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A Fight for Fair Courts

Having freed corporations, unions and other institutions to spend unlimited amounts of money on elections in its Citizens United ruling in 2010, the Supreme Court compounded the damage last year by striking down an element of Arizona's public financing system that was meant to provide a workable alternative to all that corrupting campaign cash.

The question in an important case being heard on Tuesday by West Virginia's highest court is whether states are now foreclosed from using a similar public financing system just for judicial elections.

The lawsuit was brought by the Brennan Center for Justice on behalf of Allen Loughry II, a Republican candidate for West Virginia's Supreme Court of Appeals — the same court hearing the case — and the only candidate participating in the state's pilot program of judicial public campaign financing. Mr. Loughry is seeking an order compelling the [State Election Commission](#) to disburse supplemental funds that he is entitled to under provisions aimed at enticing candidates to accept the program's spending limits and give them a meaningful chance to compete. West Virginia's rules triggering disbursement of more public money when spending by a privately financed opponent reaches a certain level resemble those the Supreme Court invalidated in the Arizona decision. The majority based its ruling on the cockeyed notion that giving less well-financed candidates a better chance to be heard suppressed free speech rather than increased it.

But the ruling did not deal with judicial contests, which raise concerns about preserving judicial fairness in the face of heavy election spending. As the Supreme Court has recognized in other cases, including a major 2009 case from West Virginia that involved a litigant's outsize judicial campaign spending, preserving public confidence in the impartiality of the judiciary is essential. Mr. Loughry should get his disbursement.