

VT¹⁰

VERMONT TO THE TENTH POWER

How a Small State Thrives in a Time of Federal Collapse

A state may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country.
-- Supreme Court Justice Louis Brandeis, 1932

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SUMMARY

The federal government is in a period of collapse. It is not functioning at a level sufficient to address the needs of the day. In addition to the partisan divide, the obstacles of minority rule and unprecedented national debt present impediments to responsive government. In this situation Vermont is uniquely vulnerable, because of its small population and the advanced age of its congressional delegation.

Under the 10th Amendment to the U.S. Constitution, each state has powers independent of Washington. States do not always have to follow the national model. In the past Vermont has exercised its 10th Amendment rights only episodically – though usually to great effect.

This document establishes the need for and potential of a more strategic 10th Amendment-based approach to governance. Call it state-level activism, Vermont to the Tenth Power – to shield our state from the worst of Washington’s difficulties, to learn from other states, and to strengthen Vermonters’ capacity to determine our shared fate.

DEFINING THE PROBLEM

Today the federal government is in collapse. The degree of partisanship – in progress on bills, in mutual accusation, in attention to public demands – is dangerously high. Conflict between the branches of government is also far above the normal friction, from White House officials shirking Congressional subpoenas, to Congress' inability to pass a cohesive budget rather than short-term continuing resolutions. The political divide has infected the public as well. The result is a nation -- if you measure in hate crimes, mass shootings, and violence against religious groups – arguably more rancorous than any time since the Civil War. If the goal of the 9/11 terrorists was to weaken America by dividing the people, mission accomplished.

The nature, origins and solutions to these problems will take a generation of historians to explain. Meanwhile Vermonters have a state to run, a way of life to protect, and a series of challenges that deserve authentic effort regardless of party politics.

Three indicators in particular reveal how structural the problems are, and therefore how urgent the solutions must be.

Minority rule. The electoral process has become distorted -- by politically motivated barriers to voting, by unfounded claims of voter fraud, by gerrymandering, and by antiquated election laws and equipment. Among the many consequences of this undemocratic trend, America's current officeholders do not represent a majority. President Donald Trump received three million fewer votes than Hillary Clinton, yet he sits in the White House. The 2018 midterm elections saw eleven million more votes for Democratic U.S. Senate candidates than for Republican candidates, yet the GOP gained five seats. (This is not an argument for changing the Senate makeup, but rather a recognition of how current law has diminished Americans' voices.)

The most troubling manifestation of minority rule is voting rates. In 2016 the presidential election saw a turnout of thirty-six percent. Nearly two-thirds of eligible voters stayed home. No wonder the government is not representative.

Minority rule is not neutral in its interests. Rather, since the U.S. Supreme Court's *Citizens United* decision in 2010, the power of campaign contributions from large donors has grown by billions. The public interest is increasingly excluded.

Meanwhile the lobbying industry has exploded. Spending on influencing the federal government leapt from \$1.45 billion in 1998 to \$3.37 billion in 2017. Setting aside state, county and local lobbying, in Washington alone the industry employs 11,551 registered lobbyists – about 21 per member of Congress.

Americans have a constitutional right to petition government. But professional petitioners, representing large groups and powerful businesses, control rich treasuries of potential campaign donations. There is too great a correlation between who supports a candidate and how that elected official votes. And that link leads to too much monopolistic power in key industries, thwarting innovation and competition.

The outcome is evident in public approval of Congress, which has remained at or below 20% since 2008 -- with a low of 9% in 2014. You might expect, therefore, a public reaction that throws many members of Congress out of office. Under minority rule, the opposite happens.

The 2018 midterm elections were notable for higher voter turnout, as well as a large number of incumbents deciding to retire. Yet OpenSecrets reports that 93% of House incumbents who sought to stay in office kept their seats. In the Senate, 86% of incumbents won re-election.

In sum, regardless of how the majority of Americans vote, today this nation is living under minority rule. It is hard to imagine a more destabilizing political situation. It is also difficult to find an example in history in which a democracy with minority rule turned out well.

Public consensus. Conventional wisdom says that the American people are deeply divided. It is not entirely so. Yes, the rancor on social media is ugly. Yes, it has served the political parties to divide the states into red and blue (though this tactic merely reflects the distorting power of the electoral college. In the reddest states there are still millions of people who vote blue, and in the bluest states there are millions of people who vote red).

A clearer understanding of where the American people stand appears when they are polled not on candidates or parties, but on issues. While no poll deserves to be treated as gospel, a review of many studies from a variety of sources can provide a general picture:

- 75% percent of people polled say they want higher taxes on the richest Americans.
- 73% of Americans believe climate change is happening, and 72% say the issue is important to them.
- 92% want Medicare to negotiate for lower drug prices.
- 85% want web access that is neutral (as opposed to favoring certain dominant Internet companies) and 60% want greater protection of their online privacy.
- When it comes to guns, an issue on which people's opinions are often considered most cemented, 93% want background checks for all gun purchasers, 89% want laws prohibiting people who are mentally ill from buying guns, and 72% want a waiting period for all gun purchases. (These numbers are from households that already own guns; the consensus is stronger among households that do not own guns.)

Despite these huge majority preferences, none of these issues is advancing in any substantive way. It's not that the problems cannot be solved. Norway arguably leads the world in clean energy. France fined Google for monopolistic Internet behavior. Germany restricted Facebook's use of personal data. Australia outlawed assault weapons. New Zealand passed gun safety reforms within weeks of a mass shooting.

These other nations don't have First and Second Amendment rights, so change would be more difficult here. But the thoroughness of American inaction on these issues illustrates the tyranny of minority rule. Perhaps the worst example is money. At the time of this writing, the federal debt stands at \$22.4 *trillion*, and is growing at \$2 billion per day.

Some amount of debt is defensible, if its repayment period reflects the useful life of the thing it is buying. People pay for cars over four or five years, and houses over thirty years. An aircraft carrier or a federal courthouse likewise merits long-term financing.

However, if a household uses 30-year borrowing to pay last month's electric bill, the folly is obvious: Debt will inevitably overwhelm income. Yet this is precisely the fiscal policy of the U.S. government. In 2017, with a budget already running billions in red ink, the president proposed and Congress passed a tax cut. Although the new law generated modest increased economic activity, it did not come anywhere near compensating for the lost revenue.

What this fiscal policy does, more than anything, is tie the nation's hands in the future. By 2024, interest payments on debt will become the largest line item in the federal budget. For decades to come, any urgent issue which arises will suffer from a lack of funds to solve it. A housing crisis? There will be little money for a national housing effort. Childhood poverty? There will be scant new funding for food, clothes, or schools. A disease outbreak, a disaster stemming from climate change, a new military adversary? The only option will be to increase

deficit spending. America sits at the bottom of a canyon of debt, yet the future may require digging even deeper.

Assigning blame. At present roughly one-third of Americans identify as conservative, one-third as liberal, and one-third as independent. It serves the interests of political parties, as a fund-raising and campaign mechanism, to demonize the others. It also benefits the parties to identify cultural issues around which to rally, and to an unusual degree today, to declare that people with opposing views are stupid, immoral or corrupt.

It's ugly, and all sides are guilty. A study by political scientists Nathan Kalmoe and Lilliana Mason found that 42 percent of people consider those who support the other political party to be "downright evil." One in five people believe their opponents "lack the traits to be considered fully human – they behave like animals." Sixteen percent of Republicans and almost 20 percent of Democrats said the world would be better if many members of the other party died.

This venom ignores some fundamentals. Foremost, a variety of viewpoints is not only unavoidable in a democracy, it is welcome. The nation's founders believed in a notion – radical at the time – that every person contained sufficient intelligence and integrity to participate in governing, and the collective effort of citizens would create a nation greater than anything possible under an individual monarch. In other words, diversity of opinion is a foundational American strength.

Consider, too, the practical reality: No election is going to make the people who disagree with you disappear. There will still be racists, there will still be climate change deniers, there will still be people who are more or less militaristic than you. And they are still Americans. We have a shared destiny.

Part of the current problem, for about 60 percent of people polled, is President Donald Trump. He makes a tantalizing target, on a daily basis. But there are two problems regarding Trump. The first is that nearly 63 million people voted for him. This tally means that he is not the cause of America's anger; he is merely the largest symptom. Second, does anyone believe the rancor would be less if Hillary Clinton had been elected? Or that it will disappear when Trump leaves office? No. For the time being at least, the culture of contempt a fixture in American life.

Vermonters might therefore spare themselves some aggravation, and accept that people with differing politics are not going away. West Virginia is not likely to elect a U.S. Senator who favors solar energy over coal. Given the U.S. Senate candidacy of Beto O'Rourke, Texans instead chose to re-elect Ted Cruz. Vermonters' influence over those circumstances is miniscule.

Meanwhile, working to put Vermont's house in order, using our state as a laboratory of innovative ideas, and trying ideas that have worked elsewhere – these are components of a strategy that history has shown to succeed.

One other point about blame. Most of the federal payroll consists of civil servants, who investigate plane crashes, run national parks and operate fish hatcheries. Their commitment is clear: Hundreds of thousands of them recently worked for 35 days without pay, while another 800,000 were not allowed to work, because of the elected people's inability to do their job.

The contrast between civil servants and the elected class is stark. For example, a report on climate change, researched and written by government employees, came out in late 2018 with findings that are credible, alarming and grim. In response and without explanation, President Donald Trump announced, "I don't believe it." Congress ignored the study too, taking no action on its findings. In other words, the issue is not the machinery of federal government. Imperfect

as a bureaucracy can be, that is not where America's problem lies. The problem is a fractured, polarized and unresponsive elected government in Washington.

Here is the worry: Vermont is arguably the state most vulnerable to this situation. Our state is the most rural, has the second lowest population, and soon will have the oldest population too. More people will be needing services at the same time there are fewer wage earners to support them. Vermont's aging trend is exacerbated by the declining birth rate. In 2016, only 5,734 babies were born to Vermont mothers – the fewest births *since 1857*.

The urgency from demographics grows if you consider certain professions: Today half of Vermont's lawyers are within ten years of retiring. Imagine what that means if you want to write a will, buy a house, make a contract. The aging is true in other fields, too. The average Vermont nurse is 49. One recent report said our state needs 1,422 more nurses. Shortages are ahead in the skilled trades too, like electricians and plumbers.

The demographics also pertain to Vermont's congressional delegation. U.S. Sen. Patrick Leahy is 79 years old, U.S. Sen. Bernie Sanders is 77, and U.S. Rep. Peter Welch is 72. Today their seniority works to Vermont's benefit, giving our state influence disproportionate to its size -- for example in Leahy's sustained success in obtaining funds to clean Lake Champlain.

Some people may have felt envy, on seeing the enormous energy in the current congressional freshman class, particularly among women and people of color. If Vermont's Congressional delegates are statesmanlike enough to be cultivating their successors, they are successfully keeping it secret. Still, all Vermonters might wish the three men continued good health, because when they leave office, and are replaced by rookies, our state's clout will suffer.

In sum, the country is divided, Washington is a mess, and Vermont's influence is waning. Therefore the central question is this: In a time of federal collapse, what can a small state do to thrive?

The good news is that there are many reasonable and attainable answers. They are built on past successes in our state. They are illustrated in the example of other states. They expand on existing Vermont policies.

Turning these ideas into a strategy will require new attitudes about the role of the governor's office, enlarged responsibilities for the state's attorney general, increased resources for the Legislature, more focused philanthropy to support the best of Vermont's non-profit economy, and above all, new methods of engaging Vermonters in determining the fate of this small, beautiful place where we are fortunate enough to live.

THE POWER OF ONE STATE

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are hereby reserved to the States respectively, or to the people.

-- 10th Amendment to the U.S. Constitution

On Dec. 15, 1791, twenty-one months after adopting the U.S. Constitution as its governing document, the nation added the Bill of Rights: freedom of speech, religion and assembly, protection against unlawful search and seizure, safeguards against cruel and unusual punishment, and so on.

Nine of the ten amendments are about individuals' rights. Not the Tenth Amendment. It is about power. It says that any authority not specified in the Constitution as belonging to the federal government instead belongs to the states and the people.

Boundaries between state and federal powers make intuitive sense. Washington can regulate trade between states, but not within a state. A state cannot declare war; only the federal government can. A state cannot make its own treaties with other nations. Otherwise a state is generally free to govern itself.

Vermont has exercised its 10th Amendment rights in the past, but on an issue-by-issue basis rather than as a strategy. One could argue that Vermont's ban on slavery, before this territory was even a state, shows the independence in our DNA. Consider the ban on billboards: Vermont took its own path, creating a point of pride about both our state's beauty and the attitude of the people who appreciate it.

There have been many occasions when Vermont acted independently of the federal government. While people may disagree on the merits of these initiatives, they nonetheless demonstrate the power of a state to choose its own way:

- Civil unions. Vermont took this step toward marital equality before any other state, later becoming the only state to legalize same-sex marriage through legislation not court-ordered. By the time the U.S. Supreme Court upheld same-sex marriage, Vermont couples had been in legally recognized relationships for 15 years.
- Physician assisted suicide. Vermont permits doctors to provide a terminally ill patient, under specific circumstances, with the means to end his or her life. Our state joined five others and Washington, D.C. with similar laws.
- Health care reform. Vermont's goal is to pay doctors and hospitals based not on how many procedures they perform, but on how many people they treat and how effectively those people are kept well. This initiative would not be possible without broadly permissive waivers from federal Medicare and Medicaid rules. Although the seven-year-old project remains a work in progress, by conservative estimates it has already saved Vermonters nearly \$2 billion.
- Gun safety. In 2018, a Poultney teen was arrested based on his alleged plan to shoot students and faculty at Fair Haven High School. Lawmakers promptly passed the first substantive gun safety bill in Vermont history. In what amounted to a political profile in courage, Gov. Phil Scott signed the bill on the Statehouse steps while opponents shouted insults. In Washington, though 40,000 Americans

a year die from guns, backing a bill like that would amount to political suicide. In Vermont, nearly every elected person who supported the bill won re-election.

- Reproductive rights. In anticipation of possible adverse rulings from the newly constituted U.S. Supreme Court, Vermont's lawmakers have taken action -- in legislation and in embarking on a state Constitutional amendment -- to protect women's privacy rights and reproductive choices.
- Foreign trade. While federal policy is characterized by rising tariffs and broken treaties, the New England governors and the premiers of Canada's eastern provinces have worked to establish separate, less combative trade agreements.
- Voting protections. When in 2017 the Trump administration's dubious Election Integrity Commission demanded states' lists of registered voters, Secretary of State Jim Condos refused to comply. Other states also took the same hard line.
- Even cell phone service. Last year a Vermont Department of Public Service technology specialist drove around the state with cell phones served by the six major carriers -- proving were providing federal regulators with inaccurate coverage maps. Vermont challenged both the companies and the Federal Communications Commission. A state can hold Washington accountable.

There are many other examples, from state's attorneys offering amnesty days, to Scott deciding during the recent federal government shutdown to pay unemployment benefits to furloughed employees.

Again, not everyone will agree with all of these initiatives. The point is less about these individual steps and more about the state's power to take them.

Why don't federal officials intervene when states go their own way? Because the 10th Amendment makes their authority weak or unclear. Former U.S. Attorney General Jeff Sessions was an outspoken opponent of marijuana legalization, for example, but when Colorado and California legalized pot, he did not take action.

When legal battles do occur, often it is the state that picks the fight. California recently embarked on its 47th legal action against the federal government, challenging a proposed cut in funding for family planning organizations that sometimes refer patients to abortion providers. Vermont and nearly 20 other states have joined this suit. By one advocate's tally, the Trump administration is facing 71 different multi-state legal challenges—from attorneys general all over the political spectrum. The cases range from halting production of 3-D printed guns to challenging employers who refuse to include birth control in employees' health insurance plans, from defending internet neutrality to questioning whether Trump's businesses can receive payments from foreign governments.

Vermont has participated in many multistate lawsuits. When Midwestern smokestacks were spewing pollution that brought acid rain to the Northeast, Attorney General Bill Sorrell was among a group of eastern state attorneys general who sued the polluters and won. Vermont also joined other states to sue the tobacco industry for marketing to children. In neither case was Congress or the White House an ally. The 10th Amendment empowers states to work together when Washington is an obstacle.

In the past, Vermont's breaks with federal policy occurred episodically, one idea at a time, without attention to the common theme of exercising the 10th Amendment. Imagine, however, if this approach became *strategic* -- a deliberate assertion of state powers, independent of a federal government that is increasingly hamstrung and feckless.

For example, imagine applying Vermont to the Tenth Power to elections. States have exclusive control over voting, even for federal positions. Our state ranks 11th in turnout, so democracy is alive here. It also means that twenty percent of the states are doing better.

Imagine if Vermont decided to set the nation's highest democracy standard: Made Election Day a state holiday. Established as a candidacy requirement for federal office the release of five years of income tax returns. Created the nation's best system for revealing who made campaign donations. Passed stricter laws against interference at polling places, or any other act impeding voting. Established protections against gerrymandering. Enlarged high school civics education so students learn about issues and candidates, and can pre-register so they are able to vote the moment they come of age. Joined the compact of states saying the president should be chosen not by the electoral college, but by the popular vote. Aimed for the highest turnout in the country. Vermont could set an example to the nation.

What's more, safeguarding clean elections today can help our state inoculate itself against problems tomorrow. Organizations that exploit the *Citizens United* decision to influence federal elections, for example, have begun to look at state and local governments too. The Koch network of conservative donors is funding state level races. That organization also acknowledged that it is working to overhaul public education in six states. The group has not yet disclosed which states.

If South Carolina can use the Tenth Amendment to observe a paid day off for Confederate Memorial Day, Vermont can certainly establish a state holiday on election day.

Elections not exciting enough for you? Then how about workforce development? There are approximately seven million jobs available in America right now, sitting open because there is no one trained to do them. Vermont shares in this problem, from tech companies' open positions for search engine specialists to nearly every hospital's shortage of nurses.

Rather than emphasize recruitment of large new employers -- a contest at which tiny Vermont is disadvantaged by size and unlikely to win – why not prioritize building the most highly skilled workforce in America? Instead of growing jobs, how about growing workers?

Still not excited? What about climate change, arguably the most urgent issue of this generation? This state has long been a leader in environmental policy. Vermont was the second state to enact a bottle bill, and the first to ban fracking. The world's first megawatt wind turbine went up in Vermont – *in 1941*.

No one is free from responsibility for lowering the atmosphere's carbon level, because we all contribute, and we all live on the same planet. Likewise no one is exempt from the damage already taking place. Vermont now receives six inches more rain annually than it did a century ago. The number of heavy precipitation events is up 55 percent since 1958 – which is especially destructive when mountain ranges work like funnels, and channel a whole watershed's downpour into the river villages and valleys. Irene alone did \$700 million in damage.

Today, as it happens, one of the world's most respected voices on this topic, Bill McKibben, lives in Ripton. One of the nation's strongest climate advocacy groups, 350.org, is based in Middlebury. Our state possesses ready resources to reckon with a changing climate. Where is Vermont's Green New Deal?

Climate not interesting enough for you? How about income inequality, which makes it ever harder for low-earning families to rise out of poverty? How about the high cost of housing? How about gender equity in wages? How about finding a constructive use for school buildings during the summer, so that instead of sitting idle this costly infrastructure can be used for seniors, or for job training, or for feeding kids? How about helping Vermont's struggling dairy farms? How about, given those farms' reliance on immigrant labor, becoming a sanctuary state?

Listing the challenges doesn't make solving them any easier. But sometimes, the very things that define Vermont uniqueness also make exercising the 10th Amendment especially promising. Our health care system, for example, is almost entirely nonprofit: hospitals, nursing homes, home health agencies, etc. Vermont's health care reform would be far more difficult – if not impossible – in a state with competing for-profit providers.

Likewise Vermont's transportation needs are unique. The nation's most rural state lacks major metropolitan areas, has no interstate highway along its more populous western corridor, maintains a system in which 57% of the roads are dirt, deals with snowfalls anytime from October to April, and entertains a tourist economy that includes both slow drivers and tens of thousands of bicyclists a year. Of course the federal norm will not apply satisfactorily here.

The range of policy areas that could benefit from Vermont to the Tenth Power is vast. But that does not mean we would give up on the rest of the country. Instead, Vermont might serve as an example.

LEADING THE NATION

There are many ways Vermont's singular attributes justify challenging federal business-as-usual. But creating an activist state government does not mean ignoring national issues. All of America needs a criminal justice system that is colorblind. All of America needs effective infrastructure that also reduces carbon air pollution. All of America needs a national security system that protects the country and fosters global stability. All of America deserves fair and open elections.

Vermont's capacity to influence these policies will only grow if our own house is in order. States lead and the nation follows. This is not rhetoric; it is borne out by history.

- Women were denied the vote from the moment of America's founding. But as new territories joined the nation to become states, many of them already allowed women to vote – starting with Wyoming in 1890. Organizing efforts began in earnest in other states in 1910, led by the National American Woman Suffrage Association. Ten years later, 23 states supported women having the vote, and that year the 20th Amendment guaranteed those rights nationwide.
- The first state to allow interracial marriage did so in 1787, but it was not until a 20th state did so, in 1950, that the national view began to change. Eventually thirty-four states permitted interracial marriage. Resistance to that progress brought the *Loving v. Virginia* case to the U.S. Supreme Court, which in a 1967 ruling upheld mixed race marriages nationwide.

- In 1967, only in three states could women obtain abortions legally. But six years later, when the tally was 17 states, the U.S. Supreme Court released its decision in *Roe v. Wade*, and abortion became legal across the country.
- In 2004, a lower court ruling made Massachusetts the first state to allow same-sex marriage. The count was at 16 states when the Supreme Court ruled that the federal government had to recognize same-sex marriages from states where it was legal. In the next two years, 28 more states legalized same sex marriage. In 2015 the U.S. Supreme Court upheld same-sex marriage nationwide.
- Vermont passed a law requiring labels on foods produced from ingredients that included genetically modified organisms. In 2014, grocery associations and food producers led by Monsanto Corp. sued, and the case was underway when it was pre-empted by federal action. President Obama signed a bill requiring a national standard for bioengineered foods.

Over and over, change began with the states. Just as 13 Colonies led to a nation, a few determined states can begin to repair the larger civic fabric. Vermont can not only survive in a time of federal collapse. It can also serve as the catalyst for national change.

These cases represent victory not only on their particular issues, but also as examples of how states do not always need to defer to federal power. An independent state is therefore wise to look to its peers for more ideas:

- Tennessee now provides free tuition to community college, treating it as a matter of economic development. This Republican-led effort responds to a problem

which Vermont shares: too many good jobs sitting unfilled for lack of people with the skills to do those jobs.

- Delaware is funding universal access to free long-term birth control for low income women who want it. Preventing unintended pregnancies is only one of the plan's goals. The larger aims are to reduce school interruption (or incompleteness), avoid unwanted employment instability, and reduce the number of children born into poverty.
- New Mexico's governor, rejecting the president's description of chaos at the southern border, ordered National Guard troops to withdraw. Other states have followed New Mexico's lead.
- Vermont is \$4.5 billion away from being able to meet its commitments to the pensions of state employees. Michigan addressed a similar problem by no longer making pension promises it could not afford to keep, giving new hires benefits that defined the state's contribution rather than guaranteeing a higher outcome due to implausible investment results, and accelerating the state's methods for paying down the shortfall. Rhode Island, also facing an underfunded pension system, initially considered closing libraries and cutting bus service. But a new plan stopped the pension system's automatic cost of living benefits increases, moved current employees into 401K plans, and established a long term funding approach. Neither state's plan is perfect; both have ideas Vermont might consider.
- The Federation for Immigration Reform says that more than 500 local and county jurisdictions, as well as seven states, have declared themselves sanctuaries from current federal immigration policies.

- When the Trump administration withdrew from the Paris Climate Accord, 20 states and 50 cities vowed to honor the carbon-reduction pledge anyway.
- The 10th Amendment works at the local level too. Sandusky, Ohio decided to stop celebrating Columbus Day, and instead made a paid official holiday out of Election Day. Chicago created an apprenticeship program that links employers with potential workers to reduce the number of good jobs going unfilled.

This moment of enthusiasm seems like a good place for caveats. Here are three.

First, the idea of “states’ rights” is not new or pretty. Historically the term has applied to times that states resisted federal progress on race – from preserving slavery in the 1850s to opposing the civil rights movement in the 1960s. Since then many other forms of anti-discrimination policy, from age to sexual orientation, have been challenged under the guise of “states’ rights.” Not only did all of these efforts fail, but also their champions have been repudiated by history. When former Texas Gov. Rick Perry used the phrase “states’ rights” while running for president in 2016, the criticism was loud, instantaneous, and politically fatal.

Therefore fans of the 10th amendment should be firm and clear: An activist government seeks not to diminish the power of individuals and suppress their voices, but to the contrary, to increase their engagement to create more effective and more representative democracy.

The second caveat is that other states will exercise their 10th Amendment powers in ways Vermont may not support. That is the unavoidable consequence of a weak federal government. Thirteen states, for example, deliberately rejected Medicaid expansion through the Affordable Care Act – though it meant their citizens missed out on an opportunity to receive better access to

health care. The way to change those states' minds is to achieve successful health care reform here, and serve as an example of improved access and lower costs for other states to emulate.

The third caveat is that not every attempt to exercise the 10th Amendment will succeed. In 1997 the Vermont Legislature passed and Gov. Howard Dean signed a campaign finance reform law. The plan limited both individual campaign contributions and how much candidates could spend. The law survived legal challenges at the state and appeals court level, only to be declared unconstitutional by the U.S. Supreme Court in 2006.

It is possible to assure more victories, or better odds at least, but that will require some deliberate changes. That's next.

WHAT VT¹⁰ MIGHT LOOK LIKE

Between 1999 and 2014, the rate at which women delivering babies were addicted to opiates rose faster in Vermont than anywhere else in America.

Vermont ranks worst in the country in underage drinking -- 37% of 12 to 20-year-olds.

Vermont's suicide rate is 16th worst, and is nearly 50% worse than it was in 2005. The rate of suicide among young adults is rising faster here than anywhere else in the country.

Vermont has the smallest gross state product in America, which means fewer employment opportunities, suppressed wages, and little capacity for additional tax revenue.

Vermont has failed to master its contribution to climate change via transportation, from the number of plug-in cars and trucks to the use of single occupancy vehicles. Likewise the state lags on moving homes and workplaces into lower carbon-emitting heating sources.

Vermont's population is approaching the highest average age in the country.

Vermont ranks fourth worst in the U.S. in the percent of people who receive hospice care near the end of their lives, and those who do experience this comfort care receive it for the nearly the shortest time in the country.

In sum, from cradle to grave our state has room to improve. The needs are urgent and growing. Meanwhile Washington continues running headlong into chaos, in the process spending itself ever deeper into debt. Vermont must master its fate whether it wants to or not.

For a moment, then, imagine the candidates for governor in a not too distant year. The Republican wants to use the power of the marketplace to drive down the cost of prescription drugs, and to make community college courses tuition-free if they connect to an existing job. The

Democrat wants to strengthen internet privacy safeguards, and to ban electricity generated by coal. The Progressive wants to advance gun safety and to allocate more federal transportation money to mass transit.

There's the meat for a fine debate, giving voters plenty of substantive policy differences to consider. All three platforms respond to genuine issues facing our state. And all three are built on exercising the 10th Amendment.

The idea of an activist state government does not lend itself more to one political party than another. It is a long-standing tenet of conservatism, for example, that government works best when it is closer to the people. It is also a foundational liberal view that activism is an effective means for collective action and social change. Both are satisfied by exercising the 10th Amendment.

What we need is greater ambition. Some examples:

- It is a fine thing that the state's vehicle fleet is migrating toward a higher percentage of electric cars. But that is far shy of addressing the true impact of transportation on the state's carbon footprint. Other ideas might include accelerating efforts to reduce single-occupant commuting, supporting lower emission vehicle purchases by the public, and reducing hostility toward bicycles.
- Arguably one of the most important things the Legislature did in the 2019 session was increase funding for child care by \$7.4 million. Now more parents will be able to work, and more kids will have access to quality care. But if this state truly wants to respond to its demographic decline, and a collapsing birth rate, it will need to embark on whole range of family-friendly initiatives, which might include

such things as a per-child tax break, universal health care for pregnant women, help with rent or student loan debts for expecting parents.

- It is good news that a few tech companies in Chittenden County are thriving, and hiring. But other parts of the state, despite decades of governors' promises, remain without access to cell service and broadband. In an information age, those areas are almost condemned to second-class economic development status.
- Forty percent of Americans live on a coast, and the oceans are rising. Are we ready for the onslaught of people wanting to live here?
- Eighty-one thousand Vermonters have food insecurity, a third of them kids whose primary source of nutrition is at school. Can we do better than voluntary individual town efforts to feed those kids in the summer?

The list goes on, all proving one point: What we need is greater ambition.

So what would it take to create a Vermont to the Tenth Power?

- The governor's office must reinvigorate its policy development. During the deep recession of the early 1990s, then-Gov. Richard Snelling curtailed the Office of Policy and Research in order to economize. It's time to strengthen and revitalize that investment in finding good ideas, especially if the office makes a regular practice of seeing what ideas other states are doing.
- The Vermont Legislature needs greater research resources. The Joint Fiscal Office does an astonishing amount, given its small staff. But too rarely do the ideas of other states enter into the conversation, and the 10th Amendment rarely comes up at all. Lawmakers participate in summer study committees, but a handful of meetings by volunteers is not equal to the challenge of this moment in the nation's

history. Also, summer committees too rarely lead to change. Most studies barely blink in the daylight before being shelved. Vermont needs robust research resources. Devotion to collecting hard data about programs' performance (a hallmark when Cornelius Hogan ran the Human Services Agency) tests the efficiency of new ideas and establishes standards for new investments. As with the governor's office, it will cost some money; it will likely save much more.

Meanwhile the Statehouse needs to develop better ears – whether in improved electronic access for Vermonters, or in far more frequent use of public hearings. Imagine one night a week at the Statehouse for people to come and speak their minds on that week's issue. Sounds like a Town Meeting. Sounds like Vermont.

- The state attorney general's office must enlarge. Historically Vermont's attorneys general have testified in Statehouse committee rooms about which bills are likely to get Vermont sued (and sometimes doing the right thing means taking that risk anyway, as with the 2018 gun safety law). But support of this kind will need to grow. And if the ideas Vermont is trying have already been tested elsewhere, the odds increase of those initiatives succeeding here.
- Local government might also evolve to consider a 10th Amendment approach. Today some of the best and most committed activism is happening in town halls across our state, with lively, in-person debate and with democratic decision-making. Local libraries are doing more than their part too, from educating seniors in computer technology to teaching kids to play chess to acting as service centers for low income Vermonters. Too often these efforts involve only people with gray hair. Regardless, the practical responsibilities of municipal leaders often transcend

party lines in appealing ways. Vermont's mayors stood together just after the Newtown, CT school massacre to call for sensible gun safety. Chiefs of police have likewise offered sound and sometimes visionary ideas about fighting opiate addiction. Chittenden County's dramatic progress on reducing overdose deaths proves the value of deciding not to enforce federal policies (for example those requiring the arrest of people possessing nonlethal heroin alternatives).

Burlington's independence from Washington, in this case, is literally saving lives.

- The business community, by investigating good ideas from elsewhere, might migrate from a too-frequent culture of complaint to one of greater initiative. Vermont presently has a labor shortage, for example, with many open jobs and record low unemployment. Yet the push for higher wages and better benefits is coming from the Legislature. Imagine chambers of commerce and other business groups advocating for workforce development ideas they found elsewhere. A few Vermont companies are taking a leadership role on this issue, but so far the followership has been unimpressive.
- Finally and most importantly, there is the role of the public, Vermonters themselves. A glance through the local ballot items in recent years' Town Meeting Days shows that Vermonters are happy to tell Washington what they think about federal policies. An independent spirit is woven into the fabric of our public discourse.

Also, this state is not like the others. Our problems and our institutions are mostly human scale. So an agenda for involving Vermonters might look like this:

First, policy education. Vermont is home to a number of excellent organizations and programs that serve to educate the public on issues of the day: Leadership Champlain, the Snelling Center, the Vermont Council on Rural Development, the Public Assets Institute, the Vermont Council on World Affairs, Vital Communities, Emerge VT and others. It's a laudable effort, but needs to enlarge – to consider how a state can function independently of the federal government, to learn where other states are doing a better job, and to find ideas that deserve attention though they originate outside our borders.

Second, protest. The public theater of questioning government energizes people, and displays the degree of their discontent. But protest is not the same as engagement; when it's over, people go home. Over the past two years, the power of the public march has returned to a strength not seen in a generation. The challenge to organizers will be to turn that force into substantive solutions that distinguish Vermont from the national woes.

Third, philanthropy. Vermont is home to a vibrant nonprofit economy, a \$6.8 billion enterprise annually, involving 6,200 organizations that address all manner of social, economic, educational, environmental, health and cultural needs. However, if you set aside the large nonprofit institutions – hospitals, colleges, major players like the Flynn Theater, Vermont Public Radio and the Vermont Land Trust – that accounts for most of the billions.

Many of the remaining organizations suffer from two imminent threats. The first is financial. Vermonters rank near the bottom of the nation in per capita charitable donations. The situation is worsening, as many of the most generous donors are aging or dying, and the next generation of people with the capacity to make major gifts has not done so. The other threat is redundancy, as too many nonprofits serve needs similar to others.

The first problem is likely to solve the second, but through a winnowing that means many well-intended organizations will either merge or go out of business. It would not be surprising if over the next generation the number of Vermont's nonprofits fell from 6,200 to 3,200.

Philanthropy in an activist state must be built on partnership, for example in what the Vermont Community Foundation is doing about education. Our state ranks high in the nation in the percent of kids who graduate from high school, but low in the percent of them who finish college. Yet having a college degree today confers average lifetime earnings nearly \$1 million higher. VCF has teamed up with educators, and with the J. Warren and Lois McClure Fund (which used to donate generously to a wide range of needs but now concentrates on education), to remove barriers to higher education, helping more Vermonters move into higher potential professions.

More broadly, people will need to increase their donations (merely rising to the national average would mean Vermonters giving \$86 million more to charity each year), will need to discern which nonprofits are most efficient and effective, and will need to concentrate their gifts on problems the federal government is unwilling or unable to solve.

(An excellent example occurred in the Champion lands project in 1999, in which a diverse team of organizations contributed to the purchase and protection of 133,000 acres in northeastern Vermont – a deal the state was nowhere near affording on its own. A 2018 study found that transactions like this brought \$9 in goods and services for every dollar invested.)

Fourth, fraternal organizations. These local groups quietly and consistently make a difference in their communities. The Benevolent and Protective Order of Elks awards millions in college scholarships each year. Rotary International was instrumental in the eradication of polio, and now funds disaster relief and international study scholarships. The Lions Club has raised

hundreds of millions of dollars for health care, particularly to reduce blindness. These organizations and others can guide our state's progress toward an activist government. Who better than the VFW chapters, for example, to help Vermont policymakers understand and remedy the lackluster federal health care veterans have been receiving?

Fifth, engagement. During the recent federal shutdown, people thanked TSA agents at airports for working without pay. Volunteers picked up trash on the Washington Mall and in National Parks. The fastest way to restore America's well-being is through the public's exercising of its immense power. Imagine if every book group adopted a local library. Imagine if several times a year schools, cities and towns held bazaars for volunteerism, like a farmer's market but for addressing local needs. Imagine a Green Up Day for getting involved.

Besides, idealism is good for us: 57 percent of people who volunteer feel a greater sense of community, 66 percent say it gives them a greater sense of purpose, and 75 percent say it makes them happier. That's the opposite of frustration over national politics.

Sixth, attitude. Even ideas with the best intentions will be wrong sometimes. There will be mistakes. Therefore maintaining a degree of uncertainty and humility will be imperative. Openness to dissenting views will not be a weakness, as it is often considered in today's adversarial culture, but instead will offer a way to avoid mistakes. As the distinguished appeals court judge Learned Hand wrote, "The spirit of liberty is the spirit which is not too sure that it is right."

CONCLUSION

It is one of the happy incidents of the federal system that a single courageous State may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country. This Court has the power to prevent an experiment. ... But, in the exercise of this high power, we must be ever on our guard lest we erect our prejudices into legal principles. If we would guide by the light of reason, we must let our minds be bold.

Supreme Court Justice Louis Brandeis, 1932

Vermont is functioning in a desert of policy initiatives. If you doubt that assertion, ask yourself: Can you name three people in the governor's cabinet? Any three.

The Legislature is little better. While legalization of marijuana may not rank at the top of your priorities, it's worth noting that Vermont did so in a way that has generated zero tax revenue. By contrast, the other states that legalized pot have received \$1 billion in new tax revenue. We missed the boat.

Perhaps lawmakers will pass additional legislation to generate state income from marijuana sales. Perhaps the governor will leave the politically safe sidelines of issues to urge and risk and lead, as he did so courageously in the gun safety debate.

Until then, it will fall to Vermonters to lead the way.

A valuable first step would be the creation of a convening authority: an independent entity that serves the 10th Amendment. What might it be like?

It identifies issues that either merit immediate attention or that promise low hanging fruit (opiate addiction exemplifies the former, revenues from legalized pot illustrates the latter). It contains mechanisms for Vermonters to communicate our ideas, interests and concerns (such as

online conversations, bias-free polling, active engagement of Vermonters who participate in protests, and public hearings far beyond the compressed events the Legislature conducts).

The task of rebuilding our society's public forum is a significant and worthy task all by itself. Let's say this new organization gathers the smartest people it can, to understand a problem and its potential solutions, to investigate what other states are doing, and to offer ideas based on the independent principles of Vermont to the Tenth Power.

This is not a radical idea. Our state has seen efforts like this before, on single-issues such as the Vermont Business Roundtable's excellent 2015 call to action on public education. Work like this is underway right now in the volunteer men's group organized by the Vermont Women's Fund and Change the Story, with the aims of reducing sexual harassment in the workplace. Sometimes the energy comes from a philanthropic organization too, most notably as the Windham Foundation's thirty-six Grafton Conferences.

Our work now is not to replace or eclipse those endeavors, but to make them ongoing, continuous, to establish an effort outside of government that enables Vermonters to face the challenges of federal collapse squarely.

In a democracy, there is no happily ever after. Representative government is a living organism that changes and grows, and sometimes even steps backward. When that happens, the best sources of reinvention, reinvigoration and recovery are among the people themselves.

An activist Vermont will not be free of debate or dispute. Leave quiet to the monarchies and autocracies where dissent is suppressed. Lively disagreement is evidence of a healthy democracy.

In Vermont to the Tenth Power, the difference will be in what people are talking about – not the polarizations of Washington but the concerns of the Green Mountains, not the monumental debt of Congress but the steady fiscal stability of our state, towns and schools, not the schisms between entrenched opinions but the insight that comes from trustworthy facts and a thorough effort to learn Vermonters’ opinions. Let us exchange the frustrations of Washington with the gratification of taking greater responsibility for our own lives, our shared communities, our home.