

# The Center for Media and Democracy

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December 6, 2012

Jonathan Becker  
Wisconsin Government Accountability Board  
212 East Washington Avenue, Third Floor  
P.O. Box 7984  
Madison, Wisconsin 53707-7984

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: Supplemental Evidence and Information regarding our March 23 ethics complaint made pursuant to Wis. Stat. §§ 19.45, 19.56, and 13.625.**

Dear Mr. Becker:

The Center for Media and Democracy (CMD) is submitting supplemental evidence and information relating to our ethics complaints, filed with the Government Accountability Board on March 23, 2012 and April 11, 2012, alleging the American Legislative Exchange Council (ALEC) “scholarship” payments to elected representatives violate Wisconsin ethics and lobbying laws.

Included in this submission is (1) a recent report detailing the ALEC “scholarship” scheme in Wisconsin and across the country, (2) an opinion from neighboring Minnesota’s Campaign Finance and Disclosure Board finding that ALEC “scholarships” violate that state’s gift ban, and (3) a complaint filed with the IRS by a former IRS Exempt Organizations Director premised on the fact that ALEC provided contradictory descriptions of the ALEC State Scholarship Program to Wisconsin’s Government Accountability Board in 2010 and to the IRS.

## **(1) “Buying Influence” Report Details Scholarship Scheme in Wisconsin and Nationally**

CMD recently published an in-depth report written by its Executive Director, Lisa Graves, detailing how the “scholarship” program operates in Wisconsin and other states. The report is attached as Exhibit A.

One of the most surprising findings from this investigation is that Wisconsin is one of the “top five” states in the nation in terms of the amount of money paid by corporations to fund lawmaker trips to posh resorts. South Carolina, Georgia, and Mississippi legislators received more than Wisconsin lawmakers but the legislators of 45 other states received less in the three-year period with comprehensive data that CMD examined. For a clean government state like Wisconsin to share company with these Southern states in terms of money funneled from corporations for legislators’ trips was startling and calls into question how this has transpired. Nationally, we discovered that the top three corporations – with interest in changing state laws – gave nearly one-half million dollars to fund plane tickets, hotel rooms, and other items for legislators.

Accordingly, we enclose copies of our full report for the Board, and we request that it be considered in your evaluation of our claims about ALEC’s activities.

## **(2) Minnesota Ruled that ALEC’s Task Force Scholarships Violated Gift Law**

In our investigation for the scholarship report, we discovered that Wisconsin’s neighboring state, which has enacted similar gift rules to Wisconsin, has previously ruled that its legislators cannot accept gifts of travel paid for by corporations with interests before the state via ALEC, expressly.

In that case, the Minnesota Campaign Finance and Disclosure Board (MCFDB) examined ALEC “scholarships” for legislators sitting on ALEC task forces (where legislators vote behind closed doors with corporate lobbyists on templates to change state laws). The State Scholarships described in CMD’s March 23 and April 11 complaints cover the travel for legislators to ALEC meetings even if they are not on a task force, while ALEC’s Task Force program covers travel for legislative task force members. Both involve corporations paying for legislators’ travel through ALEC.

The MCFPD determined that ALEC Task Force scholarships violate that state’s prohibition on gifts from lobbyists to legislators. We are asking the GAB to find both the ALEC State Scholarships described in our earlier complaints and the Task Force Scholarships described below violate Wisconsin’s ethics and lobbying laws, since both scholarship programs allow lobbying principals to provide impermissible gifts to legislators.

ALEC Task Force Scholarships operate parallel to ALEC State Scholarships, as described in CMD's March 23 and April 11 complaints. To recap: through the State Scholarships, lobbying principals fund gifts of travel, hotel rooms, and meals for Wisconsin legislators by paying into a state "scholarship fund" used expressly to fund these expenses. ALEC Task Force Scholarships operate in a similar manner, with lobbying principals paying into a task force operating budget which is used to fund travel expenses and hotel rooms for Wisconsin legislators who are members of that task force.

The ALEC Task Force Operating Procedures, excerpted and attached as Exhibit B, explain that the ALEC task force operating budget is paid entirely by the "private sector" corporate members, many of which are lobbying principals in Wisconsin. *See* Exhibit B. Legislative members of ALEC task forces are reimbursed from the task force budget for their travel expenses to certain ALEC meetings, particularly the annual ALEC Spring Task Force Summit. *See* Exhibit C ("Scholarship Policy by Meeting"). Corporations pay between \$2,500 and \$10,000 for a seat on a task force where the private sector has an equal vote with state legislators, who pay nothing extra to be on a task force. *See* Exhibit D. Corporations also pay between \$7,000 and \$25,000 or more to be members of ALEC and more for other kinds of sponsorships of ALEC meetings.

Wisconsin legislators are invited to these Annual Spring Task Force Summits – held in 2012 in Charlotte, North Carolina – and are reimbursed for their flights and hotel rooms from the task force operating budget. *See* Exhibit E. Dozens of Wisconsin legislators are members of ALEC Task Forces. *See* Exhibit F. Legislators attending the most recent Spring Task Force Summit were offered two free nights in the Westin Charlotte hotel (a value of between \$400 and \$600), plus \$350 for travel expenses. *See* Exhibit E.

Wisconsin legislators are also invited to Task Force Academies, such as the "K-12 Education Reform Academy" held at the Ritz-Carlton in Amelia Island, Florida in February 2012. *See* Exhibit G. Legislators attending this "academy" were offered two nights at the Ritz-Carlton (a value of \$400 or more) and \$500 for travel expenses. *Id.* This reimbursement is also managed by the Task Force Committee, but the funds can come from a single "sponsor" – according to ALEC's internal documents, a corporation can pay \$80,000 to sponsor an ALEC academy or "boot camp," such as ALEC's "tort reform boot camp." *See* Exhibit D.

ALEC's Scholarship Policy declares that the Task Force Scholarship Fund is used to reimburse legislators who attend the States & Nation Policy Summit (held in late November or early December) and the State Scholarship Fund is primarily used to reimburse legislators who attend ALEC's Annual Meeting (typically held in late July or early August), as well as any other expenses not covered by the Task Force Scholarship Fund. *See* Exhibit C. ALEC's bylaws note that legislators chosen as "alternate" Task Force members by ALEC's legislative leaders in the state may be reimbursed from the State Scholarship Fund for their travel expenses. *See* Exhibit C.

Many Wisconsin legislators have received offers to have their travel expenses reimbursed from the Task Force Scholarship Fund, and many have received money for such trips. *See* Exhibit H.

As noted above, the MCFPD closely examined this specific issue and determined that gifts of flights and hotel rooms paid for via ALEC Task Force “scholarships” are impermissible under that state’s lobbyist gift ban, which is functionally similar to Wisconsin’s gift ban described in Wis. Stat. § 13.625.

In Advisory Opinion 277, attached as Exhibit I, the MCFPD found that because corporate lobbying principals “provide the [Task Force] operating funds with the knowledge and intention that they will be used to benefit legislators” such gifts are prohibited. “The fact that the corporate money is passed through ALEC, a conduit for the gift, does not isolate the corporations from their status as givers,” the Board wrote.

The State Scholarships described in CMD’s March 23 and April 11 complaints offer an even more direct connection between the corporate lobbying principal funding the scholarship and the legislator receiving it. Under the State Scholarships, lobbying principals donate directly to a fund for use exclusively by Wisconsin legislators to travel to ALEC conferences, and ALEC’s Wisconsin legislative leaders know which corporations are underwriting the trips. (*See* CMD’s March 11 complaint.) Plus, some of the same corporations also sponsor “state nights,” which are dinners for the legislators who have traveled to the meetings.

But the Task Force scholarship program is equally troubling: legislators sit down in Task Force meetings or a Task Force Academy with absolute certainty that the corporate task force members voting alongside them on legislative proposals paid for their trip. Or, they know which corporation(s) sponsored the ALEC “academy” they traveled to. Neither the state scholarship program nor the task force scholarship program are permissible in Minnesota.

As CMD noted in our March 23, 2012 complaint, the exclusive exception to Wisconsin’s gift ban hinges on who is really paying for the gift.<sup>1</sup> Wis. Stat. § 19.56(3)(a) allows a public official to accept reimbursement for expenses connected to “participation in a meeting related to [legislative proposals and issues] **if the payment or reimbursement is paid or arranged by the organizer of the event**” (emphasis added).

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<sup>1</sup> Wis. Stat. § 13.625 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)). Subsection (7) of § 13.625 provides an exception for “the furnishing and receipt of a reimbursement or payment for actual and reasonable expenses authorized under s. 19.56.” The Wisconsin Attorney General has interpreted “the reference to 19.56 [in § 13.625(7)] as encompassing only 19.56(3)(a).” 80 Op. At’y Gen. 205, 212 (1992).

As CMD described in our earlier complaints, ALEC does not really pay for the gifts of flights and hotel rooms through the State Scholarship Program; it is the conduit for the corporate lobbying principals that really provide the funds, with the intention and knowledge that those funds will be used to benefit Wisconsin legislators. *See* March 23 complaint, pp. 4-5.

The Task Force Scholarship program operates in the same way, with corporations paying into the task force budget “with the knowledge and intention that [the funds] will be used to benefit legislators,” as determined by the MCFPD. *See* Exhibit I. The Minnesota Board correctly found that these payments, “coupled with the knowledge that the funds may subsequently be used to benefit officials, constitutes paying for the gift.” *Id.*

ALEC is also not really “arranging” the reimbursements to Wisconsin legislators for their flights and hotel room, versus acting like a bank or bookkeeper in processing reimbursement bankrolled by other entities. All legislative members of each task force are eligible for reimbursements from the Task Force Scholarship Fund, and legislators’ task force membership and reimbursements appear to be managed by the legislative State Chairs (currently Rep. Robin Vos, Rep. Scott Suder, and Sen. Leah Vukmir). *See* Exhibit J; *see also* Exhibit F (showing then-State Chair Sen. Scott Fitzgerald being asked to make task force appointments).

For the State Scholarship Fund, decisions on which legislators receive reimbursement are made by the legislative State Chairs, as described in CMD’s April 11 complaint. But most importantly, and in both instances, corporate lobbying principals are providing funding for the scholarships with the knowledge and intention they will be used to fund legislators’ flights and hotel rooms.<sup>2</sup>

As we noted in our March 23 and April 11 complaints, 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 an ALEC scholarship fund. Regardless of whether a state legislator receives a scholarship through the Task Force Fund or the State Scholarship Program, it is as clear in Wisconsin as it was in Minnesota that corporate lobbyists are truly paying for state legislators’ travel and lodging for ALEC meetings in violation of state law, to wit: Wis. Stat. § 13.625.

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<sup>2</sup> In 2010, after ALEC asked the GAB to sanction the “scholarships” (and as documented in CMD’s April 11 letter, provided information contradicted by the organization’s own bylaws, IRS filings, and internal records) Jonathan Becker replied “[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). In the case of the Task Force Scholarship Program and State Scholarship Program it is clear that lobbying principals are in fact providing monies with the full knowledge the funds will be used for legislators’ trips.

The Task Force Scholarships also raise additional issues under Wis. Stat. § 19.45, which prohibits any person from giving a public official “anything of value if it could reasonably be expected to influence the state public official's vote, official actions or judgment, or could reasonably be considered as a reward for any official action or inaction on the part of the state public official.”<sup>3</sup>

Corporations pay thousands of dollars to join ALEC task forces for the opportunity to propose and promote legislation that benefits their profit margins or business interests. For example, Time Warner Cable is on the Communications and Information Technology Task Force, State Farm is on the Commerce, Insurance, and Economic Development Task Force, and Koch Industries is on the Energy, Environment, and Agriculture Task Force. By joining an ALEC task force these corporations are paying for the opportunity to “introduce, draft, and vote on model legislation.” *See* Exhibit C.

All legislators who are ALEC Task Force members are eligible for generous offers of flights and hotel rooms from the Task Force Scholarship Fund, paid for by the task force’s corporate members. How do legislators earn the privilege of task force membership? According to ALEC’s Task Force Operating Procedures, **“A preference will be given to legislators who sponsor ALEC Task Force model legislation in the state legislature,”** (emphasis added). *See* Exhibit K.

Accordingly, Wisconsin legislators are appointed to task forces because they introduce ALEC Task Force bills -- which tend to benefit the task force’s corporate members – and the task force’s corporate members then pay for gifts of flights and fancy hotel rooms worth hundreds, and cumulatively thousands, of dollars for those same legislators. Those flights and hotel rooms make it possible for legislators to attend additional ALEC Task Force meetings so they may be lobbied to introduce more task force model legislation. Such transactions reek of a quid pro quo. Any impartial observer would find that such gifts “could reasonably be expected to influence the state public official's vote, official actions or judgment,” or be “considered as a reward for [their] official action,” in violation of Wis. Stat. § 19.45 (3).

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<sup>3</sup> As discussed in CMD’s March 23 complaint, it is CMD’s strong view that ALEC “scholarships” should not fall under the exception described in 19.56(3)(c) because legislators do not attend ALEC meetings “primarily for the benefit of the state.” *See* March 23 complaint, pp. 6-8. Furthermore, CMD believes it is inappropriate for lawmakers to accept reimbursement for trips funded by corporations to speak or participate in ALEC meetings with corporate lobbyists, and that it is especially inappropriate to permit this to be considered “honoraria” because ALEC meetings where legislators vote on bills to take back to their states are closed to the press and public. Additionally, ALEC members have attempted to conceal from Wisconsin residents their communications with ALEC about this legislative agenda by, for example, asking ALEC to communicate only with their personal email accounts, an action which resulted in a settlement of a lawsuit filed by CMD and Common Cause last month that required that such communications be divulged under state sunshine laws.

### **(3) ALEC's Contradictory Statements to the GAB and the IRS Are Cited as the Basis for Two Complaints to the IRS Filed against ALEC earlier this Year**

The former Internal Revenue Service Exempt Organizations Director, Marcus Owens, a partner in the law firm of Caplin & Drysdale in Washington, DC, has filed a complaint with the Internal Revenue Service discussing how ALEC provided contradictory descriptions of the ALEC State Scholarship Program to Wisconsin's GAB and the IRS. Owens' complaint, attached as Exhibit L, reinforces and expands upon the arguments made by CMD in our April 11, 2012 letter filed with the GAB.

An additional complaint with the IRS was filed this summer by the Voters Legislative Transparency Project (VLTP), which concurs with the main arguments about the ALEC scholarships made by Mr. Owens and also reinforces a separate complaint about ALEC's undisclosed lobbying, made by Common Cause earlier this year. VLTP's complaint also highlights the ALEC Task Force Scholarships as well as its "academy" scholarships as suspect and as key mechanisms for ALEC to help corporations advance their legislative agendas.

Owens' complaint describes how ALEC told the GAB in 2010 that "[d]ecisions on how scholarships are awarded and in what amounts are made by ALEC staff," but in its 2010 filing with the IRS, ALEC declared "the State Chair retains the exclusive right to determine the expenditures" from the scholarship fund. ALEC told the GAB the "scholarships" are controlled by ALEC itself to comply with Wisconsin's ethics and lobbying laws, and told the IRS that the scholarships need not be reported because the expenditures are controlled by the legislative state chair rather than ALEC itself. We noted this same contradiction in our April 11 letter, but it is notable that a lawyer with the expertise of Mr. Owens, with his extensive experience overseeing legal compliance by non-profit organizations, also finds this contradiction to be exceedingly troubling, such that he even calls for the IRS to consider both civil and criminal penalties against ALEC.

In contrast to CMD's complaint, however, Owens' complaint takes the position that ALEC actually does provide scholarships. Owens' complaint also does not distinguish between the Task Force scholarships described above and the State Scholarship Program that CMD has previously discussed. ALEC's own internal documents acknowledge that it officially disburses the Task Force scholarships, but that the State Chair (a legislator) is in charge of the State Scholarship Program. *See* Exhibit C; *see also* CMD's April 11 complaint.

ALEC's own filings with the IRS and its internal documents show that state legislators are in charge of approving "scholarships" from the corporate-funded State Scholarship Fund. ALEC itself approves scholarships from the corporate-funded Task Force Scholarship Fund, but as the MCFPD has found, "[t]he fact that the corporate money is passed through ALEC, a conduit for the gift, does not isolate the corporations from their status as givers," and thus the "scholarships" are impermissible under the state's gift ban.

In reality, ALEC merely cuts the checks for legislators who are designated by other legislators as qualifying for the reimbursement based in part on their support for the legislative agenda of ALEC corporations. Legislators who do not advance this corporate legislative agenda but who pay the ALEC dues of \$50 per year, such as former state Rep. Mark Pocan who was recently elected to the U.S. House of Representatives, are not designated to receive such reimbursement.

CMD believes that both the corporate-funded gifts provided via ALEC Task Force Scholarships and State Scholarships violate Wis. Stat. § 13.625, and that they do not fall under the exception in Wis. Stat. § 19.56(3)(a) for the reasons stated above. We also believe, for the reasons stated above and in our previous complaints, that such scholarships also violate §§ 19.45 (3) and (3m) and do not fall under the exception in Wis. Stat. § 19.56(3)(c).

Please contact me if you need further information or have additional questions.

Sincerely,

Brendan Fischer  
Staff Counsel  
Center for Media and Democracy