THIRD SUPPLEMENTAL SUBMISSION TO THE

INTERNAL REVENUE SERVICE

UNDER THE TAX WHISTLEBLOWER ACT

26 U.S.C. § 7623(b)

REGARDING UNDERREPORTING OF LOBBYING AND

OPERATION IN FURTHERANCE OF

PRIVATE CORPORATE INTERESTS

IN CONTRAVENTION OF 26 U.S.C. § 501(c)(3)

TAX-EXEMPT CHARITABLE STATUS

BY THE AMERICAN LEGISLATIVE EXCHANGE COUNCIL

OCTOBER 5, 2016

IRS SUBMISSION NO. 2012-004434

INTRODUCTION

This memorandum is submitted as a supplement to IRS Submission No. 2012-004434.

On April 20 2012, Complainant filed Form 211 along with a memorandum ("Original Submission") to the Internal Revenue Service ("IRS"), pursuant to 26 U.S.C. § 7623 *et seq.* (the "Tax Whistleblower Act"). The Original Submission reported that the American Legislative Exchange Council ("ALEC") is misclassified as a nonprofit organization under Section 501(c)(3) of the Internal Revenue Code because the primary purpose of the organization is to provide a conduit for its corporate members and sponsors to lobby state legislators. These corporate members and sponsors then deduct the costs of their lobbying efforts from their taxes as charitable contributions. The Original Submission provided examples and documentation of ALEC's illegal lobbying activities.

Since then, Complainant has filed two supplemental memoranda providing extensive additional evidence of ALEC conduct in violation of its 501(c)(3) status.

On July 29, 2013, Complainant filed a supplemental memorandum ("First Supplement") to the Original Submission documenting a "scholarship" scheme in which ALEC's state legislative chairs directly solicit tax-exempt donations from corporations and lobbyists for an ALEC fund used to subsidize the attendance of lawmakers and their families at ALEC conferences, conferring a direct private benefit on both the legislators and the corporate donors. The First Supplement further detailed how ALEC uses deceptive reporting tactics to conceal the nature and extent of the funding for these gifts.

Complainant filed a second supplemental memorandum on May 12, 2015, ("Second Supplement") further documenting the central non-exempt lobbying purpose of ALEC, and the private benefit that lobbying confers on its member corporations, despite ALEC's formalistic changes made under increased public scrutiny. The Second Supplement included documents from 21 current and former corporate members and sponsors of ALEC stating that their purpose of participating in ALEC was to influence legislation of benefit to those corporations. The Second Supplement also contained the conclusion of Minnesota's Campaign Finance and Public Disclosure Board, after an in-depth investigation, that "ALEC's primary purpose is the passage of legislation in the varying states and that all of its wide-ranging activities are in support of this primary purpose." The Supplement explained why ALEC's creation of an affiliated 501(c)(4) organization, the Jeffersonian Project, controlled by board members hand-picked by ALEC, did nothing to change ALEC's primary purpose and activities, or cure its improper and unlawful misuse of its tax-exempt status.

This third supplemental memorandum ("Third Supplement") focuses on the intentional misuse of ALEC by the ExxonMobil Corporation (hereinafter "Exxon") to advance legislation for the direct benefit of the corporation. For most of the past two decades, Exxon has used ALEC as a key asset in its multi-billion dollar campaign to sow uncertainty about climate science, undermine international climate treaties and block any legislation that would impose emission reductions. Exxon has also used ALEC to advance its legislative goals concerning cap-and-trade policies, fracking, the Keystone Pipeline, and the Obama Administration's Clean Power Plan. Over a 17-

year period, the corporation and its foundation poured more than $1.7 million into ALEC's operations in order to finance lobbying activity by ALEC on legislation and public policies that interest and benefit the corporation, while improperly and illegally claiming a tax deduction for those expenditures. That activity constitutes a violation of the Internal Revenue Code in its own right, and further reinforces the case against ALEC for abuse of its 501(c)(3) charitable status.

The additional documentation for this supplemental submission is attached and referenced by exhibit number (beginning with Exhibit 58, where the Second Supplement left off).

I. EXXON HAS IMPROPERLY USED ALEC AS A CONDUIT FOR LOBBYING STATE LEGISLATORS AND ADVANCING THE CORPORATION'S LEGISLATIVE GOALS.

Publicly available information from Exxon establishes that Exxon contributed at least $1,730,200 to ALEC between 1998 and 2014 in support of the organization's activities to influence state legislators concerning the corporation's legislative agenda related to climate change, air pollution, and fossil fuel extraction. Reports by Exxon show that the company gave ALEC $981,700 directly from the corporation and $748,500 through its foundation, the Exxon Foundation.

The table below shows Exxon's reported funding of ALEC since 1998, but the actual amount may be substantially larger. For example, ALEC told the IRS on its schedule B form that it received $295,000 in 2005 from "ExxonMobil Corporation," while Exxon's giving report shows only $90,000 in funding for ALEC from the corporation. (Ex. 58)

TABLE 1
EXXON FUNDING OF ALEC, 1998-2014

Year	Amount	Funding Entity	Stated Purpose	Source
1998	$15,000	Corporate	"Conference for freshman legislators"	1998 Exxon Education Foundation report (Ex. 59)
2000	$70,000	Foundation	"General Support"	2000 IRS Form 990 (Ex. 60)
2001	$70,000	Corporate	"Annual Conference": $50,000 "Annual Summit": $20,000	2001 Worldwide Giving Report (Ex. 61)
2001	$10,000	Foundation	"General Support"	2001 Worldwide Giving Report (Ex. 61)
2002	$163,200	Corporate	"Annual Conference": $50,000; "General operating Support": $80,000 "Membership": $5,000 "Project support": $25,000 "Other": $3,200	2002 Worldwide Giving Report (Ex. 62)
2002	$30,000	Foundation	"General Operating Support"	2002 Worldwide Giving Report (Ex. 62)
2003	$78,000	Corporate	"Annual Conference"	2003 Worldwide Giving Report (Ex. 63)
2003	$290,000	Foundation	"Energy and climate change": $50,000 "General Operating Support": $100,000 "Global Climate Change": $140,000	2003 Worldwide Giving Report (Ex. 63)
2004	$55,000	Corporate	"Annual Conference"	2004 Worldwide Giving Report (Ex. 64)
2004	$167,000	Foundation	"Energy and Climate Change": $62,000 "Climate Change": $75,000 "General Operating Support": $30,000	2004 Worldwide Giving Report (Ex. 64)
2005	$90,000	Corporate	"Annual Conference"	2005 Worldwide Giving Report (Ex. 65)

2005	$151,500	Foundation	"Energy sustainability project (climate change)": $80,000 "Climate change environmental outreach": $21,500 "General operating support": $30,000 "Project Support": $20,000	2005 IRS Form 990 (Ex. 66)
2006	$56,000	Corporate	"Annual meeting host committee sponsorship": $15,000 "Annual meetings sponsorship": $31,000 "General Support": $10,000	2006 Worldwide Giving Report⍰(Ex. 67)
2006	$30,000	Foundation	None	2006 Worldwide Giving Report⍰(Ex. 67)
2007	$31,000	Corporate	None	2007 Worldwide Giving Report⍰ (Ex. 68)
2008	$56,000	Corporate	None	2008 Worldwide Giving Report⍰ (Ex. 69)
2009	$47,500	Corporate	"Annual Conference: $15,000 General Support: $31,000 Other: $1,500	2009 Worldwide Giving Report⍰ (Ex. 70)
2010	$64,000	Corporate	"General Support": $39,000 "National Chairman's Reception": $25,000	2010 Worldwide Giving Report⍰ (Ex. 71)
2011	$86,500	Corporate	None	2011 Worldwide Giving Report⍰ (Ex. 72)
2012	$59,000	Corporate	"2012 Annual Conference": $25,000 "Private Sector and Energy and Tax Task Force": $34,000	2012 Worldwide Giving Report⍰ (Ex. 73)
2013	$49,000	Corporate	"2013 Annual Conference": $15,000 "Private Sector, Energy and Tax Task Forces": $34,000	2013 Worldwide Giving Report (Ex. 74)
2014	$61,500	Corporate	"Annual Conference": $25,000 "Private Sector-Jefferson Club Membership": $25,000 "Other Contributions, each under $5,000": $11,500	2014 Worldwide Giving Report (Ex. 75)

A. Exxon used ALEC as one of five "fund allocators" as part of an explicit plan to sow doubt about climate science and forestall legislation limiting carbon emissions.

Exxon's funding of ALEC's work around climate-related legislation was part of an explicit plan by the corporation and its allies in the fossil fuel industry to use the tax-exempt group to advance its private interest in sowing doubt over climate science, undermining international climate treaties, and preventing the enactment of laws that would limit emissions of carbon dioxide and other greenhouse gases. As reflected in our earlier submissions, ALEC's primary use of such member-supplied information is not to "educate" the public, but to lobby politicians in order to influence legislation – in this case legislation regarding climate change.

Despite early acknowledgment by Exxon scientists that the burning of fossil fuels was the most likely cause of climate change, Exxon bankrolled an aggressive lobbying and advertising campaign aimed at eroding confidence in climate science. Exxon's leading climate researcher, Brian Flannery, contributed to a 1985 Department of Energy report that predicted global warming by the end of the 21st century of up to 6 degrees Celsius. Notwithstanding its knowledge of the gravity and portent of global warming, Exxon took a public stance of climate denial in response to the Clinton Administration's agreement to the Kyoto Protocol, adopted in 1997, which committed participating nations to reductions in greenhouse gas emissions. (Ex. 76)

In 1998, Exxon helped found the Global Climate Science Team, a small group of prominent industry and public relations leaders, for the express purpose of creating uncertainty around climate science. One of the Team's founding members, Steven Milloy, had previously headed a similar organization formed to undermine the science around the health threats of secondhand smoke, funded by tobacco giant Phillip Morris. (Ex. 77 at 36)

In April 1998, the Global Climate Science Team developed a "Global Climate Science Communications Action Plan," authored by the American Petroleum Institute (API), to "inform the American public that science does not support the precipitous actions Kyoto would dictate, *thereby providing a climate for the right policy decisions to be made.*" (emphasis added) To accomplish that goal, the plan envisioned spending more than $600,000 on paid advertising and $5 million over two years or more to

> [d]evelop and implement a direct outreach program to inform and educate members of Congress, state officials, industry leadership, and school teachers/students about the uncertainties in climate science. This strategy will enable Congress, state officials and industry leaders [] to raise such serious questions about the Kyoto treaty's scientific underpinnings that American policy-makers not only will refuse to endorse it, they will seek to prevent progress toward implementation at the Buenos Aires meeting in November or through other ways.

The plan identified specific sources of funding for that program, including API "and its members," of which Exxon was a major one, and five "potential fund allocators," including ALEC. Exxon lobbyist and environmental advisor Randy Randol was identified as one of the Team members who contributed to the plan's development. (Ex. 78)

Exxon quickly took steps to implement the use of ALEC as an "allocator" for funding a portion of the Climate Action Team's communications and lobbying plan. Exxon funding for ALEC increased from $15,000 in 1998 to $70,000 in 2000 and $80,000 in 2001, before jumping to $190,200 in 2002. Between 2002 and 2005, Exxon and its foundation poured more than $1 million into ALEC, of which $428,500 was specifically earmarked for work around climate change.

Exxon followed through on other elements of the plan as well. According to corporate giving data compiled by Greenpeace from Exxon's own reports, the corporation spent $30.9 million between 1998 and 2014 on nonprofit organizations that ran climate denial campaigns consistent with the goals of the Global Climate Science Communications Plan. Exxon funneled $6.5 million to the five groups named as "fund allocators" in the plan, (ALEC, Committee for a Constructive Tomorrow (CFACT), Competitive Enterprise Institute (CEI), Frontiers of Freedom, and George C. Marshall Institute), during the same period. (Ex. 79; Ex. 80) Both CFACT and CEI are regular participants in ALEC meetings. (See, e.g., Ex. 81)

ALEC projects funded by Exxon were denoted as "Energy and climate change," "Global Climate Change," "Climate Change," "Energy sustainability," and "Climate change environmental outreach." Exxon's funding to ALEC in recent years, although not earmarked for climate-related purposes in public documents, has continued to help ALEC advance its climate science-denial policies.

Exxon's financial support of ALEC coincides with ALEC's lobbying activity around climate science and regulation of air pollution from burning fossil fuels that mirrors the corporation's legislative strategy and interests; with ALEC's publication of reports and sponsorship of conferences for state legislators to promote climate denial; and with ALEC's tracking of state efforts to promote the Kyoto Protocol and regulate greenhouse gases.

1. <u>ALEC's lobbying activities around climate change coincide with Exxon's funding and corporate goals.</u>

Between 1998 and 2003, ALEC adopted more than a dozen "model" bills aimed at undermining confidence in the science behind the causes of climate change, opposing implementation of the Kyoto Protocol, and blocking regulation of greenhouse gases and other forms of pollution from burning fossil fuels. ALEC renewed its support for many of those bills in 2013 and adopted additional measures. As detailed in our earlier submissions, ALEC maintains a number of Task Forces focused on different policy areas, each of which is made up of state legislators and representatives from the private sector, who vote on adoption of "model" bills as equals. Once approved by the ALEC board, those bills are widely distributed and promoted to ALEC legislators for introduction and passage in their home states.

TABLE 2
ALEC CLIMATE DENIAL AND AIR POLLUTION LEGISLATION[1]

ALEC "Model" Bill	Approved by ALEC	Enacted	Introduced, but not Enacted
State Responses to Kyoto Climate Change Protocol (Ex. 82.1-82.9)	1998	AL, CO, KY, IL, WV (1998) OK, WY (1999)	MS (1999)
Interstate Research Commission on Climatic Change Act	1998 Re-Approved 2013		
Ozone Attainment State Implementation Plan Act (Ex. 82.10-82.12)	1998	IL (1997) IA (1999)	TX (1997)

[1] This table only shows legislation based on ALEC "model" bills that CMD and Common Cause were able to identify. ALEC has touted introduction and passage in additional states, as noted in the text, but without specific information.

Environmental Literacy Improvement Act (Ex. 82.13-82.27)	2000 Re-Approved 2013	LA (2008) TX School Board (2009) SD (2010) TN (2011) KY (2013)	OK (2009) KY, NM (2010) NM, OK (2011) AZ, CO, KS, OK (2013)
The Common Sense Scientific and Technical Evidence Act (Ex. 82.28-82.30)	2000, Re-Approved 2012		MO (2001) MS (2002) PA (2003)
State Protection of Air Quality Related Values Act (Ex. 82.31-82.34)	2000		TX (2001) MD (2002) WV (2005)
Verifiable Science Act (Ex. 82.35-82.42)	2001 Re-Approved 2013		GA, MO, VA (2001) WV (2011) WV (2012) WV (2013) WV (2014)
Power Plant Siting Act (Ex. 82.43-82.44)	2002 Re-Approved 2013	VA (2007)	
Performance Based Permitting Act (Ex. 82.45-82.50)	2002		FL (2002) FL, WV (2004) FL, WV (2005)
Resolution in Opposition of Carbon Dioxide Emission Standards	2002		
Resolution on Federal Multi-Emission Reductions Legislation (Ex. 82.51-82.54)	2003		SD, MO, WY (2005)
An Act Conditioning Regulations of Non-Pollutant Emissions on Science	2003 Re-Approved 2013		
Resolution Concerning Legislative Approval of Proposals and Regulations for Controlling Greenhouse Gas Emissions Associated with Global Climate Change	2003		
Resolution in Opposition to EPA's Regulation of Greenhouse Gases from	2007		

Mobile Sources			
Resolution in Opposition to EPA's Plan to Regulate Greenhouse Gases under the Clean Air Act (Ex. 186-190)	2008	AL, IA, IN, KS, KY, MI, MO, MT, ND, PA, UT, VA, WY (2011)	AK, FL, IA, IL, KY, MN, MO, MT, NH, OH, OK, TX, VA, WV (2011) GA (2012)
State Withdrawal from Regional Climate Initiatives (Ex. 186, 189)	2010	ME (2011)	CT, DE, IA, MN, MT, NH, NJ, NM, OR, WA (2011)
State Implementation Plan Requirements for Ozone and Particulate Matter Attainment (Ex. 82.55-82.56)	2013	IL (2013)	IL (2006)
Resolution in Opposition to a Carbon Tax	2013		

In 1998, ALEC's Natural Resources Task Force adopted three "model" bills, later approved by ALEC's board, aimed at blocking state implementation of the Kyoto Protocol and ozone reductions: the "State Responses to Kyoto Climate Change Protocol," the "Interstate Research Commission on Climatic Change Act," and the "Ozone Attainment Implementation Plan Act."

The "State Responses to Kyoto Climate Change Protocol" expressed opposition to the treaty and prohibited state environmental agencies from "propos[ing] or promulgat[ing] any new regulations intended in whole or in part to reduce emissions of greenhouse gases" prior to the treaty's ratification by the U.S. Senate. (Ex. 83)

The "Interstate Research Commission on Climatic Change Act" proposed creating a special commission to "address scientific and economic aspects of the issue of climate change." The bill's legislative findings declared that human activity '*may* lead to demonstrable changes in climate," "*may* lead to deleterious, neutral, or possibly beneficial climatic changes" and that "a great deal of scientific uncertainty surrounds the nature of these prospective changes." The proposed commission was instructed to address the "beneficial or deleterious" influences of climate change "in an evenhanded manner," and to include research on the "possible benefits" of climate change. (Ex. 84) ALEC re-approved this model bill in 2013.

The "Ozone Attainment Implementation Plan Act" required legislative review of any state environmental agency proposed actions "related to the atmospheric transport of ozone" after the federal EPA's Ozone Transport Assessment Group recommended "several emission control options for states to consider." (Ex. 85)

During the next two legislative sessions, 17 states passed legislation or resolutions critical of the Kyoto Protocol and opposing ratification. (Ex. 86; Ex. 87) At least eight states passed ALEC's "State Responses to Kyoto Climate Change Protocol" legislation with identical or very similar language (Alabama, Colorado, Illinois, Kentucky, Oklahoma, West Virginia, and Wyoming). (Ex. 86 at 20) The bill was introduced in Michigan as well, with strong support from Governor John Engler, an ALEC member and the group's 1993 Thomas Jefferson Freedom Award recipient. (Ex. 88) It ultimately failed in the Senate, but the result was to chill any climate change work in Michigan. (Ex. 86 at 42-26)

Between 2000 and 2003, ALEC adopted and promoted at least ten additional "model" bills related to climate science and air pollution from burning fossil fuels: the "Environmental Literacy Improvement Act"; "The Common Sense Scientific and Technical Evidence Act"; "Verifiable Science Act"; "State Protection of Air Quality Related Values Act; Power Plant Siting Act"; "Performance Based Permitting Act";

"Resolution in Opposition of Carbon Dioxide Emission Standards"; "An Act Conditioning Regulations of Non-Pollutant Emissions on Science"; "Resolution Concerning Legislative Approval of Proposals and Regulations for Controlling Greenhouse Gas Emissions Associated with Global Climate Change"; and "Resolution on Federal Multi-Emission Reductions Legislation." (Ex. 89; Ex. 90)

ALEC's "Environmental Literacy Improvement Act" set its sights on ensuring that even public schools promoted Exxon's goal of undermining climate science. The "model" bill mandates that all environmental education programs and activities "provide a range of perspectives presented in a balanced manner," and prohibits "instruction in political action skills" and "encourage[ing] political activities. It calls for establishing an Environmental Education Council dominated by people with economics and non-environmental science backgrounds to develop an acceptable list of educational resources and to "actively seek countervailing scientific and economic views on environmental issues." (Ex. 91)

In 2007, ALEC adopted a "Resolution in Opposition to EPA's Regulation of Greenhouse Gases from Mobile Sources," in response to the U.S. Supreme Court's decision in *Massachusetts v. EPA* that the Environmental Protection Agency (EPA) has authority to regulate greenhouse gases under the Clean Air Act. The resolution called on the EPA not to exercise that authority, arguing that greenhouse gases "cannot reasonably be 'anticipated to endanger public health or welfare'" as required by the Clean Air Act. Indeed, ALEC's resolution maintained that "quite the opposite was true," noting that "[d]uring the warming of the past 100 years, global

GDP has increased 18-fold, average life span has doubled, and per capita food supplies increased." In other words, climate change is good for us. (Ex. 92)

ALEC expanded on that position in 2008, adopting a "Resolution in Opposition to EPA's Plan to Regulate Greenhouse Gases under the Clean Air Act," claiming that the EPA did not have authority to regulate greenhouse gases without further action by Congress. (Ex. 93) In a 2011 press release, entitled "ALEC State Legislators Push Back EPA's Onslaught of Regulations," ALEC boasted that "a total of 22 states have introduced resolutions in opposition to EPA's plan to regulate greenhouse gases, and 13 of these states have succeeded in adopting the resolution." ALEC stated that those resolutions were "modeled after" ALEC's. The release concluded by saying that, "ALEC will continue to support the efforts of state legislatures in resisting the EPA's regulatory agenda." (Ex. 94) These are clear admissions by ALEC of its lobbying activity, none of which was reported to the IRS.

ALEC re-approved many of its climate-related "model" bills in 2013, and adopted two additional ones: "Resolution in Opposition to a Carbon Tax," and "State Implementation Plan Requirements for Ozone and Particulate Matter Attainment."

2. <u>ALEC published reports and convened conferences for lawmakers aimed at promoting Exxon's strategy and positions on climate science, the Kyoto Protocol, and regulation of pollution from burning fossil fuels.</u>

Based on public disclosures, the peak years of Exxon's funding of ALEC were 2003 to 2005, apparently in response to "an unprecedented period of activity and innovation" in the states after 2000 to address climate change and regulate carbon emissions. (Ex. 86 at 20) It was during this period that Exxon earmarked $428,500 in funding to ALEC for work on "climate change," and that ALEC stepped up its climate change work, publishing numerous reports and convening multiple events on the issue for state legislators.

Exxon gave $368,000 to ALEC in 2003. In January of that year, ALEC published a 50-page report on climate change entitled *Energy, Environment, and Economics: A Guide for State Legislators*, a classic lobbying document that was made available only to ALEC-member legislators. The legislative guide repeated Exxon's mantra of "uncertain" science and warned of the dangers of carbon trading plans and state legislation "to promote the goals of the Kyoto Protocol." (Ex. 89)

The guide's introduction by ALEC's chairman summed up the group's stance on the Kyoto Protocol and legislation around climate change, closely tracking the fossil fuel industry's position:

> In 1997, an ill-founded international agreement to limit so-called "greenhouse gases" and effectively reduce hydrocarbon fuel consumption was conceived under the auspices of concern about "global warming." This agreement, entitled the Kyoto Protocol, reflected neither scientific uncertainties nor economic reality, and was driven primarily by public advocacy and supported by foreign governments attempting to get a competitive edge in the global marketplace. ...
>
> The greatest threat to national independence is the regulatory burden placed upon the marketplace from fuel supplies to emission standards. The focus of the American Legislative Exchange Council is to assist you with a cost-benefit evaluation of fuel supplies and energy production in the states and of the economic impact of carbon dioxide or multi-pollutant standards that may have little, if any, measurable effect on air quality or the global climate.

(Ex. 89 at 1)

In addition to listing state greenhouse gas legislation that it opposed, the legislative guide contained the full text of six ALEC "model" bills related to climate science and the regulation and siting of fossil fuel power plants. (Ex. 89 at 22-36)

ALEC's "Resolution in Opposition of Carbon Dioxide Emission Standards" states that:

> **Whereas,** 85% of our national energy consumption is based upon fossil fuels; and
>
> **Whereas,** carbon dioxide is a natural by-product of fossil fuel combustion; and
>
> **Whereas,** carbon dioxide is not classified as an ambient air pollutant nor a hazardous air pollutant, but is a beneficial gas that contributes to the ecological health of all natural resources; and
>
> **Whereas,** carbon dioxide is a non-toxic gas found naturally in the environment; ...
>
> **Be It Resolved,** the American Legislative Exchange Council is opposed to mandatory or "voluntary" carbon dioxide emission standards and the use of greenhouse transferable credits as a tool for environmental policy or regulation.

(Ex. 89 at 36)

The publication was made available to state legislators and provided to them at a January 2003 two-day "Energy Sustainability Academy" in Denver, Colorado organized by ALEC for state legislators. The training session for lawmakers featuring known climate-change deniers such as James Taylor, of the Heartland Institute, and Marlo Lewis and Christopher Horner, then of the Competitive Enterprise Institute (CEI), another one of the five "fund allocators" identified in the API communications plan. (Ex. 95)[2]

---

[2] Both Heartland and CEI are also heavily funded by Exxon. Exxon has contributed more than $676,500 to the Heartland Institute since 1998, and more than $2 million to CEI. (Ex. 80)

ALEC released at least seven more reports on climate change and related regulations during this period, according to a 2005 version of a members-only web page for the group's Natural Resources Task Force[3] obtained by the Center for Media and Democracy. Those reports include the following: *Unintended Consequences: Northeastern State Proposals to Limit Greenhouse Gas Emissions*; *Global Warming and the Kyoto Protocol: Paper Tiger, Economic Dragon*; *Why States Should Reject Multi-"Pollutant" Regulation of Carbon Dioxide*; *Get Your Money for Nothing and Your Credits for Free*; *Is There Legal Authority to Award Regulatory Credits for Greenhouse Gas Reductions?*; *The Anti-Energy Manifesto of the State Attorneys General*; and *'Sons-of-Kyoto': Greenhouse Gas Legislation in the States.* (Ex. 90)

The *'Sons-of-Kyoto'* report was published in 2004, the year that Exxon gave $219,000 in funding to ALEC. (Ex. 96) The report claimed the Kyoto Protocol did "not have a scientific standing nor did it reflect economic realities," noted with alarm the spread of state regulation of greenhouse gases, and concluded that:

> Regardless of the scientific uncertainty and the economic costs, there is an orchestrated movement to force the American public to bear the costs of implementing Kyoto-like regulation and develop a cap and trade carbon emission system.

(Ex. 96 at 3)

ALEC reiterated this position in its "ALEC Energy Principles" document, first adopted in 2002, and subsequently amended in 2008 and 2011, saying that "Global

---

[3] As discussed in prior submissions, ALEC's task forces are sub-groups of state legislators, corporate executives and lobbyists, and other private sector representatives who meet to discuss and vote on model bills as equals.

Climate Change is Inevitable. Climate change is a historical phenomenon and the debate will continue on the significance of natural and anthropogenic contributions." (Ex. 97) This questioning of near-universally accepted principles of climate science remains at the core of ALEC's legislative activities around the regulation of greenhouse gases, fulfilling the role described for ALEC in the 1998 Exxon-backed "Global Climate Communications Action Plan."

In 2005, the year that Exxon gave $241,500 in funding to ALEC, the Director of ALEC's Natural Resources Task Force authored a publication entitled *Top 10 Myths About Global Warming* claiming, among other things, that it is a "myth" that "[s]cientists have conclusively proven that human activity is causing the earth to warm," that the science around sea-level rise is "very unsettled," and that increased carbon dioxide from burning fossil fuels is good for plant growth.[4] (Ex. 98) This publication, like the others, was used during this period of high Exxon funding to teach climate science denial to hundreds of state legislators.

In addition to the January 2003 conference on "energy sustainability," ALEC regularly features workshops and speakers on climate denial and regulation of greenhouse gases, all nakedly designed to sell legislators on Exxon's position and influence legislative outcomes. At the organization's 2001 States & Nation Policy Summit, legislators were given "a list of states that are introducing multipollutant emissions standards that include carbon dioxide," and Chris Homer of CEI (also funded by Exxon) gave a presentation on "the negative impact that passage of this

---

[4] Kelli Kay, *Top 10 Myths About Global Warming*, American Legislative Exchange Council 18-21 (2005), *available at* http://www.alecexposed.org/w/images/d/d9/ALEC_Climate_Myths.pdf.

legislation will have on free trade," noting that "Carbon Dioxide is not a scientifically proven air quality reducer." (Ex. 90 at 3) Similarly, ALEC's Policy Summit held in Scottsdale, Arizona in December 2003 included a workshop for legislators on the "economic impact of climate change policies"; ALEC's July 2004 Annual Meeting included a "presentation on the New England Regional Greenhouse Gas Initiative" and a workshop on "Climate Change"; and ALEC's December 2004 Policy Summit included presentations on "air quality improvements, initiatives to regulate greenhouse gases in northeastern states, and state efforts to mandate renewable energy portfolio standards." (Ex. 90 at 2-3)

ALEC's 2011 Annual Meeting even included a session for legislators entitled, "Warming Up to Climate Change: The Many Benefits of Increased Atmospheric CO2." (Ex. 99)

At ALEC's 2014 Annual Meeting in Dallas, legislators heard a presentation from Heartland Institute President Joseph Bast maintaining that:

- "There is no scientific consensus on the human role in climate change." ⍰
- "There is no need to reduce carbon dioxide emissions and no point in attempting ⍰to do so." ⍰
- "Carbon dioxide has not caused weather to become more extreme, polar ice and ⍰sea ice to melt, or sea level rise to accelerate. These were all false alarms." ⍰
- The International Panel on Climate Change (IPCC) "is not a credible source of ⍰science or economics." ⍰
- "The likely benefits of man-made global warming exceed the likely costs."

(Ex. 100; Ex. 101)

CFACT also led a workshop at the ALEC annual meeting and distributed a document, *Climate change talking points 2014*, coaching legislative members on how to talk about "man-made climate fears." The document leads off with a statement that, "The scientific reality is that on virtually every claim – from A to Z – the claims of the promoters of manmade climate fears are falling short or going in the opposite direction." (Ex. 100; Ex. 102; Ex. 81) Exxon was among the one third of the sponsors bankrolling the Annual Summit that year that were fossil fuel related companies, trade associations or front groups, including Exxon. (Ex. 103)

B. Exxon has also used ALEC to promote the corporation's position on other legislation concerning air pollution and fossil fuel extraction.

1. <u>Opposition to cap-and-trade agreements.</u>

Exxon opposed the adoption of cap-and-trade programs designed to reduce greenhouse gas emissions by Congress and the states, and paid to sit at the table with Koch Industries and other fossil fuel companies on ALEC's Natural Resources Task Force when the group drafted anti-cap-and-trade legislation. (Ex. 104; Ex. 105)

After cap-and-trade died in Congress, ALEC's Energy, Environment and Agriculture Task Force Director Clint Woods identified the Regional Greenhouse Gas Initiative (RGGI) between ten east coast states as the "new battlefield worth reconsidering in light of threat No. 1 being shelved." (Ex. 106) In 2010, ALEC adopted a model bill, "State Withdrawal from Regional Climate Initiatives," aimed at getting states to pull out of RGGI, the Western Climate Initiative, and the Midwestern Greenhouse Gas Accord. (Ex. 107; Ex 108)

Over the next two years, bills based on ALEC's language were introduced in at least 11 states, and passed in Maine and New Hampshire (New Hampshire's governor vetoed the bill).

TABLE 3
ALEC ANTI-CAP-AND-TRADE LEGISLATION

State	Bill	Year	Status
Delaware	H 86	2011 (Ex. 109)	Introduced
Iowa	HR 4	2011 (Ex. 110)	Introduced
Maine	S 231	2011 (Ex. 111)	Adopted
Michigan	HIR 277	2010 (Ex. 112)	Introduced
Michigan	HR 134	2012 (Ex. 113)	Introduced
Minnesota	S 235	2011 (Ex. 114)	Introduced
Minnesota	SF 293	2011 (Ex. 114.1)	Introduced
Minnesota	HF 509	2011 (Ex. 114.1)	Introduced
Montana	HJR 18	2011 (Ex. 114.2)	Died in committee
New Hampshire	HB 519; LSR 475	2011 (Ex. 114.3)	Passed House (Note: amendment was placed in the bill that removed ALEC language)
New Hampshire	SB 154	2011 (Ex. 114.4)	Vetoed by Governor
New Hampshire	HB 1490	2012 (Ex. 114.5)	Adopted
New Jersey	A 1500	2012 (Ex. 114.6)	Introduced
New Jersey	S 276	2012 (Ex. 114.7)	Introduced
New Mexico	HJM 24	2011 (Ex. 114.8)	Introduced
New Mexico	SB 190	2011 (Ex. 114.9)	Introduced
Oregon	HJR 9	2011 (Ex. 114.10)	Introduced
Washington	HJM 4003	2011 (Ex.	Introduced

		114.11)	
Washington	S 5096	2011 (Ex. 114.12)	Introduced

2. Lax fracking regulations.

Exxon is America's largest natural gas producer and an aggressive proponent of the controversial process of hydraulic fracturing, or "fracking," to extract previously untapped natural gas reserves. In 2012, Exxon's CEO Rex Tillerson told an audience of energy executives that state and local regulation "has become an obstacle to getting anything done." "This type of dysfunctional regulation is holding back the American economic recovery, growth, and global competitiveness," Tillerson said. (Ex. 115) The company spends millions of dollars each year on pro-fracking advertising and lobbying against fracking regulations. (See, e.g., Ex. 116)

In 2011, Exxon presented—and ALEC adopted—a model bill, "Disclosure of Hydraulic Fracturing Fluid Composition Act," designed to make it more difficult for the public to discover what chemicals are being pumped underground during fracking. (Ex. 117) Legislation based on that model has been introduced in at least nine states.

TABLE 4
ALEC FRACKING LEGISLATION

State	Bill	Year	Status

Florida	HB 745	2013 (Ex. 118)	Passed House
Florida	SB 1776	2013 (Ex. 119)	Died in committee
Florida	HB 71	2014 (Ex. 123.1)	Introduced
Florida	H 157	2014 (Ex. 123.2)	Died in committee
Illinois	H 3897	2011 (Ex. 123.3)	Introduced
Illinois	HB 2615	2013 (Ex. 121)	Introduced
Indiana	H 1049	2011 (Ex. 123.4)	Introduced
Michigan	HB 4061	2013 (Ex. 123)	Introduced
Nebraska	L 877	2011 (Ex. 123.5)	Introduced
New Mexico	HB 187	2012 (Ex. 123.6)	Introduced
New Mexico	HB 136	2013 (Ex. 120)	Introduced
New York	A 8805	2011 (Ex. 123.7)	Introduced
New York	S 5879	2011 (Ex. 123.8)	Introduced
Pennsylvania	SB 1226	2011 (Ex. 123.9)	Introduced
Wyoming	SF 60	2012 (Ex. 123.10)	Introduced
Wyoming	SF 157	2013 (Ex. 122)	Introduced

ALEC has adopted other fracking measures that benefit Exxon as well. In 1995, ALEC adopted a resolution, "Resolution on Responsible Resource Development," supporting continued regulation of fracking by the states instead of the EPA. (Ex. 124) ALEC adopted a similar resolution in 2009, "Resolution to Retain State Authority over Hydraulic Fracturing," which would preempt government at both the local and federal level from regulating hydraulic fracturing. (Ex. 125) Both resolutions were reauthorized in 2015. In 2012, ALEC distributed a report to state legislators, *Economy Derailed: State-by-State Impacts of the EPA Regulatory Train Wreck*, promoting those and other pro-industry policies. (Ex. 126)

That same year, ALEC's Energy, Environment and Agriculture Task Force director, Todd Wynn, touted in a blog post that ALEC had been at the forefront of the effort to retain state sovereignty over fracking. (Ex. 127) In 2014, ALEC hosted a panel discussion for legislators and local elected officials featuring API's Karen Moreau, who compared the anti-fracking movement and environmental community to the rise of Hitler and Fascism. (Ex. 128)

3. Approval of the Keystone Pipeline.

Exxon stood to gain from construction of the Keystone XL Pipeline, "as the U.S. oil giant owns most of Imperial Oil and also owns Gulf Coast refineries set up to handle the heavier crude from up north." (Ex. 129) The corporation lobbied for legislation in Congress to approve the pipeline, (Ex. 130), and in 2013 criticized the federal government's delay in granting permits as "putting politics ahead of an already rigorous regulatory permitting process." (Ex. 131)

During the same period, ALEC similarly carried on activity designed to influence legislation concerning the pipeline. ALEC called on President Obama to approve the pipeline in a 2013 blog post, (Ex. 132), and adopted a model resolution, "Resolution in Support of the Keystone XL Pipeline," in 2011. (Ex. 133) Since then, measures reflecting that resolution have been introduced in 13 states and adopted in ten legislative chambers.

TABLE 5
ALEC KEYSTONE XL PIPELINE LEGISLATON

State	Bill	Year	Status
Florida	H 281	2014 (Ex. 150.1)	Adopted
Indiana	SR 41	2013 (Ex. 136)	Introduced
Indiana	SCR 38	2013 (Ex. 140)	Introduced
Indiana	SR 41	2013 (Ex. 141)	Introduced
Iowa	SR 103	2012 (Ex. 150.2)	Introduced
Kansas	HCR 5014	2013 (Ex. 135)	Passed Senate
Kentucky	SCR 273	2013 (Ex. 142)	Passed Senate
Kentucky	HR 122	2013 (Ex. 143)	Passed House
Louisiana	SCR 115	2013 (Ex. 144)	Introduced
Louisiana	SCR 125	2013 (Ex. 145)	Introduced
Michigan	SCR 6	2013 (Ex. 137)	Passed Senate, House
Minnesota	SF 479	2013 (Ex. 146)	Introduced
Minnesota	HF 987	2013 (Ex. 147)	Introduced
Mississippi	SR 3	2013 (Ex. 138)	Passed Senate
Mississippi	SC 543	2013 (Ex. 148)	Passed Senate, House
Missouri	HCR 19	2013 (Ex. 139)	Introduced
Missouri	HCR 4	2014 (Ex. 150.3)	Introduced
Ohio	HCR 9	2013 (Ex. 134)	Passed House
Ohio	SCR 7	2013 (Ex. 149)	Passed House
South Dakota	HCR 1006	2013 (Ex. 150)	Passed Senate, House
Washington	SJM 8018	2011-2012 (Ex. 150.4)	Introduced

Exxon wasn't the only corporation using ALEC to promote the Keystone XL pipeline. In 2012, ALEC took nine state legislators on an all-expenses-paid two-day trip to tour the Alberta tar sands. Billed as an "ALEC Academy," the trip was financed by TransCanada and other corporations with a direct financial stake in the pipeline, each of which paid ALEC a trip sponsorship fee of $80,000. ALEC later asked those legislators to send "thank you notes" to the corporate lobbyists who hosted the trip. One legislator, Rep. John Adams from Ohio, even introduced "a bill given to him by a TransCanada lobbyist" when he got home, calling for the pipeline's approval. (Ex. 151)

4. Opposition to the Obama Administrations Clean Power Plan.

Exxon has vigorously opposed federal efforts to regulate carbon pollution from power plants, including the Obama Administration's Clean Power Plan (CPP). Exxon's CEO denounced the plan in a 2015 speech, and the corporation provided $1 million in funding to the National Black Chamber of Commerce, which produced a controversial report claiming the CPP would hurt minorities and low-income communities. (Ex. 152; Ex. 153) ALEC, in turn, has adopted two pieces of model legislation opposing the EPA regulation of carbon pollution and the CPP, which have been enacted in at least 23 states.

TABLE 6
ALEC LEGISLATION IN OPPOSITION TO CLEAN POWER PLAN

Bill	Approved by ALEC	Introduced	Passed
A Resolution Concerning EPA Proposed Greenhouse Gas Emission Standards for New and Existing Fossil-Fueled Power Plants (Ex. 154-154.9)	2014	FL, GA, MO, ND, UT, AL, VA (2015)	AZ, LA (2015)
Act Requiring Approval of	2015	AK, AZ, FL, IN, KS,	AR, WV (2015)

State Plan to Implement EPA's Carbon Guidelines (Ex. 154.10-154.31)		MN, MO, NE, NC ND, OK, SC, TN, TX (2015)	

II. EXXON IS FULLY AWARE OF AND COMPLICIT IN ALEC'S LOBBYING ACTIVITIES ON BEHALF OF THE CORPORATION AND CANNOT PROPERLY CLAIM A TAX DEDUCTION FOR ITS ALEC FUNDING.

Exxon has played a leadership role in ALEC for many years, giving it full knowledge of the extensive and improper lobbying activities of the organization on behalf of the corporation and many others. In addition to being one of the organization's top funders for many years, Exxon's agents have long served on ALEC's corporate board and Task Forces responsible for developing legislation on energy issues, and have even proposed specific legislation of benefit to the corporation.

Exxon has funded ALEC since at least 1981, (Ex. 155), and it has sponsored ALEC's meetings of legislators and lobbyists as early as 1984. (Ex. 156) While ALEC has often sought to keep the identities of its corporate members secret, documents show that both Exxon and Mobil, as separate entities, were corporate members of ALEC as early as 1992 and 1994, and Exxon has remained an active corporate member following the companies' merger. (Ex. 157; Ex. 158) ALEC awarded Exxon its "Private Sector Member of the Year" award in 2002, the same year Exxon gave ALEC $193,200. (Ex. 163 at 21)

A. Exxon plays a leadership role in ALEC's governance and has full knowledge of the organization's improper lobbying activities.

Exxon has served on ALEC's Private Enterprise Board (renamed the "Private Enterprise Advisory Council" in 2013, after the Original Submission was filed in 2012), for at least 10 of the last 14 years. The Private Enterprise board is a body comprised of corporate representatives that meets jointly with ALEC's Board of Directors at least once per year, has an ex officio member on the ALEC board of directors, and plays a role in appointing and removing private sector members on ALEC's Task Forces. The Board of Directors is responsible for giving final approval to "model" legislation adopted by the Task Forces. Whereas legislators only pay nominal dues of $50 per year, corporations must pay anywhere between $7,000 and $25,000 per year for a "full membership" to be able to serve on the Private Enterprise board and/or issue Task Forces. (See Original Submission; Ex. 160 at 3-4; Ex. 161; Ex. 162)

TABLE 7
EXXON'S LEADERSHIP ROLE AT ALEC

Year	Private Enterprise Board Membership	Task Force Membership
2003	Walt Buchholtz, Issue Management Advisor (Ex. 163 at 32)	No list available
2004	No membership	No list available
2005	No membership	No list available
2006	No list available	No list available
2007	Walt Buchholtz, Senior Environmental Advisor (Ex. 164)	No list available
2008	Walt Buchholtz, Senior Environmental Advisor (Ex. 165)	No list available
2009	No list available	No list available
2010	Kevin Murphy, U.S. Government Affairs	Kevin Murphy, U.S. Government Relations

	Manager (Ex. 166)	Manager (Ex. 167)
2011	Randy Smith, U.S. Government Affairs Manager (Ex. 168)	Randy Smith, U.S. Government Affairs Manager; Andrew Breslow, Tax Counsel (Ex. 169 at 22, 39)
2012	Randy Smith, U.S. Government Affairs Manager (Ex. 170)	No list available
2013	Randy Smith, U.S. Government Affairs Manager (Ex. 171)	No list available
2014	Cynthia Bergman, U.S. Government Affairs Manager (Ex. 172)	No list available
2015	Cynthia Bergman, U.S. Government Affairs Manager (Ex. 173)	No list available
2016	Cynthia Bergman, U.S. Government Affairs Manager (Ex. 174)	No list available

In 2003, 2007, and 2008, Walt Buchholtz, then Exxon's Senior Environmental Advisor, served on ALEC's Private Enterprise Board. Since 2010, Exxon has assigned its government affairs managers—responsible for overseeing the corporation's lobbying efforts—to serve in that capacity: Kevin Murphy in 2010; Randy Smith from 2011 to 2013; and Cynthia Bergman from 2014 to 2016.

B. Exxon has had a corporate representative on ALEC's internal task force on energy issues for much of the past two decades, giving the corporation a direct and equal say with legislators over adoption of ALEC "model" bills.

ALEC has a number of issue-based task forces (currently ten) comprised of corporate representatives and legislators who propose, craft, and vote on "model" legislation as equals. Once adopted, this model legislation is distributed to thousands of state legislators across the country and introduced as actual bills in many states. (See Original Submission.) The ALEC task force handling energy issues of interest to Exxon was called the Natural Resources Task Force until 2010, when ALEC renamed it as the Energy, Environment and Agriculture Task Force (EEA).

ALEC carefully guards information about corporate membership on its issue task forces. However, it appears that Exxon and/or Mobil has had a seat at the table for much of the past two decades. In 1991, Exxon was listed as a company that "accepted ALEC's invitation" to participate in their "16 issue-area task forces." (Ex. 175 at 23) In 1995, Vicki Jones, a Mobil employee, was listed as the Vice Chair of the Natural Resources Task Force. (Ex. 176 at 5) In 2010, Kevin Murphy, also representing ExxonMobil on ALEC's Private Enterprise Advisory Council, was a member of the EEA Task Force on behalf of ExxonMobil. In 2011, Randy Smith, also representing Exxon on ALEC's Private Enterprise Advisory Council, was a member of the EEA Task Force on behalf of Exxon. (See Table 7) Exxon lobbyists likely served on ALEC's task forces during many other years, but we have only been able to obtain a handful of task force lists. In 2013, Exxon donated $34,000 to ALEC earmarked specifically for ALEC's task forces. (Ex. 74)

C. Exxon has exerted direct influence over legislation adopted and promoted by ALEC in at least one instance.

Exxon has also exerted direct influence over the internal lobbying activity of ALEC by submitting at least one proposal for adoption by ALEC as a "model" bill to be distributed to and promoted by ALEC legislators, private sector members, and staff. The bill, the "Disclosure of Hydraulic Fracturing Fluid Composition Act," was based on a similar measure enacted in Exxon's home state of Texas. (Ex. 177;

Ex. 178) Touted by ALEC as a transparency measure concerning the fluid used by oil and gas companies to break up underground shale in the extraction of natural gas, the bill actually makes it much harder to find out what chemical additives are being pumped underground in the "fracking" process by allowing a corporation to withhold information about any chemical ingredient it declares as a "trade secret." (Ex. 117, 179 at 28)

ALEC adopted Exxon's proposed bill in 2012, and the bill has since been introduced in six state legislatures.[5] (See Table 4; and, e.g., Ex. 180)

D. Exxon has likely claimed improper tax deductions for donations to ALEC as a 501(c)(3) that should have been reported as non-deductible donations to a trade association under 501(c)(6).

As a consequence of the extensive lobbying activities described above, which Exxon conducted through ALEC, Exxon was not entitled to treat its contributions to ALEC as deductible donations to a 501(c)(3) charitable organization. By using a 501(c)(3) charity to promote its legislative agenda, instead of a 501(c)(6) trade association, Exxon benefited from the arms-length appearance of neutrality the charity provided, and likely claimed the full amount of funding as a tax deduction. Comparable payments to a trade association would not be deductible as a business expense unless they were "ordinary and necessary in the conduct of the taxpayer's business," and not used for lobbying or influencing the public with respect to

---

[5] *Id.*; Steve Horn, *ALEC's Fracking Chemical Disclosure Bill Moving Through Florida Legislature*, DESMOG BLOG (Feb. 19, 2014), http://www.desmogblog.com/2014/02/19/alec-exxonmobil-proposed-fracking-fluid-disclosure-bill-moving-through-fl-legislature.

legislation. As a result, Exxon's contributions to ALEC may have been unlawfully deducted from its income.[6]

E. **Exxon may be in violation of both civil and criminal statutes.**

As further set out and documented in our previous submissions, the primary purpose of ALEC is to influence legislation, in violation of its tax-exempt status. The tax code does not allow a deduction from taxes for any donation made in connection with the influencing of legislation. 26 U.S.C. § 162(e). Thus, Exxon's funding of ALEC should be treated as a non-deductible lobbying expense and, given Exxon's active role in promoting ALEC lobbying, Exxon should be liable for any improper tax deductions claimed.

Exxon's conduct with and through ALEC also implicates federal criminal statutes, including 26 U.S.C. § 7206(1), which imposes liability for willful false statements on tax returns; 26 U.S.C. § 7206(2), proscribing the willful aiding or assisting of others—here ALEC—in connection with ALEC's misstatements on its own filings; and 18 U.S.C. § 371, for conspiracy to impede the functions of the IRS.[7]

Under 26 U.S.C. § 7206(1), any person who "[w]illfully makes and subscribes to any return, statement, or other document, which . . . is made under the penalties of perjury, and which he does not believe to be true and correct to every material matter" is criminally liable for that conduct. Further, under 26 U.S.C. § 7206(2),

---

[6] *See* https://www.irs.gov/charities-non-profits/other-non-profits/tax-treatment-of-donations-501-c-6-organizations.
[7] *See United States v. Presbitero*, 596 F.3d 691 (7th Cir. 2009).

these same corporations may be criminally liable for "[w]illfully aid[ing] or assist[ing] in, or procur[ing], counsel[ing], or advis[ing]" ALEC in connection with ALEC's misstatements on its own filings.

Finally, under 18 U.S.C. § 371, these same corporations may have engaged in a conspiracy to defraud the United States. The law defines a conspiracy as an agreement between two or more people, who agree to obstruct, impair, or impede an agency like the IRS from performing its duties, and take a single, overt act in furtherance of this agreement. This overt act does not need to be a criminal act, but simply needs to further the criminal conspiracy. The statute protects the United States not only from loss of money or property, but also protects the integrity of U.S. agencies by covering acts that interfere with or obstruct lawful governmental functions by deceit, craft, or trickery, by means that are dishonest.[8] The agreement to conspire only needs to be an agreement to impede the government's lawful functions, and it does not require that the government actually be harmed.[9]

III. Exxon's funding of ALEC to advance the corporation's legislative goals reinforces the complaint against ALEC for abuse of its 501(c)(3) status.

Exxon's funding of ALEC to advance the corporation's legislative goals relating to climate change and fossil fuel production demonstrates the fundamental pay-to-play nature of ALEC's operations. ALEC exists to advance the legislative goals

[8] *Hammerschmidt v. U.S.*, 265 U.S. 182 (1924); *Coluccio v. U.S.*, 313 F. Supp. 2d 150 (E.D. N.Y. 2004).
[9] *U.S. v. Everett*, 692 F.2d 596 (9th Cir. 1982), *cert. den.* 460 U.S. 1051 (1983).

of its private sector members, and those members contribute substantial sums in order to support and prioritize that work.

A. ALEC's primary purpose is to influence the passage of legislation.

As described in the Original Submission, ALEC is essentially a pay-to-play operation where corporations and other private-sector members have de facto veto power over any ALEC legislation and pay large sums of money for the privilege of lobbying ALEC's legislator-members (who pay nominal dues). ALEC spends its sizable resources to enable corporate members to communicate their desired legislative outcomes to state lawmakers while claiming to the public and the IRS that it does not influence legislation. ALEC is a corporate lobbying group masquerading as a public charity.

ALEC would only qualify as a § 501(c)(3) tax-exempt organization if it were "organized and operated exclusively for . . . charitable . . . or education purposes . . . no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation."[10] Similarly, an "organization is not organized or operated exclusively" for these purposes "unless it serves a public rather than a private interest."[11]

Yet the extensive facts presented concerning Exxon's use of ALEC to provide a private benefit to the corporation and promote its lobbying efforts underscore the fundamental reason why ALEC is misclassified as a tax-exempt organization: its *primary purpose* is to influence legislation.

---

[10] 26 U.S.C. § 501(c)(3) (2016).
[11] Treas. Reg. § 1.501(c)(3)-1(d)(1)(ii) (2016).

Federal law defines "influencing legislation" in 26 U.S.C. § 4911(d)(1) as

> (A) any attempt to influence any legislation through an attempt to affect the opinions of the general public or any segment thereof, and
>
> (B) any attempt to influence any legislation through communication with any member or employee of a legislative body, or with any government official or employee who may participate in the formulation of the legislation.

Virtually all of ALEC's activity falls within that definition.

B. ALEC closely tracked state legislation related to regulation of greenhouse gases and other matters of interest to Exxon, and shared that information with its legislative members.

As we demonstrated in the Original Submission, ALEC not only generates and promotes scores of "model" bills, it carefully tracks the introduction and passage of those bills in state legislatures across the country and boasts about its success in getting those bills enacted into law. The organization also tracks legislation it opposes. This holds true for many bills of interest to Exxon. Between 2001 and 2012, ALEC tracked progress on its legislation relating to climate change, regulation of greenhouse gases, regional cap-and-trade compacts, fracking, and the Keystone Pipeline and reported out the results to its corporate and legislative members.

ALEC's 2003 guide for state legislators contained a chapter tracking 60 state bills aimed at regulating greenhouse gases, and warned that "taxpayer subsidies of alternative energy and renewable fuels are multiplying in the states as back-door approaches to eliminate carbon-based fuels from the nation's energy mix," (Ex. 89 at 16) An ongoing ALEC tracking document contained a more detailed report, detailing more than 90 bills from the 2001-2002 legislative session regulating greenhouse gases, along with where they were introduced, passed, killed, or still pending. (Ex.

181) And ALEC's member-only website contained a 15-page section tracking every greenhouse gas bill of interest in the 2003 legislative session, providing bill sponsors, summaries, committee assignments, and current bill status. (Ex. 183)

ALEC's 2004 *'Sons-of-Kyoto'* report contained additional tracking and maps, stating that "greenhouse gas regulation has proliferated in the states at an alarming rate. In the 2001-2002 general sessions, 66 bills were introduced in 24 states. During the 2003 general session, over 90 bills were introduced in 27 states." (Ex. 184 at 3) ALEC's Natural Resources Task Force webpage, available only to members, provided updated numbers for the group's tracking of greenhouse gas legislation in both 2004 and 2005, providing detailed information on 109 bills introduced in 27 states in 2004. (Ex. 182; Ex. 90)

ALEC took much more than a passive or policy interest in these bills it opposed and the "model" bills that it promoted. A Heartland Institute profile of Alexandra Liddy Bourne, who served as the Natural Resources Task Force director and then Director of Legislation and Policy at ALEC from 1999 to 2006, boasted that, "Under her leadership, 20 percent of ALEC model bills were enacted by one state or more, up from 11 percent." (Ex. 185) Ms. Bourne now serves as the executive director of the American Energy Freedom Center, a project of the Institute for Energy Research, which is heavily funded by Exxon.

The Center for Media and Democracy and Common Cause were able to obtain additional, detailed tracking spreadsheets maintained by ALEC in 2011, 2012, and 2014 that monitored legislation of interest to Exxon, along with scores of bills of interest to the group's other corporate members, and included a "Scorecard" worksheet. The "Disclosure of Hydraulic Fracturing Composition Act," submitted by Exxon to ALEC, appears in three of four of the tracking documents, as does the "Resolution in Opposition to EPA's Regulation of Greenhouse Gases from Mobile Sources." Resolutions in support of the Keystone XL Pipeline and state withdrawal from regional climate initiatives appear in two of those documents. (Ex. 186; Ex. 187; Ex. 188; Ex. 189; Ex. 190)

C. ALEC continues to falsely report to the IRS that it spends $0 on lobbying expenditures.

ALEC has consistently and continuously declared to the IRS that it spends $0 on lobbying expenditures, regardless of its extensive lobbing activity. Despite taking the 501(h) election starting in 2011, ALEC continues to engage in this charade, claiming zero lobbying expenditures on its latest available tax return. (Ex. 191) The detailed information provided in this Supplement documenting ALEC's activity on behalf of Exxon and other fossil fuel funders to promote legislation of interest to the industry, undermine legislators' confidence in climate science, and track climate-related legislation further demonstrates that ALEC's core claim of having no lobbying activity or expenditures is a cynical lie. ALEC's false statements about the amount of its lobbying constitute a criminal violation of 18 U.S.C. § 1001, and Exxon, with its extensive involvement and control over ALEC, is liable for aiding and abetting that violation.

CONCLUSION

The materials included in the Original Submission, the First Supplement, the Second Supplement, and this supplement demonstrate that ALEC operates primarily for the non-exempt purpose of advancing and influencing legislation of interest to its corporate members, has massively underreported its lobbying activities, and has operated for the substantial private benefit of Exxon.

Exxon is fully aware of and complicit in ALEC's lobbying activities and in fact has taken a leadership role in the organization, with generous funding and direct participation in proposing and approving of "model" legislation that ALEC promotes to lawmakers. Taxpayers have been damaged by ALEC's abuse of the tax exemption laws for nonprofit organizations, and damaged by the loss of tax revenue from corporate donors and sponsors.

In light of the mounting evidence provided to the IRS, and the enormous scale and scope of ALEC's fraudulent tax scheme, we respectfully urge the IRS to expedite its open and active investigation into potential civil and criminal liability for both ALEC and Exxon, revoke ALEC's 501(c)(3) status, impose any necessary civil and criminal penalties, and collect unpaid back and present taxes for nondeductible lobbying activities from both ALEC and its corporate donors.

Eric R. Havian
Constantine Cannon
4 Embarcadero Center,
14th Floor
San Francisco CA 94111