



Capital Eye

Volume 11, No. 10 ~ December 22, 2011

2011: Year of the Protester

by Gary Zuckett, garyz@wvcag.org

It's been a busy and challenging year for WV Citizen Action. As *Time Magazine* just acknowledged, it was truly the year of the protester. Wisconsin was dubbed the "Cairo of America" and the Occupiers finally got fed up with all the graft and greed on Wall Street and reawakened our nation's activist roots.

At the legislature in March, we organized two Wisconsin support rallies attended by hundreds and a press conference with legislative leadership to stand in solidarity with Wisconsin's public employees. Just last week it was announced Wisconsin workers have finally collected enough signatures to hold a recall election for their Tea Party Governor!

Who would have predicted that a group of young protesters targeting Wall Street would inspire citizens across the whole country to join in local occupations, including the one in Charleston that Citizen Action has been aligned with? Keep tracking Charleston and the other Occupy sites as they transition into a long-term movement. Don't just watch - stop by with a donation of firewood or groceries. Just last Sunday, a group of retirees from the aluminum plant in Ravenswood whose pensions and healthcare had been stripped away, began occupying their plant site!

Marcellus Shale drilling and fracking has created another group of protestors - surface owners organized by our WV Surface Owners Rights Organization www.wvsoro.org. Both the regular and special session on Marcellus did not produce a decent set of regulations to rein in this threat to our clean water and property rights, so we'll be back at the legislature in January to get the job done!

2012 is a big election year and now, more than ever, we need to be vigilant and pro-active to counter all the "independent" (i.e. corporate) spending aimed to swing elections toward corporate issues and candidates. For the first time ever in WV, next year, candidates for state-wide office – the WV Supreme Court – will have the option to run without taking any special interest money by signing up for the public financing pilot project that WV-CAG helped implement. See inside for info on the Jan. 20th Occupy the Courts rally downtown, calling for an amendment undoing corporate personhood.

In another first for WV: utility customers can now save money on their electric bills by taking advantage of free Home Energy Audit and other Energy Efficiency programs offered by the utilities. These are all the direct result of Citizen Action's pro-Energy Efficiency interventions on behalf of ratepayers at the WV Public Service Commission. See our Energy Efficient WV coalition group at www.eewv.org.

This summer and fall, WV-CAG worked with WV for Affordable Health Care and Senator Rockefeller's office on state implementation of the Affordable Care Act and to once again push back on Wall Street's attempts to "privatize" and cut Social Security. We held "bridge events" with our labor allies and Congressman Rahall to promote the Jobs Act to fix our ailing economy by putting folks back to work fixing our crumbling roads and bridges. As director, I was asked to represent USAction.org, our national coalition of all state Citizen Action groups, on a "Jobs for America" working group at the White House this fall. I've never before had the opportunity to shake hands with a US President!

I could go on for several more pages just to outline all the good work we've been up to since this time last year but in the interests of time and paper, I'll wrap it up by saying that we live in critical times and the need for more "citizen actions" is greater than ever. Your support now will empower us to keep up the fight and stay in it to win it!

Please take a minute to renew your membership. If possible, please consider also giving an end-of-the year tax-deductible donation. With your help, we can keep fighting for you and the rest of the 99%!

Occupation of Charleston Continues

by Maggie Fry, maggiemfry@gmail.com

As the Occupation of Charleston (OCWV) heads into winter, the big top is muddy, a few tents are damp, workgroups are butting heads, and regular training sessions are underway.

Adapting models used by Huntington West Virginia's Wall Street Solidarity encampment, OCWV has been hard at work creating a structure for state-wide occupy dialogue ever since its occupiers met on the first evening of their October 15th stand on the levy at Haddad Riverfront Park.

Like most Occupy Together.org encampments, OCWV began with an online meetup and call for city wide General Assemblies. In Charleston, the Rifleman Park's meetup was organized through Occupy Together and advertised on Facebook.

(continued on page 2)

Occupation of Charleston (*continued from page 1*)

Citizen Action Group established contact with initial organizers and offered material and outreach support. However, like most organizations with established relationships to Occupy Wall Street, CAG wanted to give Occupy the support necessary to become autonomous. "I know it's going to be messy," said CAG Executive Director Gary Zuckett, "but we want to see what they will come up with."

The meetup Assemblies materialized into a march and a day of citywide action, drawing an estimated 200 to 300 hundred people, some traveling two or three hours to march and picket. Without tents, tarps or blankets in tow, about twenty of these marchers collected the signs and sat at the levy.

This first week of encampment hosted 60 rolling campers, thirty of whom who would later maintain a presence in Davis Plaza until weather, a lack of resources and misinformation from the city forced what some called a "retreat." The campers then moved to the AFL-CIO yard, as Kenny Perdue, President of the WV AFL-CIO adopted national president Trumka's nationwide commitment to support Occupy to the fullest capacity.

Despite the initial controversy, most agree that OCWV has come a long way since Davis Plaza. "The overall attitude of individuals who have partaken in Occupy events has increased in awareness greatly and our outreach is underway and steadily picking up momentum," says Trevor Payne, Logistics Organizer at Unity Center.

These changes are evident in the appearance of the grounds at Unity Center, as well as in the structure of the group's conversations. "Our General Assemblies are more progressive and we get stuff done," says Loreila Braebender, who works in Charleston and occupied all three OCWV encampments. Now into its second month on the AFL-CIO yard, the group is not without its problems, but finds itself with labor, media, social justice and political partnerships that will assure the material and training support necessary for developing and sustaining a statewide strategic occupation.

OCWV's action and outreach have been local and nationwide. Occupiers see the day-to-day struggles involved in camping out in Charleston as an opportunity to create dialogue between OCWV and national Occupy Entities regarding issues that affect average West Virginians. "I've seen so many times where people pull awesome situations out of the crappiest times. We were given very little, and we made the best out of that situation," says Nate Jacobs who has been occupying since the concrete days at the levy.

During its occupation, OCWV has played host to a variety of national and local Occupy supporters. Theresa Casto, who has coordinated donations for the group since the days at Haddad Park, considers these folks, "...team members who support our cause in the only way they can." Occupy Charleston is working to generate fluid lines of communication that allow our satellite members more direct participation in the Occupy movement.

In the meantime, OCWV is building awareness on the muddy grounds of Unity Center, and the changes are visible in the structure of the camp. Logistics coordinators have worked to establish open times for the public to participate in the evolution of Occupy Charleston. "We've added a meeting to address onsite grounds issues so that we can free up the General Assembly to address city, state and global outreach programs," says Payne.

If you want to find out what we're doing or learn how you can support our efforts, you are invited to attend our daily, 7PM "General Assembly." You can also find out what we're talking about by subscribing to our email list: occupycharlestonwv@gmail.com, following our twitter feed, or keeping in touch with us through Facebook at:

<http://www.facebook.com/#!/OccupyCharlestonWV>.

Corporations are People? NOT!

by Hedda Haning, hedda.l.haning@gmail.com

WV-CAG's board has officially recognized that corporations are not natural persons like you and me. We support a Constitutional Amendment to clarify, in the face of a hugely erroneous decision by our Supreme Court, that corporations are not natural persons, and should not have any of the rights guaranteed to natural persons.

WV-CAG has always been devoted to supporting and protecting citizens against corporate abuse. Just like Occupy, we are part of the 99%. We want the United States government to stop being run by corporately funded politicians. We want our President, Congress, governor and state legislatures to represent the people's needs and to have priorities other than passing laws resulting in even more profits pouring into corporate accounts.

It's time for real environmental protection, quality education, health care for all and many other progressive societal programs - none of which are profitable in a corporate sense. It is time to decide that profit is not the only value—not for the 99%.

(continued on page 3)

Corporations Are People? (continued from page 2)

With Boulder, Colorado leading the pack, the Los Angeles' city council recently made LA the first major city to endorse the *Corporations are not People* amendment unanimously. Hooray for LA!

Go to <http://movetoamend.org/amendment>, read the amendment and sign a petition supporting it. And please BRING UP THE ISSUE to EVERYONE YOU KNOW. Bring it up to your city council, to your chapter of League of Women Voters, to your environmental friends, to your teachers, to your union. Let's be the movement that works. Go grassroots!

We also hope you can join us for an upcoming event to memorialize and resist the U.S. Supreme Court decision in Citizens United. Move to Amend, Public Citizen and other groups are organizing to **Occupy the Courts**. Here in West Virginia a group is planning a demonstration on **Friday, January 20th** in front of the **Byrd Federal Courthouse on Virginia Street in Charleston**. Time details will follow, but we want you to know about it. Please put it on your calendar, make sign(s), and commit to come. Let me know by email hedda.l.haning@gmail.com if you can attend. We need a crowd, so pass this information along to everyone you know. If you belong to other groups that could conceivably be supportive, invite them. It will be impossible to have too many.

Remember the courts are the enforcers (via bought judges) of the laws and regulations that support our corporate oppressors. **Stand with us on January 20th!**

"Take Back the Capitol"

by Terry Reasoner, WV-CAG volunteer

WV-CAG members, along with SEIU local 1199 and Occupy Charleston, rode the bus to DC and took their grievances to Congress, bearing a message of economic justice to Capitol Hill. The rally - "Take Back the Capitol" - was a three-day protest event sponsored by a coalition of progressive organizations, including our national affiliate, USAAction.org. The group's message: pass President Obama's Jobs Bill, extend the federal payroll tax break for working Americans, and extend the federal unemployment benefits that are slated to expire December 31.

Undaunted by a steady drizzle of rain, hundreds of protesters from across the country emerged from their "tent city" on the National Mall and trekked to the Capitol, where they made good on their promise to "swarm the halls" and track down members of Congress to demand commitments on their issues. As a retired teacher, I felt that I too, must have a voice in this rally, so I rode the bus to DC. Like many of the 99% of middle

and lower class Americans (???), I have paid taxes without contention and have planned for my retirement. However, the 1% is playing fast and loose with health care, mortgages, social security, Medicare/Medicaid and American jobs.

The protest activities continued Wednesday to K Street where diverse groups protested the influence of corporate lobbyists and "occupied" the street for most of the day. On Thursday, a national prayer vigil was held on Capitol Hill for the multitude of unemployed/underemployed citizens. That same day, here in Charleston, WV-CAG WV United, AFL-CIO and other unions held a rally outside the East End unemployment office to call for an extension of unemployment insurance for folks whose coverage is set to expire at the end of this month.

Overall, the passionate voices and kinship of fellow Americans sharing their cause was a theme resonating throughout the three-day event. *"Aude aliquid dignum"* (Dare something worthy).

Public Financing Pilot Project Faces Challenges *by Julie Archer, julie@wvcag.org*

You may recall that one of the disappointments of the 2011 legislative session was the State Senate's failure to sign off a bill to provide additional funding for the Supreme Court Public Campaign Financing Pilot Project, a program the legislature overwhelmingly supported the year before. However, what has probably been more damaging to the program at this point is the fall out from a U.S. Supreme Court decision in June and the reluctance of the then "acting" governor to call the legislature into special session to make needed changes to the program despite the Secretary of State's urging.

In its ruling in *Arizona Free Enterprise v. Bennett*, the Supreme Court struck down a mechanism in Arizona's public financing program that triggered the release of additional funds to participating candidates when they were outspent by non-participating opponents or independent expenditures. West Virginia's Supreme Court Pilot Project contains similar provisions, which in the wake of the above ruling, have been declared "violative of the United States Constitution" by the State Attorney General.

Unfortunately, what may have otherwise been a simple task of fixing the pilot project, was complicated by a number of factors including but not limited to the legislative redistricting process and the need to regulate Marcellus Shale gas drilling.

We were briefly encouraged that the needed changes to the public financing program might happen during the
(continued on page 4)

Public Financing (*continued from page 3*)

special session on redistricting, in response to a request from Secretary of State Natalie Tennant. However, Senate President Acting as Governor Tomblin did not share her sense of urgency.

Despite these challenges, we plan to work with our legislative allies and the Secretary of State's office to secure additional funding for the pilot project, and to adopt a "fix" for the trigger fund provision. This would allow candidates' committees to continue to raise small contributions of \$100 or less, and have those contributions matched 3 to 1, or simply provide qualified candidates with a larger initial grant to help ensure they can run a viable campaign. We will also be asking for the program to be extended to the 2016 election cycle.

In addition to the challenges facing the pilot, in July, a U.S. District Court judge struck down key provisions of West Virginia's electioneering communication disclosure law. The law came in response to millions of dollars spent on negative political advertising during the state Supreme Court race in 2004. It regulates 527 committees and other groups engaging in electioneering that masquerades as "issue advocacy" and requires disclosure of financial contributors with the Secretary of State.

Judge Thomas Johnston upheld provisions of the law that regulate ads that contain such "magic words" as "re-elect" or "vote against," or that use words or slogans that "can have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidates." However, he struck down the state's efforts to regulate ads that include the "functional equivalent" of such magic words saying the language was too broad. The judge also ruled unconstitutional the state's attempt to apply disclosure to non-broadcast media, such as mass mailings and newspaper ads.

The good news is that the Secretary of State is appealing Judge Johnston's decision. The Brennan Center for Justice is preparing a "friend of the court" (amicus) brief in support of the Secretary's appeal. WV-CAG and other Citizens for Clean Elections member organizations are signing on the Center's brief as fellow amici.

Efficiency Coalition Wins at PSC

by Mike Harman, mph1946@gmail.com

Energy Efficient West Virginia (EEWV) continues to rack up points in promoting energy efficiency wherever opportunities appear. WV-CAG's latest Public Service Commission (PSC) intervention, involving Mon Power/Potomac Edison (both subsidiaries of the multi-state utility FirstEnergy) electric utility cases, allowed

EEWV to present detailed economic and financial arguments supporting energy efficiency and demanding management alternatives over "business as usual" construction of new power plants.

The last week of November included two separate FirstEnergy cases that could dramatically affect the future of electric power generation and distribution in our state. Several EEWV team members met with FirstEnergy representatives and PSC staff in order to hammer out a settlement agreement, as often happens in PSC proceedings. Ninety-five percent of the case (#11-1274) was the annual ENEC (Expanded Net Energy Cost) rate case, in which new rates are set based mainly on historical and projected fuel costs. But EEWV also introduced a proposal that FirstEnergy be required to produce an "Integrated Resource Plan" (IRP) that shows how the company will meet electric power demand in the most cost-effective manner. When this is done, in most cases energy efficiency and demand management scenarios easily take priority because it is always cheaper and quicker to meet demand by reducing wasted energy on the customer side of the equation.

In this case, EEWV was able to introduce the concept of IRP and have it considered at length by all parties to the case. We can claim a small victory since the company will produce a "Resource Plan" when they next file an ENEC case in September 2012. There will be a review process and public comments will be taken after the plan is submitted.

The second EEWV case heard by the PSC on December 1st was solely regarding the FirstEnergy plan to begin its energy efficient services and incentives. EEWV found FirstEnergy's plan to be painfully inadequate. WV-CAG's testimony was presented by our expert witnesses Cathy Kunkel and Dan Sawmiller. They gave detailed economic and comparative data taken from other states' experiences, including what FirstEnergy has proposed or implemented in Ohio and Pennsylvania. Additional testimony was included from John Manchester, Mayor of Lewisburg, and Allen Cook, Director of Senior Services in Upshur County. The hearing, which commenced at 9:30AM, did not wrap up until nearly 6PM. Most of that time was taken up with extensive questions for FirstEnergy's key witnesses by the PSC Consumer Advocate and WV-CAG's attorney Mary Anne Maul.

WV-CAG staffer Robin Wilson and I made brief opening statements during the public comment period at the beginning of the hearing. I referenced the many letters in the case file that were submitted by customers who favor an improved, comprehensive plan for energy efficiency. More info at www.eewv.org.

WV Moving to Implement the Affordable Care Act

by Lisa Diehl, lisadiehl@zoominternet.net

West Virginia is moving ahead on multiple fronts to implement the Affordable Care Act (ACA). West Virginians for Affordable Health Care (WVAHC) are leading the efforts and currently have three regional coordinators working statewide. WV CAG, AFL-CIO, AARP, WV United, and other coalition partners continue to support, participate, and advocate for the ACA in a variety of ways. Here is a snapshot of what's been happening and how the ACA is already helping thousands of West Virginians:

- Over the summer and fall, more than 250 individuals in seven cities in WV were trained on the provisions in the ACA and, in turn, are educating people in their communities. http://www.wvahc.org/aca_training.htm
- WVAHC is currently training staff and community partners at county Family Resource Networks (FRN).
- The WV Office of Insurance Commissioner received funding to create the WV Health Exchange and has applied for additional (Level 2) funding.
- Proposed regulations for enrollment and eligibility for Medicaid, CHIP and the Health Insurance Exchange have been released and will allow more individuals to participate.
- WV has received multiple grants to help implement the ACA. Here are just a few: nine school-based health clinics in WV have received \$2.8 million to expand their services to children; \$18.7 million went to community health centers; and 21 WV employers received \$5.3 million for assistance in preserving health benefits for retirees under age 65.
- Almost 7,000 young adults in WV are now insured. The ACA allows them to stay covered on their parents' policies until age 26.
- Closing the 'doughnut hole' in Medicare has already saved \$13 million for 25,000 WV seniors.

For more information visit: www.wvahc.org, www.healthreformwv.org and www.healthcare.gov.

Legislature Passes Marcellus Shale Bill

by Julie Archer, julie@wvcag.org

As you have probably heard, the Legislature wrapped up a special session last week with the passage of Governor Tomblin's Marcellus Shale bill. We are beyond disappointed that the Governor and Legislature weren't willing to do more for surface owners to help them have their rights recognized and respected, and that

the bill only takes baby steps to address environmental and other impacts of Marcellus Shale drilling. We had several problems with the bill recommended by the Legislature's Select Committee on Marcellus Shale, but thought we could support it with a few changes. Unfortunately, the Governor's supposed "tweaks" made scores of major changes that the industry wanted, changes weakening the bill and taking us backward - particularly in regard to surface owners' rights.

Since the bill's passage, statements from the Governor's office and legislative leaders have proclaimed the bill a "monumental piece of legislation" and that its passage is an "exciting achievement." The sad reality is that it falls short of providing both citizens and the environment with needed and deserved protections. Most published summaries of the bill are oversimplified and ignore the fact that the DEP can issue waivers for many of the requirements. Furthermore, the few minor improvements offered by the bill apply only to horizontal wells (and not all of those). The bill does not apply to vertical Marcellus wells that disturb 3 to 5 acres and use 1 million gallons of water. The bill's notice and other provisions do not apply to conventional wells, which also cause major problems for surface owners and the environment.

We appreciate that the Senate made a few changes, such as restoring the public notice and comment provisions that were in the Select Committee bill. The Senate also changed the provision that made the surface estate subservient (rather than equal) to the mineral estate. However, these changes reversed only some of the most obvious and embarrassing revisions made at the request of the oil and gas industry. Scores of other pro-industry provisions remain in the bill.

Perhaps the most significant changes to the Governor's bill were two amendments adopted by the House Judiciary Committee. Both were offered by Delegate Woody Ireland (R-Ritchie). The bill now says that, for horizontal wells, drill cuttings and other drilling waste can only be buried on site if a surface owner consents. The Governor's bill gave the Department of Environmental Protection the discretion to allow on-site burial. Another change requires the DEP to study the noise, light, dust and volatile organic chemicals generated by the drilling of horizontal wells, as they relate to the distance gas wells can be from peoples' homes. Based on these findings, the DEP must set limits on these factors and propose methods to lessen their impacts.

However, we are disappointed that other changes proposed by members of the Committee failed because leadership opposed them, merely because the industry

(continued on page 6)

Marcellus Shale Bill (*continued from page 5*)

and therefore, the Governor and the Senate, would not agree. For example, an amendment offered by Delegates John Frazier (D-Mercer) and Bill Hamilton (R-Upshur) to require the 625 feet from homes be measured from the edge of the well pad, rather than the center, was not adopted, due to the leadership's objections. An amendment proposed by Delegates Mike Manypenny (D-Taylor) and Linda Longstreth (D-Marion), to increase the distance gas wells must be from water wells and springs, also failed to pass.

You can read more about the changes made by the Senate and the House, and numerous news articles on the special session (some with audio and video) at www.wvsoro.org. We'll be posting more details on what's in and not in the bill soon.

Visiting a Marcellus Mess

by Joe Dickerson, joe@wvsoro.org

On Friday, December 9th, I accompanied Julie Archer on a trip to Wetzel County to view the impact fracking has had on the area. Rising early and powered by caffeine, we arrived at small shop known as the Wetzel County Store. There we mingled with fellow WV-SORO members, activists, county representatives, and a Public Radio reporter. Rose and Ed, Wetzel County Action Group members, were our guides through a horror show of industrial carelessness.

What followed was a surreal tour through a landscape that had been fractured by industry. For six hours, we were escorted to numerous farms turned fracking sites. Drilling and fracking are omnipresent in Wetzel County. Every plot of land has a well site or a story that explains the lack of one. As we drove through a low-lying flood plain, Rose showed us a plot of land with a small cinder block building on the property. This building was built to turn the farmland into a residential area and to take advantage of legislation preventing wells from being placed within a certain distance of homes. Not a minute later, we were shown a proposed fracking site, moved because its location in a flood plain violated EPA requirements. The site was relocated to an adjacent location *in the same flood plain*. Under-funded and understaffed state inspectors are poorly equipped to play cat and mouse with drillers.

What I heard in the voice of everyone I met that day in Wetzel County was desperation and exhaustion. Each individual was tired. Here were

people used to hard work, self-sufficient souls whose community had been united in labor and spirit until men in suits with large trucks came to town. Worn down from anger, fear, hope, and the retelling of their tales, the cost of fracking is etched into their faces. When sad tales are told over and over again, one wonders if healing can happen. When can this land and people begin to heal?

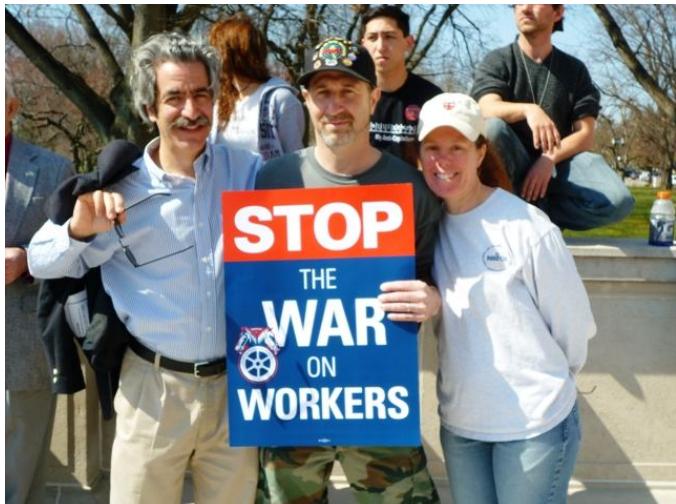
Despite their exhaustion, Wetzel County residents were determined, and freely offered advice. Rose mentioned numerous times that base line water and air tests should be performed before fracking begins in an area. Without these tests, companies can dismiss any environmental effects as pre-existing conditions. Both Rose and Ed encouraged people to follow their "CB and Camera" tactics, documenting every action that companies take in their community. Ed's sixteen-hour days stalking Chesapeake's movements are a hard example to emulate, but this tactic does pay off. Rose also expressed a need for better education regarding company tactics and surface owners' rights. Rose and Ed expressed concern over a lack of state regulation and that residents have been forgotten.

Anger and exhaustion were traveling companions on our way back to Charleston. For my part, I wondered how long folks could hold up under such pressure. What would happen if a large or deadly enough accident occurred? What will happen to Wetzel County when this boom is over? Driving home in the dark, we said little. All I know is that despite the environmental damage, the safety concerns, abuses, and destruction, hope is present in Wetzel County. If they can keep fighting, so can we! More at www.wvsoro.org.

Joe Who?

Joe Dickerson, WV-SORO Project Assistant, joined CAG in October. Joe is a recent graduate of Marshall University with an M.A. in History. He interned for Marshall University's Morrow Library, developing Collection Management Plans for the Ken Hechler and Glass Plate Negative Collections. A former South Florida native and teacher, Joe moved to West Virginia three years ago to attend grad school and enjoy the natural beauty of the Mountain State.

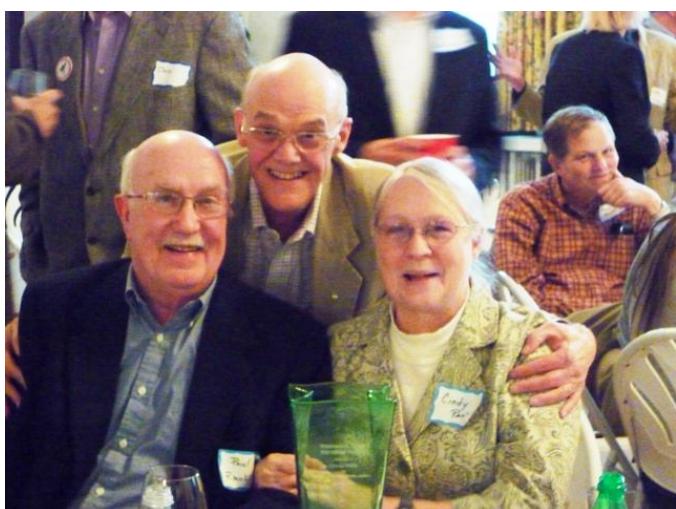
2011: A Year in Pictures



Vince George, Mike Forman and Linda Frame at Wisconsin Solidarity Rally, State Capitol, March 2011.



Paul Nyden interviews Bonnie Hall & Rose Baker of Wetzel Co. at July rally for a moratorium on Marcellus Shale drilling.



Paul & Cindy Rank with Don Garvin (center) at our 2011 Spring Extravaganza. Cindy was the recipient of our Thomas A. Knight Excalibur Award.



Julie Archer and Ken Hechler at an October tribute dinner for Ken.



WV AFL-CIO President Kenny Perdue & Fat Cat at Dec. rally supporting the extension of benefits for the unemployed.

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.