



Capital Eye

Summer Edition ~ August 9, 2012

Citizen Action on the Move

by Gary Zuckett, Executive Director

Wow, it's been several months since we've published a newsletter. Time sure flies when working to save the planet, or even a piece of it the size of West Virginia. I'll try to get you all caught up on some of our Citizen Actions!

One of the things that CAG does best is spawn affiliate groups. Our newest, West Virginians for Democracy started this year and is focused on undoing the "Citizens United" Supreme Decision that opened the floodgates of unrestricted corporate money to buy elections. Calling corporations "fictional persons" and giving them the same rights as real flesh & blood citizens is wrong and damages our democracy in more ways than elections. A constitutional amendment is needed to undo this court's folly. See more in Barbara's article on Move to Amend.

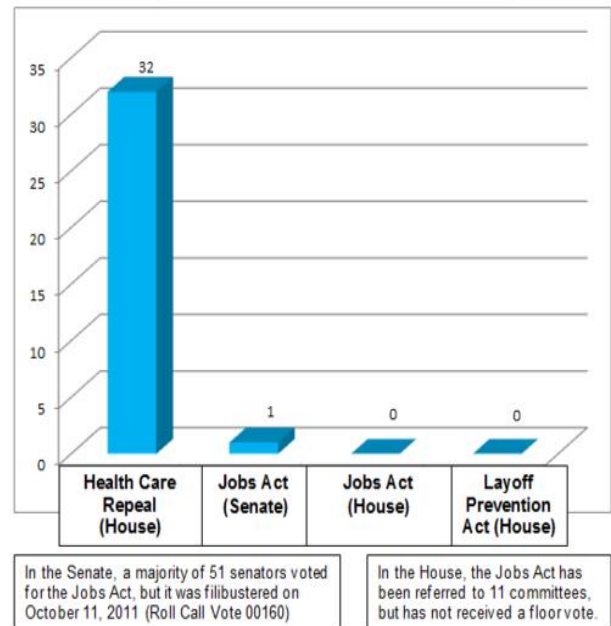
Our Energy Efficiency group EEV.org is going gangbusters to promote the best ways to save money, energy, mountains, and the planet by being more efficient. West Virginians use more energy per capita than just about anyone else in the country. Our homes are older and draftier, our appliances and lighting need upgrades and our Public Service Commission needs to make the utilities cough up more efficiency programs for consumers and also make them use conservation and efficiency to forestall the need to build new generation. See Cathy & Stacy's articles and a big welcome to Stacy Gloss as our new EEV coordinator!

WV Surface Owners Rights Organization, now in its fifth year, continues the fight for justice in the oil

& gas fields. We started this group before Marcellus Shale was hot and when no one outside the industry had even heard of Fracking. See Julies article on the national Frack Attack rally and lobby effort in DC she helped organize. The WV legislature needs to realize that they haven't "fixed" citizen's problems with gas drilling by passing the governor's industry-vetted bill last year.

Federal issues take up a lot of our time and energy. We work closely with our USAction.org national coalition of 23 state Citizen Action groups whose office is on K Street in DC. Along with USAction, we're also working with Americans for Fair Taxation, Transportation 4 America and Social Security Works to move along federal legislation such as ending the Bush tax cuts for the top 2%, putting folks back to work rebuilding our state & nation's roads and bridges, making collage loans more affordable, preserving our social programs such as Social Security, Medicare & Medicaid, and defending and implementing the Affordable Care Act – affectionately called ObamaCare.

Votes in 112th Congress



I could go on and on, but the point I'm trying to make here is that you, as a supporter/member of

WV Citizen Action, are helping to fight back against the forces of greed and prejudice that want to take us back to the robber baron era. Instead, let's all work together for progressive change by renewing your membership and, if you can, kicking in a few extra bucks to help us keep up the fight! This can be easily done on our www.wvcag.org web page or using the handy renewal form in this newsletter. While you're at our web page, don't forget to sign up for our action alerts (if not getting them) and "like" our Facebook page so we can keep you up to date on ways you can weigh in on current events.

Campaign Finance Woes

by Julie Archer, Julie@wvcag.org

For those who haven't been following the trials and tribulations of the West Virginia Supreme Court public campaign financing pilot project, here's the latest.

How we got here...

In recent years, spending has skyrocketed in West Virginia Supreme Court races. Third parties have spent record amounts trying to influence the outcome of our elections. In 2008, the candidates spent a combined \$3.3 million, making it the most expensive election to date. In 2009, the US Supreme Court ruled that it was unconstitutional for State Supreme Court Justice Brent Benjamin to fail to recuse himself from a case against Massey Energy in the wake of an independent expenditure campaign on his behalf funded by Massey CEO Don Blankenship. In its ruling in *Caperton v. Massey*, SCOTUS said that due process was violated because of the lack of an impartial decision maker.

In response to these disturbing trends and the black eye the Court received because of the *Caperton* case, Governor Joe Manchin convened the West Virginia Independent Commission on Judicial Reform, with honorary chair Justice Sandra Day O'Connor, to find a better way to run judicial elections in the state. The Commission, first and foremost, recommended the introduction of a public financing system for Supreme Court elections. The

Legislature agreed with the Commission's recommendation and implemented a pilot public financing program for the 2012 Supreme Court election.

How it is supposed to work...

After collecting a set number of qualifying contributions from West Virginia voters to demonstrate a base of public support, participants in the program forgo raising private donations and receive public money to run their campaigns. Candidates receive an initial monetary grant and are eligible for supplemental funds equal to the amount by which they are outspent by their non-participating opponents and outside groups up to a set limit.

Where we are today...

Unfortunately, only a single candidate, Republican Allen Loughry, chose to participate in the public financing program this year. In July, the State Election Commission (SEC) held an emergency meeting to consider whether to make supplemental funds available to Loughry based on a disclosure filed by his opponent Justice Robin Davis. The report filed by Davis indicated her re-election campaign had spent \$494,471 between May 9 and June 30, exceeding the first threshold of \$420,000, and technically making Loughry eligible for a supplemental payment of \$144,471.

However, in a 2-2 deadlock, the SEC failed to authorize the funding, with Commissioner Gary Collis arguing it that it would be improper to disperse the funds in light of the 2011 US Supreme Court ruling in *Arizona Free Enterprise v. Bennett*, which struck down a mechanism in Arizona's public financing program for legislative and executive candidates that triggered the release of additional funds to participating candidates when they were outspent by non-participating opponents or independent expenditures.

The next day, former state Democratic Party chair Mike Callaghan filed a petition in U.S. District Court asking the court to strike down the rescue funding provisions in the West Virginia law on the same grounds.

Loughry filed a motion to intervene in that challenge and has petitioned the state Supreme Court to compel the SEC to release the supplemental funds. Ideally, the Legislature would have revisited West Virginia's law in the wake of the Arizona Free Enterprise ruling in order to avoid a legal challenge. However, the law establishing the program remains unchanged and the SEC has a legal obligation to fulfill its duties under the law, which include releasing supplemental funds to participating candidates once the conditions for releasing those funds are met. Oddly enough, after Loughry sued the SEC for withholding the supplemental funds from his campaign, the Commission held another emergency meeting and voted to defend the law it is being sued for not following.

Why we still need public financing...

Despite the current legal quandary, the need to protect the integrity and credibility of our courts and strengthen public confidence in the judiciary remains. By providing Supreme Court candidates with no-strings-attached funds and shielding them from the biasing influence that can come with private contributions, public financing protects the impartiality of the Court and the justices on it.

It's a shame that other candidates did not attempt to qualify for public financing, because once elected a publicly financed candidate won't owe any favors to special-interest benefactors. Loughry's stand in defense of the law deserves praise and we hope his efforts to defend public financing for judges result in a decisive decision to uphold the law.

It is essential that judges be impartial, with no possibility of influence by financial supporters. Public financing in judicial elections is vital to protecting the impartiality, and the appearance of impartiality, of the West Virginia Supreme Court of Appeals. With public financing, judges no longer must rely on support from lawyers and special interest contributors who frequently have cases before the court. When justices take money from these parties, it is quite reasonable to question whether Lady Justice may have one eye peeking out from under the blindfold. Public financing keeps

the blindfold squarely in place, reassuring everyone that justice is truly being done.

Contribution limits challenged...

Sadly, the public campaign financing pilot project is not the law being challenged. In an unrelated case, an unaffiliated political action committee (PAC) calling itself Stay the Course West Virginia has petitioned a federal judge to overturn the state's \$1,000 limit on what an individual or PAC can contribute to such independent expenditure PACs each election. In its suit, Stay the Course also challenged a state policy barring corporations from giving directly to such PACs.

According to media reports, the group wants to influence the outcome of the November elections and says it wants to support one or more incumbents it credits for recent changes in the state's economy, and target those who oppose them.

Unfortunately, campaign finance experts we have consulted indicate it will be an uphill battle to defend the contributions limits in this situation. Stay the Course has set itself up as an independent-expenditure-only group, and is essentially arguing that they should be the state-level equivalent of a federal Super PAC. Super PACs may raise unlimited sums of money from corporations, unions, associations and individuals, and then spend unlimited sums to overtly advocate for or against political candidates. Alas, a number of courts have recently ruled that groups like Stay the Course should be free of contribution limits.

Last week, US District Court Judge Thomas Johnson held a preliminary hearing to consider the group's request for an injunction pending the outcome of their lawsuit. However, Johnson held off issuing an immediate ruling on whether to block the cap temporarily.

As for the corporate contribution ban, the Secretary of State's office has conceded that some of the guidance it offered on the topic is outdated and fails to reflect changes in the law made in response to SCOTUS's ruling in Citizens United. Johnston asked both sides to draft a proposed order reflecting that understanding.

We'll be closely following these cases as they work their way through the courts and continue to keep you posted. To stay informed see the latest news coverage at www.wvoter-owned.org

Energy Efficient West Virginia is Working Hard to Save Schools and Consumers Money in WV

by Cathy Kunkle, cathykunkle@gmail.com

Energy Efficient West Virginia is Working Hard to Save Schools and Consumers Money in WV
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Energy Efficient West Virginia has had a busy few months. We hired a new project manager, Stacy Gloss, to coordinate more of our work with community energy efficiency initiatives around the state. We are excited to be building a network and serving as a resource for local groups and municipalities that are working on energy efficiency projects.

We recently finished an analysis of the potential for energy efficiency in West Virginia's schools. Analyzing energy use data available from 37 counties, we found that the state could be saving about \$20 million per year if all of the counties in the state achieved the same level of energy efficiency as Wyoming County, one of the top-performing counties. That is \$20 million that could be better spent on teachers, text books, and education. We are beginning to work with the Department of Education and WV Sustainable Schools Initiative on implementing some of our recommendations. If you are interested in finding out more information and/or helping your school district save money through efficiency, please contact us.

We are gearing up for a busy fall at the Public Service Commission. Appalachian Power has proposed to purchase two existing coal plants from Ohio Power (see recent State Journal article). The company claims that this is the least-cost option for

its customers to meet future energy supply needs, even though they haven't analyzed much in the way of other alternatives. We are skeptical that this plan is in the best interest of Appalachian's customers given that increasing coal prices and coal price volatility are largely responsible for our recent rate hikes. We will be fighting this proposal and continuing to push the company to invest more in energy efficiency. Also this fall, Mon Power and Potomac Edison will be presenting the results of the first year of their meager energy efficiency program to the Public Service Commission; we will be advocating for them to offer more programs to their customers, as they do in the other states where they operate.

Contact us at energyefficientwestvirginia@gmail.com for more information about any of our projects.

News from West Virginia Surface Owners' Rights Organization

Legislature Disappoints on Drilling Issues
After a disappointing version of Marcellus legislation, often referred to as "The Governor's Bill" passed in a 2011 special session, West Virginia legislators were hesitant to address any bills or resolutions related to Marcellus drilling in the state during the 2012 session. WV-SORO pushed hard to have legislators address issues related to rejoining estates divided by separate ownership of minerals and surfaces. Two WV-SORO bills HB 2851 and HB 4393 would have reversed the trend of separate ownership in one small way – by giving surface owners a chance to own any interests in the minerals under their land if any of those interests are sold for unpaid taxes. The bill was referred to the House Committee on Energy Industry and Labor (EIL), and was then placed in a subcommittee where it did not reemerge for the full session.

Of the twenty-three Marcellus bills introduced to the West Virginia Legislature in 2012, only three study resolutions passed the session:

- how to best use the additional severance tax collections attributed to shale gas production and whether such funds should be used to promote "a

shared prosperity” through the creation of “a Future Generations’ Fund for the benefit of the general public welfare;”

- the creation of a shale research center at West Virginia University to foster scientific research and encourage partnerships between and among the university, government, and industry; and
- the relationship between increases in seismic events and hydrocarbon production and exploration.

Surface Owners Look to Courts for Justice

After four years of inaction by the legislature, WV-SORO began focusing on litigation as a means to further our goals of helping surface owners have their rights recognized and respected, and giving them more say when oil and gas development occurs on their land. WV-SORO is currently involved in four such cases.

The WV Supreme Court case, DEP and EQT vs. Hamblet, addresses the permitting process for drilling on a surface owner’s land. When a surface owner receives notification of permits for drilling, they usually have about 15 days to file comments with the permitting agency to contest the permit or challenge portions of it. Most often, these comments do not result in denial of the permit. DEP and EQT vs. Hamblet argues, in part that surface owners have the right to a hearing before the state agency issuing the permit for drilling on their land. Also at issue in the case is the surface owner’s right to appeal permitting decisions and processes through the circuit court system. More information on DEP and EQT vs. Hamblet can be found at www.wvsoro.org/current_events/hamblet/.

WV-SORO is working on two cases, Cain vs. XTO and Moss vs. Antero involving mineral owners who use their deeds to drill onto tracts of neighboring land for which they do not own the mineral rights. After failing to negotiate drilling sites with surface owners, in both cases, drillers dug multiple horizontal wells surface owners’ land, and in one case, damaged neighboring pieces of land in the process. The law implies that, in deeds like the ones separating the Cain’s and Moss’s surface from the minerals, the mineral owner has the right to do whatever is reasonably necessary to the surface to

get to and develop the minerals beneath the surface tract. The plaintiffs argue however that using the surface of one tract to drill into neighboring mineral tracts constitutes trespassing. WV-SORO is hoping for a ruling that will protect all surface owners by affirming their consent is need before huge Marcellus wells sites can be place on their land.

In a fourth case, EQT vs. Doddridge County Commission/Huffs et al, EQT wants to drill horizontal wells in a meadow owned by the Huffs. The meadow is in a floodplain, and the Huffs, who have already experienced a great deal of flooding on their land, argue that the drill sites will increase the probability of floods on their surface. This case is further complicated by a county ordinance stating that in order for a county to have floodplain insurance, there must be clear rules restricting construction on floodplains. This means that if EQT wins the case, the Huffs and other Doddridge County residents will be subject to a potential increase in flooding, but could also be unable to insure their property against flood damages to their property. You can find details about the cases in this summer’s WV-SORO Newsletter.

Host Farm Program Supports Study of Drilling Impacts

Surface owners will now have greater opportunities to partners with environmental science faculty and students, health professionals, environmental advocacy groups, environmental law and public policy professionals, journalists. Landowners directly effected by Marcellus Shale drilling can enroll in the West Virginia Farm Host Program, which is working with Duke University and other environmental research and advocacy institutions to study the impacts of this development and address the growing discrepancy between individuals who own the land and companies that want to drill for its minerals that lie underneath.

In West Virginia, little environmental research is being conducted on the impact of Marcellus shale drilling and how it affects the people of the state, their farms, their health, safety, and their environment. Oil and gas corporations and their lobbying groups operating in West Virginia have funded research projects through grants and other

allocations, which explore the economic benefits of Marcellus shale drilling for the state and its citizens. But it is difficult to locate comparable of research projects underway that give equal attention to the environmental and other impacts of Marcellus shale drilling in West Virginia.

Water quality programs are currently underway in New Milton. To learn more about these and other Host Farm Program partnerships visit www.wvhostfarms.org.

To keep up to date on West Virginia's surface owner issues, be sure to visit www.wvsoro.org

West Virginians Participate in Stop the Frack Attack Events in Washington, DC

By Julie Archer, julie@wvcag.org

Community members and organizations across the country gathered in Washington, DC on July 28 for a rally at the Capitol to demand greater government responsibility and corporate accountability for the harm that existing oil and gas development causes, starting with the removal of special exemptions and subsidies for the oil and gas industry.

In addition to the Saturday rally and march, the week's events included a lobby day on Capitol Hill, as well as trainings, strategy sessions and a town hall style meeting.



On Thursday, 140 citizens lobbied members Congress. More than 250 people attended the National Gathering on Friday to talk strategy and share their stories. Saturday's rally at the US Capitol and march to America's Natural Gas Alliance and American Petroleum Institute was 5,000 strong. Although folks from West Virginia turned out for all of the events, we had the biggest showing at the rally and march. The WV Chapter of the Sierra Club chartered a bus to the event. Nearly 50 people rode the bus, including members of the WV Surface Owners' Rights Organization, and other folks connected with the WV delegation in DC



(Left to Right) Julie Archer with Fiona Druge of Morgantown, Letty Butcher of Independence, Rick Humphreys and his daughter Kelly of Mannington. Fiona is a summer intern with Oil Change International. Letty and Rick are members of WV-SORO. Kelly was a youth speaker and WV representative at the rally.

Representatives Diana DeGette (D-Colorado), Maurice Hinchey (D-New York) and Jared Polis (D-Colorado) addressed activists that attended Thursday's lobby day. Friday's town hall speakers included author and environmentalist Bill McKibben, GASLAND director Josh Fox and citizens from across the country whose communities are affected by fracking. McKibben and Fox also spoke at Saturday's rally along with Kari Matsko (OH), Mike Tidwell (MD), Laura Amos (CO), John Fenton (WY), Dayne Praztky (Australia), Jameson Lisak (PA), Kelly Humphreys (WV), Calvin Tillman (TX), Lori New Breast (Blackfoot

Confederacy) and Doug Shields (PA). Dr. Catherine Thomasson of Physicians for Social Responsibility and Allison Chin of the Sierra Club also addressed the crowd. Jen Krill and Gwen Lachelt with Earthworks served as MCs for the event.

Julie Archer and WV-SORO member Rick Humphreys represented WV on the national advisory committee.

The rally and march were covered by WBOY-TV (<http://www.wboy.com/story/19138290/west-virginians-participate-in-stop-the-frack-attack-in-dc>) in Clarksburg and we'll be posting videos of the speakers at www.youtube.com/user/wvsoro. More information at: stopthefrackattack.org.

MamaCare Picnic Celebrates New Health Coverage for Woman & Children

by Maggie Fry, maggie@wvcag.org

Fourteen organizations, including WV-CAG, gathered together Wednesday, August 1st at Charleston's East End "Celebration Station" for a "MamaCare" picnic to commemorate what Kira Miskimmin, called "The greatest advance in women's health in a generation." Miskimmin, director of public affairs for West Virginia Planned Parenthood, is referring to portions of the Affordable Care Act designed to prevent insurance companies from discriminating against women.

The provisions will require insurance companies to offer a variety of services to women with no co-pay or deductible, including: an annual well woman visit, birth control (including oral contraception and IUDs,) HIV screening and counseling, sexually transmitted infection counseling, screening for gestational diabetes, breastfeeding consultation and supplies, including breast pumps, and screening and counseling for domestic violence.

One of the most celebrated portions of the new legislation is ending the trend of charging women up to 50% more for insurance coverage based solely

on their gender. National Health and Human Services Director, Kathleen Sebelius and former House Speaker Nancy Pelosi released a statement saying that this discrimination costs women \$1 billion a year. While the increased services will begin this year, the elimination of gender based premiums will not go into effect until 2014.

Margaret Chapman Pomponio, Executive Director of WV Free says the MamaCare picnic drew together 150 people in Charleston to celebrate these initial phases of better healthcare for women. In an interview with Charleston Metro News, Pomponio reported that these provisions are expected to save West Virginia's families a great deal on out of pocket expenses in addition to saving women's lives.



Margaret Chapman Pomponio talks with reporter about historic changes to women's healthcare at the MamaCare Picnic.

WVCAG and West Virginians for Democracy Host Move To Amend in Charleston

by Barbara Frierson, West Virginians for Democracy (WVFD)

On Friday, July 6, several local organizations welcomed David Cobb and George Friday from the national Move to Amend barnstorming tour to a rousing public event at the Unitarian Universalist Congregation in Charleston. A hundred or so people

turned out to enjoy cool drinks and refreshments while Cobb and Friday heated up the night with their call to action against corporate rule in America.

The U S Supreme Court's ruling in "Citizens United v. FEC" opened the floodgates to unlimited corporate spending on elections. Move to Amend is the coalition of hundreds of organizations and tens of thousands of individuals across the country that has developed in response to the ruling. Cobb, an attorney and organizer, supports amending the U S Constitution to restore power to the people over corporations and is one of the leaders responsible for helping Move to Amend Members develop resolutions to overturn Citizens United throughout the country. He spoke clearly about the historic role and legal status of corporations in this country, and the need to abolish the concepts of "corporate personhood" and "money = free speech" -- neither of which meets the original intent of the Constitution.

Cobb was joined by George Friday, a social justice advocate and founder of Independent Progressive Public Policy Network, which challenges corporate influence in American democracy. Both explained that this policy trend, which favors corporate interests over individual voices must be corrected at the grassroots level, and we need to prepare ourselves to work consistently and intelligently to reach the goal of true democracy)

For more details, check out the videos of the July 6 forum produced by Jeremy Brannon:
http://www.youtube.com/watch?v=4ySZqLA_hsM
<http://www.youtube.com/watch?v=D3wl-bn5kEk>

WVCAG and WVFD are working locally to support this nationwide campaign.

Welcome Stacy Gloss, Introducing Our Newest Staff Addition!

West Virginia Citizen Action Group recently hired new staff member Stacy Gloss to join the Energy Efficient West Virginia team. Stacy graduated from

Appalachian State University with a concentration in Sustainable Development in 2009. She first cut her teeth on energy efficiency and renewable energy in Boone, NC by coordinating two Western North Carolina Wind Workshops and coordinated an energy fair in a rural county. After graduating, she was hired as an AmeriCorps VISTA at the Pine Mountain Settlement School in Harlan County, KY organizing a program to promote energy efficiency in the local community. Stacy most recently joins us from Knoxville, TN where she worked for the Knoxville - Knox County Community Action Committee department of Housing & Energy Services. While there she hosted two annual Community Energy Efficiency & Weatherization Fairs and partnered with the City of Knoxville on a grant for Energy Star appliance upgrades and solar project installations for city residents. Admittedly she geeks out on energy efficiency and generally likes to talk about energy bills, CFLS and insulation. Stacy looks forward to developing Energy Efficient West Virginia's coalition and supporting statewide energy efficiency initiatives. In her spare time she is helping her partner finish a small cabin in Southern West Virginia.

EEWV Goes on the Road

by Staci Gloss, stacy.eewv@gmail.com

Early in August, I travelled with Cathy Kunkel to Philippi, WV in Barbour County to provide a workshop on rising electric rates, how energy efficiency programs can help utility customers save energy and money, and how citizens can push for stronger energy efficiency programs. Hosted by the Women's Democratic Club of Philippi, we met with about twelve community members in a private room of Smokey Ray's restaurant. We don't always know the background of everyone we meet with before we arrive, but as the group was just the right size for conversation we began with go-around introductions. "What's your name and what do you associate with energy efficiency?"

I was prepared to talk about energy efficiency in the home; but during the introductions I learned that this group already knew and applied many of the

energy saving tips I would provide! Answers ranged any where from energy efficient lighting to insulation, energy saving appliances and improved HVAC systems. Inevitably renewable energy was part of the conversation with a participant who highlighted the solar array at her home. And, with an AES wind energy farm so close by on Laurel Mountain, wind power was named as well.

What I like so much about energy efficiency are the options available to us. Whether the choice for energy efficiency is to be energy conscious or financially conscious or both, the options are almost limitless. (Just go to the light bulb section of the hardware store these days to find many choices for CFLs, LEDs, and more efficient incandescent bulbs too).

Energy Efficient West Virginia is working towards stronger standards and policies in the state toward energy efficiency. And naturally we envision many more communities with sustainable energy plans and options for free energy assessments and incentives for energy efficient upgrades. But, some of the best part of our work is talking with state residents about their ideas.

To invite us to a community event or organization meeting to talk about our work or energy efficiency options, you can contact me at stacy.eewv@gmail.com or visit us on the web at www.eewv.org.

The Best Stimulus – Raise the Minimum Wage

by Gary Zuckett, garyz@wvcag.org

One of the reasons our economy is still in the tank is that low-wage workers don't make enough to live on. If we raise the minimum wage to something more reasonable this new paycheck money will be immediately spent into local economies. The real value of the minimum wage today buys less than it did in 1956. In addition, workers who rely on tips haven't seen an increase in their wages since 1991. The minimum pay for tipped workers, excluding tips, has been stuck at a paltry \$2.13 per hour for 21

years. And, the federal minimum wage doesn't automatically rise with inflation. Recently Rep. George Miller introduced the Fair Minimum Wage Act of 2012. More than 100 US House members are listed as co-sponsors!

“The Fair Minimum Wage Act of 2012 (H.R. 6211) will increase the minimum wage in three 85-cent steps, over three years, from \$7.25 to \$9.80 per hour. The rate will then be indexed to inflation each year thereafter. In addition, the legislation will increase the required cash wage for tipped workers in annual 85 cent increases, from today's \$2.13 per hour until the tip credit reaches 70 % of the regular minimum wage.

However, none of WV's three US House members were listed. Contact your Representative and ask them to co-sponsor and support an increase in the minimum wage.



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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



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