

applicants, studies their qualifications, checks references, and sends a list of the most qualified finalists to the governor, who appoints one of them to the bench. Voters can be reassured that candidates are thoroughly vetted before being selected.”

Values-based Messages

The most persuasive messages for educating voters about merit selection rely on key values that people seek from their court system. Four major values-based themes emerged from our top tier messages:

- (1) fairness and impartiality
- (2) selecting qualified judges
- (3) reducing the influence of money on the courts
- (4) freeing judges from political pressure

Examples of Values-Based Talking Points

Top talking points that incorporate these key themes in different ways. We include parenthetical numbering to highlight for you which values are covered in each talking point.

- Courts should be fair and impartial. Judges should be chosen based on qualifications, not partisan politics or their ability to fundraise. (1, 2, 3, 4)
- Courts protect the Constitution and serve as a check on the other branches of government. Merit selection ensures high quality judges who are accountable to the law and not to politicians. (2, 4)
- Elections pressure judges to decide cases based on politics. Judges should be free to make unpopular decisions based on the facts and the law, rather than having to act like politicians. (1, 4)
- When judges run for office, voters want them to say how they will rule. But they can't do that and remain impartial. We want judges to make decisions based on the law, not what is politically popular. (1, 4)
- Campaign money should not be a factor in selecting judges. Merit selection reduces the influence of money on the courts. (3)

What's in a name?

Not as much as you might think. We tested many possible names for merit selection, and none emerged as a clear branding winner. What's important to voters is what's in the system, and how you speak to them about it, but not what you call it. If there happens to be a name more commonly used than “merit selection” in your state, stick with it.

“Regardless of whether you favor or oppose this system, I'd like to read you several potential names for this system and have you rate each using a zero to one hundred scale - with 100 meaning you have a very warm, favorable feeling, zero meaning a very cold, unfavorable feeling, and 50 meaning not particularly warm or cold. If you don't know enough to rate it, just say so.”

Name	Rating
Merit Selection	58.8
Interview-Based Selection	58.3
Nonpartisan Court Plan	56.4
Quality Judges Plan	56.1
Merit-Retention	54.4
Quality Courts Plan	52.5
Citizen-Commission Plan	49.6

Messaging Pitfalls

Some messages we tested had surprisingly little resonance, especially with voters seen as “persuadable” or “on the fence” about merit selection:

Arguments relying on statistics

Less Effective: “Research conducted by nonpartisan groups in several states shows that judges selected using merit selection are less likely to commit ethical violations during their career than those who are elected.”

Americans are sometimes skeptical about statistics, and say they want to read the studies themselves before they can agree with your conclusions. This just distracts from the conversation. While these statistics may be accurate, they fail to arouse enthusiasm.

Pro-business arguments

Less Effective: “Employers look for stable court systems and quality judges when deciding where to locate. Some employers may find that it’s too risky to do business in states that elect their judges.”

Less Effective: “Merit selection helps businesses create more jobs, because it provides a more stable business climate and higher quality judges, and employers can spend money creating jobs instead of making political contributions.”

Voters we polled failed to see the link between stable courts and job creation. But as always, the message that should be used depends on the intended audience. Pro-business messages can help persuade business leaders to promote merit selection and turn them into valuable allies.

“Simply put, the current merit selection system for choosing judges in Kansas is good for business... It’s worked well for over fifty years, and there’s no reason to replace it with a system that will make judges beholden to the political branches of government.”

- Landon Rowland, Chairman of Lead Bank, in testimony before the Kansas Senate Judiciary Committee and House Judiciary Committee

Why The Business Community Cares About Merit Selection

Pro-business messages on behalf of merit selection do not resonate strongly with the general public. But the business community is an essential ally when growing your pro-merit selection coalition or messaging to legislators. The business community depends on the integrity, quality and evenhandedness of the judicial system when making financial and investment decisions, and the business community believes an impartial judiciary is a critical element of a stable and prosperous business climate. Accordingly, the business community is deeply concerned about the damaging effects of judicial elections on the independence and integrity of our state courts.

In 2007, the Committee for Economic Development, a business-led, nonpartisan nonprofit, commissioned a poll by Zogby International that found 4 out of 5 business leaders worry that campaign contributions have a major effect on decisions rendered by judges. The survey also revealed near universal concern that campaign contributions and political pressure will make judges accountable to politicians and special interest groups rather than the law.

Anticipating and Responding to Challenges

Our polling research shows that strong, pro-merit messages are more compelling to the public than the most common arguments against merit. Furthermore, the research shows that the more partisan the critique, the less convincing it is among “persuadable” audiences (i.e. those individuals who shifted from not supporting merit selection to supporting it over the course of a poll).

What does this mean for you?

Whenever possible, we suggest that you respond to anti-merit messaging by bridging to positive messages about merit. And whenever possible, stay out of partisan political fights. Bipartisan support that can neutralize partisan efforts against merit selection are key.

The most effective rebuttals will allow you to pivot and bridge to your counterpoint message, one which relies on the core values previously named:

- (1) fairness and impartiality
- (2) selecting qualified judges
- (3) reducing the influence of money on the courts
- (4) freeing judges from political pressure

Responses to Opposition

Our research tested a handful of common arguments used against merit selection. Below are some examples highlighting how you can most successfully pivot the conversation back to the advantages of merit selection:

Critique: “This system doesn’t get politics out of the process. It just moves it behind closed doors.”

Response: “A well-designed merit system will ensure far more transparency and accountability than either an appointment system or an election system. Merit selection ensures that our

judges will be chosen based on their qualifications, not partisan politics or their ability to fundraise. With merit selection, potential judges apply to a nominating commission that conducts interviews, reviews candidates’ records, and sends a list of the most qualified finalists to the governor, who appoints one of them to the bench.”

Tip: If the system has specific transparency mechanisms built into it, it is important to highlight them. For instance, you might say, “The nominating commission opens its doors to the public, making a list of applicants available for review and streaming video of its interviews online.”

Critique: “Merit selection takes away our right to vote.”

Response: “Judges are not politicians. We want judges to be chosen based on their qualifications, not partisan politics or their ability to fundraise. This helps ensure fair and impartial judges and courts.”

Tip: There are several additional arguments that support this line of reasoning:

- “Elections pressure judges to decide cases based on politics. Judges should be able to make unpopular decisions based on the facts and the law, rather than having to act like politicians.”
- “When judges run for office, voters want them to say how they will rule on cases, but they can’t do that and remain impartial. We want judges to make decisions based on the law, not what is politically popular.”
- “Campaign money should not be a factor in selecting judges. Merit selection is the best way to cut down on the influence of money that now floods elections, and it protects judges from having to solicit money from donors who may have expectations of how they will rule in a case.”

Important: Because some merit systems have traditionally incorporated retention elections, these are often held up as a means of ensuring accountability in a way that also satisfies the desire to vote. For example:

- “People will still be able to hold judges accountable through a meaningful vote at the end of every term. Merit selection restores accountability through retention elections, ensuring voters have a clear choice in whether or not to keep judges after they have served their term.”
- “In contested elections, most candidates for judgeships run unopposed, giving voters no real choice. By contrast, retention elections give voters a more meaningful opportunity to hold judges accountable, since voters can decide whether or not to allow a judge to continue to serve.”

Emphasis on Accountability

In discussing the role of accountability within a merit selection system, advocates shouldn't be defensive. Instead, agree that judges have to be accountable - to the Constitution and the law, not to politicians and special interests. When they hear this formulation, voters are reminded that they want courts to be fair and impartial above all. Talk about how merit selection can help assure that judges are not “accountable” or beholden to contributors or to any group of individuals, but to the law.

Critique: “Merit selection gives too much power to the governor.”

Response: “The governor’s power within a merit system is carefully limited. S/he chooses from candidates who are carefully screened for their qualifications, not on the basis of partisan politics. With merit selection, the governor selects only from qualified finalists identified by a nonpartisan nominating commission. The governor can’t just select unqualified contributors and cronies.”

Critique: “The current system isn’t broken, so why fix it?”

Response: “The escalating spending and growing role of special interest money in judicial elections is a big cause for concern for all who want to guarantee fair and impartial courts. Tens of millions of dollars were spent on judicial races in 2011 and 2012, with more and more coming from out-of-state special interest groups with an agenda. We want our judges chosen based on their qualifications and to be accountable to the law, not partisan politics or an ability to fundraise.” (See Figure 3)

Critique: “Nominating commissions are dominated by trial lawyers.”

Response: “That’s not true. These nonpartisan commissions are made up of lawyers from a range of practice areas, as well as non-lawyers. This helps ensure judges will be chosen based on their qualifications and that regular people have a say in the process.”

Tip: Voters understand that legal experts play a useful role in identifying qualified judges due to the expertise they bring from their courtroom experiences.

Figure 3

Estimated Spending on Supreme Court Races, 2011-2012*

STATE	CANDIDATE FUNDRAISING***	PUBLIC FUNDS	INDEPENDENT EXPENDITURES BY POLITICAL PARTIES	INDEPENDENT EXPENDITURES BY INTEREST GROUPS	TOTALS
Michigan †	\$3,419,187	\$0	\$8,370,969	\$1,216,617	\$13,006,773
Wisconsin** †	\$563,269	\$800,000	\$0	\$3,373,748	\$5,101,017
Florida †	\$1,529,020	\$0	\$0	\$3,333,190	\$4,862,210
North Carolina †	\$173,011	\$480,200	\$0	\$3,841,998	\$4,495,209
Alabama	\$4,053,131	\$0	\$0	\$0	\$4,053,131
Ohio	\$3,467,446	\$0	\$250,840	\$141,270	\$3,859,556
West Virginia	\$3,322,370	\$373,705	\$0	\$0	\$3,686,075
Texas	\$3,206,614	\$0	\$0	\$0	\$3,206,614
Louisiana	\$2,644,271	\$0	\$0	\$555,440	\$3,199,711
Mississippi	\$1,793,742	\$0	\$0	\$1,078,240	\$2,871,982
Illinois †	\$2,285,198	\$0	\$0	\$195,493	\$2,480,691
Washington	\$1,288,379	\$0	\$0	\$0	\$1,288,379
Iowa	\$0	\$0	\$0	\$833,087	\$833,087
Oregon	\$792,176	\$0	\$0	\$0	\$792,176
Pennsylvania**	\$629,756	\$0	\$0	\$0	\$629,756
Oklahoma	\$0	\$0	\$0	\$453,140	\$453,140
Montana †	\$329,384	\$0	\$0	\$42,000	\$371,384
Kentucky	\$363,191	\$0	\$0	\$0	\$363,191
Minnesota	\$260,317	\$0	\$0	\$0	\$260,317
Arkansas	\$209,230	\$0	\$0	\$0	\$209,230
Georgia	\$183,402	\$0	\$0	\$0	\$183,402
New Mexico	\$166,373	\$0	\$0	\$0	\$166,373
Arizona	\$5,000	\$0	\$0	\$0	\$5,000
TOTALS	\$30,684,467	\$1,643,905	\$8,621,809	\$15,428,223	\$56,378,404

*This chart estimates spending on high court races, including competitive and retention elections, in the 23 states in which spending was documented. Candidate fundraising and public funding figures were provided by the National Institute on Money in State Politics. Independent expenditures by political parties and interest groups reflect television spending estimates by Kantar Media/CMAG. In Florida, Illinois, Iowa, Michigan, Montana, North Carolina, and Wisconsin, additional information on independent expenditures by parties and interest groups was obtained through campaign finance filings and other verified reports, as detailed in the notations for each state. This additional data was added to spending totals to the extent it did not duplicate television spending estimates by Kantar Media/CMAG.

** 2011 election

*** Candidate fundraising includes contributions and self-financing by candidates. It excludes fundraising by judges that did not run for election in 2011-12.

† Independent expenditures reflect estimated spending on television ad time, as provided by Kantar Media/CMAG, and data from the following sources: Michigan: Michigan Campaign Finance Network, Michigan Supreme Court Campaign Finance Summary 2012 (excluding estimated television spending); Wisconsin: campaign finance filings provided to the Wisconsin Campaign Finance Information System; Florida: IRS filings by Restore Justice, as documented by opensecrets.org, public statements made by the Florida director of Americans for Prosperity; North Carolina: campaign finance filings provided to the North Carolina State Board of Elections (excluding television spending), press release by Americans for Prosperity; Illinois: independent expenditures tracked by the National Institute on Money in State Politics; Iowa: campaign finance filings provided to the Iowa Ethics & Campaign Disclosure Board (including television spending reported in excess of estimates provided by Kantar Media/CMAG); Montana: spending reported by the Center for Public Integrity. Additional documentation on file with the Brennan Center for Justice.

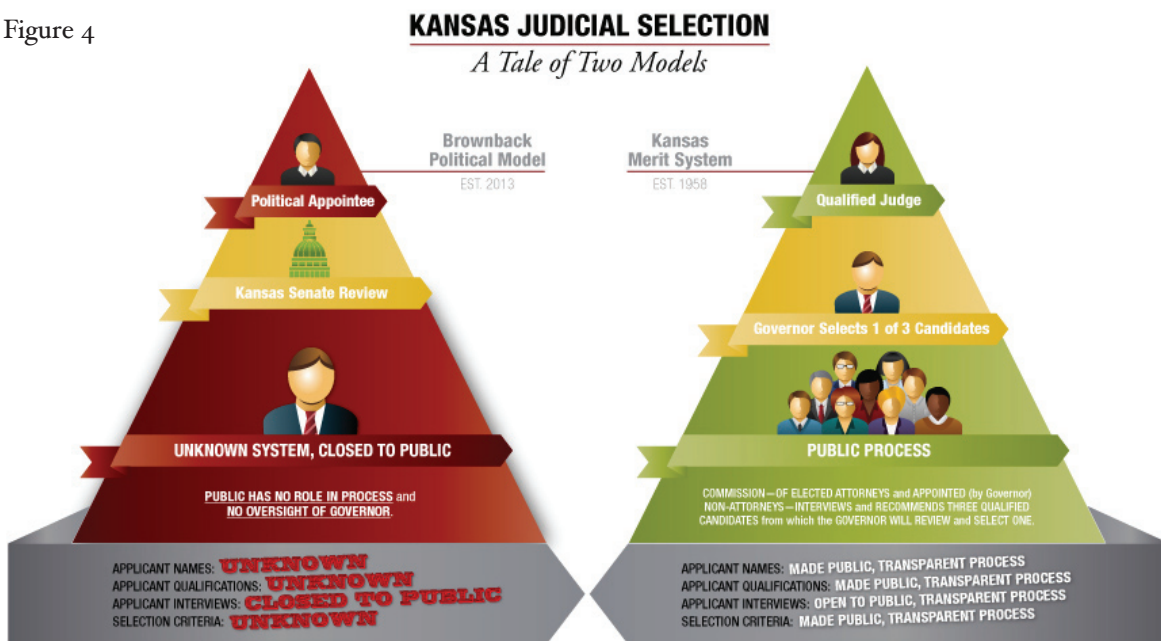
Media Strategy

While there is no one-size-fits-all media strategy for campaigns, the topic merits a short discussion here. Your media strategy needs to be part of an overall campaign plan. If you have the resources to hire a local public relations consulting firm, consider doing so. Such firms survive on the strength of their media contacts, and can do the legwork and outreach that can seem daunting and overwhelming at first.

Your budget will also determine the type of media strategy you are able to pursue. Earned media (coverage that is not paid advertising, including op-eds, newspaper articles, and TV or radio interviews) will be a cornerstone of your efforts, but if your issue will be on the ballot you will also want to build a budget around the necessary paid advertising to communicate repeatedly with voters prior to an election. A professional consultant can provide tips on your ad campaign, such as ensuring that you buy ad time early before rates shoot up during the election season.

Online and social media techniques could fill an entire handbook on their own, and are becoming less and less distinct from traditional media relations, with substantial areas of overlap. Build social media efforts into your budget and engage a communications specialist to employ social media tactics as a cost-effective method to reach likely voters, educate them, persuade them, and dispatch them to spread the word, as well as grow and motivate your campaign's base and solicit funds.

Figure 4



Kansans for Fair Courts used social media visuals such as this one to highlight the disparity between the existing merit selection system and Gov. Sam Brownback's actions to consolidate greater control over the judiciary.

Here are a few considerations to keep in mind regarding your media strategy, whether you are hiring a consultant or taking a do-it-yourself approach:

- Use the messages outlined in this guide, along with the set of messages honed for your local audience, as the foundation for your media activities
- Give careful consideration to the choice of a go-to media spokesperson for your campaign, and if at all possible, have that person (or those people) trained in spokesperson skills and in your tested messaging
- Consider enlisting a VIP spokesperson whose prominence makes his or her activities newsworthy, such as a high-ranking retired official
- Start early to meet with and engage the interest of local newspaper editorial boards, whose support can be invaluable to your efforts
- Have a plan for the regular issuance of press releases, letters to the editor, op-eds and announcements about your activities
- Create a structure to facilitate rapid decision-making and dissemination when opportunities and challenges arise
- Ensure that you have a skilled writer or two on your team, as poorly written material will not be published and will harm your credibility with the press
- Since polls show that most people still get their news from local television, explore opportunities to create live events with visual components that will appeal to television stations
- Understand that reporters and editors will evaluate your pitches and press releases with an eye to why the average viewer/reader/listener should care about the issue, and frame your approach accordingly
- Justice at Stake is also available to assist with tips and guidance for your media efforts

“If we see judges on the ballot, then we’re not voting for them because they’re good judges, because we don’t know the law. I’m not a lawyer, I’m not a judge, I don’t know if this guy would hang my mother. So there’s a commission to weed out those people who aren’t qualified.”

-Focus group participant, Kansas

The Nevada Example: Developing a Needs-Case Message

A question appeared on the November 2010 ballot in Nevada asking voters about transitioning from judicial elections to merit selection. Specifically, the ballot measure asked: “Shall the Nevada Constitution be amended to provide for the appointment of Supreme Court justices and District Court judges by the Governor for their initial terms from lists of candidates nominated by the Commission on Judicial Selection, with subsequent retention of those justices and judges after independent performance evaluations and voter approval?”

A campaign—Nevadans for Qualified Judges—was developed to support the initiative. The measure was defeated with 285,746 votes in favor (42.3%) to 390,370 votes opposed (57.7%).

A comprehensive review of the strategy and tactics of the campaign in support of the judicial selection change was conducted after the election by IAALS, the Institute for the Advancement of the American Legal System, and RBI Strategies, an independent consulting firm. The review concluded that one of the major reasons merit selection lost at the ballot was the failure by proponents to provide a “needs-case message,” defined as “A

message stressing the existence of a problem facing the public that is in need of addressing. The focus of a needs-case message is on the problem as much as, or perhaps even more than, the solution being offered.” Along these lines, one perceived misstep was that the campaign chose not to capitalize in its paid advertising on a high level of recall of several scandals involving abuse of power by judges in Nevada.

Stated the report:

“...[V]oters’ disconnect with the current selection process, in addition to the generally strong approval for the state’s highest court and the finding that most believed their judges to be qualified, fair, and impartial, should have been viewed as a vulnerability as voters were not primed to change the current system. Further, this should have been an early indication of the need for a large scale and aggressive needs-case message strategy to communicate to voters the breadth and depth of the problems associated with the current system...It has been shown in election cycle after election cycle that voters will rarely change a system without a widespread sense among the electorate that the existing system is inefficient, ineffective, corrupt, or

Part III: What Is Needed to Build a Campaign to Advance or Protect Merit Selection

Designing the right system and developing a compelling message are only part of the battle. Winning or losing will depend heavily on whether merit selection supporters plan and run a smart, professional campaign, and whether the campaign is funded adequately to engage in widespread public education and advocacy. This booklet is not a guide to running a campaign; it merely offers observations on important aspects of one. If you face a ballot campaign there is no substitute for a professional campaign manager.

Whether you are working to transition your state to a merit selection system, defend an existing system, or enact reforms that make your current system stronger, you will likely follow almost the same steps in building your campaign. This chapter takes you through many of the basic questions you should ask in assessing whether to launch a campaign, as well as the steps to developing a detailed campaign plan.

When your campaign is in offensive mode, you have the advantage of being able to set a timeline that will best guarantee your success. The best time to set that timeline, of course, is before you launch your campaign. (Pay careful attention to the research section below and develop a timeline that gives you every possible strategic advantage.)

On the other hand, ***if your campaign is in defensive posture***, you are largely forced to respond to your opponents' timeline. Understand what that timeline is and how you can best adapt to it, or whether one of your goals might be to change it. Ask yourself, when will there be clarity around how much money your opponents are raising, whether they have hired lobbying firms or a campaign manager, or have purchased air time to advance their agenda?

The primary disadvantage to a proactive campaign, as we have seen from research and from recent history, is that you face the high hurdle of persuading the public that there is a problem with the current system. When it comes to a ballot initiative, in particular, it is always much easier to defend the status quo than to get a majority of the electorate to support a constitutional change. Your proactive campaign will need to be aggressive, large scale, well financed, and based on an articulated need. A sustained multi-year effort, from a committed core group of leaders, preferably with advocacy experience or advisors who have those skills, will be needed. These factors make point #1 above all the more important: Take control of your timeline, knowing that you will face an uphill battle to build public support.

Campaign planning is best done as a group activity. Invite in the allies and stakeholders that you have identified so far for a facilitated planning session (Justice at Stake can help you find a facilitator). Plan a retreat. Set aside the time and bring in the expertise needed to do it right.

Answering Threshold Questions

Before moving forward on a campaign, it is important to consider some threshold questions:

- What is the problem you are trying to address? (e.g., “Money and special interests have too much influence on our courts,” or “Politicians are trying to increase their influence over the judicial branch,” or “Money and special interests have wreaked havoc in other states, and we want to make sure our courts don’t fall victim to the same problems.”)
- How will the proposed policy reform solve this problem?

Your answer to these questions will form your theory of change. You must be able to clearly articulate the connection between the problem in your state and your proposed solution. For example, “If we adopt a merit selection system with a nonpartisan, transparent nominating commission, then we will ensure fair and impartial courts with judges chosen based on their qualifications, not partisan politics or their ability to fundraise.”

Once you have clearly articulated your problem and identified the policy or policies that would address it, you are ready for the first step in planning your campaign: Research.

Research, Research, Research: What Do You Need to Know?

Questions will arise during the course of your campaign that will require ongoing research and investigation. However, the more you know before you launch your campaign, the stronger your plan will be and the better your chances for success will be. Below are some suggested categories for information-gathering prior to developing a campaign plan around merit selection.

Your current judicial selection system:

- How are judges selected at each level in your state?
- Is the selection system authorized by the state constitution, was it established by the legislature, by an executive order, or was it a combination of those elements?
- How long has the current system been in place and what led to its enactment?
- Have there been attempts to change your system in the past? What happened to those attempts and who led and opposed them?
- Who currently supports and opposes your system, and why?
- What criticisms have been raised against the current system?
- In what ways does your judicial selection process allow for public and voter input?

Tip: Ask these questions about some neighboring states - neighbors might provide good examples for your state to emulate, or bad examples that your state is seeking to avoid.

What it will take to bring about the reform you seek:

- Can your chosen reform be enacted by a simple rule change, by legislation, or does it require a constitutional amendment? What is the process?
- What legislative committees will your bill likely be assigned to, and what do you know about the leadership of those committees?
- Do you have influential and articulate legislative champions for your issue?
- If the legislature will not act on the desired reform, can you petition a constitutional amendment onto the ballot? If so, what does that require?
- If your strategy will require legislative or ballot-initiative work, do you understand the legal requirements for tracking and reporting lobbying, fundraising and related activities?
- What is the ballot language writing process in your state? Would you be able to influence the language that will appear on the ballot?

Ballot Language: A Crucial Factor for Success

In any ballot initiative campaign, one of the most important communications that any voter will receive during the campaign is the ballot language. Its wording, length, and the images it creates in the mind of the voter are no less important than the language of the paid communications. You might find during your initial research that public opinion regarding the general concept of merit selection is high in your state. Do not be fooled! Ballot measure experts know that the actual wording of the question can decrease support substantially and can sink your prospects for success, or it can dramatically improve your chances.

It is crucial that your campaign influence as much of the language writing process as possible. When you offer input into the language itself, make sure to take a research-based approach. Use polling and focus group experts to get a baseline of how the measure will perform with the proposed and then actual language that will appear so you can alter your campaign accordingly.

Before you even begin, ask yourself this crucial question: If your state allows for a petition process, would this allow you more influence over ballot language than if the language goes through the legislature? If so, is it worth the greater investment to pursue a petition process even if legislative approval is possible?

Potential allies and opponents:

- What other organizations and entities have an interest in solving the problem you have identified?
- Who is likely to oppose you? Opposition research is needed.
- How strong and influential are the groups on each side? What resources does each side have?
- What are their top priorities and how does this issue rank?
- Will any of these groups offer financing and other resources to support your reform efforts?

Once you have thought about these questions, do so a second time.

- Who are you missing?
- What strong and influential groups can be brought on board if you just talk it through with them once more?
- Who might be persuaded to oppose your effort, and what can you do before getting started to prevent that from happening?
- Are there current opponents who might be persuaded to sit out this fight? How?

Legal Community Support

The legal community is a critical piece of the puzzle, though not sufficient to win a campaign by itself. Attorneys often care deeply about judicial selection, offer expertise on the legal system and may have connections and insights into the state legislature. They may also be able to garner resources to support your campaign. Begin by reaching out to your state bar association, as well as organizations representing trial lawyers, defense attorneys, public defenders, and minority bar members. You may find that not everyone supports your proposal. By approaching these groups early, and with some flexibility, you may be able to shape your reform to maximize the support of these key stakeholders.

Public opinion:

The tested messages in this guide are an excellent starting point for your campaign. But it is very important to engage in state-specific research to refine these messages for voters where you live. Here are some key questions you will need answers to at the outset of your campaign:

- How well does the public understand the current system of judicial selection?
 - What is public opinion about the judiciary in your state?
 - Does the public have knowledge of any malfeasance in the judicial system that might lead them to support a change in judicial selection?
 - Where does the public stand on the concept of reform you are pursuing? What are the most decisive factors in persuading the public to support your position?
-

A benchmark statewide poll will be extremely valuable in helping to determine not only the viability of a campaign, but also the clearest path to victory. It may also help you attract donors. Plan on polling again during the campaign, possibly a few times, to ascertain whether your tactics are successfully moving voters into your camp, and whether support for the concept of merit selection is translating into a commitment to support your measure at the ballot. Remember, if this is a ballot campaign, it will be crucial to test the actual ballot language when it becomes available, along with alternative messages designed to promote it.

Justice at Stake can provide assistance in developing polling questions and analyzing results throughout a campaign. Contact us!

Timing:

- Is there an external event (like a recent, court-related news event or a change in leadership) that creates a new opportunity?
- What does your legislative cycle look like and how long does it take to move a constitutional amendment (if needed) through the legislature?
- If passed, when would your amendment go before the voters? What other amendments are likely to be on the ballot, and how might they affect your allies' ability to support your proposal? How might they affect your ability to raise money and ensure your message is heard? How might they mobilize voters for or against your measure?
- Based on upcoming state and federal elections, both primary and general, and anticipated ballot measures, when would be the most strategic timing for your measure to go before voters? Will early voting be a factor?
- Will there be high-profile, contested political campaigns saturating the airwaves and therefore making TV ad buys more expensive? If so, by what date would you need to purchase airtime to accommodate your budget?

Resources:

- If you must pass a constitutional amendment, what is that likely to cost?
- What resources (money, staffing, communications, legal team) do you need to sustain a campaign from initial launch through Election Day? What benchmarks: e.g., when will you need certain amounts?
- What resources do you anticipate will be brought to oppose you?
- What support do you anticipate allied organizations would provide?
- What is your plan to bridge the gap between what you have and what you need?
- Can you do it within the timeframe you are considering?

Post-election Polling

Post-election polling can help you determine which messages resonated with the public, which types of media were most influential in forming their opinions, and what issues or considerations drove people to vote (or not vote) on this issue. If you have the resources for it, this polling can guide your efforts to retain public support for merit selection following a successful campaign, or become “lessons learned” for a repeat attempt to advance the issue in your state or another. Post-election campaign analysis is also a valuable tool.

Important: If you are planning to go to the ballot, we strongly advise that you engage an experienced campaign manager who can craft an overarching campaign plan, including a fundraising plan, and advise you where to best direct your time, money, resources, and efforts. Any campaign will benefit from working with a professional who can manage your efforts and connect you to other professionals with paid advertising, polling, and ad buying expertise, for starters! You will need to plan your work, and work your plan!

Conclusion

Across the country, fair courts advocates are fighting back against attacks on our courts by politicians and special interests. The stakes are high, and our side is typically outspent, so as leaders we have to get it right. Our job is to work smarter, harder and more strategically—and link our cause to values that the public cherishes, like fairness and impartiality.

The good news is that in recent years, voters in several states have rejected efforts to tamper with their merit selection systems. Passing and protecting reforms to keep money and politics out of our courts is no small task. But make no mistake: defending and advancing merit selection of judges will further the work our nation’s founders began, of creating a more perfect union.

Resources

Justice at Stake, www.justiceatstake.org, is available to help with your campaign to advance or defend merit selection.

The Brennan Center for Justice at NYU School of Law report, “Improving Judicial Diversity,” offers useful recommendations. To read the full report, visit: http://www.brennancenter.org/sites/default/files/legacy/Improving_Judicial_Diversity_2010.pdf

The Institute for the Advancement of the American Legal System has a comprehensive publication on judicial performance evaluation, “Recommended Tools for Evaluating Appellate Judges,” which is available for download at: http://iaals.du.edu/images/wygwam/documents/publications/Recommended_Tools_for_Evaluating_Appellate_Judges.pdf

The Ballot Initiative Strategy Center (BISC), at www.ballot.org, offers research and guidance on best practices for ballot initiative campaigns.

The Center for Story-Based Strategy, www.storybasedstrategy.org, can help you define and refine the narratives that tell the story of your campaign.

Organizing for Power, at www.organizingforpower.org, and Tools for Change, www.toolsforchange.org, offer tools and resources for campaign planning.

American Judicature Society, www.ajs.org

Committee for Economic Development, www.ced.org
(need specifics on what we want to say about them)

We want to help!

At Justice at Stake, we are constantly tracking developments in legislatures across the country, conducting polling and other research, and evaluating strategies to support state courts. Contact us for support in developing your strategy, conducting state-specific message research, building a strong coalition, and more.