



Green Mountain CITIZEN

Winter 2011

Plans for Annual Legislative Day Are Underway

The LWVVT annual Legislative Day will be held at the State House on Wednesday, February 22. We are inviting representatives from Basic Adult Education and the Vermont Refugee Resettlement Program to join us, in part to work with them on voter registration in the next election cycle.

The format has been changed from that of the past few years. The day will begin with League-sponsored coffee in the State House cafeteria. This phase of the event will allow the League to have face-to-face conversations with our legislators and to bring our positions to their attention.

At 9:00 members will gather in Room 10, to get a rundown of bills under consideration, with an emphasis on those of particular interest to the League. Attendees will then be free to observe the House or Senate in action if they are in session, or to sit in on committee hearings on issues of interest if they are not. We will be watching for bills on health care, transportation funding and renewable energy. Since this is the second session of the biennium, there should be a lot going on.

Advance information about bills of interest will be posted on the state League website at www.lwvofvt.org.

Lunch will be on our own, in the cafeteria or in downtown Montpelier. You are encouraged to attend afternoon committee meetings.

This event is one of our most important and effective ways to increase the League's visibility in Vermont. *Please contact your legislators and let them know that we will be in the State House cafeteria on February 22, and invite them to join us for coffee.* Sponsored coffee service is a popular feature at the cafeteria, and you should have no difficulty convincing your legislators to join us.

After the new legislative session has begun, check out our website for more information. You can also learn about bills and committee hearings on the legislative website at <http://www.leg.state.vt.us/>.

Message from the Board Winter 2011

Leaguers Vee Gordon, Frankie Knibb, Kate Rader, and Sonja Schuler attended a leadership development training conducted by the League of Women Voters of the United States (LWVUS) this past Fall. The leadership program, which sponsors these trainings, was established by the LWVUS to help enrich the democracy-building efforts of this more than 90-year-old grassroots organization. The program will be implemented by local leagues in all 50 states with the support of a volunteer national coaching team and a cadre of state coaches.

During the two-day training held in Wells, ME in October, national trainers from Washington, DC, Tennessee and North Carolina spoke about techniques for empowering citizens to have a voice in their communities, for heightening League visibility, and for developing the skills of rising League leaders. It was an amazing experience! Twelve hour days notwithstanding, we all came back with thick notebooks full of ideas and techniques to expand the work of the League and its membership. The training familiarized participants with membership/leadership best practices, helped local teams create an action plan, and sought to strengthen relationships between all three levels of the League.

Now the real work begins. Anne Schink, from the Maine League, will coach League members Gia Biden, Nancy Lynch, Vee Gordon, and Frankie Knibb with Kate Rader as a backup coach. Kate will be the lead coach for the Maine League with Anne as a backup. Each month this team will hold phone conversations to keep us on track to reaching our goals. We had our first phone conversation November 28th and shared what each local unit had planned over the next several months.

The State League coaches have a monthly call with the national Ruth S. Shur Fellows (National Coaching Team) the second week of the month. The Shur Fellows support the state-level coaching teams. The whole purpose is to support one

another in setting realistic, but measurable goals, and to hold one another accountable for results.

The Ruth S. Shur Leadership Institute:

League member Walter Shur, of Pittsboro, North Carolina, generously contributed to the League of Women Voters Education Fund to create and endow the Ruth S. Shur Leadership Institute in 2009. The Institute develops and sustains a “national coaching team” that supports and strengthens emerging League leadership, membership recruitment and League visibility and best practices. Mr. Shur made this extraordinary gift to honor the memory of his wife Ruth S. Shur, a longtime League member and leader.

Shur Fellows receive intensive face-to-face training through the Institute, which is led annually by key League leaders and staff. Shur Fellows serve as mentors, cheerleaders, accountability coaches, and communicators. They have two-year terms and are responsible for a given pair of states. They work in partnership with another coach to help ensure cross training and further information sharing. Fellows also help train local Leagues in best practices at an in-state training, such as the training we just attended in Maine.

Frankie Knibb

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Kate Rader, Editor

Membership in the League includes a subscription.
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Transportation Study Update

Local League Units are already gathering information for the LWVVT Transportation Study, Part Two.

The Southeast Vermont League of Women Voters Member-at-Large Unit will hold a public forum on “Stretching our Transportation Dollars: Finding New Money and Rethinking the Money We Have” on December 15th. The panelists include: Chris Cole, Director of Policy and Planning for the Vermont Department of Transportation, Matt Mann, Senior Planner from the Windham Regional Commission and State Representative Mollie Burke.

This meeting is co-sponsored by the American Association of University Women, Brattleboro Chapter. We will publish notes from this forum in a future GMC.

The LWVCV is also organizing a public meeting related to the state transportation funding study for February, with the expectation of collaborating with other organizations.

The LWVVT new transportation study focuses on funding mechanisms for transportation. The study includes, but is not limited to: identifying funding mechanisms used in other states and considering their possible application in Vermont: considering increased flexibility in allocating and utilizing existing and new funding; and, exploring the role rules and regulations play in governing access to funding.

A recently released report, “Transportation Governance and Finance: a 50-State Review of State Legislatures and Departments of Transportation,” identifies funding mechanisms but we still have plenty of work to do. To join the Transportation Study group, contact Frankie Knibb at frankieknibb@gmail.com.

LWVUS Privatization Study Underway

With the completion of the LWVUS study of the federal government in education, attention is now focussed on the study of privatization of traditional functions of government. Two papers appear in this issue, beginning on page 5. more can be found at <http://www.lwv.org/member-resources/privatization>

LWVUS To Set Legislative Priorities

In January, the LWVUS Board of Directors will be setting the League Legislative Priorities for the upcoming year. Setting these priorities for League action at the national level is an annual responsibility for the Board.

Once again, the Board is soliciting suggestions for LWVUS advocacy priorities from members.

If you are interested in making suggestions to the Board, please consider the goals and criteria as listed below. While the LWVUS has numerous positions under which we might take action, the Board must prioritize and consider those issues where we might be able to make a difference.

According to the LWVUS *Impact on Issues*, the goals for setting priorities to guide the LWV advocacy work are to:

- (1) Enhance the League’s effectiveness by concentrating resources on priority issues;
- (2) Build the League’s credibility and visibility by projecting a focused and consistent image;
- (3) Ensure that the League has sufficient issue and political expertise to act knowledgeably; and
- (4) Enable the League to manage resources effectively.

In setting legislative priorities, the Board considers the following:

- (1) Opportunities for the League to make an impact;
- (2) Program decisions made at Convention and/or Council;
- (3) Member interest; and
- (4) Resources available to manage effectively.

If you would like to make suggestions for LWVUS advocacy priorities, please email Advocacy Committee Chair Judy Duffy: jduffy@lww@aol.com. Please indicate whether the suggestions are from an individual member, a committee, board or membership meeting.

Suggestions must be received by January 15.

Support Sought for Women's History Museum

(Judy Myrick)

Once again women have been put "on hold" - this time by two Senators in Congress. The goal of many women is the creation of a National Women's History Museum on the National Mall in Washington DC.

No taxpayer funds will be used, as the funds have already been raised successfully. The only thing standing in the way of this monument recognizing the achievements of women in history is a rubber stamp from Congress allowing the museum to purchase land with private funds.

Securing a spot in such a location requires sign-off by Congress. Two senators have opposed the bill, saying it duplicates existing women's museums (such as the Quilters Hall of Fame in Indiana, the National Cowgirl Museum in Texas, and the Hulda Klager Lilac Gardens in Washington state).

Among the museum's many supporters at the national level are the League of Women Voters and the American Association of University Women, both of which have local branches here in Vermont.

Make sure our members of Congress hear from you this season, so that some day you'll be able to visit Washington to see the work your foremothers did to make this country what it is. The relevant bills are S.680 and H.R. 1269.

1.

LWVVT Is Now on Facebook!

We have joined Facebook. Go to the LWVVT website (www.lwvofvt.org), scroll down to the bottom of the Home page, and click on the Facebook logo. Check it out frequently, and be sure to click on "Like" when you go there. You don't have to be on Facebook yourself to see what's there, but you can't add any comments unless you are. **Spread the word.** We want a lot of people to know what the League in Vermont is doing.

Saudi Women Gain Vote

The following appeared in the Brattleboro Reformer.

Dear Editor:

The League of Women Voters of Vermont through its Board of Directors wishes to share some exciting news with your readers. Women in Saudi Arabia are to be given the right to vote and to run in future municipal elections! This has been announced by King Abdullah, who made the surprise statement at the opening of the new term of the Shura Council (the formal body advising the king, whose members are all appointed).

According to various news sources, the king told the Shura Council: "Because we refuse to marginalize women in society in all roles that comply with sharia (Islamic law), we have decided, after deliberation with our senior clerics and others...to involve women in the Shura Council as members, starting from next term."

This is an extraordinary development, since women are not allowed to drive or leave the house without their faces covered, nor can they travel abroad without the permission of a male guardian. Municipal elections are the only public polls in Saudi Arabia.

On Thursday Sept. 29, more than 5,000 men competed in elections (the second-ever in the kingdom) to fill half the seats in local councils. The other half are appointed by the government. In the next term, women may also compete for these positions.

Members of The League of Women Voters of Vermont send congratulations. We are well aware that women's suffrage in the U.S. was achieved gradually, culminating in 1920 with the passage of the Nineteenth Amendment to the U.S. Constitution. Taking the first step, however small, is always welcome!

Yours truly,

Judith Myrick
(on behalf of the Directors, LWVVT)

The Legal Framework of Transparency and Accountability within the Context of Privatization

Executive Summary

The legal frameworks within which public and private sector entities operate differ. One difference is that, unlike private entities, government entities are statutorily required to conduct their business through open, transparent processes to ensure that they are accountable to the citizenry. This modern practice of open government is viewed as both a key feature and a necessary condition of a contemporary democratic state. It is based upon the conviction that the people can only effectively exercise their constitutional role as overseers of government action where their unfettered rights of access to information about government operations are secure.

Public transparency laws thus have been enacted throughout the United States at both the federal and state level for the purpose of maintaining free and open access to the government's proceedings, deliberations, decision-making and records. Such laws include sunshine or open meeting laws, which seek to ensure that the public may observe the meetings and deliberations of government bodies, and freedom of information or public record acts, which seek to ensure public access to the documents and records of government.

Privatization raises particular issues with respect to transparency, however, because as a general matter, such transparency laws apply exclusively to public bodies, and not to private entities. Where the provision of government services are transferred into private hands, what then becomes of the public's right of access to information regarding the provision of those services?

Judicial and legislative efforts to address concerns regarding public transparency within the context of privatization have emerged over several years. Some state courts, for instance, have adopted a judicial doctrine that subjects a private contractor to the applicable transparency law when the contractor is performing a government function in such a manner that it may be deemed the "functional equivalent of the public body." In addition, state legislatures have been modifying their public accountability statutes over the years in order to make such laws applicable to certain private entities carrying out government functions. Public accountability advocates nonetheless are concerned that public access to information in the hands of private contractors often is frustrated when statutory language does not adequately cover the private entity or a court ruling is not obtained. Moreover, even when private contractors are subject to such laws, they often dispute it or are not aware of such requirements, and, thus, refuse to provide the information.

A recent example involves one of the nation's largest not-for-profit providers of community-based supervision and treatment services to individuals within the criminal justice systems. The company is 97 percent publicly funded from sources such as state departments of corrections and the federal prison bureau. Following revelations of certain unusual and high profile expenditures by the private contractor in Kentucky (including hundreds of thousands of dollars in stadium suites, sponsorship of a university basketball team and extravagant social events), the Kentucky state auditor sought to examine how its tax dollars were being spent. The private contractor, however, refused to provide the state auditor with the requested financial information, and neither the state public records law nor any decision by a state court required the contractor to provide the information. This case illustrates the importance of yet another approach to ensuring public accessibility of information and records in the hands of a private contractor: that is, using the bidding or contract negotiation process of the privatization deal itself to require agreement on the part of the private contractor to make all pertinent information available to the government agency with which it is contracting before any privatization of services is put in place.

Finally, this paper concludes with a call by accountability advocates for special transparency requirements to apply to any privatization proposal. The notion, here, is that government action to privatize is of such import and consequence that special (super) public accountability procedures should apply with respect to the initial privatization decision itself in order to ensure the proper constitutional role of the people as overseers of government action.

Diane Dilanni

Privatization of Prisons

By Ted Volskay

Background

Many states have turned to private prisons to address the issues of prison overcrowding and the capital expense of building new prisons, and to reduce the cost of prison operations. In 2011, the corrections services market (including federal and state prisons, but excluding jails) in the United States was valued at approximately \$70 billion. The portion of corrections services market that is outsourced to private corporations is approximately 10 percent or \$7 billion.¹

Advocates of privatizing correctional services state that private prisons can achieve savings over public prisons by purchasing in bulk, eliminating overtime and employee benefits, and reducing the red tape. Opponents of privatizing prison services argue that a true and accurate comparison between public and private costs and services is difficult and complex, and does not provide a compelling argument for privatizing prison services.²

Privatization Case Study: Pennsylvania Child Care Center

Governmental Level: County (Luzerne County)

Primary Privatization Mechanism: Defunding publicly owned and operated juvenile detention center

On February 18, 2011, a federal jury convicted former Luzerne County Common Pleas Juvenile Court Judge Mark A. Ciavarella, Jr., on 12 of 39 counts of racketeering, money laundering and conspiracy in connection with the infamous “Kids for cash” scheme.³ Ciavarella and former Judge Michael T. Conahan reportedly received \$2.6 million in kick-backs for sending thousands of juveniles to two private detention centers.⁴

The scheme began when Robert J. Powell, a wealthy personal-injury lawyer from Hazelton (PA) contacted Judge Michael T. Conahan, Ciavarella’s colleague, to learn how he might get a contract to build a private detention center. When Judge Conahan became the “president” judge in January 2002, he obtained control over the county courthouse budget. Judge Conahan subsequently signed a secret deal with Powell, whereby the court would pay \$1.3 million dollars annually to rent Powell’s private juvenile detention center, in addition to the tens of millions of dollars that the county and state would pay to house delinquent juveniles.⁵ Two detention centers, Western Pennsylvania Child Care and Pennsylvania Child Care, were eventually constructed in Pittston, Luzerne County.⁶

Conahan and Ciavarella systematically shut down the public juvenile detention center that was owned and operated by Luzerne County. First, the judges refused to send delinquent juveniles to the public detention center and, then, cut off funds for its operation.⁷ Although county commissioners were the only ones authorized to sign contracts for detention centers, Judge Conahan left them with little alternative but to sign a contract with the privately owned and operated detention centers because Conahan had eliminated funding for the Luzerne County juvenile detention facility. A state audit of the private detention center was conducted that described the lease of the facility as a “bad deal.” The center’s owner filed a “trade secrets” lawsuit against the Luzerne County controller who leaked the findings of the audit, and Judge Conahan subsequently sealed the suit to limit the release of other documents. During a separate audit, state auditors determined that the detention center was systematically overbilling the county and was receiving shutoff notices from utilities because they had fallen behind in paying their bills.⁸

The “Kids for cash” scheme began to unravel when Ciavarella sentenced a 15-year-old collegebound high school student to three months in juvenile detention after she made fun of an assistant principal on MySpace and was cited for harassment. The girl’s mother took her daughter’s case to the Juvenile Law Center (JLC), a nonprofit advocacy group that promotes juvenile justice and child welfare reform in Pennsylvania. The JLC determined that their client’s case was not exceptional.⁹ In 2002, Judge Ciavarella sentenced twice as many juveniles to detention compared to the prior year and sentenced juveniles to detention at a rate that was twice the state average over a subsequent five-year period.¹⁰ One of the cases involved a 12-year-old boy who went joyriding with his mother’s car and ran over a barrier. Although there were no injuries, the car was damaged, and the boy was cited after his mother filed a police report so that insurance would cover the damage. The boy, who was not represented by an attorney, pleaded guilty and spent two years in the detention center.¹¹

The JLC asked the Pennsylvania Supreme Court to assume jurisdiction over all the cases of juveniles adjudicated delinquent in Luzerne County since 2005. The Luzerne County District Attorney opposed it and the Pennsylvania Supreme Court denied the JLC petition without comment. Subsequently, after the FBI began an independent investigation into Ciavarella and Conahan for accepting money from certain detention center developers, the Pennsylvania Supreme Court reconsidered and granted the JLC petition. One of the developers, who has not been accused of criminal wrongdoing but is a defendant in a class action lawsuit, is the Allegheny County District Attorney’s brother and a former Pennsylvania Supreme Court Justice’s son.¹²

Things to Consider

- This case illustrates the need for stringent state oversight procedures to be firmly in place when transitioning from public sector to private sector detention centers. Furthermore, it is important to monitor changes in patterns of incarceration when for-profit incentives are involved.¹³
- One of the benefits argued by proponents of privatization is that free market competition is ultimately good for the taxpayer. In the case of the “Kids for cash” scheme, defunding the existing county juvenile detention center achieved the goal of privatizing juvenile detention services, while eliminating any meaningful competition that would have

existed had the public detention center remained operational.

- Although parents and local child advocates accused the former judge of harsh sentencing, many in the community, including the local schools, supported him. When Judge Ciavarella decided upon a policy to incarcerate juveniles arrested at school, local schools were more than happy to send trouble makers out of town by calling the police for just about any incident that they preferred not to address. Ciavarella himself pointed to the low recidivism rate as justification for his tough judgments.¹⁴
- Two of the largest private prison corporations, Corrections Corporation of America and Geo Group are publicly traded on the New York Stock Exchange; NYSE Symbols (CXW) and (GGO), respectively. In fact, consistent with their for-profit culture, private prison corporations include as part of their business plan finding alternative means of filling their facilities.¹⁵ According to Corrections Corporation of America, “Utilization Drives Earnings.”¹⁶
- During the 2008 election cycle, the three largest publicly traded prison management companies contributed approximately \$679,000 to political groups and politicians from states where they are courting new business. The boards of directors for Corrections Corporation of America and Geo Group include formerly elected representatives and government officials from former Republican and Democratic administrations.¹⁷
- In a free market, the consumer chooses between companies that provide a service. The for-profit prison market is different because prisoners cannot choose where or how long they will be incarcerated. Furthermore, prisoners typically do not have a strong representative voice. They are vulnerable to efforts by privately owned/operated detention facilities to increase profitability by reducing or eliminating any prison expense that might not be required but substantially affects prisoner welfare.

Ted Volskay (LWVNC) is a member of the LWVEF Education Study Committee on Privatization of Government Services, Assets and Functions.

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ENDNOTES

- ¹ CCA (Corrections Corporation of America) Second Quarter 2011 Investor, Power Point Presentation, August 18, 2011.
- ² Dina Perrone and Travis C. Pratt, “Comparing The Quality of Confinement and Cost-Effectiveness of Public Versus Private Prisons: What We Know, Why We Do Not Know More, and Where We Go from Here,” *The Prison Journal*, Vol. 83, No. 3, September 2003, pp. 301-322. Not accessible online.
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- ⁴ Ian Urbina, “Despite Red Flags About Judges, a Kickback Scheme Flourished,” *The New York Times*, March 28, 2009.
- ⁵ See endnote 4.
- ⁶ Tracie Maunello, “Detention scheme was lucrative, harmful,” *Pittsburg Post-Gazette*, February 15, 2009.
- ⁷ See endnote 3.
- ⁸ See endnote 4.
- ⁹ Wendy N. Davis, “Town Without Pity,” *ABA Journal*, September 1, 2009.
- ¹⁰ See endnote 4.
- ¹¹ See endnote 3.
- ¹² See endnote 9.
- ¹³ Vanessa M. Cross, J.D., LL.M., “Commentary: Privatization of Juvenile Detention Centers”, *National Institute for Law & Equity (NILE)*, (no date provided).
- ¹⁴ See endnote 9.
- ¹⁵ Fiona Donson, “Kids for cash”: the dangers of private prisons laid bare, *CCJHR (Center for Criminal Justice and Human Rights) blog*, March 27, 2009.
- ¹⁶ See endnote 1.
- ¹⁷ Nancy Cook, “How the Recession Hurts Private Prisons,” *Newsweek*, June 30, 2010.

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