



Judicial Merit Selection: **Making the Case and Considerations** **in Building Campaigns**

A Practical Guide for Fair Courts Advocates

Letter from Our Executive Director

Dear Friend,

Since the dawn of our democracy, Americans have debated which method of picking judges will best promote quality judges and impartial justice, while minimizing politics and big-money influence in the courtroom. But in the last decade, the stakes have grown higher. In the wake of the U.S. Supreme Court decision in *Citizens United v. Federal Election Commission*, which opened the floodgates to new levels of independent spending in judicial races, concerned parties from across the political spectrum are seeking ways to insulate courts from special interest pressure and spending.

Fair courts advocates already know merit selection of judges dramatically reduces the influence of money and politics on state courts. In the merit selection process, potential judges apply to a nonpartisan nominating commission that conducts interviews, reviews candidates' records, and sends a list of the most qualified finalists to the governor, who then appoints one of them to the bench. Many jurisdictions couple merit selection with retention elections, while others provide for reappointment.

Today, more than two dozen states use merit selection to pick some of their judges. Although merit selection remains popular with voters in these states, politicians and special interests seek greater influence over who sits on state courts. In recent years, efforts to water down or eliminate merit systems have emerged in many states. In 2012, voters in three merit selection states — Arizona, Florida and Missouri — were asked to give politicians greater control over the selection of judges. All three ballot measures were resoundingly rejected.

Unfortunately, these attacks on merit systems will continue. And in states where fair courts advocates hope to adopt merit selection, or to strengthen their merit system, politicians and special interests who believe they have an advantage with the status quo system will work hard to preserve it.

That's why Justice at Stake created this guide. We want to help you — both new and seasoned fair courts advocates — make your best case for judicial merit selection in your state, understanding that each state and each political situation has its own unique considerations. In these pages, you will read about how to develop a strong merit selection system, prepare a winning campaign, incorporate tested themes and messages, and counter partisan attacks when they arise.

We hope this guide will prove useful in your work, and we look forward to learning about your unique experiences and how they might shape future merit selection efforts elsewhere.

Together, I know we can preserve fair and impartial courts, and protect them from a rising tide of special-interest influence.



Bert Brandenburg,
Executive Director

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Executive Summary

Merit selection of judges dramatically reduces the influence of money and politics on state courts. In the merit selection process, potential judges apply to a nonpartisan nominating commission that conducts interviews, reviews candidates' records, and sends a list of the most qualified finalists to the governor, who then appoints one to the bench. In some cases, merit selection is coupled with retention elections, while other systems provide for reappointment.

Justice at Stake created this guide to assist fair courts advocates in building strong campaigns, whether on offense or on defense, and presenting a strong case for merit selection in their states. Recommendations are based on focus groups, telephone and online polling, experience with legislative and ballot campaigns across the country, and the wisdom of our partner organizations. Here are our key takeaways:

To gain public support, transparency must be a core component of a merit system.

Voters prefer nominating commissions that publicize written procedures and applicants' names, and that open the interview process to public viewing.

Diversity in the nominating commission is a key value for the public.

Voters have more trust in nominating commissions that are professionally, politically, geographically, and demographically diverse.

Polling shows that it is possible to build public support for a merit selection system without retention elections.

Voters must be confident that merit selection results in the most qualified judges, with safeguards in place to ensure that judges remain ethical and trustworthy.

Use effective, tested messages when educating voters.

Voters find messaging in support of merit selection far more persuasive than messages used to promote other forms of judicial selection. These four major values-based themes should inform your top tier messages:

- Fairness and impartiality
- Selecting qualified judges
- Reducing the influence of money on courts
- Freeing judges from political pressure

Important:

Highlight any specific transparency mechanism built into a merit selection system.

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“Like democracy itself, merit selection relies on a wide-angle view of our nation’s goals for its people and produces a systemic superiority that safeguards our most precious baseline values.”

- Retired U.S. Supreme Court Justice and Justice at Stake Honorary Chair, Sandra Day O'Connor

Prepare to engage in a sustained education effort.

Campaigns must fill knowledge and enthusiasm gaps that exist among voters.

If advocating a switch, convince voters the current system needs change.

Success depends on your campaign clearly articulating a clear connection between the problem and your proposed solution.

Campaign planning is critical.

A proactive campaign needs to be strategic, well planned, and well financed. A campaign manager is needed.

Ballot language is key.

Its wording and the images it creates in voters’ minds are no less important than the language of your paid communications. Influence the language writing process as possible; challenge the language if necessary.

Poll early and often.

Early and repeat polling is extremely valuable in helping to determine not only the viability of a campaign, but also the clearest path to victory.

Enlist a broad coalition as early as possible.

Leaders and allies are both critical. So is understanding and neutralizing opponents’ arguments.

Ask for help.

Justice at Stake strongly advises that you engage an experienced campaign manager who can craft an overarching campaign plan and advise you where it is best to direct your time, money, resources, and efforts.

Don’t forget: we are also here to help! We can be reached at 202-588-9700, and on the web at www.justiceatstake.org.

Introduction and Methodology

Justice at Stake created this guide to equip you to advocate for merit selection in your state.

- In Part 1, we examine the elements of a merit selection system that build the greatest confidence among voters, drawing from our own public opinion research as well as the expertise of our colleagues at the American Judicature Society, The Brennan Center for Justice at NYU School of Law, and the Institute for the Advancement of the American Legal System (IAALS). Special thanks to Rachel Paine Caufield (AJS) for her assistance in preparing an early draft of Part 1.
- Part 2 offers a guide to the most effective research-tested messages merit selection advocates can employ, based on national research.
- Part 3 offers fundamental tips on how to create a strong campaign in support of merit selection, including checklists of practical questions that should be asked and answered before you begin your campaign.

Methodology

To ascertain which elements of a merit selection system are most important to voters, and which arguments in favor of merit selection are most compelling, Justice at Stake embarked on the following research:

- Six focus groups - two each in Wichita, KS; Portland, OR; and Charlotte, NC. Focus group participants were carefully chosen to represent a broad cross-section of the electorate from one state with a long history of merit selection and two states that elect judges. Focus groups were run by American Viewpoint.
- National telephone survey - American Viewpoint, Dec. 18-19, 2012, 800 registered voters.
- National online survey - Greenberg Quinlan Rosner, June 24-28, 2013, 800 registered voters.

This research was commissioned by Justice at Stake, with support from the American Judicature Society, and the Committee for Economic Development.