

P E R C-WV

West Virginia People's Election Reform Coalition

Analysis of Coal Industry Contributions to State Political Campaigns 1996-2004

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Executive Summary/Report Highlights

- ◆ Since 1996, coal interests have contributed more than \$4 million to candidates for Governor, Supreme Court and the Legislature. Over the past five elections cycles, the industry has contributed over \$2 million to gubernatorial campaigns and inaugurations, \$1.5 million to legislative races and \$529,332 to Supreme Court candidates.
- ◆ The 2004 election was a record year for coal contributions to West Virginia political campaigns. The industry contributed nearly \$1.7 million, with \$847,751 going to gubernatorial candidates and Governor Manchin's inaugural celebration, \$354,321 to candidates for the Supreme Court and \$474,423 to legislative candidates. The total to Supreme Court candidates does not include the \$2.4 million Massey Energy CEO Don Blankenship donated to the 527 group And For the Sake of the Kids, or the \$517,708 in independent expenditures he made in support of Brent Benjamin.

Summary of Campaign Contributions from Coal in 2004

	Campaign Contributions
Governor's Race:	
Joe Manchin III	\$571,214
Dan Moore	\$57,087
Monty Warner	\$31,850
Other	\$13,100
Total	\$673,251
Governor's Inaugural:	\$174,500
Supreme Court Race:	
Brent Benjamin	\$248,200
Jim Rowe	\$97,621
Warren McGraw	\$8,500
Total	\$354,321
Legislative Races:	
State Senate (Winners)	\$152,833
State Senate (Losers)	\$71,016
State Senate Total	\$223,849
House of Delegates (Winners)	\$138,179
House of Delegates (Losers)	\$112,395
House of Delegates Total	\$250,574
Legislative Total	\$474,423
2004 Election Cycle Total	\$1,676,495

- ◆ West Virginians for Coal contributed more often than any other coal industry donor. The West Virginia Coal Association's political action committee (PAC) made 143 contributions to 81 candidates, with contributions totaling \$46,450. Arch Coal PAC was the second most frequent coal contributor, making 76 contributions to 52 candidates. Contributions from Arch totaled \$15,300. Other frequent industry contributors include William T. Bright, owner and president of Bright Enterprises; Progress Energy; Massey Energy CEO, Don Blankenship; Bruce, Larry and Robert Addington, former owners of Horizon Natural Resources; Consol Energy (WV Consol PAC); and James "Buck" Harless.
- ◆ The most frequent contributors were not necessarily those that contributed the most money to candidates. PERC-WV observed several examples of coal company executives and employees bundling¹ contributions to various candidates. Contributions from Massey Energy executives and members of the company's board of directors, combined with contributions from its PAC, made it the top industry contributor to political campaigns in 2004. Overall, contributions from individuals and PACs affiliated with the company totaled \$115,325. Supreme Court Justice Brent Benjamin received \$43,900 of that total.
- ◆ Contributions from executives of RAG Coal Holdings and two of its subsidiaries made it the seconded biggest coal contributor to campaigns in 2004. Individuals associated with RAG, Riverton Coal and Kingston Resources contributed a total of \$92,877 to candidates for Governor, Supreme Court and the Legislature. More than half of those contributions, \$53,927, went to Governor Joe Manchin. Most of the contributions to Manchin were made at two separate fundraisers held at the Guyan Country Club in Huntington.
- ◆ PERC-WV saw a similar pattern of giving by RAG executives to former Governor Bob Wise's re-election campaign. PERC found coal companies and trucking companies were contributing thousands to Wise's campaign while state lawmakers were debating a bill to increase weight limits for coal trucks. A fundraiser at the Charleston Marriott on March 18, 2002 raised \$73,500 for Wise, including \$20,500 from employees of Riverton Coal and its parent company. At the time, this was the largest single day giving PERC-WV had seen from a group of individuals affiliated with the same corporation.
- ◆ Since PERC-WV began tracking contributions to West Virginia political campaigns, no candidate has received more money from the coal industry than former Governor and coal executive Cecil Underwood. The coal industry was the biggest source of donations to his 1996 campaign and inaugural celebration (more than \$500,000). Coal also provided 14% (\$378,000) of all the money that he raised during his failed re-election bid in 2000. Between 1996 and 2000 Underwood received \$895,946 from coal interests.

¹ "Bundling" refers to a group of company or corporate executives or employees that all contribute to the same candidate (or group of candidates), often on the same day. This significantly increases a company's giving power beyond what it could give through its political action committee (PAC), and it is legal because the contributions come from individuals not the company or corporation itself.

- ◆ Although, no candidate has received more coal contributions than Cecil Underwood, no candidate has raised more from the industry in a single election than Governor Joe Manchin. In 2004, Manchin received \$571,214 from coal interests, 12% of all contributions to his campaign. In addition to raising a record amount from the coal industry, Manchin's overall fundraising and expenditures have been surpassed only by former Governor Jay Rockefeller. Rockefeller spent \$11.7 million during his 1980 re-election campaign.² Manchin raised nearly \$4.8 million and reported spending \$3.5 million.
- ◆ Manchin also raised a record amount for his inaugural celebration, surpassing the Cecil Underwood's record, despite a \$5,000 limit on inaugural contributions passed by the legislature in 1998. Manchin raised \$1.3 million, including \$174,500 from various coal and mining equipment companies³, as well as individuals affiliated with the industry.
- ◆ In the legislature, House Speaker Bob Kiss is the top recipient of coal contributions from 1996 to 2004. During that time Kiss has received a total of \$76,425 from coal interests. Although in past election cycles Kiss received more coal contributions than any other Delegate, the top recipient in 2002 and 2004 was Delegate Steve Kominar. Kominar has received \$64,125 from coal interests since 1996. In 2002, Kominar was lead sponsor of an industry-backed proposal to increase the maximum weight limit for coal trucks from 80,000 to 126,000 pounds. Kominar is employed by Sartin Trucking, one of the state's major coal truck companies. He served as Vice-Chair of the House Judiciary Committee in 2003 and 2004.
- ◆ Other top recipients of coal industry contributions include Senate President Earl Ray Tomblin. Tomblin received \$62,425 from coal interests between 1996 and 2004. He was the top recipient of coal contributions in 1996, but during the 2000 and 2004 elections, Senate Minority Leader Vic Sprouse received more money from the industry than Tomblin. Sprouse has received \$60,854 from coal since he first ran for the Senate in 1996.
- ◆ Of the record \$474,423 the coal industry donated to legislative candidates during the 2004 election, 56% went to incumbents. This is consistent with trends observed in previous election cycles. However, PERC discovered that in 2004 coal broke from its tradition of giving more money to Democrats than Republicans. Republican candidates for both the House and Senate received more coal contributions than their Democratic opponents.
- ◆ West Virginia is following a national trend when it comes to fundraising by Supreme Court candidates. According to a study by the Brennan Center for Justice at the NYU School of Law, fundraising by candidates for state supreme courts nationwide jumped

² J. Michael Withers, "Money Talks: A Campaign Financing Study of the 1996 WV State Elections," Common Cause/West Virginia, March 1997.

³ Corporations, which are not allowed to give to a candidate's election campaign, may give up to \$5,000 to inaugural committees.

61% (from \$21 million to \$45 million) between 1998 and 2000.⁴ The 2000 elections proved to be a turning point as special interests began to exert significant monetary influence in key Supreme Court races. In 2004, special interests spent more than \$2.8 million in direct contributions to West Virginia's Supreme Court candidates.

- ◆ Former Supreme Court Justice Warren McGraw and both his primary and general election opponents, Jim Rowe and Brent Benjamin, all broke previous fundraising records set by West Virginia Supreme Court candidates. McGraw raised \$1.2 million, Rowe raised \$834,937 and Benjamin raised \$794,081. Justice Robin Davis, who raised nearly \$700,000 for her 2000 election campaign, held the previous record.
- ◆ Both Rowe and Benjamin were heavily financed by the coal industry. Money from coal interests accounted for \$97,621, or 12% of all contributions to Rowe. Benjamin received \$248,200 from coal, which accounted for 31% of his total contributions. Before Benjamin, Justice Elliott "Spike" Maynard had raised more money from coal interests than any other Supreme Court candidate. Over 25% of the \$408,843 Maynard raised in 1996 could be attributed directly to the coal industry⁵.

⁴ Deborah Goldberg, "Public Funding of Judicial Elections: Financing Campaigns for Fair and Impartial Courts," Brennan Center for Justice, <www.brennancenter.org>.

⁵ J. Michael Withers, "Money Talks: A Campaign Financing Study of the 1996 WV State Elections."

Introduction

Historically, the coal industry has wielded significant political influence in West Virginia. One way the industry exerts and maintains its power is by contributing vast sums of money to both state and national political campaigns. These campaign contributions often translate into favorable legislation for the industry. At the state level, what coal interests can't obtain legislatively, they can sometimes achieve administratively by lobbying the Governor or the heads of state agencies, like the Department of Environmental Protection (DEP). Between 1996 and 2004, coal interests have contributed more than \$4 million to candidates for Governor, Supreme Court Justice and the Legislature.

The purpose of this report is to provide a quantitative analysis of campaign contributions from coal interests over the past five election cycles. In addition the report provides examples of favorable legislation and other perks the industry has received during that time.

Coal Industry Contributions to WV Political Campaigns 1996-2004

	1996 ⁶	1998	2000	2002	2004	Total Contributions Over Past 5 Election Cycles
Governor's Race⁷	\$518,304		\$641,682		\$847,751	\$2,007,737
Supreme Court Race	\$102,211 ⁸	\$25,850	\$46,950		\$354,321 ⁹	\$529,332
Legislative Races	\$195,350	\$295,937	\$213,398	\$332,252	\$474,423	\$1,511,360
Total	\$815,865	\$321,787	\$902,030	\$332,252	\$1,676,495	\$4,048,429

Since PERC began tracking contributions to West Virginia political campaigns, no candidate has received more money from the coal industry than former Governor and coal executive Cecil Underwood. The coal industry was the biggest source of donations to Underwood's 1996 campaign and inaugural celebration (more than \$500,000). Coal also provided 14% (\$378,000) of all of the money that he raised during his failed re-election bid in 2000.

⁶ Reflects contributions to winning candidates only.

⁷ Includes contributions to the Governor's inaugural celebration.

⁸ Estimate based on J. Michael Withers, "Money Talks: A Campaign Financing Study of the 1996 WV State Elections." According to the report, over 25% of the \$408,843 raised by Justice Elliott "Spike" Maynard can be directly attributed to the coal industry.

⁹ Does not include the \$2.4 million Massey Energy CEO Don Blankenship donated to And for the Sake of the Kids, or the \$517,708 in independent expenditures Blankenship made in support of Brent Benjamin.

Top Recipients of Coal Industry Contributions 1996-2004

	Campaign Contributions ¹⁰	Elections
Governor Cecil Underwood	\$895,946	1996-2000
Governor Joe Manchin III	\$817,683¹¹	2000-2004
Governor Bob Wise, Jr.	\$423,340	2000-2004
Justice Brent Benjamin	\$248,200	2004
Justice Elliott "Spike" Maynard	\$102,211¹²	1996
House Speaker Bob Kiss	\$76,425	1996-2004
Delegate Steve Kominar	\$64,125	1996-2004
Senate President Earl Ray Tomblin	\$62,425	1996-2004
Senate Minority Leader Vic Sprouse	\$60,854	1996-2004

Cecil Underwood's Legacy

Over the last 25 years, the share of West Virginia coal produced by strip mines has doubled. Strip mines and mountaintop removal¹³ account for more than one-third of the coal mined in the state. From 1993 to 1998 alone, the average size of strip mines doubled to 450 acres, an area roughly the size of 360 football fields¹⁴. Although the size of strip mines began to increase significantly prior to Underwood's election, was a major proponent of a bill passed by the Legislature in 1998 to make valley fills larger, as well as cheaper and easier to approve.

¹⁰ Includes inaugural contributions for gubernatorial candidates.

¹¹ Includes \$71,969 in coal contributions Manchin received during his 2000 campaign for Secretary of State.

¹² Estimate based J. Michael Withers "Money Talks: A Campaign Financing Study of the 1996 WV State Elections."

¹³ Mountaintop removal is a high extraction form of strip mining where large machines called "draglines" and tons of explosives replace human workers. Coal companies blast the tops off mountains (between 500-800 feet) and dump the "overburden" (the former mountaintops) into the headwaters of nearby streams. A Federal study says that between 1992 and 2002, 380,000 acres of mountaintops were destroyed. This is over four times the land in West Virginia state parks. By 2005 the estimate is 500,000 acres, an area the size of 500,000 football fields.

¹⁴ Ken Ward, Jr., "Getting touch on valley fills; Federal regulators may reign in strip mines if state doesn't," *the Charleston Gazette*, March 31, 1998.

Underwood also appointed three consecutive former coal industry executives to oversee the Department of Environmental Protection (DEP). In November of 1998, then-DEP Director Michael Miano issued the largest permit in state history -- a 3,100-acre permit to Arch Coal Inc. to expend its Dal-Tex mountaintop removal mine near Blair in Logan County¹⁵.

In 1999, Underwood supported an effort by Bureau of Employment Programs Commissioner William Vieweg to dismiss lawsuits that sought to collect more than \$200 million in unpaid workers compensation premiums and interest from major coal companies (both Underwood and Vieweg are former executives of Island Creek Coal Co., the biggest single defendant in those lawsuits). The dismissal of the suits, as well as premium cuts and caps placed on premium increases for the state's most dangerous industries (coal and timber), are two of the major causes of the current \$3 billion Workers' Compensation liability.

Coal Industry Contributions to WV Governors 1996-2004

	Coal Contributions	Total Contributions	% of Total Contributions from Coal
Cecil Underwood (1996)	\$264,454	\$2,181,802	12%
Underwood Inaugural	\$253,850	\$960,400	26%
Cecil Underwood (2000)	\$377,642	\$2,636,782	14%
Bob Wise, Jr. (2000)	\$115,600	\$2,913,858	4%
Wise Inaugural	\$120,340	\$892,534	13%
Bob Wise, Jr. (2004)	\$187,400	\$1,248,490	15%
Joe Manchin III (2004)	\$571,214	\$4,798,665	12%
Manchin Inaugural	\$174,500	\$1,347,992	13%

In addition to Island Creek, A.T. Massey Coal Co. was also a defendant in the suits. Massey owed \$42.4 million dollars to the Workers' Compensation fund. During the 1996 election, Massey President Don Blankenship raised \$92,000 for Underwood at an August fundraiser. Other defendants in the lawsuit included Bluestone Coal Corp. and Hampden Coal Co. owned by James C. Justice II and James "Buck" Harless. At the time, both Justice and Harless were

¹⁵ Ken Ward, Jr., "Chronology [of significant events in the *Bragg vs. Robertson* mountaintop removal case]", *the Charleston Gazette*, December 3, 2000.

business partners with Underwood in Morgantown Industrial Park. The two companies owed \$13.2 million.¹⁶

Coal: Plenty of Money to Go Around

While not as directly connected to the coal industry as his predecessor, Bob Wise was mostly silent on the issue of mountaintop removal during his term as governor. Despite some stepped-up enforcement against coal companies who violated environmental laws and regulations, he did nothing substantial to regulate the practice of mountaintop removal. Although Underwood received more contributions from the coal industry in 2000, coal interests didn't waste any time trying to earn favor with Wise after he won the election. Coal companies and their executives contributed \$120,340, or 13% of all of the donations to Wise's inaugural celebration. Coal also proved to be the biggest contributor to his re-election campaign.

In 2002, Wise called a special session of the Legislature to consider his proposal to increase the maximum legal weight limit for coal trucks from 80,000 to 126,000 pounds, after a similar bill failed to gain approval during the regular session. He proposed the increase even though a WV Division of Highways study determined it would cost \$2.8 billion to upgrade coal haul roads to federal minimum standards in order to handle the increased weights.¹⁷ The House of Delegates narrowly defeated the bill during the special session, and Wise pushed his proposal again during the 2003 regular session.

Coal companies and trucking companies contributed thousands of dollars to Wise's re-election campaign while state lawmakers were debating a bill to increase weight limits. A fundraiser for Wise at the Charleston Marriott on March 18, 2002 raised \$73,500. Most of the contributions came from coal companies, coal haulers and land companies. Wise received \$20,500 from employees of Riverton Coal and its parent company, RAG Coal International. This was the largest single day giving PERC-WV had seen from any entity. Wise received a total of \$62,250 from coal in 2002, all in the month of March. Overall, he received \$187,400 from coal for his re-election.

A Coal-Fired Victory

Although Cecil Underwood received more coal money overall than any other candidate, Governor Joe Manchin broke the record for coal contributions received during a single election. Manchin raised \$571,214 from coal interests during the 2004 election and received another \$174,500 from various coal companies to pay for his inaugural celebration.

One of Manchin's first acts as governor was to call the Legislature into special session to revamp the West Virginia Governmental Ethics Act, address the unfunded liability debt of the Workers' Compensation Commission, and pass a government reorganization bill. The government reorganization bill restructured and reauthorized several state boards and authorities, including the Public Energy Authority (PEA). The authority's main purpose is to "foster, encourage and promote the mineral development industry," including coal, natural gas and other natural resources. Largely inactive and due to sunset out of existence in 2005, the

¹⁶ Paul J. Nyden, "Underwood backs Workers' Comp suits' dismissal," *the Charleston Gazette*, May 21, 1999.

¹⁷ West Virginia Division of Highways (WVDOT), "Coal Transport in West Virginia," January 21, 2002.

PEA was reauthorized with expanded powers with the Governor as chair. This was not surprising, since the only specific economic development measure Manchin mentioned in his State of the State address was to make it easier to build new coal burning power plants in West Virginia.

During the 2005 regular session, coal was one of many industries that pushed to transfer rulemaking authority for the state's water quality standards from the largely independent and science-oriented Environmental Quality Board (EQB) to the more politically influenced Division of Environmental Protection (DEP), a move opposed by the environmental community. After three consecutive years of lobbying the Legislature to strip the EQB of its authority, industry was finally successful and Governor Manchin signed the bill despite a campaign promise to leave the board's duties intact.

In 2005, in response to the ongoing controversy surrounding two coal silos and a coal waste impoundment at a Massey Energy facility near Marsh Fork Elementary School in Raleigh County, Manchin agreed to meet with coalfield residents after a series of protests at the facility and the state Capitol. Manchin promised to look at the operations near the school and the possibility of moving the school to another location. Since the meeting with coalfield residents, the DEP suspended and then revoked a permit for the second silo and ordered Massey to rip up its foundation and reclaim the area. DEP Secretary Stephanie Timmermeyer said that her agency has no plans to act on an existing silo at the facility. In addition, no action has been taken to address citizens' concerns about an impoundment 400 yards above the school, which holds millions of gallons of water and toxic coal waste.

Coal Industry Clout in the West Virginia Legislature

Over the past five election cycles coal interests have contributed over \$1.5 million to legislative candidates and it's not surprising that House Speaker Bob Kiss has been the top recipient. From 1996 to 2004, Kiss has received \$76,425 from coal interests. Although in past election cycles Kiss received more coal contributions than any other Delegate, the top recipient in 2002 and 2004 was Delegate Steve Kominar. Kominar has received \$64,125 from coal interests since 1996. In 2002, Kominar was lead sponsor of a bill to increase the legal weight limit for coal trucks from 80,000 to 120,000 pounds. Kominar is employed by Sartin Trucking, one of the state's major coal truck companies. He served as Vice-Chair of the House Judiciary Committee in 2003 and 2004.

Other top recipients of coal industry contributions include Senate President Earl Ray Tomblin, who received \$62,425 from coal interests between 1996 and 2004. He was the top recipient of coal contributions in 1996, but during the 2000 and 2004 elections, Senate Minority Leader Vic Sprouse received more money from the industry than Tomblin. Sprouse has received \$60,854 from coal since he first ran for the Senate in 1996.

It is often difficult to cite specific examples of *quid pro quos*, but there's little denying that contributions from coal interests fuel the passage of legislation that is favorable to the industry, while stopping legislation that the industry perceives as hurting its bottom line.

A major victory for coal in the West Virginia legislature came in 1998 with the passage of the mitigation bill which reduced the fees coal companies pay in exchange for filling in streams

from \$200,000 per acre to \$50,000 per acre. Other industry perks in the bill aimed at making permits for mountaintop removal and valley fills faster and easier to approve included automatic approval of permits if DEP failed to review the permit application within 30 days, and an increase in the number of acres a coal company can disturb without paying to reclaim the land. The increase in the size of projects that require mitigation from 250 to 480 acres in the final version resulted in an increase in mountaintop removal projects. Warnings from environmentalists and DEP officials that the bill might conflict with parts of the federal Clean Water Act were not enough to deter the legislature from approving the bill.

In addition to the mitigation bill, other coal friendly legislation that has passed in recent years include:

- ◆ 1999 – A resolution supporting “all methods of coal mining,” which was specifically directed at mountaintop removal.
- ◆ 1999 – A tax law that reduced coal property taxes, while dramatically increasing taxes on individual property.
- ◆ 2002 – Coal received a \$2.5 million break in the amount they were required to pay for water pollution permits.
- ◆ 2003 – An increase in the maximum legal weight limit for coal trucks from 80,000 to 126,000 pounds.
- ◆ 2004 – Transfer of water quality rulemaking authority from EQB to DEP.
- ◆ 2004 – Passage of a bill allowing waste material to be dumped into West Virginia streams.¹⁸

Bills the coal industry successfully stopped:

- ◆ 1998 – A bill that would have given people living near strip mines relief from blasting by holding mining companies more responsible for damage they cause.
- ◆ 1998 – Moratorium on permits for valley fills until the “long-term social, environmental and economic effects” could be determined.
- ◆ 2002 – A bill that would have increased enforcement of weight limits and cracked down on overweight coal trucks.

PERC-WV found that legislators who received contributions from coal were more likely to support a weight increase. While coal truck weight limits isn't the only issue where coal's campaign giving influences public policy, in 2002 and 2003 it was perhaps coal's highest legislative priority.

In July 2002, the House of Delegates emerged as the biggest challenge to passage of a weight limit increase when it voted down a proposal offered by Governor Bob Wise that would have increased the weight limits for coal trucks to 126,000 pounds. An analysis released by PERC immediately after that vote found that 39 of the 47 delegates who voted to increase weight limits received a total of \$100,243 in coal contributions during the 2000 election cycle. The

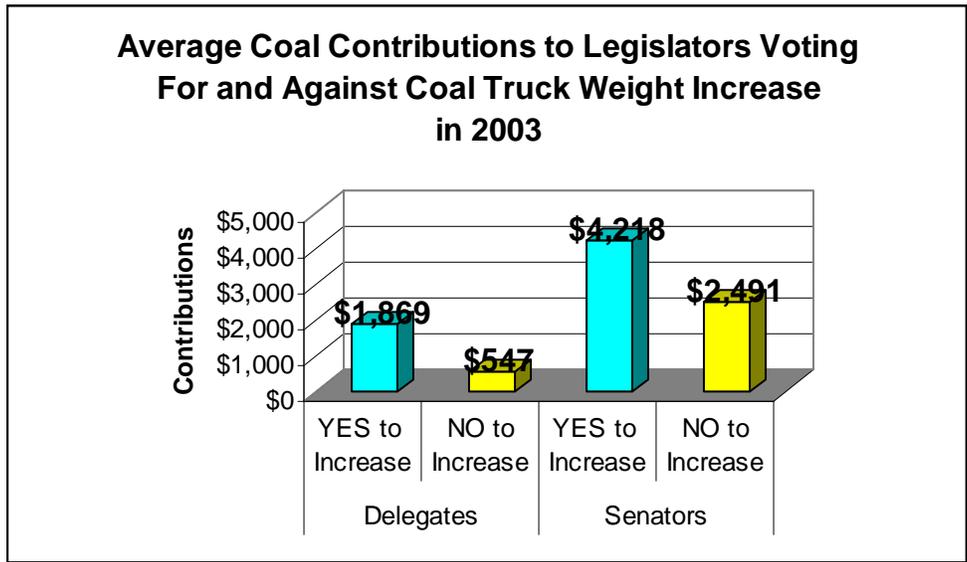
¹⁸ The bill passed both houses but died because the Senate failed to concur with a House amendment during the final hours of the session.

average contribution to these delegates was \$2,570. Delegates who voted against the weight increase received \$14,695, with an average contribution of \$612.¹⁹

In 2002, the coal industry gave a total of \$89,235 to returning House members who had voted for increasing coal truck weight limits in July. Many of these delegates received substantially more from coal than in 2000 and coal gave to several candidates that it had not contributed to in the past. Coal gave \$11,820 to returning delegates who voted against the proposal, and \$22,400 to newly elected delegates. More than one-third of the \$128,555 coal gave to delegates was concentrated in the House Judiciary Committee.

PERC found that coal increased its contributions to Judiciary Committee members by over 100%, from \$22,365 in 2000 to \$48,495 in 2002. Contributions to House Judiciary Chairman Jon Amores increased nearly ten fold. On March 3, 2004, his committee approved the industry-backed proposal to increase weight limits for coal trucks to 126,000 pounds, after rejecting it in favor of a bill to step up enforcement during the previous legislative session.

Four days after the Judiciary Committee vote, the full House passed the bill on a 56 to 43 vote. PERC did an analysis of campaign contributions based on the final vote in the House and again found that legislators who received contributions from coal were more likely to support a weight increase. Delegates who voted for the weight increase received a total of \$104,660 from coal in 2002. Delegates who opposed the weight increase received a total of \$23,545. In the Senate, PERC found that the 21 members of the Senate who voted for the weight increase measure received a total of \$88,581 from the coal industry in the last two election cycles. The 11 senators who opposed the legislation received \$27,400. The thirteen sponsors of the bill received \$73,831 in coal contributions.



¹⁹ Paul J. Nyden, "Delegates with coal cash more likely to back truck bill," *the Charleston Gazette-Mail*, July 28, 2002.

Approaches and Trends in Campaign Giving

While donors to political campaigns take different approaches to giving, the objective is usually the same -- to gain access to elected officials and influence public policy. This point is illustrated by the fact that most campaign contributions come from relatively few donors. In most elections less than one percent of all voting age West Virginians give to political campaigns. PERC-WV estimates that the nearly \$1.7 million the coal industry contributed to campaigns in 2004 came from approximately 800 donors. Although many donors made only one or two contributions during the election cycle, several contributors gave multiple contributions to several candidates.

West Virginians for Coal was the most frequent contributor in 2004. The political action committee (PAC) of the West Virginia Coal Association made 143 contributions to 81 candidates with contributions totaling \$46,450. Arch Coal PAC was the second most frequent coal contributor, making a total of 76 contributions to 52 candidates. Contributions from Arch totaled \$15,300.

Most Frequent Coal Industry Contributors to West Virginia Political Campaigns in 2004

Contributor	Total Contributions	# of Contributions	# of Candidates Contributed To
West Virginians for Coal	\$46,450	143	81
Arch Coal Inc. PAC	\$15,300	76	52
William T. Bright	\$23,700	63	41
Progress Energy	\$11,900	45	33
Don Blankenship	\$37,500	40	36
Addington Brothers	\$33,500	38	15
WV Consol PAC	\$20,600	38	35
James "Buck" Harless	\$18,950	32	26

The most frequent contributors were not necessarily those that contributed the most money to candidates. PERC-WV observed several examples of coal company executives and employees bundling contributions to various candidates. Contributions from Massey Energy executives and members of its board of directors combined with contributions from its PAC made it the top industry contributor to political campaigns in 2004. Overall, contributions from individuals and PACs affiliated with the company totaled \$115,325. Supreme Court Justice Brent Benjamin received \$43,900 of that total.²⁰

²⁰ See Contributor Profiles: Top Coal Industry Donors in 2004 on page 13.

Massey Energy donated \$5,000 to the Governor Joe Manchin's inaugural celebration, but other than a \$500 contribution from a Lyburn, West Virginia resident who was listed on financial disclosure reports as a "coal miner" for Massey and \$200 in contributions from Massey Energy lobbyist Greg Thomas, he received no other direct contributions from company employees or executives. However, he did receive tens of thousands of dollars in bundled contributions from several other coal and mining equipment companies.

Manchin received \$53,927 from employees and executives of RAG Coal Holdings, Inc. and its subsidiaries Riverton Coal and Kingston Resources, and \$42,932 from employees and executives of Permco, Inc., an Ohio based company that manufactures hydraulic gear pumps and motors for the mining industry. Manchin broke the previous record set by former Governor Bob Wise for the most contributions received in a single day from employees and executives of a corporation. Most of the RAG and all of the Permco contributions came during two fundraisers held for Manchin at the Guyan Country Club. At the first event, held October 24, 2003, Manchin raised \$17,500 from RAG and \$20,932 from Permco. That event netted nearly \$240,000. The second held September 9, 2004 raised over \$344,000 with \$22,500 coming from RAG and \$22,000 from Permco.

PERC-WV saw a similar pattern of giving by both companies to former Governor Bob Wise's re-elections campaign. A March 18, 2002 fundraiser at the Charleston Marriott raised \$73,500 for Wise, including \$20,500 from employees of Riverton Coal and its parent company. A separate fundraiser held on March 28, 2003 at the Guyan Country Club netted nearly \$277,000 with \$29,000 coming from Permco executives and their spouses.

Most of the frequent and top industry contributors to campaigns in 2004 are not newcomers to West Virginia's political scene. A look at past contributions shows a clear pattern of giving. While some contributors like RAG and Permco tend to focus their giving on gubernatorial or other statewide elections by bundling contributions from company executives, others give mainly to legislative candidates through their political action committees or PACs.

West Virginians for Coal has been one of the most consistent industry contributors to state political campaigns. Over the past three election cycles, the WV Coal Association PAC has given more than \$130,000 to candidates. Other top and frequently contributing PACs between 2000 and 2004 include A.T. Massey PAC, Arch Coal, Inc. PAC, Progress Energy and WV Consol PAC. Two of the most consistent individual contributors have been William T. Bright and James "Buck" Harless. In addition to being one of the coal industries top contributors Bright was among the top overall contributors to legislative candidates in both 2000 and 2004. Harless was a top contributor in 1998 and 2002.

Contributor Profiles: Top Coal Industry Donors in 2004²¹

Massey Energy Company²²	\$115,325	West Virginians for Coal	\$46,450
		(WV Coal Association PAC)	
Brent Benjamin	\$43,900	House of Delegates	
House of Delegates		Winners	\$23,850
Winners	\$12,425	<u>Losers</u>	<u>\$4,450</u>
<u>Losers</u>	<u>\$17,500</u>	Total	\$28,300
Total	\$29,925	State Senate	
State Senate		Winners	\$12,050
Winners	\$11,150	<u>Losers</u>	<u>\$4,100</u>
<u>Losers</u>	<u>\$7,550</u>	Total	\$16,150
Total	\$18,700		
		Brent Benjamin	\$1,000
Dan Moore	\$17,750	Jim Rowe	\$1,000
Jim Rowe	\$3,350		
Monty Warner	\$1,000	PERMCO	\$42,932
Joe Manchin	\$700	Joe Manchin III	\$42,932
RAG Coal Holdings, Inc.	\$92,877	AEI Resources, Inc.	\$33,500
		(Addington Brothers/Horizon)	
Joe Manchin III	\$53,927	State Senate	
House of Delegates		Winners	\$9,000
Winners	\$11,750	<u>Losers</u>	<u>\$7,000</u>
<u>Losers</u>	<u>\$1,750</u>	Total	\$16,000
Total	\$13,500	House of Delegates	
State Senate		Winners	\$1,000
Winners	\$8,000	<u>Losers</u>	<u>\$11,000</u>
<u>Losers</u>	<u>\$2,500</u>	Total	\$12,000
Total	\$10,500		
		Brent Benjamin	\$3,000
Jim Rowe	\$8,500	Joe Manchin III	\$2,500
Brent Benjamin	\$5,950		
Dan Moore	\$500	William T. Bright	\$23,700
Consol Energy, Inc	\$60,850	House of Delegates	
		Winners	\$13,950
Joe Manchin III	\$19,600	<u>Losers</u>	<u>\$500</u>
Brent Benjamin	\$13,850	Total	\$14,450
Jim Rowe	\$10,800	State Senate	
House of Delegates		Winners	\$7,750
Winners	\$7,550	<u>Losers</u>	<u>\$1,500</u>
<u>Losers</u>	<u>\$2,050</u>	Total	\$9,250
Total	\$9,600		
State Senate		Superior Highwall Miners	\$20,000
Winners	\$5,500	Joe Manchin III	\$19,000
<u>Losers</u>	<u>\$1,500</u>	Brent Benjamin	\$1,000
Total	\$7,000		

²¹ Profiles reflect total contributions from individuals and PACs affiliated with the listed companies.

²² Does not include the \$2.4 million Massey CEO Don Blankenship donated to And For the Sake of the Kids, or the \$517,708 in independent expenditures Blankenship made in support of Brent Benjamin.

While most industry donors contribute to candidates of both political parties, some high profile contributors tend to give primarily to Republican candidates. Of the top contributors for 2004, Larry, Robert and Bruce Addington former owners of AEI Resources, Inc., are a prime example. Of the 15 candidates the brothers contributed to during the 2004 election the only Democrat they gave to was Joe Manchin. Massey Energy CEO, Don Blankenship also gave primarily, although not exclusively, to Republicans. Democrats that Blankenship contributed to include Senate President Earl Ray Tomblin, Senator Shirley Love, Delegate Steve Kominar and Supreme Court candidate Jim Rowe.

In previous elections, coal interests have typically given more money to Democrats than Republicans, but 2004 saw a reversal of this trend, with Republican candidates for both the House and Senate receiving more coal contributions than their Democratic opponents.

One trend in giving that has remained consistent since PERC-WV began monitoring contributions to political campaigns is that most of the coal industry contributions to legislative candidates went to incumbents. 56% of the \$474,423 coal interests contributed to legislative candidates in 2004 went to incumbents. Of the 109 incumbents running, only 13 failed to get re-elected.

Political Party Distribution of Coal Industry Contributions to Legislative Candidates During the 2004 Election

	All Candidates	Winners
House		
Democrats	\$123,045	\$99,000
Republicans	\$127,529	\$39,179
Senate		
Democrats	\$87,345	\$70,079
Republicans	\$135,503	\$82,754

Coal Industry Contributions to Members of the WV Legislature 1996-2004

	1996	1998	2000	2002	2004	Total Contributions Over Past 5 Election Cycles
House						
Democrats	\$95,950	\$118,530	\$75,245	\$116,395	\$99,000	\$505,120
Republicans	\$15,850	\$28,725	\$48,543	\$26,200	\$39,179	\$158,497
Incumbents	\$103,950	\$124,655	\$112,738	\$114,295	\$119,285	\$574,923
Challengers	\$7,050	\$22,400	\$9,875	\$27,250	\$15,894	\$82,469
Open	\$800	\$200	\$1,175	\$1,050	\$3,000	\$6,225
Senate						
Democrats	\$76,300	\$94,751	\$39,050	\$55,681	\$70,079	\$335,861
Republicans	7,000	\$9,800	\$21,400	\$25,300	\$82,754	\$146,254
Incumbents	\$71,300	\$85,250	\$55,275	\$55,456	\$111,979	\$379,260
Challengers	\$7,400	\$2,900	\$2,250	\$20,025	\$33,700	\$66,275
Open	\$4,600	\$16,401	\$2,925	\$5,500	\$7,154	\$36,580

Impartial Justice?

Citizens deserve a fair and impartial court system, yet between 1998 and 2000 fundraising by candidates for state supreme courts nationwide jumped 61% (from \$21 million to \$45 million) according to a study by the Brennan Center for Justice at the NYU School of Law. While most of the money came from lawyers and other parties who appear before those courts, in 2000 non-candidate spending by political parties and interest groups reached approximately \$16

million.²³ The 2000 elections proved to be a turning point as special interests began to exert significant monetary influence in key Supreme Court races.

West Virginia is clearly following the national trend. In 2004, special interests spent more than \$2.8 million to influence the race in direct contributions to West Virginia Supreme Court candidates. Former Justice Warren McGraw and both his primary and general election opponents, Jim Rowe and Brent Benjamin, all broke previous fundraising records for a Supreme Court race in West Virginia. Both Rowe and Benjamin were heavily financed by the coal industry. Money from coal interests accounted for 12%, or \$97,621, of all contributions to Rowe and 31%, or \$248,200, of contributions to Benjamin. McGraw received \$8,500 in contributions from coal, less than 1% of his total contributions. Overall, coal contributions accounted for 13% of all direct contributions to the candidates, and coal was the second biggest contributor in the race after other lawyers.

Independent groups also poured millions into the race for West Virginia Supreme Court Justice. Of the 5,096 television ads aired during the race, independent groups sponsored 3,656. And For the Sake of the Kids, a 527 group funded largely by Massey Energy CEO Don Blankenship sponsored 30% of those ads.²⁴ Blankenship donated \$2.4 million of the \$3.5 million that And For the Sake of the Kids reported raising.²⁵ In addition, Blankenship made over \$500,000 in independent expenditures in support of Brent Benjamin, according to reports filed with the Secretary of State's office. 70% of all coal contributions that went directly to Benjamin's campaign could be attributed to Massey Energy executives and members of its board of directors.

Airtime Summary of Television Ads Sponsored by Independent Groups in the 2004 West Virginia Supreme Court Race²⁶

Sponsor	Total # of Airings	Estimated Cost
And for the Sake of the Kids	1,179	\$579,920
Citizens for Quality Health Care	92	\$34,899
WV Chamber of Commerce	1,332	\$648,840
WV Citizens Against Lawsuit Abuse	91	\$43,862
WV Consumers for Justice	926	\$336,051
WV State Medical Association PAC (WESPAC)	36	\$9,094
TOTAL	3,656	\$1,652,666

Coal played an active role in previous Supreme Court races, although not nearly to the same extent as in 2004. In the 2000 election, coal contributed \$46,950 to candidates for the Court,

²³ Deborah Goldberg, "Public Funding of Judicial Elections: Financing Campaigns for Fair and Impartial Courts."

²⁴ Deborah Goldberg, et al., "The New Politics of Judicial Elections 2004: How Special Interest Pressure on Our Courts Has Reached a 'Tipping Point' – and How to Keep Our Courts Fair and Impartial," Justice at Stake, <www.justiceatstake.org>.

²⁵ Center for Public Integrity 527 Database, see <<http://www.publicintegrity.org/527/search.aspx?act=com&orgid=782>>.

²⁶ Deborah Goldberg, et al., "The New Politics of Judicial Elections 2004."

with the majority going to now-Senator Evan Jenkins who lost in the primary. Jenkins received \$38,700 from coal interests, including \$11,550 from Massey Energy executives. Those contributions accounted for 12% of all contributions to his campaign. Justice Robin Davis received \$6,500 from coal interests, and Justice Joseph Albright received \$1,500, less than 1% of their total contributions. Davis, who was largely self-financed, held the previous fundraising record for a Supreme Court candidate, raising nearly \$700,000.

Before Benjamin, Justice Elliott “Spike” Maynard had raised more money from coal interests than any other candidate for the Court. Over 25% of the \$408,843 Maynard raised in 1996 is directly attributed to the coal industry.²⁷

Coal Industry Contributions to WV Supreme Court Justices 1996-2004

	Coal Contributions	Total Contributions	% of Total Contributions from Coal
Brent Benjamin (2004)	\$248,200	\$794,081	31%
Elliott “Spike” Maynard (1996)	\$102,211 ²⁸	\$408,843	25%
Warren McGraw (2004)	\$8,500	\$1,192,343	<1%
Robin Jean Davis (2000)	\$6,500	\$692,042	<1%
Joseph Albright (2000)	\$1,500	\$358,885	<1%
Warren McGraw (1998)	\$1,000	\$154,791	<1%

Coal and the Court

The significance of Don Blankenship and Massey Energy’s involvement in the Supreme Court cannot be overstated. In March 2005, Massey announced plans to appeal a case before the Court in which the company has been ordered to pay millions of dollars in damages. In that case, a Boone County jury found Massey guilty of fraud because it forced another company, Harman Mining, out of business and awarded the plaintiffs \$50 million. With interest, that verdict is now worth \$63 million.²⁹

²⁷ J. Michael Withers, “Money Talks: A Campaign Financing Study of the 1996 WV State Elections.”

²⁸ Estimate based on J. Michael Withers, “Money Talks: A Campaign Financing Study of the 1996 WV State Elections.”

²⁹ Paul J. Nyden, “Verdict against Massey upheld, Lincoln judge rules company must pay \$63 million in suit,” *the Charleston Gazette*, March 17, 2005.

In another case, citizens living in Sylvester, WV successfully sued the company because their town was constantly blanketed with coal dust from a coal preparation plant owned and operated by the company. A jury found that Massey's Elk Run processing facility failed to control dust coming off its property, creating a nuisance for its neighbors in the Boone County town. The jury said Elk Run negligently harmed Sylvester residents and violated the WV Surface Mining Act by allowing dust to escape its permit area and awarded approximately \$2.5 million in damages and attorney fees.³⁰ Massey could appeal this case as well, although as of the writing of this report no appeal has been filed.

Elk Run Coal is one of several companies who have filed a suit currently before the Supreme Court seeking to recover severance taxes paid on exported coal. In the case, *U.S. Steel Mining Co., et al v. Helton*, coal companies argue that because the severance tax isn't collected until after the coal is sold, applying the tax to exported coal violates the U.S. Constitution's "import-export clause" which prohibits state governments from imposing any "imposts or duties on imports or exports." In addition to Elk Run and U.S. Steel, other companies in the case are Consolidation Coal and its affiliate, McElroy Coal; Laurel Run Mining, Arch Coal, Mid-Vol Leasing, Coastal Coal-West Virginia, Paynter Branch Resources and Pioneer Fuel Corp.³¹

At least three of the companies, through their employees and executives or those of a parent company, contributed \$63,700 to Brent Benjamin during the 2004 election. Don Blankenship and other Massey Energy executives made \$43,900 in direct contributions to Benjamin. Consolidation Coal (Consol Energy) contributed \$13,850. Kingston Resources, its parent company RAG Coal Holdings, Inc., and another company subsidiary, Riverton Coal contributed another \$5,950.³²

If the coal companies convince the Supreme Court that the severance tax on exported coal are illegal, West Virginia would have to refund those companies as much as \$500 million for taxes paid since 1997, plus interest. In the future, the state and its counties could also lose \$45 million a year in revenue from severances taxes imposed on exported coal. If the state loses the lawsuit it could have an extremely negative impact on state agencies and county governments. For example, the Department of Environmental Protection uses the severance taxes to help reclaim and treat acid mine drainage from abandoned coal mining sites. County governments use the money to fund a wide variety of services from supporting volunteer fire departments and buying equipment for sheriff's departments, to contributing to food banks.³³

³⁰ Martha Bryson Hodel, "Jury finds Massey subsidiary liable in coal dust case," Associated Press, February 7, 2003.

³¹ Paul J. Nyden, "Coal industry seeks an end to export tax," *the Charleston Gazette*, September 20, 2005.

³² See Contributor Profiles: Top Coal Industry Donors in 2004 on page 15.

³³ Paul J. Nyden, "Coal firms' tax suit nears, Case on severance tax of exports may cost state \$500 million if it loses," *the Charleston Gazette*, September 6, 2005.