

Ethan Allen Institute

Newsletter – July 2020 (Printer Edition)

Top Story: “Veto Vote-By-Mail” Petition

Vermont Attorney Deb Bucknam is distributing an open letter to Governor Scott, urging him to veto S.338, the bill eliminating his participation in formulating a plan for the conduct of elections during the COVID crisis. At the heart of this issue is the Secretary of State’s determination to mail “live” ballots to as many as 500,000 addresses, regardless of a voters request to receive an absentee ballot, and the potential for fraud and confusion this could raise.

Bucknam is asking all Vermonter who care about election integrity to sign onto the letter, which you can read in full [HERE](#).

If you are interested in lending your support to this effort, please send your name and contact information, including address, telephone number, and email to dbucknam@vtlegalhelp.com. Only your name and town will be added to the letter.

SCOTUS Delivers School Choice Decision with Huge Implications for Vermont.

Press Release from the Institute for Justice:

This morning, IJ succeeded in eradicating the biggest legal obstacle standing between parents and their ability to choose the best educational options for their children.

In a [5-4 decision](#) in *Espinoza v. Montana Department of Revenue*, the U.S. Supreme Court ruled that states may not discriminate against religious options in generally available educational choice programs. As you may recall, IJ convinced the Supreme Court to decide this crucial legal question after the Montana Supreme Court struck down the state’s new tax-credit scholarship program. Why? Because some of the families who received scholarships through the program, like IJ client Kendra Espinoza and her daughters, freely chose to use them at religious schools.

The Montana high court claimed, as choice opponents have for decades, that allowing parents like Kendra to do this violated the state constitution’s Blaine Amendment—which forbids state funding of so-called sectarian institutions.

The U.S. Supreme Court made clear in its ruling today that it was wrong. As Chief Justice Roberts wrote in the majority opinion, “Drawing on ‘enduring American tradition,’” the Court has long recognized the rights of parents to direct the upbringing of

their children.

Today's victory ranks among the most important education reform decisions in half a century. Now the exciting work of leveraging it begins. In the months ahead, IJ will lead a nationwide campaign to clear the way for new and expanded choice programs, with special focus on the 14 states where Blaine provisions have previously made such efforts impossible. Our goal is to spur an educational revival that will give hundreds of thousands of families access to an unprecedented array of educational opportunities.

These are the moments that justify decades of painstaking legal work by IJ—and years of steadfast support from you and so many others. On behalf of Kendra and the innumerable families who will benefit from today's landmark victory, thank you!

Scott G. Bullock
President and General Counsel
Institute for Justice

Given that Vermont's Town Tuitioning system, the nation's oldest school choice program, currently does not allow parents/students to use vouchers at religious schools, this ruling has tremendous ramifications for our state policy. Expect a fight in the days to come from the usual special interest suspects that do not want to see this change become law.

Commentary: Final Push for GWSA

By John McClaughry

It's crunch time for the Climate Action Network's most urgently sought legislation: The Global Warming Solutions Act (GWSA). The House passed this bill (H.688) – that I earlier described as the “worst democracy-shredding bill of the past 50 years” – back in January. The Senate Natural Resources and Energy Committee has been considering it remotely for a month. If it doesn't get a Senate vote this month, the bill is dead until next year, when the climate change juggernaut will bring it in again and pull all the stops to get it passed.

Here's what the GWSA would do. First, it recites a lot of grim United Nations pronouncements about our mounting climate emergency, if we don't take drastic measures to rein in the alleged culprit, human-caused carbon dioxide emissions. Then it declares how much state government must force Vermonters to reduce such emissions by 2025, 2030, and 2050.

To prevent any foot-dragging by the governor that would slow Vermont's rush to enforced climate virtue, the GWSA bill sets up what amounts to an alternative government called the Climate Action Council and directs it to create an all-inclusive Climate Action Plan. The Council will have eight members from the Executive Branch, and 14 picked by the legislative leadership to make sure that the Governor's eight can't

sidetrack any proposal urged by the climate action coalition that has been working hard to get the bill passed.

The grand Climate Action Plan will instruct the Governor's appointees, mainly the Secretary of Natural Resources, to write and enforce countless rules to control or prohibit anything and everything that contributes to CO2 emissions. Unlike legislation, where you can find out how your legislator voted and hold them accountable, the GWSA-mandated rules will never be voted on by your elected representatives. The rules will just be proclaimed, complete with fines and penalties if you don't obey.

What if the elected head of our government, the governor, does not wish his appointees to gin up some particularly expensive, invasive, useless, or noxious rule, that would operate against the goal of affordability, especially in light of the urgent need to somehow pay down the estimated \$430 million all-funds deficit projected for the approaching fiscal year? He would have to tell his appointee to forget about it. The Council's climate warrior majority would howl that the Governor was obstructing the law. How that comes out no one knows, because in the past 243 years no legislature has every tried such a stunt.

What if the emissions reduction rules emerging from the bureaucracy appear to be too feeble to force Vermonters to give up the required amount of CO2 emissions to save the planet? The backers of the GWSA have provided for that. A key section of the bill invites "any person" – meaning the Conservation Law Foundation – to sue the State of Vermont to get a judge to order the bureaucracy to speed up the regulating and prohibiting.

That's just what CLF did in Massachusetts in 2015. They used that State's GWSA to persuade the state supreme court to instruct the Department of Environmental Protection to get cracking with sufficiently oppressive emissions regulations. And oh yes, if CLF or whoever brings the lawsuit "substantially prevails", it gets to send to the taxpayers its bill for the legal costs for doing this service.

No self-respecting Governor would stand for an alternative climate government accountable to his political opponents telling his or her appointees that they must move faster and harder, or face a judge's order to wreck the state's economy more quickly.

If this misbegotten bill makes it to the Senate floor, responsible Senators should offer amendments to require that the Climate Council make recommendations to the governor, not instruct the bureaucracy. They should move to strike out the "anybody can sue the state" provision, that includes the "make the taxpayers pay the plaintiff's legal expenses (along with the State's)" clause.

They should also move to add language to specifically bar rules to regulate methane from cattle, force homeowners to switch to electric heat, further subsidize electric cars, reduce fossil fuel used in manufacturing, hospitals, schools, and municipal governments, prohibit snow machines, motor boats and ATVs, and regulate trucks that bring vital food, fuel and supplies into Vermont and haul Vermont products out to markets.

Above all, they should require that no rule originating with this counterfeit climate government can take effect without an affirmative vote of the General Assembly.

It's hard to see how, four months before an election, even the most ardent climate warriors of the Senate would welcome casting roll call votes on a long list of such amendments. A far simpler and better solution: consign the democracy-shredding GWSA to a place of eternal rest, and focus on rescuing Vermont's precarious economy from the depredations of COVID-19.

PS: On July 25-26 the Senate voted to pass GWSA 22-6, but stripped out the \$972,000 funding needed to put the Climate Council into operation. Not one of the six Senators opposing GWSA offered a single amendment, other than two of them cosponsoring one to make sure that CLF gets its legal costs reimbursed for suing the state and “substantially prevailing”. The bill now goes back to the House for concurrence, or negotiation, when both bodies resume in August.

- John McClaughry is vice president of the Ethan Allen Institute

Commentary: Founders Didn't Invent Slavery, They Helped End It

By Rob Roper

Slavery was and is a horrible, dehumanizing institution, but to call it the United States' “original sin” and to tear down statues and deface memorials to our founders (not to be confused with Confederate generals) is historically ignorant and dangerous. Slavery was hardly an original concept in the late 18th and 19th Century. In fact, pretty much every society since the modern version of humans evolved had slavery up until that time.

The Greeks had slaves. The Romans had slaves. The Egyptians had slaves to build the pyramids, and the Chinese had slaves to build the Wall. Vikings enslaved Saxons. Muslims enslaved Vikings. The English enslaved Irish and Scots. The Russians had serfs (potAYto, potAHto). The Incas, Mayans and Aztecs all had slavery, as did the North American native tribes. African nations had slaves themselves and sold them to European slave traders. Slavery was the norm for all 5500 or so years of recorded human history -- until those crusty, old, dead, European white guys abolished it.

Western Europeans and early Americans were not unique in having slavery; they were unique in declaring the practice immoral and putting laws into effect to stamp it out. For this, despite any or even many other faults, they deserve to be celebrated.

Ending five millennia of slavery and the healing process to follow was never going to be an immediate process, nor a smooth one. There was staunch resistance in some quarters such as the Southern United States. Europe was quicker than the US to abolish slavery, but the U.S. beat Europe to the punch in declaring innate human equality and eliminating legal class distinctions, which was also remarkable step forward in societal evolution and deserving of celebration.

Today's critics like to point out Thomas Jefferson and others who signed their names beneath the words in our Declaration of Independence, “We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness,” owned slaves. Hypocritical? Yeah. But the more important point is they chose and adopted the principles equality and liberty as the cornerstone upon which we built our nation. In doing so doomed slavery to the ashbin on history. Immediately? No. But inevitably.

The principles laid out in the Declaration of Independence and the Bill of Rights were the vaccine injected into the national bloodstream that killed the virus of slavery and are still at the heart of all battles for civil rights – equal treatment under the law, freedom to make a living, to worship as you choose, the right to fair trial. Without the Declaration

and the Bill of Rights set down by our founders, there would be no Civil Rights movement for the simple reason that these are the civil rights marginalized groups want and deserve access to. Invalidate them, wipe them from our body politic, and then what exactly are we fighting for?

Before and during the Civil War, Frederick Douglass and Abraham Lincoln did not argue that the concept “all men are created equal” was invalid because the people who wrote it down didn’t fully live up to the promise. The opposite. They insisted on the validity of these principles and the moral necessity of applying them to all. As did Martin Luther King. As did the suffragettes in the battle for women’s civil rights. These are the principles we both stand on and reach toward in order to do better. To be, as the preamble to the Constitution intones, “a more perfect nation.”

We’re not perfect. The legacy of slavery in the United States is real, and its impact on the lives and opportunities of Black Americans persists. But the improvements we have made over the past hundred and fifty years were because of, not despite, the principles laid out in our founding documents by the likes of Jefferson and Washington. If we want to continue to make progress into the future, we had better not toss these tools into the trash.

The United States is unique and special in history: a multi-ethnic society built upon the shared ideals of its citizens and bonded together by a common history. These ideals and history are what inspire millions of people of all races from all other parts of the globe, sometimes at great personal risk, to come here every year. If we invalidate these ideals and eradicate the history behind them, we will have destroyed our country. And replaced it with... what exactly? A collection of angry tribes that do not respect each others’ rights to liberty, equality, property rights, and fair treatment under the law?

- Rob Roper is president of the Ethan Allen Institute.

Events

News & Views

Darn Tough & National Life Cutting Jobs to. These aren’t the canary in the coal mine, they’re the coal miners. It’s hard to conjure a more resilient, successful Vermont companies than Darn Tough and National Life. They are a poster children for companies “making it in Vermont.” So, it’s alarming to see the headlines that they are now in a financial situation where they are forced to lay off 50 of their 330 and 53 of 800 workers respectively – good paying jobs at companies not as hard hit as others by Covid restrictions. If Darn Tough isn’t tough enough to handle this, who is?

“The Legislature doesn’t understand the reality of running a business.” A sad story in the [Valley Reporter](#) tells of the struggles of The Mad River Barn in Fayston, and one owner’s intention to leave Vermont for more business friendly Florida. “[Owner Heather] Brown said that the impact of the political climate in Vermont on their ability to run a

successful business was significant. She cited a minimum wage law that increased front-of-the-house hourly wages by 50 percent which means that front-of-the-house workers (receiving tips) are earning an average of \$49 an hour which can't be shared with back-of-the-house employees. 'That's one reason why Vermont has not turned out to be a good place for us. The Legislature doesn't understand the reality of running a business and thinks that business is bad and that business owners are bad,' she said. 'Those kinds of things should be considered in policies and they're not, which have catastrophic downstream conditions.'" Yes. Yes, they do.

Magic Hat Brewery Leaves Vermont for NY. Magic Hat is hailed as a pioneer of the craft brewing industry that has become such a strong pillar of the Vermont Brand. But now the company (owned by FIFCO USA since 2014) is pulling out of Vermont and consolidating its operations in Rochester, NY. The good news is that Zero Gravity (who makes better beer than Magic Hat anyway -- shout out to Conehead!) will expand into the Magic Hat facility. But, why is it that when an out of state company purchases a Vermont company and decides to consolidate operations, they never do so in Vermont? Hmmm.

Standardized Test Scores Are Out. Vermont Continues to Drop. The "reforms" put in place, designed to bolster a flawed system not alter it (expanding public school oversight to Pre-K, Act 46 consolidations, etc.), clearly are not working and are arguably making the problems worse. As you can see from looking at this year's posted scores from the Agency of Education...

	~~~English scale scores~~~	X.2	X.3	~~~Math scale scores~~~	X.4	X.5
Grade	Historically marginalized	Not historically marginalized	Difference	Historically marginalized	Not historically marginalized	Difference
Grade 3	2394	2459	65	2407	2470	63
Grade 4	2434	2506	72	2446	2507	61
Grade 5	2471	2550	79	2470	2541	71
Grade 6	2491	2568	77	2475	2557	82
Grade 7	2516	2598	82	2497	2582	85
Grade 8	2524	2605	81	2502	2595	93
Grade 9	2528	2616	88	2492	2583	91

... the longer marginalized populations remain in the system the larger the gap grows. Perhaps it's time to accept that this is a structural problem with the system. The way we provide education does not work for the most vulnerable in the system and hasn't worked for a long time. Forcing any child, especially those from marginalized groups, into a

system that, as the evidence repeatedly shows, does not work for them is a form of cruel and unusual punishment.

**COVID Relief Funds Not a Solution for Statewide Broadband.** “When lawmakers learned that Vermont was receiving \$1.25 billion through the federal Coronavirus Relief Fund, many hoped they could steer a hefty chunk toward finally expanding broadband internet access to people who need it more than ever. The committee initially discussed allocating \$45 million of that \$100 million to build fiber-optic internet connections with download speeds of 100 megabits per second. Those lightning-fast speeds are available to fewer than one in five buildings in Vermont, according to the Department of Public Service.....Another \$7 million sought by the committee for preconstruction engineering and design work to help providers — established national players such as Comcast, as well as homegrown networks in voter-backed community utility districts — was also deemed out of bounds. "The Joint Fiscal Office and the consultant they are working with very much gave a thumbs-down to that idea," Briglin told his colleagues... The funds come with a "severe limitation" that they can only be used to connect to broadband people who need it for K-12 education, telehealth and telework, she said.” [Seven Days](#),

**Vermont Looks Like Europe – Not in a good way.** Vermont is the most European state in the union - in the sense of declining, aging population. “In terms of population trends, Vermont more closely resembles our friends across the Atlantic than it does most U.S. states. More people die in Vermont than are born there, a phenomenon with little precedent in the United States. And since at least 2010, Vermont hasn’t attracted enough immigrants from abroad to offset the residents it is losing to other states.” – [Washington Post](#),

**Interracial Brattleboro Couple Feels Safer with Funded Police.** “Before COVID-19 hit and George Floyd was murdered, our main concern in Brattleboro was that the police department was underfunded.... All our services are underfunded. Shifting money from BPD to some other idea might be a plan, but we don’t like it. We don’t feel safe in Brattleboro as an interracial couple, but we do feel safe with our police department, and we want to be able to call 911 anytime we need to and know that someone will show up.” – MacLean and Shanta Lee Gander, [The Commons](#).

**The Consequences of “Defund the Police.”** “If anyone wants to see what Thomas Hobbes was referring to in "Leviathan" when he said life was "nasty, brutish and short", defunding the police will take us there quickly.” [Frank Hill](#)

**Massive Vote-by-Mail Fraud in NJ Election.** “Attorney General Gurbir S. Grewal announced voting fraud charges against 1st Ward Councilman Michael Jackson, 3rd Ward Council-Elect Alex Mendez and two other men, weeks after the May 12 local election in which the Passaic County Board of Elections decided not to count 800 city ballots found scattered across different municipalities.... Mark Hemingway says the actual problem [may have been in the thousands](#) — and that it came close to 20% of all voting in the election: In the City Council election, 16,747 vote-by-mail ballots were received, [but only 13,557 votes were counted](#). More than 3,190 votes, 19% of the total ballots cast, were disqualified by the board of elections. Due to the pandemic, Paterson’s election was done through vote-by-mail. Community organizations, such as the city’s

NAACP chapter, are [calling for the entire election to be invalidated](#). ...” – [RealClearPolitics.com](#), 6/26/20

**When a Far Left Guy from Rolling Stone Says This...** “[T]he American left has lost its mind. It’s become a cowardly mob of upper-class social media addicts, Twitter Robespierres who move from discipline to discipline torching reputations and jobs with breathtaking casualness. The leaders of this new movement are replacing traditional liberal beliefs about tolerance, free inquiry, and even racial harmony with ideas so toxic and unattractive that they eschew debate, moving straight to shaming, threats, and intimidation. They are counting on the guilt-ridden, self-flagellating nature of traditional American progressives, who will not stand up for themselves, and will walk to the Razor voluntarily.” [Matt Taibbi](#), 6/12/20

**Ditto from Us at EAI.** “We stand against the mob and all its aims. We stand against the chaos and violence, the silencing of debate, the purging of heretics, the rewriting of history, and the destruction of the greatest country in the world. We will defend the most majestic achievement of humankind, the United States of America, against the most ignoble impulse in human history, to tear down that which is good.” – The Editors, [Commentary](#), 6/18/20

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## **Movie of the Month: The Death of Stalin**

Writer/Director: Armando Iannucci

Staring: Steve Buscemi, Simon Russell Beale, Jeffrey Tambor

Released: 2017, 107 min.

*The Death of Stalin* is a dark comedy about the chaotic scramble for power that follows the sudden death of the tyrannical dictator of the Soviet Union in 1953. While the movie is very funny, the events the story revolves around are factual. (One of my favorite YouTube channels, [History Buffs](#), reviews movies based on their historical accuracy and gives *The Death of Stalin* high grade.)

I decided to feature this film in the Newsletter for a couple of reasons. First, it’s highly entertaining and I think you will enjoy it. Steve Buscemi’s portrayal of Nikita “Nicky” Khrushchev is not to be missed, nor is Jeffrey Tambor’s take on the clueless, sycophantic Georgy Malenkov, Stalin’s number two. But the main reason I share this is because it presents a haunting vision of where we are headed as a country today if we’re not careful.

The Soviet Communists were, after all, the original enforcers of “Political Correctness” and perpetrators of the “Cancel Culture,” where even the greatest heroes of the 1917 Revolution, such as Leon Trotsky, were literally erased from history. His statues were torn down, his writings banned, his career destroyed, he was chased into exile, and eventually murdered.

*The Death of Stalin* illustrates in stark terms the perpetual terror that citizens live under when this kind of political climate takes root. Rule of law is replaced by “rule of man.” To have the wrong opinion – or be perceived as having the wrong opinion -- on an issue could mean banishment to a gulag or a bullet in the back of your head. What those standards are can change one hundred eighty degrees in a matter of minutes, based on the

whims of, in this case, a handful of goofy, old, not very bright, power hungry mass murderers.

Let's hope we don't go down this road. Heed this cautionary tale. *The Death of Stalin* is now available on Netflix. Check it out!

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

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## The Final Word

### **July Survey: Global Warming Solutions Act**

Should Governor Scott sign or veto the Global Warming Solutions Act passed by the legislature?

- Sign it into law.
- Veto.

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

### **June Survey Results: Legislative Priorities Post COVID**

What should the VT legislature's priority be in the wake of the COVID-19 shutdown?

- Get our economy up and running again. 91.3% (84)
- Ensure that Vermont reduces its greenhouse gas emissions. 0% (0)
- Prevent another possible COVID resurgence. 8.7% (8)