

The Center for Media and Democracy

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April 11, 2012

Jonathan Becker
Ethics and Accountability Division
Government Accountability Board
212 East Washington Ave, Third Floor
Madison, WI 53703

Judge Thomas Crane
Judge Thomas Barland
Judge Gerald Nichol
Judge Michael Brennan
Judge David Deininger
Judge Timothy Vocke
Members of the Government Accountability Board
212 East Washington Ave, Third Floor
Madison, WI 53703

RE: March 23, 2012 Ethics Complaint Filed by the Center for Media and Democracy

Dear Mr. Becker and Members of the Government Accountability Board:

I write on behalf of the Center for Media and Democracy (CMD). Since filing an ethics complaint on March 23 with the Government Accountability Board (GAB) about members of the American Legislative Exchange Council (ALEC) in the Wisconsin Legislature possibly violating Wis. Stat. §§ 19.45, 19.56, and 13.625, it has come to our attention that in 2010 ALEC asked the GAB to sanction the corporate-funded “scholarships” that pay for legislators to attend ALEC meetings. Although we contacted the GAB in advance of our filing, we were not informed that an opinion had been issued to ALEC in 2010.

Evidence suggests that the way ALEC described the “scholarships” to the GAB in its 2010 letter are at odds with the way they actually operate. Their description is further contradicted by ALEC’s signed submission to the Internal Revenue Service on the Form 990 filed for the same year that they made their representations to the GAB staff and Board.

We write to clarify some of the assertions ALEC made to the GAB in 2010, and to once again ask the GAB to determine that ALEC “scholarships” are impermissible under Wisconsin law.

In CMD’s view, ALEC’s 2010 letter misrepresents the scholarships by (1) erroneously stating that ALEC staff are in charge of awarding scholarships, (2) wrongly implying that the “scholarships” are disbursed from ALEC itself, (3) incorrectly suggesting that

contributions to the scholarship fund from lobbying principals are not earmarked for use by members of the Wisconsin legislature, (4) inaccurately describing the role of legislators in fundraising efforts, and finally, (5) making an unfulfilled promise that ALEC members who are legislators would publicly and fully disclose any scholarship funds they received.

Scholarship Awards Are Not Decided by ALEC Staff

On May 27, 2010, attorney Mike B. Wittenwyler wrote a letter on behalf of ALEC to Mr. Becker “to verify that ALEC’s intended actions and practices are appropriate under Wisconsin law.” (Exhibit A) In that letter, he wrote:

“ALEC has recognized that the expense associated with participating in its task forces, forums and conferences may create a barrier for many legislators. To help defray the cost of attending these events, ALEC maintains a scholarship fund that will reimburse legislators for their travel expenses and registration fees. Expenses that will be reimbursed include the reasonable cost of transportation, meals, and lodging. Decisions on how scholarships are awarded and in what amounts are made by ALEC staff.

In a June 30, 2010 letter to ALEC and Mr. Wittenwyler, Mr. Becker stated that based on the assertions made in ALEC’s May 27 letter, “[a]s I understand it, only ALEC staff makes scholarship award decisions.” (attached as Exhibit B) For this reason, in part, he opined that the scholarships did not appear to violate Wisconsin ethics and lobbying laws. (The GAB confirmed Mr. Becker’s staff opinion at its meeting of July 22, 2010; Mr. Becker informed ALEC of the GAB’s decision in an October 15, 2010 letter that is attached as Exhibit C.)

ALEC’s statements to Mr. Becker and the GAB contradict ALEC’s own bylaws, which are on file with the IRS, and its sworn statements to the IRS. How scholarship gifts are awarded and in what amounts are not decided by ALEC staff, but by Wisconsin state legislators.

According to ALEC’s bylaws, the State Chairs -- currently Representatives Robin Vos and Scott Suder in Wisconsin, and previously Senator Scott Fitzgerald--are tasked with “oversee[ing] expenditures of legislative scholarship funds.” (ALEC bylaws Art X 10.03, attached as Exhibit D).¹ Control by the legislative State Chairs over the scholarships is described in its 2010 Form 990 filed with the IRS, where ALEC stated that the scholarship funds “are not considered revenue and expenses of ALEC as the State Chair retains the exclusive right to determine the expenditures.” (emphasis added) (ALEC 2010 Form 990 Part X, Line 21, attached as Exhibit E).²

Similarly, in 2009, ALEC also listed “scholarship funds held as agent” as a “liability” (attached as Exhibit F).³ It listed the same in its 2008 filing with the IRS (attached as Exhibit G).

¹ Exhibit 4 in March 23, 2012 complaint.

² Exhibit 6 in March 23, 2012 complaint.

³ Exhibit 8 in March 23, 2012 complaint.

Likewise, in 2007, the IRS Form 990 included the question “Did the organization make grants for scholarships?” (a question not included in subsequent Form 990s); ALEC answered “no.” (attached as Exhibit H).⁴

Additionally, because ALEC tells the IRS that it provides no scholarships, and that scholarship funds “are not considered revenue and expenses of ALEC,” it does not disclose how much money goes into, and out of, the scholarship fund each year. Instead, the organization only lists the amount held in the scholarship fund at the end of each year as a liability held in “escrow” or held “as agent,” which for several years has hovered around \$1 million. This does not demonstrate how much money corporations contribute to the fund during the course of the year, nor does it reflect how much is granted to state legislators (at the direction of the ALEC State Chairs) throughout the year for their travel to ALEC meetings.

The “Scholarships” Come Almost Directly From Lobbying Principals, Not From ALEC

In its May 27 letter, ALEC acknowledged that lobbying principals in Wisconsin contribute to the scholarship fund that reimburses legislators for their ALEC-related travel. The letter further states that “fundraising efforts for the scholarship fund are overseen by ALEC staff members with the involvement of its private sector members – some of whom are individuals registered as Wisconsin lobbyists.”

On its face, this would appear to violate Wis. Stat. § 13.625, which prohibits any principal or lobbyist from giving legislators or legislative staff any lodging, transportation, food, beverages, or any other thing of value, as well as prohibiting any elective state official from accepting the same (§§ 13.625(1)(b), (2), (3)).⁵

However, ALEC’s depiction of the scholarships apparently gave the misleading impression that corporate contributors are two or three steps removed from the scholarships. ALEC appears to imply that it receives general operating support or membership dues from a variety of sources (including lobbying principals), then uses funds from its treasury to reimburse legislators for their travel related to ALEC meetings. This implication is reflected in Mr. Becker’s June 30 letter, where he references how “lobbying organizations may make donations to ALEC.”

This is not how ALEC scholarships operate. Lobbying organizations do not make donations to ALEC, but instead contribute to a segregated “scholarship fund” account that ALEC has insisted to the IRS is not part of its revenue or expenses. Lobbying principals make contributions to that account for the express purpose of funding Wisconsin legislators’

⁴ Exhibit 9 in March 23, 2012 complaint.

⁵ For the reasons explained in our March 23 complaint, the scholarships do not fall under the exception described in § 19.56(3)(a), which the Attorney General has determined is the exclusive exception to § 13.625. 80 Op. At’y Gen. 205, 212 (1992)). See pp. 4-5 of the March 23 complaint, discussing how Wis. Stat. § 19.56(3)(a) does not apply because ALEC neither pays nor arranges scholarships.

travel expenses for ALEC meetings. That is, their funding is designated for use in Wisconsin, by Wisconsin legislators, not to ALEC generally.

As noted above, ALEC has stated in its IRS filings, under penalty of perjury, that it merely holds the scholarship funds in “escrow” until the State Chair orders disbursement. ALEC has even stated in its filings with the IRS that it provides no scholarships and that it maintains no control over any scholarship fund. According to its 2010 filings with the IRS, “the State Chair retains the exclusive right to determine the expenditures.”

ALEC is essentially acting like a “bank” for lobbying principals to make gifts to state legislators. Corporations deposit funds into a segregated “scholarship fund” account, then a designated state legislator distributes the funds to other legislators that share the agenda of the corporations or individuals that made the deposits. It makes little sense to prohibit corporate principals and lobbyists from offering anything of value to public officials, but to allow such giving if it is filtered through a trust account as part of the ALEC “scholarship fund.” Such a shell game would appear to violate Sec. 13.625.

Contributions from Lobbying Principals Are Earmarked for Wisconsin Legislators’ Expenses

In Mr. Becker’s June 30, 2010 response to ALEC, he stated “[t]he fact that lobbying organizations may make donations to ALEC or that lobbyists may assist in ALEC’s fundraising does not bring the lobbying law into play as long as these organizations and individuals [do not] earmark any monies” for the scholarships (emphasis added).

It is clear that corporate lobbying principals earmark contributions for the express purpose of funding Wisconsin legislators’ travel to ALEC meetings. For example, in our March 23 complaint, we referenced how the pharmaceutical lobby group PhRMA made a \$356,075 contribution to the ALEC scholarship fund, and on its 2010 Form 990 filed with the IRS listed the recipient’s address as the address for Madison, Wisconsin government relations firm Hamilton Consulting, whose lobbyist Amy Boyer is the ALEC Private Enterprise Co-Chair for Wisconsin (and who also represents several ALEC corporate members including Wal-Mart and Koch Industries).

In our March 23 complaint we questioned how much of this contribution was used to fund Wisconsin legislators’ travel to ALEC meetings, and in a March 28 press release (Attached as Exhibit I), ALEC included a quote from a PhRMA representative noting that \$2,500 of the total contribution was earmarked for Wisconsin legislators. When CMD contacted PhRMA prior to filing the ethics complaint, the trade association did not offer any such clarification – a PhRMA representative told us that ALEC instructed them to send their \$356,075 scholarship fund contribution to Hamilton Consulting – but in any case, these statements clearly demonstrate that PhRMA and other corporate interests are making contributions

with the express purpose of funding Wisconsin legislators' flights, hotel rooms, and meals so they can attend ALEC meetings.⁶

Wisconsin Legislators Appear to Be Involved in Fundraising Efforts

ALEC further insists in its May 27, 2010 letter that "Wisconsin state legislators however, are *not* involved in these fundraising efforts."

This statement is also contradicted by ALEC's bylaws. The "Duties" of the State Chairs -- who are legislators -- include "working with the Private Enterprise Chairman to raise and oversee expenditures of legislative scholarship funds." (ALEC bylaws Art X 10.03, attached as Exhibit D). The central role of the legislators designated as "State Chairs" is further emphasized elsewhere in the bylaws, which declare that the State Chairs from all states nominate a Chairman and a Private Sector Co-Chairman, and the duty of the Private Sector Co-Chairman is to "assist the Chairman in fund raising."

The involvement of Wisconsin legislators in the scholarship fundraising process is further demonstrated by a "credit" and "debit" spreadsheet titled "State Scholarship Account Activity/Balance" sent to then-State Chairs Senator Scott Fitzgerald and Representative Mike Huebsch on November 3, 2010, and obtained through an Open Records request. (Attached as Exhibit J, pp. 5-6).⁷ The left column of the spreadsheet is populated by a list of Wisconsin legislators and corporate ALEC members (such as Reynolds American Tobacco, AT&T, and 3M, almost all of which are "principals" as they employ lobbyists in the state). To the right are columns for "credit" and "debit." Dollar amounts listed in the "credit" column correspond with the names of corporate members and amounts in the "debit" column correspond with names of legislators on specific dates.⁸

This spreadsheet further demonstrates that lobbying principals make earmarked contributions to the segregated ALEC scholarship fund for the express purpose of funding legislators' trips to ALEC meetings.

That document was emailed to Senator Fitzgerald and then-Representative Huebsch, along with Boyer and other ALEC corporate members, consistent with the way the ALEC by-laws suggest that fundraising for state scholarships are a joint effort. Based on that email, Fitzgerald knew with specificity which corporations were funding scholarships to be used to pay for travel of his colleagues in the state Senate. No e-mails were disclosed that suggested that the credit/debit spreadsheet was unwelcome, inconsistent with practices, or rejected in any way.

⁶ It should be noted that with no accountability or reporting requirements, we have no way of knowing whether PhRMA's gifts to Wisconsin legislators were limited to \$2,500 in 2010 or in any other year.

⁷ Exhibit 11 in March 23, 2012 complaint.

⁸ Similar credit-and-debit sheets have been discovered in other states, such as Arizona, Ohio, and Florida, via open records requests submitted by journalists and others.

It seems likely that the 2010 spreadsheet obtained from Senator Fitzgerald's office was not an aberration. Identical open records requests CMD has submitted to Wisconsin's current ALEC State Chairs have not resulted in the release of similar credit / debit spreadsheets showing the identity of the lobbying principals funding legislators' travel, but this may be the result of the current State Chairs refusing to release all records or deleting emails. For example, in response to our request for all records containing the words "ALEC" or "American Legislative Exchange Council" within a certain timeframe, longtime ALEC member and current ALEC State Co-Chair for Wisconsin Scott Suder replied that his office did not have a single record responsive to our request.⁹ (Open Records request and Rep. Suder's response are attached as Exhibit K).

As noted in our March 23, 2012 complaint, because state legislators are likely aware of which corporate interests are funding their ALEC-related plane tickets, hotel rooms, and meals, such giving "could reasonably be expected to influence the state public official's vote, official actions or judgment," in violation of Wis. Stat. § 19.45 (3). The lobbying principals giving to the scholarship fund likely want legislators to know which corporate interests are funding their travel expenses. As state Rep. Mark Pocan has stated based on his observation of actual ALEC conventions, corporate branding and sponsorship of ALEC meetings is omnipresent. Many of the same corporations that pay for Wisconsin legislators' travel are also prominently featured as sponsors of various aspects of ALEC meetings as well as parties.

It should be apparent that lobbying principals are not funding legislators' travel expenses for ALEC meetings out of generosity. These expenditures may be considered investments, and the corporations investing in the scholarships likely expect a return.

Because many of the legislators receiving these scholarships are active in introducing, co-sponsoring, and/or voting for ALEC "model bills," the reimbursement "could reasonably be considered as a reward for any official action or inaction on the part of the state public official," also violating Wis. Stat. § 19.45 (3).

Additionally, for the reasons stated herein and in our March 23, 2012 complaint, we do not believe the ALEC scholarships fall under the exceptions to Wis. Stat. § 19.45 (3) described in §§ 19.56(3)(a) or (c).

Legislators Are Not Disclosing Their Receipt of Scholarships

ALEC's May 27, 2010 letter also states that "[i]n the event that a state legislator makes a personal outlay for the travel expenses (rather than ALEC making a reimbursement directly to the state or to a legislator's campaign account), ALEC will now direct the state

⁹ CMD filed identical Open Records requests with all known ALEC members in the Wisconsin legislature in December 2011. In addition to holding a leadership position with ALEC, emails received from other legislative offices in response to our Open Records requests show Rep. Suder being included as a recipient on many ALEC-related emails sent to multiple Wisconsin legislators. Despite this, Rep. Suder insisted that he did not have even one email or other record in his office that was responsive to our Open Records request for all records containing the words "ALEC" or "American Legislative Exchange Council." See Exhibit K.

legislator to disclose the ALEC scholarship fund reimbursement on the legislator's statement of economic interest."¹⁰ Mr. Becker's response dated June 30, 2010 stated "If reimbursement is provided directly to a legislator, he or she must report that to the Board."

However, as we noted in our March 23 complaint, most legislators are failing to disclose their receipt of ALEC scholarships on their statements of economic interests. (See March 23 complaint pp. 8-10) Perhaps this is because ALEC asserted a loophole in these disclosure requirements for when a legislator makes an initial outlay for flights, hotel rooms, and meals from their campaign account, rather than from their personal account.

It makes little sense to only require disclosure when a legislator makes an initial expenditure from their personal account rather than their campaign account. This does not serve the public's interest in transparency.¹¹ Likewise, the possibility of improper influence from lobbying principals providing things of value to legislators is not lessened if reimbursement from the corporate-funded ALEC scholarship fund goes to a legislator's campaign account rather than directly to the legislator.

In addition, as noted in our March 23 complaint, even if more elected officials were to report reimbursement from "ALEC" on their statements of economic interests, such disclosure would still fail to illuminate to the general public about who is really funding the legislators' trips to resorts for ALEC meetings. The "scholarships" are funded by lobbying principals, not ALEC – indeed, ALEC has specifically and repeatedly told the IRS that it provides no scholarships. The true sources of the scholarships are corporations that lobby in Wisconsin. Legislators contravene the intent of Wisconsin's clean government laws by only noting "ALEC" as the source of the scholarship, rather than the corporations actually funding the legislators' travel. This deprives the public of the information necessary to track whether corporate spending translates into legislative action.

Conclusion

Nowhere in the May 27, 2010 letter to the GAB does ALEC indicate that there are ways the scholarship fund in Wisconsin operates as an "exception" from the operations described in its bylaws and IRS filings. Even if ALEC were to declare that the fund operates differently in Wisconsin because of the state's ethics and lobbying laws, there is no accountability to ensure that the scholarships would actually function in the manner ALEC claims. Further, there is absolutely no transparency to give the public or the GAB assurance that corporate

¹⁰ It is unclear what the practice for disclosure was before the "now" referenced in the 2010 letter, and CMD believes the public has a right to know how much corporations have spent in the past to pay for legislators' travel, as well as how much they have spent since 2010.

¹¹ Even if legislators were to disclose reimbursement from the ALEC scholarship fund on their campaign finance reports, this invites further problems and confusion. It is misleading to classify gifts of plane tickets and hotel rooms as a contribution to a political campaign – in fact, ALEC is a 501(c)(3) organization prohibited under the Internal Revenue Code from making contributions to political campaigns. Additionally, it is burdensome and inefficient to require that Wisconsin residents must check multiple reports to learn whether their elected officials have received reimbursement from the ALEC scholarship fund (if they disclose at all).

principals are not exerting impermissible influence by cloaking their spending under the ALEC scholarship fund.

ALEC's statements in its May 27, 2010 letter are contrary to its IRS filings and its published bylaws, so we believe there is little reason to accept ALEC's latest assertions that the scholarship fund will operate in a manner compliant with Wisconsin ethics and lobbying laws.

We believe it is imperative that the GAB closely scrutinize the activities surrounding the ALEC scholarship fund because what happens at ALEC meetings has a demonstrable impact on public policy in the state. ALEC boasts that about 20% of the 1000 ALEC model bills introduced across the country make it into law each year. In Wisconsin, some of the most contentious bills the legislature considered in the 2011-2012 session appeared to have been influenced by ALEC models, including tort reform legislation, changes to public sector collective bargaining, voter ID requirements, efforts to expand education "voucher" programs, and others.

Many of these bills were drafted and approved by ALEC's corporate members. ALEC says that it allows corporations "an unparalleled opportunity to have its voice heard, and its perspective appreciated, by the legislative members," and boasts that corporate interests "have a voice and a vote" in proposing and approving ALEC model legislation. (Attached as Exhibit F).¹² Some of these same corporate interests -- which already "have a voice and a vote" in setting the agenda at ALEC meetings -- are also lobbying principals in Wisconsin and fund legislators' travel to ALEC conferences.

We ask that the GAB fully enforce the plain language of Wisconsin statutes to determine that the ways these scholarships operate violates the expectations of the people in clean government in this state.

Finally, nothing in ALEC's May 27, 2010 letter made reference to the additional perks that Wisconsin legislators receive once they are at an ALEC meeting -- such as the Time Warner Cable - sponsored "Night at the Ballpark" where Wisconsin legislators were treated to free tickets to a Cincinnati Reds game and given exclusive access to ballpark party decks, food, and drinks, while at the same time a bill that would benefit Time Warner Cable was pending in the legislature. We accept this as a concession from ALEC that there are multiple layers of improper influence at ALEC meetings.

For these reasons and the reasons stated in our March 23, 2012 complaint, we once again ask that the GAB determine that ALEC scholarships and the perks offered at ALEC meetings violate Wis. Stat. § 13.625 and do not fall under the exception in Wis. Stat. § 19.56(3)(a), and also violate §§ 19.45 (3) and (3m) and do not fall under the exception in Wis. Stat. § 19.56(3)(c).

¹² Exhibit 1 in March 23, 2012 complaint.

We respectfully request that the Board make its determinations about these matters public, to advance the interests of Wisconsin citizens in clean and transparent government.

Date: APR 11 2012

B F

Brendan Fischer
Center for Media and Democracy
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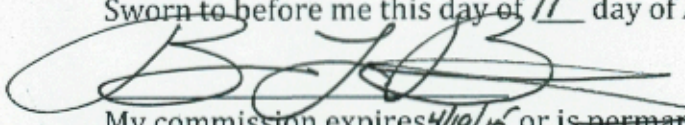
I, Brendan Fischer, being first duly sworn on oath state that I personally read the above complaint, and that the above allegations are true based on my personal knowledge and, as to those stated on information and belief, I believe them to be true.

B F

(complainant's signature)

STATE OF WISCONSIN)
) ss.
County of Dane),

Sworn to before me this day of 11th day of April, 2011.


My commission expires 4/19/15 or is permanent
Notary Public