

BEYOND AETA: HOW CORPORATE-CRAFTED LEGISLATION BRANDS ACTIVISTS AS TERRORISTS

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Executive Summary

While the 2006 Animal Enterprise Terrorism Act (AETA) has received a great deal of attention from animal and environmental activists – as well as supporters of free speech – similar state-level legislation has faced little to no scrutiny. A conservative organization of state legislators known as the American Legislative Exchange Council (ALEC) has produced model legislation that is similar to AETA but more extreme in many ways. ALEC's model legislation:

- Suggests adding the phrase “politically motivated” to the definition of an “animal or ecological terrorist organization,” which clearly shows that the bill is designed to suppress speech based on its content.
- Defines illegal activity so broadly that anyone using the Internet or email to plan (or even express support for) an act of “animal or ecological terrorism” can be charged.
- Creates a “terrorist registry” – an online database open to the public which contains names, addresses and photos of everyone convicted of “animal or ecological terrorism.”

ALEC's unique structure allows powerful corporate representatives to craft model bills such as this one and hand them off to legislators who then introduce the bills in numerous state legislatures. An analysis of the progress of this model bill shows that while ALEC was successful in distributing the bill to its members (it was introduced in several legislatures in the year following its release), it has yet to pass in any state. Despite this outcome, there are now signs that ALEC is engaging in a renewed lobbying effort to pass pieces of its controversial legislation in any way it can.

Introduction

Since its passage by Congress in 2006, the Animal Enterprise Terrorism Act (AETA) has drawn a great deal of attention and criticism from animal rights and environmental activists – and for good reason. The Act which purports to protect animal enterprises¹ from so-called “eco-terrorists,” is a vague and unnecessarily broad law that has already been used to restrict First Amendment rights. While the discussion of AETA is valuable, it is important to recognize that AETA is not a unique piece of legislation. Similar bills have been introduced in several state legislatures over the last few years, and most of them stem from a model bill produced by an organization of state legislators known as the American Legislative Exchange Council (ALEC)². Legislation based on ALEC's model bill must be monitored closely because ALEC's version is even harsher than AETA. Although the several states that considered ALEC's bill soon after its release all eventually rejected it, there are signs of an emerging effort to pass this legislation through a more incremental approach.

¹ “Animal enterprise” is defined very broadly in AETA and covers any entity that uses animals or animal products, including everything from research laboratories to pet stores.

² A copy of the ALEC model bill was provided for analysis by Arizona State Senator Jack Harper

What is ALEC?

While ALEC's website describes the association as nonpartisan, it is in fact quite conservative. Bill Howell, Speaker of the Virginia House of Delegates and ALEC's National Chairman, is a Republican, as are 16 of its 17 board members.³ *USA Today* recently described ALEC as a "national group that represents 2,000 conservative state legislators."⁴

ALEC's organizational structure is designed to give corporate interests significant influence over legislation produced at the state level. ALEC has several task forces, each of which is run by a Public Sector Chair (a state legislator) and a Private Sector Chair. Some of the current Private Sector Chairs include employees of the National Rifle Association (Public Safety and Elections Task Force) and AT&T (Telecommunications and Information Technology Task Force).⁵ Each Task Force drafts numerous pieces of "model legislation" on a variety of subjects within its policy domain; for example, the Health and Human Services category alone features over 100 model bills.⁶

As equal partners in the creation of the "model legislation," representatives of the private sector are given an extraordinary opportunity to craft bills that suit their personal agendas. Once completed, these bills are provided to ALEC's public sector members in the hope that they will be introduced in as many states as possible. ALEC's model is different from traditional forms of lobbying and advocacy because not only are corporations given extraordinary power to shape bills under ALEC's system, there is often no clear evidence of the corporate influence when model bills are introduced. And so far, ALEC has been extremely successful in pushing its model legislation through state legislatures. According to its Legislative Scorecard for the most recent legislative session (2007-2008), 751 bills based on ALEC model legislation were introduced and 118 of these were enacted, yielding an impressive 15.7% success rate.⁷

From ALEC to AETA

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http://www.alec.org/AM/Template.cfm?Section=Board_of_Directors&Template=/CM/HTMLDisplay.cfm&ContentID=10582

⁴ http://www.usatoday.com/news/washington/2009-01-26-stimulus_N.htm

⁵ http://www.alec.org/AM/Template.cfm?Section=Task_Forces

⁶ http://www.alec.org/AM/Template.cfm?Section=Health_and_Human_Services&Template=/TaggedPage/TaggedPageDisplay.cfm&TPLID=7&ContentID=9149

⁷ http://www.alec.org/AM/Template.cfm?Section=2009_Legislative_Scorecard

In 2003, ALEC approved a new piece of model legislation titled the “Animal and Ecological Terrorism Act” (because this model bill’s acronym is the same as that of the federal Animal Enterprise Terrorism Act, this one will be referred to as the ALEC bill or version while the federal law will be referred to as AETA). Comparing the text of the ALEC bill with AETA, which passed in 2006, shows a significant degree of similarity, as demonstrated below. Portions underlined indicate similar or identical language.

Example 1

- ALEC: An “animal or ecological terrorist organization” attempts to “obstruct, impede or deter any person from participating in a lawful animal activity” through “intimidation, coercion, force or fear”
- AETA: A person commits an offense if he or she acts “for the purpose of damaging or interfering with the operations of an animal enterprise” and (a) “intentionally damages or causes the loss of...property” or (b) “intentionally places a person in reasonable fear of...death...or serious bodily injury to that person” or others “by a course of conduct involving threats...harassment, or intimidation” or (c) “conspires or attempts to do so”

These excerpts show that the ALEC bill and AETA have similar descriptions of both the purpose of the crime (obstructing or interfering with an animal enterprise or activity) and the way in which it is carried out (through fear and intimidation). The problem with the “fear” and “intimidation” language is that it is already being interpreted in animal welfare prosecutions by a subjective standard—that of the person or institution being protested.⁸ The proper measurement is the constitutional “true threat” standard of intimidation by a threat to an individual with the intent of placing him or her in fear of bodily harm or death.⁹

Example 2

- ALEC: A person can be charged for “providing any person with material, financial support or other resources...that will be used in whole or in part, to encourage, plan, prepare, carry out, publicize, promote or aid an act of animal or ecological terrorism, the concealment of, or an escape from, an act of animal or ecological terrorism”
- AETA: The law targets any person who “travels in interstate or foreign commerce, or uses or causes to be used the mail or any facility of interstate or

⁸ See UNITED STATES. V. BUDDENBERG, No. 5:09-cr-00263 (N.D. Cal. Mar. 12, 2009) in which activists known as the AETA 4 were charged for conspiracy to commit animal enterprise terrorism.

⁹ See United States v. Hart, 212 F.3d 1067 (8th Cir. 2000) (known anti-abortion activist’s actions constituted a “true threat” where he parked two Ryder trucks at an abortion clinic, knowing that the clinicians were aware that a similar truck had been used in the Oklahoma City bombing and thus would be in fear for their lives); Planned Parenthood of the Columbia/Willamette, Inc. v. Am. Coal. of Life Activists, 290 F.3d 1058 (9th Cir. 2002), creating “Guilty” posters and a website disclosing personal information of abortion providers and the actions of an anti-abortion organization constituted true “threats of force” because they intentionally replicated a pattern that preceded the past murders of three providers).

foreign commerce” so long as the purpose and outcome conditions in the above AETA example are met

In this case AETA didn’t go quite as far as ALEC’s proposed bill, but it clearly follows the general idea. The ALEC bill attempts to ensure that anyone connected to a crime under the Act can be charged, and AETA moves in the same direction. By including interstate and foreign commerce, the Act includes any communication or material transmitted via mail, email or the Internet. The Animal Enterprise Protection Act (AEPA), AETA’s 1992 predecessor, includes a similar provision, which was used to target a group of activists known as the SHAC 7.¹⁰

Example 3

- ALEC: Those charged may be ordered to pay an “amount equal to three times all economic damages [including] the cost of lost or damaged property, records, the cost of repeating an interrupted or invalidated experiment, loss of profits or other consequential damages”
- AETA: Those charged may be ordered to pay damages including “the reasonable cost of repeating any experimentation that was interrupted or invalidated as a result of the offense...the loss of food production or farm income reasonably attributable to the offense...[and] any other economic damage”

This example follows the same pattern seen in Example 2; while AETA is not necessarily as extreme as the ALEC bill, AETA clearly borrows heavily from the ideas and language of the ALEC version.

Why is AETA dangerous?

After studying the ALEC model legislation, one might conclude that AETA looks quite tame by comparison. Despite the fact that AETA is to some extent a watered-down version of the ALEC bill, it is still problematic for a number of reasons:

1. AETA creates a content-based speech restriction by focusing solely on animal and environmental activists. AETA clearly targets those who wish to use their First Amendment rights to advocate on behalf of animal rights and environmental causes. Creating a punishment exclusively for actions which involve animal enterprises shows that the Act is designed to suppress the expression of certain opinions and viewpoints.

In a 2009 letter, the New York City Bar Association urged congressional Judiciary Committee leaders and members of President Barack Obama’s cabinet to repeal AETA.

¹⁰ The SHAC 7 are seven activists from Stop Huntingdon Animal Cruelty, an international campaign to shut down the animal testing facility Huntingdon Life Sciences. In 2006, they were found guilty of using their website to “incite attacks” on individuals doing business with Huntingdon Life Science and six were convicted on charges of “terrorism and Internet stalking.”

The letter argues that “AETA cannot pass strict scrutiny under the First Amendment because it defines offense based on the content of the penalized speech” and goes on to state that “[c]riminal statutes, like AETA, must be scrutinized with particular care; those that make unlawful a substantial amount of constitutionally protected conduct may be held facially invalid even if they also have legitimate application.” *City of Houston v. Hill*, 482 U.S. 451, 459 (1987) (internal citations omitted).¹¹

2. AETA can be used to charge persons who do economic harm – but no physical harm – to an animal enterprise, which further infringes upon First Amendment rights. The New York City Bar Association’s letter notes that “[b]y imposing criminal penalties for causing economic loss, AETA reaches protest activity that results in lost profits, use of property, or business opportunities.”¹² This relates to the SHAC 7 case discussed above; while members of the SHAC 7 did not commit any acts of violence or damage any property, they were convicted simply because they were found to have assisted—through their website—an effort to economically damage an animal enterprise. AETA ignores the fact that for decades activists have successfully – and legally – used economically harmful tactics such as boycotts to spur social change.

3. Terms used in AETA are excessively vague and broad. The Act says that an offender must have the “purpose of damaging or interfering with the operations of an animal enterprise,” but it does not explain what is meant by the term “interfere.” Absent any definition, this phrase could be construed to apply to very minor acts such as publishing information about an animal enterprise on a website in order to hurt its business.

Another problematic line involves “intentionally” causing a person to feel that he/she or someone else will be injured or killed. This is a subjective standard because it relies largely on the interpretation of the person who claims to feel threatened and does not define what it means to “intentionally” cause this fear.

Beyond criminalizing any act that causes damage to an animal enterprise or causes a person to fear injury or death, AETA says that anyone who “conspires or attempts” to do these things can also be charged. This provision makes AETA much broader and could be used to target anyone who was even tangentially involved with an effort to advocate for animal rights and environmental issues. Such tangential involvement can include the posting of notices and of news on an internet website, as in the SHAC 7 case. As Andrew Erba, an attorney for the SHAC 7 said, “The government says that as a result of this posting of information, which otherwise, I think, is completely legal and First Amendment-protected, other individuals were incited to take actions. But the government

¹¹ http://www.nycbar.org/pdf/report/AETA_Animal&CivilRights_Letter072109.pdf

¹² Ibid.

has never proven any individual actually read the information on the website and then took an immediate action based on that, which is the test under *BRANDENBURG V. OHIO*.”¹³

4. AETA’s use of the “terrorism” label is inaccurate and misleading. Branding animal rights and environmental activists as “terrorists” is excessively punitive and unfair. It is unfair because many of these crimes do not traditionally constitute “terrorism,” which has been defined by United States law as “premeditated, politically motivated violence perpetrated against noncombatant targets by subnational groups or clandestine agents.”¹⁴ Given that AETA goes beyond physical damage to include economic damage (and even planning to inflict economic damage), labeling all of these actions as acts of terrorism is simply incorrect. Beyond this, the “terrorist” designation is dangerous to those charged under AETA. In the post-9/11 climate, the term “terrorist” conjures a certain image that is worlds apart from an environmental activist who may commit a crime under AETA. The label is particularly damaging due to the vague and broad nature of the Act (described above). Because terms in AETA are generally expansive and not clearly defined, this necessitates more personal interpretation on the part of judges and juries, few of whom are eager to side with the “terrorists.” By designating even non-violent activists as terrorists, the Act more often than not may result in judges and juries being swayed by emotion rather than legal arguments.

5. AETA’s “savings clause” does not fully cover constitutionally protected activities. AETA includes a so-called “savings clause” which states that “[n]othing in this section shall be construed...to prohibit any expressive conduct (including peaceful picketing or other peaceful demonstration) protected from legal prohibition by the First Amendment to the Constitution.” While this clause may appear to resolve some of the problems with the Act, it is in fact relatively ineffective. The New York City Bar Association writes that “[t]he Supreme Court has suggested that such generally worded savings clauses may themselves be impermissibly vague. *See Bd. of Airport Comm’rs v. Jews for Jesus*, 482 U.S. 569, 575-76 (1987)... AETA’s savings clause offers an example of protected conduct (‘peaceful picketing’), but its parenthetical reference provides insufficient guidance for a person faced with a highly fact specific question of whether a certain activity falls within AETA’s scope. *See Nat’l People’s Action*, 594 F. Supp. at 79 (*citing* Lawrence Tribe, *American Constitutional Law*, § 12-26 at 716 (1978)).” The letter goes on to conclude that “at best, AETA’s savings clause provides insufficient guidance to a citizen and, at worst, is itself unconstitutionally vague.”¹⁵

¹³ “FIRST MEMBER OF SHAC 7 HEADS TO JAIL FOR THREE-YEAR SENTENCE,” OCTOBER 3, 2006 DEMOCRACY NOW! INTERVIEW WITH ANDREW ERBA AND ANDY STEPANIAN.

¹⁴ http://www.law.cornell.edu/uscode/22/uscode_sec_22_00002656---f000-.html

¹⁵ http://www.nycbar.org/pdf/report/AETA_Animal&CivilRights_Letter072109.pdf

Why does state-level legislation matter?

Having established that AETA is expansive enough to easily violate the constitutional rights of animal and environmental activists, it is worth asking what value there is in studying similar legislation on the state level. The answer is that many ALEC-based bills introduced on the state level are significantly more extreme than AETA and could lead to a further erosion of First Amendment rights.

1. ALEC’s model bill includes an overly broad definition of an “animal or ecological terrorist organization.” This definition includes any group of two or more individuals with the “incidental purpose of supporting any activity through intimidation, coercion, force or fear that is intended to obstruct, impede or deter any person from participating in a lawful animal activity, animal facility, research facility, or the lawful activity of mining, foresting, harvesting, gathering or processing natural resources.” Unlike AETA, the ALEC bill does not provide any sort of explicit protection for persons exercising their First Amendment rights. However, like AETA, this definition criminalizes organizing activities that may lead to someone else targeting an animal enterprise.

2. The ALEC bill includes a suggestion to add the phrase “politically motivated” to some sections of the legislation. Doing so would expand the bill and allow the bringing of charges against an “animal or ecological terrorist organization...or any individual whose intent to commit the activity was politically motivated”. This provision is clearly unconstitutional; it moves beyond the already-expansive definition of “animal or ecological terrorist organization” to include anyone seeking to express a political opinion.

3. ALEC’s bill creates a “Terrorist Registry.” Anyone charged with the crime of animal or ecological terrorism would be required to submit his or her name, address, photograph and signature to the state’s Attorney General, who would create and maintain a website listing all the offenders. This information would remain on the website for at least three years, at which point the offender can only have his or her data removed by requesting a hearing for removal. This provision continues AETA’s use of the “terrorist” label and suggests that animal and environmental activists are so dangerous that their personal information needs to be published online in the name of public safety.

Bills introduced based on ALEC model legislation

Several state-level bills have been introduced in recent years which address crimes against animal enterprises. Of these, almost all borrow heavily from ALEC’s proposed bill. The examples below highlight three controversial sections of ALEC’s bill – the definition of an “animal or ecological terrorist organization,” the description of prohibited offenses, and the creation of a terrorist registry – and show how closely ALEC’s language matches with language used in bills from Arizona,¹⁶ Hawaii,¹⁷ South Carolina¹⁸

¹⁶ <http://www.azleg.state.az.us/legtext/46leg/2r/bills/sb1081p.pdf>

and Washington.¹⁹ Underlined portions indicate language similar or identical to that in the ALEC bill.

- **ALEC bill:** ““Animal or ecological terrorist organization”” means any association, organization, entity, coalition, or combination of two or more persons with the primary or incidental purpose of supporting any {optional language insert “politically motivated”} activity through intimidation, coercion, force, or fear that is intended to obstruct, impede or deter any person from participating in a lawful animal activity, animal facility, research facility, or the lawful activity of mining, foresting, harvesting, gathering or processing natural resources”
 - **Arizona:** ““Animal or ecological terrorist organization”” means any association, organization, entity, coalition or combination of two or more persons with the primary or incidental purpose of supporting any activity through intimidation, coercion, force or fear that is intended to obstruct, impede or deter any person from participating in a lawful animal activity, from mining, foresting, harvesting, gathering or processing natural resources or from being lawfully present in or on an animal facility or animal research facility.”
 - **Hawaii:** ““Animal rights or ecological terrorist organization”” means two or more persons organized for the purpose of supporting any politically motivated activity intended to obstruct or deter any person from participating in an activity involving animals or any activity involving natural resources”
 - **South Carolina:** ““Animal or ecological terrorist organization”” means an association, organization, entity, coalition, or combination of two or more persons with the primary or incidental purpose of supporting an activity through intimidation, coercion, force, or fear that is intended to obstruct, impede, or deter a person from participating in a lawful animal activity, animal facility, research facility, or the lawful activity of mining, foresting, harvesting, gathering, or processing natural resources”
 - **Washington:** ““Animal rights or ecological terrorist organization’” means any association, organization, entity, coalition, or combination of two or more persons with the primary or incidental purpose of intimidating, coercing, causing fear with the intent to obstruct, or impeding any person

¹⁷ http://www.capitol.hawaii.gov/session2004/bills/hb2550_.htm

¹⁸ http://www.scstatehouse.gov/sess115_2003-2004/bills/4439.htm

¹⁹ <http://apps.leg.wa.gov/documents/billdocs/2003-04/Pdf/Bills/Senate%20Bills/6114-S.pdf>

from participating in an activity involving animals, activity involving natural resources, or an animal facility, horticultural facility, or research facility, or the lawful activity of mining, foresting, harvesting, gathering, or processing natural resources.”

- **ALEC bill:** “Participating in or supporting animal or ecological terrorism to include raising, soliciting, collecting or providing any person with material, financial support or other resources such as lodging, training, safe houses, false documentation or identification, communications, equipment or transportation that will be used in whole or in part, to encourage, plan, prepare, carry out, publicize, promote or aid an act of animal or ecological terrorism, the concealment of, or an escape from, an act of animal or ecological terrorism”
 - **Arizona:** “It is unlawful for an animal or ecological terrorist organization or for any person acting on behalf of, at the request of or for the benefit of an animal or ecological terrorist organization to do any of the following...”
 - Providing advice, assistance or direction in the conduct, financing or management of an act of animal or ecological terrorism[,] knowing or having reason to know that an act of animal or ecological terrorism has occurred or may result by:
 - (a) Harboring or concealing any person or property
 - “(b) Warning any person of impending discovery, apprehension, prosecution or conviction...”
 - “(c) Providing any person with material support or resources or any other means of avoiding discovery, apprehension, prosecution or conviction...”
 - **Hawaii:** “A person commits an offense against animals or natural resources if the person knowingly provides financial support, resources, or other assistance... for the purpose of assisting the organization in carrying out an act described in subsection (a)”
 - **South Carolina:** Participating in or supporting animal or ecological terrorism to include raising, soliciting, collecting, or providing a person with material, financial support, or other resources such as lodging, training, safe houses, false documentation, or identification, communications, equipment, or transportation that will be used in whole or in part, to encourage, plan, prepare, carry out, publicize, promote, or aid an act of animal or ecological terrorism, the concealment of, or an escape from, an act of animal or ecological terrorism”
 - **Washington:** “It is unlawful for an animal or ecological terrorist organization or any person acting on its behalf or at its request or for its benefit or any individual to intentionally...Participate in or support animal

or ecological terrorism, including raising, soliciting, collecting, or providing any person with material, financial support, or other resources such as lodging, training, safe houses, false documentation, or identification, communications, equipment, or transportation that will be used in whole or in part to encourage, plan, prepare, carry out, publicize, promote, or aid an act of animal or ecological terrorism, the concealment of, or an escape from an act of animal or ecological terrorism.”

- **ALEC bill:** “There is hereby created the registry of animal and ecological terrorists. A person who is convicted of or pleads guilty to an act that violates any section of the Animal and Ecological Terrorism Act shall be registered with the Attorney General on a form prescribed by the Attorney General”
 - “The registry shall contain the name, a current residence address, a recent photograph and signature of the offender”
 - “The Attorney General shall create a website containing the information set forth in this paragraph for each person who is convicted or pleads guilty to a violation of this Act”
 - “Information regarding an offender shall remain on the website for no less than three (3) years at which time the registrant may apply to the Attorney General for removal after a hearing on the application for removal.”
- **Arizona:** “A person who has been convicted of a violation of Section 13-2308.01 or 13-2319 shall within seven days after conviction register with the Sheriff”
 - “The Department of Public Safety shall establish and maintain an Internet terrorist web site for persons who were convicted of a violation of section 13-2308.01 or 13-2319.”
 - “The Internet terrorist web site shall include the following information for each convicted person in this state who is required to register
 - (1) The offender’s name, address and date of birth.
 - (2) A current photograph.”
 - “An offender shall remain on the web site for at least three years, at which time the offender may apply to the Department of Public Safety to be removed from the web site”
- **Hawaii:** “The department of agriculture shall create a record of each individual who commits an offense involving animals and the department of land and natural resources shall create a record of each individual who commits an offense involving natural resources under chapter A”

- “A record created under this section shall include the individual's name, residence address, signature, and a recent photograph of the individual”
 - “The department of agriculture and department of land and natural resources shall maintain internet websites containing each record described by this section”
 - “A record shall remain on the website for at least three years, at which time the individual who is the subject of the record may apply to the department of agriculture or department of land and natural resources for a hearing on removal of the record”
- **South Carolina:** “There is hereby created the registry of animal and ecological terrorists. A person who is convicted of or pleads guilty to a violation of this chapter must be registered with the Attorney General on a form prescribed by the Attorney General”
 - “The registry shall contain the name, a current residence address, a recent photograph, and signature of the offender”
 - “The Attorney General shall create a website containing the information set forth in this section for each person who is convicted or pleads guilty to a violation of this chapter”
 - “Information regarding an offender shall remain on the website for no less than three years at which time the registrant may apply to the Attorney General for removal after a hearing on the application for removal”
- **Washington:** “There is created the registry of animal and ecological terrorists. A person who is convicted of or pleads guilty to an act that violates this chapter shall be registered with the attorney general on a form prescribed by the attorney general.”
 - “The registry shall contain the name, a current residence address, a recent photograph, and signature of the offender”
 - “The attorney general shall create a website containing the information set forth in this section for each person who is convicted or pleads guilty to a violation of this chapter”
 - “Information regarding an offender shall remain on the website for not less than three years at which time the registrant may apply to the attorney general for removal after a hearing on the application for removal”

These examples show that the bills in these four states are effectively the same as the ALEC bill; South Carolina lawmakers even appear to have essentially copied the ALEC bill verbatim. Such a strong connection between ALEC’s bill and actual proposed legislation in these various states is proof of the extremely powerful relationship that exists between ALEC, corporate interests and state legislators. In this case ALEC’s corporate members were able to draft a piece of legislation to their exact specifications

before it was passed off to legislators and introduced in various states with very few substantive modifications.

What has actually been passed on the state level?

Following the release of ALEC's proposal in 2003, similar versions of the bill were introduced in several state legislatures but none became law. It appeared as though ALEC's bill was too extreme to pass in any state, and the only related legislation passed in subsequent years was narrowly written. For example, the Oklahoma Farm Animal, Crop, and Research Facilities Protection Act (2003) does not contain any of the three sections of the ALEC bill highlighted above and it limits the scope of the law to several specific acts (mostly property offenses).²⁰

Recently, however, a pattern has appeared in the animal enterprise laws that have passed. While states have still been unable to pass a bill with all the elements of the ALEC model legislation, individual components of the ALEC bill are slowly becoming law in various states. A 2005 Arizona law uses the term "animal or ecological terrorism" which, as discussed above, is both inaccurate and misleading.²¹ Pennsylvania approved legislation in 2006 that includes a provision relating to damages similar to that in the ALEC bill: offenders must pay up to three times the amount of all damage, including "the market value of the property prior to the violation and the production, research, testing, replacement and development costs directly related to the property that was the subject of the specified offense," which could easily be an enormous sum.²² For example, an animal enterprise may argue that protesters outside the facility caused its employees to feel threatened. The enterprise could then conceivably argue that any experiment which failed due to employee error – for as long as the employees continued to feel threatened – was caused by the impact of the protesters and could claim damages that include the rental or per-use cost of research equipment (easily thousands of dollars per hour). California's 2008 Researcher Protection Act uses similar language to AETA and ALEC's model bill. It defines a new crime to include publishing information about researchers with the *intent* that the information be used to commit a violent act or threaten a violent act, as long as the information is *likely* to do so.²³

Conclusion

The American Legislative Exchange Council's push for the model "Animal and Ecological Terrorism Act" in the years after its 2003 release was largely unsuccessful.

²⁰ http://webserver1.lsb.state.ok.us/2003-04bills/SB/sb584_engr.rtf

²¹ <http://www.azleg.gov/legtext/47leg/1r/bills/sb1166c.pdf>

²² <http://www.palrb.us/pamphletlaws/20002099/2006/0/act/0027.pdf>

²³ http://www.leginfo.ca.gov/pub/07-08/bill/asm/ab_2251-2300/ab_2296_bill_20080928_chaptered.pdf

Following the distribution of the ALEC proposal to its members in legislatures across the country, bills were introduced in Arizona, Hawaii, South Carolina and Washington in 2004 but none became law. Subsequent attempts in Tennessee and South Dakota also failed. Despite these victories for opponents of the legislation, key pieces of ALEC's model bill are now beginning to pass in some states.

It is possible that ALEC and its members, reacting to this outcome in 2004, shifted to a more incremental strategy – attempting to insert key provisions of the model bill into legislation rather than pushing for the entire package. Conclusive proof of a renewed ALEC lobbying effort has not yet emerged, but whether such an effort exists or not, it is clear that supporters of ALEC's misleading and discriminatory bill are not ready to give in. Because ALEC's efforts take aim not only at the animal rights movement but also at long-established notions of what constitutes criminal behavior, it is essential that those who oppose criminalizing political speech and excessive corporate influence in our legislatures and courts continue to monitor animal enterprise legislation in order to ensure that ALEC's extreme proposals do not become law. Failure to do so would not only hinder a robust political movement but allow private interests to redefine what it means to be an activist, a criminal, and a terrorist under United States law.

