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Supporters Say Supreme Court Ruling Disappointing, but Not Fatal for Public Financing

Charleston, WV — Although a West Virginia law establishing a pilot project to make public financing available to candidates for the two Supreme Court seats on the ballot in 2012 elections contains a similar funding mechanism, local campaign finance reform advocates characterized the ruling in *McComish v. Bennett* as disappointing, but not fatal for public financing itself.

"This ruling doesn't mean that public financing is dead in West Virginia. The trigger mechanisms which provide candidates with additional funding are an important component, but not the only way to design a robust public financing program," said Carol Warren of the Ohio Valley Environmental Coalition and coordinator for Citizens for Clean Elections, a coalition of twenty-five organizations that supports election reforms in West Virginia. "It is essential that judges be impartial, with no possibility of influence by financial supporters Properly crafted public financing laws are more critical than ever, so that judges do not have to dial for dollars from major donors who may appear before them in court," said Warren.

Supporters noted that a key element of the ruling is that even in striking down one important funding mechanism — triggered matching funds for participating candidates—the Supreme Court affirmed its previous rulings that public financing is itself constitutional.

Public financing has been an important reform in the area of judicial elections, where campaign spending exploded nationally in the last decade. According to Justice at Stake, a national reform group that work to keep politics and special interests out of the courtroom, state high-court candidates raised $206.9 million in 2000-09, compared with $83.3 million in the 1990s, and special-interest groups spent tens of millions more on independent TV ads. Judges face some form of election in 39 states.

Seeking to reduce special-interest influence, four states enacted public financing for appellate court elections: North Carolina, New Mexico, Wisconsin and West Virginia. All have the same funding mechanism struck down by the Supreme Court.

Polls in North Carolina, Wisconsin and West Virginia all show broad bipartisan voter support for public financing of judicial elections. The West Virginia poll showed that over two-thirds of voters see contributions to Supreme Court candidates as a serious problem and more than three out of four believe that these contributions influence a judge's decisions. These sentiments cut across party lines. In addition, the poll revealed strong bi-partisan support for public financing of West Virginia's Supreme Court elections.

A case before the Seventh U.S. Circuit Court of Appeals continues to debate whether triggered matching funds may be constitutional in the specific context of judicial elections. In *Wisconsin Right to Life v. Brennan*, Justice at Stake (JAS) and the Brennan Center for Justice argued in separate amicus briefs that

judges have a unique role in our government, with a constitutional duty to be impartial. The groups say that creates a far more compelling state interest, of preventing even the appearance of bias in elected judges.

The JAS brief, which was co-signed by 23 public interest groups including four West Virginia reform groups — the League of Women Voters of West Virginia, the Ohio Valley Environmental Coalition, the WV Association for Justice, WV Citizens for Clean Elections and WV Citizen Action Group.

The Wisconsin Right to Life case is one in a series of federal lawsuits attacking campaign-financing laws. However, unlike *Citizens United* in 2010, and *McComish v. Bennett*, the Wisconsin case addresses only court elections.

More information on the *McComish* ruling and *Wisconsin Right to Life v. Brennan*, is available here and here.

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