



**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
AMICUS CURIAE BRIEF**

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I. Interests of Proposed Amicus

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 both 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 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.

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 Brief or the attached Note.

II. Argument

Judicial elections are a horse of a different color. *See generally* Anthony J. Delligatti, *A*

Horse of a Different Color: Distinguishing the Judiciary from the Political Branches in Campaign Financing, 115 W. Va. L. Rev. (forthcoming Oct. 2012)(attached in Appendix). There is an extensive history of distinguishing the judiciary from the other branches when it comes to speech regulation and selection methods.*Id.* Nevertheless, modern campaign finance law is at odds with the history of distinguishing the judiciary, and modern campaign finance law from the Roberts Court threatens the sanctity of judicial independence of state courts. Accordingly, First Amendment issues in judicial elections should be viewed differently than First Amendment issues in elections for political offices. Courts should take a balancing approach, weighing the effect of a law on judicial independence with its effect on First Amendment free speech rights.

In applying such a standard to the Pilot Program, the importance of protecting the integrity and impartiality of the West Virginia judiciary is far greater than any speech it may hinder. Secondly, the Pilot Program withstands strict scrutiny because it is narrowly tailored to the compelling state interest of reducing the appearance of impropriety on the West Virginia Supreme Court of Appeals.

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