

...news, views and reviews from the Center for Justice & Democracy

CENTER FOR JUSTICE &
DEMOCRACY
NEWS

Dear Friends,

Soon, we will be headed into our third exciting year teaching a project-based learning course at New York Law School! The goal of this course is to acquaint students with the critical role that civil litigation plays in protecting the public's health and safety, and to engage students in learning and applying the skills of public policy advocacy.

Since moving to the school in 2011, we have had wonderful experiences working with students on topics like health care and medical malpractice litigation protection, product safety and environmental litigation, civil justice and human rights, and federal regulations, along with the full range of contemporary civil litigation areas. This last year, our students wrote papers about everything from diet supplements and the FDA, to tort remedies for cyber bullying, to the liability of private prisons for medical negligence.

Next year, we hope to expand upon what we have done so far, and integrate students more directly into our work as a nonprofit organization. This is a great opportunity both for students and for CJ&D, as we continue our independent work as the only consumer group in the nation dedicated exclusively to protecting the civil justice system and fighting "tort reform." We appreciate your support!

Sincerely,
Joanne Doroshov
Executive Director

IN THIS ISSUE: ALEC

WHAT THE HECK IS ALEC?

If you research the origin of the phrase "smart alec," you'll find an interesting history. The term comes from the criminal actions of Alec Hoag, an infamous thief, pimp and con man in 1840s New York City. One scheme involved Hoag giving police officers a share of stolen goods in exchange for protection. When Hoag cheated the officers, he was arrested and dubbed "Smart Alec" by police because of his cockiness.

Today, over 160 years later, the entire country faces a more modern yet similarly brazen "Smart Alec," the American Legislative Exchange Council, a.k.a. ALEC. ALEC is a secretive tax-exempt organization of conservative lawmakers and corporations that drafts and shops model state



bills without identifying that they're written by national corporate lobbyists. According to the May 6, 2013 News & Observer, ALEC has 2,600 state legislators and 300 businesses as members; lawmakers pay a "\$100 membership fee every two years, but the vast majority of its \$9 million revenue in 2011 came from corporations who paid huge sums in annual dues..."

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ALEC V. STATE ATTORNEYS GENERAL

State Attorneys General (AGs) are among our country's most important public advocates, targeting corrupt and harmful business practices on behalf of state consumers. Yet over the last decade, conservative business groups – whose members have often been found liable by state AGs and forced to repay taxpayers millions of dollars – have launched unfair, misleading assaults against state AGs.

Not surprisingly, ALEC has been at the forefront of these attacks. Among its latest weapons: the "Attorney General Authority Act," a model bill that would let state legislatures dictate when AGs can and cannot file lawsuits. According to an April 6, 2012 ALEC memo explaining the bill, AGs should "follow the wishes of his or her client, the state" since the "legislature, not the Attorney General, is best positioned to bal-

ance the competing concerns that go into the decision of whether to allow a cause of action and under what circumstances." In other words, state lawmakers should have the power to limit state AGs from bringing suits against corporations, i.e., ALEC members.

"This legislation would have prevented [an attorney general] from suing tobacco manufacturers in the '90s for tobacco-related health costs associated with the Medicaid program," Mike Dean, head of Common Cause Minnesota, told the May 18, 2012 Minnesota Post. "It is easy to see why corporations would want to stop these types of lawsuits because tobacco manufacturers were forced to pay \$6.1 billion in a settlement to the state of Minnesota."

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ALEC “not only allows corporations and special interests to hand state legislators ‘model bills,’ but also provides a vehicle for ALEC’s corporate members to buy influence with legislators through gifts of flights, hotel rooms, and other perks denominated as ‘ALEC scholarships,’” a scam detailed in a May 2012 Center for Media and Democracy report. As Paul Krugman pointed out in a March 25, 2012 NYT op-ed, ALEC’s goal is “privatized government, in which corporations get their profits from taxpayer dollars, dollars steered their way by friendly politicians,” in other words, it’s “about expanding crony capitalism.”

One area where this agenda is apparent is ALEC’s repeated attacks on the civil justice system. For over 25 years, ALEC has had an entire division, a “Civil Justice Task Force,” devoted solely to weaken or eliminate corporate liability for wrongdoing. According to ALEC’s 2011 *The State Legislator’s Guide: Tort Reform Boot Camp*, since 1999, 43 states have enacted legislation based on ALEC Civil Justice Task Force bills. And that Guide came out two years ago. This very active Task Force is co-chaired by Victor Schwartz, general counsel of the American Tort Reform Association, a corporate group the sole purpose of which is to limit the liability of its corporate members. Schwartz’s co-chair is Ohio state Senator Bill Seitz, described in his office’s January 7, 2013 press release as the “key architect of Ohio’s sweeping tort reforms by which nearly two dozen such bills between 2001-2004 transformed Ohio’s civil justice landscape”

Bill Moyers’s November 2012 documentary, *The United States of ALEC*, revealed the extent to which ALEC has invaded the state democratic process to weaken consumer rights. For example, before taking office, Wisconsin Gov. Scott Walker, a former ALEC member, had forged “incredibly close ties with a lot of corporate interests that he had first been introduced to in ALEC, individuals and groups like the Koch brothers,” billionaire businessmen whose

“companies and foundations have been ALEC members and funders for years” and “were among the two or three largest contributors to Scott Walker’s campaign for governor of Wisconsin.” Once elected, Scott proclaimed that “Wisconsin is open for business!” and “moved quickly with a draft of ALEC-inspired bills...of course there was one limiting corporate liability.” Soon, the “Wisconsin legislature passed a “tort reform” measure that included parts of eight different ALEC models. ALEC was elated, praising Walker and the legislature in a press release for their, quote – ‘immediate attention to reforming the state’s legal system.’”



ALEC has also had similar success in North Carolina. According to the May 6, 2013 *News & Observer*, “ALEC held a [tort reform] boot camp at the N.C. General Assembly for lawmakers in 2011, and major proposals with the group’s fingerprints won approval last session,” including a measure to weaken medical malpractice laws. And during a recent committee meeting, N.C. lawmakers advocating limits on asbestos and obesity-related lawsuits against Fortune 500 companies and food companies, respectively, “touted how many other states had approved or considered similar measures. It’s good public policy, they argued, and now it’s North Carolina’s turn. What didn’t get mentioned is the organization that helped coordinate the effort and draft the bills: the American Legislative Exchange Council....”

ALEC’s anti-civil justice priorities are also reflected in the group’s most recent report, *ALEC 2013: Jobs, Innovation, and Opportunity in the States*. Among ALEC’s most pressing missions: 1) making it more difficult for consumers

injured or killed by unsafe or defective products to hold manufacturers accountable in court; 2) limiting the availability of “class actions,” so big companies can more successfully undermine the rights of large numbers of people with impunity; and 3) restricting lawsuits by individuals who have been defrauded under state consumer protection laws. All such proposals put the cost of injuries onto others, like victims and taxpayers, rather than the corporations responsible for causing harm.

Historically, ALEC had kept all model bills secret. It took a two-year campaign by a coalition of progressive public interest groups, and the accompanying bad publicity, for ALEC to relent and post model state legislation online in March 2013. At the time, ALEC spokesman Bill Meierling told the *Huffington Post*, “We really believe in transparency. ... We believe that more eyes on our model policies will create better policies. We are hoping to engage with the public.”

Yet, according to the Center for Media and Democracy, ALEC continues to operate in the shadows. More specifically, documents from ALEC’s May 2013 Spring Task Force Summit “show the organization directing legislators to hide ALEC meeting agendas and model legislation from the public.” As the Center explained in a May 7, 2013 blog post, “Legislators attend ALEC meetings in their official capacity, and ALEC has claimed that they do so ‘on behalf of and for the benefit of the state.’ Under almost every state’s public records law, all documents related to official business are considered public unless there is a specific exemption, defined and passed by the legislature, and embodied in the statutes.” Clearly ALEC has no intention of changing its shady corporate-funded practices.

The only change ALEC seems to be making is to rebrand itself the Exchange Council so it won’t be recognized for the pro-business, anti-consumer political force that it is. Good luck, Smart ALEC!

ALEC ON THE FIRING LINE

Coca-Cola, Pepsi, McDonald's, Wendy's, Mars, Intuit and Kraft...corporate defections from ALEC in 2012 were swift. Why were these companies so quick to cut ties with the group that had brought them so much success in statehouses across the country? Here is one reason: "Stand Your Ground" laws.

When Florida law enforcement invoked the state's "Stand Your Ground" law after George Zimmerman shot and killed 17-year-old Trayvon Martin, the civil rights and consumer community publicized ALEC's role (and by extension, exposed its corporate members' identities) in pushing this statute. The law,

enacted by nearly half the states in the U.S., not only protects people who use deadly force but also confers absolute civil immunity to perpetrators who successfully avoid arrest and prosecution, further victimizing crime victims by stripping them of their legal rights and access to the courts. For many of these victims' families, civil lawsuits are the only way they are able to achieve some form of accountability when the criminal justice system fails. ALEC's "Stand Your Ground" law blatantly tears away their constitutional rights.

As Paul Krugman put it in a March 25, 2012 *NYT* op-ed, it took Trayvon Mar-

tin's killing to "finally place a spotlight on what ALEC is doing to our society – and our democracy." The public should not let ALEC retreat once again into the shadows with its corporate agenda that seeks to undermine our basic legal rights.

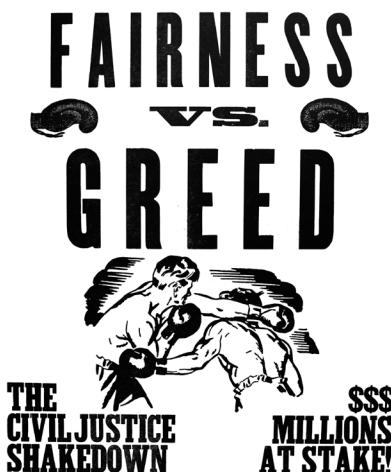


ALEC V. STATE ATTORNEYS GENERAL *continued...*

Another ALEC initiative targets when state AGs, whose offices may be underfunded and understaffed, work with private outside counsel to bring public interest lawsuits that protect consumers from corporate wrongdoing. There are enormous benefits to this partnership: outside counsel are hired on contingency at no cost to taxpayers; they offer additional resources so the state can investigate exactly what was happening behind corporate doors; they can provide more whistleblower protection to insiders willing to speak the truth about industry misconduct; and they often obtain settlements and fees from unscrupulous companies that can then be used to cover the costs of litigation, be disbursed into public programs related to the underlying lawsuit or be funneled back into the AG's office.

Yet those aren't the facts ALEC wants to bring to state lawmakers' attention. Instead, ALEC has devised the "Private Attorney Retention Sunshine Act," reaffirmed by its Board of Directors in January 2013, which would make it more difficult for AGs to hire law firms to combat corporate malfeasance. The model bill is now law in over 12 states, including Mississippi. After that happened in his state, Mississippi AG Jim Hood told the May 22, 2012 Associated Press, "In the past eight years the office has recovered

more than \$600 million for our taxpayers from wrongdoers without costing the taxpayers one dime. ...However, the huge corporate interests that paid for and supported this bill through the American Legislative Exchange Council have decided that they did not like having to pay what they owed the taxpayers of Mississippi."



If ALEC continues to succeed in making it more difficult for AGs to do their job, the real losers will be taxpayers in states, which will be unable to recoup hundreds of millions of lost reimbursements from corporate wrongdoing, and their consumers, who will remain vulnerable to the unchecked behavior of powerful industries.



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ALEC'S TAX EVASION?

On April 21, 2012, the watchdog group Common Cause filed a whistleblower complaint with the IRS to end ALEC's tax-exempt status. Among the 4,000 pages of ALEC documents submitted as evidence, as detailed in a Common Cause press release:

- A May 2011 memo in which Ohio state Sen. Bill Seitz describes "considered advice from our friends at ALEC" in opposition to a bill to help the state collect damages on false claims. "We should at least consider their sage advice," Seitz wrote to a colleague.
- Hundreds of ALEC "Issue Alerts," emailed to ALEC-aligned lawmakers in advance of hearings and scheduled votes and including summaries and arguments in support of ALEC-endorsed bills.
- Talking points distributed by ALEC staffers to help lawmakers argue to reporters and their legislative colleagues on behalf of ALEC-backed bills and about ALEC itself.
- Legislative tracking documents distributed by ALEC to its member legislators to help them track the progress of ALEC-backed and

opposed legislation. ALEC has acknowledged its support for hundreds of "model" bills each year, but the tracking documents indicate the group also works hard to block hundreds of bills outside its portfolio.

- An article in ALEC's 1995 "scorecard" sent to private sector members, celebrating the group's success in passing 23 percent of the 973 ALEC model bills introduced that year. "With our success rate at more than 20 percent, I would say that ALEC is a good investment," ALEC director Samuel Brunelli assured corporate backers. "Nowhere else can you get a return that high."
- Invitations from ALEC to state legislators to attend corporate-hosted receptions and other exclusive events at ALEC conferences, coordinated by ALEC staff.

"ALEC has told the IRS that it does not spend a penny on lobbying, but the activities documented in the records we've given the IRS show that lobbying is its primary mission," then-Common Cause President Bob Edgar said in announcing the complaint. (Very sadly, Edgar recently passed away.) ALEC and its members "write legislation tailored



to serve their interests and peddle it to our elected officials in private meetings at resort hotels; they keep out of sight while lobbying for that legislation in our statehouses and celebrate among themselves and take credit when it's passed. And then they lie about what they've done to exploit the tax code and get the rest of us to subsidize their work," Edgar added. "The IRS should force ALEC to clean up its act. Now."

Following its IRS filing, Common Cause lodged complaints with state Attorneys General in 48 states, alleging ALEC's rampant violations of state tax and lobbying laws. Hopefully these AGs will investigate and see the extent to which this corporate lobby front group is, as Common Cause puts it, "masquerading as a public charity on the taxpayers' dime."

ALICE

A new organization has been formed as a progressive answer to ALEC. It's called "ALICE"! (American Legislative and Issue Campaign Exchange.) The brainchild of the University of Wisconsin Law School's Joel Rogers, ALICE "is a one-stop, web-based, public library of progressive law on a wide range of issues in state and local policy." Find out more by going to their website: <http://www.alicelaw.org/>

