

Executive Summary

The 2010 *Citizens United v. FEC*. Supreme Court case, in which the court ruled in favor of corporate funding of independent political advertisements, has altered the campaign financing landscape in the country. These large independent political organizations, super PACs, can raise and spend unlimited sums of money and direct these funds to as many candidates as they see fit. After three election cycles we are beginning to see the impact of the *Citizens United* ruling. In 2014 alone over \$2.5 million was spent on legislative races in West Virginia alone. The types of organizations that give can range from local and national political parties, trade unions, and major industry leaders.

Money spent by super PACs on legislative races has increase by over 4.5 times from 2012 to 2014. Super PACs have grown more sophisticated in each election cycle since the *Citizens United* ruling and state governments are lagging behind in their regulation of them. A majority of states do not require super PACs to disclose how their money is being spent on the candidate that they refer to in their expenditure form. In addition to this, many super PACs have harmless-sounding names that give the impression they are run by grassroots movements. This can make it difficult for the average Joe to know the source of many of the ads they see during an election cycle.

Many of the super PACs in West Virginia have connections to the coal industry in one way or another and as a result their preferred candidates pass or attempt to pass bills that favor Big Coal. In response to this, labor unions have created their own super PACs to prevent from being left behind. Several sponsors of bills that deregulate the coal industry had been the beneficiaries of independent expenditures from super PACs that have connections to the coal industry. This influx of money from super PACs puts into question the independence of our elected officials. Do our elected officials do what's best for their constituents or are they obligated to the highest bidder?

Campaign Finance in the 21st Century
Logan Bush
West Virginia Citizens for Clean Elections

Introduction

Before we get started I want to define some terms. A **political contribution** is a gift, usually money, made to support a political candidate. An **independent expenditure** is "an expenditure that expressly advocates for the election or defeat of a clearly identified candidate and is not coordinated with any candidate's campaign, authorized candidate committee or party committee" (Go Local Prov). An **electioneering communication** is "a broadcast ad airing within 30 days of a primary election or 60 days of a general election that mention or refer to a federal candidate and are aimed at 50,000 or more members of the electorate of the office the candidate is seeking" (Open Secrets).

West Virginia law dictates that super PACs must disclose these independent expenditures (IEs) with the West Virginia Secretary of State, however the position towards a candidate, for or against, is often omitted from the forms either due to the form lacking a place to make the distinction or a failure to comply. This makes it difficult to fully understand how this money is being spent leading up to an election. The source of the money into West Virginia is obfuscated through super PACs. Many of them have names, like West Virginia First, Protect West Virginia, Grow WV, that give the impression of being owned and financed by West Virginians. Give these organizations a closer look and you will find that they are often financed by political non-profit organizations with the sole purpose of helping as many members of each political party get elected to office.

Super PACs and Their Contributors

Grow WV, Inc is an organization that gave nearly \$74,000 exclusively to Republican candidates. Grow WV was propped up by a handful large donors. The largest was the U.S. Chamber of Commerce Institute for Legal Reform. This organization, an arm of the larger U.S. Chamber of Commerce, works on passing bills under the guise of tort, but in the meantime is backed by large corporations wanting to avoid lawsuits from consumers (CBS). Another donor is Go West Virginia, a non-profit run by Mark Scott. Before the election, Scott was the vice-chairman of the West Virginia Republican Party. Super PACs must operate independently of political campaigns and Scott's position within the party has raised suspension of his independence. A lawyer representing the group claimed that Scott resigned but when asked the West Virginia Secretary of State's office was unaware of his resignation (Sunlight Foundation). Other major donors include E.G. Kendrick, an executive with the Arizona Diamondbacks; Sean Fieler, a president of the hedge fund Equinox Partners and a board member of two conservative think-tanks (Business Insider); RAI Services Company, the second-largest tobacco company in the country; and the State Government Leadership, a non-profit that works to elect Republicans at the state-level that was founded with the help of companies like AT&T, Citigroup, Exxon-Mobil, Time Warner (Pro Publica).

Another major super PAC in 2014 was Honest West Virginians. Their money came from a variety of trade unions that have a presence in West Virginia. The largest donors included the WV State Building & Construction Trades Council, West Virginia AFL-CIO, the American Federation of Teachers, the United Mine Workers Assoc., the International Brotherhood of Electrical Workers, etc. Honest West Virginians gave nearly \$900,000 in state congressional elections, but did not disclose how their money was going to be spent. While we can speculate whom Honest West Virginians financed we will never know for sure. This makes it difficult to see if any of the candidates mentioned participated in favors-for-favors activities.

West Virginia Citizens Against Lawsuit Abuse (CALA) gave candidates \$288,000 in the 2014 election. CALA's largest chunks of that money in the last election cycle were for Republican candidates and attack ads on Democrats (SOS). CALA has organizations in over half the states and says they represent small donors concerned about lawsuit abuse. "They actually represent major corporations and industries seeking to escape liability for the harm they cause consumers." (Center for Justice & Democracy) They have designed themselves as patriotic organizations aimed at ending lawsuit abuse when in fact they want to limit a consumer's right to sue. CALA is partly funded by the American Tort Reform Association (ATRA) and the tobacco industry has spent millions of dollars a year supporting ATRA. But the complete picture of who funds CALA has been a mystery for as long as the organizations have been around. (WVAJ) Greg Thomas was once the executive behind West Virginia's CALA. Greg Thomas has acted as Don Blankenship's chief political consultant and attempted to get Blankenship's preferred Supreme Court Justice Spike Maynard reelected in 2008 (Journal News). He was the mastermind behind the For the Sake of the Kids PAC to help defeat Warren McGraw's election bid to the West Virginia Supreme Court in 2004. There have also been claims of bias when conducting polls on lawsuit reform (WV Legal Examiner).

Protect West Virginia was one of the largest contributor of the 2014 election cycle with \$499,000 dollars spent on helping Democrats get elected and attacking Republicans. Michael Sargeant and Elizabeth Gramling were listed as the two directors on the independent expenditure reporting form. They both work for the Democratic Legislature Campaign Committee (DLCC). The mission statement from the DLCC website explains that the DLCC uses "state-specific strategies – working with national and local partners to enable Democratic legislators to win in all regions of the country" (dlcc.org). The DLCC was the only contributor to this organization (WVPress).

Moving West Virginia Forward spent over \$300,000 on state legislative races in 2014 mostly in support of Republican candidates. Its largest sources of money come from the coal interests in the state: Murray Energy Corporation, Arch Coal, and the West Virginia Coal Association. Chris Hamilton is listed as the organization's chairman. Hamilton also serves as the vice-president of the West Virginia Coal Association (WV Press). Chris Hamilton was also involved with the West Virginia Business and Industry Council, another super PAC that was primarily concerned with getting republicans elected (WV Press).

West Virginia First spent just over \$265,000 in 2014. The organization received \$200,000 from the Penn National Gaming Inc. Penn National owns a

Hollywood Casino chain in Charles Town, W.V. and is the 3rd largest publicly traded chain of casinos in the U.S. (WV Press). They primarily supported Democrats in 2014.

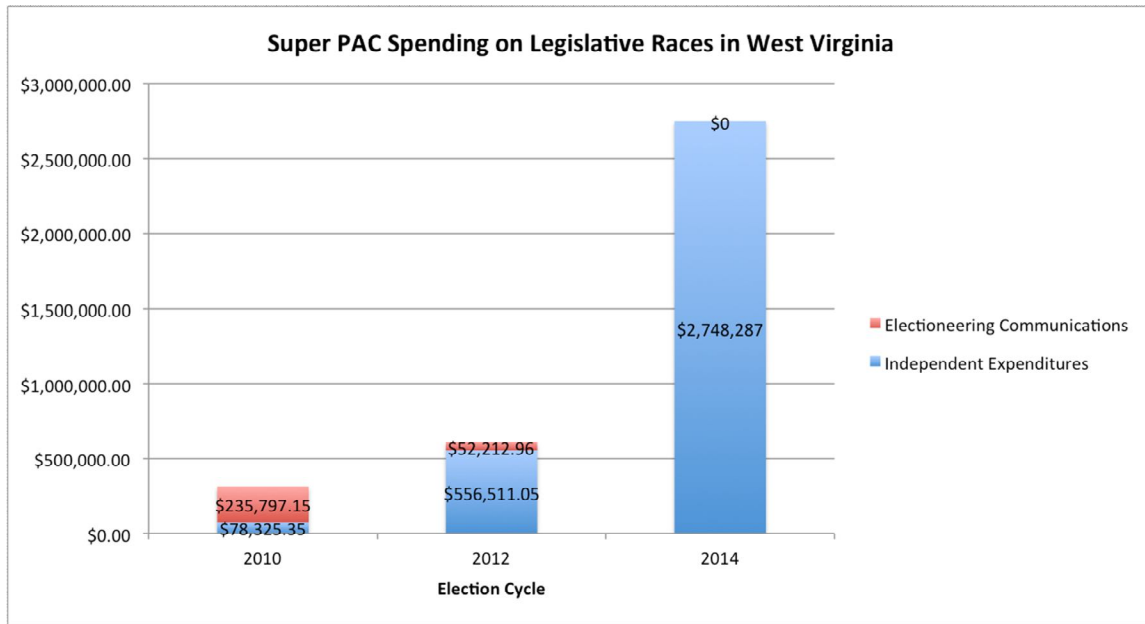
GOPAC Election Fund is a conservative non-profit that gave over \$34,000 to Republican candidates and is primarily concerned with electing Republicans at the state and local level. West Virginia Senate President Bill Cole is currently on GOPAC's State Legislative Leaders Advisory Board. The Advisory Board "helps promote the ideas and policies being implemented at the state level, as well as assist with electing a new generation of Republican leaders." West Virginia State Senator Ryan Ferns has a short biography on their website highlighting emerging Republican leaders (gopac.org).

The National Association of Realtors (NAR) is one of the largest lobbying organizations in the country. In over 10 years they have given over \$40 million dollars to hundreds of candidates in contributions, primarily the two major parties. It gave over \$42,000 to West Virginia legislative candidates in 2014. After the 2008 economic crisis experts accused realtors represented by NAR in pushing buyer to take out subprime loans to finance homes they couldn't afford (Knowledge Wharton).

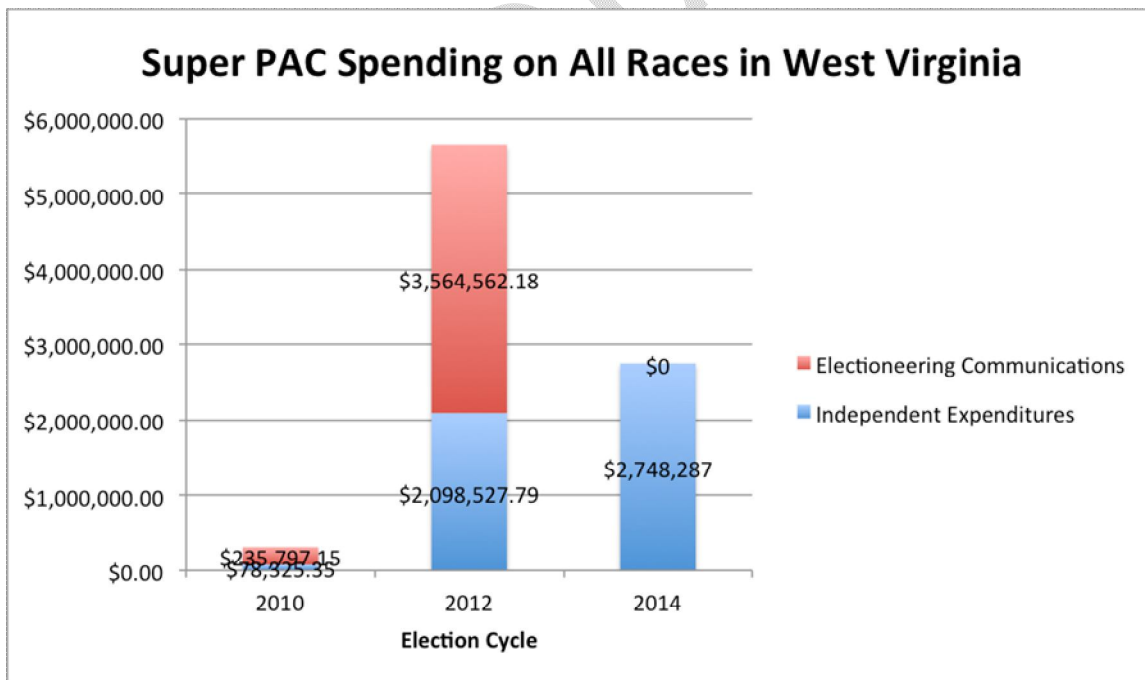
Super PAC Spending in West Virginia Since *Citizens United*

As super PACs have gotten more sophisticated and accustomed to the guidelines after *Citizens United* the money they have given to campaigns has increased. In the 2010 mid-term election, super PACs gave over \$300,000 in the form of IEs and electioneering communications (ECs) to various campaigns in West Virginia. That number skyrocketed to over \$5.5 million in 2012. Most of that increase is due to 2012 being a general election with executive races (gubernatorial, secretary of state, attorney general, etc.) in addition to the legislative races. If you just look at legislative races in 2012 the amount given by super PACS more than doubled to \$608,724. That number continued to rise in 2014. More than \$2.5 million was given to campaigns in 2014, and that only includes legislative races.

My methodology concerning these figures is pretty simple. Independent expenditures and electioneering communications totals are located on the West Virginia Secretary of State's website, and include a PDF of the original form filed with the state. The website had information on super PAC activity from as far back as 2006 but I only looked at the data from 2010 to 2014. For each candidate that was referred to in a form I made a distinction between supportive, oppositional, or unspecified expenditures and electioneering communications.

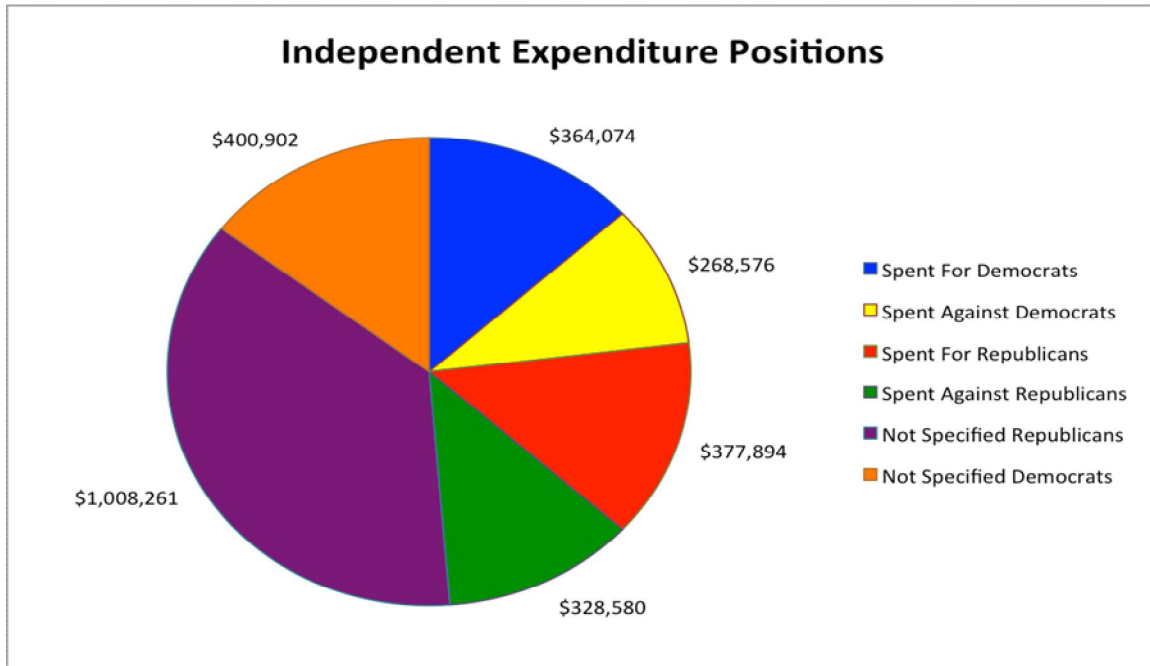


In the chart above, you'll see notice two things: the sharp increase in money given to legislative candidates and the shift in how super PACs give their money, away from ECs to exclusively IEs. Below is the same chart, only now it includes spending on executive branch races.

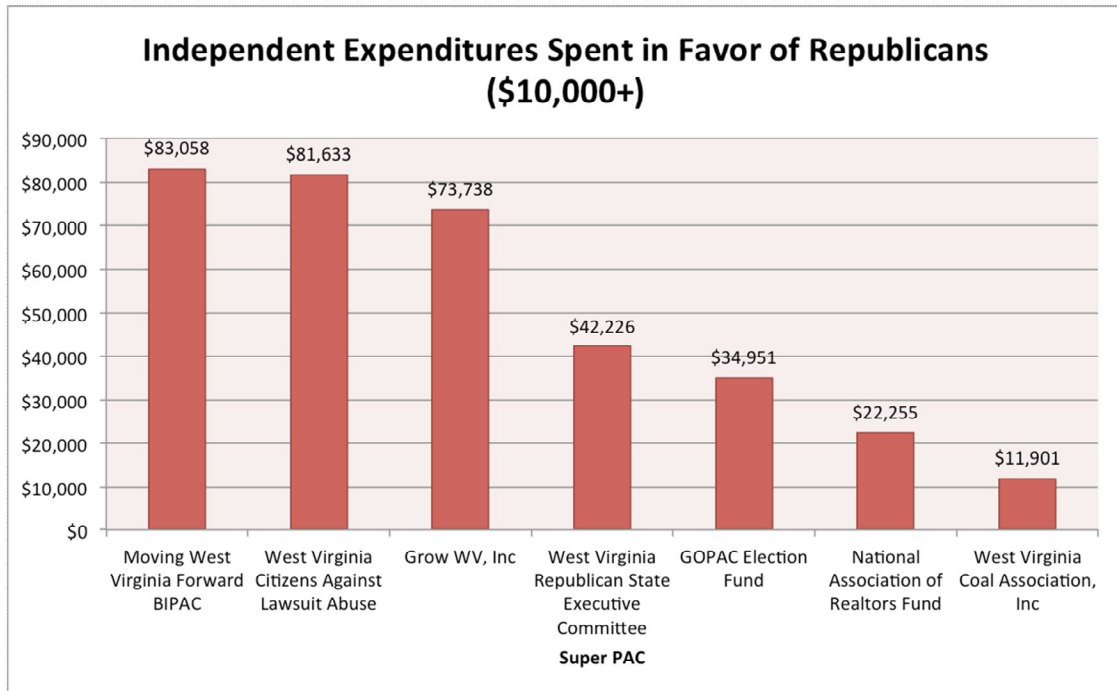


While we have totals from these super PACs, but we do not have the full picture due to inconsistency with the expenditure forms or lack of enforcement. The lack of the enforcement of this requirement was a main reason for the National Institute of Money in State Politics giving West Virginia a B on their scorecard for disclosure requirements for independent spending (Follow the Money). Only

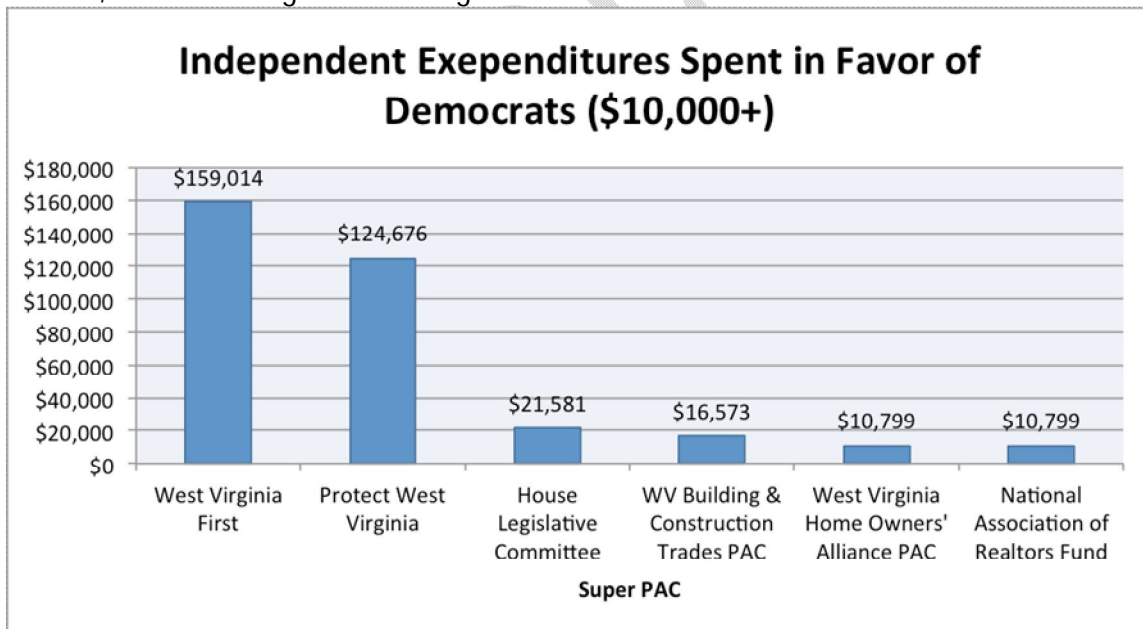
guesses can be made about how super PACs spend their money. In 2014 around half of the money spent on campaigns failed to specify whether they supported or opposed the candidate(s) named on the expenditure form.



What we do know from the IEs and ECs that specify their position bolsters a popular notion of politics: labor backs Democrats and big business backs Republicans. As I mentioned above in my profiles of the various super PACs many of these organizations use harmless monikers to appear that they represent “real” or “honest” West Virginians when in fact many of them are backed by coal and energy companies and labor unions. Those that supported the GOP in West Virginia include: Moving West Virginia Forward, a super PAC backed by the coal industry; West Virginia Citizens Against Lawsuit Abuse, whose supporters include large corporations trying to avoid litigation; GOPAC Election Fund, a non-profit organization whose purpose is electing Republicans at the state-level.



On the Democratic side we see groups that represent the AFL-CIO, Protect West Virginia; the Penn National Gaming Inc, West Virginia First; and smaller trade unions, the West Virginia Building & Construction Trades Union.

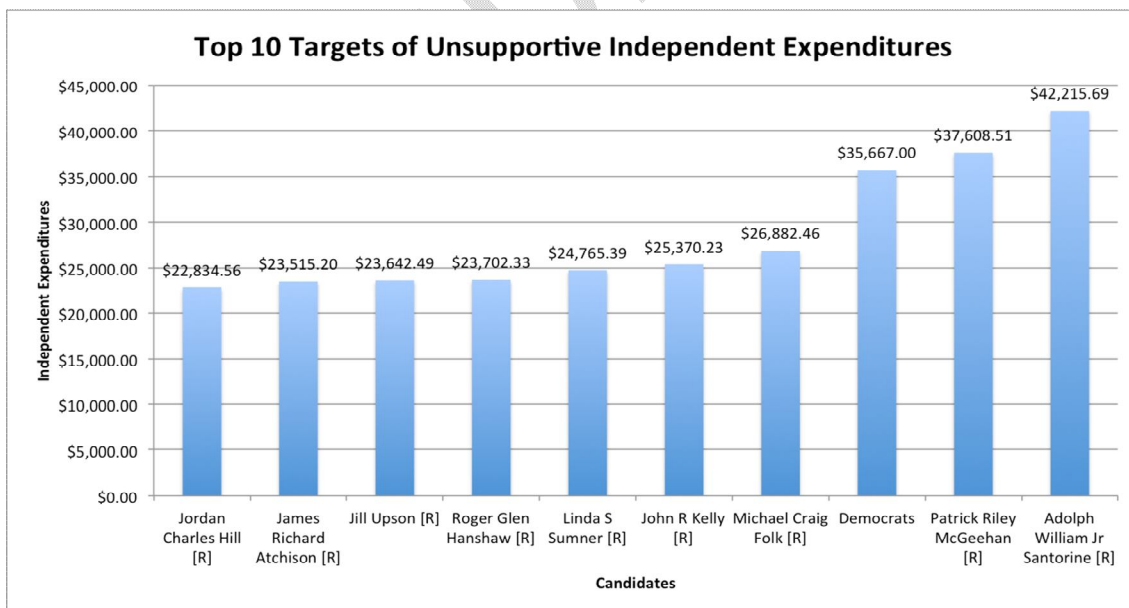
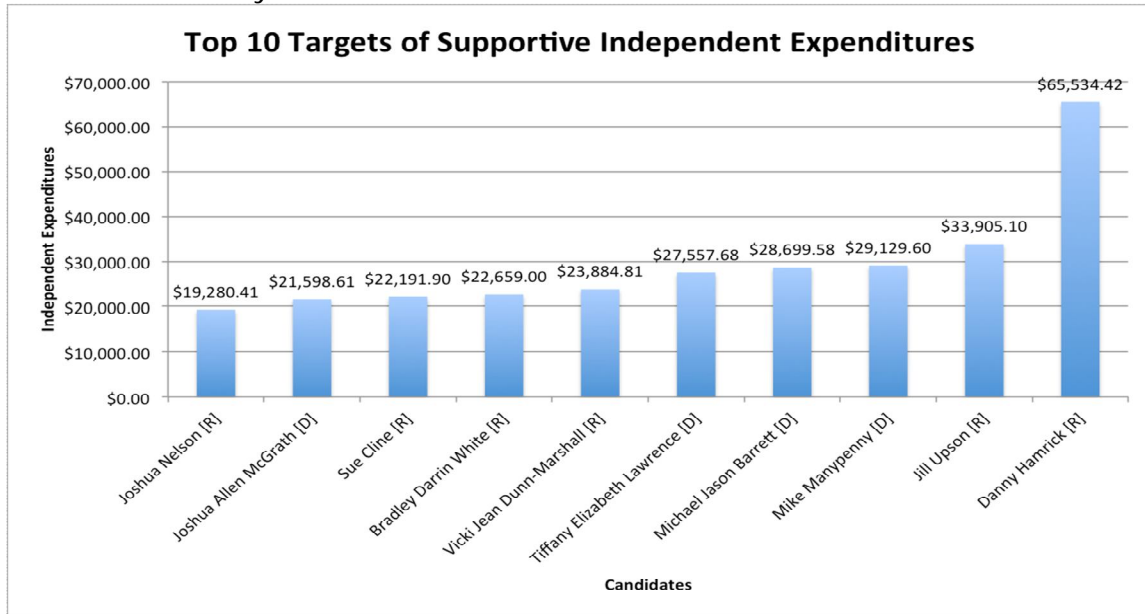


What is the goal for these organizations spending so much on state-level elections? Most likely it is to get favorable politicians into the legislature to fight for their specific interests. Should recipients of favorable IEs from the coal industry sit on the House Energy Committee? Have our politicians lost their loyalties to their constituents and instead turn to special interests for direction? How much money

does it take to buy a politician? It is difficult to tell, but one way is to look at a bill's sponsors.

Possible Conflicts of Interest in the West Virginia Legislature

Candidates from both parties benefit and suffer from the whims of super PACs. Tens of thousands of dollars are up for grabs for the candidate who can curry favor with industry and labor leaders.



During the last few election cycles we have begun to get a clearer picture of how unlimited IEs from super PACs can effect elections and how politicians make governing decisions. While these super PACs can give unlimited sums of money they cannot coordinate with any candidates over campaign strategies. Over 1,000 bills were introduced during the 3 month long legislative session. While most of these

bills had to do with redefining words and reworking minor regulations and rules a handful had the possibility of changing the lives of thousands of West Virginians.

One such bill was Senate Bill 337, also referred to as the West Virginia Right to Work Law. The bill would have prohibited any requirement that a person must pay a due or a fee to a labor organization. One advocate for the bill was the West Virginia branch of the Koch Brother-supported *Americans for Prosperity*. Wendy McCuskey, the organization's director argued that "right to work is vital to making West Virginia competitive and creating an environment of opportunity for all." However, by allowing certain workers to opt out of paying union fees they would be able to reap the benefits of organized labor without supporting organized labor. Chris Hamilton's West Virginia Business and Industry Council supported the bill as well (Gazette-Mail).

Senator Sypolt, a co-sponsor of the bill, was the target of IEs in the 2014 election from the Business and Industry Council. Senator Sypolt and Trump, another co-sponsor, was referred to by IEs from Moving West Virginia Forward, a super PAC that is primarily supported by local coal companies and whose chairman is Chris Hamilton. The last activity taken on the bill was to Senate Judiciary Committee where Senators Charles Trump, Ryan Ferns, and Ed Gaunch reside and each of those senators were referred to by IEs from Moving West Virginia Forward. Senator Romano also sits on the committee and was the referred candidate on the IEs from the AFL-CIO, who opposed the bill.

The coal industry also had their fingerprints on Senate Bill 357, known as the Creating Coal Jobs and Safety Act, and its companion House Bill 2574. Four co-sponsors of the bill 357 had received IEs from Moving West Virginia Forward. Senators Ferns, Gaunch, Stollings, Sypolt, Trump, and Walters had been on the receiving end of a combined \$11,000 from the coal industry-back Moving West Virginia Forward. The house bill was no different. Five sponsors of the bill received just under a combined \$26,000 in IEs, with \$16,000 going to Delegate Steve Westfall. Delegates Robert Ashley, Roger Hanshaw, Erikka Storch, and Mark Zatezalo also received IEs from Moving West Virginia Forward.

Tort reform organizations were one of the most visible special interest groups in the 2014 election cycle, and that visibility in the campaigns carried over to the 2015 legislative session. One tort reform bill, House Bill 2011, promised to "restore the predictability of the court system," but critics claim that it makes it near impossible for employees and their families to sue for wrongful death and/or injury. The bill, also known as deliberate intent, would make it more difficult for employees to sue their employers if they are injured by deliberate violations of safety regulations. "As written, there would be no liability even for catastrophic accidents like those at Sago, Aracoma, and Upper Big Branch," West Virginia Association for Justice President Anthony Majestro said (WV Record).

Eight sponsors of the bill, including leader sponsor Delegate Roger Hanshaw, were beneficiaries of independent expenditures from Moving West Virginia Forward. Those eight delegates (Hanshaw, Shott, Rohrbach, Sobonya, Weld, Espinosa, Statler, and Miller) received a combined total of over \$34,000 from Moving West Virginia Forward. West Virginia Citizens Against Lawsuit Abuse is another organization that preaches so-called tort reform, but in actuality is more

concerned with protecting the bottom lines of the industries that support them financially. Their website claims to be a “non-profit citizen watchdog group committed to equal justice for all West Virginians,” but the reality is that they are an organization that represents major corporations wanting to escape legal liabilities for the harm they have caused their consumers and their employees (Center for Justice & Democracy).

In the House, bill 2119, the Intrastate Coal and Use Act, was introduced with the intent of disallowing federal regulation of coal that was mined and subsequently used within the borders of West Virginia. Regulation would ultimately be the responsibility of the West Virginia Department of Environmental Protection. Nine of the co-sponsors (Delegates Moffatt, Hamrick, J. Nelson, Statler, Arvon, Blair, Kessinger, and Zatezalo) received some kind of campaign support through IEs from Moving West Virginia Forward and/or the West Virginia Coal Association. Financial support of a campaign does not necessarily translate into a quid pro quo relationship but it does raise a few eyebrows. The bill stalled in the House Energy Committee, where eleven members received IEs from super PACs backed by the coal industry (WV Secretary of State).

While those delegates wanted to insure that the federal government did not intrude on what they saw as a state’s right to regulate West Virginia coal, other delegates in the House wanted to prohibit localities from implementing their own environmental policies of public utilities. Through House Bill 2744 members of the house wanted to centralize the environmental regulations of public utilities with the West Virginia state government. No laws, regulations, ordinances pertaining to environmental regulation of public utilities would be allowed without the consent of the West Virginia Legislature. The bill stalled in the House Judiciary Committee where individual members were referred to by IEs from coal and energy industry ranging from just over \$500 to over \$14,000, as was the case with Delegate McCuskey (WV Secretary of State). Attempts like this bill to give more power to the legislature concerning environmental issues is disconcerting when so much money is pumped into electoral campaigns from coal and energy companies.

The independence of our elected officials is in question. Are they serving the interests of the population at-large or the interests of a select few individuals and businesses? What could be changed in West Virginia to take some of the influence out of the hands of large corporations and give it back to it’s citizens? The first step, as I see it, would be to fully disclose how money from super PACs are being spent. West Virginia’s citizens deserve to know which candidates are being supported by special interests. Secondly, the list of the independent expenditures and electioneering communications on the West Virginia Secretary of State’s website need to be clearer. Errors, such as omissions and duplicates, exist, and if super PACs are going to disclose this information it needs to be in an easy-to-use format. Finally, and more importantly, efforts to repeal *Citizens United* should continue. We live in a time where politicians court billionaires like the Koch brothers instead of listening to the concerns of the public. Politicians need to be responsive to the electorate instead of the dollar.

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