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Forget D.C.—the Battle is in the States

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BY [Nathan Newman and David Sirota](#)

Speaking to a packed room of 2,000 state legislators and business lobbyists gathered in Grapevine, Texas, last fall, George W. Bush thanked the crowd for its work on behalf of the conservative agenda. He wasn't talking about work they'd done on Capitol Hill, but about their collaboration to push the corporate agenda forward in statehouses across the country. The meeting was the 32nd annual gathering of the American Legislative Exchange Council (ALEC), a membership association for conservative lawmakers. As its chairman, Georgia State Rep. Earl Ehrhart, said of the president's speech: "It was like the governor of a state talking to his legislative leaders."

This is the critical point: The highest echelons of the conservative movement and corporate America treat state legislators not as members of 50 different institutions, but as a single set of leaders who can be mobilized on a national basis.

Recognizing this reality, the [Progressive Legislative Action Network](#) (PLAN) was formed in fall 2005 to create a counterforce to the right in statehouses across the country. Supported by groups like MoveOn and the Center for American Progress, along with unions like SEIU, AFSCME, the AFL-CIO and the Steelworkers, PLAN is working with state legislators across the country to move both a united agenda and strategic plan to take on ALEC and its allies throughout the country.

The conservative march through the states

The need to challenge the right-wing movement in the states is clear. ALEC claims more than 2,400 state lawmakers as members--roughly one-third of all state legislators--and has become one of the critical fulcrums of conservative power in the United States. Backed by many of the largest corporations in the country--including Exxon Mobil, Coors Brewing, Pfizer and Phillip Morris--ALEC is networked into conservative think tanks and allied political operations such as the Heartland Institute and the corporate-backed American Tort Reform Association. At the center of this network, ALEC helps draft and promote legislation that has crippled social service budgets, deregulated industries, slashed medical care for the poor, and undermined consumer and worker protections in state after state.

In 2004 alone, 1,108 ALEC model bills were introduced and 178 were enacted into law, a legislative assault that ALEC and its conservative allies have been repeating year after year. Given the prominence of its legislative supporters--34 state speakers of the house, 25 state senate presidents, 31 state senate leaders and 33 state house leaders are ALEC members--this success is hardly surprising.

Sadly, in the face of this daunting right-wing machine, many progressive leaders and activists remain fixated on Capitol Hill and the White House, leaving state legislators, local political organizations and unions to battle ALEC all alone. The problem is compounded by a national media that barely covers these state struggles. Even the most sophisticated national political commentators typically see fights for control of state legislatures as important only insofar as they impact redistricting of federal congressional races. Except for the occasional media spasm around a particularly virulent state legislative proposal that hands out pork to a corporation or restricts civil rights, the overall march of conservative legislation in the statehouses gets relatively little attention from progressive activists fixated on "serious" politics at the federal level.

Yet the battle for our states is incredibly serious. The conservative strategy is to use the state political arena to leverage control of national policy, and unless progressives get focused and view the battle for the states as crucial to America's political future, no amount of change at the federal level will allow us to take our country back.

Why state policy matters

Most progressives fail to realize that state governments collectively have as much--and in some cases, more--power over the issues they care about as the federal government. State and local revenues are about equal to federal tax revenue, and in an era of "flexibility" and "waivers," federal money is increasingly handed over to the states with few strings attached. In explaining conservatives' focus on state legislation, ALEC's Medicaid specialist James Frogue observed, "Innovations and reforms in Medicaid will come from the states. They will not come from D.C."

Most federal civil rights, consumer and employment laws only modify the baseline of rights established by state governments. In fact, only a tiny minority of legal struggles are pursued under federal statutes. Instead, state courts handle roughly 17 million civil cases every year, including contract, tort and real property disputes, the outcome of which turn overwhelmingly on state, not federal, law. Through state law and liability rules, the states regulate trillions of dollars of commerce.

Similarly, while there were 170,535 federal prisoners in 2004, that number is dwarfed by the 1.9 million prisoners in state and local prisons and jails. The criminal sentencing decisions that have decimated a generation of young people in minority communities were made in statehouses, not on Capitol Hill. And one of the least-understood areas of increasing state power is that wielded by public pension funds, which now control \$2.7 trillion in financial assets and can shape financial markets with their investment decisions--a fact that the right is all too aware of as they launch campaigns to privatize those pensions.

With all this power in the hands of the states, conservatives recognize that with a coordinated strategy, a movement can govern the nation from the statehouses. States have been vulnerable to this right-wing takeover because most state legislatures are made up of poorly paid, part-time lawmakers with few--if any--staff to research or evaluate the laws they are asked to approve. The lack of resources means there are few staffers in legislatures who can challenge the expertise presented by ALEC and other conservative operatives, or uncover the hidden payoffs for corporate interests contained in legislation. Thus ALEC provides a stealthy, tax-exempt front for corporate interests to sell their ideas directly to statehouse leaders across the country.

At the most obvious level, ALEC gives a "public interest" sheen to the raw special pleading of Big Money before state legislatures. Here are just a few of these recent corporate campaigns:

- Backed by the oil industry, ALEC has lined up legislators to lower taxes on gasoline and to undermine regulations aimed at curbing the carbon dioxide emissions leading to global warming.
- Backed by the drug companies, ALEC has mounted a full-scale campaign to defeat initiatives by cities and states to promote importing lower-priced select medicines from Canada.
- Backed by low-wage employers, ALEC has promoted legislation to block local governments from raising local minimum wages or even requiring government contractors to pay a fair wage to their employees.
- Backed by the telephone companies, ALEC has worked to bar or hamstring cities that have sought to build cheaper or even free Internet services for their residents.
- Backed by the insurance companies, ALEC has been promoting a campaign to stop state insurance commissioners from requiring insurance companies to meet the same accountability and auditing rules that were imposed on publicly-traded corporations in the wake of the Enron debacle.
- And ALEC has been advocating cracking down on seniors who shelter income in a home while using Medicaid to finance long term care, a campaign that would force seniors to buy "reverse annuity mortgages," a new financial instrument promoted by ALEC's financial services industry funders.

The right's strategic agenda

Still, if the right-wing movement in the states only amounted to a series of individual profit-driven campaigns, the threat posed by ALEC would merely be one of a slick, well-funded public relations operation, albeit a nasty and effective one.

But the real danger from ALEC and its associated organizations comes from conservatives' aim to structurally undermine the very capacities of government that restrain corporate power and to fuel campaigns that fracture progressive alliances and political power.

Grover Norquist, head of Americans for Tax Reform and arguably the premiere right-wing strategist, has famously described the conservative goal as cutting government "down to the size where we can drown it in the bathtub." Key to that objective is cutting tax revenues and using constitutional limits on state taxing powers to make it politically impossible to fund social needs through government action. This strategy serves not just to limit progressive policy but, by creating a limited pool of funds, pits progressive groups against each other in a fight for resources.

Conservatives also aim to shut down the enforcement of business regulations across the states. The very success of state attorneys general in bringing tobacco and financial firms to heel has led to a backlash to limit the power of attorneys general. And where citizens have the ability to enforce regulations in the courts, the right has been gutting those citizens' legal powers. For example, one of the first acts of Arnold Schwarzenegger's administration was forcing through restrictions on the state labor code's Private Attorney General Act, which had given advocates greater power to enforce the state's labor laws.

In the last few years, no issue has consumed corporate America more than shutting the courtroom door to plaintiffs injured by corporate malfeasance under the campaign of "tort reform." Damage awards have been limited and judges have increasingly been granted the right to exclude evidence of corporate wrongdoing by limiting plaintiff witnesses. This is

done through the banning of so-called "junk science," with an often-politically connected judge (rather than the jury) getting to decide which witnesses are credible. The end result of this campaign is to make it nearly impossible for poor plaintiffs to get a day in court or to prevent a judge from overturning any judgment in their favor.

Another key strategy for the corporate right is privatization, a strategy that both undermines labor standards for government services and opens the labor market to corporate profiteering. The conservative-induced budget crises in many states have served to help this process along. In 2002, ALEC co-wrote a report with the Manhattan Institute that made privatization a key solution for balancing state budgets. They proposed that Medicaid be replaced with private Medical Savings Accounts and public schools be funded with vouchers. Similarly, prison management would be privatized. Name an area of government and conservatives are seeking to hand its operations over to corporate allies who, in turn, can eliminate labor unions and use the profits to fund more campaign contributions to their political machine.

A special case of privatization has been the recent assault on state employee pension funds. In 2005, Alaska passed legislation ending guaranteed pensions for all newly hired state employees in favor of individual accounts, and legislators in California, Georgia, Illinois, Iowa, Kansas, Maine, Maryland, New Hampshire, New Mexico, Oklahoma and Virginia are heading in the same direction.

The most obvious goal is to cut benefits for union workers by ending guaranteed benefits--using exactly the same rhetoric of "choice" that President Bush employed to sell his Social Security privatization scheme at the federal level. But what really enrages conservatives are decisions by trustees of these pension funds to use their shareholder voting power to challenge corporate abuses, such as the pension funds in Ohio, New York and California that voted to divest in firms involved in privatization. And of course, there is the direct payoff to the financial services firms who will end up administering the millions of private accounts in a privatized state pension system and collecting the billions of dollars in fees.

Defunding the left

The shift in control of financial assets from public trustees to private corporations highlights the most pervasive and dangerous goal of the right's campaign in the states: defunding progressive institutions and thereby leaving corporations--and a few religious conservative allies--as the only forces with significant resources in politics.

Take the 2003 legislation passed in Texas that reserved family planning dollars, including those from the federal government, exclusively for healthcare providers that do not offer abortion services or referrals. This kind of proposal, coupled with "gag rules" and "abstinence only" legislation, not only shifts abortion policy, but strips resources from the broader pro-choice community. Similarly, the push for "faith based initiatives" shifts resources from nonprofits embedded in social justice networks to conservative organizations engaged in active conservative politics.

State-based "Right to Work" campaigns were conservatives' original weapons to cut off union dues, one of the primary sources of funding for political campaigns that oppose conservatives day-in and day-out. The present round of attacks is labeled "paycheck protection"--a nice-sounding term for crippling union workers' ability to donate political contributions through workplace deductions.

The whole right-wing attack on the civil justice system also has the effect of cutting the fees for employment and other trial lawyers, who have been strong sources of political funding for progressive causes. Passing tort reforms nationally, Grover Norquist argued back in 1999, takes "a \$5-10 billion a year bite out of trial lawyer fees" and shuts down the progressive "get-out-the-vote effort, funded with money from trial lawyers."

By operating at the state level, Norquist et al have successfully avoided the glare of media attention and the full political focus of progressives. It's as if the right is tunneling under the foundation of progressives; by the time the ground--and financial resources--give way, it'll be too late to save the house.

How progressives fight back

So how should progressives respond to this coordinated assault on every level of progressive policy?

The key is to fight back, coordinate our own battles, think as strategically as ALEC and its allies and win back power at the state level. As People for the American Way said in a 2003 report about ALEC: "Progressives need a collaborative and equally coordinated effort to successfully counter ALEC's influence, expose its corporate and right-wing ties, and defeat dangerous proposals launched by this 'common enemy.'"

While many grassroots efforts have continued across the country since that report, progressives have not established the coordinated response that is needed to beat back the right. To do so, we must take three steps.

- First, we need to develop a deep national network of progressive legislators supported by grassroots organizations. We have to establish partnerships between national organizations, grassroots activists and state legislators in each state to find state-specific ideas that represent home-grown progressivism. Not only will these networks help bring progressive-minded people together, but they also will serve as a hotbed of information exchange so progressive legislators can equip themselves with all of the information they need to promote progressive bills.
- Second, we need to promote a set of popular issues that define the progressive state agenda in the minds of voters. This could include raising the minimum wage, expanding health care, promoting family issues like paid family leave and pre-K education for all children, protecting free speech in the workplace as well as the political realm, and developing an energy independence policy that creates jobs in each state.
- Third, we must develop a set of policies that beat back the right-wing attack and turn the tables on conservatives. We should use legislation strategically to highlight the hypocrisy of groups like ALEC and put conservative legislators in the uncomfortable public position of voting either the interests of their corporate patrons or the desires of their constituents.

For instance, recent legislative initiatives in states ranging from Virginia to Michigan to preserve public lands and stop sprawl divide sprawl developers from a broader population that wants both livable communities and green areas for recreation. Similarly, targeting taxpayer subsidies specifically to entrepreneurial businesses that provide a living wage, as progressives have done in a number of cities, challenges conservatives to justify their fealty to low-wage companies. Supporting paid family leave and expanded child care for working parents forces legislators to confront empty "families values" rhetoric.

Ultimately, each strategic issue will reinforce the others, undercutting opposition coalitions while adding new allies to the progressive side, exposing the hypocrisy of the conservative agenda while clarifying the progressive program, and, step-by-step, entrenching progressive power in ways that the right wing will find harder and harder to dislodge.

Progressives need to use every tool of grassroots mobilization to build unity among our side's state legislators and deploy both strong policies and innovative strategies to beat the conservatives at their own game. Our overarching strategy: find the best public policies and champion them with effective and cohesive messaging. That is what the new Progressive Legislative Action Network (PLAN) is all about. It's time to finally end conservatives' dominance of state policy. It is time for progressives to govern from the states.

This article is being published by In These Times in conjunction with the release of

PLAN's report, "[Governing the Nation from the Statehouses.](#)"

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