

# MASSEY ENERGY

## SHAREHOLDER PROPOSAL ON VOTE-COUNTING (2010-2011)

**RESOLVED:** Shareholders of Massey Energy Company hereby ask the Board to amend Massey’s governing documents to provide that all matters presented to shareholders shall be decided by a majority of the shares voted FOR and AGAINST the item (or “withheld” in the case of board elections). This policy shall apply to all matters unless shareholders expressly approve a higher threshold for specific types of items.

**SUPPORTING STATEMENT:** Massey is regulated by the Securities and Exchange Commission (SEC). The SEC dictates a vote-counting standard for establishing eligibility for resubmission of shareholder-sponsored proposals. It is the votes cast FOR, divided by the FOR plus AGAINST votes.

Massey does not follow the SEC standard, but instead determines results by the votes cast FOR a proposal, divided by the FOR votes, AGAINST votes, and ABSTAIN votes.

This variant method makes Massey an outlier among its peers in the S&P 500, which generally follow (with limited exceptions) the SEC standard.

Historically, Massey’s vote-counting methods have resulted in distortions. A 2009 resolution calling for adoption of quantitative goals for reducing greenhouse gas emissions received a 53.1% majority of shares voted FOR and AGAINST, but was reported by management to shareholders and the press as garnering only 36.8%.

Using ABSTAIN votes as Massey does counters a hallmark of democratic voting – honoring the intention of the voter.

Massey policy states (for shareholder-sponsored proposals) that “abstentions have the same effect as a vote against the item.” However, thoughtful voters who choose to abstain should not have their choices universally switched to management’s benefit.

### THREE CONSIDERATIONS

[1] Abstaining voters consciously act to abstain – to have their vote noted, but not counted. Yet, Massey unilaterally counts all abstentions in favor of management.

[2] Abstaining voters consciously choose not to support management’s recommendation against shareholder-sponsored items. However, again, Massey unilaterally counts all abstentions in favor of management (irrespective of the voter’s actual intent).

[3] Further, we observe that Massey embraces the SEC vote-counting standard (that this proposal requests) for director elections (which excludes abstentions, thus benefiting management’s position); but does not use the same SEC standard for shareholder-sponsored proposals. Instead, the company switches to a more stringent method that includes abstentions (again, to the benefit of management).

---

### IN CLOSING

Together, these practices are arbitrary, fail to respect voter intent, and run counter to core principles of democracy.

We believe an internally inconsistent system does not serve shareholder best-interest, but instead empowers management at the expense of Massey’s true owners. Massey tacitly acknowledges the inequality of these practices when it applies the SEC standard to board elections, but applies more stringent requirements to shareholder-sponsored proposals.

This proposal calls for democratic, fair, and consistent use of the SEC standard across-the-board, while allowing flexibility to adopt higher thresholds for extraordinary items.

**Therefore, please vote FOR this common-sense proposal** that embraces corporate governance best-practices – to the benefit of company and owners alike.

~ ~ ~