INSIDE ALEC

A PUBLICATION OF THE AMERICAN LEGISLATIVE EXCHANGE COUNCIL

SPECIAL ISSUE

POLICY OVERVIEW FOR 2012

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ALEC strives to provide legislators with viewpoints and discussions on issues important to them and their constituencies. Authors submitting articles for Inside ALEC do not necessarily reflect the views or policy positions of ALEC.

Balancing the Federal Budget Can Start in the States

BY SEN. JIM BUCK (IN) AND MEAGHAN ARCHER

Time is running out. Our nation is trillions of dollars in debt without a credible plan to stop spending. The battle in Congress has escalated to a point where politics outweighs the cost of our economic future, and there is little hope our nation's leaders will make the tough choices that need to be made in order to reign in our debt and revive our economy. Fortunately, there is a solution outside of Congress—a solution Professor Rob Natelson outlines in ALEC's newest publication: *Proposing Constitutional Amendments by a Convention of the States: A Handbook for State Lawmakers*.

Our founders knew the importance of checks and balances. In the United States Constitution, they enumerated one of the most important roles states have in keeping the federal government in check. Under Article V, states are granted the right to require Congress to call a convention of the states, during which states can propose amendments to the Constitution. For decades we have allowed Congress to run rampant, spending as it pleases. In 30 years, Congress has managed to balance the budget only twice.

ALEC's new handbook provides state legislators the proper tools to use the Article V process legally and effectively, while protecting taxpayers. Additionally, it offers reliable information about the state application and convention process based on thorough and objective scholarship. In the first section, Natelson lays the groundwork for the Article V process. Importantly, he explains what the convention process is not: "plenipotentiary," or the complete rewriting of our Constitution. Natelson also summarizes the founders' intention behind including Article V in the Constitution and describes how history can be a lesson for what a convention would look like today. Many questions about the process concern the role of courts in Article V. Using both case law and his extensive constitutional law background, Natelson highlights how the courts might be involved in this process.

After discussing Article V history and its key players, Natelson takes state legislators through the process step-by-step. From making an application to ratification, state legislators will learn the minutia of the Article V process and how best to prepare an application in their states. Further, this handbook debunks the myth of a runaway convention. Natelson makes a compelling argument for why states should not worry about critics' fears that a convention of the states would result in a complete takeover of the U.S. Constitution. Finally, Natelson provides practical recommendations for states that choose to apply for a convention through the Article V process. Natelson encourages legislators to promote the right amendments, use the right amount of specificity, and keep the process within the states' control.

It is far too easy for the appropriators of our nation's funds to spend without limit and outside of reason, but that is something that can be remedied. The solution is an amendment to the Constitution that imposes greater accountability on Congress and requires a balanced budget. The stipulations of such an amendment would need to ensure spending does not exceed revenue and prohibit borrowing money to make up for any shortfalls. In 1957, Indiana was the first to apply for a convention to propose a Balanced Budget Amendment to the Constitution. Since then, many other states have followed suit.

Balancing our budget transcends party politics. No matter who controls Congress or the presidency, our $15 trillion dollar (and growing) national debt will remain an ever-present hurdle to economic growth and recovery. The problem won't be going away any time soon, either. Over 30 years of deficits cannot be solved with only one year of policy.

Today America faces an uncertain economic future. Millions of Americans are unemployed, and some even suggest America faces a new normal in economic mediocrity. Spending ourselves into more debt won't solve that problem; in fact, doing so will only make it worse. State legislators must take the long-sighted view and exercise our rights within the Constitution to limit Congress's ability to drive our nation into further economic decay.

We hope that you will read this handbook and find it both informative and useful as you embark on an adventure never before accomplished in our nation's history.

You can download a free PDF copy of the Handbook by visiting **www.alec.org/handbook.** If you have any questions about the Balanced Budget Amendment, please contact **Meaghan Archer** at **202-379-4388** or **marcher@alec.org**.

Senator Jim Buck is a legislator in the Indiana Senate and serves as the Public Sector Chair for ALEC's Tax and Fiscal Policy Task Force. **Meaghan Archer** is a Research Analyst for ALEC's Center for State Fiscal Reform.

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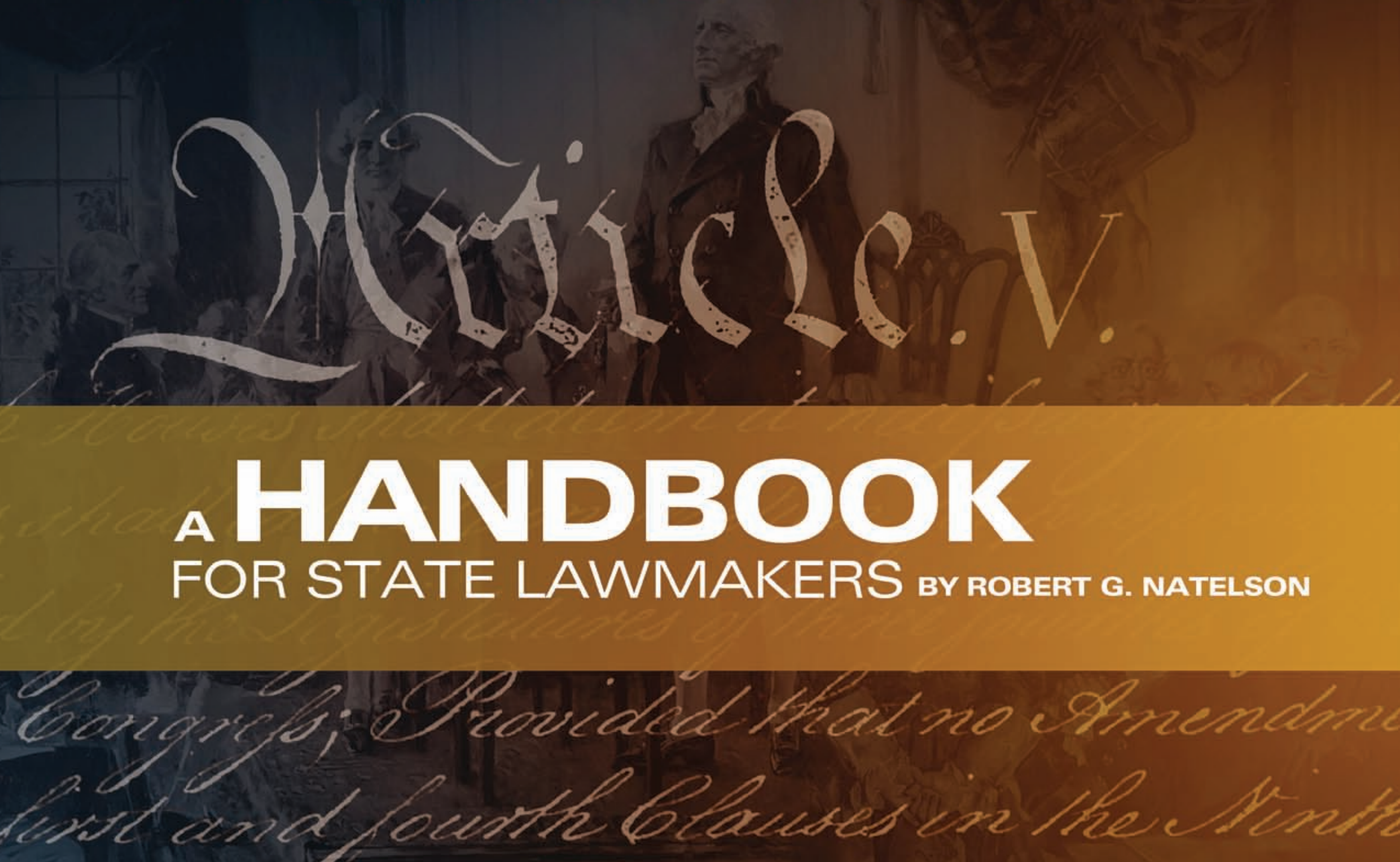
"WE ARE NOT FORMING PLANS FOR A DAY MONTH YEAR OR AGE, BUT FOR ETERNITY."
— JOHN DICKINSON
(WRITTEN DURING THE 1787 CONVENTION)

PROPOSING CONSTITUTIONAL AMENDMENTS BY A CONVENTION OF THE STATES



A HANDBOOK FOR STATE LAWMAKERS

BY ROBERT G. NATELSON

FOREWORD
BY INDIANA SENATOR **JIM BUCK**

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Attracting Innovation in Education through the Charter School Growth with Quality Act Model Law

BY GREG RICHMOND

A powerful workshop, "Innovation in the Classroom: Rethinking School Design," held by the Education Task Force at December's States and Nation Policy Summit, allowed attendees a glimse well into the future of education in America. The workshop featured leaders from three highly successful charter school management organizations—Rocketship, KIPP (Knowledge is Power Program) and Breakthrough Schools—whose new approaches to schooling were overcoming the most daunting challenges facing public education.

Rocketship's methods feature their "Learning Labs," a completely new classroom concept that allows every child to receive the individualized teaching needed to overcome their learning disadvantages. The Learning Lab combines online instruction with tutor-led, small-group instruction that targets and lifts basic skill mastery so that teachers in larger classroom settings focus on higher order thinking and personal growth.

What sets KIPP apart—in addition to its attention to partnerships with parents and a culture of putting learning absolutely first—is the amount of time students are in school. A regular school day is from 7:30 a.m. to 5 p.m., plus extra weeks in the summer. Some schools even offer Saturday programs. That is up to 600 more hours a year in school than children who attend traditional public middle schools. This is where KIPP finds the extra time to deal with individual student needs. It also where KIPP finds the planning and collaboration time among teachers that leads to a higher performing school workforce.

The third program, Breakthrough Schools of Cleveland, Ohio, is innovative how it is achieving the scale required to reach the many of children underserved by a deeply dysfunctional traditional public school system. Breakthrough unites

STATES WITHOUT CHARTER LAW		STATES THAT HAVE ADOPTED CHARTER AUTHORIZING POLICIES
Alabama	New Jersey	Arizona
Alaska	New Mexico	Colorado
Arkansas	Nebraska	District of Columbia
California	North Dakota	Hawaii
Connecticut	Oklahoma	Idaho
Delaware	Oregon	Illinois
Florida	Pennsylvania	Indiana
Georgia	Rhode Island	Maine
Iowa	South Dakota	Michigan
Kansas	Tennessee	Minnesota
Kentucky	Texas	Nevada
Louisiana	Vermont	New York
Maryland	Virginia	North Carolina
Massachusetts	West Virginia	Ohio
Mississippi	Washington	South Carolina
Missouri	Wisconsin	Utah
Montana	Wyoming	
New Hampshire		

four high performing charter schools into one network capable of winning all of the advantages of size—significant private philanthropic support, respect and collaboration from the city school district, and the ability to spread its success community wide—while preserving for each member school the benefits of small, nimble, student-focused organizations.

Since each of the three charter programs is embarking on growth—in fact, as a group they represent the coming wave of charter expansion that will result from a wave of pro-charter policy changes made in many states this year—what you see in them today is a good imagine of the future of education in America.

That is, it is the future for those 15 states and the District of Columbia marked in green above that have adopted the charter authorizing policies that allow these innovations to spread, take root and thrive.

For the remaining 35 states in red, either because they lack a charter law altogether or because charter authorizing largely rests in the hands of the educational status quo, the future is not nearly as full of innovation and public school improvement.

The *Charter School Growth with Quality Act* (http://www.qualitycharters.org/images/stories/Charter_School_Growth_with_Quality_Act.pdf) is a comprehensive state policy for creating or expanding charter school authorizing in a state and for setting child-centered standards to guide the work of all state authorizers. It takes the kind of charter authorizing outlined in this model law in order to give a green light to genuine innovation in public education in your state.

Charter-based innovation typified by the Innovation in the Classroom presenters favors states with an authorizing policy that gives every good charter idea a chance to be approved and come to life. This condition is seldom met in states where only school districts or the state education department can create a charter schools. The incentive for these agencies to threaten the school establishment by creating charters is very low and so innovative educational ideas cannot take root.

Innovative charters also flow to states where oversight carried out by authorizers is of high quality. When charter school authorizing is guided by objective standards and best practices, as proposed by the act, charter school innovators will know that they will have the consistent, predictable process they prefer to work with. Not because it determines any set of outcomes in terms of charter schools, but because it assures the innovators their schools will be treated fairly by authorizers.

Charter school innovators also thrive when authorizers protect all charters from interference by the traditional school interests, hold all charters highly accountable for quality in student performance and vigorously protect the public stake invested in every charter school. This is an environment that promotes innovation because charters have the autonomy they need to succeed. Yet it is also an environment where excellence is the rule, rather than the exception, and charter innovators know this makes it easier to locate, hire and fundraise for their schools.

High quality charter authorizing attracts educational innovators from across the country and it helps a state to grow its own models of educational success through the flexible and accountable charter school format.

Of course, it is possible to have innovative charter schools in jurisdictions where charter authorizing is miserly in permitting new schools or interferingly intrusive in oversight of existing schools. However, it will be a providers' market in the coming wave of charter growth. In pursuing the greatest return on their investments the providers represented by the Innovation in the Classroom panel will greatly favor the states where the policies proposed by the *Charter School Growth with Quality Act* are in place.

There are other reasons for reform-minded legislators to consider the *Charter School Growth with Quality Act.*

It is a sound strategy for charter school expansion. It can overcome the roadblocks to greater school choice put up by school districts or other agencies currently holding control over charter growth. In order for most states to significantly expand their charter sectors, it will take a change in which kinds of institutions can issue charters as proposed by the act.

The act ought to be a key component of any state's new charter school law. For those states still trying to adopt a charter school law, the drive for choice needs to be matched with an expectation for charter school quality. While it is true that every charter school is the result of hours of work by dedicated school leaders and employees, and volunteer board members, the quality of each school is not guaranteed. Some charter schools are excellent and some sadly are not.

For all of these needs, the *Charter School Growth with Quality Act* can be a solution.

The act proposes the creation of an independent chartering board that would play a critical role in developing a new or expanded charter sector characterized by consistent high quality and wide availability. In deciding which new schools to approve and in monitoring each school's operations, the board would both directly increase charter options and set a gold standard of charter accountability and autonomy for all to be judged against.

The Charter School Growth proposal designs its charter board to be independent of traditional public school interests. The law gives the charter board tools and standards reflecting national best practices for charter school authorizing. Enacting this law would create a powerful new force in expanding excellent educational opportunities for the children of your state.

That is why the concept of an independent charter authorizing board is spreading. In 2011 alone, Indiana, Illinois, Maine, Utah and North Carolina created boards and joined six states and the District of Columbia with the policy already in place.

Because it threatens the perks and privileges of the education status quo, the creation of an independent board as proposed by the act can face court challenges. Recently the Georgia state Supreme Court struck down a statewide independent charter commission law similar to that proposed by the act. Charter school and school choice opponents have tried to spin the decision as definitive repudiation of charter education and as having national implications. However, the 4-3 decision was based on provisions in the Georgia state constitution that are generally not found in other states. The historical legacy of the particular provisions cited by the court are also problematic (see "Charter Ruling Flunks History, Ignores Roots of Segregation" in the Atlanta Beacon Journal, May 24, 2011; http://www.ajc.com/opinion/charter-ruling-flunks-history-956354.html)

Generally, the state constitutional provisions that threaten a statewide charter commission and which were used by the Georgia court are those that vest the control of education exclusively in local school districts. An analysis counts just five other states where constitutional constraints might come into play: Florida, Kansas, Montana, Virginia and Colorado (see Colorado state Supreme Court decision *Booth v. Denver Public Schools Board of Education*).

Not only is the Georgia decision of limited relevance for other states, it is important to note that Colorado has adapted to this constraint with a statewide authorizing commission approach that has withstood review by their state courts.

Creating a new state board is probably not sitting at the top of many readers' agendas. Still it is worth considering this: the model law shifts power away from the educational establishment and directs it toward parents, teachers and yes, innovators, in education. Yet the act also protects taxpayers by setting high standards and by complementing the marketplace in holding charter schools accountable for good academic results and fiscal propriety.

The *Charter School Growth with Quality Act* is a win-win solution for helping more children to get the educations they deserve and for taxpayers getting more value for dollars they pay into the system. To learn more about the *Act*, please do not hesitate to contact me at gregr@qualitycharters.org or at (312)376-2300; or contact ALEC Education Task Force director David Myslinski.

Greg Richmond is the President and CEO of the National Association of Charter School Authorizers (NACSA). NACSA is the trusted resource and innovative leader working with public officials and education leaders to increase the number of high-quality charter schools in cities and states across the nation. NACSA provides training, consulting, and policy guidance to authorizers and education leaders interested in increasing the number of high-quality schools and improving student outcomes.

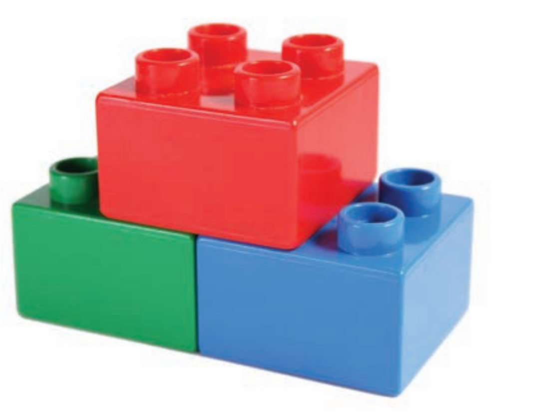
Inside the Toy Box: Toy Safety and the Regulatory Environment

BY ANDY HACKMAN

Though it may differ from culture to culture and generation to generation—play is a universal constant that helps children learn about themselves, others and the world around them. Some experts describe play as a child's work … and toys as the important tools of play that foster activity, creativity, imagination and more.

Nothing is more important to the Toy Industry Association (TIA) and its more than 500 members across North America than the safety of children and the trust of their parents. To ensure the protection of children at play, the industry has committed itself to constant leadership in the area of toy safety. We embrace our vitally important role in the developmental of youth and are proud to be a world leader in regulating, testing and reviewing our products.

For decades, TIA members and staff have worked alongside medical experts, consumer organizations and government to create, maintain and constantly improve the standards that pave the way to safer toys. In 2008, the U.S. government signed into federal law the previously voluntary toy safety standard (ASTM F963) that had been spearheaded by the toy industry in the 1970s. Today, the standard is an integral element of the federal mandatory standards for toys; its requirements cover more than 100 separate tests and design specifications to reduce or eliminate hazards with the potential to cause injury under conditions of normal use or reasonably foreseeable misuse. A broad-based committee includes medical and safety experts, consumer organizations, government regulators and industry stakeholders. Collectively, they review and update the standard on an ongoing basis to ensure that (1) it keeps pace with product innovation and (2) that potential emerging issues are dealt with in record time.



But ASTM F963 is only one of many other strict federal environmental and safety laws—including the Consumer Product Safety Improvement Act, the Consumer Product Safety Act, the Child Safety Protection Act and others—that govern the sale of toys within the United States.

These collaborative toy safety efforts of the private- and public-sectors have been extraordinarily successful. In November 2011, the Consumer Product Safety Commission credited safety-conscious toymakers and strong federal regulations for a steady decline in toy recalls over the past three years. The CPSC cited several new protections in place that have helped make toys safe, including conversion of toy standards from voluntary to mandatory; the establishment of the lower lead content and lead paint limits; stringent limits on phthalates; requirement of third party testing and certification of toys designed for children 12 and under; and collaboration with the U.S. Department of Homeland Security to track shipments from other countries, thereby increasing seizure of dangerous imported toys.

In short, toys are already highly regulated.

Yet several states have taken an approach to chemical and product regulation that does not consider the already existing, robust safety system for toys sold in this country. Not only do these excessive regulations unnecessarily burden companies with no measurable increase in safety, they also burden individual states with the development and implementation of new chemical assessment, reporting and restriction systems at a time when this country's resources are scarce. Many of these state-based legislative efforts also lack the scientific research that should serve as the appropriate underpinnings and foundation of a complex, costly regulation system. As demonstrated across numerous federal and international regulatory structures, the key to ensuring that products are safe when used by consumers and children is to consider exposure and harm. It is unwise—even dangerous—to base a chemicals management system solely on the premise that the mere presence of a chemical with certain traits is dangerous.

TIA and its members remain committed to efforts that will assure toys sold in the U.S. are the safest in the world. TIA's leadership and the federal ASTM F963 toy safety standard are a perfect testimonial that the open, multi-stakeholder process is fast, efficient and effective. As such, the toy industry will continue to work with policymakers and regulators at the state and federal level so as to avoid needless burdens on states and interstate commerce. Play is universal. Toy safety laws should be, too.

Andy Hackman is senior director of state government affairs for the Toy Industry Association, Inc. (TIA)

Energy is the Key to Unlocking Economic Recovery

BY CHRIS MASCIANTONIO

It's no secret—energy has been and continues to be the buzz word with Congress and many of our state legislatures as our country focuses on establishing a national energy policy. Energy is a significant area of interest for United States Steel Corporation– both as a major consumer of energy, and as a supplier for the energy sector. U. S. Steel is the largest steel pipe producer in North America with facilities or joint ventures in six states. The company produces casing, tubing, line pipe and couplings to help locate, refine and transmit the oil and natural gas that powers our economy and our lives.

U. S. Steel, headquartered in Pittsburgh, Pa., is an integrated steel producer with major production operations in the United States, Canada and Central Europe and an annual raw steelmaking capability of 31.7 million net tons. The company manufactures a wide range of value-added steel sheet and tubular products for the automotive, appliance, container, industrial machinery, construction, and oil and gas industries.

The company also operates two iron ore mines through its Minnesota Ore Operations on the Mesabi Iron Range in northern Minnesota: one in Mt. Iron (Minntac) and one in Keewatin (Keetac). Both mine an iron-bearing rock called taconite and process it into concentrated iron ore pellets, which are converted to liquid iron in the company's blast furnaces.

U. S. Steel's operations are efficient and high tech, and our customer focus is intense. We've been making steel for more than 110 years, always with an eye to serving our customers' needs in the most cost-effective ways possible. In order to make sure we can continue producing a quality product that touches nearly every aspect of American life, we will need to have affordable energy sources available.

Recent advancements in unconventional drilling techniques and completion technologies are allowing our nation to unlock—in a safe and environmentally responsible way—its abundant natural gas reserves. The demand for tubular products for shale developments such as Marcellus, Barnett, Eagle Ford and Utica provide a great business opportunity for U. S. Steel and have the potential of creating many jobs in a tough economic environment. Natural gas development also represents a step toward our nation's energy independence as an affordable energy source that also serves as a key component of our country's green energy agenda.

U. S. Steel's steelmaking and finishing operations use significant amounts of natural gas. The increasing abundance of this resource has led the company to consider longer-term business strategies to enhance or significantly grow the use of natural gas in its operations, including alternative iron and steelmaking technologies such as gas-based, direct-reduced iron and electric arc steelmaking.

It is important that we advance the development of natural gas as a national energy resource. Affordable, long-term natural gas supplies can provide energy intensive industries, such as steel manufacturing, a competitive advantage over its foreign competitors. The role of state government in the developing natural gas industry is critical. State regulation and policy can determine to what extent the gas will be extracted, and whether exploration will be conducted in a competitive, yet safe and responsible manner.

A host of state legislative and policy issues involving a wide range of topics, including energy, the environment, infrastructure and safety, impact the operations of U.S. Steel. Specifically, the company is interested in the role of state governments in the environmental permitting process, and the safe and responsible development of the natural gas shale reserves. U. S. Steel's ability to advance capital projects often requires that environmental permits be secured in a timely manner. The permitting process invites numerous stakeholders to participate, and it has become more common for the process to extend beyond a reasonable time period, in some cases, placing the capital projects at risk. U. S. Steel's approach to environmental permitting encourages stakeholder participation and a close working relationship with the respective state environmental agency and the Environmental Protection Agency.

With operations across the country, U. S. Steel is confident that the efforts of ALEC will line up well with our multi-state legislative policy and goals. U. S. Steel has integrated steelmaking and finishing facilities in Alabama, Illinois, Indiana, Michigan, Pennsylvania and Canada; and tubular operations in Arkansas, Ohio, Pennsylvania and Texas.

Companies that want to be competitive in an increasingly global marketplace must have a global outlook and presence. U. S. Steel continually looks for opportunities to strengthen our existing presence in the global arena and strives to meet and set world-class standards.

Every day, U. S. Steel employees around the world dedicate themselves to putting our five core values into action. Safety is first—it's our company's top priority. Our other core values are diversity and inclusion; environmental stewardship; focus on cost, quality and customer; and results and accountability. Focusing on these values guides our highly skilled workforce toward realizing our Vision: Making Steel. World Competitive. Building Value.

We look forward to working with ALEC and its members on creating sound public policy on important issues like energy that will better position the United States as a leader in energy policy.

Chris Masciantonio is General Manager of Governmental Affairs for U.S. Steel.

All Eyes on ObamaCare

BY SEAN RILEY

As the Supreme Court prepares to hear oral arguments challenging the *Patient Protection and Affordable Care Act (PPACA)* in March, let us review what brought us to this point, what questions will be answered, and what ALEC is doing and will continue doing to advance market-driven healthcare reform.

PPACA passed the Senate on Christmas Eve 2009 on strict party lines. The following March, then-Speaker Nancy Pelosi gave a speech to the National Association of Counties and said, "we have to pass the bill so that you can find out what is in it." And pass it did, by a vote of 219-212 in the House on March 21. Even though 54 percent of voters opposed it, the President signed the bill into law on March 23, 2010. Moments later the first lawsuit challenging the constitutionality of the law was filed.

Of course then-Speaker Pelosi's words were foretelling. Over the following months, the public did find out what was in the bill. And they didn't seem to like it. In fact, a majority of voters has favored repeal since the law was signed, and a majority has never opposed repeal. Never. A majority of the states joined legal challenges to the law, including 26 states in *Florida v. HHS*. Oklahoma and Virginia filed independent challenges.

Aside from the negative effects *PPACA* will have on Medicaid, taxes, and insurance regulation, why were states challenging the constitutionality of the new law? At the heart of the constitutional challenge, though there are many issues, lies the individual mandate question. That is, can the government force you to buy insurance?

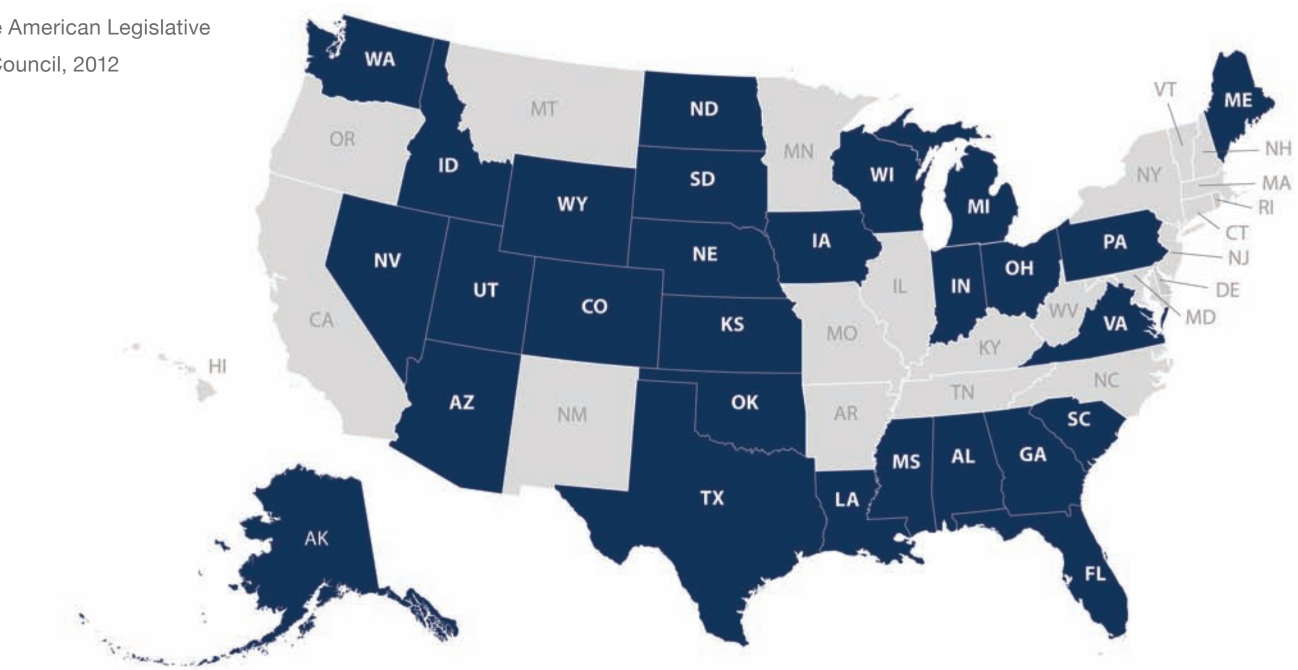
This idea is unprecedented. And many have asked—if Congress has the power to do this, doesn't it have the power to do anything? Even the Congressional Research Service acknowledges, "though the federal government provides health coverage for many individuals through federal programs such as Medicare, it has never required individuals to purchase health insurance."

As numerous lawsuits worked their way through district courts across the country, five cases rose to the federal appeals level:

- ***Thomas More Law Center v. Obama:*** On June 29, 2011, a divided three-judge panel of the 6th Circuit Court of Appeals ruled the law constitutional.
- ***Florida v. HHS:*** On August 12, 2011, a divided three-judge panel of the 11th Circuit Court of Appeals ruled the

States Challenging the Constitutionality of PPACA

Source: The American Legislative Exchange Council, 2012



individual mandate unconstitutional, but held that it could be severed, or separated, from the rest of the law, thereby, allowing the rest of *PPACA* to remain in force. This created a "circuit split" in which at least two circuit courts have varying interpretations of the same law. This split paved the way for the Supreme Court to eventually accept and hear constitutional challenges. Notably, the majority opinion in the 11th Circuit ruling cited ALEC's *amicus curiae* brief that was filed in support of the 26 states challenging the law. The brief was cited for supporting the argument that health care is an area of traditional state concern. ALEC will file an additional *amicus* brief with the Supreme Court in support of the multistate lawsuit and against the individual mandate.

- ***Liberty University v. Geithner:*** On September 8, 2011, a divided three-judge panel of the 4th Circuit Court of Appeals ruled that those challenging the mandate could not do so until it goes into effect.
- ***Virginia v. Sebelius:*** On September 8, 2011, a three-judge panel of the 4th Circuit Court of Appeals unanimously ruled that the state of Virginia did not have the authority to challenge the law.
- ***Seven-Sky v. Holder:*** On November 8, 2011, a divided three-judge panel of the U.S. Court of Appeals for the District of Columbia ruled the law constitutional.

And so on November 14, 2011, the Supreme Court issued an order agreeing to hear four issues raised in the various challenges to the constitutionality of *PPACA*:

- Whether those challenging the mandate can do so before the mandate takes effect;
- Whether Congress has the power to impose an individual mandate to purchase health insurance;
- Whether the mandate can be severed, or separated, from the rest of the law; and,
- Whether Congress has the power to impose Medicaid expansion by coercing states with the threat of withholding federal funds.

If history is any lesson, we should be hopeful yet cautious moving forward—hopeful that the Supreme Court will preserve federalism and prevent Congress from using the commerce clause to erase the idea of limited, enumerated powers from history, and cautious given the chain of events that has led us to a point where the federal government forcing someone to buy a private good is considered consistent with the Constitution.

Looking back on relevant cases, the Supreme Court has struck down a federal statute only twice in the past seventy years for exceeding Congress's commerce power. In *U.S. v. Lopez*, the Court held that a federal act prohibiting the possession of a gun in a school zone exceeded the commerce power. In *U.S. v. Morrison,* the Court held that Congress exceeded its commerce power in enacting the *Violence Against Women Act* because the economic effects of crimes against women were too narrow to impact commerce.

However, one of the most recent Commerce Clause cases, *Gonzales v. Raich*, represents the broadest reading of Congress's commerce power to date. In *Raich*, the Court held that Congress's commerce power was broad enough to uphold a ban on the cultivation of marijuana for personal use. The Court held that the federal law was "quintessentially economic" because it regulated "production, distribution, and consumption of commodities."

The Court recognized that it "need not determine whether respondent's activities, taken in aggregate, substantially affect interstate commerce in fact, but only whether a 'rational basis' exists for so concluding," and that Congress acted rationally in determining that a ban on the personal marijuana cultivation "was an essential part of a larger regulatory scheme." The Court held that "[w]here necessary to make a regulation of interstate commerce effective, Congress may regulate even those intrastate activities that do not themselves substantially effect interstate commerce."

So while *Lopez* and *Morrison* limited Congress's commerce power and *Raich* seemingly expanded that power more than ever, one could argue that the holdings are consistent: Congress cannot regulate purely local non-economic activity unless it is an essential part of a larger regulatory scheme focused on economic activity.

Proponents of *PPACA* will argue that mandating insurance is within Congress's commerce power because regulation of the broader health care market to lower costs is necessarily economic. Congress clearly acted rationally, they'll argue, because health insurance is unique, and every individual will affect the insurance market at some point in their lives.

However, ultimately the mandate presents a novel issue. Unlike car insurance where an individual has made the decision to operate a vehicle, or in *Raich* where an individual has decided to grow an illegal drug, an individual under the mandate is required to purchase insurance even though they have not engaged in any activity at all.

Additionally, the delivery of health care is not an area of federal concern, but an area of traditional state concern. States maintain a constitutional role to serve as the laboratories of democracy and innovation. From state level policies creating high-risk pools for those with preexisting conditions, to allowing individuals to purchase affordable health insurance across state lines, to reviewing mandated benefits to control costs, upholding the individual mandate would displace existing and future state policy choices.

Though all eyes will be on the Supreme Court and ObamaCare this coming March, state lawmakers should not stall in their efforts in continuing to bring patient-centered, market-oriented healthcare solutions to their citizens. Regardless of any decision, the commitment to the principles of individual liberty, limited government, and free markets will not be diminished.

For more information on ALEC's* amicus brief *to the Supreme Court, please visit www.alec.org or contact me at sriley@alec.org.

Sean Riley is the Legislative Analyst for ALEC's Health & Human Services Task Force.

Health Savings Accounts: Fiction vs. Reality

BY SEAN RILEY

Claims that HSAs are only for the young, healthy, and affluent, and that HSAs cause people to forego care and spend all of their savings are called into serious question by a recent comprehensive report from America's Health Insurance Plans. The report, titled "Health Savings Accounts and Account-Based Health Plans: Research Highlights," draws information from a range of studies related to HSAs.

The number of people with a Health Savings Account and high deductible health plan (HSA/HDHP) coverage has more than tripled from 3.2 million in January 2006 to 11.4 million in January 2011. And as states continue moving forward in providing options for affordable insurance for individuals, businesses, and state employees, HSAs are proving to be a viable coverage solution for an increasing number of Americans.

FICTION: HSAs are only for young people.
REALITY: Approximately half of enrollees in an HSA-eligible plan (including dependent children) are aged 40 and above.

According to AHIP's annual census, the age distribution among HSA-eligible enrollees in the individual market has changed only slightly since 2006. About half of enrollees in an HSA-eligible plan (including dependent children) are aged 40 and above, and half are below the age of 40. In the individual market:

- 26 percent of HSA-eligible plan enrollees were younger than 20 years of age (25 percent in 2008);
- 13 percent were between 20 and 29 (13 percent in 2008);
- 13 percent were between 30 and 39 (16 percent in 2008);
- 19 percent were between 40 and 49 (21 percent in 2008);
- 21 percent were between 50 and 59 (19 percent in 2008); and
- 9 percent were ages 60 or over (9 percent in 2008).

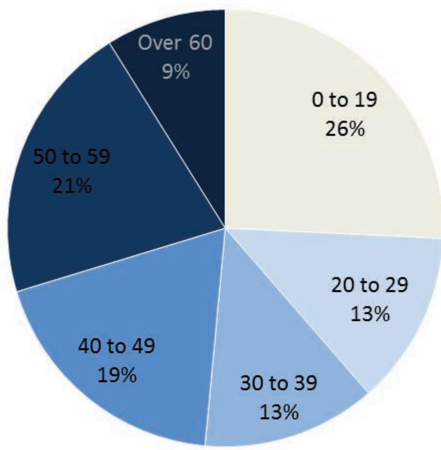
(America's Health Insurance Plans, June 2011)

FICTION: HSAs only benefit upper-income individuals.
REALITY: 83% of HSA accountholders lived in middle-income neighborhoods or below.

A 2009 AHIP study in which responding banks used a geo-coding technique to estimate the income characteristics of their HSA accountholders found that:

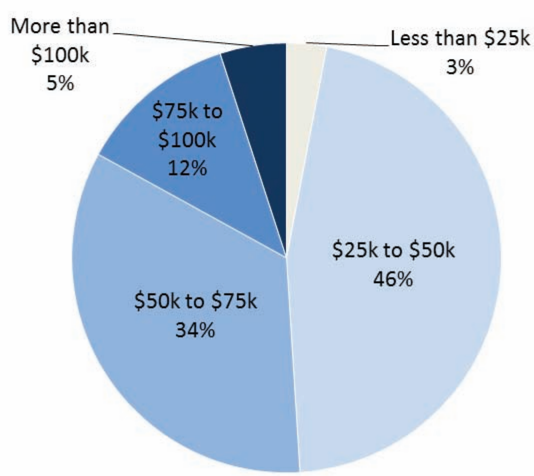
- 3 percent of HSA accountholders lived in lower income neighborhoods, which had median incomes less than $25,000 in 1999 dollars;
- 46 percent lived in lower-middle income neighborhoods, with 1999 median incomes between $25,000 and $50,000;
- 34 percent lived in middle-income neighborhoods, which had median incomes between $50,000 and $75,000;

Age Distribution of People Covered by HSA/HDHPs, Individual Market, January 2011



Source: AHIP Center for Policy and Research. 2011 HSA Census Report.
Notes: Most enrollees in the 0-19 age group were dependents covered under family plans. Figures may not sum to 100 percent due to rounding.

Distribution of HSA Accountholders' Census Tract Median Household Incomes, 2008



Source: AHIP Center for Policy and Research. Estimated Income Characteristics of HSA Accountholders in 2008.
Notes: Most enrollees in the 0-19 age group were dependents covered under family plans. Figures may not sum to 100 percent due to rounding.

- 12 percent live in upper-middle income neighborhoods, with median incomes between $75,000 and $100,000; and
- 5 percent live in higher-income neighborhoods, with median incomes above $100,000.

(American Health Insurance Plans, May 2009)

FICTION: HSAs are only for those who are healthy.
REALITY: 45 percent of enrollees in HSA-qualified plans reported having at least one chronic condition.

A 2008 survey found that similar percentages of enrollees in HSA-qualified plans (45 percent) and traditional plans (49 percent) reported having at least one chronic condition. (Employee Benefit Research Institute, March 2008)

An actuarial monograph on consumer-driven health (CDH) plan studies indicates that CDH plan enrollees with chronic conditions use more preventive services than similar patients enrolled in a traditional health plan—in some cases up to 23 percent more than traditional plan enrollees. This was attributed to the fact that most CDH plans provide such care at no charge. Among other findings, studies also showed that:

- Enrollees in CDH plans with chronic conditions received recommended care at comparable or higher rates than traditional plan enrollees; and
- CDH plan enrollees use fewer inpatient services, and have lower emergency room and acute care spending.

(American Academy of Actuaries, May 2009)

FICTION: HSAs cause individuals to forego or delay health care.
REALITY: Enrollees in consumer driven health plans, like HSAs, are 21 percent more likely to participate in disease management programs than those with traditional coverage.

A 2010 study by Cigna comparing its CDHP, "Choice Fund," and traditional plans showed that CDHP enrollees are in better control of their chronic health issues and were more engaged in their care. For example, CDHP enrollees were 21 percent more likely to participate in disease management programs than those with traditional coverage.
(Cigna, October 2010)

An Aetna study of 2.3 million members showed that members with either HRA or HSA plans:

- Spent more on preventive care and accessed higher levels of screenings for breast and cervical cancers, as compared to members in preferred provider organization (PPO) plans;
- Had higher rates of diabetes-related tests and screenings than members of PPO plans;
- Visited the emergency room less than their PPO counterparts; and
- Used prescription drugs necessary to treat chronic conditions at rates similar to PPO members.

(Aetna, 2010)

FICTION: HSAs aren't financially sustainable.
REALITY: Account balances for enrollees are growing, including the amount of money being rolled over from one year to the next.

A fund administrator snapshot of HSAs in 2010 showed that:

- 73 percent of accountholders contributed more than they spent during each month in 2010;
- Account balances grew for all cohorts—35 percent of accounts had balances over $1,000.

(J.P. Morgan Chase, 2010)

The 2008 and 2009 EBRI/MGA Consumer Engagement in Health Care Survey and the 2006 and 2007 EBRI/Commonwealth Fund Consumerism in Health Care Surveys reported on the following information about account balances and rollover of HRA/HSA account funds:

- The amount of money that individuals have accumulated in their accounts has grown over time. The percentage of individuals reporting account balances of at least $1,000 at the time of the survey increased from 25 percent in 2006 to 44 percent in 2007. It remained at 43 percent in 2008 and increased to 47 percent in 2009.
- The amount of money being rolled over from one year to the next has also increased. The percentage reporting rollovers of $1,500 or more increased from 13 percent in 2006 to 31 percent in 2009.
- Between 2008 and 2009, the percentage of persons with health problems who did not roll over funds from the previous year decreased from 21 percent to 10 percent, while the percentage reporting a rollover of at least $1,500 increased from 19 percent to 33 percent.

(Employee Benefit Research Institute, November 2009)

For the full text of the report please visit www.ahipresearch.org.

Sean Riley is the Legislative Analyst for ALEC's Health & Human Services Task Force.

Reducing Wasteful Spending on Litigation: ALEC's Model Phantom Damages Elimination Act

BY CARY SILVERMAN

A new ALEC model act ensures that the amount of damages in personal injury lawsuits reflects the plaintiff's actual medical expenses. Its impact cannot be understated. The effect of eliminating what is known as "phantom damages," liability awards based on amounts initially billed rather than what a patient or his or her insurer actually paid, can cut inflated damages by half or even two thirds. The model act does so fairly, safeguarding an injured person's ability to recover the full costs of medical care that he or she incurred.

In our day-to-day lives, Americans recognize that the "list" or "sticker" price for products or services does not always reflect the actual cost. For instance, more than three quarters of Americans have "club cards" that they routinely use at the supermarket. When the customer presents the card and the store applies applicable discounts at the checkout counter, the total bill can easily come down 20 percent from the "regular" prices. Another common example is the sticker price of a car. Car buyers recognize that the amount on the window of the vehicle is a starting point for negotiation and they expect to ultimately pay less.

If an unfortunate person who purchased a new car got into an accident as he drove out of the dealership's lot, resulting in a total loss, would he expect his insurance company to pay him the list price of the car? Likewise, if an individual purchased supplies for a work function at the supermarket, and submitted a request to her employer for reimbursement, would she expect the check to reflect the prices on the receipt prior to the deduction of discounts? In these types of situations, consumers generally expect to be reimbursed based on the amount actually paid, not based on a list price. They recognize that the sticker price may simply reflect the pricing practices of that industry, not the true costs.

In the topsy-turvy world of the legal system, however, lawyers who represent clients in personal injury cases seek damages for medical expenses, based on amounts originally billed by healthcare providers. This practice occurs even when neither the patient, nor his or her insurer, paid these amounts. In many states, they can receive inflated damages based on invoiced amounts. Jurors are misled to believe that the plaintiff was responsible for paying those bills. They are blindfolded from knowing that the amount accepted by the healthcare provider as full payment was substantially less. "Why, that's fraud on the jury," was the reaction of an ALEC legislator from a state that does not allow this practice.

As anyone who has visited a doctor can attest, it is not uncommon for the prices of medical services reflected on the original invoice to be three or four times the actual price paid. Given the widespread application of negotiated rates between managed care plans and providers, fee schedules set by Medicare or Medicaid, and other discounts and write offs, few patients (or those who pay on their behalf) pay the full invoice. Uninsured patients rarely pay list prices, as healthcare providers have established indigent care programs that provide subsidies or discounts to low-income patients and write off an increasing amount of bills.

For example, a hospital may charge $1,500 for an MRI, but accept $500 as full payment. The plaintiff may have paid a $25-co-pay and the insurer paid the remaining $475. Yet, in states that allow recovery of phantom damages, a defendant must pay the full $1,500—$1,000 more than anyone ever paid—simply because that amount was printed on the initial bill. These illusory amounts serve no compensatory purpose, but drive up the costs of products and services for consumers. The amount that no one ever paid but is sought in personal injury litigation is what we call "phantom damages."

REAL CASES OF PHANTOM DAMAGES IN THE COURTS

Here are a few examples of actual cases showing the impact of phantom damages. As these cases illustrate, inclusion of such illusory costs drives up awards for damages for medical care by 40% or more. They can also lead juries to arrive at inflated amounts for pain and suffering damages, since they often consider a multiple of the plaintiff's medical expenses when putting a value on an otherwise arbitrary and completely subjective amount. In addition, basing awards on amounts billed rather than amounts paid increases the amount plaintiffs' lawyers demand to settle claims.

- Richard Tucker slipped and fell at an event sponsored by Volunteers of America. He was billed $74,242 for medical service, which his insurer settled with a $43,236 payment (reflecting $31,006 in phantom damages). The jury, which was not allowed to learn of the amount actually paid to satisfy the bill, found Mr. Tucker 49 percent responsible for his own injury and the nonprofit organization 51 percent responsible. It reached an award based on the billed medical costs plus $60,000 for pain and suffering. The trial court subtracted the phantom damages from the award, but a divided Colorado Supreme Court reinstated the billed amount. Colorado legislators are pursuing legislation similar to the ALEC model act to overturn the court's decision.[1]
- George White, a patron at the Ponderosa Lounge, a popular country music venue in Portland, Oregon, was injured when his bar stool collapsed. The jury awarded him $37,600 in medical expenses, even though Medicare paid $13,426 to settle the bill. The trial court rejected the lounge's request to limit evidence to collectable medical expenses or to allow them to inform the jury of the amounts the medical providers wrote off. The Oregon Supreme Court affirmed the trial court's phantom-damaged award.[2]
- Lydia Lopez slipped and fell when entering an Arizona Safeway supermarket. While her healthcare providers billed $59,700 for her medical treatment, they accepted $16,837

from her insurer as full payment. An Arizona trial court denied a request by Safeway to exclude evidence of the billed amounts, rather than the amounts paid. Based on evidence that included $42,863 in phantom damages, the jury awarded $400,000, which was reduced to $360,000 to reflect that Ms. Lopez was found 10 percent at fault. An Arizona appellate court affirmed the full $360,000 award.[3]

- In Florida, a state that limits recovery of phantom damages, Albert Goble was severely injured when another driver hit his motorcycle. Healthcare providers billed $574,554.31 for his treatment, but accepted $145,970.76 from his insurer in full satisfaction of the bills. Under Florida's system (which legislators are seeking to improve), the jury was not told of the amount actually paid and awarded $574,554.31 in medical expenses. The judge then reduced the jury award by $428,583.55, representing the amount of phantom damages. The Florida Supreme Court affirmed the reduced award. As the Court recognized,"[t]he alternative, forcing an insurer to pay for damages that have not been incurred, would result in a windfall to the injured party. The allowance of a windfall would undermine the legislative purpose of controlling liability insurance rates because insurers will be sure to pass the cost for these phantom damages on to Floridians."[4]

TREATMENT OF PHANTOM DAMAGES IN THE STATES

A growing number of states have limited or precluded phantom damages, but the majority rule continues to allow inflated compensation. The list below provides a general lay of the land, however, it is important to recognize that each state has nuances in the application of this law.

In August, the California Supreme Court, which is not generally viewed as favorable to defendants in civil cases, ruled 6-1 that a plaintiff may not recover undiscounted sums stated in a healthcare provider's bill but never paid "for the simple reason that the injured plaintiff did not suffer any economic loss in that amount." Ms. Howell, who was injured in a car accident by a driver who worked for the defendant, was billed $189,978.63 for her medical care, but $130,286.90 of this amount (nearly 70%) was written off and never paid by her or her insurer. The jury returned a verdict for the full invoiced amount, which the trial court reduced by the amount of phantom damages. The California Supreme Court ruled that where a healthcare provider has accepted less than a billed amount as full payment, evidence of the full billed amount is irrelevant and inadmissible.[5]

Allows Phantom Damages	Limits or Prohibits Phantom Damages	Law is Uncertain
Arizona	Alabama	Alaska
Colorado	California	Arkansas
Delaware	Connecticut	Michigan
District of Columbia	Florida	Montana
Georgia	Idaho	Nevada
Hawaii	Indiana	New Jersey
Illinois	Maryland	New Mexico
Iowa	Massachusetts	North Dakota
Kansas	Minnesota	Rhode Island
Kentucky	Missouri	Tennessee
Louisiana	New Hampshire	Utah
Maine	New York	Vermont
Mississippi	North Carolina	West Virginia
Nebraska	Ohio	Wyoming
Oregon	Oklahoma	
South Carolina	Pennsylvania	
South Dakota	Texas	
Virginia		
Washington		
Wisconsin		

The stakes on this issue were high in California, as they are in other states. California insurers estimated that requiring compensation based on the amount billed, rather than the amount paid based on negotiated rates and discounts, could cost them $3 billion annually.[6]

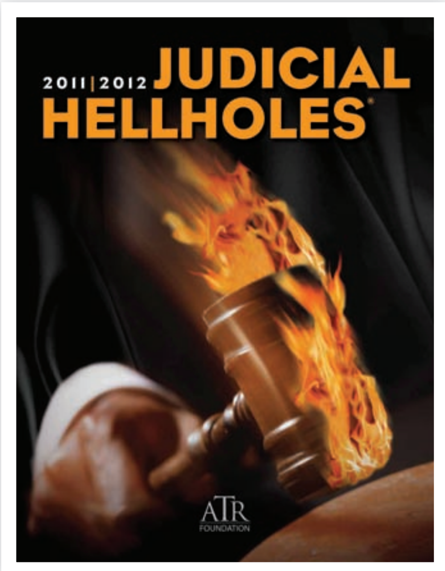
LEGISLATIVE REFORM GAINS MOMENTUM

State legislatures can address inflated damages and settlements in personal injury litigation by following the simple approach reflected in the *Phantom Damages Elimination Act*. Under the model act, the value of reasonable and necessary health care services or treatment is based on (1) amounts actually paid by or on behalf of the claimant; and (2) amounts actually necessary to satisfy outstanding charges still due to the healthcare provider. Billed amounts that do not reflect actual amounts paid or that remain actually owed are inadmissible at trial.

Several states have taken this or a similar approach through legislation. Texas was the first to do so in 2003 when it enacted a one-sentence bill: "recovery of medical or health care expenses incurred is limited to the amount actually paid or incurred by or on behalf of the claimant."[7] During the 2011 session, Oklahoma (H.B. 2023) and North Carolina (H.B. 542) enacted legislation eliminating phantom damages. As this reform gains momentum, legislators should consider this sound, commonsense approach to reducing wasteful spending on lawsuits.

Cary Silverman serves as an advisor to ALEC's Civil Justice Task Force and is Of Counsel in Shook, Hardy & Bacon L.L.P.'s Public Policy Group.

[1]Volunteers of America Colorado Branch v. Gardenswartz, 242 P.3d 1080 (Colo. 2010).
[2]White v. Jubitz Corp., 219 P.3d 566 (Or. 2009).
[3]Lopez v. Safeway Stores, Inc., 129 P.3d 487 (Ariz. Ct. App. 2006).
[4]Goble v. Frohman, 901 So. 2d 830 (Fla. 2005).
[5]Howell v. Hamilton Meats & Provisions, Inc., No. S179115 (Cal. Aug. 18, 2011).
[6]Dan Walters, California Supreme Court Plays Role in Tort War, Sacramento Bee, Aug. 15, 2011, at http://www.modbee.com/2011/08/15/1816272/dan-walters-california-supreme.html.
[7]Tex. Civ. Prac. & Rem. Code § 41.0105. The Texas Supreme Court recently clarified that, under this law, billed amounts that do not reflect actual costs may not be presented at trial. Haygood v. De Escabedo, 2011 WL 2601363 (Tex. July 1, 2011).



Newest "Judicial Hellholes™" List Released: Is Your State on it?

BY BRYAN WEYNAND, LEGISLATIVE ANALYST, CIVIL JUSTICE TASK FORCE

The American Tort Reform Association recently released its annual Judicial Hellholes™ publication with a strand of optimism that is unusual for the report, the title of which illustrates accurately its focus on America's most unfair and unbalanced legal jurisdictions. While it retains plenty of content to comprise the traditional list of Hellholes, the Watch List, and the Dishonorable Mentions, it is the Points of Light that conclude the report and truly characterize the progress made for the tort reform movement in 2011.

"This year's report, more so than any other in the past," said ATRA President Tiger Joyce, "also emphasizes a boom in good news from the states with an expanded Points of Light section."

The efforts of state legislatures were the centerpiece of the Points of Light, especially the comprehensive tort reform packages passed by Tennessee, Alabama, North Carolina and Wisconsin. The bills passed in the latter three of those states were advanced by newly elected pro-reform majorities, and Wisconsin actually struck twice, with significant reform measures passed at the beginning and the end of the legislative year. Other states honored in the Points of Light section were Arizona, Florida, Indiana, Kentucky, Missouri, North Dakota, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, and Texas.

Over 50 tort reform measures were passed around the country in 2011 with the most popular reforms including protection against the expansion of liability for trespassers, transparency and oversight for the retention of private attorneys by state attorneys general and strengthening standards to guard against junk science. These measures led to what the report calls the largest Points of Light section in recent memory.

The primary focus of the report, however, is judicial rather than legislative, where it highlights those court jurisdictions that, as defined by the report, consistently and systematically apply the law in a manner that is unfair and unbalanced to defendants. These jurisdictions are susceptible to abuse of the proper function of litigation and often become objects for 'venue shopping' by plaintiffs hoping for friendly judges and procedures.

"The jurisdictions we name as Judicial Hellholes™ each year are not the only unfair courts in the nation," Joyce said. "But they are among the most unfair, based on our survey of litigants and considerable independent research."

Most unfortunately, many of 2011's Judicial Hellholes™ are repeat offenders from past reports. Leading the way are Philadelphia, PA and the state of California, which find themselves on top for the second consecutive year. West Virginia, South Florida, and New York City are also 2010 Hellholes featured again in this year's edition.

Philadelphia has achieved its status largely due to its high plaintiff win rate, its hosting a disproportionate number of Pennsylvania's lawsuits because of its attraction as a venue for securing easy plaintiff wins, and Pennsylvania's plaintiff-friendly laws. California, according to the report, has built on the reputation of Los Angeles, long held as one of the nation's most plaintiff-friendly jurisdictions, to establish itself as a state characterized by "extortionate" lawsuits against small business and consumer and class action suits with high awards.

Yet even these districts were not without bright spots. As mentioned above, Pennsylvania's state legislature was recognized as a Point of Light for reforming its joint and several liability laws. No longer will a defendant less than 60 percent at fault for an injury be potentially responsible for paying all damages awarded in a case, which should improve the outlook for Philadelphia defendants. Meanwhile, the California Supreme Court ruled that plaintiffs are not entitled to so-called "phantom" damages, accomplishing through judicial decision what several other states look to accomplish through legislation in 2012. The ruling ensures that where medical bills are incurred plaintiffs are awarded actual medical expenses rather than the inflated "sticker price" for treatment.

The report exemplifies the success of the tort reform movement in 2011, while identifying opportunities for necessary reforms in the future. ALEC's Civil Justice Task Force works to contribute to this national movement in the states by developing model legislation that discourages frivolous lawsuits, treats defendants in a consistent manner, and instills transparency and accountability in the trial system.

To download the full report, visit www.judicialhellholes.org.

Bryan Weynand is the Legislative Analyst for ALEC's Civil Justice and Energy, Environment and Agriculture Task Forces.

Federal Legislation Authorizing Sales Tax Collection Measures Up to ALEC Principles of Taxation

BY SANDY KENNEDY

Who should be required by law to collect state and local sales and use taxes? This question has been the focus of significant debate over the past few years here at ALEC, in state legislatures across the country, and in the Congress.

Traditional retailers across the country, from the largest retailers to the thousands of local mom-and-pops on every Main Street in America, are obligated under state law to collect sales taxes on behalf of their consumers in every jurisdiction where they have physical presence. These businesses – and their role in the community - are jeopardized by what we believe to be an unfair advantage given to “remote sellers,” such as some internet and catalog retailers, through outdated state sales tax policy.

The U.S. Supreme Court ruled in the 1992 *Quill* case that states cannot require retailers without a physical presence in their states to collect tax on sales into those states, a policy position that ALEC currently supports based on its *21st Century Commercial Nexus Act*. Importantly, the Court recognized “that the underlying issue is not only one that Congress may be better qualified to resolve, but also one that Congress has the ultimate power to resolve.”

On November 30, 2011, the U.S. House of Representatives Committee on the Judiciary discussed the issue of sales tax collection for nearly three hours. Bipartisan federal legislation to grant states the authority to require all retailers, not subject to the small seller exemption, to collect sales taxes has been introduced in both the House and the Senate. These bills have garnered a wide range of support from businesses large and small, organizations across the political and business spectrum, including the American Conservative Union and Americans for Job Security, traditional brick and mortar retail groups like ours, technology industry groups such as the Consumer Electronics Association, and prominent policymakers such as former Mississippi Gov. Haley Barbour.

The purpose of this article is to inform the debate regarding who should be required to collect sales taxes by viewing the issue through the lens of ALEC’s Principles of Taxation. These seven “fundamental principles,” adopted in 2010, as opposed to ALEC’s 2002 *21st Century Commercial Nexus Act,* “provide guidance for a neutral and effective tax system; one that raises needed revenue for core functions of government, while minimizing the burden on citizens.”

SIMPLICITY

ALEC calls for the tax code to be easy to understand for the average citizen and to minimize compliance costs. Consumers clearly understand the sales tax and how it is calculated. The sales tax is one of the simplest taxes imposed by state and local governments, and more than 20 states have worked to make it even simpler for retailers that collect the tax in multiple states. From the consumers' perspective, the most complex aspect of sales taxation is paying tax directly to the state when it is not collected by the retailer, as is the case for some internet and catalog retailers. Federal legislation authorizing states to require all retailers to collect sales taxes would further simplify the sales tax for consumers because they wouldn't have to file use tax returns for purchases from retailers that refuse to collect applicable taxes.

TRANSPARENCY

The sales tax, as applied to consumer purchases, is the most transparent tax levied by state and local governments. Taxpayers know exactly how much tax they will pay on any purchase. ALEC counsels that "changes in tax policy should be highly publicized and open to public debate." No state tax policy issue has been more visible or open to public debate than the issue of empowering states to require all retailers of an applicable size, regardless of the channel through which they sell, to collect sales taxes.

ECONOMIC NEUTRALITY

"The tax system should exert minimal impact on…spending and decisions," have "few loopholes" and "avoid multiple layers of taxation." The fact that some retailers refuse to collect sales taxes and that states do not currently have the authority to require them to collect perverts the tax system. Consumers can and do choose to purchase from certain retailers specifically to evade paying legally owed taxes, a phenomenon which the Hudson Institute finds "is equivalent to a subsidy, distorting the free market." This loophole would be remedied by a federal law authorizing states to require retailers with sales above the established small business exemption level to collect sales taxes. With regard to the final point in this principle, the sales tax is indeed often imposed on multiple layers, but that is because not all business purchases are exempt from tax as they should be and is unrelated to this issue of tax collection.

EQUITY AND FAIRNESS

"The government should not use the tax system to pick winners or losers." Unfortunately, this is exactly what happens under the current system. The federal government, by preventing states from requiring all retailers to collect sales taxes, has created a system that provides some retailers with a significant price advantage over their main street competitors. Congress can restore a competitive balance and eliminate the "special favors" that ALEC decries by authorizing states to require online retailers to begin collecting sales taxes and effectively level the marketplace to enable true price competition amongst all retailers.

COMPLEMENTARY

ALEC supports tax structures that "help maintain a healthy relationship between the state and local governments." The sales tax is the one major tax that is frequently both a state and local tax. Collection of the sales tax by all sellers will help to strengthen state and local tax systems. Proposed federal legislation would encourage state and local governments to work together on sales tax policy to create a simplified system to facilitate collection by out-of-state retailers.

COMPETITIVENESS

Consumption taxes, like the sales tax, are among the most economically neutral taxes, which is exactly what ALEC suggests is needed to achieve "effective competitiveness." By strengthening the state and local sales tax system, federal legislation authorizing states to require retailers to collect sales taxes would allow states to use any new revenues to reduce less competitive taxes, such as personal income taxes.

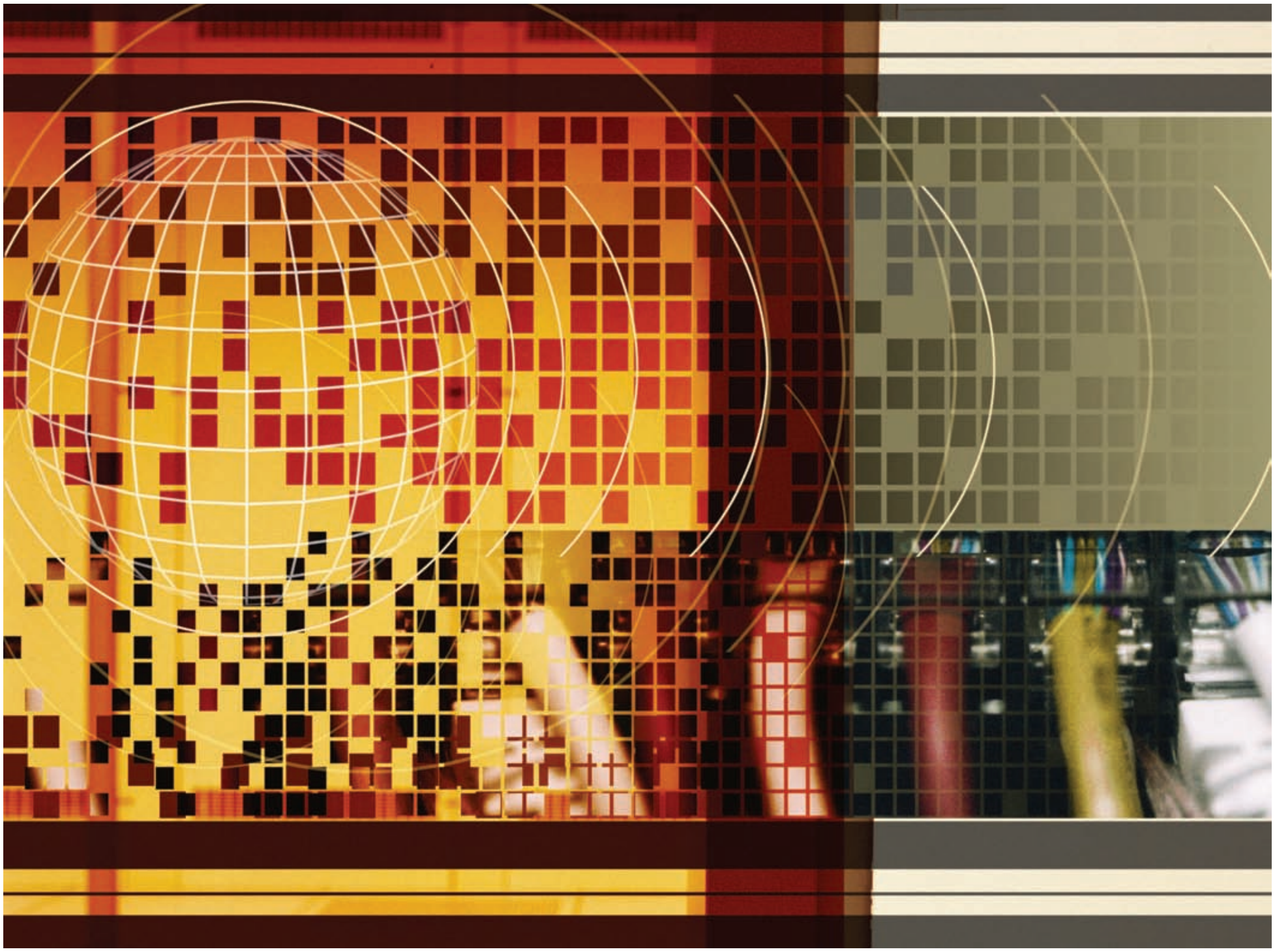
RELIABILITY

ALEC recommends stability and certainty for both the states and taxpayers. The sales tax is generally recognized as one of the most stable sources of revenue. A federal law authorizing states to require online retailers above the small business threshold to collect sales taxes would ensure continued stability for state revenues and would eliminate the surprise that many law abiding taxpayers face when they make their annual use tax payments.

As ALEC notes, "a principled tax system is an ideal way for advancing a state's economic interests and promoting prosperity for its residents." We believe federal legislation authorizing states to require all retailers to collect sales taxes complies with ALEC's Principles of Taxation. In a recent letter supporting such legislation, Gov. Barbour echoed many of ALEC's principles, concluding that "government shouldn't be picking winners and losers." As Gov. Barbour so aptly noted, "States should not be deprived of their right to establish and collect taxes as they see fit."

"There is simply ***no longer a compelling reason*** for government to continue giving online retailers special treatment over small businesses who reside on Main Streets across Mississippi and the country." GOV. HALEY BARBOUR OF MISSISSIPPI

Sandy Kennedy was named RILA president in December 2002. Under her leadership, RILA has grown from a niche trade association into the primary trade association for America's largest and most innovative retail brands. Immediately prior to joining RILA, Kennedy served as director of the Leadership Dialogue Series for Accenture, a global management consulting and technology services company.



It Was the Best of Reforms, It Was the Worst of Reforms: A Dickens of a Decision at the FCC

BY JERRY ELLIG

The Federal Communications Commission (FCC) released its 750-page Report and Order on intercarrier compensation and universal service reform in November. Since billions of subsidy dollars are involved, the stakes for consumers are high.

Commissioner Robert McDowell made no understatement in declaring that intercarrier compensation and universal service reform have "cast a long shadow over the FCC for more than a decade." Past commissions accumulated almost as many last-minute whiffs on this topic as Charlie Brown chasing that football Lucy always pulled away. So the commission's unanimous agreement on any reform package is quite an achievement.

The FCC decision serves up a stew of long-overdue reforms, forgone opportunities, and program perpetuations – well-seasoned with acronyms and communications industry jargon. Below, I attempt to strip away some of the complexities to highlight the pros and cons of the commission's approach.

INTERCARRIER COMPENSATION

"Intercarrier compensation" refers to per-minute fees one telephone company pays another when it hands off a call to be completed. Intercarrier compensation provides rural phone companies with billions of dollars in hidden subsidies paid for by all telephone users. In addition to transferring money, these charges historically reduced consumer welfare by prompting customers to use fewer minutes of calling time. They also create incentives for rural companies to wastefully inflate their revenues by inducing free conference calling and sex chat providers to locate in their territories to generate a lot of inbound call volume.

The FCC declared that over the long term, intercarrier compensation will move to a default rule of "bill and keep." Instead of sloshing money back and forth, carriers will have to cover more of their own costs by charging their own customers no more than an additional $2.50 per month after five years (or $5.00 per line for businesses). High-cost phone companies facing financial hardship will receive explicit FCC subsidies for a transition period. The FCC staff estimates that this reform will save consumers at least $1.5 billion annually while increasing local phone bills by a maximum of $500 million annually, implying a net gain of at least $1 billion.

UNIVERSAL SERVICE:

The "high cost" universal service program spends about $4.5 billion annually to subsidize phone service in rural and high cost areas. This program faces a number of interrelated problems.

"The FCC's decision demonstrates both ***the best and the worst*** of Washington."

INEFFICIENT FUNDING MECHANISM:

The universal service program is funded with a percentage surcharge on all interstate and international telecommunications revenues. The more you use, the more you pay. But this means the charge acts like a tax on using your phone. Economists have found that this tax harms consumers not just by taking money out of their pockets, but also by prompting them to use their phones less. But the commission entirely ducked the opportunity to reform the funding mechanism.

LACK OF ACCOUNTABILITY:

Until this year, the FCC never really tried to measure the ultimate outcomes the subsidy program produced for the public. The commission now commits to measuring the percent of homes with telephone service and the number of homes, businesses, and community institutions that gain broadband access. It will also measure the burden of the subsidy program by calculating universal service expenditures per household.

But the FCC declined to devise measures that would tell us how much of the increase in subscribership or access was actually caused by the subsidies, saying it is "not administratively feasible at this time." So like the rooster who crows and gets credit for making the sun rise, the subsidy program will get credit for any improvements in subscribership or access that occur, unless outside experts use FCC data to perform studies that control for other factors.

WASTE:

Because the FCC failed to anticipate the growth of wireless service, a program intended to subsidize phone service where the market was not large enough to support one company ended up subsidizing multiple competitors in the same places. Some companies receive subsidies even where unsubsidized competitors also offer service. The program subsidized very high cost landline service even where satellite would have been much cheaper. Some phone companies receiving subsidies actually charge their customers rates below the national average in urban areas. And phone companies still subject to rate of return regulation are allowed to earn 11.25 percent on their investment – surely a generous profit in today's economy.

The FCC order promises to limit subsidies to one landline and one mobile provider in each census block that lacks service from an unsubsidized competitor. A special fund will offer subsidies for satellite or other innovative technologies in the very highest-cost areas. Companies that charge rates below urban rates will have their subsidies reduced. And the FCC opened a new proceeding to reconsider the target rate of return for subsidized phone companies.

NEVER-ENDING PROGRAM:

The universal service program subsidizes telephone service, which is now virtually universal, but does not explicitly subsidize broadband, which is not.. Instead of simply declaring victory and shutting down the program, the FCC opted to repurpose the subsidies to support broadband in high-cost areas.

The commission chose a definition of broadband that far exceeds what most Americans actually choose to buy: 4 megabytes download and 1 megabyte upload. It will continually move the goalpost, requiring larger carriers to offer 6 megabytes download and 1.5 megabytes upload in some locations several years from now. A graph of projected broadband speeds through 2022 suggests that the subsidized speed goal will continue to increase – virtually guaranteeing that the problem will never be considered solved and the program will never end.

CONCLUSION: A MIXED BAG

The FCC's decision demonstrates both the best and the worst of Washington. The commission froze the high cost universal service program at $4.5 billion annually thru 2017. Congress could learn a lot from an agency that can actually commit to freezing a program's budget for six years. On the other hand, the FCC's repurposing of the subsidies for broadband once more demonstrates the truth of President Reagan's adage that "The nearest thing to eternal life we will ever see on this earth is a government program."

Jerry Ellig is a senior research fellow at the Mercatus Center at George Mason University and an Advisor to the ALEC Telecommunications and Information Technology Task Force.

How The States Have (And Haven't) Fixed The Auto Insurance Market

BY ELI LEHRER

Line up the most vexing issues for a legislature to consider in the 1970s and vehicle insurance might very well have been one of the highest. With a few exceptions, it is not that way anymore. Reforms to auto insurance—increased consumer freedom, a renewed focus on core regulatory activities and cultural changes—offers guidance for state legislators looking to deal with health insurance and, indeed, every area of economic activity under their purview.

First, however, it is worth describing the automobile insurance situation that past legislatures confronted. Between roughly 1970 and 1990, many of America's state automobile insurance markets were a mess. Rates were high, yet insurers occasionally still lost money and an enormous numbers of drivers (nearly half in some places) were unable to find private insurance at any price and had to purchase coverage through state-run residual markets. Since property and casualty insurance is the largest area of economic activity regulated almost entirely at the state level, this presented a huge problem for state legislators. Calls to do something became increasingly intense and many states responded by imposing price controls and rating limitations on automobile insurance in certain cases.

However, these price controls and rating limitations often ended up, at best, raising rates rather than lowering them and, at worst, destroying markets. In the first set of circumstances, prohibitions on raising rates in certain areas (high crime neighborhoods or cities where high traffic densities caused lots of accidents) or for certain purposes (because a driver was male, young, or had a bad credit score) backfired. Unable to make money off of one class of drivers, auto insurers would simply charge higher rates to everyone else. This led to a vicious cycle: demands for price controls, their imposition, higher rates across the board and a call for even more price controls.

Eventually, states like South Carolina, New Jersey, Pennsylvania and Massachusetts found that hardly anyone was willing to write auto coverage under the rules they set. Millions of drivers ended up in residual market plans known variously as "assigned risk plans," "reinsurance facilities" and "automobile insurance funds" that tended to provide scanty coverage at very high rates. Although it was managed differently from place to place—some areas like South Carolina and the District of Columbia wrote entirely new automobile insurance laws while others, like New Jersey and Massachusetts, tweaked theirs—nearly all states transitioned to various forms of open competition by the mid '00s. As a result, rates generally declined in real terms, people left residual markets and increased competition provided a wide variety of new products.

Although this sounds like a straightforward triumph for laissez-faire economics, the transition to freer automobile insurance rate system was not solely a matter of getting government out of the way. Even as they made it easier for auto insurers to change their rates, states also cracked down on fraud, tightened efforts to regulate auto insurance forms (to make sure that consumers got the benefits they thought they were promised) and improved efforts to regulate insurer solvency.

The result of the reforms were not one sided. Companies that did not play by the rules fell by the wayside. Even though the number of companies with significant market share rose in most states during the 1990s (meaning that consumers had more useful choices), the total number of companies writing auto insurance actually fell as rate regulation diminished. This happened, in large part, because some of the new regulations forced weak and dishonest players out of the market.

A range of cultural shifts largely disconnected from insurance probably also helped decrease rates while reducing regulation. Between roughly 1990 and today, norms against drunk driving strengthened greatly, auto theft fell 60 percent and new technology like airbags and electronic stability control made cars intrinsically safer. Since all of these things helped make claims easier, insurance companies were able to make more money without raising rates.

Of course, things are far from perfect today. A few states—California and Michigan to name just two—still have seriously flawed automobile insurance systems. Other states, Massachusetts most prominently, have shown signs of backsliding on previous reforms. But the overall environment for auto insurance for consumers and businesses alike has improved a great deal over the past two decades. And, while some of the changes result from things well outside of state legislators purview—making drunk driving unacceptable resulted from a mass social movement—legislators in much of America solved the problems that annoyed their predecessors by letting the market set prices and strengthening government's hand in carrying out its true, core regulatory responsibilities. It is a story that has manifold lessons as states work to implement aspects of the healthcare reform law and otherwise get asked to take part in economic regulations.

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Get Moving: Public-Private Partnerships Improve Our Road Network

BY GEOFF SEGAL, MACQUARIE CAPITAL USA

According to the American Society of Civil Engineers (ASCE), Americans spend 4.2 billion hours per year stuck in traffic at a cost of $78.2 billion a year, about $710 per motorist. More than a third of our major roads are in poor or mediocre condition and congestion in our urban communities is crippling. ASCE estimates that our country needs to spend an additional $110 billion more a year to substantially improve our road network.

The numbers, and need, only gets worse if we look beyond roads and include other vital components of our transportation network – airports, rail, ports and transit systems – each of these add billions to the annual need of investment necessary to get America moving again. Our challenges are indeed significant.

While the likelihood of a major increase in federal highway spending remains remote, an increase in the federal TIFIA loan program is possible and can help many states address their transportation infrastructure needs. The Transportation Infrastructure Finance and Innovation Act (TIFIA), is a federal credit assistance program for surface transportation projects of national and regional significance that helps state and local governments leverage scarce resources. The program was created to help states advance large-scale projects that might be delayed or deferred because of size, complexity, or uncertainty over the timing of revenues – i.e., tolls or tax increment financing – and has seen its popularity grow dramatically in recent years.

Each dollar of Federal funds can provide up to $10 in TIFIA credit assistance - and leverage $30 in transportation infrastructure investment. With an annual appropriation of only $110 million, the TIFIA program can support $1.1 billion in annual loans. According to the Federal Highway Administration, 25 projects have received $8.7 billion in credit assistance, with $33.1 billion in total project cost.

One of the benefits of TIFIA is merit-based selection. Projects are awarded allocations based on a set of criteria established to remove, or limit, politics and provide support for the most important and credit worthy projects.

However, in recent years the program has been significantly oversubscribed. In 2011, thirty-four different infrastructure projects were seeking $14 billion in loans. Similar interest is expected for 2012 and beyond. As such, only a handful of projects received a TIFIA allocation.

In particular, TIFIA has been an attractive and effective tool to use in public-private partnerships (P3s) (see ALEC model legislation "Establishing Public-Private Partnership (P3) Authority Act"). P3s have been growing in popularity as another tool for states to address their major transportation challenges, bringing in new sources of capital to their programs and getting projects moving again. TIFIA made projects a reality that either would never have been built or at best delivered them decades earlier. States such as Florida, Texas and Virginia have successful track records using P3s and have brought billions in new resources into the transportation networks. Most of these projects have benefited from the TIFIA program, lowering the relative cost of capital and making the projects more affordable. Many other states, including Georgia, Indiana, Colorado and Ohio are increasingly turning to P3s. A more robust and available TIFIA program will allow these and other states to advance much needed transportation projects.

Because of TIFIA's success, some states have initiated programs similar to the federal program within their state. In 2011 the Virginia General Assembly passed legislation establishing the Virginia Transportation Infrastructure Bank. While the Virginia bank will have several "products", it is borrowing from TIFIA the lessons learned on what and how to support transportation projects and P3s.

The next federal highway bill, currently being debated in Washington, will include new rules and new funding levels for the TIFIA program. Fortunately both the House and Senate versions of the bill will broaden the scope and reach of the TIFIA program by significantly increasing the annual amount available to projects as well as increasing the size of credit assistance available to any one project.

At the 2011 Spring Task Force Summit, the Commerce, Insurance and Economic Development Task Force adopted a model resolution supporting the renewal and expansion of the TIFIA program. The Resolution urges Congress to continue to work to expand the program created under TIFIA and recognizes that the program remains one of the critical methods available to advance major transportation projects by leveraging private sector funding.

Neither an enhanced TIFIA program nor P3s will replace the need for sustainable resources to further support the development and maintenance of our nations' transportation network. However, as P3s gain popularity in addressing the most complex (and often most expensive) projects, the federal TIFIA program will continue to grow in popularity and attractiveness. A robust and fully funded program will make more projects viable in more states, thereby reducing our nation's transportation infrastructure deficit.

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States Forging a Path — Corrections and Reentry Reform in 2012

BY CARA SULLIVAN

As the New Year rushes in, so do the state legislative initiatives aimed at doing more with less. Two states, Georgia and Missouri, are seizing the opportunity to do that—through criminal justice reform. These reforms are not only aimed at saving taxpayer dollars, but also at protecting communities. In order to maximize the return of their criminal justice systems, key players in Georgia and Missouri are introducing reforms that protect public safety, hold offenders accountable and contain corrections spending.

Over the past two decades, corrections spending in both Georgia and Missouri has skyrocketed. Georgia currently spends more than $1 billion annually on corrections, up from $492 million in 1990.[1] Missouri has experienced even more of an increase as corrections spending grew 249 percent between 1990 and 2009.[2]

Despite the substantial growth in corrections spending, neither state has seen a robust return in terms of public safety. In Georgia, the recidivism rate—the proportion of inmates who are reconvicted within three years of release—has remained unchanged for the past decade, hovering just shy of 30 percent. In Missouri, crime rates have failed to keep pace with the national decline.[3] Furthermore, in both states most corrections spending is drained by prisons, leaving insufficient resources for the probation and parole agencies that supervise the majority of convicted and sentenced offenders.

Corrections reform is crucial for Georgia and Missouri. If current policies remain in place, Georgia's prison population will grow by 8 percent over the next five years, costing taxpayers an additional $264 million.[4] Missouri is estimated to lose between $3.7 and $12.6 million of potential savings if it fails to adopt corrections reforms.[5]

Both Georgia and Missouri are seeking better returns on their corrections investments. In order to do this, each state formed a working group—The Special Council on Criminal Justice Reform for Georgians and the Missouri Working Group on Sentencing and Corrections. Along with the Pew Center on the States and the Justice Reinvestment Initiative of the U.S. Department of Justice, these working groups formulated recommendations based on extensive data analysis and input from key stakeholders.

The recommendations put forth by both working groups contain several principles that closely align with ALEC's corrections and reentry policies. Implemented together, the following five areas of reform serve as an example for states looking to maintain public safety while reducing corrections spending.

EVIDENCE-BASED PRACTICES

Research and practice over the last 25 years has developed new strategies and policies that can significantly reduce recidivism rates. Because these practices are proven to work, ensuring that evidence-based practices are implemented is a state's best bet for making the most of what it spends on corrections. The Council in Georgia recommended requiring the implementation of evidence-based practices and the working group in Missouri recommended reinvesting savings into evidence-based practices. (See ALEC model policy: "*Recidivism Reduction Act*.")

EARNED DISCHARGE

Earned credit compliance programs reduce the time low-risk, non-violent offenders are on active supervision for each month they are in full compliance with the conditions of their supervision. This allows probation and parole officers to focus resources on high-risk offenders and promotes behavior change by providing incentives for low-risk offenders to meet their conditions of supervision. Both Missouri's and Georgia's working groups recommended the use of earned discharge programs. (See ALEC model policy: "*Earned Credit Compliance Act.*")

ADMINISTRATIVE SANCTIONS

Research indicates that the threat of swift, certain and proportionate sanctions for technical violations can improve probationer and parolee compliance and reduce the number of violators sent to costly prison cells. Missouri's Working Group on Sentencing and Corrections recommended that probation and parole officers be granted the authority to utilize short prison stays as a sanction for violations of supervision. Georgia already has an administrative sanction system in place that has significantly reduced the amount of time probation officers spend waiting in courthouses for violation cases to be heard.vi (See ALEC model policy: "*Swift and Certain Sanctions Act.*")

PERFORMANCE INCENTIVE FUNDING

Sharing state prison savings with community supervision agencies and county-level public safety agencies that successfully implement evidence-based programs and reduce recidivism and new prison admissions can reduce crime without appropriating new funds. Georgia's working group adopted this principle by recommending that the Georgia Department of Corrections and Parole work with localities to create up to ten performance incentive funding pilot programs that provide fiscal incentives for community corrections agencies to reduce recidivism rates. (See ALEC model policy: "*Community Performance Incentive Act.*")

PERFORMANCE MEASUREMENT

Many community corrections agencies lack a systematic approach to performance measurement, making it difficult to determine if the corrections system is accomplishing its goals. Georgia's Council recommended a systematic performance model to evaluate key measures such as recidivism, employment, substance use and payment of victim restitution. Missouri's Working Group on Sentencing and Corrections made a similar recommendation that community corrections agencies be required to annually collect and report data, measure performance and evaluate outcomes. (See ALEC model policy: "*Community Performance Measurement Act.*")

"...key players in Georgia and Missouri are introducing reforms that **protect public safety, hold offenders accountable and contain corrections spending."**

These recommendations put Georgia and Missouri on the path to significant corrections and reentry reform in 2012. These states are not alone in recognizing the need for policy change. Georgia and Missouri follow in paths forged by states such as Texas, South Carolina, Ohio, Kansas, Arkansas, North Carolina and Kentucky, whose criminal justice reforms have maintained public safety, ensured offender accountability and reduced corrections spending.

Cara Sullivan is the Legislative Analyst for ALEC's Public Safety and Elections and Commerce, Insurance, and Economic Development Task Forces.

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[2] Missouri Working Group on Sentencing and Corrections Consensus Report (December 2011).
[3] Report of the Special Council on Criminal Justice Reform for Georgians. (November 2011) and Missouri Working Group on Sentencing and Corrections Consensus Report (December 2011).
[4] Report of the Special Council on Criminal Justice Reform for Georgians. (November 2011).
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Government-Run Bail Leads to More Fugitives

BY MICHAEL HOUGH AND CARA SULLIVAN

You may remember the 1981 action movie "Escape from New York," in which the entire City of New York is a heavily-guarded prison. Unfortunately a number of American cities may begin to look like a scene from this fictional movie because they are now inhabited by large numbers of fugitives.

The Philadelphia Inquirer recently reported the following: "Shaking, bartender Marcia Williamson gave the gunman the little bit of money in her till: $115. He took cash from the customers and fled into the West Philadelphia night…Williamson bitterly recalls the "little smirk" of Timothy Scott, the 22-year-old man whom police have charged with holding up the Caprice Villa. But she is also upset at a court system that could not keep him behind bars despite multiple arrests…Before the robbery, Scott had skipped out under the courts' 'deposit bail' system, which requires many offenders to pay only 10 percent of their bail while signing IOUs for the remainder."[1]

The Inquirer found that Timothy Scott had been arrested ten times in less than five years and had "racked up eight bench warrants as he skipped court again and again - only to be arrested, hauled before the magistrates, and released anew."[2]

Scott's case may be an extreme, but it is far from an anomaly. At last count, $1 billion was owed by defendants who had skipped bail and there were 61,000 outstanding bench warrants in Philadelphia.[3]

Philadelphia isn't alone. According to Dennis Bartlett, Executive Director of the American Bail Coalition, "For more than three decades, Oregon's state-run bail system has left a legacy of one out of three defendants stiffing their court dates, cohorts of fugitives both from Oregon and from out-of-state drifting around Pioneer Square, and red ink running almost to $100 million from forfeitures never collected."[4]

Since Oregon banned commercial bail in 1974, "[T]he failure-to-appear rate has skyrocketed," said District Attorney Joshua Marquis.[5] By failing to appear in court, criminals cost the public a great deal of money due to the expense of rearranging and rescheduling court dates as well as the cost of finding and apprehending fugitives. Other costs include those incurred due to the wasted time of judges and prosecutors and any new crimes committed while the criminal is free.

Similarly, in the City of Detroit, defendants in mass have failed to show up for court and owe the City $65 million in forfeitures.[6]

Philadelphia, Oregon, and Detroit have replaced the private-sector commercial bail bond industry with a government-run bail bond system. In these localities, the government oversees the pretrial release system. This means that the government releases defendants from jail and is responsible for making sure they attend their scheduled court appearances. Unfortunately for law-abiding citizens, the government is less effective when it comes to making sure defendants return to court after they are released and apprehending them when they skip. When the government is the only option for bail, both the number of fugitives and crime rate have dramatically increased.

Thanks to a recent study by the Department of Justice, it is clear that upwards of 30 percent of defendants released by the government, who fail to appear in court, remain fugitives after one year as compared to 19 percent of defendants released on commercial bail. The Department of Justice study concluded the following: "Compared to release on recognizance, defendants on financial release were more likely to make all scheduled court appearances."[7]

Commercial bail provides a better solution than government-run bail because it provides incentives for the bail bondsmen to ensure court appearances. Agents secure the release of a defendant from jail by guaranteeing to pay the entire bond amount if the defendant fails to reappear for his or her court date. In return for this service the bail agent charges the defendant a premium fee to cover the full bond amount.

In opposition to this free-market solution, government bureaucrats have railed against the widespread use of privately-secured bail bonds and instead promoted a complete government takeover of this sector. For years government officials have promoted the idea of eliminating bail bondsmen and encouraging the government to make the decision to release criminals on their own recognizance or on a government-issued deposit bond. The result of this government-run system has been predictable: a large number of criminals failed to appear in court and government officials failed to track them down, putting taxpayers, rather than bail bondsman, on the hook for releasing criminals from jail.

So many fugitives remain at large under the government model of bail because it lacks the efficiency and incentive structure of the private sector solution. Bail bondsmen have "skin in the game" because they will lose thousands of dollars if a criminal fails to show up for court. In the government model, there is less incentive to keep track of offenders because every fugitive represents one less person that a bureaucrat has to supervise.

Government-run bail is contributing to lawlessness and creating fugitive safe-havens in many parts of America. The use of commercial bail bonds will provide a solution to this problem.

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America's Economic Freedom Depends on Protecting Our Intellectual Property

BY TOM FEENEY

In the current economic climate, protecting jobs and innovation take on a heightened importance, and stronger intellectual property (IP) protections for Americans are vital to our economic recovery. One reason why protecting IP is so important is that IP intensive industries account for approximately 60 percent of U.S. exports and employ more than 19 million Americans. IP intensive business sectors currently enjoy a trade surplus. But right now, there are those domestically and overseas who are trying to steal America's intellectual property for their own benefit.

Property rights, including intellectual property, are the cornerstone of America's foundation of economic freedom. Of course, the American IP system is one of balance, with property rights in brands and creative works balanced with corresponding public benefits. IP theft upsets that balance by increasing uncertainty and distortion in the IP marketplace, disincentivizes investment, and ultimately passes costs and harms along to consumers.

IP rights have a sustained history in the United States. The Founders specifically authorized Congress to enact copyright and patent legislation in the Constitution and the first U.S. Trademark statute dates back to 1870. Periodically these laws have been updated to protect American interests. Rapid globalization and the digital era have brought new problems for protecting our creative and innovative industries, and businesses and lawmakers alike are needed to develop a system that will update our laws to protect American interests in a balanced way.

Intensifying the problem currently facing America is that our IP interests are being threatened by inadequate IP laws and enforcement measures in important markets, including China, Russia, India, and Brazil. We need to better protect American interests in these countries by engaging key trading partners to resist chipping away at our property rights. Not only are counterfeiting and piracy serious issues, but so are foreign policies such as forced technology transfer and compulsory licensing. We need to ensure America will remain a leader in innovation to maintain our trade surplus and our economic stability.

As problematic as our international IP difficulties are, domestically there is also a small, but vocal, culture that does not believe in intellectual property rights and does not want to protect private property. Not everyone believes that the time, effort, ingenuity, and resources to develop a creative work or innovative product should be protected from free-riders whether those works are sold on a street corner or on the Internet. Clearly, we need to do more to educate the public that strong IP enforcement maintains the incentive to innovate and create. It protects investments in research and development from being hijacked or encroached upon by IP theft and spurs new growth and new creations.

The value of protecting IP can be found in every state of the union not only through the products invented, but also the jobs created. While Florida, California, Tennessee, and New York are known as being home to the entertainment industry, every state employs workers in the IP-intensive industries. From Silicon Valley in California to Massachusetts' Route 128 technology corridor, from optics centers in Arizona and Vermont to pharmaceutical companies in New Jersey, from a huge software developer in Washington to a tinkerer in his garage – all are protected by IP laws.

America needs to protect its IP industries with strong domestic and international enforcement efforts. At both the national and state level, we need to foster strong IP protection in our economic and foreign policy agenda. By elevating IP protection, we are helping foster an environment where American creators and entrepreneurs alike are rewarded for their work and investments.

Tom Feeney is the President/CEO of Associated Industries of Florida. He represented Florida's 24th Congressional District from 2002-2008, serving as the Co-Chairman of the Intellectual Property Caucus in the US House of Representatives. Feeney was also elected to the Florida House of Representatives where he became the Speaker of the Florida House in 2000 serving until being elected to Congress. He is also an ALEC Alumni.

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