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AMERICAN LEGISLATIVE EXCHANGE COUNCIL

ISSUE ALERT

To:	**New York ALEC Members**
From:	**ALEC's Public Safety and Elections Task Force**
Re:	**NY SB 101 and NY AB 696**
Date:	**February 15, 2011**

New York Senate Bill 101 and New York Assembly Bill 696 impede on rights protected by the First Amendment. This bill imposes oppressive and impractical requirements on corporations by requiring an annual shareholder vote in which a majority of shareholders must first choose to allow the corporation to make contributions or independent expenditures, and then determine a specific aggregate amount of funds that the business can spend in that calendar year. This bill restricts free speech and places discriminatory burdens on a vast array of corporations. Due to this unjust barrier to speech, **ALEC opposes the policies in NY SB 101 and NY AB 696.**

If SB 101 and AB 696 are passed, before a corporation can make a financial contribution to a political committee, candidate, party committee, or ballot referendum, the entities must at least annually obtain the authorization of a majority of their shareholders. These onerous requirements will deter and delay these entities from participating in political debate.

Not only do these burdensome requirements impede upon First Amendment rights, they are also unnecessary. Shareholders always have the option of voting out board members and removing management who engage in independent expenditures contrary to the interests of the company and its owners, or of passing shareholder resolutions to prohibit independent expenditures by corporations.

The provision also raises equal protection issues, because similar requirements are not imposed on unions. Exempting unions from arduous requirements is a hypocritical move that will silence some voices while allowing others. In the majority opinion in Citizens United, Justice Kennedy quoted the Court in an earlier decision, stating: **"The worth of speech 'does not depend upon the identity of its source, whether corporation, association, union, or individual.'"**[1]

This strongly suggests that the courts are unlikely to uphold a law imposing a major burden on some entities, while allowing other incorporated entities and unincorporated associations to remain unburdened when it comes to political speech.

Senate Bill 101 and Assembly Bill 696 are dangerous bills which will trample upon the right to free speech in New York. Legislation punishing speech stifles uninhibited public debate and undermines the very purpose of the First Amendment. NY SB 101 and NY AB 696 will impose burdensome and impractical requirements on corporations which will limit the free and robust debate of these entities. For all these reasons, **ALEC opposes the policies in SB 101 and AB**

696.

Should you have any questions on this important issue, please contact Courtney O'Brien at cobrien@alec.org or 202-742-8504.

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[1] *Bellotti*, 435 U. S., at 777 (1978) as quoted in *Citizens United*

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ALEC

ISSUE ALERT

To: **Indiana ALEC Members**
From: **ALEC's Health and Human Services Task Force**
Re: **Senate Concurrent Resolution 5**
Date: **February 14, 2012**

It has come to our attention that tomorrow, the Indiana Senate Health and Provider Services Committee will consider Senate Concurrent Resolution 5. The resolution—which is modeled after ALEC's *Resolution Against PPACA Exchanges*—urges state officials to stop planning or establishing health insurance exchanges as prescribed in the federal health law, and urges Congress to defund exchange planning grants to states.

Twenty-two states have either refused to establish an exchange, or have had exchange legislation fail, die, or vetoed. Twenty states have either refused, returned, or not yet applied for federal exchange grants, and legislatures in another four states are trying to freeze exchange funds.

ALEC applauds these actions, and hopes that Indiana will follow this trend. ALEC also applauds the policy behind SCR 5, and urges all Indiana ALEC members to consider the following key points about state-based health insurance exchanges.

- **There's little difference between a federal exchange and a state-based exchange.** Every aspect of a state exchange must be approved by the U.S. Department of Health and Human Services (HHS), and states can't deviate from federal rules and standards. And much like Medicaid, a state-based exchange will be forever tethered to Washington through ongoing regulation. States should let the federal government spend its own time and money implementing its own programs.

- **There's no imminent threat of defaulting to a federal exchange.** The federal health law doesn't technically provide HHS any funding to set up an exchange, nor does it provide subsidies for people to buy insurance in a federal exchange. And HHS has announced it will extend exchange planning and grant deadlines to 2014. This means states can carefully deliberate, not rush to judgment on setting up a new bureaucracy.

- **State-based exchanges can entrench the federal health law.** In the multistate lawsuit challenging the federal health law, U.S. District Court Judge Roger Vinson refused to stop the law's implementation because at least eight of the plaintiff states were already complying with it. And the federal government has argued that exchanges are essential to the federal health law because they will enforce the individual mandate.

- **State exchanges can be costly.** Federal exchange grants expire in 2014, and some states have said they'll pay for their exchanges with provider taxes, "user fees," and taxes on health insurance sold both inside and outside of the exchange. Indeed, the Mercatus Center recently found that, in general, every $1 of temporary federal grants leads to 40 cents of state and local tax increases.

- **There are too many unanswered questions.** With the upcoming U.S. Supreme Court ruling and the 2012 elections, the federal health law might be struck down, repealed, or defunded. States also face "early adopter" risks (high costs, flawed technology) when implementing the exchange.

Thank you for your attention in this matter. If you have any questions, please contact ALEC HHS Task Force Director Christie Herrera at christie@alec.org.

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