

# INSIDE *ALEC*

A PUBLICATION OF THE AMERICAN LEGISLATIVE EXCHANGE COUNCIL

SPECIAL ISSUE  
**HEALTH &  
HUMAN SERVICES**



ANNUAL  
MEETING  
PREVIEWS  
INSIDE

## All About Jobs: Keeping the Pledge to Repeal & Replace ObamaCare

By U.S. House Speaker John Boehner

## Preserving the Federalist Structure of American Constitutional Government

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# C'mon Down to the Big Easy!

BY ALEC NATIONAL CHAIRMAN NOBLE ELLINGTON

ALEC's 38th Annual Meeting, Solutions for the States, will be the best yet. New Orleans is a thriving, resilient city with much to offer its visitors with amazing cuisine, cultural events, history and entertainment.

As always, you will have the opportunity to network with your peers from across the country and receive information from industry leaders to help you make sound policy decisions for your state. This year's Annual Meeting will provide you with a host of sound solutions on significant issues affecting our states and country including, energy alternatives such as natural gas (see Sec. Scott Angelle's article on p.19), digital learning, solutions for real budget and pension reform, and the Medicaid crisis in the states.

We have many receptions and activities planned so you may relax and network after a long day of educational sessions. The first official evening of ALEC's 38th Annual Meeting, we will visit one of New Orleans' treasures – the National World War II Museum – for the Louisiana Welcome Reception. We'll enjoy great food and great company at an historical location. On Thursday, August 4, you'll have opportunity to network with your peers at a relaxing reception while enjoying great food and beverages. Friday night is your night with your state and there are plenty of famous and amazing restaurants, museums and events within walking distance of our host hotel, the New Orleans Marriott. Finally, after the prayer service on Saturday, I hope you will enjoy and experience more New Orleans activities.

Let me take a moment to share with you some information about the great state of Louisiana and New Orleans. New Orleans is rebounding with a strong economy and some areas are doing better than ever before. Average wages in the New Orleans metro area have increased 14 percent from 2004 to 2008. Entrepreneurship has grown in the metro area post-Katrina with 450 of every 100,000 adults starting a business compared to 320 out of every 100,000 nationally. It is the entrepreneurs that contribute significantly to our growing, diverse economy and will lead us to stability and sustainability.

Tourism is Louisiana and New Orleans' top industry. In 2010, total spending by international and domestic visitors in Louisiana was \$9.3 billion. Fine dining and shopping rank among the top five travel leisure activities for domestic visitors which have been major contributors to economic recovery in Louisiana. I encourage you to visit the official Louisiana Office for Tourism site at

[www.louisianatravel.com](http://www.louisianatravel.com) for more information on exciting events and adventures in this great state.

When you visit New Orleans, you'll see that our culinary industry is one of the strongest in the United States. The seafood is safe (see the article by Louisiana Seafood Promotion & Marketing Board on p.16), the cuisine is divine and restaurants are plentiful. According to the Louisiana Restaurant Association, in 2011, restaurants in Louisiana are expected to have an economic impact of \$6.2 billion. Every \$1 spent in restaurants in Louisiana generates an additional \$0.96 in sales for other industries in the state. When in New Orleans, be sure to sample our world famous beignet pastries and try the Oysters Rockefeller. They aren't far from our hotel!

The cultural economy is also vital to New Orleans, ranking the second largest economic sector by employment after tourism. Along with 200 cultural non-profits, about 1,200 commercial enterprises in the city are part of the cultural economy, including 500 independent, local restaurants, 120 live music venues, 18 live performance venues, 24 museums and 209 art galleries. The film industry is booming, with over 1,000 local film workers, 35 projects spending \$355 million locally, and 400 smaller projects spending as much as \$4 million in the city in 2010. New Orleans has over 100 cultural festivals with an estimated attendance of 3 million in 2010 and an estimated annual economic impact of more than \$600 million.

Louisiana welcomes ALEC's members for our 38th Annual Meeting to our great city and I assure you, New Orleans is ready for ALEC. Remember to contact ALEC's membership and meetings team for any assistance you may need in registration, securing your hotel and making your travel plans. New Orleans is ready for you, so c'mon down to the Big Easy! 🍷

**Rep. Noble Ellington** is ALEC's 2011 National Chairman. Ellington has been a member of the Louisiana House of Representatives since 1995.



## References:

-Greater New Orleans Community Data Center - <http://www.gnocdc.org/>

-Louisiana Tourism - <http://www.louisianatravel.com/>

-New Orleans Mayor's office of Cultural Economy - <http://www.nola.gov/PRESS/City-Of-New-Orleans/All-Articles/20110506-MAYOR-LANDRIEU-RELEASES-REPORT-ON-CULTURAL-ECONOMY>

# All About Jobs: Keeping the Pledge to Repeal & Replace ObamaCare

BY U.S. SPEAKER OF THE HOUSE JOHN BOEHNER (R-OH)

From the moment the American people elected a new Republican majority to Congress, we've focused on job creation. Last month we unveiled A Plan for America's Job Creators that's focused on fostering innovation and reducing regulatory burdens, and that builds on our Pledge to America to remove barriers to job growth—barriers like ObamaCare.

Put yourself in the shoes of a small business owner. For some of us it's not hard: we've been there. You hire good workers, meet your payroll, play by the rules, and at the end of the day you hope to have something left over to reinvest and grow your business.

Now imagine operating under the health care law jammed through Congress by Democrats last year—a law that makes it far more difficult for you to create new jobs.

The prospect of crippling fines and penalties have forced the owner of a Lawton, OK-based lumber company to make a tough choice: keep his payroll under 50 employees, or make employees part-time or independent contractors. "I do not want to lose anyone on my payroll," he told House lawmakers, "but if it comes down to laying off a few employees or being saddled with these fines, I won't have a choice."

Imagine operating under a health care law where your employees can't keep coverage they like.

The House Ways & Means Committee heard from the owner of a printing company in Moorestown, NJ who says his insurance carrier cancelled the health care plan he offered his workers because of ObamaCare. "The promise that my employees would be able to keep their existing health insurance has proven to not be true," he said.

Imagine operating under a health care law that raises your costs—dramatically.

The owner of a restaurant in Marshall, MI told the House Energy & Commerce Committee his insurance premiums could increase by 282% under ObamaCare. "We believe that offering health care coverage is the right thing to do," he said, but, "We cannot raise menu prices high enough to cover these costs and to do so would drive away the customers who are just beginning to return to our tables."

Sound frustrating? This is the reality facing job creators today. Things are so difficult, the Obama Administration has issued more than 1,300 waivers to businesses and unions shielding more than 3 million Americans from the health care law—each waiver a tacit admission that it increases costs and destroys jobs.

Things are no better for state legislators dealing with law's costs and mandates. According to a joint congressional report, the massive Medicaid expansion will cost states twice what the Congressional Budget Office (CBO) previously estimated: \$118 billion through 2023 compared to the \$60 billion estimated by CBO through 2021.

Republicans made a Pledge to America to repeal the full health

care law, but since the Democrats who control Washington have blocked our effort to do so, we are now working to repeal it piece-by-piece. To that end we've voted to defund it and shut down several of its slush funds. We even successfully passed—and the president signed—a measure repealing the onerous small business paperwork mandate.


But we can't stop there. For too many people our health care system already wasn't working before Democrats imposed their job-crushing law. Republicans made a pledge to replace ObamaCare with reforms that will help lower health care costs and protect jobs—and we're keeping that one too.

We want to let Americans shop for coverage across state lines. Manhattan Institute senior fellow Dr. Paul Howard says The Health Care Choices Act (H.R. 371) by Rep. Marsha Blackburn (R-TN) would "spur innovation in insurance products as states compete to offer the best combination of cost and coverage terms." And we want to curb junk lawsuits that drive up prices (see The HEALTH Act [H.R. 5] by Rep. Phil Gingrey [R-GA]).

We want to eliminate barriers that prevent cash-strapped states from saving their Medicaid programs and better targeting assistance to those who need it most (see The State Flexibility Act of 2011 [H.R. 1683] by Reps. Gingrey [R-GA] and Cathy McMorris Rodgers [R-WA]). This is where the innovation is going to happen – on the state level with creative legislators and governors working together—and Republicans in Congress want to allow it to occur.

We also want to save Medicare from bankruptcy and eliminate ObamaCare's "rationing board." The GOP budget—the Path to Prosperity—would protect Medicare for current and future retirees. Nobody 55 and over would see any changes, and we could pay off our debt over time without giving unelected bureaucrats the power to deny seniors care. Washington Democrats' plan is to do nothing, which will ultimately push Medicare into bankruptcy and lead to benefit cuts for seniors.

If you still have your small business shoes on, you know health care law isn't the only dark cloud hanging over our economy. Democrats are pushing for tax hikes that would drive up the price of energy; an onslaught of new government regulations has job creators frozen with uncertainty; and the president's plan to raise the debt limit without cutting spending is a danger to American jobs.

To spur job growth, we need to repeal and replace ObamaCare, and we need to liberate our economy from the shackles of debt and big government. Learn more about our Plan for America's Job Creators by visiting [Speaker.Gov](http://Speaker.Gov) today. 



**John A. Boehner**

serves as Speaker of the United States House of Representatives. Elected to represent the Eighth Congressional District of Ohio for an 11th term in November 2010, John is a national leader in the drive for a smaller, less costly, and a more accountable federal government and is an ALEC alumnus.

# Health Care Freedom in Kansas

BY STATE SEN. MARY PILCHER-COOK  
(KS)

When thinking about how a sequence of events leads to a certain outcome, it can be difficult to recapture all the milestones. However, before the federal health care bill became law, I remember picking up the July 2009 issue of *Inside ALEC* and reading an article about Arizona State Rep. Nancy Barto's efforts for a "Healthcare Freedom Act" she had sponsored. Her arguments were compelling; I had no doubt Kansas needed this same type of legislation.

Given the trajectory of the left-wing majority in Congress at the time, it was becoming clear there was an urgent need for Kansans to enact a constitutional amendment so citizens could continue to act freely concerning their own health care decisions. In addition, state sovereignty, as guaranteed by our U.S. Constitution, made it apparent that it was a primary duty of state legislators to protect the liberty of the people of Kansas in regards to their health care.

After serving in the House for two terms, I was fortunate to have two State Representatives, Brenda Landwehr and Peggy Mast (both ALEC members), as good friends. Both recognized the pressing need for legislation that would preserve the freedom of Kansans to make their own health care choices. Landwehr was also the Chairman of the House Health Committee.

We put together a bus tour and traveled around Kansas, announcing our intent, as well as giving other legislators an opportunity to jump on board and allowing Kansans to voice their support. We emphasized that our government didn't grant us our rights, it recognized we were born with those rights—and it recognized we have a right to pursue health care in the way we see fit. Our liberties come from God and not the government. It was a monumental success and gave us a great deal of encouragement. Eventually, via our website,

[www.kansashealthcarefreedom.com](http://www.kansashealthcarefreedom.com), and petitions, we collected over 2,000 signatures in support of our effort, with ALEC's Christie Herrera helping and encouraging us all along the way.

In the 2010 session, the Health Care Freedom Amendment passed easily out of the House health committee, but it failed on the floor by nine votes. The hurdle was high, as a Kansas constitutional amendment needs two-thirds vote by each House before it can be placed on the ballot for voters.

*"We emphasized that our government didn't grant us our rights, it recognized we were born with those rights..."*

In the other chamber, Kansas Senate leadership did everything possible to prevent the proposed constitutional amendment from coming to the Senate floor for a vote through a series of maneuvers meant to kill the bill. It was referred to two committees—one committee passed it without a recommendation, and the second committee referred it to a subcommittee, and finally the second committee chairman voted against the legislation to cause a tie vote, which resulted in the failure of the measure so the legislation could not make it to the floor for a vote.

To illustrate the voting gymnastics displayed by some Senators to avoid any kind of public scrutiny on the legislation, when one was questioned by a reporter about his committee vote against the health care legislation, he said he had really meant to vote for it, but was not thinking clearly. It would have been comical if it hadn't been so serious!



But as Texas Gov. Rick Perry in his book *Fed Up!* points out, "No issue is more critical for the defense of freedom and the American way of life than the preservation of our free-market health care system," and I was determined to try again in the 2011

session. As I witnessed the fallout from the federal health care reform law, I was convinced more than ever that this debate should not end. We need to advance health care policies that work instead of damaging what good health care we do have in our country.

The 2010 November election put more conservatives in the Kansas House of Representatives. Landwehr and Mast guided the Health Care Freedom Amendment to victory early in the 2011 session, clearing the two-thirds threshold by seven votes—16 votes more than the previous year. The election had made a huge difference.

The Senate was not up for re-election, so the left-wing vs. right-wing ratio remained the same. Yet even though Senate leadership referred the proposed constitutional amendment to just one committee this time, the committee chairman waited until the end of session to announce to a crowded committee room that he saw no






need to work the bill until the 2012 session, since it would not be on the ballot until 2012.

However, during the session, I had been greatly inspired by Judge Vinson's ruling declaring the entire federal health care law unconstitutional. While it is obvious no one knows how the U.S. Supreme Court will rule in this case, there was a strong likelihood that a Kansas law might factor into the court's determination, especially since Kansas is a party to the Florida lawsuit. So I amended the language of the Health Care Freedom Amendment into an existing prescription health care bill on the Senate floor as the "Kansas Health Care Freedom Act"—a law instead of a constitutional amendment.

It passed 26-10, but not before one influential Senator stood up and said the measure would send a misleading message to Kansans substantive action was taken when instead, "we have done nothing to protect our rights." I answered the impact could not be known, but what could be known is that if we did NOT pass this legislation, we most certainly would have done nothing to protect our rights. The senator voted for the measure.

The bill has now been signed into law by Gov. Sam Brownback, Kansas' first conservative governor in more than half a century. We have a chance now for success. Our former governors, Democrats Kathleen Sebelius and Mark Parkinson, would have vetoed the measure instantly.

While work remains for a constitutional amendment, Brownback's signature signifies the culmination of two years of hard work and an important step forward in the defense of state sovereignty, and more importantly, the liberty and freedom of Kansans. 



**Senator Mary Pilcher-Cook** currently represents Kansas' 10th Senate District, and has also served two terms in the Kansas House of Representatives.

# State Insurance Exchanges: The Case Against Implementation

BY BENJAMIN DOMENECH

State policymakers face a complex task as they decide whether to implement President Barack Obama's health care law. For those in one of the 29 states currently mounting legal challenges to the law, the decision of how to proceed in the short-term is even more complex. They must decide whether to implement a series of burdensome regulations and vague requirements even as their representatives in the courts argue that such implementation is done in obedience to an unconstitutional act—a dangerous scenario, given that implementing the law could undercut their state's arguments in court.

The pressing issue for most states is the challenge of the health insurance exchanges created under Obama's law, which must be submitted for approval to the U.S. Department of Health and Human Services. Some policymakers—motivated by warnings that if they do not set up their own exchanges, the federal government will direct one which bypasses their authority—have attempted to find a middle path between compliance and resistance, adding pro-market or anti-abortion provisions to improve their exchanges.

This attempt to find a middle path is treacherous: it offers no protection for future bureaucratic decisions, collaborates with an unconstitutional framework, and risks undercutting the case before the courts. Policymakers would be wise to consider that any exchange created to pass muster with U.S. Health and Human Services Secretary Kathleen Sebelius and the current regime of rules within Obama's law will be fundamentally flawed.

## No Flexibility Under Obamacare

President Obama's law mandated the creation of a statewide regulated insurance market, called an "exchange," in all 50 states. To comply, each state must submit its exchange for a federal audit and review by January 1, 2013.

The date is an intentionally political one: Each exchange must be approved by the Department of Health and Human Services, but only after the 2012 election, when Washington's position on health policy may have changed dramatically, and when the political fallout from a negative review of a state exchange would be very limited.

Some governors have pushed forward on developing these exchanges in advance of the 2013 deadline, despite the pending court cases and intervening election. In states like Mississippi, the creation of an exchange would translate to 76 percent of the people being eligible for health care subsidized by other taxpayers.

Beyond the redistributionist subsidies, any exchange created under Obama's law will have to be designed to pass a series of tests that are fundamentally anti-market and anti-consumer, setting the stage for never-ending bureaucratic regulation. State policymakers are kidding themselves if they believe developing an exchange by the 2013 deadline will protect them from federal government interference. On the contrary, the state's creation of an exchange will merely serve as an avenue for further regulation while saving the federal government an organizational and administrative headache.

## State Costs and Subsidies

It is also likely most estimates of state costs for setting up these exchanges are on the low side. As further study is given to Obamacare's system of subsidized care, a picture is emerging of an administrative nightmare that virtually ensures gaps in coverage for millions of Americans and additional costs for states.

A study published in *Health Affairs* recently by Harvard Professor Benjamin Sommers and George Washington University Professor Sara Rosenbaum found Obama's system will force millions of adults and their families to move back and forth between Medicaid and state exchanges over periods of just a few months.<sup>1</sup> They estimate "more than 35 percent of adults with family incomes below 200 percent of the federal poverty level will experience a change in eligibility within six months, and 50 percent will experience a change within one year." Citizens will move back and forth between Medicaid and the exchanges at a level which will dramatically increase the administrative costs for states.

Obama's plan also expands subsidies to cover those with incomes up to 400 percent of the federal poverty level (FPL), creating a nationalized subsidy regime under which, according to the nonpartisan Washington think tank e21, "a family of four earning just below \$88,000 [400 percent of FPL] will receive about \$5,000 in annual subsidies to purchase insurance in 2016. Once that threshold is crossed, the subsidy immediately drops to zero."<sup>2</sup>

<sup>1</sup>Chris Fleming, "Frequent Churning Predicted Between Medicaid and Exchanges," *Health Affairs Blog*, February 4, 2011. <http://healthaffairs.org/blog/2011/02/04/frequent-churning-predicted-between-medicaid-and-exchanges/>

<sup>2</sup>Obamacarewatch: Exchange & Premium Subsidies. <http://www.obamacarewatch.org/primer/exchanges-and-premium-subsidies>



This handout-based approach makes pursuing a raise or finding a better job a very bad choice for low- and middle-income households. It gives families a powerful disincentive to pursue advancement and risk losing their subsidies. Any exchange created under Obamacare will be unable to avoid this subsidy problem.

## What About a Future Exchange?

An exchange created outside Obamacare's provisions could prove useful for some states, but this is not an option under the current law. While some organizations continue to push for the creation of exchanges, arguing that the potential exists for a more market-based option, the reality is that outcomes in Utah (the sole existing exchange other than Massachusetts' Commonwealth Connector) have thus far been less than stellar. While Utah's exchange was intended to be a limited model, its lack of proven outcomes shows that states may have to go through several iterations to properly structure an exchange that works for their citizens.

As John Graham of the Pacific Research Institute has argued in a series of op-eds published across the country, if Obamacare's


Florida Gov. Rick Scott. Both experienced veterans of health policy, these governors, and those who have joined them in declaring opposition or vetoing exchange bills, recognize that the ramifications for resistance are few, while collaboration could be profoundly negative.

As Louisiana Health and Hospitals Secretary Bruce Greenstein said in the course of announcing the rejection of Washington's taxpayer funded grant for the purposes of exchange implementation, they are not about to take the blame for the inevitable future premium hikes within Obamacare's system: "Envision an exchange which, if we were to run it, has the governor's name on the top of the letterhead" every time a premium increase is announced.

If state policymakers wish to pursue a more market-based exchange in the aftermath of a decision, that's another matter entirely. But such an exchange will be possible only outside the regulatory confines of Obamacare and its raft of taxpayer subsidies. If policymakers proceed with the exchanges under the auspices of Obamacare, they will be creating a near-permanent delivery mechanism for massive subsidies and the imposition of market regulation by unelected Washington bureaucrats. By enshrining the relevant taxpayer subsidies in law

and empowering the White House to dictate their insurance market, policymakers will declare themselves as collaborators in the installment of an unconstitutional health care regime.

Any exchange set up under Obamacare's system is virtually guaranteed to become an anti-market force, designed to

please the bureaucrats more than the people. For reasons of principle and practicality, states should take only the bare minimum of steps legally necessary to investigate an exchange under Obamacare. If officials determine that political pressure requires them to proceed, they should work to ensure the inclusion of a sunset provision to eliminate the exchange if repeal comes. But ideally, they should choose not to implement an exchange at all. 

*"Envision an exchange which, if we were to run it, has the governor's name on the top of the letterhead"...*

exchanges are created, it is likely a temporary approval from the Obama administration would be followed by mandates pushing aside any market-friendly or other reforms. Virginia recently joined several other states in passing a requirement banning the coverage of abortions by insurance plans operating within the exchange, at the behest of Gov. Bob McDonnell. Yet what Gov. McDonnell and other legislators fail to recognize is that such provisions are meaningless: Sebelius, who controls both the approval phase and directs the subsidies which flow through the exchanges, will ultimately decide whether Virginia's health plans will cover abortions.

## Resistance the Wisest Choice

While some governors are proceeding with the creation of exchanges within Obama's law, others are wisely defying the federally imposed regulation, such as Louisiana Gov. Bobby Jindal and

**Benjamin Domenech** is a research fellow at the Heartland Institute and managing editor of *Health Care News*.



# States Triumph over Federal Mandate: Health F

"Many Oregonians are concerned about the implications of the federal health care law and the individual mandate. I believe Oregonians should have the right to make their own health care decisions, and I'm working to pass legislation this session to protect our citizens from the federal government's punitive health care tax."

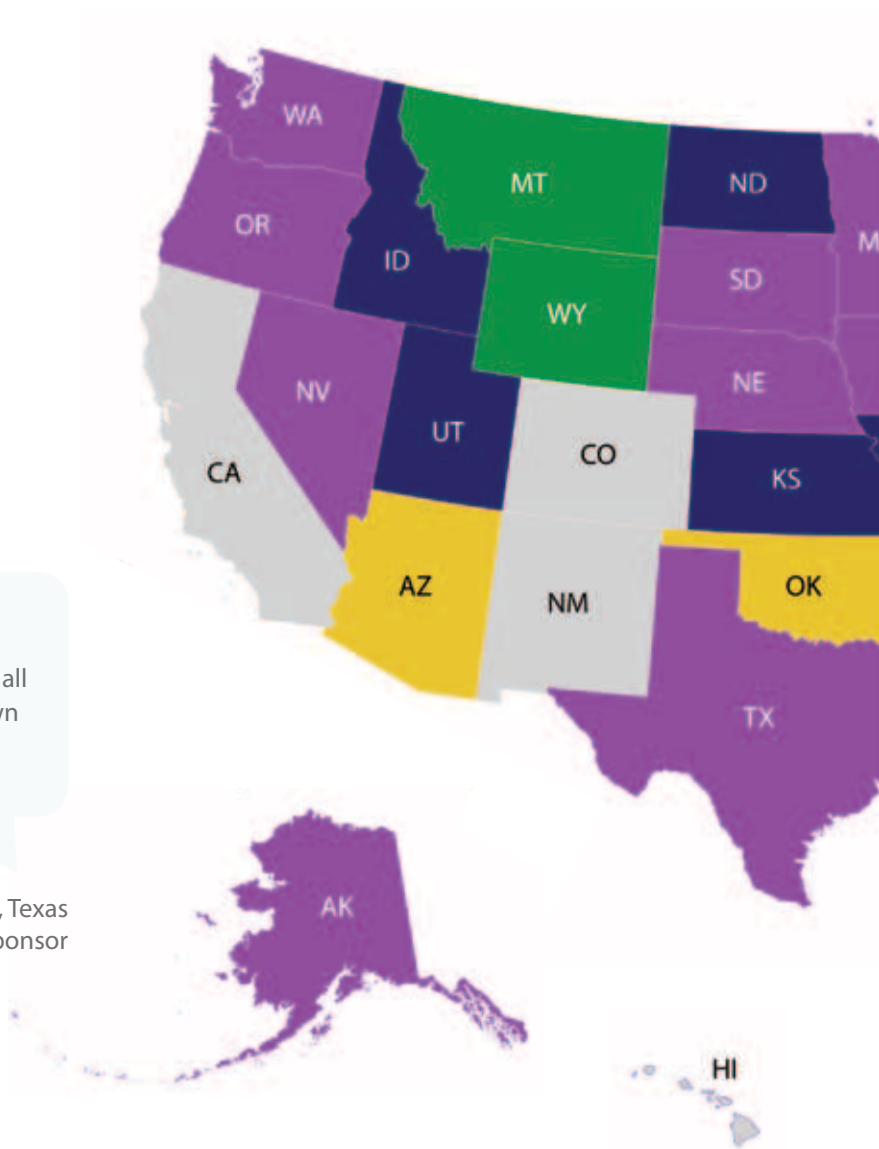


Representative Shawn Lindsay, Oregon  
HB3226, Co-Sponsor

“Never before in our history has the national government claimed to have the power to force an individual to purchase a specific product. Texans and all Americans have a fundamental right to make their own decisions about their healthcare, and the Health Care Freedom Act is about defending that precious right.”



Representative Bryan Hughes, Texas  
HB203, Sponsor



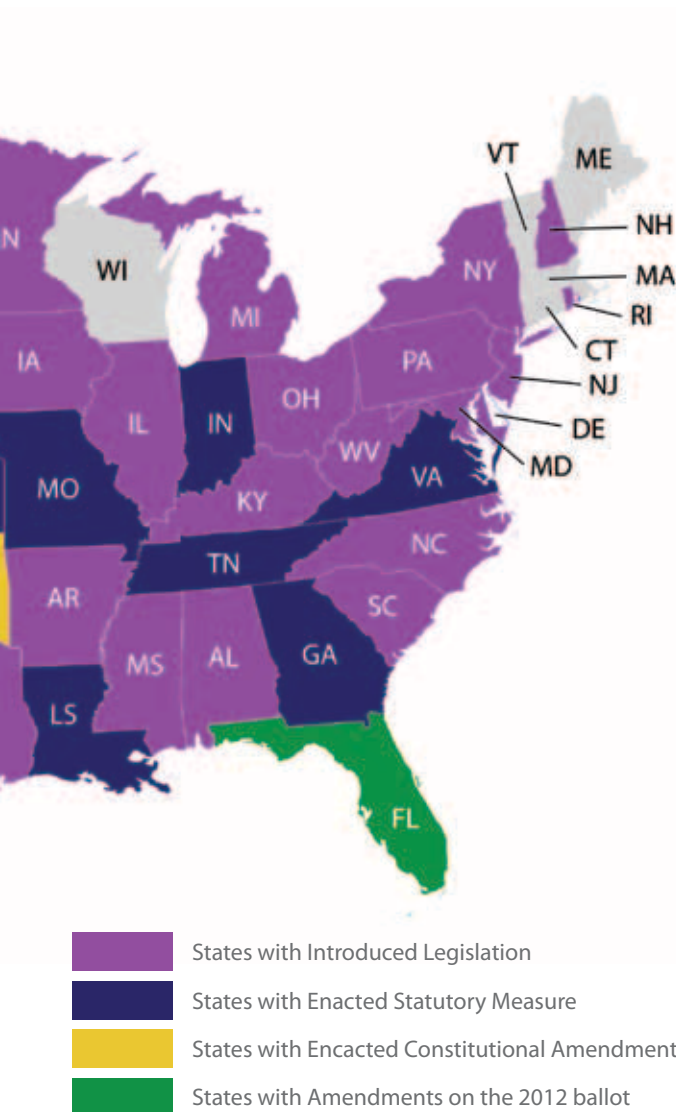
Health care freedom remained a top priority for legislators in 2011, as ALEC's *Freedom of Choice in Health Care Act* was introduced in 35 states. ALEC state legislators have successfully worked to expose the truth about the *Patient Protection and Affordable Care Act* (ObamaCare) and fight back—one state at a time. The states are triumphing over ObamaCare's federal mandate. This year Kansas, North Dakota, Indiana and Tennessee enacted statutory measures prohibiting the individual mandate. Montana, Wyoming and Florida sent similar constitutional amendments to the 2012 ballot. In addition, ALEC's *Freedom of Choice in Health Care Act* provided, in part, the legal standing for several of the plaintiff

states to pursue a Constitutional challenge to ObamaCare. ALEC filed an amicus brief in May to the 11th Circuit U.S. Court of Appeals regarding the case of *State of Florida and National Federation of Independent Business v. U.S. Department of Health and Human Services*. ALEC is proud to be the only state legislative organization to submit a brief on behalf of state legislators in this landmark challenge to Obamacare. This brief supports the very principles of ALEC: limited government, free markets and federalism. ALEC's brief shows that ObamaCare

is incompatible with the U.S. Constitution's enumeration of federal powers.

Policy successes in 2011 mirror ALEC's 2010 work in mobilizing states against a government requirement to purchase health insurance. Last year, 42 states either introduced or announced ALEC's *Freedom of Choice in Health Care Act*. Eight states (Virginia, Idaho, Utah, Arizona, Georgia, Louisiana, Missouri and Tennessee) passed the ALEC model in 2010 as a statute.

# Freedom Gains Momentum in 2011



"This legislation was passed out of the Health & Aging Committee down partisan lines. It's clear the House Democrats are fearful to take this issue to the ballot. They know Ohioans don't want this, and they know that if the people choose, that they'll likely say no thanks."



Representative Barbara Sears, Ohio  
HJR2, Co-Sponsor

"In Pennsylvania, we currently have 1 in 6 citizens (2.2 million) receiving welfare benefits, and PPACA will expand welfare to 1 in 4, or nearly 3 million people, who will be on welfare. Pennsylvania Medicaid already consumes 31 percent of the state's budget and is growing at nearly 12 percent a year, while revenues have grown just 3 percent. This unsustainable, unaffordable, and unavoidable growth will continue as long as inflexible federal rules mandate state policies. Which is why, due to strong public opposition to this federal law, I have introduced House Bill 42 that protects the health care freedom of Pennsylvanians."



Representative Matthew Baker, Pennsylvania  
HB42, Sponsor


and two states (Arizona and Oklahoma) passed the ALEC model as a constitutional amendment.

ALEC's *Freedom of Choice in Health Care Act*—modeled on the language of Arizona Proposition 101 (2008) and Arizona Proposition 106 (2010)—protects the rights of patients to pay directly for medical services, and it prohibits penalties levied on patients for failing to purchase health insurance. If enacted as a constitutional amendment,

ALEC's *Freedom of Choice in Health Care Act* will help defend against the federal individual mandate and also prohibit a Canadian-style, single-payer system, which legislators in some states have been advocating even before ObamaCare. If ObamaCare is repealed, it will also prevent a state-level requirement to purchase health insurance.

ALEC's *Freedom of Choice in Health Care Act*, if passed by statute, can provide a state-level defense against ObamaCare's excessive federal power. Particularly, the measure can provide standing to a state

participating in current litigation against the federal individual mandate; allow a state to launch additional, 10th-Amendment-based litigation if the current lawsuits fail; and empower a state attorney general to litigate on behalf of individuals harmed by the mandate once it goes into effect in 2014.

ALEC encourages all states to consider ALEC's *Freedom of Choice in Health Care Act* to protect its citizens from the most harmful aspects of the federal health reform law. For more information about ALEC's health care freedom initiative, contact **Christie Herrera** at [christie@alec.org](mailto:christie@alec.org). 



# Compacts: The Key to Health Reform

BY SPENCER HARRIS

Medicaid financing has been a contentious issue for many state legislatures, straining their budgets and their relations with the federal government for many years. But the economic downturn—coupled with unprecedented levels of federal spending and federal constraints related to Medicaid—have brought the debate to the forefront in legislative sessions across the country.

Offered as a way to provide states with the flexibility to deal with the rising costs, block grants gained traction in the past—notably when pushed by President Reagan in the 1980s and the Republican Congress in the 1990s. Now they are being proposed again in the U.S. House by Chairman Paul Ryan in his 2012 federal budget.

Another method for dealing with the unsustainable costs gaining momentum is the Health Care Compact. Both block grants and compacts will achieve state freedom in Medicaid financing and structuring.

The Health Care Compact is an interstate compact between two or more states that is then sent to Congress for ratification as required by Article I, Section 10 of the U.S. Constitution. Once ratified, it becomes federal law, superseding all previous federal law.

The Health Care Compact currently under consideration in a number of states is a non-prescriptive compact that would allow member states to administer health policy in whatever way the people and legislature of that state decided was best. For Medicaid, this means one state could enact a free market subsidy program with cost sharing mechanisms, but another state could create a single payer system.

The Health Care Compact addresses an even more fundamental issue than health care financing and policy. It has the potential to reestablish the constitutional relationship between the states and federal government.

Since 1965, the Medicaid program and the numerous proposals to fix it have originated in Washington. Since its inception, this Great Society entitlement program has flowed from Washington down to the states.

This is where the core difference between block grants and the Health Care Compact is found, and it is largely a philosophical difference. The block grant is financing reform, while the health care compact is governance reform. The Health Care Compact is about who decides. Is

to compete for citizens by enacting policies that encourage growth and freedom. A limited government is necessary to growth and freedom which is why federalism, by nature, limits government.

Finance reform solves the problem of unsustainable programs, but governance reform begins to roll back decades of precedent that has wrecked our federalist system. To be sure, the Texas Public Policy Foundation supports Chairman Ryan's efforts to reform Medicaid, but the compact offers hope for a new future for state and

*“Finance reform solves the problem of unsustainable programs, but governance reform begins to roll back decades of precedent that has wrecked our federalist system.”*


health care policy to be decided by a Washington bureaucracy or by the state and its citizens? The Health Care Compact is an opportunity for citizens to regain control over their own health care decisions and how their tax dollars will be spent.

Block grants, for all their benefits, still originate in Washington. They still perpetuate the relationship between the federal government and the states in health care that the nation has come to accept over the past seven decades. It is this relationship that leaves the states as the partner continually subjected and submissive to the political whims of the federal government. It is the “Mother, may I?” game played out on a grand scale.

The Health Care Compact presents an opportunity for states to rewrite their role in health care policy and reap the benefits of government reform for decades to come.

Federalism causes state governments

federal relations on top of Medicaid reform.

Governments at every level must realize that individuals empowered to make decisions in their own interest is the key to reforming health care. The Health Care Compact will accelerate this process so that individuals can once again be free to govern their own health care. 



**Spencer Harris** joined Texas Public Policy Foundation in 2010 as a Health Care Policy Analyst. His research focuses on identifying patient-centered, free market solutions for Texas' health care challenges.

# Can We Stop Calling Them “Consumer Protections” Now?

BY MICHAEL F. CANNON\*

Many supporters of the health law are lamenting how the nickname “ObamaCare” has achieved wider purchase than the law’s official title. More egregious, though, is how supporters have successfully misbranded ObamaCare’s health insurance regulations as “consumer protections.”

In anticipation of the House vote to repeal ObamaCare, for example, three Obama cabinet officials warned House Speaker John Boehner, R-Ohio, about the consequences of eliminating the law’s “consumer protections.”

Major media outlets routinely play along. The New York Times reported, “Many of the law’s consumer protections take effect [January 1]. Health plans generally must allow adult children up to age 26 to stay on their parents’ policies and cannot charge co-payments for preventive services or impose a lifetime limit on benefits.<sup>1</sup>

Other “consumer protections” already in place limit the percentage of revenues insurers can spend on administrative expenses and prohibit them from turning away children with pre-existing conditions.

Who could object to such rules? As it happens, an awful lot of people.

These supposed consumer protections are hurting millions of Americans by increasing the cost of insurance, increasing the cost of hiring and driving insurers out of business.

At the same time Secretary of Health and Human Services Kathleen Sebelius was threatening to bankrupt insurers who claim ObamaCare is increasing premiums by more than 1 percent, her own employees estimated that one of the law’s regulations—the requirement to purchase

unlimited annual coverage—will increase some people’s premiums by 7 percent or more when fully implemented. A Connecticut insurer estimated that just the provisions taking effect last year would increase some premiums by 20-30 percent.

Such mandates force consumers to divert income from food, housing, and education to pay for the additional coverage. That can leave consumers worse off, even threaten their health. They can also force employers to reduce hiring, leaving some Americans with neither a job nor health insurance. This reality led McDonald’s to seek a waiver from the unlimited annual coverage mandate, among other rules.

The ban on discriminating against children with pre-existing conditions has caused insurers to stop selling child-only policies in dozens of states. The dependent-coverage mandate was cited as one of the reasons spurring a Service Employees International Union local in New York City to eliminate coverage for 6,000 dependent children.

In 2008, Congress passed a similar mandate that supporters said would expand coverage for mental-health and substance-abuse services. Instead, that mandate spurred the Screen Actors Guild to eliminate mental-health coverage for 12,000 of its lower-paid members. It had the same effect on 3,500 members of the Chicago’s Plumbers Welfare Fund, and 2,200 employees of Woodman’s Food Market in Wisconsin. Other employers are curtailing access to mental-health services thanks to this mandate, and some insurers have stopped selling such coverage altogether.

The list goes on. ObamaCare now forces insurers to spend no more than 20 percent of revenues—15 percent for large

employers—on administrative expenses. Similar state laws have done nothing to slow the growth of premiums.


ObamaCare’s rule spurred Principal Financial Group to stop selling health insurance before it even took effect, leaving nearly 1 million consumers to find new coverage and threatening their continuity of care. Experts expect more consumers to suffer the same fate. This supposed consumer protection also punishes efforts to reduce fraud and improve quality by reviewing claims. Thus, in addition to increasing premiums, it may expose patients to unnecessary and even harmful services.

Consumers, insurers, employers, unions and state officials are begging for protection from these so-called protections. Since April 2011, Sebelius has so far issued 1,372 waivers<sup>2</sup>, which raises the question: if these were really consumer protections, why waive them?

These rules may end up helping somebody, and that should count in the law’s favor.

Yet rules that were supposed to protect children have stripped sick kids of their health insurance and made it harder for parents to find coverage for kids who may soon fall ill. Other rules have reduced wages and discouraged hiring amid high unemployment. Just as the mental-health mandate is ousting vulnerable patients from their rehab or therapy and cutting off their meds, ObamaCare’s voluminous mandates are threatening even more Americans’ access to care.

Calling these rules “consumer protections” implies that the people harmed don’t matter, or one has clairvoyance to know that the benefits outweigh the costs.

ObamaCare supporters should call these supposed consumer protections what they are: regulations that can hurt even more than they help. 



**Michael F. Cannon** is director of health policy studies at the Cato Institute and co-author of *Healthy Competition: What’s Holding Back Health Care and How to Free It*.

\*This article was originally published by Kaiser Health News on Jan. 10, 2011. Kaiser Health News is an editorially independent news service of the Kaiser Family Foundation, a nonpartisan health care policy organization not affiliated with Kaiser Permanente. See: <http://www.kaiserhealthnews.org/Columns/2011/January/011011cannon.aspx>

<sup>1</sup><http://www.nytimes.com/2010/12/14/health/policy/14impact.html>

<sup>2</sup>[http://cciio.cms.gov/resources/files/approved\\_applications\\_for\\_waiver.html](http://cciio.cms.gov/resources/files/approved_applications_for_waiver.html)

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at [jwilliams@alec.org](mailto:jwilliams@alec.org) or (202) 742-8533.





# Preserving the Federalist Structure of American Constitutional Government

BY THE HONORABLE PAM BONDI

The preservation of individual liberty is at the heart of the 26-state lawsuit challenging the constitutionality of the federal Patient Protection and Affordable Care Act. In a narrow sense, the case will turn on discussions of the scope of the Commerce Clause and of the Tenth Amendment, which reserves power to the States. But those structural protections embodied in the Constitution are a means to the end of preserving our freedom. As James Madison put it in Federalist 51, through our federal system of government, “a double security arises to the rights of the people.”


Much of the attention devoted to the states’ lawsuit has rightly focused on the Act’s mandate that every individual purchase health insurance (or have it purchased for them). Whether looked at as a matter of the constitutional text and first principles, or alternatively under the Supreme Court’s case law, this unprecedented requirement goes well beyond the scope of federal power and is unconstitutional. The reason is simple: Congress’s power to regulate commerce, while quite

broad, is not so broad as to authorize the federal government to compel an individual to engage in commerce in the first instance. As federal District Court Judge Roger Vinson ruled in his order striking down the Act, the Commerce Clause does not empower Congress to regulate “inactivity.” And that is a good thing—for if Congress has the authority to force an individual to purchase health insurance, then it necessarily has the authority to require us to engage in whatever commerce the federal government thinks beneficial to some greater good. There is simply no limiting principle to the constitutional theory underlying the Act.

The Act further infringes our liberty by coercing the States radically to expand their Medicaid programs, requiring spending over which the citizens of the States have no effective control. Since at least the 1988 decision of *South Dakota v. Dole*, the Supreme Court has recognized that the Constitution limits the federal government’s authority to use its spending power as a means of coercing the States. Florida

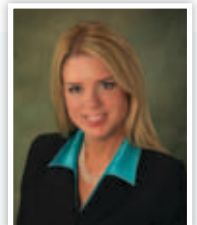
already spends approximately \$20 billion on Medicaid, nearly 30 percent of our state’s entire budget, and we have nearly three million people on the Medicaid rolls. The Act would force the States to dramatically expand the program, at a cost to Florida alone of over \$1 billion per year, or end participation in a program upon which so many rely. “Opting out” is not a feasible option—it would in reality be ruinous. Under these circumstances, if the Constitution limits Congress’s spending power at all, then surely the Act is on the unconstitutional side of the line.

The States involved in the healthcare lawsuit have done everything within their power to have these critical issues resolved as quickly as possible. With an expedited schedule and oral argument in the 11th Circuit Court of Appeals on June 8, we hope to have our case before the U.S. Supreme Court by fall.

It is no exaggeration to say that the States’ case ultimately is about preserving the federalist structure of American constitutional government, which the Founders viewed as the greatest guarantor of our personal freedom. Judge Vinson himself left no uncertainty about the principles at stake: “It is difficult to imagine that a nation which began, at least in part, as the result of opposition to a British mandate giving the East India Company a monopoly and imposing a nominal tax on all tea sold in America would have set out to create a government with the power to force people to buy tea in the first place. If Congress can penalize a passive individual for failing to engage in commerce, the enumeration of powers in the Constitution would have been in vain for it would be difficult to perceive any limitation on federal power, and we would have a Constitution in name only.” 

**Pam Bondi** is attorney general for the State of Florida, and is the lead plaintiff in *Florida v. U.S.*

DHHS, the multi-state lawsuit challenging the federal health law.





As Executive Director for the Louisiana Seafood Promotion and Marketing Board, I often get asked by members of the public and media about how our seafood industry is doing and is the seafood safe?

The truth is that yes, it is safe and there is plenty of Louisiana seafood available, but people have a difficult time believing that and I am not surprised. Perception, unfortunately, is a reality for many. And after months of watching oil flow into our beautiful gulf waters people are concerned and don't know who or what to believe. I can tell you though, that there is no other industry that takes more pride in the product they serve than a Louisiana fishermen. They were the first in line to demand that the federal and state agencies begin testing

## Experience the Safe, Fresh, Local Louisiana Seafood!

of Louisiana seafood following the gulf oil spill. Since April 22, 2010, just one day after the gulf oil spill there has been ongoing unprecedented testing of our seafood.

Scientists from at least 6 different agencies are testing our Louisiana seafood. On a federal level there is the National Oceanic Atmospheric Administration (NOAA), the U.S. Food and Drug Administration (FDA), Department of Environmental Quality (DEQ) and then on a local level there is the Louisiana Department of Wildlife and Fisheries, the Louisiana Department of Health and Hospitals and Louisiana State University. These agencies have been conducting thousands of tests on shrimp, crab, oysters, finfish and the waters in which they live. Those tests all say the same thing, our seafood is safe.

It is so safe in fact, that FDA commissioner Margaret Hamburg has called it "The most tested food in the world." In addition to testing that goes on in labs there are several layers of other individuals who are

protecting consumers. First are our fishermen, who would never put a piece of seafood on the market if they thought it was going to harm a consumer. Those fishermen sell directly to the processors who work with our world renowned chefs to ensure that only the highest quality seafood is served to their guests.

Being a Louisiana fisherman has been increasingly difficult over the past several years. Between the Hurricane season of 2005, which produced several major hurricanes, including Hurricane Katrina and in 2010, the gulf oil spill. These have been challenging times for sure. One thing is certain though; you will never meet someone with more perseverance and love for their work than a Louisiana fisherman.

We are excited that ALEC is choosing to hold its annual meeting in New Orleans and I am glad that you will be able to see for yourself the reality, which is that New Orleans and all of Louisiana is open for business.

Our restaurants are full of locals and tourists enjoying raw oysters, boiled crawfish, Shrimp Creole, fried soft shell crabs, Trout Almandine and don't forget the alligator! I hope that you will come to New Orleans and experience our fresh, local, wild caught Louisiana seafood, our culture and our people.

Sincerely,

**Ewell Smith**

Executive Director  
Louisiana Seafood Promotion and  
Marketing Board  
Ewell@LouisianaSeafood.com



Shrimp on oregano grits, courtesy of Chef Chris Lusk, Cafe Adelaide in New Orleans



*Get fresh with us.*

# Seismic Shift in Resource Availability Must Be Followed by Seismic Shift in Energy Policy

BY SEC. SCOTT A. ANGELLE

We have reached a time in our nation's history in which we must come to the realization that energy policy in America needs to change with the same speed as our changing resource supply.

In June 2003, only eight years ago, Federal Reserve Chairman Alan Greenspan testified before the United States Senate Committee on Energy and Natural Resources. He explained that there was not enough natural gas in the United States and he was concerned about the impact that would have on our economy. He insisted that America must find ways to increase our imports of liquefied natural gas (LNG).

Shortly thereafter, America set out to review options and opportunities for liquefied natural gas (LNG) importation through our coastal states. Louisiana was one of the states that went through the rush of plans and permitting in getting some of those facilities sited.

Then, in 2008 with improved technology in horizontal drilling, shale plays came to the forefront of national discussion with the Barnett Shale in Texas, the Haynesville Shale in Louisiana and the Marcellus Shale in Pennsylvania. We now know that those shale plays represent a 100 year supply of natural gas right here in America.

This new ability to reach natural gas that was once thought impossible meant that we as a country must absolutely shatter our previous thinking about America's domestic energy supply. We've come from a time in which the top economist on the planet was testifying about our lack of natural gas, to a new era with an abundant supply of natural gas.

Unfortunately, we've seen that the failed energy policy of this nation is wasting an amazing opportunity. While the energy industry has explored for natural gas, discovered it and can supply it, our nation has not fully mobilized to promote the use of an energy source that is proven and plentiful. Instead, the focus has been directed

toward devoting resources to promoting renewables that may be a generation away from providing real support to our energy needs and our economy.

In the meantime, when we had no workable alternatives as a country, we turned again to oil – and the industry responded.

At one time, there was a predictable correlation between the price of natural gas and oil. We now see in this world economy even that has changed. From 2000 to 2008, oil averaged trading at an 8 to 1 ratio vs. natural gas. Now that figure is almost 25 to 1.

For transportation, I believe natural gas is the way forward. It's affordable, it's available and it's right here in America. A

\$60 billion in energy costs for our economy. It would also mean less dependence on foreign oil.

I am reminded that since 1972, our country has experienced six recessions. Prior to almost all of them, the price of oil saw a sustained increase over the previous year. A major increase in fuel prices has almost always been an indicator of a major recession or downturn in our economy. That hurts everyone in the country.

Right now we stand at the gates of what can be called the Golden Age of Natural Gas in this country. Natural gas is the best opportunity for us to gain control of skyrocketing energy costs. It allows us to be better stewards of our environment. Natu-

*"Instead, the focus has been directed toward devoting resources to promoting renewables that may be a generation away from providing real support to our energy needs and our economy."*


secure, sustainable fuel supply is the critical point on which our economy pivots. It can be the fuel that provides energy and security until renewable sources are ready.

Nationwide, a gallon of gasoline costs more than \$1.50 more than its equivalent in compressed natural gas for public use as transportation fuel.

If you look to the Compressed Natural Gas station that recently opened in Bossier City, Louisiana – the going price for the equivalent of a gallon of gasoline is \$1.85. Think about savings for American families by keeping an extra \$1.50 per gallon in their pocket at each gas station visit. Imagine the savings that every American family could enjoy if our nation's energy policy adopted a wider and broader use of natural gas.

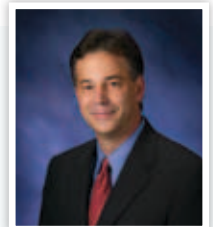
We used about 140 billion gallons of gasoline in our country last year. If we could replace even 30 percent of that with natural gas that would mean a savings of

ral Gas has a smaller carbon footprint than oil. It creates American jobs, but most of all it helps the American economy.

I invite all of you to New Orleans, Louisiana this August to the 2011 Annual Meeting. Spend some time dancing to our music, tasting our delicious cuisine and experiencing our unique joie de vivre while learning more about a new way to fuel America and how you can be a part of America's strong energy future. 

**Scott Angelle** is currently serving Louisiana as Secretary of the Department of Natural Resources

and as the point person for federal oil and gas permitting issues.





# Safe and Affordable Pretrial Release an Issue in Many States

BY MICHAEL HOUGH

Across the nation, a number of states are grappling with the question of how to safely and affordably release individuals on bail pending their trial. The Eighth Amendment to the U.S. Constitution prohibits “excessive bail,” which has generally been interpreted to mean, in most cases, when individuals are arrested they will be given the opportunity to post bail. Should taxpayers be responsible for criminal defendants that can afford to post their own bail? When the government posts bail and the defendant fails to show up for court, does the government have the resources to find the fugitive or front the bill for the forfeited bonds?

The ultimate question for states is how much should the government be involved in the bail process? In some areas the private sector is used exclusively to release people, in other areas the private sector is prohibited and the government runs its own bail operation. With many states facing deficits, some state lawmakers are looking at reforming this process.

A handful of Florida legislators, like Sen. Ellyn Bogdanoff and Rep. Chris Dorworth, are working to cut their state’s bloated pretrial release budget, which costs taxpayers \$30 million a year. Their legislation would only allow the government to release those who are ruled indigent and the private-sector would release the rest.

This legislation makes a simple statement that taxpayers should not have to subsidize the release of financially-able defendants.

Here are some interesting statistics about the problem with government-run

bail programs in Florida:

- Pretrial release, a government alternative to commercial bail, was created in Broward County in 1988 with an \$88,000 grant. Today they have a \$20 million budget and 214 employees. Despite the fact the arrest rate has decreased in Broward County, the government agency charged with releasing people from jail has constantly increased its budget.
- A report released by Florida’s Office of Program and Policy Analysis & Government Accountability found that programs like Broward County’s cost taxpayers about \$1,400 per defendant.
- A Mason Dixon poll conducted on March 5, 2011 found that 75 percent of Floridians felt if a criminal defendant can afford to pay their own bail for release from jail, they should not be allowed to be released using tax dollars.

Across the country in Colorado, legislation was introduced that one local newspaper accurately dubbed “among the worst ideas of the year.” Senate Bill 186 would allow local government jurisdictions to set up their own bail operations and collect a refundable ten percent deposit bond.


This legislation will put Colorado on a path to end up like Oregon, which operates with only a government-run bail operation and the consequences there have been disastrous. In fact, Oregon has now become a safe haven for fugitives because it falls to the state’s limited resources to round up fugitives.

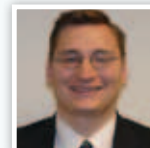
The Portland Tribune recently quoted Clatsop County District Attorney Josh Marquis,<sup>1</sup> who said, “He fields telephone calls from out of state when a felony defendant has been picked up and local police

discovered he or she had an outstanding warrant for failure to appear in Clatsop County court. Marquis says he tells those out-of-state officers to let the defendant go. There isn’t enough money in the state budget to send someone to bring the offender back. The same is true for most other states, according to federal officials.”

According to the Portland Tribune, taxpayers in Oregon are owed \$81 million in forfeited bonds for defendants who failed to show up in court.<sup>2</sup> Similarly in the City of Detroit, fugitives have failed to pay \$65 million in forfeitures, and in Philadelphia fugitives owe the City a staggering \$1 billion in unpaid forfeitures. Unfortunately, overwhelmed and often underfunded police departments do not have the ability to chase down the thousands of fugitives that are produced due to the lack of supervision by government-run bail.

Conservatives believe in the efficiency of the free-market system and would not be surprised to learn the private-sector bail industry does a better job of supervising criminals while on bail and does so at less cost to taxpayers than the government. In most states today a public/private bail hybrid exists where the commercial bail industry releases some individuals and government pretrial agencies release the others.

Private-sector bail agents, routinely travel across the country to grab fugitives so that the bail company won’t have to forfeit the bond. Efforts like these by the private sector help to augment those of police by reducing the fugitive rate and thereby increasing public safety. 



**Michael Hough** is a Resident Fellow in Public Safety at ALEC.

<sup>1</sup> Welcome to Oregon: Haven for bail jumpers Oregon’s restrictions keep bounty hunters from stalking bonded prey By Peter Korn The Portland Tribune, Apr 21, 2011 ([http://www.portlandtribune.com/news/story\\_2nd.php?story\\_id=130333325714145500](http://www.portlandtribune.com/news/story_2nd.php?story_id=130333325714145500))

<sup>2</sup> “Just Funny Money: Oregon is Owed \$81 million in bail; does anyone care?” April 14, 2011 ([http://www.portlandtribune.com/news/story.php?story\\_id=130273082913710500](http://www.portlandtribune.com/news/story.php?story_id=130273082913710500))

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