

INSIDE *ALEC*

September 2008

A Publication of the American Legislative Exchange Council



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Chairman's Column

How ALEC Works

By Arkansas State Sen. Steve Faris, Senate Majority Whip



Every year, ALEC Task Forces consider dozens of Model Bills ranging from legal reform to taxes, from crime control to education reform, and from improved access to health care to good government initiatives. This summer, at our Annual Meeting in Chicago, ALEC's Task Forces were busier than ever.

ALEC has been so successful because of the unique way in which we develop policy solutions for the states. ALEC is the only national organization which brings together the public and private sectors as equal partners to draft Model Legislation.

ALEC also remains deeply committed to the principle of non-partisanship. Good policy solutions and ideas that create jobs, grow our economy, protect our citizens, and/or educate our children should not carry party labels. ALEC always makes a concerted effort to include people who are willing to discuss and work on these types of solutions across party lines.

I encourage legislators and members of the private sector who are interested in becoming more involved in this process to join one of our eight Task Forces. Please feel free to contact Mike Conway in ALEC's Membership Department for more information. He can be reached at mconway@alec.org.

In the next issue of Inside ALEC we will include summaries of all the new ALEC Model Bills passed by our Task Forces in Chicago. These will also be available in full on our web site (www.alec.org) for all ALEC members to access. Also, if we missed you in Chicago, we have a complete write up of the meeting starting on page 9 of this issue.

I thank each and every ALEC member who participated, as well as all of our sponsors, who made this meeting, ALEC's 35th, one of our best ever. I also congratulate all of our legislators and private sector members who received the ALEC Member of the Year award. Their hard work and initiative in support of ALEC and good policy solutions in their states makes them examples for all of us.

ALEC Calendar

December 4-6, 2008	States & Nation Policy Summit	Washington, D.C.
May 1-2, 2009	Spring Task Force Summit	Memphis, TN
July 15-19, 2009	ALEC Annual Meeting	Atlanta, GA
December 2-4, 2009	States & Nation Policy Summit	Washington, D.C.

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Exhibiting or advertising at an ALEC event is a great way to promote your company to members of both the private and public sector. If you are interested in exhibiting or advertising at an ALEC meeting, please contact Rob Pallace at 202-466-3800 or email him at exhibits@alec.org.

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ALEC Federal Update

Network Neutrality Regulation Threatens Internet

By Seth Cooper

The World Wide Web is a technological breakthrough driven by free-market enterprise and the absence of burdensome regulations. But a recent action by the Federal Communications Commission (FCC) threatens the future of the Internet with a new, unprecedented era of so-called “network neutrality” regulations.

In August, a 3-2 majority of the FCC signaled its intent to subject the Internet to a new regulatory morass. It concluded that Internet Service Provider (ISP) Comcast acted contrary to the FCC’s “Internet Policy Statement” regarding “reasonable network management” for apparently slowing user uploads of a particular kind of peer-to-peer (P2P) file-sharing to relieve congestion of its network. The FCC disagreed with Comcast and commentators in the proceeding who insisted that such actions were indeed reasonable. By the FCC’s order, Comcast must disclose details of past and future network management practices and submit a compliance plan, or risk penalties.

The FCC was undeterred by a March agreement between Comcast and P2P service BitTorrent to collaboratively solve network management issues without the need for government involvement. Rather than let the marketplace pursue solutions, the FCC chose bureaucratic interventionism.

The FCC is putting freedom and commerce on the Internet at risk. Bureaucratic second-guessing and attending uncertainty will now plague ISP efforts to manage their networks for the benefit of consumers. The FCC is undermining the ability of ISPs to pursue innovative solutions to relieve high traffic congestion on its network so that all customers may enjoy a quality Internet experience.

The “exaflood” of Internet traffic makes it crucial for ISPs to maintain flexibility to find and implement new technologies and techniques for network management without government oversight. Data-rich P2P file-sharing in music and video, YouTube, iTunes, video gaming and other real-time interactions now course through the veins of the Internet. Traffic spikes tend to occur on weekday afternoons, as users trading video and music files eat up a disproportionately share of bandwidth and cause network traffic jams, degrading connection speeds for all network subscribers. Many of these files also contain viruses and worms, which further affect bandwidth. With good network management, ISPs can prioritize traffic flow to ensure a few individuals do not “hog” bandwidth at the expense of others.

The process by which the FCC issued its order was problematic. The FCC is imposing and enforcing certain obligations on an ISP without having first adopted rules about network management for an ISP to understand and follow. The FCC relied instead on general guidelines it previously described as unenforceable. This is certainly inequitable, and the FCC likely exceeded its legal authority. (Lawsuits have now been filed.) Although it declined to establish any specific network neutrality “rule,” the FCC has opened the door to future case-by-case rulings based on its vague criterion. This allows for uncertain, arbitrary regulation of the Internet.

ALEC’s *Resolution on Network Neutrality* (2007) affirms that the exponential growth of the Internet is a result of “the government’s ‘hands off’ approach, ever increasing competition, as well as fierce consumer interest.” The *Resolution* recognizes that “companies that invest in broadband and broadband-related applications should be afforded the flexibility to explore fair and competitive business models and pricing plans for their products and services.” The *Resolution* also declares that “mandated net neutrality regulations would impede future capital investments in the U.S. broadband infrastructure.” It resolves that consumers should “receive meaningful information regarding their broadband service plans.”

Government should promote a system of network freedom conducive to the innovation that the Internet depends upon. It should also ensure consumers have access to legal content of their choice and receive meaningful information about their service plans. But in this case the FCC replaced the network engineering decisions of real engineers with their bureaucratic preferences.

Seth Cooper is the Director of ALEC’s Telecommunications & Information Technology Task Force.

ALEC’s Federal Affairs Program fosters dialogue between ALEC members in the states and ALEC Alumni in Congress and federal agencies. ALEC is primarily a state focused organization; however, in order for our members to ensure that their legislative efforts are effective, they must maintain a keen interest in policy issues at the national level. Michael J. Correia is the Director of Federal Affairs at ALEC. For further information he may be contacted at mcorreia@alec.org.



Going Nuclear:

Senate Proposal Closely Mimics ALEC Model Energy Bill

By Marshall Cohen

The saying “be careful what you wish for, because you just might get it” stands as cautionary wisdom. Sometimes, getting what you ask for is exactly the right thing—especially if what you want is sensible and well thought out.

Energy challenges are foremost in the minds of both U.S. citizens and their leadership. Americans want action—both immediate and longer-term policy to ensure reliable, affordable energy for the future.

Recognizing the large and growing significance of nuclear power to the energy security of the United States, ALEC in 2007 embraced the construction of new nuclear plants and recycling uranium fuel as national policy objectives. ALEC enacted Model Legislation to update its used nuclear fuel management policy, urging Congress and the Executive Branch to “encourage development of safe new nuclear plants as a key component of American fuel portfolio diversity and energy security.”

New Mexico Senator Pete Domenici recently introduced legislation that would go a long way toward meeting ALEC’s goals and would be a vehicle for furthering the U.S. nuclear renaissance by recycling uranium fuel. Commercial reactor fuel still has 90 percent of its energy content after one use in a reactor. This material can be converted into new fuel for use in America’s 104 reactors, which provide one-fifth of our electricity.

Domenici, along with Sens. Mary Landrieu (D-La.), Lisa Murkowski (R-Alaska), and Jeff Sessions (R-Ala.), have introduced the Strengthening Management of Advanced Recycling Technologies Act of 2008 (S. 3215). The bill, appropriately, is known as the SMART Act because it encourages public-private partnerships and provides community incentives to encourage interim nuclear fuel storage and recycling centers for uranium fuel. It would complement the proposed used fuel repository at Yucca Mountain, Nevada, another component of the integrated used fuel strategy in ALEC’s Model Legislation.



“A sustainable nuclear fuel cycle is the key to nuclear energy reaching its full potential,” Domenici said. “I’m pleased to introduce this legislation, which takes the first step toward resolving the question of nuclear waste.”

Incentives for public-private ventures for recycling and interim storage sites in the bill include financial benefits to communities that will host nuclear fuel storage sites, matching funds for recycling facility development and contracts with the U.S. Department of Energy (DOE) for commercial recycling services.

The funding mechanism for this sensible and much-needed legislation is already in place and requires no taxpayer contribution beyond that already established in federal law. A designated federal trust fund for used nuclear fuel management will finance the Yucca Mountain repository and related fuel management activities. The SMART bill would create a new \$1 billion revolving fund so that benefits to communities and commercial recycling fees would not be subject to congressional appropriations. This also would ensure that the fund is used for its intended purpose of managing used fuel.

The bill also would create a program to develop two used fuel recycling projects—with the Energy Department and the nuclear power industry sharing the cost of the projects.

It also provides incentives to encourage volunteer communities to host two interim storage facilities. Used nuclear fuel at decommissioned plant sites would be the first to be moved to these facilities.

The nuclear energy industry has endorsed the SMART bill. The legislation “rightly recognizes the potential value of an integrated fuel management program that recycles fuel for use in existing and new nuclear power plants that will help meet our fast-growing electricity demand,” said Frank L. Bowman, president and CEO of the Nuclear Energy Institute.

Importantly, the bill requires fuel recycling techniques that do not result in a pure plutonium byproduct—an important way to improve the proliferation resistance of the recycling process.



The legislation is timely given that the industry has been discussing the possibility of developing interim used fuel storage facilities with several communities around the country. Some communities have expressed interest in hosting a facility. With the incentives in this legislation, this concept would move forward.

Inaction on used nuclear fuel management would continue to cost taxpayers billions of dollars. Under federal law, the Department of Energy was to begin accepting used nuclear fuel in 1998 for storage or disposal at a federal facility. But delays in the Yucca Mountain repository project have pushed its opening back to 2020. As a result, the federal government has paid \$290 million to companies to settle damages incurred by their having to store used fuel beyond 1998.

Interim storage sites will enable DOE to meet its obligation to move used fuel from nuclear power plants before recycling facilities or the disposal facility planned for Yucca Mountain are operational.

This initiative will go a long way toward helping America meet its energy needs.

Marshall Cohen is Senior Director of State and Local Government Affairs at the Nuclear Energy Institute in Washington, D.C. (www.nei.org). He can be reached at mc@nei.org

ALEC Urges Congress to End Offshore Drilling Ban

By Matt Warner

The Natural Resources Task Force voted unanimously during ALEC's 2008 Annual Meeting in Chicago to adopt a resolution urging Congress to end the moratorium on offshore exploration and drilling. The resolution comes while Congress is grappling with an energy crisis that many believe is exacerbated by this nation's ban on a large majority of offshore drilling opportunities. The current moratorium is set to expire at midnight on October 1 unless Congress acts to renew it—a decision that may be a political challenge amidst polls that show 67% of Americans are in favor of offshore drilling.

In preparation for a potential change in U.S. policy, the Minerals Management Service (MMS)—the U.S. Department of the Interior bureau that manages the nation's natural gas, oil, and mineral resources on the outer continental shelf (OCS)—has begun to prepare a new five-year plan that would take advantage of a repealed ban and open new areas to exploration and production. The MMS estimates there are 86 billion barrels of oil and 420 trillion cubic feet of natural gas in undiscovered fields on the OCS.

Opponents of drilling claim that the “unproductive” 68 million acres of federal land currently under lease show that new leases won't do any good. One proposal in Congress even included a “Use It or Lose It” clause that would terminate lease agreements with companies that failed to produce on a specified timetable. The assumption behind this “solution” is that lessees are hoarding supply in an effort to drive up price. But the MMS already regulates the timetable of leases and allows only the minimum length of time a company should need to explore a lease.

The reality is the process takes time and both the MMS and the lessees are strongly incentivized to see leased areas produce. Companies must make heavy investments to lease *before* knowing whether the area will produce anything, and further heavy investment is needed at each stage of the very lengthy exploration and production process.



Overwhelming support for offshore drilling has pushed some opponents in Congress to open the door to compromise. One such compromise is a bipartisan Senate energy bill that would allow some offshore drilling in exchange for higher taxes on energy. This contradicts the will of the American people to encourage new energy production and *lower* prices. ALEC joined a coalition letter urging the bill sponsors to redraft the bill to include more offshore opportunities and exclude the tax hike.

A recent Wall Street Journal/NBC poll showed that Americans highly favor a wide range of energy solutions. This should send the message to politicians that everything should be on the table. By lifting the ban, Congress can show the American people that all solutions are part of our energy future.

To view ALEC's resolution, visit the Natural Resources Task Force page at www.alec.org.

Matt Warner is Director of the Natural Resources Task Force at ALEC.

The States' Struggle for Sovereignty: The Consequences of Federal Mandates

By Benjamin Barr¹

Today it is the norm, rather than the exception, for the federal government to issue massive transfer payments to states. Think highway funds and No Child Left Behind. But like your parents taught you, there is no such thing as a free lunch. Just the same, and as Justice Scalia has commented, the strings attached to these programs “make the states dance like marionettes on the fingers of the federal government.” It’s time to cut those strings.

Federalism is rooted in the concept of dual sovereignty. The Constitution created a federal government with limited and enumerated powers. In turn, the Tenth Amendment to the Constitution provides that powers not resting with the federal government “are reserved to the States respectively, or to the people.” As states become more reliant on federal mandates, the nation’s underlying system of federalism shifts from one of partnership to a master-servant relationship.

At first impression, it may seem hard to see the problem with federal transfer payments to the states. After all, state taxpayers finance a good portion of federal payments to state and local governments. Upon inspection, however, large-scale federal funding of state services is a two-edged sword. Federal funds distort legislative policy preferences and priorities, place

bureaucratic agencies beyond legislative control, and lock states into expensive funding commitments.

Once states become habitual users of federal funds, they become dependent on them. That will be true regardless of the institutional arrangements—including the scope of legislative appropriation authority—within the state.

Despite periodic efforts to rein in intergovernmental transfers (especially under the Reagan administration), payments have grown rapidly in absolute terms, in proportion to the federal budget, and most ominously as a percentage of state spending. Today, about 25 percent of states’ total revenue comes from the federal government.²

Because the federal government can borrow more easily than the states, and because states (unlike the federal government) must fear that tax hikes will induce an exodus of productive citizens and businesses, one would expect taxes and spending to grow faster at the federal than at the state or local level.

Strikingly, however, the opposite has happened. The federal tax receipts as a percentage of gross domestic product (GDP) have remained roughly what they were after World War II (about 17 percent). State and local



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tax revenues, in contrast, have almost doubled, from 5.5 percent of GDP in 1948 to 10.1 percent in 2005.³

Although this trend surely has more than a single cause, it appears that federal funding has permanently inflated the demand for government. Indeed, most federal grant programs have some substitution effect within the states, but their systemic, long-term effect is to *increase* state and local taxation and spending.

Large-scale federal funding inflates the size of state government far beyond the median voter's preference—or, put differently, the size of government for which citizens in each state would be willing to tax themselves. For example, Medicaid and similarly structured programs look like a bargain for the states. By accepting a one-for-one matching grant, wherein the federal government ends up funding half the total cost, a state can provide the service at up to twice the pre-grant level without raising taxes or shifting money from competing government programs.

The principal reason for Medicaid's stupendous growth is that its generous funding formula gives states a huge incentive to expand their programs.⁴ Some states now cover families with incomes of up to 275 percent of the poverty level. Almost all provide optional prescription drug benefits and long-term care for the poor and low-income elderly. In a few states, one-third of the population is now on Medicaid.

Where federal funds must be matched by state funds, the state's own policy and spending priorities will be distorted. Federally favored and funded programs will be overfunded by the state, while state functions that do not receive federal support will be shortchanged. When flagging revenues or other factors force the state to reduce expenses, however, the state can save only cents on the dollar by cutting the federally funded program.

Given the federal matching formulas, for example, a one-dollar reduction in a state's Medicaid spending would cause the state to lose more than \$2.00 in federal matching grants.⁵ Thus the state-level cut looks more expensive and requires more draconian steps than an equivalent cut in a wholly state-funded program. Even if the federally funded program is more generous than what the local citizens in the pre-grant world were willing to pay for, the state will prefer to cut competing state-funded programs or, failing that, raise taxes. Some valuable state programs may be crowded out altogether.

Take the State of Arizona, for example. Arizona passed propositions to expand eligibility for federal programs and limit legislative authority to tweak these programs, tying the hands of the state's legislators. After considering the general fund, other appropriated funds, non-appropriated funds, and federal transfer payments, the legislature is left to control but 25 percent of the state's spending. This erosion of state fiscal authority is troubling and is partially the consequence of expanding federal mandates.

Besides being expensive, uniform federal mandates are fundamentally flawed. Increased federal mandates offer homogeneous, national policy solutions for diverse, local problems. While uniform solutions might be fitting in limited instances, attention must be brought to the fact that unique communities require policy solutions fitted to their unique circumstances. Otherwise, one-size-fits-all solutions undercut the very foundation of federalism—that states should be on the forefront as laboratories of reform.

States and local communities know best when it comes to managing their resources and deciding how to use them. Carefully designed local programs specifically tailored to solve community problems should not be displaced in favor of one-size-fits-all federal formulas.

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Chicago, Where ALEC Began: ALEC's 2008 Annual Meeting

By Jorge Amselle



Minnesota Governor Tim Pawlenty (right) speaks with Sam's Club President and CEO, Doug McMillon (center), and ALEC's 2008 National Chairman, Arkansas State Senator Steve Faris (left).



Rep. Tom Craddick, Speaker of the Texas House of Representatives (center) and the Secretary of ALEC's Board of Directors, receives the William Raggio Leadership Award presented by Nevada State Senator William J. Raggio (left) and ALEC's 2008 National Chairman, Arkansas State Senator Steve Faris (right).



U.S. Attorney General Michael Mukasey (right) meets with Mr. Victor Schwartz of Shook Hardy & Bacon and a member of ALEC's Board of Scholars as well as Co-Chair of ALEC's Civil Justice Task Force.

Speakers

This summer, the American Legislative Exchange Council held its 35th Annual Meeting in the city where it all began, Chicago. The full agenda and list of exemplary and notable speakers did not disappoint the nearly 2,000 state legislators and business leaders from across the United States who attended this year's conference. ALEC members also viewed a video message from President George W. Bush, who thanked ALEC for our efforts to promote low tax and pro-growth policies.

U.S. Attorney General Michael Mukasey spoke about new efforts at the Justice Department to expand cooperation efforts between federal and state and local law enforcement. U.S. Secretary of Transportation Mary Peters was also well received as she addressed a new proposal for the way transportation projects can be funded in the future.

There was also a great deal of excitement and media attention surrounding the speech by Minnesota Governor Tim Pawlenty, who was rumored to be on a very short list for Sen. John McCain's vice presidential pick. Gov. Pawlenty gave an impassioned speech addressing many of the most vital needs of the average citizen, from meeting our energy needs, to creating more and better jobs for Americans, to improving education. Also on the political side of things, the honorable George Allen, a past ALEC Thomas Jefferson award recipient, spoke on behalf of Sen. McCain's candidacy (both major party candidates were invited to speak).

Many speakers also addressed the growing economic difficulties facing many American families and offering real-world and sound solutions. Doug McMillon, President and CEO of Sam's Club discussed how his company is helping small businesses survive hard times. Dr. Richard Vedder, a Distinguished Professor of Economics at Ohio University, discussed the reasons behind the growing cost of higher education. The Honorable Dick Armey addressed the need to rein in government spending and called for real policy solutions to budget problems as opposed to political solutions, which mostly benefit politicians. Christopher Manning, of Manning & Sossamon, spoke of the need for reform of state consumer protection statutes to protect small businesses like the Chung dry cleaners he is representing in a \$54 million lawsuit over a pair of lost pants.



U.S. Secretary of Transportation Mary Peters addresses ALEC members on a new proposal for the way transportation projects can be funded in the future.



Former U.S. Senator George Allen (left) is introduced by Del. Bill Howell, Speaker of the Virginia House of Delegates and ALEC's Second Vice Chairman.

ALEC's expanding international program was also well represented as Dr. Bjorn Lomborg, author of *The Skeptical Environmentalist* and *Cool It*, provided much needed perspective on the effects of global warming and the real environmental and health issues affecting the world and how to best solve them. Joining ALEC from Great Britain was Dr. Liam Fox, Conservative MP and Shadow Defence Minister, who spoke of the great cross-Atlantic alliance between his nation and ours and preserving our common ideals of freedom and enterprise. Lady Margaret Thatcher also sent ALEC members a letter in which she wrote, "you have achieved an enormous amount already but our task never ends. So steel yourselves for the struggles ahead and draw strength once more from that undaunted spirit of freedom which underpins your great nation."

Workshops

In addition to ALEC's Task Force, Working Group, and Sub-Committee meetings, nearly a dozen workshops offered attendees in depth policy solutions. The workshop on evidence-based medicine discussed how relying on a one-size-fits-all approach can potentially lead to "cookie cutter care," rationing of health services and prescription drugs, and the politicization of medicine. Another workshop delved into best practices to increase accountability in state budgets by making them more transparent, including, online applications and tools. Several workshops addressed America's energy needs including the need for further offshore oil exploration, an analysis of our current capacity to meet future energy needs, exploring the potential uses for our natural gas resources, and the latest facts on climate change science.

Other workshops dealt with issues such as higher education and how to make sure our colleges and universities remain the best in the world, as well as the danger of expanding liability laws and rolling back hard-won tort reforms. Finally, and back by popular demand, was a workshop addressing the importance of preserving our electoral college for presidential elections and the role the electoral college plays in protecting the equal status of the states.

Honoring ALEC Members

ALEC's public- and private-sector members work tirelessly to promote the Jeffersonian principles on which ALEC was founded—free enterprise, individual liberty, limited government, and federalism. Each year, a handful of members stand out as leaders in their communities and in their support for our organization. Nominated by their peers, these members are honored at our Annual Meeting with awards that recognize their contributions.

This year, Dr. Richard Vedder, a Distinguished Professor of Economics at Ohio University and a member



FreedomWorks Chairman, and Former Majority Leader in the U.S. House of Representatives, Dick Armey discusses the need to rein in government spending.



Dr. Richard Vedder, a Distinguished Professor of Economics at Ohio University, was presented with ALEC's Adam Smith Free Enterprise Award. He is accompanied by his wife Karen and daughter Vanette.

Dr. Liam Fox, Conservative MP and British Shadow Defence Minister speaks on the importance of our cross Atlantic alliance.



*Professor Clayton Christensen of Harvard's Business School, and author of *Disrupting Class: How Disruptive Innovation Will Change the Way the World Learns*, spoke at ALEC's Leadership Dinner about applying the principles of business model innovation to education reform.*

of ALEC's Board of Scholars, was awarded ALEC's prestigious Adam Smith Free Enterprise Award for his visionary leadership in the spirit of Adam Smith.

Dr. Vedder has written extensively on labor issues, authoring such books as *Going Broke by Degree: The American Economy in Historical Perspective*, and, with Lowell Gallaway, *Out of Work: Unemployment and Government in Twentieth-Century America*. He has been an economist with the Joint Economic Committee

of Congress, with which he maintains a consulting relationship. He has served as the John M. Olin Visiting Professor of Labor Economics and Public Policy at the Center for the Study of American Business at Washington University in St. Louis and has taught or lectured at many other universities. Dr. Vedder is currently working to use the forces of the market to make higher education more affordable and qualitatively better.

The William J. Raggio Excellence in Leadership and Outstanding Service Award was presented to Rep. Tom Craddick, Speaker of the Texas House of Representatives for his work with the American Legislative Exchange Council as a leader and a driving force in solidifying policy solutions and promoting ALEC principals and ideas. Speaker Craddick was also recently elected National Secretary of ALEC.

ALEC recognized nine Legislators of the Year:

- **Senator Carol Weston (ME)**

Senator Weston is currently serving her third term representing in the Maine State Senate where she serves as Senate Minority Leader. She also serves as ALEC State Chair and has increased Maine ALEC membership five-fold. Carol has introduced and or sponsored several ALEC Model Bills including ALEC's Charter School Legislation and Health Care Choices Act for States. Senator Weston serves on ALEC's Telecommunications and Information Technology Task Force. In Maine, Senator Weston is regarded as a champion of internet freedom and has been a tireless advocate against the traps of internet overregulation that will stifle innovation and commerce.

- **Senator Curt Bramble (UT)**

Sen. Bramble is a member of the Utah State Senate, representing the state's 16th Senate District in Provo. He is the Majority Leader in the Utah Senate and is the Co-Chair of the Retirement and Independent Entities Joint Appropriation Committee and serves on the Executive Offices and Criminal Justice and Higher Education Joint Appropriations committees and chairs the Retirement and Independent Entities Standing Committee and serves on the Revenue and Taxation Committee for the 57th Utah State Legislature. He is also ALEC's State Co-Chair.

- **Senator Steve Komadina (NM)**

Senator Steve Komadina currently is serving as ALEC's New Mexico Public Sector Co-Chair. Even prior to joining ALEC, he championed legislation espousing Jeffersonian principles of individual liberty, limited government, and free enterprise. He has worked diligently to increase ALEC's visibility

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ALEC's 2008 Legislator of the Year Award recipients, from left: Rep. Renée Kosel (IL), Rep. David Casas (GA), Sen. Alex Mooney (MD), Sen. Steve Komadina (NM), Rep. Curry Todd (TN), Sen. Bill Seitz (OH), Sen. Curt Bramble (UT), and Rep. Wayne Christian (TX). Not pictured is Sen. Carol Weston (ME).

and membership in his state. He is a recognized expert on healthcare issues, and frequently is called upon for his opinion on bills that will affect patient, doctor, nursing, hospital, and insurance activities in New Mexico. In 1999 he was selected by his fellow physicians to receive the Wyeth-Ayerst Award for outstanding community service by a doctor in the state of New Mexico. He has also been selected by the Albuquerque Tribune as the "Rising Star" in health. He was elected Vice-President, President Elect, and President of the New Mexico Medical Society from 2000 to 2003.

- **Rep. Renée Kosel (IL)**

As ALEC's State Co-Chair, Rep. Renée Kosel was instrumental in the success of our Annual Meeting this year in Chicago. Rep. Kosel was first elected as Illinois State Representative of the 81st Legislative District on November 5, 1996, and took office in January 1997. She is serving her sixth term as a legislator, and was elected by her fellow Republican legislators as Assistant House Republican Leader in 1996. She serves on the following legislative committees: Elementary & Secondary Education, International Trade & Commerce, Least Cost Power Procurement (Republican spokesperson), Registration & Regulation, Transportation & Motor Vehicles, Housing & Urban Development, and DCFS Oversight Committees. She also serves on the state's Health Planning Reform Task Force.

- **Rep. Curry Todd (TN)**

In addition to serving as ALEC State Chair, Rep. Todd has been a strong supporter of the "Tennessee Trust" initiative, which includes protecting against government waste by making it more difficult for legislators to break the Copeland Cap, a 1978 amendment to the Tennessee Constitution. The amendment limits the budget from increasing beyond what the expected growth in the economy can handle. Right now, this protection can be

overridden by a simple majority vote, an action that has been taken 11 times since 1984. "Tennessee Trust" legislation would require at least a two-thirds majority before the cap can be overturned. Additionally, the "Tennessee Trust" platform also includes limiting taxes and ensuring that Tennessee remains an income tax-free state.

- **Sen. Alex Mooney (MD)**

Sen. Mooney, a Republican, was elected to the Maryland State Senate in 1998 as the youngest and only Hispanic member. He has introduced several ALEC model bills including the Government Budget Transparency Act, Right to Carry, TABOR, Repealing the Death Tax, and the Prohibiting the Seizure of Firearms During an Emergency Act. Sen. Mooney received the Maryland Taxpayer of the Year award in 2000 and the National Hero of the Taxpayer Award for 2003 for consistently voting to protect the "little guy" by cutting burdensome government regulations and red tape on small businesses. He has also received the top business rating in the state by the Maryland Business for Responsive Government. Currently, Senator Mooney sits on the Senate Judicial Proceedings Committee.

- **Rep. David Casas (GA)**

Rep. Casas is a Republican serving his second term as a member of the General Assembly. He is also a full-time public high school teacher and Chairman of ALEC's School Choice Sub-Committee. He is a founding member of the National Conference of Hispanic Legislators, a Legislative Liaison for the Governor's Hispanic Commission and a Georgia Member of the Southern Regional Education Board's Legislative Advisory Council. Rep. Casas currently chairs the House Subcommittee on Academic



From left, ALEC's Private Enterprise Board Chairman, Mr. Jerry Watson of the American Bail Coalition and ALEC's 2008 National Chairman, Arkansas State Senator Steve Faris, present ALEC's 2008 Private Sector Member of the Year Award to Susan Valauri of Nationwide Insurance, J.P. Wieske of the Council for Affordable Health Insurance, and Darcy Davidsmeyer of Motorola.

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Imposing identical solutions nationwide removes incentives for states to compete and experiment in designing the most optimal policy solutions.

Can one think of a federal reform that *would* make a difference in righting the imbalance of power between federal and state governments? One idea—with very limited chances of immediate enactment, but with considerable political potential—is to provide states with a genuine opt-out right from some or all federally funded programs. Currently, states can opt out of program participation *but not* out of the tax payments for those programs. This fiscal asymmetry helps to explain the universal state participation in virtually all federal programs.

To remedy that problem, Congress could and should provide that the citizens and businesses of nonparticipating states receive their proportionate share of payments as a credit against the next year's income tax.⁶ Doing so would lower the tax burden for individuals and businesses—whatever they paid in to support a federal program that the state government of their residence opted out of would be returned to their wallets. This provision need not operate across the board; it could be attached to individual federal funding programs.

A second reform option would be to amend the U.S. Constitution to prohibit federal mandates that require states to use non-federal funds to pay for them. As proposed, in part, by the late Congressman Paul Gillmor (R-OH) in the early 1990s, a suitable constitutional amendment would stop the federal government from forcing state governments to pay for federal programs. Specifically:

The Congress shall not enact any provision of law that has the effect of requiring any State or local government to expend non-Federal funds to comply with any Federal law unless the Congress reimburses the State or local government for the non-Federal funds expended to comply with that Federal law.



This proposal rests on a simple foundation: “When a local government is forced to pay for national policy, the local government becomes a servant of the national government, rather than a partner in federalism.”⁷ The underlying policy question is whether one government body should be able to propose an objective and demand that another government body pay for it. In a system of unchecked federal mandates, the federal government does exactly this.

By passing the buck for costly federal mandates onto local governments, Congress escapes fiscal accountability. Local government bodies are forced to raise taxes to comply with the requirements of the looming federal mandate. In turn, citizens turn to local authorities for assistance. Under this reform, Congress would be held directly accountable for the costs of the programs it creates.

Another reform option would be to expand the reach of the federal Unfunded Mandates Reform Act (UMRA) so that it is applied more frequently. Currently, “emergency” legislation and “constitutional rights” legislation are immune from the act’s provisions. Additionally, procedural gimmicks can be used in the U.S. House and Senate to get around UMRA requirements.

A final pathway of reform involves judicial redress. Each of three approaches presents some ray of light in challenging overbearing federal mandates in the courts.

Continued on next page

ALEC POLICY FORUM

AMERICAN LEGISLATIVE EXCHANGE COUNCIL

The U.S. Constitution promises to the citizens a republican form of government in the states.⁸ Unless states can retain their own independence and autonomy, they cannot enjoy republican forms of government as promised under the Constitution. These promises are contained in the Guarantee Clause and the 10th Amendment.

Likewise, the Taxing and Spending Clause of the Constitution, under current precedent, permits Congress to condition the acceptance of federal grants on compliance with requirements, provided that the conditions are set forth unambiguously.⁹

Lastly, some federal statutes contain assurances that the law in question will not require states to spend or incur funds in administering the federal program.

It is difficult to counteract the destructive effects of federal funding programs. Procedural reforms, either at the federal or the state level, are difficult to achieve in the short term. The principal constraint is political

in nature. One way or the other, state legislators are called upon to deliver public services, build and maintain roads, provide police protection, and respond to emergencies. These crucial functions are often subsidized by the federal government, but transfer programs are being subsidized far more generously.

Increasingly, federal funds have driven legislators to expand payments for Medicaid and education, at considerable cost to other programs and constituencies. Legislators need and want a way out. In the long term, focusing attention on procedural and structural reforms, such as strengthening the Unfunded Mandates Reform Act, proposing a federal constitutional amendment to end mandates, or devoting funds to litigation challenges may just free states from the grip of their federal masters perpetually.

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- 1 The author wishes to thank Professor Robert G. Natelson, Davin Mason Scholar of Law at the University of Montana School of Law, and Tim Keller, the Executive Director of the Institute for Justice, Arizona Chapter, for their scholarly assistance with this project.
- 2 USASpending.gov, (FY 2007)
- 3 Office of Management and Budget, *FY 2007 Budget*, Historical Table 15.1.
- 4 See Michael S. Greve with Jinney Smith, "What Goes Up May Not Go Down: State Medicaid Decisions in Times of Plenty," American Enterprise Institute working paper, August 5, 2003, http://www.aei.org/publications/pubID.17115/pub_detail.asp.
- 5 Federal Register, Vol. 72, No. 228, November 28, 2007, <http://aspe.hhs.gov/health/fmap09.pdf>
- 6 The seemingly simpler option of remitting the funds to nonparticipating state governments would only exacerbate problems. To those governments, the rebate will look like the proceeds of an income tax they never had to levy, and they will rarely be prepared to pass them along. In fact, those governments will emerge as the strongest proponents of expanding a federal program in which they do not participate: the bigger the program, the bigger the windfall.
- 7 Paul Gillmor and Fred Eames, *Reconstruction of Federalism*.
- 8 U.S. Const. art. IV, § 4.
- 9 U.S. Const. art. I, § 8.

AMERICAN LEGISLATIVE EXCHANGE COUNCIL

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EPA Plan Would Vastly Expand Its Regulatory Reach

By Matt Warner

The nation watched earlier this summer as the Senate cap-and-trade bill, Lieberman-Warner, failed before reaching a final vote. The bill would have created a new government agency charged with issuing and regulating government permission credits for American businesses to emit greenhouse gases. Such a scheme would have created a massive drag on the American economy. The Heritage Foundation estimated as many as 1,000,000 jobs lost *annually* through 2030 and cumulative GDP losses of nearly \$5 trillion.

While that effort is over (for now), the nation should now keep its eyes on the Environmental Protection Agency's (EPA) latest initiative—a new plan to regulate greenhouse gases under the Clean Air Act (CAA). Many have responded to the EPA plan with sharp criticism, notably many Cabinet-level officials including the EPA administrator Stephen Johnson who called it “an unprecedented expansion of EPA authority.” On a conference call with the media the day of the plan's release, Johnson was complimentary to his staff for their efforts but suggested the plan ultimately reveals that the CAA is ill-suited to regulate greenhouse gases.

The Natural Resources Task Force voted unanimously to adopt a resolution in opposition to the EPA plan during ALEC's 2008 Annual Meeting in Chicago. The Task Force recognized the implications of using the CAA to regulate greenhouse gases and expressed concerns over the plan's “economy-wide restrictions impacting a wide range of industries including dairy and beef operations, office buildings, hospitals, schools, large homes, houses of worship...even lawnmowers, among other things.” The Task Force was also concerned that such a scheme would advance unchecked by a legislative body of elected officials.

The plan is part of a response to an April 2007 U.S. Supreme Court decision in which the majority ruled that the EPA has the authority under the CAA to regulate greenhouse gases and, in fact, is required to



EPA administrator Stephen Johnson.

address the issue. Running out of options, the EPA released its plan as an Advance Notice of Proposed Rulemaking (ANPR) and is seeking public comment for a period of 120 days.

Interested parties can learn more about the ANPR and submit comments by visiting www.epa.gov/climatechange/anpr.html.

To view ALEC's resolution, visit the Natural Resources Task Force page at www.alec.org.

Matt Warner is Director of the Natural Resources Task Force at ALEC.



Oklahoma Analyzes State Health Insurance Solutions

By Jennifer Monies, Press Secretary
Oklahoma House of Representatives

Christie Raniszewski Herrera, Director of the Health and Human Services Task Force for ALEC, was invited to speak before the Oklahoma House Health Care Reform Task Force on August 26 to discuss ways to improve statewide access to health insurance. Specifically, the House Task Force wanted to analyze what is being done in other states to determine which solutions may be applicable.

Several states have attempted to improve their health care systems, with mixed results. Reform efforts in states such as Tennessee, Arkansas, Kentucky, Massachusetts, and Florida were discussed. States like Massachusetts with a universal mandate for coverage have run into barriers, the Task Force was told.

“We hear a lot about how an individual mandate is simply about personal responsibility,” Herrera said. “But we believe the individual mandate is about big government. When you force purchase of a government-defined benefits package, it will ratchet up spending.”

Herrera said that in Massachusetts too many mandates are still included in required plans, which increases costs and makes it harder for residents to purchase the required coverage.

“The political reality is that special interests will lobby for and win inclusion in the ‘standard benefits package,’” she said. “That ratchets up the cost of care

and it also increases the amount of state spending needed to keep up with the subsidy.”

Rep. Gary W. Banz (District 101) said “I value the role ALEC plays in assisting with my job as a legislator.”

After several meetings of the Task Force, Rep. Kris Steele, Co-Chairman of the Task Force, said the members remain in the information-gathering stage though some conclusions can already be made. “It is not the goal of this Task Force to implement an individual insurance mandate,” said Rep. Kris Steele, R-Shawnee. “But, we want to improve access and affordability to the point where there are no longer reasons why Oklahomans would not choose to have private insurance.”

Rep. Doug Cox, the lone medical doctor in the Legislature and Co-Chairman of the Task Force, said Oklahoma needs a unique solution that meets local needs.

“We would be foolish to not look at what other states have done, but in the end every state is different and we must do something here that makes sense for Oklahoma,” said Rep. Doug Cox, R-Grove. “We would be able to do a lot more in moving more Oklahomans into the health insurance system if federal officials would give us more flexibility to structure our own policies according to our needs here in Oklahoma.”



Rich States, Poor States Capitol Hill Luncheon a Success

By ALEC Staff

In July, ALEC's Tax and Fiscal Policy Task Force was proud to host a Capitol Hill luncheon, discussing *Rich States, Poor States: ALEC-Laffer State Economic Competitiveness Index*. The event featured Speaker William Howell of the Virginia House of Delegates, Stephen Moore of the *Wall Street Journal*, and Tax and Fiscal Policy Task Force Director Jonathan Williams.

The briefing highlighted how Congress can learn valuable lessons from the states and promote better fiscal policy at the federal level. The event was a huge success, with over 55 in attendance, including congressional staff, policy analysts, private sector representatives, and concerned taxpayers.

Jonathan Williams opened the panel discussion by addressing the economic woes in his home state. "Michigan is a great example of a state that has unlimited potential, but seems to consistently embrace the big government policies that have caused the current economic malaise." The historical evidence from *Rich States, Poor States* is clear: states that keep spending and taxes low exhibit the best economic results, while states that follow the tax-and-spend path lag far behind.



From left: Tax and Fiscal Policy Task Force Director Jonathan Williams, Speaker William Howell of the Virginia House of Delegates, and Stephen Moore of the *Wall Street Journal*.



Audience at *Rich States, Poor States* Capitol Hill Luncheon

Speaker Howell discussed Virginia's exemplary ranking in the *ALEC-Laffer State Economic Competitiveness Index* (6th best nationally in 2008) and outlined what policies have encouraged economic growth and wealth creation in Virginia. In particular, Speaker Howell discussed the importance of recent legislation that eliminated Virginia's death tax, and highlighted efforts to protect the state's right-to-work status. In contrast, Speaker Howell referenced other states, such as neighboring Maryland, where massive tax increases have hampered that state's economy and driven many Maryland businesses out of the state.

Stephen Moore, co-author of *Rich States, Poor States*, presented on the findings of the publication and talked about the need for states to put a lid on state spending growth. When discussing the research, he highlighted many lessons learned at the state level and challenged the congressional staff and other policy makers in attendance to use the comparative index to encourage economic growth and prosperity at the federal level.

All panelists ended on a similar theme: state tax rates, spending, regulation, and economic freedom are among the key factors in determining which states will prosper and which states will continue to fall into economic stagnation. To view the entire *Rich States, Poor States* study, please visit www.alec.org.

Continued from page 12

Achievement in the Education Committee, which has jurisdiction over all legislation dealing with the state's curriculum. He is also the co-sponsor and champion of the recently passed Georgia Special Needs Scholarship Act, which provided school choice for Georgia's learning disabled children.

- **Sen. Bill Seitz (OH)**

Sen. Seitz of Cincinnati (8th District – OH) was a principal in legislative reform of the negligence law as a former member of the Ohio House of Representatives from 2001 – 2007, where he served the House Republican leadership team as Majority Whip. While chairing the Civil and Commercial Law Committee, then-Representative Seitz shepherded landmark asbestos and silica dust reform through the House the year after he was a critical negotiator of the comprehensive civil justice reform that allowed Ohio to climb from 43rd to the 4th best legal liability climate among the 50 states, according to the U.S. Tort Liability Index developed by the Pacific Research Institute. A seasoned legislator and multi-year member of ALEC's Civil Justice Task Force, Senator Seitz has been an enthusiastic supporter of ALEC and through his commitment to a fair, stable, and predictable legal environment has helped the citizens and businesses of his own state immeasurably.

- **Rep. Wayne Christian (TX)**

During the 80th Legislature, Speaker Craddick appointed Rep. Christian to the State Affairs Committee and as Vice Chairman of Regulated Industries. Throughout an active session, Rep. Christian provided leadership in multiple capacities. He was chosen as President of the Texas Conservative Coalition in order to lead and strategize with other members in key conservative debates. He was also elected to the Policy Committee of the Republican Caucus. Recognized as a consistent conservative voter during this 80th session, he was named a "Texas Taxpayer Hero" by the Texans for Fiscal Responsibility. He was also named a "Fighter for Free Enterprise" by the Texas Business Association, and "Texas Top Ten" by the Free Enterprise PAC and Free Market Committee.

- **Dr. Syed Kamall, MEP**

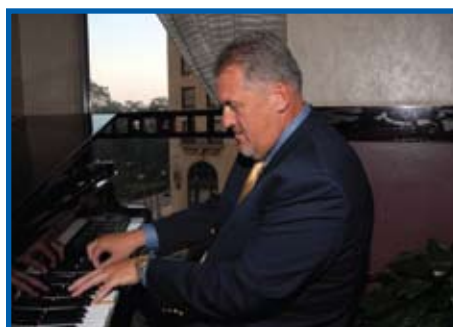
ALEC chose as its International Legislator of the Year Dr. Syed Kamall, a Member of the European Parliament representing London. Syed became a Member of the European Parliament in May 2005. He has been a member of the Conservatives since 1987 and has been a member of Vauxhall, Bath, Westminster, West Ham, and Barking Conservative associations. In May 2000, Syed was a Conservative Candidate for the Greater London Assembly. The following year, he was Conservative candidate for West Ham in the June 2001 General Election. Syed



Christopher Manning, of Manning & Sossamon, spoke of the need for legal reform.



ALEC chose as its International Legislator of the Year Dr. Syed Kamall, a Member of the European Parliament representing London.



Mike Morgan of Koch Industries and a member of ALEC Private Enterprise Board of Directors displays his musical skills at the ALEC Board Dinner.

is an associate of the Centre for Social Justice (CSJ) working to identify community based projects at the forefront of tackling poverty for the CSJ alliance. He also sits on board of the Conservative Party's Globalisation & Global Poverty working group.

ALEC's private-sector members were also recognized with three 2008 Private Sector Members of the Year: Susan Valauri of Nationwide Insurance, J.P. Wieske of the Council for Affordable Health Insurance, and Darcy Davidsmeyer of Motorola. Finally, ALEC's Volunteers of the Year were Ruth Cheesman, Legislative Assistant Rep. Renée Kosel (IL) with the Chicago Host Committee, and Ann Cornwell, Secretary of the Arkansas Senate and Coordinator of Legislative Services for Sen. Steve Faris, ALEC's 2008 National Chairman.

ALEC Members can view power points, files, and videos for select speeches (and order photos) from the 2008 Annual Meeting by visiting the Annual Meeting section of ALEC's web site at www.alec.org.

New Maryland Education Survey: Voters Value School Choice

By ALEC Staff

Maryland voters indicated a preference for sending their children to nonpublic schools over any other type of school by more than a two-to-one margin and a majority of them expressed support for a business tax credit scholarship program, according to a new public opinion survey taken in late June.

The results of the survey of 1,200 likely voters were released August 28 by a coalition of nonpublic school organizations, including the Friedman Foundation for Educational Choice (an ALEC Member), the Maryland Catholic Conference, Maryland CAPE, the Union of Orthodox Jewish Congregations of America, Agudath Israel of Maryland, the Mid-Atlantic Catholic Schools Consortium, Black Alliance for Educational Options (BAEO), Hispanic Council for Reform and Educational Options (HCREO), and the National Catholic Educational Association (NCEA).

Voters indicated that they value the role and contributions of nonpublic schools, with 29 percent of respondents called the private schools “very important” and 37 percent called them “somewhat important” to public education in Maryland. Maryland’s private schools currently enroll about 136,000 students and save taxpayers approximately \$1.56 billion in yearly public school expenditures – based on combined local and state government funding of \$11,459 per public school student.

Respondents also indicated a preference for sending their children to nonpublic schools over any other type of school by a more than two to one margin. More than a third considered overcrowded classrooms (22%) or overcrowded schools (14%) to be major challenges facing public schools.

Voters also expressed support, by a 59 to 41 percent margin programs in which businesses receive state tax credits for contributing money to nonprofit organizations that distribute private school scholarships to all families, regardless of income or special needs. The

support grows to 63 to 37 for programs which limit the scholarships to students with financial need.

“The majority support for giving businesses a tax credit for donating to needs-based scholarship programs is encouraging news, given how close we are to enacting this legislation in Maryland,” said Mary Ellen Russell, Deputy Director of the Maryland Catholic Conference, and a member of the Nonpublic School Coalition’s steering committee.

The BOAST Maryland Tax Credit Act, which would provide businesses with a 75 percent state income tax credit on donations made to eligible scholarship organizations or innovative educational programs, passed the Maryland Senate by a 30-17 vote in its 2008 session. It did not receive a vote in the House of Delegates. State lawmakers will consider the legislation again in their 2009 session.

The Maryland findings are the latest in a series of surveys commissioned under the Friedman Foundation’s Survey in the State project. Recent surveys include Oklahoma, which was released in June of 2008, Idaho and Tennessee, both released in March of 2008; Nevada, January, 2008; Illinois, December 2007; and Georgia, April 2007.

Or more information please visit www.friedmanfoundation.org.





Sen. Dean Skelos



Sen. Tom Libous

New York Members Moving Up

ALEC members State Senator Dean Skelos will take over as Majority Leader and Senator Tom Libous will take over as Assistant Majority Leader in New York.



In Memoriam: Rep. Maureen Murphy (IL)

Former State Rep. Maureen Murphy (R-Illinois), an ALEC member, succumbed to lung cancer on August 9 at the age of 55. While in the legislature she was Chair of the Revenue Committee and worked to

educate taxpayers about how to appeal their property tax bills. She was also the lead sponsor of property-tax cap legislation and school reform bills.



New School Choice Group in Virginia

Long-time ALEC member, Del. Chris Saxman (R-Staunton) has been named the chairman of a new organization dedicated to promoting school choice options for parents in the Commonwealth of Virginia.

School Choice Virginia will work for specific legislative proposals, such as providing tax credits to families to offset the costs of private education. Del. Saxman, who is a former school teacher said in a prepared statement that "every child deserves the opportunities to succeed and receive an education that will best meet their unique learning needs."



States & Nation

POLICY SUMMIT

December 4-6, 2008

The Marriott Wardman Park Hotel
Washington, D.C.

Legacy Membership Program

ALEC invites its legislative members to become part of the Legacy Membership Program. By joining this program, ALEC Legacy Members help ensure the long-term sustainability of the organization through a restricted capital fund. The first 50 contributors will become "Charter Legacy Members" and receive free registration to ALEC conferences for life, a permanent name badge for this purpose, and a plaque honoring them for their commitment to ALEC and the organization's Jeffersonian principles. Finally, when funds from the program are used for infrastructure improvement within ALEC, Charter Legacy Members will be honored with a dedication plaque.



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