



To: Maine Commission on Governmental Ethics and Election Practices

From: Arn Pearson, Esq., Executive Director

Date: July 21, 2022

Re: **Proposed Findings of Fact for the Commission's ALEC CARE Investigation**

I would like to thank the Commission and its staff for dedicating many hours to investigating the American Legislative Exchange Council's (ALEC) donation of valuable campaign software to its Maine legislative members under the guise of "ALEC CARE."

I understand the practicalities involved in the Commission's decision to discontinue the investigation in light of the refusal by ALEC and Voter Gravity to voluntarily provide the Commission with full access to the CARE software, the user data of Maine legislators, and related records.

Nonetheless, all of the facts provided by the Center for Media and Democracy (CMD) in its complaint to the Commission remain uncontested – with the exception of ALEC's dispute about its purpose in donating CARE software to its members – and staff has uncovered additional information that casts doubt on the value of CARE as a constituent communications tool.

I would like to propose, therefore, that the Commission issue Findings of Fact alongside the draft motion proposed by staff in order to best preserve the efforts of the Commission and inform the public.

For that purpose, I have provided the attached draft set of Findings for your consideration. Each of the findings is footnoted to its source in a Commission staff memo and/or uncontested fact in the Complaint.

In closing, I would argue that providing something of value to a candidate that was developed specifically for the purpose of influencing elections should create a rebuttable presumption that it is an in-kind contribution under Maine law.

ALEC's attempt to meet that hurdle by pointing to its disclaimer and admonishments to legislators using the CARE software is, in my opinion, wholly inadequate. The disclaimer is not legally binding, ALEC did not disable the exclusively electoral functions of the software prior to coming under Commission scrutiny, the software does not even contain a complete or

nonpartisan constituent database, and ALEC refuses to give the Commission any data on whether legislators used CARE during the 2020 campaign season or accessed the software's campaign functions.

I realize the matter at hand presents an unusual sequence of facts, with the claim that giving something of value created for influencing elections is not an in-kind contribution because an intermediary donated it for an ostensibly non-electoral purpose. However, allowing corporations – let alone tax-exempt ones – to contribute valuable campaign assets to candidates by calling them something else sets a bad public policy and undermines the intent of Maine's campaign finance laws.

Thank you for your time and consideration of these important matters.

Sincerely,

A handwritten signature in black ink that reads "Arn H. Pearson". The signature is written in a cursive, flowing style with a long horizontal stroke at the end.

Arn H. Pearson, Esq.
Executive Director

Proposed Findings of Fact

Following extensive investigation, the Commission makes the following findings of fact:

1. The American Legislative Exchange Council (ALEC) has provided free software, called ALEC CARE, to its Maine legislative members as a “constituent communications” tool.
2. ALEC estimates the value of the software to be approximately \$3,000 per legislator.¹
3. The ALEC CARE software is licensed to ALEC by Voter Gravity, a for-profit corporation that markets voter management campaign software to Republican candidates as “an approved mobile app vendor for the Republican National Committee and fully integrated with the RNC’s database.”²
4. ALEC CARE is rooted in Voter Gravity’s campaign software and has only minor differences.³ During the 2020 election cycle, ALEC CARE contained many features more useful to campaigns than constituent communications, including Election Day Strike Lists, walking lists, turnout scores, political donor histories, a tool for identifying “supporters,” and RNC (Republican National Committee) ID numbers.⁴
5. ALEC CARE does not contain features of some case tracking and management software.⁵ It also does not contain a complete constituent database for a legislator’s district, but is rather focused on potential Republican voters. The whistleblower legislator interviewed by Commission staff reported that a majority of Democratic voters in his/her district were missing from ALEC CARE.⁶
6. ALEC maintains that the purpose of the CARE software is to assist its legislative members with constituent communications, and has a disclaimer on the sign-in page saying that legislators cannot use it for their campaigns.
7. ALEC maintains records of who has a CARE account and has the ability to see the “electronic trail” left behind by any Maine legislator who uses it.⁷ Nonetheless, ALEC

¹ Complaint at ¶13 and Ex. 9, uncontested.

² Commission Staff memo (June 15) at 5; Complaint at ¶¶ 12, 14, 16 and Exs. 8 and 11, uncontested.

³ Commission Staff memo (June 15) at 7.

⁴ Id. at 7-8 (noting that ALEC has since removed the strike-list function); Commission Staff memo (Jan. 19) at 4-5; Complaint at ¶ 19 and Ex. 12, uncontested.

⁵ Commission Staff memo (June 15) memo at 8.

⁶ Commission Staff memo (Jan. 19) at 4-5; *See also* CMD letter to Commission (Jan 25) at 1 (“At my request, the whistleblower searched for another 20 Democratic constituents this morning. Of those, two-thirds were missing, and those that were included were tagged as ‘Inferred Republican’ or ‘Moderate.’”), uncontested.

⁷ Aff. of Aaron Gillham (Sept. 16, 2021) at 1.

refuses to voluntarily share this information with the Commission, or provide other records and communications concerning the purpose of its CARE program.⁸

8. ALEC CARE software is a thing of value for candidates' campaigns under 21-A M.R.S. § 1012(2)(A)(1), and it was developed by Voter Gravity for the clear purpose of promoting the election of candidates who purchase it.
9. However, the Commission cannot conclusively ascertain that ALEC's purpose in providing the CARE software to its legislative members was for the purpose of aiding their campaigns without dedicating more staff resources to issuing and litigating subpoenas on ALEC, which is domiciled in Virginia.

Therefore, I move that the Commission take the following actions: [Staff Draft Motion]

⁸ Commission Staff memo (June 15) memo at 4; Commission Staff memo (Jan. 19) at 3.