

# Holtzman Vogel

HOLTZMAN VOGEL BARAN TORCHINSKY & JOSEFIAK PLLC

## CONFIDENTIAL

July 25, 2022

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 Supplemental Submission

Mr. Wayne,

Thank you for informing us of CMD's supplemental submission on July 22, 2022, and for this opportunity to respond. Clearly, CMD's letter and "proposed findings of fact" are another demonstration of its unending campaign to smear ALEC. CMD's statement that "all of the facts provided by [CMD] in its complaint to the Commission remain uncontested – with the exception of ALEC's dispute about its purpose in donating CARE software to its members" is patently false, and it illustrates why CMD's proposed findings of fact should not be considered by the Commission.

If anything about this matter is "uncontested" it's that CMD filed substantially similar complaints against ALEC in at least ten states and no state has found that a violation occurred. Feb. 16, 2022 Letter from Commission Staff to the Commission (noting that Maine and Connecticut initiated investigations, six states dismissed, and two states didn't even respond to CMD's complaint). It is also undisputed that Commission Staff have recommended that the Commission either not initiate an investigation or discontinue the investigation on multiple occasions. Sept. 22, 2021 Letter from Commission Staff to the Commission at 4 ("Commission staff recommends not initiating an investigation"); July 20, 2022 Letter from Commission Staff to the Commission at 1 (reiterating that in its June 15, 2022 memo to the Commission, the Staff "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").

Given CMD's continued misrepresentations and mischaracterizations, ALEC need not respond to CMD's proposed findings of fact in detail. Like it did in its Complaint, CMD has cherry-picked snippets, omitted context, distorted facts, misstated the record, and stretched inferences well past their breaking points. Take, for example, Proposed Finding of Fact 5:

ALEC CARE does not contain features of some case tracking and management software. It also does not contain a complete constituent database for a legislator's district, but is rather focused on potential Republican voters. The whistleblower

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legislator interviewed by Commission staff reported that a majority of Democratic voters in his/her district were missing from ALEC CARE.

July 21, 2022 Letter from CMD to the Commission (citations omitted).

First, CMD omits “[a]though [the Staff] would not view this as dispositive” from the opening sentence, which quotes the Staff’s memo. June 15, 2022 Letter from Commission Staff to the Commission at 8. Next, CMD asks the Commission to adopt the finding that ALEC CARE “does not contain a complete constituent database for a legislator’s district, but is rather focused on potential Republican voters” even though the Staff memo states that “Mr. Gillham specifically denied that data entered by Legislators is shared with the Republican National Committee” and he said that “[d]ata has never been used for that purpose.” *Id.* at 5. Moreover, the Staff specifically noted that “[t]his comment by Mr. Gillham runs contrary to the contention by CMD that one of the purposes of ALEC and Voter Gravity in providing 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.” *Id.* at 5 n.1. The record clearly demonstrates a divergence, and showcases how CMD’s assertion that this “fact” is “uncontested” is false.<sup>1</sup> Finally, an unsworn statement by an anonymous, non-Maine legislator has little—if any—value, and undoubtedly does not constitute an “uncontested fact.”

CMD’s proposed findings of fact are as baseless as the allegations in its Complaint, and ALEC continues to contest CMD’s assertions. ALEC urges the Commission to accept its Staff’s recommendation. The Commission should ignore CMD’s at-best careless attempt to propose facts that are contradicted by the Staff’s record, which the Staff developed through the voluntary assistance of Mr. Gillham, who sat for multiple hours of questioning. ALEC has expended significant resources defending itself against CMD’s frivolous complaints throughout the country, and it is time to put an end to CMD’s malicious campaign to harm ALEC.

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  
Counsel to ALEC

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<sup>1</sup> July 21, 2022 Letter from CMD to the Commission at 1 (“Each of the findings is footnoted to its source in a Commission staff memo and/or uncontested fact in the Complaint.”)