



The Ethan Allen Letter

IDEAS FOR VERMONT'S FUTURE

A Monthly Publication of The Ethan Allen Institute

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The Liberal War Against Big Pharma

COMMENTARY

On November 29, the U.S. 2nd Circuit Court of Appeals closed, at least for the time being, the latest chapter in Vermont's long-running War Against the Drug Industry. More on that later.

Ever since the latter years of the Dean Administration, Vermont's liberal legislators have found one rationale after another to launch demagogic attacks on the drug manufacturers. The cause of this recurring urge is the desire of patients for cheaper pharmaceuticals.

In 2000, Gov. Dean announced he would attempt to add 175,000 people to Medicaid to let them take advantage of Medicaid's discount for medications. A federal appeals court ruled a year later that Dean's plan was an unauthorized enlargement of Federal Medicaid program.

The same year, the Vermont Senate narrowly approved a provision imposing state price controls on pharmaceuticals, which would likely have made most of them unavailable in the state. The House declined to go along.

Two years later, another bitter battle ensued over a bill that sought to impose sizable license fees on drug manufacturers and their salespersons. Those provisions too were dropped.

Early in 2005, Gov. Douglas and the legislature cooperated to put Vermonters into the Illinois ISaveRx program. This was a state-run program where Vermonters could call in their brand-name prescriptions (sorry, no generics) and have them filled by a foreign pharmacy. Most were filled in Canada, where the provinces impose price controls on drugs sold into their government health systems.

ISaveRx ran into three problems. The Federal Food and Drug Administration forcefully reiterated that it is illegal for a state to import price-controlled drugs into the U.S. (except for "personal use"). In early 2005, it initiated seizure of more than one-fourth of ISaveRx's incoming drug shipments to make its point.

In July of that year, the Canadian Health Minister put a stop to Canadian pharmacy participation in ISaveRx, noting that his country would no longer serve as "a cheap drug store for the United States". ISaveRx had to go ever further abroad to find product, raising persisting questions about drug manufacturing safety.

Then, in September 2006, the Illinois Auditor General issued a scathing report on the program. He found that in its 19 months of operation fewer than 5,000 persons had made use of the program – two thirds of them Illinoisans. Worse, the participating pharmacies were operating illegally, and the state was making little effort to assure drug safety. The auditor identified over \$1 million in waste in the first 19 months.

A month later private enterprise came to the rescue. In October 2006, WalMart, followed by K-Mart, announced dramatic price-cutting for 314 common generic drug products in 14 states, including Vermont. With this announcement, and the ensuing response from online and retail competitors, ISaveRx became increasingly irrelevant.

The program limped on, apparently for two more years. In January 2009, the Illinois legislature impeached and removed from office the program's biggest booster, Gov. Rod Blagojevich. A month later the program quietly disappeared. There was no memorial service in Montpelier.

Inquiries made in 2010 to the Vermont Agency of Human Services trig-

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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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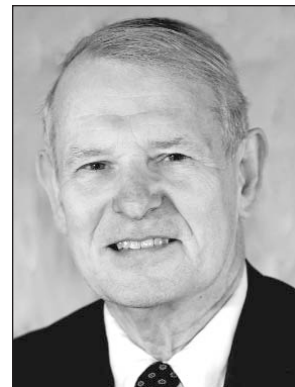
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PRESIDENT'S MESSAGE

Après Douglas, The Deluge



A week from now Gov. Peter Shumlin will give his inaugural address to a lopsidedly liberal legislature.

We already know all the promises he made to win the Democratic primary and general election. If he reiterates all those promises, in the face of a \$112+ million General Fund shortfall, you'll know that he's in complete denial – and Vermont is in very deep trouble.

- No employee layoffs
- Universal preschool
- Government-run health care
- Renewable energy subsidies
- Broadband service to every home
- Shut down Vermont Yankee.

Since it's hard to imagine Gov. Shumlin finding any serious spending reductions, he will have to find new revenues to pay for these promises, plus somehow covering the deficit. The most likely source is a new sales tax on services. Oh yes, and from the income and sales taxes collected from all the new people our new governor believes will come to Vermont to take high-paying jobs in our multiply-subsidized renewable energy industry.

Now we'll see if ordinary Vermonters, concerned about our state's solvency, our economy and their own economic security, will stand for this. Will you?

With the coming of this New Year, I will step down as acting CEO of the Ethan Allen Institute. I'll still be turning out commentaries, but the responsibility for leading the Institute will now pass to others. I deeply appreciate all the support EAI's members have given to my efforts for the past 17 years, and fervently hope the Institute will grow stronger with your continued and expanded support in the crucial years ahead.

PRESIDENT (acting)



The Ethan Allen Institute presents

SHERATON ECONOMIC SERIES 2011

Power to Save the World

featuring Gwyneth Cravens

Sheraton Burlington – Emerald Ballroom
Thursday, January 20, 2011 • 7 p.m.

Concerned about the devastating impacts on public health and the environment caused by fossil-fuel combustion, environmental writer Gwyneth Cravens set out to learn about alternatives. She began her tour through the world of nuclear power as a skeptic, but, after eight years of discussions and site visits with scientists, engineers, and experts in the fields of public health, counterterrorism, and risk assessment, she concluded that nuclear is the only large-scale, practical, environmentally friendly, nonpolluting energy source we have.

What she learned is documented in her well-received book *Power to Save the World: The Truth About Nuclear Energy* (Random House, 2008).

Cravens has contributed articles on science and other topics to *The New Yorker*, *The New York Times*, *Harper's*, *The Washington Post*, *Discover*, *The Brookings Institution Review*, and other publications. She worked as an editor at *The New Yorker* and *Harper's*, and for several years wrote a literary column for *The Nation*.

"An excellent speaker on a crucial issue of our time."

- Meredith Angwin, chemist and Director, EAI Energy Education Project



The Sheraton Economic Series is sponsored by the Ethan Allen Institute, hosted by the Sheraton Burlington Conference Center, and cosponsored by the *Vermont Economy Newsletter*, *Vermont Business Magazine*, *Vermont Tiger*, True North Radio, and the Lake Champlain Regional Chamber of Commerce.



Reservations not necessary - no admission charge.



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It's Time to Think About Election Reform

COMMENTARY

Vermont's 2010 elections are over, to the relief of exhausted candidates and voters alike. Now is a good time to start thinking about what a much-improved electoral process would look like.

One good thing the legislature did last year, perhaps inadvertently, was to repeal the "sore loser" feature in the election laws. Before, a primary loser had ten days to collect signatures to put himself on the general election ballot as an "independent", where he could take another crack at the primary winner.

Now independents must file in June, at the same time as primary candidates. If they also file in a primary, everyone will know that they are false primary candidates planning to oppose the primary winner in November. The legislature should go one step further and prohibit candidates filing as independents from also filing to enter a primary.

The new legislature will have the decennial task of reapportioning the Vermont House and Senate. The paramount principle should be single-member House and Senate districts. Why? So every voter will be reasonably close to a legislator, and more importantly, so each election contest is for one seat. That would force candidates to address issues, instead of inviting the issue-free gamesmanship so often exhibited in multi-member district contests.

Existing law says that the Senate should be apportioned "on a county

basis". In fact, only two of 14 Senate districts are coterminous with 19th century county lines (Washington and Windsor). Instead, the legislature should apportion the House first, then make 30 Senate districts out of five contiguous House districts.

This year 26 candidates ran for the six statewide offices. Get 19 of them off the ballot. The Governor and Lt. Governor candidates should run as a compatible team, as they now do in twenty other states. Then voters would focus on their "One Big Choice": Which team is best qualified to lead the state for the coming term? The General Assembly would choose the nonpartisan Treasurer, Secretary of State and Auditor, just as they now vote to retain judges.

The Governor would appoint and the Senate would confirm the Attorney General. Accountable to the Governor, the AG would no longer have an independent license to build a 78-lawyer legal empire and run around filing all sorts of political lawsuits.

With only three or four Governor-Lt. Governor candidate teams on the ballot, voters would be spared the flood of radio, TV and newspaper ads, bumper strips, phone calls, yard signs and fund raising appeals for 26 different statewide candidates. Each political party's campaign talent, energy, and cash would be devoted to persuading the voters to make the One Big Choice in their favor.

The political parties should remain open to all comers who choose to affiliate with a party. Those who would rather remain independent – fine. But independents have no business barging into a party's pri-

mary to influence the party's choice of candidates, any more than Baptists would have barging in and voting for Knights of Columbus officers.

It's quite likely that, knowing who their registered members are, the parties would develop an Oregon-style mail-in or internet-based nomination process, thus doing away with primary elections altogether.

Candidates have every right to denounce their opponents for whatever reason, real or imagined, but many voters are disgusted with the harsh charges and countercharges of this year's race for Governor. A Fair Campaign Practices Panel would provide a useful antidote. It would be composed of half a dozen knowledgeable and fair minded citizens whose partisanship, if any, has long since receded beyond recovery.

The Panel would evaluate charges of false or inaccurate statements by candidates, and make its findings public. An (overly bureaucratic) example is the California Political Practices Commission.

The Panel would deal only with facts, not opinions. "My opponent beats his wife" raises a question of fact. "My opponent is a loud-mouthed jerk" is a statement of opinion.

The other duty of the Panel would be striving to keep campaigns in reasonably good taste. This is of course subjective, but the Panel could at least frown on over the top portrayals of, for instance, an opposing candidate passed out drunk at a frat party 25 years in the past.

There are six useful ideas for greater clarity, economy, efficiency, rationality, and accountability in election season. The next one is just two years away.

Tom Palmer SMC Talk Cheered by 300

REPORT

Despite a nasty rainstorm, 300 Vermonters – including about a hundred SMC students, came out to the Saint Michael's College campus McCarthy Arts Center on December 1 to hear globe-trotting Cato Institute scholar and freedom fighter Dr. Tom Palmer dispose of “Twenty Myths About the Free Market”.

The crux of Tom’s inspiringly presented argument is that the free market is the only workable and moral economic system that leads to human cooperation, advancement, prosperity, and happiness.

After the talk, all 25 copies of Tom’s new book *Realizing Freedom* sold out in minutes.

Tom was also interviewed on True North Radio and lectured to 150 students in four classes at SMC and UVM. SMC Prof. Robert Letovsky reports that he continues to hear from his students about Palmer’s talk. After the Arts Center talk, Dr. Palmer and a dozen students continued the conversation over pizza until Zachary’s closed down.

One of the Institute’s goals for the future is to



awaken young people to instill the critical principles of a free society at the time when they are besieged with socialist messages. Many adults also need to be reminded of these same key principles about free markets and the rule of law, things they rarely hear in the media or from most politicians in Vermont.



Read Tom Palmer’s paper on his speech topic at www.ethanallen.org/mythsaboutmarkets.pdf.
Order *Reclaiming Freedom* at www.cato.org/store/books.

Coming Event: The Vermont Campaign for Liberty will hold its annual meeting Saturday, January 8 at the Black River Academy Museum in Ludlow. The public sessions are from 10-noon, with membership meeting to follow. For more info: vt-gadfly@comcast.net.

Coming Event: Meredith Angwin of the Energy Education Project will speak on “Nuclear Power: Safety, Economics, and Prospects” at an EAI event at the St. Johnsbury Welcome Center at 7:00, Monday, January 10, hosted by the NEK Chamber of Commerce.

Coming Event: The Twentieth Annual Vermont Economic Outlook Conference, “Recovering from the Great Recession”, will be held at the Sheraton Burlington on Friday, January 14, 2011, 9-2. Call the *Vermont Economy Newsletter* at 879-7774 (rheaps@vteconomy.com) for a conference brochure.

Coming Event: Author Gwyneth Cravens (see page3) will make an EAI Statehouse Roundtable presentation in Room 11 of the State House at noon on January 20. The public is invited.

NEWS & VIEWS

Coming Event: National School Choice Week begins January 23. For more info: www.schoolchoice-week.com.

Important News: “We are spending too much, and have used up our tax capacity.” Sen. Peter Shumlin (WCAX, 1/14/07).

We Told You So: “The news that Challenges for Change has come up short of its target to save \$38 million in state spending this year shows that reinventing government will likely provide no immediate answers for the state’s fiscal problems.” – *Free Press* editorial, 11/28/10.

Thank you for that long overdue admission! However “Challenges for Change” has little to do with “reinventing government”. That has yet to be tried.

ObamaCare Falters in Court: “In his ruling, [Florida Federal Judge Roger] Vinson chastised Democrats for what he called ‘Alice-in-Wonderland’ tactics: saying during the debate over [health care] reform that the penalty leveled on people who do not buy health insurance was not a tax, but then

calling it a tax in their legal defense of the mandate.” (PBS 12/13/2010)

On December 13, Federal Judge Henry Hudson in Virginia held the ObamaCare individual mandate unconstitutional. For his reasoning, see our commentary “The ObamaCare Tax on Your Existence” (July 27) on our website.

Prudent Planning: “As we create jobs in this state, we’re going to bring in young employees. With young employees come relationships. With relationships come children. And with children come the need for schools.” – Gov-elect Shumlin (12/3/10).

So ... what about letting Vermonters take those new jobs, instead of bringing people in? And shouldn’t we start building more schools and hiring more teachers now, to get ahead of the Shumlin job boom?

Debate Report: In a December 1 cable TV debate with EAI’s Energy Education Project team (Meredith Angwin and Howard Shaffer), VPIRG energy spokesperson James Moore emphatically declared that the Vermont Yankee nuclear plant “hasn’t killed anyone YET”. One unnamed

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The Liberal War Against Big Pharma

Continued from Page 1

gered an exhaustive and ultimately fruitless internet and telephone effort to find out how many Vermonters were making use of ISaveRx, or whether it still existed. By then it didn’t, but Illinois had never bothered to tell Vermont, and Vermont had long ago lost interest in it.

Now for last month’s court case. Act 80 of 2007 sought to ban the sale or use of commercial “data mining” to improve marketing of prescription

drugs. The U.S. Second Circuit held that unconstitutional: “The legislative findings are explicit that Vermont aims to do exactly what has been so highly disfavored [by the courts] – namely, put the state’s thumb on the scales of the marketplace of ideas in order to influence conduct.”

Big Pharma, with its embrace of high entry barriers for new products and patent law manipulation, ought not be immune from political attack.

But 12 years of liberal chest-thumping against Big Pharma, involving at least two judicial embarrassments and a failed program, has produced, essentially, nothing but a lot of demagoguery, bureaucracy, legal costs, and incompetence – plus, admittedly, some coerced “supplementary rebates” and lots of useful name recognition for the leading chest thumper, Sen. Peter Shumlin.

NEWS & VIEWS

viewer observed that “I also haven’t killed anyone YET, but I am thinking of James Moore as a candidate.”

EPA vs Farmers, Again: “The U.S. Environmental Protection Agency says that in 2006 [Swanton farmer] Germain Bourdeau began to clear, grade, fill and alter the wetlands without first obtaining the permit required by the federal Clean Water Act. The EPA’s order says Bourdeau must, among other things, hire an experienced wetlands scientist to prepare a restoration plan that must be approved by federal officials, backfill a drainage ditch, remove any existing drainage structures and plant and seed the area with shrubs and saplings.” (AP 12/3/10)

Vermont’s Rich: “There were only 136 [income tax] filers who filed such a return [over \$500,000 AGI] in all nine years [2000-08]. Further, 33 percent of these ‘wealthy’ filers turned 65 during this nine-year period...The

‘wealthy’ in Vermont are often ‘wealthy’ one time, when cashing in long-held assets to fund retirement.” – Tom Pelham (C-R 12/18/10)

Transparency Ranking: A national organization called Good Jobs First issued a report (12/10) entitled *Show Us the Subsidies*. It examines how well the 50 state governments make public the recipients of government largesse for economic development (VEPC, VEGI, VEDA, workforce training etc.) Vermont ranked 13th from the top on a complicated ranking scale. http://www.goodjobsfirst.org/show_usthesubsidies.

Mann’s Admission: “Earlier this year, a paper by Dr. Michael Mann – for years a leading light in the IPCC, and the author of the infamous ‘hockey stick graph’ showing flat temperatures for 2,000 years until the recent dizzying in-

crease – made an extraordinary admission: that, as his critics had always claimed, there had indeed been a ‘Medieval Warm

Period’ around 1000 AD, when the world may well have been hotter than it is now.” (*London Daily Mail*, 12/5/10)

Two Varieties of Teacher Unions: “European and Asian teacher unions are as powerful or more so than their U.S. counterparts. But unlike the unions here, they zealously guard high standards of educational performance. Unions in those OECD nations, tracing their origins to the guild-apprentice system, recognize that quality control is the best guarantee of continuing public support for good salaries and benefits.

American unions, by contrast, arose out of the industrial manufacturing model that regards quality control (or in educational terms, student performance) as a management responsibility.” – William Moloney, former Colorado education chief (Centennial Institute, 12/10)

EAI Project Reports

The **Energy Education** Project is rapidly ramping up. It will present Gwyneth Cravens, a nationally known liberal author who became a convert to nuclear energy, at a Sheraton presentation on January 20 (see p. 3). She will also appear on True North Radio (WDEV) at 11, at a StateHouse Roundtable that same day at noon, and at a Gund Institute program at UVM at 4:00.

Project Director Meredith Angwin is blogging (yesvy.blogspot.com) and speaking to Rotary clubs, chambers of commerce, and public events (St. Johnsbury Welcome Center, 7pm Jan. 10). She is an excellent source of reliable scientific information on the present and future of nuclear energy in general, and in Vermont in particular. Invite her to speak to a group in your town! (Meredith@ethanallen.org).

It’s crunch time for the **Transparency** website project (www.vttransparency.org). We have labored for ten months to get the State to produce the all important vendor data, so that citizens can learn who is getting taxpayer dollars, when, how much, and for what. All this data exists, but it’s not formatted for website display. Administration Secretary Neale Lunderville directed all agencies to identify data that they believed should be kept confidential, and report by December 17.

The last roadblock is Attorney General William Sorrell, who reportedly wants to examine all data from all agencies to satisfy himself that no confidential (determined by him) data will find its way to the taxpayers. Stay tuned for the final chapter next month. (This is an excellent argument for letting the Governor appoint the attorney general.)

– JMc



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Don't Miss "Sick and Sicker!"

Filmmaker Logan Darrow Clements shows what happens when "the government becomes your doctor" using licensed news footage from Canadian TV, interviews with doctors, patients, journalists, a health minister, a Member of Parliament, a doctor who went on a hunger strike as well the producer's own Canadian relatives. Clements even rents a hospital to show the mismatch between supply and demand in a medical system run by politicians. SICK and SICKER puts government-run medicine on ice with cold hard facts from Canada.

Green Mountain Patriots have licensed the acclaimed 50-minute color film for showings in Vermont. Can you arrange a showing in your town? If so, please contact greenmountainpatriots@gmail.com to make arrangements.

