NUMBER 188 NOVEMBER 2009

The Ethan Allen Letter

IDEAS FOR VERMONT'S FUTURE

A Monthly Publication of The Ethan Allen Institute

INSIDE:

Market Failure in Health Care?

COMMENTARY

Four years ago then-Senate President Peter Welch, now Congressman, declared, not for the first time, that "the private sector approach [in health care] has failed." That assertion has been echoed repeatedly by all of the advocates of increased government control over health and medicine, culminating in a wholly government-run health care system.

It never seems to occur to such people that, while there remain private actors in the health care sector, that entire sector has been distorted, restricted, mandated and indeed corrupted by decades of government meddling.

A century ago the American Medical Association, concerned that a glut of new doctors would drive down doctors' fees for service, conspired with doctor-dominated state medical licensing boards to restrict access to medical schools and limit the number of emerging MDs.

Through most of the 20th century – and even still – the physicians' guild successfully pressured their state boards to strictly control routine medical duties provided by nurses, deny licenses to doctors working on contract for fraternal lodges and cooperative hospitals, and discipline doctors using new technology that threatened to lower treatment costs and thus fees.

Responding to pressure from interest groups, legislatures have insisted that health insurance policies cover over a thousand specific treatments. These include such things as in-vitro fertilization, hair replacement, pastoral counseling and childbirth – even for single men, infertile women, and couples in their sixties.

Even more premium-inflating are guaranteed issue and community rating. The first of these requires insurers to accept all comers, even those who skip buying insurance until they get sick.

The second requires young people, just at the lower-income beginning of their working careers, and paying for college loans, home mortgages, and child rearing, to pay sharply higher premiums for the benefit of their sixtyish parents and grandparents who are almost inevitably better able to pay health insurance premiums. These "Robin Hood in Reverse" features are key provisions of ObamaCare.

Then there is the disparate tax treatment of medical expenses. Thanks to wartime wage and price controls imposed by the Roosevelt administration in 1943, employer-provided health insurance became tax-free to the employees. That benefit tied health insurance to employment, gave the power of choice to the employer, and denied portability when employees changed jobs. Individual insurance buyers must pay their premiums out of (diminished) after-tax income.

Tax-free Health Savings Accounts, authorized by Congress in 2003, unfortunately cannot be used to pay premiums on the associated consumer-driven health plans.

Local citizen groups – based on churches, unions, fraternal lodges, and co-ops – might want to form health insurance buying pools and negotiate with insurers for good rates. State governments have made that illegal since the 1930s.

Why not let Vermonters buy health insurance from carriers in the many states with far more reasonable insurance regulation? Many thousands of younger working people could save over two-thirds of the cost of premiums they are now paying to Vermont's

See ***Market Failure***, 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.

The Institute sponsors and conducts research on important public policy questions facing the people of Vermont, and makes its findings and recommendations known through various channels to the general public, the news media, and civic leaders at all levels.

MEMBERSHIP

The Ethan Allen Institute relies upon the generous support of its more than 600 members to support its work. Contributions to the Institute, a 501(c)(3) educational organization, are tax deductible to individuals, corporations, and foundations. The Institute neither solicits nor accepts funding from government sources.

Basic	$50
Supporting	$51-$99
Sustaining	$100-$499
Sponsor	$500-$999
Patron	$1,000-$4,999
Benefactor	$5,000 and above

Members receive the monthly Letter, invitations to all Institute events, periodic email news, and (on request) all publications. For a list of available publications or other information, please contact the Institute by phone, fax, mail, e-mail. Most publications can be downloaded from the web site.

ETHAN ALLEN INSTITUTE
4836 Kirby Mountain Road
Concord, VT 05824
Phone: 802-695-1448 Fax: 802-695-1436
E-mail: eai@ethanallen.org
Web page: http://www.ethanallen.org

PRESIDENT'S MESSAGE

Two Visions in One Night

Friends of liberty in Vermont were treated on October 15 to two very dramatically different visions of the human condition. One was an uplifting affirmation of the power of freedom to enrich our potential – materially and culturally. The other offered an apparent glorification of one of the world's darkest eras of repression and deprivation.

Larry Reed provided the uplifting vision during his speech to an overflow crowd of Institute members at the Sheraton Burlington. Larry is president of the Foundation for Economic Education and president emeritus of the Mackinac Center for Public Policy. Larry's "Seven Principles" (see p. 3) are the essential preconditions for the ability of individuals everywhere to build, create, and innovate for the betterment of everybody.

By contrast, network news that same evening reported a speech given to Maryland high school students by White House Communications Director Anita Dunn. Ms. Dunn told her audience that Mao Tse-tung was one of her "favorite political philosophers."

Mao's "philosophy" resulted in the deliberate starvation of tens of millions forced into primitive in collectivist agriculture. Mao wanted to transform and purify man himself, and his murderous "Great Leap Forward" was his way of doing it.

The Left still wants to transform us, to make us "better" people through resource deprivation and the rejection of "materialism."

Well, nothing will work quite like starvation to cure our "overconsumption," and help us live more "harmoniously" with the Earth.

There you have it: two visions for our future in one night. The choice couldn't be more clear, and it's our job to make sure that every Vermonter knows it.

Rick Bornemann

REPORT

Larry Reed Talk Attracts 100

An unexpectedly large crowd of 100 packed into the Diamond Ballroom for the latest presentation in the Institute's Sheraton Economic Series. The speaker was Lawrence Reed, economist and founder of the highly successful Mackinac Center for Public Policy in Michigan.

Larry Reed addresses a packed audience for the EAI Sheraton Economc Series.

Below: EAI President Rick Bornemann (left) and Board Chair Jim Gatti (right).

After 20 years as Mackinac's CEO (with a budget of $4 million and staff of 31), Reed moved last year to become CEO of the Foundation for Economic Education, America's oldest (1946) free-market think tank.

Reed gave a talk he has given over a hundred times, from the Detroit Economic Club to the People's University in Beijing. It capsulized the "seven eternal principles that should form the intellectual backdrop to what we do as policymakers." In condensed form, they are:

1. Free people are not equal, and equal people are not free.
2. What belongs to you, you tend to take care of. What belongs to no one or everyone tends to fall into disrepair.
3. Sound policy requires that we consider long-run effects and all people, not simply short-run effects and a few people.
4. If you encourage something, you get more of it; if you discourage something, you get less of it.
5. Nobody spends somebody else's money as careful as he spends his own.
6. Government has nothing to give anybody except what it first takes from somebody; and a government that's big enough to give you everything is big enough to take away everything you've got.
7. Liberty makes all the difference in the world.

EAI Chair Jim Gatti opened the program. New CEO Rick Bornemann called for a new fusion between thinking and doing – with the thinking, grounded in morality and knowledge, providing the compass to guide the doing. EAI VP John McClaughry, a friend of Reed's for 15 years, introduced him as a "Johnny Appleseed of Freedom".

Larry Reed's inspiring talk can be accessed on video at www.ethanallen.org. The published "Seven Principles" text can be found at http://www.mackinac.org/article.aspx?ID=3832

EAI's Sheraton Economic Series is cosponsored by the Lake Champlain Regional Chamber of Commerce, *Vermont Economic Newsletter*, *Vermont Business Magazine*, Vermont Tiger, and the Sheraton Burlington.

Improving – and Bypassing – the Court System

COMMENTARY

When state revenues tank, the governor and legislature begin by carving out fat. They leave vacancies unfilled, freeze new hires, curtail travel, and cancel publications. Then they stretch out programs, freeze salaries, push expenditures over into the next fiscal year, give employees unpaid furloughs, shortchange pension fund contributions, and – occasionally – make entitlements less generous.

Then comes the day when all the politically acceptable spending savings have been implemented. Revenues are still far behind earlier budget projections. Huge deficits loom. Something Radical Has To Be Done.

At this point well-managed state governments turn to recommendations from a Performance Review. It's a process that asks of every state function: Privatize, Eliminate, Retain, or Modify?

The Democratic Party's 2004 platform called for just such a process. In 2005 Gov. Douglas made what proved to be a feeble run at the same goal. Since then, the concept has lain fallow. Now is the time that the state very badly needs to act upon PERM recommendations – that, of course, it doesn't have.

But there's one bright spot here. The Judiciary Branch has set out on the performance review path. Pursuant to a 2008 statute, Chief Justice Paul Reiber created a Commission on Judicial Operation to examine the efficient and effective delivery of judicial services and the allocation of judicial branch resources.

Last June, in the special session, the legislature protected the judiciary from any new budget rescissions until the Commission's final report in 2010 – but announced that the Commission would be expected to identify $1 million in savings in the FY2011 budget.

The Constitution, as amended in 1974, requires the state to have a "unified judicial system". Following ratification of that amendment, the Supreme Court created an Advisory Committee on Court Unification. The committee found that the "system" was far from unified. It featured fragmented court jurisdiction, inflexibility in using courthouses, untrained personnel, variation of practices in different areas, excessive traveling, poorly controlled calendars, and much more.

A bill based on the committee's report passed the house in 1975, but stalled in the Senate. Since then elected assistant judges and their county clerks have blocked any thoroughgoing reform.

Today we have what the Commission on Judicial Operation describes as a "balkanized" "non-unified system" that not only defeats flexibility and efficiency, but also spends too much for what it does. There is a constitutionally defined Supreme Court, constitutionally mandated Superior Courts and Probate Courts, and legislatively created district, family and environmental courts. There is no unified budget, and the Supreme Court has little control over the county courthouses and county clerks.

The current prospect of huge general fund shortfalls has spurred renewed interest in making our judicial non-system more flexible and efficient, with uniform rules governing procedure and case management in all courtrooms. In particular, modern technology can simplify court procedures, but there has to be a single standard under the control of one administrator.

It seems likely that the committee will recommend constitutional change, to bring the Superior and Probate Courts into the unified system and break the 18th century linkage with counties that have never been functional.

Notably omitted in the legislative charge to the committee is an important part of the PERM process: keeping as many disputes as possible out of the formal – and expensive – judicial system.

Judges and lawyers can certainly find ways to make the judicial system more unified, efficient and flexible. But when it comes to expanding the use of dispute resolution methods that operate less formally and largely without lawyers, they are not likely to exhibit a lot of enthusiasm. No one is eager to promote proposals that might shrink their own importance and financial rewards.

Alternative dispute resolution (ADR) is a rapidly growing field. It includes conciliation, mediation, arbitration and even private courts. None of the first three processes requires lawyers. They do require training, which is offered by Woodbury College and Vermont Law School.

Vermont courts are increasingly turning to ADR to avoid costly and time-consuming jury trials. ADR can be used to settle family squabbles and juvenile, workers comp, personal injury, environmental, zoning, landlord-tenant, civil rights, work rules, truancy, small claims, business contract, product liability, medical malpractice, and vehicle warranty disputes.

Leading such programs requires wisdom, experience, knowledge of the community, and public respect more than formal legal expertise. With training, Vermont's elected assistant judges could play an important role in managing ADR programs.

Making the court system unified, efficient, and flexible is long overdue. But the more cases that never turn up in the court system, the better off we'll all be.

Rx A Patient-Centered Approach to Health Care Reform

We, the undersigned leaders of the 33 state free-market think tanks, believe that expanding the role of government in the health care market is not the change that America needs.

Congress should focus on a patient-centered approach to health care reform that respects the patient-doctor relationship and empowers the patient and the doctor to make effective and economical health policy choices. A patient-centered health care reform:

- **Begins with individual ownership of insurance policies.** The tax deduction that allows employers to own your insurance should instead be given to the individual
- **Leverages Health Savings Accounts (HSAs).** HSAs empower individuals to monitor their health care costs and create incentives for individuals to use only those services that are necessary
- **Allows interstate purchasing of insurance.** Policies in some states are more affordable because they include fewer bells and whistles, and consumers should be empowered to decide which benefits they need and what prices they are willing to pay
- **Reduces the number of mandated benefits insurers are required to cover.** Empowering consumers to choose which benefits they need is only effective if insurers are able to fill these needs
- **Reallocates the majority of Medicaid spending into simple vouchers for low-income individuals to purchase their own insurance.** An income-based sliding scale voucher program would eliminate much of the massive bureaucracy that is needed to implement today's complex and burdensome Medicaid system and produce considerable cost savings
- **Eliminates unnecessary scope-of-practice laws and allows non-physician health care professionals practice to the extent of their education and training.** Retail clinics have shown that increasing the provider pool safely increases competition and access to care and empowers the patient to decide from whom they receive their care
- **Reforms tort liability laws.** Defensive medicine needlessly drives up medical costs and creates an adversarial relationship between doctors and patients

The Ethan Allen Institute is one of the 33 signatories.

Market Failure in Health Care

Continued from Page 1

two remaining carriers. Forget it. No state presently allows its licensed carriers to accept bargain-hunting out-of-state customers.

Modern pharmaceuticals can work wonders, but the cost of gaining FDA approval of a new drug runs well over $800 million. That's because the 1962 Kefauver amendment requires new drugs not only to be proven safe, but also effective. This ambiguous requirement dramatically escalates the cost of clinical testing, much of it now done in cheaper Third World countries. The large drug companies are happy with this requirement, however, because it erects an enormously expensive entry barrier to new drugs developed by their smaller competitors.

Government drives health care costs far above market prices by sending millions of Medicare and Medicaid patients to health care providers, and paying far below the actual cost of the services rendered to them. Hospitals, required by the Hill-Burton Act to accept every patient that comes in the door, have no choice but to shift their losses into the price of care provided to patients with private insurance. This is the single most important factor in driving up private health insurance costs – far, far larger than the unpaid bills of uninsured patients.

In most states, many doctors – especially obstetricians, anesthesiologists and neurosurgeons – face staggering medical malpractice premiums. This results from courts and juries imposing extravagant pain and suffering awards. The threat of malpractice litigation also leads doctors to run up the costs ("defensive medicine").

The high costs of health care and health insurance are due to market failure? Let's call it what it is: it's the failure of government, politicians and interest groups to allow competitive and efficient markets to satisfy consumer desires.

NEWS & VIEWS

Vermont's Tax Burden: Dr. Art Woolf reports that Vermont had the fifth highest state and local tax burden (2007): 13.4 percent of personal income. Two of the higher-ranked states – Alaska and Wyoming – export their taxes to other states via oil and coal taxes, so the tax burden on Vermonters actually ranks third. (VEN, 10/09.)

"If Vermont's tax burden was identical to the nation's, Vermont's total taxes would be $392 million less than they actually were in 2007. If Vermont taxed at the level of New Hampshire [50th], Vermont's state and local tax collections would be $935 million less than they were in 2007."

Not Reform: "Real health care reform puts the patients/consumers in charge of their own money and their own health care decisions. That is not what is happening in Washington. There it is a matter of balancing the rewards to the special interests to keep them 'at the table.' That is not reform." – Greg Scandlen (*Consumer Power Report*, 10/9/09.)

Ominous Mindset: "We are not going to allow people to misrepresent the President or his program," a White House spokesman warns (*USN&WR*, 10/23/09).

Remember, the White House has thousands of law enforcement officers, the Justice Department, and numerous detainment facilities at its disposal – so don't misrepresent His program. You have been warned.

Another Hit for Vermont: The Heritage Foundation has calculated the negative effects for Vermont of the energy price increases mandated by the House-passed Waxman-Markey cap-and-trade energy tax bill. Projected changes in Vermont's annual GDP range from minus $200 million to almost a billion in 2031; an eventual (2035) extra dollar a gallon for gasoline; 3,825 fewer non-farm jobs in 2012.

For whom is this bill a benefit again? And why are our three members of Congress supporting it? (Heritage WebMemo 2585-VT, 8/19/09.)

Bad News for Energy Fascists: "Just 57 percent [of Americans] think there is solid evidence the world is getting warmer, down 20 points in just three years", according to a Pew Research Center poll. (AP, 10/23/09.)

Ten Threats to Your Liberty: EAI VP John McClaughry delivered an updated version of his April Tea Party talk on this topic at Bradford on September 16. It's on the EAI website, but it's also on the Family

Continued on Page 7

David Walker's Fiscal Wake-up Tour

If you think Vermont is in pathetic fiscal condition – and it is – Uncle Sam is far worse off.

David Walker, until recently the Comptroller General of the United States, made a startling presentation on this subject to kick off the Russell and Carol Todd Lecture Series at Norwich University on October 13.

"The largest threat to the United States," Walker, said, "is our own fiscal irresponsibility. If we fail to deal with that problem, foreign lenders will lose confidence in the U.S., interest rates will start to climb, and the exchange value of the dollar will grow ever weaker. This will be far worse than a recession".

Walker observed that in only two fiscal years the budget deficit has climbed tenfold, from $162B to $1.6T, Our national debt will grow to 95 percent of GDP in 2010, half of which is held by foreign investors on whom we have become dependent. Medicare is actuarially $38T in deficit, and Social Security is another $6-7T in the red.

Walker said we must get over our addiction to debt, and impose some tough-minded reforms, such as increasing the retirement age and changing the COLA for benefits to prices instead of wages.

Walker is now President of the Peter G. Peterson Foundation (www.pgpf.org), whose major project is waking Americans up to the predictable consequence of their profligate ways before the nation's economy "lands in the ditch".

EAI VP John McClaughry presented Walker with a copy of the EAI report *Off the Rails*, that reached many of the same conclusions about Vermont's demography, taxing and spending trends.

VCHC and EAI Cosponsor Health Care Forum

Vermonters for Choice in Health Care and the Ethan Allen Institute will sponsor "Rx for Health Care Reform," a citizen forum at the **Williston Central School** on **Tuesday, November 17, 6:30 p.m.** EAI VP John McClaughry and Director Bill Sayre will join Steven J. Howard, Robert Emmons MD, and Jane Combs to explain health care policy both in Vermont and Congress. The event is free and open to the public.

Continued From Page 6

NEWS & VIEWS

Security Matters website at http://www.familysecuritymatters.org/publications/id.4315/pub_detail.asp.

FSM is a valuable national organization concerned about many threats to our liberty and security. Sign up for their free daily email service (highly recommended – JMc).

Think on This: "The future of industrial society … left to its own discretion, is a future in which subsistence and security shall be guaranteed for the proletariat, but shall be guaranteed at the expense of the old political freedom and by the establishment of that proletariat in a status really, though not nominally, servile." – Hilaire Belloc, *The Servile State*, 1913.

Not Good Enough: "Where in the Constitution does the government have the authority to manage health care?" [former state Sen. Mark Shepard] asked, sliding a printed copy of the U.S. Constitution across the table.

"Congressman Peter Welch gave little credence to the argument, however. 'I'm just going to make this simple. I really disagree with you. There's not a constitutional argument in my view,' he said." (*Banner*, 9/28/09.)

Global Fraud: "'Human-caused climate change' is a completely bogus construct, entirely without scientific merit, that has been proven wrong by observation and theory. So why has more than $100 billion been spent for propaganda promoting this failed idea?

It has been spent because control of energy for every human being is a central goal of those who wish to build themselves up by lowering all humanity to one low level under their total control." – Dr. Arthur Robinson (PhD biochemistry, Cal Tech, *AtE*, 6/09.)

Reagan on Freedom: "Freedom is a fragile thing and is never more than one generation away from extinction. It is not ours by inheritance; it must be fought for and defended constantly by each generation for it comes only once to a people. Those who have known freedom and then lost it have never known it again." – Ronald Reagan (Inaugural Address, Sacramento, 1/5/67.)

Hamilton on Demagoguery: "History will teach us … that of those men who have overturned the liberties of republics, the greatest number have begun their career by paying an obsequious court to the people; commencing demagogues, and ending tyrants." (*Federalist No. 1*, 1787.)

New Canadian Health Care Videos from Mackinac

Our friends at the Mackinac Center for Public Policy (www.mackinac.org) invite friends to come along as they journey across Canada, documenting harrowing stories from real Canadians of long waits, physician shortages, doctor lotteries, special treatment for insiders and being forced to travel abroad for basic medical care. They're desperate for a way out. And they want YOU to know about it.

Introduction: "Oh Canada?" – Meet the Canadians who have a warning for us.

"Medical Tourism" – Hear from Canadians so desperate for treatment they're leaving the country.

"Wait List Insurance" – See what happens when Canadians try to demand better service from their system.

"Canadian Doctor Lotteries" – Find out what Canadians need to do just to get a family physician.

"Breaking the Doctors" – Discover how rationing and shortages impose impossible burdens on Canadian doctors.

"Power Plays" – See how unions, politicians, and bureaucrats take away choices from doctors and patients.

The Ethan Allen Letter

ETHAN ALLEN INSTITUTE
4836 Kirby Mountain Road
Concord, VT 05824

November 2009

INSIDE:

Rutland Herald *October 19, 2009*

Wealthy Taxpayers

OPINION

"Wealthy taxpayers," opines the *Rutland Herald*, "enjoyed a great boon under President George W. Bush. It is not out of line for the states to claw back some of that wealth."

In 2001 President Bush and the Republican Congress repealed the Clinton income tax rate increase on the rich, bringing the top rate down from 39.6 percent to 35 percent. They also lowered the other rates and created a 10 percent bracket to reduce the burden on lower income workers.

Two years later, they reduced the tax rate on capital gains from Clinton's 20 percent to the present 15 percent, and set a flat rate of 15 percent on dividends. Like the income tax rate cuts, these provisions benefited "wealthy taxpayers" – and also everyone with taxable investment accounts.

In large measure, as a result of the Bush tax policies, the American economy set off on a six-year economic boom. That boom ended in 2008 when, after the Democrats in the Senate beat down Bush's proposal to tighten supervision of Fannie Mae and Freddie Mac, the cheap-money housing bubble triggered the present recession.

During the years 2001-06 (the most recent year reported) the share of income taxes paid by the wealthiest 10 percent rose from 64.25 percent to 70.12 percent. The Bush tax bills thus succeeded in shifting the incidence of the income tax even further toward "wealthy taxpayers".

If the *Herald* wants to extract even more "golden eggs" from "wealthy taxpayers", maybe it ought to advocate further lowering the tax rates on incomes, dividends and capital gains. That way the rich will produce more tax revenues, and economic growth will make all of us better off.

– John McClaughry, EAI