

**STATE OF WISCONSIN
BEFORE THE GOVERNMENT ACCOUNTABILITY BOARD**

The Complaint of
Brendan Fischer,
Center for Media and Democracy,
Complainant

COMPLAINT

against

Members of the American Legislative Exchange Council
in the Wisconsin legislature, including:

Rep. Robin J. Vos, Rep. Scott Suder,
Sen. Scott L. Fitzgerald, Rep. Tyler August,
Rep. Dan Knodl, Rep. Joan A. Ballweg,
Rep. Jeff M. Fitzgerald, Rep. Chris L. Kapenga,
Rep. Stephen L. Nass, Rep. John Nygren
Rep. Karl Van Roy, Sen. Leah M. Vukmir
Sen. Rich Zipperer, Sen. Alberta Darling,
Sen. Michael G. Ellis, Sen. Glenn Grothman,
Rep. Andre Jacque, Rep. Daniel LeMahieu,
Sen. Neal J. Kedzie, Sen. Sheila Harsdorf,
Rep. Kathleen Bernier, Rep. Dean Knudson,
Rep. Tavis Tranel, Rep. Amy Loudenberg,
Rep. Bill Kramer, Rep. Patricia Strachota,
Rep. Erik Severson, Rep. Thomas Larson,
Sen. Terry Moulton, Rep. John Klanke,
Rep. Michelle Litjens, Rep. Warren Petryk,
Sen. Luther Olsen, Sen. Van Wanggaard,
Sen. Mary Lazich, Rep. Evan Wynn,
Rep. Chad Weininger, Rep. Jeremy Theisfeldt,
Rep. Mike Kuglitsch, Rep. Joe Knilans,
Rep. Mike Endsley, Rep. Roger Rivard,
and Rep. Howard Marklein,

Respondents.

This complaint is made pursuant to Wis. Stat. §§ 19.45, 19.56, and 13.625.

On behalf of the Center for Media and Democracy (CMD), I, Brendan Fischer, based on information and belief, respectfully asks that the Government Accountability Board, pursuant to its authority under Wis. Stat. § 5.05(2m), investigate and examine the issue of whether it is a violation of state ethics and lobbying laws for legislators to receive “scholarships” funded by corporate lobbyists to attend meetings of the American

Legislative Exchange Council (ALEC), and whether legislators are receiving impermissible gifts while attending ALEC conferences, based on new information obtained about these practices.

Background

ALEC is a non-profit corporation organized under Section 501(c)(3) of the Internal Revenue Service (IRS) code, and it describes itself as a membership association with a purpose “to work in cooperation [with] the private sector to promote individual liberty, limited government, and free enterprise.”

ALEC’s members come from the “private sector” and “public sector.” Its private sector members include many of the world’s largest corporations, such as Koch Industries, Wal Mart, Time Warner, Pfizer, AT&T and others, who are primarily represented at ALEC meetings through their lobbyists. Many of these corporations have interests in Wisconsin and employ registered lobbyists in this state. ALEC’s public sector members are state legislators. Approximately 40 Wisconsin legislators are believed to currently be ALEC members.

Legislators pay \$50 per year for dues (\$100 for two years), and “private sector” members pay between \$7,000 and \$25,000 in dues, with additional fees to sit on ALEC Task Forces or sponsor meetings. (See Exhibit 1). Only about 2% of ALEC’s approximately \$7 million in funding comes from legislative membership dues, with the remainder coming from corporate or foundation contributions.¹

ALEC holds several meetings each year for its private sector and legislative members. The largest is the “Annual Meeting,” described as a “place for the exchange of ideas and legislation between private businesses and lawmakers,” (see Exhibit 2) attended by “approximately 2,000 legislators, business executives, and public-policy experts” to “discuss issues and develop policy.” (See Exhibit 1).

In 2009, 2010, and 2011 multiple ALEC legislative members from Wisconsin (and their families) attended the ALEC Annual Meeting in Summer, the ALEC “States and Nation Policy Summit” in late Fall, and the ALEC “Task Force” Meeting in Spring. (See Exhibit 3, pp. 7-10). At these meetings, ALEC legislators and lobbyists vote behind closed doors on “model” legislation that is often later incorporated into bills introduced in the state legislature. Many legislators were given “scholarships” to attend these meetings, receiving reimbursement for their travel expenses, meals, and lodging.

According to ALEC’s bylaws, scholarship funds are raised from corporate and special interests in each state by the ALEC “State Chair” (a legislator) and the “Private Enterprise Chair” (a representative from the private sector, usually a lobbyist). (ALEC bylaws, Art X

¹ See Lisa Graves, July 19, 2011, “A Special Report on CMD’s Funding and Spending,” PRwatch.org, available at <http://www.prwatch.org/news/2011/07/10887/cmd-special-report-alecs-funding-and-spending>

10.03, attached as Exhibit 4)². In Wisconsin, the ALEC State Chairs are currently Representatives Robin Vos and Scott Suder; for the 2009-2010 term, the State Chairs were Senator Scott Fitzgerald and Representative Mike Huebsch.³ The Private Sector State Chair for Wisconsin is Amy Boyer of Hamilton Consulting (See Exhibit 5). Bryon Wornson of Pfizer was also listed as a Private Sector State Chair in documents from August 2011, but more recent documents do not list him as a Chair. (Id.)

The scholarship funds raised by the Wisconsin State Chairs and Private Enterprise Chairs are deposited in an account held by ALEC, until the State Chair orders payment to Wisconsin legislators as reimbursement for expenses related to attending ALEC meetings. (ALEC 2010 IRS Form 990 Part XIV, attached as Exhibit 6). ALEC does not disclose the amount received or spent each year for these “scholarships.”

The scholarships have previously been described as “blind” – meaning legislators do not know which corporations are funding their travel expenses – but evidence demonstrates that this is not true. Documents obtained through open records requests show that ALEC public sector State Chairs receive information showing the identity of the corporate donors. Additionally, in 2010, the Pharmaceutical Research and Manufacturers of America (PhRMA) reported in public IRS filings that it gave a \$356,075 contribution to the “ALEC Scholarship Fund” in Wisconsin. (See Exhibit 7). PhRMA employs a registered lobbyist in the state and is thus a “principal” under Wisconsin law.⁴

Evidence also shows that Wisconsin legislators attending ALEC meetings are offered free tickets to events like baseball games (or receptions with free food and drink), courtesy of specified corporations that employ registered lobbyists in the state. Legislative action surrounding these gifts gives the impression of improper influence.

The Board Should Examine Whether ALEC Scholarships Violate Wisconsin Law

The Center for Media and Democracy respectfully asks that the board consider (1) whether ALEC scholarships violate Wis. Stat. § 13.625 and do not fall under the exception in Wis. Stat. § 19.56(3)(a); (2) whether ALEC scholarships violate §§ 19.45 (3) and (3m) and do not fall under the exception in Wis. Stat. § 19.56(3)(c), and are not “blind;” (3) whether Wisconsin legislators receiving ALEC scholarships are appropriately disclosing them; (4) whether the ALEC scholarship fund is being used for more than reimbursement; and (5) whether legislators attending ALEC conferences are receiving other impermissible “gifts,” such as baseball tickets or free food and drinks.

² ALEC’s bylaws were amended in 2007 and attached to their Form 990 filed with the IRS that year. No further amendments have been filed with the IRS.

³ Those ALEC bylaws provide that ALEC’s state legislator leaders have specific duties: “State Chairmen duties shall include . . . working to ensure introduction of model legislation” and “working with the Private Enterprise State Chairman to raise and oversee expenditures of legislative scholarship funds.” (Bylaws Article X Sec. 10.03, Exhibit 4).

⁴ Wis. Stat. § 13.62(12)).

(1) ALEC Scholarships Violate Wis. Stat. § 13.625 and Are Not Permissible Under Wis. Stat. § 19.56(3)(a)

Wisconsin legislators receiving reimbursement for travel to ALEC conferences from corporations that employ lobbyists in the state would appear to violate a number of lobbying and ethics statutes. As noted above, reimbursements from the ALEC scholarship fund do not come from ALEC as a non-profit group, but from a segregated account whose funds are raised by the State Chair (a state legislator) and the Private Enterprise Chair (a lobbyist). The funds are primarily raised from corporations that are “Private Sector” members of ALEC (like PhRMA), many of which have registered lobbyists in Wisconsin and are thus “principals.”⁵

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)). The Attorney General stated that this interpretation “is consistent with the legislative history of the statute and consistent with the spirit or intention of the statute” and “is also consistent with the words of the statute.” (Id.)

Wis. Stat. § 19.56(3)(a) provides that “a state public official may receive and retain reimbursement or payment of actual and reasonable expenses [for] . . . 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.”

This provision only applies if the reimbursement is (1) paid by the organizer of the event or (2) arranged by the organizer of the event and neither of these critical elements of § 19.56(3)(a) are satisfied. ALEC insists that it neither pays nor arranges scholarships – instead, scholarships are paid by corporate interests and arranged by Wisconsin’s State Chair. As noted above, many of the corporations or trade associations contributing to the scholarship fund employ lobbyists in Wisconsin and are thus “principals.” (§ 13.62(12)).

ALEC – the organizer of ALEC meetings – stated in a signed filing with the IRS in 2010 that it does not pay for scholarships, and that funding for scholarships comes from external sources. (See Exhibit 6). The organization attested in its IRS filing that “ALEC is the recipient of funds from various outside organizations and individuals which are to be used exclusively for scholarships on behalf of State Legislators” and that the funds “are not considered revenue and expenses of ALEC.”⁶ The money contributed by corporations to the

⁵ Wis. Stat. § 13.62(12)).

⁶ Accordingly, ALEC has refused to disclose to the public the amount raised by corporate lobbyists or the amount of reimbursements directed to legislators by state co-chairs.

ALEC scholarship fund are deposited in a “trust” held by ALEC. ALEC lists the amount held in the scholarship fund at the end of the year as a liability held in “escrow” (ALEC 2010 Form 990 Part X, Line 21, attached as Exhibit 6). In 2009, ALEC also listed “scholarship funds held as agent” as a “liability” (See Exhibit 8). 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.” (See Exhibit 9).

ALEC also declared to the IRS that it does not “arrange” the scholarships, and that control of the funds is left to the State Chair. According to ALEC’s bylaws, the duties of the State Chair 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 4). On its 2010 Form 990 ALEC stated 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).

CMD further requests that the Board investigate whether vesting such “exclusive” discretion and control to the Wisconsin State Chairs (currently Representatives Vos and Suder) over the use of non-state funds furnished by lobbying principals violates Wis. Stat. §19.45(3) or any other provision of the state ethics code.

Because ALEC neither pays nor arranges reimbursement for travel related to ALEC meetings, the ALEC “scholarships” are not permissible under Sec. 19.56 (3)(a), and are thus prohibited under Sec. 13.625.

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 segregated ALEC “scholarship fund.” By analogy, corporations or individuals would not be able to avoid Wisconsin ethics and lobbying laws by depositing funds into a bank account, then asking a designated state legislator to distribute the funds to other legislators that share the agenda of the corporations or individuals that made the deposits. Such a shell game would clearly violate Sec. 13.625, and so do the corporate-funded ALEC “scholarships.” Allowing such activity contravenes the plain language and intent of Wisconsin’s clean government laws.

(2) ALEC Scholarships Violate §§ 19.45 (3) and (3m), Are Not Permissible Under Wis. Stat. § 19.56(3)(c), and Are Not “Blind”

Legislators receiving reimbursement from corporations for the travel, lodging, and meals may also violate Wis. Stat. §§ 19.45(3) and (3m).

Under Wis. Stat. § 19.45 (3m), “No state public official may accept or retain any transportation, lodging, meals, food or beverage, or reimbursement therefor.” Wis. Stat. § 19.45 (3) also 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.”

There is an exception to Sec. 19.45 for activities listed in Sec. 19.56(3). As discussed in the previous section, ALEC scholarships do not fall under the Sec. 19.56(3)(a) exception. If subsection (c) of Sec. 19.56(3) were construed to allow reimbursements from the ALEC scholarship fund, we believe such an interpretation would be erroneous and that such an error might be based on incomplete information.⁷

In the past the Board has apparently viewed legislators' travel expenses for ALEC meetings as eligible for reimbursement from the state, and therefore has seemingly allowed legislators to accept money from private entities "on behalf of the state." To alleviate the tension between this interpretation of Sec. 19.56(3)(c) and the strong policy against elected officials accepting things of value from corporations with an interest in legislation, the Board has apparently advised Wisconsin legislators to make the scholarship fund "blind" so legislators do not know which corporate interests are paying their expenses. Then-State Chair Senator Fitzgerald told the public that the scholarships were "blind" in a 2008 article by the Milwaukee Journal-Sentinel (attached as Exhibit 10).

However, evidence strongly suggests that Wisconsin legislators are aware of which corporations are funding scholarships to ALEC meetings.

For example, a November 3, 2010 email sent to then-State Chairs Senator Scott Fitzgerald and Representative Mike Huebsch, and then-State Private Enterprise Chairs Amy Boyer and Bryon Wornson, from ALEC's Laura B. Elliott includes an attached spreadsheet titled "State Scholarship Account Activity/Balance." (Exhibit 11, pp. 5-6). 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 contradicts assertions Senator Fitzgerald made to the Milwaukee Journal-Sentinel, and perhaps others, about the scholarships being "blind."

Available evidence also shows that the identity of scholarship funders is not "blind" or secret. In 2010, the Pharmaceutical Research and Manufacturers of America, the 501(c)(6) trade association better known as PhRMA, listed a \$356,075 contribution to the "ALEC Scholarship Fund" on its Form 990 filed with the IRS (attached as Exhibit 7). The address PhRMA listed for its contribution to the ALEC Scholarship Fund was 10 East Doty St., Suite 500, Madison WI 53703. This is the address for Hamilton Consulting, whose lobbyist Amy

⁷ 19.56(3)(c) provides that "A state public official may receive and retain from the state or on behalf of the state transportation, lodging, meals, food or beverage or reimbursement therefor or payment or reimbursement of actual and reasonable costs that the official can show by clear and convincing evidence were incurred or received on behalf of the state of Wisconsin and primarily for the benefit of the state and not primarily for the private benefit of the official or any other person."

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.

Boyer is the ALEC Private Sector Chair for Wisconsin. Boyer is also the lobbyist for a number of ALEC member corporations, such as Koch Industries, Wal Mart, 3M, CenturyLink, and Xcel Energy. The year after this major donation, PhRMA was chosen as one of the ALEC “private sector members of the year” and received an award at the 2011 Annual Meeting.

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). Additionally, because many of the legislators receiving these scholarships are active in introducing 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 that subsection.

Additionally, CMD believes that reimbursements from the corporate-funded ALEC scholarship fund should not be allowed under the Sec. 19.56(3)(c) exception because ALEC meetings are not “primarily for the benefit of the state.”⁹ To receive reimbursement under this section, a state public official must prove by “clear and convincing evidence” that the expenses “were incurred or received on behalf of the state of Wisconsin and primarily for the benefit of the state and not primarily for the private benefit of the official or any other person.” We believe that ALEC is structured specifically and primarily to allow corporate members to advance their agenda, rather than to benefit the state of Wisconsin.

ALEC boasts that corporate representatives “have a voice and a vote” in approving ALEC model legislation in Task Force meetings. (See Exhibit 1). ALEC describes these Task Forces as “public-policy laboratories,” and bills developed in these “laboratories” have had a major impact on laws in Wisconsin and elsewhere – around 1,000 ALEC model bills are introduced each year, and approximately 17 percent are actually enacted. (Id.)

Neither the public nor the press are allowed in the Task Force meetings, where corporations and legislators deliberate over “model bills” that have a good chance of becoming Wisconsin law. (See Olivia Ward, *The Toronto Star*, “America’s Secret Political Power,” Dec. 17, 2011, attached as Exhibit 12). The agendas for the Task Force meetings are not publicly available. This raises legitimate questions about whether these meetings violate Wisconsin’s Open Meetings laws (Wis. Stats. §§ 19.81 – 19.98), and whether such a meeting in violation of these laws can be “primarily for the public benefit” and reimbursable under Sec. 19.56(3)(c).

It should also be noted that lobbyists for the corporations that fund Wisconsin legislators’ “scholarships” to ALEC meetings are also present at those same ALEC meetings. In many

⁹ Wis. Stat. § 19.56(3)(c) provides that “A state public official may receive and retain from the state or on behalf of the state transportation, lodging, meals, food or beverage, or reimbursement therefor or payment or reimbursement of actual and reasonable costs that the official can show by clear and convincing evidence were incurred or received on behalf of the state of Wisconsin and primarily for the benefit of the state and not primarily for the private benefit of the official or any other person.”

cases they also sit on the Task Forces and vote alongside state legislators in approving model bills.

The inference that ALEC is structured for the benefit of corporations is strengthened by the fact that ALEC is almost entirely funded by its corporate members. Less than 2% of ALEC's funding comes from the "membership dues" of \$50 per year paid by state legislators, according to ALEC's filings with the IRS. The remainder comes from fees paid by corporate members, like Koch Industries, and contributions from ideological foundations like the Charles G. Koch Foundation.

A recruitment brochure ALEC sent to potential private sector members emphasizes the opportunity it provides for corporate members to advance their policies and influence state legislators. (Brochure attached as Exhibit 1). "ALEC provides the private sector with an unparalleled opportunity to have its voice heard, and its perspective appreciated, by the legislative members," the brochure states. ALEC tells corporations they will "work in unison" with state legislators to develop "result-oriented policies." In other words, ALEC's purpose is to offer its corporate members a forum to present their views on policy to legislators – an activity typically understood as "lobbying."¹⁰

It seems difficult to believe that the people of Wisconsin would approve of their tax dollars being used to send elected officials to out of state conferences so they can be lobbied by out-of-state corporations. Such activity is not "primarily for the public benefit" and thus would not be reimbursable by taxpayer dollars -- accordingly, it should not be permissible for legislators to accept reimbursement from corporations "on behalf of" the state.

For these reasons, reimbursements from the corporate-funded ALEC scholarship fund are not permissible under the Sec. 19.56(3)(c) exception, and therefore violate Wis. Stats. §§ 19.45 (3) and (3m).

(3) Many Legislators Are Also Not Disclosing Their Receipt of Scholarships

While we believe that ALEC scholarships do not fall under the exceptions described in Wis. Stat. § 19.56(3)(a) and (c), and appear to violate a number of Wisconsin ethics and lobbying laws, we understand that the Board has reportedly required that legislators disclose the receipt of any ALEC reimbursements on their statements of economic interests. Additionally, if reimbursements are received under the exception described in Wis. Stat. § 19.56(3)(a), legislators are also required to disclose this on their statements of

¹⁰ ALEC denies that any lobbying occurs, despite the fact that lobbyists can present bills to task forces and vote on bills with legislators. In an October 29, 2010 press release ALEC's then-Senior Director of Public Affairs Raegan Weber wrote "laws are not passed, debated or adopted during this process and therefore no lobbying takes place. That process is done at the state legislatures." Weber's description of "lobbying" as passing, debating or adopting laws is at odds with the definition of lobbying in Wisconsin, which under Wis. Stat. § 13.62(10) "means the practice of attempting to influence legislative . . . action by oral or written communication with any elective state official." Under Wisconsin law, what the activities at ALEC meetings would likely be defined as "lobbying."

economic interests under § 19.56(2)(a).¹¹ But most legislators are failing to disclose, as is required both by the Board's guidance and under Wisconsin law.

On their 2011 Statement of Economic Interests, filed for calendar year 2010, only four legislators noted the receipt of money from the ALEC scholarship fund (attached as Exhibits 13-16):

- a. Sen. Scott Fitzgerald listed ALEC as the payer of \$1,529.93 under the "Honoraria and Expenses" section (#12), with the circumstances of the receipt listed as "reimbursement." (See Exhibit 13).
- b. Rep. Vos also listed ALEC as the payer in the "Honoraria and Expenses" section, but only noted "reimbursement of expenses" with no amount listed. (See Exhibit 14).
- c. Rep. Dan Knodl listed ALEC as the payer of \$2,000 under the "Honoraria and Expenses" section, with the circumstances of the receipt listed as "conference." (See Exhibit 15).
- d. Rep. Jeff Fitzgerald wrote in the "Additional Sources of Income" section (#10) that he received \$1,329 for the Dec. 2010 "States & Nation Policy Summit" in Washington, D.C. (See Exhibit 16).

A document obtained through CMD's open records requests shows that the following legislators actually received reimbursement from the corporate-funded ALEC scholarship fund between December 2009 and October 2010, on the following dates and in the following amounts (See Exhibit 11, pp. 5-6):

- a. Sen. Randy Hopper - 12/8/09 - \$1,270.82
- b. Rep. Steve Nass - 12/21/09 - \$993.45
- c. Rep. Phil Montgomery - 12/22/09 - \$524.42
- d. Sen. Leah Vukmir - 12/15/09 - \$1,000
- e. Rep. Mike Huebsch - 12/22/09 - \$1,250 (current secretary of DOA)
- f. Sen. Ted Kanavas - 12/17/09 - \$1,453.24
- g. Rep. Brett Davis - 2/3/10 - \$1,250
- h. Sen. Ted Kanavas - 8/10/10 - \$2,157.85
- i. Mike Huebsch - 8/23/10 - \$2,461.42
- j. Rep. Robin Vos - 8/23/10 - \$2,223.64
- k. Rep. Scott Suder - 8/31/10 - \$1,784.27
- l. Rep. Phil Montgomery - 9/1/10 - \$985.52
- m. Sen. Leah Vukmir - 10/20/10 - \$1,064.60

¹¹ Wis. Stat. § 19.56 (2)(a) requires that "every official required to file who receives for . . . participation in a meeting, any lodging, transportation, money or other thing with a combined pecuniary value exceeding \$50 . . . shall, on his or her statement of economic interests, report the identity of every person from whom the official receives such lodging, transportation, money or other thing during his or her preceding taxable year, the circumstances under which it was received and the approximate value thereof."

This document was not part of any public filings. It also does not account for scholarships provided to legislators attending the December 2010 States & Nation Policy Summit. We believe the Board should request a full accounting of all such gifts from corporate lobbying principals that were disbursed to state legislators over the past five years.

Some legislators disclosed the receipt of ALEC “scholarships” on their campaign finance reports as “campaign contributions.” But this is contrary to what is called for by the Board and Wis. Stat. § 19.56, which require that reimbursements be disclosed on legislators’ statements of economic interests.

For each violation of the § 19.56(2)(a) disclosure requirements, legislators could be fined up to \$5,000 under Wis. Stat. § 19.579(1)(1). If the violations were intentional, under § 19.58(1)(a) legislators could receive an additional fine of between \$100 and \$5000 and face up to a year in the county jail. The failure to disclose transcends the 2010 calendar year and may involve several years of non-compliance by some legislators, up through and including the past fourteen-plus months of sessions.

The public is being kept in the dark by legislators failing to disclose their ALEC “scholarships.” However, 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. As noted in previous sections, the “scholarships” are funded by corporate 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, as documented in emails to Senator Fitzgerald and in other public documents.

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.

(4) It is Not Known Whether the ALEC Scholarship Fund Is Being Used for More Than Reimbursement

The failure by many legislators to disclose these “scholarships,” and the inadequate information provided by those who do, keeps the public from knowing which corporations are spending to influence their elected officials. This lack of transparency raises further questions about the ALEC scholarship funds, and how they are being used.

This concern is especially pointed given the apparent \$356,075 contribution to the ALEC scholarship fund in Wisconsin from PhRMA in 2010. At the time, 29 Wisconsin legislators were members of ALEC (See Exhibit 7, p. 3). Hypothetically, if PhRMA’s contribution were divided equally among all of Wisconsin’s ALEC members, each legislator would have received \$11,869 in “scholarships.” That would cover a lot of flights and hotel rooms, far more than has been reported by legislators or that has been discovered through open

records requests. It is not clear at all how such a huge donation in one year has been distributed to ALEC legislators in Wisconsin or elsewhere, in addition to other corporate donations received.

The \$356,075 contribution from PhRMA, coupled with the lack of disclosure by Wisconsin legislators, warrants further investigation into the ALEC scholarship fund and its operations.

(5) Wisconsin Legislators Appear to Receive Prohibited “Gifts” at ALEC Meetings

Besides the corporate-funded scholarships reimbursing legislators for their ALEC-related travel expenses, Wisconsin legislators attending ALEC conferences are offered a variety of other perks that appear to violate Wisconsin ethics and lobbying laws. These perks have also not been disclosed in filings by state legislators who attend ALEC meetings.

For example, prior to the 2011 ALEC Spring Task Force Summit in Cincinnati, ALEC State Chair Rep. Robin Vos received an emailed invitation from ALEC on April 7, 2011 to a “night at the ballpark as the Cincinnati Reds take on the Florida Marlins!” (See Exhibit 17).¹² The invitation stated, “ALEC will have access to the ballpark party decks where select food and drinks will be provided.” Registered guests – which include spouses – were also invited. There is no indication that tickets for this free major league baseball game party were available to the general public.

Rep. Vos’ assistant Janine Hale forwarded the baseball event invitation to 44 individuals, primarily Wisconsin state legislators and staffers. It is not known how many of those legislators RSVP’d for the game, but Hale emailed ALEC’s Ngan Nguyen on April 11 to reserve Rep. Vos’ ticket for the game.¹³ (See Exhibit 17).

Wis. Stat. § 19.45(2) provides that “no state public official may use his or her public position or office to obtain financial gain or anything of substantial value for the private benefit of himself or herself or his or her immediate family.” The major league baseball tickets, free food and drinks, and access to the special party decks are things of substantial value offered exclusively to state legislators and their family by virtue of their public position, and accepting them would appear to violate § 19.45(2).

The emailed invitation to the baseball event continued: “Space is limited at this special event – sponsored by Time Warner Cable – so be sure to reserve your free ticket now!” The Time Warner Cable logo was at the bottom of the invitation. Time Warner Cable is a “principal” in Wisconsin as it has a registered lobbyist in the state. (§ 13.62(12)).

¹² One month earlier, on March 8, 2011, ALEC had sent an email inviting legislators to purchase tickets to the Reds vs. Marlins game at a discounted rate.

¹³ On April 26, Nguyen replied to Hale and said no more free tickets were available, but provided a link by which tickets could be purchased. On April 27 Nguyen sent another email stating that ALEC had purchased additional tickets and that all legislators could be accommodated.

Wis. Stat. § 13.625 prohibits any lobbyist or principal from giving legislators or legislative staff any lodging, transportation, food, beverages, or any other thing of pecuniary value (§§ 13.625(1)(b), (2)). Likewise, no legislator can accept any thing of pecuniary value. (§ 13.625(3)).

Free tickets to the ballpark party decks at a major league baseball game, along with “select” food and drinks, are indisputably things of pecuniary value, and were not available to the general public for free. For these reasons the April 2011 “night at the ballpark” would appear to be prohibited under 13.625.¹⁴

Further, and perhaps most importantly, all of these “perks” could reasonably be expected to influence legislators’ votes, official actions, or judgment, or reasonably considered a reward for official action, in violation of Wis. Stat. § 19.45 (3).¹⁵

This concern is particularly relevant giving the timing of the baseball event. On April 28, 2011 the committee on Senate Organization introduced Senate Bill 13, a telecommunications bill that would benefit Time Warner Cable (lobbying records show that Time Warner Cable disclosed 49 hours of lobbying in favor of the bill). That same day, thirteen of the twenty Assembly members who received the invite to the Time Warner Cable “night at the ballpark” added themselves as co-sponsors to the bill.¹⁶ The following evening, on April 29, 2011, the Time Warner Cable – sponsored “night at the ballpark” took place, presumably with many of these same legislators in attendance. Senate Bill 13 passed the Assembly on May 11, 2011.

In summary, Wisconsin legislators were invited to a free “night at the ballpark” sponsored by Time Warner Cable on April 7, 2011. On April 28 many of those same legislators added their names to a bill that would benefit Time Warner Cable. On April 29 many of those same legislators may have attended the “night at the ballpark” and received free access to a party box at a major league baseball game and free food and drink, courtesy of Time Warner Cable. These transactions certainly look like a quid pro quo and appear to violate multiple provisions of Wisconsin’s ethics and lobbying laws.

¹⁴ The § 13.625 gift ban does not apply to reimbursement of meeting expenses otherwise permitted under Sec. 19.56, but the exception certainly does not apply to free tickets for a party box at a baseball game. As noted above, § 19.56(3) provides that “a state public official may receive and retain reimbursement or payment of actual and reasonable expenses [for] . . . participation in a meeting related to [legislative issues] if the payment or reimbursement is paid or arranged by the organizer of the event.” Receiving free baseball tickets, free food, and free drinks are not forms of reimbursement for “actual and reasonable expenses,” and a baseball game is not a meeting related to legislative issues; to construe the gift ban otherwise would render it meaningless. Even if the baseball event were somehow associated with an acceptable legislative meeting, the funding for the baseball event is coming from Time Warner Cable, which is not an organizer of a legislative meeting – it is only an underwriter of a perk where legislators and lobbyists could party together.

¹⁵ “No person may offer or give to a state public official, directly or indirectly . . . 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.” § 19.45(3).

¹⁶ Representatives Vos, Bernier, Endsley, Farrow, Klenke, Knilans, Kramer, Krug, Kuglitsch, Litjens, Petryk, Rivard, and Strachota all received the “night at the ballpark” invitation and co-sponsored Senate Bill 13.

Other corporate-sponsored events surrounding ALEC meetings raise additional concerns.

For example, at the Spring Task Force Summit, Wisconsin legislators were invited to a “Wisconsin Delegation Introduction to ALEC” reception held in the Julep Room of the Hilton Cincinnati Netherland Plaza. (See Exhibit 18) It is not known whether legislators were offered anything of value at this free reception, which was held at this luxurious hotel during the period of the day often referred to as “happy hour.”

At the 2011 ALEC Annual Meeting in New Orleans, legislators were invited to a free “Cigar Reception” held at the bar Pat O’Brien’s, and “sponsored by Reynolds American and the Cigar Association of America.” (See Exhibit 19). Both Reynolds American and the Cigar Association of America employ lobbyists in Wisconsin and are thus principals, and any things of value provided at the reception – such as cigars or free drinks – and accepted by legislators may have violated the gift ban described in Wis. Stat. § 13.625. Spouses were also invited to the “Cigar Reception.” Depending on the value of the cigars, drinks, or other things of value offered at the reception, participation in the event may also have violated the § 19.45(2) prohibition against public officials using their position for anything of “substantial value for the private benefit of himself or herself or his or her immediate family.” Reynolds American and the Cigar Association had both been actively lobbying in the state on a variety of tobacco-related proposals, and legislators’ participation in the reception could reasonably be expected to influence their votes, official actions, or judgment, or reasonably considered a reward for official action, in violation of Wis. Stat. § 19.45 (3).¹⁷

This reception was just one of several similar corporate-sponsored receptions held at the 2011 ALEC Annual Meeting, including various receptions and dinners at expensive restaurants in New Orleans, all of which were closed to the press.

Also at the 2011 Annual Meeting in New Orleans, legislators were invited to a “Sporting Clays Shoot & Barbeque” event sponsored by the National Rifle Association (NRA). (See Exhibit 20). “Shotguns, ammunition, eye and ear protection” were provided, as was a shuttle from the hotel. The NRA is a principal under Wisconsin law, as it employs lobbyists in the state, and a free day at the shooting range with barbeque is a “thing of value.” This too may have violated the § 13.625 gift ban, and, depending on the value of the event, it may also have violated § 19.45(2).

¹⁷ Center for Media and Democracy staffers observed that the gatekeepers of the cigar reception handed cigars to state legislators, lobbyists, and their spouses as they entered the reception.

WHEREFORE, the undersigned complainant asks that the Board fully investigate how the ALEC scholarship fund is being used in Wisconsin; that the Board determine that ALEC "scholarships" are impermissible under Wisconsin law and that legislators are failing to properly disclose their receipt of money for trips to ALEC events; that the Board issue a ruling about Wisconsin legislators accepting impermissible gifts through ALEC, such as the major league baseball tickets provided by Time Warner to legislators; and that the Board make its determinations about these matters public, so as to advance the interests of Wisconsin citizens in clean and transparent government.

Date: MARCH 23, 2012

B F

Brendan Fischer
Center for Media and Democracy
520 University Ave Suite 260
Madison, Wisconsin 53703

I (complainant's name), 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 23 day of March, 2012 ~~April, 2011~~.

[Signature]
My commission expires 9/20/2015, or is permanent
Notary Public

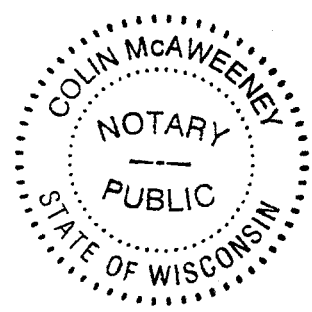


EXHIBIT INDEX

Exhibit 1: ALEC Brochure:

Sent to prospective "private sector" ALEC members. Lists benefits of ALEC membership and necessary dues.

Exhibit 2: Press Release for 2011 ALEC Annual Meeting

Via PR Newswire, August 3rd, 2010. Announces 37th annual ALEC meeting in San Diego. (Accessed March 12th, 2012)

Exhibit 3: Email Sent from ALEC Policy Coordinator Stephanie Linn to Sen. Scott Fitzgerald and Rep. Michael Huebsch

Sent January 13th, 2011. Email includes an attachment (page 7 – 10 of the Exhibit) showing a list of Wisconsin state legislators who attended an ALEC meeting between 2009 and 2010, as well as the legislators' then-current task force appointment.

Exhibit 4: Bylaws of the American Legislative Exchange Council

Article X, Section 3 describes the duties of an ALEC state Chairman, including "working with the Private Enterprise State Chairman to raise and oversee expenditures of legislative scholarship funds."

Exhibit 5: Scan of Agenda Page From the 2011 ALEC Annual Meeting

Annual Meeting Held August 3 - 6, 2011. Scan of page 52 and 53, which lists the Private and Public Sector Chairs of each State.

Exhibit 6: Selected pages of ALEC IRS Form 990 for 2010

Includes front page and Part X (where ALEC lists the scholarship fund held in "escrow" on line 21) and Part XIV (where ALEC describes the operation of the ALEC Scholarship Fund to the IRS in the "supplemental information" section).

Exhibit 7: Selected pages of PhRMA IRS Form 990 for 2010

Includes front page and pages from Schedule I, "Grants and Other Assistance to Organizations, Governments and Individuals in the United States," which notes a \$356,075 contribution to the ALEC scholarship fund located at 10 East Doty St St 500 Madison WI 53703.

Exhibit 8: Selected pages of ALEC IRS Form 990 for 2009

Includes front page and Part X (where ALEC lists "scholarship funds held as agent" under "Other Liabilities").

Exhibit 9: Selected pages of ALEC IRS Form 990 for 2007

Includes front page and Part III (where ALEC replies "no" to the question "Did the organization make grants for scholarships, fellowships, student loans, etc?" on line 3a.

Exhibit 10: News article: Steven Walters, "Parties Spar on Travel Bills; Should State or Sponsors Pay Lawmaker's Way to Conferences?" Milwaukee Journal Sentinel, July 11th, 2008.

Where then-ALEC co-chair Senator Scott Fitzgerald says because individual ALEC scholarships are "blind," he does not know who will be paying his expenses.

Exhibit 11: Email sent from ALEC Director of State Programs Laura Elliott to ALEC State Chairs Sen. Fitzgerald and Rep. Huebsch and Private Enterprise Chairs Amy Boyer and Bryon Wornson

Sent November 3rd, 2010. *Email includes one attachment (page 3 of the Exhibit) titled "Current Legislative Members with Emails and Phone Numbers and another attachment (page 5-6 of the Exhibit) titled "State Scholarship Activity/Balance" and listing the "credits" and "debits" of ALEC member legislators and corporations.*

Exhibit 12: News article: Olivia Ward, "America's Secret Political Power," The Toronto Star, December 17th, 2011 (Accessed March 14th, 2012).

Exhibit 13: Page from Senator Scott Fitzgerald's 2010 Statement of Economic Interest
Lists "American Legislative Exchange Council" as source of "Honoraria and Expenses."

Exhibit 14: Page from Representative Robin Vos' 2010 Statement of Economic Interest

Lists "American Legislative Exchange Council" as source of "Honoraria and Expenses."

Exhibit 15: Excerpt from Representative Dan Knodl's 2010 Statement of Economic Interest

Lists "ALEC" as source of "Honoraria and Expenses."

Exhibit 16: Excerpt from Representative Jeff Fitzgerald's 2010 Statement of Economic Interest

Lists "ALEC States + Nation Policy Summit" under "Additional Sources of Income."

Exhibit 17: Email invite to Time Warner Cable-sponsored "Night at the Ballpark" event sent from "ALEC Meetings" to Representative Robin Vos

Sent April 7th, 2011. *Email contains an invite to attend a free baseball game between the Cincinnati Red and the Florida Marlins on April 29, 2011 with free admission to "the ballpark party decks where select food and drinks will be provided," sponsored by Time Warner Cable. Rep. Vos' assistant forwarded the email to other Wisconsin legislators, and sent a reply email confirming Rep. Vos' participation.*

Exhibit 18: Email invite to "Wisconsin Delegation Introduction to ALEC" reception sent from Rep. Vos' assistant Janine Hale to Wisconsin legislators.

Sent April 26th, 2011. *Email contains an invite to attend a reception at the Julep Room of the Cincinnati Netherland Plaza Hilton on April 28th, 2011.*

Exhibit 19: Invitation to "Cigar Reception" Sponsored by Reynolds American and Cigar Association of America at ALEC's 2011 Annual Meeting.

Reception held August 4th, 2011 at Pat O'Brien's in New Orleans.

Exhibit 20: Invitation to "Sporting Clays Shoot and Barbeque" sponsored by the National Rifle Association after ALEC's 2011 Annual Meeting

Held August 6th, 2011, with "shotguns, ammunition, eye and ear protection provided."