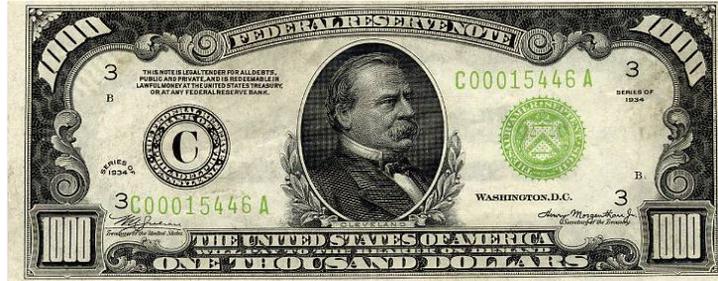


Drilling for Dollars:



How Big Money Has a Big Influence at the Railroad Commission



December 2010



Acknowledgments

Public Citizen would like to thank our interns, Ali Rawaf and Natalie Strait, for their help in compiling and analyzing this data. We would also like to thank several industry insiders for helping to identify some of the large donors who did not self-identify as being in the oil and gas business.

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Drilling for Dollars:

How Big Money Has a Big Influence at the Railroad Commission

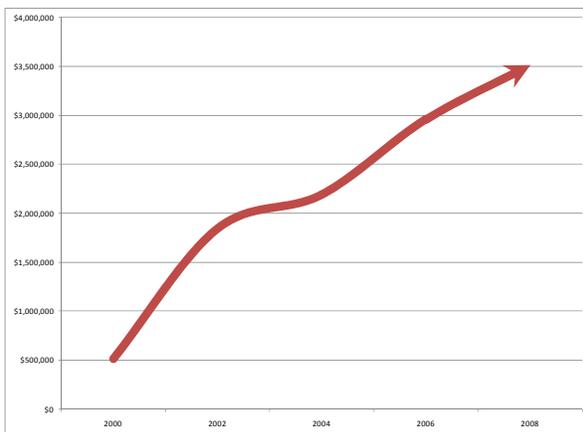
Is the Railroad Commissioner's job regulating or raising money?

In any political race, money has an influential role. But at the Texas Railroad Commission (RCC), political spending is out of control, well over half of campaign donations coming from the very industries the Commission is supposed to regulate. Real or perceived, this creates a conflict of interest.

Railroad Commissioner is seen as a springboard to higher elected office in the state, giving influence-peddlers more incentive to curry favor and sitting commissioners to amass massive campaign war chests.

The Railroad Commission, as stated on its website, *"has primary regulatory jurisdiction over oil and natural gas industry, pipeline transporters, natural gas & hazardous liquid pipeline industry, natural gas utilities, the LP-gas industry, and coal & uranium surface mining operations."*

Campaign donations coming from regulated industries present a very real problem, inserting the probability that regulatory decisions are made in favor of large donors rather than the public's interest. And in the past decade, since the last round of Sunset reforms, the volume of money raised has only gotten worse.



Similar to what is true at the national level, it is increasingly difficult to tie donations to individual decisions. Nevertheless, fundraising has become increasingly important as **the amounts raised and spent by incumbents on their re-elections increased 688% between 2000 and 2008, from \$511,204.72 to \$3,519,387.01**. While we did not identify any quid pro quo, which would be illegal, the data indicates a sort of "soft corruption" of

commissioners whose political futures are dependent on the amount of campaign cash they can amass to run for re-election or for higher office as much as their job performance. Over the last decade this has created a culture of access and influence whose *very appearance* should not be tolerated.

Costs for all statewide campaigns have increased in the past decade, but donations to sitting Railroad Commissioners have far outpaced other comparable statewide elected officials such as Land Commissioner or Agricultural Commissioner.

As amounts increased, so did the reliance on big donors and big donations from those the Railroad Commission regulates. And while “big money” from these sources increased as a percent overall of funds raised, so did the proportion of said funds, coming in larger and larger chunks.

By 2010, 80% of all donations to incumbents were from industry, up from 45% in 2000. Volume of donations from industry also increased nearly ten fold, from just under \$230,000 in 2000 to over \$2.1 million in 2008.

And while “big money” has always played a role, it has gotten even larger: In 2000, 80% of all money came in donations of \$1,000 or more; by 2008 it was 85% and an astounding 92% for 2010.

These findings show the inexcusable amount of money that is spent to fund the political races of incumbent Railroad Commissioners. This sort of broad-based culture of influence demands reforms at the Railroad Commission and how commissioners are elected. Public Citizen supports campaign finance reform for Railroad Commissioners or moving them to appointed, rather than elected, officials. The Sunset Review that the agency is currently undergoing is the perfect opportunity to make these changes.

We also see the rise of other large donors, reflecting the increasingly complex, organized, and coordinated fundraising apparatus across the state precipitated by increasingly competitive and expensive elections. Apart from members of the oil and gas industry and their lawyers and consultants, other groups who contributed included banks and investment brokers, developers, ranchers, real estate, and construction. Self-identified “housewives” and retired persons also made many donations.

However, while there was some disclosure of where money was coming from, it is not all entirely clear. When disclosing to the Texas Ethics Commission, political committees are asked to ask for and disclose the occupation and industry of each donor. However, the single most common practice was to leave the industry or occupation question blank. Because we use paper, rather than electronic, disclosure, much of the information on the original records was illegible, robbing us of valuable information.

While this information is hidden from us, it is not likely to be hidden from Railroad Commissioners themselves; they know who is giving them money. This indicates that our estimates are, in fact, an underestimation of the influence of the oil and gas industry.

Corporate Political Action Committees (PACs) remained a relatively steady percentage of overall funds raised, in large part due to the unlimited cap for

individual donations. However, the percentage of those PAC funds that came from interested industries increased from a low of 38% in 2004 to 56% in 2010. Donations from lawyers and lobbyists increased from 14% in 2000 to 21% in 2010.

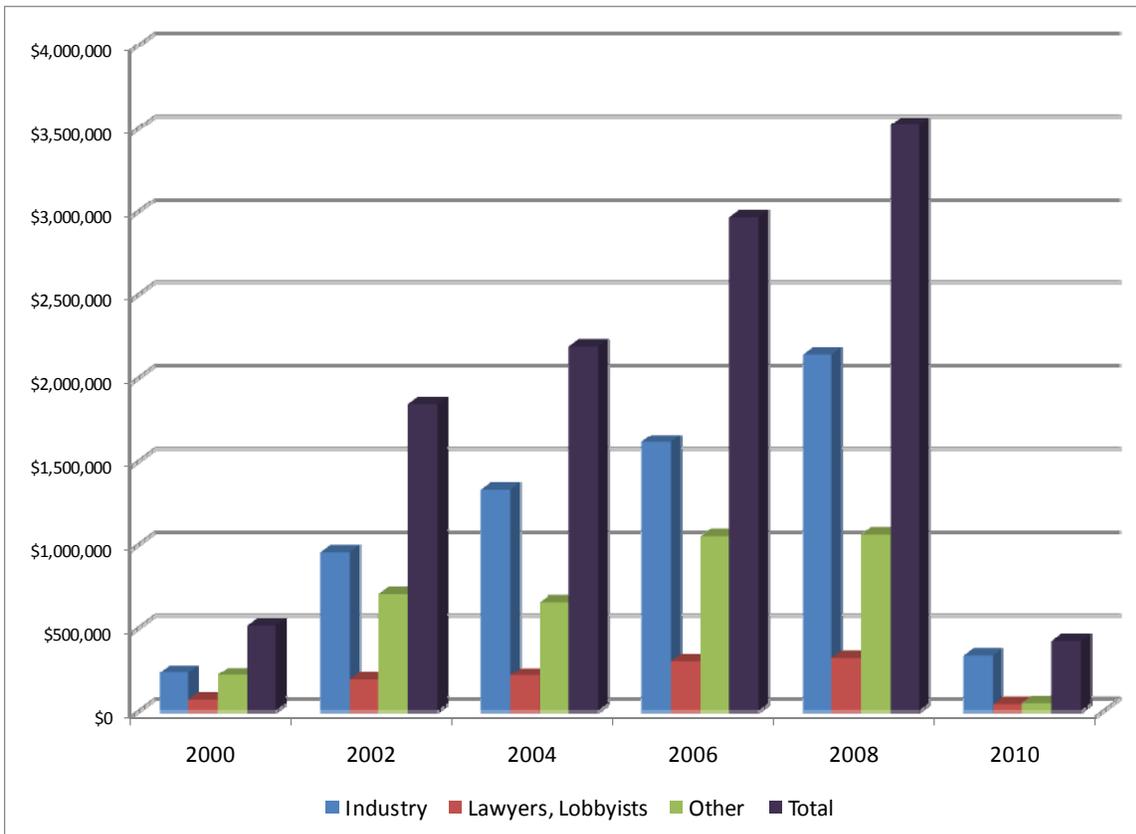
Methodology

Taking all available campaign finance disclosures from the Texas Ethics Commission available through April, 2010 (after the primary in which the incumbent was defeated), Public Citizen staff, interns and concerned industry insiders identified campaign donations made to candidates for the Railroad Commission from energy-related companies or their employees, the single most common group giving money to these candidates. We also identified attorneys, consultants, and lobbyists who would advise on energy related issues. In short, we looked for anyone who might conceivably have business before the Railroad Commission or have a financial stake in how the Commission could rule.

Specific Findings

Overall, funds raised by incumbent Railroad Commissioners have more than tripled, and the proportion from industries regulated by the commission has similarly increased. And while campaign funds from lawyers and lobbyists nearly tripled, their proportion of the total remained nearly constant at just under 10%, showing that the real driver was industry funds.

	Total	Increase from 2010	Total from Fossil Fuels		Total from lawyers, lobbyists	
2000	\$511,204.72		\$229,565.74	44.91%	\$66,400.00	12.99%
2001 - 2002	\$1,842,789.46	360.48%	\$951,237.74	51.62%	\$186,986.00	10.15%
2003 - 2004	\$2,189,726.65	428.35%	\$1,328,706.74	60.68%	\$212,231.90	9.69%
2005 - 2006	\$2,961,026.18	579.23%	\$1,613,652.52	54.50%	\$300,556.27	10.15%
2007 - 2008	\$3,519,387.01	688.45%	\$2,142,564.49	60.88%	\$319,890.00	9.09%
2009 - 2010	\$419,338.50		\$334,522.50	79.77%	\$39,125.00	9.33%



What is remarkable here is what is driving the increase in money raised. Campaign donations from non-industry donors has remained relatively flat, while those doing business before the Commission have increased their campaign spending by almost ten-fold.

By comparison, what is raised by Railroad Commissioners in one two year period for an election every six years is generally greater than that raised by the Comptroller, Agricultural Commissioner, and Land Commissioner. These offices are most similar to Railroad Commissioners in both their public profile and in having a specific issue area, rather than a broad responsibility like the Governor, Lt. Governor, or Attorney General.

	Comptroller	Agricultural Commissioner	Land Commissioner
2006	<i>(no incumbent)</i>	<i>(no incumbent)</i>	\$1,046,448.30 <i>(Jerry Patterson)</i>
2010	\$2,488,313.35 <i>(Susan Combs)</i>	\$1,648,979.02 <i>(Todd Staples)</i>	\$784,393.75 <i>(Jerry Patterson)</i>

Data courtesy Texans for Public Justice, 2010 numbers are incomplete

With the notable exception of Susan Combs, incumbent statewide officeholders raise far less than a typical Railroad Commissioner every election cycle.

Domination by Big Dollar Donors

Furthermore, we see a large increase in big dollar donations. Even in 2000, 80% of all donations came in amounts of \$1,000 or more, but by 2010, 92% had come in at over \$1,000.

	Total	Total > \$1,000	Percent > \$1,000	Average Donation	Average Donation > \$1,000
2000	\$511,204.72	\$409,965.74	80.20%	\$824.52	\$1,814.01
2001- 2002	\$2,080,399.46	\$1,507,858.89	72.48%	\$621.20	\$2,114.81
2003- 2004	\$2,399,501.65	\$1,841,810.16	76.76%	\$788.27	\$2,213.71
2005- 2006	\$2,961,026.18	\$2,504,713.22	84.59%	\$1,072.45	\$2,792.32
2007- 2008	\$3,519,387.01	\$2,993,979.39	85.07%	\$949.39	\$2,792.89
2009- 2010	\$419,338.50	\$386,182.50	92.09%	\$1,638.04	\$3,479.12

Some argue that giving to campaigns is an important part of the democratic process, that writing a check to a candidate you support is an essential part of political expression. What this data show is that this sort of small-donor, grassroots fundraising is not occurring. The average size of campaign donations grew over the past decade, specifically in donations over \$1,000—if small-dollar donations were dominant, we would not see these budge.

As we can see from the following table of distribution of contributions, an increasing proportion of donations began to come in over the \$5,000 range, and industry sources especially jumped on this big money bandwagon.

2000	Total	# of donations	% of total	Total from Industry	% from Industry
>\$10,000	\$25,000	1	4.9%	\$25,000	100%
\$5001- \$10,000	\$20,000	2	3.9%	\$10,000	50%
\$1001 - \$5000	\$210,965.74	69	41.3%	\$149,465.74	70.8%
\$501 - \$1000	\$158,792.11	161	31.1%	\$85,500	53.8%
\$101 - \$500	\$80,447.87	226	15.7%	\$23,200	28.8%
<\$100	\$15,999	161	3.1%	\$2,800	17.5%

2001- 2002	Total	# of donations	% of total	Total from Industry	% from Industry
>\$10,000	\$95,000	4	5.2%	\$0	0%
\$5001-\$10,000	\$213,189.08	22	11.6%	\$150,000	70.4%
\$1001 - \$5000	\$735,169.81	224	39.9%	\$596,355.81	81.1%
\$501 - \$1000	\$399,553.03	404	21.7%	\$265,202.29	66.4%
\$101 - \$500	\$325,026.54	973	17.6%	\$115,019.14	35.4%
<\$100	\$74,851	989	4.1%	\$11,646.50	15.6%

2003-2004	Total	# of donations	% of total	Total from Industry	% from Industry
>\$10,000	\$235,000	10	10.7%	\$15,000	6.4%
\$5001-\$10,000	\$207,900.79	22	9.5%	\$162,880.79	78.3%
\$1001 - \$5000	\$855,909.37	270	39.1%	\$762,859.37	89.1%
\$501 - \$1000	\$474,611.21	480	21.7%	\$383,010.84	80.7%
\$101 - \$500	\$364,902.53	1092	16.7%	\$202,457.64	55.5%
<\$100	\$51,402.75	673	2.3%	\$14,730	28.7%

2005-2006	Total	# of donations	% of total	Total from Industry	% from Industry
>\$10,000	\$602,651.34	18	20.4%	\$244,809.03	40.6%
\$5001-\$10,000	\$331,279.36	34	11.2%	\$271,279.36	81.9%
\$1001 - \$5000	\$1,126,782.52	401	38.1%	\$893,708.07	79.3%
\$501 - \$1000	\$461,674.17	469	15.6%	\$308,872	66.9%
\$101 - \$500	\$388,674.83	1144	13.1%	\$185,533.33	47.7%
<\$100	\$49,963.96	695	1.7%	\$10,007	20%

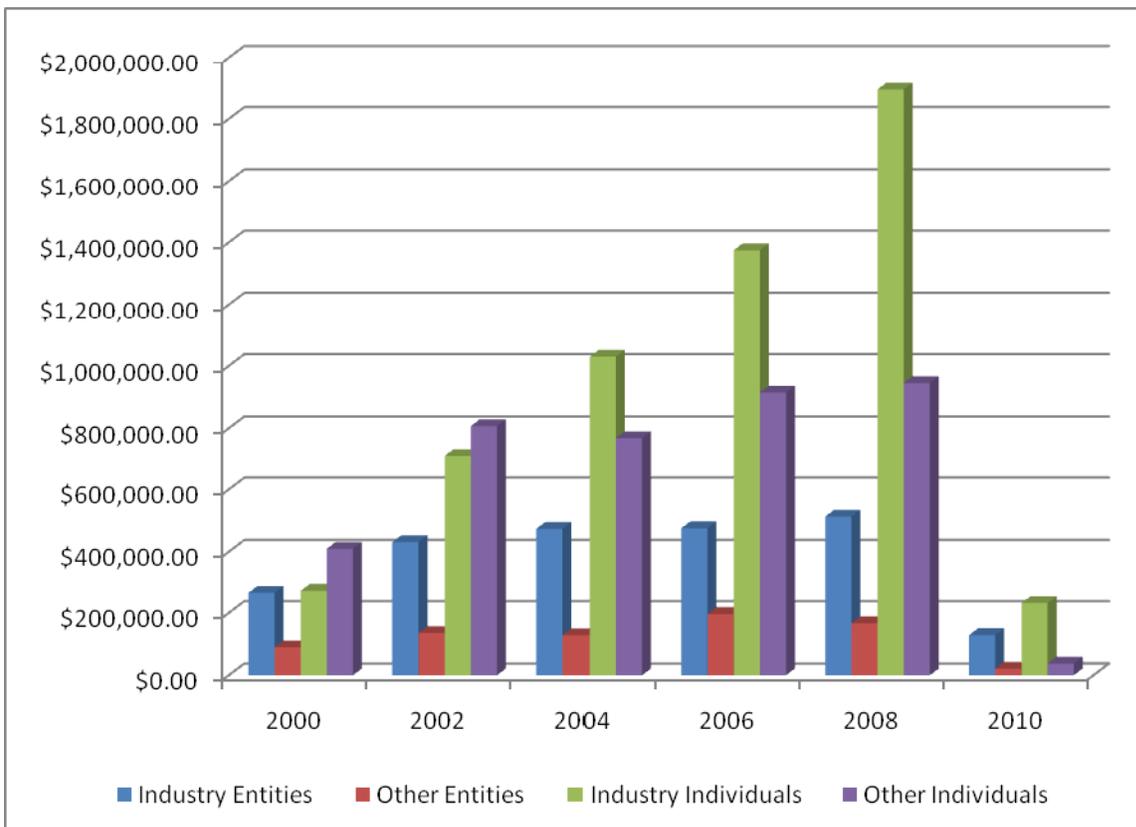
2007-2008	Total	# of donations	% of total	Total from Industry	% from Industry
>\$10,000	\$492,557.39	21	14%	\$270,000	54.8%
\$5001-\$10,000	\$661,574.62	69	18.8%	\$532,500	80.5%
\$1001 - \$5000	\$1,279,847.38	422	36.4%	\$1,015,450	79.3%
\$501 - \$1000	\$601,081.84	620	17.1%	\$427,978.49	71.2%
\$101 - \$500	\$395,861.85	1142	11.2%	\$198,580	50.2%
<\$100	\$88,463.93	1433	2.5%	\$17,946	20.3%

2009-2010	Total	# of donations	% of total	Total from Industry	% from Industry
>\$10,000	\$55,000	3	13.1%	\$55,000	100%
\$5001-\$10,000	\$97,439	10	23.2%	\$97,439	100%
\$1001 - \$5000	\$189,743.50	54	45.2%	\$160,443.50	84.6%
\$501 - \$1000	\$44,000	44	10.5%	\$39,000	88.6%
\$101 - \$500	\$30,050	95	7.2%	\$20,255	67.4%
<\$100	\$3,106	50	0.7%	\$1,510	48.6%

The norm has gone from very few mega-donors and donations over \$5,000 to those donations being a very large portion of what incumbent commissioners have been raising.

PAC Donations vs. Individual Donations

Nearly one of every four dollars (24%) raised by commissioners over the past decade came from entities, not individuals. However, PAC giving to the Railroad Commission remained relatively flat for the past decade. But what growth there was came from industry PACs. As you can see below, the real driver in money being raised was the increase in donations from individuals, not entities like PACs.

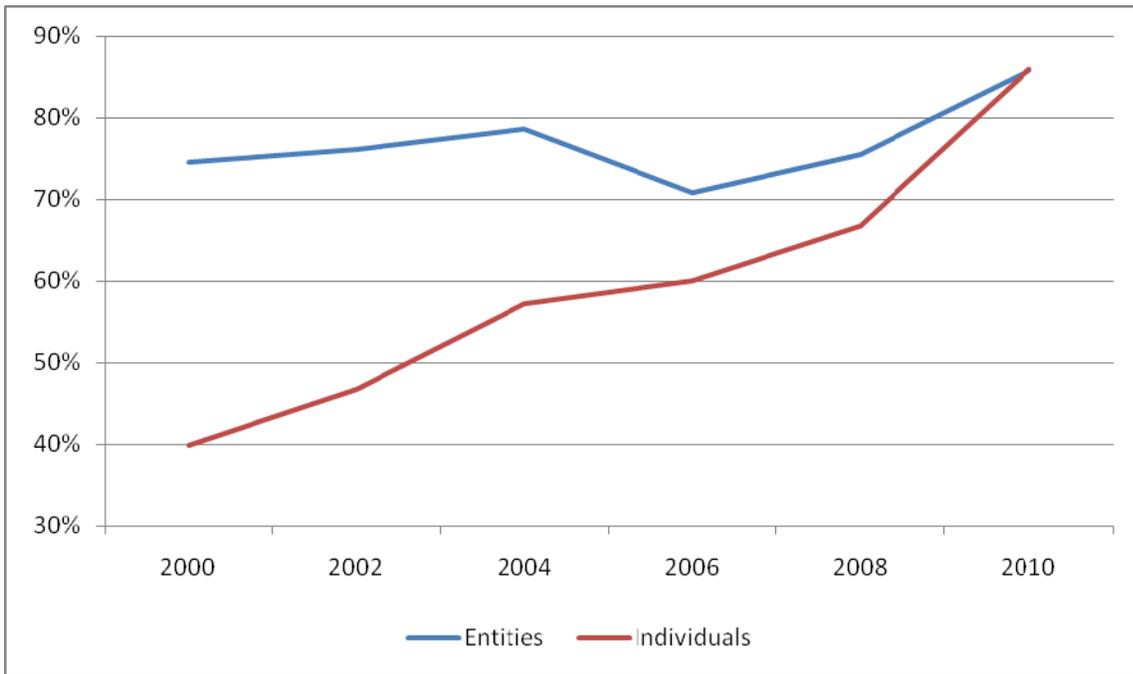


It is worth noting that because there is no limitation on how much an individual can give, there is, in some ways, a disincentive to give through an entity. PACs are, in the public's view, almost immediately suspect for having ulterior motives, while individuals are not.

This explains the relative steadiness of giving by entities, either affiliated with industry or not. It is also worth noting that among the biggest donors of this type are the Republican Party and associated party groups. Their campaign donations existed before the explosion of money at the Railroad Commission and they exist in much the same amounts now.

Industry and their lawyers have always been the largest donors among entities. 75% of all donations from entities in 2000 were from industry, lawyers, and lobbyists. But even this large proportion ballooned to 86% in 2010.

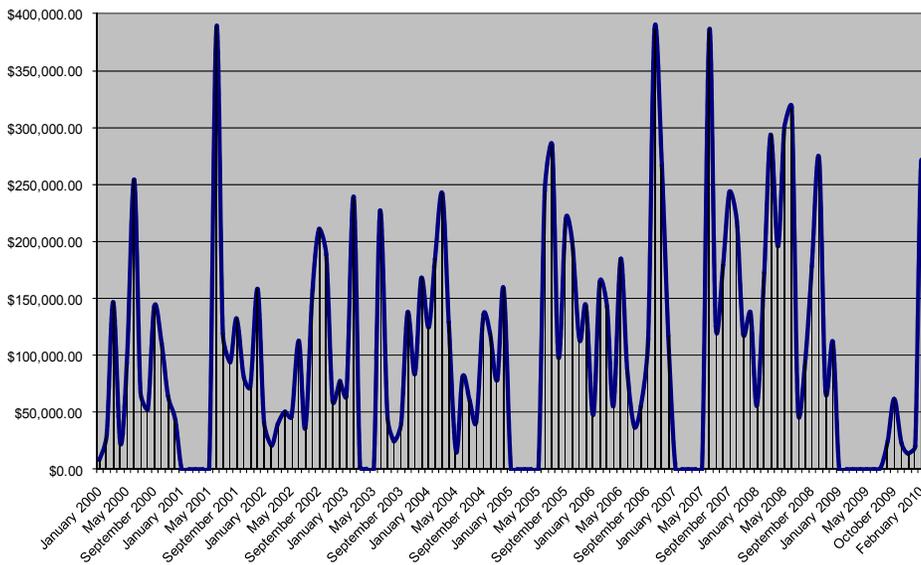
However, when compared to increased industry domination among individual donations (from 40% to 86%), we can see that the real growth is mostly due to individual donors, not entities like corporate PACs. This is shown in the following graph.



Can these donations be linked to specific actions by the Commission?

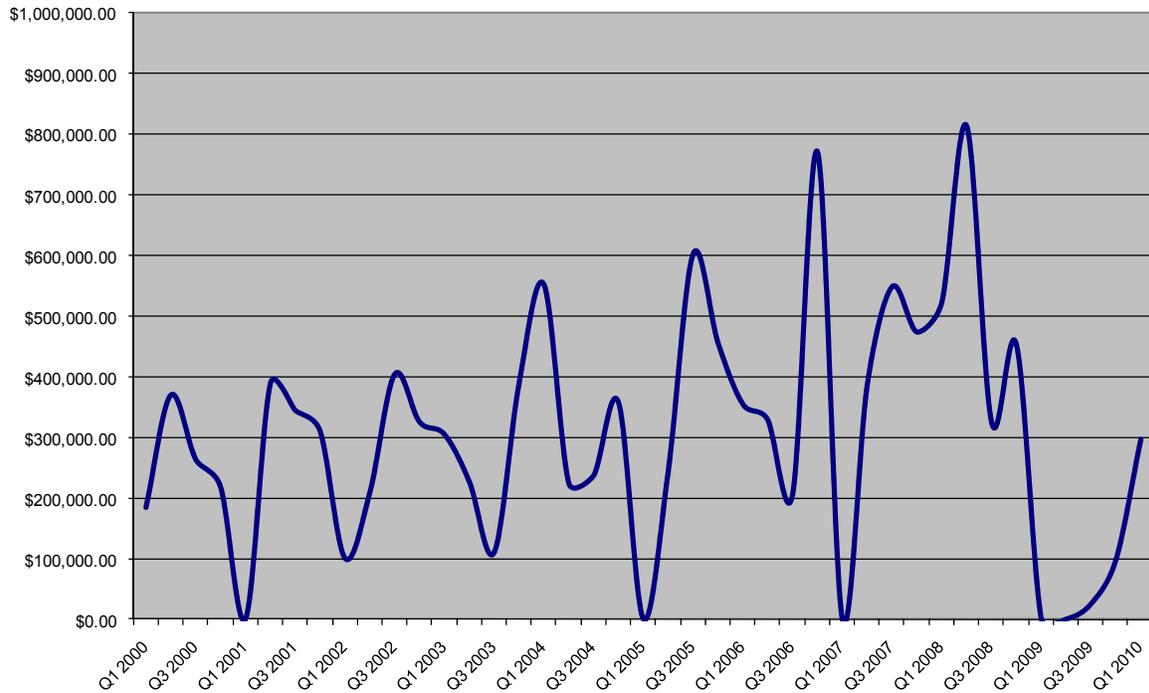
Elected officials holding public office with terms of four and six years generally raise less money in off years and do the bulk of their fundraising in the year before they are up for re-election. But in a six year term for a Railroad Commissioner, the money flows almost non-stop and seems to have peaks and valleys that may be associated with particular regulatory decisions. However, there is so much “background noise” from external fundraising and commission regulatory decisions that it is hard to specifically point to individual decisions that were influenced by money, but we present the data here regardless.

Contributions to Sitting RR Commissioners by Month



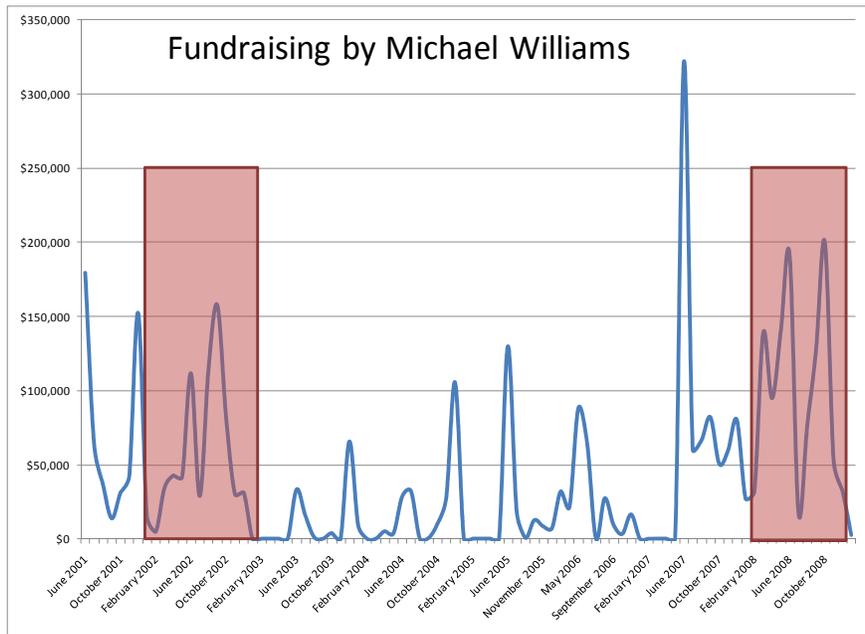
The timing of the obvious peaks and valleys here is suitable for further investigation. There is a somewhat predictable pattern: After an election year, fundraising drops off for several months at a time, first due to likely donor fatigue and second due to the campaign finance moratorium placed on all statewide candidates before, during, and after a Legislative session, which is then usually followed by a boom of possibly “pent up” donations. When we further aggregate by quarter year, however, an even more predictable pattern emerges:

Contributions to Sitting RR Commissioners by Quarter

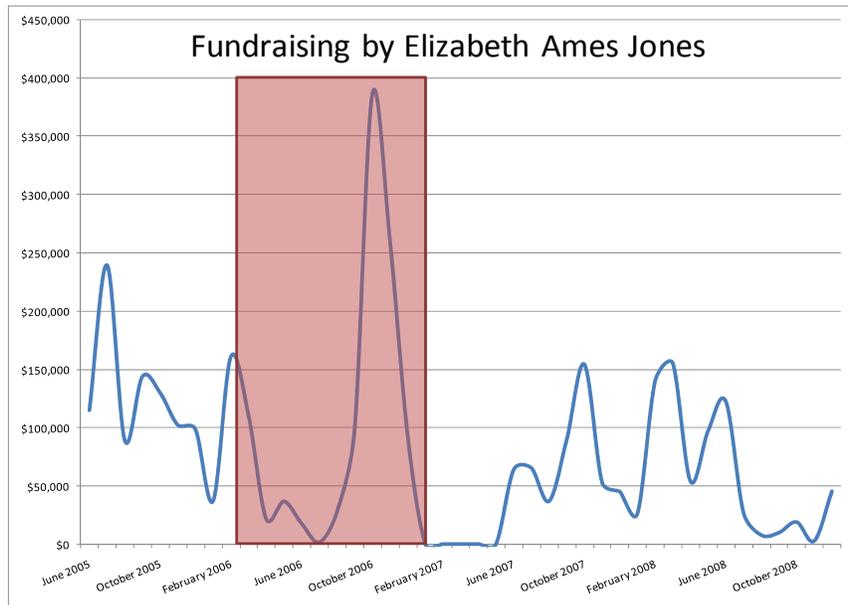


We expect fundraising to peak in election years, especially in the quarters immediately preceding an election, and the associated drops right after the election. And to an extent, we see that. What is unmistakable, however, is the greatly increased fundraising activity in the 2006 and 2008 election cycles. In fact, the smaller peaks in that time are roughly equal to the largest quarters in 2000 and 2002. The lulls in activity were equal to the high points from only a few years earlier. **Fundraising had become institutional and almost ever-present.**

The pattern of fundraising for individual commissioners are very similar. Because of both their extended time on the Commission, their abilities as prodigious fundraisers, and their current incumbency, we have included the patterns for both Michael Williams and Elizabeth Ames Jones.



Michael Williams’ fundraising shows the constant nature of campaign donations coming to Railroad Commissioners, with fundraising in election seasons, shown above in red, only slightly higher than the norm. In fact, he raises only about half of his entire campaign warchest during election season, defined for the purpose of this study as 30 days before filing to 30 days after the general election, or January – December of a year in which they will stand for election.



In some ways, Commissioner Elizabeth Ames Jones displays exactly the pattern we would predict from an elected official. Fundraising peaks during the election season and falls off during the intervening years. However, this also shows perfectly how, even in non-election years, tens of thousands, sometimes hundreds of thousands, of dollars of campaign contributions are coming in every month.

Of all of the dollars raised by incumbent commissioners, 56% of them were raised outside of an election season. Looking at each of the commissioners over the past decade, some raised more in the 5 years between elections than others:

Commissioner	Percent raised in non-election years
Charles Matthews	70%
Tony Garza	100%
Michael Williams	53%
Elizabeth Ames Jones	66%
Victor Carillo	57%

Worth noting here is that Garza never came up for re-election, due to his appointment by President Bush to an ambassadorship, and Matthews' appointment to a chancellorship by Gov Rick Perry meant he never had an opportunity to raise money for re-election campaign in a re-election year. This explains their aberrantly high numbers, but

we can see from the three sitting commissioners in 2010 that the norm is that half or more of their campaign war chest is accumulated outside of the election cycle.

Conclusions from the Data

The amount of money being raised is immense, and the increase is being driven almost entirely by those who have an economic interest in the regulatory decisions the Railroad Commission makes.

We have a large number of cross-cutting trends, but all indicate that industry money is increasingly influential at the Railroad Commission. Spending by mega-donors and their PACs is likely putting pressure on the smaller, independent operators who are getting the message that if they want a fair shake before the Commission, they also are expected to “ante up.”

Fundraising is ubiquitous. It rarely ceases, except in the immediate aftermath of an election. With a commissioner raising tens of thousands of dollars every month, it is unlikely they can fully divorce the contributions from the decisions they make.

Policy Recommendations

The Railroad Commission ought to be revamped and renamed the Texas Oil and Gas Commission, as recommended in the staff report of the Texas Sunset Commission. They also recommend expanding the Commission to five members but having appointed, rather than elected, commissioners. We support this policy, albeit we prefer going to three commissioners rather than five to avoid

violations of the Texas Open Meetings Act known as a “walking quorum.”¹ The Sunset staff report documents how changing from elected to appointed commissioners will save the State of Texas millions, and given current budget predicaments this is a smart choice.

If commissioners are to continue to be elected, we recommend enacting campaign finance rules similar to those for state legislators, where campaign donations may not be solicited or received while lawmakers are in session. We’d suggest limiting contributions to a 30-day window before filing and after election, prohibiting contributions from those with business before the Commission, placing caps on how much individuals can donate, and moving to a system of public financing.

Limitations of research

- Since 2000, the election after the previous round of Sunset recommendations, there have only been five elections, and each has been wildly different. We had two sitting commissioners appointed to another office and not standing for re-election despite collecting significant campaign war chests. In 2008, there were two incumbent commissioners running— not just for re-election, but for higher office. In 2010 the only data is from before the primary because the incumbent lost. This makes “apples to apples” comparisons more difficult but by no means inconclusive. Specifically, since we are attempting to look at what influence contributions have on decisions at the Commission, the comparisons are valid.
- Another limitation is that the campaign finance records kept by the state rely on full disclosure, something not generally abided by in many cases. Our methodology relied on self-identification as a member of the oil/gas/coal industry in the “Occupation” and “Industry” sections of campaign finance disclosure, but this section is still left blank in many cases, especially prior to 2004. This may have largely represented a vast undercount and underestimation of the influence of industry over the Railroad Commission.

¹ According to the Texas Open Meetings Act (TOMA), a majority, or quorum, of individuals of any given body may not discuss business before them in private. On a commission or council of three, commissioners may not discuss any business outside of any open meeting, as any conversation with any other commissioner would constitute a majority or quorum. But a commission of five, two members *may* discuss business in private, either behind closed doors or via email, etc. If an email conversation then is forwarded to a third colleague for input, or one of the individuals has a similar conversation with another commissioner, you have a “walking quorum,” and this violates TOMA. Because of the nature of walking quorums, commissioners may inadvertently violate TOMA, and it is harder to track and harder to prosecute. The temptation ought to be removed completely.

