

Virginia: Sold to the Highest Bidder

The Outsize Influence of Right-wing Conservative Dark Money and ALEC

Imagine This

Instead of attending public schools, school children attend virtual, for-profit charter schools.

Medicare is privatized and seniors receive a subsidy to purchase private, for-profit medical insurance.

Instead of receiving Social Security, recipients manage their own retirement finances.

You travel on roads and other infrastructure owned and managed by private, for-profit companies.

States outsource the management of prisons to private, for-profit companies.

The Reality of a World of Dystopian Privatization

Most school children would learn less in virtual charter schools. For hundreds of years, education has been a communal effort, first handled by churches and synagogues, then by local communities. The understood purpose was passing on skills that reflected the community's culture and values. The purpose was not pocketing a profit. A comprehensive study done at Stanford University's Center for Research on Education Outcomes shows that online charter schools significantly underperform traditional public schools.¹ Another study focused on online schools states that "academic benefits from online charter schools are currently the exception rather than the rule."² But fewer credentialed teachers would be needed for online charter schools. If fewer teachers had credentials, they could be paid less. And the for-profit school operators would make a profit at the expense of our school children.

Privatizing Medicare would result in increased costs for 59 percent of recipients.³

Retirees managing their own Social Security benefits would lose the guarantee of defined benefits, the type that typically pay a set monthly amount at retirement. Senior citizens—at an age when many face cognitive decline—would need the capability to actively and competently manage any money they may have and administrative costs and inexperience would eat up a larger portion of the funds .

Infrastructure projects such as roads and prisons operated by for-profit entities have resulted in increased rates. In Indiana, a contract with a private company managing a toll road allowed for toll increases every year, resulting in tolls that almost doubled in the first 5 years of a 75-year lease.⁴ Some contracts even stipulate that governments can't build or maintain nearby roads which would be in competition for the private toll roads.

Privately managed prisons are motivated to fill up to capacity as they try to maximize profits with more inmates. Private prisons lose money if they aren't full, so they have an incentive to have more people arrested. One of the provisions of Arizona's notorious anti-immigrant bill [SB 1070] required police to ask for immigration papers and allow them to arrest anyone who could not prove they were

legally in the country. Private prison companies supported the bill; arresting immigrants is a good source of profit. Evidence shows private prisons actually cost states more than state-run prisons.⁵ The United States already has the highest imprisonment rate—by far—of any developed nation.

It isn't just prisons that cost more to operate if privatized. Outsourcing work to contractors costs governments *more* in general.⁶ That's not because the private corporations are paying their employees better. In fact, these corporations increase their profits further by cutting employees' pay and benefits. They also enhance profits by hiring people with fewer qualifications so they can be paid less. Oversight and accountability become additional victims when public services are privatized.

This dystopian world of privatization is the dream of some. With such obvious shortcomings, why is there a push for privatization? While the profit motive for companies is clear, it is less clear why elected officials go along with this idea—until you realize that the politicians in support of it are receiving donations from corporate advocates of privatization.

How Corporate Interests Control National Policy to Society's Detriment

The privatization that has become increasingly common is a result of the outsized power that one constituency—business—has to influence legislation. Businesses, whose primary motive is profit, don't necessarily consider the societal costs of their actions. Do we really want businesses, whose overriding interest is profit, to be running our schools?

Turning public service into private profit is but one disquieting practice. Corporations can work to curtail civil rights within a state. And when businesses are able to pollute the environment while outsourcing the costs they impose on public health, not only current but future generations will suffer the consequences. We need a society that benefits the majority, not just a few wealthy individuals and corporations.

This phenomenon—the enormous power of one constituency—is playing out in two different but related ways. For one, a national organization, called the American Legislative Exchange Council, commonly referred to as ALEC, has had a huge impact on laws passed within the states. Its impact comes from writing "model" legislation, which is then given to lawmakers who sponsor it. This has resulted in nearly identical bills being passed in many different states.

For another, outside interests affect local policy through what is called preemption. Preemption occurs when laws are passed at the state level—often with input from ALEC— which prevent cities from enacting their own ordinances or laws. In other words, local laws are preempted by state laws. Preemption laws are usually the result of conservative state legislators reining in progressive cities which are trying to solve problems not being addressed at the state or national level. One example is the attempts of cities to address low, non-living wages by passing laws that increase the minimum wage. Republican-led state legislatures have thwarted these attempts by passing laws that prevent cities from setting their own minimum wage levels.

About ALEC

Through its model legislation, ALEC promotes very conservative and pro-business causes. It has been compared to a dating service for legislators and corporations because it matches up fully-written legislation with legislators willing to sponsor the bills.⁷

Although ALEC claims to be bipartisan, the vast majority of legislative members are Republicans. Legislation written by ALEC seeks to increase business profits, weaken environmental protections, and privatize public entities such as schools, prisons and other infrastructure, like highways. Other legislation promotes very conservative social causes.

Most of its funding comes from corporations, trade associations and the foundations created by very wealthy individuals. Entities controlled by the Koch brothers have been major donors, but many other right-wing groups also give substantial amounts.⁸ The Koch brothers, with a combined net worth of about \$97 billion, have long sought to weaken (or eliminate) the social safety net, weaken labor laws, promote denial of climate change, and weaken regulation of industry.^{9 10}

ALEC is very secretive. It does not reveal its members, either corporate or legislative. Many legislators will not even acknowledge their membership or that they are sponsoring legislation that came from ALEC. Some legislators are known to be members of ALEC only because of information leaked to the press or to groups such as Common Cause. According to the ALEC website, "a quarter of state legislators, one-fifth of the U.S. Congress, and seven sitting governors" are members of ALEC.¹¹ With 7,383 state legislators nationwide, this works out to nearly 2000 ALEC members in state houses.

Since legislators generally don't admit to sponsoring legislation provided by outside organizations, it can be difficult to know when this happens. Sometimes it becomes apparent that bills were generated from a template when bills with very similar language—too similar to be coincidental—are found in different states. Occasionally, legislators are outed as being members of ALEC if they fail to remove some of the boilerplate language in legislation that identifies ALEC as the true author of the bill.

ALEC is registered as a 501 (c)(3) organization, the designation for a tax-exempt charitable organization with the IRS. Such organizations are not permitted to lobby. However, the activities of ALEC are the very essence of lobbying. ALEC puts on conferences where business and legislative members hash out details of bills. In some states, lawmakers have used taxpayer money to attend the ALEC conferences, which are held at high-end resorts. Activities for spouses and childcare are perks for attendees. Not only does ALEC pay for these boondoggles, lawmakers often don't disclose these gifts to their constituents. Since ALEC is tax-exempt, taxpayers are effectively subsidizing its lobbying activities.

A former Republican state senator from New Jersey, William Schluter, said about ALEC, "When you get right down to it, this is not different from lobbying. It is lobbying... Any kind of large organization that adds to public policy or has initiatives involving public policy should be disclosed—not only their name, but who is backing them."¹²

The vision of ALEC is to privatize almost all functions of government with the exception of national security. As mentioned in the introduction, eliminating government's role in public education, infrastructure, Medicare, Social Security, and government-run prisons is ALEC's goal. Here is a sampling of what ALEC bills have done to further this vision:

- Limit consumer and worker rights
- Help protect businesses against lawsuits
- Privatize public water and sewer systems
- Weaken unions
- Weaken environmental laws
- Limit or prevent local governments from regulating pollutants and pesticides

- Eliminate taxes such as the estate and capital gains taxes
- Require identification to vote and other voter-suppression measures
- Enact state laws to preempt local laws
- Promote "stand your ground" gun laws

ALEC Laws in Virginia

In 2011, hundreds of ALEC model bills were leaked to the Center for Media and Democracy. Because of that leak, much more is known about ALEC legislation from that time than in later years. The alexexposed.org¹³ site for Virginia has descriptions of more than 40 ALEC bills that were introduced in Virginia in 2011 and in the preceding few years. The topics of these bills reflect the priorities of ALEC: privatizing public schools, establishing virtual schools, requiring law enforcement to determine the citizenship status of people arrested, limiting the liability of an asbestos company, "stand your ground" legislation, and more.

The secretiveness of ALEC makes it difficult to know definitively which bills have been written by ALEC. In the last few years, there have been numerous bills introduced throughout the country that attempt to stifle protesters. In Virginia, a bill [SB 1055] sought to criminalize protesting by fining or jailing protesters who refuse to leave an "unlawful protest". (This bill was not passed.) While there has been speculation that ALEC is behind such bills, there is no definitive proof.

Preemption

The wages of the vast majority of workers in the U.S. have remained flat in terms of buying power since the 1970s. Yet worker productivity has steadily increased over that same time period. If the minimum wage had kept pace with this increased productivity, it would be about \$18/hour, instead of \$7.25, according to the Economic Policy Institute.¹⁴ Meanwhile, executive pay has exploded, with CEOs now earning around 270 times the pay of the average worker. As a comparison, in the mid-1960s, CEOs were earning just 20 times that of an average worker.¹⁵

Stagnant wages have hit residents of metropolitan areas especially hard because of the significantly higher cost of living in urban areas. With inaction at the state and national level, local officials have sought to find their own remedies. This has included laws that mandate higher minimum wages, paid sick leave, and more regular work schedules. However, these efforts are being thwarted by preemption laws passed at the state level to specifically prevent municipalities from passing laws aiding the workers and citizens of a locality.

State preemption laws are overwhelmingly sponsored by Republican politicians to rein in progressive local leaders. Proponents of preemption laws claim that increased minimum wages will reduce job growth. Many sources have debunked such claims, including the White House Council of Economic Advisors. One study examined neighboring counties in different states, where one county had a higher minimum wage. It found that job growth rates were essentially the same.¹⁶ Conservatives often say they want to limit the role of government, and yet it is conservatives who want to use preemption to insert state government into local affairs.

Preemption laws prevent cities from much more than raising the minimum wage and requiring employers to offer paid sick days. Around the country, preemption laws have also prevented cities from:

- Enacting local bans on fracking
- Protecting the civil rights of the LGBT and other marginalized communities
- Prohibiting discrimination by businesses on religious grounds
- Enacting restrictions on tobacco use
- Enacting local gun controls
- Banning plastic bags
- “Banning the box”, which refers to a civil rights initiative to prevent employers from asking job applicants about criminal records
- Creating municipal broadband

Because conservatives are so tightly aligned with corporate interests, preemption laws essentially enable corporate interference in local affairs, and can be considered anti-democratic.

Virginia is a “Dillon Rule” state, which means that localities have only the powers the state explicitly gives them. The Dillon Rule hamstring local governments so they cannot address their own problems, which is a form of preemption. This means that in Virginia, legislators would have to pass bills giving localities the right to pass ordinances and local laws regarding a particular issue.

The minimum wage in Virginia remains at \$7.25 per hour. For areas with a high cost of living, such as the Washington, D.C. suburbs of northern Virginia, this is very low. State law must be changed before northern Virginia cities can pass local laws increasing the minimum wage. There were two recent attempts to do just that. In the 2018 legislative session, Democrat Mark Levine introduced a bill [HB 39] that would have given local governments the authority to set minimum wages higher than the state or federal minimums. This bill didn't make it out of committee, nor did a similar bill [SB 704] introduced in 2015 by Democrat Barbara Favola. As recently as January 21, 2019, a bill that would have raised Virginia's minimum wage from \$7.25 per hour to \$10 per hour was voted down by the Republican-led state Senate.¹⁷

Virginia laws have specifically preempted localities from passing most types of gun regulation. Thus, during the Unite the Right protests in Charlottesville in 2017, local police had no legal authority to prevent guns from being carried at the protests. Preemption laws in Virginia also prevent local governments from renaming streets or removing Civil War memorials.

Conclusion

A community is composed of many different constituencies: its citizens, neighborhood groups, businesses, congregations, schools, and other public services. The needs and desires of all must be balanced, even though there are sometimes competing demands and obligations. Eleanor Roosevelt wrote that “America is not a pile of luxury goods and more comforts, but rather is a dream of greater justice and opportunity for the average person. If we do not attain this, all of our accomplishments will amount to nothing.”¹⁸

Eleanor Roosevelt's vision of America is not shared by Republicans and their donors who want a society that is more skewed towards corporations and the already very wealthy. This is not good for society as a whole—which should be representing the needs of all people—nor is it good for our democracy. When too much power is concentrated in the hands of a few, it weakens the normal checks and balances that a society needs to function equitably. We should demand that our legislators represent all of our constituencies.

In a time of decreased social mobility and increased income inequality, do we really want laws—written by outsiders—that are tilted strongly in favor of businesses and against workers? Legislators should be representing the interest of all members of their community, not just a special few. However, the secrecy and lack of transparency, as exemplified by ALEC and its legislator members, prevents the public from knowing whose interests their legislators are actually representing. Anybody who cares about accountability, cost-effective management of public entities and services, and equitable outcomes must ask Republicans candidates for office where they stand on these issues.

Appendix: Some Virginia Members of ALEC

The list below may not be comprehensive as many members of ALEC do not acknowledge their membership.

Current representatives in the House of Delegates known to be members of ALEC

Del. Richard P. Bell (R-20) (not running for re-election in 2019)
Del. Kathy J. Byron (R-22)
Del. Mark L. Cole (R-88)
Del. Marvin Kirkland Cox (R-66)
Del. Buddy Fowler (R-55)
Del. Nick Freitas (R-30)
Del. Chris Head (R-17)
Del. Timothy D. Hugo (R-40)
Del. Riley E. Ingram (R-62)
Del. S. Chris Jones (R-76)
Del. Terry Kilgore (R-01)
Del. R. Steven Landes (R-25)
Del. Daniel W. Marshall, III (R-14)
Del. Christopher Peace (R-97)
Del. Beverly J. Sherwood (R-29)
Del. Lee Ware (R-65)
Del. Michael Webert (R-18)

Current Virginia Senators known to be members of ALEC

Sen. John A. Cosgrove, Jr. (R-14)
Sen. Ryan T. McDougle (R-4)
Sen. Thomas K. Norment, Jr. (R-3) (current Majority Leader)
Sen. Stephen D. Newman (R-23)
Sen. Frank M. Ruff, Jr. (R-15)
Sen. Frank Wagner (R-7)

Some Former Members of the Virginia Assembly

Benjamin L. Cline (R) (now in U.S House)
Barbara J. Comstock (R)

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- ¹ <https://credo.stanford.edu/pdfs/OnlineCharterStudyFinal2015.pdf>
 - ² <https://credo.stanford.edu/pdfs/OnlineCharterStudyFinal2015.pdf>
 - ³ <https://kaiserfamilyfoundation.files.wordpress.com/2013/01/8373.pdf>
 - ⁴ <http://www.pfaw.org/report/predatory-privatization-exploiting-financial-hardship-enriching-the-1-undermining-democracy/>
 - ⁵ <https://www.nytimes.com/2011/05/19/us/19prisons.html>
 - ⁶ <http://www.nytimes.com/2011/09/13/us/13contractor.html>
 - ⁷ <https://www.npr.org/2013/12/10/249956329/how-alec-serves-as-a-dating-service-for-politicians-and-corporations>
 - ⁸ <https://www.prwatch.org/news/2011/07/10887/cmd-special-report-alecs-funding-and-spending>
 - ⁹ https://www.alecexposed.org/wiki/ALEC_Exposed
 - ¹⁰ https://ipfs.io/ipfs/QmXoypizjW3WknFijnKLwHCnL72vedxjQkDDPlmXWo6uco/wiki/American_Legislative_Exchange_Council.html
 - ¹¹ <https://www.alec.org/membership/>
 - ¹² http://www.nj.com/news/index.ssf/2012/04/alec_model_bills_used_in_nj_la.html
 - ¹³ <https://www.alecexposed.org/wiki/Virginia>
 - ¹⁴ <http://www.epi.org/publication/charting-wage-stagnation/>
 - ¹⁵ <http://www.epi.org/publication/ceo-pay-remains-high-relative-to-the-pay-of-typical-workers-and-high-wage-earners/>
 - ¹⁶ <http://www.nelp.org/publication/fighting-preemption-local-minimum-wage-laws/>
 - ¹⁷ <https://wtkr.com/2019/01/15/bill-to-increase-virginias-minimum-wage-headed-to-full-senate/>
 - ¹⁸ From Eleanor Roosevelt's syndicated column, called My Day, on January 6, 1941.