



## Capital Eye

Volume 10, No. 10 ~ December 2010

### Looking Forward, Looking Back

By Gary Zuckett, [garyz@wvcaq.org](mailto:garyz@wvcaq.org)

This is the time of year to reflect on the one that's passing, and plan for the one ahead.

Looking back over 2010, the big victory was on healthcare reform. I know its far from perfect (and Obama's dig about his Bush tax cut compromise being like scuttling the Public Plan was one I resented) but it's a huge step forward for our nation to reign in the insurance industry and eventually provide affordable health coverage to nearly all Americans. We helped win the battle to pass the law, now we need to win the war of implementation – many say the years needed to fully implement the [Affordable Care Act](#) will be tougher than its passage. After the November elections, I think they might be right.

CAG's three PSC interventions yielded three victories for energy efficiency! For the first time ever WV electric utilities must begin offering incentives for their customers to use less of their product! This will hopefully reduce the need for expensive new power plants in our future. A Big thanks to our lawyer Tom Rodd and the Calwell Practice for their essential support!

Another PSC campaign with our Communications Worker allies got concessions from Verizon and Frontier. As a result, they will now invest additional millions into broadband and other communications infrastructure as a part of the deal to sell off Verizon's land lines.

Our [WV Surface Owner's Rights Organization](#), hosted a showing of movie GasLand (with Sierra Club and Highlands Conservancy) on a sunny Sunday afternoon in August and over 600 citizens came out to see the flick and hear Josh Fox, the director, after the showing.

The [One Nation](#) rally in October was the high point in the fall's campaign season. It was sandwiched in between Glen Beck's and Jon Stewart's but with filled with 150,000 progressive activists from across the nation. WV sent 10 busloads and we all came back energized.

A big win at the WV legislature this year was the pilot project that will provide public financing for candidates running for the Supreme Court in 2012. We need to add more funding for his in the upcoming legislative session.

Looking ahead to the 2011 legislature, there are many issues on our agenda – surface owners right; bottle bill; supporting and updated ethics bill; the arbitration act; unemployment modernization; and much more – (see our wish-list for the session).

The November elections were not as tough on WV as many other states but we'll still feel the blowback in the continued gridlock in Congress. It's too soon to tell what Congress will tackle next year with the control of the House now in Republican hands – it won't be pretty.

One thing for sure about next year, we'll be there fighting for a more progressive West Virginia and country. Since 1974, WV-CAG has been there thanks to your support. We have been able over the years to cover so many, many critical issues and campaigns because you, our citizen activists were backing us up. If you haven't yet, please take a minute and renew your membership. And a Big Thanks to everyone who has already renewed their support!

### DEP, Legislature Propose Bills to Address Marcellus Drilling Concerns

By Julie Archer, [julie@wvcaq.org](mailto:julie@wvcaq.org)

Despite a disappointing session on surface owners' rights, we were encouraged by the progress of other, much needed measures and by the attention that drilling related concerns and issues received generally during the 2010 legislative session, as well as in the months since. We are most encouraged by the fact that this spring DEP Secretary Randy Huffman initiated a total review of the state's regulation of oil and gas drilling in response to the growing rush to develop the Marcellus Shale.

As part of this ongoing review, WV-SORO and several other interested parties gave presentations and provided position papers to the DEP. Since then DEP has held private meetings with various groups including WV-SORO. These meetings with agency representatives, as well as one-on-one meeting with legislators in recent months, provided us with an opportunity to discuss the problems we would most like to see addressed in legislation during the 2011 session.

The last steps in the review process require the DEP to develop and finalize its legislative proposals. In August, Governor Manchin asked Secretary Huffman to convene a panel of stakeholders to provide input on these proposals. The agency released a preliminary draft of their legislation last month, the same week that a legislative study committee was presented with a bill establishing a new regulatory program for gas wells utilizing horizontal drilling and hydraulic fracturing. Both bills are aimed at regulating the Marcellus Shale gas well drilling occurring now in West Virginia, but would apply to all drilling using these new techniques. Each bill contains some good things and some not-so-good things, and omits some things we want, and the interim bill does some things better than the DEP bill and vice versa.

As we go to press legislators are wrapping up their monthly interim meetings. We were hoping to report that the study committee had advanced their bill so that the full legislature would have a comprehensive draft bill to consider when they

convene on January 12. Unfortunately, the committee couldn't take any action on the bill because there were too few members present. We're disappointed lawmakers couldn't take up the measure, but they could still endorse the bill during January interim meetings.

IF the interim bill advances, and IF DEP bill makes it before the legislature there will likely be some sort of reconciliation of the two versions. The IF on the DEP bill, is whether or not acting Governor Earl Ray Tomblin will ask the legislative leadership to introduce the bill -- since this whole review process started under the previous administration.

We'll continue to keep you posted. In the meantime, please check [www.wvsoro.org](http://www.wvsoro.org) for additional information and updates.

## CAG Files In Court for Early Election of Governor

By Gary Zuckett, [garyz@wvcag.org](mailto:garyz@wvcag.org)

House Speaker Rick Thompson and Senate President Earl Ray Tomblin were both reelected to their positions of leadership this week during the legislative interims. Wait a minute, isn't Sen. Tomblin now the acting governor? Yes, but he's also still President of the Senate. I know it's confusing. This is why we here at Citizen Action felt it necessary to [file suit](#) in the WV Supreme Court asking the Court to rule that WV must hold a new election for governor as soon as possible. We feel that our democracy's foundation is based on the fact that we get to elect our leaders – the consent of the governed, right?

Another Constitutional concern is with separation of powers. To have one person serving as both Senate President and Governor for two years is not what our founders had in mind. See below:

Article 7, Section 16 of the West Virginia Constitution states:

"In case of the death, conviction or impeachment, failure to qualify, resignation, or other disability of the governor, the president of the Senate shall act as governor until the vacancy is filled, or the disability removed; and if the president of the Senate, for any of the above named causes, shall become incapable of performing the duties of governor, the same shall devolve upon the speaker of the House of Delegates.... Whenever a vacancy shall occur in the office of governor before the first three years of the term shall have expired, a new election governor shall take place to fill the vacancy."

While it's clear from our constitution that the acting governor should call a prompt special election in order to fill the long-term vacancy in the office of Governor – acting governor Tomblin has indicated that he intends to serve out the remainder of Manchin's term and will only call a special election if the people "express an overwhelming desire for one." Well, how about it?

If you think West Virginians should be able to choose their Governor before 2012, e-mail acting

governor (Senate President) Tomblin and tell him that in West Virginia, those who govern only do so with the consent of the governed. Ask him to do his constitutional duty and call a special election for Governor early next year. His address is [senate.president@wvsenate.gov](mailto:senate.president@wvsenate.gov).

Please copy [info@wvcag.org](mailto:info@wvcag.org) on the e-mails so we can track your support on this critical issue.

## Supporters Highlight Advantages of Public Financing

Supporters of publicly financed elections gathered at the State Capitol on November 16, 2010, to highlight the advantages of the West Virginia Supreme Court Public Campaign Financing Pilot Project, which was recommended by Governor Joe Manchin and adopted by the legislature earlier this year.

The WV Supreme Court Public Financing Pilot Project was enacted during the 2010 legislative session and will provide public campaign financing to qualifying candidates for the WV Supreme Court in 2012. Members of WV Citizens for Clean Elections, WV Secretary of State Natalie Tennant and state legislators spoke about the importance of the project to maintaining a fair and impartial West Virginia Supreme Court, free of the influences of campaign contributions.

Attendees at the event made donations totaling over \$1,800 to the fund for the pilot project. Individuals and organizations can contribute to the fund by contacting the Secretary of State's office at (304) 558-6000 or (866) 767-8683.

More information on the pilot project is available at [www.wvoter-owned.org](http://www.wvoter-owned.org) and [www.sos.wv.gov](http://www.sos.wv.gov)



*Delegate John Doyle (D-Jefferson) speaking at Citizens for Clean Election's November 16, 2010 press conference. Also pictured (L to R): Margaret Chapman, WV-FREE; Julie Archer, WV-CAG; Larry Matheney, WV AFL-CIO; Delegate Barbara Fleischauer (D-Monongalia); Delegate Nancy Guthrie, (D-Kanawha); Sam Hickman, National Association of Social Workers-WV; Kathryn Stone; and Dennis Sparks, WV Council of Churches.*

## Other Issues for the 2011 Legislative Session

In addition to the many issues highlighted throughout this edition of the Eye, other issues well be working on during the 2011 Legislative session include:

**Bottle Bill** – Already in place in 11 other states, this legislation would place a fully refundable deposit on beverage containers to increase recycling, reduce landfill tonnage, decrease litter and save taxpayers money. In addition, a WV Bottle Bill would create jobs by providing incentives for existing recyclers and new business to collect and handle empty beverage containers. ([www.wvbottlebill.org](http://www.wvbottlebill.org))

**Publicly Financed, Voter-Owned Elections** – help remove special interest money from the election process, along with real or perceived conflicts of interest, by providing candidates with an alternative source of “clean” funding. In 2012, the Supreme Court Public Campaign Financing Pilot Project will provide Supreme Court candidates and sitting justices with an alternative to funding their campaigns with money from special interests and attorneys whose cases they may later decide. Securing additional funding for the pilot project is a priority this legislative session. Although the legislature dedicated \$3 million, this may not be enough and insufficient funding will deter candidates from participating in the program. ([www.wvoter-owned.org](http://www.wvoter-owned.org))

**Post *Citizens United* Reforms** - Earlier this year, the US Supreme Court determined that the First Amendment protects the use of corporate money in elections, opening the flood gates for the unencumbered corporate political spending our elections. In the wake of *Citizens United* we support measures that require full disclosure of political expenditures by independent groups and that provide shareholder accountability in order to rein in this spending, which is having a corrupting influence on our electoral process. Disclosure permits citizens and shareholders to react to the speech of corporate entities in a proper way. This transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages. In addition, requiring shareholder approval for corporate political expenditures protects the interests of shareholders and ensures that their own First Amendment interests are being acknowledged.

**Same-Day Registration & Voting** – would increase voter registration and participation by allowing citizens to both register **and** vote during West Virginia's early voting period. A growing number of states adopting same-day registration (SDR) and studies have shown that voter participation is 10 to 12 percent higher in presidential election years in states that have SDR.

**Election Integrity** - Since the 1990s, the state law has taken regulation of elections more seriously, and has even adopted measures to ensure that in the age of electronic voting we have a way to verify

our election results. Unfortunately, we took a step backward when the legislature passed a law authorizing a pilot program to allow our troops and other overseas voters to cast their ballots over the internet during the 2010 election. While the motivation for online voting is laudable, in light of the recent hack of Washington, DC's online voting system, before expanding the use of internet voting West Virginia should follow the District's example and put our systems to a public test. The way to respect and support our troops overseas it to respect their right to vote on a system at least as verifiable and recountable as the one being used here at home.

## Transitions

You may not have noticed but this issue of our newsletter is being edited by Beverly Steenstra - yes, wife of former director Norm. Beverly has agreed to fill in for Linda who has served as editor forever. Since last summer, Linda has been transitioning into her new duties at the WV Center on Budget & Policy headed up by ex-CAG staffer, Ted Boettner. We all hate to see Linda go and welcome the addition of Bev to our staff here at Dixie St.

This is such a close-knit community of activists here inside the Charleston Beltway that we'll still have the opportunity to interact with, tease, and cajole Linda on a regular basis. We're leaving her voice on the answering machine so that if we get to miss her too much we can always call the office and listen to her say “Thanks for calling Citizen Action....”

## Snapshots of 2010 – People in Action



*CAG's Julie Archer & Lisa Diehl (on right) dish out dogs and chips at our Progressive Picnic in the Park to encourage voters to get out and vote!*



*Governor Manchin shakes hands with AFL's Larry Matheney at signing of Supreme Court public financing bill*

## Keeping the Courthouse Doors Open for Citizens Activities in 2010

West Virginia and our civil justice system remain under attack by the U. S. Chamber of Commerce, billion-dollar insurance corporations and other corporate interests because our courts are the one place where these corporate wrongdoers can still be held accountable for their negligence and misconduct when workers and consumers are harmed.

These groups continue to call for West Virginia to create an automatic right of appeal. That right already exists with the West Virginia Supreme Court. That right has always existed. This year, the West Virginia Supreme Court revised its rules of appellate procedure to add transparency and ensure that both parties know why their appeal was accepted for further proceedings or denied based on the merits of the case as the Court will outline its decision in either an opinion or memorandum.

These new rules also eliminate the need for an unnecessary intermediate court of appeals, which would cost taxpayers an addition \$10 million each year. The corporate interests are pushing to establish this intermediate court in order to further delay legitimate claims and increase the costs for the claimants. One change to our judicial structure we could support would be the creation of business courts to handle complex business to business litigation. By establishing a business court, our state can ensure businesses that these legal matters—cases that involve things like anti-trust issues, creation and dissolution of business entities and trade secrets—will be handled efficiently by judges well-versed in this area of law. It is critical, however, that a business court be limited to these sophisticated commercial issues and should never have jurisdiction in cases that would include consumers, employees or small businesses.

A positive change for West Virginia consumers would be new guidelines for handling the binding arbitration agreements that are in the contracts for your credit cards, cell phones and even your mortgage agreements. Binding arbitration is often inserted in consumer contracts as a mandatory method for resolving all disputes. It is an unfair process when it is imposed on consumers, employees, and small businesses, who are in a weaker economic position, by bigger wealthier businesses. It has several characteristics which make it harder for an individual to prevail in disputes against the business, including steep case filing fees and hourly rates for each arbitrator from \$100 to \$450 per hour. Deposits of \$25,000 are a common requirement to bring a case. Arbitration panels are inherently biased against consumers, as big businesses will use the same panel exclusively for hundreds of arbitrations, but the consumer will only use arbitration once in a lifetime. The Fairness in Arbitration Act will establish guidelines that will level the playing field and help ensure that consumers are not at a disadvantage when forced into arbitration.

## The Great Debate of 2011-2012: Tax Cuts for Millionaires or Jobs for America?

*For Immediate release – December, 17<sup>th</sup>, 2010*

Charleston, WV – Congress' vote late last night sets the stage for a two-year debate over the most important priorities America faces: tax cuts for millionaires or action steps to help lower- and middle-income families regain their footing, WV Citizen Action said today.

“On the one hand, middle- and low-income families won policies that will continue the federal unemployment insurance program through 2011, extend tax credits and create jobs,” said Gary Zuckett, Executive Director. “On the other hand, Republicans and the millionaires supporting them won another two years of massive tax cuts that will further widen the income disparity gap in the U.S.”

Zuckett added: “Everyone got a little something out of this bill. It’s just that the millionaires got a lot more than the rest of us.”

WV-CAG has been aggressively pushing for maintaining the federal unemployment insurance program and opposing additional, massive tax cuts for the wealthiest 2 percent of Americans (and 0.8% of West Virginians)

“Going forward, this will be one of the major issues of our federal work during the next two years,” Zuckett said. “The American people ultimately will have to decide which is more important: tax cuts for the rich or jobs for Americans & help for the 14 million workers who are now jobless.”



## Efficiency Coalition Follows Success at PSC

by Mike Harman

Energy Efficient West Virginia (EEWV) formed its roots at the WV Public Service Commission (PSC) in March, 2009 as Appalachian Power Company was calling for a 43% increase in rates. WV-CAG responded to my appeal that energy efficiency and demand-side management incentives could be introduced in the rate case, based on feedback from Billy Jack Gregg, a former PSC consumer advocate. According to the Appalachian Regional Commission, the amount of energy that could be saved by WV utilities was in the neighborhood of 20 to 30 percent of total energy sales. These figures are based on experience in a number of states with comprehensive programs and incentives to help residents as well as business and industrial customers save energy and save money. Very capable legal representation was secured from Tom Rodd, of the Calwell Law Practice, and CAG filed a series of interventions over the next 15 months involving the two electric power giants. In each case, the PSC sided with us and ordered the companies to produce programs to help their customers achieve a modest level of energy savings. This is a historic first for our state – the first time electric utilities have had to put resources into encouraging their customers to save energy, not use more of it!

These start-up programs will be helpful, but much more could be done with a stronger public policy and greater public support. This is the mission of EEWV-- to promote energy efficiency in every way, through policy analysis, public education, grassroots organizing, and networking with businesses, academics, and public officials. In West Virginia the climate is ripe for moving this particular agenda forward. EEWV is now meeting regularly and on the road to a more efficient energy future. Stay tuned!

## Do You Really Need a Paper Copy?

This note is to all of you who have gotten this newsletter delivered by the post office. (The rest of you can skip this) We've been proud of our past ability (for ten years!) to get a "Capital Eye" newsletter into the mail each Friday and into your box by at least Monday of the next week so you can let lawmakers know your opinion on issues of concern. However, our partner in this process, the US Post Office, has continued to make this more and more difficult and costly.

With more of us plugged into the internet and e-mail, we'd like our paper readers to let us know if they still want a paper copy. We want everyone who cares to get our newsletter and we realize that, especially in WV, access to the internet and e-mail is still a problem for many. But, unless we hear from you by January 10<sup>th</sup> that you want a postal delivery, we'll be discontinuing you from the Capital Eye snail-mail list. Write, call, fax (or e-mail) us with your request to continue getting our paper version. – [bev@wvcag.org](mailto:bev@wvcag.org), 304-346-5891 – phone, or 346-8981 fax.

If you want to switch to an electronic version of our legislative update we'll need your electronic address – send an email to [bev@wvcag.org](mailto:bev@wvcag.org) and ask to be put on the update list. This free service will provide you with our weekly newsletter plus up-to-the-minute alerts on state and national issues you care about. (not to mention saving trees and the planet)

Don't miss a single exciting issue! Send us your preference today!

## WV Focus on Implementing Health Reform

by Lisa Diehl

While other states are spending millions to stop the new health care law from taking affect, advocates & Administrators here in West Virginia are busy working to figure out how we can best implement in the Patient Protection and Affordable Care Act (PPACA). An estimated 184,000 West Virginians could gain health care coverage as a result.

Recently, the Office of Insurance Commissioner(OIC) has announced a series of public meetings on the development of West Virginia Health Care Exchanges. These exchanges will allow individuals and small businesses to 'shop' for the plans that best suit their needs. Individuals and businesses will receive significant tax credits under the new law.

All meetings will be held from 6-8pm. During the public meetings, OIC officials will outline options for the exchanges and take public comments on how the exchanges should be operated. The remaining meetings are scheduled for:

### Thursday, January 6, 2011

Shepherdstown - Shepherd University, Storer Ballroom

### Monday, January 10, 2011

Charleston - Capitol Complex, Building 7, Capitol Room

For more information on how exchanges can operate for the benefit of consumers visit [www.wvahc.org](http://www.wvahc.org). Hear a story on WV Public Radio about the upcoming meetings and how you can submit written comments at <http://www.wvpubcast.org/newsarticle.aspx?id=17875>.

Capital Eye is published by WV-Citizen Action, a nonprofit membership organization founded in 1974 and dedicated to increasing citizen participation in economic and political decision-making. Our members work for progressive changes in federal, state, and local policies by educating people about key public interest issues ranging from environmental protection and consumer rights to good government. Learn more about us at [www.wvcag.org](http://www.wvcag.org).

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## Glen Beck Doesn't Want You To Read This!

by Gary Zuckett, [garyz@wvcag.org](mailto:garyz@wvcag.org)

Even with all the hoopla over the Obama tax-cut deal, those left who still pay taxes may be looking for a good place to donate some of their hard-earned money instead of giving it all to those faceless bureaucrats in DC to squander. (How do you like my Glen Beck impersonation?)

Seriously, we have the perfect educational institution for your liberal year-end tax-exempt contributions – WV Citizen Action Education Fund! WV-CAEF is our “sister” 501-c3 group that does a lot of our educational heavy lifting for a more progressive state and nation. The synergy between our two groups strengthens our message and helps educate policymakers to counter the right-wing propaganda from Beck, et al who have a hundred ways to make their crazy ideas look sort of normal to lawmakers.



Afghanistan is now the longest war in US history. Mike Harman, Rev Mel Hoover and Ken Hechler at the peace vigil in July



We Need Your Support  
We can't do it without you!

**Please renew your membership or send a donation.**

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Address: \_\_\_\_\_

E-mail: \_\_\_\_\_ Phone: \_\_\_\_\_

Here's my donation of: \_\_\_\$25 \_\_\_\$50 \_\_\_\$100 Other \$\_\_\_\_  
Clip and mail with your check to West Virginia Citizen Action Group, 1500 Dixie St., Charleston, WV 25311 - **THANKS!**

**Donate quickly & securely at [www.wvcag.org](http://www.wvcag.org)!**



Crowd at Progressive Picnic in the Park – Vote for Health Care!