



The Ethan Allen Letter

IDEAS FOR VERMONT'S FUTURE

A Monthly Publication of The Ethan Allen Institute

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The Evil School Choice Plot

COMMENTARY

An evil plot is afoot to pressure the states to adopt “school choice schemes”, according to onetime Rutland Northeast Superintendent Dr. William J. Mathis. He is currently a Shumlin appointee to the Vermont State Board of Education and Managing Director of the grandly named “National Education Policy Center” at the University of Colorado.

According to Mathis’s article “School Choice: What the Research Shows”, the centerpiece of the plot is the Obama administration’s pressure on states to create charter schools. Vermont is one of 13 states that do not authorize public charter schools, thanks to the surprisingly determined opposition of Gov. Howard Dean and, naturally, the Vermont-NEA teachers’ union. The idea is not popular with the public school establishment either,

since allowing parents to choose charter schools for their children threatens an exodus from poorly-performing traditional schools that their management may find it hard to explain when asking taxpayers for more money.

It’s not just the Obama administration, either. Mathis states that “Vested interest think tanks, heavily supported by the deep-pockets of the Gates, Broad, and Friedman foundations” are also “major pushers” (as if parental choice is some kind of narcotic).

One has to wonder how think tanks can become “vested interests”, when none of them can receive any financial benefit from increased parental choice. The real vested interests in education are people whose livelihood depends on the government continuing to deliver students and money, for instance, Rutland Northeast Superintendents.

In any case, Mathis has well earned the dubious accolade of being Vermont’s most persistent and extravagant opponent of giving parents more educational choices

for their children. His opposition flows from a deeply-held ideology derived from the well-known socialist of the 1920s, John Dewey: “the purpose of education is a democratic society.”

For Mathis, that translates into a government-operated monopoly school system, managed by far-seeing and certified experts, into whose unionized schools parents are required to consign their children, and for which taxpayers are required to pay whatever is deemed necessary.

Without this common education requirement, Mathis believes, parents will too often make ill-informed educational choices that appear to them better for their children, with no concern for the democratic ideal. And that’s not democratic!

In his commentary Mathis declares that “the legitimate peer-reviewed research shows that in general there isn’t any difference in test scores” between students in traditional public schools and choice programs. This is true only

See **Evil Choice**, Page 5

The Ethan Allen Letter

The Ethan Allen Institute is an independent, non-profit, nonpartisan public policy research and educational organization, incorporated in 1993 under Vermont law.

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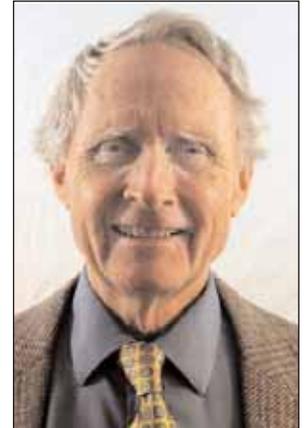
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PRESIDENT'S MESSAGE

The Wages of Complexity



Did you ever notice how much more complicated government is than when you were younger?

It used to be that taxpayers could look at their grand list value and the town's school property tax rate, and figure out what they would have to pay. Today we have Act 60 and Act 68. There are about 621,000 people in this state and I would be very surprised if 621 of them could be found – including legislators who voted on it – who could offer a passable explanation.

Now we have ObamaCare and Green Mountain Care. The House debate February 23-24 on Gov. Shumlin's Exchange bill revealed that most of the 88 legislators in favor of it had a tough time explaining why. (The opponents did a lot better at pinpointing the many defects.)

The argument for the bill pretty much came down to “we need everybody inside the Exchange, so they can qualify for the most Federal tax credits, so the governor can then petition Obama to let state government grab the credits to pay for his dream of turning Vermont into Quebec starting in 2017.”

To legislators hell bent on installing single payer health care, and (necessarily) not squeamish about compulsion, that was a good enough reason. (Some might say that's also a good enough reason for their constituents to vote them out of office.)

As EAI has pointed out unfailingly over 19 years, government creates problems as often – perhaps more often – as it solves problems. Every government fix of a government-created problem leads to more complexity, more problems, and more fixes, until the whole thing is simply beyond citizen comprehension.

I hope you'll renew your support of EAI, to enable us to keep making the case for limited and comprehensible government, where free citizens can understand problems and find workable solutions.



PRESIDENT

The Left's Latest Attack on Freedom of Association

BY BRUCE SHIELDS

On Town Meeting Day many Vermont towns will find an article in their warning supporting a “Saving American Democracy” (SAD) amendment to the U.S. Constitution, as proposed by Senator Sanders and Congressman Welch. The stated purpose of SAD is to deny “personhood” to corporations. The real goal is to prevent corporations from speaking out on public issues, especially during elections.

Senator Sanders on his web site argues that the Founding Fathers never intended for corporations to be treated as persons. Sanders (SJR 33) and Welch (HJR 90) propose limiting the scope of the First Amendment to individual private or “natural” persons, as opposed to the “artificial” person created by incorporation.

The SAD effort hopes to overturn a 2010 U.S. Supreme Court case titled *Citizens United v. Federal Election Commission*, which the Left claims first introduced the idea that corporations are people.

Congress first imposed tight limits on campaign finance in 1974 amendments to the Federal Election Campaign Act (FECA), which capped both total spending and individual contributions to campaigns. In *Buckley v. Valeo* (1976), the Supreme Court on First Amendment grounds voided caps on total spending by candidates. However it did not address the cap on contributions,

even though spending clearly is linked to contributions.

Subsequent courts have not touched *Buckley v. Valeo*. Despite that case's partial victory for free speech, the FECA spending limits did achieve a part of their goal. From 1974 onward, the rate of reelection of incumbents has been higher than ever before.

Spending limits manifestly benefit incumbents. Not surprisingly, incumbents overwhelmingly support caps on campaign spending. For candidates who mount attacks upon “giant corporations,” muzzling any potential response from the target simplifies the process.

Two recent cases have clarified the loose ends of *Buckley v. Valeo*. In March 2010 the DC Circuit Court of Appeals decided *Speech Now.org v. Federal Elections Commission*. The decision specifically gives First Amendment protection to corporation, union, and individual contributions to advocacy organizations (“Super PACs”) not connected to a candidate's campaign. The U.S. Supreme Court declined to review *Speech Now*, effectively affirming its findings.

The same year the Supreme Court ruled in *Citizens United* that all sorts of organizations possess an inherent free speech right to support independent committees that argue their views about issues and candidates. The longstanding caps on contributions by corporations to candidate committees continue in force, on grounds of minimizing opportunity for political graft.

In attacking the right of groups and associations of citizens to speak out in the election process, the Left

is mounting a frontal attack on the principle of free of speech and association.

Corporations have been recognized as persons ever since English courts of law first protected incorporation from royal prerogative in the 16th century. Incorporation protects the property and the rights of individual persons precisely because it affirms the social utility of a group of people organized to function as one person before the law.

This principle was brilliantly enunciated by Daniel Webster in his famous brief and affirmed by the Supreme Court almost 200 years ago in the pivotal Constitutional case, *Trustees of Dartmouth College v. Woodward*. Chief Justice John Marshall's opinion in the Dartmouth College case contains a detailed history and affirmation of corporate personhood, and declares that corporate persons enjoy every right guaranteed in the Constitution.

Curtailment of the scope of the rights of associations as proposed in SAD would ultimately deprive all for-profit business corporations – but not labor unions, the Sierra Club, VPIRG, and other anti-business advocacy groups – of their constitutional right to speak out in support of their interests and views.

Finally, a footnote to the Left: had the 1974 spending limits been in force, anti-war Senator Eugene McCarthy could never have run for President in 1968. The “Saving American Democracy” petition ought to be renamed the “Trash the First Amendment” petition, and rejected.

Bruce Shields is President of the Ethan Allen Institute.

Federal Judge Strikes Down Legislative Extortion Ploy

COMMENTARY

On January 20 Federal District Judge J. Garvan Murtha ruled that federal law preempts the state from regulating the Vermont Yankee nuclear power plant over safety concerns.

Well down in the media reports it was mentioned that the judge also found that the interstate commerce clause of the U.S. Constitution precludes the state from conditioning Vermont Yankee's continued operation on Entergy offering below market power prices to Vermont's utilities.

What the news accounts did not do was explain how Judge Murtha reached that second conclusion. It's not a pretty story.

Beginning on page 91 of the court's 102-page decision, the judge quoted verbatim a February 9, 2009 letter to Entergy from then-Senate leader Peter Shumlin and House Speaker Shap Smith. The two lawmakers stated that "It was our expectation that a power purchase agreement would be reached between the negotiating parties no later than December, 2008 and in advance of the legislature convening for the 2009 session."

The Shumlin-Smith letter continued that the General Assembly intended to consider "the terms of such a contract," including "its length, the price to be paid for electricity products under the contract, and an analysis of its costs and benefits to our constituents."

The letter concluded: "Accordingly, if [Entergy is] unable by

Wednesday, February 18, 2009, to provide the General Assembly with a power purchase agreement between the parties, it will be nearly impossible for the legislature to make a judgment on the continued operation of the plant before we adjourn in May, 2009."

After that adjournment Shumlin and Smith again wrote to Entergy's Jay Thayer, stating that "it will be exceedingly difficult for the Vermont General Assembly to act in 2010 on the question of continued operation of the Vermont Yankee Nuclear Power Station unless a power purchase agreement between Vermont utilities and Entergy is filed with the Vermont Public Service Board before November 1, 2009."

The letter noted that state officials "established this firm deadline" to permit review "by the Public Service Board and then by the Vermont General Assembly." Furthermore, the "contract and its details are critical to the central issues of economic [sic] relative to the Vermont Yankee nuclear plant that the legislature must consider."

Here, the judge stated, "there is evidence Vermont Yankee would be required to sell a portion of its output to Vermont utilities at below-market rates, rates that would not otherwise be available to the utilities if they were negotiating on the same footing as customers in other states, or the plant must suffer the consequences of closure. The *New England Power* decision makes clear that a state's requirement that a wholesale plant satisfy local demands and provide its residents an 'economic benefit' not available to customers in other states runs afoul of the Commerce Clause, because it impermissibly burdens interstate commerce."

He concluded, "this Court will permanently enjoin Defendants [Gov. Shumlin and the PSB] from conditioning Vermont Yankee's continued operation on the existence of a below-market Power Purchase Agreement with Vermont utilities."

What are we to make of this? First, Judge Murtha is describing an unmistakable political shakedown. The 2006 law interjected a unique legislative approval requirement before the applicant (Entergy) could obtain a final order from the Public Service Board to continue plant operation. Unlike the PSB, whose non-political decisions are guided by volumes of statute and case law, Act 160 allowed legislators to vote Vermont Yankee off the island for any reason, or no reason.

Shumlin and Smith made it clear that their price for allowing the PSB to rule on Entergy's application was below-market power contracts. To put it in bold relief, this is only a little different from a Chicago ward boss demanding payment from a contractor seeking a building permit.

That leads to the second point. By using their political muscle to force Entergy to give them a political benefit – lower power costs – the two politicians cast a dark shadow over Vermont's hitherto nearly spotless record of equality before the law and probity in public service.

Vermont is still ethically far removed from Chicago, but the judicially-rejected Shumlin-Smith extortion attempt can only damage Vermont's attractiveness as a place to engage in productive economic activity. This state has enough obstacles to job-creating economic growth without adding that one on top.

Coming Event: Saturday, March 17, Rally in Support of Vermont Yankee at the plant gate in Vernon from 5:00-6:30 pm. For more information, please contact Howard Shaffer, 603-304-9157 or hshaffer3@myfairpoint.net.

Coming Event: Thursday, March 23, Vermonters for Economic Health presents "A Tale of Two Futures" by Robert Maynard and Tom Licata. The event will discuss Vermont's economic future and will be held at 6:30-8:00 p.m. at the Grange Hall in Essex. (116 Center Road, Essex Junction, next to Frank's Motorcycles.)

Coming Event: The Institute's annual Jefferson Day event will be held Wednesday, April 18 in Greater Burlington. Please save the date! Details in the coming issue.

NEWS & VIEWS

Summer Seminars: The Institute for Humane Studies offers weeklong and weekend summer seminars on various topics. Application deadline is March 31. For more, visit www.theihs.org.

The Reagan Resolve is the title of a new publication from the Carleson Center for Public Policy. Its text analyzes Ronald Reagan's principles as applied to key issues facing America today, and its appendices contain ten important presidential statements and executive orders to illustrate Reagan's record.

The Carleson Center (www.thecpp.org) will provide copies on re-

quest. EAI VP John McClaughry is one of the 14 high-level Reagan veterans comprising the Center's Founding Policy Board.

Welcome News: Only 15 months after EAI exposed the complete disappearance of everybody's Big Health Care Idea of 2005, ISaveRx (see *EA Letter*, Jan. 2010), the House has voted to repeal the law authorizing Vermont's participation in this foreign drug importation scheme. The House accepted Rep. Oliver Olsen's amendment to the Exchange bill apparently without dissent.

Now, on with this year's "Big Health Care Idea", conceived by the same people who so enthusiastically promoted ISaveRx.

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The Evil School Choice Plot

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if one accepts Mathis's condition that "so-called 'research' by groups advancing or opposing choice" are disqualified.

Last year Dr. Greg Forster (PhD, Yale) published a report summarizing all ten empirical studies that used random assignment, the gold standard of social science, to examine how vouchers affect participants. Nine studies found that vouchers improve student outcomes, six that all students benefit, and three that some benefit and some are not affected. One study found no visible impact. None of these studies found a negative impact.

Forster also found, from surveying all of 19 additional studies, that vouchers improve outcomes for both participants and students in "voucher threatened" public schools, which were forced to improve to prevent an outflow of students to competing schools.

The Forster report was published by the Foundation for Educational Choice, and the author clearly is enthusiastic about parental choice. For Mathis, that disqualifies his findings. But Forster examined all of the published studies on these subjects. If Mathis can disqualify them all for reaching pro-choice conclusions, there aren't any studies left.

There was a time, in the last century, when the dominant opinion was: let every kid go to public school, let local school boards manage them to produce self-sufficient young citizens, fend off know-it-all-mandates from experts in the state capitol, and spend what local taxpayers could reasonably afford.

What has changed? The progressive centralization of control over public schools. The rise of combative, politically powerful teachers unions. Content-challenged teach-

ers. Lower academic standards. Foolish, trendy curricula. The replacement of anything resembling the community's moral values with behavior modification and political correctness. Deteriorating discipline and safety.

Many Vermont public schools still perform well in spite of these changed conditions. Many dedicated Vermont public school teachers give full value. But taken all in all, mandating that every student attend the government's school of choice for the benefit of the school will no longer work to the benefit of many students, or of society.

As no less than President Obama said, about health insurance, "My guiding principle is, and always has been, that consumers do better when there is choice and competition." That's equally true in education, and we need to get on with empowering those consumers.

Ban Nuclear Testing! “A report in the *Brattleboro Reformer* shows the Vermont Health Department has found the same levels of strontium-90 and cesium-137 in Lake Carmi in Franklin County, as were found in fish taken from the Connecticut River near Vermont Yankee.”

“The state’s chief of radiological health, Bill Irwin, tells the *Reformer* the findings are evidence that all fish in Vermont have some levels of contamination and that the source is nuclear weapons fallout and the releases of the Chernobyl disaster.” (WCAX, 2/7/12)

Hang On to Your Wallet: “With Robin Lunge, Director of Health Care Reform, testifying before the House Healthcare Committee [2/10/12], Rep. Jim Eckhardt (R-Chittenden) asked, ‘If you get 96,000 people that sign on to this [health insurance exchange] in 2014, and we’re getting all this money from the federal government to pay for that, what happens in 2015 when that federal money disappears?’ Lunge said she had no idea.”

“However, language in the ACA [ObamaCare] states that, ‘exchanges must be self-sustaining in 2015 and may generate revenue through assessments, user fees, or other means.’”

That is, essentially, a call for open season on taxpayers.” (TNR, 2/11/12)

Ratepayer Support for Expensive Renewables: “When CVPS introduced ‘Cow Power’ with media and marketing fanfare, very few customers signed up. Nearly 70 percent of the customers polled said they would – but that was before they actually had to pay. After implementation of the plan only about 2 percent actually signed up. Lesson: an economic model that results in higher costs without making a clear case for the benefits results in consumer rejection.” – Bruce Lisman (CfV 1/31/12)

State Chamber on the Exchange: “Our goal is to have a voluntary exchange and to have the products inside of it be of such excellent quality and price that businesses will flock to the exchange,” [Chamber President Betsy] Bishop said. “If it’s going to be the wonderful thing that we’re being told it’s going to be, then we’re wondering why there’s a need to force people into it.” (Herald, 2/12/12)

Yoo hoo, Betsy: It’s because the current government needs to force people to make the government’s preferred choices. Duh.

The Phantom Windfall: What will these companies do with the windfall [no more health insurance premiums to pay]? [Health care reform director Robin] Lunge says employers can give their employees a raise, and that sounds wonderful. However, that is not likely to happen, given the fact that in 2017 or shortly thereafter, the current Administration’s intention will be to move to a single payer healthcare plan that will likely rely on a 14 percent payroll tax.

Any saving enjoyed by these small businesses in the short term would be swallowed up by these taxes in just a few years.” – Rob Roper (TNR 2/16/12)

GMC Theory in Practice: “If nothing works [to reduce the cost of Medicare], the fallback weapon in Obama Care is to reduce fees paid to doctors and hospitals. Yet the Medicare actuaries tell us that squeezing the providers in this way will put one in seven hospitals out of business in the next eight years, as Medicare fees fall below Medicaid’s. Under this scenario, senior citizens may be forced to line up behind welfare mothers, seeking care at community health centers and in the emergency rooms of safety net hospitals.” – John Goodman Health Blog (1/30/12).

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Unionize Child Care Providers?

House Bill 97 would allow childcare providers and early childhood educators to enter into collective bargaining with the state. The union [American Federation of Teachers] has made big promises to the people it purports to help. However, a large and growing number of those same people don’t want or believe they need help in negotiating child-care subsidy rates and reimbursements from the state. They are small, independent business people, many of whom chose the profession because of the autonomy it affords them.

Elsa Bosma, who runs Puddle Jumpers Child Care in Shelburne, is spearheading the effort to defeat H.97. She has organized an on-line petition and created a Facebook Page to help inform and organize the many child care

providers who value their independence and who do not feel the need for third party representation. The petition reads, in part:

We are against H.97 because:

- 1) We do not support forced unionization
- 2) We don’t want our hard earned money to go toward a union that may not represent our values
- 3) And most importantly, H.97 does nothing to improve the quality of childcare in Vermont!

– Alice Dubenetsky, *True North Reports*, 2/14/12

NEWS & VIEWS

Health Care Policy Cost

Index: The Small Business & Entrepreneurship Council has issued its 2012 index of states for sensible health care policies. No surprise here: Vermont (guaranteed issue, community rating, huge Medicaid expenditures): 47th.

Ice Not Melting: “Data from Amazing GRACE (Gravity Recovery and Climate Experiment satellite) is showing no net loss of ice for the glaciers of the world’s greatest mountain chain, the Himalaya-Karakorum of Central Asia. Further, all of the world’s glaciers and icecaps in total show no net loss of ice. Oh, yes, the oceans are indeed rising: one six-hundredth of an inch a year. One inch per 600 years. Hard to claim island nations disappearing under the waves and coastlines evaporating with that.” – TTP News 2/11/12

Obama on Green Mountain Care: “There are those on the left who believe that the only way to fix the system is through a single-payer system like Canada’s, where we would severely restrict the private insurance market and have the govern-

ment provide coverage for everyone. On the right, there are those who argue that we should end the employer-based system and leave individuals to buy health insurance on their own.

“I have to say that there are arguments to be made for both approaches. But either one would *represent a radical shift that would disrupt the health care most people currently have*. Since health care represents one-sixth of our economy, I believe it makes more sense to build on what works and fix what doesn’t, rather than try to build an entirely new system from scratch.” (9/9/09)

Who Benefits from Solar PV: “In time, household and business electric

bills will be much higher due to rolling the expensive solar energy into rate schedules. At that point, it will become abundantly clear to the average Vermonter that we

have been misled, whereas the top 1 percent of households that are part of tax-shelter LLCs will have enjoyed a lucrative 20-year joyride courtesy of Vermont’s SPEED program.” Engineer Charles Kelly, yesvy (2/3/12)

At Least It’s Not Our Tax Dollars: “Two Vermont school districts have won a three-year grant of about \$3.5 million to design a new approach to graduation requirements and fund equipment. The grant to be shared by the Burlington and Winooski school districts comes from the Nellie Mae Education Foundation.”

“The money would help create a more flexible program for high school students who can demonstrate proficiency in a required subject to move ahead immediately, rather than sit through a year or a semester of a class below their level. It also would mean that students who are struggling to become proficient can take more time if needed.” (BFP 1/26/12)



Save the Fish!

LETTER

There recently appeared in your paper an op ed titled “Vermont Yankee Pollution Puts Fish in Hot Water”. It was authored by David Deen, who modestly describes himself as the “Connecticut River watershed’s foremost citizen advocate for clean water and healthy human and natural communities.” Deen’s employer, the privately funded Connecticut River Watershed Council, has long been an active part of the anti-Vermont Yankee coalition

Deen laments that that terrible Vermont Yankee nuclear plant releases condensed steam – warm water – into the river. He labels this “thermal pollution” and claims that it “confuses and disrupts the fish”. In winter, the discharge at the plant can increase the river’s temperature from 33 degrees F to a still-frigid 46 F – which, of course, readily drops as the river flows southward.

Deen professes great concern for the wellbeing of “aquatic organisms” in the river. Readers might be curious to know how Deen squares this concern with his own longtime occupation. He is a licensed fishing guide who steers anglers to their favorite aquatic organism, which they catch with ugly sharp hooks, then kill and eat!

You’d think that an organization concerned about the health of aquatic organisms in the Connecticut River would think twice before hiring somebody who brazenly pockets good money helping people slaughter the river’s leading aquatic organisms. David Deen has probably killed off more aquatic organisms in this watershed than has Vermont Yankee, without producing any useful electricity.

JOHN McCLAUGHRY,
Kirby



The Ethan Allen Letter

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St. Albans Messenger

February 22, 2012

Shumlin's Continuing War Against Entergy

MEDIA

This week the Shumlin Administration proposed that the Legislature consider legislation that would increase the plant's water discharge fee by 417 percent. It would go from \$105,000 to \$543,000.

This could be called a shot across the bow, just to let Entergy know that the state does not intend to roll over just because District Court Judge Garvan Murtha all but destroyed the state's case to shut the plant down by March...

It can be distilled to the simplest of legislative concepts: We have no money, they do. Get it.

When the company asked for legislative permission to expand its capacity to generate power, the legislature eventually said yes, but at a \$10 million price – \$8 million of which was to be used to clean up Lake Champlain, \$2 million went to affordable housing.

When the company was required to change its storage practices to use dry casks, the Legislature was able to exploit a legal snafu that allowed it to intervene and a deal was made. It cost Entergy roughly \$30 million as the chief subsidy provider

for the Clean Energy Development Fund.

When the governor was Senate Pro Tempore, he proposed a 35 percent gross revenues tax which would have cost the company about \$37 million. It failed, but it was not for lack of interest on the governor's part.

The Legislature's hypocrisy is written all over most that they do regarding Entergy. They want it to go away. But they don't. It's their cash cow....

The Clean Energy Development Fund is about to be history. Entergy is asking the state to pay its legal bills, which may run into the millions. The attorney general has decided to appeal Murtha's ruling, which not only will cost more money, but has the effect of cutting off discussions. And the environment created can hardly be called conducive to negotiations with the state's utilities for a power purchase agreement....

If the Legislature keeps pursuing obviously vindictive policies, all with the dual intent of shutting the place down, or extorting them until they leave, it's creating a legacy that will last long beyond their reign. They are forcing future governors and future legislators to deal with the leftovers of a relationship that has been pointlessly tortured.