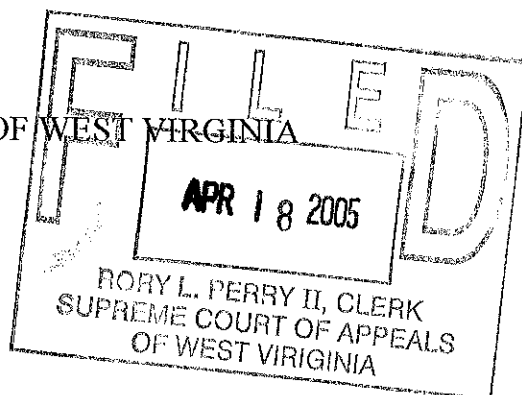


No. 32528

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA



**U.S. STEEL MINING COMPANY,
CONSOLIDATED COAL COMPANY,
LAUREL RUN MINING COMPANY,
MCELROY COAL COMPANY,
ARCH COAL, INC.,
MID-VOL LEASING, INC.,
COASTAL COAL-WEST VIRGINIA LLC,
ELK RUN COAL COMPANY, INC.,
PAYNTER BRANCH MINING, INC.,
KINGSTON RESOURCES, INC.,
PIONEER FUEL CORPORATION,**

Petitioners,

vs.

**THE HONORABLE REBECCA MELTON CRAIG,
West Virginia State Tax Commissioner**

Respondent.

**BRIEF *AMICUS CURIAE* OF
THE WEST VIRGINIA LABOR FEDERATION, AFL-CIO**

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The West Virginia Labor Federation, AFL-CIO*

The West Virginia Labor Federation, AFL-CIO, is a federation of 406 local unions, over 60 districts, and 13 central bodies from 58 national and international labor unions representing 123,000 West Virginia active and retired working men and women from every walk of life. The West Virginia AFL-CIO is affiliated with the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) with a total membership in excess of 13 million active working men and women.

The West Virginia AFL-CIO works to improve the quality of life of all West Virginians, and, in conjunction with the National Federation, works to shape trade policies which will not lower the living standards of all working families in West Virginia.

All 50 states, including West Virginia, are experiencing their worst financial crisis since World War II as they collectively wrestle with budget shortfalls that, over a three-year period, exceed \$180 billion. The Center on Budget and Policy Priorities reports that the States' budget gaps are twice as large as during the recession of the early 1990s. This dire situation is largely the product of the national economic downturn. The federal government has provided no aid to help the states respond to this crisis, but instead, has passed the buck with national economic policies; i.e., certain provisions of the 2001 tax cuts and the tax code restructuring that aggravates the states' plight, forcing cuts in programs and staff and, increasingly, local tax hikes.

The West Virginia coal severance tax, as used by our state, counties, and municipal governments, has in the past and will in the future provide hundreds of millions of dollars for economic development, water and sewer projects, health services for thousands of West Virginia citizens, police and fire protection, libraries, public transit authorities, parks and recreation programs, senior citizen services, regional jails, flood control, courthouses, airport services, bond debt services on many infrastructure projects, and numerous other public projects.

The untenable position taken by the appellants, who for decades have benefited from West Virginia's God-given natural resources, are again trying to undermine the basic governmental structure of this state and its subdivisions. Should the appellants prevail in declaring unconstitutional the valid taxes imposed by West Virginia Code §§11-13A-3(a), Section 11-12B-3(a), 23-3-32(a), and 22-3-32(b), this state and its political subdivisions will lose hundreds of millions of dollars in past and future revenues which will have a devastating effect on all West Virginians. These losses will effect our national credit rating at the bond market, and to replace the dollars necessary to maintain governmental services which these revenues have provided, will necessitate monumental increases in personal income taxes, corporate taxes, and business and occupation taxes, which will effectively close West Virginia for new business growth.

The West Virginia AFL-CIO adopts by reference the arguments contained in the briefs of the West Virginia Tax Commissioner, County Commissioners Association of West Virginia, West Virginia ACT, West Virginia Association of

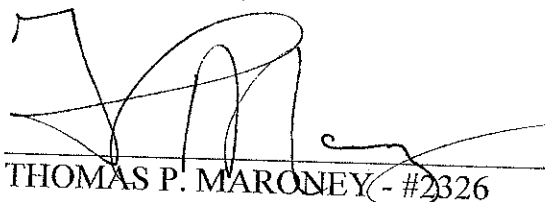
Counties, West Virginia Municipal League, and all other briefs filed on behalf of the State Tax Commissioner.

CONCLUSION

For the reasons stated in this brief, and the briefs filed on behalf of the appellee and the *amicus* briefs in support thereof, the West Virginia Labor Federation, AFL-CIO, respectfully requests that this Court find that the severance taxes at issue in this case do not violate the Import-Export Clause of the United States Constitution, and that the decision of the Circuit Court of Kanawha County, affirming the Decision of the Administrative Law Judge denying refunds to taxpayers, be affirmed.

Respectfully submitted,

**KENNETH PERDUE, PRESIDENT
THE WEST VIRGINIA LABOR
FEDERATION, AFL-CIO**



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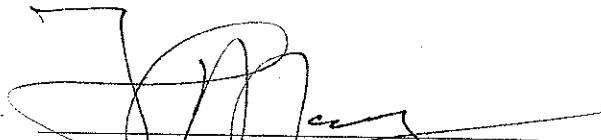
CERTIFICATE OF SERVICE

I, THOMAS P. MARONEY, General Counsel for the West Virginia Labor Federation, AFL-CIO, do hereby certify that I served a true and accurate copy of the foregoing **BRIEF AMICUS CURIAE OF THE WEST VIRGINIA LABOR FEDERATION, AFL-CIO** via the United States Postal Service, postage pre-paid, on the 18th day of April 2005, upon the following counsel of record:

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