A collage of various protest photos. Visible signs include: "OUR STRUGGLE FOR LIBERATION IS A STRUGGLE FOR PEACE" (yellow), "BLACK LIFE MATTERS" (white with a portrait), "STAND UP TO BIG OIL" (blue), "NO DAPL" (red), "DRAFT IS" (red), "HIT W" (red), "GZ-DZA-JO" (red), "HONOR TO" (red), "PEOPLE POWER" (red), "BLACK LIVES MATTER" (black), "ENVIRONMENTAL RACISM IS REAL" (yellow), "PROTECT WATER CLIMATE HEALTH" (white), "STOP OIL" (red), "WATER IS LIFE" (white), "NO PLANET" (white), "I THINK NO ONE'S LIVES MATTER" (white), "POWER" (white), "WATER IS LIFE" (white), "STOP OIL" (red), "WATER IS LIFE" (white), "NO PLANET" (white), "I THINK NO ONE'S LIVES MATTER" (white), "POWER" (white), "WATER IS LIFE" (white).

ALEC ATTACKS

How evangelicals and corporations captured state lawmaking to safeguard white supremacy and corporate power.

A report from the Center for Constitutional Rights, Dream Defenders, Palestine Legal, The Red Nation, and the US Campaign for Palestinian Rights



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EXECUTIVE SUMMARY

This report will take a close look at the devastating impacts of the activities of the American Legislative Exchange Council, or ALEC, on communities of color across the country.

ALEC is a highly effective incubator and platform for spreading a broad swath of corporate and conservative policies. According to its own description, “ALEC lets legislators take a good idea and turn it into a perfect fit for the people of their state.”¹ In reality, ALEC brings together conservative legislators and corporate lobbyists to develop and disseminate model legislation that sustains corporate power and white supremacy, which has ensured that ALEC has become one of the most powerful, and least known, platforms of its kind in U.S. politics today.

ALEC’s success as a political platform for unaccountable interests is indicative of a more general phenomenon known as “corporate capture.” In a system of corporate capture, private industry seizes control of the authority of the state, writing legislation and public policy for the general public behind the closed doors of a CEO suite. In the case of ALEC, its structure and influence provide such a reach into U.S. politics that it resembles the elements of a shadow state apparatus.

This report considers ALEC as a case study of corporate capture in the United States. Through its network, conservative and corporate interests have “captured” our political processes to harness profit, further entrench white supremacy in the law, and target the safety, human rights, and self-governance of marginalized communities.

As organizations working within and alongside those targeted by the laws ALEC promotes, we are concerned not just with process, but with outcome, and particularly the outcome as it impacts communities of color. While white supremacy and corporate greed were not born with ALEC, its commitment to proliferating racist and exploitative policies is a profound threat to communities struggling for freedom, equity, and historical justice.

[ALEC's] commitment to proliferating racist and exploitative policies is a profound threat to communities struggling for freedom, equity, and historical justice.

The case studies and analysis in this report are centered on the experiences of impacted communities and reveal how corporate capture is an inherently reactionary phenomenon. Those in power — in this case, the dominant racial and economic classes — commandeer the machinery of government to suppress dissent and stave off socio-political changes aimed at a just redistribution of power and resources, using ever more desperate means of enforcing a racist and exploitative economic and political status quo.

Part 1 of the report will provide an introduction to ALEC. Through a close examination of its history, mission, and internal workings, we consider the group’s evolution and highlight key moments of resistance. ALEC was born as a political organizing network for evangelicals resisting the victories of the Civil Rights Movement. Twenty years later, finding it difficult to fund only racist conservative policies, the organization opportunistically partnered with newly politicized corporate entities. The result was the formation of a mutually beneficial financial and political partnership that brought together conservative religious fundamentalists and the economic elite of corporate America, who were both determined to control the

levers of political power to continue reproduction of the socio-economic and political circumstances that perpetuated systemic economic and racial injustices. Here we will also chart the rise in recent years of the efforts by racial justice groups to successfully expose ALEC's deadly impact on Black and Brown lives.

Part 2 of the report will discuss how ALEC currently operates its platform. A tax-exempt charity, ALEC's political strength is in its legislative membership, but the institution is financially solvent thanks to its dues-paying corporate members. Alarming, up to a third of all state legislators are members of ALEC, as are several hundred corporations. ALEC brings these lawmakers and corporate executives together behind closed doors twice a year at its conventions. Utilizing the power of ALEC's platform, members of its notorious task forces write and vote to approve prefabricated draft laws, and then ALEC lawmakers commit to funnel the draft laws into state legislatures across the country.

Part 3 provides case studies on the impact of ALEC laws on communities of color. We examine four specific areas: "Stand Your Ground" laws; Voter ID laws; anti-Boycott, Divestment, and Sanctions laws; and Critical Infrastructure laws. Each set of laws relates to ALEC's mission and history differently but is fundamentally aligned with the interests of the group's corporate and conservative members. This section offers analysis of ALEC's role in supporting the proliferation of these laws and documents the origins as well as the harmful effects of the laws on communities of color and their allies.

Part 4 invites reflection on the ways racial justice advocates can resist ALEC's sophisticated and coordinated attacks on communities of color. It draws on successes in social justice movements that have faced similar opposition and offers national and international political and legislative tactics to mitigate the harms of corporate capture and transfer power back to the people.



Photo: CCR

Protest sign by local activists outside ALEC's 2018 Annual Meeting in New Orleans.

Endnotes

1 American Legislative Exchange Council, 2018 Annual Report, p. 42. Available at: https://www.alec.org/app/uploads/2019/09/2018-Annual-Report_FINAL_WEB_R1.pdf.

Photo Citations

Pages 4-5 The cross-movement coalition #AbolishALEC protesting outside the 2018 ALEC Annual Meeting in New Orleans, Louisiana. Photo: Meg Logue

Page 7 Protest sign by local activists outside ALEC's 2018 Annual Meeting in New Orleans. Photo: CCR

Part 1

INTRODUCTION: A HISTORY OF ALEC & THE PEOPLE'S RESISTANCE



Vice President Mike Pence at 2017 Conservative Political Action Conference.
Photo: Michael Vadon

Introduction

Every year, hundreds of new laws in the United States are passed that emerge not from the needs or the will of the people, but rather from a shadow government composed of social conservatives and corporations seeking to advance their own interests. Behind closed doors, state and local lawmakers meet with conservative, right-wing activists and corporate executives (who pay tens of thousands of dollars for access), and together design model legislation that is then shipped out to state legislatures across the country and passed into law with alarming efficiency.

This co-opting of systems of governance by a private, unaccountable economic elite to advance their own agendas is an example of a phenomenon known as “corporate capture.” It is a deliberate strategy employed by corporations and those atop hierarchical systems of power and privilege to maintain the social, political, and economic status quo at the expense of human rights and ecological justice.

In other words, corporate capture is a weapon to use the political system to further oppress historically marginalized communities, particularly when those communities demand a more just distribution of power and protection of the environment.

For more than 46 years, the American Legislative Exchange Council (ALEC) has refined the practice of corporate capture into a profitable and highly effective business model. Since 1973, the group has mastered the art of “pay-to-play” politics to provide an overwhelmingly powerful political platform that empowers not only the corporations that fund it, but also the groups that make up its ideologically conservative base.

By exploiting the power of its established networks, ALEC has developed a methodology that is efficient and effective: its corporate members propose or draft legislation in their own interest, and their legislative partners introduce those bills into their own legislative bodies. This happens several hundred times, producing several hundred new laws, in state legislatures across the country each year.³

ALEC has drawn criticism from anti-corruption and watchdog organizations for designing laws behind closed doors without any input from the public. ALEC-affiliated legislators have similarly drawn criticism for introducing legislation into their legislative bodies lifted verbatim from ALEC documents.⁴

However, ALEC’s material danger to communities under threat reaches far beyond the anti-democratic processes through which ALEC drives legislation. People of color are also



Vice President Mike Pence

“I was for ALEC before it was cool.”

— Vice President Mike Pence²

disproportionately affected by the goals and impacts of much of the legislation ALEC pushes for. ALEC is specifically devoted to expeditiously spreading racist ideas and corporate agendas across the country that target the rights and lives of communities of color.

This section briefly traces the development of the ALEC platform from its founding as a vehicle for politicizing evangelical doctrine and dogma, to its growth as a modern incubator for codifying corporate power. While adding corporate membership to ALEC was born of necessity — funding only the policies that energized evangelical conservative groups proved unsustainable by the early 1990s⁵ — the comfortable corporate-conservative alliance reveals the fundamentally illiberal underbelly of corporate capture. Although their individual policy priorities are not necessarily in perfect alignment, both corporations and social conservatives share an interest in defending a status quo that enables and is built upon the extraction of profit at an unending human and ecological cost.

Curbing Social Change: A Brief History of ALEC

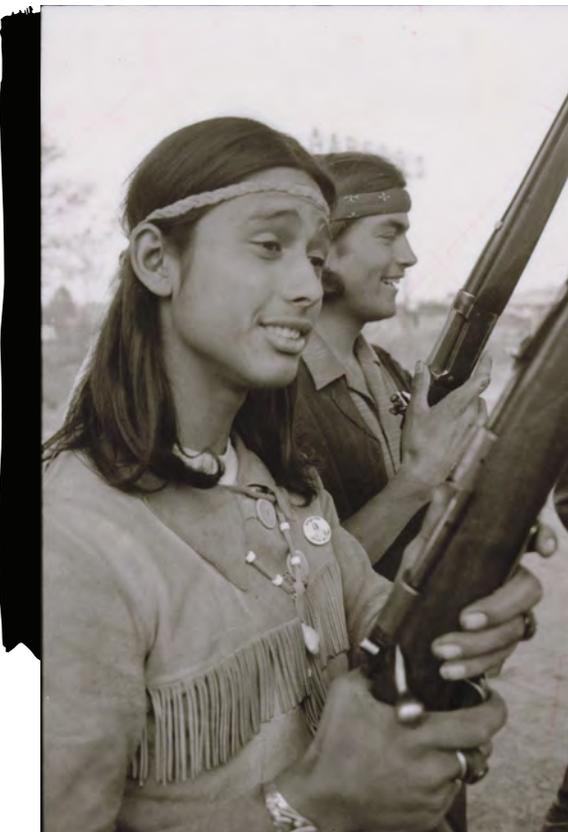
The second half of the 20th century saw a socio-political revolution in the United States. Social movements across the country challenged dominant power structures that privileged a small, powerful elite class of primarily heterosexual, white, wealthy men, while subjugating everyone else. The Civil Rights and Black Nationalist movements demonstrated immense

people power against a white supremacist society; the formation of the American Indian Movement, or AIM, represented a new incarnation of the centuries-long fight against settler colonialism; a new feminist movement emerged, demanding gender equality; the struggle for queer and trans liberation challenged the heteronormative patriarchy; and the modern environmental movement demanded decisive action on pollution to protect our air, land, and water. Similar progressive forces brought forth significant political change in other countries, including the decades-long social movements that successfully overturned military regimes in Latin America and colonial regimes across Asia and Africa. Among all these struggles, the fights against apartheid in South African and settler colonialism in occupied Palestine garnered enormous international attention.

As has been the case throughout history, these progressive shifts in society and politics were met with a swift backlash from the dominant elite determined to maintain the status quo.

The staunchly right-wing American Christian evangelical movement was particularly resistant to egalitarian social change. After the U.S. Supreme Court prohibited racial segregation in education in 1954, fundamentalist Christians reacted feverishly to, in their view, “protect” their children by enrolling them in

Photo: U.S. National Archives and Records Administration



ALEC emerged in part as a response to progressive social movements of the 20th century, such as the American Indian Movement (AIM).

all-white, private evangelical “segregation academies.”⁶ A tipping point came in 1971, when the federal government dealt a potentially fatal blow to segregated education by revoking tax-exempt status from private schools without a non-discrimination policy.⁷ Prominent American evangelical pastor Jerry Falwell famously complained: “In some states it’s easier to open a massage parlor than to open a Christian school.”⁸

Closely following this development was Paul Weyrich, a dedicated conservative Evangelical Christian and aspiring political activist who was already interested in building a politicized American conservative evangelical movement. In the years prior, Weyrich had tried to rally American evangelicals around a number of conservative social causes, including against pornography, for prayer in schools, and against gender equality. But, by his own account, those efforts “utterly failed.”^{9,10}

In response to the creeping social change brought on by progressive political movements, most recently in forced racial integration, and to advance his staunchly conservative evangelical political values, Weyrich founded a number of right-wing political organizations. He soon found that the restrictions on segregated education marked a critical change in his community; his evangelical peers were finally as eager as he was to fight back against social progress.

At that moment, Weyrich energized a newly politicized conservative evangelical base by opening its eyes to its ability to reclaim power and roll back civil rights gains through the political process.

One of the organizations Weyrich founded at that time, specifically to work behind the scenes in state legislatures, was the American Legislative Exchange Council. Weyrich left no doubt that his intention in founding ALEC and similar groups was to overturn the progressing sociopolitical order. What he and others were doing was “different from previous generations of conservatives,” he told an audience. “We are no longer working to preserve the status quo. We are radicals, working to overturn the present power structure of this country.”¹¹ He later elaborated on his fundamentalist counter-revolutionary philosophy to his long-time conservative evangelical associate, Richard Viguerie, that what he was engaged in was war. He said, “it may not be with bullets, and it may not be with rockets and missiles, but it is a war, nonetheless. It is a war of ideology, it’s a war of ideas, it’s a war about our way of life. And it has to be fought with the same intensity, I think, and dedication as you would fight a shooting war.”¹² Such was Weyrich’s zeal that when former House Speaker Newt Gingrich reflected on the history of modern conservatism, he noted “no single person other than Ronald Reagan has done more to create the modern conservative movement than Paul Weyrich.”¹³

But Weyrich’s and his community’s fanaticism — and the flush of funding he received from billionaire allies at the outset — was not enough to sustain an organization with such an ambitious agenda forever. Almost twenty years after its founding, ALEC found itself in a funding crisis, with \$2 million of unfunded liabilities.¹⁴ The situation was dire: in 1996, a board member worried that ALEC “will go under if there is not a significant influx of money in a short period of time”¹⁵



Photo: Chip Berlet

Paul Weyrich, co-founder of ALEC and other conservative organizations including the Heritage Foundation.

While Weyrich and his evangelical peers fought social and racial progress tooth and nail, corporate America faced similar challenges to capitalist orthodoxies. In the early second half of the 20th century, American capitalism faced unprecedented critiques at home from communities protesting the exploitation of laborers and consumers and the racial injustices it compounded. While grassroots movements like the Latinx and immigrant farm workers led by Cesar Chavez and Dolores Huerta challenged the corporate exploitation of laborers, a new movement of lawyers and consumer activists demanded corporate accountability and decried the impacts of corporate deregulation on consumers and the broader public.¹⁶

Like their evangelical counterparts, corporate executives across the country feared the end of their unchecked dominance. A particularly alarmist group of devout capitalists formed the “League to Save Carthage,” an association of corporate executives who believed the U.S. was on an inexorable slide toward socialism.¹⁷

One member of the League to Save Carthage, Lewis F. Powell, drafted a highly influential and now-infamous, staunchly pro-corporate memo to the Director of the U.S. Chamber of Commerce in 1971 that channeled the panic spreading through corporate America.¹⁸ Powell issued a call for American businesses to more assertively influence all sectors of political and social life. In other words, to politicize themselves in the same way that Weyrich had been urging evangelicals to do. According to the Powell memo, at stake was nothing less than “survival — survival of what we call the free enterprise system, and all that this means for the strength and prosperity of America and the freedom of our people.”¹⁹ The memo made plain that “businesses must learn the lesson ... that political power is necessary.”²⁰

The message was well-received.²¹ Corporate America no longer feared government, but instead saw in it a major opportunity to expand their reach in American political life. Corporations no longer had to play defense; by entering what Powell called the “neglected political arena,” they could take the offensive. This was their wake-up call.

A lucrative new lobbying industry emerged. Over the course of the 1970s, the number of companies with a registered lobbyist presence in Washington, D.C. grew from 175 to 2,445. Corporations increasingly waded into electoral politics, as well: in the second half of the 1970s, the

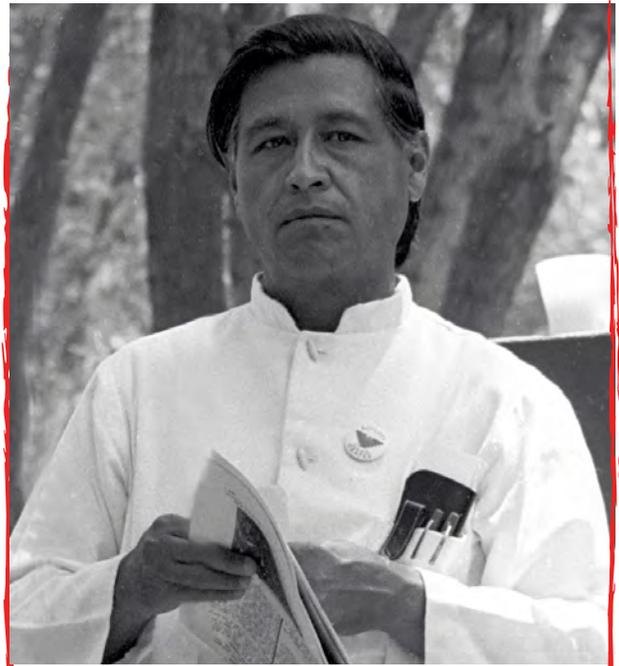


Photo: Joel Levine

Cesar Chavez, co-founder of the United Farm Workers Union.

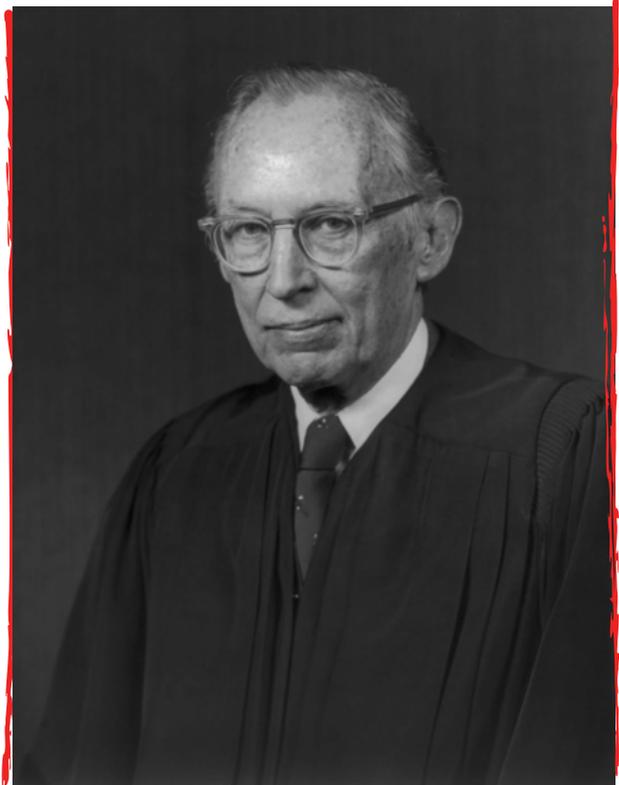


Photo: Robert S. Oakes

Lewis Powell, lawyer for the tobacco industry who became a US Supreme Court judge. Author of 'the Powell Memo'.

number of companies with political action committees quadrupled. By the end of the decade, four out of five Fortune 500 companies had an “External Relations” department, considered a “rarity” just years earlier.²²

Perfectly positioned to service the growing group of newly politicized corporate executives was a cash-strapped influential evangelical Christian organization in search of a viable economic model to sustain itself. ALEC identified a lucrative opportunity to stay afloat by harnessing corporate funding. A report prepared for its leadership outlined a suggested approach. Specifically, the report argued that “ALEC must begin to function more like a

“ALEC’s product is policy, and its customers are state legislators and private sector supporters.”

business, and recognize that it has a product that it provides to a defined customer base for a ‘profit.’ In other words, there can be no mission without margin.”²³ It continued, “ALEC’s product is policy, and its customers are state legislators and private sector supporters.”²⁴

And where ALEC saw a new and much needed revenue stream, corporate executives across the country saw an untapped network of political influence to roll back the threat that Powell so desperately warned of.

ALEC revamped its operations to appeal to corporations willing to pay for access. Most notably, it placed a new emphasis on its Task Forces, the groups that bring together corporations and lawmakers to draft model laws. ALEC knew, from the memo provided to leadership, that charging a sizable membership fee to the Task Forces, would prove to be its financial savior.

With a shift in ALEC’s business model, its fundamental mission necessarily changed in tandem. Recent data compiled by Alexander Hertel-Fernandez, Assistant Professor in Columbia University’s School of International and Public Affairs, shows that in the ensuing years, ALEC increasingly prioritized corporate-driven legislation over the conservative social agenda espoused by its founders. Whereas as much as 20 percent of ALEC model legislation between 1977 and 1979 related to “social issues” such as abortion and religious freedom, only four percent of ALEC model legislation in this timeframe concerned business regulation issues. In the following years, corporations pulled ALEC’s focus toward deregulation and corporate profit. By 1993 to 1995, nearly 50 percent of ALEC model legislation was advancing ALEC members’ pro-business agenda, while model legislation related to social issues had dropped to just two percent.²⁵

The group’s focus had swung back somewhat by the early 2000s, and the back-and-forth continues today, as ALEC’s conservative and pro-corporate members share its platform to draft and push through legislation to advance their own interests, twisting and corrupting state-level democratic lawmaking processes to serve their own ends.

The alliance is a natural one: corporate and political elites are two sides of the same proverbial political ‘coin’. Capitalist profiteering depends on an exploitative economic system that is based on racial subjugation, and conservative political elites rely on disenfranchising racial minorities to hold on to political power. Each of these branches of white supremacist power — economic and political — serve each other’s interests through entities like ALEC that

capture and privatize economic and political power at the expense of historically marginalized people. Though white supremacist political and economic power manifest differently in different policy priorities, both thrive by targeting the human rights and self-governance of communities of color.

The People's Resistance to ALEC

ALEC finally came under significant scrutiny by mainstream American progressive organizations following a pivotal event in American politics in 2012: the murder of Trayvon Martin, an unarmed Black teenager killed by a man named George Zimmerman in a gated Florida community. Zimmerman, who fatally shot the teen, was not arrested or charged with a crime for 45 days.²⁶

When he was finally brought into the criminal justice system, commentators widely doubted that prosecutors could convict him of murder, due to an arcane statute passed seven years earlier. The now-infamous “Stand Your Ground” law eliminates the “duty to retreat,” effectively providing legal cover to murder when the would-be defendant murderer feels that their life is in danger (regardless of whether it actually is).²⁷

When the public learned more about the Stand Your Ground law, interest grew in the origins of the legislation. Soon enough, guided by existing advocacy campaigns, organizers and the general public turned their eyes to the group behind the law

Several advocacy groups, led by Color of Change, already had their sights set on ALEC in response to its behind-the-scenes work passing Voter ID laws leading up to the 2012 election.²⁸ In a 2011 report, the NAACP singled out ALEC as a source of model voter ID legislation intended to disenfranchise minority voters.²⁹ Also that year, the Center for Media and Democracy, having obtained copies of over 800 bills from an internal whistleblower, launched *ALEC Exposed*, a website that publishes, analyzes, and tracks ALEC-affiliated bills. A coalition of these groups, including Color of Change and the Center for Media and Democracy, also launched a public campaign targeting ALEC and its members with petitions, rallies, and private outreach. The campaign notably included a call to boycott corporate sponsors and affiliates of ALEC.³⁰

But following the murder of Trayvon Martin, racial justice advocates caught a glimpse of the wide-reaching impacts of ALEC’s work on communities of color. The boycott campaign against ALEC exploded in size and in impact, as more and more progressive groups joined in. Facing pressure from Color of Change and a grassroots coalition of racial justice activists, a number of companies, including Coca-Cola, PepsiCo, Mars Inc., Wendy’s, McDonalds, the Gates Foundation, Kraft, Walgreens, and even Walmart ended their long-standing ALEC memberships.³¹

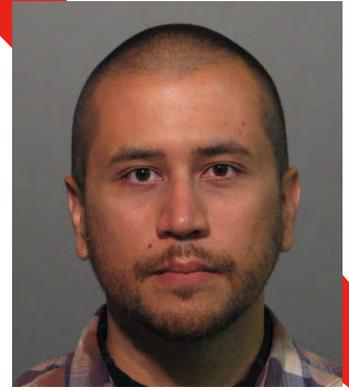


Photo: Seminole County Sheriff's Office

George Zimmerman was acquitted of the murder of Trayvon Martin in part due to Florida's Stand Your Ground law.



Photo: Greg Lilly

Protesters take to the streets after the murder of Trayvon Martin.

Although the companies did not mention ALEC by name, a statement released by ALEC just days after losing many corporate sponsors confirms the success of the boycott, or what it called an “intimidation campaign.”³²

As ALEC kept losing different funding sources each week, attracting more negative press than it ever had in its forty-year history, the group sought to stem the tide of losses by publicly dissolving the ALEC “Public Safety and Elections Task Force” which was responsible for promoting both voter ID laws and “Stand Your Ground” laws.³³ ALEC refused to admit that the decision to eliminate the task force was due to pressure from the boycott and targeted advocacy, insisting instead that they were “...redoubling [their] efforts on the economic front, a priority that has been the hallmark of [the] organization for decades.”³⁴

At the same time, ALEC implemented superficial policy changes internally to deflect criticism of undue corporate influence. After spring 2013, only legislator members of ALEC — and no longer lobbyists — could introduce legislation at ALEC convenings.³⁵ However, documents made public in a lawsuit filed by the Center for Media and Democracy revealed that the change was “just a sham” and corporate members still led the internal policy proposal process.³⁶

By 2013, following the boycott, advocacy campaign, and decision to end the Task Force, ALEC saw more than 100 corporations and 400 state legislators formally sever affiliations.³⁷ With declining membership, the group’s budget was dealt a significant blow: at the end of the year, ALEC found itself with a \$1.2 million budget deficit.³⁸

In its 2016-2018 strategic plan, ALEC confirmed the success of the boycott, acknowledging what it euphemistically called a “difficult period”: “Given its effectiveness, ALEC is closely scrutinized by the Left and has faced especially harsh attacks from those opposed to free-market policy in the past few years. This caused some upheaval in the organization’s funding base, as many corporate members and sponsors broke off to avoid controversy....”³⁹

Another form of resistance ALEC has faced since the groundswell of attention it attracted in 2012 has come in the form of litigation, largely led by a pro-transparency and pro-democracy organization called Common Cause. In April 2012, in the midst of the boycott and aftermath of Trayvon Martin’s murder, Common Cause filed a whistleblower complaint against ALEC, accusing the organization of committing wide-reaching tax fraud. The complaint alleges that ALEC has misrepresented itself to the federal government and has underreported its lobbying activities in order to maintain tax-exempt status.⁴⁰

Although the watchdog group has filed three supplemental submissions to the IRS substantiating their claims against ALEC, and a former head of the IRS division in charge of overseeing non-profit and exempt organizations filed a separate complaint on behalf of a group of clergy called Clergy VOICE, the IRS has taken no public action to date.⁴¹ And although ALEC has not commented publicly on the litigation, in spring 2013, it set up an affiliated shadow organization under the IRS 501(c)(4) classification, called the Jeffersonian Project, to conduct the kind of direct political lobbying that ALEC, as a 501(c)(3), cannot.⁴² Although ALEC maintains that it does not conduct political lobbying and is therefore entitled to tax-exempt status, it acknowledged in the internal memo updating its members on the creation of the Jeffersonian Project that “[a]lthough [they] do not believe any activity carried on by ALEC is lobbying, the IRS could disagree. If that is the case, it would be possible to resolve any such issue with the IRS by agreeing to transfer the activity in question from ALEC to the Jeffersonian Project.”⁴³

At the same time, a coalition of organizations, including Common Cause and others, has continued appealing directly to corporations to cut their ties with ALEC⁴⁴ and has published a detailed report each year since 2011 exposing ALEC's influence in the state where it decides to hold its annual conference.⁴⁵ Similarly, a coalition of groups has formed another pressure group called Stand Up to ALEC⁴⁶ to encourage constituents to pressure their representatives to cut ties with ALEC.⁴⁷

ALEC will continue to attract criticism and attention so long as it continues to advocate for laws that undermine the social, economic, and political protections people rely on, particularly people of color. Aside from the "Stand Your Ground," voter ID, anti-Boycott, Divestment, and Sanctions (BDS), and critical infrastructure laws covered in this report, there are many examples of how ALEC has tried, often successfully, to pass regressive laws that have a distinctly negative impact on people of color. ALEC played a role in bringing about SB 1070 – the infamous Arizona law that made it a state misdemeanor crime for an alien to be in Arizona without carrying the required documents. The law effectively granted authority for law enforcement to racially profile Latinx people, since it exclusively targeted undocumented people, for the benefit of ALEC members operating privately-run immigration detention centers.⁴⁸

ALEC also supported its private prison industry members to promulgate laws that increased this industry's profits, such as "three strikes" and "truth in sentencing" laws, as well as laws developed by its members in the bail bond industry that privatize the parole process.⁴⁹ All of these laws disproportionately impact communities of color.

ALEC has also played a central role in the design and development of the deliberately misnamed "Right to Work" laws that do nothing to guarantee employment but instead directly undermine the viability of unions. These laws prevent unions from negotiating contract provisions that require workers to contribute to the costs of worker representation on the job. Right to Work laws depress wages for Black and brown workers compared with non-Right to Work states.⁵⁰

ALEC has long actively denied that the climate crisis,⁵¹ which people of color are disproportionately impacted by, is caused by carbon emissions resulting from human activity.⁵² ALEC wrote in a 2011 submission to the Environmental Protection Agency (EPA) that "carbon dioxide is a naturally occurring, non-toxic and beneficial gas, and it poses no direct threat to public health. In order to justify regulation, the EPA is relying on an uncertain assumption that increased carbon dioxide emissions by humans are causing an unprecedented global temperature increase."⁵³



Photo: Nevele Otsong

2010 protest in Washington, DC against Arizona's adoption of SB1070.

While these ALEC efforts, and many others not covered in this report such as its attacks on reproductive rights,⁵⁴ have contributed to the rightward shift in law and politics, ALEC's attacks on the planet, people of color, and other historically marginalized communities are inadvertently adding strength to the growing cross-movement resistance to ALEC's efforts. What the legacy of resistance that Center for Media and Democracy, Common Cause, Color of Change and others have shown is that when people of conscience organize and resist, ALEC is weakened. This history provides the path on which a new generation of activists is building.



Endnotes

- 2 Bill Meierling, "Governor Mike Pence: 'I was for ALEC before it was cool.'" ALEC Website, August 14, 2016, <https://www.alec.org/article/governor-mike-pence-i-was-for-alec-before-it-was-cool/>.
- 3 See: "Legislative Membership," American Legislative Exchange Council website, <https://www.alec.org/membership-type/legislative-membership/>; see also Hertel-Fernandez, at 48 and 72. In its 2000 annual report, ALEC claimed that it introduced 3,100 pieces of legislation in the 1999-2000 legislative cycle, 450 of which became law. See Hertel-Fernandez, 48.
- 4 For example, see Minnesota House debate from April 25, 2012, where Representative Atkins confronts Representative Gottwalt over Representative Gottwalt's use of ALEC-branded legislative materials when introducing a healthcare bill (SF 1933). See here: <https://youtu.be/6kX7JGcQk2I> at 2.22.22-2.24.59.
- 5 By 1988 ALEC was in dire financial circumstances with \$2 million of unfunded liabilities. See: Hertel-Fernandez, 39.
- 6 *Ibid*, 303.
- 7 Internal Revenue Service, Revenue Ruling 71-447, 1971, <https://www.irs.gov/pub/irs-tege/rr71-447.pdf>.
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Part 2

ALEC'S PAY-TO-PLAY POLITICS



Department of Labor Secretary Alexander Acosta at ALEC in 2018
Photo: Department of Labor

By its own account, ALEC seeks to “...increase individual liberty, prosperity and the well-being of all Americans by advancing and promoting the principles of limited government, free markets and federalism.”⁵⁵ ALEC’s vague and seemingly benign mission statement disguises how this registered tax-exempt charitable organization regularly convenes its members, made up of corporate executives, conservative state lawmakers, conservative activists, and funders, to privately craft self-serving model legislation that advances their agendas away from public scrutiny.

Far-Right Financing: ALEC’s Membership and Funding

ALEC’s impact comes from its astoundingly broad membership. According to its own website, nearly one-third of all state legislators are members.⁵⁶ In 2016, it also counted among its members eight sitting governors, 300 local politicians, and over 200 corporations and conservative think tanks with non-profit charitable tax status.⁵⁷

ALEC’s 2017 budget, the last available ALEC filing to the IRS, was \$10.3 million. \$8,765,064 of this total revenue stream came from corporate membership dues and grants from conservative foundations, which is equal to almost 90 percent of its revenue.⁵⁸

In its early years, ALEC did not generate any significant revenue from corporations; what revenue it did generate came from radical conservative foundations like the Adolph Coors Foundation and the Scaife Foundation.⁵⁹ Beginning in the early 1990s, ALEC shifted its funding strategy to more explicitly seek funding from corporations. The strategy proved successful, such that between 1988 and 1992 ALEC more than doubled its annual revenue from \$1.5 million to \$3.9 million.⁶⁰

Research indicates that ALEC still receives a substantial number of grants from wealthy far-right conservative donors; the collection of foundations run by the Koch brothers donated more than \$3 million between 1997 and 2017.⁶¹



Nearly one-third of all state legislators are members of ALEC

With legislative members at all levels of government across the country, ALEC has been extraordinarily effective at passing its favored legislation. It has been reported that in 2009, ALEC legislators introduced 826 bills and passed 115 into law.⁶² The New York Times reported that in 2011, “...ALEC typically introduced more than 1,000 bills based on model legislation each year and passed about 17 percent of them.”⁶³

ALEC’s Corporate Capture Strategy

ALEC is so effective because of the operating model it has perfected. It brings together its members — corporate, legislative, and otherwise — twice a year to exchange conservative and corporate ideas they form into draft legislation that they then vote on, and later farm out to state legislatures to pass into state law. Its signature tactic, however, which has distinguished it from other conservative policy think tanks and organizations, is its use of its so-called ‘Task Forces.’

Closed-Door Annual Meetings

In ALEC's own words, its meetings are "where the action is."⁶⁴ It holds its Annual Meeting each summer, shortly after most states' legislative sessions have ended. There, corporate leaders, lawmakers, and others with an interest in ALEC's work come together to attend workshops, hear keynote speeches, and ultimately forge right-wing social and economic policy.

The 2016 Annual Meeting welcomed more than 2,500 attendees, including an undisclosed number of state legislators and more than 200 business executives discussing a range of issues in more than 20 workshops.⁶⁵ A leaked copy of the 2015 Annual Meeting agenda revealed the corporate make-up and themes of workshops, as well as the titles of a number of subcommittees and working groups.⁶⁶ The annual meetings often attract high-profile conservative keynote speakers, many of whom are in powerful government positions; in 2016, then Vice Presidential Candidate Mike Pence told the audience at the annual meeting in Indiana that he "...was for ALEC before it was cool."⁶⁷

The annual meetings often attract high-profile conservative keynote speakers, many of whom are in powerful government positions

Each December, ALEC holds a States and Nation Policy Summit, "specifically designed to introduce new members to ALEC" following the November elections held a month prior.⁶⁸ In addition to welcoming new members to ALEC, the winter convening serves as a brainstorming session for the upcoming state legislative sessions and a forum at which corporate executives and high-profile conservative politicians lead "...intensive, in-depth educational sessions addressing issues that will be at the top of state legislative agendas the following year."⁶⁹ Speakers at the 2018 winter convening included Trump administration Office of Management and Budget Director Mick Mulvaney, Secretary of Housing and Urban Development Ben Carson, and Senator Ted Cruz.⁷⁰

Until 2018, ALEC also held a meeting for members each spring, but ALEC eliminated this event in 2019, reportedly in response to at least 366 ALEC-affiliated lawmakers losing re-election in November 2018 and several corporate members cutting ties.⁷¹



Jamie Corey & Lisa Graves, Documented, March 31, 2019

Advancing Corporate and Conservative Agendas Through Model Legislation

If ALEC's meetings are "where the action is," its Task Forces are how the work gets done. Co-chaired by corporate executives and legislators, the Task Forces "bring elected officials, policy experts and business leaders together" to advance ALEC's profit-driven and ideologically conservative agenda. Each Task Force, like a Congressional subcommittee, covers a policy

area and reviews model legislation before it heads to the full membership for a broader vote of approval and adoption. And, although the Task Forces are supposed to serve as a neutral preliminary stage for pending model legislation, the corporate members maintain disproportionate control through veto power and even the ability to remove their legislative co-members at will (whereas corporate members can only be removed “with cause”).⁷²

ALEC’s Task Forces were inspired by the Reagan Administration’s “Task Force on Federalism.” Early into his presidency, Reagan convened a working group to bring states and the federal government together to work toward limited government. Early participants included the then national chairman of ALEC, Tom Stivers, and ALEC members John Kasich and Rober Monier. Five years after Reagan convened his Task Force on Federalism, ALEC announced the creation of their own internal Task Forces, each with a thematic mandate, together covering “virtually every responsibility of state government.”⁷³

Today, there are 11 Task Forces covering such topics as Energy, Environment, and Agriculture; Federalism; Criminal Justice; and Homeland Security.⁷⁴



Photo: White House/ Ronald Reagan Presidential Library

Joseph Coors, co-founder of the Adolph Coors Foundation and president of Coors Brewing Company, was one of the early financial backers of ALEC.



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Part 3

**ALEC'S ATTACKS ON PEOPLE OF
COLOR, CIVIC ENGAGEMENT,
& DISSSENT**

The parallel ideological priorities that co-exist within ALEC, advancing both conservative social policy and opportunities for corporate profit-making, drive its current political efforts. These objectives reflect the two central elements of ALEC’s mission: on one side, its conservative evangelical roots continue to resist social progress, while on the other, the corporate members continue to advance deregulation and privatization.

But whether motivated by corporate profit or conservative ideology, ALEC’s behind-the-scenes maneuvering consistently has a disproportionate and harmful impact on communities of color. In some areas of law, the link between corporate interests and attacks on communities of color is clear. For example, in the name of protecting profits of oil and gas companies, ALEC has sponsored so-called “critical infrastructure” bills that dramatically enhance criminal penalties for the Indigenous water protectors (and their allies) who protest construction of fossil fuel infrastructure projects. As introduced in Part I, ALEC was also critical to the proliferation of Stand Your Ground laws in state legislatures around the country, protecting NRA profits while endangering Black lives.

On other issues covered in this report, like voter ID and anti-Boycott, Divestment, and Sanction bills,⁷⁵ we see a modern incarnation of ALEC’s ideological fundamentalist evangelical roots. ALEC’s members rely on its powerful political platform to advance the white supremacist ideology of right-wing evangelical groups. As Weyrich sought to on racial segregation, today’s ALEC seeks not only to pass favored pieces of legislation, but to change the terms of the debate itself. By lending its political platform to the reactionary forces behind bills seeking to vilify an entire movement for human rights and re-define “antisemitism” to serve its own political ends,⁷⁶ ALEC empowers Paul Weyrich’s modern-day evangelical and fundamentalist counterparts in their quest to redefine the social order.

ALEC’s behind-the-scenes maneuvering consistently has a disproportionate and harmful impact on communities of color

Part 3 of the report will detail four areas of legislation that ALEC has recently promoted or is currently championing and illustrate how each has disproportionately targeted and affected communities of color beginning with a discussion of ALEC’s involvement in providing a platform for encouraging passage of “Stand Your Ground” laws across the country. These laws can be traced back to the National Rifle Association (NRA), a corporate member of the group representing the interests of gun and ammunition manufacturers, but have been fiercely opposed by racial justice groups for the impunity they have extended to those who murder Black people.

The focus will then move to so-called voter ID laws, a modern-day reincarnation of Jim Crow voting restrictions designed to suppress the power of Black and Brown communities in the political system. These the anti-democratic measures further the beliefs of ALEC’s co-founder, Paul Weyrich, that “not everyone should vote,” perpetuating white supremacy over political power.⁷⁷

Part 3 will then consider “critical infrastructure” laws, pieces of legislation that strengthen the power of the legal system to criminalize Indigenous and allied water protectors fighting to resist the expansion of this country’s vast and dangerous oil and gas infrastructure. Con-

ceived of by representatives of the oil and gas industry to protect corporate profits, “critical infrastructure” laws have continued this country’s long legacy of criminalizing Indigenous people who have never stopped protesting against the theft of their land, resources, and wealth, and the accumulation of power by the white elite of the U.S.

The final section of Part 3 will consider “anti-BDS laws,” which are designed to delegitimize and attack a Palestinian-led boycott movement for human rights. That ALEC is involved in supporting the passage of these laws is perhaps unsurprising given ALEC’s deep evangelical history. It was tele-evangelist Jerry Falwell, a close contemporary of ALEC founder Paul Weyrich, who said “to stand against Israel is to stand against God.” The roots of fundamentalist Christian support for Zionism stretch back to at least the writings of John Darby in the mid-1800s, and carry through to the present day, with most modern evangelicals believing that the creation of Israel is a necessary step to bringing about the second coming of Jesus Christ.⁷⁸ Hence, it is no surprise that conservative Christian evangelical groups within ALEC played an influential role in supporting passage of a set of laws designed to criminalize advocacy for Palestinian rights.

For each area of legislation, the report will give a brief historical overview of the laws and detail the use by ALEC members of its platform to raise-awareness about and repackage emerging pro-conservative and pro-corporate issues into draft laws that are distributed to and passed through state legislatures across the country. The sections below will then examine the specific harms these laws have on communities of color.

‘Stand Your Ground’ laws

The Origin

Twenty-seven states now have a “Castle Doctrine” or “Stand Your Ground” law similar to the first one developed in Florida, SB 436, which was signed into law by Governor Jeb Bush on April 26, 2005.⁷⁹ Section 3 reads:

A person who is not engaged in an unlawful activity and who is attacked in any other place where he or she has a right to be has no duty to retreat and has the right to stand his or her ground and meet force with force, including deadly force if he or she reasonably believes it is necessary to do so to prevent death or great bodily harm to himself or herself or another or to prevent the commission of a forcible felony.⁸⁰

The law was drafted by Marion Hammer, the National Rifle Association’s (NRA) lobbyist in Florida and former president of the NRA.⁸¹ The NRA is a long-time member of ALEC, and Hammer had developed a particularly strong reputation for influencing Florida politicians to pass legislation favorable to gun manufacturers.⁸² As Paul Flemming, then-reporter for *Florida Today* told a media watchdog, “There is no doubt about it.... All of the gun laws that come through the Florida legislature, she writes.”⁸³



Sign at #AbolishALEC protest, ALEC Annual Meeting, New Orleans, July 2018.

Photo: Meg Logue.

The Role of ALEC

The primary sponsors for Florida's "Stand Your Ground" bill were ALEC members state Representative Dennis Baxley and state Senator Durell Peadon.⁸⁴ The lawmakers worked closely with Marion Hammer and the NRA to pass the law, and their partnership exemplifies both the close relationships between gun lobbyists and elected officials, and the mechanism for proliferating ALEC legislation throughout the country. In 2005, the NRA described how it utilized the ALEC platform to support wider adoption of "Stand Your Ground" laws in other states:

Marion Hammer presented the ALEC Criminal Justice Task Force with proposed legislation based on Florida's landmark "Castle Doctrine" law, that passed in Florida earlier this year. Her talk was well-received, and the Task Force subsequently adopted the measure unanimously. It will officially become ALEC Model Legislation in 30 days if there is no objection from the ALEC Board of Directors.⁸⁵

Indeed, four months after the Florida "Stand Your Ground" law was passed, the ALEC Board of Directors approved the model legislation in August 2005.⁸⁶ Furthermore, former ALEC employee and current Maryland state senator Michael Hough indicated publicly that ALEC worked with the NRA to develop the model policy, and then introduced it in states across the country. On *NRA TV* he stated that, "we worked with the NRA with that, that's one of our model bills that we have states introduce."⁸⁷

The NRA heightened its investment and support of ALEC in later years, and, according to research by Progress Florida, "The NRA co-chaired the ALEC Public Safety and Elections Task Force from 2008 to 2011, and has made large contributions to the group – for example, in 2011, the NRA donated \$25,000 to ALEC to achieve "Vice-Chairman" level sponsorship for the annual conference."⁸⁸

The NRA's return on its investment in ALEC, and the passage of Stand Your Ground laws, comes in the form of contributions it receives from the firearms industry. A detailed report on corporate sponsorship of the NRA and found that "[c]ontributions to the NRA from the firearms industry since 2005 total between \$14.7 million and \$38.9 million."⁸⁹ The report also noted that "[i]n a promotional brochure for the program, NRA Executive-Vice President Wayne LaPierre promises that the 'National Rifle Association's newly expanded Corporate Partners Program is an opportunity for corporations to partner with the NRA....This program is geared toward your company's corporate interests.'" ⁹⁰



Gov. Jeb Bush, center, hands a pen used to sign a Gun Bill to Marion Hammer of the National Rifle Association.

Photo: AP/Eric Tonnay

In the year following Florida's passage of its Stand Your Ground law, and after ALEC had approved a model policy, 13 states passed a similar version.⁹¹ According to the National Conference of State Legislatures, "laws in at least 25 states allow that there is no duty to retreat an attacker in any place in which one is lawfully present" and "at least ten of those states include language stating one may 'stand his or her ground.'"⁹²

Stand Your Ground Laws' Impact on People of Color

In 2012, Floridian George Zimmerman shot and killed an unarmed, 17-year-old Black teenager named Trayvon Martin. Trayvon was a student from Krop Senior High School outside Miami, and had been visiting his father in Sanford, Florida when he was killed. Zimmerman was a neighborhood watch captain for "The Retreat at Twin Lakes," a gated community in Sanford, and was patrolling the neighborhood the night that he killed Trayvon.⁹³ *Time* magazine reported on the incident a few weeks later:

Martin was in the gated community with his father as they visited the home of family friends. He had gone to a nearby 7-11 for snacks and was on his way back to the house when he was spotted by Zimmerman, who called police to report a "real suspicious guy." He told the dispatcher that Martin "looks like he's up to no good or he's on drugs or something." He described Martin as having his hand on his waistband, carrying an object, and coming towards him. "And he's a black male...Something's wrong with him...These a**holes, they always get away."⁹⁴

In July 2013 a jury found Zimmerman not guilty of second-degree murder or manslaughter.

In a media interview with CNN's Anderson Cooper after the verdict, a juror explained how Stand Your Ground had played a role in determining Zimmerman's culpability:

COOPER: Because of the two options you had, second degree murder or manslaughter, you felt neither applied?

JUROR: Right. Because of the heat of the moment and the Stand Your Ground. He had a right to defend himself. If he felt threatened that his life was going to be taken away from him or he was going to have bodily harm, he had a right.⁹⁵

ALEC ATTACKS

How evangelicals and corporations captured state lawmaking to safeguard white supremacy and corporate power

STAND YOUR GROUND LAWS

Stand your ground laws establish the right of a person to defend one's self against threats (or perceived threats), including the application of lethal force, **regardless of whether safely retreating from the situation might have been possible.**

2005 Florida Governor Jeb Bush signs into law the first stand your ground law, SB 436. The bill was **drafted by the NRA and sponsored by ALEC members**, state Representative Dennis Baxley and state Senator Durrell Peardon.

Between 2005 and 2014, **monthly rates of homicide by firearm increased by 31.6%**. There was no increase in states that did not have a stand your ground law.

27 states now have laws that have similar legal effect as the law that was first developed in Florida.

In 2012, 17-year-old Black teenager Trayvon Martin was shot and killed by George Zimmerman near his father's home in Florida. One year after his death, a jury found his killer not guilty of second-degree murder or manslaughter, **citing Florida's stand your ground law.**

A 2013 study found that in stand your ground states, a judge is **12 times more likely** to rule a white-on-Black shooting "justified" than a Black-on-white shooting.

Follow the link below and call on your elected officials to cut all ties with ALEC:

ccrjustice.org/ALECAattacks

Since Stand Your Ground laws have become more widespread across the United States, researchers have begun to examine their impact. A widely cited 2016 study published in the *Journal of the American Medical Association* found that:

Since Florida's stand your ground law took effect in October 2005, rates of homicide and homicide by firearm in the state have significantly increased; through 2014, monthly rates of homicide increased by 24.4% and monthly rates of homicide by firearm by 31.6%. These increases appear to have occurred despite a general decline in homicide in the United States since the early 1990s.⁹⁶ In contrast, rates of homicide and homicide by firearm did not increase in states without a stand your ground law (New York, New Jersey, Ohio, and Virginia), or for either suicide or suicide by firearm. Our findings support the hypothesis that increases in the homicide and homicide by firearm rates in Florida are related to the stand your ground law.⁹⁷



Photo: David Shankbone

Trayvon Martin's parents at Million Hoodies Union Square protest in New York, 2012

A 2013 study by *Urban Institute* examined the intersection of race and justifiable homicide rates in states with and without stand your ground laws. The study found that:

Overall, the rate of justifiable homicides is almost six times higher in cases with attributes that match the Martin case. Racial disparities are much larger, as white-on-black homicides have justifiable findings 33 percentage points more often than black-on-white homicides. Stand your ground [SYG] laws appear to exacerbate those differences, as cases overall are significantly more likely to be ruled justified in SYG states than in non-SYG states.⁹⁸

The study noted that, “with respect to race, controlling for all other case attributes, the odds that a white-on-black homicide is found justified is 281 percent greater than the odds a white-on-white homicide is found justified. By contrast, a black-on-white homicide has barely half the odds of being ruled justifiable relative to white-on-white homicides.”⁹⁹

Voter ID bills

The Origin

Measures to disenfranchise people of color abound in U.S. history. For example, strategies by white supremacists, such as administering reading tests to would-be Black voters, have been in existence since the beginning of the Jim Crow era.

In a 1940 address to union workers, President Roosevelt stated that “there are some political candidates who think that they may have a chance of election, if only the total vote is small enough.”¹⁰⁰

In the wake of the controversial 2000 U.S. presidential election where, by one estimate, almost two million votes were disqualified,¹⁰¹ former presidents Jimmy Carter and Gerald Ford formed the Nation-

al Commission on Federal Election Reform (known also as the ‘Carter-Ford Commission’), with various recommendations, one of which was a voter ID requirement. Federal legislation followed in the form of the ‘Help America Vote Act’ (HAVA) in 2002, which included a voter ID requirement for first-time voters.¹⁰² Following the 2004 presidential election, former President Carter again established a commission to examine ways of further amending the electoral voting system, this time together with former Secretary of State James A. Baker III. In 2005, their commission issued a report entitled “Building Confidence in U.S. Elections.”¹⁰³

The co-chairs of the report justified the need for further reforms by noting that, “many Americans thought that one report – the Carter-Ford Commission – and one law – the Help America Vote Act of 2002 (HAVA) – would be enough to fix the system. It isn’t.” As such, they said, “we are recommending a photo ID system for voters designed to increase registration with a more affirmative and aggressive role for states in finding new voters and providing free IDs for those without driver’s licenses. The formula we recommend will result in both more integrity and more access.”¹⁰⁴

One commissioner, Professor Spencer Overton, strongly disagreed with the findings of the Carter-Baker 2005 Commission he was a part of. Overton noted that the voter ID recommendation is “more extreme than any ID requirement adopted in any state to date.... The existing evidence suggests that the type of fraud addressed by photo ID requirements is extraordinarily small and that the number of eligible citizens who would be denied their right to vote as a result of the Commission’s ID proposal is exceedingly large.” On procedural issues Commissioner Overton raised his dissent by stating that the “commission’s reliance on anecdotes and political sound bites – rather than empirical data, testimony by top experts, and rigorous analysis – undermines its credibility.”¹⁰⁵

In the 2006 U.S. midterm federal elections, Democrats made significant advances, gaining control of the House and Senate. In the aftermath, Republicans alleged that “voter fraud” played a role in delivering election wins for the Democrats. Royal Masset, the former political director

EVERYTHING GOES WHITE!

Judges, Congressmen and Solicitors:

GLORIOUS VICTORIES

Headline in *The King's Weekly* following the 1898 midterm elections, North Carolina.



Protestor at Occupy Boston protest in 2011 against Voter ID laws.

Photo: sharonkubo

for the Republican Party of Texas and skeptic of the need for voter ID laws, informed a reporter for the Houston Chronicle that:

We fulfilled our conservative agenda. To appear new we took more and more extreme positions. We became arrogant and self righteous... It's almost a religious part of the Republican canon that Democrats are stealing these elections. It's a lie. It's not true. It does not exist. I must have gotten 200 calls from people who wanted a criminal investigation of so-and-so because they lost by 100 votes and were sure there was fraud. They could never prove anything.¹⁰⁶

The results of an investigation launched by the U.S. Department of Justice between 2002 and 2005 found almost no evidence at all to substantiate the long-held conspiracy theory of voter fraud that Republican politicians have repeated ad nauseum to justify the need for voter ID laws.¹⁰⁷ Republicans' insistence on the presence of voter fraud only increased following the 2008 election of President Barack Obama.

The Role of ALEC

In June 2009, ALEC's publication *Inside ALEC* ran a story called "Preventing Voter Fraud," detailing what voter ID bills should include to survive constitutional challenges. The guidelines were based on the 2005 Carter-Baker Commission and the Supreme Court findings in *Crawford v. Marion County Election Board*, a case involving a dispute over Indiana's 2005 voter ID law.¹⁰⁸ ALEC stressed in its publication that to "improve the chances of a law being upheld in court," voter ID bills should include distribution of free voter ID cards, availability of provisional ballots as well as strong promotion of the new law and comprehensive distribution of ID cards. These elements were incorporated into ALEC's "Taxpayer and Citizen Protection Act" which was drafted by its Criminal Justice and Homeland Security Task Force and approved by ALEC's Board of Directors in June 2008.¹⁰⁹ In August 2009, ALEC held its annual meeting, and the ALEC Board of Directors approved ALEC's "Voter ID Act," produced by the

ALEC Task Force on Public Safety and Elections.¹¹⁰

These pieces of ALEC model legislation contain many provisions, but essentially the first requires voters to demonstrate U.S. citizenship prior to voting or registering to vote, and the second requires all voters to show certain types of ID prior to voting.

Between 2008-2010, the years immediately following the U.S. Supreme Court decision in *Crawford v. Marion County Election Board*, no state passed a strict voter ID law requiring photo identification (although Oklahoma, Utah, and Idaho passed laws with what the non-partisan National Conference of State Legislatures calls "non-strict,



non-photo ID requirement”).¹¹¹ However, when Republicans gained full control of an additional 11 state legislatures in the 2010 midterm elections, ALEC moved fast. In 2011, five strict photo ID laws and one non-strict law passed through state legislatures — all Republican controlled and all sponsored by ALEC-member lawmakers.¹¹² Others followed in 2012 and 2013, but the pace has since slowed.¹¹³ All told, 35 states now have some form of voter ID law in effect.¹¹⁴

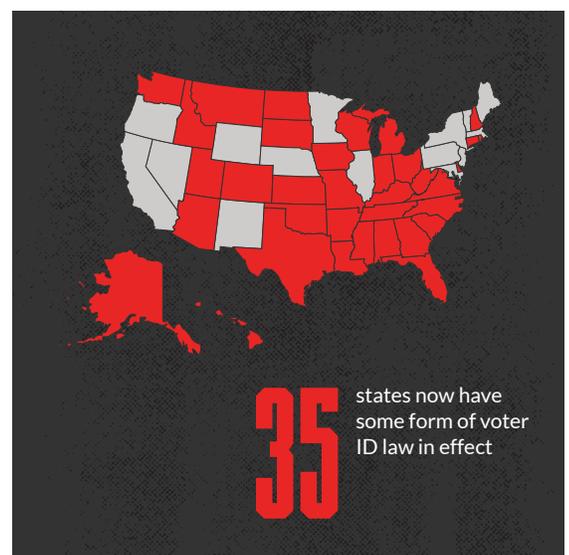
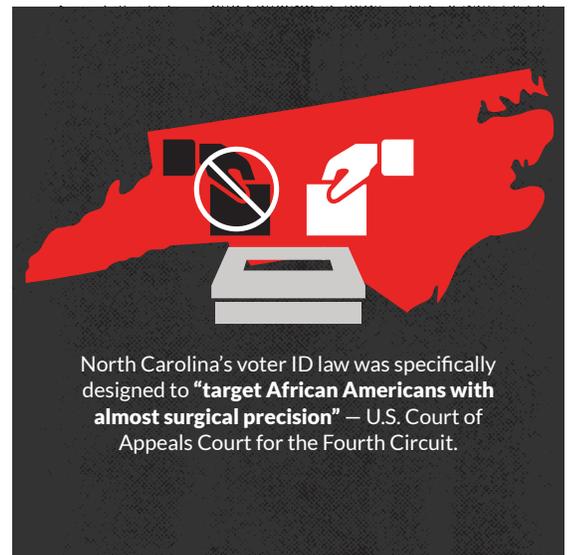
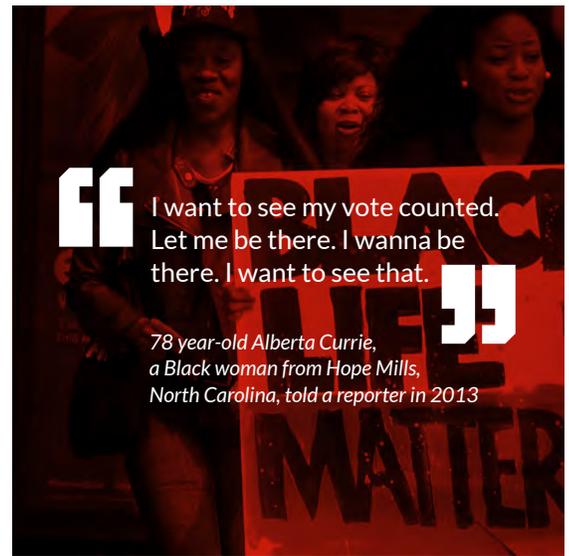
Voter ID Laws' Impact on People of Color

“I want to see my vote counted. Let me be there. I wanna be there. I want to see that,” 78-year-old Alberta Currie, a Black woman from Hope Mills in North Carolina, told a reporter in 2013.¹¹⁵ At the time, the Republican-controlled legislature of North Carolina had recently passed a law, SL 2013-381 (also referred to as House Bill 589, before it was amended and passed in the NC Senate),¹¹⁶ aimed at restricting the ability of people of color to vote. In the phrasing used by the U.S. Court of Appeals for the Fourth Circuit, “we can only conclude that the North Carolina General Assembly enacted the challenged provisions of the law with discriminatory intent”.¹¹⁷

All four of the principal lawmakers who sponsored the bill in the North Carolina Legislature have been involved in ALEC, three of them as active members of ALEC Task Forces.¹¹⁸

The “challenged provisions” of the new law, “required in-person voters to show certain photo IDs, beginning in 2016, which African Americans disproportionately lacked, and eliminated or reduced registration and voting access tools that African Americans disproportionately used.”¹¹⁹

One of those “voting access tools” was early voting. North Carolina’s law cut the amount of time available for early voting, from 17 days to 10 days, and required all voters to provide one of a group of state-issued forms of ID prior to voting. Early voting is particularly popular among rural Black voters in North Carolina. Albert Currie and the members of her small church in Hope Mills relied on her community church’s effort to provide transport to the voting booth on the first Sunday of early voting. As the pastor of the New Oxley Hill Baptist Church in Merry Hill, N.C. reported, “many of these persons don’t have cars. They can’t afford automobiles.”¹²⁰ Elaborating on the objective of the North Carolina legislature to restrict early voting by a week, longtime Republican consultant Carter Wrenn told the *Washington Post*, “of course it’s political. Why else would you do it? ... Look, if African Americans voted overwhelmingly Republican, they would have kept early voting right where it was.”¹²¹ An-



other Republican official also provided insight into the intent behind the voter ID feature of the law. Don Yelton, Republican precinct chair, stated that this requirement of the law would “disenfranchise some of [Democrats’] special voting blocks.... That within itself is the reason for the photo voter ID. Period. End of discussion.”¹²²

The U.S. Court of Appeals for the Fourth Circuit, in finding that the law was specifically designed to “target African Americans with almost surgical precision,” cited the requests Republican officials had made of the North Carolina elections board in the months leading up to the passage of the bill through the legislature:

“Prior to and during the limited debate on the expanded omnibus bill, members of the General Assembly requested and received a breakdown by race of DMV-issued ID ownership, absentee voting, early voting, same-day registration, and provisional voting (which includes out-of-precinct voting). This data revealed that African Americans disproportionately used early voting, same-day registration, and out-of-precinct voting, and disproportionately lacked DMV-issued ID. Not only that, it also revealed that African Americans did not disproportionately use absentee voting; whites did. SL 2013-381 drastically restricted all of these other forms of access to the franchise, but exempted absentee voting from the photo ID requirement. In sum, relying on this racial data, the General Assembly enacted legislation restricting all — and only — practices disproportionately used by African Americans.”¹²³

The targeting of African Americans that took place in North Carolina has happened elsewhere. In 2011, Texas passed a voter ID law, S.B. 14, which required voters to show one of six forms of government-issued photo identification in order to vote: a state driver’s license or ID card, a concealed handgun license, a U.S. passport, a military ID card, or a U.S. citizenship certificate with a photo. A study by political scientists Eitan Hersh and Stephen Ansolabehere found that “white registered voters are significantly more likely to possess a voter ID than African-American or Hispanic voters.”¹²⁴ Commenting to a Tufts University magazine about the study, Hersh noted that “in the last decade, states have been changing rules about registration, early voting, and voter ID.... Voter ID is particularly controversial, because some of these laws seem to have been passed into law with a discriminatory intent.”¹²⁵ Hersh has served as an expert witness for the Department of Justice in litigation filed to challenge S.B. 14. Similarly, a 2018 study by Phoebe Henninger, Marc Meredith, and Michael Morse found that, based on data from Michigan, “non-white voters are between 2.5 and 6 times more likely than white voters to lack photo ID.”¹²⁶

“...white registered voters are significantly more likely to possess a voter ID than African-American or Hispanic voters.”

Anti-Boycott, Divestment, and Sanctions Bills

The Origin

In 2005, as part of the justice movement for Palestinian liberation and in light of a counterproductive peace process, Palestinian civil society launched a call for global solidarity



Dr. Angela Davis, author of "Freedom is a Constant Struggle: Ferguson, Palestine, and the Foundations of a Movement" lectures at Columbia University in 2014.

to pressure the state of Israel to comply with international law and its human rights obligations to Palestinians. Hundreds of Palestinian organizations, individuals, and political parties called on the international community to commit to broad boycotts, divestment initiatives, embargoes, and sanctions (similar to those applied to South Africa during the apartheid era) to be levied against Israel "for the sake of justice and genuine peace."¹²⁷

The call for boycott, divestment, and sanctions (BDS) urged the international community to maintain this pressure until Israel meets its obligations under international law by "1. Ending its occupation and colonization of all Arab lands and dismantling the [Separation] Wall; 2. Recognizing the fundamental rights of the Arab-Palestinian citizens of Israel to full equality; and 3. Respecting, protecting and promoting the rights of Palestinian refugees to return

to their homes and properties as stipulated in UN resolution 194."

In the intervening decade, the international solidarity movement for Palestinian rights has grown exponentially, drawing particular strength from student organizers on college campuses across the country.¹²⁸ The growth of the movement for justice in Palestine has also coincided with a renewed commitment across social justice struggles to the praxis of solidarity and what Dr. Angela Davis calls the "indivisibility of justice."¹²⁹ In response to this surge in activism and organizing, state and local governments across the United States have responded by cracking down on the right to protest and boycott Israel's policies, as well as to speak openly about Palestinian human rights.¹³⁰ Many such measures mention the boycott of Israel and the BDS movement by name.

In May 2015, the state legislature of Illinois broke ground when it unanimously passed the first state law to use the machinery of government to explicitly punish boycotts in support of Palestinian rights. The law established a blacklist of foreign companies that engage in a boycott of Israel, and divested public employees' pension funds from those companies.^{131,132} Governor Bruce Rauner signed the bill into law in July of that year.

At the time, it was widely covered in the media that the Jewish United Fund (JUF) was central to generating political support for the bill.¹³³ In its own statement, JUF noted that its Associate Vice President for Government Affairs, Suzanne Strassberger, "worked closely with the sponsors in Springfield [the state capital of Illinois] to move the legislation forward," and, "in addition to lobbying in Springfield, JUF helped mobilize voter outreach to legislators."¹³⁴ The support was acknowledged and appreciated by Governor Rauner's political aides: "JUF played a critical role in the passage of this important legislation," said Richard Goldberg, the governor's deputy chief of staff for legislative affairs, who noted that the governor appreciated "JUF's strong partnership in combating BDS."¹³⁵ The JUF president added, "We anticipate that this legislation will become a model for similar action in many other states."

In the following months, many more state legislatures followed suit, drawing from a set of identical tactics to retaliate against business entities that engaged in the boycott of Israel. In

March 2016, Florida Governor Rick Scott signed into law a measure both divesting public pensions from, and prohibiting public entities from entering into certain contracts with, companies that boycott Israel, in addition to creating a publicly available blacklist.¹³⁶ That same month, the governor of Colorado signed a law divesting public pensions from companies that boycott Israel.¹³⁷ Also in March 2016, the governor of Arizona signed into law a measure divesting public pensions from companies that boycott Israel and prohibiting public entities from entering into contracts with such companies.¹³⁸

Later that year, the Ohio state legislature also prohibited public entities from entering into contracts with companies that boycott Israel.¹³⁹ The Indiana state legislature passed — and then-Governor Mike Pence signed into law — a provision prohibiting public entities from doing business with companies that boycott Israel and also creating a blacklist.

By April 2019, according to Palestine Legal, 27 states have anti-boycott laws, including five states where governors issued executive orders.¹⁴⁰ Since 2014, more than 100 measures targeting boycotts and advocacy for Palestinian rights have been introduced in state and local legislatures across the country, as well as in the U.S. Congress.¹⁴¹

In March 2018 the Florida legislature amended a comprehensive anti-BDS bill it passed in 2016, to broaden its scope to apply to all contracts (not just those above \$1 million, as had been the case previously).¹⁴² A different May 2019 law deployed a new tactic to silence critics of Israel, redefining anti-discrimination to include antisemitism. While the 2019 law rightly adds religion as a protected category under Florida’s public education anti-discrimination law, it goes on to define antisemitism as virtually any criticism of Israel, and requires public education institutions to use that definition when investigating allegations of antisemitism.¹⁴³ A similar measure was written into law in South Carolina in May 2018.¹⁴⁴

The Role of ALEC

The Center for Media and Democracy has revealed that two anti-BDS measures were introduced as potential ALEC model legislation at an annual ALEC summit in December 2015: “Resolution on Countering the BDS movement” and the “Protection and Enforcement against the Commercial Exclusion of Israel Act.”¹⁴⁵ According to ALEC’s website, the resolution was formally introduced as model legislation during the annual ALEC conference held the following July.¹⁴⁶ Reports linked Wisconsin State Senator and ALEC national chairwoman Leah Vukmir to the model legislation; she had written her own alarmist article on the BDS movement on ALEC’s online blog just weeks earlier, calling it “economic terrorism.”¹⁴⁷

The language of the model legislation is not publicly available. However, the bill’s summary makes clear that it seeks to retaliate against the BDS movement in exactly the same way as the spate of anti-BDS bills that emerged several months later in state legislatures across the country. The goal of the bill, according to ALEC, is to “to create disincentives to engaging in . .

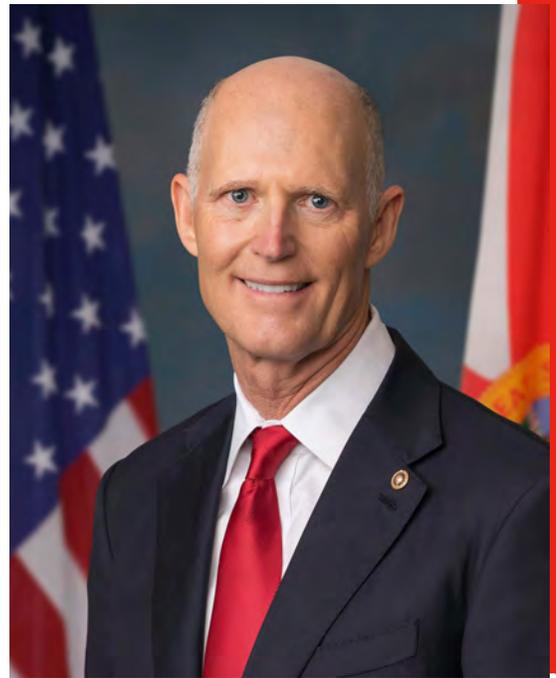


Photo: United States Senate Photographic Studio

Rick Scott, former Florida Governor now Senator, signed an anti-boycott measure into law in March 2016.

. boycott activities . . . [that have] the intention of creating significant economic harm to Israeli or Jewish entities by exerting coercive economic pressure on those doing business with them.”¹⁴⁸

Notably, the primary group collaborating with ALEC to promote anti-BDS legislation was a right-wing Christian evangelical organization called the American Center for Law and Justice (ACLJ), founded by the tele-evangelist Pat Robertson in 1990. For decades, although increasingly so in recent years, some of the most strident supporters of Israel and Zionism in the United States have been Christian evangelicals like Robertson, who espouse a fundamentalist philosophy of Christian Zionism.¹⁴⁹



Photo: Mark Taylor

Jay Sekulow, President Trump's personal attorney, is also the chief counsel of the ACLJ, a right-wing Christian evangelical organization advancing anti-boycott legislation.

Today, ACLJ, which is closely associated with Jay Sekulow, President Trump's personal attorney, is a religious 501(c)(3) tax-exempt organization with a 2016 budget of over \$53 million. ACLJ has worked behind the scenes with ALEC to develop and help push for the adoption of anti-BDS legislation, including by presenting on the legislation to ALEC lawmakers at its conferences.¹⁵⁰

In many of the 27 states that have adopted anti-BDS measures, the main sponsors of those bills have been closely with ALEC. In Georgia, SB327 was co-sponsored by state Senator Judson Hill, who was named ALEC 'Legislator of the Year' just a few years earlier.¹⁵¹ In Tennessee, SB1250 was introduced by state Senator Dolores Gresham, who has served on ALEC's Education Task Force.¹⁵² Similarly, in Indiana, HB1378 was authored by Representative Brian Bosma, who has served ALEC as a member of its Energy, Environment and Agriculture Task Force¹⁵³ and its Civil Justice Task Force.¹⁵⁴

And two years after introducing ALEC to anti-BDS legislation as the group's national chairwoman, Sen. Leah Vukmir introduced it to her own state legislature in Wisconsin in late 2017. The bill, co-authored by Vukmir, was signed into law in April 2018.¹⁵⁵ The Wisconsin bill, adopted as 2017 Act 248, prohibits all public entities from doing business with any entities that boycott Israel.

A recent *Guardian* report revealed ALEC's role in coordinating an upcoming dissemination of bills seeking to quell criticism of Israel in U.S. public schools and universities by labeling it as "antisemitic" or "discrimi-



Photo: Christopher Hazou

Protesters in Ferguson Missouri take part in the 2014 Palestine contingent of "Ferguson October."

natory.” E-mails obtained by the *Guardian* show that Florida state Representative Randy Fine, who sponsored Florida’s own legislation, presented on his recent legislative accomplishment at ALEC’s annual conference held in August 2019. Fine was eager for the meeting’s attendees, which included state lawmakers from South Carolina, North Carolina, Arkansas, Kansas, and Oklahoma, to coordinate their own state legislative advocacy with the Israeli-American Coalition for Action, which he praised for supporting the legislative push in his own state.¹⁵⁶

Responding to that email, a representative of the group boasted that their legal team had “refined [the bill] into a model that can be brought elsewhere,” and encouraged members to contact them or ALEC National Chairman Rep. Alan Clemmons of South Carolina for “policy support.”¹⁵⁷

Anti-BDS Laws’ Impact on People of Color

While it is clear that anti-BDS laws are a direct attack on the constitutionally-protected First Amendment right to boycott,¹⁵⁸ they are also just one tactic in a long legacy of attacks on the rights of Palestinians. The movement for Palestinian rights is broad and diverse, with supporters from all sectors of society. While the laws target Palestinian rights advocates writ large, Arab-American, Black, Brown, and Indigenous people who have been central to the growing cross-movement defense of the rights of Palestinians have also clearly been impacted.

Anti-BDS laws chill, punish, or attempt to punish speakers supporting Palestinian rights... designed to silence expressive advocacy that challenges the injustices of Israeli state policy

As in other struggles for justice, it is people of color that are disproportionately affected by backlash that movements face. For example, the Israeli government deems Black-Palestinian solidarity so threatening that it has attempted to implement a strategy to expressly target the Movement for Black Lives’ support for Palestinian rights.¹⁵⁹

Students of color who support Palestinian rights have also found themselves singled out and targeted by right-wing extremists like David Horowitz. He has been referred to by the Southern Poverty Law Center as “one of America’s most dangerous hatemongers” and “the godfather of the modern anti-Muslim movement”. Like other Islamophobic right-wing commentators, Horowitz frequently ties his anti-Muslim and anti-Black diatribes together with his hatred of Palestinians.¹⁶⁰ Horowitz has used posters and speeches to target students and professors of color who support Palestinian rights.¹⁶¹ ALEC hosted Horowitz at its annual meeting in New Orleans in 2018. During a breakfast session, Horowitz claimed that “at the K-12 level, school curricula have been turned over to racist organizations like Black Lives Matter and terrorist organizations like the Muslim Brotherhood.”¹⁶²

Online campaigns like those run on the Canary Mission website deliberately smear the reputations of people who advocate for the rights of Palestinians, and they overwhelmingly focus on people of color. The Palestinian rights advocacy organisation, Jewish Voice for Peace, reported on the shadowy activities of Canary Mission and found that “[t]he students targeted by Canary Mission are overwhelmingly Palestinian, Arab, Muslim and/or students of color”. The report continued, “in a national climate marked by rising Islamophobia, anti-Arab

and anti-black racism, Canary Mission's smear campaign only adds fuel to the fire, exposing already marginalized campus communities to additional surveillance, harassment and even physical danger."¹⁶³

These and many other examples of the widespread attack on Palestinian rights advocates and their allies are compounded by the wave of anti-BDS laws that has occurred in recent years. The analysis of the impact of these laws must be seen together with this wider animus directed toward Muslims and people of Arab descent, particularly Palestinians and Palestinian-Americans.

Consider the impact of a 2017 Texas law, sponsored by Phil King, who was National Chair of ALEC in 2015 and is a member of the Board of Directors.¹⁶⁴ The 2017 law stipulated that "a governmental entity may not enter into a contract with a company for goods or services unless the contract contains a written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract." A Palestinian-American speech language pathologist, who was born in Austria but has lived in the U.S. for thirty years, has worked in Austin suburban schools serving Arabic-speaking students since 2009. She was unable to renew her contract with the school district because she could not, in good conscience, sign the required certification that she does not and will not boycott Israel.¹⁶⁵ Speaking in a media interview, Ms. Amawi said, "You know I have to set an example for my kids. We have got to stand up for justice, and what's right and equal opportunity for everybody... so I could not sign it. I was forced to resign from my job because I will not sign it."¹⁶⁶ Zachary Abdelhadi, a student at Texas State University, is another Palestinian-American impacted by the Texas law. Because he would not submit to the law, he was prevented from judging high school debate tournaments for the Lewisville Independent School District. Similarly, Obinna Dennar, a Ph.D History student, had to turn down payment for judging a debate in the Klein independent school district.

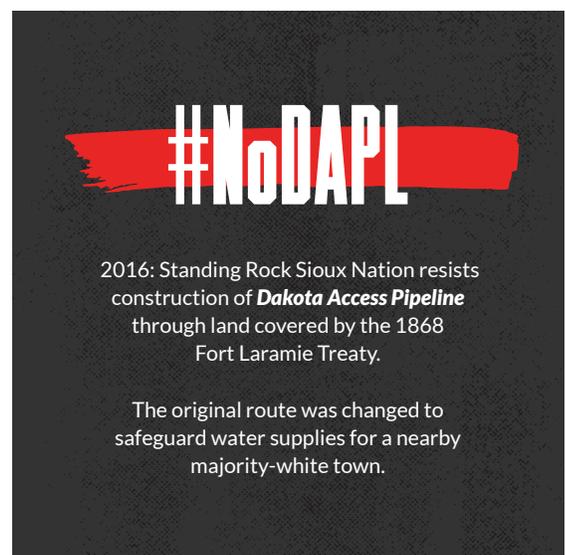
These anti-BDS laws chill, punish, or attempt to punish speakers supporting Palestinian rights. They are part of a tapestry of laws and practices, of which the Texas anti-BDS Act is a central piece, which are designed to silence expressive advocacy that challenges the injustices of Israeli state policy. Beyond the attack that anti-BDS laws have on people of color, the broad nature of how anti-BDS laws are applied can have devastating consequences. For example, based on a mistaken application of the Texas anti-boycott law, hurricane victims in Dickinson, Texas were required to pledge not to boycott Israel as a condition for receiving relief aid.¹⁶⁷

While anti-BDS laws impact the everyday lives of the people of color, and their allies, who take a stand to defend the rights of Palestinians, they exist within this broader social and political context. These laws are only one component of the broader attack on the movement for Palestinian rights that undermines the rights of all people to boycott not only in support of the rights of Palestinians, but other social justice issues as well.

Critical Infrastructure Bills

The Origin

In August 2016, Indigenous and allied protesters began an



effort to prevent construction of the Dakota Access Pipeline (DAPL) that soon evolved into a national movement referred to as #NoDAPL. Historian and Indigenous activist Nick Estes documented his involvement with #NoDAPL in his 2019 book *Our History Is the Future*, which contains, among many other important stories, details of the motivations and significance of this movement:

This was my fourth and final trip to Oceti Sakowin Camp, the largest of several camps that existed at the confluence of the Cannonball and Missouri Rivers, north of the Standing Rock Indian Reservation, from April 2016 to February 2017. Initially, the camps had been established to block construction of Energy Transfer Partners' \$3.8 billion Dakota Access Pipeline (DAPL), a 1,712-mile oil pipeline that cut through unceded territory of the 1868 Fort Laramie Treaty and crossed under Mni Sose (the Missouri River) immediately upstream from Standing Rock, threatening the reservation's water supply. This was not just about Standing Rock water: The pipeline crossed upriver from the Fort Berthold Indian Reservation on the Missouri River, transporting oil extracted from that reservation's booming fracking industry. It cut under the Mississippi River at the Iowa-Illinois border, where a coalition of Indigenous peoples and white farmers, ranchers, and environmentalists in Iowa opposed it. And it crossed four states – North Dakota, South Dakota, Iowa, and Illinois. But it was Standing Rock and allied Indigenous nations, including Fort Berthold, who had put up the most intense resistance.... The encampments were about more than stopping a pipeline. Scattered and separated during invasion, the long-awaited reunification of all seven nations of Dakota-, Nakota-, and Lakota-speaking peoples hadn't occurred in more than a hundred years, or at least seven generations.¹⁶⁸

The movement was quickly misrepresented by Republicans, law enforcement officials, and right-wing commentators who supported a quick and uninterrupted construction of the 1,712-mile-long underground oil pipeline. State-level legislators across the country harnessed the backlash as justification for new laws that criminalize protest activity with extreme penalties.¹⁶⁹

On Feb 22nd 2017, the chair of the Oklahoma House of Representatives Committee on Criminal Justice and Corrections, Rep. Scott Biggs, introduced a critical infrastructure bill, HB 1123, to the committee, expressly stating in response to a question by another committee member, "Yes, [the Dakota Access Pipeline protests] are the main reason behind this."¹⁷⁰ During debate of the bill in the committee session, Rep. Biggs invited members to join oil and gas executives for a committee briefing on what took place in North Dakota.¹⁷¹



Dakota Access Pipeline protests at Standing Rock

Photo: Fibranacti Blue

The law created a new set of criminal offenses for trespassing on property containing “a critical infrastructure facility,” a term defined broadly by the bill as any of 16 mostly energy-related industrial manufacturing facilities, or, in a clear allusion to the Dakota Access Pipeline, “[a]ny aboveground portion of an oil, gas, hazardous liquid or chemical pipeline, tank, railroad facility or other storage facility” marked as private property.¹⁷² The offenses carried a tremendous penalty: entering property that has on it a critical infrastructure facility could result in a fine of \$1,000 and/or six months in jail, and causing damage on such property could lead to 10 years in prison and a fine of up to \$100,000.¹⁷³

House Bill 1123 was signed into law by Oklahoma Governor Fallin on May 3, 2017. Less than two weeks later, Governor Fallin signed another bill into law, HB 2128, to ramp up financial liability for individuals convicted of trespassing and for others who conspired with them.¹⁷⁴

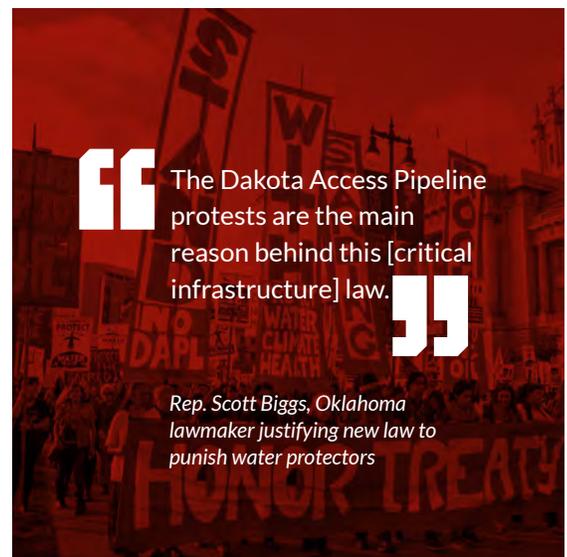
The Role of ALEC

A few months after Oklahoma passed HB 1123 and HB 2128 into law, ALEC’s Energy, Environment and Agriculture Task Force drafted what it called the “Critical Infrastructure Protection Act.”¹⁷⁵ ALEC introduced it as a model bill soon after, at its States and Nation Policy Summit in Nashville, December 7-9, 2017. In a letter sent by six fossil fuel industry associations, lobbyists, and corporations to state lawmakers on December 7, 2017, timed to coincide with ALEC’s meeting, the groups called on state lawmakers to support ALEC’s new Critical Infrastructure legislation, arguing it would hold individuals and organizations accountable for tampering with or disrupting operations. The fossil fuel groups added that they looked “forward to working with you as you continue to address this growing problem in your state.”¹⁷⁶

A few weeks later, Grant Kidwell, director of ALEC’s Energy, Environment and Agriculture Task Force, wrote an article for ALEC’s website. In the piece, Kidwell specifically cited pipeline protestors’ activities against Energy Transfer Partners’ Dakota Access Pipeline as justification for the need for critical infrastructure laws. He also drew an explicit connection between Oklahoma’s laws and the ALEC model legislation:

States have begun to take action in response to this disturbing trend of trespassing, vandalism, and damage to critical infrastructure sites. In 2017, Oklahoma enacted two new laws designed to hold individuals and conspiring organizations criminally and civilly liable for trespassing or tampering with critical infrastructure sites and structures. Members of the American Legislative Exchange Council drew on these two laws for the crafting of a new piece of model policy, the Critical Infrastructure Protection Act.¹⁷⁷

On March 26, 2018, Major Thibaut, Jr., an ALEC-affiliated Democratic Louisiana state leg-



islator,¹⁷⁸ introduced House Bill 727 to the state's House of Representatives. Justifying the need to amend the critical infrastructure bill, Thibaut told a reporter, "I saw what happened in parts of the country like North Dakota. Oklahoma has some legislation, and this is kind of modeled after that."¹⁷⁹ The bill was introduced soon after protesters in Louisiana, inspired by earlier protests at Standing Rock, had established a campaign to halt construction of the 163-mile-long Bayou Bridge oil pipeline by two ALEC-affiliated corporations,¹⁸⁰ Energy Transfer Partners and Phillips 66.¹⁸¹ Thibaut may also have had in mind that Phillips 66 (and the company it was formerly owned by, ConocoPhillips¹⁸²) had made donations to his political campaign for several years, including the year just prior to his bill passing into law.¹⁸³ His close ties to the companies building the critical infrastructure facilities is part of a much larger trend: the National Institute on Money in Politics and Greenpeace have revealed that since 2011, 65 elected representatives who signed on as co-authors of the Louisiana Senate and House critical infrastructure bills received \$54,851 in contributions from the two companies building the Bayou Bridge Pipeline.¹⁸⁴

In 2019, just months after ALEC adopted Oklahoma's bill as model legislation, North Dakota, South Dakota, Texas, and Tennessee all passed critical infrastructure laws. In Missouri, a critical infrastructure bill has passed both houses of government and is awaiting approval by the governor. There are also critical infrastructure bills pending in Idaho, Illinois, Kentucky, Minnesota, and Ohio.¹⁸⁵

The Center for Media and Democracy has also documented ALEC affiliations for sponsors of the bills passed into law in other states, including North Dakota (Sen. Janne Myrdal, Rep. Chuck Damschen, and Rep. Jim Schmidt),¹⁸⁶ South Dakota (Sen. Kris Langer, Sen. Ryan Maher, committee Vice Chair Sen. Jenna Netherton, and Sen. Al Novstrup)¹⁸⁷ and Tennessee (Sen. Frank Nicely).¹⁸⁸ In Texas, two of the three sponsors of the state's critical infrastructure bill, passed in spring 2019, have documented ALEC ties.¹⁸⁹

Critical Infrastructure Laws' Impact on People of Color

As illustrated above, the Louisiana law emerged in the wake of the #NoDAPL movement, as part of a coordinated national effort by fossil fuel industry interests, supported by ALEC, to criminalize environmental and Indigenous protests against their infrastructure projects. It is therefore no coincidence that, just days after it was enacted, the Louisiana law was invoked



Photo: Julie Demansky

No Bayou Bridge protesters stage direct action to stop construction along the pipeline route, 2018.

Since #NoDAPL in 2016, 11 ALEC-affiliated lawmakers have been lead sponsors on critical infrastructure bills that passed into law in North Dakota, South Dakota, Tennessee and Texas.

by a private security company working in tandem with local law enforcement at the behest of the private corporations building the Bayou Bridge pipeline.¹⁹⁰

Anne White Hat, one of the Indigenous women who have been central to the leadership of the campaign to stop construction of the Bayou Bridge Pipeline in Louisiana, said of the law:

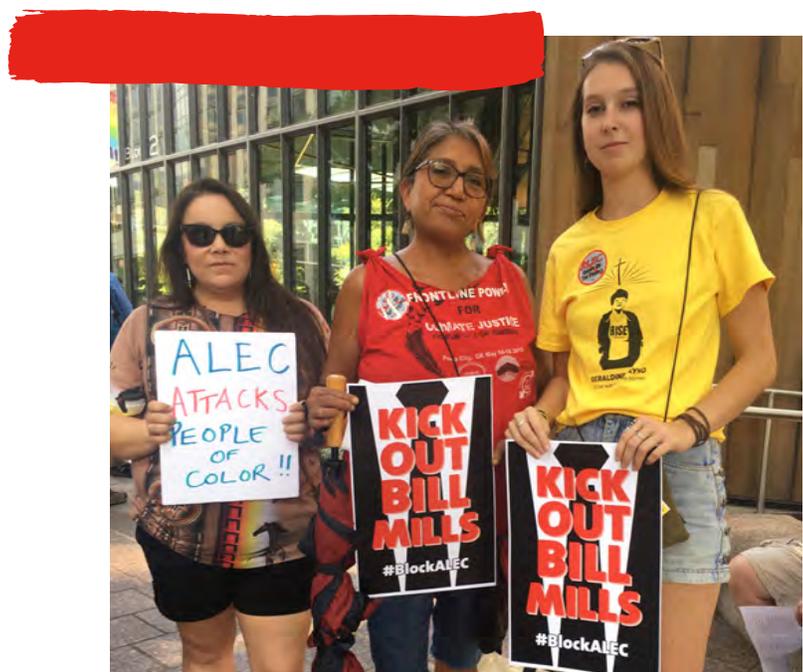
The goal of this unconstitutional law is to further corporate interests and silence Indigenous and non-Indigenous communities that take a stand for the rights of our Mother Earth that we human beings depend upon for our existence. While our leadership ignores the growing climate chaos, ALEC and its “Big Oil” partners can try to leverage America’s pay-to-play politics to silence us – but we will fight this on the front lines and in the courts.¹⁹¹

Meg Logue, a local activist with 350 New Orleans, said of the law, “ALEC-inspired HB 727 was a thinly veiled attempt to equate the peaceful, prayerful resistance of water protectors to terrorism, and hyper-criminalize our work accordingly. Our legislators jeopardize our democracy by bending toward the priorities of corporations while undermining the people’s right to self-determination and justice.”¹⁹²

As detailed in Section 3, the initial draft of House Bill 727 contained amendments to Louisiana’s critical infrastructure law that were even more draconian than either the Oklahoma or ALEC model legislation. For example, HB 727 included a far-reaching conspiracy offense which provided that if two or more persons conspired to commit unauthorized entry (heretofore a misdemeanor trespass), even without actually committing the trespass, they could be imprisoned with or without hard labor for up to five years and fined up to \$10,000.¹⁹³

As the bill progressed through the House and Senate in Louisiana, opponents of the bill began to raise serious doubts about it. Another climate activist with 350 New Orleans, Alicia Cooke, told a reporter covering the situation, “How do you prove that someone is conspiring to trespass on property? Versus conspiring to gather *near* property?”¹⁹⁴ The many concerns raised by opponents of the bill, particularly the conspiracy component, resulted in this provision, and others, being removed before passage.

Unlike the Oklahoma law, HB 727 contains no outer bounds to its definition of pipelines, and thus includes all portions of the 125,000 miles of pipelines in the state, most of which run underground.¹⁹⁵ According to a legal challenge to HB 727, filed by the Center for Constitutional Rights in support of Anne



#BlockALEC Protesters outside ALEC Annual Meeting in Austin, TX 2019 (L-R) Jennifer Falcon, Anne White Hat, Meg Logue.

Photo: Dominic Renfrey

White Hat, 350 New Orleans, and others, the open-ended and far-reaching definition not only lends itself to misuse by law enforcement as a pretext for targeting a wide range of protest activity, but renders the law unconstitutionally vague and over-broad.¹⁹⁶

White Hat, who is also the lead plaintiff in the aforementioned case, was arrested on September 18, 2018, after leading a prayer ceremony at a boat launch near St. Martinville, Louisiana. She was charged with two felony counts under the critical infrastructure law for unauthorized entry that allegedly occurred on September 3, 2018, near a pipeline construction site in the Atchafalaya Basin. As outlined in the court filing:

White Hat had been present on the property in question as a Water Protector with the permission of co-owners. She engaged in non-violent protest against and monitoring of the pipeline project and was trying to raise awareness about the fact that the pipeline was being constructed on the property illegally, a fact later confirmed as the company was found by a Louisiana court to have been trespassing at the time. White Hat is currently facing the possibility of prosecution for the two felony charges that are subject to a combined 10 years imprisonment. The pending charges have affected her life and her ability to engage in further demonstrations.¹⁹⁷

CHANGES IN THE NORTH DAKOTA LAW CARRY SERIOUS PENALTIES

\$10,000 AND 5 YEARS IN JAIL	\$100,000
Max penalty for individuals "damaging," "interfering" or "tampering" with critical infrastructure	Max penalty for organizations "conspiring" with an individual to "damage," "interfere" or "tamper" with critical infrastructure

So far, more than a dozen arrests have been made of peaceful protesters, as well as a journalist covering the events, who were charged with felonies for acts that would have been charged as misdemeanor trespass before August 1, 2018 (and only if those arrested did not have permission or a legal right to remain on the property in the first place). They now face the possibility of prosecution and, if found guilty, up to five years in prison (per offense) and heavy fines. Many of these arrests took place on property upon which a court in December 2018 ruled that the pipeline company itself was trespassing,¹⁹⁸ while the protesters had obtained permission of co-owners of the property to be there.



Endnotes

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Photo Citations

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Page 29 Sign at #AbolishALEC protest, ALEC Annual Meeting, New Orleans, July 2018. Photo: Meg Logue.

Page 30 "Gov. Jeb Bush, center, hands a pen used to sign a Gun Bill to Marion Hammer of the National Rifle Association on Tuesday, April 20, 1999 in Tallahassee, Fla." by AP Photo/Eric Tournay

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Page 45 #BlockALEC Protesters outside ALEC Annual Meeting in Austin, TX 2019 (L-R) Jennifer Falcon, Anne White Hat, Meg Logue. Photo: Dominic Renfrey

Part 4

HOW TO FIGHT FOR SEPARATION OF CORPORATION AND STATE

While ALEC has had success for many years pursuing its agenda, it is not without vulnerabilities. Advocates, activists, and movements seeking to push back against its corporate-first, racist agenda can take meaningful action to resist ALEC's influence over law and policy-making and reclaim the people's right to self-determination.

This section is designed to facilitate generative strategizing for advocates. Specifically, in the spirit of cross-movement solidarity, this section will draw on past successes by progressive grassroots movements for social justice across issue areas – often but not always battling ALEC-sponsored legislation – to suggest a way forward to reclaim our law and policy-making spaces from corporate control.

Political Advocacy Opportunities

With an increased presence of progressive politicians in federal and state legislatures, there are a growing number of opportunities to take on corporate control of legislative decision-making through political advocacy.

Calling on Elected Officials and Corporations to Cut Ties with ALEC

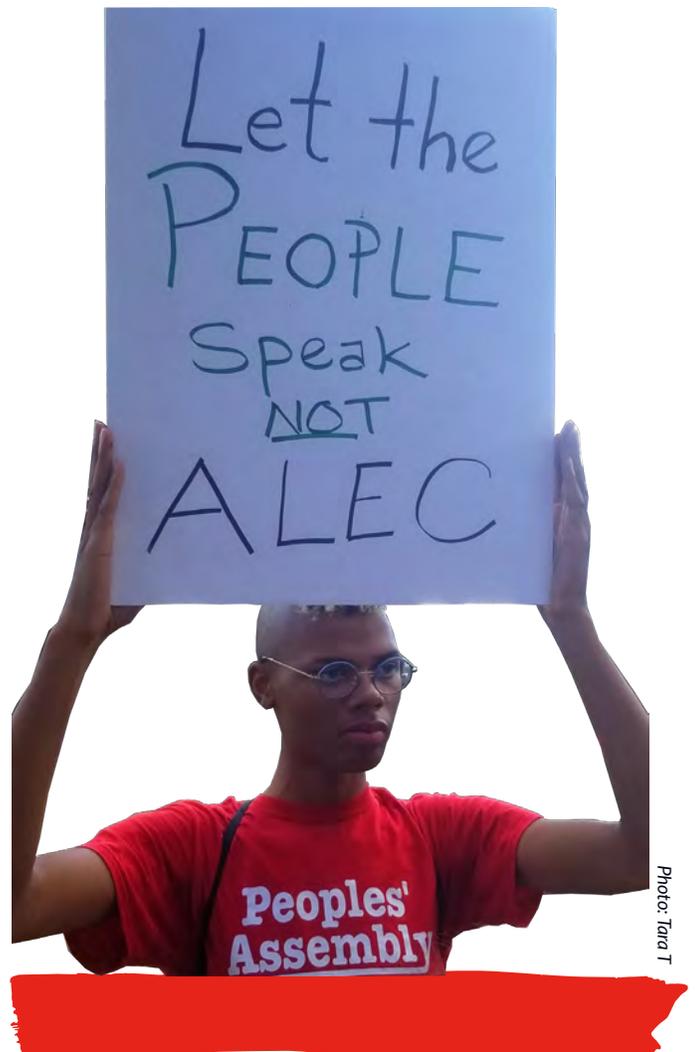
As demonstrated by the group Stand Up to ALEC,¹⁹⁹ a viable advocacy approach is to make sure state lawmakers know that their constituents do not want them associating with ALEC. Key times to mobilize constituents to register their concerns about ALEC with their representatives are during political primaries, in the lead-up to state elections, and in the recess period before state legislatures convene.

Although it is not always easy to know whether an elected state lawmaker is a member of ALEC (as explained above, ALEC does not identify its members unless they are part of an ALEC Task Force), groups like Stand Up to ALEC,²⁰⁰ the Center for Media and Democracy,²⁰¹ and Documented²⁰² have all compiled information that can be used to identify whether a state lawmaker has affiliations with ALEC, and how deep those affiliations run.

Similarly, as illustrated by the successful advocacy of Color of Change and other public interest groups, advocates can have a significant impact on ALEC's activities by undertaking sustained public pressure campaigns on corporate members to withdraw their membership.²⁰³

Fighting Laws in Committee

Each state legislature has its own legislative process. However, across legislatures, before bills are finalized for a vote, they may be referred to issue-specific committees. The legislators forming each committee scrutinize a bill's contents before voting to approve or deny advancement of the bill. Importantly, at this stage of the legislative pro-



Protester at #AbolishALEC protest outside ALEC Annual Meeting in New Orleans, 2018.

cess, bills can be amended; if advocates are unable to stop an ALEC bill altogether, they can still focus efforts on altering its contents.

The Louisiana Critical infrastructure Law discussed in Section 2 of this report was originally much more expansive and punitive than the final bill as passed. It was weakened in committee in response to advocacy by organizers and activists from 350 New Orleans and other groups that intervened to urge the elimination of a number of its provisions.

Originally, the bill contained language to allow for imprisonment for up to 12 years and a fine of \$250,000 for merely conspiring to interfere with the operations or construction of a pipeline, and a minimum prison term for trespassing on a pipeline construction site.²⁰⁴ The advocates successfully pressed to have these provisions removed and other language added prohibiting use of the law to criminalize or prevent a) lawful and peaceful protest on matters of public interest; and b) recreational and commercial activities in the area, including crawfishing.²⁰⁵

When a law is not in the interest of a state's population and did not originate with the will of that population, the attorney general should not view it as a legitimate and enforceable statute

A Role for Attorneys General

Civil society organizations often pressure state attorneys general to defend their state residents against discriminatory or harmful policies and laws. In recent months and years, civil society organizations have successfully rallied state attorneys general to exercise their robust legal authority to refute several policies put forth by the Trump administration that would have a harmful impact on their residents.

In the immigration context, for example, the National Immigration Law Center has issued guidance to attorneys general encouraging them to protect immigrants from the Trump administration's targeted attacks.²⁰⁶ In Colorado, the Colorado People's Alliance has urged Attorney General Cynthia Coffman to protect the rights of recipients of Deferred Action for Childhood Arrivals (DACA), despite threats from the federal government to repeal the program protecting undocumented students.²⁰⁷ Similarly, in the case of California's sanctuary laws, California's attorney general has vowed to protect the state's sanctuary laws and "defend them against the U.S. Justice Department's lawsuits."²⁰⁸ In both instances, state attorneys general have been pressured by, but also worked with, groups like the Service Employees International Union.

State attorneys general have also played critical roles in opposing the administration's roll-back of labor protections,²⁰⁹ Trump's Muslim Ban,²¹⁰ and net neutrality repeal.²¹¹

When unable to prevent ALEC model legislation from becoming law, advocates can appeal to state attorneys general to not enforce ALEC-originated laws given their undemocratic origins. When a law is not in the interest of a state's population and did not originate with the will of that population, the attorney general should not view it as a legitimate and enforceable statute.

State attorneys general may also examine whether ALEC, as a 501 (c) (3) non-profit organization, is operating in accordance with relevant state laws governing the activities of charitable organizations within their state. Again, advocates and cooperating movement lawyers can play an integral role in activating political opinion in favor of attorneys general taking such action.

Legislative instruments for transparency and accountability

Open Meetings Laws

Public access to agencies, boards, committees, and other government bodies is governed by a category of laws known as open meetings laws. These laws allow constituents to attend — and scrutinize — government meetings.²¹² Most open meeting statutes prohibit members of local government bodies not just from conducting official meetings in secret, but also from conducting informal, out-of-session “meetings” outside of the public eye as well.²¹³

According to these laws, such informal meetings are typically defined by their purpose, to perform public business, and are presumed to be open to the public.²¹⁴ Legislative and executive bodies are required to publish an advance notice of certain proceedings, such as formal rulemaking hearings, enforcement proceedings, and other administrative matters, so that the public can plan to attend.²¹⁵ In some instances, these laws also entitle the public to copies of minutes, transcripts, or recordings.²¹⁶

Open meetings laws do have several critical exemptions that shield government bodies from transparency requirements. Meetings are allowed to remain closed when dealing with certain sensitive subject matters, including “pending litigation, the purchase of real estate, and official misconduct.”²¹⁷ Meetings are also allowed to remain closed to the public when dealing with private information about an individual, trade secrets, or other confidential information.

Open meetings laws can support the work of advocates when there is suspicion that ALEC is meeting with a quorum of lawmakers from a state public body out of the public view. While open meetings laws vary from state to state, generally any meeting of a quorum of members of a state public entity is subject to disclosure requirements. For more specific information on the rules and regulations governing each state, see the Reporters Committee for Freedom of the Press’s “Open Government Guide.”²¹⁸

Lobbying Registries

ALEC is classified as a 501(c)(3) public charity with the IRS and therefore is subject to strong restrictions on the amount of lobbying it is permitted to engage in. However, the organization appears to exist for the sole purpose of facilitating private corporate lobbying of state legislators.²¹⁹ To that end, in April 2012, Common Cause filed a complaint against ALEC charging it with misusing charity laws, massively underreporting lobbying activities, and obtaining improper tax breaks for corporate funders at the expense of taxpayers.²²⁰

Lobbying registration is regulated both federally and locally.²²¹ Lobbying registries vary greatly between states as each state defines a lobby or a lobbyist very differently.²²² In 2015, the Sunlight Foundation published a lobbying disclosure scoreboard ranking of all 50 states.²²³ For example, ALEC is registered in Virginia²²⁴ and is subject to relevant provisions of the Code of Virginia, however, the state’s disclosure requirements on political activity are relatively lax.²²⁵

Public Records

All states have public records laws that allow members of the public to obtain public records from state and local government bodies. Broadly, there are many barriers to obtaining access to government records or to certain areas of government. ALEC has taken advantage of these barriers, such as records exemptions, to infiltrate local government bodies across the country without public scrutiny.

In 2013, the Center for Media and Democracy sued Wisconsin state Senator Leah Vukmir over her failure to disclose ALEC-related materials under Wisconsin's records law.²²⁶ Through the litigation, it was made clear that ALEC attempts to seal its documents by arguing that they are "internal ALEC documents," which "ALEC believed is not subject to disclosure under any state Freedom of Information or Public Records Act."²²⁷

Vukmir and Wisconsin Attorney General J.B. Van Hollen's Department of Justice took the unprecedented position of arguing that Vukmir is immune from suit during her two-year legislative term. After a year of litigation, Vukmir settled with the Center for Media and Democracy and released the documents at issue.²²⁸

Filing public records requests, backed up by public interest litigation, has been successful in revealing ALEC's inner workings, members, and schedules. In 2019, Documented obtained a list of members on the ALEC Commerce, Insurance and Economic Development Task Force through an Ohio public records request.²²⁹ Similarly, in anticipation of the Republican Attorneys General Association (RAGA)'s "Oil and Gas Summit" in Houston, Texas, Documented obtained a copy of a heavily redacted draft agenda through a public records request to the office of the North Dakota Attorney General.²³⁰

For more specific information on which state open records laws cover legislators, refer to the Reporters Committee for Freedom of the Press's "Open Government Guide."²³¹ In states where public records laws do cover legislators, advocates can use these laws to seek communications between ALEC and state lawmakers.

Disclosure of Legislators' Expenditures and Tax Documents

Financial disclosure laws provide constituents with the tools to track conflicts of interest between a candidate or officeholder and their respective personal financial interests, or those of their donors, and the politician's policy positions or actions in office.²³² These laws are meant to protect transparency and engender trust in politicians and in their policies.

In about two-thirds of states, financial disclosure forms for candidates and officeholders are available online. In the other third of states, records are accessible by filing an in-person request. In some states, officials processing record requests are mandated to verify the names and addresses of all those making a request, and mandate that requests be handwritten.²³³ Disclosure laws can help advocates seek information about expenditures lawmakers make in relation to ALEC meetings.

ALEC has taken advantage of barriers, such as records exemptions, to infiltrate local government bodies across the country without public scrutiny.

'Revolving Door' Bans

"Revolving door" bans forbid departing public officials from lobbying for a period of time after leaving public office. The laws are designed to prevent state officials acting in a way favorable to a lobbyist in return for private employment after leaving public service. The length of such bans varies depending on the state, and there are various nuances in some states' laws. There are also restrictions at the federal level.²³⁴

Revolving door bans provide some support to advocates in monitoring whether state lawmakers are operating ethically or are making decisions that favor ALEC members in return for future employment in the private sector. Review the different state laws on revolving door bans at the National Conference of State Legislatures website.²³⁵

'Conflict of Interest' Laws

Conflict of interest laws are designed to ensure lawmakers make decisions in the public interest rather than for their own personal financial gain. States have widely varying ethics requirements for lawmakers, but generally all have public entities mandated to investigate allegations of conflict of interest violations. These conflict of interest laws provide an avenue for investigating lawmakers when advocates suspect unethical conduct by an elected legislator. Review the related section of the National Conference of State Legislatures website for more information.²³⁶

Continuing the Fight at the International Level

UN Treaty on Transnational Corporations and Other Business Enterprises

Since the late 1990s, public health and corporate accountability advocates from more than 100 countries have pushed member states of the United Nations to establish a robust international framework to regulate the tobacco industry. This effort has largely been led by two civil society networks: the Framework Convention Alliance (FCA) and the Network for Accountability of Tobacco Transnationals (NATT).²³⁷ The NATT in particular, coordinated by U.S.-based Corporate Accountability International with over 100 members in more than 50 countries, was pivotal in ensuring that countries adopted a provision in the UN Framework Convention on Tobacco Control (FCTC) limiting the role of the tobacco industry in formulating national health policies. Civil society groups successfully argued, on the strength of evidence exposed by litigation in the U.S. and elsewhere, that tobacco companies have a clear conflict of interest when formulating health and other policies, and have regularly sought to derail regulation of tobacco products.

NATT and FCA's success in limiting the tobacco industry's capture of health



Treaty Alliance members at UN negotiations, 2017.

Photo: Victor Barro

policy formulation has inspired activists and organizers to campaign for a similar UN human rights treaty to regulate corporate abuses of human rights generally. The Treaty Alliance, a loose campaign endorsed by more than a thousand organizations in over 100 countries, has successfully encouraged states to include a “corporate capture” provision into the text of an international treaty. In its most recent draft, UN treaty draft Article 5.5 reads: “In setting and implementing their public policies...State Parties shall act to protect these policies from commercial and other vested interests of persons conducting business activities...”²³⁸

States drafting this treaty have drawn from the language of the FCTC, which reflects the call that some UN member states, the FCTC Secretariat, and civil society organizations have made in the annual negotiations that take place at the UN.²³⁹ In repeatedly calling over several years for this provision to be included in the future UN treaty, the Center for Constitutional Rights has several times made explicit mention of ALEC’s legacy of corporate capture, and particularly pointed to the effects of its influence on people of color.²⁴⁰



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Photo Citations

Pages 52–53 Coalition against Death Alley protesting at Louisiana State Capitol, 2019. Photo: Dominic Renfrey

Page 54 Protester at #AbolishALEC protest outside ALEC Annual Meeting in New Orleans, 2018. Photo: Tara T

Page 58 Treaty Alliance members at UN negotiations, 2017. Photo: Victor Barro

RECOMMENDATIONS

NO DAPL

KEEP IT IN THE GROUND



PRESIDENT-ELECT, ARE YOU LISTENING?
#NODAPL

KEEP IT IN THE GROUND
PROTECT OUR CLIMATE WATER AND HEALTH.

RECOMMENDATIONS



To ALEC

- ✓ Disband all ALEC Task Force groups and do not accept lawmakers as members.
 - ✓ Make publicly available online the full archives of all proposed and passed ALEC model legislation, including sponsors.
 - ✓ Make publicly available online a comprehensive list of current and past legislative and corporate members.
- 

To State Governmental Authorities

State Lawmakers:

- ✓ Do not associate with ALEC.
- ✓ Disclose current and past affiliations with ALEC. Release public information detailing attendance at ALEC convenings, participation in ALEC Task Forces, and communications with or facilitated by ALEC officials.
- ✓ Amend state open meetings laws to ensure they cover lawmakers' activities at ALEC meetings.
- ✓ Amend state open records laws permitting public access to information and materials relating to all interactions between ALEC and lawmakers.

Attorneys General

- ✓ Investigate whether ALEC's lobbying activities violate state laws governing the activities of charitable organizations.

District Attorneys and Prosecutors

- ✓ Use prosecutorial discretion to refuse to criminally prosecute individuals under statutes drawn from ALEC model legislation.
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To Federal Governmental Authorities

Internal Revenue Service

- ✓ Investigate whether ALEC's lobbying activities violate federal laws governing the activities of charitable organizations.

To Progressive Lawmakers in the U.S. Congress

- ✓ Hold hearings on the negative and widespread impact of ALEC's activities on people of color across the U.S., with firsthand testimony from racial justice, Indigenous, and Palestinian rights organizations.
 - ✓ Formally inquire into whether the Internal Revenue Service has begun investigating whether ALEC's lobbying activities violate federal laws governing the activities of charitable organizations.
-

To the Private Sector

Journalists and Media Organizations

- ✓ Closely investigate the connections that conservative and pro-corporate state laws have to ALEC's members, Task Force activities, annual meetings, and model legislation.
- ✓ Track bills across state legislatures that have originated from ALEC model legislation.
- ✓ Cover ALEC convenings, and publish as much information as possible.
- ✓ Utilize public records requests to obtain any internal ALEC documents, communications, and information that are in the public interest to publish.

Funder Organizations and Other Financial Supporters of Progressive Activism and Organizing

- ✓ Prioritize funding for organizations fighting corporate capture, with special consideration given to Black, Indigenous, female, queer, and/or immigrant-led organizations that adopt an intersectional critique of corporate capture.
-

To Public Interest Organizations

Organizers and Movement Groups

- ✓ Continue cross-movement organizing to focus attention on ALEC.
- ✓ Continue pressing state lawmakers to not associate with ALEC.

Progressive Social Justice Organizations

- ✓ Focus research, advocacy, and legal activities on the impact ALEC has on people of color, beyond just the impacts ALEC's activities have on democracy and good governance.

Photo Citations

ALEC ATTACKS

CENTER FOR CONSTITUTIONAL RIGHTS



US Campaign for
Palestinian Rights

