

**SUBMISSION TO THE
INTERNAL REVENUE SERVICE
UNDER THE TAX WHISTLEBLOWER ACT,
26 U.S.C. § 7623(b)**

**REGARDING IMPERMISSABLE ELECTORAL ACTIVITY
OF THE
AMERICAN LEGISLATIVE EXCHANGE COUNCIL
IN CONTRAVENTION OF 26 U.S.C. § 501(c)(3)
TAX-EXEMPT CHARITABLE STATUS**

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Introduction

The Center for Media & Democracy (CMD) submits this Form 211 exposing the American Legislative Exchange Council's (ALEC) severe and repeated violations of the prohibition on political campaign intervention by a tax-exempt nonprofit organization, under 26 U.S.C. § 501(c)(3). As reflected in prior submissions to the IRS, ALEC has abused its non-profit status for many years. Common Cause has filed a separate Form 211 submission to the IRS in collaboration with CMD, detailing ALEC's extensive lobbying activity and its actions for the private inurement of its corporate sponsors in violation of its 501(c)(3) status.¹ Moreover, a 2015 ruling by Minnesota's Campaign Finance and Public Disclosure Board found that "ALEC's primary purpose is the passage of state legislation in the various states and that all of its wide-ranging activities are in support of this primary purpose."²

ALEC is highly selective in the candidates it assists and the lobbying it performs. The organization is dedicated exclusively to advancing the agenda of its corporate members and the Republican Party and helping to elect conservative candidates. This submission describes the latest of ALEC's partisan schemes that masquerade as charitable activities and reveals information never before made public.

Based on information provided by ALEC's legislative members and other documents obtained through its investigations and open records requests, CMD has obtained conclusive evidence that ALEC has been providing sophisticated voter management and campaign software, run by partisan political operatives and linked to the Republican National Committee's voter file,

¹ See Common Cause, *ALEC Whistleblower Complaint* (Oct. 1, 2016), <https://www.commoncause.org/resource/alec-whistleblower-complaint/> (providing Common Cause's original April 2012 submission to the IRS, as well as their supplemental submissions from July 2013, May 2015, and October 2016).

² See Exhibit 1, Minn. Campaign Fin. & Pub. Disclosure Bd., *Findings of Fact, Conclusions of Law, and Order in the Matter of the Complaint of Common Cause Minnesota Regarding the American Legislative Exchange Council* (Feb. 3, 2015), at 6.

to its legislative members since at least 2016 in continuing violation of its 501(c)(3) status. By ALEC's own admission, and other evidence provided below, these unreported in-kind campaign contributions to ALEC's 2,000-plus members, almost all of whom are Republicans, have a total value of more than \$6 million per election cycle.

As a registered tax-exempt organization under 26 U.S.C. § 501(c)(3), ALEC is forbidden from engaging in partisan political campaign activities. This prohibition is absolute: even *de minimis* interventions in political campaigns are prohibited under penalty of fines, sanctions, and revocation of nonprofit status. Yet since at least 2016, ALEC has provided valuable campaign assistance to its legislative members in the form of free, sophisticated voter management software and voter data, constituting an illegal and unreported in-kind campaign contribution.

The information in this submission is based upon two primary sources. First, CMD has conducted its own exhaustive investigation of ALEC's activities, resulting in extensive evidence that demonstrates ALEC's repeated violations of the tax laws. Second, as stated above, CMD has received confidential assistance from a current legislative member of ALEC ("Legislator"), a classic "insider" who wishes to remain anonymous. This unprecedented look inside ALEC's highly secretive operations provides irrefutable evidence of ALEC's longstanding unlawful electoral assistance provided to the overwhelmingly Republican legislative members of ALEC.

Pursuant to 26 U.S.C. § 7623 *et seq.* (the "Tax Whistleblower Act"), this Memorandum and accompanying Form 211 comprise CMD's submission to the Internal Revenue Service detailing ALEC's violations. CMD is also filing campaign finance complaints with the appropriate oversight agencies in 15 states.

I. Factual Summary

Legislator is a state legislator, candidate for public office, and dues-paying member of ALEC. As a “membership benefit,” Legislator has been provided by ALEC with an expensive and sophisticated voter management software suite, called “Constituent Analytics and Research Exchange,” or ALEC CARE.

According to ALEC staff, who advertise CARE as an inducement for renewing membership in ALEC, the CARE software is a tool for constituent service: “[Y]our ALEC Membership comes with access to technology such as . . . **ALEC CARE**, the exclusive CRM [Constituent Relationship Management] tool for members,” one email, from ALEC’s legislative outreach coordinator to a GOP member of the Texas Statehouse, said (emphasis in original). “This program, developed by VoterGravity, typically costs legislators thousands of dollars.”³ Indeed, the value of the CARE software and voter database exceed the \$100 annual dues charged to ALEC’s legislative members by many orders of magnitude.⁴

Upon further examination, however, Legislator realized that ALEC CARE was not like any other CRM software he had seen before. And while the CARE login page states that the tool cannot be used for political campaigns,⁵ many of its features can have no other plausible use. The software came preloaded with individual-level *voting* information, including voter history and political party ideology; views on “hot button” electoral issues like taxation and gun control; income and donor status; metrics like “Turnout Score” and Republican National Committee (RNC)

³ See Exhibit 2, E-mail from Hunter Hamberlin to Ben Leman, *ALEC Membership Renewal 2020* (Sept. 24, 2020).

⁴ See Exhibit 3, E-mail from Will Davies to Sine Kerr, Russell Smoldon & T.J. Shope, *ALEC State Chair Follow Up* (Jan. 7, 2021).

⁵ See Exhibit 4, Screenshots of training video by American Legislative Exchange Council (ALEC), *What is ALEC CARE?*, YOUTUBE (Sept. 14, 2020), available at <https://www.youtube.com/watch?v=sbOpHimIm0s>, at 1 (referring to 0:11).

voter identification numbers;⁶ and numerous other data points exceedingly helpful for a re-election campaign but largely irrelevant to “constituent service.”⁷ Moreover, Legislator noted that CARE’s analytical and dashboard tools were also primarily campaign related and not particularly useful for constituent service, tracking elements like “Identified Supporters,” “Door Knocks,” “Walklist Stats,” and “Phone Bank Stats.”⁸

Understanding that as a legislator this sort of political information was subject to strict regulation, Legislator felt compelled to speak up regarding ALEC’s brazen electioneering. He informed CMD that legislators are not permitted to access this type of electoral software or voter data on state-run computers.

Legislator’s information confirmed other intelligence CMD had obtained from ALEC insider notes, documents, promotional materials, meetings, and correspondence regarding CARE. These insider materials, discussed in greater detail below, along with additional analysis and information acquired by CMD, form the basis of this Submission.

A. ALEC’s CARE software donation goes far beyond “sharing research and educational info.”

ALEC claims to the IRS on its Forms 990 that its mission and most significant activities are to “Assist State Legislators, Congress & the public by sharing research and educational info.”⁹ This submission demonstrates ALEC’s representation to be undeniably false and fraudulent. CMD provides detailed evidence that ALEC has belied its stated mission and violated its tax status:

⁶ Voter identification numbers are used by political organizations, such as national political committees, to identify and track voters, often as part of their voter files. For more information on the contents and purpose of voter files, *see generally* Drew Desilver, *Q&A: The growing use of ‘voter files’ in studying the U.S. electorate*, PEW RESEARCH CENTER (Feb. 15, 2018), <https://www.pewresearch.org/fact-tank/2018/02/15/voter-files-study-qa/>.

⁷ *See* Exhibit 5, Screenshots of ALEC CARE software by Legislator under his own login (redacted), at 1-4, 10-12.

⁸ *See id.* at 7-9.

⁹ *See, e.g.*, American Legislative Exchange Council, *Return of Organization Exempt from Income Tax (Form 990)*, available at <https://projects.propublica.org/nonprofits/organizations/520140979> (signed Nov. 7, 2019).

ALEC has been providing services that benefit the political campaigns and fortunes of its legislative members since at least 2016, when it began testing the CARE software platform.¹⁰

An ALEC internal promotional document from that election year touts CARE as a “game-changing tool for legislators” to “gather and store information for targeted, insightful, and immediate reporting on constituent attitudes and policy positions.”¹¹ It also noted that a full rollout would follow in 2017, with CARE being “offered to all ALEC member legislators as a member benefit.” Moreover, ALEC’s partisan assistance is multi-layered. In addition to providing its legislative members with electioneering software, it has used the CARE platform to contribute in-kind voter data and information directly to the Republican National Committee.¹²

ALEC claims that the CARE platform is intended for “constituent management.”¹³ Yet CMD’s analysis reveals that CARE has, from its inception, been (1) conceived, (2) built, (3) promoted, and (4) distributed for an entirely different purpose: benefitting the political campaigns of ALEC’s 2,000-plus legislative members and using their input of private voter information to augment the RNC’s voter file.

1. *The roots of ALEC CARE: software developed from the outset by Ned Ryun and VoterGravity to facilitate electioneering for conservative Republican candidates.*

The proprietary software behind ALEC CARE, called VoterGravity, was designed as a highly partisan tool from the beginning. It was conceived by Ned Ryun, conservative political operative, activist, and founder of the “campaign operative training group” American Majority,¹⁴ with the explicit goal of creating a political campaign technology to “outmaneuver the left

¹⁰ See Exhibit 6, ALEC promotional flyer, *ALEC Constituent Analytics and Research Exchange (CARE)* (no date).

¹¹ *Id.*

¹² See Section I.B, *infra* 18-19.

¹³ See Screenshots of ALEC training video, *supra* note 5, at 1; see generally Hunter Hamberlin e-mail, *supra* note 3 (“ALEC CARE . . . allows you to keep track of constituent research and engagement”).

¹⁴ See Warner T. Huston, *CPAC 2015 Digital Action: Conservatives Have Fallen Behind in Campaign Tech*, BREITBART NEWS NETWORK (Feb. 27, 2015), <https://www.breitbart.com/politics/2015/02/27/cpac-2015-digital-action-conservatives-have-fallen-behind-in-campaign-tech>.

philosophically and politically . . . leverag[ing] all of our data technology for the center Right.”¹⁵

The software, rebranded by ALEC as “CARE,” was originally intended to be distributed in conjunction with American Majority—Ned Ryun’s conservative political operative and activist training group. Before the VoterGravity company and software took shape in 2012, it was called just “Gravity,” developed by a company called Political Gravity (formerly at www.politicalgravity.com).¹⁶ According to an article in *The Hill* from April 2012, the Ryun brothers were directly involved in the software’s original development: “[Drew] Ryun is working with his brother Ned, founder and president of American Majority, an affiliated educational organization. . . . American Majority Action developed the software in partnership with Political Gravity, a technology firm.”¹⁷ At the time, the software was targeted at empowering Tea Party activists:

American Majority Action, a rising force among the conservative grass roots, has made a nearly \$1 million investment in technology to put Tea Party activists on even footing with President Obama’s election campaign. . . . The leadership at American Majority Action wants conservative candidates to do a better job of reaching independent voters likely to support them. . . . Its solution is **Gravity**, campaign management software that allows field directors to organize volunteers in real time through smartphones.

“**Gravity** will rocket conservatives past the high-tech approaches of the DNC and other progressive political groups,” said Drew Ryun, president of American Majority Action. “This is the fusion of old-school grassroots tactics with the state-of-the-art technology. In recent years, conservatives have been out-gunned by their more liberal counterparts in utilizing technology as a means of promoting their message and mobilizing voters” (emphasis added).¹⁸

¹⁵ See Press Release by Ned Ryun, *Voter Gravity Announces Integration with the RNC Database*, VOTER GRAVITY NEWS/BLOG (Aug. 25, 2015), <https://votergravity.com/integration-with-rnc-database>.

¹⁶ See Exhibit 7, LinkedIn page of William Hogsett (screen print), available at <https://www.linkedin.com/in/williamhogsett> (taken July 14, 2021), at 2 (indicating by Hogsett, the former CEO of Political Gravity, that “Political Gravity [is] Now VoterGravity.com”). See also Alexander Bolton, *Conservative group makes \$1M high-tech investment to help Tea Party*, THE HILL (Apr. 12, 2012), <https://thehill.com/policy/technology/221151-conservative-group-makes-1m-high-tech-investment-to-help-tea-party-groups>.

¹⁷ See Bolton, *supra* note 16.

¹⁸ *Id.*

According to *The Hill*, “Their [the Ryun brothers’] plan [was] to distribute the software for free to local Tea Party groups, which often have plenty of motivation but little funding.”

In fact, the partnership with American Majority Action was originally thought to be critical to Gravity’s widespread adoption and success. According to a joint press release between the two organizations from July 2011, “The American Majority Action partnership adds **national distribution and a training vehicle** to get this technology in the hands of the people who can impact elections” (emphasis added).¹⁹ In order to facilitate Gravity’s dissemination, and echoing the software’s later evolution into CARE, Political Gravity’s then CEO William Hogsett noted that, “We have also built a version of our toolbox that is **available at no cost to conservative grassroots groups**” (emphasis added).²⁰

This partnership for development and distribution eventually precipitated a wholesale change in ownership. In December 2012, just after the 2012 elections, Hogsett sold Political Gravity to Ned Ryun, who re-branded the company to VoterGravity as its new “Founder and CEO.”²¹ From this point on, VoterGravity has described itself as “the first integrated database platform on the center-right”; a “Voter Canvassing [tool] for Republican Operatives”; and, following a 2014 state senate race in Indiana, an indispensable program for unseating incumbent Democrats in “large, or small, size campaigns.”²²

¹⁹ See Press Release by Political Gravity and American Majority Action, *Political Gravity and American Majority Action Form Powerful Partnership to Effect Political Change* (July 26, 2011), republished on Scribd by TEA_Party_Rockwall at <https://www.scribd.com/document/61051661/American-Majority-and-Political-Gravity-Partnership-Announcement>, at 1.

²⁰ *Id.*

²¹ See Exhibit 8, LinkedIn page of Ned Ryun (screen print), available at <https://www.linkedin.com/in/nedryun> (taken July 14, 2021), at 1 (indicating that Ryun started as “Founder and CEO” of Voter Gravity in November 2012, with no mention of Political Gravity); see also William Hogsett LinkedIn, *supra* note 16, at 2 (indicating that “Political Gravity (Now VoterGravity.com)” was sold on December 21, 2012).

²² See Exhibit 9, Screenshots of Voter Gravity website, available generally at <https://votergravity.com> (taken July 14, 2021), at 1-3.

After founding the new corporation, Ryun quickly began making good on VoterGravity's grand ambitions. Within a few years, he closed a \$2 million round in new capital funding,²³ added to its board senior Republican leader Matt Schlapp,²⁴ and launched a "2.0" version of its software for a "bigger, faster, and more targeted voter contact effort."²⁵

In 2015, Ryun hosted several sessions at the Conservative Political Action Conference (CPAC), an annual meeting of officials, activists, legislators, and political operatives.²⁶ Among Ryun's presentations was a session entitled "Back to the Future: Catching up on Political Technology," for attendees of the conference's "Operatives in Training—Candidate, Campaign Manager & Campaign Operative Track."²⁷ According to a subsequent profile in Breitbart News Network, Ryun warned during this session that "the center right is woefully behind the curve in campaign technology, and if things don't change, it will seriously hamper the electoral future of conservatives and Republicans both."²⁸ Ryun then proceeded to introduce VoterGravity as his "new campaign data system," which Breitbart noted at the time was "devised with the backing of the Koch brothers."

But Ryun's biggest win, by far, was securing a colossal distributional partner in ALEC. Previously, Gravity's top institutional clients had been American Majority Action, FreedomWorks, the Republican Governor's Association, and the (now-defunct) Scott Walker

²³ See Byron Tau, *GOP data firm adds big name*, POLITICO (Dec. 4, 2013), <https://www.politico.com/story/2013/12/voter-gravity-matt-schlapp-100644> ("A new Republican technology firm has raised \$2 million in new capital and is adding a veteran political hand to its board").

²⁴ See *id.* Politico describes Schlapp as "the former White House political director under President George W. Bush[.]. . . Schlapp was previously involved in fundraising for the Republican National Committee's abandoned Data Trust project — which sought to outsource the committee's voter file to a private company . . . [and] previously worked as vice president of federal affairs at Koch Industries."

²⁵ See Allen Fuller, *Voter Gravity 2.0 arms campaigns with the power to turn data into votes*, VOTER GRAVITY NEWS/BLOG (June 26, 2013), <https://votergravity.com/voter-gravity-2-0-arms-campaigns-with-the-power-to-turn-data-into-votes>.

²⁶ See Exhibit 10, Agenda, CPAC "Pre-Game": *Operatives in Training—Candidate, Campaign Manager & Campaign Operative Track* (Feb. 27, 2015).

²⁷ See *id.*; see also Huston, *supra* note 14.

²⁸ Huston, *supra* note 14.

Defense Fund;²⁹ ALEC, meanwhile, boasted higher annual revenues than these organizations *combined*.³⁰ Sometime around his noted 2015 CPAC “Operatives in Training” presentation, Ryun struck an agreement with ALEC to distribute VoterGravity’s voter management software across its entire 2,000-plus member Republican legislator base, and ALEC CARE was born.

That same year, VoterGravity announced another major win for the company: direct data integration into the Republican National Committee voter database. “We’re excited about these API integrations [connecting two otherwise separate databases via software],” Ryun said in a press release, which “will allow any candidate . . . to put data back in real time into the RNC.”³¹ API is the acronym for Application Programming Interface, which is a software intermediary that allows two applications to talk to each other. Ryun’s head of operations Chris Littleton added candidly, “We believe that this is going to help more Republican candidates win in 2016.”

Throughout this period, Ryun continued to pursue a grand vision and aspirations for VoterGravity as a “campaign technology” company. “Our ultimate goal,” Ryun explained, “is to outmaneuver the left philosophically and politically. And the best way to accomplish this is to fully leverage all of our data technology for the center Right, while always keeping true to our strongly held beliefs.”³² At the time of its integration with the RNC, VoterGravity already offered an impressive suite of political campaign tools, including mobile deployment, phone systems,

²⁹ These were the clients featured on ex-CEO Hogsett’s LinkedIn page. *See* William Hogsett LinkedIn, *supra* note 16, at 2 (“Gravity clients include(d) Ted Cruz, American Majority Action, FreedomWorks, Republican Governors Association, Scott Walker Defense Fund and a multitude of Federal, State and local political candidates”).

³⁰ *See generally* Total Revenue (line 12), *Return[s] of Organization[s] Exempt from Income Tax (Form[s] 990)*, available at <https://projects.propublica.org/nonprofits/organizations/520140979> (pertaining to tax years 2015-18).

³¹ *See* Ryun press release, *supra* note 15.

³² *Id.*

touchstone surveys, Esri-based mapping, and walk-list cutting³³—with more features promised.³⁴

Today, the software’s additional features include voter-level information preloaded directly from the RNC voter file;³⁵ donor, voter, and volunteer management functionality; door knocking and mobile canvassing tools; and a “Campaign Intelligence Dashboard” to “Track and manage your campaign.”³⁶

2. Despite efforts to conceal the connection, ALEC simply rebranded the VoterGravity software as CARE for its own dissemination and use.

ALEC credits the CARE software as being “developed by VoterGravity,”³⁷ but the true relationship between CARE and VoterGravity is actually more simple: ALEC CARE is VoterGravity, simply re-branded or “white labeled” as a separate (ostensibly non-electoral) product.

According to the “About Us” page of an archived, now-defunct version of VoterGravity’s website from 2017, “Gravity CRM and ALEC CARE” are *jointly* a “Solution for ALEC Members”; the two are listed side-by-side as being the *same tool*, “[o]ffered as an ALEC membership benefit.”³⁸ On Gravity CRM’s erstwhile homepage, meanwhile, the “Sign-Up” and “About Us” buttons under “ALEC CARE” and “Gravity CRM” contain the exact same links³⁹—

³³ Esri is a widely used supplier of geographic information system (GIS) software for location-based analysis. *See generally* Esri, <https://www.esri.com/en-us/home>. A walk list is a (sometimes computer generated) sequence of potential voters to door-to-door in an efficient manner as part of political campaign efforts. *See, e.g.*, Dan Gookin, *How to Create Voter Lists for Your Political Campaign*, DUMMIES: A WILEY BRAND, <https://www.dummies.com/education/politics-government/how-to-create-voter-lists-for-your-political-campaign> (last visited July 19, 2021).

³⁴ *See* Exhibit 11, Voter Gravity promotional document, *We Turn Data into Votes—We Engineer Victory: VoterGravity Features* (no date) [hereinafter “VoterGravity Features PDF”].

³⁵ *See supra* note 24.

³⁶ *See* VoterGravity Features PDF, *supra* note 34.

³⁷ *See, e.g.*, Hunter Hamberlin e-mail, *supra* note 3

(“This program [CARE], developed by VoterGravity, typically costs legislators thousands of dollars”).

³⁸ *See* Exhibit 12, Archived versions and screenshots of Gravity CRM website, *Gravity CRM and ALEC CARE* (archived Sept. 11, 2017), at 1. Today, VoterGravity’s website is available at <https://votergravity.com>, while versions of its former website, www.gravitycrm.org, are still available for various dates at <https://web.archive.org>. *See, e.g.*, <http://web.archive.org/web/20170911121057/http://www.gravitycrm.org/about-us> (archiving Gravity CRM’s “About Us” page on Sept. 11, 2017).

³⁹ *Id.* at 3-5 (archived July 14, 2017).

with the Sign-Up button leading to a description of how CARE is an ALEC benefit “powered by Gravity CRM.”⁴⁰

Apparently realizing its tax law exposure, ALEC tried to erase these connections with VoterGravity. Sometime between 2017 and 2020, archived versions of Gravity CRM’s website cease to function, indicating that the above cited content was removed.⁴¹ On ALEC’s own website, however, there are still traces of the former branding. One page describes an “ALEC CARE Training,” urging “ALEC Legislators [to] . . . Come see how ALEC CARE can benefit you.”⁴² Underneath that description is a link to “sign up today at www.gravitycrm.org.”

Meanwhile, in 2018, the VoterGravity Client Relations Specialist responsible for servicing ALEC left VoterGravity to join ALEC directly. Aaron Gillham, previously the “Campaign Hacks” author for VoterGravity’s blog,⁴³ started at ALEC as a “C.A.R.E. Associate” in March 2018 according to that month’s ALEC State Chair Call Minutes.⁴⁴ Gillham’s LinkedIn page describes his role at ALEC as “Spearheading the full implementation of the [CARE] platform as a member benefit within ALEC,” among others tasks, and his job at VoterGravity as “providing the onboarding for all new clients” and “turn[ing] data into votes” at “the premier platform for Center-Right, voter contact tools.”⁴⁵

3. *The features of ALEC CARE are largely irrelevant to “constituent management” but highly effective as electioneering tools.*

⁴⁰ *Id.* at 6 (archived June 4, 2017).

⁴¹ The websites and web archives display, as is still the case today with “gravitycrm.org,” pages which are active (that is, the domain can be accessed) but which show a permanent “loading” screen. *Id.* at 7 (taken July 13, 2021); see also Later archived versions at <https://web.archive.org>, *supra* note 38.

⁴² See Exhibit 13, Screenshot of ALEC website, *ALEC CARE Training*, available at <https://www.alec.org/meeting-session/alec-care-training> (advertising an event on May 4, 2017).

⁴³ See, e.g., Aaron Gillham, *Campaign Hack: Creating a Better Target Audience*, VOTER GRAVITY BLOG (Jan. 6, 2016), <https://votergravity.com/campaign-hack-target-audience>.

⁴⁴ See Exhibit 14, Email from Wes Fisher to Wes Fisher, *March ALEC State Chair Call Minutes* (Apr. 2, 2018), at 1 (Introducing Gillham as “the newest staff member leading the charge on ALEC CARE . . . working in every state”).

⁴⁵ See Exhibit 15, LinkedIn page of Aaron G. (screen print), available at <https://www.linkedin.com/in/aarongillham> (taken July 14, 2021), at 2-3.

As discussed above, the Republican-leaning, campaign-focused nature of ALEC CARE has been sanitized and is no longer prominently advertised: there is little mention of ALEC on VoterGravity’s current website, nor much the other way. Indeed, ALEC is careful to brand CARE today as a “Constituent Relationship Management (CRM)” tool, as opposed to a political campaign platform.⁴⁶ But the partisan and political nature of CARE is still manifest in the software’s interface, features, functionality, and design.

As discussed above, the graphical user interface of ALEC CARE is exactly the same as that of VoterGravity, besides the “VoterGravity” banner topping the web page.⁴⁷ Comparing in-depth screenshots of Legislator’s CARE account to VoterGravity’s public website and promotional materials, CMD notes that the boxes, dials, buttons, and visual elements are identical between the two—including the red-and-white color scheme.⁴⁸ (ALEC’s typical colors resemble a cobalt blue,⁴⁹ but this aspect of the software was apparently not re-branded.) On VoterGravity’s website, next to “technology will completely change politics over the next few elections” and “[w]e place powerful data . . . into the hands of political campaigns . . . on the center-right,” are images of “Support Goal” (check mark), “Surveys Goal” (doc icon); “Doors Knocked Goal” (house icon); and “Phones Called Goal” (handset icon).⁵⁰ These same Goals and icons are also featured in ALEC’s “What is ALEC CARE” introductory video posted to its YouTube channel.⁵¹

But CARE’s purpose as a political campaign software goes beyond its associations with

⁴⁶ See, e.g., Exhibit 16, Agenda of 45th ALEC Annual Meeting, *Louisiana: Welcome to the ALEC Annual Meeting* (Aug. 8, 2018), at 3-7 (“As one of the benefits of your ALEC membership, ALEC CARE is an internet-based, one-stop shop for Constituent Relationship Management (CRM) for lawmakers”) [hereinafter “ALEC annual meeting agenda”]; Hunter Hamberlin email, *supra* note 3.

⁴⁷ CARE is an internet-based tool that does not require downloading or installing a separate application. See *id.*

⁴⁸ Compare Screenshots of ALEC CARE, *supra* note 7, at 7, with Screenshots of Voter Gravity website, *supra* note 22, at 1.

⁴⁹ See, e.g., Screenshot of ALEC website, *supra* note 7.

⁵⁰ See Screenshots of Voter Gravity website, *supra* note 22, at 1.

⁵¹ Compare Screenshots of ALEC CARE, *supra* note 7, at 1-4, 7 & 10-12, with Screenshots of ALEC training video, *supra* note 5, at 2-4 (referring to 0:35, 0:38, & 0:40).

VoterGravity—the very metrics and data fields CARE is built to track suggest a partisan and political use. Screenshots of CARE provided by Legislator show various examples of individual-level “Voter Profiles.”⁵² Another ALEC legislator who attended a live CARE training session reported that according to the trainer, these “voter information and history” pages for a given legislator’s constituents are pre-populated directly from the RNC’s voter file, confirming claims made by VoterGravity.⁵³ Not surprisingly, many of the fields are thus highly electoral and partisan in nature, including:

- Political Ideology and Party Status with a partisan slant, including “Inferred Republican” and “Tea Party Supporter”
- Income and Donor Status
- “Election Details” (voting history), by election, down to primary vs. general elections
- Interest in partisan conservative issues, including “Tax Issues,” “Second Amendment Supporter,” etc.
- Turnout Score, Aristotle ID, and RNC ID
- Other election-related parameters, such as “Persuadable Voter”⁵⁴

ALEC CARE also allows for filtering of constituents by RNC ID and Aristotle ID,⁵⁵ although the software does not provide any equivalent filtering functionality for Democratic or third-party attributes as far as Legislator and CMD can tell. In fact, while CARE even contains built-in API integrations for RNC Access (with an “Access Token”) and Anedot⁵⁶—the noted favorite electronic donation platform of Never-Trump Republicans like the Lincoln Project⁵⁷—

⁵² See Screenshots of ALEC CARE, *supra* note 7, at 1-4 & 10-12.

⁵³ See, e.g., Ryun press release, *supra* note 15.

⁵⁴ See Screenshots of ALEC CARE, *supra* note 7, at 1-4 & 10-12.

⁵⁵ See *id.* at 5.

⁵⁶ See *id.* at 6.

⁵⁷ See, e.g., Michael Graham, *In Fundraising Fight, Anti-Trump Republicans Embrace Anedot Software*, INSIDE SOURCES (May 29, 2020), <https://insidesources.com/in-fundraising-fight-anti-trump-republicans-embrace-anedot-software>.

there are no known integrations to any Democratic or third-party platforms or software as of this submission.

Despite ALEC’s re-branding of CARE as a constituent relationship platform, its purpose and provenance are clear. CARE started as, and still is, VoterGravity: a conservative-focused campaign management software package founded and funded by highly partisan Republican operatives and allies. As VoterGravity asks on its “Ready to win?” demo page, “Are you a member of the American Legislative Exchange Council?”⁵⁸ The implication being apparent that, if you are an ALEC member, you presumably already have access to their product—a product designed to help you win your election.

4. *ALEC promotes the CARE software as a “fundamental game changer” for Republican campaigns, not as a constituent management tool.*

Not only are the features of CARE plainly tailored to electioneering, but such a purpose is also how ALEC touts the software, at least in unguarded moments and private venues. According to notes obtained by CMD from an anonymous source, ALEC’s leaders were uncharacteristically blunt about their partisan objectives for rolling out CARE during an ALEC internal meeting in 2016. At that meeting, ALEC CEO Lisa Nelson declared (in reference to constituent analytics), “[W]hen you get into a campaign, you can take it one step further,” and CMO Bill Meierling called CARE a “fundamental game changer.” Later, the ALEC executives laid out a tantalizing and highly partisan vision for the program:

[A] federal Senate campaign doing statewide polling only needs 600 to 700 respondents . . . imagine if we could do that for all ALEC members in every state, and imagine if *you* were at the vanguard of that. ALEC serves as the backbone . . . Each member provided with a tool, in this case **Gravity CRM, from VoterGravity** . . . Having fundraisers . . . and using Gravity to integrate . . . 6 tools integrated into a back end . . . Analyze with ALEC staff assistance . . . **Individual and small group meetings with Voter Gravity team, as a member benefit** . . . Hope to routinize as a major ALEC function

⁵⁸ See Screenshots of Voter Gravity website, *supra* note 22, at 4.

. . . Part of a long-term transition of ALEC; **not only a model policy creating org, but “trusted convenor”** (emphasis added).⁵⁹

ALEC’s pivot from legislative idea exchange, as claimed on its Form 990, to “trusted convenor” for partisan political gain, violates its status as a 501(c)(3) nonprofit.

Since CARE’s rollout in 2017, ALEC has provided multiple training sessions for the “member benefit” at each of its annual meetings.⁶⁰ Although the CARE login page forbids use for “campaign related purpose[s]”⁶¹ and CARE’s promotion has reframed its electoral and campaign elements as “constituent management,”⁶² this is mere window dressing belied by the facts.

In addition to the previously described links to VoterGravity, CARE’s dissemination has also featured more direct references to electioneering. For example, in the introductory video on ALEC’s YouTube page from September 2020, the narrator introduces the CARE platform while Aaron Gillham’s email address appears; soon, viewers are told about features such as text messaging, touchtone polling, and “geomapped walklists,” while elements like “Voter Data,” “Door Knocks,” and “Turnout Score,” scroll by.⁶³ Yet a legislator doing constituent service would hardly need information like voting history or turnout score, which are core electoral elements.

ALEC even displays in its CARE training video a “Strikelists” feature, designed to mark people who have voted; this, as Ned Ryun himself explained on a VoterGravity blog post, is for “Maximizing GOTV [Get Out the Vote]” of the user’s supporters:

In order to make sure your identified supporters vote, you can use our **Voter Gravity Mobile Strike List feature** to mark down people who have voted. Do this on your phone at every polling location on election day, instantly sending the information to your campaign. This enables the campaign to contact any supporters which haven’t yet voted and track strike

⁵⁹ See Exhibit 17, Notes from a 2016 ALEC internal meeting about CARE provided to CMD by an anonymous source.

⁶⁰ See, e.g., ALEC annual meeting agenda, *supra* note 46.

⁶¹ See Screenshots of ALEC training video, *supra* note 5, at 1.

⁶² See *id.*

⁶³ See Screenshots of ALEC training video, *supra* note 5, at 2-4.

list progress as it happens.

How do you do this? Simply create a target list of voters, assign the targeted voters to volunteers by precinct and make sure they select who has voted on their Voter Gravity app as lists of voters become available at each polling location.

As your campaign strikes voters off the list of those who should be voting, add those who still need to vote to phone and contact lists and give them friendly reminders.

Don't waste your hard work. Give your campaign the best chance to make sure every identified supporter and target voter makes it to the polls. (emphasis added)⁶⁴

If ALEC were genuinely aiming to ensure that CARE would not be used for “any campaign related purpose,” then there would be no reason for distinctly election-minded features like Turnout Score and “Strikelists” to be promoted through the platform.⁶⁵

5. *A \$3,000 campaign contribution, from ALEC to its member candidates.*

ALEC's provision of the CARE software suite free of charge to its legislative members cements its violation of the political campaign prohibition, and its approach to distributing CARE to its overwhelmingly Republican members is as brazenly partisan as the software's design.

ALEC openly touts to its members that CARE is a highly valuable benefit provided free of charge. In internal emails obtained by CMD, ALEC's Member Engagement Manager Will Davies and Legislative Outreach Coordinator Hunter Hamberlin share the following three facts:

- ALEC CARE is developed by VoterGravity⁶⁶
- The CARE “software would cost \$3,000 if bought by a member”⁶⁷

⁶⁴ See Ned Ryun, *Maximizing GOTV*, VOTER GRAVITY BLOG (Oct. 29, 2014), <https://votergravity.com/maximizing-gotv>.

⁶⁵ While *non-partisan* Get-Out-the-Vote activity can lawfully be provided by a 501(c)(3) organization, ALEC's CARE tool is provided exclusively to ALEC's legislative members, who are overwhelmingly (perhaps exclusively) Republican and/or politically conservative, and the specific features of the software are clearly designed with partisan goals in mind. This partisan bias makes the behavior a prohibited political campaign intervention.

⁶⁶ See Hunter Hamberlin e-mail, *supra* note 3.

⁶⁷ See Will Davies e-mail, *supra* note 4.

- It is provided completely free of charge to its legislative members, who pay just \$100 per year to renew their membership in ALEC⁶⁸

ALEC’s internal valuation of the CARE software package tracks the software subscription price advertised by VoterGravity. The company’s promotion sheet, boasting the bold title “We Turn Data into Votes—We Engineer Victory,” contains a pricelist based on the number of voters in the subscriber’s electoral district.⁶⁹ For most state legislative districts, the price is \$99 per month, which works out to \$2,376 for a two-year election cycle. VoterGravity subscriptions for larger state House races are \$240 per month, and \$558 per month for larger state Senate races. That means for some ALEC members, the true market value of CARE may be up to \$13,392 per election cycle. The pricelist tops out at \$5,000 per month for statewide candidates with above 10 million voters.

Using ALEC’s own \$3,000 valuation—and given that ALEC boasts more than 2,000 legislative members—the value of ALEC’s illegal in-kind campaign contributions is approximately \$6 million annually.

Despite ALEC’s careful packaging, the free CARE tool constitutes a naked in-kind campaign contribution, designed specifically to advance partisan Republican interests and provided almost exclusively to Republican legislators. It also represents the audacious go-to-market of Ned Ryun’s conservative data operation, first lauded at the 2015 CPAC conference.⁷⁰ And it functions, fundamentally, as a software for political campaign intervention by candidates for office—something no amount of “constituent management” verbiage can mask.

B. ALEC also uses the CARE software to make in-kind contributions to the Republican National Committee.

⁶⁸ *Id.*

⁶⁹ See VoterGravity Features PDF, *supra* note 34, at 3.

⁷⁰ See Huston, *supra* note 14.

VoterGravity is, and was always intended to be,⁷¹ a for-profit enterprise—yet it’s unclear how or whether the company is being compensated by ALEC for the distribution, maintenance, and support of its product. What VoterGravity *does* gain from the partnership, though, is *voter data*. Ryun’s company—and by extension the RNC—not only *provides* the voter file information that feeds CARE’s voter profiles,⁷² but it also *receives* the data that is fed into CARE by its legislator users. Consider the aforementioned CARE training video on ALEC’s YouTube channel. In a testimonial for CARE, state Rep. Timothy Barr (R-GA) noted that, “There was a lady who needed some help, and I was able to make some notes right there while we were talking, get her information, populate the fields, and it—it’s amazing.”⁷³

What Rep. Barr fails to mention is that *the personal constituent data he is entering into CARE is feeding real-time back into the RNC’s voter file*. Recall Ned Ryun’s press release from August 2015 announcing VoterGravity’s integration with the RNC database, in which he expresses excitement about “the[] API integrations. . . [which] will **allow any candidate or state party who chooses to use Voter Gravity on the front end to put data back in real time into the RNC**” (emphasis added).⁷⁴

As noted above, VoterGravity’s board member Matt Schlapp formerly worked on the RNC’s project “to outsource the [C]ommittee’s voter file to a private company.”⁷⁵ That project, called Data Trust, may have been abandoned, but the RNC’s desire for a live-updating voter file apparently has not. While ALEC may claim that CARE is somehow distinct from VoterGravity’s two-way linkage with the RNC, Legislator’s screenshots show that CARE contains the same “RNC

⁷¹ See Bolton, *supra* note 16 (“The effort has been funded by investors but the founders stress it is a for-profit venture. They hope to recoup the costs of software development by selling Gravity to larger advocacy organizations”).

⁷² See *supra* note 52.

⁷³ See Screenshots of ALEC training video, *supra* note 5, at 5 (referring to 0:26).

⁷⁴ See *supra* note 15.

⁷⁵ See Tau, *supra* note 23.

Integration” feature—which users access by entering an “RNC Access Token”—as featured in the paid VoterGravity suite.⁷⁶

In fact, this two-way production of voter data is not a bug but rather a sought-after feature of VoterGravity, which was conceived from the start to prevent campaign “data loss.” As *The Hill* reports:

The drawback to [the] old-school hard-copy model, according to Drew Ryun, is that campaigns lose data. The Gravity program is designed to better capture voter data that gets lost. . . . [T]he stacks of hard-copy data [volunteers] return to headquarters do not get entered properly into campaign databases. American Majority Action hopes **conservative candidates can avoid this data loss by using the Gravity smartphone technology, which immediately updates voter profiles with the answers to survey questions**” (emphasis added).⁷⁷

The big win for Ned Ryun was elevating his data-sharing operation from the individual campaign-level, to the national party-level, through his much-touted RNC integration—but for ALEC, a tax-exempt nonprofit, to participate in Ryun’s enterprise via CARE represents yet another instance of prohibited partisan electoral activity.

ALEC’s real-time delivery of voter data to the RNC constitutes an independent violation of the § 501(c)(3) prohibition on political campaign intervention. For VoterGravity, the data inputted by ALEC’s legislative members may serve as an attractive reason to “give away” its valuable software suite for free. But for ALEC, not only does the production of data for voter management purposes during ostensible “constituent service” interactions raise privacy and ethics concerns, more importantly, the sharing of this data with the RNC amounts to an unlawful in-kind campaign contribution, independent of ALEC’s provision of CARE to its members.

⁷⁶ See Screenshots of ALEC CARE, *supra* note 7, at 6.

⁷⁷ See Bolton, *supra* note 16.

II. Law

The Internal Revenue Code § 501(c)(3) absolutely forbids the participation of tax-exempt, tax-deductible organizations in any partisan political campaign activities. The relevant provisions of the Internal Revenue Code, 26 U.S.C. § 501, include the following: Section 501(a) provides that certain organizations are exempt from federal income taxation, § 501(b) specifies that these organizations are still subject to taxation to the extent of their “unrelated business income and certain other activities,” and § 501(c) details a “list of exempt organizations,” including, in § 501(c)(3):

Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition . . . , or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation . . . , and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

Scholars have noted that this provision amounts to a test, applied by the Internal Revenue Service, with five parts: (i) the organizational test; (ii) the operational test; (iii) the prohibition on private inurement; (iv) the limitation on lobbying activity; and (v) the prohibition on political campaign intervention.⁷⁸ ALEC’s in-kind contributions of the CARE software and associated voter data violate this test for two independent reasons.

The (v) prohibition on political campaign intervention is a specific prohibition on any partisan political campaign activities by 501(c)(3) nonprofit organizations. It forbids “directly or indirectly participating in, or intervening in, any political campaign on behalf of (or in opposition

⁷⁸ Terri L. Helge, *Rejecting Charity: Why the IRS Denies Tax Exemption to 501(C)(3) Applicants*, 14 PITT. TAX REV. 1, 3-4 (2016).

to) any candidate for elective public office.”⁷⁹ This includes funding, contributions, support, oral or written statements of position made on behalf of the organization, etc.—all of which violate the prohibition and destroy the organization’s exempt status.⁸⁰ As numerous scholars have pointed out, the (v) prohibition on political campaign intervention is an absolute standard, wherein “even a *de minimis* amount of involvement in political campaign activities by [501(c)(3)] charities” will lead to their being re-classified as 501(c)(4) “action organization[s].”⁸¹

Under this unequivocal bar, it is forbidden for a 501(c)(3) organization to make “cash [] or ‘in kind’ contributions of services or use of facilities to particular candidates or political parties.”⁸² Any contribution of this sort is absolutely prohibited by the Code and Treasury Regulations, as they violate the prohibition on political campaign intervention.

Critically, this prohibition bars contribution of services to facilitate political campaigns *even if such services are provided on a non-partisan basis*. The only question is whether the contribution constitutes electioneering on a candidate’s behalf. A 501(c)(3) organization cannot

⁷⁹ See IRS, *The Restriction of Political Campaign Intervention by Section 501(c)(3) Tax-Exempt Organizations*, <https://www.irs.gov/charities-non-profits/charitable-organizations/the-restriction-of-political-campaign-intervention-by-section-501c3-tax-exempt-organizations> (last updated July 1, 2021). This is the Service’s main landing page on the political campaign prohibition, cited as authority in *Citizens Union of City of N.Y. v. AG of N.Y.*, 408 F. Supp. 3d 478, 483 nn. 4-5 (S.D.N.Y. 2019). See also, IRS, *Political Campaign Intervention by 501(c)(3) Tax Exempt Organizations - Educating Exempt Organizations*, <https://www.irs.gov/charities-non-profits/charitable-organizations/political-campaign-intervention-by-501c3-tax-exempt-organizations-educating-exempt-organizations> (last updated June 26, 2021) (Compiling “an array of educational tools” from the Service for section 501(c)(3) organizations to “educate[them] about the ban and put[] them on notice of the enforcement program,” including Published Guidance, News Release & Fact Sheets, training materials, FAQs, and other resources).

⁸⁰ See Rev. Rul. 2007-41, 2007-1 C.B. 1421 (June 18, 2007).

⁸¹ Helge, *supra* note 78, at 16-17 (citing I.R.C. § 501 (c)(3); Treas. Reg. § 1.501 (c)(3)-1 (c)(3)(iv) (2014) & Treas. Reg. § 1.501(c)(3)-1(c)(3)(iii) (2014)) (internal citations omitted). See also, e.g., John P. Persons, John J. Osborn, Jr. & Charles F. Feldman, *Criteria for Exemption under Section 501(c)(3)*, 4 RESEARCH PAPERS IN WASH. DEPT. OF TREAS. 1909, 1931 (1977) (“As the *Exempt Organizations Handbook* states, the first point to be noted is that this is an absolute prohibition”) (internal quotations omitted); J. Patrick Whaley, *Political Activities of Section 501(c)(3) Organizations*, 29 MAJOR TAX PLAN. 195, 209 (1977) (“[I]t would seem that any participation in a campaign for or against a candidate for public office is absolutely prohibited. This is certainly the position of the Service.”) (citing Reg. § 1.501(c)(3)-1(b)(3) & (c)(3)(iii); Rev. Rul. 67-71, 1967-1 C.B. 125); David A. Wimmer, *Curtauling the Political Influence of Section 501(c)(3) Tax-Exempt Machines*, 11 VA. TAX REV. 605, 620 (1992) (“This is an absolute prohibition, one without the substantiality exception. . . .”) (citing I.R.C. § 501(h)(2)(A)).

⁸² See Helge, *supra* note 78, at 17.

avoid the prohibition by making in-kind electioneering contributions to candidates of both parties. Unlike, say, voter education or turnout efforts, campaign contributions are equally impermissible even if given to both Republicans and Democrats.

Here, it is beyond dispute that the very purpose of the CARE software is to facilitate campaigning. This purpose is confirmed by explicit statements made by its creators and users, by the fact that its features and tools make sense only if used for electioneering, and by the express rationale for the tool's creation in the first instance. Without more, such in-kind contributions violate ALEC's 501(c)(3) tax-exempt status.

Alternatively, while ALEC's persistent partisan bias is not necessary to finding that ALEC has violated the law, such partisan bias provides an independent basis for holding ALEC's in-kind contributions to be unlawful. For a tax-exempt, tax-deductible organization, even when a given activity or contribution would *otherwise* be permissible, if that activity or contribution is conducted in a *biased manner* or has a *partisan effect*, then the activity or contribution will still be deemed unlawful. In other words, an act or contribution by a nonprofit organization necessarily constitutes unlawful political campaign intervention when that act or contribution demonstrates partisan bias for a candidate or candidates for public office.

This partisan bias rule has been the subject of increasing guidance and enforcement by the Service over time:

In 2004, the IRS initiated a process, although still informal, to address in real time allegations of partisanship by 501(c)(3) organizations during the time period around national elections, through targeted examinations, rather than just through the process of auditing returns . . . now known as the Political Activity Compliance Initiative Also after a long hiatus, the IRS has issued precedential "revenue rulings" in recent years addressing the contours of what constitutes partisan election

intervention. More may be forthcoming.⁸³

The rule was most recently detailed in a 2007 IRS Revenue Ruling entitled “Exempt organizations; political campaigns.”⁸⁴ The Ruling states that whether political campaign intervention has occurred turns primarily on whether an action or activity “shows a bias or preference . . . with respect to the views of a particular candidate . . . [or] for or against a particular candidate.” In order to evaluate the existence of bias (and therefore unlawful campaign intervention), the Rule further states that such a determination “depends upon all of the facts and circumstances of each case.” It gives note of the specific “facts and circumstances” which prove dispositive in twenty-one potentially ambiguous hypothetical fact patterns. Scholars conclude, based on this Ruling and others, that “the Service approaches these issues on a case-by-case basis under a highly factual inquiry and looks to see if the organization is supporting a candidate or remaining neutral.”⁸⁵

In terms of the relevant “facts and circumstances,” the 2007 Ruling explains that bias or preference can be reflected in “content,” “structure,” “timing,” “distribution,” “procedure,” or any other such dimensions of a given act or contribution.⁸⁶ It can even be implicated in “coded” language, “such as ‘conservative,’ ‘liberal,’ ‘pro-life,’ ‘pro-choice,’ ‘anti-choice’ . . . etc.” which,

⁸³ Rosemary E. Fei, Laurence E. Gold & David A. Levitt, *The Rules of the Game: A Guide to Election-Related Activities for 501(c)(3) Organizations*, ALLIANCE FOR JUSTICE ADVOCACY RESOURCE (2d. ed. 2010), at 9. Several publications by the Alliance for Justice are cited with favor in *Citizens Union*, *supra* note 79, e.g., nn. 2, 6, & 8.

⁸⁴ Rev. Rul. 2007-41, *supra* note 80, at 1421. This official Revenue Ruling, published in the Internal Revenue Bulletin on June 18, 2007, first began as a “Fact Sheet” release from the IRS Media Relations Office in February 2006. IRS, *Election Year Activities and the Prohibition on Political Campaign Intervention for Section 501(c)(3) Organizations*, FS-2006-17 (Feb. 2006), <https://www.irs.gov/pub/irs-news/fs-06-17.pdf>. In the release’s introduction, the IRS explained its goal of “provid[ing] information to help section 501(c)(3) organizations stay in compliance with the federal tax law,” since “[m]any of the types of political intervention activities addressed in the fact sheet were those that came under scrutiny during the 2004 election cycle.” At the same time, the IRS also stepped up its enforcement of the political activity restriction: “With the 2006 campaign season approaching, the IRS is launching enhanced education and enforcement efforts, based on the findings and analysis of the 2004 election cycle. The IRS is providing this fact sheet to help ensure that charities have enough advance notice of the types of problems that have occurred, the legal strictures against engaging in political activities and how to avoid these problems.”

⁸⁵ C. Joseph Boatwright, *Should the 501(c)(3) Political Prohibition Be Revoked*, 6 INT’L J. CIV SOC’Y L. 7, 14 (2008) (citing Rev. Rul. 80-282, 1980-2 C.B. 178 (1980)).

⁸⁶ Rev. Rul. 2007-41, *supra* note 80, at 1421-22.

when referencing a candidate or election, can constitute a violation.⁸⁷ The issue, according to commentators, is one of intent: the Service’s factual inquiry seeks to determine whether the organization *intended* to bias or favor a specific candidate or slate of candidates. If it did, then the non-profit has violated its tax-exempt status.⁸⁸

When the specific campaign intervention at issue is a cash or in-kind contribution, the relevant “facts and circumstances” typically include: the nature of the item contributed, the parties to whom it was provided, and what level of fees (if any) was charged, among others. As explained in the 2007 Ruling,

In the context of a business activity of the organization . . . some of the factors to be considered in determining whether the organization has engaged in political campaign intervention include the following:

- Whether the good, service or facility is available to candidates in the same election on an equal basis,
- Whether the good, service, or facility is available only to candidates and not to the general public,
- Whether the fees charged to candidates are at the organization’s customary and usual rates, and
- Whether the activity is an ongoing activity of the organization or whether it is conducted only for a particular candidate.⁸⁹

Each of these factors is independently sufficient to constitute bias or preference: If the contribution was offered to one candidate but not another candidate or the general public, if the prices charged to one candidate were different from those charged to another candidate or the general public, or if the contribution otherwise reflected inconsistent availability or treatment for a given candidate

⁸⁷ See Boatwright, *supra* note 85, at 14 (citing Judith E. Kindell & John Francis Reilly, *Election Year Issues*, IRS 2002 EO CPE TEXT, 345 (2002)).

⁸⁸ *Id.* at 14-15.

⁸⁹ Rev. Rul. 2007-41, *supra* note 80, at 1425. See also Cong. Research Serv., *Tax-Exempt Organizations: Political Activity Restrictions and Disclosure Requirements*, RL33377 (Sept. 24, 2010), at 10 (“According to the IRS, factors that tend to indicate the activity is not biased towards any candidate or party include . . .”) (citing Rev. Rul. 2007-41, *supra* note 80; Kindell & Reilly, *supra* note 87, at 383-84).

or set of candidates, then a prohibited campaign activity has occurred.

Here, ALEC's in-kind contributions violate each of the four factors set forth in the 2007 Revenue Ruling. The CARE tool is not available to all candidates "on an equal basis"; the tool is not available "to the general public"; the tool is provided free of charge and worth many times the dues paid by ALEC's legislative members; and the tool is available only to "particular candidates," *i.e.*, conservatives and Republicans who are members of ALEC. This bias provides an independent basis upon which to find ALEC in violation of its tax-exempt status.

In 1983, the Supreme Court held in *Regan v. Taxation Without Representation of Wash.*, 461 U.S. 540, 544 (1983) that the classifications of various tax-exempt and tax-deductible organizations, such as 501(c)(3) nonprofit organizations and 501(c)(4) action organizations, reflected Congress's desire to subsidize some nonprofit activities more than others, and that the proscriptions placed upon 501(c)(3) organizations' political activities were to prevent "public funds [from] be[ing] spent on an activity Congress chose not to subsidize." This belief that tax-exempt, tax-deductible organizations should refrain from certain political activities—so as not to misuse taxpayers' subsidies—remains at the core of what it means to be a 501(c)(3) charity today.

ALEC has long pursued a non-charitable set of activities: it has brazenly helped to conceive, design, promote, and distribute partisan political campaign software under the guise of constituent service. It has also supplied the voter data from this software directly to the Republican National Committee on an ongoing basis. CMD thus submits to the Service that ALEC has intervened in countless political campaigns, on behalf of its overwhelmingly Republican membership, in stark violation of its duties under 26 U.S.C. § 501(c)(3).