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RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

**IN THE SUPREME COURT OF APPEALS**
**OF WEST VIRGINIA**

**No.** 12-0899

**STATE OF WEST VIRGINIA, ex rel, ALLEN H. LOUGHRY II, candidate for the Supreme Court of Appeals of West Virginia**

**Petitioner,**

**v.**

**NATALIE E.TENNANT, in her official capacity as West Virginia Secretary of State; NATALIE E. TENNANT, GARY A. COLLIAS, WILLIAM N. RENZELLI, and ROBERT RUPP, in their official capacities as members of the West Virginia State Election Commission; GLENN B. GAINER III, in his official capacity as West Virginia State Auditor; and JOHN PERDUE, in his official capacity as West Virginia State Treasurer,**

**Respondents.**

**ANTHONY J. DELLIGATTI'S *PRO SE* MOTION FOR LEAVE TO FILE AS *AMICUS CURIAE***

Pursuant to W. Va. R. App. P. 30, Anthony J. Delligatti respectfully moves for permission to file attached brief as *amicus curiae*. Furthermore, pursuant to the Comments under W. Va. R. App. P. 30, Anthony J. Delligatti respectfully moves for permission file a brief *amicus curiae* and to attach his forthcoming law review note that puts forth a "perspective not otherwise provided by the parties." W. Va. R. App. P. 30 Comments.

**Argument**

I submit that in this case of first impression, I may be able to help the Court decide this case. Over the past ten months I have spent a great deal of time researching the constitutionality of the West Virginia Supreme Court of Appeals Public Campaign Financing Pilot Program. I am a law student at the West Virginia University College of Law and an editor of the *West Virginia*

*Law Review*. My forthcoming law review note *A Horse of a Different Color: Distinguishing the Judiciary from the Political Branches in Campaign Financing* will be published in the fall of 2012 in the *West Virginia Law Review*. In the Note, I argue that because of the long history of distinguishing the judiciary from the other branches of government, in terms of the selection methods used, the state interests at play, and the regulation of speech in pursuing those interests, strict scrutiny should not apply to campaign speech in judicial races. Rather, courts should use a balancing approach when assessing judicial campaign speech, giving equal weight to judicial campaign speech and the independence, impartiality, and integrity of the judiciary. When applying such a standard to the West Virginia Supreme Court of Appeals Public Campaign Financing Pilot Program, it is clear that any speech it hinders is outweighed by the compelling state interests of preventing corruption and the appearance thereof on the Supreme Court of Appeals of West Virginia. My note and many of the sources that it cites may assist the Court in deciding this case. The note is attached in the Appendix.

The research that went into this Note should help this Honorable Court resolve this matter of first impression because 1) it brings to this court a "perspective not otherwise provided by the parties" and 2) it is not otherwise publicly available. The note highlights centuries of Anglo-American traditions of distinguishing the judiciary from the "political branches" of government. It is this tradition, and the unique nature of the judiciary that makes the judiciary a "horse of a different color." The note, because it will not be published until October 2012, is otherwise publicly unavailable.

No party to this case or counsel to any party to this case authored any part of the Note. No one made a monetary contribution to fund the preparation or submission of this Motion or Brief or the attached Note.

Anthony J. Delligatti
*Pro Se*

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