

Ethan Allen Institute

Newsletter - September 2017 (Printer Edition)

Top Story: 2017 Senate Roll Call Profiles Are Out!

EAI's Legislator "Roll Call Profiles," (arguably our most popular service) have been updated for both the Senate and the House to reflect the 2017 legislative session. I must say the Senate seemed particularly disinterested in casting many meaningful votes on the record in 2017. Only five votes met our criteria for posting – the Budget, Gov. Scott's \$26 million property tax saving proposal, marijuana legalization, raising the smoking age to twenty-one, and allowing kids to seek psychological counseling regarding their sexuality without the permission of their parents.

Click here to see how your Senator(s) voted! <http://ethanallen.org/vt-senators-roll-call-profiles/>

Beyond providing a picture of how your elected officials voted, each legislator's page includes detailed contact information, including email addresses, links to websites and social media pages, and, increasingly (we're still completing this feature), links to email the editors of local papers serving their districts. Our goal is to make this a "one stop" platform for you to learn about, interact with, and hold your legislator accountable.

First "Liberty Camp" a Fun Success

On August 8-10, The Ethan Allen Institute participated in the first of what we hope will become a summer tradition: "Liberty Camp" for kids.

Over the three-morning event a group of fifteen students ranging from third grade to tenth grade learned about the reasons for our breakaway from Great Britain, the ideological foundation of our country as laid out in the Declaration of Independence, and how the Constitution secures the inalienable rights of U.S. citizens. We also played some fun games, including Boston Tea Party Bocce and Bunker Hill Ball.

It was an inspiring week. We threw some pretty heavy concepts at these young patriots, and they responded with intelligence and enthusiasm – as well as some very insightful questions and observations. It's kids like this who give us hope for the future!

We would like to give special thanks to Linda Kirker, Carol Frenier, and Lenore Broughton who, as volunteers, did the hard work of pulling this event together, to our participants for being awesome, and to their parents for forcing them (we're not naïve) to spend three summer mornings with us.

Commentary: Martyrs to the Clean Water Act

By John McClaughry

Among the most notable martyrs to the Clean Water Act are names that few recall: Ocie and Corey Mills, John Pozsgai, John Rapanos, and most recently, John Duarte. All of them were dragged into years-long battles with the Federal government – notably the Army Corps of Engineers and the Environmental Protection Agency – over making their own land more productive.

Congress passed the Clean Water Act of 1972 to regulate actions that affect the “navigable waters of the United States”. The Connecticut River and Lake Champlain are clearly navigable waterways. Environmentalists would argue that Kirby Brook, which runs from Kirby Pond into the Moose River, then into the Passumpsic River, then into the Connecticut River, is by extension a part of the “navigable waters of the United States”.

But at some point common sense says that remote bogs, ponds, sloughs, ditches, and “vernal pools”, that have no surface water connection to navigable waterways, ought to remain beyond the reach of Federal regulation, so long as they contribute no shocking downstream contamination.

But common sense failed Congress. It left to the courts the matter of just how far the navigable waters clause could be stretched. The Supreme Court’s most recent effort to interpret the law came in 2006. The appellant was John Rapanos, who filled and leveled an occasionally damp Michigan field 20 miles away from an actual waterway. The case became a judicial food fight, producing much rhetoric but no controlling opinion whatever.

At the invitation of the Court, the Obama administration produced a regulatory document titled Waters of the United States (WOTUS). It adopted the most extreme reading of “significant nexus” to bring almost every imaginable parcel of land under Corps and EPA jurisdiction.

A number of states went to court and won a stay of implementation of WOTUS. The new Trump administration announced it was withdrawing the plan.

But here’s the shocking part. Even though WOTUS never took effect, and even though President Trump signed an executive order withdrawing it, the Trump Justice Department is aggressively prosecuting the case of John Duarte in Tehama County, California.

As reported by Tony Mecia in the August 21 Weekly Standard, Duarte faces a \$2.8 million fine plus a mandated outlay of as much as \$13 million in “mitigation credits”. His crime: plowing a vacant 22 acre field to grow wheat without a Corps of Engineers permit.

The Justice Department - now supposedly run by Trump appointees – claims that tilling the field will loosen dirt that will find its way into “vernal pools”, thereby becoming an illegal “discharge” into navigable waters (sic). The Clean Water Act exempts operations related to “normal farming... for the production of food”, but the Justice prosecutors say that “normal farming” does not include reclaiming a vacant field that hasn’t been farmed for some years.

Duarte is understandably indignant and angry at his expensive and far from concluded ordeal. And he committed a major aggravation of his offense: he called the Corps staffers “a carload of idiots.”

The earlier the Clean Water Act martyrs often made similar protests. Big mistake. It’s not much of an overstatement to say that whenever an environmental regulator faces stubborn resistance, the government’s bureaucrats, inspectors, permit managers and

prosecutors will go into high gear to make the offending landowner pay dearly for his insolence. They gave Ocie and Corey Mills 21 months in jail for protesting. They ruined John Pozsgai's life – 18 months in prison and a \$202,000 fine. (A sympathetic federal judge, shocked by the government's punitive behavior, reduced it to \$5,000.) There are many others.

The first needed solution is for those running the government to control their appetites for regulating every single little thing just to prove they can make applicants comply, at whatever cost. (The White House needs to pointedly explain this to the Justice Department.)

Another part of the solution is for top regulatory officials to insist that their underlings behave reasonably and respectfully toward their "customers", even if the customers are utterly exasperated at being throttled, impoverished and jerked around by a carload of idiots.

A further step would be to give an aggrieved applicant the right to file with an agency ombudsman a complaint about employee incompetence, rudeness, arrogance, and abuse. The ombudsman would report findings to the agency head. He or she would have to personally sign that he or she has read the report, and either rejected the complaint, or disciplined the employee and apologized to the customer. After the thirtieth working day, an agency head who continued to ignore this duty would be personally fined \$10,000 a day, paid to the complainant.

It's not perfect, but it's certainly worth a try.

- *John McClaughry is the founder and vice president of the Ethan Allen Institute*

Commentary: So, Second Homeowners Can Vote In Vermont

By Rob Roper

There is a vote fraud case in Vermont, currently in the Essex Superior Court, in which a family of second homeowners from Connecticut (parents and two adult children) registered to vote in the town of Victory, and did so. Their votes likely altered the outcome of a local election, which was decided by fewer than four votes.

Now, all four of these family members listed Connecticut as their primary residence on their income taxes, had Connecticut drivers licenses, paid property taxes on a primary dwelling in Connecticut, did not pay residential property tax rates on their second home in Vermont, had jobs in Connecticut, and spent an overwhelming amount of their time in Connecticut. But they were voting by absentee ballot in Vermont, deciding who would represent in public offices people who actually live here. That's vote fraud, right?

Wrong! At least according to our Secretary of State's office.

Robert and Toni Flanagan, two of the defendants in this case, testified under oath that they consulted with the Vermont Secretary of State's office and were advised that their voting in Vermont under these circumstances was okay, that they should leave the residency box on the voter registration form blank.

Vermont statute says, "... 'resident' shall mean a person who is domiciled in the town as evidenced by an intent to maintain a principal dwelling place in the town in

definitely and to return there if temporarily absent, coupled with an act or acts consistent with that intent.”

How does one establish “intent?” In a [recent interview](#), Secretary of State Jim Condos said, “My staff refers to the law and tells the person that they need to determine for themselves whether they qualify under the legal standard.” What? Determine for themselves?

Will Senning, who serves under Condos as Director of Elections, was asked under oath, “when a voter registers, does that voter have to have a principle residence in the town at the moment that they register?” Senning’s answer: “Not necessarily.” Asked “why not?” His answer was, “Because they may be intending to make that place their principle residence in the near future.” Pressed further with the question, “How far out can that intent be?” Senning testified, “There’s no objective standard in terms of that time frame.”

This wildly loose interpretation of the residency requirement does not reflect the spirit of the statute. In practice it means that there is no legal standard of residence for voting in Vermont. If individuals can determine for themselves that they qualify to vote here and can validate that determination simply by expressing an “intent” -- which cannot be objectively challenged -- what’s to stop anybody from anywhere from voting here?

What allegedly happened in Victory is that the Town Clerk, an elected position, actively recruited these out of town friends to join the local voter rolls in order to help assure her own re-election.

The implications here are profound. According to Census data, there are over 40,000 second homes in Vermont, 14.6 percent of the total number of households. If these folks decide they don’t like their property tax bills – or love Vermont but don’t like its politics – they can register to vote here. All they have to do if questioned is tell election officials that they “intend” to make their second home in Vermont their permanent residence at some point in the future. Whether they actually ever do or not is irrelevant.

In fact, what’s to stop someone from registering in Vermont to vote in elections they think are more important here, and then re-registering in their real home towns to vote in elections they deem more important there – just so long as you don’t vote in both places for the same election you are apparently not committing any crime. Or at least not one that can be proven.

There are two ways of looking at this: A) this is good, legal, public policy. Or, B) our Secretary of State’s office under Jim Condos is not only turning a blind eye to but actively facilitating vote fraud.

If A, let’s alert all those people from New York, New Jersey, Connecticut, Massachusetts, etc. who own ski chalets and lake cabins in our communities of their legal options for participating in Vermont elections. The more the merrier. After all, in little old Vermont where elections are often decided by a handful of votes, your absentee ballot can really make a difference.

If B, we need to put some teeth into our residency requirements for voting and make sure this kind of nonsense does not and cannot happen.

Jim Condos is fond of saying there is no illegal voting going on in Vermont. I guess it’s easy to think that if you allow that nothing is illegal.

- Rob Roper is president of the Ethan Allen Institute. He lives in Stowe.

Commentary: Vermont's Greenhouse Gas Mandate: Costly, Symbolic Environmentalism

By Jonathan A. Lesser, PhD.

Vermont, along with 19 other states, has a long-term greenhouse gas (GHG) reduction mandate. The original mandate, signed into law in 2006, called for a 75% reduction below 1990 emissions levels by 2050. In 2011, then- Governor Shumlin raised the goal to a 90% reduction by 2050, something which the 2016 State Comprehensive Energy Plan (CEP) discusses in detail.

Too bad the numbers don't add up. Vermont's mandate is much more than a requirement to supply consumers with electricity from renewable resources like wind and solar power. It will require virtually complete electrification of the Vermont economy to eliminate almost all fossil fuel consumption. Cars and trucks, oil- and gas-fired furnaces, industrial processes –virtually everything that now uses fossil fuels will need to be replaced with its electric counterpart.

In 1990, Vermont's GHG emissions were estimated to be 5.5 million tons of CO₂ equivalent (CO₂-e). By 2012, those emissions had increased to 8.3 million tons. (The “equivalent” arises because CO₂ is just one of many greenhouse gases and in Vermont, methane emissions from the state's dairy industry account for almost 10% of GHG emissions.) The 90% goal means that GHG emissions must be reduced by about 5 million tons, to just over 500,000 tons of CO₂-e by 2050, less than one ton per Vermonter. That's less than the methane emitted by the state's bovines in 2012.

By comparison, in 2014, total world GHG emissions were estimated to be around 45 billion tons of CO₂-e. To put that in perspective, Vermont's CO₂-e emissions in all of 2012 were about *two hours'* worth of world emissions.

Meeting the 90% GHG reduction goal will require replacing virtually all fossil fuel use in the state with electricity, and ensuring that there is enough electricity to do that. According to data published by the U.S. Energy Information Administration, Vermonters annually consume a total of 132 trillion BTUs (TBTUs) of energy. Of that amount, about 20 TBTUs (15%) was in the form of end-use electricity consumption.

Fossil fuel use accounted for 92 TBTUs. Although the CEP discusses using biofuels, the amount of biofuel that could be produced on agricultural land is small, estimated at 4 million gallons. Thus, the prospects for a biofueled Vermont economy are slim. Moreover, biofuels cost far more than their fossil-fuel equivalents.

How much electricity will Vermont need? Suppose Vermont could reduce total end-use energy consumption to just 100 TBTUs by 2050. That's 30 TWh of electricity, five times the amount consumed in 2015. Currently, Vermont gets 2 TWh of electricity

each year from hydropower and another 1 TWh from burning wood. That leaves 27 TWh from wind and solar power.

Last November's election appears to have confirmed that Vermonters don't want thousands of giant wind turbines dotting the landscape. So, assume that additional electricity will be generated by solar photovoltaics. To produce 27 TWh of electricity from solar panels would require about 20,000 MW of solar capacity. According to data published by the National Renewable Energy Laboratory, 1 MW of solar PV requires eight acres of land. So, 20,000 MW would require 160,000 acres, or about 250 square miles. And despite cost decreases, solar power is still much more costly than power purchased on the wholesale market. Thus Vermonters would pay even higher electricity prices.

Solar PV is not available at night or on cloudy days. Thus, enough solar PV will need to be installed to store excess electricity in batteries. Current battery technology can provide 8 megawatt-hours of electricity for every MW of capacity, at a cost of about \$1.2 million per megawatt. 27 TWh of electricity is equivalent to just over 80,000 MWh per day. Thus, suppose that on a cold, cloudy December day, electricity consumption is 100,000 MWh. Supplying that much electricity from batteries would require 12,500 MW of battery storage, at a cost of \$15 billion. Even if battery costs drop by half, that's still \$7.5 billion.

Replacing all of the fossil-fuel-using equipment in the state and adding electric vehicle charging stations would cost billions of dollars more.

Curiously, nowhere does the 2016 CEP discuss the benefits of reducing the state's GHG emissions. Perhaps that's because there will be no benefits. Reducing Vermont's two-hours' worth of world CO₂ emissions will have no measurable impact on world climate. Nor will similar GHG reduction mandates in other states. No measurable climate impacts mean zero climate benefits.

Ambitious, math-challenged legislators can always vote to impose costly and foolish mandates like Vermont's with little pushback from voters. But Vermont's mandate, like the mandates in other states, will impose additional costs on residents and businesses with zero offsetting benefits. Vermont's is just another economically damaging exercise in symbolic environmentalism and political grandstanding.

- Jonathan Lesser, PhD, is the president of Continental Economics and the author of the new report "New York's Clean Energy Programs: The High Cost of Symbolic Environmentalism," published by the Manhattan Institute. In 2003-2004, he was the Director of Planning at the Vermont Department of Public Service.

What Ails Vermont's Economy. Vermont businesses "identified the top three key issues facing their business as health insurance costs (63%), taxes (Federal and State tax laws: 47% and Property tax: 19%), and finding qualified employees (57%)." [Vermont Chamber of Commerce](#)

Vermont Labor Force Hits 15 Year Low. "In July Vermont's labor force dropped to its lowest level in 15 years. The labor force comprises people who are employed, including self-employed, and those who are unemployed but actively job hunting. Vermont's labor force fell to 343,850 last month—the lowest level since July 2002, when it numbered 343,835. The unemployment rate also dropped in July, to 3.1 percent. The decline in the labor force tells us that unemployment shrank not because people found jobs, but because they stopped looking." ([Public Assets Institute](#))

JFO Report on \$15 Minimum Wage. The "positive effects will be largely offset by negative cost of production increases, reduced federal transfer payments to the State, higher Federal income and payroll tax payments by Vermont businesses and workers, higher local prices and associated reductions in demand, reductions in employee benefits, and the longer-term substitution of capital for labor in the most highly affected industry sectors." ([JFO](#))

Nasty Vermont. Wired Magazine ran a story about where the nastiest people on the internet come from based on an analysis of "92 million comments over a 16-month period, written by almost 2 million authors on more than 7,000 forums that use [Disqus] software." This is the comment platform used by Vermont Digger, VPR, etc. Vermont, it turns out, is the absolute worst. Trolls inhabit the Green Mountains!

Vermont's Emission Control Flop. Act 168 of 2006 established a state goal of reducing carbon dioxide emissions to 25 % below 1990 levels by 2012. "The most recent data available, from a report the ANR published in July, shows that the state's greenhouse gas emissions have remained more or less steady [at the 1990 level] for the past 25 years." (VTDigger 8/16/17) And this after six years of a Governor who declared in 2006 that "[The #1 issue facing Vermont] is global warming and keeping this planet from destroying itself and keeping us from destroying this planet in front of our own eyes."

Opioids & Medicaid Expansion. An article in [the Wall Street Journal](#) (behind a pay wall) shows evidence that the expansion of Medicaid under the Affordable Care Act (ACA) is driving, at least in part, the opioid epidemic that is ravaging the nation. Under the ACA, states were encouraged, but not required, to expand Medicaid access to people with higher income levels in exchange for increased federal funding. Twenty-nine states took the deal; the rest did not. According to the Department of Health & Human Services, "overdose deaths per million residents rose twice as fast in the 29 Medicaid expansion states – those that increased eligibility to 138% of poverty from 100% of the poverty line –... between 2013 and 2015." Vermont is, of course, one of the 29.

Too Drugged-Out To Work. Employers need workers, but jobs remain unfilled. A growing reason is drug addiction. "A slew of reports finds a fresh reason for the chronic inability of American companies to fill skilled jobs: not a lack of skills, and hence a training-and-education crisis, but a surfeit of drug abuse. Simply put, prime-working age

Americans without a college diploma are often too drugged-out to get the best jobs.”
(Source: [Axios](#))

Vermont Recognized "Bernie Sanders's own state of Vermont experienced similar sticker shock. The [single payer] plan under consideration in the Green Mountain State would have cost \$4.3 billion - nearly 90% of the entire state budget. To cover that tab, payroll taxes would have surged 11.5%; income taxes would have increased 9%. Consequently, in 2014, Democratic Governor Peter Shumlin shelved the plan, deeming it "unwise and untenable."- Sally Pipes (IBD 8/15/17).

CERN: Sun Dominates Earth’s Climate. CERN (the European Organization for Nuclear Research), “in the first-ever laboratory analysis of cloud chemistry, that solar variations—not CO2 molecules—were the biggest factor in the earth’s recent warmings!” “CERN’s CLOUD experiment findings are now being used to model predictions for the next 100 years—and the model shows a solar sunspot minimum will soon lower earth’s temperatures by half a degree C.” Gee, who’d a thunk it. ([Source: TownHall](#))

Medicaid for All. A Kaiser Family Foundation report found that only 45 percent of primary care doctors are willing to take on new Medicaid patients, thanks to its low reimbursement rates and heavy administrative burdens. Nearly one-third won't see anyone on Medicaid. (Sally Pipes, Forbes 8/21/17)

Wonders of socialized medicine. According to a report (From CBS News 8/14/17), Iceland's government-run health system has managed to convince expectant mothers to have an abortion in nearly 100% of cases in which prenatal testing suggests a child will be born with Down syndrome. "Iceland is on pace to virtually eliminate Down syndrome through abortion," tweeted CBS News as it urged followers to tune in for that night's broadcast. Patricia Heaton, a television actress best known for her role on the program, "Everybody Loves Raymond," tweeted a clarification in response: "Iceland isn't actually eliminating Down Syndrome. They're just killing everybody that has it. Big difference."

“Fair Share” Facts to Remember. "In February the Tax Foundation highlighted IRS data showing that the top one percent of income earners pay more than 39% of income taxes, and the top 5% pay nearly 60%." (WSJ 8/1/17)

How the Left Is Tearing Us Apart. “Identity politics is competitive. The rewards offered to the officially victimized necessarily establish a competition to claim that privileged status. Also there is the inner competition within groups about which elites can represent the group most effectively. “Effectively” usually means “increasing demands.” So in encouraging people to be ever more sensitive about cultural appropriation, you are inevitably intensifying bad feelings among groups and promoting competitive exclusivity. – Fred Bauman, professor of Political Science, Kenyon College.

Book of the Month

School Inc.

By Andrew Coulson

Free To Choose Media, 2017

A little change of pace here.... Our “book” of the month is actually the three part television documentary, *School Inc.*, which recently ran on PBS (causing many heads on the Left to explode). In it, Andrew Coulson, an education policy analyst for the CATO Institute, delves into the questions of why public education in America is so resistant to adopting new and better ways of teaching children, and does it have to be that way?

The underlying argument of the program is that free market incentives work, and that the top-down, government bureaucratic approach does not. The U.S. public education system is mired in a 19th century model despite breakthroughs in technology and service delivery that have transformed, mostly for the better, almost every other aspect of our lives.

Throughout the series, Coulson explores a variety of education models both nationally and internationally, examining private schools, elite boarding schools, and charter schools in the U.S. to voucher programs in Chile, tutoring programs in South Korea, and school choice in Sweden. In doing so, he attempts to divine what works and what does not for each system. No system is perfect.

Coulson looks at the history of public education’s roots with Horace Mann. Mann noticed that in his day the private schools were the drivers of innovation, high standards and positive results, and reasoned that this was because better educated, financially well off parents tended to choose them. But, rather than promote ways to allow poorer, disadvantaged children to attend the successful private institutions, Mann’s solution was to find ways to force the children of affluent parents into the public schools. At the root of this decision was an overriding distrust of parents’ abilities to make good decisions – a sentiment that still exists amongst elites today. History would indicate it was Mann who made the wrong decision.

Coulson also spends some time on the story of Jaime Escalante, an innovated teacher of inner city kids whose classroom success was so incredible Hollywood made a movie, *Stand and Deliver*, about him and his students. However, rather than adopting his techniques on a large scale, the public school establishment drove Escalante out of the classroom. This Coulson contrasts to highly effective teachers in South Korea who, through use of new technologies, reach hundreds of thousands of students (and, not for nothing, make millions of dollars in the process). Great teachers in South Korea are treated like elite pro athletes in the U.S.

Another model that is working well and scaling up in the U.S. is KIPP (Knowledge is Power Program), which focuses on preparing low income, disadvantaged kids for college. KIPP sends 80% of its graduates to college, and, once there, those students have a college graduation rate five times greater than the population at large. Yet, rather than adopting KIPP methods, the public school establishment spends its energy trying to put these schools out of business.

A similar dynamic is at work in India where an explosion of inexpensive private schools is proving to be a far better alternative for poor children, but, again, rather than embrace and reinforce success the establishment is intent on regulating these schools out of existence – echoes of what we are currently dealing with here in Vermont.

This is, as they used to say, Must See TV. And you can see all three episodes at no charge on the CATO website HERE. <https://www.cato.org/schoolinc>. Share it on social media, too. Especially with someone on the Left whose head you'd like to see explode.

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

The Final Word

September Survey

It's National Right to Work Week.

Should workers who are not members of, and do not want to join, a union be forced by law to pay "agency fees" to that union?

Yes.

No.

August Survey Results: Vote Fraud

Which statement most accurately reflects your opinion?

- Meaningful levels of voter fraud are a myth and investigating fraud is a form of voter suppression. 37.76% (91)
- Meaningful vote fraud is a real possibility, and we have a responsibility to make sure our election results are valid. 60.87.45% (150)

Voter ID Laws are...

- common sense. 64.88% (157)
- discriminatory. 35.12% (85)

Vermont Secretary of State Jim Condos and Attorney General T.J. Donovan are...

- right to obstruct the Commission on Election Integrity's vote fraud investigation. 39.09% (95)
- wrong to obstruct the Commission on Election Integrity's vote fraud investigation. 60.91 (148)