

Ethan Allen Institute

Newsletter - July 2015 (Printer Edition)

Top Story: EAI 2015 Legislator Roll Call Profiles Are Out!

Are your representatives representing YOU? For decades the Ethan Allen Institute has put out legislative Report Cards chronicling the voting records of our elected officials. In 2013/2014, we introduced individual Roll Call Profiles for each of Vermont's 180 Representatives and Senators in a PDF format. For 2015 we have raised the bar once more, creating more interactive, electronic profiles, including links to email addresses, facebook pages, campaign websites and more.

Please check out our new format, see how your legislators voted, share the links with your friends and neighbors, and send lots of letters to editors!

After you've had a chance to review your legislators' records at...

<http://ethanallen.org/vt-legislator-roll-call-profiles-2015-update/>

take the EAI July Survey and let us know what you think of how they voted.

<https://www.surveymonkey.com/r/S385RYH>

Please Help Us Hold Montpelier Accountable! Make a Contribution to EAI today.

Thanks to all who have already made a donation to our 2015 campaign! For those who haven't yet, please help us fight all the potential taxes mentioned above and other encroachments on our liberty. Be generous. We're only as strong as you make us. Thanks!

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Commentary: The Governor's "Productive" Legislative Session

By John McClaughry

A recent decision by the Supreme Court of Iowa reminds us of a Vermont Supreme Court case in 1996, which two years later had a happy ending.

An Iowa woman called the police amid a domestic altercation in June 2013. When an officer arrived, she stepped out of her house to talk with him. She told the officer that she and her boyfriend frequently fought and he had refused to give her car keys because she was drunk and did not have a driver's license.

The officer thereupon arrested the woman on her own front steps for being intoxicated in a public space. At trial, the woman argued that her front steps were not a public space under Iowa law, but the prosecutor said any modicum of public access would make a place public. She was convicted in a bench trial and raised the same issue on appeal.

The Iowa Supreme Court wasn't buying the state's argument. In an opinion by Justice Daryl Hecht, the Court said it did not believe that state lawmakers intended Iowa law to be so heavy-handed. "If the front stairs of a single-family residence are always a public place, it would be a crime to sit there calmly on a breezy summer day and sip a mojito, celebrate a professional achievement with a mixed drink of choice, or even baste meat on the grill with a bourbon-infused barbecue sauce — unless one first obtained a liquor license," Hecht wrote. By that standard, he concluded, an intoxicated person could be arrested and convicted for walking up the stairs of their own house after securing a ride home from a sober designated driver.

The Iowa case is reminiscent of a very similar case decided by the Vermont Supreme Court in 1996. A Rutland man was convicted of driving while intoxicated in his own driveway.

A state trooper followed a car into the driveway of Dennis Eckhardt. The trooper was in the process of writing up the driver for speeding, when the homeowner carefully drove his own car down the driveway to its parking place. The trooper, smelling liquor on Eckhardt's breath, then arrested him for DUI.

It turned out that Eckhardt had not driven his car on the town road. A sober friend had driven him to the "top of his driveway", then got out and allowed Eckhardt to navigate, without incident, to his parking area. He was, however, convicted of DUI. The Vermont Supreme Court upheld the conviction of a citizen for driving while intoxicated in his own driveway, on the grounds that the driveway was a "public highway", and other citizens, not being barred from the driveway, might suffer injury.

The Court's unsigned opinion said that "defendant's driveway, like most driveways in Vermont, is open to the general circulation of vehicles, and, in keeping with the objective of protecting the public from injury, thus constitutes a public highway ... Law enforcement officers should not have to wait until drunk drivers are in traffic on the highway to make a DUI stop."

To its credit, the 1998 legislature refused to accept this decision. Thanks to Rep. Tom Koch (R-Barre), who retired in 2014, it inserted a section in a major revision of the DUI laws that overturned the Supreme Court's Eckhardt holding. The Koch Amendment passed 121-21, and was later accepted by the Senate.

The Koch language says that " 'highway' does not include the driveway which serves only a single-family or two-family residence of the operator. This exception shall not apply if a person causes the death of a person, causes bodily injury to a person, or causes damage to the personal property of another person, while operating a motor

vehicle on a driveway...”

The Iowa Supreme Court has now happily come to the same view as the Vermont legislature that overturned the Eckhardt decision.

Those views reinforce the celebrated ruling of Sir Edward Coke in 1604, translated from Latin as “everyone’s house is his safest refuge” (“Every man’s home is his castle.”) Your private space belongs to you, and if you aren’t engaging in criminal activity, the long arm of the law cannot reach into it. That’s one of the liberties that Vermonters should always cherish and defend.

- John McClaughry is vice president of the Ethan Allen Institute (www.ethanallen.org).

Commentary: Study Will Provide Cover for Higher Property Taxes

By Rob Roper

Tucked away in the education bill just passed in Montpelier – the one that has everybody talking about consolidation – is \$300,000 earmarked for a study. A legislator familiar with the back-room horse-trading that goes into moving these bills into law said that this little provision was key to getting the bill passed; its absence a potential deal breaker.

So what is this study for, and why the fuss?

The study will explore putting a number on what Vermont taxpayers really need to spend in order to provide an “adequate” education – a very important term with legal implications. In a recent article by VPR, Speaker of the House Shap Smith (D-Morristown) justified the need for this study, saying, “Many people these days are asking whether the per-pupil spending average that we have is too high or too low.” Too low? Really?

The National Education Association ranks Vermont number one in the nation for per pupil spending at \$21,263 (NEA Research, March 2015). The Agency of Education calculates the number differently at around \$18,000. With our property taxes also some of the highest in the nation and, consequently, the number one issue on people’s minds in the last election, I don’t know of too many people who have been asking if our spending average is too low. Outside of the State House, that is. And, hence, this study...

The majority in the legislature do not want to cut spending on public education despite a greater than 20 percent decline K-12 student population because doing so means cutting back the cash flow to a very powerful, allied political interest group in the teachers’ union. But, they also don’t want to upset voters who have reached the end of their patience with this ever-expanding tax burden. Commissioning a study accomplishes a couple of things. A) In the short term, “delay” while creating the appearance of doing something to fix the problem. “We’re digging hard to find places where we can and should be spending less.” B) In the long term, manufacturing the justification for future increases in that spending.

I will bet a very large sum that the “adequacy” number determined by this study will come in — by quiet direction from these legislators — higher than the current state

per-pupil average. The reaction will be, “Oh’m’gosh, we’re not spending enough!” The chair of the House Education Committee, Rep. David Sharpe (D-Bristol), hinted at this in the VPR story, saying, “If you look at what our traditional academies are spending, what it actually costs to educate a child at St. Johnsbury Academy or Burr & Burton, I think it is close to \$20,000.” That’s 11 percent higher than the \$18,000 the Agency of Education says we spend on average now. (Taxpayer funded tuition to the academies is around \$16,000.)

A study producing such a higher number would justify, at least in the minds of the majority in the legislature, either doing nothing to reduce property taxes, or more likely, serve as a mandate for future increases.

Furthermore, “adequate” is a highly subjective term that, if other states are any guide, will open the door to lawsuits demanding that the state spend more to become adequate, whatever that means. Several states that have adequacy language written into laws regarding education have been subject to court mandates that taxpayers spend more money. In Kansas, for example, Shawnee County District Court judges ruled that taxpayers be forced to spend between \$548 million and \$771 million a year more on schools. (Heartland, 2/5/15)

Closer to home, New Hampshire is enduring a decades long struggle between the legislature, the governor, and the state’s Supreme Court over adequate education funding that has reached the point of a constitutional amendment battle to remove the judiciary from school finance decisions.

If the courts assume the power to dictate education financing decisions in Vermont, it would take the legislature off the hook as far as responsibility for increasing property taxes. It would also obliterate what’s left of local control.

If the legislature wanted to embark on a worthwhile study, they would be looking at how the Village School of North Bennington has been able to cut their baseline spending by over 10% while expanding programs and services since “going independent” in 2013. Or how the Compass School in Westminster, with 40% of its student population qualifying for free and reduced lunch and 30% identified with special learning needs, achieves a virtual 100% high school graduation rate with 90% of its graduates accepted into college — all for roughly \$5500 less than the statewide per pupil spending average.

But, they’re not going to look at that. Unfortunately, this adequacy study is wholly inadequate.

- Rob Roper is president of the Ethan Allen Institute.

Commentary: Amtrak - A Runaway Train

By Frank Mazur

Amtrak service to Montreal was promised by Gov. Shumlin back in 2011 and promoted by the Vermont Rail Action Network. Sen. Leahy said the service would be used by “relatives and friends on both sides of the border.” This is a dream for rail advocates as long as someone else pays the bill.

In 1958 the Interstate Commerce Commission wrote that passenger trains were destined to “take a place in the transportation museum along with the stagecoach, the

side-wheeler and the steam locomotive.” Still, Congress insists on supporting an extensive nationwide system of passenger rail that doesn’t make economic sense. It runs trains that serve political purposes as opposed to being responsive to the marketplace. Studies show that routes that run less than 400 miles make money; routes with more miles post a loss. The former accounts for 83 percent of ridership; the latter 15 percent. However, the 15 percent, like the Ethan Allen and Vermonter routes, continue to exist because of congressional pressure.

Government has put \$44 billion into Amtrak since inception thinking that it will eventually subsist on its own. However, it has lost money every year despite claims by bureaucrats and environmentalists that profitability was on the horizon. The reason why is politics.

The state passenger subsidy for FY16 is \$7.75 million or \$54 per passenger which reflects costly poor ridership.

This is evident in Vermont where the focus of environmentalists, activists and political progressives has been to preserve current routes and expand new service to Montreal. The state passenger subsidy for FY16 is \$7.75 million or \$54 per passenger which reflects costly poor ridership. This subsidy doesn’t include any capital expense like track maintenance or cost of rail cars. Increasing service to Montreal will only exacerbate the deficit per rider.

Nationally, the demographics served by long-term routes tend to be retirees who use it for recreational and leisure trips and does not show a need for taxpayer subsidies. Premium service like food cars most likely required for a Vermont/Montreal route would greatly contribute to the operating losses.

The business case for the Vermont/Montreal route shouldn’t give equal weight to geographic equality and economic efficiency. The only way to solve this runaway train that consumes huge subsidies with little return is to get politicians out of decision making and privatize Amtrak’s operation. Private operators would be able to continue routes that profitably serve passengers and they would most likely be more innovative in attracting new riders.

You get what you accept.

– Frank Mazur is a former state representative from South Burlington who served as chair of the House Transportation Committee. He is a former member of the EAI board of directors.

News & Views

Jobs Report: The May BLS report shows Vermont’s unemployment rate holding steady at 3.6 percent. The Civilian Labor Force increased slightly to 348,500 from 348,200 in April, and employment rose to 336,000 from 335,600. ([Bureau of Labor Statistics](#))

Vermont Progressive Policies Whack Middle Class. And so it goes, the Legislature and governor cannot solve the fiscal mess they’ve created without whacking the middle class as there are too few higher income filers in Vermont upon whom to cost shift their overspending. – Tom Pelham, Campaign for Vermont. See CfV’s chart below...

Income Range	Tax Payers Affected	Average Tax Increase	Average Percent Tax Increase	Total Tax Increase
\$25,000 - \$50,000	15,103	\$55	7.83	\$830,665
\$50,000 - \$75,000	18,357	\$117	7.82	\$2,147,769
\$75,000 - \$100,000	16,081	\$180	7.59	\$2,894,580
\$100,000 - \$150,000	17,731	\$310	7.42	\$5,337,031
\$150,000 - \$200,000	5,988	\$479	6.98	\$2,868,252
\$200,000 - \$300,000	3,837	\$712	6.33	\$2,731,944
\$300,000 - \$500,000	1,808	\$1,040	5.02	\$1,880,320
\$500,000 - \$1,000,000	761	\$1,638	6.10	\$1,246,518
\$1,000,000+	295	\$4,952	5.54	\$1,460,840
Total	79,961			\$21,397,919

More Evidence Vermont’s Middle Class Is Hurting. Two other reports highlight that Vermont’s middle class is dying faster than every other state but one – California. One report by the Pew Charitable Trust shows that Vermont’s middle class declined by 5 percentage points (From 52.4% to 47.4%) between 2000 and 2013. The second, by 24/7 Wall Street looks at the more recent time frame between 2009 and 2013, in which Vermont’s middle class income growth declined by 5.9% — the second worst record in the nation.

Restraining Property Taxes NOT! “...[T]he cost of reductions in property taxes as incentives to merge and the cost of merger grants will be paid for by the Education Fund. This added use of funds will tend to drive up property taxes. This will tend to offset any possible cost savings from the mergers, which will likely only come into effect gradually over time. So the state is bribing schools to merge with what is largely their own money, done in the name of controlling property tax rate growth, but tending to increase property taxes. Nice.” Rep. Cynthia Browning, Arlington, explains H.361/Act 46.

Taxing Miles Instead of Gallons. According to a story on VPR, Vermont Transportation Secretary Sue Minter, also a potential candidate for governor, “says a plan that taxes motorists based on the number of miles they drive their car deserves serious study.” While there is some merit to this concept in theory (why should a Prius driver pay less to use the roads than a Ford truck driver), it would be a difficult tax to collect, and in all likelihood a serious invasion of privacy to track. When, where and how would drivers pay such a tax? All at once at one’s annual inspection? As part of the income tax? And how would miles be accounted for? An odometer check at the annual inspection? Or a GPS on every vehicle? Would this replace a per gallon gasoline tax, or supplement it? How would you tax out of state drivers?

Soda Tax Fight Is Not Over Yet. In this past legislative session the state’s 6% sales tax was expanded to cover sweetened beverages. This apparently is not enough for the nanny-state activists pushing for an excise tax. Tina Zuk, co-chair of the Alliance for a Healthier Vermont, complained in an interview with VPR (6/1/15) that “... to purchase two 12-packs of soda cans, on sale at a local store, for two for \$5 would cost an extra 30 cents with a sales tax. A per-ounce excise tax on those same packages would be \$5.70.... ‘We want people to drink these sugary drinks as the treat they were intended to, not constantly throughout the day.’” Pardon me, but why should anyone give a rat’s tail what

Tina Zuk wants? It's not her decision.

GMO Labeling Law Will Cost Us. “Vermont’s first-in-the-nation law requiring the labeling of foods made with genetically modified organisms could cost the nation’s grocers up to \$10 million a day in fines, according to a letter from an industry organization suing to block the law.... [C]ompanies could be fined up to \$1,000 a day per unlabeled item — a can of soup or a box of cereal, for instance — that mistakenly ends up on store shelves.” ([AP, 6/19/15](#)) Don’t think these costs won’t be passed on to hungry consumers grocery bills.

Carbon Tax View. “Our view of a [national] carbon tax is that it might be acceptable as part of a tax reform that eliminated—entirely—some current revenue source such as the payroll or corporate income tax. But we don’t expect to live long enough to see that day. A slippery compromise would trade a new carbon tax for a reduction in some tax rates, but the politicians would soon return to raising those rates again. The U.S. would be left with the current tax burden plus the new carbon tax—and a permanently larger government.” – Wall Street Journal editorial 6/24/15.

Our Misplaced Environmental Priorities. “From May 30 into June 1, more than a million gallons of sewage and stormwater from the Vergennes sewer system flowed untreated from a pump station into Otter Creek. The mix of human waste, household discharge and street runoff poured into the creek intermittently for 31 hours with no public notice until a day later, when town officials informed state regulators of the overflow....” (Taylor Dobbs article) But it’s okay because we’re wasting our tax dollars covering the state with solar panels and windmills to save the planet.

Why Jobs Matter. “Youngstown’s [Ohio] story is America’s story, because it shows that when jobs go away, the cultural cohesion of a place is destroyed. The cultural breakdown matters even more than the economic breakdown.” - John Russo, a professor of labor studies at Youngstown State University writing in the Atlantic Magazine, *A World Without Work*. <http://www.theatlantic.com/magazine/archive/2015/07/world-without-work/395294/>

Economic Freedom = Prosperity. "High and rising economic freedom spurs the creation of capital in all its forms, planting the seeds for rising living standards. Where economic freedom falters, capital will be scarce, misused and poorly maintained. Over time, people will become poorer." - W. Michael Cox and Richard Alm. Unfortunately, economic freedom is declining.

Not that the EPA is the Be All/End All, But This is Interesting... “According to the four year, multimillion dollar report, 1,399 page report, the EPA, "did not find evidence that these mechanisms [hydraulic fracturing] have led to widespread, systemic impacts on drinking water resources in the United States.” (Source, Heartland, Institute 6/8/15) <http://news.heartland.org/newspaper-article/2015/06/08/fracking-poses-minimal-risk-water-supplies-concludes-epa>

Patrick Henry on the Pacific Trade Deal. “The liberties of a people never were, nor ever will be, secure, when the transactions of their rulers may be concealed from them.” -

Patrick Henry, Speech On the Expediency of Adopting the Federal Constitution, Delivered in the Convention of Virginia (June 9, 1788)

Patrick Henry on Gun Control. "Are we at last brought to such humiliating and debasing degradation, that we cannot be trusted with arms for our defense? Where is the difference between having our arms in possession and under our direction, and having them under the management of Congress? If our defense be the real object of having those arms, in whose hands can they be trusted with more propriety, or equal safety to us, as in our own hands?" - Patrick Henry, 3 J. Elliot, Debates in the Several State Conventions 45, 2d ed. Philadelphia, 1836)

Happy Independence Day! "What is it that gentlemen wish? What would they have? Is life so dear, or peace so sweet, as to be purchased at the price of chains and slavery? Forbid it, Almighty God! I know not what course others may take; but as for me, give me liberty or give me death!" – Patrick Henry, St. John's Church, Richmond, Virginia, March 23, 1775.

Book of the Month

The First Family: Abigail and John Adams

By Joseph Ellis

Alfred J. Knopf, 2010, (299 pp.)

John Adams, the voice of the American Revolution, wrote to his wife Abigail of Independence Day, "I believe that it will be celebrated by succeeding generations as the great anniversary festival. It ought to be celebrated by pomp and parade, with shows, games, sports, guns, bells, bonfires, and illuminations from one end of this continent to the other..." So, in honor of the Fourth of July and Adam's correct prediction of our celebrations, our Book of the Month selection is *First Family: Abigail and John Adams*, by Joseph Ellis.

The quote above was taken from one of roughly 1,200 letters shared between John and Abigail Adams, two of the most remarkable figures – and prolific writers -- in our nation's history. These exchanges on their own provide raw historical insight, as well as touching personal accounts of the birth of our nation and the role this fascinating couple played. However, Ellis, a superb storyteller, gives a rich contexts and perspectives that make this a real page turner.

First Family opens a unique window into the founding of our nation. The reader, through these letters, witnesses the generation of mere ideas that grow to form the pillars of our government and our unique culture. At the same time, we are privy to an intimate look at the small details that make these people who formed and fought for these ideas so human. Both had to deal with the pain of long separations. Abigail, a woman in the 18th century, had to learn how to run a farm on her own. We see the two of them debating the greatest issues of state on one hand, and discussing whether or not to vaccinate their children with a new, dangerous procedure in the face of a small pox epidemic on the other.

It is always useful to remember that our country was founded by imperfect people who recognized and accounted for the fact that humans are not, and never will be perfect. That is why we strive for a “more perfect union.” It is a constant effort, and one that will never end. I highly recommend *First Family*, particularly as we celebrate the Fourth of July.

- Review by Rob Roper, president of the Ethan Allen Institute.

The Final Word

July Survey: Are you being well represented in Montpelier?

[CLICK HERE TO TAKE THE SURVEY](#)

Comments may be made available to legislators. Respondents will remain anonymous, so please take a moment to leave a civil comment!

Results of the June Survey: