



National conservative ‘dark money’ group joins fight over certificate of need in Kentucky

By Mark Payne | Published July 13, 2023

A national libertarian-leaning conservative group known for its connections to the Koch brothers and its “dark money” network is weighing in on the certificate of need debate expected to heat up in Kentucky over the ensuing months as some seek to repeal or reform the decades-long program.

The Koch brothers, David and Charles, controlled Koch Industries, an energy conglomerate based in Wichita, Kansas. David Koch died in August of 2019. His brother Charles still leads the organization. The brothers spent their vast fortune on libertarian causes, specifically through the use of dark money, which is a term applied to when a group does not have to disclose its donors.

Both sides of the argument — those seeking to reform or repeal certificate of need and the healthcare groups in favor of keeping it — have spent large sums of money lobbying Congress and the Kentucky legislature in 2023, so it could impact election and lobbying spending in Kentucky for the foreseeable future.

Speaking in Florence this week, representatives from Americans for Prosperity, which waged a similar campaign in South Carolina against certificate of need — the program that dictates who provides specific healthcare services in a given area — told audience members that it’s one of their key policy issues.

“Certificate of need is a hot-button issue here in Northern Kentucky as it has been in all the states that it happened,” said Liam Gallagher, the grassroots engagement director for Americans for Prosperity Kentucky. Gallagher noted that the group fought a 10-year battle in South Carolina, and they recently passed a full repeal of certificate of need. “That’s what we’re hoping to do here in Kentucky,” Gallagher said.

In Northern Kentucky, the discussion over certificate of need reform has moved into the mainstream, with legislators filing bills this past legislative session that either would reform or repeal the program altogether. One of those legislators, Rep. Marianne Proctor (R-Union), spoke at the Americans for Prosperity Event Tuesday. Proctor, a freshman legislator, said that certificate of need reform is her passion, and she wants competition for healthcare in the area.

Originally from Texas — “...but don’t worry, we come out of the womb with the bible and a rifle” — Proctor noted that there was no certificate of need when she worked as a speech pathologist in the Lone Star state. “To have competition always breeds excellence,” Proctor said. “The hospital that I worked with was top three nationwide for all the years that I worked there.”

The legislation that Proctor filed in spring 2023 would allow any healthcare provider to operate in the three northernmost counties — Boone, Campbell, and Kenton — without first requiring a certificate of need. In other words, it would fully repeal certificate of need for the region.

“What I’m looking to do is reduce the amount of services that are regulated by the certificate of need,” Proctor said earlier this year. “In Kentucky, we have 23 regulations that require permission from the state to open such as ambulatory care services, dialysis centers, substance abuse, mental health services.”

The legislation specifically targeted NKY because some view St. Elizabeth as holding a monopoly over healthcare in the region. The healthcare organization argues they legally aren’t a monopoly but that they have been designated to have dominant healthcare status.

St. Elizabeth CEO Garren Colvin said that when the hospital group merged with St. Luke in the mid-2000s, the healthcare group went through an analysis with the federal government to determine there weren't any anti-trust issues. "So as far as the status of monopoly, there is no monopoly," Colvin said.

According to Kentucky's state health plan, certificates are issued by the [Kentucky Cabinet for Health and Family Services](#), and there are currently 21 medical services that require certificates of need. In the Northern Kentucky counties of Boone, Campbell, and Kenton, there are 109 certificates of need, and St. Elizabeth holds nine of them. Regarding hospitals, they hold four of the NKY counties' seven total certificates, with St. Elizabeth Florence, St. Elizabeth Ft. Thomas, St. Elizabeth Edgewood, and St. Elizabeth Covington.

Dean Clancy, the senior health policy fellow for Americans for Prosperity, said that it sounds like semantics, and if it "looks like a duck and quacks like a duck, then it is a duck." "If there is a dominant player in these parts that lacks sufficient competition, then we should call it what it is," Clancy said.

Clancy, who lives in Florida but works in Washington D.C., is no stranger to the healthcare industry. He has more than 20 years of experience working on policy in Congress, the White House, and the healthcare industry, according to his bio from Americans for Prosperity. He also regularly pens op-eds about healthcare issues.

"Local healthcare monopolies are a problem all over the country, not just in Kentucky," Clancy said. "We are trying to repeal certificate of need and enact other reforms that will basically put patients in charge. We're very excited by this effort here in Kentucky and we look forward to seeing it succeed and replicating it around the country."

Clancy joined Americans for Prosperity three years ago. Known for its connection to the Koch brothers, the organization was born in the early 2000s and became one of the driving forces behind the Tea Party Movement, which advocates for limited government and has 35 state chapters. "We have a stated policy position in every single one of our states against certificate of need," Gallagher said.

The group also spends big when it comes to policy and supporting limited government issues. So far this year, they've spent \$507,000 on total lobbying expenditures to Congress, according to the campaign finance website OpenSecrets. They spent \$1,463,000 in 2022. The network with the Koch brothers also includes the Americans for Prosperity Action Super PAC and the Americans for Prosperity Foundation. The super PAC spent nearly \$80 million in the 2022 midterms, according to Federal Election Commission reports.

As a 501(C)(4), Americans for Prosperity is not required to disclose its donors. The group can't donate directly to candidates, however, and can only operate for the "promotion of social welfare." As part of that classification, it also can't spend more than 50% of its budget on politics.

Regarding groups supporting healthcare in Kentucky, The Kentucky Medical Association spent \$98,182, and the Kentucky Hospital Association spent \$95,946 lobbying the Kentucky legislature during the first quarter of 2023, according to the Kentucky Legislative Ethics Commission. Colvin thinks that Kentuckians should be the ones making healthcare policies for Kentuckians.

"I think the people in Kentucky should be making the healthcare policy for the state of Kentucky, and I trust that our legislators in Frankfort will do what's right," Colvin said. But, Americans for Prosperity Kentucky now has six full-time and 20 part-time employees in Kentucky who are dedicated to fighting for their policy positions — this includes certificate of need, which is one of their top priority positions.

"It is one of our priority initiatives in the scope of this session," Gallagher said. "It will be for the foreseeable future until we see repeal."