

# INSIDE *ALEC*

A PUBLICATION OF THE AMERICAN LEGISLATIVE EXCHANGE COUNCIL



**FOCUS ON  
PUBLIC SAFETY**

## **Criminals on the Streets**

**YOUR RIGHT TO KNOW**

**Reducing Recidivism  
and Treating Individuals**

**Why Green Jobs Are a Liability**

**Preventing Election Fraud**

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1101 Vermont Ave., NW, 11th Floor  
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(202) 466-3800

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# Mississippi Reaffirms 10th Amendment Rights

BY MICHAEL HOUGH



Steve Palazzo, ALEC member and Mississippi State Representative, recently introduced a resolution based on ALEC's *Model Resolution to Restate State Sovereignty*, calling on the federal government to respect the 10th Amendment to the U.S. Constitution, which states "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." The resolution also calls on the federal government to repeal legislation that sends unfunded and unconstitutional mandates to the states.

"The federal government is encroaching into our every day lives at an alarming rate, from dictating how we teach our children to funding federal initiatives that many believe to be immoral, over-regulating and taxing our citizenry, meddling in our personal lives and interfering with the affairs of our state. We must stop this unchecked growth of the government before it's too late. State legislators must lead the fight because the power the federal government is illegally assuming is ours," said Rep. Palazzo.



Mississippi State Representative Steve Palazzo is the owner of CPA firm Palazzo & Company, PLLC. Steven has been in the legislature since 2007 where he is Treasurer of the Conservative Coalition and Co-Chairman of the MS Legislative Sportsmen's Caucus. He is also a Marine veteran of the Persian Gulf War and currently serves in the MS Army National Guard.

After the federal government enacted the enormous stimulus bill, filled with unfunded mandates and requirements for states, similar resolutions were introduced in 35 states and enacted in five. In Texas, Gov. Rick Perry signed his state's 10th Amendment resolution saying, "I believe that our federal government has become oppressive in its size, its intrusion into the lives of our citizens and its interference with the affairs of our state. That is why I am here today to express my unwavering support for efforts all across our country to reaffirm the states' rights affirmed by the 10th Amendment."

Governors of several states, including Alaska, Idaho, Louisiana, Mississippi, Texas and South Carolina, have indicated they will reject federal stimulus funds because of required changes to state laws that will increase spending and create future budget liabilities. An example of this are the strings the federal government attached to states who take money for their unemployment funds. In order to receive full federal funding, states have to liberalize their unemployment laws by giving unemployment benefits to part-time workers and workers who leave a job to go to school or

to take care of a family member. For states whose unemployment funds were already in the red, this is a recipe for disaster once federal funds run out.

States now review the fine print when agreeing to partner with, or incorporate federal policy into, their state laws. The 10th Amendment resolutions represent state lawmakers calling on the federal government to stop forcing its agenda onto the states and to respect the system of federalism created by our founding fathers. Resolutions, like the one introduced by Rep. Palazzo, are needed now more than ever.

In the words of Thomas Jefferson, "When all government, domestic and foreign, in little as in great things, shall be drawn to Washington as the center of all power, it will render powerless the checks provided of one government on another, and will become as venal and oppressive as the government from which we separated." Constitutional power must be restored to the states and to the people. It is the duty of each state to reaffirm its sovereignty and serve notice to the federal government to cease and desist all activity outside the scope of its constitutional powers. ||

Michael Hough is the director of ALEC's Commerce, Insurance and Economic Development & Public Safety and Elections Task Forces.

# Reducing Recidivism and Treating Individuals

BY MICHAEL HOUGH

A couple of weeks ago I toured the Jewish Recovery Houses in Pikesville Maryland, which treat Jewish substance abusers dealing with severe drug and alcohol addictions. One of our ALEC members, State Senator Alex X. Mooney (MD), accompanied me on the tour.

Given that ALEC's Public Safety and Elections Task Force is focusing on the issues of reducing recidivism and treating individuals with drug and alcohol addictions, I thought it would be helpful to tour a privately-run treatment facility that is having great success in treating addiction.

Residents at the Jewish Recovery Houses must remain drug and alcohol

free while they stay at the house. They must also pay \$125 in rent a week and maintain a job or attend school. All of the clients are Jewish and there are separate housing facilities for men and women. Like most 12-step programs, the spiritual nature of recovery is promoted and residents are encouraged to attend services at the local synagogue. Program Director Michael Rokos explained to us that the homogeneous culture allows clients to feel they are part of a community during recovery, and this helps a great deal because these individuals have severed most of their relationships in life.

Most of the residents at this facility started off abusing legal drugs like Oxy-

Contin and then moved on to heroin. Mr. Rokos stated that privately-run facilities like the Jewish Recovery Houses were not only helping addicts, but also aiding society as a whole because the cost for not treating these individuals would be increased crime. Research has born this point out with studies consistently showing a strong correlation between illegal drug-use and criminal activity:

- The Department of Justice found that over 27 percent of violent crimes were committed by individuals who were using drugs at the time of the offense;
- Almost 10 percent of inmates in state prisons committed their violent crime in order to get money for drugs;
- In 2006, there were 14,990 drug-related homicides

Many are now concluding that providing treatment for drug addiction both in and out of prison is a sound investment to reduce crime. Facilities like the one Sen. Mooney and I visited make a good case for increasing funding for addiction treatment. After leaving our tour, Sen. Mooney remarked "I talked and met with residents of the facility who were turning their lives around. I truly believe these people would still be suffering if it were not for this unique treatment facility."



Inmates completing faith-based rehabilitation are significantly less likely to be rearrested or reincarcerated.

Michael Hough is the director of ALEC's Commerce, Insurance and Economic Development & Public Safety and Elections Task Forces.



Sen. Alex X. Mooney (MD), on right, and Task Force Director Michael Hough touring a Jewish addiction treatment facility”

In fact, many other facilities with similar goals around the country do not measure success rates, partly because they are hard to track and partly because the results can be discouraging. On the other hand, over half of the individuals who graduate from the Jewish Recovery Houses are able to stay clean and sober for the five-year period that the organization measures. This level of success is consistent with other faith-based treatment facilities.

A six-year evaluation of a faith-based prison reentry program called the InnerChange Freedom Initiative (IFI) found that inmates completing the program were significantly less likely to be rearrested (17 percent versus 35 percent) or re-incarcerated (eight percent versus 20 percent). IFI is administered by the Prison Fellowship Ministries, which recently joined ALEC as a private-sector member. Prison Fellowship Ministries operates voluntary prerelease

programs for inmates to ready them for life outside of prison. They run the Interchange Freedom Initiative, which is privately-funded and operates in Texas, Minnesota, Iowa, Kansas, Arkansas and Missouri.

Most state prisons offer some sort of treatment program – even though many are sorely lacking. Twenty-three states currently operate faith-based treatment facilities. While individuals in these prisons may get treatment, it is often much more difficult for those on the outside to find help.

A great number of drug addicts lack health insurance, and facilities like the Jewish Recovery Houses rely on private donations to operate. Because of federal and state restrictions on funding, many private facilities with homogeneous populations or faith-based treatment plans cannot receive funding.

Mr. Pat Nolan, the Vice President of Prison Fellowship Ministries, advised

that states should adopt a voucher policy which would allow each individual to choose the type of drug treatment they wanted, whether faith-based or secular. The key he said is to fund programs that effectively treat addiction and thereby relieve prison overcrowding and reduce crime.

How states ultimately decide to deal with prison overcrowding and crime, comprehensive drug and alcohol treatment should be part of that solution. Privately-funded facilities are doing great work and states should work with them as an ally to battle addiction. ||

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*For more information about the Jewish Recovery Houses you can visit their website at [www.jewishrecoveryhouses.org](http://www.jewishrecoveryhouses.org) and for information about the Prison Fellowship Ministries or to sign up for their e-reports, go to their website at [www.pfm.org](http://www.pfm.org).*

# Blowing Bubbles

## Why “Green” Jobs are a Liability, Not an Asset

BY MATT WARNER

While this year’s cap-and-trade showdown has not quite reached its zenith in Congress, the big hurdles for cap-and-trade proponents have already emerged in polls, state-level debates and infighting on Capitol Hill. These hurdles became undeniable early this year in the Pew Research Center’s January poll results<sup>1</sup> which put “global warming” twentieth on a list of issues Americans consider “top priorities.” Number one and two on the list were “economy” and “jobs.” This is a major thorn in the side of those hoping to impose new costs on America’s conventional sources of energy through a cap-and-trade system for carbon dioxide emissions.

This priority set has continued to emerge at the state level as legislatures have debated new or strengthened laws

designed to reduce CO<sub>2</sub> emissions. Washington, which was one of the first states to follow California’s lead in CO<sub>2</sub> reduction policies, was unable to pass new cap-and-trade legislation this session despite it being the top legislative priority of the state’s governor. Opponents complained the proposal would hurt the economy and would “lead to job losses and business failures.”<sup>2</sup>

Maryland proponents of similar legislation were able to win passage in their state but the compromises they were forced to make reveal just how difficult it is to ignore the economy and jobs hurdles. The legislation calls for a CO<sub>2</sub> emissions reduction of 25 percent below 2006 levels by 2025 and 90 percent by 2050, but it exempts the largest emitters, including manufacturing and electricity generators, explaining

### WHAT IS CAP AND TRADE?

A cap and trade policy for greenhouse gases would limit the nation’s greenhouse gas emissions by issuing or auctioning a limited number of permits to those who emit. The purpose of cap and trade is not simply to reduce greenhouse gases but also to raise energy prices so that conventional sources of energy lose their natural cost advantages over alternatives.

in statute that the state needs to remain competitive with other states and preserve existing jobs. The legislation gives the state’s Department of the Environment the unenviable and, some would say, impossible task of coming up with a plan to meet the targets in “a manner that promotes new “green” jobs, and protects existing jobs and the state’s economic well being.”<sup>3</sup>

In the nation’s capital, House Democrats have begun to challenge openly the priorities of Speaker Nancy Pelosi (D-CA), and committee chairmen Rep. Henry Waxman (D-CA) and Rep. Ed Markey (D-MA), cosponsors of cap-and-trade legislation entitled *American Clean Energy and Security Act of 2009*. The Democrats are hoping to avoid tough votes on cap-and-trade legislation that will hurt energy-intensive industries in their states and cause job losses.<sup>4</sup>

With these tall hurdles to clear, proponents of cap-and-trade have tried to go on the offensive claiming economic benefits associated with cap-and-trade legislation and, in particular,

***continued on page 11 - Green***



Matt Warner is the director of ALEC’s Natural Resources Task Force.



# Citizen's Right to Know

## Private Bail Agencies Help States Monitor Criminals

BY MICHAEL HOUGH AND REBECCA HURLEY

Over the last couple of months, I have traveled across the country discussing one of ALEC's new *State Factor* policy briefs, "Criminals on the Streets: A Citizens Right to Know." I've traveled to Tennessee, Florida and Texas to discuss our paper and model bill. Due to the tough economy, legislators are facing difficult budget decisions this year. At ALEC we are looking for wasteful government programs legislators can cut or reform. One program legislators should look at is government-run pretrial release (PTR) agencies.

Across the country, in almost every state, there are government agencies which have taken on the awesome responsibility of releasing defendants from jail prior to their court dates. In most states there are two methods for releasing defendants from jail – the first method is commercial bail, which requires defendants to pay a small portion of their bond in order to be released. The second method is government-run PTR agencies, in which defendants pay nothing or only a small deposit and are released from jail. Because PTR programs

are government entities, a large portion of their funding comes from tax dollars. Currently there are about 400 PTR operations scattered throughout the country. They range in size from hundreds of employees with multimillion dollar budgets to small, part-time operations. Overall, they cost the public close to \$100 million per year.

For those who believe in limited government and the supremacy of the free-market, these agencies are frustrating as they replace a well-functioning private-sector model – commercial bail,

which operates at no cost to the taxpayer – with a less efficient government alternative. In fact, commercial bail generates tax revenues and when a criminal absconds the bail agent must forfeit the full amount of the bond to the state. In contrast, when the government runs bail, once the defendant disappears no one pays bail. In Philadelphia alone, as recently reported by the *Philadelphia Enquirer*, criminals have cost the city \$1 billion over the last 30 years by skipping out on city-issued bail bonds. This "revolving door of justice" essentially

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Michael Hough is the director of ALEC's Commerce, Insurance and Economic Development & Public Safety and Elections Task Forces. Rebecca Hurley is a research assistant at ALEC.

forces taxpayers to subsidize the release of dangerous criminals who are left free to commit new crimes.

The government has proven to be ineffective when it comes to making sure defendants return to court after they are released and apprehending them when they skip bail. Not surprisingly, in states where the government is the only option for bail, the number of fugitives and the number of failures-to-appear in court have dramatically increased. In Oregon, which banned commercial bail in 1978, “the failure-to-appear rate has skyrocketed,” said District Attorney Joshua Mar-

**In the commercial bail industry, due to the existence of a financial incentive, apprehension of the absconder is the highest priority for a bonds agent. Bail agents return close to 97% of their skips.**

quis. Criminal who skip court dates cost taxpayers in terms of rearranging and rescheduling court dates, finding and apprehending fugitives, and wasting the time of judges and prosecutors. Not to mention the additional costs resulting from any new crimes committed while the criminal is free. In its 1997 study, “Run Away Losses,” ALEC found that the cost to the local system for every failure to appear is \$1,273.81. The equivalent of \$1,688.17 in today’s dollars.

Unlike the commercial model, in PTR agencies there is no incentive for government agencies to retrieve criminals who become fugitives. In fact, defendants who abscond represent one less person a government bureaucrat has to supervise. When a person fails to appear at a court hearing, a warrant is issued for their arrest and they are entered into a national FBI criminal database. The warrant squads of most law enforcement agencies are minimally staffed and the pursuit of fugitives is a low priority for

police. They don’t have the resources to chase fugitives and the only place they are likely to re-arrest an absconder is at a random traffic stop or during apprehension for another offense. In contrast, in the commercial bail industry, due to the existence of a financial incentive, apprehension of the absconder is the highest priority for a bonds agent. In fact, bail agents return close to 97 percent of their skips.

Among those freed using government-issued bonds was Paul Merle Eischeid, a member of the notorious motorcycle gang, the Hell’s Angels. Eischeid, who was arrested for his connection with a brutal assault and murder of an Arizona woman, was released on his own recognizance and required to wear a tracking device. In short order, he secured a spot on America’s Most Wanted list after removing the device and fleeing.

In Oregon, a man with 49 previous arrests and at least 15 convictions was released on a government bond while awaiting trial for burglary. During this time, he kidnapped and raped a 13 year-old girl.

Also in Oregon, Robert Holliday was kidnapped and murdered by Lee Knoch, who was out on government bail and awaiting trial for a previous assault against Holliday.

Not only are there numerous heinous examples, but 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. Defendants released on an unsecured bond or as part of an emergency release were most likely to have a bench warrant issued because they failed to appear in court.”

In addition to the Department of Justice, the academic world has spoken out on this subject. In April 2004, the University of Chicago Law School *Journal of Law and Economics* published an article by economic professors Eric Helland and Alexander Tabarrok, that concluded:

“Defendants released on surety bond are 28 percent less likely to fail to appear than similar defendants released on their own recognizance [via PTR], and if they do fail to appear, they are 53 percent less likely to remain at large for extended periods of time ... Given that a defendant skips town, however, the probability of recapture is much higher for those defendants released on a surety bond. As a result, the probability of being a fugitive is 64 percent lower for those released on surety bond ... These findings indicate that bond dealers and bail enforcement agents ... are effective at discouraging flight and at recapturing defendants.”

We can also look at individual states to see how PTR is working.

- **Illinois**, which was the first state to adopt the 10 percent cash deposit system, according to the Illinois Criminal Justice Authority reports a failure-to-appear rate of 21 percent for women and 30 percent for men;
- **Oregon**, which outlawed commercial bail, has a failure-to-appear rate of 40 percent;
- **New Jersey** eliminated their 10 percent government bail program in 1995.

By comparison we know the free-market alternative commercial bail does a good job of supervising pretrial defendants. Commercial bail also causes other parties to become stakeholders in the future of the defendant. In many cases, family members or friends will



pay the fee required to release the defendant from jail and place liens on their property in order to post bail. The bail bond creates a circle of responsibility wherein family or friends have a monetary incentive to make sure the defendant makes all of his or her scheduled court appearances. Studies have shown that commercial bail helps maintain social control over defendants during the pretrial period.

Commercial bail has a long history in America as it is an outgrowth of English common law. In medieval times a magistrate would travel the countryside and try defendants. Rather than hold these defendants until the magistrate arrived, the local sheriff would release them into the custody of friends or family. This system carried over into America and is enshrined in the U.S. Constitution in the Eighth Amendment which prohibits the use of "excessive bail." In the current system, when a criminal is incarcerated upon probable cause, he or she has bail set by a judge and once bail is posted they are let out of jail until their next hearing. For a small fee – usually 10 percent of the total bond amount – a bail bonds agent will take responsibility for the defendants bail. A bail bonds agent works with an insurance company who acts as a "surety" and guarantees the full amount of the bond.

At a minimum, agents have to meet the state's licensing and continuing education requirements. They have to comply with other regulations pursuant to business and professional codes. In addition, they have to honor their contractual requirement with the courts and their insurance company on every bond they write. They are subject to a tax on insurance premiums and exposed to legal liabilities like any other business. If their client skips, they have to pay a forfeiture in favor of the state. The commercial bail bonds industry is a natural market-driven development. Over the last 100 years, commercial bail has become well established and 47 states have enacted statutes allowing public authorities to accept commercial bail. Because this system costs taxpayers nothing and does a good job bringing defendants back to

court, more and more judges are relying on commercial bail. In fact, the percentage of defendants released on commercial bail has increased from 25 percent in 1990 to over 40 percent in 2004.

The Department of Justice study, along with a number of academic studies, prove the public is appreciably safer with defendants released by commercial bail than by government PTR. Which system does the taxpayer fund? The more dangerous one.

If state and local governments are going to continue to fund and operate PTR agencies, there needs to be some accountability brought to the system. Just as a number of states are enacting transparency requirements when it comes to spending, similar laws should be enacted when it comes to PTR agencies. The primary purpose of government is the protection of life and property. Unfortunately, information about the effectiveness of PTR agencies is woefully lacking. About half these agencies do not even keep track of their failures to appear.

Furthermore, it is a matter of justice to the taxpayer that PTR agencies should keep records on those they release and make that information available to the public. PTR agencies owe an account of their stewardship to the public who funds them and for whom they work. *The Citizen's Right to Know* bill would right this wrong by demanding that PTR agencies reveal:

- Their budgets and staffing;
- The number of, and kind of, release recommendations made;
- The number of defendants released and under what kind of bond;
- The number of times a defendant has been released, his or her failure to appear for court and crimes committed while on release;
- Report the above in a timely and intelligible way and make it available to the public.

Both Texas and Florida have enacted

the Citizen's Right to Know Act. Unfortunately in Texas, where the law was enacted in 1995, many PTR agencies are refusing to turn over required information, or what they turn over is impossible to decipher by the public. Last year, this problem led ALEC's Public Safety and Elections Task Force to amend its Citizen's Right to Know model bill by adding an enforcement sanction for PTR agencies who do not comply with the law.

If necessary reforms in the criminal justice system are to occur, the public and legislators need to know how much money is being spent to bail criminals out of jail, and how many individuals are skipping their court-appointed hearings and subsequently committing new crimes. With many states facing tight budgets and deficits in the years ahead, the question needs to be asked "Why do lawmakers continue to fund a government service that is being provided for free and better by the private-sector?"

States with PTR agencies should at a minimum adopt ALEC's *Citizen's Right to Know Act*. The information from this bill is needed so legislators can reform dangerous PTR agencies that are potentially increasing crime and releasing criminals at the taxpayer's expense. ||

AMERICAN LEGISLATIVE EXCHANGE COUNCIL

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1101 Vermont Ave., NW, 11th Floor  
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Phone: (202) 466-3888  
Fax: (202) 466-3801  
www.alec.org

# Rage Against Federal Pre-Emption

## Does it Hurt Public Safety?

BY VICTOR SCHWARTZ & CARY SILVERMAN

There are a narrow range of products – the cars we drive, the medicines we take, the equipment workers rely upon – that are subject to rigorous federal oversight. In these areas, Congress, federal agencies and the courts have found that random liability lawsuits, claiming that a product could somehow be made “safer” or “stronger” or include even more fine print disclaimers, disrupt the agency’s delicate balancing of risks and benefits. Judges call this “pre-emption.”

Pre-emption helps ensure that lawsuits do not undermine regulators charged with protecting public health and safety. Nevertheless, pre-emption is under major assault by wealthy personal injury lawyers and some politicians.

Eliminating pre-emption would increase the number of lucrative lawsuits against industries that are closely regulated by the government. But if anti-pre-emption personal injury lawyers have their way, Americans will be the true losers, at risk of losing their lives.

In the 1980s, the National Highway Transportation Safety Administration (NHTSA) decided not to require air bags. NHTSA found the airbag technology of the time posed an unacceptable risk of hurting or killing people, particularly “out-of-position” passengers such as small women and young children.

NHTSA was also concerned that



In the 1980s, the National Highway Transportation Safety Administration found that airbag technology of the time posed an unacceptable risk of hurting or killing people, and decided not to require air bags.

mandating air bags just as seatbelt usage was slowly gaining public acceptance could lead passengers to abandon seatbelts entirely. Wisely, the U.S. Supreme Court rejected lawsuits that would have effectively reversed NHTSA’s carefully-reasoned decision. That’s pre-emption working to protect public safety.

Today, enterprising plaintiffs’ lawyers have new theories to sue auto manufacturers. They would like to claim vehicles should exceed strengthened roof crash standards, even when NHTSA found that would render many vehicles more prone to rollovers.

Plaintiffs’ lawyers would also assert that manufacturers should wedge four seatbelts in the back seat of a car, even as NHTSA cautions that cramped seating discourages the use of seatbelts.

Anti-pre-emption proponents often contend that federal regulations provide only “minimum standards.” This is very misleading. It focuses on only part of a product. “Strengthening” one aspect of a “minimum” design may create new risks and decrease a product’s overall safety.

Regulators consider complex scientific, technical and public policy issues. Their goal is to provide the most good for the greatest number of people.

Without pre-emption, a lay judge and jury – even with the best intentions – may undo these well-reasoned decisions. Their focus is on one highly sympathetic injured person in a courtroom and a battle of experts. The thousands of people who benefited from the product or service are not in the courtroom. They are totally absent from the jury’s view.

Unfortunately, Congress and the President seem poised to take the lawsuit industry’s bait on broad abolishment of pre-emption.

Recently, President Obama issued a little-noticed Executive Memorandum instructing federal agencies to identify, review and potentially reverse, their views in favor of pre-emption dating as far back as the Clinton Administration.

The Obama memo comes on the heels of a Congressional hearing on legislation that would overturn a sound U.S. Supreme Court ruling that experts at the FDA, not individual judges and lay juries, should decide whether medical devices are safe, effective and available for potentially life-saving treatments.

These are the first steps toward the personal injury bar’s collective goal of eliminating all pre-emption so that its members can have free reign to sue. Federal agencies, Congress and the courts should not let personal injury lawyers pre-empt the health and safety of the American public. ||

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Victor Schwartz and Cary Silverman are members of Shook, Hardy & Bacon L.L.P.’s Washington, D.C.-based Public Policy Group and nationally recognized experts on product liability law. Edited for length. Re-printed with permission from the *Washington Examiner*, June 2, 2009.

**continued - Green**

the promise of new “green” jobs. While the definition of “green” job is a subject of some debate, it generally refers to any job that contributes to the production of renewable energy or supports efforts to reduce the carbon dioxide emissions of any economic activity. The argument that “green” jobs will be an economic boon to the nation is used frequently and widely by proponents of cap-and-trade and other policies pushing renewable energy sources. President Obama’s Web site promises to create five million “green” jobs as part of an economic recovery.<sup>5</sup> In the press release of the Waxman-Markey discussion draft, both sponsors touted the “green” jobs their legislation would create. In Rep. Markey’s words, “We will create jobs by the millions, save money by the billions and unleash energy investment by the trillions.”<sup>6</sup> Analysis of the bill performed by the Environmental Protection Agency (EPA) goes along with the sponsors’ claims concluding the bill would “play a critical role in the American economic recovery and job growth.”<sup>7</sup>

Can these claims be true? Can the government limit energy generation among conventional energy sources, tax remaining generation activity by requiring the purchase of allowances, redirect these revenues towards employment in the renewable and energy efficiency sectors, and claim a net benefit for the national economy? Both economic theory and practice say no.

**Theory from France, Practice from Spain**

Arguing against a proposed subsidy of sixty thousand francs for the theater industry in the mid-1800s, economist and statesman Frédéric Bastiat explained that when government takes money from one sector and redirects it to another, it does not create something without also destroying something else.

The government expenditure in favor of theater workers is seen but the sixty thousand francs worth of economic activity that did not occur because of the tax or fee responsible for the government revenue is not seen and almost never contemplated by subsidy proponents who claim only the benefits including, in this case, employment. Bastiat argues, “Surely, no one will dare maintain that the legislative vote has caused this sum to hatch out from the ballot box; that it is a pure addition to the national wealth ... It must be admitted that all that the majority can do is to decide that they will be taken from somewhere to be sent somewhere else, and that they will have one destination only by being deflected from another ... Let us not, then, yield to the childish illusion of believing that the vote ... adds anything whatever to national well-being and employment. It reallocates possessions, it reallocates wages, and that is all.”<sup>8</sup>

Proponents of “green” jobs like to evaluate the economic impact of their

policies with blinders on, looking only at what is created, not destroyed. Even more troubling, jobs that emerge as a result of political decisions are highly unlikely to produce as well for the economy since they do not represent true demand. Bastiat makes this point well when he writes, “for the best proof that

**Proponents of “green” jobs like to evaluate the economic impact of their policies with blinders on, looking only at what is created, not destroyed.**

theatrical work [ed: think “green” employment] is not as productive as other work is that the latter is called upon to subsidize the former.”

The result is a bubble industry that requires continual support from public sources to keep from collapsing, since there is insufficient private sector demand to support the supply created



by government reallocation of capital. This support has many forms including subsidies (production tax credits, e.g.), mandates (renewable portfolio standards, e.g.), taxes (cap-and-trade, e.g.) and direct investment (stimulus bill allocations for energy efficiency projects and “green” jobs). In fact, the premise for the policy is to support with government money those sectors that are not economically viable on their own. They are valued by the political class, not the energy consuming public, as evidenced by today’s consumption preferences in the energy market. For example, in the electricity market, the national fuel mix in 2008 was 49 percent coal, 21 percent natural gas, 20 percent nuclear, 6 percent hydropower and only 3 percent renewable sources.<sup>9</sup>

Bastiat’s arguments from two centuries ago aside, we have a contemporary example of the “green” jobs phenomenon in the case of Spain and its government’s heavy investment in renewable energy and “green” jobs. We know Spain’s case is worth visiting since it is often touted by U.S. advocates including President Obama as an economic recovery and job creation strategy. But the findings of a new study by King Juan Carlos University’s Gabriel Calza-

da Álvarez show that the public investments in Spain have destroyed 2.2 jobs for every “green” job they have created. Calzada arrives at this figure by totaling the subsidies provided to the renewable energy market (wind, solar and mini-hydro) between 2000 and 2008 (£28,671,000,000) and dividing that total by the total number of jobs created in those sectors during that time (50,200). Then he divided that figure (£571,138) by Spain’s average stock of capital per worker over the period 1995 to 2005 (£259,143).<sup>10</sup>

This finding reveals some of the true costs of public investment in “green” jobs and it confirms the theory that the costs are likely to be higher than the benefits. Calzada also warns that the bubble created by Spain’s renewable energy policies is very likely to burst, especially in the solar energy sector, which is the costliest to subsidize per kilowatt hour. The combination of the government’s pro-renewable energy policies which include subsidies, regulated prices (575 percent above the mean reference rate for smaller renewable energy operations and 300 percent above the same rate for larger operations),<sup>11</sup> and guaranteed purchase caused extraordinary growth in recent years. For example, solar ca-

capacity grew 806 percent in 2007 and 903 percent in 2008.<sup>12</sup>

In 2007, the Spanish government began to revise these policies by reducing the subsidies and imposing annual caps on capacity growth in an attempt to head off further explosions in public liabilities. It was too little, too late for at least 15,000 laid-off workers so far this year whose jobs depended on artificial demand in the solar energy sector. Calzada concludes, “This reflects the boom/bust nature of the renewables industries, or any others which exist and subsist solely due to subsidies, mandates and similar regimes,” and cautions that this phenomenon, “must not be ignored by any country claiming a desire to replicate Europe’s experience.”<sup>13</sup>

Debates over the economic impact of cap-and-trade should never be won by proponents who point to “green” jobs as the answer. “Green” jobs represent *another* costly government program, not a cost-mitigating solution to cap-and-trade. Whether government uses the revenues from a cap-and-trade program or some other revenue source to fund new “green” jobs is irrelevant. Either way the “green” jobs come at a cost – a cost we can be sure will be higher than any benefits promised. ||

## ENDNOTES

- 1 *Economy, Jobs Trump All Other Policy Priorities in 2009*. The Pew Research Center for the People and the Press. January 22, 2009. <http://people-press.org/report/485/economy-top-policy-priority>
- 2 *Lawmakers Thwart Gregoire’s Cap-and-Trade Plan on Climate*. Lawrence Cornwall. *Seattle Times*. March 16, 2009. [http://seattletimes.nwsourc.com/html/politics/2008865324\\_capandtrade16m.html](http://seattletimes.nwsourc.com/html/politics/2008865324_capandtrade16m.html)
- 3 Annotated Code of Maryland. Environment Section 2-1201 through 2-1211. Subtitle 12. Greenhouse gas Emissions Reductions. [www.state.md.us](http://www.state.md.us)
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- 7 *EPA Analysis of the Waxman-Markey Discussion Draft: The American Clean Energy and Security Act of 2009*. Executive Summary. April 20, 2009. <http://epa.gov/climatechange/economics/pdfs/WaxmanMarkeyExecutiveSummary.pdf>
- 8 *What Is Seen and What Is Not Seen*. Selected Essays on Political Economy. Frédéric Bastiat. <http://www.econlib.org/library/Bastiat/basEss1.html>
- 9 U.S. Department of Energy, Energy Information Administration, Power Plant Operations Report (EIA-923). 2008 preliminary generation data. [www.eia.doe.gov](http://www.eia.doe.gov)
- 10 *Study of the effects on employment of public aid to renewable energy sources*. Gabriel Calzada Alvarez. King Juan Carlos University. March 2009. p.28. <http://www.instituteforenergyresearch.org/green-jobs-resources/>
- 11 *Ibid.* p. 13.
- 12 *Ibid.* p. 15.
- 13 *Ibid.* p. 18.

# The Challenge of Photo ID

## Can Legislation Prevent Election Fraud without Disenfranchising Voters?

BY STEPHEN ELZINGA

In 2002, Congress passed the Help America Vote Act (HAVA), which established ID requirements for first-time voters who register to vote by mail without providing an ID document, a driver's license number, or the last four digits of a social security number. HAVA requires such voters to present a government-issued photo ID or a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter. Twenty-four states have subsequently adopted voter ID requirements that go beyond HAVA. The most proactive states in this area are Arizona, Georgia, Indiana and Missouri – all of which have acted to secure the integrity of the election process by requiring all voters to present photo ID at the polls. The experiences of these states provide a helpful guide for other states interested in enacting similar legislation.

Two potential constitutional limitations for voter ID legislation came to light in the court battle over Georgia's 2005 voter ID law. The law required voters to present photo ID at polling locations in order to vote and charged a twenty-dollar fee for obtaining a special ID card for those that did not already possess a photo ID. In 2005, a federal district court issued a preliminary injunction against the enforcement of this law, citing two primary faults. First, the judge found a substantial likelihood that the difficulty of obtaining photo ID



– both in terms of the cost in time and money for obtaining an ID – amounted to a “severe” restriction on the right to vote. Second, the judge found a substantial likelihood that the law imposed a *de facto* poll tax by requiring someone to sign an affidavit of indigence before being able to obtain an ID card without charge.

A week after this initial district court ruling, the 11th Circuit Court of Appeals upheld the injunction. However, a 2007 rewrite of the law including a new section providing free IDs upon demand was eventually upheld by the same district court judge, who rejected the claim that this was a severe burden on the right to vote or that the incidental costs involved in obtaining an ID amounted to a poll tax. The district court judge also approvingly cited the extensive education efforts made by Georgia to make

The provision of free ID cards for non-drivers is an essential step in preventing the disenfranchisement of voters according to the U.S. Supreme Court.

voters aware of this new requirement. The Eleventh Circuit Court of Appeals has upheld that decision. A similar law in Missouri that provided free IDs was struck down by the Missouri Supreme Court under a provision of the state constitution.

In 2008, the U.S. Supreme Court upheld the photo ID requirement of Indiana's voter ID law in *Crawford v. Marion County Election Board*. In a complex split decision, the court upheld the Indiana law by a 6-3 vote, but issued two sepa-

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Stephen Elzinga is a research assistant working with ALEC's Public Safety & Elections Task Force. He is currently a senior at Patrick Henry College majoring in government.

rate opinions as to why the law was constitutional.<sup>1</sup> In *Crawford*, the court recognized that “even handed restrictions” protecting the “integrity and reliability of the election process itself” are constitutional. The three-judge plurality opinion found that Indiana’s distribution of free voter ID cards and the availability of provisional ballots for voters without ID satisfied the first part of this test; the second part was met by Indiana’s interests in “detering and detecting voter fraud,” safeguarding against registration rolls with a number of “persons who are either deceased or no longer live in Indiana,” and “safeguarding voter confidence.”<sup>2</sup> The three-judge concurring opinion went further by holding that whether or not the law “imposed a special burden on some voters is irrelevant” and that the law was valid because “the overall burden is minimal and justified.”<sup>3</sup>

An analysis of *Crawford* suggests several critical elements that must be present in a voter ID law for it to be constitutional. States can improve the chances of a law being upheld in court by including two key parts in any proposed photo ID legislation:

- **Distribution of free voter ID cards**  
The provision of free ID cards for non-drivers is an essential step in preventing the disenfranchisement of voters according to the U.S. Supreme Court.<sup>4</sup>
- **Availability of provisional ballots**  
The U.S. Supreme Court held that Indiana law provides an adequate remedy for voters who forget their ID on Election Day by allowing them to

cast a provisional ballot and return later with valid photo ID.<sup>5</sup>

Because a key consideration in the *Crawford* decision was that Indiana was able to demonstrate several problems in their election system that a photo ID law would fix – including highly tainted voter rolls with the names of thousands of persons who had moved, died, or recently been convicted as felons – other states should carefully consider whether their own unique situation may require additional precautions. However, there was no requirement that Indiana show prior evidence of impersonation fraud in Indiana to justify a voter ID law.

In 2005, the bipartisan Commission on Federal Election Reform, co-chaired by former President Jimmy Carter (D) and former Secretary of State James A. Baker, III (R), issued a report entitled “Building Confidence in U.S. Elections.” In addition to recommending photo ID requirements, the report suggests two provisions that can be added to voter ID laws that would not only give such laws more bipartisan appeal, but also alleviate some concerns that lower courts have raised about voter ID laws in the past:

- **Aggressive promulgation of new voter ID requirements**  
When it comes to the right to vote, normal means of promoting public awareness of a change in the law may not be enough. An aggressive advertising campaign to notify voters of new ID requirements before the first election in which they take affect could make a big difference.

- **Comprehensive distribution of ID cards**

A concerted effort to provide ID cards to all citizens, especially to minorities, the elderly, and the disadvantaged would mitigate some of the objections that photo ID laws are discriminatory. While a state may find it hard to meet the costs of a sustained push to disperse ID cards, a transitional program that lasts for a year or two and includes mobile office units being sent to disadvantaged communities, nursing homes, and the like is entirely within reason.<sup>6</sup>

Taking these precautions may be the difference between success and failure. Such provisions will not only broaden the appeal of photo ID laws, but also provide an additional layer of protection in the event of a court challenge.

ALEC’s model bill on this issue, the Taxpayer and Citizen Protection Act requires qualified electors to present one form of identification that bears the name, address, and photograph of the voter or two different forms of identification that bear the name and address of the voter prior to receiving a ballot. A requirement that voters provide either photo ID or two alternative identification documents (instead of just one non-photo ID like HAVA requires) is a strong step toward the prevention of fraud at the polls. ||

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*To view ALEC’s Taxpayer and Citizen Protection Act, visit the model legislation page of the Public Safety & Elections Task Force at [www.alec.org](http://www.alec.org).*

## ENDNOTES

1 *Crawford v. Marion County Election Board*, 553 U.S. ---, 128 S.Ct. 1610, 1613 (2008) (Stevens, J., plurality).  
 2 *Id.* at 1617-1620 (Stevens, J., plurality).  
 3 *Id.* at 1624 (Scalia, J., concurring).

4 *Id.* at 1620 (Stevens, J., plurality).

5 *Id.* at 1621 (Stevens, J., plurality).

6 Commission on Federal Election Reform, “Building Confidence in U.S. Elections,” (American University, 2005), 33-34.

## Rich States, Poor States in Kansas

ALEC's *Rich States, Poor States* issue briefing in Kansas was a huge success. Jonathan Williams met with Wichita business leaders, gave an interview on local TV, and attended a dinner for community leaders, including Rep. Steve Brunk – a Tax and Fiscal Policy Task Force member. Jonathan then traveled to Topeka and was interviewed on the Jim Cates radio show before going to the Capitol to meet with ALEC state chairs Ron Hein and Majority Leader Ray Merrick. ALEC's issue briefing luncheon attracted more than 40 legislators (including the new Speaker of the House) to hear about *Rich States, Poor States* and its implications for Kansas. Speakers included Donna Arduin (a partner of Art Laffer) and Dr. Art Hall of Kansas University (and a task force advisor) who addressed the current budget shortfall, federal stimulus dollars and possible tax increases. Americans for Prosperity and The Flint Hills Center for Public Policy co-sponsored the lunch with ALEC.

## Legislators Gather in Memphis

ALEC's Spring Task Force Summit in Memphis, TN, held May 1-2 was tremendously successful and one of the best attended ALEC spring meetings. ALEC Task Force members considered many important Model Bills, and heard valuable presentations on the federal stimulus and the states from Mississippi Governor Haley Barbour and Congressman Marsha Blackburn (TN). Speaking on climate change issues were Kimball Rasmussen, CEO of Deseret Power, and Phelim McAleer and Ann McElhinney, producers of the environmental film "Not Evil, Just Wrong." Please look for additional information on new ALEC Model Legislation from this meeting in future issues of *Inside ALEC*.



Mississippi Governor Haley Barbour with ALEC's Tennessee State Chairman, Rep. Curry Todd (top).

ALEC Private Sector Board Members Preston Baldwin, Vice President State Government Affairs for UST Public Affairs Inc., and David Powers, Vice President State Government Relations for Reynolds American Inc., enjoy a day at Graceland (right).



## Rich States, Poor States Grabs National Attention

- » **Rush Limbaugh** talked about people fleeing New York's high taxes and discussed ALEC's *Rich States, Poor States* report April 13 and May 18.
- » Jonathan Williams, Director of ALEC's Tax and Fiscal Policy Task Force and a co-author of *Rich States, Poor States*, appeared on the **Glenn Beck Program** May 18, discussing why more taxes are not the answer to state budget problems.
- » Williams appeared on the **Lou Dobbs Radio Show** on May 20 to discuss the California state budget mess.
- » An editorial by Dr. Arthur Laffer and Stephen Moore featuring *RSPS* appeared in **The Wall Street Journal** on May 18, the **New York Post** on April 19, and the May 28 edition of **The Washington Times**.

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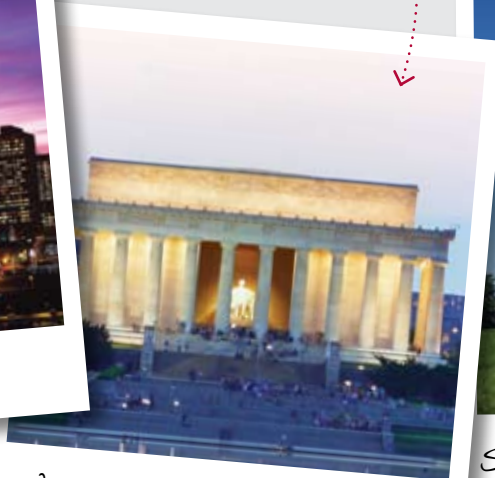
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