



ALEC 2008 Press Releases

January 30, 2008

State Legislators to Congress: Make Tax Cuts Permanent

WASHINGTON, DC—More than 2,400 state legislators have called on Congress to permanently extend the Bush tax cuts to promote economic growth and wane fears of a possible recession in a resolution recently passed by the American Legislative Exchange Council (ALEC).

“Some of the angst we are currently seeing among investors is in regard to the looming expiration of the Bush tax cuts,” said Iowa State Representative Jamie Van Fossen, who chairs ALEC’s Tax and Fiscal Policy Task Force. “If no Congressional action is taken, taxpayers will witness the revival of the notorious federal death tax and marriage penalty, lose essential capital gains and dividend tax relief, see the expiration of the child tax credits, and experience increases in personal income tax rates.”

All said, more than 115 million families would see an average tax increase of \$1,800 if the tax relief is not made permanent.

“Allowing the tax cuts to expire will result in the largest tax increase in our nation’s history, which will undoubtedly slow the growth of our economy, hurting millions of Americans,” said Jonathan Williams, ALEC’s Tax and Fiscal Policy Task Force Director. “If Congress fails to take action, our nation’s record economic growth will be put at serious risk.”

As the nation’s largest membership organization of conservative state legislators, ALEC members and their constituents are greatly affected by the actions, or inactions, of Congress. With 85 former members currently serving in Congress, the ALEC resolution could very well prove influential in the current tax debate.

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March 7, 2008

**National Ranking of State Education Released
American Legislative Exchange Council's Report Card on American Education**

The American Legislative Exchange Council (ALEC) released its 14th edition of the *Report Card on American Education: A State-by-State Analysis*, which covers the school years 1985-1986 thru 2006-2007. This comprehensive guide ranks the educational performance of the school systems in the states and the District of Columbia with Minnesota placing first and the District of Columbia last.

Based on a variety of indicators, ALEC's *2007 Report Card on American Education* has found no direct correlation between conventional measures of education inputs, such as expenditures per pupil and teacher salaries, and educational outputs, such as average scores on standardized tests. For instance, class sizes today are 15 percent smaller than they were 20 years ago, yet of the 10 states that experienced the greatest decreases, only one (Vermont) is found among the highest performing states in the rankings.

“Raising student achievement levels and improving our schools must involve new and innovative solutions, and examining the data in this publication is a step in the right direction,” said ALEC Education Task Force Chairman Senator Nancy Spence of Colorado. “We need to hold our schools accountable, demand results, and provide parents with more choices when it comes to their children’s education.”

Even with dramatic increases in the amount of educational resources spent on primary and secondary education over the past two decades—expenditures have risen nationally to an all-time high of \$9,295 per pupil—student performance has improved only slightly; 69 percent of American eighth-graders are still performing below proficiency in math and 71 percent in reading, according to the 2007 National Assessment of Education Progress (NAEP).

To obtain a copy of the *2007 Report Card on American Education* or to schedule an interview on the report's findings, please contact Jorge Amselle at (202) 742-8536 or e-mail jamselle@alec.org. An electronic version of the report is available online at www.alec.org.

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March 13, 2008

Tennessee voters want increased access to private and charter schools

A recently released poll from the Friedman Foundation for Educational Choice and co-sponsored by the American Legislative Exchange Council (ALEC) and six other partners indicate widespread dissatisfaction with Tennessee's public education system, and large majorities think that spending more money is not the answer. The scientifically representative poll of 1,200 likely Tennessee voters was conducted January 11-13, 2008 by Strategic Vision.

A large block of likely voters, 52 percent, rate Tennessee's public school system as "poor" or "fair." Nearly eight out of ten likely voters (79 percent) say Tennessee's level of public school funding is "about right" or "too high." That exact percentage of respondents also holds the same belief regarding Tennessee public school teachers' salaries.

The poll shows clear support for broad reform measures that would give parents more choice and control over their children's education. Solid majorities indicate they either strongly favor or somewhat favor reforms that would give parents more choices in the education system, including special need (55 percent) and tax-credit scholarships (52 percent).

"Policymakers and opinion leaders in Tennessee should pay close attention to these results," said Robert C. Enlow, Executive Director and COO of the Friedman Foundation. "Tennesseans are tired of the status quo and the uninspiring 'rubber stamp' for education spending. They clearly want to access more school options." As an organization committed to advancing free market reform and individual liberty, ALEC would applaud any leadership in seeking new and innovative ways to improve educational standards.

To obtain a copy of the Tennessee survey, visit ALEC's website at www.alec.org or the Friedman Foundation at www.friedmanfoundation.org. For information regarding ALEC's work in school reform, contact Education Task Force Director Matt Warner at (202) 466-3800, or via email at mwarner@alec.org.

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May 2, 2008

MN Legislators to Hear from State Economic Competitiveness Expert

Washington, D.C.—Tax policy expert Jonathan Williams, Directors of the Tax and Fiscal Policy Task Force for the American Legislative Exchange Council, will present to Minnesota state legislators the findings of ALEC's latest report on state competitiveness rankings.

The meeting will be hosted by Senator Gen Olson, Minnesota state chair of the American Legislative Exchange Council (ALEC). Media are welcome to attend this important legislative briefing.

**“Rich States, Poor States”
Laffer State Economic Competitiveness Index**

**Presented by Jonathan Williams
Director of ALEC's Tax and Fiscal Policy Task Force**

MAY 6, 2008

**Minnesota State Capitol,
Room 229
8am – 9am**

Before joining ALEC, Jonathan Williams served as Staff Economist at the Tax Foundation, where he conducted tax policy research. Jonathan's work has been featured in many publications including the *Wall Street Journal*, *USA Today*, *the Los Angeles Times*, and *Investor's Business Daily*.

The report, Rich States Poor States is available online at www.alec.org. For more information or questions about the program, call John Lundberg in Senator Olson's office at 651-296-7633. To schedule an interview with Jon Williams please call (202) 557-8484.

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June 26, 2008

Survey finds Oklahomans want school choice

WASHINGTON, D.C.—Four out of five Oklahoman voters—83 percent—would send their children to private, charter, or virtual schools, or educate their children in a home-school setting, according to a survey released yesterday by the Oklahoma Council of Public Affairs and the Friedman Foundation for Educational Choice, and eight cosponsors, including the American Legislative Exchange Council (ALEC).

According to the survey of 1,200 likely Oklahoma voters, if parents “could select any type of school...to obtain the best education” for their child, 41 percent selected private schools, 19 percent selected home schooling, 17 percent selected charter schools, 17 percent selected regular public schools, and 6 percent selected virtual schools.

Moreover, the survey found that Democrat, Republican, and Independent voters support vouchers, tax credits for scholarships, and other school-choice programs, once again showing school-choice advocacy crosses party lines.

“The issue of school choice is about ‘who knows best?’ The parents or the government?” said Jeff W. Reed, Director of ALEC’s Education Task Force. “The Oklahoma survey shows that parents want to be afforded the dignity to choose the best educational setting for their children.”

The scientifically representative poll was conducted April 25-27, by Strategic Vision, an Atlanta-based public affairs agency whose polls have been used by *Newsweek*, *Time Magazine*, BBC, ABC News, and *USA Today*, among others. It has a margin of error of plus or minus 3 percentage points.

To obtain a copy of the Oklahoma survey, visit ALEC’s Web site at www.alec.org or the Friedman Foundation for Educational Choice at www.friedmanfoundation.org. For information regarding ALEC’s work in school reform, contact Jeff W. Reed, Education Task Force Director, at (202) 466-3800.

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July 1, 2008

American Legislative Exchange Council Approves Model Bill for Transparent, Public-Sector Collective Bargaining

WASHINGTON, D.C.—The American Legislative Exchange Council (ALEC) recently adopted model legislation designed to increase public awareness of negotiations between public-sector labor unions and state and local governments.

The model bill is the latest to apply a greater degree of transparency to public meetings. While all states have some form of open public meetings laws, only 13 allow for some form of transparency for government labor negotiations. The ALEC model language would expand state open meetings laws to encompass these negotiations, which include public officials and public employees discussing public contracts funded with public money.

The suggested language also clarifies that documents exchanged during collective bargaining negotiation sessions are available for disclosure to the public. The bill recommends the establishment of a state government website to act as a clearinghouse for the public to access copies of all public-sector collective bargaining agreements.

The model legislation was sponsored by the Evergreen Freedom Foundation, a free-market think tank based in Olympia, Washington. The ALEC Commerce, Insurance and Economic Development Task Force approved the model legislation at its annual Spring Task Force Summit on May 16, 2008, and the ALEC board gave final approval to the language on June 23, 2008.

ALEC consists of members from both public and private sectors and is the nation's largest individual membership organization with over 2,000 members.

For information regarding ALEC's work in the areas of labor and commerce, contact Michael Hough, Commerce, Insurance and Economic Development Task Force director, at (202) 742-8530 or mhough@alec.org.

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August 8, 2008

FCC Order Threatens Internet with Brave New Regulatory World

Washington, D.C.—The American Legislative Exchange Council (ALEC) recognizes the Internet as a technological breakthrough driven by free-market enterprise and the absence of burdensome regulation. ALEC expresses grave concerns that a recent action by the Federal Communications Commission (FCC) threatens the future of the Internet with a new, unprecedented era of so-called “network neutrality” regulations.

At last week's meeting on Friday, August 1, a 3-2 majority of the FCC signaled its intent to subject the Internet to a new bureaucratic regulatory regime. The FCC concluded that internet service provider (ISP) Comcast acted contrary to the FCC's Internet Policy Statement regarding ‘reasonable network management’ for apparently slowing user uploads of a particular kind of peer-to-peer (P2P) file-sharing to relieve congestion of its network. The FCC disagreed with Comcast and commentators in the proceeding who insisted that such actions were indeed reasonable. According to the FCC's Order, the ISP must disclose details of past and future network management practices and submit a compliance plan, or risk penalties.

The FCC was undeterred by a March 27 agreement between Comcast and P2P service BitTorrent to collaboratively solve network management issues without the need for government interference. Rather than let the marketplace pursue solutions, the FCC chose bureaucratic interventionism.

“The FCC's ruling in this matter puts freedom and commerce on the Internet at risk,” said Seth Cooper, ALEC's Telecommunications & Information Task Force Director. “Bureaucratic second-guessing and attending uncertainty will now plague ISP efforts to manage their networks for the benefit of consumers. The FCC is undermining the ability of ISPs to actively pursue innovative solutions to relieve high traffic congestion on its network so that all customers may enjoy a high quality Internet experience.”

Cooper also pointed out that the process by which the FCC issued its order was problematic. “Having never adopted rules about network management for an ISP to understand and follow, the FCC's action is certainly inequitable. There is also strong reason to believe the FCC lacks legal authority to impose such obligations after-the-fact,” he said. The FCC relied instead on general guidelines it previously described as unenforceable. In its Order, the FCC retroactively created and applied a novel interpretation of ‘reasonable network management.’ “The FCC's Order stems from bureaucratic difference of opinion over Internet traffic engineering. Through its arbitrary, ex post facto adjudication, the FCC took an unreasonable approach to ‘reasonable network management,’” stated Cooper.

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

Cooper applauded the statements of dissenting Commissioners Deborah Taylor Tate and Robert McDowell.

ALEC's Resolution on Network Neutrality (2007) affirms that the exponential growth of the Internet is a result of “the government's ‘hands off’ approach, ever increasing competition, as

well as fierce consumer interest.” The Resolution recognizes that “companies that invest in broadband and broadband-related applications should be afforded the flexibility to explore fair and competitive business models and pricing plans for their products and services.” The Resolution also declares that “mandated net neutrality regulations would impede future capital investments in the U.S. broadband infrastructure.” It resolves that consumers should “receive meaningful information regarding their broadband service plans.”

Earlier this year, Cooper submitted Reply Comments in the Broadband Industry Practices proceeding opposing new Internet regulations, consistent with ALEC's Resolution on Network Neutrality.

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August 25, 2008

State Legislators Oppose EPA Plan to Regulate Greenhouse Gases

Washington, D.C.—The Natural Resources Task Force of the American Legislative Exchange Council, a national organization of state legislators from across the United States, voted unanimously to oppose the Environmental Protection Agency’s plan to regulate greenhouse gases under the Clean Air Act as described in the Advance Notice of Proposed Rulemaking (ANPR) it released on July 11, 2008.

The Natural Resources Task Force, which includes legislators from 42 states, convened during ALEC’s 2008 Annual Meeting of the American Legislative Exchange Council in Chicago, IL in August. The EPA plan would affect mobile vehicle emissions as well as emissions from stationary sources such as apartment buildings, large homes, schools, even hospitals.

“We oppose this plan because it appears to circumvent legislative efforts through bureaucratic initiative,” said Rep. John Piscopo (CT), chair of the ALEC task force. He continued, “There are looming questions about the science, economics and legality of this plan. These require lengthy and thorough discussions in a public debate of elected officials accountable to the people.”

ALEC joins the many Cabinet-level critics of this plan including EPA administrator Stephen Johnson who, in the preface to the ANPR, questioned the wisdom of tackling greenhouse gas regulations via the Clean Air Act. According to Johnson, the Clean Air Act is an outdated law designed to address regional pollutants and the plan could result in “an unprecedented expansion of EPA authority.”

“State legislators are wary of this would-be expansion of federal authority on an issue that remains highly controversial among legislative bodies and the public,” said Matt Warner, ALEC’s director of the Natural Resources Task Force.

Additional information

ALEC’s resolution opposing the EPA plan is available at www.alec.org.

The ANPR is available on the EPA’s website at www.epa.gov/climatechange/anpr.html.

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August 26, 2008

Improved Credit Tied to Expanded Access for Consumers
ALEC State Factor Report Describes Importance of Credit Scores and
Financial Education During “Credit Epidemic”

Washington, DC– The American Legislative Exchange Council (ALEC) has just published a new State Factor, titled *Access to Credit Means Access to the American Dream*. This report addresses the problem of growing numbers of Americans with poor credit and offers solutions for policy makers.

The report encourages lawmakers to allow the private sector to offer credit to individuals with lower credit scores so that they may both meet their immediate financial needs, and have the opportunity to improve their all-important credit score over time.

Credit scores have become a routine element of our daily economic lives that extends far beyond simply qualifying for a loan. When determining a job applicant’s employability, for example, many employers look at an applicant’s education, experience, drug test results - and their credit score. Landlords often refer to credit scores when evaluating potential renters. Public utilities and wireless telephone companies have used credit scores widely for years in deciding whether to require a deposit, and the automotive insurance industry uses credit scores to help determine the likelihood that a consumer will file an insurance claim.

Access to Credit advises us that “the problem is not the availability of too much credit; it is the large and growing number of Americans with poor credit.” Credit has become an enabler of wealth creation in America, and many consumers with poor credit scores will have a difficult time acquiring wealth because they are unable to purchase a home or take out a loan to start a business, says the report. Without the ability to access credit that is reported to the credit reporting agencies such as Experian, Equifax and TransUnion, many credit-challenged Americans have little hope of improving their credit scores. This creates a corresponding impediment to moving up the economic ladder and to achieving the American dream.

“The message of *Access to Credit* is that legislators should exercise caution as they review public policy proposals that would further erode our free-market system in the name of consumer protection,” said Rep. Susan Lynn (R-TN). “Amid this economic downturn, lawmakers should be careful not to over-correct. We should enact policies that support consumers with low credit scores in their efforts to access credit products and services, especially those policies which can help consumers improve their credit scores.”

In addition to supporting expanded access to credit, the ALEC paper strongly endorses financial education and “loan transparency standards” as an important component in addressing the access to credit problem.

For a complete copy of “*Access to Credit Means Access to the American Dream*,” please visit: www.alec.org/am/pdf/accesscredit2008statefactor.pdf

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September 4, 2008

ALEC Supports Freedom to Negotiate in the Broadcasting Marketplace

As the fall season starts, the American Legislative Exchange Council (ALEC) celebrates the American pastime of football and the free market system of enterprise. As the National Football League (NFL) kicks off its 2008-09 season, ALEC highlights its recently approved resolution opposing efforts to insert government into commercial disputes such as those that have arisen over the broadcast of NFL games.

This week, millions of viewers will tune into professional football games through broadcast television, cable television, satellite, broadcast radio, and the Internet. To view additional NFL games from their homes, some football fans subscribe to the NFL Network, a channel available on cable operators' premium tier of channels. But controversy arose this past year when the NFL demanded cable operators place the NFL Network on their standard tier of channels. This despite the higher cost of the NFL Network compared to typical standard tier channels. Understandably, cable operators chose not to saddle themselves or their standard tier customers with extra costs, declining to give the NFL Network special treatment.

Rather than offer better terms through private negotiation, the NFL turned to the state government for leverage. In the last year, legislatures in states such as Illinois, Indiana, Ohio, North Carolina, South Carolina, Wisconsin and Texas considered proposals requiring independent programmers such as the NFL and cable operators to enter into a special, binding "arbitration" process. The so-called arbitration process favors terms offered by the parties seeking government intervention.

In May, ALEC's Telecommunications and Information Technology Task Force adopted a *Resolution Opposing Government Involvement in Commercial Negotiations*. The *Resolution* recognized that "a myriad of programming choices have resulted from the successful private negotiation of contracts between program networks and video distributors without government interjection requiring the parties to submit to mandatory arbitration." It also declared that "parties out to be free to negotiate without the threat of government intervention tipping the scales in one party's favor." The *Resolution* resolved that "ALEC calls upon the government to oppose efforts to adopt legislation requiring mandatory arbitration to resolve commercial disputes."

"Government shouldn't be involved in a commercial disagreement that should be resolved in the competitive marketplace," said Seth Cooper, Task Force Director of ALEC's Telecommunications and Information Technology Task Force. "Government shouldn't adopt a hedged process that will result in government picking the winners and losers in a commercial contest. By this *Resolution*, members of ALEC put all state legislators on notice to beware this kind of heavy-handed intrusion by government in the marketplace."

Cooper also noted that federal law already provides independent programmers adequate protection against unfair discrimination. "If an independent programmer feels it is being unfairly discriminated against, it can file a complaint and assert its rights," he stated. "But these forced commercial arbitration proposals are more about favoritism than fairness."

September 9, 2008

ALEC Supports Separation of Powers and Supermajorities for Tax Increases in Washington Supreme Court

Today, the Washington Supreme Court hears oral arguments in the case of *Brown v. Owen*, concerning the state's supermajority requirement for tax increases. The American Legislative Exchange Council (ALEC) recently filed a "friend of the court" brief in the case. ALEC's brief urges the court to respect the separation of powers and thereby uphold the state's supermajority requirements.

Brown v. Owen arose when Washington Senate Majority Leader Sen. Lisa Brown filed a motion with the Washington Supreme Court, asking it to order the President of the Senate, Lt. Governor Brad Owen, to certify that a bill raising taxes to have passed the Senate despite having not achieved a supermajority. Lt. Governor Owen had ruled that the bill called for raising taxes and therefore required a supermajority. Neither Sen. Brown nor any member of the Washington Senate appealed the Lt. Governor's parliamentary ruling. When on final passage the bill received a bare majority—but not a supermajority—Lt. Governor Owen considered the measure failed. (The Washington House of Representatives did not pass any similar legislation during the session.)

ALEC's brief supported the position of Washington Attorney General Rob McKenna, whose office defended the supermajority requirements. In its brief, ALEC stressed the importance of the separation of powers as a safeguard of limited government that protects individual liberty from unaccountable, concentrated power. ALEC argued that separation of powers principles prohibit a court from interfering with the legislative's branch's ability to interpret and apply its own rules in discretionary matters. The brief concluded that Lt. Governor Owen's ruling that a tax increase requires a supermajority was a discretionary ruling, not a ministerial or legal ruling that the Court can interfere with. ALEC's brief noted that the Washington Senate could have overruled Lt. Governor Owen's ruling with a simple majority but failed to do so. The brief urged the Court not to take sides in political dispute between members of the legislative branch.

The position taken by ALEC in its brief to the Washington Supreme Court is consistent with ALEC official policy as contained in its Super-Majority Act, a model bill for state legislators. The introductory provisions of its brief asserted that "ALEC supports supermajority requirements on the premise that tax increases fuel excessive government spending." The brief also reiterated ALEC's policy that "to more effectively control the budgetary process, the ability to raise taxes or enact new taxes should be made as politically difficult as possible, require broad consensus, and be held to a high standard of accountability."

Read ALEC's friend of the court brief in *Brown v. Owen* (http://www.affwa.org/files/pdf/ALEC_amicus.pdf).

September 15, 2008

State Legislators Urge Congress to End Offshore Drilling Ban

Washington, D.C.—The Natural Resources Task Force of the American Legislative Exchange Council, a national organization of state legislators from across the United States, voted unanimously to urge Congress to respond to America’s energy needs by ending the moratorium on offshore drilling.

The Natural Resources Task Force, which includes legislators from 42 states, convened during ALEC’s 2008 Annual Meeting of the American Legislative Exchange Council in Chicago, IL in August. With Congress approaching the deadline to extend the current moratorium, state leaders are calling on members of Congress to answer the public’s demand for more drilling.

Many legislators from coastal states are expressing their support of policies that would expand opportunities to tap resources offshore. In a statement explaining his support, Virginia Del. John Cosgrove wrote, “I believe that it is absolutely essential that we, as a nation, search for the energy resources needed to end our dependence on foreign oil. The search for additional gas and oil energy from offshore exploration and drilling is critical to the national security and financial well-being of Virginia and the United States of America.”

“It is time for the United States of America to become energy independent and produce oil for our own citizens,” said Maryland Rep. Nancy Stocksdales. She continued, “I am urging Congress to put politics aside and do what is best for this nation and begin offshore drilling.”

Connecticut Rep. John Harkins wants the United States to be more proactive in response to Americans’ dependence on foreign suppliers. “If we do not drill, our import percentage will rise steadily over the next decade. The result will be even higher oil prices.” Harkins notes, “As our oil reserves decline and import percentages increase you can count on OPEC to take full advantage of our vulnerability.”

The U.S. Department of the Interior’s Minerals Management Service estimates 86 billion barrels of oil and 420 trillion cubic feet of natural gas are yet to be discovered in offshore areas of the Outer Continental Shelf.

In Resolution Urging Congress to End the Outer Continental Shelf Moratorium on Oil and Natural Gas Exploration and Production, ALEC calls on Congress to pave the way for lower domestic energy costs and more reliable energy markets by giving all coastal states the authority to determine whether offshore drilling should be permitted along their coast.

October 2, 2008

ALEC Joins Alliance Promoting October as National Cyber Security Month

The American Legislative Exchange Council (ALEC) recognizes October as National Cyber Security Awareness month. As a nationwide membership organization of over 2,000 state legislators, ALEC wholeheartedly supports public and private educational outreach efforts encouraging safe practices for computer and Internet users.

“ALEC strongly urges computer users to take some time this month to make sure they are protected when using the Internet,” said Seth Cooper, Director of ALEC’s Telecommunications & Information Technology Task Force. “By taking just a few simple steps such as installing antivirus programs, installing antispymware programs and using firewalls, computer users can significantly improve the safety of their World Wide Web experience.”

Cyber safety requires all computer users to stay informed, take action, and remain vigilant. Cyber criminals use a number of ever-changing tactics to scam innocent consumers. A common tactic for identity theft and fraud is “phishing.” Scammers send unsolicited e-mails falsely identified as coming from trusted commercial websites and services, fraudulently inducing consumers to provide credit card numbers and financial information to cyber criminals. Computer users who operate without antispymware, antivirus and firewalls can also find their computers taken over by “bots.” A malicious type of software, bots can control computers and use them as tools for further identity thefts. Computers controlled by bots can become hosts of phishing sites and infect other computers.

National Cyber Security Awareness month is organized by the National Cyber Security Alliance (NCSA), a non-profit association of government agencies, academic institutions, other non-profit organizations, and private industry sponsors. This month ALEC announces its joining with the NSCA as an official endorser. “We are delighted to join ranks with universities, nonprofits, agencies, and industry partners in furthering the National Cyber Security Alliance’s efforts,” stated Cooper. “ALEC is eager to help increase the public’s awareness of cyber security threats and how they can be addressed.” The official mission of the NCSA is to “create a culture of cyber security and safety awareness by providing the knowledge and tools necessary to prevent cyber crime and attacks.” Simple cyber security tips for computer users can be found at NCSA’s website, www.staysafeonline.org.

“Beyond educational outreach, ALEC remains committed to addressing cyber security on the public policy level,” added Cooper. ALEC’s Telecommunications & Information Technology Task Force has emphasized cyber security through model state legislation. For instance, ALEC’s *Computer Spyware Protection Act* (2005) is a model bill that makes it unlawful for persons to deceptively install spyware, providing a civil cause of action against violators. Also, ALEC’s *Anti-Phishing Act* (2006) makes it unlawful to defraud someone by using a false website or pretending to be a legitimate Internet business and fraudulently obtaining identifying information. In addition, ALEC’s *Information Security Management Act* (2007) is a model bill that enables state governments and their agencies to develop and implement information security plans to protect sensitive personal data that is entrusted to them. In 2008, ALEC adopted comprehensive online child safety model legislation.

“In the months and years ahead,” concluded Cooper, “ALEC will continue to monitor the latest threats to cyber security and develop public policies that maximize computer user freedom and industry innovation for new security technologies, to ensure all citizens can benefit from safe computer and Internet experiences.”

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October 7, 2008

Supreme Court Urged to Uphold States' Powers of Appropriations and Education Policymaking

The American Legislative Exchange Council (ALEC), the nation's largest individual membership association of state legislators, filed a friend-of-the-court brief with the U.S. Supreme Court in the case of *Speaker of the Arizona House of Representatives and President of the Arizona Senate vs. Miriam Flores, et al.* ALEC requested the Supreme Court take up the case to vindicate the constitutional authority of state elected officials to adopt and fund educational policies that emphasize standards and accountability.

"*Flores* is another 'democracy by decree' case where a federal trial judge mistakenly tries to micromanage government institutions over a span of several years. What began as a sincere effort to ensure that English language-learner (ELL) students in one school district were given enough resources to overcome language barriers and receive an equal education has now spun out of control," said Seth Cooper, a Task Force Director at ALEC, who served as co-counsel on the brief.

The *Flores* case originated as a class-action lawsuit against a lone Arizona School District, filed in 1992. The school district was ruled to be in violation of federal law for failing to provide ELL students an equal opportunity for education. Despite significant improvements to ELL funding and programs that followed, a federal trial judge in Arizona later absorbed the entire state into the litigation. More recently, the federal trial judge declared that the Arizona legislature's attempts to improve overall education funding and other funding sources for ELL programs and to combine them with performance accountability standards violated federal law. The trial judge insisted that the Arizona legislature must adopt earmarked appropriations to satisfy the law. Arizona's House Speaker and Senate President challenged the trial judge's rulings. But the U.S. Court of Appeals for the Ninth Circuit upheld the trial judge's rulings, refusing to consider changes in factual circumstances and federal law that have taken place in recent years.

"Under the separation of powers, appropriations are a legislative function," Cooper said. "It's the job of courts to uphold individual rights, but not to assume legislative powers to do so. Appropriations involve the balancing and prioritizing of competing interests and policy choices through the legislative process."

Traditionally, states bear the primary responsibility for providing public education and financing it. But states risk losing their ability to provide those services effectively where federal courts enter decrees and injunctions that refuse to take into account changing circumstances and bind successive groups of elected officials. ALEC's brief asserted that court decrees and injunctions against state and local government institutions be narrowly drafted, limited in duration, and respectful of state and local interests and policy judgments.

In its brief to the Supreme Court, ALEC emphatically defended the ability of states to rely on performance standards and accountability measures to better provide public educational services.

"Study after study shows that throwing money at schools doesn't by itself result in improved performance," said Jeff Reed, ALEC's Education Task Force Director. "ALEC believes that standards and accountability are important factors for achieving educational success. We hope the Supreme Court reasserts its recent rulings that flexibility be given to state and local

governments to take new factual circumstances into account and to pursue innovative solutions to better provide public education.”

ALEC’s general and principled policies regarding government institutional reform cases are embodied in its *Resolution on the Federal Consent Decree Fairness Act* (2006). In addition, ALEC’s support for standards and accountability in education policy is expressed in its *Resolution Supporting the Principles of No Child Left Behind* (2006).

October 13, 2008

ALEC Supports State Legislators' Constitutional Redistricting Authority and Stare Decisis at the Supreme Court

Washington, D.C.—The American Legislative Exchange Council (ALEC), the nation's largest individual membership association of state legislators, recently filed a friend-of-the-court brief with the U.S. Supreme Court in the North Carolina redistricting case of *Bartlett v. Strickland*. ALEC urged the Court to reaffirm the bright-line standards for legislative redistricting it has adhered to in its prior rulings construing the Voting Rights Act (VRA).

“ALEC believes in protecting the constitutional authority entrusted to state legislators over the redistricting phase of legislative reapportionment under Article I, Section 4” said Seth Cooper, ALEC's *amicus* counsel. “State legislators should be able to make redistricting decisions based upon political subdivisions such as counties as well as other objective, race-neutral means of limiting unconstitutional gerrymandering. Legislators also need the clearest possible set of rules for redistricting so that they can properly understand and apply them in setting district boundaries for Congress and state legislatures. Otherwise, judges too readily become the authors of redistricting choices, rather than impartial referees safeguarding individual rights” Cooper added.

At issue in *Bartlett v. Strickland* is whether the VRA and related Supreme Court case law mandate creation of “crossover minority” districts when doing so is contrary to race-neutral state constitutional requirements. The North Carolina State Constitution's “Whole County Provision” provides that no county shall be divided in the formation of senate or representative districts unless federal law so requires. Under the Supreme Court's prior ruling in *Thornburg v. Gingles* (1986), a legislative district boundary violates section 2 of the VRA (1) if a racial minority population constitutes a majority of that district, (2) if the minority group votes as a bloc, and (3) a racial majority population votes as a bloc enough to usually defeat the minority's preferred candidate, so that as a result the minority voters' ability to elect candidates of their choice is impaired. Applying this case law, the North Carolina Supreme Court held that because Pender County, NC is not numerically a “minority-majority” district, federal law did not require the state legislature to split up the county in setting single-member state legislative districts. Rather, the North Carolina Supreme Court held that dividing up the County violated the state constitution's Whole County Provision. The North Carolina Supreme Court's decision is now under review by the nation's high court.

“The Voting Rights Act is a landmark piece of civil rights legislation that helps guarantee citizens their 15th Amendment right to vote, free from denial or abridgment on account of race or color,” stated Cooper. Amendments to the VRA and Supreme Court decisions have also put in place safeguards to ensure that voters do not have their votes diluted through unconstitutional gerrymandering of legislative districts. “*Thornburg v. Gingles* at least provided state legislators with a workable framework for making redistricting decisions. But eliminating the quantifiable ‘minority-majority’ requirement by mandating a more subjective determination involving coalitions makes the entire framework self-contradictory and unworkable. By definition, minority populations that form working coalitions with majority populations do not find their ability to elect candidates of their choice impaired” continued Cooper.

However, the Executive Director of the North Carolina State Board of Elections argues that section 2 of the VRA mandates that legislative districts be created whenever a minority population in a given area could form a coalition with majority voters to elect a candidate of their

choice. This would essentially demand creation of *near* “majority-minority” districts in every case, lacking any clear standard for state legislators to understand and apply.

Recently, the Supreme Court granted the motion of the Solicitor General of the United States to participate in oral arguments. The *amicus* brief of the Solicitor General supports the *Thornburg v. Gingles* standards and the ruling by the North Carolina Supreme Court. The Solicitor General’s position in the case is similar to ALEC’s.

Supreme Court Justices have declared that race should not be the predominant factor in redistricting decisions and that states should be able to respect political subdivisions as race-neutral criteria for making those decisions. But if the *Thornburg v. Gingles* standards are discarded, it would likely make every redistricting decision a racially-charged decision from the start. Courts would be increasingly thrust into the position of deciding what racial majority populations vote with what racial minority populations and how to reconcile conflicting claims by different racial minority populations in the same geographical region.

Thornburg v. Gingles establishes a “results” test for unlawful vote dilution taking place where no racially discriminatory intent is established. It does not apply where individuals or officials challenge districting decisions based on alleged discriminatory intent. Also, section 5 of the VRA provides imposes additional requirements for counties with historical patterns of racial discrimination. But Pender County, NC, is not subject to special oversight under section 5.

ALEC also filed an *amicus* brief with the Supreme Court before its most recent redistricting decision, *League of United Latin American Citizens v. Perry* (2006).

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November 9, 2008

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The transition from analog broadcasting over-the-air TV to digital broadcasting will allow viewers to experience higher quality picture. Because digital broadcasting uses less spectrum than analog, the transition will also free additional spectrum to be reallocated for wireless broadband use. But to view digital signals, consumers who use antennas to watch TV and have older TV sets must upgrade by using either a converter box, a new TV set with a digital tuner, or a pay TV subscription such as cable or direct-broadcast satellite. Consumers who use antennas and have older TV sets who do not upgrade will find that their TVs no longer work.

Right now, consumers who rely on antennas and older TV sets can take advantage of the federal converter box coupon program. Every household in the United States can request up to two coupons worth \$40 each toward the purchase of basic converter boxes at local consumer electronics retail stores. Consumers can apply for coupons at www.dtv2009.gov or by calling 1-888-DTV-2009. Importantly, ordered coupons expire 90 days after they are mailed. Each coupon has an expiration date printed on it. Federal law prohibits the sale of coupons, but coupons may be gifted by consumers who order them.

“Now is the best time for consumers using older TV sets with antennas to order their coupons,” said Seth Cooper, Director of ALEC’s Telecom & IT Task Force. “Coupon supplies are limited and mail delivery takes time. Ordering early gives consumers plenty of time to buy converter boxes and make sure they are properly set up. Citizens should also take the time to find out if family, friends and neighbors who use older TV sets with antennas have ordered coupons or pay-TV services to prepare for the DTV transition.”

The DTV transition date was set by Congress through the Digital Transition and Public Safety Act of 2005. Pursuant to the Act, in January of this year the Federal Communications Commission (FCC) conducted a licensing auction for use of the spectrum to be reallocated following the February 17, 2009 DTV transition. The FCC auction raised over \$19 billion from auction-winning licensees. Proceeds of the auction are deposited in the federal treasury, with a portion of those proceeds funding the converter coupon program. The reallocated spectrum will be used by licensees to offer consumers new wireless broadband services.

ALEC’s longstanding Resolution Concerning Management of the National Spectrum supports market-based mechanisms—such as competitive bidding or auctions for spectrum assignment—to encourage the most efficient use and fullest deployment of spectrum-based or wireless telecommunications services to the greatest number of consumers at the lowest possible costs. The Resolution also encourages new innovations and services through use of all assigned spectrum by reducing regulations and allowing for flexible use of assigned frequencies while maintaining broad requirements for compatibility and interference protection.

###

ALEC's Solution to the \$54 Million Pants Case

December 22, 2008

On December 18th, the D.C. Court of Appeals denied the appeal of former Judge Roy Pearson's lawsuit against Jin and Soo Chung, the owners of Custom Cleaners.

After being hired to alter a pair of Judge Pearson's pants, the Chungs misplaced the pants for a short period of time. Upon recovery, they attempted to give the pants back to Pearson who refused to take them and, relying on an outrageous interpretation of the Chung's "Satisfaction Guaranteed" sign, demanded \$54 million in damages. In its denial the Court of Appeals' said: "We agree with the trial court that Pearson's expansive interpretation of 'Satisfaction Guaranteed' is not supported by law or reason."

The denial is certainly good news for the Chung family, but it is difficult to call them the winners. The time, cost, and energy of fighting this case has cost them 2 of their 3 dry cleaning shops.

Christopher Manning, the attorney representing the Chungs, shared his mixed response with ALEC: "While the Chung family and I are happy with the trial verdict and the denial of Mr. Pearson's appeal, the fact remains that business-killing frivolous litigation similar to this could easily happen again if changes aren't made to our legal system. In particular, the vague and often unfair D.C. Consumer Protection Act, and similar laws in other states, must be amended to not encourage meritless lawsuits like this case."

The problem does not stop in D.C. Numerous other state-level Consumer Protection Acts only require similar minimal proof. The American Legislative Exchange Council (ALEC) has developed its Private Enforcement of Consumer Protection Statutes Act to safeguard against such troublesome abuse.

Additional information on this case can be found on ALEC's web site at www.alec.org. A video presentation by Christopher Manning can be viewed on [YouTube](#) as well.

###

ALEC Founder and Friend Paul Weyrich Dies

December 18, 2008



More than thirty years ago, a small group of state legislators and conservative policy advocates met in Chicago to implement a vision: a nonpartisan membership association for conservative state lawmakers who shared a common belief in limited government, free markets, federalism, and individual liberty.

Conservative activist Paul Weyrich was among those first few with the vision and initiative to help establish the American Legislative Exchange Council. At the same time, Weyrich was also busy helping to give a voice to a growing conservative movement in America as a co-founder and the first president of the Heritage Foundation, and later as chairman and CEO of the Free Congress Foundation. He will be sorely missed.

Weyrich, 66, is survived by his wife, Joyce, five children and several grandchildren.

###

Evidence-Based Medicine: Rationing Care, Hurting Patients
New Report Released by the American Legislative Exchange Council

December 9, 2008

Washington, D.C.—As health care costs continue to rise, state policymakers are increasingly turning to “evidence-based medicine” (EBM)—in the form of Medicaid preferred drug lists and physician “pay for performance” (P4P)—to determine best practices in medicine. But a new report shows that EBM could lead to health care rationing and the destruction of the doctor-patient relationship.

“The danger is real,” says Twila Brase, R.N., P.H.N., president of the Citizens’ Council on Health Care and author of a new ALEC report, *Evidence-Based Medicine: Rationing Health Care, Hurting Patients*.

ALEC’s report suggests that medical decisions based on EBM are often tainted by researcher bias, conflicting evidence, and special interests. Policymakers who use EBM to craft Medicaid preferred drug lists—a government-authorized group of “safe” and “cost-effective” prescription drugs for Medicaid patients—can limit access to important medications, require extra work for physicians, and put certain Medicaid recipients’ health at risk.

“Although ‘evidence-based medicine’ sounds benign, state legislators should be warned that, if fully implemented, EBM will leave patients vulnerable to the political biases and value-laden agendas of health bureaucrats,” Brase says.

The report also finds that “pay-for-performance” (P4P)—a move to tie physician payments to compliance with government-issued guidelines—will sever the doctor-patient relationship and could be used to ration health care services.

This valuable report explains the debate surrounding EBM, questions the emphasis on evidence and guidelines for medical decisionmaking, demonstrates how EBM harms the doctor-patient relationship and why EBM won’t guard against frivolous lawsuits, and describes various iterations of evidence-based medicine being enacted and implemented today. The full report is available online [here](#).

###

**Bill Howell, Speaker of the Virginia House of Delegates,
Will Chair American Legislative Exchange Council**

December 9, 2008

(Washington, D.C.) — William J. Howell, Speaker of the Virginia House of Delegates, was named as the 2009 National Chairman of the American Legislative Exchange Council (ALEC) during its annual States & Nation Policy Summit in Washington, D.C. held December 4-6, 2008. ALEC represents a network of 2,000 state legislators who are committed to the fundamental Jeffersonian principles of limited government, free enterprise, federalism, and individual liberty.

“I am honored by the confidence that the nonpartisan members of ALEC have placed in me to lead this outstanding organization in 2009,” said Speaker Howell. “Exploring and learning from what other states are doing and recognizing the need to change, adapt, innovate, and improve lie at the very heart of what ALEC is all about. It’s what has made ALEC such a powerful force against the status quo and for a more free and prosperous future. I look forward not only to building upon but strengthening ALEC’s reputation as a leader championing new ideas and practical solutions that deliver real results for the benefit of people, taxpayers, and businesses across America.”

William J. Howell is the 54th Speaker of the Virginia House of Delegates and has led the 100-member chamber since 2003. First elected a delegate in 1987, he represents the 28th House District, which includes parts of Stafford County and the City of Fredericksburg. Under Howell’s leadership, Virginia has adopted fiscally responsible state budgets with forward-looking investments in K-12 and higher education, public safety, mental health, and other core services while avoiding costly new programs. In 2007, Howell took the unprecedented step for a Virginia House Speaker of sponsoring and successfully enacting a comprehensive transportation plan with significant institutional reforms, historic land use changes, and over \$3 billion in statewide and regional funding for roads, rail, and transit. He has championed improving health care access and the Medicaid program through greater choice, better quality, and cost savings. A strong supporter of restoring the Chesapeake Bay, he also led the effort to enact Virginia’s national model program for open-spaces land preservation using free-market principles. Howell has been a member of ALEC’s Board of Directors since 2003. ALEC honored Howell as *State Legislator of the Year* in 2001.

During ALEC’s 2008 States & Nation Policy Summit, hundreds of state legislators from across the United States gathered for three days of intensive discussions on the critical issues facing the states and nation, to share their knowledge and experiences with each other, and to hear from national leaders.

ALEC is renowned for developing cutting edge legislative policy and garnering top policy speakers. This year’s speakers included: Indiana Governor Mitch Daniels; former Speaker of the U.S. House of Representatives Newt Gingrich; syndicated columnist Amity Shlaes, author of *The Forgotten Man: A New History of the Great Depression*; U.S. Rep. Mary Fallin (OK); and U.S. Rep. Tom Price (GA).

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