



# The Ethan Allen Letter

IDEAS FOR VERMONT'S FUTURE

*A Monthly Publication of The Ethan Allen Institute*

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*The Ethan Allen Institute presents -*

## SHAPING AMERICA'S FISCAL FUTURE

**Thursday, August 19 • 9-Noon**



**Sheraton Burlington Emerald Ballroom  
South Burlington, VT (exit 14W off I-89)**

*Featuring: **David Walker CPA***

Dave is President and CEO of the Peter G. Peterson Foundation, which concentrates on promoting financial responsibility today in order to create more opportunity tomorrow.

He served as the seventh Comptroller General of the United States and headed the U.S. Government Accountability Office (GAO) for almost 10 years. His most recent book, *Comeback America*, shows how we can return to our founding principles of fiscal responsibility and stewardship for future generations.

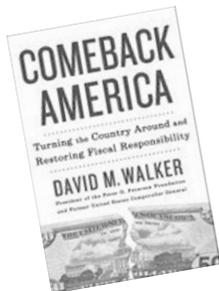
Responding: **Thomas M. Salmon**, AUDITOR OF ACCOUNTS  
**David Coates** CPA, KPMG RETIRED  
**Dr. Art Woolf**, ASSOCIATE PROF. OF ECONOMICS, UVM  
**Mary Alice McKenzie** MODERATOR

*The public is invited – no reservation necessary*



*Ethan Allen Institute*

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## COMEBACK AMERICA: TURNING THE COUNTRY AROUND AND RESTORING FISCAL RESPONSIBILITY

... is David Walker's new book. In it he clearly explains our country's fiscal crisis, and offers a road map – from the standpoint of a top fiscal manager – toward solvency and transforming our overgrown national government. Copies will be available for purchase and signing at this event.

# 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.

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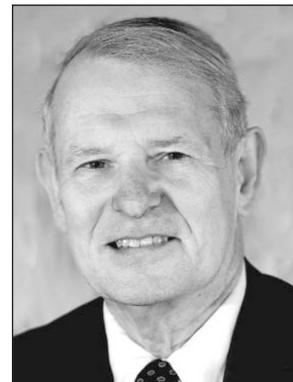
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# PRESIDENT'S MESSAGE

## Fiscal Wake Up Time



The David Walker program announced on the front page is perhaps the most important public event EAI has sponsored in its 17 years.

America is in trouble. As Walker has explained all across the country on his Fiscal Wake Up Tour, it will take heroic efforts by public-minded statesmen and women to tackle \$1.7 trillion annual deficits, a \$15 trillion national debt, and trillions more in unfunded promises made by irresponsible politicians that will come due over the next 75 years.

Walker will address national concerns, but here in Vermont we have a similar but more manageable problem. The 2010 legislature produced what it wants to believe is a balanced budget, but it will almost certainly dip well into the red.

Our *Off the Rails* report (2006, updated in 2008) showed convincingly what will happen if state government keeps on its taxing and spending path, while our population ages and work force fraction shrinks.

Over the past eight months EAI has repeatedly pointed out the fallacies of the vaunted "Challenges for Change" project. Gratifyingly, even the *Free Press* has gotten our point (see editorial excerpt on page 8).

Please make every effort to attend this very important program on August 19. It won't resolve America's problem or Vermont's problem, but it can serve as the wake-up call for the hard work ahead.

**Note to members:** You may have received email solicitations to restore your lost manhood, etc. from [ethanallen@kingcon.com](mailto:ethanallen@kingcon.com). EAI owns this address, but there's no way we or our internet service provider can stop third parties from stealing it and sending solicitations purportedly originating from it. If you block that sender, you will also block all legitimate EAI news messages. Please just discard the solicitation without opening it. We regret the inconvenience.

# The ObamaCare Tax on Your Existence

## COMMENTARY

In a startling development last month, the Obama Justice Department, defending against a host of lawsuits to invalidate the ObamaCare law, declared that the law's individual insurance mandate is not founded on the power of Congress to regulate interstate commerce. Surprise! It's a new tax!

The reason, obviously, was that trying to hang the ObamaCare coverage mandate on the interstate commerce clause looked more and more like a loser in court.

In 1942 the Federal commerce power reached its high water mark. In that year the Supreme Court informed Roscoe Filburn that he couldn't grow his own wheat to fatten his own hogs on his own farm, without submitting to the New Deal wheat management program.

Its argument was that if Roscoe hadn't grown his own hog feed, he would have had to go into the marketplace and purchase feed. A million hog farmers growing their own feed would of course wreck the New Deal regulatory scheme, that depended on every wheat farmer submitting to Federal crop production controls. Too bad, Roscoe.

But note the difference between Roscoe's case and the ObamaCare insurance mandate. The government regulation of the national wheat market was, by 1942, conceded to be a legitimate exercise of the commerce power. ObamaCare is something else.

ObamaCare mandates that by 2014 almost every American must prove to the IRS that he or she is enrolled in a government-approved health plan. Absent that proof, the IRS will hound the luckless citizen for a "penalty" of 2.5 percent of his or her income (by 2016), or \$695 a year, whichever is greater.

In a 2008 debate with Hillary Clinton, Sen. Barack Obama scored points by strongly opposing this mandate policy, on the reasonable grounds that people without enough income to buy health insurance would be caught, fined, and still not have any health coverage. But that was then.

Unlike Roscoe, these uninsured Americans are not even arguably engaged in commerce. They aren't in the health or insurance businesses. They aren't creating anything of value to sell into a regulated market.

It's not hard to see why a reasonable constitutional lawyer would conclude, as many have, that Congress cannot stretch the commerce power to regulate – and fine – people who merely exist.

So now – aha! – the Justice Department finds that the individual mandate rests upon the power of Congress to tax. This was no sudden stroke of legal genius. The House-passed version of ObamaCare – the one supported by Congressman Welch – contained the key Sec. 401: "Tax on Individuals Without Acceptable Health Care". But that tax language wasn't enacted. The Senate bill that replaced the House language relies on regulation of commerce (Sec. 1501).

But the individual mandate does not involve a tax increase! Who said so? President Barack Obama, who "absolutely rejects" that notion when pressed by George Stephanopoulos on ABC's *This Week*, last September. But that was then.

So the Obama Administration's position now comes down to this: Congress has the power to tax you until you do any specific thing Congress thinks is good for you, or for the nation, or for the planet. If you're one of the 18 million working uninsured, you must buy government-approved insurance or face the IRS Penalty Patrol at your doorstep. Not good.

There is growing concern about obesity, a major health risk factor. Under the Obama theory, Congress could levy a new tax on every excess unit of your Body Mass Index, until you prove to the Federal Obesity Regulation Bureau that you have, through diet, exercise and perhaps surgery, reduced your BMI to 25.

To be subject to the law, you wouldn't have to be in the business of being obese – say, by working in a circus sideshow. You would just have to exist. That's all it would take to trigger a new tax, that the IRS would make you pay until you complied with Washington's dictates. And if you don't pay the IRS, you can end up in jail.

Make no mistake: whether by stretching the commerce power beyond all known bounds, or by levying new taxes on anything and anybody to validate regulations unsupported by any power found in the Constitution, ObamaCare is a mortal threat to our liberty – and to our constitutional republic.

# Revisiting Vermont's Constitution

## COMMENTARY

On July 10 Vermonters re-enacted the adoption of Vermont's remarkable Constitution of 1777. Strongly influenced by the Pennsylvania Constitution, the handiwork of the farmers and woodsmen assembled at the Constitution House in Windsor is today the oldest, shortest and arguably the most liberal (in 18th Century terms) of the fifty state constitutions.

Vermont's founders took Article I of Chapter I, the Declaration of Rights, from George Mason's Virginia Bill of Rights that appeared a year earlier: "That all men are born equally free and independent, and have certain natural, inherent and unalienable rights, amongst which are the enjoying and defending life and liberty, acquiring, possessing and protecting property, and pursuing and obtaining happiness and safety..."

Note that the Vermont Constitution, unlike Jefferson's Declaration of Independence, explicitly declares the right of citizens to acquire, possess and protect their property. This provision reflected the early Vermonters' confrontation with Yorker feudalism, where landless tenants labored under the yoke of the Hudson Valley patroons. That, Vermonters said, was not freedom, but serfdom, and there would be none of it in the new Green Mountain State.

Vermonters have long celebrated their Constitution for being the first in the Americas to outlaw human slavery (at least above the age of 21) and the first to provide for universal manhood suffrage. There is a third

"first", rarely acknowledged. The Vermont Constitution was the first written constitution in the world to provide that, although when necessary private property could be taken for public use, "the owner ought to receive an equivalent in money."

This just compensation clause and its later Federal counterpart proved so troublesome to modern land use planners and controllers that the Vermont Natural Resources Council once sponsored a full day legal conference to find a foolproof way of taking the value of a person's property for their idea of public benefit (i.e., doing nothing with it), without the public having to pay for the value taken.

Like the later U.S. Bill of Rights, the 1777 Vermont Declaration provides for freedom of religion (Article 3rd), freedom of speech and press (Article 13th), freedom of assembly (Article 20th), due process of law (Article 10th), trial by jury (Article 12th), and the right to "bear arms for the defence of themselves and the state" (Article 16th).

This latter right was invoked a century ago when the Rutland city council adopted an ordinance requiring citizens to get police permits for owning firearms. The no-nonsense, literal-minded (conservative) Supreme Court of 1904 disposed of that idea in one printed page. The Constitution says that Vermonters have the right to keep and bear arms, it declared, and so the Rutland city council can go pound sand.

One long-ignored provision of the Declaration of Rights (Article 9th) states that "previous to any law being made to raise a tax, the purpose for which it is to be raised ought to appear evident to the Legislature to be of more service to community than the money would be if not collected." Voters may find this useful in con-

fronting tax-raising legislators currently seeking reelection.

Beside these protections of specific rights, the Vermont Constitution contains the immortal Article 18th: "That frequent recurrence to fundamental principles, and a firm adherence to justice, moderation, temperance, industry and frugality, are absolutely necessary to preserve the blessings of liberty, and keep government free; the people ought, therefore, to pay particular attention to these points, in the choice of officers and representatives, and have a right, in a legal way, to exact a due and constant regard to them from their legislators and magistrates, in making and executing such laws as are necessary for the good government of the state."

This Article endorses popular sovereignty and the accountability of public servants to the people. But more importantly, it defines the character traits that the Founders believed must predominate among the people, lest this brave little frontier republic descend into failure and chaos.

In its century the Vermont Constitution, and its sister documents from Pennsylvania and Virginia, were considered the height of enlightened liberalism. They gave no shrift to crowned ruffians, feudal barons, lords and ladies. They announced the birth of democratic government of and by the people – people who had rights that no government could invade, and arms to stand against tyranny.

This was a scintillating achievement. The question today is whether there are enough Vermonters who still hold to the principles and character traits of 1777 to defend their venerable Constitution, and strengthen the liberal (for that era) culture upon which that Constitution was based.

# NEWS & VIEWS

## Important New Blog:

Meredith Angwin of Wilder has a new independent blog defending Vermont Yankee against the brownout yahoos. It's called YesVY (YesVY.blogspot.com). Meredith, a physical chemist by profession, is smart, well-informed, honest, and reliable. With the VY license extension issue coming to a head in January, this is an important place to get good information.

**Cheers for the Reformer:** The Brattleboro *Reformer* has for many years seized every opportunity to editorially hammer Vermont Yankee. Its July 14 edit, however, hammered the anti-nuclear yahoos for their misinformation and bad manners, closing with this: "So if you are opposed to the plant operating past 2012, put your money where your big mouth is, become better informed and stop the childish outbursts and juvenile foot stomping." Thanks for that!

**Vermont's No. One!** Dan Mitchell of the Cato Institute looked at the percentage of a state's inhabitants receiving benefits from at least one of the eight Federal welfare programs, and subtracted the percentage of inhabitants with incomes below the Federal Poverty Level. This gives a very rough index of non-poor people receiving welfare benefits.

And now, the results: Vermont: No. 1 – 17.5 percent. Mississippi: No. 2 – 14.4 percent. New Hampshire: No. 32 – 7.8 percent. The state of Vermont, that administers most of the programs, has set income cutoff levels very high. This calculation does not include state-only benefits like Catamount

Health and V-Script enjoyed by non-poor inhabitants.

**Guess Who Voted Yes:** In a bid to stem taxpayer losses for bad loans guaranteed by federal housing agencies Fanny Mae and Freddy Mac, Senator Bob Corker (R-TN) proposed that borrowers be required to make a 5 percent down payment in order to qualify for a mortgage loan. His proposal was rejected 57-42 on a party-line vote because, as Senator Chris Dodd (D-CT) explained, "passage of such a requirement would restrict home ownership to only those who can afford it."

**Let's Try for 42nd:** From a candidate for governor (name withheld): "*Forbes* magazine rates the states for business friendliness, and puts Vermont in 47th place. That's not good enough."

One might be excused for thinking that's not good at all.

**Stuck at 95th:** The conservative Leadership Institute ranked UVM 95th (of 100) major universities for being overwhelming tilted toward goofy liberalism. Only one of the eight political student groups at UVM (College Republicans) is remotely conservative; 97 percent of UVM faculty and staff contributions to the 2008 Presidential campaign went to Democrats; all UVM freshman are mandated to take to politically correct courses from a menu that includes "Race and Racism", Sexual Identities", "Ecofeminism", and "Human and Social Diversity".

**Vermont Educational Standards:** The Thomas B. Fordham

Foundation periodically reviews state education standards for clarity and rigor. The 2010 findings:

"With their grade of D, Vermont's English Language Arts standards are among the worst in the country ... With their grade of F, Vermont's mathematics standards are among the worst in the country." For details: <http://edexcellence.net/201007>

**Sorrell Lucks Out:** The Competitive Enterprise Institute has just named Vermont AG Bill Sorrell as No. 6 on the list (of six) of the *The Nation's Worst Attorneys General* ([www.cei.org](http://www.cei.org)). The rating was based on Sorrell's role in the tobacco Master Settlement Agreement of the 1990s, plus his amicus support for the City of New Haven in the Kelo eminent domain lawsuit.

CEI completely overlooked Sorrell's support for what proved to be the worst U.S. Supreme Court decision in modern history, *Massachusetts v EPA*, where the Court agreed that carbon-dioxide should be a regulated "pollutant" even though Congress had twice said it was not.

Adding that (and several other things) ought to have vaulted Sorrell into a tie for first (worst) with Jerry Brown of California and Dick Blumenthal of Connecticut.

**Lefty Editorial of the Month:** Criticizing Senate Republicans for questioning the extent of the much-stretched interstate commerce power of the Constitution, the *New York Times* said "A vote against the commerce clause is a vote against some of the best things that government has done

*Continued on Page 6*

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for the better part of a century, and some of the best things that lie ahead.”

Translation: Congress can and should do whatever it wants without Constitutional limitation, so long as it wants good (liberal) things.

**John Locke on Arbitrary Government:** “Whenever the legislators endeavor to take away and destroy the property of the people, or to reduce them to slavery under arbitrary power, they put themselves into a state of war with the people, who are thereupon absolved from any further obedience.” (*Two Treatises on Government*, 1690.)

# NEWS & VIEWS

**Hawaii Energy Economics:** “About 75 percent of Hawaii’s electricity is generated by burning oil and another 14 percent from coal. Burning oil is very expensive, which is why the average residential price of electricity there is 32 cents/kwh (compared to 14 cents in VT and 11 cents average in the U.S.). Despite its high price of electricity, Hawaii generates only 6.8 percent of its power from “other renewables (which excludes hydro), about the same as Vermont’s 6.2 percent share.”

“If the economics of solar and wind don’t make economic sense

in Hawaii, where electricity prices are more than double Vermont’s, it’s hard to believe that

large scale solar and wind will be economically viable in Vermont.”  
– Art Woolf (VT, 6/24/10)

**Mathis on School Consolidation:** “There is no scientific evidence that consolidation [of public schools] saves money ... What consolidation does is separate the people from their government, disempower them, and cause poorer social outcomes for children.” (ex-RNESU Supt. William Mathis PhD, the arch foe of parental choice in education, illustrating the point that no one is likely to be wrong all the time.)

## Freedom Activist Directory

Get involved (before the Obama administration requires a license to participate in political activity).

### Vermont:

Green Mountain Patriots (NW Vermont): [greenmountainpatriots@gmail.com](mailto:greenmountainpatriots@gmail.com)  
Rutland Tea Party: [rutlandteaparty@gmail.com](mailto:rutlandteaparty@gmail.com)  
Barre Tea Party: [barrecityteaparty@gmail.com](mailto:barrecityteaparty@gmail.com)  
Bradford Tea Party: [vtgirl2@charter.net](mailto:vtgirl2@charter.net)  
Manchester Tea Party: [bjtgoss@comcast.net](mailto:bjtgoss@comcast.net)  
Vermont Campaign for Liberty: [vtgadfly@comcast.net](mailto:vtgadfly@comcast.net)  
Defenders Council of Vermont: [robmayn@myfairpoint.net](mailto:robmayn@myfairpoint.net)  
American Conservative Women in Action (VT): [acwavt@hotmail.com](mailto:acwavt@hotmail.com)

### Nationally:

FreedomWorks: [www.freedomworks.org](http://www.freedomworks.org)  
American Majority: [www.americanmajority.org](http://www.americanmajority.org)  
Americans for Prosperity: [www.americansforprosperity.org](http://www.americansforprosperity.org)  
Leadership Institute: [www.leadershipinstitute.org](http://www.leadershipinstitute.org)  
Tea Party Patriots: [www.teapartypatriots.org](http://www.teapartypatriots.org)  
Campaign for Liberty: [www.campaignforliberty.com](http://www.campaignforliberty.com)  
Free Republic: [www.freerepublic.com](http://www.freerepublic.com)  
Red State: [www.redstate.com](http://www.redstate.com)

# Full House for EAI Training Session

A capacity crowd of 46 came to the Montpelier Elks Club on July 17 to take the four-hour activist training workshop presented by American Majority. Attendees ranged from Bennington and Brattleboro to Franklin County and the Northeast Kingdom.

AM's executive director Matt Robbins gave a fact-filled survey of the basic issues and underlying principles for Tea Party and Campaign for Liberty activists. It was followed by AM President Ned Ryun's articulate and well-informed instruction on how to use social networking techniques, build coalitions, and win media attention for conservative causes.

The EAI *Vermont Voters' Report Card* flew off the literature table. Following the session, Green Mountain Patriots hosted a "grip 'n' grin" session for candidates that attracted Chris Roy and Jason Gibbs (Secretary of State), John Mitchell and Keith Stern (Congress), and several legislative hopefuls. Sen. Bill Doyle and Lt. Gov. candidate Mark Snelling



made appearances during the afternoon, and Lt. Gov. Brian Dubie sent a recruiting team.

American Majority is a new national organization that focuses on training conservative activists. Ned and Matt have put on programs all over the country. EAI members who would like a copy of the AM activist handbook can send name and mailing address to EAI, and we'll send you a copy.

## You're Paying For It

*From the U.S. Department of Education Public Finance Report for 2008:*

Vermont spends \$14,300 per pupil (that was in 2008). That's 36 percent above the national average of \$10,260 and fourth highest in the nation.

In terms of effort, Vermont spends more than 48 other states on K-12 education. Only Alaska outranks us in spending as a percent of personal income earned by state residents.

Vermont spent \$1.43 billion on elementary and secondary education in 2008. Only \$94 million of that came from federal sources.

Total state and local government tax collections in Vermont in 2007 were just under \$3.0 billion, so K-12 education absorbed about 45 percent of all taxes paid to all levels of government in 2008.

– Dr. Art Woolf (*Vermont Tiger*, 6/28/10)



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## August 2010

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*Burlington Free Press*

*July 11, 2010*

## The Myth of “Efficiency”

**MEDIA**

The state’s social programs grew to cover more and more with the best intentions – striving to do what we felt we should do for those less fortunate than ourselves. And now, even though the money is still tight, we are still loath to cut back, to take away help from those who would benefit from it....

If there is any element of fantasy in the [six gubernatorial candidates’] outlook, it can be

found in their belief in efficiency. Efficiency is the talisman to which these candidates cling – the almost mythical idea among budgeters that there’s enough savings to be found if only we find ways to do things with less waste.

Sometimes, the only possible answer is to do less with less. The tough choices come down to distinguishing among what we want the state to do, feel the state should do, and what the state can afford to do.

## The Founders on Federal Charity

In 1794, when Congress appropriated \$15,000 to assist some French refugees, James Madison, the acknowledged father of our Constitution, stood on the floor of the House to object, saying, “I cannot undertake to lay my finger on that article of the Constitution which granted a right to Congress of expending, on objects of benevo-

lence, the money of their constituents.” He later added, “The government of the United States is a definite government, confined to specified objects. It is not like the state governments, whose powers are more general. Charity is no part of the legislative duty of the government.” (Walter Williams, Town Hall, 7/7/10.)