sup>34</sup> 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.<sup>35</sup>

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."<sup>36</sup> A review of campaign finance disbursement data indicates Political Gravity may have stopped acting as a vendor for political campaigns after the 2012 election.<sup>37</sup>

#### *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.<sup>38</sup> The company operates an app that provides data about campaign donors, voters, and activists to political campaigns.<sup>39</sup> In 2013, AM appears to have acquired a 29.9 percent stake in Voter Gravity.<sup>40</sup>

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<sup>33</sup> *Id.*

<sup>34</sup> *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](https://projects.propublica.org/nonprofits/display_990/261501154/2012_12_EO%2F26-1501154_990_201112).

<sup>35</sup> 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/>.

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

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

<sup>38</sup> 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>.

<sup>39</sup> <http://votergravity.com>.

<sup>40</sup> 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](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.<sup>41</sup> 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.<sup>42</sup> 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.<sup>43</sup>

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.<sup>44</sup> 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.<sup>45</sup>

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.<sup>46</sup> In 2016, income was more than

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<sup>41</sup> 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](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](https://projects.propublica.org/nonprofits/display_990/261501154/02_2019_prefixes_25-26%2F261501154_201712_990_2019021116085208).

<sup>42</sup> 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](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>.

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

<sup>44</sup> 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](https://projects.propublica.org/nonprofits/display_990/261501154/2016_07_EO%2F26-1501154_990_201412).

<sup>45</sup> 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](https://projects.propublica.org/nonprofits/display_990/263594713/2015_07_EO%2F26-3594713_990O_201406).

<sup>46</sup> 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.<sup>47</sup> In 2017, income was nearly \$400,000 in the negative and assets consisted of nearly \$250,000.<sup>48</sup> 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.<sup>49</sup> In 2017, AMA reported a loan of nearly \$300,000.<sup>50</sup> Most recently, in 2018, AMA loaned Voter Gravity more than \$300,000.<sup>51</sup> 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.<sup>52</sup> AM and AMA have been actively involved in Wisconsin, and they have received DFI licenses to operate. AM first received

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<sup>47</sup> 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](https://projects.propublica.org/nonprofits/display_990/263594713/12_2017_prefixes_26-27%2F263594713_201612_990O_2017122915067215).

<sup>48</sup> 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](https://projects.propublica.org/nonprofits/display_990/261501154/02_2019_prefixes_25-26%2F261501154_201712_990_2019021116085208).

<sup>49</sup> 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](https://projects.propublica.org/nonprofits/display_990/263594713/12_2017_prefixes_26-27%2F263594713_201612_990O_2017122915067215).

<sup>50</sup> 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](https://projects.propublica.org/nonprofits/display_990/261501154/02_2019_prefixes_25-26%2F261501154_201712_990_2019021116085208).

<sup>51</sup> 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](https://apps.irs.gov/pub/epostcard/cor/263594713_201812_990O_2020021817155283.pdf).

<sup>52</sup> <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.<sup>53</sup>

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.<sup>54</sup> Between 2015 and 2017, the foundation contributed \$645,000 to AM.<sup>55</sup> In 2016, Bradley's \$345,000 contribution constituted around 34 percent of AM's total contributions and grants.<sup>56</sup> 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.<sup>57</sup>

To lead its Wisconsin efforts, AM maintains an office in the state, which hosts events.<sup>58</sup> 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.<sup>59</sup>

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<sup>53</sup> 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>.

<sup>54</sup> 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](https://projects.propublica.org/nonprofits/display_990/396037928/12_2019_prefixes_38-42%2F396037928_201812_990PF_2019122716981869).

<sup>55</sup> 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](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>.

<sup>56</sup> 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>.

<sup>57</sup> 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>.

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

<sup>59</sup> <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.<sup>60</sup> 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.<sup>61</sup> In 2015, the Motion Picture Association of America, which is based in Sherman Oaks, California, contributed to AM.<sup>62</sup> In 2017, the Lebherz Family Foundation, based in San Mateo, California, contributed to AM.<sup>63</sup>

### **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.<sup>64</sup> In determining whether a particular activity is political campaign activity, the IRS will look at all relevant facts and circumstances.<sup>65</sup> 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,

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

<sup>61</sup> **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>.

<sup>62</sup> **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>.

<sup>63</sup> **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>.

<sup>64</sup> Treas. Reg. § 1.501(c)(4)-1(a)(2).

<sup>65</sup> 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.<sup>66</sup>

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.<sup>67</sup> 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.<sup>68</sup> 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

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<sup>66</sup> Rev. Rul. 2004-6 I.R.B. (Jan. 26, 2004).

<sup>67</sup> Treas. Reg. § 1.501(c)(4)-1(a)(2)(ii).

<sup>68</sup> 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...”<sup>69</sup>

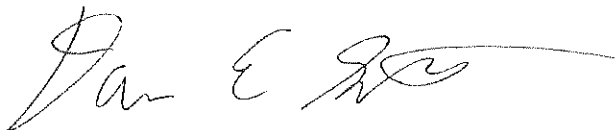
### *Related Transactions*

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

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<sup>69</sup> <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](http://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 ) ◀ (insert no )  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**

<b>Activities &amp; Governance</b>	<b>1</b> Briefly describe the organization's mission or most significant activities PROMOTING SOCIAL WELFARE AND CIVIC BETTERMENT THROUGH PROMOTION OF CONSERVATIVE PRINCIPLES			
	<b>2</b> Check this box <input type="checkbox"/> if the organization discontinued its operations or disposed of more than 25% of its net assets			
	<b>3</b>	Number of voting members of the governing body (Part VI, line 1a)	3	
	<b>4</b>	Number of independent voting members of the governing body (Part VI, line 1b)	2	
	<b>5</b>	Total number of individuals employed in calendar year 2018 (Part V, line 2a)	6	
	<b>6</b>	Total number of volunteers (estimate if necessary)	8	
	<b>7a</b>	Total unrelated business revenue from Part VIII, column (C), line 12	0	
<b>7b</b>	Net unrelated business taxable income from Form 990-T, line 34	0		
<b>Revenue</b>			<b>Prior Year</b>	<b>Current Year</b>
	<b>8</b>	Contributions and grants (Part VIII, line 1h)	500,000	846,500
	<b>9</b>	Program service revenue (Part VIII, line 2g)	0	0
	<b>10</b>	Investment income (Part VIII, column (A), lines 3, 4, and 7d)	65	122
	<b>11</b>	Other revenue (Part VIII, column (A), lines 5, 6d, 8c, 9c, 10c, and 11e)	0	1,583
	<b>12</b>	Total revenue—add lines 8 through 11 (must equal Part VIII, column (A), line 12)	500,065	848,205
<b>Expenses</b>	<b>13</b>	Grants and similar amounts paid (Part IX, column (A), lines 1-3)	0	71,320
	<b>14</b>	Benefits paid to or for members (Part IX, column (A), line 4)	0	0
	<b>15</b>	Salaries, other compensation, employee benefits (Part IX, column (A), lines 5-10)	146,881	395,879
	<b>16a</b>	Professional fundraising fees (Part IX, column (A), line 11e)	0	0
	<b>b</b>	Total fundraising expenses (Part IX, column (D), line 25) ▶ 78,312		
	<b>17</b>	Other expenses (Part IX, column (A), lines 11a-11d, 11f-24e)	85,570	536,037
<b>18</b>	Total expenses Add lines 13-17 (must equal Part IX, column (A), line 25)	232,451	1,003,236	
<b>19</b>	Revenue less expenses Subtract line 18 from line 12	267,614	-155,031	
<b>Net Assets or Fund Balances</b>			<b>Beginning of Current Year</b>	<b>End of Year</b>
	<b>20</b>	Total assets (Part X, line 16)	385,096	210,259
	<b>21</b>	Total liabilities (Part X, line 26)	34,147	33,545
<b>22</b>	Net assets or fund balances Subtract line 21 from line 20	350,949	176,714	

**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: \_\_\_\_\_ Date: 2019-11-14

NED C RYUN CEO  
Type or print name and title

**Paid Preparer Use Only**

Print/Type preparer's name	Preparer's signature	Date 2019-11-13	Check <input type="checkbox"/> 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	

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

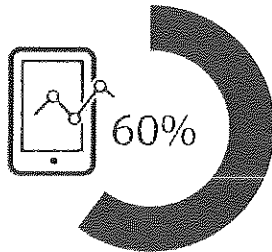


# Exhibit 6



## 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

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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 21<sup>st</sup> 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](http://www.alec.org/join)

As always, please let me know if you have any questions at 770-363-6076 or [hhamberlin@alec.org](mailto: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](mailto:sales@votergravity.com) or register for a demo at [votergravity.com/demo](http://votergravity.com/demo).

# Exhibit 9

## Norm Moore

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**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 3<sup>rd</sup> 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](mailto:wdavies@alec.org)



**Upcoming Meetings:**

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

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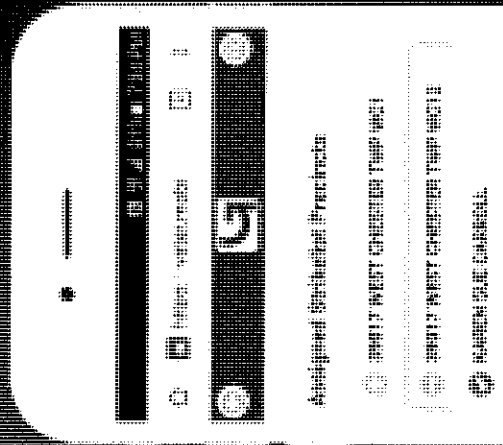
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# Exhibit 10

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# 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

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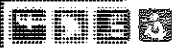
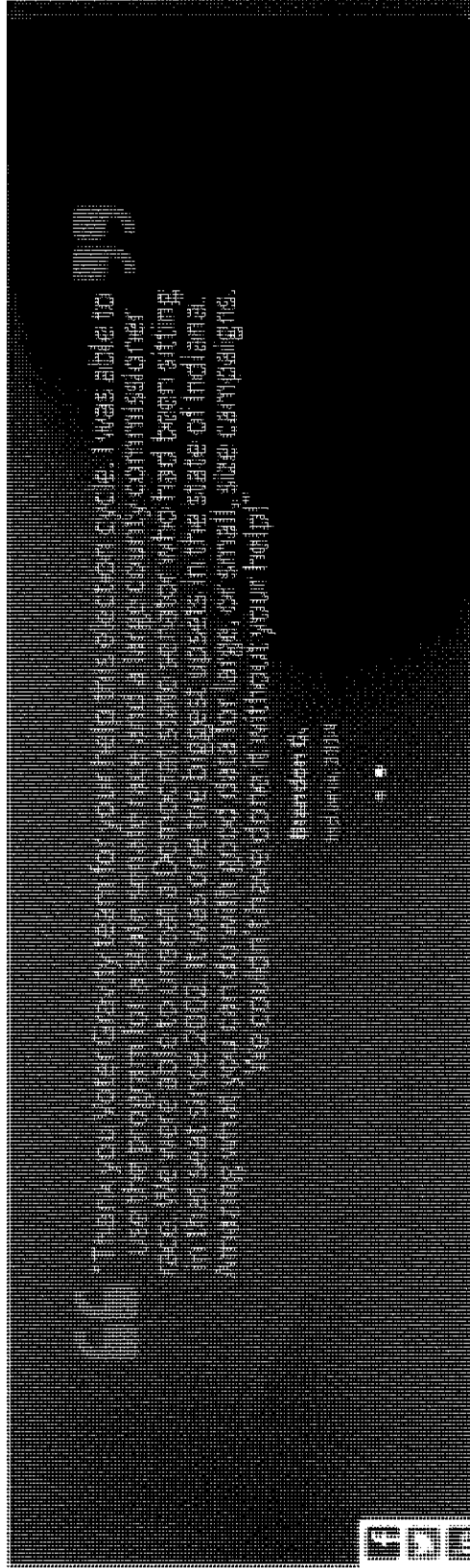
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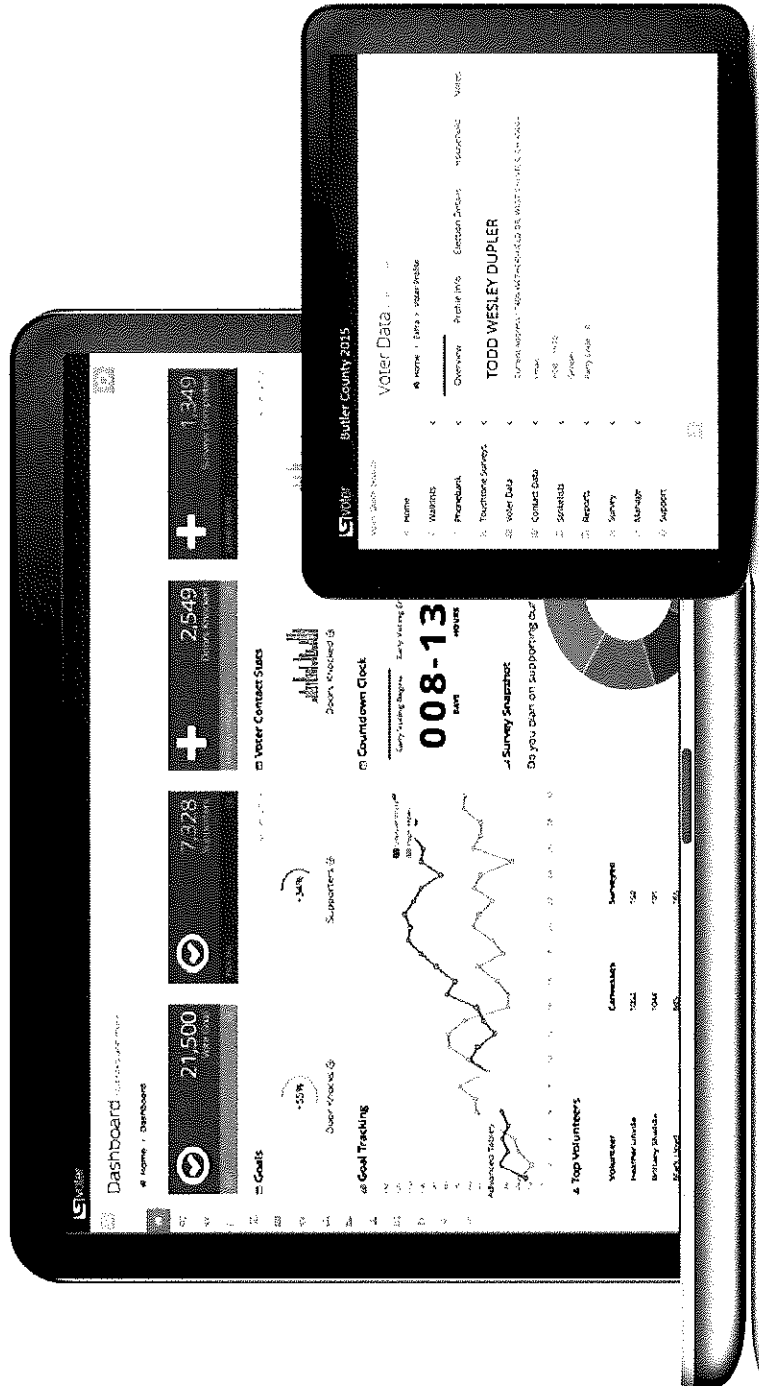
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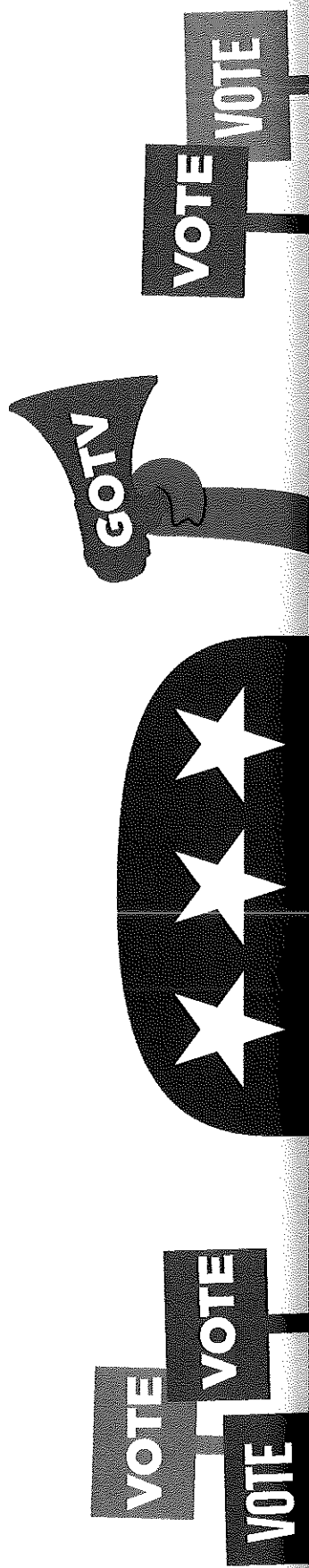




# In the Trenches:

What Republican Operatives Need to Know About Voter Canvassing

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



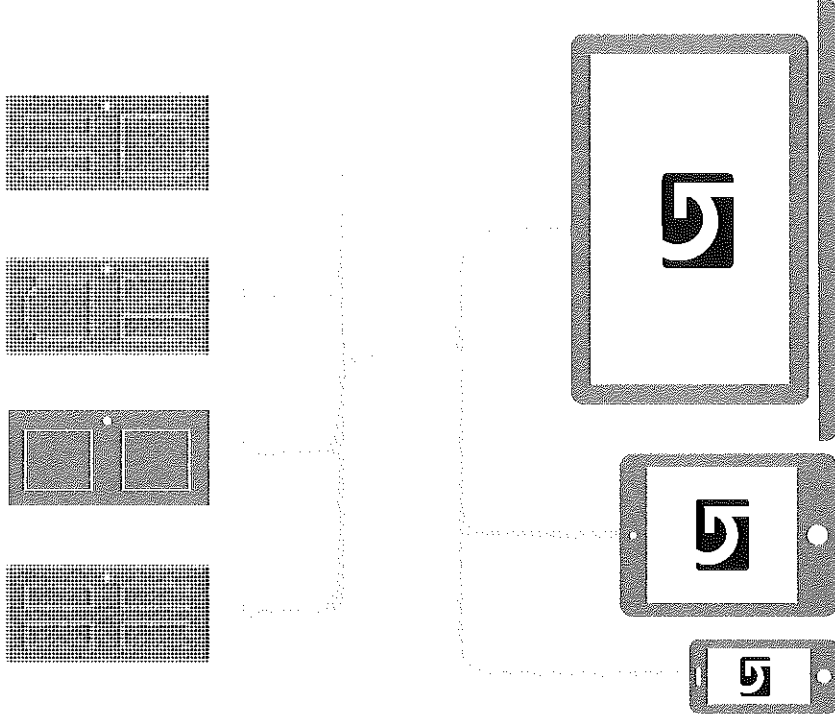
## Introduction

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.

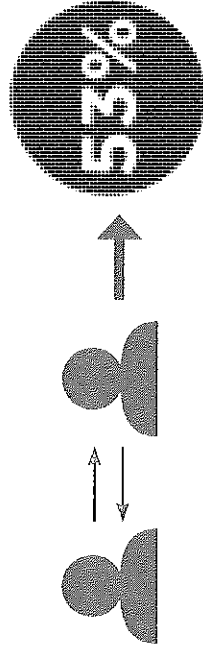
However, advanced technology alone is not enough to assure effective voter contact. Fortunately, the political science literature provides useful guidance for how to reach your potential voters and get them to the polls.



## 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.<sup>i</sup> These results are congruent with older studies, such as those conducted by Rosenstone and Hansen<sup>ii</sup> and Verba, Schlozman, and Brady.<sup>iii</sup>

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.**<sup>iv</sup> 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.<sup>v</sup>**

## 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 20<sup>th</sup> 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.

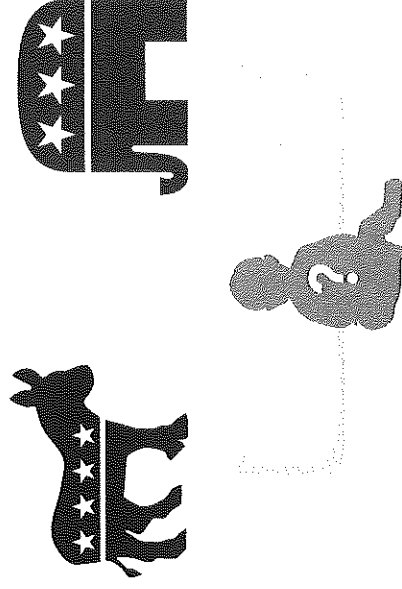
There are many competing theories of party identification. Some contend that party identification stems from early socialization, starting as early as childhood.<sup>vi</sup> Others have argued that party identification stems from our key social identities.<sup>vii</sup> A prominent political scientist 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.<sup>viii</sup> 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.

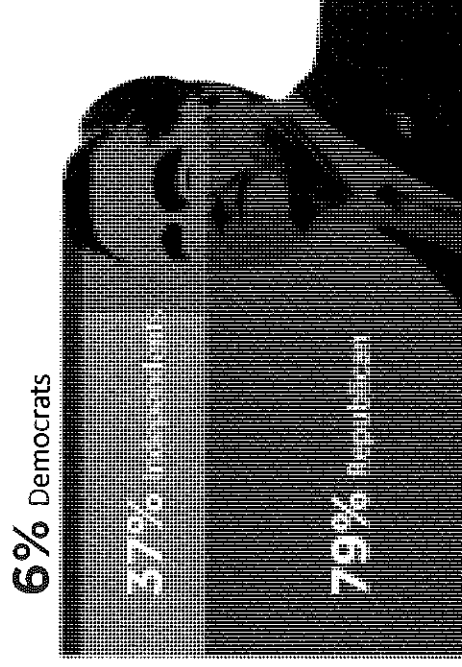
Political scientists have since learned that party identification should not be categorized as a variable with only three possible values. It became clear that voters needed to be asked an important follow-up question. We now typically treat party identification as a seven-point scale, ranging from “strong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

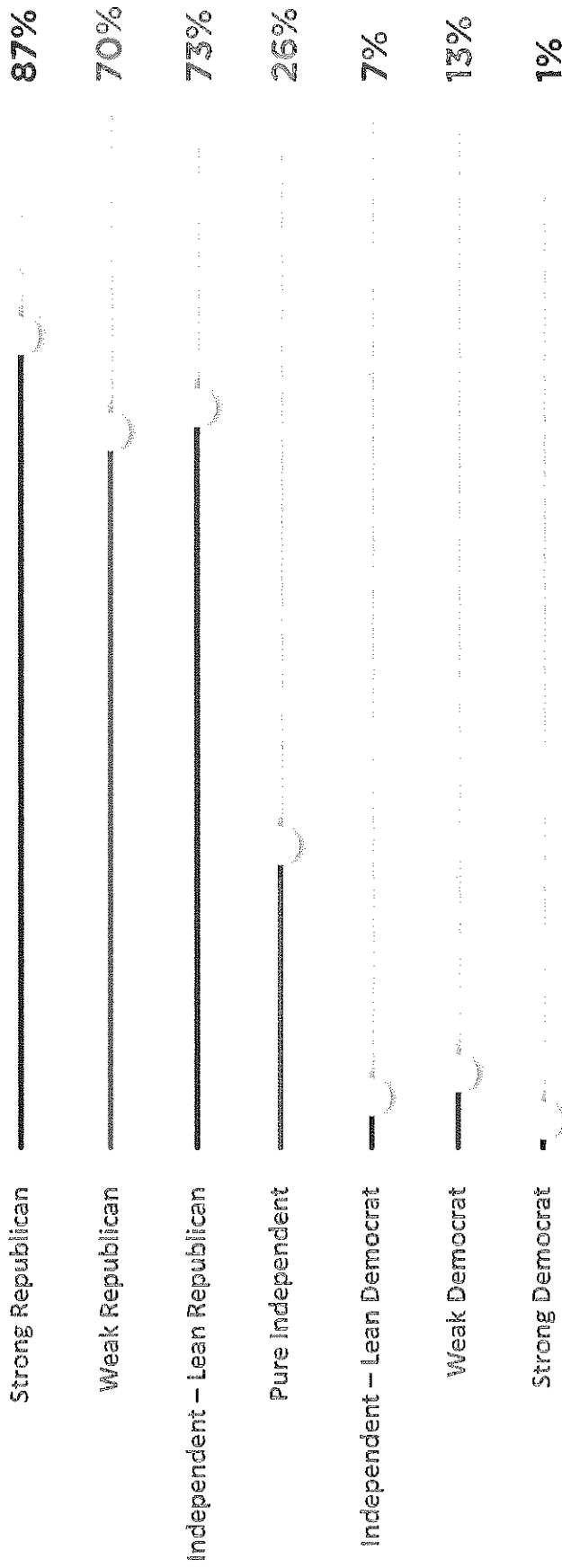
When we consider party identification this way, it appears that independents are split – though a strong majority of self-described independents voted against Romney in 2012.

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.<sup>x</sup> 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.



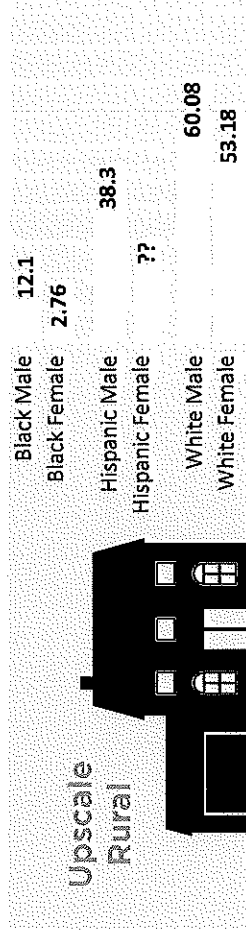
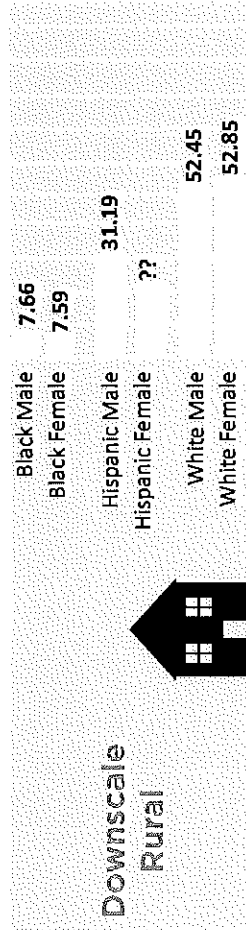
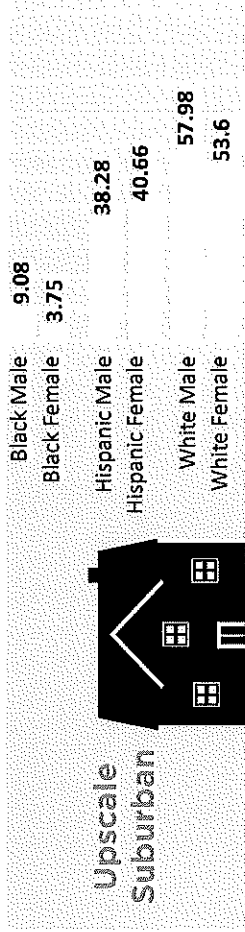
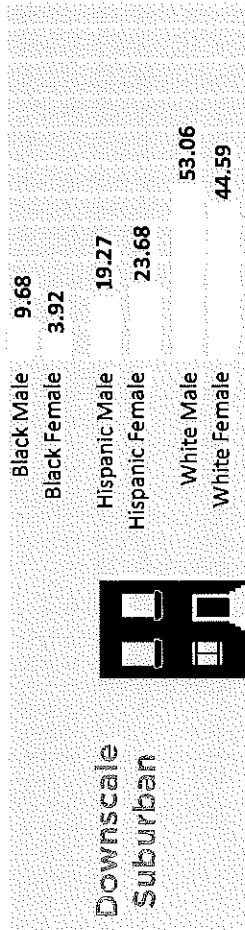
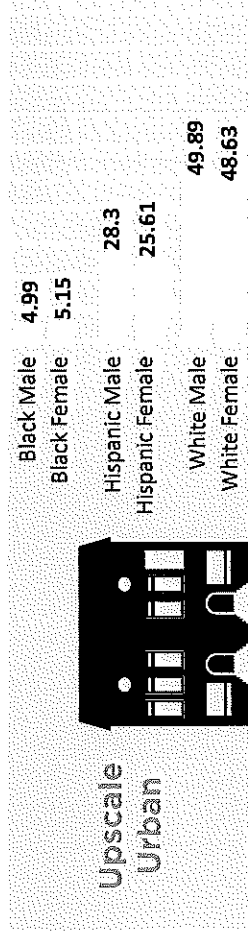
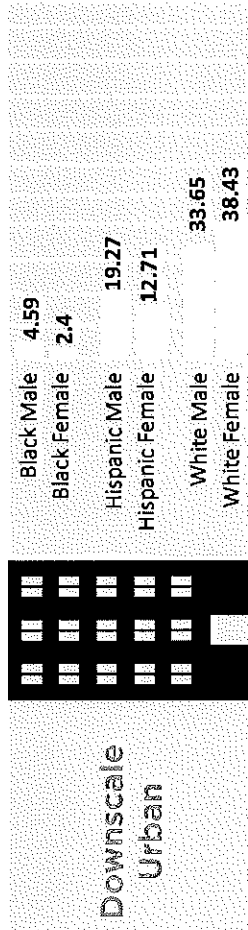
Gathering this kind of consumer information is expensive, and it is very unlikely that is worth the effort. For one, the relationship between consumer choices and voter behavior is likely spurious in many cases. After controlling for age, race, geographic location, home ownership, marital status, and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

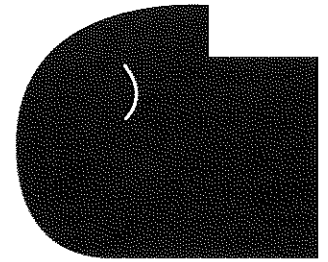
Affiliating with a party is one of the most important predictors of vote choice, but many of those who affiliate with the opposing party can be peeled away. Hillygus and Shields describe a category within the electorate called “persuadable voters.”<sup>xi</sup> These voters typically describe themselves 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.

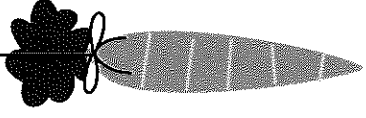
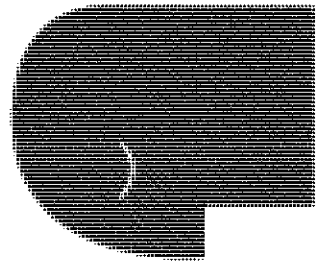
## When it comes to voter canvassing, the method seems to matter more than the message

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<sup>xii</sup>, which matters the most.



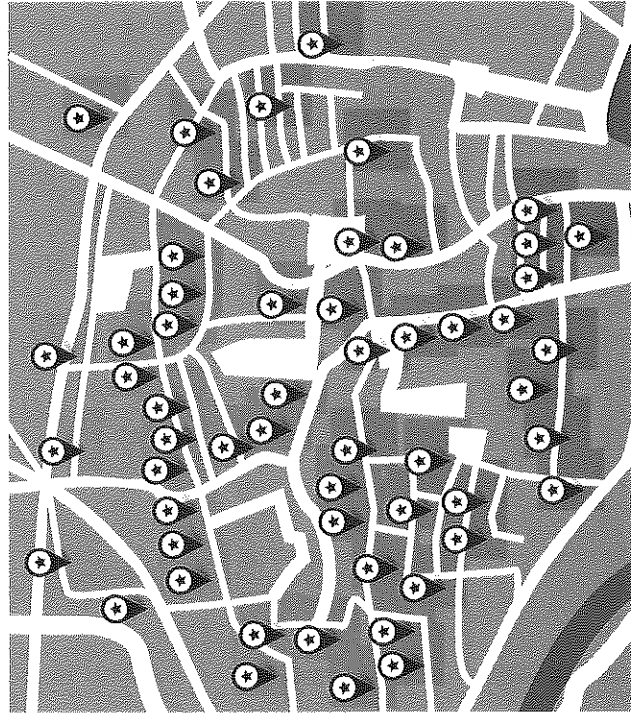
It's personal contact . . . which matters the most



# 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.<sup>xiii</sup> Lam and Peyton reached similar conclusions.<sup>xiv</sup>



## 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.<sup>xv</sup>

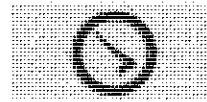
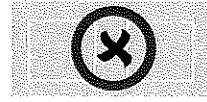
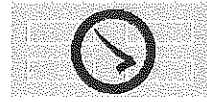
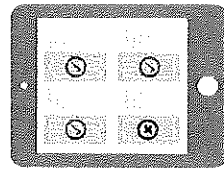
Voters, on average, prefer canvassers who are co-ethnics.<sup>xvi</sup>

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.<sup>xvii</sup>

## 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 21<sup>st</sup> 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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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](http://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](http://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](http://www.VoterGravity.com/features).

###

# Exhibit 12



# Voter Profile voter information and history

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



Political Ideology - Conservative

Interested in Tax Issues

Children Present

Income [REDACTED]

Donor

Education - High School

Religion [REDACTED]

Tea Party Supporter

# Voter Profile voter information and history

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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

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## Vote History

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

# Voter Profile voter information and history

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Second Amendment Supporter

Environmentalist

Persuadable Voter

Political Ideology - Conservative

Interested in Tax Issues

Children Present

Income ██████████

Education - Graduate School

Religion ██████████

# 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

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

Enter RNC Access Token

Save

Eventbrite Integration

Link EventBrite Account

Anedot Integration

Username

Username

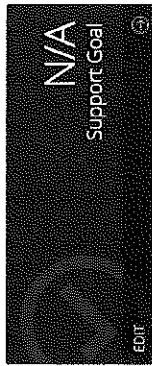


API Key

API Key

Save

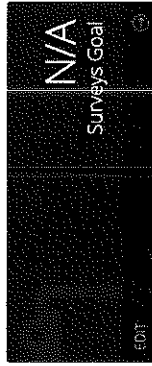
**GOAL TRACKING**



N/A%

Identified Supporters

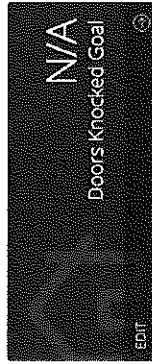
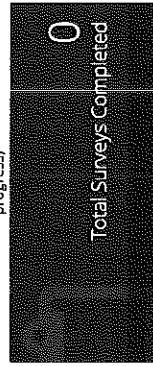
(Add a goal in the dashboard settings to track your progress)



N/A%

Completed Surveys

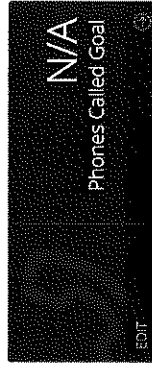
(Add a goal in the dashboard settings to track your progress)



N/A%

Door Knocks

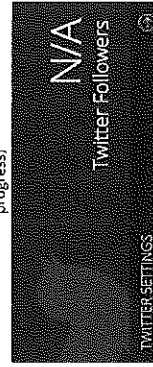
(Add a goal in the dashboard settings to track your progress)



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](#)

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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]

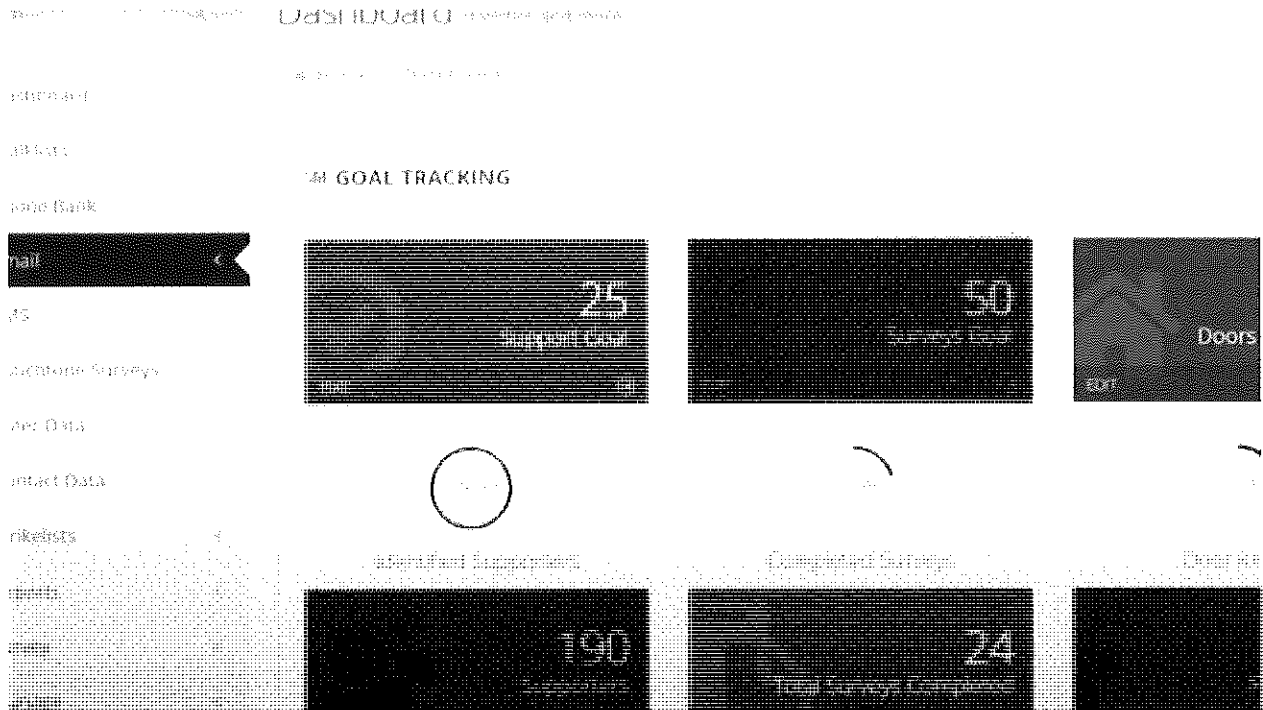
Work Email Address: [Redacted]

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.



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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.

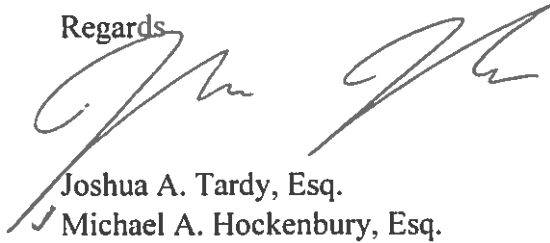
Arn Pearson, the complainant, makes three suppositional allegations in paragraphs 31, 32 and 33. The Complaint does not assert knowledge whether either Senator Stewart or Representative Harrington has made use of the software. In fact, it would appear that not none of the fifteen complaints filed by 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.

# Holtzman Vogel

HOLTZMAN VOGEL BARAN TORCHINSKY & JOSEFIAK PLLC

## CONFIDENTIAL

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](http://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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Letter from ALEC to the Commission  
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CONFIDENTIAL

**ETH-123**

# Holtzman Vogel

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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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Letter from ALEC to the Commission  
September 17, 2021  
**CONFIDENTIAL**

**ETH-125**



# Holtzman Vogel

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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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Letter from ALEC to the Commission  
September 17, 2021  
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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.”<sup>1</sup> 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.<sup>2</sup>

In furtherance of its mission, ALEC remains committed to the ideological diversity of its membership and to hearing all sides of a debate.<sup>3</sup> For example, both Republicans and Democrats have served as ALEC State Chairs.<sup>4</sup> 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.<sup>5</sup> 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

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<sup>1</sup> 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”).

<sup>2</sup> *See id.*

<sup>3</sup> *See id.* at 7–8.

<sup>4</sup> *See id.* at 8.

<sup>5</sup> *See* AFP Brief at 7.

# Holtzman Vogel

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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.<sup>6</sup> 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."<sup>7</sup>

ALEC also provides its members with training on the ALEC CARE software as well as consistent technical support.<sup>8</sup> 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.<sup>9</sup>

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

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> WHAT IS A DIGITAL CONSTITUENCY SERVICE, at 0:41–0:43, [https://www.youtube.com/watch?v=uoBF9a4\\_ue8](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.<sup>10</sup> 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

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<sup>10</sup> 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 ALEC<sup>11</sup>

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<sup>11</sup> 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.

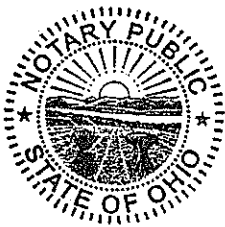
I declare under penalty of perjury that everything I have stated in this document is true and correct.

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 16<sup>th</sup> day of Sep, 2021. Before me  
Aaron Gillham signed.

*St. Lthi*  
9/16/2021